



2007: No. 3 • JULY

BENCHERS' BULLETIN

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The quest for equality and diversity in the legal profession

by Anna K. Fung, QC

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor at bdaisley@lsbc.org. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50.00 (plus GST) per year by contacting the subscriptions assistant at communications@lsbc.org. To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at lawsociety.bc.ca.

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Publications Mail Agreement No. 40062742

IS THE LEGAL profession in British Columbia really ready to embrace equality and diversity within its ranks? I had occasion to reflect on this question at the Canadian Bar Association's (BC Branch) Provincial Council meeting in Richmond on June 24.

As I looked around the room at lunch, I saw many bright young faces. Although there seemed to be an equal balance between men and women, there were only a handful of visible minorities and even fewer aboriginal members. Why is that, I wondered? Is it because there are institutional barriers against entry into the legal profession for minorities? Is it because of lack of language proficiencies? Is it because the values of the legal profession resonate only with Anglo-Saxon cultures?

As the regulator of the legal profession, should the Law Society worry about and devote resources to addressing these "soft" issues?

I am sure that there are lawyers who feel that the advancement of equality and diversity falls within the mandate of the Canada Bar Association as a member-interest rather than a public-interest issue, and that the Law Society should stick to its knitting and focus on its regulatory functions.

There is no question that the CBA has taken the lead in advancing equality and diversity issues. The association instigated the Bertha Wilson report and successfully implemented many, if not all, of its recommendations. Both the national CBA and the BC Branch have instituted standing committees on equality and diversity and give out annual awards that recognize the efforts of lawyers who promote these issues.

Despite these efforts, however, there are still few visible minorities and aboriginal lawyers in BC relative to their population, and based on my own experience, even fewer in mainstream downtown law firms. Women are still a relative rarity amongst the partnership ranks of large firms, and women with children even rarer.

Many articling students and associates have expressed disillusionment and disappointment when they discover the reality of a 24/7 career at the same law firms that promised them "work-life balance."

Why should we care about any of this, you ask? You might even think, without saying it of course, that there are enough lawyers competing for limited clients, so if women and minorities aren't entering or staying in the profession, so much the better as that means less competition.

Let me assure you that this is a very short-sighted view, particularly in BC where we are part of today's global economy. Demographic projections for the province indicate that by 2030, all of BC's population growth will come from immigration. Our

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clients will demand that we provide legal services in their own languages, with true awareness and sensitivity to diverse cultural backgrounds and mores. How well we are poised to respond to those needs will dictate the future relevance and sustainability of the legal profession in the long run.

There is no question that the struggle for equality and inclusion is a daunting and never-ending one, and it is one with which I am intimately familiar, as too were my ancestors before me. My grandfather first came to Canada from China in the early 1900s as a child labourer to work on the building of Canada's national railway. Until the day he died, he lived all his life confined to the safety and familiarity of Vancouver's

Chinatown, home to countless other Chinese male immigrants, who were cut off and isolated from their families in China. Even though he eventually became a Canadian citizen and was proud to call himself one, he was, nonetheless, denied the right to vote until Canada changed its laws to give Chinese Canadians the right to vote. Like others of Chinese ancestry, he paid the obligatory Chinese head tax until the Canadian government saw fit to do away with it.

Coming from a Chinese heritage, I was aware from an early age that it was a culture that typically valued males more than females. For example, when my grandfather died, he left all of his meagre assets to his son, my father, and left nothing for his daughter, my aunt. Fortunately for me, though, my father, unlike my grandfather, was a non-traditionalist. He brought me up to believe that I was not inferior simply because I was born female, and that I could do anything that any males could do if I set my mind to it and it was something that I wanted to do.

He was the first male feminist role model in my life. I was lucky to have had others since, including my former professional colleagues and mentors Alec Robertson, QC, Sholto Heberton, QC and

Steve Richards. At one point, Steve and I discussed how law firms needed to get with the program in terms of having more women and visible minorities to represent their firms in responding to clients' requests for proposals for legal work. He said, "I am interested in hiring lawyers, not dinosaurs."

Thankfully, dinosaurs are now extinct, even in the legal profession (I hope). How-

... IF THE LEGAL PROFESSION CONTINUES TO ACCEPT THE CURRENT STATUS QUO IN THE MAKEUP OF OUR LEGAL PROFESSION, WITHOUT TAKING CONCRETE STEPS TO ENSURE TRUE EQUALITY AND DIVERSITY WITHIN OUR RANKS, WE RISK BECOMING ALIENATED FROM THE REST OF SOCIETY THAT WE PURPORT TO SERVE.

ever, if the legal profession continues to accept the current status quo in the makeup of our legal profession, without taking concrete steps to ensure true equality and diversity within our ranks, we risk becoming alienated from the rest of society that we purport to serve.

Those who wish to leave this important

work simply to the CBA may be well served to remember that from a socio-economic perspective, it is in the best interests of the public that every member of the citizenry be able to maximize his or her contribution to society. And if women, visible minorities and aboriginal people are discouraged from participating fully in the legal profession, it would be a tremendous loss to the profession and to society as a whole.

As the body charged with the responsibility of protecting the public interest in the administration of justice and the governing of the legal profession, the Law Society should care about and continue to devote efforts towards the advancement of true equality and diversity in the legal profession. If we do not demonstrate true leadership in this area, we risk perpetuating the stereotypical public image of lawyers as white, middle-aged men who freely dispense legal advice about equality but never actually do anything about achieving it. That would be a real shame. ❖

Anna Fung was the 2007 recipient of the Canadian Bar Association (BC Branch) Equality and Diversity Award (see page 8).

Benchers meet with Campbell River Bar

Stephen Frame of Graham and Frame with Benchers Ken Dobell and Jan Lindsay at a reception for Campbell River lawyers during the Benchers' retreat. "It was fabulous to meet with the Benchers and to share our opinions and views with them," Frame said.

For more on the retreat, see pages 6-7.





Celebrating our excellence

by Timothy E. McGee

ONE OF THE best parts of my job is to report from time to time on the successes and achievements of the Law Society and its people. Over the past few weeks and months we've witnessed a series of successes and new initiatives — people, programs and projects demonstrating the commitment to excellence that is part of the Law Society tradition.

Our President has been honoured with two distinguished awards in recent weeks. In May, Anna Fung, QC was chosen as the YWCA's "Woman of Distinction – Business and the Professions" for 2007. In June, the Canadian Bar Association, BC Branch announced that Anna had won their 2007 Equality and Diversity Award, celebrating the accomplishments of a lawyer who has succeeded in advancing equality in the legal profession or generally in BC. In his letter of nomination, Alec C. Robertson, QC said, "Anna Fung is a champion of equality and a tireless worker to improve the lot of the disadvantaged. She is also an outstanding role model for women of diverse ethnic backgrounds and for women generally."

The Association for Continuing Legal

Education (ACLE), an international body representing more than 300 organizations, recently announced the granting of their 2007 Award for Professional Excellence to the Law Society for our online Small Firm Practice Course. Led by Kensi Gouden, the Law Society's Manager, Standards and Pro-

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fessional Development, the project development team launched the course on January 1 — on time and on budget. The Law Society's entry won out over entries from around the world. ACLE member countries include Canada, the United States, the UK, Australia, New Zealand and China.

Beat the Clock – Timely Lessons from 1,600 Lawyers, the Lawyers Insurance

Fund's newest publication, was sent to every insured lawyer in BC with the May issue of the *Bencher's Bulletin*. *Beat the Clock* is a guide for managing deadlines and limitation periods, providing over 70 risk management tips. The first such guide published in North America, *Beat the Clock* was developed by LIF staff over the past year under the guidance of Director Su Forbes, QC and Program Administrator Margrett George. Early feedback from practitioners has been very positive.

In March, our Professional Conduct staff launched the Intake and Early Assessment Group as a pilot project for enhancing the Law Society's responsiveness to new complaints through a combination of early assessment, streaming and intervention. An in-house team is focusing on resolving less serious complaints through early intervention — using phone calls and meetings to re-start communication between lawyers and clients, as an example.

I'm proud to be able to highlight these recent successes and new initiatives, and to congratulate all those involved. ♦

Inns of Court program

THE INNS OF Court program, which gives junior barristers an opportunity to discuss practical and professional issues with the judiciary and senior lawyers, is now accepting applications for its fall session.

Founded in 1984 by Alan McEachern (then Chief Justice of the BC Supreme Court) and fellow judges Henry Hutcheon, John Bouck and Josiah Wood, the program is modelled on the English tradition of junior lawyers meeting informally with senior practitioners and the judiciary over

dinner to talk about current issues.

"We felt a loss of contact with the young lawyers," McEachern said. "So we put something together where we could have a conversational, instructional talk with young lawyers about the Bar and professionalism and the civility that is so important to litigation."

Program head, Mr. Justice Austin Cullen, agrees. "It allows people to communicate among themselves and with the judiciary in a relaxed and informal

atmosphere and to feel a sense of the collegiality that should infuse the profession."

Participants meet once every two weeks at the Vancouver courthouse restaurant for a 90-minute discussion on topics such as professionalism, the role of counsel, lawyers and the media, and ethical issues led by Supreme Court judges and senior lawyers. This is followed by an

continued on page 15

Fall 2007 forum: *Lawyers Without Rights*



Munich lawyer Dr. Michael Siegal (1882–1979) complained to Munich Police Headquarters in early April 1933 when one of his clients was taken into "protective custody." He had the legs of his trousers cut off and was led through Munich's inner city streets barefoot with a board around his neck that read, "I will never complain to the police again!" Siegal managed to flee to Peru as late as 1940, where he died in 1979.

IMAGINE WHAT WOULD happen if half of BC's lawyers were summarily disbarred, the legal system transformed into an instrument of tyranny and the rule of law disappeared. If individual rights and freedoms were threatened, who would stand up to protect them? An internationally acclaimed exhibit that chronicles the fate of Jewish lawyers before and during the Holocaust is coming to Vancouver and Victoria this November to remind BC lawyers and all citizens to stay vigilant.

The Law Society is joining the Friends of Simon Wiesenthal Center for Holocaust Studies and the Vancouver Holocaust

Education Centre in presenting *Lawyers Without Rights*, a travelling exhibit that demonstrates what can happen when the rule of law and the rights and freedoms of all citizens are undermined by state interference. As part of this exhibit, the Law Society will present an evening **public forum on November 22** at Simon Fraser University, Harbour Centre, examining why it is so important to have a legal system that is independent of politics, what happened in Germany and what is happening around the world today in societies where the independent legal system is threatened.

The German Federal Bar and the

German Jurists Association, in partnership with the Friends of Simon Wiesenthal Center for Holocaust Studies, initiated *Lawyers Without Rights*. Since its inception, the exhibit has been presented around Europe, Israel, the US and more recently Montreal, Ottawa and Toronto. *Lawyers Without Rights* will run from November 1 to 25 at Harbour Centre Tower Atrium and at the University of Victoria from November 28 to December 9, with a round-table discussion on November 29.

Stay tuned for more information in the next issue of the *Benchers' Bulletin* and at lawsociety.bc.ca. ❖

Legislative changes broaden LSS mandate

RECENT CHANGES TO the *Legal Services Society Act* have broadened the Legal Services Society's mandate, while ensuring low-income people will still have priority for legal aid.

"We're very pleased with these changes," says Executive Director Mark Benton, adding that LSS can now be more flexible in providing services to people in need.

Benton said LSS was involved in drafting the amendments and, "while they don't go as far as the pre-2002 LSS mandate, in particular with respect to providing civil law services, they still pave the way for some exciting work ahead as we move forward with legal aid renewal."

The amendments included removing

"low-income" from the society's objects in s. 9 (1) of the act and adding to the principles in s. 9 (2) that the society's priority is to identify and assess the legal needs of low income people in BC.

As reported in the May 2007 *Benchers' Bulletin*, legal aid renewal is a new strategic priority that will guide LSS as it works toward ensuring it offers more client-centred services in a broad social context. This work will include providing lawyers with broader resources and support so they can take a more integrated approach to helping clients reach lasting and valued solutions to their legal problems.

Benton said the changes also mean the society can expand its current role

in justice reform initiatives, such as the Nanaimo Family Justice Services Centre, and will help LSS fill some important service gaps.

"For example, now we can do much more for people who fall just outside our financial eligibility guidelines. Before, we were restricted in the help we could offer them, and it left some very deserving people in quite dire situations with no legal recourse."

The amendments, contained in Bill 33 (*Attorney General Statutes Amendment Act, 2007*), were introduced and passed in the spring sitting of the BC legislature. ❖



Jock Finlayson, executive vice-president of the Business Council of BC, at the retreat.

Bencher retreat focuses on the future

THE BENCHERS' ANNUAL retreat is an opportunity for the Law Society's 31 governors to focus on long-term planning, strategic policies and key initiatives that require more time for analysis and discussion than is available at the Benchers' regular meetings.

It is also an opportunity to take the Law Society outside Vancouver so Benchers and senior staff can meet with local lawyers and ensure their views are heard.

This year's retreat — held in Campbell River and led by First Vice-President John Hunter, QC — explored the role of the Law Society in light of BC's changing economy, demographics and labour market, as well as recent developments in professional regulation.

The discussion, which included a presentation by Jock Finlayson, executive vice-president of the Business Council of

BC, was designed to assist the Benchers in developing the Law Society's 2008 – 2010 strategic plan later this year.

Hunter said the Law Society's regulatory focus will always be on the traditional core areas of admissions, ethics and discipline, but that it is important to consider whether the society should be pursuing some non-traditional activities in the future.

"The province is changing, the profession is changing, and there have been a number of developments in legal regulation since the last strategic plan was adopted," he explained.

One of the most influential and controversial developments in legal regulation is the Clementi Report released by the UK government in 2004. It recommended an expanded role for legal regulators, including public legal education and support for

consumer interests.

In Canada, recent developments include the changing role of the Federation of Law Societies as a national and international voice for legal regulators. In addition, provincial law societies are wrestling with fragmentation of the profession (firm size as well as the urban-rural divide), access to justice and the cost of legal services.

The Benchers debated these and other topics at length as they begin setting strategic priorities for the coming years.

"The purpose of the retreat," said Hunter, "is to take the long-term context presented by Jock Finlayson, telescope it down into the three years of our strategic plan and then narrow it into our profession and our regulatory mandate. We're not here to come up with conclusions or resolutions, but to make sure we're considering all the options." ♦

Finlayson's presentation

JOCK FINLAYSON, EXECUTIVE vice-president of the Business Council of BC, provided the context for the Benchers' retreat with a long-range look at BC's economic prospects, changing demographics and future business trends.

Broad trends affecting the legal profession:

Globalization

- Local economies are increasingly affected by external trade and investment flows.
- Globalization of practice pursuant to clients' needs and steady growth of international business activity.
- International negotiations (WTO/GATS) aimed at reducing barriers to trade in services and foreign provision of services in domestic markets.

Advances in technology

- Facilitates commodification of routine work.
- Lowers the cost of communication, information exchange and research.
- Off-shoring of certain legal services.

Industry consolidation

- Many industries are witnessing the emergence of a small number of predominant, global-scale competitors (e.g., automobile manufacturing, chemicals, pharmaceuticals, IT products, investment banking, etc.).
- Fewer Canadian/BC-owned firms are significant players in local markets.
- Less consolidation in "non-traded" industry sectors.

Financial markets rule

- Growing pressure for returns on capital are being pushed by demographics and globalization of capital markets.
- Low interest rates and low cost of capital are fuelling the growth of private equity which results in fewer large, public companies (but most firms taken private will likely become public again in a few years' time).
- Profits are near a record high as a percentage of GDP. ❖



Victoria Bencher Richard Stewart and Vancouver Bencher James Vilvang, QC at the 2007 retreat.

Past retreats

BENCHER RETREATS ARE often the beginning of long-term projects that have significant importance in the regulation of the legal profession. Highlights of past retreats include:

1990 Bencher workload

- Beginning of reforms to the Law Society's governance structure. Also led to hiring practice advisors.

1993 Perspectives on racism

- Established the Multiculturalism Committee (now part of the Equity and Diversity Committee).

1994 Board governance

- Development of a policy-based governance model for the Benchers.

1998 The future of the legal profession

- Initial discussion of the Law Society's first strategic plan.

2002 Admission program reform and enhancement

- Changes to the articling program.

2004 Improving trust assurance post-Wirick

- Development of the Trust Assurance Program.

2005 Small firm practice

- Development of the award-winning Small Firm Practice Course (see page 14).

2006 Government relations

- Analysis of ways in which the Law Society can work with government to improve the justice system

Law Society President receives YWCA, CBA awards

LAW SOCIETY PRESIDENT Anna K. Fung, QC, is the YWCA's 2007 Woman of Distinction for the business and the professions category.

The Women of Distinction Awards, presented at the 24th annual reception attended by close to 1,000 people, honours women and organizations from across the

"GETTING INVOLVED IN YOUR COMMUNITY OPENS YOUR EYES BEYOND YOUR OWN LITTLE WORLD," FUNG SAID. "THERE'S NO BETTER WAY TO WIDEN YOUR PERSPECTIVE."

Lower Mainland who have demonstrated exemplary leadership and contributed in meaningful ways to the community.

The YWCA noted Fung's work to advance equal rights for women and minorities.

In addition to serving the Law Society since her first election as a Bencher in 1998,

Fung has served as president of the Association of Chinese Canadian Professionals (BC), the Canadian Corporate Counsel Association, the BC Autism Association and the People's Law School, and is a former director of the Canadian Bar Association, the Legal Education and Action Fund and the Continuing Legal Education Society of BC. She is the former secretary of the UBC Law Alumni Association and is currently a member of the Advisory Board to the UBC law school's new National Centre for Business Law. Fung is senior counsel and chief privacy officer for Terasen Inc. In 2004, she received the RVA Jones Award for her work on behalf of Canadian corporate counsel.

On the same day that she received the YWCA Woman of Distinction Award, Fung received confirmation that she was this year's recipient of the Canadian Bar Association (BC Branch) Equality and Diversity Award. The annual award recognizes a CBABC member who has succeeded in advancing equality in the legal profession or generally in BC.



Anna Fung, QC at the YWCA Women of Distinction Awards

"Getting involved in your community opens your eyes beyond your own little world," Fung said. "There's no better way to widen your perspective."

For more information about the YWCA Vancouver Women of Distinction Awards, visit ywcavan.org/distinction. ❖

Amendments to the *Legal Profession Act*

AMENDMENTS TO THE *Legal Profession Act* were passed at the recently completed spring session of the Legislative Assembly, making the Law Society's regulatory programs more effective. The amendments are the result of ongoing collaboration between the provincial government and the Law Society to support public confidence in the administration of justice.

The amendments are:

PRACTICE STANDARDS

The Benchers may make rules to permit the Practice Standards Committee to order conditions and limitations on lawyers' practices (section 27(2)). Rules made under section 27(2)(d.1) must not permit the imposition of conditions or limitations on a lawyer's practice before that lawyer has been notified of the reasons for the

proposed order and has been given reasonable opportunity to respond (section 27(4)).

HEARING POWERS

Panels and the Benchers are given powers to conduct hearings by reference to the *Administrative Tribunals Act*, rather than the *Inquiry Act*, which has now been repealed (sections 44 and 45).

SOCIETY REQUESTS FOR EVIDENCE EX JURIS

New section 45.1 permits the Law Society to apply to the Supreme Court of BC for a letter of request to judicial authorities outside BC to compel testimony from witnesses or production of documents.

QUORUM FOR BENCHER REVIEWS

Section 47 now provides that if a Bencher

is unable to complete his or her duties regarding a Bencher review in progress, such that section 6(2)'s quorum requirement is not met, the review may continue to a valid conclusion, provided that at least five Benchers remain to hear the review.

APPOINTMENT OF LAW SOCIETY AS CUSTODIAN

Section 50 has been amended to provide for the appointment of the Law Society as a custodian of a lawyer's practice. The Society must designate an employee who is a practising lawyer or retain a practising lawyer to act as custodian on the Society's behalf (section 50.1)

For more information on the amendments, see the May 2007 issue of the *Benchers' Bulletin*. ❖

New summary hearings for regulatory violations

THE BENCHERS HAVE authorized a new hearing process that will provide an efficient, timely and cost-effective mechanism for dealing with lawyers who fail to observe their regulatory obligations.

A similar process used by the Law Society of Upper Canada has resulted in a high level of complainant satisfaction and is seen as demonstrating to the public that complaints are taken seriously.

While the vast majority of lawyers are conscientious practitioners, those who fail to follow Law Society regulations often fall into one of two groups: lawyers who are struggling or “crumbling” and lawyers who are trying to delay the Law Society’s investigation of, or hide, serious underlying misconduct (e.g., refusing to bring accounting records up to date to hide misappropriation).

The usual citation and hearing process is overly cumbersome for dealing with these cases, especially when they need to be resolved as quickly as possible to expedite investigation of an underlying complaint or to expedite an investigative audit of a lawyer’s financial records.

Under the new process, complaints

that allege that a lawyer has breached a Law Society rule, breached an undertaking given to the Law Society, or failed to respond to communication from the Law Society can be referred to the chair of the Discipline Committee who has the authority to issue a citation.

New rules confirm that evidence can be presented by affidavit and will allow the hearing panel to deal with verdict, penalty and costs in a single hearing instead of the two hearings now required.

The Law Society expects that most of these hearings will be held in front of a single Benchers rather than a three-member panel.

Additional rules ensure fairness to the lawyer facing the charges by permitting the Discipline Committee chair to refer the allegations to the full committee and by allowing a single-member panel to refer the case to the President to consider appointing a three-member panel with the standard hearing procedures where appropriate.

The summary hearing process is expected to speed up significantly the Law Society’s response to regulatory

violations.

The Benchers have previously stated in *LSBC v. Dobbin* [1999] LSBC 27, that failure to respond to Law Society correspondence is *prima facie* evidence of professional misconduct and that one letter and one reminder should be enough to elicit a response.

In cases involving breach of an undertaking given to the Law Society (for example, a lawyer who continues to practise real estate law after agreeing not to), the streamlined process will allow the Law Society to step in quickly, enforce the undertaking and ensure protection of the public.

In addition, the summary hearing process will allow the Law Society to deal more expeditiously with lawyers who fail or refuse to keep their financial records as required by the rules and will ensure the public can have confidence in a lawyer’s handling of trust funds.

Amended rules will be posted on the Law Society’s website and copies will be mailed with the next *Benchers’ Bulletin*. ❖

BC Justice Review Task Force to release draft rewrite of Supreme Court Rules

THE CIVIL JUSTICE Reform Working Group (CJRWG) is in the final stages of preparing a draft re-write of the Supreme Court Rules for review and comment by the profession and the public.

The CJRWG is part of the BC Justice Review Task Force, which was established in March 2002 on the initiative of the Law Society to identify reforms to make the justice system more responsive, accessible and cost-effective. The task force includes representatives from the judiciary, the Law Society, the Canadian Bar Association and the Ministry of Attorney General.

In November 2006, the CJRWG released *Effective and Affordable Civil Justice*, a 142-page report setting out three broad

recommendations to improve access to justice in BC:

- creation of a single place or “hub” where people can get the information and services they require to resolve legal problems on their own;
- introduction of case planning conferences to support identification of issues and exploration of settlement possibilities in litigation; and
- revision of the Supreme Court Rules to streamline procedures and to create more flexibility, so that legal processes are proportional to the value, complexity and importance of the case.

Following the release of the CJRWG’s

report, the task force formed the Civil Rules Drafting Group to rewrite the Supreme Court Rules, under the direction of a steering committee made up of BC Supreme Court Chief Justice Donald Brenner, Deputy Attorney General Allan Seckel, QC, Mr. Justice Malcolm Macaulay and Assistant Deputy Minister of Judicial Services Jerry McHale, QC.

On July 23, 2007, the task force will post the concept draft of the new Supreme Court Rules to its online forum — bcjusticereviewforum.ca/civilrules — for review and comment. BC lawyers are encouraged to post their comments on the proposed rule changes to that online forum by the end of October. ❖

An update on continuing professional development

AN INFORMAL ASSESSMENT prepared for the Federation of Law Societies of Canada last year shows that the legal profession lags behind most other Canadian professions when it comes to continuing professional development requirements.

That, however, is changing quickly as several law societies are now considering continuing professional development programs — both mandatory and voluntary — along with innovative ways for lawyers to ensure they keep current with trends and developments in their practices.

Ontario began the process in 2002 when the Law Society of Upper Canada required lawyers to report the number of hours of professional development they undertake. The society also established voluntary “minimum expectations” of 12 hours of continuing education and 50 hours of self-study a year.

BC followed suit in 2004 with a similar mandatory reporting program and voluntary minimum expectations.

The Law Society of Alberta is currently

considering a mandatory program that will see lawyers develop their own individual education plans with the assistance of an online, self-assessment tool that suggests relevant learning possibilities.

BC notaries have recently instituted a mandatory education program that requires members with greater than five year’s experience to take six hours of educational programs in 2007-2008 and nine hours in 2008-2009.

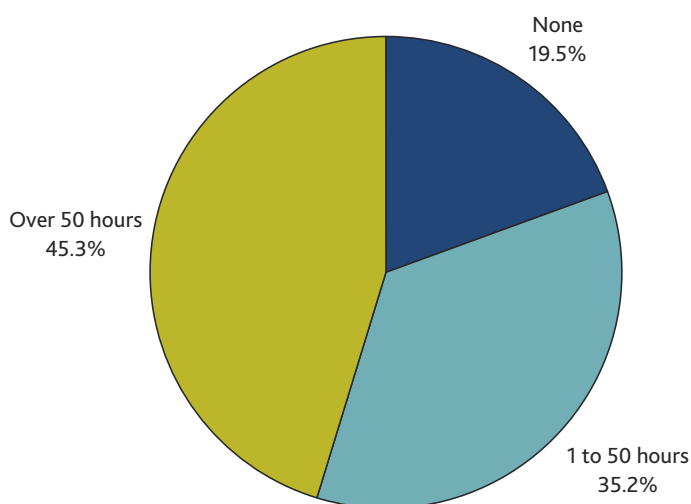
Most law societies are also abandoning the notion that professional development means exclusively classroom learning. Many now recognize a broad range of activities, from teaching and writing to in-house educational sessions and professional seminars. And it is not just traditional lawyering skills such as trial advocacy and research that lawyers are being urged to study. Practice survival skills such as time management and marketing are also on most lists.

Last year, the president of Manitoba’s law society, Jon van der Krabben, wrote in

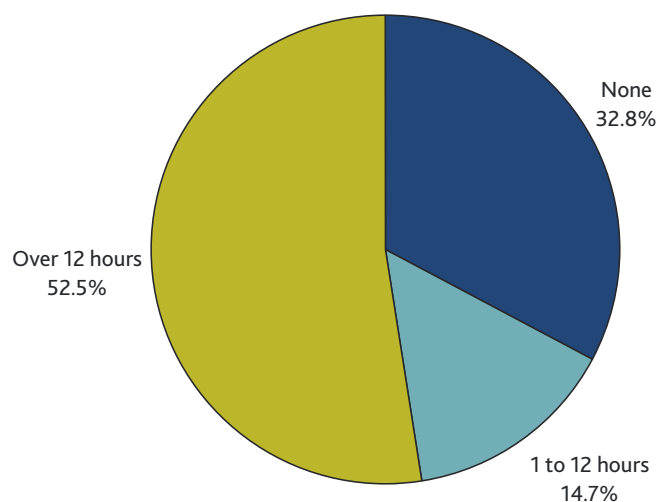
the June edition of the society’s newsletter, *Communiqué*, that the lack of post-call education requirements “will not go unnoticed indefinitely by the government of the day and the general public.” He urged the profession “to deal with the situation up front and on our own terms, rather than having someone tell us what to do, or worse yet, losing some of our rights to self-govern.”

In fact, governments are already telling professions that continuing education is a necessary part of their mandate. New legislation governing professions often includes provisions for mandatory post-admission education. Alberta’s *Regulated Accounting Professions Act* — which brought the three accounting organizations under one umbrella in 1999 — says each of the three governing bodies must have a continuing competence program. In BC, the *Health Professions Act* states that one of the objects of the governing bodies of each of the health professions is to establish a continuing competency program.

REPORTED HOURS OF SELF-STUDY IN 2006



REPORTED HOURS OF STRUCTURED STUDY IN 2006



Since January 2005, the Law Society has required lawyers to report their professional development activities. The Society has also established voluntary minimum expectations of 50 hours of self-study and 12 hours of course work a year.

Here in BC, statistics from the professional development reporting program show that over the past two-and-one-half years, only 50 per cent of the profession met the suggested standard of 12 or more hours of structured study annually. Almost 35 per cent reported no continuing education at all. This latter number increases steadily according to length of time in practice, with 55 per cent of those called for more than 30 years reporting no continuing education.

MOST LAW SOCIETIES ARE ALSO ABANDONING THE NOTION THAT PROFESSIONAL DEVELOPMENT MEANS EXCLUSIVELY CLASSROOM LEARNING. MANY NOW RECOGNIZE A BROAD RANGE OF ACTIVITIES, FROM TEACHING AND WRITING TO IN-HOUSE EDUCATIONAL SESSIONS AND PROFESSIONAL SEMINARS.

In addition, only 45 per cent of BC's lawyers met the suggested minimum requirement for self-study of 50 hours. Twenty per cent reported no self-study. Again, the percentage of lawyers reporting no self-study increases with length of call.

The Lawyer Education Committee is currently considering four broad options for a formal continuing professional development program: 1) a program requiring a certain number of hours of study, of which a portion requires the study of certain subjects; 2) a program of required courses for all lawyers, with the remainder of hours to be made up of activities chosen by lawyers; 3) a program of required courses for certain areas of practice; and 4) a program requiring a certain number of hours of study through approved activities. The committee is also looking at a wide range of activities that could be classified as professional development, including coaching and mentoring programs, study groups, and teaching PLTC (see: *Bencher's Bulletin* 2006 No. 5 November-December).

The committee is mindful of the importance of ensuring that lawyers throughout BC can fulfil the requirements without the necessity of travelling to Vancouver or to any location that would be a significant distance from their offices.

The committee has discussed the options with the Canadian Bar Association (BC Branch), the Trial Lawyers Association, the Canadian Corporate Counsel Association and the Continuing Legal Education Society of BC, and will continue to consult

Lawyer Education Committee

The Benchers have re-established the Lawyer Education Task Force as a standing committee to ensure there is a coordinated approach to long-term development of education policy.

Law Society task forces usually work on a specific project for a limited time whereas committees play a broader, on-going role in policy development.

The new Lawyer Education Committee, chaired by Kootenay Bencher Bruce LeRose, QC, continues the task force's work on continuing professional development and will look at other pre- and post-call education issues.

at meetings of local Bar associations. The committee is preparing a report for the Benchers that will be distributed to the profession later this year for comments. ❖

In Brief

JUDICIAL APPOINTMENTS

Stephen Harrison has been appointed to the Bench of the Provincial Court in Kamloops. Harrison has been Crown Counsel in Vancouver and in Kamloops for 18 years.

The Honourable Mr. Justice S. David Frankel, a judge of the Supreme Court of British Columbia, has been appointed a justice of the BC Court of Appeal and a judge of the Yukon Court of Appeal. He replaces Madam Justice M.F. Southin (Vancouver) who retired.

The Honourable Mr. Justice David F. Tysoe, a judge of the BC Supreme Court, has been appointed a justice of the BC Court of Appeal and a judge of the Yukon

Court of Appeal. He replaces Mr. Justice K.C. Mackenzie (Vancouver) who elected to become a supernumerary judge.

The Ministry of the Attorney General has appointed the following as Justices of the Peace in and for the Province of British Columbia: Bradley David Beer, Edward E. Bowes, Anna-Maya Sophia Brown, Brian R. Burgess, Debra Anne Padron Garcia, Hunter W. Gordon and Tim Holmes.

REAPPOINTMENT TO LEGAL SERVICES SOCIETY

The Benchers, after consultation with the Canadian Bar Association, have reappointed John Hogg, QC to the board of directors of the Legal Services Society for a further

term of two years commencing on June 1, 2007.

SUPREME COURT OF BC 2006 ANNUAL REPORT

The BC Supreme Court's 2006 Annual Report is now available online at www.courts.gov.bc.ca/sc/ in "What's New." The report features the Chief Justice's review of new and ongoing initiatives in the court's administrative and policy work, and provides reports from its various committees. Also included are an outline of the court's jurisdiction and protocol as BC's superior trial court, and a complete listing of its judges, masters, registrars and judicial staff. ❖

Federation of Law Societies reports to the Benchers

THE FEDERATION OF Law Societies of Canada has seen a dramatic shift during the past few years in what it does and how it carries out business, the organization's President Michael Milani, QC, told the Benchers at their July meeting.

"What was once a relatively loose affiliation ... really has changed," said Milani, who along with the Federation's chief executive officer Jonathan Herman, presented a report on the Federation's activities.

A partner at Regina's McDougall Gauley, Milani was president of the Law Society of Saskatchewan in 2002 and has served as Saskatchewan's representative to the Federation since 2003.

He said the change was the result of external pressures on the legal profession, such as attacks on the core values of the independence of the Bar and the independence of the judiciary.

"All law societies recognized that in some cases having a national, coordinating body advocating for the preservation of these fundamental pillars was to the benefit of all of us."

In response to these external pressures,

the Federation, which was founded in 1926, recently relocated its office from Montreal to Ottawa and hired Herman, the former chief of staff to then-justice minister Irwin Cottler, as the new chief executive officer to ensure better communication with the federal government. It also revamped its governance structure so each jurisdiction has a council member.

Herman said Canadian law societies are being watched closely around the world as we deal with issues involving international trade in services, competition policy and money laundering.

"What happens here matters to people in Paris, in Brussels, in Geneva and elsewhere," he said.

Milani noted that the Federation's foresight in negotiating a national mobility agreement several years ago will assist all law societies in responding to the federal competition bureau's recently announced review of alleged anti-competitive practices in the professions.

He also highlighted the Federation's pivotal role in the money laundering negotiations with the federal government and its work with the government on the World

Trade Organization's proposals to expand international trade in legal services.

"In all cases," said Milani, "the point we have made with the regulators in the federal government is that we are regulating in the public interest and, therefore, our viewpoint coincides with that of the government."

Other Federation initiatives include the Canadian Legal Information Institute (CanLII), which provides free, online access to case law and statutes, a national model code of conduct, and a task force that is reviewing the core requirements for a law degree, as well as on-going advocacy work on behalf of the law societies.

"Every single one of these matters ... could, in theory, be done by each individual law society," he said. "But ... a well-run, focused and effective organization, speaking with a consistent message from a national perspective, will stand a better chance of achieving results."

See page 13 for more on the Federation of Law Societies of Canada's anti-money laundering initiatives. ♦



Michael Milani, QC, president of the Federation of Law Societies, explains the importance of the Federation's work. Also pictured, left to right: Anna Fung, QC, Timothy McGee and Jonathan Herman, the newly hired chief executive officer of the Federation.

Know your client – draft anti-money laundering regulations

THE FEDERAL GOVERNMENT has released new draft regulations under the *Proceeds of Crime (Money Laundering and Terrorist Financing) Act* outlining the steps lawyers must take and the records they must keep to verify client identity.

Independent of the government's current initiatives, the Federation of Law Societies of Canada has also prepared a model rule focusing on client identification and verification requirements.

The draft regulations have been published in Part 1 of the June 30, 2007 *Canada Gazette* for a 60-day comment period to be followed by consultations (canadagazette.gc.ca/index-e.html). This is pre-publication of the regulations only. They will not come into force until a date determined after the consultation period.

The government's objectives through the regulations are to continue the fight against money laundering and terrorist financing and to demonstrate to the global community that Canada's anti-money laundering regime meets international standards.

While there are few cases of lawyers knowingly laundering money on behalf of criminal or terrorist organizations, the Federation recognizes that in the post-9/11 world the legal profession must take steps to prevent money laundering by lawyers and clients alike.

The Federation believes the legal profession, acting in the public interest, must move proactively to ensure lawyers are at the forefront of the fight against money laundering. The Federation also believes that this must be done in a manner that preserves and protects solicitor-client privilege and the independence of the legal profession.

THE FEDERATION BELIEVES THE LEGAL PROFESSION, ACTING IN THE PUBLIC INTEREST, MUST MOVE PROACTIVELY TO ENSURE LAWYERS ARE AT THE FOREFRONT OF THE FIGHT AGAINST MONEY LAUNDERING. THE FEDERATION ALSO BELIEVES THAT THIS MUST BE DONE IN A MANNER THAT PRESERVES AND PROTECTS SOLICITOR-CLIENT PRIVILEGE AND THE INDEPENDENCE OF THE LEGAL PROFESSION.

The Federation's Anti-Money Laundering Committee has been discussing the draft regulations with the Department of Finance for the past year. Committee members are now reviewing the proposed regulations and comparing them to the Federation's model client identification rule. Finance department officials plan further meetings with the Federation and other stakeholders over the next few

months.

These ongoing discussions are part of a dialogue that began a number of years ago between the Federation and the federal government about the *Proceeds of Crime (Money Laundering and Terrorist Financing) Act*. The primary concern for the legal profession at the outset was the threat to the independence of the Bar by requiring lawyers to secretly report confidential client information to the government with respect to suspicious transactions, and to report large cash transactions.

The Federation, at the urging of the Law Society of British Columbia, commenced a constitutional challenge to the Act and applied successfully for injunctive relief from the application of the reporting requirements of the legislation pending the hearing of the case. The injunction continues to apply and covers any new regulations under the Act affecting lawyers. Individual law societies then adopted the Federation's model "No Cash" rule.

The government subsequently decided to exempt lawyers, through an amendment to the Act, from the reporting requirements. The Minister of Finance, in speaking to the amendment, acknowledged that the model No Cash rule was intended to deal with risks in the legal profession associated with cash placement and money laundering. ❖

CBA dispute resolution program

IF YOU HAVE a disagreement or are in conflict with another lawyer or a member of your staff, and you are looking for outside help to resolve it, the Canadian Bar Association (BC Branch) Dispute Resolution Service may be able to assist you.

The program — available to all BC lawyers since 2003 — provides confidential mediation services through volunteer lawyers trained in dispute resolution.

"The majority of the calls we get involve 'exit conflicts,'" says Vancouver lawyer Arlene H. Henry, QC, who chairs the

CBA's Member Dispute Resolution Committee. "Disagreements over who gets which files or which clients when a lawyer leaves a firm are the number one issue."

Henry explains that exit disputes are often best resolved through confidential mediation rather than through a public court battle, especially when the parties are in a smaller community or a specialized area of practice and will have to deal with each other in the future.

The service also helps lawyers resolve relationship issues or personality conflicts

with other lawyers or staff, says Henry, whose legal practice primarily involves mediation.

"Sometimes, just talking to one of our mediators helps," she says. "Often mediation isn't required and we provide coaching to one of the parties so he or she can resolve the issue."

The program is voluntary, free, and available to all BC lawyers.

For more information, see the CBA (BC Branch) website (cba.org/bc) under "Practice Resources" or call 604 646-7864. ❖



Our award-winning team

Kensi Gouden (front) with Law Society staff and contractors who worked together to develop the Small Firm Practice Course: (left to right) Lenore Rountree, Doug Munro, Debra DeGaut and Drew Jackson.

Small firm practice course awarded professional excellence

THE LAW SOCIETY'S online small firm practice course has been recognized with an award for professional excellence from the Association for Continuing Legal Education, an international organization that includes representatives from more than 300 organizations.

The award is the top prize in the Best Technology category, which recognizes the effectiveness of the technology in meeting educational objectives, the proficiency of the use of technology, reaction of the users, financial practicality and effective use of the organization's resources.

The Law Society developed the free course on the recommendation of the Lawyer Education Task Force to help lawyers in setting up a new practice and to assist existing sole or small firm practitioners with practice management and trust accounting skills.

"The course helps lawyers develop an understanding of the pitfalls that can happen to sole practitioners, and how these pitfalls can be prevented or corrected," said Kensi Gouden, the Law Society's Manager of Standards and Professional Development.

"It's the only online, self-testing course for lawyers available in Canada."

The course is mandatory for some lawyers, including anyone who sets up small firm practice after January 1, 2007 and those beginning or returning to practice in a small firm after three years. But lawyers do not need to register for the course to access useful resources such as the chat room and ongoing updates. Log in to the Member Resources & Online Courses

at lawsociety.bc.ca for more information.

Outside of the major urban centres, sole and small firm practitioners provide the vast majority of legal services in the province.

The Law Society is currently developing a practice refresher course for lawyers who wish to resume practice after one to seven years. This online course is slated for release next summer. ❖

Title insurance report released

THE REPORT OF the Task Force on Title Insurance Issues is now posted in the "Publications and Forms/Reports" section of the Law Society website.

The Benchers established the task force following the 2005 annual general meeting at which the members passed several resolutions bearing on the title insurance industry.

Lawyers and other interested parties who wish to comment on the report are invited to do so before **October 12, 2007**.

Comments may be sent to David Newell, the Law Society's Corporate Secretary, at dnewell@lsbc.org. ❖

UBC president addresses the Benchers

PROFESSOR STEPHEN TOOPE, President and Vice-Chancellor of the University of British Columbia since 2006, addressed the Benchers at the July 13 meeting. Toope emphasized the importance for law schools to prepare lawyers to be good citizens and to provide a solid grounding in logic, problem-solving, ethics, political and social organization and interpersonal relationships.

Toope also noted the increasing interaction between the UBC law school and other faculties, including the Sauder School of Business and the recent development of a national centre for business law at UBC. The centre will offer business law and finance policy education, support research and promote links with the business community. ❖



Prof. Stephen Toope (left) will be part of the Law Society's public forum, Lawyers Without Rights, on November 22 (see page 5).

Downtown Vancouver firms: articling offers to stay open to August 20

LAW FIRMS WITH an office in the downtown core of Vancouver (west of Carrall Street and north of False Creek) must keep open all offers of articling positions they make this year until noon on Monday, August 20. This timeline is set by the Credential Committee under Law Society Rule 2-31. It applies to offers firms make to second-year law students or first-year law students, but not offers to third-year law students or offers of summer positions (temporary articles).

Rule 2-31 gives law students greater choice in selecting law firms for articles by relieving them of the pressure to accept short-fuse offers before they have had an opportunity to interview with other firms.

A law firm may set a deadline of noon on August 20 for acceptance of an offer. If the offer is rejected, the firm can then make a new offer to another student the same day. Law firms may *not* ask students whether they would accept an offer if an offer were made. The Credentials Committee has found this practice improper

because it places students in the very position Rule 2-31 is intended to prevent.

If a lawyer in a downtown Vancouver firm makes an articling offer and later discovers circumstances that mean it must withdraw the offer prior to August 20, the lawyer must receive prior approval from the Credentials Committee. The Committee may, for instance, consider conflicts of interest or other factors that reflect on a student's suitability as an articulated student in deciding whether to allow the lawyer to withdraw the offer.

If a law student advises a law firm that he or she has accepted another offer before August 20, the firm can consider its own offer rejected. However, if a lawyer learns from a third party that a student has accepted another offer, the lawyer should first confirm with the student that the offer is no longer open for this reason.

Any firm with a question respecting articling offers may contact the Member Services department at 604 605-5311. ❖

Inns of Court ... from page 4

informal dinner and a chance to talk about whatever is topical.

McEachern adds that the judges and senior lawyers get as much out of the evening as the participants. "You find out what's going on and what's troubling [junior lawyers] and that's very, very valuable."

The program is sponsored by the Vancouver Bar Association, runs twice a year starting in September and January, and consists of six sessions. The cost of the program, including dinner, is \$235. Lawyers with two to six years experience practising as barristers should contact program coordinator Michael Libby of Dolden, Wallace, Folick, at 604 891-0358 or mlibby@dolden.com, for more information. Registration is limited to 25 participants.

"As a young lawyer it's easy to immerse yourself in the law, but it's getting increasingly harder to gain practical experience and insight," says Libby, who attended the Inns of Court in 1997. "What you're dealing with in the program are situations that might actually arise in the practice of law." ❖



The three leaders in BC's pro bono world are (left to right), Allan Parker, the new executive director of the Western Canadian Society to Access Justice, Jamie Maclaren, executive director of Pro Bono Law of BC and John Pavey, manager of pro bono and justice services for the Salvation Army.

Reinventing pro bono

WHEN DUGALD CHRISTIE pioneered the legal clinics at the Salvation Army his vision of a more equitable legal system was just getting started. The informal legal advice program that he founded in 1985 grew into a series of clinics, but Christie's plans reached much farther. In 1999, he set off to expand the clinic model with the Western Canadian Society to Access Justice. A call for more volunteers went out and BC lawyers signalled their commitment to serving the public good.

In less than a decade, the number of pro bono services available in BC has exploded. Today, the Salvation Army offers 22 clinics in communities around the province, and they have plans to open more, including a northern expansion program that will cover Prince George, Dawson Creek, Fort St. John, Prince Rupert and Williams Lake. The Western Canadian Society

to Access Justice has over 400 volunteer lawyers staffing 61 clinics from Campbell River to Winnipeg. The UBC Law Students' Legal Advice Program and the University of Victoria Law Centre run busy pro bono services with the help of dedicated students. And Pro Bono Law of BC has emerged to develop new and original ways of providing pro bono representation and assistance to people and non-profit organizations of limited means through its roster programs.

But as quickly as pro bono services have sprung up and lawyers have come forward, the demand for legal advice and representation has grown even more. This spring, the three leaders in BC's pro bono world, John Pavey, manager of pro bono and justice services for the Salvation Army, Allan Parker, the new executive director of the Western Canadian Society to Access Justice, and Jamie Maclaren, executive

director of Pro Bono Law of BC, began to reinvent how they will deliver pro bono in the future.

Under a \$75,000 grant provided by the Law Foundation of BC, the three organizations have committed to map out a system that will identify what services are available and, where gaps and duplicate services exist, ultimately allow the organizations to direct clients to the services most appropriate to their needs. By working together to coordinate pro bono service delivery, Pavey, Parker and Maclaren hope to serve their clients in a much more expeditious and effective manner.

"We are looking at how we can integrate our organizations to provide a more seamless continuum of services, particularly to promote cross-referrals, bring our

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Louise Kim: bringing home the benefits of pro bono service

There aren't very many lawyers who get the chance to lead a case in the BC Court of Appeal within their first two years of call, but Louise Kim can already credit a win to her name thanks to her willingness to take on pro bono work.

It all started when Edwards, Kenny & Bray LLP (EKB), sent an email around the office asking if anyone would be interested in taking on a case for a group of Richmond tenants who were facing eviction. The landlord had issued eviction notices to the tenants claiming a need for vacant possession for renovations. Just four months after her call, and with no experience in residential tenancy matters, Louise decided to put her hat in the ring to see if the tenants would consider having her represent them on a pro bono basis.

"When the opportunity came up for Louise to take the case, management agreed that we should support this," said Louise's mentor, Robert Ward, a partner at EKB. "Supporting pro bono work is good for

the public, it's good for the firm and it's certainly good for young lawyers because it gives them an opportunity to get into the courtroom."

Since taking on the well-publicized case, Louise succeeded in defending dozens of tenants through six arbitration hearings and a case in the BC Supreme Court. The tenants contributed a small amount toward the cost of the arbitrations and court proceedings. When the landlord appealed the Supreme Court decision, Louise continued to represent the tenants in the BC Court of Appeal with support from Pro Bono Law of BC to cover the disbursements. On January 10, 2007, the Court of Appeal upheld the Supreme Court decision to set aside the eviction notices.

"We wouldn't be in the situation we are in today if we didn't have Louise and Edwards, Kenny & Bray on the case," said Mark Allman, a tenant at Richmond Gardens. "For us to even take the case to a judicial review would have been

impossible."

EKB, which is now looking at developing a formal pro bono policy, supported Louise all the way through the lengthy process. To help her prepare for the Supreme Court and Court of Appeal, Louise had the assistance of David Turner, an articled student who is now an associate at the firm. And when it came time for her day at the Court of Appeal, Robert Ward came with her as assisting counsel.

"The partners supported and recognized my pro bono work, and it really helped to have my mentor in the room at the Court of Appeal," said Louise. "Through this case, I was able to help numerous people stay in their homes, and help others who may find themselves in similar situations in the future."

Louise was named the 2007 Judicial Review Program Lawyer of the Year by Pro Bono Law of BC. She recently began a new role as a policy analyst with Work-SafeBC. ♦



Pro Bono Law of BC survey

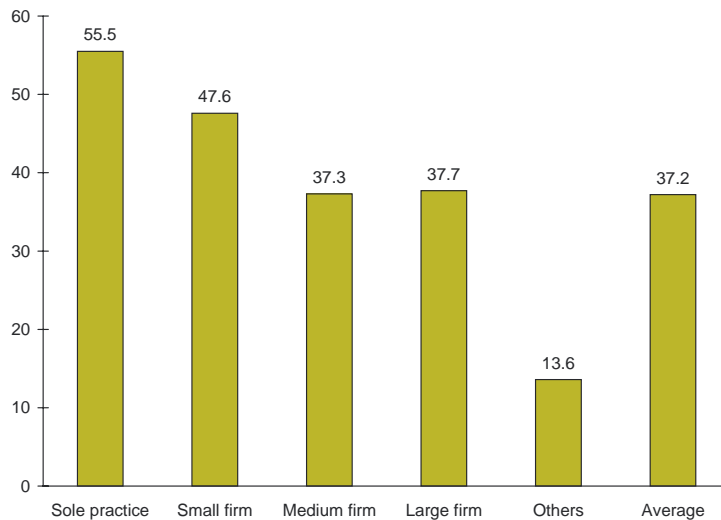
THIS SPRING PRO Bono Law of BC surveyed BC lawyers to determine the level of pro bono participation and to assess what can be done to better support their pro bono efforts.

Highlights:

- 64 per cent of 1,080 survey respondents stated that they currently provide pro bono services to persons or non-profit organizations of limited means, representing a 10 per cent increase over 2005.
- Lawyers reported providing over 40,000 hours of pro bono services over the past year, for an average of 37.2 hours per respondent.
- Participation rates showed that sole practitioners provided an average of 55.5 pro bono hours in the past year on the high end, and respondents from medium-sized firms (seven to 20 lawyers) provided an average of 37.3 hours on the low end. Lawyers in rural areas provided an average of 61 hours on the high end, while lawyers from small urban areas provided 34.2 hours on the low end.
- An overwhelming majority of respondents cited “professional responsibility” as their primary motivation for providing pro bono services.

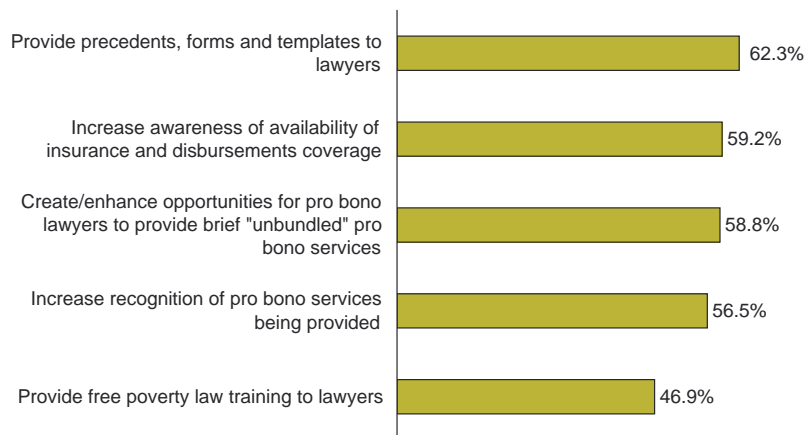
For the full survey results visit probononet.bc.ca. ❖

AVERAGE YEARLY PRO BONO HOURS BY PRACTICE SIZE



RESPONSES TO THE QUESTION

“HOW CAN PRO BONO LAW OF BC FACILITATE AND EXPAND PRO BONO SERVICES IN BC?”



Pro bono ... from page 16

organizations closer together in our aspirations and foster a greater sense of cooperation and camaraderie among pro bono service providers,” says Maclaren.

Pro Bono Law of BC already offers a searchable map outlining all pro bono legal services in BC (probonomap.bc.ca), and Access Justice provides a list of alternative resources for clients on its website (access-justice.ca). Coordinated service delivery is a concept that the Salvation Army (probono.ca) is also very familiar with.

“Through dealing with our clients’

legal issues we are often presented with deeper issues, such as the need for family counselling and the basic essentials of life — food, clothing and shelter,” Pavey comments. He says there is a huge unmet need for legal assistance, pointing to the example of family law cases, where lengthy, drawn-out processes often lead people to fend for themselves.

“No matter how many clinics we run, there is always more demand,” says Parker. “We feel it’s our role to bridge the gap where members of the public feel that they can’t reach the private Bar to address their legal needs. We will also continue

to provide a voice for low-income clients around access to justice issues.”

While a recent survey conducted by Pro Bono Law of BC shows that the majority of pro bono clients come to lawyers via referrals from family, friends or colleagues — and sole practitioners carry a substantial load — Maclaren, Pavey and Parker point to the benefits of working with their organizations. Maclaren notes that many lawyers don’t know that Pro Bono Law of BC provides disbursement coverage for poverty law cases. The Law Society also extends

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June 21 marked National Aboriginal Day celebrations across Canada. BC has the greatest diversity among First Nations in Canada, with 11 distinct language families and 198 nations.

Linda Locke, QC near Hudson Bay Mountain in Smithers

Linda Locke, QC, “Bringer of Light”

WHEN FUNDING CUTS threatened legal aid services across the province, Linda Locke, QC, manager of the Hazelton-based Upper Skeena Counselling and Legal Assistance Society, was not about to close the doors.

The challenge that lay ahead was just another leg of the journey Linda has taken since she found her feet as a lawyer and became the first aboriginal woman in BC appointed a Queen’s Counsel.

A member of the Sto:Lo Nation from the Fraser Valley, Linda began her career as a social worker and later, a probation

officer. She observed a frustrating number of people, both aboriginal and non-aboriginal, who had fallen through the cracks in the system and were not getting the help they needed. But it was her work as an Elizabeth Fry court worker that inspired her to consider a career in law.

“I saw lawyers in action and how the court system worked, and things had started to open up for aboriginal people,” Linda says. “The judges encouraged me to consider a career in law, and I started to feel like I belonged in the justice system.”

When Linda decided to attend Queen’s University law school in 1980, she did not know just how profound the experience would be.

“When I was a kid I never thought that I could become anything like a lawyer or a doctor,” says Linda. “That was something unreachable — for rich people.”

“It’s quite amazing that law school freed me because it opened my history to me. It was at law school that I began to yearn for my aboriginal name, Siyamstawel, which means ‘Bringer of Light.’”

It is a name that comes naturally to Linda and her team at the Upper Skeena Counselling and Legal Assistance Society. While many offices shut down in the face of funding cuts, the society had already found other funding sources. With creativity, hard work and dedication, they stayed up and running.

Today, the organization assists aboriginal and non-aboriginal people across Northern BC with everything from poverty and family law to community development initiatives and access to justice issues. Their diversified funding base includes the Law Foundation of BC, Aboriginal Justice Canada, the Skeena Native Development Society and the Royal Bank of Canada. But every day brings new challenges, and demand for legal aid.

“We would never have learned what we have learned if we didn’t have to go through this journey. We had to change in order to survive. Now, we need to evolve to ensure our future stability.” ❖



Call ceremony, May 25, 2007

Law Society helps China develop legal aid

JUST AS CARS have permeated the dizzying pace of development happening in the land of bicycles, China is prepared to start modernizing its legal system. But, unlike the rapid pace of development that is fueling China's transformation, reforming the legal system does not happen overnight.

For the past three years, the Law Society has journeyed to China to offer guidance and support to the Chinese Ministry of Justice through the Canada-China Legal Aid and Community Legal Services Project. The project, funded by the Canadian International Development Agency (CIDA) and administered by the Canadian Bar Association, seeks to strengthen China's legal aid and community legal services system by integrating and coordinating the legal aid system, providing training and development for legal aid workers and increasing public awareness and information.

Since 2004, four model legal aid clinics set up in the four poorest provinces — Jiangxi, Guizhou, Hunan and the Guangxi Autonomous Region — have provided services for criminal and civil matters and improved access to legal information and

documentation.

Alan Treleven, the Law Society's Director, Education and Practice, visited China in 2005 and 2006 to assist in training legal aid staff lawyers and volunteers on how to design and teach lawyer skills courses, so they in turn can teach their counterparts.

"It's in our interest to promote stable governments that protect human rights and the legal system has to be in place for that to happen," says Treleven. "The project aims to assist in the modernization of the Chinese legal system and helps spread the rule of law."

This summer, Kensi Gounden, Manager, Standards and Professional Development, visited China to review the current case management systems and determine if they could be adapted for the model legal aid clinics.

CHINESE LEGAL AID

In 1994, China's Ministry of Justice launched an initiative to pilot legal aid programs in some large cities based on local resources from the provincial and municipal governments. The first legal aid centre

was established in Guangzhou (Guangzhou Municipal Legal Aid Centre) in 1995, followed by provincial legal aid centres in the Guangdong and Sichuan provinces. Today, there are about 3,000 legal aid centres in China, made up of staff lawyers as well as private lawyers who invoice legal aid for their work on behalf of clients. In China, municipal and district governments are expected to provide some funding for their level of legal aid centres, which leads to very unequal funding across the country, and minimal funding in China's poorest provinces.

Criminal and family law comprise the majority of cases seen by legal aid. These include youth, petty crime, capital offences and family relations. Eligibility is determined mainly on income level, and may include disability and the nature of the charge or the case.

"The model clinics have already been through the growing pains and are now at a stage where they need a functional case management system," says Gounden. "The evolution of legal aid is really exciting and China is looking to the Canadian experience for guidance."



Law Society welcomes visitors from Guangdong

Law Society President Anna Fung, QC and Kensi Gounden, Manager, Standards and Professional Development, with Mr. Pan Shaohua, a representative for the Guangdong Law Society in China, and his wife Wu siying. Shaohua, who is in charge of international relations and cultural exchange, visited BC in May to begin building a relationship between the two societies.



Scenes from Nanjing, left to right: Kensi Gounden strikes a meditative pose at the Dr. Sun Yat-sen Mausoleum; the Chinese and Canadian delegations in the boardroom of the Nanjing legal aid office; two boys at the Night Market.

THE TRIP

Upon arrival Gounden met Meng, a local CBA/CIDA representative, LLM student, part tour guide, part interpreter and full-time liaison between the CBA and the local legal aid offices. Meng gave Gounden the lay of the land, including a brief overview of legal aid. She explained that the legal aid system in Nanjing is governed at three levels: by the central government, the provincial government and the municipal government.

The next day Gounden and Meng traveled to the Jiangsu province and Nanjing, a city that established its first presence in 472 BC. Nanjing was home to the first Ming Dynasty in 1368 and the first Capital of the Republic from 1927 to 1949. With six million people, including more than 50,000 scientists and 400 scientific research facilities, the city is small by Chinese standards. There are over 200 parks, many bridges and countless food vendors dotted through the bustling city. Nanjing has 14 municipal offices and 128 local legal aid offices.

The legal aid clinic is run by 50 staff and 2,600 volunteers who deal with up to 2,000 legal aid cases a year — mostly criminal matters, as well as family and migrant worker cases. The migrant workers, who arrive from other places in China without a relocation permit, often seek legal aid for injuries encountered on the job and lack of pay. Their eligibility level is about 400 yuan or \$55 Canadian a month. The average income for a Beijing resident is 15,600 yuan or about \$2,170 Canadian per year.

A police escort transported Gounden from the airport to a former military hotel, which has been converted into a convention centre, where the formalities and the work began in earnest. First there was the “meet and greet” between the Canadian and the Chinese delegations. This turned out to be an explosion of name card exchanges and introductions. Dinner came next and the inference that protocol demanded a lot of serious toasting. It turned out that Gounden had inadvertently challenged their politeness by making a toast (Gambai in Chinese), which prompted the Chinese delegation to demonstrate that they cannot be bested in any such contest.

“Tables were pushed together and everything became unbelievably jovial,” said Gounden. “Thank goodness it didn’t degenerate into karaoke.”

CASE MANAGEMENT SYSTEM

At the Nanjing office Gounden discovered a case management system that was far more sophisticated than most systems here in Canada. As China attempts to join the developed countries, it is pouring significant dollars into the most highly advanced technology available and making that technology even better, Gounden notes. For example, instead of developing a land line system, China jumped right through to cellular.

The case management system uses Web 2.0 technology and has advanced it somewhat, allowing sharing and monitoring among all levels of legal aid institutions. Each staff member administers and

monitors their cases, providing data analysis for human resources and standardizing business operations. The system also allows for real-time data reports and real-time file management with various levels of rights and restrictions for all 1,228 legal aid workstations.

The trip to Nanjing showed Gounden that it would make sense for China to adapt the existing case management system for use by the model legal aid clinics, and eventually throughout China. The key, he notes, will be to determine what is needed and what is not needed to implement the system elsewhere.

“Our goal is to guide China to develop the best system for the minimal amount of time and money,” says Gounden. “The best way to do that is to adopt and implement what’s already in place in the richer Nanjing area of China and bring this to the poorer provinces where the model legal aid clinics are up and running. This will be another important step in China’s journey to modernize their legal system, and bring legal aid across the country.”

The Canada-China Legal Aid and Community Legal Services Project will wrap up activities in July 2008 and officially close at the end of January 2009. Project leaders hope their work will strengthen China’s legal aid and community legal services system, enhance the capacity of the Ministry of Justice to govern in this area and enhance access to justice for China’s poor and disadvantaged people, including youth, people with disabilities, the elderly, minorities, migrant workers and women. ♦



GOLD MEDAL PRESENTATIONS

UBC, photo left: First Vice-President John Hunter, QC, gold medallist Rebecca Levi and Dean Mary Anne Bobinski.

UVic, right: Dean Andrew Petter, Benchers June Preston and Kathryn Berge, QC, gold medallist Christine Joseph and Connie Isherwood (nee Holmes). Ms. Isherwood received a gold medal at UBC in 1951 — the first woman to receive this honour.

Amendments to the Rules

NOTIFICATION OF CRIMINAL CHARGES

RULE 3-90'S REQUIREMENTS for notification in writing to the Law Society regarding criminal charges have been clarified, compelling the provision of all relevant information as soon as possible after each of the following events: laying of the charge; disposition of the charge (including sentencing); commencement of an appeal of either verdict of sentence; and disposition of an appeal.

The notification requirements now cover practitioners of foreign law.

TIME TO PAY FINES

Rule 5-10 has been amended to apply its extension of time provisions to the payment of fines and to require the Law Society to withhold the non-practising or retired membership certificate of any non-practising or retired member who remains in default after December 31 regarding any payment.

Rule 5-10 now treats fines and costs equally with respect to extension of time.

APPROVAL OF INFORMATION-SHARING PROTOCOL

The Law Society and the Provincial Court

have adopted a protocol to share complaints information relating to lawyers who are also part-time judicial officers.

The Benchers have also amended Rule 3-3 to allow disclosure to the Provincial Court of complaints information about lawyers who serve as part-time Judicial Justices of the Peace or Judicial Arbitrators. Rule 3-3 prohibits disclosure of complaints information, with limited exceptions.

The amended rule will allow both the court and the Law Society to better fulfil their obligations to ensure the integrity and competence of lawyers who are also judicial officers.

Lawyers appointed as part-time Judicial Justices of the Peace or Judicial Arbitrators will be required to consent to disclosure.

CREDENTIALS HEARING PANEL DECISIONS AND REVIEWS

The Benchers have amended Rule 2-68 to require credentials hearing panels to provide written reasons in all cases. They have also authorized a new Rule 5-20 requiring written reasons on Benchers reviews.

The *Legal Profession Act* requires a

credentials panel to give written reasons for rejection of an application for enrolment, call and admission, or reinstatement. However, the Act is silent on whether reasons are required of a panel if it approves the application.

The amendment and new rule are consistent with recent case law requiring tribunals to provide written reasons in certain circumstances. The new provisions also accord with Rules 5-16 and 5-17, which provide that the "record" for a review of a panel's decision includes the written reasons for any decision.



These rule changes are reflected on the Law Society website (Publications & Forms/ Act, Rules & Handbook). The rule changes noted under "Reporting criminal charges" and "Time to pay fines" are included in the *Member's Manual* amendment package enclosed with this mailing; the remaining rule changes will be reflected in the next amendment package.

See also page 9 for rule changes on the new summary hearing process. ❖

Responding to requests for information from Canada Revenue Agency

A RECENT DECISION of the Federal Court of Canada addresses the process for dealing with a requirement to provide information issued by the Canada Revenue Agency.

In *MNR v. Cornfield*, 2007 FC 436, the court considered an application by the Canada Revenue Agency (CRA) for a compliance order requiring a BC lawyer to produce certain client accounting documents that the CRA had sought from the lawyer pursuant to a requirement for information issued under s. 289(1) of the *Excise Tax Act*.

The lawyer was unable to contact his client and, therefore, could not obtain instructions about whether the client wished to claim privilege. As a result, he determined he was bound by his professional obligations, as set out in Chapter 5, Ruling 14 of the *Professional Conduct Handbook*, which require him to claim privilege in the absence of instructions to the contrary.

The Law Society appeared as an intervener in the application for the compliance order to raise issues relating to privilege and notice.

The judge ruled that accounting records are not protected by solicitor-client privilege and, consequently, that the obligations imposed by the *Professional Conduct Handbook* did not apply, as there was nothing for the client to waive.

The decision acknowledged that only the client, and not the lawyer, has the right to determine whether to claim privilege, but said that where the law is clear that the information is not privileged, "such a right simply does not arise."

The ruling also rejected the Law Society's contention that Federal Court rule 303(1) required the CRA to name a lawyer's client as a respondent when it applies for a compliance order, as the client is a person directly affected by the order and may wish to argue that the documents sought are privileged. The judge held that rule 303 does not apply because the procedure for compliance orders is set out in the *Excise Tax Act* and only requires notice to the party from whom the information is sought.

The Law Society is concerned that the decision does not adequately protect solicitor-client privilege and has filed an appeal.

While the appeal is pending, the Law Society recommends that lawyers faced with a demand to produce documents under s. 289(1) of the *Excise Tax Act* (or s. 231.2 of the *Income Tax Act*) consider Chapter 5, Ruling 14 of the *Professional Conduct Handbook* before responding to the CRA.

The privilege, if any, attaching to the documents sought is that of the client



and not the lawyer and the Law Society, therefore, recommends that lawyers obtain the instructions of the client (or former client).

The Law Society strongly encourages lawyers to advise their clients to obtain independent legal advice as to whether the documents sought by the CRA are, or may be, privileged.

It may also be prudent for the lawyer to obtain independent advice on this point as the CRA request for information may place the lawyer in a conflict of interest with the client.

After obtaining advice, the following options exist:

1. If the lawyer determines the documents are, or may be, privileged, then the lawyer must assert a claim of privilege unless he or she receives instructions from the client to waive

privilege. If the client cannot be found, the lawyer will have to claim privilege over the documents.

2. If the client does not wish to assert a claim of privilege, then the documents may be produced to the CRA.
3. If the lawyer is unable to obtain instructions from the client, and if the lawyer has determined that the documents are not privileged, then, following the *Cornfield* decision, it appears the documents must be given to the CRA. The Law Society is, however, concerned that this result means the client may never be aware of the demand for production of documents over which the client may wish to consider making, and arguing, a claim of privilege. If, for example, the lawyer erred in his or her determination, privilege would be lost without the client ever having had an opportunity to argue the issue.
4. If the lawyer considers that the documents are of the same nature as those at issue in *Cornfield*, but the client nevertheless instructs the lawyer to claim privilege, the lawyer should contact the Law Society for guidance.

Lawyers with questions about their professional obligations relating to a requirement to provide information should contact Michael Lucas, Staff Lawyer, Policy and Legal Services, or Kensi Gounden, Manager, Standards and Professional Development, at the Law Society's office. ❖

CHAPTER 5, RULE 14 OF THE PROFESSIONAL CONDUCT HANDBOOK STATES:

Disclosure required by law

14. A lawyer who is required, under the *Criminal Code*, the *Income Tax Act* or any other federal or provincial legislation, to produce or surrender a document or provide information which is or may be privileged shall, unless the client waives the privilege, claim a solicitor-client privilege in respect of the document.

Practice Watch, by Barbara Buchanan, Practice Advisor

Supreme Court of Canada rules PST payable on legal services

ON MAY 25, 2007, the Supreme Court of Canada issued its decision in *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, ruling that lawyers are required to collect and remit provincial sales tax (PST) for legal services in accordance with the *Social Service Tax Act*.

Following the decision, BC's Ministry of Small Business and Revenue issued a notice through its Consumer Taxation Branch (CTB), stating the ministry is not seeking to recover from low-income persons who did not pay PST during the course of the *Christie* litigation, in accordance with the ministry's guidelines. The ministry has yet to determine whether low-income clients qualifying for exemption under those guidelines will be entitled to a refund with interest for PST paid by their lawyers on their behalf. The CTB will issue a further notice when information is available.

CTB's June 18, 2007 "Notice to Lawyers" advises lawyers to remit with their next Social Service Tax Return form (FIN 400) the PST held in trust during the *Christie* case. The notice explains how to make the remittance and the entitlement to commission. The due date for the majority of remitters is July 23, 2007.

Lawyers should remit the interest earned on PST held in pooled trust

accounts to the Law Foundation in the normal course. Amounts held in separate, interest-bearing trust accounts are governed by s. 62 (5) of the *Legal Profession Act*.

If you have PST questions, contact the Consumer Taxation Branch at 604 660-4524 in Vancouver, or toll-free at 1-877-388-4440, or email questions to CTBTaxQuestions@gov.bc.ca. You can also direct questions to the Law Society's practice advisors, Dave Bilinsky at 604 605-5331, dbilinsky@lsbc.org, or Barbara Buchanan at 604 697-5816, bbuchanan@lsbc.org. Further information may be posted on the Law Society website at lawsociety.bc.ca.

GRATUITOUS TRANSFERS — DOCUMENT YOUR CLIENTS' INTENTIONS

Joint bank and investment accounts are often used for estate planning, financial management and other purposes. Two recent Supreme Court of Canada decisions, *Pecore v. Pecore*, 2007 SCC 17, and the companion case of *Madsen Estate v. Taylor*, 2007 SCC 18, demonstrate that lawyers should continue the existing practice of identifying and documenting their clients' intentions for treatment of joint assets upon the death of one of the joint account holders. A lawyer's notes may assist in determining whether joint assets should go to the surviving joint account holder or to the deceased's estate.

In these two cases, the Supreme Court clarified the common law principles of presumption of resulting trust and presumption of advancement regarding adult children and minors.

A presumption of resulting trust arises when one person makes a voluntary transfer into the name of another person, or purchases property in the name of another. The presumption applies to gifts to adult children whether dependent or independent. If the transfer is challenged, the onus is on the transferee to demonstrate that a gift was intended. This is because equity

presumes bargains, not gifts.

The presumption of resulting trust is the general rule for gratuitous transfers. However, advancement (i.e., a gift) may arise where the transferee is a minor child. If the presumption of advancement applies, it will fall on the party challenging the transfer to rebut the presumption of gift.

In *Madsen Estate*, the court applied the presumption of resulting trust to a father's gratuitous transfer of assets during his lifetime to his adult daughter. The court gave little weight to a financial institution's account agreements on the issue of entitlement to the joint bank account and investment assets, finding insufficient clarity in the agreements' survivorship provisions. The judges concluded the daughter failed to rebut the presumption of resulting trust on a balance of probabilities. Accordingly, the court ruled the father had not intended to make a gift to his daughter and that the assets were held for the benefit of his estate.

Pecore involved the status of investment and bank accounts held jointly by a father prior to his death and his adult child. The adult child successfully rebutted the presumption of a resulting trust by presenting testimony from the lawyer who drafted the father's will that the father had not intended the jointly held assets to form part of his estate. Therefore, the accounts constituted complete and perfect *inter vivos* gifts from the time the accounts were opened, even though the father retained exclusive control of them while he was alive.

Lawyers practising in the areas of wills, estates, trusts and tax will want to read these two cases for other information relating to the presumptions, taxation, capital gains and probate fees. In addition, lawyers should be mindful of the potential for the common law presumptions to apply to clients' real property held in joint tenancy.

The Law Society's *Practice Checklists*



Concern for his low-income clients prompted Dugald Christie (1940-2006, seen here at the 2004 AGM) to begin his action in 1999.

Manual reminds lawyers to obtain information about joint accounts and review property with a lawyer that is intended to pass outside of a will. Document your clients' intentions.

BROADLY WORDED POWERS OF ATTORNEY

Some lawyers receive from their clients broadly drawn powers of attorney, going beyond what one normally thinks of as an attorney's services. Wealthy clients sometimes ask their lawyers to act as their personal shoppers: buying furniture, vehicles and other large ticket items on their clients' behalf, and charging for these services. Consider whether providing such

services may compromise your client relationships or demean your professional obligations.

For information on the insurance coverage provided under the compulsory policy for attorney services, review "Insurance coverage for lawyers acting as trustees or executors or in other similar fiduciary capacities," found under "Coverage Inquiries & Rulings" in the Insurance section of the Law Society's website at lawsociety.bc.ca, or contact the Lawyers Insurance Fund.

BANK HOLDS ON TRUST CHEQUES

Some lawyers have been unpleasantly

surprised that their financial institution has put a hold on a trust cheque required for a conveyance. You may wish to contact your financial institution to discuss its policy regarding holds on trust cheques to make sure that you are not put in the unfortunate situation of being short of funds or in breach of an undertaking.



For further information regarding *Practice Watch*, feel free to contact Barbara Buchanan at 604 697-5816 or bbuchanan@lsbc.org. ❖

Benchers approve model policies on workplace equality and language

AT THEIR JULY meeting the Benchers approved model policies on workplace equality and respectful language prepared by the Women in the Legal Profession Task Force and the Model Policy Revision Working Group.

The *Workplace Equality Policy* and the *Respectful Language Guideline* are posted in the Practice Support/Articles section of the Law Society's website as best practice resources for the profession, replacing the *Workplace Equity* and *Gender Neutral*

Language model policies.

The original *Workplace Equity* model policy largely focused on the right of women to equitable treatment in the workplace. The new model policy expands its scope to include other traditionally disadvantaged groups in a manner consistent with BC's *Human Rights Code*. The title of the policy has been changed to *Workplace Equality* to avoid confusion with "employment equity" policies that flow from the federal *Employment Equity Act*.

The *Respectful Language Guideline* sets out general principles of respectful communication, identifies potential issues that may arise in specific contexts, and provides both advice and examples for effective use of respectful language. The *Guideline* represents a significant departure from the more prescriptive approach of its predecessor model policy, which was adapted from the *Gender Neutral Language Policy* issued by the provincial government in 1991. ❖

Practice Directions from the courts

THE SUPREME COURT of BC has issued two Practice Directions:

1. As of July 1, 2007, anyone wishing to open a bankruptcy file must file a requisition in Form 2 and must state the name of the bankrupt, the title of the supporting document, the authority that allows the filing of the document and must provide an address for delivery.
2. The fax filing numbers in those registries that provide registry services by fax pursuant to Rule 67 are updated.

For more information, see the Court's website at www.courts.gov.bc.ca/sc

(Practice Directions and Notices).



The Provincial Court of BC has issued a Practice Direction for Victoria – South Vancouver Island District regarding Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings. The directive has three objectives:

1. to authorize Judicial Case Managers by assignment to deal with virtually all administrative and remand matters (including arraignment and trial confirmation hearings);

2. to provide a simplified and efficient means of managing breach matters to secure a timely determination of the matter; and
3. to provide a prompt hearing where there has been a failure, on the part of counsel or an accused, to comply with the Criminal Caseflow Management Rules that require senior judicial attention to address issues that lead to backlog in the justice system.

For more information, see the Court's website at provincialcourt.bc.ca. ❖

Services for members

Practice and ethics advisors

Practice management advice – Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604 605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact **Barbara Buchanan**, Practice Advisor, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. Tel: 604 697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the committee. Tel: 604 443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.



Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articulated students and their immediate families: Tel: 604 431-8200 or 1-800-663-9099.



Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articulated students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers: Tel: 604 685-2171 or 1-888-685-2171.



Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: Tel: 604 687-2344 Email: achopra1@novuscom.net.



Interlock: Work-life balance for the sandwich generation – an oxymoron?

ARE YOU A member of the "sandwich generation," juggling a high-maintenance career, dependent children and ailing parents? Many of us struggle to achieve work-life balance.

You may think you have the juggling act under control until a new unanticipated responsibility tips the scale, leading to additional stress, moral dilemma, financial insecurity, legal planning, medical needs, questions regarding living arrangements, the division of responsibilities and consensual solutions. And this inevitably affects one's focus and productivity and may lead to absenteeism.

Employers are becoming increasingly sensitive to this growing phenomenon. According to Caroline Tapp-McDougall, author of the *Complete Canadian Eldercare Guide*, "Eldercare and its inherent

superhero responsibilities are the new facts of life for aging Canadians and the invincible baby boomers." While they may not be invincible, solutions and resources are available.

Eldercare resources:

- members.shaw.ca/bcseniors – The Peace of Mind website lists a variety of Eldercare resources, including those specific to the Lower Mainland. It includes a list of eldercare facilities.
- canadianadulthood.ca – An online connection for families to find experienced caregivers for seniors, people with special needs and post-operative adults.
- myseniorsite.ca/eldercare.htm – MySeniorSite is aimed at those 55-plus, and includes a section on eldercare support. ❖

Interlock reminds lawyers to seek help early

SEEKING HELP EARLY can make a big difference in dealing with a personal, family or work-related issue, and Interlock is reminding BC lawyers that their services are always just a phone call away.

Funded by the Law Society, Interlock's confidential Member Assistance Program is provided at no direct cost to BC lawyers, articulated students and their immediate family members. Interlock counsellors are experienced and qualified professionals — registered social workers, psychologists and clinical counsellors who must meet ethical standards, including duties of confidentiality.

Interlock services are available throughout BC. To set up an appointment with a counsellor in your community, call 1-800-663-9099 or 604 431-8200 in the Lower Mainland. For more information, visit Interlock online at interlock-eap.com. ❖

Decisions on ungovernability and privileged information

TWO RECENT DISCIPLINE decisions — one from a Law Society hearing panel and the other from the Court of Appeal — will enhance the Law Society's ability to govern the profession in the public interest.

The first, *Law Society of BC v. Hall*, 2007 LSBC 26 (penalty); 2006 LSBC 10 (facts and verdict), opens the door to disbarment based on "ungovernability" — a persistent disregard of the Law Society's regulatory processes.

The underlying principle behind a finding of ungovernability is that the legal profession cannot continue to be a self-regulating profession if lawyers do not accept regulation by their governing body.

"The public interest can only be served if members of the profession respect and respond to the Law Society as a regulating authority," the hearing panel in *Hall* concluded.

The panel found there was sufficient evidence to disbar Hall without a finding of ungovernability, but canvassed the issue because it has not previously been considered in this province. Ungovernability has been accepted as grounds for disbarment by law societies in Ontario, Manitoba and Alberta. For a summary of the *Hall* decision see page 30.

Relevant factors for a finding of ungovernability include:

- a consistent failure to respond to the Law Society;
- neglect of trust account record keeping;

- misleading a client or the Law Society;
- failure to attend discipline hearings;
- a discipline history involving different circumstances over a period of time;
- a history of breaches of undertakings without regard for the consequences; and
- practising law while under suspension.

The panel emphasized that it is not necessary to establish all these factors to conclude a lawyer is ungovernable.

"We do not foreclose the possibility that a finding of ungovernability can be made if all that was present was a repeated failure of a lawyer to respond to inquiries from the Law Society, if that failure is illustrative of a wanton disregard and disrespect of the lawyer for the regulatory processes that govern his or her conduct."

A separate hearing panel in *Law Society of BC v. Basi*, 2007 LSBC 25, accepted the Law Society's submission that a lawyer could be disbarred if ungovernable but did not consider the jurisprudence in depth as the facts did not demonstrate ungovernability.

The second case, *Skogstad v. Law Society of BC*, 2007 BCCA 310, confirms that s. 88 of the *Legal Profession Act* allows a lawyer to provide privileged information to the Law Society during a professional conduct investigation or hearing.

During a discipline hearing, a lawyer objected to a question from Law Society

counsel on the grounds that it would require him to divulge information covered by solicitor-client privilege.

The hearing panel, however, observed that s. 88(1) states that a lawyer who provides privileged information to the Law Society in the course of an investigation or hearing "is deemed conclusively not to have breached any duty ... owed to the society or the client."

The Court of Appeal upheld the ruling, noting that s. 88(2) imposes duties to protect solicitor-client privilege on the recipient of the information while s. 88(3) prohibits disclosure except for purposes contemplated by the *Legal Profession Act* or the Law Society Rules.

In addition, Rule 5-8 provides that privileged information must not be disclosed in any reasons given as a result of disciplinary proceedings and ss. 88(4)-(6) of the Act maintain the privilege in any subsequent court proceedings.

"Section 88 legislatively addresses the required balancing of the protection of solicitor-client privilege and the supervision and maintenance of the integrity of the legal profession," the court said. "A lawyer is free to provide required information to the Law Society and the privilege of the client is maintained intact."

The court added that "proper regulation by the Law Society of the competence and integrity of lawyers requires access to confidential, and occasionally, privileged information." ♦

Unauthorized practice

PURSUANT TO ITS statutory duty to protect the public from unqualified, unregulated legal service providers, the Law Society has obtained undertakings or court orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law.

Anyone with questions regarding the right of a person who is not a member of the Law Society to provide legal services should contact the Society at 604 669-

2533 or 1-800-903-5300.



continued on page 28

Unauthorized practice ... from page 27

[REDACTED]

[REDACTED]

Stella Nhung Davis and Lac Viet Resources Inc., doing business as Lac Viet Centre of Vancouver, BC, were offering to incorporate companies and prepare shareholder agreements for a fee. By a BC Supreme Court Consent Order dated April 24, 2007, Ms. Davis and Lac Viet Resources Inc., doing business as Lac Viet Centre, have consented to refrain from offering and providing these and other legal services set out in the court order, unless they become entitled to practise law in BC.

[REDACTED]

[REDACTED]

Pro bono ... from page 18

insurance coverage to lawyers who are not otherwise insured for certain pro bono legal services provided through approved programs. In addition, the Lawyers Insurance Fund waives the financial consequences of paid claims for lawyers providing pro bono services in these circumstances.

Pavey, Parker and Maclaren also note that, when lawyers volunteer with their organizations, they can rely on an organized model that helps clients to get ready for their meeting with the lawyer, while ensuring conflict resolution processes are in place.

"We provide a setting that is comfortable for both the clients who need legal advice, and the lawyers who are volunteering their time," says Parker. "Our volunteers are the heart of the work that we do."

It is clear the BC Bar continues to be

very active in the pro bono world, but Pro Bono Law of BC would like to see more law firms with formal pro bono policies in place. At present, 30 to 40 per cent of large, Vancouver law firms have pro bono policies, signalling an important shift in corporate values. But the push is coming from young lawyers who want to work in firms that recognize and support pro bono service.

"Law students are increasingly looking at what firms are doing in the pro bono sphere and they want to see a pro bono policy in place," Maclaren says. "Pro bono work also allows young associates to gain experience in a wide range of legal issues, to get in the courtroom and to conduct their own files. It's a win-win for law firms and for the public."

Pro Bono Law of BC has also helped broker partnerships between law firms and community organizations, such as

the partnership between Davis & Co. and the Multiple Sclerosis Society of Canada, and the more recent partnership between Blakes and the Parkinson Society British Columbia. The partnerships allow the non-profits to provide their clients with a direct link to free legal advice, while enabling the law firms to build meaningful community relationships.

If the last ten years are any indication, the pro bono world is bound for change. But no matter what the future holds, people in need of legal assistance can depend on lawyers to answer the call.

"There is a very long history of pro bono service in BC, and we have led the way nationally, Maclaren says. "It's difficult to think of any other profession where people contribute so many hours to the public interest. The primary reason lawyers do pro bono work is because they feel it's the right thing to do." ❖

Discipline digest

FOR THE FULL text of discipline decisions, visit the Regulation & Insurance/Regulatory Hearings section of the Law Society website at lawsociety.bc.ca.

RAYMOND WILLIAM BARTON

Quesnel, BC

Called to the bar: September 13, 1983

Non-practising: January 1, 2004

Ceased membership: January 1, 2006

Discipline hearing: September 28, 2006 and February 12, 2007

Panel: G. Glen Ridgway, QC, Chair, Ralston S. Alexander, QC and Robert C. Brun, QC

Report issued: April 27, 2007 (2007 LSBC 24)

Counsel: Jaia Rai for the Law Society and Donald P. Kennedy, QC for Raymond William Barton

FACTS

On March 8, 2006 the Law Society issued a citation alleging that Raymond William Barton had engaged in unauthorized practice under the *Legal Profession Act* by performing or offering legal services to WF and his spouse, MF, for a fee, while a non-practising member of the Law Society.

Early in 2004, WF became aware that a mineral claim he purchased from WP was much smaller than he had believed when he registered the bill of sale at the Ministry of Energy, Mines and Petroleum Resources (Mineral Titles Branch) the previous year. In June or July 2004, WF retained Barton to determine the true size of his claim. WF and MF both told the Law Society that WF had gone to see Barton as a lawyer.

In several subsequent meetings, some of which were also attended by MF, WF and Barton discussed various issues relating to verification of the mineral claim, including terms and delivery of payment for Barton's services and for the services of third parties. The testimony before the hearing panel was consistent on the point that Barton had communicated his status as a non-practising lawyer to WF at the time of their first meeting. However, the testimony was inconsistent regarding the amounts and terms of various payments made by and on behalf of WF, and the terms of engagement between WF, other parties and Barton.

VERDICT

The hearing panel determined that when the course of dealings between WF and Barton was viewed as a whole, Barton's actions constituted the unauthorized practice of law, but not professional misconduct.

The panel found it significant that WF initially contacted Barton because he believed him to be a lawyer, and that in their first meeting Barton told WF he expected to be reinstated in the near future. The absence of a formal accounting and the resulting uncertainty regarding Barton's handling of funds paid by WF were noted by the panel as illustrations of the risk to the public caused by the unregulated practice of law.

The panel accepted that Barton clearly told WF that he was not a practising lawyer when he took conduct of the matter, and that he genuinely believed his practising status was about to be reinstated by the Law Society shortly after the retainer commenced. The panel concluded Barton's conduct was not, in all the circumstances, dishonourable or disgraceful and accordingly fell short of professional misconduct.

RAGHBIR SINGH BASI

Victoria, BC

Called to the bar: May 19, 1989

Resigned: May 31, 2006

Suspended: May 17, 2007

Discipline hearings: September 8, 2005 and October 6, 2006

Panel: Ralston S. Alexander, QC, Chair, Richard S. Margetts, QC and Robert C. Brun, QC

Reports issued: October 6, 2005 (2005 LSBC 41) and May 17, 2007 (2007 LSBC 25)

Counsel: Brian McKinley for the Law Society and Raghbir Singh Basi appearing on his own behalf (penalty only)

CITATION 1: FACTS AND VERDICT

In a citation issued June 29, 2005, the Law Society alleged Basi failed to respond to Law Society correspondence. In a October 6, 2005 decision, the hearing panel concluded the allegations in the June 29 citation were proven and constituted professional misconduct.

CITATIONS 2 AND 3: FACTS AND ADMISSION

In citations dated November 22 and December 20, 2005, the Law Society alleged Basi failed to respond to Law Society correspondence, allowed a client's company to be struck from the Corporate Registry, and failed to respond promptly to the client's request for the corporate records. Prior to the penalty hearing for citation 1 (above), Basi admitted the allegations in both citations constituted professional misconduct. He resigned his membership in the Law Society on May 31, 2006, the same day he made the admission.

PENALTY

At the October 6, 2006 penalty hearing, the panel was asked to consider a penalty for all three matters. Basi accepted responsibility for his actions and circumstances, acknowledged the authority and responsibility of the Law Society to govern the legal profession, acknowledged that he should have dealt with matters as they arose and stated his belief that his failure to do so was driven by long-standing depression.

The panel gave careful consideration to whether Basi's actions constituted unfitness to practice (see page 27 of this issue of *Benchers' Bulletin*) and accordingly whether disbarment was the appropriate penalty. The panel decided that a suspension with terms for reinstatement was the appropriate penalty, noting that the remedy of disbarment is extreme and ought to be imposed only when required to protect the public.

The panel ordered that Basi:

1. be suspended for 18 months;
2. must respond to the Law Society's outstanding correspondence as set out in the three citations;
3. must support any application for reinstatement with appropriate medical evidence confirming his psychological stability and his successful resolution of the issues giving rise to these proceedings; and
4. pay costs in the amount of \$5,771.

MICHAEL ZSOLT GALAMBOS

Vancouver, BC

Called to the bar: May 17, 1991

Suspended: August 1, 2007

Panel: Gordon Turriff, QC, Chair, Joost Blom, QC and Robert W. McDiarmid, QC

Report issued: June 11, 2007 (2007 LSBC 31)

Counsel: Maureen Boyd for the Law Society and Jerome Ziskrout for Michael Zsolt Galambos

FACTS

In February 2006, colleagues in the office where Michael Zsolt Galambos worked were preparing an application for short leave for an application in a matrimonial action. Galambos was aware of a discussion on whether it was necessary to serve the defendant in the action with only the writ and statement of claim, or whether the notice of motion and supporting affidavit also had to be served. On February 15, 2006, the writ and statement of claim were served on the defendant. The notice of motion and supporting affidavit were not served.

On February 17, 2006, Galambos attended before Master Barber in Supreme Court Chambers to speak to the short leave application. Prior to leaving the office for court, Galambos asked a legal secretary if the defendant had been served. She told Galambos that the defendant had been served, but the process server had not yet provided an affidavit of service. He did not ask which documents had been served on the defendant.

During his submissions in the short leave application, Galambos represented to the court that the notice of motion and supporting affidavit had been served on the defendant. The master granted the short leave application. Immediately after the application, Galambos' associate advised him that the notice of motion and affidavit had not been served. Galambos did not return to court to advise that his representation was not accurate.

VERDICT

The panel accepted Galambos' admission that his conduct on February 17, 2006 had the effect of misleading the court, and found him guilty of professional misconduct.

PENALTY

The panel underscored the importance of ensuring the court can accept statements of counsel without having to make inquiry. The panel agreed that this kind of case calls for something more than a fine and ordered a one-month suspension from August 1 to August 31, 2007 and costs of \$3,000. Although the panel did not order Galambos to write a letter of apology to Master Barber, they were assured he would do so.

JAMES DOUGLAS HALL

Victoria, BC

Called to the bar: September 2, 1994

Suspended: September 6, 2005 (outstanding trust report) and November 8, 2005 (pending hearing)

Resigned: November 24, 2005

Disbarred: May 28, 2007

Discipline hearing: March 7, 8 and July 28, 2006

Panel: Anna K. Fung, QC, Chair, Ralston S. Alexander, QC and William M. Everett, QC

Reports issued: March 15, 2006 (2006 LSBC 10) and May 28, 2007 (2007 LSBC 26)

Counsel: Brian McKinley for the Law Society; no one appearing on behalf

of James Douglas Hall

FACTS

On March 8, 2006, the panel made an oral decision on Facts and Verdict, finding James Douglas Hall guilty of 11 counts of professional misconduct, including failure to abide by a direction of the Practice Standards Committee, failure to maintain proper records, filing a trust report containing false information and a forged signature of an accountant, practising law while suspended, breaching undertakings to the Law Society, and deliberately misleading a client and another lawyer. The panel found Hall's professional misconduct to have been pervasive, extremely serious and, in the case of his failure to maintain proper books and records, to have extended over a number of years.

VERDICT

On July 28, 2006, the panel concluded Hall should be disbarred, noting that he had repeatedly failed to respond to Law Society requests for information, had displayed indifference and contempt for matters of significance involving the Law Society, and had demonstrated a fundamental lack of honesty in his dealings with clients, auditors and the Law Society. The panel pointed out that there is ample authority in Law Society jurisprudence for disbarment where fundamental dishonesty has been demonstrated, even when no misappropriation has occurred.

The panel also stated it would not have hesitated to disbar Hall for unfitness (see page 27 of this issue of the *Benchers' Bulletin*).

PENALTY

The panel ordered that Hall:

1. be disbarred; and
2. pay costs in the amount of \$17,180.93.

NOTE: James Douglas Hall should not be confused with James (Jamie) A. Hall of Reed Pope LLP in Victoria.

RICHARD CRAIG NIELSEN

Vancouver, BC

Called to the bar: September 5, 2001

Discipline hearing: May 15, 2007

Panel: Joost Blom, QC, Chair, Thelma O'Grady and Kathryn Berge, QC

Report issued: June 29, 2007 (2007 LSBC 35)

Counsel: Jaia Rai for the Law Society and Garth McAlister for Richard Craig Nielsen

FACTS

In 2004, Richard Craig Nielsen represented TS while Lawyer P represented GD, TS's ex-wife, in matrimonial proceedings. Through the summer and fall of 2004 Nielsen corresponded frequently by email with Lawyer P as they negotiated a draft consent order for custody of and access to their clients' son. Nielsen and Lawyer P exchanged five different versions of the draft order, including, excluding and varying provisions for joint custody, additional access and permission for a visit to India.

On November 9, 2004 Nielsen submitted a draft consent order with supporting affidavits of TS and GD to the BC Provincial Court for entry. Prior to submitting the TS affidavit, he altered the exhibit setting out the draft order being consented to by removing one page and substituting another without the access and joint custody provisions contained in the original exhibit.

ADMISSION AND PENALTY

Nielsen admitted that he altered the documents without his client's

consent and submitted them to the court as though they were genuine and that his actions constituted professional misconduct.

Nielsen stated his law practice had been very disorganized at the time of his misconduct. He had a day job witnessing mortgages, and worked on other files in the evening from his home. In this case, Nielsen did not have hard copies of earlier versions of TS's affidavit in his file, and he had not recorded new instructions from his client. In preparing to file the affidavit, Nielsen realized the exhibit and draft order being filed were inconsistent. He thought he was correcting a problem by making the exhibit consistent with the draft order.

Nielsen further stated he did not make the changes to his client's affidavit with any intention to mislead the court, or for any personal gain. Nielsen advised the panel that since the incident, he has put into practice the Law Society's law office management advice. He no longer acts as a signing officer during the day, limits the number and types of cases he handles, and has developed mentoring relationships with senior legal aid lawyers.

The panel accepted Nielsen's conditional admission and penalty proposed under Rule 4-22. Accordingly, the panel ordered that:

1. he be reprimanded;
2. he pay a fine of \$10,000 and costs of \$5,000, both within two years; and
3. his admission be recorded on his professional conduct record.

DOUGLAS WARREN WELDER

Kelowna, BC

Called to the bar: May 12, 1981

Bench review: January 19, 2007

Benchers: James D. Vilvang QC, Chair, Terrance E. La Liberté, QC, Jan Lindsay, Ken Dobell, Joost Blom, QC, Ronald S. Tindale, Kathryn Berge, QC, Dirk J. Sigalet QC and Leon Getz, QC

Report issued: June 8, 2007 (2007 LSBC 29)

Counsel: Brian McKinley for the Law Society and Alan R. Perry for Douglas Warren Welder

BACKGROUND

In 2002, Douglas Warren Welder was found guilty of professional misconduct for failing to remit GST, PST and source deductions. The panel in that case fined him \$2,500 and ordered that he provide proof on a quarterly basis that he had remitted all GST, PST and source deductions. He provided the reports but indicated he had not made all the required payments. As a result of his failure to pay, in 2005 Welder was again found guilty of professional misconduct and suspended for one year (report issued November 16, 2005: 2005 LSBC 49).

DECISION

On an application for review of penalty, the Benchers concluded that the hearing panel erred by not taking into consideration Welder's acknowledgement of his misconduct and the impact of the penalty, which would likely prevent him from resuming practice. Given the nature of the misconduct and the fact that it was the second such offence committed by Welder, the Benchers concluded that a suspension was warranted, but the one-year sentence imposed by the hearing panel was unduly harsh. They ordered that Welder be reprimanded; suspended for a period of three months to begin July 3; and pay costs of \$2,450. They also ordered Welder be subject to the following conditions on his return to practice:

- he must provide evidence, on a monthly basis, that he has remitted GST, PST and employee source deductions; and
- he must provide information, as required by the Discipline Committee, to determine and ensure that the continued practice by the applicant poses no danger to the public interest.

Both of these conditions will continue until the Discipline Committee decides to remove them. ❖

Credentials hearing

RE: AN APPLICANT

Pursuant to Law Society Rule 2-69.1, the published summary does not identify the applicant when the application is rejected.

Hearing (application for call and admission by transfer): February 26 – March 1, 2007

Panel: Dirk J. Sigalet, QC, Chair, Robert E.C. Apps, QC and John M. Hogg, QC

Report issued: June 19, 2007 (2007 LSBC 34)

Counsel: Herman Van Ommen for the Law Society and Christopher E. Hinkson, QC for the applicant

In November 2005, a Manitoba lawyer applied for membership in the Law Society of BC. The Law Society's review of his application determined he had provided incomplete information about a 1998 criminal charge of assaulting his common-law spouse that was subsequently stayed, and that he had failed to disclose a 2005 conviction under Manitoba's *Retail Sales Tax Act*. As a result, the Credentials Committee ordered a hearing to require that the applicant meet the requirements of s. 19 of the *Legal Profession Act* by establishing that he was of good character and repute and fit to become a barrister and solicitor.

The hearing panel rejected the applicant's claim that he thought he did not have to disclose the *Retail Sales Tax Act* conviction — which resulted

from the applicant's refusal to pay the tax so he could challenge its legality in a test case he never launched — even though the application form specifically required disclosure of all charges arising from "any crime, offence or delinquency under a statute or ordinance." The panel noted the applicant pleaded guilty and was granted an absolute discharge only three months before filling out the application and, according to a trial transcript, specifically told the judge he would have to disclose the conviction to the Law Society of BC.

Additional evidence disclosed that a Manitoba judge had criticized the applicant's decision to act as counsel for his common-law spouse in a family relations matter, that another judge had questioned his skill and competence when he "deserted" a client at a critical point in her legal matter, and that the Law Society of Manitoba had reprimanded him for berating a client who questioned his advice.

Former clients also told the hearing their experience with the applicant was that of confrontation, disrespect, and a lack of legal preparation as well as badgering, harassing and intimidating.

The panel concluded the applicant had been untruthful on his application for membership in the Law Society and, as well, had failed to establish he was of good character and repute. His application for membership was dismissed. ❖

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