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BENCHERS' BULLETIN

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What people should know about law and the legal profession

by Gordon Turriff, QC

BENCHERS' BULLETIN

The *Bencher's 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.

Suggestions on improvements to the *Bulletin* are always welcome — please contact the editor at mbernard@lsbc.org. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50 (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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I DISCOVERED WHEN I became a Bencher that I knew a lot less about what the Law Society and the Benchers did than I thought I knew. Until then, I had been pretty cynical about the Benchers' work, tending to side with those who considered the society to be an organization that had grown beyond what it needed to be. I knew that it oversaw credentialling; that it had a disciplinary function; that it ran a Professional Legal Training Course; that it occasionally told us about changes to the *Professional Conduct Handbook*; and that it funded a scholarship for graduate law studies. I had pretty much let the society take care of itself and, like many of us, I was happy that our paths had not crossed.

I also learned very soon that the Benchers and all the Society staff took the public interest mandate very seriously and that every decision the Benchers made was tested against the public interest standard. Soon the rule of law, independence of lawyers, self-governance and solicitor-client privilege were matters with which I had constant contact. They were and are the canopy over the daily work of the Benchers and Law Society staff.

But in August 2001, just by chance, I went for a long run with the then President, Richard Margetts, QC, beside the river in Saskatoon. It was an invigorating run in more than one sense. As some may know, Richard is quite competitive. So we were probably doing six-minute miles. He was very keen to tell me everything the Benchers were doing and what he had in mind for them, even though his term as President was winding down. By the end of the run, I was intrigued, if not hooked, and that fall I was elected as one of the Benchers from

Vancouver County. So here I am, as cynical as I may then have been. Now I know more about the Law Society and the Benchers than is probably healthy.

My pre-Bencher cynicism evaporated within a few months of my taking up my new responsibilities. I learned quickly that everything the Law Society did was done in the public interest, something I may have understood in a vague way but had never really thought about.

I also learned very soon that the Benchers and all the society staff took the public interest mandate very seriously and that every decision the Benchers made was tested against the public interest standard. Soon the rule of law, independence of lawyers, self-governance and solicitor-client privilege were matters with which I had constant contact. They were and are the canopy over the daily work of the Benchers and Law Society staff.

For me, as one lawyer in the community of lawyers, those concepts had been of academic interest. For Benchers, they are matters of central importance. But I knew so little about them. It was a steep learning curve. I climbed it chiefly with the help of Michael Lucas, now the Law Society's policy manager.

It would not be right to say that these subjects consumed me, but it would be right to say that I came to see that they were matters that must not be ignored or even undervalued. I learned by interviewing articulated students that they knew as little as I had known and when I spoke about these topics to people in the community I raised polite smiles or got blank stares.

I could see that there was work to be done. I could see that public confidence in the Law Society and the Benchers required public education. I could see that people in the community needed to learn that they depended on the rule of law; that the rule of

law was only as secure as lawyers allowed it to be; that lawyers were independent because the public interest demanded it; that self-governance was a necessary condition of independence of lawyers; and that independence was illusory if solicitor-client privilege was not vigorously defended.

What to do? As a start, while I was Chair of the Independence and Self-Governance Committee, I prompted the development of a unit on lawyer independence for high school law and civics classes. The Benchers quickly signed on to that initiative. They also endorsed public education as one of their chief priorities. This was an

opening for me. I proposed a speaking tour, to occur during the celebration of the society's 125th anniversary of its incorporation. Happily the Benchers supported the

... I will travel the province this year delivering the public interest, rule of law, independence of lawyers, self-governance message to all who will hear me.

idea and the Law Foundation provided some funding.

In the result, I will travel the province

this year delivering the public interest, rule of law, independence of lawyers, self-governance message to all who will hear me. My hosts will include high school and college classes, local libraries, historical societies and business clubs. I will speak to anyone who will have me. When I can, I will take with me the resident Bencher or Benchers and I will bring along one of the Lay Benchers whenever the arrangements can be made.

I am looking forward to taking the profession's message into the community and I look forward to seeing local lawyers as members of the audiences I will address. ❖

Benchers honoured

Second Vice-President Gavin Hume, QC, receives the YMCA Fellowship of Honour from Governor General of Canada Michaëlle Jean. The Fellowship of Honour recognizes outstanding service of the highest degree in the YMCA movement.



Steven Point, Lieutenant Governor of BC (left) and Premier Gordon Campbell (right) present Lay Bencher Patrick Kelly with a BC Community Achievement Award, which celebrates British Columbians who go above and beyond in their dedication and service to others.



The Olympic challenge

by Timothy E. McGee

THE VANCOUVER 2010 Olympic Games will be a spectacular event, witnessed live and on television by billions of people from around the world. The Games will bring the world together in the pursuit of athletic excellence, and we will be host to the thrill of victory for some and the agony of defeat for others.

The Olympics will also bring a unique set of challenges for businesses and organizations that, like the Law Society, operate in the downtown core. The Law Society's offices are situated in the "red zone" or epicentre of public events during the Games. The opening and closing ceremonies and nightly medal presentations at BC Place stadium are a short walk from the Law Society as are celebration centres with music, videos and other entertainment. While Olympic organizers want people to visit the "red zone" and participate in the festivities, we already know that street closures and

pedestrian-only access will be the order of the day.

The Law Society will be open for business during the Olympics, but we recognize that it will not be business as usual. Our goal is to maintain an appropriate level of service in our key regulatory areas and continue to handle day-to-day enquiries from the public and from members.

While we don't know whether demand for our services will be affected by the Olympics, we assume there will be some drop-off in regular activity. We are putting in place staffing plans to deal with all eventualities.

The Olympics promise to be an exciting time, and Canada looks ready to take its place on the podium as never before. We will be catching the Olympic spirit in different ways at the Law Society, and I look forward to sharing these with you in the months to come. ❖

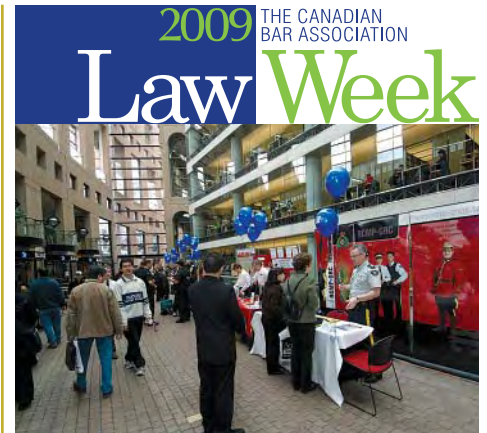
This *Bulletin* is green

The *Benchers' Bulletin* is now Forest Stewardship Council Certified (FSC) — a small but important step towards greening the Law Society.

FSC is an international certification and labeling system that guarantees that the forest products from which this paper is produced come from responsibly managed forests and verified recycled sources.

Using FSC-certified paper helps protect wildlife habitat and endangered species. It also protects clean water by respecting rivers and waterways, ensuring adjacent lands are not planted with genetically modified trees or converted into plantations.

Keep reading the *Benchers' Bulletin* for more information about other green initiatives underway at the Law Society. ❖



Celebrate Law Week: April 16 – 25

LAW WEEK 2009, with its theme "Access to Justice: Public Confidence in the Justice System," is being held from April 16 to 25 and features hosted events in the Cowichan Valley, Fort St. John, Kamloops, Kelowna, Nanaimo, New Westminster, Maple Ridge, Port Coquitlam, Vancouver and Victoria.

Hundreds of lawyers around the province volunteer their time to Law Week events to commemorate the signing of the Canadian *Charter of Rights and Freedoms* and to provide the public with an opportunity to find out more about the law and the legal system. Events include mock trials, free law classes, citizenship ceremonies, courthouse tours and a free public forum in Vancouver.

The series of events is sponsored by the Canadian Bar Association (BC Branch), in partnership with the Continuing Legal Education Society of BC, the Law Foundation of BC, the People's Law School, the Vancouver Bar Association and the Law Society of BC.

For more information on events throughout BC during Law Week, visit bclawweek.org. ❖

Law Society President launches speaking tour

GORDON TURRIFF, QC, Law Society President, has embarked on a province-wide speaking tour to help educate the public about the rule of law, independence of lawyers and the Law Society's public interest mandate.

The President's tour is part of the Law Society's 125th anniversary activities, taking place throughout 2009.

"I hope by this speaking tour to engage the public — people who have little knowledge of law and the legal profession — about the role the Law Society plays in protecting the public interest," he said. "I also want to promote public understanding of the rule of law, independence of lawyers and self-regulation."

"The public interest permeates every question the Law Society seeks to answer, every policy we promote, every step we take. I am not making this up. I am not dressing it up for public consumption. It is so."

—Gordon Turriff, QC

Turriff's first stop was on February 24 at New Westminster, where he held a public lecture at the local library. He also spoke to a legal studies class at Douglas College.

He has since travelled to Kelowna, Penticton, Nanaimo, Qualicum Beach, Prince George, Surrey, Fort St. John and Dawson Creek, delivering his message to students, seniors, chambers of commerce, community groups and the general public.

The public interest plays a pivotal role in the Law Society's work, he states in his keynote address.

"The public interest permeates every question the Law Society seeks to answer, every policy we promote, every step we take. I am not making this up. I am not dressing it up for public consumption. It is so."

Turriff describes the role, responsibilities and structure of the Law Society, but he also delves into a deeper discussion of the principles that underpin the society's work, including the rule of law and its role in community affairs.

"The rule of law means there is one law for all, legitimated by all. It can be broken down into three principles — laws reflect community standards, law regulates the relationship between governments and people, and governments are not above the law.

"If we want to maintain the rule of law, we must be vigilant. We must insist that laws reflect the standards of the community, not the standards of the noisy few."

Turriff also focuses on independence of lawyers in his keynote address, which he adapts to his varied audiences.

"Some people believe that independence of lawyers is a privilege, others think that it is a public right, subject to restriction. Still other people — and I am one of them — think that independence of lawyers is a constitutional value or imperative, as secure as independence of judges. Lawyers must be independent.

"Be certain that there are independent lawyers who will use their best judgment in your interests, free from government or anyone else who might seek to stop them from discharging their duty of loyalty to you as their clients."

On the topic of self-governance, Turriff does not mince words.

"Lawyers must govern themselves. That has been the way in British Columbia, and it must be the way of the future. You can trust the Benchers of the Law Society, acting in the public interest, to make appropriate rules for all lawyers. Those rules will ensure that lawyers are people of integrity and that they are properly equipped to serve their clients' needs."

The President's speaking tour continues through September 2009. ♦



Gordon Turriff, QC, speaks to members of the public at the New Westminster Public Library on February 24 as part of the President's speaking tour.

Mr. Turriff's upcoming speaking dates and venues:

- Surrey Board of Trade*
April 23, 11:30 am
- Kamloops Public Library*
April 29, 7 pm
- 100 Mile House Rotary Club
April 30, 12 pm
- Vancouver Brock House Society
May 5, 10:30 am
- Rotary Club of Richmond
May 13, 12 pm
- Prince Rupert Public Library*
May 14, 7 pm

* Open to the public.

Law Society's 2009-2011 Strategic Plan

THE BENCHERS HAVE approved a strategic plan that will guide the Law Society over the next three years.

The plan, adopted at the Benchers' February meeting, identifies three principal goals:

1. enhancing access to legal services;
2. enhancing public confidence in the legal profession through appropriate and effective regulation of legal professionals;
3. effective education, both of legal professionals and those wishing to become legal professionals, and of

the public.

The Benchers identified a number of strategies and policy initiatives to achieve

The plan will enhance the Benchers' ability to focus on policy development that best meets the fulfillment of the Society's mandate.

these goals. The plan will enhance the Benchers' ability to focus on policy development that best meets the fulfillment of the Society's mandate. It also will

enable the Law Society to optimize its staff resources in the development of those policies and strategies.

President Gordon Turriff, QC and CEO Tim McGee will be meeting with non-elected and elected officials within the provincial government, as well as other key stakeholders, to explain the plan and the Law Society's Key Performance Measures, which track progress in a number of operational areas.

The details of the Strategic Plan will be available to members in the Law Society's Annual Report in July. ❖

Rick Sugden, QC

Rick Sugden, QC passed away on January 5, 2009 after a lengthy illness.

Rick was called to the bar in 1973. He practised law with Braidwood & Company until 1988, and with Sugden, McFee & Roos until his retirement in June 2004.

Rick received the Law Society Award in 2004 in recognition of his exemplary service to the legal community. The lawyers who supported his nomination universally described him as the "lawyer's lawyer," regarded as pre-eminent counsel at all levels of court and "a model of thoughtful integrity."

The Law Society expresses the sincerest of condolences to Rick's family and friends and professional colleagues.

Rick Sugden, QC receiving the Law Society Award from then First Vice-President Ralston Alexander, QC.





Gordon Turriff, QC

GORDON TURRIFF, QC is the 70th head of the Law Society. First elected a Bencher for 2002, Turriff is senior counsel in the Vancouver office of Stikeman Elliott LLP.

He currently serves as Chair of the Executive Committee and of the Litigation and Appointments Subcommittees. He is also a member of the Equity and Diversity Advisory Committee and is the Benchers' representative on the Federation of Law Societies of Canada National Committee on Accreditation.

Turriff has authored or co-authored many publications, including the *Annotated British Columbia Legal Profession Act*, the *British Columbia Annual Practice* and a chapter on "Remuneration" in *Barristers & Solicitors in Practice*.

Benchers' Bulletin: What prompted you to become a lawyer?

Gordon Turriff, QC: Looking back now, I think it was the day the US National Guard shot and killed four students on the campus of Kent State University in Ohio. I was a student myself then. My direction was a result of everything that was going on then, where there were challenges every day to government action. And I was sympathetic to that because I've always

been skeptical of government.

BB: Why turn to law? Why not politics or activism?

GT: I was mildly interested in politics, but I think I was turned off it because it seemed to be something that depended very much on who you happened to know rather than how good you might be. I thought the longer term solution was to get into the system rather than to attack it from the outside.

BB: What made you decide to run for President of the Law Society?

GT: One thing led to another. I asked for and was given lots of responsibility by some of the Presidents under whom I served [as a Bencher]. And I just became more and more involved and thought that I could continue to contribute in bigger ways, and eventually the [Benchers] agreed. And here I am.

BB: What in your opinion is the President's most important responsibility?

GT: To help to show people the way. Perhaps this year particularly, to help educate the public about the role the Law Society plays in the community, the rule of law, independence of lawyers and

self-governance as a necessary condition of independence.

BB: How did you come up with the idea of a province-wide speaking tour?

GT: It seemed to be the right thing to do. I could tell in speaking to people in the community, even speaking to articulated students and young lawyers, that people just didn't have any clear idea of what the Law Society is all about, what its mandate is, what it does from day to day. And I thought we needed to communicate that information.

BB: And how is the tour going so far?

GT: The thing that surprises me is that people really are interested in the subjects that I'm taking to them; I wasn't sure whether they would be. But they seem to be very interested in what I'm telling them. And that's good because that's exactly what I'd hoped for.

"[The President's most important responsibility is to] help to show people the way. Perhaps this year particularly, to help educate the public about the role the Law Society plays in the community, the rule of law, independence of lawyers and self-governance as a necessary condition of independence."

—Gordon Turriff, QC

BB: What would you say to *Bulletin* readers about the benefit of serving as a Bencher and President for the Law Society?

GT: It's a great opportunity to make a contribution to the public welfare. It's also interesting, and it's fun. You get a chance to work with good people. Not only fellow Benchers, but Law Society staff. Absolutely, I would do it again.

BB: How many hours do you typically spend doing Bencher work each month?

GT: Well over 100.

BB: And that's in addition to the work you do at Stikeman Elliott.

GT: And in addition to my work on two books.

BB: So when do you sleep?

GT: Not often, actually. Not often. I'm looking forward to that on January 1, 2010. ♦



Lawyers can improve access to justice

By Dana Bales,
staff writer

LAWYERS HAVE A crucial role to play in improving people's access to the justice system, according to panellists at a Law Society public forum, *Clearing the Path to Justice*.

Held on January 28, the forum explored barriers to accessing the justice system and creative solutions to break down those obstacles.

Keynote speaker the Right Honourable Beverley McLachlin, PC, Chief Justice of Canada, said that, even though Canada's justice system "ranks with the best," lawyers, government and the courts need to work together to make it better because "solving the problem will require a multi-pronged attack."

"The problem," she said, "can be described as a disconnect between the ideal of the right to justice and the reality — many people are unable to access justice."

Panellist M. Sue Talia also spoke to the audience of 250 people in Vancouver about that disconnect. She is a private family law judge in California, where both sides of a

family law case can choose to use a private judge, rather than a publicly appointed one.

"If you go into court and all you know is you might lose your kids, you might lose your home, you might lose your pension rights and you don't have access to someone who can tell you how to protect that," said Judge Talia, "then effectively the courts are failing you."

In California, family courts have seen as many as 80 per cent of the litigants come before them unrepresented by an attorney, which Talia called "unconscionable."

BC Attorney General Wally Oppal, QC — who took questions from the forum audience and explained important steps the government is taking to improve access — said the panellists' remarks highlighted the need for everyone in the justice system to work together.

"Lawyers have to come onside and help those people. There are pro bono operations and pro bono lawyers in this province. All of us have to get together and help those people who are unable to help themselves."

Panellist Lyall Knott, QC, articulated another access issue: specific cultural and language barriers. He is Board Secretary for the immigrant assistance society S.U.C.C.E.S.S., which runs legal clinics in conjunction with the Western Canada Society to Access Justice.

"Immigrants come to this country, and many of them have the same issues and problems as the rest of us, but they lack an understanding of our justice system, so access is denied," said Knott.

He added that some "come from a culture that distrusts and is suspicious of the legal system," and they question, "is our legal system there to help or is it there to suppress and punish? What is the role of the lawyer? Is the lawyer on my side or

their side?"

Others come from a culture where the rights and freedoms enjoyed by Canadians may be very foreign. Still others "may be reluctant to take certain issues to an outsider."

"For example," he said, "some in the Chinese community will not take family issues outside the family, for to do so would be a loss of face — this includes divorce, spousal abuse and child abuse."

Panellist Grand Chief Edward John of the First Nations Summit talked about the cultural challenges some First Nations people face. He praised the Supreme Court of Canada for case law that has helped to articulate justice for First Nations people. "In our case it's important, because we've seen far too many policies in this country throughout our history that undermine the interest of our people."

"So we have to go to the UN or we have to go to our courts."

Law Society President, Gordon Turriff, QC, told the forum audience access to justice is an important priority for Benchers. "We are taking many steps to try to help clear the path to justice." For example, the Law Society helps to fund Pro Bono Law of BC, which connects people who need free legal services with lawyers who can assist them.

Turriff also praised the "hundreds of lawyers who, every day, elevate the profession by donating their time to help people who have legal problems, but who don't have the means to pay for the help they need." ♦

Moderated by CBC Radio's Mark Forsythe, *Clearing the Path to Justice* was put on in partnership with CBC, *the Georgia Straight*, the Legal Services Society, the Western Canada Society to Access Justice and S.U.C.C.E.S.S.



Pictured at the forum, left to right: Timothy McGee, Judge Sue Talia, Grand Chief Edward John, Gordon Turriff, QC, Lyall Knott, QC, Chief Justice Beverley McLachlin and Mark Forsythe.

Team Finn takes on dreaded disease

"I do this for full moons and Finnrisers." – Patrick Sullivan on his decision to ride in the Cancer Foundation's Ride to Conquer Cancer

By Lesley Pritchard,
staff writer

AS A CORPORATE litigator, Patrick Sullivan knew about long, tough days. At least the North Vancouver lawyer thought he knew about them. That was before Finn got sick.

Finn Sullivan was born in 2005, along with his twin brother, Baird. Patrick and his wife, lawyer Samantha Mason, already had an older daughter, Sarah. With the birth of their two boys, the couple had what most would consider the dream family.

The dream was shattered in February 2007 when Finn was only 18 months old. Doctors found a tumour the size of a grapefruit in the little boy's belly. He was diagnosed with a rare form of cancer called Rhabdomyosarcoma.

"You can't really think when something like this happens," said Patrick, struggling to explain his state of mind. "It was an emotional jumble of fear and confusion. It was at BC Children's hospital and doctors used words like 'mass.' I commend them for it. It gave us a chance to transition to 'cancer.'"

Finn went through countless rounds of surgery, chemotherapy and radiation. There were many difficulties that came with the illness and the treatments, including the little boy having to wear a urinary bag. But his dad can still picture in his mind how Finn didn't let it get in the way of being a kid. "He would jump in his little yellow car and throw his pee bag behind his back and zoom down the hill on our cul-de-sac. Finn taught us a lot."

Gavin Marshall, a friend and fellow lawyer, also clings to the memory of the brave little knight whose favourite colour was pink. "Finn was amazingly brave despite the increasing pain and the litany of intrusive medical procedures which knocked him down, but never out."

It proved impossible for Samantha to work and she eventually decided to leave her law firm. Financial support from the legal community poured in. Friends would

show up at the couple's home with cash and instructions to spend it foolishly, or however they wanted. The money helped pay for the whole family to go to Boston where Finn got experimental treatment.

In Spring 2008, Finn was given the all-clear. The bliss lasted two short months. The cancer roared back with a vengeance and on October 9, 2008, Finn died at Canuck Place Children's Hospice.

The emptiness could have become unbearable. The tears flowed freely as Patrick talked about what he and his family have lost, as well as what they gained. Rather than a funeral, the family held a Celebration of Life. They handed out bookmarks with a picture of Finn jumping high in the air. On the back of the bookmark were the words, "Jump, Bounce, Run, Dance, Sing, Smile, Love." Patrick said his son did all these things with abandon.

Finn's tough, courageous and bound-

less energy in the face of hardship inspired Patrick to carry on. Patrick's friend Gavin, along with James Buckley, another lawyer friend, approached Patrick with the idea of forming a cycling team to raise money for cancer research. Patrick said yes immediately. And that's how a group of lawyers and their friends formed Team Finn in the Ride to Conquer Cancer.

Patrick hopes that the money raised will someday save others from the suffering he witnessed. At the same time, he also looks forward to the trip to honour Finn's approach to life. ❖

If you'd like to learn more about the ride, visit conquercancer.ca. The two-day ride starts June 20. Money raised will go to research, teaching and compassionate care at the BC Cancer Foundation.



The team of lawyers and their friends wear pink — Finn Sullivan's favorite colour. Inset photo: (left to right) Samantha Mason, Baird (holding photo of twin brother Finn), Patrick Sullivan and Sarah.

Tough economic times

*When times are good, people need lawyers.
When times are bad, people need lawyers.*

By Lesley Pritchard,
staff writer

THESE ARE UNSTEADY economic times. Real estate deals continue to collapse, pension funds teeter into trouble, and layoffs and bankruptcies fill the headlines.

The impact on law firms internationally has been dramatic. Those in the United Kingdom are still handing out a torrent of pink slips, laying off more than 2,500 lawyers and support staff. Figures from the US Department of Labour show the legal sector losing more than 5,000 jobs in the first three months of 2009.

The effect of the recession on lawyers and law offices in Canada is still unfolding, but it is evident the legal community here is not suffering the same scale of job losses as in the US and abroad. In fact, some law firms are experiencing a surge in business related to collapsing deals and insolvencies.

But there are still dark clouds ahead,

according to the president of Canadian legal recruitment firm, ZSA Legal Recruitment. Chris Sweeney reports that "law firms are being very cautious in their hiring," and "if you scratch beneath the surface, they are laying people off." His company's research suggests Canadian law firms can expect a drop in revenue of 10 to 25 per cent in 2009.

Jason Furlong, the Editor In Chief of the Canadian Bar Association's *National Magazine*, has not heard of any substantial job losses in Canada but believes it is only a matter of time.

"I think it will hit," said Furlong. "If Chris Sweeney is right, and some law firms are faced with a quarter of their business going away, that could be catastrophic for those firms."

Some large firms in BC have already downsized, including the Vancouver office of Lang Michener LLP, which had to lay off 11 staff members in February. And it is not

alone in its decision to make cuts, said Elizabeth Barclay, the firm's human resources manager. "This is something that is happening at many law firms in Vancouver."

Don Sorochnan, QC, a partner at another large law firm, Miller Thompson LLP, has been involved in firm management through three recessions. He has noticed less work coming into the office in certain areas, such as securities and real estate. However, he has observed an increase in other areas, such as litigation, insolvency and corporate restructuring. Sorochnan notes there has been personnel movement both in and out of the firm and describes Miller Thompson as always being on the lookout for strategic hires. "In these times, managers tend to stop procrastinating on staffing decisions that they were already contemplating."

Abbotsford solicitor Ted Strocel notes the impact of a slowing real estate market has been felt for more than a year, long



"In these times, managers tend to stop procrastinating on staffing decisions that they were already contemplating," says Don Sorochnan, QC.

before some US banks buckled under the pressure of subprime mortgages. A lawyer with more than 30 years experience, Strocel saw conveyance work slow down considerably in October and November, and believes the real test will come this spring when real estate normally picks up.

As a result of the changing economy, Strocel is seeing what he calls "scary stuff." He says buyers and sellers are engaging in transactions that are not properly secured. People are then bringing those shaky deals for him to look at after the fact. "I saw a lot of this back in the 1980s when real estate values plummeted; people would be desperately selling properties in exchange for the assumption of a mortgage, with the balance paid by way of promissory notes with no security."

Strocel and his firm, Cascade Law Corp., have worked to try to recession-proof themselves, broadening the practice and striving to make it flexible enough to offer what is needed in a changing economy. Despite the firm's best efforts, Strocel lays no claim to having the magic answer. "We are all in this together, and there is no question lawyers are being affected."

Still others are finding new opportunities in the current economic turbulence. The administrator at one medium-sized Vancouver firm has noticed her office is "as busy as heck." Ann Main at Camp, Fiorante and Mathews said the managing partner has told staff there are no layoffs on the horizon. The firm focuses on litigation cases, including class action lawsuits and workers' compensation claims.

Lorna Pawluk, a sole practitioner in Vancouver, is not feeling the impact of a falling economy, at least not yet. Pawluk offers her services to a number of large companies as well as some government departments. Her practice focuses on occupational health and safety; if there's a workplace accident she helps the employer meet their legal obligations.

"I am watching and I am going to be doing more business promotion than I think I normally would be doing — just contacting people and letting them know what I do," said Pawluk. "There will be fewer workplaces because of the shrinking economy, but whether that's going to translate into less work for me, I don't know."

At the same time, she wonders whether the recession is eventually going to have

What you can do in down times

- Make the quality of your services unassailable. Appreciate that financial distress will cause clients — and others — to re-examine every step taken.
- Use the Law Society's practice checklists, and keep your personal and firm-wide systems in good working order.
- Confirm your advice and instructions in writing.
- Get organized, and avoid taking on more than you can handle.
- Recognize your client's need for other professional advice. Business, investment and accounting advice and services may become more critical to your client in risky times.
- Manage your client's expectations about your retainer, what the legal system can accomplish and the cost of legal services. Send letters that clarify your role. Be upfront about legal fees. Manage risky clients through defensive lawyering.
- Be aware of the risk inherent in unrepresented third parties involved in your client's transaction, and take protective steps, as needed.
- Avoid conflicts. Resist the temptation to give in to pressure to save parties time or money by acting for everyone in a new venture.
- Watch for frauds. It's almost certain that the current economic downturn will create opportunities for new scams and schemes that will use or prey on lawyers. Learn the red flags of potential frauds and the fraud prevention steps by reviewing the extensive material produced by the Law Society and the Lawyers Insurance Fund.
- Assess your own exposure to claims that exceed the compulsory policy limits, and buy excess insurance if you may be at risk.

Excerpts from the Law Society's December 2008 issue of *Insurance Issues: Risk Management*, "Hard Times: Managing risk in a troubled economy."

an adverse impact on prevention, the part of the practice she loves. Companies often come to her in advance of trouble, asking how to prevent workplace accidents. "Will they just cross their fingers because they just don't have the budget, and then get into trouble? I don't know, it will be interesting to see."

Others believe this recession could have profound long-term consequences for lawyers and their clients. Meldon Ellis, a partner in a boutique law firm in Vancouver, predicts firms will have to be more responsive to the needs of clients who cannot pay the standard hourly billing rates that most lawyers charge. Ellis' firm offers alternative forms of payment, including flat fees and contingency fees. In some cases, clients have paid an initial flat retainer of between

\$2,500 and \$7,500 and then the firm gets a percentage of the monies recovered in litigation, minus the retainer. Ellis calls it value-based billing. "We've done a number of cases on that basis, and we've attracted a number of clients this way." He expects to attract many more clients this way as well.

This recession, lawyers and law offices will face challenging situations and changing environments that may demand expertise gleaned from the past, as well as new and innovative ways of navigating the road ahead. The Law Society of BC will continue to monitor the economic environment, and the impact on lawyers and the public interest in the administration of justice. ❖

Call for expressions of interest in outside appointments

THE LAW SOCIETY is seeking volunteers for board appointments.

The Society appoints judges, Benchers and lawyers to the boards of more than 20 organizations. While a few of these bodies require the appointee to be a Bencher, most do not.

These appointments provide lawyers with opportunities to serve their communities and to demonstrate the ongoing commitment of the profession to public service. The society will make the following appointments in 2009:

- BC Law Institute, Board of Directors – one member of the Law Society;
- Continuing Legal Education Society

of BC, Board of Directors – seven members of the Law Society: one from each of Cariboo, Westminster, Prince Rupert and Yale districts, and three from Vancouver district (all jointly appointed by the presidents of the Law Society and the CBA, BC Branch);

- Law Foundation of BC, Board of Governors – one judge or member of the Law Society from each of Cariboo, Westminister, Prince Rupert and Vancouver districts;
- Legal Services Society, Board of Directors – two members of the Law Society (appointed by the Benchers after consultation with the CBA, BC Branch);

- Pro Bono Law of BC, Board of Directors – two judges, members of the Law Society or members of the public;
- Vancouver International Airport Authority, Board of Directors – one member of the Law Society.

If you would like to be considered for any of these appointments, send confirmation of your interest with your curriculum vitae, by mail or email to:

Bill McIntosh
 Manager, Executive Support
 Law Society of BC
 845 Cambie Street
 Vancouver, BC V6B 4Z9
 bmcintosh@lsbc.org ❖

In Brief

NEW HOMES ONLINE REGISTRY

A free online New Homes Registry has been launched by the Homeowner Protection Office. Real estate and construction lawyers can use this new tool to help clients make more informed decisions when buying a new home or new home under construction.

The registry provides information such as the name and contact number of the warranty provider, the builder's warranty number and whether an owner-built home can be legally offered for sale. Homes suspected of being illegally built, along with the status of related compliance investigations, will also be included in the registry.

All homes registered with the Office on or after November 19, 2007 are searchable in the New Homes Registry in the Homebuyers section at hpo.bc.ca.

S.U.C.C.E.S.S. CALL FOR MENTORS

Immigrant assistance group S.U.C.C.E.S.S.

is inviting lawyers to volunteer as host mentors. This program matches new lawyers with residents from Metro Vancouver who need mentors to acquaint them with the job market and workplace culture. The lawyers will also offer guidance in accessing employment and educational opportunities.

Volunteers are required to commit to two to three hours once a week for three months.

Contact Jessica-Ann Dozois at 604-936-5900 or jessica.dozois@success.bc.ca for more details.

JUDICIAL APPOINTMENTS

Five lawyers have been appointed as judges of the Supreme Court of BC.

Elaine J. Adair, formerly a partner with Clark Wilson LLP in Vancouver, replaces Mr. Justice H.M. Groberman (Vancouver) who was appointed to the Court of Appeal.

Robert J. Sewell, formerly a partner

with McCarthy Tétrault LLP in Vancouver, replaces Madam Justice M. Marvyn Koenigsberg (Vancouver) who elected to become a supernumerary judge.

John S. Harvey, formerly a partner with Scarborough Herman & Harvey in New Westminster, replaces Madam Justice Daphne M. Smith (Vancouver/Westminster) who was appointed to the Court of Appeal.

Peter G. Voith, QC, formerly a partner with Hunter Litigation Chambers in Vancouver, replaces Madam Justice Mary-ellen Boyd (Vancouver) who elected to become a supernumerary judge.

Frits Erik Verhoeven, QC, formerly a partner with Edwards, Kenny and Bray, LLP in Vancouver, replaces Mr. Justice W. Glen Parrett (Vancouver/Westminster) who elected to become a supernumerary judge. ❖

Queen's Counsel appointments

THE LAW SOCIETY congratulates the 37 BC lawyers appointed Queen's Counsel this year. Recipients were honoured at a reception attended by Attorney General Wally Oppal, QC on February 20, 2009. Two of this year's appointees have a special connection to the Law Society — Bencher Robert Punnett, QC and Tribunal and Legislative Counsel Jeff Hoskins, QC were each awarded the designation for their exceptional work in the legal profession.

Punnett is a partner in Punnett & Johnston of Prince Rupert, a Bencher of the Law Society, a governor on the Trial Lawyers Association of BC board and served as a member of the Canadian Bar Association provincial council for six years.

Hoskins is Tribunal and Legislative Counsel for the Law Society, where he previously served as general counsel during his 20 years as a member of the society's staff. He advised the provincial government on development of the *Election Act*. ❖



Robert Punnett, QC (left) and Jeff Hoskins, QC.

Assassination of a lawyer

*By Lesley Pritchard,
staff writer*

ON JANUARY 19, 2009, Russian lawyer Stanislav Markelov was doing what some lawyers here might find themselves doing on any given day. He had just finished briefing reporters on an important case and was walking down a busy street in Moscow with a journalist who wanted to continue the conversation.

What happened next was anything but typical. The 34-year-old human rights lawyer and the 25-year-old female reporter near him were shot and killed by unknown assassins.

There is speculation that Markelov was targeted because he represented the family of a teenager who had been raped and murdered by a Russian army colonel in 2000. Authorities had granted the colonel an early release from prison, and Markelov

was speaking out against the release.

Markelov was known as a man who was not afraid to make enemies within the ranks of the government. He routinely defended people who said they were beaten and tortured by Russian special police forces. He also served as director of the Russian Rule of Law Institute, a civil liberties group. Human rights observers are likening his death to the 2006 murder of Anna Politkovskaya, a journalist and outspoken Kremlin critic.

Law Society President Gordon Turriff, QC believes that Markelov's assassination should be important to BC lawyers for a number of reasons. It serves as a reminder of the pressures some lawyers face in their work. It is also a reminder of the importance of lawyer independence.

"It would be intolerable if lawyers were restricted in doing what they honestly

believe must be done, as they pursue their client causes, to ensure the rule of law prevails," Turriff said. "A lawyer does not have to be gunned down on a busy street to have that independence threatened."

There are many lawyers in this province, both past and present, whose work puts them at odds with governments and their agents while representing a client. Most of us can name lawyers whose relentless interest in certain issues makes them an irritant to authoritative bodies.

Turriff believes lawyers must all be vigilant in preserving their independence. "These lawyers have a job to do, and as long as they do it professionally, there should not be interference. People can be on the margins and still be very effective lawyers — in fact some of the best lawyers are the ones who are on the margins." ❖

Update on the Legal Services Society

THE LEGAL SERVICES Society will be changing some services and some of its operations this year.

The changes are necessary because the society's current government and non-government revenues are insufficient to cover the current demand for legal aid, says LSS Executive Director Mark Benton, QC.

"The changes will direct available funding and resources to people in greatest need while having the least impact on current clients," Benton said. He added that many family and criminal law services will remain unchanged.

"The cuts to legal aid are not ones we want to make, and there is no doubt they will have a detrimental effect on some of society's most vulnerable people. But there is only a finite amount of money available for legal aid and we have to do the best we can with what we have."

LSS Executive Director Mark Benton

The provincial government has not cut the Legal Services Society's funding and is expected to provide a modest increase for large criminal cases, he said. Non-government funding is expected to decline and more funding is still needed to meet the increased demand.

"In the latter part of 2008, there was a significant increase in the demand for legal aid representation services. At the end of November 2008, referrals to lawyers for emergency family services were up 21 per cent over budget and criminal referrals were up five per cent. Immigration referrals increased 76 per cent over the last fiscal year."

Given the recent economic downturn, the society expects the increased demand to continue in the 2009/2010 fiscal year.

"The cuts to legal aid are not ones we want to make, and there is no doubt they will have a detrimental effect on some of society's most vulnerable people," Benton said. "But there is only a finite amount of money available for legal aid, and we have

to do the best we can with what we have."

One way LSS is trying to help people who might not otherwise receive legal aid or who might be affected by the recently announced changes is by continuing its duty counsel program.

"We originally thought our revenue shortfall would force cancellation of several duty counsel programs. But after a careful review of our 2009/2010 budget, we've found efficiencies to maintain most duty



Legal Services Society Executive Director Mark Benton, QC

counsel services with some adjustments. I think this is good news for low-income British Columbians who find themselves in court."

Most family law services will remain unchanged. Since 2002, family law representation services have been limited to financially eligible clients who are facing situations where their safety or the safety of their children is at risk, they have been denied access to their children on an ongoing basis, or there is a risk that a child will be permanently removed from the province. Legal aid for these and other urgent issues will continue to be available.

Dispute resolution (ADR) referrals, however, were eliminated after April 1, affecting about 600 applicants a year. Extended services, which allow lawyers extra time to complete cases, may be reduced depending on the volume of applications received.

The biggest change is the elimination April 1 of coverage for legal representation on minor criminal offences such as breach of probation, failure to appear and breach of bail. The Legal Services Society will consider providing representation for these offences to adults with mental disabilities that prevent them from stating their cases to the court.

Coverage for immigration and refugee matters will remain unchanged. Funding for immigration cases is, however, fixed by federal-provincial cost-sharing agreements. No increase to this funding is expected despite the increase in demand over the past year. As a result, LSS is introducing stricter merit screening of immigration applications to ensure spending remains within the available budget. This means that some cases that would have been covered in the past are not covered after April 1, 2009.

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LSS is also reducing its operating expenses by cutting 38 staff positions in its Vancouver and Surrey offices April 30, involving staff at all levels.

The society's numerous community outreach programs and public legal information services will remain largely unchanged, except for some staff reductions. ❖

Protecting the public interest for 125 years

In 1884, the BC government passed the Legal Profession Act — legislation that incorporated the Law Society of British Columbia. One hundred twenty-five years later, the Law Society remains true to its purpose of protecting the public interest in the administration of justice.

By Cara McGregor,
staff writer

THE ROOTS OF the Law Society, like the law that its members practise, trace back to England. Motivated in part by the newfound wealth of the gold rush, Queen Victoria dispatched an experienced English lawyer, Matthew Baillie Begbie, to establish and protect the lands to which her country laid claim.

After deliberation with his colleagues, Crease drafted a letter to Justice Begbie requesting that he withdraw O'Byrne's Call Certificate and modify the Order of Court of 1858 to prevent others like O'Byrne from practising law in BC. Begbie agreed with Crease and struck the words "or had qualified" from the Order, essentially disbaring O'Byrne from practice.

Begbie crossed the Atlantic Ocean and most of the North American continent to a fledgling outpost, bringing with him official documents establishing the Colony of British Columbia. Those papers were signed by Gov. James Douglas on November 18, 1858 at Fort Langley. The following day, Begbie was sworn into office as High Court Judge of the colonies of British Columbia and Vancouver Island.

On December 24, 1858, Justice Begbie published an Order of the Court which gave the first official recognition to barristers and solicitors in the colonies. The Order noted that only one lawyer was qualified to act as a barrister in a court of

law — Henry Pering Pellew Crease.

As BC's first lawyer, he would prove to be critical in solidifying the self-regulation of the legal profession.

THE CASE OF FELIX O'BYRNE

Crease was not the only lawyer who made the voyage from England. Felix O'Byrne arrived in the colony in 1863, having occupied himself during his travels by cheating his fellow passengers at cards.

O'Byrne had qualified to be a barrister in England but had never been called to the Bar. But Begbie's Order of Court provided for call of persons who had been called or had qualified; O'Byrne applied and a Certificate of Call was issued.

O'Byrne's admission caused Crease, then Attorney General of BC, great concern. He called together the practising members of the Bar to discuss the O'Byrne matter and review his paperwork. After deliberation with his colleagues, Crease drafted a letter to Justice Begbie requesting



*Benchers of the Law Society, 1897.
Image from the Legal Archives of British Columbia.*

*Benchers of the Law Society, 2008.
Photo by Brian Dennehy Photography.*

that he withdraw O'Byrne's Call Certificate and modify the Order of Court of 1858 to prevent others like O'Byrne from practising law in BC. Begbie agreed with Crease and struck the words "or had qualified" from the Order, essentially disbaring O'Byrne from practice.

In a letter dated August 6, 1863, Begbie

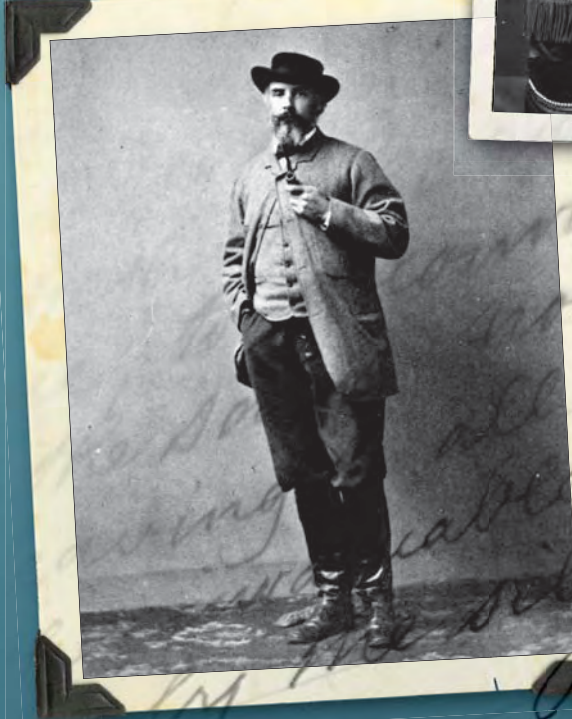
continued on page 18

FEATURE

Sir Henry Crease,
"father" of the Law Society.
Image F-07698 courtesy of the
Royal BC Museum, BC Archives.



Law Society seal, 1897



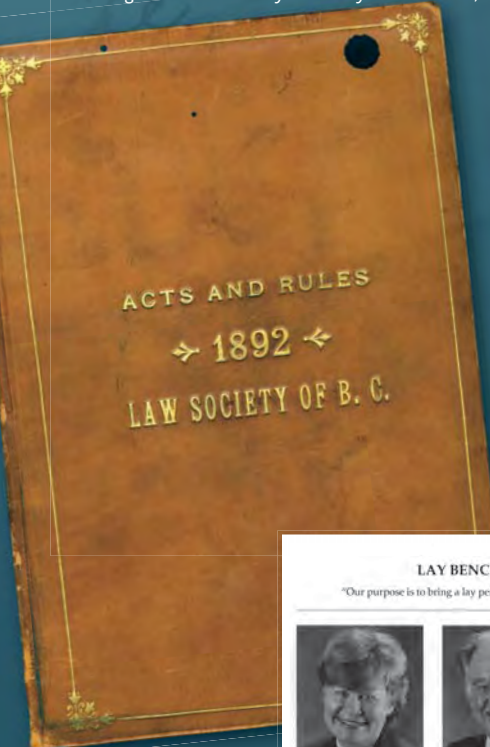
Sir Matthew Baillie Begbie,
first Justice of the new colony of British Columbia.
Image A-08953 courtesy of the Royal BC Museum, BC Archives.



First UBC Law class, 1947
Image courtesy of
University of British Columbia Archives.



Vancouver Legal Baseball Team, 1900.
Image from the Legal Archives of British Columbia.



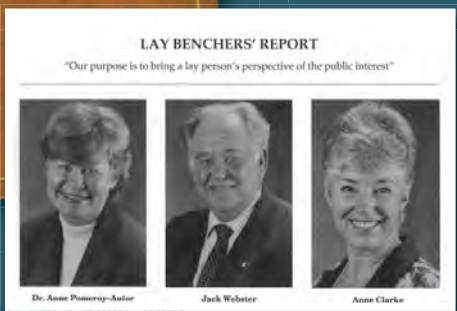
Andrew Joe



Mabel Penery French



On the set of *Legal Wise*, 1989
Image from the Legal Archives of British Columbia.



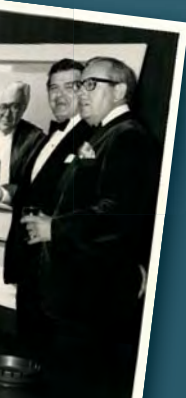
Lay Benchers, 1988

Opening of the Vancouver Law Courts, 1979
Image from the Legal Archives of British Columbia.



Timeline: BC's legal history

- 1858 Colony of British Columbia established. Sir Matthew Baillie Begbie appointed Chief Justice. Admits the only barrister in the colony, Henry Crease, to practise law.
- 1869 Crease assembles 13 barristers and solicitors to establish an association called the Law Society.
- 1884 The Law Society is incorporated by an Act of the Legislature.
- 1897 Law Society seal unveiled.
- 1899 Law Society Benchers cite and suspend Attorney General Joseph Martin.
- 1900 Former Attorney General Martin becomes Premier of BC.
- 1912 Mabel Penery French is the first woman called to the Bar in BC.
- 1914 Law schools open in Vancouver and Victoria, sponsored by the Law Society.
- 1921 *Canons of Legal Ethics* adopted by the Law Society.
- 1921 Canadian Bar Association incorporated.
- 1926 Conference of Representatives of the Governing Bodies of the Legal Profession in the Provinces of Canada (now the Federation of Law Societies of Canada) formed.
- 1945 UBC Faculty of Law opens.
- 1947 Law Society relocates to Vancouver Courthouse basement, taking over the office previously occupied by the Provincial Game Warden.
- 1947 Gold Medal for law students adopted.
- 1947 Special Compensation Fund established.
- 1949 Court library system expansion begins.
- 1953 Andrew Joe is the first Chinese Canadian to be called to the Bar in BC.
- 1955 Benchers elected by County for the first time.
- 1957 Edsworth McAuley Searles is the first Black person called to the Bar in BC.
- 1959 Continuing Legal Education program begins.
- 1962 Alfred J. Scow is the first Aboriginal person called to the Bar in BC.
- 1964 James Bland retires after 66 years as an employee of the Law Society.
- 1969 Law Society proposes a Legal Aid Society.
- 1969 Law Foundation established.
- 1970 Law Society publishes *Professional Conduct Handbook*.
- 1971 Mary Southin is the first woman elected a Bencher of the Law Society.
- 1971 Conduct Review Committee established.
- 1975 BC Law Library Foundation (later Courthouse Libraries BC) incorporated.
- 1975 UVic Faculty of Law opens.
- 1977 Mary Southin, QC is the first woman Treasurer of the Law Society.
- 1977 First Law Society Building opens at 1148 Hornby Street in Vancouver.
- 1979 *Legal Services Society Act* merges Legal Services Commission and Legal Aid Society.
- 1983 First *Benchers' Bulletin* published.
- 1983 Professional Legal Training Program commences.
- 1988 Jack Webster, Mayor Anne Clarke and Dr. Anne Autor appointed first Law Society Lay Benchers.
- 1988 Complainants' Review Committee established.
- 1988 *Legal Wise*, a television show promoting public legal education developed in partnership with the Law Society, premieres on CBC.
- 1992 Move to second Law Society Building at 845 Cambie Street in Vancouver.
- 1994 Mission statement adopted: the principal aim of the Law Society is a public well served by a competent, honourable and independent legal profession.
- 1994 Discrimination ombudsperson (now the equity ombudsperson) appointed.
- 1995 Law Society is a "local public body" under the *Freedom of Information and Protection of Privacy Act*.
- 1996 Linda Loo, QC is elected the first Chinese Canadian Bencher.
- 1999 Under a new *Legal Profession Act*, Warren Wilson, QC is the first modern-day "President" of the Law Society.
- 1999 Membership in the Law Society reaches 10,000.
- 2002 Pro Bono Law of BC society formed.
- 2007 Anna Fung, QC is first Chinese Canadian President of the Law Society.
- 2008 Law Society launches Articling Registry in partnership with Canadian Bar Association.
- 2009 Law Society launches Continuing Professional Development program.



125 year anniversary ... from page 15

notified Crease of the amendment to the Order, in closing stating, "I have, however, to thank you for the protection which you have in this instance successfully accorded the profession at the head of which you stand, and I have the honour to be, Sir, your very obedient servant."

FOUNDATIONS OF A SOCIETY

The O'Byrne incident made it clear to Crease that the legal profession needed to be regulated. Moreover, Begbie's lengthy absences while administering justice in BC's vast frontier made it difficult for the High Judge to do so in a timely and effective manner. In his view, an organization whereby lawyers could be self-regulating was clearly necessary.

On July 15, 1869, Crease assembled 13 members of the legal profession in the colony. Together, they founded the Law Society of British Columbia, the objectives of which were: creation of a law library; publication of legal decisions; regulation of call to the Bar and admission to rolls; and protection of the interests of the legal profession. Member dues for the year would be \$10, to help pay for the library and the publications it housed.

The province formally incorporated the Law Society in 1884.

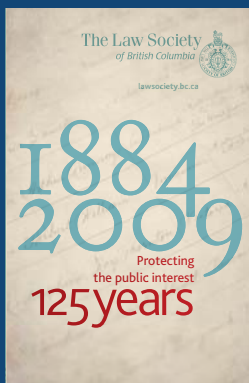
PUBLIC INTEREST PARAMOUNT

Protecting the public interest has always been at the heart of the society's work, a mandate that was recognized as early as 1898 in *Re Blake* 6 BCR 282:

Looking at the object of the [Legal Profession] Act it is obvious that it is a remedial statute intended to protect clients from being plundered by a privileged class — hence to protect the public and not the solicitor.

While not the most flattering characterization of the legal profession, it stands as powerful evidence that the public interest is paramount in the Law Society's work.

As the society has grown, its commitment to the public interest has remained strong. The society has spearheaded a number of initiatives to improve public information and access to law and the legal profession, including most recently:



Order your commemorative booklet

Produced in celebration of the Law Society's 125th anniversary, this booklet contains historical information about the society, a timeline of BC legal history and practical tips about finding and working with a lawyer.

Aimed at members of the public with little to no knowledge of law and the legal profession, this booklet is available for distribution by law firms to

their clients and the general public.

To request copies, contact Robin Pollak, Communications Assistant, at communications@lsbc.org. Quantities are limited.

- ongoing investment in BC's courthouse libraries;
- educating the public about the Law Society and its work through a speaking tour;

On July 15, 1869, Crease assembled 13 members of the legal profession in the Colony. Together, they founded the Law Society of British Columbia, the objectives of which were: creation of a law library; publication of legal decisions; regulation of call to the bar and admission to rolls; and protection of the interests of the legal profession. Their dues for the year would be \$10, to help pay for the library and the publications it housed.

- promoting topics for discussion, such as access to justice issues, etc., for public forums;
- working to ensure free access to legislation online, in partnership with the Ministry of the Attorney General and other legal organizations.

THE LAW SOCIETY TODAY

Over the past 125 years, the Law Society's scope has expanded to provide a range of services for members and the public. Today, the Law Society is responsible for:

- determining the standards for admission to the legal profession;
- overseeing the education of articulated students;
- setting ethical standards for all lawyers;
- setting practice standards of competency;
- providing liability insurance for lawyers and trust protection coverage for the public;
- investigating allegations of lawyer misconduct, resolving complaints and taking disciplinary action where necessary.

The Law Society will continue to be a leader in developing new initiatives, standards and resources to support the legal profession and protect the public interest in the administration of justice. ❖

FROM THE LAW FOUNDATION OF BC

Legal Research Fund

THE LAW FOUNDATION of British Columbia has established a fund of \$100,000 per year to support legal research in BC.

Purpose of the initiative: The purpose of the initiative is to support legal research projects that advance the knowledge of law, social policy and the administration of justice.

Who can apply? Members of the Law Faculties at the University of British Columbia and the University of Victoria

and others in the legal profession who can demonstrate that they have the background, interests and capacity to carry out a project that will meet the stated purpose of this initiative.

The Foundation seeks Letters of Intent for proposals for one-time projects.

To be eligible for funding, a project must fall within the Law Foundation's legal research program objectives of advancing the knowledge of law, social policy and

the administration of justice through the identification of areas and issues needing study and analysis and the encouragement and support of projects to address those needs.

The foundation encourages applicants and projects that reflect the diversity of British Columbia. The Law Foundation's working definition of diversity is: *diversity includes age, different abilities, socio-economic level, education, ethnicity, language, family, gender, marital/relationship status, race, religion, work experience, geographic size and location, and sexual orientation.*

Length of project: The foundation will consider one-year projects, as well as multi-year projects.

Grant size: The maximum amount available for each project is \$20,000.

Application process: To be considered, submit by mail, courier or fax a Letter of Intent by **3 pm, May 20, 2009** for consideration at the June Law Foundation Board of Governors meeting. Please do not email Letters of Intent.

The Letter of Intent, which should be no more than three pages long, should contain the following information:

- name of project/proposed research;
- description of the proposed research;
- need for the proposed research;
- budget/amount of request.

Materials should be sent to:

Law Foundation of British Columbia
1340 – 605 Robson Street,
Vancouver BC V6B 5J3
Fax: 604-688-4586

Contact Michael Seaborn, Program Director, at 604-689-2048 to discuss your project prior to submitting a Letter of Intent. ❖



Mary Mouat

The Board of Governors is pleased to announce that Mary Mouat of Victoria has been elected as Chair of the Law Foundation effective January 1, 2009. Mouat succeeds Warren Wilson, QC of Vancouver who has been Chair of the Law Foundation since 2006.

Mouat earned her law degree from the University of Victoria and was called to the BC Bar in 1988. She is a partner of the Quadra Legal Centre in Victoria, practising as a qualified family law mediator and collaborative law lawyer. She has been active in many community and bar organizations, including the Victoria Bar Association, the Executive of the CBA (BC Branch), the Family Tariff Committee of the Legal Services Society, the Law Courts Education Society and the Victoria Women's Sexual Assault.

Most recently she was a member of the Family Justice Reform Working Group created by the Justice Review Task Force.

She has been a Governor of the Foundation since 2006 and has served on the Child Welfare Fund, New Grants (as Chair), and Bursary, Scholarship and Fellowship Committees.



As well, Justice David Masuhara, Anna Fung, QC, Frank Scordo and Robert Groves were appointed governors of the Law Foundation for three-year terms commencing January 1, 2009.

The Law Foundation of British Columbia is a non-profit foundation that receives the interest on lawyers' pooled trust accounts and distributes it, by means of grants, for legal education, legal research, legal aid, law reform and law libraries in the province.

Thanks for your help in 2008

THE BENCHERS THANK and congratulate all those in the profession and the legal community who volunteered their time and energy to the Law Society in 2008. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panelists or advisors on special projects, volunteers are critical to the success of the Law Society and its work.

Over the past year, the Society has enjoyed the support and contributions of over 300 Life Bencher and non-Bencher volunteers, all of whom deserve acknowledgement.

Anne Adrian	Gordon S. Comer	Richard S. Fowler	Donald N. Kawano	John W. Marquardt
Paul Albi	Jennifer Conkie, QC	Eugene Fraser	Jocelyn M. Kelley	Gordon G. Matei
Ralston S. Alexander, QC	Christopher M. Considine, QC	David A. Freeman	Judith Kennedy	Dr. Carol Matusicky
Peter G. Altridge	Heather D. Craig	William N. Fritz	Paul G. Kent-Snowsell	Janis D. McAfee
Rebecca A. Anderson	Gordon Cruse	Stephen Fudge	Mark Killas	Joseph C. McArthur
Dianne G. Andiel	Sandra A. Cunningham, QC	Gordon A. Fulton, QC	Catherine M. Kinahan	Emma A. McArthur
Jeffrey P. Andrews	Azim Dattoo, QC	Anna Fung, QC	Michael P. Klein	Brendan McCabe
Deborah Armour	Mark Davies	R. Mark Gallagher	Theodore I. Koffman	Jerry McHale, QC
John B. Arnesen	Nicholas Davies	Nicole L. Garton-Jones	Gordon J. Kopelow	W.B. (Barney) McKinnon
Paul M. J. Arvaisis	Allison R. De Smet	Michael Gianacopoulos	Darren S. Kozol	John A. McLachlan
Mark C. Baron	Adam de Turberville	Anne Giardini	Ken Kramer	Hugh S. McLellan
Sue K. Basi	Craig Dennis	Kevin J. Gillett	Edwin G. Kroft, QC	Daniel Meneley
Joe Battista	Michael Dery	Jonathan R. Goheen	Kenneth V.F. Krohman	Jack Micner
Peter C.P. Behie, QC	Darren P. Devine	Peter Gorgopa	Jason A. Krupa	Colin A. Millar
W. J. Scott Bell	Jeevyn Dhaliwal	Charlotte Gregory	Rosanne Kyle	Renee Miller
Dan Bennett	Dale R. Doan	Harvi Grewal	Gerry M. Laarakker	Robert G. Milne
Tim Bezeredi	Kelly R. Doerkson	David O. Griffiths	Derek C. Lacroix, QC	E. Jane Milton, QC
Donald G. Bird	Patrick Doherty	Mitchell H. Gropper, QC	Annamarie Laing	David Mitchell
Johanne Blenkin	Ian Donaldson, QC	Robert Halifax	Seema Lal	Joseph P. Mockler
J-P Bogden	Judith T. Doulis	Norah-Jean Hall	Stanley Lanyon, QC	Maria Morellato, QC
Charles W. Bois	Joseph M. Doyle	Jeffrey A. Hand	Dean P. J. Lawton	Charlotte Morganti
Patricia Bond	Emily C. Drown	Frederick W. Hansford, QC	P. Daniel Le Dressay	Mary Mouat
Scott L. Booth	Jennifer Duncan	Amanda B. Harris	John Leathley, QC	J. Cameron Mowatt
Joseph A. Boskovich	Andrea Duncan	Reginald P. Harris	Gerald J. Lecovin, QC	Terrence M. Mullen
John-Paul E. Boyd	Dana C. Duncan	David W. Hay	Roger D. Lee	Michael T. Mulligan
Luciana Brasil	Birgit E. Eder	Harmon C. Hayden	Robert J. Lesperance	William F. Murray
Lindy J. Bremner	Brenda Edwards	E. Ian B. Hayward	Allan E. Lester	David Neave
Marian K. Brown	Garth E. Edwards	Matthew J. Heemsker	Franklin D. Lew	Thomas Nesbitt
Alexander Budlovsky, QC	Michael R. Eeles	Colleen Henderson	Carla Lewis	David G. M. Nicol
W. Bryce Cabott	J. Timothy Ellan	Jane Henderson, QC	David K.S. Li	Alexander H. Northey
Neil A. Campbell	Robin Elliot, QC	David A. Hobbs	Michael Libby	Jeffrey L. Oliver
Jo Ann Carmichael, QC	Christine Elliott	Roger E. Holland	Marvin Lithwick	Alison M. Ouellet
Jeremy G. Carr	William Everett, QC	William R. Holmes	Michael J. Lomax	Ashif Pabani
Nigel Cave	Stephanie L. Fabbro	Michael R. Howcroft	Nicholas W. Lott	Gregory Palm
Susan E. Cawley	Silvana Facchin	Kyra L. Hudson	Paul E. Love	Lisa I. Pape
Douglas B. Chiasson	John Ferber	Elizabeth Hunt	Steven G. Lukas	Benedict Parkin
Anne B. Chopra	Richard Fernyhough	John J. Hyde	Ed Lyszkiewicz	Michael D. Parrish
Jennifer Chow	Peter Firestone	Leslie B. Jamieson	Edward Macaulay	David T. Paterson
David A. Clancy	Carol L. Fleischhaker	Douglas R. Johnson	David A. MacLeod	Donald N. Paul
Myron Claridge	Jay L. Fogel	Kim E. Johnson	Pat Madaisky	Michele Peacock
Brent C. Clark	Monika Follett	David A. Joyce	S. Nicola Mahaffy	David Perry
John S.G. Clark	Todd Follett	Moses Kajoba	Karl A. Maier	Martin Peters
Hugh H. Claxton	Mark Forsythe	Michael A. Kale	Valerie Mann	Hon. Nancy Phillips
Patrick S. Cleary	Prof. Hamar Foster	Gerald Kambeitz, QC	Richard S. Margetts, QC	Robert P. Pirooz
Leonard M. Cohen	D. Mitchell Foster	Azmina A. Karim-Bondy	Kevin Marks	Geoffrey Plant, QC

Gordon G. Plottel
 Michael L. Pohorecky
 Sandra L. Polinsky
 Elliot Poll
 Sarah Pollard
 Jef F. Poulsen
 Patrick J. Poyner
 Derrill W. Prevett, QC
 William C. Prowse
 Lila Quastel
 Dennis Quinlan
 James W. Radelet
 Christopher J. Ramsay
 Peter Ramsay, QC
 Gayle M. Raphanel
 Jeffrey R. Ray

R. Keith Reed
 Stephen Richards
 Wayne Robertson, QC
 Lindsay A.C. Ross
 Lee M. Sawatzky
 Patricia Schmit, QC
 Timothy A.C. Schober
 G. Creighton Scott
 Jeffrey P. Scouten
 Colleen E. Selby
 Jane Shackell, QC
 L.M. Bill Shetty
 Geoffrey Sherrott
 Alex Shorten
 Dirk J. Sigalet, QC
 Kerry L. Simmons

Lorne D. Sinclair
 Mark Skwarok
 Benjamin P. Slager
 Lawrence S. Smith
 Brock Smith
 William P. Sokoloff
 Gary R. Sollis
 Gabriel M.A. Somjen
 Andrew A. Stewart
 Anne Stewart, QC
 Terence G. Stewart
 Ted Strocel
 Jill Swanston
 Etel R. Swedahl
 Genevieve N. Taylor
 James R. Taylor

Angela E. Thiele
 Janine Thomas
 Timothy D. Timberg
 Vittorio C. Toselli
 Abigail Turner
 Mary Ellen Turpel-Lafond
 Charlie Tutt
 Catherine Tyhurst
 David H. Unterman
 John A. Vamplew
 Winfred A. Van Der Sande
 Kay M. Vinall
 Elizabeth Vogt
 Terry C.W.L. Vos
 John N. Walker
 Kathleen Walker

David J. Walsoff
 Michael Warsh
 Eric Watson
 Kimberly J. Wendel
 Loreen M. Williams
 Steven M. Winder
 Louisa M. Winn
 Bruce Woolley, QC
 Roselle Wu
 Linda J. Yardley
 Joseph Zak
 Deborah L. Zutter ❖



Eight members of Vietnam's judiciary went back to school at the Law Society March 26 as part of a Canadian International Development Agency's aptly named project, Judicial Development and Grassroots Engagement (JUDGE). Aided by a translator, the Hanoi-based judges attended a Professional Legal Training Course (PLTC) class focusing on principles of client-lawyer interviews. The judges were intrigued by the interactive style of education, which included mock interviews, instruction, video examples and practice with feedback. The judges were also interested in seeing nearby BC Place, venue for next year's opening and closing ceremonies for the Vancouver 2010 Olympics. The judges will visit Alberta as part of their tour.

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Client identification and verification

TO HELP LAWYERS and law firms better understand and follow the client identification and verification rules, resources are available on the Law Society website, including:

- frequently asked questions (FAQs);
- a client identification and verification checklist; and
- a free online course.

Note that the FAQs and the checklist have been updated to reflect rule changes. Also, the FAQs have been expanded to provide more information. I anticipate adding further questions and answers from time to time. One question I am frequently asked is set out below. See the website for more questions and answers.

Q. I sometimes commission or notarize a document for someone but do not give any legal advice. I usually charge for this service. Do I have to identify the person?

A. No. Simply commissioning or notarizing a document does not trigger the obligations under Rule 3-93. If you are retained to provide legal advice or other representation, the rule applies. However, note footnote 3 of Appendix 1 of the *Professional Conduct Handbook*, which states:

The commissioner should be satisfied that the deponent is who the deponent represents himself or herself to be. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

NEW LOTTERY SCAM

A new lottery scam using the “BC 6/49” jackpot name has surfaced in British Columbia. The scamster uses the names of two real BC law firms (or a law firm and a notary), fake law firm letterhead, a fake law firm trust cheque and a fake lottery win.

How the scam works

An individual in the United States receives a letter written on fake law firm letterhead

telling them that they have won a BC lottery (e.g. \$279,000). The law firm is real but the contact information is altered.

A fake trust cheque drawn on a Canadian bank in a second law firm’s name is enclosed. The letter says the trust cheque represents an advance payment in US dollars (e.g. \$7,980). The second law firm’s name is real and its trust account numbers are correct. If the cheque is cashed without the financial institution realizing it is a fake, the money would come out of the second firm’s account.

The letter also says that the firm has been requested to prepare some documents (e.g. tax forms) prior to the release of the funds. The lump sum payout is to commence once the documents are filed. The “winner” is informed that they must pay processing fees, legal fees, an insurance premium and federal taxes (the projected amount exceeds the amount of the advance).

The winner is given telephone numbers (cellphone numbers) to call immediately and told that failure to comply will result in forfeiting the prize.

At this point, the BC firms whose names were used in this scam have not lost trust money. They contacted the police and their banks and have taken steps to protect their accounts.

What can you do?

Some steps that you may consider to help protect yourself:

1. Check your trust account frequently. Online banking makes it simple to be informed.
2. Talk with your financial institution’s representative about what cash management services they offer. For example, consider whether an automated cheque matching service would work for your firm. You would electronically provide your institution with a daily list of all items drawn on your account. The financial institution would then cross-reference the information you provided to the paid items and items that are not contained in your list. You would receive an exception report alerting you to possible fraudulent items presented for payment, and would issue instructions to either pay or not pay the items.

In some cases institutions automatically pay an exception item if they



do not hear from you within a limited time period so you have to be prepared to issue instructions quickly.

3. Alert your staff to be on the look-out for unusual telephone calls, emails and faxes and to be cautious about giving out your trust account information.
4. Try to limit the use of your signature to instances where it will not be widely published. Consider using initials for correspondence. Save your formal signature for formal documents (e.g. banking documents).
5. Where possible, limit the use of your signature on faxed documents. If you have a signature stamp, consider destroying it to protect against the unauthorized use of your signature.
6. Use of an electronic signature on emails is not recommended. Where possible, avoid publishing your signature on web pages or documents that are publicly available. This would reduce the chance that someone will copy it and apply it where you do not want it.
7. Google your name and firm's name to see if anyone else is using them. The Google Alert feature helps to send you this information automatically.

Two Canadian websites that you might view to inform yourself about scams are fraudcast.ca and phonebusters.com, the Canadian Anti-fraud Call Centre. PhoneBusters (a form of partnership between the Ontario Provincial Police, the RCMP and the Competition Bureau) identifies new trends in scams, gathers evidence and alerts law enforcement officials both inside and outside of Canada.

If a fraudster has attempted to scam you, report it to the RCMP or your municipal police force and the Law Society. You can ask the police to report the matter to PhoneBusters or you can do it yourself (call 1-888-495-8501).

FAKE INVOICES ISSUED TO LAW FIRMS

Some law firms have reported receiving invoices for services or products that they did not order. The amounts are generally for odd amounts, less than \$100. Advise your accounting staff to be alert for this scam.

CIVILITY IN THE COURTHOUSE

It has come to the Law Society's attention that there have been instances of lawyers losing their temper in the courthouse, sometimes using profanity and abusive language. Undignified and discourteous behaviour reflects badly, not only on the individual lawyer, but on the profession generally. The Law Society takes rudeness complaints seriously.

Rule 1 of Chapter 3 of the *Professional Conduct Handbook* states:

A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

We all have times when we are stressed and frustrated, and on some days it is easier to cope than on others. Let us all take pride in how we publicly conduct ourselves under stress and be courteous even in difficult circumstances.

Whether in the library, the hallways, the registry, the courtroom or elsewhere, lawyers should conduct themselves in a courteous and civil manner.

We all have times when we are stressed and frustrated, and on some days it is easier to cope than on others. Let us all take pride in how we publicly conduct ourselves under stress and be courteous even in difficult circumstances.

FURTHER INFORMATION

You are welcome to contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in *Practice Watch*. ❖

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@no-vuscom.net.



INTERLOCK, by Anna Luckyj, MSW, RSW

Developing resilience during a recession

JIM HAS ENJOYED a thriving sole practice for the past 25 years. Always an optimistic "boomer," Jim is now faced with a dramatic decline in business due to the economic downturn. He sees his own investments and financial security failing for the first time in his career. The thoughts of retirement now seem impossible. He isolates himself from his family and colleagues as he struggles to cope with his worry and anxiety.

Susan, a successful family lawyer, has enjoyed the balance of part-time work and raising her two young children. Recently, her husband was laid off from his job and suddenly the family's financial load is resting on her shoulders. Susan finds herself lying awake at night with anxiety and worry. Aware that her husband is depressed, she keeps her thoughts to herself.

Chris is the managing partner of a mid-sized firm who enjoys his role and the ability to resolve staff concerns and issues. His firm's recent focus on cost containment will result in some employees losing their jobs. Chris finds himself dreading the process of meeting with these staff, many of whom he has known for several years. Worry pervades his thoughts, and he finds himself avoiding co-workers.

These stories are not unusual or unfamiliar. Perhaps you too are living a parallel experience. The sudden drop from boom and prosperity to — dare I say it — recession, impacts us all and tests our ability to deal with adversity.

The state of the economy, falling real estate prices and debt are increasing our levels of worry and stress about the future. We find ourselves unable to plan or move

forward. Research shows that uncertainty can actually take a greater toll than bad news. Chronic stress can damage our health. There are, however, healthy strategies that can keep us resilient in these times.

Here are some ways to keep your focus and sanity when faced with uncertainty and financial unpredictability:

Avoid the drama. Television news focuses on drama and catastrophes. This daily reinforcement of economic disaster increases our anxieties and sense of doom. Monitor your own response and, if you find your chest tightening, avoid it. Media such as newspapers and the Internet allow you to control what you read.

Focus on what you can control and accept those things you can't. Gather information regarding your finances and develop a plan. Focus on what you can do today rather than what might happen down

the road.

Research shows that uncertainty can actually take a greater toll than bad news. Chronic stress can damage our health. There are, however, healthy strategies that can keep us resilient in these times.

Identify the unhealthy ways you respond to stress. For example:

- smoking;
- increased consumption of alcohol or use of other substances;
- workaholism;
- perfectionism and/or procrastination.

If you find that you are not able to stop or that these costly strategies are compulsive, seek professional help.

Keep things in perspective:

- remember, these times are temporary;
- focus on what you have, not on what you have lost;

- stay in the moment. Learn the discipline of valuing each moment for what it has to offer;
- do an inventory of your values and what is important in your life;
- reconnect to the communities to which you belong — professional, business, family, neighbourhood, spiritual, recreational, etc. We need to belong and our communities help to give us a perspective in life.

Accept what you cannot control. Free up energy to improve your life. Don't let anger and frustration take over.

Take care of yourself. The temptation might be to work harder to compensate in difficult times. Know your point of diminishing returns. We can all reach the point where more energy (working harder) can lead to a precipitous drop in efficiency, poor judgment, exhaustion and burnout. When this happens, you are no help to your business, your family or yourself.

Reflect and discover the opportunities for growth and change. There is a saying that we fail our way to success. It is the learnings we take from short-term setbacks,

adversity and "failures" that determine our long-term success.

Reach out to those around you. Don't isolate yourself.

How Interlock can help you

- Financial planning: 60-minute telephone consultation
- Debt management: 30-minute telephone consultation
- Nutritional coaching: assessment and follow-up with a registered dietician
- Work consultations and coaching services
- Work/life advisory services: resource information (i.e. eldercare, childcare, parenting)
- Health and wellness: on-line wellness and resource tools

Counselling is available In person, by telephone and online for lawyers, articulated students and immediate family members . Call Interlock at 604-431-8200 or toll-free in BC 1-800-663-9099.

Seek professional help. Contact Interlock, your member assistance program, at 604-431-8200 or toll-free in BC 1-800-663-9099.❖

Handbook changes

THE BENCHERS HAVE amended Chapter 6 and Appendix 5 of the *Professional Conduct Handbook*, (the "Martin v. Gray" rules), clarifying and streamlining the rules that permit law firms to continue to act for existing clients, notwithstanding that a lawyer transferring into the firm had previously worked in the law firm that represented the opposing side, provided that certain steps are taken to protect confidential information.

The Benchers have added new Rules 7.01 to 7.04 and footnote 4 to Chapter 6 of the *Handbook*, exempting lawyers who deliver short-term services in court-annexed or non-profit programs or clinics from some conflicts rules in limited circumstances.

Copies of the *Handbook* changes are included in the *Member's Manual* amendment package as part of this mailing.❖

Notices from the Court

THE PROVINCIAL COURT has issued three practice directions:

1. The February 9, 2009 direction "Hearing of Bail Applications," pursuant to section 11 of the *Provincial Court Act*, replaces one issued March 4, 2005, "Hearing of Bail Applications by the Justice Centre."
2. February 16, 2009 for the Prince George-Cariboo Northeast District, "Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings and Administrative Court Sitings."

This direction has two objectives:

- expand judicial assignments for Judicial Case Managers;
- enforce compliance with Criminal Caseflow Management Rules.

3. January 5, 2009 for the Williams Lake – Cariboo Northeast District, "Criminal Caseflow Management Rules — Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings."

This direction has three objectives:

- expand judicial assignments for Judicial Case Managers;
- provide a simplified and efficient means of scheduling breach matters;
- enforce compliance with Criminal Caseflow Management Rules.

See the court's website at provincialcourt.bc.ca for the complete text of the practice directions.❖

Unauthorized practice of law

THE LAW SOCIETY routinely investigates allegations of unauthorized legal practice. The *Legal Profession Act* restricts the practice of law to qualified lawyers to protect consumers from unqualified and unregulated legal service providers.

Section 1 of the *Legal Profession Act* defines the practice of law while section 15 states that only a practising lawyer is entitled to practise law. Section 85 makes it an offence to practise law if you are not a lawyer. It is important to note that the practice of law is defined as providing a variety of legal services “for a fee, gain or reward, direct or indirect.” Non-lawyers who provide or offer to provide legal advice but are not seeking a fee are not violating the statute, unless they are suspended or disbarred lawyers.

Other exceptions are notaries public in BC who are entitled to provide a limited range of legal services — primarily real estate conveyancing and certain types of wills and affidavits. As well, registered immigration consultants are regulated by the Canadian Society of Immigration Consultants. Consultants appearing before workers’ compensation board tribunals are not regulated.

Anyone with questions regarding the right of a person who is not a member of the Law Society of BC to provide legal services should contact the society at 604-669-2533 or 1-800-903-5300.

In 2008, the Law Society obtained court orders and consent orders from the Supreme Court of BC prohibiting the following individuals and businesses from engaging in the unauthorized practice of law or punishing them for contempt of orders that the Law Society had previously obtained to prevent them from engaging in unauthorized practice:

Fred Yehia, a disbarred lawyer in Vancouver, was found in contempt of court for failing to pay funds in accordance with a November 4, 2006 order made in earlier contempt proceedings. He has since paid those funds. Madam Justice Marion Allan of the Supreme Court of BC has ordered him to pay a fine of \$1,450 as well as special costs.

Auguste Christiane Von Pfahlenburg of Vancouver consented to be found in contempt of court when he breached an injunction made on January 31, 2006 prohibiting him from practising law. Mr. Justice Selwyn Romilly of the Supreme Court of BC placed him on conditions and ordered him to complete 100 hours of community work and pay \$3,000 in special costs. He was also prohibited from identifying himself as a lawyer or practitioner of foreign law.

Norman Gill of Gill Consulting Services was acting in civil matters and

identifying himself as a legal representative. A Supreme Court of BC order has prohibited him from practising law and has ordered him to pay costs.

Fareed M. Raza and **F & A Accounting** have been prohibited by the Supreme Court from preparing incorporation and other corporate documents and ordered to pay costs.

Robert Hart of 150 Mile House has consented to an injunction prohibiting him from appearing as counsel or advocate or otherwise providing legal services and ordering him to pay costs.

Blair Franko of IPX Consulting in Kelowna has consented to an order prohibiting him from giving legal advice, appearing as counsel or advocate, or preparing documents for use in a proceeding. He was ordered to pay costs.

Robert Arthur Menard of North Vancouver has been prohibited by the Supreme Court from appearing as counsel, preparing documents for use in proceedings, and identifying himself in any way that suggests he is a lawyer. He was also ordered to pay costs.

Casey Brannigan of CRB Communications in Penticton has consented to a Supreme Court order prohibiting him from acting as counsel and preparing documents, and ordered him to pay costs.

AKL Management Limited, doing business on the internet as The Family Law Centre of North York, Ontario, has consented to an order prohibiting it from preparing family court documents and wills. The court also ordered that it pay costs to the Law Society.



In 2008, the Law Society obtained undertakings from 34 individuals and businesses to stop engaging in the unauthorized practice of law. The most common breach of the *Legal Profession Act* continues to be bookkeepers or people who provide business services preparing incorporation documents for a fee.

In the past year the Law Society also received undertakings from a number of non-lawyers preparing divorce documents as well as separation agreements for a fee. While not as common, the Law Society also received undertakings from non-lawyers who prepared wills, provided legal advice and services in relation to ICBC claims and other insurance claims, and appeared before and drafted documents for administrative tribunals and courts. ❖

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Brian Borthwick Norton
- Khushpal Singh Taunk
- Donald Andrew Lyons
- Jack Alexander Adelaar
- Gregory John Lanning
- John Christopher Karlsson
- Barry Promislow
- Trevors Bjurman
- John Owen Richardson

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

BRIAN BORTHWICK NORTON

Kelowna, BC

Called to the bar: October 1, 1968

Discipline hearing: May 8 (facts and verdict) and November 10, 2008 (penalty)

Panel: Glen Ridgway, QC, Chair, June Preston and Ronald Tindale

Reports issued: July 29 (2008 LSBC 22) and November 25, 2008 (2008 LSBC 36)

Counsel: Eric Wredenhagen for the Law Society and Brian Borthwick Norton appearing on his own behalf

FACTS

Brian Borthwick Norton represented client SL in a real estate transaction. On September 25, 2007 Norton received \$45,000 in cash from SL as part payment of the real estate purchase. He advised the client that any large cash payments made to him would have to be reported under money laundering statutes. Norton deposited the cash into his trust account.

At the time Norton received the cash deposit, the Law Society had issued 12 publications about Rule 3-51.1, the "no cash rule," which states that a lawyer must not receive or accept an aggregate amount in cash of \$7,500 or more in respect of any client matter or transaction.

Later that evening, Norton reviewed the reporting requirements for large sums of cash and realized he had misunderstood the rule and breached it by accepting the cash deposit. Realizing his mistake, Norton faxed a letter to the Law Society's Executive Director September 26. Having received no response from the Law Society by September 28, Norton returned the money to his client in cash. He met with his client on October 1 and explained that he had made a mistake in accepting the cash deposit and could not continue to represent her. He then made arrangements to have her file transferred to another law firm.

VERDICT

The hearing panel found that, while Norton had committed a breach of Rule 3-51.1, his conduct did not amount to professional misconduct. In reaching this conclusion, the panel noted that Norton acted in good faith in accepting the money and, after realizing his mistake, took all necessary steps to address the error. They also found that Norton's actions did not cause any harm to the client.

PENALTY

In their assessment on penalty, the panel underscored the importance of the "no cash rule," noting that this rule is intended to ensure that lawyers do not inadvertently assist in money laundering transactions. They also noted that Norton had no previous professional misconduct record.

Accordingly, the panel ordered:

1. a fine of \$500; and
2. \$500 in costs.

KHUSHPAL SINGH TAUNK

Surrey, BC

Called to the Bar: May 19, 2000

Discipline hearing: November 27, 2008

Panel: Glen Ridgway, QC, Chair, Gavin Hume, QC and Bruce LeRose, QC

Report issued: December 8, 2008 (2008 LSBC 37)

Counsel: Eric Wredenhagen for the Law Society and Jerome Ziskrout for Khushpal Singh Taunk

FACTS

Khushpal Singh Taunk was retained in February 2005 to represent MG in a divorce proceeding. MG wanted to obtain a speedy divorce from KG so that he could proceed with an arranged marriage in India. KG had previously commenced a family law proceeding in Vancouver in January 2004. MG had counterclaimed in that proceeding, seeking a divorce. In April 2004, a case management consent order resolved issues of custody, access and child support, but the issues of spousal support, property division and divorce remained outstanding.

At the time of the retainer, MG provided incorrect information to Taunk, stating that he had not sought a divorce in the Vancouver action and that all issues from that action filed had been resolved except for the divorce.

Taunk commenced a new action on March 10, 2005 in New Westminster, in which divorce was the only relief sought. In April, Taunk became aware that in fact spousal support and property division issues were not resolved and MG had counterclaimed for divorce in the Vancouver action. Taunk filed an amended writ and an amended statement of claim in the New Westminster action, noting that:

The Consent Order was signed on April 15, 2004 by the parties and their respective counsels [sic], resolved all issues other than the divorce, spousal support and property division.

Taunk brought an application in New Westminster on April 29, 2005 seeking an order for divorce. Justice S, who heard the application, was not prepared to grant a divorce until all other issues outstanding between the parties had been resolved.

Despite the fact that the issues of property division and spousal support remained unresolved, Taunk brought the divorce application back to court on June 9, 2005. Justice S rejected Taunk's submission and ordered instead that the Vancouver action and the New Westminster action be consolidated.

Following two unsuccessful attempts to have the consolidation order entered in the registry, Taunk set his application for July 4, 2005. He did not serve a notice of hearing on KG. At the July 4 hearing before Justice D, Taunk did not advise the court of the two previous attendances before

Discipline digest ... continued

Justice S; the existence of the Vancouver action; the consolidation order; or KG's reason for opposing the application. The divorce was granted. When KG became aware of the divorce she complained to the Law Society.

In a letter responding to the Law Society, Taunk admitted that he should have advised Justice D of the consolidation order and that he had failed in this duty to the court.

VERDICT

The hearing panel accepted Taunk's admission that he wrongfully obtained the Divorce Order on July 4, 2005 and found his conduct constituted professional misconduct.

PENALTY

In their assessment on penalty, the hearing panel considered Taunk's failure to meet his responsibilities to the court and particularly his failure to advise Justice D of the directions provided by Justice S on June 9, 2005. Taunk gave an undertaking to the Law Society that he would not appear in court or before administrative tribunals without senior counsel representing his clients, unless he was relieved of this undertaking by the Law Society.

Taunk agreed to review the Law Society's Practice Refresher Course and Small Firm Practice Course, paying particular attention to ethical issues raised in those courses.

Therefore, the panel ordered:

1. a one-month suspension; and
2. \$2,500 in costs.

DONALD ANDREW LYONS

Vancouver, BC

Called to the Bar: July 10, 1979

Hearing dates: January 17 (facts and verdict) and October 2, 2008 (penalty)

Panel: Kathryn Berge, QC, Chair, Anna Fung, QC and Thelma O'Grady

Reports issued: March 14 (2008 LSBC 09), September 29 (2008 LSBC 32) and December 9, 2008 (2008 LSBC 38)

Counsel: Maureen Boyd for the Law Society and Donald Andrew Lyons on his own behalf

FACTS

This was a matter of first instance, as it was the first citation issued by the Law Society regarding Rule 3-51.1, commonly known as the "no cash rule."

Donald Andrew Lyons was retained by client SC to provide services on behalf of his movie production business. On April 10, 2006 SC delivered US \$32,900 and CDN \$9,000 in cash for deposit into Lyons' trust account. Lyons advised SC that the Law Society had rules about receiving large cash amounts and needed to confirm what those rules were before he could accept and deposit the money.

After receiving the funds but before depositing them, Lyons contacted the Law Society and informed an employee in the Trust Assurance Department that he had received US \$32,000 in cash from a client. The employee drew his attention to Rule 3-51.1. Her note indicated that she used the word "violation"; however, Lyons' evidence was that the employee used the word "exception", which he understood in the context

of an exception to his annual trust report, rather than a violation which could result in discipline.

After this telephone call, the employee emailed the text of the "no-cash rule" to Lyons, who received and read it prior to determining to deposit the cash.

On or about June 5, 2006, SC delivered additional cash of CDN \$14,000 to Lyons, which he deposited in two amounts of CDN \$9,000 and CDN \$5,000, then subsequently disbursed the money according to his client's instructions.

On August 4, 2006 Lyons provided the Law Society with a written exception report stating he had received US \$32,000 on April 10 and CDN \$9,000 on June 5. This report prompted correspondence between Lyons and the Law Society, in which the society sought a written explanation as to why cash of \$7,500 or more was received and whether Lyons was still holding the cash in trust.

On September 22, 2006 a staff lawyer in the Professional Conduct Department contacted Lyons to advise him an investigation had commenced regarding the information set out in his exception report and requested a complete written response.

After exchanging multiple letters with the society, Lyons provided a complete written response on January 29, 2007 in which he advised the society he had received more cash than reported in his August 4, 2006 letter: on April 10, 2006 he received and additional \$9,000 and on June 5, 2006 the further amount of CDN \$5,000. Lyons advised that he had incorrectly reported the cash amounts in his report of August 4, as he had not consulted the relevant trust accounting records prior to filing.

Lyons admitted that he was familiar with the legislation that gave rise to the "no cash rule" and had read articles published by the Law Society about the rule since its implementation.

He admitted that he accepted and received cash in breach of Rule 3-51.1, that he read the Rules before depositing the cash into his trust account and that he did so knowingly in breach of the rule. He admitted that doing so constituted professional misconduct.

At the time these events took place, Lyons was experiencing personal difficulties, including problems arising from the termination of his partnership for which he sought assistance from the Law Society.

VERDICT

Lyons committed two breaches of Rule 3-51.1 (the "no cash rule") over a period of nine months. These breaches were not unintentional nor purely administrative in nature.

Lyons was sufficiently aware of the "no cash rule." The Law Society published no less than 12 articles about the rule between 2004, when it was first adopted by the Benchers, and 2006, when the alleged behaviour occurred. Lyons admitted he read several of these articles.

Further, Lyons contacted the Law Society about the rule after receiving cash from a client. After reading Rule 3-51.1, Lyons made a conscious decision not to abide by the rule and deposited the money. Approximately two months later, he again accepted additional cash in the amount of \$14,000 from his client on the same matter.

The panel found that Lyons was not frank in his dealings with the society in several respects — with regard to the extent of cash received, in his replies to follow up inquiries, in his August 4, 2006 exception report and in the ensuing months of investigation.

Lyons submitted that, while he was prepared to take responsibility for his actions, the Law Society bore some responsibility for the situation.

While the panel accepted Lyons may not have been fully briefed by the Law Society employee who answered his telephone call, it was ultimately his responsibility to inform himself of the Rules. Further, lack of knowledge about the potential consequences of a breach of the rule is not an

excuse for its violation. If there was a misunderstanding of the application of the rule, Lyons did not take any steps to clarify his understanding until he learned the society was investigating the matter.

Lyons' conduct was a marked departure from the conduct the Law Society expects from its members. The panel accepted the respondent's admission of professional misconduct.

PENALTY

Lyons acknowledged without reservation that he had made a mistake and was ashamed of his conduct. He apologized to the Law Society and provided assurances it will be the last time he will be disciplined. The panel accepted that Lyons was genuine in his remorse and truly regretted what appear to be uncharacteristic and unfortunate lapses in judgment.

The panel was satisfied that no further specific deterrence is necessary in this case. But with respect to general deterrence, the panel was of the view that in order to ensure the efficacy and purpose of the "no cash rule," the penalty must signal clearly both to Lyons and to the profession that the rule must be complied with, regardless of the inconvenience to the lawyer or the client.

The penalty should, as a general rule, be a fine with a sufficient deterrent effect that it prevents other lawyers from treating it as an acceptable cost of doing business.

In light of factors discussed above and considering Lyons' unblemished history and the steps he took to consult the Law Society, the panel agrees that Lyons should be assessed a fine in the lower range of the spectrum.

The panel determined the following penalty:

1. a fine of \$1,500;
2. costs in the amount of \$2,700.

JACK ALEXANDER ADELAAR

Vancouver, BC

Called to the bar: June 29, 1972

Discipline hearing: April 21 (facts and verdict) and December 10, 2008 (penalty)

Panel: David Renwick, QC, Chair, Carol Hickman and David Mossop, QC
Reports issued: July 2, 2008 (2008 LSBC 18) and January 23, 2009 (2009 LSBC 01)

Counsel: Jaia Rai and Maureen Boyd for the Law Society and Terrence Robertson, QC for Jack Alexander Adelaar

FACTS

Jack Alexander Adelaar represented a vendor in a real estate transaction. The vendor had accepted an offer, and the option to purchase was open until midnight on September 30, 2006. Counsel for the purchaser advised Adelaar that he would deliver a certified cheque for \$100,000 to be held in trust by Adelaar pending completion of the transaction. However, at 4:40 pm on September 29, Adelaar received a bank draft for \$90,200 and \$9,800 cash from a representative of the purchaser. The funds had to be in Adelaar's trust account by midnight on Saturday September 30, a non-banking day. He did not have a safe in his office to store the money over the weekend, and he could not reach counsel for the purchaser. He opted to deposit the cash to his account on September 29, 2006 and was aware when he did so that he would be in breach of Rule 3-51.1.

On October 31, Adelaar advised the Law Society in writing that he had received and deposited the \$9,800 in cash.

At the time Adelaar received the cash, the Law Society had issued 12 publications regarding Law Society Rule 3-51.1, the "no cash rule." Adelaar admitted that he was aware that the Law Society Rules limited the

amount of cash a lawyer may receive to no more than \$7,500 in respect of any one client matter or transaction, and he knowingly accepted the cash in breach of the rule. However, it was a one-time occurrence, and he had expected to receive funds by way of a certified cheque, not cash.

VERDICT

The hearing panel considered a number of mitigating circumstances in reaching their decision. The panel agreed that Adelaar had not expected to receive cash and he had no place to store the money over the weekend. If he had kept the money in an unsecure location he could have been in violation of Chapter 7.1 of the *Professional Conduct Handbook*, which requires lawyers to store valuables (cash) in a secure place apart from the lawyer's property. In addition, if he had returned the cash to counsel for the purchaser, he would have exposed that lawyer to a violation of Rule 3-51.1.

The panel also noted that this case illustrates the potential for civil liability issues arising from Rule 3-51.1. Because the option agreement did not stipulate how the \$100,000 was to be paid (solicitor trust cheque or certified cheque), if Adelaar rejected the \$9,800 cash he might have put his client and himself in a position of civil liability.

Considering these circumstances, the hearing panel found that, while Adelaar breached Rule 3-51.1, the breach did not amount to professional misconduct. The panel noted that this case illustrates some shortcomings in the Rules that the Benchers may wish to address.

PENALTY

In their assessment on penalty the panel considered the unique circumstances of this case as well as Adelaar's professional conduct record and ordered:

1. a fine of \$1,000; and
2. \$500 in costs.

GREGORY JOHN LANNING

Abbotsford, BC

Called to the Bar: May 15, 1992

Hearing dates: June 11, 12 and 13 (facts and verdict) and November 25, 2008 (penalty)

Panel: William Jackson, Chair, Leon Getz, QC and David Mossop, QC
Report issued: September 29, 2008 (2008 LSBC 31) and January 29, 2009 (2009 LSBC 02)

Counsel: Jean Whittow, QC and Mathew Good for the Law Society and Gregory John Lanning on his own behalf

FACTS

Gregory John Lanning represented client LG in a family law matter through a legal aid referral.

LG and NG were married in 1998 and had a daughter in 1999. They separated in 2004 and negotiated a separation agreement in May 2006. In June 2006 issues arose and NG, a self-represented litigant, filed various applications in Provincial Court, including an *ex parte* restraining order against LG.

Between August and December 2006 Lanning and NG exchanged letters pertaining to unresolved legal matters. In 12 of those letters, Lanning critiqued NG's correspondence and engaged in name-calling and personal criticism.

Lanning said that his communications were a "brilliant but unorthodox strategy" to "squelch," "defeat" or "crush" NG in order to advance his client's interest in securing access, and later, a divorce.

*Discipline digest ... continued***VERDICT**

A lawyer's communications must be courteous, fair and respectful. A lawyer is to refrain from personal remarks or references and to maintain objectivity and dignity.

Lanning's conduct departed from professional standards from the outset. He issued repeated letters that were rude, deliberately provocative and belittling of an opposing party. Even if his purpose was to advance the interests of his client, this does not justify the incivility and discourtesy contained in the letters.

The panel noted that lawyers face many challenges in dealing with unrepresented litigants, particularly in family matters. Parties can easily descend into name calling and uncivil language. The panel urged lawyers to rise above this behaviour.

Lanning's correspondence falls markedly below the standards expected of members of the Law Society and amounts to professional misconduct.

PENALTY

The panel considered the nature and gravity of the conduct, the previous character of the respondent, including details of prior discipline, and the impact upon the victim, and ordered that Lanning:

1. be reprimanded;
2. pay a fine in the amount of \$2,500;
3. pay costs in the amount of \$6,600;
4. pay the fine and costs by June 30, 2009.

JOHN CHRISTOPHER KARLSSON

Youbou, BC

Called to the bar: May 23, 2003

Discipline hearing: January 22, 2009

Panel: James Vilvang, QC, Chair, Robert Brun, QC and Peter Lloyd

Report issued: February 3, 2009 (2009 LSBC 03)

Counsel: Maureen Boyd for the Law Society and Jerome Ziskrout for John Christopher Karlsson

FACTS

In 2000, 2001 and 2002, John Christopher Karlsson made three separate applications to the Law Society — two for temporary articles and one for enrolment in the admission program.

In 1991 Karlsson was charged with impaired driving and possession of a prohibited weapon. He was acquitted of impaired driving and pleaded guilty to the possession charge. In all three applications, Karlsson answered "no" to the question of whether he had ever been charged with a crime, offence or delinquency. Further, he solemnly declared in each application that the information he provided was true, accurate and complete.

ADMISSION AND PENALTY

Karlsson admitted he lied in applications made to the Law Society in 2000, 2001 and 2002 and this conduct constitutes conduct unbecoming a lawyer.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Karlsson's admission and ordered:

1. a six-week suspension; and
2. costs of \$2,500.

In their assessment, the hearing panel noted that dishonesty is one of the most serious forms of conduct unbecoming or professional misconduct. The legal profession could not function if judges, other lawyers and members of the public could not rely on the honesty of lawyers, the panel said.

BARRY PROMISLOW

Vancouver, BC

Called to the Bar: July 7, 1958

Discipline hearing: January 22 (facts and verdict) and December 2, 2008 (penalty)

Panel: Richard Stewart, QC, Chair, Kathryn Berge, QC and Leon Getz, QC

Reports issued: March 10, 2008 (2008 LSBC 08) and February 5, 2009 (2009 LSBC 04)

Counsel: Eric Wredenhagen for the Law Society and Barry Promislow on his own behalf

FACTS

In October 2006, Barry Promislow was retained by clients RP, EG and GD who had initiated litigation involving the *Strata Property Act* and terminated the engagement of their then counsel, MF. In representing his clients, Promislow reviewed MF's accounts in early December 2006. The Registrar ordered that the fees be reduced, which amounted to a judgment for \$3,675.36 payable by MF's firm to the clients.

On December 28, 2006, Promislow received a cheque for \$3,675.36 from MF's firm. The accompanying letter contained the trust condition that payment was provided on Promislow's undertaking to execute, file and deliver to MF an Acknowledgement of Payment, or return the cheque to MF unprocessed. Promislow deposited the cheque into his trust account but did not comply with all the terms of the undertaking. After an unsuccessful exchange of letters and emails between MF and Promislow, MF filed a complaint with the Law Society.

Promislow responded to the Law Society on January 30, 2007 and, as of that date, he had not disbursed the funds to his clients. The funds were subsequently disbursed.

VERDICT

At the time of MF's complaint, Promislow had been practising law for close to 50 years. The panel noted that, as a senior lawyer, Promislow would be well aware of undertakings and their importance.

Between 1985 and 1999, Promislow was the subject of one citation and six Conduct Reviews. Promislow's conduct difficulties have centred around breaches of undertakings and discourteous conduct. The panel treated this discipline record as "an aggravating factor of some significance" and noted that his behaviour in this case, as in the past, had been "deliberately contentious and uncivil."

At the hearing, Promislow essentially conceded that he had been uncivil in this case as well as in the past. While it was noted that he had made similar representations in earlier discipline proceedings, his acknowledgement of his discourtesy was a factor considered by the panel in imposing a fine rather than a period of suspension.

The panel concluded that by deliberately ignoring the trust condition, Promislow had committed professional misconduct.

PENALTY

The Law Society was seeking a fine of \$7,500; however, the panel concluded that the appropriate sanction in the circumstances was a fine

of \$10,000, which was consistent with the precedents that the panel examined.

The panel ordered that Promislow:

1. pay a fine of \$10,000;
2. pay \$3,500 in costs;
3. complete, to the satisfaction of the Practice Standards Committee, the online "Communications Toolkit" course developed by the Law Society; and
4. if the course is not completed by May 7, 2009, be suspended from that date until the course is so completed.

TREVORS BJURMAN

North Vancouver, BC

Called to the Bar: May 14, 1976

Discipline hearing: November 20, 2008

Panel: Leon Getz, QC, Chair, Haydn Acheson and David Mossop, QC

Report issued: February 5, 2009 (2009 LSBC 05)

Counsel: Jaia Rai for the Law Society and Trevors Bjurman on his own behalf

FACTS

On July 5, 2007 a citation was issued against Trevors Bjurman outlining three allegations of professional misconduct. The first and second allegations related to unauthorized disclosure of confidential client information without the client's consent, and the third concerned making a knowingly unfounded application to a judge to order the surrender of a party's passport. Bjurman admitted professional misconduct in connection with the first and third allegations and the Law Society elected not to proceed on the second allegation.

Disclosing client information without the client's consent

In August 2003, Bjurman was retained to represent property owner JP on a counterclaim filed by his tenants. The amount of the counterclaim exceeded the net equity in JP's property. In adjourning the trial of the counterclaim to January 2004, the judge made an Order respecting JP's property and the disposition of proceeds if the property was sold.

In July 2004, Bjurman was advised that JP was proceeding with the sale of his property and the funds would not be paid into Bjurman's trust account. This was in violation of the Order. Bjurman also became aware that no Certificate of Pending Litigation had been registered against the Property.

Bjurman submitted to the Land Title Office a caveat, dated August 11, 2004, for registration against JP's property. The caveat contained confidential information relating to JP, but his consent to disclosure of this information was not obtained. Bjurman stated that he filed the caveat to prevent JP from breaching the Order and being found in contempt, but acknowledged that it could also be perceived he was acting to protect his claim for legal fees.

JP terminated Bjurman's retainer on August 26, 2004.

Seeking an unsubstantiated order for the surrender of a passport

At a court hearing on October 4, 2004 in which Bjurman and his co-counsel applied to withdraw as counsel of record, Bjurman sought an order that JP surrender his passport on the basis that he was a potential flight risk. Bjurman did not, however, have any expectation that JP would leave the jurisdiction.

ADMISSION AND PENALTY

Bjurman admitted that, in submitting the caveat for registration, he disclosed confidential information without consent and that suggesting an order for JP to surrender his passport, when he did not personally believe at the time that JP was a flight risk was, in each case, unprofessional conduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Bjurman's admissions and ordered that he pay:

1. a fine of \$7,500; and
2. \$4,500 in costs.

JOHN OWEN RICHARDSON

Vancouver, BC

Called to the Bar: May 15, 1972

Bench review: October 17, 2008

Benchers: Glen Ridgway, QC, Chair, Joost Blom, QC, Kathryn Berge, QC, Leon Getz, QC, William Jackson, Barbara Levesque and Dr. Maelor Vallance

Report issued: February 11, 2009 (2009 LSBC 07)

Counsel: Maureen Boyd for the Law Society and Terrence Robertson, QC for John Owen Richardson

BACKGROUND

In the decision of the hearing panel (reported in the March 2008 *Benchers' Bulletin*), John Owen Richardson was found guilty of professional misconduct for failing to honour the terms of an undertaking from opposing counsel in a matrimonial matter on behalf of their clients. The hearing panel ordered that Richardson pay a fine in the amount of \$2,500 and pay hearing panel costs in the amount of \$4,500.

On review, Richardson was seeking a reconsideration of some of the facts found by the hearing panel, as well as its finding of professional misconduct. He did not seek a reconsideration of the penalty imposed by the hearing panel, and no submissions were made on this subject. Richardson was adamant that in over 30 years of practising law, he had never breached any undertakings and that, in this case, opposing counsel had imposed an improper undertaking. It was suggested by Richardson that the hearing panel found that every breach of an undertaking constituted professional misconduct; the review panel disagrees that this can be concluded from that panel's decision.

DECISION

The review panel stated that acceptance of Richardson's argument would mean that he was free to decide whether the undertaking was lawful by virtue of his own interpretation of his client's contractual rights. It was noted that Richardson did not attempt to resolve the issue regarding the trust funds or propose an amendment to the undertaking. The fact that a consequence of Richardson's breach of the trust condition was that he was able to pay his own account due from his client adds to the seriousness of the misconduct as it adds an element of conflict of interest.

The review panel confirmed that the hearing panel's decision was correct in fact and in law and ordered Richardson to pay:

1. a fine in the amount of \$2,500;
2. hearing costs in the amount of \$4,500; and
3. hearing review costs in an amount to be determined. ❖

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