



The Law Society
of British Columbia



Benchers' Bulletin



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President's View

Closing comments

by William M. Everett, QC

It is hard to believe that my term as a Bencher of the Law Society has now come to an end. I'm certain that I speak for all the Benchers when I say what a great honour it is to be elected by one's peers and entrusted with the responsibility of regulating the profession in the public interest.

The seven years since I was first elected seem to have passed in an instant. I believe that is due to the camaraderie that develops amongst the elected and lay Benchers, together with the sense of accomplishment we share in tackling important, if sometimes difficult, issues. I have had the opportunity and privilege of working with very able and wise Benchers from all corners of the province, with whom I have forged lasting friendships.

It has also been a great honour and privilege to have served as President for the last 15 months. The Benchers have accomplished much during that time:

- **A reduced fee:** Through creation of a Financial Planning Subcommittee, the Benchers have become more directly involved in the Law Society's budgeting process and have overseen a reduction in the General Fund assessment in the last two years, from \$925 to \$775;
- **Resolution of the CBA fee issue:** Membership in the CBA, and payment of CBA fees, is now voluntary for BC lawyers, the issue having been finally resolved by a referendum;
- **Improved government relations:** Through the work of a new Public Affairs Committee, we have strengthened our working relationship with government in respect of policy, regulatory and legislative change;
- **Lawyers in LLPs:** We are now opening the door for lawyers to practise through limited liability partnerships following recent amendments to the *Legal Profession*

Act and Law Society Rules. These will come into effect in January, at the same time as amendments to the *Partnership Act*;

- **Safeguarding land titles:** A new, independent Land Title and Survey Authority has emerged. The Law Society made recommendations to government that an independent authority was desirable to preserve the structure and integrity of BC's world-class land title system;
- **Combatting money laundering without compromising clients:** When introduced in June, 2000, the federal *Proceeds of Crime (Money Laundering) Act* required lawyers to secretly report large cash and "suspicious transactions" to government. After a successful Court challenge to the applicability of that legislation to lawyers on the basis of solicitor-client privilege, the Law Society tackled the problem in a different fashion. Rather than placing at risk any aspect of the lawyer-client relationship, we introduced a rule that restricts lawyers from receiving large cash deposits. We believe this rule to be in the public interest and a positive step toward ensuring that lawyers are not conduits for money laundering or terrorist financing;
- **Upholding lawyers' role in real estate transactions:** We successfully negotiated with the provincial government to preserve the exemption that allows BC lawyers to sell property under the new *Real Estate Act*;
- **Compensating the public:** The Special Compensation Fund has continued paying claims arising out of the Wirick defalcations. Our first priority has been the prompt approval and payment of the claims of all innocent purchasers involved in the Wirick transactions. In addition, the Benchers have worked on a number of

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 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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reforms to increase public protection in real estate and trust transactions, including:

- recommending changes to real estate practice, the use of the CBA standard undertakings and early confirmation by lawyers of the steps taken to pay out mortgages and other charges;
- adopting rules that require a lawyer to report the failure (by another lawyer or by a financial institution) to provide or file a registrable discharge of mortgage in a timely manner;
- encouraging government to fast-track consumer protection legislation to require financial institutions to provide registrable mortgage discharges in a timely manner;
- instituting an expanded Law Society trust assurance program;
- introducing trust protection coverage as part of the insurance coverage carried by BC lawyers,

rather than requiring claimants to apply for discretionary payments from the Special Compensation Fund.

The Law Society of British Columbia has also been very active at the Federation of Law Societies on issues that affect lawyers across Canada. This includes significant work on the national mobility of lawyers; considering a new protocol to deal with police warrants in law firms; and expansion of the Canadian Legal Information Institute (CanLII) at www.canlii.org, a superb online library of primary legal materials — statutes, regulations and caselaw from across Canada.

I wish to express my thanks to the elected Benchers for their support, confidence and hard work during my term as President.

I also express my thanks to the lay Benchers for the public perspective they bring to the Benchers table and for the time and energy they commit to our profession. Their contribution is of great importance to the public

interest.

For my own part and on behalf of all the Benchers, I also express my thanks and appreciation to all the staff of the Law Society. None of the accomplishments of the Law Society would be possible without their hard work and dedication.

On behalf of the Law Society and the profession, I express our gratitude to Sholto Heberton, QC, who interrupted his retirement to step forward to serve the public interest and his profession as our Acting Executive Director.

Finally, I extend a warm welcome to our incoming President, Ralston Alexander, QC. I wish him, his Vice-Presidents Rob McDiarmid, QC and Anna Fung, QC, and the other Benchers every success as they continue the work of the Law Society.

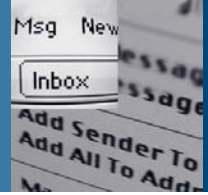
There is every reason to be optimistic under their leadership about the future of the Law Society, the independence of the bar and our ability to continue to earn the public's confidence in our right to self-regulation. ♦



Honouring 50 years

John D. McAlpine, QC (left) receives a certificate in honour of his 50 years in the profession from 2004 President William M. Everett, QC at the Life Benchers Dinner on October 1. The Benchers also honoured nine other lawyers reaching this milestone: Leonard C. Dudley, Robert J. Falconer, QC, William C.E. Frolic, Frederick H. Herbert, QC, John F. Leighton, E. George MacMinn, QC, David P.R. Roberts, QC, Stella F. Samuels and John M. Tennant.

Each year the Law Society presents 50 and 60-year certificates to long-serving members in tribute to their cumulative years in the profession. For those who have previously served as a judge, all years of service on the Bench are acknowledged as forming part of that service record.



In the coming year, the Lawyer Education Task Force will begin exploring five areas of possible educational reform — 1) improving access to education resources, 2) ensuring that lawyers acquire practice management skills, 3) introducing limited licensing for lawyers who are newly called or inexperienced in certain areas of practice, 4) introducing a program of specialization and 5) introducing mandatory continuing legal education. “Some of the policy objectives outlined are controversial and may represent a departure from the current programs that are more typical of law societies,” the Task Force told the Benchers in December. “If implemented, they may also result in a departure from the current model of practice under which lawyers in the province operate.” At this early stage, the Benchers have not approved any reforms, but have given the go-ahead for further study and consultation in the profession.

Lawyer Education Task Force contemplates new reforms

The Lawyer Education Task Force will begin considering new reforms to support and enhance the competency of BC lawyers, following Bencher approval of the study in December.

Five key areas of reform are under consideration:

- Improving lawyer access to educational resources;
- Ensuring that lawyers acquire practice management skills, such as by requiring or encouraging that they complete courses in some circumstances;
- Ensuring that lawyers who are newly called or inexperienced in some areas of practice do not engage in activities beyond their abilities, through a program of limited licensing;
- Allowing for a higher level of knowledge and practice capabilities of lawyers, and assisting the public to easily identify such lawyers, through a program of specialization;
- Supporting and enhancing the competency of lawyers in providing legal advice and services, through a mandatory continuing legal education program.

The Benchers have not approved any of these approaches, but have called on the Lawyer Education Task Force, chaired by Cariboo Bencher Patricia Schmit, QC, to carry out a study and to bring these issues back for later consideration. If ultimately pursued, some options for reform would have an impact on lawyers' call and

admission requirements and on the requirements for the transfer to BC of other Canadian lawyers under the national mobility agreement. For that reason, the Task Force recommends opening the dialogue with other provinces through the Federation of Law Societies as needed.

Improved access to educational resources

Both the Task Force and the Benchers agree that improving lawyer access to educational resources is a priority and merits immediate attention.

Many BC lawyers now face geographical or financial constraints that make attending continuing legal education courses difficult. Another of the Task Force's concerns is that some important courses, such as those on professional responsibility, are not in high demand and therefore only rarely offered because the cost is prohibitive.

The Law Society could have a role to play in filling gaps that now exist in the market, the Task Force believes. In recent years, the Society has, for example, helped to fund the development of certain online learning technologies and provided bursaries to make education more accessible to lawyers. The Task Force wishes to consider such initiatives more broadly and determine whether the Law Society itself should develop courses and materials for lawyers.

Lawyer education on practice management issues

In reporting to the Benchers in December, the Task Force stated that “a solid

ability to manage one's practice is a key component of a lawyer's ability to practise law competently and effectively.”

While keeping up with changes in the law is important, it is equally important for lawyers to have good practice management skills and an understanding of professional responsibility issues.

The Task Force intends to explore such options as:

- requiring as a condition of admission that students have taken a course in professional responsibility, practice management and/or trust accounting over a period of time, over and above what is part of PLTC;
- requiring lawyers opening new practices to take relevant courses, and perhaps pass a test;
- requiring lawyers to verify that at least one or some specific number of lawyers in the firm have taken a requisite management and/or accounting course;
- requiring lawyers generally to complete such courses over a designated period.

Limited licensing of new or inexperienced lawyers

The Task Force has flagged that, while lawyers are permitted to do “anything and everything” once called to the bar, prudence dictates that they not tackle complex legal matters immediately.

The issue is whether a limited licensing scheme should be considered on



the premise that there are some things junior lawyers are currently permitted to do that in fact may warrant more than entry-level education. Likewise, other lawyers may be inexperienced in some areas, such as practice management and trust accounting.

"...The Benchers should consider requiring a lawyer to pass an accounting course prior to allowing him or her to operate a trust account," the Task Force noted. "Perhaps, in the public interest, a lawyer should be required to pass a course on operating a sole practice prior to opening one. Perhaps a lawyer, on being called to the bar, should be given only a limited practice certificate until certain criteria or skills have been evaluated."

Issues marked for further exploration include:

- requiring licensing before a lawyer becomes a sole practitioner;
- requiring licensing before a lawyer operates a trust account (or becomes a signatory to a trust account);
- giving newly called lawyers a licence that permits only certain activities or requires the supervision of some activities.

Section 14 of the *Legal Profession Act* permits the Benchers to establish categories of members and determine the rights and privileges associated with each, which may allow for limited licensing.

While the issue demands further study, the Task Force acknowledges that BC lawyers may not embrace the idea. The impact on other Canadian lawyers transferring to BC under the national mobility agreement must also be taken into account.

Specialization

The Law Society has examined lawyer specialization as a reform issue on a number of occasions over the past 35 years. Specialization could be considered one way of giving the public

better access to lawyers with particular competencies, requiring objective standards for the title of "specialist" and possibly decreasing the unit cost of legal services to the consumer.

While the cost of setting credentialing standards for specialization may prove prohibitive in BC alone, the Task Force observes that such a program may be possible on a regional or national basis.

The Task Force plans to explore the possibility that practice as a barrister before the courts and practice as a solicitor be considered specialist areas, and that lawyers could qualify for one or both areas. While recognizing that this approach would be seen as dividing the BC bar and is therefore controversial, it merits consideration, in the view of the Task Force. There may be good reason to require lawyers who want to practise before the courts to obtain certain advocacy skills since it appears there are now fewer opportunities for junior lawyers to do so under the tutelage of a senior lawyer.

Mandatory continuing legal education

On recommendation of the Task Force in the spring of 2004, the Benchers approved a requirement for BC lawyers to report on their professional development activities and self-study. The Benchers also now encourage each practising lawyer in BC to complete a minimum of 12 hours of coursework (the equivalent of two full course days) and 50 hours of self-study each year. The targets are set as minimum expectations for the profession and are not mandatory.

While only the reporting of continuing legal education activities is required at present, the issue of mandatory continuing legal education remains of interest to the Task Force.

"The arguments in favour of and against mandatory continuing legal education have been debated over many years," the Task Force told the



Benchers in December. "...[We] consider that mandatory continuing legal education is one way of demonstrating to the public that the Law Society is serious about supporting and enhancing the competence of its members."

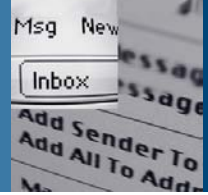
The Task Force said that it was mindful of public perception. Law is one of the few professions in BC without mandatory continuing education, and continuing legal education is mandatory for lawyers in 40 American states.

While it is not clear that continuing legal education needs to be mandatory for reasons of lawyer competence, ongoing education is beneficial for all lawyers. A mandatory program could likely increase the number and variety of courses offered each year, in accordance with the experience in the United States.

A mandatory program could be based on different options:

- mandatory continuing legal education for all lawyers, based on a requisite number of credit hours, with lawyers permitted to choose their courses;
- a mandatory program for all lawyers, with the Law Society prescribing some or all of the courses or topics;
- a mandatory program for some lawyers, for example those in their first five years of practice, those

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Unbundled legal services. Limited retainers. Discrete task representation. There are a variety of terms now used to describe the delivery of specified legal services to a client without the lawyer representing the client throughout an entire transaction or proceeding. Should BC lawyers unbundle their services? Would unbundling provide legal services to people who would otherwise "go it alone?" On recommendation of the Access to Justice Committee, the Benchers decided in December to strike a new task force to look at these issues more closely.

Would unbundling legal services benefit the public?

A new task force will begin work in 2005 to study the "unbundling" of legal services whereby lawyers offer clients a limited scope of legal assistance, rather than full representation throughout a proceeding or transaction.

The Benchers approved the task force study on recommendation of the 2004 Access to Justice Committee, chaired by Margaret Ostrowski, QC. The Committee sees a potential benefit for those members of the public who might be able to afford certain limited services and would not otherwise retain a lawyer.

From the Committee's research to date, it is clear that the American Bar Association contemplates and supports lawyers offering limited scope representation. The ABA authorizes lawyers under Model Rule 1.2(c) to limit the scope of their representation "if the limitation is reasonable under the circumstances and the client gives informed consent." The revised Model Rule permits and regulates the agreements by which lawyers can limit the scope of their representation. This, in turn, is intended to expand access to legal services by providing limited but valuable legal services to low or moderate income people.

In 2003 the ABA's Section on Litigation published the *Handbook on Limited Scope Legal Assistance*, a comprehensive publication that features practice forms, rule revisions and ethics opinions. The forward to the *Handbook* states the following: "The *Handbook* is intended as a practical guide to providing legal services in a way that permits clients who otherwise could not afford or would not choose to hire a lawyer to obtain critical legal

representation for discrete and important tasks in the course of resolving disputes." The focus of the *Handbook* is litigation, in response to the growing *pro se* (self-representation) litigation phenomenon.

In Canada, of all law societies canvassed earlier this year, only BC and Alberta have rules specifically addressing limited scope services.

In BC, Chapter 10, Rule 10 of the *Professional Conduct Handbook* contemplates a limited retainer and it is anticipated that most, if not all, of the rules that apply to full legal representation also apply to limited scope services. Rule 10 provides:

Limited retainer

10. A lawyer who acts for a client in a limited capacity only shall disclose promptly to the court and to any other interested person in the proceeding the limited retainer, in any case where failure to make disclosure would mislead the court or that other person.

Policy staff of the Law Society note that, while unbundling does not appear to violate any current rules, "it is likely that the rules were not drafted with the current broad concept of unbundling in mind."

The new Law Society task force will zero in on whether, by deliberately choosing to offer limited scope services, lawyers would enhance access to legal services and should be supported, both within non-profit and pro bono programs and within law firms. The specific regulatory issues the task force will canvass include:

- the impact, if any, on liability and insurance;
- possible revisions to practice

materials;

- relations with the courts at various levels;
- ethical issues, such as conflicts of interest;
- possible rule revisions.

Seeing the potential to improve access to legal services, the authors of the *ABA Handbook* note that, while the cost of full-service representation in litigation in the United States is often prohibitive, many *pro se* litigants have enough disposable income to pay for limited representation. "The market failure ... is that the great majority of lawyers do not offer these potential clients the services they need and can afford," they observe. "Instead [lawyers] present them with an all (full-service) or nothing (wholly self-represented) Hobson's choice. The result is more *pro se* litigants."

In the view of the ABA Litigation Section, some legal assistance is better than none, in most cases.

On a continuum of legal services delivery, the most limited types of legal services include those offered through self-help centres, legal advice hotlines and one-time interviews and advice.

A critical, if sometimes difficult distinction, is what constitutes "legal information" and what constitutes "legal advice" or "legal assistance." The distinction is important because, if lawyers provide legal advice and assistance, they cannot avoid the accompanying duties and consequences of the solicitor-client relationship. That is to say, they owe the same duties of loyalty, confidentiality, diligence and competence to limited service clients as other clients.



Limited legal scope assistance identified in the ABA *Handbook* comes in many forms — coaching in mediation, collaborative lawyering and preparing or reviewing documents and pleadings. It may also include coaching throughout a litigation; representing a client in litigation within certain parameters (for instance, handling only uncontested divorces); and providing legal counselling and assistance, but not otherwise representing the client. Or a lawyer may offer representation in an initial case or proceeding that helps the client in a subsequent case or proceeding in which he or she appears *pro se*.

Hybrid situations also arise, such as a lawyer handling a critical step in a case or resolving a key point after which the client appears alone. There are also “lawyer of the day” (duty counsel) programs and group representation in which lawyers provide limited legal

assistance to community organizations and non-profits.

Lawyers must address a number of considerations in setting up a limited scope retainer and obtaining informed consent — possible conflicts, the exact terms of the retainer, alerting clients to issues that fall outside the scope of the retainer, identification of the risks of the retainer, communications ground rules with opposing counsel and how the retainer will end.

* * *

The new Law Society task force studying these issues is expected to be appointed early in 2005. For more information on the task force and its work, please contact Charlotte Ensminger, Staff Lawyer, Policy and Legal Services at censminger@lsbc.org, or any member of the 2005 Access to Justice Committee:

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Members of the new task force, once appointed, will be listed on the Law Society website at www.lawsociety.bc.ca. ♦

In tribute to academic excellence

The Benchers extend congratulations to 2004 gold medallists **Kathy Grant**, graduate of the UBC Faculty of Law (pictured right) and **Paul Brackstone**, graduate of the University of Victoria Faculty of Law. Ms. Grant and Mr. Brackstone earned top honours by finishing law school with the highest cumulative grade point average in their respective three-year programs.

Also honoured in 2004 was **Jana Katherine McLean**, recipient of the \$10,000 Law Society Scholarship for Graduate Legal Studies. Ms. McLean graduated from the University of Victoria Faculty of Law in 2000 and was called to the bar in 2002. She practised as an associate lawyer in the general litigation department at Lawson Lundell in Vancouver for two years while also devoting time to *pro bono* legal work and other volunteer commitments. Ms. McLean is now pursuing graduate studies in international law at the University of Cambridge.





Protocols assist judges and lawyers with concerns and complaints

The Benchers have concluded a protocol agreement with the Provincial Court, set out below, to guide any Provincial Court judges or Judicial Justices of the Peace (JJPs) who may be considering making a complaint about a lawyer and to guide any BC lawyer who is contemplating making a complaint about a judge.

The protocol is not intended to

discourage complaints or to replace existing complaints processes — rather it recognizes that a judge, a JJP or a lawyer may benefit from advice or assistance in making a complaint, or in deciding whether it is appropriate to make a complaint.

The new protocol deals with complaints between lawyers and Provincial Court judges (or JJPs) generally.

An earlier protocol concluded in 1997 between the Law Society and all three levels of court in BC specifically addresses how lawyers and judges may handle concerns in the course of an *ongoing court proceeding*.

The 1997 protocol has been reprinted for convenience on page 9. Both the 2004 and 1997 protocols are also available on the Law Society website.

Protocol between the Provincial Court and the Law Society respecting complaints (2004)

Text of the Protocol

Whereas:

1. Lawyers, judges and judicial justices of the peace (JJPs) have ethical duties to report misconduct to the appropriate disciplinary body; and
2. In some cases a lawyer or a judge or JJP may benefit from advice or assistance in making a complaint or deciding whether it is appropriate to do so.

Therefore, the following protocol has been mutually agreed upon between the Chief Judge of the Provincial Court of British Columbia and the President of the Law Society of British Columbia. Nothing in this protocol is intended to discourage complaints or replace existing complaint processes. Specifically, this protocol is intended to complement the protocol adopted by the Law Society in 1997, referred to as the Maclean/Fraser protocol,* which pertains to complaints in the case of going proceedings.

[*Note: The Report of the Committee on Relations between the Law Society and the Judiciary (also known as the Maclean/Fraser Report), including the 1997 protocol, is available in the Publications/Reports section of the Law Society website. Highlights of the report and a reprint of the protocol are set out on page 9.]

Complaints by a judge or JJP about a lawyer

Where it appears to a judge that a complaint about a lawyer may be appropriate, and the judge desires assistance in making a complaint or deciding whether it is appropriate to do so, the judge may bring the matter first to the attention of his/her Administrative Judge before a formal complaint is pursued. After discussing the matter with the judge, the Administrative Judge may then raise the matter with the Chief Judge or an Associate Chief Judge, who will vet the complaint.

Where it appears to a JJP that a complaint about a lawyer may be appropriate, and the JJP desires assistance in making a complaint or deciding whether it is appropriate to do so, the JJP may bring the matter to the attention of an Associate Chief Judge or the Chief Judge before a formal complaint is pursued.

There may be situations where a formal complaint appears premature, does not appear to be necessary, or may not be the most constructive means of proceeding, such as where there are emotional problems or personal crises. In these cases, the Chief Judge or Associate Chief Judge may consider approaching a Bencher or member of the Discipline Committee to discuss how to proceed in the matter

to determine, for instance, whether an appropriately placed word of advice might suffice, in the best traditions of the Bar and Bench.

If, after it is vetted through the above process, a complaint appears warranted or appropriate, all relevant materials should be forwarded to the Chief Judge by the judge or JJP, including a court transcript, if available. The Chief Judge will then submit the complaint on behalf of the court, and future communications with the Law Society about the complaint will take place through the Chief Judge.

It is preferable, if possible, that such complaints proceed without the judge or JJP becoming a direct complainant or witness in the matter. The Law Society agrees that, where a formal complaint is advanced by the Chief Judge after this vetting process, it will be given due consideration, if possible without the judge or JJP who brought it becoming a party to the proceedings or indeed being further involved at all.

Unauthorized practice

When a judge or JJP becomes aware of a person who is not a lawyer holding him or herself out to be a member of the Law Society, this may be the subject of an immediate complaint, either directly to the Law Society Unauthorized Practice Committee or through



the Administrative or Chief Judge if preferred. Confirmation of whether a person is registered with the Law Society may be obtained through the Law Society website at www.lawsociety.bc.ca or by telephone at 604 669-2533.

Complaints by a lawyer about a judge or JJP

Where it appears to a lawyer that a judge or JJP's conduct may be in question, and the lawyer desires assistance in making a complaint or deciding

whether it is appropriate to do so, the lawyer may raise the matter with a Bencher before lodging a written complaint to the Chief Judge. In such circumstances, the Bencher may consider discussing the matter with the Chief Judge prior to deciding whether a formal complaint should proceed, or whether some other intervention short of a complaint may be appropriate.

If it is determined, after consultation with a Bencher and/or the Chief Judge, that a formal complaint should

be made, it should be submitted in writing to the Chief Judge, with a copy of the transcript if one is available. It is preferable that the matter proceed on a transcript or other available written material, rather than placing the lawyer in the position of being a direct complainant or witness.

Lawyers may refer to the Provincial Court website at www.provincialcourt.bc.ca regarding the procedure for complaints.

Protocol between the Law Society and the BC courts respecting concerns that arise in ongoing proceedings (1997)

Background

Under the 1997 protocol concluded between the Law Society and all three levels of court in BC, a special panel is available to assist with problems that might occasionally arise between judges and lawyers in ongoing proceedings before the Provincial Court, Supreme Court of BC or the BC Court of Appeal.

The special panel can provide emergency assistance or advice to a lawyer in the course of a trial or other proceeding when such assistance is requested by a judge who has concerns about that lawyer's conduct or competence. The panel is also available to provide advice and assistance to lawyers who have complaints about judges. Members of the panel will act in accordance with the protocol approved by the Law Society, and their services are entirely optional — no judge or lawyer is obliged to participate.

This panel was recommended by a special Law Society Committee on Relations between the Law Society and the Judiciary, comprised of Leonard Doust, QC, as Chair, Bruce Fraser, QC, Marguerite Jackson, QC, Charles Maclean, QC, Karl Warner, QC and Karen Nordlinger, QC. Their report is available in the Publications/Report

section of the Law Society website at www.lawsociety.bc.ca.

Ms. Nordlinger of Vancouver currently serves on the special panel. At least one other senior practitioner is expected to be appointed in the near future to replace Mr. Justice Robert Johnston, who served on the panel up to the time of his recent judicial appointment.

Under the protocol, when a judge has concerns that a litigant is receiving inadequate representation, the judge may adjourn the matter so the litigant can retain other counsel, or may alternatively attempt to control the process to ensure the case is decided fairly. As noted in 1997 by the Committee on Relations between the Law Society and the Judiciary, the urgency of an issue before the court may in some instances preclude a judge from adjourning the matter, or it may be difficult for the judge to control the process to ensure fairness.

In the Committee's view, it is not appropriate for the Law Society to take any action on a judge's complaint about a lawyer until the ongoing proceedings have been completed or adjourned, except in the most unusual circumstances. The concern was that there be no miscarriage of justice or appearance of unfairness to the lawyer

about whom the complaint is made, or to the lawyer's client.

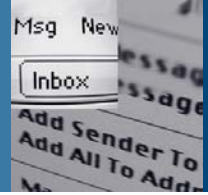
The Committee recommended that the services of an independent panel of senior and respected barristers should be available to judges in such circumstances to provide advice and assistance to the lawyer, in accordance with the protocol set out below. No judge or lawyer is bound to avail themselves of the services of the special panel — participation is voluntary.

The special panel is also available to give advice and assistance to a lawyer who feels that a judge's conduct has been inappropriate. The panel may advise on whether or not to proceed to a complaint and may canvass the options of making a complaint to the appropriate judicial council, raising as a legal issue in the trial whether the judge's actions manifest a bias against the lawyer's client or asking the Law Society to raise the matter informally with the appropriate Chief Justice or Chief Judge.

Text of the Protocol

1. The judge who has concerns should seek advice from the Chief Justice or Associate Chief Justice or, in the case

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LLP legislation and rules in effect January 17

BC lawyers can opt for limited liability partnerships



the Law Society website at www.law.society.bc.ca, and updated pages for the *Member's Manual* are enclosed in this mailing.

Both the legislation and Law Society Rules on LLPs take effect on **January 17, 2005**.

For a law partnership or an extraprovincial LLP to register with the BC Registrar of Companies as an LLP under the *Partnership Act*, it must take the following steps:

1. submit to the Executive Director a copy of the registration statement that will be filed under the *Partnership Act*,
2. pay the LLP registration fee specified in Schedule 1 of the Law Society Rules (\$250), and
3. obtain a statement of approval of LLP registration from the Executive Director.

To issue a statement of approval of LLP registration, the Executive Director must first be satisfied that:

1. the intended name of the LLP complies with Rule 9-14 of the Law Society Rules, and
2. all partners in the partnership are members of the Society or a recognized legal profession in another jurisdiction.

A law firm can reserve a name through the Corporate Registry prior to applying for registration as an LLP. Please

note, however, that the Law Society will not issue a statement of approval to register unless the Executive Director is satisfied that the name of the proposed LLP complies with Rule 9-14.

To receive a statement of approval from the Law Society as expeditiously as possible, you should ensure, when forwarding to the Society a copy of the registration you intend to file under the *Partnership Act*, that you also send a statement, certified to be correct by a partner of the firm, that all members of the partnership are members of the Law Society of BC or of a recognized legal profession in another jurisdiction.

Firms that register as LLPs should note their obligations under the Law Society Rules, including the requirement of Rule 9-17(2) to promptly take reasonable steps to notify in writing each existing client of the firm of the change and the effect of a limited liability partnership in respect of the liability of partners. Rule 9-17(3) sets out a form of statement to be included in this notice.

Likewise, Rule 9-17(4) requires that a law firm registered as an extraprovincial limited liability partnership must promptly take reasonable steps to notify in writing each existing client of the firm in British Columbia of the registration and any change, resulting from the registration, in the liability of the partners. ♦

The *Partnership Amendment Act, 2004*, SBC 2004, c. 38 permits the registration of limited liability partnerships (LLPs). Under consequential amendments to the *Legal Profession Act*, the Benchers have now passed rules to allow BC lawyers and law corporations to enter into LLPs under the new legislation.

For details, see the *Partnership Amendment Act, 2004*, the *Legal Profession Act* (sections 30, 83.1 and 84) and the Law Society Rules (9-12 through 9-20). The *Legal Profession Act* and Law Society Rules, as amended, are available on

Fewer filing requirements for law corporations

Lawyers practising through law corporations should take note of recent Law Society Rule changes.

Under Rule 9-8, as amended, a BC law corporation must deliver to the Law

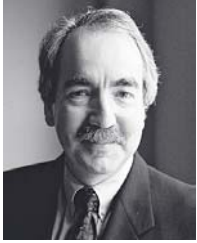
Society a copy of its articles, notice of articles and any amendments to those documents. While rules were recently passed to require that a law corporation also file its annual report with the Society, that requirement has now

been dropped.

Law corporations are further relieved of the requirement to renew their Law Society permits annually and to pay a renewal fee. ♦



Robert Brun, QC elected a Bencher for 2005



Robert C. Brun, QC has been elected a Bencher for Vancouver County (District No. 1) in the November 15 by-election, receiving a majority of votes

in the 11th round of a preferential ballot.

Mr. Brun will begin service on January 1 for the remainder of the 2004-2005 term. He fills the vacancy that arises from the retirement of President William M. Everett, QC, who completes his service as President and as a Bencher and who becomes a Life Bencher at the end of this year.

Called to the bar in 1978, Mr. Brun practises with Harris & Brun in Vancouver in the fields of personal injury and workers' compensation law, as well as employment, insurance and

estate law. He was recently appointed Queen's Counsel.

Mr. Brun is the immediate past-President of the CBA (BC Branch), having served as President for 2003-2004 and Vice-President for 2002-2003. In the BC Branch, he has been Chair of the Planning and Priority Committee, Secretary-Treasurer (2001-2002), Chair of Government Relations Committee (2001-2002) and Executive Liaison, Equality Committee (2001-2002). He has also been a member-at-large of the BC Branch Executive (2000-2001), a member of Provincial Council (1997-2003) and a director of the CBA National (2003-2004).

In his community, Mr. Brun has been a coach for the Mount Seymour Soccer Association and a volunteer for the Mount Seymour Scouts.

For a breakdown of the by-election results, reflecting the votes cast for each candidate in each count, please see the

Law Society website. Whenever there are more than two candidates seeking one position in a Bencher election, as in this by-election, the Law Society Rules require the election to be by preferential ballot. This method of voting ensures that the winner has support from a majority of voters.

If after the first count of a preferential ballot, no candidate has a clear majority of votes, the candidate with the fewest votes is eliminated from the running. Votes for the eliminated candidate are then redistributed among the remaining candidates according to the second choices marked on those ballots. If there is no second choice indicated on a ballot, that ballot is considered exhausted. The process continues on successive counts until one candidate has received a majority of votes cast for candidates still in the running. In this by-election, Mr. Brun received a majority of votes on the 11th count. ✧

Professional Conduct Handbook

New real estate sales rules restrict delegation

New *Professional Conduct Handbook* Rules permit lawyers who offer real property for sale on behalf of clients to employ assistants in relation to the sale, but they may only delegate certain tasks: see Chapter 12, Rules 10 to 12 and Chapter 14, Rule 22.

When carrying out the acquisition or sale of a property for a client, a lawyer must do so in his or her name or that of the law firm and must include the firm's name in any marketing activity. The new Rules specify that the lawyer who conducts the sale must not delegate the task of showing the property. This includes attending at the property for the purpose of

exhibiting it to prospective purchasers; providing information about the property (other than preprinted information prepared or approved by the lawyer); answering questions and making any representations in relation to the property; and conducting an open house.

A real estate marketing assistant may arrange for maintenance and repairs of any property in the lawyer's care and control; place or remove signs relating to the sale of a property; attend at a property (without showing it) to unlock it and let in prospective purchasers, real estate licensees or other lawyers; and provide

prospective purchasers and others with preprinted information about the property prepared or approved by the lawyer.

These rules flow from a common position that the Law Society and the BC Real Estate Association put forward to the provincial government at the time of recent changes to provincial real estate legislation. Both organizations agreed that the exemption for lawyers from the licensing provisions of the real estate legislation should remain, but that the licensing exemption should not extend to a lawyer's staff. ✧

Coming in January at www.lawsociety.bc.ca

Visit the updated Law Society website



Watch in January for relaunch of the Law Society website (at www.lawsociety.bc.ca), featuring a fresh design, improved navigation and more extensive content.

You will want to visit regularly to see what's new and to update all your favourite bookmarks. As of mid-January, check out these sections:

- **About the Law Society** gives an overview of the Society and information on the Benchers, governance policies and minutes of Benchers meetings, as well as details on departments, committees,

task forces and volunteers.

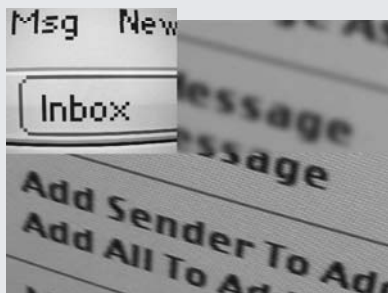
- **Professional Regulation** is a new section detailing Law Society regulatory programs — conduct and discipline, ethics, practice standards, trust assurance and reporting, insurance and trust protection coverage — as well as hearing dates and hearing panel decisions.
- **Licensing & Membership** is another new section, offering information on becoming a lawyer and full details on requirements and procedures respecting admissions, transfers, PLTC, temporary practice in BC, requalification & reinstatement and member status changes.
- A new **Member Login** section is available to BC lawyers and articulated students to access web forms on the site. (And coming soon to this section is a member/student mailbox feature through which electronic versions of Law Society publications will be distributed: *see*

below.)

- **Publications & Forms** contains resource material published by the Law Society, including the *Benchers' Bulletin*, notices, reports and forms.
- **Practice Support** includes helpful articles, papers & precedents.
- **Lawyer Lookup** is a popular tool to verify the status and contact information for a BC lawyer.
- **Public** is a section especially directed at clients and potential clients on finding a lawyer, working with a lawyer, lawyers' fees, lawyer conduct and complaints and unclaimed trust funds.

The Law Society website has been a key resource for the profession and the public since 1998 and will continue to expand in the coming year. If there are resources or features you would like to see, let us know. The Communications Department welcomes your comments at communications@lsbc.org. ✧

Electronic or print publications – it's your choice



As stated in the May-June, 2004 *Benchers' Bulletin*, the Law Society will introduce the distribution of electronic versions of the *Benchers' Bulletin* and other newsletters, as

well as amendments to the *Legal Profession Act*, *Law Society Rules* and *Professional Conduct Handbook*, beginning in 2005.

You can soon expect to receive more information on the electronic distribution of Law Society publications and an opportunity to state a preference for the electronic version.

Electronic versions of the Law Society publications are already published on the Law Society website at www.lawsociety.bc.ca. In 2005, however, these will be

delivered in an e-bulletin format to an individual lawyer's "mailbox" on the Law Society website. For convenience, the contents of a mailbox can be forwarded to the lawyer's own email address in his or her law firm or other workplace. The lawyer will be able read the news highlights in these e-bulletins and click to the full articles on the Law Society website.

Watch for more details on electronic publications and how you can state a preference for this format. ✧



Fee takes effect March 1, 2005

Benchers adopt rules on trust administration fee (TAF)

The Benchers have passed new Law Society Rules 2-72.1 through 2-72.5 to implement the trust administration fee, which comes into effect on March 1, 2005. These rules are available online at www.lawsociety.bc.ca and set out in the enclosed *Member's Manual* amendment package.

As reported in previous issues of the *Benchers' Bulletin* and by email broadcast to the profession, the Benchers approved in principle a trust administration fee earlier this year to fund Law Society trust assurance initiatives.

A BC lawyer will be required to remit to the Law Society on a quarterly basis a \$10 trust administration fee (TAF) for each client matter undertaken by the lawyer in connection with which the lawyer receives any money in trust on or after March 1. The TAF will not apply to money received as fees or retainers.

The Benchers had originally planned that the TAF would apply only to those trust matters of \$5,000 or more. In Law Society consultations with several law firms, it appeared this

threshold would create an additional administrative burden within firms and prove more of a nuisance than a benefit. As a result, the Benchers decided against adopting a minimum threshold in the Rules.

The proceeds of the trust administration fee will fund various Law Society trust administration programs, including the audit and investigations program, the custodianship program and a new program of trust reports that is replacing the Form 47 accountant's report. The funding of these trust initiatives through the TAF will be on a go-forward basis.

In the future it is possible that a portion of the fee may also be allocated towards the new trust protection coverage now provided by the Lawyers Insurance Fund. If a portion of the trust administration fee is allocated as a contribution towards that coverage, this would be on a go-forward basis only (not to pay any claims made against the Special Compensation Fund). Any such allocation would result in lawyers who carry out trust

transactions in effect contributing a greater portion of the overall costs associated with those transactions.

It is important to note that only one transaction fee will apply per client matter; accordingly, multiple trust deposits and disbursements in relation to one client matter will not incur multiple trust administration fees. The deposit or payment of money for the sole purpose of legal fees and disbursements will not attract the fee.

For more information on the trust administration fee, please contact Chief Financial Officer Neil Stajkowski by email at nstajkowski@lsbc.org or through the Law Society office numbers.

The Rules provide for interpretation of what constitutes a "client matter" by the Law Society's Executive Director and the Executive Committee in individual cases. The Society may also issue interpretation guidance as necessary to assist law firms in collecting and remitting the TAF — please check the Law Society website and publications early in 2005. ♦

Matkin resigns as Law Society Executive Director



As previously announced to the profession, James G. Matkin, QC resigned as Executive Director of the Law Society of British Columbia

on December 6.

Mr. Matkin had earlier stepped aside as Executive Director on November 22 on paid leave to await the outcome of an investigation by the Law Society Executive Committee. The Executive

Committee began the investigation after information was published in the *Vancouver Sun* regarding Mr. Matkin's personal business affairs.

In announcing his resignation on December 6, Mr. Matkin stated that he did not wish his involvement in outside private business interests to continue to be an issue for the Law Society or the public. "Therefore, I have concluded it is in the best interests of the Law Society for me to resign." As a result of the resignation, it was unnecessary for the Executive Committee to

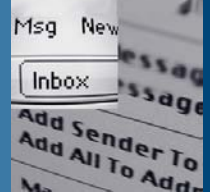
proceed with its investigation.

The resignation was on mutually agreed terms.

The Benchers appointed Vancouver lawyer Sholto Heberton, QC as Acting Executive Director of the Law Society on November 25, 2004, and he will continue in that role until a new Executive Director is appointed.

Mr. Heberton previously practised

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Tackling a career in law while living with a disability may seem a hard road to travel, but two Vancouver lawyers say why it's worth the trip

Making it work — profiles of two lawyers living with disabilities

In its recent report, *Lawyers with Disabilities: Overcoming Barriers to Equality*, the Law Society's Disability Research Working Group is asking the Benchers to consider initiatives to help BC lawyers with disabilities overcome barriers to practice.

Their recommendations — to be considered by the Benchers in 2005 — range from promoting workplace policies, to sponsoring a mentoring program for new lawyers, to encouraging law firms to commit to tangible objectives on the recruitment, hiring, retention, advancement and compensation of lawyers with disabilities. (As background, see the *September-October Benchers' Bulletin*, or read the full report online at www.lawsociety.bc.ca.)

As part of its outreach to the profession, the Working Group has now published a resource guide — also available on the Law Society site — for

lawyers and employers considering accommodation issues.

Just as importantly, the Working Group wishes to put a human face on the issue of disability — and there is no better way than through lawyers' own stories. In this spirit come the profiles of Halldor Bjarnason and Bill Morley, two Vancouver lawyers who have established themselves as vibrant, respected members of the legal community.

Not only have both men overcome more than their share of problems to fulfil career aspirations, but they hold a passion for giving back to the community, particularly through organizations that assist other people with disabilities.

These profiles, presented by Vancouver writer Toni Armanno, have been abridged for the *Benchers' Bulletin*. The full-length articles are available in the

online version of the *Bulletin* at www.lawsociety.bc.ca. ♦

Resource guide now available

Would you like to learn more about funding assistance and other resources available to support employers and their employees with disabilities? The Disability Research Working Group has published a resource guide listing government and community programs. The guide is available in PDF in the Practice Support section of the Law Society website at www.lawsociety.bc.ca.

The Working Group would greatly appreciate hearing from law firms and lawyers about their experiences in using any of the resources or services listed in the guide. This will assist the Working Group in flagging those of greatest (and least) value. Please relay your comments to Kuan Foo, Staff Lawyer for the Working Group, at kfoo@lsbc.org.

Halldor Bjarnason – it's "the best profession in the world"

Halldor Bjarnason didn't always want to be a lawyer. "But," he says, "I knew I wanted to go into law since Grade 3. Before that I wanted to be a firefighter. In Grade 3, I realized that being a firefighter wasn't practical, and the only other job I could think of where I'd be allowed to wear suspenders was a lawyer."

Halldor was born with athetoid cerebral palsy, which means that he is uncoordinated in some of his movements, and has a speech impediment. Because of this, he began his education in a pre-school for children with disabilities. Back in the late '60s, Halldor says, "They just didn't put disabled kids in public school." But, largely due to his mother's determined efforts, he was allowed to enter the public school

system. Halldor earned an honours degree in Political Science at the University of Winnipeg and went on to Queen's University in Kingston, Ontario, where he received a Bachelor of Laws. His experience in law school was "positive," he says. Because his disability was visible, there was no debate about needing extra support, which amounted to additional time to write exams.

After graduating from law school in 1989, Halldor articulated with a large, established law firm in Toronto's Bay Street area. According to Halldor, the booming economy at that time encouraged firms to take more risks and hire people with disabilities. Getting kept on permanently was a different matter. "All prejudices and presumptions

came out," he says, and they hired other students whom they presumed could work longer hours and be more productive.

Shortly after being called to the bar in Ontario in 1991, Halldor came to Vancouver. Unable initially to find an articling position, he worked as a program officer in the federal Department of the Secretary of State. In 1993, he completed PLTC and was called in BC.

Today Halldor has a thriving practice with Access Law Group, where a group of independent lawyers share common resources. About 80% of his work involves wills, trusts and estate law. He also does family, personal injury and employment law. His assistant, Nicole Beaulieu, points out that many of Halldor's clients have



disabilities or are the parents or guardians of people with disabilities and find in Halldor a lawyer who is particularly sensitive and knowledgeable about their situation.

His initial attempts to secure a place in his profession were not easy, however. Not long after being called to the bar in BC, he secured a position as a staff lawyer with the BC Labour Relations Board for two and a half years on a contract basis. But when the term was up, Halldor recalls, "No one would hire me, so I had to be creative. I did freelance legal research for other lawyers, drafting and opinion work." His efforts to establish himself were eased significantly by the support he received from Manuel Azevedo, a Vancouver lawyer who not only let Halldor use his office, but also offered encouragement. During this time, over a period of three years, Halldor also managed the Cerebral Palsy Association.

In the fall of 1999, Halldor opened a sole practice in Vancouver, in association with a group of other lawyers. After two years, he launched a new firm in partnership with one of them in Vancouver's historic Marine Building. When an opportunity to join Access Law Group came up in the fall of 2003, Halldor seized it.

Halldor is seen by his colleagues as a leader — showing them how to deal patiently with people, to be forbearing and to destroy some of the presumptions they may hold about other people. As John Weston of Access Law Group observes, "It's wonderful to be led by somebody who, in the world's eyes, has a deficiency."



With disarming charm and a quick wit, Vancouver lawyer Halldor Bjarnason always manages to put others at ease, whether on the issue of his disability or his chosen profession. "In Grade 3, I realized that being a firefighter wasn't practical," he reflects. "The only other job I could think of where I'd be allowed to wear suspenders was a lawyer."

Halldor needs little in the way of accommodation for his disability. "The only thing I have is this piece of plexiglass over the keyboard," he says, pointing to a cover with holes drilled over each of the keys to prevent him from involuntarily pressing the wrong one. "This \$100 piece of plexiglass — the actual cost of my accommodation — is not expensive." And, he adds, "I bought it myself and can take it with me wherever I'm working."

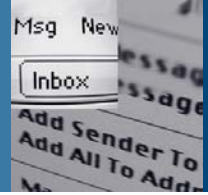
John Weston, one of the founders of Access Law Group, observes that Halldor is seen as a leader by his colleagues in showing them how "to deal patiently with people, to be forbearing and to destroy some of the presumptions that you have about other people." Weston adds, "It's wonderful to be led by somebody who, in the world's eyes, has a deficiency."

Halldor remains active in numerous organizations. He is currently the Chair of the Law Society's Disability Research Working Group and a member of the Equity and Diversity

Committee. He is a legal advisor to the BC Sports Medicine Council and sits on several boards, including that of the Neil Squire Foundation. Through the Planned Lifetime Advocacy Network, an organization that assists families to ensure ongoing support for their disabled children, Halldor leads regular information seminars. He has also taught at UBC, the West Coast School of Massage and at Langara College. For his outstanding service to the community, Halldor has won numerous awards, including the Governor General's Medal in 1982, the Terry Fox Humanitarian Award and a Community Service Award from the BC Branch of the Canadian Bar Association.

At Access Law Group, Halldor has succeeded in getting past what he believes is the biggest obstacle facing lawyers with disabilities: people's attitudes. Recognizing that changing people's attitudes takes time, Halldor

continued on page 16



Halldor Bjarnason ... from page 15

suggests there are things that can be done now to improve prospects for lawyers with disabilities, such as offering compensation to law firms for costs they incur in making accommodations for a lawyer with a disability.

John Weston notes that, in recruiting, it's important for firms to be open, rigorous and ask tough questions. Before they agreed to bring Halldor into their group, they asked, "What can we expect of you? What special needs do you have?" Most people, he says,

would be afraid to ask those questions. "But," he continues, "those of us who are trained to aspire to excellence in the Olympian sense — you know, higher, longer, faster, brighter, whatever — have to temper that with something that may be a little bit foreign. And woe to the firms that fail to dust off the diamond and see what's there."

The irony is that Halldor is, in fact, an athlete of Olympian stature who has participated in a number of international games, including the 1988 Paralympic Games in Seoul, where he won a gold medal for being the best in the world in the 1500 metre tricycle sprint. "It was a pretty good day in

Seoul," Halldor recalls. "I broke a world record."

Halldor's assistant admires his "energy and passion for everything he does," including the interest he has sustained for the occupation he didn't pursue. He maintains connections with many fire departments and is just finishing writing a book about the history of the Winnipeg Fire Department. Reflecting on the choice he made in Grade 3, Halldor declares that "I've been doing law for 13 years, and I'm still convinced it's the best profession in the world. Some days, like any job, you get tired of it. But overall, I love it." ♦

Bill Morley – helping to set others on the path to independence

It was May, 1975, and like most students nearing the end of their Grade 12 year, Bill Morley was looking forward to the prospects that lay ahead. He had just started what would have turned into a great summer job installing gutters and drainpipes on houses for \$100 a day — big money for him back then

— and was planning to go to university in the fall. A car accident changed all that. "My injury was a big adjustment," Bill says. "Looking back on it, it did not derail me, but I went from being an active teenager to someone who was bedridden and paralyzed overnight."

Bill quickly accepted his new condition and was determined to go to university after his year-long rehabilitation. In 1980, he graduated from the University of Victoria with an honours degree in English. He had embraced university life, and being in a wheelchair didn't hamper the outgoing Bill from having "a great social life" as well. By the end of his BA, he decided he wasn't suited to the academic career he had considered and, in the fall, enrolled in the law school at the University of British Columbia.

Bill did well at law school. But he had to work hard, he says, and for someone in a wheelchair there were architectural challenges. "Most of the professors' offices were upstairs, but they were very flexible. I could phone them and they'd come down to meet." And there was no problem interacting with other students. "Partly," he says, "it's the person in the chair's attitude. I'm quite outgoing and I find it's reciprocated very well."

Being in a wheelchair didn't hinder Bill from getting an articling position. "I didn't have trouble with the interview process," Bill reports, although he had heard some horror stories. He braced himself for the assumption in



Bill Morley, a litigator at Fasken Martineau, says he has gone "full circle" — from his own recovery from a serious accident in his youth to helping accident victims find the means necessary to regain their independence and rebuild their lives.



firms that, if you're in a wheelchair, "you require a whole bunch of accommodations, that you easily fatigue, that you need breaks, that you couldn't work a whole day — regardless of the nature of your disability." As it turns out, that never came up in any of his interviews. "Everyone treated me as a legitimate candidate on a par with anyone else," he reflects. Asked if that was due to the fact that his requirements, compared with many others, are relatively minor, Bill is not sure. People make presumptions, he thinks, before they know what specific needs are involved.

After articling at Russell DuMoulin (now Fasken Martineau DuMoulin, one of the largest firms in Canada), Bill was selected to stay on as an associate. The physical alterations that had to be made — wheelchair accessible washrooms — were minimal. "That was the only accommodation that was needed," he says.

Today Bill is a senior partner practising in the Litigation and Dispute Resolution Department of Fasken Martineau, and his case load keeps two full-time assistants busy. About 75% of his cases are in the area of plaintiff's personal injury or medical negligence. "It has come full circle for me," he says thoughtfully. "I've gone through an accident, and now I'm helping people who have gone through a similar experience."

"When you act for an accident victim, you're making a real difference to their lives. You get an award that allows them to live independently, or to start a business, or to do something worthwhile," he says. Shelley Manson, his legal executive assistant of more than eight years, has observed how Bill is seen as a model by some of his clients. And does he win most of his cases? "Touch wood, yes," Bill says, "Win, or settle them."

Being in a wheelchair hasn't been a big problem in the courtroom, Bill says. A few judges have asked him to stand up

while he's introducing himself, so now he tries to sit as far back as he can so they can see that he's in a wheelchair.

Within his office, Bill's disability is practically invisible, observes his paralegal assistant, Christy Johnson. Compared with working for someone without a disability, the only difference, she says, is that sometimes she has to get him a binder that he can't reach. She believes his attitude is one of the reasons he has come so far. "At a function," she says, "he's out on the dance floor dancing — dancing in his wheelchair, going around doing all these moves in his wheelchair!"

From a law firm's perspective, Bill Morley says, the goal has to be making a living, but no one should jump to the conclusion that someone who is disabled is an economic liability. Many lawyers with disabilities need little or no accommodation — usually much less than firms might think.

Bill makes a difference not only in the lives of his clients, but also for those assisted by the organizations in which he has been active, which include the Canadian Wheelchair Sports Association (BC), the Canadian Paraplegic Association and the BC Brain Injury Association. His strongest contribution has been as chair, since 1996, of the BC Paraplegic Association. It was during his summer jobs there as an undergraduate that he met the then President of the Association, Doug Mowat, a quadriplegic who was a businessperson, an MLA, an advocate for people with disabilities and a mentor to Bill Morley.

At Fasken Martineau, Bill Morley is, at

present, the only lawyer in the Vancouver office with a visible disability. Although the economic environment has become more competitive, Bill is optimistic about improving opportunities for lawyers with disabilities. The legal community, he says, is an intelligent, generous group, despite their "adversarial" reputation. "If you're disabled," he says, "and you approach law positively, I think you'll find work." It's important, he advises, to be up front. "Don't say that you're going to be a full-time plus, if it's not going to be real for you." And, he adds, the more disabled someone is, the more likely that person will be doing part-time work and the more problematic partnership will be, given that it's tied to economic measures.

From the firm's perspective, Bill contends, the goal has to be making a living, but no one should jump to the conclusion that someone who is disabled is an economic liability. Many lawyers with disabilities need little or no accommodation — usually much less than firms might think. Firms, he says, should "take a step back, and take a deep breath and say, 'Hold on a minute, let's give this person a try. What can they do, what are the restrictions they have, and will they fit?'"

Sandra Guarascio, an associate in the Labour, Employment & Human Rights Department of Fasken Martineau, believes that one of the challenges in recruitment is the "fit" quality. To reinforce the value of having a proactive recruitment policy that is inclusive of candidates with disabilities, Guarascio argues, "you need only look at a lawyer like Bill Morley who is first and foremost a phenomenal lawyer."

"My injury is something I still mourn," says Bill. "Having said that, I have met people and done things I would never have done had I not been injured. Life has taken me down a different but in its way a rich and rewarding path for which I am grateful." ♦

Practice Watch, by Felicia S. Folk, Practice Advisor

Limited liability partnerships

The Ministry of Finance has announced that the *Partnership Amendment Act* will be proclaimed in effect January 17, 2005. This *Act* amends the *Partnership Act* to permit the creation of limited liability partnerships: *for more on law firms LLPs, see page 10.*

Production orders: new investigative powers

On September 15, 2004, new *Criminal Code* provisions came into force, creating new investigative powers that may affect solicitor-client privilege. It appears that the Federation of Law Societies, the provincial law societies and the Canadian Bar Association were not consulted prior to these amendments to the *Code*.

Section 487.012 of the *Criminal Code* creates a "production order." This is an order that a judge can make to compel a person who is not under investigation to produce documents or data relevant to the commission of a crime. Failing to comply with a production

order is an offence, punishable by a fine not exceeding \$250,000 or imprisonment of not more than six months, or both.

A lawyer could be the subject of a "production order" if a client were being investigated for the commission of an offence. In such a case, the lawyer would, pursuant to Chapter 5, Rule 14 of the *Professional Conduct Handbook*, be required to claim privilege over any documents that are or may be privileged, unless the client consented to their release. If the client could not be found, the lawyer would prudently claim privilege over any documents or data that the lawyer reasonably believed *might* be privileged. The privilege is that of the client and not the lawyer.

Section 487.012(4) provides that a production order may contain terms and conditions to protect a privileged communication between a lawyer and a client. Also, a person named in a production order may apply for an exemption from the requirement to produce the information referred to in the order. One of the grounds for making such an exemption order is that the documents, data or information would disclose information that is privileged. Notice of intention to apply for such an exemption order must be made within 30 days of the making of the production order.

Section 487.015 places the onus on any lawyer named in a production order to make the exemption application. If a lawyer fails to obtain an exemption, either through inadvertence or negligence, the client's right to protect privileged communications with a lawyer is lost. This result, however, seems to contradict the judgment of the Supreme Court of Canada in *Lavallee, Rackel & Heintz v. Canada (Attorney General)* [2002] 3 S.C.R. 209.

If you are named in a production order, your first step should be to

determine whether the order requires you to produce documents that are subject to solicitor-client privilege. If a client's privilege may be at risk, you should, subject to your client's instructions, apply for an exemption from the requirement to produce that information.

If you have questions about production orders, please contact Michael Lucas (mlucas@lsbc.org), Administrator of Policy and Legal Services, at the Law Society.

Law Society of Upper Canada has new rules on whistle-blowing for lawyers

Ontario lawyers must now comply with new "up-the-ladder" reporting rules in the face of corporate wrongdoing. The Law Society of Upper Canada has become the only regulatory body in Canada to date to impose corporate governance rules for lawyers similar to those now in force in the United States.

In March of 2004, Ontario's Benchers approved amendments to the *Rules of Professional Conduct*, making "up-the-ladder" reporting obligatory. A lawyer is now required to report corporate wrongdoing "up the ladder," if necessary, to the highest authority in the organization. The lawyer must resign representation of the client in the matter if the wrongdoing is not stopped (Rules 2.02, 2.03, 2.09 and Commentaries).

In addition, Ontario's Law Society has added new commentary to its Rules, on the lawyer's roles as counsel for and director of an organization, and has revised its rules on equity interests in clients (Rules 2.04, 2.06 and Commentaries). Lawyers in BC who practise interjurisdictionally or with interjurisdictional firms should become familiar with the new Ontario rules.





Mortgage to secure legal fees

In a recent BC Supreme Court decision, a mortgage granted to secure the payment of legal fees was held to be of no force and effect if the lawyer witnessed his own client's signature on the mortgage. The named mortgagee was the lawyer's law corporation. Section 42(1) of the *Land Title Act* provides, in effect, that the named mortgagee on a mortgage cannot be the same person who witnesses the signature of the mortgagor. There was no question that the mortgage in this case would have run afoul of s. 42(1) if the lawyer were not practising through a law corporation.

The question for the court was whether, in signing the mortgage instrument as a witness to the client's signature, the lawyer did so in his personal capacity since the mortgagee was not the lawyer personally but rather the law corporation of which he was the majority shareholder and sole director. The court decided that the effect of s. 42(1) could not be avoided by refusing to pierce the corporate veil of the law corporation.

While practising law through a law corporation may affect a lawyer's relationship to persons who are strangers to the solicitor-client relationship, a lawyer cannot hide behind his law corporation in order to defeat the rights his own clients would otherwise enjoy but for the existence of the

corporation.

Whose file is it anyway?

A client who has no outstanding accounts with a lawyer is entitled to the contents of his or her file, subject to some exceptions, such as the lawyer's own notes. When you are asked or are asking for a client's file, please consult the article "*Whose File is it Anyway? Who Owns Client File Documents when the Retainer Ends,*" on our website, under Practice Support.

Affidavits

A recent practice direction issued by Chief Justice Brenner on November 22, 2004:

Re: the Identity of the Counsel or Commissioner before whom Affidavits are sworn

Some concern has been expressed with respect to affidavits that have been filed where it is impossible to identify the commissioner before whom the affidavit has been sworn. When a commissioner applies only his or her signature to the jurat, there is no means of clearly identifying the commissioner should a question arise about the circumstances under which the affidavit was sworn. Many commissioners apply a stamp below their signatures which indicates their name and contact information. This practice is encouraged.

Effective immediately, affidavits prepared for filing in Supreme Court must include the name, legibly typed or written, of the commissioner before whom the affidavit was sworn as part of the jurat in addition to the signature.

Real property transactions

I continue to receive calls from lawyers concerned that other lawyers in their own communities, under pressure from financial institutions, are breaching the real estate conflict rules. These lawyers say they are losing clients as a result of declining to breach the rules. The Ethics Committee has invited lawyers to provide the Committee with information about these concerns. The Ethics Committee, in its request for consultation in the May-June *Benchers' Bulletin*, indicated that the Law Society will look at whether further amendments would clarify any ambiguity in the rules and will also consider how to educate financial institutions on lawyers' obligations under the *Handbook*.

The Ethics Committee does not have a disciplinary function, and in communicating with that Committee, it is not necessary for you to name any lawyer who may be breaching the conflict rules. I urge you to write to the Committee with your concerns by letter to Jack Olsen, Staff Lawyer – Ethics, at the Law Society. ✧

Lawyers receiving civil orders for disclosure must protect privilege

There may be times in which a party to a civil action obtains an order to compel the production of documents from an employee of a law firm.

Earlier this year the Law Society learned of a civil order that compelled a law firm to disclose the contents of the computer hard-drive of one of the firm's employees. The purpose of the order was to gain access to personal

emails that allegedly were relevant to litigation involving the employee (but not the firm or clients of the firm).

Counsel who seek to obtain or who receive such orders must remember that there are professional obligations to protect the privilege and confidentiality of client information.

A lawyer who finds it is necessary to

apply for such an order, should address the need to preserve solicitor-client privilege and confidentiality at all times. A lawyer who receives such an order should satisfy him or herself that the order contains provisions to maintain the privilege and confidentiality of client material and, if it does not, should bring the matter back to the court for directions. ✧

Practice Tips, by David J. Bilinsky, Practice Management Advisor

Thoughts on the future – change as a constant factor of legal life

“The Future ain’t what it used to be”
— Yogi Berra

Lawyers learn to look objectively at the evidence in a client’s case — both for and against. This paper examines the evidence for what I submit is a probable future for the legal profession. That future promises both opportunities and difficulties for the profession as we know it. Lawyers can start to change that future if steps are taken now.

The first factor is the oft-made observation that the rate of change is faster now than ever before. My perspective happens to be based in technology, but that is only one example, albeit a more apparent one. Some 20-odd years ago, computers began to replace typewriters and carbon paper. Next, BC-Online offered electronic LTO searches by modem. Now, email and Blackberries have largely replaced written correspondence. The internet has replaced paper-based research. Files no longer exist solely on paper, and “document” now describes an electronic file that is exchanged between parties containing hypertext links and digital signatures and that exists in dual formats (a PDF image sandwiched with a machine-searchable text). “Discovery” in a legal context requires lawyers to consider metadata and information stored on PDAs, in email and in deleted but unerased files on electronic hard-drives.

But these changes have not happened in isolation — the same changes have affected the legal consumer market. Thanks to the internet, consumers of legal services are increasingly sophisticated and this has affected the balance of power between lawyers and clients. Clients expect excellent legal skills in their lawyers — but in addition, clients are looking for corresponding people skills, management

skills and leadership skills.

In the law firm setting, there is less and less emphasis on the lawyer as the “lone ranger;” today, increased attention is being paid to lawyers working in teams and using people skills. Witness the increased attention paid to practice groups and practice group management. Law firms are focusing on the strategic management, financial measurement and marketing/positioning of law firms — which are being driven by professional management teams that are no longer composed of lawyers.

Law firms are slowly witnessing the

Clients expect excellent legal skills in their lawyers — but in addition, clients are looking for corresponding people skills, management skills and leadership skills.

separation of ownership and management in firms (which is exactly what lawyers have been advocating for their corporate clients for decades). Furthermore, leadership in firms is being taken over by professional administrators. The truth is that lawyers have largely failed to carry the ball in this regard, due to the conflict between working on client files and working on firm administration. A further trend is the concentration of highly technical legal work in larger firms while smaller firms are being driven towards more commodity legal services. As an example, witness the decline in the fortunes of the real estate bar (which was typically part of a smaller firm staple diet). This work is largely seen as a commodity service, and all

competition is solely fee-based.

Then there are third-party effects. For example, the new corporate e-registry has adopted a format that serves consumers over lawyers and law offices. This highlights that the lawyer as intermediary is less of a factor today than in the past, just as intermediaries are disappearing in other fields (just look at the decline in fortunes of stock brokers, travel agents and TV news programs, courtesy of the internet).

The near future

Technology will be used by governments and others to reduce the complexity of legal transactions (witness the corporate registry). E-filing will become a factor in the courts, driving firms further into working in a digital environment — from filing the claim, all the way through to adducing evidence electronically and presenting PowerPoint and graphically based closing arguments. As a result, digital trials will become commonplace. Trials will also become more technologically sophisticated, courtesy of software such as Summation, Concordance, Searchlight, MasterFile, Trial Director, Sanction, LiveNote, PowerPoint and others. The speed of trials will increase (with less time spent on the drudgery and time-consuming parts such as adducing and entering paper-based evidence). The courts themselves will be a big proponent of change in this area, as they necessarily seek to use technology to increase the number of trials and concurrently reduce their costs.

Lawyers will be driven to demonstrate how they add value to their clients. A lawyer working as an intermediary will diminish in importance or will be valued poorly. In this sense, advocacy programs designed to simply improve the image of the profession will be wasted money unless they are



combined with teaching lawyers how to move away from commodity-based legal services.

Pro se (self-represented) litigants and clients who rely on legal services contracted with off-shore providers will become a bigger factor in the future. Websites will offer commodity-based services — from wills to incorporation services to real estate sales and on and on...). In order to preserve their billable hours, lawyers must evolve to provide unique services to clients that cannot be easily duplicated using technology or lower-cost employees.

The slightly farther out future

There will be a need for lawyers to be masters of several disciplines: technology and law are just examples. Clients will seek out lawyers who have in-depth knowledge in both the client's area of expertise and the legal issues being addressed. These lawyers will add value in their depth of understanding of the matter at hand.

Lawyers will be driven to have increased people skills, as this will be a distinguishing factor by clients in selecting and retaining firms. Skills in relationship-building (the lawyer as trusted advisor) will become on a par with legal skills. Law firms will see the increased need for professional management at the highest level — with explicit strategic goals set, not just on revenues, but also on profitability, growth and market share. Performance management systems will ensure that all persons in a firm are held to financial and non-financial targets. Increasingly, these targets will be set by the firm management and tie each person — staff and lawyers alike — into the overall strategic plan for the firm and the practice group.

There will be a focus on what value lawyers bring to the table (what is it that lawyers actually *do*?) Wills and estates are one example — lawyers will not just draw a will, they will design an estate and asset transfer plan. Along the way, lawyers must come to

understand cross-border asset issues, tax issues, secondary residence issues, family trusts, charity donations, estate freezes, blended and broken family difficulties and other increasingly complex situations.

"Simple" or commodity wills will not be drawn by lawyers — consumers will use websites or notaries for this purpose. If lawyers do draw "simple" wills, they will either charge a market rate for doing this work (realizing that other lawyers will be charging drastically lower fees) or they will realize that they are being paid a vastly reduced hourly rate for doing so (and *why* would you take on the risk of the file while being paid so little?)

As the world changes to a global market, there will be an increased use of

Lawyers will be driven to demonstrate how they add value to their clients. A lawyer working as an intermediary will diminish in importance or will be valued poorly.

off-shore legal services. Today we have off-shore firms in English-speaking common law jurisdictions offering legal research and back-office services to law firms. It will not be a stretch for those firms to reach out to clients directly via the internet. Or they may set up offices here in North America and simply refer all the work back to their home jurisdiction. With today's communication technology, this is easily done.

Law schools will be incorporating marketing, management, finance, technology and, most importantly, people management skills into their black-letter law curricula, as law firms will be demanding these skills from their young lawyers (this is already

the case in US law schools).

What can be done

Personal and firm level

Lawyers must take control of their futures and invest in people, business and practice management skills training, along with black-letter law education. Strategic planning and performance evaluation must become commonplace in firms; this planning should be implemented, right down to individual personal growth and skill targets. Professional managers should be brought into firms to devote their full attention to future directions and to allow lawyers to assume supervisory (directorship and ownership) duties. The separation between setting policy and implementing policy will increase. Management reporting structures will evolve to provide meaningful feedback to both lawyers and management to allow them to respond appropriately to changes.

To preserve their hourly rates or annual fee targets, lawyers must learn to add more value to the services they provide to their clients. One strategy to accomplish this is to narrow and increase each lawyer's depth of legal knowledge in discrete legal areas, as clients will seek out lawyers with depth of talent and sophistication in their area of need.

Practice group level

One possible effect of implementing practice group management is to create competitive groups within firms. Resources of the firm — marketing, IT, staff — will be allocated to the practice groups based on profitability (*not on revenues*, since it is pointless to spend \$1 million to only raise \$800,000 in revenues). Under-performing practice groups will either have to implement strategic and tactical decisions to increase their profitability or be content to be secondary in importance when it

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comes to accessing the best assets of the firm.

There will be increased emphasis on lawyers seeking to understand how they add value to services provided to their clients. In this connection, law office management will increase feedback mechanisms with their clients, in order to make strategic decisions based on hard information.

Firm level

By far the most important factor affecting the future of the legal profession will be *leadership*. Leadership skills, or the lack thereof, will drive the profession to its future. Leadership will move lawyers from a reactive mind-set (sue someone *after* an event) to a proactive mind-set (take steps to encourage preventive action). The implications of leadership are profound:

- Firms move to adopt a strategic position in the marketplace, directing each firm to the type of work it desires, rather than accepting work that comes in the door;
- Explicit revenue, billing and profitability goals are set and reviewed relative to results to date;
- Performance management is implemented, holding all staff and lawyers to explicit personal and

financial goals or targets;

- The firm adopts a professional management structure and sorts out ownership, management and directorship duties and the separations between them;
- Marketing plans present a clear and focused image of the firm that is consistent with the service expectations the firm creates and the services that clients actually experience.
- The financial reporting mechanisms of the firm deliver timely and accurate information on the performance of lawyers, files, clients, practice groups and the firm as a whole in a format and manner that allows the management of the firm to take early corrective action;
- Last, the firm culture evolves to encourage leadership at all levels, from allowing staff to reach their potential to encouraging active mentoring of associates and the grooming of future firm leaders.

Nothing less than the future of the profession is at stake. I am hopeful that lawyers can develop the necessary skillsets and learn to adapt to constantly changing circumstances, particularly as the bulk of the changes are yet to come. However, without encouraging and developing strong and effective leadership skills, we may be

career, make him ideally suited for this interim position," Law Society President William Everett, QC said of his appointment. "We are very pleased that Mr. Heberton will lend his valuable experience and insight to the Law Society."

Mr. Heberton has served the legal profession in many capacities, including as a member of both the National and Provincial Councils of the Canadian Bar Association, as a Director of the BC Law Institute, as a Governor of

saying that the future of the legal profession "ain't what it used to be."

* * *

This article is largely based on a recent in-depth discussion with Vancouver lawyer Bill MacLeod. While the views expressed herein are strictly mine, all credit for the article may be attributed to Bill and all criticisms may be directed to me.

New ABA guide

The ABA Law Practice Management Section has just released *The Lawyer's Guide to Strategic Planning: Defining, Setting, and Achieving Your Firm's Goals* by Thomas C. Grella and Michael L. Hudkins (<http://tinyurl.com/64k6t>).

This book is written by a law firm's managing partner, together with the firm's law office administrator following their experience in taking their firm through the entire strategic planning process. It is a practical resource on how to establish goals in key areas such as law firm governance, competition, financial management, technology, marketing and competitive intelligence, client development and retention. This is not a theoretical book — it is a practical resource full of ideas of how to implement and monitor your goals to remain on your strategic plan. I also happen to know the authors and can endorse this book highly. ✧

Matkin resigns ... from page 13

with Shrum, Liddle and Heberton and its successor, McCarthy Tétrault, until his retirement in 2000. He was educated at UBC, Oxford University (where he attended as a Rhodes Scholar) and Harvard Law School.

"Mr. Heberton's distinguished service to both the legal profession and the public, along with the leadership he has shown throughout his lengthy

the Law Foundation of BC and as a Director of the Canadian Institute for the Administration of Justice. Mr. Heberton's community involvement has included service as a Governor of the Leon and Thea Koerner Foundation, as a member of the Vancouver Police Board and as President of the Canadian Club of Vancouver. He was appointed a Queen's Counsel in 1985.

The Benchers have appointed a committee to conduct a search for a new Executive Director. ✧



Interlock

Overcoming procrastination

by Nancy Payeur, MSW, RSW, Regional Director, Interlock

Nothing is so fatiguing as the eternal hanging on of an uncompleted task.

— William James

When I spoke to several lawyers recently about procrastination, all agreed they know of others for whom it is a real problem and — no surprise — even see the tendency in themselves. Clearly, it's normal for most people to procrastinate some of the time and about some tasks — making income tax filings on time and meeting RRSP deadlines are common examples.

The seriousness of the problem and the impact it has on career and professional success vary substantially. While lawyers are not alone in their struggles to get work done on time, law is a time-sensitive profession and includes many deadlines outside of an individual lawyer's control. Therefore, most lawyers do not have the luxury, if it can be called that, of a procrastination habit.

Work struggles that may be related to procrastination include consistently missing deadlines, not returning client calls and repeatedly delaying court matters. These behaviors often provide the first red flags of difficulties, although the underlying causes are diverse.

Several lawyers have spoken to me of overwhelming workloads and the sense of immobilization or inability to

act that can be experienced by even the most productive and efficient lawyers from time to time. This sense of panic or feeling out of control can happen most often during times of unusually high work demands, for example during long and complex trials, when a person realizes the volume of work and tight time lines in the weeks ahead. Whether lawyers are in private practice or not, chronic procrastination can present a serious barrier to success in the legal profession and in life.

These practical tips may help you in avoiding procrastination:

1. **Face the problem.** It is very easy to avoid doing this, particularly when under stress. Often we delude ourselves with the illusion of work. You know the signs. Browsing the net, sending and reading e-mails, filling time with non-essential administrative tasks ... anything to avoid working on that problematic file.
2. **Recognize your weak spots.** One of the reasons for procrastination is that we don't do what we're not good at. If you don't like handling issues on the phone or have difficulties with certain clients, for example, you may find you will delay in dealing with those issues or those clients. Once you recognize this, dealing with the solution becomes easier. You may need to tackle the problem directly yourself or, in some cases, you may find colleagues more suited to the task than you and with whom you can exchange work.
3. **Trick yourself into starting.** If you've been avoiding a particular task, start by telling yourself you will just work on the file for 15 minutes. At the end of that time, see if

you can continue. Before putting it away, jot down a few notes on next steps or ideas for follow-up and place them in the file. This will help you transition back into the work more readily the next time.

4. **Set your priorities daily — and act on them.** One experienced Crown Counsel described her process as follows:

I review everything that's on my desk. Then I do a couple of things. I make a list of everything that has to be done. Then I number them in order of importance and urgency. I ask myself: what must be done today? What can wait? Once I decide what the top two items for the day are, I set about working on them. At the end of the day, if I have accomplished only those two items, I'm happy. Once I'm able to start crossing

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things off my list I feel calmer and more in control. I also physically organize and number my files in order of priority, which helps me focus and reinforces those top items. I also review my list at the end of each day and decide what the next day's top two priorities will be.

5. **Break down complex tasks into smaller ones.** Frequently, we put off starting because the overall job looks so daunting. Map out a detailed outline of all the separate tasks that need to be completed on a file, such as through comprehensive practice and project management checklists.
6. **Set mini-deadlines.** Use a technique called "back-timing," described by Rita Emmett in her book

The Procrastinator's Handbook: Mastering the Art of Doing it Now. Work backwards from your final deadline to set interim deadlines*

Often we delude ourselves with the illusion of work.

*You know the signs.
Browsing the net, sending and reading e-mails, filling time with non-essential administrative tasks ... anything to avoid working on that problematic file.*

for each of the separate tasks. For example, if you are presenting a paper at an upcoming legal

conference, set and record earlier deadlines prior to the presentation date, including dates for completion of research, first draft, review and feedback from colleagues, further drafts, final proofing by a trusted peer, final proofing and revisions by yourself and submission of the paper.

7. **Find rituals and routines that work for you.** Identify and work within your personal rhythms. If you are most productive in the morning, use that time for challenging tasks and save routine administrative chores for the afternoon. Identify distractions and eliminate or contain them: close out of email, turn on your phone's "do not disturb," shut the door and let uninvited visitors know you have a commitment. Repeat rituals that work for you: a favourite pen, getting coffee before

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 articulated 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 articulated students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers: **Tel:** 604 685-2171 or 1-888-685-2171.

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



you begin. In short, build in cues that remind you it's time to begin. Use a timer and tell yourself you will give your entire concentration to your most onerous task for 60 minutes.

8. **Get the help you need.** Once you have faced the problem, identify your barriers and needed resources. Do you need someone who's an expert at managing time to coach you? Administrative or paralegal support? Help getting your office organized, de-cluttered of distractions? Or, do you need to consult with a colleague who has expertise in a complex area of law relevant to your file?
9. **Visualize.** See yourself at the end

of the day having been productive and focused. Think about the sense of satisfaction you will feel once you've completed a long-delayed task.

10. **Reward and reinforce.** Find a way to reward yourself when you've stuck to your goals for the day, if only to mentally remind yourself what you've accomplished. After long periods of a heavy workload, plan a weekend getaway or relaxing family activity as a way to reward yourself and reconnect with loved ones. Life should be more than just work.

Finally, consider seeking help from Interlock when your problems are becoming overwhelming. Interlock

provides completely confidential and professional counselling to members of the Law Society of British Columbia. The service is sponsored by the Law Society and is a membership benefit for lawyers throughout the province.

To set up an appointment with a counsellor in your community, call 1-800-663-9099 or 604 431-8200 in the Lower Mainland.

* Recommended reading

Rita Emmett, *The Procrastinator's Handbook: Mastering the Art of Doing It Now* (Toronto: Doubleday Canada, 2000). ✧

From the BC Supreme Court

New practice directions

Jurats: The Chief Justice of the BC Supreme Court has issued a practice direction requiring that, for any

affidavit filed with the Court, the name of the commissioner before whom the affidavit is filed must be legibly written or typed as part of the jurat in addition to the commissioner's signature.

Small claims appeals: The Chief Justice has also issued a practice direction respecting small claims appeals and a notice to the profession on *Guidelines Applicable to Court-to-Court Communications in Cross-Border cases*. These guidelines were recently adopted by the Court to enhance coordination of insolvency proceedings in more than one jurisdiction.

Commercial chambers applications: In a recent notice to the profession the Chief Justice announced a pilot project, in effect January 1, for the conduct of commercial chambers applications. Under the pilot project, counsel are asked to exchange and file concise briefs of argument one week in advance of the date scheduled for hearing. These briefs are to include an introduction, a statement of facts, a

statement of issues and a statement of argument. At the commencement of the hearing, counsel for the parties should be able to advise the court of the matters over which there is still disagreement.

For the text of these practice directives and the notice, visit the BC Courts website at www.courts.gov.bc.ca/sc.

"You be the Judge" schools project

"You be the Judge" is a new program, designed and produced by Canadian judges, for integration into high school socials studies, civics and law courses. A project of the Canadian Superior Courts Judges Association, "You be the Judge" introduces case scenarios through which students can experience the role of judges and explore such concepts as the rule of law, judicial independence and judicial impartiality.

For more information, visit the resource website for teachers and students at www.youbethejudge.ca. ✧





This Spring in Chicago

It's the 2005 ABA Techshow: March 31 to April 2

Mark your calendars now for American Bar Association's Techshow 2005 at the Chicago Sheraton Hotel and Towers, running March 31 through April 2.

Now in its 19th year, this leading legal technology conference features over 60 educational sessions in eight tracks on a wide range of topics at all levels. These include: "Technology to Jump Start Your Practice," "The Travelling Lawyer: Handling Business Anytime, Anywhere," "Marketing with Technology," "Battle-tested Tactics for

E-Discovery," "Your Computer Forensic's Toolkit," "E-filings and E-briefs: a Practical Guide," "The Trial Lawyer's Laptop: A Primer," "Methods for Managing Electronic Evidence," "Technology and the Family Lawyer," "Security for Solos and Small Law Firms" and conference favourites such as "60 Tips in 60 Minutes" and "60 Sites in 60 Minutes."

The sessions are complemented by an exhibit floor of over 100 vendors who can demonstrate the latest software and hardware relevant to legal

practice.

Because the Law Society is a program partner in Techshow, every BC lawyer is entitled to a US \$100 discount off the conference registration fee, which can be combined with the early-bird registration for a further US \$100 discount (if you register by February 18). Please use Program Promoter Code **PP15** when registering to receive the Law Society's discount.

For further information and to register, see www.techshow.com. ✧

Court protocols ... from page 9

of the Provincial Court, with the Chief Judge or an Associate Chief Judge.

2. No steps under this protocol will be taken if the judge, after receiving advice, concludes that the interests of the litigant can be adequately protected by the judge or that the matter can be adjourned.

3. If the interests of the litigant cannot be adequately protected by the judge or the matter cannot be adjourned, the Chief Justice, Associate Chief Justice, Chief Administrative Judge or Assistant Chief Administrative Judge may approach the special panel for assistance.

4. When the special panel receives a request for assistance, it will immediately contact the lawyer affected and attempt to provide assistance.

5. Other than informing the judge who contacted the special panel of the fact that the lawyer has been contacted (and nothing further), the special panel will provide no information to

anyone and, in particular, will not inform the Law Society of its activities with respect to any specific case.

6. If the lawyer declines the assistance offered, no further steps will be taken by the special panel. The panel will not report to anyone on whether the assistance it offered has been declined or accepted by the lawyer.

7. A judge will be free to report a lawyer's conduct to the Law Society at any time and have the complaint dealt with in accordance with the Society's normal procedures. However, where the complaint relates to a trial that is still proceeding, the Society will take no action on the complaint unless:

(a) the trial or interlocutory matter is completed or adjourned,

(b) a mistrial is declared,

(c) counsel is no longer acting on the matter, or

(d) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public or the lawyer's clients.

Except in extraordinary circumstances, where a judge makes a complaint against a lawyer to the Law Society, the lawyer will receive notice of the complaint from the Law Society.

8. Where a judge hearing a case requests the assistance of the special panel directly, the panel will, nevertheless, respond to that judge's request in the same way as if the request had been made by an administrative judge.

9. Where a judge approaches the Law Society, outside of the complaints process, to intervene in a matter, the Society should only do so when:

(a) Law Society representatives are satisfied that the continued practice of the lawyer would be dangerous or harmful to the public, the lawyer's client in the proceedings or other clients, and

(b) the judge making the approach is unwilling to follow the usual protocol, or the protocol has been followed but has not succeeded in resolving the matter. ✧



Unauthorized practice

Injunction

On application of the Law Society, the BC Supreme Court has ordered that **Ferlin Lyndon Dorrington** of Vancouver be enjoined from holding himself out as an articulated student or as a lawyer or counsel or by any other name that suggests that he is licensed to practise law in British Columbia.

The Court also ordered that Mr. Dorrington be enjoined from appearing as counsel or advocate; from drawing corporate documents, wills or probate documents, documents for use in a judicial or extra-judicial proceeding or a proceeding under a statute, or documents relating to real or personal estate; from negotiating to settle a claim or demand for damages; from giving legal advice; from agreeing to place at the disposal of another person the services of a lawyer and from offering or representing that he is qualified or entitled to provide any of these services for a fee: September 30, 2004 (entered October 27, 2004).

Undertakings



Unauthorized practice

Under the *Legal Profession Act*, the Law Society is responsible for ensuring that unqualified people do not illegally offer legal services or misrepresent themselves as lawyers. This responsibility exists to protect the public from a loss of rights, money or both, which are often at stake in legal matters.

The Society investigates complaints of unauthorized practice and takes the steps necessary to stop it. If the facts bear out a complaint,

the Society will explain the restrictions that apply to law practice and will ask the non-lawyer to refrain from the activity. Usually this step is sufficient. When it is not, the Society has statutory authority to seek a court injunction, which may proceed by consent.

The Law Society publicizes undertakings and court actions to ensure the community understands this aspect of the Society's mandate, and also to gain the assistance of lawyers and members of the public in recognizing new or recurring unauthorized practice.

Correction to Special Compensation Fund summary

The Special Compensation Fund summary on former lawyer John Motiuk, published in the September-October issue of the *Bulletin*, stated the following:

In May, 1996 Mr. Motiuk drafted a will for a long-time client, Ms. W. The will appointed Mr. Motiuk's law firm as sole executor with the right to be paid professional fees. *Mr. Motiuk, however, was one of the*

two attesting witnesses, which rendered his appointment as executor and the charging clause invalid (emphasis added).

This statement is incorrect. The *Wills Act* provides that "A person is not incompetent as a witness to prove the execution of a will, or its validity or invalidity, solely because the person is an executor." Consequently, while the charging clause in the will witnessed

by Mr. Motiuk was invalid, his appointment as executor was not.

One paragraph in the Special Compensation Fund Committee's report on Mr. Motiuk, which mistakenly referred to the appointment not being valid, has now been corrected, and the balance of the report properly reflects the state of the law. ♦

Lawyer education ... from page 5

who wish to become sole practitioners, those practising in high risk areas or those who have been the

subject of a number of claims or complaints.

More information

Lawyers wishing further information or to put forward comments at this preliminary stage of the Lawyer

Education Task Force study are invited to contact the Task Force c/o Alan Treleaven, Director of Education and Practice by email to atreleaven@lsbc.org or through the Law Society office. ♦

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