

Squid pro quo

Newfoundland and Labrador Branch

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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.

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Letter from the Editor



*Pamela Taylor
Editor*

It is difficult for me to believe that a year has passed since I became Editor of *Squid pro quo* Magazine. It has been an interesting and challenging position, and I look forward to continuing as Editor in the coming year. Thank you to all the members of the Magazine Committee for their support, input and dedication. A special thanks to Geoffrey Aylward for regularly contributing to the Magazine for the past 12 years. This will be Geoff's last edition as a member of the *Squid pro quo* Committee. His case digests have always been an informative and a welcome feature of *Squid pro quo*. Geoff, I want to say thank you on behalf of *Squid pro quo* and wish you luck with all your future endeavors.

The Branch elections took place in July, and the results can be found in this edition. Please make special note of who the Section Chairs are and consider becoming involved in the various Sections, if you have not already done so. Enclosed you will find a Branch Section registration form for your completion. There are still a couple of Sections without Chairs, so please consider volunteering your time to these worthwhile endeavors. With the elections come changes to the Executive Committee for 2007-2008. Sheilagh Murphy, who has seen the Branch through an incredibly busy and productive year, will be continuing as Past President. Look for her farewell article as President in this edition of the Magazine. Jennifer Newbury; Susan Gover; and Mark Linehan will be leaving the Executive in September. It has been a pleasure working with each of them and I wish them every success as they take on new and interesting challenges. I would also like to extend a warm welcome to Cheryl Mullett, Membership Chair; Beth Whalen, Young Lawyers-CBA; and Tina Baker, Central Regional Chair; I look forward to working with each member of the 2007-2008 Executive Committee.

This past winter has brought many changes to our judiciary. Justice Gillian Butler, Justice William H. N. Goodridge, Justice Deborah Fry, Justice Michael Harrington and Justice Lois Hoegg were all appointed to the Supreme Court Trial Division. Justice Leo Barry was elevated to the Court of Appeal and Judge Wynne Anne Trahey was appointed to Provincial Court. In addition to our regular features, in this edition of the Magazine you will find In Personam articles on Justices Butler, Barry and Harrington. We plan to include In Personam articles on the other appointees in the fall edition of the Magazine. This year's Distinguished Public Service Award recipient was Mr. Justice William H. N. Goodridge. In this edition, Peter Shea profiles some of Justice Goodridge's many contributions to the Canadian Bar Association and to his local community. A more in-depth piece on Justice Goodridge will be forthcoming in our fall edition. Justice Goodridge has been very involved with the Canadian Bar Association's International Development Committee. He was kind enough to allow us to reprint a recent article he wrote on his experiences volunteering for the CBA in Africa.

In the fall we will be looking for people to join the *Squid pro quo* Committee. Please watch for the announcement and consider becoming involved. To find out more about the various activities and benefits that the Branch provides to our local membership, please visit the Branch website at www.cba.org/newfoundland. I hope you all have a great summer! ■

President's Report

by Sheilagh M. Murphy



It has been my distinct honour to represent our membership as President of the Newfoundland and Labrador Branch of the Canadian Bar Association (CBA) this year. The CBA is full of bright energetic volunteers and staff who give of themselves, often with precious little notice, in a variety of capacities. I have been truly fortunate to be one of those volunteers and to work with the other outstanding volunteers and staff.

This year, our Branch has made several submissions to the media. We have remained vigilant and responded to criticism of our judges and the justice system and the judicial appointment process. In my last report to you in *Squid pro quo* (SPQ), I discussed the First Canadian Title resolution which was debated at the National Mid-Winter Meeting in Mont Tremblant and tabled until the 2007 Canadian Legal Conference (CLC) in August. As a follow up, the Branch has researched and is closely following the debate surrounding the motion to allow advertising by First Canadian Title. We understand from discussions with the National office that the resolution has again been tabled pending outcome of the New Brunswick Court of Queen's Bench decision re FCT practices in that jurisdiction.

This past year, the Branch has had to overcome some financial strains on the operating budget due to the relocation of the Branch office. Our lease with Fortis expired and we moved our offices to the more spacious suite at Atlantic Place in order to better accommodate the growing Lunch and Learn program. Our rent is significantly more expensive and in the coming years we will need to find alternate revenue sources in order to cover that cost. In spite of the initial moving and set-up costs however, our Executive Director Roxane Dean and Treasurer Chris Pike, with the help of all Executive Committee members and Section Chairs, have managed to keep our finances healthy. Kudos to all.

In an effort to help keep the CBA relevant to our more rural practitioners, the Branch is now offering all Lunch and Learn Sessions to all members outside of the St. John's Metro Area. These rural practitioners are able to participate free of charge via teleconference. We have also, thanks to Roxane Dean, secured a preferred supplier program with Provincial Airlines Limited: a tangible exclusive benefit for all CBA members for travel within the Province. We will forward further information relating to

this new preferred supplier agreement in the near future.

Since my last report in SPQ we have had a very successful Easter Egg Hunt, outstanding Law Day activities, Young Lawyers Social, and Lunch and Learn Sessions. Christine Healy, Roxane Dean and I also participated in the Board of Directors meeting in Ottawa in June, where, in addition to the board meetings, I had the privilege of dining with members of the Supreme Court of Canada.

This has been a very busy year for our bar and bench. Christine Healy and I have had the pleasure of bringing greetings on behalf of the Branch at the Swearing-in Ceremonies of our five newly appointed Supreme Court Justices (Justice Michael Harrington, Justice William Goodridge, Justice Gillian Butler, Justice Deborah Fry and Justice Lois Hoegg) and our newly appointed Provincial Court Judge (Judge Wynne Anne Trahey). Speaking at these swearings-in has been one of the highlights of my



year as President. SPQ will highlight each of these newly-appointed individuals in this as well as the Fall edition.

September 1, 2007, will be bittersweet when I hand the reigns to Christine. I have thoroughly enjoyed this year serving as your Branch President and would be lying if I said I was not going to miss it. I would personally like to thank our Past President, Jennifer Newbury for her years of invaluable service to the Canadian Bar Association and our Branch in particular. She will be leaving the Executive

in September. As most past Branch Presidents can attest, one is never really "finished" with the CBA and we look forward to calling on Jennifer for her knowledge and expertise in the future. I would also like to thank all the members of this year's Executive Committee and all Section Chairs for their enthusiastic dedication and hard work. It has been a pleasure working with you.

Fair winds. ■

Section Update

Civil Litigation

by Sheri Wicks, Section Chair



On April 13, 2007, I attended the Civil Litigation National Section meeting in Montreal. This meeting was initially intended to coincide with the 2007 National Civil Litigation and Insurance Law CLE however, for a number of reasons which were canvassed extensively in discussions during the section meeting, the CLE was cancelled. Despite the difficulties with the CLE this year, the Section unanimously approved organizing another CLE, with a change in the date to the fall of 2008.

Nationally it was noted that the February, 2007 update of *Advocacy* highlighted the Civil Litigation's recent activities and initiatives. Most noteworthy is the Class Action Database. This database was a Canadian Bar Association (CBA) initiative that moved from the concept to implementation stage very quickly. The database has been wholeheartedly endorsed by the judiciary, and many of the practice notes coming from the courts are now requiring the use of the database in class action situations.

Federally the court now requires the disclosure of expert reports much earlier than was previously the case. The Federal Court has also re-introduced representative actions, but is not thinking about introducing class actions at this time.

All of the Provincial Section Chairs in attendance reported on the activities in their respective province. The Alberta Section Chair was proud to note that its CBA membership has increased. Every third Tuesday of the month the Alberta Section has a Lunch and Learn Session, more recent Lunch and Learn Sessions have included discussion on the recent and significant changes to the Rules of Court in Alberta. Also of note is the launch of a Charter challenge to Bill 53, which puts a cap on claims for soft tissue injuries.

In British Columbia, the Section has had six meetings, and a task force has been put in place to review the civil justice system with a view to preparing a comprehensive report that will significantly change the judicial system if approved. The

focus of the task force is on providing quick, inexpensive and easy access to the judicial system. A pilot project based on the British judicial model has been in place for the past one and half years. A recent judicial ruling has held that if documents such as medical charts are not in your possession you do not have to produce them.

In Ontario, a new "Human Rights Court" has been established. The effect of this new "Court" is that complainants proceed immediately to a hearing before a tribunal without the normal investigation process previously required. The reason for the change is that it was taking three to five years for a human rights complaint to be heard and decided.

The New Brunswick Section Chair reported that a significant amount of mediation is occurring in an attempt to settle claims. The provincial government is working towards implementing uniform limitation periods. There is still no judicial interpretation of the definition of a soft tissue injury in the insurance reform legislation. The courts have implemented new summary trial rules for claims under \$40,000.00, which include new punitive cost consequences.

In Quebec, the Section is very active with two to three CLEs each month for approximately ten months of the year. There were also two conferences in Quebec that were exceptional. There has been a significant change to the Bench in Quebec with nine new judicial appointments in the past year. Concern has been raised amongst the Bar in Quebec regarding lawyer's privilege on new technology as a result of recently enacted legislation. The legislation appears to put an obligation on lawyers to use the most sophisticated means of encryption for their emails. If they do not, or the email goes to the wrong place, privilege could be lost.

In Saskatchewan, the Section hosted six Lunch and Learn Sessions in the past year. The Province now has mandatory mediation which occurs after a defence is filed. The media-

tors are not lawyers, and the process is not viewed as a useful step in the litigation process. The Saskatchewan Court of Appeal has a new Chief Justice. That court has also recently increased the tariffs which can be claimed in a cost award.

Prince Edward Island has had a \$25,000.00 simplified procedure rule for a few years now. Unfortunately, it does not appear to be fully understood or frequently used. There is no mandated settlement process, however the judiciary have been relatively accommodating in facilitating settlement efforts if requested. CLEs in the Province are primarily Law Society driven. There is insurance cap legislation in Prince Edward Island. They are eagerly awaiting for the results of test cases launched in New Brunswick and Nova Scotia. The court docket is problematic in that it can take four months to get an application/motion date, but a trial date can be obtained almost immediately.

Since the meeting in April, a call for nominations for the National Executive took place. The election results are as fol-

lows: Chair - Pierre-Yves Trudel, Montréal; Vice-Chair - Lynn Murray, Charlottetown; Treasurer - Arthur Wilson, Edmonton; Secretary - Mark Arnold, Toronto; Executive Member - Gérard Dugré, Montréal; and Past Chair - Dawn Pritchard, Saskatoon.

Locally, since my last report to you, the Section was pleased to have Chief Justice Wells as a guest speaker at the July 3, 2007, Lunch and Learn Session entitled "Better Factum writing for the Court and your client, some practical tips from our Court of Appeal". This was an extremely well attended Lunch and Learn Session with some excellent tips received from the Chief Justice. Work continues on the compilation of all of the Practise Notes issued from our courts which we hope to have posted on the Branch website by the end of the summer. As always, please feel free to contact me at swicks@wob.nf.ca or at 570-7360 should you have any topics for Lunch and Learn Sessions, or if you wish to discuss anything of interest to the Section. ■

Section Update

Criminal Law

by D. Mark Pike, Section Chair



Addictions and the Criminal Justice System

On April 24, 2007, the Criminal Law Section of the Newfoundland and Labrador Branch of the Canadian Bar Association, in conjunction with Continuing Legal Education, presented a lunchtime seminar and multi-media presentation on the subject of addictions and the criminal justice system. We were most fortunate to have in attendance Dr. David C. Marsh, who had been in St. John's to testify in a court proceeding and kindly offered to make a presentation during the lunch break on that day. We were very pleased that so many criminal law practitioners and others working in the corrections and criminal justice system were able to attend and benefit from the incisive presentation and excellent discussions on this important topic.

Dr. Marsh, a Newfoundland and Labradorian and Memorial Medical School alumnus, began serving as the Physician Leader, Addiction Medicine, with Vancouver Coastal Health and Providence Health Care in January, 2004. He is now also working as Clinical Associate Professor in the Department of Health Care and Epidemiology, Faculty of Medicine at the University of British Columbia. In 2004, he received the Nyswander-Dole Award from the American Association for the treatment of Opioid Dependence in recognition of his contribution to this field. Dr. Marsh's research interests include the integration of Pharmacotherapy and Psychotherapy in the treatment of substance use and disorders and focuses primarily on novel interventions for Opioid Dependence. He is presently involved in several research projects including the North American Opioid Medication

Initiative (NAOMI) trial of prescription heroin funded by the Canadian Institutes of Health Research and an evaluation of the supervised injection site in Vancouver.

In addition to providing a clear insight into the many challenges of treating those persons addicted to dangerous substances, Dr. Marsh was also able to dispel many myths concerning the success rates, treatment programs and law enforcement initiatives which have taken place around the world. He provided ideas about programs that have been successfully implemented in other Canadian jurisdictions that have targeted chronic re-offending via the medical model by providing community support and counseling to deal with the root cause of the problem. With the recent prevalence of Oxycontin on the streets of St. John's and the fear raised by the prospect of increasing consumption of methamphetamine in this Province, Dr. Marsh was able to answer questions from many of the key stakeholders in the justice system who must deal directly with the offenders and the problems created by the consumption of such dangerous substances.

I would like to thank Mr. Francis P. O'Brien, Director of Legal Education of The Law Society of Newfoundland and Labrador, Judge David Orr of the Provincial Court, Ms. Pamela Goulding, Director of Public Prosecutions and Mr. Robin Fowler of the Crown Attorneys' Office in St. John's for their efforts in making it possible for Dr. Marsh to address us on these important subjects. ■

Family Law

by Tammy L. Drover, Section Chair



Planned Section Activities

On April 26, 2007, a Lunch and Learn Session was held to discuss and review the *Support Orders Enforcement Act*, 2006. Although the *Act* was passed in the spring of 2006 it was not proclaimed until April 13, 2007. The new *Act* replaces the *Support Orders Enforcement Act* governing the enforcement of child and spousal support orders in the Province. It also expands the ability of the Director of Support Enforcement to enforce support orders registered with the support enforcement program.

We anticipate holding a Lunch and Learn Session in the early fall with respect to the enforcement of court orders. Our section members frequently obtain court orders for family law clients outlining their custody rights, which include a clause that the Order is enforceable by the Royal Canadian Mounted Police (RCMP) / Royal Newfoundland Constabulary (RNC) if a parent withholds the child. We have found in practice however, that the police are not in a position to assist with the Order or there is inconsistency in the approach. In an attempt to determine how to deal with this inconsistency, we have invited both a representative of the RCMP and the RNC to attend a Lunch and Learn Session to discuss the police approach to this issue, advise of the protocols for dealing with these types of Orders, who to contact, issues with wording, etc. Unfortunately, the officers' schedules precluded the Section from holding this Lunch and Learn earlier; however, we look forward to an informative session in the fall.

Conferences and Continuing Education

On November 30, 2007, a CLE was held to discuss new developments in Family Law. While a number of topics were discussed, the event also included a presentation by Rollie Thompson regarding the spousal support advisory guidelines, the status of the guidelines 20 months after implementation, as well as a cross-country review of the case law utilizing the guidelines.



Legislation Update

The *Support Orders Enforcement Act*, 2006 was passed in the spring of 2006 and some of the notable provisions of the *Act* include a new ability by the Director to enforce a lower amount of support with agreement of the parties. The legislation allows for the creation of a new website, whereon a debtor's name and information may be posted for the purpose of assisting the Director in locating the debtor. The *Act* also now limits the number and length of stay of garnishment Orders that may be awarded in any given matter. New provisions allow for the suspension of certain Provincial licenses, including a driver's license and big game hunting licenses. In addition, there will no longer be a limitation with respect to the collection of arrears and there are new sources of funds that may be accessed in certain circumstances, including pensions, RRSPs and lottery winnings.

As a result of the implementation of the Family Justice Services Division of the Supreme and Provincial Courts of the Province, amendments to the Family Law Rules were necessary and came into force on February 5, 2007.

The *Family Violence Protection Act*, S.N.L. 2005 c. F-3.1 was proclaimed on July 1, 2006 as well as the Provincial Court Family Violence Protection Rules under the *Provincial Court Act*. This legislation provides for new justice system responses through the Provincial Court, in the form of Emergency Protection Orders (EMO), intended to assist adult victims of family violence and their children in emergency situations. The EMO is intended to be of immediate effect, but of temporary duration of up to 90 days. These Orders may include conditions that often arise in family law proceedings such as exclusive temporary occupancy of the home, police removal of the respondent from the home, police accompaniment to remove personal belongings, temporary possession or control of personal property, temporary care and custody of a child, payment of rent or mortgage by the respondent, restraining the respondent from terminating utilities and any other condition the court considers necessary to protect the applicant or their property.

Section 13 of this new legislation states that the EMO prevails over a prior or subsisting Order respecting custody or access, including those made pursuant to the *Divorce Act*, Part III of the *Children's Law Act* and Part IV of the *Family Law Act*. It will be interesting to see to what extent this new legislation impacts the practice of Family Law in this Province.

Court Administration and Services

Procedural changes in the courts handling of family law proceedings in this Province have been implemented in the form of Family Justice Services Division (FJSD). While acting autonomously, FJSD is a division of the Supreme and Provincial Courts of the Province. FJSD is comprised of multidisciplinary teams, including mediators and counselors, working in partnership with family law parties and their children, and focuses on consensual dispute resolution. Where an application for divorce, custody, access, child and/or spousal support has been made to the Supreme or Provincial Court of Newfoundland and Labrador, it will be forwarded to the FJSD where an intake process and information session will occur. The dispute resolution process will be implemented and will either result in an agreement being filed with the applicable court or a referral back to the traditional court process. The parties are encouraged to consult legal counsel throughout the process. Members of the family law bar reviewed the proposed changes and made recommendations to the committee implementing the FJSD.

National Update

The National Family Law Section met in Ottawa on November 5, 2006. Issues discussed include creation of Unified Family Court positions, new passport requirements for children, improvements to inter-jurisdictional support orders and child support recalculation programs.

One of the more significant topics included the submission of recommendations to Rollie Thompson and Carol Rogerson regarding the Spousal Support Advisory Guidelines. The Family Law Section was called upon to provide comments to the National Section, to be consolidated and forwarded to the authors of the guidelines for their consideration. Recommendations were completed by the National Section in the spring of 2007.

The National Family Law Section also met in Yellowknife on June 8 and 9, 2007. Unfortunately I was unable to attend this meeting; however, Suzanne Orsborn attended on my behalf and indicated that it was not only a great trip, but very productive as well. Issues discussed included the recruitment of new members to the Family Law Section, taking a proactive approach to law reform and a code of conduct for family law practitioners.

If you have any questions or suggestions, please contact me at your convenience at tammydrover@gov.nl.ca. ■

Check us out on the Web!

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

Section Update

Insurance Law

by Jamie Martin, Section Chair

On March 31, 2007, I attended a meeting of the Insurance Law Section in Toronto at the Delta Chelsea. All provincial representatives except Nova Scotia and Prince Edward Island were in attendance. There are some 2,300 active members in the Insurance Section from across the country.

Some provinces such as Quebec combine the activities of their Insurance and Civil Litigation Sections. As a result there was some discussion of rule changes across the country. For example, several jurisdictions are considering increasing the monetary limit for cases to be heard by small claims. This was discussed in the context of "access to justice".

During the meetings, the discussions focused mainly on insurance issues. Some jurisdictions are very active holding seminars on a monthly basis to discuss topical issues. In Alberta, for example, there have been regular educational sessions on such topics as bad faith claims, structured settlements, functional capacity evaluations, infant settlements, changes to workers' compensation and SEF 44. I intend to

conduct Lunch and Learn Sessions on some of these topics in the course of my term as Insurance Law Chair.

There was a discussion of the ongoing test cases on the insurance caps in New Brunswick, Nova Scotia and Alberta. There was also some discussion of a recent case in New Brunswick, which was the first case in that Province to consider the changes that were passed three years ago. This specific case has not been appealed, but it is expected that further cases will be pursued in New Brunswick that may be appealed. There was also some discussion by several provinces, most notably Ontario, concerning possible changes to their insurance legislation dealing with the deductible and the verbal threshold.

The next meeting of the Section may be scheduled in the Fall to facilitate better planning for the year ahead. The Section is also proposing to develop a newsletter that can be circulated on a timely basis to its section members. ■



Section Update

Law Practice Management & Technology

by Christopher Pike, Section Chair



Since my last report in *Squid pro quo*, the Section held a Lunch and Learn Session entitled "A Taste of Techshow". I was my own guest speaker at this session, which highlighted some of the sessions I attended at the American Bar Association's Techshow in Chicago during March 2007.

On June 19, 2007, I attended the National Law Practice Management and Technology Section meeting in Ottawa. During the meeting, we developed communication plans for the 2007-2008 year and discussed a number of content development and newsletter initiatives.

This will be my last report to you, as my term of office is at an end. Please contact me or Roxane Dean, Executive Director, if you have an interest in participating in section activities next year.

I wish to thank Ms. Dean for her invaluable assistance throughout my term. ■

Section Update

Maritime Law

by Kim Walsh, Section Chair




Our first scheduled Lunch and Learn Session was to be a presentation from Mr. Justice Sean Harrington of the Federal Court of Canada, who was scheduled to be in St. John's for a trial. As the case settled prior to trial, Mr. Justice Harrington was unable to attend. However, he did kindly offer to suggest to his colleagues on the Federal Court bench that they consider speaking to a meeting of our section members should the opportunity ever present itself.

In January of this year, I attended the Maritime Law Federal Court and Federal Court of Appeal Seminar in Ottawa, which is a one day affair held during the National Judicial Institute's Annual Conference. Presentations were made to Justices of the Federal Court and the Federal Court of Appeal by several members of the maritime law Bar from across the country. This year's seminar was titled "The Principles of Maritime/Admiralty Law - Back to Basics Guide" and the judges in attendance clearly appreciated the effort. It was noted by several Federal Court Justices in attendance that the maritime law bar in this country is a very collegial group. In my first year as Section Chair I have certainly found that to be the case, particularly in our own provincial section.

On June 15, 2007, members of the Maritime Law Section held an informal lunch meeting to discuss recently announced changes to the Atlantic Fisheries Licensing Policy. The meeting was very well attended, with section members participating in St. John's and by teleconference from around the province.

The changes to the Atlantic Fisheries Licensing Policy purportedly return independent control of the inshore fishery to inshore fishers through the introduction of an Independent Core status fisher and through the abolition of controlling, or trust, agreements. Only those fishers who have not entered into controlling agreements are eligible for independent core status and only independent core fishers will be eligible to hold new licences or obtain replacement licences.

Measures were also announced which are intended to make it easier for fishers to achieve independent core status by obtaining financing for their fishing enterprises from recognized financial institutions. These financing

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arrangements would be at arms length as the recognized financial institutions would have no interest in controlling the industry. Under these measures, licence holders are able to advise the Department of Fisheries and Oceans (DFO) that they have an agreement with a recognized financial institution and that they have agreed not to request a transfer of their licences as part of that financing arrangement. DFO would take these agreements into account when considering requests for licence transfers.

Many section members voiced concerns over the changes, some of which are as follows:

1. The policy changes do very little to provide lenders with a means of enforcing security agreements in the event of default by a fisher. Most section members at the meeting agreed that if DFO intends to take away the ability of fishers to obtain financing through the use of trust agreements, then there should be a corresponding recognition of a bank's right to enforce the security agreements in the event of a default by the fisher;
2. It is not clear at this time if "recognized financial institution" includes only chartered banks, or if it would also include community development corporations funded by the Atlantic Canada Opportunities Agency; and
3. The policy changes ignore the reality that many inshore fishers have incorporated their fishing enterprises. In such cases the fisher will transfer the licences he or she holds to the company. While the fisher will hold the licences in trust for the company by way of a controlling agreement, as principal of the company, the fisher effectively retains control of the licence.

At the end of the meeting we agreed that our concerns be brought to the attention of the Executive of the National Maritime Law Section with a view to prepare a submission that would be addressed to the Minister of Fisheries from the Canadian Bar Association (CBA). On June 29, 2007, I participated in a meeting of the Executive of the National Maritime Law Section to discuss these issues and it was agreed that a submission under the auspices of the CBA would be made to the Minister in time for the fall sitting of the House of Commons. I invite all section members who wish to make submissions to do so at their earliest opportunity.

During this meeting, the Executive also discussed a CBA submission in relation to Bill C-45, which, if passed into law, would see significant changes to the *Fisheries Act*. It is intended that this submission will be completed and presented to the Minister at the same time as the CBA submission concerning changes to the Atlantic Fisheries Licensing Policy.

Finally, the Executive discussed the matter of nominating a member of the Maritime Law Section to sit on the Federal Court Bench and Bar Liaison Committee as Mr. Robert Jette's term is about to end. It was agreed that our Section should have a continuing presence on this important Committee. Mr. Simon Barker graciously put his name forward for nomination and the Executive agreed to make all efforts to have him successfully elected to the Committee.

I have enjoyed serving as Chair of our Section and I would like to thank everyone who has expressed an interest and participated in section activities. I look forward to your continued involvement in the year ahead. ■

Mark Your Calendars !

August 12-14, 2007

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

September 6-7, 2007

**CBA National Bankruptcy &
Insolvency Conference**
Hilton Hotel, Quebec City

October 14-16, 2007

**CBA Law Firm
Leadership Conference**
Montreal, PQ

February 16-17, 2008

CBA National Mid-Winter Meeting
Yellowknife, NWT

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Privacy Law

by Regan O'Dea, Section Chair

In May of this year, I was appointed Chair of the Privacy Section, by the Executive Committee of the Newfoundland and Labrador Branch of the Canadian Bar Association (CBA) after John Cook, the former Chair, left the Province to pursue his legal career in London, England. Since taking over as Chair, I have been in regular contact with the National Privacy and Access Law Section in preparation of the National Section Meeting, which was coordinated with the national meeting of the federal and provincial privacy commissioners, and held June 28-29, 2007 in Fredericton, New Brunswick.

I attended the National Section Meeting where branch and national activities were discussed amongst the National Section executive and current issues affecting privacy and access law were discussed with the various federal and provincial privacy commissioners. I delivered a report on the recent decisions from the Office of the Information and Privacy Commissioner in Newfoundland and Labrador and advised that Part IV of the *Access to Information and Protection of Privacy Act* had still not been proclaimed.

The meeting with the federal and provincial commissioners allowed for a frank and open discussion of issues that are currently being dealt with in privacy law and issues that are likely to arise in the near future, such as breach notification, impact of new technologies, mergers and acquisitions and information sharing between government departments and agencies. The discussion emphasized the

important role that the CBA can play in forming privacy policies and laws and the desire to have continuous dialogue between the commissioners and the CBA in furtherance of the improvement and administration of privacy law.

The National Section has been quite active this past year with the preparation of various submissions to Parliament and the courts including extensive involvement in the House of Commons Access to Information, Privacy and Ethics Committee review of PIPEDA, which report was released in May, 2007. Many of the positions advanced by the CBA were incorporated in the report as recommendations. In addition, the National Section made submissions at the Air India Inquiry, was granted intervener status by the Supreme Court of Canada in the *Privacy Commissioner of Canada v. Blood Tribe Department* hearing, and made substantial submissions to government in respect of lawful access.

At this meeting a resolution was passed by the National Privacy Law and Access Section to support the "Right to Know" week to be held in September of this year. I plan on coordinating efforts with the provincial privacy commissioner to support "Right to Know Week". If anyone would like to coordinate or participate in this event or has any suggestions, please contact me at 737-1610 or by email at rodea@johnson.ca. ■

Queen's Counsel Appointed

On April 5, 2007, The Honourable Tom Rideout, Attorney General for Newfoundland and Labrador, announced that the Lieutenant-Governor in Council had appointed ten lawyers as Queen's Counsel.

Ernest Boone

Sandra R. Chaytor*

Christopher P. Curran

Barry G. Fleming*

Sheila H. Greene

R. Kent Morris

George L. Murphy*

William N. Rowe

Raymond P. Whalen

D. Bradford L. Wicks*

* Denotes CBA Member



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Law Day Report

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

Introduction

Law Day 2007 was celebrated across Canada on Tuesday, April 17, 2007, with a national focus on the theme of "Access to Justice". In consideration of the 25th anniversary of the introduction of the *Canadian Charter of Rights and Freedoms*, the Newfoundland and Labrador Branch of the Law Day Committee chose the theme of "Canadian Rights and Freedoms: Our Place in the World" as its guiding principle for the activities and events of Law Day 2007.

Mock Trials

Mock trials were held in St. John's, Grand Bank, and Happy Valley-Goose Bay. Participants in this year's mock trials were John Burke High School in Grand Bank; Mealy Mountain Collegiate in Happy Valley-Goose Bay; Holy Heart High School, O'Donel High School and Queen Elizabeth Regional High School in St. John's. Efforts were made to arrange for mock trials to be held in Corner Brook however, due to logistical difficulties, they were not held. As in previous years, the mock trials were a highlight of Law Day activities and were met with positive reactions and feedback from the participants.

The Law Day Committee was delighted with the involvement of the justices who volunteered for the mock trials. Wells, J.A., Roberts, J.A., Orsborn J. presided over mock trials in St. John's. Justice Handrigan presided over mock trials in Grand Bank and Justice Fowler presided over mock trials in Happy Valley-Goose Bay.



Members of the Sheriff's Office and the Registry staff were also kind enough to volunteer their time to help make the mock trials a realistic experience for the participants.

In addition, many local lawyers provided invaluable instruction to participants on the organization and presentation of argument at the mock trials. The Law Day Committee was pleased to receive positive feedback from lawyers involved in mock trials. Members of the Crown in Happy Valley-Goose Bay have offered to volunteer for future mock trials.

An additional highlight at the mock trials in St. John's was a presentation by Constable Moores of the Royal Newfoundland Constabulary (RNC), and Rocky, the explosives sniffing dog. This presentation was open to the public and was met with a great deal of interest. Given the positive feedback received for this event, the Law Day Committee will endeavour to have a similar presentation during future mock trials.

The Law Day Committee received several suggestions on how to improve the mock trials in the future:

1. Scenario - Several of the participants, including teachers, lawyers, and judges, found that the scenario was too complex. This year's scenario involved a murder charge, which required a review of the different degrees



of murder and manslaughter, as well as the defense of self defense. Given the nature of the activity and the level of instruction that the students (including the "juries") were able to receive with respect to these issues, it is suggested that next year's scenario be less complex, at least in terms of the legal issues involved;

2. Meeting for teachers - One teacher suggested that prior to the mock trials, a meeting be held with the teachers in order to provide some information on how the mock trials work and how they can best prepare their students for the mock trials. This could potentially be done in lieu of having a lawyer "coach" the students or in conjunction with the coaching. Given that it is at times difficult to arrange for lawyers to volunteer with Law Day activities, a meeting with all the teachers could prove to be an effective tool, particularly for those outside the jurisdiction as they could attend via teleconference; and
3. RNC "Sniffer Dog" - In light of interest generated by this year's presentation, it is suggested that in the future, this event be scheduled for at least one hour.

Poster and Photography Contests

This year the Law Day Committee received more entries for the photography contest than the poster contest, but fewer entries were received overall. In light of the high volume of faxes and contests schools received from various organizations, it was agreed that future efforts would focus on making contact with a single contact person at each school to distribute the contest information.



High School Visits

The high school visits were met with limited success this year. Many schools expressed interest unfortunately; certain schools were in areas where lawyers were not available to attend (Stephenville and Lewisporte). However, school visits were undertaken in Corner Brook and in St. John's. As in previous years, the Committee contacted lawyers directly to see if they would volunteer to participate in high school visits. Generally, those contacted were willing to participate and this will likely continue to be an effective way to obtain volunteers for this initiative.



Visits to Girl Guide Groups

In addition to the high school visits, some lawyers met with Girl Guide troops. Given that the Girl Guides have a "Law" badge this is something worth

exploring in future years. It may also be a way to encourage greater participation from members of the legal community whose children participate in Guides or Scouts.

Legal Information Fair

The Legal Information Fair was held at the Avalon Mall on April 19, 2007. The participants included the Better Business Bureau, Public Legal Information Association, Residential Tenancies Board, Royal Canadian Mounted Police (RCMP), and the Royal Newfoundland Constabulary (RNC). The fair was an overall success.

Volunteer Participation

One of the biggest challenges faced by the Committee is a lack of volunteer participation from the legal community for the various Law Day activities. To broaden the potential pool of volunteers, the Committee intends to have its members specifically target lawyers at their respective firms. In future, the Co-Chairs will send letters to various law firms seeking volunteer participation.

In addition to sending out volunteer forms in *Squid pro quo*, the Committee will look at obtaining "general" email addresses for the firms in the province and email a volunteer request form for distribution to all members of the firm.

Often volunteers are obtained by way of personal contacts through friends and colleagues. This has been a particularly successful approach in smaller communities in the Province, which the members of the Committee will seek to expand in future. The emphasis will be on contacting colleagues early in the planning process to see if they would be interested in volunteering.

Sub-Committees


Without the involvement of sub-committees, it would be impossible to organize and execute all the various Law Day events. The challenge is efficient coordination of these sub-committees. In consideration of this issue, an action item for the Law Day Committee in future years is to provide a written outline to each sub-committee, outlining the purpose of the sub-committee, general duties and tasks of the committee, expectations of committee members and expected outcomes and timelines. To facilitate this process, it is proposed that sub-committee heads be assigned to provide oversight, guidance and advice to the other members.

Conclusion

The Co-Chairs of the Law Day Committee are pleased to term Law Day 2007 an overall success. While there were some bumps along the way, the final outcome of the various activities were met with positive feedback and it is suggested that the Committee continue with these "core" activities in future years.



The Committee was pleased to receive feedback from participants in the various Law Day activities and from members of the Committee itself on how to improve Law Day in future years. These suggestions, outlined herein, are offered with a view to improve the various specific Law Day activities, and enhance the efficient and effective operation of the Law Day Committee in future years. ■


Law Day 2007
Photography Contest Winner



"Canadian Rights & Freedoms: Our Place in the World"
Photography Contest Winner: Tyler Hennessey
Stephenville High School, Stephenville, NL
Grade 9 Student



OUR HEROS - I took this picture on Remembrance Day. These war veterans and thousands more like them gave their hearts, souls and even their lives to give us the freedom that we and the rest of Canada have today.



"Canadian Rights and Freedoms: Our Place in the World"
Poster Contest Winner: Laura Bradley
Grade 6, Gander Academy, Gander, NL

Law Day 2007



Awards Committee Report

by Peter Shea, Chair



Branch Award for Distinguished Public Service

True to its name, the Award for Distinguished Public Service is given annually to a member of the Branch in recognition of extraordinary community service.

The recipient for 2007 is The Hon. Justice William H.N. Goodridge. Justice Goodridge was presented with this Award during the Branch's Annual General Meeting on July 27, 2007, at The Wilds Golf Resort, Salmonier.

Born and raised in St. John's, Justice Goodridge was educated at Memorial University of Newfoundland (B.Comm. (Honours), 1979), and York University (LL.B., 1982). From his admission to the Law Society of Newfoundland in 1982 until his recent appointment as a Supreme Court Justice, Justice Goodridge practiced law with Stewart McKelvey, and was appointed Queen's Counsel in 2002.

While carrying on an active litigation practice coupled with a busy family life, Justice Goodridge not only made time to provide extraordinary service to our profession, but to our community as well. Professionally, Justice Goodridge is a Past President of our Branch, and served as President of our Law Society as well as the Federation of Law Societies. He has served with distinction on several

committees of the Canadian Bar Association, the Law Society, and the Federation of Law Societies, including the National Mobility Task Force of the Federation of Law Societies, as well as the International Development Committee of the CBA.

Justice Goodridge's work with the International Development Committee of the CBA is distinguished, and through his work with this committee he has helped the advancement of the rule of law and the independence of the legal profession in several countries in Eastern Africa.

In addition to his professional activities, Justice Goodridge has volunteered extensively within our community, serving as Chair of Crime Stoppers of Newfoundland and Labrador (1999-2002), Chair of the Basilica Foundation (2004-2006), and as a member of the St. John's Airport Authority Passenger Advisory Panel (2005-2007). Justice Goodridge has also volunteered with Oxfam Canada and the St. John's Ski Club.

In addition to these volunteer activities, Justice Goodridge has provided extensive *pro bono* assistance to new Canadians over the years, and has had a meaningful, positive impact on the lives of immigrants to our country as well as their families.

There are several consistent threads in the nomination material submitted to the Awards Committee from the people that have worked with and volunteered with Justice Goodridge over the years: professionalism; leadership; dedication; good judgment; hard work; accessibility; decency and a willingness to help. Justice Goodridge, through his exemplary dedication to our profession and to the community at large, has personified with distinction the spirit of this Award.

The members of the Distinguished Public Service Award Committee are Doug Moores, Q.C., John Roil, George Murphy, Janie Bussey, Sheilagh Murphy, and Roxane Dean. I would like to thank the members of this committee for their assistance throughout the year, and for their ongoing commitment to the CBA.

As this concludes my tenure as Chair of the Awards Committee, I would like to especially thank Roxane Dean for her assistance and tireless effort on behalf of our Branch. I would also like to give my best wishes to Jennifer Newbury, incoming Chair of this Committee. ■

Branch Days Gone Bye...

Can you identify the people in this photo?

Answer on page 28



In Personam

by Christopher Peddigrew



Justice Michael F. Harrington

Prior to his recent appointment to the Supreme Court of Newfoundland and Labrador, Trial Division, Michael F. Harrington, Q.C. was widely regarded by his peers as one of the top litigators in this Province. From listening to senior members of the Bar at my firm, Cox & Palmer, it is clear that they have great respect for Michael's skills and abilities as a lawyer. From speaking with associates at his former firm, Stewart McKelvey, and from personal experience working on the other side of files, it is clear that Michael the lawyer treated his peers with respect and courtesy regardless of their age or experience level. These skills, abilities and character traits will no doubt be put to good use as he embarks on the next stage of his career as Mr. Justice Michael F. Harrington, Supreme Court, Trial Division.

Michael Francis Harrington was born on July 2, 1948 in St. John's to his namesake, Michael Francis Harrington, and Katherine (Smyth) Harrington. Michael is the oldest of five children. He has two brothers, Paul and Tom, and two sisters, Beth and Denise. Had Michael followed the career paths of his father and four siblings, Michael would have been a journalist, but he knew from a very early age that he was destined for a career in the legal profession.

Michael started his schooling at St. Bonaventure's College. He was part of the first class of grade nine students to attend Gonzaga High School and graduated from Gonzaga in 1965. In the fall of 1965, he began studies at Memorial University. While Michael joked that he majored in Humanities, with a minor in Political Science, in order to avoid math, the main reason for choosing these subject areas was to prepare him for law school. Michael graduated from Memorial in the spring of 1969 and began studies at Dalhousie University law school the following September. When asked about his years at Dalhousie, Michael responded that what he remembers most are the many good friends he met, many of whom he remains in contact with today.

After graduating from Dalhousie in the spring of 1972, Michael returned to St. John's and continued his articles, which he had begun after his second year of law school with Stirling Ryan Goodridge Caul Gushue Goodridge, which with lawyers Ernie Reid and Bill Wells, made the firm the largest in the Province.



Justice Michael Harrington

Upon being called to the Bar in 1973, Michael began working primarily as a litigator with retired Chief Justice James Gushue and former partner Alan Caule. After only three years in practice, an opportunity came along that Michael describes as the "turning point" in his career. The appointment of the late Chief Justice Noel Goodridge to the Bench in November, 1975 meant that he was not able to act for the British banking syndicate that held a first mortgage on the Come-by-Chance Oil Refinery. With the refinery heading for

bankruptcy, he suggested that Michael, then only 28 years old, become lead counsel on the file. Michael referred to this assignment as "baptism by fire" and recalls that the first time he read the Bankruptcy Act was during a flight to New York for a meeting with other counsel and accountants on the pending bankruptcy. Michael worked on this file from February, 1976 to April, 1981. He recalls these five years as "career defining" and as a fantastic opportunity to deal with and learn from other lawyers and accountants in London, Paris, New York and Toronto, where he traveled regularly during those five years.

The experience of the Come-by-Chance file gave Michael the opportunity to advise Mobil Oil Canada on East Coast oil and gas issues beginning with the preparation of a proposed court reference to resolve the offshore jurisdiction dispute between the Federal Government and the Province of Newfoundland. The proposed constitutional reference did not proceed, but the Ocean Ranger disaster occurred shortly thereafter. As Mobil Oil's lead counsel, this file became almost a full-time occupation for five years. Building on this work, Michael was retained on the Bow Drill III oil rig fire case in 1987, which dealt with jurisdictional, product liability, economic loss and maritime law issues. The case was ultimately resolved by the Supreme Court of Canada in 1997. Throughout his career, Michael appeared before the Supreme Court of Canada three times.

When recounting stories from his career as a lawyer, Michael told me that he feels fortunate to have been involved in the emergence and growth of the oil and gas industry in this Province. He recalled that in the early days of the industry, most legal work was being done by law

(continued on page 20)

In Personam

by Nancy Furlong



Justice Leo Barry

Justice Leo Barry, a Justice of the Trial Division of the Supreme Court of Newfoundland and Labrador, was appointed to the Court of Appeal of the Supreme Court of Newfoundland and Labrador on April 2nd, 2007. I recently had the great privilege of sitting down with Justice Barry to speak with him about his life and his thoughts on his new appointment.

Justice Barry lived the first few years of his life on Red Island but then moved to Brigus where he lived and attended grade school until grade eleven. After completing grade school, he thought about going to law school but was persuaded otherwise by his teachers and subsequently decided to move to St. John's where he enrolled at Memorial University of Newfoundland. Justice Barry obtained a Bachelor of Science in 1962 and a Bachelor of Arts in 1963.

After obtaining his Arts degree, Justice Barry taught grades nine, ten and eleven for a year in Wabush, Labrador. After a year of teaching, he still found himself very interested in the law and decided to attend law school. He attended Dalhousie Law School and obtained a Bachelor of Laws in 1967. Subsequent to completing law school, Justice Barry was very interested in legal theory and was offered scholarships from both Yale and Harvard Universities to do his Masters in Law. He chose Yale because its program focused more on legal theory than Harvard's program. Justice Barry completed his Masters of Laws with a specialization in Jurisprudence and International Law in 1968. After Yale, Justice Barry returned to Newfoundland and Labrador and completed his articles at Halley, Hickman, Hunt where he initially began articling after his second year of law school.

Justice Barry was admitted to the Bar of Newfoundland in 1969. Not long after being admitted to the Bar, Justice Barry joined three others in starting a law firm called Thoms Fowler Rowe and Barry. Justice Barry had a general practice with this firm until 1972 at which time he entered politics full-time as the Minister of Mines and Energy in the Conservative Government. In 1975, he returned to practicing law at Thoms, Fowler, Rowe and Barry. During that time, he also acted as part-time chairman of the Labour Relations Board.



Justice Leo Barry

In 1977, Justice Barry took a position at Dalhousie Law School teaching administrative law, judicial remedies and constitutional law until 1979. While he enjoyed teaching at Dalhousie, he missed the interaction he had as a lawyer with people generally. In 1979, he came back to Newfoundland and Labrador and re-entered politics, serving the Province as the Minister of Mines and Energy and also the Minister of Industrial Development between 1979 and 1981.

Justice Barry left Premier Brian Peckford's cabinet in 1981, but remained in the Progressive Conservative Party while practicing law at Halley, Hickman, Hunt until 1984. In late 1984, he decided to change political parties and became leader of the provincial Liberal party, as well as leader of the opposition until 1987. He then practiced law from 1987 until 1989 with the firm Kendall and Crosbie.

In 1989 Justice Barry was appointed to the Trial Division of the Supreme Court of Newfoundland and Labrador. In 2000, still very interested in both legal and general philosophy, he decided to do enroll in the Masters of Philosophy program at Memorial University of Newfoundland. He completed his Masters over a five-year period by attending evening courses. Justice Barry noted that he believes his background in philosophy has often helped him in analyzing cases as a judge.

When asked for his thoughts on his time in politics, Justice Barry told me that this period gave him not only an opportunity to see the Province, but to learn about it. He also observed that politics allowed him to learn a great deal about dealing with people and understanding what makes people "tick", which he noted was an important part of being a judge.

As a lawyer, Justice Barry enjoyed the legal side of private practice, but was not particularly excited by the business side. He enjoyed litigating and preparing for trials, the competitive nature of a legal case and bringing results to his clients. He believes that helping clients and making a difference in their lives is a part of a legal career which is often understated.

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In Personam

by Judy Manning



Justice Gillian Butler

On November 19, 1955, in St. John's, Newfoundland and Labrador, then eight year old Wendy Butler welcomed her twin siblings, Mark and Gillian, to the world. Blessed to grow up in the home of their parents, Denise and the late Gordon Butler, where love and support were abundant, the Butler children grew to rely on each other and their parents in dealing with life's challenges, and unfailingly managed to add a little humour to the daily grind. Many years later, Wendy and Gillian would find themselves working alongside one another at the law firm of White Ottenheimer & Baker.

Recently appointed to the Supreme Court of Newfoundland and Labrador, Trial Division, in the judicial district of Corner Brook, and sworn in on April 12, 2007, Madam Justice Gillian Butler credits the strong family support from which she has benefited as a main ingredient in her story of success. In addition to her family, there have been other profound influences along Madam Justice Butler's journey to her appointment as a Supreme Court Justice.

Gillian was a member of the first class of Memorial University's Bachelor of Commerce Co-operative program, graduating in 1977. While attending Memorial, Gillian met a young Dave McKay, who would eventually become her husband. Upon graduation from the Commerce program, Gillian and Dave both applied to the same eight law schools and, in a twist of fate, both gained acceptance at the same six schools.

Lured by the mountains, and, of course, the oil and gas industry, Dave wanted to study law in western Canada. With a desire to practice oil and gas law, Dave's choice of a law school was a relatively easy one to make: the sought-after course offerings were only available at two law schools, and the University of Alberta complemented its basic oil and gas offerings with an opportunity for more advanced studies in that area. Perhaps indicative, at an early stage, of the remarkable negotiating skills that would eventually lead to his success as a respected corporate lawyer, Dave convinced Gillian that his first choice of law school should also be her first choice, and in September of 1977, the two were off to the University of Alberta to pursue their shared dream of becoming lawyers.

Following her second year of law school, Gillian spent her first period of articles with Margaret Cameron (who would later become Madam Justice Margaret Cameron), who was then a staff solicitor in the civil division of the Department of Justice, Government of Newfoundland. Madam Justice Cameron became a respected mentor to Gillian, and years later, in Court appearances before Madam Justice Cameron, Gillian would marvel at her wisdom.

After her third year of law school, Gillian made the conscious decision to continue her articles amidst the downtown fray of legal activity. At that time, Gillian contacted Derek Green (now Chief Justice of the Trial Division) who had previously taught her Business Law at Memorial University of Newfoundland, and who had encouraged Gillian to pursue a law degree. Chief Justice Green readily offered Gillian an articling position at the law firm then known as Marshall White Ottenheimer & Green. Although her principal was William Marshall (who would later become Mr. Justice William Marshall), she spent virtually all of her time working with Chief Justice Green.



Geraldine Brophy - The Western Star
Justice Gillian Butler

Gillian was called to the Bar in December of 1980, and commenced practice at the law firm of Marshall White Ottenheimer & Green, which would be known as White Ottenheimer & Baker at the time of Gillian's departure, approximately 22 years later. Notably, Gillian made her debut in legal practice at a time when family law in this Province was undergoing substantial reform with the passing of matrimonial property legislation, which became effective July 1, 1980. Understandably, some very experienced practitioners were somewhat hesitant to wade into these unfamiliar waters. Enter Gillian Butler, a bright new member of the Bar, fresh from her studies in Alberta, where similar legislation had been passed about a year earlier. Eager to explore this new legislation, Gillian's enthusiasm for practice in this relatively uncharted territory was very well received at the firm of Marshall White Ottenheimer & Greene. In fact, for her first 16 years of practice, much of

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Justice Michael Harrington

(continued from page 17)

firms in Calgary. Michael is pleased that his former firm, Stewart McKelvey, and other firms in the Province have demonstrated to the oil and gas industry that the expertise exists here to serve this important sector of our Province's economy. It was clear to me that Michael is justifiably proud of his role in the shift of oil and gas industry legal work from Calgary to this Province.

As we concluded our discussion of his career as a lawyer, Michael made an interesting comment about his opinion of a lawyer's responsibilities to a client. He explained that a lawyer's role is not simply to provide legal advice. Rather, in his view, it is important for lawyers in private practice to measure their success by the degree to which they are seen to be trusted advisors by their clients, whether the strategic advice involves legal, business or personal matters. In fact, Michael told me that what he enjoyed most about being a lawyer was providing strategic advice to clients and negotiating with government departments and regulatory agencies on their behalf.

During our discussions it seemed very clear to me that Michael thoroughly enjoyed the practice of law and had a passion for serving his clients. It seemed like the obvious question, therefore, to ask why he decided to accept an appointment to the bench when it seemed that he truly enjoyed life as a lawyer. He replied that after 34 years in private practice he wanted a change, but a change that would allow him to continue working in the law. Michael explained that he was looking for a new challenge and was excited about the opportunity to be involved in litigation from the decision maker's perspective. Michael told me that while he misses the camaraderie of life in private practice and misses the strategizing aspect of being a lawyer, it was time for him to move on to a new challenge and he is very happy in his new role.

Michael and Ruth recently celebrated their 35th wedding anniversary. They are the proud parents of four successful children, Susan, Jane, David and Tim and three grandchildren, Gordon and Henry Clarke and Maria Connors. In his spare time, Michael is an avid salmon fisherman and just recently returned from a trip to the Gander River with his son and his two sons-in-law. Michael also enjoys golf, downhill skiing and reading.

On behalf of *Squid pro quo*, I would like to thank Michael for taking the time out of his busy schedule to meet with me and discuss his life and career. I would also like to take the opportunity to wish him the best of luck in his new role as a Supreme Court Justice where he will no doubt display the same passion and competence that made him a successful and respected lawyer for 34 years. ■

Justice Leo Barry

(continued from page 18)

Justice Barry said he had mixed emotions when he found out that he was appointed to the Newfoundland and Labrador Court of Appeal. His feelings stemmed from the fact that while there were many positives to becoming a Court of Appeal Justice, he enjoyed and will miss many aspects of working at the trial level. He noted that the Court of Appeal is more removed from the actual litigants, the trial process and the many members of the Bar. He said that the Trial Division allows you to hear and see witnesses and analyze their evidence directly, but as a Court of Appeal Justice you are more involved in examining the witnesses' transcripts and simply listening to the lawyers discuss their analysis of these transcripts. However, he noted that one main attraction for him in becoming a Court of Appeal Justice is that he will have more time to read and reflect on the law. He observed that in the Trial Division a judge often has to make a decision more quickly than he or she would like. He further noted that if a jury is involved in a criminal matter, a judge does not have the luxury of researching all the legal principles involved because of the time constraints involved with jury trials.

Justice Barry told me that there are two main aspects of being a judge that he really enjoys, both of which are present for a judge at any level. He enjoys how his decisions can impact and improve the lives of those in this Province and the country. He believes this is both a satisfying and humbling part of his job. He also enjoys waking up each day knowing that he is going to learn more than he knew the day before.

As for Justice Barry's experience to date with the Court of Appeal, he told me that he is still learning how to be a judge on a panel and laughed when telling me that he may well be like a "bull in a china shop" moving into this new process. However, he believes being a judge on a panel is an interesting way to work and is looking forward to it.

When asked if he had any advice to lawyers appearing before the Trial Division or the Court of Appeal, Justice Barry was quick to advise of the importance of being frank when setting out the issues for the Court. Justice Barry believes that often there are too many issues thrown at a judge, some of which are not essential to the case and are a waste of the client's time and money. Justice Barry advises to be candid in the presentation of issues.

On behalf of *Squid pro quo*, I would like to thank Justice Barry for taking the time to speak with me about his career. It was a pleasure. We wish Justice Barry continued success in all his future endeavours. ■

Justice Gillian Butler

(continued from page 19)

Gillian's work was in the area of family law. Through her involvement in many of the early cases interpreting this legislation in our Province, Gillian developed a highly regarded level of expertise in this area.

During the course of her successful practice at White Ottenheimer & Baker, Gillian received her Queen's Counsel designation in January, 1996.

In 2002, having reached a maturity level in her career wherein she desired something different, and seeking a setting that would facilitate a mediation practice in a multi-disciplinary setting, Gillian became a sole practitioner. She decided to "hang out her own shingle" in order that she might have an association with a multi-disciplinary mediation group, and also be able to maintain her own separate law practice. The location at which Gillian actually chose to hang out that shingle, an awe-inspiring boathouse space on Quidi Vidi Lake, quickly became the envy of many of her colleagues in the legal community.

Looking back on her career, Gillian believes that with the decision to become a lawyer comes a great deal of responsibility, something of which she has always been conscious and taken very seriously. In the very early years, Gillian recalls being a true pioneer, along with her good friend, Janet Andrews, in trying to balance a very busy litigation practice with small children and all the responsibility that accompanies those respective roles. Achieving this tough balance meant that, for many years, there had to be a large degree of selflessness. Many of her other interests often had to be set aside, in order to ensure that her family was taken care of and that her clients were well-served.

During the course of her legal career, Gillian appeared before the Supreme Court of Canada in *Wells v. Newfoundland* [1999] 3 S.C.R. 199 (S.C.C.) and *Bella v. Young* [2006] 1 S.C.R. 108 (S.C.C.), and on each occasion, received a unanimous verdict in her client's favour. These cases provided tremendous personal fulfillment for Gillian as a result of her role in effecting these changes to the law. Certain treasured possessions fondly remind Gillian of her stunning accomplishments during her years of private practice, including a framed picture of the Supreme Court of Canada building, a gift to her from the firm of White Ottenheimer & Baker following the rendering of the *Wells v. Newfoundland* decision, and a framed copy of the jury verdict from the *Bella v. Young* case, which is prominently displayed in her home in Corner Brook.

Describing the attributes that she considers most advantageous for a successful legal career, Gillian says, without hes-

itation: "A good work ethic. A really strong work ethic and compassion". With respect to the solicitor-client relationship, Gillian opines "I think the client has to like his lawyer. Because if he likes him and respects him, they will work as a team and that relationship has to be a team relationship".

Despite her hectic schedule, Gillian has readily made herself available to teach in a variety of capacities, including her role as an instructor for the Bar Admission Course and various Continuing Legal Education initiatives of the Law Society of Newfoundland and Labrador. She has also chaired numerous committees of the Law Society and the Canadian Bar Association. Gillian has also been involved extensively with human rights and medical malpractice issues, speaking at various events across the country on related topics of interest.

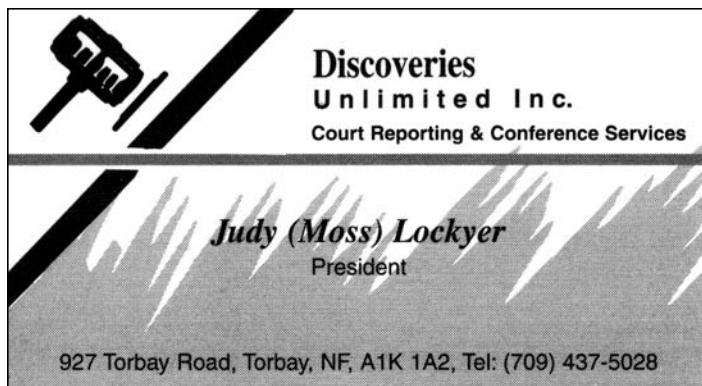
Beyond the legal community, Gillian has been involved with various other organizations, including the Newfoundland and Labrador Planned Parenthood Federation of Canada and the Canadian Association of Human Rights Agencies. Minor soccer is another area in which she has given freely of her time.

Although exhibiting an unabashed enthusiasm for the law, Gillian appears to embrace other areas of life just as passionately. She is an avid tennis player, often playing up to five times a week. Also a hiker, she has already joined a Corner Brook hiking group, and participates in "very long and very challenging" hikes every weekend that she is in Corner Brook. Gillian also enjoys playing scrabble and is currently learning bridge. She also describes herself as a "family person", noting that she spends a lot of time with her children, twenty-two year old Heather and nineteen-year old Ian, both of whom are students at Memorial's Faculty of Business. She also devotes a significant amount of time to the family's three dogs, including two five month old Golden Retriever puppies.

Having been sworn in as a Justice of the Supreme Court of Newfoundland and Labrador, Madam Justice Butler is eager to embrace the challenges that lie ahead in her new role: "This is what I have wanted and this is what I'm enjoying and I'm pleasantly surprised with everything associated with the job in terms of the Bench and the Bar and the staff and my integration into the community, I'm just delighted with it all".

Seemingly debunking the growing perception of a "glass ceiling" for "moms in law", or, at least in her own case, shattering that ceiling, one might ponder the secret to Gillian's success...well, in addition to her much loved family and

friends, and the many benefits that she has reaped from the support of her mentors along the way, Gillian candidly reveals "I allow myself far more coffee than most people would allow themselves".



Approximately 30 years after her initial adventure to the wild west of Canada, Madam Justice Gillian Butler now finds herself exploring the west coast of our fair island of Newfoundland, and is apparently relishing the opportunity to do so. Exhibiting a true passion for the law, and a refreshing enthusiasm for the many other facets of life, I wish Madam Justice Gillian Butler many happy and fulfilling years on the Bench; as she describes it, her appointment as a Supreme Court Justice "feels right" at this stage of her life...one cannot aspire to a more lofty accomplishment than the achievement of such personal satisfaction.

On behalf of *Squid pro quo*, I would like to thank Madam Justice Gillian Butler for taking the time to share her thoughts with me. It was truly a pleasure discussing the life and legal career of a woman who has made, and continues to make, great contributions to the judicial system of this province. ■



CANADIAN BAR ASSOCIATION
NEWFOUNDLAND AND LABRADOR



ANNOUNCEMENT

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What does this mean for you as a member of the CBA - NL Branch?

As part of the new partnership, **Provincial Airlines Limited** will be offering CBA members of the Newfoundland and Labrador Branch preferential corporate discount rates as set out in the required **Ticketing Instructions** which can be obtained by contacting the Branch office. These rates are only available to CBA members when they specifically identify themselves as a CBA member of the Newfoundland & Labrador Branch and provide the Corporate Contract Number. Members are required to follow the proper booking guidelines as outlined in the **Travel Booking Guidelines**. Please contact the Branch office to obtain your copy. The Branch has developed this Exclusive Provincial Preferred Supplier agreement with tailored savings to enhance members' professional and personal bottom lines.

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If you have any questions about this preferred supplier agreement, please contact Roxane Dean, Executive Director, at the CBA Branch office at 709-579-5783 or email: cba-nl@nl.rogers.com.

Continuing Legal Education

by Christopher Pike, CLE Co-Chair



During the spring, I temporarily assumed the Continuing Legal Education (CLE) Co-Chair position when Bernadette Cole Gendron resigned following the birth of her daughter. It is expected that I will remain responsible for CLE activities during the 2007- 2008 term if proposed changes to the Branch By-Laws, which would transfer responsibility for CLE to the Vice President, are accepted at our Annual General Meeting. The changes have been proposed to enable us to strengthen our Sections' commitment to CLE by assigning responsibility for it to the Executive member responsible for Section activities; the Vice President.

Some members may be aware that Mr. Frank O'Brien, the Director of Legal Education with the Law Society, has assumed more and more responsibility for the activity of our joint CLE Committee. During the next year we expect to invest some time and carefully examine our evolving relationship with the Law Society to ensure that CLE activities meet the needs of Branch members while preserving our valued relationship with the Law Society.

I wish to acknowledge Mr. O'Brien's significant work in delivering CLE during the 2006-2007 term and refer members to his report to the Law Society for full details of CLE offerings during that period. I also wish to thank Ms. Cole Gendron for her service to the Branch and the Committee over the last two years and to acknowledge the work of our Executive Director, Roxane Dean, to advance the Branch's interests in CLE over the past year. ■

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of the
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CBA MEMBERSHIP BENEFIT

In this and subsequent editions of *Squid pro quo*,
the following benefit is available
to CBA members in good standing.

Members can 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 email, 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
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Age 35	\$241	\$431	\$761
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Age 35	\$132	\$236	\$417
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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
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Hughie J. Shea B. Comm., CFP
709-726-6570 Ext. 226
or via email at
hughieshea@financialanswers.ca
or visit www.barinsurance.com



CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION

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

Retirement Planning

by Hughie Shea, CBIA Representative



A quick search on Amazon.com will reveal that there are over 150,000 hits to a search for the word retirement in the book section. Surely the process can not be that expansive that over 150,000 authors thought their spin on the topic was more informative, exciting, compelling or thought provoking than the material already available?

Retirement planning from a financial point of view is relatively simple. The ideal is to answer three questions: Where am I now, where do I want to be and how do I get there?

Where am I now? - The process of creating a benchmark for any retirement planning activity is to find out what is available. Whenever I complete a retirement plan to first part of the process to gather as much data as possible. For a lot of clients this is an imposing task; it requires that we review previous investment statements, current individual and spousal pension plans, current income streams and debt structure. For this part of the process there is no subjectivity. It is a very objective, quantitative look at how the financial picture is currently structured. For some clients this piece of the puzzle is worth the price of admission. In essence it is a forced organization of what's going on with your money.

Where do I want to be? - At retirement there are two guarantees:

1. You will no longer be saving for retirement. The RRSP limit for 2007 is \$19,000. At retirement you will not be trying to create this \$19,000 but instead start living on your accumulated gains. Saving for retirement is like any other savings, you are postponing spending until a later time; and
2. You will be older. You may want to break down your "golden years" into segments. At the beginning of your retirement most people will be healthier, more active and have the ability to enjoy their money more than in their later more mature retirement years. This is purely subjective. How do you want to plan to spend the money you have saved for retirement? Should your retirement income be grossed up by 30% between the ages of 60 to 75? Based on your current spending what would be a good income for your lifestyle? Pretend here that the following is true: no more money is needed for retirement savings, the debt is significantly reduced, and the kids are self-sufficient. What is the baseline for your retirement income? How much

money do you want available to spend when you retire?

How do I get there? - You really have only three factors to control in your retirement plan. I have mentioned these in a previous article reviewing the Canadian Bar Association (CBA) Financial RSP program: How much you save?; At what age do you want to retire?; and What your rate of return do you want?

The first two variables are fairly easy to understand. The more you save the more you will have. The later you decide to retire, the more time your money has to grow and compound and the less time you will need to live on the pool of capital you created for your retirement. That is, if you decide to retire at 60 rather than 65, you need five extra years of income from age 60 to 65 and you have five years less contribution to your retirement and five less years of growth. If you are trying to create a before tax income of \$5,000 per month you will need an extra \$255,243 at age 60 than you would need at age 65. (This example assumes a 7% annual return.)

The art for retirement planning is trying to create a rate of return. For a guaranteed no risk return be prepared to accept approximately 5%. This is the benchmark for a 5 year GIC. The problem with this scenario is that it takes a lot of money to make it work. At a 5% GIC type return, in order to retire early at age 60 we need \$266,751, an extra 4.5% of capital. That extra capital can only be produced by one means - saving more. More realistic is an investment solution that involves some sort of equity mix. Equities have outperformed all other market activities over a 50-year period. Equity investment is a long-term solution to a long-term problem; rather than trying to outlive your money. Good solid equity investment alternatives offered through the CBA Financial program ensure that more of your invested money and growth goes into your pocket and that the CBA is supported through your involvement.

As always, thank you for your support. Have a great summer. If you need additional detail or information on any of the products or services offered through the Canadian Bar Insurance Association (CBIA) or CBA Financial Corporation (CBAF). Please feel free to contact me at hughieshea@financialanswers.ca or visit our websites: www.barinsurance.com, or www.barfinancial.com ■

Report of the Elections Committee

by Jennifer Newbury, Chair



It is my final duty as a member of the Branch to sit as Chair of the Elections Committee. Unfortunately, I will be in Montreal and I will not be present to give the report of the Committee at Council. I would like to thank our incoming President, Christine Healy, who has agreed to provide this report in my absence.

I would also like to thank our Executive Director, Roxane Dean for her dedication and constant cheerful disposition.

The following members have agreed to accept positions on the Executive for 2007-2008:

Executive Committee	Name	Firm / Employer
President	Christine Healy	Department of Natural Resources (NL)
Vice President	Christopher Pike	Benson Myles
Past President	Sheilagh Murphy	Curtis Dawe
Treasurer	Sheri Wicks	White Ottenheimer & Baker
Secretary	Janie Bussey	Stewart McKelvey
Membership Chair	Cheryl Mullett	Curtis Dawe
Young Lawyers	Beth Whalen	White Ottenheimer & Baker
Communications Chair	Pamela Taylor	Ches Crosbie Barristers
Western Regional Chair	Jamie Merrigan	Poole Althouse
Central Regional Chair	Tina Baker	Juan M. O'Quinn Law Office
Labrador Regional Chair	Jennifer Mercer	Miller Hearn

The following members have agreed to accept positions as Section Chairs for 2007-2008:

Section Chairs	Name	Firm / Employer
Aboriginal Law	Vacant	
Administrative Law	Donna Strong	Eastern Health
Alternative Dispute Resolution	Don Sword	Johnson Incorporated
Bankruptcy & Insolvency	Griffith Roberts	Cox & Palmer
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	Benson Myles
Corporate Counsel	Regan O'Dea	Johnson Incorporated
Criminal Law	Mark Pike	Benson Myles
Elder Law	Vacant	
Environmental Law	Greg Moores	Stewart McKelvey
Family Law	Suzanne Orsborn	Benson Myles
General Practice Solo & Small Firm	Co-Chairs Geoff Aylward	Aylward Chislett & Whitten
	Bob Buckingham	Bob Buckingham Law
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	Cox & Palmer

Section Chairs	Name	Firm / Employer
Labour Law	Michelle Willette	Cox & Palmer
Law Practice Management	Vacant	
Maritime/Admiralty Law	Kim Walsh	Stewart McKelvey
Privacy Law Section	Anna Cook	Cox & Palmer
Real Property Law	Susan LeDrew	Smyth Woodland Del Rizzo LeDrew
Wills & Estates	Kerry Hatfield	White Ottenheimer & Baker
Women's Lawyer	Sheilagh Murphy	Curtis Dawe

The following members have agreed to accept positions as National Council members for 2007-2008:

Voting Council

Christine Healy
Chris Pike
Sheilagh Murphy
Sheri Wicks
Janie Bussey
Jennifer Newbury

Firm

Department of Natural Resources (NL)
Benson Myles
Curtis Dawe
White Ottenheimer & Baker
Stewart McKelvey
Martin Whalen Hennebury Stamp

Non-Voting Council

Janis Byrne
Jamie Martin
Jamie Merrigan
Cheryl Mullett
Robert Stack
Pam Taylor
Beth Whalen

Firm

Penney Group of Companies
Roebathan McKay & Marshall
Poole Althouse
Curtis Dawe
Cox & Palmer
Ches Crosbie Barristers
White Ottenheimer & Baker ■

Congratulations

The CBA Newfoundland & Labrador Branch would like to extend special congratulations to The Hon. Justice William H. N. Goodridge, the recipient of the CBA - NL Branch's 2007 Distinguished Public Service Award.

In the fall 2007 edition of *Squid pro quo* magazine, Justice Goodridge will be featured in our "In Personam" series.



Branch Days Gone Bye...

Request for Submissions from the Membership

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

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



Branch Days Gone Bye...

The photo on page 16 was reproduced from a 35 mm slide. In the photo is Thomas O'Reilly, Q.C. presenting a CBA Honorary Membership to Lord Sydney Templeman of the British House of Lords during the CBA National Conference in Winnipeg, August 1976.



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Trustee in Bankruptcy

Young Lawyers - Canadian Bar Association

by Janie Bussey, Chair



The annual Young Lawyers Conference - Canadian Bar Association (YLC-CBA) Directorate Meetings took place in Montreal on May 3-5, 2007. The meetings were held in conjunction with the first ever joint conference between the American Bar Association - Young Lawyers Division and the Association du Jeune Barreau de Montréal.

The conference included CLE and professional development programs that were designed to educate attendees on the legal systems of both Canada and the United States and on how to become a better lawyer and a better young lawyer leader. Social events and networking opportunities included a dinner and dance at the Chalet du Parc du Mont-Royal and a Speed Networking session.

The meetings and conference sessions provided an excellent opportunity to meet a diverse group of young

lawyers from across Canada, the United States, the United Kingdom and Italy. It also provided an opportunity to learn more about other young lawyer organizations and their projects and discuss issues of mutual concern.

A focus of many discussions centered on the education debts of young lawyers and student loan repayment. Since concluding the meetings, a geographical comparison of the Canadian Provinces has been completed and our National YLC-CBA chair, Annette Horst, will be corresponding with each of the federal and provincial finance ministers. The YLC-CBA is advocating that interest accrual not commence until articles are completed and that loan repayment not be required until six months following completion of articles.

Since our Spring 2007 report, the YLC-CBA hosted a Lunch and Learn Session on June 5, 2007. Mr. David Jones, Acting Registrar of the Supreme Court of Newfoundland and Labrador, spoke on the topic of "Judgment Enforcement - "You've got an Order so What's Next". We would like to thank David for volunteering his time to speak at this well attended and very informative luncheon.

On Thursday, July 19, 2007, the YLC-CBA hosted a Glow Bowling Social at Plaza Bowl, Ropewalk Lane at 7:00 p.m. We encourage you to attend YLC-CBA social events as they provide an excellent opportunity to make new friends and develop new business contacts and learn about opportunities for young lawyers.

On Wednesday, August 8, 2007, the YLC-CBA will be hosting a Lunch and Learn Session on the topic "Opportunities for Young Lawyers in Rural Newfoundland and Labrador". We would like to thank Douglas Moores, Q.C. for volunteering his time to speak at the luncheon which will be both informative and entertaining.

The YLC-CBA strives to offer Lunch and Learn Sessions on topics that are of interest to young lawyers. If there are any topics that you would like to see addressed at a Lunch and Learn Session, please feel free to contact either myself or Roxane Dean at the CBA Branch office. ■



CBA International Development Committee

Report from Africa

by Justice William H.N. Goodridge



Two years ago I wrote a brief account of the pleasant memories I had from my work with lawyers and judges in Ethiopia, Kenya, Uganda, Tanzania and Zimbabwe. It was a story about remarkable individuals striving to make a positive difference in their home countries. The work has continued and in many ways has been the most satisfying work of my career as a lawyer. Let me share with you a few of the highlights of the recent follow-up work of this ongoing partnership between Canada and these African countries.

In February and March of this year I spent four weeks facilitating workshops and attending meetings with lawyers, government officials, judges and court officials in Ethiopia, Kenya, Uganda and Tanzania. At the end of the work, I was fortunate to travel to rural Tanzania for four days visiting Massai villages.

Africa is a spectacular continent, rich in its people, its beauty and its natural resources. Why, however, is this 'prosperity' so inconsistent with the realities of day-to-day life for most Africans? Issues of health care (most notably AIDS/HIV), gender inequality, poverty, conflicts and corruption with those in leadership positions, are challenges that would seem daunting for most people. But the strong African spirit, the same determination that paved the way for independence about 50 years ago, is motivating the people of Africa again today.

The issues mentioned above are interconnected in complex ways and there is no easy panacea. However, the Canadian Government, in the spirit of a global community, is participating as a partner on several fronts. I was asked to participate in one small component of this partnership initiative. Through the Canadian International

Development Agency (CIDA), the Federal Government asked the Canadian Bar Association (CBA) to coordinate a small group of lawyers to work in partnership with the law societies of eastern Africa. The objective was to improve law society governance and therefore allow a stronger, more independent voice in defending the basic rights of all citizens. The basic human rights include, among others, access to health care and education, gender equality and freedom of speech.

The majority of African countries have constitutions that provide democratic parliaments with free elections and the promise of the provision of basic human rights. There is, however, a gap between the legal documents and the legal realities. Since 2004, with support from the CBA, the law societies of east Africa have been strengthened. Lawyers are pushing the state to respect the 'rule of law' - "Honor the constitution and our human rights or we will challenge you in the courts!" Law societies now serve as a "check" on the abuse of power by the executive arm of government. In the recent past, the executive arm of some governments has not always honored the 'rule of law'. Increasingly, lawyers, through their representation of citizens, are serving as the watchdogs, advocating for the state to respect the rule of law and the promises put forth in the constitutions. Corrupt elections are being challenged. In situations where the validity of the election result has been questioned, judges are ordering new elections. Arbitrary arrests or detentions are not tolerated. Individuals charged with crimes have the opportunity to be heard before a fair and independent tribunal. These are all major steps in the right direction.





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.

In my last report in *Squid pro quo* I told the story of a lawyer jailed for speaking out in Ethiopia (May 2005) about corrupt practices during the last election. In this report I will share a March 2007 incident where the police arrested and jailed several citizens who had just been released following a court hearing before a Supreme Court justice. It was a violent arrest with the citizens and at least one lawyer assaulted as they attempted to exit the court house in Kampala. It was a blatant and outrageous disrespect for the independence of the courts and the rule of law. But in this recent incident, the Law Society of Uganda called an emergency meeting which was attended on short notice by more than 80% of the country's lawyers. Acting with a strong and unified voice, the Law Society, with support from the Judiciary, prompted the President to condemn the police action and declare his respect for the independence of the Judiciary. This was heralded as a positive move forward, and certainly one that may not have occurred a few years ago.

Finally, I would like to share my personal experiences with the resourceful Massai people of northern Tanzania and southern Kenya. The elegance of their stature, the vibrant colours of their clothing, the magic of their smiles and their friendliness have remained with me since my return to Canada. The Massai villagers live simply in hand crafted mud huts, nourished primarily by the blood and milk of their grazing livestock. We all learn from each other, and much can be learned from the lifestyle of the Massai. They have an incredible work ethic, they support each other always and they respect all that nature provides. Learning from their example is one of the benefits of living in a multi-cultural society. Some of my vivid memories from the Massai villages include children walking hours each day to attend school, others, surprisingly very young, working under the hot sun all day to guard cattle from lions or other predators, and whole villages relocating, sometimes more than once a year, to find better grazing for cattle.

There is much that I have gained personally and professionally as a result of my work with members of the legal community in Africa. Certainly I am wiser from the experience, but I hope also that I have helped them in some small way. Friendships have formed and the convenience of the internet allows the relationship to continue. ■

Check us out on the Web!

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

Canadian Bar Insurance Association (CBIA)

Directors Report - June 2007



Newfoundland
and Labrador
Directors:

Anne M. Fagan

Robert P. Stack

National Director:

Janis Byrne



CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION

The Canadian Bar Insurance Association (CBIA) is a not-for-profit corporation that is wholly owned by the Canadian Bar Association (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
- Critical Illness
- Outside Directors' Liability
- Retiree Health and Dental Plan

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

Meloche Monnex

The overall results for this program remain excellent. Sylvain Dion, CBIA Actuarial Consultant, reported on the strong financial performance of this plan.

Mr. Henry Kugler, CBIA Executive Director and Mr. Sylvain Dion also provided an update on negotiations with Meloche Monnex on a long term agreement. A final agreement is very close to completion and Meloche has agreed to terms that help maintain CBIA control of the program.

Manulife Financial

The Board heard reports from senior Manulife staff on the overall insurance market and how CBIA sales compare to these trends. It appears CBIA is equal or better than industry trends on most items. The Board was also provided with an overview of the steps Manulife is taking to improve new business processing times and claims handling.

Financial Results

Sylvain Dion reported that all plans continue to experience satisfactory financial results.

National Sales Director Report

Peter Kent provided the latest sales results for CBIA and CBAF. Sales for both Term Life and Disability Income are strong and most representatives are performing within expectations. CBAF sales were up 25% over last year.

National Marketing Director Report

Mike Mooy, National CBIA Marketing Director, reported that the implementation of a new database is complete and now in testing. This new database will improve customer service as well as help identify new sales opportunities. Mr. Mooy also reported on the launch of an all-new website designed to assist lawyers with an understanding of CBIA products as well as other insurance products. The new site is expected to go live in early July 2007.

CBA Financial Corporation

Chrys Pappas, President of CBAF reported that the RRSP program has approximately \$24 million in assets and over 900 people enrolled.

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 Management Board, chairs the Bar Group Committee and is a member of the CUPJ and *ad hoc* Quebec Strategy Committees. Robert was recently elected to the position of Vice President and will assume office on December 1, 2007. Anne Fagan chairs the Audit Committee and serves on the Outside Directors' Liability and *ad hoc* Quebec Strategy Committees. Anne has been elected to the Management Board, and also assumes that role on December 1, 2007.

National CBA Board nominee, Janis Byrne, serves on the Manulife Products and CBIA/CBA Liaison Committees.

An 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

Email: 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 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 coverage of as much as \$5,000,000,000 in risk, with coverage extended to approximately 30,000 lives.

To get information on any of the products 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, Anne Fagan or Janis Byrne with any questions or concerns. ■

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.

New CBA Members

Joined since March 30, 2007

William Jeremy Andrews Benson Myles

Heather Squires Law Student

Elyse White Curtis Dawe



Case Digest

by F. Geoffrey Aylward



Limits on Damages for Loss of Housekeeping

Personal injuries often limit the ability of the injured person to perform household duties on a temporary or permanent basis. In recent years, it has been common place for plaintiffs to be compensated to a greater or lesser extent for this impairment. The Court of Appeal in two recent concurrent decisions, *Morgan and Her Majesty (NL) v. Driscoll* and *Morgan and Her Majesty (NL) v. Oates*¹, took the opportunity to establish guidelines for such awards. Both decisions were written by Cameron, J.A. with the concurrence of Mercer and Welsh, J.J.A.² Most will find these guidelines provide less scope for this type of award in future cases.

The respondents were injured in the same high impact vehicle collision. Their injuries were severe. The defendant did not appeal either of the general damages for pain and suffering of \$150,000 or \$75,000 awarded respectively to Ms. Driscoll and Ms. Oates.

Ms. Driscoll had been awarded \$10,000 for past housekeeping loss at trial and \$75,000 for loss of future housekeeping. The award for loss of past housekeeping was not appealed. The Court reduced the award for future housekeeping to \$35,000. Cameron, J.A. explained:

Loss of housekeeping will be awarded whether the tasks are not done at all, or done by the family or by a person hired for the purpose. . . . The award for future housekeeping in this case is far in excess of the average award for such cases in this jurisdiction.

. . . .

The determination of the proper award for loss of housekeeping capacity is not a simple task. Housekeeping is generally considered to involve direct labour and management . . . Not everyone's standards are the same. Not every household shares tasks in the same way. Further there is a distinction to be made between tasks which can no longer be done by a plaintiff and those which a plaintiff may do but take longer time to do or are done with pain. If a plaintiff can still do housekeeping but with pain, or taking longer time, that is an item of general damages, not an item under loss of housekeeping capacity.

. . . .

The assessment of housekeeping capacity must be calculated with this in mind as it would be highly unlikely that a person who is working (and perhaps

commuting to work for 2 hours per day) would spend as much time doing household tasks as the person who does not work outside the home.

Ms. Oates was found to have suffered no loss of past housekeeping and very limited loss of future housekeeping. The award of \$12,000 for loss of past housekeeping was set aside entirely:

The evidence respecting pre-trial housekeeping leads to the conclusion that either Ms. Oates, because of her circumstances would not have been doing any housekeeping tasks, or when she lived with her friends, had come to an arrangement to do only a particular kind of task, one which she preferred. In other words, there was no loss in these circumstances. This is not a case of Ms. Oates' friends doing extra housekeeping because she was unable to do certain tasks.

The Court considered that the injury caused no interference with Ms. Oates' current housekeeping ability. There was a reasonable possibility of limitations in the future arising from future medical intervention that would at least temporarily interfere with her housekeeping ability. The Court allowed \$4,000 for impairment of future housekeeping.

These decisions require close reading by lawyers who prosecute and defend personal injury claims. Other significant points that were examined by the Court include: whether proof of the discount rate is required; nature of proof (simple probability) to entitle plaintiff to damages for potential future loss; proof of future care cost including judicial notice of differences between health care in Canada and the United States; working life expectancy; latitude of an expert to expand upon the contents of his or her report; factors to be considered in relation to a functional capacity evaluation; effect of *Human Rights Code* and organizations that require or facilitate accommodation of disabled workers in assessing future loss of income; and the strictness of the proof required for special damages. ■

¹ June 14, 2007; 2007 NLCA 39 (CanLII) and 2007 NLCA 40 (CanLII).

² In both appeals, Ms. Irene S. Muzychka represented the first appellant; and Ms. G. Lori Savory, represented the second appellant. Messrs. Thomas O'Reilly, Q.C. and Peter Shea represented Ms. Driscoll. Mr. Kevin F. Stamp, Q.C. represented Ms. Oates.

People and Places

by Keri-Lynn Power

Don Anthony*, formerly with the *Humber Valley Resort*, is now with *O'Brien & Associates*.

Robert Bradbury*, formerly with *Martin Whalen Hennebury Stamp*, is now with *Brown & Burnes* in Toronto, ON.

Matthew Clarke*, formerly with *McInnes Cooper*, is now with *Blake, Cassels & Graydon LLP* in Toronto, ON.

Gregory Connors*, formerly with *Cox & Palmer*, is now with *McInnes Cooper*.

Fred Constantine*, formerly with *Cox & Palmer*, is now with *The Woodward Group of Companies*.

Genevieve Dawson*, formerly with *McInnes Cooper*, is now with *Benson Myles*.

Christine Healy*, formerly with the *Department of Justice-Civil Division*, is now Commercial Advisor to the *Department of Natural Resources, Government of Newfoundland and Labrador*.

Brianna Hookey*, formerly with *Cox & Palmer*, is now with *Martin Whalen Hennebury & Stamp*.

Susan Marsh* has taken non-practicing status.

Kimberley McLennan*, formerly with *Gillian D. Butler, Q.C. Litigation & Mediation*, is now with *Roebathan McKay & Marshall*.

Jennifer Mercer* has taken non-practicing status.

Damian Penny*, formerly with *Murphy, Watton & Burridge*, is now with *Bedford Law Inc.* in Bedford, NS.

Alex Schwartz has taken non-practicing status.

Dana Sullivan, is now with the *Department of Justice - Crown Attorney's Office* in St. John's.

John Taylor-Hood, formerly with *Robert R. Regular Law Office*, is now with *John F. Dawson Law Office*.

Shirley Walsh has taken non-practicing status.

*Denotes CBA Member

Call to Bar



Twelve lawyers were Called to Bar in St. John's on April 20, 2007. They are (*in the order of call*):

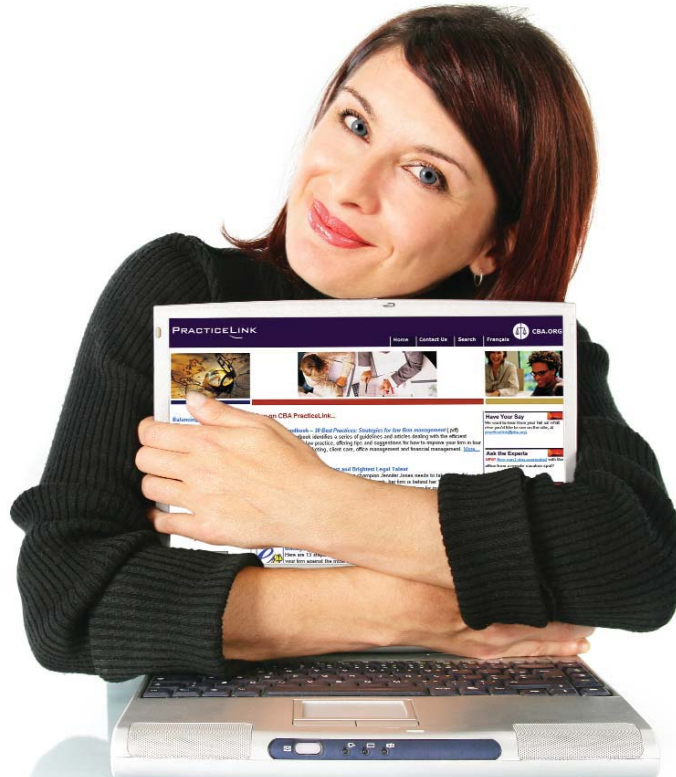
Roll Number	Name	Roll Number	Name
1355	Michelle E Scaplen*	1361	Gary P Nolan*
1356	Vikas Khaladkar	1362	Beth A Sheppard*
1357	J Alexander Templeton*	1363	Janet L Grant*
1358	William R Sheppard*	1364	David J R Coffin*
1359	Vanessa J McCarthy*	1365	Brianna L Hookey*
1360	Chad M Blundon*	1366	J Daniel Whalen*

Seven lawyers were Called to Bar in St. John's on June 15, 2007. They are (*in the order of call*):

Roll Number	Name	Roll Number	Name
1367	Janet A Tucker	1371	Rebekah J Slein
1368	Douglas B Skinner*	1372	Danielle P Evans
1369	Allison C Oser*	1373	Mark J Gruchy
1370	Krista-Dawn Harding		

*denotes CBA member

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