
Benchers' Notes



December 2004

Volume 10, Number 2

These Benchers' Notes are written to provide members with information arising out of the Fall Term Convocation of Benchers held on October 4, 2004, and the Special Term Convocation of December 6, 2004. This and previous editions of Benchers' Notes, beginning December, 1999, are available at www.lawsociety.nf.ca

Benchers Approve 2005 Budget and Some Fee Increases

At the Special Term Convocation Benchers approved a 2005 Budget that froze at 2004 levels many of the basic fees paid by members, including the membership fee, the defalcation fund levy, and Bar Admission Course and related student and Call to Bar fees usually paid by firms. Benchers further instructed that revenues from Continuing Legal Education programmes not increase for 2005.

As widely anticipated, some fees increased. Given the costs experienced with two Custodianships during 2004 (the law practices of Douglas Harvey and William Parsons), it is necessary to replenish the Law Society's emergency cash reserves spent for legal and administrative costs on these Custodianships. A Levy of \$1,100 is necessary in order to replace immediately a portion of the monies spent.

For many months 2005 insurance program planning required considerable effort and contribution by the Insurance Committee chaired by John Roil, QC. At Convocation, Roil, QC, advised Benchers of the anticipated difficulty obtaining insurance at reasonable rates in the international markets and the resulting necessity to change insurers. This change, he noted, is not without considerable regret. The Law Society enjoyed a most

pleasant and beneficial working relationship with the professionals at LawPRO, particularly its President, Michelle Strom, and Vice-President, Duncan Gosnell. Nevertheless, and as an outcome of the Parsons' Custodianship, LawPRO were the first to counsel the Committee that international markets where traditionally we purchase coverage would pose a significant pricing challenge for the 2005 policy.

Following many deliberations, the Insurance Committee decided to conclude the Society's relationship with LawPRO and international re-insurers and to recommend instead participation in the Canadian Lawyers Insurance Association, CLIA. CLIA has a 15-year history of success insuring lawyers in other provinces: Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta. The Northwest Territories, Nunavut and Yukon are covered under CLIA also.

The CLIA model for insurance is one of significant self-dependence and self-involvement for participating law societies. Member societies are responsible for, and manage, their own defence and claims payments, and in many instances pay the first \$200,000 in claims costs from their directly held insurance reserves. CLIA operates on a not-for-profit basis and provides claims management advice when requested, manages claims above a dollar value determined by the society, provides actuarial services, periodically reviews the claims portfolio, and maintains a capital pool of funds for extraordinary claims payments.

In the final analysis, however, re-insurers do not purchase part of a society's risk and hence all claims costs will be paid by the member society over the long term. For this

2005 Fee Highlights

- Insurance premium increases \$1,100
- Levy of \$1,100 necessary to rebuild emergency funds
- Transaction Fee Surcharge to begin during 2005
- Other Fees frozen at 2004 levels



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reason it is necessary during 2005 for the Law Society to begin accumulating monies for a capital pool assigned in the name of the Law Society of Newfoundland and Labrador to the CLIA program. While the base CLIA premium for 2005 is \$4,100, a surcharge of 20% is added toward accumulation of the pool. To this sum a further charge is added to pay for defence, adjusting and management costs of the program, resulting in the \$6,000 total for 2005 liability insurance coverage.

During the first year of the CLIA program in Newfoundland and Labrador claims management will compare with the experience of recent years. Members will report claims to Ray Walsh, the Society's adjuster, and claims will be managed locally. For 2005, the Law Society will not itself pay claims from retained premiums but instead permit CLIA to manage and pay claims from dollar one. Beginning in 2006, however, the Insurance Committee may determine it is appropriate, as in most CLIA jurisdictions, for the Society to retain authority over the first \$200,000 in claims payments. This level of claims management and claims payment locally will require management by a dedicated Law Society Claims Committee, and likely additional staffing.

Since LawPRO and CLIA policies are both "claims made" policies, the LawPRO policy expires at midnight, December 31, for claims not reported by that date. It is important for members to report to LawPRO any claims that might arise from the term of their

LawPRO contract. Potential claims known, or about which members should have known at December 31, will not be accepted by LawPRO after the contract ends. Claims reported after midnight of December 31, and which members could not reasonably anticipate in advance, will likely fall within the new CLIA policy. Nonetheless, claims or potential claims under the LawPRO contract must be reported to Ray Walsh before December 31.

In related insurance matters, Benchers affirmed at Convocation their earlier decision to introduce a Transaction Fee Surcharge. A Transaction Fee Surcharge was proposed first in December 2003 as a means to reduce insurance costs overall since eventually the revenues can be assigned to pay down the insurance premium. In Ontario, for example, Surcharge revenues reduce each member's premium by approximately \$2,500. Unfortunately, events of 2004 delayed implementation of a Surcharge in this province; the Law Society did not have staffing resources to address two Custodianships and Surcharge start-up requirements.

At the recommendation of the Insurance Committee, Benchers determined the Surcharge will take effect at a date to be decided at the Winter Term Convocation of January 24, 2005. Members can anticipate the Surcharge start-up during the first quarter of 2005. The Surcharge is anticipated to generate approximately \$300,000 annually.

The amount of money to be generated from the Surcharge by each transaction, and the types of transactions to be charged, have not been finally determined. The Insurance Committee has these decisions under consideration and will report to Benchers in January with recommendations. Revenues from the Surcharge will be assigned to funds later in 2005, but one consideration must be depletion of the Assurance Fund by uninsured Parsons' transactions. In some instances Mr Parsons was acting for both sides on a real estate transaction and no LawPRO cover will apply. In the interest of public protection, Benchers earlier decided the Assurance Fund must respond to these losses, amounting approximately to \$850,000 of the approximately \$1 million available. The Fund will need to be replenished and revenues from the Surcharge may be made available. Benchers will determine the allocation of Surcharge revenues at the end of 2005.

Full details about the Surcharge, and the self-reporting mechanisms developed for members to report Surcharge assessments to the Law Society, will be provided in a February **Benchers' Notes**. Members can anticipate that the Surcharge program will require the paperwork necessary for two or three filings with the Law Society each year, each filing to include a remittance of the accumulated Surcharges.

In Memoriam

Edward Neary, QC, Roll # 236, Called to Bar April 28, 1955

Benchers noted with regret the sudden death of Edward Neary, QC, on April 25, 2004, a former Registrar of the Supreme Court of Newfoundland and Labrador and well-known practitioner with particular interest in real property law. Mr Neary's funeral was well attended by members and several Benchers. Benchers extend their condolences to his family.

William (Billy) Chafe

Benchers of the Law Society noted with regret the recent death of Billy Chafe on November 25, 2004, a former bailiff and Sheriff's officer of the Supreme Court of Newfoundland and Labrador, Trial Division. Several Benchers attended Mr Chafe's funeral. A tribute to Mr Chafe was held in Supreme Court on December 1, 2004. Benchers extend their condolences to Mr Chafe's family.

New Trust Rules and Random Audit Program off to a Good Start Further Trust Rule Changes in Effect Soon

- From January 1, 2005, Estate monies to be managed through a firm trust account
- Remedy soon for unclaimed trust funds
- Random Audit program proceeding on schedule

Uniform Trust Account Rules in Atlantic Canada

Transition to the consolidated Atlantic Canada Trust Rules, which came into effect in this province on October 1, 2004, has been seamless and without apparent difficulty for members. Some changes in the Rules were delayed and take effect soon. They are discussed below.

Unclaimed Trust Funds

The new Rules and the Member's Annual Report form anticipate that firms will regularly clean their trust accounts of unclaimed monies left following transactions where, for example, the client has moved with no address, or died, or a company has gone out of business and the principals cannot be found. There is no mechanism currently in place to permit firms to dispose of these funds in a manner that complies with trust conditions. The Society

has proposed amendments to the **Law Society Act**, that will permit firms to remit unclaimed trust monies directly to the Law Society, then to be held by the Society in trust for a period of 10 years, and, if still unclaimed at the end of 10 years, remitted to the Law Foundation for charitable purposes. Government has approved in principle the proposals and legislation will follow at the earliest opportunity. Members will be notified.

Lawyers Acting as Executors

Beginning January 1, 2005, the consolidated Atlantic Canada Trust Rules require members acting as Executor or Administrator of an estate to administer all estate monies through a trust account. Estate trust accounts, even if managed by a member separately from the firm's usual trust account, must be reported to the Law Society in the Member's Annual Report form.

Random Audit Program

By the end of December, approximately one half the law firms in the province will be visited by the Society's random auditor, Jerry Oser, CA. Those remaining will be audited during the next audit cycle, October to December, 2005. Mr Oser travelled this year to Happy Valley-Goose Bay, Corner Brook, Port-aux-Basques, Conception Bay South, Grand Falls-Windsor, Clarenville, Deer Lake, Daniel's Harbour, Port aux Choix, Stephenville, and Mount Pearl. He began the audit cycle in St John's and will finish the year in St John's. He reports that he has been courteously received by members throughout the province and expresses his gratitude.

Firms will be billed for the time spent by Mr Oser at their offices conducting the audit, plus a per member assessment for overall travel costs of the program. An equal per member travel assessment for those audited will assure fairness for all, without regard to location in the province. The Society is awaiting final travel expenses from Mr Oser before calculating the per member assessment and issuing invoices for the audits done.



Jerry Oser, CA Appointed to Conduct Law Society's Random Audits

Earlier this year, Jerry Oser was appointed by the Practice Rules Compliance Committee to conduct Random Audits of members' trust accounts as required under the new Rules. Jerry comes to this work with considerable background experience, including work with Ernst & Young and Revenue Canada, Excise. Jerry has a well-rounded background in several areas of financial management. His key strengths include his analytical ability and communication skills.

Currently, he is in private practice in St John's and works for the Law Society on contract for several months a year.

Brief Convocation Highlights

New Cash Transaction Rule

Benchers approved a new Cash Transaction Rule proposed by the Federation of Law Societies of Canada. The Rule stipulates that members are not to accept cash from clients in excess of \$7,500. Beyond this amount, clients must go to a financial institution and obtain a draft. Cash transaction limits of \$7,500 will be imposed by all law societies in Canada over the next few months.

Intervention at the Supreme Court of Canada

The Federation has been granted intervenor status before the Supreme Court of Canada in a case related to the manner in which federally and provincially appointed judges' salaries are determined. The Federation believes this case speaks to the independence of the judiciary. The intervenor will not address specific financial packages proposed for judges but instead assert the right to salary determination independent of political interference.

Ad Hoc Committee re Parsons: A New Practice Standard Adopted

A few months ago Marina Whitten, Benchers, was asked to chair an *ad hoc* Committee to examine circumstances that gave rise to the William Parsons' Custodianship and to determine whether practice standards or other factors might be addressed by the Law Society to assure against future problems. The Committee, comprising Denis Barry, QC, Dennis Ryan, Beverley Marks, QC, Robert Hickey and Gary Peddle, met on several occasions before the Special Term Convocation and provided an interim report to Benchers. The Committee is considering a number of proposals, including a bar against acting for both sides on a real estate transaction.

Following discussion of one recommendation from the Committee, Benchers agreed there should be a change to real estate practice standards concerning trust cheques. Beginning immediately where practicable, and in real estate transactions where title is encumbered by one or more mortgages, debentures or trust deeds, the vendor's solicitor must provide the purchaser's solicitor with a Discharge/Payout Statement(s) from the vendor's lenders, the statement providing the sum requested to obtain a full or partial release of the security. The vendor's solicitor will require written permission from the vendor to release the statement(s).

The purchaser's solicitor shall deliver to the vendor's solicitor a trust cheque in favour of each security holder in amounts sufficient to discharge the security as set out in the Discharge/Payout Statement(s). The balance of monies payable under the transaction shall be paid to the vendor's solicitor or firm in trust. The vendor's solicitor shall undertake (i) to remit the discharge payout to the security holder(s), (ii) obtain a release of the security for deposit with the purchaser's solicitor. Cheques are to be delivered to the vendor's solicitor by courier or express post.

Benchers approved this practice standard and instructed that Notice be given to the profession as soon as possible. While effective immediately, members are urged to be practical in its adoption until the bar has been able sensibly to accommodate the new standard. The standard will be rendered as a Rule for consideration and adoption at the Winter Term Convocation of January 24, 2005. During the interim period, members should address changes that are necessary in the way they conduct their practices. The Committee will pro-

vide further recommendations and a final report to Benchers at the Winter Term Convocation of January 24.

Incorporation of Lawyers

During early summer the Society forwarded comprehensive policy recommendations and draft legislation to government to assist in the preparation of changes to the **Law Society Act** that would permit incorporations. Government informs that the legislation will not be ready for consideration until the spring sitting.

Honours and Awards

An Adjourned Fall Term Convocation was held during the evening of October 15 to honour two distinguished members for their service to law and to the community. The Hon Fabian O'Dea, QC, was awarded the Degree of Doctor of Laws, *honoris causa*. Ernest G Reid, QC, was awarded the Gordon M Stirling, QC, Distinguished Service Award. Approximately 100 Benchers and guests filled Convocation Hall to witness the ceremonies and to attend the reception following.

In Memoriam

The Hon Fabian O'Dea, QC, died unexpectedly on Dec 12, 2004. Photographs on the adjoining page show him being honoured by the Law Society at an October 15th Convocation where he was granted the Degree of Doctor of Laws, *honoris causa*. O'Dea, QC, had a distinguished legal career, was the fourth Lieutenant-Governor of Newfoundland and Labrador, and a significant contributor to the community. Benchers extend their condolences to his family.

Law Society Honours and Awards



Left: **Brian Furey, Hon Fabian O'Dea, qc and William Goodridge, qc**

Below: **Jim Greene, qc and**



Right:
Brian Furey, Ernie Reid, qc and William Goodridge, qc

Bottom:
Peggy Reid, William Goodridge, qc, Lewis Andrews, qc and Ernie Reid, qc



Professional Responsibility Notes

Discipline Committee

The role of the Discipline Committee is separate entirely from the Complaints Authorization Committee (CAC). This Committee's Chair is responsible to ensure that Complaints referred from the CAC are heard before Adjudication Panels comprised as required under the **Law Society Act, 1999**. An Adjudication Panel must include three members of the Discipline Committee, that is, two Law Society members and one lay member. The Act prescribes that the panel may make findings and impose sanctions.

Adjudication Panel Decision re Keith F Rose

An Adjudication Panel of the Discipline Committee having heard two Complaints, in a Decision dated June 16, 2004 pursuant to the **Law Society Act, 1999**, subsection 48(3) found Keith F Rose guilty of conduct deserving of sanction.

Mr Rose entered a guilty plea to the following violations:

- (i) failed to enter into a written contingency fee agreement with his client and thereby failed to comply with Rule 55.17 of the **Rules of the Supreme Court, 1986**;
- (ii) failed to render a bill for legal fees prior to withdrawing a fee from his trust account and thereby failed to comply with the Rules of the Law Society of Newfoundland respecting Withdrawals from trust account and in particular Rule 5.05(c);
- (iii) failed to respond to several demands from the Law Society for a response and thereby failed to comply with the Rules of the Law Society of Newfoundland, Part IX - Discipline, and in particular Rules 9.04(3), 9.04(5) and 9.07;
- (iv) failed to obtain a tax certificate and a certificate of title for a

- client and to respond to numerous requests from the client and the client's solicitor for compliance and thereby failed to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation contrary to the Rule contained in chapter II of the **Code of Professional Conduct**;
- (v) failed to comply with the Rule respecting fees contained in chapter XI of the **Code of Professional Conduct**;
- (vi) failed in his responsibility to the profession generally contrary to the Rule contained in chapter XVI of the **Code of Professional Conduct**; and
- (vii) failed to satisfy escrow conditions in a timely manner and to respond to numerous requests from a solicitor for compliance and thereby failed in his responsibility to lawyers individually contrary to the Rule contained in chapter XVI of the **Code of Professional Conduct**.

The Adjudication Panel ordered that the member be reprimanded; that the member send letters of apology to the client and the solicitor; that the member pay a fine of \$2,500; that the member pay the expenses incurred by the Law Society in the investigation and hearing of the Complaints; and that publication of the disposition of the Complaints be made in accordance with Law Society Rule 9.28.

Adjudication Panel Decision

An Adjudication Panel of the Discipline Committee, in a Decision dated October 18, 2004 pursuant to the **Law Society Act, 1999**, subsection 48(3), found a member guilty of conduct deserving of sanction.

The member entered a guilty plea to the following violations:

- a) failed to file with the Vice-President of the Law Society of

- Newfoundland a completed Notice of Change in Practice in Form 2.19A prior to or at the time of changing the member's association in practice;
- b) failed to execute Form 2.19A for a period of approximately seven months following the change of the member's association in practice;
- c) transferred substantially all client files to another law firm without obtaining each individual client's consent to the transfer of each file to another law firm prior to the actual transfer of the respective file, including the files of three clients, who individually complained to the Law Society of Newfoundland respecting transfer of their files without their consent.

The Adjudication Panel Ordered that the member be reprimanded; that the member have one year to pay the expenses incurred by the Law Society in the investigation and hearing of the Complaint; and that publication of the member's conduct deserving of sanction be published in accordance with Law Society Rule 9.28.

The Adjudication Panel ordered that the member's name be withheld from publication. This deviation from the Law Society's publication policy was based on the following reasons. The facts and circumstances relating to the complaint were not unusual or egregious. The object of general deterrence to members of the profession in the proper and careful dissolution of partnerships and/or transfer of files can be generally satisfied by publication of the conduct deserving of sanction without reference to the name, in that members can take notice to exercise care and caution in situations where partnership and associations are dissolved and confidential clients' files are transferred.

Complaints Authorization Committee

The Complaints Authorization Committee (CAC) is a statutory committee of Benchers mandated to address the first phase of the disciplinary process as prescribed by Part II of the **Law Society Act, 1999** (the **Act**). The process commences with an "allegation" filed with the Vice-President (s. 43). An allegation is a statutorily defined term meaning "a written document alleging that a respondent has engaged in conduct deserving of sanction" (s.41(a)). "Conduct deserving of sanction" is also a defined term which includes professional misconduct, conduct unbecoming, violation of the **Act** or the Law Society Rules, and failure to adhere to the Code of Professional Conduct (s.41(c)).

The Vice-President may either refer the allegation to consensual mediation or conduct an investigation (s.44(1)). If mediation is unsuccessful, the Vice-President will conduct an investigation and will submit the allegation to the CAC upon completion of the investigation (s.44(3)).

Once the allegation has been submitted to it, the CAC may require further investigation or require the respondent to appear before it (s.45(1)(b), (c) and (d)). It may make recommendations to the Executive Committee concerning a respondent's practice (s.45 (1)(e), (f) and (g)). It may dismiss an allegation (s.45(1)(a)), counsel or caution a respondent (s.45(2)(a)), or instruct the Vice-President to file the Complaint and refer it to the Discipline Committee for hearing (s.45(2)(b)). There is no appeal from the CAC's decision (s.45(3)).

A Complaint comes into being only after the CAC has considered the allegation and has formed "the opinion that there are reasonable grounds to believe that a respondent has engaged in conduct

deserving of sanction". The CAC's role with respect to a Complaint lends meaning to the word "authorization" in the CAC's name. As the Complaints "Authorization" Committee, the CAC's role is to determine when an allegation constitutes a Complaint. Then the CAC may authorize the filing of the Complaint and its referral to the Discipline Committee. Or, it may chose to proceed by way of counsel or caution, thereby not authorizing the filing of the Complaint.

The decision of the CAC to issue a letter of counsel or caution is not a disciplinary action. There is no finding of guilt from which discipline can flow. Counsel is advice; caution is a warning. Both are intended to assist the member in his or her future conduct.

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

Letters of Counsel were issued by the CAC because of the following Complaints.

Complaint concerning the manner in which the member acted during an argument with a member of the public. (**Code of Professional Conduct, chapter I commentary 3 and chapter XIX, commentary 10**)

Complaint of poor management of an Estate file and failing to provide a quality of service in compliance with the standard contemplated by the Code. (**Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8**)

Complaint that the timeliness of communications with the client was not in keeping with the agreed bi-weekly reporting. (**Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8**)

Complaint of failing to respond to telephone calls and correspondence from another solicitor for a three month period. (**Code of Professional Conduct, chapter XVI, commentary 6**)

Complaint that direct contact with a potential witness, without the consent of opposing counsel, for the purpose of obtaining information which the member knew or ought to have known was personal information concerning the opposing party, and which the member knew or should have known the potential witness was prohibited by law from disclosing in the absence of consent or a Court order. (**Code of Professional Conduct, chapter I and chapter XIII, commentary 3**)

Complaint that the representations made to the client do not comply with the standard of conduct contemplated by the Code. (**Code of Professional Conduct, chapter III, Rule (a), commentary 3**)

Complaint of failing to do any substantive work on a client file for a twenty-four month period. (**Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8**)

Complaint of failing to respond to a client's telephone calls and failing to proceed with a quieting application for a twenty-one month period. (**Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8 and chapter III, Rule (a)**)

Letters of Caution were issued by the CAC because of the following Complaints.

Complaint that the quality of service provided and the representations made to the client do not comply with the standard contemplated by the Code. (**Code of Professional Conduct, chapter II, Rule (b), commentaries 7 and 8 and chapter III, Rule (a)**)

Complaint that the quality of service provided, including the misplacement of the client's family law file, does not comply with the standard contemplated by the Code. (**Code of Professional Conduct, chapter II, Rule (b) and chapter VIII, commentaries 4 and 5**)

Complaint of failing to transfer a client file for a four month period and failing to provide notice of withdrawal in compliance with the Code. (Code of Professional Conduct, chapter II, rule (b), commentaries 7 and 8 and chapter XII, commentaries 2 and 7)

Complaint of proceeding with an ex parte application when there was a solicitor representing the other party and failing to inform the Court that there was no confirmation that the solicitor for the other party had been served. (Code of Professional Conduct, chapter IX, commentary 15 and chapter XVI)

Rule 9.01.1

Designated Person Rule

Law Society Rule 9.01.1, approved by Benchers on December 6, 2004, requires all law firms, as defined in the Rule, to designate a person to receive information with respect to allegations, complaints and disciplinary matters. Members are required to provide the name and address of the designated person using the Statutory Declaration Form to be filed with the Law Society not later than Jan 15, 2005.

Refer to insert for Rule 9.01.1

Archives Committee

Louisa Maud Saunders (183)



Louisa Maud Saunders

It was 1933, ninety-nine years after the incorporation of the Law Society that the first woman was called to the Bar of Newfoundland. Louisa Maud Saunders was born in Greenspond, Bonavista Bay, on April 9, 1897, the sixth daughter and youngest of nine children of Abraham Saunders and Bridget Parsons. She began her education at the Church of England School at Greenspond, but moved to St John's in 1910 to complete her secondary schooling at Bishop Spencer College. Shortly after graduation she received her introduction to the legal profession by joining the law office of Richard Squires as a legal secretary.

Saunders was intrigued by the law and before long had convinced

Squires to accept her as an articling clerk. Her articling took place between 1928 and 1932, during which time Squires was Prime Minister of Newfoundland. It was a busy time for Squires, as he spent much of that time trying to keep Newfoundland from going bankrupt and defending himself against accusations of corruption. It is likely that much of Saunders's articling was self-directed.

On April 4, 1933 Louise Saunders, having successfully completed the requisite examinations, was called the Bar of Newfoundland. She was immediately admitted into partnership in Squires's firm, thereafter known as Squires, Curtis, McEvoy and Saunders. The firm later included Squires's son, Richard Jr after his call to the bar in 1935.

McEvoy left the firm in 1936 and Curtis in 1939; with Squires death in 1940 and his son's death in 1942, Saunders practised alone until 1951, when Stanley F Carew became her partner. Saunders was mainly involved in civil law, probates, conveyancing, property and administration of estates. In 1964 she was raised to the silk, becoming the first woman

in Newfoundland to be accorded the title Queen's Counsel.

In addition to the practice of law, Saunders was a devoted community worker. She was a founding member of both the Local Council of Women and the YWCA, serving for many years as legal counsel to the former and on the board of directors of the latter. In 1967 she was awarded the Centennial Medal in recognition of her volunteer work.

An accomplished artist, Saunders won first prize for an oil painting of St Thomas Church of England Church in the first Arts and Letters Competition, sponsored by the provincial government, in 1954. Although she never married, she raised the family of her sister, Alice Edith Hunt, who died in 1925 leaving a number of young children.

In an article in *The Evening Telegram*, August 4, 1946, Saunders stated, "The legal profession is one to which patience, perseverance, and probity must be brought. In return the lawyer has work that is never monotonous." For her it never became monotonous; she continued to practise until her death, June 14, 1969.

A Fine Summer's Digging

by Bert Riggs

James Simms (Roll #1); Edward M Archibald (15); Hugh Hoyles (17); Frederick Carter (19); Philip F Little (25). These names are among the earliest members called to the Bar of Newfoundland during its first 50 years (1826-1876). They are familiar names: all five served as Attorney General of Newfoundland, and the latter three all became prime minister of Newfoundland after 1855. Information about them is quite plentiful.

There are many names among the first 50 or 60 members of the Law Society about whom little or nothing is known: names such as Robert Roberts Wakeham (12); Theophilus Stewart (16); William G Greene (24); Harcourt Mooney (26), Alexander Fraser (32). Almost all of the Society's early records were destroyed in the fires that swept St John's in 1846 and 1892, making the search for information about these and other early members of the Newfoundland legal fraternity a challenging prospect indeed.

The Archives and Records Committee believes that no stone should be left unturned in an attempt to obtain information about the establishment of the Law Society and the men whose names were written large on its roll in its formative years. To that end, in June 2004 we were successful in obtaining a grant from the Young Canada Works in Heritage Institutions.

We were very fortunate to be able to employ Amanda Jamieson, a graduate of Memorial who has completed the first year of a two-year masters program in Archival Studies at the University of Toronto. For a ten-week period, she combed through published books and others records in city libraries and archives, spent hours peering over microfilm of 19th century newspapers, studied the minutes of Benchers' from the time period and even tramped through various cemeteries in her attempt to seek out every single piece of information she could find on these 66 men. While some still remain elusive, her diligence and determination has given life and character to a host of individuals who, up to this point, were nothing more than names on a list.



Amanda Jamieson

This new information will become part of the permanent record of the Law Society and eventually will be made accessible to current members and the general public on the Society's web site. In the meantime, her success has demonstrated that the information is available if the right person knows where to look and bodes well for a continuation of this type of research endeavour in the years to come.

Alternative Dispute Resolution

4-Day Mediation Skills Workshop in St. John's February 21-24

presented by the
Stitt Feld Handy Group (a division of ADR Chambers)

Certificates provided by the


"Enthusiasm, humour, detail practice and new skills - who could ask for more from any course?"
 Glenda Best, Williams Roebothan McKay & Marshall, St. John's

"Absolutely excellent. Light years ahead of any other program. The facilitators knew their subjects and were able to convey interest, enthusiasm and encouragement to try. Excellent communicators."
 Grant Inglis, Little, Parker & Inglis, Waterloo

"This was the best workshop I have ever attended. Fun, informative and interesting."
 Gregory Pittman, Mills, Husey and Pittman Law Firm, Clarenville

"Exceeded expectations. Very practical, very informative. I knew very little about mediation before; now I feel I know quite a lot."
 Christopher Nugee Q.C., Wilberforce Chambers, London, England

Call 1 800 318 9741 or visit www.adr.ca



Educational Notes

Bar Admission Course

The 2004 Bar Admission Course for Newfoundland and Labrador was offered from October 5, 2004 until November 19, 2004.

This year's Bar Admission Course covered the following topics:

Week 1 - Family Law

Topics included divorce proceedings, custody and access, child and spousal support, matrimonial property, provincial family legislation, pensions, Unified Family Court procedure, child protection and support enforcement.

Week 2 - Corporate/Commercial Law

Topics included incorporation and organizing a business, corporate procedures, corporate finance, the **Personal Property Security Act**, security opinions, purchase and sale of a business/shares and commercial insolvency.

Week 3 - Civil Procedure

Topics included limitations of actions, commencing proceedings, service, defences, counterclaims and 3rd party proceedings, summary trial, expedited trial, discovery and disclosure of evidence, setting down for trial, the **Judgment Enforcement Act**, civil appeals, costs and alternative dispute resolution.

Week 4 - Skills Training

The Course presented "lawyering-skills" workshops where students received instruction in direct examination, cross-examination, negotiating settlements, interviewing clients, examination for discovery, risk management and how to avoid professional negligence claims. As well there was a session on maintaining a balance between professional and personal responsibilities and a separate section on ethics and the Code of Professional Conduct, for which students completed a written assignment.

Week 5 - Criminal Law and Procedure

Topics included the court structure, presumptions and burdens, classification of offences, pre-arrest, arrest, charge, first appearances, judicial interim release, disclosure, elections and re-elections, solicitor/client matters, preliminary inquiries, pre-trial matters, Charter applications, trials by judge alone, jury trials, the sentencing process, types of sentences, criminal appeals, young offenders, evidentiary matters, **voir dire**s, search and seizure and defences. As well, in this section, students received instruction on advocacy skills, there was a panel discussion among judges with

respect to advocacy and students prepared for and participated in a mock trial.

Week 6 - Administrative Law

Topics included the Labour Relations Board, Labour and Commercial Arbitration, Municipal Law, the Human Rights Commission, the Workplace Health, Safety and Compensation Commission, administrative law in the Federal Court, the Law Society discipline process, statutory appeals, judicial review of arbitration and prerogative orders.

Week 7 - Real Estate and Wills

Topics included the registry system and land tenure, the real estate transaction, the mortgage, disabilities and title insurance, survey/location certificates, taxation issues, crown lands, quieting of titles, possessory title, landlord/tenant and title searches, a real estate transaction workshop and a separate section on wills, estates and probate.

The goal of the Course is to provide new lawyers a comprehensive overview of Newfoundland and Labrador law and procedure and to transfer information to ensure entry level competence in the profession. The Course is intensive, practical and relevant to what a new lawyer will see in practice.

To pass the Bar Admission Course, students must pass examinations in Family Law, Commercial Law, Civil Procedure, Criminal Law, Administrative Law and Real Estate/Wills. Each exam is 3½ hours long and focuses on the lecture presentations, the Bar Admission Course materials and the approximately 80 provincial and federal statutes and regulations covered in the Course. The Bar Admission Course materials consist of 11 separate volumes. Any member interested in auditing any portion of the Bar Course or reviewing the Bar Course materials



Bar Admission Course - 2004

should contact Francis O'Brien, Director of Legal Education, for further information.

The Bar Admission Course Committee and the Law Society is grateful for the generous contributions made by members of the profession, whose contributions as Bar Course Instructors ensure the Course remains vibrant and beneficial to our new lawyers. The Joint Committee on Continuing

Continuing Legal Education

Legal Education offered educational programs in a wide cross-section of practice areas throughout 2004. As this is the last Benchers' Notes for 2004, the Joint Committee on Continuing Legal Education would like to sincerely thank our 2004 seminar presenters and acknowledge their contributions to the ongoing education of lawyers in this province. We also appreciate those who support our programs through their attendance at seminars.

What follows is a listing of seminar topics in 2004 and the names of our presenters for each seminar.

Family Matters:

Recent Amendments to Family Law Rules and Forms in the Supreme Court – February 5, 2004

Thank you to The Honourable Mr. Justice Richard LeBlanc of the Supreme Court of Newfoundland and Labrador, Trial Division; The Honourable Mr. Justice Douglas Cook of the Supreme Court of Newfoundland and Labrador, Unified Family Court; and Ms. Sandra Burke of Dawe and Burke.

Are you ready for the new Privacy Legislation? What lawyers and their clients need to know about PIPEDA – February 5, 2004 in St.

John's & February 6, 2004 in Corner Brook

Thank you to Mr. Michael Power of Gowling Lafleur Henderson LLP, Ottawa, ON; and Mr. Gerald Neary, Office of the Privacy Commissioner of Canada, Ottawa, ON.

Electronic Legal Research Training Sessions: Using Quicklaw or WestlawCarswell for Legal Research – January 26 – March 26, 2004

Thank you to Ms. Harriet Mercer and Ms. Gail Hogan, Law Society of Newfoundland.

Employment and Labour Law: Caselaw Update – April 15, 2004

Thank you to Mr. Ian Wallace, Stewart McKelvey Stirling Scales; Ms. Sheila Greene, NAPE; Mr. Denis Mahoney, McInnes Cooper; Ms. Rose McGrath, White Ottenheimer & Baker; and Ms. Anna Locke, Patterson Palmer.

Courts and Technology: Current Capabilities and Emerging Trends – April 19, 2004

Thank you to Mr. Justice Garrett Handrigan of the Supreme Court of Newfoundland and Labrador, Trial Division; Mr. Robert O'Brien, Federal Court of Canada, Ottawa, ON; Mr. Raynald Chartrand, Tax Court of Canada, Ottawa, ON; Mr. Mike Ives of Lexiz/Nexis, Charlottetown, PEI; Ms. Pamela Ryder Lahey of Provincial Court of Newfoundland and Labrador; Mr. Douglas Wright of Patterson Palmer; and Ms. Cathy Kendall, Department of Justice.

Financial Reporting, Accounting and Analysis: The Fundamental Tools of Finance and Accounting for Lawyers – April 22 & 23, 2004

Thank you to Mr. Philippe Levy, McGill International Executive Institute, Montreal.

Title Insurance and Risk Management in Real Estate: A Seminar for Lawyers, Legal Assistants, Legal Secretaries and Real Estate Support Staff – May 27, 2004 and a Video Repeat held in Corner Brook on June 9, 2004

Thank you to Mr. Chris March, TitlePLUS; Mr. Tim Clarke, LawPRO; Mr. Stephen Freedman, TitlePLUS and Mr. Tim Anningson, TitlePLUS.

Focus on Environmental Law – June 17, 2004

Thank you to Mr. Geoffrey Brown, Stewart McKelvey Stirling Scales; Mr. James Thistle, QC, McInnes Cooper; Mr. Toby Matthews, Department of Environment and Conservation; and Mr. Craig Hollett, Pinchin LeBlanc Environmental Ltd.

Focus on Administrative Law, 2004 – October 1, 2004

Thank you to The Honourable Mr. Justice Keith Mercer, Supreme Court of Newfoundland and Labrador, Court of Appeal; Mr. Augustus Lilly, QC, Stewart McKelvey Stirling Scales; and Mr. David Jones, QC, de Villars Jones, Edmonton, Alberta.

Winning Through Cross-Examination – October 25, 2004

Thank you to Mr. Timothy Ray of Beament, Green, Ottawa, ON; Mr. Joel Kohm of the firm Joel Kohm, Barrister and Solicitor, Toronto, ON; and the Advocates' Society, Toronto, ON.

New Criminal Proceedings Rules in the Provincial Court of Newfoundland and Labrador – November 26, 2004

Thank you to The Honourable Judge Gregory Brown of the Provincial Court of Newfoundland and Labrador; Mr. David Eaton, QC of McInnes Cooper; and Mr. Thomas Mills, Department of Justice.



At the **Annual Dinner and Dance** in June, Brian Furey, incoming President, congratulates Stephanie Newell on the completion of her year as President of the Law Society.



Call to Bar

February 6, 2004 (photo #2)

Front Row (l-r) Stephanie Newell, President, Chief Justice Derek Green, Andrew Collingwood

2nd Row (l-r) Kathleen Tremblett, Jennifer Reid, Lisa Clarke, Alison Manning, Maija Laitinen, Katherine O'Brien, Laurie Penney

3rd Row (l-r) Mark Andrews, Brian Harvey, John Hoben, Wayne Webster, Paul Auerbach, Chris King, Michael King

April 7, 2004 (photo #3)

Front Row (l-r) Kathleen O'Reilly, Raman Balakrishnan, Jane Hennebury, Alex MacNab, Isobel O'Shea, Kimberley Horwood

Back Row (l-r) Michelle Davis, Lisa Daley, John Edgecombe, Angela Blagdon, Ian Tucker

June 18, 2004 (photo #4)

Front Row (l-r) Edward Brown, Denise Woodrow, Mark Garrett, Dana Sullivan, Peter Chaffey

Back Row (l-r) Catherine Boyde, Gregory Moores, David Sinnott, Christopher Peddigrew

October 15, 2004 (photo #5)

Front Row (l-r) David Conway, Colin Feltham

Back Row (l-r) Denis Fleming, Jeffrey Slade

