

Squid pro quo

Newfoundland and Labrador Branch

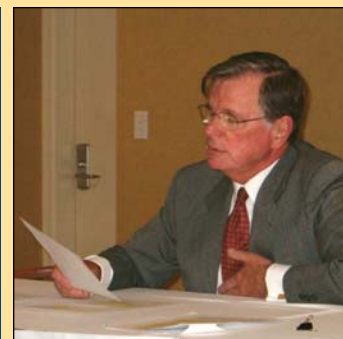
Summer 2006

Canadian Bar Association



Canadian Bar Association
Newfoundland & Labrador Branch

Branch Annual General Meeting
July 13-14, 2006



Members of the Law Day Committee 2006

See page 24-25 for a report of *Law Day* activities



Squid pro quo

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Squid pro quo is a publication of the Newfoundland and Labrador Branch of the Canadian Bar Association and is intended to provide a service to members by informing them of Branch activities and matters of general interest.

Members are encouraged to submit articles for publication, though articles submitted may, at the discretion of the Editorial Board, be edited for brevity and clarity, in which case the author will be consulted prior to publication. Articles must be submitted no later than October 31st, February 28th and June 30th.

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

This letter will be my last as Editor of the *Squid pro quo* Magazine. It has been a wonderful 6 years with the magazine, four of which as Editor, and a very rewarding experience to see this publication go from a newsletter to a magazine, from black and white to colour, from an average of 24 pages to a record of 36, and the many other trials and tribulations in between. All of the foregoing would not have been possible without the invaluable assistance and guidance of Roxane Dean, our tireless Executive Director, and all of the many members of the Magazine Committee, all of whom I thank for being such fantastic people to work with. The CBA-NL Branch is very blessed to have an incredibly dedicated membership, who are always willing to pitch in and lend a helping hand whenever one is needed. Pamela Taylor will be taking over as Editor of the magazine this September, and I look forward to the many ideas and improvements I am sure she will bring. I hope that many of you, including those who have been involved with the magazine in the past, will continue to contribute as either story writers or editors. Despite leaving the magazine, I plan to continue to be involved with the Branch Executive next year in the new role of Membership Chair, which will be hard shoes to fill given the excellent job done to date by Ken Jerrett, who is taking a hiatus from the Executive for a little while.

The Branch elections took place in July, and the results are contained within the pages of this edition of the magazine. Be sure to take note of who the section chairs are as we look forward to repeating what was a record year of activity at the Branch level. There are still a couple of sections without chairs so please consider becoming involved. Of course with elections come changes in the Executive, including the departure of Peter Shea, our Past-President and unofficial poet laureate. I will miss the humor and light heartedness that Peter brought to the Executive. It has also been a pleasure this year to work with Jennifer Newbury who will be continuing on as Past-President. Jennifer has worked very hard to fulfill her duties and responsibilities as President and is to be commended for doing a fantastic job; I look forward to continuing to work with her again next year.

In addition to all of the regular features, this edition has an In Personam on Jack Harris, former leader of the NDP, and, in keeping with recent tradition, and In Personam on an individual involved nationally with the CBA, this time our incoming President, J. Parker MacCarthy, Q.C. Also included in this edition, and very dear to my heart, is an In Personam on John Joy, Q.C., a former partner at my office, who will be a member of the Provincial Judiciary before this edition reaches you. Chris Peddigrew did a fantastic job of conveying exactly who John is, and while I will miss him dearly at the office, I know he will be a wonderful asset to the Provincial Bench.

I would like to wish everyone a safe and enjoyable summer, and for those of you attending, or volunteering, at the national CBA Canadian Legal Conference in St. John's, I am sure I will see lots of you during the month of August!!

President's Report

by Jennifer Newbury



Summer 2006

Summer 2006 has arrived! ... and with much excitement not just for branch members, but for CBA members across Canada. The City of St. John's and the Province of Newfoundland and Labrador are both proving to be extremely popular destinations for judges and lawyers from across the country, with many planning to tour the city and the Province for an extended vacation as they attend the CBA's Canadian Legal Conference (CLC).

Lois Hoegg Q.C. and Jamie Martin, the CLC Co-Chairs; Justice Adams, Chair of the Judges' Day Program; Susan Gover and John Roil, Co-Chairs of the CCCA Program along with the members of the CLC Organizing Committee and members of the Branch are all to be commended for their enthusiasm and willingness to host this conference. As many of you now know, a lot of work and attention to detail is required to host a conference of this magnitude. We will have an opportunity to display our local flair, through events such as at-home dinners, law firm receptions and late night parties. No doubt all of the conference events will be first-rate and will confirm that "hosting" does indeed come naturally to Newfoundlanders and Labradorians. As of the date of this report, an impressive 1,000 plus people have registered for the CLC.

Meanwhile, the usual activities of the Branch and its Executive continue along...

National Activities of the Canadian Bar Association

Each year, the President, Vice-President and Executive Director of our Branch attend four (National) Board of Directors meetings: one in November, one in February in conjunction with the National Mid-Winter meeting, one in June and the final one in August in conjunction with the CLC.

The Board of Directors is composed of the National President, Brian Tabor, Q.C., the First Vice-President, Parker MacCarthy, Q.C., the Second Vice-President, Bernard Amyot, Treasurer, Jack Innes, Q.C., Past President, Susan McGrath, CEO, John Hoyles, Presidents (or their designates) of each of the Provincial Branches and representatives of each of the National Sections Council, Young Lawyers, Canadian Corporate Council Association, and the Standing Committee on Equity. Executive Directors and Vice-Presidents of the Branches are invited to attend as observers.

The National staff members who attend the Board of Directors meeting are: Stephen Bresolin, Associate Executive Director; Joan Bercovitch, Senior Director, Legal and Governmental Affairs; Stephen Hanson, Senior Director, Communications; Sandy Duck, IT Project Management Consultant; Tamra Thomson, Director, Legislation and Law Reform; Ann O'Grady, Director of Finance; and the Director of Marketing (formerly Jacquelyn Hoult).

In addition to activities such as membership, marketing, and coordination with the Branches typical to any large national organization, there are many exciting initiatives pursued by the CBA at the national level. Previous President's reports in *Squid pro quo* have highlighted the Legal Aid Test Case (Spring 2006) and work of the International Development Program (Fall 2005). Updates of those initiatives are available on the website www.cba.org.

Public Interest Interventions

Those who watch the CPAC channel will already know that the CBA occasionally intervenes in appellate level court cases which are of *compelling public interest or of special significance to the legal profession*. Counsel acting for the CBA do so on a pro bono basis. The list and brief synopsis of current public interest interventions and the "Public Interest Interventions Policy" are posted on the CBA website and can be found under "Activities" on the menu bar, under "Law Reform", then "Court Interventions". The legal aid test case referred to in the spring 2006 edition of *Squid pro quo* President's Report is just one example.

There have been six interventions since September 2005, including the three related interventions for which a brief synopsis follows. The other three are: *Canadian Bearing v. Celanese Canada* (solicitor-client privilege in Anton Pillar orders); *Little Sisters Bookstore v. Canada Revenue Agency* (advance costs); and *Davis & Co. v. 3464920 Canada Inc.* (duty of loyalty).

As a recent example, the CBA intervened in three cases involving immigration security certificates: *Charkaoui, Almrei and Harkat v. Minister of Citizenship and Immigration & Solicitor General*. Each of the three appellants had been arrested on security certificates and faced deportation to his native country. The Appellants stated that they faced

torture or death if so deported. The Supreme Court of Canada will consider whether the judicial review procedure for security certificates under the *Immigration and Refugee Protection Act* infringe an individual's rights under the *Charter* and the *International Convention for Civil and Political Rights*.

CBA has intervened at the SCC in the three appeals, arguing that:

- the security certificate process interferes with the right of effective representation by counsel under section 10 of the *Charter*, because a hearing considering the reasonableness of the security certificate may take place in camera, without participation of the accused or counsel, and without notice of the evidence against them;
- the scheme interferes with a person's right to liberty under section 7 of the *Charter*, because the detained person cannot effectively challenge the lawfulness of his or her detention without participating in the process; and,
- the scheme impinges on judicial independence and impartiality, as the judge must perform the judicial function and also protect the interests of the accused.

The appeals were heard in mid-June 2006 and decisions are expected sometime in the fall of 2006.



Meetings of Council and Annual Meetings

13-14 July 2006 - The NL Branch Annual General Meeting was held on July 13 and 14, 2006. Activities included the Branch Council Meeting on July 13 with guest speaker, the Hon. Chief Justice Clyde K. Wells, as well as a CBA Awards Luncheon on July 14, at the Fairmont Newfoundland at which time the 2006 Distinguished Public Service Award was presented to Mr. Gary Peddle of Benson Myles.

Recap of Special Events held Throughout the Year

15 December 2005 - The President's Reception was held at the Fairmont Hotel Newfoundland, with over 50 members in attendance.

06 April 2006 - Law Day Co-Chairs, Tammy Drover and Crystal Critch, along with the CBA Law Day Committee, did a tremendous job in organizing a variety of events to celebrate the CBA National Law Day. Further details on the Law Day events can be found on pages 24-25 of this edition of the magazine.

09 April 2006 - This year the CBA-NL Branch hosted a children's Easter party at the Fluvarium, St. John's, which included an Easter egg hunt, games for the children and a brunch. Over 70 members and their children attended this event.

CBA Members Luncheons

25 May 2006 - The Honourable T. Alex Hickman, former Chief Justice of the Supreme Court, Trial Division, former politician and recipient of the Order of Canada, was the guest speaker for a CBA members luncheon held at the Fairmont Newfoundland. Mr. Hickman spoke on the topic *53 years in the law*.

15 June 2006 - William Goodridge, Q.C., was the guest speaker at a CBA Luncheon held at the Fairmont Newfoundland, and lead a discussion titled *CBA International Development Initiatives - Work in Africa*.



Section Activities - Lunch and Learn Sessions

Section activity in the Newfoundland and Labrador Branch this year has been tremendous. There have been many Lunch and Learn Sessions held throughout the year. In an effort to reach members outside the St. John's area many of these Lunch and Learn Sessions were made available by teleconference to members in the Corner Brook area. The Branch hopes to expand, improve and increase this activity throughout Newfoundland and Labrador in the months and years to come as resources and technology will allow. To inquire about how you can avail of these services, please contact any Executive Committee Member or Executive Director, Roxane Dean.

The following are a list of Lunch and Learn Sessions held this year:

- November 17, 2005, Young Lawyers: *Your First Real Estate Transaction Going Bad: How to avoid problems and find solutions*, guest speaker, Denis Barry, Q.C. of Barry, Walsh & Associates.
- February 9, 2006, Civil Litigation and Insurance Law Sections: *SNAFU's and FAQ's at the Court Registry Counter*, guest speakers, Darlene Wells, Senior Deputy Registrar and Margaret Williams, Trial Coordinator with the Supreme Court of NL, Trial Division Registry.
- March 10, 2006, Privacy Law and Law Practice Management & Technology Sections: *Presentation on the Interface Between Protecting Solicitor-Client Confidentiality and Privacy Law* with guest speakers, Lois Hoegg, Q.C. of Ches Crosbie Barristers and Anna Cook of Patterson Palmer.
- March 30, 2006, Civil Litigation and Insurance Law Sections: *Section D and Facility Claims: Have you Done Enough to Identify the Driver?* guest speaker, Christopher Pike of Benson Myles.
- April 13, 2006, Young Lawyers-CBA: *Tips for Young Lawyers Appearing at the Supreme Court of Newfoundland and Labrador*, guest speakers, Chief Justice J. Derek Green and Justices Adams, Orsborn and O'Regan of the Supreme Court of Newfoundland and Labrador, Trial Division.
- April 20, 2006, the General Practice, Solo and Small Firm Section: *Time... To Think About Investing*, guest speaker, Charlie Pope of the Investors Group.
- April 25, 2006, Bankruptcy and Insolvency Law Section: *Changes to Insolvency Legislation - Impact on Creditors/Debtors*, guest speaker, Ian Penney, C.A., CIRP of Deloitte & Touche Inc.
- May 8, 2006, Maritime Law Section: *Enforcement of Rights and Remedies Under Part 13 of the Federal Courts Rules*, guest speaker, David Jones, Q.C., High Sheriff of Newfoundland and Labrador.
- May 29, 2006, Administrative and Labour Law Section: *Getting your Application Before the Labour Relations Board*, guest speaker, Carmel Noel, CEO of the Labour Relations Board.
- June 8, 2006, Civil Litigation and Insurance Law Sections: *Going All the Way in Tort Litigation*, guest speaker, Gillian D. Butler, Q.C. of Gillian D. Butler, Q.C., PLC Inc
- June 23, 2006 Law Practice Management and Technology Section: *The Blogging Lawyer: The 50 cent Tour of the World of (web) Blogs, Complete with Access Ramps for Professional or Personal Use*, guest speaker, Liam O'Brien of White Ottenheimer & Baker.

(continued on page 6)



Acknowledgements

It has been a great pleasure to serve as the President of the CBA - Newfoundland and Labrador Branch this past year. It has been particularly enjoyable to do so with a dedicated and enthusiastic Executive Committee, always ready to help with branch activities and adept and prolific with email. A special thanks to our poet laureate, and Past President, Peter Shea and also to Ken Jerrett and Gerald Wetzels who will complete their terms on the Executive Committee this year. Special mention should also be made of Sheri Wicks, who will complete her term as Editor of *Squid pro quo* but will remain on the Executive Committee next year as Membership Chair. Sheri has literally turned *Squid pro quo* from a newsletter into a magazine and this publication is now referred to fondly in both our Branch and throughout the CBA. We welcome aboard new Executive Committee members Susan Gover as Secretary and Pamela Taylor as Communications Chair.

And a very special thanks to Roxane Dean, Executive Director. Most of you know Roxane - she is the first to arrive and the last to leave at all CBA events, always with a camera. Her commitment to our Branch activities has been a tremendous help to me, particularly in this busy year, and I am confident this is also true for all of the Executive Committee members, Section Chairs, members of the CLC Organizing Committee and to her colleagues nationally. ■

Branch Days Gone Bye. . .

Can you identify all four members?

Answer on page 14



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.

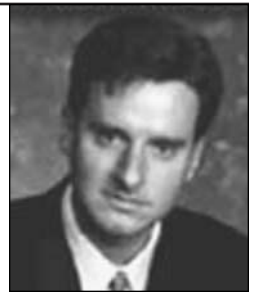
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ttp://www

cba.org/newfoundland/gate.asp

Bankruptcy & Insolvency Section Report

by Geoffrey Spencer, Chair



On April 25, 2006, our section held a Lunch and Learn Session with guest speaker Mr. Ian Penney, C.A. CIRP of Deloitte & Touche Inc. Mr. Penney made a presentation on the proposed amendments to the *Bankruptcy and Insolvency Act* and the *Companies Creditors Arrangements Act* contained in Bill C-55. Mr. Penney led an interesting discussion on the proposed amendments and the anticipated impact on creditors/debtors, from the perspective of a trustee in bankruptcy. While Bill C-55 was passed by the House of Commons on the eve of the last federal election, it was subject to further revisions by the Senate Committee on Banking, Trade and Commerce. At the time it was referred to the Senate Committee, it was anticipated that the Senate would table any further revisions by June, 2006. This deadline has come and gone and it appears that the Senate Committee's timetable has been extended indefinitely. It will be interesting to see where this Bill sits on the current Federal Government's agenda.

There will be further discussion of the proposed changes to the federal insolvency legislation at the upcoming business meeting of the National Bankruptcy and Insolvency Section to be held on August 14, 2006, at 10:00 a.m. at the Delta Hotel in St. John's, as part of the Canadian Bar Association's Canadian Legal Conference (CLC). The following topics will be discussed as part of the business meeting:

1. Bill C-55, S.C. 2005, c. 47, Critical Commentary affecting Litigators and Corporate/Commercial Counsel: Presenter, Frank Bennett, Bennett & Company;
2. 2005 Personal Insolvency Roundup: A cornucopia of highlights from the personal insolvency cases of 2005, along with key legislative changes in other jurisdictions in the past year: Presenter, Robert A. (Bob) Klotz, Klotz Associates;



3. Equity in the Bankruptcy Courts: Determining the existence of subordination: Presenter, Geoffrey L. Spencer, Benson Myles; and,
4. Equity in the Bankruptcy Courts: Giving Effect to Subordination - Circular Priorities: Presenter, Gregory M. Smith, Curtis, Dawe.

In addition to the business meeting, the National Section shall also be presenting a Continuing Legal Education (CLE) session as part of the CLC program entitled "Fighting Fraud Through the Courts" on August 14, 2006, at 2:30 p.m. The following topics will form part of the CLE:

1. Use of Forensic Investigations in Insolvency Proceedings. What is a forensic investigation and what is not; common trust and stakeholder issues arising within insolvencies; understanding your client, your responsibilities and how to protect yourself; and interacting with law enforcement agencies within insolvencies: Presenter, Howard Wasserman, C.A., CIRP;
2. Issues Facing Counsel, Clients and Witnesses in Commercial Fraud Cases. Issues regarding search warrants, general warrants, wiretaps, conspiracies and documentary evidence; the role of counsel in protecting the interests of your clients; and the role of forensic audits and investigative techniques relied upon by the police and regulatory agencies: Presenter, Pamela Goulding, Senior Crown Counsel, Government of NL; and,
3. Investigative Aids for Law Enforcement in Tracing Assets. Expectation of Privacy and Disclosure of Information: Presenter, Corporal Barry Pitcher, Proceeds of Crime Section, St. John's Detachment of the RCMP.

I hope to see many of our section members at the upcoming sessions being presented by the National Bankruptcy and Insolvency Section. The upcoming events will provide both an opportunity to learn more about areas of insolvency law affecting many of our practices, as well as the chance to interact with fellow insolvency practitioners from across the country. Finally, the National Bankruptcy and Insolvency Law Section will be holding its second annual Pan-Canadian Insolvency and Restructuring Conference on September 7-8, 2006, in Quebec City. This year's conference theme is "Restructuring for Success".

(continued on page 8)

Bankruptcy & Insolvency Section Report

Topics to be addressed include: the CBA's annual review of developments in insolvency and restructuring law; an update on insolvency law reform; a review of the year's big restructurings; a look at the role of investment banks, claims traders and hedge funds in the insolvency process; cross-border developments, including the impact of the adoption of Chapter 15 in the United States; personal insolvency and proposed developments; and new twists affect-

ing receivers, trustees, monitors, insolvency administrators and other insolvency professionals. A brochure describing the conference has been sent to all section members.

If anyone has any questions regarding any of the CLE programs mentioned above, please feel free to contact me at 570-7263 or email: gspencer@bensonmyles.com. In the meantime, have a great summer! ■

Section Update

Civil Litigation Section Report

by David C. Moores, Chair

Since my last report, I attended the annual meeting of the National Civil Litigation Section in Toronto, and the 1 ½ day National Civil Litigation and Insurance Law CLE "Hot Topics in Litigation and Advocacy" held on the same late-April weekend.

The 1 ½ day CLE was once again a tremendous success. There were presenters from all over, including this Province. High-quality and very engaging presentations were made at every turn. I experienced just a little less angst in deciding between concurrent sessions this year, since the line between insurance and litigation issues appeared a little less blurred.

At the section meeting, there were a number of interesting discussions, which included early planning of another ambitious CLE for next year. Also of interest was news that the Province of Quebec is now looking at revamping its tariff for court costs, set in the 1960's. It was said that Quebec costs awards are so low as to be almost meaningless!

The continuing battle with insurance companies over insurance caps in motor vehicle accidents has resulted in a considerable diminution of work for both legal practitioners and claims examiners in several jurisdictions. The early emphasis in these matters now often shifts, predictably, towards trying to escape the cap instead of reaching a settlement, and there is still considerable concern as to whether accident victims are well-served by these provisions.

On another note, with Ontario's Civil Litigation Section being quite large they often run their own CLE programs. That section finds itself competing with the Advocacy and Trial Lawyers Association both for membership and CLE's. In the larger Ontario market, there are several providers of CLE events, and it would seem that careful identification of members' needs along with strong member services are the key to success - but it is quite a competitive market.

On the local front, on June 8, 2006, we were fortunate in arranging for Gillian D. Butler, Q.C., to present at one of our Lunch and Learn Sessions. Ms. Butler told us of taking *Young v. MUN* to the Supreme Court of Canada to confirm a jury award which was overturned by our Court of Appeal. The work and costs (oh, the costs!) in taking on such an ordeal are truly staggering. In closing her presentation, Ms. Butler offered to confer with anyone inclined to take such a matter "all the way" as she put it. From what we heard in her presentation, one would be well advised to take her up on her offer.

Finally, I guess you could call this my "swan song". I am taking a step back from being your Civil Litigation Section Chair, and seeking a different role for a while. I want to thank you for your support over the last several years in attending the section events I have helped bring to you, and wish my successor the best. But most of all, I want to thank Roxane Dean for her invaluable assistance in coordinating the details necessary for what I hope you will view as a valuable program. If you want to get involved in volunteering with the CBA Branch, Roxane makes it easy. ■



Constitutional & Human Rights Section Report

by Jamie Merrigan, Chair



As with other sections in smaller provinces, geography has proven a challenge in organizing section events. The vast majority of lawyers (and CBA members) live in St. John's and the immediate area and I live on the west coast, organizing events has proven difficult. This challenge has been overcome with the gracious help of other section chairs.

Section Activities

A Lunch and Learn Session is being planned for this summer on the topic of Search and Seizure. A federal crown prosecutor and prominent defence counsel have been asked to present and we are currently working out the dates and availability in St. John's. A parallel session will be held in Corner Brook featuring a less prominent defence counsel (and CBA Section Chair!) and a local provincial crown prosecutor.

Activities on behalf of the Section

In the fall of 2005, I participated in a committee formed to prepare submissions for the CBA on draft lawful access legislation which was anticipated to be tabled. The proposed legislation would have governed the way in which the government obtained access to otherwise private information and communications in a lawful fashion. The legislation was not tabled due to a strong negative public reaction. It now appears that this legislation or similar legislation will be tabled in the near future.

In May 2006, I participated in drafting the CBA submissions on Bill C-2, the *Federal Accountability Act*. The notice given to provide submissions on this *Act* was clearly inadequate and the CBA expressed concerns with the limited time to study such a large and important piece of legislation. Although few traditional constitutional concerns were raised, legislative counsel of the House of Commons raised constitutional concerns with some of the provisions which restricted Parliament's ability to govern its own affairs. The *Act* bears the earmarks of hurried drafting and in its current state is convoluted and difficult to follow. Hopefully, the CBA's submissions will go some way towards correcting this.

At the National Section meeting in June, 2006, I was asked to form and chair a national section sub-committee on the proposed national identity card, in order to ensure that a response to this anticipated piece of legislation would be more considered than was possible with the "short fuse" on the *Accountability Act*.

Recent Developments

The most interesting decision in the field of Human Rights in this Province this past year was the decision of the Newfoundland and Labrador Court of Appeal in

Newfoundland (Human Rights Commission) v. Newfoundland (Workplace Health, Safety and Compensation Commission) which most practitioners view as having effectively expanded the jurisdiction of the Human Rights Commission.

This case was an appeal by the Newfoundland and Labrador Human Rights Commission from a decision that affirmed a decision of an adjudicator finding that she had no jurisdiction to hear a complaint. The claimants in the complaint alleged that they were discriminated against by the Workplace Health, Safety and Compensation Commission on the basis of marital status because they were denied widow's pension upon remarriage until a legislative amendment restored the benefits. The Human Rights Commission referred the complaints to a board of inquiry. The adjudicator found that the effect of the remedy sought by the complainants would render s. 65.1(1) of the *Workplace Health and Safety and Compensation Act* (the "*Act*") invalid. Accordingly, she declined jurisdiction on the basis that the *Newfoundland Human Rights Code* (the "*Code*") did not create a mechanism to determine the validity of, or to strike down allegedly discriminatory provincial legislation. The Trial Division affirmed the adjudicator's decision.

The Court of Appeal found that the Trial Division and the adjudicator erred in finding that the board of inquiry had no jurisdiction to grant a remedy. Although the board of inquiry had no jurisdiction to declare provincial legislation inoperative, the *Code* provided authority to grant the remedy sought by the claimants. Section 5 of the *Code* confirmed the primacy of human rights legislation and provided jurisdiction to determine whether s. 65.1(1) of the *Act* justified conduct otherwise contrary to the *Code*. A number of appropriate remedies were available to the Board which did not involve a declaration that the section was inoperative. This includes a directive to the Workplace Health, Safety and Compensation Commission to stop the offending behavior and refrain from committing a contravention in the future or to take other action as permitted by s. 28 of the *Code*, though this would not extend to specifying by what means the offending legislation should be made compliant.

The distinction between declaring a section inoperative, and directing the agency responsible for enforcing the section not to do so, is a subtle one that may be problematic to apply in practice. It is anticipated that additional litigation will be required to flesh out this distinction. ■

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Family Law Section Update

by Jean V. Dawe, Q.C., Chair



This has been a quiet year for the Family Law Section on both the provincial and national levels.

Both nationally and provincially, the main development in the family law area over the past 12 months is the impact of the *Spousal Support Advisory Guidelines* (the "SSAG"). These were initially released in January of 2005 with the intention that after a year of being worked with by lawyers and the judiciary, fine tuning would be conducted by the authors and a final draft submitted to the federal government. As of late April 2006, when the National Section Chairs met in Toronto, the authors advised some changes are anticipated, including:

- (i) a recommendation in cases involving adult dependent children for whom the child support amount is not the table amount, and there are no other child support payments, that for calculation of spousal support, the *without child support formula* be used, but with an adjustment to each spouse's gross income for the grossed up amount of his/her contribution to the child; and,
- (ii) in the *without child support formula*, after long marriages, a recommendation to compare the net incomes of spouses after the spousal support amount is calculated under the formula (which uses only gross incomes); especially where gross incomes are low or very high. For high income payors who are still in the work force while the recipient is not, it is recommended that work related expenses should be considered, which would be brought into the picture by the comparison of net incomes.

The "final" version of the SSAG is now expected late this year or early 2007.

Professors Rollie Thompson and Carol Rogerson, the authors of the SSAG have prepared a comprehensive summary of cases which dealt with the SSAG in the first 14 months following their release, which they provided to the Section Chairs at the spring meeting. I will be glad to forward this to any members who wish to have a copy.

Also on the national level:

- Changes are being considered by the Federal Department of Justice to the rules governing issuance of passports for children, intended to tighten up controls on children being removed from the country by one parent without the knowledge/consent of the other. Comments on the proposed changes have been invited from the National Section. As the requirements of the passport office will vary depending upon the language of the parenting order or agreement, this issue requires careful attention.

- The *Federal Child Support Guidelines* (the "Guidelines") have been amended, effective May 1, 2006, so as to adjust the table amounts both for inflation and changes in the rates of income tax. In this Province, the effect is a general, but small, increase in the table amounts. The substantive amendments to the "shared custody" provisions of section 9 of the Guidelines are still not finalized, although the Supreme Court of Canada decision in *Contino v. Leonelli-Contino*, [2005] S.C.J. No. 65, should provide some guidance on that often contentious issue.

On the Provincial level, a new *Support Orders Enforcement Act*, S.N.L. 2006, c. S-31.1 was assented to on May, 2006, but is not yet proclaimed.

A training session in Collaborative Family Law was held in late November, 2005, organized by the Joint NL Continuing Legal Education Committee. This was attended by several family law practitioners as well as several psychologists and social workers. Anecdotally, there does not seem to be any change to date in the way in which family law files are handled in this province. Interestingly, recent feedback from other provincial section chairs suggests that collaborative family law is now faltering in some of the jurisdictions which had embraced it very enthusiastically.

Procedural changes in the courts' handling of family law proceedings across the province are currently being discussed by a committee formed following a presentation by Mr. Justice Richard LeBlanc on May 4, 2006. Although I was not present at the information session, I understand the intention is to adopt the approach which has been operating so successfully in western Newfoundland under the auspices of Family Justice Services Western. I believe the intention is that upon the commencement of a family law proceeding the matter will be diverted to "Family Justice Services" who will assess it and offer mediation services to the parties. Only upon that route being considered unsuccessful, will the parties be offered a court date.

Case law to watch for: The concept of general damages being awarded to a spouse "injured" by the other's actions (\$10,000.00 was recently awarded by the British Columbia Supreme Court in *Raju v. Kumar*), and the impact of behaviour on spousal support entitlements, which in a very recent decision by the Supreme Court of Canada was held to be relevant where one spouse's conduct caused illness/inability to achieve self-sufficiency in the other. ■



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Insurance Law Section Report

by Sheri Wicks, Chair



On April 27, 2006, I attended the Insurance Law National Section meeting in Toronto. This meeting was held immediately before the 2006 National Civil Litigation and Insurance Law CLE "Hot Topics in Litigation and Advocacy". Before reporting on the meeting itself I would be remiss if I did not comment on the exceptional quality of the CLE - the effort of the organizers was evident from both the relevancy of the topics offered, and how well the conference itself was run.

The first issue discussed at the section meeting was the timing of the meeting itself. While the meeting has taken place in the spring for the past few years, given it is the only face-to-face meeting of all of the section chairs each year, it was agreed that it would be more beneficial to the functionality of the national executive if the meeting were moved to early fall, so that the new executive could have the opportunity to plan the year's activities in person. Locations for the meeting were narrowed to Winnipeg, Ottawa or Montreal.

All of the provincial section chairs in attendance reported on the activities in their province. Quebec held five Lunch and Learn Sessions during the year, all in Montreal, which were very well attended. In Prince Edward Island, the section has been relatively inactive, with only 20 members

of the bar practicing in the area of insurance law in that province. In British Columbia, the section is quite strong and had several meetings during the year. A couple of topical issues facing the BC section right now are the government's proposed re-writing of the *Insurance Act*, and a debate over whether or not the existence of, and limits of, insurance policies must be disclosed during litigation. In Nova Scotia, four section meetings were held, including a presentation on the current constitutional challenge before the Nova Scotia courts to the automobile reform legislation. In New Brunswick, the implemented reforms to automobile insurance continues to be a live issue for several reasons. Neither the legislation nor the regulations have received judicial interpretation to date and the meaning of the statutory definition of a soft tissue injury remains particularly contentious. Also resulting from the automobile reforms is a possible class action suit against adjusters who are allegedly misinforming injured parties about what their entitlements are under the new legislation. The legislation has also had a significant negative effect on the plaintiff bar in the province, with many practitioners leaving the practice of law as a result. The Insurance Law Section in Ontario is very active and has an on-line newsletter for members. The section was very pleased that the Ontario Bar Association presented its first annual *Award for Excellence in Insurance Law* in 2006 to Ms. Philippa Samworth. One of the biggest issues facing the Ontario section is the prevalence of paralegals and the current lack of regulation of this profession.

Two of the issues which dominated section discussions this year were the proposal to extend the protection of privilege to the self audits submitted by insurance companies and the proposed whistleblower legislation. To date what has been put forward by the regulators is not supported by the section, and the CBA has responded to the regulators and indicated that if they wish to pursue these initiatives, further work is required prior to implementation.

Finally, during the section meeting the section's budget for the coming year was approved for submission to the CBA National office, and the election of officers for 2006-07 was completed. The Chair for 2006-07 will be Braham Mattress, Vice-Chair Joe Zak, Secretary Daniel Payette, and the Treasurer will be John Vamplew. ■

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Section Update

Law Practice Management & Technology Section Report

by Christopher Pike, Chair



On June 23, 2006, Liam O'Brien of White Ottenheimer & Baker, made a presentation entitled *The Blogging Lawyer: The 50 cent Tour of the World of (Web) Blogs, Complete with Access Ramps for Professional or Personal Use* at our last Lunch and Learn Session for the year. Many thanks to Liam for his informative presentation.

I will be returning for another year as Chair of the Section in 2006-07, and plan to offer Lunch and Learn Sessions focused on marketing and technology tips during the year. I will also be working with the Joint CLE Committee as required to deliver CLE within the Section's mandate. Expressions of interest are welcome from members with an interest in chairing the Section in 2007-08 or who have an interest in serving as a member-at-large of the national section in 2006-07.

National Law Practice Management & Technology Section Meeting - April 7, 2006 - Montreal

The meeting was attended by representatives of the sections in Newfoundland and Labrador, Quebec, Ontario, and Saskatchewan, as well as the national section and two affiliate members, Dexco Corporation and SmartTech Inc.

The Section held an extensive discussion on communication with members via E-news, the Section web page and the reinstatement of a listserv to facilitate discussion of

issues between all members. After extensive discussion on the mechanics of setting up and promoting a listserv, it was agreed to proceed with reinstatement of this facility.

Following a discussion of various CLE initiatives, the members agreed to pursue both opportunities to present law practice management and technology CLE opportunities, and to partner with other sections to present management and risk management content, where appropriate. Some disappointment was expressed with the registration numbers for the CLE presented during the morning, with only 20 in attendance, however, it was universally agreed that the quality of the presentations was high and much positive feedback had been received from the attendees.

After a round table discussion of section reports, it was agreed that section chairs will share information on Branch luncheon and CLE speakers, to assist other sections in identifying perspective presenters.

Both the Secretary and Vice Chair positions are open for election this year. Call for nominations will be sent out shortly. ■



Branch Days Gone Bye . . .

(Photo on page 6)

Shown in the photograph are:

Wayne R. Chapman,
National CBA President (1990-1991),
William Goodridge, Q.C.,
Robert P. Pittman and
Kevin Stamp, Q.C.

Photo was taken during the
CBA-NL Branch Annual General Meeting
at the Fairmont Newfoundland.

Privacy Law Section Report

by Anna Cook, Chair



Privacy and Access to Information Law - Continuing to grow as a section of the CBA.

As Chair of the section this past year, I have had the privilege to represent you on a number of occasions.

On March 10, 2006, our section, in conjunction with the Law Practice Management and Technology section, hosted a Lunch and Learn Session. The speakers included Ms. Lois Hoegg, Q.C. and myself. At that session, the group enjoyed a good discussion on the intersection of privacy law with the Code of Professional Conduct as they apply to client confidentiality. This session was well attended and feedback was very positive.

As Privacy and Access to Information Chair of the CBA Newfoundland and Labrador Branch, I had the opportunity to attend section meetings in Calgary in April, 2006. While all of the Provincial Chairs and the National Executive are in contact through regular monthly conference calls, this meeting is the only annual opportunity to work together face-to-face. One of the primary focuses of this session was meeting with the Federal Privacy Commissioner and many of the Provincial Commissioners. This *in camera* session allowed the group to discuss several privacy issues and to hear comments from the commissioners.

Perhaps the highlight of this year's work is yet to come. As you are already aware, the 2006 Canadian Legal Conference (CLC) will take place in St. John's in August.

The CLE at that time will be a joint project between the Privacy and Health Law Sections. The topic to be presented on August 15 is *Health Information, Surveillance and Public Health*. This will be presented as a panel discussion and the speakers will be Elaine Gibson from the Health Law Institute at Dalhousie University; Dr. David Mowat, Deputy Chief Public Health Officer for the Public Health Agency of Canada; and Daniel Boone of Stewart McKelvey Stirling Scales.

To close, I invite anyone with an interest in this growing section to join the section in 2006-2007. As well, watch for the CLE on Privacy, Access and Health information at the 2006 CLC. ■



Congratulations

The CBA Newfoundland & Labrador Branch would like to extend special congratulations to Mr. Gary Peddle, the recipient of the CBA - NL Branch's 2006 Distinguished Public Service Award.

In the fall 2006 edition of *Squid pro quo* magazine, Mr. Peddle will be featured in our "In Personam" series.



In Personam

Jack Harris

John James "Jack" Harris, former leader of the Newfoundland and Labrador New Democratic Party announced this past Fall that he would retire as leader of the Party, once his successor was chosen in the next leadership convention. On May 28, 2006, Lorraine Michael was chosen to be the new leader of the NDP and Jack Harris stepped down from his 13-year tenure as leader. Mr. Harris's length of tenure as leader of a political party in this Province is second only to that of Joseph R. Smallwood and he is one of few politicians in this Province that has served in both the House of Commons and the House of Assembly.

I had the recent pleasure of sitting down with Jack Harris to talk mainly about his life as a politician and lawyer and what he has planned for the future. Mr. Harris was born in St. John's on October 27, 1948. He attended school at St. Bon's and Brother Rice and graduated from Memorial University of Newfoundland with a Bachelor of Arts in Psychology in 1971.

At a young age, Mr. Harris was interested in the "idea of being a lawyer". From an idealistic perspective he liked the idea of defending ideas and rights, but from a practical perspective he did not really see himself as being a practitioner because he could not imagine what he would do as a lawyer. Mr. Harris therefore delayed attending law school for a number of years and worked a variety of jobs including a long-shoreman, a labourer, a community development worker with the Householders Union in Shea Heights and a reporter with the CBC.

In 1976, after working for a few years, Mr. Harris decided it was time to attend law school even though he still did not have a good sense of the practice of law and still did not know whether he was going to practice. Mr. Harris obtained his Bachelor of Laws degree from the University of Alberta in 1979 where he was the only Newfoundlander in his graduating class. He spent the first week of law school living in a tent in a campground, where he also had to study for his first final exam which took place the very next week.

Mr. Harris articulated with the law firm Williams, Williams & Buffet and was admitted to the Newfoundland Bar in 1980. Six months after being admitted to the bar and feeling "on top of the world" he moved to England and did a Masters of Law at the London School of Economics on a Rothermere Fellowship and the Law Society of Alberta Viscount Bennett Scholarship. He received his Masters in 1981. Mr. Harris then moved back to Newfoundland and became a partner in the firm, Williams Harris, with his friend, and now Premier, Danny Williams. Harris remained a partner until 1997 at which time he started his own firm, which he still operates today, John J. Harris, Q.C. Law Office.



Jack Harris

Mr. Harris was always interested in politics but early on thought that he would never have a career in it because of his political orientation - neither Conservative nor Liberal. Despite this, Mr. Harris became involved with the NDP in the early to mid 1980's. Mr. Harris helped to shape the NDP and establish its Statement of Principles. He chose to get involved in this process because he wanted to be able to answer the question, "what does the NDP stand for?" After this, it was just a question of when Mr. Harris was going to run for public office.

The opportunity presented itself to Mr. Harris in the Fall of 1987 when Jim McGrath retired from the St. John's East district. Mr. Harris ran in the federal bi-election for this district and won. The following year he lost his seat in the federal election and went back to full-time practice. Mr. Harris continued to practice law full-time until he was elected to the Newfoundland and Labrador House of Assembly in the provincial bi-election of December 1990 for the district of St. John's East, later renamed Signal Hill-Quidi Vidi. He has been in the House of Assembly ever since and became leader of the provincial NDP in 1992. Mr. Harris told me he stepped down as leader of the NDP in this Province because he was not prepared to commit to political life for another 3 to 5 years. Despite this, he believes the future of the NDP in Newfoundland and Labrador is very bright. He believes there is a strong place for the NDP in this Province and that the new leader, Ms. Michael, has a strong reputation for social values and is committed and motivated to making things better for society.



Mr. Harris maintained his practicing status throughout his political career, practicing part-time. Maintaining practicing status was always important to him for a number of reasons, in particular retaining his independence. Mr. Harris remains the provincial member for Signal Hill-Quidi Vidi district, but will not run in the next election. As he is no longer leader of the NDP, he is expecting a bit of a hiatus and plans to take it easy. He has no firm plans for the future and enjoys the luxury of being a lawyer and being able to simply "hang out his shingle". Mr. Harris's present practice consists mainly of labour and employment law and arbitration. He has no master plan for the future but still feels young enough for a third act. Although he may happily carry on practicing law, he is open to other opportunities which may arise.

Mr. Harris believes that being a lawyer and getting involved in politics is a great thing to do. He was once given the following great advice by a former politician and judge "it is a noble calling being able to help to make the laws that govern your people". Mr. Harris has always remembered this as the "proper frame-work for lawyers being involved in politics". He believes that being a lawyer is good training for a politician so they can understand the legal system, society, parliamentary procedures, limits of the law and policy, and of course analyzing and criticizing legislation. The legislative process, he believes, is something that probably appalls most lawyers because it is not thorough. He thinks legislation is often passed hastily, sometimes without enough deliberation and poor use of committees. Despite a competent legislative counsel, amendments are often brought forward to remove anomalies and errors that were not caught the first time around.

Mr. Harris believes that more lawyers elected to the House of Assembly would fix this problem and that there is a great opportunity for lawyers to use their knowledge and skills to make the world better through the political sphere.

Mr. Harris told me that he did not accomplish everything he would have liked to politically. He would have liked to have obtained more seats for the NDP in the House of Assembly, established a good size opposition and obtained party status. Despite this, he told me that he does not live in regret and hopes that he has shown people that you can make a contribution to political life in Newfoundland and Labrador without being a Liberal or Conservative. Even though the NDP have never formed the government or obtained official party status, Mr. Harris feels the NDP have still influenced ideas, debate, and legislation in the Province. He believes that many things have happened in this Province because of the NDP's presence in the House of Assembly.

Mr. Harris thinks that we have come a long way as a province and as a people over the last number of years and since we now have some prosperity it is time to use it to make this Province a fairer place. In the words of Mr. Harris, "what is the good of increased prosperity, if we do not use it to make a fairer society?"

I would like to thank Mr. Harris on behalf of *Squid pro quo* for taking the time to speak with me and for sharing his thoughts. I really enjoyed speaking with him. ■

Call to Bar

June 23, 2006

Nine lawyers were Called to Bar in St. John's on June 23, 2006. They are (*in the order of call*):

Roll Number	Name	Roll Number	Name
1336	Andrea L Murphy*	1341	Alexander D Schwartz
1337	Robin F Cook	1342	Bridget S Daley
1338	Edward B Ring*	1343	Dianne D Rideout
1339	Natalie S O'Donnell*	1344	Jennifer M Berlin
1340	Mark E Gillette*		

**denotes CBA member*

In Personam

John L. Joy, Q.C.

My first encounter with John L. Joy, Q.C., recent appointee to the Newfoundland and Labrador Provincial Court Bench in Happy Valley - Goose Bay, was during the 2003 Law Society of Newfoundland and Labrador, Bar Admission Course. What I recall most from John's presentation that day is that his philosophy on life in the legal profession seemed to be a little different than most of the other presenters. John spoke to us about more than what was on the pages of our bar course materials. As lawyers, we often hear about the importance of achieving a healthy balance between our work life and personal life. John pointed out the importance of working hard, but cautioned that we should be careful not to get caught up in the practice of law to the point that we lose sight of things like family, friends, personal interests and a commitment to community service. Recently, I had the opportunity to sit down with John to discuss his life in the legal profession. I discovered that John is not only an accomplished lawyer, but also a person with a profound sense of responsibility to the community.

John L. Joy was born on August 7, 1950, in St. George's on the west coast of Newfoundland and Labrador. John has two brothers, Robert and David and one sister, Deborah. At a young age John's family moved to St. John's where his father, Dr. Clifton Joy, a pediatrician, played an integral role in establishing the Janeway Hospital. John started his education at Winterton private school and then moved to St. Bon's and eventually to Brother Rice where he completed his high school education.

In 1968, John began his studies at Memorial University of Newfoundland ("MUN") where he graduated in 1971 with a Bachelor of Arts (History). Shortly after graduating from MUN, John moved to Toronto where he lived for about a year before returning to MUN to complete his Masters degree in Newfoundland history. Throughout his undergraduate and masters studies, John seriously considered pursuing a Ph. D. in history, but eventually decided that he wanted to be, as he put it, "an admiralty lawyer, not just a lawyer". In 1974, John began studies at Dalhousie Law School where he graduated in 1977.

After graduating from law school, John returned to St. John's to article with the firm Williams Williams & Buffett under Thomas Williams, Q.C. Upon completion of his articles and his call to the Newfoundland Bar, John spent the summer of

1978 at sea as a deckhand on the M.V. George C. Crosbie and later the M.V. Bill Crosbie. John had hoped that this position would take him up as far as the Arctic, but he joked that he only got about as far as Goose Bay. Nevertheless, it was clear that John thoroughly enjoyed his summer at sea as he spoke about the importance of young people taking advantage of such opportunities.

After his summer as a deckhand, John moved to Wales to study at the University of Wales Institute of Science and Technology where he obtained his Masters degree in Marine Law and Policy. John told me that he knew very early in his career that he wanted to be an admiralty lawyer. When I asked John if he had any advice for those starting out in the practice of law, he answered that young lawyers should not be afraid to focus their practice at an early stage in their career if they have an interest in a particular area. John feels that being focused on admiralty law at an early stage in his career helped him develop a successful practice in that area. While referring to his year in Wales as one of the best years of his life, John suggested that more young lawyers should consider further study in their area of interest if they are financially able to do so.



John Joy, Q.C.

In 1979, John returned to St. John's and the firm of Williams Williams & Buffett to begin practicing as an admiralty lawyer. John recalled several files from the early years of his career that he is proud to have worked on, including the case *R. v. Norman*, which dealt with the cargo claim of a man who lost a truck and a couple of timber jacks as a result of the sinking of the M.V. *William Carson*, as well as his involvement in the formal investigation into the death of 13 men with the sinking of the *Arctic Explorer*. John also recalled that he was one of two lawyers the Workers' Compensation Commission retained in the aftermath of the Ocean Ranger disaster. Throughout his 28 years in private practice John has maintained considerable involvement in numerous conferences, organizations, committees and associations whose mandate has in one way or another been associated with admiralty law. He is currently chair of both the Offshore Mobile Craft Committee and the Piracy Committee of the Canadian Maritime Law Association.

John practiced with the firm Williams Williams & Buffett until 1983 when he joined Marshall White Ottenheimer & Green, the predecessor to the present-day firm White Ottenheimer & Baker. Over the years, John has become known as an accom-



plished admiralty lawyer, but he has also established a successful practice in other areas of the law such as immigration, intellectual property, and criminal. In particular, however, John developed a keen interest in the practice of aboriginal law. Since about 1988, John has done work for, and on behalf of, the Mushuau Innu First Nation, the Sheshatshiu Innu First Nation, the Innu Nation, various Inuit organizations such as the Labrador Inuit Development Corporation, the Nunatsiavut Government, as well as solicitor and barrister work for various Labrador Innu, Inuit and settler individuals. John's involvement with the Innu and Inuit of Labrador has included not only his work as a lawyer, but also general economic and social development. John referred specifically to his work with Jack Lavers, a partner of his at White Ottenheimer & Baker, and spoke proudly about how they have developed a significant aboriginal law practice at that firm, which now involves several lawyers. John's sense of community and his commitment to helping others was evident throughout all of our discussions, but especially when he referred to his work with the Innu and Inuit of Labrador which he described as being a "great privilege".


In 2001, John was appointed Honourary Consul for Iceland. In addition, he is, and has been involved with numerous public policy institutes, cultural and heritage organizations, human rights and environmental groups. John is also a published author, having published poetry and numerous articles, and has been a frequent legal ethics seminar leader with Geoffrey Brown, Q.C. of Stewart McKelvey for the Law Society of Newfoundland and Labrador, Bar Admission Course.

Near the end of our discussion I asked John why he wants to be a judge. After thinking for a moment, he answered that he has come to a watershed in his life. During his 28 years as a private practitioner one of his primary focuses has always been public policy work and contribution to the community. John recognizes that a judicial appointment to Labrador brings significant responsibility, but he genuinely feels that from the bench he can make a significant difference while continuing his focus on public policy work and community service. John views his move to the bench as a welcome challenge and looks forward to the opportunity to develop professionally. From a personal point of view, John indicated that he truly enjoys being in Labrador. Throughout his years as a lawyer, he spent considerable time in Labrador and enjoys the lifestyle that the region offers. John has a love of poetry, history, writing, music and gardening and views Labrador as a wonderful place to pursue these interests while at the same time making a valu-

able contribution to the community through his position on the bench. Finally, John pointed out that the move to Labrador is a good fit for him since his wife, Dr. Robin McGrath, who has a Ph. D. in Inuit literature, and has spent significant periods of time in Labrador, Nunavut and the Northwest Territories over an academic career of more than 25 years. For the last 10 years or so she has been a professional writer who has published over 10 books, some of which have northern and aboriginal themes.

Thinking back on my first encounter with John Joy and having spoken with him after his recent judicial appointment, I now have a better sense of what John meant when he spoke of the importance of balance in the life of a lawyer. John told me that balance in the life of a lawyer means having a commitment to your client, to professional development and to your community, and that a commitment to all three is what makes us a profession. In John's view, a failure to recognize and live up to our obligation to the community results in the practice of law being just another business. A review of John's *curriculum vitae* reveals that he is not only an accomplished admiralty, aboriginal and intellectual property lawyer, but also a proficient and regular contributor to numerous professional organizations, associations, committees, and public policy institutions, a diplomat, a published author and an individual with a true sense of dedication to the community and a commitment to our province's culture, history and arts.

Prior to meeting with John, I was told by someone who knows him well that my interview with him would be insightful and interesting - it certainly was both. On behalf of *Squid pro quo*, I would like to take this opportunity to thank John for taking the time to meet with me and to wish him the best of luck, both professionally and personally, with his upcoming move to Labrador and his appointment to the Provincial Court Bench. ■



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In Personam

J. Parker MacCarthy, Q.C.

I recently had the pleasure of speaking with Mr. J. Parker MacCarthy, Q.C., a British Columbia lawyer and the incoming President of the CBA. He was kind enough to discuss his 30-year legal career, his commitment to community service and his goals for his time as President of the CBA.

Mr. MacCarthy was born in Vancouver in 1949 and was raised in West Vancouver, Burnaby and the Fraser Valley. His parents, Betty and Jim MacCarthy, always stressed the importance of education and community service. He attended the University of British Columbia and obtained a Bachelor of Arts in Political Science in 1971. When asked what was his motivation for choosing law school, he related that at the time there were not necessarily people lining up to hire political science majors. Many people were therefore considering post graduate studies within their field of discipline or various professional schools. Law interested him because he felt a legal education might allow him to make a difference in life as well as challenge him intellectually. He returned to the University of British Columbia, graduating with a Bachelor of Laws degree in 1975. He was called to the Bar of British Columbia in 1976.

Mr. MacCarthy completed his articles in Vancouver. During that time, he and his wife, Virginia, whom he married in 1974, were trying to decide whether they wished to stay in Vancouver. He related that he had an aunt and uncle who lived on Vancouver Island at that time. His uncle was a family medical practitioner and his aunt was an active community volunteer in Chemainus. He was drawn to his aunt and uncle's lifestyle, the involvement they had with their community and the appreciation the community expressed to them in return. Parker and Virginia moved to the Cowichan Valley in the mid-70's for what was supposed to be a six month experience. He jokingly advises that they lost their return tickets to the mainland so that their six-month experiment turned into a 32-year odyssey which they have very much enjoyed.

With respect to his legal practice, Mr. MacCarthy has engaged in a general practice since 1976. He first joined the

firm of Williams, Davie & Company which later became known as MacCarthy Ridgway. He was a partner with the firm MacCarthy, Ridgway, Duncan from 1976 to 1998. He has been Associate Counsel with the regional Vancouver Island firm of Ramsay Lampman Rhodes since 1999. His practice encompasses a variety of areas including corporate commercial matters, real estate, wills and estates and commercial mediation and arbitration. Mr. MacCarthy has served on various committees within the Law Society of British Columbia, and has served as President of his local and county Bar Associations.



J. Parker MacCarthy, Q.C.

Parker's involvement with the CBA on a provincial level goes back to the beginning of his law career. He was a member of the Executive of the British Columbia Branch of the CBA from 1989 to 1995, serving as its President from 1993 to 1994. He has chaired numerous provincial CBA committees and has remained involved in various CBA sections. He has found the CBA to be not only an invaluable source of information on developments within the law but also a place within which he can connect with other members of his profession, both within his province and across Canada.

Mr. MacCarthy's involvement with the CBA on a national level spans almost 20 years. He was elected a member of the CBA National Council from 1987 to 1993. He continued on the National Council as an ex-officio member from 1994 to 1997, as a member of the CBA National Executive from 2000-2002, and as Chair of the National CBA General Practice, Solo and Small Firm Conference. He has attended over 20 annual and mid-winter meetings of the National Council. On a professional level, the travel has allowed Parker to meet members of the profession across the country and to form lasting relationships. He has also realized that the issues facing lawyers across Canada are not really that different. The practical challenges of the practice of law are the same. The working dynamics of law firms, the constant scarcity of time, satisfying the demands of clients within the context of competing schedules, finding ways to develop and refine skills to become a better professional, and making room for personal and family time are some of the issues that lawyers, regardless of their geographic location, must deal with daily. Attending these meetings has also given Mr.

by Pamela L. Taylor



MacCarthy and his family a chance to see almost every region of Canada as family vacations were normally planned around CBA conferences.

Parker credits his wife, Virginia, with giving him the support necessary to allow him to successfully combine professional practice development with community and CBA responsibilities. Virginia is a university college professor and is extremely accomplished in her own right. According to Mr. MacCarthy, she has always been hugely supportive of both him and their children and has been instrumental in helping Mr. MacCarthy maintain a healthy work-life balance.

Mr. MacCarthy has certain specific priorities for his term as National CBA President. He anticipates the comprehensive CBA consultation process with respect to the Futures Committee report "Crystal Clear - New Perspective for the Canadian Bar Association" will be completed in his presidential year. He will then turn his attention to the incorporation of those recommendations accepted by National Council into a new CBA Strategic Plan. He would also like to work towards advancing the image of lawyers in society. Maintaining the independence of the bar and the judiciary and educating the public on the importance of this

issue is also a high priority for him, noting that there has been an erosion of this independence on an international level. On a personal level, he wants to fully enjoy the experience of being the CBA President and having the opportunity to meet and work with CBA members across Canada.

Mr. MacCarthy is very much looking forward to returning to St. John's for the CBA's Canadian Legal Conference. He and his family came to the conference in 1998 and spent 10 days exploring the island. He informs me that his now adult children, Cameron and Alexandra, enjoyed Newfoundland so much that they are returning from studies abroad specifically to come back to Newfoundland & Labrador with Mr. MacCarthy and his wife.

On behalf of myself and the *Squid pro quo* magazine, I thank Mr. MacCarthy for taking the time to speak with me. It was truly a pleasure. We wish him every success in his upcoming year as CBA President and look forward to seeing him and his family in St. John's in August. ■

Mark Your Calendars !

August 13-15, 2006

**CBA Canadian Legal Conference
and Expo**
St. John's, NL



February 15 - 18, 2007

**2007 Mid-Winter Meeting
of Council**
Mont-Tremblant QC

Young Lawyers - CBA Chair Report

by Janie Bussey, Chair



Since my last report in March of this year, the YL-CBA hosted a Lunch and Learn Session on Thursday, April 13, 2006, to provide practical advice to young lawyers and students. Guest speakers Chief Justice Derek Green and Justices James Adams, David Orsborn, and Seamus O'Regan spoke on the topic: *Tips for Young Lawyers appearing at the Supreme Court of Newfoundland and Labrador*. The luncheon, rescheduled from its original March 27 date due to inclement weather, was very well attended. We would like to thank our guest speakers for volunteering their time to speak at this luncheon.

On Monday, May 1, 2006, the YL-CBA organized a Casual Day in support of the Mental Health Court Pilot Project. Through the efforts of firm representatives over \$600.00

was raised for emergency assistance in the form of food and clothing to participants in the pilot project. We would like to thank all those who participated in this very worthwhile event.

I look forward to serving as Chair of the CBA Young Lawyers, Newfoundland and Labrador Branch for another year commencing in September 2006. The YL-CBA strives to offer Lunch and Learn Sessions on topics that are of interest to young lawyers. If there are any topics that you would like to see addressed at a Lunch and Learn Session, please feel free to contact either myself at 722-4270 or the Branch's Executive Director, Roxane Dean, at 579-5783. ■



Queen's Counsel Appointed

On May 15, 2006, the Honourable Tom Marshall, Justice Minister & Attorney General for Newfoundland and Labrador, announced that the Lieutenant-Governor in Council had appointed 2 lawyers as Queen's Counsel. The new Queen's Counsel are:

Geoffrey Edmund James Brown*

Brigadier General Kenneth Watkin*

* Denotes CBA Member

Continuing Legal Education Report

by Bernadette Cole, CLE Co-Chair



The CLE Committee had a very busy year this year. From September, 2005 to date, the CLE Committee has offered the following sessions:

- *Information Session on Transaction Levy*. This session was offered in four areas of the province on September 12, 16 and 20.
- *The Criminal Justice System and Persons with Special Needs and Intellectual or Development Disabilities*, which took place on September 23.
- *Advocacy Skills Workshop, Cross-Examination, Impeachment and Rehabilitation of Witnesses on Re-Examination*, a workshop presented by The Advocate's Society, which took place on October 24.
- *Training in Interdisciplinary Collaborative Family Law Practice*, which was an intensive two day training course held on November 28 and 29. The course attracted lawyers, financial planners, social workers, a psychologist, as well as two members of the Unified Family Court counseling staff. Participants were trained in the interdisciplinary model of practice in the family law area. This is the first time this training was offered in the Province and there was much positive feedback from the attendees.
- *Revising the Rules: New Developments in the Rules of Supreme Court, 1986*, was held on December 2. This session was presented by the Honourable J. Derek Green, the Honourable David B. Orsborn, Christopher P. Curran, James C. Oakley, and John V. O'Dea. Attendees were taken through some new rules that have recently been adopted by the Rules Committee and discussed other proposed revisions to the Rules that were being considered by the Committee.
- *Issues in Personal Injury Practice: Trends, Tips and Traps*. This CLE was offered as part of our Mid-Winter Meeting. While initially scheduled to kick off our Mid-Winter Meeting, the CLE had to be re-scheduled due to inclement weather. The CLE was finally held on February 20, and was a big success, attracting more than 100 attendees. The topic covered a broad range of current issues in personal injury practice and was delivered by individual presenters followed with a panel discussion. The presenters included Daniel M. Boone, Reginald H. Brown Q.C., Peter N. Browne, Gillian D. Butler, Q.C., W. John Clarke, Chesley F. Crosbie, Q.C., Jamie P. Martin, Glen L.C. Noel, and Lois J. Skanes, Q.C.
- *Update on the Law of Competitive Bidding and Procurement* held on March 23. This was an interactive lecture, presented by Robert C. Worthington, L.L.B., covering a detailed examination on the latest cases on competitive bidding law across Canada, includ-

ing the laws of competitive bidding, the latest rules on disqualifying bidders, requests for proposals and the duty of fairness, when and why most requests for proposals are legally binding on both the owner and the bidders, the new legal obligations of contractors to sub-contractors on competitive bidding, the effective use of exclusion of liability clauses in competitive bidding, potential methods of waiving strict compliance - when they work and when they don't, what a competitive bid invitation involves and much more.

- *Effective Legal Research Techniques: A Demonstration of the CanLII Legal Research Website* was held on April 5. Topics discussed were: an overview of CanLII's legislative and caselaw collections, how CanLII allows you to search historic legislations, and how you can effectively combine CanLII with existing commercial search services to save time and cost to clients. The presenters were Ms. Janine Miller, CanLII Project Manager and Mr. Ivan Mokanov, CanLII Editor.
- *Advocacy in the Court of Appeal*, was held on May 5. This seminar provided the attendees with some useful tips on written and oral advocacy in the Court of Appeal. The presenters were Madam Justice Cameron, Mr. Justice Keith Mercer, Mr. Justice Denis Roberts, Madam Justice Gale Welsh, Michael Harrington, Q.C., and Michael Madden.
- *Real Estate & Commercial Law: Accessing Information Online*, held on June 29. The seminar included a demonstration of the new Companies and Deeds Online (CADO) system, as well as a demonstration of the Personal Property Registry System, followed with a discussion on the ongoing projects within the Commercial Registration Division and future plans for the Division which will impact law firms. The presenters were Ms. Lorraine Vokey, Depute Registrar, Commercial Registrations Division, Ms. Ann Martin, General Counsel, WHSCC, Mr. Douglas Laing, Commercial Registrations Division, and Ms. Lena Walsh, Project Business Analyst, WHSCC.

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

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

I invite members to contact me at 778-1536 or email: bernadette.cole@whscc.nl.ca, at any time with ideas for CLE sessions. ■

Law Day 2006 Report

by Tammy Drover & Crystal Critch, Co-Chairs

Law Day 2006 was celebrated on Thursday, April 6, 2006. Although the national theme for Law Day was *Access to Justice*, the Newfoundland and Labrador Branch of the Law Day Committee decided upon the sub-theme of *Celebrate your Rights and Freedoms*. As in prior years, the Law Day Committee 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 Wednesday, April 5, 2006. The organizations participating in this popular event included the Public Legal Information Association of Newfoundland, Better Business Bureau, Royal Newfoundland Constabulary, Royal Canadian Mounted Police, Residential Tenancies Division, Association for New Canadians and the Canadian Bar Association (Newfoundland and Labrador Branch). Entries for the annual poster and photography contests were on display during the fair and for the first time, the committee offered free estate planning information sessions.



Mock Trials

The annual Mock Trial Program was held in judicial centres throughout the Province including the historic 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, O'Donel High School in Mount Pearl, Queen Elizabeth Regional High School in Foxtrap, Marystown Central High School, John Burke High School in Grand Bank, Riverwood Academy in Wings Point and Christ the King School in Rushoon. Students acted as legal counsel, witnesses and jury members as the guilt or innocence of L. Skywalker was vigorously debated. As in previous years the students 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 held on Saturday April 8, 2006, and were followed by a reception for all participants and guests in the foyer of the Courthouse. This event was well attended and not only educational, but great fun for all those who participated.

Poster and Photography Contests

This year the sixth annual Law Day Poster Contest was organized for the participation of elementary school students from across Newfoundland and Labrador. Students submitted drawings reflecting their perception of *Celebrate your Rights and Freedoms*. The Law Day Committee received a tremendous response to this contest, and with much difficulty chose the first, second and third place win-



ners. The entry from Jessica Butt, a grade 6 student at Pasadena Elementary, came out on top. The judges chose Samantha McCourt of St. Michael's Elementary, Stephenville Crossing as the second place winner, and Kaitlin Budgell of Valmont Academy, Kings Point, took third prize.

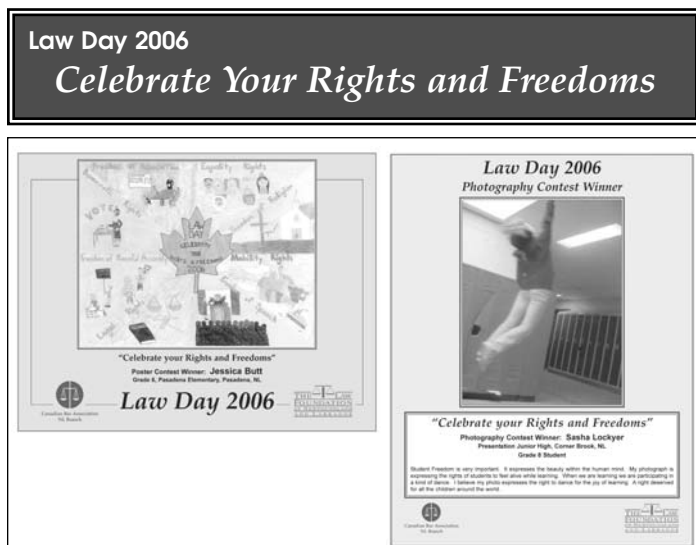
The Law Day Committee's third annual photography contest was organized for the participation of junior high school students throughout the Province. Similar to the poster contest, students were invited to submit a photograph based on the theme *Celebrate your Rights and Freedoms* together with a brief written description of why the photograph reflects this particular theme. This year's winner Sasha Lockyer, a grade 8 student at Presentation Junior High in Corner Brook, submitted a photograph of a student leaping into the air and the following written description: "Student freedom is very important. It expresses the beauty within the human mind. My photograph is expressing the rights of students to feel alive while learning. When we are learning we are participating in a kind of dance. I believe my photo expresses the right to dance for the joy of learning. A right deserved for all the

children around the world". The judges chose Jeffrey Belbin of Mountain Field Academy, Forteau, as the second place winner, and Michael Bourgeois of J.R. Smallwood Middle School, Labrador City, took third prize. All winners and their respective schools received cash prizes.

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. To date a number of high schools have received visits including Mount Pearl Senior High, Indian River High School in Springdale, St. Kevin's High School in the Goulds, and Herdman Collegiate in Corner Brook.

The Co-Chairs of the CBA Law Day Committee wish to sincerely thank all volunteers for their hard work and enthusiasm in connection with this year's Law Day activities. We look forward to another successful Law Day in 2007. ■



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

Female, non-smoker, regular health*

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

Female, smoker, regular health*

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

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CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION

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

Canadian Bar Insurance Association

Directors Report - June 2006

Newfoundland and Labrador Directors:

Robert P. Stack
Anne M. Fagan

National Director:

Janis Byrne

The Canadian Bar Insurance Association ("CBIA") is a not-for-profit corporation that is wholly owned by the CBA, providing insurance products "for lawyers by lawyers".

CBIA offers a broad range of insurance coverage including: Term Life; Permanent Life; Disability Income; Individual Health and Dental; Business Expense; Travel Medical; Accident; Employee Benefits; Home & Auto; Outside Directors' Liability; Critical Illness and Retiree Health and Dental Plan.

Highlights of current news from the Board:

1. **Meloche Monnex** - The overall results for this program remain excellent. Recent surveys indicate a client satisfaction level of 92%. This is considered excellent; client retention is at 95.7%. The Board approved proceeding with a Small Office Contents insurance plan in British Columbia;
2. **Manulife Financial** - Senior representatives of Manulife advise that our new Term Life plan is an excellent design and is exceeding sales expectations. The new Disability Insurance design is expected to become available on July 1, 2006;
3. **Financial Results** - CBIA actuarial consultant, Sylvain Dion, reports that all plans continue to experience satisfactory financial results;
4. **National Sales Director Report** - Peter Kent, National Sales Director, reported on the excellent sales results for the Term Life program. However, Disability Insurance sales are currently below expectations; and,
5. **National Marketing Director Report** - Mike Mooy, National Marketing Director, reported on the excellent progress toward implementing a new database for CBIA clients and non-clients. This new database will improve customer service as well as help identify new sales opportunities.

CBIA is Insurance for Lawyers by Lawyers

The Directors of CBIA include two representatives from each of the Provincial CBA Branches, one representative from each of the Yukon and Northwest Territories and two

representatives from the National level of CBA. The affairs of the CBIA are generally carried out by a Management Board of eight individuals, which is supported by several committees of Directors. Robert Stack serves on the Management Board, chairs the Bar Group Committee, is a member of CUPI and the ad hoc Quebec Strategy Committees. Anne Fagan chairs the Audit Committee, serves on the Outside Directors' Liability and the ad hoc Quebec Strategy Committees. National CBA Board nominee, Janis Byrne, serves on the Manulife Products and CBIA/CBA Liaison Committees.

Executive Director, Henry Kugler, oversees the administrative branch of the organization. The administrative offices and CBIA staff are located in Toronto. The address for the National Office is:

Canadian Bar Insurance Association
5 Park Home Avenue, Suite 500
Toronto, ON M2N 6L4

There are marketing representatives in each of the provinces. The marketing representative for Newfoundland and Labrador is:

Hughie J. Shea, B. Comm., CFP
Bonaventure Place
5 Bonaventure Avenue
St. John's, NL A1B 2X5

Telephone: (709) 726-6570
Facsimile: (709) 726-6579
e-mail: hughieshea@financialanswers.ca

The mission statement of CBIA provides that the corporation is to be controlled and directed by lawyers, and that the insurance and financial products carried are to be designed for the specific needs of lawyers. Aside from the benefits that arise from the tailoring of the products, it is a major benefit to all of us that the premium structure is designed to meet the requirements of providing the products but not to make a profit. Premiums are adjusted upward when necessary, but they are also adjusted downward when possible. In addition, where the financial circumstances of a particular program will allow it, from time-to-time refunds of premium are made.

There is currently a combined total through all coverages of as much as \$5,000,000,000 in risk, with coverage extended to approximately 30,000 lives.

(continued on page 28)

To get information on any of the products available from CBIA or to apply for Life Insurance, Disability Insurance, Business Expense Coverage, Individual Health & Dental Insurance, Group/Employee Benefits or Accident Death and Dismemberment Coverage, Critical Illness Coverage or Retiree Health and Dental Coverage, you can contact Hughie Shea at the above-noted address.

The CBIA also has a detailed description of its products on its website which is located at www.barinsurance.com. As always, you may call Robert Stack (726-3321), Anne Fagan (726-8844) or Janis Byrne (782-3024) with any questions or concerns.

CBA Financial Corporation

In 2004, CBIA, in conjunction with CBA, established CBA Financial Corporation (CBAF) to provide RRSP and other financial services to members. CBAF launched its first product, a RRSP, on January 5, 2004. Benefits of the new RRSP include: lower than retail management fees; access to institutional fund managers and some of Canada's top retail managers; a .40% fee discount for CBA members; an additional .25% fee discount for balances of \$50,000 or more; easy and fast on-line enrolment or with the assistance of a CBIA rep; and no loads. For more information, speak to Hughie Shea or go to www.barfinancial.com. CBAF is also working towards providing banking services, and unbiased fee-for-service financial planning. Most recently, CBAF introduced a group RRSP for law offices. ■

The Canadian Legal Conference

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

Don't Miss Out

The local Branch is working hard to ensure the success of this summer's Canadian Legal Conference ("CLC"). The CLC will be held from August 13-15, 2006, and response from across the country has been overwhelming. We expect in excess of 1,000 people will attend making it one of the best attended conferences in the history of the CBA.

The response from across the country should come as no surprise to a Province which prides itself on hospitality. Over 400 people will attend at home dinners Saturday, August 12 sponsored by over 50 local lawyers and their families.

The CLC will officially open on Sunday, August 13, and the Opening Plenary will feature guest speaker Patrick Fitzgerald, United States Attorney for the Northern District of Illinois. Also in attendance will be the Right Honourable Beverly McLoughlan, Chief Justice of the Supreme Court of Canada, and the Honourable Thomas Marshall, the Minister of Justice and Attorney General for Newfoundland and Labrador.

On Sunday evening, the delegates will be provided with a full-course meal at the Battery Hotel & Suites. Opening Night Festivities at the Johnson GEO Centre will include entertainment by the Signal Hill Tattoo, Fergus O'Byrne and Jim Payne, and the evening will close with a performance by Great Big Sea at the Delta Hotel.

On Monday and Tuesday, August 14 and 15, there will be a wide range of topical Continuing Legal Education



Seminars on such topics as insurance law, natural resources law, and ethics in the profession. On Monday evening ten law firms will be sponsoring receptions, at various venues around the city. The law firms include: Benson Myles, Curtis Dawe, McInnis Cooper, Stewart McKelvey, Martin Whalen Hennebury Stamp, Barry Spalding, White Ottenheimer & Baker, O'Dea Earle, Patterson Palmer and Cox Hanson O'Reilly Matheson.

The Young Lawyers Closing Luncheon on Tuesday will feature entertainment with a local flair with actor and renowned comedian Rick Mercer. The Closing Gala on Tuesday evening will feature local entertainer, Cathy Jones, and delegates will then dance the night away to the sounds of the band, New Found Sound.

There will also be a children's program and this year we expect in excess of 50 children to attend. In addition, the CLC could not be a success without the large number of dedicated volunteers. Over 100 individuals have agreed to donate their valuable time to the CLC.

The 2006 CBA CLC will offer a great time for all. It is never too late to register and we look forward to seeing you there! ■

Registered Education Savings Plans (RESP's) ...a great deal

by Hughie Shea



University is an expensive proposition. For lawyers, you are keenly aware of the high cost of education. You realize that there is more to the cost than just the initial undergraduate degree. All of you had to complete studies outside of Newfoundland and Labrador by the simple virtue of not having a law school in this Province.

Memorial University of Newfoundland ("MUN") is still one of the least expensive universities in Canada. The cost of tuition and compulsory ancillary fees for 2005 was \$3,015 annually, or a little more than \$1,500 per semester. The most expensive school in Canada for 2005 was Acadia at \$8,116.*

So a great student, with life and career planned out, living at home, going to MUN, will finish their primary undergraduate degree at a cost of approximately \$12,060. Unlike most of you I was not a great student, especially when I was considering what career path I wanted to pursue. My university background went from psychology to computer science to chemistry to finally, business. This type of initial indeciveness in the early university years increases a student's time in school and therefore the cost. Even with the initial undergrad completed in four years it is evident that more and more students are choosing to supplement the initial undergraduate degree with other education such as a law degree or some other form of masters or additional post-secondary work.

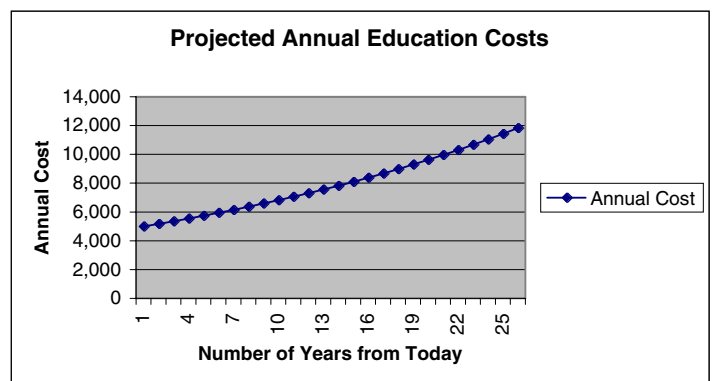
Additional costs may include some of the following expenses: Food and lodging at Dalhousie \$8,000 annually, at University of Toronto between \$7,700 to \$11,778.* Books, supplies, course fees, laptops, MP3 players, and high-speed Internet services are just some of the additional costs which continue to add to the financial resources required to not only succeed, but thrive, in a university environment.

In 1998, the federal government created the Canada Education Savings Grant ("CESG"). The CESG contributes 20% of your annual RESP contributions, up to a maximum of \$400 per year, for each child you have an RESP for.

Like anything dealing with compounding and money the earlier the better. A contribution of \$50 per month turns into \$60 when the CESG has been applied. If you start contributions when your child is born and continue until they are 18, using a 7% return assumption, your child will have \$25,255 available for education purposes. Your out of pocket is \$10,800 the rest is a combination of grant and growth.

The longer you wait the more money you will need to contribute in order to get to \$25,255.

How much money your children will need to pay for a university education is a moving target. A reasonable benchmark for tuition inflation is 3.5%. Below is a simple chart, which illustrates what an annual education cost of \$5,000 today will be over time.



For a child born today, the annual education cost in 18 years time will be \$7,820, or 56% more expensive than today's cost. The point is simple. In planning for the future of your children, the opportunity to get a 20% matching grant warrants serious consideration.

RESP's are available from almost everywhere including: banks, insurance companies, mutual fund companies and companies dedicated to only RESP's such as the Canadian Scholarship Trust. All you need to start is a social insurance number for your child.

Before you start a plan ask questions such as: How does the representative get paid? How will the money be invested? Is there any administration charges or fees? Will there be surrender charges? and what happens to the money if the children do not pursue post secondary education?

If you have any questions about this or any other financial planning topic feel free to email them to me at hughieshea@financialanswers.ca. Thank you for your support and allowing the CBIA and CBAF to be a preferred provider for you, your family and your employees. ■

*source Maclean's Guide to Canadian Universities 2006 edition

CBA - Newfoundland and Labrador Branch

Report of the Elections Committee

Peter Shea - Chair



My last task as an Executive Member of the Branch was to sit as Chair of the Elections Committee. Unfortunately, a family wedding had me out of the province during the week of our AGM and I was not present to give the report of the Committee at Council. I would like to thank our incoming President, Sheilagh Murphy, who agreed to provide this report in my absence. I would also like to thank our

Executive Director, Roxane Dean, whose tireless work and dedication to the Branch has made my years on the executive a distinct pleasure.

The following members have agreed to accept positions on the Executive for 2006-2007:

Executive Committee	Name	Firm / Employer
President	Sheilagh Murphy	Curtis Dawe
Vice President	Christine Healy	Department of Justice (NL)
Past President	Jennifer Newbury	Martin Whalen Hennebury Stamp
Treasurer	Christopher Pike	Benson Myles
Secretary	Susan Gover	CNLOPB
Membership Chair	Sheri Wicks	White Ottenheimer & Baker
CLE Co-Chair	Bernadette Cole	WHSCC
Young Lawyers	Janie Bussey	Stewart McKelvey
Communications Chair	Pamela Taylor	Ches Crosbie Barristers
Western Regional Chair	Jamie Merrigan	Poole Althouse
Central Regional Chair	<i>Vacant</i>	
Labrador Regional Chair	Jennifer Mercer	Miller Hearn

The following members have agreed to accept positions as Section Chairs for 2006-2007:

Section Chairs	Name	Firm / Employer
Aboriginal Law	<i>Vacant</i>	
Administrative Law	Donna Strong	Eastern Health
Alternative Dispute Resolution	John Clarke	Innovative Dispute Resolution Inc.
Bankruptcy & Insolvency	Griffith Roberts	Cox Hanson O'Reilly Matheson
Business Law	Beth Whalen	White Ottenheimer & Baker
Civil Litigation	Sheri Wicks	White Ottenheimer & Baker
Constitutional & Human Rights	Jamie Merrigan	Poole Althouse
Construction Law	Genevieve Dawson	McInnes Cooper
Corporate Counsel	Sandra Tilley	Aliant Inc.
Criminal Law	<i>Vacant</i>	
Elder Law	<i>Vacant</i>	
Environmental Law	Tracey Pennell	Patterson Palmer
Family Law	Tammy Drover	Department of Justice (NL)
General Practice Solo & Small Firm	Gillian D. Butler, Q.C.	Gillian D. Butler, Q.C., PLC Inc.
Government and Public Sector	Todd Stanley	Department of Justice (NL)
Health Law	Richard Rogers	Rogers Bussey
Insurance Law	Jamie Martin	Roebathan McKay & Marshall
Intellectual Property	Chris Hickey	Patterson Palmer
Labour Law	Raelene Lee	White Ottenheimer & Baker
Law Practice Management	Chris Pike	Benson Myles
Maritime/Admiralty Law	Kim Walsh	Stewart McKelvey
Natural Resources & Energy	Greg Moores	Stewart McKelvey
Privacy Law Section	John Cook	Stewart McKelvey
Real Property Law	Susan LeDrew	Smyth Woodland Del Rizzo LeDrew
Wills & Estates	Kerry Hatfield	White Ottenheimer & Baker

The following members have agreed to accept positions as National Council members for 2006-2007:

Voting Council

Jennifer Newbury
Sheilagh Murphy
Peter Shea
Christopher Pike
Christine Healy
Susan Gover

Firm

Martin Whalen Hennebury Stamp
Curtis Dawe
Cox Hanson O'Reilly Matheson
Benson Myles
Department of Justice (NL)
CNLOPB

Non-Voting Council

Lois Hoegg, Q.C.
William Goodridge, Q.C.
Bernadette Cole
Sheri Wicks
Jamie Martin
Robert Stack
Janis Byrne
Janie Bussey

Firm

Ches Crosbie Barristers
Stewart McKelvey
Workplace Health & Safety Compensation Commission
White Ottenheimer & Baker
Roebathan McKay & Marshall
Cox Hanson O'Reilly Matheson
Penney Group of Companies
Stewart McKelvey

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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.

Opinions and Commentaries

by F. Geoffrey Aylward



The Mistake of Law Defence¹

Ignorance of the law is not a defence to a criminal charge. Officially induced error constitutes a limited exception to this rule.

Strict liability offences excuse prohibited conduct if the accused has exercised due diligence to avoid the commission of the offence. This defence includes cases of mistake of fact where the defendant has exercised due diligence to ascertain the fact.

This article argues that (a) due diligence is a necessary, but not a sufficient condition, to establish the defence of mistake of law, and (b) recent decisions of the Trial Division and the Court of Appeal have either been mistaken or unclear on this point.

In *R v. Travers*², Mr. Justice Fowler upheld the conviction of a hunting guide under s. 11(1), of the Guides Regulations, enacted under the *Wild Life Act* for failure:

to insure that the person he was guiding made all reasonable efforts to immediately retrieve a big game animal . . . that the person he was guiding had wounded.

The hunter had shot a caribou. Travers and the hunter assumed it was dead (whether the animal is dead is irrelevant under s. 11). They proceeded to hunt other caribou. Travers was following a longstanding practice. In an exchange with the Court, he stated:

I don't understand with the retrieving part. . . . We always shot our animal and once you assumed the animal was dead, every man in Labrador West . . . should have been charged for that violation for years and years and years.

Once the caribou had been killed, Travers was required to insure that it was retrieved, i.e. taken under possession and, so it appeared on these facts, brought back to his pick-up. Travers had not exercised due diligence - or any diligence - to ensure the animal was "immediately" retrieved. However, Fowler, J. went further:

It is clear that Mr. Travers had not familiarized himself with the *Wild Life Regulations* or he would have known immediately what his duty was. He cannot rely on an honest mistake as a defence if he hadn't consulted the governing legislation and regulations.

One implication of this *obiter dicta* statement is that a reasonable mistake of law may be set up as a defence. This statement, however, does not reflect the law. If, notwithstanding due diligence, the defendant makes a mistake of fact, the mistake of fact is a defence. This does not extend to a mistake of law³.

In *R v. Shiner*⁴, a Provincial Court Judge had entered a stay of the proceedings against Shiner, a seal hunter, on a charge that in March, 1996 he unlawfully:

...sold Blueback Seal Pelts contrary to Section 27 of the Marine Mammal Regulations thereby committing an offence punishable under section 78(a) of the *Fisheries Act*.

Dymond, J. dismissed an appeal by the Crown.

Shiner admitted that he knew it was illegal prior to 1996 to sell blueback seals. He had not sought any official advice that would have indicated the sale was legal. However, the trial judge appeared to accept that lack of enforcement of the law was sufficient to establish an officially induced error of law⁵:

The trial judge clearly stated that he felt that Department of Fisheries and Oceans were somewhat at fault for not intervening when the hunt was being carried out or at least making it clear that the commercial harvest was illegal.

Dymond, J. considered that the decision turned on the facts and that there was no overriding error made by the trial judge on the facts (the trial judge had referred to the relevant authorities on mistake of law). At most, a lack of enforcement would be consistent with an officially induced error of law. In my view, the question on appeal was one of law.

The basic rule that ignorance of the law is no defence is still robust. In *Lévis (Ville) c. Tétreault*⁶, LeBel, J. reiterated the general rule:

ignorance of the law is not accepted in Canadian criminal law as a means to erase or mitigate criminal liability, despite occasional criticism of the inflexibility of this rule. . . . This Court has firmly and consistently applied the principle that ignorance of the law is no defence.

The Court of Appeal in *Croft v. R.*⁷ upheld the conviction of a fisherman for having "separated the carapace from the crab at sea contrary to section 53(c) of the *Atlantic Fishery Regulations*." A DFO official had warned Croft, that if he proceeded to separate carapace from crab at sea, he would be charged. Croft then obtained legal advice that his conduct was legal. In *obiter*, the Court left open the possibility that a defendant may rely upon due diligence to support a defence of mistake of fact:

While reliance on legal advice may be a relevant factor, it must be considered in the context of all the circumstances. In this case, Croft and Russell had been told they would be charged. There is no evidence that they, for example, provided their legal advice to an appropriate fishery official to obtain a response to that advice. A reasonable person having prior knowledge that he or she risked being charged would take steps beyond merely obtaining a legal opinion which is just that, an opinion.

The Court separately considered whether there was an officially induced error. It was plain that having been warned that he would be prosecuted, Croft could not rely upon this defence.

Unfortunately, the Court did not clarify the distinction between (a) mistake of law that occurs notwithstanding a reasonable diligence to ascertain the law and (b) officially induced error. Reliance upon the latter defence will necessarily require that the defendant make reasonable efforts to obtain official advice. Both elements are required to establish the defence of mistake of law.

Standing alone, a reasonable effort to determine the law, including a legal opinion, does not constitute a defence based upon a mistake of law. The reason is that officially induced error causing a mistake of law does not rest on the moral culpability of the individual. Instead, it rests upon the fundamental unfairness of an individual who acts both reasonably and upon the advice of the state in performing an action that he was told by the state was reasonable.

It is a necessary condition of the mistake of law defence that a defendant exercise due diligence / reasonableness, as he or she (a) looks to an official who could reasonably be expected to provide correct advice, and (b) reasonably believed the advice to be correct.⁸ This point follows from the analysis of the Supreme Court in *Tétreault* and is not inconsistent with the result in *Croft*. ■

¹ The opinion expressed in this paper is solely that of the author and has not been separately endorsed by the editorial committee of *Squid pro quo*.

² *Travers v. R.*, 2006 NLTD 73, 20060425, 200408T165, per Fowler, J. Ernest Gittens, Counsel for the appellant; Phyllis Harris, Counsel for the Respondent.

³ *R v. MacDougall*, 1982 CarswellNS 112. On the mistake of fact defence, see generally, *R v. Sault Ste. Marie*, 1978 CarswellOnt 24; *R. v. Tavares* (1996), 144 Nfld. & P.E.I.R. 154 (NLCA); *Lévis (City) v. Tétreault*; [2006] S.C.J. No. 12.

⁴ *R v. Shiner*, 2006 NLTD 93, 20060613, 200504T0104; Paul Adams for the Appellant, Averill Baker for the Respondent.

⁵ The seminal decisions on officially induced error are *R. v. MacDougall* [1982] 2 S.C.R. 605; *Jorgensen v. R.* [1995] 102 C.C.C. (3d) 97. The minority opinion of Lamer, J. in *Jorgensen* was adopted by the Court unanimously in *Lévis (Ville) c. Tétreault*, 2006 CarswellQue 2911. The latter decision makes it clear that the remedy is a stay of proceedings, not an acquittal.

⁶ *Ibid.*

⁷ *Croft v. R.*, 2006, 04/41, 2006 NLCA 33, Cameron, Welsh, Rowe, J.J.A., reasons by Welsh, J.A., Jerome Kennedy, Q.C. for the Appellant, Paul Adams for the Respondent.

⁸ Dymond, J. in *Shiner*, at paragraphs 32 and 33 quotes Lamer, J. on these points in *Jorgensen*.

CBA MEMBERSHIP BENEFIT

In this and subsequent editions of *Squid pro quo*, a new benefit is being made available to CBA members in good standing.

Members can now place classified ads in *Squid pro quo* for items of interest to the profession. The cost per ad is \$25.00 including HST, with a maximum word count of 25 words.

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

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

The Canadian Superior Courts Judges Association

Annual General Meeting and Judges' Day Program

by The Hon. Justice James P. Adams

The Canadian Superior Courts Judges Association (CSCJA) will again be holding its Annual General Meeting and the Judges' Day Program in association with the CBA's Canadian Legal Conference (CLC). This year we are proud to be able to offer this program here in St. John's on Tuesday, August 15, 2006. The program this year should prove to be of considerable interest because of current national and international events. The topic for the Judges' Day Program is: *Human Rights and National Security: Global and National Dimensions*. The speakers are:

Honourable Dennis O'Connor,
Associate Chief Justice of the Court of Appeal of
Ontario and the Chair of the Mahar Arar Inquiry;

Mr. James Judd,
Director, Canadian Security Intelligence Service;

Mr. Alex Neve,
Secretary General of Amnesty International Canada; and

Ms. Anne-Marie Boisvert,
Dean of Law, University of Montreal;

Honourable Edmond Blanchard,
Justice of the Federal Court of Canada and the
Chief Justice of the Courts Martial Court of Canada.

The program is expected to elicit a lively and entertaining debate among experts in the field of human rights and national security, both domestically and internationally. The Judges' Day Program will be held at the Delta Hotel, with the seminar taking place from 9:00 a.m. to 12:30 p.m. The program will be followed by a luncheon with guest

speaker the Honourable Allan Rock, Canada's recently retired ambassador to the United Nations. The luncheon will be followed by the CSCJA's Annual General Meeting. A large number of judges are planning to attend the Judges' Day Program which is jointly sponsored by the CSCJA and the CBA Judges' Forum and we are looking forward to hosting them. Plans have been made for those interested to play a couple of rounds of golf at the Bally Hally and Clovelly golf courses and other informal social events have been planned.

The location of the Judges' Day Program and the CBA CLC in St. John's has sparked a great deal of interest among judges to attend, as many of them have not had the opportunity to visit this Province before. Most have planned at least some of their vacation around this visit and will take trips of various lengths around the Province from the Colony of Avalon on the Southern Shore, to L'Anse aux Meadows on the tip of the Great Northern Peninsula, with numerous points in between. It should prove to be an exciting and interesting time for all.

The Organizing Committee for the CSCJA Judges' Day Program is the Honourable James P. Adams, Justice of the Supreme Court of Newfoundland and Labrador, Trial Division, the Honourable Malcolm Rowe, Justice of the Court of Appeal of Newfoundland and Labrador, Justice Pierre-C Gagnon, Justice of the Superior Court of Quebec, the Honourable Judge Sheila Whalen, Judge of the Provincial Court of Saskatchewan, and the Honourable Judge Robert Hyslop, Judge of the Provincial Court of Newfoundland and Labrador. ■

New CBA Members

Joined since March 2006

Laura Brazil	Law Student
Janet Christian	Poole Althouse
John Edgecombe	Law Student
Stephanie Hiller	McInnes Cooper
Keri-Lynn Power	Robert R. Regular Law Office
Tonya Pritchett	Law Student
Mark Russell	Law Student
Cillian Sheahan	Poole Althouse
John Whelan	Law Student



People and Places

by Cindy Starkes

Riley Adams*, previously with *Poole Althouse*, is now with *Family Justice Services Western*.

Averill J. Baker*, previously with *Baker & Mahoney Law Office*, is now a sole practitioner at *Averill Baker Law Office*.

Eli W. P. Baker, formerly with *Budden Morris*, is now a sole practitioner at *Eli Baker Law Firm*.

Joseph F. Boulos, formerly of *Learmonth Dunne & Clarke*, is now with *Learmonth Dunne & Boulos*.

W. John Clarke*, formerly of *Learmonth Dunne & Clarke*, is now with *Clarke & Fry* and is also a principal with the *Centre for Innovative Dispute Resolution*.

Bernadette A. Cole*, previously with *Benson Myles*, is now with the *Workplace Health, Safety & Compensation Commission*.

Crystal Critch, previously with *Roebathan McKay & Marshall*, has taken non-practicing status.

Paul M. Dunne, formerly of *Learmonth Dunne & Clarke*, is now with *Learmonth Dunne & Boulos*.

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

Christopher J. Fox, is now with the *Department of Justice, Civil Division*.

Gregory A. French, formerly with *Curtis Dawe*, is now with *Memorial University of Newfoundland, Division of Labour Relations*.

Deborah E. Fry*, formerly of *Learmonth Dunne & Clarke*, is now with *Clarke & Fry* and is also a principal with the *Centre for Innovative Dispute Resolution*.

Mark J. Garrett, formerly with *Easton Facey Hillier Lawrence*, has joined *Parsons Ennis Moores*.

Krista L. Gillam, previously with *Collins & Associates*, is now with the *Workplace Health, Safety & Compensation Commission*.

Janet Henley Andrews, Q.C.*, formerly with *Stewart McKelvey* has taken non-practicing status.

Jason N. House, formerly with *Public Legal Information Association of Newfoundland*, is now with *Burgess Law Offices*.

William G. Howse, previously with *Jeffrey Keefe Law Office*, has joined *O'Brien & Associates*.

Christina R. Kennedy, formerly with *Rogers Bussey*, is now with the *Newfoundland Association of Public Employees*.

R. Barry Learmonth, Q.C., formerly of *Learmonth Dunne & Clarke*, is now with *Learmonth, Dunne & Boulos*.

Kenneth J. Mahoney, formerly with *Baker and Mahoney Law Office*, is now a sole practitioner at *Kenneth Mahoney Law Office*.

Alexander G. MacNab, formerly with the *Legal Aid Commission*, has taken non-practising status.

Michael J. McCarthy, previously with *Parsons Ennis Moores & McCarthy*, has joined the *Office of the Judge Advocate General, Canadian Forces*.

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

Kristen R. O'Keefe, formerly with the *Crown Attorney's Office*, is now with *Public Legal Information Association of Newfoundland*.

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

Michael C. Reddy*, formerly with *Martin Whalen Hennebury Stamp*, has taken non-practising status.

Donna L. Strong*, previously with the *Workplace Health, Safety & Compensation Commission*, is now with *Eastern Health, Corporate Office*.

W. Wayne Thistle, Q.C.*, is now a principal with the *Centre for Innovative Dispute Resolution*.

Denise Woodrow, has joined *Parsons Ennis Moores*.

Kendra E. Wright, formerly with *Martin Whalen Hennebury Stamp*, has joined the *Department of Justice, Civil Division*.

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