THE ASSISTANT

BC Association of Legal Assistants *Issue III - 1998, Volume 7*

SUMMARY OF INTERIM REPORT OF CHAMBERS COMMITTEE ON THE EVALUATION OF THE OPERATION OF RULE 65 - MAY, 1998

Permission granted to reprint excerpts.

As was set out in the Report of the Committee preceding the implementation of Rule 65 in Vancouver, the specific problem to be addressed was adjournment of applications on which the parties were ready to proceed because there was no court time available.

As there was little, if any, possibility that more Judges or Masters would be appointed, given the present economic climate, or that court hours would be extended because the Judges and Masters require all of their out of court time to write their reserve judgments, the only practical solution was to make the Vancouver Chambers system more efficient, thereby creating more time and enabling Judges and Masters to handle more applications.

The specific proposed solution was Rule 65, a pilot project to be conducted for one year in Vancouver. During this project period litigants were required to follow various procedures intended to increase the efficiency of the system. In particular, under the provisions of Rule 65, parties were required to fully exchange all materials to be relied upon in the application well before the hearing; to set down the hearing on a mutually convenient date; to clarify the issues and their position on them in an outline; and to organize all of the materials for the court in a complete manner.

Statistics accumulated during the pilot project period show that although the implementation of Rule 65 has not completely eradicated the adjournment process, it has reduced it significantly and has increased the efficiency and quality of the Vancouver Chambers system generally.

The following interim report sets out the recommendations that the Chambers Committee intend, subject to any suggestions made by the Bench and Bar in Registries outside of Vancouver, to make regarding revisions to be made to Rule 65. These recommendations are based on the responses received from the Bar, the Bench, the Registry, and legal support staff as a result of questionnaires and memos sent to them requesting their views and comments regarding the operation of Rule 65 during the preceding year.

Continued on page 3.

INSIDE THIS ISSUE:

From the Editor's Desk 2
Legal Websites 2
Programs Update 2
Pre-Nuptial Agreements 5
Effective Use of LAs Can Mean Greater Profit 9
Professional Status of LAs Under NAFTA 13
Selkirk College LA Program 15
Practice Update 17
Y2K Trauma Awaits the Unprepared 21
B.C. Will Assist I.C.B.C. 23
LA Opportunities 25
Technology Corner - The Global Repository 26
Law Primer 27
Duties and Defences in Leaky Condo Cases 28
Noah's Dilemma 29

FROM THE EDITOR'S DESK

BCALA is considering developing a website and would like members to contribute articles to be published on the site and/or in *The Assistant*. If you have any ideas on what the website should contain, or would like to contribute something we would like to hear from you. Contact Ann Halkett at E-mail: *Halkett30@aol.com* or Fax: (604) 689-3444.

LEGAL WEBSITES

Do you know of a good website whether it is legal, government, etc. If so, e-mail a short note to Ann Halkett at *Halkett30@aol.com*. Be sure to include the website address, name and a short description of its contents. The list will be published in the next issue of "The Assistant".

PROGRAMS UPDATE

By Connie Iverson, Programs Director

Upcoming Events

Supreme Court Rules Seminar - We are organizing a seminar in late September to cover the extensive changes to the Supreme Court Rules. Details will be mailed to members and delivered across the Lower Mainland by registry agents.

Joint Dinner - BCALA and CALA hope to hold a joint dinner in November. Details will be forthcoming.

Last Seminar

The last BCALA seminar on work place harassment was held on June 23, 1998. Speakers included lawyers Karen Coulter and Gail H. Forsythe.

THE ASSISTANT

Address: P.O. Box 4127
Main Post Office
Vancouver, B.C. V6B 3Z6

Editor/Vice President: Ann Halkett
Telephone: (604) 689-7400 Fax: (604) 689-3444
E-mail: *Halkett30@aol.com*

Committees/Directors

President/Membership:
Jasbir Bains 661-1701
Secretary/Education:
Glenis Bryson 684-4777
Treasurer:
Gemma Hale. 685-1343
Membership:
Thora Arnason 631-3164
Programs:
Connie Iverson 294-9594

Advertising

Rate includes four yearly issues:

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

Contact Ann Halkett for details.

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

Submissions
Articles for *The Assistant* are gladly accepted. If possible please provide submissions in both hard copy and disk form (formatted for Word Perfect 5.1). The deadline for submissions for the next issue is October 23, 1998. 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.

Reprints
Articles may only be reprinted with permission. Contact Editor for details.

Over 275 responses were received from the Bar and over 150 responses from legal support staff. To say the least, the information contained in this material was invaluable to the Chambers Committee. These responses were very thoughtful and constructive.

The final recommendations of this Committee will include a recommendation as to whether Rule 65 should be implemented outside of Vancouver. It is premature to make any recommendation at this point as the consultation process with those areas has not been done.

With respect to the procedure that will govern the final recommendations of this Committee, the final report will be forwarded to the Advisory Committee who upon review will determine the recommendations they intend to make to Chief Justice Williams regarding the revisions suggested.

The recommendation that Chief Justice Williams then makes regarding the revision of Rule 65 will be referred to the Rules Committee.

If the Advisory Committee and/or Chief Justice Williams decide that some of the recommendations of this Committee should be revisited, they may return the final report to us with that request.

The Rules Committee, as a committee appointed by the Attorney General of British Columbia, will then review the recommendations and, firstly, make a decision as to whether they support the recommendations in whole or in part. (Under their mandate, they are entitled to make any changes they see fit. That is, they are not restricted to making changes because it is necessary from a legislative point of view. Rather, they may make changes simply on the basis that they do not agree with the recommendations made.)

After making a decision with respect to the revisions to be made, they will determine their legislative form and forward those revisions onto the legislature to pass into law.

General Recommendations and Observations

(a) That Rule 65 as revised be retained on a permanent basis.

(b) That the Honourable Mr. Justice Melnick begin consultation with the Bench and Bar in Registries outside of Vancouver regarding the implementation in those areas of Rule 65 as revised and that he ascertain whether there should be further revisions to Rule 65 to accommodate some or all of those areas.

(c) That educational programs should be conducted through CLE and/or other mechanisms to educate the Bar and others regarding the rule regarding the operation of Rule 65.

(d) That the Bench be advised of the concern raised by many members of the Bar that some of the provisions of Rule 65, time estimates and lump sum costs were not being consistently enforced or imposed.

(e) That the Registry devise a checklist for their own use to ensure that the requirements of Rule 65 are being interpreted and implemented in a consistent manner.

(f) That although there has been an increase in the number of Chambers applications in New Westminster since the implementation of Rule 65, it does not correspond to the reduction in Chambers applications in Vancouver.

PRE-NUPTIAL AGREEMENTS

By Mary E. Harris, Lawyer with Worthington, Simm & David

Parties usually enter into pre-nuptial agreements before marriage or shortly after. A pre-nuptial agreement is not a substitute for estate planning strategies. It is a good planning tool for couples, who, for various reasons wish to protect and divide their estate in ways that may attract potential claims pursuant to the Wills Variation Act when one party dies.

It is a good idea for agreements to be made in the following circumstances:

(a) when either party brings significant assets into the relationship;
(b) when either party has significant earning power;
(c) when future significant inheritances are contemplated;
(d) when one party wishes to leave a certain asset intact and in his/her possession;
(e) when the parties are older and it is a second or later marriage; and
(f) same sex couples.

These agreements generally contain a full disclosure of assets and income, the parties' wishes for management of family assets or property acquired before and during marriage and ownership and division of their property should the parties' marriage end. They can also address custody and access issues, as well as spousal and child support.

Although parties typically agree to waive rights to claim against one another's estate, under the Wills Variation Act in the agreement, the courts are not bound by this waiver. Only divorce will terminate rights under the Act. However, if an agreement to waive such right was fair when it was made, and if circumstances have not changed since the time of the agreement, the waiver may be an important factor in determining the extent of the testator's legal and moral obligations under the Wills Variation Act.

The bad news is that just like wills, pre-nuptial agreements are not set in stone and cannot provide the certainty of even commercial contracts. Pursuant to our provincial legislation, the Family Relations Act, spouses may apply to vary their agreement after separation, by claiming that it is unfair. They must apply not more than two years after a divorce order, an order for legal separation, or an order declaring a marriage null and void. The court will consider several factors set out in the Act, such as:

(a) the duration of the marriage;
(b) the period of time the spouses lived separate and apart;
(c) the date the property was acquired or disposed of;
(d) the extent to which property was acquired by one spouse through inheritance or a gift;
(e) the needs of each spouse to remain economically independent or self-sufficient; or
(f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of the property or liabilities and capacities of the spouse.

Parties who enter into agreements while involved in a common-law or same sex relationship will attract Section 120.1 of the Family Relations Act. This provision provides that the parties can have the courts review their agreement on the same basis as agreements entered into between legally married spouses.

In general, courts are more likely to uphold agreements about property and are more likely to find unfairness when agreements waive spousal and child support. If the agreement is deemed to be unfair, the court has a wide discretion to re-apportion family assets and other support to achieve fairness.

The court does not treat all assets of the parties as "family assets". Whether an asset qualifies as a "family asset" involves a complex legal test. The most important, basic elements are that the assets have to be owned by one or both spouses and ordinarily used for a

Continued on page 7.

CAN YOUR CLIENT

RETURN TO WORK?

PHYSICAL CAPACITY EVALUATIONS

Assessment of Physical Capacities, **PCE**

- Determines the client's ongoing physical limitations
- Assesses current level of physical function/work potential
- Provides recommendations for treatment and return-to-work

OT CONSULTING/TREATMENT SERVICES LTD.

210 - 3438 Lougheed Hwy., Vancouver, B.C. V5M 2A4

*Phone: (604) 215-3660 * Fax: (604) 215-3669*

COST OF FUTURE CARE

"How Much Is Enough?"

Considers . . .

- Loss of independence
- Permanent disability
- Expenses related to equipment, services and supplies
- Future consideration
- Rehabilitation planning
- Wage loss

family purpose. The terms "ordinarily used" and "for a family purpose" have been interpreted by the court in many cases.

There are certain steps parties can take to help protect their assets from becoming "family assets". The parties' legal advice with respect to the agreement should include discussion of all of these factors in detail, with the aim of creating an agreement that is as binding as possible. The lawyer will evaluate and advise whether the agreement would likely be considered fair and which assets would likely be considered "family assets".

The most important reason why parties should obtain independent legal advice is to re-dress any inequality of bargaining power. A person who is properly advised of legal rights and of the significance of a contemplated agreement is less likely to be a victim of duress or undue influence or to enter into an unfair bargain. This gives the parties a better chance that the agreement will be valid and enforceable. Both parties should be fully aware of their rights and obligations. One lawyer should not act for both parties. Typically, one lawyer draws up the agreement and gives one party legal advice. The other party takes it to another family lawyer to obtain one hour of independent legal advice and signs the agreement.

Sometimes not having an agreement prepared at the beginning of a relationship will invite future legal proceedings. However, an agreement that is poorly drafted can cause more problems than it was meant to resolve.

The good news is that not all agreements are varied. The whole purpose of pre-nuptial agreements is to achieve finality on issues that could be disputed at a later date. Most parties enter into agreements with the intention of relying on the terms even if circumstances change.

References:

CLE: June 1998 Family Law Agreements
Marzban, Dinyar, The Effect of Pre-Nuptial Agreements on Property Claims Pursuant to the Family Relations Act

Law Society of B.C.
Discrimination Ombudsperson

Gail H. Forsythe
Phone: (604) 687-2344

If you work for a lawfirm, and need assistance with a work-related problem, call for free and confidential assistance

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.

EFFECTIVE USE OF LEGAL ASSISTANTS CAN MEAN GREATER PROFIT

By Keith J. Libman, CPA, a managing shareholder in the Cleveland-based firm of Kopperman & Wolf Co. at 2000 Keith Building, Cleveland, OH 44115. He heads the firm's Services to the Legal Profession Practice Group.

Client demands and economic forces mandate closer scrutiny of all aspects of practice management, both for the firm as a whole and for individual practice groups. With salary costs as the number one expense for firms, the proper use of associates, legal assistants and support staff is critical to practice management.

Of those three, the effective use of legal assistants likely offers the most promise for beleaguered firms. The lessons of the past decade are clear: no more responding to growth by automatically adding expensive associates, expecting clients to pay their necessarily high billing rates, and maintaining a partnership track for all professional staff.

Some confusion exists as to exactly what are legal assistants, how they function in the firm, and how they are best utilized.

Legal assistants (or paralegals) have been around for some time. They have long been confused with competent legal secretaries. Both positions have a place in a law firm, but they should not share the same body. Each position requires outstanding skills, but they are not the same skills. This article advocates for the greater use of legal assistants in a law firm of any size or specialty. The reason? Higher profitability.

A Definition of Legal Assistants:

"Persons who, although not members of the legal profession, are qualified through education, training or work experience, are employed or retained by a lawyer, law office, government agency, or other entity in a capacity or function that involves the performance, under the direction and supervision of a lawyer, of specifically designated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent the legal assistant, the lawyer would perform the task."

Legal Assistants Add Value to Client and Firm

The reasons to employ legal assistants are numerous, including that lawyers and law firms who do so make more money than those who do not.

The basic precept is that legal assistants themselves should return a profit to the firm. The analysis which follows examines this profitability, compared with associate lawyers.

In most firms legal assistants warrant a billing rate at a higher multiple of their salaries than do lawyers, particularly if they are performing comparable assignments. The reason is simple: the result to the client is worth the same fee regardless of the person handling the assignment. If it is assumed that a legal assistant is only slightly less speedy than most lawyers on the tasks to which they are assigned, the client will not tolerate a significantly higher fee because a lawyer did the work. Yet, lawyers at all levels are paid a far greater salary than legal assistants.

A typical mid-size to large firm might set a legal assistant's billing rate at a multiple of up to five times his or her salary. Associates in their first few years might expect multiples in the three to four range. As the analysis below demonstrates, under such a scenario legal assistants may well be more profitable to the firm. Obviously the assumptions made in this article may not hold steady in all firms, but the example will nonetheless be useful in making the determination based upon the criteria in place at any firm.

Presented Below Are Three Scenarios:

Entry level legal assistant
Experienced legal assistant
First or second year associate

It should be noted that the foregoing analysis predicts that associates will require more overhead to support them than will legal assistants. The reasons for this assumption include the need for more support in terms of secretarial, clerical and research assistance, greater costs of training and continuing legal eduction, amortization of associate recruiting costs, meals and entertainment and so forth.

While this analysis shows meaningful additional profitability weighing in favour of legal assistants, the most controlling factor will be a law firm's willingness to let these professionals work to their fullest potential. Not all legal assistants will be successful, but neither are all lawyers. Risk of failure is significantly less expensive with legal assistants because of their lower cost to the firm and because their effectiveness will generally be able to be determined sooner than would be the case with newly hired associates. If it does not work out with a legal assistant, the cost of severing the relationship may be far less expensive than dealing with a departing associate.

Of course, one caveat governs the economic model: legal assistants must provide increased production or their addition will dilute existing work. Given that increased production exists, total contributions to the firm far exceed the profits represented from return on billable time. Legal assistants enable lawyers to handle more work. In turn, the lawyer often can bill at a higher effective rate for his or her work, because the lawyer is moving certain tasks to a more appropriate level.

Legal assistants can assist lawyers in being better prepared, thereby improving the quality of legal services provided to clients. Clients benefit from enhanced quality and effectiveness of service, and from overall lower fees.

Legal assistants might indeed be the answer for smaller law firms that currently operate with an upside down leverage triangle-more partners than associates. While most firms will not replace existing lawyers with legal assistants, many firms will be able to reduce the number of new associates hired.
Continued on page 11.

	Legal Assistant Entry Level	Legal Assistant Experienced	Lawyers 1-2 Years Experience
Billable Hours	1,500	1,500	1,500
Hourly Billing Rate	$60 U.S.	$93 U.S.	$100 U.S.
Gross Billable Dollars	$90,000 U.S.	$139,500 U.S.	$150,000 U.S.
Salary	$25,000 U.S.	$40,000 U.S.	$150,000 U.S.
Payroll Taxes and Benefits (22% of Salary)	$5,500 U.S.	$8,800 U.S.	$14,300 U.S.
Secretarial Services and Overhead	(20%) $18,000 U.S.	(25%) $27,900 U.S.	(25%) $37,500 U.S.
Contribution to Profit	$41,500 U.S.	$62,800 U.S.	$33,200 U.S.

Practical Tips Assure Effectiveness

Consider these guidelines to assure that your experience with utilizing legal assistants is successful.

1. Treat legal assistants as professional colleagues.

2. Include them in practice groups and other relevant firm meetings.

3. Provide them with a private office, just as you would for an associate.

4. Provide them with secretarial help and dictation equipment. Expect them to use computers as partners do, for review rather than data input.

5. Expect participation in CLE and pro bono work just as you would for associates.

6. Extend case management responsibilities rather than just "piece work". Usually, legal assistants are more effective when they work for one lawyer on matters from beginning to end.

7. Expect legal assistants to work hours like lawyers, not just nine to five.

8. Educate clients as to the legal assistant's role and responsibilities.

Winning Strategy

Law firm management is waging a battle to reduce costs and improve profits. Personnel costs are on the front line of that battlefield. A victory can be won by deploying new troops -- legal assistants.

LEGAL COURSES ANYONE?

Is there a legal course you would like to take, but no one is teaching it? If so, contact Katherine Wellman, Program Advisor for Vancouver Community College's Legal Assistant Program at 222-0707.

PROFESSIONAL STATUS OF LEGAL ASSISTANTS UNDER NORTH AMERICAN FREE TRADE AGREEMENT

By L. Amighetti, Q.C. and B. Peterson, Legal Assistant, both of Russell & DuMoulin

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

Recently a representative of Canada Immigration agreed to present the professional status of legal assistants (which includes paralegals as they are often called in the United States and law clerks as they are referred to in Ontario) ("legal assistants") to a NAFTA Working Group providing that certain criteria are met.

i. Legal assistants need to demonstrate that there is consensus among American, Mexican and Canadian legal assistants for professional status.

ii. Education and experience requirements need to be negotiated.

Presently lawyers and specific notaries have professional status. If legal assistants obtain this status professional recognition is on the international level. Although the purpose of NAFTA is not for a professional body or individuals to raise their credentials, by receiving professional status under NAFTA our credentials will be raised.

Greater recognition may lead to increased demands for legal assistant services and a higher quality of work. This may also lead to greater financial rewards in addition to decreasing legal costs for the public. As legal assistants are not on the "partnership track" significant financial benefits for law firms may be an attractive economic reality.

With global economics becoming more popular, in time, Canada may decide to enter into agreements similar to NAFTA with other countries. It may be easier for legal assistants to work internationally if they can first obtain professional status under NAFTA.

Mobility is important. If a legal assistant has professional status, working in the United States, Canada and Mexico is significantly easier. Temporary project work in another geographic area may be more readily attainable. It would also be easier to relocate with a lawyer with whom the legal assistant is working, or has worked with in the past. A legal assistant could pursue a specific area of law which is highly developed in another geographic area. If a legal assistant's personal goal is travel, freedom to work in another location is not a problem

At the 1998 Annual General Meeting of the Canadian Association of Legal Assistants ("CALA") a NAFTA Committee was set up to pursue the professional status of legal assistants. The BC Association of Legal Assistants ("BCALA") is also interested in finding out more about this professional status. CALA is just in the preliminary stages of looking into NAFTA's professional status for legal assistants. This is a lengthy process, however, NAFTA is currently under review. There are approximately nine other occupations in Canada who are interested in receiving professional status. Perhaps timing is of the essence.

If a legal assistant has NAFTA experience; negotiating experience; legal contacts; political contacts; can speak, write or translate Spanish; or is interested in this project please contact B. Peterson at (604) 631-4801 or *bjp@rdcounsel.com.*

SELKIRK COLLEGE LEGAL ASSISTANT PROGRAM

By Jennifer Calhoun - Program Co-ordinator

Selkirk College's Legal Assistant Certificate program is recognized both provincially and nationally.

The goal of the program is to provide training that will equip graduates with skills required to successfully and capably perform the duties of a legal assistant. The emphasis is on practical training, integrated with substantive law to provide a strong theoretical framework and background.

Class size is small, allowing for individual attention and support. Expert training is provided by lawyers and legal assistants in specialized areas.

Courses cover substantive and practical aspects of law firm work including: civil litigation, corporate-commercial procedures, family law practice, real estate conveyancing, collections, wills and estates. Substantive law courses are taught in all those areas, and others, such as torts, contracts and commercial law (insurance, sale of goods, secured transactions, etc.).

Students are exposed to the workings of a client file by assignments that closely replicate the experience. Students draft correspondence, pleadings and other papers for the proper prosecution or defence of a case.

Work is allied to the study of tort law (especially negligence law) and to legal writing and research projects. Contracts, including the standard form release, are studied and drafted.

A similar structure is used in company law (business organizations), real estate and conveyancing, and commercial law courses. Assignments may draw on and be connected to elements of other courses, including contract law and legal writing and research.

Courses vary in length from 80 hours to 160 hours.

Substantive law, typically by lecture, includes review of the governing enactments, reading and preparing case briefs for selected leading cases (normally 5-10 cases per course) and comparison of assignments to that governing law.

There are also two courses, legal writing and research (Parts I and II), in which research and writing skills are practiced. These include: simple legal research (through books and Quicklaw); interviewing skills; writing skills for correspondence, memos, pleadings, contracts, affidavits, reporting letters (e.g. summary of discovery transcript), opinion letters (simple personal injury quantum), etc.

Graduates have gone on to work at law firms in B.C., Alberta, Saskatchewan and Ontario. Several have joined corporate legal departments, e.g. I.C.B.C. and Saskatchewan Government Insurance. One graduate has just completed first year at U.B.C. Law School.

The program is currently in its fifth year. For more information contact Jennifer Calhoun at (250) 368-5236.

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

GOT SOMETHING TO SAY?

Send submissions for The Assistant to:
Ann Halkett, Editor
c/o Lidstone, Young, Anderson
1616 - 808 Nelson Street
Box 12147, Nelson Square
Vancouver, B.C. V6Z 2H2
Phone: 689-7400 Fax: 689-3444
Deadline: October 23, 1998

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 June, 1998 "Registrars' Newsletter".

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

Amendments to the Supreme Court Rules

Rule 60 - Family Law - Effective Sept. 1, 1998

This new rule consolidates the former Rules 60 and 60B and provides a uniform procedure for matters under the Divorce Act and the Family Relations Act.

Consequential amendments:

Rule 1(8)	
Rule 4(6)	
Rule 8(17) repealed	
Rule 12(10)(a)	
Rule 13(1)(q) and 2	
Rules 18(1) & 60(22)	This allows for a default proceeding for any matter other than an undefended divorce.
Rule 18A(1)(c)	A contested family law proceeding may now be heard under this rule.
Rule 39(1)(c) and (25)	
Rule 60C(1)	Reference to the Divorce Act and the Family Relations Act is amended to refer to a Family Law Proceeding.
Rule 65(3)(h)	
Appendix B, s.5	"In a family law proceeding in which no claim, other than a claim for costs, has been contested, the costs shall be assessed under Scale 2."

FORMS:	Repealed:	97-103, 119B, 120
	New:	127-139

Registry staff accepting new writs must ensure divorce applications are assigned a divorce proceeding number as well as a file number, e.g. 5939032416, due to divorce requirements from Ottawa.

Now a writ which does not claim relief for a divorce can be amended to include a claim for divorce by the plaintiff or include a claim for divorce by a defendant by counterclaim. At this point, a divorce proceeding number should be assigned.

In the absence of a transition provision, the ordinary rules of statutory interpretation apply: a procedural change such as this takes effect immediately. In other words, if the party is initiating a proceeding after September 1st, it must conform to the new writ (Form 127). Common sense should prevail with petitions that were commenced prior to September 1st. Registry staff ought not to reject documents because of a minor technical error which could easily be corrected at the registry counter.

The new form of Restraining Order (Form 134) must not include provisions not directly related to the matters set out in ss. 37, 38, 124 or 126 of the Family Relations Act. This will assist registry staff to identify those orders that are to be forwarded to the Protection Order Registry.

Rule 4: Forms and Documents - Effective July 1, 1998

These changes clarify what is required in an "address for delivery" and add two documents to the list requiring an "address for delivery":

Form 10 -	Notice of Appointment or Change of Solicitor
Form 11 -	Notice of Intention to Act In Person

(The forms are not amended.)

This amendment will have no effect on registries unless it is their practice to check the content of these documents.

Rules 41 and 44: Consent Orders, Ex Parte Orders, Desk Order Applications - Effective July 1, 1998

There will only be one form of desk order. It will be incumbent on registry staff to direct it to the right judicial officer, i.e., a Registrar, Master, or Judge.

Rule 10-	This is consequential to amendments made under Rules 41, 44, 64, and 65(3) to assist the Registrars, Judges and Masters in entering orders made by consent or through ex parte applications, specifically desk order applications.

Rules 41 and 44 - Effective July 1, 1998

These changes have clarified Registrar's consent orders, interlocutory orders and final orders. It will be necessary to understand these changes prior to July 1, 1998 as they change registry practice and procedure. In particular:

1. the form for orders made without a hearing is now set out in Appendix A as Form 56A;

Continued on page 19.

ACCURATE *Realtime* REPORTING

903 - 1127 Barclay St., Vancouver, BC V6E 4C6
Office & Fax: (604) **685-6050** Cell: (604) 377-0612
e-mail: catkot@smartt.com

PLEASE READ THIS NOTICE. IT MAY CHANGE A MOST IMPORTANT ASPECT OF YOUR LITIGATION

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.

COURT REPORTER'S FEE LESS THAN OR EQUAL TO TYPING COMPANY'S!

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:

(A) Typing Company's Transcript Fee: ***(3- to 4-week turnaround)*** 85 pages @ $5.00 pp (Or + 1) Total Per Day: **$425.00**	**(B) * Reporter C. Kottmeier's Court Fee:** ***(2-week turnaround or better)*** NO ATTENDANCE FEE WHEN FULL DAY ORDERED! 85 pages @ $5.00 pp (Or + 1) Total Per Day: **$425.00**

(C) * Reporter C. Kottmeier's Court Fees Split by Parties *(2-week turnaround or better)*

Client pays $70.00 less per day than if ordering O + 1 from typing company!

Attendance ($40 pr/hr)	Counsel 1:	$100.00	Counsel 2:	$ 100.00
85 pgs @ $6.00 pp (Or + 1):		255.00		255 00
	Total Per Day:	**$355.00**	Total Per Day:	**$355.00**

(D) * C. Kottmeier's Audiotape Transc. Fee: *(2-week turnaround or better)* 85 pgs @ $6.50 pp (1 party): **$ 552.50** 85 pgs @ $8.00 pp divided by 2 parties: **$ 340.00** ea.	**(E) * Reporter C. Kottmeier's Uncertified Disk:** *(Take transcript with you at day's end)* $150 + Attendance ($40 pr/hr) Total Per Day: **$350.00**

*** (Uncertified transcript at day's end, e-mailed daily, expedited, realtime, etc., are also available at very competitive rates.)**

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,

Kottmeier

Catherine Kottmeier,
Official & Realtime Reporter

2. the praecipe to be filed with the order is set out in Appendix A as Form 56. This form requires a party to outline what rule or act the party seeking the order is relying on and requires a description of a party's disability if a party to the action is under any disability.

3. the subrules which have been added set out what must be filed to obtain an order where a party is under a disability, a consent order, and an order in respect of an application where notice is not required The subrule clarifies when a Registrar is required to refer an application to a Judge or Master. It also sets out the procedure the court may follow after a matter is referred by a Registrar.

These changes will facilitate registry practice by clarifying which orders can be the subject of a Registrar's consent order and ensuring counsel are following uniform procedures when applying for these orders.

Consequentional Amendments:

Rule 44(13)	
Rule 64(9)	Lists registry procedures requiring an application by praecipe.
Rule 65(3)(b)	
FORMS:	56, 56A

Rule 18A: Summary Trial - Effective July 1, 1998

Rule 18A(14) has been repealed as it was inconsistent with the case management of trials and also with the provisions of the Class Proceedings Act. This amendment affects trial coordinators in the scheduling of trials.

Rule 26: Discovery and Inspection of Documents - Effective July 1, 1998

This amendment provides that where privilege is claimed, the documents must be described in such a way that the other parties can assess the validity of the privilege claim. This amendment will have no effect on registry practice.

Rule 42: Enforcement of Orders - Effective July 1, 1998

Subrule (12) now provides in the case of an order not made by the Supreme Court that a writ of sequestration, a writ of possession or a writ of delivery may be issued by the Registrar, after appropriate service, whether or not the underlying order has been filed with the court. An example is an application for a writ of possession when an order for possession has been issued by the Residential Tenancy Branch.

Rule 51: Affidavits - Effective July 1, 1998

A subrule has been added to permit the guardian ad litem of a patient as defined in the Patients Property Act to swear an affidavit on information and belief on behalf of the patient.

Rule 66: Fast Track - Effective September 1, 1998

This rule is intended to ensure the speedy and inexpensive resolution of cases of two days or less. It applies only to those actions, in civil proceedings, that are filed in Vancouver, New Westminster, or Kamloops and that designate those court houses as the place for trial. It does not apply to family law proceedings or personal injury or death actions (with exceptions for consent).

FORMS - Effective July 1, 1998

Forms 1, 16 & 17	These forms have been amended to clarify instructions to lay litigants on the time limits for delivery of the Statement of Defence.
Form 38	Notice requiring trial by jury amended to include a notation concerning the date of trial.
Forms 59, 59A	The appeal form is amended to comply with Rule 49(6) to indicate that a person wishing to oppose an appeal must file an appearance.

Party and Party Costs - Effective July 1, 1998

Appendix B, s. 3 amended to increase unit value of all scales by $20. This will affect all assessments of costs conducted after July 1, 1998.

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.

Y2K TRAUMA AWAITS THE UNPREPARED

By Andrew N. Epstein, Lawyer with Singleton Urquhart Scott. Reprinted with permission from "Letter of the Law" Vol. 10, No. 2, Spring 1998.

By now you have probably heard about the apparent flaw in the world's computer systems, which will halt international financial transactions, bring elevators to a sudden stop, shut down airplane navigational systems, and make your VCR perpetually flash 12:00, 12:00, 12:00 just after midnight on January 1, 2000.

Even if you don't work in the technological sector, problems associated with computers unable to cope with the year 2000 (Y2K in computer lingo) can seriously damage your business.

The cause is historical: computer programmers attempted to save space by shortening the year in computer code from four digits to two. Computers understood that 82 meant 1982. Most, if not all, new computers and computer software won't have a problem. However, programs from just a few years ago, which are still in operation, could come to a crashing halt when the year goes from 99 to 00, and the computer thinks it has been transported back to January 1, 1900 and shuts down.

Computer chips are used in unexpected places including cars, telephone systems, and cash registers, all of which could malfunction on the first day of the new millennium, if not sooner.

Statistics Canada estimates that Y2K problems could cost the Canadian economy as much as $12 billion in direct costs. They will affect most sectors of the business community, likely leading to litigation either by or against an injured company, or its suppliers, clients, auditors, insurers, and even lawyers.

The most obvious source of lawsuits will be against software creators and suppliers. You can bet that long lines will be forming at courthouses to start lawsuits against computer and other high-tech suppliers whose products go haywire. Many of these companies will become insolvent from paying out on all of these claims, or even defending them, which will lead to additional litigation in bankruptcy courts.

Indirect claims will arise when automated calendars used for applications as diverse as expiration dates on food products, tender bids for construction contracts, or credit card accounts stop some businesses cold and slow most.

Even if your business doesn't rely on technology, the problems of your key suppliers become yours when you can't fill a production contract because your raw materials didn't arrive as scheduled.

Another class of claims could arise from auditors, bankers, and shareholders suing companies that fail to adequately disclose the state of their Y2K (un)preparedness.

Accountants may have to consider the potential for business interruption and the cost of future litigation and equipment upgrades when performing audits of companies that rely directly or indirectly on technology. Failure to consider these issues could lead to professional negligence claims against them.

Corporate directors and officers could run into problems because they have a fiduciary duty to protect the interests of their companies. If senior management fails to take appropriate steps to deal with the Y2K problem, they could find themselves personally liable for losses to shareholders, financial institutions, and even employees.

Possibly the biggest Y2K fallout will be in the insurance industry, which is already attempting to cope with the possibility of billions of dollars in claims for business interruption (BI) and director and officer (D&O) liability by excluding Y2K problems from standard coverage. If Y2K coverage is excluded, it will likely be made available for an additional,

Continued on page 23.

significant cost. A host of lawsuits related to determining the effect and scope of Y2K exclusion clauses from insurance coverage will almost certainly follow. Insurers may also attempt to bring subrogated claims against software designers for their shortsightedness.

Y2K lawsuits have already begun in the United States. Examples include the following:

A class action lawsuit in California against SBT Accounting Systems for requiring customers to pay substantial fees to purchase upgrades to remedy Y2K problems in the company's own software;

An action by Produce Palace International in Michigan against a cash register company whose registers shut down when customers used credit cards with expiry dates after December 31, 1999;

An action by a factory against a chemical company which shipped products with a five-year shelf life in 1995. The factory's inventory computer calculated that the chemical products, which were to expire in April 2000, were 95 years out of date and refused delivery, halting the factory's production and leading to substantial losses.

Y2K problems need not be a disaster. Experts agree that the first step is to comprehend the scope of your Y2K exposure, and then make an inventory of the snags that might arise in your business.

Once your problems have been identified, evaluate software licences and contracts to see if they deal with Y2K issues, and as existing contracts are renewed, ensure that Y2K warranties appear in the new agreements. The U.S. government has passed legislation requiring Y2K compliance for any company contracting, or sub-contracting, with it.

Suppliers and customers of technology may need to seek legal advice about possible product liability claims, or claims for negligent misrepresentation based on a product's failure to deal with the Y2K problem.

Companies should check their insurance policies, particularly D & O and BI coverage, to see if Y2K claims are specifically excluded.

Some businesses may wish to hire a consultant to assess the cost of rewriting large portions of their computer software or replacing or upgrading the software altogether. Many other options are available to a company depending on individual circumstances and the amount of money in issue. Consultants should seek legal advice about drafting engagement letters so there will be no disagreement over what services are being provided.

The most important thing is to start working on the problem immediately. Statistics Canada has recently reported that fewer than half of Canadian companies surveyed are taking any steps whatsoever to minimize the impact of Y2K.

A site worth a look is *www.y2k.com.*, which is sponsored by an American law firm. It has additional information about legal issues. The Federal Government's site, *www.info2000.gc.ca*, has links to other sites - from the Royal Bank to the Institute of Grocery Distribution - and tips to help squash the millennium bug.

PROVINCE OF B.C. WILL ASSIST I.C.B.C. TO IMPOSE MEDIATION OR ARBITRATION

Reprinted with permission from Lawyersoncall weekly article section on *www.lawyersoncall.com* - a division of ASAP Legal Printing.

An amendment to the Insurance (Motor Vehicle) Act permits the B.C. government to allow anyone who is a party to a motor vehicle insurance claim to require that the claim go to mediation or arbitration.

It is expected that the Insurance Corporation of B.C., the primary provider of motor vehicle insurance in

B.C., will pursue this opportunity because it is generally believed that forms of alternate dispute resolution (known as ADR) will reduce legal costs and shorten disputes. This approach is one of the outcomes of the government's attempt to institute a "no-fault" insurance scheme last year. Public outcry prevented an immediate switch to "no-fault".

The B.C. Branch of the Canadian Bar Association issued a statement on April 30 saying it commends the B.C. Government for "its efforts to encourage the use of mediation as an option in motor vehicle actions". But the amendment does more than encourage mediation as an option. After the specific rules are adopted by the government, one party to a claim can force the other party to go to mediation. In a limited number of situations, a person will be exempted from using ADR or can choose not to but we will have to see the new rules to know which situations qualify.

The trend to alternate dispute resolution is believed to be important to reforming the courts and enhancing public respect for the judicial system.

The CBA also stated that it:

"...was very active in proposing that mediation be attempted in auto vehicle actions as a means to avoid more costly and lengthy court procedures and thus reduce the cost of auto insurance claims, and as an option which has a high reported rate of client satisfaction."

The Traffic Safety Statutes Amendment Act, 1997, s. 57 amended the Insurance (Motor Vehicle) Act by adding the following section on alternate dispute resolution:

"44.1(1) The Lieutenant Governor in Council may make regulations respecting mediation in motor vehicle actions including, without limitation, regulations

(a) providing to a party to a motor vehicle action the ability to require the parties to engage in mediation and setting out when and how that ability may be exercised and prescribing any other results that flow from the exercise of that ability, and

(b) respecting

(i) the forms or procedures that must or may be used or followed before, during and after the mediation process,

(ii) requiring and maintaining confidentiality of information disclosed for the purposes of mediation,

(iii) the circumstances and manner in which a party to a motor vehicle action may opt out of or be exempted from mediation,

(iv) the costs and other sanctions that may be imposed in relation to mediation, including, without limitation, in relation to any failure to participate in mediation when and as required or otherwise to comply with the regulations,

(v) the mediators' fees and disbursements, and

(vi) the qualifications required for, and the selection and identification of, individuals who may act as mediators in the mediation process contemplated by the regulations.

(2) If and to the extent that there is any conflict between the regulations made under subsection (1) and any other enactment, including, without limitation, the rules of any court, the regulations made under subsection (1) prevail.

(3) Regulations under subsection (1) may provide for a mediation process to be applicable to motor vehicle actions brought out of one or more court registries and may be different for motor vehicle actions brought out of different court registries.

(4) Without limiting subsections (1) to (3) or any other enactment and without limiting the right of the corporation to use any method it considers appropriate to resolve any dispute, the Lieutenant Governor in Council may make regulations respecting dispute resolution procedures, including, without limitation, arbitration and mediation procedures, that the corporation may make available to any person who

wishes to use them to resolve disputes in relation to any benefits or insurance money claimed or payable under this Act or the regulations or any other disputes in relation to the administration of the Act and the regulations."

JOB ANNOUNCEMENTS

For a nominal fee of $60 BCALA will mail job notices to all its members- many of whom are specialized legal assistants with a number of years of experience. If you're tired of trying to find help through the want ads we have qualified people who want to see you.

LEGAL ASSISTANT OPPORTUNITIES

Jr to Intermediate Corporate/Records L.A.
Work in a team in a larger d/t firm. Lots of growth potential & team spirit. Salary negotiable & benefits. (Also have a position for a jr to intermediate corporate records clerk.)

Senior Corporate/Records Paralegal
4 month contract position starting mid-September to mid-December in lovely d/t law firm. Team position. Salary negotiable. Happy work environment.

Senior Corporate/Banking Paralegal
8 month contract position starting September 1 to end of April 1999 - possible perm. Work alongside another paralegal for senior partner & associate. Windows proficiency req'd. Super d/t law firm. Salary negotiable.

Litigation L.A.
Prefer private insurance defence litigation experience. Work one-on-one with super nice partner who will give you lots of responsibility. Windows ex nec & will train on their database. Very friendly mid-size d/t law firm. Suggested salary up to $4,000 per mon & benefits.

Punjabi Speaking Litigation L.A.
L.A. exp'd in plaintiff personal injury req'd for very nice d/t law firm. Must be Windows proficient & have B.C. personal injury experience. Salary negotiable & benefits.

Call or fax your resume to: Judy Balone, Legal Consultant at Conlin Personnel Ltd.
Ph: 681-1400 or Fax: 681-1425

ATTENTION SPECIALIZED LEGAL ASSISTANTS

Are you a legal assistant practicing in a specialized area of law, if so we would love to hear from you. We are looking for individuals to be part of a lecture series. If interested in sharing your knowledge with others please telephone Connie Iverson at 294-9594.

TECHNOLOGY CORNER FEATURE - THE GLOBAL REPOSITORY, PROVIDING TOMORROW'S SOLUTIONS TODAY

If you are one of those people who just can't fathom ever doing business without such 1990s technology innovations as your voice-mail box or e-mail, and the flexibility they give you to access them anytime, anywhere, then get ready for the next wave. This time it's your discovery documents which are available anytime, anywhere, using just a computer and an Internet Browser.

The Global Repository(TM) is the latest implementation of document and evidence management solutions from Global Information Services. Properly utilized, The Global Repository will insure that you never have to manually handle your documents again, doing away with dedicating expensive storage space in your office and hard to use/difficult to understand software. Best of all, The Global Repository is open 24 hours a day, 7 days a week, with access from anywhere you are, whether at home, at the office or on vacation.

For litigation support and case management tasks, The Global Repository gives you instant access to your discovery documents, full-text depositions, pleadings, correspondence and other documents. The Global Repository also allows you to manage your witnesses and attorney service list.

For archive records management, Global Information Services will set-up a "virtual storage facility" that provides an immediate, searchable index to your entire law firm record's population. Anyone in the firm, with authorization, will be able to search the repository and locate an archived record for either viewing or printing. No more hassles with Records Request Forms, large storage facility staffs, waiting time or storage costs related to your current records management.

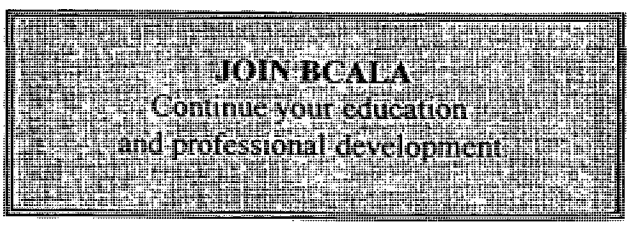
As with all on-line applications, the security of your data stored in The Global Repository should be a primary concern. The Global Repository implements several levels of security to assure data integrity. The first line of the Repository, Security Protocol (RSP), is your User-ID and Password. The User-ID identifies you to The Global Repository and controls what portions of the repository to which you have access. For example, if you are a lawyer or paralegal with several cases in the repository, your User-ID would only allow you to access those "virtual storage rooms" where your cases reside. Conversely it would lock out others who do not have authorization to your cases.

In addition to the User-ID and Password security, the Repository Security Protocol implements several background security items. These include Known IP address verification (KIP) as well as unique, user cookie codes. You can also add data-packet encryption as well as other snoop detection security protocol.

For your documents to be loaded into the repository, they must first be "scanned" and "indexed." Scanning documents with an optical image scanner will create digital images of each page of your documents.

Then, each document is indexed or coded, which includes abstracting case specific information and entering the information into a specific database. This "objective coding" highlights such information as beginning and ending bates numbers, authors, recipients, names-in-text and/or key words.

For more information on The Global Repository or other litigation support services provided by Gravity, Inc., please contact Sharon Wells, Western Region Sales Director at 800-354-3288, or e-mail at *wells@gravitynet.com*. Also, check-out our web sit at *http://www.gravitynet.com*.



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.

GAMING - Licensing and regulation - Court interpreting municipality's prohibition against "video lottery gaming" as applying to slot machines - Regulation of lottery corporation permitting such machines not invalidating municipality's bylaw - Casino owner ordered to remove machines.

The petitioner had owned and operated a casino located in the respondent municipality since 1994. In 1995 the municipality amended its relevant zoning bylaw to prohibit video lottery terminals. The amendment defined video lottery gaming as "any activity or game of chance for money carried out or played on or through a computer, electronic or other video device or machine". In October 1997 the respondent corporation, an entity established by the Lottery Corporation Act, passed a regulation under s.12 of that Act permitting, inter alia, the installation and operation of slot machines by specified parties. The petitioner entered into an agreement with the corporation in accordance with that regulation, and under the terms of the agreement, installed and began to operate slot machines at its casino. A common characteristic of video gaming machines and the slot machines used in the petitioner's casino was that the game outcome was determined in the computer's microprocessor chip and its associated software. Each time a slot machine was activated, the corporation's central slot management computer system performed a signature check of the machine. That system also communicated instructions to the slot machines, monitored the machines, and retrieved data related to the operation, security and financial control of the slot machines. The municipality demanded that the petitioner cease what it considered to be video lottery gaming. The petitioner filed a petition seeking, inter alia, a declaration that the definition of "video lottery gaming" in the bylaw had no application to slot machines. Held, petition dismissed; petitioner ordered to cease computer slot machine gaming. The mischief that the bylaw was meant to prohibit, namely the encouragement of gambling and the concomitant social ills, was the same for computer slot machines as it was for video gaming machines. The only distinguishing feature between the two types of machine was the relatively insignificant one of the use of a television-style picture tube in the latter, which did not affect the game. The slot machines in use at the casino were clearly, in the words of the bylaw, games of chance for money or other valuable consideration carried out or played on or through a computer, given the significance of computer chips to their operation. The correct interpretation of the definition of video lottery gaming in the bylaw was to read it disjunctively, so that it prohibited games of chance played on or through computers, as well as games of chance played on or through electronic or other video games and those played on or through machines. The bylaw therefore applied to the slot machines. With respect to the apparent conflict between the municipality's bylaw and the regulation the corporation had passed under s.12 of the Lottery Corporation Act, the two operated in pari passu. Both the lottery corporation and the municipality were creatures of provincial statute and had the same administrative powers. It was possible for the petitioner to comply with both regimes, and as such the field had not been occupied by the federal and provincial regulation of gaming. Therefore, the bylaw was not invalidated by the doctrine of paramountcy.

Great Canadian Casino Co. v. Surrey (City), S.C., Leggatt J., Doc. Vancouver A980167, April 17, 1998, 33 pp. [CLE No. 98-12305] // G. Bruce Butler, for petitioner; Craig MacFarlane and Anthony Capuccinello, for respondent city; David W. Buchanan, Q.C. and Virgil Z. Hlus, for respondent lottery corporation; Brad W. Dixon, for respondent Attorney General. // Principal case authority: British Columbia Lottery Corp. v. Vancouver (City), [1998] Civ. L.D. 180; [1998] Mun. L.D. 13; [1998] C.D.C. 11229 (CLE) (B.C.S.C.) - applied.

DUTIES AND DEFENCES IN LEAKY CONDO CASES

By Michael J. Hewitt, Lawyer with Singleton Urquhart Scott. Reprinted with permission from "Letter of the Law" Vol. 10, No. 2, Spring 1998.

In recent years an inordinate number of construction projects in the Lower Mainland have produced buildings that leak and rapidly deteriorate, in turn spawning an inordinate number of lawsuits. The design industry, among others, has joined in the debate as to where the blame lies for the "leaky building syndrome".

Designers are no doubt responsible for designs that keep water out of inhabited areas. In most circumstances, it will be reasonable for an owner to expect a building to perform that function, and the courts generally will impose that expectation.

If a designer contracts directly with an owner who suffers damage as a result of an improper design, the professional is exposed to a claim for breach of contract, in which the damages include the cost of returning the owner to the position he would have been in had the breach not occurred.

The more common claim against a design professional is for negligence. Some people believe that without a contract there can be no liability, but with negligence this is not so. The law imposes a duty on design professionals to exercise the skill, care, and diligence that may reasonably be expected of a designer of ordinary competence. Although the historical view was that the required level of competence or performance should be measured by the professional standard at the time, more recently the courts have made clear that mere compliance with the professional standard of the day will not necessarily foreclose a finding of negligence.

The 1995 decision in Winnipeg Condominium No. 36 v. Bird Construction has created a significant expansion for negligence claims. Owners and occupants may recover the cost of correcting construction and design defects that pose a substantial danger to occupants, against contractors, architects, engineers, and any other parties involved in the design and construction. Architects and engineers who take part in the design and construction owe a duty to subsequent purchasers if it can be shown that it was foreseeable that a failure to take reasonable care in constructing or designing the building would create defects that pose a substantial danger to the health and safety of the occupants. Where negligence is established, they can be held liable for the reasonable cost of repairing the defects and putting the building back into a non-dangerous state.

With respect to building leaks, it remains uncertain what extent of leakage is required before the Winnipeg Condominium authority can be applied, because of the "real and substantial danger" limit, although it is nearly certain that leaks that lead to rot or other destabilising damage will fit within the category.

The decision of the High Court in Australia in Bryan v. Maloney is an example of how our courts may further develop the law of negligence to permit general recovery for defective construction. That Court considered whether, in the absence of physical injury to persons or property, a plaintiff could recover the cost of correcting defects against the original builder. The Court held that it was reasonable for the builder to assume that the house would be sold over time and that hidden defects often take time to become apparent. The Court found that the diminution of the value of Maloney's house because of inadequate footings was recoverable in negligence.

Claims against design consultants may also be framed as claims for failure to warn. A duty to warn may arise where the consultant knows of potential or actual defects and fails to bring them to the owner's attention. As with a claim in negligence, the plaintiff must establish a sufficient relationship of proximity such that the affected party is within a class of persons who could suffer damage if the consultant failed to issue a warning.

The most common defence in relation to leaky buildings constructed during the 1980s and 1990s will

likely be that the designs were not negligent because they conformed to the standard in the industry at the time. Conformance with the standard was once considered to constitute a full defence, but it is now well established that such conformance does not necessarily constitute a defence.

In Kripps et al v. Touche Ross, the B.C. Court of Appeal determined that while courts should be deferential to standard practices, "if a standard practice failed to adopt obvious and reasonable precautions which are readily apparent to the ordinary finder of fact", that standard of practice may fall below the standard of care.

One could foresee a court affixing liability for a poor choice of design if a generally accepted design philosophy was unacceptable for a particular structure and location. What may distinguish the building design scenario from the Kripps case is the fact, if it could be proved, that certain designs were not generally understood at the time to be problematic.

NOAH'S DILEMMA

Internet Extract.

And the Lord spoke to Noah and said: "In six months I'm going to make it rain until the whole earth is covered with water and all the evil people are destroyed, but I want to save a few good people and every kind of living thing on the planet. I am ordering you to build Me an Ark."

And in a flash of lightening he delivered the specifications for an Ark.

"O.K." said Noah trembling in fear and fumbling with the blueprints. Six months and it starts to rain," thundered the Lord "you'd better have my Ark completed or learn how to swim for a very long time."

And six months passed. The skies began to cloud up and rains began to fall. The Lord saw that Noah was sitting in his front yard, weeping. And there was no Ark. "Noah!" shouted the Lord, "where is my Ark?" A lightening bolt crashed to the ground next to Noah.

"Lord, please forgive me!" begged Noah. "I did my best. But there were big problems. First I had to get a building permit for the Ark construction project, and your plans didn't meet code. So I had to hire an engineer to redraw the plans. Then I got into a big fight over whether or not the Ark needed a fire sprinkler system. My neighbours objected, claiming I was violating zoning by building the Ark in my front yard, so I had to get a variance from the city planning commission. Then I had a big problem getting enough wood for the Ark because there was a ban on cutting trees to save the spotted owl. I had to convince the U.S. Fish and Wildlife that I needed the wood to save the owls. But they wouldn't let me catch any owls, so no owls. Then the carpenters formed a union and went on strike. I had to negotiate a settlement with the National Labour Relations Board before anyone would pick up a saw and hammer. Now we have 16 carpenters going on the boat, but still no owls. Then I started gathering up animals and got sued by an animal rights group. They objected to me taking only two of each kind. Just when I got the suit dismissed, the EPA notified me that I couldn't complete the Ark without first filing an environmental impact report on your proposed flood. They didn't take kindly to the idea that they had no jurisdiction over the conduct of a Supreme Being. Then the Army Corps of Engineers wanted a map of the proposed new flood plain. I sent them a globe. Right now I'm still trying to resolve a complaint from the Equal Employment Opportunity Commission over how many Croatians I'm supposed to hire, the IRS has seized all my assets claiming I'm trying to avoid paying taxes by leaving the country and I just got notice from the State about owing some kind of "use" tax. I really don't think I can finish your Ark for at least another five years."

The sky began to clear. The sun began to shine. A rainbow arched across the sky. Noah looked and smiled. "You mean you're not going to destroy the earth?" Noah asked, hopefully.

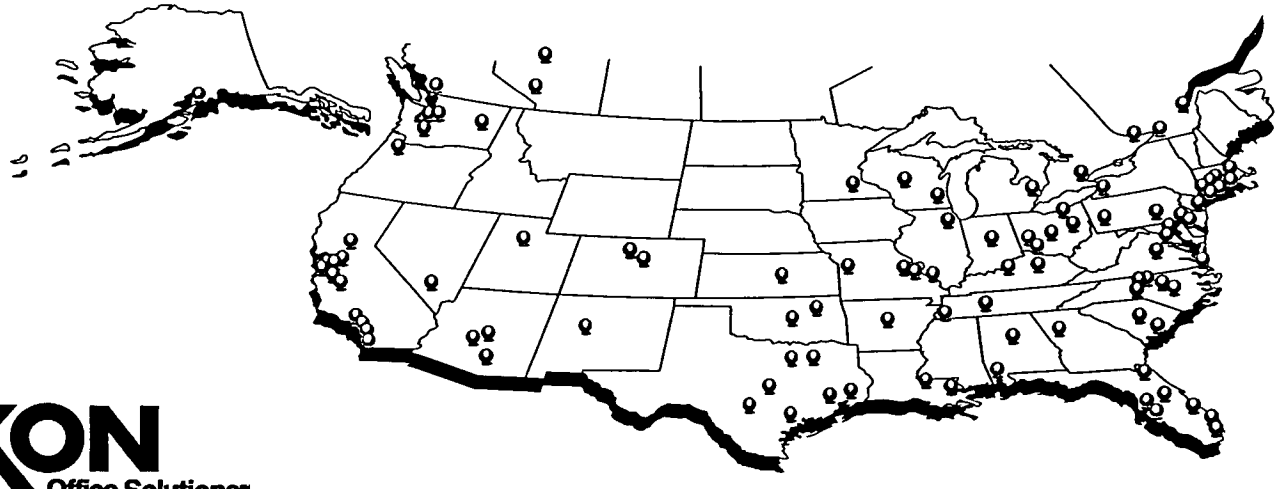
"No," said the Lord, "The Government already has."

NORTH AMERICA'S MOST TRUSTED LEGAL DOCUMENT PRODUCTION SERVICE

PARTIAL LIST OF LEGAL DOCUMENT SERVICES

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

- Litigation photocopying & binding by experienced staff
- Database coding by highly trained experts
- High-speed image capture of litigation documents
- Digital printing service for high-volume document runs
- Capacity to handle huge document libraries
- National network of facilities for coast-to-coast service
- Single point of contact for production locally or in a distant city
- On-site service available nation wide
- Security & confidentiality guaranteed
- Strict quality control measures enforced
- Exceptional deadline compliance record
- Service available 24-hours-a-day, 7 days-a-week, including holidays



IKON Office Solutions™

Document Services

For Around-the-Clock Service in Vancouver call 646-6729