

# Squid pro quo

Newfoundland and Labrador Branch

Fall 2004

Canadian Bar Association

## Canadian Bar Association Canadian Legal Conference - Winnipeg August 15 - 17, 2004



## Canadian Bar Association Newfoundland and Labrador Branch

### Executive Committee 2004 - 2005

Seated L-R: Chris Pike, *Continuing Legal Education Co-Chair*; Christine Healy, *Secretary*; Peter Shea, *President*; Janis Byrne, *Past President and President's Designate on Board of Directors*.

Standing L-R: Sheri Wicks, *Communications Chair*; Roxane Dean, *Executive Director*; Sheilagh Murphy, *Treasurer*; Kenneth Jerrett, *Young Lawyers' Conference Chair*; Jennifer Newbury, *Vice President*; Bernadette Cole, *Membership Chair*.

Missing from Photo: Jamie Merrigan, *Western Regional Chair*; Gerry Wetzal, *Central Regional Chair*.



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## Squid pro quo

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*Members are encouraged to submit articles for publication, though articles submitted may, at the discretion of the Editorial Board, be edited for brevity and clarity, in which case the author will be consulted prior to publication. Articles must be submitted no later than September 10<sup>th</sup>, January 15<sup>th</sup> and April 26<sup>th</sup>.*

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## Letter from the Editor

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*Sheri Wicks*  
*Editor*

Well summer is definitely over, and the chill of winter is showing sure signs of settling in for the next few months; however the front cover of this edition of the *Squid pro quo* (SPQ) Magazine reminds us of what a wonderful summer has just passed. For those in Winnipeg for this year's Canadian Legal Conference, I am sure you will agree that it was another enjoyable conference filled with excellent CLE's and fabulous opportunities to enjoy Winnipeg with our colleagues from around the country. 2006 is not as far away as you might think, and planning is well underway for our hosting of the Canadian Legal Conference, won't you join in and get involved?

This year we again have a fabulous group of volunteers who have agreed to give their time and energies to the production of the SPQ Magazine. Committee members who have graciously agreed to contribute again this year include: Tammy Drover, Greg Connors, Pam Taylor, Geoffrey Aylward, Andrew Wadden, and John Mate. Also returning this year are our tireless editing subcommittee members: Cindy Starkes, Louise Powell-McCarthy, and Brian Harvey. Our new members include Peter Shea (2004-2005 CBA President - NL Branch), Chris Peddigrew and Janie Bussey. Of course the SPQ Magazine Committee could not function without the tireless efforts of its final member - Roxane Dean, our Executive Director.

In this edition Louise Powell-McCarthy had provided us with a closer look at the life and career of Ernest Reid Q.C., this year's recipient of the 2004 CBA's Distinguished Public Service Award. Pam Taylor wrote an *In Personam* on Judge Robert Hyslop, one of our many avid CBA members from the bench. Of course the fall edition would not be complete without an introduction to this year's Section Chairs who have provided you with their goals and objectives for the upcoming year, along with a report from Peter Shea, our new President. Rounding out this edition is an update from Jamie Martin, the CBA's representative on the Joint Law Society of Newfoundland and the Canadian Bar Association - NL Branch Task Force on Automobile Insurance Reform, watch for additional news from this group as the PUB hearings take place next year. Of course all of our regular features are still inside including People and Places, and a great article from Hughie Shea on the benefits that CBA Financial Services can provide to members.

As the Christmas season fast approaches, mark your calendars for the Children's Christmas Party on the 12<sup>th</sup> of December, and the President's Reception at the Fairmont Hotel on December 16<sup>th</sup>. Also don't forget this year's Mid-Winter meeting which is back in St. John's the 3<sup>rd</sup> and 4<sup>th</sup> of February 2005. Hopefully I will see you there!

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# President's Report

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by Peter Shea



It is a great honour and privilege to be reporting as your Branch President for 2004-2005. I must start with a special thank you to our Past-President, Janis Byrne. Janis completed a very busy 2003-2004 term, guiding the Branch with a steady hand, and represented us with distinction on issues such as judicial independence. I am hopeful that we can continue to be successful and build on the initiatives undertaken during Janis' term as President, and I am confident that this year's executive is up to the task.

I am very pleased to welcome aboard Chris Pike, our newest executive member, as CLE Co-Chair. Chris brings a wealth of CBA experience to our executive, particularly as past National Sections Chair. Joining Chris, Janis and myself, are a talented and enthusiastic group: Jennifer Newbury - Vice President, Sheilagh Murphy - Treasurer, Christine Healy - Secretary, Bernadette Cole - Membership Chair, Kenneth Jerrett - Young Lawyers' Conference Chair, Sheri Wicks - Communications Chair, Jamie Merrigan - Western Regional Chair, Gerry Wetzel - Central Regional Chair, and last but not least Roxane Dean, our tireless Executive Director. As well, I am pleased to report that Alex MacNab, counsel with Legal Aid in Happy Valley - Goose Bay, has expressed interest in being the Branch's first Labrador Regional Chair. We are delighted with Alex's interest, and are taking the necessary steps to amend the Branch By-laws to allow for this position. We also bid a fond farewell to Peter House, who has not only left our executive as Past President but who will be leaving the practice of law to pursue other opportunities. Best wishes Peter.

My goals this year for the Branch are to continue with the success we have achieved in membership recruitment in recent years, and to make membership in the CBA relevant and necessary for lawyers in Newfoundland and Labrador.

There are several issues and initiatives on the horizon as we start this year. I am pleased to note the positive response to the letter sent on behalf of the Branch respecting the situation at the Registry of Deeds. The correspondence between the Branch and Government was forwarded to all members by e-mail. We have followed up with the Registry of Deeds, thanking them for the extended working hours that alleviated the backlog of loose deeds, and inquiring as to what steps are being taken to address other issues such as staffing, work space, equipment availability and protocol respecting deed registration.

This year, our Bar will be dealing with the wake of the Myles-Leger bankruptcy. The Law Society is in the process of striking a committee to address practice issues post

Myles-Leger, and we have contacted the Law Society and expressed interest in being involved in this process. The CBA is uniquely situated to assist with a practice review through its Sections, and I am confident that the Law Society will respond favourably to our offer of assistance with respect to this important initiative.

On September 15, 2004, a Court Advisory Committee was struck by the Minister of Justice and Attorney General, Tom Marshall, to introduce a collaborative process of strategic planning for the courts. We have written the Justice Minister and offered the Branch's assistance with respect to this committee through our Sections, both locally and nationally.

Continuing with the courts, I was pleased to attend and speak on behalf of the Branch, at the Opening of Courts on September 13, 2004. The Branch appreciates having a presence at this function, and I thank Chief Justice Derek Green for inviting our participation.

On the National front, the Legal Aid Project has long been a touchstone initiative of the CBA. Our National office intended to fully fund a Legal Aid Test Case, however, the defeat of universal CBA membership in British Columbia by the narrowest of margins, and the subsequent expected loss in membership, has caused a budgeting adjustment. Accordingly, it was proposed at the National Canadian Legal Conference (CLC) in Winnipeg that National fund 63.25% of the Legal Aid Test Case to a maximum amount of \$325,000.00, with the balance of the funding being provided by the Branches on a pro rata basis. Council in Winnipeg passed a resolution to this effect. The requested contribution from our Branch totaled \$2,021.00, payable in three annual installments of \$674.00. I am pleased to report that our executive unanimously voted to undertake this funding through surplus budget funds. We have notified National of the Branch's decision, and our first annual installment has been paid.

Speaking of the National CLC in Winnipeg, I am sure that I speak on behalf of all Branch members who attended, in offering our sincere thanks to John Stefaniuk and his organizing committee for playing the perfect hosts and putting off an excellent conference. As you all know, the National CLC will be in St. John's in 2006. We have a hard act to follow, as the 1998 meeting in St. John's, is widely regarded as one of the best attended, most successful national meetings. We are in fine hands with CLC Co-chairs Lois Hoegg, Q.C. and Jamie Martin, both distinguished past presidents of the

Branch. It will take a tremendous volunteer effort to put off a successful meeting, so please consider volunteering to help again make the 2006 meeting one to remember.

Our Sections are a vital part of the CBA. The Section Chair Orientation Session took place on October 12, 2004. We have an excellent group of Section Chairs, and I wish them the very best for the upcoming year. I encourage all members to make sure that they have registered for sections in their practice area. Section activity is off to a brisk start. On September 17, 2004, the Civil Litigation section hosted a live CLE online presentation with guest speakers Ward Branch and Rod Hayley of Vancouver. The topic of the CLE was "An Insider's Guide to Class Certification." On September 27, 2004, the Natural Resources and Energy Section held a brown bag luncheon to discuss the section program for the upcoming year. On October 29, 2004, the Maritime Law and Natural Resources and Energy Sections teamed up to host a brown bag luncheon with guest speaker Seymour Isenberg, Director General of the Canadian Transportation Agency (CTA). Mr. Isenberg spoke on the marine mandate of the CTA. As well, on October 29, 2004, the Real Estate Law Section hosted a brown bag luncheon with guest speaker Dianne Smith, Q.C., from the Department of Justice, Civil Division. At that meeting, Ms. Smith fielded questions and requested input from section members on the proposed *Marketable Titles Act*. I encourage all members to support the activities in their respective Sections.

I also note that the Branch has a new section - the General Practice, Solo & Small Firm Conference, chaired by Gillian Butler, Q.C. Anyone wishing to join this section please contact the Branch office.

I sent a letter of thanks on behalf of the Branch to Katherine Crosbie, who has relocated to British Columbia with her spouse and fellow CBA member Martin Lockyer. Katherine was a wonderful asset to the Branch over the years as Chair of the Government and Public Sector Section, and was also active nationally with the Public Sector Lawyers' Conference and the Pro Bono Working Group. Her presence at the Branch will be missed, and we wish her and Martin the very best.

I note that the joint Law Society/CBA Automobile Insurance Committee, chaired by Jamie Martin, will be involved in the general insurance hearings scheduled for this fall at the Public Utilities Board. We look forward to a report from this committee as these hearings unfold.

In conclusion, I encourage all members to avail of the many benefits of CBA Membership. Foster activity in your section, check out our website content and resources, look to products from preferred suppliers that may assist with your practice, and consider the products offered by the Canadian Bar Insurance Association and the CBA Financial. As well, if there is anything that you think the Branch may be able to assist you with, please do not hesitate to contact me. I look forward to serving you in the upcoming year.

## *Branch Days Gone Bye. . .*

This photo was taken on the occasion of the signing of the *Law Day Proclamation*. Most of you will recognize the gentleman seated. How many can identify the members of the Newfoundland Bar?

*(Answer on page 15)*



## NOTICE

The Young Lawyers Conference - Newfoundland and Labrador Branch is in the process of organizing a clothing drive. We will be looking for **women's professional wear** to donate for use at job interviews and attendance at Court. As closets are cleaned out to make way for winter wear, we ask that you think about donations you may wish to make. If you have any questions please contact Kenneth Jerrett, Carey Majid, or Bernadette Cole.

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## Past President's Report

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by Janis Byrne



At the 2004 Canadian Legal Conference held in Winnipeg from August 15-17, great debate ensued over the revision of the CBA Code of Professional Conduct, in particular the proposed introduction of regulations governing lawyers' personal relationships with clients. Naturally, the media seized upon this discussion and dubbed it as the "sex with clients" debate. Two resolutions were put forth: one resolution proposed an outright prohibition on a lawyer/client intimate relationship, while the other resolution proposed allowing such relationships under certain circumstances.

While the revised Code of Conduct was passed with friendly amendments to a few sections, both resolutions pertaining to "sex with clients" were soundly defeated. The majority of Council members felt that lawyers' relationships with their clients, sexual or otherwise, were already governed by the existing provisions of the Code. Further, there appeared to be no evidence suggesting that this is a widespread problem in Canada, and the majority of Council believed that restrictive and specific provisions of the Code were not required to regulate this matter. According to this debate, and the one previously held in

Whitehorse, incidents of a lawyer's abuse of the solicitor-client relationship are thankfully few and far between, and appear to have been adequately addressed under the provisions of the previous Code. There was a lot of discussion about the effects of either resolution on smaller centre practitioners, lawyers with international firms, and corporate counsel, together with concern over how "Client" could be defined. In the end, both resolutions were soundly defeated.

A second topic that I will briefly update is the ongoing discussion between the Canadian Corporate Counsel Association (CCCA) and the CBA. As most of you know, the existing protocol between CBA and CCCA expired in 2001, and negotiations have been ongoing ever since. While a number of issues have been resolved, and only a short list remains, there is still work to be done. I will keep you posted.

### *Mark Your Calendars !*

November 19, 2004  
**YLC Wine and Cheese**  
LSPU Hall, St. John's, NL

November 19, 2004  
**Maritime Law Brown Bag Luncheon**  
Patterson Palmer Board Room  
St. John's, NL

December 12, 2004  
**Children's Christmas Party**  
The Fluvarium, St. John's, NL

December 16, 2004  
**President's Reception**  
Fairmont Newfoundland  
St. John's, NL

————— 2005 —————

February 3 - 4, 2005  
**Branch Mid-Winter Meeting**  
St. John's, NL

February 17 - 20, 2005  
**2005 Mid-Winter Meeting of Council**  
Charlottetown, Prince Edward Island

August 14-16, 2005  
**CBA Canadian Legal Conference  
and Expo**  
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# Update on Auto Insurance Reforms - NL

by Jamie Martin, Chair, Task Force on Automobile Insurance Reform

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Bill 30, an *Act to amend the Automobile Insurance Act, the Insurance Companies Act and the Highway Traffic Act to effect certain reforms respecting automobile Insurance* was proclaimed by Government on the 1<sup>st</sup> of August, 2004. The changes to the legislation will apply to motor vehicle accidents which occurred after the August date.

## Major Changes for Personal Injury (PI) Practitioners

A summary of the major changes include as follows:

1. A claimant's non-pecuniary general damage entitlement is to be reduced by \$2,500.00 in the form of a deductible applied to all claims;
2. Loss of Income (past or future) which may be recovered, is net of employment insurance premiums, CPP premiums and income tax which would have applied. It is also net of most Government and private income replacement payments where no right of subrogation exists;
3. If a driver has been designated as an excluded driver on the vehicle insurance for the car they are driving, then the vehicle is for all intents and purposes uninsured and should be treated as such;
4. There is now a provision in the *Act* that allows for an application to be made for periodic payments;
5. There is now provision in the *Act* that obliges an insurer to attempt to settle claims expeditiously;
6. If an insurer admits liability in respect of all or part of a claim, then the insurer is obliged to make payments, based upon their estimate of the claim, pending determination of the amount owing; and
7. There is to be a reduction of 25% of the claim for failure to wear a seatbelt unless the claimant can show that their failure to wear a seatbelt did not contribute to the injury.

Members are encouraged to consult the amended *Act* and Regulations in order to determine the full extent of the changes for their respective client(s).

## Anticipated Impact on Consumers

Government has indicated that the reform package contained in Bill 30 will result in savings of between 9% and 20% depending on a person's coverage and where in the Province they live. According to a Government press release:

a person who carries only third party liability coverage will save 9% while a person who carries full cov-

erage will see significantly more savings of up to 20% in some areas.

The Government has further indicated that:

the savings will be mainly achieved through a combination of a \$2,500.00 deductible and legislative reductions in third party liability, comprehensive, collision and uninsured motorists coverage.

## PUB Review

The *Insurance Companies Act* was further amended under Bill 30 to direct the Public Utilities Board (PUB) to:

conduct a review of any aspect of insurance in the Province on the terms and conditions that the Lieutenant Governor in Council may specify.

Government also indicated that further reforms may be instituted as a result of the public hearings on insurance. The terms of reference for this review were announced by Government on October 18, 2004. The Law Society of Newfoundland & Labrador had input on the terms of reference. The PUB is being asked to look at a number of issues, including eliminating ratings based on age, gender and marital status and using a cap or a deductible for pain and suffering. The terms of reference encompassed a broad review of insurance including automobile, home owner, commercial and marine insurance. The terms of reference include a review by the PUB of Automobile Insurance, in particular:

- To conduct a closed claim study to determine the costs associated with third party liability bodily injury claims arising from the use of private passenger automobiles and commercial automobiles;
- To review the impact on rates with the use of a monetary cap of various amounts on claims for non-economic loss for minor/mild injuries and the implications of such a cap for claimants;
- To review the impact on rates with the use of a deductible of various amounts on claims for non-economic loss and the implications of such a deductible for claimants;
- To review the feasibility and impact on rates of providing consumers with one of the following choice options when purchasing liability coverage:
  - No restrictions on non-economic loss;

or a cap on the amount of non-economic loss recoverable; and

- No restrictions on non-economic loss; or a deductible from the amount of non-economic loss recoverable.
- In relation to accident benefits, to review the implications of mandating that consumers carry accident benefits coverage with respect to:
  - The impact on rates,
  - Benefits to claimants; and
  - Integration with other insurance plans.

On commercial insurance, the PUB is also being asked to examine the feasibility of caps or deductibles.

#### Date of Hearing

The date of the hearing is contingent on completion of the closed claims study. Government has indicated that the only information currently available is nearly a decade old. The hearing is widely expected to take place early in 2005.

This hearing is in addition to the benchmark hearing being conducted this Fall by the PUB to review its benchmarks in respect of both commercial and private passenger automobile insurance.

#### Future Role of the Law Society / CBA

The joint Law Society of Newfoundland/Canadian Bar Association Newfoundland and Labrador Branch, Task Force on Automobile Insurance Reform has been active on this file in the past through written submissions to Government, participation in public forums sponsored by Government, and through regular meetings with Government. The Task Force has sought representation at the upcoming hearing, and will seek input from members once the date has been set. It is anticipated that the committee will make a written submission to the PUB as well as participate in the hearings.

We encourage all lawyers who wish to seek input on this matter to contact the undersigned directly. I can be reached at 753-5805, 1-800-563-5563, via facsimile 753-5221 or by email [jmartin@wrmlaw.com](mailto:jmartin@wrmlaw.com)

## Section Update

# Aboriginal Law Section Update

by Sandra Gogal, Section Chair



#### Update on CBA National Activities




The National Aboriginal Law Section met in Montreal on April 3, 2004, where a motion was passed to support a change in the composition of the Supreme Court of Canada to reflect the three founding peoples of Confederation (English, French and Aboriginal) as well as a motion to support the inclusion of the Indigenous Bar Association on the Special Advisory Committee. A report was provided on the Section's meeting with Minister Goodale and his officials on October 24, 2003 with respect to the dispute resolution process proposed by Government to resolve the Indian Residential School Claims. As a follow-up, the

Section supported moving forward with preparing a paper for the inclusion of "loss of culture and language" as a head of damages in the established ADR process. For more details please contact me at 724-8264 or by email: [sandra.gogal@mcinnescooper.com](mailto:sandra.gogal@mcinnescooper.com).

#### Case Law Update

Practitioners are anxiously awaiting the Supreme Court of Canada decisions on *Haida Nation v. BC* and *Weyerheuser and Taku River Tlingit First Nation v. Riystad et al* which are expected to be handed down this year. Until the British Columbia Court of Appeal is overturned, both *Haida*, which arguably extends the obligation to conduct consultations with aboriginal peoples to developers, and *Taku*, which confirms that consultation must be conducted before decisions are made and prior to proof of aboriginal rights being established, must be reconciled.

It is interesting to note the decision of the Newfoundland & Labrador Supreme Court, Trial Division in *Davis v. Canada (Attorney General)* on July 28, 2004 which supports the argument that section 35 of the *Constitution* imposes no positive obligation on Government to protect and preserve any aboriginal right, but is intended to protect proven existing rights.

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## Section Update

# Insurance Law Section Update

by Wayne Bruce, Section Chair

It has been a relatively busy year for the section. We held two joint brown bag luncheons, and I attended five teleconference meetings of the National Law Section. Unfortunately due to a conflicting schedule, I was unable to attend the National Meeting in Ottawa in June.

On the local scene, our brown bag luncheons included presentations by Ches Crosbie on Section B auto insurance benefits and by Tom Hickey on residential insurance problems and both were well attended. We hope to sponsor similar brown bag luncheons this coming year.

The new executive took over at the National Section Meeting on September 10, 2004. Sandy Chaytor stepped

down as past Chair and did not put her name forward for a second year due to other commitments.

Please check out our Insurance Law Section newsletter "Underwritings" at cba.org, hit "Publications" and then "Newsletters". Also check out our CBA Insurance Section web site which has a link on the same page.

We would like to thank everyone who participated in our efforts this year and look forward to a busy upcoming year. You may contact me at 722-4270 or by email: rbruce@smss.com at any time.



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## Section Update

# Natural Resources & Energy Section Update

by Jim Thistle, Section Chair

On Thursday and Friday, October 21<sup>st</sup> and 22<sup>nd</sup> I attended the meeting of the National Natural Resources Energy and Environmental Law Group with the Federal Department of Justice.

The meeting focused primarily on the major initiatives in this area of law; the significant revisions underway to federal environmental legislation, and the upcoming implementation of the Kyoto Accord, now that Russia has confirmed its intention to ratify.

As of the date I am writing this, the Russian Duma has all but unanimously approved Kyoto, which will have the effect of bringing the deal into effect. This has some important implications for Canada, and should be watched closely by anyone in the resource sector.

If you have any questions or suggestions please feel free to contact me at 724-8247 or by email: jim.thistle@mcinnescooper.com.



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## Section Update

# Continuing Legal Education Report

by Chris Pike, CLE Co-Chair

The CLE Committee's first offering this year, a presentation on Administrative Law by Mr. Justice Keith Mercer of the Newfoundland and Labrador Court of Appeal, David Jones, Q.C. of Calgary, and Gus Lilly, Q.C. of Stewart, McKelvey, Stirling, Scales was a roaring success. The Committee has received substantial positive feedback and extends a sincere thank you to our three presenters.

Our next offering, a hands-on seminar on cross-examination, presented by the Advocate's Society will have been completed by the time this article is published. The Committee expects all places in this limited registration seminar to be filled, and that it will enjoy the same high

quality as other sessions offered by the Advocate's Society.

My Co-chair, Frank O'Brien, and I are now developing the CLE calendar for the rest of this year. We expect to see offerings on time management, a PPSA update and the recently passed automobile insurance reforms.

I invite members to contact me at 570-7228 or by email: cpike@bensonsmyles.com, at any time with ideas for CLE sessions.





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## Section Update

# YLC - NL Report

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by Ken Jerrett, YLC Chair



The summer was an active time for the Young Lawyers' Conference (YLC). In July, Robert Simmonds, Q.C., conducted an informative and entertaining luncheon session concerning a lawyer's role in advising a client faced with a breathalyser demand. The responses received from students and young lawyers were quite positive. Thanks to Crystal Critch for her role in the demonstration.

The YLC is here to respond to the needs of young lawyers. Therefore, I ask that members please contact me with ideas for educational and social events. I can be reached at 754-1400 or by email at [kjerrett@mwhslaw.com](mailto:kjerrett@mwhslaw.com).

On a social note, the YLC hosted an evening with the St. John's Haunted Hike. The event opened with a reception at the Duke of Duckworth, where students and young lawyers met the Executive of the Newfoundland and Labrador Branch. Following the reception the infamous Reverend Thomas Wyckham Jarvis, Esquire led us around some of the scariest sites in the city.

The traditional Bar Course Wine and Cheese Reception with members of the Bar and Bench will be the first event for this year. We are also planning a joint session with the Family Law Section and a bowling night. At the National level, I attended the annual meeting of provincial YLC chairs in Ottawa on October 30-31.



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## Section Update

# Construction Law Section

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by John O'Dea, Section Chair



The Construction Law Group has not been very active. An early attempt to attract interested lawyers to a meeting to lay out a program for the section drew only three members. A renewed effort will be made to hold a meeting before Christmas to determine the interest of members practising in this area.

Earlier this year I contacted the Newfoundland and Labrador Construction Association to explore avenues of common interest. I offered the NLCA an opportunity to participate in a joint seminar on construction issues or to have members of the section participate in forums of interest to NLCA members. As a result, several members of the section, whose firms are also members of the NLCA, have

been invited to be a part of a panel on legal issues at the Annual General Meeting of the NLCA in January 2005. The topics will be construction claims, Bill C-45, PIPEDA, and labour issues. It is hoped that the section will be more active and will hold more frequent meetings and sessions of interest to members.

I encourage all members to contact me at 722-8735 or by email: [john.odea@mcinnescooper.com](mailto:john.odea@mcinnescooper.com) with any comments or suggestions.

# In Personam

by Louise Powell-McCarthy



## Ernest G. Reid, Q.C.

In June of this year the Canadian Bar Association's Distinguished Public Service Award was presented to Ernest G. Reid, Q.C.. I recently had the pleasure of speaking with Mr. Reid about this prestigious award and the importance of public service.

A native of St. John's, Mr. Reid graduated from Dalhousie University with a Bachelor of Laws in 1967, and was subsequently called to the bar in early January 1968. Since that time, he has been an active member of our legal community, practicing in the areas of corporate, commercial and real estate law.

When it comes to public service, Mr. Reid is very down to earth. During his early years of practice Mr. Reid worked on the 8<sup>th</sup> floor of the Royal Trust Building in St. John's, and, following an invitation to join the Rotary Club of St. John's Northwest, realized that from the 8<sup>th</sup> floor he had virtually no contact with the world. His interactions were limited to other lawyers and the Courts. Mr. Reid welcomed the opportunity to join the Rotary Club where he has been a member for over 25 years, serving as Club President in 1986. Mr. Reid was awarded a Paul Harris Fellowship in 2002, the highest honour available to Rotary members, for his years of community and club service.

The Canadian Bar Association, nationally and provincially, has also received much of Mr. Reid's attention over the years. Mr. Reid believes the CBA to be a wonderful organization for lawyers generally, especially providing great opportunities to younger members of the Bar. It encourages active involvement in the development of the profession at an early stage in lawyers careers, as well as providing great opportunities to meet colleagues on a personal level, thereby making the Bar in general more congenial.

Mr. Reid has been actively involved in many roles with the Law Society, including as a Bencher and Treasurer. He continues his involvement by participating as a member of the Council of Past Treasurers and Presidents of the Law Society. Mr. Reid also helped found the Daisy Committee, a group dedicated to the preservation of the history of the legal profession in Newfoundland and Labrador.



Ernest G. Reid, Q.C.

Mr. Reid has also been involved for many years with the Anglican Diocese of Eastern Newfoundland and Labrador, where he rose to the position of Chancellor, the most senior position that can be held by a lay person.

In addition Mr. Reid continues to contribute to the Naval Officers' Association of Canada, as Honourary Solicitor, and with the St. John's Regional Council of the Boy Scouts of Canada.

From his varied experiences in public service, both within organizations connected to the legal profession and those outside it, Mr. Reid has gained some insight into what it takes to be involved in public service, and what public service has to offer its volunteers.

Mr. Reid recognizes the difficulties facing new lawyers who may wish to become involved in public service, and he respects the time limitations they experience. Mr. Reid stated that being a lawyer carries a great deal more stress today, than it did 35 years ago when he started out. Mr. Reid attributes his ability to become involved in public service activities to the great support he received from his firm, and from his wife,

Peggy, who chose to stay at home and raise their three children, giving him much more time to devote to such activities.

Mr. Reid stated that it is now much more difficult for individuals to find the time to devote to public service due to the greater demand on one's time from a variety of sources. He did state however, that becoming involved in public service does not mean that there are less billings, as volunteering can lead to many new connections and clients. However, he did understand that being a volunteer is not for everyone. In order to be effective, you must be interested in what you choose to do and willing to devote the time necessary to do the job properly. When you find yourself bored with a given activity, it is time to move on to something else.

Mr. Reid believes that as a lawyer, devoting ones volunteer time can greatly benefit a chosen cause. The presence of a lawyer in a group can bring something to the group that

*(continued on page 14, left column)*

# In Personam

by Pamela L. Taylor



## Judge Robert Hyslop

Judge Robert B. Hyslop was born in New Brunswick in 1947. He attended the University of King's College in Halifax on a four year scholarship, and while attending there enrolled in the University Reserve Training Program. He served as a lieutenant at Canadian Forces Base Halifax during 1969-1970, during which time he first considered attending law school. As a security intelligence officer, he was required to follow the events occurring in the courts of the day. It was his first real interest in the practical application of the law.

In 1970, he enrolled at Dalhousie Law School. He received his degree in 1973, articulated with Peter Green, Q.C. and was admitted to the Bar of Nova Scotia that same year. From there he moved to the National Defence Headquarters in Ottawa where he worked with the office of the Judge Advocate General. Between 1973 and 1975, he was involved in court martial defence work. He also worked as Director of Law for Pensions, Statements and Finance. Judge Hyslop noted that the latter was very interesting work, providing him with the opportunity to practice administrative law and to appear on a number of occasions before the Federal Treasury Board.

In 1974, Judge Hyslop married Marie Kavanagh, a Newfoundlander. The next year they decided to return to Atlantic Canada and came to Newfoundland. He began working with the Department of Justice where he articulated with then Deputy Minister of Justice, Vincent McCarthy, Q.C. At the time the provincial Department of Justice was responding to the recommendations of the Steele Commission and was building its prosecution service within the department. Judge Hyslop stated that the administration of justice in Newfoundland was undergoing great changes in the mid 1970's. He cited as an example the fact that a separate Court of Appeal was just being developed. He noted that it was an extremely interesting period of time to be a young lawyer practicing law.

Immediately after being called to the Newfoundland Bar in 1976, Judge Hyslop was involved as a junior lawyer on the last grand jury in Newfoundland with Mr. John Byrne, Q.C., a case that was eventually decided by the Supreme Court of Canada.



Judge Robert B. Hyslop

Judge Hyslop has also been involved in cases which have literally changed the manner in which justice is administered in our province. He was involved as junior counsel in the Supreme Court of Canada case of *Edmunds v. R.* The issue in that case was whether a police officer could act as a prosecutor in trials of individuals accused of indictable offences under Part XVI of the Criminal Code. Up to that point, the police in Newfoundland had been involved in such prosecutions.

The Supreme Court of Canada decided they could not act as prosecutors. He then became involved in the development of a proper Crown Attorney service in the province and was the first senior Crown Attorney in St. John's.

By 1981 Judge Hyslop was the Assistant Director of Public Prosecutions. He was later appointed Director of Public Prosecutions and then Associate Deputy Attorney General. In 1988 he received his Queen's Counsel designation. Over the course of his career he appeared before the Supreme Court of Canada on seven occasions. Judge Hyslop was appointed to the Provincial Court Bench in 1989 and says

that it was a natural progression for him as he saw the Provincial Court as a place where he could best employ the skills he had developed as a litigator over the years, particularly in criminal law.

Judge Hyslop was first assigned to Gander where he sat for three years. He remembers his time in Gander with extreme fondness. He came to St. John's in 1992. I asked what have been some of his most rewarding times on the bench. He stated that one was the five years he spent in Youth Court. Over the years young people who have appeared before him come back with their report cards from school to let him know how they were doing. Of his time in Youth Court, he noted it was a place where one could have a real impact on people. He always tried to find something constructive or positive to say to young people appearing in his court.

(continued on page 14, right column)

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*Ernest G. Reid, Q.C.*  
(continued from page 12)

may not otherwise have been there. For example, Mr. Reid sees a lawyer's involvement as sometimes adding accountability and integrity to any group.

In return for his time and efforts in public service, Mr. Reid stated that he has received a great sense of personal fulfillment, and that without being involved in this way, he would not feel whole. He stated that from a mental health point of view, getting out there and getting involved was something he just had to do. He also believes that being involved in the community can bring a sense of perspective and purpose to the legal profession.

Mr. Reid's experiences with volunteering have been positive and he urges others to get involved in some way. He stated that volunteerism today appears to be on the decline, and that without new volunteers, much of the good work currently being done will stop, to everyone's detriment. So, if there is a group out there that you are interested in, give it a try - maybe you will receive as much personal fulfillment from it as Mr. Reid has received.

I would like to thank Mr. Reid on behalf of myself and *Squid pro quo*, for taking the time to speak with me, and to say a heart felt congratulations to him on receiving this award.

---

*Judge Robert Hyslop*  
(continued from page 13)

Judge Hyslop is the Past President of the Canadian Association of Provincial Court Judges. He states that being able to serve his colleagues around the country on this association has been one of the most rewarding and interesting aspects of his time as a judge.

Judge Hyslop maintained his connection with the military for a number of years, and has in fact been a military trial judge in addition to his position on the provincial bench. He is one of few people in Canada to have held a concurrent federal and provincial appointment.

Judge Hyslop has also somehow found the time to study French and is now quite conversant in this language. He started running long distance in 1995 and has now participated in 17 marathons. He ran the Washington Marathon in October 2003, Las Vegas in January 2004, Winnipeg in June 2004, and ran the PEI Marathon in mid October of this year. He is an avid reader and enjoys traveling with his wife, Marie, whenever possible.

On behalf of the *Squid pro quo* magazine committee and myself, I would like to thank Judge Hyslop for taking the time to meet with me and for sharing his thoughts. It was indeed a pleasure.

---

## Thank you

The CBA Newfoundland and Labrador Branch would like to extend a special thank you to all volunteers who have participated and contributed this year, including all members who have served on the Executive, Council, Various Committees, Sections and to all those who have contributed to our outstanding magazine - *Squid pro quo*. Your contribution has been essential in allowing us to provide exceptional service to all members of the Newfoundland and Labrador Branch over this past year.

## New CBA Members

Joined since June 1, 2004



Barrie Heywood .....	Patterson Palmer
Christopher King .....	McInnes Cooper
Michael King .....	Les Thistle Law Office
Judy Manning .....	Martin Whalen Hennebury & Stamp
Tracey Lynn Pennell .....	Cox Hanson O'Reilly Matheson
Blair Rogers .....	Roebbothan McKay Marshall
Michael G. Wetzel .....	Wetzel's Law Office

## Squid pro quo Letters to the Editor

*Squid pro quo* welcomes letters to the editor from members of the Canadian Bar Association wishing to express observations, opinions, corrections, very brief reports, or comments on previously published articles.

Please note the following:

1. Your letter must be single spaced, Times New Roman font, point size - 11, with one inch margins.
2. Letters must not exceed 250 words in length. Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned.
3. Signatures of all authors are required (by fax will be acceptable, together with the author's full mailing address and daytime telephone number. Pen names and anonymous letters will not be published.
4. Letters referring to a recent *Squid pro quo* article must be received within one month of its publication.
5. *Squid pro quo* will not accept responsibility for statements made by contributors.

## Branch Days Gone Bye . . .

(Photo on page 4)

The photo, taken by Ed Ringman, captured the signing of the *Law Day Proclamation* by Premier Brian Peckford in 1983.

Shown in the photograph are:

(l-r): John Roil, Q.C., Wayne Myles, Q.C., Denis Barry, Q.C. and Alfred Pike, Q.C..

Seated: Premier Brian Peckford.

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**Fortis Properties**

**Sundance**

**Friends and Family of Conne River**

**Theatre Pharmacy**

**Honourable Judge Robert Hyslop**

**Jumbo Video - Torbay Road**

**Kinsmen Club of Witless Bay**



# CBA - Newfoundland and Labrador Branch

## Section Chairs - 2004 / 2005

### ABORIGINAL LAW SECTION



**Goals:**

- To improve the format and approach to better respond to lawyers who practice in this area; and
- To hold a few informal sessions to establish overall objectives for the year with a view to developing a schedule of meetings or seminars in keeping with those objectives.

Sandra Gogal  
*Chair*

The level of participation has been low and we are very interested in receiving input and suggestions for planning this year's activities. I encourage any members wanting to participate or offer constructive suggestions to contact me.

Tel: (709) 724-8264  
Fax: (709) 722-1763      Email: sandra.gogal@mcinnescooper.com

### ADMINISTRATIVE, LABOUR AND EMPLOYMENT SECTION



**Goals:**

- To work with other sections with similar interests to share information and develop relevant brown bag luncheons and CLE sessions; and
- To keep members informed of developments nationally and to increase the size of the section.

Jamie Martin  
*Chair*

I encourage all members to make their interest known so we can develop this practice area for the benefit of all section members.

Tel: (709) 753-5805  
Fax: (709) 753-5221      Email: jmartin@wrmlaw.com

### ALTERNATE DISPUTE RESOLUTION



**Goals:**

- To increase the awareness of Alternate Dispute Resolution as a truly alternative way to solve client problems and reduce client costs.

John Clarke  
*Chair*

I encourage all members to make their interest known so we can develop this practice area for the benefit of all section members.

Tel: (709) 739-8585  
Fax: (709) 739-8151      Email: jclarke@nfld.com

### BANKRUPTCY & INSOLVENCY LAW SECTION



**Goals:**

- To arrange a brown bag luncheon to discuss current issues facing the insolvency practitioner; and
- To keep members informed of national developments.

Geoff Spencer  
*Chair*

I encourage all members to advise me of any issues or concerns which they would like this section to address.

Tel: (709) 570-7263  
Fax: (709) 579-2647      Email: gspencer@bensonmyles.com

### BUSINESS LAW SECTION



**Goals:**

- To conduct occasional informal brown bag luncheon sessions on topics of interest to section members; and
- To keep members informed of national developments through communication of information obtained through attendance at National Business Law Section meetings.

Mark R. Andrews  
*Chair*

Ideas from Section members are welcome.

Tel: (709) 570-7341  
Fax: (709) 722-9264      Email: mandrews@wob.nf.ca

### CIVIL LITIGATION LAW SECTION



**Goals:**

- To participate in at least three brown bag luncheons for the members of our section this year; and
- To work in conjunction with the Insurance Law Section.

I encourage all members to advise me of any issues or concerns which they would like this section to address.

David Moores  
*Chair*

Tel: (709) 722-5100  
Fax: (709) 722-0808      Email: dcmoores@parsons-law.com

### CONSTITUTIONAL & HUMAN RIGHTS LAW SECTION



**Goals:**

- To conduct two brown bag luncheons on Constitutional and Human Rights issues. It is hoped that both these sessions will be held in St. John's and at locations outside of St. John's as well. It is hoped to do these sessions jointly with other sections;
- To make presentations to the National Constitutional and Human Rights Section with respect to the sunset clause review of the antiterrorism legislation passed in 2001; and
- To canvass with the Bar and provide the provincial and federal governments with submissions on access to justice issues raised in the Province of Newfoundland and Labrador, including availability of courts, availability of legal aid, Crown work loads, judicial work loads, and access to legal research resources.

I encourage all members to make their interest known so we can develop this practice area for the benefit of all section members.

Tel: (709) 634-3136  
Fax: (709) 634-8247      Email: jemerrigan@pa-law.ca

### CONSTRUCTION LAW SECTION



**Goals:**

- To conduct brown bag luncheons to discuss the following topics of interest: modernizing the Mechanics Lien Act, developing a data base of experts, proposals for dispute resolution in construction claims and managing the litigation of claims.
- I propose to hold meetings with the NLCA, the Professional Engineers and Geoscientists, and the Newfoundland Association of Architects.

John O'Dea  
*Chair*

Tel: (709) 722-8735  
Fax: (709) 722-1763      Email: john.odea@mcinnescooper.com

### CORPORATE COUNSEL SECTION



**Goals:**

- To establish an active NL corporate counsel section; and
- To hold at least 2 social events and 2 educational sessions in the upcoming year.

I encourage all members to make their interest known so we can develop this practice area for the benefit of all section members.

Janis Byrne  
*Chair*

Tel: (709) 782-3024  
Fax: (709) 782-3718      Email: jbyrne@pennecon.com

## CRIMINAL LAW SECTION



Averil Baker  
Chair

### Goals:

- To keep all members updated on recent amendments to provincial or federal legislation which has a direct impact on the subject of criminal law;
- To draft any requested submissions to any level of government regarding changes being contemplated in the realm of criminal law, and to forward a draft to all section members for their input before they are submitted; and
- To invite section members to attend seminars with special guests who will lead discussions on various topics of interest in criminal law.

Tel: (709) 753-1555

Fax: (709) 726-1813

Email: [averillbakerlaw@nl.rogers.com](mailto:averillbakerlaw@nl.rogers.com)

## ELDER LAW SECTION



Richard Goose  
Chair

### Goals:

- To improve the law affecting seniors;
- To educate the public, the individual Bars, the Judiciary and members of the association on important Elder Law issues;
- To foster professionalism in the practice of Elder Law through communication among Elder Law practitioners; and
- To host two brown bag luncheons and to build upon the work already underway on developing a practice note on issues surrounding the Enduring Power of Attorney.

I encourage all members to make their interest known so we can develop this practice area for the benefit of all section members.

Tel: (709) 570-5330

Fax: (709) 726-2992

Email: [rgosse@coxhanson.ca](mailto:rgosse@coxhanson.ca)

## ENVIRONMENTAL LAW SECTION



Donald Anthony  
Chair

### Goals:

- To provide section members with access to relevant and timely information through presentations from industry officials and members of the Bar. Working together with the Admiralty and Natural Resource sections;
- I hope to assist with arranging speaking events touching on topics of mutual interest, including marine and environment municipal policy, the Kyoto Accord and a debate on custodial management;
- I believe that it is still very important for members to be cognizant of the problems related to contamination from residential oil tanks. Areas of law across the spectrum including, real estate, municipal, insurance, and personal injury law, can all be affected in the aftermath of a spill; and
- I hope to work in concert with the national section to make this term an active one for this section and look forward to meeting and working with our members.

Tel: (709) 753-5805

Fax: (709) 753-5221

Email: [danthony@wrmlaw.com](mailto:danthony@wrmlaw.com)

## FAMILY LAW SECTION



Jean V. Dawe, QC  
Chair

### Goals:

- To have monthly brown bag luncheons on topics of interest to members. Some ideas are:
  - "Emergency" applications in family law proceedings;
  - The family law client - expectations and concerns; and
  - Spousal support releases;
- To increase awareness and, hopefully interest in, collaborative law; and
- To review the spousal support guidelines to ensure awareness of same.

Tel: (709) 753-3400

Fax: (709) 753-4401

Email: [jvdawe@daweandburke.nf.ca](mailto:jvdawe@daweandburke.nf.ca)

## GENERAL PRACTICE, SOLO AND SMALL FIRM CONFERENCE



Gillian Butler, Q.C.  
Chair

### Goals:

- I hope to generate a high level of interest and participation from our membership; and
- The National Conference was held in Ottawa on October 16, 2004. Upon receipt of the materials from this meeting I hope to host the first of our section meetings in November.

I welcome expressions of interest in this exciting new section.

Tel: (709) 738-3250

Fax: (709) 738-3211

Email: [info@gillianbutler.com](mailto:info@gillianbutler.com)

## HEALTH LAW SECTION



Peter Browne  
Chair

### Goals:

*(Submission not received prior to publication deadline.)*

Tel: (709) 722-5181

Fax: (709) 722-7521

Email: [pbrowne@curtislaw.nf.ca](mailto:pbrowne@curtislaw.nf.ca)

## INSURANCE LAW SECTION



Wayne Bruce  
Chair

### Goals:

- To continue to promote a mutually beneficial relationship with the Civil Litigation Section in order to raise awareness of issues which are of interest to both sections; conduct two brown bag luncheons in conjunction with the Civil Litigation Section; and
- To raise awareness of issues which are of concern to practitioners of Insurance Law.

Tel: (709) 722-4270

Fax: (709) 722-4565

Email: [rbruce@smss.com](mailto:rbruce@smss.com)

## INTELLECTUAL PROPERTY LAW SECTION



Stacey O'Dea  
Chair

### Goals:

- The section plans to have three brown bag luncheons to discuss and alert local lawyers on the three Intellectual Property Law areas most encountered in Newfoundland and Labrador:
  - Trade-Mark (registrability opinions and applications);
  - Copyright (discussion on the recent issues in copyright including P2P file sharing); and
  - Patents (recognizing your client's patent issues and needs).

In addition to the foregoing, the section would like to canvass the membership for interest in areas such as using Intellectual Property as security in financial transactions, as well as domain name disputes.

Tel: (709) 722-8735

Fax: (709) 722-1763

Email: [stacey.odea@mcinnescooper.com](mailto:stacey.odea@mcinnescooper.com)

Check us out on the Web!  
<http://www.cba.org/newfoundland/gate.asp>

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## LAW PRACTICE MANAGEMENT AND TECHNOLOGY SECTION



Greg Dickie  
Chair

### Goals:

Law Practice Management and Technology continues to be a timely topic, with a particular emphasis on technology. There continues to be huge leaps in technology which make file organization and access to valuable information quicker, cheaper, and easier. My objectives for the year are as follows:

- With the assistance of the LPMT Section, identify internet resources making information available to lawyers (e.g. corporate searches, essential government forms, searches, and other information), and to provide such list to all interested lawyers;
- Communicate with Government of Newfoundland and Labrador and encourage/determine the status of on-line searching capabilities currently being implemented, and to keep our members informed/provide information on utilization;
- Continue to identify leading edge technology and keep our members informed; and
- To establish a "mentoring" system whereby sole practitioners and small law practices can benefit from the experiences of firms which have implemented law office technology.

Technology exists for a law practice to run more efficiently. It is my objective this year to generate a group of interested lawyers who will exchange their experiences respecting software and equipment, with a view to assisting each other, and developing a knowledge base for the assistance of Newfoundland and Labrador lawyers in general.

Tel: (709) 570-7307

Fax: (709) 722-9210

Email: [gdickie@wob.nf.ca](mailto:gdickie@wob.nf.ca)

## MARITIME LAW SECTION



Doug Wright  
Chair

### Goals:

- Brown bag luncheon on recent developments in commercial fisheries licence litigation is scheduled for November 19, 2004;
- To have a presentation on the marine mandate of the Canada Transportation Agency on October 29, 2004; and
- Follow the Canada Revenue Agency review process for policies regarding incorporation of fishing enterprises.

Any suggestions from section members are welcome!

Tel: (709) 726-6124

Fax: (709) 722-0483

Email: [dwright@pattersonpalmer.ca](mailto:dwright@pattersonpalmer.ca)

## NATURAL RESOURCES & ENERGY LAW SECTION



James Thistle  
Chair

### Goals:

- To hold a number of relatively informal sessions over the upcoming year, looking at issues in the electrical, offshore oil and gas, mining and regulatory areas. A first planning meeting was held at McInnes Cooper, September 27, 2004, but there is still room for more people interested in steering this year's program.

We are very interested in input and suggestions for topics from CBA members, and would like to increase the level of participation in this section. Anyone wanting to get involved is asked to contract me.

Tel: (709) 724-8247

Fax: (709) 722-1763

Email: [jim.thistle@mcinnescooper.com](mailto:jim.thistle@mcinnescooper.com)

## PRIVACY LAW SECTION



Anna Locke  
Chair

### Goals:

- To hold an initial meeting of the section members to determine what the sections interests are and what issues the section would like to consider and explore this year;
- To hold at least one brown bag luncheon with a speaker having a specialized expertise in privacy law issues; and
- To keep members informed of national developments.

Tel: (709) 570-5565

Fax: (709) 737-0533

Email: [alocke@pattersonpalmer.ca](mailto:alocke@pattersonpalmer.ca)

## REAL PROPERTY LAW SECTION



Robert Hickey  
Chair

### Goals:

- To have regularly scheduled information sessions dealing with issues in real property law, focusing on the evolving role of the lawyer in the real estate transaction, and the impact of title insurance on the real estate practitioner;
- To be an effective liaison with the Registry of Deeds so that institutional concerns of real property practitioners can be addressed, minimized or alleviated; and
- Foster a friendly, but professional, atmosphere amongst real property practitioners.

Tel: (709) 570-7340

Fax: (709) 722-9210

Email: [rjh@wob.nf.ca](mailto:rjh@wob.nf.ca)

## WILLS & ESTATES LAW SECTION



Deanne Penney  
Chair

### Goals:

- To continue to ensure this is an active group;
- To address relevant issues for practitioners and increase the level of awareness of the complexities of practicing in this area and the pitfalls that can arise; and
- To have two presentations (brown bag luncheons) on relevant topics.
- Ideas:
  - A presentation by a representative of the Canada Revenue Agency addressing tax issues arising from estate probate;
  - Discussions on advance Health Care Directives including the practical effect and difference between these and Living Wills in other provinces. Maybe have someone from the Hospital Board give us their view of how we can assist in this process so it works for everyone; and
  - Report on initiatives from the National section. There were good national initiatives proposed late last year that should come to fruition this year.

I have moved to Corner Brook to practice law with King, Senior, Penney and I hope to promote more involvement and interest from the West Coast members.

Tel: (709) 634-9893

Fax: (709) 634-1497

Email: [dpenney@king-senior.com](mailto:dpenney@king-senior.com)



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The CBIA continues to evolve in our efforts to meet your needs. That is why we formed the CBA Financial Services Corporation (CBAF).

Like the CBIA, CBAF is a not-for-profit corporation, controlled and directed by lawyers. CBAF offers members of the Canadian legal community access to a wide range of financial products and services, including a Retirement Savings Program, unbiased, professional financial advice, and, in the immediate future, innovative and affordable banking services.

For more information on any of our products and services, contact your local CBIA Authorized Representative:

Hughie Shea, B.Comm. CFP  
709-726-6570 Ext.226  
[hughieshea@financialanswers.ca](mailto:hughieshea@financialanswers.ca)



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# The CBA Edge on Investing

by Hughie Shea



It is now closing in on our one-year anniversary since the launch of CBA Financial (CBAF). While market conditions can seem imprecise, uncertain, and sometimes even downright scary, it has been a good year, especially in the Canadian Equity Sector.

A one-year look at September 2003 to September 2004 gives a brief snapshot of how the markets have performed for investors. The best equity performer in the CBAF line-up is the Jarislowsky Fraser Canadian Equity Fund at a 25.77 per cent one-year return. The equity fund with the smallest return was the Legg Mason U.S. Value with a 4.62 per cent one-year return.

With these performances in mind, the advantages of the CBA Financial RSP are significant and substantial. Below are just a few of the advantages of being a CBAF investor.

Lower fees can have a significant impact on your savings. Before you can make a decision about where to invest your money, it makes sense to know your investment and what you are paying for. Fees are what are charged to manage your money. Mutual fund companies such as Fidelity or the banks charge fees when you purchase your funds from them. These fees are the funds Management Expense Ratios (MER's). Below is an example of how these fees work if we look at one of our international funds, the Fidelity International Portfolio:

Non-CBAF fund MER	2.67%	
Non-CBA members using the CBAF RSP	2.20%	0.47% less
CBA members using the CBAF RSP	1.80%	0.87% less

Source: Paltrak

Other companies may use the expertise of the Fidelity Company, but typically they charge a higher MER than if it was bought directly. Because the CBAF Group Retirement Savings Program provides you with the purchasing power of a group, your Investment Management Fees (IMF's), the CBAF version of the fund (MER) are typically lower than the fees you would pay to invest in a similar mutual fund through a fund company directly or your bank.

The result is an improvement in your bottom line. Every dollar not paid to someone else is a tax-deferred and growth deferred dollar left in your portfolio to grow over time. This can make a big difference in how much your savings actually earn for you.

For example, if the Fidelity International Portfolio had a return of 10 per cent, (keeping in mind that it is from this

return that fees are deducted), the posted actual return would look like:

Non-CBAF fund MER	7.33%
Non-CBA members using the CBAF RSP	7.80%
CBA members using the CBAF RSP	8.20%

Over the term of your investment life, the more you make the more you have. You really only have control over three factors when it comes to your retirement:

1. Time: When do you plan to retire?
2. Savings: How much will you be putting toward your retirement goal?
3. Risk: How will you be investing your money?

For a person investing \$10,000 per year toward their retirement, over a twenty year period, the net result from the same investment would be (assuming the funds theoretical 10 per cent return continues each year):

Non-CBAF fund	\$456,189
Non-CBA member using the CBAF RSP	\$482,520
CBA members using the CBAF RSP	\$506,251

With over \$24,000 in extra retirement savings, this is an excellent benefit to our CBA members. Along with the lower fees, we have also built in value:

- Loyalty Discount: When total contributions reach \$50,000 or more the fees reduce by an additional 0.15 per cent. More money for your retirement;
- Leading retail and institutional fund managers: Trimark, Fidelity, Templeton, McLean Budden, Legg Mason and Jarislowsky Fraser;
- No Loads;
- Quick and easy enrollment;
- Secure on-line or telephone access; and
- Easy to read statements.

You work hard for your money and should have more of it working for you. The CBAF RSP and all its excellent features is a valuable way to accomplish that goal. For more information on how CBAF can work for you, please contact me at 726-6579 (ext. 226) or by email: [hughieshea@financialanswers.ca](mailto:hughieshea@financialanswers.ca).

As always thank you for your time, support and continued partnership in order to provide exceptional products and services to our members.

# Case Summary

by F. Geoffrey Aylward



*Newfoundland (Treasury Board) and St. John's Regional Health and Community Services v. NAPE (Walsh)* 20040929; 03/24; 2004.58; Wells, C.J.N., Roberts, Mercer, J.J.A.

Judicial capacity: Timing and effect of judge being seized with matter.

An arbitrator had allowed the union's appeal from the termination of Walsh and imposed the disciplinary measure of a one year suspension. The employer applied to have the decision set aside. It argued that the decision was patently unreasonable given the evidence.

Barry, J. had allowed an application by the employer to have the notes of the arbitrator form part of the record. A subsequent application was brought before Thompson, J. That application sought to have introduced affidavit evidence respecting the evidence which had been heard at the arbitration. Thompson, J. disallowed that application.

On appeal, the Court held that the decision of Thompson, J. was a nullity. Once Barry, J. had ruled that the notes of the arbitrator form part of the record, he became seized with the matter.

As to when a judge becomes seized:

[S]imple commencement of a proceeding [before] a judge is not enough. Where procedural steps only are taken, to facilitate orderly management of the court's processes, and anything decided does not impair the integrity of the trial, a judge is not seized . . . [W]hen a judge hears evidence or makes a decision that could, directly or indirectly, impact the substantive decision, or the making of the substantive decision, that is to be made by the judge who is seized, or will become seized, of the matter.

As to the powers of a judge not seized with the matter:

Adjournments, routine procedural matters, and perhaps other such matters not involving substance, are decisions or rulings that are of such a nature that they could not, directly or indirectly, impact the ultimate outcome of the matter.

The only circumstances which allow for one judge to hear a matter which had been commenced before another judge are outlined in section 29 of the *Judicature Act*. Rule 46.10 empowers the Court to vary an order made as to manner in which a fact may be proved. This rule does not affect the requirement that a judge, once seized, hear a matter through to its conclusion. It relates solely to the power of the seized judge.

Although a decision may be a nullity, it is binding unless it is formally nullified by the Court of Appeal. A decision made without jurisdiction is a nullity.

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**2005 Distinguished Public Service Award**

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**Canadian Bar Association**  
Suite 402, 139 Water Street  
St. John's, NL A1C 1B2  
Tel: (709) 579-5783  
Fax: (709) 726-4166  
Email: [cba.nfld@thezone.net](mailto:cba.nfld@thezone.net)

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# People and Places

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by Tammy Drover



**Rhona Buchan**, formerly with *Newfoundland Legal Aid Commission*, Grand Falls-Windsor has joined the St. John's Legal Aid Office.

**R. Paul Burgess\***, previously with *Martin Whalen Hennebury & Stamp*, is now with the newly formed law firm of *Burgess Law Office*.

**J. Andrew Collingwood**, formerly of *Dawe and Burke*, has joined *Borden Ladner Gervais* in Toronto.

**Katherine Crosbie\***, has left the *Department of Justice* and has joined the *Workers' Compensation Board - Review Division* in Vancouver.

**Melanie Del Rizzo**, formerly with *Bonaventure Legal Services*, has joined *Smyth Woodland & Del Rizzo*.

**Michael Drover\***, previously with *Rogers Bussey Drover*, is now with the newly formed law firm *Michael Drover, Attorney-at-Law*.

**Michael Duffy**, formerly of *Duffy & Associates*, has joined *Bonaventure Legal Services*.

**Gladys Dunne\***, formally of *French, Dunne and Associates*, has joined *Smith Coffey*.

**Colin Feltham\***, formerly practicing with *Barry Spalding* in Saint John, New Brunswick, has joined *Roebathan McKay and Marshall* as an associate.

**Denis Fleming\***, formerly practicing in Toronto, has joined *Cox Hanson O'Reilly Matheson* as an associate.

**Barrie Heywood, Q.C.\*** has joined *Patterson Palmer*.

**Karen Hurley\***, formerly of *Benson Myles*, has joined *Browne Fitzgerald Morgan & Avis*.

**Tom Johnson**, of *O'Dea Earle*, has been appointed consumer advocate for the upcoming Public Utilities Board Review of Automobile, Homeowner, Commercial and Marine Insurance.

**Susan LeDrew**, formerly of *Bonaventure Legal Services*, has joined *Smyth Woodland & Del Rizzo*.

**Martin Lockyer\***, formerly of *Patterson Palmer*, has joined *CHC Helicopter Corporation* in Vancouver.

**Alex MacNab\***, formerly with the *Newfoundland and Labrador Legal Aid Commission* in St. John's, has joined the Happy Valley-Goose Bay Legal Aid Office.

**Juan O'Quinn**, formerly with the *Federal Department of Justice*, is now with the newly formed firm *Juan O'Quinn Law Office* in Gander.

**Christine A. Perry**, formerly of *Christine A. Perry Law Office*, has taken non-practicing status.

**Deanne Penney\***, formerly of *Patterson Palmer*, has joined *King & Senior* in Corner Brook.

**Cory St. Croix\***, formerly of *Patterson Palmer*, has taken non-practicing status and is pursuing opportunities in Calgary, Alberta.

**Kathleen Tremblett**, has joined the *Newfoundland Legal Aid Commission* in Gander.

**Derrick White\***, formerly of *Derrick White Law Office*, has accepted a position as in-house counsel with *Humber Valley Resort*, on the west coast.

\*denotes CBA member

## Call to Bar

### October 15, 2004

Four lawyers were Called to Bar in St. John's on October 15, 2004. They are (*in the order of call*):

Name	Roll Number:
Jeffrey Slade	1242
David Conway	1243
Colin Feltham*	1244
Denis Fleming	1245

\* denotes CBA member

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