



The Law Society
of British Columbia



Benchers' Bulletin



Inside

A publication of the Law Society of British Columbia
2002: No. 2 March-April

President's View – No guts, no allegory: page 2

News

Lawyers ... staying at the forefront of property transactions: page 4

Special General Meeting reset for May 22: page 8

Should family law cases be removed from the internet?: page 9

Chief Judge and Attorney General discuss courthouse closures: page 9

New rule allows lawyers to send electronic bills: page 10

Practice & Ethics

Practice Watch – The Calderbank letter: page 11

Practice Tips – The art of document management: page 12

The Pacific Legal Technology Conference: page 14

Ethics Committee opinions: page 15

Articling offers: page 16

The Discrimination Ombudsperson: page 17

Regulatory decisions

Special Compensation Fund claims: page 18



President's View

Benchers' Bulletin

The *Benchers' Bulletin* and related bulletins are published by the Law Society of British Columbia to update B.C. lawyers and articulated students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities.

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.

Editor: Denise Palmer
dpalmer@lsbc.org; Tel. (604) 443-5706

Editorial Assistant: Denise Findlay
dfindlay@lsbc.org; Tel. (604) 443-5788

Subscriptions: Donna Kokot
dkokot@lsbc.org; Tel. (604) 443-5768

© 2002 The Law Society of British Columbia

No guts, no allegory

Malaysia. Constitutional monarchy. Parliamentary democracy. Federal state. An Executive responsible to Parliament. Heavy influence of British legal tradition. An independent judiciary. The Barisan Nasional, the governing coalition of political parties, has consistently held in excess of two-thirds of the seats in Parliament, a majority that allows for amendments to the Merdeka (Freedom) Constitution. The Prime Minister, Dr. Mahatir Mohamad, a doctor by training, has been in power since 1981. Dr. Mahatir wrote of Parliament:

In the main, Parliamentary sittings were regarded as a pleasant formality ... which would have no effect on the course of the government. The sittings were a concession to a superfluous democratic practice. Its main value lay in the opportunity to flaunt the Government's strength. Off and on, this strength was used to change the constitution. The manner, the frequency and the trivial reasons for altering the constitution reduced this supreme law of the nation to a useless scrap of paper.

Between 1957 and 1993 there were 34 amendments to the constitution. It is the most-amended constitution of any known democracy.

What laws has an unchallengeable Parliamentary majority bequeathed to Malaysia?

A 1988 constitutional amendment allowed Parliament to abolish judicial review of federal law by a majority vote. Let's look at some of the laws that have been put beyond judicial reach:

The Internal Security Act (ISA)

This is a preventive detention statute aimed at anyone "acting in any manner prejudicial to the security of Malaysia or to any part thereof or to the maintenance of essential services therein or to the economic life thereof"

[section 8(1)]. The Home Minister may make an order detaining any such person for two years, renewable indefinitely.

By a 1989 amendment, section 8B(1) was added:

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, an act done or decision made by ... the Minister in the exercise of [his] discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

Dr. Mahatir again:

It is not appropriate for us to follow the practice in other countries where courts play an interventionist role in substituting the decisions of the Executive as this is against the concept of "separation of powers" between the Executive and the Judiciary.

By section 8(5) the Minister may impose a restriction order on any person, prohibiting him or her from being out of doors between specified hours, requiring him or her to notify authorities of his or her movements, prohibiting him or her from addressing public meetings or taking part in political activities, or from travelling outside the country or any part thereof specified in the order. As with detention orders, there is no judicial review of the Minister's decision.

Section 22(1) permits the Minister to ban publications that are prejudicial to the national interest, public order or security of Malaysia.

Essential (Security Cases) Regulations (ESCAR)

The Attorney General can designate any offence as an ESCAR prosecution. These procedures directly indict the



accused to trial by a High Court Justice without a jury. Witnesses need not identify themselves when they testify. Hearsay is admissible and given the same weight as direct evidence. Upon conviction, the maximum permissible sentence must be imposed. The death sentence thereby becomes mandatory for some of the *ESCAR* prosecutions.

Sedition Act, 1948

Sedition, in Malaysia, is anything that has a seditious tendency. A seditious tendency includes exciting disaffection against the government, raising discontent or disaffection among the inhabitants of Malaysia, or promoting feelings of ill-will or hostility between different races or classes of the population of Malaysia. Conviction brings the possibility of a substantial fine or imprisonment up to three years, or both.

The Printing Presses and Publications Act, 1984 (PPPA)

By section 3(3):

The Minister may in his absolute discretion grant to any person a license to keep for use or use a printing press for such a period as may be specified in the license and he may in his absolute discretion refuse any application for such license or may at any time revoke or suspend such license for any period he considers desirable.

By section 7(1):

If the Minister is satisfied that any publication contains any article, report, caricature ... which is in any manner prejudicial ... to public order, morality, security ... is likely to alarm public opinion ... or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion ... prohibit ... the printing, importation ... circulation, distribution or possession of that publication...

By section 8A(1):

Where in any publication there is maliciously published any false news, the printer, publisher, editor and writer thereof shall be guilty of an offence...

Since 1987, the Home Minister's *PPPA* discretion has been beyond judicial review.

Publications banned at one time or another under the *PPPA* include *Time*, the *International Herald Tribune*, *Asiaweek* and the *Far Eastern Economic Review*.

Under section 48 of the constitution, anyone fined more than a small amount or jailed for more than a year is disqualified to sit in Parliament.

* * *

I travelled to Malaysia in January, 2002 to observe the sedition trial of Karpal Singh, a prominent lawyer and politician who was charged for words spoken in open court in the defence of his client. In October, 1987 Mr. Singh, then an Opposition Member of Parliament for the Democratic Action Party, had been detained under the *Internal Security Act*. I had the pleasure of dining just off Merdeka Square with Karpal Singh and Lim Kit Siang, another leader of the Democratic Action Party. Mr. Lim had been detained under the *Internal Security Act* in 1970 and again in 1987. I also had the honour of meeting the United Nations Special Rapporteur on the Independence of Lawyers and Judges in Malaysia, Dato' Param Cumaraswamy, a former Vice-Chair of the Malaysian Bar Council. He had been prosecuted in 1985 for sedition for criticizing the Pardons Board for failing to commute a death sentence.

My personal assessment: Karpal Singh, Lim Kit Siang and Dato' Param Cumaraswamy are wonderful, kind, intelligent, educated and conscientious human beings — a credit to any beach they may wash up on. Yet each

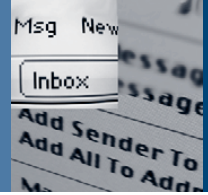
had felt the wrath of Malaysian society's sanctions.

Malaysia, taken in allegory, may cause us to reflect on unbalanced government: an independent Malaysian Judiciary, but one not entrusted with sufficient constitutional authority to counterbalance Executive and Legislative abuses of fundamental freedoms. Freedom of the person, freedom of association and freedom of the press reduced to the subjective whim of the Executive in the *ISA* and the *PPPA*. Too much law and order; not enough regard for human rights.

When folks raise the *Charter* to rail at our independent judiciary for making law and overriding the will of Parliament, consider the alternative and thank your lucky stars that the Canadian balance has been struck differently.

The Law Society of British Columbia is suing the federal government over incursions of the *Proceeds of Crime (Money Laundering and Terrorist Financing) Act* into the confidential relationship between solicitors and their clients, recruiting lawyers as secret agents of the state to surreptitiously inform on their clients. The Law Society is suing the Government of British Columbia to establish that it is not just the Executive's decision to close law courts.

Be patient with the Benchers; we have not lost our minds, nor have we developed an insatiable appetite for litigation. We just have a vision of an appropriate line between the branches of government: the independent Canadian judiciary (enabled by an independent bar), differentiated from the legislative and executive branches. There are changes in the topography of the Canadian legal landscape of which an independent bar cannot approve. We grouse have some strutting and pecking to do. No guts, no allegory. ♡



Lawyers ... staying at the forefront of property transactions

Mike Seaborn and Jeff Jones have practised law on northern Vancouver Island for nearly 20 years, and now oversee offices in Port McNeill, Port Hardy and Alert Bay. Almost two years ago, the lawyers enhanced their general practice through expanded legal services in the real estate field. Jones Seaborn is now a "one-stop" service centre for clients wishing to take advantage of solicitor residential property sales — from assisting in marketing and showing a vendor's property, to negotiating purchase contracts, to completing the conveyance. It's brought them closer to their clients and the community.

Elsewhere, another initiative is underway. Dale Janowsky, QC is one of several lawyers who have envisioned a formal network of lawyers across the province to promote their clients' business interests, including the sale and leasing of commercial properties and assets, through a shared database of client interests. It is a vision that has led to creation of the Lawyers Business and Property Network launched this April, joining together 36 lawyers to date, from Kamloops, the Okanagan, the Kootenays, Vancouver Island and the Fraser Valley.

The Benchers have encouraged the involvement of lawyers in the expanded provision of legal services and are committed to keeping the profession updated on current initiatives. The initiatives profiled here show different approaches, yet they share a common thread — they put lawyers at the forefront of property transactions to ensure clients benefit from professional legal guidance, from start to finish.

There are certainly issues for lawyers to watch on the horizon. Following the launch of an expanded legal practice by Jones Seaborn, the Superintendent of Real Estate raised some objections and appears to be construing very narrowly the section of the Real Estate Act that exempts lawyers from registration as real estate agents. The Law Society, however, views a lawyer's representation of clients in these



B.C. lawyers are finding creative ways to renew their role in real estate and business — guiding more clients through transactions, from beginning to end. Michael Seaborn and Jeff Jones, whose general practice on Northern Vancouver Island now features assistance to vendors with residential property sales, have found their full service firm has struck a chord with clients, and given them a new opportunity.

initiatives as constituting the practice of law and in the public interest. For more on the respective positions of the Law Society and the Superintendent, see the sidebar "Are property sales the practice of law?"

In its strategic plan (online at www.lawsociety.bc.ca), the Law Society has recognized that client expectations are driving change in the marketplace, and that lawyers need the flexibility to respond. The Law Society is committed to reviewing its regulatory framework to ensure the rules protect the core values of the profession without unnecessarily hindering innovations by lawyers. The primary value that lawyers bring is professional legal advice, offering greater protection and a more complete service for clients.

Solicitor property sales ... the Jones Seaborn story

For people selling a home on northern Vancouver Island, there is an alternative to using a real estate agent or going it alone in a private sale. For almost two years, Jones Seaborn, a two-lawyer practice based in Port McNeill, has offered vendor clients more extensive legal services in the real estate field, from initial listing, to sale to conveyance. It's a service that fits well with their general practice, especially in this small community where there is no resident real estate agent.

Jones Seaborn takes transactions from start to finish for vendors: conducting recent title searches; examining title and advising on encumbrances, mortgages, easements and rights of



way; obtaining values from the B.C. Assessment Authority; obtaining appraisals and advising on market value; preparing sale particulars and advertising in local newspapers and on the firm's website; erecting property signage; presenting information packages on the property to potential purchasers; showing the property; reviewing and advising on any purchase offers; negotiating agreements and preparing

legal documentation and discharges. The cornerstone of this service, as with all of the firm's work, is professional legal advice.

Mike Seaborn notes that lawyers have always been involved in real estate sales, but usually near the completion of a transaction, when it is more difficult to solve problems that may arise. "We are now involved at an earlier

stage in that process than we were previously," he told lawyers at a Law Society workshop last year. "The bumper sticker version is that we do more for less, and offer one-stop shopping."

Jeff Jones sees the services lawyers

continued on page 6

Are property sales the practice of law?

The *Real Estate Act* requires the licensing of people falling within the definition of "agent," subject to a limited number of exemptions, including one for lawyers. Section 2(a)(f) of the *Act* provides:

This Part does not apply: ... to a barrister or solicitor whose name is inscribed on the rolls of barristers or solicitors in British Columbia, or to a person employed by him or her, in respect of transactions in the course of his or her practice.

Following on a complaint from the B.C. Real Estate Association a year ago, the office of the Superintendent of Real Estate questioned whether lawyers can rely on this exemption for solicitor property sales without being licensed under the *Real Estate Act*.

The Law Society has taken the view that the *Real Estate Act* and *Legal Profession Act* do not, with respect to the sale of real estate, define exclusive fields of practice. Rather, they define exclusive fields of regulatory authority. Under the *Real Estate Act*, the Superintendent of Real Estate has exclusive authority to regulate non-lawyers in real estate sales. The Law Society has exclusive authority under the *Legal Profession Act* to regulate lawyers in the practice of law.

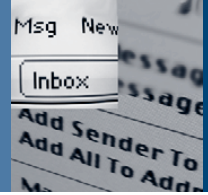
The Law Society imposes higher standards of education, conduct and accountability on lawyers than are imposed on real estate agents and salespersons and maintains insurance and special fund programs that are better than the security provided to clients of real estate agents. Accordingly, the Law Society has pointed out that requiring lawyers to be licensed under the *Real Estate Act* would be redundant and would not increase public protection.

An opinion from counsel concluded that, while the exemption would not apply if the lawyer performed *no* legal services for a client, legal services in connection with a real estate transaction *includes* negotiating the purchase or sale, including evaluating factors going to the negotiation such as appraisals, development or redevelopment possibilities and financing. In the view of counsel, the wording of the *Real Estate Act* exemption does not support a limitation — either on the means by which a lawyer obtains a client or the context of the transaction in the lawyer's overall practice of law.

Counsel distinguished a 1995 decision of the New Zealand Court of Appeal. That Court held that New Zealand lawyers could not rely on a similar exemption to operate freestanding property centres in

coordination with their practice as lawyers: *Real Estate Institute of New Zealand v. Lewis and Callanan* CA 242/94 31.8.95. The dividing line acceptable to the Court in that case was between a transaction that was incidental to an existing lawyer-client relationship and one that involved active marketing of property where it could be said that the primary service was selling property rather than negotiating and conveying property. In that case, for example, the clients were not required to use the lawyers for the actual conveyancing. That is not the model of service that has been offered by B.C. lawyers.

Despite that fact, the Superintendent of Real Estate is pursuing the issue further and has advised the Law Society that, rather than seek a court determination of the scope of the exemption for lawyers, he would seek a legislative amendment to remove the exemption. Law Society representatives met with the Minister of Finance in March to oppose any amendment that would preclude lawyers from engaging in this field of practice, noting that there has been no harm to the public in all the years the exemption has been in place, nor have there been public complaints or demand for legislative change. ♦



Property transactions ... from page 5

offer in real property sales transactions as very different from those of realtors who list properties for vendors but then work for purchasers for a split of a commission. "Lawyers act for clients, provide professional services to the client and always have their clients' best interests at heart," he says, noting that his firm makes it very clear to a vendor client and to potential purchasers looking at a property that the firm acts only for the vendor. "We've found that clients are very appreciative of that."

In Jones' experience, clients like having a choice and also look favourably at the contingency fees charged by the firm.

The firm provides its vendor clients with exclusive representation, legal advice and marketing services on a contingency fee basis: typically, for a residential property, 4% of the selling price up to \$100,000 and 1% on any amount over \$100,000. Jones Seaborn uses a contingency fee agreement that has been reviewed and approved by the Law Society Ethics Committee.

To reach potential purchasers for their clients' properties, the firm relies primarily on its website, property signs, advertising and information packages.

Mr. Seaborn notes that he and his law partner have found a way to offer legal services in the real property field in a way that works for their firm. They are also always willing to talk to lawyers who might wish to offer expanded services in their own conveyancing practices.

For lawyers who might be intimidated by the prospect, Jones says that, compared to a chambers application or a buy-sell agreement, "it's extremely simple." Lawyers can start with one file and don't need any additional systems. Jones Seaborn now helps 10 to 15 vendor clients in offering properties at

any given time.

If lawyers hesitate to take up this opportunity, Jones says it may be founded on a misperception that this is similar to the realtor model, when in fact it is very different. "If anything is consistent with our historical legal services, this is," he says. "It's involving title, real estate, title searches, negotiating and assessing value, all of which we do on a regular basis. If there is anything that lawyers can do, this is absolutely on all fours."

Lawyers interested in more information on the Jones Seaborn experience may wish to visit the firm's website at www.island.net/~js-co or contact Mike Seaborn or Jeff Jones.

The Lawyers Business and Property Network ... making connections

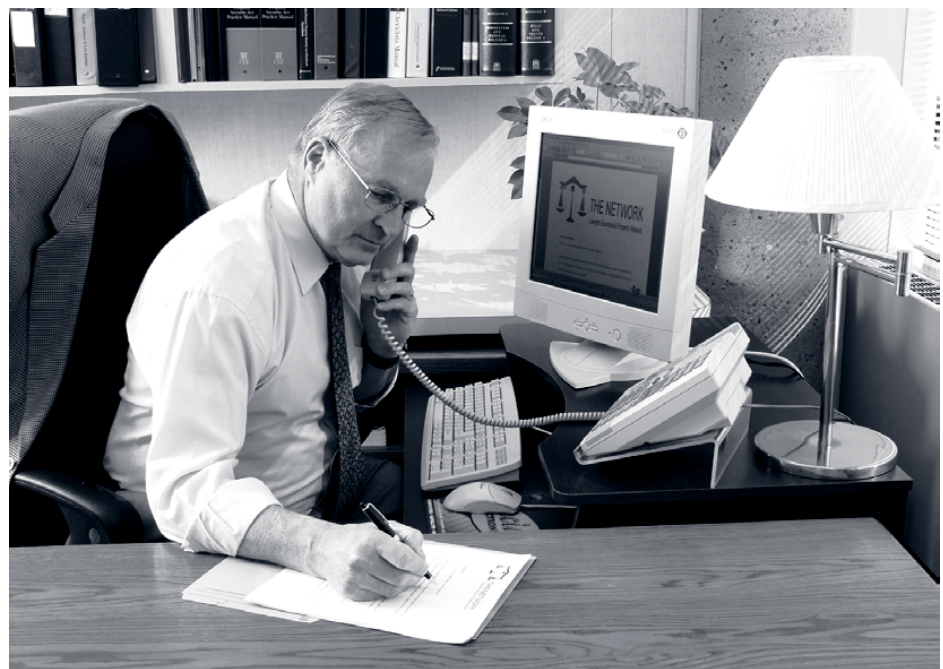
A new initiative underway in April is the Lawyers Business and Property Network. The Network is a non-profit association, open to all B.C. lawyers,

that helps lawyers assist clients — both buyers and sellers — with business, property and financial interests, including the purchase, sale and financing of commercial properties and businesses.

Now with 36 founding members, the Network is a forum for lawyers to pool their collective client and business contacts, to further client interests. As President and a primary organizer of the Network, Dale Janowsky, QC of Kamloops, says that cooperative efforts in the profession are important.

Mr. Janowsky sees great potential for lawyers, through the Network, to tap into a pool of contacts. "You can pick up the lawyers directory, multiply the number of lawyers by the number of clients they may have," he said. "When we share information among the members in an organized and professional manner, it's just head and shoulders above whatever is being offered out there."

The Network is intended to help



Dale Janowsky, QC is one of 36 lawyers who have come together from different corners of B.C. as part of a non-profit association, the Lawyers Business and Property Network. The Network is developing a database of business and property interests for lawyers to better facilitate the buy-sell transactions of their clients.



lawyers represent clients throughout business and property transactions, and to receive fees commensurate with the value of their services. As noted by Mr. Janowsky, clients regularly pay real estate agents commissions of between 4% and 7%, while lawyers currently receive conveyancing fees worth the one-tenth the value of those commissions.

He sees great potential in a network

providing opportunities to lawyers and giving clients greater choice. "The program will support the public interest by providing a one-stop service for clients of lawyers who want market exposure for their business or property in addition to legal advice on the purchase or sale," he says.

A client has several advantages in choosing a lawyer, including the promise of strict confidentiality, which can be critical in commercial

transactions. "Some clients don't want it known that their business is for sale because someone may try to take it away from them," notes Mr. Janowsky. "If you have, for example, a client list that is an integral part of the business, you can provide it to the other lawyer on the basis that he does not disclose it to anyone, and the financial records that go along with that. Our rules of conduct and ethics (as lawyers) are so much stronger and onerous than in the real estate world, and that's why we provide a better service."

The Lawyers Business and Property Network will feature several key services:

- **A public website (www.thenetwork.ca):** This website will provide general information for lawyers and clients.
- **A "B.C. lawyers-only" intranet (www.lbpn.intranets.com):** Members of the Network can post client properties, businesses or other interests in a central database. They can use this database to negotiate and conclude transactions on behalf of clients. All B.C. lawyers can browse this database by first registering for access (see page 10).
- **Information and template packages:** Members of the Network will receive — via email and a web forum — standard forms for listings, templates for retainer agreements and guidelines on how to handle an initial set of transactions.
- **Package of support services:** On behalf of clients, members of the Network can purchase an optional service from an outside supplier that manages and provides signs, valuations, property descriptions, photos and other related materials.

Mandatory liability insurance coverage

The coverage provided by the Law Society's mandatory liability insurance policy includes coverage for errors made by lawyers in acting for buyers and sellers in the purchase and sale of property and goods. As always, the extent of any coverage under the policy depends, in part, on the exact nature of the activities undertaken.

The Lawyers Insurance Fund has already provided some assurances to the members of the Lawyers Business and Property Network on coverage under the policy for the services described in the Network's retainer agreements. Other lawyers considering embarking on their own property initiatives are encouraged to contact the Lawyers Insurance Fund directly for an "advance ruling." The ruling will confirm whether the specific activities in which the lawyer intends to engage fall within coverage, and will provide information on limitations, if any, on coverage.

If it is ultimately determined that lawyers are precluded from engaging in these activities without separate licensing, such as a licence under the *Real Estate Act* (see *Are property sales the practice of law?* on page 5), any services for which lawyers are required to be licensed

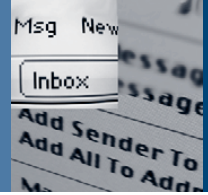
would no longer fall within coverage.

The Lawyers Insurance Fund reminds lawyers that this area of practice, as with any others, poses potential liability risks for lawyers. The highest risk faced by lawyers is the exposure to claims for negligent misrepresentation. As soon as one side to the transaction, usually the purchaser, alleges that misinformation was given to them about a matter of particular importance, lawyers will quickly find themselves embroiled in the dispute.

Like all risks, the risk of liability for misrepresentation can, with careful practice and management, be minimized. For instance, when appropriate, lawyers will want to clearly communicate to the parties that the lawyers are not responsible for the accuracy of specific information. Further, when a lawyer does provide information about the property, that information should be confirmed in writing, along with any appropriate disclaimers or warnings.

For more information on any of these matters, please contact Margrett George at the Lawyers Insurance Fund by telephone at (604) 443-5761 or by e-mail at mgeorge@lsbc.org. ↵

continued on page 10



Special General Meeting reset for May 22

The Law Society Special General Meeting — adjourned from April 12 because of overflow crowds in several locations — has been reset for May 22, beginning at 1:30 p.m. The Vancouver Trade and Convention Centre will be the main site, and the meeting will join other sites across B.C. by audioconference.

Lawyers should consult the April 26 *Notice of Special General Meeting* for full details of the meeting, including audioconference locations. The Society is requesting that lawyers send back an email RSVP to assist in registration and set-up at the meeting (see *Notice* for details of where to send your RSVP). Registration will be available early on the day of the meeting in those sites where highest turnout is expected and will remain open at all sites throughout the meeting.

Over 2,000 lawyers attended the



meeting on April 12, a record number and far more than the Vancouver hotels and a number of other sites could accommodate. Because the meeting could not be adjourned to a specific date, the Law Society is providing

members with at least 21 days advance notice of the meeting.

The Special General Meeting was convened by the Benchers by a petition of members under the Law Society Rules. ♦

Appointments

B.C. Courthouse Library Society — **Robert McDiarmid, QC** and **Patricia Schmit, QC** have been reappointed as Law Society representatives on the Board of Directors for three-year terms commencing January 1, 2002 and ending December 31, 2004. **Jeffrey Hayes** has been reappointed as the President's nominee to the Board for a further one-year term ending December 31, 2002.

B.C. Medical Services Foundation — The Benchers have appointed **Mark Skorah** to the Board of Directors for a four-year term commencing February 1, 2002 and ending December 31, 2005.

CBA (B.C.) Benevolent Society — The Benchers have appointed **Jane Shackell, QC** as the Law Society's representative on the Board for a one-year term commencing February 1, 2002

and ending February 1, 2003.

Canadian Bar Association, National Council — The Executive Committee has reappointed **Jane Shackell, QC** as the Bencher representatives on the National Council.

Continuing Legal Education Society — **James Baird** has been reappointed and **Timothy Schober** appointed to the Board of Directors for three-year terms commencing January 1, 2002 and ending December 31, 2004.

Hamber Foundation — The Benchers have appointed **Gerald Lecovin, QC** to the Board of Governors for a three-year term commencing March 8, 2002 and ending February 28, 2005.

Law Foundation — The Executive Committee has appointed **Barbara Cromarty** and **Christine Elliott**, and has reappointed **Paul Love**, to the

Board of Governors for three-year terms commencing January 1, 2002 and ending December 31, 2004.

Pro Bono Society — The Executive Committee has appointed Mr. Justice **Bryan Ralph, Peter Keighley, QC** and **Anita Olsen** as interim Directors.

Provincial Judicial Council — **Peter Wilson, QC** has been reappointed as the President's nominee to the Council for a further one-year term commencing January 1, 2002 and ending December 31, 2002.

UBC Faculty of Law Curriculum Committee — The Executive Committee has appointed Law Society Director of Education and Practice **Alan Treleven** to the Curriculum Committee for a two-year term commencing January, 2002 and ending January, 2004. ♦



Comments invited from lawyers

Should family law cases be removed from the internet?

The Chief Justice of the B.C. Supreme Court has advised the Law Society that the Court may discontinue publication of family law cases on the superior courts website. The Court has postponed a final decision on this issue to July to allow for consultation.

The Chief Justice notes the Court's view that family law judgments ought not to be published on the superior courts website because of the ease with which members of the public can search out and review such judgments, coupled with the sensitive nature of the subject matter

and the findings of fact that judges are required to make in family cases.

The Chief Justice says that the Court has experienced a relatively steady stream of complaints about family law cases on the internet site. As an example, the school acquaintances of children whose families are involved in family litigation have searched the site and obtained particulars.

It is the intention of the Court that judgments would continue to be available to the profession and to in-person litigants at court registries, through conventional

publishers, both in paper and electronic form, and through the Continuing Legal Education Society.

To assist the Court in its consultation, the Law Society invites lawyers to comment on this proposed change and how it may impact on the profession or the public. *If you have views, please relay them by June 3 to:*

Peter J. Keighley, QC, Bencher
Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9
Email: pkeighley@rosborough.com.

Chief Judge and Attorney General discuss courthouse closures

On April 19 the Chief Judge of the Provincial Court, Carol Baird Ellan, and Attorney General Geoff Plant, QC laid the groundwork to discuss provincial courthouse closures and other issues.

A memorandum of understanding and protocol (www.provincialcourt.bc.ca/newsandreferences/newsreleases/index.html) recognize the respective roles of government and the judiciary and open the door to reconsidering the fate of some of the 24 courthouses now slated for closure. The MOU reflects an intention by the Attorney General and the Provincial Court to work cooperatively, to maintain reasonable and adequate access to the Court and to consider cost reductions, such as through the use of circuit courts and videoconferencing of some pre-trial appearances.

The Attorney General announced the

decision to close the courthouses in a letter to the Chief Judge of the Provincial Court on January 17, 2002. The decision affected matters of judicial administration (including the assignment of judges, the sittings of the court, court lists, related matters of courtroom allocation and the provision for public access to the Provincial Court) and was made without the authority of the Provincial Court judiciary.

The Law Society began a constitutional challenge of the government decision to close courthouses in March. A hearing of the case, set for April 23, has been adjourned to May 6, with the agreement of all parties, in light of the new discussions.

For updates on this issue, see the Law Society website at www.lawsociety.bc.ca. ♦



Residents of Maple Ridge stage a protest on March 20 against the provincial government's plan to close the local courthouse, one of the busiest in the province. Local lawyers Gordon Kehler, Rob Germell and Michael Ritzker were among a number of speakers who addressed the gathering of 150 people, explaining the negative impact on local justice, policing and the youth diversion program. Photo compliments of the Maple Ridge News.

Property transactions ... from page 7

The Lawyers Business and Property Network offers members fee agreement templates (either a fixed fee or contingency basis) when representing buyers or sellers. Fee negotiations and arrangements are left entirely to the individual lawyer and client.

What professional conduct considerations have been canvassed in relation to the template agreements? The Law Society Ethics Committee reviewed certain aspects of the agreements for the Network last December, specifically in relation to lawyers charging placement fees to buyers and accepting finders' fees for financing. The Committee was satisfied that the agreements would not violate Chapter

6, Rule 8 of the *Professional Conduct Handbook* (Finders' fees), given that all finders' fees and brokerage fees are disclosed to and approved by a client, and paid to the client's credit. In the Committee's view, a buyer's agreement could properly allow for the buyer to pay a fee to his or her lawyer based on a percentage of the purchase price without violating Chapter 7, Rule 1 of the *Handbook* (Acting when the lawyer has an interest in the matter) as a lawyer is always under an obligation to minimize costs for a client.

* * *

Mr. Janowsky invites all lawyers to visit the Lawyers Business and Property Network information site (www.thenetwork.ca). To register for access to the private intranet, first register at the Juricert website

(www.juricert.ca), click on "Products and Services" and submit a request to apply to the Network. Once your Law Society membership has been confirmed by Juricert, the Law Society's online authentication service, you will be given a password to www.lbpn.intranets.com.

If a lawyer wishes to do more than browse the intranet — to post a listing or conclude a transaction for a client — he or she can do so by joining the Network, paying the annual fee and any applicable posting or transaction fees. The annual membership fee is \$250.

For more information, you can also contact Mr. Janowsky by email at dale.janowsky@thenetwork.ca, by telephone at (250) 372-2022 or by fax at (250) 372-0087. ♦

New rule allows lawyers to send electronic bills

In March the Benchers amended Law Society Rule 3-57 to allow lawyers to transmit a bill, and a letter accompanying a bill, to a client at the client's last known email address.

Rule 3-57(3), as amended by the addition of (d), now reads:

A bill or letter is delivered within the meaning of this Rule if it is ...

(d) transmitted by electronic mail to the client at the client's last

known electronic mail address.

The change reflects the legal recognition accorded to records in electronic form under the *Electronic Transactions Act* SBC 2001, c. 10.

Lawyers will wish to consider, however, that section 69 of the *Legal Profession Act* on "Lawyers Bills" requires that bills be signed by or on behalf of the lawyer or accompanied by a signed letter. Section 11 of the *Electronic Transactions Act* provides that, if

there is a requirement under law for the signature of a person, that requirement is satisfied by an electronic signature.

Lawyers interested in learning more about how to use electronic signatures in this context are welcome to contact Ron Usher, Staff Lawyer, Practice Opportunities, at rusher@sbc.org.

The revised text of Rule 3-57 will be included in the next *Members' Manual* amendment package. ♦

Law Foundation strikes new agreement with the Bank of Nova Scotia

The Bank of Nova Scotia has addressed Law Foundation concerns over its interest rate agreement, and the severe overall impact of low interest rates on Foundation revenues, and has come forward with a very competitive rate of return on lawyers' pooled trust accounts.

As of April 1, 2002, interest paid to the Foundation on lawyers' pooled trust accounts will be at a rate of prime less 3%, with no service charges. Law

Foundation Chair Don Silversides, QC thanks Mike Pugh, Director, and MaryAnne Galey, Manager, of Scotiabank Enterprise Solutions for the leadership shown in making this new agreement possible.

Increased revenues enable the Law Foundation to fund programs that make the justice system accessible to British Columbians, particularly those people who have the greatest access problems. Funded programs include

professional legal education, public legal education, law reform, legal research, legal aid and law libraries.

The Law Society, Law Foundation and Canadian Bar Association (B.C. Branch) encourage lawyers to consider which financial institutions provide the best support to the Law Foundation when deciding where to place their trust accounts. ♦



Practice Watch, by Felicia S. Folk, Practice Advisor

The Calderbank letter (and suing jointly)

Two interesting decisions dealing with costs and Calderbank letters have been handed down recently. In *Brown v. Lowe*, 2002 BCCA 7, Madam Justice Southin for the Court of Appeal said that “*Calderbank v. Calderbank* should not be considered law in this province today.” Madam Justice Ryan agreed with the reasons of Southin, J.A. on costs, while Chief Justice Finch dissented. The majority said that, when the Court of Appeal decided *Calderbank* in 1975, it was attempting to fill a gap in the Rules on costs, and that the 1993 revision to Rule 37 is a complete code and there is no room for any judicial discretion save that given by it.

In *Pacific Hunter Resources v. Moss Management Inc.*, 2002 BCSC 396, a decision that followed immediately on *Brown v. Lowe*, Madam Justice Martinson discussed whether the decision of the majority in *Brown v. Lowe* on the use of the Calderbank letters as the basis of an order for costs, was

binding on her. She decided it was not binding.

Martinson, J. noted that the decision in *Brown v. Lowe* was *obiter*, and made the distinction that *Brown v. Lowe* dealt with an application for double costs while in the *Pacific Hunter Resources v. Moss Management* case before her, the “defendant asks, strictly speaking, for ‘increased costs,’ though in an amount tantamount to double costs. The *obiter* decision is contrary to previous decisions of the Court of Appeal.” Martinson, J. exercised her discretion to award costs on the basis of a Calderbank letter.

I recommend to all litigators that you read these two decisions carefully, not only for the discussion about the Calderbank letter, but also for Southin, J.A.’s comments about the meaning of being sued “jointly.” She notes that tortfeasors can only be said to be sued “jointly” if they have joined together in committing the tort and the liability of one is the liability of the other. In other words, liability may be joint, but unless defendants are joint tortfeasors, they are not sued “jointly.”

Negligence claims against municipalities

In its February *Alert!*, the Lawyers Insurance Fund reported on the British Columbia Court of Appeal decision in *Gringmuth v. The Corporation of the District of North Vancouver*, a decision that resolved that negligence claims brought against municipalities for a breach of a duty of care in tort are governed by the two-year limitation in the *Limitation Act*. Claims brought against municipalities for an unlawful act contrary to statute are governed by the six-month limitation in section 285 of the *Local Government Act*.

However, please remember that the two-month notice provision in section 286(1) of the *Local Government Act* continues to apply to *any* claims brought against a municipality, including claims in negligence. Lawyers intending to claim damages against a municipality must comply with the two-month notice requirement, regardless of the nature of the claim they intend to advance. ✧

Practice resources on the web

For practice resource articles, check the Law Society website at www.lawsociety.bc.ca/services/frame_practice.html. Recently posted resources include:

- Opening and Maintaining Client Files
- Getting Started: Trust Accounting
- Getting Started: Opening Your Law Office
- Winding up a Sole Practice
- Remitting Interest to the Law Foundation
- CDIC reports

New materials are prepared or selected for the site by the Practice Advisor and Practice Management Advisor, so watch for updates.

Also available, at no cost and while quantities last, are copies of *Lawyer to Lawyer: The 1997 Loss Prevention Video* — covering conflict of interest, client relations and communications, limitations, client identification and emotional detachment.

The Practice Advice program has had a tremendous response from lawyers for the free CD-Rom *Getting Started: Opening your Law Office and*

Trust Accounting, published in 2001. Copies are still available. The CD explains the decisions to make and steps to take before opening your own law office, how to organize the office, find help with your practice and understand the fundamentals of trust accounting.

If you are interested in a copy of the video or the CD-ROM, please contact Joanne Hudder, Assistant to the Practice Advisor by telephone at (604) 669-2533, by fax at (604) 646-5902 or by e-mail at jhudder@lsbc.org. ✧

Practice Tips, by Dave Bilinsky, Practice Management Advisor

The art of document management

Part Two of "Building an automated practice"

The first part of this article appeared in the November-December, 2001 Benchers' Bulletin and featured the core automated systems for a law office. This second part explains how to go beyond the basics. The full paper, first presented by Dave Bilinsky at LegalTech Toronto in November, is available in the Practice & Ethics page of the Law Society website under "Services for Lawyers" at www.lawsociety.bc.ca.

Once you have the core automated systems operating in your firm (financial management, case management, word processing, research software and communications software), you are ready to take it to the next level. Where you go from here depends on the type of practice that you have, the strategic direction you wish to take (which of "Better, Faster, Cheaper" do you wish to pursue?), the time and

resources that you have available and the climate in which you operate. This last factor is ultimately the most important.

Many lawyers have called me to say, "I would like to introduce some new technology around here, but I don't know about so-and-so — they just won't change their ways." It is a sad fact that lawyers are like mules — there ain't no way you are going to get them to move unless and until they are darn well ready and willing to move. Building a system that won't be used by everyone is simply not an efficient use of time and resources since you will then be maintaining dual systems — unless you foresee that the hold-out(s) will be pressured into changing if the entire office around them changes.

Assuming that you have all the personal factors, office politics and the stars in alignment to take the next step, what would that be?

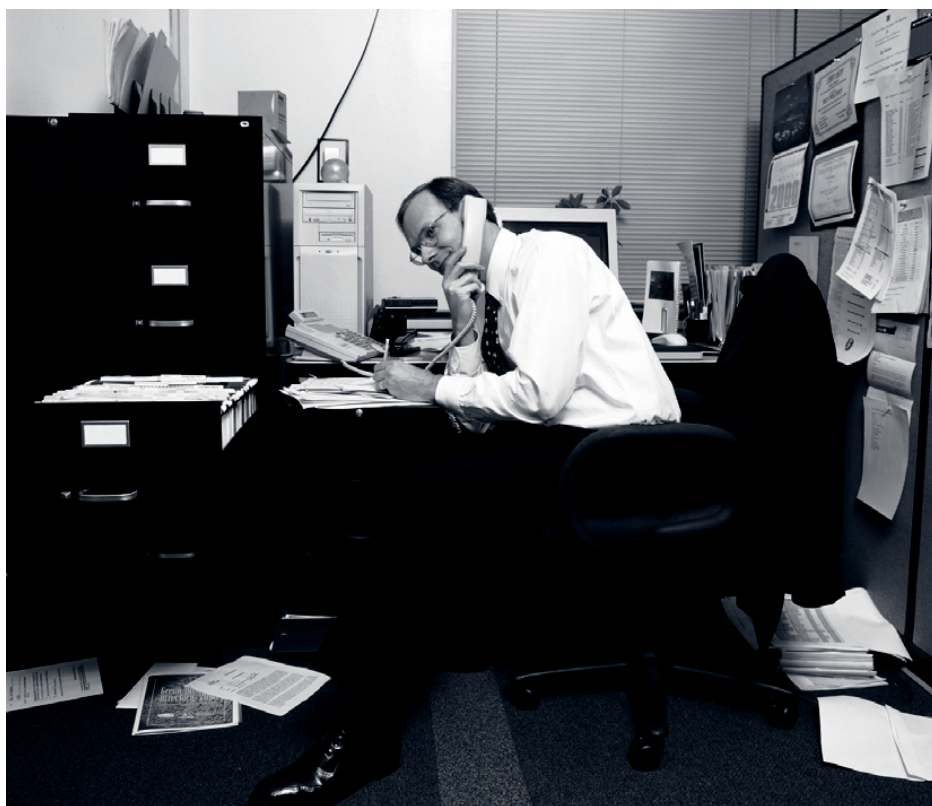
Document assembly

Whether yours is a litigation practice or a solicitor's practice, in all likelihood there are at least a handful of documents that you must create time and again (mortgages, statements of claim, affidavits, reporting letters and so on). There are a number of ways to automate this process — from using the merge facility in Word or WordPerfect to sophisticated document assembly programs such as HotDocs (www.capsoft.com) or Ghostfill (www.ghostfill.com) or a database program such as Microsoft Access with MS Word — all of these programs can create documents from a standard word processing precedent library.

Case Management software (such as Amicus Attorney, Time Matters and ProLaw) can generate documents such as standard retainer letters, pleadings, fax cover sheets and the like using the information stored in their contact databases. Amicus Attorney can also generate documents using HotDocs and Word or WordPerfect's merge facility.

A somewhat less sophisticated approach is to use a program such as ActiveWords (www.activewords.com) that is akin to autocorrect in Word, but on steroids. ActiveWords allows you to create keyboard shortcuts for the insertion of standard wording, such as contact information, into a letter form.

To see how HotDocs works, go to www.lexisone.com/store and try any one of the free forms that are in HotDocs format (such as the California will under the estate planning area).





To see Ghostfill in action, go to their website (www.ghostfill.com) and take the 15-minute tour.

To try ActiveWords, go to their website and download the full version — you receive a 30-day free trial (www.activewords.com).

Document assembly falls along the “Better” and “Faster” axes, in my opinion, since you are building a standard set of precedents and no longer relying on the “search and replace” method of document creation.

Document management

Finding the proverbial needle in a haystack is the purpose of document management software. The leading products here are Worldox (www.worldox.com), DocsOpen (www.hummingbird.com) and iManage (www.imanage.com). It is true that they do things such as archiving, document version control, full-text searching and indexing, but the heart of these programs is their ability to find a document that exists somewhere on the LAN, deep in the heart of someone’s hard drive, that you recall having seen at some indeterminate time in the past.

Document management has in a sense spawned, or at least been a forerunner for, a new area of study entitled “Knowledge Management.” What is KM? Good question. Dr. Yogesh Malhotra defines KM as follows:

Knowledge Management caters to the critical issues of organizational adaptation, survival, and competence in face of increasingly discontinuous environmental change. Essentially, it embodies organizational processes that seek synergistic combination of data and information-processing capacity of information technologies, and the creative and innovative capacity of human beings.

In a nutshell, Knowledge Management means being able to find the person in your organization who knows

about an issue — quickly — and being able to tap into that wisdom.

The International Standards Organization is developing ISO 9000 standards for KM.

Knowledge Management tools range far and wide — from expert systems (that assist someone to “think” using the judgement of others that has been captured in a sophisticated decision tree-like analysis) to email “filter” systems that discern who in an organization knows about certain things based

on their email history. These tools are changing as we speak.

I would place Document Management along the “Faster” and “Cheaper” axes, if it results in your finding documents in less time as compared to your paper-based system (which it should). Knowledge Management is one that I would place along the “Better” and “Faster” axes.

continued on page 14

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 confi-

dential, 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 Tips ... from page 13

Specialized packages

There are software packages that are continually being developed to support lawyers in specific practice areas. These range from:

Corporate records management, real estate, estates, family law and other software: www.cakeware.com ♦ www.dyedurhambc.com ♦ www.doprocess.com ♦ www.highlander.ca ♦ www.data-care.com ♦ www.e-incorp.ca ♦ www.divorcemate.com ♦ www.childview.ca ♦ www.infoware.ca ♦ www.jls.ca ♦ www.teranet.ca.

Document precedents: www.dydurhambc.com ♦ www.thomforms.ca ♦ www.ucdocuments.com ♦ www.nereosoftware.com/lexwrite.htm ♦ www.findlaw.com ♦ www.lexisone.com.

Specialized personal injury case management software: www.needpins.com ♦ www.denovosys.com.

Litigation software

Litigation software is an especially important and comprehensive tool —

probably since litigators are willing to go to almost any length if it assists them in winning their case.

Accordingly, litigation software can start at the case management stage, to organize the file, the parties, the witnesses, the BF and limitation dates and all the disparate bits of information, including documents, telephone calls, emails and notes.

From here, a litigator can image all hard copy evidence (documents, photographs, hand-written notes etc), OCR them (optical character recognition) and store both the graphic images and the OCR files in a database. Then the litigator can use an evidence analysis package such as: Searchlight (www.searchlight.ca), Summation (www.summation.com), Almost Paper (www.almostpaper.com) or Concordance (www.dataflight.com) to either search by keyword or to build a database of issues, facts, people and the like and associate the evidence with the issues.

From here a litigator can use litigation strategy products, such as CaseMap, TimeMap and NoteMap (www.casesoft.com) to strategize, build

timelines and outline and brainstorm their case as well as trial preparation software (www.redianalysis.com).

In discoveries and in trial, the lawyer need not take notes while a witness is giving evidence if the lawyer has acquired LiveNote (www.livenote.com), which is real-time transcription software delivering a full transcription of all evidence as it is given.

There are other products, such as JFS Litigator's Notebook, which is an electronic version of the traditional litigator's three-ring, tabbed and indexed trial notebook (www.bowne.com). Version 7 of this product now extends its capabilities to workgroup settings.

Last, you will be required to take the case to trial. There are several products that can assist you in conducting your trial, from a jury summation using a PowerPoint presentation all the way to a full digital trial using such products as the Director's Suite Trial Presentation Software (www.trialdirector.com), Sanction (www.verdictsystems.com) TrialPro II (www.trialpro.com) and Visionary (www.visionarylegaltechnologies.com), which allow you to easily organize, display

This Fall the Law Society of British Columbia – in conjunction with the Continuing Legal Education Society of B.C. and the Canadian Bar Association (B.C. Branch) – presents

The Pacific Legal Technology Conference

Technology that Works and Pays for Itself

October 18, 2002
Vancouver Trade and Convention Centre

Mark your calendars now for this unique event — a full day of multi-stream legal technology sessions presented by internationally acclaimed speakers who will focus on the *practical* results of technology for litigators, solicitors, office

administrators, legal researchers and IT professionals.

This program will concentrate on what practical legal technologies are now available, what they can do for you, how you go about implementing them in your busy office, how to overcome hurdles and how to maximize benefits. This program will also explore legal and ethical issues of the technologies, practical

and legal steps to using them in court and the ways they can make your practice "better, faster and cheaper." Find out what your competition will be using!

For further information, watch the "Events" section of the Law Society's website at www.lawsociety.bc.ca or email Dave Bilinsky at daveb@lsbc.org. ♦



and control your demonstrative exhibit presentations for trial. You can display two exhibits side-by-side, order your exhibits for quick presentation and display a document, photograph or other image immediately in front of the jury, the judge and

counsel. The time saved using this method can be substantial as compared to referencing multiple document books and placing an exhibit before the judge, the witness, the jury and counsel.

This is just a small selection of the vast

array of legal and general software that can be used by lawyers to automate their practices. But, as noted in the first part of this article, the secret to piecing together the picture is to start with a vision of what you are building. ✧

Ethics Committee seeks views on joint retainers in divorce actions

In 1989 the Ethics Committee (then called the Professional Standards Committee) published an opinion in the *Benchers' Bulletin* that lawyers should not act for both spouses in bringing a joint action for divorce under then Rule 9.1 of the Divorce Rules. In 2000, after consultation with the CBA Family Law Section, the Ethics Committee reaffirmed that opinion: see the October-November, 2000 *Benchers' Bulletin*.

The rationale for the Committee's opinion was that the potential for disagreement to emerge between the parties in family law matters, even after both spouses have received independent legal advice, made it unsafe for one lawyer to act for both parties. The Committee was of this view, notwithstanding that

section 8 of the *Divorce Act* and Rule 60(11) of the Supreme Court Rules contemplate the filing of joint actions in some circumstances, although not necessarily by lawyers.

Section 8 of the *Divorce Act* provides:

8. (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

Rule 60(11) of the Supreme Court Rules states:

(11) *Joint Action for divorce* — Spouses may commence a family law proceeding jointly, without naming a defendant, if they claim an order for divorce and no other orders except by consent.

Since the opinion of the Ethics Committee on joint retainers in divorce actions was published in 2000, the Committee has received a number of representations from lawyers that the opinion is unnecessarily restrictive and ought to be reconsidered for some circumstances. Before it reviews this issue, the Ethics Committee invites comment from the profession.

Lawyers who wish to comment should contact:

Jack Olsen
Staff Lawyer — Ethics
Law Society of British Columbia
8th Floor, 845 Cambie Street
Vancouver, BC V6B 4Z9
Tel. (604) 443-5711 or 1-800-903-5300 (toll-free in B.C.)
E-mail: joslen@lsbc.org ✧

Ethics Committee opinion

The Ethics Committee has approved for publication this opinion from the past year — as guidance for the profession as a whole.

Whether FOI requests can be made to public body represented by a lawyer
Chapter 4, Rule 1.1 of the *Professional Conduct Handbook*
(Ethics Committee: March, 2001)

A lawyer asked whether she is required to make freedom of information requests to a public body through another lawyer in relation to a matter

in which the other lawyer is acting for the public body.

The Committee noted that Chapter 4, Rule 1.1 of the *Professional Conduct Handbook* prevents a lawyer from communicating directly with a client who is represented by another lawyer in a matter. On the other hand, section 5 of the *Freedom of Information And Protection of Privacy Act* ("the *FIPP Act*") contemplates that, to obtain access to a record, an applicant must make a written request to the public body that the

applicant believes has custody or control of the record. Section 79 of the *FIPP Act* states that, if a provision of that *Act* is inconsistent or in conflict with a provision of another *Act*, the provision of the *FIPP Act* prevails.

It was the Committee's view that Rule 1.1 must be read as subject to section 5 of the *FIPP Act*. For that reason, it is proper for lawyers to make freedom of information requests directly to a public body in a matter where the public body is represented by a lawyer. ✧



Downtown Vancouver firms to keep articling offers open to August 19

The Credentials Committee has announced that 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 at least **12:00 noon on Monday, August 19, 2002.**

This date is set each year pursuant to Rule 2-31 to ensure students have an opportunity to consider more than one firm's offer in interviewing for articles.

The rule applies to offers made to second-year law students or first-year law students, but not to offers to third-year law students or offers of summer positions (temporary articles). ♦

CBA considers revisions to Code of Professional Conduct

The CBA (National) Ethics and Professional Issues Committee invites the views of Canadian lawyers on a consultation paper called *Modernizing the CBA's Code of Professional Conduct*: see www.cba.org/EPIIgram/february2002/default.asp

The CBA Committee will draw on comments from the profession in formulating recommendations for revision, to be submitted to the CBA

membership for a vote.

Please send your comments by **May 31, 2002** or by fax, email or regular mail to:

Kathryn Berge, Q.C., Chair
Ethics and Professional Issues
Committee
c/o Richard Ellis, Legal Policy
Analyst
Canadian Bar Association

902 – 50 O'Connor Street
Ottawa, Ontario K1P 6L2
Fax: (613) 237-0185
E-mail: richarde@cba.org

The Benchers in 1988 acknowledged the CBA *Code of Professional Conduct* as a professional conduct text of particular value in B.C., although the Law Society *Professional Conduct Handbook* governs if there is any discrepancy between the *Handbook* and the *Code*. ♦



UVic moot team captures Sopinka Cup

UVic law students **Timothy Livingston** and **Almira Esmail** (left) accept congratulations from Attorney General Geoff Plant, QC for their accomplishment in 2002 in winning both the McIntyre Cup — a western regional moot competition — and the Sopinka Cup — the highest national honour for moot trial advocacy. Sharing in the moment are coaches Nils Jensen, counsel in the Ministry of Attorney General, and Adrian Brooks, a lawyer with Brooks and Marshall in Victoria (right), who are both sessional instructors at the University of Victoria law school.



The Discrimination Ombudsperson: *here to help*



Law firms have a duty to foster a professional work environment that promotes equal opportunities and prohibits discriminatory practices. When firms do not live up to that duty, there

can be costly consequences for everyone.

*The Law Society of B.C. wants to help stop workplace discrimination by providing law firms with the services of a Discrimination Ombudsperson. The Ombudsperson, **Anne Bhanu Chopra**, confidentially assists anyone in a B.C. law firm who asks for help in resolving a discrimination or harassment complaint against a lawyer, and also assists law firms in preventing discrimination.*

Ms. Chopra is independent of the Law Society and reports only anonymous statistical data to the Society.

Whether you are a law firm employer or employee, you can look for information and assistance from Ms. Chopra by emailing her at achopra@novus-tele.net or leaving her a confidential voicemail message at (604) 687-2344. Ms. Chopra is the only person with access to her messages and will return calls promptly.

What is discrimination?

Discrimination in the workplace involves unwelcome comments or actions that relate to a person's race, colour, ancestry, place of origin, political belief, religion, marital or family status, physical or mental disability, age, sex or sexual orientation.

Discrimination is illegal — contrary to

both the *B.C. Human Rights Act* and the *Canadian Human Rights Act*. It is the impact of the behaviour — not the intention behind it — that determines if the behaviour is discriminatory. The *Law Society's Professional Conduct Handbook* also makes discriminatory conduct a disciplinary offence for lawyers.

What is sexual harassment?

Sexual harassment is a form of discrimination based on sex. It is a serious abuse of power. Harassment can be a demand for a sexual favour in exchange for a benefit, or an unwelcome action or comment of a sexual nature. This may include:

- unwanted touching, sexual flirtation, advances or propositions
- leering
- the display of offensive material of a sexual nature
- suggestive comments or jokes
- gestures or comments about a person's sexuality or sexual orientation
- unwanted questions about a person's sex life
- persistent unwanted contact or attention after the end of a consensual relationship

What is the impact of discrimination?

Whether a racial slur, an unwanted sexual advance or denial of a promotion because of pregnancy, discrimination poisons the workplace. Law firms suffer when humiliation, anxiety and tension permeate the office, when working relationships break down,

when work quality and productivity drop, when valuable employees are absent or quit and when reputations are put on the line.

That's not all. Lawyers or employees who discriminate against or harass others in the firm may face a human rights complaint or a civil action, and these can result in serious damage awards. As well, lawyers may face a complaint to the Law Society.

How can discrimination be stopped?

There are formal and informal ways to redress discrimination problems. The formal options include a complaint to the B.C. Human Rights Council or a civil action, which offer a range of remedies including compensation. Anyone considering these routes should seek legal advice early to meet time limits.

Discrimination by a lawyer can also be the basis of a complaint to the Law Society. The Society will review the complaint as a professional conduct issue for the lawyer, but cannot offer the complainant compensation.

There are also informal approaches to resolving a complaint that can be explored and may prove most helpful in preserving a working relationship.

Perhaps most importantly, implementing an equitable workplace harassment policy and educational program may ensure that a complainant comes forward and does not take a complaint outside the law firm.

The Discrimination Ombudsperson can help with an approach that meets your unique circumstances. And help is just a call away. ♦

New District Registrars appointed

Chief Justice Brenner has announced that **Murray Blok** was appointed the District Registrar in Vancouver,

effective March 25, 2002 and **Carolyn Bouck** was appointed the District

Registrar in Victoria, effective April 2, 2002. ♦



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 of a summary of the written reasons for decisions of the Committee.

Michael Haynes

Kelowna, B.C.

Called to the Bar: August 30, 1991

Undertook not to practise law: November 27, 1998

Custodian appointed: November 27, 1998

Ceased membership: January 1, 1999

Claimant: M

Payment approved: \$586.01

Decision date: February 28, 2000

Report issued: April 25, 2000

While representing the vendor in a mobile home sale in 1998, Mr. Haynes received funds from the purchaser (M) in trust, on his undertaking to pay property taxes, interest and penalties. Mr. Haynes failed to pay the taxes.

The Committee found that Mr. Haynes had misappropriated or wrongfully converted the funds, noting that he offered no response or submission in this regard. The Committee ordered payment of \$586.01, repre-

senting the unpaid taxes. It exercised its discretion not to pay interest, noting that the claimant had not been asked to exhaust his civil remedies.

Claimants: D and R

Payment approved: \$1,278.15

Decision: July 24, 2000

Report issued: October 11, 2000

While representing D and R in the sale of their home, Mr. Haynes received in trust from the purchasers' lawyer \$157,983.23, representing the net sale proceeds. The funds were sent to Mr. Haynes on certain undertakings, including an undertaking to pay the 1998 gross property taxes, arrears, interest and penalties to July 31, 1998. Mr. Haynes did not in fact do so, even though he prepared a statement of monies received and disbursed indicating that the taxes had been paid.

There were no funds left in trust to pay the taxes and arrears, and Mr. Haynes offered no explanation. The Committee concluded that he had misappropriated or wrongfully converted the funds.

The Committee approved payment of \$1,278.15, representing unpaid taxes and penalties to July 31, 1998, but did not award interest.

Claimant: P

Payment approved: \$1,376.10

Decision: February 28, 2000

Report issued: June 26, 2000

In June, 1998 P retained Mr. Haynes to represent him in the sale of his home and the purchase of a new property. Mr. Haynes was to pay the outstanding property taxes on the new property from funds held in trust. He sent his client a statement of monies received and disbursed indicating that he had paid the outstanding taxes of \$1,376.10, although he had not. P subsequently received notice that the taxes were in arrears and he was assessed a forfeiture fee, interest and other penalties.

The Committee concluded that, in the circumstances and with no explanation offered by Mr. Haynes, he had misappropriated or wrongfully converted the funds. The Committee approved payment of \$1,376.10 and declined to pay the penalties or award interest on the claim.

Claimant: S

Payment approved: \$800

Decision: February 28, 2000

Report issued: June 26, 2000

In October, 1998 Mr. Haynes received an \$800 retainer from S whom he represented in a matrimonial proceeding. A custodian who was later appointed to wind up Mr. Haynes' practice found no file materials for S or any record of a deposit of the funds. Mr. Haynes told the custodian he would deal with the matter directly with S, but he did not.

In the absence of a trust deposit, or a transfer of the funds from the trust to the general account, the Committee was satisfied that Mr. Haynes wrongfully converted the funds and that S had suffered a loss. The Committee ordered compensation of \$800 and declined to pay interest. Given the small size of the claim and the unlikelihood of recovery from Mr. Haynes, the Committee did not require the claimant to obtain a judgment.

Claimants: T and M

Payment approved: \$1,482

Decision: July 24, 2000

Report issued: October 29, 2000

In 1998 Mr. Haynes represented T and M in the sale of their business. On September 2 Mr. Haynes received a trust cheque for \$43,806.32, representing the sale proceeds. Mr. H deposited the funds to trust and then disbursed them. On September 3 he paid \$1,482 and \$687.21 to himself without rendering a bill for services. While the claimants allowed the \$687.21 for reasonable fees and disbursements, they sought to recover the \$1,482 from



the Fund.

The Committee was satisfied that the funds had been misappropriated or wrongfully converted, noting that there was no apparent justification for the withdrawal, no bill and no explanation offered by Mr. Haynes. The claim was approved, without interest, and the claimants were relieved of the requirement of seeking a judgment.

William John Graham

Vernon, B.C.

Called to the Bar: May 17, 1996

Suspended: January 25, 1999

Custodian appointed: January 15, 1999

Resigned: October 22, 1999

Discipline: See December, 1999 Discipline Digest

Previous claims: See January-February, 2000 Benchers' Bulletin

Claimant: R

Payment approved: \$7,327.35

Decision: March 27, 2000

Report issued: June 26, 2000

In 1998 the firm in which Mr. Graham practised held \$17,097.36 in trust for the claimant. Mr. Graham was on an undertaking to use the funds to obtain release of a builder's lien, which in fact was removed by consent. In February he paid out \$10,600.09 of the funds on behalf of another client, without R's consent or knowledge.

In October Mr. Graham paid himself \$4,971.26 from trust money held for R.

The custodian of Mr. Graham's practice returned to R the \$1,526.01 still in trust and Mr. Graham repaid \$8,500. After these repayments, \$7,071.35 remained owing to R. The Committee found misappropriation or wrongful conversion and ordered that R be compensated for her loss and \$256 as the costs of obtaining a Small Claims judgment against Mr. Graham, a total \$7,327.35. The Committee declined to award interest.

Claimant: B

Payment approved: \$51,008.27

Decision: January 29, 2001

Report issued: March 15, 2001

In 1998 Mr. Graham acted as solicitor for the executor of an estate (B). B was to receive a \$15,000 bequest. A charity of her choice was to receive the estate residue.

B received from Mr. Graham a \$15,000 cheque, which she deposited. She then issued back a \$7,500 cheque to Mr. Graham, which he deposited to his personal account. Mr. Graham later informed B that the balance of her inheritance (\$7,500) was available. They met at a bank and Mr. Graham had a trust cheque for \$42,935.20 payable to her. He explained the amount as a clerical error. He proposed rectifying the mix-up by B depositing the trust cheque and then giving Mr. Graham a cheque for the difference. B obliged. Mr. Graham received from her a cheque for \$35,435.20 with which he purchased a bank draft and deposited those funds to his personal account. As a result of Mr. Graham's actions, the residual beneficiary received none of the estate funds.

The custodian of Mr. Graham's practice discovered that Mr. Graham had also withdrawn \$8,073.07 for legal fees but without rendering accounts.

The Committee determined that Mr. Graham's misappropriation through the deposit of estate funds to his own account was a purposely devised scheme to deceive B as executor and falsify his accounting records. His withdrawal of funds for professional services without B's knowledge, authorization or consent was also misappropriation or wrongful conversion of funds.

Claimant: S

Payment approved: \$10,700.92

Decision: May 28, 2000

Report issued: July 17, 2001

In late 1996 Mr. Graham began acting for S who had purchased a business for \$30,000, but who was in a dispute with the seller over \$10,000 of the purchase price. Mr. Graham received \$10,000 from S to hold in trust pending resolution of the dispute. Mr. Graham took steps to settle the dispute and paid out the \$10,000 from trust without the knowledge, authorization or consent of S. At least \$5,000 of this amount he paid to himself without issuing a bill or providing an explanation.

The Committee found that Mr. Graham had misappropriated or wrongfully converted the funds in his capacity as a lawyer and accordingly approved payment of \$10,700.92, which included \$700.92 for fees and disbursements incurred by S in obtaining a judgment. ✧

Reinstatements

The following people have been reinstated to membership in the Law Society. These reinstatements do not relate to discipline proceedings.

As of January, 2002: Linda Michele Angela Slang, of Duncan. **As of**

February, 2002: Herbert Samuel Groberman, of Vancouver; Lindi Esther Hain, of Vancouver. **As of March, 2002:** Bradford Herbert Cowburn, of Edmonton; Crawford Grant Edwards, of Surrey; Maureen Fay Fitzgerald, of

Vancouver; Clarence Herbert Larson, of Kelowna; David Munroe Levis, of Fort St. John; Valerie Lynn Osborne, of West Vancouver. **As of April, 2002:** Adrienne Mary Murray, of Vancouver. ✧

ELECTED BENCHERS

President

Richard C. Gibbs, QC

First Vice-President

Howard R. Berge, Q.C.

Second Vice-President

William M. Everett, QC

* * *

Ralston S. Alexander, QC
Robert D. Diebolt, QC
Ian Donaldson, QC
Anna K. Fung, QC
David W. Gibbons, QC
Robert W. Gourlay, QC
John J.L. Hunter, QC
Gerald J. Kambeitz, QC
Peter J. Keighley, QC
Robert W. McDiarmid, QC
Margaret Ostrowski, QC
G. Glen Ridgway, QC
Patricia L. Schmit, QC
William J. Sullivan, QC
Grant C. Taylor
G. Ronald Toews, QC
Russell S. Tretiak, QC
Ross D. Tunnicliffe
Gordon N. Turriff
James D. Vilvang, QC
Anne K. Wallace
David A. Zacks

LAY BENCHERS*

Jaynie Clark
Ann Howard
Marjorie Martin
Anita Olsen
June Preston

** 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.*

EX OFFICIO BENCHER

Attorney General
Geoff Plant, QC

LIFE BENCHERS

R. Paul Beckmann, QC
P. Michael Bolton, QC
Robert W. Bonner, QC
Darrell T.B. Braidwood, QC
Mr. Justice Thomas R. Braidwood
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
Ujjal Dosanjh, QC
Leonard T. Doust, QC
Jack L.T. Edwards, QC
Dr. James J. Gow, QC
Arthur M. Harper, QC
David B. Hinds, QC
John M. Hogg, QC
H. Allan Hope, QC
Henry E. Hutcheon, QC
Robert T.C. Johnston, QC
Peter Leask, QC
Gerald J. Lecovin, QC
Hugh P. Legg, QC
Charles C. Locke, QC
James M. MacIntyre, QC
Richard S. Margetts, QC
Allan D. McEachern
Meredith M. McFarlane, QC
Lloyd G. McKenzie, QC
Brian W.F. McLoughlin, QC
Colin D. McQuarrie, QC
Kenneth E. Meredith
Peter J. Millward, QC
Dennis J. Mitchell, QC
Karen F. Nordlinger, QC
Richard C.C. Peck, QC
Emily M. Reid, QC
Norman Severide, QC
Jane S. Shackell, QC
Donald A. Silversides, QC
Gary L.F. Somers, QC

Madam Justice Mary F. Southin
Marvin R.V. Storrow, QC
Benjamin B. Trevino, QC
William M. Trotter, QC
Alan E. Vanderburgh, QC
Brian J. Wallace, QC
Karl F. Warner, QC
Warren T. Wilson, QC

MANAGEMENT BOARD

Executive Director

James G. Matkin, QC

Deputy Executive Director

Jean P. Whittow, QC
Director, Discipline and Professional Conduct

* * *

Brad Daisley
Public Affairs Manager
Susan Forbes
Director, Lawyers Insurance Fund
Jeffrey G. Hoskins
General Counsel
Susan James
Human Resources Manager
David Newell
Corporate Secretary
Neil Stajkowski
Chief Financial Officer
Alan Treleaven
Director, Education and Practice
Adam Whitcombe
Chief Information Officer

Contact

The Law Society
of British Columbia



845 Cambie Street
Vancouver, B.C.
Canada V6B 4Z9

Telephone: (604) 669-2533
Toll-free within B.C.: 1-800-903-5300
Telefax: (604) 669-5232
TTY: (604) 443-5700
Website: www.lawsociety.bc.ca

Lawyers Insurance Fund
Telephone: (604) 682-8911
Telefax: (604) 682-5842