

Benchers' Notes

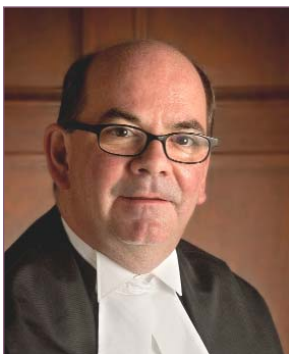


Spring 2017

Volume 18, Number 1

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



Barry G. Fleming, QC
President, Law Society of
Newfoundland and Labrador

This will be my final Report for *Benchers' Notes* and it has been a busy few months.

On 14 December 2016, I attended a technical briefing by officials with the Department of Municipal Affairs following the passage of the Bill to Amend the *Lands Act* on 13 December 2016 which received Royal Assent on 14 December 2016. The amendments

incorporate the principles outlined in the latest Court of Appeal decision on the topic which requires open, continuous, notorious and exclusive possession for 20 years prior to 1977. I reiterated concerns that it is becoming virtually impossible to dispossess the Crown because of the difficulty in getting sworn affidavits for evidence prior to 1977.

I was happy to see many of you at the Benchers' Reception on 21 December 2016 which was well-attended again this year. It is always a fun event which provides members with the opportunity to socialize and wish each other well as we kick off the Christmas season.

On 31 January 2017, I, along with Paul Burgess and Brenda Grimes, QC, had a meeting with Chief Justice Whalen to discuss the delays in having civil trials and applications set down for a hearing. Justice Whalen

outlined a number of reasons for the increasing delay which fell into four main categories: an ever-increasing demand on the work of the Unified Family Court leading to drawing the equivalent of an additional 3 full-time judges from the General Division; the conduct of civil trials and applications taking longer, partly due to an increase in unrepresented litigants and the need to school counsel in the proper conduct of a trial or application; the occurrence of miscellaneous, unrelated events which can result in delays, such as the loss of a judge to medical leave or to a judicial inquiry; and issues surrounding the conduct of criminal trials. Chief Justice Whalen noted that, in one calendar year, the court had to deal with 15 delayed trials because of requests by accused to change counsel, or have counsel paid for by the Attorney General. This, coupled with the recent rise in the number of criminal trials, the length of time it takes to conclude them and the effect of the Supreme Court of Canada decision in *R.v Jordan* is problematic. Finally, there was a general discussion about court security and the rundown nature of the courthouse.

On 17 February 2017, I officiated the Call to Bar presided over by The Honourable Donald H. Burrage, where a total of 20 students became lawyers.

On 21 February 2017, accompanied by the Vice President, I met with Justice Richard LeBlanc of the Unified Family Court to discuss the potential of an Early Neutral Evaluation Program for that Court. The initiative would have senior family law practitioners meet with litigants once a proceeding has been com-



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menced to help manage expectations, explain the process and facilitate, where appropriate, admissions and agreements. We explained the other access to justice initiatives undertaken by the Law Society and the resources earmarked for those but offered support in principle. Justice LeBlanc appreciated this and explained he would convey the position to the Minister of Justice and Public Safety.

The Court of Appeal, on 14 March 2017, recognized the remarkable career of the late Derek Lewis, Q.C. As I was scheduled to be attending Federation of Law Society's meetings on that date, I was grateful that fellow Bencher, Ian Wallace, was available and willing to deliver remarks on behalf of the Law Society.

It was a pleasure to attend the Swearing-in ceremony and reception for Queens' Counsel on 17 March 2017 where Janie Bussey, QC, Felix Collins, QC, Deborah Hutchings, QC, Neil Jacobs, QC, Stephen May, QC, Jennifer Mercer, QC, Judy Morrow, QC, Peter O'Flaherty, QC, Andrew Parsons, QC, Kari Ann Pike, QC and Darlene Russell, QC were appointed.

On 29 March 2017, I facilitated the first meeting of the Indigenous Law Committee and this newly established Committee had its second meeting on 26 April 2017, which I also participated in. We hope to keep the momentum going with this Committee to bring to Benchers issues which relate to the Indigenous community.

On 21 April 2017, I officiated the Call to Bar, presided over by Chief Justice Raymond P. Whalen, where a total of 11 students became lawyers.

In closing, I would like to express my gratitude to the membership for electing me as Bencher; to all Law Society Committee members, who often volunteer a lot of their personal time to undertake issues of great importance that affect the public and the legal profession as a whole; to Benchers, for their continuous commitment in preserving the mandate of the Law Society and for their thoughtful commentary at all Convocations; and, last, but certainly not least, to the truly dedicated staff at the Law Society. ■

Custodianships

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

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

Members can contact Lisa Kennedy, Custodianship Assistant for details on any of the above by email at lisa.kennedy@lawsociety.nf.ca or by telephone at 758-0822.

Note from Brenda B. Grimes, QC

Executive Director

I would like to take this opportunity to highlight some recent Rule changes approved by Benchers:

- The repeal of Part III, The Library (Law Society Rules 3.01, 3.02, 3.03 and 3.04); and
- Amendments to Law Society Rules 9.07 and 9.31

Notification of these changes have been sent to the membership via email broadcast and I urge all members to take a moment to review them on our website at <http://www.lawsociety.nf.ca/lawyers/lawyer-regulation/law-society-rules/>.

I am pleased to announce that we are currently working on adding additional forms to the Lawyer Portal which members will have

the ability to access and complete online and we are also reviewing the potential for online voting. Further details on these future initiatives will be communicated to our membership in coming months.

As you know, during the past few months, the Law Society has said farewell to two long-time employees, Gail Hogan and Phyllis Weir, both of whom spent many dedicated years with the Law Society, for which they are to be commended. We hope they are enjoying this new phase in their lives and taking in all of the pleasures that retirement has to offer! During this time we also welcomed two new employees, Jenny Thornhill and Lori Chafe to fill the roles left vacant by Gail and Phyllis. We look forward to working with



Brenda B. Grimes, QC
Executive Director

them over the coming years.

In closing, I would like to remind you that the Law Society's Annual General Meeting will be held on Friday, 9 June 2017 at 2:00 pm at the Law Society. Our Annual Dinner and Cocktail Reception will be held the evening of Friday, 9 June. You will find the registration form and further details on the Annual Dinner and Cocktail Reception on our website, www.lawsociety.nf.ca ■

Continuing Legal Education

The Law Society of Newfoundland and Labrador (the Law Society) requires 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

The Law Society requires all practicing members to complete a minimum of 15 hours of eligible CLE activities annually. Members are required to complete and submit their CLE Annual Report and Plan in January of every year.

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, watch-

ing 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.).

Failure to Report or Comply with Requirements

The consequences for members who fail to fulfill the requirements may include administrative sanc-

tions 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 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-practic-

ing 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. ■

Upcoming Continuing Legal Education Seminars:

Practice Issues in Wills, Trusts and Estate Planning

Date: Thursday, June 15, 2017

Time: 9:00 am – 1:30 pm

N.B. Subject to the Mandatory Continuing Legal Education Requirements, this seminar would constitute 4.5 hours of eligible CLE activities.

Real Estate in 2017:

Current Issues, Risk Management and Best Practices

Date: Thursday, June 22, 2017

Time: 9:00 am – 1:00 pm

N.B. Subject to the Mandatory Continuing Legal Education Requirements, this seminar would constitute 4 hours of eligible CLE activities.

Changes in Status

The following changes in status were approved by Benchers sitting in Convocation in October 2016 and February 2017:

Resumption of Practicing Status

| | | | |
|--------------------|-------------------|------------------|-------------------|
| Jennifer Lundrigan | 8 June 2016 | John Cook | 16 September 2016 |
| Gordon Aylward | 10 June 2016 | Rory Barnable | 11 October 2016 |
| Matthew Moulton | 5 July 2016 | Madeleine White | 28 October 2016 |
| John Samms | 9 August 2016 | Michael Peddle | 2 November 2016 |
| Judith Rae | 24 August 2016 | Megan Sheppard | 2 November 2016 |
| Anna Wadden | 24 August 2016 | John Green | 18 November 2016 |
| Agnes Tong | 24 August 2016 | Vivian Arenillas | 16 January 2017 |
| Scott Worsfold | 30 August 2016 | Cheryl Mullett | 25 January 2017 |
| Jennifer Berlin | 16 September 2016 | Amanda Summers | 27 January 2017 |

Practicing to Non-Practicing Status

| | | | |
|----------------------|------------------|-----------------------|------------------|
| Jasmine Compton | 1 July 2016 | Kenneth Anderson | 24 June 2016 |
| Alexander Barroca | 1 July 2016 | Karen Hollett | 1 November 2016 |
| Isobel O'Shea | 1 July 2016 | Gwenyth Stadig | 17 October 2016 |
| Cheryl Mullett | 20 June 2016 | Kevin Gibson | 14 October 2016 |
| Mark Aylward | 20 June 2016 | Andrea Barnes | 14 October 2016 |
| Edward Langdon | 9 September 2016 | F. Alfred D. Pike, QC | 30 December 2016 |
| Andrew Collins | 1 September 2016 | Erika Breen Hearn | 23 December 2016 |
| John Green, QC | 18 August 2016 | Peter Daniel Shea | 1 January 2017 |
| Toby Bristow | 26 August 2016 | Derek Hillier, QC | 31 December 2016 |
| Kelly Hynes Curties | 24 August 2016 | Mary Mandville | 1 January 2017 |
| Stephen Lichti | 1 September 2016 | Emily Stockley | 31 December 2016 |
| Edward Brown | 1 August 2016 | Darlene Neville | 1 January 2017 |
| Anastasia Wadden | 15 June 2016 | Andrew White | 1 January 2017 |
| Koren Thomson | 14 May 2016 | Jaclyn Whelan | 1 January 2017 |
| Anthony E St. George | 7 July 2016 | Raphaëlle Ferland | 2 December 2016 |

Members Granted Permission to Resign Membership

| | | | |
|-----------------------|-----------------|---------------------|------------------|
| Susan Doyle | 14 June 2016 | Elizabeth Utting | 19 December 2016 |
| Andrew Clements | 6 July 2016 | Nick Westera | 31 December 2016 |
| Elaine Wychreschuk | 1 May 2016 | R. Wayne Bruce | 31 December 2016 |
| Andree Thoms | 16 May 2016 | John Hurley | 6 January 2017 |
| Jeremy de Jong | 1 May 2016 | Agnes Tong | 31 December 2016 |
| Carolyn Moulton | 19 May 2016 | Ghazi Durrani | 31 December 2016 |
| James Ian Simpson | 14 October 2016 | Aidan Beresford, QC | 31 December 2016 |
| Wayne Chamberlain, QC | 6 July 2016 | | |

Decisions, Decisions, Decisions

Below is a brief summary of some of the decisions taken by Benchers during the period from October 2016 up to and including February 2017.

October 2016:

The October 3, 2016 meeting of Benchers was called to order by the President, Barry Fleming, QC who welcomed new Benchers, John Hogan and Suzanne Orsborn.

The Education Committee presented the first report and Benchers approved four transfers under the National Mobility Agreement, six Certificates of Fitness, sixteen applications for Non-Practicing status and two applications to resign membership.

Benchers were provided with an Executive Summary outlining amendments to our Code of Professional Conduct recommended by Review Committee. In response to questions, Ms. Weir noted that these recommendations (which are based on changes to the Federation's Model Code), follow multiple consultations at multiple levels, including with law societies, the CBA and academics before being referred back to law societies for consideration. After some discussion, Benchers approved the recommended revisions to the Code of Professional Conduct with an effective date of 14 November 2016.

Benchers went on to approve a recommendation by the Chair of the Disciplinary Panel to appoint Megan Taylor to the Panel.

Next, Benchers were provided with an Executive Summary from Ms. Grimes, QC and two reports from KPMG along with a recommendation from the Executive Committee, all related to the development of a Net Assets Reserve Policy. KPMG had been retained to do an analysis

of the Law Society's surplus and to assist in the development of a policy for the Law Society's use based on priorities and risks. In combination, the two reports addressed the concepts of both unrestricted (no limitation placed on use) and restricted reserves (limited by Benchers to a particular use), and how they can be utilized. Benchers accepted the recommendation, approved the Net Asset Reserves Policy and Procedures document as presented, and voted to accept the creation of several internally restricted reserve categories, as outlined, and allocate to them the amounts recommended.

Following this discussion, Mr. Morgan Cooper was appointed as the Law Society's new Federation Council representative and Benchers approved the reappointment of Mr. Daniel Boone, QC for a second term as Governor, and Chair of the Board of Governors, effective 1 January 2017.

Next on the agenda was the Strategic Initiatives Work Plan which Ms. Grimes, QC explained helped to show how delivering on the Benchers' strategic discussions would be accomplished through a series of steps. The Strategic Initiatives Work Plan was approved by Benchers.

Benchers were provided with a memo from Ms. Grimes, QC outlining the current status of the TWU matter before the courts. Following a discussion about the relative merit of taking a position now, it was agreed that, in light of the current status of the matter before the Courts and the Federation Committee's work, Benchers

would maintain the position that any decision be held in abeyance pending the outcome of those initiatives.

The President took the opportunity to thank Sheila Greene, QC for her many years of service as the Law Society's Federation Council representative and presented her with a gift. Ms. Greene, QC indicated that it had been a great experience and that she had been fortunate to have great people to work with.

December 2016:

The 5 December 2016 meeting of Benchers was called to order by the President, Barry Fleming, QC.

The Education Committee provided the first report and Benchers approved one transfer under the National Mobility Agreement and approved the Minutes for the 14 October 2016 Call and Special Call to Bar.

Next, Benchers approved three applications for Non-Practicing status, two applications to resign membership and Life Membership for John Noel, QC and Francis P. Fowler, QC. Benchers also approved the granting of the Gordon M. Stirling Distinguished Service Award to Francis P. Fowler, QC.

Benchers went on to approve amendments to the Investment Policy Statement and the Insurance Committee tabled a report and sought input from Benchers regarding a CLIA initiative to introduce some form of coverage for cyber risks. One of the questions posed by CLIA was whether it should be limited to third party losses (protect client) or extended to first party

losses (protect lawyer and, indirectly, client). Benchers agreed that they would defer to the views of the Insurance Committee on this issue. The Insurance Committee was in favor of the introduction of cyber coverage for third party claims and for first party losses to the extent that they have a public protection element.

Benchers were asked to approve the granting of funding to both PLIAN and the *SS Daisy* Legal History Committee from the Strategic Initiatives Restricted Surplus Fund.

Following a discussion about the importance of PLIAN in addressing access to justice issues and the good work carried out by it as an organization, Benchers agreed it would be appropriate to provide a substantial grant of funding to it. Benchers approved the use of funds from the Strategic Initiatives Restricted Surplus Fund in the amount of \$50,000.00 per year for the next three years.

Following a discussion about the important work carried out by the *SS Daisy* Legal History Committee in the preservation of our legal his-

tory (particularly in the absence of a law school) and the dedication of the many volunteers, including those outside our profession, Benchers agreed to provide the Committee with additional funding to carry out its work. Benchers approve the increase of the operating budget for the *SS Daisy* Legal History Committee to \$10,000.00 and approved a one time grant of \$10,000.00 from the Strategic Initiatives Restricted Surplus Fund.

Mr. Yabsley joined the meeting and reviewed the proposed budgets for the Law Society and the Insurance Program noting that they were based on no increase in fees for either. Benchers approved the Law Society and Insurance Program budgets for 2017.

Next, Benchers were provided with a memo from the Complaints' Authorization Committee ("CAC) recommending changes to Rule 9.31 which required a lawyer to report a guilty plea or finding of guilt. The recommendation was that it be changed to require the lawyer to report at the time of a charge so that the Law Society could assess the need for public protection measures. Following a

discussion, it was agreed that it should be referred back to the CAC for consideration of whether there were other statutes, not identified in the original Rule, which should be included in the reporting requirement.

The Library Committee report was provided and Ms. Grimes, QC highlighted for Benchers the commentary from the Library User Survey which was particularly complimentary about the service provided by Ms. Hogan, Ms. Myers and their predecessors.

February 2017:

The first Benchers' meeting of 2017 was called to order by the President, Barry Fleming, QC.

The Education Committee provided the first report and Benchers approved one transfer under the National Mobility Agreement, twenty Certificates of Fitness, eleven applications for Non-Practicing status, seven applications to resign membership and approved Life Membership for John Roil, QC and O. Noel Clarke, QC.

Next, Federation Representative, Mr. Cooper circulated a written report and noted that there is still some tension at the Council level as concerns have been raised about the speed at which certain matters get to the table, sometimes with little advance notice, and the tendency of some societies to dominate the discussion. That said, he felt that recent discussions surrounding these issues was respectful and expressed optimism that Council could move forward constructively.

A Bencher queried whether there would be further CLEs held in person on the West Coast. Mr. O'Brien noted that he is always looking for opportunities to do this but scheduling of speakers can be a problem. ■

Staff Retirement

Phyllis Weir retired on 15 May 2017 after 22 years of exemplary service to the Law Society, members and the public.

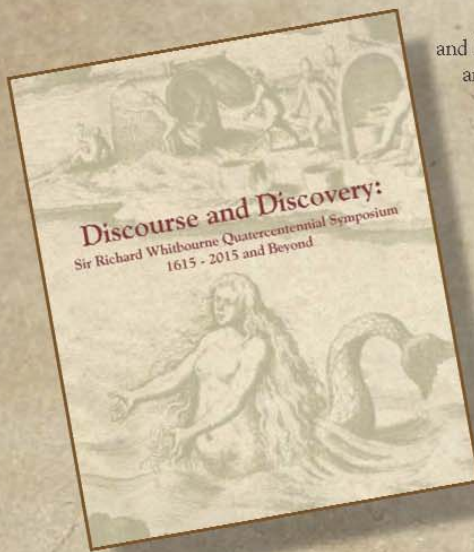
Her dedication and expertise over the years has served the Law Society and its membership well and, while Benchers, members and staff of the Law Society will certainly miss Phyllis, we happily celebrate this milestone with her.

Phyllis, we wish you nothing but the best as you embark on your new adventures and we hope that your retirement is filled with fun and happiness!

The SS Daisy Legal History Committee
of the Law Society of Newfoundland & Labrador
Is pleased to announce the publication of

Discourse and Discovery: Sir Richard Whitbourne Quatercentennial Symposium 1615-2015 and Beyond

Edited by Melvin Baker, Christopher Curran and J. Derek Green



In June 2015, the Supreme Court of Newfoundland and Labrador, in conjunction with the National Judicial Institute and the SS Daisy Legal History Committee of the Law Society of Newfoundland and Labrador, held a symposium to mark the 400th anniversary of the holding by Sir Richard Whitbourne of a court of Vice Admiralty in the then colony of Newfoundland.

The holding of the court at Trinity on June 4, 1615, which was repeated in other communities along the eastern coast of the island during the summer of 1615, is reputed to have been the first such formal judicial proceeding held under the umbrella of English admiralty law to that time in North America.

The Supreme Court's motivation for the holding of the symposium was to provide a venue for reflection on topics in Newfoundland and Labrador's rich legal history and at the same time to provide a forum for discussion of future directions in law and justice in the province of Newfoundland and Labrador as we move forward in the 21st century. The symposium was entitled

Discourse and Discovery: Sir Richard Whitbourne Quatercentennial Symposium, 1615-2015 and Beyond, drawing on the title of Sir Richard's book entitled *A Discourse and Discovery of Newfoundland* to reflect the joint ends of discovery of our legal past and discourse as to our legal future.

Contributing Authors

This publication, which is produced by the Daisy Committee as part of its Legal Publication Series, contains the edited versions of most of the papers and presentations made on the first day of the symposium with its focus on the province's legal history, plus some additional historical material. Authors include:

| | |
|---------------------------------|---------------------------------------|
| Dr. Melvin Baker | Dr. Philip Girard |
| Dr. Jerry Bannister | Hon. J. Derek Green, Chief Justice |
| Hon. Justice David M. Brown | Professor Emeritus W. Gordon Handcock |
| Hon. Justice Thomas A. Cromwell | Hon. Judge John L. Joy |
| Christopher P. Curran, Q. C. | Professor Emeritus John McLaren |
| David C. Day, Q. C. | Dr. Lynne Phillips |
| Dr. Peter E. Pope | |



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Complaints Authorization Committee

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 an allegation to determine whether there are reasonable grounds to believe that a 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.

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 CAC with respect to the following Complaint.

Complaint that the member's failure to complete the work in a timely manner and to keep the client adequately informed, as per the member's admission, does not comply with the standard of conduct contemplated by the Code. The Complaints Authorization

Committee counselled the member that the quality of service standard prescribed by the Code of Professional Conduct contemplates that work will be completed in a timely manner and that clients will be adequately informed with respect to the progress of work. Furthermore, the member was counselled to adhere to this standard in the future. (*Code of Professional Conduct (2013), chapter 3, rule 3.2-1*).

A Letter of Caution was issued by the CAC with respect to the following Complaint.

Complaint that the quality of service provided by the member, does not comply with the standard of conduct contemplated by the Code. The Complaints Authorization Committee cautioned the member that the Code of Professional Conduct prescribes a quality of service standard requiring service that is competent, timely, conscientious, diligent, efficient and civil. Further, the member was cautioned to adhere to this standard in the future. Furthermore, the CAC is of the opinion that the standard requires that the client file should be documented and indicative of the lawyer's work product. (*Code of Professional Conduct (2013), chapter 3, rule 3.2-1*).

The Complaints Authorization Committee **suspended a member's licence** to practice on an interlocutory basis. The suspension arises from a determination by the Complaints Authorization Committee that the member's conduct is not compliant with the Code of Professional Conduct. ■

In Memoriam

Since the Winter 2016 edition of *Benchers' Notes*, Benchers and members were saddened to hear of the passing of the following member:

The Honourable P. Derek Lewis, QC

Roll #210

Called as a Solicitor on October 14, 1947

Called as a Barrister on October 15, 1947

Professionals' Assistance Program

As a lawyer, you provide vital services and support to the public. It is essential that you invest the time and energy necessary to take care of yourself.

The **Lawyers' Insurance Programme** funds the **Professionals' Assistance Program** as part of risk management. We understand the value of the services you provide and we are committed to ensuring that you have the support you need to serve the public properly.

The purpose of the **Professionals' Assistance Program** is to ensure that effective assistance is available to lawyers, employees of lawyers, articulated clerks, students, and their families who may require support for all types of personal problems which cannot be solved without assistance.

Our service provider, **Homewood Human Solutions**, has more than 33 years of experience and capability.

Homewood's website, www.homewoodhumansolutions.com offers an array of online resources.

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

Your Professionals' Assistance Program

Get to know your PAP



Everyone faces challenging and stressful events in their lives. Most of the time we can handle these situations ourselves; other times we could benefit from some support.

Your PAP is a professional, confidential, and proactive service to support you with a wide range of personal, family, and work-related concerns.

What benefits are available to me?

Your PAP is here for you whenever you need it, 24 hours a day, seven days a week, 365 days of the year.

Within a confidential environment you can receive counselling for any challenge — whether it's a first step in facing a possible addiction, or managing day-to-day stress.

We guarantee your confidentiality.

We are Homewood Health, a trusted company with years of experience delivering the best possible support for clients like you. Everyone is guaranteed confidentiality within the limits of the law. You won't be identified to anybody — including your employer.

People frequently use an PAP for personal challenges such as relationship concerns, family or parenting issues, anxiety, depression, addictions, grief, coping with health issues, or work-related challenges.

We will match you with a counsellor who suits your needs and provide you with short-term solutions.

If you are identified as requiring additional, longer-term treatment or specialized support, our counsellors will refer you to community-based resources and programs which suit your unique needs.

How does the counselling program work?

Counselling services can be offered face-to-face, over the phone, through video, or online. Offices are local and appointments are made quickly, with your convenience in mind. If you have a preference for location, gender, or

Contact us to learn more.

1-800-563-9133 | TTY: 1-888-384-1152 | International (Call Collect): 604-689-1717

Número sans frais - en français : 1-866-398-9505

homeweb.ca



Professionals' Assistance Program: Get to know your PAP

appointment time, we'll do our best to accommodate your preferences.

When you need to speak with someone, simply call Homewood Health — staff will ask you for some basic information (to establish your eligibility for this benefit) and will help set up an initial appointment at a time that is convenient for you. An experienced counsellor will assess your concerns and help you develop practical solutions.

Plan Smart – Lifestyle and Specialty Counselling Services

Plan Smart is a suite of telephonic services that offers assessments, coaching, and resources; each service has been developed to allow you to take a proactive approach to managing everyday challenges.

A Plan Smart Service intake counsellor will contact you within 72 hours to offer you an appointment with an appropriate specialist.

Plan Smart Services include three major components with service options for each area:

Life Balance Solutions

- Childcare/Parenting Services
- New Parent Support
- Elder and Family Care
- Legal Advisory
- Financial Consultation
- Relationship Solutions

Health Smart Coaching Services

- Nutritional Counselling
- Smoking Cessation
- 12 Weeks to Wellness

Career Smart Counselling Services

- Career Counselling
- Pre-Retirement Planning
- Shift Worker Support

Online Services – Homeweb

Homeweb is part of your Professionals' Assistance Program. You can access Homeweb on your phone, tablet, or desktop. Homeweb offers you the ability to create an individual profile, receive personalized content recommendations, and access lots of helpful resources — anywhere, anytime.

Access Homeweb for interactive tools, health and wellness assessments, child and elder care resource locators, and a library of health, life balance, and workplace articles.

How do I register for Homeweb?

Step One: Visit www.homeweb.ca and click 'Sign Up'.

Step Two: Enter information into the required fields, choose an email and password, and click 'Next Step'. Then, type in your company name and click 'Find it!' Select the correct company from the list provided. If you do not see your company listed, check the spelling and try again.

Step Three: Let us know how you are covered by Homewood, (e.g. through your organization or the organization of a family member), and let us know your relationship to the organization (e.g. employee, spouse, dependent, etc.). Submit the additional information required and click 'Sign In' at the bottom of the page.

Search, browse, and get expert support.

What if I'm in crisis?

Homewood Health staff are prepared to take your call 24 hours a day, seven days a week. **Help is always available.**

Who do I contact?

To speak to someone in confidence, for crisis services (24 hours a day) or to book an appointment contact us today by calling the number below.

Contact us to learn more.

1-800-563-9133 | TTY: 1-888-384-1152 | International (Call Collect): 604-689-1717

Numéro sans frais - en français : 1-866-398-9505

homeweb.ca

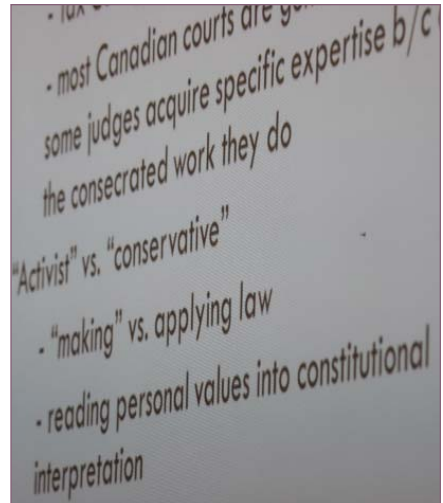
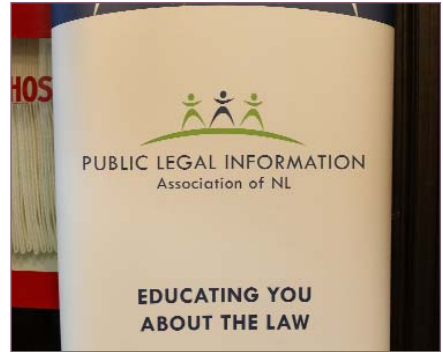
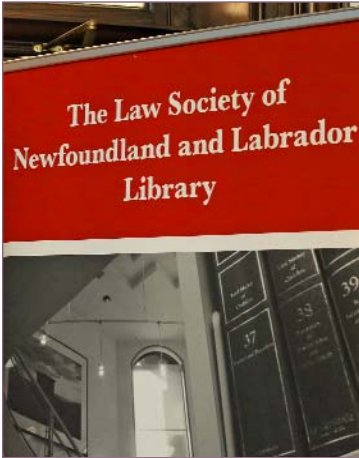
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Homewood
Health | Santé

Chief Justice's Public Information Session

October 2017



Insurance and Risk Management

CLIA Cyber Liability Program

Lawyers and law firms are potential targets for hackers, ransomware and cyber criminals. However, the mandatory Professional Liability Insurance Policy has always excluded claims arising out of cybercrime. Now, CLIA has arranged a new program which will provide cyber coverage protection for lawyers and their clients. This new policy will take effect on July 1, 2017 for all lawyers required to be insured under the mandatory Professional Liability policy.

This new program will provide initial/first response coverage in the event of a cyberattack. The amount of coverage and the deductible will vary depending on the size of the firm at the date the incident is discovered and the nature of the claim. The coverage is conditional on your firm taking certain steps to protect itself from cyberattack.

Damage from Disclosure of Client information

If a client's confidential information ends up all over the internet or is disclosed inappropriately because of a cyberattack against a law firm, the client may have a claim for damages against the firm. One aspect of this new program provides coverage for the damages suffered by the client because of such disclosure. The following chart sets out the amount of coverage and the deductible, based on the number of lawyers in the firm, for damage claims resulting from disclosure of confidential client information arising out of a cyberattack.

| <u>Firm size at date of discovery</u> | <u>Coverage Limit</u> | <u>Deductible</u> | <u>Aggregate</u> |
|---------------------------------------|-----------------------|-------------------|------------------|
| 1 lawyer | \$50,000 | \$1,000 | \$50,000 |
| 2 – 10 lawyers | \$50,000 | \$1,000 | \$100,000 |
| 11 – 25 lawyers | \$100,000 | 2,500 | \$100,000 |
| 26+ lawyers | \$200,000 | \$5,000 | \$200,000 |

(Policy period and occurrence aggregate limits also apply).

Privacy Breach Notifications

When a law firm's systems are compromised by cyberattack, the law firm may have an obligation to notify clients and third parties of a privacy breach which can be a time consuming and unfamiliar process. The policy covers firms for reasonable expenses to contain, investigate and mitigate a privacy breach and to notify the affected clients and third parties. The limits and deductibles for privacy breach notification coverage are set out below.

| <u>Firm size at date of discovery</u> | <u>Coverage Limit</u> | <u>Deductible</u> |
|---------------------------------------|-----------------------|-------------------|
| 1 – 10 lawyers | \$5,000 | \$1,000 |
| 11 – 25 lawyers | \$10,000 | \$2,500 |
| 26+ lawyers | \$25,000 | \$5,000 |

(Policy period and occurrence aggregate limits also apply).

System and Data Rectification Costs

A cyberattack can result in your firm losing or misplacing data that you need to get your clients' work done. This coverage applies to retrieve, restore and replace any of the law firm's computer programs or any other data and to repair, restore or replace any of the firm's computer systems damaged by an attack so that client data is preserved and protected. The limits and deductibles for system and data rectification coverage are set out below.

(continued on p15)

| <u>Firm size at date of discovery</u> | <u>Coverage Limit</u> | <u>Deductible</u> |
|---------------------------------------|-----------------------|-------------------|
| 1 – 10 lawyers | \$5,000 | \$1,000 |
| 11 – 25 lawyers | \$5,000 | \$2,500 |
| 26+ lawyers | \$25,000 | \$5,000 |

(Policy period and occurrence aggregate limits also apply).

Cyber Threat and Extortion Costs

In some cyberattacks, hackers hijack computer systems and deny access until you pay a ransom (usually in an online currency known as bitcoin). This program provides coverage for the costs associated with ransomware and other attacks where client data in the law firm's computer system is held hostage. The limits and deductibles for cyber threat and extortion coverage are set out below.

| <u>Firm size at date of discovery</u> | <u>Coverage Limit</u> | <u>Deductible</u> |
|---------------------------------------|-----------------------|-------------------|
| 1 – 10 lawyers | \$2,500 | \$1,000 |
| 11 – 25 lawyers | \$5,000 | \$2,500 |
| 26+ lawyers | \$10,000 | \$5,000 |

(Policy period and occurrence aggregate limits also apply).

One of the best things about this new program is that, once your firm discovers that you have been the victim of a cybercrime, you have access to the program's 24 hour emergency response number. You will then be referred to the appropriate cyber response team so that you don't have to deal with a cyber incident on your own, without professional assistance.

There are some conditions of coverage which you should ensure your firm has in place. Your firm must have:

1. a firewall between the firm's systems and the internet;
2. up-to-date antivirus and malware endpoint protection on computers and laptops; and
3. weekly data back-ups.

If you purchase Voluntary Excess Insurance from CLIA, additional coverage is also available for damages to third parties arising from the disclosure of confidential client information as the result of a cyber incident. You can purchase a Cybercrime Endorsement providing limits of \$250,000 per claim per year at a cost of \$80 per lawyer. You can apply for this excess cyber coverage when you renew your Voluntary Excess insurance for July 1, 2017.

Report all Insurance Claims before June 30, 2017

The Law Society Member's insurance policy is a "claims-made" policy. Accordingly, the focus is on **when** the claim is made and reported, **not** on the year in which services are provided and the alleged error is said to have occurred. For example, if a claim is made against a member in 2017 for services that were provided in 2013, your 2017 policy coverage will respond.

To ensure that you preserve your policy coverage, you **must** report a potential claim as soon as practicable after learning of or becoming aware of circumstances that might give rise to a claim, however unmeritorious. This is a condition of your policy. The current policy period ends June 30, 2017.

(continued on p16)

Furthermore, you should report to the Insurance Administrator even when:

- You discover a mistake which has or may have caused the client damage. This is true even if the client has no intention of advancing a claim against you at the time; the client may advance a claim in the future. Early claim reporting allows investigation and possible mitigation of the problem before it becomes worse or more costly.
- You receive any threat or communication of intention to sue from a client or his or her lawyer. You should not second-guess the client's intentions and wait for a clearer indication that the client is serious.
- A client expresses dissatisfaction with your handling of a particular matter and there is some indication the client believes he or she has suffered a loss or incurred damages.

To report a potential insurance claim, please contact Janice Ringrose, Insurance Administrator, at (709) 722-6008 or email to insurance@lawsociety.nf.ca before the end of June, 2017.

Spring Access Law Clinic – Another Success



The Law Society Library was pleased to host the second Access Law Clinic on Saturday, April 22, 2017. As an initiative of the Access to Justice Steering Committee, it was an opportunity for members of the bar to provide free legal advice to the public in the area of Family Law.

As a single-topic law clinic, the day was a great success. The clinic served 24 members of the public

who received legal advice during their pre-booked consultation sessions. Court staff were also on site to provide guidance on various procedures in Unified Family Court as well as assistance with accessing relevant forms online. Thanks to the following for generously donating their time and making this second clinic such a success: Tracy Bannier, Sydney Blackmore, Sandra Cahill, Adrienne Ding, Gladys Dunne,

Sarah Fitzgerald, Robert Hoskins, Jillian Kieley, Donovan Molloy, QC, Kevin O'Shea, Michael Ralph, Caitlin Urquhart, Ian Wallace, Ashley Woodford and Rosie Myers.

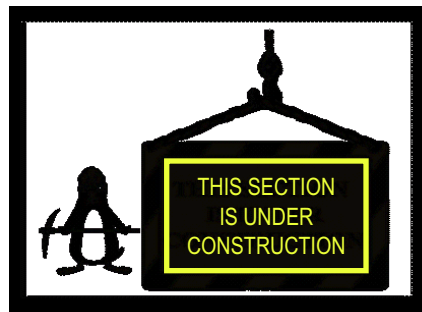
If members of the bar across the province are interested in future opportunities to volunteer with an Access Law Clinic please contact Kevin O'Shea director@public-legalinfo.com or Ashley Woodford cba-nl@cba.org. ■

Law Society Library

Jenny Thornhill, Law Librarian

In numerology, it is said that the year 2017 is a year of change and new directions. Well, this is certainly true for the Law Society Law Library! We have had a change in Librarians, the library catalogue, and plan upcoming changes for the library collections.

Jenny Thornhill began as the Law Librarian at the end of January. Jenny brings over eleven years of experience in a variety of libraries to this position. Jenny is very much enjoying the new and interesting challenges of the Law Library. She looks forward to getting to know the members and assisting with their research needs. During last years' *Survey Monkey* survey for the Law Library, the feedback regarding the Law Library's staff and services was very positive and engaged. In fact, we had an excellent rate of participation from the Law Society members. One request from members was for increased functionality and ability in our library catalogue,



including the ability to see if an item has been borrowed from the collection. As a result, in the coming months, the Law Library will be migrating our catalogue from its existing platform to a new and more powerful library system. The catalogue will be accessible from our website as it is now, but it will have a lot more capabilities. For example, items that have been borrowed will be recorded in the system and will display as not available in the online catalogue.

As part of our summer work we will be moving from the American legal resource call number system

(ex: KN 37.1 WAD 1994-2014 RES) to the expanded Canadian legal resource call number system (ex: KF 9655 .M35 2016) known as KF Modified. This will increase access to the collection as items will be organized more thematically and focused on Canadian rather than American legal concepts. The result is that the Law Library staff will be relabelling the books and the borrower cards as well as reorganizing the resources themselves.

So, what does this mean for borrowers this year? Well, we ask you to bear with us as there will be some disorganization on the shelves as we work to rearrange items. Also, if you have memorized the location or call number of titles you use frequently, well, there may be some hunting involved until you get used to the new organization. One thing that will not change is our helpful and efficient service for the members of the Law Society. ■

Get involved!

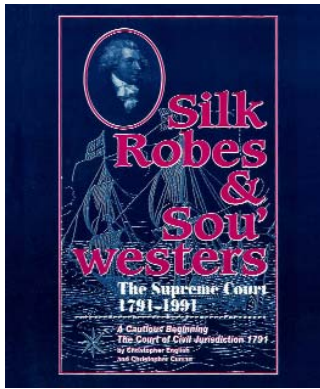
The Public Legal Information Association of NL (PLIAN) provides a valuable service to the public and has been doing so since 1984.

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.

Publications of the SS Daisy Legal History Committee

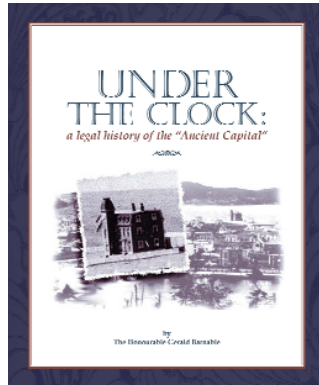
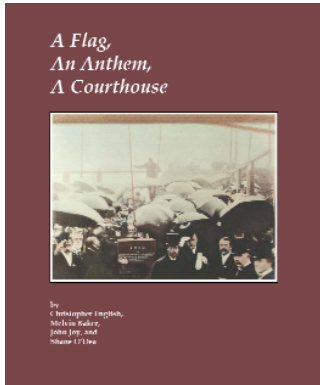


SS Daisy Legal History Committee

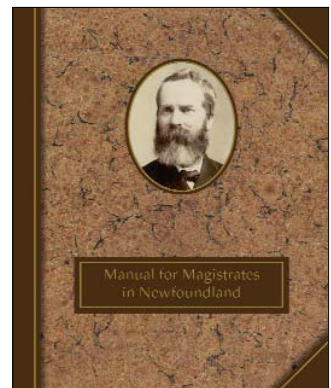
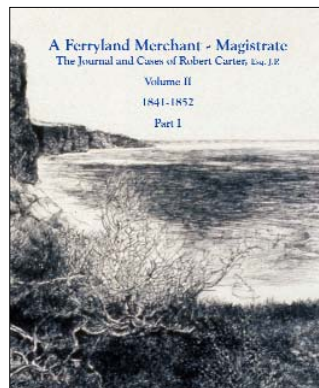
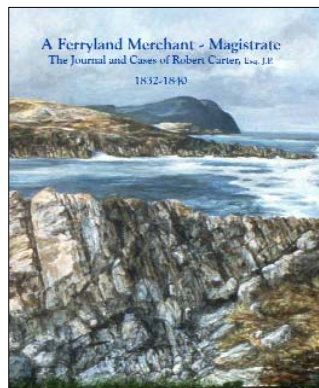
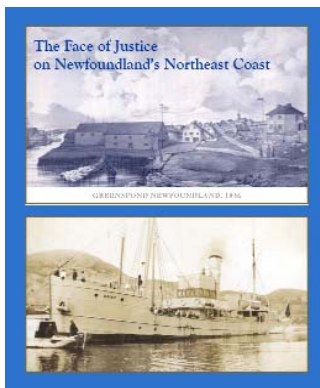
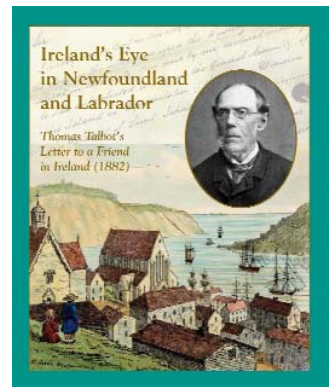
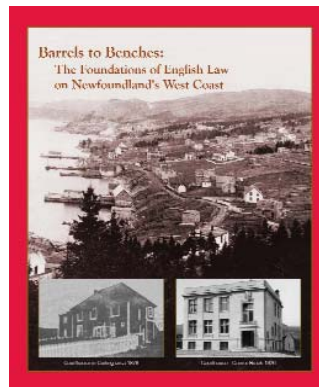
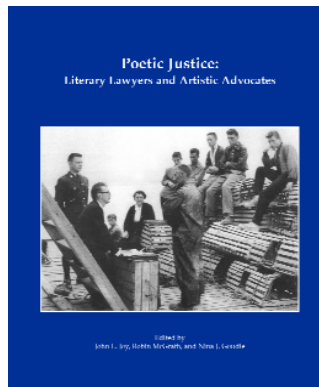
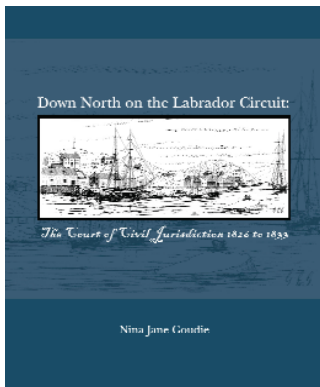
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Gerald J. Barnable
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Angela M. Whitehead

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Jerry Bannister
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Francis P. O'Brien (*Ex Officio*)



The eleven books shown here have been published in recent years by the SS Daisy Legal History 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 (709) 722-4740 for details on how you can purchase a copy or several – they make a great gift for any history buff(s) you might know!!!



Benchers - February 2017



Back Row (l-r): Donovan Downer, Ian Wallace, Ann Martin, Ian Patey, Donovan Molloy, QC, Robin Fowler, Glenda Reid, Rebecca Redmond MacLean

Front Row (l-r): Barry Fleming, QC, Susan LeDrew, Paul Burgess, Brenda Grimes, QC, Donald Anthony, Renee Appleby, Linda Harnett

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Ian S. Patey
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Labrador District:
Adrienne S. Edmunds

Appointed Benchers

Dr. Donovan Downer
Glenda Reid
Linda Harnett
Bert Riggs

Call to Bar



February 17, 2017

1st row (l-r): R. Belbin, J. Coleman, S. Evans, A. Haighway, G. Boyd, S. Belbin
2nd row (l-r): M. McWhirter, A. Philpott, B. McCoy, A. Hurley, L. Go, B. Crane
3rd row (l-r): L. Wareham, S. Griffin, T. Carroll
4th row (l-r): J. Locke, S. Pittman, R. Hoskins, G. Ragan, M. Peyton



April 21, 2017

1st row (l-r): B. Whalen, J. MacMillan, S. Smith, V. Carroll, J. Hewitt, D. Brannen
2nd row (l-r): A. Gallichon, T. Murphy
3rd row (l-r): S. Bitton, E. Zarpa, G. Ayers