

Squid pro quo



Newfoundland Branch

Summer 1996

Canadian Bar Association

Branch Days Gone By . . .

*The years go by,
yet I am who I am.*

Who am I?

Answer on page 29



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President's Report

Robert Stack
O'Reilly, Noseworthy



The CBA is a peculiar organization. My term as President of the Newfoundland Branch ends officially at the closing dinner in Vancouver at the end of August, some three months away. Yet we have our annual meeting and election of officers here in St. John's on June 21, which is almost upon us. That is when my year will be over in practical terms. Unless something dramatic and unforeseen develops, from that day I will be heading a mere caretaker government, awaiting the takeover by Paul Burgess and the new executive committee on September 1.

This will be my last report to you by way of this newsletter. I thought I would use it to reflect on some of the things we have been doing, boasting of those endeavours at which we have had success and identifying others where more work is to be done.

Squid Pro Quo

The newsletter has been a tremendous success. The new name and new look that you see before you are only the two most obvious of the many changes that have occurred. First, we now have in place a Newsletter Committee under the chair of Jamie Martin that involves more than just the Branch executive committee. Joe Morrison and Annette Conway were our first "outside" recruits and their efforts are obvious in the quality of the finished product.

Second, the expansion of the committee has enabled us to put more emphasis on raising advertising revenue. The success that flowed from this has allowed us to acquire a CBA camera to liven up our pages. Don't make the mistake of thinking that we will become some mere legal version of *People*, the efforts of the last few years to make the content more meaningful and practical for members continues.

I think that you'll agree that the new package and improved content make *Squid Pro Quo* a Branch newsletter that we can be proud of.

Internet

As we have discussed in the past, at the urging of the National office we are the first Branch on-line. We have our own home page on the World Wide Web. In addition to a brief introduction to the Branch (in both official languages), *Squid Pro Quo* and all Branch position papers and

submissions to Government can be accessed by anyone cruising the information superhighway. We have written to all of the high schools on the Avalon Peninsula to advise them of our Internet address, and will try to get the word across the province as soon as possible.

In addition, we can communicate with other Branches and the National office via e-mail. This has led to an ease and convenience of communication that is truly remarkable. You will be hearing more from other advocates of the 'Net elsewhere in this edition of *Squid Pro Quo*, but let me tell you that I am a convert.

Submissions to Government

The Branch committee prepared a Brief to the House of Assembly Legislative Committee on Children's Interests. Under the chair of Bill English, the committee did a very good job in a very short time. The committee that we struck to review the new *Limitations Act*, with Denis Barry Chair, responded quickly to provide input into the recent CLE program and is now examining the Act for the purpose of providing comment to Government. In addition, we have committees examining the *Conveyancing Act* and the *Enforcement of Judgments Act* and we look forward to their submissions.

Continuing Legal Education

CLE is a tremendous responsibility in a small Branch such as ours. We are proud to be partners with the Law Society in the delivery of a timely and quality product. Co-chairs Bob Simmonds and Maureen Ryan have taken the committee to new levels of professionalism in terms of budgeting and planning.

Of course, CLE needs your support. Each program is the result of a tremendous volunteer effort. Cost is kept to a bare minimum (and below in most cases). Therefore we need you to participate by agreeing to prepare a paper and speak when approached, and by making an effort to ensure that each and every program is well attended.

Systems of Civil Justice Task Force

This working group, under the chair of Bill Goodridge, has continued to work hard to respond to the demanding timetable being set by the the National Task Force. This is a major CBA undertaking and the buzz is that the report will be far ranging and indepth.

Young Lawyers Conference

It is impossible to say too much in praise of the dedication and enthusiasm with which this group has tackled every project they have undertaken. Jennifer Newbury has been chair for two years, and is now seeking election to the National Executive of the Young Lawyers Conference. If successful she will ultimately move on to chair the Conference, the first Newfoundlander to do so since Mr. Justice Jamie Puddester (as he certainly wasn't then). We wish Jennifer success and look forward to the Branch Conference continuing next year under new leadership.

Government & Public Sector Lawyers Conference

Born two years ago, this new conference has been an attempt by the CBA to speak more directly to public sector lawyers. As a group, this is the body of lawyers among whom we have the lowest membership. The reasons for this are many and include the fact that Government as an employer can no longer afford to pay membership fees for its staff lawyers.

Yet this does not mean that the CBA does not present good value for these lawyers. With the new graduated fees and monthly billing, membership is more affordable than ever. And with direct monetary benefits for insurance, automobile leasing, long distance telephone and hotels, a quick analysis will show that the CBA is really a bargain. In fact, for many members, all of the other CBA benefits, including conference and section activities, the *National* magazine, the *Canadian Bar Review*, *Squid Pro Quo*, national CLE (including a full dedicated program at last year's annual meeting in Winnipeg and again this year in Vancouver) and more, are free or next to it.

In April, Paul Burgess, Lois Hoegg and I had a good meeting with the new Minister of Justice, Chris Decker, and his Deputy, Lynn Spracklin. We suggested that they take a fresh look at the CBA, to see what we could do to be of assistance to them in formulating legislation and in terms of being of value to their legal staff.

This is one of the areas that we have identified where our efforts are continuing. A lot has been accomplished in a short period of time and we are confident that more and

more Government and public sector lawyers will come into the fold.

Section Activity

When CBA members are asked to identify the most important part of the organization, most identify section activities. No other organization offers a forum for people practicing in a particular area of law to meet at a local and national level to discuss items of common concern.

Like all aspects of the CBA, section activities are volunteer driven. We rely very heavily on a core of committed section chairs and their groups. Of course, not all sections will be busy to the same extent at all times. At any point in time, however, there are a number of sections holding meetings, preparing CLE programs, hosting speakers, working on submissions to government, responding to inquiries from the media and generally being the face of the organization.

Anyone seeking a place at which to become involved in the Canadian Bar Association would do well to look first to a section in an area of law that interests them.

In Conclusion

There are many other aspects of this organization that could discuss here. These would include but would not be limited to the 1998 Annual Meeting, the Equality Committee, national legislation and law reform, the Canadian Bar Insurance Association, the triennial review process and the role of the CBA in the Canadian national unity debate. I could also discuss (at great length) the invaluable contribution of our Executive Assistant, Barbara Barry. But space does not permit.

For those of you who have read this and feel that it sounds a little too much like a farewell speech, you could be right. Take comfort though that its inclusion here means that you will be spared anything similar at our annual fête at Murray's Pond.

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Law Day 1996

Michael Duffy, Co-Chair
Jennifer Newbury, Co-Chair

Law Day — April 17, 1996

The toil and effort of the Law Day Committee members - and many Saturday mornings - all paid off!

A wide range of activities for students and the public were coordinated by the Newfoundland Committee and their counterparts across the country to celebrate the anniversary of the enactment of the *Charter of Rights and Freedoms*.

In Newfoundland, the main core of the Law Day activities has in the past tended to focus on St. John's and Mount Pearl, the areas which enjoy the highest concentration of lawyers (and committee members!). There is, however, a growing trend to expand our horizons out past the overpass, due to the immense interest and enthusiasm expressed by the media, students and public from around the bay.

High School Visitation Program

Students and teachers across the island were thrilled to have the opportunity to have a question and answer period with local lawyers. And the questions were not just about salary! The high school curriculum which includes a course in Canadian Law (and no doubt the O.J. Simpson trial) have well-prepared students to ask many intuitive and demanding questions. Schools from the followings towns participated: Bay Roberts, Conception Bay South, Victoria, Bell Island, Harbour Grace, Mobile, Ferryland, as well as Mount Pearl and St. John's.

Courthouse and RNC Tours

Forty-seven St. John's students were treated to a tour of the provincial court and the Royal Newfoundland Constabulary headquarters. The students, all from Gonzaga High, also had the opportunity to meet with the Honourable Judge Rorke and to observe various trials and other provincial court matters scheduled for the afternoon.

Mock Trial

In a special night sitting of the Supreme Court of Newfoundland, O'Donnel High, for the prosecution, skillfully presented its case against Sam Stolid, a gun control opponent accused of assault with a weapon. Mr. Stolid was represented by the Johnnie Cochrane-style team from Brother Rice. Following 25 minutes of what is rumoured to be a very heated deliberation, the jurors, from Booth, Gonzaga and Bishops returned a guilty verdict. Mr. Justice

Mercer presided over the dramatic mock trial, which captured the interest of gun control advocates and opponents alike.

Guide and Scout Awareness Badge

Fifty boy scouts and girl guides from the St. John's area were presented with Law Awareness badges, following their participation in sessions with lawyers from private practice, the Department of Justice and the Crown, who volunteered their time to explain and discuss with the children the Canadian Legal System and crime prevention. In recognition of their achievement, Madam Justice Noonan presented the guides and scouts with their badges in a ceremony held at the Unified Family Court.

Phone-A-Lawyer

Phones in many law firms in Newfoundland rang constantly on Wednesday, April 17, 1996 as lawyers participating in the phone-a-lawyer program answered a variety of legal questions, free of charge. The public was notified of this program through two provincially distributed publications, which listed the participating lawyers and their corresponding areas of practice.

Radio: VOCM & CBC

Christina Perry and Don Powell engaged in a lively debate with Bill Rowe and listeners of the VOCM Open Line program. Ms. Perry and Mr. Powell adeptly answered demanding questions which strike at the very heart of law day - "access to justice".

Issues relating to the Young Offenders Act were featured on CBC Radio Noon, with guest speaker Joan Dawson.



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Law Day 1996

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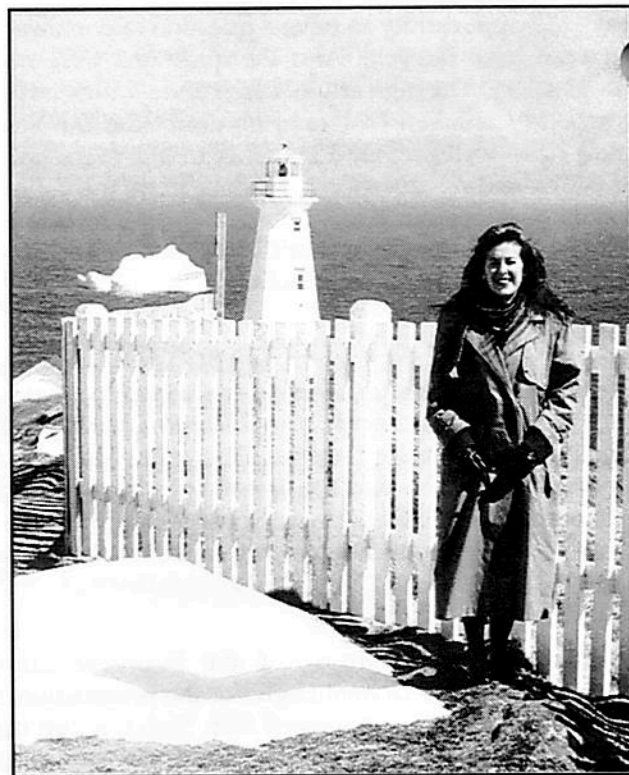
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The Law Day Committee presents a gift to
Law Day Guest Speaker, Anna Tosto.



Anne Fagan, Secretary, NF Branch, CBA, works with Guides
on their Law Awareness Badges



Anna Tosto, was eager to take in the beauty of the
Province. Here, she visits Cape Spear, NF — North
America's most easterly point.

Law Day Address: UN Convention on the Rights of Children

Anna Tosto was a novel and interesting guest speaker for the Law Day luncheon, held at the Newfoundland Hotel on Wednesday, April 17, 1996. Ms. Tosto, a partner with McCarthy Tetrault, is also a Director of UNICEF Canada and a member of the Canadian Bar Association (Ontario).

As an officer and board member of UNICEF Canada for the past seven years, Miss Tosto has played a high-profile role in the ratification in Canada of the UN Convention on the Rights of the Child and subsequent monitoring of the Convention in Canada. In 1990, on behalf of UNICEF and the Canadian Coalition for the Rights of Children, she worked with the Canadian Government to ensure speedy ratification of the Convention in this country. She has been a prominent speaker and author on the subject since such time.

Following is an excerpt of Ms. Tosto's presentation:

Introduction

We celebrate Law Day to commemorate the repatriation of the Canadian Constitution. Our constitution and particularly our Charter has brought forth the most momentous legal developments of the last fifteen years and has touched the lives of virtually every Canadian in some manner. I hope to stand before you in another fifteen years to announce that the Convention of the Rights of the Child, which is a comprehensive code of all children's rights, has had a similarly momentous impact on children both in Canada and overseas.

The theme of Law Day '96 is "Access to Justice" and I can think of no more appropriate a topic to contemplate on this day than the Convention of the Rights of the Child ("CRC").

Children's rights in general, because of their tenuous interaction with parents' rights and obligations as well as the obligations of society, have historically been neglected, down-played and in many jurisdictions, entirely dismissed. No doubt, they present the ultimate challenge in "moral balancing" probably more so than with the rights of any other "special interest group." Indeed, the current embryonic development of children's rights signals the evolution of what may be a final frontier in legal philosophy. If the CRC lives up to its full potential, it will open the halls of justice to children in Canada and beyond in a way never imagined as recently as a decade ago. To achieve this potential, however, the Canadian bar and the judiciary must educate themselves on the CRC and must pursue with all possible vigour the principles of the CRC in our practices and decision-making.

The CRC as a Legal Document

The fundamental premise of the CRC, as with the 1959 Declaration of Rights of the Child, is that, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

Structurally, the CRC is a work of art. It has a number of unique components.

National/International Obligations:

The CRC forms part of international law. Its individual tenets are not part of our domestic law. Nevertheless, the CRC is binding on Canada as a country and can and should be used by lawyers and cited by judges in cases involving children's issues.

First, it includes obligations of both a national and international nature. For those individuals who would dismiss the significance of the CRC in countries like Canada where, we would hope, the majority of provisions have already been implemented, Article 24 and 28 of the CRC should be of interest. Article 24, for example indicates that, "State Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article (that is to say the right of the child to enjoyment of the highest obtainable standard of health and to the facilities for the treatment of illness and rehabilitation of health.) In this regard, particular account shall be taken of the needs of developing countries." Although difficult to measure, the countries of the developed world clearly owe some duty to those in the developing world to assist in their progress.

Similarly, Article 28, dealing with the rights of the child to education on the basis of equal opportunity indicates that, "State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."

Perspective:

Second, a detailed yet fundamental framework of child rights is established. The CRC was intentionally drafted simply, a departure from traditional legalese, in an attempt

to make the document more accessible to more individuals, particularly children and youth. The result was a resounding success.

Notwithstanding that (i) the CRC is the first international document to combine children's civil, social, economic, political and cultural rights in one procedural vehicle and (ii) it is a comprehensive document embodying all the fundamental rights of children, its perspective is intriguing because it is essentially written from the point of view of the child. What a novel concept in terms of legislative drafting!

Compliance Mechanism:

Another interesting feature of the CRC is its uniqueness in terms of compliance demands. As so many international conventions before it, the CRC was, and is, at risk of becoming another meaningless international legal document. Given the orientation of the United Nations away from compliance by force, the notion of "moral suasion," as the only remaining compliance mechanism, had to be bolstered given the delicacy and importance of the subject matter. As a result, the CRC is the only human rights document which includes obligations for implementation and monitoring. A committee has been established to review the periodic reports of state parties (based on a time period of two years subsequent to initial ratification and every five years thereafter) and to provide commentary thereon. The possibility of reprimand from the committee, and the associated international embarrassment, is intended to act as a strong motivator for compliance. Additionally, the detailed nature of the reporting required by the Committee will force state parties to undertake detailed quantitative and qualitative analyses. The results of these analyses will mean the complication of meaningful data on child well-being without which objective analyses of child well-being could never be made on a country-by-country basis.

Articles 24 and 28 which create obligations for developing countries may also benefit from strong compliance provisions particularly in a global environment where international aid is rapidly decreasing. One must wonder, however, if the censure of public opinion will be strong enough to give these obligations any measurability.

You may be interested to know that Committed reporting and scrutiny is not the "cake-walk" cynics might expect. Canada's performance after two years of having the CRC in force was met by the Committee with some caution. The situation of aboriginal children in Canada was particularly cited as less than acceptable and the high incidence of child injury was similarly noted as being objectionable in a country of Canada's standing.

Nature of Rights:

The nature of the rights granted in the CRC are a breadth never before seen in one legal document. The rights granted are as diverse as the right to a name and nationality, the right to freedom of conscience and religion, the right to play time, the right to protection from economic exploitation and sexual exploitation.

In tandem with the enumeration of these rights, however, is also invariably the concomitant citation of the related obligations of the state. By including the state's obligations, the CRC has attempted to give some life and definition to what might otherwise be empty and immeasurable standards.

Rights vs. Obligations

One clear area of contention surrounding the CRC and certainly the area most contributing to Alberta's unwillingness to assent to ratification touches upon the most basic of legal conundrums, namely the interplay of the rights of parents contrasted with the rights of children. Contrary to what certain vocal, but ill-informed critics indicate, the CRC does acknowledge and emphasize the role of parents. The fifth preamble of the CRC acknowledges the importance of the family environment and the need for that family environment to provide protection and assistance to the

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child. The sixth preambular paragraph indicates that a child should grow up in a family environment. Article 9 indicates that a child shall not be separated from his parents against their will except when competent authorities so determine. In no way does the CRC detract from the rights of the parent.

Relevance of the CRC to the Legal Community

Without doubt, the CRC is relevant to every individual in this room today. First, the CRC is critical to us all in *our role as parents, teachers and care-givers*. By educating our children on the CRC, we give them the tools they need to be citizens. By educating ourselves, we become better care-givers who are more sensitive to the needs and vulnerability of children.

Second, the CRC is obviously vital to those practitioners who work directly with children and the law. These individuals must be well-acquainted with the CRC to ensure that the CRC is used as a tool when representing children or dealing with children's issue.

Third, each and every one of us should be motivated to ensure that the monitoring process, the only means of compliance, is effective.

I believe that the legal community will be instrumental, if not critical, in assisting the monitoring of the CRC in Canada. Because compliance measurement is conducted every five years, compliance will have to be monitored in a meaningful way. This monitoring job will be enormously difficult in a country like Canada where the laws in question emanate from thirteen different jurisdictions. Monitoring has been difficult for our government and even the non-profit sector has been less than content with its own monitoring efforts. Clearly, a non-governmental source has to be integrally involve din the monitoring efforts to ensure that any arms-length party offers observations on Canada's compliance. It would be a shame if the legal community and particularly the provincial bar associations did not participate actively in this effort. We have the expertise to help. Surely we should all be personally motivated to do so.



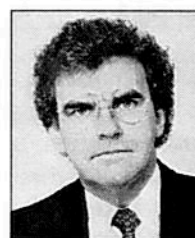
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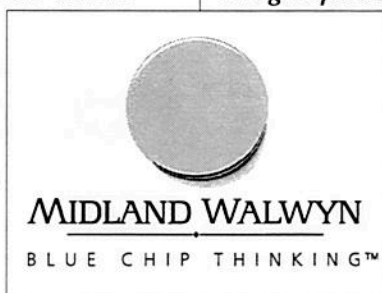


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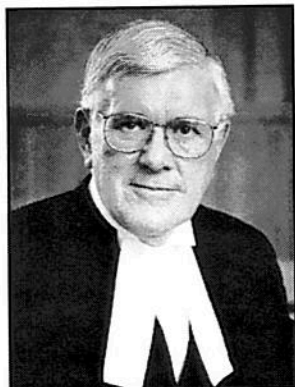


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Gushue Sworn In As Chief Justice



The Honourable
James R. Gushue

On April 9, 1996 the Honourable James R. Gushue was sworn in as Chief Justice of Newfoundland. Branch President, Robert Stack, spoke on behalf of the Canadian Bar Association at the ceremony which was held in historic court room number one in the Supreme Court building on Duckworth Street, St. John's.

Mr. Stack brought greetings to both Chief Justice Gushue and former Chief Justice Goodridge from the National President of the CBA, Gordon Proudfoot. It was acknowledged that both former Chief Justice Goodridge and Chief Justice Gushue are CBA members. Chief Justice Goodridge is a former President of the Nfld Branch, and has been very supportive of the CBA during

his tenure as Chief Justice. Chief Justice Gushue is a long standing member of the CBA. The new Chief Justice has already demonstrated his willingness to work with the CBA by the courtesy with which he and two other members of the Court of Appeal received Mr. Proudfoot and Mr. Stack during the branch mid-winter meeting in February.

In concluding his address, Mr. Stack referred to Judge Prowse's 1895 History of Newfoundland. The Supreme Court of Newfoundland has its origins in a court designated "the Court of Civil Jurisdiction of Our Lord the King at St. John's, in the Island of Newfoundland" which was created by act of the British parliament in 1791. The first Chief Justice, John Reeves, is described by Prowse as "an admirable official - industrious, painstaking, firm, courteous and resolutely impartial." Mr. Stack observed that our retired Chief Justice and Chief Justice Gushue both embody all of these qualities and more. Two hundred and five years after its origin, the Court continues in good hands.

TRIENNIAL REVIEW REPORT SUBMITTED

On May, 14 Ron Knowles of Western Management Consultants submitted his *Canadian Bar Association Organizational Review* to the Finance and Planning Directorate. F&PD, in consultation with the Branches, will now analyse the *Review* for the purposes of making recommendations to Council at the CBA Annual Meeting in Vancouver in August.

As you may be aware, at the 1995 Mid-Winter Meeting of Council in Charlottetown, a motion was passed by which 2.5% of membership revenue was transferred from the national office to the Branches. In addition, it was mandated that there would be conducted a triennial review of the delivery of services within the CBA, with the first review to be completed by August of 1996.

The *Review* is an excellent one. Knowles consulted broadly within the CBA. In addition to thoroughly examining the national office, he also visited seven Branches, including ours. Generally he found that CBA members have a good thing going. Yet there are concerns that our strategic direction is unclear. Members remain concerned that National CBA is taking political positions with which they are uncomfortable. The varying sizes of the Branches leads to marked differences in Branch services. The National governance framework is seen as fragmented and divided.

To correct these issues, Knowles would see effort put into developing a vision for a renewed CBA. Members' needs would become our first priority. The delivery of services and governance of the organization by National office and the Branches should be aligned and better integrated. Knowles would see a new National Board of Directors which would combine and replace National Council, National Executive, National Table Officers, F&PD and Branch Presidents and Vice-Presidents.

Contrary to some perceptions, national office is not over-staffed. A reallocation of membership revenues should allow eight of the Branches (including Newfoundland) to hire additional staff.


Of course, to fully appreciate the *Review* it should be read in detail. Its comments and recommendations are far ranging and will require much work before a consensus is reached. Once we have achieved a consensus, the implementation program will have to be comprehensive and will have to include all of the stakeholders, including the National office, the Branches, volunteers and staff.

The *Review* is available at the Branch office for anyone who would like to examine it more closely.

Advance Health Care Directives: Making Important Decisions About Your Future Care Today

Mary is 88 years old. She has no family and lives in a nursing home where she receives 24-hour care. Recently she developed a cancerous mole for which she requires medical treatment. However, Mary is mentally incompetent. She doesn't understand the nature and consequences of her problem, and therefore is unable to give her consent to treatment.

Who will consent for Mary? How could she have provided for this situation when she was competent?




The *Advance Health Care Directives Act* came in to force on July 1, 1995. The Act contains a way for people, while they are competent, to provide for their future care if they become incompetent or unable to communicate their wishes. This legislation intends to protect and extend the right of all competent persons of adult status to decide for themselves.

The Act describes two ways Mary could have made arrangements for her health care while she was competent. She could have completed an advance health care directive (AHCD) in which she outlined her health care preferences and attitudes; and/or she could have appointed a substitute decision maker (SDM) whom she trusted to make her decisions for her when she became too ill to make them herself.

Even though Mary did neither of the above, the Act contains a method by which decisions may be made on her behalf. It lists people that will be appointed as substitute decision makers for her since she did not name one herself.

Advance health care directives may be more immediately needed by people with serious illnesses. However, anyone could become unconscious at any time due to illness or accident, and be unable to state his or her wishes. Anyone who is competent can make an advance health care directive. It is invalid if made when incompetent, and may not be used when a person can communicate health care wishes and is competent to make his or her own health care decisions.



There are three legal requirements for a valid advance

health care directive. First, people making directives must set out their health care preferences in writing. Specific treatments or medical terms are not necessary. So that the person's wishes are clear, however, it is advisable to include both instructions and personal values. Second, the maker must sign the directive, and, third, it must be witnessed by two people.

Dating the directive is not required by the Act, but it may be helpful if questions arise later concerning competency and withdrawal or change of the AHCD.

An AHCD will be of no benefit, however, if it is not known about, or if it cannot be found. Therefore, it is important for makers to tell people they have made an AHCD, and to give copies to their substitute decision maker, family and doctor. If it is changed, these people should know, and makers should keep a copy of their AHCD on their person, or a piece of paper telling where the directive can be located.

The substitute decision maker (SDM) is a proxy who stands a person's place to make health care decisions for him or her in the context that person's personal, religious, and health care beliefs.

Having an SDM allows the health care wishes of patients to be interpreted in the way the patient intended them to be. An SDM prevents family conflicts over who has the right to enforce and interpret health care wishes, and can reduce uncertainty when doctors and nurses have to interpret advance health care directives alone.

People should appoint an SDM who they know and trust, and who knows their attitudes towards life and death. An SDM follows your wishes, instead of making life and death decisions for you.

If a person does not appoint an SDM one will be appointed in accordance with the Act. Appointed persons include family members and close relatives. If a person is unable or unwilling to act, the next listed person is appointed. However, a person may not act as an SDM unless he or she has had personal involvement with the incompetent person at some time during the previous 12 months.

Making an advance health care directive is a social process. Like informed consent, it involves other people, and features discussion and communication. You may consult

with you family doctor, nurse, lawyer, or social worker regarding your AHCD. Consultation with you doctor to make an AHCD, like completing an insurance form, is not covered by MCP. Even so, no professional consultation is needed to make a valid advance health care directive.

To help with creating your AHCD, the Department of Health has developed the pamphlet "It's Your Decision". It contains a sample form for an advance health care directive which meets all the legal requirements for validity, and it is available at the Office of the Queen's Printer, Confederation Building.

Editor's Note:

This column first appeared as a contribution to Law Day 1996 activities.



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Regulatory Reform: Improving Efficiency in the Administration of Regulatory Regimes

Over the past two years, government has reviewed all regulatory regimes under its aegis with the objective of reducing regulation to the minimum level required to protect the public interest. A Commissioner, the Honorable Nathaniel S. Noel, was appointed, and the Regulatory Reform Project was born. Terms of Reference were established by Cabinet, and the departments and the Project team worked together to test all regulations against the criteria defined in the Terms of Reference.

The primary analysis of the regulations included critical reflection with the following in mind: does the regulation protect the public interest; that is, is it necessary for maintenance of public health, order or safety, for enhancement of the environment, or for the goal of sustainable development. The Project also examined the regulation's effect on private sector competitiveness, including its effect on innovation and the encouragement of efficiency in conducting business intra-provincially. It was queried whether the regulation was necessary for the effective administration of the government of the province. Further, the regulation was examined for the presence of formal and systemic gender discrimination. If the regulation satisfied the above criteria, a further analysis was completed regarding the appropriateness of the regulation, its effectiveness when compared to its objective, and the efficiency with which it is applied.

The Project examined 441 Acts and 2,358 regulations, which resulted in 359 reports being submitted to Cabinet. Reports were submitted on all regulations, some of which recommended changes to the regulatory regime, including the subject Acts, in keeping with the criteria for regulatory reform. Reports were also submitted on Acts without regulations, where a judgment was made that the regulatory regime was inconsistent with the criteria for regulatory reform. Particular recommendations were as follows:

- 1,088 regulations not to be re-enacted;
- 123 regulations to be re-enacted with amendment;
- 1,147 regulations to be re-enacted without amendment; and
- 48 Acts to be repealed.

The principles of regulatory reform are now a permanent part of government's law making process. All new regulations must meet the criteria for regulatory reform. The Office of the Legislative Counsel will now draft all regulations, instead of drafting occurring at individual departments. This will ensure a consistent, ongoing consolidation of regulations which will be available at the Office of the Queen's Printer. Most fees and forms previously found in regulations will be eliminated, and will now be set through policy at the ministerial level. They will be available at the appropriate departments, government offices, and at the Government Service Centre.

The Office of the Legislative Counsel is currently in the process of drafting the changes stemming out of the

Regulatory Reform Project. The Act governing this final phase of the project, the *Subordinate Legislation Revision and Consolidation Act*, which came into force on December 21, 1995, requires that drafting be completed by June 30, 1996. All regulations not re-enacted by that time will lapse. The republication process began on March 22, 1996 in Part III of the *Gazette*. Re-enacted regulations are termed "Consolidated Newfoundland Regulations" and may be cited as "CNR # /96". Amendments to Acts recommended by Regulatory Reform will be completed in two omnibus Bills, to be introduced into the House of Assembly in this coming session, and in the Fall Session. Any questions regarding Regulatory Reform may be directed to the Office of the Legislative Counsel, Department of Justice.

Young Lawyers' Conference

Photos taken during the Wine & Cheese Reception for Articling Students, February 8, 1996.



l-r: Kim Seaward, Chalker, Green & Rowe; Doug Cook, QC, Chalker, Green & Rowe; and the Hon. Mr. Justice Leo D. Barry, Supreme Court of Newfoundland Trial Division.



l-r: The Honourable John Rorke, Provincial Court, St. John's; Jennifer Newbury, Chairperson, Young Lawyers' Conference; Clint Davis, Benson Myles; and Joe Morrison, Williams, Roebathan, McKay, Marshall.

People & Places

Appointment

The Honourable Mr. Justice James R. Gushue*, was appointed Chief Justice of Newfoundland Court of Appeal on April 9, 1996.

Queen's Counsel

Recent Queen's Counsel appointments.

Augustus G. Lilly, QC*
Stewart, McKelvey, Stirling, Scales

Gale Welsh, QC
Department of Justice

George J. Furey, QC*
O'Brien, Furey, Smith

Minister of Justice

Mr. Chris Decker*, Liberal Member for the District of Straits & White Bay South, Minister of Justice

Elected

Three members of the legal community were elected to the House of Assembly on February 22, 1996.

Paul Dicks, QC*
Liberal Member for Humber East District
Minister of Finance

John (Jack) Harris*
NDP Member for Signal Hill-Quidi Vidi
Leader of the New Democratic Party.

John Ottenheimer, P.C.
Member for St. John's East
Opposition Justice Critic

Retired

Francis M. Ryan, Q.C.

Call to the Bar - April 15, 1996:

Dianne B. George
Leanne M. O'Leary*
Stephanie S. Hickman*
Griffith D. Roberts*
Amy M. Crosbie*
M. Christine Casey
Kimberley M. Seaward*
Peter D. Shea*
Desmond K. Parsons
Felix J. Collins
G. Todd Stanley*
Marcus A. Evans
Rebecca A. Redmond-MacLean*
Michael S. Ralph
Stephen J. Willar
Susan W. Powell*
M. Jane Burnham*
Kent J. Brothers
Jill K. Brown*
Kenneth M. Hollett
Janis C. Byrne*
Michael G. Murray
James P. Goudie
Wendell J. W. O'Reilly
Jeannie R. House*
Paula M. Schumph*
Clinton M. Davis*

Relocations

Gordon Woodland*
Woodland Law Office

Keith Morgan*
Benson • Myles

Edward Roberts, QC*
Private Practice

Clyde K. Wells, QC*
Counsel, O'Reilly, Noseworthy

Phyllis Harris*
Associate, Gittens & Associates

— * Denotes CBA Member —

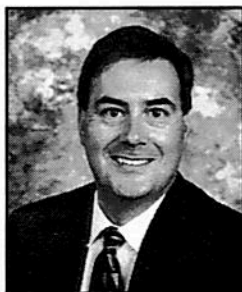
Career Profiles

Susan Churchill
Acting Registrar of Deeds

DEPARTMENT OF JUSTICE - CIVIL DIVISION

John Andrews - Civil Solicitor

John Andrews is a solicitor with the Department of Justice, Civil Division, Government of Newfoundland and Labrador. He is responsible for legal matters relating to mines, energy, forestry, Hibernia monitoring and the Terra Nova Development Project.



After receiving a Bachelor of Commerce (Hon.) degree from Memorial University of Newfoundland in 1976, John obtained a Masters of Business Administration from the Centre for International Business Studies at Dalhousie University in 1977. He then attended Dalhousie Law School, graduating in 1980.

John articulated at the law firm of Halley Hunt and was admitted to the Newfoundland Bar in 1981. At Halley Hunt, he specialized in banking law and was a federal crown prosecutor for income tax and narcotic offenses. He also maintained a general practice.

In 1983, John left Halley Hunt to work as in-house counsel on the Hibernia Development Project for Mobil Oil Canada, Ltd. He enjoyed this position as he also had assignments in Calgary, New York, New Orleans, and Nigeria. Working for this company permitted him to specialize in oil and gas law which has been a benefit especially in his current position with the Department of Justice which he assumed in 1989 when Mobil Oil Canada, Ltd. closed its Newfoundland office.

It is evident that John has experienced different types of practice. When asked which type of practice he prefers, he states that working with the Government of Newfoundland and Labrador is likely the best legal work around. Government practice provides a wide range of issues, but one can focus on issues relative to a limited number of clients.

The Department of Justice has been very progressive in providing modern information technology including an internal access network, database access to federal and provincial statutes, and an opinions and decisions database. The Department of Justice has a modern information


filing system which is very useful for managing paper documents. This technology greatly facilitates efficiency.

John states that his employer recognizes that technology and education transfer will be important initiatives as oil and gas development comes on stream. It will be very important for the local bar to be prepared for oil and gas legal issues which arise as well as those related to spin-off industries.

Solicitors with the Government are salaried lawyers with no incentive payments. However, there is generally less pressure than in private practice and one is better able to schedule meetings and to prioritize work because of the close contact with a limited client base. The Civil Division lawyers also socialize together at an annual golf tournament and other gatherings throughout the year.

John recognizes that there are fewer jobs for younger lawyers and that the opportunities for employment experience similar to his have been reduced in recent years. He suggests that experience in oil and gas law may provide excellent opportunities for young lawyers in the future.

Finally, John is the Newfoundland representative for the CBA Government and Public Sector Lawyers' Conference which was established in 1995. He says he is delighted about such a Conference being formed because it allows lawyers who practice in the public sector to discuss current issues important to their practice and network with government lawyers in other provinces. Currently, there are 14 government lawyers who are members of this Conference. John would also encourage private practice lawyers who are interested in these issues to participate. He hopes this newer Conference will be as successful as the Corporate Counsel Conference has become.




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Newfoundland Case Reports

F. Geoffrey Aylward
Aylward, Chislett

Pecuniary loss from partial disability: Wall v McGrath

Mrs. Wall was a 32 year old mother of two young school children who had been injured in an automobile accident on September 27, 1990.

At that time, she was working full-time with an insurance agency as a customer service representative. The drive to work, which was done in a car pool, was 70 km one way. She continued to work until January 1991. During this time she was seen by her family doctor for pain in her neck and back. An orthopedic surgeon recommended she take time off work from January to June. By April she was able to resume most domestic activities. Mrs. Wall worked part-time in July and then returned full-time from July 1991 until March 1993 when she quit her job because of continuing discomfort. At the request of her employer, she did summer relief work from June to August 1993. Since then, Mrs. Wall had been looking for work closer to home. The orthopedic surgeon believed that the plaintiff might well continue to have chronic pain and limited function.

Mr. Justice Green found Mrs. Wall had not interrupted her work in March 1993 so she could spend time with her children. The Court emphasized that Mrs. Wall was the principal income earner in her home. She had attempted to fight through the pain and could not be penalized for trying to minimize her losses by her efforts to continue to work after her injury. Past loss of income was set at \$39,400.

The Court found the plaintiff's injuries in the past had caused her to miss work and would likely cause her to miss work in the future to the point of even having to quit work for a period of recovery. This time off could result in losses of seniority and advancement. Further, the injury restricted the area in which Mrs. Wall could find employment to places within a reasonable driving distance. A plaintiff is not obliged to relocate to an area of greater opportunities.

Green J. reasoned that although the case was one of partial disability, he could rely upon the actuarial method to determine future income loss if the underlying assumptions and contingencies were reasonable. The Court considered it would take the plaintiff two years to find employment. Prospective work-related disability was set at 15 percent. Future income loss was set at \$105,215.

Where the plaintiff does not hire others to perform pre-trial household tasks and either struggles through the work or has it done by volunteers, the proper approach is to make a global award by way of general damages. The court awarded \$6,000 for damages for loss of ability to perform domestic tasks before trial.

The Court did not accept the plaintiff's submission that housekeeping chores were taking an additional 2 to 2.5 hours daily and that this inefficiency would continue indefinitely. In the circumstances, a global award was considered most appropriate to recognize the adverse impact on the plaintiff's enjoyment of life because of the additional time and pain associated with such tasks. The evidence did not support a finding of a consistent and persistent loss of housekeeping over the long run. Future housekeeping grossed up for income tax was set at \$22,000.

\$30,000 was awarded for general non-pecuniary damages. Pre-judgment interest was awarded on the award for pain and suffering and on the Hospital Services Account.

The plaintiff and defendant, P. McGrath, were represented by Ms. J. Henley Andrews and Mr. P. Buckingham, respectively. *Wall v McGrath*, 1992 St. J. No. 3430, was decided on April 9, 1996.

Note: The Court of Appeal in *Kashyap v Snow*, 1995 No. 193, has allowed the interlocutory appeal of Kashyap. Snow, a medical malpractice plaintiff, must submit to an assessment by an occupational therapist designated by the defendant. The Court relied on the narrow ground that the assessment was reasonably required by a neurologist so he could provide a medical opinion to the defendant. (*The trial decision was reviewed in the last issue of the newsletter.*)

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Technology and the Law

High-Tech Legal Research Available at Law Library

*Gail Hogan & Harriet Mercer
Law Library - Law Society of Newfoundland*

During the past year the Law Society Library has acquired two computers with CD-ROM drives, and a laser jet printer for lawyers' use in the Library. These acquisitions enable the Library to provide a number of computer databases which enhance legal research.

INMAGIC, a library software program which has two components, is undoubtedly the most popular among lawyers. The library catalogue, entitled LIBCAT, allows lawyers to search for library materials received since 1992, by author, subject and title among other fields. A retrospective cataloguing project is currently underway and it is expected that all Library holdings will be listed on LIBCAT by the end of 1996. As a result, the card catalogue will become obsolete.

The JUDGMENT database has been the salvation of more than one lawyer. It is an index to unreported Newfoundland judgments since 1952. This can be searched by style of cause, date, docket number, and for cases filed since January 1995, by subject and statute. The ability to search by subject or statute means a lawyer can access very recent cases without knowing the style of cause or docket number.

Another increasingly popular database is EASYSEARCH. This database which covers the Newfoundland and Prince Edward Island Reports, Nova Scotia Reports, New Brunswick Reports and the National Reporter, can search for case citations by topic and by topic numbers assigned by the publishers. For example, lawyers researching Newfoundland criminal law need not go through thirteen

indexes looking for cases, but only need to do one search on the EASYSEARCH Newfoundland database. In addition, the printer enables researchers to print their case citations rather than having to photocopy the results of a thirteen index search.

For the academic researcher, the Law Library has the LAW REFORM COMMISSION database which indexes the Library's collection of national and international law reform reports by subject, title and jurisdiction.

CD-ROM's are beginning to have an impact on legal research and the Law Society Library currently has the full text of the Statutes and Regulations of Canada, updated to December 1995, on CD-ROM. On order, and expected in the Library very shortly, is the LAWYERS WEEKLY on CD-ROM.

The Law Society Library has INTERNET access which is particularly useful for finding recent Supreme Court of Canada cases, Provincial legislation and searching library catalogues across Canada. For anyone wishing to correspond with us via the internet the Law Society Library's e-mail address is lsnl@newcomm.net.

Searching the Quicklaw databases for citations and on Westlaw continues to be an integral part of the law librarian's work. Anyone wishing for searches or assistance conducting searches can contact Gail Hogan or Harriet Mercer at the Law Society Library.

The exciting changes which are currently influencing legal research are resulting in the need to assist lawyers in the technical aspect of their research. The Librarians are more than willing to provide assistance or training on the Internet or on any of the Library's databases. If you would like to arrange training on an individual basis, or for a group, please call Harriet or Gail at 753-7770.

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Solutions for Business

Managing Lawyers' Information: The Dept. of Justice Perspective

Mona B. Pearce
Director of Legal Information Services
Department of Justice
Government of Newfoundland & Labrador

Law is an ethical profession, fundamentally an advisory service based on legal analysis. As a business enterprise, legal practice sells the time of an experienced expert who engages in strategically linking clients' fact situations with the rules of law. These rules are embodied in a variety of media including printed, manuscript and electronic.

More than any other, the world of law is one of information. On a daily basis, lawyers are highly dependent on information collected from *outside* the law firm (e.g. law reports, statutes, textbooks, loose-leaf services, articles, gazettes, etc.) and information created *inside* (e.g. legal opinions, precedents, deeds, agreements, opinions, facts, etc.). In recent years, the volume, cost and demand for legal information has increased exponentially. Productivity in legal practice is dependent on efficient and streamlined systems for the management of this information. Developing and implementing an information management policy is *the* strategy by which to obtain coherent, integrated information control for law practice management.

Today we are experiencing a significant transition from letters fixed on paper to where information is created, stored and communicated electronically. The future of law will no longer be found solely in buildings, files and leather-bound books, but in small pieces of silicon and in millions of miles of wires and cables. It will be a world of new possibilities for individual communication, an environment where the value of information increases as it is shared.

As the largest law firm in the Province, the Department of Justice employs approximately 80 solicitors and crown attorneys covering almost every area of legal practice. The mandate of the Legal Information Services Division is the development and implementation of a Strategic Information Resources (IRM) Plan which includes the evaluation of information resources systems to determine methods of increasing effectiveness and efficiencies while ensuring that IRM contributes towards the Department's business objectives. These resources include both internally and externally-generated information and its creation/acquisition, distribution, use, retention, storage,

retrieval, protection and final disposition. In fulfilling this mandate, we are ably assisted by our Information Technology Division. Our services also extend to over 50 members of the judiciary at all court levels.

At Head Office, all staff have 486 computers at desktop connected through a Local Area Network in a Windows environment. All lawyers have access to e-mail (which has become the norm for communication), Time Management, Index to Newfoundland Judgments since 1971, Consolidated Statutes of Newfoundland, Consolidated Annotated Statutes of Canada on CD-ROM, Records Centre Index, Correspondence Tracking, and Legal Opinions. During this year, the Law Library Catalogue, Consolidated Regulations of Newfoundland, Consolidated Regulations of Canada, a new Records Classification and Retention Schedule, and Document Management Tracking will be made available. Many of the in-house databases are developed and maintained by the Legal Information Services Division. This year, our Division will also commence work on the development and implementation of a database of all Newfoundland Labour Relations Board and Arbitration Board decisions. We also provide legal research and reference services, current awareness, access to commercial online legal databases (QL, WESTLAW, etc.) and the Internet. Summaries of Supreme Court of Canada decisions are down loaded from QL each Thursday and delivered electronically to lawyers' desktops by e-mail. Our bi-monthly Newsletter, *Ex Parte*, is used as a communication vehicle to provide information on the status of legislation, new Law Library acquisitions, Internet sites of interest and new initiatives. We develop User Manuals and provide training to lawyers on all our databases.

This article provides a brief introduction to the nature and value of lawyers' information and technology applications to the management of this information at Head Office only. We have other initiatives underway at the Crown Attorneys's Offices, Courts, Corrections and the RNC, any of which could be the subject of another column. Our objective is to provide our lawyers with the information they require, when they require it and in the most expedient manner. In doing so, we engage in continuous consultation on what services they require and how we can better provide them. Our staff are highly competent, motivated and committed to quality, while bearing in mind that quality is never an accident - it is always the result of intelligent effort.



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Internet Basics

Brian J. Hurley

It's one of the most common contemporary topics of discussion, of newspaper and magazine articles, of debate and, most certainly, of interest — the Internet. Most people assume that because it is so topical, that everyone understands what the Internet is. Some of us know that the Internet is a hot topic but do not really have an understanding of what it is and we fear showing our lack of knowledge. For those readers who get that sick feeling in the pit of their stomach when someone brings up the subject, this article should help relieve a little of that stress.

If we break down the word, Internet, we have "inter" (which you could take to mean interconnected and international) and "net" (which means network, or to use a local analogy, like a fishing net).

The Internet is really, in its physical form, a network of networks. The Internet works because of telecommunications and computer hardware (equipment) and software (programs) connected using a number of protocols and interfaces — none of which require any further discussion for the non-technical among us. For you techies reading this, please forgive the license taken in the interest of "de-teching" the explanations.

In Newfoundland, there are a number of Internet Service Providers who sell Internet access to users such as you and me. They essentially charge fees for what could be considered a "subscription" to the Internet. These Internet Service Providers are attached to the Newfoundland and Labrador regional Internet network, NLnet. NLnet provides a connection for those service providers to the Canadian national network, called CA*NET. CA*NET is in turn connected to other national and international networks, forming what is commonly known as the Internet.

All this interconnected network stuff is interesting, but it does not explain what the Internet is to the user. That explanation comes by way of describing the categories of service usually provided by the Internet Service Provider.

First, the service provider furnishes a mechanism for the user to connect to the Internet. As an individual user, this usually means software (usually called a "winsock") that establishes a connection between the user's computer and modem and the service provider's modems and computer (commonly called the server). That software provides the protocols which allow the two computers to talk to each other and it serves as a kind of conduit or pipeline for the different Internet applications which can be used.

The Internet applications most commonly used include electronic mail (e-mail), a World Wide Web (WWW) browser, File Transfer Program (FTP), Gopher servers, Telnet, Newsgroup access and Internet Relay Chat (IRC).

One of the most common uses of the Internet is e-mail. E-mail has been a tremendous boost for the business card printing industry since many people have rushed to have their business cards re-done to include their Internet e-mail address. A great productivity improvement, e-mail allows users to send notes and attached files to just about anyone else in the world who has an e-mail address. An e-mail address is made up of a user ID (identifier) and a mail server address. For instance, my e-mail address is *bhurley@cycor.ca* and is made up of *bhurley*, my user ID, and *cycor.ca*, the address of my service provider's mail server.

The most pervasively used service on the Internet is the World Wide Web. The web is accessed through a web browser. The browser is a viewer which allows the user to view text and pictures or graphics. Recent enhancements to web browsers allow sound or video files to be played. The text, graphics, pictures, sound and video are presented to the user through the browser from what is called a web page.

Each web page (or site) has a unique address called a Uniform Resource Locator (URL). You see these URLs in many print advertisements nowadays. They appear to be in a foreign language as in the following example: <http://cba.org/abc/nf/risk.html>. Actually, http stands for hypertext transfer protocol and brings us to how you navigate through the Web.

Simply, hypertext and the URL are used to transfer the user's view from web page to web page. Hypertext markup language or HTML is the tool that is used to organize, format and present pages to the browser. In most HTML documents, there are highlighted areas, words or phrases which include an embedded URL. So, by clicking your computer mouse on that highlighted item, you will be transferred to the new URL address — a new web page. For instance, if you are browsing the CBA site (<http://cba.org/abc/index.html>) and you notice that the word Newfoundland, of interest to you, is highlighted, when you click on the highlighted words you are taken to a new page (<http://cba.org/abc/nf/nfmenu.html>) which provides information on the Newfoundland Branch of the CBA.

Other Internet applications include:

- FTP which allows the transfer of files from FTP servers on the Internet to your computer;
- Gopher which is a menu-driven access to text files

and information somewhat like decision-tree navigation;

- Newsgroups which allow large numbers of users to broadcast their opinions on specified topics to users who subscribe to the specified Newsgroup; and,
- IRC which allows one-on-one interactive private chatting or typed conversations between computer users.

That's all fine and dandy, but what can you do with the Internet? The answers are simple and many. You can communicate, research, browse, investigate, or entertain yourself. Whether for business or entertainment, the Internet continues to grow and its usage is steadily increasing. We can expect to see new services emerge and provide additional functions as the Internet continues to change many aspects of how we interact throughout our world.

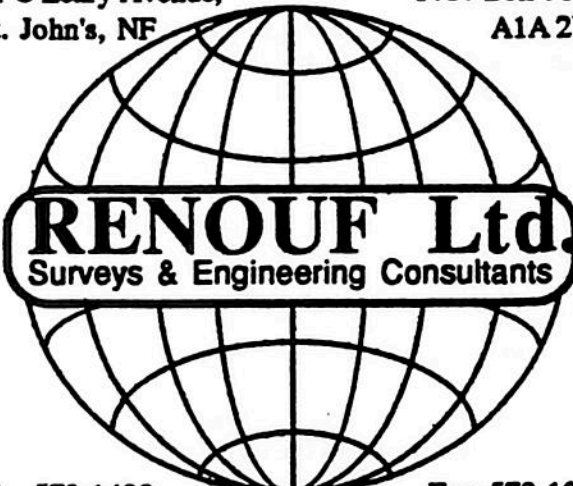
Brian Hurley is President of Horizon Consulting Limited, a St. John's firm providing strategic, marketing and business planning services to industry and government, focused on the exploitation and implementation of IT.

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Lawyers on the Internet: Superhighway or Road to Ruin?

Chris Pike
Benson•Myles

Computer technology is challenging lawyers to change the ways they work and the tools they use daily. Our libraries, calendars, ticklers and mail are all becoming paperless. I "typed" most of this article using a program called DragonDictate, a voice recognition program which takes dictation. I could spend a couple of pages talking about that software once I finish learning how to use it (and once the software has better learned to recognize my voice), but I was asked to focus on the uses lawyers may make of the Internet in this article. Many Branch members may have seen the article published in the March/April edition of *National* magazine on the development of the Benson•Myles World Wide Web site. I will not repeat that material.

The use of the "information highway" presents challenges and opportunities for lawyers. Both will come from those of our clients and prospective clients who establish their own presence on the Internet. They will expect their lawyers to be able to understand and use the tools that they use themselves.

In an article published in the American Bar Association *Journal* in September 1995, Professor Peter Martin, of Cornell University Law School suggested five reasons for lawyers to be on the Internet, including:

- the presence of clients and potential clients;
- the presence of other law firms (and other competing service providers);
- discussion on many legal issues is taking place in news groups on the Internet;
- access to a broad spectrum of information at a very modest cost; and
- the low cost of broadcast and person-to-person communication.

One of the greatest concerns about using the Internet, and specifically electronic mail, to communicate with clients is the risk of having confidential information intercepted by an unauthorized party. Paul Dodd and Daniel Bennett published an article in *The Advocate*, in May 1995, in which they review cases on the loss of solicitor-client privilege. They focused on the loss of privilege following interception of communication by another party interested in the litigation. The authors conclude that Canadian Courts, following *Double-E, Inc. v. Positive Action Tool Western Ltd.*, will preserve the privilege in an inadvertently disclosed document, provided that the communication was intended

to be confidential and that reasonable steps were taken to ensure confidentiality.

Questions remain as to what constitutes reasonable steps to ensure confidentiality. Software that encrypts electronic mail transmissions, called PGP (Pretty Good Privacy) programs are available free on some Web sites or at modest cost from software vendors. Most word processing programs include the capability of setting a password within a document that can then be attached to an electronic mail message. Either of the options should meet the test of reasonably assured confidentiality.

As a widely used communication tool, the Internet is still in its infancy. Over the next few years, some clients and potential clients will find their way on to the Internet. Some lawyers will follow. Some firms — and our Branch — will be there waiting.

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Computers in the Law Office

*Gregory W. Dickie
White, Ottenheimer & Baker*

Do computers have a role in the law office? The answer is indisputably "yes."

The only decision which really has to be made is whether computers are purchased only for use of the support staff (secretarial and accounting), or staff and lawyers as well. A desktop computer is a must for secretarial staff.

To determine whether or not computers would be of assistance for a lawyer to do his/her work more efficiently, the following assessment will help.

Scheduling and limitation periods - the computer software which is now available for daily scheduling and for keeping track of limitation periods is extremely user-friendly. Even those who are not computer literate can have these programs up and running inside of an hour. The program which I currently use is called "daytimer", version 2.0. It keeps track of items which I have scheduled to do every day, scheduled meetings, daily events which I have to attend to, gives notice of upcoming events which I wish to be reminded of (court delays, limitation periods, etc.) with whatever advance warning I require and it allows me to keep track of matters as they are done. This program also serves as a database to keep track of matters as they are done. It also serves as a database for contacts and references. Names, addresses, telephone numbers, fax numbers, and e-mail numbers are easily entered and easily retrieved. There is no need to go back to the file or to a rolodex system to retrieve this information. It can be retrieved in seconds from this program, which remains running on your desktop computer throughout the day. My secretary uses this program as well to record follow-up dates for real estate matters and to record names, addresses and telephone/fax numbers.

This function alone justifies the acquisition and use of a computer by lawyers.

Word Processing

If you are not using the abilities of one of the newer word-processing packages which are available, you are losing out. Secretarial staff should have the use of computers with a current word processing package. These current word processing packages have many features which make the packages more user friendly and easy to use than the older programs. The newer word processing packages

spell check your words as you are typing, will make recommendations for correcting sentence structure, grammar if you require, automatically mark revisions of documents as you make the changes, store documents using long file names which can adequately describe the documents (as opposed to the old limit of eight letters), together with many other useful functions. The program which I am currently using is *Microsoft Word for Windows 95*. I highly recommend it, but do advise that the learning curve with this program, as any word processing program, is steep: patience will be needed in implementing this or any other such program as you will rely so heavily on.

Databases

There are several user-friendly database programs on the market. Although it may not be immediately apparent that a database would be useful in a law office, it is one of the more useful functions that I have initiated in our office. The database can be used to enter and retrieve information easily. Library books can be entered on the database. The name of the book, author, identification and location would be located on the database. Once they are entered, anyone wishing to find the book or to access the location of the book would simply enter a key word and find out whether you have it and where it is located. Really, only one person has to know how to set-up the database and enter information. Retrieval can be learned in minutes.

A database of precedents used in the office is extremely beneficial. Although one cannot expect to gather all the precedents in the office and create a database immediately, as documents are created in the future, they can be described on the database, found in the future by searching for a key word describing the document, and the database will give the location where the document can be found in your word-processor directory. You can then access that document and make changes that are required. This gives a much easier and quicker starting point for the drafting of the documentation, and often eliminates so much of the typing which would be involved to make the changes that the lawyer himself/herself can quickly make the changes directly.

Accounting

There are new programs available for law office accounting which are quite easy to use. I am not familiar with them since our accounting functions are on one master computer. However, the newer systems operate on desk-top computers.

Library Research

As you may have noticed, many of the library report series have now been placed on CD Rom. One which springs to

mind is the Canadian Abridgement. We have been using this version of the Canadian Abridgement for several months, and find it to be a tremendous enhancement over the hard copy. The whole Canadian Abridgement is located on one CD, and the program with the CD provides search functions which are extremely easy to use. You must have a computer to be able to run the CD and the program. It is extremely user friendly - much more so than the Canadian Abridgement hard copy.

The CD is quickly becoming an accepted library resource, and will quickly replace many hard copies. CDs are now available which would replace the entire report series. They give the full text of all cases, together with the ability to search a topic or case name to find the case which may be relevant for purposes of your research. The use of these CDs now makes it possible for smaller law firms to have tremendous library facilities without the enormous expense of upkeeping a library full of books, which are considerably more expensive, on average, than the CDs. It must also be born in mind that CD can be removed from a computer to use on a computer or laptop at home to do your research.

Networking

In order for a law office to most efficiently use its computers, it would also be my recommendation that the computers be networked. The additional cost of networking would range from \$250.00 - \$400.00 per computer hooked in. By networking the computers, each user can have access to the other person's computer (limited access if so desired). By way of example, any person on a network can read and research from a CD Rom located on another person's computer. Additionally, any documents stored for purposes of precedents can be located on one person's computer and then copied over to another user's computer once it is identified as being a useful precedent. Networking also permits interoffice e-mail such that messages can be sent between lawyers and secretaries. Those messages remain on the computer until they are accessed and read.

In my assessment, even though computer equipment does require a relatively large initial capital outlay, once computers are put to work in your office, and once you expend the up-front time required to learn the program(s) required, you will find that your work can be done considerably more efficiently.

Respecting the type of computer which you would need, my recommendation is to get the best that is available now since whatever you purchase now will be obsolete within a few months. However, obsolete does not mean that your

equipment is no longer useful. It simply means that something better is out there. By buying the best equipment now, you can expect that it will remain useful in your office for a period of about five years after which you will likely find the need, not to replace the equipment, but to upgrade it.

I would recommend using *Windows 95* as an operating system (*Windows 95* itself has networking capabilities which are quite user friendly), that your computer acquisition have a minimum of 12 megabytes of RAM, and at least a Pentium 90 processor. Your hard drive (for storage space for programs and documents) should be at least 1.2 GB. This may sound large, however, with the size of programs that are now becoming available, you will likely use the space rather quickly. You should also purchase at least a 4X CD ROM, preferably a 6X CD ROM (this is the speed at which you can retrieve information from it.) Secretarial and support staff will not need a CD ROM, however, will still need the Pentium 90 processor speed. Their hard drives could be less than 1.2 GB, however, the cost of upgrading to this size is so minimal that I would recommend that all new computers installed in your office have *at least* this hard drive capacity. Personally I recommend a 2 GB drive.

This one item will likely push your computer upgrade date further away.

One last word of advice, if you are using computers, make sure that you have installed a virus protection program. I use *Norton AntiVirus for Windows 95*, which constantly scans the files in my computer and warns me immediately if a virus is detected. You should also establish a backup regime such that the information which you have stored (not the program, the information which you have created with the programs) is backed up regularly so that you do not lose the information if the computer on which it is located fails. I do our backups across the network such that information is stored on at least two computers in the office, on the assumption that the information will be retrievable from at least one of them. You can backup on a magnetic tape drive, however it is somewhat slower. The backup program which I use is a system tool under *Windows 95*. I have tried several backup utilities and I find that the backup program on *Windows 95* to be the easiest to work with by far.

Good luck!

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National Mid-Winter Meeting

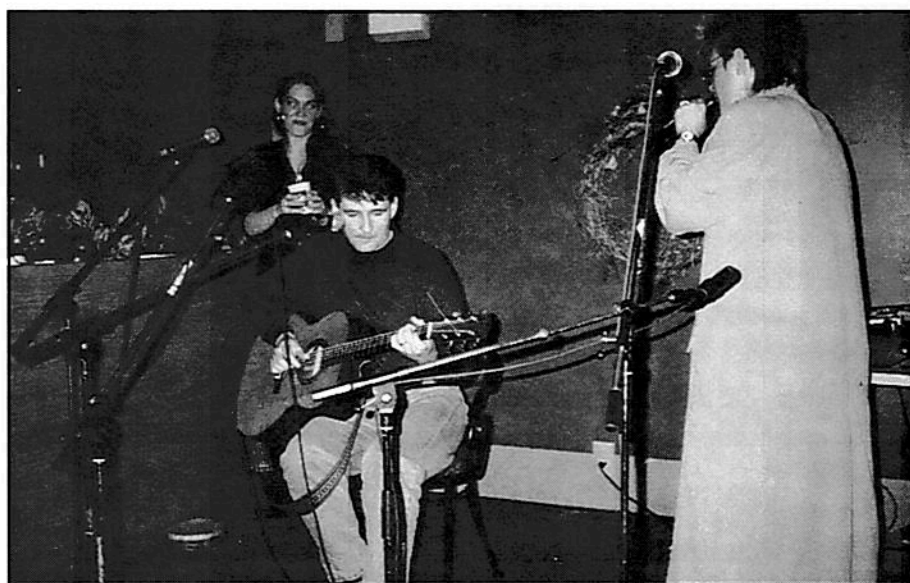
Yellowknife, N.W.T.
February 199



The Newfoundland Branch was represented by the following, l-r; Gerlinde van Driel, Membership Committee Chairperson; Shawn Kavanagh, Branch Representative on Provincial CLE Committee; Chris Pike, Chairperson, Insurance Section, NF Branch; Lois Hoegg, Treasurer, Executive Committee; Robert Stack, Branch President; and Jennifer Newbury, Young Lawyers Conference Chairperson.



And you thought our weather was cold! Gerlinde van Driel and Jennifer Newbury now know the true meaning of c-c-cold.



Shawn Kavanagh on stage with terrific Yellowknife singer Tracy Riley.



Andrew Rock was one of the many attendees who enjoyed a dogsled ride.

Branch Mid-Winter Meeting

St. John's, NF
February 15, 1996



l-r: Robert Stack, Branch President; Gordon Proudfoot, National President, Jean Dawe, Lewis, Day, Dawe & Burke.



Sheila Osborn-Brown
Heywood, Kennedy, Belbin

Sheila, along with John Bruce, Jackie Brazil, Brian Cuff, and Ben Davenport were part of the local entertainment which gave the closing evening a special tone.



l-r: Jane Burnham, Linda Rose and Debbie Fry



National Executive Summary

Systems of Civil Justice

"The recommendations will be practical, concrete and of assistance to practitioners", Eleanor Cronk, Chair of the Systems of Civil Justice Task Force, assured the National Executive Committee about the final report of the task force. During a two-hour presentation, the Executive was advised that the project is on time and on budget. With the research complete and the consultations now underway, the project moves to the Communications phase immediately before, and for six months after, the report is released at the Annual Meeting in August.

The Executive expressed a number of concerns: how to deal with recommendations concerning the judiciary and educators, as well as the bar; the tight timelines for response to the consultation paper (now available with responses due May 10); the very tight timeline for translation and printing of the final report in less than six weeks; and need for an implementation budget (after August) of \$75K. Paul Burgess, Kevin Carroll and Barry Gorlick will review the final report on behalf of the Executive.

Telephone discounts

A contract between the CBA and Posicom will be signed shortly. Under the terms, 75% of firm members - up from 51% proposed originally - must be CBA members for firms to qualify for discounts. This gives the Association an excellent marketing tool to encourage membership retention and drive recruitment.

The discount will be available to all members. Advertising and promotional materials have been prepared by Posicom. Details on the discounts and how to sign up are forthcoming. As part of the marketing plan, Gerard Lewis, CBA Director of Marketing, is visiting Branches this spring.

Mid-Winter 1997

With construction reportedly ahead of schedule, the 1997 Mid-Winter in Mont Tremblant, Quebec, is a go. Mark your calendar now; the dates are Feb. 22-24, 1997.

Budget report

The Treasurer and F&PD have their work cut out for them for the rest of the year. Not only will they continue to keep

a close watch on expenses, but they face the difficult task of balancing what is sure to be a tough budget for 1996-1997. F&PD meets for four days in mid-May to hammer out a budget based on submissions from all sectors of the Association.

Membership

Membership numbers are higher than expected but more efforts are needed to attract student members. One suggestion from Ontario is to reduce the membership fee to a nominal amount - around \$20. Some Branches have been subsidizing students for many years. For example in Manitoba students pay \$35 per year; in Alberta students are allowed to attend Section meetings free of charge. A full airing of Membership concerns is scheduled for the June meeting.

Vancouver '96

To date, 1,106 delegates and guests have registered for the Vancouver Annual Meeting. Canadian and international registrations are about equal at this point. A major and campaign in the National is planned to promote the meeting domestically. The next important date to remember is June 15. After that, registration fees increased by 12%.

Upcoming meetings

It's official - Halifax is the site of the 2000 Annual Meeting. Just to recap, after Vancouver '96, the 1997 Annual Meeting is in Ottawa; in 1998 it's St. John's, Edmonton is the site for 1999; and Montreal has been booked for 2003.

A three-person sub-committee has been appointed to speed up decision-making on sites for meetings and set a long-term schedule to enhancing planning. Jim Bancroft, Marc Richard and Bob Thornton will come to the June Executive meeting armed with proposals and recommendations for future Annual and Mid-Winter meetings.

International focus

The Executive would like to see the CBA become more involved in international projects with Mexico, and Central and South America. While the CBA has been very successful in obtaining funding for the current - international development initiatives in Central Europe and China - and potential initiatives in Vietnam and Rwanda - there was a

consensus that the President and the International Development Committee seek funding to pursue activities along the North-South axis since this appears to be where the interests of many CBA members are focussed.

Constitutional project

Following a lengthy debate, the Executive has proposed four areas of research for the CBA which would form the basis for an initiative on the future of Canada:

- **Dispute resolution model.** A novel, non-litigious approach would provide a model for negotiations.
- **Rebalancing the Canadian federation.** With the help of Sections, the CBA would respond to federal government's plan to "rebalance" the federation as proposed in the recent Speech from the Throne. Alternatively, this initiative could also work on a second level: Sections would identify areas where overlap and duplication between levels of government could be eliminated.

- **Distinct society.** The CBA would develop a definition of distinct society and an opinion on whether a distinct society clause could be entrenched in the Constitution. Concern was expressed that this proposal may be too political.
- **Referendum rules and process.** The CBA would present views on the rules and processes necessary to conduct a referendum relating to the separation of a province or territory.

Before proceeding, the Executive is seeking the views of Branches and Sections. A letter from the President asking for input is being distributed. Branch and Section response is to be directed to Joan Bercovitch, Senior Director of Legal and Governmental Affairs in Ottawa. The Executive will make a final decision on this initiative at its June Meeting. Outside funding will be sought to cover all costs.

Constitutional Law Section

Robert Stack, Chair

Yves Desjardin-Siciliano, President of the Quebec Branch, spoke to a luncheon sponsored by the Constitutional Law Section on April 15th. He is shown with Branch members Clyde Wells and Evan Kipnis.





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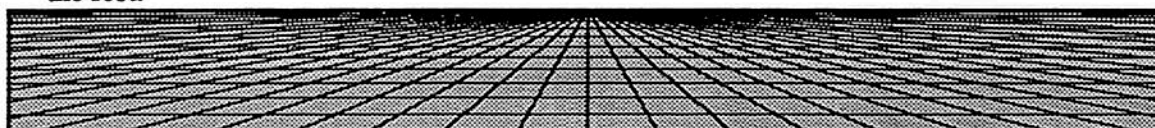
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CLE Committee

Spring '96 has been a busy time for CLE. A Limitations Act Seminar was held on March 28 and the Corporations Act Seminar was held on May 22. Registration for both Seminars exceeded the Committee's projected numbers. It is the view of the Committee that this level of interest is an indication of the satisfaction with the presentation as well as the desire of the legal community to continue their competence in specific areas of practise.

The Committee is presently finalizing the details for an **Advocacy Seminar** which will be held in St. John's on June 26. A Notice and Registration Form is presently being circulated.

Practice Tip



With the coming into force of the new *Limitations Act*, R.S.N., 1995 c.L-16.1, on April 1, 1996, all personal injury claims previously having a six year limitation period (slip and falls and other non-motor vehicle accident injury claims) now have a two year limitation period. Check your files and re-diarize!

Branch Days Gone By . . .

The photographs reproduced on the cover of this issue were obtained as a part of the Branch's attempt to collect memorabilia for an archival collection. Persons having photos or other materials that might be of interest to members are asked to contact Barbara Barry.

Photo No. 1

Newfoundland Branch, Annual Meeting, June 1960;
l-r: Joan Stirling, Nancy Hickman, Louise St. Laurent, T. Alex Hickman, *Provincial Vice-President, CBA*, Renault St. Laurent, *National President, CBA*, Gordon M. Stirling, *Treasurer, Law Society of NF*.
(Photo courtesy of Chief Justice T. A. Hickman)

Photo No. 2

National Annual Meeting, August 1971.
l-r: The Hon. Leo Barry, *Supreme Court of Newfoundland Trial Division*; Clyde Wells, QC, O'Reilly, *Noseworthy*; Thomas O'Reilly, QC, O'Reilly, *Noseworthy*.
(Photo courtesy of Thomas J. O'Reilly, QC)



Newfoundland Branch Canadian Bar Association

1996 Annual Meeting & Nominating Committee Report

June 20 & 21, 1996

Delta Hotel & Convention Centre
St. John's, Newfoundland

— SCHEDULE OF EVENTS —

Thursday, June 20, 1996

LUNCHEON

Young Lawyer's Conference

RECEPTION

Section Chairs & Government / Public Sector
Lawyer's Conference

Friday, June 21, 1996

Business Meeting, Presentation of Annual Reports
including Nominating Committee Report

LUNCHEON

Guest Speaker:

Russell Lusk, National Vice-President
Canadian Bar Association

Golf Tournament (9 holes)
Pippy Park Golf Club

Bar-B-Que
Awards Presentation & Dance

Note:

A registration brochure, with detailed information,
will be circulated.

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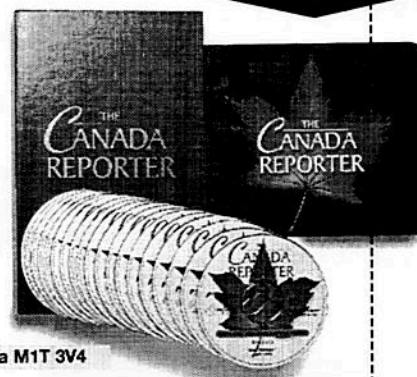
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Your Opinion (Continued from page 32)

session, and the fact that he did such a good job made me even angrier that his question was undoubtedly answered in less than stellar fashion on the exam; as they say, location is everything. His materials were lengthy but succinct, and addressed a broad range of salient issues in this area. The section contains invaluable references to both case law and tax bulletins, and has certainly become a valuable reference tool to anyone intending to practice family law. Mr. Day did not read nor recite his materials, but explained them in context of the philosophies of the court. He chose to dwell on the more perplexing areas, while leaving the more straight forward stuff to us to digest. He answered questions directly, and while the responses were buttressed with tales of his own experiences, he did not fall into the "fireside chat" mode and ream off war stories. The words of wisdom provided at the end of the session should constitute the prologue to every Call to the Bar. When Mr. Day had finished, my initial reaction was that this man should be a law school professor. Needless to say, I was delighted to learn that Mr. Day would be sharing his talents with students in the near future.

If we are to keep the current structure, the materials have to be improved, and the level of ingenuity required in the exams has to increase by leaps and bounds. I say this not because I have completed the exercise, but because I was genuinely insulted by the simplicity of the exams in general. No one had to go to law school to successfully write any of the tests; the most required was good tabbing and a mighty quick pen. In all the sessions, a valiant attempt was made to address practical concerns, but I sometimes got the impression that the instructors themselves were hamstrung by the need to get good examinable material "in there", and the exam questions, especially in some parts of the Family exam seemed to be nothing more than filler.

Suggested Reform

It would be a much more enjoyable exercise for students and instructors alike if we forgot about the exams and adopted a workshop structure. While certain topics do need to be lectured, there are quite a few areas where participation in the form of working through hypotheticals, doing mock bail hearings, or drafting a separation agreement would be very beneficial. Learning only happens by doing, and the advocacy part of the course is the perfect example. Some will say that this is to come from your articles, but I remind them of the purpose of the academic session: it provides a yardstick in the form of marks to determine who is admitted to practise, and secondly, ensures that we are all aware of at least seven or eight crucial areas

of the law and the more important hoops to jump through when issues arise. It is supposed to be an umbrella session to bring the practical and theoretical together to form the big picture. I do not propose to abolish the "Bar Ads" component of articling as there are areas in which students do not gain in depth exposure during articling (regardless of what the declaration says), and at least we all have materials to refer to as a starting point when such an issue comes across our desk. I merely suggest that an introduction to an area be followed by a problem-solving session, discussions or group effort to deal with, for example, a complicated estate planning issue (which I might add is an important area sorrowfully dealt with in the current framework of Bar Ads). Instructors may complain that it is difficult to generate such discussions, but I can assure you that if this was the basis on which we were graded, it would get a lot easier. This may result in a greater onus on students to prepare at night, but I guarantee that the whole endeavour would be a lot more rewarding to all involved.

While in a utopia I would propose that we forget about marks and focus on learning, I realize that the powers that be need the pesky yardstick to determine whether we can make our living. So if stuck with having to assign marks, why not establish a system whereby we actually participate and learn instead of copy and regurgitate?



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Your Opinion

Janis C. Byrne
Poole, Althouse, Thompson & Thomas

Reflections on The Bar Admission Course

On April 15, 1996, I was one of the chosen few released into the wilds of the legal profession, after surviving a year of captivity in the wonderful world of articling. Perhaps one of the highlights of the articling experience was the six weeks or so spent at the Littledale Conference Centre; it's a toss-up between that and a record four hour stint at the Assignment of Book Debts Registry.

When I first received the schedule for the Bar Admission course, I began eagerly anticipating the opportunity not only to flee the Registry of Deeds and see my friends from "beyond the overpass", but to learn more about the actual practice of law, with a focus on practicalities in lieu of academics. Let's face it, we've all been subjected to the rigours of academia in law school, and need very little instruction on how to study and regurgitate a set of notes. For me, this was a "last chance" of sorts to learn something before being let loose on the public. I viewed Bar Ads as an umbrella session that would incorporate the substantive and practical elements of the practice. While there were some sessions which offered invaluable practical insights, overall the feeling seems to be one of disappointment in the structure of the Bar Admission courses.

While there were some problems with the materials, in particular the not so minor typos and staleness of some of the chapters, as well as the order of instruction in some sessions (learning about the mortgage before the purchase and sale), I will not be focusing on these issues as my main objective is to offer some insights into how the whole system can be improved. If there was one thing I think we can all agree on, the exams, with the exception of Corporate, were a colossal waste of time.

Why do I single out Corporate? Well, in this author's humble opinion, it was a session in which we all had to think at some point in time. While some instruction took place in the form of lectures, much was framed in a workshop setting. Sample problems were provided, a group of students brainstormed, followed by an exchange of ideas between groups. The exam, for the most part, did not involve regurgitation of materials, but required a degree of thought. The real challenge came in maintaining your sanity during the over 4 hour marathon. For some reason, instructors in just about every course except civil proce-

dures were unable to accurately assess the time requirements of a question. This is perhaps inevitable, given the rather disjointed nature of the whole set-up, however a suggestion would be for the instructors to meet once the exam is drafted in order to make the necessary modifications. Better still would be having a maximum of two instructors teach the substantive examinable aspects of the course, with practical insights being provided by a broader cross-section of practitioners. This would also avoid assumptions by instructors that topics were covered in other sessions, as there seemed to be very little communication between the lecturers.

Regarding the originality of the exam drafting, it was non-existent. To be asked to list the statutory conditions in the *Residential Tenancies Act* is, quite frankly, insulting and incredibly boring. I know that the subject does not lend itself to highly exciting hypotheticals, but this leads me to my ultimate thesis: the abolition of Bar Exams, given the routine "going through the motion activity" that the process has become. I actually became so bored and unmotivated by recopying notes and statutes in the real estate exam that I became hostile towards the instructors. What is the reward in doing well in such an exam? There is no intellectual challenge required, rather a good dose of intestinal fortitude.

Then we have perhaps the group favourite, the Family exam, where all that was missing was the starting gun and the checkered flag. The instructions were to do as much as you could in the allotted time, and the average number of questions completed would be calculated, thus becoming the cut-off point for marking. So then you had to strategize: do I complete fewer questions and dazzle the Law Society with my brilliance, or write a blue streak and hope to drive the average up, thereby thwarting those perfectionist dazblers? Just another pressure that we can do without! Unfortunately, what I considered to be "good" exam questions dealing with pensions and tax issues were at the end of the exam and did not get the attention that they deserved.

Although it is not my intention to single out individual presenters, there is one person David Day who stands out and deserves to be mentioned. If we are to keep the current structure of this course, I think his approach is one to be emulated. Mr. Day taught the tax section in the Family

(Continued on page 31)