Church in St. John's. Joyce had been interested in radio for some years and while at Wesley was responsible for starting a radio broadcasting station. Operating out of Wesley Church, the station first went on the air in 1924, with the call letters 8WMC. The call letters were changed to VOWR in 1932.

Joyce left Newfoundland in 1930 and was stationed at Verdun, Quebec. He returned to Newfoundland in 1948 to attend the official opening of a new transmitter for the radio station. Everett Hudson (interview, Nov. 1982), Pitt and Pitt (1984), D.W. Wilson (n.d.). EMD

JUBILEE GUILDS. See WOMEN'S INSTITUTE.

JUDE ISLAND. Lying 12 km east of Red Harbour *qv*, Placentia Bay, Jude Island was probably named after its southern cape, which appeared as "C. Judas" on several maps of the seventeenth and eighteenth centuries (Howley). Howley also noted that on a French map of 1784 the headland was referred to as "C. de Judas," while the island itself was "called I. du Milieu, or Middle Island" (which was probably a description of its geographical relation to Oderin *qv* in the north, the Flat Islands to the west and a string of tiny islands to the southeast). While Howley himself used the name "Judy Island," it later came to be known as Jude Island and was included with the nearby Flat Islands *qv* group in all early census returns. Although 5 km long and 4 km wide, Jude Island appears to have been the site of only one sizable permanent settlement. Named Hay Cove — perhaps after an early occupant — this community was first separately recorded in the 1891 *Census* for the Burin district, with 86 Methodist inhabitants. Near what Captain DeCourcy referred to as the "best fishing ground for cod in Placentia Bay" (*JHA*), Jude Island prospered throughout the late nineteenth and early twentieth centuries, with the family names Dicks, Keeping, Miller, Peach and Senior being recorded there during these years. By 1921 there were only 68 people living in the community, the number had dropped to nine by 1956 and by the 1960s the community had been abandoned. M.F. Howley (1979), E.R. Seary (1976), *Census* (1891-1956), *JHA* (1851), *McAlpine's Maritime Gazeteer* (1898; 1904), *Newfoundland Directory 1936* (1936). CSK

Lighthouse at Jude Island

JUDICATURE — FAMILY LAW. The administration of justice by courts (judicature) has legitimately obtained in Newfoundland at least since enactment in 1791 by the British Parliament of legislation establishing "The Court of Civil Jurisdiction of Our Lord the King at St. John's in the Island of Newfoundland," for one year. Recommendations better to ensure the rule of law in Newfoundland that the new Chief Judge, John Reeves *qv*, made the same year during his first judicial tour were in June 1792 translated into further legislation establishing "The Supreme Court of Judicature of the Island of Newfoundland" with civil and criminal jurisdiction. The legal existence of the Supreme Court was for numbers of years renewed annually, then triennially. In 1809 the Court was made permanent and is now legally described as the Supreme Court of Newfoundland. Reeves, at age 39, was appointed the Court's first Chief Justice, a position he held from 1792 to 1793. His tenure was briefest among the 22 chief justices to have served the Court to date; the longest tenure being that of Sir William H. Horwood *qv* (from 1902, when he was 39, to 1944). Since 1986 the Chief Justice of Newfoundland has been Noel Goodridge *qv*.

In 1991 the Supreme Court comprised a Trial Division in seven judicial centres province-wide and, at St. John's, a Unified Family Court responsible for the northern half of the Avalon Peninsula and the Court of Appeal responsible for the entire Province (see JUDICIARY).

One form or another of district courts functioned in Newfoundland from about 1890 until merged in the Supreme Court in 1986. Since 1729 magistrates, first appointed to sit only outside the fishing season (as "winter magistrates") and known as Provincial Court Judges from 1974, have been part of the administration of justice in the Province.

Up to July, 1832, the law administered — interpreted, applied and enforced — in Newfoundland courts was, essentially, legislation enacted by the British Parliament and common law. For most of the period to 1832 Newfoundland was regarded by Britain as a station for seasonal fisheries, but legislation enacted by the British Parliament in 1824, which began functioning in 1826, belatedly recognized Newfoundland as a colony.

Commencing July 27, 1832 and continuing until the Statute of Westminster in 1931, whereby Newfoundland's status changed from colony to Dominion, only legislation enacted by the British Parliament that expressed or necessarily implied an intention to do so applied to Newfoundland (such legislation being infrequently enacted up to 1907 and, apparently, not since then). Newfoundland has had an elected legislature for most of the period from 1832: at first under representative government (1832 to 1855),

under responsible government (1855 to 1934) and, following government by an appointed Commission (1934 to 1949), as a Province by virtue of Confederation with Canada (from 1949). Since enactment of the Statute of Westminster legislation of the British Parliament has had no direct effect on, and little legal potential for influencing, Newfoundland law. Since Confederation it has had none.

Of the areas of law, whether public (for example, criminal) or private (such as contracts, property, estates), in which courts are periodically asked to resolve disputes, one subject having potential for widespread, sometimes acute, impact on members of the Newfoundland public is family law.

FAMILY LAW TO 1832. Legislation of the British Parliament and common law that determined family law applicable to Newfoundland residents up to mid-1832 perceived marriage as a process joining man and woman as one — *he* being the one. A married woman was not legally entitled to own most types of property. The law regarded the husband as having virtually indisputable rights to legal and physical custody of a child of his marriage, even "an infant at the breast of its mother;" and was silent regarding divorce as well as maintenance of a child and a husband — although it provided for support of an estranged wife.

The Clandestine Marriages Act (1753), known as Lord Hardwicke's Act, was the statute which first established procedure to be observed in all marriages celebrated in England. The Act specified, however, that its provisions did not apply "to any marriages solemnized beyond the seas" such as, presumably, marriages in Newfoundland; a situation corrected by legislation of the British Parliament in 1817, 1824, 1829 and 1832.

Another statute of the British Parliament, enacted in 1824, effectively furnished the Supreme Court of Newfoundland with jurisdiction to try child custody proceedings. From 1826, when the statute commenced operating, until as recently as September 1, 1986, the procedure usually relied upon to commence such proceedings was the application for a writ of *habeas corpus* (produce the child to the court) that derived from England's Magna Charta. The same 1824 statute provided for the appointment of two assistant justices who, together with the Chief Justice, were expected to undertake circuits of the Supreme Court of Newfoundland, outside St. John's.

1832 TO 1855. Legislation governing marriage formalities in Newfoundland, enacted in the first session of its Legislative Assembly under representative government, took the form of "An Act . . . to regulate the future celebration of Marriages in this Island." This legislation replaced legislation first enacted by the British Parliament in 1817. During its second session, in 1834, the Assembly enacted maintenance legislation "to provide for the maintenance of bastard children" and "to afford relief to Wives and Children, Deserted by their Husbands and Parents." (This legislation in many respects relied upon England's Poor Laws, enacted in 1576 and 1601).

1855 TO 1934. Besides legislation consolidating the two maintenance statutes first passed in 1834, family law enacted by Newfoundland's General Assembly under responsible government was confined to married women's property and child welfare. The Married Women's Property Act in 1876 relied substantially on Britain's 1870 statute of the same name. Additional Newfoundland married women's legislation in 1883 materially duplicated 1882 United Kingdom law. The Newfoundland Acts indisputably enabled a married woman, as well as an unmarried one, to acquire, hold and dispose of property in her own name (in addition to a host of other rights, including entitlement to sue and to be sued in her name for damages and for breach of contract) — rights previously uncertain, if not controversial. The legislation did not, however, enhance a married woman's limited rights at common law in a number of proprietary respects, such as to acquire an interest in property the deed of which was in her husband's name solely. The other noteworthy family law legislation enacted during responsible government was The Health and Public Welfare Act, 1931, that included embryonic provisions for child welfare.

1934 TO 1949. In the 15-year interlude of appointed Commission of Government probably more noteworthy family law legislation was enacted than during the previous 102 years under representative and responsible government. One statute provided for control of juvenile delinquency, substantially improved the 1931 legislation as it affected child welfare, and revised laws entitling unwed mothers to seek support for themselves and their children. Another statute provided for Newfoundland's first adoption law. Stuart R. Godfrey concludes in his *Human Rights and Social Policy in Newfoundland 1832-1982* (1985) that critical assessments of Commission of Government:

> have overlooked or tended to obscure the implications [during its stewardship] of legislative and other beginnings of services in child and family welfare, juvenile delinquency, mental health and other areas of prevention and rehabilitation . . . [and its] efforts to develop a coordinated approach to some of these problems.

To the extent not addressed either by Newfoundland or applicable United Kingdom legislation the common law continued to govern family-related disputes such as involved child custody. Although at common law pre-eminent, a father's right to custody was not absolute. A harbinger of the modern judicial preoccupation with a child's best interests may be seen in an application in July 1891 to the Supreme Court of Newfoundland. The parents were a Scotsman and a former Newfoundland resident who were married in Greenock, Scotland in October, 1882. There the wife gave birth to a female child on June 22, 1884. Within days of the child's birth, the mother died. On her death bed she had declared that she wanted her daughter to be

raised by the mother's aunt, who then lived in Scotland, and wrote a letter to her husband, then on a voyage to the West Indies, advising him of her wishes. When he returned to Scotland, the child's father approved in writing his deceased wife's choice. In time the aunt and the child moved to Newfoundland and took up residence. By 1891 the child's father decided to remarry and he applied to the Supreme Court of Newfoundland for an order that his daughter be returned to Scotland to settle with him and his soon-to-be wife. While Mr. Justice J.I. Little *qv*, one of the two trial justices, acknowledged that "a parent cannot by agreement give up his natural right to the control of his child," he stated that his paramount duty as a judge was to consider "the welfare, health and happiness of the child." As the girl had by now lived with her aunt for almost seven years, the father's application was dismissed (*In re McGirr, an Infant*, [1891]). (The daughter later married in Newfoundland and bore several children. Her husband and a son both served as justices of the Supreme Court of Newfoundland.)

More recent Supreme Court of Newfoundland decisions have usually provided custody of pre-teen young people to the mother; but occasionally to the father, a grandparent or an unwed father. Newfoundland, incidentally, had the longest child custody proceeding (33 sittings) in Canadian history up to 1991, presided over by Mr. Justice John W. Mahoney *qv* in 1982 and 1983.

FAMILY LAW SINCE 1949. The continuing (although substantially diminished) influence of the common law's paternal preference in judicial determinations of custody disputes produced the first significant family law development in the Province after Confederation. Although in theory rules of equity (essentially, rules supplementing common law to ameliorate its harshness in particular cases) that increased emphasis on a child's welfare applied to custody proceedings, there were judicial differences of opinion as to what precisely these rules were and the extent to which they influenced the common law regarding child custody. One result in Newfoundland were custody decisions in the 1950s and early 1960s which, arguably, relied unduly on common law at the expense of the rules of equity. The result was that the child's welfare was made paramount in custody disputes by legislation in 1964, which closely followed similar legislation of the British Parliament enacted in 1925. (Although in law still possible, by 1925 statutes of the British Parliament then being enacted did not, in practice, apply to Newfoundland.)

A principal legal consequence of Confederation was that Newfoundland became subject to the British North America Act 1867 (renamed the Constitution Act on April 17, 1982), which provided for division of law-making power between federal and provincial governments. Family law subjects — such as capacity to marry, juvenile delinquency and divorce — became legislative responsibilities of the Parliament of Canada. Marriage formalities, child welfare, child custody, and property were, as before Confederation, legislative responsibilities of Newfoundland. Legislation regarding support of spouses and children prior to divorce continued to be Newfoundland's responsibility, whereas the support of spouses and children in divorce proceedings was the responsibility of Canada.

Stimulating post-Confederation developments in family law legislation was the Family Law Study established in September, 1967, under directorship of Raymond Gushue *qv*. Over the next six years the study produced 14 reports to the Province and a 675-page book — Gushue and Day, *Family Law In Newfoundland* (1973).

Young Offender. Term 18 of Newfoundland's Terms of Union with Canada exempted Newfoundland from application of Canada's Juvenile Delinquents Act, the pre-Confederation Newfoundland equivalent continuing in force. The Welfare of Children Act defined juvenile delinquents as every child actually or apparently under age 17 years (under Canada's legislation: 16 years, except 18 in Manitoba and Quebec and 18 for females and 16 for males in Alberta). This Newfoundland legislation (including post-Confederation amendments) was supplanted, as was the Juvenile Delinquents Act elsewhere in Canada, on April 2, 1984, by the federal Young Offenders Act. The Young Offenders Act defines a young person (formerly a "juvenile delinquent") as a person of 12 years of age or more and under 18 years who, if charged with an offence either provided for by the Act or provincial statute may be tried in a youth court unless, where more than 14 years of age, transferred to an adult court having regard for the offence alleged, society's interests and the needs of the accused.

Divorce. Divorce had not, up to Confederation, been authorized by Newfoundland law. From Confederation to 1963, therefore, access by Newfoundland (and Quebec) residents to divorce was by production to a Senate divorce committee of proof of adultery or sodomy which, if sufficiently cogent, resulted in passage of private member's bills (known as "Divorce Acts") by the Senate that were approved of by the House of Commons. (At the behest of Newfoundland residents 69 such bills were passed from 1949 to 1963.) As a result of strenuous objections of two members of the House of Commons to the process of senators' judging the sufficiency of divorce proof, from 1963 to 1968 a Justice from the federal Exchequer (now Federal) Court, acting as Divorce Commissioner, heard divorce proceedings from Newfoundland (and Quebec) and recommended granting or rejecting each divorce application to the Senate divorce committee which, if the committee approved the Justice's positive recommendation, initiated a Senate resolution facilitating a divorce. (In this manner divorces were granted to 46 Newfoundland residents.)

With no access to divorce provincially until 1968, some Newfoundland residents sought from the Supreme Court of Newfoundland a judicial separation (effectively, divorce without right of remarriage) on grounds of mental or physical cruelty, bestiality or

sodomy; or an annulment on grounds of bigamy, being too closely related to the other spouse by blood or marriage, lack of consent to the marriage, or inability to consummate. From January 1, 1940 to July 1, 1970 seven applications for judicial separation and four applications for annulment were made to the Supreme Court of Newfoundland.

Parliamentary divorce procedures for Newfoundland residents, as well as local divorce legislation operative almost everywhere else in Canada were, on July 2, 1968, replaced by the first federal Divorce Act. The Act authorized granting by provincial and territorial superior courts of a divorce decree (a decree *nisi* followed in 90 days or later, on application, by a decree absolute) on any of eight marriage offence grounds (such as adultery, a homosexual act, or mental or physical cruelty) or eight marriage breakdown grounds (including separation for at least three years unless the person seeking divorce had deserted in which event the period of separation for him or her was five years). The first divorce granted in the Newfoundland Supreme Court was by a future Chief Justice (1979 to 1986), Arthur S. Mifflin *qv*, on December 9, 1968 to a woman who had been separated for 14 years from her husband due to his mental illness.

This Act was supplanted from June 1, 1986 by the Divorce Act (1985) which replaced the 16 grounds of divorce with one, namely marriage breakdown (defined as adultery, mental cruelty, physical cruelty, or separation for one year) upon proof of which a divorce judgment may be rendered that usually takes effect, without further application, on the 31st day following the day rendered. One provision of the most recent Divorce Act authorizes a stay of the granting of a divorce judgment, even where the divorce ground is proven, until reasonable arrangements for support of any children of a marriage have been made. (From July 2, 1968 to December 31, 1988, 9,387 divorces were granted by the Supreme Court of Newfoundland. In 1988 the Newfoundland divorce rate was 155.6 for every 100,000 of population, approximately half the national rate.)

Marriage. No federal legislation ever having been enacted on the subject, capacity to marry in Newfoundland and elsewhere in Canada is governed by common law. Thus, the minimum age of marriage is 14 years for a male and 12 years for a female (chosen at common law as being the approximate ages of puberty). In Newfoundland and elsewhere in Canada, however, legislation has created provincial penal offences proscribing persons authorized to perform marriages from doing so where any proposed spouse is under a specified age. Such an offence was incorporated in Newfoundland's first marriage formalities statute in 1833. Its equivalent in the present legislation, The Solemnization of Marriage Act, 1974, provides that a marriage celebrant commits an offence where (subject to certain situations not here mentioned) he or she (a) marries a couple if either is of or over 16 years and under 19 years of age and does not have a required consent or an order of a Justice of the Newfoundland Supreme Court that judicially bypasses the consent requirement or (b) marries a couple if either is under age 16 years and does not have a licence for the marriage issued by either a Provincial Court Judge or a Supreme Court Justice. Such a licence cannot be judicially issued unless the prospective bride is pregnant.

Civil marriage has been authorized since the marriage legislation of 1833 which initially permitted the lay procedure where a person requesting nuptials was "distant ten miles from the residence of the nearest clergyman, or teacher or preacher of religion;" perhaps necessary, former Chief Justice Robert S. Furlong *qv* (1959 to 1979) remarked, to preclude couples wishing to marry during the summer fishery in Labrador, where clergy were few and far flung, from living together without being married. (This prompted Mr. Justice James Douglas Higgins *qv* to express doubt that anyone in Newfoundland or Labrador ever resided that far from clergy.) Civil marriage was not, however, universally available in Newfoundland until the 1974 Act. Since then, whether a person proposes to be married in a religious or civil ceremony, he or she has been required to first apply for a marriage licence (and save in special circumstances justifying abridgement) wait until the fourth day following to obtain and present the licence to the marriage celebrant, then wait at least four days before the day on which the ceremony can be performed. There has never been any requirement of a minimum residency period in Newfoundland before being married here.

From 1968 to 1989, 87,937 marriages (5,106 in 1972 being the most for one year) have been solemnized in Newfoundland. The marriage rate in 1989 was 6.0 marriages per 1,000 of population, lower than in any year other than 1985 (5.5) during the period 1968 to 1989.

Child Protection. Other than to consolidate in 1964 and 1972, development of child welfare legislation in Newfoundland has (notably from 1972 to 1985) occurred in a manner English justice Lord Devlin might describe as "make due and mend" when there was any examination of the legislation by responsible provincial government departments—social services and justice. The legislation's raison d'être is supervision at home or in state-approved foster environments by and on behalf of the Director of Child Welfare of the "best interests" of children to age 16 years suspected of being and judicially found to be "in need of protection." With agreement of children who reach 16 years of age while in the Director's care, the Director's supervision may continue until age 19 and the Province's financial support until age 21.

Although a comprehensive revision of protection and most other aspects of policy for implementing Newfoundland child welfare law was published by the Director of Child Welfare in October 1989, neither the coming into force on April 17, 1982 of the federal constitutional Charter of Rights and Freedoms nor the

declaration of a few provisions of The Child Welfare Act, 1972 to be unconstitutional in 1988 (which resulted in curative amendments) has prompted a major overhaul of Newfoundland child protection legislation.

Disclosures of shortcomings in The Child Welfare Act, 1972 in some testimony to public hearings from September 1989 to June 1990 of a public inquiry may spur major renovations to the legislation. Mandated to inquire into (among other things) the response of the state to allegations of sexual and physical mistreatment of young persons, for whom the Director of Child Welfare was responsible, living at Mount Cashel Boys Home and Training School, St. John's and in state-licensed settings, the Royal Commission Of Inquiry Into The Response Of The Newfoundland Criminal Justice System To Complaints was struck under The Public Enquiries Act on June 1, 1989. Chairperson of the inquiry was Judge Samuel H.S. Hughes, retired as a Supreme Court of Ontario Justice. (See HUGHES INQUIRY.)

Numbers of children since 1950 (neglected or in need of protection) for whom the Director of Child Welfare has been responsible ranged from 339 in 1950 (the lowest number) to 1,965 in 1970 (the highest). From 1983 the number has steadily declined: from 1,215 in 1983 to 773 in 1989.

Since the first half of the 1970s the Director and his staff have sought to cope with significantly increasing numbers of complaints regarding sexual mistreatment of children — which, by 1985, exceeded the annual total of all other types of alleged child mistreatment. The commitment to public service of perennially caseload-overburdened receiving officers (to 1944), welfare officers (to 1974) and social workers (since 1974) is inestimable.

Adoption. Like most family law subjects, adoption was a creature of statute; being unknown at common law. Since enactment of the first Newfoundland adoption legislation in 1940 the office of Director of Child Welfare, responsible for administration of the law, and the Director's headquarters staff at St. John's and field staff currently working out of the 52 District offices of the Department of Social Services have developed and maintained an impressive adoption program. Where an order has been made under The Adoption of Children Act, 1972, the child is in law the child of the adopting parents as if they were the natural parents; although, due to a shortage of children eligible for adoption, the waiting period to adopt in Newfoundland as of June 1, 1991 was approximately seven years. The supply of Newfoundland-born children for adoption is not likely to increase soon; one reason being that the fertility rate of Newfoundland women in 1988 was 1.508 children per woman, lower than in any Canadian jurisdiction other than Quebec. In 1966 Newfoundland's fertility rate, 4.58, was second highest in Canada.

Despite the adoption program's efficacy the only family law appeal from Newfoundland to the Supreme Court of Canada, involving legal and factual circumstances unique among appeals to the final court of judicial resort in Canada. (*Beson v. Dir. of Child Welfare* [1982], resulted in the Court ordering removal of a five-year-old boy, for whom the Court appointed counsel who filed a substantial record of evidence and reports of professionals, from the then-current adoptive applicants for the purpose of being adopted by former adoption applicants from whom, the Court found, he had, improperly, been removed on behalf of the Director.)

Child Paternity and Custody. Child paternity and custody are two subjects canvassed in legislation in force from May 1, 1989 that, Department of Justice solicitor Alphonsus E. Faour *qv* wrote in January 1990, "served to dramatically reform and revise the legislative framework for private family law in Newfoundland." The legislation consisted of four statutes that Faour described generally as follows:

> The Family Law Act and The Children's Law Act comprise a major reform and consolidation of much of the private law relating to the family within the jurisdiction of the provincial legislature. The Reciprocal Enforcement of Support Orders Act . . . modernizes the legal framework in which orders for support may be enforced on a reciprocal basis between Newfoundland and other jurisdictions. The Support Orders Enforcement Act . . . provides the authority for establishing the Support Enforcement Agency, a publicly funded program to enforce support orders on behalf of parties in whose favour the orders are made.

As a result of this legislation the Provincial Court of Newfoundland may try all family law proceedings (including, for the first time since early 1950s, custody proceedings) other than those involving divorce and property.

The Children's Law Act which replaced some portions of The Children of Unmarried Parents Act (successor to Newfoundland's 1834 bastardy legislation) includes a provision that removed "illegitimate child" (that had, in turn, supplanted the term "bastard child") from the Newfoundland legal lexicon. It also authorizes the ordering of blood tests to assist courts to determine a child's paternity (where disputed) and the making of declarations of parentage (that is, paternity) of children including those conceived by artificial insemination, although it addresses none of the broader issues pertinent to birth technologies such as surrogate motherhood.

The Act prescribes some of the factors to be considered in determining, in custody disputes, a child's best interests. Moreover, the Act addresses situations in which a child is abducted between Newfoundland and other provinces and the territories or, assisted by the Hague Convention On The Civil Aspects Of International Child Abduction that the Act incorporates, situ-

ations in which a child is abducted between Newfoundland and other countries.

Testamentary custody (for the first time authorized in Newfoundland as a result of the Act) permits a person to incorporate in a will designation of a custodian for his or her children following death, potentially effective for 90 days.

Property. Despite their presence in the labour force, by close of the 1970s, of 38% of married women in Newfoundland (compared to 73% of married men) rarely did a wife succeed in litigation at common law to obtain a declaration of a partial interest in the residence she occupied or had occupied with her spouse to whom, alone, the residence was deeded. Married women who served exclusively as homemakers and child care givers, and thus made no contribution of wages to the marriage, had even less success. One of the handful of legal proceedings profitably prosecuted by a woman did not involve a home. Rather, the property in dispute was wedding gifts to which Mr. Justice Geoffrey L. Steele *qv*, then sitting as a District Court judge, decided the wife was entitled to the extent the wedding guests making the gifts had been invited from her side of the family (which represented most of the guests at her wedding).

By the time courts began to find, in rules of equity, remedies to this and related long standing inequities in division of property between spouses, most Canadian provinces and both territories were enacting legislation designed, wrote Madam Justice Bertha Wilson (in *Clarke v. Clarke*, October 4, 1990), "to alleviate the inequities of the past when the contribution made by women to the survival and growth of the family was not recognized . . . [and to reflect] the equal partnership concept of marriage and the equal division of property." The result, in Newfoundland (from July 1, 1980), was The Matrimonial Property Act that ordinarily recognized as jointly owned, irrespective of ownership described by title deed, property occupied by spouses as a family residence (the matrimonial home) and that provided for sharing (on separation, divorce, annulment or death) of most other property acquired while spouses cohabited — exceptions including gifts from third parties, inheritances and business assets. However the Act recognized contributions by one spouse of work, money or money's worth to the business assets of the other spouse. The operation of the Act (which governed unmarried couples where and only where they specifically agreed in writing to its application to them) had the salutary influence of bringing fairness to most circumstances requiring domestic property division.

On May 1, 1989, the Act was repealed and its provisions incorporated in The Family Law Act. This Act provided an additional and less onerous procedure for one spouse to obtain temporary exclusive possession of the matrimonial home than that already in place — a legislative development that reflected heightened awareness of family violence in Newfoundland society.

Most aspects of children's property is governed by The Children's Law Act; provisions that largely codify existing Newfoundland legislation, rules and common law relating to that subject.

Support. The Family Law Act also replaced The Maintenance Act and certain provisions of The Children of Unmarried Parents Act, 1972 — not materially altered in some respects since the first such Newfoundland support legislation in 1834.

Shortly before The Maintenance Act's repeal Madam Justice Margaret Cameron reluctantly cancelled support a husband (cohabiting with another woman) was paying to his wife because the wife had had a brief sexual relationship about six years following separation. The Family Law Act removed fault as a bar to entitlement or as a basis for cancelling a support order and for the first time provided in provincial support legislation specific guidelines for determining dependency for and the amount of support to be paid (a) by a parent for a child — including (i) a child born out of wedlock and (ii) an unwed parent (of the child) if he or she has lived with the other parent for at least one year; (b) by a spouse for another spouse, and (c) by a son or daughter for a parent.

The Support Orders Enforcement Act authorized an agency, established in 1989 at Corner Brook, to attack the problem of default of court-ordered support, while The Reciprocal Enforcement of Support Orders Act provides assistance to the agency with enforcement of Newfoundland maintenance orders in other provinces and the territories of Canada and in certain other parts of the world.

Other Legislation. Other Newfoundland family law legislation to 1990 has defined the age of majority as 19 years; authorized change of name (under which a young man who was undergoing a gender change was permitted to adopt a female given name); provided for regulation of daycare and homemaker services; authorized judicial alterations of the provisions of a deceased spouse's will in appropriate circumstances to provide, for example, for a surviving spouse; authorized confinement by the state of family members who are mentally challenged; authorized legal proceedings for compensation for pre-natal injuries; and provided for neglected adults.

In 1989 Newfoundland finally enacted legislation abolishing several ancient family law remedies created at common law. Remedies abolished were actions by a husband (a) for damages (i) for criminal conversation against a man who had committed adultery with his wife; (ii) against a man for enticing his wife to leave him or (iii) for harbouring his wife; or (b) for an order of restitution of conjugal rights requiring his separated wife to resume living with him.

In the same year The Family Law Act extinguished the common law principle that by virtue of marriage two shall become one, *he* being the one. See also CHILD WELFARE; DIVORCE; MARRIAGE. Rupert W. Bartlett (*BN III*, 1967), Bissett-Johnson and Day (1986), St. John Chadwick (1967), David C. Day

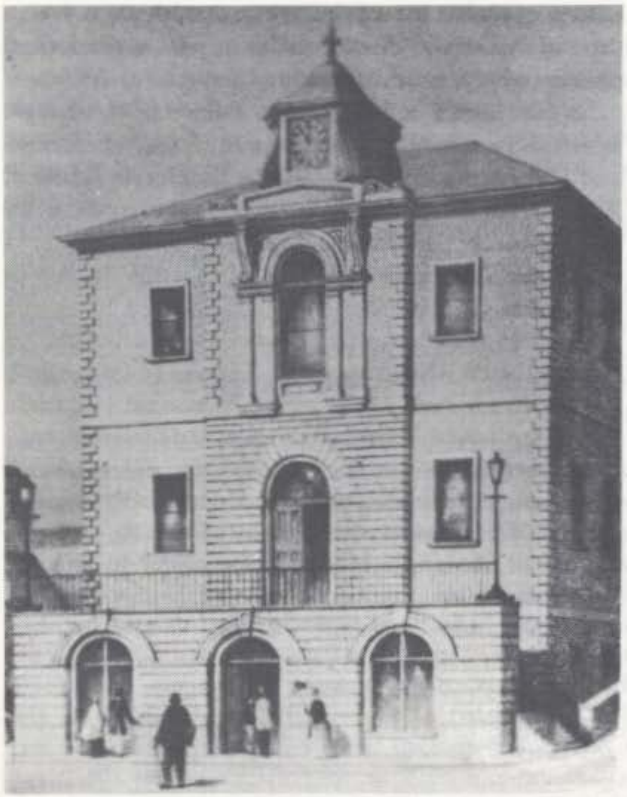
(1983), Alphonsus E. Faour (1990), William C. Gilmore (1988), Stuart R. Godfrey (1985), Gushue and Day (1973), A.H. McLintock (1940), Hugh Ridler (interview, June 1991), Margaret (Higgins) Trask (interview, June 1991). DAVID C. DAY

JUDICIARY. The judiciary is the branch of government in which is vested the power to interpret and apply the law. The early evolution of a system of courts in Newfoundland was slow and uncertain. Settlement was discouraged officially and difficult for any number of practical reasons, and in 1699 was in fact declared to be illegal (see SETTLEMENT). It was not until 1824 that a formal court system was firmly established. With early settlement taking place despite its illegality, an informal system of justice evolved, so that "three centuries of legal experience preceded the emergence of judges and lawyers" (English).

EVOLUTION OF THE JUDICIARY TO 1792. When John Guy established the first colony in Newfoundland, at Cuper's Cove, he issued a code of regulations pertaining mainly to public and private properties. Like Sir Humphrey Gilbert, Lord Baltimore and other early colonizers, Guy was empowered by a Royal Charter to make laws and administer justice. Of course, by the time Guy's colony began in 1610 the migratory and seasonal fishery had been in existence for more than 100 years. Other than the issue by Guy of property-related regulations early developments in the law, therefore, were largely to affirm customary practices regulating the migratory fishery.

The need for law enforcement in Newfoundland was recognized when the first North American vice-admiralty court was held in Trinity in 1615 by Richard Whitbourne *qv* upon commission from the British High Court of Admiralty, London. Hearing complaints of misdemeanours in trade and navigation from at least 170 masters of ships in Trinity Harbour, Whitbourne also visited various outlying stations to look for instances of lawbreaking, including monopoly of shore spaces and the burning of woods. He made a report on cases of lawlessness, but with no bailiff to serve process, no courtroom or military forces at his disposal to enforce decrees, and no further sessions after 1615, Whitbourne's commission had little effect, the primary exercise of legal authority continuing to rest with fishing admirals. By custom, the captain of the first British vessel to arrive in a Newfoundland harbour for the fishing season became "admiral" of that harbour, with the authority to allocate shore space and fishing grounds and a general obligation to maintain law and order.

The first code governing the Newfoundland fisheries was issued by the Court of Star Chamber, London, in 1634. The laws for the most part reaffirmed customary practices in the migratory fishery: appointing the first fishing master to arrive in harbour as admiral for the season; forbidding the operation of taverns, the destruction of shore stations and the rinding of the forests. The powers of the fishing admiral — "the skipper of the first vessel which the favouring winds



The old courthouse and market at St. John's

blew into any harbour, how rude soever and ignorant he might be" (Prowse) — were limited only by the restriction that those accused of capital crimes (murder and theft over 40 shillings being punishable by death) should be taken to England for trial, accompanied by two witnesses. Given that the witnesses would have to lose their fishing season and travel at their own expense, it is not surprising that few such cases seem to have reached the Lord High Constable. Other statutes in the 1600s attempted to encode customary practices in the migratory fishery and to thwart attempts by West Country merchants and fishermen to gain advantage by giving their fishing stations some permanency. By 1661 captains were forbidden to transport passengers to Newfoundland in an effort to end the growing practice of *bye boatkeepers' *qv* taking passage to Newfoundland. Additional Rules in 1670 limited the fishery to British subjects and introduced new restrictions to prevent over-wintering crews from claiming the legal rights of a settled population.

In 1698 the customary practices of the migratory fishery were further codified in *King William's Act *qv* (10 & 11 Will. III, c. 25). The authority of the fishing admirals was reaffirmed, but the limits of that authority were more clearly set out. Decisions were subject to appeal to the naval officer from England in charge of the Newfoundland station and some provision was made for the fishing admirals to report to English authorities. This system of justice still had obvious weaknesses, the fishing admirals often being accused of serving only their own or their merchants'