



BENCHERS' BULLETIN

Keeping BC lawyers informed

PRESIDENT'S VIEW

Prioritizing access to justice and the challenge of Truth and Reconciliation / 2

CEO'S PERSPECTIVE

Access to justice and the work of the Law Foundation / 4

NEWS

Truth and Reconciliation – “Nothing about us without us” / 3

New Appointed Bencher / 4

Law and the Media Workshop / 5

Magna Carta essay contest / 6

PRACTICE

Supreme Court of Canada releases decisions concerning CRA notices of requirements / 14

Practice advice – Top 10 questions asked of practice advisors / 15

REGULATION of the PROFESSION

Conduct reviews / 18

Credentials hearings / 20

Discipline digest / 22



FEATURE

Overcoming resistance to limited representation / 11



Prioritizing access to justice and the challenge of Truth and Reconciliation

by David Crossin, QC

TO UPHOLD A justice system that serves all, the legal profession has a responsibility and obligation to listen to and address the needs of the public. It is simply too difficult for ordinary citizens to access legal services. We as lawyers have a duty to help ensure the services we provide are available to all citizens, not just those the profession wants to serve or those who can afford the fees.

On April 25 I attended Access Pro Bono's annual appreciation breakfast, which honours volunteer lawyers for their outstanding service to the public. I am inspired by the wonderful work that the organization and its volunteers have done and continue to do. In 2015 alone, Access Pro Bono provided legal services of \$5 million in value, helping 14,599 clients in need.

A portion of Law Society members' fees currently goes to the Law Foundation of BC to fund pro bono work, but I want to further strengthen our partnership. I have asked the Access to Legal Services Advisory Committee to look for ways to collaborate with this great cause and to consider how to more effectively encourage the profession to dedicate time to pro bono work.

Another important component of improving access to justice is a strong and sustainable legal aid system. That goes beyond paying lawyers to go to court — it requires fundamental changes and reforms to the justice system. Our Legal Aid Task Force has been tasked with developing a principled vision concerning publicly funded legal aid in BC. Chaired by Nancy Merrill, QC, the task force will work to find ways to engage lawyers to be actively involved in legal aid programs. The task force has met with stakeholders and expects to hold a summit with them in the late fall.

I would like to take this opportunity to welcome Appointed Bencher Daniel Smith, a citizen of the Laich-Kwil-Tach First

Nation, member of the Campbell River Indian Band on Vancouver Island and former Chief Negotiator for the Hamatla Treaty Society. Dan brings to the Bencher table a wealth of expertise in negotiations and experience in working with local First Nations communities, provincial, national and international Indigenous organizations and provincial and federal governments.

The Law Society continues to move forward with addressing the Truth and Reconciliation Commission's calls to action, which formed the focus of this year's annual Bencher retreat. Ardith Walkem, Indigenous lawyer and a member of the Nlaka'pamux Nation, co-chaired the retreat with First Vice-President Herman Van Ommen, QC. A list of presenters shared their insights at the retreat, providing for the Benchers a foundation of knowledge and understanding of the legacy of residential schools, ongoing harms to Indigenous peoples, as well as invaluable insights into how the Law Society can move forward.

We are honoured to have key leaders in the Indigenous legal community help guide our next steps. This highly esteemed group includes Judge Marion Buller, Judge Len Marchand, Judge Steven Point, Professor John Borrows, Canada Research chair in Indigenous law and Nexen chair in Indigenous leadership at the University of Victoria's Faculty of Law, Grand Chief Ed John of the First Nations Summit, Tina Dion of the Aboriginal Lawyers Forum, Michael McDonald of the Indigenous Bar Association, Appointed Bencher Dan Smith, and Indigenous lawyer Linda Thomas. These leaders will help guide the Law Society's engagement with the Indigenous legal community in the creation of a task force, whose mandate will be to effectively respond to the Truth and Reconciliation Commission's calls to action. I look forward to updating you on our progress in the near future. ❖

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articulated 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.

Current and archived issues of the *Bulletin* are published online at lawsociety.bc.ca (see [Publications](#)).

© 2016 The Law Society of British Columbia — see lawsociety.bc.ca > [Terms of Use](#)
Publications Mail Agreement No. 40064480





Ardith Walkem (photo left) addresses the Benchers and guests at the 2016 Benchers retreat; First Vice-President Herman Van Ommen, QC (photo right) emceed the event.

Photos: Kevin Dunn

TRUTH AND RECONCILIATION

“Nothing about us without us”

THE BENCHERS HELD their annual retreat from June 2 to 4 at the Penticton Lakeside Resort and Convention Centre. Friday, June 3 was devoted to a forum at which the Benchers heard from Indigenous leaders and participated in discussions.

The all-day program marked an important step in the Law Society’s ongoing development of an action plan in response to the findings of the Truth and Reconciliation Commission of Canada (TRC).

At their October 2015 meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC report is one of the most critical issues facing the country and the legal system today. The Benchers also recognized, however, that the desire for immediate action must be tempered by the need for consultation with the Indigenous legal community. That need was articulated by Indigenous lawyer Ardith Walkem when she referred to the saying, “Nothing about us without us” while addressing the Benchers at their May 2016 meeting. The Benchers subsequently recognized the phrase as a reminder of the need to be guided by Indigenous engagement.

Since their October 2015 meeting, the Benchers have identified key Indigenous leaders to help guide the Law Society’s response to the TRC’s calls to action. As a first step, the Society’s annual retreat was used as a forum to build broad awareness of the issues underlying the calls to action.

Walkem was the co-chair of the June Benchers retreat and spoke at the

June 3 forum. Walkem is a member of the Nlaka’pamux Nation and has practised in the area of Indigenous law since she was called to the bar in 1996.

At their Penticton retreat, the Benchers also heard from the Honourable Judge Marion Buller, who spoke about First Nations courts. A member of the Mistawasis First Nation in Saskatchewan, Judge Buller was the first Aboriginal woman judge in BC. Judge Buller established the First Nations Court in New Westminster, and in 2013 she expanded the First Nations Court to Duncan. Judge Buller is currently supporting the development of an Aboriginal family court. She has been a Provincial Court judge for just over 19 years.

Grand Chief Edward John spoke about the United Nations Declaration on the Rights of Indigenous Peoples as a foundational document necessary to understand the TRC’s calls to action. A hereditary Chief of the Tl’azt’én Nation in Northern BC, John was a lawyer for more than 30 years and has served in many leadership roles at the local, provincial, national and international levels. He is a former co-chair of the North American Indigenous Peoples’ caucus and participated in the development of the Declaration on the Rights of Indigenous Peoples that was adopted by the United Nations General Assembly in September 2007. He was recently reappointed for a second three-year term as a North American representative to the United Nations Permanent Forum on Indigenous Issues.

Michael McDonald, a member of the Peguis First Nation in Manitoba and the treasurer of the Indigenous Bar Association, provided an overview of the history of the constitutional protection of Aboriginal and treaty rights in Canada. McDonald has practised in the area of Aboriginal law for over 25 years.

Katrina Harry, a member of the Esk’etemc First Nation near Williams Lake, conveyed the need for improvements in the child welfare system to reduce the number of Indigenous children in foster care. Harry manages the Parents Legal Centre at the Robson Square courthouse in Vancouver, which focuses on helping parents reach collaborative solutions as early as possible in the child protection process. Called to the bar in 2006, Harry has been involved in child protection matters for several years.

Dan Smith, a citizen of the Laich-Kwiltach First Nation and a member of the Campbell River Indian Band who was recently appointed as a Benchers (see p. 4), presented an overview of Indigenous laws. A former chief negotiator for the Hamatla Treaty Society, Smith has considerable working experience with local First Nations communities, provincial, national and international Indigenous organizations and provincial and federal governments. He was elected by the Chiefs of the First Nations Summit as one of three members of its Political Executive and Leadership Council, and the Chiefs subsequently elected him to the BC Treaty Commission as a commissioner. ❖



Access to justice and the work of the Law Foundation of BC

by Timothy E. McGee, QC

THE THEME OF this issue of *Benchers' Bulletin* is access to justice, a subject that is central to the Law Society's strategic priorities. We have chosen to feature Jennifer Muller's arduous journey as a self-represented litigant in a family law proceeding for the custody of her daughter. Her story serves as a reminder that, for some, the challenge of accessing justice can seem insurmountable.

There are, however, many success stories in the area of enhancing access to justice, and I would like to highlight the work of the Law Foundation of BC as the driver of many of those. As you may know, the interest on funds held in lawyers' pooled trust accounts and a portion of lawyers' fees are directed toward the Law Foundation of BC, largely to support pro bono services and access to justice programs. I was reading the Foundation's most recent annual report and it really drove home for me the importance of its work and the difference it makes in communities across our province. Legal aid is the largest mandate

area of the Foundation, with 68 per cent of the total grants falling under this category. In 2015 alone, 103,645 clients were helped by programs funded by the Foundation's legal aid grants.

Legal aid is the largest mandate area of the Foundation, with 68 per cent of the total grants falling under this category. In 2015 alone, 103,645 clients were helped by programs funded by the Foundation's legal aid grants.

It is hard not to be impressed by the breadth of the programs the Foundation funds and the great care it takes to identify and assess programs and projects in legal aid, legal education, legal research, law reform and law libraries. Last year, the Foundation approved \$16.3 million in funding for 73 continuing programs and 66 grants

to many worthy causes and programs such as the Legal Services Society, the CBA, BC Branch's lawyer referral service, the People's Law School, the BC Law Institute, Courthouse Libraries BC, Access Pro Bono, and the Law Society's own Professional Legal Training Course.

The Foundation's success is made possible by the strong leadership of its board of directors and the tireless efforts of its Executive Director Wayne Robertson, QC and his dedicated staff and volunteers. It is often said that in addressing the challenge of improving access to justice there is no silver bullet and no simple solution in the hands of any one organization. But it is safe to say that the Law Foundation is a major player in improving access to justice and an organization that can inspire us all.

I welcome your comments or feedback on our efforts in improving access to justice. Please feel free to contact us at communications@lsbc.org. ❖

New Appointed Bencher



THE LAW SOCIETY welcomes recently appointed Bencher **Daniel Smith**. Appointed Benchers are non-lawyers selected by the provincial cabinet to represent the public interest.

Dan is a citizen of the Laich-Kwil-Tach First Nation, a member of the Campbell River Indian Band on Vancouver Island and former Chief Negotiator for the Hamatla

Treaty Society.

Dan began his career in the commercial fishing, logging and trucking industry, gaining experience in negotiations as an active member of the International Woodworkers of America and the Teamsters Union of Canada. He has extensive experience working with local First Nations communities, provincial, national and international Indigenous organizations and provincial and federal governments.

Dan has worked in senior positions with Canada Employment and Immigration, the

Department of Fisheries and Oceans, Indigenous and Northern Affairs Canada and Canadian Heritage. He was elected by the Chiefs of the First Nations Summit as one of three members of its Political Executive and Leadership Council. After Dan served his term, the Chiefs elected him to the BC Treaty Commission as a commissioner. Dan is now retired.

Dan was raised by his grandparents in the Wuikinuxv Nation, Rivers Inlet and the Campbell River Indian Band and later moved to Vancouver to attend school. ❖