



Benchers' Notes

April, 2000

Volume 6, Number 2

*These **Benchers' Notes** cover the Spring Term Convocation of Benchers held on April 3, 2000. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar.*

Special Term Convocation

President's Report

The President began his report to the Benchers by welcoming four lay Benchers recently appointed. The new lay Benchers are Karen Cole, St John's, John Green, St John's, Bert Riggs, St John's, and Charles (Ted) Janes, Port aux Basques. Under the new *Law Society Act, 1999*, the number of lay Benchers has been increased from two to four. The two retiring lay Benchers, Dr Linda Inkpen, CM, and Jean Bruneau, LL.D., served the Law Society well and for many years; in Jean Bruneau's case, the President noted, she has served continuously for about 18 years. Earlier in the day, the new lay Benchers met over breakfast with the outgoing lay Benchers and with the President, the Vice-President and the Executive Director.

The President went on to express some concern that there has been a delay in the appointment of lay persons to sit on Discipline Panels. Under the new *Law Society Act, 1999*, every Discipline Panel of three must include as one of its members a lay person appointed by government. To date, no such persons have been appointed and there are now delays in the assignment of panels to hear matters. The Law Society will continue to press government to make the appointments as soon as possible.

The President reported to Benchers that he attended, with Robert Sinclair, QC, the Vice-President, and Peter Ringrose, the Executive Director, the

mid-winter meetings of the Federation of Law Societies, held this winter in Whitehorse. As always, the meetings provide stimulating exchanges and are productive, raising many topics pertinent to the concerns of the law society.

In social matters, the Law Society and the Canadian Bar Association will be co-hosting a reception in May for all Justices of the Supreme Court of Canada. The reception will be held in the Harbour Dining Room of the Battery Hotel from 6:00pm to 8:00pm May 5; all members will be notified and invited by written invitation.

Education Committee Report

The Chair of the Committee, William Goodridge, stated that the Committee authorized 20 Certificates of Fitness for the April 25 Call to Bar. There will be a further 11 students following at the June Call to Bar.

The Bar Admission Course marks were reviewed by Benchers. The Benchers noted that Ms Genevieve Bulgin won the Hunt Award for highest marks overall in the Bar Admission Course and Mr Neil Pittman won the Penney Award for highest marks in Family Law.

Mr Goodridge stated that the Committee is continuing to develop guidelines for Principals and for students concerning the articling programme, including a Report Card and policies for the licensing of Principals. He hoped to have these policies for consideration before Benchers at the next Convocation.

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Changes in Status

Benchers approved the following applications for changes in status:

Applications to Elect Non-Practising Status

- David MacDougall
- Rhonda Young

Notice of Resumption of Practising Status

- Daniel Peyton

Application to Resign Membership

- Heather Boyd Kinnie

Suspension

TAKE NOTICE THAT effective 9:00 am, Thursday, 16 March, 2000, the Benchers of the Law Society of Newfoundland suspended from practise the following non-practising member for failure to pay arrears in fees in the amount of \$1,420.78.

Allison P Lawton
Called April 12, 1993
Barristers' and Solicitor Roll # 898

Discipline

Acquittal

On January 24, 2000, Benchers exonerated a member and dismissed a complaint of professional misconduct pursuant to section 45 of the *Law Society Act*. The allegations giving rise to the complaint were, namely, that the member failed to ensure the protection of the public interest, did fail in the member's duty when making legal services available, and did fail to prevent the practice of law of an unauthorized person. Benchers accepted the recommendation of the panel of the discipline committee and determined that the facts so found did not make out a case of professional misconduct, conduct unbecoming a member or failure to adhere to the Code of Professional Conduct. Since the member was exonerated, no name is published.

Library Notes

The Library is now providing free access to *Quicklaw* for style of cause and cases judicially considered searches. Statutes judicially considered and subject searches will be billed at the *Quicklaw* rate.

The Library is now on the web and can be accessed through the Law Society site: www.lawsociety.nf.ca/library. The catalogue is online and the "What's New" section, which is updated weekly, provides information on new products, books and journals acquired.

Two new CD products have been added to the collection:

1. Rules Concordance and Case Locator which provides access to full text of the rules of all superior courts for all provinces. As well, a full concordance and full text of judgments are provided.
2. Canadian Encyclopedic Digest which provides access to federal, provincial and common law as it applies to Ontario and Western provinces. This CD replaces the looseleaf paper version which has been canceled.

The library staff provides assistance with reference and research questions. For more information please call Gail Hogan or Harriet Mercer at 753-7770, toll free 1-800-984-7779, or e-mail: lsnl@thezone.net

Annual Dinner of the Law Society

The Law Society's Annual General Meeting will be held Friday, June 9 at the Delta Hotel, St John's, beginning at 2:30pm.

Mark your calendar, the Annual Dinner of the Law Society will be held Friday evening, June 9, at the Delta Hotel. There will be no dance this year; instead, the Spirit of Newfoundland will provide dinner entertainment and, following their performance, the Ennis Sisters will perform. More information about the evening, and ticket prices, will be mailed to members in the next few weeks.



Eric Hutton v Law Society of Newfoundland

Eric Hutton is a member of the Law Society with non-practising status, this status granted in August, 1997, following his conviction in Provincial Court for forgery and uttering, the offences related to his practice of law. He appealed his conviction and the appeal was dismissed; a further appeal is pending before the Court of Appeal. Requests by Mr Hutton to the Law Society that he be returned to practising insured status have resulted in a decision by the Education Committee to hold a fitness hearing; the hearing is postponed until the Court of Appeal renders its judgement. Contemporaneously, a Discipline Panel has been struck to hear a complaint against Mr Hutton and arising out of his conviction; the complaint also is held in abeyance pending the outcome of his Appeal.

In July, 1999, Mr Hutton appeared in Provincial Court with respect to several summary conviction charges against a resident of Grand Falls. During his appearance, Mr Hutton advised the Provincial Court Judge of his status as a non-practising member of the Law Society and that he was appearing as agent. In January, 2000, Peter Ringrose, the Executive Director of the Law Society, learned of Mr Hutton's appearance and wrote Mr Hutton stating that he should not be appearing as agent since to do so would be in violation of the *Law Society Act, 1999* and of the Rules of the Law Society. In result, Mr Hutton took an Application before the Supreme Court for an Order returning him to practising insured status with the Law Society or, in the alternative, an Order granting him the right to appear as agent.

In his Decision, Mr Justice Rowe determined that Mr Hutton should not be returned to practising insured status until the Education Committee has made a determination in the matter following a fitness hearing, this matter properly the jurisdiction of the Law Society. Concerning the main point at issue, the right to appear as agent, Mr Justice Rowe addressed the differences between the right of a member of the public to act as agent under the Criminal Code and other statutes, and the general right of a lawyer to appear as counsel. The Law Society took the position that, under the *Act* and the Rules, a lawyer with non-practising status remains a barrister and solicitor and, as a mem-

ber of the Law Society, is properly characterized as counsel, not as agent.

While Mr Hutton argued that he does not appear in court as counsel, but only as agent, Mr Justice Rowe decided that such arguments are disingenuous. In sum, Mr Hutton is a lawyer and would be regarded by his clients as a lawyer since, given most circumstances and apart from his attempts to act as an agent only, he would be giving legal advice, such advice by a non-practising member being prohibited under the *Law Society Act, 1999*. Further, Mr Justice Rowe took the view that the central purpose of the *Law Society Act, 1999*, and of the Rules of the Law Society, is to protect the public interest; he was concerned that the public might engage Mr Hutton as agent but rely on him as a lawyer, and the Law Society could not regulate his conduct. The fine distinctions that Mr Hutton would have to make for the public in the course of employment as an agent would, in Mr Justice Rowe's opinion, be too esoteric to explain to an accused since it would be necessary first to understand that, while Mr Hutton is a lawyer he does not appear before the court as a lawyer; second, that because he has non-practising status he cannot give legal advice; and, third, that the accused has none of the protections provided by the Law Society, including liability insurance, if Mr Hutton fails to perform adequately.

Mr Hutton's application was dismissed.

IN MEMORIAM

Marie Josephine Green, Roll #1046, Called to Bar June 30, 1997. Ms Green practiced law in Labrador City. She died on March 18, 2000, in St John's. Benchers and members of the Law Society extend their condolences to her family.



Times Past

The Law Society holds archival records of the legal profession in Newfoundland since 1826. The records include correspondence, photographs, petitions and, in particular, Benchers' Minute Books. The Editor notes with interest that, from about 1890, Benchers' Minutes use the titles, President, and, Treasurer, interchangeably.

What follows are excerpts from Benchers' Minutes from 150 years ago and 100 years ago January month. The 1850 extract will be of interest to tea lovers.

Benchers' Minutes, Hilary Term, Monday, January 8, 1850

In Convocation, Present
The Treasurer
Hugh William Hoyles, Esq
The Secretary

The Treasurer reported that he had communicated with the Secretary of State for the Colonial Department through the Governor requesting to be furnished for the Law Library a copy of the statutes at large pursuant to Resolution in the last Convocation, and read the following correspondence which resulted therefrom:

...

A copy of Dispatch from Earl Grey to the Governor,
No 137

Downing Street
27 November 1849

I have the honour to acknowledge your Dispatch No 50 of the 1st of October accompanied by a letter from the Treasurer of the Law Society of Newfoundland requesting that the Society may be supplied with a copy of the statutes at large for the use of their Library, and also that the volumes may be continued from time to time as they shall be published.

I regret to acquaint you in answer that there are no funds at the disposal of Her Majesty's government out of which it would be in my honour to comply with this application but if you should provide for the expenses I should be happy to cause these books to be duly provided and sent to you for the Law Society.

I am, etc, yours, Grey

The Treasurer reported that the books ordered by the Society had been received and deposited in the Library, and he laid before the Society the letters and

correspondence on the subject, also the invoice as received from Messrs Butterworth and Co by which it appears the cost of the books amounted to 58.9.9 Stirling which he had defrayed.

Benchers' Minutes, The Court House, January 31, 1900

At the January 31 Convocation, Benchers presented the Annual Report of the Society for 1899. They noted that "receipts for the year were \$1221.92 and the disbursements \$874.82. ... The balance of \$347.10 has been deposited in the Savings Bank and brings the total sum now lying there to the credit of the Society to \$882.34."

"Much of the time of Benchers during the past two years has been devoted to enquiries into complaints of misconduct brought against members of the Society. An Act was passed during the last session of the Legislature at the suggestion of the Benchers regulating the practice relating to the discipline of the profession. It is hoped that the definite and extensive powers thereby given to the Benchers will not require to be exercised, but the Benchers will not hesitate to use their full power if occasion should demand it; nor will they fail, through leniency towards the individual, in safeguarding the honour of the profession and the interests of the public.

...

"The Library received special attention of the Benchers; the shelves have been faced with leather and a new arrangement adopted for the books. The Reports of the Supreme Court of Canada and the English and American Encyclopedia of Law have been ordered and will in a short time appear upon the shelves; text books upon special branches of the law have been purchased and will soon be ready for use. Many members have in the past been careless about returning the books which they obtain from the Library. In many cases, books have been detained for a month; in not a few cases books have been withheld for a year or more. Such conduct is a very flagrant breach of the Rules of the Society and if persisted in and unrestrained, will do great injury to the profession and will in a great measure destroy the general usefulness of the Library." (These fulminations continue for several more brief sentences; the Editor has intervened to spare modern sensibilities.)

...

"A new curriculum of study (for students of law) has been prepared. Under it the yearly examination of the



clerk is provided for as a means of keeping him at the study of law continuously during his term of service.

"The Benchers consider that during the year much progress has been made. They look to the members for sympathy and support in their efforts to raise the status and improve the morale of the profession during the present year."

NOTICE

**IN THE MATTER OF
THE ESTATE OF EDGAR L TESSIER
OF 109 NEW COVE ROAD, ST JOHN'S
AND 19 POWER STREET, ST JOHN'S
DIED MARCH 17, 1998**

I am attempting to locate a Last Will and Testament executed by Mr Tessier between 1981 and 1988 (or perhaps one more recent). An unsigned Will dated 1984 has been located. Any information would be greatly appreciated and would assist in the proper settlement of his estate.

If you have information, please contact me by writing to me, Frederick G Tessier, 2 Kilbride Avenue, St John's, NF, A1G 1K5, or call 368-1530 (with voice-mail).

Lawyers and law firms known to have dealings with Edgar L Tessier include: J Vernon French, QC, James L Fardy, Stephen Fitzgerald, Irene S Muzychka, Keith Morgan, Barry R Sparkes, J David Baird, John Roil, QC, Benson, Myles, Stewart McKelvey Stirling Scales.

Paternity Testing Services

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PTS is managed by Terra Nova Biotechnology-
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Health Sciences Centre
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Tel: 709-737-5034
Fax: 709-737-5127

www.mun.ca/scabright/tnb/paternity.html

Education Notes

Bar Admission Course

The 2000 Bar Admission Course was recently completed. The Course ran from January 17, 2000 - March 2, 2000 inclusive. The Bar Admission Course continues to be a concentrated educational experience during which students receive procedural and substantive instruction in Family Law, Corporate/Commercial Law, Civil Procedure, Administrative Law, Real Estate & Wills, and Criminal Law and Procedure. As part of the Course requirements students write a 3½ hour examination in each of the above subjects. The Course provides students with a very comprehensive picture of Newfoundland procedural and substantive law and is an important step in the transition from a Student-at-Law to a practicing member of the Law Society of Newfoundland.

This year, 31 students from many areas of Newfoundland and Labrador attended at the Course. Students were responsible for materials covered in the Bar Admission Course lectures and workshops, as well as material covered in approximately 12 volumes of Bar Admission Course materials and approximately 70 major statutes. This year's Course continued to include other seminars which were non-examinable but nonetheless important to the Bar Admission students' education. For example, students had seminars and workshops dealing with negotiation skills, examination for discovery, risk management, trial advocacy and a mock trial. As well, students attended three continuing legal education seminars during the Bar Admission Course.

The Law Society continues to be very appreciative of the efforts of its dedicated group of Bar Admission Course Instructors and volunteers. This year, approximately seventy-five volunteers, including lawyers and other professionals, made meaningful contributions to the Course. The Bar Admission Course would not be as successful or strong as it presently is without the ongoing contributions of these volunteers.

Continuing Legal Education

The Joint Committee on Continuing Legal Education is continuing its programming for the Spring of 2000.

On February 9, 2000 a seminar entitled *Practice Before Appellate Courts* was held at the Littledale Conference Centre in St. John's. The seminar was also held in Corner Brook as part of the CBA Mid-Winter meeting



on February 11, 2000. Presenters at the St. John's seminar were the Hon Mr Justice Derek Green of the Newfoundland Court of Appeal and CBA National President, Eugene Meehan, QC. Mr. Nicholas Avis of Avis & King, Corner Brook presented at the Corner Brook seminar along with Mr Justice Green and Mr Meehan. Extremely positive feedback was received on both seminars with many members commenting on the excellent presentations and written materials prepared for the seminar. We sincerely thank Mr Justice Green, Mr Meehan and Mr Avis for their contributions.

On February 25, 2000, an Advocacy Skills Workshop was presented by four lawyers from the Ontario Centre for Advocacy Training. We were very pleased to see such a great mix of practitioners attending at this workshop, from those just recently called to the Bar to members with many years of experience and expertise. The seminar was very well received by those who attended and it is hoped that we will, in future, be able to offer further programs in conjunction with the Ontario Centre for Advocacy Training. The Committee would like to thank Michael Cormier, Scott Maidment, David Butt and Timothy Hill of OCAT for their efforts in leading this very successful workshop.

The next Continuing Legal Education seminar is scheduled for April 14, 2000, and is entitled *Golden Rules: Procedural Rules to Practice (and Live) By*. This seminar will focus on key procedural rules in three different areas: namely, the *Federal Court Rules 1998*, the *Limitations Act* and Rule 20A of the *Rules of the Supreme Court, 1986*. Presenters at this seminar will be the Hon Mr Justice Andrew MacKay of the Federal Court of Canada, Mr Glen L C Noel of Patterson Palmer Hunt Murphy, St John's and Mr Gregory M. Smith of Curtis Dawe, St John's. This seminar promises to be excellent opportunity to learn of recent developments in a number of key procedural areas.

Honours and Awards Committee

Benchers recently approved policy for the creation of an Honours and Awards Committee. The role of the Committee is to make recommendations to Benchers for honours and awards to be granted by the Law Society to distinguished members and, where appropriate, to lay persons, where there has been a significant contribution of time and expertise to the Law Society or to the profession or law generally. Under the approved policy for the Committee, there will be four available awards: Life Membership, on such terms as Benchers may determine; Certificate of Merit, for lay persons, including lay Benchers, whom have made a substantial contribution on Benchers or in some other capacity; Distinguished Service Award, open to members of the Law Society, the judiciary and the public for exceptional service to the Society and/or the public; and, Honorary Doctorate in Law, to be awarded only to members of a law society in Canada or elsewhere as deemed appropriate, or to current or retired members of the judiciary.

Members of the Committee are: Dennis C MacKay, President, Augustus G Lilly, QC, a past-President, and Bert Riggs, a lay Bencher.

The Committee will soon consider nominations for the awards listed above. Members who wish to nominate someone for an award should send a nominating letter to the Executive Director, Peter Ringrose, for consideration by the Committee.

Law Society Web Page

The Law Society's Web page, found at www.law-society.nf.ca includes the new *Law Society Act, 1999*, the *Code of Professional Conduct*, the Directory of Members and a Directory of Students (both these are updated monthly), CLE offerings, and a What's New Bulletin Board for a quick review of items of interest. The Web page is generating interest and use from members; comments for additions to the site will be welcomed.

Easter Seal Society

Peddle & Paddle Adventure for Easter Seals with Stan Cook's Sea Kayaking Adventures in Cape Broyle. Bike, Hike & Sea Kayak! Come Bike for 15 km, Hike for 6 km and Sea Kayak for 4 km on June 24, 2000. Registration is \$300. per team of 4 participants. Limited number of Teams.

Raise money for children with physical disabilities in Newfoundland and Labrador.

For more information please call Judy Shannahan at 754-1399 or 1-888-601-6767.