



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.



Mona Duckett, QC,
President, Law Society of Alberta

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STRENGTHENING AN INDEPENDENT BAR

by Jessi-Ann Riddell, Communications Analyst, Law Society of Alberta

Mona Duckett, QC, who practises with Royal, McCrum, Duckett & Glancy in Edmonton, became the president of the LSA in February and is quickly taking the reins on strategic projects to strengthen the legal profession in Alberta.

"The benchers are already busy looking at key issues like continuing professional development for Alberta lawyers and trust account safety, among others. I see my role as facilitator of those who are doing that work and as spokesperson for the strong and independent bar we have in Alberta", said Mona, who was first elected as a bencher in November 1999.

Called to the Alberta bar in 1984, Mona has been practising law with her firm for 20 years. "I believe that lawyers in Canada are very fortunate to be able to self regulate, and to have the strong and open relationships we do with governments and the courts," she said, "however, I am also aware that we need to be constantly re-examining what we do and how we do it to ensure that we are in fact achieving our goals. I intend for these activities to guide my year as president."

In her six years as a bencher Mona has volunteered on several LSA committees and is acutely aware of the LSA's inner workings. "On provincial and national levels," she commented, "legal regulators are able to maintain credibility, and the trust of the public and all we serve by doing our jobs well. I firmly believe that the LSA is doing that, and that sometimes we might need to better communicate what we're doing."

That's why the administration and staff of the LSA are busy on a strategic planning process to strengthen the society's ability to act as a model regulator by serving the public

and Alberta lawyers in a manner that is as fair, efficient and expeditious as is possible. "The LSA is mandated to serve the public interest," Mona said, "and we do so in order that the public can access the legal system through a strong and independent bar. We regulate and govern all Alberta lawyers so that the public in our communities can be assured that lawyers, as the professionals they rely on, can enforce their rights, protect their interests and resolve their disputes zealously and loyally," said Mona, a criminal defence lawyer who has spoken and taught extensively on the topic as well as having litigated at all levels of court, including the Supreme Court of Canada.

"By enhancing Alberta lawyers' ability to act competently and ethically, we strengthen the independent bar, one of the most fundamental parts of the Canadian legal system," she stated.

Mona articulated to a small Edmonton firm and joined Royal, McCrum, Duckett & Glancy six months after being admitted to the bar. She is a fellow of the American College of Trial Lawyers and won the Criminal Trial Lawyers "Harradence" prize in 1996. She has served on several Legal Aid Society of Alberta committees and has been a faculty member of the Federation of Law Societies National Criminal Law Program since 2000. Mona was appointed Queen's Counsel in 1999 and has travelled to China twice with a CBA Advocacy Project. She teaches at the University of Alberta faculty of law and lectures extensively.

Mona succeeds Doug McGillivray, QC whose term as president ended in February 2006. After her one year term leading the 24 benchers, President-Elect Jim Peacock, QC of Gowling Lafleur Henderson LLP in Calgary will assume the role of president. ■



Steve Raby, QC,
Benchler

LSA NOTICES

Court of Queen's Bench

Family Law Practice Notes 3, 4, 5, 6, 8, 10, and 11 came into effect on January 1, 2006.

The Practice Notes can be viewed at:
www.albertacourts.ab.ca/go.aspx?tabid=336

Court of Appeal 2006 Sitting Dates announced

The Sitting Dates can be viewed at:
www.albertacourts.ab.ca, under Court of Appeal, News & Notices

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PROTOCOL - FIVE YEARS AND COUNTING

by Steve Raby, QC, Benchler

The old saying goes: "How time flies when you are having fun." That is so true, particularly when it comes to the Western Law Societies Conveyancing Project.

The project is a joint initiative of the law societies of British Columbia, Alberta, Saskatchewan and Manitoba. The main purpose of the project was to introduce new practice standards in residential real estate conveyancing to expedite the closing process and to assist the many lawyers practicing residential real estate to meet the challenges of a changing real estate marketplace. A full explanation of the project and the Protocol is available on www.lawsocietyalberta.com.

The 'Protocol' was effective February 15, 2001 with the first lender on board being ATB Financial, with the Bank of Montreal a close second. Since that time, the Protocol has gained acceptance as a reliable, safe and convenient method to close with many lenders understanding the benefits to them and to their customers of

relying on their real estate lawyer to safely close their deals. This year, MCAP (an independent mortgage and equipment financing company) has adopted the Protocol closing process. This is important as MCAP deals with many mortgage brokers. For a listing of lenders, please see our website. If you know of a lender that accepts the Protocol but is not on the list, please let us know.

The main Protocol question asked is: When are the other lenders coming on board? The Royal Bank of Canada has advised that they will be amending their mortgage instructions to allow for Protocol closing before the busy spring season. We hope to see movement of the other lenders after this time.

The second question asked is: What is the claims experience against our insurance fund for Protocol closings? There have been some Protocol claims. They have been minimal (under five claims in five years) and each claim has been quickly and expeditiously resolved. As Kerrie Breit, claims examiner explains "We hardly ever see a Protocol claim, and when we do, it is quickly dealt with on a priority basis".

The four western law societies have maintained the momentum of the project with the great efforts of the volunteer members: Herb Peters, Chair and David Golub - Law Society of Manitoba; Randy Baker, QC - Law Society of Saskatchewan; Steve Raby, QC, Co-Chair - Law Society of Alberta; Ralston Alexander, QC - Law Society of British Columbia. As well, the law societies have contributed significant

"THE MAIN PROTOCOL QUESTION ASKED IS: WHEN ARE THE OTHER LENDERS COMING ON BOARD? THE ROYAL BANK OF CANADA HAS ADVISED THAT THEY WILL BE AMENDING THEIR MORTGAGE INSTRUCTIONS TO ALLOW FOR PROTOCOL CLOSING BEFORE THE BUSY SPRING SEASON."

resources in terms of staff time. From the positive comments from many lawyers who practice residential real estate and regularly use the Protocol, the efforts of the law societies have been worth it.

It has been quite a journey since May 2000 when the idea of the Protocol was first discussed at the Banff Refresher course. The Legal Education Society Banff Refresher Course May 6 - 10, 2006 will again be on real estate law. In one session during the course, Jocelyn Frazer will be chairing a discussion on the future of real estate marketplace and conveyancing.

COME AND PARTICIPATE IN WHAT WILL CERTAINLY BE A LIVELY EXCHANGE OF IDEAS. 🗣️

CONFIDENTIALITY AGREEMENTS AFFECTING LAWYERS' DISCLOSURE OF LEGAL CONCEPTS

by Dale Spackman, QC, Bencher and 2005 Chair, Corporate and Commercial Advisory Committee

The following is an abridged version of an article written by Martin Kay, QC and Michelle Simpson for the Corporate Commercial Advisory committee. The full text of the article can be found at: www.lawsocietyalberta.com under *Publications and Policies, Reports*.

Lawyers are often asked by other lawyers, law firms, accounting firms and other professional/business advisors to sign confidentiality agreements. These agreements are intended to prevent the lawyers or their law firms from disclosing legal transactions and structures underlying certain concepts, such as tax plans, developed by the other firm or advisor.

Lawyers should recognize that such agreements may give rise to a conflict of interest. Such conflict arises in respect of other clients for whom such concepts and structures would have been proposed or at least raised as an alternative absent such an agreement. Therefore, any such agreement will restrict a lawyer or law firm in respect of representing subsequent clients for whom that same issue arises or could arise.

Chapter 6, Rule 7 of the LSA Code of Professional Conduct states: A lawyer must not act when there is a conflict or potential conflict between lawyer and client unless the client consents and it is in the client's best interests that the lawyer so act.

Chapter 8, Commentary G-1 provides in part: When advising a client, a lawyer has a duty ... to disclose to the client all information in the lawyer's possession that must be disclosed to enable the lawyer to properly carry out the representation. In some cases, this may compel the lawyer to decline to act rather than breach the confidence of another client.

Chapter 7, the Commentary on rule 6(b) provides: There is generally an obligation to disclose to a client all information that must be disclosed to enable the lawyer to properly carry out the representation. A lawyer must decline to act in a matter, therefore, or must withdraw from an existing representation, if all of the following circumstances are present:

- the lawyer is in possession of confidential information of a current or former client that is material to that matter or representation;
- the current or former client will not consent to disclosure of the information to the other client or potential client (see Rule #8(e)); and
- it is impossible to properly carry out the representation without making such disclosure or, alternatively,

“A LAWYER MUST NOT ACT WHEN THERE IS A CONFLICT OR POTENTIAL CONFLICT BETWEEN LAWYER AND CLIENT UNLESS THE CLIENT CONSENTS AND IT IS IN THE CLIENT'S BEST INTERESTS THAT THE LAWYER SO ACT.”

the client or potential client in that matter is unwilling to accept legal advice based on the information without actually being privy to the information and therefore insists on disclosure.

Under these circumstances, the lawyer is unable to act in the best interests of that client and cannot represent or continue to represent the client. In those instances in which a lawyer is considering executing a confidentiality agreement, the committee noted a number of considerations. Among other exceptions to or limits on the obligation to maintain confidentiality, lawyers should consider exceptions for:

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Dale Spackman, QC,
Bencher and 2005 Chair,
Corporate and Commercial
Advisory Committee

LSA NOTICES

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Federal Courts Rules Amendments

Proposed amendments to the Federal Courts Rules concerning expert witnesses, *Iqaluit et al.* will be pre-published in the February 11, 2006 issue of Part I of the Canada Gazette.

➤ www.canadagazette.gc.ca

Representations may be made with respect to the proposed Rules within 60 days after the date of pre-publication.

For more information, please contact Chantelle Bowers, secretary to the federal courts rules committee:

- **PHONE** (613) 995-5063
- **EMAIL** chantelle.bowers@fca-caf.gc.ca



THE ADVISORY

CONFIDENTIALITY AGREEMENTS

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- (i) their or their firm's own prior knowledge of the legal concepts or similar concepts and structures;
- (ii) information about the concepts and structures gained from other, non-confidential sources;
- (iii) information on the concepts and structures in the public domain (including publication in any book or article);
- (iv) knowledge of the concepts and structures independently developed by the law firm without use of the confidential information;
- (v) information disclosed by the other firm/advisors to any party without requiring a confidentiality agreement (a form of most favoured nations clause); and
- (vi) the ability to advise clients that there is a tax or other plan accessible from the other professional firm or advisors.

Consideration might also be given to adding a clause limiting damages to the amount of the fees which the other firm/advisors may have received from parties for the use of the confidential information.

The foregoing is not intended to be comprehensive but to be of assistance to members of the profession in respect of reviewing and negotiating such agreements. ■

LSA RULES AMENDMENTS

Amendments have been made to the Rules of the Law Society of Alberta.

For a complete list, see the amendment table at the beginning of the Rules, located on the LSA website at: www.lawsocietyalberta.com.

Changes have been made to:

- Rules 115(1) & (2) to provide pro bono exemptions on reinstatement
- Rule 115(2)(e) amending the subrule regarding assurance fund levy
- Rules 137(1)(a) & (b) adding a subrule to provide pro bono exemption from assurance fund assessment
- Rule 171(1.1) adding Rule (1.1) providing pro bono exemption from library assessment ■

CANADIAN CHEQUE SPECS CHANGE

from the *Bencher's Bulletin*, Law Society of British Columbia *

The Canadian Payments Association has published new cheque specifications this year that will apply to all cheques in Canada as of December 31, 2006. The changes are in preparation for Canada's move to cheque imaging, for more efficient processing and clearing. The date field on cheques must display one of three numeric formats:

DDMMYYYY, MMDDYYYY or YYYYMMDD (with the appropriate field indicators displayed below the date to identify which format is being used).

There are other requirements, including minimum size, specific printing requirements on the back of cheques, standardized positions for key fields on the front and back of cheques and a prohibition on elements that might prevent the capture of key data, such as inverse printing, italics and slanted font forms.

The Canadian Payments Association is advising organizations that custom print their own cheques to review these specifications and to confirm that they meet the new requirements by providing samples of their new cheques to the quality assurance division of their financial institutions. For more information, see www.cdnpay.ca. ■

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LEGAL AID LOOKING FOR VOLUNTEERS

Legal Aid Alberta is looking for volunteers to serve on its Board sub-committees. The time commitment - depending on the committee - varies from once to twice a month meetings.

The Appeals Committees (in Edmonton and Calgary) represent the final level of appeal in coverage issues, provide direction in unusual cases, and make decisions regarding requests from lawyers for large disbursements and for coverage for appeals to the Supreme Court of Canada.

Regional Legal Aid Committees (Calgary, Edmonton, Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat, Peace River, Red Deer, St. Paul, Wetaskiwin, and Whitecourt) provide Legal Aid applicants with a local appeal process from staff coverage decisions and may also provide direction for unusual cases within a region.

Committee appointments are subject to nomination by existing committee members and approval of the Board of Directors. Lawyers should forward their resumes to Wanda Fish at w.fish@legalaid.ab.ca or (780) 422-1620. ■

STILL MORE WORK TO DO OFFICE OF THE EQUITY OMBUDSPERSON

by Susan Billington, Policy and Program Counsel, Law Society of Alberta

In operation since 1996, the Office of the Equity Ombudsperson (OEO) is a key program of the LSA with the mandate to provide a confidential and independent resource for the legal profession on issues of diversity management, harassment and discrimination.

The mandate of the OEO includes:

1. to offer proactive outreach and education programs to the legal profession on equality, equity and diversity management;
2. to respond to law firms that need assistance in the development and implementation of equality, equity and diversity programs including workplace programs that address and prevent discrimination and harassment in the workplace;
3. to provide assistance and support to those experiencing harassment or discrimination in the legal profession. This support may be through a variety of methods such as options counseling or the provision of mediation services.

An extensive review of the OEO program was conducted in 2005 including the review of programs offered by other law societies in Canada and a statistical analysis of the operation of the OEO program in Alberta. The results of the surveys in 2003 of the active and inactive members of the LSA were also considered. The surveys indicated that discrimination and harassment based on various grounds continue to pose barriers for equal participation in the legal profession and that sexual harassment continues to be a serious issue.

The Exit Survey of those leaving the practice of law suggested that diversity management that reflects current employment practices including issues of discrimination and harassment is a problem for the legal profession in Alberta. The review of the OEO program indicated on all fronts that the important work performed by the Equity Ombudsperson continues to be needed by the legal profession in Alberta.

Further information regarding the OEO program is available on the LSA website or contact Susan Billington, Policy and Program Counsel at: www.lawsocietyalberta.com. ■



INTERESTED IN BEING A CPLE LEARNING GROUP FACILITATOR?

For information go to: www.lesa.org/cpled.asp

INFORMATION ABOUT HEARINGS AND SUSPENSIONS WILL BE EASIER TO OBTAIN

by Jim Peacock, QC, 2005 Chair, Conduct Committee

The LSA is making it easier for the public to obtain information about a lawyer's conduct record, including information about specific conduct proceedings. Over the next year, the LSA will be implementing several recommendations made by the benchers to help the public get this and other information in an efficient, easy to understand format.

The Recommendations

- ❑ Conduct Hearing Reports will be published on the LSA website
- ❑ The LSA may publish notices of suspension and disbarment in local newspapers, when directed by a Hearing committee at the conclusion of a hearing. Section 63 suspensions (suspension prior to a hearing taking place) may also be published, when ordered by the executive director or the chair of the Conduct committee. The basis for exercising the discretion in favour of publication should be protection of the public interest.
- ❑ A lawyer's conduct record should be available to members of the public on request through the LSA's website.
- ❑ Notices of Reinstatement should be published on the LSA website.
- ❑ The practice of publishing citations on the website should continue, however, they should be updated as soon as reasonably practical after they have been amended or discontinued.
- ❑ Custodian information should be provided on the website as soon as it is available. In addition, when a member has been suspended or disbarred and a custodian has not yet been appointed, the website should direct members of the public to the LSA central records department.

Implementing these recommendations will require additional resources to expand the information currently available on the LSA website and to update it on a regular basis. This means that the changes to the website will occur over time and priority will be given to ensuring that the information provided is clear and in plain language. ■



INAUGURAL PIPA CONFERENCE

The Information and Privacy Commissioners of Alberta and British Columbia are holding an inaugural annual PIPA conference,

“Customers, Employees & Privacy: An Educational Forum for Businesses”

on April 26/27, 2006 at the Westin Hotel in Calgary, Alberta. Seats are filling fast so register soon for this one-of-a-kind learning opportunity.

This two-day event will include some of North America’s leading privacy experts who will share their insights in plenary and breakout sessions. The conference’s focus will be on practical, real-world problems and solutions.

For more details on this event:

- ❖ WEB www.pipa2006.ca
- ❖ PHONE 1-866-814-8417

WHEN THE PRIVACY COMMISSIONER COMES CALLING...

by Jessica Arts, Privacy Officer, Law Society of Alberta

Lawyers are familiar with the obligation to preserve confidentiality and privilege with regard to client information. We should also be familiar with our obligations under the Personal Information Protection Act (PIPA).

Pursuant to PIPA, members of the public and employees are entitled to request access to their personal information contained in lawyers’ files and firms’ records. Firms are obliged to respond to requests for access within 45 calendar days from receipt of the request. The response must include information about whether and when access will be given. If access to all or part of the requested information is refused, organizations must provide details for the refusal on a record-by-record basis. If you are concerned that acknowledging the existence of records may have the effect of breaching privilege or confidentiality, please contact a practice advisor.

In addition to requests for access to personal information, an individual may have a complaint about your privacy policy, or lack thereof, or may request a correction to personal information.

Should an individual be dissatisfied with a firm’s response to any of these three types of requests, the firm must advise them they have the right to approach the Office of the Information and Privacy Commissioner (OIPC) to request a review of the response. As the appointed regulator, the Information and Privacy Commissioner for Alberta is responsible for overseeing and ensuring compliance with PIPA.

NOTIFICATION

When the OIPC receives a written request for review or a complaint, the commissioner usually refers the matter to mediation and assigns a portfolio officer to attempt resolution through an informal process. In rarer instances, the commissioner may agree to bypass the mediation process and set the matter down for an inquiry to resolve the issues arising between the parties. Normally, an inquiry occurs if the matter cannot be resolved in mediation. Whether proceeding with mediation or inquiry, the OIPC sends an official notification to the individual and the organization.

COMMUNICATION

It is important that your organization not ignore any communication from the Privacy Commissioner or his designate. As the regulator of Alberta privacy legislation, the commissioner can order cooperation in any investigation, which may include production of various records. Even during mediations or before inquiries, the commissioner has the power to obtain a court order to compel certain records. Failure to maintain communication, or to deal with such demands directly, could escalate matters and may potentially result in a finding of contempt by the courts.

JURISDICTION

Jurisdictional concerns may arise when, for example, a matter appears to fall within the jurisdiction of other regulatory bodies. If you disagree with the Commissioner's finding that the matter falls within the jurisdiction of the OIPC, you may commence judicial review proceedings to challenge the decision. If you have any jurisdictional concerns, please discuss them with a practice advisor or a lawyer with experience in privacy matters.

PRIVACY

Litigation or hearings could proceed concurrently with PIPA investigations. This does not mean, however, that a PIPA investigation is an alternate means for a party to acquire records that are not compellable in the litigation or hearing process. PIPA section 24 contains pertinent exceptions that permit refusal of such records to an individual. For instance, privilege is grounds for refusal to supply a record to an individual. However, when using this exception to withhold a record, the commissioner may want to see the document in order to weigh the claim of privilege. If your organization receives a request to provide records to the OIPC and you have concerns about legal privilege or confidentiality, please contact a practice advisor or experienced counsel to discuss your concerns. Maintain your communication with the OIPC and be open about the issues you are trying to resolve.

NEED MORE INFO ON THE OIPC?

You can find more information on the OIPC's role on website. Go to: www.oipc.ab.ca, click on PIPA, then Publications and finally scroll down to choose "A PIPA Guide for Organizations: Understanding the Role of the OIPC" or type in the following link: www.oipc.ab.ca/ims/client/upload/PIPA_Guide_for_Organizations_Oct2004.pdf.

NEED MORE INFO ON PIPA?

The Information and Privacy Commissioners of Alberta and BC are holding their inaugural annual PIPA conference on April 26 and 27 at the Westin Hotel in Calgary. This two-day event will include some of North America's leading privacy experts who will share their insights in plenary and breakout sessions. The conference's focus will be on practical, real-world problems and solutions. For more details, please go to: www.pipa2006.ca.

You can also find more information about PIPA at: www.oipc.ab.ca/pipa as well as at: www.psp.gov.ab.ca.

CALL PRE-CONFERENCE WORKSHOP

Do you see value in knowledge management, but just don't know where to begin?

The Canadian Association of Law Libraries (CALL) invites you to attend our Pre-Conference Workshop:

"Knowledge Management: Getting Off on the Right Foot"

- Shaw Conference Centre
Edmonton, Alberta
May 6th, 2006 - 8:30am - 4:30pm
Lunch and refreshment breaks included

To Register:

See the conference website at: www.callcbd.ca/conferences/2006/Registration.htm

Cost:

\$150 for CALL, AALL, or CLA members,
\$180 for non-members

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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 (780) 429-3343 or Toll Free 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@lawsocietyalberta.com

ASSIST Program: A service, totally separate from the Law Society of Alberta, provided through Kelly, Luttmmer & Associates, an independent consulting firm. This service provides free confidential counselling to lawyers and their immediate family on issues such as emotional distress, depression, substance and gambling abuse, grief and loss, and career issues. Users of the ASSIST program are never identified to the Law Society of Alberta.

Contact (403) 237-8880 or toll free 1-800-461-8908

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

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

Contact Janet Gaetano, Acting Equity Ombudsperson at toll free 1-888-429-3939

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@lawsocietyalberta.com