



Benchers' Bulletin



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President's View

Benchers' Bulletin

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

The views of the profession on improvements to the *Bulletin* are always welcome – please contact the editor.

Additional subscriptions to Law Society newsletters 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

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The Enemee at the Gates

A member wrote to me recently, reminding me that, when he was called to the Bar in 1837, the Law Society of British Columbia had but two staff members: the Secretary, Scooter, who was then a six-year-old boy, and Scooter's invariable companion, a doddering blind beagle named "Dodo." He recalled how Scooter was orphaned shortly after birth and abandoned in a basket before the front door of the Law Society's old building. As there was no one to take him in, Scooter survived the first years of his life wandering the corridors of the Law Society, nourished only by the paste he licked from the back of law stamps. Dodo, too, was abandoned — cast off from some downsizing at the Law Reform Commission of the day.

Boy and beagle, they tackled the issues then confronting the profession. The annual dues of the time were only a ha'penny every five years, and the excess was routinely transferred to a contingency reserve fund. When a complaint about a lawyer was received, a quiet word from the Secretary was all it usually took to put matters right. A gentle "Hey, Mister, your file's undone" from Scooter let the member know that improvement was required. There was no formal discipline or practice review process. In egregious cases, Scooter and Dodo would visit the member's office. Dodo would cock his leg at the door and that was a real stain of dishonour for proud

professionals. Not like the Law Society of today.

As with the rest of you, I've grown up on the tales of Scooter and Dodo and the early days of the Law Society of British Columbia. And, frankly, I'm skeptical. For instance, I don't think they had law stamps in British Columbia in the 1830s. I'm beginning to see these as apocryphal tales ... or a pocket full of something. No matter how we may long for a discipline process defined by the retentive capacity of a blind beagle, the fact is that times changed and the Law Society had to change with them.

When I ran for Bencher in 1995, my major prior experiences with the Law Society came from acting for members caught up in its processes. I can remember railing against what I perceived to be the unfairness of the complaints review process. (This is the process by which a complainant can ask for an independent review of a staff decision to take "no further action" on a complaint.) I was concerned that a complainant could be given a 40-minute audience before a panel of three to press his or her indictment of the member, yet the member was neither allowed to attend in person nor to send counsel. I can also remember my frustration at the conduct review process. While Law Society counsel of the day saw it as a way to effectively address certain conduct issues, I saw conduct reviews as an alternative to what should have been nice, clean "not guilty" dispositions of complaints. I went to the Law Society, as a newly elected Bencher, with an attitude of substantial hostility to what I would find there. My unofficial campaign slogan had been: "Let's give the Law Society an enemee!"

In the seven years that have intervened, I have acquired a good working knowledge of the departments of the Law Society and am now at least acquainted with most of the 125 employees who work there. It is my thesis



Scooter and Dodo c. 1837



that every one of our staff positions is essential to the proper functioning of the Law Society and, in fact, we need to staff up to properly deal with some issues that are central to our mandate and presently inadequately serviced. A satisfactory demonstration of that contention is beyond the scope of this column.

Members who compare present staffing to that of the “good old days,” or make ratios of staff to number of members then and now, are using arithmetic as a substitute for analysis. In 1992 we increased staff by bringing our liability insurance program in-house. Su Forbes and her colleagues in the Lawyers Insurance Fund have been externally evaluated as running the best liability insurance program in North America. Liability insurance in British Columbia costs full-time members \$1,500 per year — in Alberta, comparable insurance costs \$2,574; in Ontario it is \$2,700. The insurance program adds 16 employees to the Law Society. Every one of them is justified.

The public complains about lawyers as never before. In the “good old days,” one staff member may have been assigned a workload of 800 or 1,200 complaints. Little could be done with such a load. If the Benchers and staff had not responded by ramping up the capacity to properly investigate and assess complaints, our Law Society might have found itself in the situation of the Queensland Law Society after Queensland’s Ombudsman, Jack Nimmo, recommended that the government take away the self-governing status of the legal profession based on his view of their complaints process. [Those who favour gutting our Professional Conduct Department may wish to check the December 5, 2002 editorial in the Queensland Courier-Mail for an example of the kind of public hot water that can be encountered and the challenges to independence and self-regulation that could result. Or try a Google search for “Queensland Nimmo Complaints” and

review the hits.]

Our Law Society now processes about 1,700 complaints per year by a staff of 8.5 full-time equivalent lawyers plus a legal assistant and a complaints officer. We provide a complaints review process chaired by a Lay Benchers, and we pay for staff support to that process. No one can justly criticize the Law Society of British Columbia for failing to thoroughly investigate and assess each complaint we receive. There are also two full-time discipline counsel in house who take forward discipline cases.

We also now deliver our Professional Legal Training Course in-house. That involves 12 employees. Our PLTC course is recognized internationally as a leader in delivering bar admission skills training and assessment.

We assist members in regaining competence through our Practice Standards employees. The beneficiaries of those programs pay some portion of the cost. A competency program is a necessary part of our public interest regulatory regime.

We have one employee who works full-time responding to *Freedom of Information and Protection of Privacy Act* requests, as the Law Society is subject to that legislation. Scooter and Dodo were not similarly vexed.

We have a Communications Department, which manages our website and prepares our mailings and reports to the membership. We have a Public Affairs Manager at the Law Society heading that department. The public affairs function is indispensable, as I well know from my year as President. The Law Society features in, and responds to, so many issues that it would not be possible to manage our media relations without full-time, expert staff assistance.

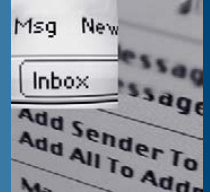
We have a Policy and Planning Department — with nine employees — that is much too small given the challenges laid before it. Policy and Planning routinely works on such

programs as unauthorized practice, equity and diversity and pro bono, oversees Law Society litigation and policy work and monitors cases and legislation that may impact on the profession. This includes, for example, monitoring Securities Exchange Commission activities in the United States with extra-territorial implications for our members advising companies that may trade shares there. We are also now in correspondence with the federal government to consult on legislation to replace section 488.1 of the *Criminal Code* (searches of law offices), following the decision in *Lavallee*. Policy and Planning crafted submissions to the provincial government over its ill-advised civil liability review initiatives. Every day there are new challenges about which the Department has to provide the Benchers, the President and the Executive Director with research, information and analysis.

Our admissions program has to deal with 325 new applicants per year for articling accreditation and call to the Bar, in addition to handling ongoing member and public enquiries about lawyers and file disposals, certificates of authentication and standing, law corporations and administrative mailings. That now requires a staff of six. With increased lawyer mobility and other admissions reforms, it is certain that the demands on this department will rise, at least initially.

The Special Compensation Fund previously responded to claims having an average value of \$348,000 per year. All claims had to be investigated and evaluated. While there was nothing to predict anything in the order of magnitude of the Wirick claims, that is a challenge we had to meet and our resources were already stretched in this area. With the Wirick claims, our lack of capacity in audits and investigations has been revealed. So far as I am concerned, we have failed over the

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Conveyancing Practices Task Force issues second interim report



The Conveyancing Practices Task Force of the Law Society has issued its second interim report, which recommends several conveyancing practice reforms and new financial protections for the public in trust transactions. The report is available on the Law Society website at www.lawsociety.bc.ca.

The Task Force, chaired by Victoria Bencher Ralston S. Alexander, QC, welcomes comments from the profession, which can be sent c/o Ron Usher at rusher@lsbc.org or by fax to (604) 669-5232.

The Benchers appointed the Task Force on June 29, 2002. The Task Force was asked to look at conveyancing practice issues, following the disclosure of irregularities in the real estate practice of former Vancouver lawyer Martin Wirick in relation to one of his vendor clients.

As a result of its work to date, the Task Force has concluded that, to better protect the public and uphold the integrity of lawyers' undertakings, there is a need to change certain conveyancing practices so as to diminish the opportunity for misuse of trust funds. There is also a need to improve the financial protections that cover all trust transactions.

The Task Force recommends that a vendor's solicitor in a real estate transaction be required by the Law Society Rules to provide a purchaser's solicitor — within 48 hours of completion of

a transaction — evidence that encumbrances on title have been repaid. That evidence would be in the form of photocopies of correspondence and copies of cheques representing the repayment proceeds. Ideally, it would also include an acknowledgement by the financial institution of the receipt of repayment, along with the name of a contact person within the institution who can verify the repayment.

A second recommendation, which the Benchers have approved in principle, is that a financial institution would have 30 days after a mortgage repayment in which to issue a discharge, and the lawyer responsible for the discharge (typically, the vendor's lawyer) would have a further 30 days to register the discharge. If a discharge is not registered at the Land Title Office within the cumulative 60-day period, the lawyer would be required to advise the Law Society of the institution's failure to provide the discharge. A purchaser's lawyer would also be required to advise the Law Society if the vendor's lawyer does not provide discharge particulars within that same period.

These notifications are intended to provide the Law Society information on 1) the business processes of financial institutions and the practices of the profession, and whether certain institutions are unable to discharge mortgages within a particular timeframe and 2) whether there are situations that require attention or intervention from the Law Society. The Task Force stresses that no adverse inferences would be drawn against a lawyer from a failure to obtain a discharge of a repaid mortgage from a financial institution, in the absence of evidence of breach of undertaking or defalcation.

In its first interim report, the Task Force had recommended a two-cheque practice in conveyances, but that proposed reform drew little

support from within the profession and will not be pursued.

The Task Force is also recommending new innocent party insurance coverage to compensate the public for losses that result from lawyer defalcation. The Task Force now recommends that such coverage apply on a go-forward basis and that premiums not be used to fund past losses, such as any claims that may be approved with respect to Mr. Wirick's practice. Under the proposed new program, coverage of \$1 million per trust transaction is projected (an annual aggregate of \$10-15 million per lawyer), and the coverage is expected to apply to all trust transactions, not only to real estate transactions.

Funding of the proposed program would be through a blended premium. The first component of the premium would be a general assessment paid by all practising lawyers. The second component would be a fee levied on a law firm for each trust account (or trust ledger within a pooled trust account) opened for a client respecting a specific legal transaction or legal matter. One fee would apply to the overall legal transaction, regardless of the number of trust deposits made or trust cheques written in the course of the transaction. It is intended that there would be an exemption for very small trust transactions and for the collection and payment of retainers.

Because of the blended premium and because the transaction fee would apply to a broader range of legal matters than real estate transactions, the Task Force anticipates that the amount of the proposed transaction fee would be much less than previously contemplated (\$10/legal transaction or other legal matter is possible). Recommendations on the premium will be made to the Benchers in early 2003 after appropriate statistical and program analysis. ♦

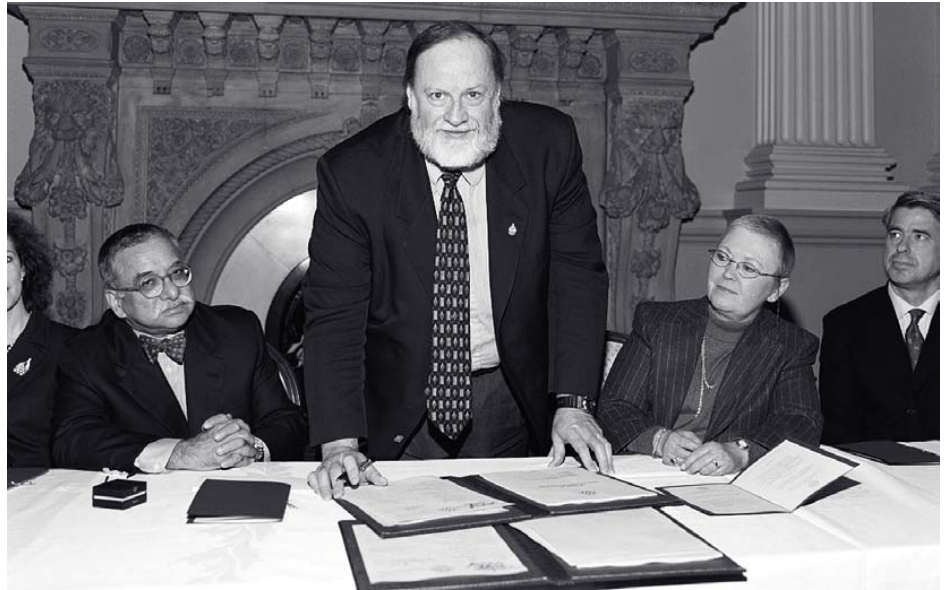


Law societies sign on to enhanced mobility regime

Canadian lawyers will soon see their horizons broadened, as law societies in eight provinces finished 2002 by giving formal approval to a new national mobility agreement. The agreement flows from the final report of the Federation's National Mobility Task Force and will result in a more liberal mobility regime for lawyers who wish to transfer to, or to practise temporarily in, another province or territory: *for a copy of the Task Force report visit the Federation website at www.flsc.ca.*

The BC Benchers authorized the President to sign the new national mobility agreement in November. Lawyers in BC will be kept updated as the necessary rules are developed to bring the agreement into effect. Questions or comments can be directed to Alan Treleaven, Director, Education and Practice at atreleaven@sbc.org.

Under the new temporary mobility regime, a lawyer in a common law jurisdiction in Canada will be entitled to practise temporarily in another reciprocating Canadian common law jurisdiction for a cumulative period of up to 100 days in a calendar year. (*The current Federation protocol entitles lawyers to practise in another province for up to 10 matters over 20 days in any 12-month period.*) The proposals for admission as a member in another province or territory will replace the current transfer examinations with a prescribed



A historic moment for the profession as President Richard Gibbs, QC joins the leaders of seven other Canadian law societies in giving formal approval to a new national mobility agreement at the Law Society of Upper Canada in Toronto on December 7. The agreement will be brought in force after law societies adopt implementation rules.

reading requirement.

There will be separate provisions for lawyers practising between Quebec (the Barreau du Québec) and the common law jurisdictions in Canada, in recognition of differences in legal systems.

While BC lawyers now enjoy enhanced practice mobility in the western provinces under a protocol of the western law societies, the new national mobility agreement will supersede the western protocol.

All law societies are participating in the national regime, except the Chambre des Notaires du Québec (in light of the unique role that notaries play under Quebec's civil law system), the Law Society of New Brunswick and the territorial law societies. As the law societies of the Yukon, Northwest Territories and Nunavut have expressed concerns about preserving the strength of their local bars, the Mobility Task Force will consider options for these jurisdictions further. ✧

Jackson elected Bencher for Cariboo

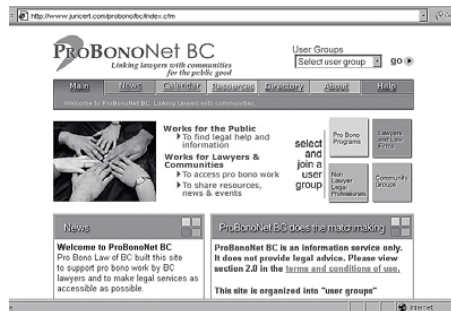
William Jackson, Crown Counsel in Dawson Creek, was elected a Bencher for Cariboo District in a November 15 by-election, to replace Richard Gibbs, QC whose service as a Bencher and President completes at the end of 2002. Mr. Jackson's term begins on January 1, 2003 and ends on December 31, 2003, at the same time as the terms of all other Benchers.

Mr. Jackson has served as a director of the CBA (Saskatchewan Branch), a member of the Real Estate Advisory Board to the Master of Titles of the CBA (Saskatchewan Branch) and a director of the BC Crown Counsel Association. He is currently a member of the Criminal Justice Branch Policy Revision Committee and the Criminal Justice Branch Law Reform Advisory

Committee.

Mr. Jackson's community commitments include service on the Dawson Creek Violence Against Women in Relationships Committee and the Executive Committee of the Dawson Creek Community Resource Network on Elder Abuse, and as an instructor of criminology and history at Northern Lights Community College. ✧

Launch of ProBonoNet BC links lawyers and the community



The first website of its kind in Canada, *ProBonoNet BC*, was launched on November 19 at www.probononet.bc.ca, offering lawyers across BC the opportunity to respond directly to needs for pro bono assistance in their communities.

ProBonoNet BC is the cornerstone project of Pro Bono Law of BC — a non-profit society founded in 2002 by the Law Society of BC and the BC Branch of the Canadian Bar Association, with funding from the Law Foundation of BC. The site will facilitate pro bono practice in the province by linking BC lawyers with community groups and pro bono organizations that need their services.

For lawyers interested in undertaking or renewing a commitment to pro bono, a visit to the *ProBonoNet BC* website is the first step.

What's on the site?

Lawyers will find a range of pro bono opportunities on the *ProBonoNet BC* site and can choose to offer their services — whether summary advice, legal representation, legal research or mentoring — to those programs that best fit their interests and skills.

The home page of the website is designed primarily for members of the public. Lawyers and law firms can join the “Lawyers and Law Firms” user section in order to view the full range of requests for assistance, to see the latest pro bono news, to access pro bono resources and to exchange

information on a secure message board. Juricert provides the registration process for this section of the site.

Community groups have their own user section, while sections are under construction for other professionals (including mediators and interpreters) and for pro bono delivery organizations.

What is pro bono?

Pro Bono Law of BC defines pro bono work as “legal services for persons of limited means or not-for-profit organizations, provided without expectation of a fee.”

The website is not intended to play a direct role in the delivery of pro bono legal services — rather, its function is to make connections between lawyers and the community. Pro Bono Law of BC is based on the principle that, while it is the primary responsibility of government to provide legal aid to ensure equal access to justice, the legal profession has a fundamental part to play in ensuring the proper administration of justice.

With the extension of insurance coverage for pro bono made possible in 2002 by the Law Society and the Lawyers

Insurance Fund, and with the launch of *ProBonoNet BC*, the profession is well positioned to enhance BC's already strong pro bono culture.

How to register

To register with *ProBonoNet BC*, visit the site at www.probononet.bc.ca. Click on “Lawyers and Law Firms” and complete the registration procedure.

Once you are registered, you have access to the “Lawyers and Law Firms” section of the site and can canvass requests for assistance that have been registered by community groups and can view those requests by area of practice or by region, or both.

Registered users also have access to pages specifically designed for the “Lawyers and Law Firms” user group. These pages include resources, news, a calendar of events and a discussion board. Lawyers can contribute their own firm's news, events and resources and view what has been posted by others. The news section also carries the latest updates on insurance coverage available to lawyers doing pro bono work. ✧

Pro bono reports online

Reports on the work of the Law Society/CBA pro bono initiative are available on the Law Society website:

- Interim report of the Law Society – Canadian Bar Association Pro Bono Committee: www.lawsociety.bc.ca/library/frame_reports.html.
- Report on the October 2001 Pro Bono Forum: www.lawsociety.bc.ca/library/report/docs/ProBonoForum.pdf.
- Final report of the Law Society – Canadian Bar Association Pro Bono Committee: [www.lawsociety.bc.ca/library/report/docs/ProBono\(02-06\).pdf](http://www.lawsociety.bc.ca/library/report/docs/ProBono(02-06).pdf).



The work has already begun . . . Pro Bono Law of BC case studies

Multiple Sclerosis Society, BC Division

People with multiple sclerosis are often faced with a variety of legal challenges over human rights, employment equity, insurance, income security, estate planning and family law. "Staff and volunteers at the MS Society have provided support on a wide range of these issues for several years," says Adrienne Boothroyd, the Society's Community Services Coordinator. "But what we really needed was professional legal advice and advocacy."

Pro Bono Law of BC provided the MS Society with the basic information they needed to set up their own pro bono legal advice program — information about best practices, quality control and the legal issues involved. Pro Bono Law of BC also introduced Adrienne Boothroyd to John Pavey, coordinator of the Salvation Army's successful province-wide pro bono program. Both then met with lawyers from Davis

and Company in Vancouver and are now developing a new pro bono legal clinic for the people the MS Society serves. The clinic will be a joint effort by the Salvation Army and the MS Society. Lawyers at other firms are also assisting the MS Society with its program.

Court of Appeal program

For a lay person to appear alone in the Court of Appeal can be very difficult. The rules are intricate and the legal issues are often complex. But thanks to a joint project of the Salvation Army and Pro Bono Law of BC, people representing themselves in the Court of Appeal may now be able to get advice from a lawyer. Under the program, which began in September, unrepresented Court of Appeal litigants may be referred to the Salvation Army's pro bono coordinator who will identify the legal problem, determine whether there is a real need for legal assistance and, if so, refer the person to an appropriate volunteer lawyer.

Eastside Family Place Society

Eastside Family Place runs a drop-in centre and parent education programs in Vancouver's Commercial Drive neighbourhood. Thanks to a successful fund-raising program and government grants, Eastside Family Place, along with the nearby Britannia Community Centre, began construction of a new building that would finally get the Society out of the old, leaky portable building they had been using for 14 years.

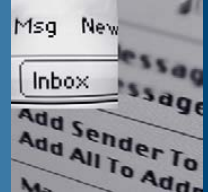
With the assistance of Pro Bono Law of BC, the Eastside Family Place's Administrative Coordinator, Mary Johnston, was able to link up with Vancouver lawyer John Third of Fraser Milner Casgrain, who provided legal advice relating to the construction, leasing and operation of the new building.

"It's been a very positive experience for us, and we're very grateful," says Ms. Johnston. "The pro bono project is a good initiative and I hope it is continued and expanded." ♦



Paying homage

Charles C. Locke, QC receives a certificate from Vice-President Howard Berge, QC in recognition of his 60 years of service in the profession and on the Bench. The presentation was made at a special luncheon in Vancouver hosted by the Benchers on December 5. Other members honoured in 2002: *60 years*: C.A. Stuart DeVitt and *50 years*: J. Allen Carr, William L. Cox, L. John Creery, Michael H. Davison, Herman Frydenlund, Patrick E. Hogan, Robert A. Kitchen, Kenneth E. Meredith, Donald S. Moir, Norman D. Mullins, QC, George W. Owen, QC, Peter C.G. Richards and William D.C. Tuck.



2002 Law Society Award

Kenneth E. Meredith receives the Law Society Award for 2002 from President Richard Gibbs, QC at the year-end Bench & Bar Dinner in Vancouver, where over 400 lawyers and judges were present to share in the moment.

The Law Society Award is given every two years to honour the lifetime contributions of the truly exceptional within the profession and the legal community, based on integrity, professional achievements, service and reform.

Call for expressions of interest in outside appointments

The Law Society is seeking volunteers for appointment to outside bodies

The Law Society makes appointments to a variety of boards, commissions and agencies. While a few of these bodies require that the appointee be a Benchers, most do not, which means the Law Society looks to the profession for volunteers.

The pool of candidates for appointment is generally limited to those BC lawyers who have, by one means or another, made their interest known. Periodically, the Law Society seeks expressions of interest from the profession so as to expand the pool of prospective candidates and to confirm that those who have previously expressed interest remain available for appointment.

The Law Society will consider appointments to the following bodies in

2003:

- UBC Faculty of Law, Faculty Council
- Continuing Legal Education Society Board of Directors
- Law Foundation Board of Directors
- Legal Services Society Board of Directors
- BC Medical Services Foundation Board of Directors
- BC Courthouse Library Society Board of Directors.

Other bodies to which appointments will be considered in subsequent years include: Vancouver International Airport Authority Board, BC Law Institute, City of Vancouver Building Permit Board of Appeal, Federal

Judicial Appointments Advisory Committee, Hamber Foundation Board, Provincial Judicial Council, Surrey Foundation Board and University of Victoria Faculty of Law, Faculty Council.

These appointments offer a lawyer the opportunity to participate more fully in the work of the profession and the community, and to demonstrate the ongoing commitment of the profession to public service.

If you would like to be considered for any of these appointments, please note which are of interest to you and send that information, along with your curriculum vitae, by mail or email to:

David Newell
Corporate Secretary
845 Cambie Street
Vancouver BC V6B 4Z9
Email: dnewell@lsbc.org ✧

Appointments

Continuing Legal Information Institute (CanLII) – The Benchers have appointed **Catherine Best** to the Board of Directors for a one-year term

commencing January 1, 2003.

Law Foundation – The Executive Committee has appointed **S. Dev Dley, Grant Gray, Pamela**

Kirkpatrick and Warren Wilson, QC to the Board of Governors for three-year terms commencing January 1, 2003. ✧



“Noisy withdrawal” rule proposed by US Securities and Exchange Commission troubles Canadian lawyers

The Law Society of BC, through the Federation of Law Societies of Canada, has joined in a submission to the United States Securities and Exchange Commission (SEC) on the *Implementation of Standards of Professional Conduct for Attorneys*, new rules proposed by the Commission on November 21, 2002 (the “proposed rules”). For a copy of the Federation submission, see “What’s new” on the Law Society of BC website.

The proposed rules were mandated by the *Sarbanes-Oxley Act of 2002*. Section 307 of that Act requires the SEC to prescribe minimum standards of professional conduct for attorneys appearing or practising before the SEC in any way in the representation of issuers. The Act requires these rules to be in place by late January, 2003.

It is unusual for Canadian regulatory bodies to comment on rules passed by a foreign regulatory authority pursuant to a statute of a foreign state. However, the proposed rules, as

drafted, apply not only to American lawyers but to all lawyers, including non-US lawyers, who “appear and practise before” the SEC.

The Federation’s submission focuses on the adverse effect that a “noisy withdrawal” rule would have on Canadian lawyers. Under this requirement, a lawyer who has identified and reported to a client a material violation by the client of securities laws may subsequently need to take several steps. If the lawyer does not receive an appropriate response from the client, and if the lawyer believes that the material violation is ongoing or is about to occur and is likely to result in serious injury to the financial interest of the client or investors, the lawyer would be required to:

- withdraw from representing the client,
- notify the SEC of the withdrawal, and

- disaffirm any submission he or she made to the SEC on behalf of the client that is tainted by the violation.

In the view of the Federation, such a requirement will cause a lawyer in Canada to breach duties of loyalty and confidentiality owed to a client — duties that are fundamental to the lawyer-client relationship.

The Federation has also emphasized that there is no need for the SEC to promulgate rules requiring Canadian lawyers to report material violations of law to a client or to withdraw from a retainer in the event a client were to continue to act contrary to the law after receiving a lawyer’s advice. That is because Canadian rules of professional conduct already require such action, and provincial and territorial law societies are already mandated by statute to enforce these rules of conduct. ♦

2003 Committees and task forces

The chairs of the 2003 committees and task forces are set out below. (For a complete listing of committee and task force members, see “About the Law Society” at www.lawsociety.bc.ca.)

Executive Committee: Howard Berge, QC

Audit Committee: Robert McDiarmid, QC

Complainants’ Review Committee: June Preston

Credentials Committee: Russ Tretiak, QC

Discipline Committee: William Everett, QC

Equity and Diversity Committee: Anne Wallace

Ethics Committee: Ron Toews, QC

Futures Committee: Peter Keighley, QC

Practice Standards Committee: Gerald Kambeitz, QC

Special Compensation Fund Committee: Peter Keighley, QC

Technology Committee: Ralston Alexander, QC

Unauthorized Practice Committee: Gerald Kambeitz, QC

Alternative Dispute Resolution Task Force: Deborah Zutter, non-Bencher

Continuing Professional Development and Competence Task Force: Patricia Schmit, QC

Conveyancing Practices Task Force: Ralston Alexander, QC

Disclosure and Privacy Task Force: Peter Keighley, QC

Fee Review Task Force: Richard Gibbs, QC

Libraries Task Force: Ross Tunnicliffe

Multidisciplinary Practices Task Force: Peter Ramsay, QC, non-Bencher

Paralegals Task Force: Jo Ann Carmichael, QC, non-Bencher

Trust Assurance Reform Task Force: Howard Berge, QC

Western Law Societies Task Force: Richard Gibbs, QC ♦

Practice Watch, by Felicia S. Folk, Practice Advisor

Common computer server in shared space

A lawyer's client information should not be stored in a common computer system that is shared with non-lawyers other than the lawyer's employees.

Recently the Securities Commission, acting under the authorization of a search warrant, seized computers, including a server, from an office where a lawyer was a tenant of non-lawyers. The lawyer — who was not the intended target of the investigation — shared the computer server that was seized by the Securities Commission.

In this incident, counsel for the Securities Commission informed the Law Society that steps were being taken to preserve solicitor-client privilege over the lawyer's files, but the problem would not have arisen had the lawyer and his secretary not shared a common server with non-lawyers. The computer system for the entire floor was operated through a common server. Although access to their files was limited to the lawyer and his secretary during normal work, the warrant authorized the seizure of the computer system, including the common server, which inevitably resulted in the lawyer's files being seized.

I strongly recommend that you take steps to ensure that your client information is not stored in any common computer server in order to avoid concerns with respect to client privilege and confidentiality.

Remember too that it is not only non-lawyers who may find themselves subject to a search and seizure of files. We are receiving increasing numbers of calls from lawyers receiving demands for information from CCRA and on PST audits, for example. However successful you may eventually be in having seized files returned to you unexamined, consider the inconvenience to your practice and to

your clients should such a situation arise. Lawyers should establish a separate computer network when working in any shared office environment.

Money laundering

Lawyers in BC were vigilant about their own conduct and the use of their trust accounts well before the introduction of the impugned proceeds of crime legislation, and they remain so. I continue to receive calls from lawyers in BC to say that they have been asked, in effect, to be a conduit for money.

It may seem unnecessary to remind lawyers that there are sophisticated criminals purporting to be legitimate clients, but who in reality are looking for ways to launder money. However, there is no harm in repeating a warning, especially to newly called lawyers, about the possibility of encountering such requests.

The application of the Federation of Law Societies and the Law Society of British Columbia to challenge the constitutional validity of certain provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* will be heard in the BC Supreme Court during mid-2003. Although lawyers in BC will remain exempt from "suspicious transaction" and "large cash transaction" reporting requirements under the *Act* at least until after a decision on that matter, the exemption does not extend beyond what had previously been the law with respect to solicitor-client confidentiality and privilege.

The exemption does not alter the pre-existing legal and ethical prohibitions against assisting a client in the commission of a crime. The *Criminal Code* provisions that prohibit money laundering continue to apply to lawyers, as to all other persons in Canada. Money laundering is a crime and lawyers must not be complicit in it. That principle has not been changed by the

exemption.

The offence, described in section 462.31 of the *Criminal Code*, is committed when a person deals with any property, or any proceeds of property, in any manner and by any means, with the intent to conceal or convert it, knowing or believing that the property or proceeds was obtained or derived as a result of a designated drug offence or an enterprise crime offence, designated in section 462.3 of the *Code*.

If you receive a request from a client for services that seem to mean that you are being retained to be the client's banker, or if you cannot precisely identify the legal services you are being retained to carry out, be vigilant to ensure that no person uses your trust account to deal with the proceeds of crime. Remember that a client who wants to bring you cash because the client has no bank account can instead purchase and then bring you a money order or bank draft. Please call the Law Society if you would like advice on how to deal with ambiguous requests for your services.

Lawyers as lobbyists

The *Lobbyists Registration Act* SBC 2001, c. 42 came into force on October 28, 2002. The Act requires that professional lobbyists register with the provincial Lobbyists Registry and list their contact information, the names of their clients and employers, details of their lobbying work and the names of government employees and politicians contacted. The information will be available online. For more information on the Registry see www.ag.gov.bc.ca/lra.

Lawyers in private practice and in-house counsel carrying out certain tasks may be defined as lobbyists under the Act. *Every lawyer should review the provisions of the Act to determine whether it is necessary to register as a lobbyist before*



undertaking any communication with the Government of British Columbia. Penalties for non-compliance can include fines up to \$25,000.

An amendment introduced November 1, 2002 under the *Lobbyists Registration Amendment Act, 2002* (Bill 72) would allow the government to make regulations regarding different fees or fee waivers based on timing of the registration or on the class of lobbyist. The amending bill will also require lobbyists to register existing contacts regarding lobbying that began before the Act came into effect on October 28.

For more detail, see Practice Watch in the September-October, 2001 *Benchers' Bulletin*. Also, see the Act online (www.legis.gov.bc.ca/37th2nd/3rd_read/gov20-3.htm) and Amendment Act (www.legis.gov.bc.ca/37th3rd/1st_read/gov72-1.htm).

Clients, not their lawyers, required to make cross-border reports

In November, 2002, the Federation of Law Societies of Canada announced that the Government of Canada had published a final set of regulations on the cross-border movement of currency and monetary instruments under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and that these regulations would take effect January 6, 2003. The regulations require persons to report the importation or exportation of amounts of \$10,000 or more of currency and monetary instruments in bearer form.

In accordance with the information the Federation originally received from the Government of Canada, the Law Society of BC and other Canadian law societies advised lawyers that they would have to comply with the reporting requirements of these regulations. That advice has now changed. The Government of Canada recently informed the Federation of Law Societies that lawyers are *not* required to

report cross-border transactions when such transactions are carried out on behalf of clients. (A lawyer would have to report a transaction done on his or her own behalf.)

Accordingly, if a Canadian lawyer, acting on behalf of a client, sends currency or monetary instruments in bearer form of \$10,000 or more by mail or courier to a party outside of Canada, it is the lawyer's client (as the "exporter" for the purposes of the Act and regulations) who is required to report, not the lawyer. If a lawyer carries out an importation or exportation of such currency or monetary instruments on the client's behalf, the client must name the lawyer in the report that the

client makes under the regulations. While it is the client who has the obligation to file the report, the lawyer may do so as a service to the client if so instructed.

For more information, please consult the Cross-border Currency and Monetary Instruments Reporting Regulations.

Lawyers are reminded that, in their representation of clients, they continue to be exempt from Part 1 of the PCMLTFA, including the reporting requirements respecting suspicious and large cash transactions, at least until the constitutional challenge taken by the Federation of Law Societies is heard. ✧

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 BC 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 BC 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 BC 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.

Practice Tips, by Dave Bilinsky, Practice Management Advisor

♪ No time left for you
On my way to better things
No time left for you
I'll find myself some wings ... ♪

Words and music, R. Bachman and
B. Cummings, recorded by The Guess Who

Management moment

At the end of the day, you look around and see the piles of files that you had every intention of attacking today — and yesterday and the day before that. You shake your head, as you just do not seem to be able to get at them. You resolve to look up the latest time management books for methods and techniques on how to create more time in your day to conquer your growing piles of ignored files. You are certain that this problem can be overcome with the best of intentions ...

While all of us have temporary work “blockages,” and all of us can benefit by being better organized and by studiously applying time management tips and techniques, those piles of files are also sending us a message — and our practices and our career satisfaction stand to benefit by listening. It is no accident that when we are working on a file that is interesting, motivating and rewarding, we are motivated and the file naturally tends to “bubble” to the top of our to-do list. Conversely, if we have difficulty staying focused on a file, if we hesitate to call the client, or if we have a strong visceral reaction when just thinking about the file, it is time to listen to the message from the file pile.

Many lawyers state that they are not sure of how to set a strategic direction for their practice. Yet the pile of files are a compass needle that is clearly pointing in the direction that is 180 degrees away from your best work and your strongest motivators. If you are prepared to pause and give the situation your total attention, you will realize that you are at a “strategic moment” that empowers you to redefine

your future. As a new year’s resolution, by way of preventative medicine, categorize the files in your file pile, and resolve not to take on any further files or clients that in any way resemble those in your file piles. Recognize that motivation is the magic ingredient that allows us to use our best talents, resources, and knowledge and turn it into productive work — which in turn is rewarded by a happy, paying client. Negative motivation can only result in delay, unhappy clients and in the worst case, a complaint to the Law Society and/or potential liability for missing important dates.

Now, look at your list of recently closed files. Highlight those that were particularly satisfying — and dig into the reasons for your satisfaction. Was it because the work was in a particular legal area or legal problem? Did the client come from a particular industry or business? Was it because the client came from a particular group or area? Did you right a wrong in a certain area? Did you triumph against the establishment? (Personally, I always identified with the David v. Goliath metaphor...) Once you have identified as many commonalities as possible, you are ready to decide which ones have the greatest potential for being developed into a strategic direction for you and your practice.

The next step? Search your head and your heart. The best outcomes for our clients and ourselves occur when our value system, abilities and passion are in alignment.

Certainly, change cannot happen overnight. However, as Yogi Berra once said, “You got to be very careful if you don’t know where you are going, because you might not get there.” The important fact is that you *can* make it happen. Make up a list of goals that will take you to your future — such as creating an electronic newsletter that can be used to market yourself in your

preferred area, or speaking at a Chamber of Commerce gathering on what it is that you do. There may be areas of self-development, such as immersing yourself in an industry, or attaining skills such as management skills, communication skills, computer skills or interpersonal skills that you need to master. If so, make a start on those immediately. Furthermore, recognize that, while you may have to approach your ultimate goal gradually, the other work that you do is paying and paving the way. Sooner rather than later, you will be on your way to better things.

Practice Q & A

Can I take a rebate from a registry service?

Question: As a lawyer, I have been approached by a registry service that is offering an annual rebate back to me, calculated as a percentage of the total value of the registry work that I send their way. Is it proper for me to enter into this type of arrangement?

Answer: The *Professional Conduct Handbook*, Chapter 9, rules 8 and 9 states as follows:

8. A lawyer shall take no fee, reward, costs, commission, interest, rebate, agency or forwarding allowance or other compensation whatsoever related to the lawyer’s professional employment from anyone other than the client or the person who is paying part or all of the lawyer’s fee on behalf of the client, without full disclosure to and consent of the client or that other person.

9. A lawyer who is financially interested in the person to whom disbursements are made or by whom services are performed, such as an investigating, brokerage or copying company, shall expressly disclose this fact to the client.

In the circumstances, it would be



incumbent on you at the initiation of the client's engagement of your services, to disclose this rebate to and receive the consent of each client to your receiving it.

Recent books

Winning Alternatives to the Billable Hour – Strategies that Work, by James Calloway and Mark A. Robertson, Editors.

As lawyers we have long decried the billable hour, yet relatively little has been done to innovate our billing methods to take us beyond the hourly rate into the realm of value. In 175 pages, Calloway and Robertson have

written a great overview of the issues involved in alternate billing methods. They have then devoted the next 112 pages to precedents: alternative fee agreements, retainer letters and other resources (which are also provided in electronic form on a companion disk). This is a must read for anyone who would like to redefine the financial relationship with their clients in ways that are mutually beneficial and rewarding. (\$149.95 US regular price, \$129.95 US for ABA members.)

The Lawyer's Guide to Marketing on the Internet, 2nd edition, by Gregory H. Siskind, Deborah McMurray and Richard P. Klau. Greg Siskind

redefined lawyers marketing via the internet through his firm's website www.visalaw.com — which has earned him coverage in the *Wall Street Journal*, *USA Today* and many other publications. In this book, Greg combines forces with Richard Klau and Deborah McMurray, two other equally visionary internet presences, to focus on the current issues facing lawyers who seek to leverage their presence on the web. (\$79.95 US regular price, \$69.95 for ABA members). Both books are available from the ABA – Law Practice Management Section's web page. ✧

New retainer agreements among online practice resources

The Law Society Practice Advisor and Practice Management Advisor have recently added practice resource materials to the Law Society website (www.lawsociety.bc.ca) under the "Practice & Services" section — and all material is now reorganized to make it

easier to find.

Here are some recent additions to this section of the site:

- Retainer agreements (general, criminal law, estate administration and family law)

- Model family law reporting letter
- Sample associate agreement
- Lawyers sharing space (article)
- Loss prevention planning checklist. ✧

Land Title Branch / BC Online offer notification service for pending documents

The Land Title Branch and BC Online are offering a new service that allows lawyers to flag particular properties and to receive electronic notice of any pending documents within minutes of these being noted against the properties. The service is available to lawyers who access BC Online over the internet.

Lawyers who wish to use the service can choose to receive notices of pending documents by email, through their BC Online user account mailbox or

through their firm's BC Online account mailbox (especially useful if more than one person in a law firm requires access to the information).

Lawyers can request an activity advisory on a property for any interval up to 60 weeks. Payment for this service is in 12-week increments (12 weeks, 24 weeks, 36 weeks, 48 weeks or 60 weeks).

During the pilot phase of this service, the BC OnLine service charge of \$1.50 (plus GST) will apply to each property

monitored over a 12-week interval. A Land Title statutory fee will be added once the pilot phase of the project is complete. That fee has not yet been set.

Lawyers should note that the service does not provide notification of when a pending document is actually registered on title, nor does it provide notification that a document has been rejected by Land Title staff.

For more information, see the BC Online website at www.bconline.gov.bc.ca. ✧

Equity Ombudsperson



Equity Ombudsperson. The Ombudsperson, Anne Bhanu

To help stop workplace discrimination and encourage equitable workplace practices, the Law Society offers BC law firms the services of an

Chopra, confidentially assists anyone who works in a firm in resolving concerns over possible discrimination, and assists law firms in preventing discrimination and promoting a healthy work environment.

The Equity Ombudsperson is independent of the Law Society and reports only anonymous statistical data to the Society.

Law firm staff, law students, articulated students, lawyers, human resource administrators and managing partners in law firms are all welcome to contact the Equity Ombudsperson.

Ms. Chopra can be reached on her confidential, dedicated telephone line at **(604) 687-2344** or by email to achopra@novus-tele.net ♦

President's view ... from page 3

years to budget for appropriate staffing for audits. To think that when I was elected a Bencher in 1995, I didn't even know what the Special Compensation Fund was!

We now have a staff of four that works on reviewing the errors and exceptions on the Form 47 accountant's reports. This is an area facing much-needed reforms and when the Trust Assurance Reform Task Force finishes its work, it is a certainty that some more resources will be needed to analyze the results of these reviews.

With the complexity of law and practice, our Law Society offers BC lawyers the services of practice advisors who can respond to both practice and ethical enquiries from lawyers. There are three staff lawyers and an assistant to keep up with requests for assistance and to publish general advice for the benefit of the whole profession.

The Law Society has a duty to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons, ensuring the independence, integrity and honour of its members, establishing standards for the education, professional

responsibility and competence of its members and applicants for membership, regulating the practice of law and upholding and protecting the interests of its members. This is a broad and complex mandate that requires a sophisticated professional organization with adequate staffing and resources.

Our Law Society's recent accomplishments in initiating the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* litigation; enhancing the mobility of lawyers across Canada through the Western Protocol and the National Mobility Agreement; establishing trusted digital certificate credentials for lawyers through Juricert; developing electronic filing projects; enhancing our bar admission program; promoting lawyer use of technology through the Pacific Legal Technology Conference and undertaking a host of other projects should reassure members and the public that the Law Society continues to do us proud.

We are fortunate that we have such a dedicated group of men and women as grace the Law Society in performing those functions. I have never worked with a finer or more dedicated crew than I have encountered here at the Law Society. Considering that our combined insurance, Special Compensation Fund and practice fees are

among the lowest in Canada — ranked sixth lowest of 15 in 2001/2002 (10 provinces, three territories, and the Notaires in Quebec) — it will be apparent to any fair-minded person that we are getting good value for money in the fees we pay.

I know there will continue to be skeptics who see the Law Society as bloated, costly and out of control. I categorically disagree. My conclusion, after careful study and due deliberation, is that the member called in 1837 is the true enemeer.

* * *

Being President of the Law Society in 2002 has been a wonderful, challenging experience. I'd like to record my thanks to the voters in my county who permitted me to become a Bencher seven years ago. I am grateful that in 1999 my colleagues at the Benchers' table put me forward as their nominee to mount the first rung of the Presidential ladder.

Most importantly, though, I wish to publicly acknowledge the sacrifices made by my wife, Barbara, and my children Leopold (18), Marynia (17), Jozef (16), Halina (14), Teresa (13) and Jan (11), to permit me to participate in the governance of the profession. They gave up a lot, and they mostly didn't grouse. ♦



Interlock

Depression ... what it is and what it isn't

by Ross Chilton, MA, RCC

Over the last 20 years, there has been an increasing awareness about depression and its impact on individuals and their loved ones. It is the second most common reason people seek the assistance of a family doctor. It is estimated that 4% of the adult population suffers from clinical depression. Depression costs the Canadian economy about \$2 billion annually in lost productivity and treatment. A person suffering from depression is three times as likely to have been off work sick in the last month and three to five times more likely to have been on disability in the last year. The good news is that significant gains have been made in assessing and treating depression.

Depression can take a number of forms:

Clinical depression

This is the condition most often associated with the term "depression." It is identified by the number and intensity of the symptoms present. Many people are aware that they are not functioning normally, but do not recognize that they are suffering from depression until they seek assistance. A person who is suffering from clinical depression will experience significant disruption in a number of areas (*see symptoms further on*).

Dysthymia

This condition differs from a clinical depression both in severity and duration. While the symptoms are typically less intense and disabling, they do tend to be chronic. This low-level depression tends to interfere with an

individual's ability to enjoy life. Though less intense than clinical depression, it can result in significant pain and suffering.

Seasonal Affective Disorder (SAD)

This condition occurs for some people in the Fall or Winter in association with decreased daylight. Signs can include all symptoms associated with a clinical depression and tend to disappear during the Spring and Summer. The most common symptoms include irritability, weight gain, fatigue, low motivation and a desire to sleep longer.

Bipolar mood disorder

This condition causes a person to experience cycles of depression and mania. The person can vacillate between feeling elated and very depressed. While less common than clinical depression, the impact on the individual and families is no less significant.

* * *

While all of us experience moderate fluctuations in our moods, a pattern of symptoms may suggest that some form of depression is present. Symptoms of depression include the following:

- Difficulty concentrating
- Loss of interest in activities that were previously experienced as pleasurable
- Changes in sleeping patterns
- Loss of sexual desire
- Fatigue that is present almost every day and is not alleviated by rest
- Chronic physical complaints such as stomach pain or headaches
- Persistently feeling sad, hopeless,

empty, guilty or pessimistic

- Significant change in appetite or weight
- Thinking about self-harm (*anyone experiencing this symptom should seek immediate assistance through their family doctor or Interlock*).

If you or someone you know has experienced several of the above symptoms for a period of over two weeks, assistance should be sought. Interlock has been providing confidential assistance to members of the Law Society of British Columbia for over 20 years. An Interlock professional can help you determine if you are suffering from depression and can work with you as needed to develop a plan to return to healthy functioning. It is important to remember that depression is not the result of a weak personality, but is a physical condition that responds well to treatment. ✧

If you are a lawyer or articling student, and either you or a dependant would like assistance with personal, family or work-related concerns, please call Interlock for **confidential**, professional counselling. The Law Society funds this service.

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

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

Emergency after hours: 1-800-324-9988

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Contact

The Law Society
of British Columbia



845 Cambie Street
Vancouver, BC
Canada V6B 4Z9

Telephone: (604) 669-2533
Toll-free within BC: 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