THE ASSISTANT

BC Association of Legal Assistants *Issue IV - 1998, Volume 8*

CHANGES TO THE FAMILY LAW RULES

By David C. Halkett, Lawyer with Tim Louis & Company

On September 1, 1998, the way we all practice family law came to an abrupt end. No longer do we, as family law practitioners and assistants, have to deal with two forms of originating documents. The Petition for Divorce and old Writ of Summons in a Family Relations Act ("FRA") action have now been formally abolished and, in their place, a newly revised Writ of Summons and Statement of Claim are now to be used. Basically, although there are exceptions, all new family law proceedings are started by the new Writ of Summons and Statement of Claim. I will discuss the exceptions later on.

As those of you who work in family law are well aware, there were times when two separate proceedings existed at the same time, sometimes in different registries. To further complicate matters, the plaintiff in the FRA action could be the respondent in the divorce petition. It created, at times, a bureaucratic nightmare. The change to the rules eliminates that problem.

On September 1, Rule 60 and 60B were amalgamated into a new Rule 60. Rule 60B has been abolished and Rule 60 has been expanded. For the most part, all of the information found in the old FRA Writ of Summons, Statement of Claim and Divorce Petition are now found in the new Writ of Summons and Statement of Claim. There are some additions such as Section 17 which asks for the husband's name at birth and immediately before marriage. That section simply reflects the new state of the law whereby men can change their name on marriage.

When completing the new Statement of Claim, which **must** be attached to the Writ of Summons, you only have to complete the relevant sections, but if you do not complete a section and/or delete it, you **cannot** renumber the remaining section. If you add a part to a section, you must number it with a decimal point, such as 7.1 or 7.2. The Registry will reject your document if you renumber the sections.

The time for response by a defendant is now the same as in a normal civil litigation matter, namely seven days if served in B.C. and longer periods if served outside of the province. Except for applying for an uncontested divorce order, which must go by desk order, or be set on the trial list, one can take default and appear in Chambers under Rules 17(9) and 18 immediately after the seven days have passed.
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INSIDE THIS ISSUE:

FROM THE EDITOR'S DESK

BCALA Voting Members will find a salary survey enclosed with their newsletter along with a self-addressed postage paid envelope. Please fill out the survey and return it no later than December 1, 1998. Survey results will appear in the first issue of 1999 which will be mailed in mid-February.

Finally, I would like to thank Thora Arnason. She is my second pair of eyes. Thora helps me edit each issue. Her assistance is invaluable to me.

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 January 22, 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.

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However, there is a downside in that one cannot file an interlocutory application to be heard within the time for Appearance without short leave. It was at least arguable that in the past, one could apply within the 20 days for Answer.

Many of the documents for a desk order remain the same with minor cosmetic changes. Forms 127 through 136 are the new forms to use.

In terms of miscellaneous changes, there are a few:

(1) You no longer name the person it is alleged had adultery with the defendant **unless** a claim against that third person is also being brought.

(2) The Affidavit of Service no longer requires a photograph. However, the means by which the process server identified the defendant must still be set out.

(3) To withdraw a part of a pleading a letter is no longer sufficient. One must now file a Notice of Withdrawal.

Transition

If you filed a Petition for Divorce prior to September 1, 1998 but did not serve it, you do not have to amend your document as Master Joyce in Jordan v. Jordan (September 4, 1998, New Westminster Registry No. D41706) held such an amendment was not required. While making such an amendment might be easier, it is not required. You must carry on under the Rules for the rest of the proceeding.

Exceptions to New Rules

As with all rules, there are exceptions. You can use an originating application under Rule 10 in the following circumstances [Rule 60(5)]:

(1) If the application is to rescind, vary, suspend or supersede a support, maintenance or custody order of another court (other than a B.C. court). **If it has been made by the Supreme Court of B.C. you apply under the old file.**

(2) If the application is with regard to a marriage agreement under Section 68 of the FRA.

(3) It is an application by a person who is not a spouse for relief under the Divorce Act Sections 16(3) or 17(2).

Rule 60(6) provides one further exception, namely, that if you start a proceeding under Rule 60(5), you can continue it under the originating application file.

Overall, the changes are welcome and will make life much simpler for all of us.

Note:
I wish to acknowledge an error I made at the September 29, 1998 BCALA Family Law seminar held at Russell & DuMoulin. I wrongfully assumed that Registry staff no longer draft the Certificate of Divorce since exact wording appears in the Rules. My error was confirmed when the Registry completed and returned the same diploma like Certificate of Divorce it always did before September 1, 1998. I am sorry if I caused any confusion.

PRESIDENT'S COLUMN

By Jasbir Bains

On November 4, 1998, BCALA and CALA will be holding a joint dinner seminar at the Crowne Plaza Hotel Georgia (formerly the Georgia Hotel). This is a great opportunity to network with fellow legal assistants. I urge all members to attend. The topic is "Dealing with stressful situations and difficult people" and the guest speaker is Toby Snelgrove, a physiotherapist and traumatic stress consultant. Feel free to approach directors with any concerns you may have regarding BCALA.

To date we have held several seminars, e.g. Workplace Harassment, Supreme Court Rules Amendments, etc. All have been well attended. The September seminar was attended by more than 50 people. The only disappointing aspect has been the lack of attendance by members. The directors are at a loss as to why more non-members attend than members. We are always looking at ways to improve the seminars and to increase member attendance. If you have any suggestions, we would like to hear from you. Almost all our seminar topics have been on litigation topics. We would like to schedule non-litigation seminars. In that regard members can assist us by suggesting topics and/or speakers.

People are always asking the question "What are the benefits of a BCALA membership?". Well, one of the benefits is that members have exclusive access to some employment positions. Between May and September 1998, members were informed of approximately five employment positions before the general public. If your firm is looking to fill a legal assistant position why not point them to us. For more information please contact Ann Halkett.

In the next edition of the British Columbia Legal Telephone Directory, 1999 (yellow cover) published by Canada Law Book Inc. (not the B.C. Bar Directory) you will see for the first time the names of legal assistants who are members of BCALA and/or CALA. We did not forward the names of all our voting members. The only names we forwarded were those of members we knew were employed by law firms. We apologize for any omissions, but we only had two days in which to come up with a list. In the next membership renewal form we will have a box for members to tick to indicate whether they want their name and employer's address included in the Canada Law Book legal directory.

One of our members, Bev Peterson, has been exploring ways for legal assistants to obtain professional status under the NAFTA agreements. Recognition will enable legal assistants to obtain temporary employment with U.S. law firms, corporations, etc. For more information see Bev Peterson's article which appears in "The Assistant" [Issue III-1998, Volume 7]. We understand that an article by Bev will also be appearing in the next edition of the "Legal Assistant Today" magazine. Bev now heads our committee on NAFTA issues. If you would like more information regarding this topic, please contact any of the directors who will put you in touch with Bev Peterson.

The directors would like to enter the next century by having a BCALA website operating by the end of 1999. I have already spoken to a couple of companies. If any of our members can help, please contact me.

For those who have e-mail my address is: *jbains@farris.com*

WHY SHOULD YOU JOIN BCALA?

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

MEMBERSHIP UPDATE

By Thora Arnason, Membership Director

I am happy to report that we have made steady gains in membership and now have a total of 126 registered members. Of those, 74 are Voting Members, 45 are Student Members and 7 are Associate Members. We also have 2 Honourary Members.

We have accepted 53 new members to the association since January 1, 1998. This is a very positive sign for the BCALA and shows an increasing interest in and commitment to the advancement of the legal assistant profession.

I would encourage everyone who is so inclined to become involved in one of the committees by calling the committee chairperson listed on page 2. Those who aren't committee-oriented, be assured that you are valuable to the BCALA and can insure its continuance by keeping your membership current and by participating in BCALA sponsored events.

On that note, 1999 Renewal Notices will be mailed to each member around the end of November, 1998. Please try your best to get them back to us by the end of February 1999. We are currently getting renewals all year round which makes it difficult in terms of bookkeeping. The cut-off for 1999 renewals will be March 31, 1999.

Last, spread the word. If you know legal assistants who have let their membership lapse, or have never been members of the BCALA, encourage them to join or re-join. Upon becoming members they'll receive what we think is a great quarterly newsletter, free entrance to the BCALA lecture series, exclusive access to certain job notices, the annual salary survey of working members, several opportunities each year to network with their peers, and that's just for a start. We expect the benefits of membership to continue to expand.

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LEGAL ASSISTANT DIRECTORY

By Jerena Laursen

Earlier this year, Valerie Fuller and I presented several ideas to CALA and BCALA with a view to enhancing the legal assistant profession in British Columbia.

Having determined that the legal telephone directory published by Canada Law Book Inc. in Ontario provided a listing for Law Clerks, Valerie and I thought it would be prudent to seek a similar listing for British Columbia legal assistants. With the concurrence of both CALA and BCALA, I approached Canada Law Book with our idea, offering to provide a list of legal assistants from both associations as the base for the first publication.

In early August, I was notified that a separate listing for legal assistants would be added to the British Columbia Legal Telephone Directory, 1999. I was also advised that, if we were able to provide the list of legal assistants within 10 days of that notice, the list would be published in the 1999 directory.

Valerie and I scrambled to obtain the lists of legal assistants from both BCALA and CALA. BCALA provided information about all if its voting members and CALA provided information for both voting and non-voting members. Approximately 50 names will comprise the first listing. In future, this directory will include the names of voting and non-voting individuals of both associations, as well as any other individuals who wish to submit their relevant information to Canada Law Book Inc. for publication. The listing will also include contact information for each of the associations and the following notation:

"The associations generally define a legal assistant as a person qualified through education, training or work experience who performs, under the discretion and supervision of a lawyer, substantive legal work requiring sufficient knowledge of legal concepts and procedures which that, in the absence of the legal assistant, the work would be performed by a lawyer. Voting members of these associations are indicated with an asterisk(*)."

Valerie and I are very pleased to announce this publication. We are also happy to promote the purchase of the British Columbia Legal Telephone Directory, 1999. No other directory provides a listing for B.C. legal assistants.

For more information about the directory, or to obtain your copy, you can contact Canada Law Book Inc. at 240 Edwards Street, Aurora, Ontario L4G 3S9, or call toll free 1-800-263-2037, or fax 905-841-5085. Depending on the number of copies ordered, the cost per directory will range from about $20-$25.

IN THE WAKE OF BRE-X --- CHANGES ON THE HORIZON

By Dayna M. Forsyth

Reprinted with permission from Dayna M. Forsyth of Swinton & Company, who can be reached at 643-1264 or by e-mail at *dmf@swinton.ca*.

Information is the lifeblood of capital markets and when an information break-down occurs, as it did in the Bre-X situation, the result is an erosion of confidence in those markets.

The securities regulators of the various provinces must balance the need for adequate levels of corporate disclosure to investors while permitting companies to operate efficiently within the marketplace, a cornerstone of the Canadian economy. When a breakdown occurs in this balance, the system must be reviewed and re-worked. In the wake of Bre-X, securities regulators are doing just that.

In the fall of 1997, two important events were announced by securities regulators. The first event involved a shift towards a fully integrated disclosure system for companies that want to obtain financing from the public markets ("Public Companies"). To understand this change, we first need to understand how the current system is set up.

"Securities" are the various forms of debt and equity financing mechanisms (the most common of which are shares) Public Companies sell in order to raise capital to run their businesses. When a Public Company wants to issue new securities to members of the public, it usually has to produce a disclosure document called a prospectus. A prospectus is a document that tells the potential buyer of the securities all about the business of the company, the people who run it, and the company's financial situation, among other things. Every prospectus has to be reviewed and approved by the securities commission in the province where the purchasers of the securities reside, sometimes in conjunction with the stock exchange on which the securities of the Public Company are listed. If the newly listed securities are being sold or have been sold through a brokerage house, the brokerage house's counsel will also carefully review the prospectus. Once the prospectus is finalized, it is signed by representatives of both the Public Company and the broker, each certifying that the prospectus contains full, true and plain disclosure of all of the material facts (i.e. really important facts) relating to those securities. The effect of the signed certificate is that an investor is deemed to rely on the disclosure made in the prospectus and if that disclosure turns out to be false, the investor has an automatic statutory legal claim against the Public Company, and possibly the broker, for any economic damages which he or she many suffer.

With our current system, however, sometimes Public Companies can sell securities to certain types of investors who are "sophisticated purchasers" in "private placements" without having to produce a prospectus. If a prospectus is not subsequently produced, these securities will not become freely tradeable to the rest of the public right away but are subject to a "hold period" which, in British Columbia, can last up to one year. After that point, those securities can be traded in the market, usually on one of the stock exchanges. The problem with this system is that new securities can be released into the market without a prospectus ever having been published. This problem may have been one of many factors which contributed to the Bre-X situation.

Public Companies are also required by our securities laws to continuously disclose to the investing public any material changes in their affairs. This is usually done through documents which Public Companies are required to send to investors (for example, financial statements and annual general meeting materials), reports which Public Companies file with the securities regulators, as well as documents which the Public Companies issue voluntarily, such as press

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releases and oral statements. The purpose of this disclosure is to keep regulators and investors informed.

Over the past couple of years, the various securities regulators have formed committees which have been looking at implementing an entirely different type of system. In this new system, rather than having to produce a prospectus only when the Public Company wants to raise money from the public, the Public Company will have to consistently maintain prospectus level disclosure. Further, the current statutory liability that attaches to misrepresentations in a prospectus would be extended to other continuous disclosure reports that Public Companies provide to investors thus extending statutory civil liability to investors in secondary markets. As a result of this move to a fully integrated disclosure system, Public Companies will be able to issue new securities at any time based on the information in their continuous disclosure record rather than information in a prospectus connected with a particular transaction. Investors will be better protected, as the statutory liability provisions make it much easier for an investor who has been misinformed to establish a legal case for damages. This in turn should cause Public Companies to be very careful to ensure accuracy in the information which they disclose. The second event which was announced by Ontario securities regulators is the formation by the Toronto Stock Exchange and Ontario Securities Commission of a joint Mining Standards Task Force. The purpose of this Task Force is to examine the current standards for public mining and exploration companies, such as Bre-X, and make recommendations on how exploration programs should be carried out and how results are reported and disclosed.

Securities regulators in British Columbia, as well as some of the other provinces of Canada, are currently drafting legislation which, if passed by the provincial legislatures, will move our system closer towards this goal of integrated disclosure. Although the system can never prevent fraud entirely, this change, along with future changes to mining disclosure standards, can improve the accuracy and flow of information to investors thereby adding "significantly to the deterrence in the marketplace in order to achieve the level of integrity of continuous disclosure that must characterize Canadian securities markets" (Committee on Corporate Disclosure. Responsible Corporate Disclosure - A Search for Balance. (Toronto: Toronto Stock Exchange, 1997, iii.)).

ATTENTION SPECIALIZED LEGAL ASSISTANTS

Are you a specialized legal assistant? If so we would love to hear from you. We are looking for individuals to be part of a lecture series. If interested please telephone Connie Iverson at 294-9594.

ENGLAND TO LAUNCH CERTIFICATION

"NVQ" exam, to start next year, tests paralegal skills

By Natasha Emmons

The body that regulates attorneys in England has launched a National Vocational Qualification (NVQ) for paralegals, with testing expected to begin around June of 1999.

The Law Society, along with the Institute of Legal Executives (ILEX) and a testing organization called Edexcel, is developing standard qualifications based on actual workplace competence, rather than just theoretical knowledge or even knowledge of workplace practice. "In other words, the qualification is evidence that someone is competent to do their job," a Law Society pamphlet reads.

To earn the NVQ, a paralegal will have to collect a "portfollio of evidence" consisting of file and attendance notes, letters to and from clients and opposing counsel, and samples of formal legal drafting. This portfolio will be presented to an approved assessor, who will probably be an attorney. The paralegal may also be observed interviewing witnesses or taking instructions. And the paralegal will have to answer further questions, including "what if" scenarios, from the assessor. This may be in the form of an oral or written test.

Separate standards will be set for NVQs in different areas of practice, including residential and commercial conveyancing, civil and criminal litigation, family and matrimonial work, local government legal work, and the sale and purchase of a business.

There is currently no one professional or regulatory body which controls England's estimated 2,500 paralegals, and there are no formal qualifications to become a paralegal.

"It's really aimed at people who are working within legal practice and yet don't have an official qualification as yet," said Seonaid Watkins, supervisor of the operations division of ILEX. "So the qualification's actually designed to show that they can actually do their job competently."

This is the first such test for paralegals, Watkins said.

For more information, call Edexcel at 011-44-171-393-4290.

TEACHERS WANTED!

The Vancouver Community College Legal Assistant program is looking for people to add their names to its teaching list. If interested contact Program Advisor Katherine Wellman at 222-0707.

CANADIAN PARALEGAL LOSES HIGHLY PUBLICIZED UPL CASE - Still defiant Boldt pleads quilty to UPL

By I. Perrin Weston

In May 1996, Ontario Paralegal Maureen Boldt won a heralded court victory against the Law Society of Upper Canada which sought to prosecute her on 16 counts of practicing law without a license.

During that skirmish, an Ontario justice of the peace threw the case out of court mid-trial after calling the prosecution's case "weak". The Law Society successfully appealed that decision and new trial dates were set for May and June of this year. This time around, the Law Society won.

On May 4, in an agreed statement of facts between the Law Society and Boldt, she acknowledged that during a two-year period ending Oct. 17, 1995, when charges were initially filed, she advertised and offered legal services in cases concerning divorce, wills and incorporation. She also admitted that between February 1996 and February 1998, she advised and represented divorce clients in court and acted as a mediator in marital separations.

Still defiant, Boldt maintains that she is innocent of the charges and that she only plead guilty to the one charge "because my attorney really squeezed me hard to settle this case. At the end of the day, the major reason I settled was that the Law Society had spent two years and invested $100,000 in fixing their case after it was dismissed. They were bringing in all the broad shoulders from across the province and I just started feeling like the deck was stacked. If we had gone to trial and the Law Society won, they would have a hot-off-the-press conviction in a gray area concerning what paralegals can do. The last thing we needed was to set a precedent".

The 38-year-old single mother faced maximum fines of $10,000 for each of the 36 counts filed against her if convicted, a potentiality she said she could ill afford. "I've already gone bankrupt and sold my home to help pay more than $80,000 in attorney expenses", she said.

At this time, independent paralegals in Ontario (paralegals who work for attorneys are called law clerks), are not regulated and there is much confusion concerning what sort of tasks they may perform. In some areas of the law, statutes allow them extremely limited leeway to perform functions in court traditionally handled by attorneys. Boldt, like many others, believes that the Ontario legislature needs to take control and regulate the industry rather than leaving it to the local courts to haphazardly "clarify the gray areas".

Ajit John, a staff attorney with the Law Society who supervises the prosecutions of paralegals charged with UPL, said the Boldt settlement is important "because we were able to obtain an admission from her that she provided legal services in the areas of divorce, wills and incorporation, which are breaches of the Ontario statute that defines legal practice. All we needed was one guilty plea because that allows the Law Society to move for an injunction if she were to breach the statute again. That way we don't have to go through this whole process again. If she breaches the statute, then her business can be shut down."

John said charges were initially filed against Boldt when attorneys reported to the Law Society that former clients of Boldt had complained to them that she had botched their cases and held herself out to be a lawyer, allegations which Boldt still denies, her guilty plea not withstanding. John said the newer charges against Boldt were made after the first trial was dismissed, when she continued advising new

Continued on page 17.

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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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All of the above-noted potentially serious problems can be completely eliminated very simply: Take me to Court! In my survey of Vancouver lawyers, I have found that most prefer the attendance of a reporter to that of an audiotaped transcription, the hesitation being cost. However, with my low overhead and clean writing style (therefore faster turnaround), I can afford to match a transcription company's rates, and you're still ahead as far as speed, accuracy, and all the add-on services I provide. See for yourself:

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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,

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Catherine Kottmeier,
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clients in a manner that violated statutes against the unlicenced practice of law.

The Law Society's mandated role is to govern the legal profession in the interest of the public. Part of that mandate is to prosecute any non-lawyer suspected of engaging in the practice of law. Unlike attorneys, John said, paralegals are not covered by mandatory liability insurance if they bungle a case. "Because there is no licencing or standardization, clients have no way of knowing if the paralegal they hire is competent or not," John said.

While the Law Society has prosecuted many paralegals for violations of its Law Society Act, John said Boldt's case attracted unprecedented attention "because she notified the press and took this on as a cause celeb. She created it, she staked her ground and then she wouldn't budge. The settlement she finally accepted was the same offer we made to her on the first day of trial in 1995. But she didn't want it then. She was on a crusade."

By her own account, Boldt is still on that crusade. Since settling her case in early May, she has sent letters to Premier Mike Harris and to Ontario Liberal Leader Dalton MacGuinty, calling for paralegal regulation as was recommended by the 1989 Ianni Report on Paralegals, a major Canadian study on the role of paralegals in modern law.

Ontario Attorney General Charles Harnick has said he supports regulation of paralegals by mid-1999. On June 15, Harnick is set to moderate a meeting of "stockholders" from throughout the province for an informal "meeting of the minds" to discuss the future of paralegal regulation and standardization (the meeting took place after this article went to print). Among those planning to attend the meeting, a first of its kind, were representatives from the Paralegal Society of Ontario, the Canadian Bar Association, educators, the Law Society, and other associations and groups that form the Ontario legal community.

David Goddard, president of the Paralegal Society of Ontario, said his organization is not in a position to know if Boldt conducted business that crossed the line into practicing unlicenced law or not.

"We're wrestling as an organization on where the lines of demarcation are drawn", Goddard said. "We couldn't be certain if Maureen had crossed those lines or not. But we do take the position that regulation should not occur through prosecution, which was the case here. We believe this issue should be resolved through the legislature and not through the courts."

LEGAL WEBSITES

National Association of Legal Assistants (U.S.)
http://www.nalanet.org

National Federation of Paralegals (U.S.)
http://www.paralegals.org

British Columbia
Legislative Assembly of B.C.
http://www.legis.gov.bc.ca/

Queen's Printer (Province of B.C.)
http://www.qp.gov.bc.ca/

Consolidated Statutes of British Columbia (Title/Ministry concordance)
http://www.legis.gov.bc.ca/procs/allacts

Consolidated Statutes of British Columbia (Arranged by responsible Ministry)
http://www.qp.gov.bc.ca/stat_reg/

Statutes of British Columbia ('92-'96 proclamation information)
http://www.legis.gov.bc.ca/procs/

Folio version of the Consolidated Statues of British Columbia
http://publish.qp.gov.bc.ca:81/folio.pgi/95bcstat/query=

B.C. Supreme Court and Court of Appeal
http://www.courts.gov.bc.ca/

Revised Statutes of B.C.
http://www.qp.gov.bc.ca/stat_reg/statutes/

B.C. Environmental Appeal Board
http://www.eab.gov.bc.ca

B.C. Human Rights Commission
http://www.bchrc.gov.bc.ca

B.C. Archives
http://www.bcars.gs.gov.bc.ca/bcars.html

Trial Lawyers Association of B.C.
http://www.plabc.org

B.C. Courthouse Library Society
http://www.bccls.bc.ca

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West's Legal Directory
http://www.wld.com/ldsearch.htm

Canada's Parliament: World Wide Web Server-Home Page
http://www.parl.gc.ca/

Introduction to Committees of the House of Commons
http://www.parl.gc.ca/committees/english_intro.html

Solicitor General Reports
http://www.sgc.gc.ca/reports/ereports.htp

The Supreme Court of Canada
http://www.droit.umontreal.ca/SCC.html

Federal Court of Canada
http://www.fja-cmf.gc.ca

Industry Canada - Corporations Directorate
http://Strategis.ic.gc.ca/sc_mksv/corpdir/engdoc/homepage.html

ACJNet-Access to Justice Network
http://www.acjnet.org/

Canadian Law Schools
http://www.law.ubc.ca/links/lawsch.html

Canadian Legal Resources on the WWW
http://www.mbnet.mb.ca/~psim/can_law.html

Department of Justice Canada
http://132.204.132.161/index_en.html

Revised Statutes of Canada; Canadian Federal Regulations (Folio version in compressed, downloadable format)
http://canada.justice.gc.ca/ftp/en/laws/index/html

Statutes of Canada
http://canada.justice.gc.ca:80/loireg/index_en.html

Statistics Canada:General Search
http://www.statcan.ca/Reference/English/Search/search.html

The Surfing Lawyer (Canadian site)
http://www.netlegal.com/

University of Saskatchewan law search
http://library.usask.ca/branches/public/law.html

FindLaw: Canada
http://www.findlaw.com/search/countries/ca.html

International
International Court of Justice Homepage
http://www.law.cornell.edu/icj/

LATCO TRADE TOOLS
http://www.teleport.com/~tmiles/tools.htm

Latin American legal WWW sources
http://lib.nmsu.edu/subject/bord/laguia/lag1.html

AustLII-Australasian Law on AustLII
http://www.austlij.edu.au/primary.html

Australian Legal Education
http://austlii.law.uts.edu.au/austlii/austral_law_education.html

Berne Convention text
gopher://gopher.law.cornell.edu:70/00/foreign/fletcher/BH006-1971.txt

European law digest; law firm directory by country
http://www.link.org/EUROPE.HTM

United Nations sources
gopher://nywork1.undp.org:70/1

IAN Web Resources - National Governments
http://www.pitt.edu/~ian/Resources/ias-natl.html

Jurweb Bayreuth: Deutschland (Germany)
http://www.uni-bayreuth.de/students/elsa/jura/geo/jurweb-d.html

Jurweb Bayreuth: Jurweb overview (Jurweb komplett)
http://www.uni-bayreuth.de/students/elsa/jura/jurweb-home-english.html

The CTI Law Technology Centre, University of Warwick
http://ltc.law.warwick.ac.uk/ltchome.html

The World-Wide Web Virtual Library: United Nations etc.
http://undcp.org/unlinks.html#rights

TNZLL-The New Zealand Law List
http://www.lawnet.com.au/lawyers/nz.html

United States
American Bar Association
http://www.abanet.org

U.S. Food & Drug Administration
Gopher:zeus.esuda.gov:70;Choose:

U.S. Patent & Trademark Office
http://www.uspto.gov

Introductory guide to US legal research (US legal research FAQ)
uslgix.htm at UBC Law Library homepage

Farislaw; full text search of US federal and state court decisions
http://www.farislaw.com/uscaselaw.html

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Hieros Gamos- encyclopaedic list of legal URLs
http://hg.org/lawlibrary.html

LAWGURU-Legal Questions, Answers and Research
http://www.lawguru.com/index.html

Legal Computer Solutions, Inc.
http://www.lcsweb.com

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Case Law - States
http://www.lcsweb.com/statedec.htm

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http://www.usc.edu/dept/law-lib/librarys/locators.html

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http://www.law.indiana.edu/law/v-lib/lawindex.html

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http://www.law.cornell.edu/source.html

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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 September, 1998 "Registrars' Newsletter".

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

Civil Practice & Procedures

Q: If a petition for divorce was issued but not served, must the form be amended to comply with the new Forms 127 & 128?

A: The decision of Master Joyce in Jordan v. Jordan on September 4, 1998 held that a Petition for Divorce filed prior to September 1, 1998 but not served does not need to be amended to comply with the Rules change.

Rule 60(1) & 60(27)(c)

Q: After September 1, 1998, can a plaintiff apply for a divorce order within seven days of service of a petition for divorce or new writ and statement of claim claiming a divorce?

A: A desk order cannot be processed until the time for filing a statement of defence has expired. The plaintiff should wait at least 21 days before applying for the divorce order. If they insist, bring the issue to the attention of the Court on the Registrar's Certificate of Pleadings.

Rule 60

Q: Should registries reject forms, other than the petition, if they do not comply with Rule 60?

A: We should exercise caution in this area and not reject any forms if the parties wish to file them. You will find the substance of most new forms very similar to the previous forms. The only change necessary may be the designation of the parties.

Civil Practice & Procedures and Rule 60

Q: Where orders received still refer to the parties as petitioners and respondents, should the orders be entered or returned for revision?

A: The orders should be entered as submitted. A reminder could be sent back with the entered order respecting the change in format if the order was submitted by a law firm. It may be that these orders are restraining orders or urgent for some other reason. We do not believe the order is nullified because the identification of the parties is incorrect.

Civil Practice & Procedures and Rule 60

Q: How does a plaintiff respond to a statement of defence and counterclaim in a Family Law Proceeding?

A: Form 129 is the statement of defence and may be adapted for use as a statement of defence to counterclaim.

Civil Practice & Procedures

Q: What is covered by "other relief" as noted in the writ of summons Family Law Proceeding?

A: See Part I of Form 128, a statement of claim, for some examples. Another example is an application for partition of property under the Partition Act, or a claim for a common law trust in property owned by another party.

Rule 60(11)

Q: As there is no prescribed form for a joint action for divorce, are there adaptations which must be made to the writ of summons and statement of claim?

A: Forms 127 and 128 must be adapted to meet the requirements of Rule 60(11) and (12).

Rule 60(9)

Q: Can the writ of summons (Form 127), statement of claim (Form 128), statement of defence (Form 129), and counterclaim (Form 130) be changed to comply with the relief sought?

A: Changes and additions may be made but the numbering must remain unchanged. Additions may be made either by inserting the new paragraph and using a decimal (e.g. 7.1, 7.2) or adding additional numbers at the end. Paragraphs not required can be omitted, struck out on a printed form, or printed with a number and blank, or "N/A".

Rule 60(15)

Q: Where the Registrar has granted leave to file the pleading without the marriage certificate pursuant to Rule 60(15), should that document be endorsed?

A: The Registrar should endorse and sign the front page of the document noting that leave has been granted.

Continued on page 23.

Civil Practice & Procedures

Q: What should we be checking when a writ of summons and statement of claim Family Law Proceeding (divorce) are being filed?

A: -Name of registry
-Name of parties (against the marriage certificate)
-Place of trial
-Writ is dated and signed
-Marriage certificate, or confirm paragraph 22 has been completed and leave has been granted
-Time for appearance and defence
-Address of the registry
-Address for delivery
-Registration of divorce proceeding form

Civil Practice & Procedures

Q: What is the definition of "split custody" and "shared custody"?

A: "Split custody" involves one (or more) child(ren) living with one parent and one (or more) child(ren) living with the other parent. "Shared custody" is when the child(ren) live(s) at least 40% of the time with each of their parents over the course of a year. This definition is from the Federal Child Support Guidelines pamphlet issued by the Minister of Justice/Attorney General of Canada.

Rule 21(5)

Q: What recourse does a defendant have who wishes to file a statement of defence setting out claims but is "out of time" (i.e., past the 7 and 14 days)?

A: If default judgment in a corollary relief application has not been entered, or a desk order divorce has not been granted, the defendant can file a statement of defence at any time. If the defendant wants to raise a claim against the plaintiff he/she must do so by counterclaim which "may be included in the same document as the statement of defence". (Rule 21(6))

GOT SOMETHING TO SAY?
Send submissions for The Assistant to:
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c/o Lidstone, Young, Anderson
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Vancouver, B.C. V6Z 2H2
Phone: 689-7400 Fax 689-3444
Deadline: January 22, 1999

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.

CORPORATIONS - Extraprovincial corporations - Rights and powers - Non-registered extraprovincial company being capable of holding interest in land and enforcing its interest, including builder's lien claims.

Section 312(1)(b) of the Company Act provides, in part that an unregistered extraprovincial company, required to be registered, is not capable of acquiring or holding land or an interest in land in the province. That section does not prevent such a company from acquiring or holding an interest. Any interest by such a company is not rendered void by s.312(1)(b). At most it might be voidable, but only upon application by the Crown. A non-registered extraprovincial company holding an interest in the province can enforce its interest in the courts of the province, including a lien interest under the Builder's Lien Act.

Trident Construction Alberta (1986) Ltd. (Trust of) v. Capilano College, S.C. Shaw J., Doc. Vancouver A962044, June 15, 1998, 15 pp. [CLE No. 98-12776//Peter C. Lee, for plaintiff and defendants by counterclaim; Donald A. Thompson, for defendants //Principal case authorities: Campbell v. Morgan, [1919] 1 W.W.R. 268 (Man. K.B.)-applied; Euclid Avenue Trusts Co. v. Hohs (1911), 23 O.L.R. 377 (Div. Ct.)-considered; Garner, Re, [1952] 2 D.L.R. 804 (Ont. C.A.)- considered; McDiarmid v. Hughes (1888), 16 O.R. 579 (Q.B.)- considered; Morelle, Ltd. v. Waterworth, Rodnal, Ltd., [1954] 2 All E.R. 673 (C.A.)- considered.

Continued on page 25.

FAMILY LAW - Children - Maintenance, Variation - Coming into force of federal guidelines amounting to change in circumstances for purposes of variation application - Court retaining direction as to whether to vary.

In 1996 the parties consented to an order under the Divorce Act under which the petitioner husband agreed to pay maintenance of $3,000 per month for the parties' three children. In July 1997 the husband applied to reduce the maintenance payable on the basis that since the making of the consent order, the federal guidelines had come into force and under those guidelines, the proper amount payable was $1,181 per month. A chambers judge dismissed the application and the husband appealed. **Held**, appeal dismissed. Parliament did not intend to make variation of every existing agreement and order to comply with the guidelines mandatory upon application by either party. The retention of a threshold discretion not to vary flows from the language of the Divorce Act. Section 17(1) of the Act permits the court to defer to the parties' view of what arrangements are in the best interest of their particular family by refusing to vary an order when circumstances have not changed and the other is reasonable when measured against the guidelines standard.

Wang v. Wang, C.A., Esson, Huddart & Hall J.J.A., Doc. Vancouver CA023586, August 21, 1998, 30 pp. [CLE No. 98-13358]//Appeal from judgment of Saunders J., [1997] Civ. L.D. 561; [1997] C.D.C. 9973 (CLE) (B.C.S.C.)//Elizabeth A. Kelley, for appellants; Garth E. Edwards for respondents //Principal case authorities: Blackburn v. Elmitt [1998] Civ. L.D. 26; [1998] Fam. L.D. 11; [1998] C.D.C. 10849 (CLE) (B.C.S.C.)- considered; Cane v. Newman, [1998] O.J. No. 1776 (Gen. Div.)- considered; Johnston v. Johnston [1998] N.S.J. No. 177- considered; Kuntz v. Chow, Sask. Q.B., Doc. Regina, January 23, 1998- considered; Metzner v. Metzner, [1998] Civ. L.D. 128; [1998] Fam. L.D. 42; [1998] C.D.C. 11276 (CLE) (B.C.S.C.)- considered.

THE PROCESS OF EXPROPRIATION

By Ann Halkett, Legal Assistant with Lidstone, Young, Anderson

The government can take your land - it is as simple as that. The question is how and why. The scope of this article does not allow for an in-depth explanation of the Expropriation Compensation Board (the "ECB") or the applicable authorizing legislation.

When does expropriation occur?

Expropriation occurs when a public agency such as the provincial government and its agencies, regional districts, municipalities, school districts and utilities take property for a purpose deemed to be in the public interest, even though the owner may not be willing to sell it. In other words, any interest in land and improvements such as buildings, may be expropriated, pursuant to s.4(2) of the Expropriation Compensation Act.

The expropriation process is set out in the Expropriation Act , R.S.B.C. 1996 c. 125 (the "ECB Act"), the Expropriation Act General Regulation, (B.C. Regulation 451/87) (the "General Regulation") and the Expropriation Compensation Board Practice and Procedure Regulation (B.C. Regulation 452/87) (the "Procedure Regulation").

Can an Expropriation be Stopped?

In order to try and stop your land from being expropriated, you can bring a proceeding under the Judicial Review Procedure Act alleging misuse of power. It is difficult to prove.

Who are the parties in an expropriation?

1. The owner of the property and all parties having an interest in the land.

2. The expropriating authority - the body empowered to expropriate the land (e.g. B.C. Hydro, a municipality, or school board, etc.).
3. The approving authority - all expropriations must be approved by an elected politically accountable authority.

Steps in the Expropriation Process:

1. Approval of Expropriation (s.4(1)(b) of the ECB Act)

Before an expropriation can occur, the approving authority must legislate the expropriation. An example at the municipal government level would be an expropriation bylaw passed by council. In an emergency or if undue delay to a project would result from the approval process, approval can be dispensed with.

2. Expropriation Notice - Form 1 (s.6 of the ECB Act)

This may be the first formal notice the owner receives that his property is being considered for expropriation. The notice must contain the purpose for which the expropriation is required. The effect of filing the notice in the Land Title Office ("L.T.O.") according to s.7 of the ECB Act is that the boundaries of the land cannot be altered and the registrar cannot enter another instrument affecting the land with a few exceptions.

3. Notice of Request for Inquiry - Forms 2 and 3 (ss. 10-15 of the ECB Act)

Once an Expropriation Notice has been served the property owner(s) can request an inquiry be held to determine whether the proposed expropriation is necessary to achieve the expropriation authority's objectives. The provision for an inquiry does not apply to "linear developments" which include highways, railways, hydro or other electric transmission distribution lines, pipelines, sewer, water or drainage lines or mains. As well an inquiry may be dispensed with at the same time a s.5 order (dispenses with approval and inquiry) is granted if requested at that time by the approving authority. An

inquiry may also be denied under s.11(1) which states that if the ECB considers an inquiry frivolous or vexatious or, if it is a claim for compensation alone, it may deny the request.

Public Hearing (s.14 of the ECB Act)

Within seven days of receipt of the Request for Inquiry, the ECB will appoint an inquiry officer who will hold a public hearing. The inquiry officer will set a time and place not more than 21 days after the date of his appointment for the hearing and will notify everyone who has been advised of the intention to expropriate. The expropriating authority and all other parties having an interest in the land will be heard by the inquiry officer who must prepare and submit a written report within 30 days containing recommendations respecting the expropriation to the approving authority and every participant in the inquiry.

4. Certificate of Approval of Expropriation - Form 5 (s.18 of the ECB Act)

After considering the inquiry officer's report, the approving authority (i.e. board of school trustees, municipality, etc.) approves, modifies or disapproves of the expropriation.

5. Notice of Abandonment of Expropriation - Form 7 (s.19 of the ECB Act)

After the conclusion of the inquiry and, before an advance payment is made under s.20 of the ECB Act the expropriating authority may also decide to abandon all or part of the intended expropriation. In this case a Notice of Abandonment is filed in the L.T.O. A copy is also served on everyone served with the Expropriation Notice.

Injurious Affection - s.41 of the ECB Act

Injurious affection occurs when an expropriating authority abandons its claim for an owner's property. The owner is entitled to compensation and may apply to the ECB for same. The ECB determines whether the owner is in fact entitled to compensation and if so how much. If the claim is not made within one year it is forever barred. Time begins to run from when the damage was sustained or when it became known to the owner.

6. Compensation - Notice of Advance Payment - Form 8 (s.20 of the ECB Act)

Expropriation compensation means that the owner should be in the same economic position as before the expropriation. Every owner is entitled to compensation pursuant to Section 30 of the ECB Act. Compensation is awarded for the market value of the estate and/or interest plus reasonable damages for disturbance. When an owner receives the advance payment (based on an appraisal report completed for the expropriating authority) he does so on a "without prejudice basis". That is, the final amount of compensation can still be determined at a hearing of the ECB and if more money is owing the owner will receive the additional amount.

Land Substitution Possible - s.43 of the ECB Act

Both the owner and the expropriating authority can agree to substitute land or an interest in land in partial or complete satisfaction for the expropriation.

7. Vesting Notice - Form 9 (s.23 of the ECB Act)

The expropriating authority must have made an advance payment before it can obtain possession of the land. Within 30 days after making the advance payment or, obtaining an order under s.20, the expropriating authority files a Vesting Notice in the L.T.O. and then serves a copy on the owner. The Vesting Notice transfers title from the owner to the expropriating authority.

8. Application for Determination of Compensation, - Form A (s.2 of the Procedure Regulation)

Once the advance payment has been made, the owner has one year in which to file an Application for Determination of Compensation with the ECB. If the

owner misses this limitation period he is deemed to have accepted the advance payment in full and final satisfaction and is barred from any further claim for compensation.

9. Reply to Application for Determination of Compensation - Form B (s.3 of the Procedure Regulation)

Within 21 days after service, the respondent authority replies using Form B and must demonstrate pursuant to Section 4 of the Procedure Regulation why the claimant should not receive any further compensation. If the respondent does not file a reply it cannot make such allegations at the hearing of the application for determination of compensation.

10. Setting down the Hearing - (s.5 of the Procedure Regulation)

To obtain a hearing date, counsel for the claimant or respondent, contacts the ECB registrar to request the reservation of a hearing date once the Form B is filed. The registrar reserves a date and within 30 days of the reservation counsel making the request submits an Application to Set Hearing Date. Once filed, the registrar issues a Notice of Hearing to the parties involved.

Notice of Motion - Form D (s.7 of the Procedure Regulation)

A form of notice of motion similar to that in the Supreme Court is used to bring a proceeding before the ECB. A proceeding could include an application for an order, decision or determination other than a determination for compensation. The notice of motion is filed with the ECB and served on all parties who may be affected by the proceeding. It is returnable not earlier than 7 days and not later than 15 days after service. Such an order might be for the production of documents.

Pre-hearing Matters (s.12 of the Procedure Regulation)

Pre-hearing procedures may come into play when an Application for Determination of Compensation is requested by an owner. These include discovery and inspection of documents, examination for discovery, pre-trial exam of witnesses and discovery by interrogatories. The Rules of Court apply and forms are similar to those used in the Supreme Court.

An application under the Judicial Review Procedure Act must be brought within 30 days after the order or determination. That is, decisions of the chair relating to questions on costs or pre-hearing matters are appealable. Compensation issues on the other hand are appealable under s.28 of the ECB Act through leave by the Court of Appeal and the time limit is 30 days from the date the decision of the panel is rendered.

11. Certificate of Readiness (Procedure Regulation)

A Certificate of Readiness must be filed not later than 60 days prior to the hearing date.

12. Legal and Appraisal Costs ss.45 and 48 of the ECB Act

An owner (and charge holders wishing to challenge the expropriation) is entitled to have legal counsel throughout the expropriation and the ECB Act stipulates that an owner's reasonable costs shall be paid by the expropriating authority.

What does the expropriating authority pay for during the expropriation process?

1. where there is an inquiry the inquiry officer may order the expropriating authority to pay the participants' reasonable costs to be fixed by the inquiry officer,
2. the costs payable include actual reasonable legal, appraisal and other costs,
3. where the Lieutenant Governor prescribes a tariff of costs, the amounts prescribed in the tariff, and
4. on an appeal to the Board under s.41(3) of the ECB Act the ECB may award, in its discretion, costs to the claimant or the

expropriating authority.

Interest and Penalties for Delay - ss.46 and 47 of the ECB Act

The expropriating authority pays interest on any amount awarded in excess of the advance payment which is calculated annually. That is, if the advance payment is less than 90% of the amount determined at the hearing for determination of compensation then 5% interest is added to the outstanding amount to be paid by the expropriating authority. As well, if there is an unreasonable delay by the owner or the expropriating authority, the ECB can penalize either by depriving the owner of his interest entitlement or by increasing the interest the expropriating authority would pay. The interest penalty is not more than double the amount of interest due.

ON THE LIGHTER SIDE

Internet Extract

A farmer walked into an attorney's office wanting to file for a divorce. The attorney asked, "May I help you?"

The farmer said, "Yea, I want to get one of those dayvorce's."

The attorney said, "Well do you have any grounds?"

The farmer said, "Yea, I got about 140 acres."

The attorney said, "No, you don't understand, do you have a case?"

The farmer said, "No, I don't have a case, but I have a John Deere."

The attorney said, "No you don't understand, I mean do you have a grudge?"

The farmer said, "Yea I got a grudge, that's where I park my John Deere."

The attorney said, "No sir, I mean do you have a suit?"

The farmer said, "Yes sir, I got a suit. I wear it to church on Sundays."

The exasperated attorney said, "Well sir, does your wife beat you up or anything?"

The farmer said, "No sir, we both get up about 4:30."

Finally, the attorney says, "Okay, let me put it this way. "WHY DO YOU WANT A DIVORCE?"

And the farmer says, "Well, I can never have a meaningful conversation with her."

WANT A FREE MEMBERSHIP?

BCALA is having a membership drive in order to make another occupational title protection application. The Registrar of Companies rejected our earlier application saying that we did not represent the number of legal assistants in the province.

We will give you a free BCALA membership for one year, or if your firm pays the fee then we will give you cash ($65.00), if you sign up three new BCALA members before the end of 1998. Simply have the new members write your name somewhere on the BCALA application form indicating that you brought the Association to their attention.

If interested in signing up some new members write to the following address for a BCALA application form: P.O. Box 4127, Main Post Office, Vancouver, B.C. V6B 3Z6, or E-mail: Halkett30@aol.com.

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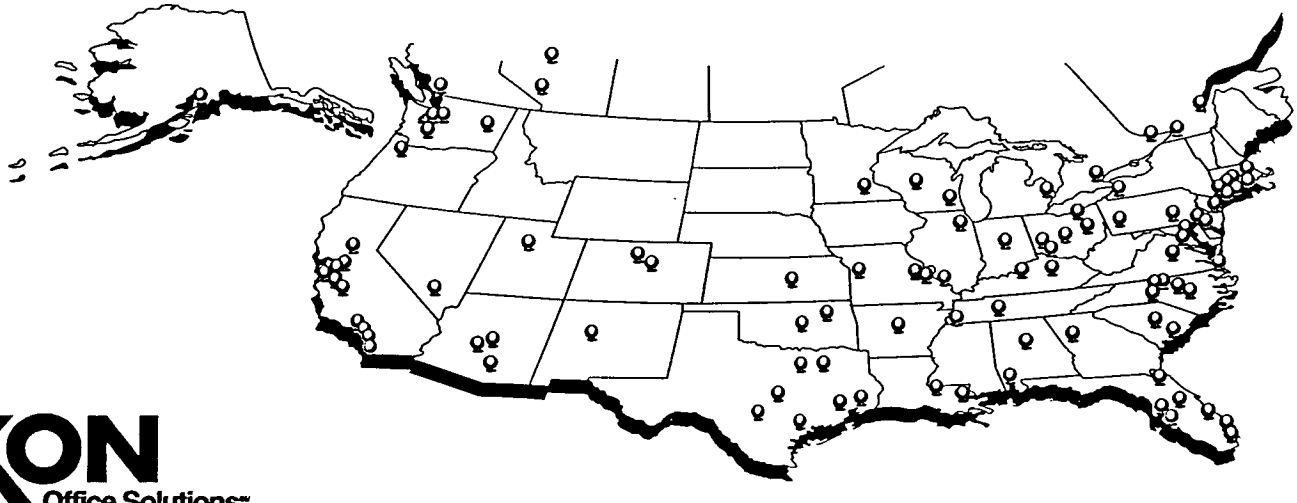

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