

## LIVES IN THE LAW:

### Informal Legal and Social Sketches of the Chief Justices of Newfoundland, 1847 to 1996

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#### SIR FRANCIS BRADY C.J.N. 1847-1865

Born: Ireland; (unable to determine date)  
Died: England; 02 January 1872

Sir Francis Brady practised law in Ireland before he came to Newfoundland in 1847 to serve as Chief Justice.

He was the first Newfoundland Chief Justice to be knighted (by the Prince of Wales during his 1860 visit to Newfoundland).

Some of his decisions, especially those resulting from political riots in St. John's and in Conception Harbour (then known as Cat's Cove) drew disapproval from the Roman Catholic Church

Perhaps the most extraordinary circumstances to come before him (or any Chief Justice) unfolded when he sat with the two assistant judges and a civil jury in 1852 at St. John's, to try an action for damages brought by John Masservey, a planter, against the magistrate serving at St. George's Bay, James Tobin. The essence of the claim by Masservey was that Magistrate Tobin had unlawfully caused him to be assaulted, battered, imprisoned, forcibly conveyed from St. George's Bay to St. John's (a distance of 450 miles) by vessel (while manacled among stones and rubbish in the hold of the vessel), dragged through St. John's streets, and imprisoned at St. John's - all without any justification; therefore causing the planter physical and emotional injuries in spades. The jury, after retiring for about two hours, found for the planter and awarded 150 pounds.

Poor health forced his premature retirement from the Bench in 1865.

#### SIR HUGH WILLIAM HOYLES C.J.N. 1865-1880

Born: St. John's, Newfoundland; 17 October 1814  
Died: Halifax, Nova Scotia; 01 February 1888

Hugh William Hoyles was the first Newfoundland-born Chief Justice.

After reading law under supervision of a former "Chief Justice of Cape Breton" and being admitted on 02 May 1837 to the Nova Scotia Bar, he sailed back to his native Newfoundland to apply for admission to the Newfoundland Bar. Then-Chief Justice Bourne identified irregularities in Hoyles' Bar application papers. This necessitated Hoyles' sailing back to Nova Scotia to rectify the irregularities, then re-sailing to Newfoundland where he was admitted to the Bar on 07 December 1837 - slightly more than seven months after first applying.

He then returned to Nova Scotia for several years (for reasons not apparent) before establishing a substantial private law practice among mercantile clients back in St. John's. In 1846, he was appointed solicitor to the House of Assembly while continuing in private practice. Although his law practice primarily involved responsibilities of a solicitor, he was by no means adverse to litigation. In one of his more publicized civil cases, he represented Reverend Joseph Lind in a defamation (slander) proceeding, in 1856, against Magistrate Ollerhead.

He and Bishop Edward Feild fought for an entrenched denominational school system in Newfoundland. They advocated separate schools for the Roman Catholics - which materialized - and separate schools for two groups comprising the Protestant denomination (the Church of England and the Dissenters: Wesleyans, Presbyterians, Congregationalists, and others) - which they failed to achieve.

He was the first Chief Justice to hold elected public office in Newfoundland before accepting the Bench. (Six of his nine successors as Chief Justice of Newfoundland have also held elected public office before serving as Chief Justice.) In fact, he had an

extensive and extraordinary career as politician. He was elected member of the House of Assembly from Fortune Bay (three times), Burgeo/LaPoile, and Burin. He was appointed Newfoundland's Prime Minister in 1861 (under Responsible Government which had replaced Representative Government on 07 May 1855) after the previous administration was dismissed amid controversy surrounding a Bill it introduced before the House of Assembly that would have lowered judges' salaries.

While he was Prime Minister, Newfoundland reaffirmed its jurisdiction over Labrador by establishing a court there.

After 15 years as Chief Justice, he resigned in 1880 and retired to Halifax.

One historian wrote of Chief Justice Hoyles: "... he literally worked himself to death's door."<sup>1</sup>

### **SIR FREDERIC BOWKER TERRINGTON CARTER C.J.N. 1880 - 1898**

Born: St. John's, Newfoundland; 12 February 1819

Died: St. John's, Newfoundland; 01 March 1900

At 61 years of age, Sir Frederick Carter may have been the oldest person to become Chief Justice.

Little wonder he was not earlier appointed the Court's principal minister.

He had previously studied law in England; practiced privately in St. John's (from 26 May 1842); been solicitor to the House of Assembly; been elected member of the House of Assembly for Trinity Bay, then Burin, then Twillingate/Fogo; been Speaker of the House; been Prime Minister (twice); been Attorney General, and in 1854 and again from 1874 to 1878, an assistant judge of the Supreme Court.

As a practising lawyer in St. John's, one of his first retainers was charged with assault. Trial of the charge was heard by his father, Magistrate Peter Weston Carter.

In political life he earned history's designation of one of the fathers of Canadian Confederation; largely because he attended one of the conferences (Quebec, 1864) that considered the prospects of union of the British North American colonies.

While Chief Justice, he and his successor as Chief Justice, Joseph Ignatius Little, together heard the trial of a parenting (traditionally and currently described by the more adversarial term "child custody") dispute which was to have noteworthy impact on the Supreme Court of Newfoundland considerably beyond the immediate result to the litigants and the affected child.

A wife had been delivered of a female child, named Jean, in Greenock, Scotland, in 1884. Within days the wife died. Her death bed wish was that Jean be raised by the wife's aunt. The wife let her husband, Jean's father, know of her wish by letter. He was on a voyage to the West Indies when Jean was born. On returning to Scotland and reading the letter from his wife, by now deceased, the husband agreed in writing with his wife's parenting preference for Jean. The wife's aunt began caring for Jean in Scotland where she and her husband lived. Eventually they moved, with Jean, from Scotland to Newfoundland. In 1891, back in Scotland, Jean's father decided to remarry. He and his proposed second wife wanted Jean to come back to Scotland and live with them. In Newfoundland, Jean's custodians resisted. Jean's father sued in the Newfoundland Supreme Court for custody. In July 1891 his application for custody was dismissed. Jean continued to live in Newfoundland with her maternal aunt and aunt's husband. Jean eventually married and raised a family in St. John's. Jean's husband was a judge of the Newfoundland Supreme Court from 1928 to 1943. He died in office at the age of 63. One of Jean's sons was a judge of the Newfoundland Supreme Court from 1963 to 1974. He died, suddenly, while in office - at the luncheon recess during a civil trial - at the age of 60. Another of Jean's children was a member of the Law Society of Newfoundland. He died, while still in practice, at the age of 52. Her married name was Higgins.

(A curious aspect of the custody case was the manner in which the Supreme Court conducted the hearing; as indicated in the final paragraph of Judge Little's decision: "His lordship the chief justice was present on the first day of the hearing of the argument, and desired me to state that, in his judgment, the application should not at present be acceded to.")<sup>2</sup>

A Canadian National Marine ferry was named in honour of Chief Justice Carter in 1967. (A monument on Military Road in St. John's outside Government House grounds witnesses the memory of his eldest son, and namesake, Frederick, who was a lawyer. The monument was funded by public subscription and erected in 1871 after 26-year-old Frederick Jr. lost his life in a vain effort to save two girls who fell through ice on Deadman's Pond on Boxing Day, 1869.)

## JOSEPH IGNATIUS LITTLE C.J.N. 1898 - 1902

Born: Charlottetown, Prince Edward Island; 1835

Died: St. John's, Newfoundland; 14 July 1902

Joseph Ignatius Little came from Charlottetown, Prince Edward Island in 1851 as a law student. He was 16 years old when he began his "articles" (that is, apprenticeship) in the St. John's law office of his brothers John and Philip. (Philip was, later, an assistant judge of the Newfoundland Supreme Court and briefly, in 1859, acting Chief Justice of the Court.)

He practiced law awhile. (The record of his admission to the Newfoundland Bar is lost.) Subsequently, he was elected and several times re-elected Member of the House of Assembly for Harbour Main. He served 15 years, continuously, as Harbour Main's Member in the House, and during at least four of them was a member of cabinet as Attorney General.

Generous to a fault, he sold for a nominal sum a portion of his family's property to facilitate establishment of Littledale College by the Sisters of Mercy, and donated to Belvedere Orphanage the entire proceeds of an insurance settlement he received following the July 1892 "Great Fire" in St. John's.

He was assistant judge of the Newfoundland Supreme Court from 1883 to 1898 and Chief Justice from 1898 to 1902.

His obituary in a St. John's newspaper included the assessment that "his desire not to pain or give offence was so marked as to be almost a weakness."<sup>3</sup>

## SIR WILLIAM HENRY HORWOOD C.J.N. 1902- 1944

Born: St. John's, Newfoundland; 05 November 1862

Died: St. John's, Newfoundland; 07 April 1945

Sir William Henry Horwood was the longest serving Judge of the Newfoundland Supreme Court. Moreover, his entire service on the bench of the Court was as Chief Justice.

He was admitted to the Newfoundland Bar in 1885 after "reading law" (also referred to as "articling", that is, apprenticing) in the law office of James S. Winter. (James Winter was to become a Supreme Court Justice from 1893 to 1896 - although, for political reasons, never Chief Justice - and the Prime Minister of Newfoundland from 1897 to 1900.)

While a member of the House of Assembly - representing Trinity, then Harbour Grace, then Trinity

again - he served on the Newfoundland delegation to Ottawa in 1895 to discuss Confederation with Canada and, from 1900 to 1902, was Newfoundland's Attorney General.

He resigned as Attorney General in 1902 to become Chief Justice. Like the shortest-serving Chief Justice, John Reeves, he was 39 years old when he took the Bench. (The only younger appointees as Chief Justice were Francis Forbes (C.J.N. 1816 - 1822), who was about 32 years old, and, perhaps, John Bourne (C.J.N. 1838 - 1844) whose appointment age could not be determined.)

He was Chief Justice for 42 years; from 31 July 1902 to 03 October 1944.

An appeal he heard in 1934 reveals fragmentary particulars of an unfortunate and, ultimately, tragic interlude in the Law Society's history.

A money lender in the habit of investing, through a St. John's solicitor, in mortgages, placed \$1,500 with the solicitor in March 1925 to invest in a particular transaction. The transaction did not materialize. Instead of holding the \$1,500-sum in his trust account pending further instructions from the lender, the solicitor converted the sum to his own use and, apparently, was unable to replace it. The solicitor, a St. John's native, who previously practised as a Barrister of the Middle Temple, London, was admitted to the Newfoundland Bar on 07 February 1903, and later served as a Bencher of the Law Society.

In September 1925 the solicitor attempted to conceal the \$1,500 conversion from the lender by fraudulently obtaining the signature of one McNeil to a mortgage of McNeil's property in consideration of \$1,500. The solicitor previously had dealings with McNeil. But McNeil had never obtained a \$1,500 loan from the solicitor and did not realize he had signed a mortgage of his property. For his part the solicitor informed the lender, falsely of course, he had found a borrower for the \$1,500 sum, secured by the borrower's mortgage. Moreover, the solicitor commenced making interest payments to the lender; professing to do so under a mortgage from McNeil and, thus, giving the lender to believe that his money was a secured loan, profitably invested. After a number of unrelated transactions involving the solicitor were questioned by his clients, the Law Society intervened to investigate and discipline. The solicitor was then living in premises on the Torbay Road site of what was later a harness racing track and is now a night club. There he was found one night, his head resting in a live fireplace. Although he survived, the misadventure rendered him insane.

Another result of the misadventure was that inter-

est payments to the money lender ceased. The solicitor's condition precluded him from continuing to make payments he had been holding out to the lender as interest from McNeil. Thus he ceased to keep up the pretense a mortgage loan existed. The money lender sued McNeil on the mortgage; believing (incorrectly) that McNeil had borrowed from him through the solicitor, had undertaken the obligations of mortgagor, and was now in default under the mortgage. The solicitor, whose signature appeared as witness on a document that appeared to be a mortgage from McNeil, lacked capacity to testify as to whether McNeil had executed the document. So the money lender, as plaintiff, called the defendant, McNeil, as a plaintiff's witness. Defendant McNeil's trial evidence was not, in Chief Justice's opinion (in dismissing an appeal by the lender), "sufficient proof,"<sup>4</sup> to enable the lender to establish existence of a mortgage, and recover his outstanding monies, from McNeil. The effect of the Chief Justice's decision was that McNeil either did not sign the mortgage document or did not know that what he signed amounted to a mortgage of his property.

On 28 April 1942, Chief Justice Horwood sentenced the last person to hang in Newfoundland. The condemned was a 21-year-old male civil servant recently discharged, because medically unfit, from the Navy. Apparently spurned by his 19-year-old Cape Broyle fiance, a housemaid, he went into a rage and struck her head with a flat iron, killing her, on St. Patrick's night 1942, at 33 Plymouth Road, St. John's. Despite the recommendation for mercy of the jury who convicted the man, he was hung on 22 May 1942 in the Penitentiary yard, Forest Road, St. John's. (This was the last criminal defence undertaken by the man's lawyer (he told me in 1968). Shortly after, he took a position with the Department of Justice and, eventually, became Director of Public Prosecutions.)

Prosecutor of the murder charge was the Commissioner For Justice and Attorney General, Sir Lewis Edward Emerson. His persistent encouragement contributed to the retirement of Chief Justice Horwood from the Bench in 1944. He, in turn, was appointed Chief Justice the same year.

## SIR LEWIS EDWARD EMERSON C.J.N. 1944 - 1949

Born: St. John's, Newfoundland; 1890  
Died: St. John's, Newfoundland; 19 May 1949

Lewis Edward Emerson was the last pre-confederation Chief Justice (that is, to be appointed by the British Government) and the first under Confederation (that is, to be re-appointed by the Canadian Government).

He was admitted to the Newfoundland Bar on 12 April 1913 after "articling" under supervision of the father of future Chief Justice R.S. Furlong.

He was twice elected to the House of Assembly (for Placentia East, then St. John's East) and served for about a year as Minister of Justice in the Responsible Government administration of Prime Minister F.C. Alderdice. During Commission of Government, he was Commissioner of Defence and, for about three years, Commissioner For Justice and Attorney General.

He was Chief Justice from 03 October 1944 until his death.

## SIR ALBERT JOSEPH WALSH C.J.N. 1949 - 1958

Born: Holyrood, Newfoundland; 03 April 1900  
Died: St. John's, Newfoundland; 12 December 1958

Albert Joseph Walsh was Lieutenant Governor of Newfoundland when asked to succeed Lewis Edward Emerson as Chief Justice.

He was admitted to the Newfoundland Bar on 28 June 1928. The same year he was elected to the House of Assembly where he served as Speaker and represented Harbour Main until 1932.

He practised law from 1932 until, in 1935, he was appointed magistrate for Grand Falls. He served as magistrate until 1940 when he entered the Newfoundland public service; employment he continued until his appointment as one of the Newfoundland representatives on the Commission of Government. Among the Commission portfolios in which he served was the Justice and Defence position.



Sir Albert Joseph Walsh

He chaired the delegation which finalized the Terms of Union of Newfoundland with Canada in 1949.

Sir Albert Walsh served as Chief Justice from 05 September 1949 until his death.

His decisions suggest a fastidious person who gave careful attention to organization and detail.

### ROBERT STAFFORD FURLONG C.J.N. 1959 - 1979

Born: St. John's, Newfoundland; 09 December 1904

Died: St. John's, Newfoundland; 09 February 1996

He was succeeded by Robert Stafford Furlong who served as Chief Justice of Newfoundland from 12 May 1959 to 09 December 1979.

His tenure as Chief Justice is second only in duration to Sir William Horwood's.

He was admitted to the Newfoundland Bar on 07 October 1926. (He was not reticent about pointing out he wrote the Bar examinations twice, over some five years of law office apprenticeship, before his admission to the Newfoundland Bar.)

He served, in Newfoundland, in the Royal Navy volunteer reserve from 1939 to 1945.

He was a commentator and member of the board of governors with the Broadcasting Corporation of Newfoundland which became part of the C.B.C. on 01 April 1949. His contemporaries recall him having performed considerable legal work that was pro bono in nature (that is, for the public good, without fee) while he was in private practice.

As a member of the support staff of the St. Bon's hockey team, his name appears several times on the Boyle Trophy, centerpiece of St. John's hockey supremacy for about 70 years commencing 1904.

The Supreme Court of Newfoundland consisted of the position of Chief Justice and two other judges when, in 1959, he was appointed. Effective from July 1975 (based on 1974 legislation), the Court was divided into Trial Division and Court of Appeal. Thereupon, he became Chief Justice of the newly-created Court of Appeal and, thus, continued to be the Chief Justice of Newfoundland. (Concurrently, Arthur Samuel Miffilin who, since 1964, had been one of the other two judges of the Supreme Court, became Chief Justice of the Trial Division.)

Chief Justice Furlong maintained an austere demeanour, intimidating to many counsel, in the court room. Equally, he could present an engaging presence in "private room" (the term that, historically, the Judicature Act and Rules Of Court used to

describe a judge's office).

Young counsel would sometimes be accosted by him, on the street or in his favourite grocery or delicatessen, and offered personal advice and professional encouragement.

He had an acutely-honed sense of judicial tradition, pageant, station and decorum.

Chief Justice Furlong took most innings in verbal jousting with members of the Bar. There were, however, exceptions. One member, now on the Bench, had a habit, during trials, of abruptly moving his right shoulder and arm in a manner that caused the folds of his gown to float up across his face. On one such occasion, when the present Supreme Court Registrar, Barry R. Sparkes, and I were in court with this counsel, as his juniors, the following exchange occurred:

Chief Justice: "Mr. -, are you showing contempt for the Court?"

Counsel: "No, My Lord, I'm trying to conceal it."

Another day, the same lawyer despatched me to appear for him on a motion to set a trial date. Chief Justice presided on the motion. After granting a trial date, Chief Justice added: "Mr. Day, when you appear for trial, ensure that what you are passing off as pleadings -" at which point I tremulously interjected: "My Lord, Mr. - will be appearing before you on the trial." To which Chief Justice responded: "Day! Don't threaten me!"

In November 1970 he contributed to alteration of the common law rule which, since 1754, enjoined the giving of evidence by spouses of non-intercourse if that would have the effect of bastardizing a child born of the wife while married. The case involved a petitioner for divorce. He proposed to testify, in proof of adultery, that his wife was delivered of a child who, due to the length of petitioner's absence from Newfoundland and his wife living there, could not have been fathered by him. The petitioner's case for admission of this proposed testimony by Chief Justice was aided considerably by the fact he and his wife were Caucasian and the baby was, unmistakably, Afro Canadian.

On 23 March 1965 Chief Justice Furlong imposed the last death sentence in Newfoundland Supreme Court. The recipient was an 18-year-old resident of St. Georges for the murder of a R.C.M.P. constable at Whitbourne the previous December. The sentence was later commuted. In *A Seaport Legacy*[:] The Story of St. John's, Newfoundland, Paul O'Neill writes <sup>5</sup> that there was "a hue and cry in the press



against adding ... [the 18-year-old's] death to the tragic loss of ... [the R.C.M.P. officer], a loss that would not have occurred had the policeman been unarmed."

(The last capital punishment sentence carried out in Canada involved two convicted murderers. They were hanged back to back at the old Don Jail, Toronto, in December 1962. Capital punishment provisions of the Criminal Code were repealed in 1976 although they remain, unused, in the National Defence Act.)

He was the last Chief Justice to preside over a Supreme Court in which a Supreme Court judge sometimes sat on an appeal from his own trial decision. (Since 1826 (based on 1825 legislation enacted in Britain) the Newfoundland Supreme Court had a bench comprised of Chief Justice and two other Supreme Court judges, who heard trials and appeals. A fourth position on the Court was not created until 1957 Newfoundland legislation, and was not filled until that legislation came into force in 1963. Before 1963, if one judge tried a case, that judge and the other two judges of the Court heard the appeal; although records indicate only two judges sometimes sat on appeal proceedings.)

In the first reported appeal on which Chief Justice sat, his benchmates were Mr. Justice Harry Anderson Winter and Mr. Justice Brian E.S. Dunfield. The appeal was from the decision, in a civil matter, of Mr. Justice Dunfield who had decided at trial that liability should be divided between plaintiff and defendants. After the appeal was heard, Chief Justice disqualified himself from writing a substantive appellate decision because "before my appointment to this Court I was engaged professionally in a matter which concerned the same circumstances, though different plaintiffs, as this present case."<sup>6</sup> That left Justices Winter and Dunfield, who did not agree. Whereas Winter J. decided that liability should rest entirely on the plaintiff and, therefore, found for the defendants, the trial judge Dunfield J. wrote, on appeal, that "I still feel" the circumstances warrant shared responsibility between plaintiff and defendants.<sup>7</sup> The case was ultimately resolved by the Supreme Court of Canada which decided that neither Justice Winter nor Justice Dunfield was correct and held entirely for the plaintiff.<sup>8</sup>

(The decisions in this case were the first legal judgments I ever read. I encountered them in the law firm of one of the ultimately successful counsel in the case, P. Derek Lewis, Q.C. now serving in the Senate of Canada, who was admitted to the Newfoundland Bar on 15 October 1947 and continues to

practice. When I first encountered this case, in 1959, I was employed as his clerk. I am now one of his law partners.)

(The only Supreme Court judge who appears to have written a trial decision, then reversed himself on appeal, did so prior to Confederation and was not a Chief Justice.)

Chief Justice Furlong died as a result of a fire at his residence on Winter Avenue in St. John's.

### ARTHUR SAMUEL MIFFILIN C.J.N. 1979 - 1986

Born: Catalina, Newfoundland; 19 June 1920

The 20th Chief Justice of Newfoundland was Arthur Samuel Miffilin.

He was admitted to the Newfoundland Bar on 05 December 1947 and engaged in private law practice in St. John's.

He was a member of the House of Assembly for Trinity North from 1956 to 1962.

(There is an incorrect report in the Dictionary Of Newfoundland And Labrador Biography that before appointment to the Supreme Court he served as magistrate from 1962 to 1964.)<sup>9</sup>

The duration of his total service on the Supreme Court (as Judge and Chief Justice) is second only to Sir William Horwood's 42 years. He presided for 30 years: from 1964 to 1975 in Trial Division, from 1975 to 1979 as Chief Justice of the Trial Division, from 09 December 1979 to 30 September 1986 as Chief Justice of Newfoundland and, afterwards, until 19 June 1995, as a supernumerary judge.

As Chief Justice he delivered several of the court's seminal judgments on Newfoundland's claim to offshore petroleum and to improved benefits from the Churchill Falls hydro electric development (the principal beneficiary of which has been Quebec).

His decisions as puisne judge and Chief Justice were paradigms of candour and, often, understatement.

Deciding a former wife's proceeding in 1975 to recover arrears of financial support from an industrialist resident in Panama (fugitive from United States criminal proceedings and subject of a criminal arrest warrant in Canada), he stated as an aside:

I do not consider it necessary to recite any



Arthur Samuel Miffilin

other facts which have been admitted or which are to be found in the documents which have been admitted even though they may be very informative to anyone who may have an interest in the propensity of the defendant for dividing his affections among the several females mentioned therein, his luxurious manner of living, and the means that he employed in order to avoid the obligations which those on whom he lavished his love and luxury felt he had undertaken towards them.<sup>10</sup>

Federal law required him to retire, as a supernumerary judge, when he reached 75 years of age on 19 June 1995.

### **THOMAS ALEXANDER HICKMAN C.J. (Trial Division) 1979 - date**

Born: Grand Bank, Newfoundland; 19 October 1925

When Arthur Samuel Mifflin became Chief Justice of Newfoundland on 09 December 1979, he was succeeded as Chief Justice of the Trial Division by Thomas Alexander Hickman.

He had been admitted to the Newfoundland Bar on 09 April 1948 and subsequently conducted a private law practice in St. John's.

He entered public life in the 1960s; serving as a member of the House of Assembly for Burin from 1966 to 1975 and for Grand Bank, from 1975 to 1979. He was a member of cabinet from 1966 to 1969 and from 1972 to 1979 (including about ten years as Minister of Justice and Attorney General).

As Minister of Justice, he superintended the work of the Newfoundland Family Law Study, which he established in 1967 and which operated until 1973. (The Study was chaired by Raymond Gushue, Q.C., former president of Memorial University of Newfoundland, and produced 14 reports and a 675-page book.) He shepherded Newfoundland through the legal steps prompted by the Study's first report, to facilitate granting of divorce by a court within Newfoundland, for the first time, commencing 02 July 1968.

He was appointed Chief Justice of the Trial Division in 1979 from private law practice to which he returned following retirement from political life earlier the same year.

Since becoming Trial Division Chief Justice, he has chaired two of the most important public enquiries in Canadian history: into the 1982 sinking of the oil rig *Ocean Ranger* off the Newfoundland coast and into the administration of justice in Nova Scotia (including the wrongful conviction for murder of ab-

original Donald Marshall).

In the first of the seven volumes of the Report of the Royal Commission on the Donald Marshall, Jr., Prosecution, he wrote:<sup>11</sup>

... The conclusion we have reached is that the system does not work fairly or equally. Justice is not blind to colour or status. There is a widespread lack of understanding within the system of the appropriate roles of the Attorney General, the prosecutor and the police. And there is a lack of structural control and organizational independence which has made it easier for unchecked and inappropriate decisions to be made.

A properly functioning criminal justice system is the bedrock on which society's acceptance of our system of law and the maintenance of order is based. But because of what has happened in the Marshall case and some others we will examine ... many people in Nova Scotia have begun to question the fairness and independence of the province's justice system. This erosion of confidence must be stopped and public confidence restored. This can only be accomplished through the unwavering and visible application of the principles of absolute fairness and independence.

In a 1987 civil proceeding Chief Justice Hickman wrote:<sup>12</sup>

... The *sine qua non* of the justice system is that there be an unqualified perception of its fairness in the eyes of the general public. In order to obtain that salutary precept, it is essential that the integrity and absolute independence of the courts and ...[their] officers be maintained in such a way as to assure a discerning public that the principle of equality before the law is not in danger of being ... [compromised]. The door must remain firmly shut against any possibility of ... [compromising] that ... [principle]. ... [To open the] door, albeit ever so slightly, to the possibility of comprising the impartial administration of justice - [is] something which a court is duty bound to prevent.

His adroitness in rendering careful, incisive, literate, oral decisions, without reserving, is widely regarded as front stall.

**NOEL S. GOODRIDGE**  
**C.J.N. 1986 - 1996**

Born: St. John's, Newfoundland; 18 December 1930

Noel S. Goodridge was Chief Justice of Newfoundland from 17 November 1986 to 01 January 1996.

As a practitioner - admitted to the Newfoundland Bar on 03 February 1954 - he enjoyed a substantial reputation as corporate and commercial lawyer, generated by a leviathan capacity for hard work. Less known is his acceptance of briefs in difficult family law cases and, in the 1950s, his retention as one of the counsel for a Latvian national charged with commercial crimes against Newfoundland that, even by contemporary standards, were grave in the magnitude of culpability and of monies allegedly ill-begotten.



**Noel S. Goodridge**

He was, in 1975, appointed a Judge of the Supreme Court. He became Chief Justice of the Supreme Court of Newfoundland in 1986; succeeding Chief Justice Miffilin.

Additionally, he has served on the federal Court Martial Appeal Court.

Law publishers, legal editors, and legal practitioners - not to mention many of his peers - regard his judgments as among the most imaginative, analytical, sensitive, and fluent delivered by Canada's judiciary.

His articulation in decision-writing is unique. He marries narrative simplicity and economy (reminiscent of Alfred Lord Denning in the British House of Lords), philosophical elegance (apparent in decisions of Chief Justice Lyman Duff in the Supreme Court of Canada), and facile tooling that affords clarity to disparate evidence and understanding to complex arguments.

In deciding, following a 22-week civil trial in 1982 and 1983, Newfoundland's application for a declaration of entitlement to a portion, beyond what it was then receiving, of the power generated by Churchill Falls, he began a 1,280-paragraph judgment as follows:

Sometime in the month of August 1839 John McLean, a Scot who had been employed for

25 years with the Hudson's Bay Company was paddling along what is now known as the Churchill River. He and others had embarked upon a mission for their employer to develop a fur trade in the unexplored interior of Labrador.

The course of his exploration brought him to the Churchill River and that in turn carried him to what is now known as the Churchill Falls. It is believed that he was the first non-native person to set eye on the falls.

At that time the generation of electricity by the use of water power was a concept not then developed. In fact, it was only seven years earlier that Michael Faraday had developed the first electric generator.

In 1929 the falls represented little more than a barrier for those bound by canoes on a course through the interior of Labrador.

The falls remained as a restless giant for 125 years.

It was in 1952 that Joseph R. Smallwood, then the Premier of the Province, began stirring the imaginations of British investors to the development of water and other resources in Labrador. Winston Churchill, the then Prime Minister of England, is reported to have said that it was high time that the Hamilton Falls had a bridal.

(The river was originally known as Grand River and the falls as Grand Falls. They were later re-named Hamilton River and Hamilton Falls after Sir Charles Hamilton, a one time Governor of Newfoundland.)<sup>13</sup>

Appraising the history of family law in Newfoundland in a 1977 decision, he wrote:

Few married couples enjoying the first warmth of their marriage foresee the darker days ahead for some of them when "unhappy differences" will divide them but not their matrimonial wealth. The wife in most cases sacrifices her economic value on the labour market but will provide economic value to the husband even if it consists only of housekeeping; in other cases she will work and contribute her earnings to the marriage. Unless she can establish a trust - a difficult task - she is turned out at the end of the marriage wiser perhaps, but penniless. This situation will prevail until the jurisdiction of the court is enlarged to order property settlements.<sup>14</sup>



This decision was pivotal in the coming into force, three years later, of The Matrimonial Property Act (now: Family Law Act) in Newfoundland and comparable legislation in some other provinces.

In the only civil proceeding effectively reheard in the history of the Supreme Court of Canada - involving an appeal from Newfoundland Supreme Court in 1982 - he received the evidence (under former s. 9516 of the Supreme Court Act) on which the Supreme Court of Canada relied.<sup>17</sup>

He retired as Chief Justice on 01 January 1996 to become a supernumerary judge of the Court of Appeal.

He was succeeded on 19 March 1996 by Mr. Justice James Randall Gushue (born on 04 June 1933, St. John's) who had served on the Court of Appeal since appointment there from private practice on 20 February 1976. Mr. Justice Gushue was sworn in as Chief Justice on 09 April 1996.

## NOTES

1. Prowse, Q.C., D.W. A History of Newfoundland (Macmillan And Co., London, 1895), at p. 494.
2. In re McGirr, An Infant (1891), Nfld. L.R. 1884-96 (Nfld. S.C.) 560, at p. 564.
3. Quoted in: 3 Encyclopedia of Newfoundland and Labrador (Harry Cuff Publications Ltd., St. John's, 1991), at p. 345.
4. (1934), Nfld. L.R. 1932-35 (Nfld. S.C.) 229, at p. 232.
5. At p. 595.
6. Best v. Great Eastern Oil and Import Co. Ltd. and Oakley.
7. (1960), 45 M.P.R. 218, at p. 219.
8. 119621 S.C.R. 118.
9. (Harry Cuff Publications Ltd., St. John's, NF, 1990), at p. 222.
10. (1975), 7 Nfld. & P.E.I.R. 341 (Nfld. T.D.) at p. 343.
11. Vol. 1, Findings and Recommendations, 1989, pp. 193-194.
12. O'Dea v. O'Dea (1987), 68 Nfld. & P.E.I. R. 67 (Nfld. U.F.C.), at p. 75; affirmed: Nfld. C.A., 06 June 1988, unreported.
13. (1983), 49 Nfld. & P.E.I.R. 181 at p. 192.
14. (1977), 2 R.F.L. (2d) 204 at p. 219.
15. R.S.N., 1990, c. F-2, 16 Now: R.S.C. 1985, c. S-26, s. 90.
16. Now: R.S.C. 1985, c. S-26, s. 90.
17. (1982), 30 R.F.L. (2d) 438 (S.C.C.).

Note: This article, and an article on Newfoundland's Chief Justices from 1791 to 1847 in Vol. XC, No. 1, are edited excerpts from an address given by David C. Day, Q.C. on 25 October 1994, at St. John's, to a conference of Supreme Court administrators and staff, with alterations to reflect events since 1994. Day, Q.C. will, in 1997, while continuing to practice law with Lewis, Day, Dawe & Burke in St. John's, occupy the Milvain Chair of Advocacy in Calgary (named after a former Alberta Chief Justice).