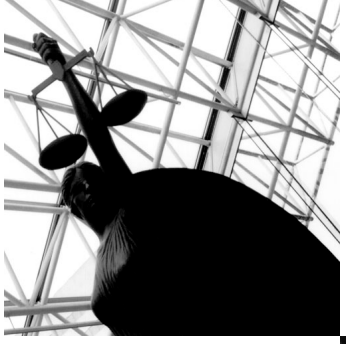
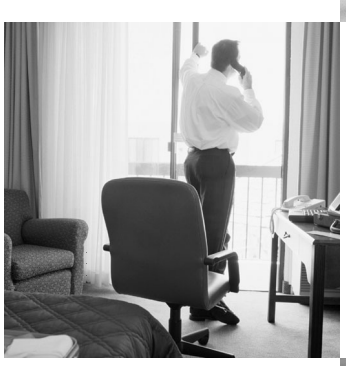


The Law Society
of British Columbia

Benchers' Bulletin



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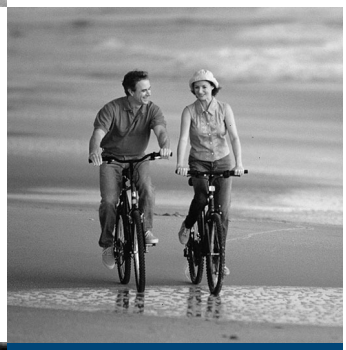
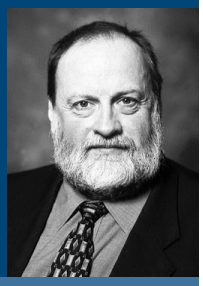


Inside



President's View

Whither the Fool Hen?

I wanted to write about Malaysia and grouse. While they are related topics, there's too much there for one column. Grouse today; Malaysia next month.

Grouse, naturalists tell us, have four main strategies to cope with danger: flying away; standing very, very still so that they won't be noticed; counter-attacking; and asserting grouse rights before any tribunal that may exercise jurisdiction.

The flying away deal, an explosion of bird, a drumming of wings, works pretty well. It copes fine for avoiding assault by dogs and children. It is reasonably effective against adults equipped with .22 rifles. It is less than 100% effective versus the shotgun.

The standing very, very still bit also works well, so long as the grouse is cognizant of his or her surroundings. It is well-suited to the conservative nature of the bird in question. It is a much more robust strategy when blending into the full foliage of trees in autumn than it is, say, when deployed against a backdrop of stark gravel road. It matters not how much the grouse perfects the standing very, very still strategy when the danger comes by gravel road; indeed, the more perfectly the grouse practises the art of standing very, very still, the less viable the strategy becomes. Topography is so nearly everything that the rest doesn't matter.

The counter-attack has some potential, but grouse are not sufficiently evolved to deploy it reliably or effectively. I sometimes see the more militant of their ilk performing their grouse martial arts out where we live: side-thrusting their stubby little calloused legs, beak sharpening, getting down and giving their Sensei five. Plucky. This is not necessarily a good thing in a militant bird.

But it's the litigious grouse that really get to me. All puffed-up and ponderous about the Universal Declaration of Grouse Rights and things they consider to be self-evident truths which, on any sober assessment, are little more than fanatical fowl droppings.

My point, of course, is that some strategies are sound for most occasions ordinarily faced. Some strategies are sometimes sound, but at other times disastrous. And some strategies are just fanciful. We need to know the topography. We also need to know whether we are grouse. I don't purport to state any of this as Law Society policy, nor to have answers; but if you want questions, I've got some beauts.

If lawyers think they can stand stock still, insisting that they are still surrounded by the abundant foliage of a monopoly on the delivery of paid legal services, then I say we are gravelled grouse. A more robust strategy would be to accept that lawyers will shortly be in competition with differently regulated, differently educated legal service providers and that the regulated lawyer will have only the competitive advantage that his or her "brand" provides: verified credentials, good character, sound training, mentorship, a complaints and discipline mechanism, a compensation fund, compulsory insurance, and so forth. With that "brand" the regulated lawyer of the not-too-distant future will go out and compete for the public's business.

Check the Yellow Pages under Accountants. You will find Chartered Accountants, who have sought to brand themselves as the elite: "CAs are the most highly-qualified & trusted Financial & Tax Advisors in Canada" runs their Institute's blurb. You will find the CGA's who position themselves as more cuddly and affordable: "We're the Name Brand for Business in Canada." Visit the Certified Management Accountants' website and

continued on page 5

Benchers' Bulletin

The *Benchers' Bulletin* and related bulletins are published by the Law Society of British Columbia to update B.C. 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.

The publications sport a fresh new look in 2002. This look will also be reflected online as the Law Society introduces email update bulletins later this year. The views of the profession on future improvements are always welcome – please contact the editor.

Additional subscriptions to Law Society bulletins may be ordered at a cost of $50.00 (plus GST) per year, prorated at $12.50 per quarter, by contacting the subscriptions assistant. To review current and archived issues of the *Bulletin* online, please check out the "Resource Library" at www.lawsociety.bc.ca.

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New national mobility protocol comes before Federation

A proposed new national protocol on lawyer mobility will top the agenda of the Federation of Law Societies March meeting.

The National Mobility Task Force of the Federation of Law Societies is recommending to Federation delegates that a Canadian lawyer from one province be allowed to practise in a reciprocating province for up to 183 days in any 12-month period. *(Under the current inter-jurisdictional protocol, visiting Canadian lawyers can appear on up to 10 matters, for not more than 20 days in any 12-month period — known as the "10-20-12" rule.)*

The new proposal is closely patterned on a protocol adopted in the four western provinces last summer. Lawyers from B.C., Alberta, Saskatchewan and Manitoba can practise in any of those provinces for up to six months cumulatively in any 12-month period on an unlimited number of matters, without a permit and without payment of any fee. To practise beyond the six-month limit, a lawyer must become a member of the host law society. For more information about the western protocol, see the July-August, 2001 *Benchers' Bulletin.*

The Task Force is now recommending that Federation delegates consider a Canada-wide mobility protocol with these features:

- **Temporary mobility**: Subject to certain criteria, a Canadian lawyer from one province or territory would be entitled to provide legal services in any other reciprocating jurisdiction for 183 days in a 12-month period.
- **Permanent practice**: To practise in another jurisdiction for more than six months in a 12-month period, a lawyer would need to become a member of the law society in that jurisdiction. However, the criteria for admission would be changed so that the lawyer would need to complete certain reading requirements specific to the jurisdiction, rather than write transfer examinations.

Both the current and proposed protocols on temporary mobility are premised on certain requirements, such as lawyers carrying comparable professional liability insurance and defalcation coverage.

To move forward on a national protocol, the Task Force has recommended that the Federation focus first on the common law provinces and then on Quebec. The situation in Quebec is more complex than in the rest of the country because it is a civil law province and because its self-regulation is limited by the jurisdiction of the Office des Professions.

As part of its proposals, the Task Force is advocating a national lawyer registry to give law societies access to relevant information about lawyers who may be practising in their respective jurisdictions.

Among the western provinces, only the Law Society of Saskatchewan so far requires visiting lawyers to give advance notice of their arrival. The B.C. Benchers, however, have recently taken the view that advance notification is necessary for regulatory reasons and are calling on the Task Force to incorporate this requirement into any new national protocol.

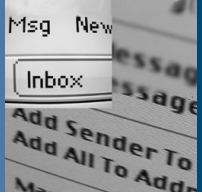
The Federation of Law Societies is an umbrella organization for provincial and territorial law societies, and any new protocol would not take effect unless adopted by the Benchers of those law societies.

Watch for updates on this issue in mid-March on the Law Society website at **www.lawsociety.bc.ca**.

Former Benchers cannot appear as hearing counsel for three years

Rule 5-3 (4) has been added to the Law Society Rules to provide that a person who has served as a Bencher or as a hearing panel member is disqualified for three years from appearing as counsel for any party in a Law Society credentials or discipline hearing. It was previously the Benchers' policy that Life Benchers should never appear as counsel in hearings and other former Benchers should not appear for three years. The new rule treats all former Benchers the same. The text of the new rule is set out in the enclosed *Member's Manual* amendment package.

It is the Benchers' policy not to retain former Benchers to represent the Law Society in hearings.



Thanks to the volunteers who make it possible

The Benchers would like to take the opportunity to thank and congratulate all those in the profession and the legal community who have volunteered their time and energy to the Law Society. Whether as members of our committees, task forces or working groups, as practice reviewers, practice supervisors, conduct reviewers, fee mediators, event panelists or advisors on special projects, these volunteers are critical to the success of the Law Society and its work. Over the past three years, the Society has enjoyed the support and contributions of over 250 Life Bencher and non-Bencher volunteers, all of whom deserve acknowledgement.

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President's View *… from page 2*

you will find them positioned as "big picture strategic thinkers." Then there are folks who I expect are completely unregulated: the "no credentials claimed" bookkeeping and accounting services, which position themselves variously ("Specializing in small business and farms," "Specializing in Forestry").

Is the public being harmed by having this competition for its accounting dollars? Do these services make mistakes that cost their clients big bucks? I'd expect so from time to time. Do the unregulated accountants and bookkeepers sometimes take the money and run? Of course. But why is there all this choice in the field of paid accountancy while there is, essentially, no choice in the field of paid legal services? Are we grouse?

What penetration do we have in the province of lawyers delivering paid legal services? There are towns of significant size with no resident lawyer. The 6,000 folks and businesses in Fort Nelson, many of them quite able to afford to pay well for legal services, have no resident lawyer and that has been true for most of the 22 years I've been delivering barrister's services up there. To what extent do lawyers penetrate traffic court? Yet we litigated to keep former police officers from defending traffic tickets for a fee. To what extent do lawyers penetrate Small Claims Court or provide WCB representation? Yet the monopoly means that paralegals cannot do that work for pay.

Can it really be in the public interest that folks either buck up for the services of someone who has gone through undergraduate training, law school, PLTC and articles or be forced into self-representation or gratuitous unqualified assistance? Isn't it about time we looked at the changing topography?

Doesn't the public interest, which the Law Society upholds and supports, demand that citizens have access to paid legal services delivered in their community by people they can afford? Isn't the real trick to balance the public's need for more, and more affordable, legal services against the public's right to protection from unscrupulous, dishonest poseurs? Are British Columbians ready to go down the road to complete deregulation of legal service providers, with *caveat emptor* and private redress as the only backstops? Will we see Law Society certified paralegals or notaries as classes of Law Society membership?

And, seeing as we grouse aren't going to be frozen on a field of gravel, how about solicitors selling real estate in competition with realtors?

At the beginning of my seventh year as a Bencher, what do I see as the biggest discriminator between Benchers and non-Benchers? Awareness of change. As Benchers, we enjoy a perch from which we can see that the topography is changing; changing more quickly, more profoundly and more uncontrollably than can be imagined if you're just in the trenches trying to serve your clients and make a living. What are the robust strategies that have a chance of serving lawyers and the public well? Adapt. Compete. Learn to love the gravel. But don't get your feathers ruffled.

B.C., Ontario lawyers exempt from new money laundering reporting requirements

B.C. Court of Appeal upholds interlocutory order

On November 20, 2001, the Honourable Madam Justice M.J. Allan of the Supreme Court of British Columbia made an order granting lawyers interlocutory relief from the requirement to comply with reporting requirements under the new federal money-laundering legislation: *Federation of Law Societies of Canada* v. *Attorney General of Canada*; *The Law Society of British Columbia* v. *Attorney General of Canada*, 2001 BCSC 1593.

Allan, J. had granted an exemption from the application of section 5 of the Regulations of the *Proceeds of Crime (Money Laundering) Act*, pending a full hearing on the merits of petitions of the Federation of Law Societies and the Law Society of British Columbia, which challenge the constitutionality of the legislation.

On January 18, 2002 the B.C. Court of Appeal dismissed an appeal of the interlocutory order brought by the federal government and upheld the order for the reasons given by Madam Justice Allan. As a result, B.C. lawyers remain exempt from the reporting requirements of the legislation pending the outcome of the hearing. That hearing is set for two weeks beginning June 24.

The full text of the decision of the B.C. Supreme Court is available at **www.courts.gov.bc.ca/jdb-txt/SC/01/15/2001BCSC1593.htm**.

Superior Court of Justice grants temporary exemption to Ontario lawyers

Following on the decision of the B.C. Supreme Court, the Ontario Superior Court of Justice on January 7 granted a temporary exemption for Ontario lawyers from the reporting requirements of the new federal money laundering legislation until a constitutional challenge can be heard in Ontario.

Justice Cullity ordered that legal counsel are exempt from the operation of section 5 of the Regulations of the *Proceeds of Crime (Money Laundering) Act*, pending a full hearing of petitions by the Federation of Law Societies of Canada.

In Alberta lawyers remain subject to the legislation but the Court of Queen's Bench in that province has ordered that they submit their reports to the Law Society of Alberta, not to the federal agency FINTRAC, pending the outcome of the court challenge in that province taken by the Federation of Law Societies of Canada.

B.C. notaries' probate bid ends at top court

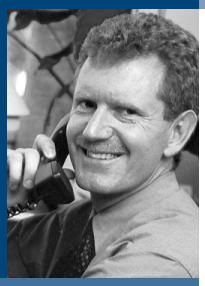
The Supreme Court of Canada has refused to hear an appeal by a notary public who was ordered to stop probating wills, thereby leaving standing the decisions of the B.C. Supreme Court and B.C. Court of Appeal that notaries in B.C. are not entitled to probate wills or to prepare documents relating to the estate of a deceased person.

The B.C. Supreme Court ordered an injunction against Sparwood notary public Marian Gravelle in 1998 after finding she had engaged in the unauthorized practice of law by offering to assist, for a fee, a member of the public in obtaining letters of administration: *Law Society of British Columbia* v. *Gravelle* (October 9, 1998) a decision of Mr. Justice Bauman (BCSC Vancouver Registry A964141).

That Court noted that the *Legal Profession Act* provides a definition of the practice of law as including the "drawing, revising or settling ... a will, deed of settlement, trust deed, power of attorney or a document relating to any probate or letters of administration or the estate of a deceased person."

The *Notaries Act*, which sets out the notaries' scope of practice, has no similar provision and does not expressly authorize a notary to advise on probate matters. Moreover, in a historical context, there was no tradition of probate practice by notaries when English common law was received in British Columbia in 1858.

The B.C. Court of Appeal dismissed an appeal of the Supreme Court decision last year: *Law Society of British Columbia* v. *Gravelle* 2001 BCCA 383.



Interlock

Economic downturn: coping with job loss, work loss and career transition

by Ross Chilton, MA, RCC

Last summer most economists were suggesting that the longest uninterrupted period of economic growth in the United States was nearing an end. A recession in the U.S. almost certainly meant that Canada would face the same downturn. The events of September 11 sent the already vulnerable economies on both sides of the border into contraction.

Locally, things were not looking promising despite the introduction of substantial personal and corporate tax cuts. The long-standing lumber dispute with the United States reached the boiling point with the application of duties amid claims of unfair trading practices. The British Columbia economy, still very dependent on the forest sector, was at the end of 10 years of less than spectacular growth. With a new provincial government came a new direction, cuts to the budget and civil service and agreements imposed or altered. Even more changes are now on the horizon.

Though it is unlikely to be reported in the morning paper or nightly newscast, the legal profession will experience significant pain. Changes in the private and public sectors will directly translate into less work for lawyers. Some will lose their positions while others will struggle with a decrease in billings. Many lawyers will find themselves working harder to avoid losing ground financially. When personal debt is at historic levels, this is certain to be a difficult period.

* * *

Alexander, for example, is a 45-year-old lawyer who works in a small firm. He finds himself working harder and harder to reach the same billable hour targets. It is starting to take its toll and he finds he doesn't have the same energy and enthusiasm for work.

* * *

Sandy is a young lawyer in a small firm. During law school she and her husband accumulated significant debt. Though they have been working hard the last few years, they find that the debt worries are placing a strain on the marriage. They frequently argue about money and worry about what would happen if Sandy's firm loses clients.

* * *

Ajit has just been told that his position is going to be eliminated in downsizing. He is not sure he wants to continue practising law. He feels anxious most of the time and has started to have occasional panic attacks. He doesn't know what to do.

* * *

Financial stress, coupled with job uncertainty, can be overwhelming for even the most resilient individual, couple and family. Interlock can help.

Through Interlock, Alexander was able to develop a plan for work — life balance. He learned to schedule time for himself and for his important relationships with friends and family. He is more productive and experiences greater satisfaction in his work.

Sandy and her husband needed assistance to move from worry to action. They developed a budget and made some financial plans for how they would manage the transition if Sandy lost her position. They started working together to solve the problems and this made them feel closer.

Ajit used counselling to develop a career plan. He found that when he took control over the future he felt less anxiety and more excitement. He was able to work on tasks that would get him ready to take the next step in his career.

Interlock professionals are available to assist lawyers and their families with a wide range of concerns, including:

- career consultation for those faced with job loss or transition;
- marital and relationship counselling;
- lifestyle planning; and
- professional assistance for those suffering from anxiety or depression. Depression will affect at least one in five adults during their career and early intervention assists in returning to normal functioning.

If you are a lawyer or articling student and you, a spouse or partner or a dependent child would like assistance with personal, family or work-related concerns, please call Interlock for confidential, professional counselling. The Law Society of B.C. funds this service to support lawyers in their professional and personal lives. To arrange an appointment at a convenient location call:

Lower Mainland / Fraser Valley: (604) 431-8200

National toll-free: 1-800-663-9099

Emergency after hours: 1-800-324-9988

Practice Tips, by Dave Bilinsky, Practice Management Advisor

A new world at your fingertips, in the palm of your hand

♪ If I could, then I would,
I'll go wherever you will go
Way up high or down low, I'll go
wherever you will go… question ♪

Words and music by Aaron Kamin and Alex Band, recorded by The Calling.

In the January *ComputerWorld Canada* is an article on how physicians, as compared with any other professional group, have become the biggest adopters of the personal digital assistant, or PDA. A PDA is, quite simply, a handheld computer. The best known is undoubtedly the Palm Pilot (so much so that "Palm" is frequently used as a generic name for the device), but other examples are the Handspring Visor and Compaq iPAC.

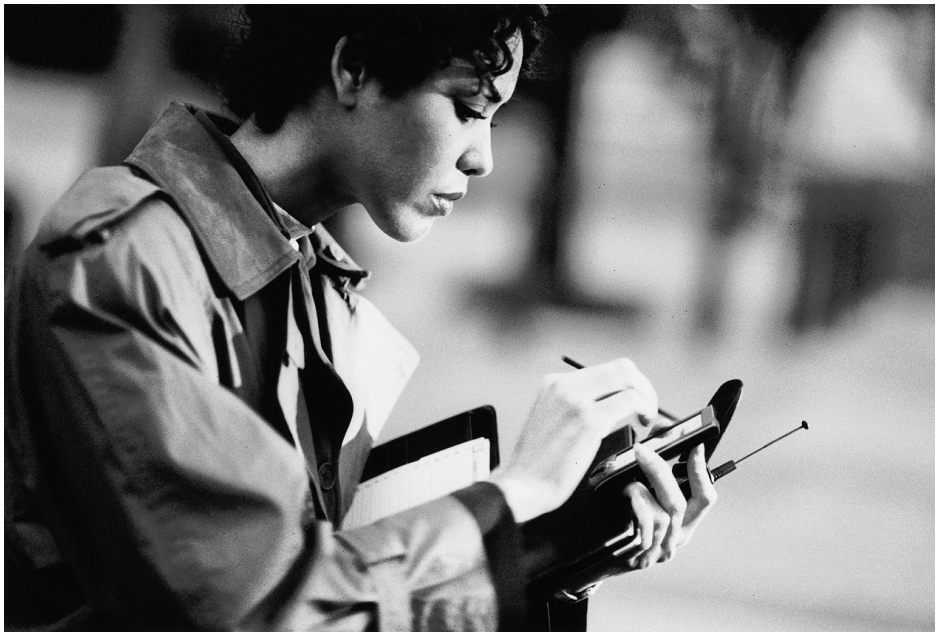
Our medical colleagues have realized the advantages that these little wonders bring to their practice, principally in three areas: accessing reference materials, updating patient files and scheduling / billing. Accordingly, this column is devoted to offering as many "tips" as space allows for lawyers to achieve similar improvements in their own practice as professionals.

Get a Palm Pilot!

Thomas Edison always had a notebook and pencil close at hand for when he came up with an idea. Keep a Palm Pilot or other PDA close at hand and you can always jot yourself a note about a file — in addition you will have all of your clients' contact information and your calendar with you at all times. They are great for looking up a telephone number quickly, checking or making an appointment, looking at your To-Do's or even for keeping track of your billable time and expenses when out of the office.

Get a case management program that synchs with your Palm Pilot

One of the advantages of MS Outlook, Amicus Attorney, Time Matters and other programs is that they quickly "download" your client contact list, To-Do list and appointments onto your PDA. Any changes made, either on your case management program or on your PDA, are "synched" and updated once you return to the office, place your PDA on its cradle and hit the button. This dynamic update feature means that you will never carry a paper diary again — for the PDA brings value-added functionality to your fingertips.



Furthermore, if you acquire any of the thousands of software applications written for these devices, you can keep track of time, billing and expense data, jot down notes and read reference materials on the go.

Let your electronic calendar manage your time

Now that you have Outlook, Amicus Attorney, Time Matters or other software, use the alarms in their electronic calendars to manage your time. When you are meeting with a client, schedule another appointment to start when you wish the prior appointment to end. Set an audible alarm for 10 minutes before the start of the second appointment and turn up the volume on your computer. When the alarm goes off (which your client can't help but hear) announce that you have an upcoming appointment.

These appointments can be downloaded to your Palm, allowing it to produce alarms for you while on the road, even if it is turned off. Moreover, there are applications such as TimeBill that has a "stopwatch" logging feature that lets you log time worked on a task by selecting this task and clicking a button. TimeBill automatically tracks the time logged on the active task to the exact second. It keeps track of elapsed time even when the Palm is turned off or you are working with other applications, until you tap the stop button or move on to another

task. You can also manually create and edit log records.

Use your contact manager to market your practice

All case management software can maintain lists of clients. Set yours up so that you can sort your clients by areas of interest — wills & estates, construction law, small business law, personal injury. When a case or a bit of news of interest comes up in a particular area, sort the list of clients corresponding to the area of interest and have your assistant send the newsworthy bit off to those people with a little note: *"I thought this may be of interest to you – Regards, Joseph or Josephine Lawyer*." Great way to keep in touch with your clients and reinforce that you are thinking of their interests even if you don't have an active file on the go.

If you see something of interest when out of the office, you can write yourself a note in the Palm and take action on it when back in the office.

Make appointments with yourself

At the start of each day, take a moment and plan your day — not by making lists but by making appointments with yourself. Take your To-Do's and your electronic calendar and schedule appointments with yourself to:

- work on the To-Do's
- keep in shape
- go out with your significant other
- do things with your children
- read about current developments in your field.

As lawyers we tend to set aside our own priorities in favor of those of our clients. Furthermore, we allow the "here and now" to take over — the crisis of the moment. By making specific appointments with yourself in your calendar, you will think twice about taking on new responsibilities before you have cleared your calendar of the existing duties — and you will carry these appointments around with you on your PDA to avoid over-committing when out of the office.

Use your "repeat appointment" feature to advantage

All electronic calendars can quickly schedule repeat appointments. By scheduling a day each week or month — say Thursday afternoons or the third Wednesday in each month — to go through your completed files for the specific purpose of producing bills, your staff and partners will realize that this is your "billing time" and will leave you alone. Moreover, since you have set this time aside to attend to this task, soon it will become automatic for you to do your billing on a regular schedule.

continued on page 13

Practice Advice

Dave Bilinsky

Felicia S. Folk

Jack Olsen

Practice management advice

David J. (Dave) Bilinsky is the Law Society's Practice Management Advisor. His focus is to develop educational programs and materials on practice management issues, with a special emphasis on technology, to increase lawyers' efficiency, effectiveness and personal satisfaction in the practice of law. His preferred way to be reached is by email to daveb@lsbc.org (no telephone tag). Alternatively, you can call him at (604) 605-5331 (toll-free in B.C. 1-800-903-5300).

Practice advice

Felicia S. Folk, the Law Society's Practice Advisor, is available to give advice in confidence about professional conduct, including questions about undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships, lawyer-lawyer relationships and other ethical and practice questions. All communications between Ms. Folk and lawyers are strictly confidential, except in cases of trust fund shortages. You are invited to call her at (604) 669-2533 (toll-free in B.C. 1-800-903- 5300) or email her at advisor@lsbc.org.

Ethical advice

Jack Olsen is the staff lawyer for the Ethics Committee. In addition to fielding practice advice questions, Mr. Olsen is available for questions or concerns about ethical issues or interpretation of the *Professional Conduct Handbook*. He can be reached at (604) 443-5711 (toll-free in B.C. 1-800- 903-5300) or by email at jolsen@lsbc.org. When additional guidance appears necessary, Mr. Olsen can also help direct enquiries to the Ethics Committee.

You can also reach Mr. Bilinsky, Ms. Folk or Mr. Olsen by writing to them at:

The Law Society of BC
8th Floor – 845 Cambie Street
Vancouver, BC V6B 4Z9
Fax: (604) 646-5902.

Practice Watch, by Felicia S. Folk, Practice Advisor

Information overload*

> *The daily New York Times now contains more information than the seventeenth century man or woman would have encountered in a lifetime.*
>
> Richard Saul Wurman, *Information Anxiety* (1989)

Every day we are inundated with an ever-increasing amount of information and an ever-increasing number of decisions on what to do with that information. Studies show that work and personal life suffer due to the stress induced by information overload.

One strategy that professionals employ in their wrestling match with information and task overload is to multi-task. *Multi-tasking creates the impression and perception that we are doing two tasks simultaneously*. However, multi-tasking actually involves rapidly switching our attention back and forth from one task or stimulus to another.

In their book, *Technostress,* psychologists Larry Rosen and Michelle Weil say, "Like jugglers, people have inherent limits as to how many balls they can keep in the air at the same time. If they try to manage too much at once, their cognitive system, or brain, doesn't work very well. In fact, with just a few too many thoughts, our entire system goes into serious overload and, just like the overextended juggler, all the balls start falling, and one must scramble to pick up the pieces … When animals are forced to multi-task, they become nervous, frightened, and eventually frozen into inactivity or launched into a frenzy."

When we are experiencing processing overload, the brain runs full tilt at times when it really needs to be quiet and resting. So, in the middle of the night, we wake with a myriad of ideas and are unable to fall asleep until they are removed from our active consciousness. We are actually searching for ways to turn off our brains and get the rest we need.

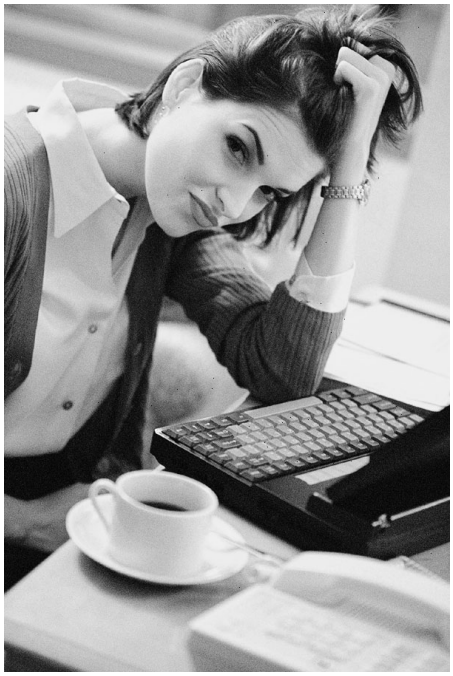
Technology not only directly contributes to information overload, it also indirectly contributes to it through a phenomenon Rosen and Weil label "time compression."

When we are faced with tasks, we rely on our own internal clocks to estimate how long the task will take. Rosen and Weil assert that, as a result of the speed of technology, we tend to consistently estimate that tasks will take less time to complete than they do. Consequently, instead of saying no to additional work when we are busy, we take on more, exacerbating our overload.

Strategies to turn the tide

Set limits and boundaries: Advise others of your preferred form of communication. Designate the best times for people to call you. Ration the time you spend cruising the internet or watching television.

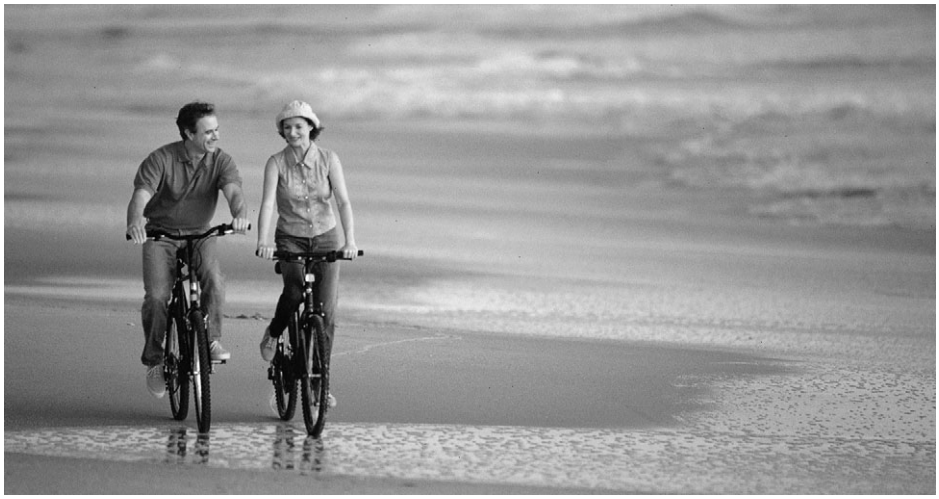
Give yourself solid, uninterrupted time to work on one task: Make it a priority to complete a task before moving on to



Information Fatigue Syndrome

- Feeling a continual need to engage in multi-tasking behaviour
- "Plugged-in" compulsion: Experiencing a constant need to check voicemail and e-mail
- Experiencing an inability to slow down because there is always more to do than time allows
- Free-floating hostility: Becoming angry when something or someone interferes with work flow
- Stress and health problems: poor concentration, sleep disturbances, irritability, memory loss and physical illness
- Alienation from others
- Mental and emotional "shut down" due to information overload

** Thanks to Mike Long and "Insight," the Oregon Attorney Assistance Program newsletter, for permission to reproduce this item.*



the next.

Respond on your own time: Disable the e-mail "ding" and turn off the ringer on the fax machine.

Sift and trash: Focus on the information you really need. Separate the important from the rest. Don't save a huge pile of articles, faxes and e-mails that you intend to reconsider later.

Use the technologies that work for you: You don't have to acquire every new technology. If beepers and cell phones cause you stress, stick with voicemail.

Schedule time away from information: Set aside time for exercise, sports, dinner with friends and vacations.

* * *

Practice Checklists Manual

The next update to the *Practice Checklists Manual* will be published on the Law Society website in May. In addition to the annual update of existing checklists, two new areas of law will be added:

- Immigration Law
- Gay and Lesbian Issues

Immigration Law will be added as a separate checklist, while Gay and Lesbian Issues are expected to be incorporated into existing checklists in several areas of practice.

Human rights and Aboriginal Law issues will also be added to the checklists in the near future. The focus of the latter will be on issues that arise when Aboriginal clients or interests are involved in a legal matter; accordingly, each of the existing checklists will be reviewed to determine where those issues might arise.

The CLE Society is working with the Law Society on these and other future improvements to the checklists.

From the Ethics Committee

Lawyers may participate in First Canadian Title's redesigned "Home Closing Program"

Last Fall the Ethics Committee concluded that it was not proper for a lawyer to act on a simple conveyance for the purchaser of real estate, the mortgagee and a title insurer (such as First Canadian Title): *see the September-October 2001 Benchers' Bulletin*.

Following a redesign of the First Canadian Title home closing program, the Committee has now changed its advice to the profession.

As the First Canadian Title program was originally designed, the Ethics Committee had stated the following, in part:

> It was the view of the Committee that Appendix 3 of the *Professional Conduct Handbook* does not permit a lawyer to act for a title insurer in addition to either or both of the purchaser and mortgagee. Appendix 3 is an exception to the rules set out in Chapter 6 of the *Professional Conduct Handbook* that prevent lawyers from acting for clients who are adverse in interest and which would ordinarily prevent lawyers from acting for multiple parties to a real estate transaction.
>
> The usual rule in Chapter 6 has been modified in the case of real estate matters to reduce the costs that separate representation of all parties would require, and because simple real estate transactions unfold in predictable ways that generally permit lawyers to avoid conflicts.
>
> In the Committee's view the sale, purchase and mortgage of real property is a "real property transaction" contemplated by Appendix 3. However, a contract to insure the title cannot be said to be part of the real property transaction. It was the Committee's opinion that such a contract is a contract of insurance that falls outside the real estate exception to the conflict rules permitted by Appendix 3.

continued on page 12

Ethics Committee … from page 11

In the Committee's opinion, lawyers must be free to give advice to purchasers and lenders concerning the appropriateness of title insurance for any individual real property transaction. While it may be a good idea for purchasers and lenders to insure the title to property in some circumstances, there will be other situations where the cost of title insurance may not be justified. If lawyers were to act for a title insurer along with a purchaser or lender they would not be positioned to give advice concerning that issue to the purchaser and lender because of a conflict between the interests of those clients and the interests of the title insurer.

As a result of the Ethics Committee opinion, First Canadian Title redesigned its home closing program. These are some of the features of the redesigned program:

- First Canadian Title is not a client of the lawyer who acts for the purchaser or for the purchaser and lender,
- the lawyer acting for the purchaser, or for the purchaser and the lender, owes no duties to First Canadian Title, other than the ethical duties a lawyer owes to a non-client,
- the purchaser is free to choose any lawyer willing to act in the matter, and
- the lawyer who acts for the purchaser or for the purchaser and lender is free to raise and discuss with those clients any aspect of title insurance, whether or not the clients have a binding obligation to purchase title insurance in connection with the transaction.

It is the Ethics Committee's view that, under the *redesigned* First Canadian Title home closing program, it is proper for a lawyer to act for a purchaser, or for a purchaser and a lender (provided that representation is permitted by Appendix 3).

News from the Courts

B.C. Supreme Court

Notice to the Profession (January 3, 2002) from Chief Justice Donald I. Brenner: **Proposed Family Law Project: new implementation date of July 1, 2002**

The details of the new procedures are found in the Report of the Family Law Committee to the Chief Justice, which is found on the Court's website at **www.courts.gov.bc.ca**.

Since the June 7, 2001 Notice was issued, the Supreme Court Family Law Committee has received many comments from family law lawyers on the proposed procedures. In the course of consultations with the bar and members of the Court, it became apparent that it is desirable to amend the Supreme Court Rules to implement the new procedures. Accordingly, the present intent is to proceed with the new procedures effective July 1, 2002. This will allow the Rules Revision Committee time to consider the appropriate rule changes. This will also give the Court time to further consider the useful comments received from the bar and develop education programs for both family law lawyers and members of the Court dealing specifically with the conduct of judicial case conferences.

***Revised* Draft Guidelines for Television Coverage of Court Proceedings**

Chief Justice Brenner advises the profession that, while the consultation process respecting television coverage of court proceedings remains ongoing, draft guidelines based on submissions to date are available on the superior courts website at **www.courts.gov.bc.ca**.

Form of address in Supreme Court

Following the change in the form of address last year for judges in the Supreme Court of Canada from "My Lord/My Lady" to "Justice," the B.C. Supreme Court considered whether its own form of address should change. It accordingly invited views from the B.C. legal profession last Fall. Chief Justice Brenner thanks the profession for its input and now advises that, having received 31 submissions and considered the matter further, the Court has decided to maintain its current form of address of "My Lord/My Lady."

B.C. Court of Appeal

Notice to the Profession (January 23, 2002) from Registrar J. Jordan: **Changes to the Court of Appeal Rules effective March 1, 2002**

New Court of Appeal Rules have been approved and are in effect March 1, 2002. The new rules can be found on the court's website at **www.courts.gov.bc.ca/CA/rules/carulesfinal.htm**.

Briefly, the new rules incorporate many of the Court's practice directives, provide new forms, eliminate paper by changing the way that appeal books and transcripts are prepared, permit a certificate of readiness to be filed with an appellant's factum, allow for the filing of electronic factums, introduce rules for intervenors, require an address for service within B.C. and generally consolidate the procedures of the Court in one document.

Lawyers should be cautious listing on directory websites

Lawyers should exercise caution when placing advertisements or listings in lawyer directory websites, some which offer free lawyer referrals to the public.

The Law Society has heard from members of the public, in particular women, who reported being treated very poorly and subjected to crude and abusive comments when seeking referrals from one such website.

Some members of the public may mistakenly view a directory website as in some way connected to law societies, in particular if the site features links to law societies or if it also purports to receive complaints about lawyers.

While there are legitimate opportunities for lawyers to advertise legal services on the internet, it is important to first verify the standards and reputation of those running a website.

Practice Tips *… from page 9*

Have your "task manager" manage your deadlines

All of us can overlook a deadline when we are caught in the hustle-bustle of a busy day or week. Enter all important deadlines into your task manager in your electronic calendar with the corresponding deadlines. Make it a rule of thumb not to take on a new task unless and until you have reviewed your current list of deadlines to avoid becoming overbooked. The reminder and alarm features will remind you of the upcoming deadlines. This is particularly good for limitation reminders as you will also be carrying them around with you on your PDA calendar (and presumably in your To-Do's as well).

Have your PDA check for conflicts

Your electronic case manager is capable of identifying all parties associated with a file — clients, opposing parties, other lawyers, witnesses, physicians and expert witnesses. Your PDA carries this complete contact list — allowing you to check for a conflict if approached by a potential client outside of the office. Your Palm can also quickly check for a potential conflict when you are back in the office when first answering a telephone call.

Use your PDA to keep up to date

Software for PDAs — such as the Palm support web-clipping — allows you to download information off the web for reading out of the office. You can, for example, download the "stay current" news from CLE (www.cle.bc.ca), cases from the B.C. superior courts home page (www.courts.gov.bc.ca), cases from the Supreme Court of Canada (www.scc-csc.gc.ca) and other information to review on the train or in Chambers while waiting to be called.

Work while out of the office without carrying a laptop

You can now put Word, Excel and PowerPoint files and eBooks (even video clips) on a 16MB SD and plug it into an expandable Palm or Handspring Visor and work wherever you are — without a computer. I have seen full-colour PowerPoint presentations done from a Palm — great for client presentations on the go (and a great way to show to a client that you are up to date). iSilo — a document viewer for the Palm platform — allows you to use your Palm as a knowledge manager. You can carry around case law, memos, notes, agendas, reports and news to read on the road. It also includes an outliner to jot and organize new notes and ideas.

Watch for what's ahead

In the U.S., a lawyer went to court with his Palm VII, equipped with a wireless Westlaw connection enabled by Palm.net, a dedicated wireless service. During the proceedings, the opposing lawyer cited the case of *Smith* v. *Jones*. The lawyer pulled out his Palm, connected to Westlaw using Palm.net and looked up the citation history of *Smith* v. *Jones*. When it was time for the opposing submission, our lawyer handed up his Palm to the judge and stated that the *Smith* v. *Jones* case his friend was relying on was no longer good law. Needless to say, the wireless lawyer won his case.

It will only be a short time before legal databases and resource materials will be accessible to us in a wireless format directly by a Palm device similar to the Palm.net service in the U.S. Provided you have internet access through your cell provider, you can do this indirectly now by attaching a modem to your Palm and connecting it to your cell phone. For the Palm to access the information directly will be (yet another) big step ahead.

The software applications written for the Palm number over 10,000 and can be found at www.palm.com. A PDA goes wherever you go — allowing you to keep your practice in the palm of your hand.

* * *

Has the PDA made a difference to your practice? If you have tips, suggestions or insights to share with others in the profession, send them to Dave Bilinksy at daveb@lsbc.org.

Special Compensation Fund claims

The Special Compensation Fund, funded by all practising lawyers in B.C., is available to compensate persons who suffer loss through the misappropriation or wrongful conversion of money or property by a B.C. lawyer acting in that capacity. Although instances of misappropriation in the profession are rare, the Special Compensation Fund is a public protection the profession takes seriously.

The Special Compensation Fund Committee makes decisions on claims for payment from the Fund, in accordance with section 31 of the *Legal Profession Act* and Law Society Rules 3-28 to 3-42.

Rule 3-39 1(b) allows for publication to the profession a summary of the written reasons for decisions of the Committee.

For each claim, the Committee must canvass such preliminary issues as:

- *Should the claim be considered prior to the conclusion of discipline proceedings?**

  (*The consideration of claims usually follows discipline proceedings. When considering complaints against a lawyer who has ceased membership, the Discipline Committee may in some instances decide not to pursue those complaints but to place the material on the lawyer's file should he or she apply for reinstatement.)

- *Should the claim be tabled and the claimant required to obtain a judgment against the lawyer?*

- *Was the claim made within the two-year time limit?*

In considering the merits of a claim and before it can exercise its discretion on whether to pay a claim, the Committee must determine several critical issues:

- *Was the lawyer or former lawyer a member of the Law Society at all relevant times?*

- *Did he or she receive the funds or property in his or her capacity as a barrister or solicitor?*

- *Did he or she misappropriate or wrongfully convert the funds or property?*

- *Did the claimant sustain a loss?*

The Committee may require a claimant to first obtain a judgment against the lawyer, or may relieve the claimant of this requirement, and has the discretion, in certain circumstances, to award interest or legal costs to a claimant. The Committee usually requires the claimant, as a condition of payment, to assign to the Law Society any rights of recovery against the lawyer.

Bruce Ross Pomeroy

Called to the Bar: May 19, 1989

Undertook to cease practice: June 6, 1996

Ceased membership: January 1, 1997

Disbarred: April 10, 2001

Discipline proceedings: *see DCD 01/11 for facts, verdict and penalty. At the time of these claims (other than for claimant M), penalty was pending in the discipline proceedings.*

Claimant: B
Payment approved: ***$153,124.37***
Decision: September 11, 2000
Report issued: December 4, 2000

Mr. Pomeroy represented B, an elderly and vulnerable woman, in the sale of a house and preparation of a will in 1993. B gave Mr. Pomeroy power of attorney without Mr. Pomeroy ensuring, or even advising, that B obtain independent legal advice. Mr. Pomeroy then had B authorize a loan in his favour, which he used to advance a $155,000 loan to his wife, secured by a mortgage. There were already two other mortgages on the property and insufficient equity to support B's mortgage. When the property was sold in 1994, the first and second mortgages were paid out, but Mr. Pomeroy paid the remaining $24,452.97 of sale proceeds into his own account. Mr. Pomeroy also withdrew $1,300 from the estate to pay his own credit card bill and $1,200 for his own use. In total, he repaid $4,375.63 to B. A discipline hearing panel found that Mr. Pomeroy had converted most of B's savings to his own use.

The Committee was satisfied that Mr. Pomeroy had misappropriated or wrongfully converted $153,124.37 and ordered payment of this amount from the Fund to B, without interest. Although B had obtained default judgment in Supreme Court against Mr. Pomeroy, damages in the matter had not yet been assessed. Given the cost and the difficulty of recovery from Mr. Pomeroy, the Committee decided B need not pursue the damages assessment to recover from the Fund.

Claimant: G
Payment approved: ***$134,878.91***
Decision: November 27, 2000
Report issued: April 23, 2001

In 1993 Mr. Pomeroy provided legal services to, and became the attorney for, G, an elderly woman who was recently widowed, had little education and lacked business and investment sophistication. Mr. Pomeroy had G sign, without independent legal advice, a loan authorization that allowed him to oversee or to personally borrow up to $200,000, with or without security. Mr. Pomeroy borrowed more than $172,000 over a period when G's competency was in question or she was in fact incompetent. He provided as security a mortgage over his matrimonial home, although there was insufficient equity in the property to support the mortgage. He further

withdrew $7,800 from G's account without rendering any account to her.

A discipline hearing panel had found that Mr. Pomeroy had borrowed money from G with reckless disregard as to whether he could repay it, and continued to do so even when he knew that G was incompetent and that he could not repay her.

The Special Compensation Fund Committee ordered payment to the claimant of $134,878.91, being the net amount of her claim less repayments made by Mr. Pomeroy and money paid to her following foreclosure of the mortgage.

Claimant: J Estate
Payment approved: ***$166,500***
Decision: February 5, 2001
Report issued: May 10, 2001

Mr. Pomeroy represented J on various matters. He drafted a will for J in which Mr. Pomeroy was named as executor.

After J's death in 1995 and the grant of probate, Mr. Pomeroy transferred $160,000 from the estate as a loan to companies controlled by another of his clients. The loan was to be secured by a mortgage, but the mortgagor did not in fact own the property in question. In disbursing the loan proceeds, Mr. Pomeroy paid himself $69,000. He took a further $6,500 from the estate with no explanation.

The Committee found that Mr. Pomeroy had misappropriated or wrongfully converted the funds in his capacity as a lawyer and had provided no explanation. The Committee noted his history of acting in conflict with respect to J, his pattern of behaviour with other elderly, unsophisticated clients and the finding of the discipline hearing panel that his primary aim was to benefit himself.

The Committee approved payment of $166,500, without payment of interest.

Claimant: M
Payment approved: ***$189,543.19****, including legal fees and expenses*
Decision: July 9, 2001
Report issued: September 28, 2001

Mr. Pomeroy began acting in divorce proceedings for M, an unsophisticated client. In January, 1993 he received $474,926.61 as proceeds from the sale of the matrimonial home under the divorce settlement.

Mr. Pomeroy subsequently withdrew from trust the sums of $10,225.81 and $10,000 without explanation and without evidence the funds were for payment of fees. He then paid out $1,650 to another client, without M's authorization or knowledge.

In 1995 Mr. Pomeroy convinced M to lend $160,000 for a property development, without advising her the loan was to another of his clients and without recommending independent legal advice. The mortgage provided as security was over property not in fact owned by the mortgagor and was therefore not valid security.

Mr. Pomeroy disbursed the funds, retaining $30,000 for himself despite having advised M that the money would be held for her benefit. Mr. Pomeroy convinced M to make two other loans, including a $20,000 loan that, without her knowledge, was for Mr. Pomeroy. There was no documentation or security and the loan was not repaid.

The Committee found that Mr. Pomeroy received the funds for M in his capacity as a lawyer and that, while it could be argued the funds were placed with Mr. Pomeroy for investment purposes, this did not alter his lawyer-client relationship with M. He had misappropriated or wrongfully converted the funds.

The Committee approved payment of $179,543.19, being the total amount of the misappropriation ($201,875.81) less the funds that M had received as repayment on the principal of her loan ($22,332.62). The Committee declined to award interest but paid $10,000 towards M's legal costs and relieved her of pursuing an action against Mr. Pomeroy.

Society obtains new unauthorized practice undertakings and orders

[redacted]

[redacted]

[redacted]

[redacted]

On application of the Law Society, the B.C. Supreme Court has ordered **Randy Panagopka** and **R.P. Compensation Advocacy** of Salmo not to appear as counsel, to draw documents in any judicial or extra-judicial proceeding, to negotiate claims or demands for damages, to give legal advice, to offer to do any of these things for a fee or to represent that he is qualified or entitled to do any of these things unless he becomes entitled to practise law in B.C.: *October 19, 2001*

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** The Law Society is currently awaiting the appointment of Lay Benchers for the 2002-2003 term. There is provision in the Legal Profession Act for Lay Benchers to overhold until new appointments or re-appointments are made by the provincial Cabinet.*

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