



# Benchers' Notes

October, 2000

Volume 6, Number 3

*These **Benchers' Notes** cover the Summer Term Convocation held on June 4, 2000, and the Fall Term Convocation of October 2, 2000 and the Calls to Bar of April 25, 2000 and June 27, 2000. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar.*

## Elected Benchers



Under the election rules of the *Law Society Act, 1999*, the following persons were elected or re-elected as Benchers at the June 4 Summer Term Convocation: Sheila Greene, Paul MacDonald and Marina Whitten. Following the Annual General Meeting of the Law Society, Robert Sinclair, QC, and Jeffrey Benson were elected officers of the Society. The Executive Committee comprises, Robert Sinclair, QC, President, Jeffrey Benson, Vice-President, Dennis MacKay, immediate Past-President, William Goodridge, Edward Hearn, QC, and Stephanie Newell.

*(Standing l-r)* Karen Cole, Bert Riggs, John Greene, Aidan Beresford, Jamie Smith, Paul MacDonald, David Eaton, Scott Beazley, Tobias MacDonald, Edward Hearn, QC, Marina Whitten

*(Seated l-r)* Barry Sparkes, William Goodridge, Jeffrey Benson, *Vice-President*, Robert Sinclair, QC, *President*, Dennis C MacKay, *Past-President*, Stephanie Newell, Brian F Furey

*(Missing from Photo),* Del Atwood, Herbert Edwards, Sheila Greene, Ted Janes

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## Summer Term Convocation

### President's Report

In his final report to Convocation, the President, Dennis C MacKay, stated that his year as President holds many pleasant memories and a sense of achievement also. Among the memories, the President mentioned his role in the Call to Bar ceremonies, and, associated with these ceremonies, the attendant meetings with Chief Justice Hickman. Among the achievements, which are achievements shared by Benchers also, are the coming into force of the new *Law Society Act, 1999*; the purchase of the office building to house the Law Library and administrative offices of the Society; and, the creation of an Honours and Awards Committee with the mandate to recognize the significant contribution of members and others who provide meritorious service.

### Honours and Awards Committee

The Committee proposed that Benchers consider naming the Society's most prestigious award, the Certificate of Distinction, after Gordon M Stirling, QC. One member of the Committee, Augustus G Lilly, QC, spoke to the proposal by reviewing the contribution that Stirling, QC, made to the profession and the community. He stated that Stirling, QC, was one of the builders of the Fieldian Grounds in St John's; was a Chancellor of the Anglican Archdiocese of Newfoundland; was the Honourary Colonel-in-Chief of the Church Lads Brigade; was President of the St John's Ambulance for Newfoundland. In addition, he received a Centennial Medal in 1967, and was inducted into the Order of Canada in 1980. Stirling, QC, was Treasurer of the Law Society for 14 years, the last Treasurer to serve such a long term. He was President of the predecessor of the Federation of Law Societies of Canada.

Following brief discussion, Benchers accepted unanimously the recommendation of the Committee that the Certificate of Distinction be named in honour of Gordon M Stirling, QC. There was agreement that, in so naming, the Certificate would signal to its recipients that their contribution is held in high esteem by the Law Society and the community.

Discussion then followed about the first person to be named as recipient of the Certificate. On the recommendation of the Honours and Awards Committee, Jean Bruneau's name was placed before Benchers for

consideration. The President reminded Benchers of the many accomplishments of Jean Bruneau and remarked in particular about her time as a lay Bencher. She was appointed a lay Bencher in 1982 and served in that capacity until March 31, 2000. During her term, she sat on a number of Law Society committees, including the Advertising Committee, Paralegal Committee, Standards of Practice and Scale of Fees Committee, the Standards Committee and as Chair of Publicity of Discipline Decisions Committee. Perhaps most significantly and for the longest period of her term as lay Bencher, Jean Bruneau sat as a member of the Complaints Authorization Committee, likely the most burdensome of all Law Society Committees and requiring its members to read hundreds of pages of complex documentation for each of its frequent meetings. Quite apart from these activities on behalf of the Law Society, the President noted as well Jean Bruneau's active volunteer life in the community, these efforts including, as a small representative sample, work with the Newfoundland Symphony, with Memorial University, and, with Festival 500. These volunteer services to the community were recognized in 1998 when Memorial University honoured her with the Degree of Doctor of Laws, *honoris causa*. In sum, the President stated, it would be difficult for Benchers to find a more worthy recipient of the Gordon M Stirling Certificate of Distinction. There was unanimous adoption of a motion that Jean L Bruneau, LL.D, be the first recipient of the Certificate; it was presented to her with a lithograph at the Annual Dinner of the Law Society on June 9.

The President noted as well the retirement from Benchers of Dr Linda Inkpen, CM, a lay Bencher appointed in 1992. Dr Inkpen served Benchers with considerable dedication during her term, sitting on the Code of Ethics Review and Revision Committee and on the Complaints Authorization Committee as an alternate. With the grateful appreciation of Benchers, Dr Inkpen was presented with a lithograph at the Annual Dinner on June 9.

### Paralegals

Benchers discussed correspondence from a member concerned about some of the advertising conducted by paralegals. Benchers noted their consistent view, and representations to government, that paralegals should be regulated in order to protect the public interest. Currently, paralegals have no structured and recognized standards for their education and, indeed,



have no educational requirements at all. Additionally, they have no governing body for regulation and no licensing requirements, have no code of ethics which is enforced, have no solicitor-client confidentiality for the protection of their clients, and carry no liability insurance to protect clients against errors and omissions. There was some consideration whether the Law Society should conduct an advertising campaign to inform the public about its position concerning paralegals. Discussion concluded with the request that the Executive Committee review options and propose a course of action for further consideration by Benchers.

### QC Appointment Process

In response to some earlier concerns, a few months ago Benchers appointed William Goodridge to chair a

committee reviewing the QC appointment process. Mr Goodridge reported that the committee has now gathered information about the process from most other jurisdictions in Canada and will now begin to consider recommendations, if any, to Benchers. There was some discussion amongst Benchers that the process as now conducted creates a class of Barrister without substantial input from the Barristers' governing body. On this point, some Benchers mentioned that recent statutory amendments permit the government to choose the Law Society's appointees on the QC appointment committee from a list of members proposed by the Society whereas, in the past, the Law Society had independent authority to appoint some committee members. Mr Goodridge was asked to report to Benchers at the December Convocation.

## Call to Bar

April 25, 2000

*(1<sup>st</sup> row l-r)* Kristen O'Keefe,  
Anna Locke, Collette Goodyear,  
Michelle Cooze, Tanya Carter,  
Kimberly MacKay

*(2<sup>nd</sup> row l-r)* Jason Edwards,  
Gregory Connors,  
Miriam Feltham, Stacy Ryan,  
Patricia Carpenter

*(3<sup>rd</sup> row l-r)* Cillian Sheahan,  
Janet O'Reilly, Genevieve Bulgin,  
Neil Pittman, Diane Rowe

*(4<sup>th</sup> row l-r)* John Goodland,  
Neil Smith, Philip LeFeuvre,  
Andrew Brown



June 27, 2000

*(1<sup>st</sup> row l-r)* Jacqueline Glynn,  
Meaghan Young, Cindy Picco

*(2<sup>nd</sup> row l-r)* Karen Robertson, Robin Fowler,  
Scott Hurley, Gerald Fleming



## Fall Term Convocation

### President's Report

The President reviewed briefly with Benchers the topics of discussion at an August meeting with the Minister of Justice, the Honourable Kelvin Parsons, QC. Among the topics raised by the Law Society was the desirability of regulating paralegals. Other discussions focussed on the feasibility of constructing an enclosed walkway between the courthouse and the Law Society's new office building, this to provide easier access by lawyers during court and to judges wanting access to the Law Library. Discussed as well was the concern of members in the Grand Falls-Windsor area that there not be a reduction in the number of provincial court judges assigned. The Law Society took the position that a reduction was not recommended.

### Appointment of a new Bencher

The President noted with regret the resignation of Mr Del Atwood as a Bencher for the Western District. Mr Atwood resigned because he was unable, because of a heavy court schedule, to guarantee regular attendance at Benchers and did not wish to compromise the representation of the bar from western Newfoundland.

Given the vacancy made by Mr Atwood's resignation, Benchers appointed Mr Derrick Watton in his place and to serve out Mr Atwood's term.

### Resolution of Atlantic Canada Law Societies

The President informed Benchers that in Halifax the Atlantic Canada law societies met to discuss ways in which they could cooperate amongst themselves and perhaps make uniform a number of the Rules that most frequently affect students and practitioners in Atlantic Canada. For example, there might be merit in working toward greater uniformity in student entrance standards and academic standards. Similarly, there might be merit in creating uniform advertising Rules or Trust Account Rules for Atlantic Canada, and so on. To give effect to these broad intentions, the four Law Societies drafted a resolution and then agreed they would meet on a regular basis to explore opportunities for cooperation. Benchers endorsed the Resolution and the concept of greater cooperation amongst the law societies and appointed Ms Stephanie Newell as the Bencher representative on the Committee.

### Trust Account Rule Amendment

Mr Aidan Beresford, Chair of the Trust Account Rules Committee, asked Benchers to vote their approval of an amendment to Rule 5.01(b)(iii) of the Trust Account Rules. The amendment adds Credit Unions to the list of approved depositories for member's trust monies. The amendment was approved and the new Rule reads as follows: (*amendments in bold*)

5.01(b) "bank" means

- i) a chartered bank carrying on business in Newfoundland;
- ii) a trust company authorized to carry on business and carrying on business in Newfoundland and insured under the *Canada Deposit Insurance Corporation Act*;
- iii) any other depository insured under **the Canada Deposit Insurance Corporation Act, or by the Credit Union Deposit Guarantee Corporation, and approved by the board of governors of the law foundation as identified in section 65(1) of the Act.**

### Rules Concerning the Licensing of Principals

The President tabled proposals of the Education Committee about the licensing of Principals and closer controls by the Law Society over the articling programme. The Rules will now go to review and then return to Benchers in December for final vote and adoption in time for the 2001 articling year. The proposals are harmonious with similar Rules elsewhere in Canada and break no new ground. In effect, the Rules are designed to ensure the articling experience is beneficial for students and that the Law Society fulfills its mandate to ensure graduates receiving its Degree of Barrister at Law meet the high standards required in the public interest.

In brief, a new Rule 6.06A would require that:

- an Education Plan (Form 6.06A(1)) be jointly filed by the student and principal, which sets out the practice areas and skills areas that are to be covered in Articles;
- an Education Plan Progress Report (Form 6.06A(8)) be jointly filed six to eight months after articles commence, which will give an indication of the progress being made in satisfying the Education Plan;



- a Certification of Completion of Education Plan (Form 6.06A(9)) be filed at the completion of articles, certifying the plan has been successfully completed; and
- confidential evaluation forms (Form 6.06A(10)(a) and (b)) be filed by both the student and the principal upon completion of articles.

A new Rule 6.06B deals with the Qualification of Principals. It states that:

- members would need to apply to the Education Committee to become a Principal, using Form 6.06B(1); and
- on the application form, the member would be asked to provide information regarding insurance claims history, discipline history etc. and would authorize disclosure of information for review by the Education Committee.

Benchers discussed the proposed new Rules at some length. They requested the Education Committee to consult with last year's principals and students about the proposals before they were sent to committee for final review prior to Benchers' vote in December.

Members who wish to review and comment on the proposals for licensing Principals, and to regulate the articling programme, may obtain copies of the proposals by contacting Regina Whitty at the Law Society. Alternatively, the complete text of the proposed new Rules and Forms are available for review on the Law Society's Web Page.

### **Juricert**

The Executive Director made a presentation to Benchers about Juricert, a company which it is proposed will be formed by law societies in Canada for the purposes of providing electronic certification of a society's member lawyers. Juricert is currently owned by the Law Society of British Columbia and provides, for the purposes of email communications, encryption of, and electronic certification of, a subscribing lawyer's email communications and status. Why is encryption and electronic certification necessary for email? Because, as the saying goes, at night all cats are grey. In the world of electronic communications, and because email is vulnerable to tampering, there is no guarantee that the recipient of an email message will not alter it to advantage and send it along to a third party, and so on. Neither is there a guarantee that the

person sending the message is the person he or she claims to be, nor a guarantee that the recipient of an email message is the person for whom it was intended. Out of these difficulties arise two issues: first, the requirement that email communications between lawyers and between lawyers and clients be encrypted to ensure confidentiality and integrity against tampering; and, second, the requirement that the lawyer sending a communication is indeed the person he or she claims to be and the lawyer receiving is similarly confirmed.

Electronic certification will be necessary as part of the guarantee of authenticity and confidentiality of electronic communications between lawyers. The certification process proposed through Juricert will comprise an assigned electronic code provided to each subscribing member and which will, when combined with an encryption programme, prevent tampering with a received communication and guarantee that a communication came from lawyer X and that it was received by lawyer Y, thereby ensuring certainty of communication and preventing repudiation by the receiving lawyer. The certifying code will be monitored on a day-by-day basis by the certifying authority, the law society, and when a member changes status, or is suspended or disbarred, the code will be changed or revoked as appropriate.

The Executive Director stated that it was important for law societies to be certifying authorities for electronic communications for a number of reasons. Chief among these reasons is the fact that certification of a lawyer's competence and status is the basis of a law society's role in the public interest; it is something which is done on a daily basis as members come and go from practice, are suspended, are disciplined, and so on. It is most unlikely that another body can be made agent to fulfil these regulatory functions with the same degree of confidence and continuity that law societies in Canada can bring to the task. After all, law societies in Canada have been certifying authorities for many years, in our instance, for 174 years.

Benchers agreed that the Law Society of Newfoundland should participate in the formation of the national company and, to this end, allocated funds to the value of \$2 per member for the initial purchase of shares in the company.



### Law Society to Honour Chief Justice Hickman

In a ceremony to be conducted at a Special Convocation of Benchers in Court Room #1 and beginning at 2:30pm on Thursday, October 19, the Law Society of Newfoundland will confer the Degree of Doctor of Laws, *honoris causa*, upon the Honourable T Alexander Hickman, retiring Chief Justice of the Supreme Court of Newfoundland, Trial Division. This Convocation will be the first occasion at which the Degree of Doctor of Laws has been conferred by the Law Society. Authorized under the Law Society Act, 1999, the Degree is granted on this occasion to acknowledge Chief Justice Hickman's outstanding career and contribution to the law.

The Convocation ceremony will include also the granting of Life Memberships in the Law Society to a number of members and former members, including several retired judges.

Following Convocation, the Law Society will host a reception commencing about 4:00 pm in the Court Garden at Hotel Newfoundland.

### Discipline

#### John B Glube

By a decision of Benchers dated July 14, 2000, Benchers found Mr Glube guilty of professional misconduct, conduct unbecoming a member, and failure to adhere to the Code of Professional Conduct and the Law Society Rules as alleged in the complaint of the Secretary dated June 4, 1999.

The complaint alleged that Mr Glube's conduct constituted a breach of the *Canadian Bar Association Code of Professional Conduct*, Chapters I, V, VI, VII and XVII; and a violation of the Law Society Rules, and in particular, Rules 5.01(1), 5.03(6), 5.05, 5.06(2), 5.07(4), 9.04 and 9.05.

Mr Glube entered a guilty plea to the allegations. Benchers disbarred Mr Glube and ordered that he be required to repay any amount the Law Society might be required to pay from its Defalcation Fund related to, or arising out of Mr Glube's misappropriation of trust funds. Benchers also ordered that Mr Glube pay the costs incurred by the Law Society in the investigation and hearing of the complaint.

## IN MEMORIAM

**Honourable Hugh O'Neill, QC**, Roll #181, called to bar January 26, 1933. Benchers noted with regret the death of the Hon Hugh O'Neill, QC, on May 25, 2000. He was a retired chief judge of the Provincial Court of Newfoundland and, following retirement, took up practice again in St John's where he worked until shortly before his death at the age of 93.

**George W Clarke, QC**, Roll #256, called to the bar April 12, 1962 died Monday, October 9, 2000. Benchers noted with regret the death of George W Clarke, QC. He practised law in St. John's and was elected to the House of Assembly in 1956, was appointed Speaker in 1963 and retired from politics in 1971 and from practice in 1981. He was made a life member in 1985.



## Law Society Library

1. Did you know that the Library provides the following services?:
  - QL, Lexis and Internet searches.
  - CD searches using electronic products such as:
    - Canadian Insurance Law Reporter;
    - Canadian Labour Law Cases;
    - Personal Injury Digest, and,
    - Rules Concordance.
  - Finding and updating legislation from the United States, Great Britain, as well as from Canada and the provinces.
2. For new additions to the Library check our website, which is updated weekly.

Address: [www.lawsociety.nf.ca/library](http://www.lawsociety.nf.ca/library)
3. We are here to help. Please call Gail Hogan or Harriet Mercer with any questions.

Phone: 753-7770 or 1-800-984-7770  
Fax: 753-0054  
E-Mail: [lsnl@thezone.net](mailto:lsnl@thezone.net)

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a support group for Lawyers,  
can be of assistance in many situations.*

*For further discussion or consultation, contact:*

**Rosemary Lahey, M.S.W., R.S.W.**

*Clinical Co-ordinator*

**754-3007**

**1-800-563-9133**

## Educational Notes

### Bar Admission Course

Planning is underway for the 2001 Bar Admission Course, which begins in January. The Law Society, in conjunction with about 80 volunteer instructors, is continuing to make appropriate adjustments to ensure the Course remains useful and practical in providing students with substantive knowledge and procedural skills, and in providing a useful bridge to practice.

The Law Society continues to value the excellent contributions made by its dedicated group of volunteer instructors, without whom the course would not be as valuable or strong.

Again this year the Bar Admission Course will provide instruction in the areas of Administrative Law, Civil Procedure, Corporate/Commercial Law, Criminal Law, Family Law and Real Estate/Wills. Further, practice and professional development areas will be covered, such as Advocacy, Ethics, Risk Management and Practice/Professional Management. Building on the positive feedback from previous courses, the Law Society is continuing to enhance skills-based components of the course through workshops in such areas as Examination for Discovery, Real Property, Negotiation Skills, Advocacy Training and Mock Trial and Sentencing Hearings.

Students who will be participating in the 2001 Bar Admission Course are also involved in a Provincial Court Mediation Program, designed to provide students with direct experience in the mediation of disputes.

### Continuing Legal Education

The Joint Committee on Continuing Legal Education is actively planning its programming for the 2000-2001 program year.

In the Spring/Summer of 2000, 4 seminars were held. These were :

1. On April 14, 2000 there was a seminar entitled *Golden Rules: Procedural Rules to Practice (and Live) By*, which focused on the *Limitations Act*, the *Federal Court Rules, 1998* and Rule 20A of the *Rules of the Supreme Court, 1986*. The Joint Committee wishes to thank the presenters at this seminar for their excellent contributions. The presenters were: The Honourable Mr Justice W Andrew MacKay of



the Federal Court of Canada, Glen L C Noel of Patterson, Palmer, Hunt, Murphy, and Gregory M Smith of Curtis, Dawe.

2. On May 19, 2000 an *Employment/Labour Law Update* seminar was held. Again the Joint Committee wishes to thank the presenters for their excellent presentations. The presenters at this seminar were Thomas Kendell, QC, of McInnes, Cooper; Gregory Anthony of Patterson, Palmer, Hunt, Murphy; Barry Fleming of the Newfoundland Human Rights Commission; Robert Andrews of White, Ottenheimer & Baker; and Denis Mahoney of McInnes, Cooper. Topics addressed at the seminar included Arbitration, Health & Safety Issues and Employment/Labour Law, Human Rights in the Employment Law Context, Injunction, and Wrongful Dismissal.
3. On June 12, 2000 there was a seminar entitled *Administrative Law Update: A Consideration of Judicial Review of Administrative Action, Tort Law Remedies and Related Issues*. At this seminar Professor David Mullan of Queen's University presented on *Recent Developments in Judicial Review of Administrative Action*. Augustus G Lilly, QC of Stewart, McKelvey, Stirling, Scales presented on *Administrative Law: The Practitioner's Perspective* and Jeffrey Levitt of the Ontario Ministry of Municipal Affairs and Housing presented on *Tort Law Remedies for Administrative Law Breaches*. The Committee wishes to thank these presenters for their excellent presentations and participation in the seminar.
4. On June 16, 2000 there was a seminar entitled *Judgment Enforcement Act Judicially Considered: Emerging Practice Points*. This seminar explored some of the recent judicial pronouncements in the three years since the *Judgment Enforcement Act*

came into force. The Committee wishes to thank Christopher Curran, High Sheriff of Newfoundland, and Sandy Hounsell of the Office of the High Sheriff, and Professor John Williamson of the University of New Brunswick for their excellent contributions to the seminar.

Planning is underway for upcoming seminars. The next seminar is on October 16 & 17, 2000 and is entitled *Advanced Mediation Course: A Two Day Interactive Workshop*. This seminar will be led by Sally Wells DiCarlo and Michael Keating, both of whom are lawyers and have extensive experience in negotiation and mediation training.

A seminar on Computer Technology and the Law will be offered in late November, 2000. This seminar will address topics such as effectively using technology in your practice, dealing with security issues and viruses, knowledge management, a review of some practical and useful websites for legal research, a technology update with respect to new technological initiatives in the courts and government respecting the practice of law, as well as a review of products and services in electronic research available from the Law Society Library. Further information on this seminar will be forthcoming.

As well, members are perhaps also aware of the full day Continuing Legal Education program forming part of the Hickman Symposium, which will take place on Friday, November 17, 2000. Further details on this Symposium have been provided to members in a separate mailout and a synopsis of the Symposium is included elsewhere in these Benchers' Notes. This seminar will feature presentations from members of the Bench, Bar and academia from across Canada, and all Law Society members are highly encouraged to attend what should be an excellent learning experience.