

# THE ASSISTANT



## 1998 SALARY SURVEY

By Ann Halkett, Vice President/Editor

I would like to thank everyone who completed a salary survey. Altogether, 44 out of 75 people responded which was up from last year's 30. Again the results were quite varied and the majority of people who responded worked in litigation. For this reason I have split the salary tables into "litigation" and "other".

You will note that salary is not dependent upon whether a legal assistant has a certificate or diploma, although a law degree does seem to make a difference. You will also note that the size of the firm does not make a difference. As for salaries, in general there did not seem to be a consistent wage paid for years of experience. As for education, almost everyone had a legal assistant certificate or diploma and a few also had bachelors degrees. Having a certificate or diploma did not make a difference in wages earned. Therefore, rather than taking averages in terms of salaries paid I listed all the information members people provided. I also did not report the average bonus paid, as these ranged from nothing, to several hundred dollars, to a percentage. Finally, keep in mind that some questions were left blank, or incorrectly answered.

	<u>1998</u>	<u>1997</u>
Ave. Hourly Billing Rate:	\$76.63	\$74.13
Ave. No. of Sick Days:	10	10
Ave. Vacat. - in Days:	18.3	---
Ave. No. of Hrs. Worked per Week:	39	---
Ave. Annual Min.		

Billing Req.:	1,339 hrs	1,311 hrs
1998 Ave. Salary Increase:	5.24%	6.15%

No of people who received the following benefits out of 44 survey responses:

Basic Medical . . . . .	30
Vision . . . . .	18
Extended Medical . . . . .	38
Life Insurance . . . . .	32
Maternity Leave . . . . .	22
Disability . . . . .	30
Dental . . . . .	37
Free Legal Representation . . . . .	12

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## FROM THE EDITOR'S DESK

Congratulations BCALA on 20 years of service to the British Columbia legal assistant profession!

If you would like to become more involved in BCALA we would love to hear from you.

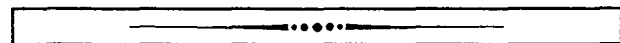


## UPCOMING EVENTS

### Annual General Meeting

Date: April 14, 1999  
Time: 5:30 p.m.  
Place: IKON Legal Document Services  
8th Floor, 555 Seymour Street  
Vancouver, B.C.

A notice will be mailed to all members.



## MEMBERSHIP UPDATE

The purpose of the Membership Committee is to review all BCALA applications and determine whether each applicant qualifies for one of the three categories of membership in the Association, which are "voting", "student" and "associate". The Committee also keeps track of names and addresses and makes sure the mailing list is up-to-date.

The BCALA now has 140 members. Of those, 87 are voting, 46 are student and seven are associate members. Such positive growth this year seems a testament to a growing awareness of the benefits of membership in an association of peers. Or, maybe it's just our terrific newsletter, or the exclusive job notices, or the seminars, or....

Membership renewal forms were sent out in December 1998. If you are a current member and did not receive one, please let me know (telephone: (604) 631-3164; e-mail: [tba@rdcounsel.com](mailto:tba@rdcounsel.com)). For those members who did receive renewal forms, we ask that you get them back as soon as possible. Remember that the cut-off date for 1999 renewals is March 31, 1999, but it would help tremendously if all renewals were in by the end of February.

## THE ASSISTANT

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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 April 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

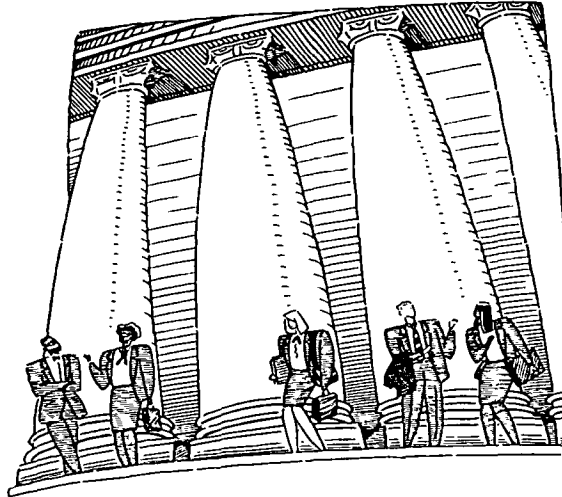
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### Reprints

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Business Cards . . . . .	39	Bachelors Degree . . . . .	14
CLE Courses . . . . .	38	Masters Degree+. . . . .	1
Parking Allowance . . . . .	11	Other: - ARCT (music teacher)	
Job Sharing . . . . .	5	- high school	
Firm/Company Retreat . . . . .	4	<i>Are you paid Overtime?</i>	
Firm Credit Card . . . . .	1	Yes. . . . .	16
Flex Time . . . . .	14	No . . . . .	27
Travel/Mileage . . . . .	10	<i>Are you required to Bill?</i>	
Paid Personal Days Off . . . . .	7	Yes. . . . .	34
Child Care/Daycare . . . . .	0	No . . . . .	10
Meal Allowance. . . . .	4	<i>Do you have a minimum annual billing requirement?</i>	
Expense Account . . . . .	3	Yes. . . . .	17
Professional Dues . . . . .	29	No . . . . .	25
Other: - \$200 towards gym membership		<i>Survey Comments:</i>	
- paid for school		-Thanks for doing the survey - the information is very helpful.	
<i>How people found their current jobs:</i>		-Our firm is also involved in profit sharing which works out to approximately \$300.00 extra per month and is added to our salary.	
Placement Agency . . . . .	14	-I find that at your review the legal assistant's hours are not taken into consideration. That is, if you exceed your budget and bill 10%+ more year, the salary increase is not reflective.	
Newspaper. . . . .	11	-In addition to salary - also receive bonus incentives, Xmas bonus, and yearly non-taxable benefits such as new computer, paid student loan, travel, etc.	
School/Placement Office . . . . .	1	-This is a good idea. I look forward to hearing the results.	
Networking . . . . .	11	-I have worked on a freelance basis for approximately 4 1/2 years - now, if I apply for a full-time permanent position my varied, numerous work assignments are considered a negative. Freelance provides great variety and flexibility but compensation in money does not necessarily equal the benefits of a full-time permanent position. However, job satisfaction	
Other: - lawyer asked me to work in office			
- sent resume to offices I wanted to work at			
- worked here prior to taking legal assistant program			
<i>Office Space:</i>		<i>Continued on page 5.</i>	
Private. . . . .	20		
Partitioned. . . . .	16		
Shared. . . . .	1		
<i>Secretarial Assistance:</i>			
Personal Secretary. . . . .	2		
Shared Secretary . . . . .	18		
Word Processing Pool. . . . .	10		
N/A . . . . .	9		
<i>Do you feel you are fairly compensated?</i>			
Yes . . . . .	24		
No . . . . .	19		
<i>Highest Level of Legal Education:</i>			
Legal Assistant Certificate . . . . .	24		
Legal Assistant Diploma . . . . .	15		
Law Degree . . . . .	2		
<i>Highest Level of Education Generally:</i>			
Some College . . . . .	27		

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generally is high and not easily quantified.

-Qualified legal assistants seem to be treated equally with legal secretaries. My legal assistant job is really a "glorified" legal secretary job. I know legal secretaries with no legal training who make more money (with more vacation) than qualified legal assistants I know. Having formal legal assistant education doesn't bring out many new opportunities. Lawyers don't seem to want to delegate substantive work to legal assistants, i.e., legal research, complex drafting, etc., nor do they use their assistants as legal assistants. There are so many legal secretaries out there who call themselves "legal assistants/paralegals" without earning it and lawyers allow it.

-There have only been legal assistants within our firm for eight months, commencing March 1998. A lot of us have only been here for a few months, and haven't experienced wage/salary reviews, bonuses etc. yet. However, the firm is VERY excited about using us and hiring more legal assistants. Unfortunately we haven't really been apprised of the systems that are in place for salary or bonus reviews. The firm is also going through a lot of growth and office space for us is not available, but it should be noted that two out of six legal assistants in our firm have their own offices. After participating in this survey last year, while employed with a different firm, I still believe that legal assistants are overworked, undervalued and in most instances underpaid. When I say underpaid, I am not strictly referring to salaries, I am referring to paid parking, overtime and other items that could be great incentives to a job. A lot of lawyers and law firms do not really realize that we are and should be treated like professionals.

-My wage was increased last year when I showed the salary survey results VALA did in 1997 to my employer. I still feel, however, that there are too many lawyers and firms out there that don't truly know what a legal assistant is capable of doing. When working casually for another job, I was called by three firms offering to interview me for a secretarial position. I was offered a job at one firm, but turned it down because I was required to do dictatyping. We, both VALA and other legal assistants, need to be more forceful in stating what

our capabilities are, and showing law firms the benefits that come with hiring a legal assistant. I know I didn't go to school for 6 1/2 years to become a secretary.

*Continued on page 7.*

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The following table represents all responses provided by members in the areas of Insurance, Family, Corporate, Commercial, Intellectual Property and Real Estate Law.

**Area of Practice and Number of Years of Experience**

Area of Practice	# of Yrs of Exper.	Vacat. in days	Firm Size - # of Lawyers	Hourly Billing Rate	Salary	Hours Worked Per Week	Min. Billing Requir.	Legal Educat.
<b>Insurance</b>	2.5 mths	15	10-20	\$90	\$42,000	45.5	1,500	Law Degree
	2yr 5 mths	10	1-10	\$50	\$34,800	50	1,320	LA Dip
	4 yrs	25	50-100	\$75	\$46,980	58	1,300	LA Cert
	14 yrs 7 mths	15	10-20	\$75-90	\$45,000	35-40	1,400	LA Dip
<b>Family</b>	2 yrs 5 mths	10	1-10	\$80	\$24,000	37.5	None	LA Cert
	6 yrs	20	50-100	\$110	\$47,400	35	1,200	LA Cert
<b>Corporate</b>	25 yrs	25	1-10	\$65	\$50,400	35	None	LA Dip
	25 yrs	20	1-10	\$90	\$52,000	35	None	LA Cert
<b>Comm.</b>	10 yrs 6 mths	N/A	1-10	N/A	\$35,000	45	None	LA Dip/ Masters
	15 yrs 11 mths	25	20-50	\$55	\$36,000	45	None	LA Cert
<b>Intell. Property</b>	2 yrs 2 mths	15	1-10	\$70	\$37,200	45	None	LA Dip
	2 yrs 7 mths	15	1-10	\$70	\$38,400	37.5	None	LA Dip
<b>Real Estate</b>	10 yrs	20	1-10	\$75	\$49,200	*	None	LA Cert
	15 yrs	20	20-50	\$80	\$47,400	37	None	LA Cert
<b>Estates</b>	4 yrs	20	1-10	\$65	\$40,200	40	None	LA Cert

\* No response given.

The following table provides a summary of the highest and lowest salaries paid in 1997 to members in the areas of Estate, Secured Lending, Corporate, Intellectual Property, and Real Estate law.

### Summary of 1997 Salary Survey Results

Area of Practice	# of Yrs of Experience	Lowest Salary Paid	Highest Salary Paid
Estates	1 yr	\$36,000	*
Secured Lending	1 yr	\$46,000	*
Corporate	1 yr	\$50,400	*
Intellectual Property	1 yr	\$30,000	\$32,400
Real Estate	2 yrs	\$24,000	*
Real Estate	10 yrs	\$47,700	*

### Area of Practice - Litigation

# of Yrs of Exper.	Vacat. in days	Firm Size - # of Lawyers	Hourly Billing Rate	Salary	Hours Worked Per Week	Min. Billing Requir.	Legal Educat.
2 yrs	20	20-50	\$65	\$42,000	50	1,500	LA Cert
2 yrs	15	10-20	\$50	\$39,600	35	None	LA Cert/BA
2 yrs 7 mths	15	20-50	\$80	\$36,000	40	1,200	LA Dip/BA
3 yrs 3 mths	15	1-10	\$80	\$23,100	40	None	LA Cert
3 yrs 3 mths	20	20-50	\$100	\$43,400	45	1,200	LA Cert
3 yrs 7 mths	15	10-20	\$90	\$41,000	35	1,400	LA Cert
5 yrs 5 mths	15	10-20	\$75-90	\$42,600	40	1,450	LA Dip
5 yrs 5 mths	15	10-20	\$90	\$42,600	40	1,560	LA Dip
6 yrs 3 mths	30	10-20	N/A	\$45,000	35	None	LA Dip
7 yrs	20	1-10	\$75	\$40,000	40-45	None	*
7 yrs	15	20-50	\$100	\$42,600	35	960	LA Cert
7 yrs	15	20-50	N/A	\$45,000	37.5	None	LA Dip/BA
9 yrs	25	1-10	\$55	\$42,000	35	7 hrs day..	LA Dip
10 yrs	15	50-100	\$95	\$52,000	40	None	Law Deg/BA
10 yrs 6 mths	15	1-10	\$75	\$43,800	35-40	None	LA Cert/BA
11 yrs 6 mths	25	100+	\$90	\$48,000	35	5-6 hrs day	LA Dip/BA
12 yrs 1 mth	15	1-10	\$60	\$34,444	40-50	None	LA Cert
15 yrs 3 mths	25	10-20	\$75	\$42,000	35	None	LA Dip/ BA
20 yrs	24	1-10	\$65-85	\$52,000	35-40	1,400-1,500	LA Cert/BA
26 yrs	20	1-10	\$75	\$54,000	40	None	BA

\* No response given.



**Summary of 1997 Salary Survey Results - Litigation**

<b># of Yrs of Experience</b>	<b>Lowest Salary Paid</b>	<b>Highest Salary Paid</b>
1	\$21,000	\$37,200
2	\$42,600	\$43,596
3	\$32,800	\$38,400
4	\$36,600	\$47,400
5	\$39,600	\$45,000
7	\$40,800	\$44,400
9	\$50,000	*
10	\$42,000	*
13	\$42,000	*
19	\$52,000	\$54,000
20	\$38,200	*

\* No response given.



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## PRESIDENT'S MESSAGE

By Jasbir Bains

On behalf of the directors I would like to wish our members and readers a HAPPY NEW YEAR.


By now all members should have received membership renewal forms and a desk calender. Please take five minutes to complete the membership renewal form and return it, together with a cheque, as soon as possible. If for some reason you have not received a membership renewal form, please contact Thora Arnason.

This year is the 20th anniversary of the BCALA (formerly WALA). The Association was registered by the Registrar of Companies on February 5, 1979. Although, we have accomplished many goals, there are still many more to achieve. The biggest goal that remains to be achieved is that of certification or registration. I am confident that we will eventually achieve certification or registration and that it will be sooner, rather than later. As I have said many times before, a substantial increase in membership would help to achieve the goal.

The directors would like to do something special to mark BCALA's 20th anniversary and are considering a dinner for some time in April/May. If you have any suggestions, please contact Connie Iverson or any of the directors.

The dinner organized by BCALA and CALA on November 4, 1998, was a huge success. Approximately 177 people attended - probably the largest dinner held to date. The speaker, Toby Snelgrove, was both amusing and informative. On behalf of the directors, I would like to thank Connie Iverson for the hard work she put into making the dinner a success.

The Annual General Meeting has been scheduled for April 14, 1999. All positions are up for grabs, so if you are interested in becoming a director or the president, please contact me.



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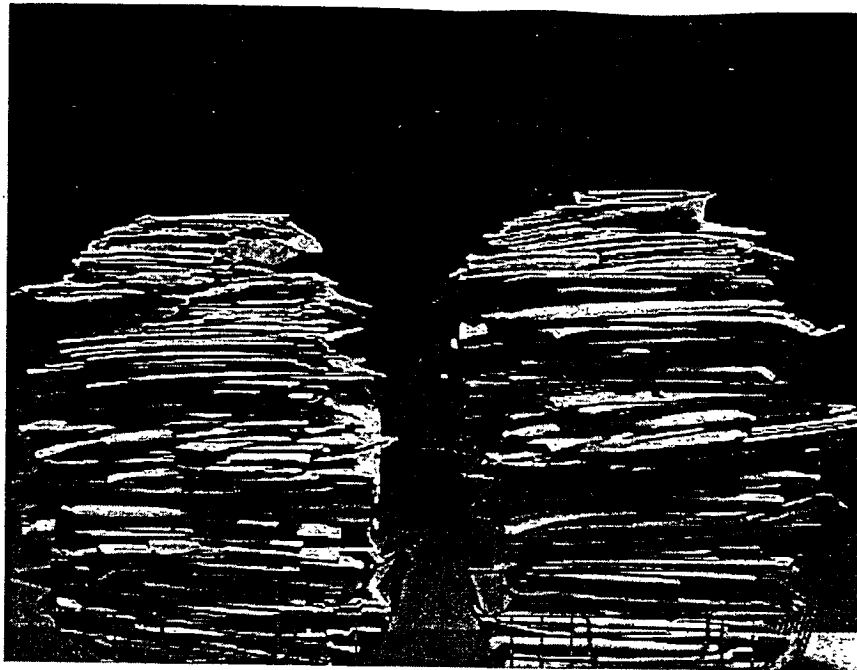
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## IT'S OUR 20TH ANNIVERSARY

Reprinted in part from Sarah Hanna's "It's Our Anniversary" article, 1994 edition of "L.A. Times".

The BCALA (formerly Western Association of Legal Assistants or WALA) was incorporated pursuant to the B.C. Society Act on February 5, 1979. Its objectives still remain the same and are:

- (a) promoting the legal assistant profession;
- (b) supporting, developing and maintaining high standards for the service and ethics of legal assistants;
- (c) establishing criteria standards and determining persons qualified to use the title "legal assistant";
- (d) providing the opportunity for the exchange of information, experience and opinion through discussion, study and Association publications;
- (e) carrying on a program for education of its members in the advancement and improvement of the profession; and
- (f) establishing and maintaining a liaison with the Law Society, the B.C. Bar Association and other groups in the legal community in order to advance and promote the profession of legal assistants.

In 1979, Capilano College was the only college offering a legal assistant program in B.C. Graduates felt that in order to advance their profession they needed an association to represent their interests and, as a result, WALA was created. The initial criteria for membership was either graduation from the Capilano College legal assistant program or graduation from another Canadian program approved by the directors.

To begin with WALA fulfilled more of a social role. However this began to change in the mid-1980s when the question of people practising law without a licence became a "hot" issue with the Law Society. As a result, WALA began looking into the possibility of title protection under the Society Act. This was put on hold in 1989 when the Paralegalism Subcommittee of the Law Society produced a report concluding that it would be in the interests of both the public and the legal profession to certify legal assistants. Unfortunately, in 1994 the Law Society abandoned the idea of certification.

At the 1995 AGM, the members approved the change of name from WALA to BC Association of Legal Assistants and changed the membership criteria for voting members. The change meant that a voting member could now either graduate from a legal program approved by the Association or have a minimum of five years employment as a legal assistant, which was to be certified by a lawyer.

The number of colleges offering legal assistant programs has since grown to include not only Capilano College but Camosun College, Selkirk College and Vancouver Community College.

In 1997, BCALA made an unsuccessful application for title protection under the Society Act, but has not abandoned the idea of a further application in the future.

Currently, the board consists of six directors and two student representatives from the Capilano College day program. Together they do everything from:

- organizing an annual lecture series with dinner meetings;
- producing a 30 page informative quarterly newsletter;
- conducting an annual salary survey of members;
- promoting the Association through liaison with CLE, the Law Society of B.C., CALA, the Institute of Law Clerks of Ontario, the Alberta Association of Legal Assistants and the Manitoba Association of Legal Assistants;
- contributing to a bursary fund at Capilano College with the future goal of doing the same with other colleges in B.C. that offer legal assistant programs; and
- sending out exclusive job notices to members.

The Association has seen many changes over the last 20 years. There are still numerous goals to achieve, such as title protection and the development of a web site to name only a few, but be assured the directors are working very hard (on their own time) to establish BCALA as a presence in the legal community.

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## TO: ALL LITIGATORS

I am one of the "Group of Seven" who realtime-reported the 11-month *Gustafsen Lake* trial for Judge Josephson. For the past few months, besides regular reporting, I have been transcribing audiotapes of Supreme Court trials. You will be interested to know audiotapes are not turned on in time, speaker misidentification occurs routinely when counsel's voices are indistinct, given that channel 2 and 3 mikes are both at the lectern, spellings and exhibit lists are non-existent, and of course inaudibles are an inevitable result of such a backward step in technology.

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<p><b>(D) * <u>C. Kottmeier's Audiotape Transc. Fee:</u></b>  <i>(2-week turnaround or better)</i></p> <table style="width: 100%;"> <tr> <td>85 pgs @ \$6.50 pp (1 party):</td> <td style="text-align: right;"><b>\$ 552.50</b></td> </tr> <tr> <td>85 pgs @ \$8.00 pp divided by 2 parties:</td> <td style="text-align: right;"><b>\$ 340.00 ea.</b></td> </tr> </table>	85 pgs @ \$6.50 pp (1 party):	<b>\$ 552.50</b>	85 pgs @ \$8.00 pp divided by 2 parties:	<b>\$ 340.00 ea.</b>	<p><b>(E) * <u>Reporter C. Kottmeier's Uncertified Disk:</u></b>  <i>(Take transcript with you at day's end)</i></p> <p>\$150 + Attendance (\$40 pr/hr)  <b>Total Per Day: \$350.00</b></p>					
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In closing, as a businessperson, I'd appreciate the opportunity to work with you. However, if your loyalties lie with someone else, as Secretary of our court reporters' association (BCSRA), I welcome your comments, observations, or opinions on your audiotape/transcript experiences. I'm sure you'll agree litigants deserve the best product for their money!

Yours sincerely,  
  
**Catherine Kottmeier,**  
 Official & Realtime Reporter

# PURSUING INTERNATIONAL PROFESSIONAL STATUS FOR PARALEGALS UNDER NAFTA

By Beverley Peterson, Legal Assistant with Russell & DuMoulin

"Wherever there are changes, there are opportunities, and this is one." (A. Baril, "No Small Change", CA Magazine, November, 1998)

Alexandre Baril was referring to the "euro" currency which came into effect on January 1, 1999 in 11 European countries. Change could also be on the horizon for Canadian legal assistants as a window of opportunity exists to achieve professional status under the terms of the North American Free Trade Agreement ("NAFTA").

"NFPA is always excited about the possibility of expanding the profession and increasing our visibility. We are pleased and excited to be working with the Canadian associations of legal assistants and our contacts in Mexico in this endeavour," said Robin I. Solomon, President of the National Federation of Paralegal Associations, Inc., USA.

NAFTA, a reciprocal free trade agreement between the United States, Canada and Mexico, came into effect in 1994. Employment mobility under NAFTA was granted to occupations with "professional status" under chapter 16. To achieve NAFTA's professional status typically a bachelors degree is required. However, equivalent alternatives may include: a) diplomas (USA and Canada) or certificates (Mexico), and three years of experience; b) professional designations such as a "CGA" or "CA"; c) licenses; and d) professional experience alone.

In June 1998, lawyers from Mexico, the United States and Canada signed the Joint Recommendations and Model Rule on Foreign Legal Consultants and Related Aspects of the Cross-Border Delivery of Legal Services in connection with NAFTA. This agreement allows lawyers to form partnerships in different jurisdictions. For example, Canadian lawyers can open law offices and practice Canadian law in Mexico

and the United States. Without professional status under chapter 16 of NAFTA, paralegals will find it significantly more difficult to join counsel under these circumstances.

"Paralegals" are pursuing professional status under NAFTA in Mexico, the United States and Canada. "Professional status under chapter 16 of NAFTA is a worthwhile goal to pursue and it has the complete backing of the BCALA," said Jasbir Bains, President of the BC Association of Legal Assistants.

The Canadian Association of Legal Assistants is also supportive. "One of our key objectives as members of the Canadian Association of Legal Assistants...is to raise the profile of our profession. Applying for recognition under NAFTA is certainly consistent with this goal," said Cathy Robinson, President of the Canadian Association of Legal Assistants.

NAFTA's professional status may enhance career opportunities, provide invaluable experience and allow paralegals to compete with other professionals such as notaries, lawyers, graphic designers, plant breeders, hotel managers and over 60 other professions. As the relentless pursuit of globalization continues to captivate businesses and governments, paralegals need to seriously consider its impact.

## *Career Opportunities*

**Jobs!** Market increases mean a demand for paralegal work and the public benefits from greater access to less costly legal services. Lawyers both increase public trust and open up a new market of clients who would use legal services more often if they were affordable.

**Mobility.** How would a paralegal's personal and professional life be affected if his/her "significant other" was offered a fabulous once-in-a-lifetime career opportunity in another country, and the paralegal could work there? A paralegal may also enjoy a mutually beneficial working relationship with a lawyer who is faced with the prospect of relocation and she or he may wish to join counsel. There may also be numerous interesting opportunities for project work, developing paralegal practice in an area of law

more highly developed in another geographic location, and international travel.

### **Professional Experience**

**Mexico.** Legal assistants and law students are pursuing the incorporation of a national organization to pursue their professional goals under NAFTA.

"NAFTA countries are required to take further steps in order to take part in the ongoing process of regional integration and be able to compete with the European community. Recognition of professional status for paralegals and legal assistants under NAFTA is an important step in this direction," said Oliver Carlos Solano Castro, SAI Law & EconoBnics, Mexico.

### **Communication with the Legal Community.**

Language and cross-cultural skills may develop with increased understanding and tolerance for those from unique cultural perspectives.

**Submissions for Professional Status of Paralegals under NAFTA.** Paralegals must demonstrate consensus within their industry for this recognition in addition to developing negotiating skills with NAFTA, immigration authorities and ministers of trade.

**Occupational Title.** Job titles need to be reviewed in Canada and the United States which refer to lawyers as "Legal Assistant" and "Law Clerk".

**Cross training in Civil and Common Law Jurisdictions.** Learning opportunities for paralegals may be promoted.

**International Paralegal Organization.** It has been suggested that an "International Chartered Paralegal Association" be formed to pursue international goals. To be successful it would need a core group of paralegals with a high degree of commitment of time and resources.

An international paralegal organization may have many goals: to maintain international professional standards; to provide paralegals with an internationally recognized professional designation

such as "ICP" for International Chartered Paralegal; to grandfather paralegals who created and established the profession working successfully with counsel for many years; to recognize quality paralegal education programs; to promote international educational exchange programs; to assist paralegal organizations with jurisdictional issues; to facilitate international communication; to promote professional goals in ethics, professional courtesy and pro bono work.

### **Call to Action!**

We would love to hear from paralegals and have them participate in this exciting and challenging international effort to obtain professional status under NAFTA. In 1999 we will be trying to contact paralegals in Canada, Mexico and the United States. If you have experience with chapter 16 of NAFTA please contact us. Or, if you have experience in International and Immigration law; research skills; negotiating experience; legal contacts; government and political contacts; Spanish, French and language communication skills; or are interested in this project please contact Bev Peterson at (604)631-4801 or [bjp@rdcounsel.com](mailto:bjp@rdcounsel.com). Stay in touch for updates!



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## HIRING TRENDS & SALARIES OF LEGAL ASSISTANTS

By Judy Balone, Legal Consultant, Conlin Personnel Ltd.

When I was asked to write this article, I welcomed the idea whole heartedly. From my experience of interviewing so many "versions" of legal assistants and dealing with such a wide variety of law firms in the lower mainland, I have always believed that there is definitely no set standard or policy when it comes to hiring practices and salary ranges for legal assistants. If any formal standards are being followed, they usually exist to some degree in the mid to larger sized law firms. It appears that smaller firms are less structured and have more flexibility with hiring their staff.

There are still a large number of law firms that have a policy of not hiring legal assistants and there are also lawyers who are unaware of the benefits of utilizing the skills of a "pure" legal assistant. Some lawyers like to control the files and trust only junior lawyers to handle the more complex matters, therefore a good intermediate to senior secretary would be adequate in these situations. This brings to mind a call I made a couple of years ago to a senior partner of a law firm for a reference on a legal assistant they had just laid off. I was told that the firm had decided to change direction and hire junior lawyers to replace the legal assistants they had employed for a few years because the L.A.'s were "competing" to do the same tasks as the junior lawyers. In addition, I was told it was their obligation and responsibility to train new lawyers coming into the industry and if they were to have legal assistants doing similar types of work, there would be duplicity of duties. In the future, he could foresee the need for fewer and fewer legal assistants in law firms and perhaps more need for them in private corporations. As you can see, there are varying perceptions and opinions about legal assistants.

Some of the candidates I have interviewed also have different perceptions about themselves as legal assistants. There are many legal secretaries who have

completed the part-time evening legal assistant program and feel that they can immediately obtain a "pure" legal assistant position. They become quite discouraged when I tell them that, unless they have worked as a legal assistant or at least have been performing a substantial amount of legal assistant duties, it is very difficult to place them in that kind of position. It is extremely hard to break away from the role of working as a legal secretary even though you have completed the L.A. course. It certainly depends on the lawyer(s) you have been working with because some of them are more open to allowing you to utilize more senior level skills. In these instances you are usually called a legal assistant/secretary but you are still performing secretarial duties. Not performing secretarial duties seems to be the defining factor in obtaining a "pure" L.A. position.

Typically, it is easier to be hired as an L.A. after having immediately completed a six month practicum, as opposed to having worked as a legal secretary for several years. Then again, because there are not as many L.A. jobs available in the market as there are legal secretarial jobs, what often happens is that full-time two year L.A. graduates are hired as secretaries and never get a chance to utilize their extensive training.

There are positions for L.A.s in many areas of law, but the most frequently requested type is in litigation, usually in plaintiff personal injury or insurance defence. Also, it appears that smaller firms hire more legal assistants than larger firms, but depending on how the smaller offices are set up you could be expected to do some secretarial and office management work as well. Sometimes legal assistants work in a team situation where several L.A.s work for a group of lawyers. Some L.A.s prefer this, but others want to leave this environment because they want to become focused and specialized in doing more senior level work with just one or two lawyers as opposed to more general work for a greater number of lawyers. Also, many L.A.s expect to have their own office and their own secretary...this is not very common.

*Continued on page 19.*



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One point I want to make is that it would be beneficial for the colleges to offer a basic secretarial/computer component to their L.A. programs. Often graduates come to my office having changed careers and having never typed or performed any computer related support role. These graduates have the most difficult time finding a position in a law firm. You have to at least be able to do your own secretarial work such as typing correspondence or maintaining a database.

The salary ranges for legal assistants are so different that they are difficult to standardize. For example, I interviewed a junior legal assistant in one firm who was earning the same salary as a senior legal assistant in another firm. The salary "rule of thumb" for L.A. graduates from the full-time two year legal assistant program is the same as articling students, which also varies from firm to firm. I have seen these salaries range from \$1,700 to \$2,500 per month. Some areas of law will have opportunities for quarterly or yearly bonuses on top of the monthly salary and this factor is discussed during the interview process. The most common areas of law for receiving bonuses are litigation and securities. I interviewed a very senior litigation legal assistant with 25 years L.A. experience who had a base salary of \$4,500 per month and with bonuses she earned up to an additional \$16,000 per year. The compensation package greatly depends on your employer and how they value and utilize your skills and abilities and, of course, on how busy the practice is.

Salary ranges are usually based on years of L.A. experience and vary from firm to firm. Firms will also take into consideration the length of time you have worked in the legal profession as a legal secretary. I have interviewed L.A.s with as little as one year experience receiving \$3,000 per month and others who have worked 10 years as an L.A. earning the same \$3,000 per month. Those are extreme cases, but I will try to give some of the average monthly salaries I have observed. From one to four years experience as an L.A. (not a secretary), the average salary is \$2,200 to \$3,000 per month. From five to 10 years L.A. experience the average salary ranges from \$3,000 to \$3,500 per month and over 10 years L.A. experience the salary is \$3,500 and up. The areas of law do not

seem to dictate these differences but, again, it appears that litigation and securities pay higher salaries, including bonuses, because of the income generating factors and variables. Also, there is another point to keep in mind. Some law firms consider legal assistants to be members of their "management team" and therefore not entitled to overtime pay. If you do receive overtime pay and bonuses you can raise your income level considerably. If you do not receive overtime you should negotiate your salary expectations with that in mind.

I have discussed some of the issues of general concern. I am always amazed how different lawyers and law firms perceive legal assistants. When they call me to find them a legal assistant and I send them one...some will ask what their typing test score was or how fast they can type...others will ask if they can draft pleadings or do quantum assessments or settlement proposals.

Times are changing and the role of the legal assistant is still evolving, but the word will eventually get out on how useful and helpful you can truly be to a lawyer. With the economy being so unpredictable and the "bottom line" being so important to any business, many law firms will continue to maintain the status quo of hiring a legal assistant/secretary because they view this as getting two skill sets for the price of one. The main thing to remember is to "kindly" keep repeating what you are capable of doing and not give up the search for that perfect "pure" L.A. position. Good luck and remember I am always here to help you in your search.

### **GOT SOMETHING TO SAY?**

Send submissions for The Assistant to:

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c/o Lidstone, Young, Anderson

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Claudia L. Losie - Page, Fraser & Associates

Date: February 18, 1999

Place: Vancouver Renaissance Hotel

### *ABCs of Wills and Estates for Legal Support Staff*

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Designed for legal support staff who need to learn the essentials. Comprehensive course materials, including invaluable checklists, a glossary of terms, and sample documents, will be provided to registrants and will be available for sale separately.

Date: March 25 and 26, 1999

### *ABCs of Corporate Records for Legal Support Staff*

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Date: April 22 and 23, 1999

### *Family Practice Update for Legal Support Staff*

Keep up with the latest changes in the rules and procedures. Legal assistants and support staff in family practice; do not miss this half-day course! Get up to speed on Supreme Court Rule 60 (in effect as of September 1, 1998); why the forms and procedures have been changed, how to correctly prepare pleadings, how the forms relate to the rule changes. Take a careful look at proposed Rule 60A and the new property and financial statement forms. Walk through some sample calculations under the Child Support Guidelines and learn how the Guidelines are being interpreted by the courts. Handy checklists and sample documents will be included in the course materials binder.

Laura Selby - Barrister & Solicitors, Delta

Date: April 16, 1999

### *Foreclosure Practice for Legal Support Staff*

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# MILD BRAIN TRAUMA ASSESSMENT

By Donald E. Read, PhD, RPsych, Consultant Psychologist and Deborah E. Preston, BA, CCRC, Director of Rehabilitation Services, Waldee Services Inc.

Functional assessments provide a unique and powerful way to evaluate and quantify impairments of higher cognitive functioning and social behaviour in individuals who have suffered a traumatic brain injury. This approach to assessment is particularly useful in situations where standardized neuropsychological assessment tests are not yet available, are not sensitive enough, or do not provide sufficient information for assessment or treatment purposes. The type of functional assessment described in this article is guided by known brain-behaviour relationships and neuropsychological principles. The assessment is done by a rehabilitation specialist under the direction of a neuropsychologist, and takes place in the client's own community.

Problems resulting from damage to the frontal-lobe systems of the brain such as:

- distractibility in noisy environments,
- difficulties in moving from thought to action,
- forgetting to remember to carry out certain planned actions (prospective memory), and,
- inappropriate behaviour in social situations

are particularly difficult to evaluate in a quiet office setting, but can often be readily observed and documented in the client's own community. A functional assessment can provide specific and concrete information about a client's day-to-day performance and pinpoint areas of actual and potential difficulty.

Some of the subjective complaints of survivors of traumatic brain injury may not reveal themselves on formal neuropsychological testing. When such complaints are consistent with the known consequences of a brain injury, and are accompanied by corroborative information from friends and family

members, then a functional assessment can be invaluable for documenting the specific difficulties being experienced by the survivor. Clear predictions can be made prior to assessment, based on known brain-behaviour relationships. Then specific situational tests can be created to assess the survivor's functional abilities in his/her own community.

It is not unusual for a neuropsychologist to assess a traumatically brain-injured client and have that client perform normally or almost normally on formal neuropsychological assessment tests. Yet collateral interviews of significant others in the client's life reveal consistent reports of functional problems in everyday life. This problem most often occurs when the impairments reported for the client are those associated with the known effects of damage to the frontal lobes of the brain.

When you consider the nature of these impairments and the circumstances under which neuropsychological assessment testing is normally carried out, it becomes obvious why this type of problem can arise. Neuropsychological testing is normally carried out on a one-to-one basis in a quiet, distraction-free, office environment. A great deal of natural structure and direction is provided by the test situation. This tends to offset or mask any problems that the client may have with distractibility, short attention span, poor planning and organizational abilities, or impulsivity. In addition, problems with social inappropriateness cannot be directly measured through neuropsychological testing.

Once a neuropsychological assessment has been completed, if there is a mismatch between the results of formal testing and the problems that the client is reported as having in the community, then the possibility arises of carrying out a functional assessment of that client in his/her own community. The advantage of carrying out a functional assessment in the client's own community, having the client carry out tasks that have previously formed part of his/her normal daily life, effectively takes care of any arguments that might be raised about the tasks being novel or too difficult for the client.

The neuropsychologist evaluates the specific problems reported by or for the client from a neuropsychological (brain-behaviour) prospective. One client, for example, reported that he would repeatedly make a special trip to a store to purchase a particular item for a project that he was involved in. When he got to the store he would become distracted by other items on the shelves in the store (**distractibility**), forget to purchase the item he set out to get (**prospective memory impairment**), and would instead often buy something else that drew his attention (**impulsivity**). He would then drive home, set to work on his project again, only to realize that he had forgotten to purchase the very item he needed. These types of problems, in a client who prior to the injury would have had no difficulties remembering to make a specific purchase, suggested the presence of impairment of frontal-lobe function. For the neuropsychologist to confirm the presence of frontal-lobe dysfunction a pattern of impairment must

emerge that is consistent with the known effects of frontal-lobe injury.

The type of functional assessment described in this article typically takes place over a two to three-day period and is comparable in cost to the cost of a full neuropsychological assessment.

Suggested criteria for determining when to request that a functional assessment be carried out are as follows:

1. Evidence of significant trauma to the brain.
2. Normal or near-normal performance on neuropsychological testing.
3. Collateral or self-report of possible frontal-lobe impairments.
4. Expert neuropsychological opinion that reported behaviours are most probably due to frontal lobe dysfunction.

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# THE TRACING GAME

By Kevin Franks, President of Missing Pieces Locators

Skip tracing and locate services often play a key role in a wide range of files taken on by law firms. Information is an equitable commodity, more so in the adversarial context of litigation cases where the difference between winning or losing can sometimes be determined by who can best lay out a strategy and support it with hard facts in conjunction with the written word of the law.

The trace needs of law firms are as diverse as their client bases and the legal scenarios they encounter. They could include everything from a simple locate for document service to complicated offshore asset traces. Law firms should gauge their perspective needs based upon the individual factors of each file and account for all of the variables, prior to listing any files for trace work. For example, we often receive requests to find a subject for simple document service, then once we have completed this task and the target is served, the firm will call back and ask if we can locate any attachable assets because the file is debt related. For the most part, having trace work assigned in this fashion is effective, however, if the initial listing had included the asset trace as well, it would have avoided several pitfalls common place when having to rework files for new information.

When trace work is done properly, subjects usually never even know they have been located - which is crucial when trying to effect document service. When secondary inquiries commence to locate attachable assets after the initial work has been completed, the chances of the subject finding out about these searches is much higher. This can cause major problems such as the avoidance of service and the subject might start hiding assets that could weaken or delay the chances of recovery.

In most cases, a good tracing bureau can conduct the locate and asset trace in tandem, concluding the work prior to attempted service and forewarning the target. Another option with these types of files, is to conduct

an asset profile before filing a notice of claim, to determine if there is anything to go after and therefore avoiding a "dry judgment".

Sometimes clients already have information that indicates there are assets, however they just do not know where they are and in what form, be it bank accounts, investment products, property, vehicles, revenue sources etc. are all viable to go after.

In many cases we are asked to disprove or find other assets that were not disclosed under examination. In this scenario the trace work can end up being the winning key to the entire case. The courts very much frown upon people lying under oath and hiding assets to avoid a legal debt or claim.

The following are just some examples of what kind of trace support services a law firm might use: trace for document service, asset profiles and traces, heir searches, birth parents, witnesses, missing persons, criminal skips, defendants, missing clients, policy holders, beneficiaries, debtors etc. There are also many other spin-off services that fall into similar categories. The trick is to qualify each file and recognize what is needed. For example, lets say your firm is handling an estate related file and there are heirs and/or executors to locate. It would be wise to determine if there are any other assets of the deceased unknown to date. We have in the past suggested this to clients (including the B.C. Public Trustee's office) when doing estate related locates and subsequently found unclaimed bank accounts, safety deposit boxes, property etc. belonging to the deceased that were previously unknown. For the small cost of a couple of extra hours in search time, it is worth the additional money.

Trace work is mostly common sense and following practical lines of investigation, based on a per file basis. Over the last 10 to 15 years, electronic databases have played a key role in streamlining access to valuable information, making the process faster and easier for those who know where to look. However, the majority of real "hard data sources" come by way of confidential contacts. These sources are invaluable and provide information that cannot be gathered by any other means. Keeping this in mind, it

is very important, when using a tracing bureau, to provide all the information you can at the time of listing. The smallest detail could develop into a viable lead that could crack the file. Be specific on your requests, allowing for enough time to get the job done. We get at least 10 to 15 "rush trace requests" from law firms every week, where they need to find a subject etc. in time for a court date a few days later.

Not only do rush locates cost a lot more, they also limit the chance of finding the subject in time. More often than not, we find out the law firm has actually had the file sitting for weeks or months, prior to the court date - so when possible try and organize open files that require trace work in order to avoid such a scenario.

When choosing a tracing bureau, make sure you know who you are dealing with. There have been several cases where confidential and sensitive information was sold or passed on to the target subject.



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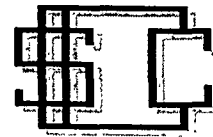


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# PRACTICE UPDATE

## 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 December, 1998 "Registrars' Newsletter".*

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

### Divorce Act, s.2(1)

**Q:** Is there still a difference in the age of a child under the Family Relations Act and the Divorce Act?

**A:** In the December 1997 issue of the Registrar's Newsletter, in response to this question, we replied erroneously "No". We are indebted to Douglas C. Baker (now Master Baker), who wrote the following clarification in the April, 1998 issue of BarTalk:

"I think that one response in the February 1998 (Volume 10, No.) BarTalk edition of 'Ask the Registrar' may be 'half right'. The question was asked 'Is there still a difference in the age of a child under the Family Relations Act and the Divorce Act? The response was that there is no longer a difference as 'child of the marriage' in the Divorce Act now refers to the 'age of majority'. This is correct as far as it goes. The answer, however, can leave the impression that the respective statutory definitions [sic] are identical. They are not. Under the provincial legislation the definition of child terminates at the age of 19. Under the Divorce Act (even as revised) the status of 'child of the marriage' can certainly include an individual 'of majority or over and under their (parents') charge but unable by reason of illness, disability, or other cause to withdraw from their charge or obtain the necessaries of life'. In other words, under the terms of the Divorce Act (as opposed to the Family Relations Act), the status can continue into majority".

### Divorce Act, ss.19(9), (9.1), (10)

**Q:** When a provisional order made in another Province is returned to British Columbia for confirmation under the Divorce Act, the Ministry of Attorney General does not appoint counsel to appear on the applicant's behalf. This usually means that if the party served does not appear at the hearing no one is present. Our Judges have been reluctant to deal with applications under these circumstances. What do you suggest the registries could do to assist the court?

**A:** In Victoria, we use an information sheet to advise the Court. Listed in this document are the Court's options.

It is important registry staff identify this application on the chambers sheet, as the application must be recorded and a transcript produced.

### Family Relations Act, s.37, Family Law Practice Direction #9 and Rule 60(33)

**Q:** When restraining orders are submitted for entry, counsel often fail to provide the date of birth of the party restrained. Registry staff must then pull the file to search for the party's date of birth. Can you suggest a solution?

**A:** In the amendments effective September 1, 1998, the restraining order (Form 134) sets out "...insert (if known) the birth dates of the person restrained, of the applicant and of the children referred to". Birth dates are required by the police and the firearms registry.

Time is critical in these orders. As a result, it is preferable to pull the file to obtain the necessary dates (which are required for index) rather than return the order to counsel and incur further delay. The amendments should gradually make this step unnecessary.

### Rule 57(29)

**Q:** Should the original lawyer's bill be attached to the appointment issued pursuant to the Legal Profession Act?

**A:** A copy is sufficient.

### Legal Profession Act, s.87(7)

**Q:** How should the Registry index an application for an increase in remuneration under the Legal Profession Act?

**A:** Section 87(7)(b) sets out "the style of cause must not disclose the identities of the solicitor and client, ...". In order to maintain a record for future applications, the application may be indexed as follows:

Legal Profession Act  
Pursuant to Section 87

v.

Contract for Remuneration  
\_\_ day of \_\_ 19 \_\_.

### Woodworker Lien Act, s.3(2)

**Q:** The Woodworker Lien Act requires a fee for filing a statement of lien which is prescribed by the Lieutenant Governor in Council. Where is this fee set out?

**A:** The fee is set out in the regulations to the Act. Your Courthouse Law Library should have these available.

### Rules 17 & 25

**Q:** Counsel continue to file default judgment applications using the wording "...the plaintiff recovers judgment against the defendants...". Is this acceptable practice?

## Rules 17 & 25

**Q:** Would it be in the Registrar's discretion to reject a default judgment application when the statement of claim does not set out the date a contract was entered into, or a date the cause of action arose?

**A:** The Registrar would have no authority under Rules 17 or 25 to reject on these grounds. If the defendant elected not to defend the proceeding after proper service and the claim is one set out in Rules 17 or 25, the Registrar should proceed to enter the judgment.

## Rule 60(26)

**Q:** Is the approval of the defendant required for a desk order divorce when they have not filed a statement of defence and counterclaim?

**A:** The Court may require the defendant's approval on an order if the relief requested in the order is not set out in the Petition for Divorce. The registry should forward those applications to a judge for consideration.

## Appendix C, Schedule 1, Item 16

**Q:** Are the transcript fees under Item 16 applicable since the contracting out of this service?

**A:** No, this item will be removed from Appendix C in an upcoming "housekeeping" amendment.

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## 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.*

### **COSTS - Conduct of parties - Trial judge finding defendant's use of flawed expert evidence warranting special costs against defendant - Appeal court dismissing defendant's appeal.**

The plaintiff sued for damages for personal injuries arising out of a minor motor vehicle accident. At trial, the defendant introduced the expert evidence of an engineer to the effect that the plaintiff could not have been injured. The trial judge rejected that evidence and awarded substantial damages. In supplementary reasons the judge awarded the plaintiff special costs in the amount of \$40,000 to mark his disapproval of the defendant's retainer of the engineer in question. He observed that judges in other cases had rejected similar evidence given by members of the same engineering firm, but that the defendant's insurer, I.C.B.C., had persisted in adducing the evidence of that firm to the effect that an occupant of a vehicle which sustained no damage could not himself or herself have suffered injury. The judge concluded that that conduct was reprehensible and deserving of rebuke. On the defendant's appeal from the award of costs, *held*, appeal dismissed. There was evidence before the trial judge upon which he could base his conclusion. While the conduct complained of may not have been scandalous or outrageous, it was nevertheless reprehensible in the sense that it constituted a milder form of misconduct deserving of reproof or rebuke. It could not be said that in exercising his discretion the trial judge failed to act judicially.

Heppner v. Schmand, C.A., Hinds, Hollinrake & Ryan J.J.A., Doc. Victoria VI02819, November 19, 1998 (oral), 8 pp. [CLE No. 98-14086]//Appeal from judgment of Shaw J., [1996] Civ. L.D. 340; [1996] C.D.C. 6496 (CLE) (B.C.S.C.)//Howard A. Milner,

for appellant; Richard B. Lindsay and Wesley D. Mussio, for respondent.//Case authorities: Garcia v. Crestbrook Forest Industries Ltd. (1994), 9 B.C.L.R. (3d) 242 (C.A.) - considered; Johal v. Dosang, [1998] Civ. L.D. 234; [1998] P. Inj. L.D. 73; [1998] Ins. L.D. 14; [1998] C.D.C. 11986 (CLE) (B.C.C.A.) - considered; Leung v. Leung (1993), 77 B.C.L.R. (2d) 314 (S.C.) - considered; Stiles v. British Columbia (Workers' Compensation Board) (1989), 38 B.C.L.R. (2d) 307 (C.A.) - considered.

**FAMILY LAW - Children - Maintenance - Extraordinary expenses - Court to consider parties' incomes and other circumstances in determining whether expenses being "extraordinary" within meaning of federal guidelines - Court then to determine whether expenses being necessary and reasonable.//FAMILY LAW - Children - Maintenance - Arrears - Cancellation - Chambers judge cancelling portion of arrears without being fully aware of the facts - Appeal court reinstating arrears in full.**

The parties were married in 1978, separated in 1993 and divorced in 1994. Their three children, now aged 16, 14 and eight, were all in the custody of the petitioner wife. The divorce decree included a term requiring the respondent husband to pay maintenance of \$1,200 per month per child. At the time he was earning \$140,000 per year. In late 1996 he resigned from the law firm where he was a partner and several months later he took a salaried position at \$70,000 per year. During the time he was unemployed, he fell into maintenance arrears in the amount of \$8,413. A chambers judge reduced the amount of periodic maintenance payable to a total of \$1,722 per month for the three children, in accordance with the federal guidelines. The husband was also ordered to contribute \$509 per month for extraordinary expenses. Finally, the judge reduced the arrears of maintenance to \$5,600. The husband appealed, seeking a further reduction in maintenance, challenging the award for extraordinary expenses, and seeking cancellation of the arrears. The wife cross-appealed, seeking reinstatement of the full amount of arrears. *Held*, appeal allowed in part; cross-appeal allowed. The

main issues raised on the appeal concerned the meaning of the phrase "extraordinary expenses for extracurricular activities" as used in s.7(1)(f) of the guidelines and whether the expenses claimed by the wife were properly allowed. In deciding whether an expense, or the totality of expenses claimed on behalf of children under s.7(1)(f) are extraordinary, the court should take into consideration the combined income of the parties, as well as the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the children and the overall cost of the activities. Once an expense or expenses are found to be extraordinary, the court must determine whether the expenses are necessary in relation to the children's best interests and reasonable, having regard to the means of the spouses and those of the child, and to the family's spending pattern prior to separation. Here, the husband took no exception to contributing to the cost of a tutor for one of the children. The biggest single expense to which the husband was required to contribute was the cost of child care for the youngest child. The chambers judge was fully justified in requiring the husband to contribute. That expense was in the best interests of the child and was reasonable in light of the parties' combined annual income of \$120,000 and the fact that the wife was working full-time. It was not a case in which it was reasonable to expect the two older children to provide child care for the youngest. The only area in which the judge erred with respect to extraordinary expenses was in relation to extracurricular activities. The husband was ordered to contribute \$69 per month for the children's sports activities. However, none of the associated expenses could be viewed as "extraordinary". They were common activities for children of the ages in question and they did not involve any additional costs such as fees for trips. The total cost had to be regarded as included in the amount of basic maintenance payable by the husband. As for the cross-appeal, the judge failed to appreciate that before defaulting on his maintenance obligation the husband had paid \$43,000 to Revenue Canada, some \$3,000 of which was an overpayment of his income tax debt. Had the judge been fully aware of the facts, he would not have been so ready to forgive \$2,800 of the arrears. The arrears would be reinstated in full.

McLaughlin v. McLaughlin, C.A., Goldie, Prowse & Finch J.J.A., Doc. Vancouver CA023706, October 30, 1998, 47 pp. [CLE No. 98-13834]//Both parties in person.//Principal case authorities: Andries v. Andries (1998), 36 R.F.L. (4th) 175 (Man. C.A.) - considered; Campbell v. Martijn (1998), Nfld. & P.E.I. R. 126 (P.E.I.S.C.) - considered; Ellis v. Ellis (1997), 158 Nfld. & P.E.I. R. 193 (P.E.I.S.C.) - considered; Kofoed v. Fichter (1998), 161 D.L.R. (4th) 189 (Sask. C.A.) - considered; Middleton v. McPherson, Alta. Q.B., Doc. 4803-103812, June 12, 1997 - considered; Raftus v. Raftus (1998), 159 D.L.R. (4th) 264 (N.S.C.A.) - considered; Sanders v. Sanders, Alta. C.A., Doc. 97-17447, May 20, 1998 - considered.

**LAW PROFESSION - Unauthorized practice//PROFESSIONS - Notaries public - Neither Notaries Act nor common law permitting notaries public to practice in probate matters - Such practice by notary constituting unauthorized "practice of law" contrary to Legal Profession Act.**

The petitioner Law Society alleged that the respondent, a notary public, had given legal advice on the probating of a will, a matter said to constitute the unauthorized practice of law. The petitioner sought declaratory and injunctive relief accordingly. Held, for petitioner. The Notaries Act does not expressly authorize a notary to advise on matters of probate. However, the Act provides that a notary "may perform the duties authorized by an Act". By virtue of the definition provisions of the Interpretation Act, "Act" includes The English Law Ordinance, 1867, and its successor, s.2 of the Law and Equity Act. The latter provision states that "the Civil and Criminal Laws of England, as they existed on November 19, 1858, so far as they are not from local circumstances inapplicable, are in force in British Columbia". An historical review shows that notaries were not, in general practice, involved in probate matters in England on November 19, 1858. To the extent that they carried out duties in the ecclesiastical courts touching on such matters, it was very largely a registrar's role. Even if ecclesiastical notaries, before 1858, performed a solicitor's role in probate matters,

the exception set out in s.2 of the Law and Equity Act was applicable, i.e., probate through ecclesiastical courts was "from local circumstances inapplicable" and any lawful practice by notaries in that regard was not imported into British Columbia. Since neither the Notaries Act nor the common law authorizes notaries to practice in probate matters, it follows that it is the unauthorized "practice of law" as defined in the Legal Profession Act for a notary public to so act. The evidence in the present case showed beyond a reasonable doubt that the conduct of the respondent constituted the "practice of law". There would be a declaration accordingly, as well as a permanent injunction enjoining the respondent from engaging in that practice.

Law Society of British Columbia v. Gravelle, S.C., Bauman J., Doc. Vancouver A964141, October 9, 1998, 36 pp. [CLE No. 98-13694]//Elizabeth B. Lyall, for petitioner; Dwight H. Whitson, for respondent; Adrian Chaster, for intervenor.//Principal case authorities: Reference re Society of Notaries Public of British Columbia (1969), 69 W.W.R. 475 (B.C.C.A.) - considered; The King v. The Scriveners' Company (1830), 10 B & C 540 - considered.

## **PROPOSED NEW COMPANY ACT**

### **Why a new Company Act?**

- The current act is 25 years old.
- The new Company Act will make it easier to form and maintain a company in B.C.
- By cutting down on the documents companies are required to file, and by allowing for the latest technology to be used, the new act will permit the Corporate Registry to cut costs and improve service.
- A Company Act which is more compatible with other modern corporate statutes in North America will help Vancouver develop as a national and international business and financial centre.

### **What are the benefits of a new act?**

It cuts red tape:

- Companies will be able to incorporate and file documents electronically, and the registry will be able to microfiche files and get rid of paper documents on site.
- The new act streamlines procedures for holding annual general meetings, allows a number of technicalities to be waived by the shareholders, and reduces the number of documents filed at the Corporate Registry by allowing companies to keep documents at their office instead.
- The new act would simplify how companies can dissolve or be restored. Court procedures will be eliminated wherever possible, making it easier for companies to amalgamate.

**It ensures B.C. companies can compete:**

- Other provinces have adopted procedures for some corporate transactions which are quicker and cheaper than the current B.C. act.
- While the revised Company Act will differ fundamentally from other modern corporate laws in Canada, it will adopt provisions where uniformity is important.
- The act adopts the standard Canadian code for trading shares based on having "negotiable" share certificates. Companies that issued non-negotiable share certificates before 1973 would have the right to recall their certificates.

**It gives companies greater flexibility:**

- A company can buy its own shares from one or more shareholders, without having to offer to buy shares from all its shareholders first. A financially solvent subsidiary company can buy the shares of its parent company.
- Companies would continue to be able to issue shares that have par value, as well as non par-value shares. Par value shares can be easier to use and understand.
- The new act gives more focused rules for directors and senior officers of companies to disclose contracts which place them in a conflict of interest, and makes it more difficult for courts to revoke these contracts.
- As long as they disclose the information to all shareholders, companies can give shareholders financial assistance such as loans or loan

guarantees.

**It ensures qualified people can act as directors and officers:**

- Companies can more easily indemnify their directors when they are sued for something done on behalf of the company and they have behaved properly.
- While companies must still file the residential addresses of their directors at the Corporate Registry, directors could request that access to this information be restricted. Companies would no longer have to keep the list of officers at the Corporate Registry.
- B.C. companies will not have to have at least one director living in this province and a majority of directors living in Canada.

**BUSINESS NAMES DISCUSSION PAPER**

The paper proposes that rules relating to the approval of all business names (i.e., corporations, partnerships and sole proprietorships) be rationalized and consolidated into a single law, the Business Names Act. Registering business names would benefit both B.C. consumers and B.C. business owners because it would prevent new businesses from having confusingly similar names. Currently incorporated company names are filed with the Corporate Registry and have this protection.

Copies of the Guide to the Draft Company Act and the Business Names Discussion Paper are available at <http://www.fin.gov.bc.ca/pt/pol.htm> or by calling (250) 387-1269.

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