

Benchers' Notes



December 2005

Volume 11, Number 2

These Benchers' Notes are written to provide members with information arising out of the Fall Term Convocation of Benchers held September 26, 2005 and the Special Term Convocation of December 5, 2005. This and previous editions of Benchers' Notes, beginning December, 1999, are available at www.lawsociety.nf.ca

Fees Reduced \$1,600 for 2006

At the Special Term Convocation of December 5 the Benchers approved a 2006 Budget that freezes or reduces many of the Society's daily operating expenses. Some of these expense allocations have remained the same up to six years. Even though faced with increased demands for services, Law Society staff each year successfully pressure many of the Society's daily operating costs in order to stabilize Budget requirements year-over-year. These staff economies maintain a downward influence against potential increases in the Membership Fee.

The Budget approves a reduction of \$800 in the insurance premium and a reduction of \$800 in the contingency fund levy. In all, 2006 Fees are \$1,600 lower than 2005.

The only cloud in the Budget process this year was late word from the Law Foundation that their annual grant to maintain the Law Library will be reduced from \$110,000 in 2005 to \$88,000, a reduction of approximately \$60 per member. This funding shortfall required Benchers to review the original draft Budget's

intention to stand pat on the Membership Fee. Following discussion, Benchers agreed it was essential to maintain the integrity of the Law Library's holdings to the extent possible given that Library inflation rates are approximately 15% annually. Some cost reductions are inevitable in the Library even though the Acquisition Budget is continued at \$220,000. Benchers determined that, during 2006, the Society will use its general revenues to fund the Law Foundation's funding shortfall and that no increase in the Membership Fee will result.

Continuing with the Law Foundation, Glen Noel and John Roil, QC, both members of the Foundation's Board of Governors, stated that the Foundation's finances are in a parlous state and that interest earnings from lending institutions, several points below prime, are insufficient to grow the funds for current demands. For some years now, Foundation grants have been confined to the same small group of recipients because, in part, the provincial government currently takes two thirds of all earnings as a contribution to Legal Aid. The President informed Benchers that he intends to address the Law Foundation's funding difficulties during a meeting with the Minister in the weeks ahead.

Speaking to Benchers about 2006 insurance programme costs, John Roil, QC, Chair of the Insurance Committee, stated that a reduction of \$800 in the insurance premium is the first direct benefit of the Transaction Levy.

Hi-Lights of the 2006 Budget include:

- No Fee increases
- Insurance premium reduced from \$6,000 to \$5,200.
- Per member contingency fund levy reduced from \$1,100 to \$300



The Law Society of Newfoundland and Labrador
196-198 Water Street
PO Box 1028
St John's, Newfoundland
Canada A1C 5M3
Tel (709) 722-4740 Fax (709) 722-8902

The Levy is intended to fund the insurance and assurance programmes and to create a capital pool necessary to stabilize the programmes and strengthen the public protection roles of these funds. During 2006, the \$800 cost of insurance fund capital accumulation included in the 2005 premium is removed and will be paid instead from Levy revenues. In the years ahead, Levy revenues will continue to strengthen and stabilize the insurance and assurance programmes at a level the Insurance Committee considers necessary to fully protect the public.

Random Audit Programme

Website Assistance

In the new year the Law Society's website will include a Question & Answer section for frequent questions and common problems encountered by Diane Rendell, CA, the random auditor. The site will include an email link for members and their staff to communicate questions to Diane Rendell, CA, or Pauline Downer, FCA, or to Law Society staff, about the Atlantic Uniform Trust Account Rules and about Levy application. Start-up will be announced to members.

Delays in Mortgage Discharges

The Chair of the Real Estate Committee, Thomas Fraize, and the Executive Director, Peter Ringrose, met with Hon Dianne Whalen, Minister of Government Services and Lands, to discuss delays in mortgage discharges. The Minister quickly understood the implications surrounding these delays and suggested her Department review whether there could be legislated requirements to have all lending institutions provide discharges in a timely manner.

Transaction Levy Update

Transition to the Levy has been smooth and without reported incident. The Law Society responds to enquiries about Levy application and provides assistance as appropriate to members.

The Practice Rules Compliance Committee soon will review and recommend law office accounting procedures for the Transaction Levy. Recommendations from the Committee will be published on the Law Society's website, www.lawsociety.nf.ca Preliminary information about Levy accounting practices at law firms reviewed through random audit indicates that some firms intend to submit a cheque for each completed transaction. This practice is a cumbersome and inefficient use of law office staff time and potentially slows the random auditing procedure in future. Since random audit costs are borne by the individual firm, efficient Levy management is a

matter of good overall economy. The Committee will soon consider and decide upon best practice procedures to assist members in management of these funds.

The Transaction Levy Summary Form is included with this Benchers' Notes mailing. The Form provides the basis for a firm's quarterly report on the Levy to December 31, 2005, and is due at Law Society offices by January 31, 2006. The Form is also available at the Society's website under Law Society Rules/Forms. The Form is included with these Notes on a one-time basis; for future reporting periods, members will take the Form from the Society's website or obtain one by request to staff. Members should note Rule 10.04(11)(e) concerning the filing of this quarterly report: *Failure by a member to comply with rule 10.04 may constitute an allegation of conduct deserving of sanction.*

New Random Auditor Appointed



Diane Rendell, CA

Jerry Oser, CA, resigned his position with the Law Society earlier this year. Jerry was the Society's first Random Auditor and completed the initial audit schedule. Following interviews, the Practice Rules Compliance Committee hired Diane Rendell, CA, as Jerry's replacement. Her work with the Society began in September following intensive training at law firms in Toronto and outlying areas with senior auditors of the Law Society of Upper Canada. The Committee is grateful once again to the Law Society of Upper Canada for its cooperation and assistance.

Diane graduated from Memorial University with a Bachelor of Commerce degree and then earned her Chartered Accountant designation. Her work experience includes duties as the controller for the Coca Cola bottling plant in St John's and for the Hotel Newfoundland. During the past 14 years Diane has worked part-time providing accounting and income tax services to a variety of clients.

Form Changes

Recent and anticipated amendments of the Law Society Rules eliminate the Annual Statutory Declaration filed by all members.

Rule changes now proposed simplify the process by which members apply for membership, apply for changes in practising status, and give notice of a change in association or in practice. Non-Practising members will no longer file annually. Changes in filing requirements, and the simplification of forms, will reduce administrative burden on members and on Law Society staff.

Some annual filing requirements remain:

- For Insured Practising and Uninsured Practising members
- For firms and sole practitioners who hold funds in trust. For these, it is still necessary to file an Annual Trust Account Report in Form 5.06A, due November 1st in each year
- For uninsured Practising members and some Insured Practising members who do not hold funds in trust and do not operate a trust account. For these, it is still necessary to file an annual non-trust declaration in Form 5.06B, due January 31st in each year.

Forms for members appropriate to their 2005 status with the Law Society have been mailed.

Professional Responsibility Notes

Discipline Committee

The role of the Discipline Committee is separate entirely from that of the Complaints Authorization Committee (CAC). This Committee's Chair is responsible to ensure that Complaints referred from the CAC are heard before panels comprised as required under the *Law Society Act, 1999*. An Adjudication Panel must include three members of the Discipline Committee, that is, two Law Society members and one lay member. The Act prescribes that the panel may make findings and impose sanctions.

Adjudication Panel Decision re William J. Parsons

On November 16, 2005, pursuant to section 48(3) of the *Law Society Act, 1999* an Adjudication Panel of the Discipline Committee of the Law Society found William J. Parsons of Mount Pearl, NL, guilty of conduct deserving of sanction.

By Order of the Adjudication Panel dated November 22, 2005 Mr Parsons was disbarred and ordered to pay two-thirds of the expenses incurred by the Law Society in relation to the Complaints relating to him and Glenn C Bursesey.

The Complaint alleged that Mr Parsons' conduct constituted a breach of the *Law Society Rules* respecting trust accounts and also was contrary to the *Code of Professional Conduct* in that Mr Parsons did fail to act with integrity; did fail to act with competence and to provide a proper quality of service; did fail when advising clients; did fail to act with impartiality and to avoid conflict of interest between clients; did fail in his duty respecting preservation of clients' property; did fail in his responsibility to the profession generally; did fail in his responsibility to lawyers individually; and did fail to avoid questionable conduct. Mr Parsons entered a guilty plea to the Complaint.

Unclaimed Trust Funds

Legislation to require the transfer of unclaimed trust monies to the Law Society is now in place. Members requiring more information about a transfer of unclaimed trust monies can contact Pamela Bursey at Law Society offices.

Claim Reporting, 2006 Insurance

During 2005 members reported (now CLIA) insurance claims in the same manner as before, to the Law Society's adjuster, Ray Walsh. Beginning 2006, and because of a new claims management approach, claims are to be reported by completing and faxing to the Lawyers' Insurance Programme a CLIA Claim Reporting Form. The Form is now available on the Law Society's website at www.lawsociety.nf.ca Go to Members' Services/Other Services.

From January 2, 2006, a member with a claim enquiry will call 722-6008, a dedicated claim reporting line, for instruction. Ray Walsh will continue to be involved as an adjuster with claims.

The Agreed Statement of Facts filed with the Panel stated *inter alia*:

From in or about January, 1999 to in or about May, 2004, William J Parsons acted for his client, Myles-Leger Ltd dealing primarily with real estate transactions. In some transactions where William J Parsons acted for the Vendor, Myles-Léger Ltd, William J Parsons or a member of William J Parsons Law Office acted for the purchaser as well.

While he was acting for Myles-Léger Ltd, William J Parsons acted on approximately fifteen (15) real estate transactions, and acted on or assisted another member of his law firm with an additional twenty-one (21) real estate transactions.

William J Parsons failed to fulfill trust conditions and his undertakings with respect to the discharge of mortgages and used trust monies for purposes not in accordance with trust conditions.

The Adjudication Panel found that although there was no evidence of misappropriation of funds for Mr

Parsons' own use, Mr Parsons acted as a conduit - transferring funds to Myles-Leger in order to facilitate its continued operation. The Panel noted that Mr Parsons exhibited a profound absence of appreciation for the role of a solicitor and acted with a reckless indifference to all of those who could be affected by his actions. Consequentially, the Panel found that Mr Parsons must not be permitted to practice law in Newfoundland and Labrador.

Adjudication Panel Decision re Glenn C Bursey

On November 16, 2005, pursuant to section 48(3) of the *Law Society Act, 1999* an Adjudication Panel of the Discipline Committee of the Law Society found Glenn C Bursey of Gambo, NL, guilty of conduct deserving of sanction. By Order of the Adjudication Panel dated November 22, 2005 Mr Bursey was disbarred and ordered to pay one-third of the expenses incurred by the Law Society in relation to the Complaints relating to him and William J Parsons.

The Complaint alleged that Mr Bursey's conduct constituted a breach of the *Law Society Rules* respecting trust accounts and also was contrary to the *Code of Professional Conduct* in that Mr Bursey did fail to act with integrity; did fail to act with impartiality and to avoid conflict of interest between clients; did fail in his duty respecting preservation of clients' property; did fail in his responsibility to the profession generally; did fail in his responsibility to lawyers individually; and did fail to avoid questionable conduct. Mr Bursey entered a guilty plea to the Complaint.

The Agreed Statement of Facts filed with the Panel stated *inter alia*:

From in or about October, 2000 until in or about October, 2003, Glenn C Bursey was an associate with William J Parsons Law Office, in Mount Pearl, in the Province of Newfoundland and Labrador.

While Glenn C Bursey was an associate with William J Parsons Law Office he acted on approximately seventeen (17) real estate transactions on behalf of Myles-Leger Ltd.

Practice Note

Conflicts of Interest - Estate Files

The Complaints Authorization Committee recommends that members not act concurrently as solicitors for and executors of Estates. The Complaints Authorization Committee has issued two letters of counsel and a letter of caution concerning the quality of services provided with respect to Estate files. Conflict issues frequently arise when a member has the dual roles of Solicitor for the Estate and Executor/Executrix of the Estate. The Court in *Earle v Wilhelm* 2000, 183 D.L.R. (4th) 45 held that the Solicitor for the Testator owes a duty to the intended beneficiaries and may be liable where his/her negligence defeats the Testator's intentions. The Executor/Executrix has a fiduciary duty to the beneficiaries.

The following excerpt is taken from *Lawyers & Ethics* by Gavin Mackenzie:

Conflicts of interest are also common in the administration of estates. Where a lawyer is retained by the executor of the estate, the executor is of course the lawyer's client, but the lawyer owes a duty of care in tort to beneficiaries also. Executors are often beneficiaries as well. A lawyer must not act for an administrator in his or her capacity as such and in his or her capacity as a beneficiary in respect of claims by others who assert claims in the estate. Conflicts of interest may also result from the lawyers' dual roles if they serve simultaneously as executors and solicitors for estates. (18.3 Other Conflicts of Interest)

While Glenn C Burse was an associate with William J Parsons Law Office he acted on or assisted another member of William J Parsons Law Office with ten (10) ten real estate transactions.

Glenn C Burse failed to fulfill trust conditions and his undertakings with respect to the discharge of mortgages and used trust monies for purposes not in accordance with trust conditions.

The Adjudication Panel found that Mr Burse was aware of the misappropriation for a period of approximately two and one-half years while practising with Mr Parsons. The Panel noted that Mr Burse's misconduct went from omission in not acting to stop the scheme to commission by actively participating in it. Therefore, the Panel concluded that disbarment was the appropriate sanction.

In Memoriam

Benchers record with regret the deaths of the following members or former members and convey their condolences to family and friends.

Edmund J Phelan, QC, LL.D
(March 18, 2005)

James Nesbitt, QC
(March 26, 2005)

Alex Kennedy
(April 13, 2005)

Gerard Griffin, QC
(August 14, 2005)

Brock Myles
(August 27, 2005)

The Hon W G Adams
(November 12, 2005)

Complaints Authorization Committee

The Complaints Authorization Committee (CAC) is a statutory committee of Benchers mandated to address the first phase of the disciplinary process as prescribed by Part II of the *Law Society Act, 1999 (the Act)*. The process commences with an "allegation" filed with the Vice-President (s. 43). An allegation is a statutorily defined term meaning "a written document alleging that a respondent has engaged in conduct deserving of sanction" (s.41(a)). "Conduct deserving of sanction" is also a defined term which includes professional misconduct, conduct unbecoming, violation of the *Act* or the *Law Society Rules*, and failure to adhere to the *Code of Professional Conduct (s.41(c))*.

The Vice-President may either refer the allegation to consensual mediation or conduct an investigation (s.44(1)). If mediation is unsuccessful, the Vice-President will conduct an investigation and will submit the allegation to the CAC upon completion of the investigation (s.44(3)).

Once the allegation has been submitted to it, the CAC may require further investigation or require the respondent to appear before it (s.45(1)(b), (c) and (d)). It may make recommendations to the Executive Committee concerning a respondent's practice (s.45 (1)(e), (f) and (g)). It may dismiss an allegation (s.45(1)(a)), counsel or caution a respondent (s.45(2)(a)), or instruct the Vice-President to file the Complaint and refer it to the Discipline Committee for hearing (s.45(2)(b)). There is no appeal from the CAC's decision (s.45(3)).

A Complaint comes into being only after the CAC has considered the allegation and has formed "the opinion that there are reasonable grounds to believe that a respondent has engaged in conduct deserving of sanction". The CAC's role with respect to a Complaint

lends meaning to the word "authorization" in the CAC's name. As the Complaints "Authorization" Committee, the CAC's role is to determine when an allegation constitutes a Complaint. Then the CAC may authorize the filing of the Complaint and its referral to the Discipline Committee. Or, it may chose to proceed by way of counsel or caution, thereby not authorizing the filing of the Complaint.

The decision of the CAC to issue a letter of counsel or caution is not a disciplinary action. There is no finding of guilt from which discipline can flow. Counsel is advice; caution is a warning. Both are intended to assist the member in his or her future conduct.

The following information is provided to inform members as required by *Law Society Rule 9.06(5)*

Letters of Counsel

Letters of Counsel were issued by the CAC because of the following Complaints.

Complaint of failing to complete work and to communicate with the client regarding legal matters referred for action. (*Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8*)

Complaint of entering into a creditor-debtor relationship with a client and failing to inform the client that the member is a director of the Company. (*Law Society Rule 5.11, Code of Professional Conduct, chapter VI, Rule (b), commentary 4 and chapter VII, commentary 4*)

Complaint that the member's conviction under sections 253(b) and 255(1) of the Criminal Code does not comply with the standard contemplated by the Code (*Code of Professional Conduct, chapter I, commentary 3 and chapter XIX, commentary 10 of the Code of Professional Conduct*)

Education Notes



Students-at-Law attend the 2005 Bar Admission Course in St. John's

Bar Admission Course

The 2005 Bar Admission Course for Newfoundland and Labrador was offered from October 4, 2005 until November 18, 2005.

This year's Bar Admission Course covered the following topics:

Week 1

Family Law.

Topics included divorce proceedings, custody and access, child and spousal support, matrimonial property, provincial family legislation, pensions, Unified Family Court procedure, child protection and support enforcement.

Week 2

Corporate/Commercial Law.

Topics included incorporation and organizing a business, corporate procedures, corporate finance, the Personal Property Security Act, security opinions, purchase and sale of a business/shares and commercial insolvency.

Week 3

Civil Procedure.

Topics included limitations of actions, commencing proceedings,

service, defences, counterclaims and 3rd party proceedings, summary trial, expedited trial, discovery and disclosure of evidence, setting down for trial, the Judgment Enforcement Act, civil appeals, costs and alternative dispute resolution.

Week 4

Skills Training.

The Course presented "lawyering-skills" workshops where students received instruction in direct examination, cross-examination, negotiating settlements, interviewing clients, examination for discovery, risk management and how to avoid professional negligence claims. As well there was a session on maintaining a balance between professional and personal responsibilities and a separate section on ethics and the Code of Professional Conduct, for which students completed a written assignment.

Week 5

Criminal Law & Procedure.

Topics included the court structure, presumptions and burdens, classification of offences, pre-arrest, arrest, charge, first appearances, judicial interim release, disclosure,

elections and re-elections, solicitor/client matters, preliminary inquiries, pre-trial matters, Charter applications, trials by judge alone, jury trials, the sentencing process, types of sentences, criminal appeals, young offenders, evidentiary matters, voir dices, search and seizure and defences. As well, in this section, students received instruction on advocacy skills, there was a panel discussion among judges with respect to advocacy and students prepared for and participated in a mock trial.

Week 6

Administrative Law.

Topics included the Labour Relations Board, Labour and Commercial Arbitration, Municipal Law, the Human Rights Commission, the Workplace Health, Safety and Compensation Commission, administrative law in the Federal Court, the Law Society discipline process, statutory appeals, judicial review of arbitration and prerogative orders.

Week 7

Real Estate and Wills.

Topics included the registry system

and land tenure, the real estate transaction, the mortgage, disabilities and title insurance, survey/location certificates, taxation issues, crown lands, quieting of titles, possessory title, landlord/tenant, title searches, a real estate transaction workshop and a separate section on wills, estates and probate.

The goal of the Bar Admission Course is to provide new lawyers a comprehensive overview of Newfoundland and Labrador law and procedure and to transfer information to ensure entry level competence in the profession. The Course is intensive, practical and relevant to what a new lawyer will see in practice.

To pass the Bar Admission Course, students must pass examinations in Family Law, Commercial Law, Civil Procedure, Criminal Law, Administrative Law and Real Estate/Wills. Each exam is 3½ hours long and focuses on the lecture presentations, the Bar Admission Course materials and the approximately 80 provincial and federal statutes and regulations covered in the Course. The Bar Admission Course materials consist of 11 separate volumes.

The Bar Admission Course Committee and the Law Society is grateful to the generous contributions made by members of the profession, whose contributions as Bar Course Instructors ensure the Course remains vibrant and beneficial to our new lawyers.

Any member interested in discussing the Bar Admission Course, auditing any portion of the Bar Course or reviewing Bar Course materials should contact Frank O'Brien, Director of Legal Education, Law Society of Newfoundland and Labrador, for further information.

Continuing Legal Education

The Joint Committee on Continuing Legal Education offered educational programs in a wide cross-section of practice areas throughout 2005. As this is the last Benchers' Notes for 2005, we would like to sincerely thank our 2005 seminar presenters and acknowledge their contributions to the ongoing education of lawyers in this province. We also appreciate those who support our programs through their attendance at seminars.

What follows is a listing of seminar presenters. Thank you all for sharing your expertise, time and enthusiasm for legal education.

Mission Possible: Creating Balance in Our Lives

February 3, 2005

Thank you to Madam Justice Maureen Dunn, Supreme Court of Newfoundland and Labrador, Trial Division; Ms Rosemary Lahey, MSW, RSW, Professionals' Assistance Program; Ms Cheryl Mullett, Curtis Dawe; Mr Christopher Pike, Benson Myles.

The New Spousal Support Advisory Guidelines: How They Work and How They Might Work For You

April 1, 2005

Thank you to Professor Rollie Thompson, Dalhousie Law School.

A Primer on Buying and Selling a Business

April 22, 2005

Thank you to Ms Jennifer Babe of Miller Thompson LLP, Toronto, Ms Maureen Ryan, Stewart McKelvey Stirling Scales; Ms Caroline Watton, McInnes Cooper.

Time Mastery for Lawyers

May 9, 2005

Thank you to Mr Frank Sanitate, Frank Sanitate Associates, Santa Barbara, California.

Professional Law Corporations and Other New Developments in the Law Society Act, 1999 and the Law Society Rules: How Will They Impact Your Practice?

June 27, 2005

Thank you to Mr Peter Collens, CA, CFP, Professional Tax Advisor; Mr Michael Duffy, Duffy & Associates; Ms Jacqueline Glynn, Duffy & Associates; Mr Douglas Kirby, CA, DMK Chartered Accountant; Mr Glen Noel, Patterson Palmer; Ms Marina Whitten, Aylward Chislett Whitten.



2005 Bar Admission Course Advocacy Panel Discussion
(l to r): Mr Justice Roberts, Mr Justice O'Regan, Mr Justice Thompson, David Eaton, oc

Effective Written Advocacy

July 22, 2005

Thank you to Mr Justice Keith Mercer, Supreme Court of Newfoundland and Labrador, Court of Appeal; Mr Justice Leo Barry, Supreme Court of Newfoundland and Labrador, Trial Division; Ms Sheila Greene, Newfoundland and Labrador Association of Public and Private Employees (NAPE); and Mr David Hurley, QC, Lewis Sinnott Shortall Hurley.

Information Session on Transaction Levy

September 12, 2005, September 16, 2005 & September 20, 2005 in St. John's, Clarendville, Grand Falls-Windsor & Corner Brook

Thank you to Mr John Roil, QC, Chair, Law Society Insurance Committee.

The Criminal Justice System and Persons with Special Needs and Intellectual or Developmental Disabilities

September 23, 2005

Thank you to Mr Liam Baker, Newfoundland and Labrador Association for Community Living; Mr William Edwards, Office of the Public Defender, Los Angeles, California; Ms Denise Hillier, Stella Burry Community Services; Mr Jim Maher, Department of Justice; Mr Peter Ralph, Newfoundland and Labrador Legal Aid Commission; Dr Ted Rosales, MD FRCPC, Consultant - NL FASP, RC.

Advocacy Skills Workshop

October 24, 2005

Thank you to Mr Timothy Ray and Ms Laura Stewart of the Advocates' Society, Toronto, ON.

Training in Interdisciplinary

Collaborative Family Law Practice

November 28 & 29, 2005

Thank you to Dr Susan Gamache, PhD, Registered Psychologist, AAMFT and Ms. Nancy Cameron, LLB of Vancouver, BC.

Revising the Rules: New Developments in the Rules of the Supreme Court, 1986

December 2, 2005

Thank you to Chief Justice Derek Green, Supreme Court of Newfoundland and Labrador, Trial Division; Mr Justice David Orsborn, Supreme Court of Newfoundland and Labrador, Trial Division; Madam Justice Gale Welsh, Supreme Court of Newfoundland and Labrador, Court of Appeal; Ms Susan Charendoff, Court Services Division, Ministry of the Attorney General, Government of Ontario; Mr Christopher Curran, Department of Justice; Ms Ann Merritt, Court Services Division, Ministry of the Attorney General, Government of Ontario; Mr James Oakley, Noonan Oakley; and Mr John O'Dea, McInnes Cooper.

We look forward to offering further practical and informative seminars in 2006. Law Society members with thoughts on Continuing Legal Education or suggestions for future seminars should contact Frank O'Brien, Director of Legal Education, Law Society of Newfoundland and Labrador.

Essays in the History of Canadian Law.

Vol. IX: Newfoundland and Prince Edward Island

By open invitation the Law Society celebrated the publication of this latest volume by the Osgoode Society for Canadian Legal History in Convocation Hall on 1 December. Edited by Christopher English it offers thirteen substantive essays, nine of them on Newfoundland. In several respects it is unique in this series: it offers overarching introductory essays on the legal historiography of the two jurisdictions; a majority of the authors are women; several are graduates of the Law and Society program at Memorial University who have won essay prizes offered by the Law Foundation. The essays examine legal

themes, developments and disputes which distinguish the legal history of the two provinces. They offer a framework for comparison of the administration of justice through the courts or examine contested cases in Common Law (criminal, libel, property and inheritance), and in Chancery, with a comparative excursion into the legal career of Sir Francis Forbes (chief justice, 1817-22) after he moved on to New South Wales.

Publication was facilitated by a grant from the publications subvention program of Memorial University and another from the Law Society.

Members Appointed to Queen's Counsel

The Swearing of Queen's Counsel took place in Courtroom No. 1 at The Court House on Thursday, October 13, 2005.

Members newly appointed were:
John M Babb, Thomas J Burke, Gregory W Dickie,
Brian F Furey, Bruce C Grant, Jerome P Kennedy,
David D McKay, Randolph J Piercey, Anne Marie
Rose, and John C Sweetland

Following the Ceremony, the Law Society hosted a reception in The Court Garden at the Fairmont Newfoundland.



*Merry Christmas and Happy New Year
to all Members and their Families
from Benchers
and Law Society Staff*

A Look Back at the First 50 Years of the Barristers' Roll

by Bert Riggs

The Barristers' Roll of the Law Society of Newfoundland and Labrador dates back to January 1, 1826 when **James Simms** (#1) became the first person to be called to the Bar of Newfoundland. In 1826 he was appointed Newfoundland's first Attorney General, a position he held until 1842. Here are other interesting facts about some of the members who were called to the Bar in its first 50 years.

George Lilly (#2), then a Justice of the Supreme Court, was arrested by order of Dr. William Carson, Speaker of the House of Assembly, for his role in the infamous Keilly-Kent dispute in 1838.

The first full-length play performed in St. John's was held at a fishery supply company owned by **William Bickford Row** (#3), on March 14, 1817. Tickets for *The Fair Penitent* were five shillings, with the proceeds going to relieve the conditions of the poor.

William Dawe (#7) was one of only two trained lawyers practising in Newfoundland in 1815. The other was **James Simms** (#1).

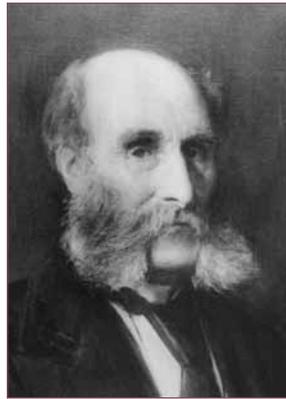
Sir Bryan Robinson (#13) was elected as first Treasurer of the Law Society in 1834. He was MHA for Fortune Bay from 1842 to 1848 and was a justice of the Supreme Court from 1858 to 1877.

Sir Edward Mortimer Archibald (#15) served as Secretary of the Law Society from 1834 to 1847. In 1841 he was named Attorney General of Newfoundland, holding office until the introduction of Responsible Government in 1855.

Sir Hugh William Hoyles (#17) was the first native-born Newfoundlander to serve as Prime Minister of Newfoundland. His colleague and successor as Prime Minister, **Sir Frederick Bowker Terrington Carter** (#19) had three sons and one grandson who were members of the Bar of Newfoundland: **Frederick Weston Carter** (#54); **Stanley Bayly Carter** (#62); **Hugh Hoyles Carter** (#63); **Henry Pyne Carter** (#160).

Philip Francis Little (#25) was elected first Prime Minister of Newfoundland in 1855. His brother, **Sir Joseph Ignatius Little** (#43), served as Chief Justice of Newfoundland from 1898 to 1902.

Harcourt St. Helen Mooney (#26) was a graduate of *Trinity College*, Dublin and a member of the Bar of the Middle Temple,



Sir Bryan Robinson (1808-1887), first Treasurer of the Law Society of Newfoundland in 1834.

London. **Alan Fraser** (#29) and **Alexander Fraser** (#32), sons of the **Rev. Donald Alan** and **Catherine McLean Fraser**, both migrated to Australia.

Sir William Vallance Whiteway (#35) served three separate terms as Prime Minister of Newfoundland (1878-1885; 1889-1894; 1895-1897), a total of 14 years. **Daniel Woodley Prowse** (#42) served as judge of the Central District Court for 29 years, from 1869 to 1898, during which time he researched and wrote *A History of Newfoundland from English, Colonial and Foreign Records* (1895).

Sir James Spearman Winter (#52) resigned as a Justice of the Supreme Court in 1896 to become leader of the Conservative Party. He led it to victory in 1897 and served as Prime Minister until 1900. Two of his sons, **James Alexander Winter** (#124) and **Harry**

Anderson Winter (#125), were also members of the Law Society.

Daniel Joseph Greene (#58) served as Prime Minister of Newfoundland from December 13, 1894 until February 8, 1895. He was **Treasurer** of the Law Society at the time of his death in 1911.

Government of Canada / Gouvernement du Canada

Request for Expression of Interest Legal Agents of the Attorney General of Canada (Non-Prosecution Work)

As authorized by the Department of Justice Act, the Minister of Justice and Attorney General of Canada is responsible for overseeing the legal affairs of the government as a whole and for providing legal services to individual departments. The Department of Justice relies on in-house counsel as well as private sector lawyers, both domestic and international, known as legal agents to carry out its mandate.

The Department of Justice is pleased to invite qualified law firms to express their interest in being considered for potential appointments as standing or ad hoc Legal Agents of the Attorney General of Canada in a variety of areas of expertise.

Interested firms are invited to consult our website www.canada.justice.gc.ca/en/dept/legal_agents/index.html for details regarding the application process and qualifications. Please note that applicant firms must meet minimum requirements in order to be placed on an eligibility list and may be subject to further screening and evaluation as dictated by operational needs.

Nicolas Neveu
Tel: (613) 946-1671
Fax: (613) 990-8197

Canada

*The Professionals' Assistance Program,
a support group for Lawyers,
can be of assistance in many situations.*

For further discussion or consultation, contact:

Rosemary Lahey, M.S.W., R.S.W.
Clinical Co-ordinator
 754-3007 or 1-800-563-9133



Photo #1 - Call to Bar February 15, 2005

Front (l-r): Heather Clarke, Patrick Duff, Brian Gosse, Susan Marsh, Janet Christian-Campbell, Glynne Pitcher
Back (l-r): Larry Innes, Jonathan Noonan, Robert Bradbury, Gary Mooney, John Hogan, Daniel Glover, William Howse



Photo #2 - Call to Bar April 11, 2005

Front (l-r): Sharon McKim-Ryan, Judy Manning, Andrew Parsons
2nd Row (l-r): Nancy Furlong, Matthew Clarke, Jason House
Back (l-r): Christopher Quigley, Joseph Twyne, Peter Durant

Photo #3 - Call to Bar June 17, 2005

Front (l-r): Fiona Innes, Catherine Brayley, Steven Barnes, Lesley Mercer
Back (l-r): Benjamin Blackmore, Brian Shell, Aaron Newell, Henry Mugford

Photo #4 - Call to Bar October 14, 2005

Christina Kennedy, The Honourable Chief Justice J Derek Green, Lawrence Hatfield, Edward Hearn, oc, President of the Law Society



Exclusive Secured Offer For The Legal Community of Newfoundland & Labrador

From:

Newfound
Mobility Solutions

 **TELUS**
mobility™
(Authorized Dealer)

Free **Blackberry 7250 (Bluetooth Enabled)**

What can a Blackberry Do For You?

- Send/Receive e-mail From Almost Anywhere,
- Works Like a Standard Cellular Phone,
- Web Browser,
- Personal Organizer,



Did you Know?

In Canada, Approximately 80% of Legal Professionals are Using Mobile e-Mail Devices.

**STAY IN TOUCH - RESPOND IMMEDIATELY - SAVE TIME - INCREASE EFFICIENCY
GET YOUR BLACKBERRY NOW, WHILE THIS INCREDIBLE DEAL LASTS!**

Free **MP3 Player**

Why would You Want an MP3 Player?

- A great Christmas Gift for People of *All* Ages,
- A \$100.00 Value!



We Offer

Personalized Service!

- Free Delivery - Free Pick-Up And Servicing,
- If your Phone Breaks, We'll Give You A free Loaner,
- Free Gift Wrap



We Offer

Great Phone / Data Packages

➤ **SUPER TALK 20**

- 6 months Unlimited Calling,
- Unlimited Telus to Telus Calling,
- 250 Daytime Minutes,
- Unlimited Evenings & Weekends,
- **All For \$20.00!**

➤ **UNLIMITED DATA**

- e-mail and browse The Web to Your Hearts Content - **No Surprises!**
- System Access Fee - **WAIVED!**
- \$60.00 Annual Data Fee - **WAIVED!**
- **All For \$60.00!**

CALL NOW!: 576-7500

OR

e-mail: info@NewFoundMobilitySolutions.ca