



BENCHERS' BULLETIN

Keeping BC lawyers informed

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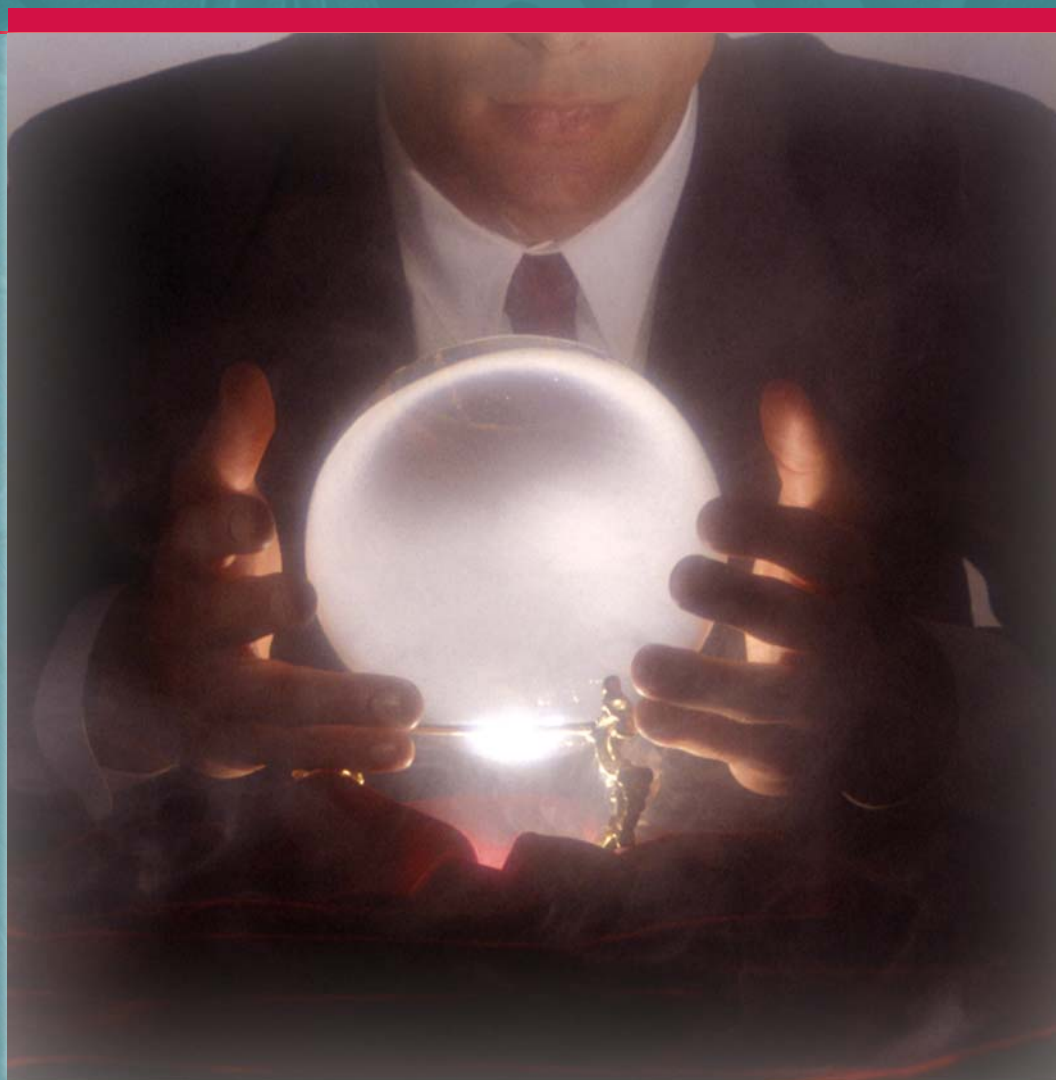
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Keeping the public interest paramount

by G. Glen Ridgway, QC

WHILE NEWS OF Premier Campbell's retirement makes the legislative world somewhat more uncertain, the Law Society does have some requests for changes to our legislation in the pipeline. These relate primarily to strengthening our discipline and regulatory function.

We are asking the Legislature to modify section 3 of the *Legal Profession Act*, which describes the object and duties of the Law Society. The present section 3 reads as follows:

Our proposal for the new section 3 reads:

Public interest paramount

- 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
- (a) preserving and protecting the rights and freedoms of all persons,
 - (b) ensuring the independence, integrity, honour and competence of lawyers,
 - (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission,
 - (d) regulating the practice of law, and
 - (e) supporting and assisting lawyers in fulfilling their responsibilities in the practice of law.

This request by the Benchers is to ensure that the purpose of the Law Society — acting in the public interest — is clear. Doing so with a mandate to “protect” lawyers, as presently contained in section 3(b)(ii), clouded the perception of that mandate, if not the mandate itself.

The Benchers are also taking steps they believe will improve accessibility to legal advice and representation. We are moving to increase the activities that can be undertaken by articulated students and paralegals under the direction of lawyers.

All Benchers believe that the best interests of the public and the best interests of lawyers coincide, but the majority of Benchers felt that the wording of section

This request by the Benchers is to ensure that the purpose of the Law Society — acting in the public interest — is clear.

Public interest paramount

- 3 It is the object and duty of the society
- (a) to uphold and protect the public interest in the administration of justice by
 - (i) preserving and protecting the rights and freedoms of all persons,
 - (ii) ensuring the independence, integrity and honour of its members, and
 - (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
 - (b) subject to paragraph (a),
 - (i) to regulate the practice of law, and
 - (ii) to uphold and protect the interests of its members.

BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers, articulated students and the public 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.

Suggestions 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 (plus HST) 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.

PHOTOGRAPHY

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3 is important and, as a result, developed the proposed new wording. It was not done without considerable debate and "word-smithing." Our Independence and Self-Governance Advisory Committee urged this amendment.

The Benchers are also taking steps they believe will improve accessibility to legal advice and representation. We are moving to increase the activities that can be undertaken by articulated students and paralegals under the direction of lawyers. Our ability to regulate will be through our

regulatory authority over lawyers.

We recognize that these increased functions will require approval by the judiciary insofar as the activity relates to the courtroom. We will be meeting with judges to work this through.

While the Law Society will set parameters, the supervising lawyer will have a lot of say in what a paralegal will be able to do. That lawyer will also be responsible for the paralegal's conduct and will be subject to the Law Society's discipline process for failure to properly supervise. Please let us

have your views in this regard, and we will keep you informed.

This is my last column as President. Serving as President has been a tremendous honour and, hopefully, something for the public and lawyers has been accomplished during my year. A large "thank you" to the staff of the Law Society, to the Benchers, and to the lawyers of this province for the way I have been treated and the work that has been done.

And by the way — I would have preferred the title of "Treasurer." ❖

BC lawyers approve e-distribution of financial statements

IN A REFERENDUM held November 15, BC lawyers voted 97% in favour (3,727 : 127) of amending the Law Society Rules to allow distribution of the audited financial statements to members electronically rather than by traditional mail.

Rule 1-6(8)(b) requires the Law Society to mail to each member, not less than 21 days before an annual general meeting,

an audited financial statement of the Law Society for the previous calendar year.

It has become quite common for organizations to distribute their financial statements electronically rather than on paper. Some lawyers have expressed concern that the Law Society is still printing and distributing paper copies of the financial statements. This year, the cost of printing

and distributing the audited financial statements to every Law Society member exceeded \$20,000.

It is the Benchers' view that making the financial statements available to lawyers electronically would be more cost-effective, timely and environmentally friendly. ❖

Merrill elected in Nanaimo county



NANCY G. MERRILL is the new Bencher for Nanaimo county for 2011. Merrill received a majority of votes cast by Nanaimo county lawyers in the first round of a preferential ballot by-election. The by-election was required to replace G. Glen Ridgway, QC, who becomes a Life Bencher after completing his term as President.

Merrill has practised primarily family law, mediation, civil litigation and wills and estates in Nanaimo since her call to the bar in 1991. She obtained an LLB from the University of Windsor in 1988 and an LLM in tax law from Osgoode Hall in 2002. She worked on the *Family Relations Act* review for the Attorney General, designed and taught the family law course at Royal Roads University and conducted federal prosecutions in Ontario while completing the first portion of her LLM.

Merrill's volunteer work includes establishing the Nanaimo Children's Lawyer (a pro bono child advocate project for children whose parents are involved in high conflict separation), serving as a governor on the Board of the Law Foundation of BC,

acting as a mentor under the CBA Women Lawyers' Mentoring Program and serving on the executive of the Nanaimo Family Bar and Nanaimo Alternative Dispute Resolution sections of the CBA.

Merrill is the first woman Bencher to represent Nanaimo county. Eleven of the 31 Benchers are currently women, which is comparable to the percentage of women lawyers in the profession.

The Law Society congratulates Nancy Merrill, and thanks all the candidates for their participation in this by-election. For a breakdown of the by-election results, see the Law Society website (About the Law Society/Benchers/Elections). ❖



Law Society continues to help build library of online courses

by Timothy E. McGee

IT MAY NOT surprise you to learn that the Law Society receives much feedback regarding continuing professional development (CPD) and the requirement for all lawyers to participate in at least 12 hours of ongoing education each year.

We are now in our second year of CPD and the Law Society remains committed to helping increase the number of available educational options for lawyers.

In particular, we are increasing the number of online courses and non-traditional options for earning educational credit.

For example, in September of this year, we partnered with Courthouse Libraries BC to offer the latest in online course offerings for BC lawyers. The *Legal Research Essentials: Finding Cases on Point* course is hosted on the Law Society website and is an introduction or refresher on using popular research tools to find relevant case law. Using well-produced video tutorials, the course demonstrates online and print research options. It takes one hour to complete and is approved for one CPD credit.

Since 2006, the Law Society itself has offered several online courses to address some of the key practice management issues that can lead to problems we often see as regulators. In addition to being free, our online courses offer lawyers the flexibility to earn their education credits anytime, anywhere and at their own pace.

The Small Firm Practice Course was the first online course offered by the Law Society and is mandatory for all lawyers commencing practice in a firm of four lawyers or less. To date, it has been completed by about 1,100 lawyers, taking about six to eight hours to complete and qualifying for

two education credits. Topics include trust accounting, HST reporting, conflicts of interest and office management. In 2007 the course was awarded the top prize in the "Best Technology" category by the international Association for Continuing Legal Education.

Since the vast majority of complaints we receive from clients relate to poor communication in some form or another, we created the Communication Toolkit

primarily to assist lawyers who wish to resume practice after a leave of absence or who are venturing into a new area of practice. The course comprises seven modules covering various areas of practice, including small claims, Supreme Court, wills and estate planning, probate and estate administration, real estate, corporate commercial law and family law.

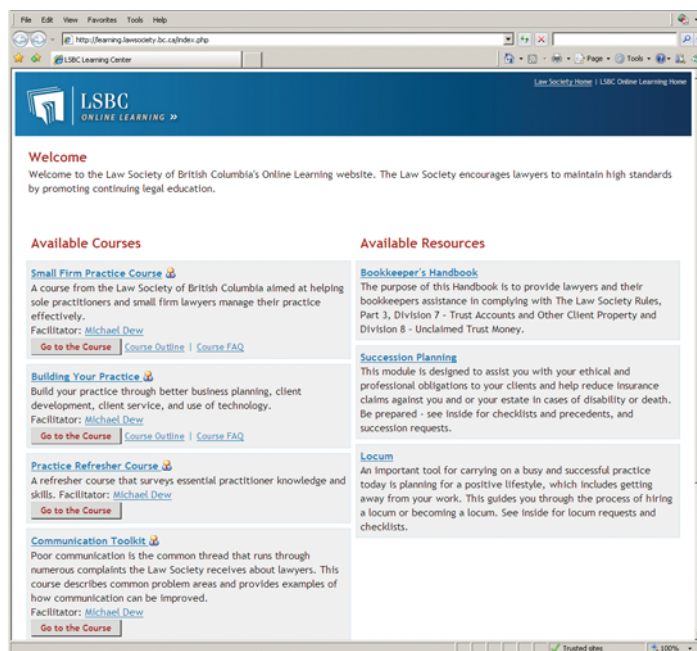
Of course the Practice Refresher course is not designed to be a complete knowledge base for each area of law, but rather attempts to capture highlights and to provide an overview of core concepts. Up to six CPD credits can be claimed by taking the Practice Refresher course.

As of mid November 2010, over 1,700 lawyers have taken our online classes.

But our courses are a mere drop in the bucket compared to all the other educational choices available to lawyers.

By logging into the member-only section of our website, lawyers can learn about literally hundreds of course options, many of them online. And of course, there are several other ways to earn education credits that don't involve a classroom including, among others, attending CBA and other bar association meetings, mentoring or being mentored, participating in a study group and writing articles.

The Law Society welcomes your feedback. Please let us know if you have any ideas or suggestions as to how we can improve the CPD program. You can contact me directly or send an email to Debra DeGaut in our practice standards group at DDeGaut@lsbc.org.



course, which describes common problem areas and provides tips on how communication can be improved. This course was introduced in late 2008 and has been taken by over 300 lawyers. Completion of the Communication Toolkit counts for two hours of professional development credit and meets the annual requirement for two hours of course work covering professional responsibility and ethics.

We also offer the Practice Refresher course, which we introduced in late 2008

Senior lawyer and former Law Society president to join team of advisors



WARREN WILSON, QC, a highly respected Vancouver lawyer, is joining the Law Society as a Practice Advisor, effective January 4, 2011.

Wilson will team with a busy group of Practice Advisors, who field more than

6,000 telephone and email inquiries a year from BC lawyers. Practice advice is a key Law Society program, assisting lawyers to understand and meet their professional obligations.

In his new position, Wilson will give practice and ethics advice to lawyers and assist in providing support to the Ethics Committee.

"This is exciting news for the Law Society" said CEO Tim McGee. "Warren is not only very experienced in the area of professional responsibility, he is also very well regarded among BC lawyers, and as past president of the Law Society he understands the importance of protecting the public interest." ♦

Sign up to receive Law Society newsletters electronically

With few exceptions, all materials created by the Law Society and distributed to BC lawyers are available electronically and can be sent by email. That includes *Benchers' Bulletin*, changes to the Act, Rules and Handbook, and much more.

To sign up for electronic distribution, simply log in to your Law Society account and under "Member Options," choose the link "Email Address and Email Choices." Under "Law Society publications by email" select the option "I DO want to receive the *Benchers' Bulletin*, related newsletters and *Member's Manual* amendments in electronic form".

For more information, email communications@lsbc.org. ♦

Publication of conduct review reports to increase

AT THEIR NOVEMBER 5, 2010 meeting, the Benchers resolved to publish summaries of all conduct reviews, unless the Discipline Committee decides otherwise in a particular case. The summaries will continue to be published anonymously, unless the lawyer involved in the conduct review consents to have his or her name made public.

Approximately 60 conduct reviews are held each year. Until now, the Law Society has only occasionally published report summaries when it was decided there was significant educational value for the profession. Hearing reports, on the other hand, are always published on the Law Society's website.

It is believed that increasing publication will assist the profession in understanding conduct that may lead to discipline as well as help the public better understand the Law Society's discipline process.

A conduct review is a significant

disciplinary measure to address professional misconduct, second only to a public hearing following the issuance of a citation. It is a formal, confidential meeting between a lawyer against whom a complaint has been made and a Conduct Review Subcommittee. The goal is to assist the lawyer in understanding the problems that have resulted from his or her conduct, so as to prevent the same or similar circumstances from happening in the future.

Once the review is complete, the Discipline Committee will consider whether further action is required. The committee will only conclude the matter once it is satisfied the lawyer has an understanding of the serious nature of the conduct and its consequences, and is not likely to be involved in such matters again.

There was considerable debate by the Benchers about the benefits and risks of retaining the privacy and confidentiality of

conduct reviews, including whether published reports should identify the lawyer involved. Law Society Rule 4-11 states that a published summary must not identify the lawyer unless that person consents in writing to being identified. Some Benchers felt that the Rules should be changed to allow for identification, saying the public should know that a particular lawyer had undergone a conduct review.

Those who favoured the status quo expressed the view that the open and honest exchange between the lawyer and the reviewers, without the constraints of more formal proceedings, has been generally successful at achieving the intended outcome and that the threat of being publicly named could hinder the free exchange that is core to the conduct review process. A majority of Benchers voted to increase publication but retain the confidential aspect of the conduct review. ♦



Gavin Hume, QC – “A Statesman”

EXPERIENCED, SKILLED AND respected. Words that aptly describe Gavin Hume, QC, the Law Society's President for 2011.

Hume is held in the highest esteem by his fellow Benchers. “Gavin’s work ethic is legendary around the Benchers’ table,” says Second Vice-President Bruce LeRose, QC. “He always strives for excellence and he is innately fair.”

Second Vice-President-elect Art Vertlieb, QC, describes Hume as a good lawyer and an inherently decent human being. “He genuinely listens and is respectful of people’s views, even if he doesn’t agree.”

For more than four decades, Hume has been practising law at Fasken Martineau

DuMoulin (formerly Russell & DuMoulin). He is recognized nationally and internationally as a leading practitioner in labour and employment law.

A steadfast interest in labour law was first piqued at a seminar he attended at UBC law school. Shortly after being called to the bar in 1968, he was invited to create a labour law practice at Russell & DuMoulin with Ben Trevino, QC (1997 Treasurer, now a Life Bencher). Trevino was his mentor, and together they became pioneers in the uncharted field of labour and employment law.

Hume has also been committed to teaching and mentoring the next genera-

tion of lawyers who are interested in pursuing a career in law, and was chair of his firm’s Student Committee for many years. At last count, he has been principal to 112 law students who have had the benefit of his wisdom and expertise.

Law students, and anyone who is contemplating becoming a lawyer, will receive the same words of advice from Hume: “Engage in the practice of law only if you love it. It’s a very demanding profession and requires a significant amount of time and effort. If you don’t love the work, you will resent it.” Clearly, Hume loves the practice of law, and his contribution extends beyond his law firm. “I want to give

back to the profession that has been generous to me."

During his seven-year tenure as a Benchers, Hume has served on numerous Law Society committees. LeRose admires Hume for always taking on the most difficult and sometimes controversial assignments as a Benchers. "He does so with quiet determination, total conviction and a willingness to share his enormous experience with his colleagues and peers. There are no tasks too difficult and no details too small when doing the many and varied jobs he has undertaken as a Benchers."

Most recently, Hume was the Chair of the Ethics Committee and the Finance Committee, Vice-Chair of the Executive Committee and a member of the Appointments Subcommittee, the Litigation Subcommittee, the Delivery of Legal Services Task Force and the Retention of Women in Law Task Force.

In addition to his invaluable work on behalf of the Law Society, he has also served as an executive member of the Canadian Bar Association Labour Sections, at the local and national levels. He is also a founding member and past president of the Canadian Association of Counsel to Employers.

Hume's contribution extends beyond the legal community. "My mother always said that it's important to give back to the community that we live in." An impressive display of awards on the wall in his office is a testament to how much he has given back.

Hume is one of only a few Honourary Life Members of the Human Resources

Management Association of BC. He was a recipient of the CBA's Community Service Award for Vancouver in 2003.

In 2009, YMCA Canada appointed Hume as an Officer of the YMCA Fellowship of Honour. He has served in a governing capacity and as honorary solicitor for the YMCA of Greater Vancouver throughout most of his career. LeRose recognizes Hume as one of the cornerstones of the YMCA. "He has spent countless years in a leadership role with this organization and its success is in no small part due to the many contributions of his time, talent and resources."

Second Vice-President-elect Art Vertlieb, QC, describes Hume as a good lawyer and an inherently decent human being. "He genuinely listens and is respectful of people's views, even if he doesn't agree."

Hume and his wife, Trish Janzen, committed to help with the revitalization of the YMCA's Camp Elphinstone in Howe Sound. With their support, the newly-opened Mark Hume Waterfront and Leadership Centre provides children and youth with leadership and boating skills training.

When he takes time for his own well-deserved leisure activities, Hume does so in true west coast style. He is an avid skier and a boating enthusiast. In the summer months, he enjoys cruising BC waters in his power boat, including the west coast of Vancouver Island and the Broughton group

of islands north of Desolation Sound. When his boats are stored away for the winter, he turns his attention to the opening of ski season at Whistler.

Hume has an extensive collection of wines. He proudly does his part to support the BC wine industry and has a particular penchant for the Naramata Bench wines. His passion for wine has not gone unnoticed by his fellow Benchers. Vertlieb believes that Hume's favourite activity is reflecting on wine. "He's not a wine snob; he just genuinely enjoys wine."

Above all else, Hume is a family man who likes nothing better than to preside at family dinners in West Vancouver and Whistler with Trish, son Gavin, his wife Adriana, grandsons Harrison and Robbie, "darling daughter" Stephanie and her husband Damian.

He and Trish reside in West Vancouver, but Fasken Martineau DuMoulin could likely be considered a second home as Trish is also a partner there. The office and meeting rooms on the 9th floor of the Law Society building may soon begin to feel like yet another home during his term as president.

While at the helm, Hume will focus on advancing the objectives in the Law Society's three-year strategic plan, which concludes at the end of 2011. He will also play a pivotal role in developing a new strategic plan for 2012.

With his structured and methodical approach, there's no doubt that Hume will get the job done. And with his integrity, modesty and professionalism, the Law Society's "statesman" for 2011 will get the job done right. ♦

In Brief

JUDICIAL APPOINTMENTS

Trevor Armstrong, QC, formerly with Hamilton Duncan Armstrong & Stewart Law Corporation, was appointed to the Supreme Court of BC in New Westminster. He replaced Madam Justice J.M. Gropper who was transferred to Vancouver.

Jeanne Watchuck, formerly a judge of the Provincial Court, was appointed to the Supreme Court of BC in Vancouver. She replaced Mr. Justice I.H. Pitfield who resigned.

Murray Blok, formerly District Registrar of the Supreme Court of BC, was

appointed to the Supreme Court of BC in New Westminster. He replaced Mr. Justice G.R.J. Gaul, who was transferred to Victoria to replace Madam Justice J.L. Dorgan, who elected to become a supernumerary judge. ♦

Gaining CPD credits through mentoring

by Linda K. Robertson

ARE YOU LOOKING for ways to complete the required 12 hours of Continuing Professional Development (CPD) credits? If so, mentoring is an excellent way to gain credits and give back to the profession at the same time. It is especially helpful for senior or semi-retired lawyers who may feel that many of the professional development courses are not as useful to them.

The mentor relationship is especially important for junior lawyers practising on their own or in small firms, and lawyers living in smaller communities. They may not have access to experienced lawyers to help them learn new areas of law or to provide guidance on practice management or ethical issues.

Mentoring can be either face-to-face or over the phone, so lawyers practising in different locations can easily work together. This is both a practical and inexpensive way to gain CPD credits without needing to travel to another community to take a course or organize a study group.

The criteria to qualify as a mentor are similar to that of a principal for an articulated student. The mentor must be a lawyer in good standing who has practised law,

either full or part-time, for seven of the last 10 years.

Mentors do not need to be senior in years of call to the mentee. Peer mentoring can qualify for credits, provided the mentor meets the eligibility criteria set out by the Law Society and has sufficient expertise in the subject under discussion. Lawyers at any stage of their careers who are working in unfamiliar or new areas of law can benefit from working with mentors with expertise in that legal area.

Both the mentor and the mentee can claim six hours of CPD credits while working together. Mentors can claim a full 12 hours if separately mentoring more than one mentee. Sessions must be a minimum of 30 minutes to encourage more in-depth discussion as opposed to simply answering questions on a file. Lawyers must also commit to completing at least six hours of mentoring with the same mentee.

Registering for CPD credits is easy. The parties file a simple Mentoring Plan on the Law Society website to ensure that the topics fall within the approved CPD guidelines, and the dates and times of the mentoring sessions are recorded. (See Licensing &

Membership/Continuing Professional Development on the Law Society website for the mentoring guidelines and FAQs.)

Mentoring for CPD credits cannot include subjects such as business development, work-life balance or advice on specific client files. There is also a restriction on claiming CPD credits for mentoring an articulated student within your own firm.

Lawyers interested in finding a mentor can check out the Mentoring Registry on the CBA website. However, lawyers can also simply contact a colleague who may be willing to act as a mentor or peer mentor to help them learn new areas of law or practice management.

Questions about mentoring and CPD credits can be directed to Lisa Nevalainen, Member Services Representative, at Inevalainen@lsbc.org. ❖

Linda K. Robertson is a member of the Lawyer Education Advisory Committee. She is a Lawyer Coach and Practice Consultant, who helps law firms design mentoring programs.

Unauthorized practice of law

UNDER THE *LEGAL Profession Act*, only trained, qualified lawyers may provide legal services and advice to the public. Further, non-lawyers are not regulated, nor are they required to carry insurance to compensate clients for errors and omission in the legal work or claims of theft by unscrupulous individuals marketing legal services. When the Law Society receives complaints about an unqualified or untrained person providing legal assistance, the Law Society will investigate and take appropriate action if there is a potential for harm to the public.

From September 1 to December 2, 2010, the Law Society obtained undertakings from 18 individuals and businesses not to engage in the practice of law

The Law Society has obtained a court order prohibiting the following individual

and business from engaging in the unauthorized practice of law:

Auguste Christiane Frederich von Pfahlenburg-Marienburg (AKA Christiane von Pfahlenburg, AKA Walther Kay Diener, and his company Argento Metals Compagnie Ltd., AKA A.M. CIE. Ltd.) was found in contempt of a contempt order.

In 2006, the Law Society obtained an injunction against von Pfahlenburg-Marienburg, restraining him from engaging in the practice of law. The Law Society learned von Pfahlenburg-Marienburg continued to engage in the practice of law and brought contempt proceedings against him. In 2008, the Court found von Pfahlenburg-Marienburg in contempt of a court order and ordered him to serve 100 hours of community service and to pay the society's

costs. Von Pfahlenburg-Marienburg did not complete any community service and has not paid the Law Society's costs.

The Law Society obtained information that von Pfahlenburg-Marienburg continued to provide legal advice and legal services for a fee, and appeared to be soliciting business from vulnerable members of the public. The Law Society brought an application against von Pfahlenburg-Marienburg for breaching the 2008 contempt order. In November 2010, the Court found von Pfahlenburg-Marienburg in contempt of the contempt order. Von Pfahlenburg-Marienburg was sentenced to 30 days incarceration and ordered to pay special costs to the Law Society. ❖

Law Society Award

Three hundred sixty lawyers and judges attended the Bench & Bar dinner on November 3, when President Glen Ridgway, QC presented the Law Society Award to Shirley Bouck on behalf of her husband, the late Honourable John Charles Bouck.

Mrs. Bouck said that the family was honoured and proud to accept the special tribute to her husband. She noted that he was passionate in his pursuit of excellence and his hopes and vision to make the justice system work better.



CRA requirements for information – new developments

IN THE SUMMER 2010 *Benchers' Bulletin*, we alerted lawyers to their professional obligations if they receive a request for information from the Canada Revenue Agency (CRA). New developments have arisen from a recent decision in the Quebec Superior Court.

In *Chambre des Notaires du Quebec v. Canada (Procureur Général)* [2010] CRL 136, the court declared that ss. 231.2 and 231.7 of the *Income Tax Act* (the sections that authorize the CRA to issue requirements for information, and to seek a compliance order if the documents are not produced pursuant to the requirement) were unconstitutional, insofar as they relate to demands made upon lawyers for information from client files. The *Chambre*

des Notaires had argued that a process that allows the CRA to seize documents with no possibility of informing the affected client, and to require a lawyer to demonstrate that solicitor-client privilege applies before the documents can be afforded any protection, is unconstitutional. The court concluded that, in light of the Supreme Court's decision in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, a legislative regime that does not allow a client, who is the owner of the privilege, to know directly that the privilege was threatened and thus to ensure the protection of his or her rights, was not reasonable from a constitutional point of view. Sections 231.2 and 231.7 do not directly permit the client to know that privilege is threatened. Further, the court

held that it was problematic that s. 231.7 required the application for a compliance order to be directed only to the person on whom the demand was made (the lawyer) and not the client as well.

The Law Society has written to the Department of Justice seeking confirmation that, in light of this case, CRA will cease issuing such demands on lawyers.

If you receive a demand or a notice of requirement to produce information pursuant to s. 231.2, or an application naming a lawyer as a party pursuant to an application for an order under s. 231.7 of the Act, contact Barbara Buchanan, Practice Advisor (604-697-5816) or Michael Lucas, Manager, Policy & Legal Services (604-443-5777). ♦

FROM THE LAW FOUNDATION OF BC

Coastal Community Credit Union

LAW FOUNDATION CHAIR, Mary Mouat, commends Coastal Community Credit Union for its commitment to paying a competitive rate of return on lawyers' pooled trust accounts. Recognizing the overall negative impact of continued low interest rates on the Law Foundation's revenues, Coastal Community Credit Union agreed to a new interest agreement of prime less 2%, effective November 1, 2010, that will ensure that Coastal Community Credit Union

will continue as a preferred institution with which to bank.

Thanks go to Adrian Legin, President and CEO of Coastal Community Credit Union for making this new agreement possible.

Increased revenues enable the Law Foundation to fund programs that make the justice system accessible to the people of British Columbia. The funded programs include professional legal education, public

legal education, law reform, legal research, legal aid and law libraries.

The Law Society, the BC Branch of the Canadian Bar Association and the Law Foundation encourage lawyers to consider which financial institutions provide the best support to the Law Foundation when deciding where to place their trust accounts. ♦



Inside the crystal ball – one possible future for lawyers and law societies

marketplace is rapidly changing; 2) those changes will have a profound impact on the way lawyers practise law; and 3) the combination of those forces will influence how law societies will regulate the profession.

THE CHANGING MARKETPLACE

For decades lawyers have billed their clients at an hourly rate, but many clients are no longer accepting that fee structure. Corporate clients are feeling the pinch — especially since the recession — and several are looking for ways to save. Pushing back on their lawyers' rates and demanding predictable fees is one way many have tried to do that.

Individual clients have also begun demanding fixed fees. The Law Society has taken steps to make this structure easier for lawyers and their clients. In 2008 the Benchers approved recommendations from the Unbundling of Legal Services Task Force to make it simpler for lawyers to offer limited scope retainers.

But many people aren't using lawyers at all. It's a rare barrister these days who hasn't encountered an unrepresented litigant. And solicitors have seen new competitors charge in on what was formerly their exclusive turf. As Furlong puts it, "lawyers still dominate the legal marketplace, but competitors have carved off huge chunks of lower-level work. Some are large-scale corporate entities, especially title insurers that have eviscerated the residential real estate bar. Others are technology-driven, the descendants of the do-it-yourself will kit: free, customizable, downloadable contracts. Nobody expects these non-lawyers' share of the marketplace to shrink in the

years to come."

And then, adds Furlong, there's also the impact of globalization, which has led to competition from "primarily low-cost but competent lawyers in foreign countries who perform routine legal tasks at massive cost savings."

In addition, Furlong believes the next generation of lawyers, millennials, will have a profound impact on law firms.

"They are going to keep pouring into this profession for another 15 years. By the time they're done, they're going to constitute a larger portion of lawyers in law firms than boomers did."

Furlong stressed that's important because millennials have their own value system and significantly, "time does not equal money for them. That matters because the equation time equals money is the foundation of the billable hours system for lawyers. So there is no chance that they will run law firms based on the billable hour, because it just doesn't make sense to them."

But if Furlong's crystal ball is to be believed, this is just the tip of the iceberg of what's to come.

"Even these changes are incremental compared to what the next decade, and the one after that, will bring," advised Furlong.

"So far, what we've seen are essentially adjustments to the basic lawyer-driven model — shifts in the power balance, the first signs of a breach in the closed legal marketplace. The next 20 years will overturn much of what lawyers today still take for granted and will, for the first time in centuries, give rise to a legal services marketplace in which lawyers are not the dominant providers."

JORDAN FURLONG HAS seen a lot of change since he first became a lawyer.

"When I was called to the bar in 1995, the Law Society of Upper Canada was prosecuting paralegals. Today it regulates them."

But in many ways, Furlong is astounded by how, until relatively recently, the profession of law has managed to escape significant change, despite the evolving world around it.

"If you took a lawyer from the turn of the previous century," Furlong told the Benchers at a presentation to them at their October meeting, "and you put him into a law firm in the year 2000, he'd be stunned by the technology and hopefully he'd be impressed by the diversity and other things. But when you actually sat him down to do some work, he'd say 'this looks familiar to me.' You take a doctor from 1900 and put him in a modern hospital, and there's absolutely no comparison. He'd have no idea what to do because so much has happened. The world has changed, but by and large lawyers haven't."

Furlong is a consultant who makes a living, in part, out of predicting where law will go next.

Three themes emerged from his presentation to the Law Society: 1) the

WHAT THE CHANGES MEAN FOR LAWYERS

Furlong predicted that over the next 20 years there will be six significant changes:

1. **New roles for lawyers.** According to Furlong, lawyers will remain “the premier suppliers of advocacy” and they will “specialize in counsel.” He added that, “while the volume of this work is nowhere near what lawyers once handled, it remains lucrative and satisfying.”
2. **Widespread automation of legal services.** Furlong sees a world where “even the most complicated tasks have been templated, flowcharted and delegated to software” and where “comparatively few lawyers sell tangible products at a profit” because Furlong foresees that “this type of work, which used to constitute the majority of many lawyers’ offerings, will be largely automated.”
3. **Non-lawyer service providers.** Furlong envisages a future where “both corporate and consumer clients are unable or unwilling to spend much money and are content with ‘good enough’ results.”

This will lead to the flourishing of “plenty of cheap-and-cheerful legal service providers, most of them powered by new technology and based outside the legal profession.” Furlong forecasts that these providers will be regulated by government regimes similar to consumer protection laws. He believes the spinoff of the relative affordability of these services means that access to justice will be “greater than it’s ever been.”

4. **Client pricing drives lawyer efficiency.** Furlong calculated that fixed or predictable fees will be the norm for all but the most unusual matters. “Efficiency, once the enemy of profitability in billable-hour law firms, is now virtually the only way to ensure profitability in modern ones.”
5. **New law firm models.** Furlong predicted that in the coming decades most law firms will have abandoned the partnership model and “now operate essentially as corporate entities.” He believes most of the tasks that associates once did and billed for will be outsourced or automated.

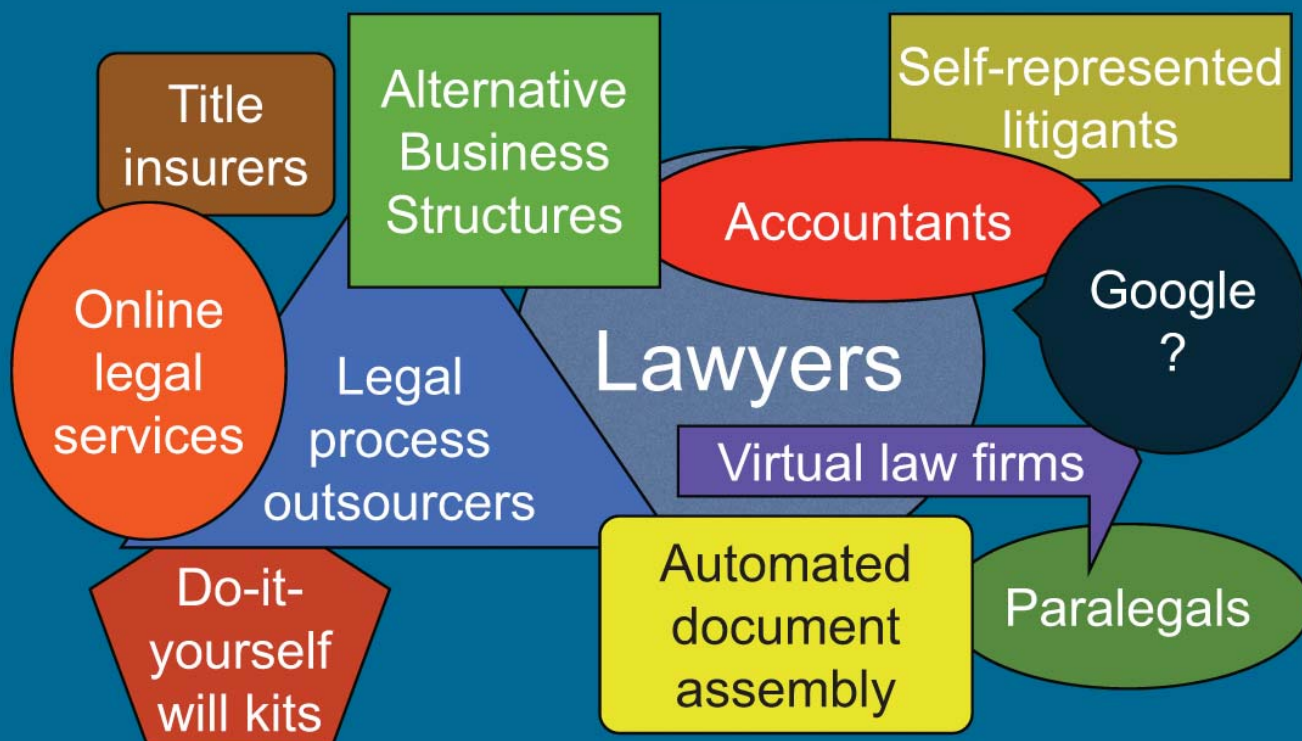


Jordan Furlong

6. **Globalization is ubiquitous.** Furlong suggested lawyers could learn from the

continued on page 12

The crowded marketplace



Future ... from page 11

experience of the North American automobile industry. Originally it feared "cheap" Japanese imports, but Japan quickly started vying for the high-end market as well. Furlong warned that North American automakers were caught unprepared for the competition and that "the same fate awaits Western law firms that mistakenly think offshore lawyers will be content to keep taking low-level work from the United States, Canada and England indefinitely."

WHAT THE CHANGES MEAN FOR REGULATION OF LEGAL SERVICES

"In practical terms," Furlong said about the current system, "lawyers have regulatory control or direct influence over the governance of the legal profession and the delivery of legal services to the public." Furlong explained how these two issues, in his opinion, have been inaccurately intertwined with self-regulation.

"Lawyer self-governance is a centuries-old tradition that can trace its lineage back to the Tudor period and that can be defended on a number of grounds, including the rule of law and the danger of unfettered state power. Lawyer control of legal service delivery is more of an accident of history, one that came about because only lawyers were qualified to provide legal services. Self-governance, in a circular way, evolved into marketplace governance."

Because of that, Furlong told the Benchers, lawyers' regulatory control over the entire legal services marketplace "will struggle to maintain its position in the years to come. The time is passing when most of the competent providers of legal services within a jurisdiction are locally licensed lawyers. And if locally licensed lawyers are only one of a number of competing service providers in a jurisdiction, on what basis can those lawyers claim fitness to regulate their competition?" asked Furlong.

In addition, Furlong stated that globalization will present a challenge for law

societies "as they will have to address the fact that lawyers situated outside their jurisdictions are delivering services to clients inside their jurisdiction, and then square that fact with their regulatory mandates."

He added this will make it extremely challenging to enforce unauthorized practice of law provisions "in a wired, globalized legal marketplace."

In the final analysis, Furlong believes "the likeliest eventual outcome is that within 10 to 20 years, law societies will still exist, but will have seen their mandates limited to governance of the legal profession alone, not the regulation of legal services generally."

Furlong warned, "this isn't just a blip, this isn't just a downturn. This is more substantial. This is a transformation of our profession."

He concluded that, in order to survive, both law societies and lawyers will need to focus on what will best support the interests of clients, themselves, and the broader goal of access to the justice system. ♦

The Law Society — thinking toward the future

Investigating impact of technology

As technology advances, so too is the pace at which it is transforming the practice of law.

- **Cloud computing.** The Law Society is considering the impact of cloud computing, which involves accessing data processing and storage applications via the internet. Many virtual law firms rely on this technology to share documents with lawyers and clients. On September 16, 2010, the Executive Committee struck a working group to:
 - look into what rules and policy the Law Society will need for BC lawyers who are using cloud computing and/or remote processing and storing of business records; and
 - consider BC lawyers' use of electronic storage, both in and outside of the province.

Putting the public's needs first

Jordan Furlong predicted that, in order to survive, law societies will need to focus on the interests of clients and access to the justice system. Furlong's view aside, the Law Society has several initiatives under way that do just that:

- **The public interest.** The Benchers have approved in principle a request for changes to the *Legal Profession Act* that will enhance the ability of the society to regulate in the public interest and that emphasize the public's interest is paramount.
- **Access to justice.** Many steps have been taken to fulfill the Benchers' strategic objective of enhancing access to legal services. For example:
 - The Law Society is working on a strategy to enhance access to legal services by improving the retention rate of lawyers in the legal

profession including, in particular, Aboriginal lawyers.

- In July 2009, a business case was developed by the Equity and Diversity Advisory Committee outlining a series of recommendations aimed at improving the retention of women lawyers in the profession. Staff is currently following up on two of the recommendations.
- In order to enhance the public's access to competent and affordable legal services, the Benchers approved a plan in October to increase the roles that paralegals and articulated students can perform under the supervision of a lawyer.
- In 2008 the Benchers approved recommendations from the Unbundling of Legal Services Task Force to make it easier for lawyers to offer limited scope retainers.

FROM PPC CANADA EAP SERVICES

Helping you with life's predictable challenges ... and the less predictable crises

EVERYONE CAN USE a little help in life from time-to-time, and lawyers are no exception. BC lawyers have access to a confidential program designed to assist you and your family with a variety of personal and professional issues.

PPC CANADA EAP SERVICES (FORMERLY INTERLOCK) – MAKING LIFE EASIER

Everyday life is full of challenges. PPC are experts at identifying those life events that can cause unwelcome stress or anxiety. Many of these key life events are predictable, so with PPC's help, you can prepare for them and stay happy, healthy and fully focussed. You can access assistance 24/7 via telephone or online services at PPCOnline.

HELPING IN TIMES OF CRISIS

Some life events are not predictable,

(serious illness, the death of a loved one). At difficult times like these it can be very helpful to talk to an expert and receive practical advice and support. PPC offers a range of support services, including web-based resources, e-counselling, telephone support or counselling and in-person counselling. PPC is only a phone call away and will discuss with you the most appropriate support package for your needs.

THE RIGHT HELP AT THE RIGHT TIME

Your PPC service is available 24 hours a day, 7 days a week, online or by phone. All services are completely confidential.

MORE THAN COUNSELLING

PPC Canada provides services to assist with all of life's challenges. PPC can assist you and your family with:

- financial issues – consultation with financial coaches for debt management and financial planning;
- nutritional coaching – consultation and nutritional planning with a registered dietician;
- information and advisory services – customized resources information packages to assist you with services such as childcare, eldercare and parenting;
- smoking cessation – a program designed to assist those who wish to quit smoking using the Quitcare Program.

WE'RE HERE TO HELP – CONTACT US 24/7

Online assistance and e-counselling:
www.ca.ppcworldwide.com

Telephone: 1-800-663-9099. ♦

Holiday organizing: 5 tips to keep you on track, on time, and on budget

THE HOLIDAYS ARE a time to enjoy quality time with family and friends ... if you can find it. During the festive season, unrealistic demands can be placed on our schedules and our wallets. Here are our tips for helping you get the most out of the holidays:

1. DELEGATE, DELEGATE, DELEGATE

All the great leaders do it. Rely on the strengths and interests of those around you. Does your son or daughter display a creative streak? Involve them in decorating or gift-wrapping. By involving others in the things they most enjoy, they get into the holiday spirit and you gain precious time.

2. KNOW WHEN TO SAY NO

As your email box begins to fill up with invitations, don't be afraid to pick and choose. Rather than berating yourself for declining an invitation, congratulate yourself for living up to your holiday "self-care" commitment.

3. GET INVOLVED IN THE COMMUNITY

At a time when most of us are focused on giving, it only makes sense to think of those less fortunate than ourselves. Whether it's "adopting a family" to provide them with the means to hold their own celebration, or helping out for an afternoon in a soup kitchen, the true holiday spirit can be found in compassion, generosity and kindness.

4. DON'T EXPECT PERFECTION

Remember, we can't all be Martha Stewart. Try and let go of, or at least lower, the increased expectations many of us place on ourselves at this time of year. Keep a healthy perspective; the burned cookies, mismatched place settings and chaotic house are all just part of the season.

5. THE BEST GIFT YOU CAN GIVE YOUR FRIENDS AND FAMILY IS YOU

Make sure to take time for yourself.



Whether it's a hot bubble bath, a walk with the dog, or even 20 minutes curled up on the sofa with a favourite magazine, take care of your emotional and physical well-being. The more you invest in yourself, the more energy you will have to devote to your colleagues, friends and family. ♦

PRACTICE TIPS, by Dave Bilinsky, Practice Management Advisor

Top 10 tech tips

♪ *Save some time to dream*
Save some time for yourself
Don't let your time slip away
Or be stolen by somebody else...♪

Lyrics, music and recorded by Jon Mellencamp

I WOULD LIKE to share the top technology tips that I believe will improve your efficiency and effectiveness:

1. ADOBE ACROBAT

Adobe Acrobat has become one of those applications that have become essential to how I work. Not only does it allow me to send documents without hidden metadata, but it has become the “go to” application for government filings and exchanging documents with clients and other lawyers. What’s more, you can insert hyperlinks. That means you can create a brief, for example, that contains your argument and evidence, as well as the law on which you are relying, all linked and contained in one file.

For the paperless office, Adobe offers an ISO standard format that is unlikely to become obsolete. The “dual layer” nature of a searchable PDF (namely, a text layer combined with the graphic layer) allows you to easily search documents in a folder, a hard drive or even a network.

All versions of Adobe Acrobat, except the free Reader, have the ability to convert a scanned document into a searchable PDF, using optical character recognition (OCR).

The full version of Acrobat 8 (and higher) has many other features. One that I really like is the ability to create a single PDF portfolio that is composed of multiple files and formats. In particular, you can convert select emails or a whole folder, or nested groups of folders, right from the menu bar in Outlook. This is a great way to organize and archive emails, which is particularly useful when a file is closed.

2. DUAL MONITORS

Once you have crossed the Rubicon and started to use dual monitors, you will find there is no going back. The ability to refer to a document on one monitor while working on another (for example, research on

one and a draft contract on another) is a huge time-saver.

Virtually all laptops and most notebooks have a VGA connection that can be used to drive a second monitor. Desktops may need an additional video card installed, but they’re not expensive. If you really decide to go whole hog, you can obtain a box that will allow you to connect and drive three monitors!

Once enabled through the operating system, you can drag and drop or copy and paste from one screen to another. The efficiencies gained from working in a dual-monitor setup quickly offset the expense of a monitor and video card.

3. GOTOMEETING (OR ADOBE CONNECT)

GoToMeeting (www.gotomeeting.com) (or a competing product, Adobe Connect) is a great way to hold a meeting without having to go thru the expense and hassles of air travel. GoToMeeting allows you to hold one-on-one or group meetings of up to 15 people easily and cheaply. You can also present a webinar with their associated software, GoToWebinar.

GoToMeeting works with a Mac or PC. You can show a document or your whole screen. Attendees can get keyboard control — great for training or showing someone something. You can use a computer microphone or the telephone for the audio portion, and you can record the presentation. There is also an online chat component.

4. “PASTE SPECIAL”

Lawyers are forever cutting and pasting text from one document to another. You probably have experienced the frustration that results from pasting a block of text only to find that the formatting of your document has been disrupted and “gone crazy.” The reason is that “Paste” brings the formatting of the original document into the target document, which may not be the desired result.

There is a way to copy and paste text that will not disrupt the style of your new document. Use “Paste Special” instead and select “Unformatted Text.” This will import the text without the associated formatting and make life much easier.

5. EZDETACH AND SIMPLYFILE

EzDetach add-in application for MS Outlook is an intelligent filing assistant for email attachments. It “guesses” which folder an attachment belongs in, and with one mouse click you can save it into that folder. It learns where attachments belong, thereby improving its accuracy. Along with its companion product SimplyFile (which guesses which folder an email should be stored), it can make your life a whole lot easier. Find them at www.techhit.com.

6. ACTIVEWORDS

If you have ever used Quick Correct or a similar function in a word processing program, you can relate to ActiveWords (www.activewords.com). This application is like Quick Correct on steroids. You can type “Word” into the ActiveWord toolbar and it will launch MS Word. Type in “Photos” to open the pictures folder on your PC. If you use the same phrase or text all the time, you can set up an ActiveWords shortcut for use in ANY application you wish — not just your word processor. I use it in conjunction with Amicus Attorney to quickly substitute text that I use all the time. You can also use it to send emails. ActiveWords has become so central to how I work that I look for it on my Mac — but unfortunately, it is only for the PC. Rats!

7. VOICE RECOGNITION

Voice recognition software translates speech to text on the computer. The productivity gains that can be realized are wonderful. If you have not tried it recently, the recognition rates have skyrocketed as the software has improved and the training periods minimized.

The products that are available:

- Dragon’s Naturally Speaking (Nuance) (Windows) (Preferred, Professional or Legal)
- IBM ViaVoice (Nuance) (Mac or Windows or Linux)
- Dragon Dictate for Mac (www.macspeech.com/pages.php?pid=143)
- Microsoft VR in Vista or Windows XP

Okay, I know that voice recognition isn’t



for everyone. I have talked to lawyers who have achieved a 98 per cent recognition ratio and others who were unable to get through one sentence without an error. I think voice recognition falls under the Alexander Keith beer motto: "Those who like it, like it a lot."

I personally think it is magic and I have achieved a fairly high recognition rate — high enough that I can dictate faster than I can type. I use Dragon's Professional version 10, a Senneiser switchbox and stereo headset, which allows me to use the same headset to answer telephone calls as well as dictate to the computer. The sound is clear and the switchbox has a volume control. My only negative comment is that the earpads get a bit warm after a while.

The Sennheiser USB microphone works well with my Lenovo and Dragon. I reduce the background noise by closing my door, as this seems to affect recognition rates. I have a grounded, three-prong power supply; I found the two-pronged one created static. Lastly, the most recent releases of Dragon analyze your existing documents and determine how you write. This seems to have a big impact on recognition rates.

8. XOBNI

Xobni.com ("inbox" spelled backwards) is another Outlook plugin. It searches the web for information on your contacts and brings it all back into Outlook — so you can see the picture of the person who sent you

an email, see your threaded conversations, find attachments from them, and much more. But the real power of Xobni is its ability to search your Outlook folders with lightning speed.

9. IOSAFE

ioSafe is an external hard drive that is practically bombproof! It is USB 2.0 enabled, fireproof (it can withstand 1550° F for 30 minutes), waterproof (it can be submerged up to 10 feet deep in fresh or salt water for three days) and can be physically locked or bolted to the floor. It works with both PCs and Macs. It comes in large capacities (1, 1.5 and 2 terabytes) and has data recovery and insurance as well. It is also whisper quiet! This is a wonderful hard drive for a law office for backup purposes.

10. YOUSENDIT

Need to send a big file but the email box for the recipient is too small ... how do you get it to them? Go to www.yousendit.com. You can upload the file and create an email with a link to the file. The recipient clicks on the link and downloads the file. Quick, easy and free. Worried about confidentiality? Encrypt the file before uploading. (For information on encryption, see Practice Tips in the March 2008 *Benchers' Bulletin*.)

I hope that at least one or more of these tips can help you save some time for yourself ... ♦

Services for lawyers

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 about client identification and verification, scams, 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.



PPC Canada EAP Services – 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 WATCH, by Barbara Buchanan, Practice Advisor

Requesting practice advice? Use Practice Advisors effectively

THE PRACTICE ADVICE Department fulfilled 6,122 requests for advice in 2009. It's a busy little department. If you require advice from a Practice Advisor, please consider the following suggestions to help us help you:

1. Ask your question of one Practice Advisor only. If you have contacted more than one advisor, let the advisor know so that only one person is handling your request. If you telephone or email more than one person, it can actually take longer to receive a reply as the advisors have to sort out who will respond.
2. Ask your question at the beginning of your call. You can fill in background

details as necessary.

3. Call us yourself. Too often lawyers ask an assistant or a student to call for help, and the caller does not understand the lawyer's question or have sufficient information.
4. If a complaint has been made against you, it is too late to call a Practice Advisor for help. The appropriate time to call an advisor for help is before a complaint is made.
5. If you leave a voicemail message, provide the following information:
 - your full name, including the spelling of your surname;
 - your phone number and local (saying it twice is helpful);
 - the name of your law firm;
 - the subject matter and your question;
 - whether the matter is time-sensitive.

Above all, please speak clearly and slowly. We cannot return your call if we do not understand who is calling and your telephone number. We want to hear from you and we're here to help.

ATTENTION REAL ESTATE PRACTITIONERS – LIMITING YOUR RETAINER

Pay extra attention to borrowers using their home equity as security for loans unrelated to buying a home. People tap into their home equity for reasons ranging from raising cash for an investment opportunity to participating in a financial strategy intended to create a tax deductible mortgage. If you act for such a borrower, you may be blamed if the opportunity or strategy doesn't play out as anticipated, jeopardizing the borrower's equity and possibly causing other losses. Take particular care to limit your retainer to clarify that you are providing advice only on the security instrument itself, not the related matter, and recommend that the borrower obtain financial or other advice as required in that regard.

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

Have you made a complaint to a financial institution or investment firm that you have been unable to successfully resolve? Before heading off to court, you may wish to consider making a complaint to the Ombudsman for Banking Services and Investments (OBSI), a national, independent dispute resolution service that's free to consumers. OBSI recently instituted a tolling agreement component to its services with respect to limitation periods regarding banking service complaints.

OBSI looks into complaints about most banking and investment matters, including:

- debit and credit cards;
- mortgages;
- stocks, mutual funds, income trusts, bonds and GICs;
- loans and credit;
- investment advice;
- fees and rates;
- transaction errors;
- misrepresentation;
- accounts sent to collections.

If your complaint about one of OBSI's more than 600 participating firms (including domestic and foreign-owned banks, some credit unions, federal trust and loan companies, all Investment Regulatory Organization of Canada and Mutual Fund Dealers of Canada member firms) falls within its mandate and time limit, and OBSI finds in your favour, it may recommend that the financial institution compensate you or your client to a maximum of \$350,000.

You can learn about how OBSI has dealt with some complaints by viewing case studies (complainants' names omitted) on its website. Here's a sample of some subject areas:

- forged cheque;
- Internet scam;
- credit card fraud;



The Practice Advice Department (left to right): Practice Advisor Barbara Buchanan, Ethics Staff Lawyer Jack Olsen and Practice Management Advisor David Bilinsky. Warren Wilson, QC will join the team in January; see page 5.

- debit card fraud;
- debit card PINs;
- mortgage prepayment;
- risk disclosure and mitigation.

To learn more, visit www.obsi.ca. For questions about tolling agreements, contact ombudsman@obsi.ca.

LOSS OF PRIVILEGE – LEGAL ASSISTANT SWEARING AFFIDAVIT

Split Vision Eyewear Inc. v. The Economical Insurance Group, 2010 BCSC 396 dealt with a situation in which privilege was held to be waived over defence counsel's file up to the time that his legal assistant swore her affidavit. The assistant deposed that she was informed by counsel that liability was in issue and that there was a meritorious defence. Her affidavit included detailed statements, based on information and belief, of evidence that the defendants would lead at trial. Walker J. stated:

[101] I agree with the submission of the plaintiff that in the circumstances of this case – where the insurers investigated the loss, denied coverage, and then chose to tender the affidavit of a legal assistant as opposed to a party itself to represent the merits of the defence to the Court – the insurers must accept the consequence, which is to make available the contents of defence counsel's file at the time the representation was made. To do otherwise, would be to do precisely what *Wigmore* forbids: to disclose as much as the party pleases while withholding the remainder.

[102] In this case, the insurers chose to represent to the Court the merits of their defence by a position-statement of counsel expressed through a legal assistant's information and belief, at a time when the insurers had denied coverage following their investigation. In disclosing what the insurers' evidence "will show," the insurers waived privilege over the information contained in defence counsel's file at the time the affidavit was sworn.

BC SECURITIES COMMISSION: AMENDMENTS TO S. 148 OF THE SECURITIES ACT

The BC Court of Appeal decision of July 8, 2009 in the matter of *Shapray v. British*

Columbia (Securities Commission), 2009 BCCA 322, declared s. 148(1) of the *Securities Act*, RSBC 1996, c. 418 invalid. However, the court delayed the order of invalidity from coming into effect for 12 months so the BC Legislature could consider "how to achieve the important objectives underlying s. 148(1) in a way that is constitutionally justifiable and consistent with the important purposes of the Act." The court's decision was not appealed.

Section 148(1) of the *Securities Act* applied to protect the secrecy of investigations under the Act. It prohibited a person (including a lawyer) from disclosing any information, evidence or name of any witness examined or sought to be examined. Section 148(1) read as follows:

- (1) Without the consent of the commission, a person must not disclose, except to the person's counsel, any information or evidence obtained or sought to be obtained or the name of any witness examined or sought to be examined under section 143, 144 or 145.

Under the legislation a lawyer was prohibited from engaging in otherwise lawful conduct or speech when representing a client who was the target of an investigation or merely a witness or document custodian contacted or subpoenaed by investigators, unless the consent of the commission was first obtained. In order to obtain the consent of the commission, the lawyer might be required to disclose otherwise privileged communication. A lawyer served with a summons under s. 144 was also prohibited from seeking instructions from a client about whether privilege should be claimed, or waived, over any information the commission was seeking from the lawyer regarding the client. Without the ability to seek instructions, a lawyer would be ethically bound to claim privilege over all information the commission sought where any doubt existed over whether privilege attached (Chapter 5, Rule 14 of the *Professional Conduct Handbook*).

The BC Legislature has since replaced s. 148(1) with legislation that requires the commission to make a specific order to protect the integrity of an investigation. Such an order presumably can be reviewed to ensure that it is compliant with *Charter* principles. Section 148(1) now reads:

- (1) For the purpose of protecting the integrity of an investigation authorized under section 142, the commission may make an order, that applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 142, or the name of any witness examined or sought to be examined in the course of the investigation.

In addition, subsection (1.1) was added:

- (1.1) An order made under subsection (1) does not apply to the disclosure of information between a person and the person's lawyer.

Accordingly, a lawyer may always disclose to his or her client any information or evidence obtained or sought to be obtained, or the name of any witness examined or sought to be examined, under section 143, 144 or 145 of the *Securities Act*.

WHERE IS YOUR CLIENT?

You have written and telephoned your client for instructions but have not received a reply. Maybe the address and telephone number are no longer current. You are anxious, but you do not have any instructions to take steps on the client's behalf. There may be a limitation date approaching. You want to clearly state in a letter that you will not take steps to protect the client's interest without instructions. Alternatively, you may have money or important documents to give to your client. What can you do?

You could take the following additional steps to try to reach your client:

- send a letter by registered mail;
- email your client;
- Google your client's name;
- look up your client on social media;
- call your client at all available telephone numbers;
- use a no-find, no-fee skip trace service.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch. ♦

Discipline digest

PLEASE FIND A summary with respect to:

- Angela Marie Ross

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

ANGELA MARIE ROSS

Grand Forks, BC

Called to the bar: May 15, 1992

Discipline hearing: September 22, 2010

Panel: Gavin H.G. Hume, QC (single-Bench panel)

Report issued: October 8, 2010 (2010 LSBC 24)

Counsel: Gerald A. Cuttler for the Law Society and Patrice Abrioux for Angela Marie Ross

FACTS

In July 2002 the sole shareholders of a company that operated an inn and restaurant entered into an agreement to sell their shares to the principal of a numbered company. The purchaser falsely told the shareholders that he had \$1.8 million from a "prominent American businessman" for the transaction. The shareholders relied on the purchaser's false representations and decided to proceed with a share purchase agreement.

In August 2002 the purchaser retained Angela Marie Ross to act for him on the transaction. He told her that the money was coming from a wealthy businessman with whom he had a father/son relationship. Ross prepared a letter of intent, which was signed by both parties.

On September 13, 2002 the client advised that a large Vancouver law firm had been retained to protect the wealthy businessman's interest in the transaction. Ross made no effort to contact this law firm.

On September 16 the shareholders dismissed their lawyer. Ross provided the shareholders with a share purchase agreement for signature with a covering letter which included an account of the services she agreed to provide them once the liabilities had been discharged. However, she had no money in her trust account for this transaction and was not in a position to disburse purchase proceeds. She did not advise the shareholders to obtain independent legal advice.

On October 8, 2002 Ross provided her client with trust cheques payable to the shareholders in the amounts of \$458,450.16 and \$458,450.17. Her client wanted to show the shareholders evidence that the cheques were ready. She signed the cheques knowing that the funds had not been deposited into her trust account.

On October 10 Ross' client advised that the funds had been transferred from a US bank to a local credit union. Ross did not request an activity report from the US bank when the funds did not arrive.

On October 18 Ross provided the shareholders with two trust cheques, post-dated to October 22, 2002, in the amounts of \$457,855.85 and \$458,426.25. She knew that there was no money in her trust account to complete the share purchase.

By mid-October some of the mortgages for the restaurant/inn were in arrears. Ross assured the mortgage holders that the sale would

close shortly.

On October 16 Ross met with her client and one of the shareholders. She knew that her client had issued at least one dishonoured cheque that was relevant to the limited services she had agreed to perform for the shareholders. However, she agreed to follow her client's instructions to conceal this fact from the shareholders.

Ross' client continued to represent that the funds would be forthcoming and tentative closing dates were arranged. Ross continued to act for her client in circumstances in which she ought to have known he did not intend to provide the funds necessary to complete the transaction.

On November 1, 2002 a lawyer who truly represented the "wealthy American businessman" advised Ross that his client knew nothing of the transaction. The sale collapsed and the mortgage holders of the restaurant/inn commenced foreclosure proceedings. The shareholders lost their entire investment.

The shareholders commenced a lawsuit against Ross and her law corporation. The defence was successful and the action was dismissed.

ADMISSION AND PENALTY

Ross admitted that her conduct constituted professional misconduct. She failed to keep her limited retainer clients, the shareholders, reasonably informed and she failed to disclose all relevant information to them. Her conduct assisted her client in continuing to deceive the shareholders in attempting to defraud them. Ross, however, stated that she did not knowingly participate in the fraudulent efforts to acquire the shareholders' business.

Ross admitted that there were several "red flags" that she ought to have recognized, pertaining to her client's intentions and his ability to close the transaction. She was anxious for the sale to complete and was prepared to go to almost any length to facilitate that result. She had a significant personal financial stake in the transaction. Her pre-billing summary indicated potential fees in excess of \$50,000.

The panel referred to the *Professional Conduct Handbook*, Chapter 4, Rule 6: "A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud," and the footnote to that rule, which sets out a lawyer's "duty to be on guard against becoming the tool or dupe of an unscrupulous client" and the obligation to make appropriate inquiries when required. The panel found that Ross' failure to view the actions of the purchaser over a significant period of time as suspicious, requiring some investigation and corroboration, was a failure to exercise the appropriate level of objectivity. The panel concluded that she ought to have known that her client was engaged in a fraudulent activity.

The panel noted that Ross did not have a discipline record and had practised competently since her call to the bar. She fully cooperated with the Law Society investigation and the Society's audit concluded that there were no improprieties.

The panel accepted Ross' admission that her conduct constituted professional misconduct and ordered that Ross:

1. be suspended for one month; and
2. pay \$10,500 in costs. ♦

Credentials hearing

LAW SOCIETY RULE 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission and reinstatement.

For the full text of hearing panel decisions, visit the Regulation & Insurance/Regulatory Hearings section of the Law Society website.

APPLICANT 3

Hearing (application for enrolment as a temporary articulated student): March 15, 16 and April 14, 2010

Panel: Kathryn Berge, QC, Chair, Haydn Acheson and David Mossop, QC

Reports issued: October 7 (2010 LSBC 23) and December 6, 2010 (2010 LSBC 25)

Counsel: Jason S. Twa for the Law Society and Henry C. Wood, QC for Applicant 3

In February 2000, a marijuana grow-operation was discovered in the basement of Applicant 3's rented house. No charges were laid.

A few days later, Applicant 3 was charged with sexually assaulting, threatening and confining his ex-girlfriend. These charges were stayed as the ex-girlfriend recanted her allegations and failed to show up for the trial.

In 2004, police found another marijuana grow-operation in Applicant 3's rented house. Again, no charges were laid.

The grow-operation caused significant problems for the landlord of the house: \$12,000 to \$15,000 in repair costs; loss of rental income; the repairs triggered new code upgrades; the house was no longer insurable for rental. The applicant acknowledged that he had never made amends to the landlord.

Applicant 3 subsequently went to law school. During law school he was an award-winning participant in pro bono legal programs.

In December 2008, Applicant 3 applied to the Law Society for temporary articles, then withdrew his application and submitted a second application in March 2009. In his applications, he disclosed some details of the charges in 2000 and claimed that his ex-girlfriend had been stalking him and that the sex was consensual. He included documentation about the 2000 marijuana grow-operation; however, the 2004 grow-operation was disclosed by Applicant 3's counsel shortly after the second application was filed.

Applicant 3 acknowledged that his decision to take the risk of growing marijuana in 2000 demonstrated poor judgment. He claimed dire financial circumstances motivated him to start the 2004 grow operation to meet his child support payments. The panel noted that his evidence tended to minimize the seriousness of his involvement in these two grow-operations.

The name of the tenant who lived in the basement suite and was involved in the 2004 grow-operation was withheld by Applicant 3. The panel viewed this as a current, conscious decision not to cooperate with the Law Society and fully account for his past errant behaviour. This does not bode well for a person who wishes to become a member of a self-governing profession where there is a constant necessity to conform to the requirements of the governing body.

Applicant 3's position was that the two marijuana grow-operations and his lack of consideration towards his landlord were isolated events, reflective of past poor judgment that would not pose any present concern in respect of his application for admission. He stated that he had changed as a result of counselling, volunteer work and education.

The critical question for the panel was whether Applicant 3 had changed and was able to demonstrate that he would act in accordance with high principles and not make decisions on the basis of what was convenient or personally advantageous. The panel noted that Applicant 3's conduct in growing marijuana was not a matter of youthful indiscretion, as he was almost 39 years old at the time of the first grow-operation.

Rehabilitation is a key issue in a credentials hearing when past admitted or alleged illegal activities raise fundamental concerns regarding the applicant's fitness. While Applicant 3 had shown exceptional determination in his efforts to obtain an education, pursue counselling and do volunteer community service, the panel also considered other factors related to his rehabilitation:

- it is possible that the applicant's volunteer efforts during law school were motivated by his knowledge that he would be required to demonstrate good character in order to be called to the bar, rather than the result of a reformed character and conscience;
- none of those providing evidence of Applicant 3's current good reputation knew the full facts about his past conduct;
- Applicant 3 waited until only a month before the hearing to tell his present girlfriend about his past difficulties, which reflects a current lack of candour and an inability to make difficult decisions that are uncomfortable for him;
- Applicant 3 fails to fully appreciate his past betrayal of his landlord's trust, which caused her significant inconvenience and financial loss.

The panel found Applicant 3's evidence to be evasive and, in many respects, improbable and beyond belief, particularly in relation to the alleged sexual assault. His lack of recollection regarding events of such significance was not persuasive of either his credibility or his current rehabilitation. The illegal nature of Applicant 3's activities in 2000 and 2004 was a reflection of his lack of social responsibility and conscience.

The panel could not give Applicant 3 the benefit of the doubt that he would become more honest and perceptive of correct conduct once he was called to the Bar. This would transfer the risk to the public and the legal profession.

The panel concluded that Applicant 3 had not met the burden of proving his current good character and repute and fitness to become a barrister and a solicitor of the Supreme Court. The panel ordered that Applicant 3's application for enrolment be rejected.

The panel granted a request by the applicant for a reduction of time before a further application for enrolment can be made. Under the Rules, that would otherwise be two years from the decision dismissing the application. The panel ruled that Applicant 3 may reapply for articles on or after May 1, 2012.

This decision was made in consideration of the whole of the circumstances surrounding the matter, including the age of the applicant, the importance of the matter to him in terms of his future, and the length of time that has elapsed since the application was first made to the Law Society in December 2008. ♦

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