



Benchers' Notes

February, 2000

Volume 6, Number 1

These Benchers' Notes cover the Call to Bar ceremony, held on January 7, 2000, and the Winter Term Convocation of Benchers held on January 24, 2000. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar.

Call to Bar - January 7, 2000



Two new members were Called to Bar on January 7, 2000.
They are: (l-r) William Flowers, William O'Keefe

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Special Term Convocation

President's Report

The President mentioned that the *Law Society Act, 1999*, came into effect on January 1, 2000. As mentioned previously, the new *Act* streamlines the discipline process, increases the number of elected and appointed Benchers, and makes a number of administrative improvements for the operation of the Law Society. The change most members will immediately notice is the absence of an Annual Practice Certificate. Previously, the Certificate was issued when a member's fees were paid in full on January 15 each year. In recent years, however, most members have chosen to pay fees by the monthly instalment plan, or in three equal payments. Further still, when members required proof of insurance or status, they required a further and up-to-date Certificate of Standing from the Law Society, or some other proof of insurance. As a consequence, the appropriateness and value of the Annual Practice Certificate has been eroded. Beginning in 2000, such Certificates will no longer be issued and, in their place, and where appropriate, a Certificate of Standing will be issued to a requesting member free of charge.

The President informed Benchers that he and the Vice-President, Robert Sinclair, QC, plan to meet with the new Minister of Justice, the Hon Kelvin Parsons, to brief the Minister on issues of common interest and to encourage the early appointment of the lay members for Benchers and for the Discipline Committee.

The President mentioned to Benchers that a number of members have expressed regret at a recent decision of the Courts not to hold Tributes for recently deceased members. The President stated that he would make arrangements to meet with both Chiefs Justice and to convey the concerns of members.

The President was pleased to report that the all Justices of the Supreme Court of Canada will be in St John's in early May, 2000, for a few days. The Law Society, in conjunction with the Canadian Bar Association, Newfoundland Branch, will host a reception for the Supreme Court Justices on May 5, 2000. Members will be advised of the date and time of the reception.

Amendments to Rule 6.01: Examination Pass Marks.

The Rule sets out the marks necessary to achieve a passing grade on Bar Admission Course and other examinations set by the Education Committee. At the December 1999 Convocation a Notice of Motion to change Rule 6.01 was tabled; the Notice proposed to increase the pass mark on individual examinations from 50% to 60%, and the overall pass mark from 60% to 65%. Benchers sent the Notice of Motion to the Act and Rules Committee for review and further consideration. The Committee recommended the Rule be changed as proposed and returned it to Benchers for a final vote. Benchers voted to approve the Rule, which comes into effect for Bar Admission Course students and for transfer applicants writing examinations, on January 1, 2001.

Changes in Status

Benchers approved the following applications for changes in status:

Applications to Elect Non-Practising Status

- Edward Conway
- Ann Martin
- Lynn Verge, QC
- Jason Walsh

Notice of Resumption of Practising Status

- Ann McLoughlan
- Pamela Taylor

Application to Resign Membership

- Lesley Lawrence
- Erroll Treslan

In Memoriam

Hon. Herbert B Morgan

Roll # 219, Called to Bar April 8, 1950

Benchers noted with sadness the death of the Hon. Herbert Morgan, a former Royal Air Force Pilot during World War II, a Rhodes Scholar, a distinguished member and retired Justice of the Court of Appeal. He died December 30th, 1999.



Rules Committee, Trial Division

The Rules Committee of the Trial Division of the Supreme Court meet on a regular basis to review the operation of the present rules and to consider changes.

There is currently a recommendation before the Committee to amend rule 46.07 to lengthen the time for delivery of an expert's report. The Law Society has been asked to canvas members for comments about the proposed change and request members' opinions about the appropriate time for delivery of such reports.

Members who wish to comment about the proposed change to rule 46.07 may contact John V O'Dea at 722-8735 or at jodea@cgr-law.com

The Committee also asks that members be acquainted with a recent change in rule 39.02(4) which has been gazetted. The change in the rule is in bold.

39.02(4). Notwithstanding rule 46.07, at least four days prior to the scheduled date of a pre-trial conference, the parties shall exchange copies of all expert opinions and reports then in their possession or under their control and upon which they propose or intend to rely at trial and shall produce those opinions and reports to the pre-trial conference judge at the conference. **Such an exchange of opinions and reports shall be deemed to have been made on a without prejudice basis and without waiver of any claim to privilege with respect to non-production thereof pursuant to the rules or at trial.**

*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.
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Discipline

Owen Myers

By a decision of Benchers dated December 21, 1999, Mr Myers was found guilty of professional misconduct pursuant to section 52 of the Law Society Act. The Complaint involved six clients and related to the time period between January 1993 and June 1995. The violation arose from Mr Myers':

- (i) failure to comply with Law Society Rules 2.19, 2.20, 5.03(4), 5.05(1), 5.06(2), 5.07(1), 5.07(4), 5.07(6), 5.08 and 5.09(1)(ii),(iii),(iv),(v),(vi),(x) and (xi);
- (ii) failure to provide competent representation in a conscientious, diligent and efficient manner; and
- (iii) failure to return a retainer or the portion thereof which was not earned for services rendered or to satisfactorily account for same.

Benchers ordered that Mr Myers be suspended for a period of thirty days from that date upon which he next becomes a practising member of the Law Society; that he reimburse his former clients in the amount of five thousand eight hundred and thirty-nine dollars and fifty cents (\$5,839.50) within ninety (90) days from the expiry of his suspension; and that Mr Myers pay the expense incurred by the Society in the investigation and hearing of the Complaint.

Law Society Web Page

The Law Society's Web site became operational on Friday, January 28. While some sections are still under construction, the site now carries the Law Society Act, 1999, an updated Members' Directory, (more than twenty-five addresses and firm changes in the directory have been made since the December publication) and information about CLE offerings and some prior Benchers' Notes. Within the next few weeks, the revised Rules of the Law Society will be available at the site also.



Educational Notes

Bar Admission Course

The 2000 Bar Admission Course began January 17, 2000 and is well underway. Our 31 Bar Admission Students have already received substantive instruction and completed examinations in the practice areas of Family Law and Corporate/Commercial Law. The students are presently receiving instruction in the Civil Procedure component of the Course and will be examined on this component.

To date students have also received presentations in other non-examinable subject areas, such as risk management, ethics, trust accounting, the Newfoundland Legal Aid Commission, the Law Society Disciplinary Process, aspects of commencing legal practice etc.

In the coming weeks, students will receive substantive and procedural instruction and complete examinations in the areas of Administrative Law, Real Estate, Wills and Criminal Law. Students will also receive advocacy skills training, be involved in a mock trial exercise, receive "lawyering skills" training in areas such as negotiations and interviewing skills and will discuss techniques to maintain a healthy balance in practice between professional and personal obligations.

Continuing Legal Education

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

On January 21, 2000 prominent Toronto lawyer Alan D Gold gave a well-received presentation on Experts in the Litigation Process and the use of computer technology in practice. The Joint Committee sincerely appreciates Mr Gold's attendance and participation at the seminar, which was well-attended by members of the Newfoundland Bar.

The next seminar will be on the topic of Practice Before Appellate Courts. The seminar will be held in two locations; on Wednesday, February 9, 2000 at Littledale Conference Centre (West Wing), St John's, and at the CBA Mid-Winter Meeting on Friday,

February 11, 2000 at the Holiday Inn, Corner Brook. Presenters at the seminar will be The Hon Mr Justice Derek Green of the Supreme Court of Newfoundland, Court of Appeal, CBA National President Eugene Meehan, QC and Mr Nicholas Avis of Avis & King, Corner Brook. (Mr Avis will present at the Corner Brook seminar only.)

On February 25, 2000, the Ontario Centre for Advocacy Training will present a workshop on Advocacy Skills, and will deal with improving lawyers' skills of Examination-In-Chief and Cross-Examination. The seminar will be held at the Masonic Hall, Cathedral Street, St. John's. Lawyers wishing to attend should register early, as registration is limited.

Other seminars for the Winter/Spring 2000 are presently being organized. As always, the Joint Committee greatly appreciates the contributions made by seminar presenters, and also appreciates lawyers who support the programs by attending.

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