

Squid pro quo

Newfoundland Branch

Fall 2001

Canadian Bar Association

CBA - AGM. . . a Roarin' Good Time!



(see photo captions on page 2)

Squid pro quo

Published by
Newfoundland Branch
Canadian Bar Association
Fortis Building
Suite 402, 139 Water Street
St. John's, NF A1B 3T2
Tel.: 579-5783 Fax: 726-4166
e-mail: cba.nfld@thezone.net
website: www.cba.org

NEWSLETTER EDITORIAL BOARD

Susan Churchill, Editor
Peter Browne
Gregory Connors
Sheilagh Murphy
Katie O'Neill
Sheri Wicks
Brian Winsor

Patricia Pope - Executive Director

2001 - 2002 EXECUTIVE COMMITTEE

President
Peter Browne

Vice-President
Peter House

Treasurer
Janis Byrne

Secretary
Peter Shea

Past President & President's Designate on Board of Directors
Jamie Martin

CLE Chair
Christine Healy

Young Lawyers' Conference
Bernadette Cole

Communications
Susan Churchill

Central Regional Chair
Rebecca Redmond-MacLean

Western Regional Chair
Jamie Merrigan

Membership
Sheilagh Murphy

Opinions expressed herein are not necessarily those held by the Newfoundland Branch of the Canadian Bar Association.

Squid pro quo is a publication of the Newfoundland Branch of the Canadian Bar Association and is intended to provide a service to members by informing them of Branch activities and matters of general interest.

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 October 1, January 15 and May 15.

Squid pro quo will accept advertising, though space for this purpose is limited. Advertisers or CBA Members wishing to purchase advertising space should contact the Branch Office (579-5783) for information regarding advertising rates and policies.

Squid pro quo can also be found on the CBA Newfoundland Branch home page on the World Wide Web <http://www.cba.org>.

Letter from the Editor



Susan Churchill
Editor

This will be my first letter of my last year as editor of *Squid Pro Quo*. We have a great team this year, and I would like to welcome Greg Connors, Brian Winsor and Kate O'Neill to the Newsletter Committee. The world has changed since we last spoke, and the newsletter pays tribute to our colleagues who are not here with us this autumn.

Peter Browne is our new President with many plans for upcoming events. Mark your calendars for the President's Reception, Children's Party and the upcoming Mid-Winter Meeting in Corner Brook. Several luncheons are also planned. Details are inside! Christine Healy gives us the scoop on the CLEs!

Jamie Martin gives us an update on No-Fault Insurance while Brian Winsor has 11 questions for the Honourable Walter Noel, Minister of Government Services and Lands. Geoff Aylward has provided us with his regular feature, *Caselaw Digest* and Bernadette Cole, the new Chair of the Young Lawyers' Conference, gives us an update on YLC plans for the upcoming year.

The Branch continues to work with the Judiciary and the Department of Education on the topic of Judicial Independence. Jamie Merrigan gives us an update from Corner Brook and Christine Healy gives us an update from St. John's. Get involved!

The Branch congratulates the new Queen's Counsel appointees and Harold Porter on his appointment to the Provincial Court, Grand Bank, and on his official swearing-in ceremony on November 23, 2001.

Last but not never least, we continue to provide a timely update on *People and Places*. I made it this edition! Talk with you again in January.

Cover Photos - Annual Meeting at the 5 Terra Nova Park Lodge

- 1 Chief Justice J. Derek Green, Chief Judge Reid, John Brooks, Katherine Crosbie, Frank O'Brien, Dan Pinnington, David Clark and Janis Byrne.
- 2 Janis Byrne, incoming Treasurer, presenting Sheila Osborne-Brown, outgoing Treasurer, with a poster-sized copy of the CBA magazine "National" which featured Sheila on the cover.
- 3 "School Master" Bruce Stagg, author of the book entitled "A Crowd from Roaring Cove" relates a tale during the Annual Dinner.
- 4 Robert Seymour, (*far left*) Outfitters/Guide, taking the rookie kayakers on a 2½ hour trip in Terra Nova National Park.

President's Report

Peter Browne



When I sat down to write this article, I began by reflecting on the fact that this was going to be the first report card of our Branch activities since I assumed the office of President in August of this year. In doing so, I remembered the feelings I experienced when I travelled to Saskatoon for the Annual General Meeting of the Canadian Bar Association and how amazed I was by the enthusiasm and dedication of our National Executive and their support staff.

It was only upon my return I realized I had become Branch President when our Executive Director, Pat Pope, slipped me the key to the Branch office and mentioned to me about the "huge binder" of materials our past President, Jamie Martin, had left behind for me to review. It was great. I had assumed the office of President without fanfare, without initiation rites, and even better, without speeches. Life seemed relatively uncomplicated.

Fast forward three months. Everything seems to be moving at the speed of light. Our Executive has met on three separate occasions to debate numerous issues, the foremost of which is the current proposals on Automobile Insurance Reform. On top of this, there have been Letters to the Editor, discussions with the Law Society on joint initiatives and requests for submissions on the proposed draft *Class Proceedings Act* and invitations to numerous official functions.



On the personal side, I turned 40, so the past three months have been traumatic. However, children have a unique quality of putting everything into perspective (I have two boys - Daniel, 3 and Ian, 1). Take for instance, a discussion I had with my wife Barb on the eve of my birthday concerning the type of cake I would like. Hearing the question posed by my wife, Daniel took it upon himself to volunteer some suggestions.

Peter and his wife Barbara Barrowman with their children Daniel (behind stroller) and Ian during the AGM on Terra Nova National Park.

"Daddy, I think you should get a Big Bird or Ernie birthday cake." Needless to say, he was extremely disappointed with me when I chose (on my wife's suggestion) a chocolate cheesecake. When I retold the story to Pat Pope, she managed to find two Ernie dolls to compensate for their father's poor choice. Both Ernies have been well received and marked with the first initial of each boy's name to avoid future arguments. However, Daniel was not to be outdone. On my birthday, we went to Chapters, as we do most Saturdays, to look at books. Once there, he found it appropriate to announce to everyone in sight that "today is my Daddy's birthday and he is four-oh". Well, so much for that simplicity I felt at the beginning of my term.

Despite the hectic schedule and the accompanying "to do" list, it is extremely gratifying and rewarding to work with a group of people who demonstrate an immense dedication to pursuing the interests of our membership. Those people are your Branch Executive, Peter House (Vice-President), Janis Byrne (Treasurer), Peter Shea (Secretary), Sheilagh Murphy (Membership), Christine Healy (Continuing Legal Education), Susan Churchill (Communications), Bernadette Cole (Young Lawyers), Rebecca Redmond-MacLean (Central Representative), Jamie Merrigan (Western Representative) and Jamie Martin (Past President and President's Designate on the Board of Directors). Needless to say, behind all of us, holding the operation together, is our Executive Director, Pat Pope. The amount of time and effort that each of these people has taken out of their busy schedules is commendable. Also, I would be remiss in not reporting on the efforts of several of our members who have served on the Law Society/CBA Joint Task Force into Automobile Insurance Reform. Ches Crosbie, Dan Boone and Jamie Martin have provided the Task Force with a great deal of time, experience and insight.

To give you some overview of the CBA's provincial initiatives, what follows are the current activities of our Branch.

No Fault Insurance

On October 4, 2001, the Honourable Walter Noel, Minister of Government Services and Lands, released a consultation paper entitled "Proposals for Automobile Insurance Reform." In response to the paper being released, a joint CBA/Law Society Insurance Reform Task Force consisting of Jamie Martin, Chair, Ches Crosbie, Daniel Boone, Jeffrey Benson, Peter Ringrose and myself. The Joint Task Force is

preparing a submission to Government to be submitted before the November 30th deadline.

On November 2nd, the CBA held a luncheon with guest speaker Gordon Adair, C.A., former Director of Finance with the Insurance Corporation of British Columbia and Co-ordinator of the Coalition Against No Fault Insurance in B.C. There were approximately 135 people in attendance with representatives from various coalition groups.

On November 9th, members of the Insurance Reform Task Force met with Minister Noel and discussed several of the controversial items in the paper and offered the views of the profession toward the paper generally.

Judicial Independence Training Video

Since the training seminar took place in April, Chief Justice Wells struck a committee of judges to determine how Judicial Independence can be introduced into the school system. Christine Healy, CLE Co-Chair, has volunteered to coordinate efforts of the Branch with the judges' committee as well as other interest groups. Jamie Merrigan has held a training session in Corner Brook with some judges. Rebecca Redmond-MacLean is in the process of arranging a training session in the central area. The Committee will look at preparing some material to leave with the schools after the presentation of the video.

Mid-Winter Meeting

The Mid-Winter Meeting will take place in Steady Brook on February 7th-8th, 2002. This Meeting is in the planning stages and a committee has been established consisting of Sheilagh Murphy, Chair; Bernadette Cole; Christine Healy; Janis Byrne, Jamie Merrigan, Pat Pope and myself. Registration forms for the Mid-Winter Meeting are expected to be distributed in early January 2002.

Class Actions

Chris Curran, Assistant Deputy Minister of Justice (Acting), provided the Branch with a draft of the *Uniform Law Conference Class Proceedings Act*. I have been in contact with Ward Branch, a class actions expert in British Columbia, to discuss class actions that would be of interest to the Newfoundland Branch.

On October 21st. I wrote Katherine Crosbie, Legislative Counsel, outlining the CBA's position concerning the proposed *Class Proceedings Act*.



Incoming President Peter Browne presents incoming National President, Eric Rice, Q.C., with a thank-you gift during the AGM at Terra Nova Park Lodge.



Because you need to know that your bank is as committed to your success as you are:

The desire to work with a financial partner that supports your changing needs and goals should never be a challenge. It's important to have access to a range of products and services that can evolve as you do.

Scotia Professional[®] Plan is designed to do just that.

Scotia Professional[®] Plan is endorsed by the Canadian Bar Association

Stop by your local Scotiabank branch. Ask how *Scotia Professional*[®] Plan can provide you with the financial support and security you need throughout your professional life.



© Registered Trademark of The Bank of Nova Scotia. ™Trademark of The Bank of Nova Scotia.

Report of the Past President and President's Designate on Board of Directors

Jamie Martin



I assumed the position as our Province's representative on the Board of Directors, at the national meeting held in Saskatoon from August 12-15, 2001. There were over 750 registered delegates at the conference including 20 individuals from our Province. Among those attending were Chief Justice Wells and Chief Justice Green who were attending the Canadian Judges Conference is held at the same time as the national CBA meeting.

The meeting was a huge success and the hospitality was exceptional. There were however several near mishaps at the meeting by our members. First of all, I experienced a minor assault by a teenage person shortly after Peter Browne and I arrived on opening night as we were taking a leisurely stroll across the bridge over to the University area. I was advised by local residents the behaviour was unusual. I mention this incident owing to the fact that when I told this story to some of our members at the conference and when I got home, some remarked that I was in good hands since Peter was able to run and seek help. (We all know Peter's success as an elite runner). As it happens, Peter was still fairly restricted in his movements as the result of injuries he sustained last winter when training. No harm was done and the young person was later arrested by authorities because of complaints earlier that evening.

There was also Sheilagh Murphy collapsing of heat exhaustion at the opening night festivities. This followed a very tiring day for Sheilagh which included a canoeing trip in the South Saskatchewan River. Sheilagh went all the way to land locked Saskatchewan to canoe! She was taken



Sheilagh Murphy, Richard Gosse and Ken Jerrett enjoy a meal during the closing ceremonies at the National Annual Meeting in Saskatoon.

back to the hotel in a private investigator's surveillance van owned by individuals who some members of our delegation met earlier that evening. Sheilagh was accompanied on the return to the hotel by Peter Shea, Janis Byrne and myself. The layout of the van and the equipment with cameras and tinted one-way mirrors was fascinating to say the least. I also felt for Robert Stack whose wife Margo got discount prices on several hockey pucks which Robert, as a good husband, carried back home on the plane. I still have visions of Robert experiencing severe back pain caused by having to transport his new purchase.

Enough of the lighter side. There were several resolutions passed, the most notable of which include:

- **Proceeds of Crime (Money Laundering)**
This included excluding lawyers from the ambit of legislation pertaining to suspicious transactions under the Proceeds of Crime (*Money Laundering Act*). The Law Society in British Columbia, the Federation of Law Societies and the Canadian Bar Association, as intervenor, is seeking an injunction concerning aspects of the regulations that pertain to lawyer-client relationships. On November 20th, B.C. Supreme Court Justice Allen granted an injunction pending a full hearing on the matter. The CBA has been critical of the money laundering bill for more than three years. Last August, the Federation of Law Societies joined the CBA in publicly calling for changes to the law to protect clients' rights. A challenge is being made at the Supreme Court in British Columbia.
- **Legal Aid** This involved urging the Federal Government to add \$20 million on an annual basis to criminal and civil legal aid on an ongoing basis.
- **No Fault.** The Tort Liability Task Force established in 1999 is to be replaced by a working group on no fault compensation. This is of course a timely issue in our Province.

A resolution on the Exclusion of Cameras from Family Law Courts was deferred to the National Mid-Winter Meeting in Moncton in February 2002.

On October 26-27, I was in Ottawa to attend the Board of Directors Meeting. A large part of this meeting was dedicated to reviewing and ultimately approving the CBA

Submission to the House of Commons Justice Committee on Bill C-36, the *Anti-Terrorism Act*. Representatives of the CBA made a submission to this committee on Wednesday, October 31st. The principal concerns of the CBA include:

- The need to include a sunset clause in the legislation;
 - The need to further define terrorist so as to exclude, for example, individuals engaged in lawful protests;
 - The need to reduce the scope of terrorist offences. Current offences would include for example lawyers who defend individuals accused of terrorist activities;
- and
- The need to further define measures associated with preventative arrest and investigative hearings including the compelling of evidence by individuals, all of which have the effort of placing severe restrictions on individual liberties. The CBA felt the current provisions would result in warrantless arrests and defections being used more frequently.

On November 20, Justice Minister McLellan proposed several amendments to the Bill including a sunset clause after five years on the preventative arrest and investigative hearing proposals unless Parliament specifically decides to re-enact them. At that time, because it perceives a continuous terrorist threat. The Minister also proposed amendments to the definition of terrorism to ensure legitimate protests, demonstrations, marches and strikes are not labelled terrorist acts.

The dynamics underlining this review process under the CBA was fascinating and was a good example of consensus building. Representatives of over twenty sections together with National office and members of our Board worked tirelessly to develop a position on a very controversial piece of legislation.

We were also given a thorough presentation on the legislation by Irwin Cotler, Member of Parliament. Mr. Cotler essentially concluded the circumstances of September 11th warranted injunction in the manner prescribed in the proposed bill.

We were also given an extensive briefing by officials of National office on the CBA's extensive International Development Program and its comprehensive Communications and Legal and Governmental Affairs. The staff at National work extremely hard. I know that from personal experience when they provided us access to their extensive holdings on no-fault insurance.

Also in attendance at the meeting from our Province was Chris Pike, who commenced a two-year term as the head of Sections. This is a very important job in the CBA structure.

Chris also serves on the Finance Committee. Chris has made an invaluable contribution to the CBA over the years and is highly regarded by his colleagues across the country.

I tabled a report to the Board on several activities taking place in our Branch including Government's Automobile Insurance Proposal; our Branch's activities on Judicial Independence, Proposed Class Proceedings Legislation, and initiatives to promote membership throughout the Branch. On the issue of membership, our Branch in the period from September 2000 to September 2001, experienced a 1.9% increase. This is above the national average of 1.5% and one of the largest increases in the Country. The big issue facing all Branches is retention of members. This is one of the issues Sheilagh Murphy, our Membership Chair, will discuss at a meeting of the Membership Committee in Ottawa in early December. The next meeting of the Board will take place in February in Moncton as part of the Mid-Winter Meeting.

In Memoriam

Sandra Blackwood Sullivan

November 1, 1964 - November 11, 2001

Jackie Brazil

I met Sandra Blackwood Sullivan in 1989, after my first year of law school. She had just been called to the Bar and we were working together at Gittens/Casey. Her warmth, her honesty, her humour, her modesty and her competency were immediately obvious to me. While she was very embarrassed by their praise, her co-workers were celebrating that she had obtained the highest marks in her bar course class and had won the Hunt Award.

She became a great friend and a professional mentor. In 1990, I introduced her to her future husband, Martin Sullivan, and a better match was never made.

Sandra's cancer diagnosis was a terrible shock but she approached this challenge with a grace and an optimism that both inspired and humbled those around her. Despite her many struggles over the last 7 years, she continued to enjoy life. She loved her parents, her sisters, her brother, their partners, her nieces and nephews, her husband and his family with a gentle intensity.

Sandra appreciated the smallest gesture of kindness and had an amazing ability to comfort those around her when it was she who deserved comforting.

Sandra passed away on November 11th. Writing this tribute is a surreal experience. My heart breaks for her family as their loss is the greatest. May they take solace in knowing that she is at peace and in a far better place. She was a brilliant lawyer who offered compassion and respect to her clients and her colleagues. She practiced law as she lived her life.

Report from the Joint Committee on Continuing Legal Education (CLE)

Christine Healy

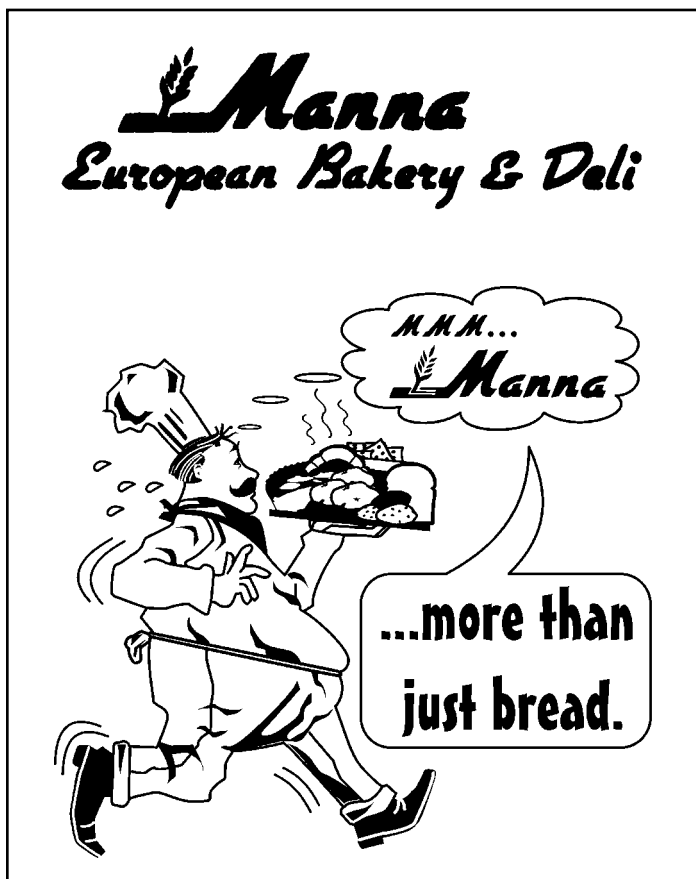
This is my first report as CLE Co-Chair. Since the last issue of Squid Pro Quo, there have been numerous CLE seminars which have been extremely well received.

In June, the CBA had its Annual General Meeting at Terra Nova Park Lodge. As part of the AGM, a CLE session was held. This CLE session had three (3) separate components: legislative update, a review of practice management issues with LPIC, and a panel session with Chief Justice Green and Chief Judge Reid on issues of effective advocacy before trial courts. The legislative update component of the agenda was delivered by Katherine Crosbie, and canvassed recent legislative changes of interest to practitioners. The practice management component of the program was delivered by representatives of LPIC, Dan Pinnington and David Clark. Their presentation was split between a focus on effective ways to manage your practice and risk management techniques and a session on issues relating to LPIC's Practice Pro initiative. The final item on the agenda was the panel discussion with Chief Justice Green and

Chief Judge Reid, moderated by John Brooks. The Chief Justice and Chief Judge had many interesting points on how to be a more effective advocate before their respective courts. Overall, the CLE session was extremely valuable for all who attended.

Also in June, a comprehensive full day session on Real Estate Law occurred. This was an extremely well attended session and featured numerous presenters on various topics including a review of statutory lien searches and why they are required, condominiums, miscellaneous practice points, title insurance and issues of oil tank liability. Presenters at this session included Denis Barry, QC, David Clark, Jeff Daniels, Michael Duffy, Tom Hickey, Peter House, Toby Matthews, David Moores, George Murphy, Dennis Ryan and Lisa Weinstein.

In September, a session entitled "*Strategies in Using (and Challenging) Psychological and Psychiatric Experts in the Law*" presented by Dr. James Ogloff, a Canadian lawyer and psychologist, finally occurred. You will recall that this session had been scheduled and rescheduled due to weather. The attendees at this session peppered Dr. Ogloff with questions, indicating a high level of interest in this particular topic.



Frank O'Brien with Catherine Over (left) and Cara Brown, presenters of the CLE entitled "Calculating Damages in Personal Injury and Wrongful Death Claims."

From September 21 through to November 16 *Legal Research Electronic Products Training Sessions* were offered for lawyers every Friday, and presented by Law Society Librarians, Harriet Mercer and Gail Hogan. The response to these opportunities for hands-on training on the electronic research products available at the Law Society Library was incredibly positive and enthusiastic. The Committee thanks Harriet and Gail for offering these valuable training sessions in which lawyers acquired practical knowledge which can be translated directly into their practices.

In October, we had another visit from representatives of the Advocates' Society in Ontario who presented a full-day workshop on Cross-Examination, Impeachment and Rehabilitation of Witnesses. As in the past, participants were broken into separate working groups. The seminar was extremely well received by all participants. The following day, the presenters did a session on Examination in Chief/Cross Examination for participants in the Bar Admission Course. The Joint Committee greatly appreciates the contributions of David Butt and Joel Kohm of the Advocates' Society for their meaningful contributions to CLE in Newfoundland.

In November, there was an important CLE session on the new Money Laundering Legislation and how it affects lawyers and law firms. This session provided important information, and the number of attendees indicated a high level of interest in the potential impact of this legislation on lawyers. Depending on the outcome of present litigation regarding this legislation, there may be further CLE sessions on this issue.

The CLE Joint Committee has several seminars in development. By the time you read this, the seminar entitled *Focus on Administrative Law, 2001* will have occurred. This seminar will see two local presenters The Honourable Mr. Justice Keith Mercer and Augustus G. Lilly, QC presenting

along with noted Administrative Law textbook authors David Jones, QC and Anne deVillars, QC.

We are also planning a CLE session for the Canadian Bar Association's mid-winter meeting in Corner Brook on February 7 and 8, 2002. Work is still ongoing on the content of this CLE, so there is time to provide Committee members with your thoughts on what you'd like to see at that session.

Also in development for the near future are sessions on Estates, Criminal Law, Tort Law and others.

The CLE Committee welcomes your input and invites you to contact any of the Committee members with your thoughts and ideas for future programs. Other members of the CLE Committee for 2001 - 2002 are Maureen Ryan, Law Society Co-chair, Peter Browne, Brock Myles, Patricia Pope, Jeffrey Keefe, Frank O'Brien, Peter Ringrose and the Honourable Judge William English.

As a final note, on behalf of the Committee I'd like to take this opportunity to thank everyone who presents and participates in the CLE programs. Without that support, the CLE program could not be as successful as it is. See you at the next CLE!



Waterford Manor
Heritage Inn

TRISH BADRUDIN

185 Waterford Bridge Rd.
St. John's, NF, A1E 1C7
Ph: (709) 754-4139
Fax: (709) 754-4155

www.waterfordmanor.nf.ca
info@waterfordmanor.nf.ca



Participants at the CLE seminar on "Advocacy Skills" held at the Masonic Temple on October 22, 2001

Automobile Insurance Proposals

Jamie Martin

On October 4, 2001, the Honourable Walter Noel, Minister of Government Services and Lands released a consultation paper entitled "Proposals for Automobile Insurance Reform." In announcing the release of the paper, the Minister noted "Consumers in our Province have sent a clear message to Government. They want reduced and stable insurance premiums. The paper is a response to that message." The proposals contain a number of suggested reforms including:

Tort Reform

- Claims for non-economic loss be restricted to injuries causing permanent and serious disfigurement or permanent and serious impairment of an important physical, mental or psychological function, subject to a \$15,000 deductible. This is commonly referred to as the verbal threshold with a deductible;
- Wage loss settlements be 100% of net wages;
- An injured party be entitled to make application to the courts for a structured settlement; and
- Injury awards to be reduced by 25% where the injured party did not wear a seatbelt and this contributed to the injury.

Other Proposals Include

- Mandatory Accident Benefits;
- An insured's own insurance company to pay a claim for property damage to the degree the insured is not at fault;
- The at fault portion of property damage be paid under the insured's collision coverage, if carried; and
- Damage in excess of \$20,000 be subject to indemnification by the insurer of the at fault party.

Reforms are being proposed to the Facility Association, Rate Regulation, measures affecting uninsured drivers and impaired drivers; changes to the monthly premium payment plan as well as measures designed to promote consumer education and consumer protection. The proposals also call for legislation to provide for a Consumer Advocate to be appointed by government to intervene in Public Utilities Board rate hearings. The proposals are available at the department's web site at [<http://www.gov.nf.ca/gsl/consultation>] or by calling (709) 729-5661.

The Minister has invited written comments on the proposed changes to be received by November 30, 2001. It is expected that any legislative changes will be introduced in the Spring session of the House of Assembly.

Shortly following the release of the proposals, Peter Browne, our President, wrote several of our members, from both the Plaintiff and Defence Bar to elicit their response to the proposals. This was followed by a meeting with representatives of the Law Society of Newfoundland and the newly formed Atlantic Provinces Trial Lawyers Association. At that meeting, it was decided to establish a joint CBA/Law Society Task Force to review the proposals. The members of the Task Force include Peter Browne, President of the Newfoundland Branch of the Canadian Bar Association (CBA); Jeffrey Benson, President of the Law Society of Newfoundland; Daniel Boone, Chesley Crosbie and Jamie Martin, who was asked by the group to act as Chair of the Committee.

The Task Force has a three-part strategy:

- (a) **Luncheon Program.** The CBA invited Gordon Adair of British Columbia, an individual with an extensive background in automobile insurance to speak to a luncheon on November 2nd on tort reform /no fault proposals in British Columbia and Saskatchewan. Mr. Adair was in the Province on other business. The luncheon was



Gordon Adair

attended by over 135 individuals including Minister Noel, the Honourable Kelvin Parsons, Minister of Justice and Attorney General, over 80 lawyers, representatives of the insurance industry and several groups whose members have a direct interest with the proposals. These groups include:

Advocates for Fair Auto Insurance
Brain Injury Association of
Newfoundland and Labrador
Canadian Federation of Students
Canadian Paraplegic Association
Canadian Union of Public Employees (CUPE)
Coalition of Persons with Disabilities
Fibromyalgia Self-Help Group
International Brotherhood of Teamsters
NF and Lab. Chiropractors Association
NF and Lab. Federation of Labour
NF and Lab. Human Rights Association
NF and Lab. Teachers' Association
NF Society for the Physically Disabled
Advisory Council on the Status of Women
St. John's Firefighters Association



Mr. Don Forgeron, (*in photo*) Vice President, Atlantic Region of the Insurance Bureau of Canada, was the guest speaker at a CBA luncheon meeting of the Insurance/Civil Litigation Sections on November 20. Over 40 lawyers and representatives of the insurance industry were in attendance.

(b) Meeting with the Minister.

On November 9th, representatives of the Task Force met with Minister Noel to discuss the proposals. We had an excellent dialogue on the proposals.

(c) Issuance of Paper to the Minister.

The Task Force will provide written comments to the Minister by the end of November.

The Insurance proposals have generated considerable debate among our members. The CBA, and members of the Task Force are very interested to hear your views.

Insurance Solutions Made Simple.

Buying the right insurance protection doesn't have to be complicated or expensive.

As a not-for-profit corporation, controlled and directed by lawyers, we have a personal understanding of your unique needs. So whether it's on your own life, your family, firm or even your car, as a Legal Professional, you can trust the Canadian Bar Insurance Association to offer all the protection you need at the lowest possible price.

Simplify your next insurance purchase.

Call your Newfoundland CBIA Authorized Representative, Michael Goodridge at (709) 737-1565.



CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION



CONGRATULATIONS

Congratulations to the following lawyers appointed Queen's Counsel on October 11, 2001

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

Photographs - Page 12 & 13 Young Lawyers Conference - Wine & Cheese Reception November 20th, 2001

- ① Christopher Fox, Blair Downey and Andrea Channing
- ② Justice Keith Mercer with Kim Walsh, Olga McWilliam and Kim Keeping
- ③ Cheryl Mullett, Christopher Fox and Jeffrey Benson
- ④ Dave Buffett, Kerry Hatfield and Gus Bruce
- ⑤ Peter Browne, John Cook, Todd Strang and Andrew May
- ⑥ Students participate in Bar Admission Course
- ⑦ John O'Dea, Hon. Justice John O'Neill and Stacey Tower.
- ⑧ Frank O'Brien, Kerry Katfield and Lois Hoegg, Q.C.
- ⑨ YLC chair, Bernadette Cole, making a CBA presentation to Bar Admission Students on October 29th, 2001

In Personam

Corwin Mills, Q.C.

During the Annual Meeting at Terra Nova Park Lodge on June 15, 2001, Corwin Mills, Q.C., was presented with a Distinguished Public Service Award.

Corwin Mills, Q.C., of Clarenville, Newfoundland, obtained his Bachelor of Arts and Bachelor of Commerce Degrees from Memorial University of Newfoundland in 1967. He obtained his Bachelor of Laws Degree from the University of British Columbia in 1971 and a Master of Laws Degree in Marine Law from the University of Wales, U.K., in 1983, with his thesis on the topic of Ship's Mortgages. He was appointed Queen's Counsel in 1988, and Master of the Supreme Court of Newfoundland in 1998.

Corwin is a long-standing member of the Canadian Bar Association and the Canadian Marine Law Association, along with being a member of the Canadian Bar Association sections.

Corwin has unselfishly given his time, commitment and leadership to numerous service and charitable organizations for the last 30 years. He has been on the Executive of the Clarenville Area Chamber of Commerce for 27 years, including serving as President of the Chamber of Commerce for 4 terms.



Jamie Martin presents Corwin Mills, Q.C., with the 2001 Distinguished Public Service Award during the Annual Meeting at Terra Nova Park Lodge in June.

He is President of the Alpine Development Alliance Corporation, a non-profit group operating the White Hills Ski Resort. He has been the Vice-President of the Discovery Regional Economic Board since 1997. He has been a member of the Clarenville Area Rotary Club for 24 years, including all the various committees and sub-committees of that organization. He is President of the Clarenville Area Nordic Ski Club and has been on the Executive for the last 28 years, during which time he served on various positions on the Executive, including President for 6 terms.

He is a certified instructor and certified tour leader in cross-country skiing. Corwin was chair-person of the Eastern Community College from 1987 to 1996 and was a member of the Board of Governors of the College of the North Atlantic from 1996 to 2000. He served as Vice-President of the Newfoundland and Labrador 1994 Winter Games Committee. In 1978, Corwin was co-winner, along with his wife June, of the Leroy Miller Award as Clarenville's Sports Builder of the Year for the promotion of the sport of cross-country skiing.

Corwin is a well-deserved recipient of the Canadian Bar Association, Newfoundland Branch, Award for Distinguished Public Service.

Young Lawyers' Conference

Bernadette Cole

I would like to take this opportunity to introduce myself as the new Young Lawyers' Conference representative of the CBA Executive Committee. I look forward to serving in this position over the next two years.

On October 13-14, I attended the National Young Lawyers' Conference Directorate Meeting in Montreal, Quebec. The purpose of this annual meeting is to provide the Young Lawyers' Conference representatives from each province with an opportunity to meet with their counterparts in other provinces to exchange ideas and discuss topics of interest to young lawyers across the country. Approximately 15 young lawyers from various provinces attended the meeting. Members in attendance presented reports setting out the projects that their group have been involved with in their province over the past year, as well as the events and projects that are planned for the upcoming year. The meeting generated ideas for prospective brown bag lunches, social events and charitable fundraisers, some of which I plan to use in the upcoming year.

The first event planned for this year was the Young Lawyers' Conference Annual Wine and Cheese for the Bar Admission Course students which took place on November 20 at the L.S.P.U. Hall. Invitations were sent out to all students, their principals, instructors and all members of the Judiciary.

The first brown bag lunch has been scheduled for December 6, 2001, from 12:30 - 1:30 pm at the Masonic Temple. The Honourable Judge Orr will be speaking on the topic of "Running a Small Claims Trial". A notice was sent to all YLC members via e-mail.

A YLC Christmas Social has also been planned for December 12, 2001, at the Steel Mountain Records Bar on Water Street. A notice specifying the time will be sent out in the near future. We encourage everyone to come out and meet with the new YLC Committee and other young lawyers in a relaxed social environment. Finger foods will be provided and there will be drink specials offered throughout the evening.

If you have any suggestions for YLC brown bag lunches or if you are interested in being a part of a YLC committee, please feel free to contact me directly or Pat Pope at the CBA office.

A SPECIAL THANK YOU TO
PRIMUM INSURANCE COMPANY
FOR SPONSORING
THE YLC WINE & CHEESE RECEPTION



2





(see photo captions on page 10)

An Interview with the Hon. Walter Noel

Brian E. Winsor



The Honourable Walter Noel

On Wednesday, October 31st, 2001, I interviewed the Honourable Walter Noel, Minister of Government Services and Lands concerning the proposed Restricted Tort Automobile Insurance legislation. Also present during the meeting was Mr. Doug Connolly, Director of Insurance and Pensions, and Mr. Rick Callahan, Director of Communications.

After the introductions were made and everyone was comfortable, I thanked Mr. Noel for agreeing to do the interview and began by asking the following question:

Question:

What, or who, prompted the Government of Newfoundland and Labrador to investigate the possibility of enacting a Restricted Tort Automobile Insurance Scheme in the province?

Answer:

Rates were rising fairly significantly in the mid 90's. It seems that over each of the past two decades rates doubled and they seemed to run in a cyclical pattern. Around the mid 1990's they were increasing again and people were becoming very upset and looking to Government for what may be done to keep some control over rate increases. So the Government of the day under Clyde Wells selected a committee to investigate no-fault insurance and that committee was dissolved when the house was dissolved in the 1996 election. In March of that year a new committee was set up with a

broader mandate and it held hearings and carried out consultations and research for a period of about 2 years and reported in 1998. Two of the recommendations of that committee were implemented, one was a change in the territorial boundaries and the other was the adoption of the graduate licensing program. The other recommendations have not been acted on. After I became Minister last February, we looked at the kinds of things that the Department had on its platter that needed to be dealt with and this was one of them. At the same time the insurance industry was talking to us about changes they thought needed to be made and by the end of last Spring started warning that rates were going to increase significantly over the next couple of years if the present system remained unchanged. We looked at the recommendations of the committee and had meetings amongst ourselves. We studied what was proposed and put together the Consultation Paper which we published on October 4th.

Question:

In your Consultation Paper you state that there were consultations with interested parties. Who were these parties and was the Law Society of Newfoundland one of them?

Answer:

Paul McDonald who is involved with the Law Society, appeared before the committee and made a presentation to the committee. The committee held extensive hearings and heard from various interest groups, lawyers, representatives of the insurance industry, other interest groups in the province and the public. Departmental officials and the Minister of this department are in periodic discussions with all people involved in the insurance industry about interests they have and recommendations they have. And since I became minister I've had discussions with representatives of the insurance industry and the legal community, public and some other interest groups. Thus, there is an ongoing kind of broad consultation about all of these issues.

Question:

Once again referring to the Consultation Paper, it is stated that the Department of Government Services and Lands, through its Superintendent of Insurance Office, has investigated the Restricted Tort Automobile Insurance legislation in Ontario. What has been the experience in that province? Have insurance rates remained low or are they on an increase in Ontario?

Answer:

Ontario doesn't have a full fledged no-fault system. They have a no-fault system regarding accidents and the restricted tort system. So you often find people referring to no-fault and the restricted tort system as though they were clear cut kinds of systems. But most systems in place today in North America are some kind of combination of both. I was in Ontario a couple of weeks ago and had meetings with representatives of the regulators, the insurance industry and the Trial Lawyers Association of Ontario. I gather that the experience has been that payments for soft tissue pain and suffering type injuries have come under more control, I don't know if they have actually fallen. The people I met with told me they thought that Ontario had the best system in the Country, and thought what we are proposing is even better. This is because one of the problems with the Ontario system, from a cost point of view, is that it is mandatory that people go to assessment centers to have the extent of their injuries determined. This has proven to be very costly and they have a consultation taking place in Ontario now to look into what may be done to get better control over that aspect. So what they found I think, simply speaking, is that while they save money on compensation payments they have run up a lot of new expenses in a more extensive assessment and treatment system. That is now provided for in our proposals and, in this province if the proposals were accepted as suggested, I guess that would be worked out through the normal dynamics between the court system and the insurance companies and the Plaintiffs.

Question:

If the proposed Restricted Tort Insurance legislation is enacted, approximately how much will insurance rates be decreased by?

Answer:

Our estimation is that Third Party liability claims would be reduced by some 42 million dollars or about 35%. We would also make mandatory accident benefits coverage because it's not presently mandatory in the province today. That would cost an additional 9 million dollars. So the net projected savings for policyholders would be about 18%.

Question:

There is some concern that initially insurance rates will go down but that gradually over time the rates will increase and reach the level that they are at today. Are there any provisions in the proposed legislation to ensure that insurance rates remain at a lower level than today's rates?

Answer:

If we were to adopt this system, rates would go down permanently. Anybody who understands how the insurance rates setting system works, would understand that we would be taking some 42 million dollars out of the total claim payments forever. When insurance companies want to have rates set they go to the Public Utilities Board who set rates on the basis of actuarial projections of the claims that would be paid out over the period in question, plus an amount for overhead and a return on investment for the insurance company. So if you take out a specific portion of potential claims, and that would be out of the system forever, the savings resulting from taking that out of the system would be there forever. You can't say that rates won't increase from what they are today because that will depend on what happens with other costs. Repair costs go up, injury claims go up, general inflation factors might well mean that rates would increase over the next number of years. Proponents of the system state that rates would still be 18 and 20% less that they would otherwise be at any given time.

Question:

With respect to the Restricted Tort legislation in other provinces, are there any reliable statistics that show how much consumers saved on insurance rates once the respective legislation was enacted? If so, how much have the savings been?

Answer:

That's difficult to answer because, over an extended period, prices have gone up, inflation has gone up and rates have gone up generally. We have some information in that regard and they are accumulating more all of the time. We have the most information about Ontario and, as we just indicated, rates did initially go down in terms of compensation for the soft tissue injury claims, but they went up on the treatment and mandatory assessment end of things. A no-fault system has been in place in Quebec for some twenty years, the Ontario system has been in place with a number of changes over the past decade, and it's been in place in Manitoba and Saskatchewan for some time. Those provinces wouldn't continue with those systems if they didn't feel that they were preferable to the alternatives. So I think we have to assume that they're satisfied with the savings. In 1999 the average cost of automobile insurance went down by 11.79% in Ontario.

Question:

With respect to the \$15,000.00 deductible, many members of the general public are of the belief that only claims under \$15,000.00 will be surrendered under the proposed

legislation. This is clearly wrong as claims far in excess of \$15,000.00 will be surrendered because the injuries are not of a permanent nature. Is the government planning to extensively educate the general public concerning restricted tort system?

Answer:

Firstly, it would only be surrendered if they are soft tissue pain and suffering injuries that are not of the serious and permanent nature. People would still be able to claim for everything else. We will ensure that people will have proper information about the proposals and about the choices to be made. We've put out a fair amount of information. Already we are asking people to call into us or write into us or tap into our email site to ask any further questions and to give us their views. We are looking at how the debate is going to unfold and how the discussion is going to unfold. This is a very complex business, the automobile insurance business, so we wanted to give all of the groups an opportunity to make their case before the end of the consultation period in November. Then, if we decide to proceed with some of these proposals we will make sure that they are well explained to people and well publicized. And of course if any required legislation and proposals for change are brought to the legislature we will have a full debate by all members of the house of assembly before any changes are made. Nothing will happen without people being properly informed and without us doing everything reasonable to make sure they have the right information and as much opportunity as they feel they need to discuss the issues with us.

Question:

Under a restricted tort system a reckless and careless driver can injure a fellow motorist and end up paying nothing to the injured party if the injured party's injuries are not of a permanent nature. Does it seem fair to allow reckless and careless drivers to get off the hook?

Answer:

It doesn't seem fair but you have to make your choices as in dealing with all kinds of insurance. When any of us go take out an insurance policy we have to decide whether we want a Cadillac policy or a Volkswagen policy and we have to decide what options we are prepared to pay for. If people want to have the right to sue for whatever damages they may incur, they are going to have to accept the kind of insurance system that makes that possible and that's going to be a relatively high cost system. The insurance industry is now telling us that we are going to see rates probably increase 15 to 20% over the next couple of years and I've even heard figures of 40% or so. So people have to decide whether they are prepared to accept certain restrictions on their right to receive compensation for injuries in return for having cheaper insurance premiums or whether they feel that they want to be fully compensated when they are injured. Rates will have to reflect what is required to pay the cost of claims and provide a profit for the industry. If we can have a lower level of claims then people can have a lower cost of insurance. But if people want to be able to maximize their claims then they are going to have to be prepared to pay higher insurance rates.

Question:

Under the test in the proposed legislation an unemployed person who is seriously injured in a motor vehicle accident with broken ribs, a ruptured spleen and spends several weeks in hospital but makes a full recovery after a few months, for example, would receive nothing because his/her injuries are not of a permanent nature. Does it seem right that this person would receive no compensation for his/her injuries because they made a full recovery?

Answer:

They will receive compensation for any actual costs they have - any economic costs and loss of wages and that sort of thing. But they wouldn't receive compensation for pain and suffering that's not of a serious and permanent nature. That is the choice the public has to make. We are saying that if people want to minimize the cost of insurance then this is the only proposal we've seen that can make that happen significantly in the near term. We will do the other kinds of things that we can do to reduce accidents such as educate people and all that sort of thing. But if people want to signifi-

Financial Problems? Worried?

We understand and can help.

Personal & Business Bankruptcies & Alternatives, Credit Counselling & Consumer Proposals

FREE initial consultation

email: james.a.kirby@ca.pwcglobal.com

PricewaterhouseCoopers Inc. Trustee in Bankruptcy

PRICEWATERHOUSECOOPERS

Call for a Confidential Assessment
722-3883
215 Water Street, Suite 802
St. John's, NF A1C 6C9
Fax 722-3874

No Charge Dial
1-800-291-3883

Michelle Hennessy, Estate Administrator Jim Kirby, Trustee
Kellie Quife, Estate Administrator Wilbur Rice, Trustee

cantly control insurance rates over the short term this is the only proposal that seems capable of doing it. We are not saying that people should agree to adopt this proposal. We want to know how they feel about it and that's why we've done this in the context of a discussion consultation paper. We are having a good consultation and I think we are all learning a bit more on all sides about the complications of the insurance industry. After the consultation period we will determine whether there is sufficient consensus amongst the public to proceed with this kind of reform or whether it seems that the public does not want to restrict their rights. If the public do not want to restrict their rights, we will proceed with the other elements in the paper and there is something like 51 initiatives.

Question:

The Judiciary, in its desire to help the common person, may interpret the legislation in such a way as to lower the threshold for finding injuries of a permanent nature. Would this have the result of increasing the insurance rates to where they are today? Is the government and insurance industry prepared for this?

Answer:

That is a possibility and none of us know how the courts may rule at any time. We always expect the judiciary to use good judgement and we will just have to wait and see until they deal with this kind of system. If the judiciary does not interpret the legislation in a manner to achieve its objectives then we would have to look at what other options we may be able to pursue.

Question:

At what stage in the legislative process is the proposed Restricted Tort Automobile Insurance legislation in now? When does the government hope to have the legislation put in force?

Answer:

We hope to have the consultation period concluded by the end of November. In our department we will make an assessment of how the discussion has gone and what we think we should recommend to cabinet. We will do that over the next couple of months and hopefully, if cabinet decides to act, we will be able to have legislation ready for the spring sitting of the house of assembly.

Public Sector Lawyers' Conference Update

Katherine Crosbie



My fuel cells were recharged lately when I had the opportunity to attend a meeting of the Public Sector Lawyers' Conference (PSLC) Executive and Branch Representatives held in Ottawa on June 9, 2001. Our meeting was held in the downtown offices of Borden Ladner Gervais LLP, where Gerry Stobo, the Past Chair of the PSLC, now practices after leaving his position as General Counsel at the Canadian International Trade Tribunal, a post he held for 6 years.

While many of the branch representatives could not attend the meeting, those that did had lots of ideas on how to encourage participation by public sector lawyers in the activities of the CBA. It was also interesting to hear how different jurisdictions deal with the issue of payment of CBA membership fees for lawyers whose salaries are publicly funded. The CBA estimates that approximately 30% of public sector lawyers in Canada belong to the CBA. This contrasts sharply, but not as sharply as I anticipated, with a 60% membership rate in the private sector. Of course, the 30% is skewed by membership rates in New Brunswick and British Columbia where CBA membership is mandatory for Law Society registration. When these provinces are factored out the membership rate drops to 15-20%.

But all is not lost. Some provinces assist with CBA fees. Nova Scotia for example will pay 50% of the cost of CBA membership. Some lawyers have resolved this problem by convincing their line department to pay the fees which then reduces the cost to the department of their solicitor attending conferences and CLE's. Also very interesting are discussions between Justice Canada and the CBA about incentives for purchasing block memberships which could then be rotated among government lawyers. Perhaps the provincial Department of Justice could be persuaded to purchase a block of memberships for use by its solicitors and crown attorneys.

My plans for Conference activities this year include 2 or 3 brown bag lunches to be held at different offices in St. John's. Possibilities include the new Justice Canada office set up by our own Mike Madden and the CNOPB, where John Andrews has recently hung his shingle. I look forward to hearing from Conference members with ideas for speaking topics.

DNA TESTING

- Paternity / Maternity
- Forensic
- Estate
- Immigration
- Results in 2 weeks
- Over 35 locations in NF
- Same day appointments
- Over 99.9% accurate
- All results legally accepted



1-800-395-4995

www.helixbiotech.com



HELIX
BIOTECH
Est. 1981

Canada's largest most experienced private DNA lab

AVIS

We try harder.

At Avis, our business is renting cars but our mission is total customer satisfaction. In fine weather or foul, *we try harder for you.*

RESERVATIONS CALL

St. John's	722-6620
Gander	256-4275
Deer Lake	635-3252
Corner Brook	634-4503
Stephenville	643-3913

Toll Free 1-800-879-2847

free your mind

... and reach for your castle in the sky

- Home and Automobile Insurance
- Friendly and knowledgeable personnel
- Emergency service that never lets you down, 24 hours a day, 365 days a year
- A free personalized client card giving you access to an international assistance network
- Competitive rates and discounts along with superior product quality

1 - 8 6 6 - 4 6 6 - 6 6 6 8



Home & Auto
Insurance Program



CBIA

CANADIAN BAR INSURANCE ASSOCIATION

Absolute Dispute Resolution (ADR) Section Report

Anne Fagan



Chief Justice J. Derek Green provided his comments on the use of ADR techniques in the court system during a reception at the Crow's Nest, Duckworth Street, St. John's, Newfoundland on October 18, 2001. The ADR Section of the CBA, the ADR Atlantic Institute and Mediation Newfoundland and Labrador jointly sponsored this reception for its members. Members of these three associations are practitioners, consumers or supporters of alternate dispute resolution processes.

Chief Justice Green reviewed types of ADR, such as mediation, that have a different approach to dispute settlement than the rights adjudication approach of the Courts. To the question: Can these methods co-exist with the Courts and what should the formal relationship, if any, be between these different systems? Chief Justice Green responded:

"There are those who think that there need not be any interconnection between ADR methods and traditional court adjudication. They can and should, it is said, simply operate on parallel tracks each doing what it does best. I do not share this view. The different dispute settlement techniques can often complement each other. They can represent a variety of tools in the dispute settlement tool box to be used in differing combinations at different times

throughout the whole litigation process. If there is no intersection between those methodologies, a lot of cross-fertilization and efficient use of resources will be lost."

The attendees were also very interested in Chief Justice Green's description of futuristic courts that were not simply rights adjudication bodies but dispute resolution centres.

Chief Justice Green reported on where ADR has already been integrated with the trial process of our courts and ADR pilot projects around the Province.

The conclusion of Chief Justice Green's comments summarized the results of Ontario's Mandatory Mediation Rule Pilot Project.

A preliminary draft of a rule amendment will be submitted to our rule's committee for consideration at its next meeting to allow the court to order that parties avail of private mediation services, either before or during trial, on a case by case basis.



Reception at the Crow's Nest -
L-R: Anne Fagan, Peter Browne,
Christine Fagan, Q.C., Chief Justice
J. Derek Green and Marina Whitten

Section Chairs 2001-2002

Aboriginal Law

Chair - Sandra Gogal - McInnes Cooper
Tel: 724-8264 Fax: 722-1763
sandra.gogal@mcrlaw.com

Administrative Law

Chair - Gregory Kirby - O'Dea Earle
Tel: 726-3524 Fax: 726-9600
gkirby@odeaearle.nf.ca

Alternate Dispute Resolution

Chair - Anne Fagan - Mercer MacNab Vavasour & Fagan
Tel: 726-8924 Fax: 726-5705
afagan@mmvf.nf.ca

Bankruptcy & Insolvency

Chair - Robert Stack - Cox Hanson O'Reilly Matheson
Tel: 726-3321 Fax: 726-2992
rstack@coxhanson.ca

Business Law

Chair - Neil Jacobs - Stewart McKelvey Stirling Scales
Tel: 722-4270 Fax: 722-4565
njacobs@smss.com

Civil Litigation

Chair - David Moores - Parsons Ennis Scott
Tel: 722-5100 Fax: 722-0808
info@parsons-law.com

Constitutional & Human Rights Law Commission

Chair - Barry Fleming - Human Rights Commission
Tel: 729-4184 Fax: 729-0790
barryfleming@mail.gov.nf.ca

Construction Law

Chair - Janis Byrne - Pennecon
Tel: 782-3404 Fax: 782-3718
jbyrne@pennecon.com

Corporate Counsel

Chair - Wayne Chamberlain - NF & Labrador Hydro
Tel: 737-1443 Fax: 737-1782
wchamberlain@nlh.nf.ca

Criminal Justice

Chair - Juan O'Quinn - Simmonds Kennedy O'Quinn
Tel: 739-4141 Fax: 739-4145
joquinn_sko@nfltd.com

Environmental Law

Chair - Jason Bourgeois - White, Ottenheimer & Baker
Tel: 722-7584 Fax: 722-9210
jbourgeois@wob.nf.ca

Family Law

Co-Chairs - Sandra Burke & Jean Dawe - Dawe & Burke
Tel: 753-3400 Fax: 753-4401
smburke@daweandburke.nf.ca
jvdawe@daweandburke.nf.ca

Government/Public Sector

Chair - Katherine Crosbie - Legislative Council Division - Department of Justice
Tel: 729-2882 Fax: 729-2129
katherinecrosbie@mail.gov.nf.ca

Health Law

Chair - Liam O'Brien - Curtis, Dawe
Tel: 722-5181 Fax: 722-7521
lobrien@curtisdawe.nf.ca

Insurance Law

Chair - Glen Noel - Patterson Palmer Hunt Murphy
Tel: 570-5534 Fax: 570-5734
gnoel@pphm.com

Intellectual Property

Chair - Colette Goodyear - Benson Myles
Tel: 579-2081 Fax: 579-2647
cgoodyear@bensonmyles.com

Labour & Employment Law

Chair - Denis Mahoney - McInnes Cooper
Tel: 722-8735 Fax: 722-1763
denis.mahoney@mcrlaw.com

Law Practice Management and Technology

Chair - Gregory Dickie - White, Ottenheimer & Baker
Tel: 570-7307 Fax: 722-9210
gregdick@wob.nf.ca

Maritime/Admiralty Law

Chair - Deborah Hutchings
Tel: 724-8254 Fax: 722-1763
deborah.hutchings@mcrlaw.com

Natural Resources & Energy

Chair - John Andrews - Canada-Newfoundland Offshore Petroleum Board
Tel: 778-1458 Fax: 778-1473
jandrews@cnopb.nf.ca

Real Property Law

Chair - Michael Duffy - Duffy & Associates
Tel: 437-5737 Fax: 437-6080
duffy.law@nf.sympatico.ca



MARK YOUR CALENDARS

Sunday - Dec. 9, 2001
Children's Christmas Party
The Fluvarium

Thursday - Dec. 13, 2001
President's Reception
Court Garden - The Fairmont
Newfoundland

Feb. 7-8, 2002
Mid-Winter Meeting
Steady Brook

Newfoundland Case Report

Geoff Aylward



Wheaton v Palmer

20010914, 99/149, 2001.43

Mahoney, Marshall, Roberts, J.J.A.

Brown, QC; T. Rowe

Limitations, confirmation of action

The Court allowed W's appeal from a decision that her claim was statute barred. W was injured in a motor vehicle accident on May 15, 1996. A statement of claim was issued on August 10, 1998. In the interim the insurer had: paid the property damage claim and the cost of a medical report; and made various written enquiries on a without prejudice basis. The letters from the adjuster consistently requested details of the personal injury claim for the purpose of concluding the matter.

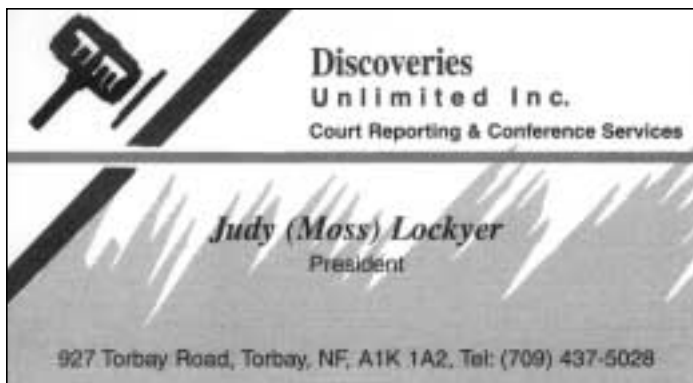
The letters from the adjuster had been entered by consent at the hearing in the Trial Division. Therefore the issue of whether the communications were privileged was not engaged.

The insurer had confirmed the cause of action under s. 16, *Limitations Act*. The general rule at common law - that there was a single cause of action for both the property damage and personal injury claim - applies to a confirmation through acknowledgement. (In the context of the discoverability rule, there is a possibility of two causes of action.)

The Court contrasted the operation of the discoverability rule to the confirmation rule. The latter is limited to confirmations made before the expiration of the limitation period. It cannot be operative after the expiry of the limitation period as in the case of discoverability. Property and personal injury claims are included in a single cause of action for the purpose of s. 16.

The letters from the adjuster following payment of property damage were admissions that W suffered injury for which P was liable. Payment by the insurer of the cost of a medical report was also relevant in finding the P had confirmed the cause of action.

Under s. 16, a confirmation need not include a promise to pay.



Ryan v Moore

1999 St. J. 2736, 20011022

Orsborn, J.

Kelly, QC; S. Chaytor

Survival of Actions, Limitations Act, Insurance

Orsborn, J. dismissed an application by the insurer of Moore to dismiss a statement of claim as being outside the 6 month limitation period prescribed in the *Survival of Actions Act*. The statement of claim was amended to name the defendant as the deceased by his administratrix.

On October 28, 1999 Ryan issued a statement of claim for personal injury in a MVA which had occurred on November 27, 1998. Moore had died on December 26, 1998 and letters of administration to his estate had been issued on February, 1999. In July, 1999 the insurer paid for the cost of a medical report which had been obtained by Ryan's counsel. Ryan's counsel learned of Moore's death in September 2000.

The discoverability rule has no application to the running of time under s. 5, SAA. This provision is concerned with whether there is an existing cause of action preceding the time death; not when the cause of action arose. The pre-existing cause of action survives only for a finite period of time which is not influenced by any element of the cause of action or by any lack of knowledge or presumed knowledge of the death in question.

The confirmation provision of s. 16, *Limitations Act* are not restricted to limitation periods under that Act. Payment for the medical report, which was preceded in this case, by payment of a property damage claim, constitutes an acknowledgement or confirmation of the action.

Although the payment was made by Moore's insurer, it would be fictitious to draw, for the purpose of this action, a distinction between Moore and his insurer. The insurer was obliged to defend the action and pay any damages. The assets of the estate were not at risk. To apply the SAA would offend reason and common sense. The Act is directed towards actions which have the potential to augment or diminish estate assets.

The cause of action was not extinguished under by reason of the common law rule, viz. that a tort action by or against a deceased was extinguished by the death. Moore was a defendant in name only. The insurer was obliged to respond to the claim.

The statement of claim was not a nullity because the cause of action had been confirmed; and, alternatively, the SAA did not apply.

Report on Judicial Independence

Christine Healy and Jamie Merrigan

St. John's

As many CBA members may be aware, the CBA in conjunction with the Canadian Judges Forum has created a video designed for presentation to high school students that addresses what judicial independence is and what it means to Canadians. A session to introduce this video to Newfoundland lawyers and judges was held in St. John's last April. The session, presented by Ron Friesen, also instructed lawyers and judges in effective methods for presenting this video to high school students. The session was extremely well attended, demonstrating a high degree of interest in bringing this important issue to Newfoundland high schools.

Perhaps inspired by this high level of interest, a Joint Bench/Bar Committee on Judicial Independence was struck, chaired by Madam Justice Gail Welsh of the Court of Appeal. Other committee members are Mr. Justice Dennis Roberts of the Court of Appeal, Madam Justice Maureen Dunn of the Trial Division, Judge Gregory Brown of Provincial Court, Frank O'Brien from the Law Society, representatives of the Department of Education, and Peter Browne, Christine Healy and Jamie Merrigan from the CBA.

The committee has been hard at work determining how this message of Judicial Independence can best be brought to Newfoundland high school students. The committee has been working with the Department of Education to find ways to integrate the existing Judicial Independence video and presentation into the overall high school law curriculum. If this initiative is successful, further efforts may be made to integrate the Judicial Independence presentation into other high school courses such as Canadian Issues. For the time being, the focus is on high school law classes. Efforts are underway to develop curriculum materials that can be left behind in the classroom after the presentation is complete. In this way, it is hoped that the message brought by the Judicial Independence presentation will have a more lasting effect.

It is the Committee's objective to offer the Judicial Independence program throughout the province, both on the Island and in Labrador. Of course, this will require a significant volunteer effort from both Bench and Bar throughout the province. We are presently building a list of volunteers, so if you are interested in participating in this program as a volunteer presenter, we encourage you to contact Pat Pope at the CBA office. Also, if anyone is up to the challenge of presenting in French, please let Pat know.

To become a presenter, you must attend a training session. If you have not already participated in a training session, the


committee is in the process of scheduling an additional training session for the St. John's area. A training session has already occurred in Corner Brook, and further training sessions will be scheduled where and when they are required. The training session takes about one hour and participants leave, having a good idea of how best to present the video in a way that will engage and challenge students.

Anyone who feels they can donate some time to this very valuable initiative is encouraged to contact Pat Pope at the CBA office.

Western

The Canadian Bar Association is working with educators to provide presentations to high school students to improve understanding of judicial independence and its importance in our constitutional structure and society. It is hoped that these presentations to the leaders of tomorrow will be the beginning of an ongoing process of education and dialogue between the legal community and the broader community.


In the first step of this ongoing process, members of the Canadian Bar Association, both lawyers and Judges met in Corner Brook on September 27, 2001, for a training session on Judicial Independence presentations. Those present include Justice Richard LeBlanc, Justice Alan Seaborn, Judge Kymil Howe, Judge Wayne Gorman, Jill Brown, Jamie Merrigan and Annette Bennett. Not present, but reviewing the materials in her spare spare time was Catherine Allen-Westby. Those present viewed a video on Judicial Independence and engaged in a discussion on the specific challenges of presenting this topic to high school students. A report will be forwarded to the CBA and all eight participants will be available as presenters once the CBA and the Department of Education have finalized the inclusion of these presentations in the high school curriculum.




Janes & Noseworthy Limited

Suite 201, 516 Topsail Rd., St. John's, NF A1E 2C5
Tel. (709) 364-8148 Fax. (709) 368-2146

Trustee in Bankruptcy
Receiver and Manager





People and Places

Vivian Arenillas, formerly with *Rose & Brazil*, is now with *Mark Kennedy/Law Atlantic*.

***Maeve Baird**, formerly of *French Baird*, has taken non-practicing status in Halifax.

***Philip Buckingham**, formerly of *McInnes Cooper*, has joined *Goodland O'Flaherty*.

***Chris Curran**, formerly Director of Legal Policy with the Department of Justice, is now Assistant Deputy Minister of Justice (Acting).

***David Bussey**, formerly of *Williams Roebothan McKay & Marshall*, has joined *Bruce and Company*.

***Susan Churchill**, formerly with Government Services and Lands, is now with Canada-Newfoundland Offshore Petroleum Board.

***Gladys Dunne**, formerly a sole practitioner, is now with the newly formed law firm *French, Dunne and Associates*.

Miriam Feltham, formerly of *Curtis Dawe*, has taken non-practicing status and is now employed with Human Resources and Employment.

Stacey Feltham has completed her international MBA and has returned to practice with *White Ottenheimer and Baker*.

***John Goodland**, formerly of *Patterson Palmer Hunt Murphy*, has joined *Poole Althouse*.

***Steven Harris**, formerly of Canada-Newfoundland Offshore Petroleum Board, is now employed with Donaghue Ernst and Young in Alberta.

Kathleen Healy, formerly with the Special Prosecutions Office, is now Assistant Director of Public Prosecutions.

***Jason Hickman**, formerly of *Cox Hanson O'Reilly Matheson*, has joined *Goodmans LLP* in Toronto.

***Doug Howell**, formerly with the Newfoundland Legal Aid Commission in Stephenville, is now with the Crown Attorney's Office in Corner Brook.

Mark Kennedy has started a new practice entitled *Mark Kennedy/Law Atlantic* and a new consulting firm entitled *Grey First*.

Kim Mackay, formerly of *McInnes Cooper*, has taken non-practicing status.

John McCarthy, formerly Deputy Minister of Justice, is presently on a secondment with the Federal Department of Justice in Ottawa.

Cormac McManamon, formerly with *Heywood, Kennedy, Belbin*, has taken non-practicing status.

Justin Mellor, formerly with the Department of Justice, has taken non-practicing status.

Ed Montague, formerly with *Buckingham Law Office*, is now with *Ernest Gittens*.

***Dwanda Newman**, formerly of Workplace, Health Safety & Compensation Commission, is now with the Public Utilities Board.

***Janet O'Reilly**, formerly of *Patterson Palmer Hunt Murphy*, is now employed with the Supreme Court of Newfoundland, Court of Appeal.

***Jacqueline Pelletier**, formerly of *Benson Myles*, is now with the Department of Justice.

Randy Pelletier, formerly with the Public Utilities Board, is now moved to Halifax.

Harold Porter, formerly with the Department of Justice, has been appointed a Judge with the Provincial Court in Grand Bank.

Lori Savory, formerly with the Newfoundland Legal Aid Commission, is now with the Department of Justice Civil Division.

Rosellan Sullivan has resumed practicing status and is now working with the Department of Justice.

Diane Smith is now Director of Civil Division (A) with the Department of Justice.

***Todd Stanley**, formerly of *Patterson Palmer Hunt Murphy*, is now with the Department of Justice.

***Angus Taylor**, formerly of Canada-Newfoundland Offshore Petroleum Board, is now retired and has started his own consulting firm.

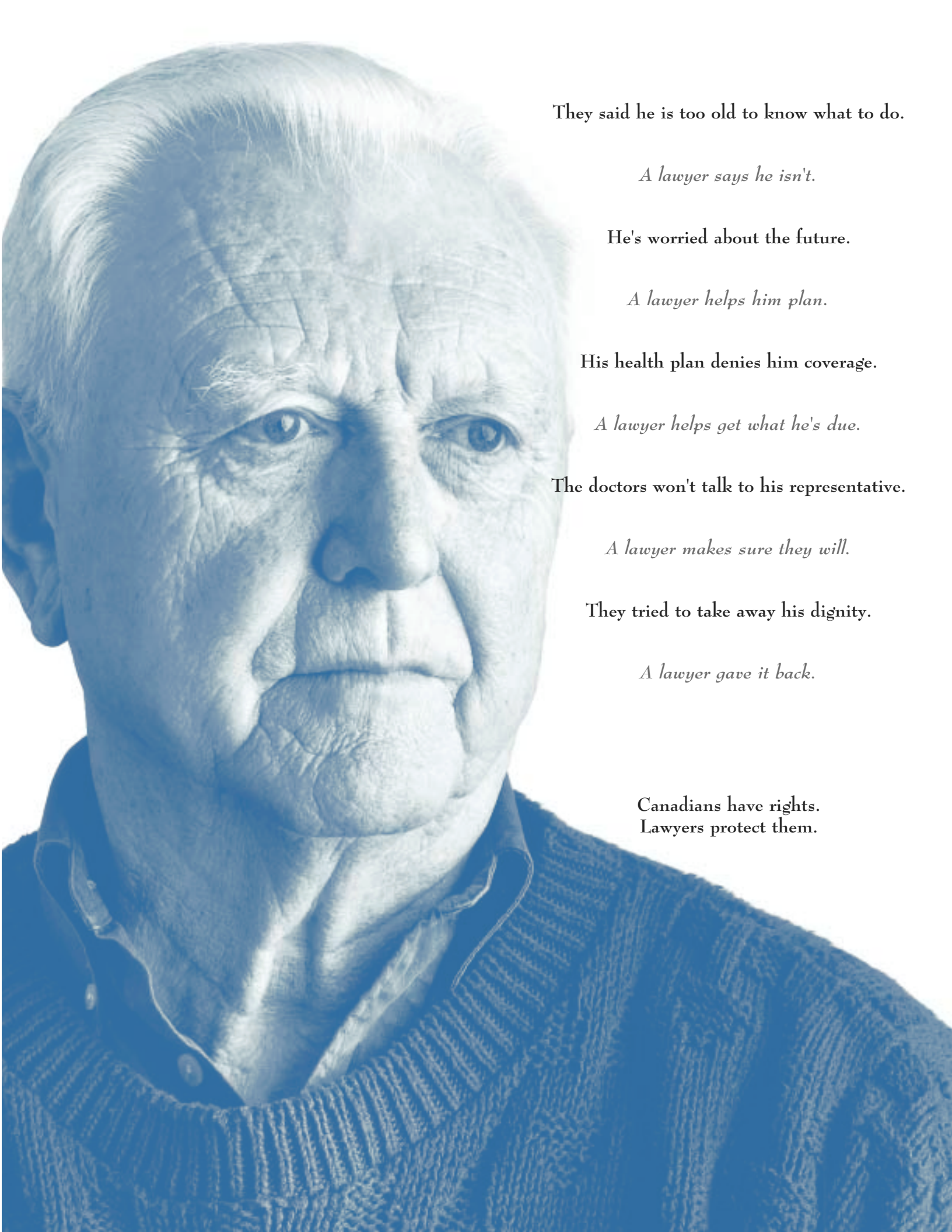
Paul Tobin, formerly of *Curtis Dawe*, has taken non-practicing status and is now employed with the Royal Bank.

***Jason Walsh**, formerly of the Department of Foreign Affairs and International Trade in Ottawa, is now with the Canadian High Commission in Singapore.

Derrick Watton, formerly of *Gallant and Watton*, is now with *Monaghan Marshall Allen-Westby Murphy and Watton*.

Ken Young, formerly with *Ernest Gittens*, is now with *Ronald Cole Law Office*.

*Indicates CBA member



They said he is too old to know what to do.

A lawyer says he isn't.

He's worried about the future.

A lawyer helps him plan.

His health plan denies him coverage.

A lawyer helps get what he's due.

The doctors won't talk to his representative.

A lawyer makes sure they will.

They tried to take away his dignity.

A lawyer gave it back.

Canadians have rights.
Lawyers protect them.