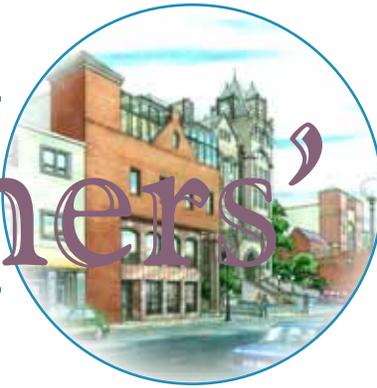

Bencher's' Notes



Spring 2013

Volume 14, Number 2

This issue of Bencher's' Notes contains information on selected topics considered by Benchers at Convocation and other items of interest to the Bar. This edition of Bencher's' Notes is available on-line at www.lawsociety.nf.ca.

President's Report



Morgan C. Cooper, President,
Law Society of NL

My year as President is nearly done and this is the first occasion I have had to connect with all of you through this column. I welcome the opportunity. Since my transition from Vice-President to President in early June, there has been much activity at the Law Society and it has been a very busy but extremely rewarding time. I would like to thank my predecessor, Mr. Augustine Bruce, for making

the transition as smooth as possible. The commitment, patience and diligence he so admirably demonstrated during his year as President of the Law Society inspired all of us and, for those of us who had the good fortune to work with him, fueled a desire to continue to review and improve our policies and processes all with the greater goal of enhanced public protection.

I would also like to take this opportunity to congratulate Ms. Brenda Grimes who has now passed the one year milestone as Executive Director of the Law Society. Ms. Grimes has faced numerous challenges since she joined the Law Society, all of which she has met head on and dealt with successfully. Her leadership, strength of character and sound judgment has been, without a doubt, evident to all.

As reported in the last edition of Bencher's' Notes, the Law Society continues to work to upgrade and update its systems. The redesign of the Law Society's website

is ongoing. A new look has been developed and the process of creating the information which will be available on the site is well underway. We expect to launch the new site, which will have a section specifically designed to serve the public, later this year.

The review of internal administrative policies, processes and operational expenses also continues. The Law Society recently introduced a Travel Reimbursement Policy and was successful in significantly reducing costs for medical benefits, long term disability, phones services and leased equipment. It is expected that further savings will be achieved as the Law Society continues to review expenses and seek alternate quotes for services as appropriate.

The Law Society continues to be involved in other important initiatives nationally through its membership in the Federation of Law Societies. These include development of national standards in the areas of discipline and education and regulation of the legal profession, topics which are discussed thoroughly at the semi-annual meetings of the Federation of Law Societies. In 2012, the annual meeting took place in Vancouver, British Columbia. The focus of this meeting was on national admission standards and, more specifically the development and adoption of a draft competency profile and possible methods of implementation. The semi-annual meeting for 2013 took place in Quebec City and the focus was on issues of risk management in a changing legal and ever more global marketplace, alternate methods of regulation and meeting public expectations. Also under consideration is the issue of what constitutes fitness to practice. As well, the Law



The Law Society of Newfoundland and Labrador

196-198 Water Street
PO Box 1028

St John's, Newfoundland
Canada A1C 5M3

Tel (709) 722-4740 Fax (709) 722-8902

Benchers' Notes

Society continues to participate in a pilot project designed to test certain discipline standards with a view to creating a uniform, national approach. These issues will be thoroughly reviewed and considered by the Federation and will be brought before Benchers for discussion and/or approval in the future.

At the local level, an ad hoc committee, chaired by Chief Justice Green has recently been considering the feasibility of establishing a law school in Newfoundland and Labrador and sought the initiation of a new review since the last study of this matter was done about 25 years ago. Law Society Benchers passed a motion in June in support of a review of the concept of a law school for Newfoundland and Labrador. A special committee has been created by the President of Memorial University to carry out that review.

One of the more enjoyable aspects of acting as President is the opportunity to attend and participate in ceremonies and receptions which recognize the accomplishments of fellow colleagues, as well as our up and coming members of the Bar. I was pleased to have the opportunity to attend swearing in ceremonies and receptions for Judge Lori Ann Marshall (Provincial Court), Madam Justice Rosalie McGrath (Supreme Court) and Mr. Justice David Hurley (Supreme Court). Fellow Bencher, Kenneth Baggs, QC, kindly volunteered to represent the Law Society at the swearing in ceremonies for Judge James Walsh (Provincial Court) and Mr. Justice Donald Burrage (Supreme Court) while Ian Wallace, also a Bencher, attended a special ceremony to honor Madam Justice Cecily Strickland (Federal Court). I have also attended four Calls to the Bar where I have seen a number of fine men and women make the passage from student to practising lawyer.

It gave me great pleasure to witness their achievements and to have the opportunity to wish them well.

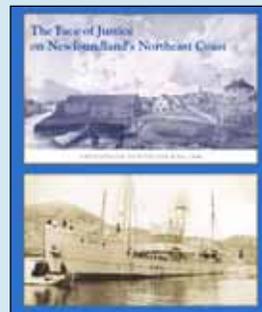
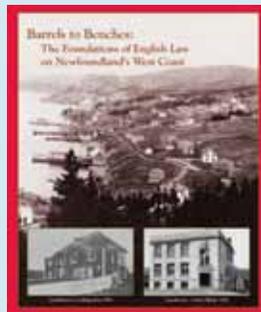
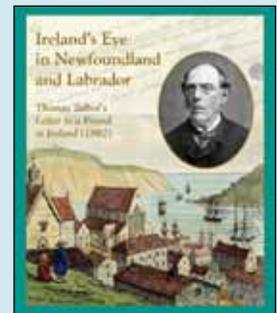
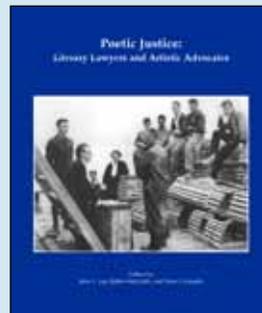
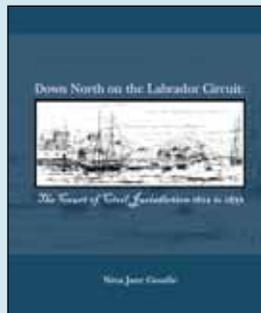
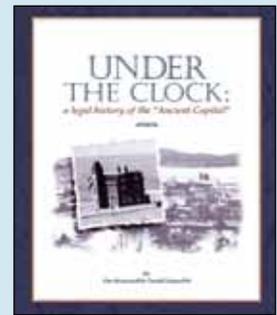
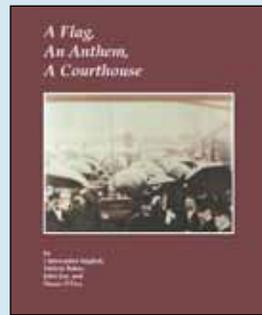
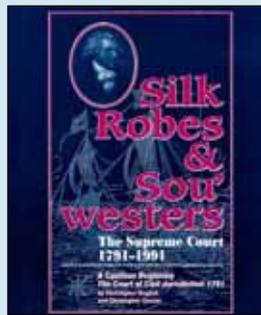
It is always sad to hear of the untimely passing of members (current or former) of our Bar, and such was the case when Law Society members, Benchers and staff learned of the sudden passing of Mr. Justice David L Russell, a former member and former President of the Law Society and Gordon Seabright, a former member and former Judge of the Provincial

Court. I attended and gave remarks at a tribute in honour of Mr. Justice Russell and while it was a solemn occasion, it was gratifying to have the opportunity to participate and to hear others comment on his life and his significant contributions to the community and the legal profession. At the time of publication a date for Mr. Seabright's tribute had not been set.

Thank you for giving me the opportunity to serve as a Bencher and as President of the Law Society. ■

Project Daisy Publications

The eight books shown here have been published in recent years by *Project Daisy*. They offer a varied and interesting look at the development of law in Newfoundland and Labrador over the last two centuries and more. And some humour, too.



Please call
722-4740
for details
on how you can
purchase a copy
or several!

Note from Brenda B. Grimes

Executive Director

Over a year has passed since I began working at the Law Society and each day brings new challenges and new opportunities for learning. As the President's Report indicates, in addition to its provincial functions, the Law Society is currently involved in a number of national initiatives which, while spearheaded by the Federation of Law Societies, often require involvement of local Law Society staff. This gives us an opportunity to exchange ideas and best practices which enhances our ability to carry out our responsibilities in this rapidly changing legal environment.

One thing I have learned since taking on this new and challenging position is that many misconceptions exist about the role of the Law Society. One of the misconceptions relates to the issue of who the Law Society serves. Many of you may not realize it but the privilege of self-regulation has been lost in a number of Commonwealth countries (some examples include England, Wales and Australia) largely because the law societies in

those jurisdictions were struggling with the dual roles of service to the members and protection of the public. Not surprisingly, tensions often exist between these two distinct mandates.

We are fortunate that, in Canada, lawyers may choose to join the Canadian Bar Association, an organization which is the "essential ally and advocate of all members of the legal profession" and whose sole function is to serve the legal profession. The existence of this organization, which is completely separate from the Law Society, provides the crucial separation of roles which was lacking in those jurisdictions where self-regulation was lost. In sharp contrast to the Canadian Bar Association, membership in the Law Society, whose role is that of regulator with the statutory mandate to maintain the integrity of the profession and protect the public interest, is not a choice but rather is a prerequisite to practicing law. This is why the Law Society cannot serve the interests of the lawyers who are members except if, in doing so, it is further



Brenda B. Grimes
Executive Director

enhancing public protection. This mandate means that the primary focus of the Law Society's governing body and its staff is protection of the public.

In order to fully realize the Law Society's mandate, Benchers and Law Society staff rely upon a committee structure. The Law Society is currently reviewing this structure and anticipates that there may be opportunities for new members to participate on a go forward basis.

I am always open to listen to any of you who may have questions, concerns and/or suggestions about how the Law Society can continue to protect the public, as are the rest of the staff here at the Law Society of Newfoundland and Labrador. ■

Professionals' Assistance Program

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

For further discussion or consultation, contact:

Rosemary Lahey, M.S.W., R.S.W.
Clinical Co-ordinator

754-3007 or 1-800-563-9133
rmlahey@nl.rogers.com

In Memoriam

Benchers and members were saddened to hear of the passing of our esteemed colleagues.

The Honourable Mr Justice David L Russell

#295; called to the Bar December 15, 1969

Died September 29, 2012

Gordon Wilburn Seabright

#540; called to the Bar June 26, 1981

Died May 14, 2013

Important Notice to Practising Insured Members

1) The Year-End of Your Insurance Policy and Potential Claim Notice

The policy year for your Canadian Lawyers' Insurance Association (CLIA) policy ends at midnight June 30 each year. Section 4.2 of the policy states that the policy provides coverage for claims made during the policy period provided you had no knowledge of a claim or potential claim before the policy period commenced and could not reasonably have foreseen that a claim might arise. If you had knowledge of a claim, or potential claim, and did not report it, then the claim will not be covered after June 30.

If you know of any circumstance which might give rise to an insurance claim against you and you want to assure coverage under your insurance policy, then you must report those circumstances to the Lawyers' Insurance Programme before the end of June, 2013.

There is no extension permitted for late reporting.

2) Excess Professional Liability Insurance Option

Lawyers in Newfoundland and Labrador have mandatory insurance coverage of \$1 million. Recent claims experience demonstrates that for many members, \$1 million in insurance coverage is no longer sufficient, especially when the mandatory limit not only includes damages but also defence costs. Costs to defend claims are ever-increasing. Lawyers and law firms without excess insurance have to satisfy any claims over \$1 million out of their own pockets. Excess coverage can be purchased through the Canadian Lawyers' Insurance Association (CLIA) in amounts from \$1 million to \$9 million. The premium rate structure per lawyer is as follows:

- \$1 million per occurrence/and aggregate = \$ 343
- \$2 million per occurrence/and aggregate = \$ 504
- \$3 million per occurrence/and aggregate = \$ 589
- \$4 million per occurrence/and aggregate = \$ 624
- \$9 million per occurrence/and aggregate = \$ 873

If you wish to purchase excess insurance, please contact Janice Ringrose, your Insurance Administrator, at 726-6008, or email at insurance@lawsociety.nf.ca

High Cost of Missed Limitations

The largest single area of insurance claims in Newfoundland and Labrador continues to be missed limitations. Since joining with the Canadian Lawyers' Insurance Association (CLIA) in 2005, 280 out of 474 claims, or 59%, involve missed limitations, whether from missing the time to file a Statement of Claim, failing to serve a Statement of Claim within time, missing an appeal period, or even failing to know the limitation date. For years now, members in this province have experienced the highest proportion of missed limitation claims amongst all Canadian law societies. As well, our experience is even unique in the North American context. No American insurer known to us has limitation claims for lawyers in the volume experienced here.

In most cases, once the limitation for filing a Statement of Claim is missed there is little, if anything, that your Insurance Programme can do to repair the damage. Generally speaking, with a missed limitation the liability is definite and what remains is simply a matter of negotiating quantum and issuing a cheque - with the insured member responsible for the \$5,000 deductible.

Every law firm, no matter the size, should have a proper system for diarizing files, file limitation periods, and other file deadlines. Diary systems can run from customized computer programs to a

manual date book entry system. What is important is that, whatever system is selected, it is used diligently. Often the insured member reporting a missed limitation has an adequate diary system available in the office but the information was not entered correctly or was not entered at all through inadvertence. In other instances, the member's diary system correctly identified the file but the file was lost in the clutter on the member's desk. Establishing office policies and procedures for dealing with limitation periods and other deadlines would eliminate many or most of these problems. A periodic review of such policies provides the opportunity to update diary systems from time-to-time and to ensure they continue to reflect actual current practice.

In summary, a missed limitation is a costly and preventable mistake. Given the experience with such claims in Newfoundland and Labrador in recent years, and when we compare our experience with the rest of Canada, it is reasonable to assert that, if our limitation claims were brought into line with the Canadian experience as a whole, then members would find significant savings in their annual premium costs.

Lawyers' Insurance Programme

Decisions, Decisions, Decisions

Below is a brief summary of some of the decisions taken by Benchers during the period from June to December 2012.

June 2012:

At his final meeting of Benchers as President of the Law Society, held on June 8, Gus Bruce reported on his activities since the previous meeting in April. This included officiating at a Call to the Bar ceremony on April 13, which saw five new lawyers admitted to membership in the Society; attending the Newfoundland and Labrador Land Surveyors Annual General Meeting on May 4; and several meetings with Law Society staff and committees.

Jeffrey Benson, a former President of the Law Society, and Chair of the Society's Professional Law Corporations Committee, was invited to attend this meeting to brief Benchers on recommended changes the committee is proposing to the *Act*, Rules and Forms of the Society. Recommendations proposed include broadening the definition of the types of persons who could hold non-voting shares in a Public Law Corporation and their relationships to the lawyers who owned the corporation; restricting the definition of child in order to prevent stepchildren from holding non-voting shares; and bringing compliance review in-house. After a lengthy discussion on the Committee's report, Benchers approved the first and third recommendations above, but substituted an alternate definition of child that had been suggested by the Executive Committee of the Law Society. It was the opinion of a majority of Benchers present that it was not the role of the Law Society to attempt to define or restrict what constitutes a family.

The Insurance Committee report was presented by the Committee's Chair, Paul Burgess. He began his remarks by informing Benchers

that Steve May, who is the Law Society's representative on the board of the Canadian Lawyers Insurance Association (CLIA), has been elected secretary-treasurer of that organization. On the insurance front, the committee is recommending that the deductible remain at \$200,000 for the coming year. Mr. Burgess provided an update on governance matters affecting CLIA but was quick to point out that any rule changes would not affect premiums paid by CLIA members, which will continue to be determined by CLIA's actuary.

Barry Fleming, Chair of the Finance and Accounts Committee, reported that the Committee had completed work on the Society's Investment Policy Statement, from which the Society should be able to stabilize its long-term investment growth.

On the Discipline front, Morgan Cooper, Chair of the Complaints Authorization Committee, indicated that the committee had had a very busy year and he expressed his appreciation to committee members Linda Harnett, Glenda Reid, Marina Whitten, David Eaton and Phyllis Weir, who devoted a great amount of time and energy to the Committee's work over the past year. He pointed out that a great deal of the Committee's work is carried out in camera and Benchers are often not aware of the demands sitting on this committee entails.

Ian Wallace, Chair of the Education Committee, informed Benchers that Certificates of Fitness had been issued to eleven students who would, as a result, be called to the Bar on June 15. Between March 29 and May 29, 2012, twenty-five individuals had been admitted as Students at Law. Mr. Wallace

advised that the Education Committee had spent a great deal of time examining the report of the Federation of Law Societies of Canada's Canadian Common Law Degree Implementation Committee, which was mandated to develop a proposal for implementing a common law degree national requirement for admission to law society programs in Canadian common law jurisdictions. The Education Committee has prepared a position paper on this report, which will be presented to Benchers at a future meeting. He also presented a motion, based on a recommendation from the Education Committee, that Benchers approve a degree program at the University of Montréal in North American Law, which was duly seconded and carried.

Mr. Bruce informed Benchers that he is a member of an ad hoc committee, under the leadership of Chief Justice Derek Green, which is examining the viability of establishing a law school in this province. He reminded Benchers that such a study had been conducted some 25 years ago and it was felt the time was right to take a fresh look at the idea. The ad hoc committee is requesting support for its deliberations from this society as well as other interested parties such as the Law Foundation and the Newfoundland and Labrador Branch of the Canadian Bar Association. A lively discussion ensued, and while support for the new study was forthcoming, it was not unanimous.

Benchers then adjourned so members could attend the annual general meeting of the Law Society. Following this meeting, Benchers reconvened and welcomed newly

elected member Leanne O'Leary to her first meeting.

Mr. Bruce, in one of his final acts as President, introduced the Executive Committee for the coming year and asked Benchers to give its approval, which was immediately forthcoming. The members of the leadership team for the 2012-2013 year are Morgan Cooper (President), George Murphy (Vice-President), Kenneth Baggs (Chair of the Complaints Authorization Committee), and Susan LeDrew (At Large). Rounding out the Executive Committee are Gus Bruce (Past President) and Brenda Grimes (Executive Director).

The outgoing President then expressed his thanks to Benchers for their assistance and dedication during the past year and turned the gavel over to Mr. Cooper. Mr. Cooper commented on the impressive changes that have occurred on many fronts at the Law Society over the past few years and committed himself to continuing the tradition of excellence that had been exercised by his predecessors in the office of President. He gave thanks to Mr. Bruce for his work as President, whom he described as a man of great tact and diplomacy, who believed strongly in collaboration and listening to the opinions of others.

September 2012:

Morgan Cooper presided over his first meeting of Benchers as President on September 28, 2012. In that meeting, Benchers were informed of his activities on behalf of the Society over the summer months. These included: his attendance at the Annual Dinner and Dance on June 8; officiating at a Call to the Bar ceremony on June 15; attendance, along with Gus Bruce, at a meeting with representatives of the Canadian Home Builders Association on June 21;

delivering a brief speech at the swearing in ceremony for Madame Justice Lori Ann Marshall on September 19. At a similar ceremony for the swearing in of Mr. Justice James Walsh, Kenneth Baggs, represented the Law Society and spoke, as the President and Vice-President were out of town.

Mr. Cooper informed Benchers of the retirement of Frank O'Dea from the practice of law, as of July 31, 2012, which also meant he was stepping down after many years as Legal Counsel to the Law Society's Insurance Program. He extended the gratitude of the Society to Mr. O'Dea for his many contributions to the Law Society over the years, and in particular, his work with the Insurance Program. In order to find a successor to Mr. O'Dea, the Executive Committee struck a Search Committee, which will be accepting expressions of interest from members of the Bar.

Expressions of interest were also sought for a nominee from the Law Society for the Judicial Advisory Council and for two new appointees to the Supreme Court Rules Committee. Over 30 responses have been received for the two latter positions.

In house, the President reported that he and the Executive Committee met regularly with the Executive Director, reviewing policies and procedures, and looking at current committee structures and membership. This may lead to some committees being combined or, if they are found to have outlived their original purpose and mandate, being abolished.

The President informed Benchers that the Society had been contacted by a member with regard to an application before the Court that may have impact on solicitor-client privilege. Upon receiving the

advice of counsel retained to investigate this matter, it was agreed that the Society should seek consent of all parties to have intervener status in this matter, representing the public and the safeguarding of solicitor-client privilege.

From September 20 to 23, the President, together with George Murphy, Brenda Grimes, Frank O'Brien and Sheila Greene, attended meetings of the Federation of Law Societies of Canada in Vancouver. High on the agenda were the move towards National Competency Standards and the Federation's need for better methods of communication with and more timely delivery of materials to the member societies, especially when consultation on and approval of Federation matters are required.

Sheila Greene, the Law Society's representative on the council of the Federation of Law Societies, presented an update on Federation activities. She informed Benchers of negotiations that are currently underway to enable Quebec lawyers to become part of the National Mobility Agreement. It is expected a vote on this matter will occur later this year or early next year.

Ms Greene reported on the National Competency Standard, which has received approval of the Federation and must now be approved by the various member societies across the country. She also indicated that the Federation's National Committee on Accreditation has been asked to assess Canadian law degree programs being offered by universities outside Canada.

On behalf of the Executive Committee, Brenda Grimes, the Society's Executive Director, presented a draft policy on reporting information to the police that may come to light either to staff or mem-

bers of committees of the Society indicating that a crime may have been committed. After a thoughtful and considered discussion, it was agreed to adopt the proposed policy, which advises caution. Permission from the clients to whom the information relates must be obtained before such information can be released without a "search warrant or other appropriate court order and [the Law Society] will take all appropriate measures to protect client confidentiality and solicitor-client privilege."

Linda Harnett, Lay Bencher and member of the Law Society committee (others members were Augustus Lilly, Sheila Greene and Phyllis Weir) that reviewed the Federation's Model Code of Conduct, presented the committee's report and recommendations for consideration by Benchers. She made the following points in addressing the report: it is very similar to the Code of Conduct that we now use, but is more streamlined and less difficult to navigate; many of the Commentaries provide much more detailed explanations and provide additional examples; it will not be possible to detect shortcomings until the Model Code has been implemented but changes can be made as the need arises. Ms Weir added that the only change required at this time was to bring the Model Code in line with the Society rule 2.04 regarding lending and borrowing. The Model Code was subsequently adopted with the proviso that the change referred to above will be made.

A number of matters were brought forward by the Insurance Committee. Paul Burgess, the Committee Chair, informed Benchers that the Search Committee struck to find a successor to Frank O'Dea as Legal Counsel to the Committee, which consisted of himself, Gus Bruce, Brenda Grimes

and Janice Ringrose, had reviewed the expressions of interest that had been received and was recommending Tom Johnson for the position. This recommendation has received the approval of the Insurance Committee and the Executive Committee and is presented to Benchers for information purposes.

A matter that required Benchers approval was a recommendation to restructure the Insurance Committee. This new structure sets the number of voting members at seven, two of whom are to be members of the Claims Review Committee and two of whom are to be Benchers. Ex officio (non-voting) members will include the Law Society President, Vice-President and Executive Director, the Society's representative on the Board of the Canadian Legal Insurance Association (CLIA), and the Insurance Administrator. Further changes would see the adjusting functions carried out by two or more adjusters and setting the term of the Legal Counsel at three years, renewable for a second three-year term. Benchers gave the green light to these recommendations.

Ian Wallace, Chair of the Education Committee, asked Benchers to issue Certificates of Fitness for two individuals who are scheduled to be called to the Bar in October. He reported that six new Students at Law had been enrolled between June 4 and September 7.

The Executive Director briefed Benchers on proposed changes to the *Judicature Act*, which would replace the position of Registrar of the Supreme Court with a Chief Executive Officer. The position would have different responsibilities than those currently vested in the Registrar and the CEO would not need to be a lawyer. These changes would affect the Law

Society, since the Registrar is a member of Benchers by virtue of office. If it was felt there should be continued representation from the Court on Benchers, the *Law Society Act* would have to be changed accordingly. It was pointed out that this is the only Law Society in Canada that has a representative of the Court on its governing body and questions about the independence of the Bar and the judiciary were raised. While there may be certain benefits that accrue to the Society and its members from having such a representative sit on Benchers, the general consensus was that it was not necessary. If the need presented itself, the CEO or other representative of the Court could be invited to attend Benchers as a guest to discuss particular matters. Therefore, it was agreed to recommend to government that the *Law Society Act, 1999*, be changed to reflect the elimination of the position of Registrar and to advise that the Society did not feel it was necessary for there to be a representative of the Court on Benchers.

December 2012:

Benchers next meeting was held on December 10, 2012, with President Morgan Cooper presiding. In his report to Benchers he indicated that he had officiated at the Call to the Bar ceremony held on October 5, 2012, and attended and spoke at the tribute to the late Mr. Justice David Russell. He attended meetings of the Insurance Committee and held regular meetings with the Law Society staff. He reminded Benchers that the levy that has been a New Year's Eve tradition for the Society for as long as anyone could remember had been transformed into a pre-Christmas celebration, in response to feedback from members. This event was well-attended, including an appearance by former Chief Justice T. A. Hickman, whose presence marked the 64th consecutive year he has attended this event.

The President informed Benchers that he, along with the Vice-President and the Executive Director, will be meeting with the Minister of Justice on December 11, at which time he will be inquiring about the progress on recommended changes to the *Limitations Act* and the disbursement of funds collected by the Law Foundation. He plans to meet with the Chair of the Law Foundation on December 19, with that matter prominent on the agenda.

Paul Burgess, Chair of the Insurance Committee, indicated that the Committee had reviewed and approved its budget allocations for the coming year, and rests confident in the fact that the Society is committed to funding the Insurance Program. The Insurance Program was subject to audit by CLIA officials during the fall of 2012 and it passed with flying colours. The CLIA actuary, Andre Normandin, did recommend that the Society review the Assurance Fund rules to ensure compatibility with the insurance coverage. The Executive Committee has authorized the Insurance Committee to conduct such a review. Mr. Burgess also explained various governance issues that were being discussed by the CLIA Board and the effects that any changes would have on this Society and its Insurance Program. The bottom line is any effect would be minimal.

Richard Yabsley, the Law Society's accountant, joined the meeting to present the proposed budget for 2103 for both the Society's general operations and for the Lawyers' Insurance Program. The good news is that while revenue and expenditures will both increase in the coming year, no increases in fees paid by members are necessary in order to maintain a balanced budget.

The Executive Committee informed Benchers that it had completed the search for a member of the Society to serve as governor of the Law Foundation for a four-year term beginning on January 1, 2013. After reviewing a large number of expressions of interest, the Committee was recommending that David Boone be appointed to the position, a suggestion that was endorsed by Benchers.

Ian Wallace reported on the success of the 2012 Bar Admission course, which ran from October 02 to November 16 and included approximately 150 hours of instruction for the 31 students who were enrolled. As grading of the Bar Admission Course licensing examinations were still underway, Benchers had to wait until a future meeting to learn the names of the students winning this year's awards. ■

ADR WORKSHOP

MEDIATION AND NEGOTIATION SKILLS

St. John's: October 8-11

It's no longer just helpful for lawyers to understand mediation. It's now imperative. Mediation is not like litigation and it's not like deal-making. It's a different animal. A few lawyers understand how to use mediation (and the mediator) to get superior deals for their clients; others just guess and hope that they're getting a good result. If you want to develop the skills to get superior results and to really understand how to make mediation work for you and your clients, you need the best training from the experts in the field. We've designed the ADR Workshops to help you succeed where others just muddle through.

"It was excellently planned and executed. I can't say enough good about it."
- Peter Shea, Lawyer, Cox and Palmer, St. John's

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Changes in Status

The following changes in status were approved by Benchers sitting in Convocation between June 2012 and December 2012:

Practicing to Non-Practicing Status

Member	Effective Date	Member	Effective Date
George Horan	April 3, 2012	Nick Westera	July 1, 2012
Heather Buffett	May 15, 2012	Rosemary Dawson	July 3, 2012
Beth McGrath	May 23, 2012	Jessica Gallant	September 1, 2012
Mark Butt	May 30, 2012	Kathleen Tremblett	August 23, 2012
Patricia Day	June 16, 2012	Edward Cardwell, QC	September 1, 2012
Kimberley McLennan	June 12, 2012	Kathy Moulton	June 15, 2012
Amber Natasha Marshall	July 1, 2012	Tauna Staniland	November 12, 2012
Thomas Mills	September 1, 2012	Miriam Sheppard	November 17, 2012

Resumption of Practicing Status

Member	Effective Date	Member	Effective Date
Mark Butt	July 02, 2012	Alan Henry	September 07, 2012
John Goodland	July 02, 2012	Erin Drover	October 10, 2012
Deidre Babcock	July 04, 2012	Laura Brown-Laengle	October 11, 2012
Silvia Suman	July 06, 2012	Candace Summers	November 15, 2012
Donna Strong	July 20, 2012	Nick Westera	November 22, 2012
Donna Andrews	August 09, 2012		

Members Granted Permission to Resign

Member	Effective Date	Member	Effective Date
Jeffrey Cutler	May 2, 2012	Reg Locke	August 29, 2012
Kimberley Pochini	June 20, 2012	John L. Ennis	November 07, 2012
Janet Henley	April 9, 2012	R. Stephen Dawson	October 04, 2012
William J Andrews	June 29, 2012	Bradley G. Savoury	November 19, 2012

CANLII

According to a 2012 survey of Canadian lawyers and notaries, nearly 90% of lawyers have used CanLII within the past year; with 56% reporting that CanLII is the first place they turn to research Canadian case law. All full-time, active members of the Law Society of Newfoundland and Labrador were invited and 25% did participate in the survey, providing an excellent view into digital legal information use and preferences. Within the province, 90% of lawyers (and 100% of articling students) used CanLII in the past 12 months, and 44% of respondents (including 50% of lawyers in private practice) started with CanLII when conducting case law research.

Notwithstanding this high level of use and preference, only 42% of respondents in the province knew that CanLII was funded through contributions from all Canadian law societies - including ours. Although CanLII has benefited greatly from project-based funding from supporters like

the Law Foundation of Newfoundland and Labrador, from its founding, CanLII's operations have always been funded through a national per-lawyer levy administered through the Federation of Law Societies of Canada. In 2001, that amount was \$7 per lawyer per year; in 2012 that amount is roughly \$35.

The survey results also indicated that 46% of lawyers have increased their use of CanLII relative to commercial alternatives over the past 12 months, with the balance indicating sustained use and none reporting reduced reliance. That momentum, no doubt a result in part due to the recent addition of nearly 2000 historic trial and appellate decisions from the province in the past few years, combined with a planned addition of a further 700 historic cases next year, lawyers in the province will find even greater value for their \$35 contribution than in the past. ■

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 Complaints.

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

Complaint that the payment of fees from the member's trust account to a non-lawyer does not comply with the standard of conduct contemplated by the Law Society Rules and the Code. (*Law Society Rules 5.04(2)(c) and 8.12(3); Code of Professional Conduct, chapter XI, commentary 8*)

Complaint that the accounting records of the member's law office and the member's continuing failure to comply with the trust account rules over a significant period time does not comply with the standard of conduct contemplated by the Uniform Trust Account Rules. (*Law Society Rules 5.02 and 5.04*)

Complaint that the timeliness of the member's responses to the Law Society, during the investigation of file number A05-158, does not comply with the standard of conduct contemplated by the Law Society Rules and the Code. (*Law Society Rule 9.04(3); Code of Professional Conduct, chapter XV, commentary 2*)

Complaint that the member's absolute failure to respond to the Law Society, during the investigation of file number A08-007, does not comply with the standard contemplated by the Law Society Rules and the Code. (*Law Society Rules 9.04(3) and 9.07(1); Code of Professional Conduct, chapter XV, commentary 2*)

Complaint that the member's direct communication with a party

represented by another solicitor, without consent of the other solicitor, does not comply with the standard contemplated by the Code. (*Code of Professional Conduct, chapter XVI, commentary 8*)

Complaint that the member's failure to file an Affidavit on behalf of the member's client and the failure to receive notice of a case management meeting does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter II, Rule (b), commentary 7*)

Complaint that the member's failure to return documents that had been provided to the member in escrow does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XVI, Rule, commentary 6*)

Complaint that the member's law firm accounting procedures and practices are not in compliance with the Law Society's Uniform Trust Account Rules. (*Law Society Rules, Part V*)

Complaint that the payments to a paralegal directly from the member's trust account and not identifying same on the client statement of account does not comply with the Law Society Rules. (*Law Society Rule 5.04(2)*)

Complaint that the member's failure to disclose a conviction, in 1990, under the Criminal Code subsection 253(b) on an application for the position of Provincial Court Judge does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapters I, Rule and chapter XIII, Rule*)

Complaint that the member's multiple roles in an Estate file does not comply with the standard of conduct contemplated by the Code. The member was the Solicitor for the Testator, the Solicitor for the Estate, the Executor of the Estate, and, by the member's own request, a Beneficiary of the Estate. (*Code of Professional Conduct, chapter VI and chapter XIX*)

Complaint that the member's failure to advise parties that the member was not representing their interests and to recommend that they obtain independent legal advice respecting their rights under the *Intestate Succession Act* does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XIX, commentary 8*)

Complaint that the member's acknowledged use of a signature stamp and the member's failure to obtain or confirm clients' consent in writing when acting for multiple parties does not comply with the standard contemplated by the Law Society Rules and the Code. (*Code of Professional Conduct, chapter V, Rule, commentary 5*)

Complaint that the member's failure to meet the standards of practice with respect to the practice of Real Estate Law does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter V, Rule, commentary 5, chapter XVI, commentary 7 and chapter XVII, Rule, commentaries 3, 4 and 5*)

Complaint that the member's failure to maintain a professional tone in communications with another lawyer does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XV, commentary 3*)

Complaint that the member's failure to maintain professional conduct in communications with the Court and the member's failure to communicate with another member concerning the postponement of a Court date does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter IX, Rule, commentary 1, and chapter XVI, Rule, commentaries 1 and 2*)

Complaint that the member's failure to disclose information to another lawyer does not comply with the Rules of the Supreme Court, Rule 56A.39 and with the standard of conduct contemplated by the Code. (*Supreme Court Rule 56A.39; Code of Professional Conduct, chapter IX, commentary 3*)

Complaint that the member's failure to notify the client in a timely fashion that liability had been denied and the member was not prepared to continue with the claim does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter II, commentaries 7 (a) and (l)*)

Complaint that the member's failure to fulfill an Undertaking and the member's failure to respond to another member's correspondence in a timely manner does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XVI, commentaries 6 and 7*)

Letters of Counsel were issued by the CAC with respect to the following Complaints.

Complaint that the timeliness of the member's communications with a client and the delay in completing work does not comply with the standard of conduct contemplated by the Code. (*Code of*

Professional Conduct, chapter II, rule (b), commentaries 7 and 8)

Complaint that the member's statements to the media do not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XVIII, commentaries 3 and 7*)

Complaint that the failure to respond to another member's correspondence and to communicate to the member the requirement for personal service does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XVI, commentaries 3 and 6*)

Complaint that two videos posted to YouTube and the member's comments posted to Facebook do not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XV, Rule, chapter XVII, Rule, commentary 4 and chapter XIX, commentary 10*)

Complaint that the loan in the amount of \$53,500 advanced to a client by the member does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter XI, Rule, commentary 4 and chapter XIX, commentary 10*)

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

Complaint that a member's threat of criminal proceedings does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter III, commentary 14 and chapter XIX, commentary 1*)

Complaint that the member's inquiries were intrusive and did not comply with the standard of conduct contemplated by the Code. The Committee is of the opinion that the member's questions were too personal in circumstances where the services requested were witnessing a signature and notarizing a copy of a driver's licence. (*Code of Professional Conduct, chapter I, commentary 3*)

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

Complaint that the member's failure to disclose, upon being retained, that the firm represented both parties to a transaction and

continuing to advise the clients when it became apparent that a conflict existed does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter V, Rule, commentaries 4 and 6*)

Complaint that the member's continuing to advise the clients when it became apparent that a conflict existed does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter V, Rule, commentary 6*)

Complaint that the member's failure to take further steps to resolve the issue of the alleged conflict and to move the file forward does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter II, Rule, commentaries 7 (a), (b) and (f)*)

Complaint that the quality of service provided by the member's firm and the member's supervision of a legal assistant does not comply with the standard of conduct contemplated by the Law Society Rules and the Code. (*Law Society Rules 12.01, 12.02, 12.03 and 12.07(a); Code of Professional Conduct, chapter II, Rule, commentary 2*)

Complaint that the member's failure to disclose a conflict of interest does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter V, Rule, commentaries 1, 2, 3, 4, 9 and 13*)

Complaint that the quality of service provided by the member does not comply with the standard of conduct contemplated by the Code. (*Code of Professional Conduct, chapter II, Rule, commentaries 2 and 7 and chapter III, Rule, commentary 1*) ■

Library News

All legal research is available online...except:

- Taxing Master decisions
- Labour Arbitration Cases - 1st Series
- English translations of French decisions reported in Canadian Criminal Cases
- Statutes and Regulations from Canadian jurisdictions before 1990
- Most cases in the English Reports
- Most Looseleaves, textbooks, and journals.... *To name a few.*

In the last year the Law Society Library scanned and e-mailed **hundreds** of items that were not online. **Thousands** of books were circulated throughout the province, **free of charge**.

Let us help you look good!



Contact

**The Law Society Library
for all your information needs**

- Gail Hogan, MLIS
- Heather Myers MLS

lawlibrary@lawsociety.nf.ca

709-753-7770

or, toll free

1-800-984-7770

Professional Responsibility Notices

Disciplinary Panel

The Disciplinary Panel is a statutory committee comprised of twenty members of the Law Society, appointed by the Benchers and nine public representatives appointed by the Minister of Justice. Complaints referred to the Disciplinary Panel are heard by an Adjudication Tribunal comprised of two lawyers and one public representative. The following are decisions with respect to Complaints filed by Adjudication Tribunals pursuant to the Law Society Act, 1999 in 2012. All decisions, including any decision filed by Adjudication Tribunals prior to 2012, can be found at CanLII.

Robert R. Regular

The Adjudication Tribunal of the Disciplinary Panel of the Law Society found Robert R. Regular of Conception Bay South, NL guilty of conduct deserving of sanction pursuant to section 50(3) of the *Law Society Act, 1999*.

The Adjudication Tribunal heard evidence and argument relating to two Complaints against Mr. Regular. The Complaints alleged that Mr. Regular failed to act with integrity, failed in his duty as advocate, failed in his responsibility to lawyers individually, and failed to avoid questionable conduct.

The Adjudication Tribunal dismissed one Complaint and determined that Mr. Regular was guilty of conduct deserving of sanction with respect to the second Complaint.

The Adjudication Tribunal found that Mr. Regular had breached his Undertaking to another solicitor when he released funds to his client which he had held in trust, without having provided the solicitor the release of his pendens which he had undertaken, on closing, to provide.

The Adjudication Tribunal Ordered that:

1. Robert R. Regular shall pay a fine of \$10,000.00, to be paid within sixty days of the date of this Order;
2. Pursuant to subsection 50(3)(1) and Law Society Rule 9.15(2), Robert R. Regular shall pay one-half the expenses incurred by the Law Society in this matter in the amount to be determined by the Law Society, such amount to be paid within sixty days of the date the Law Society provides notification of such amount; and
3. Publication of this Order shall be in accordance with Law Society Rule 9.28 and the Law Society's Publication Policy.

May 15, 2012

Robert R. Regular

An Adjudication Panel of the Discipline Committee of the Law Society found Robert R. Regular of Conception Bay South, NL guilty of conduct deserving of sanction pursuant to section 48(3) of the *Law Society Act, 1999*.

The Complaint alleged that Mr. Regular failed to comply with the Trust Account Rule re: lending money to a client, failed to act with integrity, failed in his duty respecting confidential information, failed to maintain impartiality and to avoid a conflict of interest between clients, failed to avoid a conflict of interest between lawyer and client, failed in his duty as advocate, and failed to avoid questionable conduct.

The Adjudication Panel found Mr. Regular not guilty on four allegations in the Complaint and determined that Mr. Regular was guilty on two allegations in the Complaint. An excerpt from the decision dated October 15, 2007 follows:

- (i) The Respondent is not guilty of violating Rule 5.11 of the Trust Account Rules.
- (ii) The Respondent is guilty of failure to comply with his duty to act with integrity under Chapter I of the Code and his duty to avoid questionable conduct under Chapter XIX of the Code by initiating a sexual relationship with his client within the confines of a solicitor/client relationship.
- (iii) The Respondent is guilty of failure to comply with his duty to act with integrity under Chapter I of the Code, his duty to avoid a conflict of interest between lawyer and client under Chapter VI of the Code, and his duty to avoid questionable conduct under Chapter XIX of the Code by representing his client in a family law matter at the same time as he had a personal and sexual relationship with the client.
- (iv) The Respondent is not guilty of failure in his duty respecting confidential information under Chapter IV of the Code.
- (v) The Respondent is not guilty of failure in his duty to maintain impartiality and avoid conflict of interest between clients under Chapter V of the Code.

(vi) The Respondent is not guilty of failure in his duty as an advocate under Chapter IX of the Code.

Mr. Regular appealed the guilty findings to the Benchers of the Law Society. Benchers dismissed the Appeal and upheld the findings of the Adjudication Panel.

On appeal by Mr. Regular to the Supreme Court of Newfoundland and Labrador, Trial Division, the Court upheld the Adjudication Tribunal finding of guilt with respect to item (ii) above and set aside the finding of guilt with respect to item (iii) above.

Mr. Regular and the Law Society both appealed the decision of the Supreme Court of Newfoundland and Labrador, Trial Division. An excerpt from the decision of the Supreme Court of Newfoundland and Labrador, Court of Appeal follows:

The appeal of Mr. Regular against the decision of the Trial Division judge confirming the guilty finding with respect to the conduct of Mr. Regular in the development of the sexual relationship with his client at the meeting of March 12th, 1990 is dismissed.

The appeal of Mr. Regular on the basis that the Trial Division judge erred in determining that the finding of the Panel, affirmed by Benchers, that Mr. Regular was in conflict of interest when he represented S.G. in the family law proceedings was not unreasonable, is dismissed.

The appeal of the Law Society against the decision of the Trial Division judge setting aside, by reason of waiver by S.G., the guilty finding under Chapter VI of the Code with respect to Mr. Regular being in a conflict of interest by representing his client in a family law proceeding while he was having a personal and sexual relationship with her, is dismissed.

The appeal of the Law Society against the decision of the Trial Division judge also setting aside the guilty finding as to breach of Chapter I of the Code, with respect to failure to act with integrity and the guilty finding as to breach of Chapter XIX of the Code with respect to failure to avoid questionable conduct, in connection with the family law proceeding, is allowed, and those findings are restored.

The request to order costs on the basis of section 50(2) of the *Act* is denied. The order of the Trial Division judge with respect to costs before him is affirmed. In this Court, each party shall bear his or its own costs.

As there is a variation in the final determination as to the extent to which Mr. Regular has been found to be in breach of the Code, from that found by the Panel and Benchers, the order of the Trial Division judge remitting the matter to the Panel for further hearing on the appropriate sanction is affirmed, with the direction that any variation in sanction be consistent with the determinations expressed in these reasons.

The Adjudication Tribunal ordered pursuant to the *Law Society Act, 1999*, subsections 50(3) that:

- (a) The Respondent, Robert R. Regular be suspended for a period of 30 days commencing on January 7, 2013;
- (b) The Respondent, Robert R. Regular shall pay a fine in the amount of \$5,000.00 payable within ninety (90) days of the date of service of this decision on the Respondent;
- (c) The Respondent, Robert R. Regular, shall pay one fifth (1/5) of the expenses incurred by the Law Society of Newfoundland and Labrador in the investigation and hearing of the complaint, up to the decision of the Panel on February 4, 2008;
- (d) Publication will be in accordance with the Law Society Rules. There is no order for non-publication; and
- (e) The Decision and Order shall take effect upon service, in accordance with the Law Society Rule 9.14, except to the extent varied by this Order.

Custodianships

We would like to remind members that we currently have custodianship of the practices of the following firms or single practitioners:

- | | |
|------------------------|-----------------------|
| - William Parsons | - R A Parsons/O'Neil |
| - David Sparkes | - Kent Morris |
| - Glen Bursey | - Claude Sheppard |
| - Christopher Sullivan | - Keith Rose |
| - Doug Harvey | - Fabian O'Dea |
| - Gerard Griffin | - William Browne |
| - Glube Jewell | - Hugh Coady |
| - Jody Saunders | - David Pitcher |
| - Gerard Gushue | - James Nurse |
| - Frederick R Bishop | - Gordon W. Seabright |
| - Alan Carter | |

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

December 13, 2012 ■

Benchers' Convocation - June 8, 2012



Back Row (l-r): Paul Burgess, Ian Wallace, Dr. Don Downer, Shawn Colbourne, John Noseworthy, Bert Riggs, Kevin Preston, Barry Fleming, qc, Marcus Evans, Glenda Reid, Donovan Molloy, Kenneth Jerrett

Front Row (l-r): Brenda Grimes, Linda Harnett, George Murphy, qc, Morgan Cooper, Augustine Bruce, Susan LeDrew, Amy Crosbie, Liam O'Brien, Leanne O'Leary

Elected Benchers

Morgan C. Cooper
President

George L. Murphy, QC
Vice-President

Augustine F. Bruce
Past President

Kenneth W. Jerrett
Barry G. Fleming, QC
Susan M. LeDrew
Donald Anthony
Donovan F. Molloy
Kenneth L. Baggs, QC

J. John Noseworthy
R. Paul Burgess
Liam P. O'Brien
Shawn C. A. Colbourne
Leanne O'Leary
Amy M. Crosbie

Kevin T. A. Preston
Marcus A. Evans
Ian C. Wallace

Lay Benchers

Dr. Donovan Downer

Glenda Reid

Linda Harnett

Bert Riggs

Annual Dinner 2012



Presentation: President, Morgan Cooper unveils a painting which was presented to outgoing President, Augustine Bruce.



2012 Award Winners: (l-r): Ms. Lily Anne Wroblewski (*Award in Memory of Charles E. Hunt, qc and The Honourable Mr. Justice Douglas C. Hunt*), Ms. Deidre Badcock (*Award in Memory of Edward J. Penney*), Mr. Kyle Rees (*William J. Browne Scholarship*), Ms. Amber Penney (*Award in Memory of Wayne F. Spracklin, qc*), Ms. Jane Crosbie (*Provincial Court Judges' Association Award*)

Call to Bar 2011

February 18, 2011

1st row (l-r): N. Templeman, A. Rowe,
K. Rehner, A. Dymond, R. Deveau

2nd row (l-r): A. Collins, C. Payne,
G. Jarvis, D. Rodgers

3rd row (l-r): S. Orr, K. Hynes, J.
Hall



April 15, 2011

1st row (l-r): T. Higdon, K. Penney, M. Felt, S. Cohen

2nd row (l-r): J. Whelan, K. O'Shea, T. O'Brien,
R. Butt, C. O'Flaherty

June 10, 2011

1st row (l-r): N. Payne, A. Fekete,
K. Thomson, D. Murphy, B. Oley

2nd row (l-r): S. Degen, M. Alexander,
P. Earle, J. Madore

3rd row (l-r): R. Li, M. Quigley,
R. Forsyth, W. Hiscock



October 7, 2011

(l-r): M. Kyriacou, C. Binderup, J. Goodwin

Editor's Note: Pictures for the 2012 Call to Bar Ceremonies will appear in the next issues of *Benchers' Notes*.