

Remarks by Chief Justice J. Derek Green
On the occasion of the administration of oaths of office to
Newly-appointed Masters of the Supreme Court

Court of Appeal
St. John's, NL
January 11, 2011

Before commencing the regular business of the Court this morning, I am going to administer the oaths of office to five newly-appointed Masters of the Supreme Court. They are: **David C. Day, Q.C., James Oakley, Karl R.S. Inder, Q.C., Sandra R. Chaytor, Q.C., and Christopher D. G. Pike.**

I welcome on the Bench with me this morning, Chief Justice David Orsborn of the Trial Division. His interest in this ceremony stems from, amongst other things, the fact that one of the new Masters, **Christopher Pike**, is a former law partner of his. I would also like to recognize and welcome an existing master – Thomas O'Reilly, Q.C. - and thank him for his presence in the Court this morning.

I will now ask the Registrar, as Chief Master, to read the Commission appointing the five Masters in question.

[The Registrar reads the Commissions]

I will now ask each of the newly-appointed Masters to swear and sign the oaths on the sheets provided.

[Each Master reads and signs the oath of allegiance and oath of office, as required]

Chief Justice Orsborn and I extend our congratulations to each of you on your appointment and thank you for agreeing to undertake the responsibilities of Master in the service of the administration of justice in the province. I think it is safe to say that – notwithstanding the reference to “profits and emoluments” in the Commission that was read - a person does not agree to occupy the office of Master for the remuneration that will result. The fees that are chargeable to litigants for the work masters do are not nearly sufficient to compensate for the lost opportunity of earning regular legal fees when performing legal work for clients. By giving of their time and expertise in performing very important quasi-judicial functions, masters provide a very important service and we are grateful for the sacrifice they make in assisting the court system to run smoothly and more efficiently than it otherwise would.

This is the second time since taking office as Chief Justice of Newfoundland and Labrador that I have exercised the prerogative of the Chief Justice under s. 77 of the *Judicature* Act to appoint Masters of the Supreme Court. December 2009 was the first time, I believe, that the oaths or affirmations of office of newly-appointed Masters were administered in a public ceremony in court. I felt that given the importance of the office of Master, it was fitting that some public recognition be given to the persons who have agreed to undertake the responsibilities associated with the office. We have continued that practice for this second group of new Masters whom I have now appointed.

The appointment of Masters on this occasion has been motivated in part by the resignation of Robert Sinclair, Q.C. as Master in the fall of 2010. Mr. Sinclair had been very active as a master since his appointment in 1996 and has authored a number of decisions relating to the taxation of accounts that have been of benefit to other masters and the courts as precedents in the

performance of their work. I want to take this opportunity to thank Mr. Sinclair for his contribution to the legal system in this regard.

The fact that we are today appointing five new masters to replace the one who has retired is probably the best testament to the contribution that Mr. Sinclair has made.

David C. Day, Q.C. is a barrister of 43 years who has appeared in all levels of court in Canada and has also done work in relation to cases in the European Court of Justice. He has authored many books and articles on legal subjects over his lengthy career and serves on the editorial boards of a number of legal publications. He has lectured widely on a wide variety of legal subjects. He obviously brings a vast amount of knowledge and experience to the office of master. With his penchant for writing about, and systematizing, the law, I fully expect that we will see many interesting written taxation decisions from his pen as well as an attempt at organizing the existing taxation precedents in a more accessible form.

James C. Oakley brings to the office of master 31 years of legal experience as a lawyer in private practice primarily in the areas of civil litigation, administrative law and commercial law as well as in the areas of alternative dispute resolution. Like Day, Q.C., he has appeared in all levels of Court in this province as well as before the Federal Court of Canada and the Supreme Court of Canada. He has extensive experience as private arbitrator and mediator, has chaired a number of administrative tribunals, is sought after as a lecturer and teacher at legal conferences and seminars and has a number of legal publications to his credit. Mr. Oakley has been a member of the Rules committees of the Supreme Court and has chaired the task force constituted by those committees to revise the scale of costs in Rule 55. His recommendations, which are likely to become law in the near future, will result in a very different manner of calculating party

and party costs in civil litigation in this province. As such, he will have a head start on other masters in adjusting to the new cost calculation methodology. I have no doubt that he will be willing to use that knowledge to provide training and assistance to his colleagues as they scramble to familiarize themselves with the new costs regime.

Karl R.S. Inder, Q.C. a lawyer with a quarter century's experience in private practice, presently based in Grand Falls – Windsor, brings to the office of master a wealth of experience as a litigator and will significantly strengthen the office of master in the Central Newfoundland region. At present there is only one other master in that area. Mr. Inder figured prominently in the news this past fall due to his involvement as counsel in a high profile case in the Supreme Court, Judicial Centre of Grand Falls - Windsor involving, shall we say, a bear hunting incident. He also serves as Vice-Chair of the Labour Relations Board and as an adjudicator with the Human Rights Commission. These adjudicative roles, together with his extensive involvement in governance of the legal profession as a bencher of the Law Society will enable him to bring a vast amount of experience to the office of master.

Sandra R. Chaytor, Q.C. has 21 years of legal experience as a private practitioner to offer to her new office. She has appeared at all levels of court within the province in addition to appearances before numerous administrative tribunals and the Supreme Court of Canada. This extensive litigation experience, especially in the areas of insurance, personal injury, health care and professional liability will be of considerable assistance in her new role. Of course, she is well-known in recent years for her role as counsel to the Cameron Inquiry on Hormone Receptor Testing. Like the others, she is often sought after as a speaker and presenter on legal topics within her areas of expertise at CBA, Law Society and other seminars and conferences.

Christopher D.G. Pike also has, like Chaytor, Q.C., 21 years of litigation experience under his belt but he also brings to the office an additional nine years of experience of prior work in the insurance industry, including employment as a property casualty insurer and life insurer. This added perspective may well be of assistance in his role as a master since so much of the litigation in our courts involves insurance issues of one type or another. Mr. Pike, like the others, is a speaker at legal education programs, especially in the field of insurance law and civil practice, both provincially and nationally and has produced a number of legal publications in his field. It is not without significance that he has been listed in The Best Lawyers in Canada as 2011 Lawyer of the Year – Personal Injury.

I am sure the office of master will be enhanced with the addition of these five new appointees.

At the last ceremony, I observed that the office of master of the court is a very ancient one. The origin of the office is to be found in England in the Royal clerks who staffed the office of the Lord Chancellor. They existed probably as far back as Norman times but at least since the reign of Edward the Confessor. The office has evolved over time. As the Court of Chancery developed under the Lord Chancellor, the clerks – or masters as they eventually came to be called – became assistants to that developing court. Eventually, they took over functions performed by the Lord Chancellor arranging proceedings and settling preliminary matters prior to the hearing of causes. This was the beginning of the work masters now do in some jurisdictions dealing with interlocutory applications. They also took work from the courts on references to inquire into matters, take evidence and report back to the court on matters of fact. This was especially so in the area of taking accounts in estates and commercial matters.

Slowly, the office moved away from the notion of assisting the judge to become more of an independent decision-making office in certain defined areas.

The office continues to evolve. The role varies throughout Canada. In some places like Ontario and Alberta, masters can be full-time office holders who work in the court. They perform many of the functions a judge could do in Chambers, ruling on all sorts of pre-trial applications. In others, like this province, masters have traditionally had a more limited role involving, primarily, taxing bills of costs and lawyers' accounts. Occasionally, however, masters in this jurisdiction are also involved in taking accounts in estate matters and mortgage foreclosures, assessing damages and acting as referees under Rule 43 of the rules of court. It has been suggested to me by a number of lawyers – including a couple of today's new appointees - that masters can be put to greater uses under existing court procedures than they are presently doing. I am going to challenge you now, as well as the existing masters, to put your collective heads together and come up with some ideas how the office of master in this province could play an even greater role in the administration of justice than it is currently playing. I am sure that Chief Justice Orsborn and I would both look with interest on any considered proposals you might have to make.

It may also be an opportune time for masters, as a group, to get together for other reasons as well to give some thought to the role they are playing, with a view to standardization and systematizing what they do. For example:

- Collecting and publishing written masters' decisions so as to make them more accessible to the profession and other masters;
- Standardizing procedures for the conduct of taxations;
- Developing standards for the conduct of the work of masters;

- Conducting training sessions with respect to taxation law, especially in relation to the proposed changes in the methods of calculating party and party costs, if they are implemented – as it is proposed – by the end of this month.

All it will take is one or two of you to take the initiative to organize a get-together to consider some or all of these suggestions and you never know how the office of master might be transformed for the better. Perhaps the Registrar, as Chief Master, could exercise a co-coordinating role.

But all that is for the future. For now, let me once again express my appreciation and that of Chief Justice Orsborn to each of you for agreeing to become a Master of the Supreme Court.

We will adjourn for five minutes before dealing with the regular business of the court.