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BENCHERS' BULLETIN

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Reflecting with pride

by Anna K. Fung, QC

IN THE YEAR that has passed since our last annual general meeting, the Law Society has endeavoured to do its best, to get better and to do what is right for the public and the profession. While we don't always succeed, we never stop trying. We, the Benchers and staff — collectively and individually — have focused on excellence and achievement in every facet of our work. We have brought enthusiasm to our ideas and efficiency to our tasks. In the end, we have much of which to be proud.

On the fiscal front, we have delivered on our commitment to prepare balanced budgets for our Law Society operations and have brought a degree of stability and forward planning to the setting of practice fees. At the same time, we have fulfilled our commitment to relieve the majority of law firms of the cost of the traditional annual accountant's report.

For those in small firms, we have delivered on our commitment to provide lawyers with free, practical, online practice support.

We have increased our financial support of pro bono programs; we have obtained legislative changes to make our practice standards more robust, flexible and transparent; we have brought custodianships in-house in an effort to reduce growing costs and the length of custodianships; and we have established a solid and healthy relationship with the provincial government, along with a collaborative relationship with the Canadian Bar Association.

Acting on the recommendation of the Equity and Diversity Committee, and in an effort to bring the society closer to the public that it serves, the Law Society has organized two successful free public forums on legal topics in the past year. The third will be held on November 22, 2007 in conjunction with the *Lawyers Without Rights* exhibit in Vancouver. At the same time, the Law Society is continuing to seek ways to improve access to justice and has introduced new protocols to ensure its professional conduct program responds to public needs. Following on an initiative

begun last year by our immediate past-president Rob McDiarmid, QC, the Law Society continues to work with the provincial government to find cost-effective ways to provide the public with free online access to up-to-date BC legislation.

I have no doubt that the energy and creativity the Benchers and staff, along with our many volunteers and supporters, have brought to these initiatives will pay off in the end.

The legal profession is the foundation on which the Canadian economy and Canadian society are built. Some lawyers advise business leaders on multi-million dollar mergers. Others help the average citizen write a will or buy a house. The common thread, though, is that all are involved in making our society better and our economy grow and prosper.

Our healthy lawyers' insurance program remains the envy of other law societies. Our professional conduct department is a model of fairness and efficiency. Our practice fees are lower than both Ontario and Alberta. Perhaps best of all, our home-grown, small firm online practice course won an international legal education award.

Indeed, the Law Society has a lot to be proud of. But it is you, our members, that we, the Benchers and Law Society staff, are proudest of.

The legal profession is the foundation on which the Canadian economy and Canadian society are built. Some lawyers advise business leaders on multi-million dollar mergers. Others help the average citizen write a will or buy a house. The common thread, though, is that all are involved in making our society better and our economy grow and prosper.

While other professions blur their boundaries in desperate attempts to retain business and attract new business or steadfastly refuse to embrace changing societal

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articulated 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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needs in misguided notions of professional protection, the legal profession remains committed to its core values of the maintenance of independence and the rule of law. It is these core values that impose on lawyers a greater professional burden than members of other professions.

For many people — the disadvantaged, new Canadians, the disabled, for example — lawyers are the only safety net they have in a world that often seems to be a struggle. Consistently, it is the legal profession that stands up for them.

Whether it is through advice at a storefront clinic or by finding time for them during a busy day, there are many people who rely on and trust lawyers to help them. As we know all too well, often the people who most need legal advice are the ones who cannot afford it. It is the lawyers who provide that assistance, without any expectation of reward, the Dugald Christies of this world, who are the ones we should be most proud of.

... the legal profession remains committed to its core values of the maintenance of independence and the rule of law. It is these core values that impose on lawyers a greater professional burden than members of other professions.

I would be remiss if I did not mention one of the most important components of the Law Society — our Lay Benchers. Without their perceptive and cogent assistance, I don't think the Law Society would be as solid an organization as it is. They are a constant reminder of the importance of ensuring that the public interest, above and beyond lawyer interests, is foremost in our consideration of everything that we do.

As I said at the outset, the Law Society and the legal profession have much to be proud of. Yes, as lawyers, we face more than our fair share of criticism and we are often the butt of jokes and unwarranted attacks, but that unfortunately comes with the privileged position we hold in our society and the envy with which others tend to regard us. We should not, however, let that deter us from holding our heads high and proclaiming to the world that we are indeed proud, dare I say it, even honoured, to be lawyers. ❖



President Anna Fung, QC accepts award on behalf of Law Society

At a Vancouver news conference on August 10, the Friends of Simon Wiesenthal Center for Holocaust Studies presented Law Society President Anna K. Fung, QC with an award recognizing the society's efforts in "promoting the independence and strength of the BC bar in the ongoing battle against intolerance, discrimination, bias and the rise of terrorism."

Friends' director of national affairs Leo Adler (pictured above) expressed appreciation for the Law Society's support in bringing the internationally renowned *Lawyers Without Rights* travelling exhibition to Vancouver and Victoria this fall. Launched 10 years ago by the Israeli and German federal bars, *Lawyers Without Rights* chronicles the fate of Germany's Jewish lawyers before and during World War II, and traces the implications of their persecution for the rule of law.

"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," Fung said as she accepted the award. "It's imperative that all citizens understand the importance of the rule of law in promoting a just and democratic society and the Law Society of BC, the Friends of Simon Wiesenthal Center for Holocaust Studies and the Vancouver Holocaust Education Centre would like to officially invite you to join *Lawyers Without Rights* in spreading this important message."

Lawyers Without Rights will run from November 1 to 25 at the Harbour Centre Tower atrium in Vancouver and from November 28 to December 9 at the University of Victoria. As part of the exhibit, the Law Society will present an evening public forum on November 22 at SFU 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 transparency advantage

by Timothy E. McGee

MUCH HAS BEEN said in recent months about self-regulating professions, their public accountability and whether they serve the public interest.

One of the measures of effective regulation is whether the public has confidence in the way the regulator is doing its job. At the Law Society, we believe that to earn and keep that confidence we must ensure that our regulatory processes are open and transparent to the public we serve.

I am pleased to report that the Law

These disclosure policies ensure that the public, government and the lawyers of BC have access to the information they need to understand how our regulatory processes work and to have full disclosure of the decisions which are made.

Society is one of the leaders among all professional regulators when it comes to the openness of our regulatory processes. I like to refer to this as the "transparency advantage."

By "transparency advantage" I mean the proactive position the Benchers have taken to ensure that the Law Society's communication with the public, government and our members is the most comprehensive and accessible it can be.

Our objective is to provide the public and our members with access to all our regulatory information unless doing so would be inconsistent with legal requirements, the need for administrative fairness or our obligation to protect personal privacy.

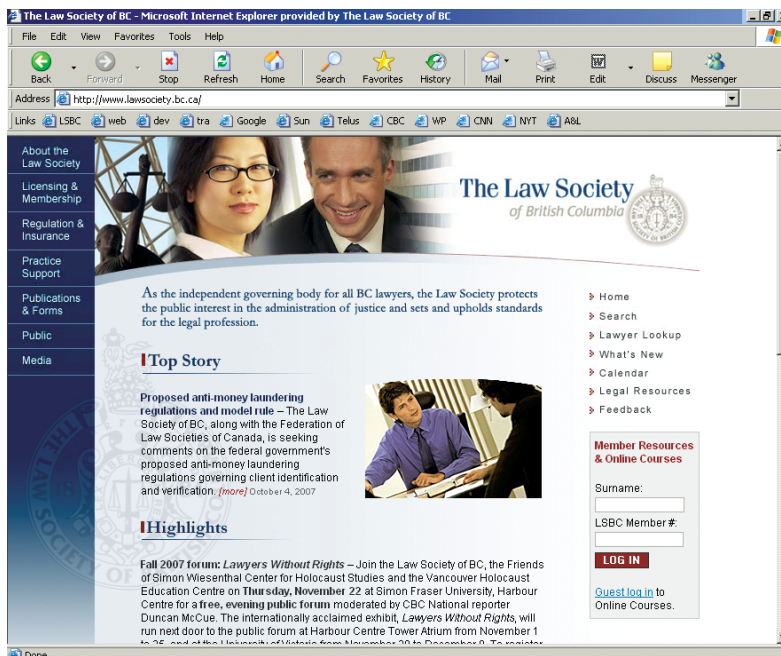
Guided by this principle, the Law Society has, for many years, made a significant amount of its discipline and credentials material available to the public. For example,

discipline hearings have been open to the public and discipline decisions have been publicly available since the early 1980s.

By being on the forefront of public disclosure, the Law Society does indeed have an advantage. But that does not mean we can stand still. We must continue to look at other professions and at best practices, in Canada and globally, to ensure that we remain open and accountable and that we retain our "transparency advantage."

Likewise, credentials hearings and decisions have been publicly available since the late 1990s.

We also respect the need to balance disclosure with appropriate protections to ensure the integrity and fairness of our



The Law Society website is a key communications tool and reflects the importance the society puts on transparency. Discipline decisions, licensing information and publications such as the Benchers' Bulletin and committee reports are all available to the public as well as the profession. Go to lawsociety.bc.ca to keep informed about the latest news affecting the BC legal profession.

regulatory processes. For example, the Law Society's rules require that complaints and investigations remain confidential unless a citation is issued or the matter is known to the public. This policy protects the integrity of our investigations and the privacy of the parties, but allows the Law Society to comment publicly when complaints are already in the public domain.

The Law Society also has guidelines governing disclosure of personal information in discipline and credentials decisions to protect the privacy of third parties who

become involved in our regulatory process. To ensure fairness we also have rules that require that discipline decisions not identify the lawyer if all charges in the citation are dismissed (unless the lawyer consents).

These disclosure policies ensure that the public, government and the lawyers of BC have access to the information they need to understand how our regulatory processes work and to have full disclosure of the decisions that are made.

Transparency and openness of regulatory processes are rapidly becoming

an important touchstone against which governments and the public assess our accountability. By being on the forefront of public disclosure, the Law Society does indeed have an advantage. But that does not mean we can stand still. We must continue to look at other professions and at best practices, in Canada and globally, to ensure that we remain open and accountable and that we retain our "transparency advantage." ❖



Ridgway acclaimed Second Vice-President for 2008

Lawyers attending the Law Society's annual general meeting on September 25 acclaimed G. Glen Ridgway, QC as Second Vice-President for 2008.

Ridgway practises with Ridgway and Company in Duncan, BC. For the past 35 years, he has conducted a general litigation practice, including personal injury and employment law, in the Cowichan Valley.

A Bencher of the Law Society since 2002, Ridgway is chair of the Credentials Committee and serves on the Executive, Independence and Self-Governance, and Regulatory Policy Committees. He is a former chair of the Unauthorized Practice Committee and a former member of the Ethics and Practice Standards Committees. He is a member of the Canadian Bar Association, the Trial Lawyers Association of BC and is the former president of the Cowichan Valley Bar Association.

Ridgway serves his community as a councillor for the Municipality of North Cowichan and as a director of the Cowichan Valley Regional District. He has also served as a director of the Legal Services Society, as a trustee of the Cowichan Valley School Board and as a board member of Malaspina College. ❖

Law Society program updates

The Law Society operates more than 20 programs, grouped into six operational areas: Credentials and Education, Insurance, Policy and Legal Services, Professional Regulation, Executive Support and Corporate Services.

Throughout the year, department heads provide reports to the Benchers outlining program goals and key performance measures. In September and October, the Benchers heard from the Professional Conduct and Discipline Department and from the custodianship and trust assurance programs. Below are summaries of those reports.

Professional conduct and discipline



Howard Kushner, the Law Society's Chief Legal Officer, had good news for the Benchers. The number of complaints against lawyers has dropped in recent years.

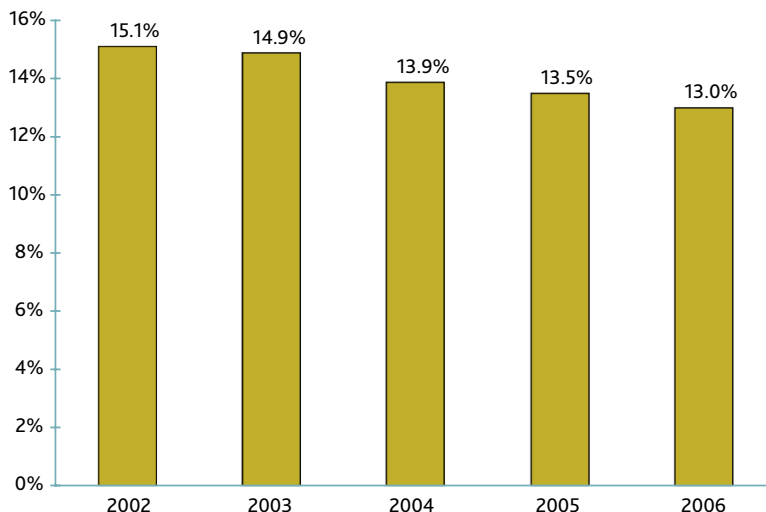
THE NUMBER OF complaints against lawyers continues to drop even as the number of lawyers in the province grows, Chief Legal Officer Howard Kushner and Director of Professional Regulation Stuart Cameron told the Benchers at their September meeting.

Complaints have been dropping steadily for several years, from 1,591 in 2002 to

1489 in 2006, even though the profession has grown from 10,836 members to 11,410 over the same period, Kushner noted.

The Professional Conduct and Discipline Department — which investigates and prosecutes complaints — also reported continued progress in complaints investigations with more files closed than opened from January to August 2007.

FREQUENCY OF COMPLAINTS



Yearly comparison of complaints as a percentage of practising lawyers.

Recent changes to the complaints and discipline process include the division of the department into two, specially trained groups to handle different types of complaints.

The investigations group, with six lawyers, examines the more serious and complex complaints. Its goal is to provide "a timely, transparent, fair and thorough review of files" and to determine whether they should be sent to the Discipline Committee or the Practice Standards Committee for further action, Cameron explained. This focused approach ensures efficient and thorough preparation if the case is referred to one of the Law Society's three discipline counsel for prosecution. The investigations group handles about 25 per cent of complaints.

The remaining 75 per cent of complaints usually involve service-related problems, such as poor communication, and are handled by the intake and early assessment group. These complaints often do not warrant discipline but do require a response from the Law Society. They are also best dealt with as quickly as possible before the problem worsens. "The goal is to renew and restore communication between lawyer and client where possible," said Cameron. "Many complainants are more interested in getting their lawyer's attention than waiting for any disciplinary action to be taken." The intake group's three lawyers and two paralegals have all taken training in mediation and inter-personal conflict resolution.

Surveys of complainants — BC is the only law society in the country to survey complainants — show general satisfaction with the Professional Conduct and Discipline Department's work. In 2006, 75 per cent of complainants expressed satisfaction with timeliness, while 90 per cent were satisfied with courtesy and 65 per cent were satisfied with the level of fairness and thoroughness of the Law Society's work. A 2006 survey of lawyers who have been the subject of complaints showed even better results with satisfaction rates of 90 per cent or higher in all areas.

"We use the survey results to help us find ways to improve our handling of complaints," Kushner said. "The success we have had with the surveys has caused other Canadian law societies to look at the merits of adopting a similar program. ♦

Graeme Keirstead, Manager of Custodianships and Special Fund, has spearheaded the Law Society's new in-house custodianship program. The program will reduce costs by taking advantage of staff expertise and resources.



Custodianships

THE NEW, IN-HOUSE custodianship program is expected to reduce the average cost of custodianships in coming years, said Graeme Keirstead, the Law Society's manager of custodianships and special fund, in his department's report to the Benchers.

Section 50 of the *Legal Profession Act* authorizes the Law Society to apply to the BC Supreme Court for appointment of a custodian of a lawyer's practice when the lawyer is unable to continue practising for

Keirstead reported that one of the first in-house custodianships — which began March 1 of this year — is estimated to have saved \$30,000 in external fees.

reasons such as illness, death, suspension or disbarment, and has not made arrangements for his or her clients.

The number of custodianships has grown in recent years, but remains small. The late 1990s saw approximately six a year while there have been an average of 12 in each of the past four years. Further increases are expected in coming years as the profession ages. Enforcement of trust

accounting rules through the new Trust Administration Program and consequential suspensions for financial irregularities are also expected to add to the number of custodianships.

Historical data shows that between 2002 and 2006, the average cost of a custodianship was approximately \$120,000.

To reduce costs and to take advantage of in-house expertise and resources such as paralegals and administrative support, the Law Society began using staff lawyers in December 2006 to handle custodianships. The society also requested changes to the *Legal Profession Act* authorizing the Supreme Court to appoint the society, rather than a specific lawyer, as a custodian. This eliminates the need to reapply to the court for a new custodian if the lawyer handling the custodianship is unable to continue. It also allows the custodianship department to manage its resources better.

Keirstead reported that one of the first in-house custodianships — which began March 1 of this year — is estimated to have saved \$30,000 in external fees. The case resulted from a lawyer's failure to comply with an undertaking to the Law Society to wind-up his practice following a disciplinary

continued on page 8

Custodianships... from page 7

suspension. It required a search-and-seizure order and a sheriff's assistance to take custody of 200 boxes of practice records from the lawyer's home. There were no accounting records, many of the files were mouldy and some contained rat feces. Law Society staff are now reconstructing the financial records to determine if clients are owed money. Staff have spent more than 1,600 hours (including 700 hours of lawyer and paralegal time) on the file.

The Law Society is further reducing custodianship costs by increasing the

use of locums to manage or terminate the practice of another lawyer. These are cases where the society is in a position to seek the appointment of a custodian, but the lawyer has made acceptable arrangements, such as the estate of a deceased lawyer retaining counsel to wind up the practice.

Locums are generally more appropriate where a member is ill or has died, but can also be used when a member is facing a short suspension. "The only cost to the Law Society is staff time spent helping to arrange the locum, providing some limited support and dealing with requests from the

public and other counsel in relation to the law practice," Keirstead explained.

The Law Society seeks repayment of costs incurred in custodianships, although recovery is not always possible.

Keirstead also said he is preparing an information guide explaining how to make arrangements for winding up a law practice. "Only 12 per cent of our members have appointed winding-up caretakers," he noted. "As the profession ages, we want to make sure lawyers — particularly sole practitioners — make proper arrangements for their practices and clients." ♦

Trust assurance

THE LAW SOCIETY'S Trust Assurance Program will help new law firms understand how to setup their trust accounting systems properly, Chief Financial Officer Jeanette McPhee explained to the Benchers at their

October meeting.

In addition to visiting new firms to explain the trust accounting rules, staff auditors provide telephone advice and have a number of publications available —

including a bookkeeper's handbook — to help any lawyer who has questions about trust accounting.

The program, which began in January 2007, eliminates the need for most firms to



Jeanette McPhee, Chief Financial Officer, at the October 12 Benchers meeting.

file an accountant's report — resulting in a financial saving to firms — and is funded entirely by the Trust Administration Fee.

"Our goal is to ensure that all law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds," McPhee said.

Trust reports from the province's

The program, which began in January 2007, eliminates the need for most firms to file an accountant's report — resulting in a financial saving to firms — and is funded entirely by the Trust Administration Fee.

3,300 firms are processed by in-house auditors who assess each firm's compliance with the trust accounting rules. Firms are then selected for a compliance audit with priority given to those firms who have demonstrated a low compliance and the remaining firms chosen at random.

When fully staffed, the Trust Assurance Department expects to audit each firm at least once every six or seven years.

Up to this point, most firms have shown proper compliance, with seven per cent requiring further follow-up and four per cent being referred to the Professional Conduct Department for further review.

McPhee noted that feedback from law firms has been very positive with almost all lawyers who responded saying they appre-

ciated the auditor's advice.

"Over the long term, we hope to see a reduction in the number of financial sus-

"Our goal is to ensure that all law firms scrupulously follow the rules relating to the proper receipt and handling of trust funds."

—Jeanette McPhee

pensions and the number of referrals to Professional Conduct, along with improved performance on key compliance questions in the trust report filings," she added. ❖

FROM WALLY OPPAL, QC, ATTORNEY GENERAL OF BC

Public shows support for community court

A SERIES OF public information sessions held this spring in Vancouver's downtown eastside, central business district and west end communities gave the city's residents a chance to comment on a new community court opening in their area next year.

Vancouver's Downtown Community Court will hear most criminal offences, including drug possession cases, arising in its designated area. The court's territory will range from Clark Drive in the east, through Stanley Park to the west, with Great Northern Way as the southern boundary and the Inner Harbour and Coal Harbour of Burrard Inlet as the northern boundary.

The community court will lead to earlier resolution of cases, with offenders being held accountable more quickly and in ways that are meaningful to the offender and the community as a whole. Once referred to community court, the accused's health and social circumstances, risk and criminal history will be assessed by the community court triage team and a plan developed for consideration by the judge. The court hopes to resolve cases within the first or second court appearance. The Legal Services Society will provide a full-time defence counsel to represent the accused, although accused persons will also be free to obtain counsel of their choice.

I am happy to report feedback from attendees at the forums was positive. The various agencies involved with this project, which include the judiciary, police, court services, Crown counsel, defence lawyers, victim services and health and social service agencies, are now even more enthusiastic as we move towards opening day (anticipated to be in March 2008).

The court will be located in the former Vancouver Pre-trial Centre on Gore Street,

The community court will lead to earlier resolution of cases, with offenders being held accountable more quickly and in ways that are meaningful to the offender and the community as a whole.

adjacent to the current courthouse at 222 Main Street. Key legal staff and service providers will work together from this location. Construction plans for the facility have been completed and redevelopment of the building's interior is progressing.

Inter-agency planning has been happening throughout the summer. We will keep working through early fall to confirm the business process for the community court. Various agencies and

representatives of residents and business people in downtown Vancouver have added valuable expertise to the development of the community court.

Agreement on key policy principles among the partners who are participating in the project — Vancouver Coastal Health, the Provincial Health Services Authority, the Ministry of Employment and Income Assistance and BC Housing — has also been reached. A detailed map of the operating principles will be developed by this fall.

Judge Thomas Gove, the community court's judge, participated in the panels that presented at the public forums. His enthusiasm for the project was shared by all those in attendance.

As we move closer to the opening of this new, innovative court, I am encouraged to be able to provide such a positive progress report. I believe this court will bring about much needed change for those who commit crime and for the businesses and residents who want to see crime reduced and safety improved in their community.

The community court is one of several justice reform pilot initiatives that aim to improve the justice system — to find early solutions and faster justice. ❖

Law Foundation continues strong BC legacy

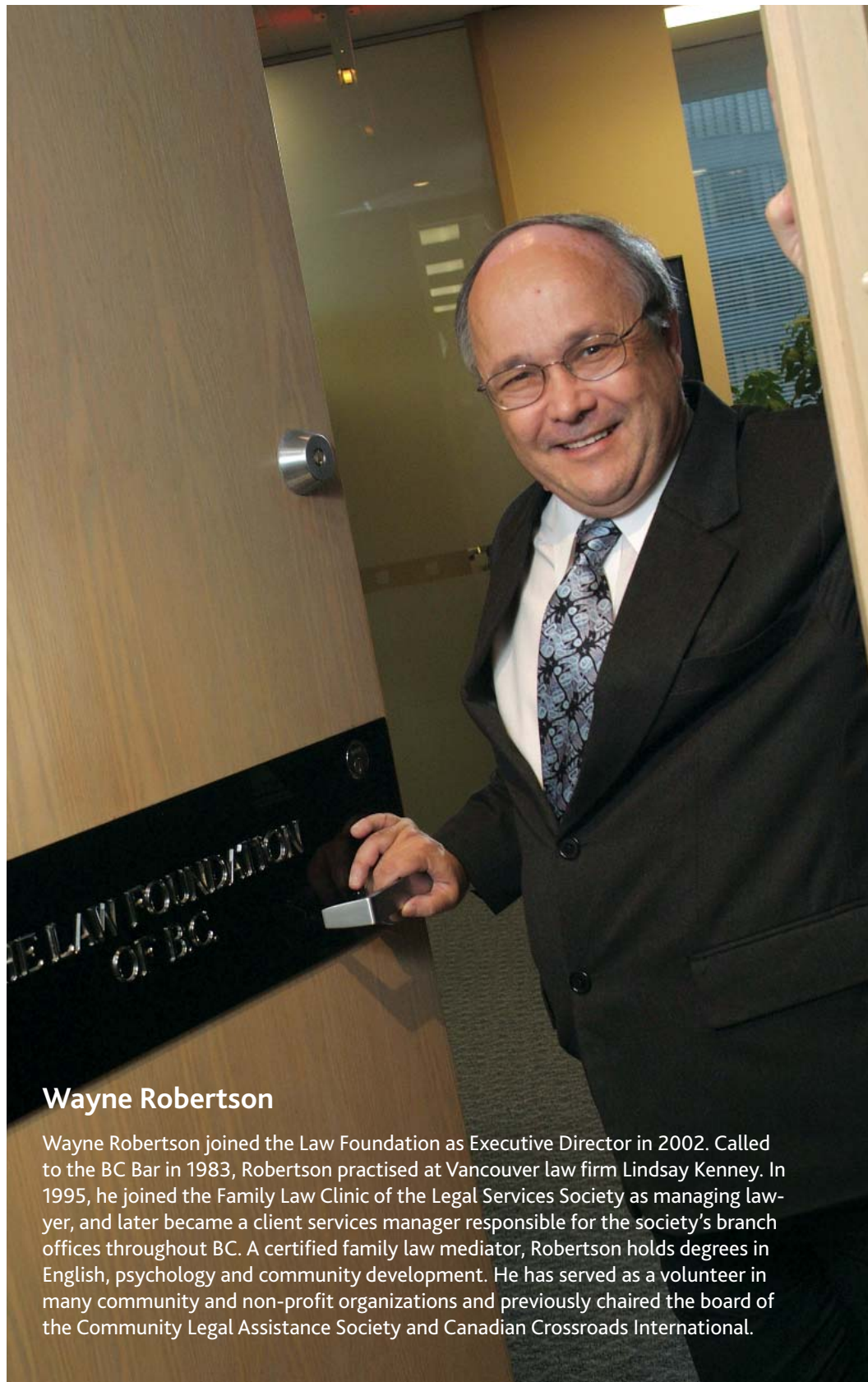
THANKS TO THE vision and determination of BC lawyers, the recent surge in the amount of money held in lawyers' pooled trust accounts has created spin-off benefits that reach far beyond the legal community. Nearly 40 years ago, BC lawyers persuaded the provincial government to enact legislation that required financial institutions to pay interest on lawyers' pooled trust accounts to the newly created Law Foundation of British Columbia. The foundation was the first organization of its kind in North America, and many more have sprung up since.

"There is now a law foundation in every province in Canada and every state in the United States," says Wayne Robertson, Executive Director of the Law Foundation. "Each year hundreds of millions of dollars are distributed to legal aid initiatives across North America, and it's all at the initiative of the profession."

Under the *Legal Profession Act*, the Law Foundation receives and distributes the interest on client funds held in lawyers' pooled trust accounts to support legal aid, legal research, law libraries, law reform and legal education. The foundation's income on interest from lawyers' trust accounts rose from \$17 million in 2005 to \$39 million in 2006.

"We support community-level advocacy throughout the province," says Warren Wilson, QC, Chair of the Law Foundation. "We provide support to local advocates to assist the public that can't otherwise access legal advice."

The Law Foundation has played a key role in helping to bridge the gap left by cuts to legal aid, and the recent increase in funding has allowed even more projects to be funded. This year the foundation provided a \$75,000 grant to the Salvation Army, the Western Canadian Society to Access Justice and Pro Bono Law of BC to help the three organizations promote a seamless continuum of pro bono services. It is one of several projects where the foundation is encouraging greater linkages among existing legal services to promote better public access. For example, the foundation supports the development of a family law hub in Nanaimo — an initiative of the Legal Services



Wayne Robertson

Wayne Robertson joined the Law Foundation as Executive Director in 2002. Called to the BC Bar in 1983, Robertson practised at Vancouver law firm Lindsay Kenney. In 1995, he joined the Family Law Clinic of the Legal Services Society as managing lawyer, and later became a client services manager responsible for the society's branch offices throughout BC. A certified family law mediator, Robertson holds degrees in English, psychology and community development. He has served as a volunteer in many community and non-profit organizations and previously chaired the board of the Community Legal Assistance Society and Canadian Crossroads International.

Society and the Ministry of Attorney General. Plans are also underway to develop a civil hub in Nanaimo and a combined civil and family hub in Vancouver, with possible expansion to other communities in the future.

"Our goal is to help support a continuum of services that enhance access to justice, including everything from supporting law reform efforts to pro bono initiatives and public legal education," says Robertson. "I'd like to see no gaps in access to justice."

In recent years the foundation has funded a number of new public legal education initiatives. For example, the foundation provided \$1 million to the BC Courthouse Library Society to ensure that public libraries across BC have a core collection of basic legal materials, and public librarians are trained on legal research. And over the next couple of years, the Public Legal Education Working Group, which the library society belongs to, will develop a public legal education "portal" to help British Columbians access a multitude of resources available online. In addition, the foundation continues to fund the Law Courts Education Society, which has a number of projects underway to promote legal education in the public school system.

"We want to ensure that the public

understands the rule of law and the justice system and the important role that courts and lawyers play in civil society," Robertson said.

In addition to promoting public legal education, the foundation plays a significant role in supporting law schools, continues to provide scholarship funding to law students and plans to broaden its role

"Our goal is to help support a continuum of services that enhance access to justice, including everything from supporting law reform efforts to pro bono initiatives and public legal education. I'd like to see no gaps in access to justice."

— Wayne Robertson

in supporting continuing legal education for the profession, such as online learning and remote access to seminars, workshops and other resources.

In 2006, the foundation provided \$6 million to the University of British Columbia faculty of law for a new law school building and \$3 million to the University of Victoria faculty of law to repurpose the law school library.

"The legal profession should feel proud of their support for the Law Foundation because our work really does benefit the public," Robertson said. "Thousands and thousands of people across British Columbia have been helped since the Law Foundation was founded almost 40 years ago by BC lawyers."

The Law Foundation is administered by an 18-member board of governors, made up of the attorney general (or appointee), three non-lawyers appointed by the attorney general, 12 lawyers or members of the judiciary appointed by the Benchers to represent geographical areas of the province and two lawyers appointed by the Canadian Bar Association.

The Law Society encourages lawyers to place their trust accounts with financial institutions that provide fair rates of return to the foundation, including Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Canadian Western Bank, Coast Capital Savings Credit Union, Envision Credit Union, HSBC Bank Canada, Prospera Credit Union, Royal Bank, TD Canada Trust and Vancity.

The Law Foundation welcomes feedback from the profession. Please call 604-688-2337 or email lfbc@tlfbc.org. ❖

Opportunities for BC lawyers

EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL SEEKS LAWYERS TO SERVE ON PANELS

THE EMPLOYMENT AND Assistance Appeal Tribunal is seeking lawyers who wish to serve on its appeal panels.

The tribunal is an independent, quasi-judicial agency that hears appeals under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*.

The appeals involve ministerial decisions that refuse, discontinue or reduce income, disability or hardship assistance, a supplement or a child care subsidy.

The tribunal has approximately 200 members and hears about 1,500 appeals

a year. Appeal panels generally consist of three members, with each member sitting on an average of 15 hearings a year. The average hearing requires about two hours of preparation time and an additional two hours for the hearing itself. Panel members are paid a small stipend for their work.

Lawyers who are interested in submitting their names for appointment as members of the tribunal can obtain more information from gov.bc.ca/eaat or by calling 1-866-557-0035.

CALL FOR APPLICATIONS FOR THE POSITION OF EDITOR OF THE ADVOCATE

With the appointment of Tom Woods to the Provincial Court Bench, the Vancouver Bar Association — publisher of *The Advocate*

— is now seeking applications from those wishing to serve as editor. There is no need for any applicant to be resident in Vancouver. The position pays an honorarium.

Persons interested in applying for the position of editor are invited to send a letter of application together with an up-to-date *curriculum vitae* to the Vancouver Bar Association:

Nicole R. Howell, President
Vancouver Bar Association
c/o Hamilton Howell
1400 – 1125 Howe Street
Vancouver BC V6Z 2K8

The deadline for applications is Friday, January 18, 2008. ❖

Task force: fee programs benefit public, profession

A LAW SOCIETY task force has concluded that the benefits provided to the profession and the public by the Special Compensation Fund fee and Trust Administration Fee outweigh any hardship on lawyers who represent low-income clients.

The Law Society Fees and Low Income Client Task Force was established in response to a resolution at the September 2006 annual general meeting by Dugald Christie and Bruce Fraser, QC. They submitted that the two fees cause undue hardship for lawyers who have little or no trust account activity and that these lawyers tend to be the ones who most often represent low-income clients. The resolution asked that the fees be reduced or eliminated for

lawyers with little or no trust activity. Prior to the meeting, the resolution was withdrawn and the Benchers agreed to examine the issues raised by it.

The task force, chaired by Cariboo County Benchers William Jackson, issued a consultation paper and surveyed the profession earlier this year to determine the impact of the two fees.

While lawyers who represent low-income clients may have few trust transactions, the task force noted that not all lawyers with little trust account activity represent low-income clients. The task force also noted that the Special Compensation Fund fee supports a fund established to protect the reputation as a whole and

not individual lawyers.

Eliminating the fee for lawyers representing low-income clients would also eliminate it for more than 20 per cent of practising lawyers who do not maintain trust accounts, the report noted.

The task force also noted that the flat-rate Trust Administration Fee is intended to fund the Trust Assurance Program, which applies to all lawyers regardless of the amount in their trust accounts.

The Benchers accepted the task force's conclusions and asked the Access to Justice Committee to determine what other steps the society might pursue to assist low-income clients and the lawyers who serve them. ❖

Lawyers' Rights Watch Canada: promoting human rights by protecting those who defend them

LAWYERS AND OTHERS who defend human rights are themselves often targeted by governments and government-controlled agencies for intimidation, repression and worse.

Lawyers' Rights Watch Canada (LRWC) — founded in 2000 by Vancouver lawyer Gail Davidson — is a committee of 225 Canadian lawyers who seek to improve human rights around the world by protecting human rights' defenders and the rule of law.

"I monitored two high-profile political trials in Malaysia and Singapore as an Amnesty International volunteer in the late 1990s," Davidson recalls. "I saw good criminal defence lawyers charged with criminal contempt of court and sedition. It became obvious to me that human rights cannot be protected unless human rights defenders are also defended. I knew that Canadian lawyers could play a leading role in that defence work."

A number of well-known BC lawyers were among LRWC's founding directors, including the late David Gibbons, QC, Michael Jackson, QC, Stephen Owen, QC, Howard Rubin, QC and Sarah Khan.

LRWC's actions are specific and on the

ground. Since incorporation in June 2000, LRWC has conducted over 200 campaigns in 56 countries, including interventions in court cases, trial monitoring, in-country investigations, letter writing (in Spanish, French, Persian, Arabic and Mandarin, as well as English), and preparation of reports and legal briefs.

In the past few months alone, LRWC has produced briefs on the duty to investigate killings of jurists in the Philippines, and on the rule of law in Singapore, and has issued statements on the removal of the Supreme Court of Pakistan's chief justice, and on the conviction and imprisonment of the UN Special Rapporteur on Trafficking in Persons.

In 2005, LRWC was granted Special Consultative Status with the United Nations' Economic and Social Council (ECOSOC), entitling LRWC to designate official representatives to the UN and to attend and participate in meetings of ECOSOC bodies.

In early 2008 LRWC will be offering a free series of public lectures on international human rights and humanitarian law in cooperation with UBC Continuing Studies. The Honourable Claire L'Heureux-

Dubé, former Justice of the Supreme Court of Canada, will deliver the first lecture on January 26 at the Robson Square Theatre.

"Public awareness is an essential element of human rights protection," says Davidson, LRWC's executive director. "Around the world, human rights are being abrogated, often in the name of the protection of democracy. We hope to build on this lecture series by partnering with UBC in future 'virtual' events, using podcasting to spread the message of the importance of universal human rights."

LRWC is operated by volunteers and funded entirely by membership fees and donations. "Financial resources are crucial to our members' work," stresses Davidson. "To be effective, we must visit countries with troubled human rights records. We need to monitor events in person, and to represent LRWC at meetings of ECOSOC and other United Nations bodies."

"LRWC's membership is still a largely untapped resource," Davidson concludes. "We have such talented and dedicated people. If we had more funding, we would do so much more." ❖

TAF filing form now automated

THE TRUST ADMINISTRATION Fee filing form has been automated so firms can create an online invoice each quarter.

This process replaces the previous "Filing Form" for the Trust Administration Fee that many firms printed and completed by hand.

To access the new form, use the "Log In" feature on the right side of the Law Society's website, or use the "Log In" link in

the Trust Accounting forms section of the site (see Publications and Forms – Forms). You will be asked for your firm's TAF filing ID and postal code to log in.

Once you have accessed the online form, enter the number of trust transactions, separating real estate matters from other matters, and the form will automatically calculate the amount owing. The form must then be printed and submitted,

along with your firm's payment, to the Law Society.

All firms are expected to be filing in this manner by January 2008.

If you have questions about the new procedure, contact the Trust Assurance Department at 604-697-5810 or trustaccounting@lsbc.org. ❖

In Brief

PST REFUND ON LEGAL FEES

The Consumer Taxation Branch of the Ministry of Small Business and Revenue has released information for low-income persons wishing to apply for a refund of PST paid on legal fees while the decision in *BC (Attorney General) v. Christie, 2007 SCC 21*, was under appeal.

Information is available from the Consumer Taxation Branch at www.sbr.gov.bc.ca/documents_library/notices/Notice_to_Taxpayers_Oct_2007.pdf

The Consumer Taxation Branch can also be contacted directly at 604-660 4524 in Vancouver or toll-free at 1-877-388 4440, or by email at CTBTaxQuestions@gov.bc.ca. Assistance is also available from the Law Society's practice advisors Dave Bilinsky (604-605-5331, daveb@lsbc.org) or Barbara Buchanan (604-697-5816, bbuchanan@lsbc.org)

APPOINTMENTS TO OUTSIDE BODIES

Continuing Legal Education Society: The presidents of the Law Society and the CBA, BC Branch have appointed Life Bencher Gerald Kambeitz, QC as a director of the CLE Society of BC, for a three-year term

effectively immediately.

Legal Services Society: The Benchers have appointed David Crossin, QC of Vancouver and Richard Schwarz of Victoria as directors of the Legal Services Society of BC, for two-year terms that commenced on September 7, 2007.

PLTC REGISTRATION DEADLINES

Please note new registration deadlines for PLTC:

Session start date	Application deadline
Feb. 11, 2008	Oct. 15, 2007
May 20, 2008	Dec. 15, 2007
Sept. 2, 2008	Mar. 1, 2008
Feb. 9, 2009	Oct. 15, 2008
May 19, 2009	Dec. 15, 2008
Sept. 8, 2009	Mar. 1, 2009

JUDICIAL APPOINTMENTS

Christine Birnie has been appointed to the Bench of the Provincial Court in Smithers. Birnie has been Crown counsel in Smithers for 10 years.

Elisabeth Burgess, QC has been appointed to the Bench of the Provincial Court in the Lower Mainland. Burgess has practised law for 23 years with the Ministry of Attorney General, as Crown counsel, director of special justice programs, Aboriginal justice and environment prosecutions, director of legal operations and justice programs and executive director of the criminal reform office.

Robert Dennis Morgan has been appointed to the Bench of the Provincial Court in Quesnel. Morgan has practised law for 13 years with the Legal Services Society in Vancouver, Campbell River and, most recently, Kelowna.

Josiah Wood, QC has been appointed to the Bench of the Provincial Court in Duncan. Wood has practised with Blake, Cassels & Graydon in Vancouver since 1996, before which he served as a judge of the BC Court of Appeal and the BC Supreme Court.

Thomas Woods has been appointed to the Bench of the Provincial Court in the Lower Mainland. Woods has practised civil litigation with Lawson Lundell in Vancouver since 1988. ❖

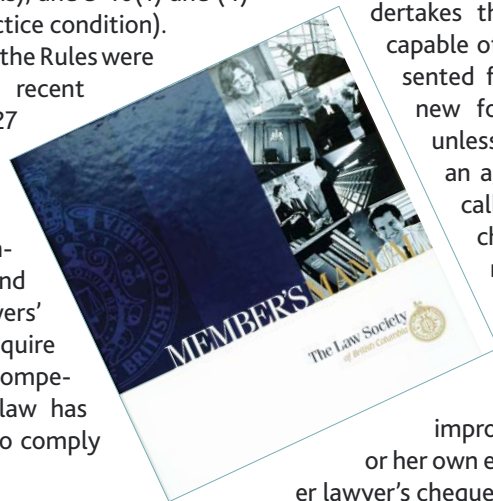
Rule and Handbook amendments

PRACTICE STANDARDS

RECENT AMENDMENTS TO the Law Society Rules give the Practice Standards Committee the authority to order and enforce conditions and limitations on the practice of a lawyer whose competence has been investigated and who fails or refuses to comply with the committee's recommendations. To ensure fairness, the Rules require that the lawyer be given notice and an opportunity to make representations concerning the proposed order.

The amended rules are 1 (definition of "professional conduct record," 3-14(1) (action by the Practice Standards Committee), 3-14.1 (conditions or limitations on practice), 3-16(3.1)-(5) (disclosure of conditions or limitations), and 5-10(1) and (4) (time to fulfil a practice condition).

The changes to the Rules were made pursuant to recent amendments to s. 27 of the *Legal Profession Act* authorizing the Benchers "to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders."



SERVICE OF CITATION

Rule 4-15(1) has been amended to permit the chair of the Discipline Committee, or any other Bencher on the committee, to extend the time for service of a citation. Citations must be served within 90 days of authorization. Prior to the amendments, only the Discipline Committee could extend the time for service. Although requests to extend the time for service of a citation are not common, there can be logistical difficulties in getting the Discipline Committee together to pass the necessary resolution. The new rule will make the process more efficient.

CROSS-EXAMINATION OF WITNESSES

A new section and footnote have been added to Chapter 8 Rule 1 of the *Professional*

Conduct Handbook to provide guidance on permissible conduct in cross-examination. The amendments arise from the Supreme Court of Canada's decision in *R. v. Lyttle* [2004] 1 S.C.R. 193, which reviewed the foundation counsel must have before cross-examining a witness on an issue. The court concluded that a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

CERTIFIED CHEQUES

A footnote has been added to Chapter 11 Rule 8 of the *Professional Conduct Handbook* to clarify the use of certified trust cheques. The Rule states that a lawyer who provides a trust cheque "undertakes that the cheque ... is capable of being certified if presented for that purpose." The new footnote explains that unless funds are paid under an agreement that specifically requires a certified cheque, "a lawyer must not refuse to accept another lawyer's uncertified cheque." The footnote also states that it is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

The footnote was recommended by the Small Firm Task Force which found that many sole and small firm lawyers objected to other lawyers demanding certified trust cheques. Small firm lawyers said the demands were contrary to the principle of professionalism and created an additional financial and administrative burden.

Other lawyers, however, noted that banks do not clear uncertified cheques — even lawyers' trust cheques — for several days which can impede closing a transaction. If parties to a transaction want to ensure payment is made by certified cheque, they must agree to that as part of their contract. In the absence of contractual terms, a lawyer may have another lawyer's cheque certified but at his or her own expense. The Benchers, on the advice of the

Ethics Committee, felt it would be valuable to clarify the issue by adding the footnote.

BENCHER REVIEWS

A new Rule has been added to allow either party in a Bencher review of a credentials or discipline panel's decision to apply for dismissal of an inactive review.

Prior to the amendment, an outstanding Bencher review that was not being pursued could not be dismissed without a formal hearing. Under Rule 5-14, a hearing panel's order for costs is automatically stayed when a review is initiated. As a result, there was concern that some lawyers were not motivated to bring a review to a conclusion if it meant they could be liable for substantial costs.

The new Rule 5-21 is based on existing rules for adjournments and allows the president to dismiss an inactive appeal without a hearing. If no steps have been taken on a review for six months or more, a party may apply to the executive director for a dismissal order. The executive director must notify the parties. The president, or her or his designate, can then decide whether it is in the public interest and fair to the parties to dismiss the review. The new rule is designed to provide a more efficient and cost-effective method of bringing an inactive review to a close.

The Benchers also approved amendments to Rule 5-13 to clarify that the time for requesting a Bencher review begins when the respondent is notified of the penalty decision in a discipline case or the applicant is notified of the panel's decision in a credentials case.

SMALL FIRM PRACTICE COURSE

Changes to Rule 3-18.1 are designed to clarify which lawyers must take the Small Firm Practice Course. The original rule said that a lawyer who begins practising in a small firm after not having done so for the "previous three years or more" must take the course. Under the revised rule, a lawyer is excused from taking the course if he or she has practised in a small firm and been a signatory on a trust account for a total of two years in the previous five. ❖



Deputy Attorney General Allan Seckel, QC (left) and Assistant Deputy Minister Jerry McHale, QC address the Benchers at their October meeting.

BC Justice Review Task Force update

DEPUTY ATTORNEY GENERAL Allan Seckel, QC reported to the October Benchers' meeting, confirming that the BC Justice Review Task Force is on track to recommend new Supreme Court Rules to the provincial government for implementation by 2010.

The Deputy Attorney General summarized the task force's vision as "early solutions, faster justice." He noted the dramatic rise in the cost, complexity and duration of judicial proceedings over the past decade, and linked those increases to diminishing access to justice and public confidence in the judicial process.

"The number of BC Supreme Court trials has declined by 50 per cent, and the time consumed by an average trial has increased by 100 per cent," Seckel reported.

He said the task force has two broad goals:

- making the judicial process more streamlined and accessible; and
- providing integrated information and services to support solutions to legal problems through "hubs" or "judicial access centres."

In July, the task force posted a concept draft of the new rules to its online forum — bcjusticereviewforum.ca/civilrules — for review and comment. Seckel noted that the deadline for comments from the profession has been extended from October 31, 2007 to November 30, 2007.

Work is already underway to implement the "hub" recommendations. Jerry McHale, QC, an assistant deputy minister in the attorney general's ministry, said that the first family justice hub is now operating in Nanaimo. The Nanaimo Family Justice Services Centre opened in April 2007 as a pilot project. A partnership of the Legal Services Society and the Ministry of Attorney General, the Nanaimo hub emerged from a proposal contained in a report released last fall by the BC Justice Review Task Force's Family Justice Reform Working Group.

That report called for the creation of "Family Justice Information Hubs," to provide information on all aspects of family law and family dispute resolution. The family justice hubs are to be prepared

to help people learn about their rights, obligations and options, and to refer people to the services they need. The hubs are to be located in communities throughout BC — often in courthouses — and are to be accessible by internet.

A civil law hub will be added in Nanaimo in the new year and family and civil hubs will open in Vancouver next spring, also on a pilot basis.

Seckel stressed that the hub concept is intended to supplement and not replace direct access to counsel and the courts. "Our objective is to provide support and increase access without taking away existing individual choice and flexibility," he explained. "We want to establish multi-disciplinary centres to offer assessment of legal problems and to provide referrals. We see this as a triage approach, focused more on identifying and responding to people's actual needs."

For more see: www.bcjusticereview.org and nanaimo.familyjustice.bc.ca. ❖



Snapshots from Sam Sussel's life (left to right): during World War I; at age 30; on the farm, 1944; as a tax accountant, 1952. Opposite page, bottom: Vancouver lawyer Terri Cohen with her grandfather's law degree from the University of Heidelberg.

Fragile freedom

WHEN SAM SUSSEL brought his law degree to Canada, among a few prized possessions he managed to take when he escaped Germany in 1935, he didn't realize he would never hang it in a law office again. Today, his granddaughter, Vancouver lawyer Terri Cohen, proudly keeps this symbol of the profession that inspired her grandfather's faith in the rule of law and the legal community.

Banned from his profession by the German government because he was Jewish, Sam, a World War I veteran, held on to hope that right would eventually prevail. But when a friend and local judge advised the Sussels that they were next on the list to be deported, they had to set out on a treacherous journey over the border into France, leaving the life they had led in Germany behind forever.

To avoid arousing suspicion, Sam and his wife Anne made the difficult decision to leave their two young children behind in the trusted care of their governess. After arriving safely in France, the Sussels sent

a coded message to the governess to take Walter, about four years old, and Hannah, just over two, to the border. The children were pointed down a path and told to keep walking until they eventually met up with an uncle on the other side of the border.

Eventually, the Sussels made it to Holland where they stayed with family friends. After months of uncertainty, lawyers from the firm Friedman, Lieberman & Newson in Edmonton arranged to sponsor the Sussels' safe passage to Canada.

"The rule of law was replaced by the rule of party, the rule of leader," says Terri Cohen, a partner with Harris & Company in Vancouver. "The Nuremberg Laws were like the ethnic cleansing of the legal profession, and many other professions. Jewish lawyers were practising with non-Jewish lawyers and they stood by and let this happen. If the lawyers don't speak out, who will?"

The Sussels had had to leave their parents behind in Germany until they were able to bring them to Canada in the late

1930s. Anne's sister Hilda Billig and her husband, Ernst, a veterinarian, had earlier settled in Alberta. Veterinarians were in high demand in Canada at the time and he was able to continue his profession. But Sam, a seasoned lawyer with a doctorate from the prestigious University of Heidelberg, and Anne, a pediatrician, had to start over. Friedman, Lieberman & Newson offered to sponsor Sam to complete the three years of articling he would need to become a lawyer in Canada, but with a family to support, the financial hardship was one he could not afford.

"If the Friedman and Lieberman families did not have the strength of their convictions, I probably wouldn't be here today," says Cohen.

Sam made ends meet by importing tools from Europe, but shortly after the war began, trade with Europe was interrupted and the family had to start over once again. On a road trip through British Columbia, the Sussels, struck by the beauty of Chilliwack, decided to purchase a 25-acre farm.



The two urban professionals, who would have been in the prime of their professional careers, reinvented themselves as farmers. Sam Sussel was 47 years old.

"I always admired how my grandfather was able to come to Canada, as a professional with this very privileged background, and turn that around and become a farmer. He was very practical, and had an incredible strength of character."

"The rule of law was replaced by the rule of party, the rule of leader. The Nuremberg Laws were like the ethnic cleansing of the legal profession, and many other professions. Jewish lawyers were practising with non-Jewish lawyers and they stood by and let this happen. If the lawyers don't speak out who will?"

— Terri Cohen

Years later Sam became an accountant in addition to his work as a farmer, but the Sussels would never resume the professions they practised in Germany.

This November, the Sussel's story will be featured as part of an internationally acclaimed exhibit, *Lawyers Without Rights*, which chronicles the fate of Jewish lawyers following Hitler's ascent to power in 1933. At the time, 58 per cent of all practising lawyers in Berlin and almost half of all lawyers in Germany were Jewish. Historically,

anti-Semitism in Germany prevented Jews from pursuing many professions and trades. Law was one of the few professions open to the Jewish community.

The exhibit, presented by the Friends of Simon Wiesenthal Center for Holocaust Studies, the Vancouver Holocaust Education Centre, the Law Society and the Consulate General of the Federal Republic of Germany, with funding from the Law Foundation of BC, will run through November at Harbour Centre in downtown Vancouver. On November 22 the Law Society will host an evening public forum to examine the need to protect the independence of the Bar and judiciary in more depth. See page 18 for more information on the forum.

"Non-Jewish lawyers, judges and legislators strove to ensure that the five-year process of excluding Jewish lawyers, judges, court officials and law professors was carried out 'legally,'" says Leo Adler, director of national affairs for Friends of Simon Wiesenthal Center for Holocaust Studies and a Toronto lawyer. "We want to remind BC lawyers — and all citizens — that even in a democracy, the spirit and the letter of the law can be all too easily subverted."

It's a point that touches close

to home for the Sussel family.

"Weimar Germany, prior to the Nazis' ascent to power, was striving to become a democratic, multi-party system like we have in Canada," says Cohen. "Democracy and freedom are something we take for granted but history tells us we need to be constantly vigilant. Lawyers are expected to uphold and further the rule of law in our society. We have an obligation and responsibility to be vigilant and to speak out when the rule of law is threatened."

Sam Sussel's legacy has had a tremendous influence on Cohen as a lawyer and as a citizen, and she hopes that BC lawyers will take the time to remember the past, and safeguard the future.

"I think Sam would chuckle to himself about the fact that he will be featured in an exhibit about lawyers because my grandfather, as I knew him, saw himself as a farmer," says Cohen. "It would mean a lot to him to be remembered in some way as a lawyer. He would be very proud of his profession." ♦





Lawyers Without Rights public forum: November 22

What happens when politics interfere with the right to justice?

THE LAW SOCIETY will present a free, evening public forum on Thursday November 22 at Simon Fraser University, Harbour Centre, in partnership with the Friends of Simon Wiesenthal Center for Holocaust Studies and the Vancouver Holocaust Education Centre. The forum, presented in association with the traveling exhibit *Lawyers Without Rights*, will examine 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.

Moderated by CBC's *The National* reporter Duncan McCue, the forum will bring together an international panel of legal experts:

- Leo Adler, Toronto lawyer and director of national affairs for Friends of Simon Wiesenthal Center for Holocaust Studies since 1999;
- Dr. Norbert Westenberger, vice-president of the German Federal Bar;
- Joel Levi, founder of Lawyers Without Rights and the 2007 Israel Bar Association distinguished lawyer of the year;
- Professor Stephen Toope, president and vice-chancellor of the University of British Columbia since 2006 and an international expert in human rights law.

Since its inception, the *Lawyers Without Rights* 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.

Presented in association with CBC, the *Lawyers Without Rights* public forum will take place November 22 at Simon Fraser University, Harbour Centre, 515 West Hastings St. in Vancouver from 6 pm to 8:30 pm with a reception immediately following. The exhibit is supported in part by the Law Foundation of BC, and the reception is sponsored in part by the Vancouver Bar Association. To register for the free forum, email forum2007@lsbc.org before November 15 or call 604-669-2533. ♦

2008 fees due November 30

WATCH FOR YOUR fee invoice, as the Law Society annual practice fee, the Special Compensation Fund assessment and the first half of the Lawyers Insurance Fund assessment are due November 30, 2007 for the 2008 practice year. The second insurance instalment is due June 30, 2008.

Practice fee: The members set the practice fee for 2008 at the annual general meeting of the Law Society on September 25. The fee and its related components total \$1,554.

Special Compensation Fund fee: The 2008 Special Compensation Fund assessment is \$350, a reduction of \$150 from 2007.

Lawyers Insurance Fund fee: The 2008 Lawyers Insurance Fund assessment is \$1,400, the same as in 2007.

Trust administration fees: These fees are due 30 days after the end of each calendar quarter ending on the last day of March, June, September or December. ♦

Bench & Bar dinner: November 14

REGISTER NOW TO join your colleagues and judges for the 23rd annual Bench & Bar Dinner, being held at the Four Seasons Hotel in Vancouver on November 14.

For more information or to order tickets, go to lawsociety.bc.ca/about/calendar/events.html and download the flyer. ♦

Law Society hosts pro bono legal and advocacy services workshop

REPRESENTATIVES OF 44 organizations gathered in the Benchers Room on October 15 to discuss ways to enhance pro bono referrals.

"The Law Society recognizes the referral process is a vital link in the delivery of pro bono legal services," said President Anna K. Fung, QC, as she welcomed workshop participants. "There is a little irony in the fact that a major referral challenge arises from the sheer number of clinics, agencies and community organizations hosting pro bono legal and advocacy services throughout the province.

"Simply identifying all those pro bono hosts is challenging, never mind tracking

"Collaboration among key players is essential to making best use of limited resources. These days there's a strong cooperative spirit running through BC's pro bono community, presenting exciting opportunities for pooling resources to tackle common challenges."

— Wayne Robertson

their ever-changing contact information, and matching them to the constant flood of service requests."

A number of the participants in an open brainstorming discussion identified the need for a province-wide database of pro bono legal and advocacy service providers that is comprehensive, current and widely accessible.

"Many of us have contact lists for pro bono service providers," said Ulrike Klee-man, manager of the Multiple Sclerosis Society of Canada's Volunteer Legal Advocacy Program. "Those lists tend to be focused by location and by purpose. Even current lists go out of date quickly. We need to consolidate our lists of providers into a provincial database that can be readily updated by its users."

Other participants identified gaps in service — particularly travel to smaller centres and translation, by both lawyers and non-lawyer advocates — and the need for legal research support as recurring concerns.

Wayne Robertson, executive director of the Law Foundation, introduced brief presentations by three leaders of BC's pro bono world: Allan Parker, new executive director of the Western Canadian Society to Access Justice, John Pavey, manager of Salvation Army Pro Bono Consultants, and Jamie Maclaren, executive director of Pro Bono Law of BC.

Robertson stressed the importance of the work currently being done by those three organizations — funded by a \$75,000 grant from the Law Foundation — to coordinate their service delivery and to streamline their cross-referral processes.

"Collaboration among key players is essential to making best use of limited resources," he said. "These days there's a strong cooperative spirit running through BC's pro bono community, presenting exciting opportunities for pooling resources to tackle common challenges."

Leaders, program directors and front-line staff from community service organizations, public legal education and information providers, and pro bono legal and advocacy service groups attended the workshop.

Lorna O'Grady, manager of CBA's Dial-A-Law and Lawyer Referral Service programs, John Simpson, manager of public information and community liaison for the Legal Services Society, Brian Higgins, senior supervising lawyer for the UBC Law Students' Legal Advice Program, David Mossop, QC, poverty law program director for the Community Legal Assistance Society, and Sarah Khan, staff counsel for the BC Public Interest Advocacy Centre, all delivered presentations.

Law Society staff will circulate a summary of the brainstorming session to the workshop participants as support for their further discussions. ♦





COLLAGE OF PHOTOS FROM THE OCTOBER BENCHERS MEETING:

*Top row: General Counsel Jeff Hoskins and Anna Fung, QC; Bill Jackson and John Hunter, QC; Gordon Turriff, QC.
 Second row: June Preston; Art Vertlieb, QC; Ronald Tindale; Rita Andreone and Pat Kelly.
 Third row: Jan Lindsay and Gavin Hume, QC; Bruce LeRose, QC; Barbara Levesque and Terry LaLiberté, QC.
 Fourth row: Director of Professional Regulation Stu Cameron, Carol Hickman and Kathryn Berge, QC; Dirk Sigalet, QC and Dr. Maelor Vallance; Robert Punnett.*

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor, Conduct & Ethics

Know the rules for handling cash

NO CASH RULE IN RETAINER AGREEMENTS

LAWYERS MAY ONLY accept or receive cash in the limited circumstances permitted by Law Society Rule 3-51.1. All lawyers



and individuals authorized to handle money should be aware of this rule, which prohibits lawyers from accepting more than \$7,500 in cash except in limited circumstances. You may wish to make it your policy not to accept cash in order to reduce your chances of offending the rule.

In an effort to discourage clients from proffering cash, consider adding a paragraph similar to the following in your standard retainer agreement:

Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, electronic transfer or credit card.

If you educate your clients and those who work in your office about Rule 3-51.1, you are unlikely to find yourself in circumstances that offend the rule. For example, your legal assistant will know not to accept cash in relation to a purchase and sale transaction and your client will know not to offer cash in the first place.

You can find retainer agreement precedents in the Practice Support section of the Law Society's website.

CASH RECEIPT BOOK REQUIREMENT

Lawyers in private practice who accept cash in the limited circumstances permitted by Rule 3-51.1 must maintain a cash receipt book of duplicate receipts and make a receipt in the receipt book for any amount of cash received (Rule 3-61.1). All lawyers and individuals authorized by a lawyer to sign the receipt book on the lawyer's behalf should be aware of the receipt book requirements in Rule 3-61.1.

Both the lawyer who receives cash and the person from whom the cash is received must sign the duplicate receipt book. In addition to the two signatures, each receipt must identify:

- the date on which the cash was received;
- the person from whom the cash was received;
- the amount of cash received;
- the client who provided the cash; and
- the number of the file in respect of which cash was received.

WITHDRAWING CASH FROM TRUST

A lawyer who is required by Rule 3-51.1(3.1) to withdraw funds in cash from a pooled or separate trust account must make a record of the transaction and that record must be signed by the person to whom the cash is paid. The transaction record must also identify:

- the date on which the cash was withdrawn;
- the amount of cash withdrawn;
- the name of the client in respect of whom the cash was withdrawn;
- the number of the file in respect of which the cash was withdrawn; and
- the name of the person to whom the cash was paid.

For further information regarding Practice Watch, contact Barbara Buchanan, Practice Advisor, at 604-697-5816 or bbuchanan@lsbc.org.

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, Conduct & Ethics, 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.



Equity Ombudsperson Anne Bahnu Chopra, pictured here with Okanagan Bencher Dirk Sigalet, QC, attended the October 12 Benchers meeting to talk about the program and the new initiatives.

New Equity Ombudsperson initiatives

NEW INITIATIVES ARE underway at the Law Society to raise awareness about harassment and discrimination in the workplace.

"The Law Society of BC has a long-standing commitment to helping law firms provide a healthy and respectful workplace free of harassment and discrimination," said the society's Chief Executive Officer Tim McGee. "We are now renewing our efforts to raise awareness about these issues within the profession," he added.

In 1995 the Law Society created the position of equity ombudsperson — then called the discrimination ombudsperson.

The equity ombudsperson is independent of the society and provides confidential assistance to anyone who works in a law firm and needs help in resolving possible discrimination. The ombudsperson also assists law firms in preventing discrimination and promoting a healthy work environment.

That same year, the Law Society amended the *Professional Conduct Handbook* to prohibit discrimination on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.

In 1992, the Law Society released the first of its model policies on workplace harassment, respectful language and workplace equity along with guidelines for recruiting, interviewing and hiring practices. These policies have been recently updated to reflect current practices.

Law firms are encouraged to adopt the policies and guidelines — which are available in the "Practice Support" section of the society's website — or use them as templates for developing their own.

Anne Bahnu Chopra, the equity ombudsperson since 2000, notes law firms

"Because law firms as employers are statutorily liable for discrimination and harassment, it is essential that law firms protect themselves through building awareness amongst all firm members of what is unacceptable conduct and through establishing a culture that does not tolerate discrimination and harassment.

"Consequences can include not only liability for damages paid to those harmed by discrimination or harassment. Human rights complaints frequently attract high levels of publicity and can harm the reputation of the firm and its members, can significantly damage the morale of firm members and can have devastating effects on the careers and personal lives of those directly involved."

– Patricia Janzen

have a duty to foster a professional work environment that promotes equal opportunities and prohibits discriminatory practices. "When firms do not live up to that duty, there can be serious consequences for everyone," she says.

Lawyer Patricia Janzen, a senior partner in Fasken Martneau DuMoulin's labour, employment and human rights group, agrees.

"Because law firms as employers are statutorily liable for discrimination and harassment, it is essential that law firms protect themselves through building awareness amongst all firm members of what is unacceptable conduct and through establishing a culture that does not tolerate discrimination and harassment," Janzen explains.

"Consequences can include not only liability for damages paid to those harmed by discrimination or harassment. Human rights complaints frequently attract high levels of publicity and can harm the reputation of the firm and its members, can significantly damage the morale of firm members and can have devastating effects on the careers and personal lives of those directly involved."

Chopra is currently developing an awareness seminar on discrimination and harassment issues that is specifically designed for smaller law firms. "It's for firms that don't have their own in-house resources," she explained. Similar programs are in place at several other law societies, Chopra noted.

The equity ombudsperson is also planning more outreach outside Metro Vancouver. "I am planning to do two trips a year to different parts of the province and

to address as many lawyers as possible in those regions," Chopra said.

The Law Society is also considering ways the Benchers can provide more support to students and principals, particularly during articling student interviews, to ensure there is a good understanding of appropriate and inappropriate questions or behaviour.

"We're looking at publishing a guidebook to assist lawyers when interviewing potential articling students," explained Alan Treleaven, the Law Society's director of education and practice. "It will include

all aspects of the recruitment process, including examples of inappropriate questions."

"We want to ensure the Benchers are able to respond appropriately to any concerns raised by students or principals," he added.

Vancouver Bencher Art Vertlieb, QC, who chairs the Law Society's Equity and Diversity Committee, highlights the importance of eliminating harassment and discrimination in the workplace.

"There's nothing worse," Vertlieb says, "than a profession that protects the rights of others not working for those same rights in our own offices. We must insist on respectful workplaces. It's part of our duty as lawyers and part of the relationship of trust we have with other members of the profession, our staff and our clients." ❖

Has your firm done something to bring equity to the practice of law? Do you know other lawyers who are working on equity programs at their firms? Let the Law Society's equity ombudsperson Anne Chopra know at achopra1@novuscom.net.

Equity ombudsperson programs

Equity ombudsperson programs are a growing trend among Canadian law societies, Anne Chopra said during her annual report to the Benchers.

BC was the first jurisdiction to appoint an equity ombudsperson and now law societies in BC, Alberta, Manitoba, Ontario, Saskatchewan and Nova Scotia all have similar programs in place.

In 2006, Chopra had 248 contacts with lawyers and law firm staff. Slightly more than 100 involved sexual or workplace harassment while 38 related to some form of discrimination. The remainder were requests for information about harassment and discrimination issues or the ombudsperson program.

The contacts were fairly evenly split among associates, partners, articled students and law firm support staff with a small number from law students.

The majority of contacts came from the Lower Mainland (121) with another 78 from Victoria and 49 from other parts of the province.

FROM THE ETHICS COMMITTEE

Avoiding conflicts when acting for more than one party

THE ETHICS COMMITTEE reminds lawyers that when they act jointly for more than one client, all information must be disclosed to all clients.

Earlier this year the Discipline Committee ordered a conduct review for a lawyer who represented a vendor and purchaser jointly in a real estate transaction. Although the lawyer properly advised the parties that no information received from either party could be treated as confidential, he failed to advise the purchaser that the vendor was not the registered owner of the property he was selling and only had the right to acquire the property pursuant to another contract of purchase and sale. Moreover, he did not advise the purchaser that the vendor was making a profit by “flipping” the property to the purchaser. The matter was ultimately referred to the Ethics Committee for a review of the rules governing joint transactions in real estate matters.

The Ethics Committee is of the view that the existing rules in Appendix 3 of the *Professional Conduct Handbook* are sufficient to ensure that both clients are protected in these circumstances. Moreover, had the lawyer made the disclosures required by Appendix 3, it would have been proper for him to act for both vendor and purchaser.

Appendix 3, Rule 2.1 requires a lawyer acting jointly for more than one client in a real property transaction to conform to the ordinary disclosure and other obligations in Chapter 6, Rules 4, 5 and 6 of the *Professional Conduct Handbook* when acting for joint clients. Rules 4, 5 and 6 state:

Acting for two or more clients

4. A lawyer may jointly represent two or more clients if, at the commencement of the retainer, the lawyer:

- (a) explains to each client the principle of undivided loyalty,
- (b) advises each client that no information received from one of them as a part of the joint representation can be treated as confidential as between them,

- (ii) the information must be disclosed to all other jointly represented clients, and the lawyer may continue to act for the clients jointly, and
- (d) secures the informed consent of each client (with independent legal advice, if necessary) as to the course of action that will be followed if a conflict arises between them.

5. If a lawyer jointly represents two or more clients, and a conflict arises between any of them, the lawyer must cease representing all the clients, unless all of the clients:

- (a) consented, under paragraph 4(d), to the lawyer continuing to represent one of them or a group of clients that have an identity of interests, or
- (b) give informed consent to the lawyer assisting all of them to resolve the conflict.

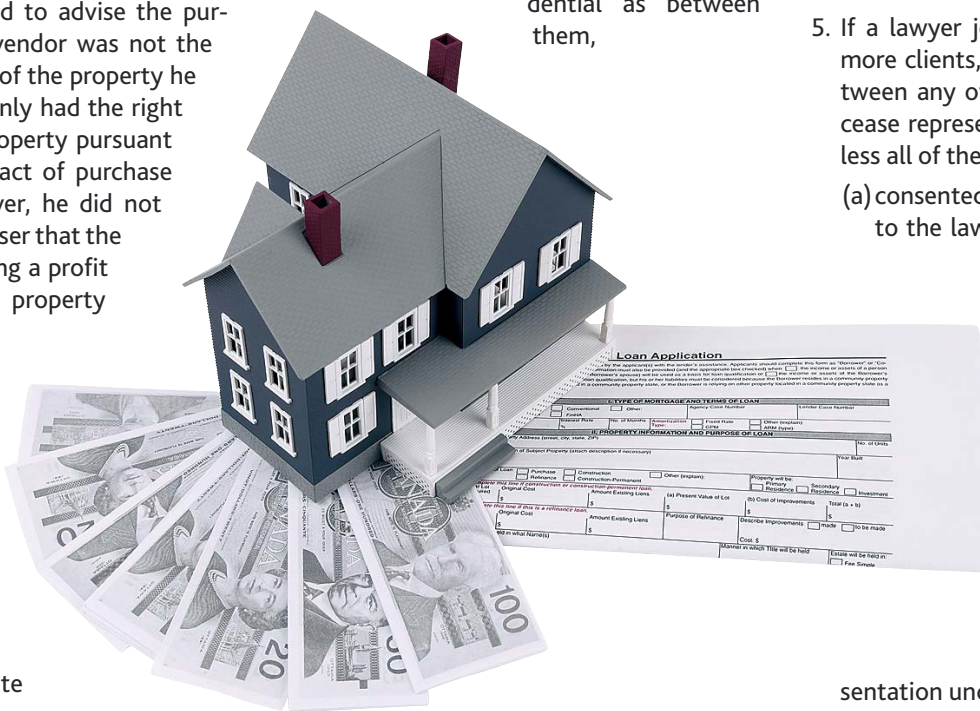
6. A lawyer who ceased joint representation under Rule 5 or who continued to represent one or more clients under paragraph 5(a) may, with the informed consent of all the clients, resume representation of all of them after the conflict has been resolved.

In these circumstances the lawyer could have fulfilled these obligations and continued to act for both vendor and purchaser by informing the purchaser client of two relevant facts:

- the vendor did not have title to the property, and
- the purchase price the vendor was paying to acquire the property. ❖

(c) receives from all clients the fully informed consent to one of the following courses of action to be followed in the event the lawyer receives from one client, in the lawyer’s separate representation of that client, information relevant to the joint representation:

- (i) the information must not be disclosed to the other jointly represented clients, and the lawyer must withdraw from the joint representation;





FROM INTERLOCK

Retirement as a life passage

RETIREMENT ... THAT much anticipated, long awaited, often glorified passage of life.

As much as we anticipate it, idealize it and plan for it, the change and challenges it brings can be both unexpected and difficult.

Despite all the planning, what is seldom talked about is: how will people live when their lives and roles are radically changed?

Most people largely define themselves by what they do. From the moment we wake up, to how we introduce ourselves to others, it provides us with structure, predictability, challenges, a social context, purpose and even power.

The baby boomers, true to form, are re-inventing retirement. The New Retirement

Survey study by Merrill Lynch builds upon conventional wisdom that “boomers are not interested in pursuing a traditional retirement of leisure.” The study found that 76 per cent of baby boomers intend to keep working and earning in retirement, expecting to “retire” from their current career at around age 64 and then launch an entirely new job or career.

Some boomers are choosing to slide gradually into retirement, networking with people and organizations as they transition from full-time work to mentoring or consulting situations.

Websites such as retiredworker.com and peer.ca post employment opportunities, mentoring, coaching and peer support programs for those wanting to stay

engaged.

The New Retirementality: Planning Your Life and Living Your Dreams ... at Any Age You Want, by Mitch Anthony, is a great resource book with a “cleverly named concept that should be of interest to anyone uneasy with the traditional requirement that we drop one portion of our lives — the working part — simply because we have reached a certain age.”

Another excellent book is *Place at the Fire: Living the Second Half of your Life on Purpose*, by Richard Leider. This book is for “people who are ready to stoke the wisdom gained in the first half of their lives to burn with a brighter sense of purpose in the second half.” ♦

Court of Appeal confirms disbarment for misappropriation



A RECENT BC Court of Appeal decision confirms the Law Society's position in discipline cases that lawyers who misappropriate trust funds can expect to be disbarred.

William Frederick McGuire appealed his May 2006 disbarment, arguing the discipline panel erred in imposing the most serious penalty available when the public could have been protected by a lesser sanction.

McGuire had been found guilty of professional misconduct relating to numerous improper withdrawals from his trust account over a 14-month period (see *Law Society of BC v. McGuire*, 2005 LSBC 43 and 2002 LSBC 20).

He submitted that the hearing panel effectively reversed a long-standing precedent when it said "disbarment is the remedy for deliberate misappropriation ... except in highly unusual circumstances."

This statement was inconsistent with *Law Society of BC v. Ogilvie*, [1999] LSBC 17, which concluded that disbarment should be reserved for those cases where prohibiting a lawyer from practising is the only way to protect the public, McGuire argued.

He claimed disbarment was unnecessary in his case because trust account restrictions imposed on his practice from the time his misappropriations came to light until his discipline hearing worked satisfactorily and protected the public.

The Court of Appeal, however, concluded the hearing panel's comment was not a statement of law or principle but was merely a statement of the "likely outcome" of a misappropriation case.

The court also rejected McGuire's submission that the panel had improperly equated general deterrence with protection of the public in disbarring him.

The panel said that protecting the public included not just punishing ethical failures but also ensuring other lawyers do not commit similar ethical breaches. One way to achieve that goal, the panel noted, is to impose the most severe sanctions.

McGuire agreed the Law Society must give prime importance to protecting the public, but said this could be achieved by a lesser sanction than disbarment.

The court, however, said the Law Society panel had considered all the

mitigating circumstances and concluded they did not outweigh the importance of protecting the public from unscrupulous lawyers. "General deterrence can be an important means of protecting the public," the judges added.

McGuire stopped using his general account after Revenue Canada garnished it in 1993 and started paying practice debts with money he paid into his trust account. Beginning in 2002, however, he started withdrawing more money than was available. He also began withdrawing money before billing his clients.

In December 2003, the Benchers ordered that McGuire could continue practising until his discipline hearing if another lawyer had control of his trust account. This arrangement was put in place and there were no further improper withdrawals.

"To put it bluntly, a lawyer who, in light of his past conduct, cannot be completely trusted with sole control of his trust accounts should not be practising law."

– Law Society panel

McGuire argued that these restrictions should continue and that a lesser penalty than disbarment would protect the public.

The panel, however, said restrictions on a lawyer's trust account should only be used as an interim measure pending a full examination of the lawyer's conduct.

"Once the misappropriation has been proved, however, we cannot see how such a restriction can properly be used as a permanent condition on a lawyer's ability to practise. To put it bluntly, a lawyer who, in light of his past conduct, cannot be completely trusted with sole control of his trust accounts should not be practising law." ♦

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Pamela Suzanne Boles
- Hugh Braker, QC
- Sheldon Goldberg
- Vance King Goulding
- Brian Peter Grant Kaminski
- Jonathan Lewis Oldroyd
- Marcus O'Sullivan

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

PAMELA SUZANNE BOLES

Vancouver, BC

Called to the bar: November 17, 1989

Discipline hearing: November 29, 2006 and August 21, 2007

Panel: Kathryn Berge, QC, Chair, Karl Warner, QC and Brian Wallace, QC

Reports issued: May 29 (2007 LSBC 27) and October 1, 2007 (2007 LSBC 43)

Counsel: Jaia Rai for the Law Society and Jerome Ziskrout for Pamela Boles

FACTS

Pamela Boles represented the plaintiff in a claim for injuries sustained in a motor vehicle accident. In the course of the case she obtained a chambers order. The order contained a term that had not been granted by the judge. When opposing counsel asked Boles how she obtained the additional term, Boles advised him that she had not requested the order but "the court gave it anyway."

Opposing counsel complained about Boles' conduct in January 2005. The Law Society sent a letter to Boles in February 2005, enclosing a copy of the letter from opposing counsel. Boles did not respond and failed to respond to subsequent letters sent February 23, March 10 and March 29, 2005. In addition, Boles did not respond directly to an April 5, 2005 phone message from the Law Society. On May 30, 2005 the Law Society advised Boles that the matter had now been referred to the Discipline Committee. Boles sent a letter on June 2, 2005 in response to the May 30 letter but did not provide a full substantive response to the complaint until the eve of the hearing in November 2006.

Boles admitted she filed a court order containing a term that had not been granted by the court. She explained that she had a busy chambers practice with multiple orders being entered at any given time. She said she relied on her experienced staff and on court registry staff to ensure the accuracy of orders.

She also admitted she misled opposing counsel when she told him the court had granted the additional term. She said that when she made the statement, she did not believe the issue was important, she did not have her file in front of her and assumed the order had been checked by her staff and court registry staff and was accurate.

In addition, Boles admitted she was wrong not to have made a full and substantive reply to the Law Society.

VERDICT

The panel concluded Boles' conduct regarding the court order and her statement to opposing counsel was negligent but did not amount to professional misconduct or incompetence within the meaning of the *Legal Profession Act*. The evidence did not establish on a balance of probabilities that Boles entered the wrongly worded order or misled counsel intentionally.

The panel found that Boles' conduct in failing to respond to the Law Society constituted professional misconduct.

The panel noted that Boles has a discipline history reflecting poor document and file management and a cavalier, defensive, and self-serving attitude to both timeliness and care in communications with lawyers, the courts and the Law Society. They panel said that ensuring that members respond promptly and fully to the Law Society is fundamental to the self-governance of the legal profession.

Boles admitted professional misconduct in failing to respond to the Law Society. The panel noted that Boles has taken some concrete steps toward rectifying the practice and personal patterns that contributed to this citation.

PENALTY

The panel ordered that Boles:

1. be reprimanded;
2. pay a fine in the sum of \$17,500; and
3. pay costs of the hearing in the sum of \$17,000.

HUGH BRAKER, QC

Port Alberni, BC

Called to the bar: May 10, 1984

Discipline hearing: December 6, 2006

Penalty hearing: July 6, 2007

Panel: William Jackson, Chair, Bruce LeRose, QC and David Renwick, QC
Reports issued: January 4, 2007 (2007 LSBC 01) and September 19, 2007 (2007 LSBC 42)

Counsel: Maureen Boyd for the Law Society, Hugh Braker, QC appearing on his own behalf at the discipline hearing and M. Louise Mandell, QC for Braker at the penalty hearing.

FACTS

JC and JC, Jr. hired Hugh Braker, QC to represent them in their personal injury claims. In November 2005, the clients became dissatisfied with Braker's services and retained new counsel, Lawyer B.

On November 16 and 18, 2005, Lawyer B advised Braker by fax that he had been consulted by the clients and requested Braker's confirmation of the status of their claims. Lawyer B also inquired whether the claims had been dismissed for want of prosecution and, if so, what remedial steps Braker's firm was taking. By a letter to Braker dated November 30, 2005, Lawyer B confirmed his engagement by the clients, and requested Braker to forward his client file as soon as possible.

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Braker did not reply to any of Lawyer B's letters and did not forward the client file to him.

On February 7, 2006 JC and JC, Jr. filed a complaint with the Law Society about Braker's services. In a February 13 telephone conversation with a Law Society staff lawyer, Braker denied having received Lawyer B's November 30, 2006 letter. By letters dated February 14, March 7 and March 21, 2006 the Law Society requested Braker's response to the complaint, but did not receive a reply.

On April 7, 2006 Braker advised the Law Society by telephone that he was scheduled for urgent surgery on April 17, with a four-week recovery period. The Law Society extended time for Braker's response to the clients' complaint to May 29, 2006. On May 31, Braker wrote to the Law Society, advising that he had returned to work full time and that he would respond to the complaint by letter during the following week. Braker did not do so.

On June 13, June 27 and July 12, 2006 the Law Society wrote to Braker, repeating the request for his response to the clients' complaint originally set out in the society's letter dated February 14, 2006. Braker did not reply.

On October 16, 2006 the Law Society issued a citation against Braker, alleging that he had failed to respond to the society's letters regarding the clients' complaint, and that he had failed to reply to another lawyer's correspondence.

VERDICT

Braker admitted he had failed to respond to the Law Society's letters regarding his clients' complaint, and to another lawyer's correspondence. Braker also admitted those failures amounted to professional misconduct. The panel accepted Braker's admissions.

PENALTY

Braker submitted that he has a long history of contribution to the public and to the Law Society, and that his admitted misconduct was out of character and caused by depression.

The panel noted one of the counts in the citation addressed a failure to respond that occurred just a few days after a conduct review addressing Braker's failure to respond to counsel in a litigation matter. The panel also noted that previous conduct reviews and a previous discipline hearing had imposed remedial conditions on Braker, without apparent effect.

The panel stressed that the purpose of the penalty in professional discipline is not to punish offenders, but rather to protect the public, maintain high professional standards and preserve public confidence in the legal profession. In determining the appropriate penalty in this case, the panel reviewed a number of factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, stating that the duty to reply to Law Society communications is at the heart of the society's regulation of the practice of law.

The panel ordered that Braker:

1. be suspended for one month, commencing November 1, 2007;
2. provide a substantive response to the Law Society's letter dated February 14, 2006, on or before October 1, 2007;
3. provide within 14 days of the penalty hearing a written undertaking to the Discipline Committee that he will respond in writing, within 14 days, to communication received from the Professional Regulation Department, if such communication requires a response; and
4. pay costs of \$5,550.

SHELDON GOLDBERG

Vancouver, BC

Called to the bar: January 3, 1973

Discipline hearing: April 10, 11, 12, May 23, July 13, August 31 and September 12, 2006

Penalty hearing: May 18, 2007

Hearing panel: Glen Ridgway, QC, Chair, Leon Getz, QC and Gavin Hume, QC

Decision on penalty: *majority decision*: Leon Getz, QC and Gavin Hume, QC; *minority decision*: Glen Ridgway, QC

Reports issued: facts and verdict January 10, 2007 (2007 LSBC 03), penalty September 7, 2007 (2007 LSBC 40)

Counsel: Herman Van Ommen and Judy Walker for the Law Society; Sheldon Goldberg appearing on his own behalf

FACTS

Professional misconduct

Sheldon Goldberg represented four men on four separate criminal appeals that were heard together. The common ground of appeal was an allegation of inadequate representation at trial by JB, the lawyer who had represented all four accused.

The Court of Appeal dismissed all four appeals and, in its written reasons, was highly critical of Goldberg's conduct and competence. The court said Goldberg's affidavits were "unworthy of any lawyer" and that his factums and written submissions were "rambling, repetitive and disorganized" and "among the poorest examples presented to this court in recent memory."

The court also said Goldberg used his right of audience to make "seriously damaging, but completely unfounded" allegations of misconduct, including drug and alcohol abuse, against JB.

A Law Society hearing panel reviewed extensive materials concerning the allegations made by Goldberg against JB, including: alcohol and drug abuse and psychological problems; that the illness of JB's parents affected his conduct; statements characterizing JB as a "rogue"; statements characterizing JB as dishonest to the courts and to his clients; statements dealing with JB's personal life that were completely irrelevant to the *appeals*; and that JB failed to order preliminary hearing transcripts.

The panel did not find any proper evidence to support any of Goldberg's assertions. The panel further noted that Goldberg should be familiar with appeals based on the ineffectiveness of counsel at trial, as he had previously been involved in at least two cases that raised the same argument.

Competence

The panel found Goldberg failed to demonstrate adequate knowledge of the substantive law, practice and procedures to effectively represent his clients, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*. The panel reviewed several competency issues noted by Court of Appeal, such as affidavits that contained hearsay, lay opinions, irrelevant evidence, and speculation, insinuation and rumour; as well as disorganized factums that lacked proper legal support for the arguments advanced.

The panel found that the affidavits drawn by Goldberg demonstrated a complete lack of knowledge of the law of evidence. The panel further found that Goldberg's written material demonstrated a serious lack of knowledge and skill and the factums did not meet an appropriate standard. The panel concluded that Goldberg did not competently carry out his duties as counsel and determined that he was incompetent in the performance of his duties undertaken in the capacity of a lawyer.

VERDICT

The panel found Goldberg guilty of professional misconduct in making unfounded, but serious, allegations about the conduct of JB. They further concluded that he incompetently carried out the duties he undertook in the appeals.

PENALTY

A majority of the hearing panel ordered that Goldberg:

1. be suspended from the practice of law for a period of 90 days, starting January 1, 2008;
2. submit any written material relating to an argument based on the ineffective assistance of counsel to a practice supervisor for review before filing; and
3. pay the costs this hearing.

The minority called for a suspension of 180 days, not 90 days. The minority agreed with all other aspects of the panel's penalty decision.

VANCE KING GOULDING

Vancouver, BC

Called to the bar: May 20, 1994

Custodian appointed: June 26, 2006

Ceased membership: January 1, 2007

Disbarred: August 31, 2007

Discipline hearing: March 14 and 15, 2007

Penalty hearing: July 26, 2007

Panel: Glen Ridgway, QC, Chair, William Jackson and Bruce LeRose, QC

Reports issued: April 4 (2007 LSBC 16) and August 31, 2007 (2007 LSBC 39)

Counsel: Maureen Boyd for the Law Society; no one appearing on behalf of Vance King Goulding

FACTS

In July 2004, HR retained Vance King Goulding to assist her with an application to sponsor her husband's immigration from Iran to Canada.

Between July and December 2004, HR paid \$3,050 to Goulding, \$550 of which was to cover filing fees charged by the federal immigration authorities. Goulding never deposited HR's funds into his trust account, never paid the federal filing fees and never issued a bill to HR, although he did provide her with a receipt on his firm letterhead. The reverse side of two HR cheques payable to Goulding for \$1,550 and \$1,500 confirmed the cheques had been cashed at a MoneyMart outlet.

In January 2005, HR obtained, completed and forwarded the sponsorship documents to Goulding by Express Post. In August 2006 the Express Post packet was found unopened in Goulding's HR client file, in the course of the custodianship of his practice.

Despite her repeated subsequent attempts, HR's last communication with Goulding was on December 28, 2004.

Between November 9, 2005 and April 6, 2006, the Law Society attempted to contact Goulding by 11 letters, three emails and numerous telephone messages, with little success. By an email dated March 2, 2006, Goulding advised that he would contact the Society the following week to schedule a conduct review. He did not do so. By another email dated March 6, 2006, Goulding requested adjournment of a practice review set for March 8. After Goulding failed to contact the Law Society to reschedule, the

society sent him a letter dated March 13, 2006 to confirm rescheduling of the practice review to March 22, 2006 at Goulding's office. Goulding did not attend at his office on March 22 for the practice review.

By a citation issued on June 28, 2006, the Law Society charged Goulding with six counts of professional misconduct.

The first three counts concerned Goulding's failure to respond to the Law Society over a five-month period regarding a complaint by Goulding's client, HR, the scheduling of a conduct review, and the conduct of a practice review.

Counts 4 to 6 in the citation charged Goulding with failure to serve his client in a conscientious, diligent and efficient manner, misappropriation of client funds, and failure to handle client funds in the manner required by the Law Society Rules.

VERDICT

No one appeared on behalf of Goulding at the facts and verdict hearing, despite service of the citation, notice of the hearing and all other disclosure.

The panel found that Goulding committed professional misconduct under all six counts of the citation. The panel applied the reasoning set out in *Law Society of BC v. Harder*, 2005 LSBC 48:

Knowing misappropriation consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking.

PENALTY

Goulding did not appear at the penalty hearing. The panel concluded Goulding had been properly served with notice and expressed its disappointment that he chose not to participate. As a result, no evidence was presented regarding any exceptional circumstances that might warrant a penalty other than disbarment.

The panel concluded that disbarment is the appropriate penalty to protect the public in cases of misappropriation, even if the possibility of recurrence is remote. The panel cited general deterrence and the need to protect the public's confidence in the integrity of the profession as reasons for its decision.

The panel ordered that Goulding:

1. be disbarred; and
2. pay costs in the amount of \$25,516.58.

TRUST PROTECTION COVERAGE

In every profession, there are occasionally members who are dishonest. Although not all professions or industries protect victims of their dishonest members, the legal profession in BC has, since 1949, provided financial protection to members of the public whose money has been stolen by their lawyer. If a claim is made against a lawyer relating to the theft of money or other property, Trust Protection Coverage (TPC) is available under Part B of the lawyer's insurance policy to reimburse the claimant, on the lawyer's behalf, for the amount of the loss. Based on the circumstances described in this decision, a TPC claim was made against Vance King Goulding and the amount of \$3,050 was paid to the claimant. Goulding is obliged to reimburse the Law Society in full for the amount paid under TPC. For more information on TPC, including what losses are eligible for payment, see the Insurance section of the Law Society's website at lawsociety.bc.ca.

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BRIAN PETER GRANT KAMINSKI

Coquitlam, BC

Called to the bar: May 14, 1993

Discipline hearing: February 9, 2007

Panel: John Hunter, QC, Chair, Gordon Turriff, QC and Thelma O'Grady

Report issued: July 18, 2007 (2007 LSBC 37)

Counsel: Maureen Boyd for the Law Society and Brian Kaminski appearing on his own behalf.

FACTS

Brian Kaminski represented the vendors and S, a notary public, represented the purchasers in the 2005 sale of strata lot 2 of a residential duplex. Strata lot 1 was also owned by Kaminski's clients, and was sold at about the same time.

Kaminski wrote S on March 15, 2005, setting out the usual closing conditions for a property sale and undertaking to provide S with the mortgage payout documents within five business days, and to obtain a discharge of the vendors' mortgage within a reasonable time. On March 21, Kaminski sent the vendors' bank the mortgage payout funds along with the discharge.

On June 21, S sent a fax to Kaminski requesting a copy of the registered discharge. S sent follow-up faxes on August 4, 10 and 24, and on December 22, 2005 his assistant telephoned Kaminski's office to follow up on the discharge, all without response.

On February 6, 2006 S complained to the Law Society that he had not received the mortgage discharge or any related documentation. The Law Society advised Kaminski of the complaint on February 28.

Kaminski then determined the discharge he sent to the vendors' bank on March 21, 2005 referred to strata lot 1, rather than strata lot 2. On February 28, 2006 Kaminski sent the vendors' bank the correct discharge. On March 15, 2006 — 12 months to the day after the closing of the sale — Kaminski provided S with a copy of the mortgage discharge.

ADMISSION AND PENALTY

Kaminski admitted he breached the undertakings he gave to S on March 15, 2005, and that his breach constituted professional misconduct. Pursuant to Rule 4-22, the hearing panel accepted Kaminski's admission and proposed penalty. The panel ordered that he:

1. pay a fine in the amount of \$7,500; and
2. pay costs in the amount of \$2,000.

JONATHAN LEWIS OLDROYD

Salt Spring Island, BC

Called to the bar: July 10, 1980

Custodian appointed: April 14, 2004

Resigned: April 14, 2004

Disbarred: July 16, 2007

Discipline hearing: October 3 and 4, 2006

Penalty hearing: May 30, 2007

Panel: Glen Ridgway, QC, Chair, Leon Getz, QC and Ronald Tindale

Reports issued: January 17 (2007 LSBC 06) and July 16, 2007 (2007 LSBC 36)

Counsel: Brian McKinley for the Law Society; no one appearing on behalf of Jonathan Lewis Oldroyd

FACTS

From early 1984 through early 2004, Jonathan Lewis Oldroyd practised law as a general practitioner from his home on Salt Spring Island. Oldroyd resigned his Law Society membership on April 14, 2004, the same day that he consented to the appointment of a custodian for his practice following an investigation of his books, records and accounts under Rule 4-43. That investigation arose from complaints from charitable organizations that were the residual beneficiaries of three estates being administered by Oldroyd.

A citation issued by the Law Society on October 5, 2005 charged Oldroyd with wrongfully converting trust funds totaling \$666,895 from five different clients between 2002 and 2004.

1. *TM and JAM*

Oldroyd represented TM and JAM in the 2003 purchase of real estate from a company, TL Corp. On February 28, 2003 Oldroyd issued a trust cheque for \$179,045.83 to the vendor's solicitor. As a result of a dispute over the terms of the sale, the cheque was not cashed and Oldroyd retained the funds in his trust account until October 2003, when he used them to purchase a bank draft for \$133,762.59, payable to "KC, in trust," and to fund a wire transfer of \$48,717.85 to a Florida bank account in the name of "S Consulting Ltd."

The bank draft for \$133,762.59 was used to pay debts owing by a company, CW Corp — of which Oldroyd and his wife were president and secretary, respectively — under mortgages held by KC.

The panel found no evidence connecting CW Corp, TM or S Consulting Ltd. with the purchase by TM and JAM from TL Corp.

2. *The N Estate*

Oldroyd was retained by N to obtain the proceeds of two RRSP accounts held in his late wife's name. In December 2003 and January 2004, two payments totaling \$45,283 were deposited into Oldroyd's pooled trust account, recorded under the name of "Mr. N in trust." On the same day that the second trust deposit was made, the RRSP proceeds — together with other funds apparently provided by one of Oldroyd's companies — were wired to a Florida bank account in the name of "S Consulting Ltd."

The panel found no connection between S Consulting Ltd. and N or the N Estate.

3. *HB*

Oldroyd acted for B in the sale of her Salt Spring Island property. On October 8, 2003 Oldroyd received a cheque for \$70,167.65 from the buyer's solicitor as the cash to the deal. That day, Oldroyd issued a cheque for \$48,000 — drawn against B's trust funds — to purchase a bank draft payable for that amount to "DL in trust." Also that day, foreclosure proceedings against a Ucluelet property owned by CW Corp were concluded upon payment of the outstanding balance of \$48,124, by a bank draft for \$48,000 and Oldroyd's trust cheque for the balance.

In February 2004 Oldroyd used some of B's remaining trust funds to purchase a second bank draft for \$21,131, which was deposited to an unknown account at Bank C.

4. *T Estate*

Oldroyd was the solicitor and co-executor for the estate of T, who died in 2002. Oldroyd used \$200,000 of the T estate funds held in his trust account to make a payment in that amount to the beneficiaries of an entirely different estate.

5. *W Estate*

Oldroyd was the solicitor for the estate of W, who died in 2002. W left an estate with a probate value of about \$300,000, consisting mostly of cash and realizable securities.

In October 2003, Oldroyd used W estate trust funds to make a \$70,000 payment to the executor (and one of the beneficiaries) of an unrelated estate, and to pay \$100,000 to cover a trust shortage in another unrelated estate.

Lawyer E replaced Oldroyd as solicitor for the W estate in March 2004. Lawyer E received Oldroyd's files, but did not receive any of the funds purportedly being held in trust by Oldroyd on behalf of the W estate. Oldroyd did not replace the \$170,000 he had paid out of the W estate trust funds.

VERDICT

In addressing the issue of wrongful conversion, the panel determined that the key questions were whether Oldroyd knew the purposes to which his clients' funds were to be applied, and whether he knowingly and without mistake applied the money to different purposes. In all five cases brought before it, the panel concluded Oldroyd had wrongfully converted funds held by him in trust for his clients.

The panel found Oldroyd guilty of three counts of professional misconduct, including wrongful conversion of clients' funds from his pooled trust account, misleading another lawyer with correspondence falsely conveying the impression that certain funds were being held in his trust account, and breaching an undertaking to another lawyer by releasing certain trust funds without that lawyer's permission.

The panel also found that Oldroyd violated the Law Society Rules by failing to produce his trust accounting records for the years 1995 through 1999 to a designated investigator.

PENALTY

The panel noted that Oldroyd's financial records had been prepared to conceal the misappropriation of client funds, and that Oldroyd had not replaced those funds.

The panel concluded Oldroyd's conduct clearly justified the penalty of disbarment. The panel also concluded it had no evidence before it to suggest that any other penalty would ensure the public's protection from future acts of misconduct by Oldroyd.

The panel ordered that Oldroyd:

1. be disbarred; and
2. pay costs in the amount of \$124,000.

The panel stressed the appropriateness of having the burden of costs borne by the party at fault rather than the general membership. The panel also stated its willingness to receive a written request for time to pay on behalf of Oldroyd.

MARCUS O'SULLIVAN

Sidney, BC

Called to the bar: May 14, 1976

Discipline hearing: December 13, 2006 and August 28, 2007

Panel: Gavin Hume, QC, Chair, David Renwick, QC and Dirk Sigalet, QC
Reports issued: January 24 (2007 LSBC 08) and October 4, 2007 (2007 LSBC 44)

Counsel: James Doyle for the Law Society and Dean Lawton for Marcus O'Sullivan

FACTS

1. *W estate*

Marcus O'Sullivan was retained in December 2002 by two sisters named as executors in their father's will. He did little work on the file and failed to reply to two separate requests for information from his clients. The Law Society, acting on a complaint from the clients, asked O'Sullivan for an explanation in January, February and March 2005, but did not receive a response until March when O'Sullivan admitted he had not responded to his clients. Further correspondence from the Law Society went unanswered until September 2005. The following month, O'Sullivan wrote saying he had suffered health problems and that he would provide a response in November.

2. *Motor vehicle accident case*

FS retained O'Sullivan in July 2002 to represent her in a motor vehicle accident case. O'Sullivan failed to comply with a master's order for delivery of documents and the case was struck out in December 2002. O'Sullivan did not advise his client of this even though he had been in contact with her.

3. *MH estate*

O'Sullivan was appointed executor of MH's will in December 2003. He did little work on the file until May 2005 when one of the beneficiaries asked about its status. In June 2005, 18 months after the death, O'Sullivan applied for probate, but the court registry rejected his application. In response to a Law Society letter, O'Sullivan admitted he had not replied to the beneficiaries. The Law Society contacted him for further details, but received only a voicemail message that he was suffering from health problems.

O'Sullivan subsequently resigned from the profession on December 31, 2006 citing serious health problems including depression and chronic heart disease. The Law Society appointed a custodian of his practice and other lawyers have assumed conduct of his files.

VERDICT

The panel concluded that O'Sullivan was guilty of professional misconduct for failing to provide quality service to his clients, failing to respond to these clients and failing to respond to the Law Society. O'Sullivan advised the panel that because of his age and health problems he will not practise law again.

PENALTY

The panel ordered that O'Sullivan not reapply for membership for six months, not apply for membership in any other law society without informing the Law Society of BC, not allow his name to be used on any law firm's letterhead and not work for a BC lawyer in any capacity without the Law Society's consent.

The panel also ordered that O'Sullivan not act as a personal representative or trustee of the estate of a deceased person, as guardian under the *Adult Guardianship Act*, or as a representative under the *Representation Agreement Act*.

In considering costs, the panel noted that O'Sullivan admitted his professional misconduct, cooperated with discipline counsel and consented to the appointment of a custodian. They also considered his significant financial and health challenges, noting that O'Sullivan has filed for bankruptcy, and due to his medical condition it appears unlikely that he will obtain employment in the near future. In light of these circumstances, the panel did not order costs. ❖

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