The Law Society of British Columbia

2009: No. 2 • SUMMER

BENCHERS' BULLETIN

Keeping BC lawyers and the public informed

Access – it's time for some results

by Gordon Turriff, QC

LAST YEAR, THE Benchers chose enhancing access to justice as one of their three chief priorities. Some of my Bencher colleagues think I have been hypercritical on this issue, especially concerning revision of the Rules of Court. It is not a secret that I have questioned the reform process.

But, actually, I think I have been quieter about access than I should have been. I don't want to disparage the honest efforts of the literally hundreds of people who have been working hard to try to provide access to justice answers, but I do ask how much real change has occurred over the last 20 years relative to the very large investments made in exploring new approaches.

Perhaps incremental change is all that can be expected, and perhaps it is the right thing. Perhaps over time a new litigation species will evolve from the little variations. But can we wait for the evolutionary process to unfold?

Isn't it somewhat astonishing that our method of resolving civil disputes at court is fundamentally unchanged from the regime that was introduced in England in the 1800s? Isn't life now a little more complicated for most people than it was in Ruskin's time? Don't we enjoy a few technological advantages over our Victorian forebears? Aren't our social arrangements somewhat different from those of our great, great or great, great, great grandparents?

Proportionality? What's new? Think of the need to apply for leave to appeal from some trial court judgments. Case management by judges? Think of all the years of unused potential for educative interlocutory costs orders. Self-represented parties? Are the numbers larger because fewer people can afford lawyers? It must be so. But aren't there a lot of Toms, Dicks and Marys with axes to grind who don't want the rigour that lawyers bring and who have found the way to hold everyone to ransom?

I think there are far too many cooks stirring the access to justice soup. By that I mean that there are too many groups with public interest mandates trying to achieve the same object. The Law Society may be one of them. The Benchers have both an Access to Legal Services Advisory Committee and a Delivery of Legal Services Task Force. Each is very ably chaired by a clear thinker and both are composed of devoted helpers who want to do good. But it is a natural tendency for people who are given separate jobs to do separate jobs; the area of intersection of their work is unexplored territory.

I think there are far too many cooks stirring the access to justice soup.

I believe that the access to justice industry has to become more efficient. There are too many rooms full of too many people separately doing essentially the same thing without any coordination of effort. Even a clearing house like the CBA's Civil Justice Forum is just another division of Access to Justice Inc.

If I got to make all the decisions, I would insist on one-room reform. I would find a neutral foundation with a lot of money it wanted to spend on access to justice and I would put into the same room for a year a top psychologist, economist, ethicist, historian, political scientist, lawyer and techno-wizard. I wouldn't burden them with researchers. I would direct them to devise the simplest, cheapest and most effective way they could think of for the fair and quick resolution of civil disputes. I would give them a blank slate, except that in whatever they recommended there would have to be a place, somewhere but not necessarily everywhere, for independent lawyers and independent judges.

BENCHERS' BULLETIN

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

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.

EXECUTIVE EDITOR
Michael Bernard

MANAGING EDITOR
Cara McGregor

PRODUCTION EDITOR
Denise Findlay

CONTRIBUTORS
Carol Oakley
Robin Pollak
Lesley Pritchard

PHOTOGRAPHY
Michael Bernard: page 4
Brian Dennehy Photography: pages 6, 7(l) and 14
Lee Halliday Photography: pages 7(r) and 12
Dave Milne Photos: page 9
Don Pierce Photo Services: page 7(c), courtesy UVic

SUBSCRIPTIONS
Robin Pollak

Publications Mail Agreement No. 40064480

What the proposers might suggest would be limited only by their own imaginations and ingenuity.

That would be my ideal. However, I am a realist, and in real life people don't like big change. So, realistically, access to justice has to be improved step-by-step. As one small step, I have invited British Columbia's chief law bodies — the Legal Services Society, the Law Foundation, the law faculties, the BC Law Institute, Access Justice, Pro Bono Law BC, the CLE Society, the Justice Education Society, and others — to meet this fall at a gathering to be hosted by the Law Society as the first of what I hope will become a series of bi-annual sessions. The meeting will be a marketplace for access and other ideas, a means of allowing each to learn more about its neighbours and for all of them to see how they can help others and be helped themselves. It will be an opportunity for the groups to discuss how they might work together efficiently, eliminating duplication of effort, coordinating the use of resources, channelling all the good ideas and learning how to keep the cooks to a manageable number. Happily, I can report that the chief policy makers for all the bodies have enthusiastically supported the proposed meeting. Some of the CEOs will soon begin working up a suitable agenda.

I believe that the access to justice industry has to become more efficient. There are too many rooms full of too many people separately doing essentially the same thing without any coordination of effort.

We will see.❖

In memoriam

William Rogers McIntyre

THE LAW SOCIETY marks the passing of former Supreme Court of Canada Justice William Rogers McIntyre.

McIntyre graduated from the University of Saskatchewan in 1939 and enlisted in the army two years later. He served overseas in the Second World War, taking part in the Battle of Ortona in December 1943.

He returned to Canada in 1946 and completed an LLB at the University of Saskatchewan. Called in both Saskatchewan and British Columbia, McIntyre moved to Victoria where he practised law for 20 years before his appointment to the Supreme Court of BC in 1967. Six years later he was elevated to the BC Court of Appeal, then to the Supreme Court of Canada in 1979, where he served 10 years before retiring.

McIntyre was elected a Bencher of the Law Society in 1965, serving until his appointment to the Bench in 1967. He was a member of the Law Society's No-Fault Insurance Task Force from 1995 to 1996.

Hugh Stansfield

The Law Society is deeply saddened by the loss of Hugh Stansfield, Chief Justice of the British Columbia Provincial Court.

Stansfield graduated from UBC law school in 1979. Called to the Bar in 1980, he practised civil, family and criminal litigation until he was appointed to the Provincial Court in 1993.

Stansfield became an Associate Chief Judge in 1998 and a member of the Judicial Council in 2001. He was appointed Chief Judge of the Provincial Court on July 1, 2005.

Despite a diagnosis of multiple myeloma in 2003, Stansfield remained an active and energetic member of the court. He worked tirelessly to improve access to justice for BC's neediest citizens.

Stansfield was a strong supporter of Canada's first community court, a joint initiative of the Provincial Court and the Government of BC aimed at breaking the cycle of crime, homelessness, addiction and mental illness.

"This [problem] requires an integrated approach to case management, with many different services — the community court puts these services under the same roof," said Stansfield on the day the court first opened in September 2008. "It's a sophisticated and integrated response to a complicated set of problems."

Stansfield was an active participant in judicial education, serving as Chair of the Judges' Education Committee. And he was always finding ways to improve access to the court for both the public and the media.

"Chief Judge Stansfield was passionate about making his court accessible and he was very good about getting people to share his passion. This is a very big loss for British Columbia," said President Gordon Turriff, QC.

Stansfield is survived by his wife Jo-Ann and sons Colin, David, Patrick and Matthew.❖

Toward a national standard for admission

by Timothy E. McGee

THE FEDERATION OF Law Societies has made the development and implementation of national standards for admission to the profession one of its strategic priorities. I would like to share with you some background on this issue and highlight the latest initiatives.

The standards and processes used by law societies in Canada to regulate admission to the Bar vary from province to province. While considerations such as competencies, good character and pre-admission evaluation and testing are used across the country, there are significant differences in application. Why should this matter? Here is the Federation's answer.

The integrity of our system of national lawyer mobility depends on the existence of reasonably similar standards for admission to the bar across the country.

First, a national admissions standards regime enhances public confidence in the legal profession by ensuring that each and every lawyer admitted in Canada has met clearly defined standards in the areas of education, competency and good character no matter where they earned their credentials.

Second, national standards of admission support the popular national mobility regime for lawyers in Canada. All of the provincial law societies (with certain exceptions for Quebec, given the civil code) have adopted and support the National Mobility Agreement under which lawyers in Canada can move easily from one common law jurisdiction to another. This approach reflects modern labour mobility policies based on a "mandatory mutual recognition" of credentials. The integrity of our system of national lawyer mobility depends on the existence of reasonably similar standards for admission to the bar across the country. The current differences in admission standards are hard to justify and undermine one of the underlying premises of the national mobility program.

Third, reducing the differences in admission standards across jurisdictions is consistent with the aims of fair access legislation now in place in Ontario, Manitoba and Nova Scotia. In each case, a commissioner has the authority to review the admissions processes of regulated professions. This includes examining why processes differ from one jurisdiction to another and why different classes of applicant are treated differently. On a global scale, we also know that regulatory differences (even though they may be defensible) can fuel criticism of law regulators.

Fourth, national admission standards should result in greater efficiency for law societies by eliminating the considerable duplication of effort and expense that is inevitable in the current system where each law society develops and operates its own processes and standards for evaluating applicants.

The Federation has struck a working group of which I am a member to design a detailed project proposal on national admission standards for presentation to the Federation council in October.

The goals of this initial phase will be to:

- define required bar admission competencies and good character standards;
- articulate required educational competencies, relying on work already underway through the Federation Task Force on the Canadian Common Law Degree, chaired by John Hunter QC; and
- develop and implement a nationally approved system of evaluation and testing compliance with the uniform standards.

All law societies will be encouraged to evaluate the proposal and, following consultation, provide input and approval to move forward. ❖

Stéphane Rivard, President of the Federation of Law Societies (centre) meeting here with Alan Treleaven, Director, Education & Practice (left) and Tim McGee.

Bencher Robert Punnett appointed to Supreme Court

THE LAW SOCIETY congratulates the Honourable Robert Punnett on his appointment to the Supreme Court of British Columbia.

Justice Punnett served as a Bencher for Prince Rupert County until his appointment on June 19. He was a partner in Punnett & Johnston of Prince Rupert.

First elected a Bencher for 2006, Justice Punnett served as Chair of the Access to Legal Services Advisory Committee, Vice-Chair of the Discipline Committee and was a member of the Lawyer Education Advisory Committee, Civil Justice Reform Task Force, Delivery of Legal Services Task Force and the Family Law Task Force. He also served two terms on the Canadian Bar Association (BC Branch) Provincial Council and on the board of directors for the Trial Lawyers Association of BC.

Law Society President Gordon Turriff, QC congratulated the newest addition to the Supreme Court Bench.

"This is great news for the people of BC," said Turriff. "Mr. Justice Punnett has all the qualities communities want a judge to have — he's thoughtful, a good listener and measured in his responses."

David Mossop, QC replaces Punnett as Chair of the Access to Legal Services Advisory Committee and Kenneth Walker as Vice-Chair of the Discipline Committee.❖

Stay up to date with *E-Brief*

E-BRIEF

Your Law Society news update

IN APRIL THE Law Society launched an electronic news feature called *E-Brief*. The newsletter is emailed to all Law Society members and is designed to keep lawyers up to date on matters discussed at monthly Benchers meetings, as well as other Law Society developments.

We made it easy to read on a mobile device and aim to take up only a minute or two of your time. *E-Brief* also links to the Law Society website, when appropriate, for a fuller review of the information provided.

Member response to our first couple of editions has been positive. Here are three examples:

> *I like the format, concision and lack of complicated graphics and frames. This is easy-to-use information that directs the reader to source documents if more detail is wanted or needed.*

> *I want to add my voice to those thanking you for doing the E-Brief. It's great! Makes me feel more connected to the Benchers and what's going on in our profession.*

> *I found it very useful. I particularly like that it is succinct, so it is easy to make the time to read right away before getting on with the other tasks of the day.*

We thank members for the encouragement. We also want to hear your suggestions on information you would like to see included in *E-Brief* in the future. The editor of *E-Brief* is Lesley Pritchard. You can contact her at lpritchard@lsbc.org.❖

Helping students learn about lawyer independence

THE LAW SOCIETY has partnered with the Justice Education Society (formerly Law Courts Education Society) to produce a video to educate high school students about lawyer and judicial independence.

The video presents the cases of three high school students arrested under a fictitious law called the *Youth Gathering Act,* which makes it illegal for a group of three or more youth to gather in a public place after 6 pm.

Following the students' arrest, they each consult a lawyer and learn first-hand about the principles of fairness, independence and equality in the justice system.

The video will be released to the BC schools this Fall, along with a teacher's guide that includes discussion points, questions and answers and other classroom activities to reinforce the video's message.

The project was initiated in 2007, when the Benchers approved a proposal from the Independence and Self-Governance Committee to develop a public education program to introduce senior high school students to the principle of the independence of lawyers.

Effective public education is one of the key priorities adopted by the Benchers in their three-year strategic plan.❖

New ways to get your CPD credits

GOOD NEWS FOR lawyers looking for ways to fulfill the Law Society's mandatory Continuing Professional Development: starting January 1, 2010 mentoring will be included as an activity to earn your credits. To qualify, members will submit a brief mentoring plan setting out their goals.

Bruce LeRose, QC, Chair of the Lawyer Education Advisory Committee, promised the process will be simple and can be done online. "This is not an exercise in mental gymnastics," he told fellow Benchers at their May 8 meeting in Vancouver. LeRose says having members submit a plan simply helps the society monitor the mentoring relationship.

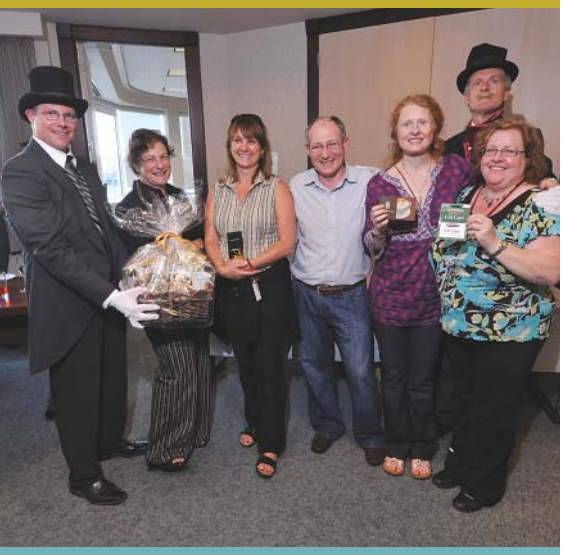
Under this program, mentoring should focus on broader practice issues and skills. Participants in the program must meet regularly for a minimum of half an hour, totalling at least six hours during a one-year period, either by phone or in person. Those who wish to act as a mentor to two lawyers can qualify for 12 hours of CPD credit, the Law Society's requirement for the year.

Participants in the program must meet for a minimum of half an hour, totalling at least six hours during a one-year period, either by phone or in person.

Linda Robertson, Lawyer Coach and Management Consultant, assisted the Law Society with the accreditation guidelines. Robertson said, based on a similar program in the UK, the minimums ensured the program was not too onerous or formal, but was not too casual either. "It should not include quick conversations between lawyers answering specific questions about files," Robertson explained.

The Law Society hopes that this will encourage more mentoring of younger lawyers. These relationships have dwindled over recent years, in part because of increased work pressures.

The Benchers also approved broadening the overall subject matter for educational options that qualify for CPD credit. As long as the subject matter of a course contained material primarily targeted at lawyers, paralegals and articling or law school students, it could qualify. The wording was also broadened for the writing and teaching options that qualify for CPD credits.❖



125 year staff celebration

Law Society staff marked the 125th anniversary of the society's incorporation with a summer party. Tim McGee and Alan Treleaven set the tone for the event by arriving in period dress.

Downtown Vancouver articling offers stay open to August 14

LAW FIRMS WITH an office in the downtown core of Vancouver (west of Carrall Street and north of False Creek) must keep open all offers of articling positions they make this year until 8 am, Friday, August 14. This timeline is set by the Credential Committee under Law Society Rule 2-31. It applies to offers firms make to second-year law students or first-year law students, but not offers to third-year law students or offers of summer positions (temporary articles).

A law firm may set a deadline of 8 am on August 14 or later for acceptance of an offer. If the offer is rejected, the firm can then make a new offer to another student the same day. Law firms may *not* ask students whether they would accept an offer if an offer were made. The Credentials Committee has found this practice improper because it places students in the very position Rule 2-31 is intended to prevent.

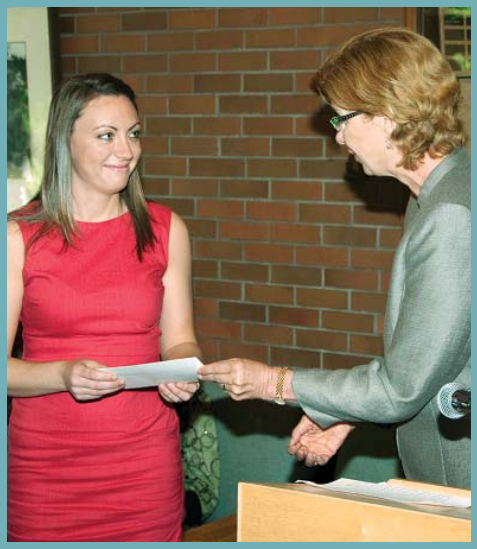
If a lawyer in a downtown Vancouver firm makes an articling offer and later discovers circumstances that mean it must withdraw the offer prior to August 14, the lawyer must receive prior approval from the Credentials Committee. The Committee may, for instance, consider conflicts of interest or other factors that reflect on a student's suitability as an articled student in deciding whether to allow the lawyer to withdraw the offer.

If a law student advises a law firm that he or she has accepted another offer before August 14, the firm can consider its own offer rejected. However, if a lawyer learns third-hand that a student has accepted another offer, the lawyer should first confirm with the student that the offer is no longer open for this reason.

Contact the Member Services department at 604-605-5311 for further information.❖

Law Society honours top achievers

President Gordon Turriff, QC presents the Law Society Gold Medal to UBC law student Eileen Keast.



Law Society Bencher Katherine Berge, QC (right) presents the Law Society Gold Medal to UVic student Diana Backhouse.

Jennifer Katherine Bond, 2009 Law Society Scholarship recipient, plans to work on human rights issues for her graduate studies.

Pro bono mentorship program

HAVE YOU THOUGHT about doing pro bono work but don't know where to start? The Canadian Bar Association has launched a program to pair you up with a lawyer who will gladly show you the ropes.

The CBA's Pro Bono Mentorship Program is seeking applications from both mentors and mentees. Any lawyer or articling student who is a CBA member can be a mentee. Any practising or retired member of a provincial or territorial bar can be a mentor.

The amount of time mentorship takes up is up to the parties involved. The program suggests a minimum of one phone call a month to keep the relationship going. The formal mentorship lasts for one year.

Roy Millen, a partner with Blake, Cassels and Graydon LLP in Vancouver, says the mentoring relationship can be beneficial to both lawyers involved: "It often just takes a five-minute phone call with senior counsel to provide some reassurance, as well as new ideas and approaches to a problem. It's a surprising relief, when one has the primary responsibility for *providing* advice, to be able to *obtain* some advice oneself!"

Shannon Salter, a litigation associate with Farris Vaughn Wills & Murphy LLP in Vancouver, says pro bono work makes you feel good: "It gives me a sense of community; it connects me with people and problems that I would otherwise only read about in the newspaper. It's a fantastic way to develop your advocacy, problem-solving and client management skills in a low-risk environment."

Salter recalls one especially satisfying case. "A few months ago, I helped a single mother fight an eviction from her housing co-op. We got short leave to bring an injunction application, which allowed her to stay in her home with her young children. There is no way this client, who barely spoke English, could have steered through the court process on her own."

Salter says she is fortunate in that she was mentored at her own firm. A retired partner, Jack Giles, QC, had a long-standing relationship with the Salvation Army Pro Bono program and brought pro bono into the firm culture. Salter has a wealth of colleagues she turns to for advice on pro bono files. In turn, she helps articling students with their files.

Jamie Maclaren, Executive Director of Pro Bono Law of BC, says troubled economic times bring increased need for pro bono legal services. As law firms experience a slowdown in some departments, he says pro bono offers an excellent morale-booster for lawyers and a chance for lawyers to develop more skills.

To find out more about the CBA's Pro Bono Mentorship program, contact Stephanie Vig, program coordinator, at 613-237-2925 ext. 221 or stephaniev@cba.org.❖

Law Society applauds Chief Justice Donald Brenner

PRESIDENT GORDON TURRIFF, QC applauded the work of BC Supreme Court Chief Justice Donald Brenner, who recently announced he will be stepping down after nine years of service in the position. Chief Justice Brenner will be leaving the court effective September 7.

Turriff described Brenner, CJSC as "approachable and as accessible as we could ever hope for" adding "he was always ready to listen."

"He has taken the lead in rules reform (a review process undertaken by the provincial government and the legal profession to increase access to justice) and, while he and I had different views about the reform process, he stuck with his vision and the people of BC are going to benefit from that.

"While it is sad to see him leave, it will be very interesting to see what new project he tackles, and we wish him well," said Turriff.❖

BC Court of Appeal 100th anniversary

Save the date: April 22 to 24, 2010

BRITISH COLUMBIA COURT OF APPEAL 1910-2010

FROM APRIL 22 to 24, 2010, the BC Court of Appeal will celebrate its 100th anniversary. Members of the national appellate judiciary will attend a symposium on April 22 followed by a two-day conference (April 23-24) open to members of the bar and the public at the Morris J. Wosk Centre for Dialogue at Simon Fraser University.

The Court of Appeal invites the legal community to celebrate its centenary at a gala dinner on Friday, April 23, 2010. The Right Honourable Beverley McLachlin, PC, Chief Justice of Canada, will be the keynote speaker.

Visit the event website at www.bcca100.ca or contact event staff at BCCA100@courts.gov.bc.ca.❖

In Brief

Professional authentication online
JURICERT™
Authentification de professionnels en direct

JURICERT FREE TRIAL

The Land Title and Survey Authority is partnering with the Law Society, Juricert and BC OnLine to encourage more professionals to use its Electronic Filing System (EFS) when releasing charges filed against land titles.

Effective June 1, 2009, electronic signatures for all types of releases will be provided at no cost for a period of up to 18 months, during which the current $2.50 Juricert fee will be waived.

For more information or to set up EFS training, contact BC OnLine at 1-800-663-6102 or at bcolhelp@accessbc.com.

Note that EFS training is now eligible for Continuing Professional Development credits.

JUDICIAL APPOINTMENTS

The Provincial Court of British Columbia:

David St. Pierre, a partner at Cobb St. Pierre Lewis, was appointed to the Bench in Port Coquitlam.

Adrian Brooks, QC, an associate with Brooks and Marshall, was appointed to the Bench in Victoria.

Susan Wishart, a partner in McKimm & Wishart, was appointed to the Bench in Victoria.

Lisa Mrozinski, a lawyer with the Ministry of Attorney General, was appointed to the Bench in Nelson.

The Supreme Court of British Columbia:

The Honourable **Hope Hyslop**, a Master of the Supreme Court of BC, replaces Mr. Justice R.M.L. Blair in Kamloops.

Bruce Greyell, a partner with Roper-Greyell, replaces Madam Justice N.J. Garson in Vancouver.

Terence Schultes, a Regional Crown Counsel, replaces Madam Justice E. A. Bennett in Vancouver.

Robert Punnett, QC, a Bencher of the Law Society and a partner with Punnett & Johnston of Prince Rupert, replaces Mr. Justice D.A. Halfyard in Prince Rupert. For more on Justice Punnett's appointment, see page 5.

Peter M. Willcock, a partner with Harper Grey LLP, replaces Mr. Justice L. Paul Williamson in Vancouver.

The Court of Appeal for British Columbia:

The Honourable **Elizabeth Bennett**, a Judge of the Supreme Court of BC, replaces Mr. Justice R.T.A. Low in Vancouver.

The Honourable **Nicole Garson**, a Judge of the Supreme Court of BC, replaces Mr. Justice J.K. Smith in Vancouver.❖

Towards a paperless office

by Robin Pollak, staff writer

DOCUMENT MANAGEMENT TECHNIQUES have changed dramatically in recent years. Electronic and digital tools provide efficient alternatives to traditional paper files. There is heightened sensibility for reducing paper waste, reflecting a genuine concern for the environment.

So then, why doesn't every office make the best use of technologies that exist to reduce paper use? And how much does a paperless office cost?

Glen Nicholson, a litigation lawyer at Traxler Haines in Prince George, is a passionate convert to a paperless office. He started using less paper four years ago as an experiment, and has never looked back.

"When I went into this, my main objective was to do something about space and filing," said Nicholson. "My paper files were exploding and we were renting expensive storage space in the basement of our building."

Today, Nicholson fits all of his open and closed files on two DVDs. He no longer needs to pay for storage space, although he admits to having a small filing cabinet for some original paper documents required for court.

Nicholson believes every lawyer would enjoy the practical and environmental benefits of having a paper-reduced office.

"The biggest benefit is reduced stress," he said. "It's very frustrating when you can't find things, when paper is stored offsite, documents get lost, or someone else is using them."

Today, file handling, managing, and locating is much easier. His "micro" office and all files can be accessed everywhere, using a laptop.

Nicholson's paperless system helps him to provide more efficient client service. "When a client phones, I can access any file in the time pleasantries are exchanged," he said. "Clients are anxious and they want to know answers quickly. I like to give good service."

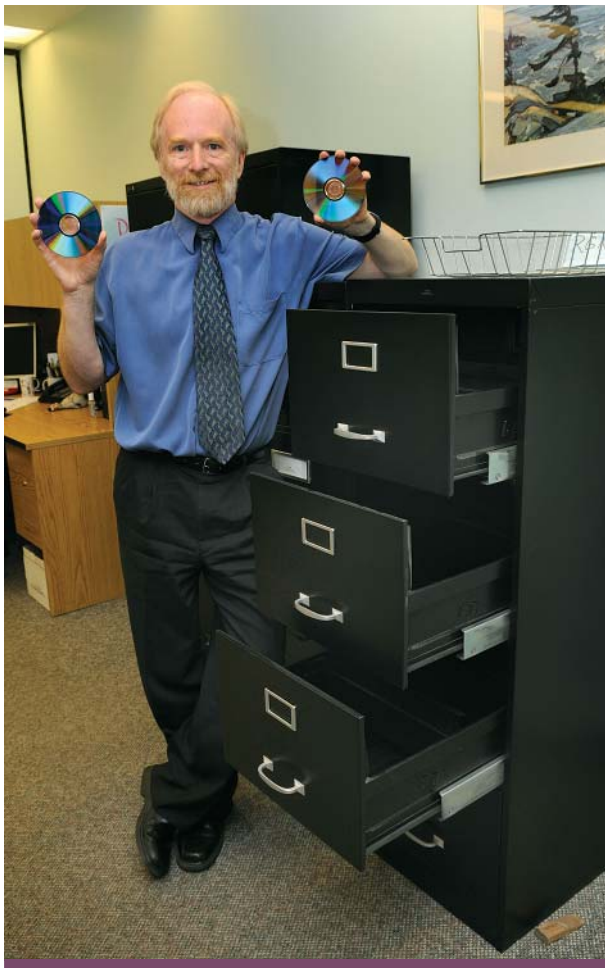
Interactions with other lawyers have also become easier. On-the-spot responses via email and scanned documents not only enhance continuity, they also save time and add efficiency.

At first, some clients and colleagues reacted negatively to his paperless existence. "When people see a bare desk, they sometimes panic and wonder if I have any work. They ask if I am okay, if I need some help!" Nicholson credits a Continuing Legal Education course he took in advanced time management that drove home this reality: There is only one task anyone can focus on at a time, and paper should be out of sight.

Some people are concerned about the cost of shifting to a paperless office, especially in today's precarious economy. Nicholson says it's all about priorities. While investing in new technologies and techniques may seem prohibitive at first, the payback is that you build a more efficient office. Administrators have a better system and clients get better service.

It is important to take small steps towards going paperless, if not the "big leap." Paper "lessened" is a great start. An incremental shift towards using less will help our environment and bring costs down.

As awareness increases, consumption decreases.



Glen Nicholson shows off his empty file cabinet.

TIPS TO REDUCE PAPER CONSUMPTION

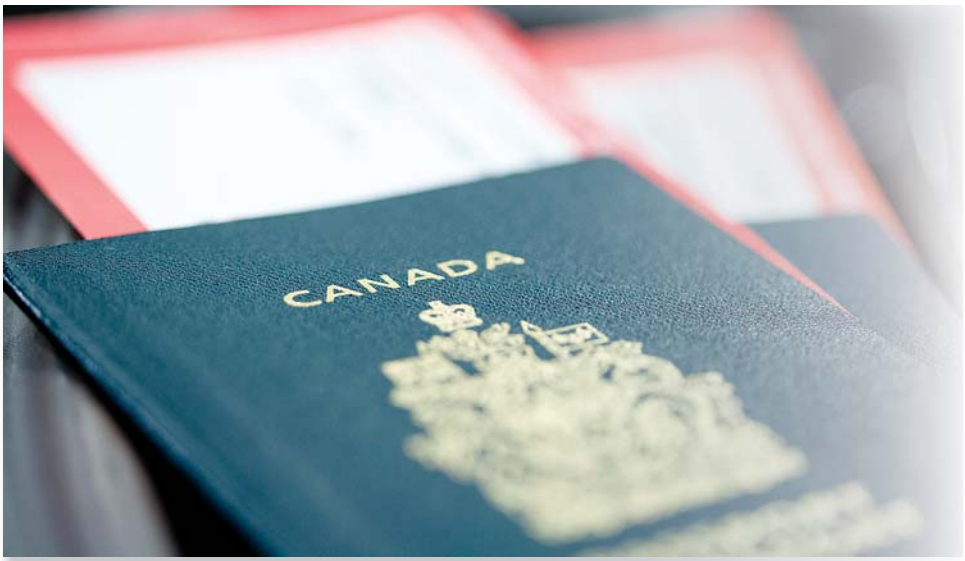
- Scan documents instead of photocopying them. Most offices have multi-function, high-speed copiers that can email and store files in PDF format.
- Assess how much paper you use and look at the ways you could reduce, if not entirely eliminate, paper.
- Set up your office printer to make double-sided copies.
- Receive faxes electronically instead of printing them.

TIPS TO MAINTAIN A PAPERLESS OFFICE

- Establish a clear coding and indexing system for your electronic files and use it to ensure you can find items at a moment's notice.
- Back up your electronic files. Automatic, overnight and offsite back-ups ensure files are regularly and securely stored.
- Set strong passwords to keep documents secure and reduce the likelihood of misuse (see Practice Tips on page 17 for more tips on keeping electronic documents safe).
- Invest in technology to maximize the benefit of your paperless office. For example, dual computer screens at a single terminal allow you to view a source document and make notes at the same time.❖

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

More on client ID and verification and "no cash"



HOW ARE YOU making out with the client identification and verification and "no cash" rules? I have spoken to many groups about the rules, most recently the Chilliwack District Bar Association in May; however, in most cases I speak to individual lawyers on a one-on-one confidential basis. Please give me a call if you have questions and I will be happy to assist you.

Rule implementation systems

You may have already implemented systems that take the new rules into consideration or are in the process of doing so. Some tools and procedures to help you implement the rules in your practice may include:

- Provide information about the rules to new and existing clients in retainer letters, on your firm website, and in mail inserts with your accounts.
- Inform your staff about the "no-cash" rules and what to do if a client unexpectedly shows up at the office with cash.
- Modify your file opening procedures to include a requirement to comply with the rules.
- Modify your trust accounting procedures to require confirmation of rule compliance before paying money out of trust.
- Use a client identification and verification rule checklist.
- Appoint someone in your firm to ensure that you, other members of your firm and relevant support staff keep up to date with Law Society rule changes.
- Designate a firm privacy officer who is responsible for ensuring that you and your firm comply with privacy legislation.
- Consider whether you need to make any changes to your current policies and procedures to safeguard the confidentiality of client information.
- Plan ahead to determine who can act as your agent to obtain the information required to verify the identity of clients in jurisdictions outside of Canada.
- Record any exemption from identification or verification upon which you rely by placing a memo in the client file.
- Implement a system whereby you can easily retrieve previously collected identity and verification information about your client.
- Create a list of online resources that may assist you in quickly locating helpful information related to the rules. (For example, to obtain information about Financial Action Task Force member countries, click on www.fatf-gafi.org).

Frequently asked questions

The FAQs are but one of the resources on the Law Society website to assist lawyers and law firms understand and follow the new client identification and verification rules. See the website for more Q and As and watch for updates. Below are some questions and answers I have recently provided:

Q. Does a lawyer only have to verify a client's identity when money goes through his or her trust account?

A. You are required to verify a client's identity in circumstances where you do not use your trust account as well as in circumstances where you do use it. For example, a "financial transaction" may exist in circumstances where you give instructions on behalf of a client in respect of the receipt, payment or transfer of "money" without the "money" being deposited into your account. To determine your obligations, you must consider the meaning of the defined terms "financial transaction" and "money" in Rule 3-91(1).

Q. If I provide pro bono summary legal advice to a client that does not involve a "financial transaction," do I have to identify the client?

A. No. If you provide pro bono summary legal advice that does not involve a "financial transaction" (as defined in Rule 3-91(1)), you do not have to identify the client (Rule 3-92(2)).

Q. If I provide summary legal advice to a client that does not involve a "financial transaction" but I charge a fee for my services, do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide an exemption. You must make reasonable efforts to identify the client (Rule 3-93(1)).

Q. If I provide pro bono summary legal advice to a client that involves a "financial transaction," do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide

an exemption. Rule 3-93(1) requires you to make reasonable efforts to identify the client. You must also take reasonable steps to verify the client's identity unless there is an exemption that applies (Rules 3-94 and 3-95).

BC LAWYERS TARGETED IN NEW FRAUD SCHEME — INCORPORATION AND SMALL BUSINESS LOAN

Be on the look-out for a new counterfeit cheque and bank draft scam that originally surfaced in Ontario, a variation of which has now shown up in BC. This scam involves incorporating a new company or companies and, shortly after, acting in relation to a small business loan.

While the details may vary, the scam works something like this. A new client retains a lawyer to incorporate one or more companies. The client may present a driver's licence and other identification (all well-made fakes) and a working cellphone number. The residential and business addresses (fake) are the same.

A short time later, the client asks the lawyer to act with respect to a small business loan. The client shows the lawyer brochures and invoices related to equipment or inventory that he will purchase with the loan proceeds. The client wants the loan completed quickly, often just before a holiday when the lawyer may be rushed or short-staffed. He instructs the lawyer to send the proceeds to a third-party corporation, not the client's new company. The only security is a promissory note or a general security agreement.

The lawyer receives the loan proceeds in the form of a well-made fake certified cheque or bank draft. The lawyer deposits the fake instrument into the law firm's trust account. The lawyer writes a cheque or wires the funds to the third-party corporation, only later to find out that the certified cheque or bank draft was counterfeit.

For details on how to protect yourself, consult the Notice to the Profession issued May 14, 2009.

ABOUT TO ACT FOR YOURSELF? THINK TWICE!

I have recently received a flurry of calls with respect to lawyers acting for themselves. I discourage this for some of the same reasons that I discourage lawyers from acting for family members, e.g. a loss of objectivity, acting outside of one's area of expertise, and no insurance.

Keep in mind that the *Professional Conduct Handbook* rules apply to a lawyer acting on his or her own behalf and the lawyer must not engage in 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. This may sound straightforward, but it becomes much more challenging if the lawyer has a personal interest in the matter at issue.

For example, a lawyer acting for him or herself may be tempted to communicate directly with the other party. If the other party is represented by counsel, the lawyer must not communicate with the other party regarding the matter, except through or with the consent of that party's lawyer. Likewise, what might be treated as a simple and perhaps inadvertent misstatement by a lay party in court might, when made by a self-representing lawyer, be seen as running afoul of that lawyer's ethical obligations to the court, and in the worst case might even attract disciplinary consequences.

For more information about the risks of acting for family and friends see the July 2005 *Insurance Issues: Risk Management*.

HEALTH CARE COSTS RECOVERY ACT IMPACTS PERSONAL INJURY CLAIMS

The Law Society issued a Notice to the Profession on April 14, 2009 about the *Health Care Costs Recovery Act*, SBC 2008, c.27 and *Health Care Costs Recovery Regulation* (BC Regulation 397/2008) that came into force on April 1, 2009.

Since then, I have received telephone calls from lawyers wanting more information. According to the provincial government's Third Party Liability web page, the Act "allows the Ministry of Health Services to recover all health care costs paid by government related to a beneficiary's injury that was caused by the wrongful act of a third party." There are obligations on plaintiffs, defendants and some insurers.

Be aware that the Act contains notice provisions that may affect settlements for personal injury or death, including those where a legal proceeding has not been filed or was filed prior to April 1, 2009. The notice requirements are in ss. 4, 5, 10, 12 and 13. Section 13(5) provides for a penalty for failing to give notice. Sections 4, 10, 12 and 13 require notice to be in a prescribed form. Links to PDF versions of the forms are on the government website. Section 24 sets out exclusions to the legislation (such as a wrongdoer's use and operation of a motor vehicle where ICBC insures the defendants and personal injury claims covered by the *Workers Compensation Act*).

Lawyers can read the *Health Care Costs Recovery Act* and associated regulations online at bclaws.ca. For further information or assistance, contact Barbara Carmichael, Legal Services Branch, Ministry of the Attorney General at 250-356-8817 or Barbara.carmichael@gov.bc.ca.

FURTHER INFORMATION

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*.❖

Notice from the Provincial Court

THE *TSAWWASSEN FIRST Nation Final Agreement Act*, S.C. 2008, c. 32, and S.B.C. 2007, c. 39 came into force April 3, 2009. The *TFN Act* implements the "Final Agreement" reached between the Tsawwassen First Nation, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of British Columbia.

The Final Agreement vests in the Tsawwassen First Nation the jurisdiction to make laws regarding a number of subject areas described in the Final Agreement. One term of the Final Agreement is to provide that the Provincial Court of British Columbia is the forum within which prosecutions of particular offences under Tsawwassen Law will be heard.

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

"I see an exciting new wave of lawyers who are not ashamed of seeking accommodations, without apologizing, without being embarrassed that they have responsibilities at home" – Lisa Martz, with her children Leo and Sadie.

Women are drawn to the practice of law for obvious reasons. Being a lawyer is a great career for someone with a sharp mind and a desire to serve people who need help.

Women have entered the legal profession in BC in numbers equal to or greater than men for more than a decade. Yet an alarming number of them are fleeing from law firms and indeed from the profession entirely within five years after being called.

Of all women called to the Bar in British Columbia in 2003, only 66 per cent remained in practice five years later. That means one third of the women who had the smarts, the grit and the savings to get through law school and then be called to the bar, were not serving as lawyers in 2008.

The Law Society has committed to explore the reasons behind the exodus and present some possible solutions. The society's Retention of Women in Law Task Force is presenting a business case for retaining women lawyers in private practice to the Benchers this July. In the meantime, the Law Society's staff writer Lesley Pritchard presents the current situation, through the eyes of some practising women lawyers in this province.

Retaining women lawyers

By Lesley Pritchard, staff writer

WOMEN WHO LEAVE

Diana Lund (a pseudonym) thought she had made the right career choice. The Vancouver-area lawyer is not so sure now. Called to the Bar in 1999, she enjoyed working at a private firm. She had her first child five years later and then began to experience the dilemma so many other women lawyers have faced — how to raise children and survive the long hours and client demands at a law firm.

Lund has made her choice — she is now a full-time mom with three children at home. She admits she has the luxury of making that choice because her husband's income can support them. While she is still listed as a practising member of the Law Society, Lund says she is only working on the occasional pro bono file. "I'd like to work for a private firm again," she sighs in near defeat, "but I'm just not sure how that's going to happen."

Lund has serious doubts whether she should have become a lawyer. "For me, it's not a flexible enough career option — not the way it is structured." Lund is convinced that being a lawyer is not for a family-oriented person because of the lack of flexibility.

There is evidence that a significant number of women have felt similar regrets. The Law Society of Alberta's 2004 *Report on Equity and Diversity* found that only half of former lawyers surveyed reported that if they could do it all over again they would become a lawyer. Some law schools in Canada have begun offering programs for women law students, to help them understand the realities of a law practice and to help them plot their career paths more strategically.

Lund's story may have a familiar ring to it. More flexibility to address family responsibilities is needed, and she feels the barriers may be too great to make a comeback. While women make up more than half of all law school graduates, they leave law — and in particular private firms — at a rate two to three times the rate of their male counterparts.

WOMEN WHO STAY

There are plenty of women lawyers either thriving or at least making it work in private practice. The latest Law Society figures show that there are 2,227 women in private practice and 1,071 in other forms of practice. Overall, women make up 34 per cent of all practising lawyers.

In a meeting room on the 13th floor of an office tower in the heart of Vancouver's financial district, Lisa Martz is eager to talk about life as a partner in one of Canada's largest law firms. At 42, the senior litigator at McCarthy Tétrault LLP has managed to find some balance. That's despite the challenges she describes as the "double asterisk" she attaches to her name: two children born close together and an unexpected divorce when the children were very young. Paradoxically, Martz says it was her work that helped her make it through some of the tough times. "I liked my job, the challenge of it," she recalls, "and I wanted to keep it."

But being in private practice is a tough game, even if it does provide a satisfying challenge that helps people. It is client-driven and the profits are based on high billing hours.

It didn't take long for Martz to realize that there were limits to what kind of reduced hours she might be able to work, even though the firm has flexible work policies. In litigation, she says, she is often dealing with the unexpected and the client has to get the message "I'll be there for you when you need me." While she may leave work early some days to meet a family demand, Martz says her Blackberry is always at hand and she relies on an extensive support system including a full-time nanny, the kids' dad, and a big network of family and friends.

"You have to enjoy the juggle," she says.

SMALL COMMUNITIES CRITICAL

Five hundred kilometres north of Vancouver in a church-turned-office in Williams Lake, Elizabeth Hunt does the juggle every day. It is late afternoon and the sole practitioner must start packing up to drive one of her children to soccer practice. A member of the Kwakuitl First Nation, Hunt's practice focuses on Aboriginal law, particularly treaty negotiations and residential school claims, and the work sometimes requires long distance travel. The needs of her First Nations clients are now changing, and she has added more general services such as wills, estates and personal injury. She is also a weekend professor at Thompson Rivers University.

Hunt faces a daunting number of responsibilities in her personal life as well. The single mother of two has to arrange childcare when she goes out of town for business. She survives month to month, spending $1,000 a month on childcare, plus paying down two mortgages, and insurance and professional fees. Hunt also sits on the Law Society's Equity and Diversity Advisory Committee and is part of the Lawyer Assistance Program, giving peer support to other lawyers. When asked if it ever crosses her mind to leave her practice, she quips "Oh yeah, all the time." A moment later she adds, "but I've got it pretty good."

Pretty good, because she feels she has more control than she would have at a big

continued on page 14

Retaining women lawyers ... from page 13

firm. "I can pick and choose," says Hunt. When her son was born, she ran a law firm out of her home. When she moved to Alkali Lake and became pregnant with her second child, she took the newborn to the office. With some help from women in surrounding offices she could nurse and cuddle her baby girl and then get back to work.

There is no question people like Hunt provide critical services to the public she serves. And she does it while also bringing the qualities and perspectives of a First Nations woman. A credible legal profession must include people who reflect the wider population and she is part of that equation.

Not only that, Hunt carries out her duties in a small community in which her Aboriginal clients would have fewer options were she to leave her practice. BC is experiencing a dwindling number of lawyers in small and remote communities and people are struggling to get their legal needs met.

In fact, a looming shortage of lawyers is predicted, as baby boomers retire and not enough lawyers are being trained to replace them. This comes at a time when the demand for legal services continues to rise.

FROM PRIVATE TO PUBLIC PRACTICE

Of those women who decide to leave private practice, many become in-house counsel or join government departments. In BC, twice as many women as men (32 per cent as compared to 16 per cent of men) practise as in-house counsel or in the public realm. The hours are often more predictable and contained and the working conditions are frequently more family-friendly and flexible, even though the pay cheque can be significantly lower.

Some women didn't choose to make this slide over. Anne Clark recalls being pregnant with her second child while she was articling at a firm. The firm encouraged her to accept work elsewhere. "Best thing that could have happened," Anne says. Being a mom was important to her, and she would be the last person to say she is bitter or that she thought it unfair. And she would not return to a firm, no matter the enticements. "Under no circumstances would I go back to private practice."

Today, Clark is an experienced Crown Counsel in Vancouver, and she is clear that the move was not an "easy out" in terms of hours or responsibilities; she works hard on the many cases she takes to trial. But her outstanding colleagues, coupled with the flexibility and progressive work environment, is what keeps her there.

Clark muses about whether the tight financial margins in private practice sometimes get in the way of creative thinking. The Crown lawyer recalls herself and two other lawyers sharing office space and "working seamlessly" together on files. "Firms need to be more open to women approaching them with creative solutions like this and give it a try," Clark says. "The whole service of the client by one person 24/7 is built around the premise another person (often a male lawyer's wife) is handling the entire domestic front needs to change."

SOME FIRMS EMBRACING CHANGE

Back at that 13th floor meeting room at McCarthy Tétrault LLP, Lisa Martz considers the point that many law firms are built on the premise that a man needs to

Retention of Women in Law Task Force

The Law Society's Retention of Women in Law Task Force will be presenting its report, *Business Case for Retaining and Advancing Women in Private Practice in BC* , to the Benchers at their July meeting.

The task force, left to right: Jennifer Conkie, QC, Elizabeth Vogt, Richard Stewart, QC, Kathryn Berge, QC (Chair), Gavin Hume, QC, Anne Giardini, Michael Lucas (Manager, Policy & Legal Services), Maria Morellato, QC, Jan Lindsay and Susanna Tam (Staff Lawyer, Policy & Legal Services). Not pictured: Roseanne Kyle.

"outsource" his personal life to his wife, and make his obligations at home invisible. She is now seeing lots of positive changes for both women and men because many have stopped hiding and apologizing and started asking for flex-time arrangements and looking for other ways to meet family responsibilities.

She also sees more firms embracing the presence of women in senior positions, not just because it harnesses potential, but because clients are demanding that women be a part of their legal teams. Then again, Martz enjoys life at one of the more progressive firms in Canada — 20 per cent of partnership positions are held by women at McCarthy Tétrault and the firm has made the retention and advancement of women a priority.

THE WAY FORWARD

Counting on large firms and the determined women who work in them to be the trailblazers is not going to be enough. The Law Society recognizes it must continue to play a role in pushing this issue forward.

It also recognizes that firms do not want to lose their women lawyers. A study done by the research firm Catalyst shows it costs a law firm an average of $315,000 to lose a four-year associate.

For the wider public interest, there are several important reasons to stem the tide. Keeping more women in private law firms enhances the public's access to a legal profession that reflects the general population. Women make up more than half of the students the province graduates; they are among some of the best and brightest minds in the province, and yet they still make up only a third of all BC lawyers. The public needs highly trained professionals in private practice who can, for example, litigate for damages, defend accused criminals, and give legal advice on complex family issues.

THE NEXT MOVE

It only makes sense to figure out how to keep women in private practice to provide direct service to the public. The Law Society is doing its part to help keep women lawyers in private practice.

The society has introduced a series of measures over the years, including reducing liability insurance for lawyers in part-time practice and providing the option of non-practising membership status with reduced fees. It also encourages law firms to adopt policies on maternity and parental leave, along with alternative work arrangements. The Practice Standards department has also put together an online Practice Refresher Course to make it easier for former and non-practising lawyers, especially women who have left to raise children, to satisfy the requirements necessary to return to practice.

The next step is the completion of the *Business Case for Retaining and Advancing Women in Private Practice in BC*. That report is to be presented to Benchers after the deadline for this issue of *Benchers' Bulletin*. Look for more information in the next issue.❖

Beat the clock internationally recognized

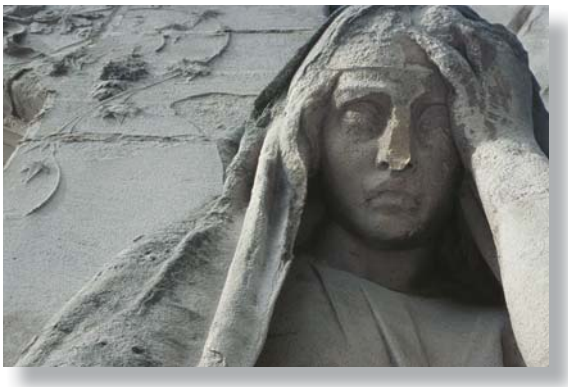
THE RISK AND Insurance Management Society (RIMS) Quality Advisory Council has recognized *Beat the clock – Timely lessons from 1,600 lawyers* with the 2008 Arthur Quern Quality Award.

RIMS is an international organization with 11,000 member organizations worldwide. The RIMS Quality Advisory Council commended the Lawyers Insurance Fund for their *Beat the clock* initiative which "demonstrated such innovation and creativity as to warrant special recognition."

The award was presented to the Law Society's Susan Forbes, QC and Margrett George during the RIMS 2009 Annual Conference in Orlando, Florida. "This award is particularly meaningful for us," said Forbes, "because it recognizes quality and innovation in risk management, the fundamental goal of *Beat the clock*."

Beat the clock is the first guide of its kind in North America. Covering over 70 risk management tips, this guide helps BC lawyers prevent missed deadlines. Download a PDF copy at lawsociety.bc.ca.❖

The Law Society was honoured to receive the Arthur Quern Quality Award for Beat the clock. *Pictured left to right: Frederick J. Savage, RIMS Director, Quality Advisory Council, Susan Forbes, QC, Margrett George and Joseph A. Restoule, RIMS President. Photo courtesy of RIMS.*



INTERLOCK, by Philip Campbell, M.Ed, RCC

Grief & Loss

GRIEF IS THE human response to loss. We usually talk about grief in relation to the loss of a loved one, but the same principles apply to any major loss. As humans, part of our ability to survive in the world is dependent on how we handle our losses.

We encounter losses of one sort or another every day of our lives. Fortunately most losses are trivial, and we do not get stuck in the grieving process. We accept the loss and move on with our lives. When we encounter a major loss that results in a significant change in our lives, this is not as easy to do.

You may have heard about the five stages of grief. These stages were originally used to describe how people cope with hearing that they have a terminal illness — the ultimate loss. The term "stages" is perhaps a misnomer, since we can skip a stage or go through two or three simultaneously. We can also experience different stages for differing periods of time, ranging from seconds to years. Use them as a guideline to help understand what you or someone you knows goes through when experiencing loss.

Denial: Denial is a form of shock and numbness. It is natural to feel at first, "This can't be happening."

Bargaining: As we begin to realize that this is indeed happening, we start trying to find a way to make it not happen. This often takes the form of trying to bargain — with God, with the elements, with any power, real or imagined, that could possibly change things. It is a softening of the denial.

Guilt: Often we think in terms of "could have, should have, would have." It is part of the learning process to ask, "What could I have done differently?" Feelings of guilt are normal, but not always rational. Especially in the case of a death, people sometimes take responsibility for things they could not possibly have known to do at the time.

Anger: As with guilt, anger may or may not be rational. We want to know who was responsible. In the case of a death, the anger is often directed at those who might be perceived as causing the death, at someone who said or did something hurtful shortly after the death, or even at helpers and the medical establishment who were not able to prevent the death.

Depression: Depression marks the breakdown of our defences in times of grief. After denial, bargaining, guilt and anger have not changed anything, the loss is still there. The reality of our loss sinks in deeply.

Acceptance / hope: Hope emerges ... that's the best way to describe it. It is subtle at first and you may not even be aware of it. You start to experience brief moments of pleasure again. You regain your sense of humour and find that you can laugh again. You start to settle back into the comfort of your old routines and look forward to a meaningful future.

Cherishing: At a memorial service we eulogize the person who has passed away. We cherish the person before letting go. So it is with any loss. While it is sometimes painful to think about the good times that are gone, it is important to do so. Talk to others who share the loss about your cherished moments. You do not want all of your memories to be dominated by the fact of your loss; you want to be able to remember with happiness and joy.

RITUALS

There are two different kinds of rituals: public and private. The public rituals, such as funerals and memorials, are familiar. They are a way of sharing the grief, marking the passage and moving on. When the public ritual is over, it often feels as though the grief is just beginning. This is when private rituals can be a meaningful way to help us come to terms with what has happened.

Private rituals help us bring our emotional selves to a place of acceptance. They often involve photographs, objects associated with the loss or ritualized actions.

One person I know went down to a river with a bunch of flowers. She then picked the petals off the flowers and threw them into the river, one by one. Like the flowers, what she had lost was something beautiful and precious. Watching the river carry the petals away allowed her to experience the process of letting go.

Grief and loss are personal and individual. You will never fully understand my grief and I will never fully understand yours. But we can support each other by helping to cherish and celebrate the person or relationship that is lost, listening to the feelings of loss and momentary helplessness. Sometimes we help just by being there.

MOVING FORWARD

Sometimes people ask, "When will I get over it? How long does it take? What is normal?"

We all have our own individual histories of grief and loss and we all respond differently. In some ways you never get over the loss, nor do you really want to. You cannot change history. You do not want to forget altogether, but you do want to be able to weave the experience into the fabric of your life. You want to be able to move forward and still find meaning and purpose in life.

FURTHER READING ...

- ***The Grief Recovery Handbook: The Action Program for Moving Beyond Death, Divorce, and Other Losses***, by John W. James and Russell Friedman
- ***The Courage to Grieve***, by Judy Tatelbaum
- **healingheart.net** (Healing Hearts for Bereaved Parents)
- **GriefNet.org** ❖

Interlock Employee and Family Assistance Program is a division of PPC Worldwide. Contact us at tel. 604-431-8200 or 1-800-663-9099, or visit interlock-eap.com.

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Securing PDF documents

♫ if you wanna be in my world
You've gotta know the password
(password)
To make it right…♫
Recorded by Kylie Minogue, "Password."

I RECENTLY LEARNED of a situation where a client received an advice letter from a lawyer in Microsoft Word format, modified the contents and then attempted to claim that the law firm had given them erroneous advice.

Fortunately, the law firm was able to produce a copy of its original letter, which documented their (correct) advice. But this entire situation would have been avoided if the firm had sent out a secure Portable Document File (PDF) instead.

How does one secure a PDF? According to John Simek, computer forensics technologist, legal technology expert and frequent speaker at the Law Society's Pacific Legal Technology Conference, securing a PDF is not complicated but it does have to be done correctly.

"Many people believe that setting a password using Adobe Acrobat will secure their document. But type 'Adobe Password Cracker' into Google and you will find a whole host of programs to break into them," says Simek. For example:

> [name of product] can be used to decrypt protected Adobe Acrobat PDF files, which have "owner" password set, preventing the file from editing (changing), printing, selecting text and graphics (and copying them into the Clipboard), or adding / changing annotations and form fields. Decrypted file can be opened in any PDF viewer (e.g. Adobe Acrobat Reader) without any restrictions — i.e. with edit/copy/print functions enabled.

These password hacking products work by removing the "flag" that Adobe's password function applies to the document. It does not depend on the "strength" of your password. Once the "flag" is gone, the document is completely open to be edited, printed, etc.

In order to properly secure a PDF, Simek advises a two-step process. First, apply a "Change Permissions Password" to restrict any changes to the document. Second, apply an "Open Document" password to prevent anyone but the intended recipient from reading it.

Using this dual password method, the software used to "crack" the Adobe document password cannot get at the "flag" and therefore cannot break the security of the document (at least at this time).

This system also safeguards against the situation described above. By providing your client with the "Open Document" password but not "Change Permissions Password," they can view the contents of the document but they have no ability to edit it.

Simek advises making both passwords robust i.e. not vulnerable to a "dictionary attack," for example, to prevent someone trying to guess the passwords and defeat the security of the document. As Kylie Minogue might say, you gotta know the password(s) to make it right.❖

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 Hand*book 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 articled 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 articled 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, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: Tel: 604-687-2344 Email: achopra1@novuscom.net.

Discipline digest

Please find summaries with respect to:

- Richard Craig Nielsen
- Joseph Takayuki Hattori
- Mimi Mankiu Luk
- Jeremy Stuart Gordon Donaldson
- Alan James Short
- Douglas Hewson Christie
- Michael Lee Seifert

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

RICHARD CRAIG NIELSEN

Vancouver, BC

Called to the Bar: September 5, 2001

Discipline hearing: December 9, 2008

Panel: Robert Punnett, QC, Chair, David Mossop, QC and Thelma O'Grady

Report issued: March 4, 2009 (2009 LSBC 08)

Counsel: Maureen Boyd for the Law Society and Gerald Cuttler for Richard Neilsen

FACTS

A citation was issued April 26, 2007 outlining eight allegations against Richard Craig Nielsen: two allegations of incompetence, two of professional misconduct and four of breach of the accounting rules.

Seven of these allegations pertained to Nielsen's role in a real estate scheme known as an "Oklahoma flip," in which mortgage funds were obtained and disbursed under false pretenses. The eighth allegation pertained to Nielsen's failure to maintain books, records and accounts in accordance with the Law Society Rules.

Between November 2004 and March 2005, Nielsen's clients, I Ltd. and Q Ltd., bought 13 properties and assigned the contract of purchase and sale to a nominee purchaser at a significantly higher price. The parties received and disbursed mortgage funds in respect of this second contract. Nielsen helped his clients and others obtain and disburse these funds.

Nielsen improperly acted for multiple parties in these transactions. He failed to disclose potential conflict issues and by his conduct preferred the interests of some of his clients (corporate assignors) over others (lender banks and nominee purchasers).

In addition, Nielsen failed to disclose material facts to his lender clients, including the fact that the mortgage funds exceeded the first purchase price and that these excess funds were disbursed to persons unrelated to the transaction.

Nielsen explained that he was duped by his clients, who told him the properties were bought at favourable prices in order to assist new immigrants. He further explained that, in the course of his duties, he raised concerns and sought advice about the transactions and the proper way to document them.

The panel found that, while Nielsen's actions were not consistent with knowing participation in a fraud, they were consistent with a lack of judgment, skill and diligence.

If Nielsen had complied with the "formalities" of real estate practice and the principles of conflict of interest, it is doubtful that he would have participated in this scheme, or at least that his participation would have been cut short. However, his conduct clearly shows he was oblivious to these requirements, which are fundamental to the practice of law.

ADMISSION AND PENALTY

Nielsen admitted all the underlying facts and each of the allegations, and admitted to an adverse determination in respect of each of them.

The allegations to which Nielsen has admitted are significant and serious. Pursuant to Rule 4-22, the hearing panel accepted Nielsen's admissions and proposed penalty. The panel ordered that he:

1. be suspended for six months, commencing February 1, 2009;
2. pay costs of $4,500 by February 1, 2010; and
3. remain bound by a previous undertaking to the Discipline Committee not to practise real estate law.

JOSEPH TAKAYUKI HATTORI

Kelowna, BC

Called to the Bar: May 20, 1975

Discipline hearing: February 17, 2009

Panel: Joost Blom, QC, Chair, David Mossop, QC and June Preston

Report issued: March 19, 2009 (2009 LSBC 09)

Counsel: Eric Wredenhagen for the Law Society and Jerome Ziskrout for Joseph Hattori

FACTS

In November 2004 Joseph Takayuki Hattori received an estate litigation file transferred from another lawyer. Hattori accepted the existing joint retainer to represent a group of three clients who were residual beneficiaries under the contested will of VM, as well as a municipality that was to receive certain real property under the will. Under the retainer, Hattori represented both the residual beneficiaries and the municipality in two separate actions involving the VM estate. One action had been brought by JW and KW, residual beneficiaries under a previous will, naming all beneficiaries of the second will as defendants.

In June 2005 JW and KW applied for an order to sell one of the properties from the VM estate with the proceeds to be held in trust pending the outcome of the litigation. The municipality advised Hattori it was not opposed to the sale, however the residual beneficiaries made their opposition known to him. Hattori responded on behalf of all the clients that the sale was unopposed and indicated that a release of a certificate of pending litigation on the property would be registered. He also executed a consent order to sell the property. The property was listed for sale in August 2005 and sold in October 2005.

The residual beneficiaries terminated their retainer with Hattori on May 5, 2006. Hattori continued to act on behalf of the municipality and on November 1, 2007 presented an offer to settle the action brought by JW and KW. The offer provided for the municipality to receive its bequest and for JW and KW to receive the residue of the estate. Hattori's former clients, however, were to receive nothing and bear their own costs.

ADMISSION AND PENALTY

Hattori admitted that he acted in a conflict of interest by:

1. failing to explain the principle of undivided loyalty to his clients;
2. failing to secure informed consent on how to proceed in light of the conflict that developed between his two clients; and

3. continuing to act for the municipality, and not for the residual beneficiaries, after it was evident there was a conflict between them.

Hattori further admitted that, by disregarding the residual beneficiaries' instructions, he failed to provide service in a conscientious, diligent and efficient manner at least equal to what would be expected of a competent lawyer in a similar situation. He admitted that this conduct constitutes professional misconduct.

Once Hattori realized his breach of duty to the beneficiaries he took steps to make amends, including apologizing to his clients and refunding their fees. He undertook to complete the Law Society's Small Firm Practice Course and to review the *Act*, Rules and *Handbook*.

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

1. a $3,000 fine; and
2. $1,000 in costs.

The panel emphasized the importance for all lawyers to exercise great caution from the outset in accepting and managing a joint retainer as noted under Chapter 6, Rule 4 of the *Professional Conduct Handbook*.

MIMI MANKIU LUK

Richmond, BC

Called to the bar: August 31, 1990

Ceased membership: June 18, 2008

Admission accepted by Discipline Committee: April 2, 2009

Counsel: Maureen Boyd for the Law Society and Gerald Cuttler for Mimi Luk

FACTS

Mimi Mankiu Luk worked for four different firms in Metro Vancouver between August 1990 and October 2000, after which she practised as a sole practitioner. She was suspended from practice in October 2005 and returned on July 27, 2007, practising as Mimi M.K. Luk Law Corporation.

Investigation order

On June 12, 2008 the Chair of the Discipline Committee ordered an investigation of Luk's books, records and accounts. Law Society staff attended Luk's office to conduct the investigation on June 17. Luk refused access to her office throughout the day and did not allow copying of any documents. Between the close of business on June 17 and 8:30 the next morning, she loaded 17 boxes of file materials, two computers and two large garbage bags filled with garbage and documentation into her car. She destroyed some draft records and accounts and deleted computer files.

Luk admitted that she removed the material from her office to avoid the Law Society having access to it in the course of its investigation. She admitted that her failure to comply with the order and the untrue and misleading responses she gave to the Law Society about the materials in her car constituted conduct unbecoming.

Conduct related to IG

In September 2001, IG retained Luk to prepare and submit an application to Citizenship and Immigration Canada (CIC). Luk did not submit the application in September or at any time after. However, she sent out a statement of account and deposited a cheque for $2,480, although she was not entitled to those funds. She did not record receipt of these funds in any client trust ledger for IG or in her trust or general account records. In addition, when her client called to follow up on the status of the application, Luk advised him that the application was still in progress. She also provided her client with a false receipt of payment to CIC for the $1,525 "Right of Landing and Application fee" and tried to mislead the Law Society that she had paid this fee, when she had not.

Luk admitted that this misappropriation of funds constituted conduct unbecoming. She admitted her failure to serve her client in a conscientious, diligent and efficient manner at least equal to that which would be expected of a competent lawyer in a similar situation. Further, she admitted that her untrue statements to her client and to the Law Society, made in order to mislead, constituted professional misconduct and conduct unbecoming.

Conduct related to GV and RV

In June 2007, Luk was retained by GV and RV to act for them in the sale of their home and the purchase of a new home. On October 16, Luk prepared and signed a trust cheque in the amount of $36,754 made payable to TA. The clients did not authorize this payment from trust and were unaware of it. In November 2007 Luk negotiated this trust cheque by depositing the funds into an account she held jointly with TA.

Luk admitted that she misappropriated the funds and that this constituted professional misconduct. In July 2008 Luk provided through her counsel $36,754 for the Law Society to hold in trust for the clients, pending proper disbursement by the custodian of her practice.

Misappropriation of funds from HH

In 2005, HH retained Luk in connection with the purchase of two properties. On October 6, 2005, Luk prepared and signed a trust cheque for $81,105 payable to TA. Her client did not authorize payment of these trust funds and was unaware of this transaction. Later that month, Luk deposited the cheque into an account that she held jointly with TA. Luk admitted that this constituted professional misconduct and provided the Law Society with a cheque for $81,105 to hold in trust for HH pending proper disbursement by the custodian of her practice.

Conduct related to AF

AF retained Luk in January 2006 to prepare and submit a sponsorship application for permanent residence for her husband and stepchildren. At this time, Luk was suspended from practising law. She deposited a cheque for $3,000 on February 2, even though she had not performed any services for her client. In September 2006, Luk requested and accepted payment of $1,975 for an immigration process fee. She deposited this cheque to her personal bank account and did not pay the immigration fee. She provided a false receipt for the processing fee to her client. Luk admitted that she took the $3,000 without providing the services, provided a false document for the purposes of misleading her client and failed to complete any services for her client, and that this constituted conduct unbecoming.

Conduct related to JV

JV retained Luk to purchase a property. When the transaction was completed, Luk held $13,862 in trust for her client. After deduction of total fees and disbursement of $10,130, the balance left in trust should have been $3,731. However, on June 12, 2008 Luk prepared and signed a trust cheque made payable to her law corporation for $13,862 and transferred to her general account the $3,731 held in trust for JV. JV did not authorize payment of these trust funds. On June 18, Luk withdrew $63,000 from her general account, which included the $3,731 held in trust for JV. Luk admitted that she misappropriated these funds for her own personal purposes and that this constituted professional misconduct.

ADMISSION AND PENALTY

Luk admitted that her conduct constituted professional misconduct and conduct unbecoming. On June 18, 2008 Luk terminated her Law Society membership and a custodian was appointed to wind up her practice. Under Rule 4-21, the Discipline Committee accepted Luk's admissions and undertakings:

1. not to apply for reinstatement to the Law Society for a period of 15 years;

2. not to apply for admission to the law society of any other province or territory in Canada without first notifying the Law Society of BC; and
3. not to work for any lawyer or law firm or allow her name to appear on the letterhead of any lawyer or law firm without obtaining the prior written consent of the Law Society.

JEREMY STUART GORDON DONALDSON

Victoria, BC

Called to the bar: May 17, 1991

Ceased membership: July 30, 2008

Admission accepted by Discipline Committee: April 2, 2009

Counsel: Eric Wredenhagen for the Law Society and Dennis T.R. Murray, QC for Jeremy Donaldson

FACTS

Jeremy Stuart Gordon Donaldson practised with a Victoria law firm from 1991 to 1993 and then as a sole practitioner in the areas of family, real estate, civil litigation, motor vehicle and wills and estates law until July 30, 2008. On that date, one day before a scheduled proceeding to consider whether he should be suspended pending the hearing of a citation, he withdrew from practice. That proceeding arose from a citation alleging, among other things, that Donaldson misappropriated client trust funds and filed misleading statutory declarations with the Law Society.

In June 2003, following a previous citation for failure to remit taxes collected from clients, Donaldson admitted professional misconduct for collecting PST and GST from clients for approximately two years and failing to remit the $26,250 collected. As part of the penalty, the hearing panel ordered that Donaldson deliver quarterly statutory declarations starting with the quarter ending June 30, 2003 setting out the total fees billed and total remittances made for PST and GST.

Late filings and false declarations

Donaldson was frequently late in filing his declarations on GST and PST. In January 2007, a Law Society auditor noted discrepancies in two of Donaldson's 2006 declarations. Following inquiries by the auditor, Donaldson advised that he had not paid PST from April 2006 onward and that the unpaid amount was between $8,000 and $10,000. He did not hold the PST monies in trust, and he used the money to pay his employees and meet other practice obligations. He admitted that he swore false statutory declarations on PST remitted.

Donaldson has since entered into a payment plan with the Revenue Collection Branch and, except for a minor amount still owing, the amounts due in respect of PST were remitted by December 2008.

Misappropriation of client funds related to billing and misleading the Law Society and clients

On July 3, 2007 an investigation was ordered into Donaldson's books, records and accounts, which was initially conducted by Law Society staff and subsequently by an external auditor. An investigation was also conducted in which a Law Society investigator interviewed several of Donaldson's clients identified in the Audit Report.

The Audit Report and Investigation Report found numerous breaches of the trust accounting rules, as well as evidence of misrepresentations made to clients and the Law Society about funds held in trust.

The auditor found Donaldson transferred client funds, usually in the form of a retainer, from trust accounts to his general account before the service had been completed and before the invoice had been delivered to the client. When the invoice was delivered to the client, it misrepresented the status of these funds, referring to them "in trust" when they were not.

Donaldson admitted to "pre-taking" fees prior to completing work in 13 separate client matters. He also admitted in one such case that he withdrew funds from trust where no work was ever done in respect of the funds withdrawn.

Donaldson further admitted that he misled his clients and sought to mislead the Law Society by rendering bills to clients that bore a different date from his file copy.

Misappropriation of trust balances

Donaldson admitted that in September 2003 he cleared six client trust balances totalling $273.63 and transferred the funds to his general account. He advised the Law Society that he will reimburse these clients.

Breach of the Professional Conduct Handbook

Donaldson admitted that he breached Chapter 4, Rule 6 of the *Professional Conduct Handbook* by assisting his client DL in conduct that he knew was dishonest or fraudulent. Donaldson agreed to pay out DL's share of a personal injury settlement in cash, helping her to hide the payment and protect the value of an unspecified pension.

Breaches of Law Society Rules

The Audit Report concluded and Donaldson admitted that between 2002 and 2007, he breached the Law Society accounting rules by:

- failing to carry out his duties and responsibilities under Division 7 (Trust Accounts and Other Client Property);
- depositing client trust funds directly to his general account;
- making payments from trust funds even though his trust accounting records were not current;
- withdrawing or authorizing the withdrawal of trust funds in payment of fees without first preparing a bill for those fees and immediately delivering the bill to the client;
- not keeping file copies of bills delivered to clients that accurately showed the dates charges were made;
- not recording each trust or general transaction promptly;
- following receipt of funds under Rule 3-61(2), not immediately delivering a bill or issuing to the client a receipt containing sufficient particulars to identify the service performed and disbursements incurred;
- not making the required trust reconciliations within 30 days of the effective date of the reconciliation; and
- upon discovering trust shortages, not immediately paying into his account enough funds to eliminate the shortage.

ADMISSION AND PENALTY

Donaldson admitted that his conduct constitutes professional misconduct. Under Rule 4-21, the Discipline Committee accepted Donaldson's admission and undertakings:

1. to resign his membership in the Law Society and not to apply for reinstatement for 10 years starting July 30, 2008, the date he withdrew from practice;
2. not to apply for admission to the law society of any other province or territory in Canada without notifying the Law Society of BC; and
3. not to work for any lawyer or law firm or allow his name to appear on the letterhead of any lawyer or law firm without the consent of the Law Society.

ALAN JAMES SHORT

Parksville, BC

Called to the bar: September 11, 1978

Discipline hearings: June 9, 2008 and January 30, 2009

Panel: David Renwick, QC, Chair, Meg Shaw, QC and David Mossop, QC

Reports issued: July 9, 2008 (2008 LSBC 20) and April 23, 2009 (2009 LSBC 12)

Counsel: Jaia Rai (facts and verdict) and Maureen Boyd (penalty) for the Law Society and Reginald Harris for Alan James Short

FACTS

In the summer of 2006 the Law Society received complaints from a court official and other counsel that Alan James Short was drinking and appearing in court while impaired, contrary to his January 14, 2003 undertaking to the Law Society to abstain from the consumption of alcohol. The Law Society requested and received a report from Short's physician, which did not note any consumption of alcohol since February 2005. Short failed to respond to the Law Society's request for an explanation as to why his physician was unaware of his recent drinking.

The Benchers suspended Short on September 12, 2006 to protect the public interest pending the disposition of the citation. Short subsequently admitted that from 2005 to July 2006 he drank on several occasions and appeared in court while impaired.

VERDICT

The panel found Short guilty of professional misconduct for breaching his undertaking to the Law Society not to consume alcohol and for appearing in court on more than one occasion while impaired.

PENALTY

The panel ordered that Short:

1. be reprimanded;
2. enter into a monitoring agreement with a physician and terms satisfactory to the Law Society for a period of five years ending January 31, 2014, and comply with the terms of that monitoring agreement; and
3. pay costs of $7,000.

DOUGLAS HEWSON CHRISTIE

Victoria, BC

Called to the bar: September 15, 1971

Bencher review: December 11, 2008

Benchers: Glen Ridgway, QC, Chair, Haydn Acheson, Leon Getz, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Ronald Tindale and Dr. Maelor Vallance

Reports issued: May 29, 2008 (2008 LSBC 15) and April 30, 2009 (2009 LSBC 13)

Counsel: Jean Whittow, QC and Andrew Buchanan for the Law Society and Douglas Christie on his own behalf

BACKGROUND

The hearing panel found Douglas Hewson Christie guilty of professional misconduct for causing the preparation and delivery of three documents titled "Subpoena of Documents" purporting to compel the production of documents in a way that was not permitted by BC law. The panel found that Christie knowingly changed Form 21, a subpoena, even though he knew there was no such thing as a "Subpoena for Documents in British Columbia" and had just completed an appropriate Rule 26 application weeks earlier. The panel found that Christie's zeal in pursuing the case on behalf of his clients caused him to overlook his professional responsibilities. They ordered Christie to pay a $2,500 fine and $20,000 in costs.

On December 5, 2006 the panel orally rejected Christie's application for a stay of proceedings on the grounds of delay, and followed that decision with written reasons on May 29, 2008. Christie applied for review of the verdict, penalty and delay decisions.

DECISION

The Benchers upheld the verdict, penalty and delay decisions. They agreed there was no evidence that Christie suffered prejudice or stigma from an unacceptable delay.

In reviewing the verdict, the Benchers rejected Christie's contention that the hearing panel was wrong on the law of compelling documents in civil litigation. They also rejected his assertion that he was not involved in the preparation of the subpoenas, noting that he had acknowledged his involvement to the judge at the trial of the civil matter involved and in his July 11, 2005 letter to the Law Society. Considering his experience with civil litigation and his recent Rule 26 application, the Benchers found it implausible that Christie did not know the appropriate procedure for obtaining documents, as he contended. They found that, while Christie was clearly suffering from stress during the time the subpoenas were prepared, this does not explain or excuse his misconduct.

In their review of the penalty, the Benchers considered that this was Christie's first misconduct in a 30-year career. They also noted that he did not secure any personal gain from his conduct, was under considerable stress at the time and had many testimonials noting his good character and commitment to his clients. They found that the penalty was appropriate to Christie's serious and deliberate abuse of the rules of court.

The Benchers found no basis for Christie's assertion that, if he had been told the penalty the Law Society was seeking, he would have agreed to settle the citation, thereby eliminating the need for a hearing and avoiding costs from those proceedings. The Benchers agreed with the panel's decision on costs but, considering Christie's financial circumstances, they decided to allow him more time — two years from the date of the review — to pay the $22,500 due from the fine and costs.

MICHAEL LEE SEIFERT

Vancouver, BC

Called to the bar: May 10, 1978

Discipline hearings: February 4 and 19, 2009

Panel: Gavin Hume, QC, Chair, Ralston Alexander, QC and Robert Brun, QC

Report issued: May 25, 2009 (2009 LSBC 17)

Counsel: Maureen Baird and Julien Dawson for the Law Society and David Gruber and Marvin Storrow, QC for Michael Lee Seifert

FACTS

This matter came to the Law Society's attention through a self report from Michael Lee Seifert on December 17, 1999 advising that he had entered into an agreed statement of facts and undertaking with the BC Securities Commission.

Seifert and other lawyers at Maitland & Company performed various services for Arakis Energy Corporation (AEC) between January 1992 and December 1995, including advising on reporting and filing obligations under the *Securities Act*. In April 1994 AEC issued Anthem International Incorporated one million shares of AEC, but did not publicly disclose that one of the reasons for the issuance was that European financiers would seek to secure financing for AEC. Seifert was aware of the potential financing and did not advise AEC to disclose this. Between April 18, 1995 and July 25, 1995, one year after he became aware of the potential financing, Seifert sold shares of AEC for proceeds of $331,259.60 and USD$366,319.63. In addition, Seifert's advice to a holding company led to trades that generated proceeds of $295,006. Seifert's relatives stood to benefit from these proceeds as beneficiaries of the Seifert Trust.

continued on page 23

Credentials hearings

LAW SOCIETY RULE 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement. If a panel rejects an application, the published summary does not identify the applicant without his or her consent.

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

INDERBIR SINGH BUTTAR

Surrey, BC

Hearing (application for call and admission): October 28, 29 2008 and January 6, 2009

Panel: Terence La Liberté, QC, Chair, Leon Getz, QC and David Mossop, QC

Report issued: May 13, 2009 (2009 LSBC 14)

Counsel: Jason Twa for the Law Society and Craig Dennis and Anu Sandhu for Inderbir Buttar

Inderbir Singh Buttar completed a combined arts and law degree in India and was called to the bar in 2003. He practised law for six months in India then moved to Canada. Following two years of study at the University of Windsor required by the National Committee on Accreditation, in June 2006 Buttar received a national certificate of qualification allowing him to article in any common law jurisdiction in Canada.

Buttar completed his articles on May 4, 2007 at a small BC firm and finished PLTC in July 2008. Testimony and written evaluations from Buttar's principal and his associate indicated that he demonstrated little better than a marginally acceptable level of skill even by the end of his articles. Buttar's principal signed a form setting out the activities that he performed during his articles and confirming that he was competent to be admitted to the bar. She never submitted the form. In July 2007 the principal sent a letter to the Law Society that stated that, while he met the competency test for call and admission, he did not meet the ethics, good character and fitness test.

The panel also heard testimony from the principal outlining a romantic relationship between Buttar and a co-worker that arose during his articles. The principal expressed concern that Buttar had taken advantage of his co-worker when she was emotionally vulnerable and failed to be honest and forthright with his principal about the relationship. The principal also noted an incident when a pornographic movie was briefly displayed on his computer at work.

The panel noted that Buttar's principal had signed a form confirming that he was competent to be admitted to the bar and did not change this assessment, although she later described his performance as borderline. They also found that the display of pornographic material was unintentional and should not be considered an issue of good character and repute.

The panel also did not find any evidence that the relationship between Buttar and his co-worker was influenced by imposition, exploitation, harassment or abuse. While the panel underscored the importance of articled students being honest and forthright in dealings with their principals, they noted that Buttar's deception was motivated by a desire to protect his personal privacy and did not involve client files.

The panel found that Buttar is a person of good character and repute and fit to become a barrister and solicitor of the Supreme Court and granted his application for call and admission, but imposed certain conditions on his right to practise law. In setting these conditions, the panel considered the fact that Buttar's principal felt he barely met the level of skill reasonably expected of someone who has completed articles and he encountered some difficulty completing PLTC. The panel ordered that Buttar:

1. successfully complete the Small Firm Practice Course before being permitted to practise law; and
2. practise in association with at least one lawyer who is qualified to act as a principal for a period of one year after starting practice.

GRAEME JOESBURY

Vancouver, BC

Called to the Bar: September 11, 1984

Undertaking to cease practising law: November 8, 2004

Ceased membership: January 1, 2005

Hearing (application for reinstatement): April 9, 2009

Panel: Gavin Hume, QC, Chair, Joost Blom, QC and Stacy Kuiack

Report issued: May 22, 2009 (2009 LSBC 15)

Counsel: Henry Wood, QC for the Law Society and Richard Lindsay, QC for Graeme Joesbury

Graeme Joesbury practised criminal law for a number of years, first with a firm in Vancouver, then as a sole practitioner. He was Crown Counsel from 1989 to 1992, then returned to practice until 2004, both as a sole practitioner and with a firm from 1995 to 2002.

In the latter years of his practice, Joesbury encountered problems with depression, alcoholism and drug addiction. On November 8, 2004 Joesbury provided an undertaking to the Law Society to cease the practice of law pending the disposition of a citation that had been issued. On January 1, 2005 he became a former member of the Law Society for the non-payment of fees and has not practised since then.

After he ceased practice, Joesbury took a number of steps to address his problems and applied for reinstatement to practice. He held a teaching position with Jiangnan University and currently works as a case worker. Joesbury's sponsor at Alcoholics Anonymous confirmed that he attends meetings regularly. The panel also reviewed a number of letters of recommendation, including several from lawyers who worked with Joesbury in the past. They described him as diligent and conscientious counsel prior to the difficulties he encountered in his later years of practice. The panel also reviewed a number of medical reports that indicated that Joesbury was committed to and responding well to treatment.

After reviewing the letters of reference and the evidence, the panel was satisfied that Joesbury was a person of good character and repute and fit to become a barrister and solicitor. The panel ordered Joesbury reinstated if he agrees to:

1. abstain from alcohol and drugs;
2. attend regular AA meetings and make regular contact with AA sponsor;
3. take anti-depressant medication as directed by family physician or psychiatrist;
4. for the first 12 months after reinstatement, visit a family physician once a month and authorize prompt communication with the Law Society and the Lawyers' Assistance Program in the event of any slippage. After the first year, quarterly visits may be approved by family physician;

5. advise the Law Society promptly of the identity and contact information of a new family physician;
6. enter into a physician monitoring agreement including monthly meetings and regular reports to the Law Society;
7. not practise in any area other than criminal law, except with the permission of the Credentials Committee;
8. arrange for five lawyers who practise criminal law within the same geographic area to commit in writing to notify the Credentials Committee if Joesbury's behaviour raises any concerns for them related to:
   (a) his professional conduct; or
   (b) any apparent depression or substance abuse.

Upon a request from Joesbury, supported by his family physician, the conditions may be modified by the Credentials Committee as it sees fit.

Costs will be addressed at a later date.❖

Conduct review

FOLLOWING CONSIDERATION OF a complaint, the Discipline Committee may order a lawyer to appear before the Conduct Review Subcommittee.

Rule 4-11 permits the Executive Director to publish and circulate to the profession a summary of a matter that has been the subject of a conduct review. A summary published under this rule must not identify the lawyer or the complainant.

Since conduct reviews are private and confidential, publication of findings is not generally carried out unless the matter is of particular interest or instructive to the membership as a whole.

LAWYER 8

This conduct review arose from a complaint of sexual harassment received by the Law Society.

Lawyer 8 was a senior partner at the firm where the complainant was an articled student and later a junior lawyer. While the complainant was an articled student, Lawyer 8 made romantic advances toward her, which made her uncomfortable. She complained to the partnership of the firm, who spoke to Lawyer 8 and received a commitment from him not to act in such a way toward the complainant. They asked the complainant to report any further infractions.

The following year, an intimate relationship began between Lawyer 8 and the complainant, which lasted approximately three years.

Lawyer 8 disputed that sexual harassment had occurred, claiming that the events between himself and the complainant were consensual. The complainant stated that the relationship arose from unwelcome conduct; Lawyer 8 was persistent in his advances, he was in a position of authority and that eventually she gave in.

Sexual harassment was defined by the Supreme Court of Canada in *Janzen* v. *Platy Enterprises* as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of sexual harassment."

Power plays a key role in the analysis of whether conduct is unwelcome. *Dupuis* v. *British Columbia (Ministry of Forests)* established that the burden rests with the manager to be certain that any sexual conduct is welcomed by the employee and continues to be welcome.

Lawyer 8 told the Subcommittee that he feels his colleagues and staff enjoy what he considered to be light-hearted, flirtatious but harmless banter around the office. The Subcommittee urged him to recalibrate his sense of what is small-talk and what is offensive behavior.

The Subcommittee found that Lawyer 8 betrayed his partners, potentially exposing them to both legal liabilities and potential public embarrassment by engaging in an affair with a junior lawyer. While the firm is not excused for its general failure to take any effective steps concerning the matter, the Subcommittee noted that Lawyer 8 made commitments to the firm that he did not keep.

The Subcommittee found that Lawyer 8 displayed remarkably little insight into his conduct. It is difficult for the Subcommittee to accept that after two decades of jurisprudence on the nature and legal consequences of sexual harassment that a senior lawyer could be so unaware of his obligations.

Lawyer 8 assured the subcommittee that he understood the matter and that his conduct would not recur.

Based on the above, the Conduct Review Subcommittee recommended no further action.❖

Discipline digest ... from page 21

VERDICT

The panel found, and Seifert admitted, that he was guilty of professional misconduct for performing legal services for AEC when he and his relatives had financial interests in the company that affected his professional judgment, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook*.

PENALTY

The panel underscored the seriousness of Seifert's misconduct, given the important role the legal profession plays in protecting the integrity of the capital market. The panel noted that this misconduct was the only departure from Seifert's otherwise unblemished record. However, they also found that given Seifert's 22-year career in securities law, there could be no leniency for inexperience or lack of familiarity with the *Securities Act*. While the panel noted Seifert had brought the misconduct to the attention of the Law Society, the facts disclosed would have come to the society's attention in any event, given their notoriety.

The panel ordered that Seifert:

1. be suspended for two months commencing May 29, 2009; and
2. pay costs of $25,000.❖

ELECTED BENCHERS

President
Gordon Turriff, QC*

First Vice-President
G. Glen Ridgway, QC*

Second Vice-President
Gavin H.G. Hume, QC*

Rita C. Andreone
Kathryn A. Berge, QC
Joost Blom, QC
Robert C. Brun, QC
Leon Getz, QC
Carol W. Hickman*
William F.M. Jackson
Terence E. La Liberté, QC
Bruce A. LeRose, QC*
Jan Lindsay
David W. Mossop, QC
Thelma O'Grady
David M. Renwick, QC
Marguerite (Meg) E. Shaw, QC
Richard N. Stewart, QC
Ronald S. Tindale
Herman Van Ommen
Arthur E. Vertlieb, QC*
James D. Vilvang, QC
Kenneth M. Walker
David A. Zacks, QC

LAY BENCHERS

Haydn Acheson
Patrick Kelly*
Stacy Kuiack
Barbara Levesque
Peter B. Lloyd
Dr. Maelor Vallance

EX OFFICIO BENCHER

Attorney General
Michael de Jong, QC

** Executive Committee*

LIFE BENCHERS

Ralston S. Alexander, QC
R. Paul Beckmann, QC
Howard R. Berge, QC
P. Michael Bolton, QC
Thomas R. Braidwood, QC
Cecil O.D. Branson, QC
Trudi L. Brown, QC
Mr. Justice Grant D. Burnyeat
A. Brian B. Carrothers, QC
Mr. Justice Bruce I. Cohen
Robert M. Dick, QC
Robert D. Diebolt, QC
Ian Donaldson, QC
Ujjal Dosanjh, QC
Leonard T. Doust, QC
Jack L.T. Edwards, QC
William M. Everett, QC
Anna K. Fung, QC
Richard C. Gibbs, QC
Arthur M. Harper, QC
John M. Hogg, QC
H. Allan Hope, QC
Ann Howard
John J.L. Hunter, QC
Mr. Justice Robert T.C. Johnston
Gerald J. Kambeitz, QC
Master Peter J. Keighley
Mr. Justice Peter Leask
Gerald J. Lecovin, QC
Hugh P. Legg, QC
Charles C. Locke, QC
James M. MacIntyre, QC
Richard S. Margetts, QC
Marjorie Martin
Robert W. McDiarmid, QC
Brian W.F. McLoughlin, QC
Kenneth E. Meredith
Peter J. Millward, QC
Dennis J. Mitchell, QC
Karen F. Nordlinger, QC
Richard C.C. Peck, QC
June Preston, MSW
Emily M. Reid, QC
Patricia L. Schmit, QC
Norman Severide, QC
Jane S. Shackell, QC
Donald A. Silversides, QC
Gary L.F. Somers, QC
Mary F. Southin, QC
Marvin R.V. Storrow, QC
William J. Sullivan, QC
G. Ronald Toews, QC
Russell S. Tretiak, QC
Benjamin B. Trevino, QC
William M. Trotter, QC
Ross D. Tunnicliffe
Alan E. Vanderburgh, QC
Brian J. Wallace, QC
Karl F. Warner, QC
Warren T. Wilson, QC

MANAGEMENT BOARD

Chief Executive Officer and Executive Director
Timothy E. McGee

Stuart Cameron
Director of Discipline / Litigation Counsel

Susan Forbes, QC
Director, Lawyers Insurance Fund

Jeffrey Hoskins, QC
Tribunal and Legislative Counsel

Howard Kushner
Chief Legal Officer

Jeanette McPhee
Chief Financial Officer

Alan Treleaven
Director, Education and Practice

Adam Whitcombe
Chief Information Officer

The Law Society of British Columbia

845 Cambie Street, Vancouver, British Columbia, Canada V6B 4Z9
Telephone 604-669-2533 | Facsimile 604-669-5232
Toll-free in BC 1-800-903-5300 | TTY 604-443-5700

lawsociety.bc.ca

Lawyers Insurance Fund
Telephone 604-682-8911 | Facsimile 604-682-5842