THE ASSISTANT

BC Association of Legal Assistants *Issue 1-1997, Volume 3*

1997 AMENDMENTS TO THE SUPREME COURT RULES

By Master John Horn

Reprinted with permission from the June 1997 "Registrars' Newsletter".

Order in Council #0544, May 8,1997, which comes into force on July 1, 1997, contains a number of housekeeping amendments and some substantial changes to the Rules of Court.

The most important changes are to be found in the amendments to Rules 4, 11 and 12, which deal with address for delivery, mode of delivery and personal service.

Service and Delivery: Rule 4

It was thought by the Rules Revision Committee that the requirement for personal service of originating process was, in many cases, too onerous and expensive. For example, in England and in Ontario, and, of course, in the Small Claims Division of the Provincial Court of British Columbia, service of an originating process may be made by mail. It was thought that a relaxation of the strict requirements of personal service would lighten the financial burden on litigants without sacrificing the principle that a party should have adequate notice of a proceeding before judgment is taken in default.

It was also thought that there should be more options offered to a party who is required to give an address for delivery and more convenient methods provided for delivering documents to an address for delivery.

Address for Delivery

Under the present Rules a party must give an address for delivery which is either the address of a solicitor, anywhere in British Columbia, or an address within 10 miles of the registry.

Under the new Rules, a party must give an address for delivery which is either the office address of the party's solicitor of record, or, if the party acts in person,

(a) a residential address or business address within 16 kilometres of the registry (note that this can be anybody's address, it need not be the address of the party), or

Continued on page 3.

INSIDE THIS ISSUE:

PROGRAM UPDATE

By Connie Iverson

Upcoming lectures in the 1997 lecture series include a review of the recent amendments to the Small Claims Court Rules and a fall dinner with employment as a focus. Watch for the announcement in the mail.

As always, suggestions on topics of interest are welcome. Fax them to (604) 294-9595.

LEGAL ASSISTANT SCHOLARSHIPS

ASAP Printing Centre would like to congratulate Clare Robertson and Suzanne Windwick for being selected to receive the ASAP Legal Printing scholarship for academic achievement and for leadership respectively. Clare is with the Department of Justice and Suzanne works for Connell Lightbody.

Last January, ASAP Legal Printing endowed a scholarship for students specializing in litigation in the Legal Assistant Certificate program at Vancouver Community College. The VCC program is designed as continuing education for law firm staff through evening and Saturday courses. There are two $250 litigation scholarships awarded each term. One for a student who acquires academic achievement and another for a student who exhibits the skills and abilities that herald success in the law office environment. A committee of instructors administers the scholarship.

OCCUPATIONAL TITLE PROTECTION UPDATE

By Glenis Bryson

We are still waiting to hear from the Registrar of Companies regarding BCALA's application. We will report as soon as we have a reply.

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

Advertising
Rate includes four yearly issues:

Full back page	$275	Full page	$200
Half page	$100	Quarter page	$ 75
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 Glenis Bryson.

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 24, 1997. 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 B.C. 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.

(b) the residential or business address of the party and, if that address is not within 16 kilometres of the registry, then the party must also give a postal address or a fax number.

Every address for delivery must be in a place located in British Columbia.

The purpose of this amendment is to allow a litigant in person the same rights as a litigant who has a solicitor, namely the right of giving an address for service anywhere in the province. But because such an address may be in a remote place, a postal address or a fax number must also be given if the address is not within 16 kilometres of the registry. This will make it easier for other parties to deliver documents.

In addition, under the new rules, a party who gives an address for delivery may also give a postal address or a fax number. In that case delivery may be made by mail or by fax instead of by actual delivery.

Although "postal address" is not defined, I suggest it means any address to which a post office will deliver mail, e.g. a post box number or rural route mail box.

How to Deliver

(a) To a Solicitor of Record

A document may be delivered either by leaving the document at the office of the solicitor of record during business hours or by mailing the document by ordinary prepaid mail to the address for delivery of the solicitor of record.

If the address for delivery includes the fax number of the solicitor of record, a document may be delivered by transmitting the document to the fax number of the solicitor together with a cover memorandum.

(b) To a Litigant In Person

The address for delivery of a party who acts in person must be a residential or business address, and a document may be delivered by leaving it at the residential or business address with anyone who appears to be an adult member of the same household. If there is no such person there, then it can be delivered by inserting the document into a mail box or a mail slot, or a mail receptacle at the residence or business. If delivery cannot be effected in either of the above ways then delivery may be made by affixing the document to a door of the residence or business.

This does not mean that the process server has to make more than one attempt to find an adult person present. The process server may leave the document in any of the above ways on his first visit to the premises.

If the address for delivery of a party who acts in person includes a postal address, then delivery may be made by mailing the document by ordinary prepaid mail to the postal address. If the address for delivery includes a fax number delivery may be made by transmitting the document to the fax number together with a cover memorandum

When is Delivery Made?: Rule 11

When delivery is made by mail, then delivery is deemed to have been made on the same day of the following week as the day on which it was posted, or if that day is Saturday or a holiday, on the next day that is not a Saturday or a holiday.

When transmission of a document by fax is made then it is effected on the day of transmission if transmitted before 4:00 p.m. or on the next day that is not a Saturday or holiday if the document is transmitted after 4:00 p.m.

Note that documents which are 16 pages or more may only be delivered by fax between 5:00 p.m. and the following 8:00 a.m. This is to avoid tying up the recipient's fax machine.

Substituted Service Without Order: Rule 12

The present Rules require in nearly every case that service of a document be effected by leaving a copy of the document with the person to be served, or in

Continued on Page 5.

the case of a corporation with some agent of the corporation or by mail to the registered office. This requirement means that, even in a case where a defendant is not evading service, it may take a process server many visits to effect service and, if he cannot do so, it takes an application for substituted service. All of this is time consuming and expensive.

Under the new Rules, if an attempt is made to serve a document on a person at the place of residence of that person and the attempt is unsuccessful, then the document may be served by leaving it, in a sealed envelope addressed to that person, at the place of residence of that person with anyone who appears to be an adult member of the same household, and by subsequently, mailing the document addressed to the person at the place of residence.

The new Rules also provide that service may be made by mailing a document by ordinary pre-paid mail or by registered mail to the residential or business or postal address of the person to be served. There must be included an acknowledgment of receipt card in Form 5.1. If the addressee returns the acknowledgment of receipt card or if the post office returns a receipt bearing a signature that purports to be the signature of the person to be served then this will be deemed good service.

These two means of substituted service will not apply to:

(a) a petition for divorce
(b) a subpoena
(c) a subpoena to debtor
(d) an appointment to examine a person in aid of execution, or
(e) a proceeding for contempt.

In these cases personal service will still be required or an order for substituted service.

When is Substituted Service Effective?

If a document is left at the person's residence with an adult member of the household, and, as is required, a copy is then mailed to that address, then the service is deemed to be effective on the same day of the following week unless that day is a Saturday or a holiday in which case it is the next day that is not a Saturday or a holiday. If service is made by mail, then it is effective on the date that the acknowledgment of receipt card or the post office receipt is received by the sender, whichever date is first. If neither the acknowledgment of receipt card or a post office receipt is returned then there will be no effective service.

What if the document does not reach the person?

Where a document is delivered or served other than personally, and the person applies to set aside an order or judgment entered in default or applies for an extension of time or applies for an adjournment, that person may show that the document did not come to his or her attention or came to his or her attention at a time when it was delivered or effectively delivered, or that it was incomplete or illegal.

Proof of Service or Delivery

Registry staff will generally become involved in a question of whether there has been proper delivery or service where there is an application to enter judgment in default.

In the case where there has been delivery of a document to an address for delivery, the registry staff should do as they do now, which is to satisfy themselves that an address for delivery was given and that delivery has in fact been made to that address for delivery in one of the ways prescribed by Rule 11(6.1). In the case of delivery by mail, the registry staff will also have to be satisfied that the requisite time has passed so the delivery may be deemed to have been effected.

In the case of service other than personal service, Rule 12(6) requires that an affidavit of service must state that the deponent believes that the address at which the document was left and to which the document was mailed is the residential address of the person on whom service was to be effected. Under Rule 12(9), if service is effected by mail, an affidavit of service must state that the deponent believes that the address to which the document was mailed is the

residential, business or postal address of the person on whom service was to be effected.

Note that the Rule does not require that the deponent set out the grounds for such relief. The Rules Revision Committee was of the opinion that if the deponent were obliged to set out the grounds for such belief then the registry would become involved in determining whether such grounds were sufficient. This was felt to be too onerous. All that the registry staff need to determine is that the deponent has sworn to such belief.

Again, where substituted service has been made by mail, the registry staff will have to determine that the requisite time has elapsed in which service can be determined to have been made.

Trial Certificates

Rule 39(19) now provides that a trial certificate in Form 37 must be filed not more than 30 days and not fewer than 14 days before the scheduled trial date. This amendment was designed to bring the provisions in relation to the trial certificate in line with provisions in relation to the trial record.

Entry of Appearance

Rule 49(16) now requires that a person who intends to oppose an appeal must enter an appearance under Rule 14 and, it follows, must give an address for delivery.

Restraining Orders

Restraining orders under s.37 or 38 under the Family Relations Act must now be in a prescribed form which is Form 119B. This form was designed with a view to the order being standardized so that it could be registered with the appropriate government registry.

Search of Registry

A registry file in respect of proceedings under the Child, Family and Community Service Act has been included as one of the files which may not be searched except by a party, a party's lawyer or a person authorized by them.

UPDATE - CHAMBERS PILOT PROJECT

By Dawn Grant, Manager, Civil Programs - Vancouver Law Courts

The Vancouver Chambers Pilot Project has been in operation since February 1, 1997. Since that time, the number of applications set down for hearing in Chambers have been cut in half. However, telephone inquiries have increased substantially and most are for assistance with Rule 65.

The confusion experienced during the first few weeks of the project has subsided as counsel, the registry and the public have become more familiar with the rule and its procedures.

The Chief Justice has issued three practice directions adding to the list of exemptions from Rule 65. These new exemptions are:

Practice Direction dated March 3, 1997

- applications in proceedings governed by the Bankruptcy and Insolvency Act;
- applications for approval of solicitors' agreements and settlements proposed to be entered into or made on behalf of an infant;
- applications in foreclosure proceedings;
- applications under Rule 39(27)(a) to strike a jury notice

Practice Direction dated April 29, 1997

- appeals under Section 63 of the Assessment Act, R.S.B.C. 1996 c. 20;
- applications pursuant to Sections 248, 249 and 252 of the Company Act, R.S.B.C. 1996, c. 62

Practice Direction dated June 26, 1997

- applications under Rule 55(16), (17), (18) and (25) (re: arrested property under Admiralty jurisdiction)

An information package was mailed out through the Law Society to members in May, 1997. It contained questions and answers, examples of forms, covering letters and checklists for the applicant and the respondent.

Some counsel believe that all ex-parte applications are exempt from Rule 65. This is not the case. A chambers record must be prepared and filed according to Rule 65. The chambers record must include an index.

Another common error involves presenting the chambers record containing originals. Only copies of the documents are to be in the record; the original motion, outline, affidavits and notice of hearing go to the court file. The chambers record is returned to counsel after the hearing.

The registry (with the assistance of the Masters and our District Registrar, Katherine Wellburn) devised a praecipe to assist counsel in making applications to abridge the time limits under Rule 65. The bottom portion of the praecipe is a certificate setting out the time frames for delivery of the applicant's material, the response time by the respondent and the time for filing the chambers record in the registry. In order to apply for this "short leave", counsel bring a copy of their substantive motion and affidavit material to the registry; they are given one of the above praecipes to fill out (or they can bring a prepared one with them). They are then sent up to Master's chambers to speak to it. If granted, the Master will certify the date for hearing and sign the certificate. Counsel then deliver the endorsed praecipe and the copy of the materials on the respondent. The time lines in the certificate are then followed.

In the near future (probably by the end of August, 1997), feedback on the project will be sought through questionnaires. Comments on the project can be made at any time in writing addressed to Madam Justice Sinclair Prowse, c/o The Vancouver Law Courts, 800 Smithe Street, Vancouver, B.C., V6Z 2E1.

For those of you with access to the Internet, answers to commonly asked questions are available for your information. Our website address is: http://www.courts.gov.bc.ca

NOTES FROM A TALK GIVEN TO THE BC ASSOCIATION OF LEGAL ASSISTANTS BY KATHERINE WELLBURN, DISTRICT REGISTRAR FOR THE SUPREME COURT AT VANCOUVER as prepared by Ann Halkett, Editor of *The Assistant*

Party and Party Costs

The registrar can only assess costs where an order for costs exists, so it is best to have an entered order before taking out an appointment. Once the bill of costs has been prepared and sent to the other party it is important to determine in advance what items will be in dispute. During the hearing your lawyer will only need to provide proof for the disputed items. If you send the bill and the other party does not respond then you will need to provide proof of all items on the bill. The registrar will often ask at the beginning of a hearing which items are disputed and which are not. It is also recommended that you send your lawyer to the hearing with a separate blank certificate (Form 68A) which can be signed by the registrar and entered immediately. A separate certificate is better for enforcement purposes. If costs have been agreed to the registrar will also sign a consent certificate. This can be done by desk order: submit the certificate with the consent of each party and a copy of the entered order providing for costs. As well, do not forget to ask for costs incurred as a result of the hearing - especially service and other charges where lay litigants are concerned. Also be sure to have an affidavit of service so as to be able to proceed in the absence of a lay litigant attending.

As for the bill of costs itself, detail is absolutely essential. Keep in mind that if your lawyer cannot explain an item then costs will not be awarded. Typically the lawyer who had conduct of the file will swear an affidavit saying that the work done on the file was reasonable and necessary (that is if, he/she is not attending the hearing). A legal assistant can swear an affidavit attaching disbursements as exhibits verifying charges. If a disbursement is quite large, for example, $1,000 or more for say a medical report, it may be necessary to get an affidavit from the doctor who did the report explaining how much time was spent reviewing records, writing the report, etc. In general, it is a good idea to attach any reports that you are requesting reimbursement for to the bill of costs and a copy of the invoice for each report.

Other details to mention are whether trials or hearings took one-half or a whole day. Also list the dates on which they took place and the name of the judge or master as this can clear up any confusion. When listing discoveries do the same and name the party being discovered.

Determining the number of units to claim per item may depend on whether the matter took a whole or a half day, but sometimes it can be a little more complex as is the case with Item 1. Generally you claim what you think is reasonable. The criteria for reducing or increasing units on taxation is generally how much time it would ordinarily take someone to do the task.

Disbursements

When claiming for disbursements the test is whether the costs incurred were reasonable and necessary. The lawyer's task will be easier if you keep track of your disbursements.

Although your firm may charge 30 cents per page for photocopying you are allowed 15 cents per page in a costs hearing. The rate allowed for in and out faxes is 20 cents per page. Binders and tabs may only be allowed in a large case as they are generally viewed as overhead. Recouping some costs may depend on the size and circumstances of a case. Firm stationery is usually not allowed. Postage is usually permitted. You can also claim for witness fees paid to a party although the party paying the fee is obliged to try to get it back if the witness was not required.

As for travel disbursements did two lawyers attend when only one was needed? If so, you cannot reasonably recover for both. The key again is whether the expense was reasonable and necessary to further the case. As far as the cost of airfare itself, it is not necessary for the lawyer to obtain the cheapest ticket. Matters are often adjourned, therefore a ticket

Continued on page 11.

that can be cancelled and refunded is acceptable. As for couriers, not every charge is allowed, especially since there are other cheaper means of sending material such as legal alternative and via facsimile. You will need to explain why you needed to use couriers.

As for Quick Law, some registrars will not allow the charges if a case could have been copied from a published report. Your lawyer should be prepared to explain why QL was necessary.

Disbursements Attacked

Disbursements are typically attacked on two grounds which include: (1) entitlement and (2) quantum. Entitlement is whether the disbursement should have been incurred at all; quantum is whether the amount is reasonable.

Taxes

There are taxes - G.S.T. and P.S.T.- which can be added to the units and disbursements. The test is whether your client had to pay them. Typically both G.S.T. and P.S.T. are charged on legal services, but not always on disbursements. Each disbursement receipt outlines the taxes charged and it is preferable to include taxes in the disbursements, rather than listing them separately.

Case Law and Reference Material

There is not much case law concerning costs so look to Rule 57 and Appendix "B" of the Rules of Court. Also refer to Practice Before the Registrar. The Probate Practice Manual also has precedents.

Special and Increased Costs

A hearing for special costs may involve a lot of money and such hearings can take days to complete. There is no specific form for the bill and it typically looks like a bill to your client, except the other party will be paying the fees. Ensure the items on the bill refer to the lawsuit and are covered by the order. Then present the bill to the other side. Again keep in mind that detail is essential and leave in time charges and details of the work done.

Legal Profession Act Review

These are typically unhappy hearings as a lawyer is collecting from his client or a client is disputing a bill. The best way to avoid these hearings is by having a retainer agreement in which the lawyer can stipulate a contractual rate of interest and how fees will be calculated. As well, keep in mind that a legal assistant's time cannot be billed if it is not stipulated in the retainer agreement. A client should be notified if there is an increase in hourly rates.

Keeping a client informed often results in fewer problems regarding billing. This can be done through interim billing as the client can see what is being done, even if he/she does not hear from the lawyer.

The Legal Profession Act takes several factors into account when considering a lawyer's bill. These include not only time and degree of difficulty, but also the result achieved. Typically if the result achieved is the one sought, the lawyer is more likely to receive a higher amount on taxation. The registrar will consider how much time was spent on the matter and whether the hourly rate was reasonable. Was the client advised in advance whether the case would be a difficult one to win and did the client understand the risks involved? Was the result a poor one?

If a legal bill is not reduced by more than one-sixth a lawyer may seek costs at taxation and vice versa for the client. These costs should be requested in person at the hearing. Pre-judgment interest or a rate stipulated in the retainer agreement may also be added.

Settling Terms of an Order

Another hearing regularly before the registrar is the settlement of the terms of orders. This occurs when there is a dispute over the wording of the order. These disputes often involve lay litigants. At a minimum the affidavit in support of the application should include the Clerk's notes. If a fine point is raised include a copy of the transcript. When dealing with lay litigants your lawyer should ask that their

approval of the form of the order be waived.

Refer to the CLE Chambers Orders book which contains numerous precedents for different types of orders. All orders must conform with the examples in this book or will be rejected by the registry.

NEW IMPROVED PROVINCIAL COURT RULES EFFECTIVE JUNE 15, 1997

By Administrative Judge Ross Tweedale

Reprinted with permission from BarTalk (published by the Canadian Bar Association) - June 1997 issue (Vol. 9, No. 3)

The Provincial Court Small Claims Rules have undergone the most substantial revision since their introduction in 1991. The aim of the changes is to enhance the just, speedy, inexpensive and simple procedure in B.C. Provincial Court civil cases. Here are the highlights:

The Settlement Conference

- The parties must now bring *all relevant documents and reports* to the conference. The previous wording only required the party to bring all documents and reports that the party was going to rely on at trial. Problems arose because lay people often did not bring essential documents that needed to be disclosed. A further settlement conference then had to be held. The aim of the new rule is to have both the mediation and pre-trial discovery process take place more effectively.

- Rule 7(14) expands the authority of the settlement conference judge to order production of documents and records, whether a party chooses to rely on them at trial or not.

- The judge may also now dismiss a claim, counterclaim, reply or third party notice *if it is frivolous or an abuse of the court's process.*

- The remedies for failure to comply with a disclosure order are now particularized.

- A simple procedure is mandated for failure to comply with a settlement agreement. In summary, the agreement is cancelled and the claimant may file a payment order after filing an affidavit of non-compliance. The rule is intended to eliminate or minimize a party having to return to court to get another order when the other party fails to carry out a settlement.

Transfer to Supreme Court

- Previously, matters could only be transferred from Supreme Court to Provincial Court. New Rule 7.1 allows the transfer of claims to Supreme Court where the monetary outcome of a claim *may exceed $10,000.* Lawyers may want to advise their clients to initiate the claim in Provincial Court, knowing that if further evidence shows the monetary outcome may exceed $10,000 that the judge must transfer the case. The issue of the limitation period for commencing an action does not then arise. That is because the case is transferred instead of being withdrawn and a new action begun in Supreme Court.

- The transfer may be considered on application at any time, at the settlement conference or, least desirably, at trial.

Multiple claims

- New Rule 7.1 also establishes the right to hold one trial with multiple causes of action, even though the total monetary outcome of all the claims is likely to exceed $10,000.

Offer to Settle

- New Rule 10.1 provides an incentive for parties to file and accept formal offers to settle. It will likely be helpful initially for the judge to raise this at the settlement conference, especially in cases where one party refuses a reasonable settlement offer.

- The trial judge may order a party who rejected an offer to settle, to pay a penalty of costs to the other party. The amount, *up to 20 per cent of the offer,* is added to or may offset a judgment.

Continued on page 15.

- A formal offer must be made within 30 days of the complete settlement conference. This is to build on the momentum of the settlement conference. (A party may apply to a judge to extend the time for making a formal offer.)

Adjournments

- Rule 17 confirms the requirement that trials cannot be adjourned by consent, except with the permission of a judge. This is for reasons of case management. The rule also provides adjournment criteria.

Naming the Right Party

- A current Registrar of Companies search will be needed when filing a claim, counterclaim or third party notice against a company or a society, to ensure the correct name and address is used.

- An expanded version of the Civil Rules for Small Claims (including a subject and forms index) and the Small Claims Manual used by court registries can be obtained from Crown Publications at (250) 386-4686.

Appeals

- Legislation has been introduced to amend the Small Claims Act. Effective for all appeals filed on or before September 1, 1997, the appeal will be based on the record from the Provincial Court trial, on questions of fact and law. This replaces the current appeal process which consists of a new trial in Supreme Court.

Special Thanks

Thanks go to the Provincial Court Small Claims Rules Committee for their work on these rule changes. A lot of time has been spent and careful thought given to the many suggestions for Rules changes. The members of the committee are: Nathan Smith, lawyer, Vancouver, nominated by the Trial Lawyers Association and member of the B.C. Supreme Court Rules Committee; Sandra Sajko, Senior Policy Analyst and Doris St. Germain, Senior Policy Analyst; Claire Reilly, Senior Legislative Counsel, Victoria; W.E. (Bill) Grandage, Manager, Provincial Court of B.C., Robson Square; and myself.

Thanks also to Chief Judge Metzger and Associate Chief Judge Schmidt for entrusting this work to the Committee for approval of the rules change.

UPDATE ON NEW FEDERAL CHILD SUPPORT GUIDELINES

By Leslie McDougall, Legal Assistant

The federal government enacted mandatory child support guidelines which became effective May 1, 1997. The guidelines became part of the federal Divorce Act R.S.C. 1985, c.3 (2nd Suppl). Any court making an order for child support must apply the Federal Child Support Guidelines when deciding the quantum of child support under the Divorce Act.

The guidelines are mandatory rules on how to calculate fair and consistent awards of child support that a paying parent should contribute towards children upon a divorce. There is a table of child support awards for each province and territory. The table award is based on a fixed percentage of the paying parent's gross income and will depend on the number of children who require financial support. The federal child support table for each province and territory reflects economic studies of average spending on children in families at different income levels across Canada. The recipient parent's income is usually not taken into account as the guidelines recognize and assume that the custodial parent also contributes a similar percentage of income to the needs of the children. The guidelines are designed to protect the best interests of the children.

The new Federal Child Support Guidelines apply to all child support payments pursuant to a court order

Continued on page 17.

ASAP Legal Printing Legal Assistant Scholarships First Awarded To...

Suzanne Windwick of Connell Lightbody won the award for interpersonal skills and abilities that herald success in the law office environment.

Clare Robertson of the Department of Justice won the award for academic achievement in the Litigation practice area program.

or agreement made on or after May 1, 1997. A parent with a child support order or agreement made under the Divorce Act before May 1, 1997, has a right to renegotiate child support payments or ask the court for a new child support order.

The guidelines do not apply to married or unmarried parents who separate and do not divorce. These situations are governed by provincial law and do not fall under federal jurisdiction. However, the courts can apply the guidelines to make sure child support arrangements are reasonable. The guidelines contain a provision that allows each province and territory to apply its own Provincial Child Support Guidelines. It is likely that the province of British Columbia will soon introduce similar guidelines.

One of the most profound changes to the child support system is the "inclusion/deduction" tax scheme. When our previous child support system was implemented in 1942, most child support payers had substantially higher incomes and resulting tax rates than most recipients. Thus, the Income Tax Act allowed a paying parent to claim a tax deduction for those payments and a receiving parent was required to pay income tax on the child support payments. Under the new child support system, the Income Tax Act has been amended so that child support paid pursuant to court orders or agreements will no longer be taxed as income to the recipient or be tax deductible for the payer. Child support awards will now normally be lower than those awarded under the previous system.

The guidelines will also not affect spousal support. Spousal support will remain deductible from the payer's income and included in the income of the recipient for income tax purposes.

The quantum of child support awards payable under the guidelines can be adjusted to account for special expenses, undue hardship, shared or split custody, income over $150,000, or children over the age of majority. In these circumstances, the income of the receiving parent will be taken into account in determining the quantum of child support payable pursuant to the tables.

The court may order an increase in the child support award if there are special or extraordinary expenses incurred by the children. Examples of such expenses are: daycare, health-related expenses over $100/year, education and extracurricular activities. All expenses must be necessary, reasonable and in the best interests of the children.

The court may also order a reduced child support award should the amount determined by the guidelines create undue financial hardship for the payer. Should the payer have an unusually high debt load, expensive travel costs to exercise access to children, a legal obligation to support another family, or suffer from an illness, a lower support award than specified in the guidelines could be made.

Custody arrangements will make a difference on how the guidelines are applied. When parents each have at least one child in their custody, the split custody arrangement could alter the amount payable under the guidelines. For example, each parent would calculate the child support payable to the other parent pursuant to the guidelines. The parent required to pay the higher amount would then pay to the other parent the difference between the two amounts. In addition, any special expenses would be divided between the parents in proportion to their incomes.

If one parent has physical custody or exercises access to the children at least 40% of the time over a period of one year, the shared custody arrangement could also alter the child support award payable by making it higher or lower than the table amount. In this situation, the guidelines take into consideration the appropriate child support amount for each parent, the increased cost of the shared custody arrangements and the needs of the child and the parents.

The guidelines specify a mathematical formula based on the number of children in order to determine an appropriate child support award should a paying spouse earn over $150,000 a year. As an alternative to the formula, an amount may be awarded based on the needs, means or other circumstances of the children and the parents.

Child support may still be payable for children who have reached the age of majority (19 years in B.C.) but who are still dependent on parents because of illness, disability, or other cause. Generally, courts interpret "other cause" as reasonable education. The court may either apply the table amount or set a different amount by taking into consideration the age of the child and the means, needs and income of the child and of each parent.

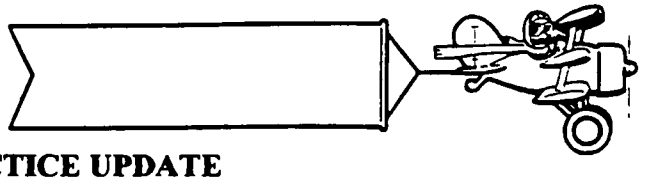
The guidelines also set a minimum income level (currently set at $6,700 gross per annum for B.C.) at which child support will not be payable if the non-custodial parent earns less. Of course, the court can attribute income to a spouse should it feel the income claimed does not adequately reflect the actual earning capacity of a parent.

The Federal Child Support Guidelines do not depart from the previous system where mandatory financial disclosure is required of spouses. Each spouse is under a continuing obligation to provide complete and accurate information to the other upon written request in order for the guidelines to work properly.

The child support tables can be a useful tool for parents whose circumstances are relatively straightforward. Quantum of child support is based on annual gross income, before taxes, from all sources of a paying or receiving parent. Annual income is usually easy to determine if one parent is an employee. Where parents are self-employed, have investment income, property or are shareholders in a corporation, determining the annual income may not be as easy. The guidelines provide detailed direction when the calculation of annual income is complex.

The federal government enacted the child support guidelines to set a fair standard to ensure consistent child support awards for the benefit of children. Hopefully, the guidelines will act as a useful tool to make the determination of quantum of child support easier and less expensive for parents. The guidelines may help to reduce conflict between spouses and the need for lengthy negotiation to determine a fair child support award. In straightforward cases, parents can now apply the guideline table amounts, without the assistance of a lawyer, to determine the amount of child support a court would likely order.

To receive more information on the guidelines, contact the Department of Justice Canada at 1-888-373-222 (toll free) or http://canada.justice.gc.ca (e-mail).



PRACTICE UPDATE

Questions & 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 "Questions & Answers" as selected by Ann Halkett from the June 1997 "Registrars' Newsletter".

Garnishment, Attachment and Pension Diversion Act

Q: How does a judgment creditor issue a garnishing proceeding against a federal government employee?

A: An amendment to the Garnishment, Attachment and Pension Diversion Act of Canada came into effect May 1, 1997.

The creditor must prepare an affidavit in support of a garnishing order after judgment. The garnishing order will identify the garnishee as "Her Majesty the Queen in Right of Canada".

A federal form called a garnishment application must be prepared by the creditor and served together with the garnishing order and a copy of the judgment or order which forms the basis for the garnishing order.

If a creditor is uncertain whether a specific department is subject to the provisions of the federal Act, the creditor should contact the Federal Garnishment Registry at (604) 666-2061 for advice.

Legal Profession Act, s.87(5) & (7)

Q: What is the procedure to follow on an application to increase a member's remuneration under a contingent fee agreement in excess of the limits set out by the

benchers in the Legal Profession Act?

A. The court registry will set a time and place for this application to be heard by a Supreme Court judge. In most locations, this will be done by the "trial coordinator".

The application is in private. If either the solicitor or the client request that the application be kept confidential, then the registry must ensure that the records are confidential and that no person other than the solicitor or the client or a person authorized by either may search the records absent a court order.

In Victoria, following the hearing, the clerk is given a sealed envelope for storage. We file these applications with our Privacy Act applications, which follow the same procedure.

Patients Property Act, s.15

Q: Can an attorney sign a bond on behalf of a committee?

A: The bonding company will determine whom they allow to sign a bond. As long as the bond is in the proper format, the amounts are correct, and the bond is issued by an authorized bonding company, we need look no further.

Rule 41(18)

Q: If a Registrar settles an order after a trial of the proceeding, must the order be put before the Judge for approval?

A: If the order cannot be settled by the Registrar, Rule 41(18) contemplates that the Registrar will refer the draft order to the Judge, who may in any event review and vary a settled order (Rule 41(21)). Otherwise, there is no reason why the Judge needs to approve it before entry.

Rule 42(34)

Q: If a debtor fails to obey an examiner's order for payment by instalments, what is the creditor's option?

A: 42(34):

> "..., the creditor may issue out of the registry a notice of motion for committal in Form 52, on filing an affidavit showing that the default has occurred, and subrules (24) and (25) apply."

Appendix C, Schedule 1, Item 30

Q: When would we charge the $40.00 fee for payment into or out of court under Item 30?

A: Either pursuant to statute or by court order. The latter may require payment into and out of court without Items 1, 7 and 11 applying. An example would be a payment in pursuant to Section 20(4) of the Builders Lien Act

EMPLOYMENT UPDATE

By Arlene Pelrine of Arlyn Personnel Agencies Ltd.

It has been an interesting year for Vancouver's legal community. Naturally, with the world's investment community and stock markets achieving record growth on an almost daily basis, we have seen a substantial increase in legal assistant positions in related practice areas. Firms and resource companies in the Vancouver area represent both Canadian and U.S. clients. Securities legal assistants have been and continue to be, in great demand.

In larger firms, securities "L.A." positions include corporate records of listed companies (i.e., public or reporting) and "SEDAR" (System for Electronic Document Analysis and Retrieval) filing and searching positions. In resource companies, legal assistants combine legal work with shareholder relations including information dissemination.

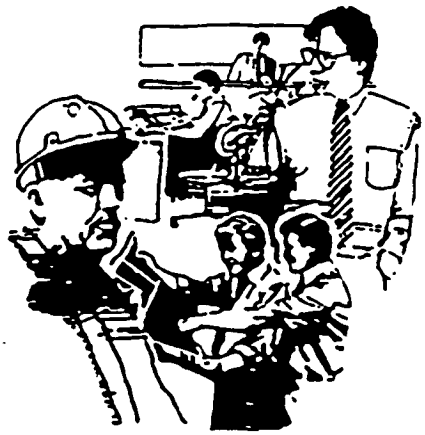
Also in demand this year have been positions within corporations, usually involving contract law and general commercial matters. We are occasionally asked if litigation positions occur in a corporate environment; in our experience, most corporations refer litigious matters to their outside law firms.

At Aryln, we are well informed and knowledgeable in the area that interests you. We do not ask legal assistants to take our clerical and technical tests. We treat resumes with the respect due them, never forwarding one without permission.

If we can be of service to you, please contact me or my partner, Mary McGillis, at 681-4432.

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.

400 - 12 Water Street, Vancouver, B.C. V6B 1A5

*Phone: (604) 685-3399 * Fax: (604) 685-4884*

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

YOU AND THE LAW - B.C.'S LAWS HAVE ROOTS IN MEDIEVAL ENGLAND

By Janice Mucalov, Lawyer
Reprinted with permission.

Many of B.C.'s laws trace their roots back to the Norman invasion of England in 1066. At the time, local judges decided cases based on the customs of the community. Some of the earliest law suits were conducted by calling God to intervene. The plaintiff would argue his case. The defendant would then swear that his cause was just.

His oath was then put to the test by twelve people swearing oaths in his support (a forerunner of the modern-day jury), by winning the fight (on the assumption that God would help the righteous), or by ordeal, where the defendant was considered to have God on his side if he could plunge his arm into boiling water or sink when thrown into a lake.

The Norman conquerors brought with them royal courts based in Westminster. Travelling justices were sent out and began to apply uniform laws throughout the land. This came to be know as the law common to all of England, or the "common law". Judges began to follow past decisions or "precedents" to decide similar cases in the same way. With the advent of printing, their decisions were published as "caselaw".

In time, applying precedents years later yielded unfair results. Courts of "equity" thus arose to decide cases on their merits fairly and equitably, without regard to past decisions. In the 19th century, the common law and equity merged.

One notable legal principle arising from equity is the concept of "trust" - property legally owned by one person, but held for the benefit of another.

As society became more complex, governments passed statutes to address circumstances not covered by caselaw.

B.C. has jurisdiction over local matters like education and property. The federal government deals with national matters like trade and commerce, banking and national defence. Municipalities can also pass bylaws concerning purely local matters.

Our legal system in B.C. is a common law one based on precedent and caselaw, supplemented by statute law. Knowing this helps us to understand how judges decide cases and how laws are made.

THE ROLE OF THE PUBLIC TRUSTEE AS OFFICIAL ADMINISTRATOR

By Taryn Walsh, Office of the Public Trustee of British Columbia

When should an estate file be referred to the Public Trustee? What are the advantages and disadvantages of having the Public Trustee administer an estate?

This article is intended to assist you in answering these questions and provide a brief overview of the role of the Public Trustee.

Our society has long recognized its obligation to protect the interests of people who are not able to protect themselves. This duty can be traced back to the 12th century England when the king was viewed as the father of his subjects and bore the responsibility of seeing that all citizens were treated fairly. In Canada, this responsibility was given to the Supreme courts. The Canadian courts gradually delegated these duties to provincial officials and, in 1963 British Columbia established the Public Trustee.

The Public Trustee fulfils this obligation through three primary functions:

1. protecting the legal and financial interests of British Columbians under the age of 19;

2. protecting the legal and financial interests of vulnerable adults; and

3. administering the estates of deceased and missing persons when there is no other

appropriate person willing and able to administer the estate.

This article will focus on the third function of the Public Trustee, the administration of estates.

When will the Public Trustee administer an estate?

The Public Trustee is the Official Administrator for the province of British Columbia. The Official Administrator will act as the administrator of an estate under the following circumstances:

(a) when a person who is resident in B.C., or has assets in B.C., dies without naming an executor in his or her Will who is willing and able to act;

(b) there are no beneficiaries named in the Will, who are willing and able to administer the estate; and

(c) in cases of intestacy, there are no relatives who are entitled to share in the distribution of the estate, who are willing and able to administer the estate.

The Official Administrator is the administrator of last resort. If there is an executor, beneficiary or heir who resides in the province, and is willing and able to administer the estate, his/her right to administer supersedes the right of the Public Trustee to do so.

If the executor, beneficiaries or heirs reside outside British Columbia, the Official Administrator has the authority to administer the estate under s.46 of the Estate Administration Act. However, if a non-resident executor, beneficiary or heir wishes to administer the estate the Official Administrator will generally not object to his or her application unless for some reason it would be inappropriate for that person to administer the estate.

The Public Trustee may also administer an estate if the Public Trustee is named as an executor in a Will, or if the Public Trustee is the guardian or committee of an heir or beneficiary.

When should an estate be referred to the Official Administrator?

There are two primary reasons why your clients may wish to administer estates themselves, rather than referring them to the Official Administrator. First, your clients may be able to complete the administration of the estate faster because of their personal knowledge about the deceased. Second, administering the estate themselves may reduce costs. The Official Administrator charges a file opening fee of $200.00, plus 7% of all capital assets (excluding real estate which is charged at 5%, if sold through an agent) 5% of all income and an asset management fee of .4 of 1% per annum to administer an estate. These fees are paid by the estate, prior to distribution to the heirs and beneficiaries.

Small Estates

Small estates are often referred to the Public Trustee, however, depending on the circumstances, it may be advisable for a relative to administer this type of estate. If a person died without a Will, the Official Administrator constructs a family tree and requires the deceased's next of kin to prove heirship by providing applicable birth, marriage and death certificates for everyone on the family tree, as well as affidavit evidence from individuals who have no financial interest in the estate. These requirements must be met for small estates. It may be faster and easier for a relative to administer an estate in these circumstances because he or she will know, for example, that Aunt Myrtle died six years ago, and will not require a death certificate to evidence it.

Insolvent Estates

Relatives of the deceased may be reluctant to administer an estate that is insolvent. This is understandable, as there may be little or no monetary benefit to administering the estate and the administrator is potentially liable in case of error. In this situation, depending on the complexity of the estate, it may be more appropriate to assign the estate to a trustee in bankruptcy rather than referring it to the Official Administrator.

Complex Estates

If an estate is particularly complex due to the nature of the assets or potential legal issues, and the executor and relatives feel unable to manage the issues involved, they may prefer that the Official Administrator administer the estate. Administering an estate is a time consuming task and if an estate is particularly large and complicated the executor and relatives may not wish to accept the responsibility.

Referrals to the Official Administrator

If you have determined that an estate should be referred to the Official Administrator, you should advise your client to:

(a) make sure that all the assets are physically secure (e.g. ensure that the residence is locked, mail is collected, motor vehicles are secure);

(b) ensure that no one removes any of the deceased's assets;

(c) make a list of all estate assets (e.g. bank accounts, real estate, motor vehicles) and liabilities (e.g. funeral invoices, loans, credit card bills); and

(d) gather all relevant documents (e.g. tax slips, bank books, identification).

If your client has begun dealing with the estate he/she will be asked to inform the office of exactly what has been done and turn over all estate assets to the Public Trustee.

Your client may call our office at the following telephone numbers:

Vancouver (incl. Richmond, North and West Vancouver, Squamish, Sunshine Coast): 660-0966
Lower Mainland (incl. Burnaby, New Westminster, Surrey, Delta, Coquitlam): 775-1811
Vancouver Island: 388-6631
Okanagan/Kootenay: 763-6700
Cariboo North: 561-9436

Conclusion

The role of the Public Trustee is to protect the interests of those who cannot protect themselves. Part of this responsibility entails administering estates when there is no other appropriate person willing or able to do so. If any of your clients, due to personal grief, family conflict or the complexity of an estate, do not wish to administer the estate, you may wish to advise them of the services of the Official Administrator.

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. To order full text judgments telephone (604) 535-1197 or toll free (800) 927-3377.

BANKRUPTCY - Actions - Leave to sue - I.C.B.C. applying under s.69.4 of Bankruptcy & Insolvency Act for leave to commence action against its insured, a bankrupt - Application dismissed.

The bankrupt was involved in a motor vehicle accident in which a person was injured. The bankrupt pleaded guilty to a charge of driving with a blood alcohol level in excess of the legal limit. He was therefore in breach of a condition of his insurance coverage with the applicant I.C.B.C. The injured party's claim was paid by I.C.B.C. After the bankrupt's assignment into bankruptcy, I.C.B.C. applied under s.69.4 of the Bankruptcy and Insolvency Act for a declaration that the provisions of the Act staying proceedings against a bankrupt did not apply to its claim against the bankrupt for

reimbursement. I.C.B.C.'s intention was not to enforce the judgment directly, but to report it to the Superintendent of Motor Vehicles, who would deny the bankrupt a driver's licence until the judgment was paid. HELD, application dismissed. Section 69.4 provides that the court may make the declaration requested if it is satisfied that the creditor is likely to be materially prejudiced by the continued operation of the stay, or that it is equitable on other grounds to make such a declaration. In this case, I.C.B.C. was asking for a preference over other creditors of the bankrupt for the purpose of collecting money from a driver who was in breach of his policy. That purpose, while it might be laudable, was not one articulated in the Act. I.C.B.C. failed to show that it would be prejudiced, in the sense that as a result of the bankruptcy it would be treated unfairly or differently or would suffer worse harm than other creditors. Nor did the "equitable" grounds contemplated by s.69.4 include enforcing the government's policy objectives.

Ingles, Re, S.C., Maczko J., Doc. Vancouver 163634/VA-96, May 12, 1997, 13 pp. [CLE No. 97-9416] // Anu K. Khanna, for applicant I.C.B.C.; Bankrupt in person. // Principal case authorities: Caporale, Re, [1970] 1 O.R. 37 (Ont. H.C.) - considered; Cumberland Trading Inc., Re (1994), 23 C.B.R. (3d) 225 (Ont. Gen. Div.) - considered; Deol, Re (1995), 8 B.C.L.R. (3d) 95 (S.C.) - not followed; Giberson, Re (1982), 45 C.B.R. (N.S.) 31 (Man. Q.B.) - considered; McConnell, Re (1987), 64 C.B.R. (N.S.) 236 (Ont. Registrar) - considered; Pizzey v. Derrough (1985), 58 C.B.R. (N.S.) 129 (Sask. Q.B.) - considered.

COSTS - Security for costs - Appeal court setting out guiding principles to be considered on application under s.229 of Company Act.

The plaintiffs sued for alleged breach of a management and development contract. The corporate plaintiff had no assets while its principal shareholder, the personal plaintiff, deposed that he did not have the resources to deposit the amount being sought by the defendants as security for costs. On the defendants' application under s.229 of the Company Act a chambers judge declined to order either plaintiff to post security, on the basis that the plaintiffs would be unable to prosecute their claim if she were to grant the order. The defendants appealed from that portion of the order pertaining to the corporate plaintiff. HELD, appeal allowed; security of $50,000 ordered. The following principles provide a useful guide to the application of s.229: the court has complete discretion whether to order security, and will act in light of all the relevant circumstances; the possibility or probability that a plaintiff company will be deterred from pursuing its claim is not sufficient reason in itself not to order security; the court must attempt to balance injustices arising on the one hand from use of security as an instrument of oppression to stifle a legitimate claim, and, on the other, the use of impecuniosity as a means of putting unfair pressure on a defendant; the court should avoid going into detail on the merits of the action unless success or failure appears obvious; the court can order any amount of security, as long as it is more than nominal; the court must be satisfied that a claim would probably be stifled by an order for security before it refuses to order security on that ground; and, the lateness of an application for security is a circumstance which can properly be taken into account. In this case, the chambers judge applied the appropriate principles, but erred in finding that the corporate plaintiff would be prevented from pursuing its claim if security were ordered. The personal plaintiff did not provide any details as to his own or his company's lack of assets, or as to the ability of either of them to sell assets, borrow money or otherwise raise funds to post reasonable security for costs. A plaintiff must do more than show it has no assets to show that an order for security would stifle the action.

Kropp v. Swaneset Bay Golf Course Ltd., C.A., Gibbs, Finch & Donald JJ.A., Doc. Vancouver CA021446, March 12, 1997, 17 pp. [CLE No. 97-8966] // Appeal from judgment of Dillon J., Doc. Vancouver A951903, December 22, 1995; [1996] D.C.L. 1; [1996] D.B.L. 2. // Edward C. Chiasson, Q.C. and David L. Miachika, for appellant; Georges E. Sourisseau, for respondent. // Principal case authorities: Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co. (1993), 76 B.C.L.R.

(2d) 231 (C.A.) - considered; Keary Development v. Tarmac Construction, [1995] 3 All E.R. 534 (C.A.) - applied; Pearson v. Navdler, [1977] 3 All E.R. 531 - considered.

LIMITATION OF ACTIONS - Confirmation of cause of action // CONFLICT OF LAWS - Limitation periods - Advance payment on plaintiff's motor vehicle tort claim not constituting confirmation of cause of action under B.C. law effective to extend limitation period applicable under Saskatchewan law.

The plaintiff was injured in a motor vehicle accident in Saskatchewan in May 1993. She commenced her action in October 1994. The defendants took the position that the claim was barred by the plaintiff's failure to commence the action within one year as required by s.88 of the Saskatchewan Highway Traffic Act. The plaintiff relied on the fact that the Saskatchewan Government Insurance Company had paid a $2,000 advance on her tort claim in January 1994. She claimed the payment was an acknowledgment of the claim which had the effect of extending the limitation period under British Columbia law. She had not taken any of the steps available under Saskatchewan law to extend the limitation period without issuing a writ. The defendants applied under R.18A for an order dismissing the action. The chambers judge held that the applicable substantive law was that of Saskatchewan. He noted that both jurisdictions had tolling provisions which encouraged negotiation and settlement of disputes. Accordingly, while the substantive provisions of the Saskatchewan legislation permitting the limitation period to be extended were applicable to the action, so too were the procedural provisions of British Columbia. Under British Columbia law, the payment was a confirmation of the cause of action which had the effect of extending the substantive Saskatchewan limitation period. The defendants appealed. HELD, appeal allowed. All limitation laws are substantive except those which can be shown, beyond any doubt, to be procedural. There was no escape from the conclusion that the applicable limitation law of Saskatchewan was s.88(1)(a), that it was substantive, and that s.13 of the British Columbia Limitation Act, relied on by the plaintiff on appeal, had no application. Accordingly, the action was brought after the expiration of the 12 month period created by s.88. The action had to be dismissed.

Stewart v. Stewart, C.A., Macfarlane, Esson & Hall JJ.A., Doc. Vancouver CA021881, March 17, 1997, 13 pp. [CLE No. 97-8907] // Appeal from judgment of Oppal J. (1996), 24 B.C.L.R. (3d) 141; [1996] Civ. L.D. 328; [1996] P. Inj. L.D. 107. // G. Ross Switzer and Michelle McPhee, for appellants; Michael J. Hargreaves, for respondent. // Principal case authority: Tolofson v. Jensen (1994), 100 B.C.L.R. (2d) 1 (S.C.C.) - applied.

PRACTICE - Class actions - Court expanding class action to include persons not resident in British Columbia.

The plaintiff sued the defendant manufacturers and distributors of breast implants. In April 1986 the action was certified as a class proceeding under the Class Proceedings Act. The plaintiff applied to expand the class to include all women who had been implanted with breast implants and who were resident anywhere in Canada other than Ontario or Quebec, or who were implanted in Canada, anywhere other than Ontario and Quebec. The defendants said that any non-resident class should be limited to women who were implanted in British Columbia and that the British Columbia resident sub-class should exclude women implanted elsewhere because the court had no jurisdiction over those claims. HELD, application allowed. The Class Proceedings Act contemplates a class which includes non-residents by requiring subdivision into resident and non-resident sub-classes. The authorities establish that the court has no jurisdiction over non-resident claims standing alone. However, those decisions do not address the problem of mass tort claims spreading across provincial lines which raise the same issue of liability. Here, the common issue had been defined:

"Are silicone gel breast implants reasonably fit for their intended purpose?" That common liability issue established a "real and substantial connection" sufficient to found jurisdiction over claims otherwise beyond the court's jurisdiction. The demands of multi-claimant manufacturers' liability litigation require recognition of concurrent jurisdiction of courts within Canada. In such cases there is no utility in having the same factual issues litigated in several jurisdictions if the claims can be consolidated. The Act facilitates the efficient litigation of multiple claims and British Columbia was therefore a convenient forum.

Harrington v. Dow Corning Corp., S.C., K.C. MacKenzie J., Doc. Vancouver C954330, February 14, 1997, 14 pp. [CLE No. 97-8651] // See also [1996] Civ. L.D. 231; [1996] P. Inj. L.D. 79. // Deborah A. Acheson, Q.C., Mark R. Steven and David A. Klein, Kevin W. Whitely, C.G. Docken and G. Bembridge, for plaintiff; Derek J. Mullan, Q.C., for three defendants; Robert G. Ward and Jonathan S. McLean, for one defendant; Bruce E. McLeod, for one defendant; J. Kenneth McEwan and S. Silber, for one defendant; Marvin R. Storrow, Q.C. and K. Bayne, for two defendants; Oleh W. Ilnyckyj and Mari A. Worfolk, for two defendants; William S. Berardino, Q.C. and Allan P. Seckel, for three defendants; Harvey M. Groberman, for Attorney General of B.C. // Principal case authorities: Amchem Products Inc. v. British Columbia (1993), 77 B.C.L.R. (2d) 62 (S.C.C.) - applied; Canadian International Marketing Distribution Ltd. v. Nitsuko Ltd. (1990), 68 D.L.R. (4th) 318 (B.C.C.A.) - considered; Ell v. Con-Pro Industries Ltd. (1992), B.C.A.C. 174 - considered; Nantais v. Telelectronics Proprietary (Canada) Ltd. (1995), 127 D.L.R. (4th) 552 (Ont. Gen. Div.) - applied; Tolefson v. Jensen (1994), 100 B.C.L.R. (2d) 1 (S.C.C.) - considered.

Continued on page 27.

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.

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
E-mail: Halkett 30@aol.com
Deadline: October 24, 1997

NO-FAULT INSURANCE - THE AFTERMATH

By Dee Rogers

I would like to take this opportunity to thank the many legal assistants and legal secretaries who assisted me and/or the Coalition Against No-Fault during the past year. It would not have been possible to influence the government's position without the dedication and effort of the thousands of people who were involved with this issue.

On June 12, 1997 the government backed away from its no-fault initiative with the announcement by Finance Minister Andrew Petter that it was introducing a Six Point Road Safety Program in place of no-fault insurance legislation. The goal of the program is to make auto insurance affordable by reducing accidents, car theft and fraud.

The highlights of the Road Safety Program are as follows:

1. Impaired Drivers: lifetime driver's licence suspension after a third conviction for impaired driving.

2. Reduce Speeding and Dangerous Driving: introduction of cameras at intersections; a graduated system of fines and penalties for speeding and higher penalties for speeding in school, playground and construction zones.

3. Increased Penalties for Bad Drivers: higher premiums for dangerous drivers and a new requirement that the driver who causes the accident must pay the first $250.00 of damage he causes to the other vehicle.

4. Steps to Improve Driving Skills: introduction of a graduated licencing system for new drivers (with a longer learner period, introduction of a probationary licence and expanded driver testing process) and mandatory retraining for bad drivers.

5. Anti-Fraud and Auto Crime Measures: increased fines for insurance fraud (up to

$25,000 for the first offence and $50,000 for subsequent offences with possible imprisonment or both); anti-theft measures include an increase in funding for police, increase in public eduction and reduced insurance benefits for willing passengers in stolen vehicles where injuries result.

6. Improve Efficiency, Cut Costs and Reduce Legal Delays: increase opportunities for mediation, streamline claim procedures for vehicle damage, improve ICBC collection of unpaid premiums and fines.

These steps certainly can be applauded but, it is also clear these initiatives can and should be put in place regardless of the system of auto insurance.

While Mr. Petter's June 12th announcement was cause for celebration, an examination of Bill 41 introduced for first reading on June 17th leads one to realize the government is continuing its efforts to introduce aspects of no-fault insurance, but this time through the back door. Bill 41, in its present form, would allow ICBC to control the mediation process and require claimants to disclose confidential information. The Bill will oblige the courts to order structured settlements regardless of whether they are appropriate or necessary in the circumstances (because they are less expensive for ICBC). Bill 41 would allow a person's gross income to be calculated, not by objective evidence, but by set regulations. The result would be something like a "meat chart" and the lost income award would flow from that figure.

These are but a few examples that illustrate the need for continued awareness and watchfulness. Those individuals who worked so hard to make no-fault insurance a reality are still in place in the NDP government and ICBC. We must continue to let Premiere Clark know that we do not want no-fault insurance in British Columbia.

So enjoy the fruits of your labour, but please be prepared to renew your efforts because, in my opinion, no-fault insurance will continue to be an issue in this province, in one form or another, for some time to come.

MEMBERSHIP UPDATE

BCALA would like to welcome the following new members:

Rosina Iantosca
Patti Shardlow
Kim McClelland
Lynda E. Noel
Samantha Kuypers
Cathy Korpela
Kelly Stromberg
Elizabeth Ozdoba

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.

WHY BECOME A MEMBER OF BCALA?

-quarterly newsletter
-regular salary surveys 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

WRONGFUL DISMISSAL CASES MAY TURN ON INDUCEMENT FACTOR

By Vanessa L.D. Wilkinson, Lawyer with Singleton Urquhart Scott - *Reprinted with permission.*

An employer has no obligation to continue employing anyone until retirement age, unless there is a contractual term to the contrary. An employer can dismiss an employee at any time as long as the employer gives reasonable notice of termination or salary in lieu of notice.

The main factors a court will consider in assessing reasonable notice are the following:

- The character of employment. For example, is the employee a dishwasher or a manager?
- The length of employment.
- The age of the employee.
- The availability of similar employment, based on the employee's experience, training and qualifications.

In some cases, creative counsel for plaintiff-employees have persuaded courts that another relevant factor in assessing reasonable notice is whether the person was induced by the present employer to leave her past employment. However, the exact effect of this so-called "inducement" or "enticement" upon the length of reasonable notice to which an employee is entitled upon termination of employment is unclear.

The recent decision of the British Columbia Court of Appeal in Robertson v. Weavexx Corp. (Feb. 3, 1997), Vancouver Registry No. CA021748 , has now clarified the law in British Columbia regarding the "inducement" or "enticement" factor in wrongful dismissal cases. The Court of Appeal held that the inducement in some circumstances may lengthen the period of reasonable notice. Moreover, in addition to the main factors outlined above, the particular circumstances of the inducement must be considered to determine whether it should be a factor in assessing reasonable notice.

In other words, if a wrongful dismissal case has evidence of inducement, this does not automatically entitle the dismissed employee to a lengthened notice period. The factors of each case and the individual circumstances of the employee have to be examined to determine whether the inducement was significant. Such an inducement may lengthen the notice period if it is objectively reasonable to do so based on the particular circumstances surrounding the inducement, the inducement itself and the subsequent termination.

In the Weavexx case the Court of Appeal held that Mr. Robertson was entitled to a lengthened notice period because his inducement was significant: Mr. Robertson was told that this was a "peak of career opportunity" and representations were made to him regarding managerial responsibility, long-term employment and the closed nature of the industry. Based on the inducement factor, Mr. Robertson, who had worked for Weavexx for approximately five and half months before his employment was terminated, was awarded 12 months' notice to be calculated on an annual remuneration of $130,000.

The Weavexx case clearly indicates that if a prospective employer lures away or entices a competitor's employee who was not looking for employment and if the employer represents the new position as a once-in-a-lifetime career opportunity and especially offers security for employment and managerial responsibilities in a specialized industry, the employer may be required to give the employee an extended notice period to end her services. To protect itself, an employer should consider using an employment contract with each new employee. This can simply be a letter of agreement that contains a provision for terminating the employee's services.

JOB ANNOUNCEMENTS

For a nominal fee of $100 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.