UNIVERSITY OF

NEW BRUNSWICK LAW JOURNAL

VOLUME 23 1974

LAW JOURNAL

APR 1

CONTENTS

REFERENCE TO PRESERVATION OF	
PROPERTY Lawson Hunter	5
THE NUISANCE ACTION: A USEFUL TOOL FOR THE ENVIRONMENTAL LAWYER Barry Morrison	21
OBSCENITY LAW IN CANADA	30
FEDERAL LAW RELATING TO SEARCH AND SEIZURE	53
PROVINCIAL SUSPENSION OF LICENCE vs. FEDERAL PROHIBITION FROM DRIVING	59
INCORPORATION AND THE REASONS THEREFOR	89
CASE COMMENTS	97

INDEX

NECESSITOUS INTERVENTION WITH SPECIAL REFERENCE TO PRESERVATION OF PROPERTY5
THE NUISANCE ACTION: A USEFUL TOOL FOR THE ENVIRONMENTAL LAWYER
OBSCENITY LAW IN CANADA
FEDERAL LAW RELATING TO SEARCH AND SEIZURE53
PROVINCIAL SUSPENSION OF LICENCE vs. FEDERAL PROHIBITION FROM DRIVING
INCORPORATION AND THE REASONS THEREFOR89
CASE COMMENTS97

THE UNIVERSITY

Visitor To The University on Behalf of Her Majesty
THE HONOURABLE HEDARD J. ROBICHAUD, P.C., B.A., D.C.
Lieutenant-Governor of the Province of New Brunswick

CHANCELLOR

Sir Max Aitken, Bart., D.S.O., D.F.C., LL.D.
PRESIDENT and VICE-CHANCELLOR
John M. Anderson, B. Sc. F., Ph. D.
THE FACULTY OF LAW

John M. Anderson, B. Sc. F., Ph. D.				
THE FACULTY OF LAW				
	Acting Dean of the Faculty and Professor of Law			
	na Frojess	or of Law		
S.J.D. (Mich.)		Dunfasson		
Daniel M. Hurley, C.D., B.A. (St. Thomas).		Professor		
B.C.L. (U.N.B.), LL.M., Ph. D. (Lond.)		D C		
Douglas G. Rouse, Q.C., B.A. (U.N.B.),		Professor		
LL. B. (Dal.)		D		
William F. Ryan, Q.C., B.A., B.C.L. (U.N.B.)	-	Professor		
LL.M. (Columbia), D.C.L. (Mount Allison)		D (
	Associate	Professor		
(U.N.B.), LL.M. (Columbia)				
Karl J. Dore, B.B.A., B.C.L. (U.N.B.),	Associate	Professor		
LL.M. (Yale)				
Robert W. Kerr, B.A. (U.N.B.),	Associate	Professor		
LL.B. (Dal), LL.M. (Harvard)	rissociate	110/63301		
Alan D. Reid, B.A., B.C.L. (U.N.B.)	Associate	Professor		
LL.M. (Yale)	7155001416	170/63307		
Christopher S. Axworthy,	Assistant	Professor		
B.A. (Hons) C.L.P., LL.M. (McG.)	rissistant	110/63301		
Douglas C. Stanley, B.B.A.,	Assistant	Professor		
LL.B. (U.N.B.), LL.M. (York)	rissisiumi	110/63301		
Basil D. Stapleton, B.A.,	Assistant	Professor		
B. Comm. (Memorial), B.C.L. (U.N.B.)	rissisium	110/63301		
William G. Webster, B.A.,	Assistant	Professor		
LL.B. (U. of Man.), LL.M. (Harv.)	rissistant	110/63301		
G. Keith Allen, B.A., B.C.L. (U.N.B.), LL.M. (Vork)	Lecturer		
John G. Bryden, B.A. (Mt. A.), B.C.L. (U.N.B.		Lecturer		
His Hon. Judge Daigle, B.A. (M'ton),	,	Lecturer		
B.C.L. (U.N.B.), D.E.S. (Paris)		Lecturer		
Samuel E. Field, B.B.A. (U.N.B.), C.A.		Lecturer		
J. Fernand Landry, B.A. (M'ton), B. Soc. Sc.		Lecturer		
(U. of Ottawa), LL.B. (U.N.B.)		Lecturer		
G.A. McAllister, Q.C., B.A., M.A., B.C.L. (U.)	VR)	Lecturer		
LL.M. (Columbia)	v.D.)	Lecturer		
William J. McCarroll, B.A. (St. F.X.).		Lecturer		
LL.B. (Dal.), LL.M. (London)		Lecturer		
Eugene J. Mockler, B.A., B.C.L. (U.N.B.)		Lecturer		
LL.M. (Mich.)		Lecturer		
J. Gordon Petrie, B.A. (U.N.B.), B.C.L. (U.N.	R)	Lecturer		
	D.)	Lecturer		
LL.M. (Mich.) Joseph W. Sears, Q.C., B.A. (U.N.B.),		Lecturer		
B.C.L. (Oxon), LL.D. (U.N.B.)		Lecturer		
Beverly F. Smith, B.C.L. (U.N.B.)		Lecturer		
Deverty F. Sillitti, B.C.L. (U.N.B.)		Lecturer		

JUSTICE

No wrong is done by any member of the public who exercises the ordinary right of criticising, in good faith, in public or in private, the public act done in a seat of justice. The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice . . . they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

- LORD ATKIN

HON. JOHN B. M. BAXTER, Q.C.

Minister of Justice and Attorney-General

Province of New Brunswick

UNIVERSITY OF NEW BRUNSWICK LAW JOURNAL

VOL. XXIII

MAY, 1974

EDITOR-IN-CHIEF ROBERT L. DeWITT

ASSISTANT EDITOR
IVAN F. IVANKOVICH

EDITORIAL STAFF

FRANK McKENNA JIM BISSELL JUDY STEEVES DONALD FLEMING MICHAEL PARE SID LOVAS

PUBLISHING & LAYOUT

NORMAN ROSE

BUSINESS

JOHN FRIEL BRENDA M. FRASER

ADVERTISING

JOHN HUGHES

CIRCULATION

ANN BYRNE

MARY ANN STAPLES

FACULTY ADVISORS

BASIL STAPLETON JEREMY D. MORLEY

UNB ESTABLISHED 1785



THE FACULTY OF LAW

With the announcement by the Chancellor, Sir Max Aitken, at the 1967 Encaenia of the generous gift by the Beaverbrook Canadian Foundation for the construction of a new law building on

the campus, the Faculty moved into a new era.

The opening of the new law building marked the culmination of a series of earlier steps taken for the progressive development of the Faculty. Until 1959 the Faculty was located in Saint John where it had been established in 1892 with the support of judges and leading members of the profession. The Faculty, then associated with King's College of Windsor, Nova Scotia, was known as the King's College Law School. But with the relocation of King's College in Halifax in 1923, the school became a faculty of the University of New Brunswick.

In 1953 Lord Beaverbrook provided a new home for the Faculty in Beaverbrook House as well as a new library. Shortly before the University had strengthened the faculty by appointing two full-time professors. Further steps were taken in 1956 with the appointment of a full-time Dean and by further strengthening

the faculty.

Then in 1959 the Faculty was moved from Saint John to Somerville House in Fredericton with a view to integrating the Faculty with the life of the university. Shortly afterwards, a number of valuable scholarships were established to assure the Faculty of a nucleus of first rate students. The Lord Beaverbrook Scholarships in Law, which now fulfill this function, have a maximum value of \$2,500 a year.

The Beaverbrook Canadian Foundation donated \$1,000,000 for the construction of a new Law building on the U.N.B. campus in 1967, and two years later the present law school was named Ludlow Hall in honour of New Brunswick's first Chief Justice.

It is a basic purpose of the Faculty, not only to train students to a high level of competence in legal principles and rules and in the techniques of practice, but to create in them an awareness of the law as a liberal profession, and to convey an understanding of the role of law as a vital instrument in a just and efficient ordering of society.

It is also the policy of the University to stimulate legal research. The Faculty has been especially active in the field of continuing legal education. In particular, it has co-operated with the New Brunswick section of the Canadian Bar Association by producing an annual series of papers for their meetings. These are later published in various legal periodicals. To stimulate research among the students and members of the Bar, the University of New Brunswick Law Journal is published by the students under

faculty guidance.