



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: A Call to Examine the Culture of our Profession

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

One of the most inspirational characters in literature is that of Portia from Shakespeare's *The Merchant of Venice*. The young girl, in the guise of a man, proves to be the most formidable of advocates in a compelling display of logic and the lawyer's craft. Had her

gender been disclosed, Portia would not have had the right of audience.

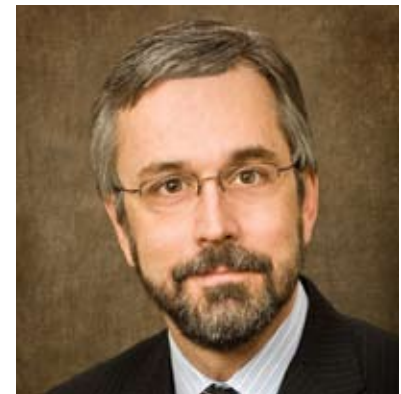
Today there are no such obvious barriers to women participating in the legal profession yet the inspiration of the Portia character is unfulfilled.

Women began to enter law schools in significant numbers in the 1970's and by the 1990's had achieved parity with men in terms of entry to the profession. One would therefore expect that in most areas of practice you would have gender parity in the middle years of practice. That is not proving to be the case.

Data collected by the Law Society of Upper Canada shows that over the last 10 years, women have been leaving private practice two to three times more often than men.

Women are disproportionately represented in government and in house positions. Men and women are leaving the profession in disturbing numbers before retirement age. There have been some excellent studies done on this phenomenon and they all tend to point to the issue of work/life balance.

Most would agree that women don't face the overt discrimination they faced in Shakespeare's time or to a much lesser extent even a generation ago; but the business aspect of the practice of law presents a significant challenge to the profession with half of us becoming the primary or significant caregivers of children.



Perry Mack, QC, President,
Law Society of Alberta

This is not a regulatory issue *per se* but it is perhaps a call to examine the culture of our profession. There is a need for flexibility in our business and compensation structures. One size does not fit all and those firms that are able to show leadership in accommodating different work/life balance needs will better attract and keep legal talent.

Where private practitioners are the source of legal services for ordinary Canadians we cannot fail to respond in a time when "access to justice" is the touchstone of the responsibilities of the legal profession. ■

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THE ADVISORY

2008 Bencher Election: Nomination Deadline Sept. 16

Nominations of candidates willing to let their name stand for election to the Law Society of Alberta Benchers must be submitted in writing by September 16, 2008.

All active members eligible to vote can cast ballots to fill the slate of Benchers on November 18, 2008. Benchers will be elected to a three-year term.

Eligibility:

Every active member is eligible for nomination and election as Bencher unless that member is ineligible by reason of section 13 of the Act or these Rules. Rule 9(1)

An active member is ineligible to be nominated as a candidate for election as a Bencher representing a district unless that member resides in that district and the member's principal office of practice is located in that district. Rule 9(2)

Nominations:

Nominations must include:

1. A nomination form signed by five (5) active members.
2. It must be endorsed by or accompanied by written consent of the active member nominated.
3. It may include biographical information not to exceed one page which includes information about education, professional work and community experience.
4. It may include a photo or likeness of the nominee.
5. It must be received in the Law Society's offices in Calgary before 4:30 p.m. on September 16.

Nominations should not contain any statements that bring the profession into disrepute, or constitutes a campaign promise or similar comment, or is libellous, in breach of the Code of Professional Conduct or in bad taste. (Rule 10)

The biographical information and photo will be included in the election booklet which will accompany the ballot.

For more details, visit www.lawsociety.ab.ca or contact Karen Olsen, LSA Bencher Secretary at 1-800-661-9003 (toll free). ■■

President's Commentary — No One is Advocating the Status Quo

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

An editorial published in a leading Canadian legal publication has suggested the fees charged by lawyers have caused legal services to become "luxury goods" for the average Canadian. (Partially reprinted in the Calgary Herald, July 7, 2008)

The Law Society of Alberta, regulator of the legal profession in the public interest, agrees that many have difficulty accessing legal services.

Many Albertans have difficulty accessing legal services. In a society governed under the rule of law, access to legal services and justice is, along with an independent judiciary, the foundation of a civil society.

The legal profession acknowledges a responsibility to ensure these high words do not ring hollow. The problem is complex.

Considering possible solutions must begin with understanding the causes. It is not enough to say that lawyers charge too much. It is a question of demand and supply.

Lawyers' fees are set by the marketplace. Lawyers charge what clients in general are willing to pay. We are currently enjoying a vibrant economy in Alberta which means there is an abundance of work for lawyers. Increased demand and escalating overhead costs such as administrative staff salaries, office rent, supplies and third party fees all tend to push the cost of legal services upwards.

Corporate Canada and government have increasingly absorbed lawyers into their operations. In doing so, the number of lawyers providing personal legal services has been reduced. There are approximately 8000 practicing lawyers in Alberta; of whom 2500 are either providing services to one corporate client or to some level of government.

Our national divorce rate nearing 40 % creates an insatiable need for legal services.

Divorce cases typically create issues respecting child custody and access, division of property and support, all to be sorted out in a time of difficult circumstance for the parties.

Many of these parties are not seeking legal representation; some because they cannot afford the cost of a lawyer and some because they see no value in professional representation.

It has been suggested that in family law cases, 50% of

litigants are self represented. Such a situation puts strain and inefficiencies on the justice system and its participants.

What is to be done?

We need to consider the accreditation of new law schools to bolster the supply of lawyers to serve Canadians. The 15 common law schools in Canada supply about 2200 new lawyers yearly. The number of law graduates has remained relatively constant since 1976.

The supply of new lawyers has not increased while the population, the economy and the need for legal services have all grown significantly. The "boomer generation" of lawyers is retiring. Rural Canada is underserved. Canadian law school graduates are increasingly being recruited to national and international law firms. We need to train more lawyers.

We need to do a better job of keeping lawyers in the profession. Many are leaving before reaching retirement age. Women lawyers, in particular, need better support to enable them to combine professional and family responsibilities. We cannot afford to lose highly trained people because we decline to address work/life balance.

We need to consider new sources of supply of legal services.

Increasingly, Canadians are using the services of paralegals who are largely unregulated outside Ontario. In Calgary, a visitor to traffic court on any day will find paralegals dealing with traffic tickets. We need to carefully consider what areas of legal services do not require the training, expertise and expense of a lawyer.

To the extent that legal services can be provided by a non-lawyer, the public needs to be protected by ensuring that authorized paralegals are properly trained, supervised and regulated.

We need to consider new business models for the delivery of legal services. If traditional law firm structures are unable to provide affordable legal services to all Canadians, we need to release entrepreneurial enterprises.

In the United Kingdom, new laws permit non-lawyer participation in the ownership of a legal business. Such a change here could permit legal clinics within a local department or grocery store. If Costco or Wal Mart can

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Model Policies Create Equality of Opportunity in a Diverse Profession

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



Lawyers and firms are invited to take advantage of model policies and guidelines developed by the Law Society that create equality of opportunity in what is becoming an increasingly diverse profession.

Policies and guidelines created by the Equality, Equity and Diversity (EED) committee, since its formation in 1991, can be adapted by any lawyer or firm for his/her own workplace.

These are posted on the Law Society website, and include:

- Alternative Work Schedules and Guidelines for law firms. This document includes suggestions for creating full-time and part-time flexible work arrangements, addresses common concerns such as profitability, productivity and service to clients, and includes a sample policy.
- Guidelines for Drafting and Implementing Maternity and Parental Leave. A sample policy is included.
- Guidelines for Drafting and Implementing a Diversity and Equality Policy in the Workplace

For details, visit: www.lawsociety.ab.ca

Strategic Plan Streamlined to Four Goals

Since starting my career 25 years ago, the environment in which law societies operate has been changing constantly. There are areas in the world where law societies have lost their ability to govern. The management team brainstormed, consulted and came up with four goals. We have three to five years to achieve these:

Goal #1 – To be highly trusted

Canada is one of the last places in the world where the legal profession is self-governed. To successfully regulate the profession the LSA must be trusted and understood by the public, the government, the profession, and the justice system. They must see us as focused on protecting the public interest, fair, transparent, timely and responsive.

Goal #3 – Be visible in standing up for the public interest in the principles of justice

We will strive to govern in the public interest by maintaining and strengthening an independent legal profession. We will be an advocate to protect the public, increase access to legal services and preserve the rule of law.

Goal #2 – Be recognized for excellence in management and leadership in service

We must earn trust through excellence and leadership in all we do. Our recent accomplishments in this area include: complaints standards work, safety of trust project, risk management and the ongoing implementation of the Continuing Professional Development Program.

Goal #4 – Be a leader organization of choice for staff and volunteers

Volunteers are key to the functioning of the LSA, because the Legal Profession Act gives them authority for certain decisions. We will strive to be a leader organization of choice for staff and volunteers. ■■

President's Commentary – No One is Advocating the Status Quo

Continued from previous page

drive down the cost of consumer goods, perhaps they can have the same effect on legal services.

Addressing the issue of affordable legal services as part of access to justice is going to require new thinking to create sustainable solutions.

The proposals referred to are just some of those under discussion within the legal profession in Alberta and in law societies across the country.

No one is advocating the status quo. ■■

Nominations Open for 2009 Distinguished Service Awards

If you know an Alberta lawyer who has made an outstanding contribution to his or her community, to the profession, to legal scholarship and in pro bono legal service, consider nominating him or her for a 2009 Distinguished Service Award.

Presented jointly by the Law Society of Alberta and Canadian Bar Association Alberta, these annual awards celebrate excellence in the legal profession.

Award categories are:

- The DSA for Service to the Community
- The DSA for Service to the Profession
- The DSA for Legal Scholarship
- The DSA for Pro Bono Legal Service

Nominations should include:

- Nominee information, i.e. name, award category, firm/company name, business phone and fax, business and email addresses.
- Nominator information including name, business phone and fax, business and email addresses.
- A statement detailing why the candidate is worthy of the award.
- A curriculum vitae outlining the nominee's background, career and any present activities that qualify them for nomination in one of the four categories.
- A maximum of two letters of support for the nomination.

All nominations will be considered for two years.

Deadline for nominations: 4:30 p.m. on Friday, November 14, 2008

Award Presentation: The 2008 Distinguished Service Awards will be presented at the Alberta Law Conference on Friday, January 30, 2009 at the Fairmont Hotel MacDonald in Edmonton, Alberta.

Send nominations to:

2009 Distinguished Service Awards
c/o Melinda Lundy, Communications Coordinator
Law Society of Alberta
500, 919 – 11th Avenue
Calgary AB T2R 1P3
Fax: 403-228-1728 ■■

Survey Results Consistent with Work/Life Balance Issue

The most significant statistic uncovered in the exit survey of active lawyers showed that the largest number of women moving to the inactive list were called to the bar after 2000.

Lawyers were asked to respond to questions posed in an on-line survey tool. Of the 34 who retired and 274 who moved from active to inactive status as of March 15, 2007, 122 responded to the survey. Of interest:

- 34% of women and 12.5% of men experienced discrimination while practising law (almost identical to last year).
- 40% who left the practice of law continue to be employed elsewhere. 20% reported that their work was somewhat related to their legal training, and for 70% it was very related.
- The highest satisfaction with the practice of law came from the intellectual challenge of the work, contact with clients, employment benefits and working relationships with colleagues, support staff and court personnel.
- Respondents were least satisfied with the stressful nature of the work, the lack of balance with their personal life, the adversarial nature of the work, hours of work, the lack of available mentoring and the opportunities for advancement (unchanged from 2006).
- The top two factors for leaving the Alberta law practice related to personally rewarding opportunities elsewhere and lack of balance with personal life.
- 23 respondents (or 19%) continue to work for a law firm in another jurisdiction. Also, 54% of the men surveyed and 43% of the women intend to return to active practice. And 54% of the men and 37% of the women would still become a lawyer if they could do it all over again.

The exit survey is conducted annually by the Equality, Equity and Diversity Committee of active members who moved to the inactive list or retired. ■■

Profitability and Lawyer Retention

By Nancy Carruthers, Practice Advisor, and Jocelyn Frazer, Equity Ombudsperson, Law Society of Alberta

The theme of this Advisory is the retention of women in the legal profession, though it appears we need to be concerned about the retention of lawyers in general. The issue is important for both economic and societal reasons.

There are approximately 8000 active lawyers in Alberta, 66% of whom are men. Approximately 5500 lawyers are in private practice and approximately 2500 are in-house. Women comprise almost 29% of the private practitioners, while they make up 44% of in-house lawyers. Of interest, in-house lawyers up to 15 years at the bar include slightly more women than men, though that trend reverses amongst the more senior in-house practitioners.

Equal numbers of men and women have been graduating from Canadian law schools for approximately the last 20 years. Men and women were not, however, called to the Alberta bar in equal numbers until 2000. What is perhaps even more surprising is that men seem to be leaving the profession with almost as much frequency as women.

By way of example, and with reference to specific years of call, 40% of the women and 28% of the men called in 1990 are no longer practicing. Thirty-nine percent of the women and 38% of the men called in 1986 are also no longer in practice. Of those called in 2000, 27% of the women and 18% of the men were not practicing within six years of being called.

The number of lawyers of both genders who are leaving the profession is troubling when one considers the investment those lawyers and their firms have made in their training and education. It has been estimated that the cost to a firm of a fourth year associate's departure is \$315,000.

For the past four years, the Law Society has been conducting exit surveys of active members who became inactive or retired. The top reasons among both genders for leaving the profession continue to be the availability of more personally rewarding opportunities elsewhere, and lack of balance with personal life.

Sixty percent of last year's respondents were simply moving on to more satisfying employment. Suggested changes to the profession included better work/life balance, more opportunities for part-time employment, greater recognition of family demands, improved civility and more flexible insurance and fee structures. The effect of the "billable hour" was the subject of specific criticism.

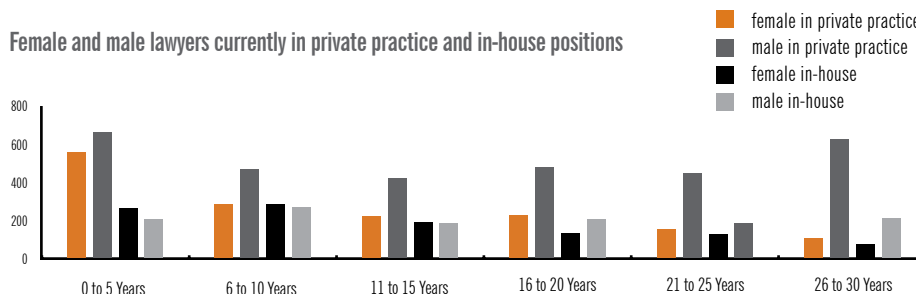
Access to justice is also affected as we are losing experienced lawyers and have not made any gains in the number of lawyers available, per capita, to the Alberta population in the last 20 years.

In the meantime, matters have grown in complexity and, due to market forces, lawyers often seem to migrate toward bigger centres and bigger firms, where they may be less likely to handle files on behalf of the growing middle class in need of affordable personal legal services.

Concern for diversity in the legal profession is gaining attention. The Benchers of the Law Society of Upper Canada have recently adopted the recommendations of the Retention of Women in Private Practice Working Group. The CBA's Standing Committee on Equity has produced a Guide and Resource Manual for the legal profession, emphasizing the business case for diversity.

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Female and male lawyers currently in private practice and in-house positions



The graph above shows the numbers of female and male lawyers currently in private practice and in-house positions, respectively, categorized according to year of call.

Factors that Make Lawyers Leave Need to be Addressed

By John Higgerty, QC, Chair, Equity, Equality and Diversity Committee



Mea culpa. Mea culpa. Mea culpa.

As a 50-something lawyer of European descent, I will confess to some weariness at the prospect of being blamed again for the various ills of society. This time it is the failure of the legal profession to

retain women.

But you know what? The shoe kinda fits. Perhaps it is even a little bit too comfy.

In 2006 and 2007, the Law Society of Alberta conducted exit surveys of its members. Just as we need to encourage lawyers to come to Alberta to properly serve the public in these boom times, we need to address the factors that make them leave.

Of the survey respondents, about 70% of those departing the profession at under the age of 40 were women. The top

two factors for both years was a lack of work-life balance, and more personally rewarding opportunities elsewhere. Probably some overlap there. Significantly, nearly 70% took a pay cut to go elsewhere.

So what are we doing wrong?

This grumpy old white man will take a chunk of the blame. As a breed we may own the world, but what is work-life balance? A breakfast cereal?

Notwithstanding some notable exceptions, we as lawyers have been long on talk, and short on action.

Half way through my fifties, I want my fellow lawyers to consider me for a fractional position. I know I will get some of the bias I have helped to prop up. "O.K. for support staff. But lawyers? Cracking up, old man? Can't handle the load anymore? He never was a team player. Tut tut."

As Chair of the Equity, Equality and Diversity Committee, I would appreciate your input. How do we keep the people we already have?

John.higgerty@gov.ab.ca

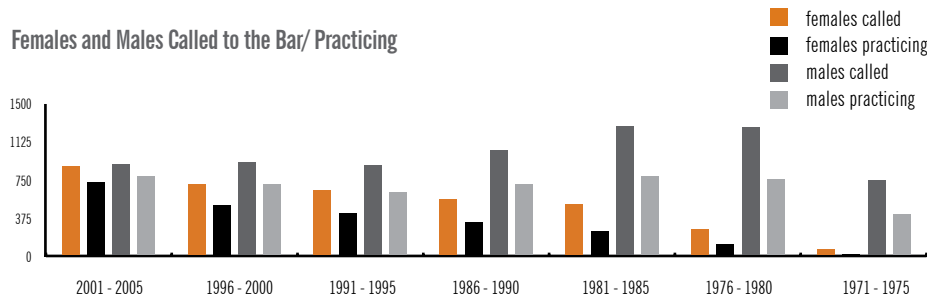
Profitability and Lawyer Retention

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Diversity management within law firms is becoming increasingly significant to the continued viability of the legal profession. In an increasingly competitive market, law firms should make it a priority to address these issues, not only as part of the hiring and retention of lawyers but also as a means of promoting clients.

Some large corporate clients in the U.S. are demanding that their lawyers demonstrate a commitment to the promotion of equality and diversity, and Canadian law firms may ultimately feel the same pressures. Accommodation of diversity is, therefore, more than just an ethical or moral obligation. It is simply good for business.

Females and Males Called to the Bar/ Practicing



The graph above was created using 2006 data, and demonstrates the numbers of females and males called to the bar from 1971 to 2005. The number of females and males still in private practice or in-house positions in 2006 is also shown.

Equity Ombudsperson Acts as Independent Resource



By Jocelyn Frazer,
Equity Ombudsperson,
Law Society of Alberta

The Office of the Equity Ombudsperson (OEO) provides advice and support to the legal profession and the Law Society of Alberta on issues respecting the promotion of equality, equity and diversity as well as prevention of harassment and discrimination in the workplace.

Effective May 1, 2008, I have assumed the role of the Equity Ombudsperson.

Since being admitted to the Law Society of Alberta in 1990, I have gained experience in a variety of different legal settings while practicing primarily in the areas of residential real estate, condominiums, wills and estate planning. My professional interests and experience include practice management with a focus on solo and small firm settings and the effective use of technology to assist in the practice of law. I am an active member of the Canadian Bar Association, and have been a sessional chair with the Legal Education Society of Alberta.

My role as Equity Ombudsperson will be to:

- act as an independent resource on issues of development, management, and education concerning workplace equality, equity and diversity; and
- provide confidential advice regarding complaints of discrimination and harassment.

I am available to assist in the development of educational material and policies which encourage equality, equity and diversity within law firms while enhancing client promotion in an increasingly competitive marketplace.

Registrations Open for 2008 Media and Law Seminar *Is the Rule of Law on Trial?*

Registrations are being accepted for the Law Society of Alberta's 6th annual Media and Law Seminar, set for October 18 with guest speaker Rex Murphy, well-known Canadian journalist.

The seminar will be held at the University of Alberta's Lister Centre in Edmonton.

Two panel sessions will be moderated by facilitator **Paula Todd**, former host of CTV's *The Verdict*, and now reporter with CTV's *W-Five*. After-dinner keynote speaker **Rex Murphy** is a weekly commentator on CBC's *The National*, and is the Sunday afternoon host of CBC Radio's *Cross Country Checkup*. The seminar starts at 2 p.m. and wraps with a dinner and keynote speaker by 8 p.m.

Panel One: Does the Legal System Straitjacket Full Reporting?

Panelists exploring the roles of legislators, lawyers and the judiciary in the operation of the justice system will include:

- **Brian Beresh**, QC, a well-known Alberta criminal defence lawyer
- **Esther Enkin**, Editor-in-chief, CBC Radio
- **Nicholas Parker**, lawyer with Reynolds, Mirth, Richards & Farmer LLP
- **Paula Simons**, Edmonton Journal

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Minister Given Mandate to Explore Initiatives Around Safe Communities



The following is an excerpt of a presentation given by the Honourable Alison Redford, Minister of Justice and Attorney General, Government of Alberta, to the Law Society of Alberta benchers on June 5,

2008 at the Jasper Convocation.

The Hon. Alison Redford was elected MLA for the Calgary-Elbow constituency on March 3, 2008. Ms. Redford, a human rights lawyer, graduated from the College of Law at the University of Saskatchewan. She was admitted to the Law Society of Alberta in 1992.

As Minister of Justice, I was given a mandate to explore initiatives around safe communities.

Establishing a made-in-Alberta crime prevention and reduction strategy is a key priority for our government. Funding of \$500 million over the next three years has been allocated to implement the recommendations of the Crime Reduction and Safe Communities Task Force.

In every community, it's clear the status quo is not acceptable and we're taking action to make our communities safer. Albertans deserve a safe, secure environment to live, work and raise their families.

One of the directions is to develop a working group across ministries, municipalities, businesses to find and implement successful, long term solutions to crime.

The government established the Safe Communities Secretariat in early April, which will oversee this initiative and focus on the factors that give rise to crime.

Prosecution Service

Part of the work we want to do with the LSA focuses on prosecution service. Our courts are becoming increasingly busy places and increased caseloads and more complex prosecutions require more staff.

We're responding by adding 26 new Crown prosecutors

this year and 41 new support positions. Fifty-three new Crowns will be added over the next three years. These positions will help manage the increasing demands on the justice system and improve court efficiency.

File Ownership

We're implementing file ownership which will see Crowns assume responsibility of a file from the beginning to the end of the court process, from bail application to sentencing.

Legal Aid

One issue I would appreciate receiving comments on is legal aid. As the demand for the service increases and cases become more and more complex, we need more funds to ensure Albertans will continue to have access to legal aid.

That's why we are also asking the federal government to step up and provide more legal aid funding on a 50/50 basis.

Alberta has added \$14.3 million to our Legal Aid budget over the past three years, an increase of almost 50 per cent since 2005. This year, our legal aid budget is \$53.8 million. A further increase of \$6 million in 2009-10 is planned to help legal aid manage growing demand and escalating operating costs.

Paralegals

Self-represented litigants are related to problems in moving things through the courts. Paralegals have a valuable role in the justice system.

In addition to working under the supervision of lawyers, many independent paralegals are being retained as agents for court matters like traffic tickets and uncontested divorces.

There's been a long-standing concern that many of these people may in fact be practicing law without the necessary training or membership in the Law Society.

We're in the early stages of determining if potential regulation of paralegals would, in fact, benefit Albertans' access to justice. ■

SCC Dismissal Upholds Solicitor-Client Privilege

By Janet Dixon, QC, Senior Counsel, Law Society of Alberta



The Privacy Commissioner's order for records between a lawyer and a client was dismissed Thursday, July 18 when the Supreme Court of Canada upheld a decision made earlier by the Federal Court of Appeal.

The FCA decision in the case, *Blood Tribe Department of Health v. Privacy Commissioner of Canada and Annette J. Soup*, to vacate the Commissioner's order for production of records, stands.

In this decision, the SCC upheld the right of clients and lawyers to solicitor-client privilege which means that clients are assured that information shared with their lawyers is, and will always remain, confidential.

The SCC noted in its decision that: "solicitor-client privilege is fundamental to the proper functioning of the legal system. Without that assurance, access to justice and the quality of justice in this country would be severely compromised. It is in the public interest that the free flow of legal advice be encouraged."

"Client confidence is the underlying basis for the solicitor-client privilege, and infringement must be assessed through the eyes of the client."

The SCC noted that: "The Commissioner is an officer of Parliament vested with administrative functions of great importance, but she does not, for the purpose of reviewing solicitor-client confidences, occupy the same position of independence and authority as a court."

The case began in spring 2002 when Ms. Soup's employment was terminated by the Blood Tribe (a southern Alberta First Nations). At the time of her dismissal, the Blood Tribe sought and obtained written legal advice regarding Ms. Soup's employment.

Following her dismissal, Ms. Soup made a request under the federal *Personal Information Protection and Electronic Documents Act* for copies of all of her personal information held by the Blood Tribe. The Blood Tribe complied with this request except for the legal advice it received from its solicitors.

The Privacy Commissioner demanded copies of the material to verify the claim to solicitor-client privilege but the Blood Tribe refused to waive the privilege. Subsequently the Privacy Commissioner issued an order under PIPEDA to produce the documents.

In November 2003, the Blood Tribe brought an application in Federal Court for a judicial review of the production order. The application was denied in March 2005. The Blood Tribe appealed to the Federal Court of Appeal where the LSA was granted intervener status.

In October 2006, the appeal was granted and the production order quashed. In quashing the Commissioner's order, the Federal Court of Appeal recognized the presumptively inviolate nature of the solicitor-client privilege and held that PIPEDA did not contain any language allowing the Commissioner to violate that privilege.

The Court agreed with the LSA's arguments that the provisions of PIPEDA may allow information obtained by the Commissioner, including solicitor-client privileged information, to make its way into the hands of public law enforcement officers which would undermine the confidence and candour of Canadians when dealing with their lawyers.

The Court also agreed with the LSA that only an actual superior court could inspect the actual documents to rule on whether solicitor-client privilege has been properly claimed.

The Privacy Commissioner sought leave to appeal to the Supreme Court of Canada.

The LSA engaged the Federation of Law Societies of Canada (FLSC) which became one of four interveners at the SCC level. Other interveners were the: Canadian Bar Association, Attorney General of Canada, and the Advocates Society.

Gary Befus was counsel for the Blood Tribe, Steve Welchner was counsel for the Privacy Commissioner and Garner Groome represented the LSA. The FLSC was represented by the Nova Scotia firm MacIntosh, MacDonnell & MacDonald. ■■

Registrations Open for 2008 Media and Law Seminar

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Panel Two: Is the Rule of Law on Trial by the Media?

How the public's understanding of the rule of law is affected by media coverage will be discussed by the following panellists:

- **Hon. A. Anne McLellan**, former Deputy Prime Minister of Canada
- **Justice Scott Brooker**, Court of Queen's Bench — Calgary
- **Mona Duckett**, QC, Royal, McCrum, Duckett & Glancy, LSA Past President 2006-2007
- **Greg Lepp**, QC, Alberta Justice

Early bird fees, paid by September 15, are \$125 per person and \$100 per student. After September 15, the fees are \$150 per person and \$125 per student.

Registration can be done online at www.lawsociety.ab.ca. Or forms can be downloaded from the Law Society of Alberta's website and faxed to (403) 228-1728.

Payment by cheque needs to be mailed to:

The 2008 Media and the Law Seminar
Law Society of Alberta
#500, 919 — 11th Avenue SW
Calgary AB T2R 1P3 ■■

CPD Program Presentations Aim to Engage Lawyers



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

Since the launch of the Continuing Professional Development Program in March 2008, over 1000 lawyers have attended one of the 24 LSA presentations.

Dunphy Best Blocksom LLP of Calgary became the first firm to achieve 100% compliance with the new proposed rule. All 21 lawyers of the firm — including one who calls himself “retired” and one on maternity leave — have made their CPD plans and made their declarations to the LSA.

CPD Presentations:

Presentations have been made to groups of lawyers at luncheons, CBA section meetings, the Alberta Law Conference, and the annual refresher course held by Legal Education Society of Alberta (LESA).

The video developed by Smile Productions and Calgary lawyer Allan Shewchuk, QC, is central to the presentations, and opens discussion among the participants about the need and value of the self-directed program. The video can be viewed at www.lawsociety.ab.ca

If you are interested in having a presentation delivered at your firm or legal organization meeting, please contact Margaret Hollis, LSA Policy and Program Counsel at 1-800-661-9003 (toll free) or (403) 229-4774.

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“I must say I was very impressed with this new LSA program. The CPD is based on lawyer-directed learning and is practical, useful, easy to use, not too onerous, and utilizes technologically advanced tools. Obviously one of the key ongoing messages to lawyers will need to be that what you get out of this program will depend on how much effort you put into using the tools.”

Jim Casey, QC
Field Law LLP, Edmonton

LSA represented on Pro Bono Law Alberta board

By Sheila Serup, Manager, Communications, Law Society of Alberta



A diverse perspective on the needs of Albertans has been brought to the Pro Bono Law Alberta board with the appointment of LSA representative Yvonne Stanford.

A lay bencher since her appointment in 2000,

Yvonne Stanford brings extensive expertise in multi-cultural community agencies, human rights, and social action to the board. She was previously a YWCA Calgary director, and executive director with the south central region of the Canadian Mental Health Association.

Her consulting experience includes human rights education with Oxfam Canada and board decision-making with Calgary Legal Guidance. She has consulted for the Calgary Immigrant Women’s Association and Churchill Park Day Care Society. She was involved in the Convention on the Rights of the Child with Oxfam, and the State of Alberta’s Children report with the committee on race relations.

“She has been effective in ensuring the LSA remains accountable to the public,” noted Janet Dixon, QC, LSA senior counsel, “and she continues to embody and keep the public interest before the LSA.”

Her volunteer work supported organizations such as the Coalition for Equal Access to Education, Dignity Foundation, Women’s Centre of Calgary among others.

With the Law Society of Alberta, she has worked on many committees, including Conduct, Continuing Professional Development (currently vice-chair), Credentials and Education, Finance, and Equality, Equity and Diversity (she was chair in 2004), and Professional Responsibility among others.

“Her continued advocacy work on access to justice will contribute to the development of PBLA as a lasting legacy,” said Susan Billington, QC, acting PBLA executive director.

Bencher Rod Jerke continues in his role as the President of the Board, and Chair of the Advisory Board. ■

Role of Lay Benchers in Governance

By Mona Duckett, QC, Past President (2006), Law Society of Alberta



A public perspective is brought to the governance of the Law Society of Alberta in the form of lay benchers.

In 1984, the Alberta Minister of Justice appointed two lay benchers. In 1991, the

third lay bencher position was created, and a fourth lay bencher was appointed in 2002. Lay benchers are appointed for three-year, renewable terms. Lay benchers come from diverse, varied backgrounds such as social work, medicine, business, international sport, as well as different cultures, among others.

Lawyers are self-governing, and the participation of members of the public in the governance process through the voice of the lay benchers is an integral part of our ability

to carry out our mission of protecting the public interest.

Lay benchers represent the public at large. Lay benchers sit on various law society committees and ensure that the voice and concerns of the general public are heard, while ensuring that high professional standards for lawyers are maintained.

Jim Peacock, QC, LSA Past President (2007) notes that lay benchers bring a valuable public perspective to the Benchers as a whole. “Their perspective is invaluable to the work performed by the Benchers, as they bring a public consciousness to core Law Society responsibilities such as discipline, conduct and education. They constantly remind us of the need to act in the public interest.”

The government-appointed lay benchers have all the responsibilities and duties of elected benchers, including active participation in the decision-making and disciplinary processes of the Law Society. ■

Ethically Speaking

Lawyers as Witnesses: What about my fees?

By Nancy Carruthers, Practice Advisor, Law Society of Alberta



The subpoena has arrived, and you are expected to testify for your former client in an upcoming trial. It is going to take at least a couple of days to review your old file materials and meet with trial counsel to prepare, and your testimony may last the better part of a day. This means you are going to be away from the office, and losing valuable billable hours. So what are your options?

The *Code of Professional Conduct* provides in Chapter 10, Rule 23, that: "A lawyer must not permit or participate in a payment or other benefit to a witness in excess of reasonable compensation." The commentary confirms that it is ethical for a lawyer to agree that a witness will be paid reasonable out-of-pocket expenses and loss of income incurred by the witness as a result of appearing in court. But what is reasonable? You have to keep in mind that we all have an obligation to be witnesses in a court of law and must be prepared to incur some inconvenience or financial detriment. Further, excessive payments to witnesses have the appearance of impropriety.

A lawyer may enter into an agreement with his former client to be paid a reasonable amount for his or her time in preparing for and attending trial. The lawyer cannot, however, demand such payment as a condition of attendance. Parties to litigation are limited in their ability to recover costs paid to professionals who attend trial as lay witnesses, and it would simply be unfair to require them to pay costs to professional witnesses which they would not be entitled to recover.

In *Electrohome Ltd. v. Gregg Properties Co.*, [2003] A.J. No. 266, Veit J. did not allow the successful plaintiff to recover costs from the opposite party, paid to the plaintiff's former lawyer in connection with the time spent to prepare for and give evidence at trial. The lawyer was not testifying

as an expert and, although he may have been paid by his former client, the unsuccessful party was not liable for the cost. The court stated that an individual who receives a summons to appear at trial with relevant documents must do so, or apply to strike down the summons. If, however, the witness is necessary, the court will not strike the summons. Everyone who comes to trial to testify must take time to prepare and to review their files, and the obligation to come to trial, prepared to testify, falls on everyone who is summonsed to appear. The cost of doing so is the responsibility of the witness, although the cost may of course be offset by payment of any fees and disbursements which are allowed by the Rules of Court, and the presiding justice, for lay witnesses.

A possible exception may exist in the case of a lawyer who has, for example, prepared a will and is called to testify in later proceedings, in the event the testator's capacity may be challenged. In *McCullough Estate v. Ayer*, [1997] A.J. No. 417, Kent J. allowed lawyers who testified about their previous dealings with the testator to be compensated from the estate, where the will had been challenged on the grounds of lack of capacity and undue influence. The unsuccessful parties argued that the lawyers had appeared only as lay witnesses and should not be compensated as professionals or experts. The court held that they had been acting as professionals in their dealings with the testator, and it was that relationship which caused them to be required to prepare for and attend at court. Accordingly, their full accounts were paid from the estate funds.

The obligation to appear as a witness is also consistent with a lawyer's ethical duty to uphold the law and support the administration of justice. While you may be fortunate enough to secure your former client's agreement to compensate you for at least some of your time, you will be obliged to prepare and attend trial. It should go without saying, however, that trial counsel should be considerate of witnesses, and do everything possible to limit the inconvenience associated with the requirement to testify. ■

CPD Program Presentations Aim to Engage Lawyers

Continued from page 08

Online Tools:

Tools to complete the plans are available online and include a self-assessment tool, a searchable resource bank, and a planning template. These are available at www.CPDAlberta.ca. The resource bank is a searchable listing of hundreds of CLE courses and other learning opportunities from LESA and other Canadian providers.

Lawyers need to complete their plans and report to the LSA by March 15, 2009 that they have done so. These plans must be kept on file for five years. Lawyers need to be able to produce it to the LSA on request.

Lawyers needing help navigating the online tools are invited to contact staff at the Alberta Law Societies Libraries for assistance.

Law office librarians, managers and directors of education who need access to the online tools are directed to the website CPD law office management FAQs for information on how to access the online tools, which otherwise require a roll number.

"It goes without saying that there has to be some kind of continuing professional development requirement. The self-directed approach should work for all lawyers. It works for us."

**Gillian Marriott, Managing Partner
Dunphy Best Blocksom LLP, Calgary**

Early Bird Draw:

The Law Society of Alberta's centennial book *Just Works: Lawyers in Alberta, 1907-2007* will be the main prize for an early bird draw to be held September 30, 2008. All lawyers who have completed their plans and reported to the LSA by that date will have their names put into the main draw for 100 prizes.

The centennial book is a collection of essays illustrating the vibrant history of law and lawyers in Alberta in honour of LSA's 100th anniversary. It combines superbly written stories with photographs showcasing 100 years of rich and diverse history of the legal profession in Alberta. ■



THE ADVISORY

Mark Your Calendar with These Upcoming 2008 Fall Dates

September 15 — Deadline for **Early Bird Registration** for the 2008 Media and the Law Seminar

September 16 — Nominations of individuals standing for **Election to the Benchers** must be received in the Society's offices in Calgary before 4:30 p.m.

October 2 — The **Annual General Meeting** of the Law Society of Alberta will be held at 5:00 p.m. at the Society's offices in Calgary.

October 18 — The **2008 Media and the Law Seminar** will be held at Lister Centre, University of Alberta.

November 14 — Nominations for the **2008 Distinguished Service Awards** must be received by the Society's offices in Calgary by 4:30 p.m.

November 18 — **Ballots for the Bencher Election** must be received by the Society's offices in Calgary by 4:30 p.m.

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

Summary of Disciplinary Matters

Including Hearing Reports Released April 1, 2008 to Jun 30, 2008

In this Summary of Disciplinary Matters for the second quarter of 2008, the Law Society of Alberta seeks to educate and inform lawyers about its role as a self-regulator in the public interest. During this time, the LSA completed 19 hearings, and issued 8 hearing reports, two of which are summarized below.

Reprimand of A.

On March 3, 2008, a Law Society of Alberta hearing panel reviewed three citations against **A.** These citations included failures to:

- (1) respond on a timely basis to communications from **A.**'s client that contemplated a reply;
- (2) keep the client informed as to the delay in registration of the Transfer of Land; and
- (3) inform the client of the material error of not completing the Dower Affidavit;

all of which breached the Code of Professional Conduct, and which became conduct deserving of sanction.

Essentially, **A.** was retained for a real estate transaction between **A.**'s client and the client's common-law spouse.

The Panel acknowledged that **A.** had no record, had practised for some time and that, at the time the matters giving rise to the citations, was experiencing a difficult time in **A.**'s practice as a result of staffing problems and volumes. The Panel concluded that a reprimand and an order to pay two-thirds of the actual costs of the hearing would be a sufficient sanction under the circumstances to serve as a deterrent in the public interest.

The Chair specifically reminded **A.** of the importance of prompt and timely communication with clients. In particular, communication of errors caused by **A.**'s office, while unpleasant, are necessary to ensure that the client is aware of the status of his or her legal problem so that appropriate steps can be taken by the client. When **A.** failed to return the client's phone calls, **A.** simply exacerbated the situation and made the client even more unhappy with **A.** and with the profession generally.

Disbarment of B.

On January 9, 2008, a hearing committee met to hear five citations against **B.** The committee found **B.** guilty of conduct deserving of sanction under the Code of Professional Conduct Citations 1, 2 & 4. Citations 3 & 5 were dismissed.

It was alleged that:

In Citation 1, B. was "...inadequately prepared for the application heard by Justice..."

In Citation 2, without the client's instructions or consent, **B.** agreed to a consent order which gave **B.**'s client's former spouse sole custody of the client's child, and

In Citation 4, B. failed to be candid with the Law Society of Alberta when **B.** had asserted that **B.** had not been told by his/her client that there was an order for supervised access in place.

The hearing committee found that **B.** has a significant and serious discipline record. Counsel for the LSA submitted that a conviction for citations of this nature as a first offence for a junior lawyer would warrant no more than a reprimand, and perhaps a small fine. Given **B.**'s record, the need to specifically deter the Member, the fact that he is currently under suspension, and especially because he stands convicted of failing to be candid with the LSA which is conduct which raises questions concerning the LSA's ability to govern **B.**, the committee found that **B.** ought to be disbarred.

The Hearing Guide states: "The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession."

And it notes: "The ability of the Law Society to govern the profession is essential. Without that ability, the self-governing aspect of the profession is put at risk."

The Hearing Committee agreed that while this conduct is not, on balance, the most serious type of conduct seen by the Benchers, and not even the most serious type of conduct engaged in by **B.**, the difficulty is **B.**'s conduct again points to the inability of the Law Society of Alberta to govern this particular Member. The committee ordered that **B.** be disbarred and pay 2/3rd of the actual costs of the hearing. ■

Donald P. McLaws — LSA President 1971-1972

1913-2008



Donald Preston McLaws, Q.C. former LSA President, died June 12, 2008 at the Bethany Care Centre in Calgary, where he had spent the last three and a

half years of his eventful life.

Don was born in his parents' house in Calgary on the longest night of the year. After graduating from high school in Calgary and law school in Edmonton, Don joined his father's Calgary law practice in the late 1930's. Over the years, he oversaw the growth of the firm through many incarnations coinciding with the growth of Calgary as a city, and culminating in its union with Parlee from Edmonton to create Parlee McLaws. Today the firm is a vital part of Alberta's legal landscape.

During his years of working hard and creatively for his clients and positively with his partners and associates, Don always had the time to mentor younger lawyers.

Today, his style of thorough and fearless representation of clients lives on through them.

Over his many years, Don's endeavours became too numerous to list. A few of the more notable saw him act as president of the Law Society of Alberta (1971-72) and as a long-time bencher, president of the Calgary Stampeders and president of the Calgary Golf and Country Club. Another abiding passion of Don's, and a deeper one, was horses.

Don will be remembered always by his children Bill, Donna, Trish and Peter, his daughters-in-law Christyne and Joanne and his six grandchildren. Don also has five young great-grandchildren (and counting) who will be told the story of his life.

Don's later years, after his wife Pauline passed on, were greatly difficult as his robust health and intellectual acuity deserted him. Yet, he never ceased to battle, right up to his last living moment. ■■

(Reprinted from the Calgary Herald, June 16-18, 2008)

Pro Bono Law Alberta News Online

The 2008 Summer PBLA newsletter highlights the first Volunteer in Profile, a new feature on the PBLA website that recognizes the volunteer services of Alberta lawyers.

The first Volunteer in Profile is Richard Assigner, a lawyer and pro bono leader in Red Deer. He is one of the founding members of the Loaves and Fishes Legal Consultation Project. Founded in 1999, it serves a busy drop-in shelter for the transient population in central Alberta. Richard Assigner is a volunteer with the Central Alberta Community Legal Clinic.

Visit www.pbla.ca to read the 2008 Summer PBLA newsletter or the 2007 PBLA Annual Report.

Pro Bono Law Alberta (PBLA) is a charitable organization that promotes access to justice in Alberta by creating and promoting opportunities for lawyers to provide pro bono (free) legal services to persons of limited means.

PBLA was formed in May 2007 as the legacy project in celebration of the 100th anniversary of the Law Society of Alberta. ■■

Bencher Candidates Can Now Contact Voters

An amendment to Rule 45.1(2), approved by the Benchers on June 5th, 2008 permits the Executive Director to disclose 'business contact information' of lawyers eligible to vote to candidates standing for election as a Bencher. This is for the candidates' purpose of communicating with members eligible to vote. ■■

AGM set for October 2, 2008

The Annual General Meeting of the Law Society of Alberta originally set for April 10, 2008 and adjourned, is now scheduled for Thursday, October 2, 2008 at the Law Society of Alberta offices in Calgary, Alberta, commencing at 5:00 p.m. ■■

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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@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