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BENCHERS' BULLETIN

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Toward more structured priority-setting and strategic planning

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 articled 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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AT THE CONCLUSION of my last column I indicated that the Benchers would be meeting on February 29 to set their strategic priorities for the year and that I would report on those priorities in my next column. This is that report.

At the outset, I should indicate that with the assistance of our CEO, Tim McGee, the Benchers have adopted a new policy development model directed at setting annual strategic priorities early in the year and then appointing committees and task forces to carry out mandates consistent with those priorities. In the past our policy development has been a little haphazard — with the urgent often taking priority over the important — and we are hoping that this more structured method of priority-setting will produce better strategic planning and decisions.

This inquiry will no doubt take us down the path of discussing greater provision of pro bono services by lawyers, but will also pursue institutional efficiencies to reduce overall cost and to increase access.

With that objective in mind, at their February meeting the Benchers approved three strategic priorities for policy development in 2008.

The first of these is enhancing access to legal services. This is an issue for many groups, but the Law Society's regulatory mandate charges our organization with a unique perspective. At our Benchers retreat in June we will be examining scope of practice issues with a view to considering whether the profession should re-examine its historic approach to the delivery of legal services by non-lawyers. In Ontario,

the Law Society of Upper Canada is developing a regulatory regime for paralegals. We have been told that LSUC has been surprised at the numbers of paralegals applying to take advantage of the new regulatory scheme. We need to look more comprehensively at British Columbia's present and possible providers of legal services to the public, and at our law society's policy and strategic options for regulating these service providers.

There are a couple of additional issues on our radar screen in relation to access to legal services. The provincial government's Civil Justice Reform Task Force is continuing its work on proposed reforms to the civil justice system. Last year the Law Society provided comments on the first report, but we have struck a small task force under the leadership of Joost Blom, QC to consider whether further input is advisable. In addition, the Benchers have established a distinguished task force under the chair of Kathryn Berge, QC to look into issues concerning the retention of women in our profession. Finally, we will be beginning our own analysis of the thorny issue of reducing financial barriers to accessing legal services.

This inquiry will no doubt take us down the path of discussing greater provision of pro bono services by lawyers, but will also pursue institutional efficiencies to reduce overall cost and to increase access.

The second strategic objective approved by the Benchers is enhancing public confidence in the legal profession and its self-regulation. One of the specific tasks will be to examine the Competition Bureau's recent comments on the legal profession, with a view to determining whether regulatory changes should be introduced to deal with some of the issues identified, including advertising restrictions, restrictions on

innovative business structures and other matters that might be characterized as having anti-competitive elements. On balance, we felt that, while the Competition Bureau report was not particularly critical of the regulation of our profession, it identified issues that should and will be addressed.

The third and final strategic objective approved by the Benchers is education — education of the public on issues relating to the law and the role of lawyers in the administration of justice, education of our members through our upcoming Continuing Professional Development program and education of the Benchers on important policy matters.

The Law Society's activities in educating the public about the law and the role of lawyers have primarily come through public forums such as last year's very successful *Lawyers without Rights*. This year, two such forums are planned. *Voices on Youth Justice* will deal with youth and the law and is scheduled for the evening of June 25 in Vancouver. This form of community outreach has been well received and has now been institutionalized in the Benchers' priorities determination.

Another recent example of the Law Society's more outward approach to public communications is an informative booklet called *Considering a Career in Law?* Produced by our Communications Department, this booklet can be viewed on the society's website and has been made available to universities across Canada, to quite favourable reviews.

Education of our members is the focus of our Continuing Professional Development program, scheduled to begin next year. The details are being developed this spring by the Lawyer Education Advisory Committee under the leadership of Bruce LeRose, QC. We anticipate that the Benchers will be asked to approve new rules once the program has been settled. I will have more to report at that time.

Finally, the Benchers are conscious that their own education on policy issues requires continual upgrading. The intention is to devote a few of this year's Bencher meetings to improving our knowledge base on specific policy issues, so that our decisions can be as informed as possible.

All of this deals with policy development, but performing, managing and administering the Law Society's core

regulatory functions remain the primary roles of Benchers and staff. Our credentials and professional conduct departments appear to be running smoothly, but we will continue to work on improvements to these core functions during the coming year. The trust assurance program has now

been rolled out and Law Society auditors are in the field assisting members to comply with the trust account requirements.

That is the program for 2008. As always, we welcome comments from our members on our ongoing efforts to regulate the profession in the public interest. ♦



The Law Society's CEO, Tim McGee, checks in with Alan Treleaven, Director of Education and Practice, at the Law Society's Law Day display at the Vancouver Public Library.

LAW DAY 2008: Saturday, April 19

Twenty-eight public and non-profit organizations — including the Law Society — were represented at Vancouver's Law Day 2008. Law Day is part of Law Week, a national event convened by the Canadian Bar Association every April since 1983 to commemorate the signing of Canada's *Charter of Rights and Freedoms*.

This year's Law Day theme was Access to Justice: Breaking Down the Barriers. Events included courthouse tours, mock trials, citizenship ceremonies, public speaking and essay contests for students, Dial-a-Lawyer clinics, free law classes and a free public forum in Vancouver.

The Law Society provides partial funding for Law Week events sponsored by the BC Branch of the Canadian Bar Association.



Improving access to legal services through collaboration in the pro bono community

by Timothy E. McGee

IN HIS CURRENT *President's View* column, John Hunter, QC discusses the strategic priorities adopted by the Benchers for 2008 and beyond. One of those priorities is for the Law Society to consider ways of enhancing the public's access to legal services. I would like to pick up on this theme and provide you with my perspective on positive developments in two related areas: the Law Society's new funding model for supporting pro bono legal services in BC, and the growing spirit of collaboration among pro bono legal service agencies operating in our province.

Last year the Benchers decided to change the model for providing financial support to organizations in BC that provide pro bono legal services. Instead of reviewing and determining grant requests from a variety of agencies on an ad hoc basis, the Benchers approved a more streamlined system whereby a flat one per cent of the annual practice fee is now allocated for pro bono causes and given to the Law Foundation to administer and distribute to pro bono agencies throughout the province. The Law Society provided approximately

\$100,000 to the Law Foundation in support of pro bono services in 2007.

By all accounts this new arrangement is working well. The Law Foundation is well equipped to conduct the necessary evaluation and ongoing assessment of funded agencies and our coordination with the Law Foundation in this arrangement has generated positive feedback from those organizations. In addition, total Law Society funding for pro bono services has increased slightly under the new model, and the simplicity of the one per cent fee allocation improves the planning and budgeting process for all involved.

I met recently with the leaders of Pro Bono Law BC, Western Canada Society to Access Justice and Salvation Army Pro Bono Consultants to touch base on their 2008 initiatives. I came away with the strong impression that collaboration and cooperation among these key service providers were important priorities for their respective organizations.

In particular, I learned that concrete steps are being taken to coordinate the

location of new clinics and to look at ways to combine or rationalize the resources of existing clinics to better serve the needs of their communities. Their collaboration also extends to making better use of technology to streamline their cross-organizational service to clients, i.e. to improve the matching of needs and resources. Possibilities under discussion include integrating the Access Justice roster database and referral software into Salvation Army clinics, and permitting Access Justice to book appointments for clients and lawyers at Salvation Army pro bono clinics through the Salvation Army's database. I believe these practical steps and important discussions are taking place because the leaders of these organizations are committed to pursuing progress through cooperation and innovation. From my perspective, they are on the right track.

Beyond funding support for pro bono legal services, the Law Society is actively looking at ways to support broader collaboration in the pro bono area. For example, the Law Society recently hosted a two-hour workshop discussion on pro bono service referral issues, attended by representatives of almost 50 pro bono delivery organizations and community agencies operating in the Lower Mainland. Many attendees spoke of the importance of this strong community spirit, and discussed a number of practical opportunities for cooperative action. The group identified as a priority a shared province-wide database of pro bono and publicly funded legal and advocacy service providers and community organizations. We expect there will be further discussions aimed at developing this valuable service tool with the ongoing support and guidance of the Law Foundation.

I look forward to reporting to you in the future as the Benchers continue their review and assessment of further opportunities of enhancing the public's access to legal services. ♦



New Lay Bencher Stacy Kuiack

YOU COULD SAY that Stacy Kuiack has been an entrepreneur his whole life. Growing up in Sooke, BC, Stacy got his start at the age of five working with his father, an independent electrician.

"My dad would take me to the job site in his Ford F-150. I would follow the crew around, picking up any copper wire clippings they would leave behind," said Kuiack.

After that experience, Stacy swore that he would get a "normal" job when he grew up. But his entrepreneurial spirit led him on a different path. After earning a BA in economics and political science, Stacy founded his first company — Vigil Health Solutions, a publicly-traded breakthrough behavioural software and medical technology company — at the age of 25.

Now 37, Stacy has an MBA in corporate finance from the University of Canterbury (New Zealand) and serves as corporate finance consultant to Turner Lane Development Corporation, one of Western Canada's leading land-development and management firms. He is also an executive in residence with the School of Business at the University of Victoria, where he shares his knowledge and experience with current students.

Stacy's strong business acumen caught the attention of the *Vancouver Sun*, which named Stacy one of their "British Columbians to Watch" in 2002.

He has also been nominated for the Ernst & Young "Entrepreneur of the Year" award, the Caldwell Partners "National Top 40 Under 40," and the Business Development Canada "Young Entrepreneur of the Year" award.

In the community, Stacy serves as a Director of the Canadian Association of Family Enterprise and is a member of the BC Cancer Foundation (Vancouver Island) Advisory Council.

In his spare time, Stacy is an active member of the Vancouver Island Soccer League, where he serves as a goalie for the Castaways Juniors B team. Stacy's stellar performance last season, including four shut outs, helped his team secure a second place finish in the Masters B division.

Stacy hopes to bring an entrepreneurial spirit to his role as a Lay Bencher.

"I have always had a strong appreciation of the value that lawyers can bring to the management team. It is my hope that my background and experience will add value at the Benchers table," said Kuiack.

Stacy replaces Lay Bencher June Preston,

who becomes a Life Bencher after seven years of service.❖

Shortly before this issue of the Benchers' Bulletin went to press, Haydn Acheson was appointed a Lay Bencher, replacing Ken Dobell. Acheson will be profiled in the next bulletin.



Stacy Kuiack — curriculum vitae

Professional experience:

- President and Corporate Finance Consultant, Turner Lane Development Corporation
- Executive in Residence, University of Victoria School of Business
- Founder, President and CEO, Vigil Health Solutions Inc.
- Vice-President, MPI Group

Community affiliations:

- Director, Canadian Association of Family Business
- Director and executive member of the Board of Advisors, University of Victoria School of Business
- Director, Victoria YMCA
- Member, BC Cancer Foundation Advisory Council
- Former Governor and Finance Committee member, Camosun College
- Former Director, Leadership Council, International Assisted Living Foundation

Professional recognition:

- Nominee, Vancouver Island Top 40 Under 40 (2007)
- Project of the Year, CARE Awards (2006)
- "British Columbians to Watch," *Vancouver Sun* (2002)
- Gold Award for Universal Design, The American Society on Aging (2002)
- Finalist, Business Development Bank of Canada "Young Entrepreneur of the Year" (2001)
- Finalist, Ernst & Young "Entrepreneur of the Year" (2000 and 2001)

Anti-money laundering initiatives

THE LAW SOCIETY of BC will enact new, client identification rules later this year. The rules, which will be effective as of November 1, 2008, are based on a model rule prepared by the Federation of Law Societies of Canada and are part of the legal profession's commitment to the fight against money laundering.

All provincial and territorial law societies are expected to enact similar rules this year. This initiative is comparable to an earlier one organized by the Law Society of BC and the Federation that resulted in Canadian law societies adopting "no cash" rules.

This article provides background to the client identification rules, as well as a general overview of the rule requirements.

Before the rules are implemented, specific information about their application along with detailed FAQs will be posted on the Law Society's website and circulated to members.

Also included below is information about the federal government's proposed client identification and verification regulations. These regulations would require lawyers to obtain client information and would authorize warrantless searches of lawyers'

offices. The federal regulations are not yet in force and, under the terms of a BC Supreme Court injunction, cannot come into force without the consent of the Federation of Law Societies of Canada and other parties to the court order, including the Law Society of BC.

BACKGROUND TO THE LAW SOCIETY'S KNOW-YOUR-CLIENT RULES

In 2000, the federal government passed legislation now known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PC(ML)&TF Act)*. Under the Act, regulated persons and entities are required to report financial transactions involving \$10,000 or more in cash or those defined as "suspicious" to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal agency set up to receive and analyze financial intelligence and disclose it to the police.

The Federation of Law Societies of Canada and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of BC challenging the constitutionality of the legislation as it applied to the legal profession.

The Federation contended that the legislation, which required lawyers to collect information about clients against the client's interests and to report that information to a government agency, threatened fundamental Canadian constitutional principles that require lawyers to maintain undivided loyalty to their clients. The Supreme Court of Canada, in *Maranda v. Richer*, [2003] 3 SCR 193, has stated that lawyers, who are bound by strict ethical rules, must not have their offices turned into archives for state authorities.

To identify an individual client, a lawyer will have to obtain and record the person's full name, home address, telephone number and occupation. Where applicable, a lawyer must also get the client's business address.

The BC Supreme Court, in *Law Society of BC v. AG Canada*, 2001 BCSC 1593, concluded the legislation was "an unprecedented intrusion into the traditional solicitor-client relationship" and granted an interim injunction in November 2001. The BC Court of Appeal affirmed the order and the Supreme Court of Canada denied the government's application for a stay. The government subsequently agreed that lawyers and Quebec notaries would be exempt.

Since then, the Federation has held discussions with the federal government regarding the appropriate anti-money laundering regime for the legal profession and has developed initiatives for lawyers in Canada.

The first initiative was a model rule that prohibits lawyers from receiving cash in amounts of \$7,500 or more. This rule was adopted by all law societies. The federal government subsequently amended the PC(ML)&TF Act to exempt lawyers from the Act's reporting requirements.

The second initiative is a model client identification rule. All law societies have committed to enact this rule. The new requirements will assist lawyers in identifying potentially fraudulent client activities,



such as a client who is attempting to use the lawyer to improperly transfer funds.

THE CLIENT IDENTIFICATION RULES

The new, client identification rules are designed to codify the steps prudent legal counsel would take in the normal course to verify the identity of a new client. The rules will also outline the *records* lawyers must keep to demonstrate compliance with the rule.

"Identification" refers to the basic information lawyers need to get from their clients to ensure they know who their clients are at the beginning of the retainer.

"Verification" refers to the information lawyers need to confirm their clients are who or what they say they are.

To identify an individual client, a lawyer will have to obtain and record the person's full name, home address, telephone number and occupation. Where applicable, a lawyer must also get the client's business address.

If the client is an organization, such as a company, a public body or a trust, a lawyer must obtain its full name, business address and, where applicable, its incorporation or business identification number, where it was issued, the general nature of its business and the name, position and contact information of the persons authorized to give instructions.

The new regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities, with some narrow exceptions.

The verification requirements are triggered when a lawyer receives, pays or transfers funds on behalf of a client or gives instructions on behalf of a client for receipt, payment or transfer. There are exemptions for funds received for professional fees and disbursements and for funds received from a financial institution, a public body (such as the government) or a public company.

To verify the identity of an individual, a lawyer must review and retain a copy of a document that he or she reasonably believes is an independent and reliable original source identification document,

such as a government-issued driver's licence, birth certificate or passport. How a lawyer verifies the identity of an organization will depend on the nature of the organization. A company's certificate of corporate status issued by the Registrar of Companies is an example of a reliable and independent document.

The Law Society of BC believes the Federation's model know-your-client rule respects the constitutional requirements imposed on the legal profession regarding gathering information from clients.

A lawyer will also be required to retain client identification and verification records for the longer of (a) the duration of the professional relationship and for as long as is necessary for the purpose of providing service to the client, and (b) at least six years following the completion of the work for which the client retained the lawyer. The records must be kept in the client file; there is no need to maintain a separate file. As long as a paper copy can be readily produced, the records may be kept in a machine-readable or electronic form.

THE FEDERAL GOVERNMENT'S PROPOSED REGULATIONS

In June 2007, the federal government released a draft of proposed client identification and verification regulations. Law societies and other interested stakeholders were also asked to provide comments on the proposed regulations.

The Law Society of BC advised lawyers of the draft regulations through a Notice to the Profession (July 10, 2007) and an article in the July 2007 *Benchers' Bulletin*. Some members provided comments on the government's proposal. The Law Society prepared its own comments to the Federation, which then prepared a response on behalf of all provincial and territorial law societies.

The federal government formally published the regulations, substantially unchanged, on December 30, 2007 with an implementation date of December 30, 2008. The new regulations include detailed requirements for client identification, verification of client identity, record-keeping

and compliance. The requirements are triggered when the lawyer receives or pays funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or organization, or gives instructions in respect of these activities.

The new regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities, with some narrow exceptions.

The Federation has noted several concerns with the regulations including:

- The regulations would authorize warrantless searches of a lawyer's office, contrary to the Supreme Court of Canada's decision in *Lavallee, Rackel & Heintz v. Canada (AG)*, [2002] 3 SCR 209.
- The nature and extent of the information required to be collected goes beyond what is necessary for lawyers to serve their clients.
- Some of the regulations are unclear or overly broad or impose unreasonable and impractical requirements on legal counsel. For example, the requirement to obtain the identities of all persons controlling more than 25 per cent of a corporation may be impossible to comply with in the case of a private company.

The Law Society of BC believes the Federation's model know-your-client rule respects the constitutional requirements imposed on the legal profession regarding gathering information from clients. A lawyer must maintain and keep all information needed to serve a client, but must not obtain any information that serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities.

The federal government's client identification and verification regulations are subject to the November 2001 BC Supreme Court injunction and cannot come into force without consent from the parties to the litigation or further order of the judge. The Federation has been discussing its model rule and the proposed regulations with the Department of Finance. These ongoing discussions are part of a dialogue that began when the PC(ML)&TF Act was first introduced. ❖

Continuing professional development: The range of options

The Law Society of BC's Continuing Professional Development program is set to begin on January 1, 2009. Throughout 2008, the Benchers' Bulletin is running a series of articles to assist lawyers with meeting their CPD requirements. This is the second article in the series.

THE FRAMEWORK OF the Law Society's new Continuing Professional Development program endorses a wide range of learning opportunities.

"One of our goals is to ensure lawyers can meet the requirements of the new program through a variety of educational opportunities," said Lawyer Education Advisory Committee chair Bruce LeRose, QC of Thompson, LeRose & Brown in Trail. "When

the program starts in 2009, we want lawyers to be able to select the type of learning that best suits them and their practices."

The committee's recommendations go far beyond conventional, classroom-based courses and endorse non-traditional educational programs, such as CBA section meetings, teaching, in-house seminars, on-line courses and writing.

"We want to encourage, not just

education, but also engagement in learning," said LeRose. "The practice of law requires interaction with other lawyers and discussion of ideas. We want this to become part of our learning culture."

The committee will make a final report to the Benchers by July 2008 and the program is scheduled to start January 1, 2009. Detailed information will be available before the program begins. ❖



Continuing Professional Development program — approved activities

The Benchers have already approved a wide variety of education activities for the Continuing Professional Development program:

- attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at courses offered by the Continuing Legal Education Society of BC, the Trial Lawyers' Association of BC, the Canadian Corporate Counsel Association, the Canadian Bar Association, the Federation of Law Societies of Canada, the Law Society of BC or a Canadian law school;
- attendance in person, as well as online or by telephone, provided there is an opportunity to ask questions, at Law Society-approved, law-related courses offered by other organizations;
- video repeats of an approved course provided it is done with one or more other lawyers so there is an opportunity for discussion;
- completion of an online self-study course offered by a provider approved by the Law Society, provided that a testing component is included in the course;

- teaching a law-related course (one hour of teaching will equal three hours of reporting credits to take into account preparation time);
- attending CBA section meetings or education-related activities offered by a local or county Bar association;
- participation in (including teaching at) an education program offered by a lawyer's firm or employer provided the program is offered in a group setting;
- participation in a study group of two or more people provided the group's study focuses on law-related activities. Guidelines for study groups are still being developed; and
- writing law books or articles relating to the study or practice of law for publication.

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

FROM WALLY OPPAL, QC, ATTORNEY GENERAL OF BC

Draft Supreme Court family rules

THE BC JUSTICE REVIEW TASK FORCE (JRTF) has recently posted a concept draft of proposed new Supreme Court family rules for review and comment. Lawyers are invited to make submissions to the online forum, which can be found at: bcjusticereviewforum.ca.

The task force was established in March 2002 on the initiative of the Law Society to identify reforms to make the justice system more responsive, accessible and cost effective. The task force includes representatives from the judiciary, Law Society, Canadian Bar Association and Ministry of Attorney General. In 2003, the JRTF appointed the Family Justice Reform Working Group (FJR-WG) to explore fundamental reforms to the family justice system.

The FJR-WG released its report, *A New Justice System for Families and Children*, in May 2005. The report outlines a new vision for family law and touches on a range of family justice services and processes that are, or should be, available to people experiencing family breakdown. It makes 37 recommendations, including those related to the establishment of family justice "hubs," consensual dispute resolution, rules and

family court structure. Recommendations related to court rules include:

- that rules and forms for family cases be simplified and streamlined to allow for expedited, economical resolution of all cases with processes proportional and appropriate to the value and importance of the case;
- that every family law form and procedure be designed to be used and understood by an unrepresented litigant.

Following the release of the FJR-WG's report, the JRTF formed the family rules working group to draft new Supreme Court and Provincial Court family rules, under the direction of a steering committee made up of BC Supreme Court Chief Justice Donald Brenner, Chief Judge Hugh Stansfield, Deputy Attorney General Allan Seckel, QC, Justice Brian Joyce and Assistant Deputy Minister Jerry McHale, QC.

The proposed new Supreme Court family rules, which will be implemented along with new Supreme Court civil rules, will be available for Bar and public feedback until June 30, 2008. ❖

Law Society and CBA to develop family law practice guidelines

THE BENCHERS recently accepted a report by the Family Law Task Force, adopting the key recommendation that the Law Society work with the Canadian Bar Association to develop best practice guidelines to support the professional development of BC family lawyers.

Task force chair, Bencher Carol Hickman stressed that the focus of the task force's recommendations is professional education and support, not regulation and discipline. "Through our research and consultation, the task force came to believe that family law is a unique area of practice," Hickman said. "We concluded that while it is not necessary to amend the *Professional Conduct Handbook* or to

create a code of conduct for family lawyers, it is important to promote and support professionalism in this area of law to better protect the public and, in particular, to reduce the harm caused to children by family law disputes."

The Family Law Task Force was created in January 2007, in response to a number of recommendations received from BC's Ministry of Attorney General. The task force's research included a jurisdictional study of family law, best practice guidelines from the United States, the United Kingdom and Australia, and consultation with members of some of the CBA family law sections, collaborative law lawyers and the CBA family law provincial chairs. ❖

FROM WALLY OPPAL, QC,
ATTORNEY GENERAL OF BC

Budget 2008

BRITISH COLUMBIA'S BUDGET 2008 focuses on addressing climate change, promoting greener choices and encouraging economic investment.

The Ministry of Attorney General's budget includes an increase of just under \$28 million for 2008/09.

We received \$12 million in dedicated funding for reforms recommended by the Justice Review Task Force that will improve the effectiveness of British Columbia's justice system. This funding is over three years, starting in 2007/08. Innovative civil and family justice projects — including pilot front-end justice access centres in Nanaimo and Vancouver — will streamline the justice system so it is faster, more proportionate and supports earlier conflict resolution, with more streamlined court processes. Criminal justice reforms will hold offenders accountable more quickly and effectively.

With the opening of Vancouver's Downtown Community Court planned for this year, budget 2008 includes \$13 million over three years for operating costs, of which just over \$4 million is for 2008/09. This project is a collaboration of justice, health and social services and will address the underlying causes of criminal behaviour among repeat offenders — many with mental illness, addictions or who are homeless — in downtown Vancouver. My ministry will continue to work closely with our partners to provide better integrated and coordinated services that encourage earlier, more meaningful resolutions for offenders and the community.

Another \$20 million has been allotted for negotiated pay increases for judges, lawyers and other Ministry of Attorney General staff.

With this budget lift, we will continue our efforts to achieve an effective justice system that is accessible, responsive and affordable — and that gives British Columbians early solutions and faster justice. ❖

Law Society committees for 2008

LAW SOCIETY COMMITTEES carry out many regulatory functions under the *Legal Profession Act* and the Law Society Rules. The Law Society has also established several advisory committees whose role is to keep the Benchers apprised of key developments in law and policy affecting the legal profession. Below is a list of 2008 committees and their chairs. Full membership lists are available on the Law Society's website.

EXECUTIVE COMMITTEE

John Hunter, QC (Chair)
Gordon Turriff, QC (Vice-Chair)

The Executive Committee assists the Benchers in establishing priorities for the assignment of Society financial, staff and volunteer resources and for planning Benchers meetings. The Executive Committee consists of the President, the First and Second Vice-Presidents, the Second Vice-President-elect, three other Benchers elected from among the Benchers as a whole and one Lay Benchers elected from among the Lay Benchers.

AUDIT COMMITTEE

David Zacks, QC (Chair)
Art Vertlieb, QC (Vice-Chair)

The Audit Committee assists the Benchers in determining that the financial affairs of the Society are properly managed. This includes reviewing quarterly financial statements of the General, Liability Insurance and Special Compensation Funds prior to submission to the Benchers, providing an annual Audit Committee report to the Benchers and reviewing with the Law Society auditors their approach, the scope of the their audit and the audit issue results.

COMPLAINANTS' REVIEW COMMITTEE

Dr. Maelor Vallance (Chair)
Thelma O'Grady (Vice-Chair)

The Complainants' Review Committee reviews the files of complainants who are dissatisfied with dismissal of their complaints following a review by Law Society staff, and may refer complaints to the Discipline or Practice Standards Committee when appropriate.

CREDENTIALS COMMITTEE

Gordon Turriff, QC (Chair)
Richard Stewart, QC (Vice-Chair)

The Credentials Committee oversees the enrolment, education, examination and call to the Bar of articulated students, the transfer of lawyers into BC and the reinstatement of former lawyers. When the character or fitness of an applicant for admission, readmission or transfer needs to be addressed, the committee considers the application directly or orders a formal credentials hearing.

DISCIPLINE COMMITTEE

Rita Andreone (Chair)
Art Vertlieb, QC (Vice-Chair)

The Discipline Committee reviews complaints concerning lawyers or articulated students that are referred by the Professional Conduct Department, the Complainants' Review Committee or any other committee.

ETHICS COMMITTEE

Gavin Hume, QC (Chair)
Joost Blom, QC (Vice-Chair)

The Ethics Committee identifies current professional responsibility issues and makes recommendations on changes to the *Professional Conduct Handbook* for consideration by the Benchers. The committee also interprets existing *Handbook* rules, gives advice to individual lawyers and publishes opinions to the profession at large on matters of professional responsibility.

FINANCE COMMITTEE

Gordon Turriff, QC (Chair)
Glen Ridgway, QC (Vice-Chair)

The Finance Committee reviews the Law Society's preliminary budget, provides a due diligence and oversight report to the Benchers in advance of the annual practice fee recommendation, brings financial issues to the Benchers for decision, and acts as a watchdog for the costs of any new programs or proposals.

The Finance Committee is composed of the First Vice-president, the Second Vice-president, Chair of the Audit Committee, a Lay Benchers and two other

Benchers, at least one of whom is not a member of the Executive Committee.

PRACTICE STANDARDS COMMITTEE

Glen Ridgway, QC (Chair)
Robert Punnett (Vice-Chair)

The Practice Standards Committee reviews information about lawyers who may have competency-related problems and orders investigations when appropriate. The committee recommends ways for lawyers with competency problems to become competent, or restricts them from some areas of practice when necessary to protect the public. The committee also helps plan programs to assist lawyers to practice more competently.

SPECIAL COMPENSATION FUND COMMITTEE

David Renwick, QC (Chair)
Richard Stewart, QC (Vice-Chair)

The Special Compensation Fund Committee considers claims for compensation arising from the alleged misappropriation or wrongful conversion of trust funds by a BC lawyer acting in that capacity. While claims made on or after May 1, 2004 are covered by Trust Protection Coverage and managed by the Lawyers Insurance Fund, the Special Compensation Fund continues to exist and is responsible for resolving claims made or discovered prior to adoption of the Trust Protection Coverage.

UNAUTHORIZED PRACTICE COMMITTEE

William Jackson (Chair)
Carol Hickman (Vice-Chair)

The Unauthorized Practice Committee enforces the *Legal Profession Act* with respect to all aspects of the practice of law by non-lawyers and develops policy recommendations for the Benchers in unauthorized practice matters.

ACCESS TO LEGAL SERVICES ADVISORY COMMITTEE

Robert Punnett (Chair)
David Mossop, QC (Vice-Chair)

The Access to Legal Services Advisory Committee monitors developments on issues affecting access to legal services, and reports

those developments to the Benchers on a semi-annual basis. The committee advises the Benchers annually on priority planning with respect to access to legal services.

EQUITY AND DIVERSITY ADVISORY COMMITTEE

Thelma O'Grady (Chair)
Patrick Kelly (Vice-Chair)

The Equity and Diversity Advisory Committee monitors developments on issues affecting equity and diversity in the legal profession and the justice system in BC, and reports those developments to the Benchers on a semi-annual basis. The committee advises the Benchers annually on priority planning with respect to equity and diversity.

INDEPENDENCE AND SELF-GOVERNANCE ADVISORY COMMITTEE

Jan Lindsay (Chair)
James Vilvang, QC (Vice-Chair)

The Independence and Self-Governance Advisory Committee monitors develop-

ments on issues affecting access to the independence and self-governance of the legal profession and the justice system in BC, and reports those developments to the Benchers on a semi-annual basis. The committee advises the Benchers annually on priority planning with respect to independence and self-governance.

LAWYER EDUCATION ADVISORY COMMITTEE

Bruce LeRose, QC (Chair)
Leon Getz, QC (Vice-Chair)

The Lawyer Education Advisory Committee monitors developments on issues affecting lawyer education in BC, and reports to the Benchers about those developments on a semi-annual basis. The committee advises the Benchers annually on priority planning with respect to the education of lawyers in BC.

New task forces for 2008

CIVIL JUSTICE REFORM TASK FORCE

Joost Blom, QC (Chair)

The Civil Justice Reform Task Force will advise the Benchers on the Law Society's further response to the Attorney General's Civil Justice Reform Task Force.

RETENTION OF WOMEN IN LAW TASK FORCE

Kathryn Berge, QC (Chair)

The Retention of Women in Law Task Force will review issues relating to the retention of women lawyers in private practice, including the preparation of a business case to support their retention in private practice. The task force will report back to the Benchers by the first meeting of 2009. ❖

Voices on Youth Justice public forum: June 25

THE LAW SOCIETY is presenting a free public forum, *Voices on Youth Justice*, on Wednesday, June 25. Panellists include Mary Ellen Turpel-Lafond, BC's Representative for Children and Youth, Provincial Court Judge Nancy Phillips and retired youth corrections officer and author Gordon Cruse.

Turpel-Lafond will be speaking about some preliminary findings of her Office's upcoming youth justice report and her extensive experience with vulnerable youth as a Provincial Court Judge in Saskatchewan. Judge Phillips is the Administrative Judge at Robson Square Provincial Court where she hears a variety of cases, including family and criminal matters involving youth. She has worked on youth matters since 1988 — as Crown counsel, as a defence lawyer and currently as a judge. Cruse spent 26 years supervising young offenders in Victoria and listening to their unique stories. He is the author of *Juvie: Inside Canada's Youth Jails*.

Mark Forsythe, host of CBC Radio One's *BC Almanac* program, will be the moderator.

The forum is presented in partnership with CBC, the Society for Children and Youth of BC, First Call: BC Child and Youth Advocacy Coalition and the Federation of BC Youth in Care Networks.

This will be the fourth public forum hosted by the Law Society. The project began as an initiative of the Equity and Diversity Committee in 2006, which is now chaired by Thelma O'Grady. The forums are aimed at promoting the legal profession and the rule of law in the community at large. They offer an opportunity to engage the public in discussion and engender a wider understanding and appreciation of the legal profession's role in free democratic societies and the Law Society's role in protecting the public interest in the administration of justice.

For more information, contact Susanna Tam, Equity and Diversity Coordinator, at 604-443-5727 or stam@lsbc.org or contact Dana Bales, Communications Officer, at 604-443-5708 or dbales@lsbc.org. ❖



Voices on Youth Justice will take place at the Law Society building, 845 Cambie Street, in Vancouver, on June 25 from 6:00 — 8:00 pm. To guarantee your attendance at the free public forum email forum2008@lsbc.org by June 18, or call 604-669-2533.

Law Society program update

The Law Society operates more than 20 programs, grouped into six operational areas: Credentials and Education, Insurance, Policy and Legal Services, Professional Regulation, Executive Support and Corporate Services.

Throughout the year, department heads provide reports to the Benchers outlining program goals and key performance measures. In April, the Benchers heard from the Lawyers Insurance Fund. Below is a summary of the report.

Lawyers Insurance Fund

STABILITY REMAINS THE hallmark of the Law Society's Lawyers Insurance Fund (LIF), as staff claims counsel consistently draw on the breadth and depth of their practice experience and sound judgment to achieve excellent results, Director of Insurance Su Forbes, QC explained to the Benchers at their April meeting.

Forbes shared some highlights from 2007 with the Benchers. The number and frequency of reports is down slightly from 2006, although the number of insured members has risen by two per cent. More significantly, the past few years have seen an increase in the amount of successful "repair missions" achieved by the program, with the

highest rate demonstrated in 2007. Fully 17 per cent of all files closed last year were the result of successfully restoring the client to his or her original position. This yields a positive result for all concerned, as a claim is avoided at minimal cost to the profession.

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Another highlight from 2007 was LIF's publication of a comprehensive guide for lawyers called *Beat the Clock*, which is a proactive risk management tool. Forbes said, "we have the ability to measure the effectiveness

of this initiative and, in time, we expect it will result in fewer reports of missed deadlines."

Forbes guided the Benchers through data collected by LIF staff related to claims. "We analyze information by area of practice to provide advice to lawyers on how they can avoid claims in the *specific* areas in which they practice," she said. In relation to the causes of claims in Part A — professional liability insurance — Forbes told the Benchers that lawyers' "simple oversights, as a cause of claims, consistently tops the charts."

Lawyers who have reported claims often have advice for their colleagues on how to avoid getting into similar situations. LIF has been collecting that advice for two years and Forbes shared some of it with the Benchers: "We received a number of responses along



Lawyers Insurance Fund staff at a regular review meeting.

the lines of 'stick to your area of expertise.'" Forbes quoted another lawyer who said, "careful notes are key to covering where the client has *forgotten* why things have been done a certain way." Another common suggestion "is to confirm instructions — tell the client what you will do, and what you won't do, in an engagement letter."

Forbes explained to the Benchers that one of her overall goals was to enhance cost-effectiveness by increasing in-house defence.

Forbes reported to the Benchers that in 2007 Part B — trust protection coverage, which protects members of the public — saw seven claims paid on behalf of four different lawyers, totaling approximately \$39,000. Four claims were denied because the lawyer either did not misappropriate property or did not do so in his or her capacity as a lawyer, resulting in the claim falling outside the coverage offered by Part B.

Forbes shared with the Benchers some of the comments on evaluation forms from Part B claimants. One claimant said, "I really appreciated the fact that you guys dealt with this so I could get back what I gave. In the future I won't be afraid to get a lawyer. Your help was appreciated."

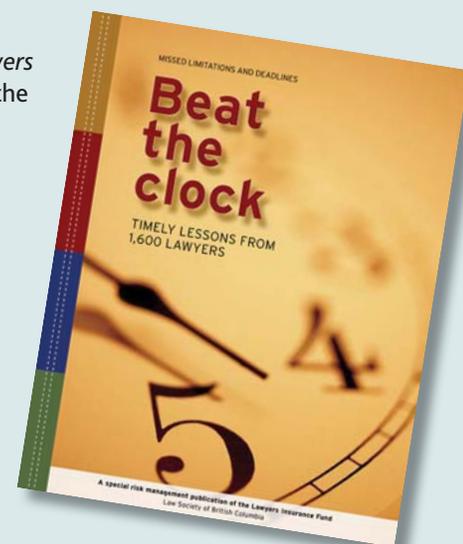
Forbes explained to the Benchers that one of her overall goals was to enhance cost-effectiveness by increasing in-house defence. "We are now defending 42 per cent of all suits in-house." She added that LIF has seen a 70 per cent increase in the amount of in-house defence in the Provincial Court, and that the growth in that area has emerged since the small claims jurisdiction increased to \$25,000 in 2005.

Forbes also told the Benchers that LIF claims counsel are often both creative and practical in resolving claims through negotiated settlements resulting in little or no cost to the insurance program, while also finding a satisfactory solution for the client. The bottom line of Forbes' presentation was that LIF continues to effectively manage claims in accordance with the program's mission, which is to protect the profession and the public from the risks associated with the practice of law by providing high quality professional liability and defalcation insurance. ❖

Beat the Clock: one year later

Beat the Clock – Timely Lessons from 1,600 Lawyers was sent to every insured lawyer in BC with the May 2007 issue of the *Benchers' Bulletin*.

The first such guide published in North America, it provides more than 70 risk management tips to help lawyers prevent missed deadlines, save lawyers and the Law Society's Lawyers Insurance Fund substantial costs over a multi-year period and promote better legal service to BC's public. The content provides both practical guidance and a high quality analysis of complex legal processes and procedures.



Positive early results

An online survey showed the guide has hit its mark, as it is being used by a broad spectrum of lawyers across different practice areas, including sole practitioners, small and large firm lawyers, as well as their articulated students and legal assistants. The survey yielded the following results:

- Nearly 90 per cent of lawyers surveyed indicated they have either made changes to how they practise or plan to in the future.
- Respondents ranked the guide an average 4.5 on a scale of one to five, with five at the high end.

Readers report benefits

Survey feedback included the following comments:

The booklet is so refreshingly useful that it is being granted a place amongst the important books that live behind my desk for easy access and which are referred to frequently.

I put Beat the Clock in my "looks useful" pile and within an hour got a call involving an appeal limitation period. I couldn't find the answer immediately in the statute I thought it was in, so opened the front cover of your publication, instantly found what I needed and was able to give prompt advice after checking it against the proper statute. Thanks for this useful publication!

I thought the publication was excellent, both in terms of the information contained and in the way in which it was laid out. It was user friendly. Now we just have to get everyone to read it!

Where to get it

The guide, along with the "Limitations and Deadlines Quick Reference List," can be downloaded from the Lawyers Insurance Fund area of the Law Society website in the Risk Management section.

A limited supply of additional hard copies are available by contacting Hazel Cords at HCords@lsbc.org or 604-443-5372.



The road from Bencher to Afghanistan

FORMER BENCHER Norine MacDonald, QC, grew up under the Canadian prairie's big skies in Yorkton, Saskatchewan. Her father was a farmer. Many of the people she knew spent long hours in the fields and made regular trips to church. Despite the distance in time and place from her hometown, MacDonald believes that, in many ways, her life in Afghanistan holds those same familiar pieces.

As the founder, President and lead field researcher in Afghanistan for the think tank the Senlis Council, MacDonald — reached on the phone in Paris, France — is based in Kandahar province in the southern part of the country. The Senlis Council, named for the French town in which it was founded,

examines global drug policy, world development issues and their relationship with international security. Much of MacDonald's work is with poppy farmers, who she said are "no different then the type of people I grew up with on the Canadian prairies — hard-working religious folk. It's just that it's a different religion."

After the early morning call to prayer, the Muslim farmers are in the field before dawn. MacDonald described a conversation with a man, who reminded her of her father. "I asked him how old he was when he started farming. He looked at me like, 'what did I just ask him?' and he said, 'whenever I could put one foot in front of the other.' The people there are very connected to seasons and nature."

When she left Saskatchewan in her teens and headed for BC, MacDonald never imagined she had embarked on a path that would eventually lead her to a war zone. The first steps she took were unconventional within her family setting. She was the first in her family to go to university. She went on to study law at UBC.

From there she practised at some of Vancouver's largest firms, eventually becoming a partner at Bull, Housser & Tupper, specializing in commercial litigation, charities and tax law. In 1992 she was elected as a Law Society Bencher. In 1998 she left the practice of law to begin the work that would eventually lead her to found the Senlis Council in 2002.



Looking back, MacDonald said the road that took her to Kandahar looks straight but “it wasn’t. It was a bit of a zigzag — two steps forward and one step back,” she said. “I didn’t have a specific goal in mind, such as I want to go and establish a think tank that looks at these issues.”

MacDonald credits her training at law school and time as a junior to some of BC’s best lawyers with preparing her for what lay ahead in Afghanistan. “I’m using the same skill set and the same training: marshalling facts, writing, advocacy, project management — everything you would do when you’re running a large piece of litigation, for example. I see the similarities every day.”

“I came from a tough prairie family, but when they’re bringing you up in the law firm it ain’t easy. It’s like, get in there

and do it and don’t you be whining and sniffing. So you get toughened up. I was junior to some really fantastic lawyers and you never broke a sweat in front of those people. And the other thing they taught you is if somebody’s pushing you around in the courtroom you push back. At the time I thought they were being a bit tough, but if that happens to me now, I think, ‘okay you’re picking on the wrong girl. You don’t know where I come from. I am a member of the British Columbia Bar and now you’re going to see what that means.’ So it’s still in me. And it’s very handy that it is. And I think that if I can say that Senlis Council has had any success, a large part of that is a credit to what I see as the top flight training I got as a lawyer in BC.”

Looking back, MacDonald said the road that took her to Kandahar looks straight but “it wasn’t. It was a bit of a zigzag — two steps forward and one step back.”

MacDonald’s work through Senlis Council has been featured in both Canadian and international media, such as CNN, BBC and Al Jazeera. She shared her insight with the Canadian government when she testified before the Standing Committee on Foreign Affairs and International Development and the Standing Committee on National Defence. She also appeared before the United Kingdom’s House of Commons’ Defence Committee. In February 2007 the Italian Red Cross awarded her the First Class Medal of Merit for outstanding contribution to international humanitarian cooperation.

One of the biggest assignments MacDonald is spearheading is the Poppy For Medicine Project. The Senlis Council believes the key to meeting the international community’s goal of stabilizing the country is resolving Afghanistan’s opium crisis. International counter-narcotics policies have led to attempts to eradicate Afghanistan’s poppy crops. Yet impoverished farmers rely on the income from those crops to feed their families. MacDonald has found a potential solution to the opium crisis that also manages to meet another global need. It centres on the fact that poppies can be used to produce morphine instead of heroin.

The International Narcotics Control Board points to a worldwide shortage of

opiates for medical use. Outside the six richest countries, much of the world is lacking sufficient pain medication for patients. “Ironically, Afghanistan is one of those countries without enough,” said MacDonald. Under the Senlis Council proposal, Afghans would continue to grow poppies, but would do so to produce morphine.

MacDonald has been doing research on the Poppy For Medicine Project and other Senlis initiatives for three years. During that time she’s been living in houses in Kandahar and neighbouring Helmand. She described where she lives as a walled piece of land with a house and garden inside — a normal Afghan house, “except that mine’s quite nice by Afghan standards.” Despite having a generator for electricity, it’s still cold in the winter. “We sleep in our parkas with our toques on, but we’re warm compared to how most Afghans live. And I have enough food,” she said.

“Afghans love their gardens,” explained MacDonald, “and I have a fantastic gardener, so I have a beautiful little garden with roses. We sit outside a lot and in Afghan society you sit on the floor on a carpet, so we have most of our meals like that. And we drink a lot of tea and talk. So it’s a very nice lifestyle, but for the fact that, of course, we’re living in a war zone.”

And, as one would expect, that war zone comes with many problems. MacDonald calls it “a difficult and deteriorating situation.” She knows people who have been injured in the fighting or killed. “It’s impossible to avoid there. It’s a part of the daily reality.” Nevertheless, MacDonald said she doesn’t feel fear living in Afghanistan.

MacDonald has been doing research on the Poppy For Medicine Project and other Senlis initiatives for three years.

“One thing I learned about myself is that I can work quite well in that environment. I actually sleep well at night. I don’t know where that came from, but I’m very content and happy, despite the circumstances. I’m making the best use of my talents, so I feel compelled to be there. I feel a real connection to those people, and we need to write reports and get information out about what’s going on there.”

continued on page 16

*The road from Bencher to Afghanistan...
from page 15*

MacDonald's experiences in Afghanistan have changed the way she sees her home country. "When I go home to Canada, I kind of have reverse culture shock. I observe things differently now. Some of the things I've seen in Afghanistan, coming from a very privileged Canadian background, were deeply shocking. I've held babies who are skeletons and seen grandmothers who are starving to death. I come home and we have 24/7 electricity and malls full of stuff nobody needs. It's a radicalizing experience to have part of my head in Vancouver and part of it in Kandahar."

MacDonald long ago said goodbye to the power suits she wore while practising law in Vancouver. Unlike many western women who choose to follow the dress of Muslim women while in Afghanistan and wear a burka, MacDonald has taken a different approach. "I ended up choosing to dress as a man." She wears a long baggy top and

baggy pants, and "as a nod" to the fact that women are supposed to cover their heads, she wears the same type of cap that Afghan men wear. The whole effect is "quite comfortable for the hot climate."

No matter which conflict zone she heads to next, MacDonald knows she will continue to do the same type of work she has been doing in Afghanistan.

As a western woman in Afghanistan, MacDonald is not blind to the risks. A foreign woman in Afghanistan she knows was recently kidnapped and is believed dead. As a westerner — female or male — you're a target for a Taliban kidnapping or attack, and importantly to MacDonald, "it's not just a question of my own security. The first thing that happens when you're kidnapped is your Afghan colleagues are killed. And so, it's one thing for me to say I'm going to take the risk to be there and continue to do the work, but

the risks for my Afghan colleagues who are with me are also very substantial."

And so MacDonald acknowledges that eventually she will have to move on. Senlis Afghanistan has approximately 50 people working for it, mostly Afghans. MacDonald has said that, once established, the goal was always that it would stand on its own as a voice for Afghans by Afghans. She will go on to establish other Senlis branches in other conflict zones. She recently travelled to Somalia to examine issues there.

No matter which conflict zone she heads to next, MacDonald knows she will continue to do the same type of work she has been doing in Afghanistan, and she encourages other lawyers to do more international work, because she believes their skill set is well suited to it.

"I think back to the long hours and how hard we worked in the law firms and now I'm a pretty tough person because of it all. It's effortless for me. Hard work? Bring it on. Tough situation? I feel like you should go back and meet some of my former partners if you think this is tough, Mr. Taliban Dude. You have not met my ex-partners. You have not been to a partners' meeting at a big Vancouver law firm if you think this conversation about this road block is a problem."

For MacDonald the rewards of the work she is doing continue to outweigh the personal sacrifices.

"The sacrifice is being away from friends and family. But I'm tiring myself out every day trying to sort this out and it feels great. It does not feel like a sacrifice. I feel so lucky. Everybody has inside of them their talents and their aspirations and they want to feel like they're doing something important and making a contribution. And I've got that. I didn't always have that when I was practising law," said MacDonald.

"I've had moments in Afghan villages in the middle of nowhere where the grandmas say their salaams to me and the kids are holding onto my clothes, and they accept me in their community," she said. "That is just a spectacular experience for me to be so privileged to be inside their lives in that way. So that's not a sacrifice. That's a real gift."

More information about Norine MacDonald and her work with the Senlis Council, including video links of footage in Afghanistan, can be found at www.senlisCouncil.net. ❖



Courthouse Library launches online video tutorials

THE BC COURTHOUSE Library Society has launched a series of online video tutorials to help lawyers and the public conduct legal research.

"These online tutorials are an innovative way to bring the expertise of our library staff to lawyers and the public," says Johanne Blenkin, Executive Director of the BC Courthouse Library Society. "A growing number of people prefer to do legal research from their offices or online, so we've found a way to bring the library to them. These videos will be an invaluable resource for lawyers living in smaller communities who don't have access to a courthouse library," said Blenkin.

"A picture is worth a thousand words, and these tutorials show rather than tell you how to do this kind of legal research. It's a better approach than a written guide, which tends to get quite long and complicated."

The videos provide step-by-step instruction on common but complex legal research tasks, such as researching and noting up legislation, and identifying legal precedents.

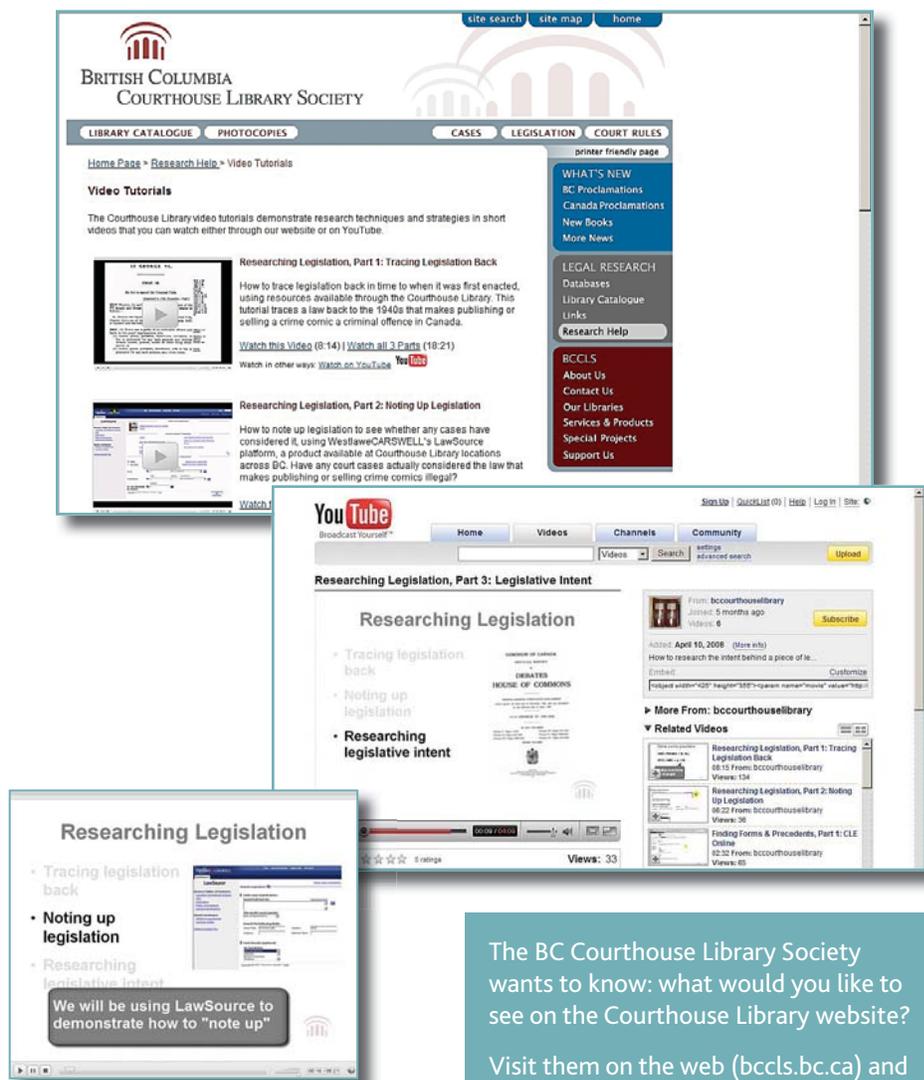
"A picture is worth a thousand words, and these tutorials show rather than tell you how to do this kind of legal research. It's a better approach than a written guide, which tends to get quite long and complicated. And the video format engages all types of learners with visual, audio and hands-on components," said Blenkin.

The BCCLS has integrated the video tutorials into its training program for BC librarians as part of the Law Matters project, aimed at providing legal information to public libraries throughout the province (see: "Courthouse library partners with public libraries," *Benchers' Bulletin* March 2007, p. 7).

"We've been getting great feedback from lawyers, librarians and members of the public who have accessed our videos. They say they're effective and presented a great opportunity for them to learn new research skills," said Blenkin.

While the society has only produced six videos so far, they are always looking

THE VIDEO TUTORIALS CAN BE ACCESSED ON THE COURTHOUSE LIBRARY WEBSITE (WWW.BCCLS.BC.CA) OR ON YOUTUBE.



for feedback, including suggestions for future videos.

The video tutorials can be accessed on the courthouse library website (bccls.bc.ca) or on YouTube.

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

The BC Courthouse Library Society wants to know: what would you like to see on the Courthouse Library website?

Visit them on the web (bccls.bc.ca) and fill out a short, 3-minute survey. Your input will help guide the redevelopment of the BCCLS website, to be launched next year.

This is your chance to have a voice in designing how you interact with the courthouse library. Do you want wikis? Blogs? Collaborative spaces? RSS feeds that deliver content tailored to developments in your area of practice? The possibilities are endless.

Survey participants can also enter a draw to win an iPod Touch. Contest closes June 13.

2008 Law Society Scholarship



Law Society President John Hunter, QC presents a cheque for \$12,000 to Abeer Hasan, winner of the 2008 Law Society of BC Scholarship.

A 2004 graduate of the University of Victoria's Faculty of Law, Abeer Hasan has practised civil and criminal litigation with the Vancouver firm of Guild Yule LLP since her admission to the Bar in 2005. Hasan plans to pursue an LL.M in international criminal law, building the foundation for an active career of practice and policy development in this new and important area of international law. Her interest was sparked mid-way through her LL.B program, when she interrupted her studies to work as an intern at the Office of the Prosecutor at the International Tribunal for Rwanda in Tanzania.

In her letter of reference, University of Victoria law professor Dr. Elizabeth Adjin Tetey noted the impact of that experience on Hasan: "She was certainly a changed person when she returned to Canada... She was particularly moved by the stories of the victims of atrocities in the genocide that occurred in Rwanda and she was committed to making a difference in any way that she could."

Benchers approve Unbundling of Legal Services Task Force report

THE BENCHERS HAVE approved a task force report containing 17 recommendations that will make it easier for lawyers to provide their clients with limited scope or "unbundled" legal services.

The recommendations address four main contexts for lawyer-client service: confidential drafting assistance; limited court appearance made as part of a limited scope retainer; legal information and advice provided as part of a limited scope retainer; and legal services provided at a court-annexed program or at a non-profit legal service program.

Created in March 2005 on the recommendation of the Access to Justice Committee, the Unbundling of Legal Services Task Force explored a wide range of solicitor-client and access to justice issues that arise when lawyers offer their clients the option of discrete, or limited scope, legal assistance instead of full legal representation on all aspects of a transaction, dispute or process.

The major public interest implication of unbundling or limiting the scope of legal services lies in the potential to increase access to justice for members of the public who otherwise might not be willing or able to obtain legal representation.

The task force's consultations and research confirmed early on that limited scope or unbundled legal services are a fact of life in BC. As Chair, Carol Hickman said in briefing the Benchers on the result of task force consultation with members of the Cariboo Bar in September 2006, "We are very aware that considerable unbundled legal work is already being done in BC, and done well. While it's important to examine how a more formalized approach to unbundling might contribute to greater access to justice in this province, it is also important not to disrupt what's already working well."

Consultation has been an ongoing and important element of the task force's work. In May 2005, a facilitated consultation was held in Vancouver including representatives of the legal profession, the judiciary, government and commu-

nity organizations. That session sought to determine which services BC lawyers currently unbundle, how and to whom those discrete services are offered, and which unbundled services are seen by community leaders as being most helpful to the public. Participants were also asked to identify risks, issues or challenges associated with unbundling, to consider whether there should be a broader unbundling of legal services and, if so, to suggest how that broader unbundling might look.

From its consultations and research the task force concluded that, while the demand for and provision of limited scope legal services have increased over the years, the rules that govern professional responsibility and the rules of court have not kept pace.

The task force report notes that "it is important that guidelines be established to help ensure limited scope legal services are enhancing, not hindering, access to justice."

The task force made recommendations regarding:

- general professional conduct
- confidential drafting assistance
- communications
 - general
 - with limited scope partners
 - with the courts and other parties
 - with the client
- conflicts of interest
- education and transition

The report notes that while "there may not be a miracle cure for the 'epidemic' of self-represented litigants," the task force believes that limited scope legal services can contribute to making legal representation more affordable, and can be "an important tool in enhancing meaningful access to justice."

The Ethics Committee is working on draft amendments to the Law Society Rules and *Professional Conduct Handbook* for presentation to the Benchers in the coming months.

For the full text of the Report of the Unbundling of Legal Services Task Force, go to Publications and Forms / Reports at lawsociety.bc.ca. ♦

New look and feel for LSS website

Legal Services Society
Legal aid can help

British Columbia, Canada

Home Legal aid Lawyers Community workers Media About us Print Resize text

Search
Advanced search

I'm looking for...

- A lawyer
- A legal aid office
- Legal advice
- Legal information
- Resources for lawyers
- Resources for community workers
- News releases
- Career opportunities

Welcome

We're the Legal Services Society (LSS), the organization that provides legal aid in BC. Legal aid includes representation by a lawyer, legal advice, and legal information. We give priority to people with low incomes, but many of our services are available to all British Columbians. [Find out more about us.](#)

Our mission is to provide innovative and collaborative legal aid services that enable people with low incomes to effectively address their issues within the justice system.

a word from
Mark Benton
executive director

replay audio

I am a...
Person who needs legal help

I want to...
Get a legal aid lawyer

francés español 中文 中文
Multilingual publications

Our websites
Our newsletters
Our publications

THE LEGAL SERVICES Society has redesigned its website to give it a new look and feel, and make it more user friendly. The improvements include enhanced navigation, multilingual support and additional content.

The redesign is the first step in a steady process of improvements in how the society uses its website to communicate with lawyers, clients and other stakeholders, as well as the general public.

The redesign is the first step in a steady process of improvements in how the society uses its website to communicate with lawyers, clients and other stakeholders, as well as the general public. The various improvements are designed to increase access to legal aid services in BC. As well, lawyers who take legal aid referrals will find it easier to navigate through the online information and services provided for them.

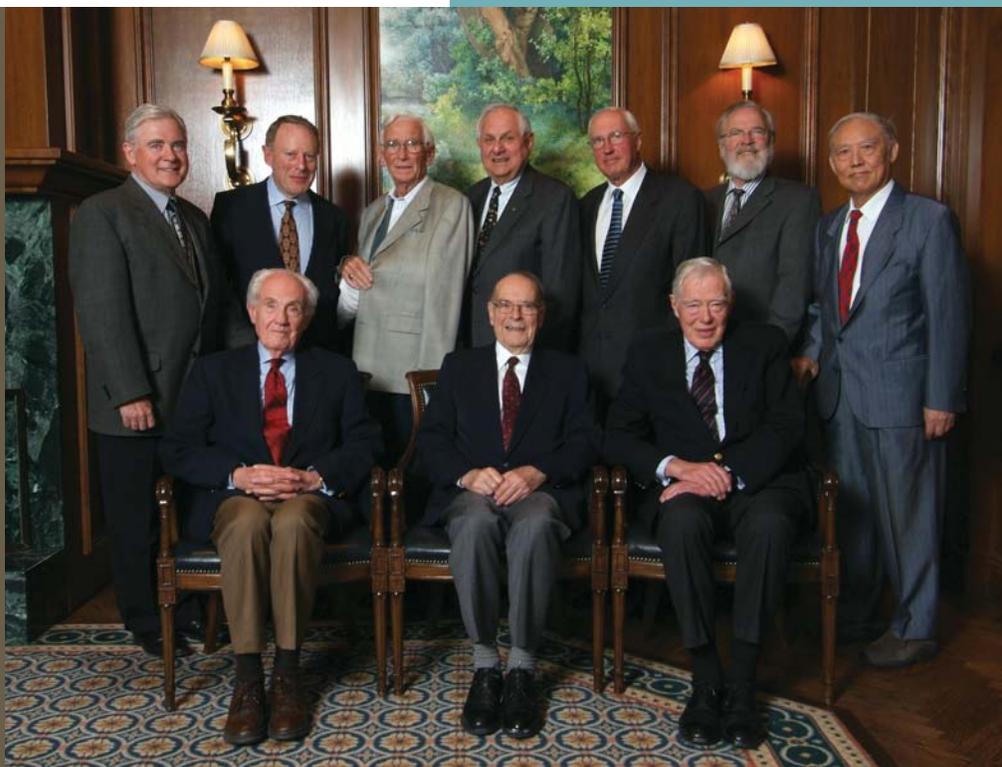
The site gets 1,000 visitors a day. ❖

Milestones in the profession

The Benchers hosted a luncheon in Vancouver on May 1 to honour lawyers who are celebrating milestone anniversaries in the profession.

A. Donovan Pool (*front row, centre*) received a certificate for 60 years since call to the Bar. Fifty-year certificates were presented to: (*front row, left and right*): William Arthur Esson and William F. Christensen; (*back row, left to right*): George P.B. Reilly, W. Richard Underhill, H. Bjorn Hareid, Jack Austin, PC, QC, J. Stuart Clyne, QC, Volmar Nordman and Harry E.S. Fan.

Also receiving 50-year certificates this year but not pictured: Gerald J. Lecovin, QC, Donald H.C. Paterson, Barry J. Promislow, Duncan W. Shaw, QC and Alan E. Vanderburgh, QC.



As part of the Law Society's on-going initiative to raise awareness about harassment and discrimination in the workplace, the *Benchers' Bulletin* is 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*.

Permissible social contact or sexual harassment?

by Patricia Janzen

IN 1993, THE BC Council of Human Rights applied the Supreme Court of Canada's definition of sexual harassment to a case that explored "the boundary between permissible social contact and sexual harassment." The case of *Dupuis v. Her Majesty in Right of the Province of British Columbia as Represented by the Ministry of Forests, Forest Sciences Division* (December 23, 1993) involved an employee and her supervisor who travelled alone together to a work site in the Queen Charlotte Islands. When they stopped for the night in Williams Lake, the supervisor rented only one motel room with two beds. During the evening in their room, the respondent kissed and caressed the complainant, but when he tried to remove more of her clothing, the complainant told him that she did not know him well enough to make love. The respondent stopped. They fell asleep on the same bed and during the night the respondent renewed his advances and they had what the adjudicator characterized as "voluntary" sexual intercourse. They had sex on several further occasions over the following week, including after they arrived in the Charlottes, but there was increasing friction between them and, by the time the respondent returned

to Vancouver, both knew that the relationship was over.

The adjudicator described both parties as honest witnesses who told very similar versions of the events. The complainant admitted that the sex was voluntary but insisted that it was unwelcome, not only at the time of the filing of her complaint but as events unfolded. The respondent described a serious and sincere interest in pursuing a relationship with the complainant (both were single) and he believed that his attraction to her was reciprocated. However, by the time he returned to Vancouver he knew the relationship was over because they were fighting all the time.

In deciding whether the conduct was unwelcome the adjudicator relied heavily on the imbalance of power between them.

The complainant was young, had moved from Ontario to BC to take the job only about two weeks before these events occurred, was isolated with the respondent in a series of remote locations and had a family background dominated by an authoritarian father. The respondent was her supervisor and somewhat older than her. He abused his authority when he rented only one hotel room for both of them in

Williams Lake and the next night in Prince Rupert. The job was related to the field of studies that the complainant wished to pursue in the fall in graduate school at UBC. The respondent was an adjunct professor at UBC in her area of interest.

The adjudicator concluded that the sexual conduct was unwelcome to the complainant and that a reasonable person in the position of the respondent would have realized that the complainant was uncomfortable with the sexual conduct. After the complainant asked him to stop, he should have proceeded with extreme caution. The adjudicator recognized that people differed in their ability to pick up the social cues of others but also surmised that a person could be "blinded by his purpose."

In summarizing earlier case law on the role that power plays in cases of sexual harassment, the adjudicator wrote: "the burden rests with the manager to be certain that any sexual conduct is welcomed by the employee and continues to be welcome."

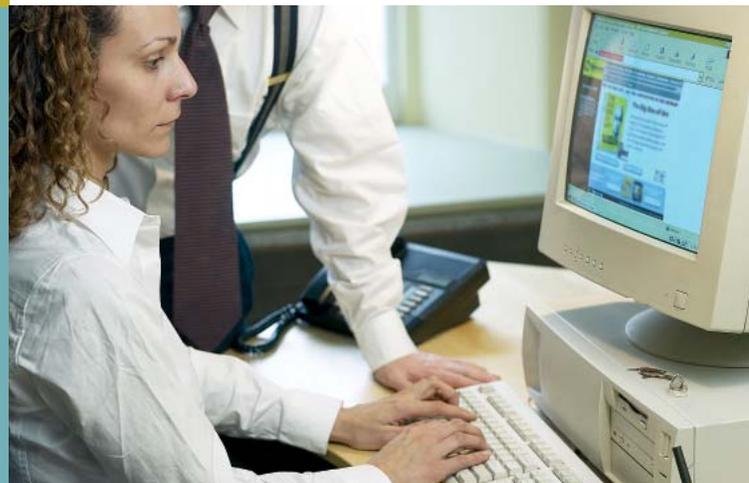
The employer was held vicariously liable for the conduct of the supervisor and the complainant was awarded damages from the employer for lost income and injury to dignity. ❖



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.



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

Cautions on cash and new scams



CASH UNDER THE mattress, or in a safety deposit box? Think twice about whether you can deposit it in your trust account.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased's possessions and who wants you to deposit it into your trust account, be careful. You may deposit into trust cash that in the aggregate amounts to less than \$7,500, but you may not deposit cash amounting to \$7,500 or more (Rule 3-51.1). Be mindful of the words "in the aggregate" in subrule (3). Here's how it works.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased's possessions and who wants you to deposit it into your trust account, be careful.

If your client finds \$2,000 in the deceased's safety deposit box, you may deposit that amount in your trust account, following accounting rules for deposit of cash. If your client finds \$5,500 in the cookie jar a few days later and wants you to deposit the \$5,500 into trust, don't do it. In the aggregate, you would have received \$7,500 in cash in a circumstance not permitted by the rule.

What can you advise the estate client who brings too much cash to your office?

Here are two options:

- You can suggest that the client open up an estate account and deposit the cash into that account.
- You can suggest that the client use the cash to get a bank draft payable to your firm in trust.

HANDLING CASH REFUNDS

Lawyers may only receive or accept an amount of \$7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-51.1. Where a lawyer has received a cash retainer in accordance with subrule (3.1), and the client is later entitled to a refund, there are rules governing when the refund must be made in cash rather than by cheque.

What happens if a lawyer receives an \$8,500 cash retainer (permitted) but when the lawyer issues the final invoice, \$3,000 is left in trust? How does the lawyer refund the \$3,000 to the client? Subrule (3.1) requires that any refund greater than \$1,000 out of the \$8,500 retainer must be made in cash. The lawyer must refund \$3,000 to the client in cash, not by trust cheque.

What if a lawyer receives a \$7,000 cash retainer but when the lawyer issues the final invoice, \$2,000 is remaining in trust? How does the lawyer return the \$2,000 to the client? Because the lawyer received less than \$7,500 from the client, subrule (3.1)

does not apply and the lawyer is permitted to return the \$2,000 to the client by way of a trust cheque.

Lawyers may only receive or accept an amount of \$7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-51.1.

What if the client provided a cash retainer in a foreign currency? Subrule (4) requires the lawyer to convert the foreign currency into Canadian dollars based on the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time. If no official conversion rate was published, the lawyer would use the conversion rate that the client would use in the normal course of business.

Breaches of the "no cash rule" are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.

Lawyers are being cited for breaches of Rule 3-51.1. Make certain that you and your firm understand the rule. Breaches of the "no cash rule" are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.

LIST OF VALUABLES FOR MONTHLY TRUST RECONCILIATION

If you have received "valuables" (defined in Rule 3-47) such as paintings, sculptures, gold, jewellery, securities, bonds (anything of value that can be negotiated or transferred) to hold for your client, be aware of the requirement to list the items received and delivered and any undelivered portion as part of your monthly trust reconciliation (Rule 3-65 (2)(e)). A sample *Valuable Property*

continued on page 22

Practice Watch... from page 21

Record is available on the Practice Support/Articles section of the Law Society's website. You can simply attach your list of valuables to your monthly trust reconciliation.

This may also be a good time to do some spring cleaning. Have a look inside your safe. Are you holding valuables that should be listed?

COUNTERFEIT BANK DRAFTS — YET ANOTHER TRUST ACCOUNT SCAM

Recently the Law Society issued a fraud alert relating to counterfeit certified cheques that set out the details of a scam that had arisen in Ontario. Other schemes have surfaced in which counterfeit bank drafts, rather than counterfeit certified cheques, are used as a means of accessing lawyers' trust funds.

How do you protect yourself? Know your client. When you open the new client file, keep in mind the client ID and verification rules that will soon come into force across Canada.

One ruse involves a new client, located outside of Canada, requesting your assistance to recover a debt from a Canadian company. You send a demand letter and receive a bank draft for the full amount from the alleged debtor payable to your firm in trust. The bank draft is drawn on a

Canadian bank and looks completely real. If you call the telephone number printed on the bank draft, the call is professionally answered and the bank draft is declared valid. In fact, it's not.

If you deposit the bank draft in your trust account and then pay out a handsome sum to your new client, minus your fees and disbursements, then you may be a victim.

Regardless of the pretext the rogue uses to lure you into relying on a forged document to pay out trust funds, there seem to be some common elements.

The client presents as a businessperson or someone trustworthy (one individual claimed to be a pastor) and may be

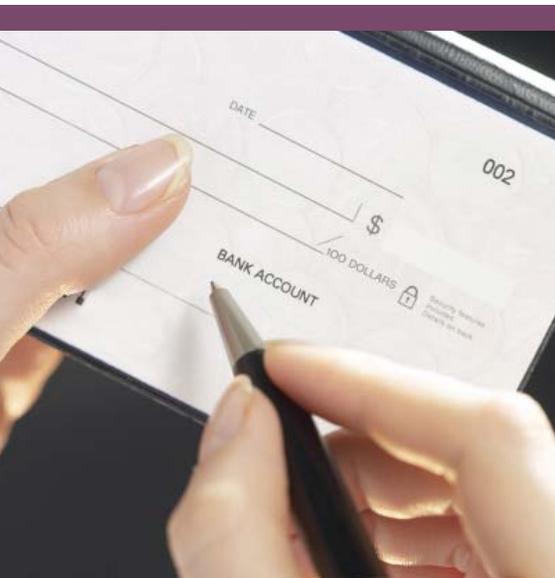
located outside of Canada. The services required are for a simple matter. The client wants to be paid quickly and may urge you to transfer the money electronically. (The amounts involved are usually much less than the \$25,000,000 required for an electronic transfer from trust (Rule 3-56(3.1) (a)). The cheque or bank draft required to pay your client, whether for an outstanding debt, as part of a purchase and sale or for some other reason, is provided quickly and easily.

How do you protect yourself? Know your client. When you open the new client file, keep in mind the client ID and verification rules that will soon come into force

Signing trust cheques

Law Society Rule 3-56(2)(c) provides that a lawyer who withdraws funds from a trust account by cheque must ensure that the cheque is signed by a practising lawyer. Notwithstanding this rule, the Professional Conduct Department has recently investigated several cases where lawyers have permitted non-lawyers to be the sole signatories of trust cheques, or where non-lawyers have signed trust cheques without the knowledge of the lawyer.

Lawyers are reminded to ensure that trust cheques are being handled in a proper manner. As well, lawyers should discuss this rule with representatives of the financial institutions handling their trust accounts to try to ensure that these institutions properly monitor the signatories on trust cheques so that improperly signed cheques are not processed. Failure to comply with Rule 3-56(2)(c) exposes lawyers to the risk of fraud, as well as to possible disciplinary consequences.



across Canada. If you are dealing with clients that you do not know well, relying on a phone number to verify the document may not expose the scam. Ask your bank to contact the issuing bank to verify the authenticity of the draft or cheque and to confirm that the funds have cleared. If you draw on your trust account without the bank draft or certified cheque being verified or cleared, your firm may be exposed to loss.

UNITED STATES SUBPOENA SCAM

Reports have been received of bogus United States District Court subpoenas being emailed to BC clients. If your client receives an electronic subpoena commanding him or her to appear to testify, please see the alert on the U.S. Courts website: www.uscourts.gov/index.html.

DIRECTION IN A WILL TO RETAIN A PARTICULAR SOLICITOR

Reports have been received that some solicitors are drafting wills in which they nominate themselves to do the estate work. The wills contain a direction that the personal representative must use the same solicitor or law firm to provide the legal services as who drafted the will. This is improper. The personal representative makes the decision whom to retain as counsel, and the direction in the will does not impose an obligation to use the

drafter (*Foster v. Elsley* (1881), 19 Ch. D. 518). If your client expressly asks you to insert such a clause without your prompting, you can explain that since the personal representative customarily chooses legal counsel, there may be little advantage to inserting the clause other than to make the client's wishes known.

PST NEWS

The Ministry of Small Business and Revenue has recently issued Bulletin SST 061 (revised April 8, 2008) regarding PST on legal services: www.sbr.gov.bc.ca/documents_library/bulletins/sst_061.pdf.

The Bulletin, aimed at lawyers and notaries, provides basic information regarding taxable legal services and non-taxable legal services. It mainly puts into plain language the content of two earlier versions (March 1992 and April 2008).

You can contact the Consumer Taxation Branch if you have questions at 604-660-4524 in Vancouver or toll-free at 1-877-388-4440, or email your questions to CTBTaxQuestions@gov.bc.ca.

FURTHER INFORMATION

Feel free to contact Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or further information regarding any items in *Practice Watch*. ❖

Amendments to the Legal Profession Act

ON APRIL 30 the Attorney General introduced a second *Miscellaneous Statutes Amendment Act* for this year, which includes two minor amendments adding new sections to the *Legal Profession Act*. These amendments are consequential to *Provincial Court Act* amendments establishing the position of "part-time judicial justice."

Many or all of the persons holding that office are also part-time lawyers and members of the Law Society. A new section 1.1 of the *Legal Profession Act* preserves the judicial independence of part-time judicial justice by stipulating that the

Act does not apply to them while sitting as judicial justices.

A new section 26.1 gives statutory force to the current protocol between the Law Society and the Provincial Court regarding exchange of information concerning investigations of complaints about lawyers who are also judicial justices.

These consequential amendments are expected to receive Royal Assent in the coming days. When passed, the provisions will be effective retroactive to April 1, 2008. ❖

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.

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

On profits and paradoxes...



♪ *Oh, I'm not afraid to face the light, I'm not afraid to think that I might fall
I was goin' nowhere fast, I was needin' something that would last...* ♪

—Words and music by K. Livgren, S. Walsh, recorded by Kansas

WHEN I MEET a lawyer, I am often told that theirs is a “general practice.” Implicit in that statement is the (unspoken) assumption that they must appear to offer a wide range of legal services in order to stay in business. There is a fear component implicit in there as well — that they might find their income falling if they were to portray themselves differently. Yet in the same breath they will be asking how they can improve their profitability as they seem to be going nowhere fast. The answer, paradoxically, is to let go of their assumptions and turn to face the light.

Lawyers typically have difficulty in embracing strategic planning. There are good reasons for this, not the least of which is that, in many cases, it has only resulted in wasted time and effort.

Lawyers typically have difficulty in embracing strategic planning. There are good

reasons for this, not the least of which is that, in many cases, it has only resulted in wasted time and effort. Other times they have moved directly to tactics without laying the proper groundwork first. But that does not take away from the proven successes of those who have done it right and who have reaped the results.

Ask yourself this question: What is your core business objective? If you have difficulty answering, then imagine how your marketing message appears to the public. The paradox here is that, by being clear on what you are not, you are coming closer to what you are. Consider if you will, a physician. When you have a problem, do you wish to see a generalist or a specialist? Now you may say that there isn't enough work where you live to support a specialist lawyer. The paradox here is that there are many examples of lawyers developing a tightly focused practice in smaller communities (and in larger ones) that attract clients from all around the province and elsewhere. The ingredient that is necessary

Ask yourself this question: What is your core business objective? If you have difficulty answering, then imagine how your marketing message appears to the public.

is vision combined with an astute appraisal of business opportunities and a marketing message that reaches out to your target clients. The internet is, of course, one of the major factors in being able to reach out to a wider client base than one limited by geography.

Planning means precluding options and embracing those that have the greatest potential for profit for you.

Planning means precluding options and embracing those that have the greatest potential for profit for you.

You have only so much time, energy and resources. If you spread those out in too many directions, you don't have any resources left to push in any particular direction, which leaves you going nowhere fast.

There are many factors to consider — demographics, economics, business trends, your skill set, staffing, training, technology and finances — to mention a few.

There are many factors to consider — demographics, economics, business trends, your skill set, staffing, training, technology and finances — to mention a few. Certainly start with small careful steps, but make those steps all line up towards a definite goal. Measure your results and embrace your successes. Mostly, realize that no one else is responsible for implementing your plan except yourself. And embrace a strategic direction that has the greatest potential to last. ❖



Provincial Court practice direction

THE PROVINCIAL COURT of BC has issued a Practice Direction for:

- Colwood — South Vancouver Island District
- Duncan — South Vancouver Island District
- Kelowna — Okanagan District

Regarding Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings. The directive has three objectives:

1. To authorize Judicial Case Managers by assignment to deal with virtually all administrative and remand matters (including arraignment and trial confirmation hearings).
2. To provide a simplified and efficient means of managing breach matters to secure a timely determination of the matter.
3. To provide a prompt hearing where there has been a failure, on the part of counsel or an accused, to comply with the Criminal Caseflow Management Rules that require senior judicial attention to address issues that lead to backlog in the justice system. ❖

Rule changes

AT THEIR APRIL meeting, the Benchers approved changes, as described below, to the following Law Society Rules.

RULE 4-13: RESCISSION OF CITATION

The Discipline Committee's authority to substitute another decision it is entitled to make under Rule 4-4(1) when it rescinds a citation has been clarified. The Rule now states:

4-13 (2) At any time before a panel makes a determination under Rule 4-35, the Discipline Committee may rescind a citation and substitute another decision under Rule 4-4(1).

RULE 4-35: PENALTY

Rule 4-35 was silent on orders, declarations and conditions under s. 38(7) of the *Legal Profession Act*, which involves discipline hearings. Accordingly, the Rule has been amended to include a reference to that section of the Act. The Rule now states:

- 4-35 (1)** Following a verdict under Rule 4-34 adverse to the respondent, the panel must
- (c) include in its decision under this Rule
 - (i) any order, declaration or imposition of conditions under section 38(7) of the Act, and
 - (ii) any order under Rule 5-9 on the costs of the hearing, including any order respecting time to pay,
 - (d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),

RULE 1: DEFINITIONS

The definition of "professional conduct record" has been clarified to make clear it includes orders and other actions taken against a respondent under s. 38(6) or (7) of the Act. The definition now states:

1 In these Rules, unless the context indicates otherwise:

"professional conduct record" includes the following information respecting a lawyer:

- (k) an action taken under section 38(5), (6) or (7) of the Act;

Lawyers and articled students will find amendment pages for their *Member's Manuals* included with this edition of the *Benchers Bulletin*. ❖

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Larry William Goddard
- Sheldon Goldberg
- Kathryn Jane Karst
- Donald Eric Linge

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

LARRY WILLIAM GODDARD

Abbotsford, BC

Called to the Bar: May 20, 1975 (ceased membership June 6, 2007)

Discipline hearings: September 17, 2007 (Facts and Verdict) and February 27, 2008 (Penalty)

Panel: Leon Getz, QC, Chair, Ralston S. Alexander, QC and Kenneth M. Walker

Reports issued: October 25, 2007 (2007 LSBC 46) and May 12, 2008 (2007 LSBC 14)

Counsel: Maureen S. Boyd for the Law Society and no-one on behalf of the respondent

On May 12, 2008, the hearing panel suspended Larry William Goddard for six months. A summary of the decision will be published in the next *Benchers' Bulletin*.

SHELDON GOLDBERG

Vancouver, BC

Called to the bar: January 3, 1973

Hearing dates: April 10, 11, 12, May 23, July 13, August 31 and September 12, 2006 (Facts and Verdict), May 18, 2007 (Penalty) and February 12, 2008 (Review)

Hearing panel: Glen Ridgway, QC, Chair, Leon Getz, QC and Gavin Hume, QC

Penalty: Majority decision: Leon Getz, QC and Gavin Hume, QC; Minority decision: Glen Ridgway, QC

Review panel: Gordon Turriff, QC, Chair, Kathryn Berge, QC, Robert Brun, QC, Peter Lloyd, David Mossop, QC, David Renwick, QC, Marguerite Shaw, QC

Reports issued: Facts and Verdict, January 10, 2007 (2007 LSBC 03); Penalty, September 7, 2007 (2007 LSBC 40); Review, May 8, 2008 (2008 LSBC 13)

Counsel: Herman Van Ommen, Judy Walker and Brian McKinley for the Law Society before the hearing panel, and Jean Whittow, QC, for the Law Society at the review; Sheldon Goldberg appearing on his own behalf

FACTS

Sheldon Goldberg represented four men on four separate criminal appeals that were heard together. The common ground of appeal was an allegation of inadequate representation at the trial by JB, the lawyer who had originally represented all four accused.

The Court of Appeal dismissed all four appeals and was highly critical of Goldberg's conduct and competence in its written reasons. It said Goldberg's affidavits were "unworthy of any lawyer" and that his factums and written submissions were "rambling," "repetitive," "disorganized" and "among the poorest examples presented to this court in recent memory."

The court also said Goldberg used his right of audience to make "seriously damaging, but completely unfounded" allegations of misconduct, including drug and alcohol abuse, against JB.

A Law Society hearing panel reviewed extensive materials concerning the allegations Goldberg made against JB and found no proper evidence to support the assertions. Further, it found Goldberg failed to demonstrate adequate knowledge of substantive law, practice and procedures needed to effectively represent his clients, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*. The panel concluded Goldberg did not competently carry out his duties as counsel.

VERDICT

The panel found Goldberg guilty of professional misconduct in making unfounded, but serious, allegations about the conduct of JB. They further concluded that he incompetently carried out the duties he undertook in the appeals.

PENALTY

A majority of the hearing panel ordered Goldberg:

1. be suspended from the practice of law for a period of 90 days, starting January 1, 2008;
2. submit any written material relating to an argument based on the ineffective assistance of counsel to a practice supervisor for review before filing; and
3. pay costs of the hearing.

The minority called for a suspension of 180 days, not 90 days. The minority agreed with all other aspects of the decision.

REVIEW

On February 12, 2008, the Benchers heard Goldberg's application for a review of the hearing panel's decision on verdict, penalty and costs.

In a letter to the Law Society dated October 16, 2007 Goldberg listed 11 points that he believed demonstrated errors made by the original panel. The Benchers found one of the points difficult to comprehend and invited Goldberg to argue and explain each of his points at the hearing, but he chose not to do so.

After considering all of the issues raised by Goldberg, the Benchers found no merit in any of them. In their decision, the Benchers reiterated that Goldberg exposed JB to severe criticism and allegations without proper foundation. Further, the Benchers stated that Goldberg had "incompetently tried to build his client's cases on allegations that he knew or should have known were unsubstantiated."

The Benchers noted that, while lawyers must be given latitude in determining what evidence is required for the proper prosecution or defence of their clients' cases, that latitude "is tempered by the responsibility to take care at all times." The Benchers said counsel must "understand ... what facts must be proved and how to prove them, having regard to the rules of evidence" and that "counsel have no right to lead just any evidence or say just anything in court."

The Benchers dismissed the review application with costs payable to the Law Society.

KATHRYN JAYNE KARST

Burnaby, BC

Called to the bar: August 1, 1986

Discipline hearing: March 27, 2008

Panel: James Vilvang, QC, Chair, Robert Brun, QC and William Jackson

Report issued: April 3, 2008 (2008 LSBC 11)

Counsel: Jaia Rai for the Law Society and Jean Whittow, QC for Kathryn Jayne Karst

FACTS

Kathryn Jayne Karst practised as a sole practitioner from the date of her call until January 1987, when she ceased to be a member of the Law Society for failure to renew her practice certificate. Karst resumed practice in June 1989 as an associate with the law firm of I & Company until January 1990, when she joined the law firm of C & Company as an associate. From March 1996 until the present, Karst has practised as a self-employed lawyer under the name of C & Company and with C as an associate.

In January 2005 the Law Society conducted a practice review of Karst's legal practice, as ordered by the Practice Standards Committee under Rule 3-13, finding periods of delay or inactivity in six of the seven files reviewed. The committee accepted the nine recommendations set out in the practice review report.

In a follow-up practice review conducted in June 2006, the Law Society found delay or inactivity in seven of the nine files reviewed, noted eight of the previous recommendations were "partially done" or "not done," and issued a revised set of 12 recommendations. A second follow-up practice review in November 2006 indicated that eight of the outstanding recommendations were "partially done" or "not done," and noted periods of inactivity in four files, including delays in proceeding on a criminal defence, attending to entry of a restraining order and securing a client's release from custody.

ADMISSION AND PENALTY

Karst admitted she failed to maintain adequate office and file management systems as alleged in the Law Society's citation, and admitted that in doing so, she incompetently carried out duties undertaken in her capacity as a member of the Law Society.

The panel accepted Karst's admission and proposed penalty under Rule 4-22, and ordered that she:

1. be reprimanded;
2. practise only as an employee of one or more lawyers to be approved by the Practice Standards Committee and under an employment supervision agreement in a form satisfactory to the Practice Standards Committee, until that committee relieves her of this condition; and
3. pay costs of \$2,000 by December 31, 2008.

DONALD ERIC LINGE

Victoria, BC

Called to the bar: July 13, 1977

Hearing dates: February 14, 2008

Panel: G. Glen Ridgway, QC, Chair, Robert Brun, QC and Thelma O'Grady

Reports issued: March 10, 2008 (2008 LSBC 07) and Corrigendum issued April 10, 2008 (2008 LSBC 12)

Counsel: Maureen Boyd for the Law Society and James Carfra, QC for Donald Eric Linge

FACTS

In approximately 2000, a vendor retained Donald Eric Linge to act in a real estate transaction involving lots with an easement registered against them. During the closing procedure, Linge accepted a trust cheque on May 9, 2000 on his undertaking to discharge the easement against two of the three lots.

On approximately May 17, 2000 Linge submitted an application to the Land Title Office to discharge the easement from the properties. About six days later the Land Title Office issued a notice declining to register the discharge. Sometime in between the application and the notice declining it, Linge released the funds from trust.

Linge explained in a letter to the Law Society dated June 28, 2007 that he had been undergoing a marriage breakdown and financial difficulties for some time in the 1990s and that by 2000 and 2001 his life was essentially in chaos. His marriage had broken down and relations with his wife were so disruptive that his then partners wrote her a letter insisting that she not come to the office. He was also undergoing serious financial problems. In addition, after returning from a vacation in September 2001, he was effectively dismissed from the partnership and locked out of the premises.

On October 29, 2002 the lawyer from firm Y, who had put Linge on the undertaking, wrote to Linge regarding the discharge of the easement and requested that Linge "attend to this matter without delay." Following the letter, Linge spoke to the lawyer on at least two occasions in 2002 and said he was taking steps to discharge the easement.

In January 2007 another lawyer at firm Y contacted Linge regarding the discharge. The following month she made a complaint to the Law Society regarding Linge's failure to comply with his undertaking made on May 9, 2000. In May 2007 the Discipline Committee directed Linge to undergo a Practice Review. In June 2007 Linge retained a lawyer, at his own expense, to ensure the easement is discharged.

ADMISSION AND PENALTY

While fully admitting his disbursement of funds without fulfilling his undertaking is professional misconduct, Linge told the panel that his failure to discharge the easement caused no hardship to any of the parties involved in the transaction. Linge further admitted that between late 2002 and February 2007 he took no significant steps to discharge the easement and fulfill the undertaking.

Under Rule 4-22, the panel accepted Linge's admissions and proposed penalty and ordered that he pay:

1. a fine of \$3,000; and
2. costs in the amount of \$2,000 with both being payable at \$1,000 per month, beginning April 1, 2008. ♦

ELECTED BENCHERS

President

John J.L. Hunter, QC*

First Vice-President

Gordon Turriff, QC*

Second Vice-President

G. Glen Ridgway, QC*

Rita C. Andreone
Kathryn A. Berge, QC
Joost Blom, QC
Robert C. Brun, QC
Leon Getz, QC
Carol W. Hickman
Gavin H.G. Hume, QC*
William F.M. Jackson
Terence E. La Liberté, QC
Bruce A. LeRose, QC*
Jan Lindsay
David W. Mossop, QC
Thelma O'Grady
Robert D. Punnett
David M. Renwick, QC
Marguerite (Meg) E. Shaw, QC
Richard N. Stewart, QC
Ronald S. Tindale
Arthur E. Vertlieb, QC*
James D. Vilvang, QC
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