



THE ADVISORY

OUR MISSION

To serve the public interest by promoting a high standard of legal services and professional conduct through the governance and regulation of an independent legal profession.

From the President: Rewards Offset Challenges of Being a Bencher

By Jim Peacock, QC, President, Law Society of Alberta



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Law Society of Alberta

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2008 marks the 101st year of the Law Society of Alberta. There will not be any pins, stamps, galas or other events to mark the occasion — rather, the staff and benchers of the Law Society will carry on without celebration to ensure that the Law Society fulfills its mission to serve the public interest by promoting a high standard of legal services and professional conduct through the governance and regulation of an independent legal profession.

In 2007, we lost two benchers to the bench; Michelle Crighton, Q.C. was appointed to the Court of Queen's Bench of Alberta and Vaughn Myers, Q.C. was appointed to the Provincial Court of Alberta. They were replaced, respectively, by Donna Valgardson, Q.C. and Roy Nickerson. Just recently, Donna Valgardson was appointed to the Provincial Court of Alberta. She will be replaced by Shirish Chotalia.

My term as President and as a bencher will end

on February 7, 2008. I will be replaced by Larry McConnell, Q.C., who practices in Whitecourt and who was previously a bencher from 2004 to 2006. I have enjoyed my bencher experience. It was interesting, challenging and taught me a great deal. I feel very privileged to have served as President during the Law Society of Alberta's 100th anniversary.

There will be bencher elections in 2008. If you are thinking about running and believe you have something to contribute, I encourage you to put your name forward. The mandate of the Law Society is to act in the public interest in the regulation of the legal profession. This is a serious task, but it is also one that will expose you to many interesting new facets of the legal profession and provide you with the opportunity to contribute to the governance of your profession in a meaningful way. While the demands of service can be significant from time to time, the experience will be a rich and rewarding one. ■

Demand vs Supply Imbalance Results in Perception of an Unjust and Unfair System

By Don Thompson, QC, Executive Director, Law Society of Alberta

According to a study by the Canadian Forum on Civil Justice, the demand for legal services is outstripping the current capacity of the legal profession, resulting in the perception that the legal system is unfair and unjust.

There is an unmet need for legal services. The conclusion in one paper by the Forum is that, over three years, 45%

of the population will experience a justiciable problem that is difficult to solve. When the problem remains unresolved, people conclude the system is unfair. And the unresolved problems frequently get worse.

At the 2nd annual Pro Bono Law Alberta roundtable in Calgary November 2007, consultant Merrill Cooper

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Save the Date

Don't miss CPD launch at Plenary March 13, 2008

The Continuing Professional Development (CPD) program will be unveiled at the LSA's plenary session at the Alberta Law Conference. The March 13, 2008 morning event will be held in Calgary at the Westin Hotel. The unveiling will show how lawyers can develop their annual CPD plans online in order to comply with the March 2009 reporting date.

2008 DSA Presentation March 14, 2008

The 2008 Distinguished Service Awards will be presented at the Alberta Law Conference, Westin Hotel, Calgary on March 14, 2008 at noon. Presented jointly by the LSA and CBA Alberta, these annual awards celebrate excellence in the legal profession.

2008 Media and Law Seminar May 23, 2008

The upcoming Media and Law Seminar will be held Friday, May 23, 2008 at the Lister Centre, University of Alberta in Edmonton. This forum brings together the media, judiciary and legal profession to discuss topical issues. More details will follow. ■

Demand vs Supply Imbalance

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spoke about a shifting landscape, particularly the social implications of demographic and economic trends in Alberta. Changes we can expect include:

- Communities of people becoming segregated along socio-economic and ethnocultural lines, i.e. into ethnic neighborhoods;
- a shrinking middle class and increased polarization of the population into rich and poor; and
- increased social exclusion, particularly among immigrant and aboriginal youth.

At a joint meeting of the Alberta and Saskatchewan benchers last fall, I spoke about the changing demographics of the legal profession and how it affects access to legal services. Although there is no specific data, the indications are that:

- the supply of lawyers for the middle class has been reduced over time, as more lawyers practice in big corporate firms and government and corporations;
- complexity has increased the hours of legal services needed for each transaction; and
- junior lawyers are going to large firms in major cities.

Law school output is approximately 2,700 graduates per year, almost unchanged since the 1970s. Women

make up approximately one-half of graduates, and have a higher attrition rate from private practice. The number of lawyers in government and in-house counsel positions has grown much faster than the rest of the profession.

An exit survey of inactive/retired lawyers, presented by Greg Francis, LSA Equity Ombudsperson, found that 43% of the respondents cited dissatisfaction with the practice of law and with place of employment. Approximately 41% found more rewarding opportunities elsewhere.

A growing supply source for legal services include in-firm paralegals, regulated and non-regulated paralegals, self-help kiosks, and pro bono services. Regulated paralegals are a recent phenomenon in Ontario and Britain. Pro bono is clearly one way to meet some of the legal needs. However, it is difficult to quantify pro bono needs. And pro bono services probably can't meet the needs for legal services on a sustained basis.

As regulators of the legal profession, law societies are aware of the complexity, and anecdotally, differing perspectives on the issue of legal services. The challenge, as regulators working in the public interest, is to determine what our role is as a regulator and to take steps to address the problem. ■

Interest Rate Set for Pecuniary Damages

The Alberta department of Justice and Attorney General has set the interest rate for pecuniary damages under the Judgement Act to 4.25% for the period January 1, 2008 to December 31, 2008. ■

Content of Canadian Law Degree Under Review

By Don Thompson, QC, Executive Director, Law Society of Alberta



A national task force of the Federation of Law Societies, of which I am a member, is to specify the content of a Canadian law degree.

This task has become necessary because of legislation in Manitoba and Ontario concerning the accreditation of foreign trained professionals. The idea behind the legislation is that accreditation requirements for foreign trained professionals must be transparent. So we have to specify what it means to have a Canadian law degree.

Currently, there is no such specification for the content of a Canadian law degree. There is an Ontario specification that dates back to 1957. Foreign trained professionals include immigrants as well as Canadians who take law degrees outside the country.

When graduates from foreign law schools come to Canada and turn to the National Committee on Accreditation for evaluation, they want a clear explanation about how to make their degree the equivalent of a Canadian law degree. These issues point out the need for regulators to ensure we have the answers and protect the public by

having standards in place for those becoming members of the legal profession.

Model Code of Conduct Created

Over a two year period, the Federation of Law Societies of Canada has created a draft model code of conduct which has been provided to each law society for review.

With increased mobility of lawyers across the country, it's problematic to have different rules depending in each jurisdiction. The Federation will encourage law societies to adopt the model code as their own code of conduct. The Law Society of Alberta is reviewing the FLSC Model Code in comparison with the LSA's Code of Conduct.

Exceeding complaints goals.

The Law Society of Alberta agreed to a goal that would see 75 per cent of informal complaints closed within 90 days. By September 30, 2007, we exceeded this by closing 84 per cent of informal complaints within 90 days.

At the beginning of June 2007, a goal was established to close two-thirds of formal complaint files within 10-11 months. For the quarter ending September 30, we closed 49 per cent of files within 12 months. ■■

Finance Committee Undertaking Additional Initiatives

By Dale Spackman, QC, Chair, Finance Committee

The following additional potential initiatives are currently being undertaken by your Finance Committee: rule and/or policy changes relating to late filing of forms S and T; and rule and/or policy changes relating to signing of trust cheques and authorization of trust transactions by persons who are not active members of the Law Society.

We welcome your input and comments on any of the foregoing matters. Contact: Dale Spackman, QC, Chair, Finance Committee at dspackman@parlee.com ■■

Improving the Claims Process of the Assurance Fund

By Dale Spackman, QC, Chair, Finance Committee

An intensive review of the LSA's assurance fund has been underway to identify the underlying guiding and operating principles of the fund and improving the claims process.

At the April Benchers' meeting, guiding principles were established for the operation of the assurance fund. Based on these, new rules were proposed by the consultation group which will be finalized and approved at the February Benchers' meeting. The approval of the revised Assurance Fund rules and guidelines will make the LSA's Assurance Fund a model of protecting client's funds for other law societies in Canada.

These rules have been revised as part of a larger LSA initiative to increase the professional competence of Alberta lawyers. The new Assurance Fund rules complement efforts being undertaken to reduce the risk of clients affected by trust fund misappropriations.

The new Assurance Fund rules enables timely and efficient processing of the legitimate claims of clients whose money was misappropriated by a lawyer.

Since 1939, the Law Society of Alberta has independently operated a fund to protect clients from misappropriation or wrongful use of trust property held by their lawyers. It is the first of its kind in North America. The fund is supported by levies imposed on all active members of the LSA. ■■

New LESA Executive Director Announced



Paul F. Wood, LESA Executive Director

Alan D. Fielding, Q.C., Chair of the Board of Directors, Legal Education Society of Alberta, announced that Paul F. Wood will assume the duties of Executive Director of the Legal Education Society of Alberta (LESA) January 1, 2008, following the retirement of Hugh A. Robertson, QC.

Paul has been with LESA for the past 17 years serving as Director, Continuing Education. Paul is a past-president of the international association for Continuing Legal Education, having served on its executive committee 2000 - 2006.

He looks forward to the challenge of meeting the continuing professional development needs of lawyers and their staff in Alberta, as well as those of students enrolled in the Continuing Professional Legal Education Development (CPLED) program.

The enormous contribution that Hugh Robertson has made to the legal profession in Alberta over the past 23 years was recognized at events in Calgary and Edmonton, hosted by the Legal Education Society of Alberta. ■■

Loyalty to Law Firms Mark Long Service

Excerpt of speech given by Jim Peacock, QC, President, Law Society of Alberta at the Long Service Awards in Edmonton, December 5, 2007.

Today we are commemorating 50 years of service to the Alberta legal profession by nine lawyers. Not only do these nine individuals share the same bar admission date (1957), they were part of an era of lawyers who remained steadfastly loyal to one firm.

The **Honourable Mr. Justice J.A. Agrios** (B.A., 1955; LL.B., 1956; University of Alberta) began his law career with Emery Jamieson LLP. He was the Alberta member of the special national Canadian Constitution committee created by the Canadian Bar Association in 1978. He contributed significantly to the work of the LSA, its bar admission

course and the U of A's law faculty. In 1980, he was sworn in as a justice for the Court of Queen's Bench. He became involved in mediation and dispute resolution, becoming an important authority on court dispute resolution.

Mr. Sydney A. Bercov, QC (B.Comm, 1953; LL.B., 1956; U of A) articulated under his father Abraham Bercov and William George Morrow before joining Emery Jamieson LLP. He began his 50-year career in business, financial services, real estate, wills and estate planning. He was the first recipient of the Distinguished Service Award for exceptional achievement presented by the Edmonton Bar Association, and received a LSA certificate of merit for service and dedication to the profession.

The **Honourable Judge J.R. Bradley** (LL.B., 1956; U of A) dedicated his law career at the Edmonton firm of Liden, Ackroyd and Company. In 1983 he was appointed to the provincial bench. In 1999, he was named assistant chief judge, responsible for courts in 29 communities and 14 judges around northern Alberta.

Judge Donald Ingram (B.A. and LL.B., 1956; U of A) articulated under Garth Fryett and Douglas Matheson. His career as a civil litigation lawyer began with the firm of



Long service award recipients in Edmonton from top left, clockwise, Justice W.E. Wilson, Judge J.A. Agrios, Sydney Bercov QC, Mrs. Loveth Bradley (on behalf of Judge J.R. Bradley), Justice Erik Lefsrud, and Judge S.E.W.J. Wood. (Missing are: Judge Donald Ingram, Paul Halijan and Jim Redmond QC.)

Matheson and Company in Edmonton. He became a senior partner, developing expertise in criminal, corporate and administrative law. He was appointed to the Edmonton civil claims division of the Alberta provincial court in 2000.

The **Honourable Mr. Justice Erik S. Lefsrud** (B.A., 1955; LL.B., 1956; U of A) articulated under Laurance Yeomans Cairns, and formed a partnership called Lefsrud, Cunningham where he practiced for 50 years. He was a chartered arbitrator, and has lectured for business and professional organizations and the University of Alberta on mediation and dispute resolution.

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Loyalty to Law Firms Mark Long Service

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The **Honourable Justice W.E. Wilson**, (B.A., 1955; LL.B., 1956; U of A) began his 50-year career upon joining Bryan Andrekson. He served as the chairman of the Institute of Law Research and Reform in Alberta and represented the LSA as a Commissioner of the Conference on Uniformity of Legislation in Canada. He has served as a LSA Bencher and committee member.

The **Honourable Judge S.E.W. J. Wood** (B.A., 1953; LL.B., 1956; U of A) articulated under Sydney Wood, QC while a Royal Canadian Airforce member with the auxiliary squadron in Edmonton. He practiced at Wood, Moir, Hyde and Ross and became a partner. In 1988, he joined McCuaig Desrochers LLP as a partner. He served as aide-de-camp to the Governor General of Canada and the Lieutenant Governor of Alberta. In 1993, he was appointed to the Alberta provincial court as a judge presiding in the Edmonton family and youth court.

Mr. Paul Halijan earned a law degree (doctor juris) in 1945 from the University of Bratislava, Czechoslovakia. After emigrating to Canada in 1949, he received a Master of Arts degree in 1954 from the U of A. In 1956, the U of A. General Faculty Council recognized his legal education, enabling him to become a student-at-law with the LSA. He articulated under Ronald Martland, QC and began his practice with Lazerte & Haljan.

An associate of Mr. Paul Halijan in his early career was **Mr. Jim Redmond, QC** (B.A., 1953; LL.B., 1954; U of A) who began his law career with the firm Milner & Steer in 1957. He articulated under Arnold F. Moir while working part-time in the evenings as a news editor and radio announcer for CKUA. Early in his career, he was a foreign service officer with External Affairs department in Ottawa. After 46 years with Fraser Milner Casgrain LLP, he established his own practice, James E. Redmond Professional Corporation. ■

Feedback Sought on Recruitment Rules

By Vivian Stevenson, QC, Chair, Credentials and Education Committee



The Credentials and Education Committee invites feedback on the recruitment rules: (1) the perception that firms are making offers prior to the offer date and

(2) the requirement that offers be left open until noon on the day following the offer date.

Rule 49.2 (3)

Rule 49.2(3) provides that no offer of employment may be made by a non-participating employer to a student before 8:00 am on the second Tuesday

of the recruitment period. A “non-participating employer” is one who is not participating in the matching program. This rule was intended to shorten the recruitment period so that law students would not be disrupted during their second year and to protect them from pressure to accept articling positions without time for consideration.

In contrast to this rule, the rules of participation that apply to the Match Program firms specifically allow them to indicate to students where those students are ranked. For all intents and purposes, those students have received an “offer” from the firm once that representation has been made.

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Student Recruitment and Hiring 2008

At its January 2008 meeting, the Credentials & Education Committee established the following timeframes for student recruitment activity in the current year:

The 2008 recruitment period will be June 2 to 13. Recruitment activity, as defined by the Rules, may commence at 8:00 a.m. on Monday, June 2 and continue until the blackout period, which begins at 5:00 p.m. Friday, June 13. Employers who are not participating in the match program may only make offers on June 10, 11 and 12 between the hours of 8:00 a.m. and 5:00 p.m. Those offers must remain open for acceptance until 12:00 noon the following day. Offers may be made again after the blackout period ends on Monday, June 16 at 5:00 p.m. ■

2008 Habitat for Humanity Legal Build

The upcoming Habitat for Humanity build by the Edmonton legal community will be dedicated to the memory of the Honourable Mr. Justice Cawsey. Fundraising has started to meet its \$100,000 goal to assist in placing a family in safe and affordable housing.

Contact Frederica Schutz, Habitat for Humanity Legal Build 2008 coordinator, at fschutz@emeryjamieson.com or phone (780) 426-5220. www.lawbuild.org ■



Extra-Provincial Registration of Limited Liability Corporations

By Steve Raby, QC, Benchler

The ability to register a limited liability corporation extra-provincially in Alberta has been an issue for some time.

Typically, LLCs have a home jurisdiction somewhere in the United States. As these entities are loosely a hybrid between a partnership and a corporation, the issue has been whether they are capable of being registered in Alberta as an extra-provincial corporation, or whether they are more in the nature of a partnership.

Corporate registry has now established a policy to extra-provincially register a limited liability corporation provided that all documents are received as required by Section 280 of the *Business Corporations Act*. As well, a legal opinion is needed from a lawyer from the home jurisdiction of the LLC to the effect that the LLC is a body corporate as defined under the laws of its jurisdiction, rather than a partnership. If the LLC is more like a partnership than a corporation, then the LLC must be registered in Alberta as a partnership.

Further details on acceptable contents of the legal opinion from the home jurisdiction may be obtained from Corporate Registry. ■■

Summary of Disciplinary Matters

Including Hearing Reports Released October 16, 2007 to December 31, 2007

In this Summary of Disciplinary Matters for the fourth quarter of 2007, the Law Society of Alberta seeks to educate and inform lawyers on its role as a self-regulator in the public interest. During this time, the LSA completed two hearings and issued four hearing reports, two of which are summarized below:

Suspension of A.

After a hearing Sept 10-12, 2007, a hearing committee of the LSA found the conduct of A. to be conduct deserving of sanction on three citations: failing to advise an unrepresented vendor in a real estate transaction to obtain independent legal advice and failing in his or her duty to that unrepresented party, failing to remit to that unrepresented party funds to which she was entitled and misleading the court at a hearing into a trusteeship application.

The hearing committee had in mind the following factors, among many: the need to maintain the public's confidence in the integrity of the profession, the ability of the profession to effectively govern its own members, specific deterrence of A. in further misconduct, general deterrence of others, and rehabilitation of A.

The hearing committee imposed a suspension of 45 days and ordered that A. pay actual costs of the hearing. A. is a sole practitioner who had no prior disciplinary record.

Reprimand of B.

On July 28, 2006, B. appeared before a hearing committee on seven citations. Both counsel for the LSA and C. agreed that B.'s conduct was conduct deserving of sanction, in that B. failed

to serve a client in a conscientious, diligent and efficient manner.

The hearing committee found several errors in B.'s conduct during the defense of the client. During the client's defense, among other things, B. failed to challenge the admissibility of a statement, failed to put the client's version of events to the detective and store clerk, erred in information given to the LSA, failed to interview the two character witnesses who attended the trial, and did not understand character evidence.

The committee was concerned about the breadth of those errors. Despite B.'s interest and enthusiasm in the area of criminal law, the committee stated that its overriding concern is the protection of the public and that B.'s mistakes were basic and fundamental.

Although the committee was close to declaring this was a result of incompetence, the committee believed the public could be protected by the following terms: B. to be mandated to work with Practice Review, to meet a board of examiners within six months, and not conduct a criminal file without the review of a senior practitioner until further order by Practice Review. A reprimand was issued and costs of \$4,291.62 ordered to be paid. ■■

Feedback Sought on Recruitment Rules

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It appears that some non-participating firms are proceeding on the assumption that they can advise students where they “rank”, or that they will be making offers to them at 8:00 on the offer date. This may be seen as contrary to the rules as there is no difference between making these statements and making an offer.

The LSA’s important issue is the protection of the students. The student remains in control of the decision whether or not to accept it, and to the extent that the offer must be held open for the specified time, tacit “offers” before the offer date do not negatively impact the students. Either way, it is inappropriate for a firm to ask students for ranking information.

This interpretation does appear to contravene the rule and also effectively lengthens the recruitment period. The student has no legal recourse if the firm does not ultimately make an offer to the student on the offer date. The Committee recognizes that it is difficult to enforce these rules. If a firm and a student reach a tacit agreement before the offer date, no one

will complain to the LSA that rules have been breached.

Rule 49.2(4)

Rule 49.2 (4) provides that an offer of employment by a non-participating employer must be made between 8:00 to 5:00 commencing with the offer date, and must remain open for acceptance until noon on the following day the offer was made.

Firms are concerned about the time involved waiting to hear back from students because while they are waiting, they are losing opportunities to extend other offers. Smaller firms argue that they are at a disadvantage because they have few offers to make, whereas larger firms can take the risk of offering more positions than they have. The Committee understands that as a result firms have to make an uninformed guess about students accepting or not accepting an offer, and are unable to make offers to others who would qualify and want to article with them. The C&E invites comments on both of these issues and on any other concerns regarding the current rules. ■

Invitation to Alberta Law Society’s Library Opening

The Benchers of the Law Society of Alberta and Alberta Law Society are hosting an opening of the Alberta Law Society’s library at the new Calgary Courts Centre. A wine and cheese reception will be held to commemorate the opening of this library at its new location on Wednesday, February 6, 2008 at 4:30 p.m.

The reception will be held at the library in Room 501-N in the Calgary Courts Centre, 601-5th Street SW, Calgary, Alberta. The reception is open to the first 200 people who reply. RSVP: Audrey Unfug, ph. (403) 297-3013 or Audrey.unfug@gov.ab.ca ■

Victims of Homicide Conference

**May 1-2, 2008 - Fantasyland Hotel,
West Edmonton Mall, Alberta**

The Victims of Homicide Support Society will host bring together, in this conference, ‘first response’ professionals from across Western Canada to explore the needs and issues of families who have been ‘touched by murder’.

Keynote speakers will focus on:

- ❖ Victims Issues & Rights
- ❖ Post Traumatic Syndrome
- ❖ Justice System
- ❖ Healing & Forgiveness - the Journey

Other topics to be addressed are:

- ❖ Victim Service- notification & first response
- ❖ Victim Stories — Panel
- ❖ Criminal Rehabilitation, roots of violence
- ❖ Coping with homicide - impact on families
- ❖ PTSD/Grief Response
- ❖ Media Coverage and Response
- ❖ Restorative Justice

Registration at www.victimsofhomicide.ca opens January 25, 2008. Early Bird Registration - until March 26, 2008 ■

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The Advisory is published five times a year for the members, partners and key stakeholders of the Law Society of Alberta. Articles and comments should be directed to Sheila Serup at (403) 229-4744, or sheila.serup@lawsocietyalberta.com.



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Contact 1-800-272-8839

Practice Review: A committee of the Law Society of Alberta that helps lawyers recognize areas of concern within their practices and provides information about resources and help to implement a program of change. Lawyers seeking practice review services will work with a panel of three members of the practice review committee and a staff person.

Contact Barbara Cooper, *Manager, Practice Review* at (403) 229-4720 or toll free 1-800-661-9003 ext. 4720
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