



# BENCHERS' BULLETIN

Keeping BC lawyers informed

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## Our national healing plan

by David Crossin, QC

SOMETHING EXTRAORDINARY HAS occurred. An Indigenous woman will lead a nation and reveal lightness and hope where there has been only darkness and indifference.

Our country is haunted by our Indigenous women that are gone. Missing. Murdered. Disappeared. Addicted, abused, exploited, vulnerable and, by most, forgotten.

The fact is, we all knew. Justice Murray Sinclair said it out loud:

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide."

There has been much collateral damage to our country and collective conscience. Women and girls are perhaps at the forefront. Exploring this horror and its causes is now, finally, a national moral imperative. A commission has been struck. Its mandate is broad:

The Commission is directed to examine and report on the systemic causes behind the violence that Indigenous women and girls experience and their greater vulnerability to that violence by looking for patterns and underlying factors that explain why higher levels of violence occur.

The Commission is also directed to examine and report on the impacts on policies and practices of government institutions. These include institutions such as policing, child welfare, coroners and other government

policies/practices or social/economical conditions.

A British Columbia judge, the Honourable Judge Marion Buller, has been appointed to lead the National Inquiry Into Missing and Murdered Indigenous Women and Girls. There could not be a better choice.

She is a member of the Mistawasis First Nation in Saskatchewan. Judge Buller has been president of the Indigenous Bar Association in Canada and was the first Aboriginal woman judge in British Columbia. She has been a Provincial Court judge since 1994, and in 2006 Judge Buller established

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the First Nations Court in New Westminster. In 2013, with the assistance of Chief Judge Thomas Crabtree and the late Judge Josiah Wood, she expanded First Nations Court to Duncan, BC.

In early 2016, the Law Society of BC formed a steering committee to assist the Law Society in formulating a mandate to address the calls to action outlined in the report of the Truth and Reconciliation Commission.

The Law Society was honoured to welcome many leaders of our Indigenous community in British Columbia as members of our steering committee. Judge Buller was part of that steering committee and spoke, with many others from the committee, at the Law Society retreat in June 2016. Those leaders, including Judge Buller, have inspired the Law Society to formulate a permanent Truth and Reconciliation

### 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](mailto: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](mailto:communications@lsbc.org).

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Advisory Committee that will be pursuing the array of justice issues arising from the commission's report.

As many of you know, an admission of criminal responsibility in First Nations Court mandates the participation of an accused person in a healing plan. It is an act

of collaboration that seeks redemption, restoration and rehabilitation. A healing plan is often difficult because it demands painful self-evaluation in seeking understanding of the past behaviour and an understanding of how to move forward in hope.

Judge Buller and her fellow commissioners are about to embark upon an exploration of framing our national healing plan. She will need our hearts and our help. I offer that to her on behalf of the Bar of British Columbia.❖

## CRA notices of requirements

THE SUMMER 2016 issue of the *Bencher's Bulletin* reported on the Supreme Court of Canada's decisions in *Canada (Attorney General) v. Chambre des Notaires du Quebec* 2016 SCC 20 and *Minister of National Revenue v. Thompson* 2016 SCC 21. As a result of the court's decisions, ss. 231.2 and 231.7 of the *Income Tax Act* are unconstitutional and inapplicable to lawyers and Quebec

notaries in their capacity as legal advisors, and the exception in the definition of solicitor-client privilege in s. 232(1) of that Act is constitutionally invalid.

The Law Society has now received confirmation that the Canada Revenue Agency will not be issuing requirements or compliance orders to lawyers or notaries for information related to their clients

where that information is held in their capacity as legal advisors.

If any questions arise from existing notices of requirements or applications for compliance orders, contact Barbara Buchanan ([bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org)) or Michael Lucas ([mlucas@lsbc.org](mailto:mlucas@lsbc.org)) at the Law Society.❖

## 2016 Law Society scholarship

Congratulations to **Sarah Pike**, winner of the \$12,000 Law Society scholarship for graduate legal studies.

Pike was called to the BC Bar in 1995, practising with Davis & Company until 2002 and then with Hunter Voith until 2003. Since 2003, she has practised as legal counsel for the Department of Justice, working for Aboriginal Litigation Services at the BC regional office and Indigenous and Northern Affairs Canada's Legal Services Unit.

Pike is pursuing studies in the University of British Columbia's Master of Laws program for the 2016-2017 academic year. Her proposed thesis is a biography of Gilbert Malcolm Sproat (1834-1913) and an analysis of his land policies as Indian Reserve Commissioner in BC from 1876 to 1880. Pike will be examining Sproat's minutes and decisions, as well as his letters and other writings.

"Reconciling the pre-existence of Aboriginal societies, Crown sovereignty, and the



Sarah Pike and President David Crossin, QC

Photo: Ron Sangha Productions Ltd.

lack of historic land cession treaties in British Columbia, in my view, is one of the most compelling conundrums facing our province today," Pike stated. "Gilbert

Sproat may be able to assist us with ideas of both what to do and what not to do as we continue with this reconciliation."❖



# Promoting equity and diversity

by Timothy E. McGee, QC

THE LAW SOCIETY values the principles of equity and diversity and continues to work on initiatives for the advancement of women, minorities and Indigenous people in the legal profession as part of its 2015-2017 strategic plan. This issue of the *Benchers' Bulletin* features interviews with two extraordinary individuals in the profession, both from diverse backgrounds that have helped inform and shape their careers in law.

You will read about Michelle Stanford, the first black woman elected as a Bencher of the Law Society. Called to the Bar in 1993, she has built an impressive legal career in criminal defence and administrative law. Michelle speaks about what inspired her to make the switch from working as a head nurse at Vancouver General Hospital to embarking on a career in law. She shares with us the progress toward diversity she has seen in the profession.

You will also hear from the Honourable Judge Len Marchand Jr., who has a wealth of experience and knowledge in working with residential school survivors. After 18 years of practising law, Len was appointed to the Bench in September 2013 and currently sits on the Provincial Court in

Kamloops. He shares his thoughts on how First Nations Court is making a difference in communities and how a non-adversarial approach in dealing with Indigenous offenders provides greater opportunity for success, from the perspective of both the individual and the community. We are pleased to have Len as a member of the

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*Current research shows the best way to promote diversity and cultural competency is inclusive engagement with staff and management and facilitating contact with people from different backgrounds.*

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Law Society's Truth and Reconciliation Advisory Committee.

In his interview, Len speaks to the importance of the Truth and Reconciliation Commission's recommendation for lawyers to receive appropriate cultural competency training, including the history and legacy of residential schools, treaties and Aboriginal rights, Indigenous laws and Aboriginal-Crown relations. This includes skills-based training in intercultural

competency, conflict resolution, human rights and anti-racism.

At the Law Society, we are planning a renewed program of cultural competency for our staff. A recent article in the *Harvard Business Review* entitled "Why Diversity Programs Fail" brought to light some of the traditional diversity strategies that simply don't work, such as focusing on negative messages about past failures. Current research shows the best way to promote diversity and cultural competency is inclusive engagement with staff and management and facilitating contact with people from different backgrounds. These are great points to consider as we plan our cultural competency initiatives.

Our Equity and Diversity Advisory Committee continues to develop its outreach strategies to engage lawyers and law firms. It has done wonderful work in the area of *Justicia* in BC, and I encourage members to take a look at the best practice guides and model policies that the Law Society has developed. Materials can be found on our [website](#).

I welcome your comments and feedback. Please feel free to contact us at [communications@lsbc.org](mailto:communications@lsbc.org). ❖

## FROM THE ETHICS COMMITTEE

# Consultation on "incriminating physical evidence" rules

THE ETHICS COMMITTEE is seeking feedback from Law Society members and other interested persons about *Code of Professional Conduct for British Columbia* provisions regulating the handling of incriminating physical evidence. Similar rules have been adopted by most Canadian law societies and are included in the Federation of Law Societies' Model Code of Professional Conduct.

Interested persons may review the consultation materials on the Law Society's website and are encouraged to provide comments before the rules are recommended to the Benchers for adoption. ❖

## LAW SOCIETY FALL CALENDAR

- October 14 **Annual general meeting** – see the [Notice to the Profession](#)
- November 15 **Vancouver Bencher by-election**
- November 17 **Bench & Bar Dinner**