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# BENCHERS' BULLETIN

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## Themes for 2007

by Anna K. Fung, QC

AS I BEGIN my year as President of the Law Society, I want to share with you the four main themes which I will be focusing on in 2007.

1. Responsiveness
2. Accessibility
3. Accountability
4. Enhanced Lawyer Competence

### RESPONSIVENESS

The first, responsiveness, refers to how we at the Law Society relate to the public, to government and to our members, and how well we discharge our statutory public interest mandate. Responsiveness requires an understanding of the needs and expectations of those whom we purport to serve, as well as continuing innovation in the ways in which we try to meet those needs and expectations. One key example of that is in our complaints and disciplinary processes, which I want to see revamped this year.

Not all complaints need to or should be treated in the same manner. Misappropriation of trust funds should be treated quite differently from failure to respond to Law Society correspondence, for example. Both are blameworthy infractions, but they are very different in the magnitude of harm to the public and should be accorded different levels of scrutiny, attention, resources and priority.

With this in mind, the Law Society will be embarking on a pilot project later this year for simple offences and service quality complaints that are not likely to result in serious disciplinary action. These types of complaints will be diverted to a more streamlined and less confrontational process designed for speedy resolution.

Then, there are those few lawyers who are the subject of numerous complaints, whom some call the "ungovernable lawyers." I believe we should be more proactive in dealing with these lawyers, in either a remedial or a disciplinary manner, so they don't consume an inordinate amount of the Law Society's limited resources. A Law Society staff group is hard at work designing a better process to address this problem.

### ACCESSIBILITY

The Law Society needs to be an accessible organization in order for it to carry out its mandate in a manner that instills public trust in the ability of lawyers to continue to self-regulate in the public interest. This means being aware of the issues facing the constituents the Society serves. In addition, the Law Society must get its key messages out to the community in a way that the public, not just lawyers, can understand and appreciate.

The only way that we can do that is through consistent and concerted public outreach, making direct linkages with media, governments and community groups and by really listening to their views. Don't get me wrong, this is not a marketing strategy. It is something that we must do if we are to continue to assert our right to self-govern.

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**INSTEAD OF TALKING TO THE CONVERTED (NAMELY, OUR FELLOW LAWYERS), WE SHOULD BE CONSULTING WITH THE PUBLIC ON THEIR NEEDS, WANTS AND EXPECTATIONS.**

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To paraphrase my fellow Benchers Leon Getz, QC: Lawyers are notorious for spending an inordinate amount of time talking to ourselves. We think that as lawyers we know what the public wants and needs, but do we really? Remember, the public is not a homogeneous mass. In my view, it is not reasonable and is perhaps somewhat arrogant for us as lawyers to individually purport to know what Joe or Jane Public working in a pulp mill in Prince George wants or needs the Law Society to do.

Instead of talking to the converted (namely, our fellow lawyers), we should be consulting with the public on their needs, wants and expectations. We should also be educating the public about the role of lawyers in the legal system and the importance of lawyer and judicial independence to the maintenance of a free and democratic

### 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 at [bdaisley@lsbc.org](mailto:bdaisley@lsbc.org). Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50.00 (plus GST) per year by contacting the subscriptions assistant at [communications@lsbc.org](mailto:communications@lsbc.org). To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at [lawsociety.bc.ca](http://lawsociety.bc.ca).

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society. We need to be accessible to the public, and that does not mean simply having a permanent office in Vancouver and maintaining regular business hours so the masses can come to our doors with their requests.

This year, I will be launching a program aimed at building relationships with community groups and getting the Law Society's key messages out to the public. This type of initiative is already partially underway under the leadership of the Equity and Diversity Committee, which last year hosted a first public forum at the Law Society on citizenship and the rule of law (see page 10 for information on the spring public forum). A similar initiative aimed at strengthening the Law Society's relationship with government is also underway.

#### ACCOUNTABILITY

Accountability is a frequently used buzzword these days. What I mean by accountability is that the Law Society, in all of its internal and external processes, must demonstrate responsibility for its actions with a view to ensuring the public continues to have faith and trust in the institution.

To achieve this, the Law Society must have a governance structure that facilitates Benchers' decision-making and ensures timely implementation of those decisions. This includes ensuring long-term financial stability for the organization. Right now, the practice fee and financial budget are set on a yearly basis. Our Past President Rob McDiarmid, QC has, however, suggested that we ought to be moving towards a multi-year practice fee and budgeting process. The

goal is to put the Law Society on a path that will assure members that their fees will not suffer wild swings from year to year while at the same time ensuring core Law Society programs are adequately funded. This is an idea I would like to explore further.

#### ENHANCED LAWYER COMPETENCE

Lawyers tend to believe that, after having proven their competence by completing law school, PLTC exams and articling, they can be assumed competent until proven otherwise. This is either sheer lunacy or tremendous hubris on the part of the profession. I believe the public would be astounded if told lawyers are not continually improving their knowledge and competence and are

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Attorney General Wally Oppal, QC and Jamie Maclaren, Executive Director of Pro Bono Law of BC, present the PBLBC 2007 Solicitors' Program Lawyer of the Year Award to Jaime Mel-lott, a Vancouver sole practitioner, at the Second Annual PBLBC Appreciation Breakfast at the Law Courts Inn on February 22, 2007.

## Welcome to the new *Benchers' Bulletin*

For many years, the *Benchers' Bulletin* and *Discipline Digest* have been the primary means by which the Law Society has communicated the latest news, policy, practice and regulatory matters to the legal profession.

To ensure we continue to deliver timely, relevant and engaging information, we have redesigned the *Benchers' Bulletin* to include:

- more information on issues that impact the legal community;
- feature spreads and greater use of photos to highlight key issues and deliver in-depth profiles;
- a revised format for the *Discipline Digest* to promote readability; and
- continuing practice, ethics and regulatory reporting.

Cost efficiency was a key part of the planning involved in launching the new *Benchers' Bulletin*, including the move to four-colour printing — a process that is cheaper than producing a custom-printed, three-colour newsletter.

Email your comments to [communications@lsbc.org](mailto:communications@lsbc.org).





# Service, communication, governance and efficiency

By Timothy E. McGee

FIRST, I WOULD like to extend a warm welcome on behalf of all staff to our incoming President, Anna K. Fung, QC. I have met with Anna to review her four Presidential themes for the work of the Law Society in 2007: Responsiveness, Accessibility, Accountability and Enhanced Lawyer Competence (see *President's View* on page 2 for discussion).

These are strong themes, going to the heart of our mandate to protect the public interest in the administration of justice. Addressing these themes requires focusing the Law Society's resources on the key performance areas of service, communication, governance and efficiency. In other words, we must focus on maintaining the public confidence and support so essential to the continued independence and relevance of our profession.

These presidential themes are closely aligned with the Law Society management

team's four top operational priorities for 2007, and I would like to share those priorities with you now.

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ADDRESSING THESE THEMES REQUIRES FOCUSING THE LAW SOCIETY'S RESOURCES ON THE KEY PERFORMANCE AREAS OF SERVICE, COMMUNICATION, GOVERNANCE AND EFFICIENCY. IN OTHER WORDS, WE MUST FOCUS ON MAINTAINING THE PUBLIC CONFIDENCE AND SUPPORT SO ESSENTIAL TO THE CONTINUED INDEPENDENCE AND RELEVANCE OF OUR PROFESSION.

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First, we will continue to manage the implementation of the five-part *Building for the Future* operational plan launched in 2006. Three key initiatives are being rolled

out over the course of this year: the new in-field Trust Assurance Program, the new in-house Custodianship Program and, effective January 1, the Small Firm Practice Course. As well, we will continue the work started in 2006 in our Benchers Support and Government Relations programs.

Second, we will develop and present to the Benchers for their consideration a new set of performance measures: defining what we do in our core mandated operations, outlining how those operations are advancing the mandate of the Law Society, and providing recommendations for measurement of progress and performance in those areas. This work is directed at enabling all Benchers to state with confidence, "I understand the objectives of our core mandated operations and how they are being pursued; I believe that achieving



*Linda D. Locke receives her Queen's Counsel certificate from Attorney General Wally Oppal, QC at a February 23 ceremony. Linda, a member of the Sto:Lo Nation who practises with Upper Skeena Counselling and Legal Assistance in Hazelton, is the first BC aboriginal woman appointed QC. She is wearing a Sto:Lo cape belonging to her mother, Dorris Peters (left).*

those objectives improves the Law Society's performance as regulator of the profession; and I am satisfied that management is measuring that performance clearly and appropriately." This work touches on what we all do here at the Law Society, day in and day out.

Third, we will focus on a number of "people" initiatives in 2007. Working with our Employee Council and using the results of an employee survey conducted last year, we will improve our management and

communication practices, becoming more responsive to issues identified by employees as important to them. We're off to a good start with the January 1 kick-off of our Health and Wellness Benefit Program, and with the introduction of our new Employee Recognition Program later this month.

Fourth, we will complete the work started in 2006 around designing and recommending a long-term strategy and plan for the setting of practice fees, building three-year "rolling" operating budgets and

assessing our long-term capital needs and future funding options.

I am excited to have the opportunity to work with Anna, the Benchers and our fine staff to turn these four Presidential themes and operational priorities into action through 2007.

Finally, I welcome you to the year's first issue of the *Benchers' Bulletin*, redesigned for a cleaner, brighter look and produced for a similar cost per issue than our previous version. ♦

## Trust reports, compliance rating and compliance audits — FAQs

THE LAW SOCIETY has prepared a new list of Frequently Asked Questions for lawyers wanting more information about the Trust Assurance Program and compliance audits.

The program, which was approved by the Benchers in November 2005 and began operation in January 2007, is designed to be a more effective means by which the Law Society can fulfil its duty to ensure lawyers comply with the trust accounting rules (see "A new trust assurance program," *Benchers' Bulletin* 2006 No. 1 January – February and "Rule changes enhance trust security," *Benchers' Bulletin* 2006 No. 4 September – October).

For many years the Law Society monitored trust compliance by requiring all law firms to file an annual trust report accompanied by the report of an accountant. The information contained in these reports was considered adequate to allow Law Society staff to exercise the judgement and discretion necessary to determine if the circumstances of any particular firm raised issues regarding the proper handling and administration of trust funds and to follow-up as required.

The new Trust Assurance Program introduced a number of changes to the way the Law Society performed its trust review responsibility. Notable among these changes was a new, more extensive "self reporting" annual trust report for most lawyers and the launch of an in-field compliance audit program that will result in all

law firms being visited by a Law Society compliance auditor at least once every six years.

These new measures have enhanced the monitoring and assessment capability of the Law Society in the trust area. They have also made it possible for Law Society compliance audit staff to relieve most firms of the requirement to file an accountant's report where, in their discretion, the circumstances warrant.

The new program has three main components: the trust report (which in some cases includes an accountant's report), compliance rating and compliance audits. Below are answers to the most frequently asked questions about the Trust Assurance Program. These FAQs are also available on the Law Society's website.

**Q:** Who has to file a trust report?

**A:** Under Law Society Rule 3-72, all lawyers must file a trust report. Non-practising and retired lawyers who do not handle trust funds are exempted from filing a trust report by Rule 3-72(6).

The trust report is available through the "Log in" button on the Law Society's website.

If you are a practising insured lawyer but do not maintain a trust account, you still must submit a trust report, but you are not required to complete the entire document.

**Q:** Who has to file a trust report with an accountant's report?

**A:** Under Rule 3-75, the Executive Director has the discretion to require a lawyer who is required to deliver a trust report under Rule 3-72 to deliver, as part of the report, an accountant's report. The exercise of discretion is grounded by the Law Society's duty to ensure lawyers comply with the Society's trust accounting rules.

The current policy is that the following must file an accountant's report with a trust report:

- lawyers who have not filed accountant's reports for the two years immediately preceding the current reporting year;
- lawyers who terminate their practice during the year and who handled or held \$5,000 or more in trust funds; and
- lawyers with a compliance rating that raises concerns about the lawyer's trust accounting practices;

Accountants can access the report form through the "Regulation and Insurance – Trust Reporting" section of the Law Society's website or at <https://alt.lawsociety.bc.ca/trustreport3/index.cfm>.

If you require more information about why you are required to file an accountant's report, please call the Trust Assurance Department directly. They will try to answer your questions over the phone and,

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*Trust reports ... from page 5*

if necessary, will follow-up with a written response. Contact the Trust Assurance Department at [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org) or call 604 697-5810, toll-free in BC 1-800-903-5300 (ext. 5810).

**Q:** How is the compliance rating determined?

**A:** Past trust report history relating to compliance or non-compliance with the Law Society's trust accounting rules is reviewed. Any exceptions are assigned a weight based on the nature of the exception and the risk the exception could pose to the public. Some examples of more highly weighted exceptions are:

- prohibited large cash transactions (Rule 3-51.1);
- deposits to incorrect bank accounts (Rule 3-51);
- insufficient funds in trust (Rule 3-55);
- cheques improperly written on trust accounts (Rule 3-56);
- incorrect amount of funds transferred (Rule 3-56);
- incomplete accounting records (Rule 3-59);
- incomplete trust accounting records (Rule 3-60);
- not keeping records (Rule 3.61.1);
- lack of timely preparation of trust account reconciliations (Rule 3-65);
- trust shortages (Rule 3-66);
- late or incomplete trust reports (Rule 3-72); and
- failure to remit taxes in a timely manner (PCH Ch. 2).

Other answers on the trust reports and other lawyer information are also taken into consideration, such as areas of practice and the volume and size of trust transactions.

**Q:** If I file an accountant's report this year, will I be filing one next year as well?

**A:** If this is your first year of trust reporting, you will be required to file an accountant's report this year and next year. If you have filed two or more trust reports with an accountant's report, it will depend on the number and nature of the exceptions that are noted by your accountant and other areas of concern to the Law Society.

**Q:** How are law firms selected for compliance audits?

**A:** All law firms will be subject to a compliance audit to ensure their books, records and accounts comply with the

requirements of the *Legal Profession Act*, the Law Society Rules and the *Professional Conduct Handbook*. The goal is to audit each firm at least once every six years. For most firms, this will be a straightforward review and will provide the opportunity for the firms to raise any questions they may have on trust systems and procedures. The audits are generally selected at random. Some indicators may, however, trigger an audit:

- failure to file a trust report;
- information on a trust report that indicates non-compliance with the trust accounting rules and procedures;
- referral from other departments of the Law Society;
- inadequacies that were identified during a previous compliance audit; and
- a compliance rating that raises concerns about the lawyer's trust accounting practices.

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**THESE NEW MEASURES HAVE ENHANCED THE MONITORING AND ASSESSMENT CAPABILITY OF THE LAW SOCIETY IN THE TRUST AREA. THEY HAVE ALSO MADE IT POSSIBLE FOR LAW SOCIETY COMPLIANCE AUDIT STAFF TO RELIEVE MOST FIRMS OF THE REQUIREMENT TO FILE AN ACCOUNTANT'S REPORT WHERE, IN THEIR DISCRETION, THE CIRCUMSTANCES WARRANT.**

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For more information on compliance audits, see [lawsociety.bc.ca/regulation\\_insurance/trust\\_assurance/audit.html](http://lawsociety.bc.ca/regulation_insurance/trust_assurance/audit.html).

**Q:** If I have had a compliance audit completed recently by a trust assurance auditor, why do I still have to file an accountant's report with my trust report?

**A:** The compliance audit is not a substitute for the accountant's report. The compliance audit will provide the Law Society with additional evidence regarding your compliance with the trust accounting requirements. The results of the compliance audit along with all other evidence regarding your compliance with the trust accounting requirements will be considered in determining whether you need to continue to file an accountant's report.

**Q:** What is the Self Report?

**A:** The new Self Report does not require you to hire an external accountant. The law firm

is required to complete all three sections of the Self Report. The Self Report is designed to be an educational tool to keep your law practice informed of your trust responsibilities.

**Q:** If I have been selected to file a Self Report, can I still hire an external accountant to complete the Accounting Procedures section?

**A:** Although it is not necessary, you may hire an external accountant at your expense, to help you complete the Self Report.

**Q:** Where can I get more information about the Trust Assurance Program?

**A:** The *Bencher's Bulletin*:

- "A new trust assurance program – more effective, and less costly for firms," 2006 No. 1 January – February.
- "Rule changes enhance trust security," 2006 No. 4 September – October.

The Law Society's website:

- See: Regulation and Insurance – Trust Accounting & Reporting.

Law Society staff:

- Contact the Trust Assurance Department at [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org) or call 604 697-5810, toll-free in BC 1-800-903-5300 (ext. 5810).

**Q:** How do I complete the trust report if I do not have Internet access?

**A:** Please contact the Trust Assurance Department (see below).

**Q:** How do I get assistance, if needed, to complete my online report?

**A:** Each question in the trust report and accountant's report has a help button located in the top right corner of the question box. If you require further interpretation or any other assistance while completing the online form, contact the Trust Assurance Department (see below).

**Q:** When I log in with my filing ID, why does it bring me to last year's report?

**A:** You may be using last year's filing ID. Each year, you will be given a new unique filing ID.

**Q:** I have answered all the questions in the section, and it still says "incomplete," what am I doing wrong?

**A:** You must mark each section "complete" before proceeding.❖

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**Further questions? Contact the Trust Assurance department at [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org) or call 604 697-5810, toll-free in BC 1-800-903-5300 (ext. 5810).**



## Courthouse Library partners with public libraries

THE BC COURTHOUSE Library Society is launching a project to provide legal information to public libraries throughout the province, thanks to a \$1 million grant from the Law Foundation of BC.

"The Public Library Legal Resources Project will ensure that all British Columbia residents have free, local access to basic legal information," said Johanne Blenkin, Executive Director of the BC Courthouse Library Society. "We also anticipate that lawyers in smaller communities with no courthouse library may find these collections of use."

The project is a partnership among the BC Courthouse Library Society, BC's public libraries, the Public Library Services Branch of the Ministry of Education and the Ministry of the Attorney General. It will also include other legal information providers.

The need for community access to basic legal information has been identified by numerous studies over the past 30 years. Public libraries are also the ideal location for public legal information, given their almost universal accessibility throughout the province. Over 98 per cent of BC residents are served by public libraries through 238 different service points, providing more than 424,000 hours of service annually.

In 1974, the Legal Services Society's Legal Resource Centre began providing public libraries with legal materials and support. Over the years, there was a significant investment in legal information, basic legal

reference training for public library staff and web resources focused on public library use. Funding changes at the Legal Services Society, however, forced cancellation of the program in 2002.

"The infrastructure for the Legal Services Society's program is still basically intact, but it needs updating. The internet has changed how the public seek information. This project will build on the existing framework and solicit input from communities and other legal information providers to better serve the public's needs," Blenkin explained.

She added that the project is a unique collaboration "that draws on the subject expertise of law librarians and the community-based knowledge and skills of public librarians to ensure the public's information needs are met. We anticipate that these collections will be integrated in some way with the new civil information hubs the Ministry of the Attorney General is proposing. It is by working together on initiatives such as these that access to justice becomes a reality."

Wayne Robertson, Executive Director of the Law Foundation, agrees. "The project will be good for communities and good for lawyers," he said. "It fits perfectly with the Law Foundation's mandate to use the interest on lawyers' pooled trust accounts to promote legal education, research, legal aid, law reform and law libraries."

The Courthouse Library Society project

will provide public libraries with a collection of legal materials appropriate for public use in their locations, a bibliography of recommended legal materials, legal reference training for public library staff and online learning tools for public library staff. Courthouse libraries will also provide backup support for staff and patrons as well as advice about new materials and resources.

In addition, public libraries will be given information about locally available legal services such as pro bono clinics. Local librarians will also be encouraged to stock materials that are relevant to their local patrons, including foreign-language resources.

The three-year project will begin in 2007 with a pilot program at one urban library, one regional library and one small public library association. Locations have not yet been determined.

"The BC Courthouse Library Society has always been the source of first resort for lawyers in BC. This project will ensure that the same valuable resource is available to everyone in the province. We applaud the Law Foundation for making it possible," Blenkin said.

The BC Courthouse Library Society provides legal information services to the general public and the legal profession through BC's 31 courthouse libraries and online. It is a registered charity and is funded by the Law Society, the Law Foundation and the Ministry of the Attorney General. ♦



### Johanne Blenkin

Johanne Blenkin was appointed Executive Director of the BC Courthouse Library Society in 2004. She received her Master of Library Science degree from McGill University in 1978 and her Bachelor of Laws degree from the University of Alberta in 1984. Ms. Blenkin was called to the Alberta Bar in 1985 and the BC Bar in 1994.

Prior to joining the BC Courthouse Library Society, Johanne was the chief librarian for law firms in Edmonton and Vancouver. She also practised law on Vancouver Island from 1994 to 2004.

Johanne has lectured in legal research at both the University of BC and the University of Alberta law schools and has edited guides on legal research. She continues to appear as a guest lecturer at UBC and has participated in legal education programs for lawyers. Johanne is also active in professional library associations and has served on the boards of numerous community organizations.

## Benchers embrace recommendations of the Small Firm Task Force

AT THEIR JANUARY meeting, the Benchers approved the six initiatives recommended in the Small Firm Task Force report presented by Chair Bruce LeRose, QC.

Mr. LeRose noted that more than 50 per cent of the province's private bar practises

in firms comprised of four lawyers or fewer and that almost 35 per cent practise as sole practitioners. Mr. LeRose also pointed out that sole and small firm lawyers provide the vast majority of BC's legal services outside the urban centres.

The Small Firm Task Force was formed in June 2005 to consult with sole and small firm practitioners and to make recommendations to the Benchers on how the Law Society might take meaningful steps to strengthen and support sole and small firm practice. Since then, the Task Force has consulted widely throughout the province and has received many suggestions from sole practitioners and small firm lawyers.

The Task Force report notes that many sole and small firm practitioners face pressures that arise through the nature of their practice structures, client bases and practice locations. Pressures highlighted in the report are: rising overhead costs, financing difficulties, practice management challenges, demands and costs of law firm technology, administrative burdens, access to legal research and continuing legal education resources, shortages of lawyers and articling students, and isolation.

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### The Small Firm Practice Course – early results

Early tracking of online activity since the Small Firm Practice Course went live on January 1, 2007 yields very encouraging results. Through February 26, 214 members have accessed the Small Firm Practice Course, generating more than 12,000 page views! Nearly half of the users were from Vancouver, almost one quarter were from the rest of the Lower Mainland, almost another quarter were from Vancouver Island, and the balance were divided between the interior and northern regions of BC (with four visitors from outside the province).

The Accounting System was the most popular module, followed by Trust Accounting Essentials. Delegation of Tasks & Supervision received the least number of visitors, followed by Client Screening.

The Small Firm Practice Course is free, self-paced and accessible online at all times, regardless of the user's location. The Law Society developed the course on the recommendation of the Lawyer Education Task Force to support sole practitioners and lawyers practising in small firms.

## Benchers form Family Law Task Force

IN JANUARY 2007 the Benchers struck the Family Law Task Force, and charged it with the responsibility to consider whether an amendment to the *Professional Conduct Handbook* and/or a code of conduct for family law lawyers is needed, and to report back to the Benchers with its findings.

Last year the Benchers' Access to Justice, Ethics, and Independence and Self-governance Committees considered the various views and recommendations expressed in the *Report of the Family Justice Reform Working Group* on potential negative impacts on families and children of the traditional adversarial approach to matrimonial litigation. In particular, the Committees examined Recommendation 36 of that report:

The Law Society should recognize the changing roles and duties of family law

lawyers and develop a Code of Practice for Family Lawyers to give guidance in the balancing of a lawyer's partisan role with the potential harm it may cause to other family members, especially children.

The Committees considered Recommendation 36 and a related provincial discussion paper, *A Code of Practice for Family Lawyers*, and referred the issues arising to the December Benchers' meeting for discussion. An informal Benchers working group, comprising Kathryn Berge, QC, Carol Hickman, Rob Punnett, Richard Stewart and Gordon Turriff, QC, was then asked to determine whether the issues warranted action and to report back at the first Benchers meeting of 2007.

The informal Benchers working group first received the assurance of a senior

government representative that the provincial government does not intend to impose a family law code of conduct on BC's legal profession, but rather is prepared to provide information and assistance to whichever group takes up the challenge of addressing the issues underlying Recommendation 36.

Next, the working group considered various discipline and family law statistics to gauge the substance of the concerns expressed regarding partisan tendencies in family litigation practice, and to assess the scale of the family law issues involved. Highlights of those statistics include:

- there are 168,000 single-parent families (26 per cent) in BC;
- 56 per cent of divorcing couples have children at home;
- BC's divorce rate is 38 per cent (about



10,000 per year);

- almost one third of BC Supreme Court filings arise from family law matters;
- 38 per cent of founded family law complaints to the Law Society are made by the opposing party, versus 22 per cent in all practice areas.

As well, the informal Benchers working group took note of the provincial government's reference to a substantial body of research indicating the manner in which parental conflict is handled during marriage dissolution has a profound impact on children's psychological and social welfare.

Accepting the informal working group's advice that the provincial government had

identified a matter of public interest both important and relevant to the Law Society mandate, the Benchers struck the Family Law Task Force for the following purpose:

1. To determine:
  - a. whether an amendment to the *Professional Conduct Handbook* is necessary, and/or
  - b. whether a code of conduct (or guidelines) for family lawyers is necessary, whether such a code or guidelines should be mandatory or voluntary, and who should be responsible for developing the code or guidelines, and
2. To report back to the Benchers with findings, for the purpose of determining

whether further action is required.

The 11-member Family Justice Reform Working Group was established by the Justice Review Task Force in 2003 to propose fundamental and cost-effective change to BC's family justice system. The Justice Review Task Force was established on the initiative of the Law Society of BC in March 2002 to identify a wide range of potential reform initiatives that could make BC's justice system more responsive, accessible and efficient. Its members include the Chief Justice of the BC Supreme Court, the Chief Judge of the Provincial Court and representatives of the Law Society, the Canadian Bar Association (BC Branch) and the Ministry of the Attorney General. ♦

## Regional calls bring legal community, public together

THE CALL CEREMONY was just the start of celebrations on the day that Kelowna lawyer Gavin Jones was called to the Bar with his friends and family, the lawyers and staff at Martin Johnson Law Corporation and other lawyers from the Kelowna community as witnesses.

"It was great to have a sense of community at an event that was so important in my life," said Jones. "If I had the ceremony in Vancouver, probably only my mom and dad would have been able to attend. In Kelowna my whole law firm attended along with other lawyers in the community, and friends and family who would not have been able to come otherwise."

After the ceremony, held on September 28, 2006, Jones' parents held a celebration at their house to bring together the many people who had seen him through the road to becoming a lawyer.

Gavin is one of many new lawyers who have taken advantage of the opportunity to be called to the Bar through a regional call ceremony. In 2006, 70 regional call ceremonies were held in communities across BC, including Victoria, Nanaimo, Kelowna, Kamloops, Prince George and Smithers. In some cases, the ceremonies were held to call just one lawyer to the Bar. Regional call ceremonies are held upon request when there is an articulated student or transfer candidate who wants to be called, a Benchers or local bar association to hold the ceremony and an available Supreme Court Judge.

Jones' ceremony, presided over by Mr. Justice T. Richard Brooke, held the special distinction of including two Benchers, Dirk Sigalet, QC and Lay Benchers Barbara Levesque. Three transfer candidates also attended the Kelowna ceremony.

In her speech to the call ceremony, Levesque pointed out that this was the first time that a Lay Benchers had spoken at a call ceremony in the Okanagan and only the second time for a call ceremony in BC.

Levesque underscored the legal traditions that ground call ceremonies and the public interest that underpins the legal profession:

The privilege of calling yourself a lawyer is entrusted to you by the public. The essence of the legal profession is to serve the public. This ceremony, with its particular formalities and history, is an occasion to remind you of your responsibility to uphold the values of the legal profession that have their roots in a complex and rich history that is hundreds of years old.

Sigalet also highlighted the "public affirmation of professional obligations" that takes place at call ceremonies, and the special role that regional calls play in bringing the public and the legal community together.

"It takes a legal community to raise a lawyer, so having the call ceremony in the community where a lawyer has been raised

is quite fitting," said Sigalet. "At a regional call ceremony, the new calls are invited to sit at the counsel table, which is quite a symbolic moment in being called to the Bar."

To find out more about regional call ceremonies and all upcoming call ceremonies, see [lawsociety.bc.ca/licensing\\_membership/becoming\\_bc\\_lawyer/admission\\_program.html](http://lawsociety.bc.ca/licensing_membership/becoming_bc_lawyer/admission_program.html), tel. 604 605-5311 or toll-free in BC 1-800-903-5300 or email [memberinfo@lsbc.org](mailto:memberinfo@lsbc.org). ♦



Benchers Dirk Sigalet, QC looks on as Gavin Jones signs the roll.

## Public forum to address issues faced by people with disabilities

Building on the success of the fall public forum on citizenship, the Law Society will present a free public forum, *Equal Access for People with Disabilities*, on Thursday, April 26 in partnership with the BC Coalition of People with Disabilities, the Western Institute for the Deaf and Hard of Hearing and the BC Paraplegic Association.

The forums, organized by the Equity and Diversity Committee chaired by Art Vertlieb, QC, are aimed at promoting the legal profession and the rule of law in the community at large.

"It's important for the Law Society to promote a just and equitable justice system, and part of that is ensuring that everyone has access to it," said Vertlieb. "We know that people with disabilities often encounter difficulties accessing the system. The public forum will examine some of these barriers while offering the opportunity for discussion on solutions."

Moderated by *Vancouver Sun* columnist Peter McKnight, the forum will bring together a panel of legal and other experts to discuss issues faced by people with disabilities, including access to justice. Topics to be covered will include courthouse accessibility; overcoming challenges faced by people with disabilities in entering and participating in the workforce; and an examination of telephonic devices for the deaf and how these services can improve access to justice.

The forum will take place at the Law Society building, 845 Cambie Street, in Vancouver on April 26 from 5:30 pm to 7 pm. For more information, please contact Kuan Foo, Staff Lawyer, Policy and Legal Services, at 604 443-5727 or [kfoo@lsbc.org](mailto:kfoo@lsbc.org). To register for the free forum, email [forum2007@lsbc.org](mailto:forum2007@lsbc.org) by Friday, April 20.



Bill Morley, a lawyer with Fasken Martineau DuMoulin, will be on the panel at the forum.

## In Brief

### CANADA'S FIRST MULTILINGUAL LEGAL GLOSSARY

5,000 LEGAL TERMS in seven different languages are now just a click away thanks to the launch of Canada's first multilingual legal glossary by Vancouver Community College. The plain language glossary, [legalglossary.ca](http://legalglossary.ca), offers English, Chinese, Farsi, Punjabi, Russian, Spanish and Vietnamese definitions. The project, sparked by BC's provincial court judges, was funded by the Law Foundation of BC with support from the Law Courts Education Society and the Notary Foundation of BC.

### JUDICIAL APPOINTMENTS

**The Honourable Gail M. Dickson** has been appointed a Judge of the Supreme Court of BC. She replaces Mr. Justice T.P. Warren (Vancouver), who elected to become a supernumerary judge.

**The Honourable Stella Doreen Frame** has been appointed a Judge of the Provincial Court of BC. A welcoming ceremony and reception will be held on Friday, March 30 at the Provincial Court of BC, Courtroom D, 455 Columbia Street, Kamloops.

**The Honourable S. David Frankel** has been appointed a Judge of the Supreme Court of BC. He replaces Mr. Justice A.M. Stewart (Vancouver), who elected to become a supernumerary judge.

**The Honourable Christopher E. Hinkson** has been appointed a Judge of the Supreme Court of BC. He replaces Mr. Justice T.J. Melnick (Victoria), who elected to become a supernumerary judge.

**The Honourable William B. Smart** has been appointed a Judge of the Supreme Court of BC. He replaces Mr. Justice J.D. Taylor (Vancouver/New Westminster), who passed away.

## Law Society fees and low income clients

### NEW COMMITTEE STRUCK TO DEAL WITH POLICY MATTERS

The Benchers have established a new Regulatory Policy Committee, which will deal with overarching policy issues with input from the other regulatory committees (Discipline, Credentials, Practice Standards and Unauthorized Practice). The Committee will identify and study issues relating to the regulation of the profession; develop specific proposals and options for consideration by the Benchers on policy matters related to professional conduct, fitness to be called and the practice of law; and attend to other matters that are referred to the Committee. While the Ethics Committee will continue to deal primarily with matters pertaining to the *Professional Conduct Handbook*, the Regulatory Policy Committee will address matters related to the Law Society Rules.

### L TSA FEE INCREASE

The Land Title and Survey Authority has announced minor fee increases to some of its services. For more information, see [ltsa.ca](http://ltsa.ca).

### FRANCES FISH AWARDS

The Nova Scotia Barristers' Society is calling for nominations for the Frances Fish Women Lawyers' Achievement Awards. BC lawyers with a connection to Nova Scotia are eligible for the awards.

To be considered, a woman must be deserving of recognition for her dedication to the advancement of women in and through the legal profession, through professional excellence and leadership and/or commitment and service to the legal profession, legal education or the community. For more information, visit [nsbs.ns.ca/Equity/francisfish.htm](http://nsbs.ns.ca/Equity/francisfish.htm). ♦

A NEW TASK Force is seeking input on whether the Law Society's Special Compensation Fund fee and Trust Administration Fee have an effect on the ability of BC lawyers to provide services to low-income clients.

The Law Society Fees and Low Income Client Task Force was established in response to a resolution at the September 2006 annual general meeting by Dugald Christie and Bruce Fraser, QC. They submitted that the two fees cause undue hardship for lawyers who have little or no trust account activity and that these lawyers tend to be the ones who most often represent low income clients. Prior to the AGM, the resolution was withdrawn and the Benchers agreed to examine the issues raised by it.

The Task Force, chaired by Cariboo County Benchers William Jackson, is now seeking information from BC lawyers about the impact of the two fees. In particular, the Task Force would like to know if the Special Compensation Fund fee and Trust

Administration Fee are causing undue hardship for lawyers who represent low income clients. The Task Force would also like to know whether lawyers who represent low income clients have little or no trust account activity.

In order to gather information about the extent and scope of these issues, the Task Force has prepared a consultation paper and an online questionnaire which are both available on the Law Society's website at <http://alt.lawsociety.bc.ca/survey/lowincome.cfm>.

The Task Force also invites submissions from any interested party. Submissions should be filed before **April 30, 2007** and sent to:

Law Society Fees and Low Income  
Client Task Force  
The Law Society of British Columbia  
8th Floor  
845 Cambie Street  
Vancouver BC V6B 4Z9  
Attention: Adam Whitcombe ♦

### *Small Firm Task Force ... from page 8*

The Small Firm Task Force's six recommended initiatives are:

1. a technology support program, designed specifically for sole and small firm practitioners;
2. a comprehensive online guide to recruiting and working effectively with a bookkeeper;
3. a program to promote articling throughout the province, focusing on sole and small firm practitioners and facilitating shared articles;
4. a program to support and promote practice locums, including
  - a guide and checklists, paying special

attention to operational effectiveness and conflicts management issues,

- precedent locum agreements, with sample clauses that might address the needs of both lawyers, including remuneration and non-competition terms, and
  - an online registry of lawyers who are available to provide locum support;
5. assistance for lawyers in establishing law practice succession and emergency plans; and
  6. a protocol providing the Law Society's recommendations to the BC profession for handling certified cheques, with consideration and advice to be provided by the Ethics Committee. ♦



## Law Society expands commitment to pro bono legal services

ACROSS BRITISH COLUMBIA, lawyers and community organizations continue to support a strong tradition of pro bono legal services.

While time donated by lawyers is the backbone of pro bono services, ensuring adequate funding for organizations that provide legal services to the public is key. To help meet this need, the Law Society has provided funding to establish Pro Bono Law BC and to support The Western Canadian Society to Access Justice. Last year, the Pro Bono Funding Task Force considered whether the Law Society should continue to provide any funding to external pro bono organizations.

After examining the practices of other

law societies, the Task Force recommended that the Law Society allocate a portion of the annual practice fee to funding pro bono services. In looking at how to distribute the funds, the Task Force noted that the Law Foundation of BC is uniquely well suited to determining recipients of grant funds. From its inception through 2005, the Law Foundation has approved grants amounting to more than \$298 million to support law-related programs in BC.

At their March meeting, the Benchers confirmed their earlier decision to transfer one percent of the General Fund portion of the annual practice fee to the Law Foundation to be used for funding pro bono programs. The Law Foundation will use the

grant to expand its role in funding BC organizations that provide pro bono legal services. Funding provided through the grant will be above and beyond funding allocated by the Foundation prior to 2006. ♦

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The commitment to pro bono services has a long history in BC. In 1969, BC lawyers persuaded the government to enact legislation that financial institutions pay interest on pooled trust accounts to the newly created Law Foundation. The Foundation, established under the *Legal Profession Act*, was the first organization of its kind in North America. Since then, law foundations have been established in nearly every other jurisdiction across North America.

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### *President's View ... from p. 3*

not required to do so. All other professions, from doctors to accountants to airline pilots, expect (and most require) their members to engage in continuous improvement. Why are lawyers any different? As most of us know, laws change and evolve, new areas of practice emerge, old ones shrink, and yet lawyers are not required to upgrade or maintain their skills, knowledge or competence from the moment that they are called. How reassuring is that to the public?

If we are to continue to have the right to self-govern, we must be satisfied we are keeping up to date with changes in the law and continually enhancing our competence and skills. Moreover, the public has a right to expect that we will do so to ensure we are providing the best possible legal services.

The Law Society has, through the excellent work of the Small Firm Task Force last year under Benchers Bruce LeRose, QC as Chair and staff lawyer Kensi Gounden and others, already made inroads to address this issue through the implementation of the Small Firm Practice Course. The course, launched in January 2007, has already drawn positive comments from many

lawyers, including a few who normally regard the Law Society as largely irrelevant to their practice.

That is not enough, though. We really ought to be looking anew at mandatory continuing professional development, limited licensing certificates and specialization as ways of enhancing lawyer competence and service delivery. This is not "Big Brotherism." It is simple, common sense if we are to continue to be able to successfully compete with less qualified but cheaper quasi-legal service providers in today's global market. Don't forget, Canadian lawyers are no longer just competing with Canadian lawyers. We are also competing with American lawyers, some of whom are already subject to mandatory continuing professional development requirements by their Bar associations. If we do not keep pace in this area, we risk being left behind. That would be a real shame for our legal profession, in my view.



These four themes (Responsiveness, Accessibility, Accountability and Enhanced Lawyer Competence) will guide what I and the Law Society will do this year. Obviously, some of the initiatives we are considering will require broadly based consultation with our members and others, and I pledge that,

with your help and support, the necessary consultation will take place. We all have an important interest to protect, namely, the right of lawyers to self-regulate for the public good.

I want to conclude by reminding you that we continue to work on three initiatives that are carry-overs from our Past President, Rob McDiarmid, QC. The first is to bring about key legislative amendments to the *Legal Profession Act* to improve our ability to carry out our regulatory function. The second is to continue our efforts to obtain free, online public access to up-to-date BC statutes and regulations. The third is to successfully implement and operate the Law Society's Trust Assurance Program and the new Custodianship Program. These continue to be important initiatives for the Law Society and the public in 2007.

With the help of all of you, our dedicated Benchers and our wonderful Law Society staff, I am confident that these objectives can be fully met in 2007.

As I end my first column as President, I thank you, all, for giving me this opportunity to serve you, our legal profession and the public. I leave you with my pledge for this year, "to leave the campground (in this case, the Law Society) in a better condition than I found it when I arrived." ♦

## South Asian Bar Association links community at home and abroad

BECOMING A LAWYER wasn't a childhood dream for Mandeep Dhaliwal, but he hopes that today's South Asian youth will know how rewarding a career in law can be. Three years ago, Dhaliwal co-founded the South Asian Bar Association of British Columbia (SABABC) with this goal in mind.

"Many of our members, including myself, are first generation Canadians and growing up we didn't have a lot of role models in our community who were lawyers," says Dhaliwal, President of SABABC and Director of the North American South Asian Bar Association. "SABABC can really help provide that mentorship so that going to law school is on the radar for South Asian youth."

SABABC, the first Canadian chapter of the North American South Asian Bar Association, brings together a diverse community of 40 South Asian and non-South Asian lawyers, including law students, junior and senior lawyers and judges. In addition to offering a student mentorship program with students from the University of BC and University of Victoria and plans to expand to high schools, the bar association offers networking opportunities and community outreach to address issues facing the South Asian community.

On the networking front, SABABC hosted its second annual gala dinner on February 16 with 180 people in attendance, including Senator Mobina Jaffer, QC, the first South Asian woman called to the Bar in BC, Attorney General Wally Oppal, QC, Chief Justice Lance Finch, Law Society President Anna Fung, QC and Bencher Art Vertlieb, QC, who is a member of SABABC.

The bar association has already begun delivering legal education seminars to help the South Asian community better understand the Canadian justice system. In November, SABABC hosted the first of this series — a Punjabi language wills and estates seminar presented in partnership with the Surrey Progressive Intercultural Community Services Society.

"Through our organization we can collectively identify ways to address the needs



(Left to right) Aseem Dosanjh, Jindy Bhalla and Amit Varma with Bencher Art Vertlieb, QC at the SABABC gala event

of the South Asian community, says Jaia Rai, Vice President, Special Events. "For example, we'd like to play a role in improving access to legal education and increasing representation on the judiciary."

In addition to legal education, SABABC is looking at ways to address domestic violence and gang violence, which impact the South Asian community at large and create unique challenges in delivering legal services.

The bar association has also defined a role as a media watchdog on these issues to ensure the South Asian community is not portrayed in a negative light. To date, SABABC hasn't felt the need to step in, but the organization is prepared to do so if necessary.

"We are a relatively new organization, and there are many ways that our work

can benefit South Asian lawyers, the South Asian community and the community at large," says Rai. "My hope is that the organization will one day be strong enough in terms of membership and support that our presence will make a difference."

Dhaliwal sees international opportunities on the horizon. "We'd like to develop international links that will generate work for our members. India's economy is growing rapidly, and I think our lawyers are very well positioned to work with Canadian companies entering the Indian market and Indian companies interested in investing in Canada."

For more information about SABABC, visit [sababc.com](http://sababc.com) or contact Mandeep Dhaliwal at [mdhaliwal@lawsonlundell.com](mailto:mdhaliwal@lawsonlundell.com). ♦

## Thanks for your help in 2006

THE BENCHERS WOULD like to thank and congratulate all those in the profession and the legal community who volunteered their time and energy to the Law Society in 2006. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as practice reviewers, practice supervisors, fee mediators, event panellists or advisors on special projects, volunteers are critical to the success of the Law Society and its work.

Over the past year, the Society has enjoyed the support and contributions of over 500 Life Bencher and non-Bencher volunteers, all of whom deserve acknowledgement:

Anne Adrian	Johanne Blenkin	David Clancy	Rebecca Faber	Iain Hallam
Quentin Adrian	Charles Bois	Myron Claridge	Silvana Facchin	Lisa Hamilton
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## Anna K. Fung, QC – A natural leader

By Jane Mundy

*Anna at home and (far left) with her family in Hong Kong.*

ANNA FUNG DESCRIBES herself modestly, as “business-minded” and an “enthusiastic golf hacker.” But those who know Anna describe a host of outstanding traits. They call her a “natural leader and good lawyer with a strong business sense” and a “no-nonsense executive with a heart — efficient yet conscientious.” Most people who meet her for the first time in a professional context assume she comes from a privileged background, but that couldn’t be further from the truth. “They usually think I am a rich Chinese immigrant and hardly ever guess that I’ve come from humble beginnings,” Anna said, laughing.

As a child growing up in Hong Kong,

Anna didn’t want to move to Canada, a place she’d never heard of; she had many friends and she was comfortable in her routine as a grade five student. “I cried when I was told that we were moving to Vancouver, but of course it didn’t make any difference,” Anna said. Her four younger siblings were less opposed to the idea. Her grandfather was already living in Vancouver and working as a chef for BC Ferries. He had lived in Chinatown virtually all his life except when he returned to China to get married (a match that was arranged) and the few trips home he made thereafter — his wife was never able to emigrate. “My grandfather was already retired when

he was finally able to sponsor my family to Canada," Anna recalled. "Under Trudeau's family reunification immigration policy, we moved here with the clothes on our backs and everything we could fit into a few suitcases."

The seven Fungs moved into their grandfather's rented house on Union Street at the edge of Chinatown. Anna soon realized the move wasn't all bad. "At that time, nobody in Hong Kong would dream of living in a house by themselves. We all lived in one room and thought ourselves fortunate, even well-off, because so many people in Hong Kong were homeless and begging at our door."

Those early childhood experiences no doubt paved the way for Anna's determination to succeed.

At first, she enrolled in a new Canadian class for immigrant children who couldn't speak English. "I picked up English fairly quickly and made friends easily," she said. "I loved school and enjoyed the sense of space and greenery and the freedom to run around outside. Hong Kong was turbulent in the 1960s and the streets weren't safe, unlike Vancouver."

Sadly, Anna's mother died young, but she'd already had a profound influence on her eldest daughter. "My mother taught me the importance of living each day to its fullest," said Anna. Her mother left six children (a brother was born shortly after the family arrived in Canada) and a huge responsibility was placed on Anna. "One advantage of being the eldest was that, although I had to cook, I never had to do the dishes. And I never had 'hand-me-downs'.... On reflection, growing up taught me to take on responsibility and leadership positions, for myself and others." Anna's father, Jack, was the sous chef at the Kettle of Fish on Pacific Street in Vancouver before he ran his own restaurant on Kingsway. He is now happily retired living in Vancouver with Anna's stepmother, Lisa.

It was also expected that the eldest child would set an example for the other siblings to follow. "It is the tradition of a Chinese family that you aren't overtly affectionate and the idea of duty, doing the right thing, can trump everything else — although that is changing," Anna said. Indeed, Anna took a different path: she managed to hold onto both traditional ways and her affectionate nature.

Fast forward to high school and Anna's first summer part-time job (not counting strawberry picking or hand-peeling shrimp) at the Kitsilano Beach Concession Stand, slinging hot dogs and burgers. "I loved having my own money and saved most of it — in fact, I saved more than I can save now," she said with a grin. Anna did well in school, and there was no doubt in her mind that she would continue on to university. "As an undergrad, I also got summer jobs at UBC doing research for professors, including teaching English tutorials. I couldn't afford to take a year off, unlike some of my friends. And I didn't want to — I loved learning and had no desire at that time to see the world."

Knowing she had a full-time job waiting at Vancouver's Davis & Co. after finishing a clerkship with the BC Court of Appeal, Anna went to Europe with her sister, Jenny. "We only went for a few weeks, but this trip taught me how much I love traveling and meeting people. And Europe taught me the importance of having another language." (Anna speaks six languages: Cantonese, English, French, Spanish, Italian and Mandarin.)

She was eager to get back to Vancouver and start her new career as a lawyer. "At Davis I was a workaholic — I enjoyed work, it was challenging and interesting and mentally stimulating." But she also felt she had no time for a life. "One day, a lawyer I worked for took me aside; he was worried about the amount of hours I spent at the firm. 'Anna, the firm isn't coming to your funeral,' he said. So I reflected on his advice and forced myself not to go in to work that weekend. I didn't know what to do with myself and I wasn't even 30 years old!"

"My friends had stopped calling me because they were frustrated when I would accept invitations and not show," she said. But one friend has always been there and has also counted on Anna for both moral and professional support. Maria Morelato first met Anna in law school, but they didn't form a strong friendship until they articulated together at Davis & Co. "We both loved law and worked hard, but we also made time to have fun," recalled Morelato. "Today we are both busy but still have time to enjoy a good meal and wine."

With Anna, there are no borders between professional and personal friends.

Tim Chaput and his wife are often invited to barbecues and dinner parties at her home, along with other lawyers (often interspersed with a few judges). He says he has bragging rights as probably the only bus driver in the province who is a dinner guest of the President of the Law Society of BC. "I think it's the way Anna grew up," Chaput said. "There's nothing about her that is elitist — she appreciates her humble background."

*continued on page 18*

## Anna K. Fung, QC

Anna is a graduate of UBC, served as a law clerk for the BC Court of Appeal and was called to the Bar in 1986. She was appointed Queen's Counsel in 2000. She is Senior Counsel and Chief Privacy Officer for Terasen Inc.

First elected as a Benchers of the Law Society in 1998, Anna has been Chair of the Executive, Discipline, Credentials, Futures and Equity and Diversity Committees and the Financial Planning Subcommittee. She is currently a member of the Regulatory Policy Committee, the Futures Committee and the Financial Planning Subcommittee. She also serves on the Council of the Federation of Law Societies of Canada.

In addition, Anna has served as President of the Association of Chinese Canadian Professionals (BC), the Canadian Corporate Counsel Association, the BC Autism Association, the People's Law School and is a former director of the Canadian Bar Association, the Women's Legal Education and Action Fund and the Continuing Legal Education Society of BC. She is the former secretary of the UBC Alumni Association and is currently a member of the Advisory Board to the UBC law school's new National Centre for Business Law. In 2004, Anna received the RVA Jones Award for her work on behalf of Canadian corporate counsel. Anna speaks French and Cantonese, as well as some Mandarin, Italian and Spanish.





Anna K. Fung, QC ... from p. 17

In 1993 Anna moved to Terasen Inc. (then BC Gas) and learned for the first time that there were people who didn't live to work. "Being at Terasen allowed me to find the balance and time to pursue other interests, such as cooking and learning about fine wine, and I even took up golf for the first time," she said. The new job also gave her the time to get her old friends back by finally showing up at their events, and she also got others interested in the sport of golf.

"I hired Anna to work at BC Gas and knew right away that she would be a good fit," said Stephen Richards, former Senior Vice President and General Counsel. "She also got me into golf and maybe that's a bad thing," he said, laughing. Richards hired Anna just about on the spot. "I was impressed not only with her legal skills but her focus on community service that was non-law related." Anna's advocacy and volunteer work have always been

wide-reaching. When she applied at BC Gas, Anna was President of the BC Autism Association. As well, she was director and legal committee member for the Women's Legal Education and Action Fund for several years. As if that wasn't enough, Anna also donated her time to the People's Law School, where she served as Director of the Board for 13 years and as Chair for four years.

Terasen also allowed Anna the time to get involved with professional associations such as the Canadian Corporate Counsel Association, where she met her boyfriend, Brent Munro. "After a CCCA annual conference in Saskatoon, some of us arranged to play golf but everyone bailed except the two of us," Munro said. "That Christmas we went up to Whistler and stayed in a freezing cold cabin — I didn't know how to start the fire and Anna was probably wondering how she was going to spend the next eight days with me." Eventually, they got the fire started and it continues

to smoulder, despite the fact that he lives in Regina and Anna has a hectic schedule to juggle in Vancouver.

Amazingly, Anna has also found the time to raise her niece, who lived with her from grade eight through to high school graduation. As well as being a mentor to her niece, Anna belongs to the Association of Chinese Canadian Professionals and is part of the mentorship program for young Chinese Canadian professionals there.

That kind of devotion to nurturing others distinguishes Anna from the crowd, according to her colleagues. "I feel privileged to know Anna — it's her depth of caring, her compassion. She shares so much of her time with others and that makes Anna a superb human being," said Richards. ❖

*Jane Mundy is a Vancouver writer who can also vouch for Anna's kind and compassionate nature. Anna regularly gives Mundy's two dogs delicious treats, even though they continually harass her SPCA cat, Izzie. And she gets invited to Anna's dinner parties.*

## Notices from the courts

THE SUPREME COURT of BC has issued four notices:

1. the court registry will no longer provide "office copies" of disclosure statements in estate administration matters;
2. amendments to Appendix B, Party and Party Costs Tariff came into effect on January 1, 2007, as a result of a review of the Rules Revision Committee;
3. effective March 1, 2007, a person applying under the *Court Order Enforcement Act* for a garnishing order before or after judgment must file a Requisition in Form 2;
4. effective April 1, 2007, all applications for desk taxations of trustees' statements of receipts and disbursements under the Bankruptcy and Insolvency Act must be made using new documents.

For more information, see the Court's website at [courts.gov.bc.ca/sc](http://courts.gov.bc.ca/sc).

The Provincial Court of BC has issued one practice direction:

1. when a matter has been scheduled for hearing and has not completed in the time provided, it will be scheduled to conclude within 30 days unless otherwise approved by the relevant Administrative Judge on advice of the local judicial case manager. See provincial-court.bc.ca. ❖



*Practice Tips*, by David J. Bilinsky, Practice Management Advisor

## Software solutions that can help you work faster and improve your ROI

♪ *Pick it up (Pick it up)*  
*Take it for the distance (Pick it up)* ♪

Recorded by Meredith Brooks

ONE OF THE most common questions lawyers ask me is: "How can I make my practice more efficient?" To help set you on the right track, I have outlined different classes of software that offer the best return on investment (ROI).

### INTEGRATED ACCOUNTING AND CASE (PRACTICE) MANAGEMENT SOFTWARE

Communication management and accounting offer a very high return on investment for automating all the necessary systems that are required to practise law and handle time and billing. Some examples of this class of software are Amicus Attorney, Time Matters, LawStream, SmartWeal and PCLaw.

Please refer to my column in the November-December 2006 issue of *Benchers' Bulletin* for a more complete view of the benefits of case (practice) management software.

### DOCUMENT AUTOMATION

Before you create an existing document based on an old file, consider the danger points of this methodology. The file may have been modified over and over resulting in both the exclusion of important clauses and the inclusion of clauses that are inappropriate. Instead, develop a standard set of precedents in the discrete areas of law in which you practise and work from the standard precedent. This will ensure that you start from a common point each time. And, you can take any special clauses and add them to your precedent bank, thereby increasing your knowledge assets while ensuring that the precedents are not corrupted or distorted. A standard precedent bank will allow you to increase your ROI in a number of areas:

1. you can market your practice to attract files in areas where you can reuse your precedents;
2. by having a standard set of precedents, you can deliver a legal service quickly

and efficiently, which will increase client satisfaction and word-of-mouth advertising; and

3. you can easily modify your standard precedents to incorporate changes in the law.

Document automation products include HotDocs and Ghostfill/Amicus Assembly.

### DESKTOP SEARCH

These nifty applications solve the problem "Why can't I find that darn file on the computer?" Desktop search applications work by indexing everything on your hard drive (or network if you wish), thereby enabling lightning-fast searches for email, Word documents, Excel spreadsheets, contacts, videos, images and the like. Document management software such as Worldox, which automates document storage and retrieval, offers definite advantages.

### YOU CAN INCREASE YOUR ROI WITHOUT SPENDING A DIME SIMPLY BY LEARNING TO TAKE ADVANTAGE OF THE SOFTWARE THAT YOU ALREADY OWN.

Desktop search software, which is more commonly used at the present time, can minimize lost time in trying to find and retrieve documents that have been named and/or stored obscurely on computer hard drives. Examples of desktop search software are: Google Desktop Search, Copernic Desktop Search and X1.

### VOICE RECOGNITION

Voice recognition has now come mainstream, courtesy of tweaked recognition engines and other "under the hood" magic that has vastly improved this groundbreaking technology. The surest sign of this change is that Vista, Microsoft's new operating system, incorporates voice recognition. With voice recognition, you can dictate directly into Word or Amicus Attorney, open and close applications, navigate within applications and perform other

tasks — all without your fingers touching a mouse or a keyboard. To do this magic, you will need the software, a good microphone, appropriate processing horsepower, hard drive space and patience to train the software to your voice (this is greatly improved over past versions).

The latest version of Dragon's Naturally Speaking (version 9) is fast, accurate and much easier to use compared to prior versions (see my column in the September-October 2006 *Benchers' Bulletin*). Once you are familiar with voice recognition software, it can save you a lot of time.

### THE SOFTWARE YOU ALREADY OWN

I constantly talk to lawyers who do not use various features of the software sitting on their computers, yet wish to spend further hard-earned dollars on acquiring more software. You can increase your ROI without spending a dime simply by learning to take advantage of the software that you already own. For example:

- PCLaw can track your time and billing directly from your desktop, thus eliminating the need for lawyers keeping paper time sheets and secretaries trying to read scrawled writing to input the time into the system;
- Amicus Attorney has "communication" or "contact" modules (dependent on the version you have) that eliminate pink telephone slips and allow you to integrate your email directly into the Amicus communication centre;
- Microsoft Excel can perform financial calculations and you can save the spreadsheet as a precedent for future use.

There are many ways to pick up the ROI in your practice and take it for the distance by applying readily available software that makes your job easier, more efficient and more effective.

For more information on how to make your practice more efficient, contact Dave Bilinsky, tel. 604 605-5331 or email [dbilinsky@lsbc.org](mailto:dbilinsky@lsbc.org). ♦

*Practice Watch*, by Barbara Buchanan, Practice Advisor

## Use of Law Society documents in court

IF YOUR CLIENT has made a complaint to the Law Society about a lawyer, you may be tempted to include information about the complaint in an affidavit or other document. Please note that, under section 87 of the *Legal Profession Act*, any letter or document created by the Law Society in the course of investigating a complaint is not admissible in any proceeding except with the written consent of the Executive Director of the Law Society.

### SOLVING DISPUTES BETWEEN LAWYERS AND PHYSICIANS

If you have a disagreement with a physician regarding fees for medical-legal reports, production of clinical records or expert testimony, consider using the Medical-Legal Liaison Committee for assistance in resolving your dispute. Representatives from the BC Medical Association, the College of Physicians and Surgeons and the Law Society make up the Committee. The Committee provides its views in writing to the parties. For more information, contact Jack Webster, QC at:

Medical-Legal Liaison Committee  
510 – 1040 West Georgia Street  
Vancouver, BC V6E 4H1  
Attention: Jack Webster, QC, Chair  
Tel. 604 682-3488

### FAMILY COMPENSATION ACT AND CONFLICTING INTERESTS

A lawyer has drawn the Law Society's attention to difficulties presented by s. 6 of the *Family Compensation Act* in light of the general principle that a lawyer has a duty to give undivided loyalty to every client.

Section 6 states that only one action may be brought for the same subject matter. The effect of this provision, in some circumstances, is that the same lawyer must be counsel of record for parties with conflicting interests.

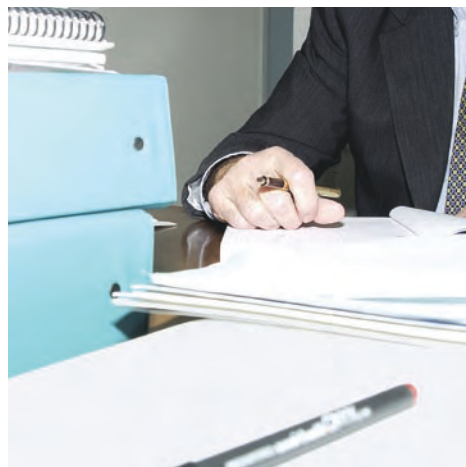
The following example illustrates some difficulties that s. 6 creates:

Father is driving a vehicle in which Mother (wife) and child are passengers. Father's vehicle is in an accident with a vehicle driven by Smith. Mother is killed in the accident. Father and child survive, although

both are injured. Both Father and Smith appear to be negligent in the collision. Lawyer A commences an action on behalf of the child against Father and Smith. Because Father was also injured, he also wishes to commence an action against Smith. Because of s. 6, Father cannot do so except as a party in his child's action against both himself and Smith. Lawyer A obviously cannot act for Father as plaintiff and against Father as defendant.

Courts have, however, fashioned remedies to deal with s. 6, including:

- permitting one counsel to be counsel of record for parties with conflicting interests, but allowing one of the parties



to be exclusively represented by a lawyer who is not counsel of record;

- giving leave to have one consolidated action with one writ on behalf of all claimants, but permitting separate statements of claim to be filed for each of the plaintiffs who are opposed in interest, and permitting each plaintiff to be represented as plaintiff by separate counsel.

See *Wiseman et al. v. HMTQ et al.*, 2006 BCSC 1708; *Smith v. Ross*, 2000 BCCA 671; *Guss v. Daigle*, New Westminster Registry No. C912026, September 23, 1992 (per Master Joyce) and November 10, 1992 (per Josephson, J).

### UNDERTAKING TO PAY HEARING FEES

A recent BC Supreme Court decision confirms that lawyers signing a Notice of Trial

(Form 35) with an undertaking to pay hearing fees are not personally liable for those fees.

In *Campbell Inc. v. Towers*, 2006 BCSC 1030, the court ruled that a solicitor's undertaking in a Trial Certificate or Notice of Trial to pay the hearing fees required by Appendix C, Schedule 1, Item 14 of the Rules of Court is not an unconditional promise that the solicitor will personally pay the fees.

Mr. Justice T. Mark McEwan said:

An "undertaking" given by a solicitor in a Trial Certificate or Notice of Trial, is not, and cannot be an unconditional promise that the solicitor will underwrite the government imposed cost of his client's exercise of his right to a courtroom. A solicitor cannot, by means of a loaded word in a mandatory form, be improperly forced to compromise his ability to represent his client dispassionately. It follows that a solicitor of record, signing such a form, does no more than give a required, if superfluous, promise on behalf of his client.

Mr. Justice McEwan also commented on the practice of having the client sign the undertaking in the Notice of Trial. He noted that it would be absurd for a party who is represented by counsel to sign the form:

The form correctly denotes that one either appears in person or by solicitor of record. The notion that one's status changes from represented to unrepresented at a whim has never been an accepted part of our practice; formal notices are required to effect such changes. If an otherwise represented party signed this form, he is essentially vouching for his solicitor's view as to a reasonable time for the hearing, so that for the purpose of setting the matter for trial, he can be said to represent his representative. This is of course, absurd.

Note that the current form of Trial Certificate (Form 37) does not contain an undertaking but the Notice of Trial (Form 35) does contain the undertaking. ♦



# Stay tuned for more than 70 tips to prevent missed limitations and deadlines

EVERY WEEK FOUR more lawyers miss a limitation period or deadline.

While not all reports result in actual claims, every lawyer who has missed a deadline knows how costly these mistakes can be. If you miss a deadline, expect to fork out your insurance deductible — \$5,000 or \$10,000 — depending on the extent of the damages. And instead of filling your workday with billable hours, you'll be spending a significant amount of time working with the Lawyers Insurance Fund (LIF) to manage your claim. Even if the situation is successfully repaired, you could still be on the hook for the deductible to compensate your client for the legal fees paid to new counsel.

These largely preventable mistakes are amounting to a predictable one-quarter of all claims and potential claims to the Lawyers Insurance Fund. It's a trend that LIF is committed to changing with the release of a new guide, *Beat the Clock: Timely lessons from 1,600 lawyers*, featuring more than 70 tips to prevent missed limitations and deadlines.

"Year after year we have seen the same number of claim reports rolling in from missed limitations and deadlines," said Su Forbes, QC, Director of the Lawyers Insurance Fund. "Thanks to a new database introduced in 2000 we can now see precisely why lawyers are missing deadlines, and we know that it's for many of the same reasons."

The database, designed to capture and categorize insurance claims, allowed LIF to identify the four main causes of missed deadlines: oversights; legal issue failures; engagement management failures; and communication failures. Each of these causes is examined in depth in *Beat the Clock*.

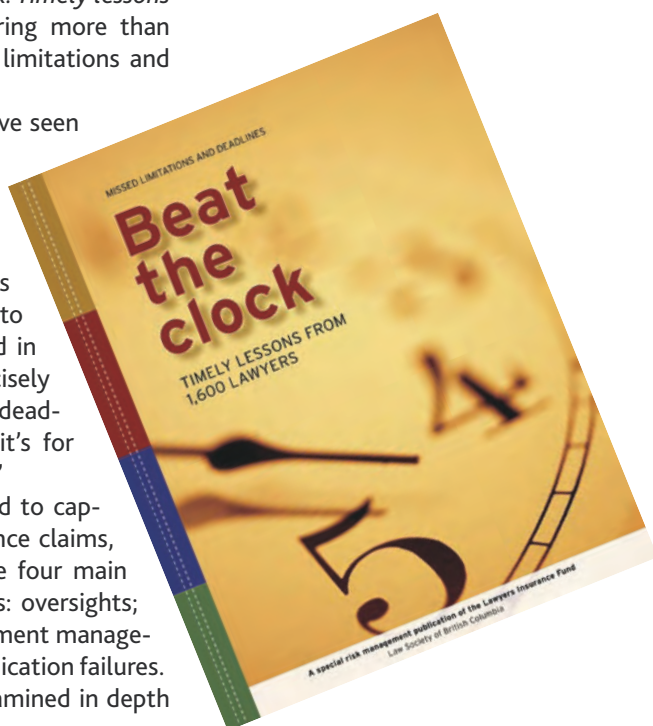
The special publication, to be delivered with the next issue of *Bencher's Bulletin*,

will feature:

- a detailed analysis of what causes missed limitations and deadlines;
- examples of "what went wrong" from actual claim reports to LIF;
- more than 70 tips from the practising lawyers at LIF to help you prevent missed deadlines;
- comments and advice from lawyers who have reported missed deadlines; and
- a handy reference chart that lists the most common limitations and deadlines.

"Part of our role at LIF is helping lawyers develop best practices," said Su. "This is the first guide of its kind in Canada and we are very excited to be able to provide it to BC lawyers."

The guide will also be posted to the Insurance section of the Law Society website. ♦



## 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.

**Ethics 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 other legal workplaces. Contact Equity Ombudsperson, Anne Bhanu Chopra: Tel: 604 687-2344 Email: achopra1@novuscom.net.

## Special Compensation Fund claims

THE SPECIAL COMPENSATION Fund, funded by all practising lawyers in BC, provides compensation (on claims prior to May 1, 2004) to people who suffer loss through the misappropriation or wrongful conversion of money or property by a lawyer acting in that capacity.

After May 1, 2004 compensation is provided by trust protection coverage under Part B of the Compulsory Professional Liability Insurance Policy.

### DALE BRUCE HARDER

Kelowna, BC

Called to the Bar: June 29, 1972

Consented to appointment of Custodian and undertook to cease practice: November 16, 2001

Ceased membership: January 1, 2003

Disbarred: December 7, 2006

Admitted one or more of: professional misconduct, conduct unbecoming a member of the Law Society, contraventions of the *Legal Profession Act* or rules made under it, and incompetently carrying out duties undertaken as a member of the Law Society. A hearing panel accepted Mr. Harder's admissions and found him guilty of 10 counts of professional misconduct, confirmed in a hearing report issued November 10, 2005 (2005 LSBC 48). Mr. Harder was disbarred on December 7, 2006 (2006 LSBC 48): see page 30 for the digest of the disbarment decision.

**SPECIAL COMPENSATION FUND COMMITTEE DECISIONS INVOLVING CLAIMS 20010130, 20010133, 20010154, 20010155, 20010175 AND 20010180**

All decisions dated: April 5, 2005

Reports issued: May 30, 2006 for claim 20010130, all others issued June 21, 2006

Prior and related Discipline Committee proceeding (2005 LSBC 48)

On March 26, 2003 a citation was issued against Mr. Harder, alleging 10 counts of misconduct, including: failure to serve his clients competently; failure to hold and remit Social Service Tax and Goods and Services Tax; breach of various Law Society trust accounting rules; failure to pay annual fees when due and practising law while uninsured; and misappropriation of funds received in his capacity as a lawyer.

Mr. Harder acknowledged that a trust shortage of between \$42,396.11 and \$56,626.21 existed when he consented to the appointment of a custodian for his practice.

After hearing testimony from medical experts and witnesses on the issue of whether the combined effect of his state of mental health and life circumstances prevented him forming the requisite intention, the hearing panel concluded that Mr. Harder had misappropriated clients' trust funds. The panel also found Mr. Harder guilty of professional misconduct in respect of all the allegations in the citation.

**SPECIAL COMPENSATION FUND CLAIMS 20010130, 20010133, 20010154, 20010155, 20010175 AND 20010180 (ALL SIX CLAIMS)**

### THE FACTS

*Claim 20010130:* B paid \$500 to P, an employee in Mr. Harder's office, as a retainer for handling a Workers' Compensation claim. According to B, no work was done on the file; the Committee found no evidence to the contrary. The Committee noted Mr. Harder's acknowledgement that he had failed to provide adequate supervision of P's work.

*Claim 20010133:* Mr. Harder received the sum of \$10,000 from J in his capacity as solicitor for K, in relation to business dealings between J and K. J claimed that he had instructed Mr. Harder to hold the funds in trust until provided with J's instructions for disbursement to a third party. However, Mr. Harder paid J's \$10,000 out of trust to K and to himself (on account of fees owed by K). Mr. Harder claimed that K had "conned" him regarding beneficial entitlement to the funds. Mr. Harder also said that upon learning that K was not entitled to J's money, he tried to reimburse J by providing him with four cheques for \$2,500. J stated that the first such cheque was returned "NSF" by his bank and that he hadn't even tried to cash the others.

*Claim 20010154:* X paid \$5,100 to Mr. Harder as a retainer to conduct a litigation matter. While X claimed that a cheque for an additional \$550 was also delivered to Mr. Harder, forensic accounting confirmed only that the sum of \$5,100 was deposited on X's behalf to Mr. Harder's trust account and was subsequently paid out of trust to Mr. Harder's personal account. The custodian of Mr. Harder's practice valued the work done on X's behalf at \$350, and deducted that amount from \$5,100. Having determined that insufficient funds were available in Mr. Harder's trust account to satisfy all claims, the custodian made a pro rata trust distribution of \$2,815.80 to X, leaving owing \$1,934.20.

*Claim 20010155:* In April 2003, W mailed two cheques totalling \$1,140 to Mr. Harder, as a retainer for assessment of his Workers' Compensation file and conduct of an appeal. Several months later Mr. Harder informed W that he could no longer represent him. Forensic accounting determined that while W's funds were not deposited in trust and no account for legal services was rendered to him, both his cheques were negotiated by or on Mr. Harder's behalf. Mr. Harder claimed that he had been unaware that W's cheques were to fund his retainer, and had included them with a group of cheques for deposit to his general account.

*Claim 20010175:* As a client of some 20 years, M had placed substantial funds in Mr. Harder's trust over time. The Committee noted Mr. Harder's admissions that he had been retained by M on several matters, that he had failed to render accounts to M with reasonably descriptive statements of services, and that he had withdrawn M's trust funds prior to rendering or delivering accounts. Forensic accounting disclosed that a great deal of trust fund activity involved M, and estimated Mr. Harder's trust liability to M at \$13,230.10. Having determined that insufficient funds were available in Mr. Harder's trust account to satisfy all claims, the custodian made a pro rata trust distribution of \$7,842.79 to M, leaving owing \$5,387.31.

*Claim 20010180:* Mr. Harder admitted that he had acted for purchasers of property owned by P, and accordingly that he was bound by the terms of the Contract of Purchase and Sale to hold the sum of \$1,000 in trust for P as a holdback for repairs. Forensic accounting confirmed that while P's funds had been deposited in trust, Mr. Harder's trust fund balance was insufficient to repay the trust liability in full. Having determined that insufficient funds were available in Mr. Harder's trust account to satisfy all claims, the custodian made a pro rata trust distribution of \$592.73 to P, leaving owing \$407.27.

### ISSUES

**Was the appropriate notice given to Mr. Harder?**

*All six claims:* Under Rule 3-31(4), notice of the claim must be given to the lawyer "as soon as practicable, and in any event, before the Special Compensation Fund Committee makes any decision under Rule 3-32." The Committee determined that appropriate notice was given to Mr. Harder.

**Should the Committee require the claimants to exhaust their civil**

## remedies?

*All six claims:* The Committee noted that in determining whether to require a claimant to pursue a judgment against a lawyer, it may consider a number of factors, including the likelihood of recovery, clear evidence of theft and hardship. The Committee exercised its discretion to require the claimants to assign any rights and causes they may have against Mr. Harder to the Law Society, in lieu of pursuing judgment.

## Were the claims made in time?

*All six claims:* The Committee observed that while the *Legal Profession Act* provides for a limitation period of two years for filing claims to the Special Compensation Fund, the BC Court of Appeal has indicated that the purpose of the limitation period is to protect the Law Society against undue delay, and that the Society has discretion "within the bounds of reasonableness" to decide what degree of formality and strictness should be required in dealing with claims to the Fund. The Committee then went on to note that it generally considers the limitation period issue in the context of the purpose of the Fund, which is to reimburse people adversely affected by acts of dishonesty by Law Society members.

Accordingly, while some of the claims to the Fund were commenced outside the two-year limitation period, in all such cases the Committee exercised its discretion to waive any reliance on the limitation period.

## Was Mr. Harder a member at all material times?

*All six claims:* Noting that Mr. Harder was a member of the Law Society from June 29, 1972 until January 1, 2003, the Committee concluded that he was a member at all material times.

## Did Mr. Harder receive the funds in his capacity as a lawyer?

*Claim 20010130:* Having determined that P likely received B's funds while under Mr. Harder's authority, the Committee concluded that Mr. Harder received B's funds in his capacity as a lawyer.

*Claim 20010133:* The Committee observed that while J was not Mr. Harder's client, Mr. Harder admitted that he had received \$10,000 from J. Noting that receiving monies into trust and paying them out of trust are normal activities conducted in the course of practising law, the Committee concluded that Mr. Harder had received J's funds in his capacity as a lawyer.

*Claim 20010154:* The Committee determined Mr. Harder had received the sum of \$5,100 from X as a retainer for legal services, and accordingly had received those funds in his capacity as a lawyer.

*Claim 20010155:* The Committee found W's funds had been paid to Mr. Harder for future legal representation. Noting Mr. Harder's acknowledgement of his responsibility for supervising his staff's conduct, and finding such supervision to be part of the normal work of a lawyer, the Committee concluded he had received W's funds in his capacity as a lawyer.

*Claim 20010175:* Upon determining that Mr. Harder had received M's funds as a retainer for legal services, the Committee concluded Mr. Harder had received the funds in his capacity as a lawyer.

*Claim 20010180:* The Committee determined that because P's funds had been placed in Mr. Harder's trust account in the course of a conveyance, Mr. Harder had received the funds in his capacity as a lawyer, notwithstanding that P was not his client.

## Did Mr. Harder misappropriate and/or wrongfully convert the funds?

*All six claims:* The Committee confirmed that to answer "yes" to this question, it must be satisfied that Mr. Harder acted dishonestly or fraudulently in appropriating or converting the money. The Committee adopted the BC Court of Appeal's objective standard of culpability: "conduct which ordinary, decent people would feel was discreditable as being clearly at variance with straightforward or honourable dealings." The Committee then acknowledged the Court of Appeal's warning that the lawyer's

intention becomes relevant only when an explanation is offered to excuse conduct objectively determined to be dishonest.

The Committee noted that a lawyer is not entitled to withdraw trust funds in respect of fees unless the work has been done and a bill has been prepared and delivered. The Committee also observed that on November 10, 2005, a discipline hearing panel ruled Mr. Harder had knowingly misappropriated funds held by him on account of trust obligations.

*Claim 20010130:* The Committee reviewed the manner in which Mr. Harder had allowed P to deal with B: taking instructions on substantive matters, providing legal advice, accepting funds, issuing receipts and disbursing retainer funds without ever sending a bill, all over an extended period and without adequate supervision. Having determined that Mr. Harder had acted in a manner that ordinary, decent people would find discreditable and at variance with honest dealings, the Committee concluded that Mr. Harder's conduct constituted misappropriation.

*Claim 20010133:* On analysis of all the circumstances surrounding Mr. Harder's payment of J's trust funds to K and to himself, the Committee found Mr. Harder's explanation to be an inadequate answer to conduct that, on an objective analysis, was dishonest. Noting the importance of every lawyer's obligation to ensure that funds placed in a trust account are paid out properly and on instructions from the party who deposited the funds in the first place, the Committee concluded that Mr. Harder misappropriated J's trust funds by paying them to K and to himself.

*Claim 20010154:* Focusing on Mr. Harder's admission that he had withdrawn X's trust funds prior to rendering accounts, the Committee endorsed the November 10, 2005 ruling of the Law Society's Discipline Committee that Mr. Harder had knowingly misappropriated funds being held subject to trust obligations.

*Claim 20010155:* The Committee noted that, while forensic auditing could not confirm that W's funds had been deposited in trust (or at all), there was evidence that W had mailed two cheques to Mr. Harder's office, and that the cheques were negotiated at the bank where Mr. Harder maintained his principal trust account. Dismissing the explanation for including W's cheques with others to be deposited in Mr. Harder's general account "as lacking the ring of truth," the Committee stressed that any legitimate general account deposit of client funds would be prefaced by the rendering of an account, and no such account was ever produced or found in this case. Accordingly, the Committee concluded Mr. Harder had misappropriated W's funds.

*Claim 20010175:* Noting that a lawyer is not entitled to withdraw trust funds to pay fees unless the work has been done and a bill rendered, the Committee endorsed the November 10, 2005 ruling of the Discipline Committee that Mr. Harder had knowingly misappropriated clients' trust funds. Accordingly, the Committee concluded Mr. Harder had misappropriated M's funds.

*Claim 20010180:* The Committee endorsed the November 10, 2005 ruling of the Discipline Committee that Mr. Harder had knowingly misappropriated clients' trust funds. Accordingly, the Committee concluded Mr. Harder had misappropriated P's funds.

## Did the claimant(s) suffer a loss?

The Committee confirmed that the claimants incurred losses (net of applicable pro rata shares of the custodial distribution of available trust monies) as follows:

*Claim 20010130:* \$500; *Claim 20010133:* \$10,000; *Claim 20010154:* \$1,934.20; *Claim 20010155:* \$1,140; *Claim 20010175:* \$5,387.31; and *Claim 20010180:* \$407.27

## DISPOSITION OF SPECIAL COMPENSATION CLAIMS 20010130, 20010133, 20010154, 20010155, 20010175 AND 20010180

The Committee approved these losses as claims for payment from the



## Special Compensation Fund claims ... continued

Fund, subject to the following conditions:

- each claimant must provide a release of the Law Society of BC, its members, the Special Compensation Fund and its related entities;
- each claimant must provide an assignment to the Law Society of BC of all the claimant's rights and any causes that he or she may have against Mr. Harder; and
- each claimant must agree to these conditions or the claim will be returned to the Committee for consideration.

### RE: A LAWYER\*

\*The lawyer is not identified as this claim was denied.

#### SPECIAL COMPENSATION FUND COMMITTEE DECISION INVOLVING CLAIM 20035068

Decision date: March 1, 2006

Report issued: May 24, 2006

Claimants P&P

Claim of \$150,000 denied

In 1995 the lawyer visited the claimants (his relatives) in their home and asked if they wanted to make an investment with a high interest payment. On March 22, 1995, P&P gave the lawyer a cheque and a bank draft totaling \$137,250.

During their interviews through a translator, P&P said the lawyer "lured" them into reinvesting when he gave them an interest payment of \$12,500. They said they gave this sum back to the lawyer, bringing their total investment up to \$150,000. The Special Compensation Fund Committee noted that the language barrier made it unclear whether the \$12,500 did pass back and forth between the lawyer and P&P, or whether there was only discussion of that "interest payment," with P&P agreeing to reinvest the money before they ever received it. There was no documentation to verify that the \$12,500 was exchanged between the lawyer and the claimants.

On March 24, 1995 a mortgage was registered in the Land Title Office, with a Form B having been filed by the lawyer. According to the Form B, one of the claimants was listed as having an undivided 150,000/500,000 interest. On December 15, 1995 the lawyer registered another mortgage in the LTO, and the Form B again listed one of the claimants as having an undivided 150,000/500,000 interest. P&P did not know that either of these mortgages had been registered, and they stated they only provided the lawyer with \$150,000.

In September 1996 the mortgagors went into bankruptcy. The property was sold in foreclosure, and the sale proceeds were insufficient to support the return of any monies to the claimants. P&P said they did not receive notice of either the foreclosure or the bankruptcy. In fact, P&P said at that time the lawyer continued to tell them the value of their investment was going up.

The Committee considered the capacity in which the lawyer received the funds, noting that P&P did not know themselves whether the lawyer was working for them as a lawyer or as a mortgage broker. In addition, pursuant to the borrower's disclosure statement under the *Mortgage Brokers Act*, the lawyer received a finder's fee of \$4,975 and appeared to have been acting as a mortgage broker. The lawyer's own statement of accounts indicated he paid himself that fee, plus an additional finder's fee of \$10,250. Further, the lawyer did not undertake to perform any services that could be considered legal in nature in his dealings with P&P.

After taking into account all of these factors, the Committee found the lawyer did not receive the funds in his capacity as a barrister and solicitor. Therefore, the Committee concluded that while P&P sustained a loss, that loss was not the result of misappropriation or wrongful conversion by a member of the Law Society. Accordingly, P&P's claim was denied.

### ARTHUR SKAGEN

Surrey, BC

Called to the Bar: May 18, 1989

Gave undertaking not to practise: September 8, 2003

Custodian appointed: September 11, 2003

Ceased membership for non-payment of fees: January 1, 2004

Admitted to the Discipline Committee that his misappropriation of trust funds and breach of an undertaking constituted professional misconduct, and undertook never to apply to the Law Society for reinstatement: April 6 and 7, 2005 (see *Discipline Digest*, No. 05/01)

#### SPECIAL COMPENSATION FUND COMMITTEE DECISION INVOLVING CLAIM 20035002

Decision date: May 10, 2006

Report issued: September 11, 2006

Claimant: Government Agency (GA)

Payment approved: \$117,165.77

### FACTS

Mr. Skagen represented Company A in the 2003 sale of Property B to Mr. C. Mr. C's lawyer provided Mr. Skagen with a trust cheque for the net sale proceeds, which he deposited in his trust account. Acting on his client's instructions, Mr. Skagen sent a trust cheque for \$117,165.77 to GA in partial payment of the \$168,886.58 owing under GA's second mortgage. GA refused the partial payment and returned the funds by a cheque deposited in Mr. Skagen's trust account.

Following discussions with GA counsel regarding the propriety of his payment of an unsecured bank line of credit in priority over the GA mortgage, Mr. Skagen provided GA with a trust cheque for the sum of \$168,886.58, with a further cheque drawn on his general account for \$964.92 to cover additional interest. The general account cheque cleared, but the trust cheque did not. A Law Society audit report showed that after accepting the trust deposit of \$117,165.77 and before issuing his trust cheque for \$168,886.58, Mr. Skagen made six unauthorized payments to third parties from his trust account, totalling \$401,357.15.

### DECISION

The Special Compensation Fund Committee determined that Mr. Skagen's trust cheque for \$168,886.58 failed to clear because he had misappropriated funds from trust. The Committee also determined that GA had effectively exhausted its civil remedies against Mr. Skagen, and that GA's claim to the Special Compensation Fund had been brought within time. The Committee decided that Mr. Skagen had been a member at all material times, and that his receipt of trust funds had been in his capacity as a lawyer.

Finally, the Committee concluded that Mr. Skagen had misappropriated trust funds by making unauthorized payments to third parties, and that GA had suffered a loss in the sum of \$117,165.77, being the amount that Mr. Skagen had been instructed to pay to GA out of the sale proceeds received into trust.

**MARTIN WIRICK**

Vancouver, BC

Called to the Bar: May 14, 1979

Resigned from membership: May 23, 2002

Custodian appointed: May 24, 2002

Disbarred: December 16, 2002 (see *Discipline Case Digest* 03/05)

**SPECIAL COMPENSATION FUND COMMITTEE DECISION INVOLVING CLAIMS 20020119/131, 20020120/132 AND 20020121/133**

Decision date: April 5, 2006

Report issued: August 25, 2006

Claimants: J&K

Payment approved: \$127,048 (\$100,000 and \$27,048 interest)

Mr. Wirick acted for Mr. G, a developer client. Mr. G had business dealings with J&K and they agreed to advance funds to Mr. G that would be secured by a mortgage. Mr. Wirick represented Mr. G and J&K in the transaction.

Initially J&K advanced \$60,000, which was secured by a property in Vancouver. That mortgage was released in September 1998. At the request of Mr. G, J&K agreed to use the initial funds plus an additional \$40,000 for a new mortgage on another Vancouver property. Again, at the request of Mr. G, that \$100,000 mortgage was subsequently released by J&K and applied against another property belonging to Mr. G. On two further occasions, Mr. G asked J&K to release their mortgage on one property and told them it would be registered against another property. In both instances J&K agreed and were led to believe their mortgage had been registered against a subsequent property. In the last instance, J&K were specifically told that if they released their mortgage on Property E, it would be replaced with a mortgage on Property N. In all the mortgage transactions, Mr. Wirick acted for both J&K and Mr. G — preparing the various documents and attending on execution and registration.

As with the previous mortgages, J&K continued to receive interest payments from Mr. G on their mortgage on Property N. The last payment they received was in May 2002 — the same month Mr. Wirick resigned from the practice of law. At that time J&K discovered that, despite their instructions, Mr. Wirick had not registered a new mortgage against Property N in their favour. In fact, Mr. G had sold Property N in February 2001; J&K were left with no security against Property N for their \$100,000 and with no recourse against Mr. G, because he had made an assignment in bankruptcy. The Special Compensation Fund Committee found that had Mr. Wirick followed through on his obligation to register their mortgage against Property N, J&K would have been able to enforce it and obtain payment through foreclosure.

The Committee further found that in obtaining from J&K the release of the Property E mortgage and then, contrary to their instructions, not registering a replacement mortgage on Property N, Mr. Wirick had knowingly misappropriated or wrongfully converted their funds. As all of the other statutory prerequisites for payment were also met, the Committee thus approved a payment of \$127,048 from the Fund to J&K, subject to various conditions and assignments.

**SPECIAL COMPENSATION FUND COMMITTEE DECISIONS INVOLVING CLAIMS 20020661, 20020660, 20020661, 20020660, 20020597, 20020325, 20020491 AND 20020600**

Decision dates: October 12, 2005, December 7, 2005 and February 1, 2006

Reports issued: January 10, 2006 and April 25, 2006

Claimants: Ms. T and B Credit Union

Payment approved, in part, for Ms. T totaling \$279,752.27 (\$8,224.07 in relation to Property A and \$271,528.20 in relation to Property B).

Payment for B Credit Union approved in the principal amount of the outstanding mortgage loan (\$174,594.20) and its line of credit (\$73,111.35) plus interest (\$40,082.48 and \$11,116.43, respectively)

**Property A**

Mr. G was a client of Mr. Wirick and sole director of V Construction. In April 1999, Mr. R, a nominee of Mr. G, entered into a contract to sell Property A in Vancouver to Ms. T for \$200,000. Ms. T obtained a \$150,000 mortgage from B Credit Union, and borrowed the balance of the purchase price from her mother.

V Construction was to construct a home for Ms. T on Property A for \$120,000. Ten thousand dollars was to be paid by Ms. T, \$60,000 by her parents and \$50,000 was to be raised through a second B Credit Union mortgage, which replaced the first B Credit Union mortgage. B Credit Union also agreed to establish a line of credit for Ms. T in the amount of \$73,000.

In June 2000, Ms. T sold Property A to Mr. M for \$350,000. Mr. M financed the purchase through a mortgage with C Bank in the amount of \$245,000 and a \$100,000 loan from his father that was given to Mr. Wirick by Mr. M.

The sale of Property A was a transaction in which Mr. Wirick acted for Ms. T, Mr. M and C Bank. Mr. Wirick gave an undertaking to C Bank that its mortgage would be a first charge on title. But Mr. Wirick did not use the funds received from Mr. M and C Bank to pay out and discharge the prior B Credit Union mortgage. Instead, he misappropriated the funds received from C Bank by paying \$170,000 to a company owned by Mr. G and by transferring the balance of the funds to the credit of other properties.

Ms. T made a claim to the Special Compensation Fund for the mortgage payments regarding the B Credit Union mortgage on Property A, which were for the mortgage that was supposed to have been paid out and discharged by Mr. Wirick. As it was not, payments continued to be drawn out of her B Credit Union line of credit without her knowledge.

As the \$100,000 Mr. Wirick received from Mr. M was used for Ms. T's purchase and construction of the home on Property A, the Special Compensation Fund Committee decided that Mr. Wirick had misappropriated \$8,224.07 from Ms. T in relation to Property A. The Committee arrived at that figure by taking the amount Mr. Wirick received from C Bank and Mr. M minus the amounts of B Credit Union's mortgage and line of credit, which had to be paid out. Consequently, the Committee approved the payment of \$8,224.07 to Ms. T in relation to Property A, subject to certain releases, conditions and assignments.

On December 7, 2006 the Committee decided to amend its October 12, 2005 decision to include a payment to B Credit Union with respect to the line of credit, plus interest. The amendment occurred because after reviewing the payout figure provided by the Law Society, B Credit Union realized the figure did not include an amount for the line of credit granted to Ms. T. The Committee noted that B Credit Union's first Statutory Declaration and Application to the Special Compensation Fund inadvertently did not include the line of credit amount and, therefore, in November 2005 B Credit Union submitted a new Statutory Declaration amending its claim with respect to Property A. The Committee allowed the original claim and amended claim of B Credit Union, subject to certain releases, assignments and conditions.

**Property B**

In May 2000, Mr. P, a nominee of Mr. G, purchased Property B in Vancouver for \$258,000. In June 2000, this contract was assigned to Ms. T.

Ms. T and Mr. G executed an agreement for the construction of a home on Property B in May 2000. As part of the agreement, Ms. T paid a deposit of \$55,000 to Mr. G for the purchase of the property and construction of the new home. The total price of the property and completed home was \$410,000.

## Special Compensation Fund claims ... continued

Ms. T obtained a mortgage against Property B from B Credit Union for \$186,300. Mr. Wirick acted for B Credit Union and Ms. T. In her Statutory Declaration, Ms. T stated that the balance to complete the purchase of Property B was \$62,808.67 and that sum was paid by Mr. Wirick from the \$99,582.75 sale proceeds from Property A (\$37,191.33 of which was used to finance the construction of Property B).

In October 2001, Ms. T sold Property B to Mr. L for \$475,000. To finance his purchase, Mr. L obtained a mortgage from D Bank in the amount of \$356,250.

On December 21, 2001 Mr. J, solicitor for Mr. L, sent a letter to Mr. Wirick enclosing his trust cheque for the balance due on completion, which was \$454,151.55. The cheque was sent upon Mr. Wirick's undertaking to discharge B Credit Union's mortgage. Mr. Wirick did not use the funds to pay out the prior B Credit Union mortgage, as he had undertaken, and instead transferred the money to unrelated transactions.

The Special Compensation Fund Committee determined the amount Mr. Wirick misappropriated from Ms. T in relation to Property B was \$271,528.20. The amount represented the difference between \$454,151.55, the sale proceeds Mr. Wirick received from Mr. J, and the amount Mr. Wirick should have paid to B Credit Union for its mortgage, which was \$182,623.35 at the time of the completion of sale. Consequently, the Committee approved the payment of \$271,528.20 to Ms. T in relation to Property B, subject to certain releases, conditions and assignments.



*In the cases indicated below, Mr. Wirick acted for the vendor, Mr. G, a developer client, one of Mr. G's nominees, or one of Mr. G's companies in respect of conveyances and mortgages of real property. In each instance, there were one or more existing mortgages, and in some cases there were also assignments of rents on the property at the time of the purchases. Mr. Wirick accepted the funds of the purchaser(s) on his undertaking to pay out and legally discharge the existing mortgage(s). Mr. Wirick did not fulfil his undertaking(s).*

*The Special Compensation Fund Committee found that, while not every breach of undertaking is dishonest, the circumstances of these claims suggested, not negligence or error by Mr. Wirick, but an intention to deceive. He breached his undertaking(s) to apply the proceeds of sale to the discharge of registered mortgage(s) and he instead misappropriated or wrongfully converted the funds.*

*The Committee decided that it would not require the claimants to exhaust their civil remedies in these cases by obtaining judgments against Mr. Wirick, noting that he had made an assignment in bankruptcy claiming liabilities far in excess of assets, and there was little hope of recovery from him.*

*Subject to various conditions and assignments, the Special Compensation Fund Committee has approved the following claims involving situations such as those described above:*

**SPECIAL COMPENSATION FUND COMMITTEE DECISION INVOLVING CLAIMS 20020127, 20020180, 20020205 AND 20020329, 20020181, 20020204, 20020279, 20020182, 20020201, 20020284, 20020183, 20020202, 20020282, 20020184, 20020203 AND 20020283**

Decision date: February 1, 2006

Report issued: April 12, 2006

Claimants: Credit Union A, D&M, B Bank and Dr. M

Payment for Credit Union A approved: \$138,103.64 (\$114,778.12 and \$23,325.52 interest), \$142,999.66 (\$118,318.58 and \$24,681.08 interest), \$156,690.53 (\$129,646.47 and \$27,044.06 interest), \$157,652.12 (\$130,442.09 and \$27,210.03 interest), \$153,687.31 (\$127,161.59 and

\$26,525.72 interest)

Payment for D&M approved: \$172,019.98 (\$140,000.00 and \$32,019.98 interest)

The claims of B Bank and Dr. M were denied because the allowed claims of Credit Union A and D&M put the other claimants in the positions for which they bargained, and which they ought to have been had Mr. Wirick fulfilled his undertakings.

**SPECIAL COMPENSATION FUND COMMITTEE DECISION INVOLVING CLAIMS 20020025, 20020511, 20020287, 20020043, 20020512, 20020288, 20020113 AND 20020114.**

Decision date: October 27, 2004

Report issued: April 26, 2005

Supplementary decision date: February 2, 2005

Report issued: April 26, 2005

Claimants: C&C, E Bank, Credit Union A, Y&C, and D

Payment for Credit Union A approved: \$213,073.41 (\$186,337.23 and \$26,736.18 interest)

Payment for Mr. C approved: \$141,465.75 (\$100,000 and \$41,465.75 interest)

Payment for D approved \$578,260.27 (\$500,000 and \$78,260.27 interest)

Credit Union A's mortgage was inter alia over the two neighboring properties at issue in these claims. There was an inter alia mortgage registered in second position in favour of Mr. C who was not a claimant. As well, D had an inter alia mortgage registered in third position over these properties and over a third property (Property X), which was not the subject of any other Special Compensation Fund claims.

Property X was sold pursuant to a foreclosure action and funds were paid into court to the credit of D, but the funds were not sufficient to pay out the inter alia mortgage in its entirety. The Special Compensation Fund Committee decided to approve payment of D's claim, subject to the assignment to the Law Society of D's position in the foreclosure action involving Property X, and subject to the written agreement by the trustee of the bankrupt estate of Y not to oppose the Law Society's application for payment of the funds being held to the credit of D in that foreclosure action.

The Committee decided to approve a payment to Mr. C for principal and interest outstanding, as well, even though he was not a claimant. The Committee decided that paying out Mr. C's mortgage, as Mr. Wirick had undertaken but failed to do, put the other claimants in the position for which they had bargained. Therefore, the claims of C&C, E Bank and Y&C were denied, because the allowed claims of Credit Union A and D along with payment to Mr. C put the other claimants in the positions for which they bargained, and which they ought to have held had Mr. Wirick fulfilled his undertakings. ♦



# Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Daniel Glen Addison
- Howard Raymond Berge, QC
- Stuart Clendening
- John Wilson Dobbin
- Crawford Grant Edwards
- Danine Lorraine Geronazzo
- Dale Bruce Harder
- Leonard Thomas Denovan Hill
- Jeffrey Francis Murray

For the full text of discipline decisions, visit the Regulation & Insurance/Regulatory Hearings section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca).

## DANIEL GLEN ADDISON

Abbotsford, BC

Called to the Bar: May 14, 1993

Discipline hearing: February 21, 2007

Panel: James Vilvang, QC, Chair, Robert McDiarmid, QC and William Sullivan, QC

Report issued: March 2, 2007 (2007 LSBC 12)

Counsel: Jaia Rai for the Law Society and Jerome Ziskrout for Mr. Addison

### FACTS

Mr. Addison represented the defendant in a motor vehicle matter where there were four independent witnesses to the accident. Two of the witnesses were favourable to the plaintiff and two were favourable to the defendant. Mr. J was the strongest witness for the defence.

Mr. Addison did not enter the names of his defence witnesses on the List of Witnesses, but he did provide that information in a November 14, 2005 letter to counsel for the plaintiff, lawyer A. Mr. J was not included in the list indicated in that letter. When lawyer A contacted Mr. Addison to inquire as to why Mr. J was not on the List of Witnesses, Mr. Addison indicated that this was an oversight by his office, and Mr. J was on the List of Witnesses. Mr. Addison indicated to lawyer A that he wanted Mr. J's name added to the list of witnesses.

Lawyer A later learned that Mr. J had died in the summer of 2004. On November 29, lawyer A's co-counsel contacted Mr. Addison to ask if he knew that Mr. J was dead. Mr. Addison indicated that he had found out about two weeks before that Mr. J had died.

In the hearing, Mr. Addison admitted that, at the time of his conversations with lawyer A and her co-counsel, he was aware that Mr. J had died in the summer of 2004 and he had learned of his death in mid-October. He further admitted that this conduct constituted professional misconduct.

### VERDICT

The hearing panel accepted Mr. Addison's admission that he misled opposing counsel and found Mr. Addison's conduct constituted professional misconduct.

### PENALTY

The hearing panel accepted the joint submission on penalty by Mr. Addison and the Law Society. The panel ordered:

1. a 30-day suspension to commence March 10, 2007; and
2. costs in the amount of \$6,369.

In their assessment of the penalty, the panel emphasized an earlier decision (*Law Society of BC v. Johnson*, August 19, 1992) which noted that:

To lie to a fellow member of the legal profession is a matter of the utmost severity. The profession that we practise in is based upon mutual trust and confidence that what our fellow practitioner tells us can be accepted. It is imperative that lawyers, both in their professional and personal lives, conduct themselves and their dealings with honesty and integrity. If that is not done, the profession will fall into great disrepute and ultimately lose its self-governing capacity.

## HOWARD RAYMOND BERGE, QC

Kelowna, BC

Called to the bar: May 12, 1967

Bencher review: October 12, 2006

Benchers: David Zacks, QC, Chair, Gavin Hume, QC, Bruce LeRose, QC, Barbara Levesque, Thelma O'Grady, Dirk Sigalet, QC and Richard Stewart

Report issued: January 17, 2007 (indexed as 2007 LSBC 07)

Counsel: Herman Van Ommen for the Law Society and Christopher Hinkson, QC for Mr. Berge

### BACKGROUND

The hearing panel (facts and verdict: 2005 LSBC 28; penalty: 2005 LSBC 53) found that Mr. Berge, after consuming a substantial amount of alcohol, drove a car without due care and attention and caused an accident. The panel also found that following the accident and prior to the arrival of the police, Mr. Berge used mouthwash to mask the smell of alcohol on his breath and that he removed an open can of beer from his car to dispose of it or acted in a manner that made it appear that he intended to dispose of it. The panel concluded Mr. Berge's actions were a conscious effort to thwart the police, that the combined effect of his actions were tantamount to dishonest conduct and that his actions constituted conduct unbecoming a lawyer.

The panel ordered that Mr. Berge:

1. be reprimanded;
2. be suspended from the practice of law for one month;
3. pay partial costs of the proceedings.

On review, Mr. Berge argued that a finding of conduct unbecoming only applied to cases of deliberate falsehood or a criminal offence. He also argued the penalty was too severe.

### DECISION

The Benchers agreed with the findings of fact made by the hearing panel. They also concluded that conduct unbecoming not only includes the obvious examples of criminal conduct and dishonesty, but also "any act of any member that will seriously compromise the body of the profession in

## Discipline digest ... continued

the public estimation" (*Hands v. Law Society of Upper Canada* (1889) 16 O.R. 625). The Benchers upheld the hearing panel's decision on penalty, recognizing that a period of suspension is one of the most severe penalties that can be imposed on a lawyer. In upholding the suspension, the Benchers said it was their intention to send a clear message to the public that Mr. Berge's conduct is not to be condoned. The Benchers awarded costs of the review to the Law Society and costs of a previous hearing to determine the scope of the review to Mr. Berge.

Mr. Berge has appealed the review decision to the BC Court of Appeal.

### STUART CLENDENING

Surrey, BC

Called to the bar: May 17, 1971

Discipline hearing: January 16, 2007

Panel: John J.L. Hunter, QC, Chair, David A. Zacks, QC and Ross D. Tunnicliffe

Report issued: February 9, 2007 (indexed as 2007 LSBC 10)

Counsel: Maureen Boyd for the Law Society and Christopher E. Hinkson, QC for Mr. Clendening

#### FACTS

In July 2004, Mr. Clendening was retained to represent JM in the sale of a residential property to JD. A notary public represented the purchaser. Two mortgages were registered against the property. On July 27, 2004 Mr. Clendening confirmed an undertaking to pay out and discharge the first mortgage and to advise the notary of the discharge. On July 27, 2004, the transaction completed and the notary forwarded the sale proceeds to the respondent.

In October 2004 the notary wrote to Mr. Clendening to remind him of his obligation to fulfil the undertaking. On November 22, 2004 Mr. Clendening provided confirmation that the first mortgage had been discharged. The second mortgage was not discharged, and Mr. Clendening did not respond to several communications from the notary on this matter.

On January 10, 2006 the notary complained to the Law Society about Mr. Clendening's breach of the undertaking to pay out and discharge the second mortgage. On February 22, 2006 Mr. Clendening completed the discharge of the second mortgage.

#### VERDICT

The hearing panel accepted Mr. Clendening's admission that he breached an undertaking to provide a discharge of mortgage in a timely manner and failed to respond to communications from a notary public. The hearing panel found that Mr. Clendening's conduct constituted professional misconduct.

#### PENALTY

The hearing panel accepted the joint submission on penalty by Mr. Clendening and the Law Society. The panel ordered Mr. Clendening, by December 31, 2007, to pay:

1. a fine of \$7,500; and
2. costs in the amount of \$2,500.

In assessing the submission, the hearing panel emphasized, once again, the importance of compliance with undertakings.

### JOHN WILSON DOBBIN

Vancouver, BC

Called to the bar: September 13, 1973

Suspended: June 1, 2006

Ceased membership: January 1, 2007

Discipline hearing: April 5, 27, 2006; November 8, 2006

Panel: Joost Blom, QC, Chair, Kathryn A. Berge, QC and Robert D. Punnett

Reports issued: June 29, 2006 (indexed 2006 LSBC 28) and February 1, 2007 (indexed as 2007 LSBC 09)

Counsel: Brian McKinley for the Law Society and Mr. Dobbin on his own behalf

#### FACTS

A hearing panel on October 16, 2002 suspended Mr. Dobbin for 10 months retroactive from May 28, 2002 and set a number of conditions that Mr. Dobbin had to meet following his reinstatement, including that he continue to see his psychiatrist and provide update reports to the Practice Standards Committee every three months for the first three years of practice. Mr. Dobbin was reinstated to practice on April 7, 2003 under these conditions. The Practice Standards Committee reminded Mr. Dobbin several times that he had not met these conditions.

On May 20, 2005, Mr. Dobbin provided the Law Society with a signed undertaking to provide monthly action plans commencing June 1, 2005. The Law Society warned Mr. Dobbin on June 28, 2005 that he had not provided his monthly action plan for June 1, 2005 and was now in breach of his undertaking. Mr. Dobbin admitted that he failed to provide monthly action plans to the Law Society by June 1, July 1, August 1, September 1 and October 1, 2005.

#### VERDICT

The hearing panel found that Mr. Dobbin failed on five occasions to perform his undertaking to provide monthly action plans to the Practice Standards Committee, and failed to provide update reports on his treatment by a psychiatrist. The panel accepted that Mr. Dobbin's admission of professional misconduct was justified and found him guilty of professional misconduct.

#### PENALTY

The hearing panel ordered that Mr. Dobbin be suspended for a minimum of one year and until he satisfies a board of examiners that his ability to practise law is not affected by a mental disability. The panel also ordered Mr. Dobbin to pay \$6,914 in costs. If he resumes practice, the panel ordered he must only do so as an employee or associate and he must undergo a practice review within three months of resuming practice.

### CRAWFORD GRANT EDWARDS

North Vancouver, BC

Called to the Bar: May 15, 1972

Suspended: September 16, 2005 pending hearing of citation

Ceased membership: January 1, 2006

Disbarred: January 12, 2007

Discipline hearing: May 9, 10 and 12 and September 20, 2006

Panel: Bruce LeRose, QC, Chair, June Preston and Leon Getz, QC

Reports issued: June 28, 2006 (indexed as 2006 LSBC 27) and January 12, 2007 (indexed as 2007 LSBC 04)

Counsel: Brian McKinley and Jaia Rai for the Law Society and Mr. Edwards on his own behalf

#### FACTS

In November 2004, Mr. Edwards and JB were introduced to an investment scheme by P who claimed to be a representative of the Government of Canada, the Bank of Canada or the Canadian Business Development Bank (Mr. Edwards and JB were not sure which entity he claimed to be affiliated with). P told Mr. Edwards and JB that the organization he represented had set aside \$100 million for investment in worthwhile enterprises with socially beneficial objectives. P said the fund was to be administered by a private sector entity that would earn significant fees for its work. In order to qualify for the work, the fund administrator had to have at least \$16 million (later reduced to \$5.5 million without explanation) deposited in a specific Bank of Montreal account, P said. He suggested Mr. Edwards and JB arrange to deposit the necessary money and become the fund administrator. He also told Mr. Edwards and JB that if they wanted to take advantage of the opportunity, they had to move quickly and that if they contacted any government or bank officials they would lose the deal.

Mr. Edwards and JB made only minimal attempts to confirm the validity of the investment scheme. JB phoned the Bank of Montreal and was told the account was in P's name but the account number was normally held by the Government of Canada or the Bank of Canada. Mr. Edwards contacted P for information about visas for two Russian businessmen and based on P's answers concluded P had a high level security clearance and that the scheme must be legitimate.

Soon after, JB began soliciting investors in the US with promises of very high returns in a very short time. Mr. Edwards also told potential investors their money would be safe if deposited in his trust account because it would be covered by the Law Society of BC's insurance plan and suggested they contact the Law Society for confirmation.

After receiving several calls from potential investors, a Law Society investigator met with Mr. Edwards on March 4, 2005. Mr. Edwards assured him the scheme was completely legitimate but urged the investigator not to contact the Government of Canada as the investment had to be kept secret. Three days later, the Lawyers Insurance Fund advised Mr. Crawford there was no insurance coverage for the investment funds. Over the next two days, the Law Society met with Mr. Edwards and advised him that the investment presented several red flags of fraud and that the *Professional Conduct Handbook* prohibited lawyers from engaging in any activity that assists a fraudulent scheme.

Mr. Edwards and JB both deposited substantial amounts of their own money in the Bank of Montreal account designated by P. Another investor, KS, also transferred more than \$500,000 to Mr. Edwards' trust account, which Mr. Edwards then forwarded to the Bank of Montreal account. On September 9, 2005 the Law Society authorized a citation against Mr. Edwards for his involvement in the investment scheme. He was suspended on September 16, 2005 until the determination of the citation.

All of the funds in the Bank of Montreal account were withdrawn shortly after deposit, including \$290,000 that was paid to an automobile dealer.

#### DECISION

The hearing panel found that the investment scheme was "a scam and fraud" and that Mr. Edwards behaved recklessly and in a manner that was a marked departure from the standard expected of a competent solicitor.

The panel noted that the respondent ignored warnings given to him by the Law Society that the investment scheme had all the hallmarks of a scam, and that Mr. Edwards continued to maintain that the scheme was legitimate based on sources no reasonably competent solicitor would have relied upon in the circumstances. The panel found that Mr. Edwards should have known that his involvement in the scheme assisted in dishonest conduct contrary to Chapter 4, Rule 6 of the *Professional Conduct Handbook*. The hearing panel did not find that Mr. Edwards personally engaged in any fraudulent conduct or was otherwise dishonest.

#### PENALTY

The hearing panel noted Mr. Edwards had been cited in 1994 for failing to meet his financial obligations and for failing to report an unsatisfied judgment. The panel said the facts of that case were "eerily and disturbingly similar" to the present citation. In that case, Mr. Edwards claimed his financial difficulties arose because of a failed investment worth millions of dollars involving a high-ranking Iraqi official linked with Saddam Hussein.

The panel noted that past efforts to rehabilitate Mr. Edwards had been conspicuously unsuccessful and nothing on the record hinted at the possibility that he could be rehabilitated. They concluded that the only appropriate penalty for Mr. Edwards was disbarment. The panel further ordered Mr. Edwards to pay costs in the amount of \$35,815.

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#### DANINE LORRAINE GERONAZZO

Victoria, BC

Called to the bar: September 8, 1998

Ceased membership: January 1, 2005

Bencher review: June 26, 2006

Benchers: Gordon Turriff, QC, Chair, Ronald Tindale, Robert Punnett, Michael Falkins, Thelma O'Grady, David Renwick, QC and Ken Dobell

Report issued: December 13, 2006 (indexed as 2006 LSBC 50)

Counsel: Gerald Cuttler for the Law Society and Ms. Geronazzo on her own behalf

#### BACKGROUND

In the decision of the hearing panel (facts and verdict: 2004 LSBC 26, penalty 2005 LSBC 12), Danine Lorraine Geronazzo was found guilty of professional misconduct for attempting to mislead her employers and the Law Society about work she had performed on various client files.

The hearing panel ordered that Ms. Geronazzo be suspended until she had entered into a practice supervision agreement for a period of two years and had certified that, for the two-year period of the supervision, she would practise only as an employee, associate or partner with two or more members of the Law Society who were not related to her. The hearing panel also ordered that she pay \$29,283 in costs.

On review, the Law Society argued the hearing panel erred in the decision on penalty by not considering whether Ms. Geronazzo was suitable to practise law and whether she should be disbarred. The Law Society also argued that a practice supervision agreement was inappropriate because Ms. Geronazzo had been working under the supervision of established and respected law firms at the time of her offences. In addition, the Society contended the penalty decision fettered the discretion of the Credentials Committee because it would allow Ms. Geronazzo, who had voluntarily given up her membership in the Law Society, to return to practice once she had satisfied the conditions imposed, without having to prove her character and fitness on reinstatement.



*Discipline digest ... continued*

## DECISION

The Benchers accepted that there are degrees of misleading conduct and that while Ms. Geronazzo's actions were serious, they were of a lesser degree. They also agreed that Ms. Geronazzo should not be practising at present, but that the Law Society failed to establish that she would not at some future time be able to return to practice. Consequently, the Benchers concluded that disbarment was not appropriate in this instance. They also found that a practice supervision agreement would provide a safeguard for the public.

However, the Benchers concluded that the hearing panel's penalty of a suspension until a practice supervision agreement was in place was not an effective punishment for the proved misconduct because Ms. Geronazzo could have satisfied the condition immediately and avoided punishment altogether. Accordingly, the Benchers ordered a six-month suspension effective immediately. The Benchers also concluded that the conditions imposed by the hearing panel would not fetter the Credentials Committee's discretion because Ms. Geronazzo would have to prove her fitness on a reinstatement application, if she made one.

Accordingly, the Benchers ordered:

1. a six-month suspension;
2. that if Ms. Geronazzo was reinstated, she would, before returning to the practice of law, have to:
  - a) enter into a Practice Supervision Agreement for a period of two years from her return;
  - b) certify that she would engage in the practice of law only as an employee, associate or partner with two or more members of the Law Society who were not related to her by blood or marriage; and
3. that there would be no costs of the review.

## DALE BRUCE HARDER

Kelowna, BC

Called to the bar: June 29, 1972

Undertook not to practise law: November 16, 2001

Ceased membership: January 1, 2003

Disbarred: December 7, 2006

Discipline hearing: August 2 to 5, 2005 and July 13, 2006

Panel: Ralston S. Alexander, QC, Chair, G. Ronald Toews, QC and Ross Tunnicliffe

Reports issued: November 10 2005 (indexed as 2005 LSBC 48) and December 7, 2006 (indexed as 2006 LSBC 48)

Counsel: Maureen E. Baird and Jude Samson for the Law Society and Christopher E. Hinkson, QC, S.L. Kovacs and Una Radoja (articled student) for Mr. Harder

## FACTS

Following client complaints and deficiencies in Mr. Harder's 2000 Accountant's Report (Form 47), the Law Society ordered an audit of his practice pursuant to Law Society Rule 3-79. The audit commenced in April 2001. In July 2001 he failed to pay the second instalment of his insurance fees and practised without insurance until September 25 when he made the

payment. In November the Law Society ordered a practice review and Mr. Harder agreed to provide an undertaking not to practise law until the audit was completed. He also consented to the appointment of a custodian. On December 21, 2001 Mr. Harder filed for bankruptcy.

In October 2002, shortly before the audit completed, Mr. Harder provided the Law Society with another undertaking not to practise law. Two months later, he was discharged from bankruptcy. Mr. Harder ceased membership on January 1, 2003 for non-payment of fees.

As a result of the complaints and the audit, the Law Society cited Mr. Harder for:

1. failing to service his clients properly;
2. failing to hold and remit PST;
3. failing to hold and remit GST;
4. breaching Law Society accounting rules;
5. failing to provide a reasonably descriptive statement of services in his accounts contrary to s. 69 of the *Legal Profession Act*;
6. failing to adequately supervise an employee contrary to Chapter 12 of the *Professional Conduct Handbook*;
7. misappropriating client funds;
8. withdrawing trust funds without preparing accounts contrary to Rule 3-57(2);
9. failing to file a Form 47 for the period ending January 31, 2001 contrary to Rule 3-72; and
10. practising without insurance from July to September 2001 contrary to s. 30(7) of the *Legal Profession Act*.

Mr. Harder admitted all counts except count 7 and that his conduct in respect of those counts constituted professional misconduct.

On count 7, Mr. Harder argued that his health problems at the time, including diabetes and depression, were so severe that his mental functions were grossly impaired such that he was not aware of his financial dealings. He further argued that, because of his mental state, the shortages in his trust account could not be characterized as misappropriation.

Other evidence, however, demonstrated that Mr. Harder was at all times, even while suffering from his mental health problems, preoccupied with the balance of his trust account, that he delayed paying employee wages to avoid overdrawing the account and that he transferred money into his trust account to ensure cheques would clear.

## VERDICT

The hearing panel concluded that Mr. Harder was aware that he was using client funds to meet personal and practice financial obligations and that his conduct amounted to misappropriation. The panel also accepted Mr. Harder's admissions on the remaining counts and found that they also constituted professional misconduct.

## PENALTY

The hearing panel ruled that Mr. Harder be disbarred. This was necessary, the panel said, to protect the public and to deter other lawyers who might think that deteriorating health is a defence to misappropriation.

The panel also said Mr. Harder's impecuniosity was not a valid reason to waive costs and ordered that he pay \$149,053.

*For a summary of the Special Compensation Fund claims arising from Mr. Harder's practice, see page 22.*

## LEONARD THOMAS DENOVA HILL

Delta, BC

Called to the bar: July 13, 1982

Discipline hearing: December 19, 2006

Panel: Gordon Turriff, QC, Chair, Carol Hickman and Leon Getz, QC

Report issued: January 10, 2007 (indexed as 2007 LSBC 02)

Counsel: James Doyle for the Law Society and Christopher Hinkson, QC for Mr. Hill

## FACTS

While acting for two borrowers in a mortgage refinancing transaction, Mr. Hill undertook to pay the outstanding taxes from mortgage proceeds in full upon receipt of the mortgage proceeds.

Mr. Hill received the mortgage proceeds in full on August 23, 2004, but failed to pay out the outstanding taxes. In December 2004 lawyer S, who was acting for the lender, wrote to Mr. Hill to inquire about the outstanding taxes and request immediate payment. Mr. Hill requested a one-month extension, which the lender agreed to grant with a final deadline of February 18, 2005. Lawyer S wrote to the Law Society on March 3, 2005 noting that payment of the outstanding taxes still had not been received.

In letters to the Law Society, Mr. Hill said that, at the time of the transaction, he was under the impression the taxes had already been paid and he did not realize this was incorrect until he received a letter from lawyer S. He said his client was refinancing the property and that the taxes would be paid as part of that transaction. In May 2005, Mr. Hill advised the Law Society that his client had paid the taxes and provided a copy of the receipt.

## ADMISSION AND PENALTY

Mr. Hill admitted that he breached an undertaking to pay the outstanding taxes from the mortgage proceeds in full, and that this breach constituted professional misconduct. Pursuant to Law Society Rule 4-22, the hearing panel accepted Mr. Hill's admission and proposed penalty. The panel ordered Mr. Hill, within six months of December 19, 2006, to:

1. pay a fine of \$2,500; and
2. pay costs in the amount of \$1,000

The hearing panel noted that lawyers who give undertakings must ensure they know what will be required to discharge the undertakings, including when they must do so, and that they will personally be able to do so. They further noted that lawyers can neither decide when they will discharge undertakings that are linked to a particular event or stated time nor put themselves in the position of hoping that someone else will do what they have undertaken to do themselves.

## JEFFREY FRANCIS MURRAY

Kelowna, BC

Called to the bar: June 16, 1992 (New Brunswick) and September 2, 1994 (BC)

Discipline hearing: November 16, 2006

Panel: Leon Getz, QC, Chair, William Sullivan, QC and Gerald Kambeitz, QC

Report issued: December 6, 2006 (indexed as 2006 LSBC 47)

Counsel: Maureen Boyd for the Law Society and James P. Taylor, QC for Mr. Murray

## FACTS

Between the summer of 2003 and February 2004, Mr. Murray represented AM on several legal matters. In February 2004, AM paid Mr. Murray \$2,000 in cash in respect of the legal matters. Mr. Murray used the funds for his personal use without first: depositing them in trust as required by Law Society Rule 3-51(1); providing a statement of account as required by Rule 3-57(1) and section 69(1) of the *Legal Profession Act*; recording the receipt of funds under Rule 3-59; recording the transactions related to the funds in his trust account as required by Rule 3-63; and accounting in writing to his client for the funds as required by Rule 3-48. Further, Mr. Murray did not remit GST or PST in connection with the funds in a timely manner.

AM filed a complaint with the Law Society in June 2005. At the time of receipt of the funds, Mr. Murray had provided legal services to AM of a value of at least \$2,000. On March 2, 2006 he rendered a statement of account to AM, which included further legal services to July 9, 2004 and a balance outstanding of \$3,932.36. He also deposited \$2,000 of his own funds to AM's credit in trust, applied that \$2,000 to the statement of account and remitted the outstanding taxes. Mr. Murray subsequently wrote off the outstanding balance.

## ADMISSION AND PENALTY

Mr. Murray admitted that his conduct in dealing with the funds in breach of the *Legal Profession Act* and the Law Society Rules amounted to professional misconduct. The panel accepted Mr. Murray's admission and his proposed penalty and ordered that he:

1. be reprimanded;
2. pay a fine of \$1,500; and
3. pay costs of \$2,000. ♦

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