

# Benchers' Notes



December 2009

Volume 13, Number 1

*These Benchers' Notes cover the Special Term Convocation of December 7, 2009. The Notes provide discussion of selected topics considered by Benchers at Convocation and other items of interest to the Bar. This and previous editions of Benchers' Notes, beginning December 1999, are available on-line at [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca)*

## President's Report

### 2009 Insurance Premium Costs Dramatically Reduced

Irene Muzychka, the President, tabled at Special Term Convocation on December 7 a 2009 Budget that realized, in her words, "some very good insurance news for members." The Budget shows a dramatic drop in insurance premium costs for 2009, the result of several good years of reduced loss experience and the growing maturity of our new insurance programme with CLIA, our insurer. Now that our claims experience with CLIA has matured beyond five years, CLIA actuaries, prompted in part by our own actuary, Andre Normandin of Montreal, are comfortable lowering premium costs. In result, the per member premium for 2009 is \$2,180 reduced from \$4,650 in 2008, a saving of \$2,470. The good news does not stop at insurance. All other Law Society fees charged to members are frozen for another year. The fee for practising insured or uninsured membership, sometimes called the Certificate Fee, remains at \$1,690 for the seventh year in a row. Observed Muzychka, "...our costs are coming into line with the rest of Canada. A number of other law societies, for example, now have membership fees that exceed \$2,000. And finally too, our insurance premium has become competitive in the national context."

John Roil, QC, Chair of the Insurance Committee, addressed Benchers about the 2010 premium. He noted that reduced premium costs today are the result of improved claims experience and good Programme management over the last few years. "Still, and even with this good news, claims experience can deteriorate quickly. And we continue to have a very high number of missed limitation claims and these are entirely pre-

ventable. Without these claims, members could reduce their insurance costs by another 50%." He cited with approval the longstanding experience in Nova Scotia where missed limitations can be re-opened by Application to court. Benchers acknowledged this opportunity to encourage change in the *Limitations Act* and resolved to approach government and propose a change in the near future.

Roil, QC, noted also that the Insurance Programme will in 2010 contribute \$250,000 to the Law Society for its ongoing loss prevention work in areas such as the trust audit programme, discipline, the Law Library and legal education, all these activities providing direct benefits to the Insurance Programme. While the trust audit programme is largely self-financing through billings for Diane Rendell's in-office time and travel costs, the programme still requires considerable office management that is not billed to members and is absorbed by the Society as a general operating cost.

The President announced further good news from the Law Foundation. Even in the face of declining interest earnings, the Foundation will maintain its grant to the



Irene Muzychka, President,  
at Special Term Convocation, Dec 7



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## Benchers' Notes

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Law Library for 2010, a grant of \$121,000. Jeffrey Benson, QC, Chair of the Board of Governors, stated that the Governors acknowledge the importance of law libraries to the public interest. Faced with declining revenues from interest earnings on lawyers' trust accounts, the Foundation is this year dipping into its cash reserves in order to maintain consistency in its funding to the Law Society's law library and the Court House libraries in Gander and Corner Brook. The President acknowledged the generosity of

these grants and expressed her appreciation for the Foundation's contribution.

Continuing with her report, the President remarked about the most recent Call to Bar, October 23, where six new members were sworn-in. This Call, she stated, was unique because the new members were all transfer applicants coming to this province under provisions of the National Mobility Agreement following practice in other parts of Canada.

Turning to social matters, the President noted the pleasant experience of attending the graduation ceremony for CGAs, and other functions planned for the next few weeks as various governing bodies celebrate the Holiday Season. She reminded Benchers of the traditional New Year's Eve levee to be held at the Law Society and noted that the Society supports Christmas parties for lawyers and court staff in other parts of the province.



Several Benchers speaking during a break at Convocation



*Merry Christmas  
and a  
Happy New Year  
to all Members  
and their Families  
from Benchers  
and  
Law Society Staff*

### Law Society Building Costs

Members enquire from time-to-time about the costs of operating the Law Society building. When the building was first contemplated, a cost comparison was undertaken to determine the merit of purchasing and refitting over continued rental in Atlantic Place. Experience in the seven years since moving into our own premises has shown the wisdom of the purchase and refit of the building. In addition to saving costs on Convocation sites (all Convocations were held in rented space), there have been savings on Bar Admission Course space rental, for CLE, for discipline, and

for social events normally held at hotels.

In 2001, the Society was paying \$12,000 per month for premises in Atlantic Place. The rent was scheduled to increase in 2002. Our cost projection to own and refit the Law Society building in 2002 was \$13,200 per month. This sum included payments on the mortgage plus the new expenses of ownership such as insurance, electricity, maintenance, parking, cleaning. Now seven years in the building, costs are approximately \$16,000 per month for the mortgage and services.

## Lending Money to Clients

Kenneth Baggs, QC, the Bencher who Chairs the Practice Rules Compliance Committee, noted that members require clear guidelines for instances when they determine it is appropriate to lend money to clients pending settlement of a claim. The Committee set out some time ago to improve upon the Rules currently used to regulate

such decisions and, in the process, asked several members to attend at Committee meetings and speak to the issue and offer guidance. Out of those discussions, and following a review of the Rules used in other jurisdictions, the Committee developed new Rules. The Rules were adopted by Benchers at Special Term Convocation of December 7

and take effect immediately. The Rules were emailed to members on Thursday, December 10 in an email titled *Law Society Rule Amendment - Rule 5.11 Borrowing and Lending*. Members may obtain another copy of the email by contacting Pamela Marks at Law Society offices, at telephone 758-0816.

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## Federation of Law Societies of Canada Report

Sheila Greene, QC, Past President of the Law Society, is our representative on the Federation's Council in Ottawa. She provided a written and oral report to Benchers on the activities of the Federation, noting the work done to develop a Model Code of Conduct to be adopted over time by law societies in Canada. The Federation is hoping that law societies will move aggressively to adopt the new Code.

There was discussion by Benchers of the Report of the Task Force on the Canadian Common Law Degree. The Task Force Report recommends a uniform academic approach to the law degree, an approach based upon skills development. Greene, QC, noted that such an approach differs from our own; the Law Society of Newfoundland and Labrador has among the highest expectations in Canada for incoming members. Because of these differences, the Education Committee will need to address the Task Force Report early in the new year and then return to Benchers in January with recommendations.

Further with admission standards, in her written report, Greene, QC, stated that "In June, the Federation's Council approved in principle the development of a

comprehensive plan to develop national standards for admission to the legal profession. Currently, there are significant differences in the admission standards and processes used by each law society. These can be difficult to justify given the mobility of lawyers in Canada. In most cases, admission to one law society effectively guarantees admission to the others."

"A working group of Council and law societies has mapped out a plan to develop common admission standards, including standards for good character, and the appropriate mechanisms for testing compliance with the standards. The goal of the project is "to develop consistent and defensible standards of admission to the legal profession and to ensure every applicant admitted to the bar meets these standards."

Greene, QC, reported next about the Quebec Mobility Agreement proposed for adoption in principle. The proposed Agreement grants to the Quebec Barreau the rights now granted by the Barreau to lawyers from other parts of Canada who wish to practice in Quebec. Essentially, the Agreement permits lawyers from outside to go into Quebec and practice Federal law or the law of their home jurisdiction under the title "Canadian Legal Advisor." Following discussion, Benchers agreed to adopt in principle the Quebec Mobility Agreement. Implementation of the Agreement will require Rule changes and possible changes to the *Law Society Act*. The Education Committee will review the Agreement with a view to implementation.

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

*For further discussion or consultation, contact:*

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

**754-3007 or 1-800-563-9133**

## Changes in Status

The following members have changed status with the Law Society since October.

Requests for Practising, Non-Practising or to Resign Membership as of October 5, 2009

### From Practising to Non-Practising

Susan Doyle  
Kathleen Healey  
Suzanne Orsborn  
Paula Schumph  
John R Whelan  
Bernadette Cole Genderon  
Beverley Lane  
James Hornby  
Heather Clarke  
Isobel O'Shea  
Sharon McKim-Ryan  
Kathleen Tremblett

### Members Granted Permission to Resign

Matthew Clarke  
Christopher Fox  
Jonathan Hale  
Alex Harrold  
Wayne Silliker  
Dale Seymour

### From Resigned to Practising

Vanessa Gauthier

### From Non-Practising to Practising

Diane Laskey  
John Roil, QC  
Greg French  
John Whelan  
Wayne Silliker  
Lloyd Strickland  
Edward Brown  
Veronica Dillon  
Garrett O'Brien  
Scott Worsfold

Requests for Practising, Non-Practising or to Resign Membership as of December 7, 2009

### From Practising to Non-Practising

Krista Dawn Harding  
Katrina Warren  
William Jeremy Andrews  
Robynn Arnold  
Diane Laskey

### From Non-Practising to Practising

Felix Collins  
Thomas Marshall, QC  
John Cook

### Members who Resigned

John Meaney  
Crystal Critch  
Jeffrey Niederhoffer  
Brianna Hookey

### From Resigned to Non-Practising

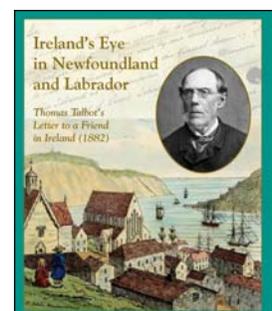
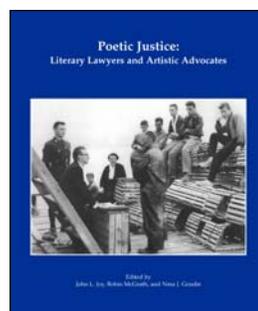
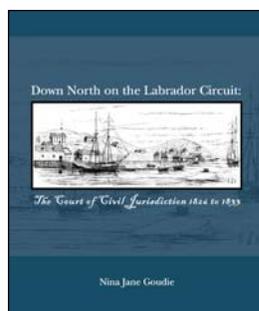
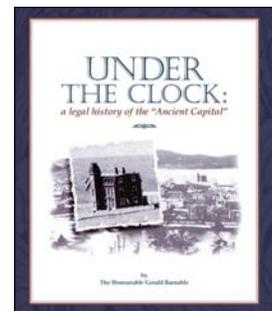
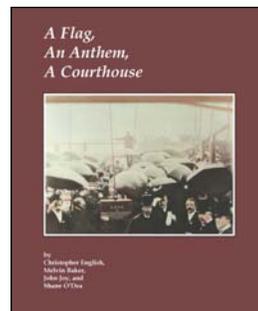
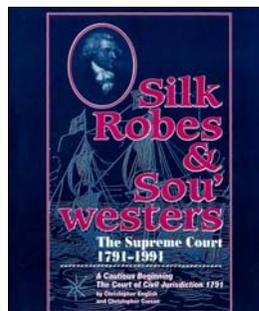
Sarah Colbourne Penney

### From Call to Bar to Non-Practising

Shawn Patey  
Suzanne Hollett

## An Ideal Christmas Gift

The six books shown here and published in recent years by *Project Daisy* offer a varied and interesting look at the development of law in Newfoundland and Labrador over the last two centuries and more. And some humour, too. Ideal as a gift and in time for Christmas! Shrink-wrapped, \$50.00 for the set. For yours, contact Janice Whitman at Law Society offices, 758-0804.



## Benchers of the Law Society of Newfoundland and Labrador



Photograph was taken at the Dec 7<sup>th</sup> Special Term Convocation. Benchers of the Law Society are:

*(Seated, l-r):* Morgan Cooper, Augustine Bruce, Sheila Greene, qc, Past President, Irene Muzychka, President, Glen Noel, Christopher Curran, qc, Registrar, Dr Don Downer, lay Bencher

*(Standing, l-r):* Paul Burgess, Kevin Preston, John Noseworthy, Bert Riggs, lay Bencher, Marcus Evans, Terry Rowe, Barry Fleming, qc, Brenda Grimes

Missing from photo are: Ken Baggs, qc, Shawn Colbourne, Linda Harnett, lay Bencher, Susan LeDrew, George Murphy, qc, Liam O'Brien, Glenda Reid, lay Bencher, Ian Wallace

*Happy New Year  
2010*



### **VOLUNTEERS WANTED for a Bar / Bench Committee at Unified Family Court**

The Law Society received the following communication from the justices at Unified Family Court:

"The justices at the Unified Family Court request an expression of interest from members practicing family law in the UFC jurisdictional area to act as representatives of the Bar on a Bar/Bench Committee. It is anticipated that issues related to the operation of the UFC will be discussed at meetings to be held every three months during the noon break. Members interested in serving on this Committee should contact Denise Hammond, Administrator, at: [denisehammond@supreme.court.nl.ca](mailto:denisehammond@supreme.court.nl.ca)

