



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.

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Pro Bono Legal Clinic a Big Hit in Red Deer

by Sheila Serup, Communications Director, Law Society of Alberta

Only four months after opening its doors, the Central Alberta Community Legal Clinic in Red Deer has more than doubled its case load and currently seeks more volunteer lawyers.

The explosive economic growth in central Alberta has also translated into an increase in both low-income workers and the homeless population, reports executive director Sheila Bannerman. The new clinic, modeled after the 35-year-old Calgary Legal Guidance pro bono centre, is experiencing a high demand for clinic services, of which family law is the single most needed area.

The Community Legal Clinic, as it is known, has established its own niche among the existing legal service providers, and strives to complement, not compete with, non-profit legal aid organizations. The most pressing needs experienced by the Red Deer clinics are for legal advice and representation for people who do not have the resources to pay for these services.

Using a pro bono legal clinic kit, prepared for and funded by the Law Society of Alberta, the non-profit organization was essentially fully staffed and operational after a six week start-up period. Bannerman notes that they were able to open their doors in early January 2006 with 17 volunteer lawyers.

The clinic runs two evening clinics a week, on Tuesdays and Wednesdays, with the latter open for four hours. A legal administrative assistant follows up with client

load and handles the appointment bookings during its daytime hours, 9:00 a.m. to 4:00 p.m.

“Our greatest challenge in meeting the needs of the disadvantaged is getting more volunteers,” Bannerman notes. She would like to attract another 10 lawyers to assist as the existing complement runs the risk of volunteer burn-out. Another challenge she faces is obtaining secure ongoing funding to hire a full-time staff lawyer.

The structure of the new clinic, says Bannerman, provides lawyers with an exciting opportunity to address community needs without the administrative work.

As the executive director, her role takes her into the community where she keeps her finger on the ‘pulse’ of Red Deer, determining the population’s needs and how they are being met. “It’s a brand new office,” states Bannerman, “so we’re setting down roots and determining priorities.” She notes the clinic assists clients who may not be able to access legal services because of educational, cultural, physical or mental challenges.

The reception from the community has been “remarkably good” with positive feedback from stakeholder groups, says Bannerman. Client requests cover all ranges of legal services from family to civil law. On criminal cases, the clinic’s mandate is limited to summary offences. ■■



Jessica Arts,
Information Officer,
Law Society of Alberta

Pilot Project on Limiting Oral Arguments Now Extended

The Court of Appeal of Alberta has extended a pilot project to implement time limits on oral arguments for all civil and criminal motions. A formal review of the project will be conducted in October 2006.

A copy of the consolidated practice directions and practice notes can be found on the Alberta Courts' website.



Safeguarding Client Records

by Jessica Arts, Information Officer, Law Society of Alberta

In response to recent media reports about client documents found around a dumpster and on a nearby street, the Law Society of British Columbia (LSBC) recently issued a notice to lawyers reminding them of their obligation to safeguard client records.

Lawyers practising in Alberta have the same requirement. Chapter seven of the *Code of Professional Conduct* sets out a lawyer's professional obligation to safeguard client privilege and confidentiality. The Statement of Principle states: "a lawyer has a duty to keep confidential all information concerning a client's business, interests and affairs acquired in the course of the professional relationship."

Section 34 of the *Personal Information Protection Act* also states: "an organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, modification, disposal or destruction."

The LSBC notice included several ways of safeguarding client documents. The Law Society of Alberta recommends members consider these safeguards, paraphrased below, as well:

- ❖ Maintain client files in secure areas and consider locking file cabinets when lawyers or staff are not in the office.
- ❖ Do not allow lawyers, staff or custodial staff to place client material directly into a garbage or recycling bin. Instead, place this material in a bin for cross-cut shredding.
- ❖ Shred documents prior to recycling or disposal and have either staff or a reputable outside provider carry out this shredding.
- ❖ When using an outside provider for on-site shredding, someone in the firm should document what was destroyed, monitor the work and obtain a certificate of destruction.
- ❖ Secure computer networks from intrusion,

- such as by maintaining proper firewalls.
- ❖ Secure computers (especially laptops) physically and with password protection.
- ❖ Encrypt laptops before leaving the office.
- ❖ Erase or destroy computer hard drives before disposal, sale or donation. Total erasure requires special software, following the standards of the RCMP and the US Department of Defence.
- ❖ Have staff read and sign a confidentiality agreement with respect to confidential information in the firm.
- ❖ Regularly train and remind staff about your firm's policies for protecting information, and list the consequences of non-compliance.
- ❖ Avoid leaving files or computers in a car and, when working on files at home, consider keeping those in a locked cabinet.
- ❖ Ensure proper disposal of papers through the office, rather than at home.

These points are provided courtesy of the Law Society of B.C.

Document storage and disposal is but one aspect of client confidentiality. It is equally important that everyone in the firm refrain from reading or discussing client information in public places such as elevators, airports, coffee shops or restaurants. Third parties may read those documents, or could overhear details of your discussions.

For more information on document disposal, the Office of the Information and Privacy Commissioner of Alberta published, on their website (www.oipc.ab.ca/orders/investigation.cfm), three investigation reports (P2005-IR-001 Linens 'N Things, P2005-IR-002 Nor-Don Collection Network, P2005-IR-003 Digital Communications) about records found in dumpsters in Edmonton, Alberta.

If you have specific enquiries about client confidentiality and privilege, please contact the LSA practice advisors in Calgary or Edmonton. ■

LSA Approves New Legal Aid Agreement

by Larry G. Anderson, QC, Past President, Law Society of Alberta

A new Legal Aid governance agreement was recently approved by the benchers. This renews an ongoing partnership between the Minister of Justice, the Board of Legal Aid Alberta and the Law Society of Alberta.

The structure of the April 6, 2006 agreement will be fundamentally the same as in the past, but with several amendments.

These will ensure ongoing open communication among the partners, facilitate effective resolution of issues that may arise in the Board's administration of the Legal Aid Plan, improve certain governance processes, and provide greater clarity of roles and responsibilities.

The agreement expressly recognizes that the three parties to the agreement are "all key participants in the delivery of legal aid services in Alberta and each is committed to the principles of transparency, mutual respect and consultation in matters that affect this common interest".

The agreement reflects a balance, recognizing that both society at large and lawyers, as a profession, have a commitment to see that individuals are not deprived of access to justice due to a lack of financial means.

Under the Alberta approach, the government, through the Minister of Justice, has the constitutional mandate to ensure that legal aid services are provided and, as such, is the major funder of legal aid. The assumption that lawyers acting under the legal aid plan will do so for reduced compensation is a further fundamental tenet underlying the legal aid scheme.

The direct involvement of the government under the agreement relates primarily to participation in the business planning process and approval of the budget. The Law Society's direct involvement includes appointing the Legal Aid board.

Under the agreement, the Board of Legal Aid Alberta has the responsibility to administer the plan and in doing so, is independent from the Minister and the Law Society. It is accountable for both the operation of Legal Aid Alberta and the Legal Aid Plan.

The new approved Legal Aid agreement will be in effect for at least five years upon being formally signed. Once the agreement has been signed by all parties, it will be accessible on the Legal Aid website at www.legalaid.ab.ca. ■



Larry G. Anderson, QC,
Past President,
Law Society of Alberta

Bring Advertising Questions Forward

by Ronald J. Everard, QC, Bencher, Chair,
Professional Responsibility Committee

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Most firms have been diligent and cooperative in complying with the new advertising rules which came into effect in December, 2005.

Some firms, and those who advise them, have expressed a desire to meet with the Law Society of Alberta to discuss issues of concern.

To that end, any members who wish to address the Law Society on the topic of the new advertising rules are invited to contact Ron Everard, the chair of the Professional Responsibility committee (403) 219-6228, or either of the Practice Advisors (Ross McLeod in Edmonton at (780) 412-2301 or Nancy Carruthers in Calgary at (403) 229-4714) to schedule a meeting with the Professional Responsibility committee. ■

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Steve Raby, QC,
Benchler

Provincial Court Intake and Caseflow Management Project

As of April 1, 2006, the Provincial Court Intake and Caseflow Management project began operating in Calgary.

The project assists litigants in dealing with matters related to parenting, contact and guardianship disputes. This initiative does not include disputes related to child support. Unrepresented Caseflow Management has been successful in Edmonton for the past five years and as a result is being expanded to Calgary.

Please contact Family Justice Services at (403) 297-6981 for further information. ■■

RBC Onside with Protocol Closings Across Western Canada

by Steve Raby, QC, Benchler

The Royal Bank of Canada (RBC) has incorporated the Western Law Societies Conveyancing Protocol into their residential mortgage instructions to lawyers for the closing of residential real estate transactions effective April 24, 2006.

In endorsing the Protocol, RBC joins ranks with national and regional lenders that accept the Protocol across Western Canada.

The inclusion of the Protocol into RBC's residential mortgage lending processes will enhance its array of services and streamline the mortgage funding process. The Protocol closing process is available from lawyers in the West at no additional cost to the customer or lender.

The Protocol process:

- allows for the release of mortgage proceeds and other purchase funds on the closing date;
- enables lawyers to satisfy the security requirements of mortgage lenders without the need for a real property report (absent the lawyer's advice to the contrary);
- encourages the continued exercise of due diligence by purchasers in survey matters; and
- provides lenders with the option of a short form solicitor's opinion in lieu of or in addition to the traditional long form lender's report.

The Protocol also provides clients with continued access to legal advice and helps to preserve the integrity of the Torrens land registration system - recognized as one of the most efficient, accurate and reliable land recording systems in the world.

In the short term, RBC will be providing an addendum to their mortgage instructions on their website at www.rbcroyalbank.com/legalforms advising lawyers they may close using the Protocol. Amendments to the mortgage instructions will be made later in 2006.

A list of protocol lenders and other protocol resources is available on LSA's website under Publications and Policies, Conveyancing Protocol. ■■

Libraries Launch New Website

by Mona Pearce, Chief Librarian, Alberta Law Society Libraries

The Alberta Law Society Libraries' new website was formally launched at a benchers' meeting in Edmonton on April 7. Featuring an easy-to-navigate format, streamlined design and in-depth content, the new website provides the legal profession with 24/7 access to online resources and services, including the Libraries' catalogue, research guides, selected websites and e-services.

Key features of the new website are:

- research guides on a range of legal topics and legal research processes with hypertext links to the most important resources available in the libraries and on the Internet;
- enhanced access to legal information through a new graphically designed online catalogue including: (i) extensive links to full-text electronic resources, (ii) holdings information for over 1,500 e-journals, and (iii) searchable tables of content for many of the Libraries' holdings, including author and title information for nearly 8,000 legal papers published in Legal Education Society of Alberta, Canadian Bar Association (Alberta) and other publications; and
- access to free online legal resources, arranged by topic, selected to meet the regularly-encountered information needs of clients.

The resources and services available through the website are supported by extensive print collections and enhanced by a range of online legal databases, including O'Brien's Forms, WestlaweCARSWELL LawSource and HeinOnline, which are freely accessible on public workstations at our libraries.

The Alberta Law Society Libraries are funded by the Law Society of Alberta, Alberta Justice and the Alberta Law Foundation. With law libraries in nine Court of Queen's Judicial Districts, the libraries have served the information needs of the legal profession in Alberta since 1885. More information is available at www.lawlibrary.ab.ca. ■■



LSA bencher Brian Beresh fields questions at the annual Law Day in Edmonton April 8, 2006.

Decrease in Insurance Levy Set

by Bradley Nemetz, QC, Bencher and 2006 Chair, Insurance Committee

The 2006/2007 insurance levy for each lawyer has been set at \$2,241 plus GST.

This decrease, approximately \$529 from last year's levy of \$2,770 (19%), results from two main reasons: claims experience and the performance of LSA's investments.

Members with paid claims in the past five years will pay surcharges in addition to the set levy. This levy is due by June 30, 2006, and can be paid in two instalments. Details are provided on the insurance invoice mailed in May.

Members exempt from the insurance levy must complete an exemption form and return it to the Law Society's membership department by June 30, 2006. Exempt active members are insured at no charge for pro bono services provided through Volunteer Lawyers Service, Calgary Legal Guidance, and the Edmonton Centre for Equal Justice.

The LSA recommends that firms consider purchasing excess coverage for additional protection. Applications are available on the Canadian Lawyers Insurance Association (CLIA) website at www.clia.ca or by calling June Fenton at (403) 229-4736 or 1-800-661-1694. ■■



Tuition Fees Increase

by Peter Michalyshyn QC, Benchler
and 2006 Chair, Finance Committee

Tuition fees for the 2006/07 Canadian Centre for Professional Legal Education (CPLED) program were set at \$2,035 by the benchers at the April meeting. The fee increase will be effective July 2006.

This \$150 increase from last year's fee results from higher staffing and facility costs. Approximately 300 students are enrolled in the CPLED program, which replaced the Bar Admission Course in 2004. Completion of the program is a prerequisite for admission to the Alberta bar.

Tuition fees cover about 55 per cent of the actual \$1,118,774 cost of the CPLED program for 2006/07. The balance of CPLED costs are covered by the Law Society of Alberta through its member levy (27%), an Alberta Law Foundation grant (16%), and other (2%).

For information, refer to the Annual Report on the LSA's website. Budget inquiries may be made to Finance Committee Chair Peter Michalyshyn, QC, or LSA Controller Peggy Stevenson, CA. ■■

Are Your Employees Honest?

by Lisa Sabo, Director of Insurance, Law Society of Alberta

Did you know that not all losses arising from your practice are covered by Alberta Lawyers Insurance Association's (ALIA) insurance policy or the LSA Assurance Fund?

For example, a lawyer found trust account discrepancies and discovered that his assistant was stealing retainer funds. His office insurance policy had some employee dishonesty coverage but not enough to recoup his losses. Neither the ALIA policy nor the Assurance Fund would cover such losses.

Simply put, a claim against lawyers who themselves did not participate in any wrongdoing, but who were negligent in supervising an employee who misappropriates trust funds, is not covered by the ALIA policy.

The Assurance Fund (AF) is designed to cover misap-

propriations by members acting in their capacity as a barrister and solicitor. The AF does not provide coverage for employee theft or dishonesty.

Do you have internal audit procedures? Are you properly supervising your staff or delegating too much? Do you have adequate employee dishonesty coverage? You should contact your office's insurance broker to discuss this further.

First, contact your insurance broker/agent to discuss purchasing crime coverage. If you have questions regarding insurance/assurance coverage, contact Lisa Sabo, ALIA's Director of Insurance at (403) 229-4717. Contact Greg Busch, Director, Lawyer Conduct, if you are seeking authority under Rule 124 (7) to have trust account cheques signed by a person who is not an active member of the Society. ■■

Financial Institutions Not Returning Cheques

by Lisa Wickstrom and Brian Olesky, Audit Department, Law Society of Alberta

Although financial institutions have stopped returning cancelled cheques for some personal accounts, LSA Rules require original cancelled cheques for trust and general accounts.

This development arises from the Canadian Payments Association's (CPA) decision to move towards a digital imaging and clearing system. This new system will require financial institutions to record cancelled cheques digitally and then destroy them. Instead of original cancelled cheques being returned to customers, financial institutions will make digital images available to customers.

The method by which these digital images are made available will differ among financial institutions, and will depend on the type of account customers have. Implementation of this new digital imaging and clearing system will be done in stages, with completion scheduled for 2008. Cancelled cheques will be provided in the interim.

Law Society rules require original cancelled cheques to be maintained by law firms, so firms should ensure they receive original cancelled cheques back from their financial institutions. The Law Society understands that the recent notices from financial institutions are related to personal accounts, and not business accounts such as law firm trust and general accounts.

Currently, the CPA is going through a consultation process with stakeholders, and issued a consultation document in November 2005. In response, the Federation of Law Societies struck a committee and sent a letter to CPA in February 2006 outlining its concerns.

The LSA will keep members updated about the transition once cancelled cheques are no longer available. The LSA is also working with the Canadian Payments Association to ensure public protection. ■■

Pro Bono Consultations Underway

by Rod Jerke, QC, Bencher and 2006 Chair, Pro Bono Committee

The Law Society recognizes the many *pro bono* hours contributed by Alberta lawyers each year assist to ensure that all Albertans, regardless of their circumstances, have access to justice.

The 2003 report of the Pro Bono committee entitled *Pro Bono Publico: For the Public Good*, made four recommendations that have set the framework for LSA's *pro bono* initiatives. In keeping with those recommendations, LSA has:

- ❖ adopted a definition of *pro bono* legal services;
- ❖ adopted rules to facilitate the ongoing participation of retired and inactive lawyers in providing insured legal services to authorized *pro bono* providers; and
- ❖ encouraged the development of *pro bono* legal clinics in the province. These efforts have resulted in the Edmonton Centre for Equal Justice, the Central Alberta Community Legal Clinic in Red Deer and the Lethbridge Legal Guidance (slated to open in the Fall of 2006).

The LSA is now working on the report's fourth recommendation which suggests the establishment of a *pro bono* stakeholder group to maximize and facilitate the coordination of *pro bono* initiatives in Alberta. Working towards this recommendation, the committee prepared a report entitled *Pro Bono Initiatives in Alberta* that identifies the various organizations which are engaged in the delivery of *pro bono* legal services in some way. Organizations that support and coordinate the delivery of *pro bono* services by lawyers experience many of the same challenges - financial, human resource, and infrastructure - in meeting burgeoning client demand. These challenges may increase over time.

The Pro Bono committee is exploring the role a new organization could take in assisting existing and new organizations in facilitating the delivery of *pro bono* legal services and in nurturing the ongoing development of a *pro bono* culture among Alberta lawyers. Similar successful initiatives have been undertaken in other provinces such as Pro Bono Law of BC at www.pblbc.ca and Pro Bono Law Ontario at www.pblo.org.

The Law Society is currently consulting with key stakeholders across the province to explore how to best support the delivery of *pro bono* services. As well, feedback is being sought on the extent to which key stakeholders may wish to be involved in governing or directing a new entity that would support, maximize and coordinate *pro bono* initiatives in Alberta. Key stakeholders in this process are those organizations which are involved in the administration of legal services, the delivery of *pro bono* legal services, and the funding of *pro bono* legal services.

The consultation document entitled *Proposal to Form a Pro Bono Alberta Network* can be found on LSA's website under Publications and Policies. What Alberta lawyers have to say regarding this initiative is important. Please provide your comments to rod.jerke@davidsonandwilliams.com or to Susan Billington at susan.billington@lawsocietyalberta.com.

The findings from the consultation process will be presented at a stakeholders' roundtable discussion to be held in Calgary in September 2006. Once the outcomes of the consultation process and the roundtable discussions have been completed, the Law Society expects to launch the new *pro bono* entity in 2007 in conjunction with the celebration of the Society's centennial. ■■



Rod Jerke, QC,
Bencher and 2006 Chair,
Pro Bono Committee

Courtroom Video Links Enhance Administration of Justice

A provincial court video link practice note has been issued by the Chief Judge of the Provincial Court of Alberta to enhance the administration of justice.

Commencing July 4, 2006, a video link will be used at various Alberta court and remand locations to conduct judicial interim release hearings, appearances, enter pleas, and hear applications. The link will be used to receive submissions as provided by Criminal Code provisions in addition to other such matters as the presiding judge may allow. ■■

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



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@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

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Contact Nancy Carruthers, (403) 229-4714 or toll free 1-866-440-4640
nancy.carruthers@lawsocietyalberta.com
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ross.mcleod@lawsocietyalberta.com

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

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