The Law Society of British Columbia

Benchers' Bulletin

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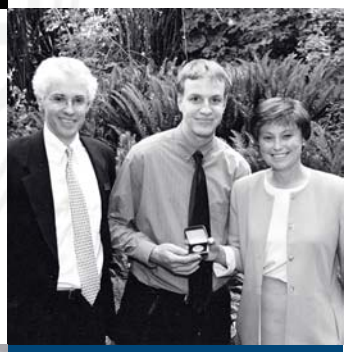

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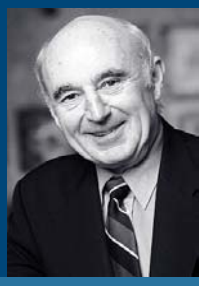

President's View

The CBA — why it's time for choice

by Howard R. Berge, QC

September 19 is the day that BC lawyers at the AGM vote on a resolution to set the 2004 practice fee for the operation of the Law Society.

The Benchers resolved at their July meeting, after much debate, to follow the very clear terms of the *Legal Profession Act*, section 24, which provides for an agency relation for collecting CBA fees. The Act, however, limits this agency to *only* those BC lawyers who are members of the CBA. Further, under this section the CBA fee collected by the Law Society is deemed to be a part of the practice fee. Accordingly, BC lawyers who choose not to belong to the CBA would pay only the practice fee of $1,027.50. Those who choose to belong to the CBA will pay an additional $485.41 as the CBA fee, for a total of $1,512.91 (if in practice five years or more) or an additional $296.41, for a total of $1,323.91 (if in practice less than five years).

After the profession was notified of the Benchers' fee resolution, the Canadian Bar Association (through Robert Brun and J.J. Camp, QC) put forward two alternative practice fee resolutions, one of which the movers intend to put forward for discussion and vote at the AGM.

In essence, each of these alternative resolutions would make payment of a CBA fee equivalent mandatory for *all* BC lawyers as a component of the practice fee, whether or not those lawyers choose to be CBA members. It's worth noting that, for the purpose of these alternative fee resolutions, the 2004 CBA fee increase in BC will be $20 less than in the rest of the country, as a means of the CBA encouraging mandatory membership in BC. This reduction is likely temporary as BC lawyers would presumably be expected to catch up in the fees in the future. In the result, the alternative resolutions propose a 2004 practice fee for all BC practising lawyers of $1,492.91 (for those in practice five full years or more) or $1,303.91 (for those in practice less than five full years).

In this column, I'd like to address two issues in advance of the September 19 AGM. One is freedom of choice. A fundamental reason for the Benchers' fee resolution is that each individual lawyer should be given a clear choice on whether or not to belong to the CBA and whether to pay the CBA fee. The key reasons have been canvassed in our notices for the AGM, and I will recap some of the pivotal points later in this column.

But there is another issue I'd like to turn to first — and that is the serious financial impact of the Brun/Camp alternative fee resolutions on BC lawyers, particularly on CBA members.

* * *

The financial impact of the alternative fee resolutions

If either of the Brun/Camp alternative practice fee resolutions were passed in preference to the Benchers' fee resolution, how would such a resolution be interpreted?

One has to consider that, at the time they passed their practice fee resolution in July, the Benchers also passed a resolution to authorize the Law Society to serve as agent to collect the CBA fee from those lawyers who are members of the CBA. This was in anticipation that the Benchers would collect fees from CBA members on a voluntary basis.

The Benchers passed their resolution pursuant to section 24(1)(c) of the *Legal Profession Act*, which states that *"the Benchers may … authorize the society to act as agent of the Canadian Bar*

Benchers' Bulletin

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

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 by contacting the subscriptions assistant. To review current and archived issues of the *Bulletin* online, please check out the "Resource Library" at www.lawsociety.bc.ca.

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Association for the purpose of collecting fees of that association from lawyers who are members of it." Section 24(2) provides that *"fees collected under subsection (1)(c) form part of the practice fee referred to in section 23(1)(a)."*

Having passed such a resolution under s. 24(1)(c), the Benchers will be required to collect a CBA fee from CBA members in 2004. The result is a double payment by CBA members unless the Benchers are able to pull back from that resolution.

If this problem is not fixed and should one of the Brun/Camp practice fee resolutions pass at the AGM, I believe the financial impact on BC lawyers could be two-fold. *First*, those BC lawyers who are not CBA members will nevertheless pay a practice fee that includes an amount equivalent to the CBA fee. *Second*, those BC lawyers who are CBA members will pay both a practice fee that includes a CBA equivalent fee *plus a further CBA fee*, which the Benchers must collect as agent for the CBA in furtherance of their resolution in July. This would result in particularly harsh financial consequences for CBA members, as reflected in the table below.

I thought it important to flag this statutory issue for the profession in advance of the AGM. It's important to note, at this juncture, that this is my own interpretation of the statute. There may be Benchers who do not share it.

I should also note that a practice fee resolution may be passed at the AGM or the Benchers could hold a referendum to set the practice fee, which is another option under section 23 of the *Legal Profession Act*. There may be circumstances in which the Benchers would feel it necessary to do both. Perhaps the worst case scenario would be seeing the Benchers forced to run the operations of the Law Society through a special assessment — that would be unprecedented and an unconstructive approach for both the Law Society and the CBA. Notably, the Society would have no means to collect an equivalent fee or serve as agent for the CBA in such a scenario.

While this gives food for thought on a financial front, the question of freedom of choice remains critical.

		Practice fee	CBA equivalent component (as part of practice fee)	**Total fee payable for non-CBA members**	CBA fee (payable by CBA members)	**Total fee payable by CBA members**
Benchers' resolution	In practice 5 years or more	$1,027.50	Not applicable	$1,027.50	+ $485.41	$1,512.91
	In practice less than 5 years	$1,027.50	Not applicable	$1,027.50	+ $296.41	$1,323.91
Brun/Camp resolution	In practice 5 years or more	$1,027.50	+ $465.41	$1,492.91	+ $485.41	$1,978.32
	In practice less than 5 years	$1,027.50	+ $276.41	$1,303.91	+ $296.41	$1,600.32

Please note: Mr. Berge points out in his column a possible problem involving a duplication of charges to CBA members of the Society. The Benchers considered this issue at their meeting on September 5 and informally agreed that, if one of the Brun/Camp resolutions were passed, all reasonable efforts to ameliorate the unintended double payment consequences would be undertaken. However, the problem remains that the passage of one of the Brun/Camp resolutions will require non-members of the CBA to pay to the Law Society an amount equivalent to the CBA fee. The Benchers have not decided how to deal with those funds. Although the CBA resolution directs the Benchers to pay the "extra" funds to the CBA, that is not a direction that the membership is authorized to give the Benchers except by the process described in section 13 of the *Legal Profession Act*. The Benchers' consideration of this matter at their July meeting led to the section 24 agency resolution. This resolution of the Benchers respects members' freedom of choice.

The matter of choice

Most Benchers believe it is right for lawyers to have the choice of whether to belong to the CBA and pay CBA fees. Having been active in the CBA for many years and as a past member of Provincial and National Councils, I look forward to a change. I am confident that the CBA will emerge as a stronger and more vibrant organization in this province.

Our Law Society and the BC Branch of the CBA have shared a relationship

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Ministry of AG invites Queen's Counsel nominations

Each September, beginning this year, the Attorney General will send out a call for nominations of candidates for appointment as Queen's Counsel.

Under the *Queen's Counsel Act*, the Lieutenant Governor in Council, on recommendation of the Attorney General, may bestow on lawyers in British Columbia the honorary title of Queen's Counsel to recognize exceptional merit and contribution to the legal profession.

While the Law Society has historically assisted through informal consultations to identify potential QC appointments, no formal nomination process has existed until now.

Nominations

The call for nominations in September will be directed to the judiciary and to the Law Society, the BC Branch of the Canadian Bar Association and the Trial Lawyers Association for communication to the profession. Any lawyer interested in making a nomination may obtain an application package, including forms and instructions, from the Ministry website.

Outside of an immediate family member of a nominee or nominees themselves, anyone can submit a nomination by completing an application form. The application must be accompanied by a statement of support from two nominators and a nominee's c.v. or brief biography and may also be accompanied by letters of support.

All nominations are confidential. Nominators may be contacted to clarify information in support of the nomination, but will not be updated on its status. Application information will not be made public.

Unsuccessful candidates may be nominated in subsequent years; however, a complete application is required for every nomination.

An application must be postmarked or faxed no later than midnight, November 3. Appointments will be announced at the end of the year.

*Attorney General **Geoff Plant** (front right) presents a certificate to **Thomas H. Hara**, QC, one of 27 BC lawyers honoured with the title of Queen's Counsel in late 2002, while Chief Justice Donald I. Brenner of the Supreme Court of British Columbia, Chief Judge Carol Baird Ellan of the Provincial Court and Chief Justice of British Columbia Lance Finch share in the moment. The presentations were made at a reception hosted by the Law Society in February, 2003.*

Mr. Hara practises criminal and labour law in Vancouver. He is a director of the Japanese Canadian Citizenship Association and was the first Japanese Canadian to open a law office in BC.

The Ministry of Attorney General is calling for nominations for new Queen's Counsel appointments this September.

Criteria for candidates

Candidates must:

- belong to the BC bar, and have been members for at least five years; and
- demonstrate professional integrity, good character and excellence in the practice of law. Such excellence could be determined by any of the following:
  - being acknowledged by their peers as leading counsel or exceptionally gifted practitioners;
  - having demonstrated exceptional qualities of leadership in the profession, including in the conduct of the affairs of the Canadian Bar Association, the Law Society of British Columbia and other legal organizations;
  - having done outstanding work in the fields of legal education or legal scholarship.

Advisory committee

All applications will be reviewed by an advisory committee, which will

also recommend deserving candidates to the Attorney General. The committee includes:

- The Chief Justice of British Columbia;
- The Chief Justice of the Supreme Court of British Columbia;
- The Chief Judge of the Provincial Court;
- Two members of the Law Society appointed by the Benchers (for 2003-2004 these appointees are First Vice-President William M. Everett, QC and Second Vice-President Peter J. Keighley, QC);
- The Deputy Attorney General.

The Attorney General retains authority to directly appoint lawyers who meet the eligibility criteria. It is expected that this power will normally be exercised in exceptional circumstances only.

Contact information

For more information, contact:

Office of the Deputy Attorney General
PO Box 9290 Stn. Prov Govt
Victoria, BC V8W 9J7

Telephone: 250 356-0149
Website: www.ag.gov.bc.ca/queens-counsel.✧

Lawyers Insurance Fund

BC lawyers' compulsory insurance under national mobility

Lawyers who wish to take advantage of the new national mobility regime,* which came into effect on July 1, will wish to take note of the insurance aspects of the regime.

Any lawyer eligible to practise temporarily (up to 100 days in a calendar year) in another reciprocating province must carry professional liability insurance that is reasonably comparable in coverage and limits to that required by the host law society and that extends to the lawyer's practice in the host jurisdiction. If a lawyer is a member in more than one jurisdiction, the lawyer need purchase only one compulsory policy and can claim an exemption from the mandatory requirement to purchase insurance in another jurisdiction.

To ensure conformity under the national mobility regime, insurers in the various reciprocating jurisdictions have agreed to adopt certain specific policy provisions and practices. The compulsory insurance program for BC lawyers already satisfied the requirements of the new regime in most respects, and minor changes were recently made to comply fully with the agreements reached with the other insurers.

Two minor revisions were made to the policy wording, effective July 1. These revisions are brought into effect by a second renewal endorsement to the compulsory policy, a copy of which is enclosed in this mailing as an amendment to the *Member's Manual*.

An insuring agreement has been added to the policy to address the scope of coverage under the new regime. It provides BC lawyers who are entitled to practise on a temporary basis in a reciprocating jurisdiction with the comfort that they carry professional liability insurance that is reasonably comparable in coverage and limits to that required by the host law society and extends to that lawyer's practice in the host jurisdiction. Wording changes were also made to the "non-stacking" provision of the policy (a standard term that maintains the limits of coverage available when a lawyer has more than one policy), but the effect of the non-stacking provision is essentially unchanged.

Although lawyers who are members of more than one Canadian law society have always been entitled to claim an exemption from the requirement to buy insurance in BC, in certain circumstances, there is now an exemption tailored specifically for lawyers who are members of a law society in more than one reciprocating jurisdiction under the national mobility agreement.

A BC lawyer is entitled to the exemption if he or she is a member of a law society in a reciprocating province, is entitled to practise law in that province, has purchased the compulsory policy in that province and is resident there. "Resident" has the meaning, with respect to a province, that it has with respect to Canada in the *Income Tax Act* (Canada). In that case, the reciprocating jurisdiction's policy will extend to the lawyer's practice in BC.

If you have any questions on insurance under the national mobility regime, please contact Margrett George at 604 443-5761 or mgeorge@lsbc.org at the Lawyers Insurance Fund.

* For background, see the May-June, 2003 *Benchers' Bulletin*.✧

Update

Special Compensation Fund claims relating to Martin Wirick

The Law Society's Special Compensation Fund Committee has now reviewed almost one-third of the dollar value of the claims arising from the actions of former Vancouver lawyer Martin Keith Wirick. The Committee has made a decision on most of the claims that have come before it and adjourned certain others pending receipt of more information.

As reported in the September-October, 2002 *Benchers' Bulletin*, Mr. Wirick wrote to the Law Society on May 23, 2002, resigning his membership and admitting to breaches of undertakings in several real estate transactions. Those breaches had resulted in money remaining unpaid to various parties and financial institutions. The Law Society immediately applied for appointment of a custodian of Mr. Wirick's practice by the BC Supreme Court and began a full forensic audit of his files. Mr. Wirick declared bankruptcy in July, 2002, listing contingent liabilities of about $52 million.

A Law Society discipline hearing panel found Mr. Wirick guilty of professional misconduct for breaching his undertaking to discharge mortgages and ordered that he be disbarred on December 16, 2002: see *Discipline Case Digest 03/05*.

Mr. Wirick's handling of trust funds in these transactions has led to numerous claims against the Special Compensation Fund.

The Law Society's investigation

The Law Society's audit is focusing on approximately 870 of the 3,700 files that the Law Society's auditors found in Mr. Wirick's office — those relating to his client Tarsem Singh Gill, a Vancouver-based property developer, to Mr. Gill's companies and to Mr. Gill's nominees. Mr. Gill was petitioned into bankruptcy in June, 2002. In addition to its audit of Mr. Wirick's records, the Law Society recently obtained a BC Supreme Court order permitting its auditors to review records held by Mr. Gill's trustee in bankruptcy.

The Law Society's staff auditors are being assisted in the Wirick investigation by forensic auditors from KPMG and Mackay and Co. Also involved in the case are Law Society staff investigators (who before joining the Society were senior members of the RCMP) and staff lawyers and paralegals who are working on the investigation and preparing claims for presentation to the Special Compensation Fund Committee.

In August, 2002, the lead auditor on the file estimated there were 22,000 line entries recorded in approximately 1,082 pages to be reviewed. The accounting documents, such as client ledger cards, cancelled cheques, cheque stubs, bank deposit books, bank reconciliations and bank statements, fill 64 large binders. Some of the transactions are very complex and, in one case, the forensic auditors traced the proceeds of a single conveyance to more than 40 other transactions.

Mr. Wirick's breaches of undertaking and misappropriations or wrongful conversion

In the claims reviewed by the Special Compensation Fund Committee up to early July, 2003, the typical scenario is that Mr. Wirick's client, Tarsem Singh Gill, either personally or through a company or nominee, purchased property and resold it. In some cases Mr. Gill redeveloped or contracted to redevelop the property.

The purchase and redevelopment were sometimes financed by a construction mortgage. Mr. Wirick received the sale proceeds from solicitors or notaries acting for the purchasers and mortgage lenders. Instead of paying off the prior encumbrances,

The Special Compensation Fund ... an overview

The Law Society has maintained a Special Compensation Fund since 1949, funded entirely through annual assessments paid by all practising lawyers in BC, to compensate people who lose money through the misappropriation or wrongful conversion of funds by a lawyer acting in his or her capacity as a lawyer. The Fund is one way BC lawyers demonstrate their collective commitment to the public and illustrates why, despite actions such as those of Mr. Wirick, members of the public can have confidence in the legal profession.

Claims to the Special Compensation Fund are governed by s. 31 of the *Legal Profession Act* and by Part 3, Division 5 of the Law Society Rules. All claims are first reviewed by Law Society staff who verify their accuracy. A staff lawyer then presents the claims to the Special Compensation Fund Committee (chaired in 2003 by Law Society Second Vice-President Peter Keighley, QC), which determines whether the claim should be paid. Payment from the Fund is discretionary.✧

as he undertook to do, Mr. Wirick misdirected the down payment and mortgage funds for the benefit of Mr. Gill, such as to a Gill nominee or a Gill company. In some cases, the money was used to make payments on mortgages that should have been discharged on other properties — thereby ensuring the scheme went undetected. Because mortgage lenders frequently take several months to issue discharge certificates, the new purchasers and their mortgagees did not know that the prior mortgages had not been discharged.

In the Special Compensation Fund cases considered so far, Mr. Wirick frequently took fees from the money that was subject to his undertaking, but there is no evidence that he otherwise profited personally from his misappropriations or wrongful conversion of funds.

Overlaps in the claims considered

The Law Society has encouraged any person or financial institution suffering a loss as a result of Mr. Wirick's actions to file claims and to provide whatever information they can to assist the forensic audit. This has resulted in a great many overlapping claims, but the Law Society believes it is necessary for the auditors to have complete information. Because of overlapping claims, it is impossible to gauge the potential aggregate dollar value of valid claims until the audit is completed and the claims are analyzed by Law Society staff and the Special Compensation Fund Committee.

For example, in the first of the Special Compensation Fund decisions relating to Mr. Wirick — reported in the January–February, 2003 *Benchers' Bulletin* as "The East Vancouver properties" — the Committee considered 17 claims. Those 17 claims related to 15 separate mortgages involving two adjoining properties that had been subdivided into three separate properties. The total amount of those 17 claims was $5.5 million. The Committee, however, determined that it needed to pay out only $3.5 million on 11 of the 15 mortgages in order to put the parties in the same position they would have been in had Mr. Wirick honoured his undertakings.

As of August 1, 2003, the Law Society had received 521 claims totalling $73.4 million. The Special Compensation Fund Committee had considered 71 of these claims, totalling $23 million. Because of overlapping claims, however, the total payments approved by the Committee on those claims totalled $12.3 million. Summaries of these decisions have been or will be reported in the *Benchers' Bulletin*. It is not possible at this stage to determine whether this ratio of overlapping claims and dollar values will continue or will increase or decrease.

These claims can be very time-consuming for the Special Compensation Fund Committee. In a typical case, the Committee deals with all claims relating to an individual property at the same time. Often there are a number of claims relating to each property and between 150 and 700 pages of documentation, including details of the forensic audit, Land Title Office documents and financial documents, for the Committee to consider.

As noted, almost one-third of the monetary value of all claims received to date have either been decided or considered in a preliminary way and are awaiting further information for disposition. Many of the remaining claims are from owners of individual suites in condominium developments. In one of these condominium cases, there are 100 claims relating to a single development. The Special Compensation Fund Committee may decide it is most expeditious to consider all claims relating to that development at the same time.

In the claims approved so far, the Committee has generally authorized payment of the amount of interest stipulated in the mortgage to May 24, 2002 and the lesser of the mortgage rate or 6% thereafter to the date of the Committee's decision. Most financial institutions have provided the Law Society with information to assist in the forensic audit and are awaiting the outcome of the Special Compensation Fund process, rather than commencing foreclosure actions against innocent purchasers. Unfortunately, there are a few mortgage lenders that have not provided the Law Society with financial information and have started foreclosure actions — an approach that slows down the Special Compensation Fund process. When a mortgage lender has commenced foreclosure action against an innocent owner of a residential property who is in danger of losing the residence, the Law Society has provided counsel to represent that owner's interests.

Recoveries from the Wirick and Gill bankruptcy estates

To receive payment from the Special Compensation Fund, claimants must agree to a number of conditions, which generally include providing to the Law Society an assignment of any claims they may have against Mr. Wirick, Mr. Gill, Mr. Gill's nominees or Mr. Gill's companies. The Law Society will pursue these claims and expects to be able to trace some trust claims to money received by Mr. Gill's trustee in bankruptcy. Recoveries from Mr. Wirick's bankruptcy estate are uncertain as he appears to have few assets.

Paying for the Wirick claims

As noted by former Law Society President Richard Gibbs, QC in the September-October, 2002 *Benchers' Bulletin*, in the 15 years prior to the discovery of Mr. Wirick's misappropriations, the Special Compensation Fund paid out an average of $348,000 a year on claims for compensation.

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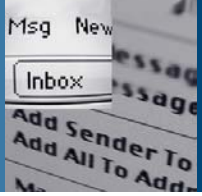


Update on Wirick *… from page 7*

In 2002, when the Law Society learned of the Wirick misappropriations, the Special Compensation Fund was insured for $17.5 million. Under the terms of the insurance policy, the Law Society is responsible for the first $2.5 million of all claims. The Fund, in 2002, had reserves of $8.5 million to cover the $2.5 million deductible and any claims over the insurance limits. All claims relating to Mr. Wirick's misappropriations fall within the 2002 insurance policy because evidence of the misappropriations was discovered in that year.

In recognition of the need to maintain public confidence, the Benchers in September, 2002 rescinded Law Society Rule 3-33 to remove the $17.5 million cap on payments that the Special Compensation Fund Committee can authorize in a calendar year. This step gave the Committee discretion to approve claims without the restriction of a pre-determined cap. It was yet another affirmation of the commitment of BC lawyers to public protection.

In 2003, the Law Society increased the Special Compensation Fund assessment paid by each practising lawyer by $350 — from $250 to $600. This increase was needed to cover audit and investigation costs, to pay claims and to increase the Special Compensation Fund reserves. Based on current information, this assessment is not expected to increase in 2004 and may possibly decrease by as much as $200.

At present, all claims approved by the Special Compensation Fund Committee have been paid without the need for additional financing. If the total of approved claims goes beyond the Fund's reserves and insurance as a result of the Wirick-related claims, the Benchers anticipate borrowing money to pay the claims. This will allow the Law Society to finance claims over time, rather than imposing a large assessment on BC lawyers.

Changes to conveyancing practice and trust accounting

In addition to providing financial compensation to those who have suffered loss as a result of misappropriation or wrongful conversion by Mr. Wirick, the Law Society has worked on conveyancing reforms to ensure greater public protection through enhanced transparency over mortgage discharges.

New Law Society Rules now require a lawyer to report to the Law Society the failure of a mortgagee to provide a registrable discharge of mortgage within 60 days of a transaction that closes March 1, 2003 or later. The new rules, recommended by the Law Society Conveyancing Practices Task Force, also oblige a lawyer to report to the Law Society the failure of another lawyer or a notary to provide satisfactory evidence that he or she has filed a registrable discharge of mortgage as a pending application to the Land Title Office within that 60-day period.

The Law Society is collecting this information to learn more about the business processes of financial institutions, whether there are certain institutions unable to discharge mortgages within a given timeframe and whether there are situations that require Law Society assistance or intervention.

The Conveyancing Practices Task Force is also encouraging lawyers to use the newly revised CBA standard form undertakings in real estate conveyances. These undertakings now include transparency provisions respecting mortgage discharges. Specifically, the new undertakings require a vendor's lawyer to provide the purchaser's lawyer within five business days of completion copies of specific documents that demonstrate that the vendor's lawyer has made payments to existing chargeholders.

For more information on the reporting requirements and the CBA undertakings, see the May-June, 2003 *Benchers' Bulletin*.

In the near future, BC lawyers will also see a revised form of trust accounting report to replace the current Form 47 accountant's report. Mr. Wirick's actions emphasized the need for the Law Society to improve the regulation of trust accounts. As a result of consultation with both lawyers and accountants, the Society is developing a new trust accounting form that will require lawyers to provide more detailed information about their practices. The focus of the new form is risk assessment, along with cost effectiveness for both the Law Society and lawyers.

Funding future misappropriation claims

The financial implications of Mr. Wirick's actions have led the Benchers to reflect on whether there are ways to compensate the public for losses caused by lawyer misappropriation other than through a Special Compensation Fund.

The Benchers are now considering the potential for coverage through an insurance vehicle, rather than a discretionary fund. The Benchers have asked Law Society staff to investigate the feasibility of innocent insured coverage as part of the compulsory professional liability policy, which might be funded through a fee on trust accounts opened for clients. The work on this issue is at a preliminary stage and will be presented to the Benchers at a later date and reported to the profession in the *Benchers' Bulletin*.

Conclusion

The Law Society's duty, pursuant to section 3 of the *Legal Profession Act*, is "to uphold the public interest in the administration of justice." Compensating Mr. Wirick's victims and ensuring that lawyers carry out their duties honestly and ethically is a demonstration of the profession's commitment to that duty.✧

Change in Annual Practice Declaration filing date

Practising insured lawyers in BC will not be asked to file an Annual Practice Declaration this September as in previous years. Instead they will be asked to do so when their firms file a new form of Form 47 accountant's report, which is expected to be introduced by the Law Society later this year.

Until now, all practising lawyers (both insured and insurance exempt) were sent a declaration for return to the Law Society by September 30. Beginning this year, only those practising lawyers who are *exempt* from Law Society professional liability insurance will be sent a declaration for filing in September. All practising lawyers who carry either full-time or part-time insurance through the LSBC Captive Insurance Company will complete the declaration as part of the new accountant's report. A lawyer's declaration will accordingly be due on the same date as the accountant's report for his or her firm.

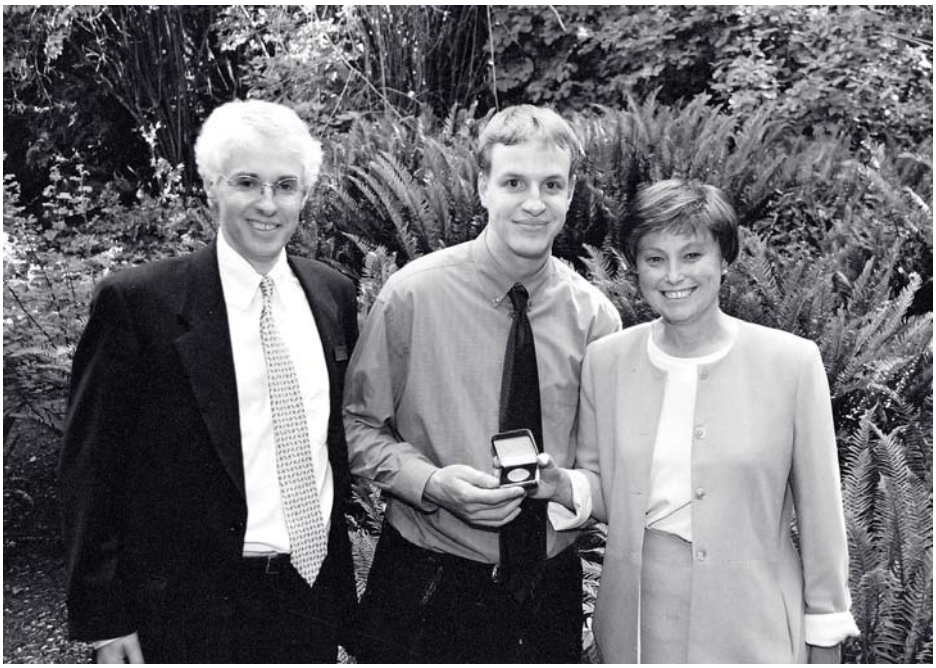
More information about the new accountant's report will be published to the profession in the coming months.✧

Erratum

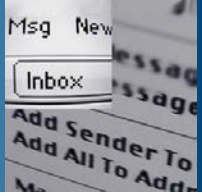
The caption to the Benchers photograph on page 1 of the *2002 Annual Report* incorrectly identifies Nanaimo Bencher G. Glen Ridgway, QC (who appears in that photo) as Bencher William Jackson. Apologies to both Mr. Ridgway and Mr. Jackson for the error. The correction is reflected in the online version of the *2002 Annual Report* at www.lawsociety.bc.ca.✧

2003 Gold Medallists

Victoria Bencher Ann Wallace presents the 2003 Law Society gold medal to ***Ben Blackmore*** *(centre) who achieved the highest cumulative grade point average over his three years at the University of Victoria law school. The presentation was made at a law faculty reception that followed convocation ceremonies, with Dean Andrew Petter (left) in attendance. Prior to studying law, Mr. Blackmore earned a BA (Honours) degree in Mathematics from Acadia University and later worked in South Korea as an ESL teacher and in Northern Ontario as a tree-planter. While at law school, he received many prizes and scholarships for academic achievement. Mr. Blackmore will article with Davies Ward Phillips & Vineberg in Toronto.*



At the July Benchers' meeting, President Howard Berge, QC had the pleasure of presenting the 2003 Gold Medal for the University of British Columbia to ***Amy Jennifer Davison****. A recipient of multiple scholarships, Ms. Davison complemented her academic achievements at law school with active service on campus — as a member of the UBC Law Students Legal Advice Program, the UBC Law Review and the Law Faculty Council Student Caucus. Ms. Davison will clerk with the BC Supreme Court before beginning articles at Borden Ladner Gervais in Vancouver.*✧



President's View *… from page 3*

that stretches back more than 50 years. In the mid-forties the legislature supported mandatory CBA membership as follows: "*The Benchers may out of the annual fee paid by each barrister pay to the Canadian Bar Association the annual fee for his membership in that association" [section 14(2), Legal Professions Act].*

In 1987 the legislature deleted the above provision, and introduced the current, much narrower, section 24, permitting the Benchers to authorize the Law Society to act as agent for the CBA for the purpose of collecting the fees of CBA members and deeming that such fees collected "form part of the practice fee referred to in section 23(1)(a)."

In recent years, BC lawyers have begun questioning the nature of CBA membership, and a few have resigned membership. While the CBA has taken the position that membership is voluntary, it has nevertheless continued to advocate payment of a CBA fee component by all BC lawyers.

After a lively debate at last year's AGM, members passed a 2003 practice fee that included "an amount equivalent to the CBA fee." The Benchers had originally recommended the "fee equivalent" in recognition of the fact that certain lawyers have expressly chosen not to be CBA members. The 2003 practice fee therefore comprised several components — the Law Society fee, the CBA equivalent fee and funding amounts for the BC Courthouse Library Society, the Lawyers Assistance Program and subscription to the *Advocate*.

The Benchers subsequently resolved to pay to the Canadian Bar Association the full amount of the CBA equivalent fee under their general authority to apply Law Society funds, and the CBA accepted this money as payment for fees of its members in BC.

The upshot of all of this was that — while CBA membership was voluntary — payment of a CBA fee component was not.

The Benchers have always regarded the Canadian Bar Association as a valuable organization, and this goes a long way to explaining why, year after year, they have recommended that payment of a CBA membership fee be included as part of the practice fee. Historically, the Law Society has also been concerned that, should the CBA drop certain functions for financial reasons, the Law Society might need to take on those functions.

If the CBA is a valuable professional association — and most of us believe it is — it should respect BC lawyers by giving them the same choice as other Canadian lawyers and by having confidence that most BC lawyers, given the choice, will see CBA membership as good value for money. Our own Law Society's polling reveals two important things. First, just over half of lawyers polled in BC do want CBA membership to be voluntary. Second, three out of four would choose CBA membership if it were voluntary.

These two findings are not hard to reconcile. Most people care passionately about the associations and community organizations to which they belong — but would not seek to force others to join. The choice to belong is the very essence of a membership association. It is what ensures that the association reflects and serves its members.

The Law Society and the Canadian Bar Association carry out very different roles. The Law Society is a regulatory body for lawyers and its primary responsibility is to protect the public interest in the administration of justice. For that reason, membership in the Society is a requirement of practising law. The CBA, in contrast, is a professional association that speaks first and foremost for the interests of its members. To maintain public and lawyer confidence in our separate responsibilities, the Law Society and the CBA should not be seen as too closely connected.

Governments are now scrutinizing and, in some cases interfering with, the self-regulation of the legal profession. While some of the criticisms levelled in other jurisdictions would not be justified in BC, too close an integration between any law society and a lawyers' association, such as the CBA, may not enhance public confidence.

In addition, the CBA should not be dependent on all BC lawyers for providing such a large share (25%) of its income, a large portion of which remains with the National Office, or on our provincial law society for using the mantle of the practice fee to secure that income stream. When I say that the CBA will come out stronger in BC, it is because each of its members will make a deliberate choice to have the CBA serve and represent them.

The mandatory nature of CBA fees is now arising again and again as a source of discontent in the profession. The issue now routinely dominates the Law Society AGM. It has prompted several BC lawyers into initiating court challenges. It is constantly diverting time, energy and resources away from important projects of both the Law Society and the CBA. This ongoing strife is not good for either organization, or for BC lawyers.

I believe that BC lawyers, whether or not they are active CBA members, are ready to support the Benchers' proposal for individual choice. If you consider this an important issue, the September 19 AGM is the opportunity to make your vote count.✧

Law firms should prepare now for the Personal Information Protection Act (Bill 38)

The *Personal Information Protection Act* (Bill 38) passed second reading in the Spring session of the provincial legislature. While the Bill did not receive third reading prior to the adjournment of the legislature at the end of May, it is expected to pass into law sometime in the Fall.

Bill 38 will govern the personal information that businesses, non-profit organizations and other private sector entities in the province can collect from clients, customers, employees and volunteers and how that personal information is to be used, disclosed and stored. This legislation will apply to law firms and to lawyers in private practice and will affect how firms handle the personal information of employees and clients, as well as personal information gathered by lawyers about non-clients in the course of a retainer.

Why is this legislation necessary?

In 1998 the European Union issued a directive to prohibit EU businesses from sharing personal information with businesses from other countries unless those countries had privacy requirements that satisfied the EU. Canada responded by enacting the federal *Personal Information and Protection of Privacy Act* ("*PIPEDA*"). That Act, which has met with EU approval, governs the protection of private information of individuals that is collected, used or disclosed within the federally regulated sector in the course of commercial activities. *PIPEDA* also covers all organizations engaged in interprovincial commercial activity.

As of January 1, 2004 *PIPEDA* will also purport to cover the collection, use and disclosure of personal information in the course of any commercial activity *within* provinces, *including provincially regulated organizations.* However, the federal government is permitted to exempt organizations or activities in provinces that have their own privacy laws if those laws are deemed to be "substantially similar" to the federal legislation.

Bill 38 was drafted following widespread consultation by the BC government over the past year. The Bill is intended to protect personal information within the private sector in BC as well as to protect employee information in provincial organizations, something which *PIPEDA*, for constitutional reasons, could never do.

An overlying issue is that *PIPEDA* requires any provincial privacy legislation intended to govern the private sector to be substantially similar to the federal legislation, which means that Bill 38 could not vary too significantly from *PIPEDA*.

Bill 38 has not yet been determined to be substantially similar to *PIPEDA*. The federal cabinet will make that determination on recommendation of Industry Canada after the Bill becomes law. While the former federal Privacy Commissioner, George Radwanski, had earlier stated that Bill 38 had "grave deficiencies," the Information and Privacy Commissioner for BC, David Loukidelis, has expressed the view that Bill 38 provides broader coverage than the federal act and is less complex.

The purpose of privacy legislation

The general purpose of privacy legislation, including Bill 38, is to ensure that the collection, use or disclosure of personal information about an individual does not occur without that individual's consent or unless the information falls within specific exceptions.

Privacy legislation also gives an individual the right to see and ask for corrections to his or her personal information that an organization may have collected.

The obligations on law firms to protect privacy

Law firms are vast repositories of personal information. In addition to maintaining information about employees, firms possess sensitive personal information about both clients and non-clients.

The personal information of clients is already protected by a lawyer's professional responsibility to protect client confidences. Moreover, the law of solicitor-client privilege protects privileged information, which a lawyer must never disclose without client instructions. Bill 38 provides that nothing in the legislation affects solicitor-client privilege.

In order to properly discharge their duties and professional obligations in the practice of law, however, lawyers must be able to collect, use and disclose personal information. Sections 12, 15 and 18 of Bill 38 set out the circumstances in which an organization governed by the legislation can do so without the consent of an individual, and these sections should be reviewed closely by lawyers. For example, personal information may be collected without the consent of an individual if:

- it is for use in an "investigation" or a "proceeding" (both are defined terms), provided that it would reasonably be expected that the accuracy or availability of the information may be compromised by having to obtain consent;
- the collection is clearly in the

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Interlock Member Assistance Program

On the verge of collapse: how to help a colleague in trouble

by Nancy Payeur, Regional Director, Interlock

"A partner in our firm recently lost several cases he should have won. Not only that, but two of the firm's clients have complained to the Law Society that he hasn't followed up on their files. And his behaviour towards other lawyers and staff at the firm has dramatically changed. This is someone who is normally very outgoing, and now he's withdrawing … spending most of the day behind closed doors. When we ask him if anything's wrong, he denies any problems. This has been going on for months now, and it's not getting any better."

* * *

The above scenario is typical of those I hear from lawyers who have contacted Interlock out of concern for a colleague. It's easy to overlook the early signs of distress in others with whom we work. We may sense something is wrong, but are not sure — or may conclude that it's a private matter and that a gesture of help will not be welcome. We may even harbour resentment if a colleague's failings are impacting on us directly in the workplace and think it's up to them to take responsibility for their own problems like everyone else.

Avoiding a problem can have serious consequences, however, both for a lawyer in trouble and for others in the firm. Lawyers need to rely on each other. For partners in particular, the overall financial interests of the firm, as well as the interests of each partner, bring a heightened sense of urgency to the situation.

If you are wondering whether another lawyer needs help, here are some warning signs of distress:

- Lateness or absenteeism
- Missed deadlines or court dates
- Forgetfulness
- Lowered productivity and drastically reduced billable hours
- Increased number of personal calls
- Personality changes: irritability, mood swings, angry outbursts
- Withdrawing or avoiding others
- Alarming statements — suggesting self-harm or threats
- Deterioration in personal appearance and grooming
- Signs of severe fatigue
- Signs of potential drug/alcohol use: bloodshot eyes, smell of alcohol.

The lawyer I've described in my scenario may be struggling with any number of things — marital problems, a runaway teenager, addictions, a psychiatric illness, workload stress or pressing financial difficulties. He may be "collapsing" — losing control of his life in a number of ways and finding that his habitual coping methods no longer work.

Law firms often wait far too long to attempt to address a situation that may already be chronic. This may be due to a natural reticence or awkwardness about approaching a colleague on the sensitive issue of work performance, or to the human tendency to deny or minimize concerns until they are blatantly obvious to all. But whatever the reason, delay may worsen the problem. A matter that could have been dealt with effectively early on can easily become entrenched and more difficult to turn around later. At that point, a partner may instead be

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expelled from the partnership and end up trying to work alone — unprepared and without adequate resources and support. That can easily lead to a marginal legal practice that spells further problems ahead for both the lawyer and clients.

Recommended steps in making the approach

My advice in such a situation is straightforward. The partner who has the most positive relationship with the lawyer must make the approach and level with him or her. I would usually suggest this as the first step. The person confronting the lawyer needs to be prepared for a range of reactions — from defensive denial to angry counter-attack. In the best of all possible outcomes, the lawyer will acknowledge the concerns, possibly explain what is going on and admit that he or she needs some help. Here are the key steps to follow.

Express concern for the person's well-being

We are all better able to hear criticism when we believe that someone is trying to be a caring human being, and there is positive intent.

Review the specifics

During the meeting, you must calmly build your case, describing examples of the concerns, including complaints from clients, deadlines or court dates missed, irritable or withdrawal behaviour, etc. The goal is not to provide an amateur diagnosis or become a counsellor to your colleague, but to provide clear, compelling and unequivocal feedback about a pattern of behaviour occurring over a period of time that is causing serious concern. When you are making this approach on behalf of a number of partners, let the lawyer know this, as kindly as possible, to indicate the seriousness and urgency of the situation.

Listen to the response

Your colleague may surprise you and acknowledge your concerns readily and openly. Or he or she may deny or minimize the problem, or become angry, perhaps accusatory. Do not be drawn into arguing, but continue listening actively and probe for an understanding of that point of view. Restate and summarize your concerns and give the person time to think over your feedback if that appears necessary. Don't leave things hanging though — follow up within 24 hours to finish the conversation.

A plan of action

Whatever the response, let your colleague know that you will provide concrete support and will help sketch out specific plans to "get things back on track." Depending on the core issue, this will include a range of alternatives.

If the lawyer needs to improve practice management skills, the plan could include additional training, appropriate systems and administrative support. If the lawyer's ability in certain areas of the law is the issue, the plan could include a mentorship structure, the help of lead counsel on specific types of cases, continuing legal education or limiting the lawyer's practice in the firm to proven areas of competence.

If personal or family issues are involved — including addictions, marital or mental health issues — you will need to provide information and assistance, such as a referral to Interlock's Member Assistance Program. You may also wish to consider exploring resources available through the Lawyers Assistance Program (LAP), including ongoing peer support.

A final note ...

Remember that you cannot take responsibility for "fixing" the problem. All you can do is let your colleague know your concerns are serious and together plan a way to resolve them. You do need to ensure there is follow-through, and that your colleague understands that things cannot continue unchanged. In the case of either a partner or an associate in your firm, it needs to be clear what actions will be taken if changes are not forthcoming. Both elements — supportive resources and clear requirements for change — are necessary components of a successful plan.

These conversations take courage. Give yourself credit for facing the problem directly and offering help. The rest is up to your colleague.✧

How to reach Interlock

Interlock offers personal counselling and referral services that are confidential and available at no cost to individual BC lawyers and articled students and their immediate families. Interlock can help with personal, relationship and family problems, stress management, substance abuse or work-related concerns.

Interlock can be reached at:

Lower Mainland: 604 431-8200

Toll-free in BC: 1-800-663-9099

Practice Tips, by Dave Bilinsky, Practice Management Advisor

♪And I could have done so many things, baby
If I could only stop my mind from wondrin' what
I left behind and from worrying 'bout this wasted time … ♪

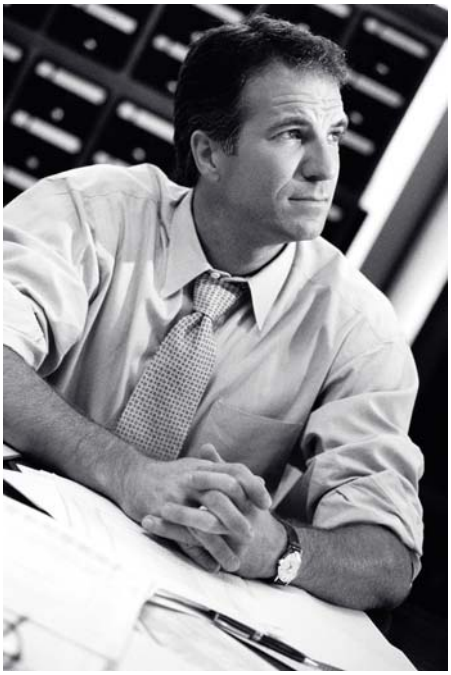
Words and music, Don Henley and Glenn Fry, recorded by The Eagles

Management moment

About 20 years ago, I was told a story. This particular story was true. It was about a man who was otherwise rather unremarkable, except for one little matter. Early in his life, he had set down a list of all the things he wanted to do in his lifetime. By the time he reached his 70s, he had managed to cross off all but a few remaining items — and was eagerly anticipating accomplishing the ones left on his list.

How many of us can look back and say that we have used our time accomplishing those goals that matter most to us? How many of us have even taken the time to identify those goals? To take up the lyrics of Beautiful Boy by John Lennon: "*Life is just what happens to you, while you're busy making other plans.*" How often do our plans actually reflect our values as opposed to just distracting us from the more important things in life? How do you set priorities, cull the wheat from the chaff and set your own journey to reclaim your life? Here are some suggestions:

- Steven Covey, in his *Seven Habits of Highly Effective People*, said: "Begin with the end in mind." Vision is a gift that has been valued in all cultures; possessing a vision of what you wish to do with your life is indeed being gifted. Take a moment and reflect on your values — what matters to you over all else? Write these down. Consider the different aspects of these values, as well as the people, the goals, and the timelines involved, to gain a perspective on what you are aiming at. Goals can be related to career, family, sport, art, attitudes, finances, self (mind and body), community and other people. Consider what accomplishing your goals would look like. Hold on to that vision.
- To free up time for the most important matters in your life and in your work, you have to know how you spend your time. So ask yourself, "How do I spend my day?" Start making a log of all the activities that you do now and the amount of time you spend on them. Also track your energy levels during the day. Now look at the tasks and ask yourself, "Am I necessarily the best person for each of these? Can some of these be delegated? Are some make-work? What would happen if I stopped doing some of them? How much time is spent taking care of interruptions? Am I using my best time during the day on the most important tasks?"



- Tasks can be divided into five categories, according to Edwin Bliss, author of *Getting Things Done*. These are *Important and Urgent, Important but not Urgent, Urgent but not Important, Busy Work* and *Wasted Time*. Go through your daily log and categorize your tasks. Tasks that are *Important and Urgent* are just that — it is rare that time is ever wasted on these matters. However, the last three categories tend to rob time from *Important but not Urgent* — the "stuff" that holds the most meaning for our lives but is pushed aside by the time-robbers. Gaining control over our lives, our goals and our priorities means having to corral the last three categories and get them out of our lives in order to give room to the matters that have meaning to us. What follows is further tips and techniques to do just this.

Making time for what matters most

- Learn to say "no." People will try to encroach on your time for good and not so good reasons. Each time this happens, ask yourself, "Is this taking me closer to or away from my vision?" Put that way, saying no, politely but firmly, becomes easier.
- Don't be a perfectionist. Achieving perfection is usually impossible, and setting too high a standard for yourself can result in procrastinating on matters because of the time and energy required to complete the task.
- Recognize the danger of doing someone else's work. While it may be easier to do a task than to show someone else how to do it, in the long run, this means that you will end up doing it over and over again. Let the appropriate person try, and take time to correct the work knowing that, once this is done, you may never have to spend time on this again. As well, watch out for "Could you please do this? You are so much better at this than I am." While we

all have to balance requests for our time, be vigilant for the well-meaning person who should be honing his or her skills rather than using yours. When assistants come to you with partly completed work, don't finish it for them — give them the information they require to do the job.

- Make the people around you more efficient. While all of us have to deal with others, some of us have to deal with supervisors — be they partners, department heads or practice group leaders. When you spend time dealing with tasks that are ill-defined by others, whether in poorly run meetings or in striving for last-minute deadlines — your own schedule and deadlines will be adversely affected. Take time at the outset to clearly outline what is required from you. Establish a system to identify upcoming priorities early enough to avoid the deadly impact of deadlines. Furthermore, when people come to you with "urgent" requests, ask them to prioritize those requests in light of your existing deadlines. Chances are they will not want to incur someone else's displeasure by vaulting their request to the top of the pile.

- Sharpen the saw. Covey recommends taking time to reflect. In other words, evaluate your own performance and reflect on whether you are so busy working that you have not taken a moment to see if there is a better way of proceeding. Build in time for training, development and "group thinking." Encourage people to come forward with ideas on how to make incremental improvements in how you go about your work.

- Delegate, delegate, delegate. One of the best time-saving techniques is to give work to others — especially if that work would empower a delegate and allow you to supervise rather than doing the work directly. In a law firm setting, this translates to pushing work down to associates and paralegals — who can learn and, in turn, complete the task at a lower overall cost to the client. This allows you to have time to think and create strategy while the troops carry out the tactics. As for what to delegate, look at your activity log and start by delegating those busy-work and important but not urgent tasks. As you become comfortable with the new paradigm, you can start delegating urgent and important tasks.

  One added benefit: by becoming a mentor, you may find that associates start flocking to you, as they soon realize that you are passing out work that others horde — thereby allowing them to gain a wider range of experience. Be sure to set up a system to have the interim results brought to you early enough to allow you to make corrections mid-stream. Remember to support the associates while resisting the urge to do the work yourself. One other thing — shoulder the blame when something goes wrong and spread the credit when things go right — your associates will love you for it.

- Make time for the right people. It is understood that, before you delegate anything, you must be comfortable with the delegate's ability to tackle the task. Take time to find and nurture the right people. Spend time on the Cs — communicating, checking and coaching — and not the Ds — despairing, digging in and doing.

- Make time for yourself. Part of the reason for managing your time is to create time for the important but not urgent matters, such as getting in the exercise you need. Take the time to start new habits and feel good about yourself and you will be encouraged to continue along on this new path.

- Follow Covey's remaining five habits: *Be proactive*, *Put first things first*, *Think win/win*, *Seek first to be understanding, then to be understood,* and *Synergize*. Putting first things first translates to ensuring that all the facets of a job are understood and communicated prior to starting on the work.

  In the context of a client file, it is equivalent to understanding the client's desired cost and outcome of a matter, rather than making an assumption that leads to a costly misunderstanding. Thinking win/win is searching for a way to solve a problem that meets everyone's needs. This technique is frequently used in alternative dispute resolution negotiations.

  Seek first to be understanding, then to be understood means truly listening and being empathetic prior to communicating. For lawyers who are trained advocates, this can be a bit of a leap, since we are paid to put forward a position rather than truly hear someone else's.

  Synergize means being comfortable being open and honest with people on the understanding that they are doing the same with you and both of you are looking for a "third alternative" that allows everyone to reach to a higher level.

- Concentrate on results, not on process. Effective leaders do not care how a job is done — they only concentrate on the goal. Effectively managing a busy practice depends on working with and managing busy people and not on looking busy. In the final analysis, ask yourself: If I were the client, would I be happy paying my hourly rate to do this task or would I be just as happy if an associate were to do it? Use that yardstick to determine how to change and still keep your clients happy.

After all, just think about all the things you could do if you could just stop worrying about wasted time….✧

Privacy legislation … from page 11

interests of the individual and consent cannot be obtained in a timely way; or

- the collection is already authorized by law.

There are similar provisions for the use and disclosure of personal information without consent.

Access to and correction of personal information is governed by Part 7 of Bill 38. Lawyers, of course, already have professional obligations to disclose to a client information in that client's file at his or her request. Bill 38 will also permit access to, and correction of, personal information about a third party (including witnesses, for example) in the possession of a lawyer. Exceptions to this requirement are enumerated in section 23(3), and include situations where:

- the information is the subject of solicitor-client privilege;
- the information was collected without having to obtain the consent of the individual for the purposes of an investigation or proceeding that has not yet completed.

Like all other employers in the province, law firms will also have to address the personal information of their employees. Lawyers should therefore become familiar with the definition of "employee personal information," the provisions on the collection, use and disclosure of such information and the right of an employee to access such information.

How should law firms prepare for Bill 38?

Section 5 of Bill 38 will require a law firm to:

- develop and follow policies and practices necessary for the firm to meet its obligations under the legislation, and
- develop a process to respond to complaints that may arise respecting the application of the legislation to the organization.

A law firm should consider appointing someone within the firm to coordinate the development of such policies and practices. That person should become familiar with Bill 38, consider how the principles of the legislation apply to the firm and organize an audit of the kinds of personal information collected by the firm. Consideration should be given to whether consent is needed in order to collect, use or disclose personal information and, if so, how such consent can be obtained. These steps are often referred to as a "privacy diagnosis." There are general resources available for assistance in performing such a diagnosis on the BC Information and Privacy Commissioner's website at www.oipc.bc.ca/private.

Law firms should also be familiar with the requirements of *PIPEDA* in the event that Bill 38 is not determined to be "substantially similar" to the federal legislation. Law firms that carry on business interprovincially will need to ascertain their own obligations to comply with the federal legislation.✧

Services to members

Practice and ethics advice

Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. **Email**: daveb@lsbc.org **Tel**: 604 605-5331 or 1-800-903-5300.

Contact **Felicia S. Folk**, Practice Advisor, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. All communications are strictly confidential, except in cases of trust fund shortages. **Tel**: 604 669-2533 or 1-800-903-5300 **Email**: advisor@lsbc.org.

Contact **Jack Olsen**, staff lawyer for the Ethics Committee, on ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the Committee. **Tel**: 604 443-5711 or 1-800-903-5300 **Email**: jolsen@lsbc.org.

Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society, and provided at no cost to individual BC lawyers and articled students and their immediate families: **Tel**: 604 431-8200 or 1-800-663-9099.

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers: **Tel**: 604 685-2171 or 1-888-685-2171.

Equity Ombudsperson – Confidential assistance with the development of workplace policies, training and education, prevention of discrimination and the resolution of harassment and discrimination concerns of lawyers and staff in law firms or legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**. **Tel**: 604 687-2344 **Email**: achopra@novus-tele.net.

Do ICBC adjusters discourage claimants from seeking legal advice?

Earlier this year, Law Society President Howard Berge, QC raised with ICBC President Nick Geer concerns from lawyers and their clients that some ICBC adjusters discourage claimants from seeking the assistance of lawyers.

According to those clients, ICBC adjusters told them that, if they sought the assistance of lawyers, any payments being made on their behalf (such as payments for chiropractic treatment or physiotherapy) would be discontinued until their claims were settled. On the other hand, if they continued to deal directly with the adjusters, their payments would be kept current.

The Law Society has expressed concern about reports of such practices. "In our view, adjusters who advise claimants that they should not seek a lawyer's advice and who threaten to withhold payments if they do would not meet the high standard of commercial morality that our community expects," Mr. Berge said in his letter to Mr. Geer. He asked ICBC to confirm that it does not have or promote such a policy and to advise the profession of how to best address complaints of such practices.

In his response, Mr. Geer noted that many files are amenable to settlement directly between ICBC and claimants, and that 66% of tort bodily injury claims are settled with unrepresented claimants. He said that ICBC would prefer to settle claims without the necessity of litigation, but recognizes that claimants are entitled to legal representation if they wish it.

"ICBC adjusters should not be discouraging claimants from seeking legal advice," he said.

Mr. Geer has advised the Law Society that, should any lawyer be concerned that a particular adjuster is discouraging claimants from seeking legal advice, the lawyer should bring the concerns to the attention of that adjuster's manager.

If a lawyer decides to take such a step, the Law Society also invites the lawyer, with client consent, to send a copy of any correspondence to the Society to ascertain the extent of the problem overall. This correspondence can be sent to Carmel Wiseman, Staff Lawyer, Policy and Legal Services, at 845 Cambie Street, Vancouver BC V6B 4Z9 or by email to cwiseman@lsbc.org.✧

BC Courthouse Library to survey lawyers and other users

The BC Courthouse Library Society will conduct a needs assessment survey of lawyers and other members of the legal community from September to November, 2003 through the research firm Synovate. This survey is essential to ensuring that the Society continues to develop its services in a manner that meets the needs of its users.

The BC Courthouse Library Society appreciates the assistance of members of the legal community who will be selected at random to participate in the survey.✧

From the courts

BC Supreme Court

Fax filing rule

Practice direction: June 24, 2003 (in effect from July 1, 2003 to July 1, 2004 and replacing the direction issued January 7, 2003)
Issued by Chief Justice Donald I. Brenner

On July 1, 2003, the new fax filing rule (Rule 67) will be effective and governs how documents may be delivered to the registry by fax for the purposes of filing. As per Rule 67(3)(a), the designated fax numbers for the registries to which Rule 67 applies are as follows: *Chilliwack* (604 795-8397); *Cranbrook* (250 426-1498); *Dawson Creek* (250 784-2218); *Kamloops* (250 828-4345); *Kelowna* (250 979-6768); *Nelson* (250 354-6133); *Penticton* (250 492-1290); *Prince George* (250 614-7923); *Rossland* (250 362-7321); *Salmon Arm* (250 833-7401); *Smithers* (250 847-7344); *Terrace* (250 638-2143); *Vernon* (250 549-5461) and *Williams Lake* (250 398-4264).✧

Special Compensation Fund claims

The Special Compensation Fund, funded by all practising lawyers in BC, is available to compensate persons who suffer loss through the misappropriation or wrongful conversion of money or property by a BC lawyer acting in that capacity.

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 summaries of the written reasons of the Committee. These summaries are published with respect to paid claims, and without the identification of claimants.

Martin Wirick

Vancouver, BC

Called to the Bar: May 14, 1979

Resigned from membership: May 23, 2002

Custodian appointed: May 24, 2002

Disbarred: December 16, 2002 (see Discipline Case Digest 03/05)

Special Compensation Fund Committee decision involving claims 20020056 and 20020423

Decision date: March 5, 2003
Report issued: May 2, 2003

Claimant: A Bank
Payment approved: ***$158,478.63***
($152,244.93 and $6,233.70 interest)

The F Street property

In March, 2002 Mr. Wirick represented T who purchased a property on F Street in Vancouver for $227,000. T arranged a $152,750 mortgage loan from A Bank, and the mortgage and assignment of rents were registered on title on March 5.

T was a nominee of Mr. G whom Mr. Wirick also represented. T held the F Street property in trust for V Ltd., a company owned by Mr. G.

T sold the property to L and D. They obtained $275,000 in mortgage financing through A Bank. Mr. Wirick received from the purchaser's solicitor the sale proceeds in trust on his undertaking to pay out and discharge the prior A Bank mortgage and assignment of rents. Mr. Wirick did not in fact use the funds to pay out these charges, contrary to his undertaking. Instead, he transferred the funds to another property, paid his own account and forwarded the remaining funds to another financial institution.

As a result of Mr. Wirick's breach of undertaking, the prior mortgage and assignment of rents (with T as mortgagor) remained on title and in priority to the mortgage obtained by L and D, which was the only charge that should have been on title.

The Special Compensation Fund Committee found that, while not every breach of undertaking is fraudulent, in this case Mr. Wirick's pattern of behaviour did not suggest an error, but rather conduct similar to that reflected in his earlier discipline proceedings. He misled and deceived the purchasers' lawyer and he breached his undertaking in order to facilitate the misappropriation and wrongful conversion of the funds that he received in trust.

The Committee decided that it would not require the claimant to exhaust its civil remedies in this case by obtaining a judgment against Mr. Wirick, given that there was little hope of recovery from him.

The Committee allowed the claim of A Bank, subject to certain releases, assignments and conditions, including the requirement on A Bank to discharge the T mortgage and assignment of rents. Noting that A Bank was in a position to commence foreclosure proceedings against the innocent purchasers L and D, the Committee also exercised its discretion to pay to A Bank interest at the contract rate of 4.9% to the date of payment.

As a result of the payment, and discharge of the prior charges from title, both A Bank and L and D would be restored to the positions they would have been in had there been no wrongful conversion of funds by Mr. Wirick. Accordingly, a separate claim by L and D for compensation was denied.

Special Compensation Fund Committee decision involving claims 20020055, 20020326 and 20020234

Decision date: June 18, 2003
Report issued: July 3, 2003

Claimant: B Credit Union
Payment approved: ***$191,249.36***
($180,887.59 and $10,361.77 interest)

The 61st Avenue property

In June, 2000 T purchased a residential property on 61st Avenue in Vancouver, financed through a B Credit Union mortgage of $186,300. In November, 2001 T entered into a contract to sell the property to C for $475,000. The property was to be conveyed to C's spouse (M). Mr. Wirick acted for T in the conveyance of the property to M.

M was financing the purchase of the property through a mortgage with C Bank. M's lawyer sent the sale proceeds to Mr. Wirick in trust on his undertaking to, among other things, pay out and discharge the B Credit Union mortgage from title. Mr. Wirick deposited the funds to his trust account but did not pay out and discharge the B Credit Union mortgage, contrary to his undertaking.

The Special Compensation Fund Committee found that, while not every breach of undertaking is dishonest, the circumstances of this case

suggested not negligence or error, but an intention by Mr. Wirick to deceive and to facilitate the misappropriation and wrongful conversion of the funds.

The Committee decided that it would not require the claimant to exhaust its civil remedies in this case by obtaining a judgment against Mr. Wirick, given that there was little hope of recovery from him. B Credit Union had not commenced foreclosure proceedings in this case at the Law Society's request, pending a decision on its claim against the Fund.

B Credit Union suffered a loss in that it had not received the funds to which it was entitled on sale of the property.

The Committee allowed the claim of B Credit Union in the principal amount of the mortgage, together with interest at the mortgage rate to May 24, 2002 and thereafter at the mortgage rate to a ceiling of 6% per annum, subject to certain releases, assignments and conditions agreed to by all claimants. B Credit Union was, among other things, required to provide the Law Society with a statutory declaration setting out the availability of any insurance to pay its claim and whether it had instigated any disciplinary action against any employee, terminated the employment of any employee or whether any employee had resigned as a result of any matter connected with this claim. All claimants were also required to provide the Law Society with their original files and original documents with respect to this matter.

As a result of the payment and discharge of the B Credit Union mortgage, C, M and C Bank would sustain no loss and their claims against the Fund were accordingly denied.✧

Disbarment and suspension

Karl-Heintz Eisbrenner, of Bridesville, BC: On August 28, 2003 a Law Society discipline hearing panel ordered that Mr. Eisbrenner be disbarred after having found him guilty of professional misconduct. Mr. Eisbrenner had earlier been suspended on November 29, 2002 pending final disposition of the discipline citation.

James Galt Martin, of North Vancouver, BC: On August 25, 2003 a Law Society discipline hearing panel ordered that Mr. Martin be suspended from the practice of law for 18 months after having found him guilty of professional misconduct. The suspension takes effect at 5:00 pm on September 5, 2003.

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These decisions will be reported in upcoming issues of the *Discipline Case Digest*.✧

Unauthorized practice actions

Court orders

On application of the Law Society, the BC Supreme Court has ordered that **Graham Kent**, of Victoria, and his company **Legal Weavers** be prohibited from appearing as counsel or advocate, drawing documents for use in a judicial or extra-judicial proceeding, negotiating or settling a claim or demand for damages, giving legal advice or offering or representing that they are qualified or entitled to provide any of these services for a fee: June 19, 2003.

The BC Supreme Court has also ordered, by consent, that **Robert Chung Fai Yau** and **AAA Business Secretarial Centre Ltd.** be prohibited from drawing corporate documents, giving legal advice or holding out that they are qualified or entitled to provide these services for a fee: June 27, 2003.

The BC Supreme Court has further ordered, by consent, that **Can-West Divorce Services Ltd.,** as well as its agents, employees, officers and directors, be prohibited from giving legal advice, drawing documents for use in a judicial proceeding or a proceeding under statute or offering or holding out that the company is qualified or entitled to provide any of these services for a fee: August 1, 2003.

Undertakings

[redacted]

[redacted]

[redacted]

[redacted]

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