

# Benchers' Notes

December, 2001

Volume 7, Number 4

*These Benchers' Notes cover the Special Term Convocation of December 3, 2001. 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](http://www.lawsociety.nf.ca)*

## Insurance and Practising Fees for 2002

Jeffrey P Benson, President of the Law Society, informed Benchers that the insurance market requires a 10% increase, to \$3,300, in the premium to cover members for errors and omissions during 2002. While increased, Mr Benson noted that the premium is still substantially below the 2000 premium of \$3,800, or premiums of the late 1990's which were as high as \$4,893.

The increase for 2002 is required for two main reasons. First, there is a slight deterioration in the Newfoundland claims experience, resulting in larger claims settlements. More information about this deterioration is contained in the *LPIC News* which accompanies these *Notes*. A second reason is the reduction in interest rates in North America. Insurers traditionally invest their premiums and include interest earnings in their calculation of premiums. With reduced earnings from investments, insurers maintain their return on equity by adjusting premiums.

Even with this slight premium increase, the President reminded Benchers that the Newfoundland insurance program provides members and the public with one of the most comprehensive insurance covers in North America, and is unique in Canada in providing one million dollars in innocent partner cover.

Members will recall that, in December 2001, Benchers approved as policy an annual subsidy of members' insurance premium. The subsidy is provided from the interest earnings on \$3,000,000 set aside for an insurance contingency fund. For 2002, this subsidy per member will be \$215, for a net premium of \$3,085.

Concerning other fees, the President noted that the Certificate Fee and the Federation of Law Societies' Fee, combined, remain at \$1,095 this year, for the third year since these fees were reduced to this level from \$1,195 in 1999.

## Special Term Convocation

### President's Report

The President reported on a number of activities and responsibilities fulfilled on behalf of the Law Society since his last report to Benchers in October, including the Call to Bar ceremonies of October 5, the Queen's Counsel ceremonies at Government House and at the Supreme Court Trial Division,

meetings of Atlantic Canada Law Societies in Halifax, participation in the Federation of Law Societies restructuring and governance subcommittee, participation in the Law Society and CBA Joint Task Force Committee about the government's automobile insurance initiatives, the UNB Alumni reception, the CBA Insurance Luncheon, meetings with Chief Justice Green, the Minister of Justice, and at the ceremonies for the swearing-in of Judge

The Law Society of Newfoundland  
Fifth Floor, Atlantic Place  
P.O. Box 1028  
St. John's, Newfoundland  
Canada A1C 5M3

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



Harold Porter. These events are an overview only of some of the duties fulfilled in the 60 days since last Convocation.

Concerning some of these meetings, the President reported that there was a good discussion with the Minister of Justice. Topics discussed included the government's insurance reform initiatives, CANLII, mobility issues for lawyers in Atlantic Canada, law corporations and limited liability partnerships, the *Survival of Actions Act*, and child and youth advocacy legislation.

The President reported also that there were good meetings held in Halifax during October with other Atlantic Canada law societies. Attending with him were Stephanie Newell, William Goodridge and Peter Ringrose. The Atlantic meetings canvassed a variety of topics, all with the central focus of increased cooperation among the societies and improved mobility for our members. For example, there were discussions to initiate the harmonization of trust account rules in all four provinces, and to examine and perhaps implement the model of inter-jurisdictional mobility used in western Canada. That model permits, without permission, a member in one western province up to six months practice in another western province; the only significant restriction is that the member cannot open a permanent office in the host jurisdiction. There was agreement at the Halifax meetings that this model deserves serious consideration and possible adoption in Atlantic Canada.

### Federation of Law Societies

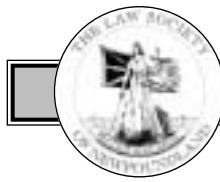
One component of the President's work for the Law Society is the contribution of time to the Federation of Law Societies of Canada. The Federation meets twice a year, and the August meetings were reported in the last *Benchers' Notes*. Of particular and new interest to members is the, at least initially, successful challenge by the Federation in the Supreme Court of British Columbia against sections of the *Proceeds of Crime (Money Laundering) Act*, Bill C-36, as they apply to solicitor-client privilege. A temporary exemption order was obtained against these sections insofar as they apply to members of the bar. Of course, the injunction has application only in British Columbia. The President informed Benchers, and in accord with earlier discussions, that the Law Society of Newfoundland contributed on an equal per member basis with all law societies in Canada toward the court challenge in British Columbia to cover costs outside the *pro bono* work by lawyers in that province.

In other Federation matters, recently Janine Miller, the law librarian responsible for CANLII, was in Newfoundland to discuss and demonstrate the virtual law library sponsored by the Federation and to which members in every province and the territories will contribute \$9.53 in 2002 as part of the fees paid to the Federation. Ms Miller met with the Law Society's Library Committee, with judges, and with officials of the provincial government.

### The 2002 Budget

The Executive Director presented the proposed Budget to Benchers and noted that 2002 represents a transition year for the Law Society since the offices and Law Library will be moving to new premises December next. Budgeting for transition is always difficult, particularly so in this instance because many of the future costs can be anticipated but are yet unknown. For this reason, the Executive Director recommended, and Benchers approved, the allocation of a portion of past surplus monies for expenditure during 2002. These monies will be used for fitting-up costs and the various expenditures necessary out of the transition to the new building. The Capital Fund Levy of \$200 is maintained this year, the monies generated from this Levy are allocated to refitting and fitting-up the new office building.

In order to bring some revenues in line with related administrative expenses, the Executive Director proposed a few fee increases. He stated that the Bar Admission course in Newfoundland remains the lowest priced course of its kind in Canada and the only course not subsidized by a Law Foundation. In an effort to recover more of the direct costs associated with running the course, Benchers agreed that fees be increased from \$1,400 to \$1,750. Even at this increase, the course will be the lowest cost unsubsidized course in Canada. There were two other fee increases approved. First, an increase in the fee for annual non-practising status is increased from \$250 to \$275, the first increase in many years. Second, and because applications to return to practising insured status from non-practising frequently require approval of the Education Committee and other administrative burdens, for the first time there will be an administrative fee of \$100 for such applications.



## Committee Reports

### Executive Compensation Committee

At the October Convocation, a Report from this Committee, chaired by John Roil, QC, was tabled for Benchers' consideration. Benchers then took the view that the Report, which recommends compensation of \$15,000 for a President from the Avalon Peninsula and \$20,000 for a President outside, should be advertised to members for a response. The Report was discussed in the October *Benchers' Notes* and provided in full text on the Law Society web site. Members were invited to contact Robert M Sinclair, QC, Past President, with their comments. At the December Convocation, and in the absence of the current President, who excused himself for the full discussion and vote on this topic, Sinclair, QC, reported to Benchers that few comments were received from members and these were favourable to a policy of Presidential compensation. Most members were increasingly aware of the work now done by the President and of compensation plans in place for Presidents at other law societies in Canada.

Following discussion, Benchers approved the recommendations of the Executive Comensation Committee Report and instructed the Executive Director to add the President's compensation to the 2002 Budget.

### Act and Rules Committee

Jamie Smith, QC, Chair, noted that proposed changes to Chapter III of the *Code of Professional Conduct* were now before Benchers for a final vote. Benchers approved the changes and they are included, complete with a revised Index, with these *Notes* as a separate handout for members to place in their records.

Smith, QC, further reported about a Practice Investigation Rule, new to the Law Society Rules. The new Rule provides a framework for those instances when the Executive Committee authorizes an investigation, either upon the recommendation of the Compaints Authorization Committee or at the initiatve of the Executive alone. The new Law Society Rule, Part XIV, is included in these *Notes*.

The changes to the *Code of Professional Conduct* and to the Rules of the Law Society are now incorporated in the full text of the *Code* and the Rules found on the Law Society's website: [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca)

### Property Management Committee

Tobias McDonald, Chair, stated that Sheppard/Case Architects provided the Committee and Benchers with proposed floor plans for the new offices. In reviewing the plans, Mr McDonald stated that the building is designed for multiple uses and the Benchers' Convocation room will double as a place to hold the Bar Admission Course and most CLE seminars. This same Convocation room will serve also for Benchers' receptions. Elsewhere in the building, the Law Library will occupy the first two floors. While there will be less space for books, among the Library's features will be double the number of computer terminals, this change acknowledging the trend to increased use of electronic services.

The Committee is informed that work on detailed plans for the building is proceeding on schedule. An estimate of costs for the reconstruction and fitting-up is now being prepared and, on that basis, Benchers will soon consider how best to finance the work. In related matters, Benchers decided that, when it is time to tender the work, tenders will be advertised widely to provide as much transparency as appropriate.

### Limited Liability Partnerships and Law Corporations Subcommittees

In the absence of the Chair, Robert Stack, the President spoke about the work of these subcommittees. He noted that the materials requested by the subcommittees, and mentioned in last *Benchers' Notes*, have now been provided by staff, comprising some hundreds of pages of research. The LLP subcommittee met once to review the materials and address the issues in broad overview, resulting in some follow-up requests for more information from staff.

Concerning the Law Corporations subcommittee, the President informed Benchers that the subcommittee, chaired by Michael Duffy, has met. In researching for its work, the subcommittee discovered a Resolution of Benchers dating from 1980 in which the Benchers approved in principle the concept of law corporations. The President assured Benchers that, this time, the law corporations issue is being addressed in a timely manner.

### Legislation Committee

In the absence of the Chair, Brian Furey, the President reported to Benchers about the Law Society's role in addressing the provincial government's initiative about automobile insurance reform. He stated that in



October the Law Society and the CBA, Newfoundland Branch, created a Joint Task Force to review and make recommendations about the government initiative. The Task Force is active in reviewing the proposals, meeting with government, and preparing a written response to government. Given the complexity of the issues surrounding the government proposals, the Task Force takes the position that many of the financial issues raised in the proposals are best addressed through the Public Utilities Board hearing process.

### Court Standards Committee

The President reported on behalf of the co-Chairs, Dennis MacKay, QC, and William Cadigan. The mandate of the Committee is to determine what minimum standards should be applied to all court facilities in the province, this work grounded in the previous work of many such committees in other provinces.

The Committee met recently for the first time and it was clear from discussions that all levels of the courts were willing to cooperate in the work. Nevertheless, the Committee is aware that the judiciary will not take as proactive a stance as other stakeholders, these stakeholders being the Law Society and government.

### Law Library Committee

Sheila Greene, Chair, reported to Benchers that the Committee received a request from an out-of-town member that there be a computer, with Quicklaw, in each Supreme Court judicial centre outside St John's. The Committee wrote the Court Standards Committee to ask for its views on this request. Cost to the Society would be approximately \$45,000, plus annual maintenance of the computers. The President asked the Committee to prepare a proposal for consideration in the 2003 budget process.

## Educational Notes

### Continuing Legal Education

The Joint Committee on Continuing Legal Education has completed its programming for Fall 2001 and is currently planning its programming schedule for Winter/Spring 2002.

There have been several CLE sessions recently held.

On October 22, 2001, an Advocacy Skills Workshop was led by instructors from the Advocates' Society of Ontario. This full day interactive workshop, entitled *Sharpening Your Skills in Cross-Examination, Impeachment and Rehabilitation of Witnesses on Re-Examination* allowed lawyers to learn by doing, by participating in small group practice exercises under the direction of the workshop instructors. The Joint Committee sincerely thanks the volunteer instructors from the Advocates' Society, David Butt and Joel Kohm, who attended and led the workshop. The feedback on this workshop was extremely positive, and the instructors also spent a separate day with this year's Bar Admission Course students, focusing on Direct-Examination and Cross-Examination Skills. The Committee is very pleased to have been able to continue this collaborative relationship with the Advocates' Society in enhancing advocacy skills.

On November 2, 2001, there was a seminar entitled *New Proceeds of Crime Legislation: What Every Lawyer Must Know*. This seminar was well attended and registrants were provided with practical information on

how this new federal legislation affects lawyers and their support staff. The presentations focused on the obligations required of all lawyers by this new legislation. The Joint Committee sincerely thanks our two presenters, Dan Pinnington from the Lawyers' Professional Indemnity Company (LPI) in Toronto and John Ommeney of FINTRAC in Ottawa, which is the newly created organization responsible for the implementation of the legislation.

On November 27, 2001, there was a seminar entitled *Focus on Administrative Law, 2001* which again was well attended and well received by attendees. There were four speakers at this seminar: David Jones, QC and Anne de Villars, QC of the Edmonton firm de Villars, Jones offered presentations on the standard of review in administrative law and the review of discretionary decisions. Augustus G Lilly, QC provided a presentation on some practical points in judicial review, including a discussion of how to get evidence before the reviewing court where the issue is unreasonable finding of fact. Mr Justice Keith Mercer concluded the seminar with a presentation on Administrative Law and Judicial Review: The Judicial Perspective. Feedback from lawyers who attended this seminar has been overwhelming positive and those attending benefitted from the presentations as well as the excellent written materials prepared by the presenters. The Continuing Legal Education Committee greatly appreciates the efforts of our presenters: Justice Mercer, Lilly, QC, Jones, QC and de Villars, QC.



Finally, the *Legal Research Electronic Products Training Sessions*, offered by Law Society Librarians, Harriet Mercer and Gail Hogan, have been so well received by members of the Bar that these training sessions were continued each Friday throughout the Fall, from late September until mid-November. The Committee thanks our workshop leaders, Gail Hogan and Harriet Mercer, for their on-going work in providing education on electronic legal research techniques.

In 2002, lawyers can look forward to seminars in a number of practice areas, including Wills and Estates, Criminal Law, Commercial Law, Tort Law and Damages, among others. The Committee wishes to thank everyone who has made a meaningful contribution to CLE in Newfoundland during the past year, including our dedicated presenters and those who support our programs by their attendance. We look forward to seeing you all at upcoming seminars.

### Bar Admission Course

The Bar Admission Course for Newfoundland recently finished. The Bar Course ran from October 2, 2001 to November 20, 2001 inclusive and provided students with exposure to a number of substantial/procedural areas of Newfoundland law, as well as an opportunity to enhance their skills in many other

areas. In this 7½ week course, students attended many hours of lectures, seminars, and workshops and were responsible for thousands of pages of Bar Admission Course materials in 12 volumes, along with approximately 80 provincial and federal statutes. Students wrote examinations in Family Law, Commercial Law, Civil Procedure, Administrative Law, Criminal Law and Procedure and Real Estate/Wills. At the mid-way point of the Course, students participated in workshops on Advocacy Skills, Interviewing, Negotiation, Examination for Discovery, Risk Management, Ethics, and maintaining a balance between personal/professional obligations, to name a few. Later in the Course, students were instructed in Criminal Advocacy and participated in a Mock Trial and Sentencing Exercises.

The Bar Admission Course continues to undergo innovations to ensure that it remains a relevant and practical learning experience, which is beneficial and enjoyable for students and a useful primer for practice. The Bar Admission Course Committee and the Law Society greatly appreciates the very meaningful contributions provided by our more than 70 volunteer lawyers, judges and other professionals, who give generously of time and talents to make the Bar Admission Course a success.

## Changes in Status

Benchers approved the following applications for changes in status:

### Applications to Elect Non-Practising Status:

Rosemary Dawson  
Colleen Hanrahan  
Jason Hickman  
Kimberly MacKay  
Cormac McManamon  
Justin Mellor

### Applications to Resume Practising Status:

Paula Schumph  
Rosellen Sullivan

### Application to Resign Membership:

Lisa C Chislett

Members are reminded that any time there is a change in your practising status, you must notify the Law Society in writing. Under the *Rules of the Law Society* changes in practice include: change from practising to non-practising; change from non-practising to practising; change of employment from one firm to another or to or from sole practice; commencement of practise; and departure from the province to pursue a career elsewhere. Appropriate Forms to accommodate the notice requirements are available by contacting Janice Whitman at Law Society offices.



## Benchers' Notes

### Focus on Administrative Law, 2001 Seminar



I-r : The Honourable Mr. Justice Keith Mercer, Anne de Villars, qc, David Jones, qc, Augustus Lilly, qc, Francis O'Brien

### Fall 2001 Bar Admission Course



Students attend the Fall 2001 Bar Admission Course.

(below) Students gather for a group photo.



### 100<sup>th</sup> Anniversary of the Court House

The Project Daisy Committee of the Law Society of Newfoundland recently assisted in organizing a dinner held in Court Room No. 1 of the Court House in St John's, this to commemorate the centenary of the laying of the cornerstone of the Court House. Court Room #1 was cleared of tables for the occasion and provided room for 100 guests. Prior to dinner, a reception was held upstairs on the landing overlooking the stairwell. Following the meal, Professor Shane O'Dea spoke on the architectural history of the building and its predecessors, and former Chief Justice T Alex Hickman recounted stories of a series of famous cases he witnessed or conducted during his time at the Court House.

Each guest at dinner received a memento of a polished stone taken from the Petites Quarry on the South Coast, this the quarry that provided stone for the Court House construction. Guests were also provided a booklet, written by Melvin Baker, Christopher English, John Joy and Shane O'Dea and titled *A Flag, An Anthem, A Courthouse*. The booklet, the third published by the Daisy Committee since 1991, contains extensive history of the events surrounding the new Court House, descriptions of the celebrations, profiles of the Chief Justice, and a large selection of photographs of the time. The Daisy Committee has copies for sale at \$10 each. Anyone interested in purchasing a copy should phone the Law Society and speak with Janice Whitman at 722-4740 extension 204. If requested, efforts will be made to fill orders in time for Christmas.



## 100<sup>th</sup> Anniversary Dinner





## Discipline Notes

### Discipline Committee Dispositions

The *Law Society Act, 1999* prescribes that an Adjudication Panel comprised of three members of the Discipline Committee, that is two Law Society members and one lay member, may make findings and prescribe sanctions. This substantively changes the procedure under the former *Law Society Act* where the Adjudication Panel reported its findings to the Benchers who in turn determined whether the respondent was guilty and, if so, imposed the sanction.

### Acquittal

On December 6, 2001, an Adjudication Panel of the Discipline Committee exonerated a member and dismissed the complaint of conduct deserving of sanction pursuant to section 48(2) of the *Law Society Act, 1999*. The allegations giving rise to the complaint were that the member failed to provide a proper quality of service and failed to properly advise the client. The Adjudication Panel determined that the evidence presented did not support the allegations and dismissed the complaint.

### Complaints Authorization Committee Dispositions

The Complaints Authorization Committee is a committee of Benchers that reviews the Secretary's report concerning allegations that have been investigated, and ultimately determines whether an allegation constitutes a complaint. The powers of the Complaints Authorization Committee are prescribed by section 45 of the *Law Society Act, 1999*. Where there are reasonable grounds to believe a respondent has engaged in conduct deserving of sanction, the allegation shall be considered as constituting a complaint and the Complaints Authorization Committee may counsel or caution the respondent or refer the matter on to the Discipline Committee. A decision of the Complaints Authorization Committee is final and not subject to appeal.

The Complaints Authorization Committee interprets counselling as less severe than cautioning. A letter of counsel recommends to the respondent to avoid similar conduct in the future. A letter of caution is a warning or admonishment to the respondent. Law Society Rule 9.06(5) prescribes that the Complaints

Authorization Committee may direct the Secretary to advise the members of the Society of the circumstances giving rise to the counselling or cautioning, but omit information that may disclose the identity of the respondent. Law Society Rule 9.06(6) prescribes that the Secretary shall notify the complainant and the respondent in writing of the fact that a respondent has been counselled or cautioned.

### Quality of Service and Failure to Respond to a Solicitor

The Complaints Authorization Committee cautioned a member for improper management of a real estate file and for failure to respond with reasonable promptness to communications from another solicitor. The committee cautioned member A for failure to follow-up, for a 12 month period, on a number of closing requirements and, despite several requests for compliance by member B, for failure to review member B's closing correspondence to ensure that it agreed *ad idem* with member A's requirements. The Committee cautioned member A that such conduct does not comply with the standard contemplated by Chapters II and XVI of the *Code of Professional Conduct*.

The Rules and commentaries are reproduced below.

#### Chapter II, Rule b

The lawyer should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.

#### Chapter II, commentary 7(h)

##### Quality of Service

7. Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

...  
(h) slipshod work, such as mistakes or omissions in statements or documents prepared on behalf of the client;

#### Chapter XVI, Rule

The lawyer's conduct toward other lawyers should be characterized by courtesy and good faith.

**Chapter XVI, commentary 6**

6. The lawyer should answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and should be punctual in fulfilling all commitments.

**Quality of Service**

The Complaints Authorization Committee counselled a member for improper management of a real estate file and for failure to respond to a client's request for information. The Committee counselled member A that failure to review the other solicitor's closing letter to ensure that it agreed *ad idem* with member A's requirements, failure to report information to the client as promised, and failure to respond to the client's telephone communication does not comply with the standard of conduct contemplated by Chapter II of the *Code of Professional Conduct*.

The Rule and commentaries are reproduced below.

**Chapter II, Rule b**

The lawyer should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.

**Chapter II, commentary 7 (a), (b) and (c)****Quality of Service**

7. Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

- (a) failure to keep the client reasonably informed;
- (b) failure to answer reasonable requests from the client for information;
- (c) unexplained failure to respond to the client's telephone calls;

## **Complaints Authorization Committee Practice Notes**

### **Firm Names**

The Complaints Authorization Committee reminds members that Law Society Rule 8.06 prescribes that a firm name shall not mislead or be capable of misleading the public. The misrepresentation of the number of barristers and solicitors in a firm is one specific example of a misleading firm name. Currently there are a number of firms whose names are contrary to Law Society Rules 8.06 and 8.07.

The Complaints Authorization Committee recommends that members ensure their firm names are in compliance with the following Law Society Rules:

### **Misleading firm names**

8.06 A firm name or letterhead shall not mislead or be capable of misleading the public.

### **Firm names and letterhead**

8.07 (1) A member who carries on the practice of law shall do so under:

- (a) the member's name;
- (b) the name of existing or former partners or associates;
- (c) the name of the original or founding partner or partners and associates;
- (d) any combination of the foregoing; or
- (e) a descriptive or trade name provided
  - (i) the name or a similar descriptive or trade name is not in use elsewhere in the province; and
  - (ii) that by the use of the name, the member of the firm could not lead members of the public into believing erroneously that the member or firm is associated or affiliated elsewhere in Canada with other firms or the members thereof.

(2) Notwithstanding subsection (1), a firm may not include:

- (a) a phrase such as "and associates", "and associate", "and partners", "and company" if there is only one barrister and solicitor in the firm; or



(b) any other language which misrepresents the number of barristers and solicitors in a firm.

### Branch Offices

The *Law Society Act, 1999*, section 78 prescribes that a member shall not open or maintain a branch office for the practice of law in the province unless the office is under the personal and actual control and management of a member in good standing.

The Complaints Authorization Committee interprets *personal and actual control* to mean that a branch office cannot be open when a practising member is not in attendance. Members are reminded that acting contrary to this statutory requirement may result in disciplinary sanctions.

### In Memoriam

#### BLACKWOOD

**Sandra Blackwood,**  
Roll #732, called to bar April 10, 1989.

Benchers noted with regret the death of Sandra Blackwood who died on Sunday, November 11<sup>th</sup>, 2001, at the age of 37 years. Condolences were extended to her family by the President and Benchers.

#### SMALLWOOD

**William Richard Smallwood, QC,**  
Roll #233, called to bar Feb. 3, 1954.

Benchers noted with regret the death of William Smallwood, QC, who died on Tuesday, October 30, 2001. Condolences were extended to his family by the President and Benchers.

### Senior Counsel?

### Then Volunteer to be a Mentor

A few years ago, a committee chaired by Bradford Wicks proposed the establishment of a Mentor Program. Under the proposal at the time, mentors would be recruited and made available to provide members less experienced in an area of practice with the assistance of experienced counsel. Recently, a committee comprising Derrick Watton, Bradford Wicks and Phyllis Weir was struck by Benchers to investigate and report with recommendations to Benchers on the needs of sole practitioners and of those practising in small firms. In conducting its review of these needs, the committee reconsidered the earlier proposed mentoring program and decided the idea still holds considerable merit.

The committee recommended to Benchers that a Mentor Program be established along the lines set out above. What follows next are the guidelines of the proposed Mentor Program.

Prior to initial access to the program, the user must sign a disclaimer with respect to the user's reliance on the advice of the mentor. The form signed by the user would also acknowledge:

- (i) that the mentor program and mentors accept no liability arising from assistance given to users or any person claiming through or under them;
- (ii) that the user must independently verify statements of law, procedure or fact made by the mentor;
- (iii) that the mentor program must not be used as a substitute for the user's own thorough research and analysis or the user's own professional judgement.

The current committee is seeking volunteers from members of the Law Society who have been practising for 10 years or more and are willing to participate in the Mentor Program. If you are a member with 10 or more years of experience and are willing to volunteer as a mentor, please submit your name and preferred areas of practice to [phyllis.weir@lawsociety.nf.ca](mailto:phyllis.weir@lawsociety.nf.ca), via facsimile at 722-8902, or by telephone 722-4740, ext 203.



## LAW SOCIETY RULES PART XIV PRACTICE INVESTIGATION

### Practice investigation

- 14.01 Where the complaints authorization committee has made a recommendation under subsection 45(1) of the Act; or, in any other case where the executive committee determines it is appropriate; and
- (a) where the executive committee makes a determination under subsection 23(4) of the Act; or
  - (b) where the member consents;
- the executive committee may direct a practice investigation to be made, by a person or persons (the "investigator") designated by the executive committee, of some or all of the member's records, files, and any other documentation and information as may be deemed necessary.

### Notice

- 14.02 One clear day's notice of the investigation shall be provided by personal delivery, electronic communication or other appropriate means to the member's partners and associates at the address of record. The notice shall indicate that the investigation has been directed under subsection 23(4) of the Act and shall provide the name of the investigator.

### Place of investigation

- 14.03 The investigation, where practicable, shall be made in the office of the member whose practice is the subject of the investigation.

### Co-operation with investigator

- 14.04 The member and the member's partners, associates, support personnel and legal assistants as defined in rule 12.01, shall respond to any inquiries and produce for the investigator all records, files, documentation and information which the investigator requires for the purpose of the investigation. The investigator may view, copy, remove and return same within a reasonable time.

### Report of investigator

- 14.05 The investigator shall, as soon as reasonably practicable, report in writing the results of the investigation to the executive committee, and to the complaints authorization committee where it has made a recommendation under subsection 45(1) of the Act. If deemed necessary by the executive committee a preliminary written report shall be provided.

### Failure to comply

- 14.06 If the member, or the member's partners, associates, support personnel or legal assistants as defined in rule 12.01, have in any way, failed to comply with the investigator's requirements for records, files, documentation and information, or have otherwise impeded the investigation, the investigator shall report the circumstances to the executive committee, and to the complaints authorization committee where it has made a recommendation under subsection 45(1) of the Act, and such failure to comply may constitute conduct deserving of sanction by a member.

### Investigation incomplete

- 14.07 If the investigator has been unable, for whatever reason, to conduct or complete the investigation, he or she shall report, stating the reasons therefor, in writing to the executive committee, and to the complaints authorization committee where it has made a recommendation under subsection 45(1) of the Act.

### Use of investigator's report

- 14.08 The investigator's report may be made the basis of a complaint against a member.

### Recovery of expenses of practice investigation

- 14.09 The expenses of a practice investigation may be recovered as costs in the same manner as provided for in rule 5.13(5).

### Discipline rules apply

- 14.10 For the purpose hereof, the Law Society Rules, Part IX shall apply with any necessary changes.

*(Adopted: Part XIV, Special Term Convocation,  
December 3, 2001)*

The full text of all Rules of the Law Society is available at the Law Society's website: [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca)



## APPLICATIONS

### Deputy Judge Advocate

The office of the Assistant Judge Advocate General (Atlantic Region) is seeking applications for the position of Deputy Judge Advocate in Newfoundland and Labrador. Candidates must be members in good standing of a Canadian provincial law society, however membership in the Law Society of Newfoundland would be an asset.

This is a part-time position. The successful candidate will be enrolled as an Officer (at the rank of Captain) within the Reserve component of the Canadian Forces. Enrollment is conditional upon meeting enlistment requirements, including a physical examination.

The position entails providing legal advice to the Department of National Defence and units of the Canadian Forces predominantly in Newfoundland and Labrador. However, duty travel throughout Atlantic Canada and elsewhere may be required on occasion. The position would be best suited to a lawyer physically located in St. John's or the surrounding area, but applications from other areas will also be considered. Training will be provided, which will include general military training as well as professional training.

Remuneration is based upon the rates prescribed for Officers (based on rank) within the Reserve Force for either half days or full days.

This position is open to females and males. Previous military experience, and proficiency in both English and French, although not pre-requisites, are assets.

Letter of Application (including resume) may be submitted to the following:

**Assistant Judge Advocate General (Atlantic)**  
PO Box 99000  
Attn Forces  
Halifax, NS  
B3K 5X5

The deadline for applications is January 18, 2002. Interviews will be conducted in February, 2002.

### Kittiwake Dance Theatre Looking for Volunteers

A not-for-profit charitable organization with a Board of Directors elected annually, **KITTIWAKE DANCE THEATRE** is Newfoundland's only professional/semi-professional dance company.

Incorporated on March 30, 1987, KDT has a two-fold mandate:

To provide local audiences with first-class dance performances;

To provide local choreographers and dancers with opportunities to further their careers without emigrating to another part of the world.

The Board of Directors of Kittiwake Dance Theatre is looking for new Board Members and would like to have one or two selected from the legal community.

If you are interested in becoming a Director, please contact

**KITTIWAKE DANCE THEATRE**  
at 722-6907  
or kittiwake@nfld.net

***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**

**1-800-563-9133**