

Benchers' Notes

May 2003

Volume 9, Number 2

These Benchers' Notes cover the Winter Term Convocation of January 27, 2003, the Adjourned Winter Term Convocation, Call to Bar of February 5, 2003, the Spring Term Convocation of April 7, 2003 and the Spring Term Convocation, Call to Bar of April 9, 2003. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar. This and previous editions of Benchers' Notes, beginning December, 1999, are available at www.lawsociety.nf.ca

Law Societies Sign National Mobility Agreement



Recently, the President of the Law Society of Newfoundland, William H N Goodridge, QC, attended a ceremony at the Law Society of Upper Canada, Osgoode Hall offices, and there signed with seven other executive officers, the Federation of Law Societies' National Mobility Agreement. As other jurisdictions approve the Agreement, further signing ceremonies will be held.

Attending the Signing Ceremony in the Great Library of the Law Society of Upper Canada are,

Standing, left to right: William H N Goodridge, QC, President, Newfoundland; Gail Rudderham Chernin, First Vice-President, Nova Scotia; Me Pierre Gagnon, Vice-President, Quebec; Lori T Spivak, President, Manitoba; Maurice O LaPrairie, QC, Past President, Saskatchewan; Kenneth G Nielson, QC, President, Alberta; and Richard C Gibbbs, QC, President, British Columbia.

Seated left to right: Law Society of Upper Canada Treasurer, Professor Vern Krishna, QC, who is also Chair of the Federation's National Mobility Task Force, and Sherron J L Dickson, QC, President, Federation of Law Societies of Canada.



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First Convocation in New Law Society Building



With completion of the Law Society building in February, the first Convocation was held on Monday, April 7, 2003.

Photographed at the boardroom table in Convocation Hall are:

Seated from left to right, Marina Whitten, Brian Furey, George Murphy, Paul McDonald, Barry Sparkes, QC, Beverly Marks, QC, Ted Janes, *lay Bencher*, Dr Bernice Morgan, *lay Bencher*, Stephanie Newell, William Goodridge, QC, Bert Riggs, *lay Bencher*, Edward Hearn, QC, Sheila Greene, Irene Muzychka, Terry Rowe, Phyllis Weir, John Greene, *lay Bencher*, Jeffrey Benson, QC

Standing from left to right, John Brooks, QC, Glen Noel, Peter Ringrose, Frank O'Brien, Robert Sinclair, QC, Toby McDonald

Call to Bar - February 5, 2003



Eighteen lawyers were Called to Bar on February 6, 2003 and are shown above in Court Room #1 with The Honourable Chief Justice J Derek Green. *Seated from left to right*, Jay Neville, Shirley Walsh, Chief Justice Green, Nancy Kleer, Kendra Wright, Christine Enta.

Standing from left to right, Lorilee Sharpe, Barbara Barrowman, Jonathan Hall, Cindy Starkes, Ken Mahoney, Toby Bristow, Doug Wright, Andrew Fitzgerald, Susan Day, Jim Bennett, Raelene Lee, Tracey Trahey, Twila Reid.

Winter Term Convocation, January 27, 2003, and Spring Term Convocation, April 7, 2003

Topics of national and regional interest were discussed at the Convocation, including the National Mobility Agreement and an Atlantic Code of Professional Conduct. The President, William H N Goodridge, QC, spoke about the continuing work on the National Mobility Agreement that soon will enable lawyers in signatory provinces and territories to practice in other signatory jurisdictions for up to 100 days in a 12 month period. Full implementation of the Agreement will take several more months, the time necessary for Rule changes.

Some statutory amendments to the *Law Society Act, 1999*, will be necessary also before full implementation is possible. The Education sections of the *Act* need to be relaxed to permit members from other provinces to become members in Newfoundland and Labrador without the current articling requirements upon transfer.

Concerning regional topics, the President spoke again of agreement amongst the Atlantic law societies to implement a common Code of Professional Conduct. The new Code will be the one recently adopted in New Brunswick and developed for that Law Society by Beverley G Smith, QC. Many members will recall Professor Smith for his excellent classes in Professional Conduct at the University of New Brunswick Faculty of Law. Before adopting the proposed new Code, Benchers asked for the Code to be examined by a Committee of members to be chaired by Augustus G Lilly, QC. Review and approval of the proposed Code with likely require 12 months.

Commenting generally upon the benefits this Society derives from membership in the Federation of Law Societies, the President remarked that the work of the Federation nationally, and with national concerns, has enabled individual societies to think broadly and regionally also. The increased cooperation amongst Atlantic law societies on a Code of Professional Conduct is an excellent example of policies informed by broader perspectives.

The Federation's broader perspectives include national and Constitutional interests when they impact upon the profession and the public interest. Members will recall that, last year, the Federation and its member societies initiated actions against the Government of Canada because of concerns arising out of the government's money-laundering legislation. The legislation undermined the solicitor-client relationship and required lawyers to report to government about certain types of financial transactions. Benchers of the Law Society of Newfoundland, and Benchers across Canada, committed approximately \$7.00 of each member's fees to date to litigate the legislation in British Columbia where an action was first begun. Locally, we enlisted the generous *pro bono* assistance of Mr Greg Anthony and the Hon John C Crosbie, PC, QC, at Patterson Palmer, to initiate litigation in our courts. Recently, and as a direct result of the Federation's initiative and successful actions across Canada, the Government of Canada announced it would abandon the legislative proposals insofar as they impact upon solicitor-client privilege. This is a remarkable achievement and further underscores the value of participation in the Federation.

The President mentioned as well his own involvement with the Federation. He is involved actively in the restructuring of the Federation's Board of Directors and sits on the *pro tem* Board. One of the changes proposed makes individual law societies members on the Federation's Board; under the current system, Board members are appointed and, amongst the smaller societies, one Director is appointed to represent two societies. Newfoundland and Labrador and Nova Scotia are paired under the current system, and a Board member is appointed from one of the societies to represent both for a five year term. Further with Federation activities, the President noted that he is involved as well in developing national Rules for implementation of the Mobility Agreement. This work, and work on the structural changes

in the Federation, has required considerable travel for the President, at Federation expense.

Benchers discussed the continuing development of a File Closure, Storage and Destruction Policy. The Executive Director stated that the Policy has now been reviewed by several Committees and is under consideration by the Law Society's insurers, LawPRO. He intends for the Policy to be reviewed and available for Benchers' consideration at the Summer Term Convocation of June 6.

Law office searches by police, and Law Society policy as it relates to these searches, were discussed briefly also. A Report from Mark Pike on this topic was considered, several questions posed, and agreement the Report should be returned for consideration again at the Summer Term Convocation. Benchers took the position that certain members should be appointed as supervisory personnel who could be available and attend if requested by a member at a law office search.

Insurance Committee

The Insurance Committee draws to your attention that the current LawPRO insurance policy no longer covers members' liability when they sit on a Board of Directors.

Archives Committee

A few years ago, Benchers decided to photograph all available former Treasurers and Presidents of the Law Society and to place their portraits in the Law Society building. Working to this objective, it became clear that several former Treasurers were not known to us, these dating from the early days of the Law Society. The Archives Committee have now successfully traced the names of all Treasurers from 1846, and with one exception have traced an oil portrait or photograph of each. Over the next year, all these will be photographed digitally and reproduced for inclusion with the more recent Treasurers and Presidents.

Changes In Status

Benchers approved the following application for changes in status:

— **Winter Term Convocation** —
January 27, 2003

Applications to Elect Non-Practising Status

Jeffrey B Cutler	Roll #1203
C Bradley Leyte	Roll #1054
Ann F Martin	Roll # 815
Ann McLoughlan	Roll # 606
Desmond K Parsons	Roll # 996
Frank van Penick	Roll # 866

Notice of Resumption of Practising Status

David R Power	Roll # 699
Sharon Worthman	Roll # 933

Application to Resign Membership

Alice K Barnsley	Roll #1069
Michelle Elliott	Roll #1079
Diane P Rowe	Roll #1119

— **Spring Term Convocation** —
April 7, 2003

Applications to Elect Non-Practising Status:

Denes Bajzak	Roll # 724
John Byrne, QC	Roll # 334
Darragh McManamon	Roll # 939
Frances Knickle	Roll # 844

Notice of Resumption of Practising Status:

Morgan Cooper	Roll # 912
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Request for Reinstatement

Janine Evans	Roll # 743
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CIBC Refusing Uncertified Trust Cheques

The Society learned recently that CIBC is refusing to accept on deposit the uncertified trust cheques of members. In some instances, and where the depositing member is a longstanding customer and known to CIBC, the bank will accept an uncertified cheque to that depositing member's account. However, where the depositing member is not known, that is, not a longstanding client of CIBC, then an uncertified cheque is unlikely to be accepted. This change in policy by the bank imposes difficulty for depositing members who do not have longstanding relationships with CIBC. The policy will impact upon property and other transactions where closing delays carry many implications. The Law Society is investigating this new policy. Nevertheless, difficulties of this type demonstrate the need for electronic transfers of trust monies.

For some months now, the Law Society's Practice Rules Compliance Committee has been working to approve a new Trust Account Rule that will permit the electronic transfer of trust monies. The proposed new Rule, in draft, will be presented to Benchers at the Summer Term Convocation on June 6. A Rule change to permit the transfers is likely before year-end. The Rule as currently proposed still requires the authorizing signature of a member before a trust transfer can be initiated, and thus a paper trail will be available to auditors. Nevertheless, the ability to transfer trust funds without a cheque will simplify and speed many transactions and avoid the controversies occasionally arising with cheques.

ORDER OF MILITARY MERIT APPOINTMENT

On January 17, 2003, the Judge Advocate General for Canada, Major General Jerry Pitzul, QC, announced the appointment, by Her Excellency the Governor General of Canada, of **Colonel Kenneth W Watkin** to the Order of Military Merit. The Order of Military Merit is considered as the Military equivalent of the Order of Canada. Colonel Watkin, who is a senior member of the Judge Advocate General's Branch of the Canadian Forces, will be inducted into the Order at a ceremony later this year to take place at Rideau Hall in Ottawa. Col. Watkin received his LLB and LLM from Queens University and has been a member of the Newfoundland Bar since the early 1980's. In his role with the JAG Branch, Col Watkin has acted as the Deputy Judge Advocate for Petawawa, the Director of Law (Prosecutions and Appeals) throughout the Canadian Forces, as well as the Director of Law (Prosecutions and Appeals) throughout the Canadian Forces, as well as the Directorship of various divisions of the JAG Branch. More recently he has acted as Government Counsel in respect of the various tribunals and inquiries arising from the genocide in Rwanda. He has also acted as the legal advisor to the 2nd Battalion Multi-National Brigade in Bosnia. Colonel Watkin is presently pursuing post-Graduate studies at Harvard University.

IN MEMORIAM

CHRISTOPHER M SULLIVAN,

ROLL #774

CALLED TO BAR JULY 3, 1990.

BENCHERS NOTE WITH REGRET
 THE DEATH OF CHRIS SULLIVAN
 WHO PASSED AWAY ON

MONDAY, MARCH 10, 2003,

AT THE AGE OF 38 YEARS.

CONDOLENCES WERE EXTENDED

TO HIS FAMILY BY THE

PRESIDENT AND BENCHERS.

BERT RIGGS AWARDED QUEEN'S GOLDEN JUBILEE MEDAL

Bert Riggs, a lay Bencher with the Law Society since 2000, was presented the Queen's Golden Jubilee Medal on Thursday, April 24, 2002. The Medal is awarded to Canadians whom have made a significant contribution to their fellow citizens, their community, or to Canada. Mr Riggs received the Medal for his contribution to the preservation of Newfoundland and Labrador history through his work at the Centre for Newfoundland Studies, for his weekly column in the Telegram, and for 13 years service on the Human Rights Commission. Congratulations, Bert!

Complaints Authorization Committee

The Complaints Authorization Committee (CAC) is a statutory committee of Benchers mandated to address the first phase of the regulatory 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 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)). The Committee may also 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 choose 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.

Letters of Counsel have been issued by the CAC because of the following Complaints.

Three Complaints of failing to communicate with and failing to provide prompt service to clients as contemplated by the Code. - (*Code of Professional Conduct, chapter II, Rule b, commentaries 7 and 8*)

Complaint of failing to obtain a conflict letter from clients when representing the vendors and the purchaser in a real estate transaction and Complaint of failing to adequately supervise a legal assistant when a potential conflict arose. - (*Law Society Rules 12.04(d) and 12.07(a) - Code of Professional Conduct, chapter V, commentaries 4, 5, 10 and 11, and chapter XVII, commentaries 3, 4, 5 and 6.*)

Discipline Committee

The role of the Discipline Committee is separate entirely from the Complaints Authorization Committee. 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 Kent Morris

An Adjudication Panel of the Discipline Committee, in a Decision dated January 31, 2003 and pursuant to section 46(3) of the *Law Society Act, 1999* found Kent Morris guilty of conduct deserving of sanction for:

- failing to comply with Rule 5.03(5) of the *Law Society Rules* requiring a Bill of Fees to be rendered to the client before money has been withdrawn from a trust account; and
- failing to comply with Rule b contained in chapter II of the *Code of Professional Conduct* requiring information be provided in a timely manner when requested by a client.

The member entered a guilty plea and the matter proceeded by way of an Agreed Statement of Facts. The Adjudication Panel noted that there was no indication that the member acted in a dishonest manner or attempted to misappropriate funds that he had not earned.

The Adjudication Panel ordered that the member be reprimanded, that the member pay the expenses of the Law Society in the investigation and hearing of the Complaint and that the results of the discipline proceeding be published in the normal manner.

Adjudication Panel Decision re Douglas G. Harvey

An Adjudication Panel of the Discipline Committee, in a Decision dated February 18, 2003 and pursuant to the *Law Society Act, 1999*, subsection 46(3) found Douglas G. Harvey guilty of conduct deserving of sanction.

Mr. Harvey entered a guilty plea to the following violations of the *Code of Professional Conduct*:

- i) failed to act with integrity contrary to the Rule contained in chapter I;
- ii) failed in his duty as advocate contrary to the Rule contained in chapter IX;
- iii) failed to encourage public respect for the administration of justice contrary to the Rule contained in chapter XIII; and
- iv) failed in his responsibility to a lay person lawfully represented herself contrary to the Rule contained in chapter XVI.

The Adjudication Panel noted that Mr. Harvey had apologized to both the lay person and to the Law Society. The Panel ordered that the member be reprimanded; that the member pay the expenses incurred by the Law Society in the investigation and hearing of the Complaint; and that publication of the disposition of the Complaint by made in accordance with Law Society Rule 9.28.

Educational Notes

Continuing Legal Education

The Joint Committee on Continuing Legal Education is continuing its programming for 2003. A number of seminars have recently been held. These included:

1. *New Developments in Family Law for 2003*. This seminar dealt with new Family Law Rules in the *Rules of the Supreme Court, 1986* which dramatically change procedural aspects of family law practice. Seminars on this topic were presented in St John's, Corner Brook and Goose Bay, Labrador. Many thanks to our presenters the Honourable Chief Justice J Derek Green, Mr Justice Richard LeBlanc and Mr Brian Furey, of the Department of Justice who spoke at the St John's seminar. We also thank Ms Gerri Smith of the Department of Justice who presented on this topic in Corner Brook along with Chief Justice Green and Justice LeBlanc, and Justice LeBlanc for his attendance in Labrador to present on these rules. The seminars were very well received by attendees and the seminar materials included a CD which contain the new rules and forms.
2. *The New Court Ordered Mediation Rule: What Lawyers and Mediators Need to Know*. On April 4, 2003 there was a seminar on the new Court Ordered Mediation Rule. Thank you to our presenters the Honourable Chief Justice J Derek Green, Ms Gillian D Butler, QC, Ms

Christine A Fagan, QC, Mr James C Oakley and Mr W John Clarke for their presentations at this seminar. The seminar was the first to be held in the new Law Society Building. The feedback received from attendees indicates that it was very well received and a great overview of the new Rule and of the mediation process generally.

3. *Title Insurance for Legal Assistants/Legal Secretaries*. On April 14, 2003 we presented a seminar for legal assistants/legal secretaries to assist them in their understanding of title insurance in a real estate transaction. Many thanks to Ms Donna Hart, a lawyer with TitlePLUS and Mr Chris March, National Consultant with TitlePLUS for their attendance at this seminar, which was very well attended and a unique educational opportunity for legal support staff. Based on the interest in this seminar, we plan to do more seminars for legal support staff in future.

A number of Continuing Legal Education seminars are being planned for the near future. In late May we are planning a seminar on Damages, in early June we are planning a seminar on Law Office Management and Practice Management, and in mid-June a seminar is planned in conjunction with the CBA Annual Meeting in Terra Nova.

We look forward to seeing you at an upcoming seminar.

RULES OF COURT AMENDMENTS

Supreme Court of Newfoundland and Labrador, Trial Division

- 1) The Court Ordered Mediation Rule 37A, enforced April 1, 2003, has been incorporated into the Rules of the Supreme Court, 1986, and can be accessed at www.gov.nl.ca/hoa/regulations/RulesSC/Rc86ru37A.htm

Ms Margaret Williams has been appointed as the "Mediation Coordinator" by the Registrar pursuant to Rule 37A.01(d) and may be contacted at 729-1319 or margaretwilliams@mail.gov.nl.ca

- 2) Amendments to the Rules of the Supreme Court, 1986, Part II.1,

Family Law Proceedings, enforced April 1, 2003, can be accessed at www.gov.nl.ca/hoa/regulations/RulesSC/Rc86ru56A.htm

The Family Law Forms are available at www.gov.nl.ca/just/CIVIL/family_law.htm

Members Appointed to Queen's Counsel

The Swearing of Queen's Counsel took place in Courtroom No. 1 at the Court House on Tuesday, February 25, 2003.

Members newly appointed were David Hurley, Barrie Heywood, John Baker, Barry Sparkes, Eugene Ozon, Harold Smith, Jean Dawe, Dave King, Wayne Myles, and Aidan Beresford.

Following the Ceremony, the Law Society hosted a reception in Convocation Hall.



Call to Bar - April 9, 2003



Thirteen lawyers were Called to Bar on April 9, 2003. Posing outside the Court House in St. John's are:

Front, (l-r)- Erin Breen, Riley Adams, Trina Simms, Nancy Bains, Krista Simon, Crystal Critch

Back (l-r)- Shawn Patten, Jennifer Samson, Louise Powell, Andrew Wadden, Christa Reccord, Mark Rogers, and Heather MacDonald

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