



Benchers' Bulletin

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President's View

Benchers' Bulletin

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

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

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Building for the future: Law Society initiatives in 2006 and beyond

by Robert W. McDiarmid, QC

I want to take my first column as President to introduce our plans at the Law Society to build for the future. This is a key theme for 2006, and there is a reason.

We want to build initiatives that ensure the Law Society's regulatory and governance programs represent the best practices among self-regulating professions, both in Canada and abroad. By doing so now, we can secure a future in which the public continues to be served by a legal profession that is demonstrably independent, competent and honourable.

In 2006, I'd like to address three major initiatives that underlie our plans for building the future.

Helping small firms and sole practitioners

The first initiative is to provide greater assistance to small firms and sole practitioners.

More than half of the lawyers in this province practise in firms of five lawyers or fewer and more than half of the law firms in BC consist of one or two lawyers.

Small firm lawyers are the backbone of our profession — they provide competent advice at a reasonable price to the vast majority of British Columbians who need a lawyer's services. But, ironically, small firm lawyers often carry more complex responsibilities than lawyers in larger firms. For example, small firm lawyers often assume greater administrative responsibility and serve a wider variety of clients.

Last year, I asked the Benchers to devote a weekend retreat to the challenges faced by small-firm practitioners. After discussing and debating the issues, we agreed that the Law Society should do more to assist sole practitioners and small-firm

lawyers. At the same time, the Lawyer Education Task Force was working on a proposal for a post-call education program for lawyers who wish to open a new practice.

As a result, the Benchers, at their November meeting last year, approved the development and implementation of the New Firm Practice Course, which will be offered online and involve self-assessment components. It will be available to all lawyers, and will be mandatory for those who, in future, move into a solo or small firm practice.

The purpose of this program is to provide support to sole practitioners and small firms to better enable them to meet the challenges of practice. The course won't be introduced until 2007, but during 2006 we will be consulting with the profession to ensure the program best delivers what lawyers want.

At present we are thinking that it should have two mandatory components. The first is "Setting up and operating a law practice." This would include such topics as trust accounting, law firm technology and file retention. The second would be "Avoiding pitfalls" and would deal with conflicts, client management and reminder systems. Optional modules might include business planning, time management and practice management.

The New Firm Practice Course will be available online, free of charge and should take no more than eight hours to complete. There will be a self-testing component, but no final exam. Lawyers will have six months in which to complete the course, and current lawyers will be "grandfathered." There is the possibility down the road that the course might be offered live following PLTC



sessions to accommodate out-of-town students who are in Vancouver or Victoria for PLTC.

We are also working with the BC Courthouse Library Society and the Canadian Legal Information Institute (CanLII) to provide greater online access to legal materials. This will help level the playing field between rural lawyers who do not have easy access to a courthouse library and city lawyers who are often only a few steps away from the nearest library.

Government relations

The second initiative is to ensure that the Law Society has a strong consultative relationship with the provincial government and, through the Federation of Law Societies of Canada, with the federal government.

The Law Society and Attorney General Wally Oppal — and I should add the Canadian Bar Association — share a common goal of improving public confidence in the justice system. This creates a natural opportunity for the Law Society and the provincial government to work towards the same end.

As President of the Law Society, I look forward to working with the Attorney General and the provincial government to ensure greater public respect

for and confidence in the justice system.

Trust assurance

Another major initiative is our new trust assurance program.

This program will bring a fresh, superior approach to the fulfilment of our fiduciary duties in the management of trust funds.

The trust assurance program will benefit the profession by providing education and assistance to lawyers. For example, we plan to document the most common trust accounting problems and to suggest solutions. This will ensure that lawyers are properly informed of and compliant with the Law Society's accounting rules.

The program will also offer increased protection to the public because it will allow the Law Society to detect accounting irregularities earlier and will help us to cut the severity and number of defalcation claims. In other words — no more Wiricks.

The new trust assurance initiative will be fully funded through the Trust Administration Fee. We are also hoping to eliminate the need for an external accountant's report for 95% of all law firms by January 1, 2007. Instead, lawyers will be required to file a self-report on their annual trust

activities.

I have no doubt that the new trust assurance program will have beneficial results for both the public and the legal profession. Details of the program are set out in this *Bulletin*, beginning at page 4.

Summary

Of course, these are not the only things the Law Society will be doing this year. We'll still be dealing with credentials applications, we'll still be investigating complaints and — yes — we'll still be collecting your fees.

But behind all of it is our commitment to a strong, ethical, committed and independent legal profession for the people of British Columbia.

I'd also like to add a personal initiative for 2006. I am a firm believer that one of the most important attributes of our practice as lawyers is professional collegiality. Without collegiality, without personal trust and respect, I think it is difficult to call ourselves professionals.

With that in mind, it is my personal goal to attend at least one meeting of each local bar association meeting in BC. If I can do that, and if my visits add to our professions's collegiality, I think I will have succeeded in my term as President. ♦

Law Society Award: call for nominations



Lawyers are encouraged to nominate a candidate to receive the Law Society Award in 2006. Nominations must be received by **Friday, May 5, 2006**.

The Law Society Award, offered every two years, honours the truly exceptional within the profession, based on the criteria of integrity, professional achievement, service and law reform.

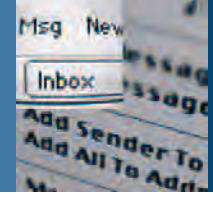
The Award is made chiefly in recognition of contributions to the advancement of the profession or the law, but public service outside the legal profession will be considered.

Past recipients are Dean Emeritus George F. Curtis, QC (1986), Oscar F. Orr, MBE, OBC, QC (1988), Chief Justice J.O. Wilson (honoured posthumously, 1992), Mr. Justice Peter D. Seaton (honoured posthumously, 1994), Alfred Watts, QC (1996), The Hon. Martin R. Taylor, QC (1998), The Hon. E.N. (Ted) Hughes, QC (2000),

The Hon. Kenneth E. Meredith (2002) and Richard R. Sugden, QC (2004).

When submitting a nomination, please include the candidate's *curriculum vitae*, and your views on why he or she should receive the Award. *Please note that a nomination must be accompanied by this material for it to be considered by the Selection Committee.*

If given in 2006, the Award will be presented at the Bench & Bar Dinner this Fall. For details, please see the enclosed circular or visit the Law Society website at www.lawsociety.bc.ca. ♦



The Benchers have given the nod to new initiatives on trust assurance, custodianships, new firm practice and government relations, beginning this year

Priorities for the year ahead

In 2006 the Benchers and staff began work on a number of operational priorities to improve the Law Society's effectiveness as a regulatory body and to assist BC lawyers.

Approved by the Benchers, these priorities will bring about changes in several areas:

- **A new trust assurance program** – The Law Society is restructuring its trust assurance program in two key respects: 1) law firms will continue to file an annual trust report, but in most cases will no longer need to engage an outside accountant and 2) the Law Society will conduct regular audits in law firms on a six-year rotation, or more frequently if required. The program will begin in 2006 and be phased in over the next three years. It is intended to assist lawyers and their staff in meeting trust accounting standards as well as addressing serious trust problems where they exist. The program is funded entirely by the trust administration fee (TAF): see details below.

- **Custodianships to be managed in-house** – Under the *Legal Profession Act*, the Law Society can apply for the appointment of a practising lawyer as the custodian of a lawyer's practice to temporarily oversee or wind up the practice, such as in a discipline matter or following the death or illness of a lawyer. For efficiency and to reduce costs, the Society intends to manage many of these custodianships directly rather than contracting them out, beginning later this year: see page 6.
- **Government relations strengthened** – The Law Society is working to make its relationship with government more effective, to enhance all channels of communication and cooperation across ministries and to seek regular consultation on matters affecting the public interest in the administration of justice, the profession and the practice of law: see page 6.
- **"New Firm Practice Course" coming soon** – Early in 2007, the Law Society will offer a free, self-paced course via the internet to assist



lawyers who are moving into solo or small firm practice. Lawyers newly setting up in small firm practice will complete the course, and it will be voluntary (and encouraged) for all others: see page 7 for details.

A new trust assurance program – more effective, and less costly for firms

The Law Society is responsible for setting and upholding standards of financial integrity in the legal profession — which includes standards for trust accounting. A rigorous trust assurance program is important for the protection of clients and others who rely on lawyers to handle trust money, and to help prevent claims against the trust protection coverage.

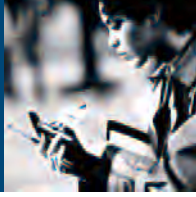
BC law firms fulfil their obligations by

meeting accounting requirements of the Law Society Rules. Currently, firms file with the Law Society an annual trust report, which includes both a self-report component signed by a lawyer and an accountant's report prepared by an outside accountant retained to conduct a specific review of books and records. The Society follows up with firms on notable exceptions in the reports. Significant

problems or exceptions in a report can result in an audit of the firm's books and records.

Most recently, the Society has studied trust compliance schemes from across Canada and internationally and reviewed its own program with an eye to making reforms.

What is clear is that regular law firm audits are a primary feature of the



trust assurance programs in several other jurisdictions. In December, the BC Benchers approved a three-year plan to restructure the Law Society's own program to make it more effective and less costly for law firms.

What has changed?

A new model of trust assurance, to begin in 2006 and be phased in over three years, will consist of these key components:

1. **Law firms will now file their trust reports directly** – By late 2006, BC law firms will be asked to file a revised form of trust report. In most cases, firms will simply self-report on their trust activities and will no longer need to retain an outside accountant to review their records or complete a portion of the trust report.
2. **Law Society will conduct site visits / audits** – The Law Society will begin conducting rotational audits in law firms. The intention is to make each BC firm subject to an audit every six years, or more frequently if there is reason to do so.

How will audits be prioritized?

Law Society Rule 3-79 authorizes the Society to conduct an examination of a lawyer's books, records and accounts to ensure they are properly maintained. Rule 4-43 provides for a Benchers to order the investigation of the books, records and accounts of the lawyer or former lawyer who may have committed a discipline violation.

To date, most Law Society audits have been in response to situations of identified risk. It is important to note that law firms in which serious problems have been identified will continue to receive highest priority as part of the Law Society's program of forensic audits and investigations. In deciding whether other firms will receive priority for an audit, the Law Society will weigh various factors, such as whether a firm has had significant

exceptions on previous trust reports or whether the firm has open files on financial difficulty or complaints.

As the Law Society collects more information through its trust report filings and audits, it will be better able to identify additional risk factors.

Because the Law Society is introducing a universal audit program, however, each BC law firm will be required to participate in an audit at some point. For most firms, this will be a straightforward review and will provide an opportunity for the firms to raise any questions they have on trust systems and procedures.

A rigorous trust assurance program is important for the protection of clients and others who rely on lawyers to handle trust money, and to help prevent claims against the trust protection coverage.

In that respect, the Law Society wants to give some priority to new law firms so as to help them set up accounting systems that work well and do not lead to problems down the road.

What are the advantages of the new program?

There are multiple benefits of the new trust assurance program:

- **Assistance to law firms, and new firms in particular** – The Law Society's trust assurance team will assist lawyers and their staff, in particular lawyers setting up in practice on their own or in small firms, to adopt proper accounting systems and procedures from the start.

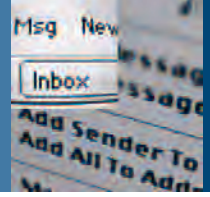
- **A cost saving for firms** – The new program will be funded entirely through the trust administration fee (TAF), which law firms now collect and remit in the course of their trust administration for clients. A primary purpose of the TAF has been to fund trust reforms. As noted, law firms will continue to file reports on their own trust activities and be subject to periodic Law Society audits. But by early 2007, it is expected that 95% of firms will be relieved of the requirement to engage an outside accountant to prepare a trust report.

- **Earlier detection of serious problems** – By introducing improved risk analysis as a basis for deciding priority audits, the Law Society will be better prepared to detect serious trust breaches in the few firms where these exist, and to do so earlier. Taking proactive steps is intended to prevent thefts and claims against the Society's Part B (trust protection) insurance coverage.

- **Greater confidence in the profession and the public** – The Law Society intends its trust compliance program to enhance the confidence of lawyers, clients and the public as a whole. By being at the forefront of trust assurance reform, the profession can take pride in its standards and in the prevention of substandard or improper trust handling by a few lawyers that may tarnish the reputation of many.

More information

More information will be available in the "Regulation & Insurance / Trust Assurance & Reporting" section of the Law Society website at www.lawsociety.bc.ca later this year. Law firms can also expect to be advised directly of any changes in advance of their 2006 trust report filing. ♦



Managing custodianships in-house — for efficiency and cost-reduction

To realize greater regulatory efficiency, the Benchers have approved a plan to restructure the Law Society's custodianship program, beginning in 2006. The key change is that the Law Society will have staff lawyers seek court appointment as custodians of a lawyer's practice when that is required, rather than retain outside lawyers.

Section 50(1) of the *Legal Profession Act* permits the Law Society to apply for a BC Supreme Court order appointing a practising lawyer as the custodian of another lawyer's practice. The custodian takes control of all or part of the property of the practice and arranges for the temporary conduct of the practice or its winding up, depending on the terms of the order. The court makes an order appointing a custodian of a lawyer's practice if sufficient grounds exist — such as following a lawyer's disbarment or suspension, death, incapacity by reason of illness or the neglect or abandonment of a practice.

When a less formal option appears workable, a lawyer in need of assistance may arrange for another lawyer to serve as a locum.

This is not always possible. About two-thirds of custodianships arise from discipline matters, and these situations generally call for formal custodianships. Discipline-related custodianships can be complex and



costly. This is particularly true if the Law Society is also conducting a forensic audit and investigation of the lawyer's practice at the time.

At present, the Law Society asks the court to appoint outside lawyers to serve as custodians. Lawyers who accept an appointment deliver a valuable service to clients of the firm, to the Law Society and to the profession as a whole.

The Society has faced an increase in the number of custodianships in recent years. Over the past 10 years, there were 86 custodianship appointments, an average of 7.8 per year. In

the past five years, the average increased to 9.6 appointments per year. Between 2000 and 2004 the average cost of discipline-related custodianships rose sharply, compared to the previous five-year period, as did associated audit and investigation costs.

To reduce these costs and stabilize them in future, to better manage custodianship procedures and to provide linkage internally between the custodianship, audit and investigation functions, the Society will begin in-house delivery of the program later this year. ♦

Strengthening our communications with government

Sound government relations are important for the Law Society. The Benchers are working to establish active, consultative and cooperative relationships across government, both at a provincial level, and at the federal level through the Federation of Law Societies of Canada.

The Law Society has long enjoyed an

effective working relationship with the provincial Attorney General and Ministry staff, and values these relationships highly. The Society shares a keen interest in the administration of justice, including public confidence in the justice system, a matter which Attorney General Oppal recently flagged as a priority concern.

In addition to its communications with the Attorney General, the Law Society is working to build channels of communication with other provincial ministries. This is important, since legislative, policy and regulatory matters that impact on the Law Society and the legal profession often come from other branches of government.



The Society will take steps to communicate with government on issues of importance, and to offer assistance and expertise on legislative or policy changes that are within its mandate.

Above all, the Society is a self-governing profession with a statutory mandate to uphold the public interest in the administration of justice. It is not a political organization and therefore

needs to maintain a non-partisan and a multi-partisan approach in all its dealings with government and the opposition. ♦

“New Firm Practice Course” to meet the needs of small firms

Beginning in early 2007, BC lawyers who enter into a solo law practice or who join a small law firm will be expected to complete the “New Firm Practice Course” — a free, online course designed to cover the essentials of setting up and operating a practice.

The New Firm Practice Course will be a requirement for lawyers moving into solo or small firm practice and available to all other BC lawyers on a voluntary basis. Designed to be self-paced and self-testing, the course will allow lawyers to measure their own progress and understanding of key practice issues — ranging from practice management to trust accounting to technology issues and various pitfalls of practice. A lawyer will complete each self-testing component of the course before moving to the next, and the entire course will take six to eight hours to complete. There will be no course examination.

The Benchers approved the creation of the new course on recommendation of the Lawyer Education Task Force, chaired by Patricia Schmit, QC, now a Life Bencher. As the Task Force noted in reporting to the Benchers last November, “A solid ability to manage one’s practice is a key component to a lawyer’s ability to practise law competently and effectively.”

Why is the course planned for small firms?

More than one in two BC lawyers currently practises alone or in a small firm. And in many cases these lawyers face special challenges.

“Law Society data shows the great

majority of lawyers in sole and small firm practice provide effective legal services,” the Lawyer Education Task Force told the Benchers, “but as a group they are disproportionately faced with the pressures of geographic isolation, working alone or in small groups without ready access to colleagues in the profession, demands to attend to law office management and administrative work, rising overheads and narrower profit margins.”

The Task Force urged that the Law Society be proactive in “supporting sole and small firm lawyers in delivering quality legal services and sustaining viable law practices.” The New Firm Practice Course is a step in that direction.

Which lawyers will be required take the course?

The New Firm Practice Course is expected to be mandatory for 1) lawyers beginning a sole or small firm practice for the first time, 2) lawyers returning to sole or small firm practice after three or more years away from that situation and 3) lawyers in small firms who are new signatories on trust accounts. The exact criteria, including what constitutes a “small firm” for the purpose of the course requirement, will be confirmed in the near future, following consultations.

BC lawyers who practise solo or in a small firm on the date the New Firm Practice Course comes into effect will be grandparented and exempt from the course requirement. Similarly, lawyers who transfer to BC from jurisdictions that have implemented the Federation of Law Societies’ National

Mobility Agreement will be exempt for purposes of practising in BC — provided they are in sole or small firm practice in their home jurisdictions on the implementation date. All lawyers, however, will be encouraged to complete the course.

How will the course be structured?

The New Firm Practice Course will be offered via the internet, with topics covered in modular components. An online course has the advantage of being accessible to all lawyers regardless of the time or their location. It is ideal for self-paced learning. Lawyers will simply work through the components and complete the self-tests in their own time. Those who are required to take the course must complete all components within six months. In total, the course is expected to take no more than six to eight hours to complete.

What are the course components?

The Law Society is seeking feedback on course components that lawyers would find most useful. The current plan is for the course to offer these modules:

Setting up and operating a law practice

- trust accounting requirements, including trust reporting and working with a bookkeeper,
- tax, including employee income tax,
- interest income on trust accounts,

continued on page 8

*New Firm Practice Course ... from
page 7*

- technology in law practice, including office systems, e-filing and legal research and legal information resources,
- retainer agreements,
- acquiring retainer funds in advance and billing practices,
- file retention and disposal practices,
- law practice coverage during absences / continuity for catastrophic occurrences,
- withdrawing legal services.

Avoiding pitfalls in practice

- conflict checks, including systems
- client screening
- managing difficult clients
- identifying conflicts
- diary system
- file management and documentation
- delegation of tasks supervision
- avoiding being a dupe / avoiding fraud.

Related course materials will include links to practice management resources, further reading, forms, precedents, courses and contacts for information and practice support. Optional components are also planned — on creating a business plan and increasing profitability. In future years, live workshops on practice management may be offered to complement the online course.

The Law Society's Small Firm Task Force is undertaking consultations on the course and other issues affecting lawyers in small firms. If you have questions, suggestions or comments on the New Firm Practice Course, please contact the Task Force chair or staff liaison (see *What can the Law Society do to help the small firm lawyer?* for contact information). ✧

Small Firm Task Force consultation

What can the Law Society do to help the small firm lawyer?

The Law Society's Small Firm Task Force, chaired by Bencher Bruce LeRose, invites ideas from sole and small firm practitioners on programs to assist them in their law practices — and also ideas for the New Firm Practice Course, to be introduced in 2007.

Lawyers in solo and small firm practice account for more than 50% of practising lawyers in BC and a much higher percentage outside the Lower Mainland and Greater Victoria. They offer a vital service for people in most BC communities.

The Law Society wants to support small firm practice. A free online course is coming in 2007, designed to help lawyers in setting up a new law practice or strengthening an existing sole or small firm practice. Other support is already available — in particular, practice advisors who answer questions on ethics, practice and technology by telephone and email. Practice advice articles are regularly featured in the *Bencher's Bulletin*, and practice resources (checklists, precedents and the PLTC materials) are available on the Law Society website.

But are there other ways to help lawyers in small firms? The Small Firm Task Force is considering various ideas, including these:

- a mentoring program, which could include:
 - a telephone and email helpline to lawyers, by practice area
 - information packages on common practice issues (via the website, by telephone or in print)
 - mentoring relationships that pair volunteer mentors and mentees
- a law office technology advice and support program
- a locum system to provide sole and small firm practitioners with back-up

support (for vacations and for planned and unplanned absences)

- a campaign to promote the effectiveness and importance of small firm practitioners to
 - the public
 - all BC lawyers
- encouragement to lawyers, where there is market demand, to move to and stay in smaller communities and to law students to article in smaller communities.

Share your views

If you are a lawyer who practises alone or in a small firm, the Small Firm Task Force would like to hear from you on these questions:

- What challenges do sole and small firm practitioners face in your area of practice — or in your area of the province?
- Do you have ideas on how the Law Society can better support small firm practice, either as noted above or in other ways?
- Do you have suggestions for the New Firm Practice Course?

Please send your comments and any questions to:

Small Firm Task Force
Law Society of BC
845 Cambie Street
Vancouver, BC V6B 4Z9

Bruce LeRose, Task Force Chair
(brucel@tlb.bc.ca)

Alan Treleaven, Director of Education and Practice (atreleaven@lsbc.org)

The Task Force expects to make a report and recommendations to the Benchers later this year. ✧



Ensuring “best practices” in professional regulation

This issue of the *Benchers' Bulletin* recaps the Law Society's top operational priorities for 2006. Another important plan is underway this year that will position the Society to more efficiently and effectively resolve complaints, complete timely investigations and prosecute discipline cases.

“Our complaints and discipline work is among the most important and challenging we perform at the Law Society and at the very heart of our statutory mandate to protect the public interest,” says Law Society CEO Tim McGee. “For this reason, it is critical that we pursue a ‘best practices’ approach in all facets of these operations.”

To better deliver on the commitment, the Law Society is introducing a new organizational structure for its Professional Regulation staff and developing a number of new operational strategies.

The need for change

Why are changes needed? The answer can be found in part by looking at the reality of the complaints process today. The Law Society now handles, on average, 1,500 complaints a year. Experience has shown that approximately 90% of these complaints are service related, outside the Law Society's jurisdiction or not matters appropriate for its professional discipline process. It follows that the sooner and more reliably staff are able to categorize complaints, the better they can resolve service complaints, close out complaints that do not belong and refer others for further action. In turn, the Law Society can focus attention on investigating and prosecuting the much smaller number of complaints that require discipline.

To meet this challenge, the Society is reorganizing the current Professional Regulation group into two new units, each with a specific and focused

mandate. The reorganization will not result in increased staffing levels, but rather will better define roles and responsibilities for all existing positions and any vacancies that need to be filled.

A new Public Response Group – complaint intake and resolution

A new Public Response Group will handle all complaints at the point of intake and identify complaints that are service related and can be resolved

“Our complaints and discipline work is among the most important and challenging we perform at the Law Society ... For this reason, it is critical that we pursue a ‘best practices’ approach in all facets of these operations.”

– Tim McGee, CEO

informally or closed and complaints that should be investigated further as a disciplinary matter.

The group will be equipped with the right tools and mix of skills to perform this important “triage” function. The skill set of the staff team will be expanded as needed to ensure it includes a range of legal, mediation and customer service skills — all suited to addressing the vast majority of complaints the Law Society receives. The Society will develop a new, internal online case management system for logging, prioritizing and tracking all complaints.

A Prosecutions Group – investigation and counsel services

A Prosecutions Group is also being organized to handle the complaints that require further investigation and referral to the Discipline Committee. The primary responsibility of the Prosecutions Group will be to deliver high quality counsel services in the discipline area with a focus on consistency, thoroughness and fairness.

The Prosecutions Group will be managed and organized like a small in-house counsel firm, building on existing expertise to ensure the Law Society has the appropriate combination of senior and junior counsel expertise and experience as well as dedicated investigative, paralegal and administrative support. A strong consultative relationship between the Public Response Group and the Prosecutions Group will ensure that referrals are handled efficiently and that case preparation is coordinated smoothly.

A new position — that of Chief Legal Officer — will provide strong and focused leadership for the two new units and related functions. The Chief Legal Officer will have overall responsibility for all matters of professional regulation and will work to ensure that the Law Society achieves its goal of identifying and implementing best practices in all aspects of the complaints and discipline area.

These initiatives will be implemented over the course of the year. In taking these steps, the Law Society will build on its experience, take advantage of new technology and meet future expectations. These initiatives also help to ensure that, in the core area of professional regulation, the Law Society continues to serve the public interest and the profession in a manner that is accessible, responsive and transparent. ♦

Lindsay elected Bencher for Westminster



Jan Lindsay of Lindsay Kenney, LLP of Langley is a new Bencher for Westminster County for the 2006-2007 term. On January 24 Ms.

Lindsay received a majority of votes cast by Westminster County lawyers in the fifth round of a preferential ballot by-election. The by-election was needed to replace Gregory Rideout who was re-elected as a Bencher in November 2005 but

appointed to the Provincial Court Bench soon after.

For a full breakdown of the by-election results, see the Law Society website at www.lawsociety.bc.ca.

Jan Lindsay is counsel whose practice is devoted almost exclusively to insurance defence work, and she is regularly retained by ICBC on motor vehicle claims. A member of the Law Society Discipline Committee in 2005, Ms. Lindsay has also served as a non-Bencher member of the Law Society's Complainants' Review Committee. Her other contributions to the

profession include service with the Canadian Bar Association, including as a member and chair of the Automobile Insurance Committee, as a volunteer at CLE courses and seminars and as a volunteer for the PLTC mock trial program. Within the broader community, she has been a member and director of the Langley Children's Society and has served over the years as a manager or treasurer for several Langley minor hockey teams.

Ms. Lindsay joins Carol Hickman and David Renwick as Benchers for Westminster. ✧

Trust fund rules amended

The Benchers have approved changes to several Law Society Rules on trust accounting.

Funds received by a lawyer as joint personal representative are trust funds

The definition of "trust funds" in Rule 1 has been changed to include funds that a lawyer receives in his or her capacity as a sole or joint personal representative of a person or as a trustee under a trust if the appointment derived from a solicitor-client relationship.

Prior to the amendment, "trust funds" included funds received by a lawyer as a sole personal representative, but arguably not funds received by a lawyer as a joint personal representative. This distinction did not appear sensible. It also was arguable that the rules did not apply when a lawyer was appointed a joint personal representative with a non-lawyer. The Trust Review Department recommended that all trust transactions by a lawyer as a personal representative be included in the definition of "trust funds" so that the Law Society will be in a position to carry out its

responsibilities to the public.

Notification needed when lawyer withdraws from practice while a personal representative

A lawyer who withdraws from practice or becomes a non-practising or retired member must notify a client for whom the lawyer has been appointed the personal representative, executor or trustee. Rule 3-80 now requires that the lawyer confirm to the Law Society that he or she gave this notification. Lawyers should ensure that their office systems allow for ready identification of all files in which they are named as personal representatives.

Insurance-exempt, non-practising and retired lawyers need not file trust reports

Following changes to Rules 3-72 and 3-73, practising members who are exempt from the requirement to maintain professional liability insurance (under Rule 3-25), non-practising members and retired members are all excused from filing any portion of a trust report, provided they have not received any funds in trust or withdrawn any funds held in trust during

the preceding 12-month reporting period.

Previously, practising lawyers who were exempt from insurance and had not handled trust funds over this period were required to complete section A of the trust report, or file a statutory declaration. These lawyers will now file only their annual practice declaration, which will include a confirmation that they have not handled trust funds. Non-practising and retired members need not complete an annual practice declaration unless required to do so by the Executive Director.

From this point forward, a practising lawyer who becomes exempt from insurance, or a lawyer who becomes a non-practising or retired member, must provide a declaration to the effect that the lawyer will advise the Law Society if he or she comes into possession of trust funds and that he or she will comply with reporting requirements.

Rules 2-52, 3-51, 3-58, 3-72, 3-73, 3-74, 3-74.1, 3-78 and 3-80 have been revised to bring these changes into effect and can be consulted on the Law Society website at www.lawsociety.bc.ca. ✧



Margaret Ostrowski, QC prepared these profiles of Alix Sutherland and Lloyd Wilson in tribute to the life and work of our longest-serving members of the profession. Sadly, since these interviews and just before the Bulletin went to press, Ms. Sutherland passed away. This article is dedicated to her memory.

Voices of experience — stories of those who have gone before us

When we think of the people we call our colleagues, most likely to come to mind are the lawyers who work with us or perhaps those we have stayed in touch with since law school days. We may even keep those circles of colleagues, friends and acquaintances throughout our careers. But forging new friendships can be difficult, so it's always a rare treat to meet a lawyer who has travelled down a different road.

Margaret Ostrowski, QC was fortunate to have met not just one such lawyer, but two, in recent months. As she finished off her term of service as a Bencher for Vancouver at the end of last year, she reflected on the fact that the generation gap should not be a barrier that keeps lawyers apart. After all, law is a mentoring profession, and an ongoing dialogue between generations of lawyers made sense. She wanted to sit down with a couple of long-serving members of the profession to learn more about them as lawyers, and as people.

With this thought in mind and with the approval of the Women in the Legal Profession Task Force, she made arrangements to meet Lloyd Wilson, called in 1947, and Alix Sutherland, called in 1950. These two lawyers first donned robes in what seems like simpler times. There were fewer than a thousand lawyers in the province, five people running the Law Society office and, yes, much



Alix Sutherland recounted for Margaret Ostrowski, QC her early years in the profession, what brought her there and why she stayed. She will be greatly missed.

less law on the books.

But both Alix and Lloyd had to work hard throughout their respective careers, and they did so with determination and confidence. Having lived through the Depression and a World War undoubtedly gave them the necessary perspective and perseverance, and both received encouragement in their youth to do their very best. As Margaret discovered when she interviewed each of them, they shared a

few common traits that may explain their long years in the profession. Neither shied away from change when change made sense. This was so in both their professional lives and their personal lives.

Margaret hopes you enjoy these profiles of Alix Sutherland and Lloyd Wilson, people she came to respect deeply and to regard not only as colleagues, but as friends.

Alix Sutherland — quiet reflections on living life well

by Margaret Ostrowski, QC

Florentine art tastefully adorns the home of Alix Sutherland. In the bookcase near the large blue and gold patterned Italian vase, there are rows and rows of her collection of notable British trials from 1900 to the 1950s. Alix always loved mysteries and

stories of true crimes. As time proved, this turned into a love of the law as well. As of early this year, Alix was the longest practising female lawyer in British Columbia and carried on a part-time wills and estates practice in the Lower Mainland after 55 years in

the profession.

Alix was called to the bar on July 29, 1950. She grew up in the Kerrisdale area of Vancouver with one older

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Alix Sutherland ... from page 11

sister and attended Quilchena Elementary, Point Grey Junior Secondary and McGee Senior Secondary. She finished two years of a General Arts degree before entering UBC law school. In her teens Alix took a keen interest in crime stories and became a collector of newspaper articles and books; she followed the newspaper reports of the Harry Oakes murder in the '40s and was captivated. Although she had no family members with law background to guide her, her love of books and crime lore made the study of law a perfect match for her.

Alix said she wanted it known that she was not a violent person — she was, on the contrary, petite, shy and genteel — but she had been always fascinated with the “whodunit’s.” She said “in my law school days, when I should have been studying in the library, I would be reading from their British trials collection and couldn’t put the books down.” Alix was also

musical and had completed her last year of piano and was an Associate of the Toronto Conservatory of Music.

Alix’s father was a travelling cutlery salesman and was not home very often when she was young. Alix was influenced by her mother Winifred Forbes who she described as a workaholic. With true entrepreneurial spirit, Winifred established a shoe store at Hastings and Seymour, where her husband joined her and the two worked hard there to pay for their daughter’s university education. Winifred also asked Russell and DuMoulin, the law firm that incorporated her shoe business, to secure an articling position for her daughter.

Sitting next to Alix in her law school lectures were many young men who had returned from the war. She married one of them, James Sutherland, and they became one of the first couples practising law together in BC. Alix recalled that articling took place over the summers during law school and the work consisted mostly of searching titles in the land title office. She didn’t recall learning a whole lot and remembered that “we women students — the few of us that there were — used to get all the ‘joe jobs’.”

On her call to the bar, she and her husband established the law firm of Sutherland and Sutherland in Vancouver. Her husband knew how to type better than she did, so she had to teach herself how to type as they both did their own secretarial work. He was the public speaker and she was the shy one — as she admitted “I was and still am absolutely petrified of speaking in public.” She felt that she was more inclined to the solicitor’s part of the practice, and began to establish herself in that role. The couple moved the practice to Quesnel, but returned after three years.

She had two daughters, one in 1951 and one in 1955, and stayed at home while they were very young. One is now a college instructor in math and computers and the other is a computer programmer. She also had six grandchildren. Her husband James died in November 1992.

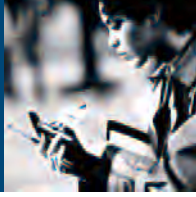
Even after so many years, Alix found law to be as interesting as ever and was of the opinion that it is a good place for women. “Law is a profession that is people-oriented,” she said. “And women are interested in people. Women should practise law ... and maybe women bring some different values to the practice.”

Alix felt that law kept her mind active. “I kept at the practice of law because there is no other occupation that I would be any good in,” she said. “And I don’t like sitting around.” She admitted to never getting rich practising law, but then “I never charged the high fees.”

In her view, the law had become complex or, she added on a whimsical note, “maybe it was always complex and I just didn’t realize it.” She liked computers and welcomed the change from the era of the typewriter — “It’s so easy to make changes on a computer. All my documents are on the computer.”

She always followed the adage “I don’t take on any work that I do not know how to do. I don’t want to make a mistake.” Alix kept her overhead low and attended regular CLE courses, although she didn’t know anyone when she attended.

Arthritis in her hands and back and some leg problems slowed her down in her later days, but Alix reflected on the satisfaction that comes from a life well lived: “I enjoy the independence of working on my own schedule and not for anyone else,” she said. “My husband and I started our practice from nothing and we made our living and raised a family.” A simple summary, but one that says it all. ♦



Lloyd Wilson — always up for the challenge

by Margaret Ostrowski, QC

He drives a red mustang and works out at the gym several times a week. He has played tennis since law school days and competed for Canada in seniors tournaments in Japan in 1997 and 1998. He was called to the bar in British Columbia in 1947 and has been practising full time ever since. Lloyd Wilson turns 90 this year and has the honour of being the longest practising lawyer in BC.

Lloyd first resolved to become a lawyer as a boy in 1928. It happened while hanging out on the porch one day with friends when one of them besmirched the good name of the profession, sneering that “lawyers were liars.” True to his future calling, Lloyd objected. He was to prove them wrong, and in dramatic fashion. He put aside his ambitions to be professional athlete and set his sights on becoming a lawyer.

Lloyd was born and raised in Ladner — his father was a clerk in the Ladner General Store. He had an older brother who was an avid ham radio operator and a supportive entrepreneurial mother who paid his way through university and taught him to play tennis. He also played badminton, basketball, baseball and lacrosse for the New Westminster Salmonbellies. His mother was a Burr and first cousin to actor Raymond Burr who inspired a dream in many young people in the 1950s and '60s to become Perry Mason. After an undergraduate degree in economics, Lloyd entered articles and began his formal legal studies. He had

five classmates, and lectures were given in the huts and law offices by notable judges and senior practitioners. He recalls excellent lectures from Senator Farris on international law.

However, after first year, Lloyd and his best friend Bob Wilson answered the call to arms in the war, joined the RCAF and trained as bomber command pilots. Sadly, Bob was killed on his first mission, but Lloyd returned from the war and entered UBC law school in the fall of 1945 (two months late). There were many more students now and the Law Society accorded him the benefit of reduced articling time for having served in the war.

He initially was articled to A. Hugo Ray of Walsh Bull & Company and subsequently to Percy White of Wilson White. “When I was a law articling student in 1940-41, I received \$15 per month,” he recalls. “After the war, I received \$20 per month, about the going wage.” He remembers buying revenue stamps and applying them to file documents at the Registry as part of his work. He was called to the bar on May 26, 1947 and received the standard two certificates from the Law Society that now hang on the wall in his Abbotsford office — one admitting him to the bar as a barrister and one as a solicitor.

His first venture was a solo solicitor’s practice in the offices of Moscrop Realty at Burrard and Robson where he had a small

cubicle. Lloyd always had sports as a number two interest and, at that time, the sport was rowing. Frank Wilson, lawyer and rowing coach, invited him to come to Chilliwack in his office where he practised for a year from April 1948 through March 1949.

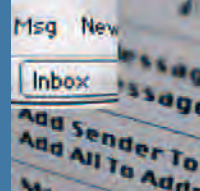
He set out his shingle on Essendene Street, Abbotsford on April 1, 1949. After 12 years he and his wife Shirley, whom he married in 1946, purchased two lots at the corner of Montrose Avenue and what is now George Ferguson Way, Abbotsford. They constructed his law office building in 1961 where he has practised to this day. Lloyd and Shirley raised their daughter Cindy in Abbotsford. He is well known as a general practitioner in the Fraser

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“My personal philosophy with respect to the practice of law is to be honest with one’s client and opponent and consider one’s service to the client first, and consider the fee second.”

– Lloyd Wilson





The Attorney General — on public confidence in the justice system

The Benchers had the pleasure of welcoming Attorney General Wallace Oppal, QC to their meeting in November.

Mr. Oppal took the opportunity to urge lawyers to help him in restoring public confidence in the justice system. He said it was time to address the length of time it takes for cases to come

to trial and the length of trials themselves and to acknowledge public concerns over use of conditional sentencing in criminal cases involving violent crime.

"I'm very passionate about our system ... I think it's the very best system in the world," Mr. Oppal told the Benchers. "All we have to do is compare our

system to other systems in the world and, on any objective analysis, I think we come out looking pretty good. But the fact is, the public is more and more demanding of us. We live in this era of accountability, where the public has high expectations of us and so we have to change the way in which we do business."



Mr. Oppal asked the profession to embrace new approaches, such as alternative dispute resolution and duty counsel programs. Another important way to instil public confidence in the justice system is by explaining the system better, and he invited BC lawyers to play a role in public legal education programs. He said it was particularly important to reach people who come from countries without a fair justice system and who may not understand the meaning of an independent judiciary and independent lawyers. "There are whole groups of people here who do not have familiarity with our system," he said. "What that means is that we have to step up our movement in public legal education." ♦

Lloyd Wilson ... from page 13

Valley. Shirley died in 1994, but Lloyd enjoys spending time with Cindy, her husband Rob and his two grandchildren, Adam and Sarah, ages 16 and 19. He also looks forward to his annual trips to Hawaii where he has made new friends. He received an honorary LL.B. in 1995 from the UBC law school.

Lloyd is not a computer dinosaur. He welcomed photocopiers, computers and the like as considerably

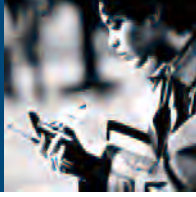
streamlining the practice of law — hours previously spent by staff typing are now just moments. "I find it difficult to attribute any negativity to the advantages of modernization," he says.

He has noticed a big change in the profession over the years, including greater diversity. "There were two women in my graduate class and four men — much different now," he notes. "Many nationalities are now engaged in practising law."

When asked what he had planned for

his 90th year, Lloyd wants to slow down a little and practise part-time. He has always enjoyed his work and feels that that enjoyment has enabled him to continue. "My personal philosophy with respect to the practice of law is to be honest with one's client and opponent and consider one's service to the client first, and consider the fee second," he says.

Cheery, energetic and full of life, Lloyd Wilson faces life with renewed vigour and looks forward to the adventure of a new day. As lawyers should. ♦



Patrick Nagle



The Benchers and staff at the Law Society were saddened by the passing of Lay Bencher and journalist Patrick Nagle on January 8.

“All of us at the Law Society will miss Patrick greatly,” said President Rob McDiarmid. “He took his role as a Lay Bencher seriously, always kept us aware of the need for transparency in our processes and understood the need for an independent legal profession.”

First appointed a Lay Bencher in 2002 and twice reappointed since then, Mr. Nagle served on the Law Society’s Discipline Committee, the

Complainants’ Review Committee and Access to Justice Committee.

Mr. Nagle’s life was celebrated at a wake — press-club style — held on January 28 where family, friends and colleagues paid tribute to him and his life’s work as a reporter. A *Vancouver Sun* memorial described his travels around the globe and the stories he told of its people and places in vivid detail on the pages of major Canadian newspapers: “His life, his work, touched countless people from the Arctic to Zimbabwe. His contribution to contemporary Canadian print journalism, from the chronicling of Pierre Trudeau’s political career to the fall of the Soviet Union, cannot be overstated. His gift to all of us was his ability to see things for how they are, not how some wanted us to see them.” ✧

2006 member cards

There was an unfortunate delay in distribution of the Law Society’s 2006 member cards. As a result, most lawyers will receive their cards in early March instead of in January.

The Law Society apologizes for any inconvenience this has caused.

If you have not received your member card and you require it immediately, please contact the Member Services Department at 604 605-5311 or memberinfo@lsbc.org.

Benchers adopt policy on outside appointments

The Benchers have adopted a formal policy whereby a Bencher will not accept an appointment or election to another organization that has objectives that may conflict, or reasonably be perceived to conflict, with those of the Law Society — unless the Benchers as a whole, the Executive Committee or the President approves.

The Independence and Self-Governance Committee had recommended the appointments policy as one way for the Benchers to demonstrate and uphold the Law Society’s independence. The Committee flagged concern that, in the United Kingdom and some other countries, the independence of law societies has been eroded in recent years. A criticism has been levied against those law societies that they failed to distinguish their role as a governing body, which must regulate in the public interest, from the role of an advocacy body, which promotes lawyers’ interests.

To reinforce the importance of Law Society independence in this province, the Benchers adopted the following governance policy, to apply to all future appointments. It sets out a general principle on when Benchers should decline appointments, but permits some flexibility for allowing exceptions on a case-by-case basis.

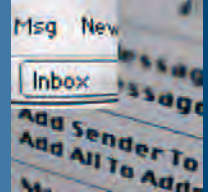
The policy reads:

Accepting appointment to boards or committees of other organizations

The object and duty of the Society is to uphold and protect the public interest in the administration of justice and, subject to the foregoing, to regulate the practice of law and uphold and protect the interests of the Society’s members. From time to time, a Bencher is asked to join, or run for election to, the board of directors or a committee of an organization, the objects of which may

not be the same as those of the Society, or a purpose of which may be to promote the interests of lawyers. In either case, the organization might, or might be perceived to, take a position that is contrary to or conflicts with the object and duty of the Society or decisions of the Benchers. The Benchers govern and administer the affairs of the Society and it is important for the promotion, protection, interest and welfare of the Society that the Benchers be, and be seen to be, independent of any organization described above.

Accordingly, Benchers must not accept appointment or election to a board of directors or a committee of an organization described above unless the Benchers, the Executive Committee or the President approves the appointment. ✧



Law Society will not extend CLE bursary funding

The Benchers have decided against extending Law Society funding for CLE Society of BC bursaries in 2006, at the recommendation of the Lawyer Education Task Force.

The Law Society has provided funding for the bursary program for the past three years to assist low-income lawyers in attending courses. In its review of the CLE bursary program, the

Lawyer Education Task Force expressed concern over limited take-up of the bursaries and the fact that the cost of continuing education remained high for lawyers, in particular for low-income lawyers outside the Greater Vancouver area who usually must devote additional time and travel expenses to attend courses. These lawyers have the greatest

difficulty accessing continuing education, and the bursaries are not sufficient assistance to them.

The Task Force has encouraged the Benchers to consider allocating funds to assist in developing new technologies and online learning programs that would be more widely available to all lawyers in BC. ♦

2006 committees and task forces

Much of the Law Society's work is carried out by its 14 committees and 10 task forces, as well as the subcommittees and working groups that provide support on specific issues or areas of research.

Here are the committee and task force chairs and vice-chairs in 2006. A full listing of committee members and committee mandates is available on the Law Society website under "About the Law Society" at www.lawsociety.bc.ca.

Committees

Executive Committee

Robert McDiarmid, QC, President

Access to Justice Committee

Terence LaLiberté, QC (Chair)
Carol Hickman (Vice-Chair)

Audit Committee

David Zacks, QC (Chair)
Bruce LeRose (Vice-Chair)

Complainants' Review Committee

Dr. Maelor Vallance (Chair)
Ian Donaldson, QC (Vice-Chair)

Credentials Committee

John Hunter, QC (Chair)
Gordon Turriff, QC (Vice-Chair)

Discipline Committee

Anna Fung, QC (Chair)
Ian Donaldson, QC (Vice-Chair)

Equity and Diversity Committee

Arthur Vertlieb, QC (Chair)
Patrick Kelly (Vice-Chair)

Ethics Committee

Gavin Hume, QC (Chair)
Joost Blom, QC (Vice-Chair)

Futures Committee

John Hunter, QC (Chair)
Anna Fung, QC (Vice-Chair)

Independence and Self-Governance Committee

Gordon Turriff, QC (Chair)
James Vilvang (Vice-Chair)

Legal Information and Technology Committee

Dirk Sigalet, QC (Chair)
Catherine Best, non-Bencher (Vice-Chair)

Practice Standards Committee

David Zacks, QC (Chair)
Michael Falkins (Vice-Chair)

Special Compensation Fund Committee

Bruce LeRose (Chair)
Michael Falkins (Vice-Chair)

Unauthorized Practice Committee

Glen Ridgway, QC (Chair)
William Jackson (Vice-Chair)

Task Forces

Alternative Dispute Resolution Task Force

Ralston Alexander, QC, Life Bencher (Chair)

Conveyancing Practices Task Force

David Zacks, QC (Chair)

Disclosure and Privacy Task Force

John Hunter, QC (Chair)

Fee Review Task Force

Richard Gibbs, QC, Life Bencher (Chair)

Lawyer Education Task Force

Gordon Turriff, QC (Chair)
Patricia Schmit, QC, Life Bencher (Vice-Chair)

Paralegal Task Force

Brian Wallace, QC, Life Bencher (Chair)
Terence LaLiberté, QC (Vice-Chair)

Small Firm Task Force

Bruce LeRose (Chair)

Title Insurance Issues Task Force

Ralston Alexander, QC, Life Bencher (Chair)

Unbundling Legal Services Task Force

Carol Hickman (Chair)

Women in the Legal Profession Task Force

Gavin Hume, QC (Chair) ♦



Equity Ombudsperson

by Anne Bhanu Chopra

In my last column, I introduced the first in a series of articles to inspire law firms to create a “culture of choice.” Simply put, this is a workplace culture where people feel they belong and treat one another respectfully.

A respectful work environment is positive and productive. It is free of harassment and other forms of discrimination. Consider the alternative — law firms that allow bad behaviour to continue so as to avoid confrontation. But an avoidance approach doesn’t work.

The ravages of harassment leave deep scars: bad feelings, low morale, lost productivity, poor work environment, staff turnover and loss of reputation for the firm. To paint a clearer picture, I promised to share real life examples. The scenarios I’ve compiled come from Canadian law firms. However, to ensure anonymity and confidentiality, any details that might otherwise identify individuals have been modified or removed.

My hope is that, if we as lawyers recognize behaviour that others may find unacceptable, there is a much better chance we can do something in our own firms to stop it early on, or prevent it altogether. So read on.

Harassment in law firms: the scenarios

Four associates, one woman and three men, work in the same law firm. The law firm has two business lunch meetings a month. One male associate always arrives early and tends to talk

Creating the culture of choice: Part 2

Would you recognize harassment?

loudly about his sex life. As a result, the female associate and another male associate who are offended, stop attending the meetings. However, one of the other male associates continues to attend, as he is not troubled. He thinks, “It’s the associate’s life, and he’s just sharing his stories.”

A female lawyer works for a senior male lawyer, in a four-person firm for six months. The male lawyer always makes comments on the female lawyer’s appearance. Further, he always insists on hugging her after their meetings, even though she had advised him that it makes her uncomfortable. He replies, “Don’t feel uncomfortable, it’s just being friendly!”

A female articulated student asks her boss, a male lawyer, for an increase in her salary. He responds, “If you want a raise, let’s go out for a drink and discuss it.” The student says, “I don’t want to go to the bar and discuss it.” To which he replies, “Then I don’t have time. I’m too busy.”

A female associate in a large law firm complains that one of the male partners refers to her as “sweetie” and “darling” and calls other women in the office “babe.”

A female associate in a large firm encounters unwanted sexual advances and unwanted touching by a male partner. After she complains, the firm cautions the partner very gently about his inappropriate behaviour. When the associate asks whether she could be assigned to a different practice group or work independently from the male partner, the firm refuses and advises her that the partner needs her help, that the firm has spoken to him

and that she should put aside her personal feeling for the short-term project. Subsequently the partner stops giving her work, she becomes ostracized in the office and eventually takes a stress leave.

A male lawyer in his private office, does searches on the internet for dating and porn sites. He believes it is his private space and therefore feels comfortable. An assistant complains that when she gives the lawyer his letters and other work, she has to see these screens on the computer.

A female associate complains that, after an office social function, one of the male associates in her office “joked” about going up to the hotel with other male lawyers, to see if they could get “a look at her without her clothes on.” When she confronts him about the inappropriate comment the next day, he says, “I am sorry, I was drunk.”

A paralegal in a law firm said that she has to always work late. The lawyer she works for hovers around her desk and always touches her back and hair when he can.

A secretary in a law firm complains that one of the male lawyers in her office repeatedly tries to ask her about her personal life and her boyfriend, and how lucky he is to have her, and further, about how sexy she is.

* * *

It’s useful to remember that sexual harassment is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for

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Harassment ... from page 17

the victims of the harassment. It includes, not just sexual advances, but sexualized language, such as referring to a person 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. It can also include environmental factors that create a hostile workplace.

What firms also need to recognize is that, if someone complains, the complaint is serious to that person. A firm committed to *creating a culture of choice* will definitely listen and ensure that the individual is made safe and not

subjected to offensive behaviour.

So is it appropriate to ask about someone's weekend, or to comment on someone's hair or appearance? Clearly it is important that a firm continues to encourage professional and friendly communication among lawyers and staff. We need to interact as human beings. But the level of familiarity or formality we have with one another will vary greatly. Just a few pointers about what some people consider "grey zones:"

- Everyone has personal boundaries and, if we push past the level of familiarity, we can hurt a work relationship
- If people appear uncomfortable with a personal question or topic of conversation, or say they are, you have crossed a line

- Where there is a power imbalance, be extra cautious not to overstep casual friendliness when discussing non-work-related issues.

Consider using this column, and my previous column, to foster a training session in your firm on harassment issues. Using examples can help everyone understand the nature of harassment and the importance of law firm policies by turning the theoretical into the practical.

If you have questions about discrimination or harassment, or would like to plan a training session, I can help. You can also call if you think that some behaviour in your firm is unacceptable and wish to discuss it on a confidential basis. You can reach me by telephone at 604 687-2344 (dedicated line/confidential messaging) or by email to achopra1@novuscom.net. ✧

Services for members

Practice and ethics advisors

Practice management 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.

Practice and ethics advice – Contact **Barbara Buchanan**, 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. **Tel:** 604 697-5816 or 1-800-903-5300 **Email:** advisor@lsbc.org.

Ethical advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss 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.

All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.

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:** achopra1@novuscom.net.



CanLII: your free resource for legal research

by Catherine Best

CanLII is a service whose time has come — an electronic legal research database available to the legal profession and the public without search fees. If you haven't tried CanLII, here is a quick Q & A to get you started.

How do I access CanLII?

CanLII is freely available on the Internet at canlii.org. No password or registration is required.

Who pays for CanLII?

The Canadian Legal Information Institute, or CanLII, is a non-profit society owned and funded by all the law societies across Canada. The Law Foundation of BC has made an annual contribution to CanLII since its inception. Courts, legislatures and administrative tribunals have provided for free the documents published on CanLII.

What material is available?

CanLII publishes Canadian case law and legislation, and the decisions of some administrative tribunals. A few pointers:

- CanLII has not yet received permission from the Government of British Columbia to publish BC legislation. However, statutes and regulations from all other Canadian jurisdictions are published by CanLII, as well as case law from all Canadian superior courts.
- The scope of coverage varies by court and jurisdiction. BC case law coverage commences in 1990, and Supreme Court of Canada coverage commences in 1985. For more information, click on Scope of Coverage on the CanLII home page.
- There are gaps in the family law collection on CanLII because the trial courts in some jurisdictions, including BC, responded to privacy concerns by not releasing

family law decisions for free internet publication. This policy has recently changed and, since January 1, 2006, new family law decisions from BC have been published on CanLII.

Why should I use CanLII if I subscribe to QL or LawSource?

- CanLII is free. Use CanLII in conjunction with the commercial services to keep your flat rate from increasing and to reduce the cost of your services to clients. For example, use CanLII to retrieve cases by citation instead of obtaining them from a commercial service.
- For lawyers who do not subscribe to a commercial service, CanLII



provides a good alternative for recent case law, and for legislation (except BC legislation, as noted above). However, CanLII's collection does not have the historical depth of the commercial services or some value-added features, such as headnotes, citators and commentary.

- It is easy to locate cases and legislation on CanLII. Some lawyers who have not mastered the more complex commercial services feel very comfortable with the CanLII interface.
- ### Why should I use CanLII when the BC cases are on the court website?
- CanLII includes case law and legislation from across Canada,

eliminating the need to visit numerous free sites and master different search interfaces.

- CanLII provides a superior search interface, and includes various value-added features:
 - the Advanced Search template helps you compose a keyword search and make the most of CanLII's search features
 - the search engine employs automatic stemming, so that variant forms of your search terms will be retrieved
 - in addition to searching by keyword, cases can be found by citation and by style of cause using the Advanced Search template
 - results are ranked by relevance, with the ability to refine your search by date, court level and jurisdiction
 - hypertext links enable easy linking to cited cases and legislation, and enable generation of a Noteup list showing cases that cite the document being viewed
 - parallel citations to print reporters are included at the top of each case, as well as a neutral citation or a CanLII citation

You own CanLII. Make the most of it! CanLII has come a long way in a very short time. It is always striving to improve its functionality and coverage. If you find a problem, report it by using the Contact CanLII link at the bottom of each page. ✧

Catherine Best is a research lawyer at Boughton. She represents the Law Society on the Board of CanLII and is a member of the CanLII Executive. More detailed information about using CanLII is available in the Reference Guide included with this Benchers' Bulletin, and at www.Canlii.org by clicking on the Help icon.

Practice Tips

Six steps to improve your practice profitability

by David J. Bilinsky and Laura Calloway

There's no getting around it if you're a sole practitioner or a member of a small firm: *You* have to do the math. Larger firms often have full-time administrators, and megafirms have stables of financial pros to keep tabs on their business matters. As a small firm lawyer, you're the one who has to start crunching the numbers and making changes if you hope to improve your bottom line. But what numbers should you be looking at? What things should you change? Here are six steps you can take to better understand — and improve — your practice's profitability.

One: create a business plan

As Yogi Berra said, "You've got to be very careful if you don't know where you're going, because you might not get there." Ergo, you need a business plan.

A business plan is your road map to the financial future. You can show it to banks, suppliers or others you will need to deal with to demonstrate that you've done the homework necessary to launch your practice or to move forward to the next level. A sound business plan is an organized explanation of where you plan to go *and* how you intend to get there. All successful businesses are planned on paper well before the doors actually open, but even if you've already been in business for many years, it's not too late to sit down and draw up a business plan. And it's a great way to refocus and revitalize a practice that has lost its way over the years and is wandering in the wilderness.

A business plan can be as simple or as detailed as you wish, but it always needs to contain four essential elements:

1. A general description of your business, including the services



you intend to provide and the markets you intend to serve;

2. Your financial plan, including a budget detailing anticipated revenues and expenses;
3. Your management plan, with a description of how you will set up your office and support the delivery of your legal services;
4. Your marketing plan (think client development), showing how you intend to keep existing clients and reach new ones.

(A detailed description of how to draft a business plan, and what should be included, is available at www.lawsociety.bc.ca/practice_support/articles/BusinessPlan.html.)

Be as precise as possible when drafting the financial part of your plan, including your budget. The care and forethought you put into correctly anticipating future income and expenses can spell the difference between success and failure for your practice.

You should prepare a detailed, month-by-month budget for at least the initial 12-month period. Include all known or anticipated expenses, and when they will come due. Factor in an additional amount for unexpected expenses (anywhere from 10 to 20 percent is a safe bet), since it is Murphy's Law that costs will always be greater than you expect, particularly as the volume of work increases. Build in marketing time and expenses as well, and don't forget to include your draw. After all, if you don't look after yourself, no one else will. (You'll find a sample budget spreadsheet at www.lawsociety.bc.ca/practice_support/articles/docs/budget.xls.)

If you already have an earnings track record, look back for historical data to spot trends and seasonal fluctuations. If you're just starting out, you can still make an educated estimate based on your marketing plan. Use a conservative estimate of how much business you will initially attract. Then, compare your estimated income and outgo



on a month-by-month basis. If you show negative cash flow for several months in a row, will you still have the funds on hand to meet your needs? If not, where will the funds come from?

Once you've set out well-defined income and expense targets, you will be able to judge for yourself whether you're meeting, exceeding or falling behind your goals. Review the goals you've set on an ongoing and regular basis. If you find yourself failing to hit your target, take corrective action by cutting unnecessary expenses and thinking strategically about potential new business — before it's too late. If you ignore the initial signs of trouble, you may find that you are quickly out of business — and possibly facing even greater debts than when you started.

Two: implement a financial reporting system

After developing your business plan, you need to implement a system that can deliver financial information — in the form of sufficiently detailed and timely reports — necessary to determine whether you are meeting your business targets. At a minimum, these reports should include the following:

- a statement comparing actual income and expense numbers against your budget, for both the current month and the year to date;
- a statement showing worked but unbilled hours (WIP) for every lawyer, for both the current month and the year to date. It should also compare the actual WIP against the expected level of WIP;
- a statement showing actual billings by lawyer for the current month and the year to date. It should also show the expected level of billings and whether each lawyer is above or below expectations;
- a statement showing collections by lawyer for the current month and

the year to date. It should also show write-offs and write-downs and compare actual collections against budgeted amounts;

- a statement showing aged accounts receivable by lawyer, by client and by area of practice;
- a statement showing unbilled disbursements by file and comparing them to the previous month to show whether they are increasing or decreasing;
- a statement showing funds in trust by client and whether those funds are retainers or funds held on behalf of clients;
- a statement of upcoming trials and motions that compares the expense and retainer funds in trust for each client against expected costs and fees for the courtroom work.

Three: scrutinize your cash flow

Although accountants encourage accrual-basis bookkeeping as a way to examine whether billable hours are finding their way to the bottom line, in the real world your firm will still live or die by its cash flow. Accordingly, your accounting system has to forecast cash flow needs and compare them with expected cash inflows. Any excess cash can be returned to the lawyers as bonuses or reinvested in the practice. Any cash shortages must be covered either by the lawyers (by way of lowered draws or capital contributions) or by increasing the firm's debt (usually by increasing the line of credit).

While occasional short-term cash shortages can usually be covered, long-term chronic cash deficits usually herald the undoing of a firm. Simply increasing firm WIP can drive you to ruin unless you are also converting that WIP to cash. A law firm's objective is not just to perform legal work, but to change that intellectual effort into cash. A cash flow statement

ensures that this is being done at a rate sufficient to keep the business afloat.

One cash flow item many lawyers fail to monitor and anticipate is taxes. Whether it's monthly withholding taxes for your employees or quarterly self-employment withholdings for yourself, these items come around regularly. They need to be a part of your routine, budgeted expenses, with the money to pay them regularly set aside before other distributions are made.

Amounts to be remitted to the government — whether they are collected taxes or employee withholdings — are deemed to be trust funds, and failure to pay those charges in a timely manner will result in dire consequences.

Four: track your time

Many lawyers do not track their time. They give various reasons, the three most common being: "I only handle matters on a contingency basis, so the hours I put in don't really matter," or "Tracking billable hours just takes away from the time that I can be doing legal work for clients," or "All that really counts around here is the amount of money that you bring in every month, not the number of hours you work."

What these lawyers are really saying is, "Keeping up with my hours is a bother, and I can't be bothered!" They are obviously missing the point if they want to improve their individual financial performance. For the individual lawyer, financial performance really comes down to two measures:

1. effective hourly rate (EHR)
2. total billings.

Here's why.

You determine your effective hourly rate on a file by taking your fees billed and dividing them by the total hours put into a client's file (*not* just the hours billed but all the time worked, whether billed or not). When you measure the

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EHR for all your files and rank the results from largest to smallest, you can see which clients and files generate high dollars for the effort involved and which are low contributors. This is a *quality* indicator — telling you which cases and clients result in high returns and what type of cases and clients you should be seeking to acquire.

After you've determined your EHR, calculate total collections per lawyer, per file, per month. This is a *quantity* indicator, and the usual metric used by lawyers. When you look at total collections, you have an indication of which files generate large bottom-line results.

Now — to work smarter and not harder — concentrate on clients and case types that are at the top of the list for both EHR *and* total collections.

Five: reduce steps and increase work flow

Look to automation to increase your efficiencies. There are many software products and technological gadgets available for legal professionals. As an example, one of the most fruitful products for enhancing work flow is practice management software (such as Amicus Attorney, Time Matters, PCLaw, ProLaw and PracticeMaster). However, just having the software doesn't necessarily boost the bottom line. You need to integrate the products with your office procedures, and with each other, to reduce costs and increase efficiencies.

One obvious way to increase your work flow is to integrate your accounting system with your practice management application. Many small firms still don't have automated time and billing systems or, if they do use software, they use one product for timekeeping, a second for contacts maintenance and a third, unrelated, product for calendaring and docketing. Often these products are on

separate computers that aren't linked through an office network and, consequently, can't share information. A secretary or the lawyer must enter a new client's data in the contact management software, then pass the intake sheet or paper file over to the bookkeeper, who has to re-enter the same information into the billing program on another computer.

Think of the savings in time and effort if that information can be entered — and updated — by one person, in one place, and everyone in the office can share it. Plus, integrating your accounting system with your practice management software will also allow you to post your time and billing data directly into your accounting system from your computer as you work — doing away with paper timesheets.

If you're not sure whether the purchase of a particular program can help your bottom line, you can evaluate your expected benefits from the technology by doing a return on investment (ROI) analysis. To illustrate, here is how you can quantify some of the efficiency gains that you can realize from the implementation of case management software.

ROI analysis in action. Most firms employ at least a part-time bookkeeper to do time postings. For this example, let's assume that time and billing entries take 40 percent of the bookkeeper's time; that he or she is paid \$35 per hour, including benefits; and that he or she comes in two days per week. You're thinking about purchasing a case management system and integrating it with your accounting system, but at \$5,000 the price seems steep and you don't know whether it would be a cost-effective move.

Your savings by implementing this aspect of practice management would be:

$$8 \text{ hours} \times 2 \text{ days} \times 40\% \times \$35 \times 52 \text{ (weeks)} = \$11,648$$

Your ROI would be:

$$(\$11,648[\text{savings}] - \$5,000[\text{cost}]) \div \$5,000[\text{cost}] = 133\%$$

Looked at another way, you would recoup the program cost in approximately nine weeks, considering just the savings in bookkeeper costs. (Of course, this analysis assumes that you cut back on your bookkeeper's hours as a result!)

In addition, case management applications allow you to link together all communications on a particular matter, whether they be word processing documents, telephone notes or emails sent or received, and to group them all in one place. Add a scanner to turn hardcopy pleadings and correspondence you receive into digital form, and you can set up a virtual file for each matter you're working on. Then, when you receive a phone call from the client or opposing counsel, you don't have to scramble around looking for the file. You just click on the client name, select the matter and view any document or other information you need.

Let's assume that you spend an average of a half hour each day leaving your office to look for files or documents in order to return phone calls. Let's also assume that this half hour is not "billable," since you aren't actually doing any productive work for your clients during these searches. What is your ROI if you could save this wasted time?

If your billable hourly rate is \$100 per hour and you work an average of 231 billable days each year, your increased billable time is:

$$.5 \text{ hour} \times \$100 \times 231 \text{ days} = \$11,500$$

That's your savings per year just by avoiding the search for files! Even if implementing the practice management product requires your firm to incur hardware, software and training costs of \$5,000 per timekeeper (for computer upgrades, network upgrades, software purchases and the



like), your payback period on the cost would be:

$\$5,000[\text{cost}] \div \$11,500[\text{savings}] \times 365 \text{ days} = 159 \text{ days per timekeeper}$
(less than six months) to recover your monetary investment

As you can see, sole practitioners and small firms can realize a substantial return on investment by taking advantage of improvements in work flow.

Six: reward the behaviour you want to encourage

Scientists have long known that the subjects of experiments, whether they be lab rats or lawyers, repeat behaviour that is rewarded and avoid that which is not. Accordingly, if you want your firm to move toward certain goals, you need to make sure that your compensation system is designed in a way that rewards the behaviours that will help you reach those goals, and discourages activities that are counter-productive.

Law firm compensation systems, whether intentionally or unintentionally, generally reward one or more of the following:

- production of work
- rainmaking
- referring clients within the firm

- superior client service
- effective delegation of work
- meeting or exceeding budgetted revenues
- meeting or falling below budgetted expenses
- mentoring, managing and supervising associates and staff
- firm leadership and business planning
- seniority
- capital investment, ownership and risk
- participating in community, bar association and pro bono activities.

Regardless of how you decide to divide the pie, look at your stated business goals, and then check whether your compensation system promotes those goals or actually encourages the firm's lawyers to disregard, or actively work against, them. For example, what if you are trying to encourage your firm's lawyers to refer more business within the firm, but each lawyer is paid based solely on the number of hours he or she bills? You won't see many clients being referred. There's absolutely no incentive to remove the nose from the grindstone to engage in cross-marketing activities.

Share the numbers and increase the sum

Improving the bottom line isn't just a result of working harder. There are ways to increase the cash in your pocket that do not involve more billable hours. However, they do involve looking at your practice — including the numbers that underlie it and seeing what those numbers reveal.

Once you know and understand the financial underpinnings of your practice, you can start pulling levers that connect to profitability factors, resulting in an increase in net income. And once you can demonstrate the greater cash flow that will result from your proposed changes, other firm lawyers as well as staff can see what's in it for them too. ✧

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"Six steps to improve your practice profitability" first appeared in the November-December, 2004 issue of Law Practice, Vol. 30, No. 8, a publication of the American Bar Association Law Practice Management Section. Copyright © 2004 by the American Bar Association.

Visit the new Pro Bono Law of BC website



Pro Bono Law of BC started off the new year by launching a new website at www.pblbc.ca. The website allows easy registration for Pro Bono Law of BC's roster programs and access to insurance and disbursement coverage for pro bono cases. It also provides simple access to the PBLBC Online Poverty Law

Training Course, a directory of services, forms and resources.

Visit www.pblbc.ca to discover what Pro Bono Law of BC has to offer lawyers, and what opportunities there are for lawyers, in turn, to offer the community. ✧

Family Relations Act under review — topics invited

The Ministry of Attorney General has launched a multi-year project to review the *Family Relations Act*. The Ministry intends to look at the substantive content and organization of the statute and to have it better reflect themes identified by the Family Justice Reform Working Group — such as cooperative dispute resolution by families.

The Ministry has identified topics for review, set out on the Justice Services Branch website (www.ag.gov.bc.ca/justice-services). These include:

- terminology changes to better describe parenting responsibilities
- participation of children
- division of pension entitlement
- division of property, including:

- whether the division of property scheme should cover all couples, married or not
- the overall model for property division, with particular consideration of the level of discretion that should be available to the courts, looking at factors such as certainty, fairness and the value of encouraging settlement
- the triggering events in section 56
- the choice of law / conflict of law when property is in another jurisdiction
- support obligations — whether these should be binding on a payer's estate
- promotion of cooperative approaches to resolving family

disputes, with a shift in focus from litigation to settlement.

Topics that will not form part of the review are child protection, child support guidelines, interjurisdictional support orders and support enforcement.

The Ministry intends to develop discussion papers for consultation and comment.

Lawyers who would like to propose additional topics for the review are invited to contact:

The Civil & Family Law Policy Office
Justice Services Branch
Ministry of Attorney General
PO Box 9222, Stn Prov Govt
Victoria, BC V8V 1X4
Email: cflpo@gov.bc.ca
Fax: 250 387-1189 ✧

Criminal Code production orders — protecting client privilege

Since 2004 the *Criminal Code* has provided for production orders, which are court orders requiring a person, other than a person under investigation for an offence, to produce documents or other data.

These orders bear similarities to search warrants, and some of the same concerns arise when a lawyer is ordered to produce documents that are, or may be, the subject of solicitor-client privilege.

The Supreme Court of Canada has recognized the importance of ensuring the protection of privilege in the search warrant process: see *Lavallee, Rackel & Heintz v. Canada (Attorney General)* [2002] 3 S.C.R. 209. For many years now, there has also been a practice in British Columbia whereby all

applications for a warrant to authorize the search of a law office are made in the Supreme Court of BC and heard by the Associate Chief Justice. This practice recognizes the unique issues surrounding the seizure of documents from a law office.

Because issues of solicitor-client privilege also arise in the authorization and execution of production orders, the Law Society has consulted with the Chief Justice of the Supreme Court and the Chief Judge of the Provincial Court. Each court confirms that the current practice of having the Associate Chief Justice of the Supreme Court hear search warrant applications against law firms will extend to applications for production orders.

A lawyer who receives a production

order has professional obligations as set out in Chapter 5, Rule 14 of the *Professional Conduct Handbook*, which states:

A lawyer who is required, under the *Criminal Code*, the *Income Tax Act* or any other federal or provincial legislation, to produce or surrender a document or provide information which is or may be privileged shall, unless the client waives the privilege, claim a solicitor-client privilege in respect of the document.

Should you receive such a *Criminal Code* production order, contact Michael Lucas or Kensi Gounden at the Law Society for guidance on fulfilling your obligations. ✧



Provincial Court issues notice on small claims changes

A Notice to the Profession from the Provincial Court
Chief Judge Hugh C. Stansfield
February 2, 2006

In response to the increase in the monetary jurisdiction of the *Small Claims Act* to \$25,000, the Provincial Court of BC has made a number of scheduling changes in order to resolve cases in a “just, speedy, inexpensive and simple manner,” according to the mandate in section 2 of the *Act*.

Cases under \$10,000

Cases where the amount claimed is under \$10,000 will be scheduled for settlement conference as before, namely at a time assigned by the Settlement Conference Notice. These cases will be set at eight per day.

Cases over \$10,000

Cases where the amount claimed is over \$10,000 will be scheduled for settlement conferences at four per day,

giving the parties more time to explore settlement by way of judicially assisted mediation. Administrative judges will review these files, prior to the Settlement Conference Notice being sent, to exclude cases from this stream which, on the face, do not appear to warrant a longer settlement conference.

Cases requiring more than one-half day of trial time

The average civil trial in Provincial Court is 109 minutes, or less than one-half day. All cases that are estimated to exceed one-half day for trial, whether over or under \$10,000, will be adjourned to a trial preparation settlement conference. Orders may be made at the settlement conference requiring statements of facts, witness “will say” documents and reports to be brought to the trial preparation settlement conference.

The trial preparation settlement

conference will generally occur in a settlement conference room and will be a working session to examine evidence and determine issues. It is also expected that counsel will address, with the judge, the issue of keeping trial time close to the average required in Provincial Court to fulfil the purpose of just, speedy, simple and inexpensive resolution of disputes.

It is expected that only one settlement conference will be required in each case to explore settlement, and a further conference, in cases set for more than one-half day, to prepare for trial.

Settlement offer rule

The profession is encouraged to utilize the settlement offer Rule 10.1 prior to, or within 30 days of, a settlement conference which may permit a recovery of substantial costs, if a matter proceeds through trial. ♦

Supreme Court issues direction on correspondence with the court

Chief Justice Brenner of the BC Supreme Court has issued a practice direction setting out the limited circumstances in which it is proper for counsel or litigants to correspond with the court or to contact the court informally.

The practice direction was issued in response to an increasing volume of inappropriate correspondence that is now directed to court registries. It makes clear that, in most instances, writing letters to the court is not appropriate, and when an exception

exists, counsel should follow specific procedures.

The practice direction is available on the BC Courts website at www.courts.gov.bc.ca. ♦

Vital Statistics stamps new look on wills notices

The Vital Statistics Agency wants solicitors to know that recent automation changes mean that wills notices now feature a computer-generated

registration number and certification stamp. Court registries have been advised of this change.

For further information, contact Mark Spearman at the Vital Statistics Agency at 250 952-2816. ♦

ABA Conference on Professional Responsibility: May 31 to June 3

The American Bar Association Center for Professional Responsibility is holding its 32nd National Conference on Professional Responsibility on May 31 to June 3, 2006 at the Fairmont Vancouver Hotel.

Conference program topics include disaster preparedness, online delivery of legal services, screening practices in law firms and tort issues for lawyers.

While some sessions are specific to an American context, others have broader appeal. Education programs and networking receptions and breakfasts offer an opportunity to discuss current professional responsibility issues with leading experts, scholars and practitioners.

The 22nd National Forum on Client Protection, presented by the ABA

Standing Committee on Client Protection, will be held at the same venue on June 2 to 3.

To learn more about the Conference, including complete schedules, speaker information and online registration, visit www.abanet.org/cpr/cp-programs.html. ✧

Would you like publications by email instead of mail?

Lawyers are welcome to receive the *Benchers' Bulletin* and related



newsletters, as well as amendments to the *Legal Profession Act*, Law Society Rules and *Professional Conduct Handbook*, by email instead of by mail. To switch over, visit the Law Society website at www.lawsociety.bc.ca and set your preferences in the "log-in" section. You can change your preferences at any time.

If you choose the electronic version, you can expect to receive an email containing brief highlights of the *Benchers'*

Bulletin, *Discipline Digest* and *Insurance Issues*, linked to the full text of articles on the Law Society website. The Society is offering the option of email publications to save on printing, postage and mailing costs.

Unless you sign up for epublications, you will continue to receive print publications. All lawyers will still receive the notices to the profession that the Law Society sends periodically by broadcast email. ✧

Law Foundation news



2006 Chair

Warren Wilson, QC of Vancouver has been elected as Chair of the Law Foundation for a two-year term beginning January 1,

2006. Mr. Wilson succeeds Heather Raven of Victoria, who has been Chair of the Law Foundation since 2004.

Mr. Wilson is a retired partner with Borden Ladner Gervais in Vancouver, where he had a corporate commercial practice concentrated in the financial services sector.

After eight years as a Bencher for Vancouver, Mr. Wilson became Law Society President in 1999 and is now a Life Bencher. He has been a Governor of

the Foundation since 2003 and has served on the Foundation's Finance and Administration, New Grants and Funding Strategies Committees.

New Governor

The Law Society has appointed Victoria lawyer **Mary Mouat** to the Law Foundation board for a three-year term, commencing January 1, 2006. Ms. Mouat is a partner of the Quadra Legal Centre in Victoria, practising in the areas of family mediation and collaborative law.

Foundation commends TD Canada Trust on new agreement

The Law Foundation has announced a new agreement with TD Canada Trust for payment of a more favourable rate

of interest on lawyers' pooled trust accounts. Chair Warren Wilson, QC commends TD Canada Trust for its commitment to paying the Foundation a competitive rate of return.

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



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Telephone: 604 688-2337
Fax: 604 688-4586
www.lawfoundationbc.org ✧



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.

Shawn Peter Jodway

Abbotsford, BC

Called to the Bar: November 10, 2005

Hearing (Application for call and admission by transfer): October 17, 2005

Panel: James D. Vilvang, QC, Chair, Art E. Vertlieb, QC and Brian J. Wallace, QC

Report issued: November 4, 2005 (indexed as 2005 LSBC 46)

Counsel: Jason Twa, for the Law Society, and Jerome Ziskrout, for Mr. Jodway, the applicant

Mr. Jodway was called to the bar in Saskatchewan on May 13, 2005. He

subsequently applied for call and admission in BC. The Credentials Committee referred his application for hearing.

At issue was Mr. Jodway's failure to disclose to the Law Society of BC, in an application for temporary articles in 2002, that he had been the subject of bankruptcy proceedings in 1989 and also his failure to properly deal with that bankruptcy for over 10 years.

The hearing panel considered the circumstances at the time of the bankruptcy. Mr. Jodway had taken an educational program at a school of technology and had accumulated student loan debt of approximately \$10,000. He went into bankruptcy without realizing the seriousness of that step or the repercussions. When he began working in remote areas of BC, he did not maintain contact with his Trustee in Bankruptcy and never properly resolved the bankruptcy.

Mr. Jodway later returned to school, earning his BA and beginning law school part-time. In the spring of 2002, he applied for summer articles. In his application for temporary articles, he answered "no" to the questions relating to bankruptcy, having misread the

questions and thinking the application was asking if he was currently bankrupt. In subsequent communications with the Law Society respecting his application, he realized that he remained an undischarged bankrupt. He retained counsel and immediately received a discharge. He did not proceed with his temporary articles application in BC, but finished law school and later completed articles in Saskatchewan, where he was called to the bar.

The panel accepted Mr. Jodway's explanation that he had not intended to mislead the Law Society in his application for temporary articles in 2002, but rather that he had misinterpreted the meaning of the questions on the form through haste. The panel expressed concern about his lack of attention to detail in this matter and his failure to recognize the importance of the form.

The panel approved his application for call and admission, but imposed the condition that he work for one year with a particular law firm. Should his employment situation change within that period, he must apply for variation of the condition. The panel also ordered that he pay \$1,000 as costs. ✧

Unauthorized practice undertakings and orders

The Law Society has obtained the following court orders and undertakings to prevent non-lawyers from engaging in the unauthorized practice of law.

On application of the Law Society, the BC Supreme Court has ordered that **Gilbert Beaudry and Dominion Tax Accountants and Company Inc.**, of Cedar, be prohibited from preparing corporate documents, giving legal advice or representing that they are qualified or entitled to offer these services for a fee: November 22, 2005.

[REDACTED]

[REDACTED]

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