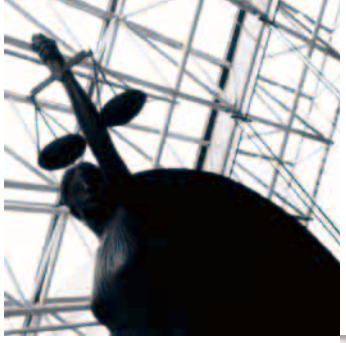

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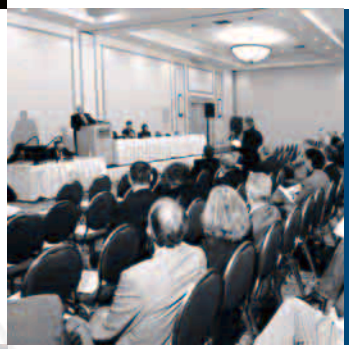

Benchers' Bulletin

A publication of the Law Society of British Columbia
2005: No. 4 September-October

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President's View

TAF will help the Law Society do its job better

by Ralston S. Alexander, QC

Mindful of the interest the profession has expressed in the Trust Administration Fee (known as the TAF), I thought it appropriate to provide a report to you on the early returns.

In case it's helpful, here is a reminder of what the TAF is and why we have it. As a lawyer, if you maintain one or more trust accounts, you are required to remit to the Law Society a $10 trust administration fee for each client matter that results in a deposit to trust (other than for legal fees or a retainer).

If Martin Wirick taught us anything, it was that the Law Society needed to be much more effective in the way we review and regulate lawyer trust account activities. We needed a beefed-up trust compliance program, and a way to pay for it. Neither lawyers nor members of the public could sustain another financial hit of any magnitude. As Benchers, we were convinced we should do everything in our power to prevent "another Wirick."

One option was to increase fees generally for that purpose. Yet we did not want BC lawyers to face the double-whammy of ongoing Special Compensation Fund assessments (to pay for the Wirick claims) along with increased fees to prevent new claims.

Moreover, simply raising the fees of all lawyers to cover the cost of trust administration did not seem equitable. The Benchers believe that, because the risk of misappropriation arises in the course of trust transactions, it is fair to ask lawyers who are handling trust funds in the private practice of law to take greater responsibility for the cost of this program. A Trust Administration Fee made sense to us because it is directly connected to the operation of trust accounts. In brief, it allows the cost of trust administration to be apportioned in relation to the risk. This relieves lawyers who do few or no trust transactions — such as members of the criminal bar — from most of the burden.

We are taking a "blended" approach to funding trust administration, by using revenue from the TAF and any additional funds from practice fee increases. Given the strong revenues that TAF has produced over the past six months, a general fee increase for this purpose is probably unnecessary.

On an annual basis, it now appears the TAF will generate as much as $3 – 3.5 million. This is higher than our original estimates (of $1.5 million). The original estimate was intentionally conservative, in part because we found law firms did not track the type of information that would have proved helpful in projecting revenues.

If you are wondering whether the Law Society needs such high revenues, the answer is yes, if we are to make trust reform a priority.

At their October meeting, the Benchers confirmed their commitment to account separately for TAF revenues and to use these only for trust assurance purposes, including a new trust compliance program. They will not be used for any part of the Wirick claims. We do soon expect to discuss just what other (non-Wirick) trust, audit, investigation and custodianship expenses may be appropriate to pay from TAF revenues, in 2005 or beyond.

It's important to note that the cost of these programs has traditionally been defrayed by the Special Compensation Fund because they are programs closely connected with the prevention, investigation and aftermath of defalcation claims. That Fund will play a much more limited role in future years, and the Benchers have decided that these costs will be covered by the General Fund. *(For more on the future role of the Special Compensation Fund, see page 9.)*

Benchers' Bulletin

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

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

Additional subscriptions to Law Society newsletters may be ordered at a cost of $50.00 (plus GST) per year by contacting the subscriptions assistant. To review current and archived issues of the *Bulletin* online, please see "Publications & Forms / Newsletters" at www.lawsociety.bc.ca.

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Once the Wirick claims are completed, the fees that BC lawyers pay to the Special Compensation Fund will be greatly reduced. Defalcation claims now come under Part B of our liability insurance program. Lawyers pay for that coverage primarily through the insurance assessment, although a General Fund contribution is possible down the road. Depending on the future strength of TAF revenues, the Benchers could also consider a contribution of TAF to the Part B coverage, if needed. This was a use we contemplated early on.

As a funding mechanism for insurance, the TAF is not without precedent. The Law Society in Ontario levies a fee on certain court and registry filings, although its purpose is different from ours — to provide revenue to help fund negligence claims involving real estate and civil litigation.

I pause here to point out that our Part B insurance coverage is designed to provide the public with an entitlement to compensation when a lawyer has misappropriated money in the course of a legal retainer. Part B insurance has several characteristics that are an improvement over the Special Compensation Fund. In particular, the policy affords greater certainty of payment — including the payment of interest and costs — within the global limits of the coverage.

Turning once again to the future of our trust compliance program, I am without doubt a passionate advocate for this reform. That is because it will better protect the public from the harm of catastrophic loss, and will consequently protect all lawyers from the cost of large compensation claims.

The Benchers have yet to decide the structure of the new trust compliance program — there are a number of options to explore and they will want to draw on the most recent experience from other jurisdictions. I am happy that the program will be a priority for adoption in 2006 — and that I am leaving it in good hands as my term as President winds down at the end of the year. I expect the Benchers to embrace a comprehensive program that includes more frequent audits, with an eye to the early detection and prevention of misappropriation.

The Law Society will also be diligent about reporting to BC lawyers on how TAF revenues are used to fund this and other trust-related programs — so that everyone knows the fee is used properly and effectively.

With the success of the TAF, the Law Society will be able to implement all its proposals for trust reform. We can do that confident that we are on the right track and within our means.✧

Scenes from the Great Hall. The Call Ceremony held September 23 in Vancouver saw 142 people called to the bar and admitted as solicitors of the Supreme Court.

Meet our new CEO — Tim McGee

It is our pleasure to introduce the Law Society's new Chief Executive Officer, Tim McGee. Originally from Victoria, Tim practised law in Toronto for several years before moving to the corporate world where he headed Canada's largest satellite television company. Now back on the west coast, Tim talks about his background, his new job and his goals for the Law Society of BC.

TM: I'm the second youngest of six children. I spent all my childhood in Victoria and went to elementary school there. For high school, I went to boarding school in Quebec, as had my elder brothers. Ostensibly, this was to learn French — but I can assure you my French language skills have not aged well! Also, my father was originally from Ottawa and my parents wanted their children to learn about Eastern Canada.

After that, in 1975, I went to Harvard where I took a degree in government studies — essentially a political science degree. We studied Middle East, American and international politics. There was also a liberal arts core curriculum, so I had to take art history, literature and other courses like that, and I just loved it. Some of the things I enjoy most in life are as a result of taking those courses.

I wrote my undergraduate thesis on the constitutional dilemma in Canada. There had been a series of federal/provincial conferences on repatriating and amending the constitution. My argument, having spent four years going to American government and constitutional law classes, was that we shouldn't wait for these conferences as they are destined to fail to come up with an amending formula. Instead, I argued that a more activist Supreme Court could play an important role. One of the visiting professors at Harvard at that time was Robert Bourassa (who was then between terms as Quebec's Premier). It was wonderful having discussions with him about this model and other topics.

Benchers' Bulletin: Did you go to law school immediately after Harvard?

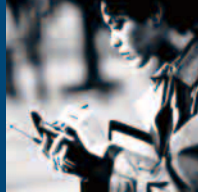
TM: No, I took some time doing other things. I spent a year backpacking around and then worked as a litigation paralegal in San Francisco for four months, working primarily on a large anti-trust case. I came back to BC in the fall of 1980 and interviewed with several Vancouver firms for what I hoped would be a paralegal job, but they didn't really have paralegals here like they do in the States.

Then a great opportunity came along in 1980 to be the executive assistant to Attorney General Allan Williams, who was then one of the most senior members of Premier Bill Bennett's cabinet. I was absolutely thrilled when he offered me the job because I was always interested in politics and law. I went from looking for paralegal work to having this dream job working for the Attorney General.

Benchers' Bulletin: You spent two years as the Attorney General's executive assistant. What were the highlights of your work?

TM: That was the time of the Clifford Olson crisis and the Attorney General was front and centre of it. It was a very, very difficult time, but it also forged my respect for how he handled such a terrible situation. His integrity and his leadership were awe-inspiring.

It was also the time when the



municipality of Whistler was being developed and it was in my minister's riding. One highlight for me was meeting Nancy Greene, who was my childhood idol, her husband, Al Raine, and their family to talk about their vision for Whistler. I was on cloud nine after that.

Benchers' Bulletin: What other work experience did you have before going to law school?

TM: I worked on the greenchain in the BC Forest Products sawmill in Victoria. That convinced me to be a lawyer because I knew I'd never be able to hack hard labour. But it paid good money and it gave me an appreciation of the value of union membership.

Benchers' Bulletin: Is that the only reason you opted for law school?

TM: No, it was something I'd always intended to do. My eldest brother, D'Arcy, was a lawyer, (Crown counsel) and later a Provincial Court judge. He was a great role model for me. And, I just always had an interest in the law. So I enrolled at the University of Ottawa law school, partly to go back to my father's hometown and partly because of my interest in government. I remember by that time having an absolute laser focus on getting my law degree and getting out into the workforce.

Benchers' Bulletin: You articled and practised for five years with the Toronto firm now known as Torys. What sort of legal work did you do?

TM: Ted Rogers was borrowing money to build his empire and his Cantel network. He was investing in everything from cable to wireless. There was a huge amount of financing work on Ted's files and I got involved in that. He was an incredibly demanding client — your classic entrepreneur. I was primarily a finance lawyer and my clients were essentially telecoms. I also did a fair bit of corporate governance work.

In 1992, when the CRTC began deregulating long-distance services I went to Unitel Communications (which became AT&T Canada) as in-house counsel. In 1998, Bell Canada then asked me to sign on as vice-president and general counsel. At Bell, I had a small law firm working for me — 45 lawyers in three cities.

I became President of Bell ExpressVu in 2002. It was a fascinating time leading Canada's fastest growing and largest digital TV provider in a highly competitive market. One of our toughest challenges was dealing with signal theft or satellite piracy. We had to rally both public opinion and our competitors to raise awareness and gain their support for counter-measures.

Benchers' Bulletin: What did you like most and least about practising law?

TM: The most satisfying aspect is that, done well, you can achieve business objectives with results that really make a difference. Lawyers add a huge value to a deal, but it has to be a team approach. At Torys, we were very proud of what we did for the Rogers companies. The success they had in getting their financing in place, their security negotiated and their strategic plans depended on a lot of blood, sweat and tears from the legal team, but it was very satisfying.

The part I liked least was, ultimately, the sense that the practice of law can be an all-consuming occupation. I have immense respect for lawyers who can deal with it that way and who can service their clients that way.

One of the reasons I chose to go into in-house practice was to specialize in an area in which I had a lot of business interest, but also to give me an opportunity to have the law not be all consuming — to understand how a business runs and how the decisions are made, to branch out in my skills.

So now, the combination of the business of law and the regulation of a profession is fascinating to me. I think I bring a love of the law and a knowledge of the law, plus I can bring some management perspective about how to run a regulator.

Personally, I want to serve my province. I have a very strong desire to provide something in a public service context. For me, I can't think of a better place to do that than with the Law Society.

Benchers' Bulletin: What are your priorities for the Law Society of BC?

TM: We, as a Law Society, have a very serious and profound mandate to protect the public interest and to ensure that lawyers are honourable and competent. I look at everything I do as relating to that mandate. The staff and the Benchers take that mandate very seriously — that is obvious to me. I think that commitment should be comforting to the public. I think it bodes well for opportunities to build on that commitment and then to do things even better.

Benchers' Bulletin: What has been your focus in the five months you've been with the Law Society?

TM: Well, I know where the coffee machine is! Seriously, I'm concentrating first on building effective working relationships with the Benchers, our staff and volunteers within the Law Society.

I'm also committed to transparency in the work we do as staff and to making sure we have an agreed set of priorities. Together with my senior managers, I have worked on an operational plan for 2006 and we are making good progress. But I also want to engage our staff at all levels. I've begun regular "Town Hall" meetings and breakfast meetings to bring everyone up to speed on developments and ensure our staff work well across departments. I've supported the introduction of a new performance management system. I'm encouraged by the enthusiasm of the staff for these

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AGM passes resolutions to counter poor mortgage practices

Surrey lawyer Ronald Morin urges his colleagues to support a resolution he and Peter Shrimpton of Whistler brought to the September 23 AGM. The resolution calls on the Law Society to take steps to ensure that borrowers in mortgage transactions receive legal advice and that there is no unauthorized practice by title insurance companies. After a vigorous debate, lawyers at the meeting passed the resolutions (94:70). The Benchers have decided to set up a task force on title insurance and mortgage practices to explore the concerns expressed in the AGM resolutions, both to ascertain the facts and to study the policy issues.

A majority of lawyers attending the September 23 AGM passed (94:70) two resolutions put forward by lawyers Ronald Morin of Surrey and Peter Shrimpton of Whistler regarding mortgage-signing practices and title insurance companies.

The resolutions call on the Law Society to:

- create a "rule of practice" forbidding lawyers from witnessing the execution of mortgage documents unless the borrower has received comprehensive legal advice;
- lobby the provincial government, financial institutions and regulators of financial institutions on the detrimental effect of borrowers signing mortgages without legal advice;
- prevent lawyers from facilitating the unauthorized practice of law or practices detrimental to the best interests of the public when witnessing the execution of mortgage documents prepared by or to be registered by title insurance companies;
- take steps to end unauthorized practice or other practices detrimental to the public, including commencing actions pursuant to the *Legal Profession Act* and lobbying government for legislative change.

The preamble to the first resolution alleged that financial institutions were increasingly having borrowers sign mortgages without the benefit of legal advice. Mr. Morin and Mr. Shrimpton argued this was not in the public interest and could result in mortgages being unenforceable.

The recitals to the second resolution alleged that two title insurance companies — FCT Insurance Company Ltd. (dba First Canadian Title) and FNF Canada Company, a division of Fidelity National Financial Inc. — had developed a practice of drawing, executing and registering residential mortgages that did not involve lawyers or notaries. According to the resolution, this practice results in unsophisticated borrowers placing mortgages on their properties without fully understanding the legal implications. The recitals also alleged title insurance companies were not filing mortgage documents with the Land Title Office in a timely fashion, thereby undermining the integrity of the Torrens system. In addition, the

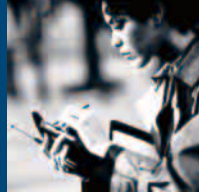
Benchers strike task force

The Law Society will soon have a new task force, chaired by President Ralston Alexander, QC, to study title insurance, and to look at issues of fact and policy behind recent resolutions passed at the AGM.

Those resolutions came to the Benchers' table for consideration in October. They raise concerns about title insurance companies and about borrowers not receiving legal advice in mortgage transactions.

Mr. Alexander told the Benchers that launching a task force study was an appropriate follow-up to the AGM. "In order to responsibly deal with the members' concerns that are expressed in the resolutions, we have first to get the facts," he said.

The Task Force will be appointed shortly and is expected to bring forward recommendations by mid-2006.



recitals said the Law Society had determined that the drawing of mortgages by FCT and FNF constituted the unauthorized practice of law.

The resolution calls on the Law Society to take all reasonable measures to end these practices by title insurance companies by preventing lawyers from witnessing mortgage documents prepared by FCT and FNF, by taking action against the alleged unauthorized practice and by lobbying the government for legislative changes.

During debate, lawyers for FCT and FNF expressed the view that the alleged facts set out in the recitals to the motions were inaccurate and possibly defamatory.

D. Anthony Knox of McCarthy Tétrault LLP, counsel for FNF, said there was no increasing practice of having borrowers sign mortgage documents without legal advice. He said all FNF procedures were carried out by lawyers, that borrowers were always given the option of obtaining independent legal advice and that FNF's practices complied with all Law Society rules. He added that the allegation of unauthorized practice against his client was true, but "seriously misleading" because FNF had ended the practices in question. Mr. Knox said that "when the Law Society informed FNF that purely clerical form-filling constituted unauthorized practice, FNF changed its procedures to conform with the Law Society's requirements pending appeal to the courts."

FCT's counsel, James P. Taylor, QC, of Taylor Jordan Chafetz, said the allegation of unauthorized practice against his client related to a program FCT had since changed. Mr. Taylor said FCT's refinancing program deals only with a borrower who is refinancing an existing mortgage and is sold only to commercial lenders. He noted that the borrower always has the choice of using title insurance or a lawyer. There were no cases of a title insurance mortgage being found to be unenforceable, and title insurance companies had a vested interest in ensuring mortgage documents were filed promptly, he said.

Several speakers said the resolutions could be seen as preventing borrowers from choosing whether or not they wanted legal advice and might have a negative impact on public perception of the profession.✧

Auditors appointed for 2006

Lawyers at the September 23 AGM approved PriceWaterhouseCoopers as the Society's auditors for 2006.✧

Hunter acclaimed Second VP for 2006

Lawyers attending the Annual General Meeting on September 23 elected **John J.L. Hunter**, QC as Second Vice-President for 2006.

Mr. Hunter is a senior litigation counsel at Hunter Voith with a broad civil and commercial litigation practice. He has represented commercial and government clients in a variety of land use disputes, particularly in relation to forestry and Aboriginal litigation, judicial review of government action and injunction remedies.

Appointed Queen's Counsel in 1994, Mr. Hunter is a Fellow of the American College of Trial Lawyers. He has written and lectured extensively on both trial and appellate advocacy. He is the author of *Conducting a Civil Appeal* (Carswell 1995) and served as an Adjunct Professor of Law teaching appellate advocacy at the University of British Columbia from 1988 to 2001.

Elected a Bencher for Vancouver in 2001, Mr. Hunter is a member of the Executive Committee (2003-2005), the Discipline Committee (2004-2005) and the Futures Committee (2002, 2004-2005) and a past member of the Credentials Committee (2002-2003).

He currently chairs the Disclosure and Privacy Task Force and the Technology Committee and is Vice-Chair of the Lawyer Education Task Force.✧

No increase in liability insurance and Special Compensation Fund assessments in 2006

Law Society fee billing — due November 30

BC law firms should watch for the 2006 Law Society fee billing. Payment is due November 30. The annual membership fees are the following:

Practice fee

The 2006 practice fee, as set by the profession by referendum in June, is $1,065.50.

The fee consists of a 1) Law Society General Fund fee of $825, 2) a BC Courthouse Library Society component of $160, 3) a Lawyers Assistance Program (LAP) component of $53 and 4) an *Advocate* subscription of $27.50.

The fee is up $85 over 2005, including a $30 per member increase for the BC Courthouse Library Society and $5 a member increase for the Lawyers Assistance Program.

Liability insurance assessment

The professional liability insurance assessment for BC lawyers in private practice remains at $1,500 in 2006, for the seventh consecutive year. This assessment is payable in two equal instalments, with the first instalment due November 30, 2005 and the second due June 30, 2006.

The part-time insurance fee is $750, the same as in 2005, and the insurance surcharge (which applies for five years to lawyers with paid indemnity claims, in accordance with Rule 3-26(2)), remains at $1,000.

Special Compensation Fund assessment

The Benchers have set the Special Compensation Fund assessment at $600, the same as in 2003 through 2005.✧

News from the Law Foundation

2006 / 2007 Law Foundation graduate fellowships

The Law Foundation offers fellowships to BC lawyers and law students who wish to pursue full-time graduate studies in law or a law-related area at a recognized university in Canada (outside BC), in the US or abroad.

Value

There are up to four awards of $13,750 each (subject to change).

Closing date

All applications and support materials must be received by the Law Foundation by **January 5, 2006**. Late or incomplete applications will not be considered.

Application documents

The application guidelines and application form may be obtained online at www.lawfoundationbc.org, by email request to lfbc@tlfbc.org, by calling 604 688-2337 or by writing to the Law Foundation of BC, 1340 - 605 Robson Street, Vancouver, BC V6B 5J3.

New Governors

The Law Foundation welcomed new Governors in 2005:

Marilyn Baker – An Attorney General appointee, Ms. Baker is the former mayor of the District of North Vancouver, having retired in 1990 after four terms in office.

Barbara Cromarty – Appointed by the Law Society, Ms. Cromarty is a Trail lawyer who practises civil litigation, primarily in family law.

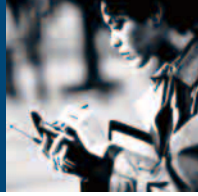
John Dustan – Mr. Dustan is President of Pacific Funds Management Ltd. and Chair of the board of Special Olympics Canada. He is appointed by the Attorney General.

Christine Elliott – Ms. Elliott, reappointed by the Law Society, is a Vancouver solicitor, board member of the Land Title and Survey Authority and adjunct professor at the UBC law school.

Nancy Merrill – Appointed by the Law Society, Ms. Merrill is a Nanaimo lawyer whose primary fields of practice are family law, mediation, personal injury law, wills and estates and child protection work.

Bruce Strachan – Mr. Strachan, an appointee of the Attorney General, served for 12 years as an MLA for Prince George South and has been minister of the environment, deputy speaker, government house leader and minister of health, inter-governmental relations and advanced education.

John D. Waddell, QC – a CBA (BC Branch) appointee, Mr. Waddell is a civil litigation lawyer from Victoria who has served various community and professional organizations, including as President of the BC Branch of the CBA for 1995-1996.✧



Future of the Special Compensation Fund — what claims will it consider?

Since May 1, 2004 a client who suffers loss by reason of theft by a lawyer can apply for compensation under Part B of the BC Lawyers' Compulsory Professional Liability Insurance Policy. In light of the Part B coverage, also known as trust protection coverage, the Benchers have decided that the public's access to the Special Compensation Fund should be restricted in the future.

Under Rule 3-33, as amended on October 14, the Special Compensation Fund will not authorize any payment of a claim made after May 1, 2004, unless a person's claim for Part B coverage has been denied *in whole* because the annual, profession-wide limit of the coverage in the policy has been exhausted — that is, more than a total of $17.5 million is paid under the Part B coverage in a single year.

The Special Compensation Fund Committee remains responsible for assessing and deciding on payment of claims made prior to May 1, 2004, which includes all claims relating to Martin Wirick. The *Legal Profession Act* requires that the Benchers continue the Fund, but its scope has been narrowed, as described in Rule 3-33.

Special Compensation Fund Committee Chair Patricia Schmit, QC told the Benchers in October that the Committee recommended this approach — rather than the option of allowing the Special Compensation Fund to consider any claims that had been rejected in whole or in part under the Part B coverage.

She noted the narrower role for the Fund would provide the Law Society with greater certainty as to total exposure on claims, to settle claims with greater certainty within the insurance limits and to encourage claimants to settle within the limits, instead of planning a further claim to the Special Compensation Fund.

In a written report to the Benchers, the Special Compensation Fund Committee pointed to administrative efficiencies to this approach.

"A decision by the insurer on a claim where the aggregate amount of the insurance has not been exhausted will be determined through an assessment of the merits of each claim and paid, denied or negotiated with the claimant," the Committee stated. "As with any civil matter, the claimant has full recourse to the courts in the event of a dispute."

The Committee also said it was more efficient to have all claims handled once by Claims Counsel in the insurance department, without additional staff time and Bencher resources devoted to a Special Compensation Fund regime.

Ms. Schmit noted that the Benchers ultimately retained discretion to make *ex gratia* payments or, if the Benchers found it necessary, to increase the global limit of the Part B coverage.

The text of Rule 3-33, as amended, is set out below. It will be included in an upcoming *Member's Manual* amendment package and is available online in the Publications & Forms section of the website at www.lawsociety.bc.ca.✧

Law Society Rule 3-33, as amended

Limit on payments from the Fund

3-33 Despite Rules 3-31 and 3-32, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, must not authorize a payment from the Special Compensation Fund in respect of a claim made on or after May 1, 2004 unless

(a) the claimant has made a claim under Part B of the policy of professional liability insurance and the claim has been denied in whole

(i) because the limit of liability described in the policy as the Profession-Wide Aggregate Limit has been exhausted, or

(ii) by operation of Exclusion 10 of the policy, or

(b) prior to May 1, 2004, the Society had notice of the possibility of claims to the Special Compensation Fund involving the lawyer against whom the claimant has made the claim.

Grant approved to support Access Justice

The Benchers have granted $35,000 to the Western Canada Society to Access Justice in 2005.

In a presentation to the Benchers in September on behalf of Access Justice, Vancouver lawyer Dugald Christie described his plan to expand the number of pro bono clinics in BC and to prepare an appeal of the BC Supreme Court decision in *Christie v. AGBC et al.* (the most recent challenge to PST on accounts for legal services).

Mr. Christie said that the Access Justice program was working at full capacity. A priority now was to introduce some central record-keeping for the clinics. This would allow the pro bono program to meet certain standards and receive approval for insurance purposes, so that retired and insurance-exempt lawyers who volunteer for the program qualify for insurance through the Law Society's professional liability insurance policy.

The Benchers approved a grant to Access Justice as an exception to the general policy against funding external programs or organizations unless they are initiated or formally sponsored by the Law Society.

For more on the work of the Western Canada Society to Access Justice, visit www.accessjustice.ca.✧

Discipline and credentials hearings

Benchers update rules on hearing panel composition

The Benchers have amended Law Society Rule 5-2(2) to state that Law Society hearing panels must be comprised of three Benchers or other lawyers unless there are special circumstances that justify a one-Bencher panel, in the discretion of the President. The composition of a one-Bencher panel still requires the consent of the lawyer or student who is subject to the hearing.

Requiring special circumstances as a condition of the President appointing a one-Bencher panel was intended to remove any opportunity that counsel might have to influence the make-up of hearing panels.

One-Bencher hearing panels will only be appointed when:

- no facts are in dispute,
- the hearing is to consider a conditional admission under Rule 4-22,
- it is not otherwise possible, in the President's opinion, to convene a panel in a reasonable period of time, or
- one or more of the original panel members cannot complete a hearing that has begun.

Another rule change permits all Life Benchers, including former Lay Benchers who have become Life Benchers, to serve on a panel (Rule 5-2(4)).✧

Tim McGee *… from page 5*

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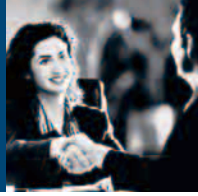
initiatives and impressed by their commitment to the important work we do.

For any Law Society CEO, external relationships are also very important. This includes our relationship with the courts, as well as with the law schools, the CBA, the CLE Society, the Law Foundation and others in the legal community. I'm also pleased that I can build on the long history and strong ties we have with the Ministry of Attorney General, and I'm encouraged by my initial meetings with Deputy Attorney General Alan Seckel and members of the Attorney General's staff. For our government relations to be effective, we also need to reach other ministries because changes that affect the delivery of legal services and the legal profession can come from anywhere within government.

Benchers' Bulletin: What is your passion outside of work?

TM: My family, first and foremost. My wife Mary and our two children, Charlotte and Fraser, are settling in well in BC, and I am very happy to be back. My roots are here, and I'm excited that my kids will have a chance to experience some of the things I did growing up here, and more I expect.

I love outdoor sports, and coming to the west coast has also brought back my appetite for rowing – which has been both a sport and a life passion for me. The Canadian National Rowing Team trains near my home and I have fond memories of rowing competitively while at college. As for now, I think the old saying "The older I get, the better I was" probably applies!✧



From the Ethics Committee

Client settlements that restrict lawyers from taking new cases — comments sought

The Ethics Committee is seeking comments from the profession on this question: *Should the Professional Conduct Handbook prevent BC lawyers from participating in, offering or making — as part of the settlement of a current client's matter — an agreement to restrict a lawyer's right to practise in the future?*

The issue arises when a litigant (usually a defendant) makes an offer for settlement that contains, as one of its terms, that the opposing party's lawyer not represent future clients in other similar actions against the litigant.

The Ethics Committee has been asked on a number of occasions to give opinions on the propriety of lawyers making or accepting such offers. The Committee would appreciate any information that BC lawyers can offer on the prevalence of such agreements, and their views.

In these scenarios, a lawyer is usually asked to agree to a restriction in exchange for receiving a payment (which is in addition to the settlement funds offered to the lawyer's client). However, a simple offer to a client to settle a matter on the condition that the client's lawyer agrees to refuse to act for other litigants in similar matters raises the same issues.

Rule 5.6(b) of the American Bar Association *Model Rules of Professional Conduct* provides:

> A lawyer shall not participate in offering or making…
>
> (b) an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a client controversy.

The American Bar Association Committee on Ethics and Professional Responsibility in Formal Opinion 93-371 made the following comments about settlement agreements that restrict the lawyer's right to take on future clients:

> Permitting such agreements restricts the access of the public to lawyers who, by virtue of their background and experience, might be the very best available talent to represent these individuals. Second, the use of such agreements may provide clients with rewards that bear less relationship to the merits of their claims than they do to the desire of the defendant to "buy off" plaintiff's counsel. Third, the offering of these restrictive agreements creates a conflict between the interests of present clients and those of potential future clients. While the Model Rules generally require that the client's interests be put first, forcing a lawyer to give up future representations may be asking too much. This is particularly so in light of the strong countervailing policy that favours the public's unfettered choice of counsel.

Some of the arguments raised in favour of having a rule in the *Professional Conduct Handbook* are the following:

- Making such an offer inevitably raises an issue between the client and the client's lawyer: *Will the lawyer agree to accept a limitation on future work to benefit the client?* Many clients would readily understand that it may be unreasonable to expect their lawyers to agree to this kind of restriction. However, a few clients may not accept that the restriction is unreasonable, or that their lawyers are entitled to refuse it.

  A lawyer who assists a party in making such an offer creates discord in the relationship between the opposing lawyer and his or her client.
- The absence of a rule permits wealthy clients to buy off lawyers who have represented similar clients in the past and may be the most knowledgeable and effective advocates for a potential new client's cause. The effect is to permit defendants to avoid fully compensating those they injure and to undercut the deterrent value of law.
- The absence of a rule allows a disproportionate share of settlement benefits to go to a plaintiff whose lawyer agrees to a restriction on future representation (compared to future plaintiffs who are unable to retain that lawyer).
- The absence of a rule increases the possibility that counsel for defendants and plaintiffs will collude to restrict damages available to potential plaintiffs.

Some of the arguments raised in opposition to having a rule are these:

- The absence of a rule increases the chances that matters will be settled.
- Although the absence of a rule will keep some able and knowledgeable lawyers from being available to provide representation in some matters, this is only one of the factors affecting lawyer availability, and the market will ensure that other lawyers come forward to act.
- Any conflicts created by permitting lawyers to enter into practice restrictions can be dealt with adequately by requiring the clients of

continued on page 12

Client settlements … from page 11

those lawyers to obtain independent legal advice.

- The absence of a rule does not require any lawyer to accept an offer that includes a restriction on future practice. Lawyers are free to reject offers that require they restrict their practice and can guard against any conflict with clients by advising those clients at the commencement of the retainer that they will reject any such offers.

The Ethics Committee welcomes your comments on this issue. Please contact Jack Olsen, Staff Lawyer – Ethics, at:

Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9
Tel.: 604 443-5711
Fax: 604 646-5902
Email: jolsen@lsbc.org ✧

From the Supreme Court Rules Revision Committee

Invitation to comment on proposed amendment to Rule 26

The BC Supreme Court Rules Revision Committee has been asked to consider an amendment to Rule 26 of the Rules of Court that would compel disclosure of documents evidencing the existence and terms of contracts of insurance that are, or may be, applicable to the claims made in the action.

The provinces of Manitoba, New Brunswick and Prince Edward Island currently have rules to this effect.

The Committee invites comments from the profession on whether or not such disclosure is appropriate before judgment is rendered in an action.

Please direct any response in writing by **January 31, 2006**, to:

The Hon. Mr. Justice Macaulay
Chair, Rules Revision Committee
Supreme Court of British Columbia
850 Burdett Avenue
Victoria, BC V8W 1B4 ✧

Trust accounts – pooled or separate?

Lawyers are reminded that, in accordance with section 62 of the *Legal Profession Act* and Part 3 of the Law Society Rules, funds received in trust are to be deposited into an interest-bearing trust account. In most cases, client trust funds are deposited to a pooled trust account, with interest payable to the Law Foundation. A lawyer, however, may obtain specific instructions from a client to set up and deposit the funds into a separate trust account, with interest accruing to the benefit of the client.

In each case, that lawyer should take into account the amount of the deposit, the time it will be held and the applicable interest rate to ensure that the return will outweigh the administrative costs and specific financial fees involved in a separate account.

Lawyers occasionally deposit funds in a pooled trust account in expectation of an early payout. If a process becomes protracted and the funds will remain in trust longer than anticipated, it is appropriate to reconsider whether to place the funds in a separate trust account.

Client instructions to deposit funds other than to a trust account must be in writing (Rule 3-51(3)) and the client should acknowledge in writing if the deposit is to an account that is not insured by CDIC or CUDIC (Rules 3-51(4) and 3-49).✧

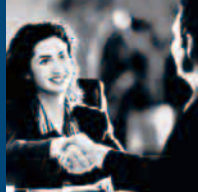
Farewell to Felicia Folk

After 12 years as Practice Advisor at the Law Society, Felicia S. Folk, has returned to private practice, taking with her the best wishes of the Benchers and staff.

Ms. Folk is now with Farber & Folk in Vancouver, offering dispute resolution services as both arbitrator and mediator in all areas of law, in professional and business ethics and in wills and estates, including administration and resolution. She can be reached at

Farber & Folk
1400 – 1125 Howe Street
Vancouver, BC V6Z 2K8
ffolk@farber.ca
Tel: 604 685-8995
Fax: 604 688-0933

Lawyers can request practice advice from Practice Management Advisor Dave Bilinsky and from Barbara Buchanan at the Law Society office. Ms. Buchanan is serving as Practice Advisor until the position left vacant by Ms. Folk is filled.✧



When personal information is on a work computer

Lawyers often use their workplace computers for personal correspondence, email and other documents of a private nature. While this practice is not a problem in itself, some safeguards are helpful for the sake of privacy.

A law firm or other workplace usually has policies on who, within the workplace, are entitled to access other people's computers and whether or not users of the computer system can have an expectation of privacy. Lawyers can take these policies into account, including whether their own personal information could be read inadvertently by others in the workplace.

But there are also circumstances in which a third party from outside the workplace may gain access to a computer hard drive or network drive and the information on it. This includes

- a Law Society auditor charged with reviewing a lawyer's books, records and accounts under Law Society Rules 3-79 or 4-43; and
- the custodian of a law practice appointed under section 50 of the *Legal Profession Act*.

If personal information is co-mingled with practice information on a firm's computer systems, the information might be seen by an auditor in the course of a review or by a custodian when dealing with the property of the law practice. Although most lawyers will not face these situations, they are worth noting.

A prudent step is to save personal information — and to archive personal email messages — to a medium other than the practice computer hard drive or network (such as to a CD or flash drive). Failing that, personal information can be saved in folders distinct from those containing the records of the practice and of clients. The latter step will not preclude authorized access, but may assist a lawyer in identifying and asserting a claim of confidentiality over personal records.

From a practical perspective, a lawyer who keeps personal information separate from practice records will also find it easier to "pack up" when moving to a new practice.✧

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

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

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

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

BC lawyers, articled students and law students have several new learning resources — thanks to funding from the Law Foundation and in co-operation with the Law Society, the CLE Society of BC and the University of Victoria and University of British Columbia Faculties of Law.

Online learning resources for lawyers and law students

CLE online conferences and archives

Since February 2004, over 600 lawyers and their staff have participated in real-time CLE online conferences from their desktops in more than 65 communities across BC. The CLE Society of BC will soon provide 24-hour access to online archives of these programs. The archived conferences will be available in components, so lawyers and legal support staff can access the individual presentations they need quickly and at a reasonable price.

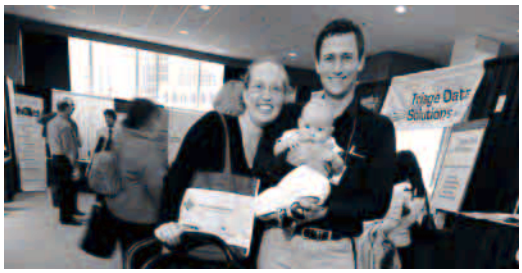
CLE is planning approximately 20 new online conferences over the next year. Visit www.cle.bc.ca for details or contact Ron Friesen, Director of Education, at rfriesen@cle.bc.ca.

Legal writing centre

A legal writing centre that includes links, resources and references for articled students and lawyers was developed in 2001 and is available in the Licensing & Membership/PLTC section of the Law Society website at www.lawsociety.bc.ca.

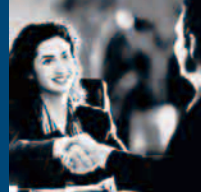
New law school resources

A legal research support centre that provides a step-by-step approach to conducting legal research is available to law students at the University of Victoria law school. Another recent educational initiative, funded for UBC and UVic law students, is an online course on business negotiations that uses a variety of resources and tools relevant to business law.



AIR INDIA WAS NOT ONLY one of the most complex trials in Canadian history, but among the most technologically advanced. It's not surprising then that both the trial and the technology gained star billing in a mock trial (top right) based on actual events and evidence, all at the Pacific Legal Technology Conference on October 14. Lawyers at the conference relived history and looked into the future of trial presentation techniques. It was just one of more than 20 choice presentations on technology relevant to legal practice today, led by more than 30 presenters for more than 230 conference participants.

For lawyers who missed the conference but would like the papers, these are available for purchase. See "Articles/Papers/Precedents" in the Practice Support section of the Law Society website at www.lawsociety.bc.ca. The Pacific Legal Technology Conference was presented by the Law Society, Trial Lawyers Association of BC, Canadian Bar Association and ABA Law Practice Management Section.



Equity Ombudsperson

Creating the culture of choice

Sexual harassment: Recognizing it. Dealing with it.

I'm introducing a series of articles to help lawyers create in their firms what I call "the culture of choice" — essentially a workplace where everyone feels they belong. In this culture, people know they are expected to act professionally and respectfully, to treat each other fairly and to do their very best.

Instilling these values in your workplace is not a luxury — it is the right thing to do and it is essential for people to stay productive.

A fair and equitable workplace does not tolerate sexual harassment, a form of gender discrimination. As the Equity Ombudsperson for the last six years, I have seen common themes emerge — and harassment is one of them. Many law firms have policies to deal with sexual harassment, yet people in the firm still may not be aware of what these mean from a practical perspective. The firm may never have received a complaint under the policy, yet a problem may still exist.

I have discovered a lack of clarity as to what behaviour is acceptable and not acceptable under some harassment policies. I have received many calls from people who are unsure if a workplace problem they face amounts to sexual harassment and just how a complaint would be addressed.

To move your firm toward a culture of choice, you'll want to do more than adopt workplace polices. You'll want a wide understanding of the meaning of those policies and a commitment among your colleagues and staff to adhere to them. In subsequent columns, I will show how firms can tackle various forms of discrimination. In essence, you have an opportunity to push aside an old, outdated culture to make room for a new one that will serve you better.

What is sexual harassment?

In *Janzen* v. *Platy Enterprises Ltd.* [1989] 1 SCR 1252, the Supreme Court of Canada concluded that: "… sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment."

Despite this definition, subsequent case law and heightened public awareness, sexual harassment continues to have significant impact on lawyers, students and staff in the workplace. It also remains a somewhat cloudy concept for many.

From a practical perspective, sexual harassment means unwelcome sexual advances, requests for sexual favours and other verbal or physical behaviour of a sexual nature when:

- submission to the behaviour is used as a term or condition of employment;
- submission to or rejection of the behaviour is used as the basis for an employment decision; or
- the behaviour has the purpose or effect of interfering with an individual's work performance, or creates a hostile or offensive environment.

When any unwelcome or unsolicited sexual conduct is imposed on a person who regards it as offensive or undesirable, *it is sexual harassment.*

The five common types of sexual harassment:

Sexual harassment is typically directed at women, but men can also be victims. Here is a brief description of the five common types:

1. **Threatening** – A person is threatened or offered rewards — promotions, raises, etc. — in return for sexual favours. A direct or implied threat often accompanies such a proposition, making it clear that the victim's career will be jeopardized if he or she doesn't comply with the request.
2. **Physical harassment** – This occurs when a person is unwillingly touched. Some examples of physical harassment include, but are not limited to: touching a person's clothing, hair or body; hugging, kissing, patting or stroking; massaging a person's neck or shoulders; or standing close to or brushing up against a person.
3. **Verbal harassment** – This comes from anyone within the firm and or other workplace or a person who does business with the firm or company. Some examples are: referring to an adult as a babe, honey, girl or stud; whistling at someone; turning work discussion to sexual topics; asking personal questions of a sexual nature; making sexual comments about a person's clothing, anatomy or looks; or asking someone repeatedly for dates and refusing to take no for an answer.
4. **Non-verbal harassment (body language)** – Examples of non-verbal harassment include: suggestive looks; prolonged staring; giving

continued on page 16

Sexual harassment *… from page 15*

unwanted personal gifts; winking and making sexual gestures with the hands or body movements.

5. **Environmental harassment** – Sexually suggestive pictures or objects displayed in the workplace may offend people. These items depict women or men as sex objects. It is important to note that, if your office is a place where others have to enter to do work, you must ensure that you are not causing a hostile or offensive environment.

Consequences

Sexual harassment is harmful, not only to the perceived victim, but to the entire workplace. It can cause staff turnover, absenteeism, low morale, reduced productivity, loss of firm reputation and costly litigation or human rights complaints, as well as stress and problems to the general health of the people involved.

Dealing with harassment

As a complainant: After you recognize that a behaviour constitutes sexual harassment, you have a number of options:

Informal options:

- Sometimes a person is unaware that his or her behaviour is offensive until someone points it out. If the behaviour is an isolated event and might have been unintentional, consider telling the person politely, but firmly, that it bothered you and ask him or her to stop.
- Follow an internal procedure within your firm to report the behaviour.
- Contact the Equity Ombudsperson to assist you with your options on a confidential basis.
- Consider mediation.

Formal options:

- Make a formal complaint to the Law Society.
- Make a human rights complaint and/or a civil action.

Law firm partners (employer): If you are a partner in a firm and you observe questionable behaviour directly or receive a complaint, you must respond, seriously and in a timely manner. The Equity Ombudsperson can assist your firm on a confidential basis.

Lawyers also have a professional obligation not to engage in sexual harassment, or other forms of discrimination, as set out in Chapter 2 of the *Professional Conduct Handbook.*

Preventing sexual harassment

We are all responsible for helping maintain a work environment free from sexual harassment. The first step is prevention. Whether you are a partner, associate, student or a staff member, there are several things that you can do to prevent sexual harassment.

For everyone in the firm:

- Monitor your behaviour. Think about how your words and actions might affect others' self-esteem, job performance and attitudes toward work.
- Observe what goes on in your work area. If you suspect that inappropriate conduct is occurring, tell the personal responsible for addressing the conduct.
- Dress and carry yourself appropriately for your job.
- Don't smile, laugh at or encourage harassing behaviour.
- Become acquainted with your internal firm policy on sexual harassment.

For partners and associates with supervisory responsibilities:

- Educate employees about sexual harassment through informal or formal discussions and/or training; or by distributing a copy of your firm's policy for dealing with sexual harassment to everyone in your working group.
- Promote a safe and respectful work environment by encouraging employees to tell harassers to stop and by publishing polices on respectful workplace behaviour.
- Take all allegations of sexual harassment seriously. If any member of the firm comes to you with a complaint, take action right away.

What kind of behaviour is okay?

Even after learning the definition of sexual harassment, many people still find themselves asking what kind of behaviour isn't sexual harassment. For example: *Is it okay to hold a door open for a woman? Will I get in trouble if I compliment someone on their clothing or their new hair style? Is telling an off-colour joke considered sexual harassment?*

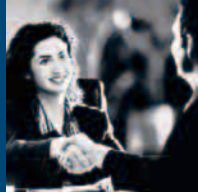
While there aren't always clear-cut answers to questions such as these, ask yourself the following questions:

> *Would I want my daughter, wife, sister, son, brother or husband subjected to this behaviour?*
>
> *Is the behaviour likely to intimidate or belittle the recipient?*
>
> *Is it possible that the behaviour would be misinterpreted?*

The bottom line is fairly simple. *If you are in doubt about whether something might amount to sexual harassment, don't do it!*

* * *

Next time, I'll take a closer look at sexual harassment scenarios that can arise in law firms, as in any other workplace. If you have questions about sexual harassment or other forms of discrimination, or would like assistance, you can contact me, Anne Bhanu Chopra, on my confidential, dedicated telephone line at **604 687-2344** or by email to achopra@novuscom.net.✧



Provincial Court can check if in doubt of counsel's status

The Law Society and the Provincial Court have agreed on a protocol whereby judges can confirm that a person appearing as counsel is a practising member of the Law Society of BC or a member of another law society who is permitted to practise temporarily in BC. The protocol places the Provincial Court in a better position to verify the identity of those appearing as counsel, when that appears necessary, and to bring unauthorized practice to the attention of the Law Society.

The protocol, as adopted by the Benchers and the Court in October, reads:

> **Unauthorized Practice**
>
> When a Judge or JJP (Judicial Justice of the Peace) becomes aware of a person who is not a lawyer holding him or herself out to be a member of the Law Society of British Columbia or engaging in the unauthorized practice of law contrary to the *Legal Profession Act*, 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. These complaints allow the Law Society to take action to protect the public from untrained, unregulated and uninsured legal service providers.
>
> Under s. 15(1)(e) of the *Legal Profession Act* and Rules 2-10.1 to 2-17.1 of the Law Society Rules and the National Mobility Protocol, members of the law society of another Canadian jurisdiction may be entitled to provide legal services in British Columbia on a limited basis if they are practising members in good standing of that other law society. There is no requirement for such lawyers to confirm their attendance in British Columbia with the Law Society of British Columbia. However, the Law Society of British Columbia can confirm whether the lawyer is entitled to practise law as a visiting lawyer in British Columbia pursuant to the Rules.
>
> Confirmation of whether a person is a practising member of the Law Society of British Columbia may be obtained by checking the Lawyer Look-Up on the Law Society's website at www.lawsociety.bc.ca or by telephone at 604 669-2533. Confirmation of whether a person is a lawyer in another jurisdiction in Canada and entitled to practise law in British Columbia on a limited basis may be obtained by contacting the Unauthorized Practice Department of the Law Society of British Columbia by telephone at 604 669-2533 or by sending an email to: uap@lsbc.org.

This text is an addendum to a 2004 protocol with the Provincial Court. That protocol guides judges and judicial justices of the peace who may be considering a complaint about a lawyer and 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 judicial justice of the peace 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 updated Provincial Court protocol is available in "Articles/Papers/Precedents" in the Practice Support section of the Law Society website at www.lawsociety.bc.ca.✧

Canadian Payments Association

Canadian cheque specs change — December 2006

The Canadian Payments Association has published new cheque specifications this year that will apply to all cheques in Canada as of **December 31, 2006**. The changes are in preparation for Canada's move to cheque imaging, for more efficient processing and clearing.

The date field on cheques must display one of three numeric formats: DDMMYYYY, MMDDYYYY or YYYYMMDD (with the appropriate field indicators displayed below the date to identity which format is being used).

There are other requirements, including minimum size, specific printing requirements on the back of cheques, standardized positions for key fields on the front and back of cheques and a prohibition on elements that might prevent the capture of key data, such as inverse printing, italics and slanted font forms.

The Canadian Payments Association is advising organizations that custom print their own cheques to review these specifications and to confirm that they meet the new requirements by providing samples of their new cheques to the quality assurance division of their financial institutions. For more information, see www.cdnpay.ca.✧

Credentials hearings

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement. If a panel rejects an application, the published summary does not identify the applicant without his or her consent.

For the full text of hearing panel decisions, see the Regulation & Insurance section of the Law Society website at www.lawsociety.bc.ca.

◆

George Edward Davis

Vancouver, BC
Called to the bar: August 1, 1985
Voluntarily ceased membership: January 1, 2004

Hearing (Application for reinstatement): May 17 2005
Panel: Anne Wallace, QC, as a one-Bencher panel
Report issued: July 27, 2005 (indexed as 2005 LSBC 32)
Counsel: Henry Wood, for the Law Society and Derek Brindle, QC, for Mr. Davis

Mr. Davis, who voluntarily ceased membership in the Law Society on January 1, 2004, subsequently applied for reinstatement. The Credentials Committee referred the application for hearing.

Mr. Davis had practised law for over 30 years and was experienced in the practice of bankruptcy and insolvency law.

At the time he ceased membership, Mr. Davis was the defendant in a civil action. The BC Supreme Court subsequently found that he had counselled clients to transfer assets in circumstances that the transfer amounted to a fraudulent conveyance in a transaction, a finding which was upheld by the BC Court of Appeal.

The hearing panel noted that it needed to decide on the whole of the evidence, not just that case, whether Mr. Davis is qualified to be reinstated. The panel took into account that the outcome of the court case had come as a surprise to Mr. Davis, that his actions were not unprecedented and that the courts had not suggested he had been dishonest.

Before the panel were letters of reference and support for Mr. Davis from senior members of the bar and leading counsel in this area. These lawyers described him as capable, honourable and a person of honesty and integrity. Mr. Davis also presented his curriculum vitae, which showed that he had made many contributions over the years to the community.

The panel found that Mr. Davis had demonstrated that he was an asset to the legal community and the community at large and that he was of good character and repute and fit to be a member of the Law Society.

The panel granted Mr. Davis' application for reinstatement, on the condition that:

- an undertaking he had previously given to the Credentials Committee remains in effect and that he accordingly must undertake to obtain Law Society approval before setting up in private practice;
- he not advise on any insolvency or estate planning matters except to his direct family;
- he pay the reinstatement fee; and
- he pay costs of the hearing.

Note: Although Mr. Davis' application has been approved, as of October 2005 he had not yet completed steps to reinstate.

◆

Robert Bruce MacAdam

Victoria, BC
Called to the bar: September 13, 1983
Voluntarily ceased membership: January 1, 1999
Reinstated: September 15, 2005

Hearing (Application for reinstatement): August 4, 2005
Panel: John J.L. Hunter, QC, as a one-Bencher panel
Report issued: August 8, 2005 (indexed as 2005 LSBC 34)
Counsel: Herman Van Ommen, for the Law Society, and Robin N. McFee, QC, for Mr. MacAdam

Mr. MacAdam, who voluntarily ceased as a member of the Law Society in 1998, applied for reinstatement in 2005. His application was referred to the Credentials Committee, which ordered a hearing.

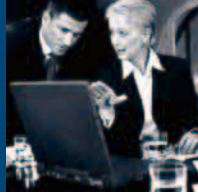
The credentials hearing panel addressed three problem areas.

First, during his time as a sole practitioner in family practice in Golden, Mr. MacAdam was the subject of four conduct reviews, each of which led to a citation. Three of the citations were for discourteous conduct towards other lawyers, clients and court personnel.

The panel observed that Mr. MacAdam had demonstrated an arrogant and insensitive approach to other people and lacked awareness about the effect of his words on them. None of the incidents involved financial matters or provided Mr. MacAdam with any benefit.

The second area of concern was a citation that arose from a *Wildlife Act* offence (shooting a grizzly bear without the appropriate licence). Mr. MacAdam committed this offence and subsequently attempted to avoid responsibility. A discipline hearing panel had found him guilty of conduct unbecoming a lawyer. In addition to being penalized by the Law Society at the time, Mr. MacAdam was ostracized in the hunting community.

The panel took note that these incidents occurred over a short period (between 1993 and 1995), when Mr. MacAdam faced personal difficulties



and also pressures in setting up his own practice. Mr. MacAdam made no attempt to justify or excuse the actions that led to these conduct reviews and citations. He accepted that his conduct was not appropriate and assured the panel it would not be repeated. The panel found that, when Mr. MacAdam decided in 2003 he wished to return to practice, he took treatment to deal with his problems better and improve his reaction to pressure.

A third area of concern related to Mr. MacAdam's medical fitness. Both the Law Society and the panel, however, were satisfied from the evidence that, so long as Mr. MacAdam continued to comply with his recommended medical treatment, that issue should not pose an impediment to his reinstatement.

Mr. MacAdam had been offered a position as a lawyer in public service, conditional on his reinstatement. The panel believed this supervised practice setting would be ideal for him.

The panel was satisfied that Mr. MacAdam was of good character and repute and fit to become a barrister and solicitor, and approved his application for reinstatement on the condition that:

- he practise only in a supervised setting and not as a sole practitioner; and
- he continue to receive medical assistance and take his recommended medication.

No time limit was placed on the requirement of supervised practice, and the panel noted that Mr. MacAdam could apply in future for a variation of the condition.✧

Unauthorized practice actions

Court injunctions

On application by the Law Society, the BC Supreme Court has ordered that **John Ruiz Dempsey,** of Surrey, cease holding himself out as a lawyer, appearing as counsel or otherwise practising law for a fee: Law *Society of BC* v. *Dempsey* 2005 BCSC 1277.

The court also prohibited Mr. Dempsey from commencing, prosecuting or defending a proceeding in any court in his name or in the name of another person unless he is an individual party to a proceeding acting solely on his own behalf. In addition, the court declared Mr. Dempsey to be a vexatious litigant pursuant to s. 18 of the *Supreme Court Act* and ordered that he be prohibited from continuing or commencing any legal proceeding on his own behalf in any court in BC without leave of the court.

Dawn Lagerbom, a notary public of North Vancouver, has consented to a BC Supreme Court order not to appear as counsel, to draw documents for judicial or extra-judicial proceedings or a proceeding under statute, to give legal advice or to offer any of these services for a fee — other than those services that are the lawful practice of a notary public. Ms. Lagerbom was ordered to pay costs of $1,000: July 14, 2005.

Greville Edgelow and **Edgelow Business Agencies Ltd.**, of Abbotsford, have consented to a BC Supreme Court order that Mr. Edgelow make no representation that he is a lawyer and that neither he nor his company draw corporate documents or documents relating to a judicial or extra-judicial proceeding, a will, trust deed, power of attorney or document relating to probate or estate administration or an instrument relating to property for registration in a public office. The order also prohibits them from negotiating for the settlement of a claim or demand for damages, giving legal advice, placing at the disposal of another person the services of a lawyer or holding themselves out as qualified or entitled to offer any of these services for a fee: July 27, 2005.

Undertakings

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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