



Michelle Stanford

Photo: Kelly Funk Photography

Bencher Michelle Stanford: Giving a voice to the under-represented

AS IF ONE remarkable career wasn't enough, law is in fact Michelle Stanford's second profession. The Bencher representing Kamloops district has a distinguished career in criminal law, but began her professional life as a registered nurse.

For those who know Stanford, the dual career path is no surprise. "Throughout everything she does for clients and for the people of Kamloops, it's about caring," says Life Bencher Ken Walker, QC, who has had the opportunity to observe Stanford at work, both as a lawyer and in the Kamloops community, for nearly 20 years.

"We're so fortunate to have someone like Michelle," he says, referring to her election as a Bencher last November.

Stanford is also the first female Bencher elected in Kamloops district and the first black female Bencher in BC. "That was not the agenda I ran on," she hastens to point out, adding that, nevertheless, race and gender did not prove barriers to becoming a Bencher of the Law Society.

That's not to say, however, that Stanford sees equal access across the profession, particularly when it comes to women. "There's still an inequity, and the Law

Society is addressing it, so I'm encouraged. But the fact is that it still exists." Stanford says she's "astounded" that, although 50 per cent or more of the province's law school graduates are women, they account for only 38 per cent of practising lawyers in BC.

Although she has not encountered any overt barriers in her own career, Stanford cautions that doesn't mean barriers don't exist. "I have to say that I'm not aware of any conscious bias," she says, "but it may

continued on page 11

Feature – Judge Len Marchand... from page 8

appointed to the Law Society's Truth and Reconciliation Advisory Committee. The committee is charged with guiding the Law Society's response to the Truth and Reconciliation Commission's calls to action. The *Benchers' Bulletin* had the opportunity to chat with Marchand and hear his thoughts on how the legal profession and the justice system can move toward reconciliation.

What are your thoughts on the significance of the TRC's calls to action to the legal profession?

They're central. Over the years, I've witnessed as a lawyer and a judge how our current adversarial processes frighten, bewilder and hurt many Indigenous Canadians. I believe that less adversarial and more restorative approaches would be more helpful to individuals who are struggling, often as a result of the legacy of residential schools or other colonial policies. A more restorative approach would be good for those individuals, their families and their communities. And that would be good for our broader Canadian society.

What does this restorative approach look like?

One great example is the First Nations Court model that we have in various locations across the province, including in my community of Kamloops. Each one is tailored to meet the needs of its community. Offenders who come in are prepared to enter a guilty plea and take responsibility for their actions. The sentencing hearings are conducted in a way that allows for the full participation of the offender, supporters of the offender, a council of elders, community members, service providers and victims if they choose to participate. We are looking for sentences that will help address the underlying issues that have brought the offender before the court.

One of the key elements that we are implementing is to attach a healing plan to a probation order in virtually every case. The probation term states that the offender will make his or her best efforts to comply with the terms of the healing plan, which sets out a number of specific steps that the offender will take to promote his or her wellness and contribute to the community. Once a sentence is imposed,

offenders come back for reviews, so we are able to track their progress toward completing the healing plan they have committed to and encourage them along their path.

How is First Nations Court working so far?

It's a very effective tool. I can give you an example of a case involving an elder in a local community who had attended residential school. He was a highly respected person, but he had a problem with alcohol. He committed a serious assault against his best friend — they were both drinking and a knife was involved. The Crown's position on sentencing was for him to serve a significant custodial sentence which, looking strictly at the offence, was an appropriate position for the Crown to take.

This elder came forward in First Nations Court. He had the support of the victim, his chief and his community. The proposal was for him to serve a sentence in his community and to make amends by leading a sober life and working with youth. This meant that the youth in his community would benefit from his traditional knowledge and skills.

With input from all stakeholders and the elders, I imposed the community sentence and, later, sat on the initial review. Things were going very well. The elder was happy to inform me of all the progress he had made on his healing plan. The reports from the community were very good.

Had the community not stepped forward and had the elders not been there, it's hard to say what the sentence would have been. In all likelihood, after a regular sentencing hearing, chances are that he would have been serving a significant custodial sentence.

I believe the assault was a low point that inspired a big change in the elder. In my work with residential school survivors, I saw people make big changes all the time, including late in life. All indications are that First Nations Court has made a difference for this offender, his family and his community.

What are other ways our justice system can work to better serve Indigenous people and communities?

Many Indigenous parties that we see in court have suffered trauma in their lives

and there is no need to re-victimize these parties through, for example, an aggressive cross-examination. Usually the truth is self-evident or can be uncovered in a respectful way. Aggressive cross-examination techniques should be a last resort and used only if really necessary. People have been deeply hurt. Even lawyers with the very best of intentions can ask questions in a way that's hurtful when they don't need to.

Sometimes the adversarial process is the best process, but there are other areas where I believe we can move to a non-adversarial, restorative type of process. When we created the Independent Assessment Process [as part of the Indian Residential Schools Settlement Agreement], we used an inquisitorial model. The adjudicators made the inquiries and the way the inquiries were made — in that non-adversarial context — was quite a bit different and quite a bit better than how it had been in litigation.

I could see a non-adversarial model being applied in child protection cases and in many types of family law cases. That would require the judge to be more actively involved or even taking the lead in gathering information from the witnesses, with input from counsel. Counsel would still have a very active role in preparing their clients and ensuring the right information is put forward to the decision-maker.

What steps can lawyers take to become culturally competent?

For lawyers working with Indigenous clients, what they need to do is to really get to know their client, his or her community and the local resources. In the criminal context, counsel need to understand the *Gladue* and *Ipeelee* line of cases. They need to provide information to assist the judge in understanding why their client is in this predicament. Do they have a reduced level of moral responsibility for their conduct? What alternatives are available to incarceration that will help this person be better and keep the community safe? Lots of counsel do this work, but I feel that, quite often due to time constraints and other pressures, I'm not getting this critical information. And I should.

Do you think attaining higher Indigenous representation in the legal profession is

important to reconciliation? And if so, how can we achieve that?

I think it's a foundational piece to have a profession and judiciary that reflect the makeup of society, not just from the perspective of Aboriginal Canadians, but from the perspective of Canadians of all backgrounds. It gives people comfort and confidence in the judicial process, and that's critical to having a free and functioning society.

From the perspective of Aboriginal Canadians, something that my father used to always say is, "Education is the key to the future." That starts with kids. It starts with making sure kids come to school and they're ready to learn. They're living in a safe environment. They're fed. They're loved and cared for. That requires resources in communities to help support

families that are struggling. Then kids can reach their full potential and all options are open to them. Not only do we need more Aboriginal lawyers and judges, but we also need more Aboriginal doctors, engineers, welders, loggers and so on. Education is key to providing opportunity to Aboriginal kids.

From the perspective of the legal profession, in my view, the profession needs to do a better job of hiring and supporting Aboriginal lawyers. Though there may be some extra effort at the outset, having a more diverse profession will pay dividends in the long run by allowing the profession to better meet its duties to our society.

Do you see a role for the Law Society in achieving reconciliation?

Absolutely. First of all, there's the specific

recommendations in the TRC report directed to the law societies to ensure that lawyers get cultural competency training, including on the history and legacy of residential schools, treaties and Aboriginal rights, Aboriginal-Crown relations and so on. The Law Society can assist in providing skills-based training to lawyers in intercultural competency, conflict resolution, human rights and anti-racism.

Many calls to action include legislative reforms, in areas such as Aboriginal child welfare, Aboriginal education, Aboriginal title claims and Aboriginal justice systems. These legislative changes are important for the success of reconciliation. The Law Society has a critical role in demonstrating its support for legislative changes and ensuring lawyers in BC fully understand the extent and implications of these changes. ❖

Feature – Michelle Stanford ... from page 9

be an issue of unconscious bias that I was unaware of, where I might have been overlooked and someone else of equal calibre was selected."

Speaking from her own experience, Stanford describes role models as playing an important part in overcoming barriers. She recounts an experience from her undergraduate days that left a lasting impression: "I happened to date a fellow whose mother was a lawyer. I don't have any lawyers in my family, but when I saw her as a single mother who was raising four children, that woman in that role flagged to me that law was something that I could do."

At the time, Stanford was gravitating toward sciences, and on her own mother's advice she completed a degree in nursing. "I was having a bit too much fun in college at the time and was a little bit unfocused," she explains with a laugh. "She suggested that nursing was a path I could achieve in a short time frame, and a career I could take anywhere in the world."

Several years later, Stanford was a head nurse at Vancouver General Hospital when she began having second thoughts about her first career choice. Thinking back to the role model she had encountered in

her early university days, she decided to apply to Dalhousie law school and was accepted.

Stanford would complete her law degree at the University of Victoria and practise in Vancouver for a year before moving to Kamloops, where she has run a sole practice since 1996.

A big part of her practice has involved representing clients with mental health or addiction issues. Some of those clients have fallen under the jurisdiction of the BC Review Board, which holds hearings to make and review dispositions where individuals charged with criminal offences have been deemed not criminally responsible or unfit to stand trial on account of mental disorder. Other clients have had mental health or addiction issues, but not to the extent of being diagnosed with a mental disorder.

Stanford is drawn to those clients because "they are definitely a demographic that requires a lot of patience and a voice, particularly when in conflict with the law."

Today, Stanford is unquestionably a role model in her own right. In addition to distinguishing herself in criminal law, she has consistently contributed to both the profession and the community. She is currently a member of the Law Society's Practice Standards Committee and Equity and Diversity Advisory Committee. In recent

years Stanford has served as president of the Kamloops Bar Association and as a member of the Legal Aid Action Committee of the Trial Lawyers Association of BC. Her community work has included serving as president of the Kamloops Art Gallery and on the boards of the Western Canada Theatre Company and the Thompson Health Region.

While she has cut back her volunteer work to focus on her Bencher duties, Stanford continues to volunteer with the Thompson Rivers University law student mentor program, the Canadian Bar Association's Women Lawyers Forum mentoring program and Access Pro Bono.

Her passion for the profession does indeed come down to caring, and for Stanford caring means ensuring that the disadvantaged and under-represented have a voice in the administration of justice, and ensuring equal access to a profession that represents the diversity of Canadian society.

While acknowledging the work that remains to be done, Stanford is clearly excited by the potential to make a difference as a Bencher. "As a new Bencher, I'm thrilled that the Law Society is focusing on equity and diversity. I'm encouraged by the passion around the table, by the insights and the passion to keep it moving forward." ❖

Scams against lawyers – What are they and what can you do about them?

by Barbara Buchanan, QC, Practice Advisor

THERE ARE MANY scams against BC lawyers and law firms, including the common ones listed below. The starting point to protect yourself against such fraud is to be aware of the prevalent scams. Next, take steps to manage the risk.

COMMON SCAMS AGAINST LAWYERS

The “bad cheque scam”

There is no question that the most common scam against BC lawyers continues to be the “bad cheque scam” (may be a counterfeit or altered cheque, certified cheque, bank draft, US cashier’s cheque or money order). Typically, the scammer poses as a lawyer’s new client; however, the scammer may also pose as another lawyer, even using the name of a real lawyer or law firm who has no knowledge of the scam. There are usually at least two people working together to create a convincing scenario (e.g., debtor/creditor, purchaser/seller, husband/wife). Fake websites are sometimes used (may copy legitimate websites) as well as fake phone trees for businesses (e.g., press 1 for accounting, press 2 for human resources, etc.).

The scammer’s end game is to dupe a lawyer into depositing a bad cheque into trust (the lawyer is invited to take his or her fees and disbursements from the funds on deposit). The lawyer is then tricked into paying the majority of the funds electronically to the scammer, before the lawyer or the lawyer’s financial institution realizes the instrument is bad, leaving the lawyer’s trust account short, overdrawn or both.

The bad cheque is sometimes of such high quality that even banks are initially fooled. A successful scam may result in a six-figure loss. In August 2016, a BC lawyer reported being defrauded out of approximately \$500,000 in a bad cheque scam; see the August 4, 2016, Notice to the Profession: [Phony debt collection nets scammer \\$500,000](#).

Although the names, email addresses and ruses may change, some of the common ruses recently used for the bad cheque

the client identification and verification rules requiring verification of identity in person. The new client may also falsely claim to have been referred by a legitimate lawyer.

Change in payment instructions

If you are about to pay out trust funds and the payment instructions change, check thoroughly to ensure that the new instructions are legitimate. The instructions may have purportedly come from the client or from another lawyer. Make your staff aware of this scheme and review your protocols. See the May 7, 2015 Notice to the Profession: [Fraudsters are targeting lawyers disbursing trust funds with a change in payment instructions](#). If your accounting staff’s names and contact information are on your website, consider removing them from public view. Once a scammer knows a staff member’s name, it is easy to figure out their email address be-



cause every address will presumably have the same domain name, e.g., @buchanan-andco.com.

scam are collecting on a family law separation agreement, equipment purchase and sale (dredgers have been popular), commercial and personal loans and unpaid invoices. The scammers provide lawyers with convincing documents (loan agreements, promissory notes, purchase orders, invoices, settlement agreements, collaborative divorce agreements, correspondence, interest calculations, court documents and scans of passports and driver’s licences).

Scammers have learned “legal lingo” from lawyers and ask lawyers for their retainer agreement and may comment on a lawyer needing to perform a conflicts check. They may provide scans of identity documents by email in an effort to avoid

because every address will presumably have the same domain name, e.g., @buchanan-andco.com.

“Phishing” scam targeting law firm accounting staff and lawyers

The April 8, 2015 Notice to the Profession: [New email “phishing” scam targets firm accounting staff and lawyers](#), alerted lawyers to a scam then targeting Ontario law firms and now appearing in BC. The scammer spoofs a senior staff member’s email address, making it appear that the email is actually sent by law firm staff, asking staff to send funds or divulge account information, ignoring normal protocols. The perpetrator may also pose as a lawyer from