



# Benchers' Notes

October, 2001

Volume 8, Number 6

*These Benchers' Notes cover the June 25<sup>th</sup>, 2001, Adjourned Summer Term Convocation, the October 1<sup>st</sup>, Fall Term Convocation, and the Adjourned Fall Term Convocation of October 5<sup>th</sup>, 2001. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar.*

*Benchers' Notes are available on our website at [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca)*

## Fall Term Convocation

Before commencing the business of Convocation, Benchers observed one minute of silence to commemorate the victims of the recent New York city attacks. The President afterward noted correspondence from the President of the Federation of Law Societies to the President of the American Bar Association, expressing sympathy and condolences on behalf of all law societies in Canada.

The President, Jeffrey Benson, opened Convocation by affirming the resignation of Scott Beazley, a Bencher from the Western District. Mr Beazley earlier moved to Halifax to take new employment. The President stated that the Executive Committee recommends Beverly Marks, QC, to replace Mr Beazley for the remainder of his elected term. Benchers unanimously approved and Marks, QC, was welcomed.

## President's Report

The President noted that there is one vacancy in the four lay Bencher positions required under the *Law Society Act*. He stated that Chief Justice Green, who chairs a committee to make the appointments, will address the vacancy in the near future.

A meeting between the Minister of Justice and Attorney General and members of the Law Society Executive will be held on November 7. The President reminded Benchers that these meetings are marked by cordial exchanges and frank discussion and he invited Benchers to suggest topics for the agenda. Currently, topics include Limited Liability Partnership and law corporations, and courthouse facilities. Members are also invited to suggest topics of discussion and can forward their suggestions to the Executive Director.

Next discussed was the annual general meeting of the Federation of Law Societies, this year held in Saskatoon. Attending for the Law Society were the President, Jeffrey Benson, the Past President, Robert Sinclair, QC, the Secretary, William Goodridge, and the Executive Director, Peter Ringrose. The President mentioned that this meeting was the last for V Randell J Earle, QC, the Newfoundland and Nova Scotia member of the Federation's Board of Directors. During his term, Earle, QC, served the Federation and this Law Society with distinction, and was President of the Federation two years ago. Under an agreement with the Nova Scotia Barristers' Society which alternates representation between the provinces, Earle, QC, is now replaced by Robbie MacKiegan of Halifax. Benchers expressed their gratitude for the effort made by Earle, QC, to represent Newfoundland and Nova Scotia and for his work nationally at the Federation during his year as President.

At the Federation meetings there were three resolutions of interest unanimously passed. One of these addressed mobility provisions for lawyers in Canada and established a task force, chaired by the Treasurer of the Law Society of Upper Canada, Vern Krishna, QC. The task force will survey all law societies concerning their admission requirements, professional liability insurance, trust accounting rules, bar admission course content, and related topics. The task force will determine how national mobility can be accomplished. Since the resolution, the Law Society of Newfoundland responded to a comprehensive questionnaire from the task force. Related to this resolution, the President noted that western provinces now permit six months mobility between those provinces.

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A second resolution initiated, on behalf of all law societies, a court challenge to federal government legislation titled Proceeds of Crime (Money Laundering) Act. There was concern amongst Federation members that the Bill impairs solicitor-client relations and will infringe rights and guarantees under the Charter. Further concerning this legislation, the President noted that the Law Society's insurer, LPIC, provides information on its website, accessible through the Society's site at [www.lawsociety.nf.ca](http://www.lawsociety.nf.ca). There will be a CLE seminar on the legislation during November.

The third resolution established a committee to review the governance and working structure of the Federation. The Committee was formed to determine how best to structure the Federation to enable it to respond quickly to emerging national issues.

Concluding his report, the President remarked that on October 19-20 he and several members of the Law Society Executive, and the Executive Director, will meet with Atlantic Canada law societies in Halifax to discuss common issues, including mobility of lawyers in Atlantic Canada, common trust account rules, and a common insurance pool.

### Committee Reports

#### Act and Rules Committee

The Committee placed before Benchers for adoption new Rules for use of the Defalcation Fund, these Rules earlier distributed to members for comment with the June *Benchers' Notes*. The Rules were adopted as proposed.

In the absence of the Chair, Jamie Smith, QC, Stephanie Newell, past Chair, reported that Rules 9.22 to 9.27 of the Discipline Rules, and concerning appeals of discipline decisions, were now ready for approval and adoption. The Rules were adopted as proposed; Benchers decided to defer adopting a Rule regarding reinstatement of an abandoned appeal.

A Notice of Motion was tabled concerning Rules to give effect to the investigation of a member's practice as prescribed by subsection 23(4) of the Law Society Act, 1999. Benchers agreed that the proposed Rules be sent to the Act and Rules Committee for review with the expectation that they might be ready for adoption at the December Convocation.

#### Property Management Committee

Tobias McDonald, Chair, reported that in June the Committee called for proposals for the design of the new office building. Subsequently, and following careful review of six proposals, the Committee selected the firm Sheppard/Case to develop the various phases of the project. Since their selection, the firm held lengthy meet-

ings with the Committee, its Chair, and Law Society staff. A comprehensive report is expected to the Committee, setting out design proposals, by mid-October.

#### Executive Compensation Committee

John Roil, QC, Chair of the Committee, joined Convocation and presented the Committee's Report to Benchers. He reminded that the Committee was asked by Benchers to determine whether any of the Law Society's Executive officers should be compensated for the time spent in administrative duties. In setting this mandate, Benchers specifically stated that current Executive members would be exempted from a benefit, if any, to be conferred.

In conducting its review, the Committee of former Treasurers (John Roil, QC, Chair, Barry Learmonth, QC, Vernon French, QC, Reginald Brown, QC, Lewis Andrews, QC) examined compensation paid by other law societies in Canada and found that Newfoundland was one of four that did not pay its President, the others being Northwest Territories, Yukon, and Prince Edward Island. Nova Scotia, for example, pays \$35,000 for a President within one hour drive of Halifax, and \$50,000 for a President outside; New Brunswick pays \$20,000 and \$25,000 for Presidents within and outside Fredericton; the Barreau du Québec pays \$158,000; Ontario the salary of a Supreme Court judge; Manitoba, \$15,000 and \$20,000; Saskatchewan, \$25,000; Alberta \$50,000; British Columbia \$50,000. Against this national experience and the knowledge that today the President of the Law Society of Newfoundland devotes no less than approximately 10 hours a week to the responsibilities of office, the Committee recommended to Benchers that a compensation plan be put in place that would pay a President from the Avalon Peninsula \$15,000 and \$20,000 if outside. The Committee also considered whether the Vice-President should be paid, but recommended against such a payment.

Concerning the Report, Benchers specifically request the views of members on a number of points. First, members are asked for their opinion whether compensation is appropriate for the office of the President? Second, and in the event compensation is approved by Benchers, whether the current President should receive the compensation? Third, whether compensation for the President should be delayed until 2002 or 2003? Fourth, whether compensation should be delayed until all members of the Executive Committee have served as President? Copies of the Compensation Committee Report can be obtained from the Law Society by contacting Janice Whitman at 722-4740 or by visiting the Law Society website in the News and Events section under Reports.

Members can express their views by writing the Law



Society, by telephoning, writing, faxing or emailing Robert Sinclair, QC, the Past President. Sinclair, QC's email address is [rsinclair@pphm.com](mailto:rsinclair@pphm.com). Members' opinions will be considered at the December Convocation, at which time a decision is likely to be taken whether to adopt the recommendations of the Report.

### **LLP and Law Corporations Committee**

The President informed Benchers on behalf of Robert Stack, Chair, that the Committee has been divided into sections, one each for LLPs and for Law Corporations. Materials are being compiled for each section. The President stated that the Committee may have a Report available to Benchers for the December Convocation.

### **Honours and Awards Committee**

Robert Sinclair, QC, Chair, informed Benchers of the Committee's recommendation to confer a Doctor of Laws, honoris causa, on a former member at the January Call to Bar ceremonies. Benchers approved the recommendation.

Sinclair, QC, indicated the desire of the Committee to have Benchers mark specific milestones in the careers of members, suggesting that perhaps a certificate be issued for the 25, 40 and 50 year membership anniversaries. Benchers agreed in principle with these suggestions and requested the Committee to develop policies for guidance.

### **Legislation Committee**

Brian Furey, Chair, informed Benchers that the Committee has been actively reviewing the Survival of Actions Act and the Limitations Act. Further with its deliberations, the Committee has been considering the class proceedings legislation and proposals about child advocacy. The Committee will present a complete report soon to the Executive Committee.

In a related matter, the President stated that proposed new initiatives by government to reform automobile insurance are being discussed once again. In cooperation with the CBA Newfoundland Branch, the Law Society intends to review the proposals of government and to make a joint submission.

### **Library Committee**

Sheila Green, Chair, spoke to Benchers about the Committee's recommendation the Law Society consider extending its computer research capabilities to some of the judicial districts outside St John's. Doing so would invoke one-time hardware costs of approximately \$25,000 and subscription costs of approximately \$21,000 annually.

At Benchers' request, Ms Green will ask the Committee to review and research the recommendation with a view

to returning with a Report and recommendations for the next Convocation.

### **Cameras in the Courtroom Committee**

Paul MacDonald, Chair, tabled a report and stated that the Committee examined carefully the issue of cameras in the courtroom from a number of perspectives. The President, noting the care in its preparation, requested that the Report be finalized, delivered to Chief Justice Green as requested, and then placed on the Law Society's web site. The Report is available on the website in the News and Events section, under Reports.

### **Financial Estimates for 2001**

The Executive Director spoke to this item on the Agenda and commented that staff estimate a budget deficit of approximately \$25,000 this fiscal year. While revenues are up overall, a number of expenditures have increased demands upon financial resources. For example, the Gerard Gushue custodianship cost approximately \$30,000 during January and February in Happy Valley-Goose Bay. Further expenditures include one-time costs for the Honours and Awards Committee and associated with the Doctor of Laws, honoris causa, ceremonies for retiring Chief Justice T A Hickman, and the reception following, and additional costs associated with the Annual General Meeting of the Law Society. Additionally, late in the year a Receptionist was hired to reduce the workload on office professional staff assistants. Other expenses include increased municipal taxes on the new office building and unanticipated maintenance on the building. Nevertheless, stated the Executive Director, the Society's finances remain sound overall and the Society still holds substantial cash reserves.

### **Law Society Media Policy**

When discipline decisions concerning members are finalized, the Law Society and the media have a common interest to provide forthright information to the public. The Law Society has the additional and first responsibility to inform the Courts of its decisions when appropriate. For these reasons, over several years the Society has developed an informal policy to address these responsibilities. In recent months, the Executive Committee and Benchers determined they should articulate a media policy in order to provide consistency in approach and to protect the paramount interests that clients have in the confidentiality of their affairs. As a result, Benchers concluded that, for purposes of media communication and response, and to protect the interests of clients, all contacts with the media will follow immediately after communication to the Courts when appropriate and be conducted through the Executive Director, Peter Ringrose. As part of this policy, and in the normal course, discipline decisions will be published in *Benchers' Notes*.



## Call to Bar



October 5<sup>th</sup>, 2001

Kathryn Mercer, Carey Majid

### June 27<sup>th</sup>, 2001

(1<sup>st</sup> row, l-r) Philip Warren, Heidi Marshall, Heather Spurrell, Tannis King  
(2<sup>nd</sup> row, l-r) Barry Lake, Beverly Sheppard, Kevin Baker, Janice Kitchen

## Gordon M Stirling Distinguished Service Award

The Hon Lynn Verge, QC, and the Hon P Derek Lewis, QC, were unable to attend the Law Society's Annual Dinner and Dance on June 8 when honours and awards were given to several members and others. On June 20, the Law Society held a special luncheon for Verge, QC, and Lewis, QC, and presented each the Gordon M Stirling Distinguished Service Award.



(l-r) Jeffrey P Benson, President; Hon P Derek Lewis, qc; Hon Lynn Verge, qc; Robert M Sinclair, qc, Past-President

## QC Appointments

On October 11, the following members were sworn in as Queen's Counsel at ceremonies in Court Room No 1 in the Supreme Court Courthouse on Duckworth Street:

- Robert Andrews,
- William Collins,
- David Eaton,
- William Gallant,
- Gerard Griffin,
- Janet Henley-Andrews,
- Arnold Hussey,
- Barry Learmonth,
- Reg Locke,
- Dennis MacKay,
- Robert Simmonds,
- Edward Shorthall,
- Paul Stokes,
- Wynne Anne Trahey, and
- Ruth Wakeham.

Following the ceremony, the Law Society hosted a reception at the Delta Hotel for the new QC's, their guests, and interested members.

Reception for QC's following Swearing In Ceremony





## Educational Notes

### Continuing Legal Education

The Joint Committee on Continuing Legal Education for Newfoundland has commenced an active programming schedule for Fall 2001.

On September 29, 2001, Dr James Ogloff, a lawyer and psychologist from British Columbia, presented at a seminar entitled *Strategies in Using (and Challenging) Psychological and Psychiatric Experts in the Law*. Dr Ogloff addressed the use of psychological and psychiatric experts in both the criminal and civil law context and his presentation was well received and informative. The Committee thanks Dr Ogloff for his presentation and wishes him well on his upcoming move to Australia, where he will continue his academic and clinical work.

On September 21, 28 and October 5 and 12 Legal Research Electronic Products Training Sessions were offered for lawyers and presented by Law Society Librarians, Harriet Mercer and Gail Hogan. The response to these opportunities for hands-on training on the electronic research products available at the Law Society Library has been very strong, so much so that a number of additional training sessions have already been scheduled and further sessions will be re-scheduled in the new year, to accommodate the enthusiastic response from lawyers. The Committee thanks our presenters, Harriet Mercer and Gail Hogan, for offering these valuable training sessions in which lawyers can gain practical knowledge which can be translated directly into their practices.

On October 22, 2001, an Advocacy Skills Workshop will be held on the following topic: *Sharpening Your Skills in Cross-Examination, Impeachment and Rehabilitation of Witnesses on Re-Examination*. This interactive one-day workshop will be led by instructors from the Advocates' Society, lawyers who have received special training in the teaching of Advocacy Skills to other lawyers. Those who are interested in this workshop who have not yet registered should do so as soon as possible to ensure your attendance.

On Friday, November 2, 2001, there will be offered a seminar entitled *New Proceeds of Crime Legislation: What Every Lawyer Must Know*. This seminar will highlight important portions of the new federal government money laundering legislation and will be specifically geared to the obligations which all lawyers and law office staff will be required to meet pursuant to this new legislation. The presentation will be given by Mr Dan Pinnington, a lawyer with the Lawyers' Professional Indemnity Company (LPIC).

Other seminars in the planning stage for the Fall session include a seminar on Administrative Law which has been scheduled for November 27, 2001, and a Criminal Law seminar which is also being planned for November 2001. Further details on these seminars will be provided.

Finally, as the Newfoundland House of Assembly is expected to meet this Fall to deal with various pieces of legislation which will be of interest to lawyers, it is expected that further programming will be offered later this year and in the new year, which will address significant new legislation.

### Bar Admission Course

The Bar Admission Course for Newfoundland is being held at a new time and in a new place. At the June Benchers' Convocation there was discussion with respect to changing the timing of the annual course, from January/February to October/November. As such, the current Bar Admission Course began on Tuesday, October 2, 2001, and will run until Tuesday, November 20, 2001. This change in the timing will enable students to receive valuable information, through lectures, workshops and the Bar Admission Course Materials, earlier in the Articling process and enable students to apply the knowledge gained from the Course at an earlier stage of their Articles.

To date, students have concluded the course in Family Law, have completed the 3½ hour Family Law Examination and are presently participating in the Corporate/Commercial Law course, which will be followed by an examination. Other examinable components in the course include Civil Procedure, Criminal Procedure, Administrative Law and Real Estate and Wills. As well, in the coming weeks students will participate in seminars and workshops on such topics as Advocacy Skills, Examination-in-Chief and Cross-Examination, Negotiations Skills, Interviewing Skills, Examination for Discovery, Mock Trial, Ethics, and Professional and Personal Development Workshops, to name a few.

The current Bar Admission Course is being held in Suite 503 in Atlantic Place, which is next to the Law Society Library. If any member is interested in auditing a particular session of the Course, please contact the Law Society to receive the particulars of scheduling and other information. Members may attend session at no charge.





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

Saturday, October 20, 2001

The Project Daisy Committee of the Law Society of Newfoundland, and the Supreme Court of Newfoundland, are celebrating the 100th Anniversary of the laying of the cornerstone of the Court House. His Royal Highness, the Duke of Cornwall and York, officially laid the cornerstone on October 24, 1901.

To honour the occasion, Project Daisy will hold a Reception and Dinner in Court Room #1, The Court House, on Saturday, October 20, 2001, 7:00 for 7:30pm. Following dinner, Professor Shane O'Dea will present a slide presentation of the history on the Court House, and Hon T Alexander Hickman will speak about interesting trials and other events associated with the Courthouse.

To accommodate the Reception and Dinner, the Chief Justice has arranged to clear Court Room #1 of benches, desks, chairs and prisoner's dock to create sufficient space. Registration is limited to 100 guests. Members may obtain reservations on a first-come, first-served basis through Janice Whitman at the Law Society at 722-4740. Cost is \$100 per person.

## A Community of Colleagues

At the close of Convocation, the President brought to the attention of Benchers correspondence received from Robert Andrews, QC, in which he set out the merits of appropriate interventions and expressions of concern by the Law Society where a member is facing personal difficulties. The President stated that the letter from Andrews, QC, renewed his personal conviction that the Law Society must respond to its community of colleagues in a way that is compassionate and sensitive to the needs of its members. He noted, for example, that he now writes frequently to members about their accomplishments, or to offer sympathy, and that Law Society staff frequently attend the funerals of members or a member's family and, in doing so, give expression to the condolences of the Society. He stressed, as a matter of policy, that Benchers and members keep the Law Society informed of events that would merit a letter from the President or some other recognition from the Law Society.

## Province Proposes Class Proceedings Legislation

In July, 2001 the Premier and the Minister of Justice announced plans to draft legislation to provide a comprehensive scheme for class actions in the province. The legislation will be based on the Uniform Law Conference of Canada's Uniform Class Proceedings Act. The Department of Justice is interested in hearing from members who may have comments or suggestions to make about the legislation, which should be introduced in the House of Assembly this Fall.

There are particular areas in the Uniform Act where choices need to be made by the province. For example, on the subject of costs, some provinces have adopted provisions which preclude the awarding of costs except in the case of frivolous and vexatious conduct by a party. Also, in the area of appeals, some provinces require that a party seek leave to appeal an order certifying a class action, to preclude defendants tying up matters for years. A careful review of the commentary accompanying the Uniform Act will assist members interested in providing comments. The Uniform Act and commentary can be accessed at the following web site: [www.gov.nf.ca/just/Other/JUS\\_WHTS.HTM](http://www.gov.nf.ca/just/Other/JUS_WHTS.HTM) or members may contact the Law Society to obtain a copy of the Uniform Act.

As the Bill will have to be finalized shortly for introduction in the Fall Session, you should respond no later than October 24, 2001 to:

Katherine Crosbie  
Department of Justice  
P.O. Box 8700  
St. John's, NF A1B 4J6

Fax: 729-2129  
Email: [katherinecrosbie@gov.nf.ca](mailto:katherinecrosbie@gov.nf.ca)

## Changes in Status

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, permanent departure from the province. Appropriate Forms to accommodate the notice requirements are available by contacting Janice Whitman at Law Society offices.



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5251 Duke Street  
Halifax, Nova Scotia B3J 1P3

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Bureau régional de l'Atlantique  
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## NEWS RELEASE

### NEW OFFICE OF JUSTICE CANADA OPENS IN ST. JOHN'S, NFLD

October 1, 2001

Ottawa — The federal Department of Justice has opened a new legal services office in St. John's, Newfoundland. The office, initially comprised of a staff of four, will provide legal services to federal government departments in the province, to complement the existing network of standing and ad hoc legal agents who provide legal advice and serve as Crown Prosecutors.

The staff of two general prosecutors, one tax prosecutor and one support staff person, will report to the Atlantic Regional Office, based in Halifax. They will focus on such traditional areas of legal practice for Justice Canada as narcotics prosecutions, tax prosecution on behalf of the Canada Customs and Revenue Agency, and legal issues arising from the work of law enforcement and regulatory bodies including the Department of Fisheries and Oceans, Environment Canada and Transport Canada. Also, the establishment of a permanent presence in the province will give the department better insight into legal trends and issues in Newfoundland.

"The existing practice of skilled local law firms acting on behalf of the government has served Canadians in Newfoundland well," said Ted Tax, Senior Regional Counsel for the Atlantic Region. "However, it seems appropriate to augment that expertise with a team of in-house legal professionals who will enhance our capacity to bring a national, consistent and government-wide perspective to our legal services. This capability will, at the same time, allow us to more effectively manage legal services in collaboration with central agencies and the government of Newfoundland."

The office will be located at:

Box 62 - Atlantic Place  
306-215 Water Street  
St. John's, Nfld. A1C 6C9  
Phone: 709-772-8046  
Fax: 709-772-8055.

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For more information, please call Glenn Chamberlain, Regional Communications Director, at (902) 426-3493.

**Canada**

## Name That Building Contest

*The Law Society will move to its new building on Water Street in December, 2002, once extensive renovations are completed. Benchers ask members to consider whether the building should be named and, if so, to submit suggestions for consideration by the Building Committee. A prize to be determined will be awarded to the best entry – whether selected or not!*