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BENCHERS' BULLETIN

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Pro bono programs and enhancing access to legal services

by John J.L. Hunter, QC

BENCHERS' BULLETIN

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

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor at communications@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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IN SEPTEMBER, Vancouver will host the 2nd National Pro Bono Conference, under the auspices of Pro Bono Law of BC and similar organizations from Alberta, Saskatchewan and Ontario. Hosting such a conference invites consideration of the state of pro bono services in British Columbia. Much has been accomplished since Pro Bono Law of BC was created in 2002 by the Law Society and the BC Branch of the Canadian Bar Association, but much remains to be done.

One of the objectives of Pro Bono Law of BC is to promote a dynamic pro bono culture in this province. While BC lawyers share a rich tradition of providing services to low income individuals and non-profit organizations without fee, our pro bono culture can hardly be described as dynamic. It would be more accurate to say that the burden of pro bono services has fallen disproportionately on a small number of dedicated professionals working with the Salvation Army BC Pro Bono Program, the Western Canada Society to Access Justice and the law school clinics. Few of our larger firms have structured pro bono programs with articulated objectives. Is it time to ask our leading firms to make a more tangible contribution to pro bono legal services?

Many large American firms have designated partners to supervise their pro bono programs, and appear to pursue competitive advantage by touting their pro bono participation.

A comparison with our colleagues south of the border is instructive. The National Association of Legal Professionals reported that 75 per cent of the 1,400 law firms who responded to their survey gave

billable hour credit for pro bono work. About half the firms encouraged their lawyers to do an average of 50 hours per year; the others had no specific target. The standard of 50 hours per year has been set by the American Bar Association, whose Model Rule 6.1 reads as follows:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono public legal services per year.

Many large American firms have designated partners to supervise their pro bono programs, and appear to pursue competitive advantage by touting their pro bono participation.

Access to legal services is becoming more and more difficult for many individuals in our communities.

The comparable figures for British Columbia are considerably more modest. A recent survey by Pro Bono Law of BC indicates that only 22 per cent of the larger BC firms give billable hour credit for pro bono work. Only 33 per cent reported having any formal pro bono policy, although several firms indicated that such a policy was in the planning stages. We seem to be lagging behind our American colleagues in pro bono commitment. Why is that?

One answer may be the ranking of firms that is prevalent in the US and is often based in part on pro bono participation. Since 2003, the influential American Lawyer magazine has produced an "A-List" of firms, based on four factors — revenue per lawyer, associate satisfaction, diver-

sity and pro bono activity. The American operating assumption has been that pro bono activity is a good recruitment tool. In Canada, our third party rating services tend to concentrate on the practice skills of the lawyers of the firm — an important measuring stick for prospective clients, but one that misses what many young associates and law students consider a professional responsibility of law firms.

While the Law Society continues to urge greater governmental funding for legal aid, it may be time for each of us to step up, individually and collectively through our firm organizations, to meet these challenges ourselves.

Firms with defined pro bono programs take strategic recruiting advantage of the fact that pro bono work is immensely satisfying, tapping into the ethical commitments and aspirations that inspired many

to enter the legal profession. In larger firms, particularly, it has become more and more difficult to give associates the kind of direct responsibilities we all know are necessary for development of lawyer skills and competence. On pro bono files, associates can have direct client contact and can gain valuable court experience as lead counsel.

Access to legal services is becoming more and more difficult for many individuals in our communities. The increasing number of self-represented litigants and growing reliance on self-help guides is well known to us all. Our profession tends to expect government to improve legal aid funding as the solution to access problems. While the Law Society continues to urge greater governmental funding for legal aid, it may be time for each of us to step up, individually and collectively through our firm organizations, to meet these challenges ourselves.

The Law Society has recently released a report on the unbundling of legal servic-

es, which addresses access issues that arise from the “entire contract” theory of legal representation. Progress on limited scope legal services may be particularly helpful for lawyers at larger firms — where conflicts are a constant concern — seeking opportunities to participate in pro bono legal service clinics.

I have emphasized the role of firms in providing pro bono services because I recognize that the high degree of specialization in our profession, particularly in the Lower Mainland, may make it unrealistic to expect each individual lawyer to provide 50 hours of pro bono work annually. The American experience would suggest, however, that such a goal is not unrealistic on a firm-wide basis. I invite those firms with sufficient resources to respond to this challenge to explore whether a structured pro bono program with realistic incentives for participation could be instituted for the benefit of those who need our help but cannot afford to pay for our services. ❖



Three leaders in BC's pro bono community. LEFT TO RIGHT: Allan Parker, executive director of the Western Canadian Society to Access Justice, Jamie Maclaren, executive director of Pro Bono Law of BC and John Pavey, coordinator for the Salvation Army BC Pro Bono program.



Trust assurance in action

by Timothy E. McGee

ONE OF THE CORNERSTONES of the Law Society's new Trust Assurance Program — launched in 2007 and now in full operation — is the use of comprehensive in-field compliance auditing to complement annual on-line trust reporting. I would like to share with you some early observations and feedback which I think bode well for the future success of the program.

Our compliance audit teams have now completed in-field audits of more than 280 firms throughout the province. The audit teams will visit each BC law firm at least once every six years. So far each audit is typically taking 3 days to complete and the cooperation from the firms visited has been excellent. As much as possible the audit team coordinates its visit with the firm to minimize disruption. For example, firm principals need not clear their schedules during the audit; in most cases they are asked to be available to the audit team for

an hour at the beginning and again at the close of the audit.

Feedback received to date indicates that law firms generally perceive the audit teams as being helpful and supporting their compliance with the trust accounting rules — an important goal of the Trust Assurance Program. Suggestions from firms which will be pursued include publishing a list of frequently asked questions drawn from the audits and designing a course for bookkeepers covering best practices for trust accounting compliance.

Our compliance audit teams have now completed in-field audits of more than 280 firms throughout the province.

To date the vast majority of the audits are not raising serious compliance

issues. Two of the most common problems involve technical breaches of the "no-cash rule" (Rule 3-51.1(3), which prohibits lawyers from receiving \$7,500 or more in cash in any single client matter or transaction, subject to specific exceptions set out in subrule (2)) and the "unauthorized trust account signatory rule" (Rule 3-56 (2)(c), which prohibits the issuing of trust cheques without the signature of a practising member).

A key goal of the Trust Assurance Program is to ensure that all firms scrupulously follow the Society's rules for receipt and handling of trust funds. The Benchers have adopted key performance measures for the program, which include a higher percentage of compliant trust report filings each year and long term reductions in the number of financial suspensions and referrals to the Professional Conduct department. While it is too early to assess results on these measures, the initial indicators suggest that the in-field compliance audit component of the program is off to a good start.

Another goal of the program is to eliminate the need for most firms to file an accountant's report with their trust returns: this has been the case for over 92 per cent of the 3,300 returns filed to date.

A key goal of the Trust Assurance Program is to ensure that all firms scrupulously follow the Society's rules for receipt and handling of trust funds.

If you or your firm have any feedback or comments about the Trust Assurance Program that you would like to share with the Law Society, please contact Felicia Ciolfitto, Manager, Trust Assurance at 604-605-5356 or fciofitto@lsbc.org. ❖



Benchers approve rules implementing Continuing Professional Development

AT THEIR JULY meeting, the Benchers approved amendments to the Rules to implement the Law Society's new Continuing Professional Development program.

The Benchers' decision marks the first time that a Canadian law society has introduced a comprehensive continuing professional development requirement for all lawyers. The introduction of continuing professional development for lawyers in BC will assure the public that the Law Society is committed to establishing, maintaining and enhancing the standard of legal practice in the province.

In November 2007, the Benchers considered the former Lawyer Education Committee recommendations for a continuing professional development requirement and approved implementation for January 1, 2009.

Following the November 2007 approval in principle, the Lawyer Education Advisory Committee sought and received input from lawyers and law-related organizations. Responses were largely positive and the continuing professional development initiative was lauded nationally in the legal media. The concerns raised were largely about approved subject matter, geographic barriers and cost. In drafting the Rules and defining approved educational activities, the Committee made every attempt to address these concerns.

The Benchers' decision marks the first time that a Canadian law society has introduced a comprehensive continuing professional development requirement for all lawyers.

Effective January 1, 2009 the new Rules will require all practising lawyers — both full-time and part-time — to complete no fewer than 12 hours a year of continuing professional development in approved educational activities. Not less than two of the 12 hours must pertain to any combination of professional responsi-

bility and ethics, client care and relations, and practice management.

Lawyers will be able to record and report professional development activities online at the Law Society's website and education providers will also be able to seek approval for courses online. Lawyers will also be reminded periodically during the year about how much of the requirement they have fulfilled and how much more they must do. The focus of the Law Society will be on assisting lawyers to meet the requirement through easy identification of approved courses online and through regular reminders. If the annual requirement of 12 hours is not met, lawyers will have until April 1 of the following year to meet the requirement, on payment of a late fee of \$200. If the requirement is still not met by April 1, the lawyer may be suspended for non-completion on 60 days notice from the Law Society. The Practice Standards Committee will have the discretion to

prevent or delay the suspension in special circumstances on application by a lawyer to do so.

Lawyers will be able to record and report professional development activities online at the Law Society's website and education providers will also be able to seek approval for courses online.

Detailed information about the process for filing and obtaining approval of professional development activities will be provided to lawyers and legal education providers by mid-September. For more information, please contact Alan Treleaven, Director, Education and Practice at 604-605-5354 or atreleaven@lsbc.org. ♦





Public forum generates conversation on youth justice

NEARLY 170 PEOPLE came to hear top opinion leaders speak about young people and the law at *Voices on Youth Justice*, the Law Society's free public forum held on June 25.

This was the fourth forum presented by the Law Society. They offer an opportunity to engage the public in discussion and engender a wider appreciation of the legal profession's role in free democratic societies and the Law Society's role in protecting the public interest in the administration of justice.

As John Hunter, QC, President of the Law Society, told the audience in his welcoming address, the goal of the forums has been, "to bring the legal profession together with the community at large — to start a conversation about issues in the law."

"The goal of the Law Society public forums is to bring the legal profession together with the community at large, to start a conversation about issues in the law."

Access to justice depends on all citizens understanding the rule of law. Promoting awareness of the unique challenges faced by young people embroiled in the legal system can help youth and their families to navigate the legal system and improve access to justice.

Panelist Mary Ellen Turpel-Lafond, BC's Representative for Children and Youth, used the opportunity to release some preliminary results from her upcoming report, which examines the relationship between youth in care and the justice system.

Turpel-Lafond told the audience that her research shows, "children in care in British Columbia have had a higher probability of ending up in the corrections system — 36 percent of them — than they did of graduating from high school,

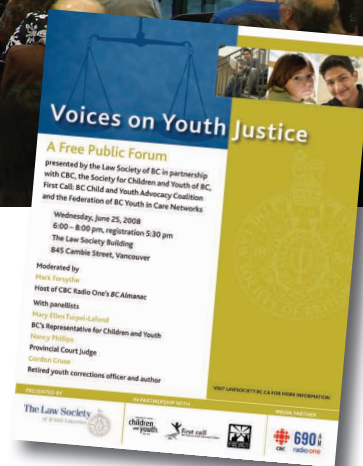
which is 24 percent. I think that's probably the most staggering finding, because it's exactly not the outcome that we want for them."

The Representative emphasized that she has found that children in care who stay out of the justice system did so because they had better support. She called for stable funding for a variety of services that could help families at an early stage of children's lives and provide what Turpel-Lafond called "protective factors" to keep the children out of the justice system.

Judge Nancy Phillips used the opportunity as a panellist to, among other things, provide the audience with some insight into how judges sentence youth. Judge Phillips is responsible for the judicial administration of the Youth Court at Vancouver's Robson Square.

"It is crucial to remember that Parliament alone has the power to make the laws relating to how young people who commit crime may be sentenced," said Judge Phillips. "And a judge cannot act outside the scope of that authority and direction that is provided by the legislation.

"If I simply sentence a young person without regard to what the law directs that I do," explained Judge Phillips, "my sentence would almost inevitably be overturned by an appellate court, which would be rather counterproductive."



Panel members look on as BC Representative for Children and Youth, Mary Ellen Turpel-Lafond, answers a question from the floor.

She also emphasized that “judges live in the community in which we work. We have families that live, work and go to school in these same communities. We are not immune to being the victims of crime and we are motivated to ensure the communities we live and work in are safe.”

The community partners helped the Law Society connect with the youth community and others — resulting in a broad spectrum of people coming to hear the panellists speak.

Panellist Gordon Cruse, a retired youth corrections officer who spent 26 years in Victoria supervising young offenders, shared with the audience his unique insight and perspective on the Reena Virk murder case. He supervised all of the teenagers who were arrested for their part in the 1997 beating death of 14-year-old Virk. He also considers the Virks family friends — the proceeds of his book, *Juvie: Inside Canada's Youth Jails*, go to a scholarship in Reena's name.

“The Virks have consistently impressed me with their approachability, their openness, graciousness, insight and understanding over the years,” said Cruse. He explained that they have told him about “their for-



More than 170 members of the public came out to hear opinion leaders at the Law Society's public forum on youth justice.

giveness of Warren Glowatski — the boy involved — because they saw a young man making every effort to change himself from the inside out while he was incarcerated.”

Cruse relayed that “their wish was to allow him to move on in his life. This ultimate expression of love and understanding,” in Cruse's opinion, “has in the doing relieved some of their own burden and set an exceptional standard for all of us.”

Of Glowatski, Cruse said, “I recently spent some time with him. He's moved on with his life, he's working, complying with his release conditions and bears with remorse his life burden for his part in the tragedy.”

The forum was put on in partnership

with CBC, the Society for Children and Youth of BC, First Call: BC Child and Youth Advocacy Coalition and the Federation of BC Youth in Care Networks. The community partners helped the Law Society connect with the youth community and others — resulting in a broad spectrum of people coming to hear the panellists speak: lawyers, youth workers, social workers, youth, those involved with law enforcement and members of the general public.

The public forum project began as an initiative of the Equity and Diversity Committee in 2006 with the aim of promoting the legal profession and the rule of law in the community at large. ❖



Panelist Gordon Cruse shares his unique insight and perspective on young offenders.



FIRST ROW, LEFT TO RIGHT: *Bencher Thelma O'Grady, Judge Nancy Phillips, Mary Ellen Turpel-Lafond, Gordon Cruse*, SECOND ROW: *Law Society CEO Tim McGee, public forum moderator and CBC host Mark Forsythe, Law Society President John J.L. Hunter QC.*

Professional Legal Training Course turns 25

AS THE PROFESSIONAL Legal Training Course completes its first 25 years, it seems appropriate to review some of its history and development.

In the summer of 1983 a pilot project called the Professional Legal Training Program opened its doors in space provided by the Faculty of Commerce at UBC. Designed by Professor Neil Gold, one of Canada's best-known legal educators, the program was novel in its focus on skills and professional ethics, and in its structure as a full-time program in a classroom setting. The pilot project broke legal and practice skills into their basic components, providing students with opportunities to practise them and to receive feedback on their performance.

Each of Vancouver's larger firms and many of the smaller ones were asked to contribute at least one of their students to the pilot's six classes of approximately 90 students. Meanwhile, the rest of the 1983 student contingent attended the old bar admission program, conducted one evening per week in various law firms' boardrooms. Lynn Burns, PLTC's current Deputy Director, was a student in the pilot program.

In 1984, under the guidance of James Taylor, QC, many revisions were made to the program; its name was changed to the Professional Legal Training Course and attendance became mandatory for all articulated students. PLTC was reviewed by an independent committee chaired by Hamish Cameron, QC, in 1986, by Legal Education

Consultant Christopher Roper in 1999 and, together with the articling program, by the Bar Admission Task Force in 2001/2002.

"While many changes and innovations have been made to the course throughout the years, today's PLTC remains true to its original focus on skills training and ethics."

PLTC is held three times a year in Vancouver at the Law Society Building and once each summer at the University of Victoria, Faculty of Law. The course is taught by full-time faculty with many years of teaching and practice experience, and by contract instructors taking a break from practice. Their instruction and guidance is supplemented by volunteer guest instructors from the practising bar. Many of the contract and volunteer instructors return year after year, saying that teaching a class or judging a mock advocacy event helps to refresh and focus their own knowledge and skills.

"While many changes and innovations have been made to the course throughout the years, today's PLTC remains true to its original focus on skills training and ethics," says Deputy Director Lynn Burns.

"Students are taught current practice and procedure, professional responsibility and practice management. They put all that they have learned together to conduct simulated solicitors' and barristers' transactions. Over the years, students have consistently rated highly the value of PLTC's skills training and give the top marks for the course's professional responsibility component," says Burns.

The curriculum is set by the Benchers, who seek to ensure that PLTC's material and emphasis are consistent with the areas of competence required for call and admission by other jurisdictions in Canada.

In 2007, 366 students attended PLTC — a record number. Extra classes were put on in the spring and fall sessions in Vancouver to accommodate them. Enrolment is running even higher in 2008 in both locations. ❖

PLTC Registration 2004-2007

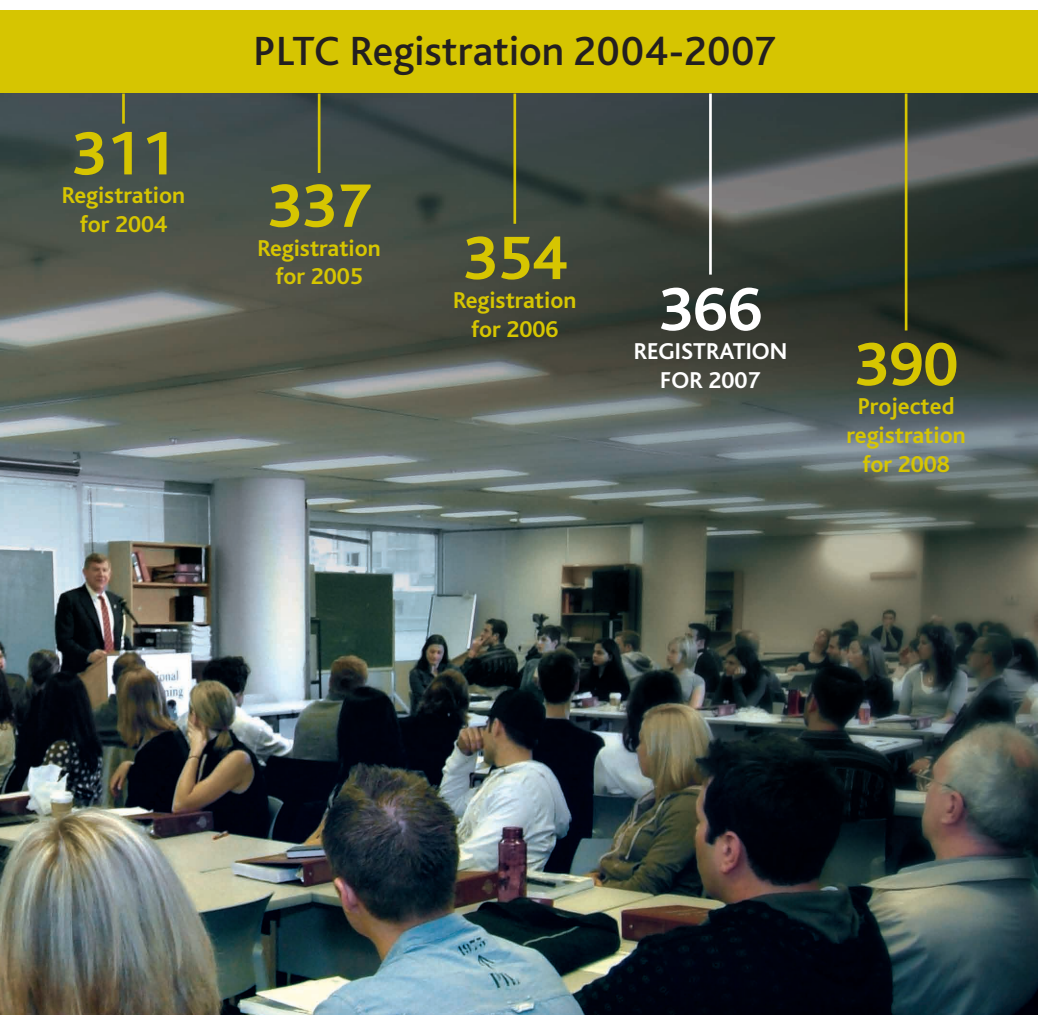
311
Registration
for 2004

337
Registration
for 2005

354
Registration
for 2006

366
REGISTRATION
FOR 2007

390
Projected
registration
for 2008



President John J.L. Hunter, QC addresses the May 2008 session of PLTC in Vancouver.

Benchers to honour John McAlpine, QC with Law Society Award

THE BENCHERS have chosen John McAlpine, QC, to receive the 2008 Law Society Award in recognition of his outstanding career and accomplishments.

Mr. McAlpine graduated from the University of British Columbia in 1950 and then headed to Harvard University, where he obtained his LLB in 1953. He returned to British Columbia and was called to the bar in 1954, practising with Farris & Co. until 1971. In that year, he established McAlpine & Associates. He was appointed Queen's Counsel in 1976.

Mr. McAlpine's distinguished career has involved a wide variety of high profile cases. He has acted as counsel in major aboriginal and public interest cases, and on behalf of government bodies such as the Labour Boards of British Columbia and Canada. Mr. McAlpine also represented high ranking government officials in inquiries and appeared as counsel to the BC Energy Commission inquiring into the natural gas industry.

Despite his high profile, Mr. McAlpine

has always invited differing opinions. One of Mr. McAlpine's nominators noted that, "Most days of the week we would cross the road to the Georgia Hotel and have a bad sandwich for lunch ... John always picked up the tab, and any lawyer in the office was welcome. Lunch talk invariably turned into a debate about some case that we were working on. At the time it seemed a well priced lunch that was fun. In retrospect, it was McAlpine's private Inn of Court, and he raised generations of lawyers in it."

In supporting Mr. McAlpine's nomination for the Law Society Award, Rt. Hon. Chief Justice of Canada, Beverly McLachlin, P.C. stated:

"I can say, unequivocally, that through his professionalism, his contributions to judicial education and his role as an example and a mentor, Mr. McAlpine has made an outstanding contribution to the betterment of the law and the improvement of the justice system."

In recommending him for the 2008 Award, the Selection Committee quoted from one of Mr. McAlpine's nominators, "'John McAlpine is the best and the brightest.' We agree." ♦

Bench & Bar Dinner Wednesday, November 19, 2008

The Law Society of BC and the Canadian Bar Association, BC Branch, invite lawyers and judges to attend the 24th Annual Dinner for the Bench & Bar. This year's Bench & Bar Dinner will honour the recipient of the Law Society Award for 2008 and the CBA Georges A. Goyer, QC Memorial Award for Distinguished Service.

Law Society 2008 Gold Medallists



Law Society First Vice-President Gordon Turriff, QC, UBC Gold Medallist Ashleigh Keall, Dean Mary Anne Bobinski.



Life Bencher Ralston Alexander, QC, UVic Gold Medallist Meagan Lang, Dean Andrew Petter

Articling Registry launched

THE LAW SOCIETY, together with the BC branch of the Canadian Bar Association, has launched an online Articling Registry for BC lawyers and Canadian law students.

The Registry enables lawyers and students to register and search for articling positions by location, timeframe, and area of practice. Firms and students can sign on and post available positions, positions sought and resumes. Postings remain current for 45 days and can be changed and modified as desired.

The Law Society's *Small Firm Task Force Report*, approved by the Benchers on January 26, 2007, included recommendations pertaining to articling, including the Articling Registry initiative. The Registry is designed to promote articling, including

shared articles, throughout BC, with a particular focus on sole and small firm practices. Matching sole and small firms with students should lead to an increase in the number of articling students in those firms, particularly outside the Lower Mainland and Victoria regions.

The Small Firm Task Force considered it to be likely that students who choose to articulate in smaller communities would, if given the opportunity, stay in those communities after being called to the bar. An increase of articling students in sole and small firms would support and strengthen the viability of law practices and the provision of legal services in both the short and long term.

Some sole and small firm practitioners have reported that while they may not

have enough legal work to justify hiring an articling student on a full-time basis, they would be in a position to share a student with another firm. The Task Force received strong encouragement from sole and small firm practitioners to support and promote an expanded shared articling program. The Registry should support that objective.

Over the coming months, the Law Society and CBABC will be working to populate the Registry with both lawyers and law students. To access the Registry, visit the "What's New" section of the Law Society website at lawsociety.bc.ca.

For further information, please contact Lesley Small, Manager, Member Services at 604-443-5778 or lsmall@lsbc.org. ❖

In Brief

LAW FOUNDATION BANKING AGREEMENT UPDATE

Law Foundation Chair Warren Wilson, QC, is commending HSBC Bank of Canada for its commitment to paying a competitive rate of return on lawyers' pooled trust accounts. As of July 1, the new agreement will pay a rate of prime less 2.25 per cent, less service charges. Increased revenues enable the Law Foundation to fund programs that make the justice system more accessible to British Columbians.

CONSULTATION PERIOD EXTENDED FOR FAMILY AND CIVIL RULES REFORM

The consultation period for both the Civil Rules Concept Draft and the Family Rules Concept Draft has been extended to December 31, 2008. A number of interested parties, recognizing both the need for reform and the importance of this project, have asked for more time to review the draft rules.

JUDICIAL APPOINTMENTS

D. Jane Dardi has been appointed to the Bench of the Supreme Court of British Columbia. She was admitted to the Bar

of British Columbia in 1983. Dardi practised with Legacy Tax & Trust Lawyers in Vancouver.

Dev Dley, QC, has been appointed to the Bench of the British Columbia Provincial Court in Kamloops. Dley was called to the Bar in 1979 and has been a sole practitioner since 2004.

Kathleen M. Ker has been appointed to the Bench of the Supreme Court of British Columbia. Ker has served as Crown counsel with the Criminal Appeals office since 1997.

J. Christopher Grauer has been appointed to the Bench of the Provincial Court of British Columbia. Grauer was a founding partner of Dives, Grauer & Harper, a small firm that specializes in civil litigation and health law.

The Honourable Harvey Groberman, a judge of the Supreme Court of British Columbia, has been appointed a justice of the Court of Appeal of British Columbia. He is replacing Madam Justice M.A. Rowles (Vancouver) who elected to become a supernumerary judge.

The Honourable Kathryn E. Neilson, a judge of the Supreme Court of British Columbia, has been appointed a justice of the Court of Appeal of British Columbia. She is replacing Madam Justice J.E. Prowse (Vancouver) who elected to become a supernumerary judge.

John E.D. Savage has been appointed to the Bench of the Supreme Court of British Columbia. Savage has practiced with Crease, Harman & Company since 1978, when Carol Huddard, now Madam Justice Huddard, hired him to take articles there.

The Honourable Daphne M. Smith, a judge of the Supreme Court of British Columbia, has been appointed a justice of the Court of Appeal of British Columbia. She replaces Madam Justice C.A. Ryan (Vancouver) who elected to become a supernumerary judge.

Paul W. Walker, QC, has been appointed to the Bench of the Supreme Court of British Columbia. Walker has been a partner with Guild, Yule and Company LLP since 1984. ❖

Flying the friendly skies with Lay Bencher Haydn Acheson

THE LAW SOCIETY'S newest Lay Bencher has spent the better part of his working life in the sky.

Not withstanding a short stint as a teacher for the Richmond school district, Acheson spent nearly three decades as a commercial pilot. Today, the retired airline captain's feet are firmly planted on the management side of the airline business.

"I'm fortunate to have had two careers — one as a pilot, which I love, and one as a manager in an incredibly challenging and exciting industry," said Acheson.

Acheson began his career with Canadian Airlines in 1973, working his way up the management ladder through his work training their pilots.

Since then, he has held several senior executive and management positions with Air Canada and Canadian Airlines including Vice-President Operations, Vice-Presi-

dent Customer Service and Vice-President Flight Operations.

Now as President of Harmony Airways, Acheson spends much of his time working on getting the company back into flight — something he'd like to see happen in the next year.

"Coming from the airline industry there are a lot of challenges. Not only are you managing budgets, you're managing people, you're managing change."

Acheson is excited at the prospect of applying his skills and expertise to the work of the Law Society as a Lay Bencher.

"Coming from the airline industry there are a lot of challenges. Not only are you managing budgets, you're managing people,

you're managing change. And you're strategizing about how to best prepare yourself, and your company, for the future.

"I was so excited to be offered a position as Lay Bencher, and I'm thrilled to have the opportunity to bring that experience to the Law Society," said Acheson.

While he stresses he is a retired pilot, Acheson still takes flight on occasion.

"I'm a managing pilot, which means you have to log a certain number of hours of flying time to maintain that designation. That means sometimes I have to miss meetings because I'm on a three day lay-over flying to Honolulu," said Acheson.

And once Harmony returns to the air, you may even have the pleasure of seeing Acheson in the captain's seat on your next flight.

Acheson replaces outgoing Lay Bencher Ken Dobell. ❖



Professional experience:

- Executive, DTK HO Enterprises LTD.
- President, Harmony Airways
- Vice-President, Operations, Vice-President, Customer Service, and Vice-President, Flight Operations, Canadian Airlines
- Former Chair, Selkirk College Aviation Advisory
- Former Member, BC Aviation Council
- Master Executive Chairman for the Canadian Airline Pilots Association (CALPA)
- Former Member, Vancouver Board of Trade

Lay Benchers: twenty years of bringing the public to the Bencher table

TWENTY YEARS AGO last month, the *Legal Profession Act* and accompanying Law Society Rules came into force, paving the way for the appointment of non-lawyers as Lay Benchers of the Law Society.

"Agreeing to government appointment of non-lawyers to the Bencher table was a big step for the Benchers and lawyers of the day," recalled the society's General Counsel Jeff Hoskins. "There was spirited debate spanning several years on whether that was a step toward broadening the perspective brought to the profession's deliberations, or a step toward undermining the Law Society's capacity for self-governance and independence from government."

The minutes of a Special Benchers Meeting held on September 13 and 14, 1980 show the urgency and duration of that debate:

It was agreed that this matter should not be delegated to the special committee but because of its urgency should be discussed and decided by the Benchers.

A lengthy discussion then followed as to the necessity of appointing Lay Benchers; their contribution to the deliberations of Benchers; their effect on the independence of the profession; their use on the Law Foundation, the Legal Services Commission, on the Governing Bodies in Manitoba and Ontario; the number which should be appointed; who should appoint them; the degree of their involvement; and whether they should be paid and by whom.

"Agreeing to government appointment of non-lawyers to the Bencher table was a big step for the Benchers and lawyers of the day."

After deliberations spread over the two days, the Benchers approved a key motion leading to provision for the appointment of Lay Benchers in the legislation that came

into force almost eight years later.

The 1987 Act called for the appointment of up to three non-lawyers to sit as Benchers for two-year terms. Jack Webster, a well-known radio and television broadcaster, was one of the original appointments; as was Anne Clarke, then the

Mayor of Vernon, along with Dr. Anne Autor, a pathologist and UBC professor.

By the early 1990's the value of public participation in Law Society governance was widely recognized outside the society and within, both as a matter of perception and as a matter of actual contribution. As then

ELECTED AND LAY BENCHERS, 1989



Elected and Lay Benchers, 1989

Front row (l. to r.): Deputy Treasurer Robert H. Guile, Q.C. (Vancouver), Treasurer R. Paul Beckmann, Q.C. (Vancouver), Assistant Deputy Treasurer Robert M. Dick, Q.C. (Prince George)

Middle row (l. to r.): Peter D. Leask, Q.C. (Vancouver), M. Howard Thomas, Q.C. (Westminster), Pamela A. Murray, Q.C. (Victoria), Anne Clarke (Lay Bencher), J. Grant Hardwick (Yale), P. Michael Bolton, Q.C. (Vancouver), Cecil O.D. Branson, Q.C. (Vancouver), S. James Shabbits (Nanaimo), Harvey J. Grey, Q.C. (Vancouver), Gary L.F. Somers, Q.C. (Westminster), Donald A. Silversides, Q.C. (Prince Rupert), Karen F. Nordlinger, Q.C. (Vancouver)

Back row (l. to r.): Brian J. Wallace, Q.C. (Vancouver), Grant D. Burnyeat (Vancouver), Robert E.C. Apps (Kootenay), Thomas A. Davies (Westminster), Robert T.C. Johnston, Q.C. (Victoria), Alan E. Vanderburgh, Q.C. (Cariboo), Richard C.C. Peck, Q.C. (Vancouver), James M. MacIntyre, Q.C. (Vancouver), Dr. Anne Pomeroy-Autor (Lay Bencher), Jack Webster (Lay Bencher)

Benchers not pictured: John M. Hogg, Q.C. (Yale), Stephen F.D. Kelleher (Vancouver), William R. Miles (Vancouver)

Benchers and Lay Benchers — then and now

While their introduction brought about spirited debate, Lay Benchers are now widely recognized as valuable and important participants in Law Society governance.



The Benchers and Chief Executive Officer (September 2007)

FRONT: *President Anna K. Fung, QC (Vancouver County)*

FIRST ROW, LEFT TO RIGHT: *Barbara Levesque (Lay Bencher), CEO Timothy E. McGee, G. Glen Ridgway, QC (Nanaimo County), First Vice-President John J.L. Hunter, QC (Vancouver County), Second Vice-President Gordon Turriff, QC (Vancouver County), Rita C. Andreone (Vancouver County)*

SECOND ROW, LEFT TO RIGHT: *Bruce A. LeRose, QC (Kootenay County), Leon Getz, QC (Vancouver County), Gavin H.G. Hume, QC (Vancouver County), Joost Blom, QC (Vancouver County), Robert D. Punnett (Prince Rupert County), Thelma O'Grady (Vancouver County)*

THIRD ROW, LEFT TO RIGHT: *David M. Renwick, QC (Westminster County), Patrick Kelly (Lay Bencher), Kathryn A. Berge, QC (Victoria County), Terence E. La Liberté, QC (Vancouver County), Dr. Maelor Vallance (Lay Bencher), Kenneth M. Walker (Kamloops District), June Preston, MSW (Lay Bencher), David A. Zacks, QC (Vancouver County)*

FOURTH ROW, LEFT TO RIGHT: *James D. Vilvang, QC (Vancouver County), Jan Lindsay (Westminster County), Richard N. Stewart, QC (Victoria County), Ian Donaldson, QC (Vancouver County), Arthur E. Vertlieb, QC (Vancouver County), William F.M. Jackson (Cariboo County), Ken Dobell (Lay Bencher)*

NOT PICTURED: *Michael J. Falkins (Lay Bencher), Carol W. Hickman (Westminster County), Dirk J. Sigalet, QC (Okanagan District), Ronald S. Tindale (Cariboo County)*

Lay Benchers of the Law Society of BC, 1988-2008

LAY BENCHERS' REPORT

"Our purpose is to bring a lay person's perspective of the public interest"



Dr. Anne Pomeroy-Autor



Jack Webster



Anne Clarke

Jack Webster	1988-1995	June Preston	2001-2008
Dr. Anne Autor	1988-1989	Michael Falkins	2002-2007
Anne Clarke	1988-1991	Patrick Kelly	2002-
Suzanne Hansen	1990-1991	Valerie MacLean	2002-2003
Ann Howard	1992-2002	Patrick Nagle	2002-2006
Marjorie Martin	1992-2002	Dr. Maelor Vallance	2002-
Reeva Joshee	1996-1997	Lillian To	2003-2005
Nao Fernando	1999-2000	Ken Dobell	2006-2008
Wendy John	1999-2001	Barbara Levesque	2006-
Anita Olsen	1999-2002	Peter Lloyd	2008-
Jaynie Clark	2000-2002	Stacy Kuiack	2008-
Dr. Setty Pendakur	2000-2001	Haydn Acheson	2008-

Legacy of the *Legal Profession Act*

The *Benchers' Bulletin* asked Law Society General Counsel Jeff Hoskins to reflect on the legacy of the *Legal Profession Act*, 1987. "Three lasting achievements of the 1987 Act and Rules come to mind for me," Hoskins said. "First, it marked the first time that our governing legislation spelled out the Law Society's paramount duty to uphold and protect the public interest in the administration of justice. Second, it paved the way for inclusion of non-lawyers at the Bencher table and confirmed their right to serve on Bencher committees and discipline panels. And third, the new Rules called for the creation of a new Complainants' Review Committee, to which a dissatisfied complainant could appeal for review of a Law Society staff decision that no further action be taken on a complaint."

All three features were carried forward in the BC legal profession's current governing statute — the *Legal Profession Act* of 1998 — and are now embedded in the Law Society's governance and discipline procedures. ❖

Lay Benchers: twenty years of bringing the public to the Bencher table... from page 12

Provincial Ombudsman Stephen Owen said in his 1991 report to the Legislature:

Professional associations should carefully consider the value of encouraging a significant lay membership on their governing councils. This can reduce public suspicion that the regulatory organization is self-serving and can also improve the quality of the regulatory decisions by bringing a broader perspective to the important deliberations of the profession. To achieve this, lay members should truly be representative of broader opinion and not simply pseudo or would-be members of the profession.

Twenty-four Lay Benchers — including 13 women — have been appointed by the provincial government since 1988.

The Law Society's Lay Representation Committee agreed with the Ombudsman's assessment and went further in their 1993 report to the Benchers:

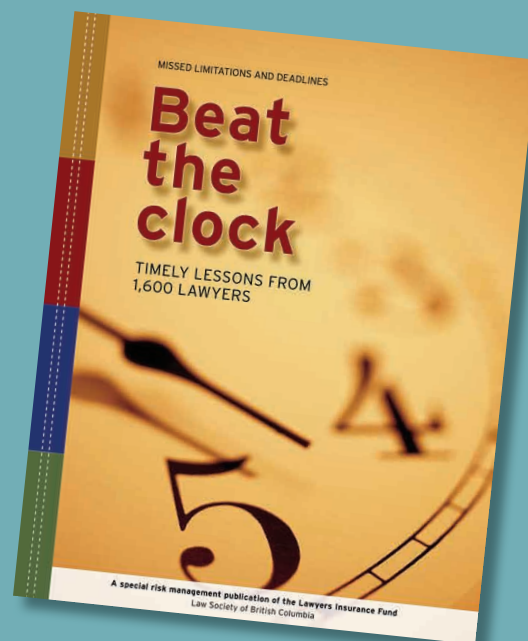
The participation of Lay Benchers has diminished the public perception of the Law Society as a closed, self-serving guild. Benchers from outside the profession have also brought with them a valuable alternative perspective to the Benchers' table, to many of the standing committees, special committees and subcommittees and to discipline and credentials panels. We believe the quality of decision-making has been improved by their participation at all those levels.

The debate shifted from "whether" to "how much" public participation there should be in Bencher ranks. The Lay Representation Committee report went on to recommend that Lay Bencher ranks be doubled to six; the 1998 *Legal Profession Act* brought that change to pass.

Twenty-four Lay Benchers — including 13 women — have been appointed by the provincial government since 1988, together providing over 77 years of service to the Law Society. That service has included the contribution of broad expertise and sound judgment to Bencher decision-making and the enhancement of accountability and transparency in Bencher governance. ❖



Photo by Tom Burley Photography.



Beat the Clock: award winner

THE INTERNATIONAL ASSOCIATION of Business Communicators of British Columbia has honoured *Beat the Clock – Timely Lessons from 1,600 Lawyers* with their prestigious Bronze Quill Award for Excellence in the category of Issues Management or Crisis Communication.

Beat the Clock was sent last May to every insured lawyer in BC and provides risk management tips to help lawyers avoid missed deadlines. Of the publication, one of the judges said the Law Society's Lawyers Insurance Fund "listened to their audience and delivered a campaign that really met their needs... It could have been a dry and boring topic, but the sample is well-produced and easy to read."

The award — which recognizes the outstanding efforts of BC's best communicators and their unique approach to meeting organizational goals — was accepted by Susan Forbes, QC, on behalf of the Law Society at a red carpet event in June. ❖

Provincial Court extends Fax Filing Pilot Project

THE CHIEF JUDGE of the Provincial Court has issued an amended practice direction with regard to the fax filing pilot project that is underway in Provincial Court registries. The review period for the project has

been extended to July 1, 2010.

On February 1, 2003 the Fax Filing Pilot Project was implemented in 14 court registries throughout the province. The project, an initiative of the Court services Branch

and the Ministry of the Attorney General, in consultation with the Provincial Court and Supreme Courts, pilots an alternative to "in-person" filing or filing by mail of certain civil documents. ❖

The Competition Act in practice

IT HAS RECENTLY been brought to the Law Society's attention that the Competition Bureau is concerned that legal service providers, including lawyers, may not be aware of provisions in the *Competition Act* and how they may relate to their practices.

Some lawyers have forwarded to the Law Society a letter that they have received from the Bureau. In it, the Bureau advises as follows:

The [Bureau] has information raising concerns that some lawyers and notaries public in your region may have formed an agreement not to provide signature execution witnessing services for mortgage refinancing documents prepared for financial institutions by title insurance companies. The purpose of this letter is to remind you and your firm of the prohibition in the Competition Act against forming anti-competitive agreements with competitors.

As you may be aware, the Commissioner of Competition is responsible for the administration and enforcement of the Act, a federal statute designed to protect and promote competition in the Canadian marketplace. Headed by the Commissioner of Competition, the Competition Bureau investigates alleged anti-competitive practices and promotes compliance with the laws under its jurisdiction.

Section 45 of the Act prohibits persons from conspiring with one another to lessen competition unduly or to enhance prices unreasonably. A primary purpose of this prohibition against conspiring is to ensure that both businesses and their customers benefit from competitive prices, product choice and quality services. An agreement made with other lawyers or notaries public to not provide signature execution witnessing services

in respect of mortgage refinancing documents is an example of activities which could violate this provision. However, it is important to note that this does not impede an individual, acting independently from his or her competitors, from deciding whether or not to offer such services to a potential client.

Where the Commission has reason to believe that an individual or company is conducting its affairs in a manner contrary to section 45 or other provisions in the Act, they will conduct an investigation. Investigations under the Act can lead to criminal proceedings. Upon conviction of an offence under section 45, individuals or companies may face very substantial penalties. These can include fines to a maximum of \$10 million per incident and jail terms of up to five years. In addition, under section 36, victims may sue for losses incurred as a result of conduct that violates particular provisions of the Act, including section 45. For the specific working of these provisions, please refer to the Competition Bureau's web site at www.cb-bc.gc.ca.

In its letter, the Bureau referred to one of its pamphlets entitled "Reaching an Agreement with Competitors." This document and additional information on the Act are available on the Bureau's web site.

The Law Society has met with the Bureau, which has discussed its concerns with us directly. In light of that meeting, the Law Society has concluded (without passing judgment on the specific matters raised by the Bureau in its letters) that it would be prudent to ensure that all lawyers are reminded of the provisions of the Act, and in particular section 45. While lawyers are always free to choose for whom they act, a collective decision between competitors not to act in particular situations may trigger section 45 of the Act and expose the participants to legal sanctions, including prosecution. ❖



PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Receiving or accepting cash — is it worth it?

THE LAW SOCIETY is interpreting the “no cash” rules strictly. Consider whether you want to receive or accept cash at all. If you decide to have a no cash office, explain this to your client at the beginning of your relationship and mention it in your retainer agreement. Examples of retainer agreements are on the Law Society website.

If your office accepts cash, make sure that all staff who handle money understand Rules 3-51.1 (cash transactions) and 3-61.1 (records of cash transactions).

HOW DO YOU GIVE CASH REFUNDS? VERY CAREFULLY!

Lawyers may only receive or accept an amount of \$7,500 or more in cash in the very limited circumstances permitted under Law Society Rule 3-51.1. When a lawyer has received a cash retainer in accordance with subrule (3.1), and the client is later entitled to a refund, subrule (3.1) governs when the refund must be made in cash rather than by trust cheque.

If you receive or accept an amount of cash under \$7,500 into your trust account and you need to give a refund, you would make out a trust cheque payable to the client rather than giving the client cash. However, if you receive or accept an amount of \$7,500 or more in cash in the limited circumstances permitted in subrule (3.1), any refund greater than \$1,000 of such money received or accepted must be made in cash. If the refund is for \$1,000 or less, you would provide the refund by trust cheque payable to the client.

Here’s an example of receiving retainers and issuing a refund:

Jane Doe retained lawyer John Smith and gave John a \$10,000 cash retainer for a litigation file. John did the work and billed the file for \$10,000. Then John asked Jane to replenish his retainer by providing \$2,000 to do more work for the same file. Jane gave John \$2,000 in cash. Unexpectedly, the matter settled and John issued a final bill for \$800. He received a total of \$12,000 in

cash from Jane. How should John refund the \$1,200 in trust to Jane? John has received a cash retainer of \$7,500 or more (a total of \$12,000 for this file) and the refund is greater than \$1,000. The Rule requires John to refund the \$1,200 to Jane in cash.

If you are providing a cash refund, it means a trip to your financial institution to make a cash withdrawal. You must not make out a trust cheque payable to “Cash” or “Bearer” (Rule 3-56(2)(b)). You can use the form of withdrawal slip provided by your financial institution to make the withdrawal. I suggest that you ask for a copy of the withdrawal slip to staple in your deposit book or to your bank statement.

When you hand over the cash to your client, have the client sign your duplicate receipt book for the cash refund just as you had the client sign your duplicate receipt book when your client originally gave you cash (Rule 3-61.1). Also, make sure that you

continued on page 18

Receiving retainers and issuing a refund:

Cash retainer under \$7,500 = trust cheque

Cash retainer of \$7,500 or more with refund greater than \$1,000 = cash refund

Cash retainer of \$7,500 or more with refund of \$1,000 or less = trust cheque



Receiving or accepting cash — is it worth it?
from page 17

document the cash refund in both the individual client file and the monthly trust bank reconciliation so you have a written explanation for a withdrawal made other than by way of a trust cheque.

See my May 2008, December 2007 and October 2007 *Practice Watch* columns for more information on the rules for handling cash.

COMMON TRUST ADMINISTRATION FEE ERRORS

Some lawyers have been under the mistaken assumption that the trust administration fee only applies to real estate transactions. Not true! The trust administration fee applies to each client matter for which the lawyer receives any money in trust, not including fees and retainers (Rule 2-72.2). For example, whether you are acting for the plaintiff or the defendant, if you receive settlement funds into your trust account from ICBC regarding a personal injury claim, the matter attracts the fee.

Some lawyers have been under the mistaken assumption that the trust administration fee only applies to real estate transactions. Not true!

What is a “client matter”? In terms of accounting for the trust administration fee, a “client matter” means any distinct matter on which a lawyer is retained to represent or advise a client, including but not limited to (a) a transaction of any kind; (b) a claim or potential claim by or against the lawyer’s client; (c) a proceeding (Rule 2-72.1 (2)).

Note that only one fee is payable in respect of a single client matter in which a lawyer represents joint clients, or more than one lawyer in a law firm acts (2-72.2 (2)). However, if you act for two clients on two different client matters, you must charge the fee for each matter (e.g. \$10 for the Erica Jones and Frank Liu house sale and \$10 for the Erica Jones and Frank Liu condo purchase).

When should you record the trust administration fee? You should record the fee into your accounting system upon the receipt of funds into your trust account. You



should not wait to record it when you render an invoice to the client or close the file.

Can you charge the \$10 trust administration fee to your client? You may choose to charge the \$10 fee to your client as a disbursement, similar to other charges such as photocopying charges and third party filing fees, if you have provided for it in your retainer agreement. Alternatively, you may decide to pay the fee as part of general administrative expenses in the same way that you pay for other general expenditures for your firm.

When do you make your quarterly remittances? Lawyers are responsible for making the trust administration fee remittances to the Law Society quarterly by April 30, July 31, October 31 and January 31 of each year (Rule 2-72.2 (3)). Each remittance covers the three-month period ending March 30, June 30, September 30 and December 31 respectively. Quarterly remittances should have been made since the trust administration fee came into effect on March 1, 2005; however, you are not required to file a nil return for a quarter where no trust money has been received.

Refer to Rules 2-72.1 through 2-72.5 for more detailed information about the trust administration fee. You can also contact a Trust Assurance Auditor (trustaccounting@lsbc.org) for specific questions.

KNOWLEDGE AND SKILL IN PERFORMING RESEARCH

Lawyers are cautioned against relying on non-legal, general search engines and internet sites, such as Google and Wikipedia, as a primary research strategy. These sites are limited by their non-legal focus and unreliability in terms of authority,

currency and scope. When using sites and search engines as part of their research strategy, lawyers must evaluate the quality of information that appears online. Is it complete and up to date? Relevant to BC? Do you need historical perspective? Did you know that the information on BC’s free Revised Statutes and Consolidated Regulations website (www.qp.gov.bc.ca/statreg/) is more than a year out of date?

Relying on research results obtained from general non-legal sites may jeopardize a client’s case and put the lawyer at risk of an insurance claim and a complaint. A lawyer must acquire and maintain adequate skills to represent a client’s interest effectively (*Professional Conduct Handbook*, Chapter 1, Rule 1 (c)).

Relying on research results obtained from general non-legal sites may jeopardize a client’s case and put the lawyer at risk of an insurance claim and a complaint.

When conducting research, remember the many services and guides provided by the BC Courthouse Library Society (www.bccls.bc.ca). You can use the Courthouse Library website as a jumping off point for finding free legal research websites that you might not discover through Google. It’s possible to piece together a current BC statute using free internet resources (see the BC Courthouse Library’s online guide, *Searching B.C. Statutes & Regulations on the Internet*) but it’s much faster to contact the Courthouse Library staff for assistance with this and other internet research issues.

HOW FRAUDSTERS USE YOUR TRUST ACCOUNT — COUNTERFEIT CHEQUES AND BANK DRAFT SCAMS

Many scams are making the rounds and some street-smart lawyers are picking up the scent and not getting burned; however, some fraudsters are hard to detect.

One ruse to make use of your trust account involves a new client, located outside of Canada, requesting your assistance to recover a debt from a Canadian company. At first instance, this seems like an ordinary request; however, you are asked to provide little in the way of legal services. When you send a demand letter and quickly receive a bank draft or certified cheque for the full

amount from the alleged debtor payable to your firm in trust, the instrument looks completely authentic but it's not. If you call the telephone number printed on the cheque or draft, the call is answered professionally and the instrument is declared valid. The client may then ask you to transfer the money electronically.

How can you protect yourself? Below are some steps that you can take to protect yourself:

- Verify the identity of your new client. The model client identification and verification rules posted March 31, 2008 on the Federation of Law Societies of Canada website (www.flsc.ca) provide assistance. Determine how you can verify a client's identity through the use of an agent when the client is not present in Canada. All Canadian law societies have undertaken to adopt local rules mirroring the substance of the model rules.
- Ask why the client particularly chose you to act. Does it make sense? Don't succumb to flattery; check out the information.
- Verify telephone numbers independently. Relying on a telephone number given to you by your "client" may not expose the scam. Look up telephone numbers independently from the numbers your client gives you and the numbers that appear on payment instruments to find out if the numbers are legitimate.

The Law Society of BC's client identification and verification rules will come into effect on **November 1, 2008**. The new rules are designed to codify the steps prudent legal counsel would take in the normal course to verify the identity of a new client. The rules will also outline the records lawyers must keep to demonstrate compliance with the rules. More information about BC's rules will be forthcoming.

- Contact your banker and ask him or her to contact the bank issuing the certified cheque or bank draft to verify the instrument's authenticity and to confirm that the funds have been cleared. If you draw from your trust account without the certified cheque or bank draft being verified or cleared, your firm may be exposed to loss.
- Don't pay out hastily when it's not necessary. Just because a client is anxious to get his or her money does not mean that the pay-out has to be immediate.
- Know the electronic transfer rules. Remember that Law Society Rule 3-56(3.1) (a) only permits electronic transfers when the amount is over \$25 million.

FURTHER INFORMATION

Feel free to contact Barbara Buchanan at 604-607-5816 or bbuchanan@lsbc.org for confidential advice or further information regarding any items in *Practice Watch*. ❖

Dear Lawyer:

We, the management of Scamco Industrial Corp., require your legal representation in Canada. Scamco sells widgets and supplies them to many North American customers. We have several clients that are behind in their payments to Scamco. We would like to retain you on a contingent fee arrangement to receive payments on behalf of Scamco and subsequently disperse the funds as per our instructions. We are not asking you to make any representations to us concerning the outcome of any litigation or investigation.

In order for us to move forward, we require a completed Attorney-Client Contingent Fee Contract faxed from your office to ours. We can provide you with any back-up documentation that you need including purchase orders and receipts.

Sincerely,

Melvin K. Scammer
Controller



PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Getting things done! Avoiding procrastination and dealing with interruptions



♪ You feel kinda trapped You don't know what to say Just say no... ♪

—Words and music by M. Young/Q. Jones Jr., recorded by Young MC

THE TWO BIGGEST hurdles in personal time management are procrastination (trying to *start* a task) and dealing with interruptions (trying to *finish* a task).

One of the best time-management tools is to understand when you are procrastinating on a task and start to take steps to correct it.

How do you start?

Recognize that you are procrastinating. Assuming you have already separated your tasks into four categories:

- important and urgent,
- important but not urgent,
- urgent but not important, and
- neither important nor urgent

and have decided which of your important and urgent tasks you should be tackling but are not, then you need to recognize that you may have a problem. Self-awareness is the first step to self-correction.

Figure out *why* you are procrastinating. It could be that you find the task unpleasant. You may find it daunting in scope. Or you keep giving it a low-priority on your list with the hope that someone else will do it. Once you know the why you can take steps to figure out how you will deal with it.

Set yourself a deadline. It is always better to work towards a defined finish date than allow the tasks to consume all your time.

Task is unpleasant? Promise yourself a reward once it is done. And realize the consequences to you if you don't do it are probably worse than doing the task.

Task too daunting? Break it into smaller parts and do the first part now.

Set yourself a deadline. It is always better to work towards a defined finish date than allow the tasks to consume all your time. By setting a deadline, you are making a promise to yourself that you don't have to deal with this (unpleasant) task once the deadline is met. That itself should be a positive reward!

Now that you finally have your job started, how do you manage the inevitable interruptions that are keeping you from finishing? To do this, you must take control of your boundaries and space.

Life is a series of interruptions interrupted by interruptions — (unknown)

-or-

Life is what happens to you while you're busy making other plans — John Lennon.

So how do you handle the unending series of interruptions?

First, divide and conquer. Take your day and isolate time to do your most important work — free of interruptions. Make an ap-

pointment with yourself in your calendar to work on this project. Change your voice mail message to inform callers that you will be returning calls after a specific time and then stick to your commitment. Then close your door.

Second, when you do take telephone calls — be all business. Cutting out the unnecessary chatter will free up time for returning more calls in less time.

Third, use e-mail. This avoids telephone tag and forces people to be succinct.

Fourth, post frequently asked questions on a web page, wiki, extranet, Q&A document or collaborative web page. Let the FAQs speak to your audience so that you are not called upon to answer routine questions over and over — and avoid the interruptions.

Fifth, work somewhere out of your office if you *really* have to get something done. It could be in a “war room” in the office or your home or a library. By removing yourself from the sources of interruptions, you craft the space you need to do your important work.

By getting started on your tasks, eliminating interruptions and putting a halt to new work, you will go a long way towards achieving your objectives...

Lastly, and **most** importantly, learn to say “No”. People will continually approach you to take on new tasks ahead of what you currently have to do — to the effect that your existing work load gets further and further behind. Practise saying “no” to the new tasks until your existing work is caught up. “No” is the most important word when it comes to handling your time.

By getting started on your tasks, eliminating interruptions and putting a halt to new work, you will go a long way towards achieving your objectives rather than those of others and no longer feel trapped by your commitments. ❖

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Larry William Goddard
- Michael Curt Scholz
- Steven Olaf Youngman

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

LARRY WILLIAM GODDARD

Abbotsford, BC

Called to the Bar: May 20, 1975 (ceased membership March 6, 2007)

Discipline hearings: September 17, 2007 (Facts and Verdict) and February 27, 2008 (Penalty)

Panel: Leon Getz, QC, Chair, Ralston S. Alexander, QC and Kenneth M. Walker

Reports issued: October 25, 2007 (2007 LSBC 46) and May 12, 2008 (2007 LSBC 14)

Counsel: Maureen S. Boyd for the Law Society and no-one on behalf of the Respondent

FACTS

On May 3, 2007, a citation was issued against Larry Goddard, alleging 15 counts of misconduct that occurred between September 2000 and January 2007. The allegations included breaches of undertaking, failure to provide clients with an appropriate quality of service, failure to respond to colleagues and failure to respond to communications from the Law Society. The Law Society did not proceed with one of the counts at the hearing.

As Goddard was not present at either hearing, the panel had limited evidence from which to find facts. The panel referred to Goddard's conduct record and findings from a previous citation in order to better understand his circumstances.

Breaches of Undertaking

Goddard represented client FCC in a loan transaction. In letters dated June 27 and October 25, 2004, Goddard undertook to transfer funds to the solicitors for the vendors and ensure that all registered financial charges against the subject property in trust were discharged in the Land Title Office and provide particulars of the discharge within 60 days. Goddard failed to do so. In addition, Goddard failed to respond to communications from another lawyer involved in the transaction.

Goddard represented client LM in the sale of a mobile home. In a letter dated September 25, 2000 Goddard undertook to file a release of the existing PPSA charge registered against the mobile home and provide confirmation of having done so. Goddard failed to file a release within a reasonable period of time. In addition, Goddard failed to respond to communications from a notary representing the purchasers.

Goddard represented clients AC and RC in a real estate transaction with a numbered company. In a letter dated January 31, 2006, Goddard undertook to provide copies of financial documents within five business days of the completion date, pay the amount required by the payout statement, ensure the mortgage on the property was discharged and register the transaction with the Land Titles Office. Goddard failed to provide payout particulars within five business days of the completion date and failed to obtain a discharge of the mortgage held by the numbered company.

Failure to Provide an Appropriate Quality of Service

Goddard represented clients VS and MS in a real estate transaction. Goddard failed to provide a registrable Form A to the notary representing the purchaser. In doing so, Goddard failed to provide his clients with the quality of service equal to that of a competent lawyer in a similar situation. In addition, Goddard failed to respond promptly to the letters of February 9 and 13, 2006 from the notary representing the purchaser.

Failure to Respond to the Law Society

Goddard failed to respond promptly or at all to communications from the Law Society regarding seven complaints received by the Law Society about his professional conduct.

VERDICT

Goddard did not attend the hearings, citing numerous health problems, and counsel did not appear on his behalf. The panel acknowledged that he had health issues, but decided that despite his absence it was appropriate to proceed.

The panel found that in three instances, Goddard breached the undertakings to which he was subject. The panel also found that in three instances, Goddard failed to respond to communications from other lawyers or notaries public. The panel found that in seven instances, Goddard failed to respond on a timely basis or at all to communications from the Law Society. And the panel found that in one instance, Goddard failed to meet the required standard of competent service.

The panel noted that professional misconduct constitutes a marked departure from conduct the Law Society expects of its members. After reviewing the evidence, the panel concluded that Goddard's actions on all 14 counts constitute professional misconduct.

PENALTY

The panel accepted that Goddard's professional misconduct in this case arose from ongoing personal and family health issues, which resulted in him becoming disengaged from practice.

The panel noted that while the Law Society made repeated efforts to assist Goddard, it is his responsibility to get help when things are going wrong in practice. Goddard did not reach out in any way for needed assistance.

The panel noted that Goddard's professional misconduct is aggravated by its continued nature. The panel noted that the 14 counts of professional misconduct in the case before them were similar to the instances alleged in the 2004 citation against Goddard.

With regard to Goddard's personal history, the panel concluded that it is reasonable to impose a requirement that if he applies for reinstatement he cannot return to practice without proof that the underlying conditions have been resolved.

The hearing panel ordered that Goddard:

1. be suspended for six months, effective immediately;
2. upon application for reinstatement, provide a medical opinion from a physician acceptable to the Credentials Committee who can verify his mental and physical fitness to practise law;
3. pay a contribution to the costs of the proceedings in the amount of \$12,000.

MICHAEL CURT SCHOLZ

West Vancouver, BC

Called to the Bar: May 14, 1979

Discipline hearings: April 24, 25 and May 4, 2007 (Facts and Verdict), May 5, 2008 (Penalty)

Panel: G. Glen Ridgeway, QC, Chair, Richard Stewart, QC, Dirk Sigalet, QC

Reports issued: January 17 (2008 LSBC 02) and June 2, 2008 (2008 LSBC 16)

Counsel: Maureen Boyd for the Law Society and George Gregory for Michael Scholz

FACTS

Michael Scholz worked for a Vancouver law firm from 1979 to June 30, 2001 when he accepted an offer to become the President, legal advisor and Vice-Chair of the Board of Directors of G. Corp., one of his clients. Scholz and his firm agreed to a six month transition period commencing July 1, 2001 to wind up his practice.

Scholz was also a solicitor for client W. Ltd. In 1997, as a result of the failure of the Eron Mortgage Corporation, the Registrar of Mortgage Brokers froze W. Ltd.'s bank account.

The bank that held the account commenced proceedings to have the funds paid into court for determination of the rightful owner or owners. DC, an investor in W. Ltd., also commenced an action to recover \$100,000 he had loaned to W. Ltd. Appearances were filed by the bank, the Province of British Columbia, the Registrar of Mortgage Brokers, and investor LM.

Scholz obtained a court order to transfer the frozen funds to his law firm on the condition that they be held in trust, unless otherwise ordered by the court or agreed to by all parties.

In May 2001, Scholz informed W. Ltd. that his firm would no longer represent them until arrangements were made for the payment of his account, which was \$106,000 in arrears. Scholz shared this information with other claimants who had loaned funds to W. Ltd and therefore had an interest in the trust fund.

In July 2001, Scholz told DC, now President of W. Ltd., that there was an opportunity to earn a greater return for the funds being held in trust. The investment opportunity was with G. Inc, a subsidiary of Scholz's company, G. Corp.

Scholz signed a trust cheque for the funds and delivered it to G. Corp. on July 20, 2001. The funds were ultimately repaid to the law firm, with a portion of them applied to the accounts owing.

The law firm was unaware that the transaction had taken place and had not authorized Scholz to sign trust cheques. Subsequent to Scholz's departure, the law firm investigated the matter, returned the funds and referred the matter to the Law Society.

VERDICT

The panel noted that all members of the Law Society are officers of the court, who have a duty to maintain the integrity of our legal system and honour court orders.

The panel noted that while there was ultimately no financial loss for the parties involved, that does not mitigate the seriousness of the breach.

The panel found that Scholz failed to follow through on the conditions set out in the court order governing the trust funds, finding him in breach of the order. In doing so, Scholz was in contravention of Rule 3-51 of the Law Society Rules.

The panel also found that Scholz was acting in circumstances that gave rise to the potential for divided loyalties and in a conflict of interest.

PENALTY

The hearing panel ordered that Scholz:

1. be suspended from the practice of law for a period of one month commencing June 2, 2008; and
2. pay costs in the amount of \$26,437.50.

STEVEN OLAF YOUNGMAN

Vancouver, BC

Called to the bar: May 12, 1981

Ceased membership: June 17, 2008

FACTS

A citation was issued against Steven Youngman on September 12, 2007, alleging failure to protect confidential client information. Youngman admitted that he failed to take any or adequate steps to protect his client's confidential information in his dealings with US federal prosecutors.

Failure to protect confidential client information

From 1983 to 1990, Youngman was registered as an associate at a Vancouver law firm, but was seconded to and worked as a de facto employee of a Vancouver accounting firm. From 1990 to 1996, Youngman was a partner at the same accounting firm. He maintained his membership with the Law Society throughout this period.

In 1988, Youngman drafted and implemented a royalty agreement for client RE and a number of companies under his control. The agreement compelled the client's companies, based in North America, the United Kingdom and Australia, to pay royalties for use of "intellectual property" owned by a company located in Anguilla, a tax haven. The purpose of this arrangement was to reduce the taxable income of the companies, thereby augmenting the client's personal income.

RE was charged with tax fraud by the United States Department of Justice, pleaded guilty and was jailed for one year. In discussing information about his client's case with US federal prosecutors, Youngman failed to take any or adequate steps to protect confidential information about his client.

ADMISSION AND PENALTY

In June 2008, Youngman admitted to the Discipline Committee that his conduct constituted professional misconduct. He resigned his membership with the Law Society, effective June 17, 2008. Under Rule 4-21, the Committee accepted Youngman's admission and his undertakings:

1. not to reapply for membership in the Law Society until June 17, 2013 (five years from the time he ceased to practice law);
2. not to apply for membership in any other law society without first advising the Law Society of BC in writing; and
3. not to permit his name to appear on the letterhead of any lawyer or law firm, or otherwise work for any lawyer or law firm in BC without the written consent of the Law Society.

Credentials hearing

RE: AN APPLICANT

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

Hearing Dates: February 26 to March 1, 2007 (Application for call and admission by transfer), February 15, 2008 (Costs)

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

Reports Issued: June 19, 2007 (2007 LSBC 34) and June 19, 2008 (2008 LSBC 17)

COSTS

Majority (Robert Apps, QC, and John Hogg, QC)

Law Society Rule 5-9 states that costs in all instances should remain at the discretion of the panel. Awards of costs should be reasonable and not prevent applications that might otherwise be made in appropriate circumstances.

Awarding full costs to the Law Society of \$43,389.31 would have a punitive effect and serve as a substantial deterrent for any person wishing to apply for enrolment with the Law Society.

The majority fixes costs at \$20,000, to be paid by release of the amount held as security for costs.

Minority (Dirk Sigalet, QC)

There are policy reasons and binding precedent that require the panel to order full costs against the unsuccessful Applicant.

For the reasons clearly set out in *Law Society of BC v. McNabb* and *Law Society of BC v. Edwards*, the successful party is entitled to a full indemnity for its costs. And while the costs ordered must be reasonable, the panel did not hear evidence or argument that the costs were unreasonable. Ability to pay is not a factor when determining the amount of costs. However, once costs are determined, ability to pay then becomes a factor in deciding when the costs are paid.

The minority finds costs of \$43,489.31 to be paid as follows:

1. \$20,000 by release of the amount held as security for costs; and
2. payment of the balance on or before December 31, 2008 of \$23,409.31.

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.



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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@no-vuscom.net.

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