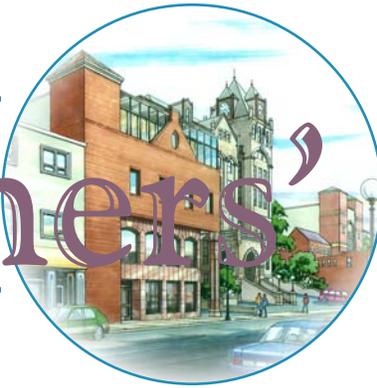


# Benchers' Notes



Spring 2015

Volume 16, Number 1

*This issue of Benchers' Notes contains information on selected topics considered by Benchers at Convocation and other items of interest to the Bar. This edition of Benchers' Notes is available on-line at [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca).*

***This edition of Benchers' Notes is dedicated to the memory of Bencher Kevin T.A. Preston***

## Law Society Mourns the Loss of Bencher



Kevin Preston

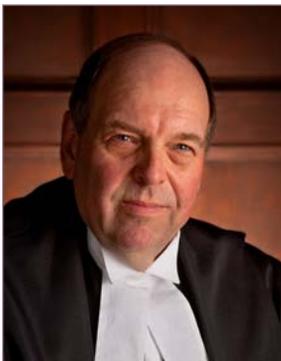
Kevin was raised in St. John's, received a Bachelor of Arts (Hons) from Memorial University in 1984 and a Bachelor of Laws from Dalhousie University in 1987. He served Articles of Clerkship under William W. Marshall (until he was appointed a judge) and then Gillian Butler (prior to her appointment as a judge). He was called to the Bar on 12 April 1988 becoming #711 on the Barrister's Roll. Following his call he worked at *White,*

*Ottenheimer & Green* until he moved to Gander in 1989 to join the firm which became *Easton Hillier Lawrence Preston* in 2008. He was first elected by his peers to represent the Central District as a Law Society Bencher on 7 June 2007 and was re-

elected on 17 June 2011 serving with distinction until 4 March 2015. He served as Chair of the Law Society's Act and Rules Committee from October of 2010 and was a member of the Committee tasked with considering the implications of possible changes to Supreme Court Rules regarding appearance before the Courts.

Kevin was a well-respected member of our legal community and was held in particularly high regard as a criminal defence lawyer in central Newfoundland. As a Bencher, he always provided thought-provoking and relevant commentary on any issues being discussed. He was charming and kind with a wonderful wit and a ready smile. Despite a busy career and involvement in many extra-curricular activities (including putting his great voice to use singing with a choir), his devotion to his family became quickly apparent in any conversation with him.

Let us all remember Kevin for his commitment to our organization, and as our colleague and friend. ■



## President's Report

On 10 April 2014, I received a phone call advising me that my predecessor, Mr. Justice George Murphy had been appointed to the bench, effectively immediately, and

Kenneth L. Baggs, QC,  
President, Law Society of  
Newfoundland and Labrador

that I too had a new role to fill here at the Law Society. As abrupt as it was, my initiation into this role was made much easier because of the excellent work done by Mr. Justice Murphy during his term. We are all indebted to him for the work he accomplished in his years as a Bencher.

The months since I took over as President have been very challenging but also exciting and informative as the Law Society has dealt with many interesting and



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thought-provoking issues such as the Trinity Western University debate. I would like to thank all of you who took the time to provide your thoughts on the issue to Benchers. Be assured that, when it is appropriate to make a decision on this matter, it will only be made after much discussion, thought, and consideration.

The Law Society recently approved funding to the Canadian Bar Association (CBA) to assist with the development of an online lawyers' wellness resource in partnership with the Mood Disorder Society of Canada and Bell Canada. The goal is to develop a national self-learning program that will provide lawyers with education, support and resources to assist in understanding mental health issues. Once the program is up and running (anticipated this year) the cost of maintenance will be borne by the Legal Professions' Assistance Conference and it will be available for all lawyers in Canada, not just members of the CBA. Recognizing the importance of good mental health to a lawyer's ability to provide legal services to the public, the Law Society sees this as an important initiative and fully supports the CBA in its efforts to develop this program.

In April of 2014, along with Director of Legal Education, Frank O'Brien and Legal Director, Phyllis Weir, I attended Access to Justice informational sessions with Justice Cromwell which provided an opportunity for many stakeholders to exchange valuable ideas. One of the outcomes of these sessions was the creation by the Law Society of an Access to Justice Committee. This Committee is made up of Benchers, Mr. Ian Wallace (Chair of the Committee), Mr. Donovan Molloy, QC, Ms. Adrienne Edmunds and lay Benchers, Ms. Glenda Reid and Mr. Donovan

Downer. It is hoped that this committee will be able to identify some proactive measures the Law Society can take to positively affect access to justice in ways consistent with its mandate of regulation, in the public interest. In addition, the Law Society is a member of the Newfoundland and Labrador Access to Justice Steering Committee.

In May of 2014, I travelled to Ottawa with Ms. Grimes, QC and Mr. Paul Burgess, Chair of the Insurance Committee, to attend CLIA Meetings where a revised Subscribers' Agreement was signed and a new board was selected. Changes to CLIA's governance structure were the result of much collaboration and discussion and work is ongoing to ensure that CLIA continues to meet the needs of lawyers and the public by providing a sustainable, cost effective program.

As a continuation of our active national involvement in the Federation of Law Societies, I attended the 2014 Annual Conference, held in Halifax in October of 2014, along with Vice-President, Susan LeDrew and Law Society Executive Director, Brenda Grimes, QC. Many interesting and informative topics were discussed including: Access to Justice and Legal Services; the Canadian Common Law Program; and the National Discipline Standards Project. The Federation, as always, clearly demonstrated that it is at the forefront of tackling relevant issues facing law societies across Canada.

In February of 2015 I attended a meeting of Atlantic Law Societies' Executive Committees in Fredericton along with Mr. Barry Fleming, QC and Ms. Brenda Grimes, QC. The meeting was initially planned to discuss opportunities for cooperation and collaboration within the Atlantic Provinces

but, for efficiency, a decision was made to meet with the Federation Governance Review Committee during the same trip. Both meetings were informative and useful and it was felt that the meetings should continue on an annual basis. The next meeting will be hosted in St. John's in early fall.

One of the more enjoyable aspects of being President of the Law Society is the opportunity to attend various ceremonies and receptions to honor colleagues who are receiving awards or setting out on new career paths. I was delighted to attend and participate in Swearing-in ceremonies and receptions for Judge Lynn Cole (Provincial Court), Judge Phyllis Harris (Provincial Court) and Chief Justice Raymond Whalen (Supreme Court, Trial Division). Vice President, Susan LeDrew attended and gave remarks at the Swearing-in ceremony for Justice Jane Fitzpatrick (Supreme Court). In November of 2014, I attended the Swearing-in of Queen's Counsel. I have been present for 5 Calls to Bar and witnessed a total of 51 students become lawyers; this is always an enjoyable experience and great opportunity to meet with the newest members of our bar.

On 22 November 2014, I attended the book launch for the new *SS Daisy* Publication entitled: *A Ferryland Merchant-Magistrate: The Journal and Cases of Robert Carter, Esq., J.P. - Volume II, 1841 - 1852*. It was a wonderful event and I note that the *SS Daisy* Legal History Committee members do some outstanding work in maintaining a documented history of our profession and are to be commended.

It is always sad to report on the passing of current or former members of our bar. With regret I note the passing of 5 members of our bar: Mr. James Greene, QC, Mr. Alan

**Note from**  
**Brenda B. Grimes, QC**  
*Executive Director*



Brenda B. Grimes, QC  
*Executive Director*

Reflecting on this past year, I am pleased with the work we have accomplished here at the Law Society of Newfoundland and Labrador. The staff and Benchers of the Law Society work diligently throughout the year to ensure that the Law Society's mandate to regulate, in the public interest, is fulfilled. Many hours of research and thoughtful discussion are

often required prior to decisions being made or initiatives implemented and this work is often overlooked. I would like to take this opportunity to personally thank the Law Society's staff and Benchers for their continued dedication to the work of the Law Society. I am very fortunate to work with such devoted people.

In the pages to follow, you will find some information which has been circulated to our membership regarding the introduction of a Mandatory Continuing Legal Education Program. While information is being provided at this time, the program is not being officially implemented until 2016 so you have ample time to consider how you can meet the requirements. Further information will be provided as we get closer to implementation. If you have any questions, please feel free to contact me or Frank O'Brien.

I would once again like to urge members to take the time to read

up on the Professionals' Assistance Program which exists in order to assist you, our members, with a myriad of personal or family issues. While I realize that it may be difficult for some to reach out and seek help when feeling overwhelmed, distressed or in crisis, you should not hesitate to do so. There has been much discussion lately about mental health issues and the reasons why people may fail to seek help. In addition to the resource mentioned by the President in his report, the Professionals' Assistance Program provider, Homewood Human Solutions, has many resources to assist in this area, including some which are accessible online.

Finally, I would like to remind you that we are holding our Annual General Meeting here at the Law Society on 12 June at 2:00 pm and our Annual Dinner that evening at Clovelly. I hope that many of you are able to attend. ■

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**(President's Report continued)**

Henry, Mr. William Cadigan, Justice John O'Neill and Mr. Kevin Preston. These men will be greatly missed by family, friends and colleagues.

I close by thanking you all for allowing me to serve as your President and as Bencher of the Law Society of Newfoundland and Labrador. It has been a wonderful experience and I encourage all members of our bar to become actively engaged in the Law Society as you will certainly have a front row seat to the always thought-provoking, challenging and exciting issues facing our legal profession, at present and in the future. ■

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**Recent Appointees to Queen's Counsel**

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Irene S. Muzychka, QC - Sworn in on 15 November 2013  
*(Ms. Muzychka, QC was inadvertently omitted from the last edition of **Benchers' Notes**)*

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The following members were sworn in on 28 November 2014:

- |                          |                        |
|--------------------------|------------------------|
| Daniel M. Boone, QC      | Donovan F. Molloy, QC  |
| William W.C. Boyd, QC    | Sheilagh M. Murphy, QC |
| Augustine F. Bruce, QC   | Paul G. Noble, QC      |
| Wayne D. Chamberlain, QC | James C. Oakley, QC    |
| Ronald A. Cole, QC       | John V.B. O'Dea, QC    |
| Donald J. Gallant, QC    | Lorna A. Proudfoot, QC |
| Brenda B. Grimes, QC     | Adam J. Sparkes, QC    |
| Heather M. Jacobs, QC    | Ellen E.M. Turpin, QC  |
| Thomas J. Johnson, QC    | John L. Vivian, QC     |
| James E. Merrigan, QC    | D. Gordon Woodland, QC |

## Benchers' Convocation - June 6, 2014



**Back Row (l-r):** Dr. Donovan Downer, Donovan Molloy, QC, Ian Wallace, Bert Riggs, Glenda Reid, Marcus Evans, QC, Kenneth Jerrett, Amy Crosbie, Adrienne Edmunds

**Front Row (l-r):** Kenneth Baggs, QC, Susan LeDrew, Barry Fleming, QC, Paul Burgess, Donald Anthony, Brenda Grimes, QC, Leanne O'Leary, Linda Harnett

### Executive Committee

Law Society of Newfoundland and Labrador

#### Officers

**President:** Kenneth L. Baggs, QC  
**Vice-President:** Susan M. LeDrew

#### Elective Benchers

##### **Eastern District:**

Donald E. Anthony  
R. Paul Burgess  
Amy M. Crosbie  
Barry G. Fleming, QC  
Kenneth W. Jerrett  
Ann F. Martin  
Donovan F. Molloy, QC  
Liam P. O'Brien  
Leanne M. O'Leary  
Ian C. Wallace

##### **Central District:**

Marcus A. Evans, QC  
Kevin T.A. Preston  
(until 4 March 2015)

##### **Western District:**

Shawn C. Colbourne, QC  
James E. Merrigan, QC

##### **Labrador District:**

Adrienne S. Edmunds

#### Lay Benchers

Dr. Donovan Downer  
Glenda Reid  
Linda Harnett  
Bert Riggs

### *In Memoriam*

*Benchers and members were saddened at the passing of our esteemed colleagues:*

#### **Justice John James O'Neill**

Called to Bar December 2, 1954 as solicitor;  
January 26, 1955 as barrister; Roll # 234

#### **James Joseph Greene, QC**

Called to Bar October 15, 1953 as solicitor;  
October 19, 1953 as barrister; Roll # 227

#### **Alan Henry**

Called to Bar July 2, 1991; Roll # 819

#### **William Andrew Anthony Cadigan**

Called to Bar April 11, 1990; Roll # 757

#### **Kevin Thomas Alexander Preston**

Called to Bar April 12, 1988; Roll # 711

## Decisions, Decisions, Decisions

*Below is a brief summary of some of the decisions taken by Benchers during the period from April 2014 up to and including February 2015.*

### **April 2014:**

The 7 April 2014 meeting of Benchers was presided over by then President, George Murphy, QC and began with a report from the President on his activities since the last meeting. On February 14 he officiated a Call to Bar where 11 new members were called (quite a few being transfers) followed by the usual reception at the Law Society. That same day, he, Paul Burgess and Executive Director Brenda Grimes met with Steve May to ask him if he would be the Law Society's nominee for the CLIA board. Mr. May agreed and his name was forwarded to the Nominating Committee. Also on February 14, the President, along with Ms. Grimes and Frank O'Brien, met with Justice Orsborn and Justice LeBlanc to discuss the Mediation Pilot Project and the type of support the Law Society might provide. As a result of the meeting, the Law Society wrote a letter to the government in support of the project.

The President advised that he had attended and given remarks on behalf of the Law Society at the Swearing In Ceremonies for Justice Brian Furey (28 February 2014), Justice Laura Mennie (Sparkes) (14 March 2014) and Judge Mark Linehan (19 March 2014) and attended the receptions which followed.

In April, the President and Vice-President, along with Ms. Grimes and Ms. Weir, attended the Federation of Law Societies' Semiannual Conference in Regina. The focus of the conference was on national discipline issues and the President noted that the topics and workshops were relevant and thought-provoking.

Benchers were provided with a package of material regarding the Trinity Western University issue which included a memo from Ann Martin summarizing the background, the issue and the relevant Rules and legislation. Benchers engaged in a thorough discussion but concluded that the issue should be deferred to the June meeting with a communique going to the members about the issue.

Law Society accountant, Richard Yabsley, joined the meeting and provided comment on the 2013 Financial Statements of the Law Society, Insurance Programme and Assurance Fund. Mr. Yabsley projected a surplus of \$124,000.00 for the Law Society, a \$220,000.00 surplus for the Insurance Programme and noted that the Assurance Fund was fully surplus. With respect to 2014 figures, Mr. Yabsley reported that revenue was on budget but that it was too early to comment on the expenses.

Paul Burgess, Chair of the Insurance Committee, provided a Claims' History Synopsis noting that there had been a decrease in the number of real estate claims but that the severity of the claims had increased. He advised that the Committee would be looking at setting a Surplus Policy and had sought a quote from the actuary to give an opinion. They would also be looking at whether the Law Society had adequate insurance in place.

With respect to CLIA, an updated draft of the Subscribers' Agreement was provided to Benchers and there was some discussion about the suggested options for allocation or return of capital (surplus) upon termination. The Executive

Committee was advised that legal counsel for the Subscribers (Ogilvies) was working through these issues in consultation with Tom Schonhoffer (Chair of Steering Committee), Patrick Mahoney (General Manager of CLIA) and the regulator. It was agreed that feedback from the Insurance Committee should be sought. Ms. Grimes indicated that Benchers might be required to approve the Subscribers' Agreement via email.

Ian Wallace, Chair of the Education Committee, requested approval for three transfers under the National Mobility Agreement and the issuance of thirteen Certificates of Fitness for the 14 April 2014 Call to Bar - all were granted. Mr. Wallace noted that eight applications for Admission as Student had been approved by the Education Committee and that ten requests to resume practicing status has also been approved by the Committee. Benchers went on to approve six requests for Non-Practising status and five requests to resign membership with the Law Society.

Near the end of Convocation, lay Bencher, Mr. Bert Riggs, provided a written recommendation regarding how the Law Society could commemorate the 100th anniversary of the outbreak of WWI by recognizing students at law who participated in the WWI effort and were either killed or gave up their prospective careers as a result. The suggestion was for a ceremony with a posthumous Call to the Bar and the creation of a commemorative booklet. Benchers' approved Mr. Riggs' recommendations and it was agreed that Mr. Bert Riggs and Mr. Ken Jerrett would spearhead this project.

The first Special Meeting was held via email on 15/16 April 2014 to appoint a new Vice-President and Complaints Authorization Committee Chair following Justice Murphy's appointment to the bench which made Kenneth Baggs, QC, the new President. A quorum was achieved and Susan LeDrew was appointed as Vice-President and Barry Fleming, QC was appointed CAC Chair. The second Special Meeting was held via email on 16/17 April 2014 to elect a new Executive Committee member. A quorum was achieved and Paul Burgess was elected. On 1/2 May 2014 the third Special Meeting was held via email to approve the 2013 draft financial statements. A quorum was achieved and the statements were approved. The fourth and final Special Meeting was held via email on 29/30 May 2014 to approve the Subscribers' Agreement as recommended by the Insurance Committee, with any incidental amendments as required. A quorum was achieved and the agreement was approved.

**June 2014:**

The 6 June 2014 meeting of Benchers was held at the Law Society Building. It was the first

with President, Kenneth L Baggs, QC acting as Chair.

Mr. Baggs, QC gave his first report as President, beginning with a quick narrative of his early appointment into the role. His first official tasks were to attend and bring greetings at the Swearing-In Ceremony for Judge Lynn Cole in Corner Brook on 11 April 2014, and to officiate his first Call to Bar on 14 April 2014 (Justice Butler presiding) with receptions following. The President also spoke at the Swearing In ceremony for Justice George Murphy in Corner Brook and attended the reception which followed.

The President's other activities included various meetings such as the Access to Justice Meetings on 28 and 29 April 2014; the Insurance Committee Meeting on 15 May; a ceremony to mark the Inaugural Sitting of Court at Happy Valley-Goose Bay on 26 May; the Executive Committee Meeting on 27 May; the Annual Dinner of the Newfoundland Association of Land Surveyors on 31 May; and CLIA Meetings in Ottawa which he attended with Mr. Paul Burgess and Ms. Brenda Grimes on 1 June.

Ms. Sheila Greene, QC joined the meeting and provided Benchers with written reports regarding the Council meetings on 3 April 2014 and 2 June 2014. She advised that both meetings were dominated by the Trinity Western University issue. She highlighted two things: the Council was striking a committee to look at whether the standards that have been created for law schools should include a non-discrimination provision; and, the Council was undertaking a governance review that had arisen out of discontent with the Presidential Rotation Policy.

Prior to the meeting Benchers had been provided with a package of material regarding the Trinity Western University issue which included submissions received by the Law Society from both members and non-members. As of the date of the meeting, 18 submissions from members had been received with 12 in favor of TWU and 6 against. Submissions from lawyers and special interest groups from outside Newfoundland totaled 16 with 13 in favor of TWU and 3 against. Benchers noted they were aware of the ongoing significant and evolving discussions across the

## Custodianships

The Law Society currently has possession of files from the following lawyers:

Alan Carter  
Christopher Sullivan  
Claude Sheppard  
David Pitcher  
David Sparkes  
Doug Harvey  
Fabian O'Dea  
Frederick R Bishop

Gerard Griffin  
Gerard Gushue  
Glen Bursey  
Glube Jewell  
Gordon Seabright  
Hugh Coady  
James Nurse  
Jody Saunders

Keith Rose  
Kent Morris  
Michael Drover  
R A Parsons/O'Neil  
Ron Noseworthy  
William Browne  
William Parsons

Members can contact the Law Society at 722-4740 for details on any of the above.

country and that litigation was pending in three provinces which would likely see the issue addressed by the Supreme Court of Canada. Benchers were also aware that the President of TWU had requested an opportunity to speak with Benchers prior to a vote. Following a thorough discussion and recognition that a decision need not be made at that time, Benchers resolved that any vote on the issue be placed in abeyance.

Benchers discussed the Executive Summary from John Roil's report on Legal Aid as well as information compiled from submissions of members on the tariff and choice of counsel issues. It was agreed that the information received should be provided to government.

Benchers then moved on to the question of whether they could support the establishment of a law school at Memorial University, in principle. Following a consensus that expressing an opinion on the subject did fall within the Law Society's mandate of regulation of the legal profession and the practice of law, in the public interest, a thorough discussion ensued which highlighted views both for and against. On the positive side, Benchers noted it would enhance the stature of Memorial University, add to the culture from an academic and disciplinary perspective, provide a forum from which commentary on issues of public policy and judicial decisions could be derived, increase the affordability of education for local students, be a center for learning in law which would help lawyers with continuing education, provide an opportunity for the development of a legal aid clinic and provide an opportunity for Newfoundland and Labrador to become a leader in a specialized area of law. The negative comments were primarily focused on the concern with respect

to the potential for there to be too many graduates for the market to be able to provide articling positions for (leading to pressure to eliminate this program) and concerns regarding the funding for the institution. Benchers recognized that, ultimately, the decision would be made by Memorial University and the government and that funding issues would have to be addressed by them. Benchers supported the establishment of a law school, in principle.

Law Society accountant, Mr. Richard Yabsley, CA, joined the meeting to address any questions Benchers might have involving the written financial reports which had been provided. Benchers had previously approved the draft 2013 financial statements and there were no questions. Mr. Morgan Cooper took the opportunity to compliment Mr. Yabsley for what he has added to the Law Society and expressed confidence in the financials. Mr. Baggs, QC echoed his comments and agreed that confidence in the management of the Law Society was high.

Then it was on to the CLIA update. Benchers had approved the Subscribers' Agreement on 29 and 30 May 2014 and the Executive Committee had endorsed the nominees for the board. Mr. Burgess reported that the agreement was signed in Ottawa on 1 June 2014 and that he, Mr. Baggs, QC and Ms. Grimes, QC were in attendance. He noted that Steve May was a member of the new board.

Following the CLIA report, Ms. Phyllis Weir provided comment on the National Discipline Standards. Ms. Weir noted that the list of standards had been presented to Benchers in February for information and now were being presented for adoption, effective 1 January 2015. The standards are intended to

be aspirational and provide goals towards which all law societies can work, recognizing that some law societies may not be able to achieve all of them. She noted that one of our problems will be the training of adjudicators but indicated that efforts are underway to come up with a cooperative arrangement with other jurisdictions. Benchers approved the adoption of the National Discipline Standards effective 1 January 2015.

Benchers were requested to approve Certificates of Fitness for eight candidates. Approval was granted for all eight who would be called on 13 June 2014. Benchers were also informed that sixteen Applications for Admission as Student had been approved by the Education Committee and went on to approve thirteen applications for members requesting to take non-practicing status and one member who wished to resign.

Before Convocation broke for the Annual General Meeting, Mr. Baggs, QC thanked Morgan Cooper for his contributions over the years noting that it was an absolute pleasure to work with him and that he brought a lot of substance and passion to debates on issues.

Following the Annual General Meeting, Benchers reconvened and approved the slate of officers for the coming year: Kenneth Baggs, QC, President; Susan LeDrew, Vice-President; Barry Fleming, QC, CAC Chair; Paul Burgess; and Donald Anthony.

Mr. Baggs, QC thanked Ms. Grimes, QC for her hard work and patience, particularly during the transition, and also thanked Ms. Weir and Mr. O'Brien for their contributions noting it was a pleasure and an honor to work with such experienced people.

**December 2014:**

The December Convocation was called to order by President Kenneth L. Baggs, QC. The President reported to Benchers that he had attended several meetings in the past months including the Federation's Annual Conference from 8-10 October 2014 in Halifax. He reported that this year's conference focused on access to justice issues. Participants were required to participate in a poverty simulation and meet with various groups that deal with these and other issues in the local community. He also met with Chief Justice Green in November to discuss the possibility of funding from the Law Society for the Trinity Conference. There were the usual Executive Committee meetings and Insurance Committee meetings which he attended in the fall and regular discussions with Executive Director, Ms. Grimes, QC regarding various

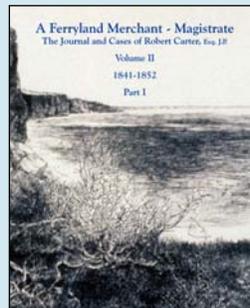
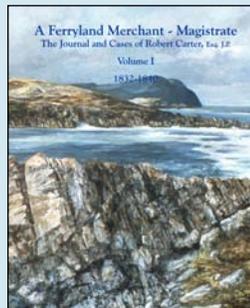
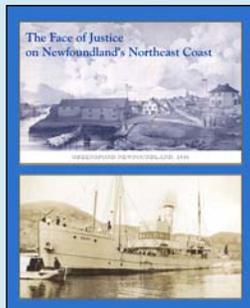
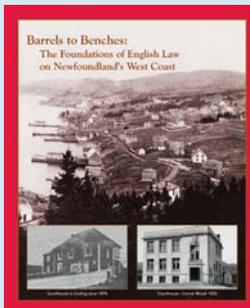
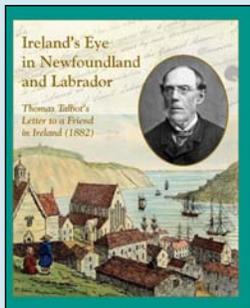
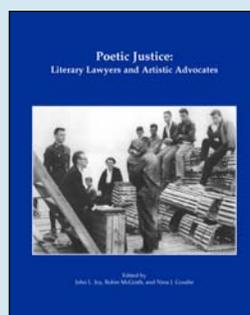
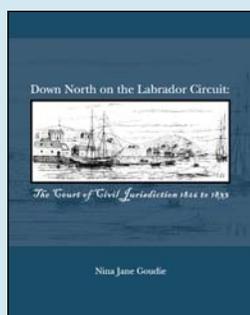
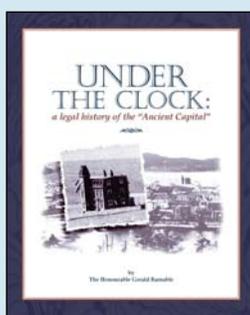
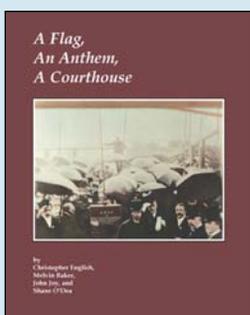
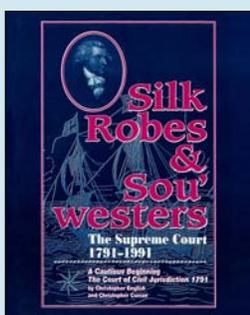
issues, particularly the custodianship of Michael Drover. The President commended Law Society staff for their hard work. The President went on to report that he officiated at the 17 October 2014 Call to Bar, where 10 new members were called, and attended the ceremony which followed. He attended the QC Ceremony 28 November 2014, where 20 members of the Bar were sworn in as Queen's Counsel and, on 5 December 2014, was present at the Benchers' Christmas Reception which he noted was a well-attended and enjoyable event.

Later in Convocation the President explained that, on 21 November 2014, many law firms received notification from their searchers that they would no longer search loose deeds because of the backlog that existed (in excess of one month). While title insurers ultimately agreed to extend insurance to cover

a gap of up to 30 days, it was still a significant issue. He indicated that Ms. Grimes, QC had contacted the Department of Justice and Public Safety immediately seeking assistance in setting up a meeting and followed up with a letter outlining this and various other issues with the Registry. Mr. Baggs, QC along with Ms. Grimes, QC met with representatives from Service NL, Assistant Deputy Minister, Julian McCarthy, Raylene Stokes and Dean Doyle on 2 December 2014 to discuss a multitude of issues with the Registry of Deeds which had been brought forth by our membership. The meeting disclosed that they were very aware of the problem and were diligently working to correct it. A combination of retiring staff, transfers to other departments and greater than expected volume for the time of the year had led to understaffing. They gave assurances that they were not affected by

## Daisy Committee Publications

The ten books shown here have been published in recent years by the *Daisy Committee*. They offer a varied and interesting look at the development of law in Newfoundland and Labrador over the last two centuries and more. Please call 722-4740 for details on how you can purchase a copy or several!



the hiring freeze and that they would update us regularly and meet with us regularly. They asked the Law Society to encourage members to adopt the online registration system.

Another topic of discussion was a request for the Law Society to make a financial contribution to funding of the 400th Anniversary of the Vice-Admiralty court (the Trinity Conference). The concept had initially been developed by the *SS Daisy* Legal History Committee and the President advised that the first day of the two day conference was being devoted to legal history with Daisy Committee members playing prominent roles as speakers and moderators. The President noted the great books that had been produced by this dedicated group. The second day of the conference was being devoted to the future of law. Because of the content, the conference would be open to lawyers and other members of the public. The request for funding from the Law Society was intended to keep the registration costs down for anyone who is not a judge and wishes to attend.

Following a discussion, Benchers concluded that, in light of the *SS Daisy* Legal History Committee's involvement, they were prepared to make a contribution. However, given the limited opportunity for access by the bar or other members of the public, the contribution would be limited to \$5,000.00.

Next Benchers discussed changes to the Rules of Court which were under consideration to provide for assistance by non-lawyers during hearings or otherwise and to allow for representation of corporations by non-lawyers. They were also provided with the Law Society's response to the Department of Justice in 2009 when similar issues were being addressed.

Following a discussion about the potential access to justice benefits, as well as the pitfalls, it was agreed that a working group be struck to consider the issues. Kevin Preston, Ken Jerrett and Glenda Reid would develop a position and report back to Benchers at the next meeting.

Paul Burgess, Chair of the Insurance Committee, advised that Mr. Ray Walsh was retiring as adjuster for the Insurance Program. He noted that Mr. Walsh's contributions over 25 years of service had been fundamental to the success of the program.

Mr. Burgess also summarized the findings of Andre Normandin's 24 November 2014 report regarding capital requirements, a copy of which was provided to Benchers in advance of the meeting. The report had been commissioned to ensure Benchers had appropriate information to assess the capital needs of the Insurance Program and make decisions regarding budgeting. Mr. Burgess advised that the Insurance Committee recommended Benchers accept Mr. Normandin's advice re: the capital requirements.

Benchers agreed that to meet the solvency criterion, the Capital Target for the Lawyers' Insurance Program be set at \$13,300,000.00, less a provision for adverse deviations that is included in the loss reserves (the PAD) and less LIP's share of the capital held at CLIA; and, that the Capital Target be reviewed annually to account for variations in the loss reserves and the capital held at CLIA, or be reviewed when necessary to meet the solvency criterion if there are material changes as follows : a permanent increase in the expected claim level; and/or a change in the investment policy that would modify the distribution of assets between common stocks and

bonds. It was noted that, based on the 2014 budget, this would require the Insurance Program to have a Capital Pool of \$11,200,000.00. At the time it had \$10,500,000.00.

Accountant, Richard Yabsley reported on the internal statements for the Law Society advising that the only notable changes from the last report were with respect to the costs for discipline and custodianship which would be higher than budgeted by a large margin. This would be offset somewhat by lower than expected library costs, professional development and professional fees. For the Insurance Program, he advised that CLIA premiums would be lower than budgeted because of the increased deductible and that adjusting costs would be lower.

Mr. Yabsley went on to report on the 2015 budgets for the Law Society and Insurance Program and noted that both were presented as balanced with no increase in fees required and no reduction in the Transaction Levy in light of the recommendations of the actuary, Andre Normandin, regarding the necessary Capital Target.

Following a discussion, Benchers approved both budgets as presented.

Chief Justice Green attended the meeting as a member of the *SS Daisy* Legal History Committee and gave a synopsis of the Committee's future goals, emphasizing the importance of the Committee's work given that legal history provides the foundation for our current system. He pointed out that, while many decisions from our past deviated from the Canadian or English law of the time, it did not mean they were wrong – they were unique and a product of the circumstances existing.

Ian Wallace, Chair of the Education Committee, obtained approval for three applications for transfer under the National Mobility Agreement and reported that seven applications for resumption of practising Status had been approved by the Committee. Benchers went on to approve twelve requests for non-practising status and three requests to resign membership.

On the issue of strategic planning, Benchers were provided with a memo from Mr. Fleming, QC summarizing the key points from the CBA Futures Report. Following a discussion it was agreed that a focused agenda would be necessary and that initial preparatory work would be done by the Executive Committee and the facilitator with an outline of process to be brought back to Benchers at a future date.

**February 2015:**

Convocation was called to order by President, Kenneth L. Baggs, QC. The meeting opened with a brief update from Ms. Grimes, QC on the status of the custodianship re: Michael Drover. Mr. Baggs, QC went on to advise that reports from the Registry of Deeds showed steady and significant improvement and indicated that he would write to Dean Doyle to commend him and his staff for their efforts.

## Library News



### WHAT'S NEW AT THE LIBRARY ?

We have a **new Library Technician**, Rosemary Myers, who joined us on 26 January 2015 but, with regret, advise that Heather Myers, part-time librarian, will be retiring as of the end of June after 6 years of exemplary service to the Law Society, members and the public. Please join with us to wish them both well.

**No time to get a book from the library?**

**Out of town and need quick access to a library book?**

The **Law Society Library** can provide Law Society members with instant, desktop access to **Irwin Law publications**, including the **Essentials of Canadian Law** series. In searching "ebook" on our online catalogue you will retrieve 150 Irwin titles available electronically.

Topics include:

- Civil Procedure and Litigation
- Family Law
- Constitutional & Administrative Law
- Torts
- Criminal Law
- Corporation, Securities and Commercial Law

See a complete list of the Irwin texts available here: <http://www.irwinlaw.com/titles>

**Labour Source** available at Law Society Library

Labour Source is available on all computers in the Library and allows you to search one database for access to the following in full text:

- Brown and Beatty, Canadian Labour Arbitration. 4th ed.
- Adams, Canadian Labour Law. 2d ed. and all court decisions cited in these texts.
- Labour Arbitration Cases Series 1- forward
- Canadian Labour Arbitration Summaries
- Labour Board Decisions from all provinces and
- Canada Industrial Relations Board and
- Canada Public Services Labour Relations Board
- In addition to other items and legislation.

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**Contact the Law Society Library  
for login and password information  
[lawlibrary@lawsociety.nf.ca](mailto:lawlibrary@lawsociety.nf.ca)**

The President reported that, as has become customary, he, Ms. LeDrew and Ms. Grimes, QC met with representatives of the Law Foundation, Mr. Bonnell, QC, Mr. Boone, QC and Mr. Lawrence Collins over lunch to discuss issues of mutual interest. The Law Foundation confirmed its continued commitment to fund the law libraries, and other projects which met its mandate, to the extent possible given the interest rates. Mr. Baggs, QC also noted that he attended and gave remarks at the Swearing In of Chief Justice Whalen in October of 2014 and that he attended the meeting of Atlantic Law Societies' Executive Committee in Fredericton in February of 2015.

Sheila Greene, QC joined Benchers to comment on current issues facing the Federation. Ms. Greene, QC noted that resources were significantly focused on the Federation Governance Review and that good discussions were taking place.

Benchers next approved the Conflict of Interest Policy which had been presented and discussed at the last meeting.

The discussion then turned to proposed changes to Supreme Court Rule re: Representation before the Court. Bencher, Kenneth Jerrett provided a written report and indicated that his working group had built on the work done by Mr. O'Brien in 2009 and then canvassed the law and other jurisdictions to see what, if anything, had changed. He noted that the Federal Court had considered making similar changes in 2011 but declined to do so. He also pointed out the burden the number of unrepresented litigants was placing on the Family Division of the Court and suggested that similar issues could arise in the Trial Division. Ultimately,

while some jurisdictions leave it to the judge to decide who can represent themselves, it was the opinion of the working group that the administration of justice would not be served at this time by amending the Supreme Court Rules to allow representation of corporations by non-lawyers. Further, even if such a change were appropriate, it was unlikely it could be accomplished without legislative change which would require more detailed study. Following a discussion, Benchers agreed that the Working Group and two members of the Access to Justice Committee would work together on the formulation of a response for discussion at the Benchers' Convocation in June.

Law Society Accountant, Richard Yabsley joined the meeting to provide comment on the financials and was welcomed with a round of applause and good wishes from all Benchers as he reached a significant milestone – his 70th birthday!

Written reports were provided and Mr. Yabsley advised that the Law Society's statements for 2014 were almost finalized and he anticipated a \$90,000.00 - \$100,000.00 surplus on the Law Society side derived mainly from higher investment returns, transfer fees and the settlement of claims left over from the self-insurance funds under reserve. On the negative side, the discipline costs were \$75,000.00 over budget. The Insurance Program figures were still in a very preliminary stage because the final levy results were still being tallied and Andre Normandin's assessment for required damage and defence costs was not yet final. Significantly higher than budgeted custodianship costs were offset by greater returns on investment, lower CLIA premiums and lower adjusting fees resulting in a pro-

jected surplus.

Reports were then provided from the Finance and Accounts Committee and Insurance Committee. The Finance Committee provided information showing the strong return on investment in all funds and indicating the weighting of investments versus the Investment Policy Statement. Mr. Fleming, QC pointed out that, even though the statement allows an investment of up to 25% in equities, the goal is to keep it around the 20% mark and efforts are made to adjust it if, because of the returns, the percentage increases. The Insurance Committee provided documentation showing local claims experience, CLIA's financial position and statistics from the assistance program. Mr. Burgess advised that, with respect to CLIA, there were still ongoing discussions regarding the level of communication required and the issue of a permanent CEO.

Following the Discipline Report, Ian Wallace, Chair of the Education Committee, indicated that five applications for transfer under the National Mobility Agreement and sixteen Certificates of Fitness for Call to the Bar required approval – all were granted. Mr. Wallace reported that three applications for resumption of practising Status had been approved by the Committee. Benchers went on to approve seven requests for non-practising status and five requests to resign membership. ■

## Changes in Status

The following changes in status were approved by Benchers sitting in Convocation April 2014 – February 2015:

### Resumption of Practicing Status

Daniel Murphy	February 4, 2014	Michelle Wilson	August 14, 2014
Heidi Wells	February 4, 2014	David Coffin	August 20, 2014
Kelly Curties	February 11, 2014	Nicole Hurley	September 9, 2014
Maria Kyriacou	February 25, 2014	Lisa Landells (Baker)	September 23, 2014
Judy Manning	February 25, 2014	Adam Sparkes	October 2, 2014
Jaclyn Whelan	February 28, 2014	Jordan Hodder	October 14, 2014
Kristen O'Keefe	March 3, 2014	Aaron Felt	October 21, 2014
Barbara Barker	March 11, 2014	Andrew White	November 17, 2014
Shane Hickey	March 14, 2014	Richard Deveau	November 17, 2014
Andrea McGrath Murphy	March 31, 2014	Laura Brazil	December 1, 2014
Vanessa McCarthy	July 3, 2014	Donna Strong	December 18, 2014
Allison Wade	July 18, 2014	Desmond Jagger-Parsons	December 19, 2014
Aimee Rowe	July 29, 2014	Sarah Colbourne Penney	December 19, 2014
Robert Wells, QC	July 31, 2014		

### Practicing to Non-Practicing Status

A Diane Smith, QC	31 January 2014	Brian Gatien	1 August 2014
Barbara Barker	14 February 2014	Stephanie Walsh	5 August 2014
David Richard Robbins	4 March 2014	Suzanne Orsborn	8 August 2014
Joanne Healey	22 February 2014	Robert Anstey	6 March 2014
Carmel Penney	24 February 2014	Kelly Langthorne	29 August 2014
Michael Fox	01 January 2014	Candace Summers	30 October 2014
Adam Sparkes	10 March 2014	Edward Ring	22 September 2014
Janine Flaherty Woodland	31 March 2014	Shane Hickey	30 September 2014
Erin Drover	31 March 2014	Daniel Furey	22 September 2014
Scott Burden	11 April 2014	Cindy Starkes	25 September 2014
Jessica Robyn Gallant	14 May 2014	Ruth Wakeham, QC	30 September 2014
Allison Wade	14 April 2014	Koren Thomson	16 September 2014
Andrew Scott Kerr	1 May 2014	Andrew Mallam	1 October 2014
Kristen O'Keefe	28 April 2014	Laura Brown Laengle	5 November 2014
Jordan Hodder	1 May 2014	Robert Alexander Bill	17 October 2014
John Todd Martin	1 May 2014	Nicole Hurley	1 December 2014
Deborah Gillis	7 May 2014	Kathleen Healey	27 November 2014
Donald Rankin	30 April 2014	Jennifer Newbury	1 December 2014
Ronald Noseworthy, QC	21 May 2014	Joshua Lehr	1 December 2014
Leslie Nicole Connolly	31 May 2014	Jillian Kean	1 December 2014
Maria Kyriakou	30 June 2014	Cheryl Mullett	1 January 2015
Tanya O'Neill	1 June 2014	Clarence Dwyer	1 January 2015
Jennifer Madore	1 June 2014	Bryan Blackmore, QC	1 January 2015
John Groves	27 June 2014	Lily Anne Wroblewski	9 January 2015
Christopher Pike	30 June 2014		

### Members Granted Permission to Resign Membership

Eric C Facey	10 February 2014	Nigel Jenkins	31 October 2014
John Rorke	21 March 2014	Matthew Kennedy	31 October 2014
David D'Intino	11 March 2014	Jonathan Blair Brandon	17 November 2014
William Wells	28 February 2014	John McCarthy, QC	4 November 2014
Jennifer Gorman	01 January 2014	Scott Harron	1 January 2015
Steven M. Degen	26 March 2014	Colin McMorrow	12 December 2014
William Collins, QC	4 July 2014	Robert Parsons	2 February 2015
John Todd Martin	1 October 2014	Cory St. Croix	1 January 2015

## Insurance and Risk Management

The Canadian Lawyers Insurance Association (CLIA), your insurer, publishes a variety of effective loss prevention information such as *Safe and Effective Practice*, a loss prevention handbook; *Loss Prevention Bulletins* which include claim prevention techniques to help lawyers minimize the likelihood for being sued for malpractice and *Loss Prevention eBytes*, which are short and snappy electronic notifications on issues of relevance and interest to practising lawyers.

You can subscribe to the *Loss Prevention Bulletins* and *eBytes* as an RSS feed or you can sign up to receive by e-mail at [www.clia.ca](http://www.clia.ca)

The following excerpt is from an earlier *Loss Prevention Bulletin*, issue number 187:

### ***Safe and Effective Practice***

*Safe and Effective Practice*, edited by Barry Vogel, Q.C. and written by Jean Côté and others, is a loss prevention resource that has withstood the test of time. This handbook of loss prevention materials, published by the Canadian Lawyers Insurance Association and based upon materials distributed as early as the mid-1980s, remains relevant to lawyers across Canada even after all these years.

For example, the authors note five “persistent fallacies” that lawyers cling to about legal malpractice:

1. Legal negligence claims are based on a lack of knowledge or poor decision-making;
2. If I do a good job for my client, I won't be sued;

3. Protecting myself against a client would require that I treat the client as the enemy and therefore I couldn't properly represent their interests;
4. All legal malpractice claims involve lawyer error and I don't make mistakes; and
5. I could never forget this matter and therefore don't need to record all the details.

The authors explore how these beliefs fail to protect lawyers from claims and go on to detail a wide range of simple, yet effective strategies to prevent malpractice claims.

If you would like a free copy of ***Safe and Effective Practice***, contact Janice Ringrose, Lawyers' Insurance Programme at [insurance@lawsociety.nf.ca](mailto:insurance@lawsociety.nf.ca) or phone 690-6174.

## Avoiding Common Errors

Calendaring and Communication errors are two of the most common errors the Lawyers' Insurance Programme see:

### **Calendaring Errors**

- Failure to follow up
- Diary System error
- Inadequate office systems
- Failure to memo file
- Failure to know or ascertain deadline correctly
- Failure to calendar properly
- Procrastination in performance of service or lack of follow up

### **Communications Errors**

- Failure to follow client's instructions
- Disputed instructions
- Disputed retainer

- Failure to obtain client's consent or to inform client
- Poor communication with client
- Poor communication with others
- Failure to document/confirm client instructions
- Unable to contact client

### **How to avoid these errors:**

#### **Conflicts**

- Recognize conflicts
- Run diligent conflict checks
- Know who your client is
  - corporation/parent/child/spouse
- Avoid representing parties with adverse or potentially adverse positions

- Refer out to ILA
- Be mindful of your fiduciary duties

#### **Delegation**

- Communicate your expectations clearly and be specific
- Continue to keep active in the file; remain in contact with the client and delegate or team
- Indicate all critical dates and time lines
- Get a commitment on the completion date
- Have a follow up system and a back-up plan in place
- Delegate appropriately - follow up, seek confirmation - remember you have delegated, not abandoned the matter

### Systems and Procedures

- Review in detail with client all documents he or she is signing
- Establish a good checklist to take you step by step through a case - outline the time lines involved in those procedures
- Keep each file checklists up to date and cover all steps of a case
- Pay attention to detail

### Dangers leading to Missed Limitation Periods

- Checking the filing deadline as soon as you open your file and properly diarizing the date can help avoid a claim. But here are some of the “dangers” you should be aware of in your practice that can lead to a limitation period slipping between the cracks:
  - Staff departures or arrivals
  - Transfer of files between lawyers at the firm

- Firm mergers
- Lawyer or staff absence
- Vacation
- Taking on more than you can handle

Hopefully being mindful of these errors and how to avoid them may assist you in never having an insurance claim being filed against you. ■

## Our New Professionals' Assistance Program

Our Professionals' Assistance Program with **Homewood Human Solutions** is a comprehensive suite of services, available to help you and your family with issues that may affect your well-being. Whether you use **Counselling, Plan Smart Lifestyle and Specialty Counselling Services** or **Online Services**, all these services have been developed and are provided by professionals who are dedicated to improving your health and well-being. They use evidence-based practices to ensure that all of our programs and services will provide you with exceptional assistance concerning the following:

Resolving all kinds of personal, family and work-related issues that may affect your health and well-being.

Taking preventative and proactive steps in developing and maintaining healthy habits for a healthier lifestyle.

### Counselling Services

When personal, family or work-related life presentse than you can handle, face-to-face, telephonic or online counselling can be arranged quickly. Professional service providers will help you in developing the skills and making the changes that are required for you to regain control of your life.

### Plan Smart Lifestyle and Specialty Counselling Services

Whether it is because you are struggling with a legal or financial issue, have questions around parenting, have to care for an elderly person or relative or perhaps need health habits, **Plan Smart Lifestyle and Specialty Counselling Services** are there to make a difference in your life.

### Online Services

Registration is easy at [www.homewoodhumansolutions.com](http://www.homewoodhumansolutions.com)

Once you have completed your registration and have gained access to the secure Member Area, you will be provided with your own personalized home page. From there, you will be able to access a variety of different online services. Whether it is to consult health and wellness or life skills articles, or access the Health & Wellness Companion™ — an online health library, with health risk assessments and healthy habit development tools. You can also use the childcare or elder care resource locators or browse one of the many online **e-Courses**, you will find all you need to take control of your own health and well-being.

*If you are not already registered, do it now!*

## Law Society of Newfoundland and Labrador

# Background Information regarding Mandatory Continuing Legal Education

### Introduction

Beginning in 2016, the Law Society of Newfoundland and Labrador (the Law Society) will require that every practicing member of the Law Society:

1. Participate in a minimum level of Continuing Legal Education (CLE) activities annually;
2. Provide information to the Law Society annually, outlining details of these CLE activities, using the Law Society's CLE Annual Report and Plan form; and
3. Provide a continuing legal education plan for the following year, using the Law Society's CLE Annual Report and Plan form.

### Mandatory CLE Requirements

Specifically, the Law Society will require all practicing members to complete a minimum of 15 hours of eligible CLE activities annually.

Benchers have determined that the inaugural year for participating in and reporting mandatory CLE activities will be 2016. Members will be expected to report their 2016 CLE activities, and their future CLE plans for 2017, using the CLE Annual Report and Plan form which will be provided by the Law Society.

### Eligible CLE Activities – Content Requirements

Eligible CLE activities must contain significant substantive law or practical content with the primary objective of enhancing a member's professional competence. As indicated above, members will be required to complete a minimum of 15 hours of eligible CLE activities annually. Eligible CLE activities must be:

- relevant to the member's present or perceived future professional needs;
- directly related to the member's current or anticipated practice areas; and/or
- relevant to professional ethics and the professional responsibilities of lawyers.

Eligible CLE activities should include significant substantive, procedural, technical or practical legal content.

The mandatory CLE activity requirement can be met in many ways; for example, in a classroom setting, by reading legal publications (periodicals, digests and journals), listening to podcasts, watching recorded programs and seminars, or through live online CLE programming.

Eligible CLE activities will include activities and content dealing with one or more of the following areas:

- the practice of law (including ethics, professional responsibility, practice standards, substantive law, procedural law etc.);
- lawyering skills (such as advocacy, drafting, research, communications, interviewing, negotiation etc.); and
- practice management (including client relations, wellness, time management, practice technology etc.).

### Examples of Eligible CLE Activities

To qualify as an eligible CLE activity, the activity must be directly related to improving professional competence in the member's practice.

Some examples of eligible CLE Activities would include:

- Attendance at live CLE activities – Attendance at live seminars, courses, educational components of conferences, live webcasts, telecasts or live on-line courses etc., would all be eligible activities, provided the content requirements (outlined above) are met.

*(N.B. Obviously, only those hours where a member is in actual attendance at the course, seminar or educational component of a conference etc. are considered eligible hours.)*

- Teaching / Lecturing / Instructing in a law course, CLE seminar etc. – Teaching in a legal context is an eligible activity, to a maximum of six hours per year, provided that the content requirements (outlined above) are met in the material that is taught. There are no restrictions or requirements on the audience, except that presentations designed for clients would not count towards eligible CLE activities.
- Writing - Authoring legal texts, legal articles or other written materials is an eligible CLE activity, to a maximum of six hours per year, provided that the content requirements (outlined above) are met. As well, to be an eligible CLE activity the primary purpose of the written material should be for use in an educational program, or to educate about the law. However, written material produced as part of the member's regular employment or practice, or for client development, would be excluded.

- Self-study/Reviewing written or recorded materials – Self-study or reviewing written materials (current legal articles, textbooks, case reports, journals etc.) or reviewing recorded CLE courses or activities (recorded online seminars, podcasts, recorded audio or video CLE courses etc.) are eligible CLE activities, to a maximum of 3 hours per year, again provided the content requirements (outlined above) are met.

### Examples of Non-Eligible CLE Activities

Some examples of non-eligible CLE activities would include:

- Activities which do not meet the content requirements (outlined above) or which are not directly related to improving professional competence;
- Activities relating to mentoring, including being a Principal to an Articled Student-at-Law;
- Activities relating to marketing or profit maximization or primarily designed for clients;
- Activities undertaken for an employment purpose, or prepared and delivered in the ordinary and usual course of practice or employment.

### Compliance with the Requirements

It will be each member's responsibility to ensure that a proposed CLE activity meets the content requirements set out by the Law Society and, therefore, qualifies as an eligible CLE activity.

The Law Society will have discretion to determine whether specific activities meet the requirements, and are or are not eligible CLE activities. It is anticipated that the Law Society will not be unreasonably prescriptive or rigid in assessing

what is or is not an eligible CLE activity.

The Law Society will not assess or accredit providers, content or subject matter in advance. However, it is anticipated that many professional learning activities will qualify and meet the requirements of an eligible CLE activity, provided a common-sense and reasonable nexus or link can be demonstrated between the activity and an enhancement in professional competence.

### CLE Annual Report and Plan - Reporting Requirements

Members will be required to complete and submit a document annually to the Law Society, referred to as a *CLE Annual Report and Plan form*. This document will have two parts; a report on eligible CLE activities for a given year and a plan for CLE activities for the following year.

The CLE Annual Report portion of this document will provide details on the member's CLE activities for the year in question. The CLE Plan portion of the document will contain a series of questions aimed at helping members identify their professional development activities for the following year. It is meant to provide a useful framework and guideline by which members can plan to participate in future professional development activities which are relevant to their needs and practice areas, and which can further enhance their competence.

This CLE Annual Report and Plan form will provide an annual record of members' CLE activities and will also provide a framework by which members can assess and meet their future requirements for professional development and continuing legal education. The submission deadline for filing in a given year would likely be the end of January of the following year.

### Failure to Report or Comply with Requirements

The consequences for members who fail to fulfill the requirements may include administrative sanctions in the nature of late fees, plus the requirement to make up the required hours of eligible CLE activities within a specified time period and, in extreme cases of non-compliance, a possible administrative suspension.

### Exemptions

Members who are subject to comparable mandatory CLE requirements in another Canadian jurisdiction (for example, a member of another Canadian Law Society who has fulfilled that other Law Society's requirements by participating in CLE activities), may count these CLE activities towards the requirements of the Law Society of Newfoundland and Labrador.

Members with non-practicing or life membership status would not be required to meet the requirements while not practicing. A member holding both non-practicing and practicing status in the same year would need to meet the requirements for that part of the year when practicing status was held.

Members who are claiming an exemption from complying with the requirements can identify their exemption on the CLE Annual Report and Plan form.

### Monitoring

The Law Society will monitor compliance with the Mandatory Continuing Legal Education requirements by reviewing *CLE Annual Report and Plan forms* submitted by members. At the Law Society's request, a member may be asked to provide further information or documentation relating to the details of the member's participation in a CLE activity and/or the eligibility of a reported activity. ■

## Complaints Authorization Committee

The Complaints Authorization Committee, a statutory committee comprising two lawyers and a public representative all of whom are Benchers of the Law Society, reviews the *allegation* to determine whether there are reasonable grounds to believe that the lawyer has engaged in conduct deserving of sanction. If the answer is no, then the Complaints Authorization Committee will dismiss the *allegation*. The Act prescribes that a complainant whose *allegation* is dismissed by the Complaints Authorization Committee, may file a notice of appeal, within 30 days, with the Registrar of the Supreme Court.

When the Complaints Authorization Committee's opinion is that there are reasonable grounds to believe that the lawyer has engaged in *conduct deserving of sanction*, there are two results:

- (i) the *allegation* is considered as constituting a Complaint; and
- (ii) the Complaints Authorization Committee may issue a letter of counsel or a letter of caution to the lawyer, or instruct the Vice-President to file the Complaint against the lawyer and refer it to the Disciplinary Panel.

Counsel is advice. Caution is a warning. Both are intended to assist the lawyer in his or her future conduct. A finding of guilt has not been made against the lawyer because a finding of guilt could only be made following a Hearing.

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

**Letters of Caution** were issued by the CAC with respect to the following Complaint.

Complaint that the member's communication with the opposing lawyer, through written correspondence and a voice-mail message, which included *inter alia*, personal criticism of the opposing lawyer and the statement "*I am going to recommend to my client to take some kind of action - I'm not sure what kind yet because I know there is something very wrong with this email that you sent*", is inconsistent with the proper tone of a professional communication and does not comply with the standard of conduct contemplated by the *Code*. The Complaints Authorization Committee is of the opinion that all communications between lawyers, including private communications, must be consistent with the standard prescribed by the *Code*. (*Code of Professional Conduct (2013) chapter 7, rule 7.2-1 commentary 7.2-1[3] and rule 7.2-4*)

Complaint that the member's distribution of a Brief criticizing the Court and the judiciary does not comply with the standard of conduct contemplated by the *Code*. The Complaints Authorization Committee noted the member's submission "*that you have a duty as a lawyer and officer of the Court to bring these matters to the attention of the legal community and the public generally.*" The Complaints Authorization Committee is of the opinion that the member's obligation, if any, in these circumstances was ameliorated by the fact that the member was a party to the proceedings. Furthermore, and as acknowledged by the member, an application to seek leave to appeal to

the Supreme Court of Canada was the procedurally correct next step. (*Code of Professional Conduct (2013), chapter 5, rule 5.6-1*)

Complaint that the member's conviction under sections 253(a) and (b) and 255(1) of the Criminal Code does not comply with the standard of conduct contemplated by the *Code*. The Committee noted that although the member cooperated fully with the Law Society, this is the member's second offence. In the opinion of the Committee such conduct does not meet the standard of conduct required by the *Code* and expected by the public. (*Code of Professional Conduct (2013), chapter 2, rule 2.1-1 and commentaries 2.1-1[2] and [3]*)

Complaint that the member's quality of service provided does not comply with the standard expected of a prudent solicitor and that the member failed to fulfill a solicitor's obligations with respect to conflict and communication issues. The Complaints Authorization Committee is of the opinion that the likelihood of the interests of the parties conflicting was so high that a prudent solicitor would have referred the clients for independent legal advice and obtained the clients' consents to the Joint Retainer. Furthermore, when representing parties on a Joint Retainer, a solicitor should be alert to the duty to communicate with all parties. Effective communication with clients is paramount in achieving client satisfaction. What is effective communication for one client may not be sufficient for another depending on the needs and sophistication of the client. (*Code of Professional*

*Conduct (2013), chapter 3 – rule 3.2-1 and commentaries 3.2-1[2], [3] and [5], rule 3.2-2 and commentary 3.2-2[1], rule 3.4-1 and commentaries 3.4-1[1], [2], [3], [4], [5], [6] and [7], rule 3.4-2 and commentaries 3.4-2[1], [2], [3], [4], [5] and [6], rule 3.4-5 and commentary 3.4-5[1], rule 3.4-6, rule 3.4-7 and commentary 3.4-7[1] and rule 3.4-8 and commentaries 3.4-8[1] and [2]*

A **Letter of Counsel** was issued by the CAC with respect to the following Complaint.

Complaint that the member's failure to ensure the accuracy of the facts prior to putting forward a statement to a witness, about a third party, who was not represented by counsel and did not have the opportunity to respond, does not comply with the standard of con-

duct contemplated by the *Code*. The Complaints Authorization Committee is of the opinion that there is a higher onus on the lawyer to ensure the accuracy of the statement, when making a statement of a serious nature about a third party, who does not have the opportunity to respond. (*Code of Professional Conduct (2013), chapter 5, rule 5.1-2, commentary h*) ■

## The Law Society Library

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- Criminal Law
- Family Law
- Torts
- Corporations, Securities and Commercial Law

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WestlawNext Canada

Quicklaw

LexisNexis International

HeinOnline

O'Brien's Forms

We can search any of these databases and provide you with the results. Ask us for case law, statutes, regulations, forms, commentary, articles...you are only limited by your imagination.

***Library Staff Gail Hogan and Rosie Myers, are here to assist you with your research needs, by answering your questions, with free book delivery, assisting you with research strategies. If you can think of the question we are more than willing to help.***

***Please contact Gail or Rosie at [lawlibrary@lawsociety.nf.ca](mailto:lawlibrary@lawsociety.nf.ca) or 1-800-984-7770.***

***We look forward to hearing from you!***

## 2014 Award Winners



### Award Presentations at the Law Society's Annual Dinner, 2014

**Photo 1:** President, Kenneth Baggs, QC and former President, Justice George Murphy

**Photo 2:** 2014 Award Winner: Ms. Sophie St. Croix. Award presented by Ms. Elizabeth Hunt and Chief Justice Alex Hickman. (*Award in Memory of Charles E. Hunt, QC and The Honourable Mr. Justice Douglas C. Hunt*).

**Photo 3:** 2014 Award Winner: Ms. Sophie St. Croix. Award presented by Judge Lois Skanes (*Provincial Court Judges' Association Award*).

**Photo 4:** 2014 Award Winner: Ms. Sophie St. Croix. Award presented by Marcus Evans, QC (*Award in Memory of Edward J. Penney*).

**Photo 5:** 2014 Award Winner: Mr. Lee English. Award presented by Father William Browne (*William J. Browne Scholarship*).



**Photo 6:** 2014 Award Winner: Ms. Kirsten Calon. Award presented by Barry Fleming, QC. Ms. Gerlinde van Driel, QC accepting award on behalf of Ms. Calon (*The Maxwell J. Pratt Scholarship*).

**Photo 7:** 2014 Award Winner: Mr. Justin Dunphy. Award presented by Raelene Lee (*Award in Memory of Wayne F. Spracklin, QC*).

## Call to Bar 2014 - 2015

**June 13, 2014**

1st row (l-r): M. Kennedy, L. Smith, R. Sheppard

2nd row (l-r): B. Trask, J. Strickland, R. Parsons,  
J. Moore, N. Jenkins



**October 17, 2014**

1st row (l-r): S. Clarke, L. Bursell,  
A. Bill, K. Hanlon

2nd row (l-r): S. Wicks, J. Tellez, I. Nault

3rd row (l-r): J. Lehr, E. O'Gorman, A. Tong



**February 13, 2015**

1st row (l-r): A. Ding, A. Kindervater,  
M. Sheppard, D. Bennett

2nd row (l-r): S. Murphy, H. Chapman, E. Young,  
S. Lichti, M. Moulton

3rd row (l-r): J. McDonald, N. Hearn,  
T. Bannier, D. Foley, J. Caines



**April 17, 2015**

1st row (l-r): M. McCaw, M. Wentte, J. Rae

2nd row (l-r): C. Moulant, C. Andrews

