



2008: No. 1 • MARCH

BENCHERS' BULLETIN

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Commitment to professionalism – Allan McEachern's bequest to his profession

by John J.L. Hunter, QC

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. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor at 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. To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at lawsociety.bc.ca.

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Publications Mail Agreement No. 40062742

THIS IS MY first column as President of the Law Society, and I want to begin by expressing my appreciation to all of the members for the opportunity to serve my profession in this way. I am fortunate to follow a series of dedicated presidents and I will endeavour to live up to the standard they have set.

My year has, however, begun on a sad note. Ten days after my term commenced, former Chief Justice Allan McEachern passed away. Allan was a giant at our Bar — the leading counsel of his generation, a Benchers for many years and then a prominent judge for over 20 years. His passing is truly the passing of an era.

A fundamental quality of professionalism for Allan was simple honesty. As he expressed it, "The most important aspect of professionalism is scrupulous honesty in financial and all other matters.... A lawyer's word must be his or her bond, whether stated as an undertaking or otherwise."

While Allan can be remembered for so many contributions, I would like to focus my first President's column on his commitment to professionalism. This was a quality that he exemplified not only in his legal practice, but also in his leadership on the Bench, through speeches, articles for the profession and in many other ways.

Professionalism is fundamental to the role we play as lawyers, and it is timely to reflect on some of the qualities that define professionalism in our working lives.

Allan wrote, "Professionalism is the product of attitude, competence and conduct." The Law Society regulates

professional *misconduct*, but *professional* conduct goes beyond the absence of misconduct to embody a particular standard of behaviour. Competence has long been regarded as a professional responsibility, and as you are all aware, continuing competence will soon be a regulatory requirement in this province. Attitude is perhaps the most ephemeral and important of professionalism's standards.

A fundamental quality of professionalism for Allan was simple honesty. As he expressed it, "The most important aspect of professionalism is scrupulous honesty in financial and all other matters.... A lawyer's word must be his or her bond, whether stated as an undertaking or otherwise."

While breach of an undertaking is regarded as serious professional misconduct, any conduct that falls short of simple honesty is unacceptable in a lawyer. A lawyer acting professionally should never be driven to making the distinction between an undertaking and a promise to do something. In either case, professionalism demands honouring one's commitments.

Professional courtesy was also a matter of considerable importance to Allan. He was the driving force behind the Inns of Court program, a series of social and educational seminars for young lawyers that began in 1984 and continues to this day. One of the common themes of that program is the inappropriateness of rudeness and bullying, particularly when directed at junior members of the Bar.

Civility and mutual respect are aspects of professionalism that need emphasis in these days of the portrayal of aggressive and preening lawyers on American television. I can still recall being a little surprised as a young lawyer when I realized that the most successful and prominent counsel

were not the hyper-aggressive and arrogant lawyers, but the lawyers who could truly be described as honourable. These were lawyers who could be relied upon to do what they said they would do, were civil and would never take paltry advantage of a slip by another lawyer. Lawyers like Duncan Shaw, Jack Giles and Rick Sugden set the standard of professionalism for their generation.

In some other jurisdictions, civility at the Bar is under some stress. A few years ago, after an appellate decision directed particularly sharp criticism to the conduct of counsel towards one another, the Advocates Society of Ontario published *Principles of Civility for Advocates*: a booklet of suggestions to encourage a greater degree of civil behaviour among counsel. The general theme was reflected in these words of the Chief Justice of Ontario: "the level of civility at the Bar relates directly to the level of professionalism of the legal profession."

Civility and mutual respect are aspects of professionalism that need emphasis in these days of the portrayal of aggressive and preening lawyers on American television.

Allan McEachern was noted for his civility both as a practising barrister and as a judge. I had an early lesson in his courteous demeanour in 1979 when, as a very young and green barrister, I found myself appearing in the first trial heard by the newly appointed Chief Justice of the BC Supreme Court. I was well aware of his prominence as a barrister and even more acutely aware of my own inexperience at the Bar, but found the Chief Justice to be unfailingly patient and courteous as I stumbled through the trial. This was a time when we still had trial judges who would swivel their chairs and turn their backs on counsel if they were unimpressed with the submissions being made. I have no doubt that the respectful demeanour of the most prominent jurist of his time played a significant role in the evolution of professionalism on the trial Bench as well as at the Bar.

Unlike the Advocates Society of Ontario, the Law Society of BC has not found

it necessary to instruct our lawyers on how to be civil to one another, and I hope it will never be necessary to do so. The leaders in our profession, of whom Allan McEachern was the most prominent, have bequeathed to us a powerful and compelling standard of professionalism in the practice of law. It is our obligation to carry this attitude forward for the generation of lawyers that follows.

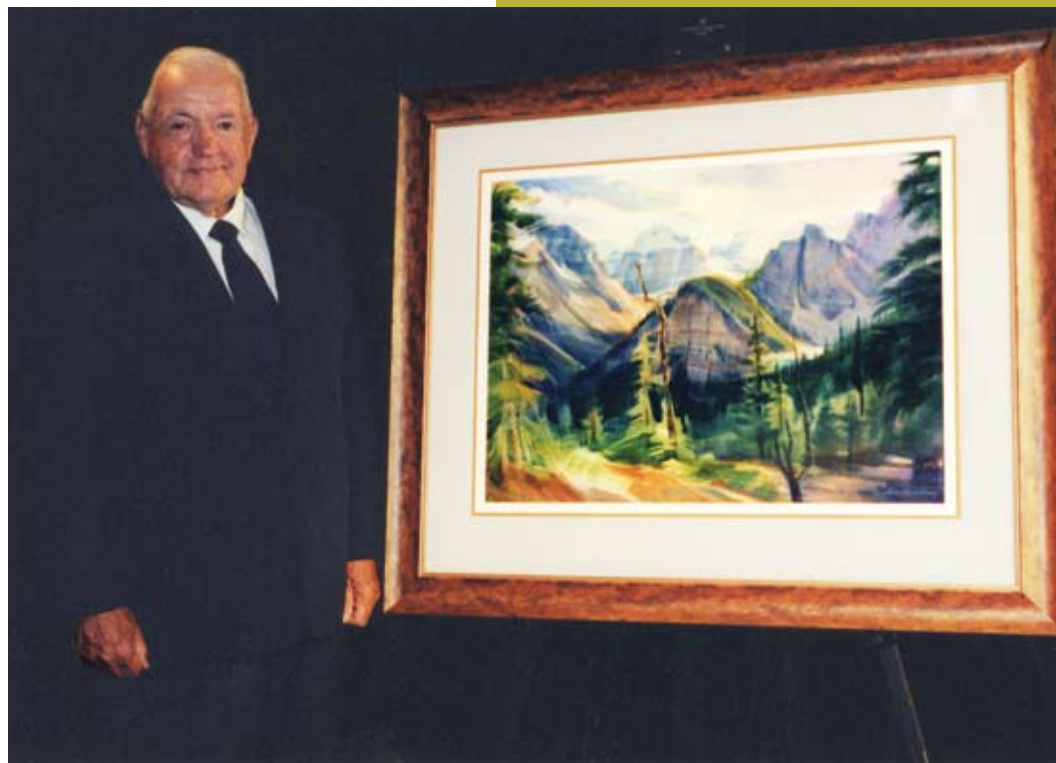
One final comment should be made. Allan's contributions to the Bar and the Bench were legion, but in the minds of some, are diminished somewhat by his controversial 1993 trial judgment in the *Delgamuukw* case. His decision has been criticized, quite unfairly in my view, by those who have forgotten the context of the decision and the very early stage of development of Aboriginal law that prevailed at the time. At the memorial for Allan

McEachern, the Chief Justice of British Columbia commented powerfully on the unfairness of these criticisms and urged that this decision be viewed in the context in which it was made. It would be most unfortunate if those who focus on this decision failed to appreciate the enormous contribution Allan McEachern made to the legal profession in this province.

Allan will be missed, but his leadership not forgotten.

It is customary for the year's first *President's View* to set out the incoming president's priorities for the coming year. This year we have changed our approach somewhat. The Benchers met on February 29 to set their strategic priorities for the year. I will report on those priorities in my next column.

Until then I wish you all well. ♦



In 2001, the Law Society presented Chief Justice Allan McEachern with a watercolour commissioned to honour his retirement from the Bench. The painting by artist Anne Marie Harvey depicts Beehive Mountain near Lake Louise, which held fond memories for McEachern because of the time he spent there as a forest ranger.



Helping with important choices

by Timothy E. McGee

TO HELP THOSE considering a career in law better understand the opportunities and challenges of legal practice today, the Law Society has published a booklet titled *Considering a career in law?* We are distributing the booklet to all Canadian law societies and law schools, some undergraduate programs and various other organizations. An electronic version is also available on the Law Society's website (go to Licensing & Membership/Becoming a BC Lawyer/Overview at lawsociety.bc.ca), and I invite you to have a look at it.

Readers will find real-life profiles highlighting different paths that one may take as a lawyer — from practising as a sole practitioner in Kamloops to working as a barrister in a large firm in downtown Vancouver and career options outside private practice. The booklet also explains the Law Society's role as regulator of the legal profession in BC, and outlines the services the society offers to BC lawyers. In addition, the booklet outlines the professional obligations that apply to all articling students and lawyers in BC.

The Law Society is aware that retention of lawyers is a growing concern for many of BC's law firms and communities. *Considering a career in law?* presents information about the changing demographics of the profession, including where lawyers are practising, the size of BC law firms and the increasing proportion of women among new calls. I expect this information will interest prospective and current law students, new lawyers and experienced practitioners as well.

Response to the booklet has been very positive since its release last month. Most often, we hear that the booklet pulls together practical information in an easy-to-understand format. Among current practitioners, we hear comments like, "I wish this had been available when I was starting out, but it's helpful even today."

We hope this booklet will help those considering or beginning a career in law make well-informed decisions that will stand them in good stead as they pursue a legal career.

Please don't hesitate to contact the

Law Society's Communications Department at 604-443-5768 or communications@lsbc.org if you would like a copy of *Considering a career in law?* We would also welcome your feedback on the booklet at any time. ♦



Law Day in Vancouver, 2007

Celebrate Law Week: April 14 – 20

Law Week 2008, focusing on "Access to Justice: Breaking down barriers," will kick off April 14 and run through to April 20 with events hosted throughout the province.

The series of events, sponsored by the Canadian Bar Association, BC Branch, the Vancouver Bar Association, the Law Foundation of BC and the Law Society, commemorate the signing of the Canadian *Charter of Rights and Freedoms* and aim to improve understanding of the law and the legal system. As part of Law Week, the Law Society will join a **Law Day** open house on **Saturday, April 19** from 10 am to 2 pm at the Vancouver Public Library. Open house events will include a public forum with senior members of the justice system, exhibits from various justice-related organizations, free law classes and a citizenship ceremony.

For more information on events happening throughout BC during Law Week, visit bclaw-week.org. ♦

New Lay Benchers Peter Lloyd

YOU MIGHT THINK that, because Peter Lloyd has spent the better part of his life working as an accountant, his life revolves around numbers. To be sure there are numbers. Important ones: 42 years of marriage, three grown children and three grandchildren. But it's water that has served as a dominant theme running through his entire life. He lives on an island — Vancouver Island, in Sidney to be specific. He grew up on an island — in England, near London to be specific. He is an avid powerboater and is chair of a society with the mission of bringing an aquarium to the shores of the Victoria area. So perhaps there is no irony in the fact that it was water that nearly drove Lloyd back to his native England.

Lloyd moved to Vancouver with his wife, Gwen — whom he met as a teenager at a high school dance — and their young son in the summer of 1970. The city put on a beautiful show, charming as it is in the summer months, with crisp blue skies, the sparkling ocean and the jagged mountains that serve as the skyline's crowning glory. Then November rolled around, and Lloyd witnessed rain on each calendar day, which caused him to reflect that, "contrary to popular belief, even in Britain there aren't any months where it rains every day," he said. "We probably would have gone back to London at that point, except that by then we'd spent the money we would have needed to travel, so we stayed."

And so it was that Lloyd embarked on a long career in BC as an accountant, working in both Vancouver and on Vancouver Island. He retired in 2004, and since then he and his wife have "never been busier." When he made the decision to leave the work force full-time, he tried to phase himself out of some of his volunteer positions, leaving various boards of directors. But somehow he found himself replacing those directorships with new ones, and this year he joined the Law Society's directors' table as a Lay Benchers. Given his obvious skill set, the Benchers were quick to ask him to sit on the Finance Committee. He is also on the Practice Standards Committee.

Of his role as a Lay Benchers, Lloyd said, "I'm encouraged to see that the Lay Benchers generally come from different



Peter Lloyd – curriculum vitae

Professional designations and memberships:

- Appointed Lay Benchers, 2008, member of Practice Standards and Finance Committees
- FCA (Fellowship of Chartered Accountants), Chartered Accountant — retired office managing partner with Grant Thornton, Victoria
- Member, Accounting Policy Advisory Board for BC Ministry of Finance
- Life Member/Past Director, Canadian Insolvency and Restructuring Professionals Association

Government task forces:

- Past member, Joint Committee on Bankruptcy (federal)
- Past member, Minister's Panel on Contaminated Sites Legislation (provincial)

Community affiliations:

- Chair of New Marine Centre Society, Sidney
- Director, Silverhill Foundation
- Director of Administration, Victoria 2000 Summer Games Society
- Past Director and Treasurer, Greater Victoria Harbour Authority
- Past Chair, Camosun College
- Past Chair, Queen Margaret's School, Duncan

backgrounds so they can bring different things to bear. I hope I'll bring the perspective of a reasonably informed business person to the matters that the Benchers will deal with." Of lawyers and the Law Society, Lloyd observed, "if there is a thing that marks out a profession from a trade

it is the concept that you're there to serve the public interest as well as the interest of the members. I am very impressed with the dedication of the Benchers. I see that they are *genuinely* working in the public interest. And I hope I can help with that by bringing my perspective to the table." ♦

Continuing Professional Development: a look at three in-house approaches

BC's practising lawyers will soon be engaged in one or more of the many possible approaches to the Law Society's Continuing Professional Development program, to be launched on January 1, 2009 (see page 6 of the December 2007 issue of the Benchers' Bulletin). Over the next several issues, we will survey a number of working examples of those options. The first of those is the provision of professional training within law firms.



"MOST OF VANCOUVER'S larger law firms, including ours, have made in-house professional development a strategic priority over the past decade or so," says Thelma O'Grady, manager of professional development for Bull, Housser and Tupper LLP, one of Vancouver's oldest and largest (nearly 100 lawyers) business law firms. "BHT was the third firm in the city to hire a professional development manager, and the first to staff that position with a legal educator."



When O'Grady joined the firm in mid-2004, she was charged with the mandate to lead the creation and management of a formal program of professional development. The current BHT professional development program includes the following elements:

- articling student seminar curriculum;
- electronic library of professional development materials;
- lunch-time seminars held regularly throughout the year — 60 sessions in 2007 — including sessions rotating through a curriculum of legal subjects and presentations by senior lawyers and other distinguished individuals on new developments or topics of special interest;
- coaching programs for associates in their first four years; and
- one-on-one support for lawyers requesting more in-depth professional development, transitioning to new practice areas or delivering presentations outside the firm.

"The lunch-time seminars are a key element of our professional development program," says O'Grady, a Bencher since 2006 and former director of programs for the Continuing Legal Education Society of BC. "The sessions are conducted in the office and over lunch, and are well attended from across the firm."

"Young lawyers often tell me how much they appreciate the participation of our senior partners in the discussions that follow the formal presentations."

O'Grady identifies recruiting and retention as strategic drivers underlying the

high priority attached by BLT's leadership to in-house professional development.

"Support" and "flexibility" are two words used by Clark Wilson LLP partner and Training Committee member Bonnie Elster to describe the professional development program created by her firm for its 81 lawyers.

"It's important to look for subjects and speakers to spark interest and attendance throughout the firm, and to respond to unexpected opportunities as they arise. For example, later this month we'll hear from Professor Kenneth Adams of the University of Pennsylvania on legal drafting. He attracted great interest in the solicitors' world for contributing a 90-page affidavit to the recent Rogers telecommunications 'comma case.'"

— Bonnie Elster, Clark Wilson LLP

"Ninety minutes to two hours of the first Friday of every month is dedicated to a firm-wide lawyer training seminar," Elster says. "We have just completed our first 30-month curriculum cycle, covering a mix of core legal knowledge, practice management techniques and client relations skills."

Associates and students are expected and encouraged to attend the monthly seminars, and partners are invited as well. Clark Wilson partners lead most of the seminar presentations on legal topics — with research and preparation support by associates — and outside talent is brought



A good turnout for a recent lunch-time professional development seminar at Bull, Houser & Tupper LLP's office in Vancouver (above and left).

in from time to time.

"We have had a number of speakers from the Law Society, including Carmel Wiseman on legal ethics and David Bilinsky on practice management," says Elster. "It's important to look for subjects and speakers to spark interest and attendance throughout the firm, and to respond to unexpected opportunities as they arise."

"For example, later this month we'll hear from Professor Kenneth Adams of the University of Pennsylvania on legal drafting. He attracted great interest in the solicitors' world for contributing a 90-page affidavit to the recent Rogers telecommunications 'comma case.'"

A strong in-house professional development program provides an excellent platform for conveying far more than knowledge, skills and techniques: defining and modelling the firm's core values and culture, and serving as a powerful tool for recruiting and retaining the right talent.

"Finding, supporting and retaining

talented, effective people is among Clark Wilson's top priorities," Elster says. "We want to recruit the best and retain the best, and we do that by building a reputation for helping our lawyers to be the best they can be."

"The cross-pollination value of those breakfast sessions can't be overstated. Our young lawyers are introduced to perspectives and issues outside their immediate practice areas, and we're all enriched by the exchange of knowledge gained by sharing different practice experiences from all corners of the firm."

*— Soren Hammerberg,
Hammerberg Altman Beaton & Maglio LLP*

You don't need to be a big firm to earn a reputation for excellence in developing talent, as Hammerberg Altman Beaton

& Maglio LLP have demonstrated since opening their doors in 1999. Personal injury litigator Soren Hammerberg has made in-house professional development and mentoring central elements of his personal philosophy since entering the legal profession nearly 30 years ago.

"I have always believed that the best way to build a firm is from the ground up," Hammerberg says. "Our firm has grown from five to 15 lawyers in eight years while developing a culture of commitment to client service with exceptional practice standards."

Hammerberg's firm combines regular seminar sessions and mentoring to frame its approach to in-house professional development.

The 10-member personal injury practice group — one of the largest in BC — meets outside the office for a quarterly

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In Brief

ABORIGINAL LAW STUDENT SCHOLARSHIP TRUST

All contributions received before March 31, 2008 toward a new scholarship for Aboriginal persons to attend law school in BC will be acknowledged at a spring launch event. The Canadian Bar Association, BC Branch, has established two annual scholarships for Aboriginal persons to study law at the University of British Columbia and the University of Victoria. Under an agreement with the National Aboriginal Achievement Foundation, the CBA has committed to raise a minimum of \$500,000 to endow the CBABC Aboriginal Law Scholarship Trust. The Law Foundation has agreed to match funds raised by the CBA to a maximum of \$75,000.

Visit cba.org/bc for more information and to make a donation.

COURT SERVICES AWARD

Court Services Online has received the Premier's gold award for excellence and innovation in the public service.

The award goes to a 10-person Court Services team that developed the online system that allows clients to produce, sign and submit documents electronically to court registry staff without having to travel to a courthouse. It is the first comprehensive system of its kind in Canada.

The award is for public service initiatives in the Lower Mainland region and will be considered for a provincial award later in March.

APPOINTMENT TO OUTSIDE BODY

The Land Title and Survey Authority has appointed **Geoffrey Plant**, QC to their Board of Directors from nominees put forward by the Law Society. The appointment is for up to three years, starting March 31.

NEW LAW FOUNDATION CHAIR

Dev Dley, QC of Kamloops has been elected as Chair of the Law Foundation of BC beginning January 1, 2008. Dley succeeds **Warren Wilson**, QC of Vancouver, who will

remain on the Law Foundation board as Chair Emeritus.

Dley has his own law firm in Kamloops, where he carries on a litigation practice. He received his LLB from the University of Victoria in 1978, was called to the BC Bar in 1979 and appointed Queen's Counsel in 2005. Previously, Dley was Commissioner and General Counsel for the Western Hockey League (1996–2000). His community work includes service as a school trustee in Lake Cowichan, as a governor at Malaspina College in Nanaimo, and as a director of the BCAA Traffic Safety Foundation and several charity golf tournaments.

Dley has been a governor of the Law Foundation since 2002 and has served as chair of the Foundation's policy and planning committee, and as a member of the finance and administration, new grants and bursary, scholarship and fellowship committees.

JUDICIAL APPOINTMENTS

Kimberley Arthur-Leung has been appointed to the Provincial Court of BC in the Lower Mainland. Since being called to the Bar in 1989, Arthur-Leung has been working in private practice in family and civil law. She is active with various community activities in Delta and in 2004 was recognized with a BC Achievement Foundation Award.

The Honourable **Robert Bauman** has been appointed to the Court of Appeal of BC. Mr. Justice Bauman was formerly a member of the Supreme Court of BC, having been appointed to that court in 1996, and has been chair of the Supreme Court civil law committee since 2005 and a member of the Supreme Court Rules Revision Committee since 2004.

Rita Syal Bowry has been appointed to the Provincial Court of BC in Fort St. John. In private practice in Dawson Creek since 1989, Bowry developed practice expertise as a family law mediator.

Lauri Ann Fenlon has been appointed to the Supreme Court of BC. Fenlon has

been an associate counsel with **Fasken Martineau DuMoulin** in Vancouver since 1997, before which she practised civil litigation with its predecessor **Russell & DuMoulin** as an associate from 1985 to 1992 and as a partner from 1992 to 1997.

Geoffrey Gaul has been appointed to the Supreme Court of BC. Since 2003 Gaul has been the Director of the Criminal Justice Branch, BC Ministry of Attorney General.

Susan Griffin, QC has been appointed to the Supreme Court of BC. Griffin has practised general litigation in Vancouver as a partner of **Fraser Milner Casgrain LLP** since 1999, and previously as a partner of **Roberts, Muir & Griffin** from 1989 to 1999. Griffin received a Master of Laws with distinction from the University of London, U.K. in 1992, and a Bachelor of Laws from the University of Toronto in 1984.

Deborah Lovett, QC has been appointed to the Supreme Court of BC. Lovett has practised administrative, labour, constitutional, environmental, employment and human rights law in Victoria with **Lovett & Westmacott** since 1997, and was previously employed with **Legal Services Branch**, BC Ministry of the Attorney General, from 1984 to 1997.

Russell MacKay has been appointed to the Provincial Court of BC in Chilliwack. MacKay practised criminal and youth law in Vancouver for 27 years, most recently with the **Granville Law Group**.

Paul Pearlman, QC has been appointed to the Supreme Court of BC. Pearlman has practised administrative, labour, aboriginal and employment law in Victoria with **Fuller, Pearlman, McNeil** since 1993.

Calvin Andrew Struyk has been appointed to the Provincial Court of BC in Terrace. Struyk was called to the Bar in 1991 and has been in private practice in Terrace for 12 years. He worked as a Crown counsel in the 1990s. Struyk's community involvement includes coaching youth soccer in Terrace. ♦

Ian Donaldson, QC to represent Law Society on Federation council



THE LAW SOCIETY is pleased to announce that Ian Donaldson, QC has been selected as its representative on the Federation of Law Societies' council.

Donaldson is a graduate of UBC and Queen's University and was called to the Bar in 1985. A partner at Donaldson Jetté in Vancouver, Donaldson practises primarily criminal law. He was appointed Queen's Counsel in 1998.

Donaldson was a Law Society Bench-er from 2000 to 2007 and is now a Life Bench-er. He has served on many Law Society committees including: Executive Committee, Discipline Committee (Chair, 2007, Vice-chair 2005-2006), Complainants' Review Committee (Vice-chair 2005-2006),

Audit Committee, Ethics Committee, Special Compensation Fund Committee, Regulatory Policy Committee, Independence of the Bar and Judiciary Subcommittee, and he chaired the Conduct Review Task Force and the Pro Bono Task Force.

He has served the Canadian Bar Association in the following capacities: Burns Committee on Reform of the Criminal Law; Chair, Resolutions Committee of the Criminal Justice Section; member, Task Force on the Reform of the *Criminal Code*; Executive and former Chair, Vancouver Criminal Justice Section; BC representative, National Executive of the Criminal Justice Section; member, Provincial Council; Chair, Legislative Liaison and Law Reform Committee.

Donaldson has also been active in professional organizations and committees, including the Joint Justice Planning Committee; the Street Crime Working

Group; Executive Committee, Trial Lawyers Association of BC; BC representative, Canadian Council of Criminal Defence Lawyers; regular columnist, *The Verdict*; lecturer at CLE seminars, PLTC, Trial Lawyers Association of BC seminars, Crown Counsel seminars and UBC law school; Trial Lawyers Association of BC; National Association of Criminal Defence Lawyers; American Trial Lawyers Association; Society for the Reform of Criminal Law; Medical Legal Society.

The Federation of Law Societies of Canada is the national coordinating body of Canada's 14 law societies which are mandated by provincial and territorial statutes to regulate the country's 95,000 lawyers and Quebec's 3,500 notaries in the public interest. The Federation's council is its senior, decision-making committee. ♦

Vancouver to host first national pro bono week

MARK YOUR FALL calendar for September 14-20, 2008: six straight days of providing, promoting and celebrating pro bono legal services in Vancouver and other Canadian cities. The first National Pro Bono Week will be hosted by Pro Bono Law of BC, together with Pro Bono Law Ontario, Pro Bono Law Alberta and newly formed Pro Bono Law Saskatchewan.

"The centrepiece of Pro Bono Week will be the two-day Second National Pro Bono Conference, to be held September 18-19 at Vancouver's Wosk Centre for Dialogue," says Jamie Maclaren, Executive Director of Pro Bono Law of BC. "Our theme will be 'Pro Bono: Spanning the Nation,' building on the success achieved in November 2006 when the First National Pro Bono Conference — 'Building Bridges to Justice' — was held in Toronto. Supreme Court of Canada Chief Justice Beverly McLachlin has already confirmed that she'll deliver the keynote address at the conference and Canadian Pro Bono Awards Dinner on September 18;

we're expecting around 250 people at the dinner and 150 at the conference."

Pro Bono Week events being planned include:

- CLE program on skills and resources relevant to pro bono lawyers and poverty law practitioners, put on by the Continuing Legal Education Society of BC;
- open-air and media-friendly pro bono legal advice clinics provided by Western Canada Society to Access Justice, the Salvation Army BC Pro Bono Program and the UBC Law Students' Legal Advice Program (LSLAP);
- a free non-profit law seminar for non-profit organizations of limited means, hosted by Pro Bono Law of BC;
- a "Pro Bono Speed-Dating Session" designed to foster new pro bono partnerships between BC law firms and BC non-profit organizations; and
- several recruiting events held at BC's

law schools by LSLAP and Pro Bono Students Canada.

The conference is expected to bring together lawyers, judges, academics and volunteer organizers from across Canada, the United States and abroad.

"We want to combine plenary sessions addressing major issues and themes related to pro bono culture and practice with breakout sessions that take a "nuts and bolts" approach to various aspects of developing pro bono programs and delivering pro bono services," says Maclaren.

The Law Society was instrumental in the formation of Pro Bono Law of BC in 2002 and continues to provide PBLBC with office space and other in-kind support.

For more information and to register for the Second National Pro Bono Conference and the conference and Canadian Pro Bono Awards Dinner, visit probonoconference.ca or call Pro Bono Law of BC at 604-893-8932. ♦

Thanks for your help in 2007

THE BENCHERS THANK and congratulate all those in the profession and the legal community who volunteered their time and energy to the Law Society in 2007. Whether serving as members of committees, task forces or working groups, as PLTC guest instructors or authors, as fee mediators, event panelists 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 450 Life Bencher and non-Bencher volunteers, all of whom deserve acknowledgement.

| | | | | |
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| Peter Behie | Jo Ann Carmichael, QC | Darlene Dort | Peter Gorgopa | Curtis Johnson |
| Diane Bell | Jeremy Carr | Aseem Dosanjh | David Goult | Douglas Johnson |
| Dan Bennett | Nigel Cave | Emily Drown | Gerald Green | Kim Johnson |
| Vicki Bennett | Susan Cawley | Jennifer Duncan | David Greig | David Joyce |
| Mark Benton, QC | Nicole Cederberg | Andrea Duncan | David Griffiths | Elizabeth Junkin |
| Catherine Best | Russel Chamberlain, QC | Jennifer Duncan | David Grunder | Gerald Kambeitz, QC |
| Allan Betton | Lynne Charbonneau | Birgit Eder | Sandra Guarascio | Nurdin Kassam |
| Aleem Bharmal | Pinder Cheema, QC | Brenda Edwards | Angus Gunn | Sheila Keet |
| Robert Bircher | Jo-Anne Chia | Michaela Eeles | David Halkett | Kathleen Keilty |
| Donald Bird | Mary Childs | Christine Elliott | Neal Hall | Jocelyn Kelley |
| Geoffrey Bird | Anne Chopra | William Everett, QC | Norah-Jean Hall | Callum Kelly |
| Halldor Bjarnason | David Christian | Silvana Facchin | Frederick Hansford, QC | Phyllis Kenney |
| Jerry Blake | Gordon Christie | | Gary Harasym | |

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| Andrew Kern | Karen MacMillan | Bradley Newby | Lee Schmidt | Russell Tretiak, QC |
| Lesley Kilgore | Kenneth Madsen | Jeffrey Oliver | Patricia Schmit, QC | William Trotter, QC |
| Catherine Kinahan | Erik Magraken | Margaret Ostrowski, QC | Timothy Schober | Ross Tunnicliffe |
| Sanda King | Nicola Mahaffy | Jennifer Oulton | Terence Schultes | Peter Unruh |
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| Neil Kornfeld | Allan Mandell | Lisa Pape | Anthony Serka | Peter Voith, QC |
| David Kozak | Valerie Mann | Helen Parker | Jane Shackell, QC | Melinda Voros |
| Darren Kozol | Kevin Marks | Allan Parker | Ian Shaw | Terry Vos |
| Ken Kramer | John Marquardt | Gilliam Parson | Robbie Sheffman | John Waddell, QC |
| Edwin Kroft | Gordon Marshall | Robert Parsonage | Douglas Shields | Michael Wagner |
| John La Van | Marjorie Martin | Tom Patch | Jay Shin | Henry Waldock |
| Derek Lacroix, QC | David Martin | Donald Paul | Lorne Sinclair | Ardith Walkem |
| Annamarie Laing | Susan Masters | Nancy Payeur | Mark Skwarok | John Walker |
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| Stanley Lanyon, QC | Joseph McArthur | Martin Peters | Brock Smith | Kenneth Walton |
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| Adrienne Lee | Chris McEwan | Michael Pohorecky | Wendy Stephen, QC | Carleigh Whitman |
| Roger Lee | Jerry McHale, QC | Sandra Polinsky | Mandy Stephenson- | Nancy Wiggs |
| Wilson Lee | Barney McKinnon | Elliot Poll | Ambrose | Judy Williams |
| Rupert Legge | Peter McKnight | David Pope | Terence Stewart | Jennifer Williams |
| James Legh | John McLachlan | William Prowse | Anne Stewart, QC | Mary-Jane Wilson |
| Digby Leigh | Jonathan McLean | Christopher Putney | Ted Strocel | Gary Wilson |
| James LeMoine | Jacqueline McQueen | Lila Quastel | William Sullivan, QC | Warren Wilson, QC |
| Allan Lester | Paul Mendes | James Radelet | Ted Sutcliffe | Baldwin Wong |
| Joel Levitt | Colin Millar | Christopher Ramsay | David Sutherland | Florence Wong |
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| Greg Lilles | Mary Mitchell | Jeffrey Ray | Peter Swanson | Linda Wong |
| Jan Lindsay | David Mitchell | Keith Reed | Jill Swanston | Mary Wood |
| John Logan | Charlotte Morganti | David Rice | Patrick Sweeney | Hon. Josiah Wood, QC |
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| Robin MacFarlane | Willian Murray | Susan Sangha | Dawna Tong | |
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| Beverly MacLean | Andrew Nathanson | Winston Sayson | Franco Trasolini | |

BC Law Institute turns 10

ON DECEMBER 31, 2007 the BC Law Institute celebrated the 10th anniversary of its creation as an independent law reform body.

Executive Director Jim Emmerton and director Kathleen Cunningham, one of the Law Society's two nominees on BCLI's board of directors (the other is Peter Ramsay, QC), briefed the Benchers at their January meeting on the institute's make-up, mission and matters.

"We're here to talk about who we are, where we've been and where we're going," Emmerton told the Benchers.

The institute was incorporated in 1997 under the *Society Act*, following the decision of the previous government to withdraw program funding from the Law Reform Commission of BC after 27 years. Unlike its predecessor, the institute is independent of government, with by-laws providing for the appointment of 14 society members. Eight are nominated by stakeholder organizations — including the Law Society — and six are members-at-large. Each member also serves as a director. Other stakeholders are BC's Ministry of Attorney General, the BC Branch of the Canadian Bar Association and the deans of the UBC and University of Victoria law schools.

The BC Law Institute's Strategic Plan defines an ambitious mission:

Be a leader in law reform in carrying out:

- the best in scholarly law reform research and writing; and
- the best in outreach relating to law reform.

Emmerton divided the institute's work into four broad categories: BC law reform; elder law reform; national and international law reform; and public legal education and outreach. He stressed the importance of BCLI's support network of organizations, committees and advisors.

In 2003 BCLI established the Canadian Centre for Elder Law Studies, following completion of a series of separate projects that seemed to cascade into an open-ended body of work. Entering its fifth year of operation, the centre's program focuses on three main areas: research and scholarship, law reform, and the development and

delivery of information and educational materials. According to the institute's 2006 annual report, "The Centre consults widely in the development of its program to identify projects and activities that are responsive to the needs of older adults and those who assist and advise them. The Centre also seeks out opportunities to participate in interdisciplinary work with other bodies."

Cunningham identified the wide recognition of CCELS's work and the success of its annual Canadian Conference on Elder Law as two examples of the institute's strong progress toward achieving its mission.

"Elder law implications cut across all fields of law, and the experience of aging is a very individual one. While mental capacity and health care needs are the obvious issues that can trigger a legal process, many more issues arise — often with little warning and support."

— Kathleen Cunningham

She also talked about the scope of elder law, and the unpredictability of the impact of its issues in people's lives. "Elder law implications cut across all fields of law, and the experience of aging is a very individual one," she said. "While mental capacity and health care needs are the obvious issues that can trigger a legal process, many more issues arise — often with little warning and support."

The BC Law Institute's ongoing commitment to substantive law reform is reflected in three major projects currently underway. A comprehensive review of BC's real property law is in its early stages, with a preliminary assessment of the need for reform completed and a two-year research and consultation process about to begin. A two-year examination of the *Society Act* and the not-for-profit world is scheduled for completion in July; a consultation paper containing over 100 recommendations is currently out for public feedback. And, a review of BC's antiquated commercial tenancy law got underway in the fall of

2007.

Emmerton read out the terms of s. 7 of BC's *Commercial Tenancy Act* — largely unchanged since its proclamation by the BC Legislature in 1897 — to demonstrate the need for updating that legislation: "Every person shall and may have the like remedy by distress and by impounding and selling the same, in cases of rentseck, rents of assize, and chief rents, as in case of rents reserved on lease, any law or usage to the contrary notwithstanding."

An often-overlooked aspect of the institute's work is its management of the legacy of the Law Reform Commission of BC. All of the Final Reports produced by the Commission — over 140 research briefs on a wide range of topics — have been made available to the public via BCLI's website at www.bcli.org. The institute also has an inventory of the Law Reform Commission's printed reports and documents, which are available for purchase.

Emmerton said that, while the institute remains committed to pursuing independent legal research and law reform — as opposed to promoting advocacy interests — public support is vital to the organization's long-term viability. He noted the importance of foundation and project funding received from the Law Foundation since the institute's inception, and stressed the significance of the ongoing support provided by the provincial government.

"A three-year funding program established by the Ministry of Attorney General for the institute in 2003 provided the stability that allowed us to undertake a range of new and ongoing commitments," Emmerton said. "Most notably, that ministry funding — which has recently been extended — allowed the institute to proceed with establishing and developing the Canadian Centre for Elder Law Studies as a significant national resource."

"While BCLI has grown considerably through its first decade, the institute's core operating challenge continues to be the balancing of our resources and demands," Emmerton concluded. "We've defined 'success through collaboration' as a strategic key to our future outlook: developing projects and sharing resources with carefully chosen partners." ♦

As part of the Law Society's on-going initiative to raise awareness about harassment and discrimination in the workplace, the Benchers' Bulletin will be running a series of articles on the topic by Patricia Janzen, a partner at Fasken Martineau DuMoulin. For more information on other initiatives and the work of the Law Society's equity ombudsperson, Anne Bhanu Chopra, see the October 2007 Benchers' Bulletin.

If it's unwelcome – it may be sexual harassment

by Patricia Janzen

UNLESS YOU WORK extensively in the human rights field as I do, you are probably not aware of how broadly sexual harassment was defined in Canadian law almost 20 years ago.

Forget about the way you would use the word harassment in common speech. Forget about dictionary definitions. In 1989 Chief Justice Brian Dickson of the Supreme Court of Canada defined sexual harassment as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims."

Since then, literally hundreds of cases have applied that definition to a broad spectrum of sexual harassment complaints, as well as complaints involving harassment based on one or more of the other grounds of discrimination prohibited by human rights legislation: age, race,

colour, ancestry, place of origin, political belief, religion, physical or mental disability, sexual orientation, family status, marital status and criminal conviction unrelated to employment.

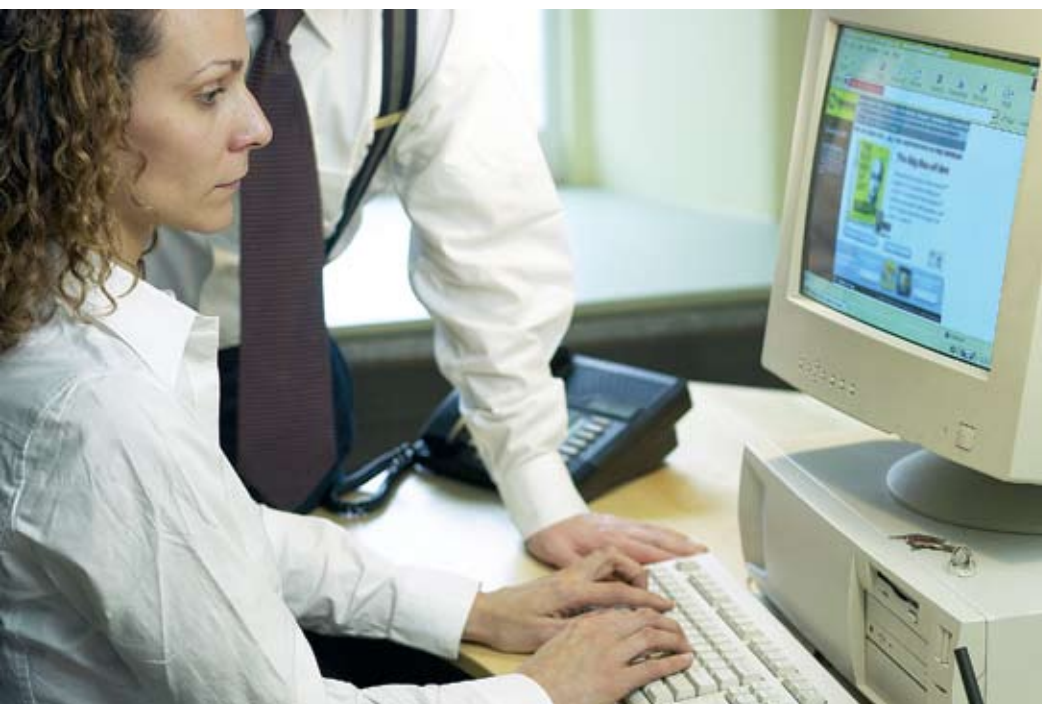
The definition has three distinct parts. "Of a sexual nature" ties the definition to treatment that is based on or related to a prohibited ground of discrimination. Secondly, the conduct must be sufficiently serious that it "detrimentally affects the work environment" or "leads to adverse job-related consequences for the victim." In practice, this part of the definition is often satisfied when an honest complainant testifies to feeling uncomfortable or anxious at work due to the conduct of the perpetrator.

Finally, the conduct must be unwelcome. The Supreme Court of Canada selected only one adjective to describe the

kind of conduct that can constitute harassment at law. It could have utilized one or more adjectives such as humiliating, intimidating, vexatious, insulting, offensive, abusive, improper or inappropriate. Instead, the court chose a word that could encompass any of the above — and less.

The court also chose a highly subjective word and subsequent case law has confirmed that, when examining whether conduct is unwelcome or not, an honest victim need only convince the adjudicator that the conduct was unwelcome to the victim and that a reasonable person in the same category as the victim would also find the conduct to be unwelcome.

Next issue we will look at an older BC Human Rights Council case from 1993, *Dupuis v. Ministry of Forests*, where council member Tom Patch "explored the boundaries of welcomeness." ♦



The Equity Ombudsperson

The Law Society wants to help stop workplace discrimination and encourage equitable workplace practices by providing BC law firms with the services of an Equity Ombudsperson.

The Ombudsperson, Anne Bhanu Chopra, confidentially assists anyone who works in a firm in resolving concerns over possible discrimination, and assists law firms in preventing discrimination and promoting a healthy work environment.

Contact the Equity Ombudsperson, Anne Bhanu Chopra, on her confidential, dedicated telephone line at 604-687-2344 or by email to achopra1@novuscom.net.





Recognizing our dedicated volunteers

DURING NATIONAL VOLUNTEER Week (April 27 – May 3) organizations across the country will recognize the many different ways that volunteers make a difference in our communities. From delivering free legal services to those in need to serving non-profit, community and public organizations throughout the province, BC lawyers make an enormous impact through their volunteer service.

In addition to an unwavering commitment to serving the public good, BC lawyers volunteer a huge amount of time serving their own profession, whether through mentoring, teaching, serving their

local bar association or bringing a voice to issues that affect the justice system and the delivery of legal services.

As a non-profit organization, the Law Society benefits greatly from our volunteer resources. In addition to the many lawyers who volunteer their time and talents to serve the legal profession and the community at large, we are indebted to the invaluable contributions of our Lay Benchers and lay volunteers. This past year, over 450 lawyers and lay volunteers offered their services to the Law Society. Our volunteers serve as members of committees, handle conduct reviews, provide advice on special

projects such as courthouse accessibility, teach young lawyers and so much more. Over 350 lawyers passed on their experience and expertise as guest lecturers and authors in the Professional Legal Training Course. As a group, our Benchers contributed at least 10,000 hours of their time to serving the public, and their profession.

On pages 10-11 you will find a full list of all of the lawyers and other professionals who volunteered with the Law Society in 2007. This year we wanted to tell you a bit more about some of our dedicated volunteers, what they do and why they do it.

Elizabeth C. Hunt, chair, Aboriginal Law Graduates Working Group

Volunteering with the Law Society is a big juggling act for Elizabeth Hunt, a sole practitioner in the Esketemc First Nation community, and mother of two children, four and six years old. As chair of the Law Society's Aboriginal Law Graduates Working Group and a member of the Equity and Diversity Committee, Hunt made the trip from her residence in Williams Lake to Vancouver to attend several meetings this past year. "It wasn't that long ago that there were only four Aboriginal lawyers in all of Canada," says Hunt, a member of the Kwakiutl Nation from the Port Hardy area. "To be truly representative, we need more Aboriginal people on the Bench, more Aboriginal Benchers and more Aboriginal lawyers." Hunt, also a volunteer with the Lawyers Assistance Program, has seen progress during her three years on the two committees, including the fact that the Aboriginal Law Graduates Working Group now includes regular participation from UBC and UVic. "It is a very exciting time to be involved in the legal community. The public can only benefit from these changes that reflect our diverse citizenry in BC."

John Waddell, QC, conduct reviewer

John Waddell, QC, a civil litigator with Waddell Raponi in Victoria, has been one of many volunteers handling conduct reviews for the Law Society for the past 15 years. "It's very important that the public sees that the Law Society responds to mistakes that are made, but not every mistake warrants a disciplinary proceeding," says Waddell, who also practises as an arbitrator and mediator. "In holding conduct reviews, we want members to acknowledge responsibility for their mistakes, and we discuss steps that can be taken to prevent the situation from happening again." In addition to his volunteer work with the Law Society, Waddell has been involved with the Canadian Bar Association, BC Branch for 24 years, including as president in 1995-1996. He also serves as a director of the CBA (BC) Benevolent Society and as a governor of the Law Foundation. He received the Queen's Jubilee medal in recognition of his contributions to the community and the legal profession in January 2003. "I have always treated my volunteer responsibilities just as I would any other responsibilities I take on in my practice — I make time."



continued on page 16



Florence Wong, guest lecturer, PLTC

"We are privileged to be a part of the legal profession, and I feel we as lawyers have an obligation to share our knowledge for the benefit of others," says Florence Wong, who has taught lay people for many years through the People's Law School, UBC and SUCCESS and co-hosts a current affairs program on Chinese-language radio AM 1320. As an instructor to lay people, Wong thoroughly enjoys helping students to develop a general understanding of wills and estates and contract law, and to know when to consult a lawyer. So when the call came in for Wong to offer her expertise as a guest lecturer in the real estate portion of the Professional Legal Training Course, she knew she was up for the challenge. "The students are in the midst of their articles, so they often bring real-world questions, which is really beneficial for the class," says Wong, who has taught residential conveyancing during three PLTC sessions. "It's great to see the vitality and enthusiasm among the new entrants to our profession."



Courtesy of *The Vancouver Sun*

Neal Hall, media workshop panellist

Neal Hall, a senior reporter with *The Vancouver Sun*, offered his expertise to more than 60 journalists who attended the seventh annual Law Society-Jack Webster Foundation Media Law Workshop held November 6 in Victoria — *Reporting on the Courts: What you should know ... and do*. Hall, along with Chief Judge Hugh Stansfield and media lawyers David Sutherland and Michael Scherr, rounded out an expert panel that provided reporters with an overview of the legal issues surrounding publication bans and contempt of court. "It's important for journalists to be able to stand up for the rights of the media," says Hall, who has attended several media workshops as a participant, and has challenged publication bans himself in the past. "It was great to be able to have an open discussion about the issues that we face as journalists reporting on the courts." ♦

Interested in volunteering?

For more information about serving as a volunteer on a Law Society committee or as a Law Society appointee to an outside body, please contact David Newell, Corporate Secretary at dnewell@lsbc.org. Expressions of interest and accompanying resumes are always welcome. If you are interested in volunteering as a guest instructor, lecturer or author in the PLTC program, please contact Lynn Burns, Deputy Director at lburns@lsbc.org. Guest instructors are needed for family practice, *Personal Property Security Act*, corporate practice, wills, business, and those who can judge a criminal or civil advocacy exercise. Teaching as part of the PLTC program counts towards the annual 12 hours required for the continuing professional development program (one hour of teaching will equal three hours of reporting credits to take into account preparation time).

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor, Conduct & Ethics

New provincial budget affects Property Transfer Tax

THE PROPERTY TRANSFER Tax exemption was increased for first-time homebuyers in the provincial budget introduced on February 19, 2008. For land title registrations by first-time homebuyers on or after February 20, 2008, the fair market value threshold for eligible residential property is now \$425,000. A proportional exemption exists for eligible property with a fair market value of up to \$25,000 above the threshold — in other words, up to \$450,000.

Buyers must meet all of the eligibility criteria set out in the Property Transfer Tax and the First Time Home Buyers' Program. Note that a purchaser is no longer required to meet any financing requirements to qualify for the program. (See www.sbr.gov.bc.ca/individuals/Property_Taxes/Property_Transfer_Tax/first_Time_home_buyer.htm.)

CERTIFIED TRUST CHEQUES

Sometimes a lawyer will ask another lawyer to provide a certified trust cheque in connection with a client's purchase and sale transaction. Unless the parties' agreement specifically requires a certified cheque, a lawyer must not refuse to accept another lawyer's uncertified trust cheque. It is not improper for a lawyer, at his or her own expense, to have the other lawyer's cheque certified (*Professional Conduct Handbook* Chapter 11, Rule 8(b), footnote 1).

SAILING OFF THE COAST OF MAURITIUS?

I sometimes receive calls from distraught legal assistants who have been left alone without supervision by a travelling lawyer who cannot be reached by cellphone or email. If you are a sole practitioner planning a holiday in a remote location where you will be difficult to reach, you must carefully plan how your practice will be looked after. Arrange for a lawyer who is competent to supervise your practice while you are away and make sure that lawyer and your legal assistant can get in touch with you. Your legal assistant should not be left unsupervised. It is not fair to him or her and your clients may be at risk. Furthermore, Chapter 12 of the *Handbook* provides that lawyers must maintain direct supervision

over each non-lawyer staff member.

For assistance with planning for someone to look after your practice while you are away, see "Succession Planning" and "Locums" in the Practice Support section of the Law Society website.

RETENTION PERIOD FOR RECORDS OF DISSOLVED COMPANY

When a company fails to make the annual filings required under the *Business Corporations Act* (the "Act"), the registrar may cancel the incorporation of the company and declare it to be dissolved. This has been commonly referred to as "letting the company die." If the law firm had custody of the records at the time of dissolution, the law firm must retain and produce the records in accordance with ss. 351 to 353 of the Act.

Currently the statutorily prescribed period for retention of a dissolved company's records is two years (s. 351(2) of the Act and s. 25 of the Act's regulations) or until the expiration of any shorter period the court may order. A dissolved company's records may be retained in electronic, microfilmed, or bound or looseleaf form (s. 351(4)(b) and s. 25.1 of the regulations). Any person who would have been entitled to inspect the company's records before dissolution can do so after.

If the location of the dissolved

company's records changes, a notice of the change must be filed promptly with the registrar setting out the new location (s. 351(3) of the Act).

Unless there is an agreement between the law firm and the client setting out a different retention period, 10 years from the dissolution date is a suggested minimum guideline for keeping a dissolved company's records. Lawyers will need to apply their own judgment to each situation to determine the appropriate period.

Take note that a person may apply to restore a company more than two years after the dissolution date. If the dissolution occurred before the coming into force of the Act, the application must be made within 10 years after the dissolution, or may, in any other case, "be made at any time" (s. 356(4)(b)). Theoretically, a person could apply to restore a company 20 years after the dissolution.

Lawyers may wish to make provisions in the initial records office agreement between the company and the law firm so that the law firm is not in the sometimes unhappy position of being the records office for a dissolved company.

For further information regarding *Practice Watch*, feel free to contact Barbara Buchanan at 604-697 5816 or bbuchanan@lsbc.org. ♦



PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Electronic devices – encryption and client confidentiality issues

*♪ Listen, do you want to know a secret
Do you promise not to tell, woh, oh, oh
Closer, let me whisper in your ear ♪*

Words and music by Lennon-McCartney

ONE OF THE more dreadful things for a lawyer to discover is that his or her electronic device — desktop computer, laptop, Blackberry, PDA, portable hard drive or USB flash drive — has gone missing, taking confidential client information with it. A family lawyer's laptop could hold reams of financial disclosure documents containing bank accounts and deposits, SINs, investments and other highly personal information. A corporate lawyer's Blackberry could carry details of a proposed merger or corporate purchase: a disastrous leak. An IP lawyer's laptop could contain research memos advising clients on their possible infringement of other patents. Indeed, there are few areas of the law where lawyers have not been entrusted with the safekeeping of their clients' secrets as a function of providing legal advice.

We advise lawyers who have suffered a theft of an electronic device containing client information to inform those clients as soon as possible that their confidential information may have been compromised. There is a real possibility that the disclosure of client personal information could result in "identity theft" for the client — resulting in false credit cards issued in their name, unauthorized access to their bank or financial accounts and other sources of funds and the like. The clients are entitled to take such action as they deem necessary to protect the privacy of their affairs from the disclosure that may result from the theft or "disappearance."

On the other hand, if the lawyer could tell those clients that *all* the information on that stolen computer had been encrypted using a "whole disk encryption" application — imagine the reassurance felt by everyone concerned! I emphasize "all" because there are certainly ways to encrypt single files and discrete folders on computers. However, in the words of Bruce Schneier, founder and CTO of BT Counterpane Security: "The reason you encrypt your entire disk, and not just key files, is so you don't have to worry about swap files, temp

are usually unencrypted when read and stored on these external devices. Note that Blackberry's advanced content protection features are deactivated by default. Accordingly, lawyers and law offices should consider policies on whether they should be sending confidential data via these devices and whether or not their security features should be activated.

These whole disk encryption applications work in the background, transparent to the user. They work on both Mac and Windows machines. Typically they also incorporate secure file deletion algorithms — meaning that once a file is deleted, it is well and truly gone. They can be established as enterprise solutions with multiple levels of security, ensuring that if any computer is stolen — within or outside the office — the information contained therein is protected.

There is one other consideration. If you are travelling outside Canada in such places as the US, the UK, Singapore and Malaysia, border officials may legally demand to examine the contents of any encrypted electronic device. In these circumstances, lawyers are well advised to carry a "clean" laptop — equipped with software to reach the office network remotely via a secure link, but containing no other information. The lawyer can link to the home office via the secure link as required, storing all work on the home office servers and saving nothing on the laptop. In this way, if the laptop is inspected by the authorities or stolen, no confidential information is compromised.

In the final analysis, any lawyer wants to be secure, knowing that there isn't anyone out there whispering his or her client's secrets. ♦



files, hibernation files, erased files, browser cookies or whatever. You don't need to enforce a complex policy about which files are important enough to be encrypted. And you have an easy answer to your boss or to the press if the computer is stolen: 'no problem; the laptop is encrypted.'

Whole disk encryption applications typically extend to all removable and portable media, such as portable hard drives and USB flash drives. Note that this is not a solution for files that have been emailed to other computers, PDAs or Blackberries, which are typically sent "clean" or unencrypted. While there are ways to transmit these files in an encrypted fashion, they

FROM BC ASSESSMENT

Warning to potential purchasers of private forest land

POTENTIAL PURCHASERS SHOULD be aware that private forest land may be assessed at a higher value to account for the economic benefit of timber that was previously harvested on that land.

Class 7 Private Managed Forest Land is valued on a two-part basis, as detailed in s. 24 of the *Assessment Act*:

- the bare land value, which incorporates such factors as soil quality, accessibility, parcel size and location; and
- the added value of the timber on the land, which becomes assessable when it is harvested. For example, timber harvested in the calendar year 2006 will show up as added value on the assessment notice for the 2008 assessment roll. For property taxes payable in the summer of 2008, part of the value may come from the harvesting of trees two years previously.

Prospective purchasers of property classed as forest land are advised to enquire about

previous harvesting on the property, and possible property tax implications of such harvesting.

Exit fees may also be charged if the property is removed from Managed Forest Class within the time frame of 15 years. The exit fee is intended to encourage long-term participation in the managed forest program.

The land and harvested timber are valued on the basis of legislated rates prescribed by the Assessment Authority. 2008 assessment rates are found in BC Regulation 90/2000.

Exit fee information may be obtained by visiting the Private Managed Forest Land Council website at pmflc.ca, or by contacting Stuart McPherson at 250-386-5737.

For more information, contact BC Assessment: Janice Thomas, AACI, P. App., Senior Appraiser, 1537 Hillside Avenue, Victoria, BC V8T 4Y2, tel. 250-595-6211, local 262. ♦

FROM THE MINISTRY OF ENVIRONMENT

Reminder to lawyers about land sales and water licences

BC'S MINISTRY OF Environment reminds lawyers that the *Water Act* requires anyone conveying or disposing of land to report the change of ownership to the comptroller of water rights or regional water manager if there are one or more water licences appurtenant to the land. All water licences are appurtenant to land and must be transferred to the new owner, complete with consideration of prepayments or arrears. Water licences are not recorded in the Land Title Office.

When conveying or disposing of land, lawyers are required to report, in writing,

the transfer of ownership with water licences (s. 16(2) of the *Water Act*).

Information is available at the Ministry of Environment, Water Stewardship Division website at www.env.gov.bc.ca/wsd/water_rights/licence_amendments/change_holder.html.

The status of a client's account for water licences is available from any Front-Counter BC office (www.frontcounterbc.gov.bc.ca). Call 1-800-361-8866 or fax 250-356-0605 prior to the land sale for a current balance on the licences and to report the transfer of ownership. ♦

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, Conduct & Ethics, 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.

Notices from the courts

THE SUPREME COURT of BC has issued a Notice to the Profession:

1. Registrars' hearings by telephone or videoconference

A registrar's hearing may now be conducted by telephone or videoconference from various registries. The purpose is to provide access to a registrar for those registries without a resident Master or where there are no scheduled sittings for a Master or legally trained registrar.

When taking out an appointment for these hearings, a party must also file a requisition form requesting that the court file be delivered to the presiding registrar in advance of the hearing date. The requisition should be filed at least seven days in advance of the hearing date and note any urgency in the delivery of the file.

See the court's website at www.courts.gov.bc.ca/sc (Practice Directions and Notices) to download the requisition form.



The Provincial Court has issued three practice directions:

1. Access to the Court for lawyers and articulated students who have a disability

When a matter is being scheduled for a hearing, lawyers and articulated students who self-identify as having a particular disability and who present themselves to a Judicial Case Manager or to a Justice of the Peace, Judicial Justice of the Peace or Provincial Court Judge, whether in Court or at a Court Registry, should be scheduled to accommodate their particular disability to the extent that it is not an undue hardship on the Court or would unreasonably interfere with the administration of justice.

2. Prince George – Cariboo Northeast District Criminal Caseflow Management Rules – Compliance Court Sittings



This direction provides a simplified and efficient means of scheduling breach allegations to secure a timely and fair determination.

3. Port Coquitlam – North Fraser District Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sittings

This direction has three objectives:

- expanded judicial assignments for Judicial Case Managers;
- simplified scheduling of breach allegations, timely and fair determination;
- enforcing compliance with Criminal Caseflow Management Rules.

See the court's website at provincialcourt.bc.ca for the complete text of the practice directions. ♦

Quicklaw databases

MANY LAWYERS HAVE expressed concern about the message recently circulated by Canada Law Book regarding the removal of its databases from the Quicklaw service. The Vancouver Association of Law Libraries advises that most of the judicial decisions contained in those databases are still available online.

Cases released by the Canadian superior courts for publication will continue to be available on Quicklaw, LawSource and CanLII. However, there is a difference in historical coverage between these services that will affect access to some older cases that were available from the Canada Law Book database. Another difference is that, while the text of judgments will be the same, editorial enhancements provided by Canada Law Book, such as headnotes and pagination, will not be the same as those in the Canada Law Book database.

Coverage in these services is as follows:

- LawSource – All cases from 1986, all cases reported by Carswell, and all other reported cases from 1977. Cases decided prior to 1977 that are not

reported in a Carswell reporter may not be on the service.

- Quicklaw – All cases from 1986, with a goal to publish all reported decisions from 1970, and all pre-1970 decisions that have been cited by the courts since 1970.
- CanLII – coverage varies by jurisdiction, with BC starting at 1990.

The other significant area is the digest services published by Canada Law Book that were previously produced by Western legal Publications such as BC Decisions and the Weekly Criminal Bulletin. It is too soon to make any comparisons between services, but Quicklaw and LawSource each publish a significant collection of similar case digests.

Quicklaw is also enhancing its digest collection, and will be including digests of criminal cases and labour rulings in its core subscription while LawSource contains the Canadian Abridgment Digests.

Please direct any queries to your firm librarian or to the BC Courthouse Library. ♦

Unauthorized legal practice

AS PART OF its statutory mandate to uphold and protect the public interest in the administration of justice, the Law Society routinely investigates allegations of unauthorized legal practice. A legal decision, whether it involves the purchase of a house, the start of a business or the drafting of a will, is often one of the most important decisions a person makes in life. It is therefore fundamentally important that he or she receives advice from someone properly qualified.

Section 1 of the *Legal Profession Act* defines the practice of law while s. 15 states that only a practising lawyer is entitled to practise law. Section 85 makes it an offence to practise law if you are not a lawyer. It is important to note that the practice of law is defined as carrying out any of the activities listed in s. 1 "for a fee, gain or reward, direct or indirect." A non-lawyer who provides or offers to provide legal advice but is not seeking a fee is not violating the statute.

Other exceptions are notaries public in BC, who are entitled to provide a limited range of legal services — primarily real estate conveyancing, certain types of wills and affidavits. As well, immigration consultants are regulated by federal legislation, and advocates appearing before workers' compensation board tribunals are not regulated.

Anyone with questions regarding the right of a person who is not a member of the Law Society of BC to provide legal services should contact the society at 604-669-2533 or 1-800-903-5300.

The Law Society has obtained undertakings or court orders prohibiting the following individuals and businesses from engaging in the unauthorized practice of law.

[REDACTED]

[REDACTED]

Mohammed B. Wanli, of Vancouver, BC, was found in contempt of court by Justice Stephen Kelleher of the BC Supreme Court and ordered to pay a fine of \$7,500 for wilfully disobeying a court order dated November 15, 2000, which prohibited him from appearing as counsel or advocate, drawing documents for legal proceedings or giving legal advice for a fee. ♦

Continuing Professional Development ... from page 7

"roundtable review," starting with briefings and updates on administrative topics and moving to discussion of current legal and practice issues over dinner.

The full firm also meets quarterly, with three practice groups taking turns in presenting a discussion paper over breakfast. "The cross-pollination value of those breakfast sessions can't be overstated," Hammerberg says. "Our young lawyers are introduced to perspectives and issues outside their immediate practice areas, and we're all enriched by the exchange

of knowledge gained by sharing different practice experiences from all corners of the firm."

Mentoring is the third pillar of Hammerberg Altman Beaton & Maglio LLP's version of professional development. Every young associate is assigned a senior member of the firm as a mentor, and Soren Hammerberg's door is always open. "We give our young lawyers file responsibility and experience they would be unlikely to receive at larger firms, and we support them with personalized mentoring," Hammerberg concludes.

The Law Society is considering a formal

mentoring program as part of the Continuing Professional Development program, but not for 2009.

Three very different firms, employing three different approaches, are using in-house professional development to promote excellence, and to attract and retain talent.

If you have questions or comments about the Law Society's pending Continuing Professional Development program, including in-house professional development, please email Alan Treleaven, Director of Education and Practice, at atreleaven@lsbc.org. ♦

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Re: A Lawyer
- Sabrina Ann Sheherazade Ali
- Douglas Hewson Christie
- Sheldon Goldberg
- John Keith Lowes
- Michael Murph Ranspot
- John Owen Richardson
- Rodney John Strandberg

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

RE: A LAWYER

Discipline hearing: November 21, 2007

Panel: Leon Getz, QC, Chair, Russell Tretiak, QC and Dr. Maelor Vallance

Report issued: February 11, 2008 (2008 LSBC 06)

Counsel: Maureen Boyd for the Law Society and Terrence Robertson, QC for the respondent

FACTS

The respondent, who acted for the defendant in a personal injury action, requested the plaintiff to attend an independent medical examination. The plaintiff's counsel agreed, provided the respondent undertake to provide her with a copy of the doctor's report as soon as it was available. The respondent accepted the undertaking.

Shortly after the plaintiff's examination, the respondent received the doctor's interim report. Two weeks later, he wrote to plaintiff's counsel saying he would not receive the doctor's report until the plaintiff provided updated medical records. When the respondent wrote this letter, he believed the doctor's interim report had been sent to plaintiff's counsel. The respondent received the doctor's final report four months later and forwarded a copy to plaintiff's counsel.

More than a year later, in preparation for trial, the respondent served the interim report on plaintiff's counsel, pursuant to the Rules of Court. Until this time, the respondent believed the interim report had been previously sent to the other lawyer.

The respondent told the Law Society that his failure to send the interim report to plaintiff's counsel was an oversight, and that his letter to plaintiff's counsel was referring to the examining doctor's final report as he thought the interim report had already been sent to the other lawyer.

ADMISSION AND PENALTY

The respondent admitted that he had breached an undertaking contrary to Chapter 11, Rule 7 of the *Professional Conduct Handbook* and that his actions constituted professional misconduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted the respondent's admission and his proposed penalty of a \$3,000 fine and costs of \$3,750.

APPLICATION FOR ANONYMOUS PUBLICATION

The respondent applied for an order that the summary of the hearing panel's decision that is circulated to the profession not identify him. Law Society rules require that summaries of discipline decisions be

circulated to the profession and that those summaries "must identify the respondent."

Rule 4-38.1(3), however, permits an order for anonymous publication of a decision only if there is no suspension or disbarment (as here) and if publication will cause grievous harm to the lawyer or another individual that outweighs the interest of the public and the Law Society as a disciplinary body in full disclosure.

In *Law Society of BC v. Doyle*, 2005 LSBC 24, the Benchers concluded that grievous harm must be exceptional, unusual, onerous and injurious to the lawyer or cause catastrophic loss personally and professionally. The harm must involve significantly more than the damage to a lawyer's reputation or embarrassment that normally flows from a finding of professional misconduct.

The respondent argued publishing his name would have a detrimental effect on his relationship with the insurance company that was his largest client. He said the insurance company had a "zero tolerance policy" regarding professional and personal misconduct on the part of its outside counsel. He also said publication would have a detrimental effect on his ability to attract new clients.

The respondent submitted that his situation was analogous to that described in *Re A Lawyer* 2005 LSBC 50, where the Benchers allowed anonymous publication. The lawyer in that case admitted to a technical breach of the Law Society's accounting rules and presented evidence that publication of his name would result in "public scorn" such that his single largest client, which was aware of the circumstances, would be compelled to end their long-standing relationship.

Decision of Leon Getz, QC (minority)

Leon Getz, QC concluded that there was no evidence that publication of the respondent's name "would give rise to a wave of public sentiment exposing the client to such scorn that it would almost certainly feel impelled to terminate its relationship with [the respondent]."

He also said the request for anonymity invited the Law Society "to acquiesce in concealing from the client something which, on the respondent's own account of the client's policy, is of significant interest to it."

Decision of Russell Tretiak, QC (majority)

Russell Tretiak, QC concluded there was no evidence to contradict the respondent's testimony that his major client had a zero tolerance policy regarding professional misconduct and that publication of his name could result in loss of the client.

He said the breach of undertaking was inadvertent and that harm to the respondent by publication outweighed the public interest.

Decision of Dr. Maelor Vallance (concurring)

Dr. Maelor Vallance agreed with Tretiak. He added that "the mischief that results from this respondent being cited and publication made exceeds disproportionately the error made by him."

The Discipline Committee has referred the decision on anonymous publication for review by the Benchers.

SABRINA ANN SHEHERAZADE ALI

Formerly of Vancouver, BC

Called to the Bar: September 4, 1997

Ceased membership: January 1, 2007

Disbarred: December 20, 2007

Discipline hearings: February 20-21 (facts and verdict) and November 20, 2007 (penalty)

Panel: David Renwick, QC, Chair, Robert Punnett and Brian Wallace, QC

Reports issued: April 11 (2007 LSBC 18), June 14 (2007 LSBC 33) and December 20, 2007 (2007 LSBC 57)

Counsel: Maureen Boyd for the Law Society and no-one appearing for Sabrina Ali

FACTS

Between January 2002 and March 2004 four separate clients gave Sabrina Ann Sheherazade Ali funds, which Ali then transferred from her pooled trust account to her personal or general account. In the case of funds from one additional client, she deposited them directly into her general account. In all cases, she proceeded to use those funds even though she was not entitled to them.

Ali used a personal float trust ledger account between January 2002 and February 2003 and withdrew funds from her pooled trust account for her own use even though the account did not hold sufficient funds.

On several occasions Ali also deposited trust funds to her general account, rather than her trust account.

In addition, she withdrew fees when she had not prepared a bill. And on at least three occasions Ali did not immediately pay sufficient funds into trust to eliminate trust shortages.

In 2002 Accounting Firm A did Ali's bookkeeping and prepared her Accountant's Report. Ali did not pay A's invoices and A subsequently obtained a default judgment. In January 2005 Ali claimed that she was neither aware of the judgment nor of having been served with anything. Ali failed to satisfy the judgment within seven days and did not immediately notify the Executive Director in writing of her proposal to do so. When Ali did not pay the judgment, A complained to the Law Society. Staff wrote to Ali in February and March 2006 regarding the complaint but she did not respond.

In 2003 and 2004 Accountant B prepared Ali's Accountant's Reports. B was paid for the 2003 work, but had trouble collecting for 2004. In September 2005 Ali provided B with two cheques to pay B's invoice. B cashed the first one for just over half of the amount owing, but the second one for the remaining \$400 did not clear.

A part-time employee worked for Ali in January and February 2003. In December 2003 Ali told an auditor that she had remitted all payroll withholdings for that year; however, on January 12, 2004 Ali wrote to the Canada Revenue Agency to advise that she had in fact not done so, and she therefore included two post-dated cheques to cover the amount owing.

As of December 2004 Ali had several practice debts totaling \$9,790.86, which were many months in arrears.

Ali owed more than \$4,000 in unpaid GST remittances as of August 8, 2005.

In 2006 Ali became a non-practising member. She chose not to attend any of the hearings concerning the citations against her and resigned as a member of the Law Society by letter in November 2007, but had in fact ceased to be a member on January 1, 2007 for failing to pay her fees.

VERDICT

The panel took into account the overall series and pattern of transactions when assessing whether Ali misappropriated her clients' funds. The panel noted a fundamental principle governing the conduct of lawyers is that "trust funds are sacrosanct." They concluded that Ali deliberately misappropriated funds for personal purposes on six occasions and found it irrelevant that the amounts involved were relatively small. They found her guilty of professional misconduct in relation to the misappropriations.

The panel also found Ali had breached Chapter 2, Rule 2 of the *Professional Conduct Handbook* by failing to pay several practice debts in a timely fashion and breached Chapter 13, Rule 3 by failing to respond to Law Society correspondence.

The panel further found Ali breached Part 3, Division 7 of the Law Society Rules when she failed to properly maintain her books, records and accounts. She was also found in breach of Rule 3-44 for failing to satisfy the default judgment against her within seven days and failing to notify the Executive Director of her proposal for satisfying the judgment.

In addition, the panel found her failure to pay practice debts and her personal use of funds held for payment of GST, PST and employee income tax exhibited a disregard for her professional obligations and amounted to professional misconduct.

The panel dismissed Ali's suggestion that her practice was so small and financial dealings with clients so simple that she could keep track of them by memory without written records; thus, the panel found her failure to keep adequate trust records was also professional misconduct.

PENALTY

The panel noted that, in most cases where disbarment is not imposed in relation to misappropriation of trust funds, there are significant mitigating factors. Ali's evidence by way of letters or statements made to Law Society staff, or through her then counsel, was that her actions were a result of "mistakes." The panel stated that Ali's decision not to participate in the hearings meant there was no evidence from which to draw comfort that the conduct would not occur again, making it impossible to assess the possibility of remediation or rehabilitation on the part of Ali. The panel further said that, in cases of misappropriation, disbarment is the appropriate remedy unless there is evidence that it is not required to protect the public. In the absence of such evidence the panel ordered that Ali:

1. be disbarred; and
2. pay costs of \$2,500.

DOUGLAS HEWSON CHRISTIE

Victoria, BC

Called to the Bar: September 15, 1971

Discipline hearings: December 6, 2006, April 12, June 18-19 (facts and verdict) and December 17, 2007 (penalty)

Panel: Robert McDiarmid, QC, Chair, Gavin Hume, QC and James Vilvang, QC

Reports issued: September 11, 2007 (2007 LSBC 41) and January 15, 2008 (2008 LSBC 01)

Counsel: Jaia Rai for the Law Society and Douglas Hewson Christie appearing on his own behalf

FACTS

Douglas Hewson Christie acted as counsel for the plaintiffs in *R and others v. D*, a case involving a challenge to a will and raising allegations of lack of testamentary capacity, undue influence and feloniously causing death. K was a key witness and provided ongoing assistance to Christie in the conduct of the litigation.

In the course of dismissing all of the plaintiffs' claims, the trial judge commented, "K was so personally involved in this action that he forged a court stamp which he affixed to a form of subpoena for service on an out-of-province witness, thereby hoping to achieve production of documents for use in the trial." Although not a party to the lawsuit, K married one of the plaintiffs in the course of the proceedings.

K testified at the discipline hearing that Christie had instructed him to prepare a subpoena to get documents, telling him to "check in the library and use the form in the Rules." K adapted the Form 21 subpoena in the BC Supreme Court Rules to create three documents titled "Subpoena of Documents." K admitted under cross-examination that he had no training to

interpret the Supreme Court Rules. K also testified that Christie was very busy during the fall of 2003 and had no other secretarial support during the time K prepared the three documents.

In June 2006 the Law Society issued a citation charging Christie with three counts of professional misconduct arising from causing the preparation and delivery of three documents titled "Subpoena of Documents," dated October 1, December 16 and December 18, 2003. Christie acknowledged having signed and authorized K to serve the three documents, but denied having directed their preparation.

VERDICT

The panel rejected Christie's denial that he had directed or authorized the preparation of the three subpoenas, citing the inconsistency of that denial with statements made by Christie during the trial in *R and others v. D* and in his correspondence to the Law Society.

The panel stated it is common ground that there is no such thing as a "Subpoena for Documents" in British Columbia. Noting Christie's extensive litigation experience, the panel observed that in August 2003 — just a few weeks before signing the first "Subpoena for Documents" — he had shown his command of the applicable Supreme Court Rules by making an appropriate application under Rule 26 for an order directing production of documents.

The panel concluded that having directed the documents' preparation, Christie then signed and gave them up to K for service, seeking to compel the production of documents in a manner he knew was not permitted by BC law.

The panel noted evidence of severe health difficulties suffered both by Christie and his spouse (his secretary of 25 years) throughout 2003, and pointed out that while such factors might be considered in the context of setting an appropriate penalty, they cannot be used to excuse professional misconduct.

The panel ruled that Christie's actions were dishonourable, were a serious abuse of the BC Supreme Court Rules, and constituted professional misconduct.

PENALTY

The panel accepted that Christie's professional misconduct arose from stress and excessive zeal to help his client, rather than from desire for personal gain.

The panel noted that, while in many ways Christie's passion and dedication to his client's cause embody the best qualities of a barrister, that passion can never be allowed to overcome a barrister's duty to practise by the rules. The panel stressed that when members of the public receive a document signed by a lawyer, appearing to be a court document and requiring them to do something, they must be able to trust that the document actually has the authority attributed to it. The panel said that such trust is absolutely fundamental to the functioning of the courts, the practice of law, and the maintenance of public confidence in the integrity of the legal profession.

The panel placed significant weight on the many letters submitted on Christie's behalf, (including 15 letters attesting to his honesty and his contribution to the community), and pointed out that the only incident on Christie's disciplinary record took place over 30 years ago.

Upon noting its satisfaction with the Law Society's draft bill of costs for \$50,000, the panel said it did not want to impose a "de facto disbarment" by making a cost award beyond Christie's ability to pay. The panel described Christie's work as a valuable contribution to our free society, often performed pro bono or for greatly reduced fees, and stated its desire that Christie be able to continue with that work.

The panel ordered that Christie pay a fine of \$2,500 by June 17, 2008, and costs of \$20,000 by January 15, 2010.

SHELDON GOLDBERG

Vancouver, BC

Called to the Bar: January 3, 1973

Bench review: October 25, 2007

Benchers: Gordon Turriff, QC, Chair, Kathryn Berge, QC, Ken Dobell, Bruce LeRose, QC, Barbara Levesque, Robert Punnett and James Vilvang, QC

Report issued: December 17, 2007

Counsel: Jaia Rai for the Law Society and Sheldon Goldberg appearing on his own behalf

BACKGROUND

A majority of the hearing panel (facts and verdict 2005 LSBC 10) determined that Sheldon Goldberg was guilty of professional misconduct by improperly withdrawing from a criminal trial and abandoning his client, Mr. T, in mid-trial, contrary to Chapter 10 of the *Professional Conduct Handbook*, and by being discourteous and disrespectful to the court. The minority concluded that Mr. Goldberg's conduct was ill-advised and contrary to the provisions of the Handbook, but did not amount to professional misconduct.

Another criminal case (*R v. D*) was set for trial on the same day that Mr. Goldberg was representing Mr. T. In the other trial, the accused, Ms. D, was representing herself. Mr. Goldberg advised Judge Godfrey, the trial judge in Mr. T's case, that he had just been retained by Ms. D to represent her and that the trial was scheduled to start immediately in another courtroom. Judge Godfrey granted Mr. Goldberg a brief adjournment in Mr. T's case so he could request an adjournment in Ms. D's case.

The judge in the other courtroom was unable to hear the adjournment application so *R v. D* was returned to Judge Godfrey who then recalled the case. She refused Mr. Goldberg's application for an adjournment on the grounds that the date was peremptory. She ordered the case be sent to another courtroom for hearing. Without explanation to the court, Mr. Goldberg then left the courtroom and represented Ms. D in her trial in another courtroom, leaving Mr. T. unrepresented. Mr. Goldberg did not inform Mr. T of his intent to represent Ms. D; nor did he seek Mr. T's instructions to absent himself from Mr. T's trial.

As a result of his having left Mr. T. to fend for himself, Judge Godfrey banned Mr. Goldberg from appearing again in her courtroom.

The majority of the hearing panel (penalty 2005 LSBC 22) ordered that Mr. Goldberg:

1. be suspended for 30 days commencing December 5, 2005; and
2. pay costs.

APPLICATION FOR FRESH EVIDENCE

The Benchers dismissed Mr. Goldberg's application to introduce affidavits from Mr. T and Mr. F, Mr. Goldberg's assistant. In his affidavit, Mr. T commented on Judge Godfrey's attitude towards Mr. Goldberg and said that he told Judge Godfrey that he would proceed with the trial without counsel. Mr. F's affidavit addressed the true effect of Judge Godfrey's ban. The Benchers found that Mr. T's affidavit conflicted with Mr. Goldberg's own evidence at the hearing before the panel and his submissions to the Benchers that he had not obtained Mr. T's approval to leave him unrepresented. They further found that Mr. F's evidence about Judge Godfrey's ban would not have affected the penalty the panel imposed because the panel had considered the ban and its effect.

DECISION

The Benchers decided that the majority of the panel had not been incorrect in finding that Mr. Goldberg's conduct was professional misconduct and had not been incorrect in fixing the penalty. The Benchers ordered Mr. Goldberg to pay costs of the review.

JOHN KEITH LOWES

Vancouver, BC

Called to the Bar: May 15, 1970

Discipline hearings: February 27 (facts and verdict) and November 15, 2007 (penalty)

Panel: James Vilvang, QC, Chair, June Preston and David Renwick, QC

Reports issued: May 29 (2007 LSBC 28) and December 6, 2007 (2007 LSBC 54)

Counsel: Jaia Rai for the Law Society and Jerome Ziskrout for John Keith Lowes

FACTS

In his 2005 Trust Report to the Law Society, John Keith Lowes self-reported that he had not paid to the government the provincial sales tax he had collected from clients for his legal services.

In subsequent correspondence with the Law Society, Lowes admitted that he had never registered with the government to remit sales tax, that he had collected sales tax from clients since the early 1990s when the tax was introduced, that he had never remitted the tax he collected, and that he had misled his clients by collecting and not remitting the tax. Lowes estimated he owed more than \$175,000 in sales tax.

Lowes admitted his actions constituted professional misconduct.

VERDICT

The hearing panel accepted Lowes' admissions and found him guilty of professional misconduct.

PENALTY

At the penalty hearing, Lowes presented evidence that he had been an alcoholic from 1981 until his family organized a successful intervention in 1992. At that time he already owed \$10,000 in unremitted provincial sales tax, but rather than deal with the debt he continued to keep the tax he collected from clients.

A doctor also provided evidence that it is common for alcoholics, once sober, to fear they will relapse if they do certain things. The panel accepted this as the reason Lowes had not remitted provincial sales tax.

Lowes also told the Law Society that his wife had passed away in 2005 after a lengthy battle with cancer, that he cared for an adult daughter who suffered from depression and that he planned to sell his house to pay his tax debt.

The panel noted Lowes had self-reported his failure to pay tax, had admitted professional misconduct and had taken steps to pay the outstanding taxes. The panel ordered that Lowes pay a fine of \$5,000 and costs of \$4,885.

MICHAEL MURPH RANSPOT

West Vancouver, BC

Called to the Bar: August 1, 1985

Discipline hearings: March 6 (facts and verdict) and November 22, 2007 (penalty)

Panel: David Renwick, QC, Chair, Robert Brun, QC and Thelma O'Grady

Reports issued: June 12 (2007 LSBC 32) and December 18, 2007 (2007 LSBC 56)

Counsel: Maureen Boyd for the Law Society and Michael Murph Ranspot appearing on his own behalf at the discipline hearing and Terrence Robertson, QC for Ranspot at the penalty hearing

FACTS

JO retained Michael Murph Ranspot to administer an estate in August 1990. The Public Guardian and Trustee of BC had possession of the estate and provided Ranspot with the original will in March 1993.

On August 4, 1993 Ranspot submitted an application for Letters of Administration with Will Annexed to the Probate Registry of the BC Supreme Court. It was rejected in part because the affidavit of the administrator did not include the reason for the delay in filing. Ranspot redrafted the application in February 1994, but did not submit it.

On January 14, 1997 the Law Society suspended Ranspot for 18 months commencing February 14, 1997. Before he transferred his files prior to his suspension, Ranspot advised the Law Society on February 13, 1997 that he did not have any wills in his possession. Ranspot did not inform JO or anyone connected with the estate that he would not be practising law for the period of his suspension.

On January 1, 1998 Ranspot ceased to be a member of the Law Society. He applied to be reinstated on October 2, 1998. One of the conditions of his return to practice was a practice supervision agreement, which he entered into on December 15, 2000. It required him to provide a written summary of all his open files. He did not include the estate file in the summary. Ranspot was readmitted to the Law Society on February 1, 2001.

On June 21, 2004 Ranspot provided the Law Society with a progress report with respect to his practice, which did not include the estate file. Days later the Practice Standards Committee accepted the progress report and relieved Ranspot of his practice restriction, which required him to have a practice supervisor.

R, of the Public Guardian and Trustee of BC, contacted Ranspot on June 30, 2004 and requested documents so the estate could be settled. Ranspot acknowledged to R that he had the estate file, but he asserted a solicitor's lien over it and refused to release it without a payment of \$2,000 for fees and disbursements.

On November 23, 2004 a beneficiary of the estate filed a complaint with the Law Society. More than 14 months later Ranspot released the original will to the Office of the Public Guardian and Trustee, which did not advise Ranspot that it had been charging a monthly estate liaison administration fee amounting to \$2,700.

On November 22, 2007 Ranspot provided oral evidence to the hearing panel that he had forgotten he had custody of the estate file until he received the phone call from the Office of Public Guardian and Trustee on June 30, 2004.

VERDICT

Ranspot admitted he failed to provide JO with the quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. He further admitted that his failure to do the work in a prompt manner resulted in the diminution of the estate by at least \$2,700. Ranspot acknowledged his failure to provide any service to JO from 2001 onwards was contrary to Chapter 3, Rules 3 and 5 of the *Professional Conduct Handbook* and is professional misconduct.

Ranspot admitted he further committed professional misconduct when he breached the terms of his practice supervision agreement by omitting the estate file from his written summary and his progress report.

PENALTY

The panel accepted Ranspot's evidence that he had forgotten about the existence of the estate file during the relevant period. The panel was mindful that Ranspot's 18-month suspension was, in part, as a consequence of problems resulting from alcohol abuse and depression in the mid-1990s and that he had been attempting to rebuild his practice ever since. The panel said it made no sense to conceal the existence of the estate file, which represented legal work Ranspot could have performed for

a fee; thus, they concluded Ranspot's earlier problems in the mid-1990s provided at least a partial explanation as to why he had forgotten the estate file existed.

The Panel said if it had concluded Ranspot had intentionally concealed the existence of the estate file from the Law Society then a suspension would have been appropriate. However, given that it was an unintentional error, the panel ordered that by December 31, 2008 Ranspot must:

1. pay a fine of \$5,000; and
2. pay costs of \$8,300.

In addition, Ranspot made an unconditional undertaking to reimburse the estate the amount of \$2,700.

JOHN OWEN RICHARDSON

West Vancouver, BC

Called to the Bar: May 15, 1972

Discipline hearings: January 10 (facts and verdict) and December 17, 2007 (penalty)

Panel: David Zacks, QC, Chair, Thelma O'Grady and David Renwick, QC
Reports issued: March 2, 2007 (2007 LSBC 11) and February 8, 2008 (2008 LSBC 05)

Counsel: Maureen Boyd for the Law Society and Christopher Hinkson, QC, for John Owen Richardson at the discipline hearing and Terrence Robertson, QC for Richardson at the penalty hearing

FACTS

In June 2003 John Owen Richardson was retained by Mr. A in a matrimonial proceeding against his wife, Mrs. A. She was represented by JC, a lawyer. That same month the matrimonial home was sold. JC held the net proceeds in his trust account. Other family assets included an RRSP in Mr. A's name that could not be disbursed until he reached age 55.

Between March 1 and April 8, 2005 Richardson and JC exchanged a series of letters, by which JC attempted to secure an agreement for a holdback of funds in trust or a penalty to ensure that his client was paid bi-weekly maintenance. Richardson resisted JC's attempt and ultimately JC accepted that Mr. A was not prepared to agree to a penalty or holdback.

A separation agreement between Mr. and Mrs. A in full and final satisfaction and discharge of all claims each had against the other was entered into on April 8, 2005.

On April 15, 2005 JC sent a number of documents to Richardson, including a trust cheque payable in trust for \$19,480.54 — representing one-half of the net proceeds of the sale of the matrimonial home. JC forwarded the trust funds to Richardson on his undertaking to provide JC with an entered copy of the divorce order, a filed copy of the separation agreement, confirmation of the transfer of the half interest in the RRSP to Mrs. A, and to provide Mr. A's 24 post-dated cheques for spousal maintenance pursuant to the separation agreement.

On April 21, 2005 Richardson deposited the trust cheque into his trust account. The next day Richardson faxed a letter to JC and said, "I do not accept any of the undertakings you unilaterally imposed upon me." Further, Richardson wrote, "at one point you attempted to withhold \$2,500 of my client's funds pending his obtaining the divorce order ... and I specifically rejected that and your client agreed." In the letter Richardson went on to say that he would "follow through" with the items requested to be done in JC's letter but would not withhold the funds.

On April 25, 2005 JC faxed a letter to Richardson saying he did not agree with Richardson's view and stated that, if Richardson was not prepared to accept the undertaking, then he must return the funds.

Richardson sent a letter to JC on May 9, 2005 advising that he had been sick for seven weeks and that he proposed to release the funds once he had taken all possible steps to satisfy the obligations flowing from the separation agreement, but not "from any alleged improperly imposed undertaking by you." Richardson further advised that he had sent documents to the Prince George Registry for a desk order divorce and that, in his view, he was now entitled to disburse Mr. A's half share of the house proceeds.

In a letter dated May 12, 2005 JC told Richardson that he had to comply with the undertaking or return the funds regardless of "whether or not you are happy with the undertaking which I have placed upon you." That same day Richardson disbursed one-half of the monies held in trust to Mr. A, while retaining the balance for his legal fees.

JC sent letters to Richardson dated July 13 and 15, 2005 asking for the trust funds to be returned to him. On July 18, 2005 JC reported the alleged breach of undertaking to the Law Society. Two days later Richardson wrote to JC stating that on advice from the Law Society he "was in error in not strictly complying with the terms of the undertaking imposed by you ... or in not returning the funds to you if I did not accept those terms." In the letter Richardson confirmed that three of the four terms of the undertaking had been fulfilled — the exception being the locked-in RRSP funds, which still required Mrs. A to complete her half of a document attached by Richardson with the letter.

At the hearing Richardson gave evidence that he only acknowledged in the July 20, 2005 letter that he breached the undertaking because of the advice he received from the Law Society and that since receiving independent legal advice he now believed he was not in breach of an undertaking.

The hearing panel noted the importance of emphasizing Chapter 11, Rule 10 of the *Professional Conduct Handbook* when the panel stated:

"A lawyer cannot impose on another lawyer 'impossible, impractical or manifestly unfair conditions of trust.' A lawyer who does this may well be cited for professional misconduct. Even so, this does not give the lawyer upon whom the undertaking or trust conditions were imposed the right to ignore or reject the undertaking and to keep the subject matter of it.

"When a lawyer receives property from another person, whether or not that person is a lawyer, on an undertaking or trust condition to use or not to use the property except on certain trust conditions, the lawyer has *only two options* [emphasis added]. The lawyer may either accept the undertaking on those conditions, or the lawyer may reject the undertaking and return the property. If this were not the case, then, as Mr. Justice McDonald stated in *Witten v. Leung* [1983] A.J. No. 883 (QB): '... the edifice of trust between solicitors, upon which so much of the efficient service to the public depends, will crumble.'"

VERDICT

The panel noted that it was disturbed by the conduct of JC, who was clearly trying to unfairly impose a term in the trust conditions that he knew or ought to have known was not set out in the separation agreement. The panel further stated that, while the conduct of JC may have deserved a citation, his conduct was not the subject of the complaint.

In the opinion of the panel, Richardson's actions regarding the undertaking were not cavalier, but misguided at best. The panel stated that Richardson should have been aware of Chapter 11, Rule 11 of the Handbook, which states that if a lawyer is unable or unwilling to honour a trust condition, "the subject of the trust condition must be immediately returned to the persons imposing the trust condition" unless the terms can be amended in writing on a mutually agreed basis.

Further, the panel said Richardson's argument that he never accepted the trust conditions would only have had some validity had he not utilized the funds, because once he disbursed them to his client he was deemed

to have accepted the conditions imposed on him. Thus, the panel found Richardson breached his obligations to abide by trust conditions and was guilty of professional misconduct.

PENALTY

The panel noted that, despite practising for more than 35 years, this was Richardson's first discipline hearing and that there had never in the past been any suggestion that he had previously breached an undertaking.

The panel said they were of the view that in this case there was "no real victim" and no "element of dishonesty." Therefore the panel determined a fine would be an appropriate penalty and they ordered Richardson to pay by March 31, 2008:

1. a fine of \$2,500; and
2. costs of \$4,500.

RODNEY JOHN STRANDBERG

Fort St. John, BC

Called to the Bar: June 12, 1987

Discipline hearings: January 22-24 (facts and verdict) and November 30, 2007 (penalty)

Panel: Bruce LeRose, QC, Chair, Gavin Hume, QC and Gerald Lecovin, QC

Reports issued: April 11, 2007 (2007 LSBC 19) and January 28, 2008 (2008 LSBC 04)

Counsel: Gerald Cuttler for the Law Society and Jerome Ziskrout for Rodney John Strandberg

FACTS

In 2006 the Law Society issued two citations against Rodney John Strandberg, charging him with a total of 11 counts of professional misconduct. The charges included failure to provide clients with competent service, failure to respond to a client's reasonable request for information, failure to do the work in hand in a prompt manner, misleading other lawyers and the Law Society (by misrepresentation and by forgery) and breach of an undertaking to the Law Society.

After Strandberg admitted nine of the charges, the panel heard evidence and submissions on the two remaining charges — breach of undertaking to the Law Society and misleading another lawyer.

Breach of undertaking to the Law Society

In October 2000 the Law Society conducted a practice review of Strandberg's legal practice, as ordered by the Practice Standards Committee under Rule 3-13. During that practice review, Strandberg agreed never to take another file in the areas of wills, estates and conveyancing. On March 1, 2001, Strandberg sent a fax to the Law Society, which stated, "I have no difficulty in undertaking not to practise in the areas of wills, estates and conveyancing."

Late in 2003 Strandberg represented B in negotiating a separation agreement with her husband, and in the sale of their home to a third party. Strandberg witnessed B's execution of a freehold transfer document, a direction to pay addressed to the purchaser's lawyer, and the vendor's statement of adjustments. Strandberg also exchanged letters with the purchaser's lawyer — forwarding executed copies of transfer documents and receiving cash to close — on the usual undertakings.

Strandberg acknowledged to the hearing panel that he had acted for B in a conveyance, but said he had not been practising law when he did so. Strandberg told the panel that while he charged his client B a fee for negotiating a separation agreement with her husband, he did not charge her a fee in the conveyancing matter. Strandberg testified, "I thought that

if I didn't charge her and didn't expect to receive anything, it was almost like pro bono except I got money from her on the family side of things, that I wasn't engaged in the practice of law and that is why I did that."

Strandberg's counsel pointed out that the *Legal Profession Act* excludes from its definition of the "practice of law" "... any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed."

Misleading another lawyer

On October 4, 2004, Strandberg served as duty counsel before the Fort St. John Provincial Court, representing L in a *Controlled Drugs and Substances Act* sentencing matter. Strandberg discussed plea and sentencing issues with R (representing the provincial Crown) before the hearing. R said he thought a jail sentence of 21 to 30 days was appropriate. Strandberg asked R to consider an intermittent sentence on two grounds: first, because L would be able to retain his employment and, second, because "the federal Crown is only asking for a fine." R advised Strandberg that on that basis, the provincial Crown would not oppose an intermittent sentence.

Just before the L matter was called, C (acting for the federal Crown) informed R that there had been no agreement — or even discussion — between C and Strandberg regarding the federal Crown's sentencing position.

VERDICT

On the charge of breach of undertaking, the panel noted B's evidence that, while she did not have the money to pay Strandberg's fees before selling her home, she would have the money when the home was sold. The panel determined that Strandberg had done B's conveyance in his own office — rather than referring the matter to an outside lawyer — to ensure he would retain control of the proceeds of the sale, and would therefore be able to pay his fees for negotiating the separation agreement from those proceeds.

The panel found that Strandberg's handling of B's conveyance provided him with a "gain" within the *Legal Profession Act*'s definition of "practice of law," breached his undertaking to the Law Society and constituted professional misconduct.

On the charge of misleading another lawyer, the panel concluded that Strandberg was either "reckless" or "wilfully blind" in his conduct, and accordingly found him guilty.

PENALTY

Counsel jointly submitted that the panel should penalize Strandberg in accord with his resignation and undertakings provided to the Law Society in a letter dated November 26, 2007, wherein he resigned as a member and undertook not to apply for reinstatement for a period of at least seven years from the date of the letter. Strandberg further undertook that any such application for reinstatement must be accompanied by a psychiatric report:

- confirming the counselling he has taken;
- providing an opinion that he is then fit to practise law; and
- stating any conditions that should be imposed on his practice if he is readmitted.

The panel accepted the joint submission of counsel and ordered that:

1. Strandberg pay costs of \$36,000; and
2. the panel's decision be published pursuant to Rule 4-38. ♦

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