

Benchers' Notes



Fall 2015

Volume 16, Number 2

This issue of Benchers' Notes contains information on selected topics considered by Benchers at Convocation and other items of interest to the Bar. This edition of Benchers' Notes is available on-line at www.lawsociety.nf.ca.

President's Report



Susan M. LeDrew
President, Law Society of
Newfoundland and Labrador

I am now halfway through my term as President and can confirm that the work of the Law Society is both challenging and exciting.

I would like to extend thanks to our past President, Mr. Kenneth Baggs, QC who displayed tremendous commitment to and passion for the issues facing our Society during his tenure as President. Those of us who

had the privilege to work with him witnessed this first-hand and our exposure to it has strengthened our sense of pride in the governance of this organization.

I officially took on the role as your President after the Annual General Meeting (AGM) on 12 June 2015. Special guests at the AGM included Rolf Pritchard, QC who gave remarks on behalf of Minister Darin King and Attorney General, Felix Collins and Aubrey Bonnell, QC, Chair of the Board of Governors of the Law Foundation of Newfoundland and Labrador. Newly elected Benchers were announced at the AGM and are as follows: Robin L. M. Fowler, Ian S. Patey (Eastern District); Renee L. F. Appleby, Rebecca A. Redmond MacLean (Central District); Trevor A. Stagg (Western District).

In September, 2015 the Law Society hosted the annual meeting of the Atlantic Law Societies' Executive

Committees. This two day meeting provided an opportunity for Executives from Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador to meet and discuss issues of shared relevance and subject matter unique to our particular societies to determine in what areas regional collaboration might be possible. Our discussions were valuable and instructive and we look forward to next year's meeting.

In late September, I travelled to Winnipeg with Executive Director, Brenda Grimes, QC and Vice-President, Barry Fleming, QC for the Federation of Law Societies' Annual Conference in Winnipeg. The main focus of this year's Conference was the work of the Truth and Reconciliation Commission. We were very privileged to have Justice Murray Sinclair, the Chair of the Commission, as one of the guest speakers. He spoke about the legacy of the residential schools and the calls to action from the Commission's report as they relate to aboriginal justice. One of the calls to action was directed to all law societies asking them to ensure that lawyers receive appropriate cultural competency training. The Law Society acknowledges the significance of the report and will be carefully considering how it might best respond.

One of the more enjoyable aspects of being President of the Law Society is the opportunity to attend various ceremonies and receptions to honor colleagues who are receiving awards or setting out on new career paths. I was delighted to attend and participate in Swearing-in ceremonies and receptions for Justice Cillian Sheahan and Judge Paul Noble. It was also a pleasure to officiate



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at the 19 June 2015 Call to Bar, presided over by Chief Justice Whalen, where a total of 11 students became lawyers. Circumstances beyond my control prevented me from participating in the 9 October 2015 Call to Bar and our Vice-President, Barry Fleming, QC very ably stepped in. My thanks to him for doing so. 12 students became lawyers at this Call; this is always an enjoyable experience and a great

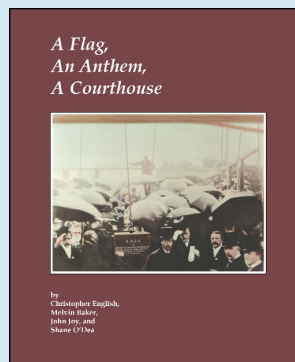
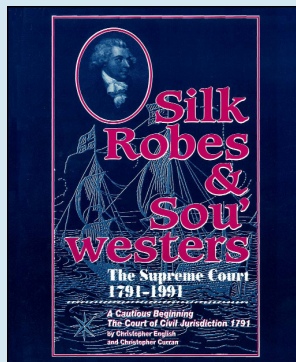
opportunity to meet with the newest members of our bar, the number of which is increasing at a notable rate with each Call.

It is always sad to report on the passing of current or former members of our bar. With regret, I note the passing of 5 members/former members of our bar: Mr. Edward Hearn, QC, Mr. Corwin Mills, QC, Mr. Justice Keith Mercer, Mr. Justice

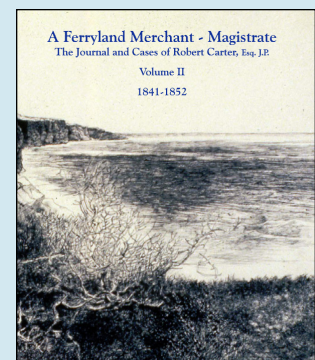
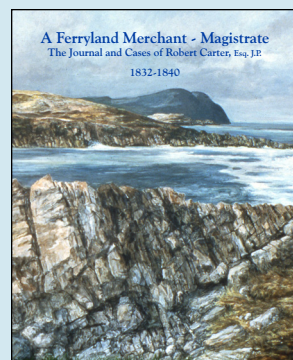
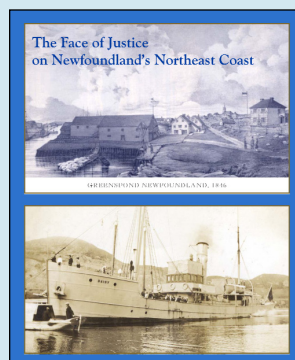
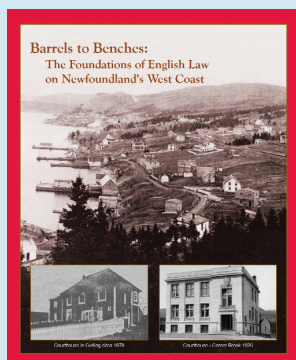
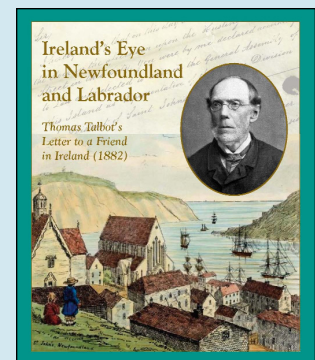
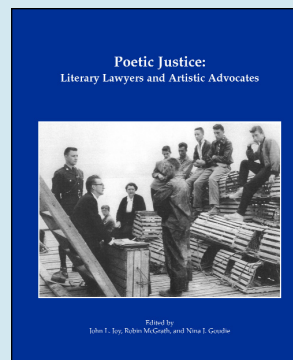
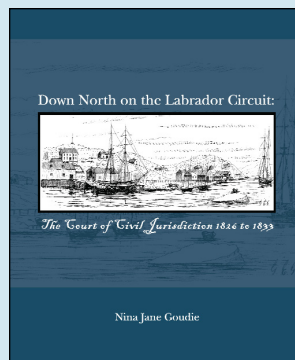
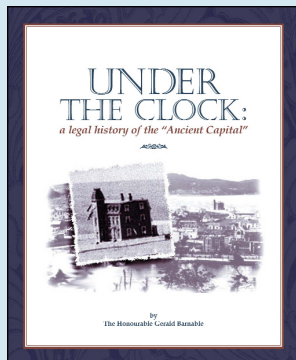
James Gushue and Mr. Gerald Fleming. These men will be greatly missed by family, friends and colleagues.

In closing, I look forward to the remainder of my tenure as your President. Please feel free to contact me with any questions and concerns. ■

Daisy Committee Publications



The ten books shown here have been published in recent years by the *Daisy Committee*. They offer a varied and interesting look at the development of law in Newfoundland and Labrador over the last two centuries and more. Please call 722-4740 for details on how you can purchase a copy or several!



Note from Brenda B. Grimes

Executive Director

I would like to take this opportunity to again remind everyone of the Law Society's Professionals' Assistance Program. This program exists in order to assist members, their employees and families, as well as law students with a myriad of personal or family issues. While I realize that it may be difficult for many to reach out and seek help when feeling overwhelmed, distressed or in crisis, you should not hesitate to do so. There has been much discussion lately about mental health issues and the reasons why people may fail to seek help. The Law Society recently held a CLE featuring Judge Timothy Daley which focused on mental health issues. The seminar was very well attended and positively received. The Professionals' Assistance

Program provider, Homewood Human Solutions, has many resources to assist in this area, including some which are accessible online as well as on the Canadian Bar Association website, www.cba.org. You will find further details on this program, outlined in the pages to follow.

Recently I sent letters to sole practitioners regarding the importance of succession planning. Further information regarding this topic is available on the Law Society's website. I encourage all sole practitioners and those of you who may, in the future, become sole practitioners to take some time to review this subject matter. Succession planning is often only thought of when considering retirement, but a succession

plan should be in place for any unexpected absences from work due to illness, disability or death. In addition to the ethical and professional obligations you owe to your clients, you may also have family obligations. Not only does not having a proper plan in place put you at risk of an insurance claim, it may also be detrimental to your loved ones. ■



Brenda B. Grimes
Executive Director



Decisions, Decisions, Decisions

Below is a brief summary of some of the decisions taken by Benchers during the period from April 2015 up to and including June 2015.

April 2015

The 13 April 2014 meeting of Benchers was presided over by then President, Kenneth L Baggs, QC who reported on his activities in the past months. On 10 February 2015 he attended a tribute to the late Justice O'Neill. On 13 February 2015 he officiated at the Call to Bar where fifteen candidates in total were called, and attended the reception which followed.

Ms. Sheila Greene, QC advised that the Federation of Law Societies' resources remained focused on governance issues. She noted the extreme dissatisfaction expressed by Ontario and Quebec which are limited in many ways in their ability to regulate because of their size. She indicated that full and frank conversations took place and that everyone was given an opportunity to voice their concerns. Ms. Grimes, QC outlined some of the concrete benefits associated with the Federation such as the collaboration among staff from each Law Society (invaluable in terms of identification of issues and sharing of best practices) and the Federation's intervention in a number of Supreme Court of Canada cases the results of which had (or could have had) a significant impact on our members.

The President went on to speak about the late Kevin Preston, noting that he was a valued member of Benchers who was always engaged and provided insightful commentary in a collegial fashion on issues which Benchers were required to address. The President commented that his contributions to Benchers and the legal community as a whole would be missed.

The meeting then shifted to a discussion and approval of the recommendations of the Honours and Awards Committee; that the Degree of Doctor of Laws, Honoris Causa be presented to the Honourable P. Derek Lewis, QC in recognition of his integrity, significant professional achievements, distinguished service and contributions to the legal profession and the administration of justice; and that the Gordon M. Stirling Distinguished Service Award be given to Christopher Curran, QC, David Eaton, QC, Augustus Lilly, QC, Donald MacBeath, QC and Corwin Mills, QC in recognition of their considerable contributions to the Law Society, the legal profession or the administration of justice, and to the public or their own community. It was agreed that the Committee would develop a nomination process and form for future awards.

Law Society Accountant, Mr. Richard Yabsley, CA, joined the meeting to give a report on the Law Society's draft Financial Statements for 2014 and provided internal statements for 2015.

Next, Mr. Burgess presented the Insurance Committee report which included written information regarding claims history and statistics re: usage of the Professionals' Assistance Program. Mr. Paul Burgess applauded the Claims Review Committee for its work. Mr. Burgess also advised Benchers of Ed Hearn, QC's decision to retire from the Insurance Committee after many years of tremendous service.

Mr. Burgess' recommendation that the Insurance Committee approach

the actuary regarding how to address any surplus beyond that required to meet the Capital Target in the future was accepted. Mr. Burgess advised that there was a CLIA Subscribers' meeting in May.

The Discipline report was provided followed by the Education Committee report in which Benchers approved two transfers under the National Mobility Agreement and issued five Certificates of Fitness. Mr. Ian Wallace, Chair of the Committee advised that eight Applications for Admission as Student and one notice of resumption of practicing status had been approved by the Education Committee. Benchers then approved six applications for Non-Practicing status, five applications to resign membership and awarded Life Membership to Mr. Bryan Blackmore, QC.

The subject of Law Society Committees was next on the agenda. Ms. Grimes, QC provided Benchers with a written report, approved by the Executive Committee. This report recommended revision of the committee structure and Benchers approved the following committees: Executive Committee, Complaints Authorization Committee, Discipline Committee, Education Committee, Bar Admission Committee, Accounts and Finance Committee, Insurance Committee, Claims Review Committee, Library Committee, SS Daisy Legal History Committee, Student Awards Committee, Honours and Awards Committee, Real Estate Committee, LLP Committee (Ad Hoc), and Access to Justice Committee. It was noted that other necessary committees could be created in the future as

required. It was agreed that the members should be asked to submit expressions of interest for service on those committees for which it was appropriate (recognizing that the composition of some was prescribed by the Rules or other policies). It was also agreed that, to the extent possible, all committees should be chaired by Benchers who would report on the committees' work on a regular basis.

Lay Bencher, Mr. Donovan Downer presented a proposal for a move to paperless meetings as a means of saving money and being more environmentally friendly. The suggestion was met with widespread approval.

June 2015

The 12 June 2015 meeting of Benchers was held at the Law Society Building and President, Kenneth L Baggs, QC acted as Chair for his last Convocation as President.

The President, Mr. Baggs, QC, reported to Benchers regarding his activities since last Convocation. Mr. Baggs, QC, officiated at the 17 April 2015 Call to Bar ceremony and attended the reception which followed. He noted that there were seven candidates in total, two of whom were transfers. Mr. Baggs, QC thanked incoming President, Ms. Susan LeDrew for attending and speaking on his behalf at the Swearing In of Justice Jane Fitzpatrick on 24 April 2015. The President attended the Annual Budget Speech, House of Assembly on 30 April 2015, which he found to be an interesting experience. The President went on to advise that he attended the Discourse and Discovery Conference in Trinity (3-5 June 2015) along with Ms. LeDrew and Ms. Grimes, QC. Members of the *SS Daisy* Legal History Committee, including Mr. O'Brien and Mr. Merrigan, QC were involved as moderators or speak-

ers. While there were not many lawyers in attendance, he noted it was well-organized and interesting and the Law Society's contribution was recognized.

A written report on the Federation of Law Societies of Canada was provided to Benchers and Mr. Baggs, QC and Ms. Grimes, QC explained that discussions on governance remained ongoing. The preliminary report from the Committee outlined a couple of options on governance and leadership but the general consensus at the Council meeting was that the options which were more directed toward a modified status quo should be further developed.

The Law Society's 2014 Audit Report was provided to Benchers along with internal statements for 2015 and an investment return summary. Regarding the Insurance Programme's surplus policy, Benchers were advised that Andre Normandin, the actuary, would be consulted regarding how to address any excess funds. A discussion regarding the Transaction Levy ensued. Following a thorough discussion and an acknowledgment that Benchers' decision not to reduce the levy for 2015 was based on the budgetary information available at the time, it was agreed that Andre Normandin's scope of work would include providing commentary on this, as well as considering how the levy might be adjusted to more accurately reflect the risk associated with particular transactions. This information, along with a history/timeline for the introduction of the levy, would be available for Benchers for the next meeting.

Mr. Paul Burgess, Chair of the Insurance Committee provided a written report and advised Benchers that the CLIA subscribers' meeting concluded on a positive note with both the subscribers and

the Board acknowledging the need to work together to enhance communications. The information provided showed that CLIA's financial position was strong and stable and that efforts to manage Alberta's departure in the most beneficial and efficient way were ongoing.

This being his last meeting as Chair of the Insurance Committee, Mr. Burgess concluded by expressing his appreciation to Benchers, Ms. Grimes, QC, the CRC, including Frank O'Dea and Ray Walsh (both now retired) and Janice Ringrose. Mr. Baggs, QC expressed thanks to Mr. Burgess, on behalf of Benchers, for his dedicated work and Benchers went on to approve the appointment of Ms. Ann Martin as Chair of the Insurance Committee.

The Discipline report was provided and Ms. Phyllis Weir, Legal Director, thanked Mr. Barry Fleming, QC for his efforts as Chair of the Complaints Authorization Committee noting that he learned very quickly and was a great asset.

The Education Committee Chair, Mr. Ian Wallace, provided the Committee's report and Benchers approved two transfers under the National Mobility Agreement and approved the issuance of eleven Certificates of Fitness. Mr. Wallace advised Benchers that twenty one Applications for Admission as Student and five notices of resumption of practicing status had been approved by the Education Committee. Benchers went on to approve eight applications for non-practicing status and one application to resign membership and awarded Life Membership to Mr. Corwin Mills, QC.

Strategic Planning was next on the agenda and Benchers were given a draft outline provided by Allan Fineblit, QC which showed how the planning session would be carried

out. Benchers were advised that they would be contacted in the near future to schedule an evening and a day in November for the strategic planning session. Mr. Fleming, QC noted that we are the only jurisdiction of our size without a strategic plan and asked Benchers to consider, prior to the planning session, one objective they would like to see the Law Society accomplish.

Benchers were informed that members had expressed a great deal of interest in getting involved in the various Law Society committees.

The Chair of the Board of Governors of the Law Foundation of Newfoundland and Labrador, Mr. Aubrey Bonnell, QC had previously sent a letter to the Law Society recommending the appointment of Dan Boone, QC as Chair of the Law Foundation, effective 1 January 2016. He also requested that two new members be appointed to the Board to fill vacancies which would be created when his and Jeff Benson, QC's terms expire on 31 December 2015. Benchers agreed that requests for expressions of interest would be sought to fill the vacancies. A Motion to appoint Dan Boone, QC as Chair of the

Board of Governors of the Law Foundation, effective 1 January 2016, was approved by Benchers.

Mr. Baggs, QC advised Benchers that, regrettably, Mr. Lewis, QC was not able to attend the 12 June Convocation to be awarded his Honorary Degree and that he would not be able to do so in the future. Benchers awarded to P. Derek Lewis, QC the Degree of Doctor of Laws, Honoris Causa in absentia. It was proposed that the framed degree could be delivered to Mr. Lewis, QC, in person, by the President, if a personal visit could be arranged.

As Convocation concluded, Mr. Marcus Evans, QC expressed his appreciation at having had the opportunity to serve as a Bencher noting that, during his two terms, many difficult issues had been dealt with. Ken Jerrett also expressed his appreciation as he concluded his time on Benchers indicating it had been an enjoyable four years with many great discussions.

Mr. Baggs, QC thanked Mr. Evans, QC, Mr. Colbourne, QC, Mr. Jerrett and all of the remaining Benchers for their hard work noting it was

great to work with them. He indicated that, while there were challenges over the years, Benchers always seemed able to achieve a consensus on important issues. Mr. Baggs, QC also thanked all of the professional staff and Ms. Rowe, Executive Assistant for their hard work, diligence and patience.

Convocation then broke for the AGM and, upon resumption, the Executive Committee was presented and approved: Susan LeDrew, President; Barry Fleming, QC, Vice-President; Kenneth L. Baggs, QC, Past President; Paul Burgess, CAC Chair; Don Anthony, Executive Committee member. Ms. LeDrew proceeded to congratulate the new Benchers, Ian Patey, Robin Fowler, Renee Appleby, Rebecca Redmond-MacLean and Trevor Stagg on their election and thanked Marcus Evans, QC, Shawn Colbourne, QC and Ken Jerrett for their tremendous efforts over their years of service. Ms. LeDrew ended Convocation by remarking that Mr. Baggs, QC was always there to provide advice and thanked him for his insightful comments and fearless leadership indicating that she was looking forward to working with everyone. ■

In Memoriam

Benchers and members were saddened to learn of the passing of our esteemed colleagues:

The Hon. Justice James Randell Gushue

#248; called to the Bar - January 28, 1960 as Solicitor
and January 29, 1960 as a Barrister

The Hon. Justice Keith James Harold Mercer

#314; called to the Bar - April 15, 1971

Edward Michael Hearn, QC

#356; called to the Bar - February 7, 1974

Oliver Corwin Mills, QC

#328; called to the Bar - April 10, 1972

Gerald Ronald Fleming

#1140; called to the Bar - June 27, 2000

Complaints Authorization Report

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

A *Letter of Counsel* was issued by the Complaints Authorization Committee (see explanatory note below) with respect to the following Complaint.

Complaint that the member's failure to communicate with and to respond to another member's correspondence, and the member's failure to cooperate with the Law Society's investigation, does not comply with the standard of conduct contemplated by the *Code*. The Complaints Authorization Committee counselled the member that the Law Society Rules and Code of Professional Conduct prescribe a duty to respond promptly to communications from other lawyers and a duty to cooperate

with the investigation by responding fully to communications from the Law Society. (*Law Society Rule 9.07(1) and the Code of Professional Conduct (2013) chapter 7, rules 7.1-1 and 7.2-5*)

The Complaints Authorization Committee, a statutory committee comprised of two lawyers and a public representative, all of whom are Benchers of the Law Society, reviews the allegation to determine whether there are reasonable grounds to believe that the lawyer has engaged in conduct deserving of sanction. If the answer is no, then the Complaints Authorization Committee will dismiss the allegation. The *Act* prescribes that a complainant whose allegation is dismissed by the Complaints Authorization Committee, may file a notice of appeal, within 30 days, with the Registrar of the Supreme Court.

When the Complaints Authorization Committee's opinion is that there are reasonable grounds to believe that the lawyer has engaged in conduct deserving of sanction, there are two results:

- (i) the allegation is considered as constituting a Complaint; and
- (ii) the Complaints Authorization Committee may issue a *letter of counsel* or a *letter of caution* to the lawyer, or instruct the Vice-President to file the Complaint against the lawyer and refer it to the Disciplinary Panel.

Counsel is advice. Caution is a warning. Both are intended to assist the lawyer in his or her future conduct. A finding of guilt has not been made against the lawyer because a finding of guilt could only be made following a Hearing. ■

Changes in Status

The following changes in status were approved by Benchers sitting in Convocation April 2015 - June 2015:

Resumption of Practicing Status

Koren Thomson	March 9, 2015	Jennifer Standen	May 21, 2015
Josh Lehr	April 21, 2015	Andrew Collins	May 27, 2015
John Brooks, QC	May 14, 2015	Jessica Gallant	May 29, 2015

Practicing to Non-Practicing Status

Alexandria Hollett	February 2, 2015	Keir O'Flaherty	April 30, 2015
Agnes Tong	February 5, 2015	Robert Simmonds, QC	April 30, 2015
Christina Spurrell	February 23, 2015	Justin Dunphy	May 1, 2015
John Brooks, QC	March 1, 2015	Elyse Bruce	June 13, 2015
Matthew Clarke	March 13, 2015	Colin Sheppard	May 28, 2015
John Andrews	April 1, 2015	Ivan Nault	May 30, 2015
Christine Casey	April 13, 2015	Andrea Murphy McGrath	June 19, 2015

Members Granted Permission to Resign Membership:

Jillian Kean	January 30, 2015	Avril Dymond	April 1, 2015
Diane Smith, QC	February 24, 2015	Peter Kearsey	April 1, 2015
Patricia Day	March 4, 2015	Phil Chapman	May 1, 2015



How to Register for Homewood Human Solutions™ Member Services Area

1. Go to homepage: www.homewoodhumansolutions.com.
2. Once the homepage is displayed, click "Login" in the top right corner, and click "Register".
3. You will be requested to enter your Company / Organization name. If you are unsure of Company / Organization name you will be allowed to temporarily register without this information, however you will not have access to certain tools until your registration is validated by Homewood Human Solutions (within 24-48 hours).
4. Complete the profile section by selecting the proper information displayed in the text box(es) provided and click "Continue".

Trouble registering? Please call our Client Service Centre for immediate assistance at 1.800.663.1142

5. Fill in the required personal, address and system information on the form that is displayed, and click "Continue".
6. You have now created your member profile for access to the Member Services Area, providing you with seamless access to a number of online tools and resources. You will have the option of logging out or continuing on to the Member Services Area using the username and password you created. If you want to continue into the Member Services area, please click "Continue".

Note: A confirmation e-mail containing your username and password information will be forwarded to the e-mail address that you provided during the registration process. On subsequent visits, simply log in with your chosen username and password by clicking on "Login".

Trouble logging in? Please call our Client Service Centre for immediate assistance at 1.800.663.1142

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Dealing with Cryptowall ransomware

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♪ Tired, frustrated ...
I think I'm hitting the wall ... ♪

Music and lyrics by Adrenaline Mob

The Law Society [of British Columbia] issued a Fraud Alert on December 31, 2014 concerning the Cryptowall virus ransomware. This article expands on the information in that notice.

WHAT IS IT?

According to Wikipedia:

Ransomware is a type of malware which restricts access to the computer system that it infects, and demands a ransom paid to the creator(s) of the malware in order for the restriction to be removed. Some forms of ransomware encrypt files on the system's hard drive (cryptoviral extortion, a threat originally envisioned by Adam Young and Moti Yung), while some may simply lock the system and display messages intended to coax the user into paying.

While initially popular in Russia, the use of ransomware scams has grown internationally; in June 2013, security software vendor McAfee released data showing that it had collected over 250,000 unique samples of ransomware in the first quarter of 2013 – more than double the number it had obtained in the first quarter of 2012. CryptoLocker, a ransomware worm that surfaced in late-2013, had procured an estimated US\$3 million before it was taken down by authorities.

There are at least three different types of ransomware. The first is

software that appears to have detected something nasty on your computer and demands that you buy a clean-up tool to “remove” it. This is really bogus ransomware and typically can be removed from a computer without too much effort.



The second type of ransomware displays what appears to be a notice from the police or other authorities and demands payment of a fine since you have “illegal” content on your computer (typically copyrighted materials or porn). Again, this type of ransomware should not be too difficult to remove by someone with an IT background.

The third type of ransomware, most commonly known as Cryptowall or Cryptolocker, is much more dangerous and malicious, and is the focus of this article.

It has infected at least seven BC lawyers' systems over the last while.

WHAT IS CRYPTOWALL?

According to Techrepublic:

CryptoWall is classified as a Trojan horse, which is known for masking its viral payload through the guise of a seemingly non-threatening application or file. Its

payload involves encrypting the files of infected computers in an effort to extract money for the decryption key.

A Trojan horse is, as the name suggests, a malicious application wrapped up in sheep's clothing. It works by tricking you into clicking on what you think is an innocent attachment from a trusted source. The exact opposite is true.

WHERE DOES IT COME FROM AND HOW IS IT SPREAD?

Techrepublic continues:

Geographically speaking, that is unknown as of this writing. What is known regarding origins of infection is that CryptoWall is

most typically spread through email as an attachment and from infected websites that pass on the virus – also known as a drive-by download. Additionally, CryptoWall has been linked to some ad sites that serve up advertising for many common websites users visit on a daily basis, further spreading its distribution.

HOW PREVALENT IS IT?

According to Secureworks.com, the top 10 countries infected with CryptoWall are:

Country	Infected systems
United States	253,521
Vietnam	66,590
United Kingdom	40,258
Canada	32,579
India	22,582
Australia	19,562
Thailand	13,718
France	13,005
Germany	12,826
Turkey	9,488

As you can see, it is not a trivial threat.

WHAT DOES IT DO?

Once it is on a computer, it searches for and encrypts files located within shared network drives, USB drives, external hard drives, network file shares and even some cloud storage drives (there are reports of Dropbox files being encrypted by the malware).

The malware uses a very strong public/private encryption key and uploads the private encryption key to a “command and control” server, placing the private key required to unencrypt the files out of the victim’s reach.

It starts out demanding a ransom (typically around \$500 USD or 1 Bitcoin) and may increase the amount as the deadline for payment nears. It may also offer de-encryption after the deadline for yet a higher ransom.

HOW DO YOU PREVENT IT?

The important things to realize about this malware are:

- Once it encrypts your files, there is no way to “unencrypt” them without paying the ransom and receiving the private key. The length of the encryption key (reported to be a 2048-bit RSA key pair) is such that a “brute force” attack will not succeed to break the encryption in the time allotted to pay the ransom.
- While it is reasonably easy to remove the malware from your system using known tools, this does not affect the encrypted files. Removal of the malware still leaves your files encrypted and unavailable to you.
- In talking with the firms that have been hit, even the best internet security and anti-virus software suites have not stopped this malware from infecting their computers and systems. In spite of what these security suites may state on their websites, the malware has succeeded in attacking systems that were protected by Kaspersky, Microsoft Security Essentials, McAfee and others. Many security suites claim that they can remove the malware and, doubtless, many of them do. However, what they do not say is that removal of the malware does not de-encrypt the infected files.
- After having done an exhaustive search of the internet, I could not find anyone who reported a reputable tool to break the encryption on the infected files. You are left with a Hobson’s choice: either pay the ransom (which may or may not result in your encrypted files being unencrypted), or not. If you do not pay the ransom, you will be left to recover or recreate the files that are now lost to you.

- The best way to deal with this malware is by taking preventive measures. Once your system is hit, it is really a matter of damage control.
- Keep your operating system current and fully up to date. One firm that was infected was still using Microsoft XP well after April 8, 2014, which was the date that Microsoft stopped supporting this operating system. As Microsoft states:
If you continue to use Windows XP now that support has ended, your computer will still work but it might become more vulnerable to security risks and viruses. Internet Explorer 8 is also no longer supported, so if your Windows XP PC is connected to the internet and you use Internet Explorer 8 to surf the web, you might be exposing your PC to additional threats.
- Do not allow peer-to-peer file sharing applications on your network.
- Disable autorun on your Windows computers on network drives and USB ports. This will prevent malware from being introduced using this function.
- Be very careful about opening attachments to emails or other messages (including instant messaging). In some of these cases, the malware appears to have been an executable file masquerading as a PDF attachment to an email. Once opened, the executable file installed the ransomware on the firm’s system. If you have what appears to be a questionable email, do not click on it. Forward it to your IT support and ask that they open it in a “sandboxed” computer, which has special protection that can allow the email and attachment

to be safely examined without infecting your system.

Note that email addresses can be “spoofed,” and an email may appear to be from someone you trust. If the email appears to be at all questionable, or not in keeping with what you would expect receive from that address, treat it as suspicious and send it to your IT department without opening any attachments.

- Educate the people you work with about the risks of:
- attachments to email and other messages;
- downloading applications from the web that have not been approved by IT;
- visiting websites of questionable content, as they may contain malware.
- Maintain up-to-date browsers and set security settings high to help prevent phishing and other malware attacks.
- Have an internet and authorized use policy in place in the office (a precedent can be found on the [Law Society website](#)), and educate your staff and lawyers on the risks outlined in that policy.

It starts out demanding a ransom (typically around \$500 USD or 1 Bitcoin) and may increase the amount as the deadline for payment nears.

- Consider restricting software and installing blocking applications. Techrepublic states: “Lastly, consider enabling software restriction policies if you’re a system administrator on an enterprise network or using a freely available application such as CryptoPrevent to block many of the avenues to which Cryptowall uses to gain a foothold on your computer.”

Note that blocking applications may or may not work against future versions of Cryptowall or similar viruses as they evolve.

IS IT POSSIBLE TO RECOVER ENCRYPTED FILES IF YOU DO NOT PAY THE RANSOM?

The short answer is, there is no known way to unencrypt affected files without paying the ransom. However, several different approaches have allowed lawyers to restore some or all of their lost files from earlier versions and/or backups that were not themselves encrypted by the virus.

Here is a selection of ways that may work if you have been hit by the virus:

- If you have enabled a cloud backup that maintains versions of documents, you may be able to go back to a version that has not been encrypted. [Microsoft OneDrive](#) states that you may be able to restore files from earlier versions in OneDrive. However, this virus is known to disable the versioning aspect of Windows.

Again, according to Techrepublic:

Finally, once the encryption process has completed, Cryptowall will execute some commands locally to stop the Volume Shadow Copy Service (VSS) that runs on all modern versions of Windows. VSS is the service that controls the backup and restoration of data on a host computer. It also controls file versioning, a feature introduced in Windows 7 that keeps histories of changes made to files. The file may be rolled back or restored to a previous version in the event of an unintended change or catastrophic event that causes the integrity of the file to have been modified. The command run by the virus stops

the service altogether and also adds the command argument to clear/delete the existing cache, making it even more difficult to recover files through versioning or system restore.

- You may be able to retrieve your files if you use [SpiderOak](#) or similar zero knowledge systems. These online backup services encrypt files uploaded to their cloud storage via a key that is only known to you. The cloud provider has no way of knowing either your password or your de-encryption key. (Of course, you are well advised to store that key in a very safe place, as it is the only way to access your files.) The files are potentially unreachable and therefore safe from the ransomware.

SpiderOak’s website states:

Ransomware attacks are on the rise these days. In order to ensure protection against attacks like Cryptowall, it is extremely important to back up your files and folders in a trusted cloud storage system. SpiderOak is one of the few cloud storage systems that uses “zero knowledge” privacy and uses strong security controls to protect customer data. SpiderOak encrypts the files in your computer before uploading them to the server. As a result, only you, have access to your unencrypted data. Even SpiderOak cannot read your data because the keys used for encryption only belong to you. SpiderOak offers amazing products like SpiderOak Hive and SpiderOak Blue to secure consumer and enterprise data. SpiderOak Blue provides enterprises with a fully private cloud service featuring all of the benefits of cloud storage along with total data privacy.

- Have a backup of your files that is disconnected from the network and thereby isolated from the propagation of the virus. This will work only if the virus does not have the opportunity to find this backup and encrypt it or disable the versioning.
- If you are fortunate enough to have an uninfected backup, do not attempt to restore your data until you are absolutely certain that your network has been fully sanitized of the malware. You wouldn't want to find that your only backup has now become infected courtesy of a vestige of the malware left on the system. Here is what has not worked for firms that have been hit:
- At least one firm was unable to restore its files in [Dropbox](#). The virus also found the firm's Dropbox files and encrypted them as well – notwithstanding that Dropbox maintains ver-

sions of files. It is an open question as to whether files that are themselves placed within an encrypted volume in Dropbox using a third-party encryption application (such as Boxcrypt or Viivo) might survive an attack.

- Restoring files stored on an USB drive or NAS (networked attached storage) device, unless the USB or NAS was disconnected from the network when it was infected. If the USB drive or NAS was connected to the network at the time of the infestation, the virus can find and encrypt these devices.

CONCLUSION

Everyone should see ransomware as a serious threat and take steps to minimize their risk. According to Secureworks.com:

In mid-March 2014, Cryptowall emerged as the leading file-

encrypting ransomware threat. The threat actors behind this malware have several years of successful cybercrime experience and have demonstrated a diversity of distribution methods. As a result, CTU researchers expect this threat will continue to grow.

This is clearly one case where a gram of prevention is worth a kilogram of cure. Lawyers are urged to harden their systems, to take action to prevent viruses from infecting their systems, to maintain backups that are out of reach of ransomware and to educate their users on the role that they play in preventing infections.

After all, once you are infected the effort to try to recover and restore encrypted files can cause you to be tired, frustrated and eventually, hit the wall. ■

Custodianships

We would like to remind members that we currently have custodianship of the practices of the following firms or single practitioners:

- | | |
|----------------------|----------------------|
| - Alan Carter | - Glube Jewell |
| - Sullivan | - Gordon Seabright |
| - Claude Sheppard | - Hugh Coady |
| - David Pitcher | - James Nurse |
| - David Sparkes | - Jody Saunders |
| - Doug Harvey | - Keith Rose |
| - Fabian O'Dea | - Kent Morris |
| - Frederick R Bishop | - Michael Drover |
| - Gerard Griffin | - R A Parsons/O'Neil |
| - Gerard Gushue | - William Browne |
| - Glen Bursey | - William Parsons |

Members can contact the Law Society at 722-4740 for details on any of these custodianships.

Recent Appointees to Queen's Counsel

The following members have been named as Queen's Counsel.

*(date of swearing-in
not confirmed at time of publication)*

Linda S. Bishop
Brenda P. Boyd
W. John Clarke
Genevieve M. Dawson
David P. Goodland
Gregory F. Kirby
Jamie P. Martin
Gary F. Peddle
G. Todd Stanley

Mandatory Continuing Legal Education Requirements

Members are reminded that the mandatory Continuing Legal Education (CLE) program requirements will begin in January 2016. During 2016 members will be required to complete the CLE requirements, and report their 2016 CLE activities to the Law Society beginning in January of 2017. For reference, please find below further details regarding the CLE requirements. The first report will be due January 31, 2017.

Introduction

Beginning in 2016, the Law Society of Newfoundland and Labrador (the Law Society) will require that every practicing member of the Law Society:

1. Participate in a minimum level of Continuing Legal Education (CLE) activities annually;
2. Provide information to the Law Society annually, outlining details of these CLE activities, using the Law Society's CLE Annual Report and Plan form; and
3. Provide a continuing legal education plan for the following year, using the Law Society's CLE Annual Report and Plan form.

Mandatory CLE Requirements

Specifically, the Law Society will require all practicing members to complete a minimum of 15 hours of eligible CLE activities annually.

Benchers have determined that the inaugural year for participating in and reporting mandatory CLE activities will be 2016. Members will be expected to report their 2016 CLE activities, and their future CLE plans for 2017, using the CLE Annual Report and Plan form which will be provided by the Law Society. The first CLE Annual Report and Plan will be submitted in January 2017.

Eligible CLE Activities – Content Requirements

Eligible CLE activities must contain significant substantive law or practical content with the primary objective of enhancing a member's professional competence. As indicated above, members will be required to complete a minimum of 15 hours of eligible CLE activities annually. Eligible CLE activities must be:

- relevant to the member's present or perceived future professional needs;
- directly related to the member's current or anticipated practice areas; and/or
- relevant to professional ethics and the professional responsibilities of lawyers.

Eligible CLE activities should include significant substantive, procedural, technical or practical legal content.

The mandatory CLE activity requirement can be met in many ways; for example, in a classroom setting, by reading legal publications (periodicals, digests and journals), listening to podcasts, watching recorded programs and seminars, or through live online CLE programming.

Eligible CLE activities will include activities and content dealing with one or more of the following areas:

- *the practice of law* (including ethics, professional responsibility, practice standards, substantive law, procedural law etc.);
- *lawyering skills* (such as advocacy, drafting, research, communications, interviewing, negotiation etc.); and
- *practice management* (including client relations, wellness, time management, practice technology etc.).

Examples of Eligible CLE Activities

To qualify as an eligible CLE activity, the activity must be directly related to improving professional competence in the member's practice.

Some examples of eligible CLE Activities would include:

- *Attendance at live CLE activities* – Attendance at live seminars, courses, educational components of conferences, live webcasts, telecasts or live online courses etc., would all be eligible activities, provided the content requirements (outlined above) are met. (N.B. Obviously, only those hours where a member is in actual attendance at the course, seminar or educational component of a conference etc. are considered eligible hours.)

- **Teaching / Lecturing / Instructing in a law course, CLE seminar etc.** – Teaching in a legal context is an eligible activity, to a maximum of six hours per year, provided that the content requirements (outlined above) are met in the material that is taught. There are no restrictions or requirements on the audience, except that presentations designed for clients would not count towards eligible CLE activities.
- **Writing** - Authoring legal texts, legal articles or other written materials is an eligible CLE activity, to a maximum of six hours per year, provided that the content requirements (outlined above) are met. As well, to be an eligible CLE activity the primary purpose of the written material should be for use in an educational program, or to educate about the law. However, written material produced as part of the member's regular employment or practice, or for client development, would be excluded.
- **Self-study / Reviewing written or recorded materials** – Self-study or reviewing written materials (current legal articles, textbooks, case reports, journals etc.) or reviewing recorded CLE courses or activities (recorded online seminars, podcasts, recorded audio or video CLE courses etc.) are eligible CLE activities, to a maximum of 3 hours per year, again provided the content requirements (outlined above) are met.

Examples of Non-Eligible CLE Activities

Some examples of non-eligible CLE activities would include:

- Activities which do not meet the content requirements (out-

lined above) or which are not directly related to improving professional competence;

- Activities relating to mentoring, including being a Principal to an Articled Student-at-Law;
- Activities relating to marketing or profit maximization or primarily designed for clients;
- Activities undertaken for an employment purpose, or prepared and delivered in the ordinary and usual course of practice or employment.

Compliance with the Requirements

It will be each member's responsibility to ensure that a proposed CLE activity meets the content requirements set out by the Law Society and, therefore, qualifies as an eligible CLE activity.

The Law Society will have discretion to determine whether specific activities meet the requirements, and are or are not eligible CLE activities. It is anticipated that the Law Society will not be unreasonably prescriptive or rigid in assessing what is or is not an eligible CLE activity.

The Law Society will not assess or accredit providers, content or subject matter in advance. However, it is anticipated that many professional learning activities will qualify and meet the requirements of an eligible CLE activity, provided a common-sense and reasonable nexus or link can be demonstrated between the activity and an enhancement in professional competence.

CLE Annual Report and Plan - Reporting Requirements

Members will be required to complete and submit a document annually to the Law Society, referred to as a *CLE Annual Report and Plan* form. This document will have two parts; a report on eligible CLE activities for a given year and a plan for CLE activities for the following year.

The CLE Annual Report portion of this document will provide details on the member's CLE activities for the year in question. The CLE Plan portion of the document will contain a series of questions aimed at helping members identify their professional development activities for the following year. It is meant to provide a useful framework and guideline by which members can plan to participate in future professional development activities which are relevant to their needs and practice areas, and which can further enhance their competence.

This *CLE Annual Report and Plan* form will provide an annual record of members' CLE activities and will also provide a framework by which members can assess and meet their future requirements for professional development and continuing legal education. The submission deadline for filing in a given year is January 31 of the following year.

Failure to Report or Comply with Requirements

The consequences for members who fail to fulfill the requirements may include administrative sanctions in the nature of late fees, plus the requirement to make up the required hours of eligible CLE activities within a specified time period, administrative suspensions, and, in extreme cases of non-compliance, a possible engagement of the disciplinary process set out in the *Law Society Act, 1999*.

Exemptions

Members who are subject to comparable mandatory CLE requirements in another Canadian jurisdiction (for example, a member of another Canadian Law Society who has fulfilled that other Law Society's requirements by participating in CLE activities), may count these CLE activities towards the requirements of the Law Society of Newfoundland and Labrador.

Members with non-practicing or life membership status would not be required to meet the requirements while not practicing. A member holding both non-practicing and practicing status in the same year would need to meet the requirements for that part of the year when practicing status was held.

Members who are claiming an exemption from complying with the requirements can identify their exemption on the *CLE Annual Report and Plan* form.

Monitoring

The Law Society will monitor compliance with the Mandatory Continuing Legal Education requirements by reviewing *CLE Annual Report and Plan* forms submitted by members. At the Law Society's request, a member may be asked to provide further information or documentation relating to the details of the member's participation in a CLE activity and/or the eligibility of a reported activity. ■

Our New Professionals' Assistance Program

Our Professionals' Assistance Program with **Homewood Human Solutions** is a comprehensive suite of services, available to help you and your family with issues that may affect your well-being. Whether you use *Counselling*, *Plan Smart Lifestyle and Specialty Counselling Services* or *Online Services*, all these services have been developed and are provided by professionals who are dedicated to improving your health and well-being. They use evidence-based practices to ensure that all of our programs and services will provide you with exceptional assistance concerning the following:

Resolving all kinds of personal, family and work-related issues that may affect your health and well-being.

Taking preventative and proactive steps in developing and maintaining healthy habits for a healthier lifestyle.

Counselling Services

When personal, family or work-related life presents more than you can handle, face-to-face, telephonic or online counselling can be arranged quickly. Professional service providers will help you in developing the skills and making the changes that are required for you to regain control of your life.

Plan Smart Lifestyle and Specialty Counselling Services

Whether it is because you are struggling with a legal or financial issue, have questions around parenting, have to care for an elderly person or relative or perhaps need health habits, *Plan Smart Lifestyle and Specialty Counselling Services* are there to make a difference in your life.

Online Services

Registration is easy at www.homewoodhumansolutions.com

Once you have completed your registration and have gained access to the secure Member Area, you will be provided with your own personalized home page. From there, you will be able to access a variety of different online services. Whether it is to consult health and wellness or life skills articles, or access the Health & Wellness Companion™ — an online health library, with health risk assessments and healthy habit development tools, use the child-care or elder care resource locators or browse one of the many online *e-Courses*, you will find all you need to take control of your own health and well-being.

If you are not already registered, do it now!

Get involved!

The Public Legal Information Association of NL (PLIAN) provides a valuable service to the public and has been doing so since 1984.

PLIAN's mandate is to provide public legal education and information services with the intent of increasing access to justice. The services provided by PLIAN (such as the Lawyer Referral Service, Legal Information Line, school visits, community information sessions and various publications) assist in providing all members of society who require information about the law, legal processes and the administration of justice with easily accessible information.

PLIAN needs help from all of you in carrying out this mandate.

Please contact any of PLIAN's staff at 722-2643 to ask how you may get involved.

Congratulations!

Congratulations to law student,
Ms. Kirsten Morry from Newfoundland and
Labrador who is the winner of the
National Law Student Essay Competition
sponsored by *Magna Carta Canada*.

Ms. Morry will receive
a \$1,000.00 scholarship from the
Law Society of Newfoundland and Labrador
and will be presented with
a Certificate at the Annual Dinner in June.



E-Books available through the Law Society Library

The Law Society Library has recently subscribed, on a one-year trial basis, to Irwin Law's E-Library, which gives members of the Law Society desktop access to e-book versions of all the titles in Irwin Law's Essentials of Canadian Law series as well as many other Irwin texts. Entering "ebook" in the keyword box of the online catalogue will retrieve a list of 62 titles available in print and through this resource. A complete list of the 120+ Irwin texts available through the E-library is available here: <http://www.irwinlaw.com/titles>

Contact the Law Library for login and password information - lawlibrary@lawsociety.nf.ca

Benchers' Convocation - June 12, 2015



Back Row (l-r): Ann Martin, Leanne O'Leary, Donovan Molloy, QC, Glenda Reid, Brenda Grimes, QC, Kenneth Jerrett, Marcus Evans, QC, Dr. Donovan Downer, Bert Riggs

Front Row (l-r): Linda Harnett, Paul Burgess, Kenneth Baggs, QC, Susan LeDrew, Barry Fleming, QC, Donald Anthony

Officers

President: Susan M. LeDrew
Past-President: Kenneth L. Baggs, QC
Vice-President: Barry G. Fleming, QC

Elective Benchers

Eastern District:
Donald E. Anthony
R. Paul Burgess
Amy M. Crosbie
Robin L. M. Fowler
Ann F. Martin
Donovan F. Molloy, QC
Liam P. O'Brien
Leanne M. O'Leary
Ian S. Patey
Ian C. Wallace

Central District:
Renee L. F. Appleby
Rebecca A. Redmond MacLean

Western District:
James E. Merrigan, QC
Trevor A. Stagg

Labrador District:
Adrienne S. Edmunds

Lay Benchers

Dr. Donovan Downer
Glenda Reid
Linda Harnett
Bert Riggs

Law Society Annual Dinner

#1 **Presentation to the Past President**

President Susan LeDrew, and
former President, Kenneth Baggs, QC

#2 **The Hunt Award**

Winner: Mr. Justin Caines.
Award presented by Kenneth L Baggs, QC.
(Award in Memory of Charles E. Hunt, QC and
The Honourable Mr. Justice Douglas C. Hunt).

#3 **Provincial Court Judges' Association Award**

Award Winner: Mr. Justin Caines and
Ms. Lesley Pike (*in absentia*).
Award presented by Judge Michael Madden.

#4 **Award in Memory of Edward J. Penney**

Award Winner: Ms. Carolyn Mouland.
Award presented by Marcus Evans QC .



June 12, 2015 - Clovelly

#5 William J. Browne Scholarship

Scholarship Winner: Mr. Mark Aylward.
Presented by Father William Browne.

#6 Award in Memory of Wayne F. Spracklin, QC

Award Winner: Ms. Carolyn Moulard.
Award presented by Sheri Wicks.

#7 Maxwell J. Pratt Scholarship

Scholarship Winner: Mr. Shane Belbin.
Presented by Barry Fleming, QC.

#8 Gordon M. Stirling Distinguished Service Award

Award Winner: Mr. Christopher Curran, QC.
Award presented by Kenneth Baggs, QC.

#9 Gordon M. Stirling Distinguished Service Award

Award Winner: Mr. Augustus Lilly, QC.
Award presented by Kenneth Baggs, QC.

#10 Gordon M. Stirling Distinguished Service Award

Award Winner: Mr. Corwin Mills, QC
(Mr. Gregory Pittman, QC accepting).
Award presented by Kenneth Baggs, QC.

#11 Gordon M. Stirling Distinguished Service Award

Award Winner: Mr. David Eaton, QC.
Award presented by Kenneth Baggs, QC.

#12 Gordon M. Stirling Distinguished Service Award

Award Winner: Mr. Donald MacBeath, QC.
Award presented by Kenneth Baggs, QC.

Doctor of Laws, Honoris Causa

The Honorary Degree, *Doctor of Laws, Honoris Causa*, was conferred on Mr. P. Derek Lewis, QC who was unable to attend.



Call to Bar 2015



June 19, 2015

1st row (l-r): M. Gardner, A. Barroca, T. Morris, J. Hewitt, M. O'Rielly
2nd row (l-r): M. Peddle, L. Pike, C. Brackley, J. Santimaw, P. Thistle, S. Anstey



October 9, 2015

1st row (l-r): C. Urquhart, G. Nagarajah, A. Kolodziej, A. Whitehead
2nd row (l-r): S. Handrigan, J. Handrigan, G. Jones
3rd row (l-r): J. Mahoney, R. Palmer
4th row (l-r): J. Olthuis, M. Sokolova, M. Power