

**THE LAW
FOUNDATION
OF NEWFOUNDLAND
AND LABRADOR**

**Annual Report
2011**

Law Foundation of Newfoundland and Labrador

Board of Governors

Jeffrey P. Benson, Q.C., Chair

Aubrey L. Bonnell, Q.C., Vice-Chair, and Acting Secretary-Treasurer

Kenneth L. Baggs, Q.C.

L. Wade Locke, Ph.D.

M. Beverley L. Marks, Q.C.

Linda M. Rose, Q.C.

Adam J. Sparkes, LL.B.

Lawrence E. Collins, B.A., C.I.P., C.G.A., Executive Director

The Law Foundation provides grants to advance public understanding of the law and access to legal services. Its objects for funding are legal education, legal research, law reform, legal aid, legal referral service, law libraries and law scholarships.

The first meeting of the Board of Governors was held on February 26, 1979, when the work began to allow for the proclamation of Part IV of the *Law Society Act* on February 1, 1980.

The Board of Governors consists of seven members. Five governors, including the Chair, are appointed by Benchers of the Law Society of Newfoundland and Labrador and two by the Minister of Justice.

Hon. Felix J. Collins, Minister of Justice appointed Adam J. Sparkes and Dr. L. Wade Locke to the Board of Governors pursuant to Sections 65(2)(a) and (b) respectively of the *Law Society Act*, 1999. Their appointments are for a term of four years effective January 27, 2011.

Law Foundation of Newfoundland and Labrador
49-55 Elizabeth Avenue, Second Floor
P.O. Box 5907
St. John's, NL
A1C 5X4

Telephone: (709) 754-4424

Telecopier: (709) 754-4320

Website: www.atyp.com/lawfoundationnl/

E-mail: lawfoundationnl@nf.aibn.com

The Law Foundation of Newfoundland and Labrador is heritage partner for the *History of Law and the Courts*, www.heritage.nf.ca on the Newfoundland and Labrador Heritage Web Site at Memorial University. This public history project presents the Province's rich heritage in a format that combines text, graphics, audio and video. Six major areas, involving heritage partners, are featured: Natural Environment, Aboriginal Peoples, Exploration and Settlement, Government and Politics, Society, Economy and Culture, and the Arts. In addition to this cultural and academic knowledgebase being available on the Internet to university students and the general public, as a further educational resource high school students are able to access high school curriculum-specific modules on the law and constitutional issues.



LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

ANNUAL REPORT 2011

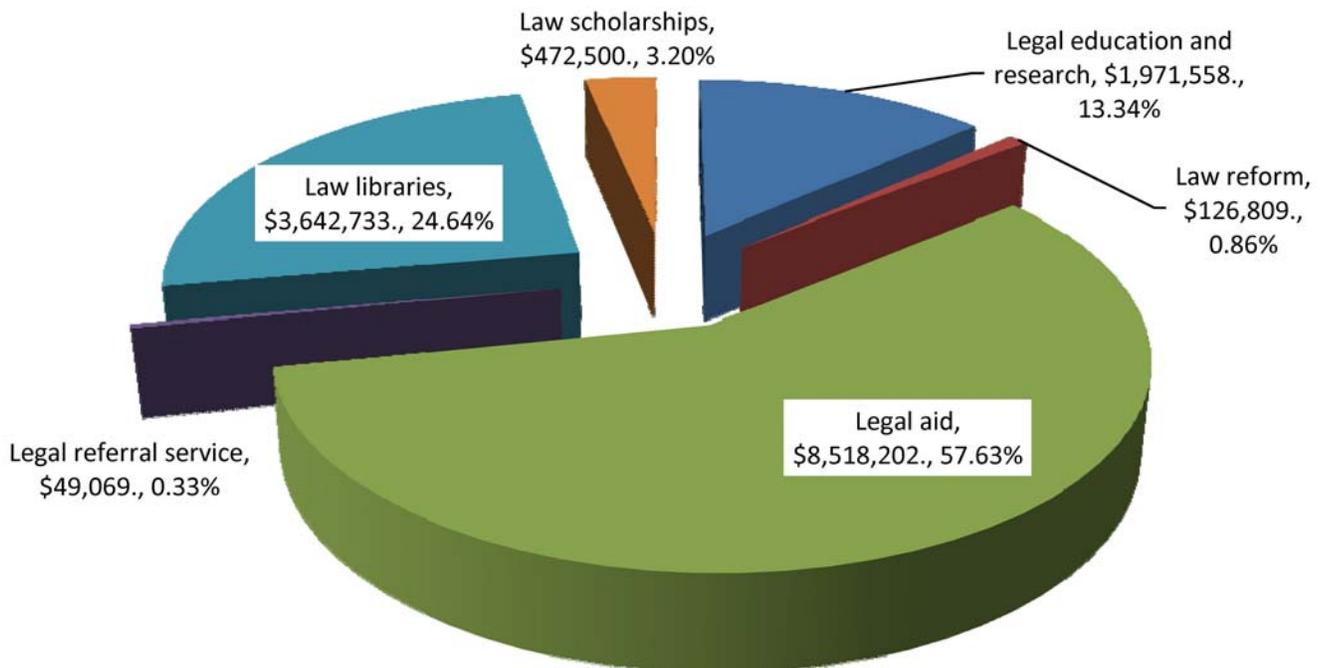
The Law Foundation of Newfoundland and Labrador approved funding totalling \$14,780,871. for the period 1980 to 2011 inclusive, on a year by year basis, to over fifty separate recipients, with several of these receiving a number of grants for different projects, for the following objects:

a) legal education and legal research	13.34%	\$ 1,971,558.
b) law reform	0.86%	126,809.
c) legal aid	57.63%	8,518,202.
d) legal referral service	0.33%	49,069.
e) law libraries	24.64%	3,642,733.
f) law scholarships	3.20%	472,500.
	<u>100.00%</u>	<u>\$ 14,780,871.</u>

The Law Foundation in 2011 had revenues of \$554,838. (3.00% annual composite prime - acp), an increase of \$245,019. from 2010 revenues of \$309,819. (2.58% acp).

The Foundation's equity position at December 31, 2011, its fiscal year end, was \$752,376. comprising the Reserve Account of \$711,434. and, after the transfer in 2011 of \$7,000. to the Law School Scholarships Trust Fund capital with standing Board approval, \$40,942. in undistributed revenue. The Foundation's equity position at December 31, 2010 was \$770,323. comprising the Reserve Account of \$711,434. and, after the transfer in 2010 of \$4,000. to the Law School Scholarships Trust Fund capital with standing Board approval, \$58,889. in undistributed revenue.

Allocation of \$14.78 M in Funds from 1980-2011



The Foundation maintains a separate Law School Scholarships Trust Fund, with \$300,000. in capital (increased by \$50,000. in both 2009 and 2008). The Law School Scholarships Selection Committee annually awards up to three entrance scholarships valued at \$5,000. each.

With respect to the Reserve Account of \$711,434., it is the policy of the Foundation to maintain:

- a) \$500,000. for grants stabilization in the event of revenue reduction;
- b) \$11,434. for legal education, research and law reform, which is the balance of funds remaining from funds returned to the Foundation upon the dissolution of the Law Reform Commission in this Province in 1992; and,
- c) \$200,000. for administration.

The Law Foundation established and administers the Law Foundation High School Legal Essay Competition for Level I, II and III students in the Province, the Law Foundation Legal Research Awards for Students of Memorial University and the Law Foundation Law School Entrance Scholarships for residents of the Province, tenable at any Canadian Law School. In 2011, they marked their 28th, 15th and 26th anniversaries, respectively.

In 2011, the Foundation's Executive Committee considered Section 69 of the *Act* and extensively reviewed the Law Society's Uniform Trust Account Rules and Forms. The Foundation recommended amendments to the Rules and Forms, which were adopted by the Law Society in order to clarify the general process surrounding trust account management and transmittal of interest to the Foundation.

The Foundation assumes that lawyers who receive or hold funds in trust for, or on account of, clients comply strictly with section 69 of the *Law Society Act*, 1999, and the *Rules of the Law Society*. This compliance requires that lawyers credited with interest earned on funds held in lawyers' mixed trust accounts (IOLTA) shall remit it to the Foundation. The lawyers' mixed trust accounts are not the property of, nor administered by, the Foundation. The Foundation is, therefore, unable to determine the amount of IOLTA until such time as it is received from each individual financial institution, upon the lawyers' filed instructions. IOLTA is recorded by the Foundation upon receipt of the funds.

IOLTA is calculated by financial institutions based on interest rates and terms negotiated by the Foundation with the individual financial institutions. When the Law Foundation was established in February, 1980, interest was paid by financial institutions on the minimum monthly balance in lawyers' trust accounts. Effective in 1987, the interest became paid on the average monthly credit balance. The rates may differ between financial institutions and within the same financial institution nationally. A number of financial institutions, as well, waive basic service charges. Certified cheque and draft charges are charged against the lawyer's general account.

IOLTA currently paid by financial institutions in the Province is generally calculated on monthly average prime minus an agreed upon percentage, historically 5%, then 4%, and, until recent years, 3% at a number of financial institutions, on the average monthly credit balance. In 2009, with the collapse in prime to 2.25%, the financial institutions, following negotiations with the Foundation, provided a floor rate of 0.25% or a revised calculation based on prime minus 2%. These rates remain in effect.

Annual composite prime (acp) in 2011 was 3.00%, an increase of .42% from 2.58% in 2010. Monthly composite prime (mcp) from Jan 1 - May 31, 2010 was 2.25% and increased from 2.49% at June 30 to 2.93% at September 30, and was 3.0% from October 1 to December 31, 2010, where it remained throughout 2011 and to date.

In 1989, the Board established the Grants Stabilization Fund for grant applicants in the event of revenue reduction with a transfer of \$500,000. from Undistributed Revenue, which was maintained at this ceiling through 2001.

In the previous low interest rate environment from 2002 to 2005 inclusive, with annual composite prime ranging from 4.00% to 4.69% and the best bank rate at prime minus 3% or a floor of 1%, the Board made annual grants that, with no undistributed revenue remaining throughout this period, utilized all of the Foundation's legislated one-third share of net revenue and significantly reduced the Grants Stabilization Fund each year. Annual composite prime increased to 5.76% in 2006, and in 2007 the \$500,000. ceiling in the Grants Stabilization Fund was restored.

In 2009, when prime was 2.25% and financial institutions provided a floor rate of 0.25% or a revised cal-

ulation based on prime minus 2%, the Board, while maintaining grants for 2009 at 2008 levels, gave core grant recipients notice of the potential of grant reductions for 2010 given the current low interest rate environment.

In 2010, while a number of banks waive basic service charges, IOLTA revenue to the Foundation was nominally higher than the service charges at the other financial institutions where approximately one-half of lawyers' trust funds are held. With an increase in prime from 2.25% to 3.0% in 2010, Law Foundation revenues slightly surpassed 2009 revenues. Further, Law Foundation revenues in 2010 were sufficient to cover Law Foundation operations and grants approved for 2010. The Grants Stabilization Fund and Administration Fund in the Reserve Account were maintained at their \$500,000. and \$200,000. respective ceilings at December 31, 2010.

At the Annual Meeting in 2010, the Board, cautiously foreseeing the current low interest rate environment continuing for the three year period 2010 through 2012 and, anticipating no net revenue at year end, allocated approximately \$166,000., an annual one-third reduction in the Grants Stabilization Fund, to grants other than the legislated two-thirds net revenue contribution to the Legal Aid Commission. With the 0.75% increase in prime to 3% for three months at the end of 2010, grants approved for 2010 reduced undistributed revenue by \$96,707. from \$155,596. to \$58,889.

While 2011, the second year in the three year period, has passed and the Grants Stabilization Fund and Administration Fund in the Reserve Account were maintained at their \$500,000. and \$200,000. respective ceilings at December 31, 2011, the current low interest rate environment continues. With prime remaining at 3% in 2011, grants approved for 2011 reduced undistributed revenue by \$10,947., from \$58,889. to \$40,942.

In 2012, the final year in the three year period, with an estimated, continued annual, one-third allocation of approximately \$166,000. to grants that may be approved for 2012, other than the legislated two-thirds net revenue contribution to the Legal Aid Commission, reductions may occur in undistributed revenue and in the Reserve Account. The amounts of the reductions, if any, will depend on whether, and when, prime

increases over 2012. However, increases in prime may also see financial institutions review their IOLTA rates.

Law Foundation of Newfoundland and Labrador Proposed Legal Aid Contribution Formula

The Board of Governors of the Law Foundation recognizes the need to increase the funds available to the Foundation to benefit existing core grantees and new worthy organizations and applicants. Governors feel it is time to now reallocate the Foundation's annual legislated two-thirds net revenue contribution to the Newfoundland and Labrador Legal Aid Commission and increase the funds available to the Foundation to benefit existing core grantees, and for prior and new applicants and worthy organizations to receive their fair share of Law Foundation revenue under the other five legislated objects of the Foundation. Specifically, Governors seek the implementation of the Board's proposed legal aid contribution formula by legislative amendment. The proposed formula is the same as New Brunswick's Legal Aid contribution agreement, stated as:

- \$150,000.00 per annum or 50% of available grant funds, whichever is the lesser.

Hon. Felix J. Collins, Minister of Justice met with Jeffrey P. Benson, Q.C., Chair and Officers of the Law Foundation on December 15, 2009. The Foundation's request for Government to reallocate the legislated contribution to the Commission and matters of common interest were discussed. Benson, Q.C., Chair in subsequent letters to Minister Collins advised that the Foundation looks forward to hearing from the Minister as to when the Foundation might expect a response on the legal aid contribution issue.

In the absence of a response from the Minister, at its Annual Meeting in May 2011, the Board of Governors agreed that Benson, Q.C., Chair will write again to Minister Collins and also to Hon. Thomas W. Marshall, Q.C., Minister of Finance, and request a meeting with both Ministers, at a time and place convenient to them both, and himself and the other Officers of the Law Foundation, Aubrey L. Bonnell, Q.C., Vice-Chair, and Acting Secretary-Treasurer and Lawrence E. Collins, Executive Director, as well as Dr. Wade Locke, Minister Collins' newly appointed Governor. Dr. Locke, not being a member or a bencher of the Law Society, represents the public's financial interest and viewpoint on

this issue, recognizing that both the interest revenue and the monies upon which this interest is derived are the property of the public, whose funds are being held in trust by lawyers in the private bar.

The Foundation, without specifying previously a recommended amount or percentage, is now making a specific request to the Ministers for Government to adopt this new legal aid contribution formula. In the other Atlantic Provinces, Nova Scotia has no legislated contribution to Legal Aid - it is purely voluntary, and the PEI *Legal Profession Act* provides no legislated percentage or amount, only that the Law Foundation shall use the Foundation fund for objects which include "the promotion of legal aid". Dr. Wade Locke has prepared a PowerPoint presentation for the meeting with the Ministers highlighting the key aspects of the formula and reasons for its adoption by Government.

Before sending his letter to the Ministers, Benson, Q.C. hosted a luncheon meeting on November 30, 2011 with Nicholas Avis, Q.C., Chair, Newfoundland and Labrador Legal Aid Commission, and informed him that under the proposed formula the Commission will remain a primary recipient of Law Foundation net revenue.

Avis, Q.C. formally thanked the Foundation for its annual contributions to Legal Aid and provided a list of program and administrative areas that were funded through Law Foundation contributions, and would not have been possible without same. The list is in the Newfoundland and Labrador Legal Aid Commission section at back of the Law Foundation's Annual Report 2011, and the funds for them basically came out of the funding that flowed to the Commission in the years 2006-2008.

The letter to the Ministers was sent in January, 2012 with correspondence from each of the Law Society of Newfoundland and Labrador and Public Legal Information Association of Newfoundland and Labrador, supporting adoption of the Foundation's proposed legal aid contribution formula.

The Supplementary Information document prepared by the Foundation to accompany the letter to the Ministers contained substantially all of the information pertaining to the legal aid contribution issue included in this Annual Report.

While Law Foundation revenue has fluctuated with changes in annual composite prime, the total amount

of funds held in lawyers' mixed trust accounts across the Province has steadily risen since the Law Foundation was established in 1980.

Financial Interest and Fairness

When Part IV of the *Law Society Act* was proclaimed on February 1, 1980, legal aid was not one of the five legislated objects for funding from Law Foundation revenue. Government by legislative amendment added legal aid as a sixth object to receive one-third of Law Foundation net revenue each calendar year effective January 1, 1983. Net revenues are defined as all interest earned, less office, salaries, professional fees and other administrative expenses.

Following discussions with the Foundation and in furtherance of the wish of Government to add the support of legal aid in the Province as one of the objects, the then Minister of Justice, by letter dated November 24, 1982, advised the Foundation, that this amendment "*would still leave two-thirds of the revenue to be ... (used) by the Foundation in accordance with its objects under the Law Society Act, while at the same time ensuring a continuing commitment to the Legal Aid Commission by the Foundation.*"

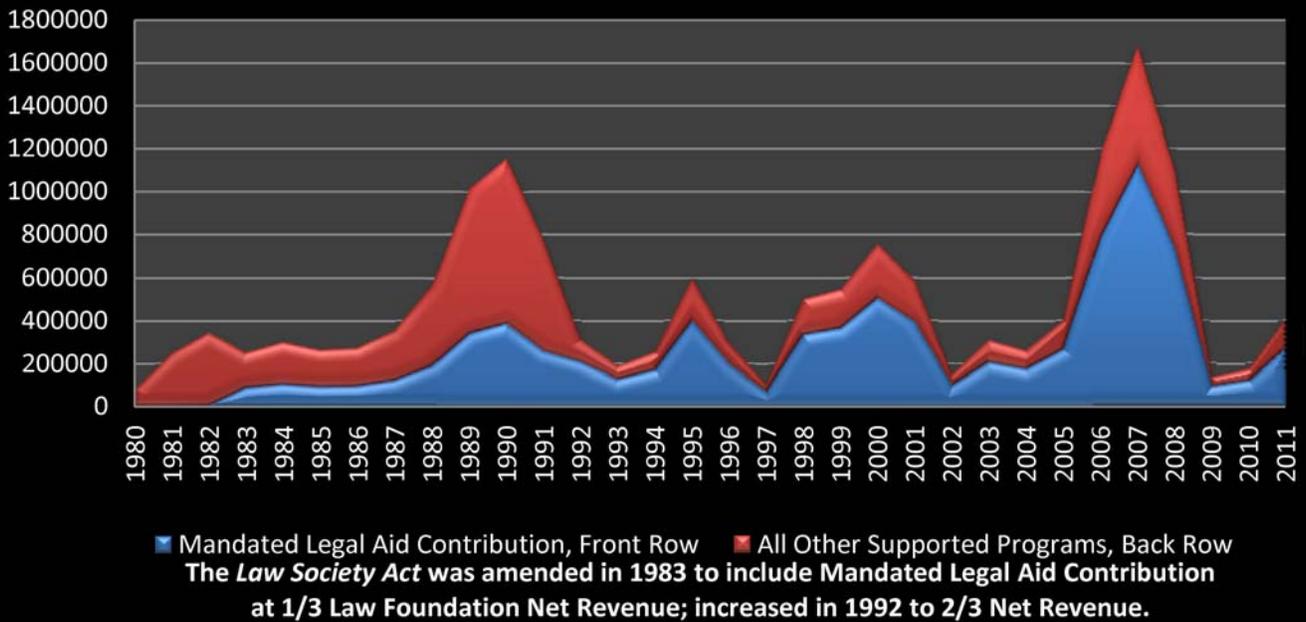
This legislative amendment in 1983 was made under circumstances where:

- the Minister of Justice first consulted with the Board of Governors of the Foundation;
- the Board recognized that this legislative change was being made in the interest of fairness to ensure that the Legal Aid Commission received an appropriate share of Foundation revenue; and, perhaps most importantly,
- the interest revenue by legislation is the property of the public, whose monies, upon which this interest is derived, are being held in trust by lawyers in the private bar.

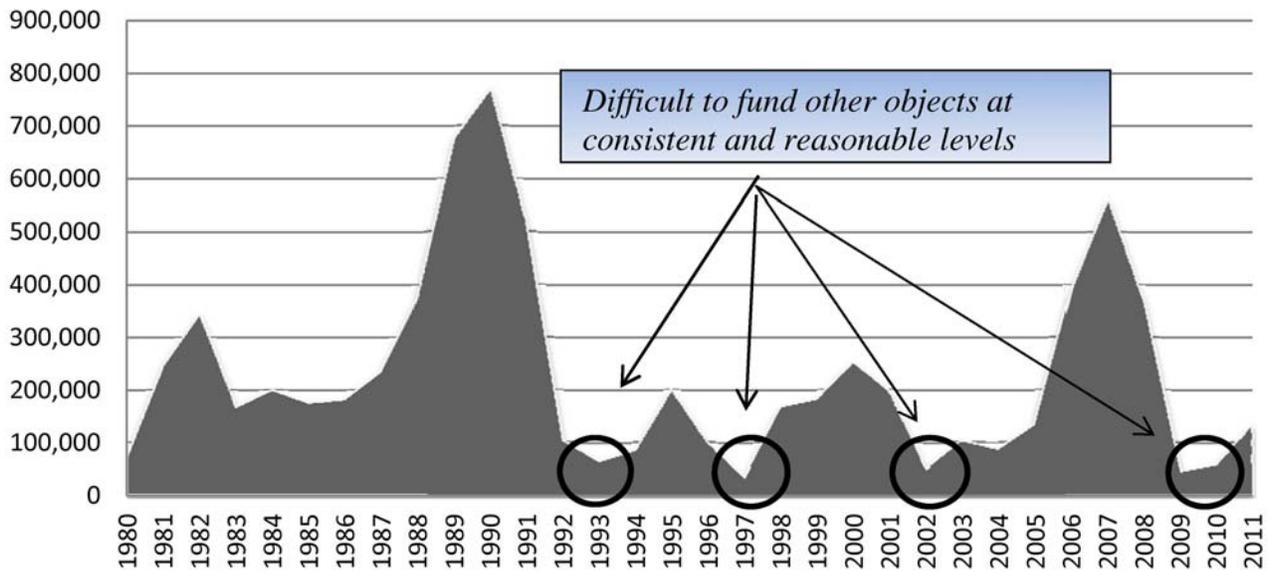
Effective January 1, 1992, Government by legislative amendment increased the Foundation's mandatory legal aid contribution from one-third to two-thirds net revenue.

Since 1992, Governors have been, and still are, concerned that, notwithstanding their approval at their Annual Meeting on March 11, 1991 of a one time grant to the Legal Aid Commission for \$250,000., as

Law Foundation NL - Mandated and Discretionary Allocations of Total Net Revenue



Funding for All Programs Supported by Law Foundation NL Other Than Mandated Legal Aid Contribution



Annual and total shares of Law Foundation net revenue from 1980 to 2011, inclusive, by Legal Aid Commission and Law Foundation

Year	Annual Composite Prime (ACP); Best Rate at Prime Minus X	Law Foundation Total Annual Net Revenue	Legal Aid Commission Net Revenue Contribution	Law Foundation Share of Net Revenue
			<i>2/3 Net Revenue*</i>	<i>1/3 Net Revenue*</i>
TOTAL		\$15,534,329.	\$8,518,202.	\$7,016,127.
2011	3.00%; 1.00% at p – 2	402,126.	268,084.	134,042.
2010	2.58%; 0.58% at p – 2	172,719.	115,146.	57,573.
2009	2.44%; 0.44% at p – 2	132,457.	88,305.	44,152.
2008	4.82%; 1.82% at p – 3	1,094,931.	729,954.	364,977.
2007	6.10%; 3.10% at p – 3	1,688,923.	1,125,949.	562,974.
2006	5.76%; 2.76% at p – 3	1,181,605.	787,737.	393,868.
2005	4.39%; 1.39% at p – 3	398,709.	265,806.	132,903.
2004	4.00%; 1.00% at p – 3	260,758.	173,839.	86,919.
2003	4.69%; 1.69% at p – 3	309,958.	206,639.	103,319.
2002	4.19%; 1.19% at p – 3	150,181.	100,121.	50,060.
2001	6.01%; 2.01% at p – 4	589,168.	392,779.	196,389.
2000	7.23%; 3.23% at p – 4	756,872.	504,582.	252,290.
1999	6.42%; 1.42% at p – 5	545,171.	363,448.	181,723.
1998	6.65%; 1.65% at p – 5	500,372.	333,582.	166,790.
1997	4.92%; 1.00% floor	103,439.	68,960.	34,479.
1996	6.18%; 1.18% at p – 5	294,018.	196,013.	98,005.
1995	8.63%; 3.63% at p – 5	598,428.	398,953.	199,475.
1994	6.76%; 1.76% at p – 5	254,054.	169,370.	84,684.
1993	5.99%; 0.99% at p – 5	190,056.	126,705.	63,351.
1992	7.44%; 2.44% at p – 5	309,881.	206,588.	103,293.
*Effective January 1, 1992 Government by legislative amendment increased the Legal Aid contribution to two-thirds Law Foundation net revenue.				
1992-2011 Legal Aid Commission 2/3 Subtotal:			\$6,622,560.	
In addition to the \$250,000. depletion of the Law Foundation's share of net revenue in 1991 by the one time grant requested by Government, since the increase of the Legal Aid Commission contribution by Government to 2/3 in 1992 the Law Foundation's loss of 1/3 share of net revenues from 1992 to 2011, inclusive, amounts to \$3,311,279.50, which would have been available for the other objects of the Foundation.				
Legal Aid, one time grant in 1991:			\$250,000.	(250,000.)
			<i>1/3 Net Revenue*</i>	<i>2/3 Net Revenue*</i>
1991	9.75%; 4.75% at p - 5	\$770,366.	\$256,790.	\$513,576.
1990	14.07%; 9.07% at p – 5	1,155,774.	385,258.	770,516.
1989	13.27%; 8.27% at p – 5	1,014,600.	338,200.	676,400.
1988	10.29%; 5.29% at p – 5	559,601.	186,535.	373,066.
1987	9.54%; 4.54% at p – 5	351,593.	117,199.	234,394.
Interest paid by financial institutions became based on average monthly balance in lawyers' trust accounts effective in 1987.				
1986	10.56%; 5.56% at p – 5	272,234.	90,746.	181,488.
1985	10.60%; 5.60% at p - 5	262,856.	87,620.	175,236.
1984	12.13%; 7.13% at p – 5	299,489.	99,831.	199,658.
1983	11.14%; 6.14% at p – 5	250,389.	83,463.	166,926.
*Effective January 1, 1983 Government by legislative amendment added Legal Aid as an object to receive one-third Law Foundation net revenue.				
1982		344,223.	-	344,223.
1981		246,276.	-	246,276.
1980		73,102.	-	73,102.
Interest paid by financial institutions on the minimum monthly balance in lawyers' trust accounts.				
When Part IV, Law Foundation of the <i>Law Society Act</i> was proclaimed on February 1, 1980, Legal Aid Commission was not one the then five legislated objects for funding from Foundation revenue.				

was then requested by the Minister, and the Board's expressed concern to the Minister that future accumulations should be directed to meeting the needs of what was then an expanding base of over fifty prior grantees and new applicants under the other five statutory objects of the Foundation, the Board was neither alerted to nor consulted before Government shortly thereafter increased the legislated contribution to two-thirds.

To fully understand the historical context for the implementation in 1983 of the initial one-third contribution to the Legal Aid Commission and for the \$250,000. one-time contribution in 1991, the then-prevailing Legal Aid Tariff for lawyers in the private bar handling legal aid cases must be kept in mind.

The Foundation's contribution to legal aid was introduced in 1983 to assist funding the Legal Aid Tariff for private bar lawyers. While a one-third contribution and a further one-time grant resulting from extraordinary circumstances may have been a fair and proportionate allocation of resources, the increase to two-thirds of Foundation revenue for the benefit of legal aid clients who have no monies in trust, raises the question of fairness and proportionality. It is the opinion of the Board of Governors that the current structure is unfair and disproportionate.

This legislative amendment in 1992 was made under circumstances where:

- the then Minister of Justice did not consult with the Board of Governors of the Foundation;
- the Board did not then, and still now does not, recognize that this legislative change was being made in the interest of fairness; and,
- the Board has long concluded that clients receiving legal services from lawyers on staff with the Legal Aid Commission, at little or no charge and without maintaining funds in trust, have disproportionately benefited from Foundation net revenue, and that the financial interest of clients of lawyers in the private bar has not been maintained. The latter pay their lawyers for their own legal services and should be entitled to more of the benefits of Foundation net revenue since the monies upon which all Foundation interest revenue is derived are the property of these clients.

The Foundation's two-thirds contribution to the Legal Aid Commission for calendar year 2011 was

\$268,084., compared to \$115,146. for calendar year 2010. Historically, the highest and lowest two-thirds contributions were \$1,125,949. and \$68,960. for calendar years 2007 and 1997 respectively.

Notwithstanding that legal aid recipients contribute little to Foundation revenue, Governors have always been and remain supportive of funding their legal services. However, it is fair to state that no one envisioned, when the increase to two-thirds of net annual Foundation revenues was made in 1992, the enormous size of the Foundation's annual contribution to the Legal Aid Commission over the past several years.

By way of example, by 2007 the Legal Aid Commission's two-thirds share amounted to \$1,125,949. This meant that the other five statutory objects of the Foundation lost \$562,974. in potential grant funding they would have had access to had Government not increased the contribution to two-thirds in 1992.

The Foundation's \$115,146. two-thirds contribution to the Legal Aid Commission for calendar year 2010 has a relatively small impact on the legal aid budget but a significant impact for other stakeholders. Based on its 2010-11 Annual Activity report, NL Legal Aid Commission had a budget of nearly \$14.3 M. The Law Foundation's contribution was 0.8% of that budget. A contribution based upon the proposed revised funding formula would constitute about 0.4% of the Legal Aid Commission's budget based on the most recent year estimates.

While over fifty recipients have received one or more grants since the Foundation was established in 1980, other than a small number of core grantees, few from what was then an expanding base of grantees have applied since 1992. The Foundation has been curtailed in seeking further and new applications from worthy individuals and organizations primarily due to the significant decline in its available funds having lost one-third of its net revenue when Government increased the contribution to the Legal Aid Commission from one-third to two-thirds.

In calendar year 2011 and 2010, the \$134,042. and \$57,573. respective one-third shares of net revenue remaining with the Foundation were required to cover \$144,988. and \$150,279. approved in grants for 2011 and 2010 respectively for all of its five remain-

ing statutory objects. Further, these grants for 2011 and 2010 had some core grant reductions of up to 50% from the 2009 grants.

In addition to the \$250,000. depletion of Foundation's share of net revenue in 1991 by the one time grant requested by Government, since the increase of the Legal Aid Commission mandatory contribution to two-thirds in 1992, the loss to the public of the additional one-third share of the net revenues from 1992 to 2011 inclusive - amounting to \$3,311,279. in total that would otherwise have been available for the other five statutory objects of the Foundation - is monumental, the unfairness of which is compounded by the fact the clients of legal aid lawyers have no financial interest in the funds from which this aid was derived.

The additional one-third mandated contribution to Legal Aid has constrained the ability of the Foundation to meet its other funding objects. In 2009 and 2010 funding on other objects has fallen to 9% of the 2007 level and to 6.6% of the 1990 level. Support for other funding objects is highly variable and unreliable at sustainable levels.

This is neither fair to the vast majority of the general public, who do not qualify for legal aid and who have lost access to the benefits of programs available for funding under one or more of the other five statutory

objects, nor consequently is it protective of the financial interest of clients of lawyers in the private bar, where the interest on their trust accounts is paying for services provided to clients of the Legal Aid Commission who have no similar financial interest.

Over these past twenty years, the access to financial aid this additional one-third net revenue would have brought for applicants whose constituencies represent clients whose funds are being held in trust by lawyers in the private bar has been unfairly compromised, and will continue to be until Government reviews and implements the Foundation's proposed legal aid contribution formula.

The Foundation's request to meet with the Ministers is for the purpose of discussing the great need to reallocate and increase the funds available to the Foundation for core grantees, prior and new applicants and worthy organizations, to maintain the adequacy of law library resources and the provision of access to legal information, education and scholarships to the remaining members of the public who do not qualify for legal aid. It is entirely from interest earned upon deposits made by members of the public into lawyers' trust accounts that Foundation revenue is derived. Governors feel applicants representing the full spectrum of public interest are not at present receiving their fair share of revenue given the legislated objects of the Foundation.

Access to Justice Fund, Law Foundation of Ontario

The Access to Justice Fund (ATJ) was established as a result of the July 9, 2009 Order of Hon. Justice Maurice Cullity, Superior Court of Justice in Ontario in the class action case *Cassano v. TD Bank* - Cy pres award to Law Foundation of Ontario (LFO).

The case involved what were alleged to be undisclosed and unauthorized charges for foreign-currency transactions on credit cards. The defendant denied wrongdoing, and a mediated settlement was eventually reached. The settlement funds that could not be distributed to individual plaintiffs were split with half being used to establish the ATJ Fund, while half went to a non-profit proposed by the bank.

This class action had a substantial residue of settlement funds because the case involved several million credit card holders and transactions stretching over many years. Courts are authorized to put the money to a use that indirectly benefits the 'class members' where one is not able to identify and quantify the damages of all individual 'class members'. At the settlement hearing, the judge decided LFO will receive a portion of the cy pres funds.

The Order provided that:

- \$14.2M (50% of the cy pres funds) goes to the LFO to create the ATJ Fund. Trustees may use capital and income at their discretion to make grants for the purpose of public access to justice across Canada.
- Trustees may obtain guidance from the geographical distribution of 'class members' in deciding the allocation of grants. Province %: ON 54%; QC 11.4%; NS 2.1%; NB 1.6%; NL 0.8%; PE 0.4%; BC 13.2%; AB 10.9%; SK 2.2%; and MB 3.4%; total 100%.
- These funds are not to be paid to Legal Aid Ontario (LAO).
- LFO is to include in its Annual Report a statement of income and expenses including disbursements for the ATJ Fund.

The court-approved settlement is the first time a cy pres award has been given to LFO. There is a possibility of more cy pres awards in other cases being directed to LFO. Like its counterparts in other jurisdictions in Canada, the LFO is a long-established organization with extensive grant-management expertise. LFO trustees established a permanent ATJ Fund to accept them.

The ATJ Fund was launched on May 31, 2010 through a media release distributed nationally through Canada Newswire, the Globe & Mail, Maclean magazine and CharityVillage.ca. Trustees make grants that benefit people across Canada and improve access to justice nationally, with a focus on five specific themes:

- Linguistic and rural access to justice
- Aboriginal access to justice
- Self help
- Family violence
- Consumer rights.

Benson, Q.C., Chair in his interview published in the June 1, 2010 edition of The Telegram advised that Law Foundation NL would be consulted on applications by LFO and Newfoundland and Labrador may receive a little more than \$100,000., based on geographical distribution of 'class members'.

The ATJ Fund opened for applications, with February 28, 2011 the final deadline for letters of intent to be submitted for law-related projects from non-profit organizations across Canada.

While other organizations could have applied and received equal consideration for projects, LFO, following consultation, was advised by Law Foundation NL that it supports applications proposed by the Public Legal Information Association of Newfoundland and Labrador (PLIAN).

PLIAN applied for funding to create Self-help Kits for Uncontested Divorce, and Executors, for self-represented litigants going through uncontested divorces, and for executors, which primarily address the themes of 'self-help' and 'rural access to justice'. A grant for \$84,178. was approved by the ATJ Fund trustees.

Decisions on PLIAN's other applications focusing on 'aboriginal access to justice' and 'family violence' are pending.

LAW SCHOOL SCHOLARSHIPS

Reginald H. Brown, Q.C., Memorial Scholarship

The Law Foundation of Newfoundland and Labrador in 2009 contributed \$20,000. to the Memorial Scholarship Fund.

The Reginald H. Brown, Q.C., Memorial Scholarship was established at Memorial University of Newfoundland in memory of Reginald H. Brown, K.St.J., Q.C., through lead donations by his widow, Pamela J. Brown, and his colleagues at his law firm, *Cox & Palmer*. Mr. Brown was managing partner of this Atlantic Canadian law firm, established only two weeks before his death in early 2007. He served as President of the Law Society in 1995. Donations came from members of the legal community and others, to recognize his many contributions to the legal profession, his family and the community generally. The Scholarship is awarded at Spring Convocation to a student graduating from any area of study and accepted at a law school. Selection is made on the basis of academic excellence and demonstrated leadership qualities. The Scholarship is awarded annually by the Senate Committee on Undergraduate Scholarships, Bursaries and Awards.

Recipients:

2011	Katie R. Phillips
2010	Daniel William Bennett
2009	Melissa Ann Royle
2008	Morgan Blakeley

The Hon. John C. Crosbie Weldon Tradition Scholarship in Law, Schulich School of Law, Dalhousie University

In 2009 the Board of Governors of the Law Foundation of Newfoundland and Labrador contributed \$50,000. to the Newfoundland and Labrador Scholarship in Law Fund.

The Newfoundland and Labrador Scholarship in Law was established on the occasion of the 125th Anniversary of Dalhousie Law School in 2008 in recognition of its strong relationship with this Province. This one-time contribution to this scholarship endowment fund, created by donations from Dalhousie Law alumni and others, will provide one or more renewable scholarships, which in time will be in the amount of \$10,000.00 or greater as further donations are made, to students from Newfoundland and Labrador who have demonstrated academic excellence. In early 2012, the Scholarship was renamed *The Hon. John C. Crosbie Weldon Tradition Scholarship in Law* and a demonstration of 'selfless public service' was added to the criteria.

Recipients:

2011/2012	Leah Burt, St. John's	\$4,500.
2010/2011	Maria Constantine, St. John's	\$3,000.

THE LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

CENTENNIAL LAW SCHOOL SCHOLARSHIPS

In honour of the 100th Anniversary of the Faculty of Law, University of New Brunswick in 1992, the Law Foundation of Newfoundland and Labrador provided a \$50,000. grant to the Heritage Campaign establishing a Scholarships Fund to award two scholarships, valued at \$1,750. each, for students enrolled in the Faculty of Law who are residents of the Province of Newfoundland and Labrador.

One scholarship is awarded to an upper year student based on a combination of financial need and demonstrated academic ability in the LLB program.

Sandra Cahill of Renew's, a second year law student, received the award in the second semester 2010/2011.

The other scholarship is awarded on the basis of academic excellence to a student entering first year.

Carolyn Mouland of Deer Lake received the award in the first semester 2011/2012.

The scholarships are awarded annually by the Admissions and Scholarships Committee of the Faculty of Law. The Law Foundation of Newfoundland and Labrador is advised when the awards have been made.

In 1986, the Law Foundation of Newfoundland and Labrador provided a \$50,000. grant to Dalhousie University, as part of the Campaign for Dalhousie, following the August 16, 1985 fire, for the reestablishment of the Dalhousie law library.

THE LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

2011/2012 LAW SCHOOL ENTRANCE SCHOLARSHIPS



Pictured at 2011/2012 Law Foundation of Newfoundland and Labrador Law School Entrance Scholarships presentation in St. John's are:

(l to r, standing) Jeffrey P. Benson, Q.C., Chair, Law Foundation, Linda M. Rose, Q.C., Governor, Law Foundation and member, Scholarships Selection Committee, and Dr. Barbara G. Barrowman, LL.B., member of Selection Committee;

(l to r, seated) Stephen G. Aylward and Jessica C. Walsh.

The Law Foundation of Newfoundland and Labrador established funding for annual Law School Entrance Scholarships in 1984, in honour of the incorporation of the Law Society in 1834. The Scholarships, valued at \$5,000. each, are awarded to residents of the Province of Newfoundland and Labrador on the basis of academic excellence and are tenable for first year studies at any Canadian Law School. The Scholarships Trust Fund is separate from and in addition to the above stated equity position of the Foundation.

The Board of Governors is advised by the Law School Scholarships Selection Committee when the awards have been made. The successful candidates for 2011/2012 and law schools they are attending are Stephen G. Aylward, Mount Pearl, University of Toronto, Faculty of Law, Katie R. Phillips, Markland, Schulich School of Law, Dalhousie University, and Jessica C. Walsh, St. John's, McGill University, Faculty of Law.

In May 2009, Governors increased the Scholarships Fund capital from \$250,000. to \$300,000. The Board reinstated the awarding of up to three, increased from two, \$5,000. entrance scholarships, provided from investment income. Pursuant to standing Board approval, there is an annual transfer from Law Foundation general revenues towards funding any investment income shortfall on the Scholarships Fund capital, should one occur. A transfer of \$7,000. was made in 2011.

The 2011/2012 Competition Selection Committee comprised Linda M. Rose, Q.C., Governor, Committee Chair, M. Beverley L. Marks, Q.C., Governor, and Dr. Barbara G. Barrowman, LL.B.

THE LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

LEGAL RESEARCH AWARDS FOR STUDENTS OF MEMORIAL UNIVERSITY 2010/2011 Awards



Pictured at luncheon presentation on February 15, 2012, at R. Gushue Hall, Memorial University of the 2010/2011 Fifteenth Annual Legal Research Awards are, *standing (l-r)*: Christopher P. Curran, Q.C., Chair, Selection Committee, Jeffrey P. Benson, Q.C., Chair, Law Foundation, Dr. David Wardlaw, Provost and Vice-President (Academic) and Pro Vice-Chancellor, Memorial University, Robert E. Simmonds, Q.C., Chair, Board of Regents, The Hon. J. Derek Green, Chief Justice of Newfoundland and Labrador, The Hon. David B. Orsborn, Chief Justice, Supreme Court of Newfoundland and Labrador, Trial Division, The Hon. D. Mark Pike, Chief Judge, Provincial Court of Newfoundland and Labrador, and Robert P. Johnston, Chief of Police, Royal Newfoundland Constabulary; *seated (l-r)*: Dr. John A. Scott, member, Selection Committee, Laurie Jones, Catherine Quinlan and Kirk Luther, Awards recipients, and Justin S.C. Mellor, LL.M., member, Selection Committee.

The Law Foundation of Newfoundland and Labrador annually offers Legal Research Awards valued at \$500. each to students at Memorial University. The Awards are for outstanding research papers on one or more legal issues, or topics treated in a legal context.

The papers, submitted by and with endorsement of course professor or lecturer, are judged initially by the Dean, Director, or Department Head who makes a recommendation to the Selection Committee for the Awards. The Selection Committee comprises appointees of Memorial University and the Law Foundation. In the case of undergraduates the Awards are made by the Senate Committee on Undergraduate

Scholarships, Bursaries and Awards. In the case of graduates the Awards are made by the Dean, School of Graduate Studies. In both cases they act upon the recommendation of the Selection Committee. An additional \$500. is provided annually by the Law Foundation to Queen Elizabeth II Library for the purchase of research materials and resources. Awards total \$4,000. annually.

The successful candidates in the fifteenth annual 2010/2011 Competition, covering the three semesters Spring/Summer and Fall, 2010, and Winter, 2011, are (*in alphabetical order by Department*):

School of Graduate Studies Paper

Laurie Jones

Faculty of Business Administration

Title: *Criminal Convictions, Offender Employability, and the Newfoundland and Labrador Human Rights Act, 2010: Implications for Labour Arbitration and Judicial Interpretation*

Course: Business 9013

Lecturer: Lionel G. Clarke, LL.B.

Undergraduate Papers

Natalie Gilliard

Faculty of Arts

Title: *Re-Conceptualizing Liberty: The Case for Reasonable Limits on Hate Speech and Pornography*

Course: Political Science 3820

Lecturer: Francis P. O'Brien, LL.M.

Harrison Luke McCain

Faculty of Arts

Title: *Terrorism, War, and International Criminal Law*

Course: Political Science 3210

Lecturer: Francis P. O'Brien, LL.M.

Katie Phillips

Faculty of Arts

Title: *Recognizing Rights, Not Race: Racial Profiling and the Charter*

Course: Law and Society 4000

Lecturer: Dr. John Hoben

Catherine Quinlan

Faculty of Arts

Title: *Children at War: Mechanisms for Protection Cause More Harm Than Good*

Course: Political Science 3210

Lecturer: Francis P. O'Brien, LL.M.

Rosemary Thorne

Faculty of Arts

Title: *Identity Crime in Canada: Unique Challenges*

Course: Law and Society 3400

Lecturer: Dr. Albert Jones

Kirk Luther

Faculty of Science

Title: *Violent Crime Linkage Analysis System: A Test of Inter-Rater Reliability*

Course: Psychology 499A and 499B

Lecturer: Dr. Brent Snook

The Law Foundation reserves the right to publish all or any of the research papers, whether selected for Awards or not.

The Selection Committee decided that Award winning student Catherine Quinlan's following second paper, while not receiving an Award, merited publication.

Title: *The Canadian Charter of Rights and Freedoms: Playing "Second Fiddle" to Canada's Media in Regulating Expression?*

Student: Catherine Quinlan

Course: Political Science 3820

Lecturer: Francis P. O'Brien, LL.M.

The Law Foundation of Newfoundland and Labrador Legal Research Award for the particular course appears on the student's official University transcript.

The annual volumes and 1997/2001 Consolidated Volume have been sent to the Reference Section of Canadian University Faculties of Law, the National Library of Canada, Ottawa, Law Libraries of Supreme and Provincial Courts, Department of Justice, Memorial University, Grenfell Campus, Queen Elizabeth II Library, the Centre for Newfoundland and Labrador Studies and Departmental Libraries, the Law Society of Newfoundland and Labrador and public libraries in the province.

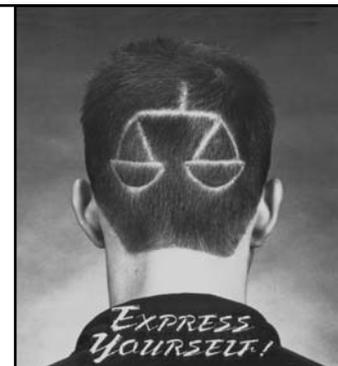
The 2010/2011 Competition Selection Committee comprised Christopher P. Curran, Q.C., Chair, appointee of Law Foundation, John A. Scott, Ph.D., Professor, Department of Philosophy, and Justin S.C. Mellor, LL.M., appointees of Memorial University.

2010/2011 HIGH SCHOOL LEGAL ESSAY COMPETITION

ANNOUNCEMENT OF WINNERS

The Law Foundation of Newfoundland and Labrador in 1984 established a High School Legal Essay Competition for legal research writing on aspects of the law, in honour of the incorporation of the Law Society in 1834.

The winners in the 2010 / 2011 Twenty-Eighth Annual Competition are:



**Provincial Level III Winner:
Catherine Hutchens**

Zachary Turner: Falling Between the Cracks - How the Criminal Code and the Child, Youth and Family Services Act Failed to Save His Life
Booth Memorial High School, St. John's

Ms. Hutchens also receives a "bonus prize" of \$500. awarded for the best legal essay by a Level III student tenable against tuition at Memorial University.

**Provincial Level III Hon. Mention:
Lauren Henley**

The Benefits of the Youth Criminal Justice Act in Canada
Stephenville High School, Stephenville

**Provincial Level II Winner:
Hillary Simms**

Rights Silenced: The Closing of the Provincial School for the Deaf
St. Bonaventure's College, St. John's

**Provincial Level II Hon. Mention:
Marcus Clarke**

Double Jeopardy
Belanger Memorial School, Upper Ferry

**Provincial Level I Winner:
Daniel Rees**

Balancing Our Country's Security and Our Own Privacy
Holy Spirit High School, Manuels, Conception Bay South

**Provincial Level I Hon. Mention:
Johanna MacAulay**

Rights of the Child Sex Offender
Corner Brook Regional High School, Corner Brook

Awards: Student Provincial Winners \$500; Student Provincial Hon. Mentions \$250; one "bonus prize" of \$500. The three Provincial Winner students' schools each receive cash prizes of \$250 for legal materials and resources for the school libraries. Total prizes awarded to students \$2,750. Total prizes awarded to schools \$750. Total prizes awarded: \$3,500.

D. Gordon Woodland, B.A., B.Ed., LL.B., Chair, Crystal L. Eagan, B.A.(Ed.), CRRS, Hon. John C. Ottenheimer, M.Ed., Q.C., and Hon. George J. Furey, M.Ed., Q.C. are the members of the Law Foundation Selection Committee.

Catherine Hutchens, Provincial Level III Winner, commenced university studies in September, 2011, and, as

the recipient of the "bonus prize" of \$500. awarded for the best legal essay by a Level III student tenable against tuition at Memorial University, was invited to the Luncheon on February 15, 2012 for the 2010/2011 Legal Research Awards recipients at R. Gushue Hall, Memorial University.

THE LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

In 2011, the Foundation approved the following deferred grants, totaling \$7,500., which apply to 2012:

29 th Annual Law Foundation High School Legal Essay Competition, 2011/2012	\$ 3,500.
16 th Annual Law Foundation Legal Research Awards Competition for Students of Memorial University, 2011/2012	4,000.

The Foundation approved the following 2011 grants, totalling \$418,072.:

Canadian Bar Association, Newfoundland and Labrador, Law Day, April, 2011	1,488.
Law Society of Newfoundland and Labrador Law Libraries, with distribution for maintenance of holdings, including electronic licenses:	76,000.
St. John's,	\$60,000.
Gander,	\$5,000.
and West Coast,	\$11,000.

The Board, in addition to book acquisitions, supports electronic licenses, which provide wider public access to legal information.

Since the establishment of the Law Foundation in 1980, Law Library, St. John's has received annual funding totalling \$2,798,594. for acquisition of books and electronic services. Similarly, since the establishment of the Law Libraries in Corner Brook and Gander, in 1983 and 1994, the Law Foundation has provided annual funding totalling \$512,939. and \$136,200., respectively.

In 1992, when the Law Library vacated the Court House in St. John's, the Board of Governors provided the Law Society with \$100,000. in the Reserve Account for the establishment of the Law Library at its then location in Atlantic Place.

Law Library Website Enhancement 5,000.

The Law Society Library maintains and provides legal information to members of the Law Society, judiciary and the general public.

In 2008, the Law Foundation provided an initial grant for \$5,000. to the Law Society which enabled the Law Library to create its website. Gail Hogan, MLIS, Law Librarian advised that since the website's launch in June 2009 "there has been a marked increase in questions from the general public."

In 2011, the Law Society Law Library commenced a website enhancement project with this second grant for \$5,000. from the Law Foundation. The enhancement will improve the value of the existing Library catalogue by providing users with greater access to legal information through:

- Superior search engine, which enables users to perform Google-like searches using syntax which is automatically ANDed and stemmed;
- Embedded links, which provides direct access to relevant websites or PDF's. This allows users to link directly to websites, e.g. Provincial Court, Supreme Court, City of St. John's By Laws etc., to obtain any rules or regulations they require. PDF's enable the Library to put links to full text reports such as Judgment Interest Rates, unreported judgments etc.;
- RSS Feeds to the catalogue, which allows Library staff to provide lists of books, articles and websites on topics such as Family Law, Criminal Law, Wills and Estates. These topics would be instantly updated as new entries are made to the catalogue and the user would be automatically notified.

THE LAW FOUNDATION OF NEWFOUNDLAND AND LABRADOR

The enhanced web-based library catalogue will facilitate searching for the public and provide desk top access to online content.

Canadian Legal Information Institute (CanLII) \$ 15,000.

CanLII is a not-for-profit organization created by the Federation of Law Societies of Canada. CanLII's objective is to provide, by means of electronic access through the Internet, free access to primary legal materials for members of the legal profession and the public.

The grant, with conditions that were subsequently met, is the third approved for a further \$15,000. in funding, bringing the total to \$45,000. to date, to continue adding historical decisions and provide extended and comprehensive coverage from Newfoundland and Labrador Courts on the CanLII site.

The Board recognizes the importance of funding this online legal resource for the purposes of research and maintaining an accessible historical archive of court decisions. The CanLII site eliminates barriers related to location and supports public access to justice. The funding, which commenced in 2009 for this project, helps to ensure that Newfoundland and Labrador keeps pace with other jurisdictions in the accelerating global shift towards electronic access to legal information.

Legal Aid Commission:

two-thirds calendar year 2011 net revenues contribution 268,084.
(Refer to Newfoundland and Labrador Legal Aid Commission section at back of the Law Foundation's Annual Report 2011.)

Public Legal Information Association, Newfoundland and Labrador (PLIAN)

Fiscal year April 1, 2011 - March 31, 2012 45,000.

This core funding, recorded under the object of legal education and legal research, also in part maintains the infrastructure for the Association's operation of the Lawyer Referral Service.

The Service was established and administered by the Law Society with annual funding totalling \$46,569. from 1986 to 1994 from the Law Foundation. In 1995 responsibility for the Service passed from the Law Society to the Association.

Since its establishment in the Province in 1984, the Association has received annual funding totalling \$924,000. to date from the Law Foundation.

28th Annual Law Foundation High School Legal Essay Competition, 2010/2011 3,500.

15th Annual Law Foundation Legal Research Awards Competition for Students of Memorial University, 2010/2011 1,000.

This grant increased the number of Awards valued at \$500. each for undergraduate students and graduate students in School of Graduate Studies from 5 to 7. Queen Elizabeth II Library continues to receive \$500. annually for the purchase of research materials and resources. Total Awards \$4,000.

15th Annual Law Foundation Legal Research Awards Competition for Students of Memorial University, 2010/2011 \$ 3,000.

In addition to grants approved, the Board of Governors made \$20,000. available in 2011 for prior grantees and new applicants. No applications were received at December 31, 2011.

Law Libraries

In 2010, grant reductions to law libraries for the maintenance of library holdings, including electronic licences, were made by the Foundation, which saw overall library grants reduced from \$153,000. to \$76,000. This amount was allocated \$60,000. for the St. John's Law Library, \$11,000. for the West Coast Law Library, and \$5,000. for the Gander Law Library.

For 2011, the Foundation was again forced to maintain grant funding reductions available to law libraries at \$76,000. for a second consecutive year, with an additional \$5,000. in project funding for the St. John's library's on-going website enhancements. This funding to the libraries and website represents 54% of the total \$149,988. approved in grants for 2011, other than the legislated contribution to legal aid.

The primary goals of the Law Society's Library in St. John's are to provide an excellent collection of legal texts, journals and electronic resources for the use of its members and to deliver high quality reference services to members of the legal community (judges, lawyers and law students), public and libraries throughout the Province.

Since the proclamation of the *Law Society Act* on February 1, 1980, the Law Foundation has provided \$2,798,594. in funding to the Law Society for Law Library, St. John's for electronic licences, website and enhancement, and book acquisitions. Since 1992, with its net revenue reduced to one-third, the Foundation has had to deny \$1,786,642. in funding to the Law Society for electronic licences and book acquisitions for Law Library, St. John's.

The Law Society's applications for Law Library, St. John's for 2010 and 2011 sought \$240,000. (comprising \$190,000. book acquisitions, \$50,000. electronic licences) and \$260,000. (comprising \$200,000. book acquisitions, \$60,000. electronic licences) respectively. While the Law Foundation's grants for 2008 and 2009 were \$121,000. each year, the grants for 2010 and 2011, due to the 50% reduction, amounted to \$60,000. each year. The Law Society adds a further sum of over \$400,000. annually (before the 50% Foundation grant reduction) for acquisitions and related operational expenses, including library salaries and building costs.

The West Coast Law Library serves as the focal point of legal research and information for the practicing Bar and Judiciary on the West Coast of the Province. This facility has been jointly funded by the Law Society of Newfoundland and Labrador (via a grant from the Foundation) and the Provincial Department of Justice since its inception in 1983. Since then, the Foundation has provided \$512,939. in funding for book acquisitions.

The Law Society sought \$30,000. from the Foundation as the Society's contribution, with the Department of Justice contributing \$40,000., towards the West Coast library's 2010 and 2011 annual \$70,000. budget item for book acquisitions. While the Foundation's grants for 2008 and 2009 were \$22,000. each year, the grants for 2010 and 2011, due to the 50% reduction, amounted to \$11,000. each year.

Since the establishment of the jointly funded Gander Law Library in 1994, the Foundation has provided \$136,200. in funding for book acquisitions. While the budget is less for the Gander Library, the financial impact of the 50% reduction in grants for 2010 and 2011, from \$10,000. to \$5,000. each year, is the same.

The West Coast Regional Law Library Committee, a committee established by members of the Law Society in Western Newfoundland for the purposes of bringing together practitioners resident in Western Newfoundland for the purpose of pooling their library resources within a library supported both in principle and financially by the Law Society (via the Foundation) and Government, stated in the Committee's application to the Foundation in 1982: "the existence of a proper Law Library is essential to the administration of Justice."

Accepting this premise, and with the Foundation's loss of access to sufficient revenue for grants for the establishment, operation and maintenance of law libraries, there has been an inordinate financial burden placed upon

members of the Law Society to support the Law Libraries across the Province.

Augustine F. Bruce, President, Law Society and Fred Kavanagh, President and Board Chair, PLIAN sent letters to Ministers Collins and Marshall in support of the Law Foundation's proposed legal aid contribution formula.

PLIAN

The Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization which relies on volunteers, core funding from the Law Foundation and the Federal Department of Justice, and in-kind support from the Provincial Government.

PLIAN provides public legal education and information services with the intent of increasing access to justice, and is the Newfoundland and Labrador component of Public Legal Education Association of Canada (PLEAC).

It is dedicated to assisting Newfoundlanders and Labradorians in understanding the law, enhancing the accessibility of the legal system, as well as informing and engaging the public and legal community with respect to the law and legal system. Its primary goals include the dissemination of public legal information throughout Newfoundland and Labrador and the strengthening of public confidence and trust in the legal system. PLIAN successfully provides public legal education and information to many hard-to-reach rural areas.

The Provincial Department of Justice has designated PLIAN as the sole PLEI provider for Newfoundland and Labrador until the year 2012. PLIAN has received project funding from the both Federal and Provincial Governments, as well as other funding sources such as the RCMP Foundation and the Ontario Law Foundation. These projects have enabled PLIAN to carry out its mandate of educating the public on legal issues, as well as enabling it to establish and offer regular programs. However, it is through core funding provided by the Foundation that PLIAN is able to assist an umbrella group of service providers from which the public directly benefits.

The Foundation's annual contribution has allowed PLIAN to continue to provide core operations to the people of Newfoundland and Labrador. The Foundation's contribution is vital to its existence. It is through that funding that PLIAN is able to host its website, and provide its Lawyer Referral Service, Legal Information Telephone Line, Community Information Sessions, school presentations and publications.

Since the proclamation of the *Law Society Act* in 1980, the Foundation has provided \$924,000. in core funding to PLIAN. However, since 1992, the Foundation has also had to deny \$616,000. in core funding. The Board maintained the grant to PLIAN at \$45,000. for fiscal year April 1, 2011 to March 31, 2012. While the Foundation maintained its grant, PLIAN has had to continue to operate with only half the amount it applied for due to a lack of available Foundation funds.

Given PLIAN's mandate to educate the public of this Province about the law by providing public legal education and information services with the intent of increasing access to justice, and as an Association whose primary goals include the dissemination of public legal information throughout Newfoundland and Labrador and the strengthening of public confidence and trust in the legal system, the public's loss has been more than monetary.

In 2009, the Foundation gave PLIAN and its other core grant recipients notice of the potential of grant reductions for 2010 given the low interest rate environment. For 2011, Governors again took the very prudent step of formally informing all of our annual core applicants that 2011 and 2012 will likely continue to be very challenging years for the Foundation, and will likely necessitate continued restraint on Governors' part when considering the size and scope of grant applications.

Unfortunately, given the Law Foundation's inability to access more than one-third of its net revenue, for 2011 Governors were again forced to continue to seriously constrict funding to other worthy but non-core grant applicants. Accordingly, Governors feel it is now imperative for Government to consider reallocating funds currently mandated to the Legal Aid Commission.

Newfoundland and Labrador Legal Aid Commission

Information provided by Legal Aid Commission: "The vision of the Legal Aid Commission is to ensure all eligible residents of Newfoundland and Labrador and non-residents receive competent legal advice and representation.

Legal Aid operates under the *Legal Aid Act* and provides for the provision of legal counsel to represent eligible residents of the province of Newfoundland and Labrador charged with offences under the Criminal Code, other federal statutes and provincial statutes, and to people who have family disputes or other civil matters. Duty Counsel services are provided to visitors of our Province and legal counsel may be appointed for non-residents either through the legal aid plan of the province in which they reside or our legal aid program.

Applications 2010-2011

8,894 people requested assistance from Legal Aid. Of those who applied, 4,673 persons were provided with full service legal representation. Those who were not provided with full service would have received advice. Persons are refused because they did not meet the financial eligibility guidelines or their cases were not ones for which legal aid would be granted.

Cases Completed 2010-2011

Staff lawyers completed 6,120 cases and 147 cases were completed by the private bar, amounting to 6,267 completed cases. These cases represented approximately 22,177 federal and provincial offences, family cases and other civil cases.

Duty Counsel 2010-2011

Duty Counsel assisted 10,445 adults and 1,079 youths for a total of 11,524 people. Duty Counsel is a service provided to people on their first appearance before a Provincial Court Judge or Youth Court Judge. A Brydges Duty Counsel lawyer is available 24 hours a day, 7 days a week, at a 1-800 number to provide advice to people upon arrest, detention or being questioned by a peace officer.

In addition to eleven area offices, the Legal Aid Commission has a number of special purpose offices. They are:

- The Aboriginal Project operates out of the Happy Valley-Goose Bay office is intended to facilitate working with aboriginal communities to better improve the quality of legal services to aboriginal people who encounter the law. The Commission has part-time Community Liaison Workers for the towns of Nain, Hopedale, Natuashish and Sheshashiu.
- The Mental Health Office which has two lawyers and two paralegals, in collaboration with the Health Care Corporation who have two social workers and two licensed practical nurses at the office. It works to improve and more efficiently deliver legal services to people

with mental health problems. Through this office, persons with mental health problems can obtain legal representation in the Mental Health Court, at the Mental Health Review Board, and in other courts.

- The French Speaking Project has a staff solicitor fluent in French to provide legal advice by telephone, in person and when necessary to conduct trials in French.
- The Family and Child Legal Aid Services officers are located in St. John's, Happy Valley - Goose Bay, and Corner Brook. Each office is staffed by a Director/staff solicitor, a social worker, and a paralegal. Their role is to assist parents of children taken into care by the Department of Child, Youth and Family Services (CYFS), to respond to the concerns of the CYFS, and to work towards the re-unification of the family where possible.
- The Client Service Officer whose role is to coordinate and facilitate all Legal Aid Commission communication with persons incarcerated anywhere in the provincial or federal prison systems or held in an institution.
- Family Justice Services in Central Newfoundland provides for a mediation and counseling service to parents in family separations.
- The Family Violence Court Project works with Provincial Court in St. John's to provide risk assessment services and legal representation to persons accepted into the new Family Violence Intervention Court process.

Additional information on Legal Aid is available from the Legal Aid Commission's annual reports and the three year plans at: <http://www.justice.gov.nl.ca/just/publications/index.html>"

The following is **list of Legal Aid Commission program and administrative areas** that were funded through Law Foundation contributions, and would not have been possible without same. The funds for them basically came out of the funding that flowed to the Commission in the years 2006-2008.

"For the years 2006-2007; 2007-2008; 2008-2009 increased Law Foundation funds were received. With these funds the Commission has sought permission to use the increased funds for several pilot projects spread over a two year period. These include: Paralegal Project; establish a Human Resources Department; Family Duty Counsel at St. John's Supreme Court Family Division and Administrative staff, paralegal, secretary and file manager to establish a retention and destruction policy for legal aid files. These projects are spread over two years and may be summarized as follows:

Paralegals - Paralegals support the legal positions. Lawyers at Legal Aid spend a considerable amount of time at court and need efficient support services to meet with clients, prepare court documents and assist in client communications, etc. Paralegals could also act as assistants to Duty Counsel Lawyers in Provincial Court and thereby speed up the processing of criminal cases by the Court

Six positions are established for use in 5 offices - one each in Atlantic Place, Corner Brook, Happy Valley - Goose Bay, and Stephenville. Two paralegals would be assigned to the main St. John's office.

Human Resources Department - The personnel issues of 140+ employees have become too numerous to be handled by a single payroll clerk. Duties such as the organization of job competitions, applications for re-classification, and probationary reviews have been taken on by senior management for lack of anyone else to do these things.

A new staff performance development evaluation process was implemented at the Commission in the 2010 - 11 fiscal year. This will put considerable demands on the Commission in order to ensure that the evaluations are done properly, information is collected, the process is reviewed, and staff concerns and needs are addressed. A Human Resources Department is needed to coordinate the handling of personnel matters.

Family Duty Counsel - There were serious problems with the number of unrepresented persons appearing on their own behalf in front of the justices of the Supreme Court - Family Division. This caused long delays in the processing of cases and in getting them to a hearing. This also causes delays for all other cases awaiting the attention of the Court.

Two lawyer positions are established in the Provincial Office, St. John's to provide full time duty counsel service in the Family Division. Two positions are necessary because of conflict of interest issues that will arise where both parties to a matter are unrepresented. A paralegal is also necessary to triage cases and to ensure that no conflicts of interest arise, to provide basic legal information, and to assist eligible persons in applying for Legal Aid.

This project has been running since May 2011. It has been widely used by the public and has made a significant impact on the processing of cases involving unrepresented litigants.

Administrative Staff, Paralegal, Secretary and file retention and destruction policy work- the staff to fill these positions are identified as follows:

1. The receptionist for the Provincial Director's Office handles all telephone calls to that office, the setting of appointments for persons seeking to apply for Legal Aid, and greeting all visitors to the office. As well, the receptionist assists the Accounts Department with filing and data entry.
2. The Commission has accepted that, pursuant to Provincial Government requirements and Privacy Act considerations, there is a need to organize the over 1,200 file drawers of closed client files and administrative records. Funds were found in the previous fiscal year's budget to hire, on a contract basis, an Information Manager to catalogue the files and implement a File Retention and Destruction Schedule. This is being done in conjunction with the Office of the Chief Information Officer (OCIO). This is being done in conjunction with OCIO.
3. Legal Aid has become a complex organization with increasingly complex accounting issues. The current accounting staff are hard pressed to keep up with the daily demands put upon them. There are delays in responding to requests from auditors and management for information and reports because the resources are not there to do the work. As well, management has identified a number of accounting tasks which would benefit the Commission's delivery of service. However, these have had to be deferred for lack of anyone to do them. An additional accounts clerk would increase the ability of the Accounts Department to respond to the Commission's needs in a timely fashion.
4. The *Legal Aid Act* provides persons who have been rejected for Legal Aid assistance with an appeal of the decision to the Provincial Director's Office and, if not satisfied with the result there, the right to appeal further to the Appeal Committee of the Commission's Board. In the last three years there has been a significant increase in the demand for resources to deal with such appeals. Currently the processing of these appeals takes up the majority of the Deputy Director-Legal's time each day and almost all the time of a Legal Secretary. The solution which has been identified is to create a work unit, consisting of a senior coordinator and a paralegal, which would handle the administration of all appeals, preparation of files for appeal hearings, and client contact and follow up."

ACLF

The Foundation attended the National Annual Meeting of the Association of Canadian Law Foundations (ACLF) held in Toronto, Ontario, August 3-6, 2011, with Workshops, August 4-5, co-sponsored by the American Bar Association Commission on IOLTA and American Bar Foundations, named the National Association of IOLTA Programs (NAIP). The IOLTA Workshops coincided with the Annual Meeting of the American Bar Association, which was held in Canada.

After hosting in 1998, the Law Foundation of Newfoundland and Labrador will again host the National Annual Meeting of the Association of Canadian Law Foundations (ACLF) from September 27-29, 2012 in St. John's.

At the National Annual Meeting, the economy, financial markets, the interest rate environment, Law Foundation revenues and IOLTA rate negotiations with financial institutions across Canada, developments in legal education and legal research, law reform, legal referral services, law libraries, electronic licences, information technologies for wider public access to legal information and services, the concerns of current and former grantees in need of funding, ATJ Fund, Cy pres awards and, of course, the legal aid contribution issue will be discussed.

The Foundation hopes to report at the ACLF Annual Meeting in 2012 on favourable developments arising from our request for Government's approval of the proposed legal aid contribution formula, which will fairly resolve the legal aid contribution issue, which has been unresolved for far too long.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey P. Benson". The signature is fluid and cursive, with a large initial "J" and "B".

Jeffrey P. Benson, Q.C.
Chair, Board of Governors



THE LAW
FOUNDATION
OF NEWFOUNDLAND
AND LABRADOR