The Law Society of Alberta 1907-2005 Volume 3 Issue 3 May 2005

The Advisory

IN THIS ISSUE

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.

Doug McGillivray, QC, President, Law Society of Alberta

Scams, schemes and skullduggery

The above title was used in the LSA's Plenary Session at the Canadian Bar Association - Alberta Branch's law conference held in mid-March. At this session, the LSA had three speakers addressing the various issues and types of frauds within which lawyers can and are both advertently and inadvertently involved. As you are all aware, lawyers hold a privileged position, part of which carries with it the obligation to take care in safe keeping the money and property of others. From time to time, lawyers fail in their obligations in that regard, and where those failures are a result of a lawyer's misappropriating, converting or outright stealing other's properties, the LSA's Assurance Fund can be called into play to make good any shortfall.

According to recent statistics provided to the benchers by the LSA's executive director, a disturbing trend of markedly increased claims against the Insurance Fund has occurred over the last five years.

Year		Claim Amount	Claims
2000	$	99,309	11
2001	$	52,568	5
2002	$	743,458	18
2003	$	3,105,405	20
2004	$	2,556,371	43
2005	$	1,815,190 (to March 31)	32

In that time frame, not only have the number of claims increased, but more importantly the amount of the claims have increased massively from approximately $99,000 in 2000, to $1.8 million dollars in the first three months of 2005. This trend is simply unacceptable.

The benchers, at the April meeting, have given clear directives to me, the LSA's administration and the benchers' Executive committee that immediate steps must be taken to address this trend. While still a work in progress, it is contemplated that some short term and longer term steps will be taken to minimize the problem of lawyer involvement in fraudulent schemes or scams. Over the last few years we have seen lawyer involvement in money laundering, a variety of mortgage based frauds, Ponzi schemes, and good old-fashioned theft.

The current system across Canada for the handling of trust monies and properties has but one safe guard. That safe guard is no more sophisticated than the legal profession and the public's faith that a lawyer will act honestly. While it is clear that the vast majority of lawyers do so, we have reached a day and age wherein peer pressure is less effective than was formerly the case, largely because of the size of the practicing bar allows for a high level of visible anonymity. In short, many lawyers do not know each other, and as a consequence, one's general reputation amongst one's peers is less than a deterrent than was the case in the 1940s when the trust accounting systems came into play. Secondly, in the modern electronic age, vast sums of money can be removed to offshore jurisdictions with almost as little effort as pushing the 'send' button on a computer. Mortgage lenders have done little to ensure the integrity of their investment, separate and apart from engaging a lawyer. Limited efforts are taken to ensure the identity of borrowers, to ensure that projects being financed are in fact being carried out, to ensure that legitimate appraisals are in fact being obtained. All of the risks associated with this are being downloaded onto the legal profession, and we as a profession are not stepping up to the mark to

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Notice of address change

The Law Society of Alberta's mailing address is changed. We are now at Suite 500, 919 11th Avenue SW, Calgary, Alberta T2R 1P3.

Phone and fax numbers remain the same.

Trust Accounting Seminars

The LSA Audit department handles questions about the interpretation of the Part 5 Rules, relating to financial records, accounts and trust money.

Because of this demand, the Audit department will continue holding its FREE annual trust accounting seminars in both Calgary and Edmonton. Seminars are approximately $2\frac{1}{2}$ hours in duration, and are held annually in the latter part of the year.

The seminars are intended to educate lawyers and their staff on accounting rules. The seminars are presented by LSA auditors, and have been especially beneficial for sole practitioners, small firms, new members, and their staff.

Topics Include:

- Books and records required, as well as tips for maintaining them
- Trust Reconciliations and how to recognize problems
- Rules on handling trust funds
- Common audit exceptions and how to avoid them

A question and answer period is included

DATES AND TIMES FOR CALGARY AND EDMONTON TO BE ANNOUNCED IN NEXT ISSUES

Scams, schemes and skullduggery

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protect our clients, and from that protect the innocent amongst ourselves.

Amongst the solutions being contemplated will be reconsideration of the overall basis upon which lawyers handle trust funds and the potential de-linking of a lawyer's right to practice from a lawyer's ability to handle trust funds, if appropriate safe guards cannot be put into place.

In a short term, we will be considering all options including:

- Education regarding early warning signs and red flags.
- Requirement for lawyers to direct their trust account institutions to advise the LSA of any trust deficiencies, no matter how minor, or any irregular trust account activity.
- Protocols for conveyancing that would minimize the reliance upon trust conditions or undertakings to discharge prior encumbrances.
- The implementation of minimal or no cash rules.
- The prohibition of establishing trust accounts that have withdrawal rights attached to bank cards, and thus be available for cash withdrawals through an ATM.
- Automatic reporting to the LSA of any failure to carry out undertakings as it relates to the receipt of monies and the discharge of encumbrances within a short specified period of time.
- The incorporation of specific rules in the Code of Professional Conduct make explicit the implicit obligation of lawyers to exercise due diligence to see that they are not inadvertently participating in a fraudulent scheme.
- Mandatory self-reporting requirements in relation to the existence of any regulatory disciplinary proceedings, whether under the *Legal Profession Act*, or any other Act in place to protect the public.
- Limiting and prohibiting the use of a lawyer's trust account as a depository for investor's money.
- Enhanced spot audits and enforcement.

The foregoing represents but a few of the matters that will be considered over the short period of time by the LSA's Executive committee, and then the benchers. There may be many others, and if the profession itself has suggestions for providing of safeguards for the public relative to the handling of the trust money or property, the LSA is only willing to hear everybody's thoughts. What is clear is that in 2005, there is a serious risk that the status quo does not provide the level of protection that is necessary, and therefore, the status quo must change.

It is a shame that this is so, when it is apparent to the LSA that the vast number of members of the profession are competent, trustworthy lawyers who carry out their duties with the utmost integrity. The problem lies with a few, but the potential damage that a few can do to the public as a whole, to the innocent lawyers who protect the public by our Assurance Fund is immense. In B.C., one lawyer has exposed the Law Society of British Columbia to in excess of $50,000,000 of real estate fraud claims. In the same province, one lawyer exposed the law society to $20,000,000 of claims in a Ponzi type investment scam. In Newfoundland, one lawyer was participant in a conveyancing fraud that will cost the profession between $11,000 and $15,000 per member to make good the loss. In Nova Scotia, ATM withdrawals from trust by one lawyer may exhaust that law society's special compensation fund. In Ontario, 72 lawyers are under investigation for alleged mortgage frauds. The cold reality is that very few, acting alone or in concert, intentionally or naively, can do vast damage to the public, and to the reputation of the profession as a whole.

The problem lies with a few, but the potential damage that a few can do to the public as a whole, to the innocent lawyers who protect the public by our Assurance Fund is immense.

As you might imagine, this is not the type of message that I want to be delivering to the profession in the first third of my term as president.

For your own part, each lawyer must be diligent of their own conduct and must be mindful of what other lawyers with whom they are dealing are doing. Anecdotally, I have been advised that everybody in the real estate business knows those lawyers who are involved in shady transactions. This is a great secret, because the LSA doesn't know those lawyers. You owe a duty to the public and to your fellow lawyers to speak up. If you are wrong, then nothing will come of it. If you are right, the appropriate steps will be taken to rectify the problem.

Be careful out there. A

The best are recognized at the DSA

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

Excellence in the legal profession is a quality that is highly esteemed and rightfully honoured. On March 11 the Law Society of Alberta recognized the distinguished service of four Alberta lawyers displaying this excellence. The Distinguished Service Awards are presented jointly by the Law Society of Alberta and the Canadian Bar Association Alberta to honour lawyers' outstanding contributions to their community, to the legal profession and in legal scholarship.

Distinguished Service Award winners left to right are John J. Mahony, QC; Lewis N. Klar, QC; Hugh A. Robertson, QC and Cathy Lane Goodfellow with Walter Pavlic, president of the Canadian Bar Association Alberta and Doug McGillivray, QC, president of the LSA.

Receiving the award for legal scholarship, **Lewis N. Klar, QC** is recognized internationally as Canada's pre-eminent tort scholar. Klar's contributions have been significant having published steadily since 1974, writing numerous books, articles and notes, having contributed to law reform, and having taught law at the University of Alberta for 32 years.

Hugh A. Robertson, QC and **Cathy Lane Goodfellow** were recognized for service to the community. Robertson's contributions are extensive in his role as executive director of the Legal Education Society of Alberta since 1984. He has been involved in educational initiatives across the globe and remains an active backer of continuing legal education in his ongoing relationships with both the CBA and the LSA.

Goodfellow has been a tireless advocate for children in conflict with the law, having worked for over ten years with the Youth Criminal Defence Office developing and delivering legal services for young people in Canada. Goodfellow has been a sessional instructor in advanced family law and volunteer lecturer to community groups, in the Bar Admission Course and with the Legal Education Society of Alberta.

John J. Mahony, QC was recognized for service to the profession and has made numerous contributions over four decades of his career. His many volunteer efforts include working with the John Howard Society, spearheading the drive to establish the Father Whelihan Scholarship committee which today provides annual scholarships to students, and serving on the St. Mary's College committee, dedicated to building a faith-based college in Calgary. A

Child care covered for LSA volunteers

by Rod Jerke, QC, Bencher and Chair, Equality, Equity and Diversity Committee

Time donated by volunteers tremendously benefits the work of the LSA, and expenses are covered for volunteers such as travel costs and meals, and now child care.

In assessing whether there are barriers to participation in LSA committee activities, the Equality Equity and Diversity committee made recommendations concerning the reimbursement policy for expenses incurred while volunteering for law society business. It was found that child care costs could be a barrier to people who would like to volunteer with the LSA.

Volunteers will now be reimbursed for reasonable child care expenses incurred while participating in law society volunteer activities.

In addition, 2005 is a bencher election year. The committee encourages lawyers to think about diversity when deciding to put their names forward, or encouraging others to put their names forward for election as a bencher. A

Insurance levy set at $2,770 plus GST

by Vivian Stevenson, QC, Bencher and Chair, Insurance Committee

The 2005/2006 insurance levy has been set at $2,770, plus GST per lawyer. This represents an increase of $187 from last year's levy (about seven per cent).

There are three main reasons for the increase in the levy. The bulk of the levy amount consists of an actuarial calculation of the funds necessary to cover potential future claims. This amount is higher for 2005/2006 as a result of an increase in the number of large claims.

There was also a $78 increase in administrative and other expenses from last year's levy. Part of this increase is due to programs including loss prevention which were included as an expense in this year's levy calculation. Whether these programs will remain within ALIA's budget is an issue that is expected to be addressed by the benchers prior to the setting of the levy for the 2006/2007 year. Finally, the CLIA premium increased by $84 from last year, reflecting adverse claims experience at the CLIA level.

The levy is due on June 30th. Payments may be made in two installments as indicated on the insurance invoice. Lawyers exempt from the insurance levy must complete an exemption form and return it to the Membership department prior to the June 30th deadline. Exempt active members are insured at no charge for pro bono services provided through Volunteer Lawyer Services, Calgary Legal Guidance and the Edmonton Centre for Equal Justice.

Claims below member deductible	$	164
Claims within group deductible	$	2,052
Admin & Other Expense	$	437
CLIA Premium	$	494
Surplus Credit	$	(377)
Total	$	2,770

These totals do not include GST.

In September 2005 the Commonwealth Lawyers Association and the Law Society of England and Wales will host their first ever combined conference in London –

Commonwealth Law 2005

Full information on the event is available on the conference website – www.commonwealthlaw2005.com

The insurance policy administered by ALIA requires the cooperation of the insured lawyer as a condition of coverage. Failure of the lawyer to maintain current contact information with LSA and ALIA may jeopardize insurance coverage if an insurance claim is made and the lawyer cannot be contacted by ALIA. An insurance claim may be made against a lawyer at any time following active practice, even if the lawyer is not an active member of the LSA at the time the claim is made.

Does your firm have a diversity policy?

by Rod Jerke, QC, Bencher and Chair, Equality, Equity and Diversity Committee

Diversity in the modern workplace is a fact of everyday life – just as it is in our community at large. By facilitating and managing diversity, employers in the legal profession will continue to have access to and retain competent, qualified and talented individuals.

In response to this reality, the Equality, Equity and Diversity committee has developed *Guidelines for Drafting and Implementing a Diversity and Equality Policy in Legal Workplaces*. The guidelines and sample policy set out policies and practices that will help ensure that the day-to-day decision-making in firms is done in accordance with diversity and equality principles. The policy aims to maximize the performance of every person at the firm by ensuring that opportunities to succeed are available regardless of personal characteristics.

The LSA's equity ombudsperson has reported that many law firms wait until there is a workplace crisis to adopt workplace policies such as a diversity and equality policy. Trying to create a new policy or adapt an existing harassment policy to diversity and equality issues while in the midst of a crisis is a challenge for management and the individual(s) concerned. Waiting for a crisis is costly, decreases morale, may create a potential liability and is a risk to the law firm's reputation.

Further, it makes good business sense for law firms to incorporate diversity and equality principles in the workplace. Studies from the corporate world, including a recent study conducted by *Catalyst* (www.catalystwomen.org) present a strong business case for diversity and equality initiatives. Companies that have implemented such policies have seen

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by Nancy Carruthers, Practice Advisor, Law Society of Alberta

Be conscientious when communicating with the court

There have been a number of recent instances in which lawyers and judges have commented on the need to remind lawyers of their high ethical obligations when they proceed with *ex parte* applications and, in general, when they communicate with the court.

Chapter 10 of the Code of Professional Conduct contains the following rules which govern *ex parte* communications with the court:

R.7 A lawyer must not communicate with the court respecting a matter unless the other parties to the matter (or, if represented, their counsel) are present or have had reasonable prior notice, or unless the circumstances are exceptional and are disclosed fully and completely to the court.

R.8 In an *ex parte* proceeding, a lawyer must (subject to confidentiality – see Rule #7 of Chapter 7, *Confidentiality*) inform the court of all material facts known to the lawyer that will enable the court to make an informed decision, whether or not the facts are adverse.

These rules are perhaps most commonly breached when lawyers communicate with the court unilaterally, in submissions which are typically provided in advance of case management meetings. Problems can also arise when lawyers approach the court unilaterally for the simple purpose of scheduling a case management meeting for attendance by all counsel, without advising the other counsel involved. It is important to remember that any correspondence which is to be sent to the judge should be as neutral as possible and should be reviewed and approved by the other lawyers involved. If seeking dates for a case management meeting with the judge, it is appropriate to advise other counsel before starting to canvass for dates. If the lawyer cannot get agreement to do so, a notice of motion should be issued to obtain direction from the court.

If appearing on an *ex parte* motion, it is the lawyer's obligation to disclose all material facts and authorities known that are reasonably necessary to enable the court to arrive at an informed decision, even if such facts and authorities may not support the applicant's position. If the opposing party is represented, it is the lawyer's obligation to advise the court of the existence of other counsel and explain why other counsel is not present.

If a lawyer fails to advise the court of all relevant and material factors, the original *ex parte* order may be set aside and the judge may award costs directly against the lawyer who obtained the order, on a solicitor-client basis, payable to the opposing party. Rule 599.1 of the *Rules of Court*, may also be employed by the court to enforce a payment of costs directly to the clerk's office, in favour of the court, when any party or counsel in an action has failed to comply with the *Rules* and has thereby interfered with the proper or efficient administration of justice.

It is important to remember how much the members of the judiciary rely on the courtesy and integrity of the lawyers who appear before them.

For questions regarding this subject, or for future article ideas, please contact the LSA practice advisors at the numbers located on the back page. A

Ronald and Anne Hopp Bursary

Student Legal Services of Edmonton and the Faculty of Law are pleased to announce the creation of the Ronald and Anne Hopp Bursary. Professor Hopp has announced his retirement from the Faculty of Law effective June 30, 2005, after over 30 years of dedicated mentorship and unceasing contribution to both the Faculty of Law and to Student Legal Services of Edmonton.

To make a donation or to receive information regarding the official announcement of the bursary, please contact either:

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by Vaughn Myers, QC, Bencher and Chair, Code Subcommittee

Consult the code before talking about a client

Solicitor-client privilege and confidentiality fosters the complete confidence in a lawyer. Clients know that the lawyer will not only keep all communication in confidence, he or she will never be compelled to reveal any information except under exceptionally limited circumstances.

Recently, a national tragedy was perpetrated by an individual well-known to the criminal justice system. This individual took the lives of four people and then took his own life. Unfortunately, members of the Law Society of Alberta spoke to the media respecting not only the fact they represented the individual, but gave their opinions as to the individual's character and discussed other particulars.

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Free Desktop Research Tools from LESA

by Richard G. Ferguson, CLE Futures Project Consultant

The Legal Education Society of Alberta (LESA) has made important changes to its website (www.lesa.org) which will assist you in conducting legal research from your office 24 hours a day, seven days a week – for free!!

The new LESA website allows you to search online to locate relevant seminar papers, practice manuals, CPLED materials and seminar offerings. Searches can now be conducted in a variety of ways so that you can search in a manner you are most comfortable with.

At www.lesa.org you can locate LESA resources by:

Key Word Searching (where you type in one or more search terms) The LESA search engine uses these key words to identify article titles and summaries which contain similar search terms. These searches can also be enhanced using Boolean search capabilities. Boolean search refers to a methodology of searching for multiple key words using relationships between the words – together ("and"), apart ("or") or by exclusion ("but not").These searches will identify all kinds of LESA resources including upcoming seminars, seminar materials, online seminars, practice manuals and other resources available from LESA on a particular topic.

Browsing LESA's Seminars and Publications. Find an upcoming seminar or an online seminar. 60 Minute Online seminars taken from recent live LESA programs can be accessed 24/7. Refine your search to only seminars, materials or online resources that are most relevant to what you need to know.

Browsing the Catalog/Index of the LESA Research Guide. Once only in paper form, the LESA Research Guide now also exists in electronic form on LESA's website. The topical index of the Research Guide, the keyword summaries and the enhanced searching capability of this database will assist in locating seminar materials. You needn't know the terms of art in a particular legal area to start your research, but can browse this resource to find out what some of those key concepts and search terms are.

Searching LESA's Pdf Library Often the key term or phrase you are interested in researching is not included in the title of a particular paper or seminar. By doing a full text search of the LESA seminar materials which are part of the pdf library you can identify both those materials which are most relevant, but also potentially more valuable references in other less obvious seminar materials. Sample pages/tables of contents of pdf materials can be viewed to determine if they are relevant to the question you are researching. Full text searches are possible on over 180 seminar papers from the past two years. Additional resources are added every month.

However you research, once you have located a relevant LESA resource, you can choose one of many immediate solutions to obtain LESA resources:

Immediate online order and download of .pdf papers. You search for free and pay only for what you need – but receive your search products while you are engaged in the research process, not after.

- immediate registration and viewing of online seminars and materials
- immediate registration for upcoming seminars
- go to your library or to a court house library to access the LESA resource

You can have immediate access to expert analysis of the current state of the law and practice in a particular area and obtain an overview of the relevant statutes, regulations, decisions and interpretations as you commence your own detailed review and research. Save time and resources by using the new LESA website and research tools. A

Two amendments were made to the Alberta Rules of Court on April 19. One involves the addition of rule 586.3, a rule that benefits family law litigants. The other changes the mileage rate payable by parties to witnesses and jurors.

The amendments can be read in their entirety by visiting: http://www.gov.ab.ca/home/Orders_in_Council/2005/405/2005_190.html .

Additional amendments to the *Alberta Rules of Court* affect procedure in the Court of Appeal: amendments to Rule 515 and 515.1 are directed at reducing delay; the notice periods under Rule 516.1 are amended to be consistent with the Consolidated Practice Directions; and Rule 516.2 was added to minimize difficulties arising from applications to introduce fresh evidence.

The amendments can be read in their entirety by visiting: http://www.gov.ab.ca/home/Orders_in_Council/2005/405/2005_170.html

No Cash Rule in effect

by Brad Nemetz, QC, Bencher and Chair, Finance Committee

In keeping with national and international efforts to curb money laundering activities, and as further discussed in the January 2005 issue of the Advisory, the benchers have passed the No Cash Money Laundering Rule.

Rule Highlights

A lawyer shall not accept cash in excess of $7,500 Canadian in respect of any one client matter or transaction.

The prohibition applies where a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:

AtLAS changes its name to the Alberta Law Line

A project of the Legal Aid Society of Alberta, the AtLAS Alberta Law Call Centre has handled nearly 5,000 calls in its first six months.

The staff listened to its callers and stakeholders who found the name too long and were sometimes confused by it, so as of April 16 (Law Day), AtLAS's new name is the Alberta Law Line.

The Alberta Law Line is a province-wide, free service which provides callers with legal information and referrals. Staff lawyers also provide brief legal advice over the phone for callers who meet Legal Aid's financial eligibility guidelines. The Law Line is available toll-free: 1-866-845-3425 (or, in Edmonton (780) 644-7777) Monday to Friday, 9am to 4 pm, except Wednesday – 9am to 2:30 pm.

(a) The lawyer receives or pays funds;

(b) The lawyer purchases or sells securities, real properties or business assets or entities;

(c) The lawyer transfers funds by any means.

The prohibition does not apply when the lawyer:

(a) Receives cash from a financial institution or public body;

(b) Receives cash from a peace officer, law enforcement agency or other agent of the Crown;

(c) Receives cash pursuant to a court order or to pay a fine or penalty; or

(d) Receives cash of $7,500 or more for professional fees, disbursements, expenses or bail, provided that any refund greater than $1,000 out of such receipts is also made in cash and a receipt signed by the person receiving the cash is obtained by the lawyer.

Additional Bookkeeping Requirements

Lawyers must record the method by which money is received (i.e. cash, cheque, bank draft, etc.) for all trust and general receipts.

Every lawyer, when receiving cash for a client shall maintain, in addition to existing financial record keeping requirements, a book of duplicate receipts to record cash receipts showing the date, person from whom cash was received, amount, file reference, signature of person authorized by the lawyer to receive cash and signature of person from whom cash is received. The lawyer can receive the cash if the person paying the cash refuses to sign the duplicate receipt as long as the lawyer makes reasonable efforts to have the person sign the receipt.

Every lawyer who refunds cash, pursuant to this Rule, shall be required to maintain a record of cash payment showing the date, amount, client name, file number, name of person receiving cash and signature of person receiving the cash.

Commentary

A lawyer should be alert to, and avoid unwittingly becoming involved with, a client engaged in criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquires to obtain information about the client and about the subject matter and objectives of the retainer, including verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

Deliberate or careless breach of the Rule will be treated very seriously and may result in sanctions, including disbarment, which is the maximum penalty.

The complete text of this Rule is available on www.lawsocietyalberta.com under *Publications and Reports*. A

Unauthorized of practice law is monitored

by Vaughn Myers, QC, Bencher

The Unauthorized Practice of Law committee monitors unauthorized practice of law, recommends prosecutions and/or injunctions where warranted and liaises with interested parties.

A major difficulty with respect to prosecutions and seeking injunctive relief is contained in the *Legal Profession Act*. While the Act restricts the practice of law to lawyers, it lists a number of exceptions, which is where most of UPL falls under. Some examples include:

Appearances in the Court of Queen's Bench (Rules of Court, Rule 5.4)

Representation in Provincial Court Traffic Division (*Provincial Offenses Procedures Act*, Section 27)

Immigration Consulting (*Immigration Act*, Section 30 and 69(1)

Appearances before Administrative Tribunals (pursuant to corresponding Act)

We continue to invite all members of the LSA as well as the public to forward concerns to the LSA. We continue to liaise with all levels of court to monitor UPL in their courts. Any concerns may be directed to the LSA's Edmonton office. A

Does your firm have a diversity policy?

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improved productivity in the workplace, reduced employee turnover and absenteeism, enhanced corporate reputations, and an increased potential to recruit the best candidates. Implementing a diversity and equality policy will help a law firm to represent and serve Canada's diverse population while in turn benefiting the firm itself.

The Equality, Equity and Diversity committee is mandated to develop, promote and respond to equity and diversity issues in the legal profession. The committee has been very active in this pursuit and has recommended a number of initiatives in the recent years in furtherance of this mandate. These initiatives include the Office of the Equity Ombudsperson and the maintenance of equity and diversity policies available on our website at www.lawsocietyalberta.com. For more information please contact susan.billington@lawsocietyalberta.com. A

Consult the code before talking about a client

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Chapter 7 Rule 2 of the Code of Professional Conduct is clear with respect to this issue:

2. A lawyer must not disclose the identity of a client nor the fact of the lawyer's representation.

While the identity of the lawyer may be available to the public through court records, lawyers should never divulge the identities of their clients to the media or other non-parties.

Rule 1 of the same chapter states as follows:

1. A lawyer must not disclose any confidential information regardless of its source and whether or not it is a matter of public record.

Some lawyers may believe that a solicitor client relationship terminates upon death. It does not. Rule 5 states as follows:

5. A lawyer must continue to hold a client's information in confidence despite conclusion of the matter or determination of the lawyer/client relationship.

The commentary pursuant to Chapter 7 Rule 5 states as follows:

Once the lawyer is impressed with the obligation to hold information in confidence, disclosure at any time thereafter is improper unless Rule 8 applies. (Rule 8 speaks to the exceptions). Therefore, a lawyer should not convey confidential information to a successor lawyer on a change of solicitors unless satisfied that the client has authorized such disclosure. The obligation of confidentiality also survives the death of a client.

So before going in front of a camera, please consult the Rules. A

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SERVICES FOR LAWYERS

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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 **Email:** barbara.cooper@lawsocietyalberta.com

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

ASSIST Program: *A service, totally separate from the Law Society of Alberta, provided through Kelly, Luttmer & 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.*
Phone: (403)237-8880 or toll free 1-800-461-8908

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