

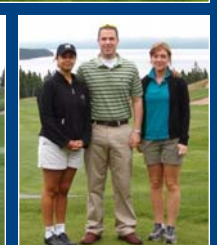
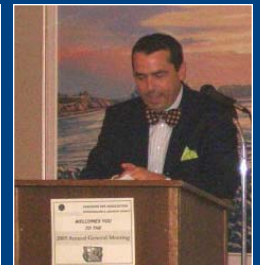
# Squid pro quo

Newfoundland and Labrador Branch

Summer 2005

Canadian Bar Association

## Canadian Bar Association Branch Annual General Meeting July 22<sup>nd</sup> & 23<sup>rd</sup>, 2005





## Squid pro quo

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

### SQUID PRO QUO EDITORIAL BOARD

Sheri Wicks, *Editor*  
Peter Shea      Geoffrey Aylward  
Gregory Connors      Tammy Drover  
Cindy Starkes      Andrew Wadden  
Brian Harvey      Janie Bussey  
Pam Taylor      Chris Peddigrew  
Roxane Dean - *Executive Director*

### 2004 - 2005 EXECUTIVE COMMITTEE

**President**  
*Peter Shea*

**Vice President**  
*Jennifer Newbury*

**Treasurer**  
*Sheilagh Murphy*

**Secretary**  
*Christine Healy*

**Past President & President's Designate on Board of Directors**  
*Janis Byrne*

**Membership Chair**  
*Bernadette Cole*

**Young Lawyers' - CBA**  
*Kenneth Jerrett*

**Continuing Legal Education**  
*Chris Pike*

**Communications Chair**  
*Sheri Wicks*

**Central Regional Chair**  
*Gerald Wetzel*

**Western Regional Chair**  
*Jamie Merrigan*

**Labrador Regional Chair**  
*Alex MacNab*

**Executive Director**  
*Roxane Dean*

*Opinions expressed herein are not necessarily those held by the Newfoundland and Labrador Branch of the Canadian Bar Association.*

*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>.*

*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 (579-5783) for information regarding advertising rates and policies.*

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

## Letter from the Editor



Sheri Wicks  
Editor

WOW!!! Hats off to the Annual General Meeting (AGM) Planning Committee for changing the date of our Branch AGM from early June to mid-July. The extra few weeks really made a difference to the temperature in Terra Nova, which made the whole AGM a more comfortable and enjoyable event. As most of you are probably aware the CBA year runs from September to August, and the results of our Branch elections were announced during our AGM, with the results included in this edition. Be sure to take note of who the section chairs are as we look forward to another active year at the Branch level. There are still a couple of sections without chairs; would you like to become involved?

Peter Shea, our President during what has been a troubling year for the NL bar, has guided us with a calm confidence that evoked strong collaboration in all members of the executive. Every opinion was important, and consensus, rather than majority rule, was Peter's mantra. It has been a pleasure working with him, and I look forward to one more year in his company as he serves as Past-President on the executive.

I would like to give a special thanks to this year's Magazine Committee, many of whom worked extraordinarily hard to ensure that the magazine was jammed packed with useful and interesting articles for our membership. Of course, like just about every facet of the Branch activities, the magazine would not be possible without the tireless efforts of our Executive Director, Roxane Dean who, amongst many other things, always makes sure that the magazine reaches our membership in a timely manner. I hope many of you join me again in September when the call for volunteers goes out.

In addition to all of the regular features, this edition has an *In Personam* on Newfoundland and Labrador Supreme Court Justice Richard LeBlanc, and for the first time, an *In Personam* on the Executive Director of the National CBA office, John Hoyles. We hope to bring you more Personams in the coming year on the people who work so hard for us as staff members of the CBA. There is also a report from this year's Law Day Committee who had another fabulous year, a list of our Province's newest Q.C.'s and an article on the Provincial Government's new victim youth services program.

I would like to wish everyone a safe and enjoyable summer, and for those of you attending the national CBA Canadian Legal Conference, have fun in Vancouver!

---

# President's Report

by Peter Shea



Wow! I had a terrific time at our Annual General Meeting this past weekend at the Terra Nova Golf Resort. With our Branch AGM behind us, I'm very much looking forward to the Canadian Legal Conference (CLC) in Vancouver this August. The Atlantic Provinces have joined forces to host a Late Night "Kitchen Party" at the Vancouver CLC, which will help promote the 2006 CLC here in St. John's. Need I say it will be a grand time? I hope to see you there!

## National Board of Directors Meeting - June 11<sup>th</sup>, 2005

Summer started with a bang when I left 8 degree weather in St. John's and landed in an early heat wave in Ottawa on June 10<sup>th</sup>. The highlight of the weekend was when I attended the annual dinner hosted by the Supreme Court of Canada. This is truly a special event, and I had the privilege of sitting next to Justice Morris Fish during dinner. Justice Fish was a very highly regarded criminal defence lawyer during his years in practice in Montreal, and sometimes found himself practicing in Newfoundland and Labrador. His stories from his visits here were very enjoyable. Following dinner, Registrar Anne Roland gave us a tour of the courthouse. The evening was a marvellous experience.

## Branch AGM

I am very happy (and relieved!) to report that we had excellent co-operation from the weather during our recent AGM. We had two beautiful days in Terra Nova. We were pleased to host Bernard Amyot, incoming National 2<sup>nd</sup> Vice-President, during our AGM. Bernard is a partner at Heenan Blaikie in Montreal, practicing commercial litigation. I thoroughly enjoyed Bernard's visit, and I look forward to watching his progression through the National executive. I am certain that he will be a tremendous credit to our organization.



Bernard, Jennifer Newbury and myself had the pleasure of visiting with the Honourable Mr. Justice James P. Adams on Thursday, July 21<sup>st</sup>. Justice Adams, a Past-President of our Branch, will be co-ordinating the events for the Canadian Superior Court Judges Association for the 2006 CLC in St. John's. We discussed the 2006 CLC, and also had an excellent discussion on issues such as self-represented litigants in the court system, the legal aid test case, and criticism of judges in the media.

Later in the day, we met with Dianne Smith, Q.C. (Director of Civil Division) and Tom Mills (Director of Public Prosecutions) at the Department of Justice. We had an informative and enlightening discussion on issues such as racial profiling, self-represented litigants, and legal aid.

Our Council Meeting took place on Friday, July 22<sup>nd</sup>. Most notably, our Branch By-Laws, which were extensively revised and updated by Christine Healy during the year, were discussed and adopted. Following our Council Meeting, Bernard Amyot gave a terrific address to Branch members at our AGM Luncheon. The CLE following lunch, "Effective Written Advocacy", was very well attended, and Justice Keith Mercer, Justice Leo Barry, Sheila Greene, and David Hurley, Q.C. treated those in attendance to an excellent discourse on the subject. Many thanks to Chris Pike and Frank O'Brien for putting together this excellent seminar.

At the Awards Dinner that evening, Norman J. Whalen, Q.C., was awarded the Branch's Distinguished Public Service Award. Mr. Whalen, a Past-President of the Branch, is a credit to our bar and our province. Following the dinner we headed to the pub to hear Kilkenny Crew, and rumour has it

that the after hours party at the Martin Whalen Hennebury Stamp suite just about blended into the family breakfast hosted by CBIA the next morning. Following the family breakfast, our golf tournament took place under picture perfect conditions, followed by refreshments, snacks and prizes at our Winners' Circle Social at the pub.

Many thanks to those who attended the AGM, as well as our sponsors, Hickman Saturn SAAB, Stewart Title, Dye and Durham, CBIA, CBA Financial Services Limited and the Terra Nova Golf Resort.

Over the years these sponsors have allowed us to greatly enhance the quality of our meetings. Our AGM Committee (Bernadette Cole - Chair, Sheilagh Murphy, Chris Pike, Kenneth Jerrett and Roxane Dean) did a great job in organizing the meeting. Our Executive Director, Roxane Dean, did her usual fantastic job in obtaining sponsorships and ensuring that everything ran smoothly.

### Luncheon Program

The Equality Committee of our Branch, along with the Constitutional and Human Rights Section, arranged a luncheon on February 28<sup>th</sup>, 2005, which featured speakers Sean Foreman of Wickwire Holm in Halifax, and David Brown of Stikeman Elliot in Toronto, who discussed the Same Sex Marriage issue.

Our Spring Luncheon took place on May 19<sup>th</sup>, 2005, featuring the Honourable Chief Judge Reginald Reid of our Provincial Court. Chief Judge Reid spoke on the development of the Provincial Court in Newfoundland and Labrador and its role in the 21<sup>st</sup> century.



### Section Activity

On February 24<sup>th</sup>, 2005, the Aboriginal Law Section held a brown bag luncheon to discuss the election of officers for the CBA National Aboriginal Law Section Executive, an update on Residential School Claims, and the upcoming joint conference of the CBA National Aboriginal Law Section and Indigenous Bar Association.

On February 25<sup>th</sup>, 2005, the Natural Resources and Energy Section along with the Environmental Law Section attended a joint lunch meeting via conference call with the corresponding sections of the Nova Scotia Branch, which featured guest speaker Ken Lee, Executive Director and Research Scientist, Centre for Offshore Oil and Gas Environmental Research, Fisheries and Oceans Canada. Mr. Lee provided an overview of the DFO Science Program as it relates to offshore oil and gas.

On March 2<sup>nd</sup>, 2005, the Civil Litigation Section held a brown bag luncheon with guest speaker James Oakley. Mr. Oakley spoke on proposed Supreme Court Rule 18A, respecting case management.

On April 7<sup>th</sup>, 2005, the Corporate Counsel Section held a brown bag luncheon featuring guest speaker Mr. John Frazer, a partner with Catalyst Consulting, who gave a presentation entitled, "Five Proven Measures to Save 20% on Outside Counsel Costs". (Ouch!)

On May 13<sup>th</sup>, 2005, the Family Law Section along with the Young Lawyers Conference, held a joint brown bag luncheon featuring guest speaker Jean Dawe, Q.C., of Dawe & Burke, who spoke on the topic, "How to Handle an Emergency Family Law Matter".

On May 30<sup>th</sup>, 2005, the Privacy Law Section held a brown bag luncheon featuring guest speakers Sandy Hounsell, Executive Director of the Office of the Privacy Commissioner for Newfoundland and Labrador, and Stephen Ring, a solicitor with the Provincial Department of Justice who is responsible for Access to Information requests. They spoke on the topic "Privacy, Principals and Legislation".

### Advocacy

Our Law Society has determined that it will require a multi-million dollar injection of cash to address recent claims issues. It advised that it was considering implementing a transaction levy to raise these funds, and requested comments on the proposed levy from members. In response to this request, the Branch convened meetings of its Family

**Financial Problems?  
Worried?**

**We understand and can help.**

**Personal & Business Bankruptcies & Alternatives, Credit Counselling & Consumer Proposals**

FREE initial consultation

email: james.a.kirby@ca.pwcglobal.com

PricewaterhouseCoopers Inc.

**PRICEWATERHOUSECOOPERS**

Michelle Hennessey, Estate Administrator  
Kellie Chafe, Estate Administrator  
Jim Kirby, Trustee  
Wilbur Rice, Trustee

**PRICEWATERHOUSECOOPERS**

Call for a Confidential Assessment  
**722-3883**  
215 Water Street, Suite 802  
St. John's, NL A1C 6C9  
Fax 722-5874

No Charge Dial  
**1-800-291-3883**  
Trustee in Bankruptcy



---

Law Section, Insurance Section, Civil Litigation Section, Real Property Law Section and Canadian Corporate Counsel Chapter between May 6<sup>th</sup> and May 12<sup>th</sup>, 2005. Following these meetings, a comprehensive report was prepared by the Branch and submitted to the Law Society Insurance Committee. Branch Executive Member Chris Pike is to be commended for his tremendous effort in spear-heading this initiative.

### Membership Initiatives

The Branch will be mailing the Spring 2005 edition of *Squid pro quo*, along with the Branch Submission on the Proposed Transaction Levy noted above, to all non-members in the province in an effort to increase membership.

### Law Day

Law Day 2005 was celebrated on April 15<sup>th</sup>, 2005, and was a great success. On April 14<sup>th</sup>, the Law Day Committee hosted a Public Legal Information Fair. On April 16<sup>th</sup>, Mock Trials were held at the Supreme Court of Newfoundland and Labrador. As well, a poster contest was organized for the elementary school students across the province, along with a photography contest for junior high students. Elder Law presentations were performed throughout the city of St. John's and surrounding areas. Law Day Co-Chairs John Cook and Tammy Drover are to be congratulated for organizing such a successful event.

### Continuing Legal Education

The Continuing Legal Education Committee, which is chaired jointly with our Law Society, has been quite busy. The following CLE's have been held:

1. "The New Spousal Support Advisory Guidelines: How They Work and How They Might Work for You", was held on April 1<sup>st</sup>, 2005. The presenter was Professor Rollie Thompson of Dalhousie Law School.
2. "A Primer on Buying and Selling a Business" was held on April 22<sup>nd</sup>, 2005. Presenters at this CLE were Jennifer E. Babe of Miller Thomson LLP, Toronto ON, Maureen E. Ryan of Stewart McKelvey Stirling Scales, St. John's, NL, and Caroline C. Watton of McInnes Cooper, St. John's, NL.
3. "Time Mastery for Lawyers" was held on May 9<sup>th</sup>, 2005. The presenter was Frank Sanitate, of Frank Sanitate Associates, Santa Barbara, California.
4. "Professional Law Corporations and Other New Developments in the Law Society Act, 1999 and the Law Society Rules: How Will They Impact Your Practice?" was held on June 27<sup>th</sup>, 2005. The presenters were Peter D. Collins, C.A., CFP, a professional tax advisor, Michael Duffy and Jacqueline Glynn of Duffy and Associates, Douglas Kirby, C.A. of DMK Chartered Accountant, Glen Noel of Patterson

Palmer, Marina Whitten of Aylward Chislett Whitten and Frank O'Brien of the Law Society of Newfoundland and Labrador.

### 2006 CLC - St. John's

The 2006 CLC is a tremendous undertaking for our Branch. We are by far the smallest Branch to host a National Canadian Legal Conference, next to Nova Scotia, which has about triple our membership. We have a large organizing committee, ably chaired by Jamie Martin and Lois Hoegg, Q.C. While preparations are well underway, more volunteers are always welcome. If you are interested in assisting with preparation for next summer's meeting please contact the Branch.

### Revue 2004-2005

As this is my third and final report for *Squid pro quo* as Branch President, writing this has made me reflect on the past year, and consider what we have done, or what more we could have done, as a Branch. We have been successful on many fronts. I am proud of our advocacy on behalf of our members over the past year, which included lobbying for improved conditions at the Registry of Deeds, obtaining Branch representation on the Law Society Committee examining practice issues post Myles-Leger, and the submission of a comprehensive report to the Law Society Insurance Committee respecting the proposed Transaction Levy. On July 19<sup>th</sup>, we submitted a letter to the Editor of Telegram, with the purpose of clarifying recent items in the Telegram that disparaged our profession generally, and to counter the criticism by the media of the Law Society for imposing a levy to replenish funds depleted most prominently by the Myles-Leger bankruptcy. This letter was published July 22<sup>nd</sup>.

We had a successful Luncheon Program this past year, our Sections have been active, we created the new executive position of Labrador Representative, and our Branch By-Laws have been revised and updated. The Branch is financially sound, and I am very pleased that we were in a position to sponsor the Association in Defence of the Wrongfully Convicted Conference, which took place in St. John's in June. Law Day activities were a success, and we have had a good dialogue with the Provincial Department of Justice throughout the year.

In conclusion, I would like to thank the members of the Executive Committee for their excellent work throughout the past year. A particular thank you to Executive Director Roxane Dean for all of her help and support throughout the year. We bid a fond farewell to Janis Byrne, who will finish her term as Past-President of the Branch at the Vancouver CLC, and welcome Janie Bussey, who will be Young Lawyers Chair for the Branch for 2005-2006. It has been a great pleasure serving as Branch President over the past year.



STARTING AT:  
**\$39,000\***

## Just cause.

**2005 CADILLAC CTS.** Just one ride and you know it's more than just sleek, seductive looks. Track-tuned, it responds to just your thoughts. It surges ahead like everything else on the road was just standing still. It's bold, breathtaking, blend of looks and performance makes it just perfect for you.

STARTING AT:  
**\$41,145\***



## Just because.

**ALL-NEW 2006 HUMMER H3.** Just because a vehicle can obliterate obstacles that stop others doesn't mean it can't be refined inside. The H3 is fitted with the latest safety and luxury options available. It is the perfect synergy of freedom and security. All you want, more than you'll ever need. Just because the road ends doesn't mean the ride has to.

**we deliver BIG** **HICKMAN**  
 **MOTORS**  
CHEVROLET • CADILLAC • HUMMER

**ATLANTIC  
CANADA'S  
LARGEST GM  
DEALER!**

ST. JOHN'S 726-6990 CARBONEAR 596-5005 GANDER 256-3906 BURIN 891-1300 CLARENVILLE 466-2661 [www.hickmanmotors.ca](http://www.hickmanmotors.ca)

\*Freight and air tax included. Taxes and license extra. Please see Hickman Motors for complete details.

---

# CBA Attends Opening of the Supreme Court Facilities in Happy Valley - Goose Bay, NL

*by Alex MacNab*

The Official Opening of the Judicial Centre of Happy Valley - Goose Bay, which houses the new Courthouse for the Supreme Court of Newfoundland and Labrador, was held on April 20<sup>th</sup>, 2005. CBA Branch Labrador Representative, Alex MacNab, was present for the opening ceremonies and brought greetings from the CBA - Newfoundland and Labrador Branch. The following is the text of his remarks:

Chief Justice Green, Minister Marshall, Mr. Justice Fowler, Honoured Judges, Members of the Inuit, Innu and Metis communities, esteemed colleagues, ladies and gentlemen.

It is with honour that I bring greetings on behalf of the 382 members of the Canadian Bar Association of Newfoundland and Labrador. I am personally humbled to be a part of this historic celebration, for the opening of this new structure today is much more than simply the moving of offices and courtrooms some several kilometers. It is more than providing comfortable functional space with proper air conditioning. It is a tangible example of our society as a whole responding to the needs of justice within our society.

Alexander Solzhenitsyn stated that..."Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognize the voice of their own conscience usually recognize also the voice of justice." With this new facility the voice of the whole has been heard. This Supreme Court building represents justice for all of Labrador including the peoples of the Inuit, Innu and Metis communities. It recognizes the value of coexisting methods of justice delivery and it keeps the rights and needs of all in focus with the delivery of justice.

But such has not come without a price. There have been many advocates for community inclusiveness in the system of justice delivery and the Canadian Bar Association of

Newfoundland and Labrador has been one such group. We believe in meaningful justice. Justice that is accessible, appropriate and relevant. This Facility and this opening today bring us several steps closer to that goal. But it is a goal that is difficult in this Big Land.

With this new justice facility the example has been set for all of Labrador. This is a mammoth step forward.

Outside a Washington Memorial, carved in granite, are the words "Thou shalt not be a victim. Thou shalt not be a perpetrator. Above all, thou shalt not be a bystander." Chief Justice Green, Minister Marshall, and Mr. Justice Fowler, on behalf of the 35,000 members of the Canadian Bar Association and personally, as a lawyer practicing with the Legal Aid Commission in Labrador, I thank you for not being bystanders, for if you had been we would not be here at this celebration today.

We have the building, we have the structure and I believe we have the people to make this new Supreme Courthouse not just the newest public building in Labrador, but an example of justice delivery that will outlive the mortar and the bricks.

Again on behalf of the Canadian Bar Association of Newfoundland and Labrador I offer best wishes to the Court and its staff and I echo the words of Martin Luther King Jr. when he said "True peace is not merely the absence of tension: it is the presence of justice."



**Check us out on the Web!**

**[cba.org/newfoundland/main](http://cba.org/newfoundland/main)**



# Bankruptcy and Insolvency Section Report

by Geoff Spencer, Section Chair



Throughout the past year, the National Bankruptcy and Insolvency Section has been very busy in continuing its response to the Report of the Standing Senate Committee on Banking Trade and Commerce which proposed various amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. On June 3, 2005, Bill C-55, entitled "*an Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts*" received first reading in the House of Commons. Some of the highpoints of the legislation include the following:

1. Unpaid Wages - Claims for unpaid wages and vacation pay in bankruptcy situations will be given higher priority, above secured creditors.
2. Wage Earner Protection Program - The Wage Earner Protection Program ("WEPP") will be established under the responsibility of the Minister of Labour and Housing to compensate individuals for amounts earned, but not paid, during the six months preceding the bankruptcy or receivership of their employers under the *Bankruptcy and Insolvency Act*. The WEPP will help protect workers by providing a guaranteed payment of wages owed up to \$3,000.00 should their employer declare bankruptcy.
3. Pension Protection - Regular pension plan contributions by employees and their employers that are unremitted at the time of bankruptcy or receivership will have priority status, ranking above secured creditors.
4. Labour Contracts - The amendments specify that a debtor company can seek a Court order authorizing it to serve a "notice to bargain" on the bargaining agent representing its employees, which would trigger a renegotiation of the collective agreement under the applicable labour legislation.
5. Treatment of Other Contracts - Contracts with a debtor company may be terminated by the debtor. This applies to all contracts except an eligible financial contract, a commercial lease or a collective agreement.
6. Interim Financing - The reforms expressly provide that the Court may authorize interim financing to the debtor company during the restructuring process with a priority ranking ahead of existing secured lenders.
7. Regulatory Measures - The Court would have the authority to enforce a stay of proceedings on regulators if the regulators are acting as creditors trying to collect the debt that has accrued prior to filing for bankruptcy protection by the debtor.
8. CCAA Process and Oversight - Companies filing under the CCAA will be required to publish notice of the CCAA proceeding in a newspaper shortly after the process has been initiated. The monitor must prepare a list of all known creditors of the company, who have a claim against the company in excess of \$1,000.00, and make the list publicly available. In addition, a central registry of applications made under the CCAA will be created at the Office of the Superintendent of Bankruptcy.
9. Governance - The judge in a restructuring proceeding is given explicit authority to deal with governance issues to foster the possibility of a successful reorganization.
10. Trustees, Receivers and Monitors - The amendments clarify that trustees and receivers are not personally liable for outstanding liabilities prior to their appointment. In addition, under the CCAA, monitors will be required to be licensed as a bankruptcy trustee.
11. UNCITRAL Model Law - The amendments include new provisions to facilitate cooperation with foreign jurisdictions in international insolvency cases based upon the United Nations Commission on International Trade Law (UNCITRAL) Model Law.
12. High Income Tax Debt - Bankrupt individuals with more than \$200,000.00 in personal income tax debts representing 75% or more of the total unsecured liabilities will not be eligible for an automatic discharge.
13. Exemption for RRSP's - A wider range of retirement savings products will be exempt from seizure in bankruptcy.
14. Mandatory Surplus Income Payments - Bankrupts will be required to make surplus income payments to the estate in accordance with directives issued by the Superintendent of Bankruptcy.
15. Automatic Discharge of Second-Time Bankrupts - Second-time bankrupts will be eligible for an automatic discharge after 24 months from the date of bankruptcy.



16. Student Loans - Student loan debt will be eligible for discharge in bankruptcy if seven years have passed since the former student has terminated his/her studies.

17. Prohibition on *Ipso Facto* Clauses in Bankruptcy - The amendments place limits on the exercise of "*ipso facto*" contract clauses in bankruptcy.

Anyone wishing to review a full copy of the text of Bill C-55 is encouraged to visit the House of Commons website at: <http://www.parl.gc.ca/LEGISINFO/Index.ASP?Lang=E>. Bill C-55 is currently at the committee stage. The National Bankruptcy and Insolvency Section is contemplating appearing at the committee hearings in order to make rep-

resentations with respect to some of the contents of the proposed legislation. As always, if anyone has any comments regarding the draft legislation which they would like brought to the attention of the committee, please contact me.

On another note, the National CBA Bankruptcy and Insolvency Section has planned an interesting continuing legal education program as part of the national section meeting to be held in Quebec City on September 16, 2005. If any section members have any questions regarding the conference or wish to obtain a registration form, please feel free to contact me at (709) 570-7263 or email: [gspencer@bensomyles.com](mailto:gspencer@bensomyles.com).

## Section Update

# Canadian Corporate Counsel Association (CCCA) Report

by Janis Byrne, Section Chair



On April 7<sup>th</sup>, 2005, the NL Chapter of the CCCA held a luncheon at *The Cellar Restaurant*, with John Fraser of Catalyst Consulting in attendance as our guest speaker. Mr. Fraser's presentation was entitled "*Five Proven Measures to Save 20% on Outside Counsel Costs*". Catalyst Consulting is the preferred supplier of the CBA and CCCA for legal services consulting. Catalyst Consulting assists law departments with forecasting and estimating the cost of legal services required from law firms over periods of 3-5 years.

We discussed various aspects of the law department relationship with law firms, such as the benefits of Request for Proposals for legal services, and how to "do business differently" with law firms in order to reduce fees. Amongst those in attendance, some corporate counsel indicated that

they had relationships with specific firms while others retained outside counsel based on the reputation and expertise of a particular lawyer.

Suggestions for reducing law firm fees included a reduction of the number of firms used by a law department, and moving legal work to a less expensive location. Finding the best mix of internal and external resources to meet the service requirements of the company is crucial to a successful relationship with law firms. While Catalyst Consulting works primarily with larger law departments, many of Mr. Fraser's insights can be applied to smaller law departments as well.

On May 12<sup>th</sup>, 2005, representatives of the Chapter met to discuss the implications to CCCA members of the Law Society's proposed levy on certain transactions. Following the meeting, written representations were submitted by the Chapter to the CBA, and were included in the CBA's final report to the Law Society. A copy of this report was distributed by email to all members.

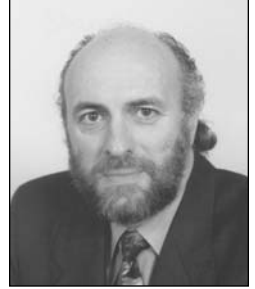
I hope to see many of you at the CCCA annual meeting in Vancouver from August 14<sup>th</sup>-16<sup>th</sup>, 2005 which is entitled "Corporate Counsel Leadership-Building Winning Teams and Effective Legal Strategies".

If you have any questions or suggestions, please feel free to contact me at (709) 782-3024 or by email: [jbyrne@pen-necon.com](mailto:jbyrne@pen-necon.com).



## Civil Litigation Section Report

by David Moores, Chair



The activities of our Section have been well-received over the last year. We held several brown-bag luncheons, with presenters including Mr. Justice Robert Hall, and more recently Mr. James Oakley of the Rules Committees of both the Supreme Court and Court of Appeal. I wish to thank those gentlemen for taking the time to present, and also to Roxane Dean for her usual fine assistance in organizing details.

In mid-April, I attended the National Civil Litigation Section's annual meeting in Toronto. Aside from not being in Montreal or Ottawa as in past years, this meeting was quite an event. This year, there was a 1 & 1/2 day CLE, followed by our Saturday afternoon Section business session.

The National CLE program on Civil Litigation and Insurance matters was almost staggering in scope. There were some 30 sessions involving more than 40 senior practitioners from every walk of civil practice, and from all over Canada. The schedule was tight and full, with presentations being brief at about 30 minutes each. The goal was to provide concise updates on the high points of legal development in areas most likely to be of interest to the broadest cross-section of our membership. The goal was certainly achieved, and this was good value for money.

The topics included procedural and substantive legal issues, right from the basics of "good faith" in insurance and contracts generally, defining the "accident" for insurance purposes, implied undertakings, expert "scientific"

evidence, appellate review considerations, strategies for presentation of "chronic pain" cases and pre-contractual duties of disclosure. The materials binder provided contains a wealth of information in well-written papers from a group of presenters who are all very approachable and willing to help. The only trouble I had was making the extremely difficult choices between various concurrent sessions, as there were always 2 places to be at the same time!

CLE's are changing as the CBA reaches out to service its membership. The event mentioned here was very ambitious for the volunteer organizers and, by all accounts, quite successful. For those without the opportunity to attend in person, the CBA has developed the internet / telephone delivery mechanism, which was demonstrated at one of this Section's brown-bag luncheons early last fall. These things happen in response to identified needs, so be sure to help us identify your needs. I am always looking for new ideas for our Section, so send along your thoughts.

Plans are in the works for another National Civil Litigation CLE next year, and I hope you will be able to take advantage of what will surely be another excellent program. Reserve a few days next spring to bring yourself up to speed!

Please contact me directly at (709) 722-5100 or by email; [dmoores@parsons-law.com](mailto:dmoores@parsons-law.com).

## Continuing Legal Education Report

by Chris Pike, CLE Co-Chair



Since my last report in *Squid pro quo*, the following CLE sessions have been offered:

- The New Spousal Support Advisory Guidelines: How They Work and How They Might Work For You - April 1, 2005
- A Primer on Buying and Selling a Business - April 22, 2005
- Time Mastery for Lawyers - May 9, 2005
- Professional Law Corporations and Other New Developments in the *Law Society Act*, 1999 and the Law Society Rules: How Will They Impact Your Practice? - June 27, 2005

Our last CLE offering entitled "Effective Written Advocacy" was held in Port Blandford on the afternoon of July 22<sup>nd</sup> at the CBA - NL Branch Annual General Meeting.

The delivery of CLE outside of St. John's remains a challenge. While there are a number of technologies that might enable us to deliver CLE outside of St. John's, it is not clear whether the use of these technologies will meet the needs and interests of our members. We will continue to explore means to deliver CLE to members outside of St. John's.

I wish to thank Roxane Dean, Frank O'Brien and Regina Whitty for their invaluable assistance during the past year.



## Constitutional & Human Rights Section Report

by Jamie Merrigan, Section Chair



On May 28, 2005, I attended the National Constitutional and Human Rights Law Section Meeting in Ottawa. This was my first exposure to the activities of the other provincial sections in the form of the provincial Section Chair reports, and it provided a great number of ideas for section activities for the upcoming year.

Developments in the law in other provinces were particularly interesting as it became clear that other jurisdictions have engaged in innovative solutions to pressing constitutional needs. The new computerized disclosure system in Manitoba is particularly interesting. Rather than forcing prosecutors to engage in repeated requests to the police, all evidence, documents and statements are logged on a computerized system accessible by prosecutors from their desktop, permitting the Crown full access to an up to date list and description of the contents of the police file. Case law under *R. v. Stinchcombe* dealing with the different obligations of police and Crown with respect to disclosure has thus become redundant in Manitoba. Extensive applications to compel disclosure will likely be less common

and when they do occur it will be easy to provide the Court and defence counsel with a comprehensive list of what the police have. I am still reviewing the various section reports and tracking down the cases described in them, but they are an excellent picture of the different approaches to constitutional issues in the various jurisdictions.

It was decided to put a resolution forward at the National Conference in Vancouver urging the Federal government to set minimum standards for translation of court decisions in both official languages. As a unilingual English speaker I have only occasionally encountered the frustration of finding that a case of interest is reported only in French. For our French speaking counterparts and their clients the lack of translated cases amounts to an access to justice issue.

The CBA recently tabled submissions on the Anti-Terrorism Legislation passed in 2001 and the Sections National Executive noted that the section's participation was not as active as it could have been. It was agreed that constitutional and human rights issues in the Criminal sphere should be given more attention in the future and that more expertise in that area for the section would be useful and desirable. It was also noted that the level of expertise in separation of powers in the bar as a whole seems to be declining. The focus in constitutional scholarship, education and litigation is now largely Charter based, with little attention being paid to the still viable issue of separation of powers. Some suggestions were made for redressing this imbalance, mostly in terms of education.

Greg Tardi, Senior Legal Counsel, Legal Services for the House of Commons presented a number of papers on the growing area of political law, an area I will not pretend to fully understand the definition of, but which seems to encompass the linkage between constitutional and other law, politics and public administration. Given the role of political tradition in the workings of parliament, a minority government will likely result in expanding scholarship and case law in this area.

Congratulations were extended to those who participated in drafting the CBA's submissions to Parliament on Bill C-38, the same sex marriage legislation, which, as of the completion of this report has passed Third Reading in the House of Commons, a watershed in Canadian human rights, and is before the Senate.

If you have any questions or suggestions, please contact me at (709) 634-3136 or by email: [jemerrigan@pa-law.ca](mailto:jemerrigan@pa-law.ca).

### Branch Days Gone Bye...

This photo was taken in 1998.  
Some familiar faces . . . but what was the event?

*Answer is on page 17*



## Maritime Law Section Report

by Douglas Wright, Section Chair



Section members will find many notable developments in the maritime law filed since my last report.

Once again, federal and provincial licensing disputes are before the courts. Currently 4 court challenges to the validity of the Minister of Fisheries and Aquaculture's March 2005 Raw Material Shares ("RMS") Policy are before the courts. Plaintiffs will have made, and judges decided, interlocutory applications to suspend the RMS Policy until trial by the time this report appears in print. The judicial review application in *Fennelly v. Attorney General (Canada)* is set down to be heard in St. John's in September. This is the second judicial review of the refusal of the Minister of Fisheries and Oceans (Canada) to re-issue an offshore snow crab license that was issued to the Applicant in 1998. The Applicant was successful in his first application but in the Minister's reconsideration of the matter, he upheld his refusal to re-issue the applicant's license.

The decision of Justice Gibson of the Federal Court in the case of *Jose Pereira Hijos, SA et. al. v. Attorney General of Canada* is still pending. The plaintiffs in this action, the owners and captain of the "*Estai*", are seeking damages for the detention of that vessel, seizure of her catch and other grounds. This promises to be a significant maritime law decision dealing with the legality of the Government of Canada's actions in international waters during the "Turbot War" of 1995. Once it is released by the Court, I am sure section members will hear about it given the passions aroused by this case.

While not strictly a maritime law case, the hearing of the judicial review applications of the Province of Newfoundland and Labrador and the Town of Stephenville against the federal Minister of Transport concerning the privatization of the Port of Stephenville will occur in September in Halifax, Nova Scotia.

On the legislation side, Bill C-15 was passed earlier this year and proclaimed into force on June 28, 2005. This legislation, which amends the *Canadian Environmental Protection Act, 1999* and the *Migratory Birds Convention Act, 1994* provides for increases in maximum fines for marine polluters, expands the persons who can be held accountable for violations, expands enforcement powers to include direction and detention orders, includes new offences concerning the disposal and incineration of substances at sea by ships, and expands the jurisdiction of Canadian courts to include the entirety of the Canadian exclusive economic zone (as opposed to the 12 mile offshore limit).

The Minister of Transportation has recently prepared amendments to the *Canada Marine Act* in Bill C-61 expanding the powers of port authorities to finance infrastructure and other improvements.

In May, the Minister of Transport released a Maritime Law Reform Discussion Paper and has invited interested groups to comment. The focus of this document is on international maritime law. The National Maritime Law Section has decided to strike subcommittees to review and comment on the various aspect of the Discussion Paper. The subcommittees are as follows:

1. Limitation of Liability for Maritime Claims (LLMC), Oil Pollution, Bunker and Hazardous and Noxious Substances (HNS) Conventions: Chair: Richard Desgagnés (Chair, National Maritime Law Section);
2. Liability and Insurance for Carriage of Passengers by Water: Chair: Simon Barker (Vice-Chair, National Maritime Law Section);
3. Ship Suppliers: Chair: Shelley Chapelsky (British Columbia Maritime Law Branch Chair);
4. Sistership Arrest: Chair: Doug Wright (Newfoundland & Labrador Maritime Law Branch Chair); and,
5. General Limitation Period and Reform of Outdated Common Law Rules Affecting Maritime Property and Obligations: Chair: Richard Southcott (Vice-Chair, National Maritime Law Section).

The input of any Newfoundland and Labrador section member who is prepared to assist with the review of any of these topics is welcomed. You can contact me if you require assistance getting in touch with the appropriate subcommittee chair.

Also at the National Section level, there is concern about the impact of proposed amendments to the *Federal Court Rules, 1998* concerning the time frames for production of expert's reports. It is proposed that all experts' reports must be served on all parties prior to the holding of a Pre-Trial Conference. The theory behind this proposal is that early production of expert's reports will aid in the settlement of claims. The National Section has taken the position that in maritime law actions this time frame is unrealistic and impractical in most cases and they will be put this position to Chief Justice Lutfy.

I have enjoyed serving in the role of section chair this year and welcome any comments from section members about initiatives they would like to see undertaken in the future by contacting me at 570-5544 or email: [dwright@pattersonpalmer.ca](mailto:dwright@pattersonpalmer.ca).



## *Insurance Law Section Report*

by Chris Pike



### *Mark Your Calendars !*

**August 9, 2005**

**CBA Summer Luncheon**

Guest Speaker:  
Nicholas Wilshire, Legal Counsel  
Foreign Affairs Canada Legal Services  
  
Fairmont Newfoundland  
St. John's, NL

**August 11, 2005**

**CBA Young Lawyers Summer Social**

Glow Bowling  
Plaza Bowl, Ropewalk Lane  
St. John's, NL

**August 14-16, 2005**

**CBA Canadian Legal Conference and Expo**

Vancouver, BC

**February 16-19, 2006**

**2006 Mid-Winter Meeting of Council**

Cancun, Mexico

**August 13-15, 2006**

**CBA Canadian Legal Conference and Expo**

St. John's, NL

On April 16<sup>th</sup>, 2005, I attended the Insurance Law Section meeting in Toronto on behalf of Section Chair Wayne Bruce. This meeting followed the National Civil Litigation and Insurance Law Continuing Legal Education Conference "*Hot Topics in Litigation*" which was held April 15<sup>th</sup> and 16<sup>th</sup> at the OBA Conference Centre.

Section Chair Gordon Murphy of Toronto opened the meeting with a report on section activities this year. He discussed a number of initiatives which the section is undertaking to increase relevance for section members. He characterized the goal of the initiatives as making life easier for insurance law practitioners. One of the cornerstones of this initiative is a significant update to the Section's web site at [cba.org](http://cba.org) to provide links of interest to insurance law practitioners. The Section is also preparing a summary of the current automobile insurance regimes and hopes eventually to include historical data so that practitioners will be able to identify the regime in place on particular dates for research purposes.

The Section is also considering the creation of a listserve to enable members to engage in discussion via email on issues of immediate interest. A number of Continuing Legal Education projects are also under consideration, including a joint venture with the Civil Litigation Section similar to the one held in April.

Provincial Section Chairs then engaged in a round table discussion reporting on Section activities and substantive developments in the last year. I reported on the recent reforms in automobile insurance, as did the Chairs from Prince Edward Island and New Brunswick. Eugene Rossiter, the Prince Edward Island Chair and Steven Barnett, the New Brunswick Chair both noted substantial decreases in the number of reported claims following the imposition of a \$2,500.00 cap on non-pecuniary general damages in their respective jurisdictions. Mr. Barnett also noted that the New Brunswick Liberal Party appears to be seriously considering the introduction of a public no-fault automobile insurance regime should they form the next government there. All Chairs also discussed the ways in which the respective branch sections arrange stand-alone, lunch and dinner meetings and CLE sessions for members.

## Privacy & Access to Information Law Report

by Anna Cook, Chair



As Privacy and Access to Information Section Chair of the CBA Newfoundland and Labrador Branch, I had the opportunity to attend section meetings in Ottawa on June 9<sup>th</sup> - 10<sup>th</sup>, 2005. While this is one of the newer sections of the CBA, and perhaps one of the smaller ones, there is no doubt that this is an up and coming area of the law and one that is practiced by some extremely skilled and creative lawyers. Representatives ranged from in-house counsel and sole practitioners to practitioners from large national law firms.

While all of the Provincial Chairs and the National Executive are in contact through regular monthly conference calls, the meeting in June was the first time that the group worked together face to face.

On the first day, we met as a group and worked through an ambitious agenda. Some of the highlights included: preparations for the upcoming CLE in Vancouver this summer



where a panel of three speakers (a practitioner, an academic and a representative of law enforcement) will speak on a topic called "Electronic Binoculars" and preparations for the 2006 National CBA meetings which will take place in St. John's. The CLE in St. John's will be a joint project between the Privacy and Health Law Sections.

Perhaps the more interesting aspect of the day's meeting was work in relation to the upcoming review of the *Federal Personal Information Protection and Electronic Documents Act* ("PIPEDA"), scheduled for 2006. The Privacy and Access to Information section of the CBA is in the process of putting together a detailed submission to Industry Canada along with some recommendations for how PIPEDA can be improved, clarified and simplified. This will be finalized and filed in the coming months. The Section has put great effort into this and has identified many of the difficulties with PIPEDA since its widespread coming into force in January 2004.

At the same time as the Privacy and Access to Information section meetings, all of the Privacy Commissioners from across Canada and the National Privacy Commissioner were having their own meetings across town. The Privacy Commissioners allowed the CBA members to sit with them for a session of informal discussions whereby each group could share their views and concerns on such topical and timely issues as health information, security of personal information and access to information in general. This session was well received and it is hoped that this dialogue between the CBA and the privacy commissioners will become a regular event.

Anyone with an interest in access of information should visit the website of the Office of the Information and Privacy Commissioner for the Province of Newfoundland and Labrador ([www.oipc.gov.nl.ca](http://www.oipc.gov.nl.ca)). It provides information concerning the role and function of the office and the relevant legislation. Also on the website are details of the complaints and requests that have been dealt with by the Office and the resolution of same.

To close, I invite anyone with interest in this growing section of the law to join the CBA section for 2005-2006. As well, watch for the CLE on Privacy, Access and Health Information at the 2006 National CBA meetings in St. John's.



---

## Section Update

# Real Property Section Report

by Robert J. Hickey, Chair



It has been an interesting year for real property practitioners in Newfoundland and Labrador.

As chair of the Real Property Section, I sat on an Ad Hoc Committee of the Law Society that ultimately recommended the two cheque rule now required on closings. The two cheque rule reflects a practice in most jurisdictions in Canada.

I also attended the meeting of the Real Property Section chaired by Chris Pike soliciting input of members on the proposed transaction levy and our insurance obligations. Feelings were varied; however, it was recognized by the

section that the proposed transaction levy would have a significant impact on real estate conveyancing.

On behalf of the Real Estate Section, I also attended the National Meeting in Ottawa in November of 2005 and hosted two brown-bag luncheons. I have also participated in monthly conference calls with the chairs of our section in the remaining Provinces.

I look forward to a prosperous 2005-2006.

---

## Provincial Update

by Christine Healy



### Victim Services Program Established for Children and Provincial Victim Fine Surcharges to be Introduced

The Government of Newfoundland and Labrador has announced the creation of a Victim Services Program for children under the age of 16. Prior to this announcement, this province was the only one in Canada with no victim services program for children. This program fills a large gap in services available to children who are witnesses to or victims of crime.

Victim Services have been available to adults in this province since 1992. Under the existing adult program, adult victims of crime who are to testify in court are provided with court support and optional counseling services. Until now, the program was not available to children.

Beginning in the fall of 2005, though, children under 16 will also be able to avail of victim services. The children's program is distinct from the adult program in that it is open not only to children who are victims of crime, but to any child who has to testify in criminal proceedings as a witness. As noted by Justice Minister Tom Marshall, "A Victim Services Program for children is long overdue and will be an important tool to introduce services to ensure children who testify in criminal proceedings have a positive support system in place."

Also unique to the children's program is the integration of services for children and, where necessary, their caregivers. As explained by Pam Thomas, Provincial Manager, Victims Services, "The objective is to reduce system-induced trauma for children. Our program recognizes that in order to help the

child, you sometimes have to offer help and support to the caregiver as well."

Through the program, children are provided with support to prepare for court, information regarding the court process, and short-term counseling services to help them better cope with the process. "We work with the child to demystify the court process for children and their caregivers," notes Ms. Thomas. In addition, the program provides access to counseling services for children and, where necessary, their caregivers at no charge to the child's family.

In order to access victim services for adults or children, individuals may contact one of ten regional victim services offices in the province, and staff there will be available to help.

### Provincial Victim Fine Surcharges Enacted

Legislation permitting a provincial victim fine surcharge has been passed by the House of Assembly. Government's objective is to fund the children's victim services program through implementation of a 15 percent victim fine surcharge on provincial fines. The surcharge process will operate in a similar fashion to the existing victim fine surcharge process in place for federal offences. The surcharge will apply to fines imposed for offences under provincial acts and regulations, excluding parking and municipal offences. A proclamation date has not yet been set but practitioners should keep their eyes open for this change in fall of 2005 or early 2006.

# In Personam

by Christopher Peddigrew



## Justice Richard LeBlanc

Born in Montreal and raised in Halifax, Justice Richard LeBlanc now presides as a Supreme Court Justice at the Supreme Court of Newfoundland and Labrador. While he primarily sits in the judicial centre in Corner Brook, he often circuits to the Unified Family Court in St. John's. In between his busy travel schedule, which requires frequent travel between Corner Brook and St. John's, Justice LeBlanc found the time to have a chat with me about his experiences in the legal profession and his journey to becoming a Supreme Court Justice.

Justice LeBlanc received his childhood education at St. Stephen's School in the north end of Halifax and later at St. Patrick's High School in Halifax. After graduating from St. Patrick's, Justice LeBlanc attended St. Mary's University where he graduated in May, 1976 with a Bachelor of Commerce degree, *Summa Cum Laude*. With his mind set on a career in the legal profession, Justice LeBlanc began law school in September, 1976 and graduated from Dalhousie University in May, 1979. During his second year at Dalhousie, Justice LeBlanc was awarded the Alister Fraser Scholarship for first class standing, and the Richard B. Hanson Prize for the highest marks in Constitutional Law. Justice LeBlanc joked with me that the Richard B. Hanson Prize was probably the only academic award not won by a bright young Newfoundlander by the name of David Orsborn. So for those lawyers out there who have often wondered...the answer is yes...Justice David Orsborn really is that smart!

During his years at St. Mary's University, Justice LeBlanc met and dated Barbara Conway, the woman to whom he has been married for the past 26 years. After his first and second years of law school, Justice LeBlanc spent his summers with Barbara in Grand Falls, Newfoundland and Labrador. While in Grand Falls, Justice LeBlanc worked at the law firm Matthews and Blackmore. After graduating from law school in 1979, Justice LeBlanc returned to article at Matthews and Blackmore under the direction of Robert M. Matthews, Q.C. He was called to the Bar in December, 1979 and practiced law as an associate with the firm until 1982, when Robert Matthews left the firm and Justice LeBlanc entered into a partnership with Bryan Blackmore, Q.C.



Justice Richard LeBlanc

Justice LeBlanc practiced in partnership with Bryan Blackmore Q.C. until June, 1989. During his years as a lawyer, Justice LeBlanc primarily practiced criminal law, civil litigation and aboriginal law. Although most of his criminal law work was as a defence lawyer, he also worked as a Crown agent for both the Provincial and Federal Crowns. Justice LeBlanc told me that he had a great fondness for working in the court room and enjoyed his years

in private practice. I asked him if there were any particular files that he was proud of from his years in private practice. Without hesitation he recalled his work with the native peoples of Conne River. He recalled assisting the Conne River people in gaining official status under the *Indian Act* and in the creation of an Indian reserve, which he referred to as "great achievements" for the people of Conne River. Justice LeBlanc also recalled negotiations with the federal and provincial governments which led to the establishment of a private school run by the Band. Justice LeBlanc told me that he has great respect for the people of Conne River, and during our conversation, it was evident to me that he is very proud of helping them to become what he referred to as "one of the most successful Indian reserves in the country".

During his years in private practice, Justice LeBlanc developed a keen interest in becoming a judge. In June, 1989 he was appointed to the Provincial Court in Wabush, Labrador. During his two years as a Provincial Court Judge in Wabush, Justice LeBlanc traveled all over Labrador presiding over the circuit courts throughout the region. In August, 1991 he was transferred to the Provincial Court in Corner Brook, although he continued to be responsible for Western Labrador. Justice LeBlanc continued to sit as a Provincial Court Judge until July, 2000 when he was appointed to the Supreme Court of Newfoundland and Labrador in Corner Brook.

Over the past number of years, Justice LeBlanc has become well known for his expertise in the area of family law, although he admitted to me that during his time in private practice, he did not deal much with family law cases.

(continued on page 18)



## Mr. John Hoyles

On June 27<sup>th</sup>, 2005, I had the pleasure of interviewing John Hoyles, National Executive Director and Chief Operating Officer of the Canadian Bar Association. Although originally from Val d'Or, Québec, John is quite proud of his family ties to Newfoundland and Labrador dating back to the late 1700s.

John's great, great, great grandfather, Newman Hoyles, the so-called dark sheep of the family, left Dartmouth, England in 1796 to fish for cod off the shores of Newfoundland and Labrador. Although early migrant fishermen were prohibited from wintering in Newfoundland and Labrador at the time, Newman decided to make the island his permanent residence. Some years later, in 1811, he became President of the Chamber of Commerce for St. John's, and thereafter his son, Sir Hugh Hoyles became the first Chief Justice of Newfoundland and Labrador. Sir Hugh's son, Newman, eventually left the island to attend law school at Dalhousie University and later became President of Osgoode Law School in 1894. Given the strong family ties to York University, it is not surprising that following graduation from the University of Ottawa with an English degree, John decided to attend Osgoode Law School.



John Hoyles

Following completion of his articles with Stikeman Elliott, John practiced law in Northern Ontario for two years before taking a position in the Prime Minister's Office during Joe Clarke's tenure. John returned to New Liskeard in 1980 to practice law for a further ten years with the firm of Byck, Hoyles & Grant, primarily in the fields of personal injury, criminal and family law. John then moved to Ottawa to assume the position of Chief Executive Officer and Executive Director of the GST Consumer Information Office. His primary responsibility was to advise and assist consumers with the GST transition. Eighteen months thereafter, he was appointed Executive Vice President and General Manager of the National Capital Commission.

On September 19<sup>th</sup>, 1996, John assumed the position of Executive Director and Chief Operating Officer of the Canadian Bar Association. In reflecting over his past nine years with the CBA, John identified the geographic obstacles of enhancing liaisons between national and local branches as one of the main challenges he initially faced. John looks forward to the National Conference in Vancouver this August where Simon Potter's "Futures Group" will present its report regarding the CBA. The Report will focus on how the CBA must change and grow to meet the needs of its diversified membership, whose goals and aspirations are evolving. John succinctly identified this challenge as "trying to ensure the CBA is leading edge - not bleeding edge."

With a tenure of nine years, John is the longest serving Executive Director in the Canadian Bar Association's history. His enthusiasm for the job is evident which John attributes to his favourite aspect of the job - meeting the diverse membership of the CBA.

John, together with his wife Sally, are the proud parents of two daughters, Julie, age 25 and Lesley, age 23. Julie is following in her mother's footsteps by completing an education degree, with aspirations to become a high school teacher. Leslie works with the Big Brothers Fine Arts High School and is releasing a CD. Thankfully, John's family maintains their patient support as he devotes much of his time to ensuring the CBA continues moving forward.

## Branch Days Gone Bye . . .

(Photo on page 11)

In this photo, CBA-NL Branch members are promoting the 1998 CBA Canadian Legal Conference in Ottawa, ON.

Those shown in the photograph are:

(L-R): Norm Whalen, Q.C., Lois Hoegg, Q.C., Tom O'Reilly, Q.C., Hannah Bernstein, CBA National Director of Publishing & Information Services, (Winner of the Treasurer Chest), Barry Gorlick, CBA (1998) National Vice President, and Robert Stack.



---

### **Justice Richard LeBlanc** (continued from page 16)

While sitting on the Provincial Court in Corner Brook, Justice LeBlanc chaired the Provincial Court Family Rules Committee and was instrumental in the establishment of Family Justice Services Western. After being appointed to the Supreme Court, he was asked by Chief Justice Green to lead a committee tasked with reviewing and revamping the Family Court Rules that were in force. The result of this committee's work is the current Rules 56A, 56B and 56C, which provide the procedural rules for family court in this province.

In 2003, Justice LeBlanc was asked by the federal government to be one of two Atlantic Canadian representatives on the Advisory Working Group on Family Law Issues. This group was primarily responsible for the development of the new Spousal Support Guidelines, which have been hailed by many family law practitioners as lending a degree of certainty to the issues of quantum and duration, issues that have traditionally been difficult to resolve. In addition, Chief Justice Green has requested that Justice LeBlanc, along with Madame Justice Noonan of the Unified Family Court in St. John's, co-convene a committee dealing with the possible expansion of the Unified Family Court system province-wide. Justice LeBlanc also co-chairs the Education Committee of the Supreme Court, Trial Division along with Justice James Adams.

While Justice LeBlanc thoroughly enjoys this policy and rule development work, he also enjoys his role as a Supreme Court Justice in Corner Brook and at the Unified

always attempts, as much as reasonably possible, to assist the parties in reaching some sort of negotiated resolution to their issues. In his experience, parties are typically more satisfied with a negotiated resolution as opposed to a court-imposed ruling.

Besides all his professional responsibilities and commitments, Justice LeBlanc finds the time for some extra-curricular activities. He is a Level-2 speed skating referee, a speed skating coach and was actually one of the driving forces behind the establishment of a speed skating club in Corner Brook during the lead up to the Canada Winter Games, held in Corner Brook in 1999. Justice LeBlanc and his wife, Barbara, enjoy staying fit by running, hiking and playing squash together. They also enjoy working outdoors, although Justice LeBlanc quickly cautioned that he sticks to gardening because he is not too handy with tools.

Justice LeBlanc and Barbara have one daughter, Martha who, at 21, is completing her final year of an honours program in medical science at the University of Western Ontario. Justice LeBlanc proudly spoke of her plans to attend either medical school or a program in speech language pathology upon graduation.

I would like to thank Justice LeBlanc for taking the time out of his very busy schedule to speak with me. It was truly a pleasure discussing the life and legal career of a man who has made, and continues to make, great contributions to the judicial system of this province.



## Thank you

The CBA Newfoundland and Labrador Branch would like to extend a special thank you to all volunteers who have participated and contributed this year, including all members who have served on the Executive, Council, Various Committees, Sections and to all those who have contributed to our outstanding magazine - *Squid pro quo*. Your contribution has been essential in allowing us to provide exceptional service to all members of the Newfoundland and Labrador Branch over this past year.

## Young Lawyers' - CBA

by Kenneth Jerrett, Chair



In Newfoundland and Labrador, our focus changed slightly this past year to provide for more participation by summer students. In July 2004, Robert Simmonds, Q.C. conducted an informative and entertaining luncheon session concerning the lawyer's role in advising the client faced with a breathalyser demand. The responses received from students and young lawyers were quite positive.

On a more social note, the YLC hosted an evening with the St. John's Haunted Hike. The event opened with a reception at the Duke of Duckworth, where students and young lawyers met the Executive of the Newfoundland and Labrador Branch. Following the reception the infamous Reverend Thomas Wyckham Jarvis, Esquire led us around some of the scariest sites in the city.

In the Fall, the YLC hosted the annual Wine and Cheese Reception for the Bar Admission Course students. This event was well attended by students as well as members of the Judiciary. Those in attendance enjoyed an evening of socializing and informal conversation.

In January 2005, the YLC and the Equality Committee co-sponsored a Clothing Drive and delivered clothes to the WISE Centre in early February. This event provided women in need with clothing suitable for job interviews and employment in the workforce.

In May the YLC continued to provide practical advice for young lawyers and students by holding a seminar respecting emergency family law applications. This informative session was conducted by Jean Dawe, Q.C. and all who attended learned valuable lessons for effective practice.

In the past year, 21 new young lawyers joined the CBA in Newfoundland and Labrador. We are continuing our efforts to increase awareness and membership in the YLC.

As my tenure as Chair of CBA Young Lawyers, Newfoundland and Labrador Branch has now concluded, I wish to thank all who have assisted and participated in the efforts we have made to meet the needs of young lawyers in this province.

## Congratulations

The CBA  
Newfoundland & Labrador Branch  
would like to extend  
a special congratulations to  
Mr. Norman J. Whalen, Q.C.,  
the recipient of the CBA-NL Branch's  
2005 Distinguished Public Service Award.

In the Fall 2005 edition  
of *Squid pro quo* magazine,  
Mr. Whalen will be featured  
in our "In Personam" series.



# Law Day 2005 Report

by Tammy Drover & John Cook, Co-Chairs



Law Day 2005 marked the 20<sup>th</sup> anniversary of the Section 15 equality rights provision of the Canadian Charter of Rights and Freedoms. Law Day 2005 was celebrated on Thursday, April 14<sup>th</sup> and, as in prior years, the Newfoundland and Labrador Branch of the Canadian Bar Association organized a number of activities aimed at educating and informing the public about the role and importance of the law. These activities included:

## Legal Information Fair

The Law Day Committee hosted a Public Legal Information Fair at the Avalon Mall on Thursday, April 14<sup>th</sup>, 2005. The organizations participating in this special event included the Public Legal Information Association of Newfoundland, Community Mediation Services, Better Business Bureau, Human Rights Association, Residential Tenancies Division, and the Canadian Bar Association - Newfoundland and Labrador Branch.



## Mock Trials

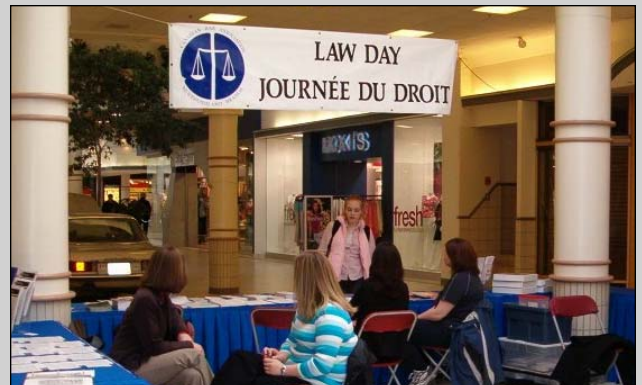
The annual Mock Trial Program was held in judicial centres throughout the Province including the historic Supreme Courthouse on Duckworth Street in St. John's. The high schools participating in this year's competition included Prince of Wales Collegiate in St. John's, Queen Elizabeth Regional High School in Foxtrap, Holy Spirit High in Manuels, Marystown Central High School, John Burke High School in Grand Bank and Stephenville High School. Students acted as legal counsel, witnesses and jury members and were prepared and coached by teachers and local lawyers. Supreme Court Justices, Provincial Court Judges, court clerks and Sheriff's Officers were also on hand to guide the students through the trial process and to help make the experience as realistic as possible. The mock trials in St. John's were followed by a reception for all participants and guests held in the foyer of the courthouse.

## Poster and Photography Contests

This year the fifth annual Law Day Poster Contest was organized for the participation of elementary school students and boys and girls clubs from across Newfoundland and Labrador. Students submitted drawings reflect-

ing their perception of *"The Law: Why it is Important"*. The Law Day Committee received a tremendous response to this contest, and with much difficulty chose the first, second and third place winners. The first place winner was Robyn MacLellan, a Grade 6 student with the St. John's Boys and Girls Club, and it is her work which was featured on the Law Day 2005 promotional poster. Robyn received a cash prize of \$100 and the St. John's Boys and Girls Club received a gift certificate of \$200 to go toward the purchase of art supplies. The second and third place winners also received cash prizes and their classes received a combination of cash and gift certificates for supplies and class activities.

The Law Day Committee's second annual photography contest was organized for the participation of junior high school students throughout the Province. Similar to the poster contest, students were invited to submit a photograph based on the theme *"The Law: Why it is Important"* together with a brief written description of why the photograph reflects this particular theme. This year's winner was Celine Cote, a student at Mountain Feild Academy in Forteau, Labrador. Celine received \$100 cash,





a plaque mounted copy of her winning photograph and her name and the name of her school will be engraved on a plaque kept at the offices of the Canadian Bar Association, Newfoundland and Labrador Branch. As with the previous year, there was limited participation in the photography contest and the Law Day Committee is considering different activities for junior high school students in future years.

## High School Visitations

The Law Day Committee arranged for CBA members to visit high schools across the Province to discuss legal issues of interest to students and teachers. Topics which were proposed to be discussed ranged from the practice of law to substantive legal issues such as the Charter of Rights and Freedoms, privacy and criminal law. The high schools participating in this year's visitations included O'Donel High School in Mount Pearl, Holy Trinity High in

Torbay, Queen Elizabeth Regional High School in Foxtrap, Marystown Central High School, John Burke High School in Grand Bank, Herdman Collegiate in Corner Brook and Stephenville High School.

The co-chairs of the CBA Law Day Committee wish to sincerely thank all volunteers for their support, ideas and time in connection with this year's activities. We look forward to working with you again as we prepare for Law Day 2006.

### Law Day 2005

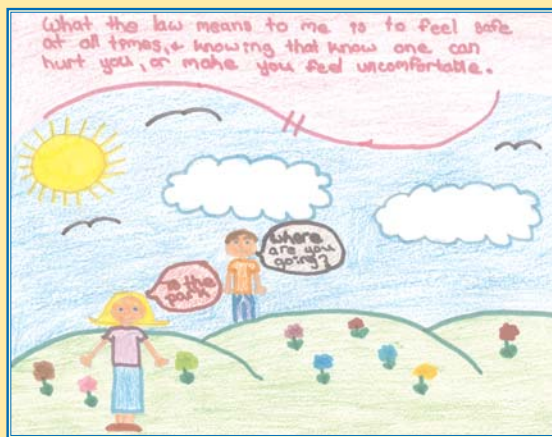
Photography Contest Winner



#### "The Law: Why it is Important"

Photography Contest Winner: Celine Cote  
Mountain Field Academy School, Forteau, NL  
Age: 15 years

The picture depicts the importance of law enforcement in our country. The main objective of the Royal Canadian Mounted Police (RCMP) is to promote safe homes and safe communities. One of many important tasks that RCMP members perform is and around our community is the enforcement of motorized snowmobile regulations. I was recently checked by a RCMP officer to make sure that I was of legal age to operate a snowmobile, that the snowmobile was registered, and that I was in possession of a valid 2005 trail pass.



#### "The Law: Why it is Important"

Poster Contest Winner: Robyn MacLellan  
Grade 6, St. John's Boys and Girls Club, Buckmasters Circle, St. John's, NL



Canadian Bar Association  
NL Branch

—Law Day 2005—



# WARNING!



## Falling Insurance Rates

The Canadian Bar Insurance Association is proud to announce new Level 80 Term Life insurance. Comprehensive protection to age 80 at an unbelievably low price.

**Please be warned that buying your insurance elsewhere may result in unnecessary overspending.**

For more details, or a quote, please contact your CBIA Representative, **Hughie Shea, CFP** at 709-726-6570 Extension 226 or via email at [hughieshea@financialanswers.ca](mailto:hughieshea@financialanswers.ca)

You can also visit us online at **[www.barinsurance.com](http://www.barinsurance.com)**.



**CBIA**

THE CANADIAN BAR INSURANCE ASSOCIATION

# CBIA Announces Launch of Level 80 Term Life Insurance

by Hughie Shea, CBIA Representative



The Canadian Bar Insurance Association Board of Directors is pleased to announce the June 1, 2005, launch of Level 80 Term Life Insurance\*. This new plan features several unique improvements over our previous Term Life plan and is offered at rates significantly lower than most comparable term life plans.

Designed to be both comprehensive and low priced, Level 80 Term Life includes a built in Waiver of Premium feature that will pay your premiums in the event a serious disability prevents you from working. It also provides you with the Good Health Renewal Option. This unique feature allows you to benefit from your continued good health every ten year period from your initial purchase date. At the end of each ten year period, you will have the opportunity to be re-underwritten, and, if approved, pay rates that reflect your proof of continued good health. However, there is no need to worry about your coverage should your state of health change from the initial start date. Your full amount of protection will remain in-force, to age 80, at premiums that are substantially lower than many other comparable term life insurance renewal rates.

Individuals who enjoy well above average health may be eligible for even lower premiums based on the CBIA's

Preferred Rates. If qualified, you would be entitled to these rates for ten years from the start of their coverage and then have the opportunity to maintain them for additional ten year periods under the Good Health Renewal Option.

Again, if you choose not to apply for medical re-underwriting, or there is a change in your state of health, your coverage will remain in place and continue to be offered at extremely affordable and competitive rates up to age 80.

Another additional benefit of the Level 80 plan is that it provides for even lower rates on larger amounts of coverage. This allows you to own the right amount of life insurance, at affordable rates, ensuring that your financial obligations will be taken care of in the event of your death, including:

- ongoing income to maintain your family's current lifestyle;
- low cost mortgage protection;
- money for your children's education;
- final burial expenses;
- a charitable cash donation; and,
- a non-taxable cash gift to loved ones.


The CBIA arranges insurance protection for legal professionals, their families and law firm staff. A Board of Directors comprised of 24 lawyers from across Canada oversees CBIA operations to ensure that all activities are in the best interests of members of the legal profession. As a result, the CBIA has grown to more than 25,000 policyholders and is one of Canada's strongest and most trusted insurance associations.

Level 80 Term Life is one of the most significant and exciting new benefit offerings ever launched by the CBIA. For more information on Level 80 Term Life Insurance, or a no obligation quote, please call your Newfoundland and Labrador CBIA Authorized Representative, Hughie Shea at (709) 726-6570 ext. 226, or visit us online at [www.barin-surance.com](http://www.barin-surance.com).

\*Underwritten by the Manufacturers Life Insurance Company (Manulife Financial)

## Use of CBA Boardroom Fortis Building

We remind our members about  
the complimentary use of our boardroom.



**Discoveries  
Unlimited Inc.**  
Court Reporting & Conference Services

---

**Judy (Moss) Lockyer**  
President

927 Torbay Road, Torbay, NF, A1K 1A2, Tel: (709) 437-5028





At Stewart Title, our only business is the issuing of residential and commercial title insurance policies.

Whether your transaction is simple or complex you know that by insuring through Stewart Title you will have access to knowledgeable Underwriters, efficient claims resolutions, streamlined search requirements, and a variety of ordering options such as phone, fax, through the internet or our Examining Counsel Program.

Although the real estate industry is changing at a rapid pace, Stewart Title is one constant you can rely upon. Stewart Title truly is title insurance.

## **Stewart Title is Title Insurance Solutions**

Ontario – Head Office 1-888-667-5151  
Atlantic Canada 1-888-757-0078  
Québec 1-866-235-9152  
Western Canada 1-866-515-8401  
Pacific 1-866-280-1659  
[www.stewart.ca](http://www.stewart.ca)

**Title insurance solutions for residential and commercial transactions**

---

# Update - Canadian Legal Conference 2006

by Jamie Martin, Co-Chair of the Local Organizing Committee

---



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

We have been extremely busy over the past several months. A meeting with Helga Otto, National Events Coordinator took place in January. We have met with our Finance and Social Committees to gear up for our promotion of the Conference in Vancouver at the annual meeting in August. The co-chairs will make a presentation to Council and we will operate a booth at the Conference Trade Show. We will have

a promotional video, PowerPoint presentation and numerous prizes for individuals to win.

We expect to hold regular meetings starting in the Fall to plan for a Conference. We are grateful to the individuals who have agreed to serve on our organizing Committee and they are as follows:

| NAME                    | FIRM                             | FUNCTION                       |
|-------------------------|----------------------------------|--------------------------------|
| Jamie Martin            | Roebathan McKay & Marshall       | Co-Chair                       |
| Lois Hoegg, Q.C.        | Ches Crosbie Barristers          | Co-Chair                       |
| Christopher Pike        | Benson Myles                     | Ex-Officio: Treasurer          |
| Roxane Dean             | CBA - NL Branch                  | Ex-Officio: Executive Director |
| Robert Stack            | Cox Hanson O'Reilly Matheson     | Finance/Sponsorship            |
| Norm Whalen, Q.C.       | Martin Whalen Hennebury Stamp    | Finance/Sponsorship            |
| Janis Byrne             | Penney Group of Companies        | Social Events                  |
| Sheilagh Murphy         | Curtis Dawe                      | Social Events                  |
| Anne Fagan              | Mercer MacNab Vavasour Fagan     | International Guests           |
| Janie Bussey            | Stewart McKelvey Stirling Scales | Volunteers                     |
| Carey Majid             | Patterson Palmer                 | Volunteers                     |
| William Goodridge, Q.C. | Stewart McKelvey Stirling Scales | Promotions                     |
| Pamela Taylor           | Ches Crosbie Barristers          | Promotions                     |
| Ruth Wakeham, Q.C.      | Department of Justice            | Justice/Government Liaison     |
| Raymond Whalen          | Guigne Inc.                      | CCCA Liaison                   |
| Christine Healy         | Stewart McKelvey Stirling Scales | At Home Dinners                |
| Rod Zdebiak             | Stewart McKelvey Stirling Scales | At Home Dinners                |
| Jamie Merrigan          | Poole Althouse                   | Central/Western NL Liaison     |
| Sandy Chaytor           | Cox Hanson O'Reilly Matheson     | Children's Program             |
| Anne Fagan              | Mercer MacNab Vavasour Fagan     | Children's Program             |
| Sheilagh Murphy         | Curtis Dawe                      | Closing Night Festivities      |
| William Goodridge, Q.C. | Stewart McKelvey Stirling Scales | Closing Night Festivities      |
| Donald Anthony          | Roebathan McKay & Marshall       | Law Firm Receptions            |
| Stephanie Hickman       | Patterson Palmer                 | Law Firm Receptions            |
| Kenneth Jerrett         | Martin Whalen Hennebury Stamp    | Late Night Parties             |
| Douglas Moores, Q.C.    | Moores Andrews Collins           | Opening Night Festivities      |
| Jennifer Newbury        | Martin Whalen Hennebury Stamp    | Opening Night Festivities      |
| Peter Shea              | Cox Hanson O'Reilly Matheson     | Pre-Post Visits/ Accommod.     |
| Tammy Drover            | Department of Justice            | Tours-Sightseeing              |
| Bernadette Cole         | Benson Myles                     | Transportation                 |
| Sheri Wicks             | White Ottenheimer & Baker        | Transportation                 |

The success of our conference will depend on getting a large group of dedicated volunteers. We will be approaching law firms by the end of the year to request the availability of lawyers and staff. The 2006 Canadian Legal Conference will be a great success. We will show over a thousand delegates from across the country our great hospitality.

If you require additional information, you may contact Lois Hoegg, Q.C. at (709) 579-4000 or email: lhoegg@chescrosbie.nf.net or Jamie Martin at (709) 570-8128 or email: jmartin@wrmmlaw.com.

---

## CBA - Newfoundland & Labrador Branch

# Report of the Elections Committee

---

by Janis Byrne, Chair



I am pleased to announce the following persons have been elected to Council of the CBA, Newfoundland and Labrador Branch for the term from September 1, 2005 to August 31, 2007. Congratulations to all candidates. We look forward to working with you on Council!

| <i>Executive Committee</i> | <i>Name</i>      | <i>Firm / Employer</i>            |
|----------------------------|------------------|-----------------------------------|
| President                  | Jennifer Newbury | Martin Whalen Hennebury Stamp     |
| Vice President             | Sheilagh Murphy  | Curtis Dawe                       |
| Past President             | Peter Shea       | Cox Hanson O'Reilly Matheson      |
| Treasurer                  | Christine Healy  | Stewart McKelvey Stirling Scales  |
| Secretary                  | Chris Pike       | Benson Myles                      |
| Membership Chair           | Kenneth Jerrett  | Martin Whalen Hennebury Stamp     |
| CLE Co-Chair               | Bernadette Cole  | Benson Myles                      |
| Young Lawyers - CBA        | Janie Bussey     | Stewart McKelvey Stirling Scales  |
| Communications Chair       | Sheri Wicks      | White Ottenheimer & Baker         |
| Western Regional Chair     | Jamie Merrigan   | Poole Althouse                    |
| Central Regional Chair     | Gerald Wetzal    | Gerald Wetzal Law Office          |
| Labrador Regional Chair    | Alex MacNab      | Newfoundland Legal Aid Commission |

---

### *Letter to the Editor*

It was a great pleasure to read the *In Personam* on my good friend Ernest Reid, Q.C. featured in the fall edition of the *Squid pro quo* magazine. Ernie is the last person who would look for recognition, while being one of the most giving amongst all the members of our Bar. He always has time to share advice and provide direction to members of his own firm along with those not so fortunate. Anyone who has had the opportunity of speaking with him will know how comfortable the experience has been. Ernie never has to raise his voice to make a point, instead of being loud and argumentative he is calm and logical, admirable qualities no doubt, and a tough combination to beat. He is an exemplary lawyer and a truly good person. If we have a "Boy Scout" in our midst in would definitely be him.

David L.G. Andrews, Q.C.  
Moores Andrews Collins  
Bay Roberts, NL



---

## *Report of the Elections Committee (continued)*

| <i>Section Chairs</i>                | <i>Name</i>           | <i>Firm/Employer</i>                            |
|--------------------------------------|-----------------------|---|
| Aboriginal Law                       | Sandra Gogal          | McInnes Cooper                                  |
| Administrative Law                   | Donna Strong          | Workplace Health & Safety Comp. Commission      |
| Alternative Dispute Resolution       | John Clarke           | Learmonth Dunne & Clarke                        |
| Bankruptcy & Insolvency              | Geoff Spencer         | Benson Myles                                    |
| Business Law                         | Mark Andrews          | White Ottenheimer & Baker                       |
| Civil Litigation                     | David Moores          | Parsons Ennis Scott Moores                      |
| Constitutional & Human Rights        | Jamie Merrigan        | Poole Althouse                                  |
| Construction Law                     | Genevieve Dawson      | McInnes Cooper                                  |
| Corporate Counsel                    | Janis Byrne           | Penney Group of Companies                       |
| Criminal Law                         | Averill Baker         | Averill J. Baker Law Office                     |
| Elder Law                            | Paul McDonald         | Cox Hanson O'Reilly Matheson                    |
| Environmental Law                    | Don Anthony           | Roebothan McKay & Marshall                      |
| Family Law                           | Jean Dawe, Q.C.       | Dawe & Burke                                    |
| General Practice, Solo & Small Firms | Gillian Buttler, Q.C. | Gillian D. Butler, Q.C., Litigation & Mediation |
| Government and Public Sector         | Alex MacNab           | Newfoundland Legal Aid Commission               |
| Health Law                           | <i>Vacant</i>         |   |
| Insurance Law                        | Sheri Wicks           | White Ottenheimer & Baker                       |
| Intellectual Property                | Stacey O'Dea          | McInnes Cooper                                  |
| Labour Law                           | James Martin          | Roebothan McKay & Marshall                      |
| Law Practice Management              | <i>Vacant</i>         |   |
| Maritime/Admiralty Law               | Doug Wright           | Patterson Palmer                                |
| Natural Resources & Energy           | James Thistle         | McInnes Cooper                                  |
| Privacy Law Section                  | Anna Locke            | Patterson Palmer                                |
| Real Property Law                    | Susan LeDrew          | Smyth Woodland Del Rizzo                        |
| Wills & Estates                      | Tammy Pike Farrell    | Stewart McKelvey Stirling Scales                |

| <i>Voting Council</i> | <i>Name</i>      | <i>Firm</i>                      |
|-----------------------|------------------|----------------------------------|
|                       | Jennifer Newbury | Martin Whalen Hennebury Stamp    |
|                       | Sheilagh Murphy  | Curtis Dawe                      |
|                       | Peter Shea       | Cox Hanson O'Reilly Matheson     |
|                       | Janis Byrne      | Penney Group of Companies        |
|                       | Chris Pike       | Benson Myles                     |
|                       | Christine Healy  | Stewart McKelvey Stirling Scales |

| <i>Non-Voting Council</i> | <i>Name</i>             | <i>Firm</i>                      |
|---------------------------|-------------------------|----------------------------------|
|                           | Lois Hoegg, Q.C.        | Ches Crosbie Barristers          |
|                           | William Goodridge, Q.C. | Stewart McKelvey Stirling Scales |
|                           | Bernadette Cole         | Benson Myles                     |
|                           | Ken Jerrett             | Martin Whalen Hennebury Stamp    |
|                           | Sheri Wicks             | White Ottenheimer & Baker        |
|                           | Jamie Martin            | Roebothan McKay & Marshall       |
|                           | Robert Stack            | Cox Hanson O'Reilly Matheson     |

---

---

# Case Digest

---

by F. Geoffrey Aylward



## Recent Spousal Support and Custody decisions under the Family Law Act: In or out of tune with the Divorce Act?

Two recent decisions of the Trial Division and the Unified Family Court considered the issue of spousal support under the *Family Law Act* (FLA). Both expressly indicated some convergence between the approach taken under the *Divorce Act* and that taken under the FLA. It appeared that there would not have been a difference in the final result had either decision been made under the *Divorce Act*. These decisions suggest the federal Spousal Support Advisory Guidelines may assist the Court in considering FLA spousal support applications.

The Court of Appeal, however, in a child custody matter under the FLA emphasized there was an important difference in the analysis to be undertaken from that mandated under the *Divorce Act*. The Unified Family Court Judge, it said, had erred in approaching the case as if it arose in a divorce proceeding.

The Court of Appeal markedly disagreed with the findings of fact by the trial judge. Based upon its own view of the evidence, it is submitted, that the result would have been the same if the matter had been before the Court of Appeal under the *Divorce Act*.

These decisions may be of interest to practitioners in deciding whether to initiate a proceeding under the provincial or federal legislation. Brief summaries of these three decisions follow.<sup>1</sup>

### *Garland v. Garland*

20050511; 2004 02U 0595

Cook, J.

#### **Support, spousal**

IG and BG were married for 27 years when they separated in January 2004 when IG was 47. She suffered from lupus for seven years; she was receiving CPP disability benefits because of her disability. The couple had two children who were now independent. IG worked in various capacities during the marriage. She had been absent from the workforce for long periods of time to care for the children. During the marriage, she looked after most childcare and domestic tasks. Moreover, the role which IG adopted enabled BG, on at least two occasions, to attend school which helped him to secure better paying employment both in the tire business and as a tractor trailer driver.

At this time, her sources of income were CPP disability benefits of \$9,600 per year and \$3,500 performing clerical duties for her brother's business. There was no reasonable prospect of her earning more than that. She had no insurance coverage for required prescription medication.

BG had taken sick in late 2004 because of stress. Until then he had earned \$44,000 per year. It was uncertain when he might be able to return to work. His one source of income was a non-taxable disability benefit of \$479 per week. This equated to annual gross income of \$31,500. Eighty percent of his prescription costs were covered.

Cook, J. awarded IG indefinite monthly support of \$680 with leave to apply for an increase once BG returned to work. The Court stated:

The parties are still married and neither has applied for a divorce; the issue of spousal support is thus determined pursuant to the provisions of the *Family Law Act*. Nevertheless, because the factors and objectives, set out in sections 15.2(4) and 15.2(6) of the *Divorce Act* are not operationally incompatible with the spousal support provisions of the *Family Law Act*, case law and commentaries relating to both statutes are useful in attempting to fashion a reasonable spousal support order. This includes the court having the power to make orders for an indefinite duration.

Ms. Garland is entitled to compensatory support to address the economic disadvantages flowing from the role which she played during the marriage as well as non-compensatory support to address the disparity in the parties' needs and means flowing from the marriage breakdown.

The net effect of the award was to leave IG with \$1,405 per month and BG, \$1,395 (both amounts net of taxes).

Cook, J. concluded:

I believe that this decision harmonizes not only with the legislation, especially s.36 of the *Family Law Act* but also the *Spousal Support Advisory Guidelines*, which has as its core concept income sharing (not income equalization).

---

**Smith v. Bennett**

20050524; 2005 NLUF 14; 200402U1034

Handrigan, J.

**Spousal support (variation): General principles under Family Law Act**

The Court allowed the application of CS to set aside an order to pay support to SB. The couple were married in 1983 and separated in 2002. There had been improvement in the financial circumstances of the payee and deterioration in those of the payor. As well, the payor had taken on the role of supporting their son through a heavy equipment course.

Handrigan, J. made the following comments on the principles governing support under the FLA:

Section 39 of the *Family Law Act* incorporates aspects of all models for the award of spousal support, whether a "clean-break", "compensatory" or "needs" analysis is conducted. . . The overriding consideration is "need". . . "Need", of course, is a relative concept and has to be considered in context. In this case, the assessment of the Respondent's "need" has to be compared to the lifestyle she was accustomed to and the reasonable expectations that she should have flowing from almost 20 years of marriage and cohabitation with the Applicant.

**Whalen v. Whalen**

20050616; 2005 NLCA 35; 05/35

Wells, C.J.N.L., Roberts, Welsh, J.J.A.

**Custody: Children's Law Act, Relocation**

The Unified Family Court, in making a final custody order under the *Children's Law Act*, denied MW's application for permission to relocate to Ottawa with the children. The judge concluded that it would not be in their best interests to relocate. He relied upon *Gordon v. Goertz*. The judge also ordered equal parenting.

The parties were married in 1996 and separated in 2004. The children were born in 2000 and 2003. The parties had lived in the province for less than two years. (Both had been members of the armed forces.) MW had an offer of a position in Ottawa with full benefits; she had also commenced a relationship with a man who had since moved from St. John's to Ottawa.

MW's appeal was allowed: she could relocate the children to Ottawa. The parents were to share parenting of the children.

The factors under *Gordon v. Goertz* - decided under the *Divorce Act* and s. 31(2), *Children's Law Act*, though not inconsistent, differ somewhat. The judge did not attend to the criteria outlined in s. 31(2). The Court noted, in particular, the required analysis under subparagraphs: (d) [ability of parent to provide guidance, education and necessities of life]; (e) [ability to act as parent]; (f) [plans proposed for the care and upbringing of the child]; and (g) [permanence and stability of the family unit].

The trial judge had concluded that an order of joint custody with equal sharing of parenting time in Ottawa was not workable. This conclusion was contradicted by the evidence. SW had indicated he would move to Ottawa if necessary. He had been out of work for 19 months. The judge failed to consider that he might well have to relocate to obtain work.

In contrast to the lack of a plan by SW, Ms. Viau's (MW's) evidence demonstrated thoughtful consideration regarding the proposed relocation of the children to Ottawa. Ms. Viau (MW) testified that she had investigated daycare facilities as well as schools in Ottawa. She had a clear proposal for living arrangements, including a transition period to introduce the children to Mr. C. This plan included SW's continued involvement in parenting whether or not he moved to Ottawa. Further, given SW's stated intention to move to Ottawa if the children moved, it would be possible for him to proceed in a manner that could accommodate Ms. Viau's (MW) plan.

The judge did not consider the value of security of employment and a benefits package available to MW in a position that was open to her in Ottawa. The children were enrolled in a francophone school in St. John's. This school was not on par with francophone schools elsewhere. The judge erred in suggesting that MW herself, through involvement with the school, somehow had a positive obligation to overcome these deficiencies; he further erred in concluding that it was incumbent upon MW to demonstrate that there would "definitely" be an inferior education at the local francophone school.

The effect on family ties is not a factor under s. 31(2). It is a factor in *Gordon*. The evidence did not support a finding that there were paternal family ties that would be seriously disrupted by a move.

---

<sup>1</sup> The summaries are taken from volume 13 of the Newfoundland and Labrador Case Digest as follows: *Garland v Garland*, no. 19, May 16, 2005; *Smith v Bennett*, no. 20, May 30, 2005; *Whalen v Whalen*; no. 23, June 20.



## Queen's Counsel Appointed

On June 8<sup>th</sup>, 2005, the Honourable Tom Marshall, Justice Minister & Attorney General for Newfoundland and Labrador, announced that the Lieutenant-Governor in Council had appointed 10 lawyers as Queen's Counsel.

The new Queen's Counsel are:

John M. Babb  
Thomas J. Burke \*  
Gregory W. Dickie \*  
Brian F. Furey \*  
Bruce C. Grant \*

Jerome P. Kennedy \*  
David D. McKay \*  
Randolph J. Piercey  
Anne Marie Rose  
John C. Sweetland

\* Denotes CBA Member

Check us out on the Web!

<http://www.cba.org/newfoundland/main>

### New CBA Members

Joined since March 2005



|                |                                     |
|----------------|-------------------------------------|
| William Cahill | <i>Patterson Palmer</i>             |
| Farrah Carrim  | <i>Cox Hanson O'Reilly Matheson</i> |
| Jamie Luscombe | <i>King &amp; Senior</i>            |
| Joseph Twyne   | <i>Mills Hussey &amp; Pittman</i>   |



#### Janes & Noseworthy Limited

Suite 201, 516 Topsail Rd., St. John's, NF A1E 2C5  
Tel. (709) 364-8148 Fax. (709) 368-2146

**Trustee in Bankruptcy  
Receiver and Manager**



### *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.

---

# People and Places

by Cindy Starkes

---

**Joseph L. Anthony\***, of *Stewart McKelvey Stirling Scales* will be taking non-practicing status and assuming the position as the Director of Human Resources, with the *Royal Newfoundland Constabulary*.

**Shelley L. Bryant\***, formerly of *Wells & Company*, has taken non-practicing status.

**Tamara L. Drover\***, previously with *Roebathan, McKay & Marshall*, is now with the *Department of Justice, Civil Division*.

**Christine A. Fagan, Q.C.\***, formerly of *Cox, Hanson, O'Reilly, Matheson*, is now practicing in Moncton, NB with the firm *Christine A. Fagan & Associates*.

**Brian R. Harvey\***, has taken a leave of absence from *Patterson Palmer Law*, to work with the *Department of Natural Resources*.

**Christine Healy\***, of *Stewart McKelvey Stirling Scales* will be taking a position with the *Department of Justice, Trial Division* starting in September 2005.

**Karl R. S. Inder**, of *Inder & Griffin*, has been appointed as vice chairperson of the *Labour Relations Board*.

**Kathryn A. Mercer\***, formerly with *Roebathan, McKay & Marshall*, has taken non-practicing status.

**Darlene M. Neville**, formerly with *Newfoundland Legal Aid Commission*, has been appointed as the new *Child Youth Advocate*.

**Shawn I. Patten\***, previously with *Poole, Althouse*, has taken non-practicing status.

**Donald G. Singleton\***, of *Singleton Law Offices*, has been appointed as a member of the *Labour Relations Board*.

**Mark A. Stares**, previously with *Keefe & Stares*, is now with the *Department of Justice, Canada*.

\* Denotes CBA member

## Called to the Bar

April 16, 2005

Nine lawyers were Called to Bar in St. John's on April 11, 2005. They are (in the order of call):

| Roll Number | Name                        |
|-------------|-----------------------------|
| #1293       | Christopher Robert Quigley* |
| #1294       | Peter Ashton Benson Durant* |
| #1295       | Joseph Sterling Twyne*      |
| #1296       | Nancy Lynn Furlong*         |
| #1297       | Jason Neil House*           |
| #1298       | Judy Marie Manning*         |
| #1299       | Matthew James Clarke*       |
| #1300       | Andrew Kelvin Parsons*      |
| #1301       | Sharon Kathleen McKim-Ryan  |

June 17, 2005

Eight lawyers were Called to Bar in St. John's on June 17, 2005. They are (in the order of call):

| Roll Number | Name                      |
|-------------|---------------------------|
| #1302       | Brian Shell               |
| #1303       | Benjamin James Blackmore* |
| #1304       | Aaron Brown Newell        |
| #1305       | Steven Fredrick Barnes*   |
| #1306       | Lesley Anne Mercer*       |
| #1307       | Catherine Anne Brayley    |
| #1308       | Henry Gerard Mugford      |
| #1309       | Fiona Margaret Innes      |

\* Denotes CBA member

# MOTION TO IMPRESS



## THE 2005 SAAB 9-3 CONVERTIBLE

Think of the Saab 9-3 Convertible as an ever-expanding source of inspiration. A car with persistent energy to satisfy your passion for driving. Especially on a winding road, where you can carve through tight bends as if downhill skiing. And a car this hot, you'll want to drive it in any weather... which is perfectly fine, because the Saab 9-3 Convertible is made for all conditions: pouring rain or sleet, howling winds or blinding sunshine. Inject some excitement into your life. The Saab 9-3 Convertible - motion to impress.

**HURRY... our Saab 9-3 Convertibles are now available!**

**move your mind™**

SALES CONSULTANTS: ROGER GORDON, WAYNE TIBBS, BRIAN HARVEY, SEAN RYAN  
KENMOUNT ROAD (CORNER OF KENMOUNT ROAD AND PEET STREET) 726-0716  
[www.hickmansaturn.ca](http://www.hickmansaturn.ca) Toll Free: 1-866-626-0716

