THE ASSISTANT

20th ANNIVERSARY

BC Association of Legal Assistants — *Issue II - May 1999, Volume 10*

INFANT SETTLEMENTS

By Sarah J. Watson, Solicitor for the Public Trustee, Services for Children Section

The settlement of a personal injury or Family Compensation Act claim involving an infant cannot be finalized without the review of the Public Trustee, regardless of the amount of the settlement. The authority for the Public Trustee's involvement is derived from Section 40 of the Infants Act, which outlines the different types of infant settlements, and the requirements for each.

Categories of Infant Settlements and Documentation Required

1. Where the proposed settlement is for an amount of *$50,000.00 or less*, excluding interest and costs, and *no court action has been commenced*, the guardian of the infant, with the consent of the Public Trustee, may enter into a guardian settlement agreement and release which binds the infant. The guardian must sign the settlement agreement in the presence of a witness, after which time it may be forwarded to the Public Trustee for signature. The amount of the settlement should be indicated, along with the amount of any legal fees to be deducted and the balance to be placed in trust with the Public Trustee until the infant attains the age of nineteen.

2. Where the settlement is for an amount of *$50,000 or less*, excluding interest and costs, and *a court action has been commenced*, the guardian ad litem of the infant, with the consent of the Public Trustee, may consent to an order awarding damages in favour of the infant. In such cases, the Public Trustee requires a Consent Order, signed by plaintiff and defence counsel, which outlines the terms of the settlement, the amount to be placed in trust with the Public Trustee and provides a space for the signature of the Public Trustee.

3. Where the proposed settlement is for an amount of *over $50,000.00*, excluding interest and costs, the guardian of the infant may make an agreement to settle the claim on receipt of approval from the Supreme Court. Court approval is required regardless of whether or not an action has been commenced. The Public Trustee provides his comments with respect to the merits of the settlement to the Court.

Continued on page 3.

INSIDE THIS ISSUE:

MEMBERSHIP UPDATE

By Thora Arnason

Once all membership renewal forms were tallied, the BCALA started fiscal 1999 with 131 members. Twenty-nine are new members who joined in 1999 and so it would appear that 41 "old" members have not renewed. We hope this is just an oversight and encourage those 41 to submit their renewal forms and membership fees as soon as possible.

The BCALA membership application form is a rather cumbersome document. We hope to redesign and streamline it this year. The new form will include lines for fax numbers and e-mail addresses and a section where a potential member may indicate whether she/he wishes to be listed in the B.C. Legal Telephone Directory. We'll keep you posted.

We are considering a "Members News & Notes" type of column in *The Assistant*. It could include such items as members' moves from one law firm to another or moves out-of-province, significant happenings affecting a member or members, notable achievements, etc. If you have any tidbits, write them down and mail them to the editor.

My personal welcome to Genevieve Wirth, who is our new Program Committee Chair director, replacing Connie Iverson, who sadly decided not run in 1999. Thanks Connie for all your hard work and dedication.

Welcome also to Shirin Drudian, who will share the duties of the Program Committee with Genevieve.

THE ASSISTANT

Address: P.O. Box 4127
Main Post Office
Vancouver, B.C. V6B 3Z6
Vice President/Editor: Ann Halkett
Telephone: (604) 689-7400 Fax: (604) 689-3444
E-mail: . . . . . *Halkett30@aol.com*

Committees/Directors
President/Public Relations:
Jasbir Bains 661-1701
E-mail: . . . . . *jbains@farris.com*
Secretary/Education:
Glenis Bryson 684-4777
Treasurer:
Gemma Hale. 733-2411
Membership:
Thora Arnason 631-3164
E-mail: . . . . . *tba@rdcounsel.com*
Programs:
Genevieve Wirth 643-7691
E-mail: . . . . . *genevieve_wirth@canacord.com*

Capilano College Student Representatives
Todd Chaster & Christine Uhrmann

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 July 23, 1999. 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.

The Practice Direction of William C.J.S.C., dated October 13, 1998, outlines the materials required in order to have a proposed settlement approved by desk order. These applications are not excluded from the operation of Rule 65 of the Supreme Court Rules. Briefly, the party must file a letter signed by the guardian ad litem or an affidavit sworn by the guardian ad litem confirming approval of the proposed settlement and the proposed fees to be charged. Affidavit material must be filed in support of the reasonableness of the proposed settlement, including experts' reports, estimates, correspondence, offers to settle and any other information that may be relevant to the granting of the approvals sought. An affidavit must also be filed in support of the reasonableness of the legal fees. Finally, the Public Trustee's comments must be attached.

Public Trustee Requirements

In order to approve a settlement or complete comments for the Court, the Public Trustee requires the details of the claim and the background of the settlement. Counsel for infant plaintiffs may find this process somewhat arduous, as it requires the extra step of making a submission to the Public Trustee's office. However, a complete initial submission will significantly cut the time and difficulty involved in obtaining approval and/or comments from the Public Trustee.

The Continuing Legal Education Society of British Columbia has published a recently updated version of the Public Trustee Handbook. This Handbook was updated in February of 1999 and sets out in detail how to make a submission to the Public Trustee. It also contains precedents of relevant documents, such as a Guardian Settlement Agreement and a Consent Order. What follows below is a brief discussion of the information discussed in detail in the Handbook.

The Public Trustee must be provided with the following:

1. a submission letter, with attached enclosures, such as medical/legal reports and hospital records;

2. the Public Trustee's review fees. The amount of the review fee required will depend upon the amount of the proposed settlement. The fees currently are;
   (a) $50.00, plus GST, for settlements of $1,500.00 and less;
   (b) $150.00, plus GST, for settlements of between $1,501.00 and $10,000.00;
   (c) $300.00, plus GST, for settlements of between $10,001.00 and $100,000.00; and
   (d) $500.00, plus GST, for settlements of over $100,001.00;
   (e) $200.00, plus GST, where the Public Trustee is asked to consent to a dismissal of the infant's claim.

3. if the proposed settlement is under $50,000.00, excluding interest and costs, and no action has been commenced, a signed guardian settlement agreement, or, where an action has been commenced, a consent dismissal order. Note that where the amount is over $50,000.00, the Public Trustee does not approve the settlement, but will provide written comments. In such cases, the signature of the Public Trustee is not required on any document.

The Submission Letter

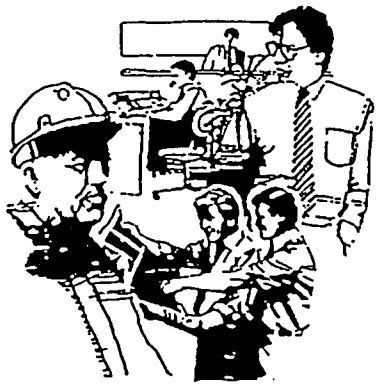
The submission letter is extremely important and the level of detail initially provided in this letter will greatly affect the amount of time required to review the proposed settlement. A useful format for the submission letter is outlined below.

1. A brief description of the accident giving rise to the claim should be provided.

2. If liability has been disputed, the liability issues must be thoroughly addressed in the letter and relevant documents such as witness statements and police reports should be attached. Sometimes discovery transcripts are useful and may be included with the relevant parts of the transcript highlighted. Alternatively, the outcome of the discovery

Continued on page 5.

OT CONSULTING/TREATMENT SERVICES LTD.
is a private practice firm specializing in providing objective assessment, community, occupational and ergonomic rehabilitation. We provide the following services:



MEDICAL/LEGAL ASSESSMENT/ANALYSIS

"Can Your Client Return to Work?"
"Future Costs – How Much Is Enough?"

Physical Capacity Evaluations
Cost of Future Care Analysis
Professional Critiques
Expert Witness for Court Appearance
Acquired Brain Injury Assessment

COMMUNITY REHABILITATION

"Ensure Safe Functioning in the Home and On-Going Support."

Immediate Care Needs
Early discharge Home Visit
Activities of Daily Living
Case Management
Physiotherapy Home/Community
Equipment Prescription

OCCUPATIONAL REHABILITATION

"Interdisciplinary Assessment, Treatment and Education."

Rehabilitation Assessment
Work Conditioning
Work Simulation/Work Hardening
Job-Site Analysis
Work Reintegration
Vocational Rehabilitation

ERGONOMIC REHABILTIATION

"Ensure a Safe Working Environment, Prevent Injury at the Workplace."

Risk Factor Identification & Analysis
Risk Control
Education and Training
Core Group "Train the Trainer"

OT CONSULTING/TREATMENT SERVICES LTD.
210 – 3438 Lougheed Hwy., Vancouver, B.C. V5M 2A4
Phone: (604) 215-3660 * Fax: (604) 215-3669
e-mail: consult@otconsulting.bc.ca

can be discussed in the submission letter. Engineer's reports should also be included in more complex cases where they have been obtained. The agreement reached between the parties with respect to liability must be outlined. For example, where there has been alleged contributory negligence, it must be indicated to what extent recovery has been reduced to reflect contributory negligence. If there is a significant risk that the infant could recover nothing if the matter proceeded to trial, then these risks must be outlined.

3. The injuries sustained and advice on the infant's current status must be described. This description must include the length of time the infant was disabled, or partially disabled. If the infant is still experiencing intermittent pain, but counsel has felt settlement is appropriate because the infant's condition has stabilized or there are other features of the case which suggest settlement is beneficial to the infant, these issues should be addressed.

   All medical legal reports must be attached and referenced in the submission letter. Clinical notes may be useful, but only if they are clear and contain sufficient detail.

   Certain injuries raise specific issues. For example, where the infant's injuries include some impact to the head, the possibility of a traumatic head injury must be ruled out. This can be done by completion of a Head Injury Symptom Form. Alternatively, counsel may simply outline the symptoms, indicating that the symptoms were canvassed with the infant and/or the parents. Where an injury has resulted in scarring, clear photographs depicting the scarring must be included.

4. Recent case law supporting both the liability assessment and the quantum assessment should be included and discussed.

5. Because the Public Trustee reviews the legal fees sought, copies of the contingency fee agreement, as well as any computerized time records or an estimate of the hours spent on the file, along with counsel's hourly rate should be provided. In approving legal fees, the Public Trustee uses the same factors as used by the courts. The relevant factors determining the appropriateness of the legal fees are the complexity and difficulty of the issues of liability, the risk assumed by counsel by exposing himself or herself to the possibility that there would be no payment for the work done and disbursements paid, the experience of counsel and the outcome achieved.

Family Compensation Act Claims

In presenting a submission with respect to these claims, counsel should focus on providing a detailed breakdown of the claim under the various heads of damage compensable under the Family Compensation Act, and provide the necessary information, such as actuarial reports, to substantiate the assessment of the settlement. Even where a global settlement has been reached, counsel should take the step to break down the global amount, as the different damage amounts are distributed in different ways. The heads of damage are:

1. *Loss of love, guidance and affection*

Typically, the Public Trustee holds this amount in trust for the infant until he attains the age of nineteen. This is generally a fixed amount.

2. *Loss of financial support*

These losses are calculated by an actuary for the period of the infant's dependency on his deceased parent. Relevant background information is the parent's employment history and opportunities, the financial stability of the family and the prior health of the deceased parent. The past loss of support (up to the date of approval of the settlement) may be paid out directly to the parent who replaced these losses. The future losses are typically held in trust, but are accessible during the infant's minority for his support and maintenance.

3. *Loss of household services*

Actuarial reports used in assessing this loss should be provided. Relevant information to include is the contribution of the deceased parent to household chores, maintenance and infant care. The loss under this head of damage is distributed in the same manner as the loss of support, outlined above.

4. *Loss of inheritance*

The courts will typically award a nominal amount, even where there is no evidence of a pattern of savings. Counsel should advise fully with respect to the rationale against proposing such an award. This loss is typically held by the Public Trustee in trust until the infant attains the age of nineteen.

5. *Prejudgment interest*

This interest is awarded on the loss of inheritance and the loss of love, guidance and affection. It is also typically held in trust until the infant attains the age of nineteen.

6. *Tax gross up and management fees*

Counsel should advise fully of the applicability of these awards and provide the significant information.

PRESIDENT'S COLUMN

By Jasbir Bains

It was approximately a year ago that our application for occupational title protection was rejected by the Registrar of Companies. We have since considered our next step and it is clear that in order to move, we have to confront the issue of certification/registration head on. The Law Society will not be doing anything to regulate legal assistants in the near future, so in order to get certification/registration moving, BCALA has to find a way to regulate/licence legal assistants. This means establishing some form of "PLTC" or other type of course. We welcome member suggestions in this regard.

To recap the year, the first meeting of the directors was held immediately after the AGM on April 15, 1998, for the sole purpose of appointing. The following officers/committee chairpersons were appointed:

Jasbir Bains	- President/Public Relations
Ann Halkett	- Vice President/Newsletter
Glenis Bryson	- Secretary
Gemma Hale	- Treasurer
Thora Arnason	- Membership
Connie Iverson	- Programs

The directors' meetings of May 6, 1998 and June 3, 1998 were short and dealt mainly with housekeeping matters.

On June 23, 1998 we held a lecture on Workplace Harassment with Gayle Forsythe and Karen Coulter as speakers.

No meetings were held in July or August. However, we kept busy compiling a list of members for publication in the B.C. Legal Telephone Directory. Since the list was compiled on short notice we included only those members for whom we had a work address. For the 1999 directory we will list voting members who have indicated on their renewal form that they wish to be included.

At the September 8, 1998 meeting Dom Bautista made a presentation on a proposed BCALA website. The Board was informed that BCALA was listed in the Directory of Associations of Canada.

On September 29, 1998 we held a seminar at Russell & DuMoulin. The topic was Amendments to the Supreme Court Rules and the speakers were David Shelly of Agentis Information Services and David Halkett of Tim Louis & Company. We had the highest attendance of the year at this seminar.

The October 7th meeting dealt with legal assistants and NAFTA. Bev Peterson informed the Board of the advantages of legal assistants being included under Chapter 16 of NAFTA. The Board struck a NAFTA committee and Bev Peterson was appointed chairperson.

A very short meeting was held on November 3, 1998 at which Thora Arnason informed the Board that there were 133 members.

On November 4, 1998 BCALA and CALA held a joint dinner meeting at the Crowne Plaza Hotel. The guest speaker, Toby Snelgrove, spoke about dealing with stressful situations and difficult people. Approximately 175 people attended.

On December 9, 1998 Bev Peterson presented a draft NAFTA plan which had been sent to legal assistant associations in Canada, the U.S. and Mexico. Thora Arnason informed the Board that there were 83 voting members, 7 associate members, 2 honorary members and 46 student members.

The first meeting of 1999 was held on January 6th. The main topic was again the future of the BCALA website.

The next meeting was on February 3, 1999. Bev Peterson updated the Board on NAFTA and a further proposal was received regarding the proposed BCALA website.

At the March 11, 1999 meeting another website proposal was put forward. Again Bev Peterson spoke

Continued on page 9.

on NAFTA and presented a draft survey for discussion.

On March 24, 1999 Sarah Watson of the Public Trustee's office spoke on infant settlements at Russell & DuMoulin.

The last meeting of the 1998/99 year was held on April 7th. Thora Arnason advised the Board that there were 122 members and Ann Halkett presented a draft paper on website construction.

The Board has committed itself to the development of a website by Agentis Information Services Inc. The address has been reserved and is *www.bcala.com*. We hope to have the site up and running as soon as practical.

On behalf of the directors I would like to thank Agentis, IKON and various other organizations who assisted BCALA in the past year. I would also like to thank Russell & DuMoulin and Farris Vaughan for the use of their facilities. Finally, I extend thanks to the BCALA directors who contribute countless volunteer hours.

SECRETARY'S REPORT

By Glenis Bryson

At the annual general meeting of the members of the BC Association of Legal Assistants held on April 14, 1999 the following people were elected as directors for the ensuing year:

Jasbir Bains
Glenis Bryson
Ann Halkett
Gemma Hale
Thora Arnason
Genevieve Wirth

The president delivered his report to the members and touched briefly on the highlights of the past year.

At the directors' meeting immediately following the 1999 AGM the following people were elected as officers:

Jasbir Bains	-	President
Glenis Bryson	-	Secretary
Ann Halkett	-	Vice President
Gemma Hale	-	Treasurer

and the following people were appointed as chairpersons for the various committees for the ensuing year:

Jasbir Bains	-	Public Relations
Glenis Bryson	-	Education
Thora Arnason	-	Membership
Ann Halkett	-	Newsletter
Genevieve Wirth	-	Programs

We invite all members to contact committee chairs to provide assistance in any area of interest for the upcoming year. We are working very hard on expanding our membership throughout British Columbia and would welcome help.

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

Land / New West Court	
Nina Andrews	21 years
Marian Bragg	18 years
Nellie Carniato	19 years
Valerie Clarke	11 years
Marsha Cromwell	22 years
Pauline Fairley	12 years
Peggy Forrester	19 years
Judith Hellem	23 years
Pamela Hunken	21 years
Bernice Husband	16 years
Bev Mallet	14 years
Sharon Phillips	17 years
Bette Stone	23 years
Helen Ternan	10 years
Cheryl Wong	12 years

Management / Support	
Wayne Crookes	30 years
Ruth Iwaschuk	17 years
Marie McDonnell	12 years
Shelley Porter	19 years
Vancouver	
Alison Hughes	11 years
Stuart Scharf	11 years
Robert Simms	10 years
Victoria	
Sharon Cann	10 years
Susan Goss	13 years
Paul Jacques-Jones	10 years
Avis King	10 years
Moira Millar	10 years
Sheila Mitchell	15 years

West Coast Title Search Ltd.

New Westminster - Vancouver - Victoria

(604) 659-8600 or 1-800-553-1936

NAFTA PROFESSIONAL STATUS UPDATE

By Bev Peterson

You may find yourself asking, "So what has my Association done for me lately?"

In addition to all the activities keeping members, directors and officers busy, the North American Free Trade Agreement ("NAFTA") Project is ongoing. Paralegal, legal assistant and law clerk associations are excited about what NAFTA's professional status could mean for the profession.

NAFTA
NAFTA is a reciprocal agreement between the United States, Mexico and Canada. One of its purposes is to allow entrants with a certain level of expertise ("professional status") mobility between the three countries.

NAFTA Law Accord
In June 1998, lawyers from Mexico, the United States and Canada signed an agreement in connection with NAFTA entitled, "Joint Recommendations and Model Rule on Foreign Legal Consultants and Related Aspects of the Cross-Border Delivery of Legal Services". If approved by the respective governments this agreement will allow lawyers to form partnerships in different jurisdictions and practice their domestic law in all three countries.

Without professional status under Chapter 16 of NAFTA paralegals will find it significantly more difficult to join counsel under these circumstances.

Globalization
NAFTA may be extended in the future to incorporate Britain and other countries. Cross-border mobility in terms of employment would take on a new meaning for Canadian paralegals who could work for Canadian lawyers in the U.S., Mexico and potentially around the globe in the future.

NAFTA'S Professional Status Criteria
1. Paralegals must demonstrate that there is consensus among American, Mexican and Canadian paralegals for professional status.
2. Typically a baccalaureate degree is required.
3. Equivalent alternatives include:
   (a) diplomas (U.S. and Canada) and three years of experience;
   (b) certificates (Mexico) and three years of experience;
   (c) professional designations such as a "CA" or perhaps "CP" for Chartered Paralegal;
   (d) licences where a baccalaureate degree is required;
   (e) appropriate professional experience.

Presently lawyers and specific notaries enjoy NAFTA's professional status. If paralegals obtain this status professional recognition would be on an international level.

Regulation
There is an ongoing initiative in Ontario to licence paralegals by the Fall of 1999. The Alberta Association of Legal Assistants has formed a committee for the purpose of looking into the regulation of its profession and is also planning to change titles.

American states such as New Jersey are also exploring regulation of the profession and it is therefore forseeable that B.C. will also address this professional issue.

Occupational Title Protection
Canadian NAFTA authorities have expressed concern at using the term "assistant" in the occupational title category as so many other industries in Canada and the U.S. use this term to refer to secretaries. Secretaries do not meet NAFTA's professional status requirements. BCALA and CALA are looking into changing titles to conform with NAFTA requirements.

NAFTA Surveys
We would like your feedback and ask that you complete the enclosed NAFTA survey. Keep in mind that NAFTA's professional status could potentially impact provincial regulation issues because of its international status. If you have any questions please contact me at *bjp@rdcounsel.com* or (604) 631-4801.

THE VALUE OF DESIGN

By Kenneth Berry, Internet Specialist

Website design is a formalized field of study. Fortune 500 companies spend millions building and maintaining their corporate identities. Why should your identity be different on the Web? Why do so many sites look like they were designed by engineering, MIS departments, or high school students? The more you do it, the more you learn the basic principles, or foundations, on which to build an appropriate site. The design process, as I hope to show, is one of taking clear steps toward well-defined goals.

A successful site sits at the intersection of four strategic goals and four tactical values. Although many sites reflect some of these values, a winning site has all eight in measured proportion.

Strategic goals are important in the long run. Branding not only identifies your company, but it lets visitors know they're on your site. Impact and news value gives people something to talk about. If your site always has something fresh and newsworthy, you will constantly attract new visitors. When sites look alike, it's hard to tell where you are.

Audience and community values are a reflection of a site's ability to satisfy the target audience. Competitive values are features that keep you ahead of the competition. If your competition counters with something more attractive to your customer group, you'll have to fire back, escalating the feature wars.

Tactical values are immediately apparent. Design value means that a designer with a sense of design and concern for the visitor has translated the goals into a visual experience. Content value means that editors and contributors have prepared content for display on the Web. Production value means that the person doing the HTML (hypertext markup language) and graphics work knows and understands the principles behind third-generation site design. Utility value means people can do things on your site (buy,

Continued on page 15.

sell, fill out forms) – that it responds quickly, solves problems, and that all the links work.

I can't guarantee that by spending five or even fifty thousand dollars on a website you will get a profitable return on the investment. The two basic reasons to build a website are to save money, and to make money, but if the idea for a product or service is poor, any amount spent on a website will be money thrown away.

How can you use the Web to save money? Many companies have reduced product-support costs significantly by putting frequently asked questions on their website. Delivery services let people track packages themselves. Annual reports are printed in smaller quantities. Catalogues are now available with new information instantly.

A fellow developer once told me "It's easy for you to say how we should build these websites to serve people, but if we ask for the money, we'll get turned down. We don't have the money to build fancy websites". I replied: "How much did you spend on photocopies last year? How much on envelopes and postage? How much on long-distance phone calls? The money you need to build websites is being spent all around you".

Every phone centre in the country is ripe for at least partial migration to the Web. Every mailroom should think about shipping bits down the wire rather than paper in envelopes. Every time you fill out a form, envision someone on the other end, keying the information into a database. Why not enter the information directly into a database yourself? Direct capture of information and feedback is one of the major advantages of the Web. A fully functional website may be a complicated project, but it will pay off.

Ease-of-use is part of good design and certainly an important factor in any user oriented site. If customers can't find answers to frequently asked questions or any other type of information they are looking for, they will call instead. As websites become more functional, they blur the lines between documents and applications. Information designers and user-interface designers can add a lot to the quality and usefulness of a site, directly affecting the financial bottom line.

Whether you're selling books, concert tickets, investment advice, legal advice, or software, the Web can be a profitable method of distribution and an effective method of promotion. Retailers using catalogues are doing good business. Specialty malls (like www.onsale.com) attract lots of customers.

The Web offers convenience and low price through disintermediation-the removal of middlemen. Travel agencies are already on the Web. Writers and designers work long-distance for clients they never meet. Banks, brokers, and government agencies are meeting customer needs online. It wouldn't surprise me if one day we were even doing legal discoveries or court proceedings online. This is the real world of the Web. The money isn't only in web-industry tools and banner advertising, but in replacing expensive procedures. The opportunities are limited only by our imaginations.

Design is one of the table legs that hold up a good site. As the Web matures, design becomes a hotter topic at site-planning meetings. Design is more important when you have competition. If you have the only online car dealership on the Web, you might get away with a first-generation site. If your competitors start offering the same products and same service at similar prices, you'll have to differentiate. Through design, functionality, and content. All three work together to build a brand, a community, and a buzz about your site.

There isn't a one-to-one relationship between quality and success. With large development companies charging millions of dollars for sites, and with thousands of people willing to make sites for $100 per page, it's hard to know where the value is. Are the expensive sites indistinguishable from the cheap sites?

It's easy to confuse a beautiful site with an appropriate site. I'd love to say that if you make a beautiful site, people will flock to it. Unfortunately, this isn't true either. While design is a differentiator, so is functionality. If another site lets people do more, you might be stuck with a pretty site that sits there

gathering cyberdust.

If the audience loves and uses the site, it's a success. Serve your core audience and make them ecstatic users. Make sites deep before making them wide. In most cases, design will play a role, but it may just be a supporting one. Always look to improve on a success!

Just because your first-generation site is doing well doesn't mean a redesign won't be worth the effort. For starters, any popular site will attract competition. Second, a number of people will be frustrated by some aspect of your site, especially if it's grown considerably. Testing the existing site against design alternatives with real users will probably uncover surprising weaknesses in the current design.

How much does a website cost? From my personal experience, small 20-page sites have a median cost of $2500 - $10,000. However, a medium to large-sized site, with password-protected directories and a search engine, and all the new technologies, can cost much throughout the project and help you with ideas and basis. A good developer will typically work with you more. Website developers typically bill on an hourly cost estimates so you know all your options and what the cost will be in advance.

Designing a website will cost more than designing a brochure, but then you must print them. That's when brochures get expensive, not to mention difficult to change. Don't make the mistake of using brochure design as your guide to setting the budget for a web project.

There is value in design, and there is value in process. Communication, strategy, and just being there day-to-day don't go onto a website, but they make the difference between a successful and a non-successful presence on the web.

For information on developing a web presence or making changes to your current website contact Kenneth Berry of Agentis Information Services at: (604) 606-2312 or toll-free within British Columbia at (800) 661-1811.

BILL 47 - 1998, STRATA PROPERTY ACT

Reprinted with permission from "The Register" March 1999 (No. 34/99) - a publication of West Coast Title Search Ltd.

The Condominium Act is being replaced by the Strata Property Act. The Strata Property Act had its third reading on July 28, 1998 and received Royal Assent on July 30, 1998, but has not yet been put into effect. The Strata Property Act may be implemented as early as July, 1999, or may take until the end of 1999 or later to come into effect. The Strata Property Act will have 17 parts and 322 sections, up from 6 parts and 133 sections in the Condominium Act.

A few of the expected changes are as follows:

- Part 11, ss.190-198 deals with Sections. A strata corporation may create "sections" to represent the different interests of owners of residential lots, owners of different types of residential strata lots, or owners of non-residential strata lots whose uses are significantly different. When created, a section has the same powers and duties as the strata corporation concerning matters relating solely to the section.

- Part 14, s.241 deals with a British Columbia land survey or certifying that the building has not been previously occupied. This endorsement is now good for 180 days (previously 90 days).

- Part 14, s.242 deals with an approving authority approving a conversion of previously occupied buildings. This endorsement is now good for only 180 days (previously the date did not expire).

- Part 14, s.250 deals with the Strata Plan General Index (SPGI). The SPGI will now contain the following:

  (a) the Schedule of Unit Entitlement,
  (b) the Schedule of Voting Rights, if any,
  (c) the mailing address, and any fax number, of the strata corporation,
  (d) any bylaws that differ in any respect from the standard bylaws,
  (e) any amendments to the bylaws,
  (f) any amalgamation agreements under s.269,
  (g) any order of the registrar under s.275 or of the Supreme Court under s.279,
  (h) any resolutions and accompanying documents that are required to be filed in the Land Title Office under this Act or the regulations, and
  (i) any other document relating to the strata corporation that is to be filed in the Land Title Office and that is not noted or endorsed elsewhere in the records of the Land Title Office.

A copy of the Strata Property Act may be obtained from Crown Publications in Victoria at (250) 386-4636 or you can access the information via the B.C. government website: *http://www.legis.gov.bc.ca/bills/3rd_read/gov47-3.htm*

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 March, 1999 "Registrars' Newsletter".

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

Adoption Act, Rule 10(2)

Q: How is an adoption proceeding commenced?

A: Adoption applications may be commenced by praecipe or petition. The applications are Supreme Court adoption proceedings filed in adoption file folders and kept separate from regular Supreme Court files. A praecipe is permitted when consents are filed and/or applications to dispense with notice or consent pursuant to ss. 11 or 17 are made. Otherwise, a petition is required. Where the non-disclosure provisions apply (i.e. the identity of the adoptive parents is not known to a birth parent) or where you cannot serve the person entitled to notice of the application(s), an application to dispense with consent or notice must be made by way of a separate petition in a regular (non-adoption) Supreme Court file. These separate proceedings are commenced in the names of "John Doe/Jane Doe".

Rule 4(2)

Q: Can a document prepared for use in court utilize both sides of the paper?

A: Yes, Rule 4(2) does not preclude using both sides: "...every document purported for use in the court shall be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper...".

Rule 18A(1)(c)

Q: What constitutes a contested family law proceeding and enables a party to proceed for a divorce and/or corollary relief under Rule 18A?

A: A matter becomes a contested family law proceeding once a statement of defence has been filed.

Rule 41(16)

Q: What form of order should be used in a desk order application? Can desk orders be rejected because of a policy that the reference to Justice, Master or Registrar be left incomplete and in its place should be "Before a _____".

A: Registries should accept Form 56A and should not be adapting this form to a style they prefer. One of the reasons for these forms is to promote consistency throughout the Province.

Rule 57(29) & Rule 11

Q: Has there been a change in the notice requirement for an appointment before the Registrar under the Legal Profession Act or for an assessment of costs?

A: Yes. Rule 57(29) was amended effective December 31, 1998. Form 24, the Appointment before the Registrar, together with any attachments must now be served personally at least five (5) days before the date of the appointment.

Rule 11 "Service and Delivery of Documents" applies:

1. If there is an address for delivery given by a party of record, the appointment can be delivered to that address (Rule 11(6)).
2. If there is no address for service (as in all L.P.A. applications), the appointment must be served, either personally (under Rule 11(2)) or substitutionally, under Rule 12(4) or (7).

Thus, "serve" includes "deliver" in some instances.

Rule 60

Q: Should registries accept a statement of claim in a family law proceeding if the text of a paragraph appears but is not completed, struck out, or marked "N/A"?

A: Parties filing statements of claim in family law proceedings must either strike out or mark "N/A" those paragraphs which do not apply and the paragraph may be omitted and only the number appear.

Rule 60

Q: Form 136 (order in a family law proceeding) is headed, "Before The Honourable..." and the Family Law Practice Direction sets out orders as "Before a Judge of the Court". Which is the acceptable form of order?

A: In desk order applications, the preferable phrase is "Before a Judge of the Court". If the order is spoken to in court it should read "Before The Honourable Mr./Madam Justice...".

Rule 60(15)

Q: Should a Registrar grant leave to file a writ of summons, family law proceeding, without the marriage certificate when the reason given is: "it has been ordered and will be filed upon receipt"?

A: No, there must be a reason for the Registrar to consider, i.e., defendant leaving town, application for a restraining order, maintenance required, etc.

Continued on page 21.

Rule 60(20)

Q: What is required when a photograph is used as identification in the service of a writ of summons in a family law proceeding?

A: The plaintiff must set out in an affidavit (Form 132) that the picture attached to the affidavit of service is a true likeness of the defendant. The courts are rejecting applications that do not have this link to the identification of the defendant.

Appendix C, Schedule 1, Items 14 & 19

Q: Must a party pay fees for the court room or hearing room if they are represented on a Legal Aid basis?

A: Yes, the party must pay the fee to the Minister of Finance and then submit the receipt to Legal Aid for reimbursement.

Registry Practice, Rule 19(25)

Q: What is the role of the registry concerning the contents of documents which are submitted for filing?

A: Documents submitted for filing should be filed. The role of the registry is to receive documents and maintain a file of proceedings. The contents of documents are not an issue for registry staff. Contents of documents may be an issue for the Registrar when called upon to issue process, such as a garnishing order or a writ of execution. A Registrar also has an overriding jurisdiction under Rule 19(25) after a document has been filed to refer certain documents to the court for a ruling. That discretion is only to be exercised where a Registrar considers the contents of a document could be found by the court to:

(a) disclose no reasonable claim or defence;
(b) be unnecessary, scandalous, frivolous or vexatious;
(c) prejudicial, embarrass or delay the fair trial or hearing of the proceeding, or
(d) be an abuse of the process of the court.

LAW PRIMER

Case Digests

Ed. Note: The following Case Notes are reprinted from the Civil Law Digest with the permission of the Continuing Legal Education Society. For subscription information telephone: 893-2162 or toll free (800) 663-0438.

INSURANCE - Actions - Duty to defend - Insurer having duty to defend action for damages for assaults allegedly committed by insured company's employees - Policy exclusion in respect of bodily injury "expected or intended from the standpoint of the insured" not applying to company itself.

The plaintiff taxi cab company was sued in two actions brought by individuals who claimed to have been assaulted by its drivers in the course of their employment. The plaintiff called upon the defendant, its insurer, to defend the claims. The defendant refused, relying primarily on an exclusion in the parties' policy relating to bodily injury which was "expected or intended from the standpoint of the insured". A chambers judge ruled in the defendant's favour on that issue on a special case under R.33. The plaintiff appealed. **Held**, appeal allowed. The question to be asked was whether the bodily injuries suffered by the victims were expected or intended from the standpoint of the plaintiff company. There was no basis in the pleadings or in fact for such a conclusion. Although the defendant argued that the conduct of the cab drivers had to be attributed to the plaintiff by way of vicarious liability, such that their acts would have been "expected or intended" by the plaintiff, that argument misconceived the nature of vicarious liability. It is not the act of the wrongdoer which is attributed to the employer, nor is it the fault or blame of the wrongdoer which is attributed. The correct view is that it is only the liability itself which is attributed from the wrongdoing employee to the non-blameworthy employer. Accordingly the exclusion in this case did not apply, because the bodily injury suffered by the victims could not be regarded as bodily injury "expected or intended" from the standpoint of the plaintiff. The defendant was obligated to defend the claims.

Bluebird Cabs Ltd. v. Guardian Insurance Co. of Canada, C.A., Lambert, Hinds & Huddart JJ.A., Doc. Victoria V02967, March 30, 1999, 12 pp. [CLE No. 99-15170] // Appeal from judgment of Drake J., [1997] Civ. L.D. 133; [1997] C.D.C. 8172 (CLE) (B.C.S.C.) // Philip J. Penner, for appellant; Dean P.J. Lawton, for respondent.

PRACTICE - Affidavits - Court observing impropriety of having prospective witness provide statement under oath before trial - Court admitting affidavit of deceased deponent in any event, with reliability to be determined at trial.

The plaintiff claimed possessory rights with respect to land within reserves belonging to the defendant Indian band. His lawyer learned that J. was a potential witness. J. said he had been a band councillor for 34 years and he recalled the band passing resolutions in 1965 establishing the right claimed by the plaintiff. The plaintiff's lawyer obtained an affidavit from J. to that effect. He then asked counsel for the defendants to agree at an early date to have J.'s evidence taken by way of video deposition, saying that there was some urgency because J. was 89 years old. Defence counsel did not respond to the request. J. died before trial and the defendants objected to the admission of his affidavit. **Held**, affidavit admissible. It is improper to have a prospective witness provide a statement under oath before trial if there is no intention to use the statement as primary evidence. This is because of the primary overriding interest of the system, and society, in having accurate and truthful evidence at trial. Binding a witness to a statement made before trial by having it sworn compromises this interest by setting up serious consequences for a witness who wishes to testify truthfully, when the truth is in conflict with the statement. It has long been held that an affidavit sworn by a deponent who has died can be admissible at trial. The court must balance the prejudice to the party against whom the affidavit is tendered against the prejudice to the party seeking to tender the affidavit if relevant evidence is irretrievably lost due to the death of a witness. It was relevant here that the

Continued on page 25.

defendants were given an opportunity to cross-examine J. Three months went by between the time they were asked about a video deposition and the time of J.'s death. Had counsel agreed promptly, the examination could have taken place. Had there been a prompt refusal, counsel for the plaintiff could have applied for an order that the examination take place. In any event, the lack of opportunity to cross-examine was not an absolute bar to admissibility. Although J.'s affidavit was perhaps true, it was controversial and would be contradicted by other witnesses. Nevertheless, it would be admitted, even if, by the end of the trial, the court would not be able to place any reliance on it.

Pierre v. Stager, S.C., Fraser J., Doc. Vancouver C956117, January 6, 1999, 20 pp. [CLE No. 99-14430] // Stanley H. Ashcroft, for plaintiff; Stan Guenther, for several defendants; Paul J. Pearlman, Q.C., for defendant British Columbia. // Principal case authorities: Harvey v. Mount (1845), 14 L.J. Ch. 233 - considered; Law v. Madden (1909), 11 W.L.R. 6 (Man. K.B.) - considered; Leclerc v. St. Louis (1984), 47 O.R. (2d) 584 (Div. Ct.) - considered; Northern Navigation Co. v. Long (1905), 11 O.L.R. 230 (Ont. H.C.) - considered; Paquin v. Gainers Inc., [1990] 2 W.W.R. 378 (Alta. C.A.) - considered; R. v. Smith (1992), 75 C.C.C. (3d) 257 (S.C.C.) - considered; Welland Election Case (The) (1892), 20 S.C.R. 376 - considered.

PRACTICE - Fast track litigation - Court allowing plaintiff's application for order that personal injury action proceed under R.66 fast track litigation pilot project - Circumstances making it appropriate to dispense with time limit set out in R.66(7)(b).

The plaintiff sued for damages for personal injuries arising out of two motor vehicle accidents. Liability was not in issue and it appeared that only one witness, the plaintiff herself, would be called at trial. The statement of claim was delivered by October 19, 1998, and on November 9 the plaintiff's lawyer wrote to the defendants seeking consent to have the action dealt with under R.66, the fast track litigation pilot project. The two-month window established by R.66(7)(b) for bringing an application for non-consensual fast track litigation closed on or about December 19. On January 13, 1999 defence counsel, who wished a jury trial, refused consent. The plaintiff applied for an order that the action proceed under R.66. **Held**, application allowed. The inquiry as to whether a case is procedurally suitable for R.66 will focus mainly on whether the trial can reasonably be expected to take no more than two days. However, it should also deal with whether the Rule's restrictions on the normal discovery process, the tight trial agenda and any other deviations from the normal course of litigation are likely to cause hardship to any party. The question of a jury trial will fit within this "any other" category. Where, as here, there is no reason why a jury trial is particularly appropriate or inappropriate, the option which will come to trial earlier, take less time in court and cost less to the litigants and the system must prevail. Here, the action was in all respects suitable for R.66. The fact that the application was made late was satisfactorily explained by the fact that the plaintiff's lawyer tried to have the matter dealt with under R.66 by cooperation between counsel. The defendants could not secure an advantage from their silence, when a response to counsel for the plaintiff was called for. It was therefore appropriate to dispense with the time limit for filing set out in R.66(7)(b).

Ram v. Pointner, S.C., Master Bolton, Doc. Vancouver B983778, March 19, 1999, 11 pp. [CLE No. 99-15137] // S. Laudadio, for plaintiff; R.L. Buckler, for defendants. // Case authority: Elyk v. Doe, [1996] Civ. L.D. 172; [1996] P. Inj. L.D. 58; [1996] C.D.C. 11075 (CLE) (B.C.S.C.) - considered.

PERSONAL, RESTRICTIVE AND SECTION 219 COVENANTS: A BRIEF HISTORY

By Marie Potvin, Lawyer with Lidstone, Young, Anderson. Reprinted with permission from "Lidstone, Young, Anderson Newsletter" Vol. 10, No. 1, February 1999.

Over the last few years the Land Title Office has taken a harder line in reviewing and assessing the compliance of s.219 covenants with their authorizing statute, s.219 of the Land Title Act, for the purposes of registration. Because the s.219 covenant is a statutory creation, its content must comply strictly with its authorizing statute. Often, the rejection of a s.219 covenant by the Land Title Office is based primarily on form, as opposed to content, in that the language of the covenant does not clearly reflect the authorizing language contained in s.219. In order to properly draft a s.219 covenant, it is helpful to have an understanding of the history of covenants, restrictive covenants, and the scope of s.219 of the Land Title Act.

A covenant is nothing more than a binding written promise by which one person agrees with another to do something, or refrain from doing something. The law of covenants developed before and independent of the law of contract, and for a long time fulfilled many of the functions now discharged by the law of contract. Although covenants need not necessarily relate to land, often they do concern the use of land.

At common law, the benefit of a covenant concerning land would run with title to the land benefitting by performance of the covenant, but the burden of the covenant would not run with title to the land burdened by the covenant. In other words, at common law a purchaser of land benefitted by a covenant could enforce the terms of that covenant where the covenant concerned the land, while the purchaser of land burdened by a covenant was not bound to comply with the covenant. However, the rules that apply in British Columbia today are the equitable rules governing covenants, which permit both the burden and the benefit of a restrictive - but not a positive - covenant to run with title to land. So long as a covenant is restrictive or negative in nature, it can be enforced against the successor in title to the land which is burdened by the covenant. As at common law, if a covenant is positive in nature, its benefit runs with the land benefitted, but its burden does not run with the land burdened.

In order for the burden of a restrictive covenant to run with title to the burdened land, the covenant must "touch and concern" the land benefitted by it, must reflect an intention to bind the burdened land and run with it, and the covenantee (who benefits from the covenant) must be the owner of the same land which is benefitted by the covenant. This latter rule is often described as the need for a dominant tenement - similar to an easement situation - which requires another parcel of land lying within a reasonable distance to somehow benefit from the covenant.

Because of the requirements for a dominant tenement and for the covenant to be negative in order to run with title, the use of restrictive covenants is seriously limited. It is for this reason that the Land Title Act was amended a number of years ago to create a statutory hook - the s.219 covenant - which facilitates land-related actions of government and other persons. Section 219 of the Land Title Act permits a negative or positive covenant to be registered against title to land in circumstances where the person benefitting from the covenant does not own a dominant tenement. As is the case with statutory rights of way, s.219 covenants can only be granted to certain qualified holders who are, generally speaking, public authorities or persons designated by the Minister of Environment, Lands and Parks. Fortunately, municipalities are included within the specified group of grantees and therefore may benefit from the s.219 provisions.

Because s.219 covenants are a statutory creation, covenants granted pursuant to s.219 must fall strictly within the scope of that section. Section 219(2) permits statutory covenants to fall within any one or more of five defined classes, being covenants respecting the use of land or buildings, covenants as to building on land, covenants regarding subdivision of land, covenants prohibiting the separate sale of more than one parcel described in the covenant, and

conservation covenants which provide that land or a specified amenity (which is defined in s.219(5)) must be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state, in accordance with the covenant and to the extent provided in the covenant.

Once a covenant is registered, s.219(7) provides that the covenant is binding on the covenantor and the covenantor's successors in title, even where the instrument or other disposition has not been signed by the covenantee.

It is not uncommon to come across covenants which do not comply with s.219, in that they do not fall within any one of the five classes set out in s.219. Further, parties often include, in addition to valid covenants under s.219, matters which do not relate to one of these subjects, such as a covenant securing the payment of money or requiring some ongoing obligation that is not otherwise connected to one of the permitted subject areas. Although the Land Title Office may accept such a document for registration, s.219(10) provides that the registration of a covenant under s.219 is not a determination by the Registrar of its enforceability. Consequently, it is possible that a future owner could successfully challenge the validity of a covenant or a portion of the covenant on the basis that it is not in relation to one of the five subject matters.

Some typical uses of s.219 covenants by local governments include covenants relating to building on land, such as to require geotechnical reports, or to address siting issues, to reserve land for highway purposes, to define areas for tree preservation, to secure subdivision servicing, or to further restrict the use of land beyond that of a zoning bylaw.

As with any contract, s.219 covenants must be drafted precisely, as well as within the parameters of s.219. Because covenants run with the land and bind future owners, it is perhaps even more important to be clear and succinct so that future owners know exactly what obligations are imposed on them. One of the most important things a drafter can do when drafting a s.219 covenant is to read s.219 before beginning and then to read it again when reviewing the final draft. For ease of registration, it is best to include, as the first section of the covenant, the negative or positive obligation in the same language as s.219 itself. For example, "No person shall build upon or develop the land except in accordance with the following provisions..." or "the land shall, in perpetuity, be used only for the following purposes...". Setting up the covenant in this way helps to ensure that it at all times falls within s.219, and keeps the drafter focused on framing the obligations or restrictions within s.219 language.

Finally, it is essential to conduct a final review of the covenant, to make sure it all fits together and achieves the desired purposes. It is not uncommon to see covenants that are internally inconsistent, or that have gaps which defeat the purpose of the covenant.

TRAVEL BLUNDERS

Internet Extract.

The following are actual stories provided by travel agents:

I had someone ask for an aisle seat so that their hair wouldn't get messed up by being near the window.

I got a call from a woman who wanted to go to Capetown. I started to explain the length of the flight and the passport information then she interrupted me with, "I'm not trying to make you look stupid, but Capetown is in Massachusetts". Without trying to make her look like the stupid one, I calmly explained, "Capecod is in Massachusetts, Capetown is in Africa". Her response...click.

I got a call from a man who asked, "Is it possible to see England from Canada?" I said, "No". He said, "But they look so close on the map".

Another man called and asked if he could rent a car in Dallas. When I pulled up the reservation, I noticed he had a one-hour layover in Dallas. When I asked him why he wanted to rent a car, he said, "I heard Dallas was a big airport, and I need a car to drive between the gates to save time".

A nice lady just called. She needed to know how it was possible that her flight from Detroit left at 8:20 a.m. and got into Chicago at 8:33 a.m. I tried to explain that Michigan was an hour ahead of Illinois, but she could not understand the concept of time zones. Finally, I told her the plane went very fast, and she bought that!

A client called inquiring about a package to Hawaii. After going over all the cost information, she asked, "Would it be cheaper to fly to California and then take the train to Hawaii?"

I just got off the phone with a man who asked, "How do I know which plane to get on?" I asked him what exactly he meant, he replied, "I was told my flight number is 823, but none of the dam planes have numbers on them".

A woman called and said, "I need to fly to Pepsi-cola on one of those computer planes". I asked if she meant to fly to Pensacola on a commuter plane. She said, "Yeah, whatever".

A business man called and had a question about the documents he needed in order to fly to China. After a lengthy discussion about passports, I reminded him he needed a visa. "Oh no I don't, I've been to China many times and never had to have one of those". I double checked and sure enough, his stay required a visa. When I told him this he said, "Look I've been to China four times and every time they have accepted my American Express".

A woman called to make reservations, "I want to go from Chicago to Hippopotamus, New York". The agent was at a loss for words. Finally, the agent: "Are you sure that's the name of the town?" "Yes, what flights do you have?" replied the customer. After some searching, the agent came back with, "I'm sorry, ma'am, I've looked up every airport code in the country and can't find a Hippopotamus anywhere". The customer retorted, "Oh don't be silly. Everyone knows where it is. Check your map!" The agent scoured a map of the state of New York and finally offered, "You don't mean Buffalo, do you?" "That's it! I knew it was a big animal!"

SERVERS OF ALCOHOL BEWARE

By H. Scott MacDonald, Lawyer with Richards Buell Sutton. Reprinted with permission from "RBS Briefs" Summer 1998.

Many people know that hotels, bars and restaurants (commercial hosts) can be held responsible for serving alcohol to people who become intoxicated, when that intoxication leads to death or injury. What many people do not know, however, is that employees or home owners can also be held responsible to the injured party.

Commercial Hosts

In British Columbia, the Liquor Control and

Licensing Act prohibits the selling or giving of liquor to an intoxicated person. It also prohibits any licensed establishment from permitting a person to become intoxicated or from having intoxicated people on the premises. If you are in the business of selling and serving alcohol, it is important to train your staff to look for signs of intoxication and to keep track of people who may be drinking too much. It is much easier to keep track of how much a customer has been drinking if only one waiter serves a particular table. A commercial host exposes itself to liability when it has no rules or policy for its staff and when it simply continues to serve alcohol as long as the customer keeps paying for it.

In Stewart v. Pettie, a 1995 decision, the Supreme Court of Canada suggests that commercial hosts will not be found responsible if all they do is allow someone to drink until he or she becomes drunk. Before a Court should impose liability on a commercial host, there should be a foreseeable risk of harm. In the Stewart decision, the bar was not found to be responsible because the drunken customer was accompanied by a sober person and the bar was not obliged to assume that the drunken customer would be driving. The Court's reasoning suggests that if the bar had known that the drunken customer was going to drive, and took no steps to try to prevent it, then liability would have been triggered.

Employers

Most employers are not in the business of serving alcohol to their employees. In a recent British Columbia decision, however, Nike, the sporting goods employer, was held responsible for serving alcohol to employees when one of its employees caused a car accident. Nike was held responsible because one of its supervisors had bought beer for its employees at a trade show, prompting a drinking contest. After drinking at work, one 19 year old employee continued his drinking at a local bar. When that employee left the bar he became involved in a car accident which left the plaintiff as a paraplegic. The employer was sued and found responsible for 75% of a $2 million damage award. The bar was not sued. The Judge found that there was even a higher duty placed on an employer in dealing with its employees, than is placed on a bar in dealing with its customers.

Home Owners

Although Canadian courts have not yet imposed liability on home owners for serving too many drinks to their party guests, it is probably just a matter of time. A social host is supposed to monitor the alcohol intake of his or her guests to make sure that a drunken guest does not get behind the wheel of a car when he or she leaves the party. Many lawsuits have been started against social hosts for serving too much alcohol in their homes. While most of those cases have been dismissed or quietly settled, there is no legal reason why home owners cannot be held accountable if there is a foreseeable risk of harm.

There are many American cases which have held social hosts responsible for their guests' injuries, or for injuries caused by one of their guests, when that guest has been allowed to drink too much. Drinking and driving is such a serious public policy issue that these high American standards are likely to soon be extended to Canadian home owners. If a social host knows that a drunken guest intends to drive, and does nothing to prevent that guest from driving then that home owner may be held accountable because there is a foreseeable risk of harm.

Warning

While the mere act of serving alcohol is probably not enough to attract liability, how far must that server of alcohol go to escape liability? Should the courts distinguish between people who make a profit out of serving liquor and people who simply serve liquor to friends? Can a server of liquor escape responsibility by simply cautioning a drunk person not to drive or is it necessary to take steps to try to prevent that person from driving?

These are all questions which have not yet been answered by Canadian courts with certainty. Until the issues are clarified, every person who serves liquor must recognize the need to take action, and not simply stand idly by in the hope that the intoxicated person makes the right decision by not drinking and driving.

IKON DOCUMENT SERVICES

YOUR LEGAL DOCUMENT PRODUCTION SPECIALIST

TAKE THE IKON CHALLENGE

We believe that some important questions need to be asked when a supplier is chosen for the critical task of providing you with copies of your clients' sensitive legal documents.
If your not using IKON, you do not have the following questions answered by the service you have chosen:

Legal professionals now have just one name to remember for a full range of document management needs - IKON Legal Document Services. As the largest network of legal document facilities in North America, IKON has access to the vast resources necessary to provide a new level of service. Call us today to learn how we can give you the competitive edge you need to win and win big.

- What specific security measures are in place to ensure that client documents remain confidential?
- What screening procedures do employees and management undergo to join the company?
- What specific procedures are in place to ensure that client documents do not get mixed with other documents in the facility?
- How are waste copies disposed of?
- What specific quality control systems are in place to ensure that EVERY project has been copied and assembled properly?
- What is done to prevent misunderstandings and missed deadlines?
- How do client documents get to and from the firm?
- What hours do they operate?
- Is legal copying a core competency or merely an add-on to their business?
- What if some documents require blueprinting, or colour copying as well as black & white copying?

For the answers to these questions and for more information about **IKON LEGAL DOCUMENT SERVICES**, call us at **646-6728** or **646-6729** 24 hours a day, 7 days a week.

IKON is the best. Let us prove it!

IKON Office Solutions™

Document Services