THE ASSISTANT

20th Anniversary

BC Association of Legal Assistants *Issue IV - November 1999, Volume 12*

NAFTA PARALEGAL PLANNING CONFERENCE A SUCCESS

By Bev Peterson, Legal Assistant, Russell & DuMoulin

Canada's First National Paralegal Conference hosted by the BC Association of Legal Assistants at the offices of Russell & DuMoulin in Vancouver on July 30 to August 1 was a success. The conference was attended by NAFTA Committee contacts from the Canadian Association of Legal Assistants (CALA) in Quebec, The Institute of Law Clerks (ILCO) from Ontario, the Alberta Association of Legal Assistants (AALA) and the BC Association of Legal Assistants (BCALA) to plan the Canadian Paralegals' application for professional status under the terms of Chapter 16 of the North American Free Trade Agreement (NAFTA). Those who could not attend the conference corresponded via the Internet and/or sent postcards from the other provinces.

Conference Summary

Introduction - Jasbirs Bains, BCALA President began by canvassing various issues which would be dealt with as the conference progressed.

United States - Telephone call to an American NAFTA contact, Robin Solomon, Immediate Past President and Board Advisor of the National Federation of Paralegal Associations, Inc (NFPA), regarding U.S. NAFTA surveys; New Jersey Paralegal Regulation not proceedng; Paralegal Week in Pennsylvania during July 26th; and a warm welcome was extended from the NFPA to all Canadian Paralegals to their May 4 to 7, 2000 Hawaii conference (see *www.paralegals.org*).

Mexico - Unsuccessful telephone calls attempted.

NAFTA Submission for Chapter 16 Professional Status

Definition of Paralegal for purposes of Canadian NAFTA Application:
"A person qualified by education, training, or professional experience to perform substantive legal work that would be performed by a lawyer in the absence of the International Chartered Paralegal, and who is subject to legislation, law society, bar association and court authority in his/her jurisdiction." (NAFTA survey definition April 29, 1999)

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INSIDE THIS ISSUE:

FROM THE EDITOR'S DESK

Voting members will find a salary survey enclosed with their newsletter. Please complete the survey and return it in the postage paid envelope no later than December 15th. BCALA is the only organization which compiles salary information on legal assistants. Therefore the more people who return the survey the more representative the results will be. Results will appear in the next issue.

All members will find a seminar survey enclosed with their newsletter. BCALA would like to hold seminars useful to members and therefore would appreciate input.

Since this is the last issue of 1999 we would like to wish everyone a Merry Christmas and Happy New Year.

MEMBERSHIP UPDATE

By Thora Arnason, Membership Chair

BCALA memberships number 177 at present with 105 voting members, 58 student members, 13 associate members and 1 honorary member. The largest increase comes from the new crop of students coming on board.

Membership renewal time is almost upon us, and I hope to have the Year 2000 renewal forms mailed to all members around the end of November with a probable return date of around the middle of February 2000 or earlier.

Again, I would remind everyone to keep me up-to-date on mailing address changes and relocations. You may do this by mail, e-mail or even by telephone. Don't forget to include your new telephone, fax and e-mail addresses when you update your information.

THE ASSISTANT

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Advertising

Rate includes four yearly issues

Full page	$200	Quarter page	$ 75
Half page	$100	Business card	$ 50

Contact Ann Halkett for details

History and Purpose

The BC Association of Legal Assistants (BCALA) is a voluntary non-profit association formed in 1979 to promote the professional development and continuing education of legal assistants in B C If interested in becoming a member contact Thora Arnason

Submissions

Articles for *The Assistant* are gladly accepted If possible please provide submissions in both hard copy and disk form (formatted for Word Perfect 5 1) The deadline for submissions for the next issue is January 19, 2000. The editor reserves the right to edit articles for brevity and grammar

Disclaimer

All opinions or views expressed in *The Assistant* are those of the writers and not necessarily endorsed by BCALA or its directors

Subscription

Annual subscription for non-members is $24.00. Make cheque payable to BC Association of Legal Assistants and mail to the editor's attention at the above address.

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Professional Title for Canada's NAFTA Application:
Conference attendees agreed that the words "assistant" and "clerk" designate legal secretaries or filing and corporate records clerks. Although the terms "legal assistant" and/or "law clerk" may mean more within the legal community they do not convey the appropriate level of expertise required.

Grandfathering:
Discussion on how to recognize achievements of members of associations, or others, who do not qualify for NAFTA's professional status based solely on education. A grandfathering process was proposed whereby up to 15 years of professional experience would be considered equivalent to NAFTA's requirement for a baccalaureate degree. This figure was based partially on a study done in eastern Canada which recognized three years of professional experience for each year of university education.

Creation of National Paralegal Designation of "Chartered Paralegal" as an Additional Avenue for Canadian Paralegals to use when applying for NAFTA's Professional Status:
The title "Chartered Paralegal" conveys professionalism and conference attendees were hopeful that it would please American and Mexican counterparts. The appropriate French translation for "Chartered Paralegal" was unconfirmed at the conference pending communication with colleagues in Quebec.

Review of Educational Requirements of Various Paralegal Organizations:
BCALA educational requirements and report on occupation title protection application prepared by G. Bryson. B. Miller and G. Piper of ILCO provided an update on ILCO educational programs and commented on the proposed regulation of unsupervised paralegals. D. Lake and G. Militsala of AALA provided information on AALA and its pursuit of self-regulation under Alberta's Professional and Occupational Associations Registration Act, c. P-18.5, 1985 (AB). AALA is also proposing to change its name to Alberta Paralegal Association at its fall Annual General Meeting. CALA newsletters, including 1997 National Salary Survey and general update on CALA were discussed by D. Giroux, V. Fuller and B. Peterson.

It was both a privilege and a pleasure to work with the associations of AALA, BCALA, ILCO and CALA and individual paralegals in this endeavour.

Preliminary Letter to NAFTA Authorities

Since the summer conference, NAFTA authorities held a conference commencing October 19th in Halifax, Nova Scotia. Canadian paralegals sent an initial draft introductory letter to the United States, together with research and arranged for delivery to NAFTA authorities in Halifax. United States paralegals finalized the letter and will send copies to Mexico and Canada. Highlights of the introductory letter to NAFTA authorities at this conference describing our application for professional status are outlined below.

Consensus - American paralegals are working with Mexican and Canadian counterparts on NAFTA surveys in English, French and Spanish (which Canadian NAFTA authorities approved in draft form) to provide current information on the paralegal profession. The United States is in the process of collecting and analyzing relevant information from survey results from thousands of paralegals in North America which will be used to provide current information in the NAFTA application. In support of the submission information is being gathered in the following areas:

(a) Public Interest - The employment mobility of paralegals as a cost effective way to assist counsel with legal matters is in the public's interest. In addition, the domestic work of NAFTA countries is naturally protected due to jurisdictional issues required to practice as a paralegal.

(b) Enhancing the Practice of Law - Paralegals assist counsel in every area of law. It would be difficult to propose a restraint of trade on legal counsel should paralegals receive professional status under Chapter 16 of NAFTA. In connection with the employment

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of paralegals, we are researching markets for legal services; Foreign Legal Consulting Accord signed in June 1998 by lawyers from NAFTA countries; mergers of U.S.-Canadian cross-border law firms such as Haythe & Curley of New York, U.S.A. and Tory Tory DesLauriers & Binnington of Toronto, Canada; multinational companies with legal and business interests in NAFTA countries; multi-disciplinary partnerships under review by international legal community and being pursued by the accounting firm of Ernst & Young in the United States and Canada.

(c) Occupational Titles - recognized occupational names of paralegals including any variations which exist in the United States, Canada and Mexico.

(d) Educational Criteria - educational criteria, including minimal educational qualifications required in the paralegal profession in North Amercia.

(e) Professional Designations - full descriptions of any national licensing or certification standards that exist in NAFTA countries which are a prerequisite to providing services under the occupation title.

(f) Professional Responsibilities - paralegals work within every area of the law in which lawyers practice and their professional responsibilities vary depending on whether or not they work in litigation, commercial law, family, environmental, technology, labour and many other practice areas.

Final NAFTA Application

Washington and Ottawa lobbyists are assisting us with the timing and presentation of our NAFTA application as we work with paralegals from the United States, Canada and Mexico. We have been advised that the more paralegals in each association who apply the greater the chances for success. We highly encourage you and your colleagues to become members of the BCALA and any other participating paralegal association. We can only benefit from uniting together in a positive way to serve the paralegal profession. The spirit of mutual assistance and cooperation is a high priority on the NAFTA professional status project.

For more information on the NAFTA Project contact Bev Peterson at (604) 631-4801 or *bpeterson@rdcounsel.com*. For information on how to join the BC Association of Legal Assistants contact Thora Arnason at P.O. Box 4127, Main Post Office, Vancouver, B.C. V6B 3Z6.

GOT SOMETHING TO SAY?

Send submissions for The Assistant to:
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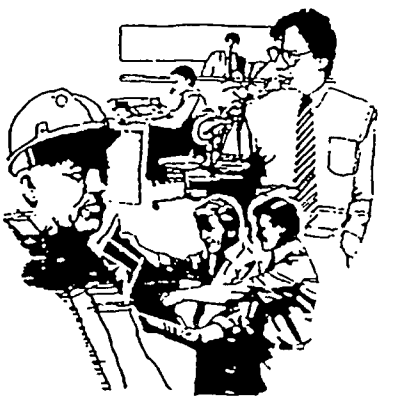
Deadline: January 19, 2000

WHY SHOULD YOU JOIN BCALA?

-quarterly newsletter
-annual salary survey of working members
-job notices sent only to members
-lecture series on topics of interest (members attend for free)
-continuing education and professional development
-occupational title protection process underway
-networking



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PARALEGALS NOT WELCOME - NAFTA'S CHAPTER 16 LEAVES CANADIAN PARALEGAL ON THE OUTSIDE LOOKING IN

By Cortland Kirkeby

When Jacqueline Zerkee's husband Ben went south to Portland, Ore. to attend chiropractic college, they were both sure that she could join him soon and easily find paralegal work within Portland's thriving legal market. The two Canadians received a rude shock when they discovered that Chapter 16 of the North American Free Trade Agreement (NAFTA) doesn't include paralegals - putting Zerkee hundreds of miles from her husband.

NAFTA was designed to expand business relationships between Canada, the United States and Mexico. An integral part of this extensive agreement is an enhanced mobility for persons who work within a select group of professional occupations. NAFTA's Chapter 16 lists these professions: accountants, lawyers, nurses, occupational therapists. Even baccalaureate economists are included. Regrettably, paralegals are not. Otherwise, all it would take to obtain permission to work temporarily within the United States would be a written job offer to present to border authorities.

Arguably, Zerkee, a 29-year-old corporate and securities paralegal for the prestigious Ladner Downs law firm in Vancouver, British Columbia, should have met - and surpassed - anyone's definition of a professional. A graduate of Simon Fraser University of Burnaby, British Columbia, with a major in criminology and a minor in psychology, Zerkee also completed the highly respected Canadian Securities course. Since paralegals are not recognized as eligible professionals under Chapter 16, all of Zerkee's legal training was nullified. During her four-month effort to join her husband in the United States in the latter part of 1998, the immigation lawyers Zerkee consulted in Portland could only suggest that she seek alternate work in an approved field.

Paralegals such as Zerkee are not the only ones hindered by NAFTA's current provisions. Attorneys conducting business across the border are rudely surprised to learn that their paralegals are not welcome.

The situation, while certainly difficult, isn't without some hope of remedy. NAFTA has a governing board that meets annually, in the fall. Currently, working paralegals in all three NAFTA countries are formulating proposals to induce NAFTA authorities to add paralegals to the professions included in Chapter 16. While each country must petition NAFTA individually, paralegals in all three countries are working to coordinate both the content and the timing of their proposals with one another. In this regard, Bev Peterson, a paralegal for the Russell & DuMoulin law firm in Vancouver, represents the Canadian Association of Legal Assistants (CALA); Robin Solomon, a paralegal for Philadelphia's Fox, Rothschild, O'Brien & Frankel law firm, represents the United States' National Federation of Paralegal Associations (NFPA); and paralegal Fernando Ramo is the Mexican contact in this tri-national effort.

All three representative entities have sent questionnaires to those in the profession to clarify their stances on key issues before proposals are sent to NAFTA. Canada started earlier, but NFPA is still completing its receipt and processing of questionnaires.

Meanwhile, the lack of professional eligibility under Chapter 16 has put a severe burden on the Zerkees. Since Zerkee returned to Vancouver from Portland in January of this year, her time with her husband has been limited to bi-weekly visits.

The Ladner Downs firm has been particularly gracious, not only granting Zerkee a leave of absence to join her husband in Portland, but also allowing her

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West Coast Title Celebrates 30th Year

1999 is a very special year for West Coast as we reach our 30 year milestone. We are very thankful for the loyal patronage of many many people over the last three decades.

We have worked hard to develop a West Coast attitude and way of doing things. I am very proud of our work and our very conscientious staff.

As we celebrate our 30th Anniversary, I would like to recognize some of our team who encompass what West Coast is all about. Thank you all.

Wayne Crookes

President/Founder

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Sharon Phillips	17 years
Bette Stone	23 years
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Marie McDonnell	12 years
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Stuart Scharf	11 years
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Avis King	10 years
Moira Millar	10 years
Sheila Mitchell	15 years

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to cut back to a four-day work week so she can spend longer weekends in Portland.

Still, the trips are a hardship in terms of both time and expense. The family has only one car, which Zerkee's husband uses in Portland. To complete her bi-weekly journey south, Zerkee must spend approximately $120 to rent - and fuel - an automobile, and then drive six hours. Typically, she leaves on Thursday after work and arrives in Portland shortly before midnight. On Sunday afternoon, she bids her husband farewell and drives the six hours back to Vancouver. Monday morning, she's back at the office.

Zerkee's other alternative is to fly, but unless the airlines are offering promotional discounts, her plane ticket costs her $200 or more. Once in a while, when her husband gets a rare holiday weekend, he will make the trip north to Vancouver. Obviously, the approximately $4,000 in annual travel expenses takes a big chunk out of their family income. This problem is made worse by the poor conversion rate from Canadian to U.S. dollars. Living and working in Portland would have enabled Zerkee not only to eliminate transportation costs, but to increase her purchasing power significantly.

There's also the struggle to maintain a marriage while living apart. "I'm pretty lucky my husband is easygoing and very understanding. His personality makes it a lot easier," Zerkee said.

The best news about the current effort toward NAFTA recognition of paralegals is that no one is openly opposing it. Of course, NAFTA has both an immigration side and free trade promotion side Hopefully, the free trade contingent will vigorously support the inclusion of paralegals under Chapter 16 as a potential furtherance of free enterprise and the strict immigration contingent can be prevailed upon to acknowledge paralegals as authentic and bonified professionals worthy of inclusion.

At least the ordeal is nearly finished. It will take approximately a year and a half for her husband to complete his studies and enter private practice. Only time will tell whether Zerkee will then be eligible under NAFTA's Chapter 16 to work as a paralegal in the United States.

BCALA's 20th ANNIVERSARY CELEBRATION

By Genevieve Wirth, Programs Chair

The BC Association of Legal Assistants celebrated its 20th anniversary aboard Vancouver Champaign Cruises' Destiny I on September 30th with 22 members and 18 nonmembers in attendance. The night was clear and the cruise proved a wonderful opportunity for people to place faces to names and to network.

The cruise was made possible with the support of volunteers such as Shirin Drudian who helped with planning. Betty Garbutt, Jacqueline Abremski and Jason Villeneuve of the Legal Freelance Centre took reservations. We could not have organized this event if it had not been for the help of these volunteers

Cruise sponsors included the Legal Freelance Centre and Farris, Vaughan, Wills & Murphy. Door prizes were kindly donated by Torie Newson of Gallery Cafe & Catering and Lynn Wigen of Legends Grill and Tap Room.

IKON Legal Document Services and Scott Brenneman are long time supports of BCALA and printed the invitations.

BCALA is fortunate to have such gracious supporters.

MEDIATION MADE EASY

By Alan A. Bramley, C.R.C. and A. Anita Vergis LLB
Alterative Dispute Resolution Centres

Mediation is a highly effective, informal and confidential dispute resolution process that is becoming more widely used in settling all types of legal disputes. During the mediation process the neutral mediator facilitates communication and negotiation between parties in the dispute to assist them to achieve a mutually acceptable settlement. Mediation is unique because unlike a trial or arbitration, the parties retain a high degree of control over the outcome. The mediator does not render a decision on the issues. The primary responsibility for reaching a satisfactory conclusion remains with the parties.

Advantages of Mediation

The advantages of mediation over litigation are numerous.

1. *Cost*
The cost of mediation is very economical when compared to the cost of lengthy litigation. Most commercial litigation matters set for trials of up to a week are typically resolved at a 4-8 hour mediation.

2. *Timing*
Mediations can be scheduled either before or after the litigation commences. Unlike trial dates that are set a year or more in the future, mediations can be set in a matter of hours or days (dependant only on the availability of the parties).

3. *Success Rates*
Statistics of Alternate Dispute Resolution Centres show that 90% of voluntary mediations result in settlement. A Ministry of Attorney General news release dated May 31, 1999 titled: "Province Announces Notice to Mediate Process for Residential Construction Disputes" states that 72% of mandatory mediations have resulted in settlement of all issues. In addition, empirical evidence shows that the parties are far more satisfied with the outcome when they have had control over the results than when a decision is made for them (as at trial). As a result of this increased satisfaction, more mediated agreements are fully honoured than are court ordered judgments.

4. *Confidentiality*
Mediation is advantageous when the parties are anxious to ensure that the settlement terms do not become part of the public record or public knowledge. Information revealed during the mediation that was only obtained by the mediation process is protected by the Agreement to Mediate.

5. *Wide Applicability*
If the parties are willing, any dispute can be mediated. Personal injury, commercial, contractual, residential tenancy, corporate dissolution, wrongful dismissal, construction, family and estate cases are all matters that have been successfully mediated.

6. *Creativity*
The actual mediation process can be tailored for the parties. In addition, a high degree of client control allows the parties to negotiate settlement terms that meet specific needs. The parties and their counsel can design win/win solutions that may not be possible if the matter went to trial.

Getting to Mediation

In British Columbia there are two methods by which parties come to mediation.

1. *Voluntarily*
The parties can agree to attend a mediation conference in an effort to settle the dispute.

2. *Mandatorily - the Notice to Mediate Regulations*
In April of 1998 the provincial government introduced the Notice to Mediate regulations for motor vehicle cases. In May of 1999 similar legislation was introduced for residential construction disputes. The legislation allows a party in a motor vehicle or residential construction dispute, after Supreme Court pleadings have been closed, to deliver

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a Notice to Mediate to the other party or parties, compelling all parties to attend at a mediation and attempt to settle the dispute.

The Notice to Mediate in Motor Vehicle Actions

The Notice to Mediate can be delivered in any Supreme Court action commenced in the Victoria, Duncan, Nanaimo, Kelowna, Vancouver and New Westminster registries regardless of when the action was commenced. For all other Supreme Court registries the Notice to Mediate can be delivered in actions commenced after January 1, 1996.

The Notice to Mediate may be delivered on motor vehicle actions no earlier than 60 days after the close of pleadings and no later than 77 days before the date set for the commencement of the trial. The parties can agree to set the mediation conference outside of the times laid out in the regulations. In addition, a party can bring a court application to be exempted from attendance at the mediation.

Within 10 days after the delivery of the Notice to Mediate, parties are required to agree to the appointment of a mediator. Seven days prior to the scheduled mediation conference the parties are required to provide a Statement of Facts and Issues (Form 2 of the regulations) setting out the facts that the party intends to rely on at the mediation and the matters that are in issue.

Notice to Mediate in Residential Construction Matters

The main differences between the Notice to Mediate in motor vehicle cases and the Notice to Mediate in residential construction disputes is in the timing of delivery of the Notice to Mediate and when the actual mediation is to take place.

The Notice to Mediate can be delivered by any party in a residential construction dispute at any time after an action has been commenced and no later than 180 days before the date set for the commencement of trial. The parties must agree to appoint a mediator within 21 days from the delivery of the Notice to Mediate. Again, any party can bring a court application to be exempted from attendance at the mediation and the parties can agree to set the mediation outside the times as set out in the regulation.

Setting Up a Mediation

Under the Notice to Mediate regulations the parties first agree on the mediator and then determine if the parties and counsel are available to mediate the claim when the chosen mediator is also free. If the mediator is not free when the parties and counsel are available then the parties choose a suitable mediator who is available.

The Alternate Dispute Resolutions Centres

Although best known for their mediation work, the Alternate Dispute Resolution Centres are also involved in arbitrations, facilitations, and the design of dispute resolution systems.

The Alternate Dispute Resolution Centres are the largest service provider of alternate dispute resolution services in British Columbia with six locations in the Lower Mainland. There are currently three full service Alternate Dispute Resolution Centres in the Lower Mainland - Vancouver (Broadway St.), Burnaby and Surrey. There are also three other facilities - Nelson Square in Vancouver, Maple Ridge and Abbotsford. In addition, mediations can be arranged throughout North America at the request and convenience of the parties.

Setting Up a Mediation Through the Alternate Dispute Resolution Centres

One or more of the parties can arrange a mediation by sending an application to initiate a mediation conference to a full service Alternate Dispute Resolution Centre. This can be done by telephone, fax, e-mail, or regular mail. The application will provide information such as the date of the incident that is the subject of the dispute, names of the parties and their counsel, whether trial is imminent (and thus the mediation has to be conducted within a very short

Continued on page 15.

period of time), available dates for mediation and choices of mediators, if known. If the matter involves I.C.B.C., the claim number and the adjuster's name will also be requested. If an action has been commenced a copy of the style of cause will be requested as the Alternate Dispute Resolution Centre will prepare the Consent Dismissal Order to be executed if the dispute settles at the mediation.

If one party is requesting that the other party attend at a mediation voluntarily, the Alternate Dispute Resolution Centre will invite all other parties to the mediation table.

The Alternate Dispute Resolution Centre will:

1. co-ordinate the date and time suitable for the mediation conference date;

2. arrange a location agreeable to the parties;

3. book a block of time (typically four hours is required) for the mediation conference; and

4. aid in the choice of mediator.

The mediator chosen is often determined by which mediator is available on the dates that the parties and counsel are available. If there is no agreement concerning choice of mediator then the Alternate Dispute Resolution Centre will find a mediator that is acceptable to all parties.

Preparation to Attend at the Mediation

The parties come to the mediation ready to settle the dispute. Prior to the actual mediation a summary of the issues is usually prepared for the mediator.

Any information or documentation that will assist in putting forward the claim should be brought to the mediation conference. We suggest that Bills of Costs and supporting documentation for disbursements also be made available.

The Alternate Dispute Resolution Centre will provide all the documents necessary for the mediation conference such as an Agreement to Mediate (which sets out the conditions under which the mediation will be conducted, and is signed by all the parties to the mediation), a Memorandum of Settlement (which sets out the agreement that the parties came to), Consent Dismissal Orders, release forms and the appropriate forms if the conference is held under the Notice to Mediate regulations.

Additional Information:
If you would like more information contact:
Alan Bramley- ADR Centre/Burnaby 205-7111
Anita Vergis- ADR Centre/Vancouver 708-9990
Trish Atkinson- ADR Centre/Gateway 589-9111

UPCOMING CLE PROGRAMS FOR LEGAL SUPPORT STAFF

Personal Injury
At the Four Seasons Hotel on November 26, attend *ABCs of Personal Injury Practice for Legal Support Staff* and learn the law, procedure, and documentation. Designed for legal support staff who are new to the area of personal injury claims and litigation. This course will walk you, stage-by-stage, through a personal injury file. Understand key legal concepts and terminology. Receive detailed guidance on trial procedure and documentation. Receive comprehensive course materials, including invaluable checklists and sample documents. Instructor: Jasbir Bains - Farris, Vaughan, Wills & Murphy, Vancouver.

Skills
Get the most from every interview by attending *Interviewing Techniques for Legal Assistants* on December 10 in Vancouver. Legal assistants are playing a critical role in the information gathering process. This hands-on practice session will give you critical knowledge and skills to increase your productivity and effectiveness. Limited enrolment. Instructor: Douglas S. Cochran - Cochran Bradshaw, Vancouver.

PRACTICE UPDATE

Questions and Answers
By Joanne Power, Manager Registrar Program

Ed. Note: BCALA is pleased that the Registrar of the Supreme Court of British Columbia has given permission to reprint portions of the September, 1999 "Registrars' Newsletter".

The "Registrars' Newsletter" can be found on the Internet at: *http://www.courts.gov.bc.ca/*

Child Support Guidelines

Q: If a Child resides in another province or territory than the payor, which Child Support Guideline should be used to calculate child maintenance?

A: The Federal Guideline tables for the province or territory in which the person paying support resides should be used.

Residential Tenancy Act

Q: Do the recent amendments to the Residential Tenancy Act (Bill 75) have any effect on the service of orders of possession filed for enforcement?

A: Yes, service of the order of possession must be either.

(a) as directed by the order of the arbitrator as set out in s.88(2), Residential Tenancy Act, or

(b) in accordance with Supreme Court Rule 42(12)

The affidavit of service must provide:

(a) service either in accordance with the order of the arbitrator, or in accordance with Rule 42(12), and

(b) the time for review under s 60, Residential Tenancy Act, has elapsed, and

(c) the order has not been suspended by the review process, pursuant to s 61(3), Residential Tenancy Act, and

(d) the tenant has not obeyed the order.

Rule 6(10.2)(b)

Q: Does an affidavit of a party attaining the age of majority filed in a proceeding affect the style of cause?

A. Yes. The style of cause should not refer to a guardian ad litem after an affidavit confirming the attainment of the age of majority has been filed (Form 4 1). However, this is a matter of form only. Documents should not be rejected for this reason

Rule 20(4), Rule 39(7)

Q: If a party has named in his statement of claim another location as the place of trial, does he need an order to transfer the file to that location?

A: No order is required. Rule 20(4) requires the place of trial to be named in the statement of claim; Rule 39(7) states that the place of trial is the place named in the statement of claim. Once a party has received a trial date in the other location, he should file a praecipe requesting the file be transferred.

Rule 41(8)

Q: If an order is granted at a different location from where the file was opened, how could we provide a better service for checking and entering the order?

A: There is no specific rule requiring that orders be filed in the originating registry However, Rule 41(8) stipulates that the order must be entered and sealed by the registrar. Given that the definition of "registrar" (Rule 1(8)) and "seal" (Rule 64(5)), this must be done in the originating registry, unless the court orders otherwise

After the matter has been heard, the file is returned to the home registry If a copy of the clerk's notes is also sent, the order can then be checked and entered there. Alternatively, if the order is sent to the registry where the matter was heard, it could be checked there, and forwarded to the home registry for entry.

Rule 41(16.3)

Q: Can a party in an undefended divorce proceeding apply by way of a desk order for a final corollary relief order before the end of the one year separation period?

A: Such relief is most unusual, however, a party can apply by filing a praecipe, draft order and evidence in support of the application The registrar will refer the matter to a judge, as it is a final order The judge must be satisfied that the other party has had notice and that the relief sought is appropriate

Rule 60 and Rule 41(16.3)

Q: How would a party apply for judgment in a Family Law Proceeding, where there was no marriage and no defence has been filed?

A The party would apply by filing a praecipe, desk order, and evidence in support as set out in Rule 41(16 3). The registrar would refer the application to a judge, as it is a final order.

Rule 60(28)

Q: Can a party proceed with a divorce when another divorce action is outstanding in British Columbia or elsewhere in Canada?

A: No A party cannot proceed with a subsequent divorce proceeding unless the first divorce proceeding is discontinued.

LAW PRIMER

Case Digests

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LAW PROFESSION - Solicitor's fees - Review - Practice - 30-day waiting period for solicitor-initiated review under Legal Profession Act starting to run when last in series of interim bills delivered or sent - Court having no power to abridge waiting period.

Section 71(1)(a) of the Legal Profession Act provides for a 30-day waiting period after a bill has been delivered or sent before the solicitor can apply for a review. A series of interim accounts will be taxed together as a single bill and the clock will not start to run for the purposes of s.71(1)(a) until the last bill has been delivered or sent. The 30-day waiting period, having been established by the Act and not a rule of court, is not subject to any power of abridgment by the court. A review which has been held without proper observation of the waiting period is a nullity, as is any registrar's certificate of fees issued consequent upon such purported review. The court has no jurisdiction to make an order nunc pro tunc validating proceedings the solicitor had no right to initiate.

Bull, Housser & Tupper v. Mr. T. International Agencies Ltd., C.A., Donald, Huddart & Proudfoot JJ.A., Doc. Vancouver CA022827, July 6, 1999, 17 pp. [CLE No. 99-16099] // Appellant in person; James H. Goulden, for respondent. // Principal case authorities: Architectural Institute of British Columbia v. McAlpine, Roberts & Co., [1982] 5 W.W.R. 470 (B.C.C.A.) - considered; Ladner Downs v. Crowley (1987), 14 B.C.L.R. (2d) 357 (S.C.) - considered; Lipsett, Re (1976), 15 O.R. (2d) 35 (Master) - applied; Pierce, Van Loon v. Edwards (1994), 96 B.C.L.R. (2d) 60 (S.C.) - applied; Robertson, Ward, Suderman & Bowes v. British Columbia Transit (1987), 25 C.P.C. (2d) 276 (B.C.C.A.) - considered.

MOTOR VEHICLE INSURANCE - No fault benefits - Actions - Insurance (Motor Vehicle) Act regulations, s.103, stating "No person shall commence an action in respect of benefits under this part unless: (a) he has substantially complied with provisions of s.97(1) requiring insured to file report and furnish proof of claim within prescribed time frames" - Writ served on I.C.B.C. before insured having complied with s.97(1) not needing to be struck out as premature - Similarly, s.103(a) by its own terms not operating to absolutely bar actions by persons who fail to meet the deadlines in s.97(1) - Corporation needing to establish prejudice in such a case.

The plaintiff alleged that he suffered partial incontinence as the result of being struck by a vehicle in August 1995. He said that his condition had caused him such extreme embarrassment that he delayed requesting medical treatment and did not approach legal counsel until much later. He finally decided that his situation was serious enough that he should seek compensation. In March 1998 he issued and served a writ of summons on the defendant I.C.B.C., claiming "Part 7" benefits. I.C.B.C. sought dismissal of the action on the ground that it was precluded by s.103 of the regulations under the Insurance (Motor Vehicle) Act. Section 103 states, "No person shall commence an action in respect of benefits under this part unless: (a) he has substantially complied with the provisions of section 97...that are applicable to him". Section 97 requires an insured to give prompt notice to I.C.B.C. of an accident, to provide a written report within 30 days, and to furnish a proof of claim within 90 days. I.C.B.C. said that the plaintiff had not taken those steps at the date his writ was issued and that the writ should therefore be struck out as being premature. Similarly, I.C.B.C. said that s.103(a) by its own terms barred the action because the plaintiff had failed to meet the timelines set out in section 97 and had therefore not "substantially complied" with that provision. **Held**, for plaintiff. The delay between the filing of the technically premature writ and the maturing of the cause of action, through delivery of

Continued on page 21.

some form of proof of loss, was comparable to other situations where the court has declined to dismiss an action. Hence the defendant's argument with respect to the validity of the writ had to fail. The defendant's alternative submission also failed. Section 103(a) is not intended to place an absolute bar against actions by insured persons who fail to meet the deadlines in s.97(1). Rather, it is intended to deter insured persons from launching actions before I.C.B.C. has had an opportunity to render a decision on the claim. Whereas s.103(b) sets out the time after which no action may be brought and s.103(a) sets out the time before which no action should be brought. Where I.C.B.C. in fact receives substantially the same information that it would otherwise have received under s.97(1), but outside the prescribed timelines in s.97(1), the appropriate question is whether or not the delay has caused prejudice to the corporation so as to release it from liability under s.97(2). The burden of proving prejudice lies with I.C.B.C. That burden was not met here.

Wilby v. Insurance Corp. of British Columbia, S.C., Romilly J., Doc. New Westminster S041825, July 8, 1999, 28 pp. [CLE No. 99-16128] // Kevin Morrison, for plaintiff; Danine T. Griffin, for defendant. // Principal case authorities: Benton v. Insurance Corp. of British Columbia (1979), B.C.L.R. 289 (S.C.) - considered; Crees v. Insurance Corp. of British Columbia (1994), 23 C.C.L.I. (2d) 14 (B.C.S.C.) - considered; Gautron v. Wawanesa Mutual Insurance Co. (1995), 2 B.C.L.R. (3d) 330 (S.C.) - applied; Marin v. Insurance Corp. of British Columbia, S.C., Doc. Vancouver C896592, C896593, April 26, 1993 - considered; Robertson (Trustees of) v. Pitts Insurance Co. (1986), 20 C.C.L.I. 348 (Ont. H.C.) - applied.

PRACTICE - Orders - Effective date - Plaintiff obtaining order adding defendants outside limitation period - Court exercising its discretion to direct that order take effect on date new defendants were notified of application.

The plaintiff succeeded on an application to add two physicians as defendants outside the limitation period. Any defences available under the Limitation Act were left for the trial judge. In supplementary reasons the chambers judge addressed the issue of when the order should take effect. The plaintiff contended it should be when the new defendants were notified of the application. The defendants contended for the date of pronouncement or, at the earliest, the date the application was heard. **Held**, for plaintiff. Unless otherwise ordered by the court, an order is dated as of the day it is pronounced. The court may select a different date, but that discretion should be exercised with caution and only in exceptional circumstances. Such circumstances exist in cases such as the present one. The date of joinder can be of some importance as it provides a frame of reference on which a defence under the Limitation Act can be pursued or defeated. An applicant has some control over the date on which potential parties are notified, whereas the date of the hearing or of the issuance of the reasons for judgment are dates over which the applicant has little or no control. Given the importance that the date of joinder may have and the prejudice that any delay may cause an applicant, it would be unjust to fix the date of joinder as the date of hearing or the date the reasons for judgment were issued.

Letvad v. Finley, S.C., Sinclair Prowse J., Doc. Vancouver C953845, August 4, 1999, 6 pp. [CLE No. 99-16295] // Supplementary to [1999] Civ. L.D. 402; [1999] C.D.C. 15796 (CLE) (B.C.S.C.) // D.W. Hay, for plaintiff; K.F. Douglas, for two defendants; R.J. Harper, for defendant Vancouver Hospital and Health Sciences Centre; N.L. Fishman, for one defendant.

AN OVERVIEW OF SUPREME COURT CIVIL

Excerpts taken from the Ministry of Attorney General Court Services Vancouver Law Courts Overview Prepared for PLTC (May 25, 1999)

Interesting Facts About the Vancouver Law Courts

Vancouver Law Courts collects revenue of nearly $25.5 million annually and averages 9,055 revenue transactions monthly. The Vancouver Law Courts trust account received more than $20.5 million and disbursed more than $21.3 million in fiscal 1998/99. The average monthly trust account balance is $4.48 million.

Up to 2,000 people use the facilities of the Vancouver Law Courts during a normal business day. During peak periods there are about 200 personnel present.

In a year, Civil Programs at the Vancouver Law Courts will:

-initiate 24,000 civil court files
-accept 250,000 documents over the counter
-file 374,000 documents into court files
-issue 13,000 consent and desk orders
-review and sign 13,000 court orders
-issue 1,900 default judgments
-process 4,400 desk order Divorce applications
-issue 3,200 Divorce Certificates
-schedule 17,000 chambers applications for hearing
-forward 630 orders to the Protection Order Registry

Civil Records will box 24,000 files annually and transfer the files to an off-site storage facility.

CIVIL DOCUMENT FILING

Top Five Reasons Why Documents are Rejected at the Civil Counter:

5. Writ of Summons in the wrong form.
4. Wrong jurisdiction to commence proceedings.
3. Documents not signed.
2. No filing fees attached.
1. Garnishing Orders Before Judgment do not disclose a liquidated claim.

Top Five Reasons Why Default Judgments are Rejected:

5. Interest not pled at a per annum rate.
4. Default Judgment in the wrong form.
3. Service Ex Juris endorsement (Form 6) not served with the Writ of Summons.
2. Substituted service not in accordance with Rule 12(4).
1. Eades v. Kootnikoff (defining liquidated demand) not complied with.

Case law for Default Judgment and Garnishing Orders:

The following is a list of cases the Deputy District Registrars rely on when issuing Default Judgments and/or Garnishing Orders:
-Crosato v. George (1984) 56 B.C.L.R. 142 - If I.C.B.C. or another insurer has filed a Third Party Notice, Default Judgment cannot be taken against the nominal defendant.
-Lee v. Pinkney (1978) 6 B.C.L.R. 289 - If an Appearance has been entered the formal requirements of delivering a Statement of Claim must be met before judgment in default of defence can be taken.
-Pacific Blasting v. Jmaeff (1992) 68 B.C.L.R. (2d) 101 - Liquidated cause of action.
-Richardson Securities v. Shoji (May 13, 1982, Vancouver Reg. Nos. C805124 and C810366 (B.C.S.C.) - No interest allowed on default judgments.
-CIBC v. Kungle (March 14, 1994, Vancouver Reg. No. CA015615 (B.C.C.A.)) - Service on a lawyer who has previously acted for a party does not comply with the rules unless acknowledged in writing.
-Forbes v. GL Construction (1979) 15 C.P.C. 71 - Pink card is required for service by registered mail.
-Jan Poulsen & Co. v. Seaboard Shipping (1994) 94 B.C.L.R. (2d) 268 at 272 - Company Act does not apply to service of foreign companies.
-Eades v. Kootnikoff (1995) 13 KB.C.L.R. (3d) 182 - which approves Holden Day Wilson v. Ashton - Liquidated cause of action.

Continued on page 25.

-Hastings v. O'Neill Hotels & Resort Management Ltd. (February 25, 1999, Vancouver Reg. No. C990610 (B.C.S.C.)) - Defining procedure for a reference to the Court by a Registrar; content of affidavit in support of a Garnishing Order Before Judgment.

CHAMBERS

Top Ten Reasons Why Orders are Rejected by the Chambers Registry:

10. Order has handwritten changes.
9. Order is not in proper form and does not comply with the C.L.E. Chambers Orders Annotated Manual.
8. Preamble of order is incorrect.
7. Hearing and/or judgment date is wrong.
6. Orders under Rule 26(11) for production of documents do not include provision for the payment of the reasonable costs of production of the non-party.
5. Order signed by an articled student - a solicitor or counsel must sign the order (Rule 41(8)).
4. Order not signed by the solicitor or counsel for all parties represented at the hearing or consenting to the order (Rule 41(8)).
3. Order does not contain the full style of proceeding (Rule 4(4)).
2. Name or title of the adjudicators not referred to correctly.
1. Order signed in quotation marks.

FAMILY REGISTRY

Top Five Reasons Why Documents are Rejected at the Family Counter:

5. Documents not originally signed.
4. Foreign language marriage. certificate/registration does not have an English translation.
3. No original or certified copy of the marriage certificate/registration filed.
2. Non-relevant paragraphs in the statement of claim are not struck out or omitted.
1. Documents (pleadings, etc.) not in proper form.

Top Five Reasons Why Desk Order Applications are Rejected:

5. Jurat to an affidavit not signed or the exhibits are not properly marked.
4. Insufficient proof of service.
3. Non-compliance with Rule 60(1)(a), (b) or (c).
2. Documents (plaintiff's affidavit, child support fact sheet and/or draft order) not in proper form.
1. Plaintiff's affidavit sworn too soon - the time to file the statement of defence has not expired and/or the one-year anniversary date of separation has not expired.

E-MAIL SECURITY CONCERNS

By Kenneth Berry, Internet Specialist with Agentis Information Services (*www.agentis.com*)

It's no secret that law firms are now taking a serious look at the Internet and how it can help them communicate with clients and each other. While not as accepted as the fax, e-mail can be a cost-effective, easy to use, and in many ways, secure form of communication.

Electronic mail is far less expensive than regular mail or courier services and is usually a fraction of the cost of a long distance call or fax. Many organizations find that as their use of electronic mail grows, their long distance telephone costs dramatically decrease. Add to that cost saving the ability to communicate without regard to time zones and the benefits of Internet e-mail are hard to ignore.

Security

There has been a great deal of concern that messages travelling the Internet can be read by unauthorized people. While it is possible that someone could access the contents of your e-mail message, it is very unlikely. That's because of the huge volume of traffic traversing the Internet at any given time, the very short period of time it remains in transit, and the variety of routes each message can take to arrive at the same destination. It would be far easier to tap your telephone or fax machine. If you are concerned about possible security risks, encryption software can be used to encrypt confidential messages prior to sending them on the Internet as long as the recipient uses similar software, such as Verisigns' Personal Digital Certificate or PGP (Pretty Good Privacy) to decode the message.

Viruses

Computer viruses are most commonly received from downloading files on the Internet or through e-mails. The Internet is a source for thousands of viruses that could potentially damage your computer files or even your network. It is important to take the necessary precautions and make sure that some type of anti-virus program is installed on your network. In addition to anti-virus software, many firms are controlling Internet use through policies. Establishing an acceptable use policy will help prevent unnecessary use and abuse of the Internet and e-mail meaning that staff will remain productive and spend more time working and less time surfing. It may also limit the possibility of unauthorized access.

Unauthorized Access

Firms with dedicated Internet connections such as T1 or ISDN lines should be concerned about unauthorized access via the Internet. Not protecting your firm from unauthorized access can result in security breaches. Installation of "firewall" software controls who has access to your network. However, if your firm's Internet e-mail is configured so that e-mail is delivered directly to users, unauthorized access will be prevented and there will be no need to install a firewall.

Most problems with data encryption software and network sabotage come from within an organization. Implementing an Internet e-mail policy, using encryption software to protect your sensitive documents and taking the necessary steps to ensure your network is secure from outsiders will go a long way. By implementing an Internet e-mail policy that ensures that your internal network is protected, and perhaps by using encryption software to protect your most sensitive documents, you can realize the cost and productivity benefits of Internet e-mail.

WORK RELATED SEXUAL HARASSMENT - A NEW TORT?

By Stephen J. Berezowskyj, Lawyer with Singleton Urquhart Scott. *Reprinted with permission from "Letter of the Law" Vol. 11, No. 2, Spring 1999.*

The law of torts continues to expand and evolve in order to keep pace with changes in society. Further evidence of this evolution is the indication that Canadian courts appear to be on the verge of recognizing work-related sexual harassment as an independent tort.

Traditionally, the courts have held that, in jurisdictions with human rights legislation, the scheme provided under such legislation is the only remedy available to victims of sexual harassment in the workplace. Accordingly, in British Columbia, a victim of sexual harassment would be restricted to a remedy under the British Columbia Human Rights Act. Generally speaking, damages awarded by human rights tribunals are not as high as awards in civil actions. More recently, however, the courts appear willing to allow individuals to bring civil actions against their employers in relation to claims of sexual harassment.

In Chaychuk v. Best Cleaners & Contractors Ltd. (1995), the Court held that B.C. Human Rights legislation established a comprehensive scheme for dealing with sexual harassment, however, Justice Hood commented as follows:

"...(I)n this day and age sexual harassment should constitute a wrong or tort, for which the remedy is a common law action for damages. Sexual harassment is so prevalent in society today, and in so many forms, that justice demands that those that injure others by it must be made accountable in the case of any other civil wrong or tort."

Continued on page 29.

More recently in the decision in Lajoie v. Kelly, the Manitoba Queen's Bench held that sexual harassment is a distinct tort. Justice Smith concluded that the plaintiff was not restricted to making a sexual harassment complaint under the Manitoba Human Rights Code and commented:

"In my opinion in today's world and under the circumstances of this case, sexual harassment should constitute a wrong or tort. The remedy then should be damages."

Although sexual harassment may be a form of discrimination, it certainly has consequences beyond those related to discrimination. Allowing civil actions in respect of conduct that previously has been held to fall exclusively within the jurisdiction of human rights tribunals recognizes that, in certain circumstances, sexual harassment may be a matter of degradation causing severe injury to self-worth rather than merely a matter of distress or discomfort in the work environment, as was the traditional way of thinking about harassment in the workplace. Accordingly, the courts appear to be moving towards allowing victims of work-related sexual harassment to pursue a civil remedy.

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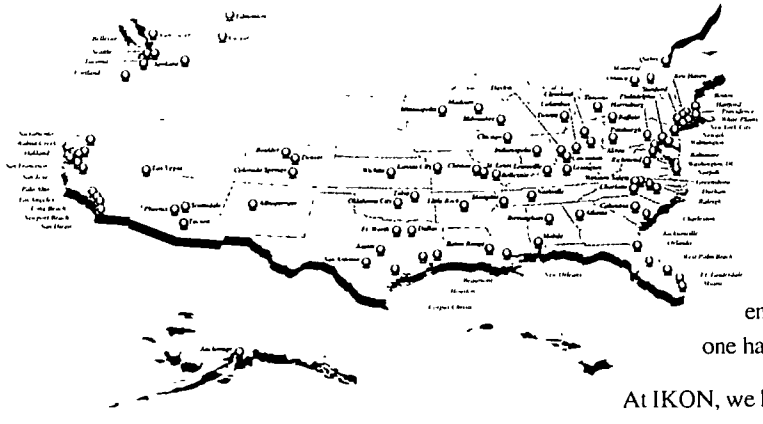

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