

# Alfred Kwinter receives Hillyer Award



*Bruce Hillyer and Alfred Kwinter*

Alfred Kwinter is an advocate for innocent victims in their battles with institutional clients. Clients like Terry and Cecile Plester and clients like Frank Mazza. These were clients who were not looking for a huge windfall in the form of punitive damages. They were not looking to make legal history. They were not looking to be involved in multi-month trials where their credibility would come under attack. Each client was accused of arson.

Terry and Cecile Plester had the misfortune of having their furniture store burn down on March 14, 1997. Within days the insurer had retained legal counsel and approximately eleven days after the fire had made a decision to deny the claim. Of course, they did this before there was a full and complete and fair investigation. Terry and Cecile, who had never had any involvement with the law prior to this, were forced to seek legal representation. They were fortunate to have retained Alfred Kwinter. For the next six years, Alf tried to resolve the claim. He hired a fire investigator who disputed the theory of arson. He hired accountants who disputed the insurer's theory that the plaintiffs were in desperate financial straits. He tried to settle the claim but the insurer was maintaining its arson defence and offered nothing. The trial started in January, 2003 and over the next 5½ weeks, was tried before Justice Jenkins and a jury. The jury awarded the Plesters the amount of their claim, aggravated damages in the amount of \$175,000.00, and punitive damages of \$350,000.00.

The fire at Frank Mazza's farm occurred on August 13, 1993. The insurer alleged a material misrepresentation and denied coverage. They also alleged that Mazza had made wilfully false statements, exaggerating the extent of the loss, and they again denied coverage. Finally, the insurer alleged arson. Any one of the defences, if made out, would have

resulted in the plaintiff's claim being dismissed. Alf was retained in 1996. Again he investigated the claim and tried to negotiate a resolution for his clients. Before trial the insurer offered a nominal amount. This case came on for trial in May, 2003, - just three months after completion of the Plester case - and over the next seven and half weeks, was tried in front of a St. Catharines jury. The jury awarded the property damage claims and awarded \$2.5 million in punitive damages.

There must have been many times on the drive down to London or St. Catharines on Sunday night to get ready for trial on Monday, that Alf must have thought: "What will happen if the jury buys into any of the defence arguments?". He had a lot at stake financially. He also had his personal reputation at stake. It's not an easy thing to do - to try a lengthy, hotly-contested case in a city where you neither practise nor live, especially when you are facing an institutional defendant with unlimited resources to fight the case. Alf had to basically abandon his practice and family for over two months on each occasion so that his clients could receive justice. I know that Alf is a family man and it was difficult being apart from his wife, Gayle, and his children, Ava, Shane and Lara. As we all know, a trial can be a gruelling experience, and these were no different. Alf would be up at 6:00 a.m. and work until midnight, including weekends. Alf did the trials with the assistance of his clerk, Marie Harnock, but did not have a junior lawyer.

So, Alf, your accomplishment in either one of the cases would have been deserving of the honour of the Hillyer Award. The fact that you did it twice in one year is a real tribute to your fighting spirit, your tenacity and the passion that you bring to your profession. [excerpt from presentation by Gary Will, Past President of OTLA]