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BENCHERS' BULLETIN

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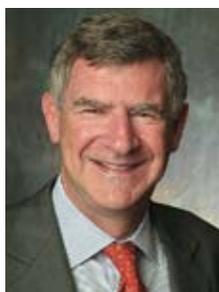
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Continuing professional development and new client identification

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 communications@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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THIS WILL BE my last column in the *Benchers' Bulletin* before my term as President ends on December 31. It has been an honour to serve as President of our Law Society. My year has confirmed my belief, after more than 30 years of practice and seven years as a Bencher, that our profession remains strong, independent, ethical and collegial. We can be proud of what we have accomplished in service to the citizens of British Columbia, but of course we can always do better.

The Law Society has two new initiatives that I want to discuss briefly with you. While superficially unrelated, they both originate in our effort to maintain the independence of the Bar by ensuring that we meet the highest standards of professional conduct and self-regulation.

The first initiative is Continuing Professional Development. Yes, it has now arrived. As of New Year's Day, it will be mandatory for the first time for lawyers to spend tangible time on professional development after they've been called to the Bar. This is long overdue. The object of the program is to get lawyers thinking about what they could do to keep up and improve professionally and to carry those thoughts into action. The program should also serve the secondary purpose of demonstrating to the public that we are making continuous efforts to improve the quality of the service we provide.

The CPD requirement can be met in many ways. It should not be onerous, but it will prove to be onerous if everyone waits until the last minute to think about what they could do to move forward professionally. I urge you to develop a plan for achieving this modest requirement before you start getting reminders to do so from the Law Society.

The second initiative, which begins December 31, 2008, is the new client identification and verification requirement. These rules require lawyers to take reasonable steps to establish the identity of their clients and, where financial transactions are involved, to verify their clients' identity. This requirement has happened relatively quickly and I would urge those of you who manage your firms to take steps now to adjust your file opening procedures to address these identification and verification requirements. We are adopting these rules in conjunction with the other provincial law societies to minimize the possibility that lawyers will unwittingly participate in the criminal activities of their clients, and also to demonstrate to the federal government that we are able to regulate this increasingly important area ourselves—thereby avoiding unwanted governmental oversight.

An issue that remains outstanding as this year comes to a close is the continuing effort to improve access to the courts for the citizens of British Columbia.

In my view, these initiatives relate to our independence because both meet a best practices standard for self-regulation. They should contribute to the protection of the public, which is the touchstone of our independence.

An issue that remains outstanding as this year comes to a close is the continuing effort to improve access to the courts for the citizens of British Columbia. As you are all aware, the Civil Justice Reform Task Force, established at the initiative of the Law Society, has proposed a draft set

of civil rules of practice that would significantly change the way civil disputes are litigated in this province. The Benchers have consistently taken the view that changes must be made to our civil justice system to improve access to it. Members of our community must be able to access the courts in an efficient and cost-effective manner if we are to meet the critical goal of a society governed by the rule of law. My own view is that the question to be addressed is how we can most effectively provide a system of civil justice that allows members of our community to resolve their disputes on the merits before an independent judiciary with the assistance of an independent Bar. The issue appears to be how we can reduce system costs without sacrificing the court's ability to adjudicate fairly on the basis of legal principle.

Whether the proposed rules achieve this objective is less clear. Many of our members do not think so. Others are prepared to give them a try. The Benchers are committed to working with all stakeholders to improve access. If the proposed rules

can be improved, we all owe a duty to our profession and to the public we serve to try to make that happen.

Finally, may I say a few words about the last, major duty of my term—to host the annual Bench & Bar dinner in Vancouver on November 19. This was a wonderful evening. The turnout of both Bench and Bar was very high, no doubt influenced by the popularity of and respect for the two members of our Bar who were honoured that night. I had the great pleasure of presenting John McAlpine with the Law Society Award for 2008. The Law Society Award was established to honour the lifetime contribution of the truly exceptional in our profession, measured by the criteria of integrity, professional achievements, service and reform. John was the 11th member of our profession to be thus honoured since the award was established more than 20 years ago. He is a very worthy recipient. I then had the pleasure of watching my former partner Marvin Storrow receive the Canadian Bar Association's prestigious Georges A.

Goyer Memorial Award for Distinguished Service to our profession.

Both gave powerful speeches in accepting their awards but I would like to close my column by referring to John's speech, which was a call to arms for the profession to assist those who need our services but are unable to pay for them. Urging better funded legal aid, supplemented by pro bono work, John challenged us all to do a better job in helping those who need our help. This challenge is in the highest tradition of our Bar. It is even more pressing now, as the impact of the economic downturn will make it even more difficult for the members of our community to obtain the legal services they need. John has thrown down the gauntlet to us all to do a better job to live up to the ideals which his career exemplified. I am confident we will not let him down.

My successor, Gordon Turriff, QC, is waiting in the wings. I know he will do an excellent job on your behalf. Thank you once again for allowing me to represent you in this great profession of ours. ❖



Brian Denmeley Photography



Public access to current legislation online

by Timothy E. McGee

A PARTNERSHIP between the Law Society, the Ministry of Attorney General, the Law Foundation and the Queen's Printer has resulted in an agreement that ensures lawyers and all Canadians have free online access to the current statutes and regulations of BC.

Effective January 1, 2009 this information will be available on a new website managed by the Queen's Printer (bclaws.ca) and also through the CanLII website.

For several years now, the Law Society has been encouraging the government to take the step that other provinces have

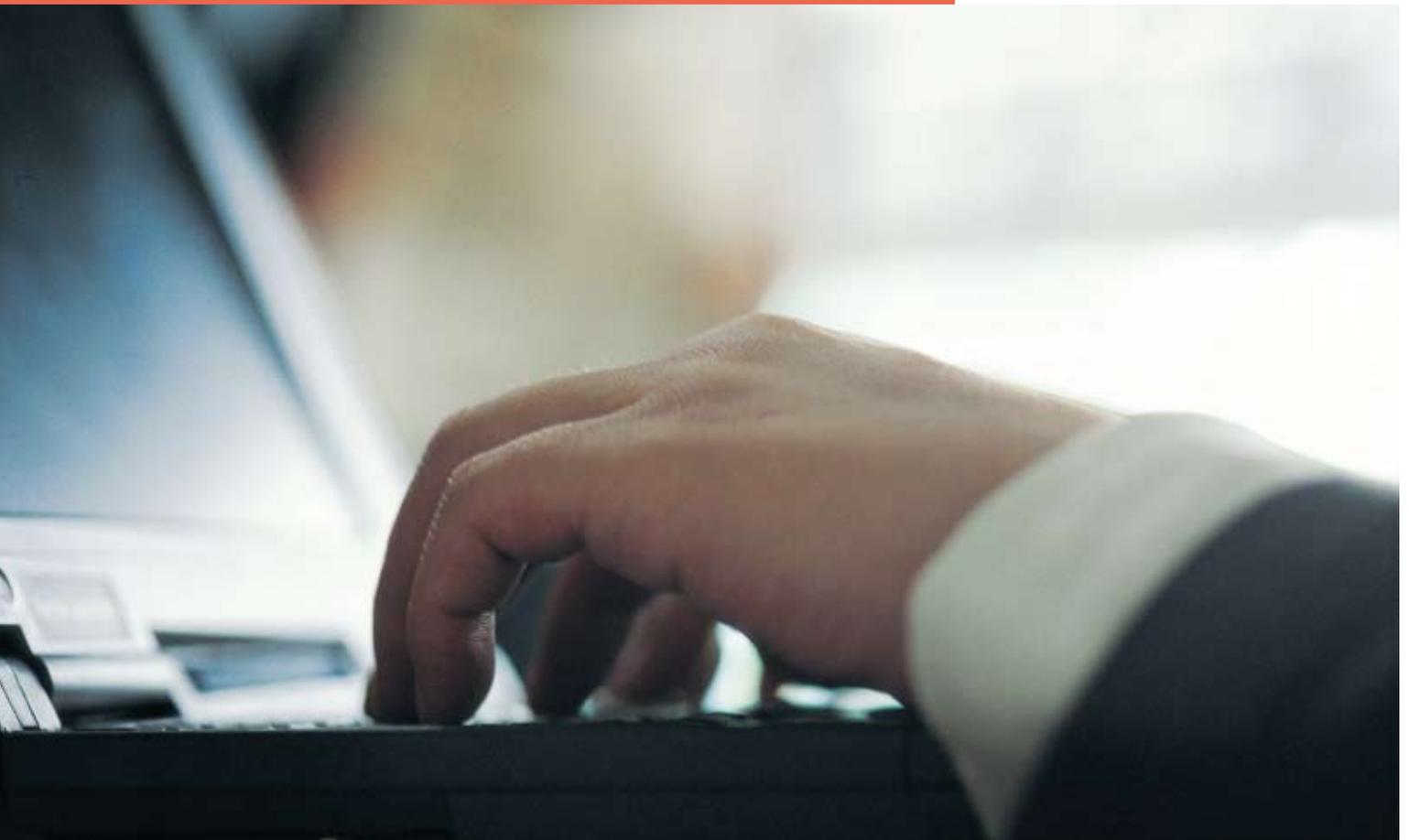
already taken, and make current versions of legislation freely available on the internet. While the Queen's Printer has been providing electronic access to current statutes and regulations, access has required a subscription to QPLegalEze. Significantly, under the new agreement, BC will be helping to ensure the public has access to legal information.

The inclusion of the current statutes and regulations of BC on the CanLII website will enhance the CanLII service and, when combined with the CanLII search engine, they will provide an important new

legal information tool for lawyers and the public alike.

The mandate of the Law Society is to protect the public interest in the administration of justice. Ensuring free and easy access to the law is a critical part of this mandate. The Law Society is pleased to have been part of the team that worked in partnership to make this agreement a reality.

The challenges we face in ensuring better access to legal services in BC are many. This new development is an important step to meet those challenges. ♦



New Bencher elected for Vancouver



HERMAN VAN OMMEN was elected the new Bencher for Vancouver County for 2009. He will replace John Hunter, QC, who completes his term as President and becomes a Life Bencher at year end.

Van Ommen has practised commercial litigation for 23 years and acted in a variety of corporate, commercial and construction disputes. He attended McGill University for his undergraduate work and received his LL.B in 1984 from the University of Victoria. Van Ommen was called to the Bar in 1985 after articling with Shrum, Liddle & Heberton. He then practised in Salmon Arm with

Brook, McManus and Jackson for a year before returning to Shrum, Liddle & Heberton in 1986. He was made a partner with McCarthy Tétrault LLP in 1991 and practises in the litigation group in the Vancouver office.

Over the past 10 years, Van Ommen has served as counsel for the Law Society in discipline and credential hearings and appeals. He recently taught a CLE seminar on summary trials, volunteered as a guest instructor at PLTC, and served on the executive of the Vancouver Bar Association from 1995-1996.

Outside of practicing law, Van Ommen has been a director of the Delta Gymnastics Society and Chair of its Expansion Committee, served as general manager of his son's all-star baseball team and as the tournament director of the 2007 Western Canada PeeWee AAA Championship. For several years he has also been involved with Operation Rednose.

In his election statement, Van Ommen said, "I am motivated to be a candidate for Bencher because I firmly believe that the decisions of the Benchers are a key part of effective regulation of the profession in the public interest. It is only with effective governance that we can ensure that lawyers will continue to enjoy the privilege of being a self-regulating profession." ❖

The value of being a Bencher

Are you considering standing for election as a Bencher in 2009? There are many reasons to contribute to the governance of the legal profession during your career. We asked some Benchers to reflect on what they personally value most about being a Bencher:

"I think that being a Bencher has made me a better lawyer. I have exposure to other areas of practice and see the challenges faced by practitioners throughout the province. It is educational, informative and humbling."

"It's an honor and a privilege to be asked by your peers to serve in the governance of the profession we all admire and have made our life's work."

"Being a Bencher makes you a better lawyer in the sense that you are definitely more alive to your professional responsibilities. It is a wonderful opportunity to learn, as well as meet a whole host of new colleagues and friends for life."

"It's so rewarding because it's a chance to work with a team of dedicated people — Benchers and Law Society staff — on issues of real importance to the public and to the legal profession."

The Law Society expresses its appreciation to the following five candidates for their participation in this important element of governance of the legal profession. For a breakdown of the by-election results, see About the Law Society/Benchers at lawsociety.bc.ca.



Michael Bradshaw
Called to the Bar:
1979 (AB) 1984 (BC)
Legal Services Society



Valli Chettiar
Called to the Bar: 1993
Valli Chettiar Law
Corporation, Vancouver



Christine Elliott
Called to the Bar: 1984
Christine Elliott, Barrister
& Solicitor



Walter Kosteckyj
Called to the Bar: 1984
Thompson & Elliott,
Vancouver



David Wende
Called to the Bar: 1980
Alexander Holburn Beaudin
Lang LLP, Vancouver

Benchers adopt client identification and verification rules

ON NOVEMBER 14, the Benchers adopted new client identification and verification Rules (Rules 3-91 to 3-102) based on the Federation of Law Societies of Canada's Model Rule. At the next meeting on December 12, the Benchers amended Rules 3-91 to 3-95 and Rule 97, based on revisions to the Model Rule. Law Society Rules 3-91 to 3-102 (including the December amendments), will take effect December 31, 2008.

The Law Society of BC Rules, which were developed by the Act and Rules Subcommittee of the Executive Committee of the Benchers are consistent with the Federation Model Rule. The Rules are designed to codify the steps prudent lawyers take in the normal course to identify their clients.

After circulating draft Rules to Law Society members in July, the Act and Rules Subcommittee recommended several changes, which were adopted by the Benchers in November and December, including:

- Duty counsel for non-profits and lawyers providing pro bono summary advice are excluded from the Rules, provided that the circumstances do not involve a "financial transaction" (a defined term);
- In-house counsel are not subject to the

Rules when acting in the course of their employment;

- If a lawyer has completed the identification and verification requirements and refers the client to another lawyer, further client identification and verification will not be required by the second lawyer;
- The responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction;
- The principle of reasonable efforts has been extended to client identification as well as verification;
- The exemption from verification requirements when a lawyer "pays money to another lawyer in trust, on the direction of the client" was deleted.
- An exemption for electronic funds transfers will apply, provided the transfer is conducted at both ends by institutions in Canada or other Financial Action Task Force countries and neither the sender nor the beneficial receiver of the funds handle or transfer the funds;
- The defined term "reporting issuer" has replaced the term and definition of "public company";

- Verification requirements will not apply if the client is a "financial institution", "public authority" or "reporting issuer".

Members are asked to read the Rules carefully, paying close attention to the definitions — terms such as "client," "financial transaction", "interjurisdictional lawyer" and "reporting issuer" may not be consistent with common usage.

The text of the Rules as adopted by the Benchers in November and amended in December is available for viewing on the Law Society website (lawsociety.bc.ca). Copies of the Rules adopted in November are included in the Member's Manual amendment package as part of this mailing. The December amendments will be circulated at the earliest opportunity.

To help lawyers and law firms better understand and follow the Rules, resources are available on the Law Society website:

- frequently-asked questions;
- a new client identification practice checklist;
- a free online course.

For further information about the new Rules or the online course, contact Barbara Buchanan, Practice Advisor at 604-697-5816 or bbuchanan@lsbc.org. ❖

Client identification vs. verification

Identification and *verification* are two distinct concepts. The client *identification* requirements apply when a lawyer is retained by a client to provide legal services. These requirements call for obtaining basic identification information about individual clients or organizational clients in every retainer, subject to certain exceptions.

The identity *verification* requirements are triggered when a lawyer receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. A number of exceptions are included. For example, the verification requirements do not apply when a lawyer pays money to or receives money from a "financial institution," "public authority," or "reporting issuer" (all defined in Rule 3-91), or receives money from the trust account of another lawyer.

View the free online course

The Law Society partnered with the Continuing Legal Education Society of British Columbia to deliver a free on-line course on December 11, 2008 to help lawyers better understand the client identification and verification rules.

The course was interactive and featured videos and examples about implementing the rules in a lawyer's practice. Lawyers can now view this course at any time via the Law Society website at lawsociety.bc.ca.

Chief Justice of Canada to speak at Law Society public forum

THE HONOURABLE BEVERLEY MCLACHLIN, Chief Justice of the Supreme Court of Canada, will be the keynote speaker at the Law Society's public forum, *Clearing the Path to Justice*, on January 28, 2009.

The free forum, presented in partnership with CBC, the Legal Services Society, Access Justice and SUCCESS, will focus on issues surrounding access to justice, which the Benchers have stated is one of their key priorities.

"Access to legal services is becoming more and more difficult for many individuals in our communities," said John Hunter, QC, President of the Law Society. "The increasing number of self-represented litigants and growing reliance on self-help guides is well known to us all."

Moderated by CBC Radio's Mark Forsythe, host of *BC Almanac*, the forum will explore some of the barriers to accessing justice and potential creative solutions to break down those barriers.

Gordon Turriff, QC, the incoming President for 2009 said, "we are honoured to be able to bring the Chief Justice to speak to British Columbians about this important issue."

Turriff added that, "The forum will certainly be of interest to all people in the community. It will be an important part of the Law Society's public education program during the year of its 125th anniversary."

Other distinguished panelists, who will bring to the forum their unique perspectives on access to justice, are: Grand Chief Edward John of the First Nations Summit of BC; Lyall Knott, QC, of SUCCESS, which runs legal clinics for Korean and Mandarin speakers in conjunction with Access Justice; and Sue Talia, a private family law judge in California who is an expert on unbundling—an approach to making legal services more affordable and hence more accessible for the average person. She will be speaking to the impact of unbundling on access to justice issues in California and its affect on the number of litigants who go to court without a lawyer. All of this will be put in the context of the expansion of unbundling here in BC.

Immediately following the presentations there will be an opportunity for audience members to ask questions of Chief Justice McLachlin and the other panelists.

The public forum project began in 2006; this will be the Law Society's fifth forum.

The original purpose in spearheading the project was to promote the rule of law among the community at large. The forums 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 interests in the administration of justice. ❖

When:

6:00 - 8:30 pm, January 28, 2009
Registration, 5:30 pm

Location:

Morris J. Wosk Centre for Dialogue, SFU
580 West Hastings Street, Vancouver

To register:

Email forum2009@lsbc.org or
call 604-697-5849

Law Society celebrates 125th anniversary

IN 2009, the Law Society of BC is celebrating its 125th anniversary. To mark the occasion of our 125th year, incoming President Gordon Turriff, QC is planning a speaking tour of the province.

Turriff will speak to service clubs, community groups, schools and members of the public about the history of the Law Society, the importance of the rule of law and the independence of the legal profession. Between February and September 2009, Turriff will be visiting communities such as Nanaimo, Victoria, Kamloops, Kelowna, Vancouver, Dawson Creek, Prince Rupert and Trail. ❖

We welcome your ideas, suggestions and feedback for possible topics to highlight as part of the Law Society's 125th anniversary activities. Please submit your comments via email 125@lsbc.org or leave a detailed message in our 125th anniversary voicemail box, 604-697-5803.



Online program tracks continuing professional development

THE ONLINE PROGRAM to track lawyers' continuing professional development is now available on the Law Society's website. Beginning January 1, 2009, members will be able to easily record and report their professional development online and receive individual progress reports periodically throughout the year.

This online resource provides lawyers with access to a listing of approved courses and educational activities. In addition to conventional, classroom-based courses, many non-traditional educational programs have also been approved. Law firms' in-house training programs as well as the Law Society's Small Firm Practice Course and the online Practice Refresher Course have recently been added to the list.

Effective January 1, 2009, all practising lawyers will be required to complete no fewer than 12 hours a year of continuing professional development in approved educational activities.

The Law Society will continually expand the courses offered. Lawyers and course-providers are invited to submit requests for approval of courses and educational activities not already listed for CPD.

Effective January 1, 2009, all practising lawyers will be required to complete no fewer than 12 hours a year of continuing professional development in approved



educational activities. Not less than two of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, and practice management.

Frequently asked questions about the Continuing Professional Development program are available at lawsociety.bc.ca. For additional information, please contact the Member Services Department at member-info@lsbc.org.

CTV wins award for legal journalism

THE LAW SOCIETY congratulates CTV British Columbia, winner of the 2008 Jack Webster Award for Excellence in Legal Journalism.

The award, sponsored by the Law Society, is presented to a journalist or a team of journalists for a story about legal issues, the administration of justice or the legal profession. CTV BC was honoured for their team coverage of the verdict in Robert (William) Pickton's trial.

Other finalists include Kim Bolan of the *Vancouver Sun* for her story on serious flaws in terrorist financing laws and Peter McKnight of the *Vancouver Sun* for a series of columns on legal issues.

The Law Society has sponsored the Jack Webster Award for Excellence in Legal Journalism since 2000. Jack Webster, a renowned BC journalist, along with UBC professor Dr. Anne Autor, became the Law Society's first Lay Benchers in 1988.

Founded in 1986, the Jack Webster Foundation carries on Webster's legacy by promoting and recognizing the achievements of BC reporters with the Jack Webster Awards.



First Vice-President Gordon Turriff, QC (third from right) with the winners of the Law Society Award for Excellence in Legal Journalism. From left: CTV BC's Jina You, Kate Corcoran, St. John Alexander, Dag Sharman and Lisa Rossington. Not pictured: Janet Dirks.

Dave Thomson Photography & Design



Bench & Bar Dinner 2008

ONE OF THE HIGHLIGHTS of the Bench & Bar Dinner on November 19th was John McAlpine, QC's compelling acceptance speech as the recipient of the prestigious Law Society Award. His talk was a call to action on the issue of legal aid and pro bono.

"To prepare this speech," said McAlpine, "I have interviewed some of the men and women in the trenches. My message is to the leaders of our profession. I speak to you simply as one voice within our community of lawyers."

McAlpine has been a supporter and advocate for legal aid and pro bono work throughout his career. He shared the story of his first legal aid experience — a murder case — when he was an associate lawyer at age 29. Many more legal aid cases would cross his desk, however, the most memorable was a criminal case for an accused, Mingma Sherpa.

Despite the Crown's evidence, McAlpine and other counsel practising at their bou-

tique litigation firm believed Sherpa was innocent. After throwing himself "and what seemed like half the firm" into the case, the trial judge rendered a verdict of acquittal. Before Sherpa returned to Nepal, he presented McAlpine with a ceremonial shawl and a Sherpa blessing to express his gratitude.

"I do not remember either of these two cases I've mentioned, or others, that drew a feeling of being noble or of making a large sacrifice," said McAlpine. "The Sherpa case was the greatest case I ever took as counsel. The expenditure of financial and human resources was not constrained by the fact that this was a pro bono case. There was no other acceptable result but this man's acquittal. The case was conducted on that basis.

"The task of the leadership of our profession does not rest solely on the discharge of our ethical responsibilities. In practical terms, it also rests upon changing the public's perception of the legal profession. Stepping up to the plate and meeting the gap goes to the visible strength and

viability of our profession. Because the issues of legal aid and pro bono are, and must remain, current and demanding, pro bono and legal aid should move up to the top of the agenda. Why? Because I believe the profession itself is on trial.

I believe the conduct of the profession practising pro bono and helping to meet the needs I speak of, will be a strong moral force, and will be recognized as such by the public.

"I believe the conduct of the profession practising pro bono and helping to meet the needs I speak of, will be a strong moral force, and will be recognized as such by the public. The ethical obligation is upon each lawyer in their firm. It is for her or him to decide. To have force, the Bar's approach must come from the top — the Bar's leaders. The approach has to be direct. And given the lives of those affected, it should be immediate." ❖



Above: John McAlpine, QC (right) receives the Law Society Award from President John Hunter, QC. Right: candid moments during the evening. More photos are available on the Law Society's website.



Life Benchers Dinner



THE LAW SOCIETY held its annual Life Benchers Dinner on November 14, 2008. A Life Bencher is a person who has served as a Bencher for four terms or who is a former President of the Law Society.

This year saw the induction of three new Life Benchers — Anna Fung, QC (1998-2007), Ian Donaldson, QC (2000-2007) and June Preston, MSW (2001-2008).

Life Bencher Darrell T.B. Braidwood, QC, who passed away earlier this year, was also recognized. Darrell served as a Bencher of the Law Society from 1965-1975 and Treasurer in 1973-74. ❖



Photo by Lee Halliday Photography.



Life Benchers of the Law Society, with the dates of their service as Benchers:

Arthur M. Harper, QC (1959-1969)	Richard C.C. Peck, QC (1988-1997)
Hon. Charles C. Locke, QC (1961-1973)	Leonard T. Doust, QC (1990-1997)
Hon. A. Brian B. Carrothers, QC (1963-1973)	William M. Trotter, QC (1990-1997)
Hon. Kenneth E. Meredith (1964-1973)	Trudi L. Brown, QC (1992-1998)
Hon. Peter J. Millward, QC (1965-1975)	Warren T. Wilson, QC (1991-1999)
Hon. Hugh P. Legg, QC (1969-1976)	Hon. Ujjal Dosanjh, QC (1995-2000)
Hon. Mary F. Southin, QC (1971-1980)	Karl F. Warner, QC (1994-2000)
Norman Severide, QC (1975-1981)	Richard S. Margetts, QC (1995-2001)
H. Allan Hope, QC (1974-1982)	Gerald J. Lecovin, QC (1994-2001)
Brian W.F. McLoughlin, QC (1974-1984)	Emily M. Reid, QC (1994-2001)
Hon. Thomas R. Braidwood, QC (1973-1975; 1979-1985)	Jane S. Shackell, QC (1994-2001)
Hon. Jack L.T. Edwards, QC (1978-1985)	Ann Howard (1992-2002)
Hon. Dr. James J. Gow, QC (1979-1985)	Marjorie Martin (1992-2002)
Hon. Mr. Justice Bruce I. Cohen (1978-1986)	Richard C. Gibbs, QC (1996-2002)
Marvin R.V. Storrow, QC (1980-1987)	Howard R. Berge, QC (1992-2003)
Dennis J. Mitchell, QC (1980-1988)	Russell S. Tretiak, QC (1992-2003)
R. Paul Beckmann, QC (1980-1989)	Robert D. Diebolt, QC (1996-2003)
Robert M. Dick, QC (1983-1991)	G. Ronald Toews, QC (1996-2003)
Hon. Mr. Justice Peter Leask (1984-1992)	Gerald J. Kambeitz, QC (1996-2003)
Brian J. Wallace, QC (1985-1993)	William J. Sullivan, QC (1997-2003)
John M. Hogg, QC (1984-1993)	Master Peter J. Keighley (1996-2004)
P. Michael Bolton, QC (1985-1993)	William M. Everett, QC (1998-2004)
Hon. Mr. Justice Robert T.C. Johnston (1986-1994)	Ralston S. Alexander, QC (1999-2005)
Hon. Mr. Justice Grant D. Burnyeat (1988-1995)	Patricia L. Schmit, QC (1998-2005)
Donald A. Silversides, QC (1984-1995)	Ross D. Tunnicliffe (1998-1999; 2000-2005)
Gary L.F. Somers, QC (1984-1995)	Robert W. McDiarmid, QC (1998-2006)
James M. MacIntyre, QC (1986-1995)	Anna K. Fung, QC (1998-2007)
Cecil O.D. Branson, QC (1988-1995)	Ian Donaldson, QC (2000-2007)
Alan E. Vanderburgh, QC (1989-1995)	June Preston, MSW (2001-2008)
Karen F. Nordlinger, QC (1988-1996)	
Benjamin B. Trevino, QC (1991-1997)	

More photos from the Life Benchers Dinner are available on the Law Society's website.

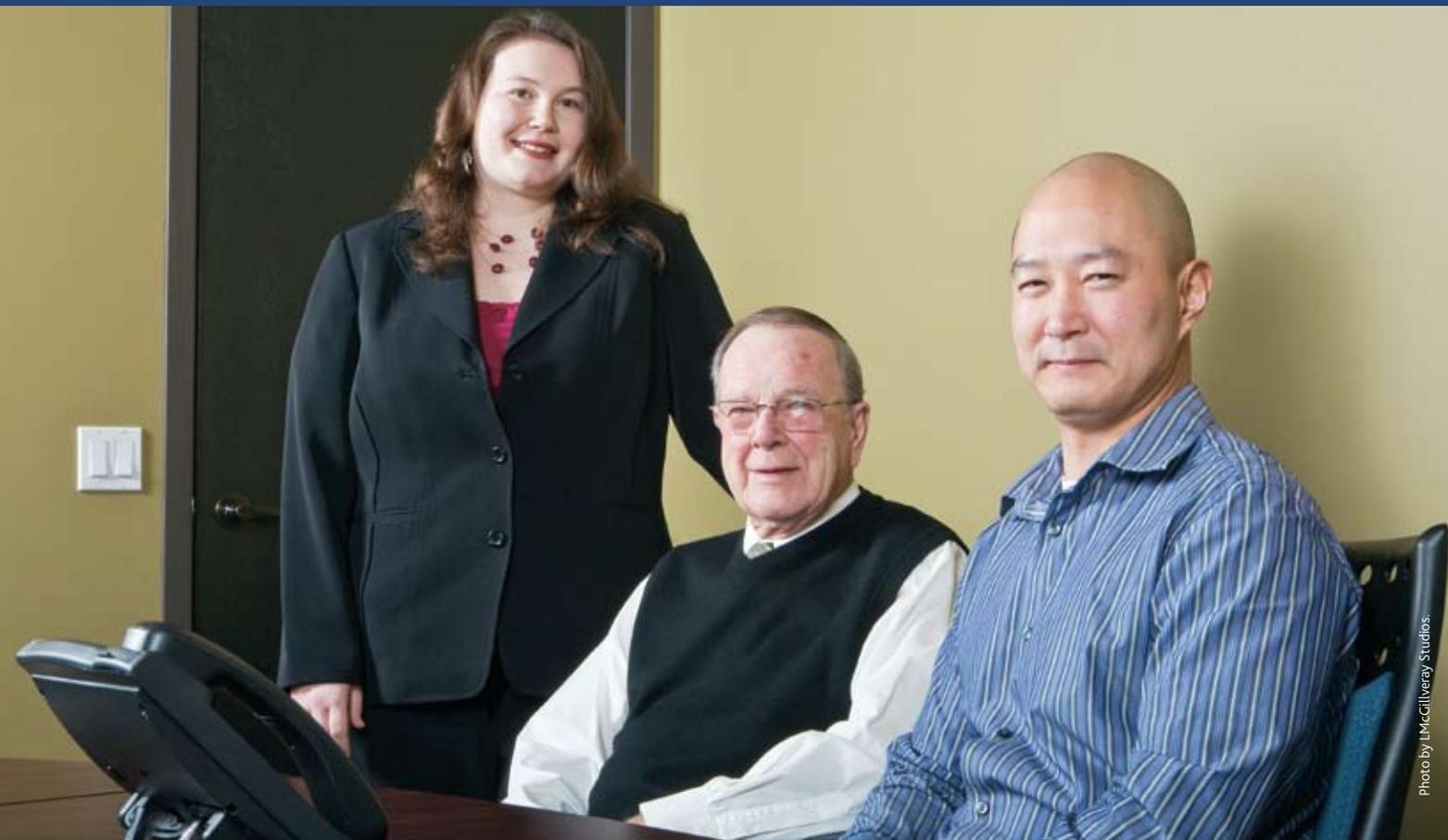


Photo by LMCGilveray Studios

Laura Tesar, David Levis and Augustine Earmme.

Small firms, small towns

When British Columbians need a lawyer — for real estate transactions, court representation, advice for their small businesses — most often they rely on small firm lawyers. This is especially true outside of Metro Vancouver and Victoria.

Working in a sole or small firm practice in rural BC carries great benefits and a unique set of challenges. This feature story showcases the work of a small firm in small town BC and the inherent opportunities and challenges.

ON THE GREAT Interior Plains of north-eastern British Columbia, just north of the Peace River, lies the city of Fort St. John. Originally established as a fur trading post in 1794, it is the oldest standing non-Aboriginal settlement in BC.

Thanks in part to the building of the Alaska Highway in 1942 and the discovery of high grade oil in 1951, Fort St. John is now the largest city in the BC Peace region. At last count, the community had grown to 18,000 residents, with an additional 12,000

in the surrounding area.

More than 1,200 km from Vancouver and 1,000 km beyond Hope, Fort St. John provides countless opportunities for outdoor adventure, including horseback riding, fresh water fishing, golfing, hiking, snowshoeing, snowmobiling and skiing. There are also cultural events, such as live theatre, a museum and art gallery.

But it was not any of these things that drew Augustine Earmme in 1992 to practice law there. "Actually, it was my brother that

convinced me to go," said Earmme, speaking from the law offices of Earmme and Associates.

"I was a student at UVic law, and when I was at the job board one day looking for an articling position, I noticed that there was an opening at a firm in Fort. St. John. My brother had recently gone up there for work, and I could have gotten a job in Vancouver, but I thought, 'Well, I haven't seen my brother in a while,' so I decided to try it out for a year."

While his brother left Fort St. John 18 months later, Earmme was there to stay.

SMALL FIRMS ...

Earmme is one of thousands of BC lawyers who work in a small firm, which is defined by the Benchers as a firm with four or fewer lawyers.

Indeed, small firm lawyers are the backbone of the legal profession in BC. They represent a whopping 92 per cent of all firms in the province. Of the 3,936 firms operating in BC in 2008, 2,916 are sole practitioners and 723 have two to five lawyers on staff.

... IN SMALL TOWNS

If you meet a lawyer from outside the Lower Mainland, chances are he or she works in sole or small firm practice. Practitioners outside of major centres make up about 20 per cent of the total number of lawyers in BC.

Many small town lawyers are raised in the area, returning to their hometowns after obtaining law degrees. Laura Tesar grew up in Fort St. John and came back after completing her LL.B at the University of Alberta. She articulated with Earmme and Associates in 2006 and has been there ever since.

"After my first two years of university, I had every intention of leaving and never coming back, but it was family that brought me back. And I enjoy it now. I'm happier here than I was in the big city," said Tesar.

But there are also Lower Mainland transplants who make the transition. "I'd say it's about a 50/50 split between displaced lawyers like me who are not from here and lawyers who were raised in the area," said Earmme.

"Lawyers in larger centres who haven't actually dealt with or experienced working with small town firms may have the misconception that we're hicks or that we don't know what we're talking about, which is not the case," said Earmme. "When I get a file where I'm dealing with an outside law firm, they're often pleasantly surprised."

THE OPPORTUNITIES ...

Opportunities exist in every region of the province for lawyers seeking a broad range of legal experience, along with the lifestyle smaller communities have to offer.

Indeed, many practitioners — from cities large and small — have made a conscious choice to practise in small towns rather than in large firms.

Indeed, many practitioners — from cities large and small — have made a conscious choice to practise in small towns rather than in large firms.

"People seem to think that with small towns, you're going to the edge of civilization and there's no coming back," said Tesar. "But I don't really feel there's any great disadvantage. In fact I think it's advantageous for me to be here. I have a much greater balance in my life, which makes me happier. And I do enjoy my work more because of it."

When asked what was most rewarding about her current practice, Tesar spoke of working directly with clients. "I interacted with clients really early on, which is something my friends who went to larger firms

didn't seem to do much of. Also, you are in charge of your own files so you're not working under somebody so much."

Earmme said that for him, the biggest advantage to his practice, "is that you get to know your clients. Some of them have become friends. They know that you're not just a lawyer. You actually live here and participate with them in the community. I run into clients at lunch, when I'm at a social event, or at the local play. Usually the first thing out of their mouth is, 'How's my file going?'"

In Earmme's opinion, small town practice affords the opportunity for a friendlier, less confrontational style of practicing law. "A lot of lawyers that I deal with are usually pleasantly surprised that big firm aggressiveness is not here. Certainly for the solicitors, it's more about a good working relationship."

"The solicitors in small towns, we're friends," said Earmme. "We socialize together. So when we're sitting across a file from each other, we don't want to fight, we want to make sure that our clients get the best deal they can."

The small town, small firm route also affords important lifestyle opportunities. "When I was first starting out, all of my friends were talking about putting in 80 hours a week, not getting any sleep, having no social life — just bill, bill, bill. Up here that's not the case."

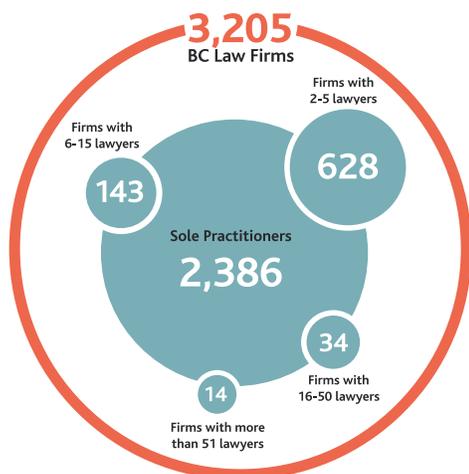
The members of Earmme and Associates take advantage of this extra time to get involved in activities outside of work. Earmme belongs to the Rotary Club and is involved in a local theatre troupe. Tesar finds time to do yoga, be involved with her church and is even renovating a house.

... AND THE CHALLENGES

While the advantages small town practice affords are great, there are also a number of challenges.

The absence of younger lawyers is more prevalent outside of urban areas. And as the profession ages, this raises concerns about whether the sole and small firm Bar is renewing itself, particularly in less populated parts of the province.

"There aren't a lot of young lawyers around, so it is hard to have that identification with what you're going through," said



92% of law firms in BC are small firms (with 4 or fewer lawyers)

20% of practising lawyers in BC work outside Metro Vancouver and Victoria

continued on page 14

Resources for sole and small firm practitioners

The Law Society provides the following resources to BC lawyers, some of which may be of particular interest to sole and small firm practitioners. More information about these resources is available on the Law Society website (lawsociety.bc.ca):

Articling Registry: An online registry connecting BC firms with articling students from across BC and Canada.

Locum registry: An online registry to help lawyers find a replacement practitioner on a temporary basis. Allows those seeking a locum and those offering their services as a locum to post information about positions sought and offered.

Small Firm Practice Course: A free online course for lawyers, students and law firm staff that provides information on setting up and operating a practice, avoiding pitfalls and developing a business plan.

Practice advice: Free telephone and email advice on ethics, practice questions and technology.

Practice Checklists Manual: The Law Society maintains practice checklists in eight different practice areas, which offer valuable assistance to lawyers.

Benchers' Bulletin: The Bulletin regularly contains helpful tips from the Law Society's practice advice team.

Web resources: The "Practice Support" section contains a wide variety of precedents and articles, ranging from standard form letters to information on solicitors' liens.

Other resources are available through legal organizations, including the BC Courthouse Library Society, the Canadian Bar Association, the Continuing Legal Education Society, the Trial Lawyers Association of BC and local and county bar associations.

CanLII: A national virtual law library supported by the Law Society as a shared initiative of Canadian law societies through the Federation of Law Societies, available online to the profession and the public without user fees.

*Small firms, small towns...
from page 13*

Tesar. "But there are a couple here. I was the first articling student in Fort St. John in about seven years. But shortly thereafter, another student came up and then another young lawyer moved up a few months later. So there's definitely been a bit of an influx. It's important to get younger lawyers up here, too."

David Levis, a local lawyer and retired provincial court judge recalled how he jumped at the opportunity to take in an articling student when he was contacted by the Law Society in 1970 and asked if he could place a student there.

"I didn't know anything about the student — not even a name — but when the call came, I immediately said yes. It wasn't common to get articulated students up here at that time," said Levis. It turned out that student was Beverley McLachlin who is now Chief Justice of the Supreme Court of Canada.

A second major challenge, according to Earmme, is practice management — particularly in more isolated communities with fewer available resources. But even in a small town, local support can be a valuable asset.

"If I have a management question, I often phone a fellow solicitor who manages or owns a firm and ask, 'What would you do in this situation?' There's a kind of collegiality to fall back on."

Lawyers are also welcome to contact a Law Society practice advisor, such as Barbara Buchanan. "We get calls for assistance from lawyers all over the province," said Buchanan. "Whether you're a senior or junior lawyer, sole practitioner or lawyer in a large firm, we're here to help."

Today, the Law Society is taking action to help create more opportunities for young lawyers seeking positions in rural areas. The Articling Registry was launched earlier this year by the Law Society and the BC Branch of the Canadian Bar Association. It was an initiative that came out of the Law Society's Small Firm Task Force with the thought being that it would enhance articling opportunities through BC — including smaller centres.

MEETING THE NEEDS OF SMALL FIRMS

In 2005, the task force consulted sole and small firm practitioners to make recom-

mendations to help strengthen and support their practices. The task force consulted widely throughout the province and received many suggestions.

It identified a number of issues facing small firms, including practice structure, client base and practice locations, rising overhead costs, demands and costs of technology, access to legal research, shortages of lawyers and articling students and isolation. And after extensive consultation, it made several recommendations for programs and services the society might provide to help sole and small firms.

The Benchers adopted six of those recommendations, and the Law Society acted on them. The Small Firm Practice Course was launched in January 2007. The course is compulsory for new lawyers practising in certain defined small firm settings and is available to all other BC lawyers on a voluntary basis. More than 400 lawyers have taken the course to date.

There has been a concerted effort to move toward online course delivery, helping lawyers working in remote areas maximize opportunities to further their professional development.

The Law Society continues to develop new programs that will benefit lawyers in small firms. In addition, there is a new online locum registry to help lawyers seeking a temporary leave from practice find an interim replacement.

CONSIDER SMALL TOWN PRACTICE

There is no shortage of professional opportunities for those interested in small town practice.

According to Earmme, "Even though it's a small community, you get a variety of legal issues, such as what you would see in major centres." Lawyers also have the opportunity to choose to focus their practices. "You get people here who specialize in areas like family law and criminal law. For me and a couple of other lawyers in town, we just do solicitor's work and mainly it's corporate, commercial and real estate."

As for younger lawyers contemplating their future practice, Tesar recommends giving full consideration to a small town firm. "If you're willing, if you have the mindset that it's okay to be in a small town, I would definitely recommend it." ♦

Articling Registry attracts national attention

THE NEW ARTICLING REGISTRY — launched this summer as a joint project of the Law Society and the Canadian Bar Association, BC Branch — is easy to use and is already attracting attention from law firms in BC and students across the country, according to Joanne Silver, Director of Stakeholder Relations of the CBABC.

Silver gave a presentation to the Benchers at their October meeting explaining how the Registry works and the program's advantages. "The Articling Registry responds directly to the needs of law firms and students across the province," said Silver.

The innovative Registry is the first of its kind to enable lawyers to advertise and students to look for BC articling positions by location, preferred start and end date,

and area of practice. Firms and students can post positions sought, resumes and available articles.

The goal is that students who post their information on the Registry will increase their ability to obtain an articling position.

Silver emphasized how the Registry can help law students from across Canada connect with BC firms, regardless of their location. "We have included virtually every area in the province," said Silver, "from major centres like Vancouver and Victoria to smaller places such as Alert Bay and Comox."

The goal is that students who post

their information on the Registry will increase their ability to obtain an articling position. In turn, all BC lawyers, regardless of location and size of firm, will be able to use it to connect with prospective articling students whose goals match up with those of the law firms. In addition, firms in smaller locations that may not have the capacity for a full-time articling position can post their interest in sharing a student.

The Law Society encourages lawyers and law firms to access and use the Registry. It is free and CBA membership is not required to access it. You can log onto it from the home page of the Law Society's website (lawsociety.bc.ca) or from the CBABC website (bccba.org). For more information, contact Lesley Small at lsmall@lsbc.org. ❖



Photo by Lee Halliday Photography.

Joanne Silver, Director of Stakeholder Relations for the Canadian Bar Association, BC Branch, at the October Benchers' Meeting

In Brief

Department of Justice Family Violence Symposium

ADOPTION OF BETTER linkages and co-ordination between the family and criminal justice systems has been identified as one of the important next steps in preventing and responding to situations of family violence.

The Department of Justice Canada is hosting a symposium on the Intersection of the Family and Criminal Justice System Responses to Family Violence to be held in Ottawa on February 26, 2009. The symposium will provide an opportunity for up to 150 government officials, judges, private sector family and criminal law lawyers, law enforcement personnel and service providers to examine this important topic.

There are no registration fees, however, space is limited and registration closes January 15, 2009. For more information, please e-mail FV-FCLsym@justice.gc.ca or contact Marilyn Bongard at 613-941-9969. ❖

Practice Support & Advice Resources Survey

THE LAW SOCIETY seeks input from lawyers on the value of the new on-line member resources and the Law Society's Practice Advice services. The online version of this survey can be accessed through <http://alt.lawsociety.bc.ca/survey/psresources.cfm> until January 15, 2009. ❖

Women Lawyers Forum 2008 Award of Excellence

MARIA MORELLATO, QC was presented with the Women Lawyers Forum highest honour, the Award of Excellence, on October 29, 2008. This award celebrates Morellato's distinguished career achievements and her outstanding contributions to women in the legal profession as a change agent, leader and mentor. Morellato was nominated for this honour by Anna Fung, QC, past president of the Law Society. Fung said, "You may ask, why, amongst this group of amazing women, is Maria particularly worthy of this award? Because she has shown us that it is possible to "have it all," a successful and challenging legal career, a loving family and personal fulfilment by way of active volunteerism in her community and her profession. Along the way, she has never compromised her principles, her values or her sense of humour, and she has remained true to her

core, her womanhood. She is a warm, compassionate, loving and supportive woman who treats everyone with utmost respect, courtesy and humanity."

Morellato leads the First Nations and Aboriginal Group in the Vancouver office of Blake, Cassels & Graydon LLP. She has acted as legal counsel before all levels of the court system, including the Supreme Court of Canada and the Federal Court, and also regularly appears before administrative tribunals and regulatory commissions. She maintains an active role in several professional organizations which currently includes: member, the Law Society's Retention of Women in the Law Task Force; Co-Chair, CBA Aboriginal Law Scholarship Trust Fund-Raising Committee; member of Canadian Bar Association; and Pro Bono Legal Clinic volunteer (Western Canada Society to Access Justice). ❖



Maria Morellato, QC (left) and Linda Robertson, Chair, CBABC Women Lawyers Forum

Photo: The Canadian Bar Association, BC Branch



NOTICES FROM THE COURTS

Impact of the 2010 Olympics on Provincial Court scheduling

THE PROVINCIAL COURT of British Columbia will maintain operations during the 2010 Olympics. Although many police officers will be deployed for Olympic security, the courts will remain open for business.

A court scheduling adjustment is currently underway to increase criminal court proceedings that require police witnesses in the months just prior to the Olympics. This will ensure no additional backlog is created if some matters cannot be scheduled during the Olympic period.

All other provincial matters scheduled during the Olympic period will proceed in every court location around the province. ❖

Provincial Court practice direction

THE PROVINCIAL COURT has issued the following practice direction for the Robson Square Youth Justice Court regarding **Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings, and Administrative Court Sitings**.

This direction has two objectives:

1. expanded judicial assignments for Judicial Case Managers; and
2. enforcing compliance with Criminal Caseflow Management Rules.

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

Notaries Act amended

THE PROVINCIAL CABINET has recently passed an Order-in-Council proclaiming sections of the *Trade, Investment and Labour Mobility Agreement Implementation Act* amending the *Notaries Act* effective January 1, 2009. The main result of these amendments will be to end the restriction of the numbers of notaries public permitted to practise in BC and the geographic limits on the practices of individual notaries. ❖

A MESSAGE FROM THE COURT SERVICES BRANCH

E-file service now available province-wide

THE COURT SERVICES ONLINE electronic filing service is now available in all 43 court locations across BC.

The CSO e-file service allows users to submit electronic court documents in civil actions to Supreme Court and Provincial Court registries. BC is the first province in Canada to introduce a comprehensive e-filing system including the storage and maintenance of court files in an electronic format.

Legislation to facilitate e-filing came into effect in 2005. Since then, over 28,000 Supreme Court Civil and Provincial Court Small Claims documents have been e-filed.

E-filing is a key component of the Integrated Electronic Court, a joint vision of the Court Services Branch of the Ministry of Attorney General and the British Columbia Judiciary to use new technology to improve access to justice.

E-filing is simple and can take less than three minutes to complete. Once a document is e-filed, an electronic copy can be retrieved via your CSO account. Statutory filing fees and CSO transaction fees can be paid with a credit card or with a BC OnLine deposit account.

Law firms that have used the e-filing service like the ease and convenience, and the efficiencies gained. E-filing allows users to file, retrieve and electronically search files from their office or home. It simplifies document preparation by eliminating the need to print and prepare multiple copies of documents for filing. Electronic delivery to the registry is immediate and users can opt to receive an email notification when their documents have been processed. Once accepted for filing the stamped, filed document is easily downloaded for storage, printing or service. E-filing is available for most Supreme Court Civil and Provincial Court Small Claims documents. For e-filing restrictions, refer to Supreme Court Rule 69 (5) and Small Claims Rule 22.

For more information about e-filing or to view an online demonstration, visit Court Services Online at courtservicesonline.gov.bc.ca. ❖

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Client identification and verification

TIPS FOR DETECTING A FAKE BC DRIVER'S LICENCE

WE ARE LAWYERS and while we may have good judgment and good instincts, we do not normally have the resources to detect a well-made fake or altered BC driver's licence or BC identity card. We can observe whether a new client acts strangely, a card has expired or appears newer than its issue date. We can also observe whether the signature, picture and description of the person on the card seem to match the signature, face and description of the person in front of us. What else can we look for?

ICBC has built many security features into the driver's licence card, some of which are easy to see and others which are less discernable. Below are some simple tips that may help you to recognize the difference between a genuine driver's licence or identity card and a fake or altered one:

Overall appearance

- The card should be smooth so beware if there are rough edges or a raised or bumpy surface.
- All of the print is easy to read.

Front of card

- The last two digits of the birth year are printed on the front of the card behind a holographic coat of arms containing a buck and a ram.
- Shuswap Lake is the driver's licence background. A picture of the BC legislature is on the back on the identity card.
- A whitish line of micro-printing is printed horizontally across the card under the coloured bar at the top.

Back of card

- Eye colour, hair colour, weight, height, sex and restrictions (e.g. corrective lenses required) are listed.
- The dark zigzag lines are on a white background.

LOCATING LAWYERS OUTSIDE CANADA

If your client is not present in Canada, you must rely on an agent to obtain the information required to verify the identity of the client (Rule 3-97 (5)). While you are not restricted to using a practising lawyer in another country to be the agent, you may decide that it is prudent to use a lawyer in these circumstances.

How do you locate lawyers outside of Canada? The newly branded Courthouse Libraries BC (formerly known as the BC Courthouse Library Society) has produced a *Locating Lawyers Resource Guide* that you can view at courthouselibrary.ca. To access it, go to the website and type the Guide's name in the site search field.

The *Locating Lawyers Resource Guide* contains information about provincial, territorial, Canadian and international resources that are available through the Internet or in print.

The following international resources are available, however, there is no guarantee about the accuracy, currency or content of these resources:

Internet resources

- Bar Directory* (barcouncil.org.uk/about/find-a-barrister) – chambers and barristers in UK
- Solicitors-Online* (solicitors-online.com) – solicitors and law firms in England and Wales
- West Legal Directory* (lawyers.findlaw.com) – American attorneys
- Martindale-Hubbell Lawyer Locator* (martindale.com) – US lawyers and law firms

Print resources

- Martindale-Hubbell Law Directory* (available in the Vancouver Courthouse Library; includes lawyers and law firms in the US)
- Martindale Hubbell International Law Directory* (available in the Vancouver Courthouse Library to locate lawyers and law firms in more than 165 countries)
- International Law List* (available in the Vancouver Courthouse Library)
- Chambers Global* (entries for 160 countries; available in the Vancouver and Victoria Courthouse Libraries)
- Kimes International Law Directory* (available in the University of Victoria Law Library)

FAKE CERTIFIED CHEQUES, BANK DRAFTS AND MONEY ORDERS

The past two issues of *Practice Watch* (July and October 2008) outlined tips on how to protect yourself from being caught by the phony debt collection scheme, fake certified cheques and other scams. These scams continue to evolve. The Law Society has learned that fraudsters have tried to present fake certified cheques as deposits in real estate transactions (new client from overseas, property purchased sight unseen, no building inspection requested). Stay tuned for new tips in the next *Practice Watch* on how to protect yourself from being caught by a scam.

Report scams to the RCMP or your municipal police force and also contact the Law Society. You can ask the police to report the matter to PhoneBusters, the Canadian Anti-fraud Call Centre (CAFF) or you can do so yourself (1-888-495-8501). CAFF (a form of partnership between the Ontario Provincial Police, the RCMP and the Competition Bureau) seems particularly interested in receiving information on new versions of the Nigerian letter scheme, especially those with Canadian mailing addresses and telephone numbers.

CANADIAN BAR ASSOCIATION, BC BRANCH STANDARD FORM UNDERTAKINGS

The *Standard Form Contract of Purchase and Sale*, in which copyright is held by the Canadian Bar Association, BC Branch and the BC Real Estate Association, is commonly, but not exclusively, used for residential real estate transactions. Clauses 13 and 14 contain undertakings referred to as the "CBA Standard Undertakings" that require the parties to use the undertakings when the buyer is obtaining a mortgage to finance the purchase price or the seller has financial charges to be cleared from title.

Some lawyers are refusing to accept the CBA Standard Undertakings, even though their clients have agreed to them.

Some lawyers are refusing to accept the CBA Standard Undertakings, even though their clients have agreed to them. It is not improper for a lawyer to attempt to renegotiate a contract when the circumstances

warrant such renegotiation and when the client instructs the lawyer to do so. However, a lawyer who routinely declines to accept the CBA Standard Undertakings contained in client contracts that were negotiated before the lawyer's involvement in the matter places each client at risk of losing the benefits of the client's contract and may be practising incompetently.

LAWYERS' BILLS FOR REAL ESTATE TRANSACTIONS

It has come to the Law Society's attention that some lawyers may be charging unusually low fees but unusually large disbursements for residential conveyances. While such billing practices may be proper in some circumstances, they may be improper if they were designed to avoid tax. Lawyers should be aware that their bills to clients are examined in compliance audits and bill reviews.

LAND TITLE SEARCHES AND OFFENCE-RELATED PROPERTY

Lawyers are advised to carefully review land title searches for important issues arising from charges on title. For example, ex parte orders made pursuant to sections 14 and 14.1 of the *Controlled Substances Act* may appear as a caveat or an injunction that prohibit disposal or any other dealing with property based on the belief that it is offence-related property (e.g. a marijuana grow operation site). If a lawyer fails to notice the problem and registers the transfer and mortgage documents, by the time the defect notice arrives, the funds will have already been transferred and the lawyer will be facing a claim.

Other registrations on title to look for are judgments, by-law contravention notices and miscellaneous notes that indicate further searching is required.

Review your title searches early enough so that you have time to discuss any issues raised with your client.

Review your title searches early enough so that you have time to discuss any issues raised with your client. For more information on title search inadequacies and other causes of claims in real estate, see the March 2004 *Alert!* "Risk management in real estate conveyancing practice", available under "Risk Management" in the Lawyers Insurance Fund section of the Law Society's website.

CHANGE TO COURT OF APPEAL ACT

An amendment to section 25 of the *Court of Appeal Act* is now in force. It requires the registrar of the BC Court of Appeal to place any appeal, or application for leave to appeal, on the inactive appeal list if a notice of hearing has not been filed within two months of filing a certificate of readiness. The parties can reactivate the matter within a six-month period.

FURTHER INFORMATION

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

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Metadata



"If you don't see what I see..."

—Words, music and recorded by Rockell

METADATA. This is a word that has only recently been introduced into the lexicon of lawyers, but it is one about which lawyers should be concerned.

First, what is metadata? The Sedona Conference defines Metadata as "information describing the history, tracking or management of an electronic document."

There are at least two ways that metadata is relevant to lawyers:

1. in a litigation context, when making or receiving discovery; and
2. in an office context, when exchanging documents with opposing counsel or even with a client.

In the first situation, there is no question that metadata, forming part of electronic files, is subject to discovery. The metadata stored as part of an electronic document is discoverable if relevant and should not be privileged. Within the rules surrounding discovery of documents, it is clearly possible that metadata would be relevant in certain situations, such as when it is necessary

to prove that an email was sent from or received on someone's computer on a certain date (which may or may not be the date in question). Within the grounds of relevance and proportionality, the metadata in a document may have greater significance than the contents of the document itself, particularly if the metadata is the proverbial "smoking gun."

Obtaining discovery in paper form eliminates any chance of discovering the metadata in an electronic document.

Accordingly, it behooves litigation counsel to know about metadata and when it may be appropriate to request discovery in electronic form that preserves the metadata in the evidence. Obtaining discovery in paper form eliminates any chance of discovering the metadata in an electronic document. In fact, obtaining

discovery in anything less than "native format" may be the only appropriate form of discovery in certain cases.

In the second situation, if counsel is sending a Word, Excel, WordPerfect or even a PDF or other electronic document to either their own client or to opposing counsel, that document almost inevitably contains metadata. If the document happened to be a draft contract, offer to settle or such, then it is possible for the recipient to "peel" back the layers and see the earlier changes to the document while it was in draft form.

Some lawyers believe that if a document is converted to PDF format prior to being sent, the metadata in the document will be "scrubbed."

Some lawyers believe that if a document is converted to PDF format prior to being sent, the metadata in the document will be "scrubbed." Alas, this is not always the case. There are instances when a Word document can be attached to a PDF in native format (in which case it will have its metadata intact). It can contain its metadata if you have your "print" function set to print "track changes" or if you have the "tracked changes" visible when you create the PDF, for example.

Some jurisdictions have made it an ethical requirement for lawyers to use "metadata scrubbers"...

There is as yet no ethical ruling in BC on whether or not a lawyer is permitted to view the metadata in a document that has been received by an opposing party. Some jurisdictions have made it an ethical requirement for lawyers to use "metadata scrubbers" prior to sending communications to the other side, in order to prevent this problem from occurring. Note that "scrubbing" discovery evidence to remove metadata prior to its delivery to opposing counsel may be improper and could result in sanctions against the client and counsel alike.

Metadata is an emerging issue and lawyers certainly need to consider whether the other side should see what they see. ❖

Rule changes

At their October meeting, the Benchers approved the following changes to the *Professional Conduct Handbook*:

Chapter 2, Rules 3 through 6 are amended and Rules 3.1 and 4.1 are added to update a lawyer's professional responsibility to respect human rights laws, consistent with recent changes in the *BC Human Rights Code*.

At their November meeting, the Benchers adopted new client identification and verification rules (Rules 3-91 to 3-102) based on the Federation of Law Societies of Canada's Model Rule. At the next meeting on December 12, the Benchers amended Rules 3-91 to 3-95 and Rule 97, based on revisions to the Model Rule. Law Society Rules 3-91 to 3-102 (including the December amendments) will take effect December 31, 2008.

The text of the Rules as adopted by the Benchers in November and amended in December is available on the Law Society website. Copies of the Rules adopted in November are included in the *Member's Manual* amendment package as part of this mailing. The December amendments will be circulated at the earliest opportunity. ♦

Annotated Handbook goes online

BEGINNING JANUARY 15, 2009 lawyers and the public will be able to access the *Annotated Professional Conduct Handbook* online at lawsociety.bc.ca.

In addition to containing all the rules in the *Professional Conduct Handbook*, the annotated version gives practitioners and the public access to selected decisions of courts, and Law Society discipline panels and opinions of the society's Ethics Committee.

The Law Society intends to update the *Annotated Professional Conduct Handbook* on a regular basis and welcomes comments and suggestions for improvement. For further information or to provide feedback, contact Jack Olsen, Ethics Advisor at 604-443-5711. ♦



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@no-vuscom.net.

Discipline digest

PLEASE FIND SUMMARIES with respect to:

- Harry Djorgee
- Glenn John Niemela
- Andrew Gordon Walker
- Lawyer 7

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

HARRY DJORREE

Victoria, BC

Called to the Bar: February 21, 2001

Hearing date: July 25, 2008

Panel: G. Glen Ridgway, QC, Chair, Bruce A. LeRose, QC, William Jackson

Report issued: September 4, 2008 (2008 LSBC 27)

Counsel: Maureen Boyd for the Law Society and Peter Firestone for Harry Djorgee

FACTS

Harry Djorgee was retained by client SL in July 2006 to obtain a divorce from her husband and custody of her two sons.

In December 2006, Djorgee prepared and filed in the Registry a Writ of Summons and Statement of Claim that bore SL's signature, however, SL did not sign either of these documents. In March 2007, Djorgee affixed SL's signature wrongfully, and without her authorization, on a Requisition and filed this Requisition in the Registry.

In March 2007 Djorgee prepared two affidavits on behalf of SL and affixed her signature when she was not present before him and did not sign the affidavits. Djorgee filed the affidavits at the Registry, knowing that the documents were falsely sworn.

In January 2007, Djorgee prepared an affidavit of service of GO in which it falsely stated that GO had served a copy of the Writ of Summons and Statement of Claim on the husband. Djorgee affixed GO's signature and filed the Service Affidavit at the Registry, knowing that it was falsely sworn and contained false statements.

In June 2007, new counsel for SL made a complaint to the Law Society with respect to Djorgee. On October 23, 2007 a citation was issued against Djorgee, alleging professional misconduct for wrongfully affixing signatures on documents and filing falsely sworn documents in the Victoria Registry of the British Columbia Supreme Court.

ADMISSION AND PENALTY

It should be noted that the false Affidavits in this matter were not used in a court application, Djorgee received no financial benefit from his conduct, and as soon as the matter was detected and called to the attention of Djorgee, he acknowledged his misconduct, ceased practice until this citation was dealt with, and gave a full acknowledgment of his wrongdoing. As Djorgee agreed to cease practice on October 2007, the six-month suspension resulted in Djorgee being out of practice for approximately 11 months. This provides a specific and general deterrent with respect to this conduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Djorgee's admission and ordered that Djorgee:

1. be suspended for six months, of which four months will be deemed to have been served prior to the hearing date and the last two months will be served commencing from the hearing date;
2. only practise in a capacity approved by the Practice Standards Committee; and
3. pay costs in the amount of \$1,000.

GLENN JOHN NIEMELA

Vancouver, BC

Called to the Bar: August 26, 1988

Discipline hearing: October 15, 2008

Panel: William Jackson, Chair, Haydn Acheson, Kathryn Berge, QC

Report issued: October 23, 2008 (2008 LSBC 35)

Counsel: Eric Wredenhagen for the Law Society, Jerome Ziskrout for Glenn Niemela

FACTS

On November 30, 1992, Niemela filed and registered a certificate of pending litigation on behalf of his client, a bank, against a property in Mount Lehman, BC belonging to WW.

WW made the payments by the mid-90s that the judgment against him required. He then checked the property title and discovered the CPL. He contacted Niemela's office occasionally to ask for it to be discharged, but did not receive any response.

In or about 2000, WW began to consider selling the property. He spoke to Niemela on the phone. Niemela advised that he would "look into it" and "get back to" WW. Niemela did not. WW subsequently left telephone messages for Niemela, but did not receive any response. WW sent a letter in December, again, making the same request to remove the CPL from title. He followed up with phone messages but, again, received no response.

WW sent a registered letter to Niemela on February 7, 2005. After he received no response he retained a lawyer in 2006. His lawyer wrote to Niemela on January 3, 2007 to request prompt discharge of the CPL. In March of that year she wrote to Niemela again and enclosed a draft discharge letter in Niemela's name for the Land Title Office. Over the course of six months, WW's lawyer had a number of phone conversations with Niemela and his staff. By June of 2007 Niemela told WW's lawyer that he would sign the draft letter of discharge that she had sent him in March, and that he would return it to her by email that day. He did not. Later that same month the Law Society received a complaint from WW's lawyer.

ADMISSION AND PENALTY

Niemela admitted that his failure to provide a substantive response to either WW or his lawyer between December 2004 and June 2007 with respect to the CPL constituted professional misconduct.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Niemela's admissions and ordered him to:

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

ANDREW GORDON WALKER

Vancouver, BC

Called to the Bar: May 10, 1984; Ontario, 1980

Ceased membership: November 28, 2008

FACTS

Andre Gordon Walker practised at a number of firms and has specialized in securities law. Between December 2003 and April 2006 he acted as corporate legal counsel to a Calgary-based junior oil company, P Corp. Walker was also an officer and director of P Corp., a public company listed on the TSX Venture Exchange.

Misappropriated funds

In February 2005, Walker and two other directors of P Corp. caused \$86,000 of the company's funds to be deposited to Walker's trust account. The money was used to buy privately held P Corp. shares which were divided among Walker and the two directors. This use of the funds was not disclosed in P Corp.'s interim financial statements, which were signed by Walker. In mid-2005, P Corp.'s new CEO and new CFO questioned Walker about the \$86,000 expenditure. Walker returned the funds in 2006 and took the position that the money had been a loan, albeit unauthorized and undocumented.

Assisting in dishonesty, crime or fraud

In early 2005, a P Corp. director, GT, advised Walker that 278,462 shares of P Corp. were to be issued to SM as "finder's fee" shares. Permission was granted by TSX to issue these shares. Walker subsequently discovered that SM was not a "finder" but rather a neighbour and personal lawyer of GT. Instead of advising the TSX and having the shares returned to treasury, Walker, GT and SM devised a plan to transfer the shares to a fourth individual, with the intention that the shares be sold and the proceeds divided among them.

Walker continues to be the subject of proceedings by TSX and the BC Securities Commission.

A citation was issued against Andrew Walker on February 12, 2008, and amended August 28, 2008, alleging misappropriation, conflict of interest, and assisting dishonesty, crime or fraud.

ADMISSION AND PENALTY

In October 2008, Walker admitted that his conduct constituted professional misconduct, conduct unbecoming a lawyer, and incompetent performance of his duties. He resigned his membership with the Law Society, effective November 28, 2008. Under Rule 4-21, the Discipline Committee accepted Walker's admission and his undertakings:

1. not to reapply for reinstatement for at least 10 years;
2. not to apply for membership in any other Canadian law society without notifying the Law Society of BC; and
3. not to work for any lawyer or law firm, or allow his name to appear on any lawyer's or law firm's letterhead, without the Law Society of BC's written consent.

LAWYER 7

Discipline hearing: November 21, 2007, Benchers on Review: July 25, 2008

Panel: Minority decision: Leon Getz, QC, Chair, Majority decision: Russell Tretiak, QC, Concurring decision: Dr. Maelor Vallance

Counsel: Maureen Boyd for the Law Society and Terrence Robertson, QC for Lawyer 7

Reports issued: February 11, 2008 (2008 LSBC 06) and October 06, 2008 (2008 LSBC 33)

Benchers on Review: Majority decision: Robert Brun, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Minority decision: Glen Ridgway, QC, Chair, Joost Blom, QC, William Jackson, Bruce LeRose, QC

Counsel: Herman Van Ommen for the Law Society and Terrence Robertson, QC for Lawyer 7

FACTS

The citation against Lawyer 7 was issued on May 20, 2007. It originally covered three distinct allegations, all arising out of the same matter. Subsequently, Lawyer 7 proposed to the Discipline Committee that he would make a Rule 4-22 conditional admission of professional misconduct in respect of one of those allegations. The proposal was accepted, and the Discipline Committee directed counsel not to proceed on the remaining allegations.

The allegation involved Lawyer 7 failing to keep an undertaking given in the course of a personal injury matter in which Lawyer 7 acted for the defendant. The undertaking was to provide plaintiff's counsel with a copy of the reports of a physician who was to conduct an independent medical examination of the plaintiff. The physician was to make an interim report and then, after reviewing the plaintiff's records, a final report. Lawyer 7 received the physician's interim report in February 2004, but did not provide it to plaintiff's counsel until September 2005. In the meantime the physician's final report, which Lawyer 7 received on or about May 16, 2004, had been forwarded to plaintiff's counsel on May 21, 2004.

ADMISSION AND PENALTY

Lawyer 7 admitted that he had breached the undertaking and that his doing so constituted professional misconduct. The disciplinary action jointly proposed by Lawyer 7 and the Law Society was a fine of \$3,000 and payment of costs of \$3,750.

APPLICATION FOR ANONYMOUS PUBLICATION

Lawyer 7 applied for anonymous publication of the hearing panel's decision that is circulated to the profession. Law Society rules require that summaries of discipline decisions be circulated to the profession and that those summaries "must identify the respondent."

The hearing panel noted that this case was particularly difficult because Lawyer 7's misconduct, though significant, cast not the slightest doubt on his integrity or competence. In such a situation, publication of a finding of professional misconduct – no matter how fully the circumstances are explained – may well risk doing damage to the lawyer's reputation that is out of proportion to the gravity of the wrong. The hearing panel referred the decision on anonymous publication for review by the Benchers. Upon review, the Benchers decided the majority of the hearing panel was correct in determining that the grievous harm likely to be suffered outweighed the interest of the public and the Law Society in full publication.

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