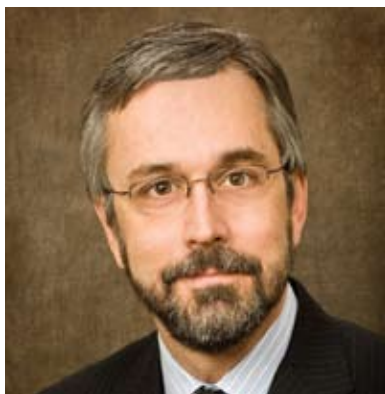




THE ADVISORY

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.



Perry Mack, QC, President,
Law Society of Alberta

From the President: Lawyers Serving Their Communities

By Perry Mack, QC, President, Law Society of Alberta

Each spring, the Law Society of Alberta in conjunction with our good friends at the Alberta Branch of the Canadian Bar Association selects four of our members to highlight their achievements and present to them the Distinguished Service Awards. This year's worthy recipients are featured in this issue of the Advisory. On behalf of the profession, I offer our congratulations and our gratitude for

their dedication and service to the community, to the profession, to legal scholarship and to the provision of pro bono legal services.

Awards such as these serve to highlight the good work that so many lawyers do outside their busy practices. Lawyers volunteer and give of their

continued on page 02 side column

IN THIS ISSUE

Streamlined Processes Support LSA Governance	03
Alberta Lawyers' Assistance Society - Your Assist Program	03
Small Firm Practice and A Bencher's Experience	04
Bencher Election Date Set for November 18, 2008	05
What's New in CPD Program is Requirement of Intentionality	06
Tools Assist Lawyers in Their CPD Planning	07
Sustainable Core Funding Enables PBLA to Focus on Projects	08
Child Advocacy Pro Bono Project Assists Vulnerable Youth	08
Amendments Provide Greater Clarity to Assurance Fund	09
Do you know your Client?	09
Summary of Disciplinary Matters	10
Fraud Alert - Bank Drafts and Counterfeit Certified Cheques	11

Awards Celebrate Excellence in the Legal Profession

By Perry Mack, QC, President, Law Society of Alberta

Excerpt of speech given by Jim Peacock, QC, LSA Past President and Michelle Hollins, QC, CBA Alberta President at the 15th annual Distinguished Service Awards on March 14, 2008 in Calgary, AB.

Although we are here today to honour four truly outstanding and deserving members of the legal profession, this occasion today provides us with an opportunity to recognize and acknowledge the vast and invaluable contributions made by

countless numbers of lawyers throughout all Albertan communities. These awards are presented jointly by the Law Society of Alberta and the Canadian Bar Association Alberta.

continued on page 02



Recipients and presenters in this photo are, from left to right: B.A.R. (Quincy) Smith, QC; Jim Peacock, QC; Shirzad Ahmed; Gerald B. Robertson, QC; Allan Shewchuk, QC; and Michelle Hollins, QC.



THE ADVISORY

From the President

Lawyers Serving their Communities

continued from page 01

time and expertise in innumerable capacities. Lawyers sit on countless community boards, not for profit organizations, school councils, and charitable groups. Lawyers serve to support the arts, sports and higher learning. Lawyers get involved with service clubs, political parties and their faiths. Most do these good things without expectation of acclaim or acknowledgement. Most contribute from a sense of quiet responsibility that comes with the privilege of being a member of this profession. Most find the volunteer experience a rewarding one.

This year offers an opportunity for our members to become directly involved in the governance of the legal profession. Bencher elections will be held November 18, 2008 for three year terms to commence in February 2009. These are demanding yet enriching positions of responsibility. If you are thinking of running for Bencher or know of someone you would like to encourage to run I would invite you to speak to any of the incumbent or outgoing Benchers about the experience.

The profession and the public we serve will benefit from a strong slate of candidates committed to carry on the work of an independent legal profession. ■■

Awards Celebrate Excellence in the Legal Profession

continued from page 01

Gerald B. Robertson, QC

Distinguished Service in Legal Scholarship

When it comes to thorny issues of Canadian health law, many in the legal community rely on the sound academic and practical expertise of Gerald Robertson. He is a world-class scholar through his work in the area of medical malpractice and mental health law and has authored and co-authored three prominent health law textbooks. As a professor in the Faculty of Law at the University of Alberta for 25 years, Mr. Robertson's involvement with important review panels, medical associations and ethics committees helped earn him the 2003 Honourable Tevie H. Miller Teaching Excellence Award from the U of A. Mr. Robertson earned his Bachelor of Laws from the University of Edinburgh (1976) and Master of Laws from McGill University (1979).

B.A.R. (Quincy) Smith, QC

Distinguished Service to the Community

Quincy Smith has embodied the spirit of Calgary since he began private practice in 1966, after graduating with his law degree from the University of Alberta. A true professional, he is one of Canada's foremost insolvency lawyers and has been recognized nationally for his efforts with Fraser Milner Casgrain LLP (Calgary) as managing partner. The hallmark of Mr. Smith's legal career, however, is his impact on communities throughout Calgary. He spearheaded the restructuring and ultimate salvation of the Calgary Philharmonic Orchestra, was a director of the Calgary Stampede for eight years and took a lead role in efforts to restructure the Calgary Stampeder Football Club. In 2005, he chaired the Calgary United Way Campaign to raise more than \$40 million to fund 225 community programs and remains as a director.

Shirzad S. Ahmed

Distinguished Service Pro Bono Legal Service

Shirzad Ahmed's desire to promote human rights and democratic freedoms began to make an immediate, tangible impact when he graduated from the University of Calgary's Faculty of Law in 2000. Mr. Ahmed has devoted thousands of hours to clients regardless of legal aid or the client's ability to pay in many immigration, refugee and humanitarian cases. Upon coming earning his law degree, he set about using his newly acquired legal knowledge to promote human rights. As a prolific writer on human rights issues around the world in native languages, he has drawn a measure of credibility overseas and within Alberta that few Canadian lawyers possess. Mr. Ahmed's immense pro bono legal service reflects a willingness to create lasting, positive change.

Allan G. P. Shewchuk, QC

Distinguished Service to the Profession

There is an inextricable connection between Allan Shewchuk and the academic and professional worlds of law in Alberta that runs deep. He earned his Bachelor of Commerce degree from the University of Calgary and in 1984 graduated with his Bachelor of Laws from the University of Alberta. Mr. Shewchuk's contribution to the profession has been abundantly evident through his roles with the Legal Education Society of Alberta, Calgary Courthouse Education Society, Legal Archives Society of Alberta and the U. of C. Faculty of Law. Mr. Shewchuk's volunteer teaching and professional roles have strengthened the field and practice of law in Alberta immeasurably. Organizations such as the Canadian Cancer Society benefit from his dedication to helping the broader community since he opened his practice with partners, Machida Mack Shewchuk Meagher LLP in 1989. ■■

Streamlined Processes Support LSA Governance

By Don Thompson, QC, Executive Director



The Law Society continues to streamline its processes, procedures and communications to better serve the committees and Benchers. The Law

Society of Alberta has already begun work on the upcoming fall elections. Key dates to remember are: September 16 as the deadline for nominations, and the election date of November 18. Benchers will be elected for a three-year term, not two years as has been the case in the past.

We continue to manage policy issues and prepare policy matters for Bencher discussions. And to this end, the Policy Forum has undertaken to streamline its processes to expedite policy matters as appropriate. Overall, we are continuing to look for areas where we can do our work better and provide a high level of services. Committees are supported by dedicated

staff who recognize the significant contributions of volunteers and Benchers to committee work.

Benchmarking programs improve evaluations

To evaluate the work we do in receiving and resolving complaints, the Law Society of Alberta is reviewing regional and national benchmarking programs. The regional program involves a peer review program among the three prairie law societies. Staff are developing a checklist of features to look at in complaints systems. They then carry out an on-site audit, during which they will look at the program in each law society, and make suggestions about how the program might be improved.

The national program, chaired by Greg Busch, Law Society of Alberta Director of Conduct, is looking at the timeliness of complaints in all Canadian law societies. The program's objective is to set benchmarks against which each law society will be measured. ■■

Alberta Lawyers' Assistance Society - Your Assist Program

By Craig Kinsman, Executive Director



Assist helps lawyers, articling students and their families with personal issues. We provide confidential, professional help for those experiencing stress, depression,

anxiety, alcohol, drug and all other forms of abuse or addiction, relationship difficulties, family struggles, burnout, anger and other personal distress. Professional help is one phone call away at 1-800-461-8908. Please call.

It is also a critical part of our mandate to raise awareness of personal struggles, reduce the stigma associated with personal difficulties and encourage everyone to reach out for help when they may need it. The Alberta Mental Health Board previously estimated that *between 40% and 75% of those suffering with mental illness will not seek help due to shame, stigma or lack of information.* We want to change that. Assist is an independent charitable society.

If you would like to learn more about Assist, please call me at 1-877-737-5508 (toll free)/(403) 537-5508. ■■

Managing Director/Deputy Director, CPLED Alberta

By Paul Wood, Executive Director, LESA



Trevor Clarke,
Managing Director/Deputy Director

Trevor Clarke assumes the position of Managing Director/Deputy Director, CPLED Alberta on April 28, 2008.

He was called to the bar in 1985 and articulated to Cecilia Johnstone. Trevor practiced with an Edmonton firm and was then corporate counsel for a major oil sands firm. He has taught business law courses at NAIT for the past 15 years, having been Course Coordinator for both the daytime program and evening program.

Trevor is co-author of "Business Law in Canada", the best-selling business law textbook in Canada. He pioneered the use of WebCT in the business law courses at NAIT. (WebCT or Blackboard is the platform on which CPLED is built.)

Trevor received his MBA and LL.B. from the University of Alberta. ■■

Increase in Decisions Posted Foster CANLII Website Growth

By Doug Mah, QC, Bencher and Chair, Joint Library
Committee

Since my last article on Canadian Legal Information Institute (CanLII) in the summer 2006 Advisory, the website has seen increased traffic and additional databases.

CanLII received 25 new databases and 105,701 decisions in 2007, an increase of 40% in decisions over 2006. As well, 10,031 decisions were edited to comply with publication restrictions and 24 key historical collections were published, including 280 ABQB family decisions.

Updates were made to most of the legislative databases, including the one for Alberta statutes.

CanLII is a comprehensive on-line legal resource funded by member dues. It is available at www.canlii.org.

2006 CanLII website statistics

Visits  4,021,444

Page Downloads  46,721,011

2007 CanLII website statistics

Visits  4,855,775

Page Downloads  61,796,108

Small Firm Practice and A Bencher's Experience

By Ron Everard, QC, Bencher



What is law practice like for you, either as a sole practitioner or in a small firm? Although it is not generally well known, many lawyers practising in Alberta practice either as sole

practitioners or in a small firm (with less than 10 lawyers). The challenges facing sole practitioners and the members of small firms are manifold:

- ❖ Finding the work (marketing);
- ❖ Doing the work (remaining competent and efficient);
- ❖ Billing and collecting for the work (being a businessperson);
- ❖ Running the office (being an accountant and businessperson);
- ❖ Keeping the regulator (the Law Society of Alberta) happy.

Do you have some days (like I do), where you are tempted to say "enough is enough" and "I am going to settle for a job waiting tables or bagging groceries"? All the sole practitioners and members of small firms with whom I speak, labour under the belief that what we do, we do only half well, and it takes all the time we give it, and then some, to do it at all.

But we all need to take a deep breath and recognize that resources are available from the Law Society of Alberta:

- ❖ Practice Advisors in both Edmonton and Calgary are available to answer questions, conduct practice reviews and otherwise assist lawyers with their practices;

- ❖ Professional Responsibility Committee will receive inquiries, and provide an opinion on matters of practice or ethics;
- ❖ Practice Review Committee is available to receive inquiries and calls for assistance, and experienced lawyers can help;
- ❖ The LSA accounting staff are knowledgeable and helpful in answering accounting questions;
- ❖ The Complaints Officers of the Conduct Department resolve hundreds of disputes between lawyers and clients every year.

If you are a sole practitioner or a member of a small firm, have you considered letting your name stand for election as a Bencher this Fall?

The commitment is for three years and although the time away from your practice is 25% - 50% of the working week, depending on what is going on (and in the case of the President and President Elect is closer to 100% of the time), the tangible benefits are many and include the following:

- ❖ It is an opportunity for you to put something back into this noble profession of ours;
- ❖ It will expose you to a variety of practitioners from many practice areas and firm profiles in a cooperative collegial atmosphere;
- ❖ It will energize your own practice and make you again idealistic about the practice of law;
- ❖ It will keep you informed as to the many changes which are overtaking our profession locally, provincially, nationally, and internationally;
- ❖ It is a self-development exercise which will develop confidence, leadership skills you perhaps did not realize you had, enhance your ability to see the other side of the issue, and to be involved in self-government.

continued on page 05

Bencher Election Date Set for November 18, 2008

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

This upcoming election will see for the second time Benchers elected to a three-year term, instead of the usual two-year term.

In 2005, there were a number of changes to the Legal Profession Act and the Rules of the Law Society of Alberta with respect to the election process.

The significant changes were:

- Benchers are elected for 3 year term. *LPA s. 12(1.1)*
- Election date is set by the Benchers between Nov. 1 and Dec.15 every 3rd year. *LPA s. 12(1)*
- Nomination period will commence August 15 (instead of September 1). Rule 7.
- The setting of dates for receipt of nominations and sending voting materials are designated by the Executive Director.

The *Legal Profession Act* and the Rules can be found on the Law Society's website: www.lawsociety.ab.ca

At the April 2008 Benchers' meeting, the Benchers determined the date for the election to

be Tuesday, November 18, 2008.

Key dates to keep in mind as the election approaches:

September 16, 2008 – Nominations must be received in the Law Society's offices in Calgary by 4:30 p.m.

October 15, 2008 – Voting materials will be sent to active members entitled to vote

November 18, 2008 – Ballots must be returned to the Law Society's offices in Calgary by 4:30 p.m.

Nominations must include a nomination form signed by five (5) active members, and must be endorsed by or accompanied by written consent of the active member nominated. It may include biographical information not to exceed one page which includes information about education, professional work and community experience, and may include a photo or other likeness of the nominee. This information will be included in the candidate election booklet which will accompany the ballot. *For more details, call LSA at 1-800-661-9003 (toll free) or visit www.lawsociety.ab.ca* ■■

Small Firm Practice and the Bencher's Experience

continued from page 04

So in conclusion, while the time commitment is large, it is more than offset by the rewards which will come your way, and yes, although it will mean some evenings and weekends spent working on files, it will take you to the next level of practising law, and bring you benefits which you might not otherwise be exposed to as a sole practitioner or a

member of a small firm. The next elections are in the Fall of 2008, and if you are a sole practitioner or member of a small firm, particularly someone outside the centers of Calgary and Edmonton, I would urge you to consider letting your name stand for election as a Bencher of the Law Society of Alberta. ■■

Greater Opportunities in Three-Year Term

By Mona Duckett, QC, LSA Past President (2006-2007), Council Member, Federation of Law Societies of Canada



Mona Duckett, QC
LSA Past President

Please consider putting your name forward in the 2008 Bencher election.

The change in length of terms from two to three years has provided incoming Benchers a greater opportunity to make a difference in the governance and regulation of an independent legal profession.

It can easily take one year to fully understand the work of the LSA. With a longer term, Benchers can provide better continuity on projects and issues such as access to justice, safeguarding an independent legal profession, etc. As well, it is cost-effective for the LSA and the legal profession.

Serving as a bencher has enormous professional and personal benefits, in terms of career growth and opportunities. It yields tremendous profile, personal benefits, and is important work for both the profession and the public. ■■

What is the new CPD requirement?

Assuming you already do CLE or other professional learning, the new requirements are not onerous:

- a. Prepare a written CPD plan annually,
- b. declare to the Law Society of Alberta (LSA) that you have a plan,
- c. retain the written plan for five years, and
- d. produce it to the LSA on request.

To prepare a CPD plan, you can use the online tools developed by the Legal Education Society of Alberta (LESA), at www.CPDalberta.ca. Using those tools will probably take 30 to 60 minutes. (The process can be done in hard copy, too, but it takes longer and loses some of the interactivity of the online tools.) The online tools are available but not mandatory. The requirement is to prepare and maintain a written CPD plan; the form of the plan is not specified. **The first declaration will be required by March 2009.** ■■

"I have often thought that, with respect to MCLE (Mandatory Continuing Legal Education), there ought to be a "better mousetrap". Once the original MCLE program got started in the states, every other state just duplicated it with modest variations. No state stepped backed and tried to construct something that was better. What you are doing matches what we are doing for our own staff re: professional development plans. You go a step further and provide a bank of resources to use in carrying out the PDPs."

- Lynn P. Chard, Director, Institute of Continuing Legal Education, Ann Arbor, Michigan ■■

What's New in CPD Program is Requirement of Intentionality

By Peter Michalyszyn, QC, President-Elect, Chair, Continuing Professional Development Committee



Central to the plan is the idea that every practising lawyer will have to develop a CPD (Continuing Professional Development) plan, and report to us that they've done so. They'll

then have to keep the plan for five years, and produce it on request. Most lawyers already engage in continuous learning and development.

What's new in Alberta's CPD Program is the requirement of "intentionality": lawyers must regularly take time to consider and plan their professional development, and must be seen to be engaging in such activities. We know that generally when lawyers turn their minds to something they are more likely than not to come up with

a good answer— and definitely more likely than if they've not turned their minds to it at all. We are confident that lawyers who engage in the process of planning their own professional development will be inclined to follow through and engage in the learning they have identified as desirable — and that learning will be relevant and meaningful.

Mandatory CLE attendance is typically measured by hours in seats, or course credits; our CPD Program will measure lawyer participation by tracking use of the online tools and compliance with the reporting requirement. As regulators, what we really want to know about is whether the lawyer has learned something, and is competent. Unfortunately, neither hours of learning nor the creation of a plan can measure learning or competence. However, we think that a self-directed, lawyer-centred learning process is more likely to result in effective and relevant self-improvement. ■■

Frequently Asked Questions - Tools

1. What if I'm looking for some learning opportunity that isn't in the resource bank?

The resource bank will not be a complete list of every learning opportunity available. It is still up to a lawyer to find suitable learning venues; the resource bank just makes it easier to find courses.

The resource bank is a work in progress and will be continually updated by LESA, which will procure information from other continuing legal education providers.

You will be given the opportunity to request an e-mail advising when a new program becomes available in your area of interest that was not available when the self-assessment plan was completed.

2. Can anyone other than I look at my self assessment? Will there be an electronic record of it?

The assessment and planning process are entirely confidential. Your plan will be password-protected and is secure from all other eyes. The only data that will be collected by the site is:

- ❖ The declaration that you have completed your plan (which will be forwarded to the Law Society on your behalf).
- ❖ Any requests you've made to be advised of learning opportunities as they arise, and
- ❖ Aggregate, anonymous data as to how many lawyers have gone through the online process, and the level of interest in the different learning opportunities. ■■

Tools Assist Lawyers in Their CPD Planning

By Margaret Hollis, Policy and Program Counsel, Law Society of Alberta



The Law Society of Alberta engaged the expertise of the Legal Education Society of Alberta to develop tools to assist lawyers in their CPD planning.

The result is at www.CPDAlberta.ca, an online suite of confidential planning tools.

The **self-assessment tool** prompts a lawyer to consider various areas of learning — skills and other relevant knowledge as well as substantive law — and preferred learning approaches and environments. The

searchable resource bank lists upcoming courses and other learning materials available from the Legal Education Society of Alberta, and from other sources such as the Law Society of Upper Canada and the Alberta CBA. This resource bank is constantly growing, and we hope to eventually include offerings from all non-profit, lawyer-owned CLE providers. Last, the **planning template** prompts the user to refine the plan and schedule the planned activities. There is even a reporting function, so the lawyer can easily report to the Law Society after making the CPD plan.

If you would like to learn more, please call me at 1-800-661-9003 (toll free) or (403) 229-4774. We invite you to explore www.CPDAlberta.ca. ■■

Frequently Asked Questions - Rules

1. What's this all about? I already do a lot of CLE — what's new about this? What's new is the requirement of "intentionality": that lawyers must regularly take time to consider and plan their professional development, and must be seen to be engaging in such activities.

2. Bottom line, what is the new requirement, what new obligations do I have, and how much time is this going to take me? Assuming you already do CLE or other professional learning, the new requirements are not onerous:

- a. Prepare a written CPD plan annually,
- b. declare to the Law Society of Alberta (LSA) that you have a plan,
- c. retain the written plan for five years, and
- d. produce it to the LSA on request.

To prepare a CPD plan, you can use the online tools developed by the Legal Education Society of Alberta (LESA), at www.CPDAlberta.ca. Using those tools will probably take 30 to 60 minutes. (The process can be done in hard copy, too, but it takes longer and loses some

of the interactivity of the online tools.)

3. Does this new rule apply to in-house lawyers too? Part-time lawyers? Lawyers engaged in non-traditional practice? This rule applies to all active members of the Law Society of Alberta.

4. Can I delegate the making of this CPD plan to my assistant or junior? No, making the plan is a professional obligation involving your professional judgment, and cannot be delegated. However, you could have someone assist by doing various searches of the resource bank.

5. Do we have to report our actual hours in attendance at courses or other CPD activities? No.

6. Is this a program of the Law Society of Alberta or the Legal Education Society of Alberta (LESA)? As this is a regulatory requirement, the LSA has brought in LESA as a legal educator to develop and maintain online tools. ■■

What qualifies as professional development for the purposes of this program?

New Rule 67.2

- (1) "Continuing Professional Development" is any learning activity that is:
 - a) relevant to a lawyer's professional needs; or
 - b) pertinent to long-term career interests as a lawyer; or
 - c) in the interests of the lawyer's employer; or
 - d) related to the professional ethics and responsibilities of lawyers.
- (2) The learning activity must contain significant substantive, technical, practical or intellectual content.
- (3) It is each lawyer's responsibility to determine whether a learning activity meets these criteria and therefore qualifies as Continuing Professional Development. ■■

"I completed the on-line assessment/template; it was fantastic. Usually new technology has its bugs, but this was very intuitive and quite straightforward. I even found a course from the Law Society of Upper Canada that is very relevant to my practice (preventing deportation) via video that I likely would not have come across otherwise."

"I think the very act of going through the assessment/template forces you to look back and appraise the actions you've done in furtherance of CPD — and of course allows you to instantly look at and access resources to address areas you've already identified."

Raj Sharma, Barrister & Solicitor, Calgary ■■

Rule Amendment Increases Pro Bono Opportunities

Approved amendments to Rule 148(2) and (2.1) extends the protection of insurance coverage for additional clinics and pro bono operations, including the Central Alberta Community Legal Clinic, Lethbridge Legal Guidance, the Children's Legal and Educational Resource Centre, and Pro Bono Law Alberta. The name of the Edmonton Centre for Equal Justice was amended to the Edmonton Community Legal Centre.

The amendment of Rule 148(2.1) is to allow lawyers who are exempt from the insurance requirement (corporate/government status and "for pro bono legal services only" status) to be insured for the purpose of volunteering pro bono legal services rendered through the listed organization. ■■

Website Address Has Been Updated

The Law Society of Alberta's website address has changed to be more consistent with other law societies across the country. It is now www.lawsociety.ab.ca.

In your internet browser, please refresh your Favorites tab with this updated website address. ■■

Sustainable Core Funding Enables PBLA to Focus on Projects

Susan V.R. Billington QC, Acting Executive Director, Pro Bono Law Alberta

Bencher approval of sustainable core funding will now enable Pro Bono Law Alberta to actively focus on program and project development.

At their December 2007 meeting, the Benchers passed a resolution committing LSA's participation to the ongoing operational funding for PBLA for the next three years. As well, the Alberta Law Foundation approved PBLA's operating grant for the 2008-2009 fiscal year. PBLA is the legacy project of the Law Society in celebration of its 100th Anniversary in 2007. The strategic plan, adopted by the PBLA directors in September 2007, articulates a mission that is driven by a vision of access to justice for all regardless of ability to pay for legal services.

Legal Aid Alberta plays a major role in this vision. Pro bono legal services are meant to complement and do not substitute for a properly funded legal aid system. With that being said, there will likely always

be circumstances where Legal Aid does not provide coverage for some low income individuals who require legal service. Priorities were identified in the PBLA strategic plan to accomplish the mission:

1. obtaining ongoing sustainable operational funding; and
2. program and project development.

"With the operational funding in place, we are very pleased we can focus on the key priority of organizing and promoting pro bono programs and projects for Alberta lawyers," says Rod Jerke, QC, PBLA President.

Program and project development will concentrate on these three areas: regional programs, representational projects, and law firm pro bono. It is also a main priority to work with the existing pro bono providers to maximize resources and program delivery. For more ways to become involved, contact the PBLA office at (403) 541-4840 or visit www.pbla.ca. ■■

Child Advocacy Pro Bono Project Assists Vulnerable Youth



Children and youth in Calgary and surrounding areas have the opportunity to access free legal assistance, representation, and legal education through a Child Advocacy Pro Bono

project. The project was founded in Fall 2007 through a new joint initiative with national law firm Borden Ladner Gervais LLP, the Children's Legal Education Resource Centre (CLERC), brokered by Pro Bono Law Alberta. It will assist vulnerable children and youth to access fundamental legal services they would otherwise be unable to access or pay for in a variety of civil law matters.

"BLG is committed to supporting our local communities, and is very proud to be a founding member of such an important initiative," said David Whelan, managing partner at BLG Calgary.

Rod Jerke, QC, President of Pro Bono Law Alberta noted: "As the first pro bono project brokered by Pro Bono Law Alberta, we could not have asked for a better first example of what the projects and programs of Pro Bono Law Alberta hope to accomplish."

"This project brings together the needs of a vulnerable group (children) together with a major law firm that provides the legal expertise for representation, education and research on a pro bono basis in Calgary." ■■

Amendments Provide Greater Clarity to Assurance Fund

By Carsten Jensen, QC, Chair, Finance Committee



The Law Society of Alberta has operated a fund since 1939 to protect clients from misappropriation or wrongful use of trust property held by their lawyers. This Assurance

Fund was the first of its kind in North America. Amendments to Division 2 of Part 6 of the Rules of the Law Society of Alberta and the Assurance Fund Claims Guidelines will now result in greater clarity in the Assurance Fund claims process.

These revised rules and guidelines on the Assurance Fund are designed to:

- facilitate a smoother, more “customer service friendly” process for claimants seeking

compensation,

- increase the ability of the Law Society of Alberta to investigate claims, and
- add a safeguard that all decisions are now public, and transparent.

The new Assurance Fund rules enable timely and efficient processing of the legitimate claims of clients whose money was misappropriated by a lawyer. These rules have been revised to increase the professional competence of Alberta lawyers. The new Assurance Fund rules complement efforts being undertaken to reduce the risk to clients of trust fund misappropriations. The Assurance Fund is supported by levies imposed on all active members of the Law Society. The Fund stands behind the public assumption that trust funds held by lawyers are safe and secure, and is an important part of the self governance and independence of our profession. ■■

Do you know your Client?

By Ross McLeod, QC, Practice Advisor, Law Society of Alberta



Coming in December 2008, there will be new “know your client” rules. The Law Society of Alberta, working with the Federation of Law Societies, is acting in the public interest to ensure

that lawyers are in the forefront of the fight against money laundering. The new rules respecting client identification and verification requirements will protect solicitor-client privilege and the independence of the legal profession.

The Law Society of Alberta has approved new rules, to be effective December 1, 2008, in order to coincide with the federal regulation and allow for the preparation of compliance guidelines.

In December 2007, the federal government published regulations regarding “know your client” rules, which will be implemented in December 2008. Earlier, in 2004-2005, law societies adopted the related “no-cash” rule. The new “know your client” rules include verification requirements for recording client identity, for different types of transactions, timing, record keeping and retention, etc.

Links:

Proceeds of Crime (Money Laundering) and Terrorist Financing Act:

laws.justice.gc.ca/en/showtdm/cs/P-24.501

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulation:

laws.justice.gc.ca/en/ShowTdm/cr/SOR-2002-184//en

International (G8) Treaty Background:

www.fatf-gafi.org ■■

Update Contact Information for LSA

Have you moved? Is your phone number different? Using a new email address? If any of your contact information has changed, please advise the Law Society of Alberta using the form on our website. You can check your mandatory address information on Lawyer Search. (Please note: Lawyer Search will not show email addresses as these are for LSA use only.)

The form can be located at www.lawsociety.ab.ca under Membership Services/Contact Information Changes. It is called ‘Request to Change Contact Particulars form’. ■■

Add Law Society of Alberta as Safe Sender in your Outlook

The Law Society of Alberta is working with Industry Mailout to send out its weekly email notices to the profession. Industry Mailout is an Edmonton-based professional electronic mail distribution company.

Please add TheLawSocietyofAlberta@lawsociety.ab.ca as a “Safe Sender in your Outlook so that news sent by email from the Law Society can be received. Under Actions/Junk Email/Junk Email Options/Safe Senders File/Address or Doman, please add the domain name of TheLawSocietyofAlberta@lawsociety.ab.ca. ■■



THE ADVISORY

Postponed to Fall 2008: Trial by Media and the Rule of Law

2008 Media and the Law Seminar October 18, 2008

Well-known Newfoundland journalist and host of CBC Radio's Cross Country Check-up, Rex Murphy, will be the guest speaker at the 2008 Media and Law Seminar. The seminar has been rescheduled to Saturday, October 18 at the Lister Centre, University of Alberta in Edmonton. It will feature two panel discussions, a dinner and a keynote speech.

Panel #1 – Does the legal system straitjacket full reporting?

Legislators, lawyers and the judiciary each have their roles in the operation of the justice system. Have these groups placed artificial constraints on journalists that prevent full reporting of legal issues, thus undermining public confidence in the justice system? This panel featuring a representative from media, judiciary and the legal profession, will debate and discuss these issues.

Panel #2 – Rule of Law vs Rule of War: What are the lessons to be learned?

How do the media portray the rule of law in combating acts of cause-related terrorism? Do we do enough to make the public fully aware of the role of the rule of law in safeguarding citizens? Panellists from all sides will discuss and debate the lessons to be learned.

Save this date in your calendar and stay tuned for more information. ■■

Summary of Disciplinary Matters

Including Hearing Reports Released January 1, 2008 to March 31, 2008

In this Summary of Disciplinary Matters for the first quarter of 2008, 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, LSA completed 11 hearings, and issued four hearing reports, two of which are summarized below.

Reprimand of A.

A hearing committee held a hearing September 6, 2007 regarding the conduct of A., a sole practitioner in an exclusively matrimonial practice providing services in high conflict cases. The lawyer had voluntarily transferred to the inactive list.

The two citations were consolidated into one, that A.: “failed to respond in a timely manner to communications from the Complainant, the Legal Aid Society, and to communications from another lawyer that contemplated a reply, and that such conduct is conduct deserving of sanction.”

The committee heard that A. was undergoing a great deal of stress due to the nature of the practice. The committee noted that this may well be an explanation for the conduct but it is not an excuse for breaching the Code of Conduct and the common rules of civility.

In its report, the committee noted that “the profession can only effectively serve its clients, the public, by treating one another in a professional manner and with respect. Failing to respond to another practitioner is a failure to serve the public. The individuals who make up the public depend on efficacious communication between counsel in order that they can order their affairs, whether they be personal or societal.”

The committee noted that the actions of A. were not “a matter of a momentary lapse of judgment or a fleeting transgression.” The report noted that these events occurred over a protracted period of time, and “certainly they involved inordinate procrastination, and as indicated, this procrastination was not without consequences.”

In its report, the committee noted that A. chose practice in a very difficult area of the law. The committee stated: “The profession and society need competent and dedicated practitioners to devote themselves to that area of the law and it is not this Hearing Committee’s intention to deter any people entering the profession or any young lawyers from undertaking that very difficult and challenging type of practice.”

A. did not have a previous discipline record. The committee decided to sanction A. for this conduct by issuing a reprimand and levying the full costs of the hearing.

Dismissal of C.

A hearing committee met January 21, 2008 to review a citation against C. in which it was alleged that C. “failed to either return the funds to the Complainant or to make an inquiry of the Complainant into the intent of the funds being provided,” and that such conduct is conduct deserving of sanction. C.’s client was a real estate investment firm and the complainant was an investor with C.’s client.

C.’s role, with respect to this particular transaction, appears to have been solely that of receiving from the investor the lending documents and a trust cheque of \$25,000 made payable to C.’s firm, which C. in turn deposited to the trust account and paid over to the client at the client’s request.

The committee concluded that the citation against C. was not proven, and that C. was not guilty. The Hearing Committee found that the documents signed by the complainant clearly made the client its agent to deal with the loan and the funds.

continued on page 11 side column

Fraud Alert - Bank Drafts and Counterfeit Certified Cheques

By Mike Martin, Risk Assessment Officer, Law Society of Alberta

The Law Society of Alberta has become aware of a new series of frauds involving bank drafts and counterfeit certified cheques. While there are scams occurring all the time, new ones and variations of existing scams, this one involves what appear to be legitimate certified cheques/bank drafts. Sole practitioners and lawyers in small firms are often targeted.

The deals look legitimate, and typically the client is in a hurry and is new to the firm. Typically, the fraud unfolds like this:

- The lawyer receives and deposits the certified cheque/bank draft that funds the transaction.
- He or she then draws certified cheques/bank draft as the borrower has directed.
- Several days later, the lawyer is advised that the certified cheque/bank draft from the lender is bogus and there is a shortfall in his or her trust account.

Red Flags to Watch for:

Certain indicators may stand out such as the:

- client seeks counsel outside the area of the debtor's jurisdiction,
- sense of urgency on the part of the client,
- ease with which agreement of terms were met, and the
- certified cheque/bank draft made to the firm in trust

How to Protect Yourself?

If you are dealing with clients you do not know well, in order to protect yourself and your trust account, contact your bank and ask them to:

- contact the bank issuing the certified cheque/bank draft to verify the authenticity of the certified cheque/bank draft, and
- confirm that the funds have been cleared.

If you draw from your trust account without the certified cheque/bank draft being verified or cleared, your firm may be exposed to loss.

For further information, I can be reached at (403) 229-4778. ☎

New Requirements for “Negotiated Cheques” Under Rule 122(2)(i)

Rule 122(2)(i) of the Rules of the Law Society require firms to maintain bank source documents, which include negotiated cheques. This applies to both trust and general bank accounts. In the past the Law Society has taken the view that the rule requires the original negotiated cheque to be maintained.

Recently the Canadian Payments Association (CPA) announced plans to change the cheque clearing system from a paper system to digital images. This means most banking institutions will no longer provide the original negotiated cheque to an account holder. Given this change in the banking industry, the Law Society acknowledges that a printout of a digital image of the negotiated cheque will satisfy

the requirements of Rule 122(2)(i), provided the following criteria are met:

1. the digital image is printed and the paper copy is maintained with the bank source documents,
2. both the front and back of the negotiated cheque is included in the printed copy of the digital image
3. the printed copy of the digital image is easily legible, with a maximum of 8 images per page (4 cheques, front and back). Please check the image quality immediately and request replacement images as necessary.

For more details, visit www.lawsociety.ab.ca. ☎

Summary of Disciplinary Matters

continued from page 10

The committee expressed its concerns about why C. became involved in receiving or disbursing funds when C. was not providing any real or substantial legal services in connection with the matter. In its report, the committee noted that “lawyers should not allow their names to be used in circumstances where they have no real role in the provision of legal services, and where unrepresented individuals are involved.”

“Trust accounts should not be used as deposit accounts for the aggregation and payment out of money from investors in circumstances where the lawyer had no real connection with the provision of legal services with respect to the investment,” the committee reported. C. should have, the committee stated, “been alert to the fact that his client might be adopting this mechanism of collecting third party funds with the intention of providing the investor with illusory comfort that a lawyer was somehow involved in the transaction.”

“The situation was replete with the possibility of mischief: a shrewd promoter client, a lawyer who had no real association with the underlying transaction, and unrepresented members of the public putting their savings at risk.” “We trust that C.’s experience, both in being sued civilly and in having a disciplinary complaint launched against him,” wrote the hearing committee, “will make (C.) more cautious in the future and more attentive to his role in acting for clients rather than merely lending his name and trust account to accommodate a client in matters unassociated with the provision of legal services.” ☎

THE LAW SOCIETY OF ALBERTA

Suite 500, 919 - 11th Ave SW
Calgary, Alberta T2R 1P3
Telephone (403) 229-4700
Fax (403) 228-1728
Toll Free 1-800-661-9003

201 Scotia Place, Tower 2
10060 Jasper Ave.
Edmonton, AB T5J 3R8
Telephone (780) 429-3343
Fax (780) 424-1620
Toll Free 1-800-272-8839

www.lawsociety.ab.ca

Editor Sheila Serup
Designed by Media Dog Productions

THE BENCHERS

Perry Mack, QC, *President*
Peter Michalyshyn, QC, *President-Elect*
Neena Ahluwalia, QC
Brian Beresh, QC
Shirish P. Chotalia, QC
Ron Everard, QC
John Higgerty, QC
Shirley Jackson, QC
Carsten Jensen, QC
Rodney Jerke, QC
Douglas Mah, QC
Larry McConnell, QC

Bradley Nemetz, QC
Roy Nickerson, QC
John T. Prowse, QC
Stephen Raby, QC
Hugh Sommerville, QC
Dale R. Spackman, QC
Vivian Stevenson, QC
Julia Turnbull, QC
Wayne Jacques, *Lay Bencher*
Larry R. Ohlhauser, *MD, Lay Bencher*
Norma Sieppert, *Lay Bencher*
Yvonne A. Stanford, *Lay Bencher*

THE MANAGEMENT TEAM

Don Thompson, QC, *Executive Director*
Janet Dixon, QC, *Senior Counsel*
Greg Busch, *Director of Lawyer Conduct*
Lisa Sabo, *Director of Insurance*
Nona Cameron, *Director of Human Resources*
Drew Thomson, *Director of Corporate Services*

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@lawsociety.ab.ca



SERVICES FOR LAWYERS

Mentor Program: A free service that provides lawyers with the names of experienced mentors or practitioners in family law, criminal law, wills and estates, real property law and civil litigation.

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
barbara.cooper@lawsociety.ab.ca

Assist Program: A service, totally separate from the Law Society of Alberta, provided by the Alberta Lawyers' Assistance Society. Assist provides free confidential counseling to lawyers, articling students and their immediate families through a leading provider of professional assistance for issues such as stress, depression, anxiety, alcohol, drug and all other forms of abuse or addiction, relationship difficulties, family struggles, burnout and anger. Users of the Assist Program are not identified to the Law Society of Alberta.

Contact 1-800-461-8908 (Professional Help) / 1-877-737-5508 (Executive Director)

Practice Advisors: Confidential professional and personal advice for lawyers on legal, ethical and practice concerns, personal matters or mediation, practice start-up, practice management, and firm management, risk management, career transition.

Contact

Nancy Carruthers, (403) 229-4714 or toll free 1-866-440-4640
nancy.carruthers@lawsociety.ab.ca

Ross McLeod, (780) 412-2301 or toll free 1-800-661-2135
ross.mcleod@lawsociety.ab.ca

Office of the Equity Ombudsperson: Confidential assistance with the development of workplace policies and the resolution of harassment and discrimination concerns.

Contact Jocelyn Frazer, *Equity Ombudsperson* at toll free 1-888-229-4769

Membership Department: Lawyers and students should contact this department for changing contact information, membership status, insurance status and any student issues.

Contact (403) 229-4781 or toll free 1-800-661-9003 ext. 4781
membership@lawsociety.ab.ca