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Keeping BC lawyers informed

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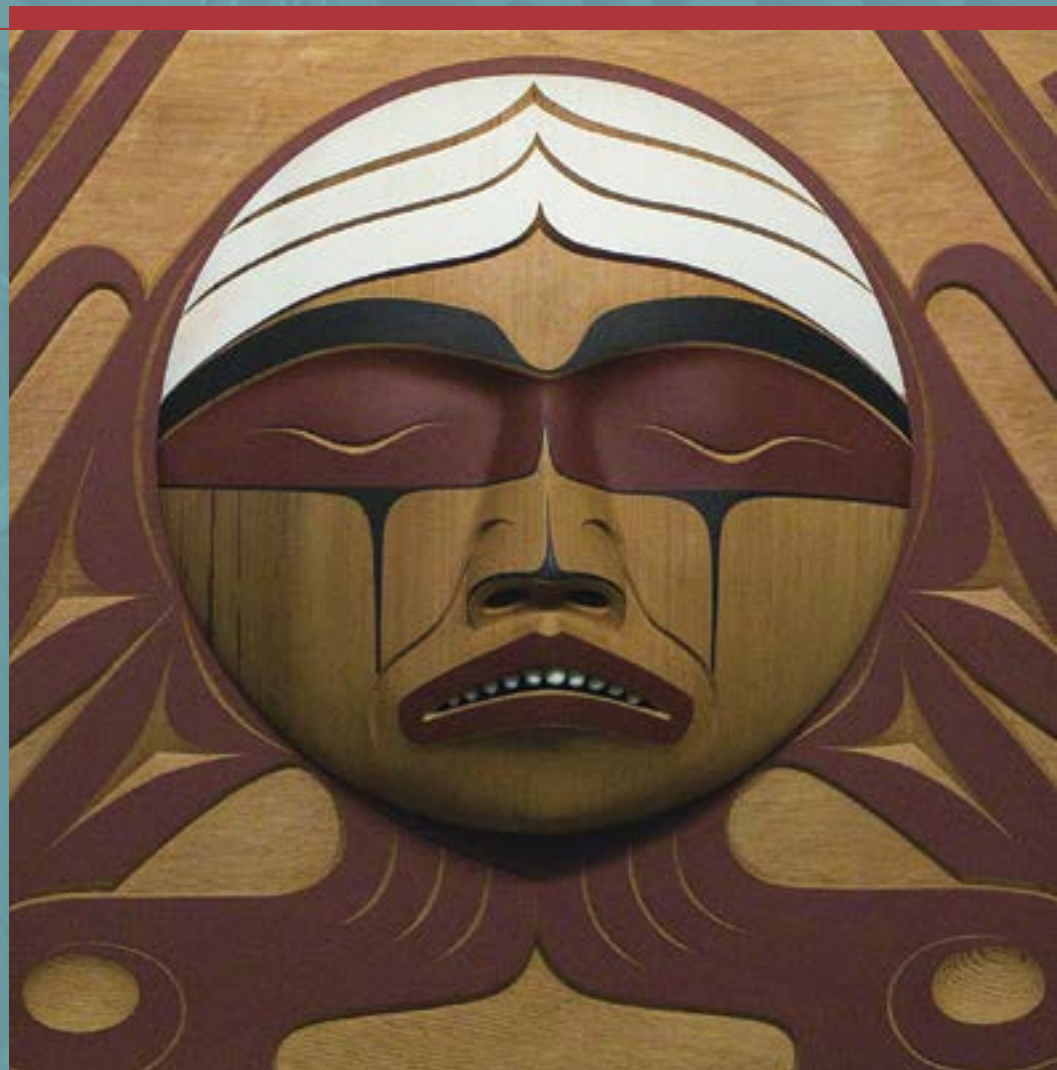
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Looking forward to a busy and productive year

by David Crossin, QC

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articled students and the public on policy and regulatory decisions of the Benchers, on committee and task force work, and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

Suggestions for improvements to the *Bulletin* are always welcome — contact the editor at communications@lsbc.org.

Electronic subscriptions to the *Benchers' Bulletin*, *Insurance Issues* and *Member's Manual* amendments are provided at no cost. Print subscriptions may be ordered for \$70 per year (\$30 for the newsletters only; \$40 for the *Member's Manual* amendments only) by contacting the subscriptions assistant at communications@lsbc.org.

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LAW SOCIETY MEMBERS elected me as Bencher six years ago. Almost the first thing I heard at the Bencher table came from my good friend Leon Getz, QC. He reminded our table of the obvious: the Law Society must always be guided by the question, "Is what we are doing important to the due administration of justice?" Since that day I have observed my colleagues at the Law Society do their very best to be guided by that principle.

The most recent example of this pursuit is reflected in the feature article in this issue of *Benchers' Bulletin*, addressing what is and will remain a fundamental priority of the Law Society. Developing an action plan in response to the recommendations of the Truth and Reconciliation Commission of Canada is a priority, and the article in this issue provides important context for the work of the Law Society going forward.

Another area for concern to the Law Society is the state of legal aid in this province. A robust, sustainable legal aid system is critical to ensuring the public interest in the administration of justice is protected and advanced.

We fall short in our province, and all of the stakeholders in our justice system must collaborate in pursuit of fundamental change.

The Law Society has struck the Legal Aid Task Force to lend our voice to that pursuit. The Benchers have concluded it is absolutely incumbent on the Law Society to take a leadership role on this issue. Our task force, chaired by Nancy Merrill, QC and co-chaired by Richard Peck, QC, will be working toward developing a clear vision on legal aid in BC and recommending how the Law Society can participate in coordinating efforts to improve this crucial component of access to justice.

A monopoly, or near monopoly, to practise law creates what the Right Honourable David Johnston, Governor General of Canada, once described as a social

contract. We are duty bound to improve justice. Legal aid is an important underpinning of that social contract.

Our profession still has much work to do in relation to gender equity. The early 1990s produced two groundbreaking reports commissioned by the Law Society of British Columbia: "Women in the Legal Profession" (September 1991) and the two-volume "Gender Equality in the Justice System" (1992).

In 2012 the Justicia Project was founded with the goal of finding ways to encourage the retention and advancement of women lawyers in private practice. With the assistance of diversity officers from 17 law firms and the tremendous effort of a cohort of dedicated lawyers, the project has now published model policies and best practice guidelines in areas such as parental leave, respectful workplaces and business development for women. The model policies and guidelines are available on the Law Society's website ([About Us > Access, Equity and the Rule of Law > Equity and Diversity](#)).

With phase one completed, our Equity and Diversity Advisory Committee has embarked on the next step. It has developed a communications strategy aimed at encouraging the implementation of the Justicia recommendations in smaller firms and in regions around the province. This is another exceedingly important endeavour to enhance our profession and better serve the public.

The Law Firm Regulation Task Force, chaired by Herman Van Ommen, QC, has also been busy in the early part of this year travelling to communities around the province to consult with the profession. In the coming months the task force will work toward recommending a regulatory framework in which firms will bear some responsibility for ensuring that the public has access to competent, ethical and independent lawyers.



In addition to these initiatives, the Law Society will continue to monitor a number of important issues throughout the year. For example, recent news stories have uncovered troubling revelations about the potential extent of government access to private communications. This has

particular significance for the legal profession and, as you know, the Law Society has taken a public position, particularly in reference to Bill C-51 and the threat it poses to solicitor-client privilege. The Benchers will continue to advocate on behalf of lawyer independence, which is such a

fundamental right underpinning the rule of law in Canada and around the world.

I am honoured to be the president this year and I look forward to engaging with you concerning these very important issues. ❖

FROM THE RULE OF LAW AND LAWYER INDEPENDENCE ADVISORY COMMITTEE

Attacks on access to legal advice and what it means for the rule of law: Warnings from China and England

IN SOCIETIES WHERE the rule of law is valued, lawyers must be free to represent unpopular people — murderers, tax evaders, even terrorists — without themselves being identified with the crime or the client's cause, or being targeted for advising or representing such persons. To protect the rule of law, people need to be able to access impartial advisers who are trained to counsel clients on their legal rights and obligations. These principles are not unique to Canada or even to the Commonwealth. They are set out in the United Nations' Basic Principles on the Role of Lawyers.

In China, of late, these principles have not been upheld. Lawyers there have been detained without charge, sometimes for months. Or they have been charged with crimes such as "picking quarrels and provoking trouble" or "politicizing ordinary

legal cases to attract international attention" for doing what we would view as the discharge of the normal responsibilities of a lawyer. This has profoundly negative implications for the rule of law.

Even in Western nations, however, these basic principles are sometimes challenged. The British government recently criticized lawyers who represented Iraqi nationals at an inquiry into the alleged wrongful deaths caused by the British military in Iraq. Toward the end of the inquiry, the allegations of wrongful death were withdrawn, although the Inquiry Report noted that other, less serious allegations of ill treatment by the military did exist. Nevertheless, the British government publicly criticized lawyers who had advanced the claims at the inquiry. One member in Parliament called on the lawyers "to

apologize for traducing the reputations of soldiers concerned and for causing costs to the taxpayers."

Lawyers should not be criticized by the executive or legislative branches of government for representing clients with an unpopular cause. If there is an issue with a lawyer's conduct, the proper place for that to be addressed is before self-governing disciplinary bodies, rather than through public shaming.

In an expanded version of this article, the Rule of Law and Lawyer Independence Advisory Committee examines the events in China and England and discusses them in the context of the implications they may have on the rule of law: go to www.lawsociety.bc.ca/docs/about/RuleofLaw-AttacksonAccess.pdf. ❖

In memoriam

WITH REGRET, THE Law Society reports the passing of the following members during 2015:

Wayne E. Arnold
Kenneth J. Baxter
Elliot J. Belkin
John K. Bledsoe
Cecil O.D. Branson, QC
Patrick G.S. Bush
Colin K.K. Campbell
Patricia C. Connor
Bonnie Lou Day
Howard L.A. Ehrlich

David Garraway
John M. Hannah
Nicole M. Hayduk
Jeanette A. Hermes
Melvin R. Hunt
H. Christopher Johns
I. John Kaminsky
Andrew Kern
Morley Koffman, QC
Janice A. Leroy

Rose T. Mok
Terry Napora
Terence C. O'Brien
Jay T. Redmond
James F. Sayre
Robert D. Shantz
Jonathon N. Stubbs
Euan R. Taylor
Cheryl M. Teron
Brian J. Wallace, QC ❖



Embracing the challenge of Truth and Reconciliation

by Timothy E. McGee, QC

THE FEATURE STORY in this issue of *Benchers' Bulletin* focuses on the findings of the Truth and Reconciliation Commission of Canada, and its calls to action that specifically relate to lawyers and legal education. As Law Society President David Crossin, QC suggests in that story, building broad awareness and knowledge of the issues underlying the calls to action is a challenge, but it is one that all members of the bar can embrace. The Benchers have committed to taking a leadership role and are establishing a steering committee to help develop an action plan to address this challenge. The findings of the Truth and Reconciliation Commission are both serious and complex, yet they also provide hope and opportunity for the future. We look forward to reporting to you as our efforts unfold.

Two other major initiatives in our current three-year strategic plan are gaining considerable momentum: the Law Firm

Regulation Task Force, chaired by First Vice-President Herman Van Ommen, QC, and the Legal Aid Task Force, chaired by Benchers Nancy Merrill, QC.

The Law Firm Regulation Task Force toured the province earlier this year to consult with members of the profession, and this important initiative attracted media coverage. In addition, online consultation with members has rendered valuable feedback and further one-on-one meetings with firms are scheduled. At the heart of the model for law firm regulation is the belief that firms are in a strong position to influence best practices and behaviours among their lawyers through the adoption of sound policies and systems. Law societies across Canada and in many other countries are actively pursuing this model because it is widely viewed as an effective and efficient approach to ensuring protection of the public interest. If you would like

to know more, I encourage you to read the task force's [consultation paper](#) and [additional information](#) published on the Law Society's website.

The Legal Aid Task Force is commencing its work on a mandate premised on the belief that the Law Society should have a principled position on the subject of the provision of legal aid in British Columbia. The topic, of course, is not new to anyone and the Law Society has been involved at key points in the evolution of legal aid as we know it today. However, we live in rapidly changing times, and the many issues impacting this topic are being looked at afresh by the task force. We look forward to reporting on its progress later in the year.

I welcome your comments or feedback on these or any other matters of interest. Please feel free to contact us at communications@lsbc.org.



The Law Society Award – call for nominations

... intended to honour the lifetime contribution of the truly exceptional in our profession.

You are invited to nominate a candidate to receive the Law Society Award in 2016. Nominations must be received by **Tuesday, May 31, 2016**.

The Award, if given in 2016, will be made to the recipient selected by the Benchers based on recommendations of a selection committee, and will be presented in the fall.

For more information, including how to submit a nomination, download the flyer at www.lawsociety.bc.ca/docs/about/LawSocietyAward.pdf.

In 2014, John Hunter, QC (left) received the Law Society Award from then President Jan Lindsay, QC.