THE ASSISTANT

BC Association of Legal Assistants *Volume I-1997, Issue 2*

PRESIDENT'S COLUMN

By Jasbir Bains

The 1996/1997 year was short as it was only seven months long. Following the last AGM the directors decided that having the AGM earlier in the year was preferable as it would give the new board more time to familiarize itself with the association and provide more time to plan events.

Accomplishments for the last seven months include the production of a brochure, prepared by Ann Halkett, a salary survey, an open house and Christmas party held in conjunction with Agentis Information Services Inc., a double feature presentation held on March 6 at Ladner Downs featuring Cheryl Stephens who spoke on "Lawyers for Literacy" and U.B.C. Law Librarian Allen Soroka who spoke on legal research on the Internet. As well, Selkirk College in Trail invited a BCALA representative to sit on its advisory committee Jerena Laursen agreed to act as the representative

As for the occupational title protection application, BCALA secretary, Glenis Bryson, and I attended a meeting of the Law Society Benchers on January 10 to discuss the application and deal with concerns. Then on January 24, Glenis Bryson and I, along with Valerie Fuller of CALA, met with members of the Law Society's Competency Committee. On February 11 we received a response from the Law Society. This response was discussed at the April 9, AGM.

On behalf of the directors I would like to thank all organizations, especially Agentis and the various law firms, for allowing BCALA to use facilities for meetings and seminars.

As president I would like to thank all the directors for putting in countless numbers of hours to ensure that BCALA ran smoothly. A special thanks goes to Ann Halkett for organizing the seminar and Christmas reception, in addition to her duties as editor of the newsletter.

Last, I would like to wish the new board of directors the best of success and urge them to carry on and see through the changes that this board has started.

INSIDE THIS ISSUE

FROM THE EDITOR'S DESK

By Ann Halkett

As I mentioned in the last issue, upcoming issues will be devoted to particular areas of law and therefore the bulk of this issue has been devoted to property law.

BCALA CALENDAR INSERTS

If you would like an insert for your BCALA calendar send $2.00 and a self-addressed envelope to P.O. Box 4127, Main Post Office, Vancouver, B.C. V6B 3Z6, Attention: Ann Halkett.

C.A.L.A. COLUMN

Meetings are held at the office of Adams & Phelps, court reporters, who kindly lend their boardroom at 1700 - 1075 West Georgia Street. Meetings start at 5.30 p.m. and will be held on the following dates: April 2, June 4, August 6, October 1 and December 3, 1997.

CAMOSUN COLLEGE LEGAL ASSISTANT PROGRAM

Victoria's Camosun College now offers a legal assistant program in partnership with Vancouver Community College.
For more information contact:

Carol Fengstad, Program Manager
School of Arts & Sciences
Continuing Legal Education, Camosun College
3100 Foul Bay Road
Victoria, B.C. V8P 5J2

THE ASSISTANT

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

Committees/Directors

President:
Jasbir Bains 661-1701
Vice-President/Public Relations:
Jerena Laursen 240-0333
Secretary/Membership/Education:
Glenis Bryson 684-4777
Treasurer
Gemma Hale 685-1343
Programs:
Connie Iverson 294-9594

Capilano College Legal Assistant Program Student Representatives:
First Year Representatives: John Kim and Dean Sutton
Second Year Representative: Sue Jibson

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 July 21, 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.

SECRETARY'S REPORT

By Glenis Bryson

At the annual general meeting of the members of the BC Association of Legal Assistants held on April 9, 1997 the following people were elected as directors for the ensuing year:

Jasbir Bains
Glenis Bryson
Ann Halkett
Jerena Laursen
Gemma Hale
Connie Iverson

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

At the directors' meeting held immediately following the 1997 AGM the following people were elected as officers:

Jasbir Bains	-	President
Glenis Bryson	-	Secretary
Jerena Laursen	-	Vice-President
Gemma Hale	-	Treasurer

and the following people were appointed as chairpersons and/or co-chairpersons for the various committees for the ensuing year:

Glenis Bryson	-	Membership/Education
Ann Halkett	-	Newsletter
Jerena Laursen	-	Public Relations/ Education
Connie Iverson	-	Programs

Kelly Stewart, David Bush and Cathy Barzo, legal assistants with the Legal Services Branch of the Ministry of the Attorney General, attended the AGM as guests. A discussion took place between members and guests with respect to the application for occupational title protection.

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

INDEPENDENT LEGAL ADVICE, PROTECTING THE BORROWER'S INTERESTS

By John W. Seddon, Lawyer with Richards Buell Sutton

A recent development in the law highlights the importance of requiring that guarantors and those who borrow for the benefit of others receive independent legal advice (ILA).

A couple who wished to buy a holiday trailer applied to the Bank of Nova Scotia for a loan. Previously, the husband had been refused overdraft protection of $250 because he was considered a bad credit risk.

The bank was not prepared to lend the couple any money for the purchase of the trailer. They would only do so on the condition that the wife's mother mortgage her condominium in order to secure repayment of the money and to repay an earlier loan to the couple. The bank advanced $45,000; $20,000 was to be used to buy the trailer and $25,000 to pay down the couple's earlier debt.

The bank considered any loan to the couple to be too risky, but apparently it did not make that point forcefully to the mother. The bank did suggest however, that the mother seek ILA before mortgaging her condominium.

The mother refused to take ILA and mortgaged her condominium to the bank.

The bank did not take any security on the trailer as it relied on the mortgage of the mother's condominium. The mother did not take any security against the trailer from the couple and was not advised to do so by the bank.

The couple agreed to make payments to the bank, which they did for a while. When payments ceased, however, the bank sought payment from the wife's mother.

The couple was forced to declare bankruptcy and the trustee seized the trailer. The bank called on the mother to make good on the mortgage.

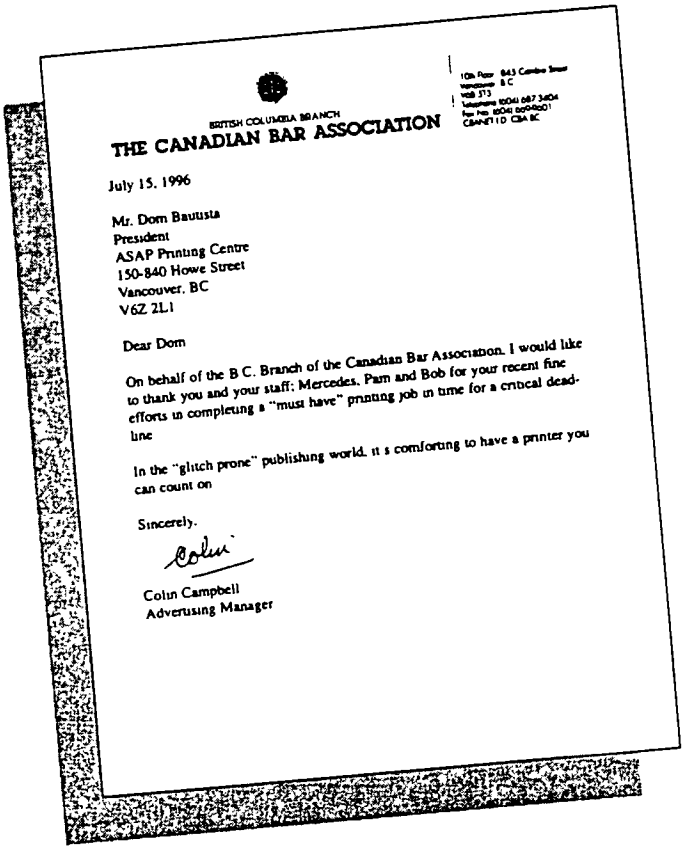
The mother took the position that the mortgage was invalid because she had not been advised on the consequences of making it. The Ontario Court, General Division agreed with the mother and decided that the bank ought to have insisted ILA be given to the borrower as a condition of making the loan and that if ILA was not given, the loan should not have been made.

This case went much further than most lawyers and lenders would have expected. Probably a B.C. court would not have reached this conclusion unless, on the facts of the case, the borrower (or more likely a guarantor/covenantor) was taken advantage of for the benefit of the lender. In such a case, the facts would demand the sympathy of the court.

Nevertheless, there is a moral to be drawn from the case: If there is any doubt about whether a borrower or guarantor who is not deriving direct benefit from a loan truly understands the nature of the transaction and the risk being run, a lender should refuse to make the loan unless the borrower receives ILA. A borrower or guarantor who does not derive direct benefit from the loan must receive ILA to help balance the greater bargaining power of the lender.

"Ask any of our clients."

How's this for starters?



BRITISH COLUMBIA BRANCH
THE CANADIAN BAR ASSOCIATION

July 15, 1996

Mr. Dom Bautista
President
ASAP Printing Centre
150-840 Howe Street
Vancouver, BC
V6Z 2L1

Dear Dom

On behalf of the B.C. Branch of the Canadian Bar Association, I would like to thank you and your staff; Mercedes, Pam and Bob for your recent fine efforts in completing a "must have" printing job in time for a critical deadline.

In the "glitch prone" publishing world, it's comforting to have a printer you can count on.

Sincerely,

Colin

Colin Campbell
Advertising Manager

ASAP
LEGAL PRINTING | LEGAL FILE SPECIALISTS

150 - 840 Howe Street, Vancouver, Canada V6Z 2L2
604-685-2727 · Fax: 604-685-2773 · 800-605-2727
Email: dom@asaprint.com

4=1

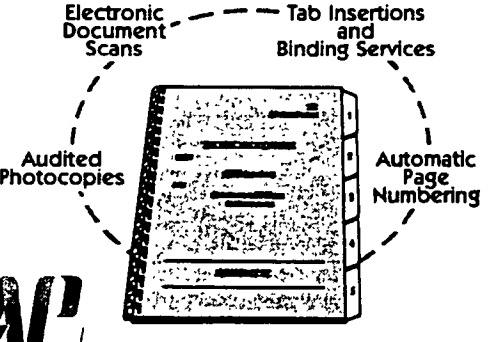
Four Essential Functions

One Legal Files Service Bureau

Combine ASAP Legal Printing with your in house legal support staff and you've got everything you need to prepare your legal files. Even with tight deadlines.

Only ASAP Legal Printing has designed its workflow to accommodate your needs. Only ASAP Legal Printing has trained staff to prepare the most complicated file. Ask any of our clients. Only ASAP can prepare audited photocopies, electronic document scans, automatic page numbering, tab insertions and binding services. We can do all or any one. All under one roof. For more information about ASAP Legal Printing, and how we can consistently help you prepare files call 685-ASAP/2727. Or visit us, we're right across from the court house at:

150-840 Howe Street, Vancouver.



ASAP
LEGAL PRINTING | LEGAL FILE SPECIALISTS

CRIMINAL RATES OF INTEREST: THE LOAN SHARK

By N. Michael Millman, Articled Student with Richards Buell Sutton

From commercial lenders to private individuals granting unsecured loans, anyone who has ever lent money ought to be aware of the "loansharking" provisions in Section 347 of the Criminal Code and their use as a defence in civil collection proceedings.

Charging an Amount in Excess of 60%

Section 347(1) of the Criminal Code provides that everyone who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate is guilty of an indictable offence. A "criminal rate" is defined as "an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60% on the credit advanced under an agreement or arrangement" "Interest" is defined as the aggregate of all charges and expenses in any form, with certain listed exceptions: repayment of credit advanced, insurance charge, official fee, overdraft charge, and required deposit.

It is important to note that there need not be a criminal conviction under Section 347 in order for a civil court to decline to enforce a loan that asks for an interest rate exceeding 60%. In fact, in most instances the lenders do not have the requisite intent in order to be convicted of the criminal offence, since, in the criminal proceedings, it would have to be proved that the accused knew that the interest rate exceeded 60%.

In civil proceedings, however, the mere fact that the effective annual rate of interest exceeds 60% leads inevitably to the partial or total unenforceability of the interest provisions in the loan agreement. (Bcorp Financial Inc v. Basciine Resort Development Inc. (1990) 46 B.C.L.R. (2d) (S.C.))

There is some authority for the proposition that where the party intended to charge interest at a criminal rate, the courts will refuse to enforce the contract at all, in which case the creditor will lose the principal to the debtor (Croll v. Kelly (1983), 48 B.C.L.R. 306 (S.C.)). Since that decision, jurisprudence has developed which all but precludes the lender from losing the principal; Croll v. Kelly, however, has been overruled.

Lender may Recover Principal

The principle which governs here is that of "severance". In some circumstances, the courts have found it appropriate to "sever" the illegal interest provisions from those governing payment of principal, thus allowing the lender to recover the principal sum lent. Whether severance will be allowed is set out in William E. Thomson Associates Inc. v. Carpenter (1989), 61 D.L.R. (4th) 1 (Ont. C.A.):

(a) Will the purpose and policy of Section 347 of the Criminal Code be subverted by severance? The case-law cites, among other things, the prevention of loansharking as the purpose and policy of Section 347.

(b) Did the parties intend to break the law?

(c) What is the relative bargaining power of the parties?

(d) Will the debtor be unjustly enriched if he or she is allowed to keep the principal?

In the majority of criminal interest cases, the issue revolves around what, if anything, the lender may recover above the principal amount, in the way of interest. Where no interest is awarded, the debtor essentially receives an interest free loan.

In most cases where interest is awarded at all, the courts have held that the lender is only entitled to interest at the Registrar's rates under the Court Order Interest Act.

Partial Recovery of Interest Possible

However, there have been cases in B.C. where the court has allowed for partial recovery of the interest stipulated in the loan agreement. In Pacific National Developments v. Standard Trust Company, 53 B.C.L.R. (2d) 158 (S.C.), an $850,000 loan was secured by a mortgage with a bonus of $700,000 with interest on the $850,000 of prime plus 2%. The Court allowed severance and held the mortgage enforceable to the extent of the $850,000 principal *plus interest at prime plus 2%*, since it was "only the bonus provision which made it illegal". However, a severance clause in the mortgage said that the bonus provision was to be severed if the interest was found to be illegal. As well, the Court found that although this was an illegal rate, it was a realistic estimate of the risks involved.

In the case of Terracon Capital Corp. v. Pine Projects Ltd. et al. (1991), 60 B.C.L.R. (2d) 384 (S.C.), Spencer J. declined to follow the reasoning in Pacific National Development allowing interest at prime plus 2%, stating that: "It is not for the Court to recalculate an acceptable commercial return by choosing from interest fees and bonus terms, any combination of which will fit within 60%. I treat all three as a single entity". At the Court of Appeal, Prowse J.A. upheld the decision and said that the Courts should not be too quick to rewrite agreements by picking and choosing from alternative provisions which would result in a legal rate of interest. Otherwise, she said, there would be little incentive for lenders to ensure that their agreements provide for interest at legal rates. However, she refrained from suggesting that it would never be appropriate to do so.

In the recent case of First Island Financial Services Ltd. v. Kirkstone Management Ltd. (1995), 6 B.C.L.R. (3d) 104 (S.C.), a borrower sought a declaration in foreclosure proceedings that the mortgage transaction was void and unenforceable because the transaction required a criminal interest rate. The agreement provided that, in the event the aggregate of payments exceeded the maximum payment permitted by law, the agreement would be modified to negate the excess, Wilson J. stated:

"...if the assumptions as described above result in the calculation of an effective rate of interest exceeding 60%, then it is my opinion that the parties have agreed upon their own remedies. Section 2.05 of the secured participation agreement provided that, in the event the aggregate of the payments... exceeded the maximum payment permitted by law, then the provisions of the agreement would be modified to the extent necessary, to negate the excess. I think the parties are bound by their agreement. In my opinion, this is not to re-write the parties' agreement as proscribed in Terracon Capital Corp. v. Pine Products Ltd. (1993), 75 B.C.L.R. (2d) 256 (C.A.). Rather it is a recognition of a consensual solution to a problem of contingencies."

Lenders who loan at criminal rates of interest will, in all likelihood, get their principal back. In light of the British Columbia Court of Appeal's decision in Terracon, courts in this province are not likely to award any interest on a loan at a criminal rate other than pursuant to the Court Order Interest Act, although it was not ruled out in that case. However, the recent B.C. Supreme Court's decision in First Island Financial Services Ltd. v. Kirkstone Management Ltd. suggests that by including a clause which negates any interest above the legally allowed rate a lender may be able to get around Terracon, and recover interest up to 60%.

LAWYERS FOR LITERACY

At the March 6, 1997 BCALA seminar at Ladner Downs Cheryl Stephens spoke on communicating effectively with clients with low literacy levels. The package she developed in conjunction with the Law Society of B.C. can be found on the Internet at:

http:///www.cle.bc.ca/literacy

Cheryl Stephens' is a partner in Plain Language Partners and can be reached at:

http://plainlanguage.com

DUE DILIGENCE SEARCHING - A BASIC INTRODUCTION

By Paul Mendes, In-house Counsel and Director of Sales & Marketing for Agentis Information Services Inc.

Due diligence searches can be divided into four categories:

- basic searches;
- statutory lien and similar searches;
- specialty searches; and
- municipal searches.

Which search you conduct in any given transaction depends on two things:

1. the nature of the transaction; and
2. the information that is available from a particular search.

Basic searches are done in most transactions, but many statutory lien searches may only be done if the industry or property of the target is regulated by legislation The best information about when and why to conduct statutory lien searches can be found in the Continuing Legal Education Society's Due Diligence Deskbook and the Law Society's Practice Check Lists.

This article briefly reviews each due diligence search category

Basic Searches

A basic search is any public record that may be searched without the consent of the target. A typical list of basic searches includes the following:

1) Bank of Canada, s.427
2) Bankruptcy and Insolvency
3) Corporate
4) Personal Property Registry
5) Litigation
6) Bailiffs
7) Land Title Registry

Statutory Lien and Similar Searches

Statutory lien and similar searches conducted pursuant to legislation containing provisions for unpaid taxes, duties, or fees as liens in favour of the Crown, or as trust obligations on the target as agent for the Crown. Similarly, some statutes give the Crown priority over other liens and charges that may exist against the target or its property. Still other statutes, like the Employment Standards Act and provincial taxation statutes, allow the Crown to trace assets and attach liens and charges to the assets of related companies.

A review of the legislation relevant to this type of search is beyond the limited scope of this article. Readers are encouraged to consult the CLE's Deskbook, and Volume 3 of the Land Title Practice Manual which contain comprehensive lists.

Typically, a selection of statutory lien and similar searches will include:

- Employment Standards Branch (Employment Standards Act);
- Ministry of Finance and Corporate Relations (Corporation Capital Tax Act, Insurance Premium Tax Act, Fire Services Tax Act, Social Service Tax Act, Logging Tax Act, Mining Tax Act, Horse Racing Tax Act, Hotel Room Tax Act, Motor Fuel Tax Act, Tobacco Tax Act);
- Worker's Compensation Board (Worker's Compensation Act);
- Department of National Revenue, Taxation (Income Tax Act);
- Ministry of Energy, Mines and Petroleum Resources (Mineral Land Tax Act, Mineral Tax Act, Mineral Tenure Act, Mining Right of Way Act, Mine Development Assessment Act, Mines Act);
- Ministry of Forests (Forest Act);
- Ministry of Municipal Affairs (Municipal Act).

Specialty Searches

Specialty searches are industry-specific searches that should be considered if the target's industry or operations are regulated by government. The following is a partial list of specialty searches:

- Ministry of Municipal Affairs (elevators, boilers and pressure safety vessels, gas

systems and electrical systems)
- Ministry of Transportation and Highways (transport permits)
- Department of Transport (airport zoning and Canadian Coast Guard- marina permits and licences)
- Ministry of Labour and Consumer Services (B.C. Council of Human Rights and Industrial Relations Board)
- Motor Carriers Licencing Department
- NUANS (Federal name searches)
- Ministry of Fisheries and Oceans (Habitat Management Division)
- Ministry of Environment - Federal (transportation of dangerous goods directorate and conservation and protection)
- Ministry of Agriculture and Fisheries - British Columbia (aquaculture and processing)
- Canada Labour Relations Board
- Canada Human Rights Commission

Municipal Searches

Municipal searches are usually done as part of a conveyance and include property tax, zoning, health, fire, electrical, gas, plumbing, planning, licencing, etc. at the municipal level. Note that if or when there is overlap between the provincial and municipal regulation of business, such as by the provincial Ministry of Municipal Affairs, you should contact the municipality concerned and determine whether provincial authority will apply in respect of the relevant search request. Also, when contacting a municipality, determine whether comprehensive search packages are available.

Where to Begin

Effective due diligence requires that your search process be efficient and well organized. You must ensure that every possible search is conducted and that all search results are obtained and acted upon in a timely manner.

OFFICE ERGONOMICS - A BEGINNER'S GUIDE

By Carolyn Wilding-Eddy, *a freelancer in the legal industry offering consulting, secretarial and desktop publishing services. Telephone: 466-9020.*

What Exactly Does "Ergonomics" Mean?
Ergonomics is the study of the human body at work. As a science, it has its roots in the industrial revolution. One of the key elements of ergonomics is environmental - how you lay out your work space and how you interface with it (i.e., sit, stand, move around, view your screen, reach for items needed to do your job) has an immediate impact on both your productivity and your health. In this age of computers, office workers can spend many hours working intensively on a given project. This can be both physically and visually demanding and even painful if the workstation is not set up properly. If you spend hours sitting at your computer or workstation and it is ill-fitting, you can find yourself with an aching neck, back, shoulders, wrist, sore eyes - you name it. Some of the names associated with these aches and pains are: *repetitive strain injury (RSI), cumulative trauma disorder (CTD), occupational overuse syndrome (OOS) and carpal tunnel syndrome*. Although mouse usage and keyboarding can cause pain or discomfort, almost any repetitive movement can lead to RSI or CTD. Fortunately, the problem has been well studied in the workplace and the basics of how to set up a good physical arrangement are well known.

How to Help Yourself
The single most beneficial behaviourial change to reduce the chance of injury is to take frequent, short breaks. Thirty seconds of stretching, or just changing your position or tasks every 15 minutes can go a long way to reducing stress and ensuring that you are computing comfortably. Also crucial to ergonomics is proper seating. An adjustable-height desk and chair, one of the many ergonomics "aids" available on the market, can make it easier to position yourself correctly. Other ergonomics aids include:

Wrist rest - helps keep your wrist straight when you're using a mouse or keyboarding;

Glare screen - reduces the primary causes of eyestrain, i.e. glare on a monitor;

Foot rest - useful where your chair is too high and not particularly adjustable - allows you to keep your feet flat on the floor. I've also used an old phone book for this purpose.

Monitor stand - useful where your monitor needs to be raised. Again, try an old phone book under the monitor to raise it a few inches;

Copy holder - reduces neck strain and fatigue by keeping paper at the same height as the monitor.

Trackball (replaces a mouse) - cuts down on repetitive movements that may cause repetitive stress injuries.

Computer break/exercise software - designed to act as a reminder that it is time to take a break, the software pops up at intervals - many packages come complete with exercises on-screen for you to do at your own workstation.

Ergo Do's and Don't's
Do
- plan your computing area so that it fits you
- take short breaks, or at least change your position every 15 minutes or so; look away from the monitor at least every 10 minutes
- try out computer chairs and ergonomics aids for at least a week before making a final decision
- alternate between mouse and keyboard usage rather than solely using one method

Don't
- use a straight-backed chair for more than a few minutes of computer time -- it will restrict your circulation

Continued on page 13.

- waste money buying "ergonomic" products without *first* considering the specific problem they will solve vs. the problem you are experiencing
- position the computer in front of a bright window or other light source that will shine in your eyes
- ignore warning signs such as frequent headaches, pain in the wrist or back pain

An Ergo Checklist - Setting up your Workstation to Fit You

1. Keyboard Height

For a person of average height (about 5' 7"), the keyboard should be about 27 to 29 inches above the floor. It should be higher for taller people and lower for shorter people.

2. Chair Height

Adjust your chair so that the elbows make a 90-degree angle when your hands are on the keyboard. When you're sitting, your waist angle (the angle between your upper legs and spine) should also be 90 degrees. (Don't slouch!)

3. Wrist Angle

Wrists should rest comfortably on the table in front of the keyboard, shoulders relaxed. If the keyboard is so thick that you have to bend your hands uncomfortably upward to reach the keys, put a raised wrist rest in front of the keyboard

4. Elbows

Keep your elbows close to your sides so that you don't bend your wrist sideways when typing.

5. Feet

With your elbows and waist at 90-degree angles, your feet should rest comfortably flat on the floor. If they don't a raised footrest can help. Otherwise, you may need a different desk or chair.

6. Distance from Monitor

While you're sitting up straight, your eyes should be about two feet away (approximately arm's length) from the computer screen (compared to the 16-inch distance recommended for reading books).

7. Tools Placement

Your tools are the things you use to perform your job tasks. If you're a construction worker, your tools would include a hammer, saw and screwdriver. If you're an office worker, your tools might include a computer, telephone, keyboard, mouse, books, dictaphone, photocopier, etc. Now look at your workspace. Are your tools stored and positioned within comfortable reach? Are frequently used items within easy reach or are you constantly reaching above you for a reference manual? Are seldom used items stored away, making room for frequently used items? Go over your workspace item by item and make a decision as to storage based on how often you're reaching for that tool in your daily tasks.

Once some of these adjustments have been made, sit down and start working in your new ergonomically correct workspace. Is it comfortable? Give it a few days before deciding -- sometimes change feels uncomfortable but in the long run is worth it. If you still find the changes uncomfortable, go back and look at other ways to customize your workspace -- be creative.

How to Help your Organization

Start an "Ergonomics Committee" - it's not nearly as daunting as it may sound! In a small office the committee may be just you. In a larger office it may be two to six or more people. The committee member(s) should then learn about the principles of ergonomics and how to help to modify their own workstation - many courses are available through occupational therapists and similar firms. Once trained, let others in your organization know about the services you offer. The committee could perhaps start a newsletter or design an informational handout for current employees and new hires. Offer to perform a workspace evaluation on a request basis. The individual could first be asked to complete a "discomfort checklist" form which would outline the sorts of problems they're having. The form might ask questions such as:

- name, date, job
- state of well-being at the beginning of the day
- state of well-being at the end of the day
- a place to note where discomfort is being felt,

i.e. left shoulder/right shoulder, left arm/right arm, etc.

- a place for the individual to list job tasks and assign an appropriate percentage to each task. For example, a legal secretary's task list might look something like this:
  Computer - keyboard/mouse = 65% of the day
  Telephone = 10%
  Photocopier = 20%
  Handwriting & Miscellaneous (notes, telephone messages, etc.) = 5%

Have this checklist handy while performing a workspace evaluation to be sure that you've looked at and evaluated each part of the person's job duties and the tools they use to perform those duties.

A little knowledge can go a very long way. Keep yourself and your organization informed and up-to-date about ergonomics and don't restrict these principles to the office - remember to create an ergonomically sound home evnironment as well.

WHO CAN SIGN AS AN OFFICER?

By Marsha Cromwell, Manager, Land Services, West Coast Title Search Ltd.

For Land Title Office purposes, the definition of an Officer is limited to a person before whom an affidavit may be sworn under the Evidence Act, R.S.B.C., c.116, sections 67, 70 and 71.

Section **67** identifies who qualifies as a commissioner for taking affidavits for British Columbia. For example, all notaries public and "barristers and solicitors enrolled under the Legal Profession Act and not disbarred, disqualified or suspended from practice" are acceptable officers. The term "attorney-at-law" is not an acceptable qualification for an officer.

Section **70** deals with affidavits sworn outside of the Province of British Columbia for use in British Columbia. The section lists the acceptable individuals before whom an affidavit may be made in any province other than British Columbia or in any country other than Canada.

Section **70(a)** states that "a judge, a magistrate or an officer of a court of justice or a commissioner authorized to administer oaths in the courts of justice of the province, territory or country" is an acceptable officer under the Evidence Act. According to Land Title Office solicitors in Hong Kong and solicitors in Quebec are not acceptable officers.

Section **70(g)** states that "a commissioner authorized by the laws of the Province to take affidavits" is an acceptable officer under the Evidence Act. However, under s.29 of the Interpretation Act, "Province" (capitalized) means the Province of British Columbia or Her Majesty the Queen in right of British Columbia. Acceptable wording for commissioners outside the Province of British Columbia would be: "Commissioner **authorized to administer oaths in the courts of justice of** (state *name of province, territory* or *country*)".

To ensure that documents will be accepted with out-of-province officer certification, it is advisable to always have them certified by "a notary public acting within the territorial limits of his authority, and certified under his hand and official seal" **[s.70(f)]**. Although it is a requirement under the Evidence Act for a notary to affix his seal, it is not a requirement under the Land Title Act for officer certification. However, if a notary chooses to affix his seal, the seal must not obliterate the officer certification statement.

Section **71** states that "all commissioned officers of Her Majesty's naval, military and air forces of Canada on active service in or out of Canada and the Agents General for British Columbia" are acceptable officers "in or out of the Province for use in the Province".

Affidavits of Execution

If a document is to be executed outside of British Columbia and the party(ies)' signatures cannot be certified by an officer qualified under the Evidence Act, the Land Title Office will allow the use of an "Affidavit of Execution". Enter the words "See Affidavit of Execution" under the heading "Officer Signature(s)" in the execution section and attach an affidavit that complies with Part 5 of the Land Title Act. There should not be a signature of an unqualified officer under this heading.

Finally, the affidavit must state the reason why officer certification cannot be obtained. A document executed outside of British Columbia is an acceptable reason and the Land Title Office will accept the affidavit of execution in lieu of officer certification. Examples of preferred Forms of Affidavit may be found on pages 187-189 of the Land Title Transfer Forms Guidebook, 1992 Edition.

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

DO YOU REALLY JUST "COPY DOCS"? How you say you spend your time matters

By Bert Gagnon

How you describe what you do makes a difference. Believe it. Both lawyers and clients actually *do* read your time entries. Attorneys want to see that you are fully occupied doing real work. Clients want to see that you are providing them with demonstratable legal services. If you do not reflect valuable services and professionalism in your time entries, neither your attorney nor your client sees or appreciates what you do for them.

Clearly, if your client or your attorney has established rules regarding time and billing entries, understand and apply those rules. But if you have no such rules or they are not specific enough to give you real guidance when you are creating descriptions, then it is your professional obligation as a legal assistant to seriously reflect on what it is you do as a provider of legal services and phrase your time entries in terms of those services.

An Essential Legal Writing Skill

When you bill time to a client, you state that you provide some service to the client that would otherwise be performed by an attorney - regardless of your practice area. This is what the legal assistant position was created for and every description of time spent that you write should reflect that performance of such valuable legal services.

All too often legal assistants (and attorneys!) spend endless hours working on a client's matters, but neglect to take a few minutes to properly describe what it is they actually *do* for their client. Take your time entries seriously and ask yourself important questions. Instead of just describing what you did physically, ask yourself *why* you did it. What goal were you trying to achieve? What legal service were you providing? Descriptions such as "work on file" or "copy docs" do not give clients the feeling that their important legal matters are being addressed seriously at the proper level of competence. They want to know *why* you worked on their file and what you accomplished for them...and they should.

Let's imagine that your practice area is litigation (though these rules can apply, generally, to any practice area). You're a seasoned legal assistant. Your firm represents a defendant that must respond to a request for production. You have never worked on this case but your attorney calls you to her office shortly before the response is due and asks you to handle it for her.

You go to the client's offices. There are surprisingly few responsive documents. Only a small percentage of them are privileged. The entire process only takes you 10 hours instead of 10 weeks. It is a long day and you are late getting back to the office. On your time sheet you note 10.0 for total hours and jot down "rvw docs". You intend to flush out the description later - but you never do.

Even though you have done a tremendous job in a short time, if you submit a time entry of "rvw docs" for 10.0 billable hours, no one is going to feel "warm'n fuzzy" about submitting or paying that bill entry - and that will have a direct impact on you.

Get Into The Details

In our example above, several questions come to mind. Why were you reviewing the documents? What were you trying to accomplish with this review? What documents were you reviewing? Were you *only* reviewing them or were you doing something else? How does this benefit the client? What, *really*, did you accomplish during this hypothetical 10-hour day?

If you closely review your assignment and accomplishments, you probably did more than you realize:

- You read and made notes regarding plaintiff's requests and gained a clear understanding from them.
- You met with one of your client's employees and located the document population that needed to be reviewed.

- You looked at every document in your client's potentially-responsive files.
- For each of those documents, you made a decision as to whether or not it was responsive to one or more of plaintiff's requests for production.
- You also considered its privileged status and dictated certain information about the document if it was privileged (i.e., how was it privileged?).

You even dictated a couple of memos regarding some files you thought might be significant. Should your time entry for this day really just say "raw docs"?

Show your true value. Include your mental process when you answer questions about how you spent your time and your client's resources. Remember that what you write on your time sheets will ultimately end up on your client's desk. Your client may perceive it as "more for the money" if time entries reflect more of the substance of what you really do for them. Perhaps our hypothetical day could be better described like this:

Review & digest Pltf.'s Req. for Prod.; Interview Mr. Client re substance and location of potentially responsive files; Conduct review & analysis of potentially responsive documents; Designate privileged status of responsive documents; Create index of privileged documents; Draft memos to file and advise Ms. Attorney re status of significant documents responsive to Pltf's Req. for Prod. - [10 hrs.]

What About the Clerical Stuff?

When you write time entries, think in terms of valuable legal services that you perform, not just in terms of manual tasks. Nobody hired you because you run a copy machine. They hired you because you think.

There are days when much of what you must do to get your job done appears to be more clerical work than substantive legal work. If there had been more of our hypothetically responsive documents, you may have spent hours copying them. Neither attorney nor client, however, wants to see time entries stating, "copy docs". It is not that such manual functions are not necessary or properly performed by legal assistants under certain circumstances; it is rather that those functions do not have the same value as the substantive work you regularly perform.

For those instances where you do have to perform these more clerical tasks out of necessity, it may be preferable to fold those tasks into the time entry descriptions of larger goals which you are trying to accomplish and which are more reflective of the valuable legal services that you provide. Suppose you are asked to pull and copy everything in a case file that your attorney will need to prepare for an expert's deposition. Do not ignore the value of your designation of just what material should be pulled from the file. More than likely, you are not only pulling the various documents, you are also making decisions as to which documents are needed and how they should be organized to best assist Ms. Attorney in preparing for the deposition.

Do not hesitate to give value to the decisions that you make. That is really why the client pays for your services. Rather than describe the assignment as "pull and copy docs", you might write: "Designate, assemble and organize relevant materials to prepare Ms. Attorney for Depo. of Dr. Expert".

Let True Value Shine Through

As a billing legal assistant, you are an income earner for your firm. Your attorneys place real value on your time. They express that real value with a real dollar amount for every fraction of every hour that you spend providing legal services to your client. That means when your attorney bills your time to the client, that client expects and deserves real value for dollars spent.

Remember that the manner in which you describe your work is directly related to how you are perceived by your attorney and your client. If, in your time entries, you illustrate that what you do has real value and describe that value in terms of legal services, then chances are good that you will be viewed as the valuable provider-of-legal-services that you truly are.

AN INTRODUCTION TO LEGAL RESEARCH ON THE INTERNET

At the March 6, 1997 seminar held at Ladner Downs U.B.C. Law School Reference Librarian Allen Soroka discussed how the Internet could be used to conduct legal research. For those who could not attend that seminar the following are the web sites provided by Allen Soroka:

Search British Columbia case law since January 1996; Court of Appeal and Supreme Court
http://www.library.ubc.ca/law/opentextsearch.html

Martindatel-Hubbell legal directory
http://www.martindale.com/locator/

West's legal directory
http://www.wld.com/ldsearch.htm

<u>Canadian Parliamentary material</u>

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

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

<u>Other Canadian Law Sites</u>

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

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

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

B.C. Continuing Legal Education
http://www.cle.bc.ca/

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

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

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

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

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

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

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

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

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

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

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

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

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

UBC Faculty of Law home page
http://www.law.ubc.ca/index.html

Legal Research at UBC Law Library (under construction)
http://unixg.ubc.ca:7001/0/workarea/law/frame1.html

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

International legal materials

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

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

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

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

Australian legal education
http://austlii.law.uts.edu.au/austlii/austral_law_education.html

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

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

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

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

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

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

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

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

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

United States legal information

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

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

Law Library - Gates to North West Law
http://www.wolfenet.com/~dhillis/lawlib.htm

Legal Research on the Internet
http://www.ali-aba.org/aliaba/intro.htm

Index for Legal Research on the Internet
http://www.ali-aba.org/aliaba/search.htm

The White House Library
http://www1.whitehouse.gov/WH/html/library.html

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

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

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

U.S. House - Home Page
http://www.house.gov/Welcome.html

U.S. House of Represenatives - Internet Law Library - Code of Federal Regulations
http://law.house.gov/cfr.htm

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

FindLaw: Internet Legal Resources
http://www.findlaw.com/

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

Law Schools and Law Firms on the WWW
http://www.law.indiana.edu/law/v-lib/lawindex.html

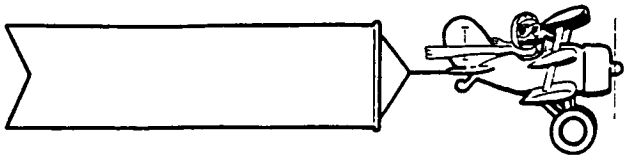
Legal Material - By Type or Source
http://www.law.cornell.edu/source.html

The National Law Net
http://www.www.lawsites.com

Yahoo Search Engine - Government: Law
http://www.yahoo.com/Law

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 please telephone Connie Iverson at 294-9594.



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 the "Questions & Answers" as selected by Ann Halkett from its February and March 1997 "Registrars' Newsletter".

If you have a question you would like answered by the Registrar please submit it in writing to Ann Halkett at Lidstone Young Anderson and it will be forwarded to the Registrar's attention.

Adoption Act

Q. Could you please give me an overview of the changes to adoption procedure under the new Adoption Act?

A The revised Adoption Act was proclaimed effective November 4, 1996 The following changes apply to procedures in the Court Registry

- New forms are set out in the Adoption Regulations
- The consent forms set out in the regulation are now in affidavit form The affidavit is the only document required (two affidavits in support of consent are no longer required)
- Additional information about the birth parents from the adoptive parents must be set out in Form 5 - "birth parent expenses affidavit"
- The material must contain a report of a "younger child's views" relating to a child who is at least seven years of age and less than 12 years.
- The post-placement report filed by the director of adoptions or an adoption agency must be confirmed by written certificate if completed three months prior to the date of hearing of the application
- One or two adults may apply to adopt and the two applicants need not be legally married
- One adult may apply to become a parent of a child with a birth parent
- Any applicant must have been resident in British Columbia continuously for six months immediately preceding the application to the court.
- The definition of birth father has changed - see section 13(2)(a)-(f) of the Act.

Court Order Enforcement Act s.11(1) & (2)

Q. What documents should be filed in an application to the Registry pursuant to s.11(1) and (2) of the Court Order Enforcement Act?

A. This subsection determines what point funds held by the garnishee can be "caught".

"s.11(1) "Service of a copy of an order that debts, obligations or liabilities owing, payable or accruing due to the defendant, judgment debtor or person liable to satisfy the judgment or order shall be attached or notice of it to the garnishee in a **manner the judge or registrar directs**, shall bind the debts, obligations or liabilities in his hands from the time of service or notice."

This subsection sets out the method of serving the garnishing order

"s.11(2) "A copy of the garnishing order shall be served at once, **or within a time as allowed by the judge or registrar by memorandum endorsed on the order**, on the defendant, judgment debtor or person liable to satisfy the judgment or order, and no order shall be made for payment to the plaintiff or judgment creditor of money paid into court by the garnishee, as provided in section 23, until service of the copy has been proved by affidavit filed."

The judgment creditor should file a notice of motion and affidavit in support of the application. The order, if granted, could be endorsed on the garnishing order itself and signed by the Registrar

Divorce Act s.8(2)(a)

Q. Can a party proceed with a petition where the ground for divorce is a one year separation and reconciliation occurred after the date of filing?

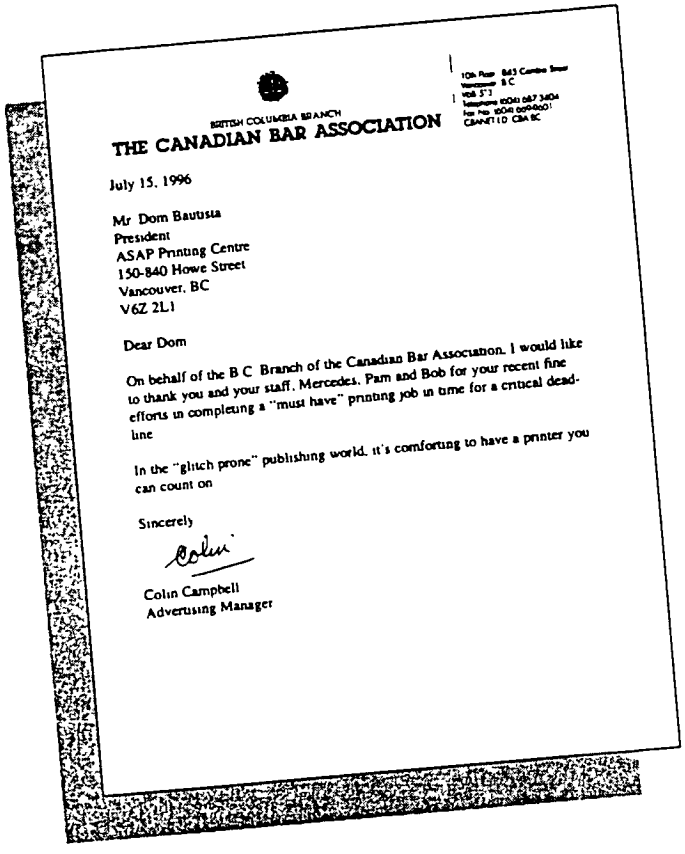
A The party could amend the petition with the new date of separation if the reconciliation is longer than 90 days. They could then apply for the divorce when section 8(2)(a) of the Divorce Act has been complied with:

"8(2) Breakdown of a marriage is established only if (a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding...."

Continued on page 25.

"Ask any of our clients."

How's this for starters?



BRITISH COLUMBIA BRANCH
THE CANADIAN BAR ASSOCIATION

July 15, 1996

Mr Dom Bautista
President
ASAP Printing Centre
150-840 Howe Street
Vancouver, BC
V6Z 2L1

Dear Dom

On behalf of the B C Branch of the Canadian Bar Association, I would like to thank you and your staff, Mercedes, Pam and Bob for your recent fine efforts in completing a "must have" printing job in time for a critical deadline

In the "glitch prone" publishing world, it's comforting to have a printer you can count on

Sincerely

Colin

Colin Campbell
Advertising Manager

ASAP
LEGAL PRINTING | LEGAL FILE SPECIALISTS

150 - 840 Howe Street, Vancouver, Canada V6Z 2L2
604-685-2727 · Fax: 604-685-2773 · 800-605-2727
Email: dom@asaprint.com

4=1

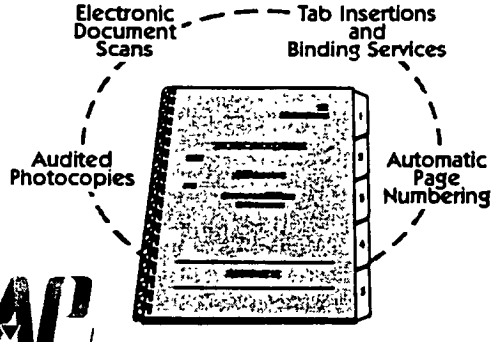
Four Essential Functions

One Legal Files Service Bureau

Combine ASAP Legal Printing with your in house legal support staff and you've got everything you need to prepare your legal files. Even with tight deadlines.

Only ASAP Legal Printing has designed its workflow to accommodate your needs. Only ASAP Legal Printing has trained staff to prepare the most complicated file. Ask any of our clients. Only ASAP can prepare audited photocopies, electronic document scans, automatic page numbering, tab insertions and binding services. We can do all or any one. All under one roof. For more information about ASAP Legal Printing, and how we can consistently help you prepare files call 685-ASAP/2727. Or visit us, we're right across from the court house at:

150-840 Howe Street, Vancouver.



ASAP
LEGAL PRINTING | LEGAL FILE SPECIALISTS

It is up to the Court to decide whether to accept the amended petition.

Rule 24

Q. Can a claim be amended after a default judgment has been issued in an action?

A. No, the court would be functus. The party could apply to set aside the default judgment, and then, if the application is granted, proceed to amend the initiating document.

Bankruptcy & Insolvency Act

Q. When legal fees incurred by a Trustee in a bankruptcy estate are required to be taxed by the court is a fee payable under the new tariff?

A. If the application is made by the Trustee, then the fee is encompassed in the general fee payable by the Trustee under Item 3. If, however, the appointment is filed by the solicitor, then the fees set out in Item 4(h) apply.

Rule 41

Q. What is the registry's responsibility when checking an order made before the Court when the order contains provisions not spoken to before the Judge or Master, but endorsed by all parties?

A. Orders must reflect what was spoken to in court. If counsel insist on adding extra provisions or refer to matters not included in the court clerk's notes, you may wish to refer the order to the Judge or Master pursuant to Rule 41(13)(c).

Appendix C, Schedule 1, Item 14

Q. Is it the responsibility of the solicitor or the party to pay the fees for the time spent in hearing a trial?

A. This question has arisen in a number of instances, particularly when the notice of trial is filed by counsel for the plaintiff who is ultimately unsuccessful and has costs assessed against them.

Under Item 14, Appendix C, the fees are "payable by the party who files the notice of trial". While the notice of trial is generally filed by the party's solicitor, responsibility for payment of the fees rests with the party rather than the solicitor.

However, the solicitor must also be cognizant of his duty as a member of the Law Society:

> "2. The lawyer has a professional duty, quite apart from any legal liability, to meet professional financial obligations incurred or assumed in the course of practice, such as agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs and public officials when called upon to do so."

Appendix C, Schedule 1, Item 20

Q. What is the effect of the increase to probate fees to those estates for which probate either has been applied for but not granted or where probate has been granted but there are assets not yet disclosed or valued?

A. The increases to probate fees effective April 1, 1997 only affect those estates having a value of more than $50,000. The new fees increase the fee charged under Item 20 only on estates having a value of more than $50,000 to $14 per $1,000 from $6 per $1,000. However, if probate is applied for prior to April 1 or if probate is granted prior to April 1 and assets are later valued or disclosed, the applicable rate is the rate in effect at the time probate was applied for.

Appendix B, Item 26

Q. Can a chambers brief be claimed under Item 26? "Written argument where requested or ordered by the Court"?

A. Yes. In a practice direction issued June 18, 1992, Chief Justice Esson (as he then was) stipulated that in any chambers application which will take in excess of two hours, chambers briefs must be exchanged and filed in advance of the hearing. Chambers briefs fall within the definition of written argument in Item 26

GOT SOMETHING TO SAY?

Send submissions for The Assistant to:
Ann Halkett, Editor
Lidstone, Young, Anderson
1616 - 808 Nelson Street
Box 12147, Nelson Square
Vancouver, B.C. V6Z 2H2
Phone: 689-7400 Fax: 689-3444
Deadline: July 21, 1997

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) 663-0437. To order full text judgments telephone (604) 535-1197 or toll free (800) 927-3377.

CONDOMINIUMS - Fines and levies - Strata corporation having priority over mortgagee with respect to maintenance and repair levies, but not fine or legal levies.

The petitioner bank foreclosed on mortgages against four strata lots. The respondent strata corporation had purported to levy various charges against the lots under s.37(1) of the Condominium Act, amounting in each case to approximately $11,000. The levies included maintenance levies, fine levies in the form of late payment penalties, legal levies for legal fees and repair levies. The respondent claimed priority for all of the levies under s.37(2) of the Condominium Act. The petitioner claimed that its mortgages enjoyed priority over all but the maintenance levies. HELD, in part for both parties. On the authorities, the fine and legal levies were not entitled to priority. With respect to the repair levies, it would not be conducive to the realization of the objects of the legislation if the strata corporation did not enjoy a privileged position with respect to expenditures made in meeting its duties to repair and maintain the common property. It is similarly important that the strata corporation be able to recover unpaid assessments from strata lot owners. The repairs had preserved and enhanced the bank's security; by enjoying priority they did not steal a march on the bank's mortgage. The expenses had been authorized by special resolution of the strata council and, under s.18 of the Act, the bank enjoyed the ability to exercise voting rights in respect thereto. The expenses were so-called "democratically" incurred expenses.

Royal Bank of Canada v. Holden, S.C., Bauman J., Doc. Vancouver H950893, H960639, H960082, H950766, November 27, 1996, 18 pp. [CLE No. 97-7902] // Peter J. Reardon, for petitioner; Patrick A. Williams and P. Taylor, for respondents. // Principal case authorities: National Life Assurance Co. of Canada v. Vidalin Construction Ltd. (1985), 64 B.C.L.R. 319 (S.C.) - applied; Royal Bank of Canada v. Chan, S.C., Doc. Vancouver H940572, June 5, 1995 - not followed.

MUNICIPALITIES - Contracts - Agreement between developer and city including implied term that zoning would remain undisturbed for reasonable period of time for development - City liable for breach of agreement.

The plaintiff purchased certain lands, including two water lots, located within the defendant city. The plaintiff made the purchase from a provincial Crown corporation and took over its rights with respect to the lands under an agreement (the "master agreement") with the defendant. The agreement provided for servicing, zoning and development control. The plaintiff developed a portion of the lands, starting in 1988. Initially the development involved the construction of residential condominiums. In 1993 the plaintiff applied for permits to develop the water lots. The existing zoning permitted 3-storey mixed commercial/residential structures on the lots. After a public hearing the defendant rezoned the water lots, restricting development to one-storey commercial structures, thereby effectively frustrating the plaintiff's plans. The plaintiff sued for damages for breach of contract. HELD, judgment for plaintiff. The issue was whether a city can be held liable in damages for breach of contract where a zoning bylaw passed by a council is in conflict with a contract entered into under the authority of a resolution of a previous council. There is nothing in Pt.29 of the Municipal Act which precludes the powers of a municipality, including zoning powers, from being

used to implement long term planning objectives, nor does the statutory scheme preclude contractual commitments made by a municipality to achieve its planning objectives that respect the Pt.29 procedures. The Act should not be interpreted so restrictively as to preclude such agreements in the public interest which require enforceable mutual obligations to be effective. The plaintiff assumed that the zoning contemplated by the master agreement would remain in place for a period of time sufficient to carry out the intended development in a logical and progressive manner, unless modified by mutual agreement. While the master agreement was silent on the continuation of the zoning for any length of time, it had to be an implied term of the agreement that the zoning would remain undisturbed for a reasonable period of time. Such an implied term was required to give the agreement business efficacy. The plaintiff pursued the development with reasonable diligence, having regard to the common understanding that development would be sequential and influenced by market demand. The defendant could not rely on s.972(1) of the Municipal Act to avoid liability. Although that section provides that no compensation is payable resulting, inter alia, from adoption of a bylaw "under this division," which included the rezoning bylaw, the section cannot be interpreted to allow a municipality to break a contractual commitment with impunity. The issue of damages would remain to be tried.

Pacific National Investments Ltd. v. Victoria (City), S.C., K.C. MacKenzie J., Doc. Victoria 93/3412, December 11, 1996, 25 pp. [CLE No. 97-8080] // See also [1996] Civ. L.D. 576; [1996] Mun. L.D. 26; [1996] R.P.L.D. 57. // C. Edward Hanman and L. John Alexander, for plaintiff; Guy E. McDannold, for defendant city; Harvey M. Groberman and Lisa J. Mrozinski, for Attorney General. // Principal case authorities: Brown v. Winnipeg (City) (1993), 92 Man. R. (2d) 99 (Man. C.A.) - considered; Capital Regional District v. District of Saanich (1981), 24 B.C.L.R. 134 (S.C.) - considered; First National Properties Ltd. v. Highlands (District) (1996), 32 M.P.L.R. (2d) 26 (B.C.S.C.); [1996] D.C.L. 171; [1996] Mun. L.D. 4; [1996] R.P.L.D. 4; [1996] D.B.L. 70 - considered; MacMillan Bloedel v. Galiano Island Trust Committee (1995), 10 B.C.L.R. (3d) 121 (C.A.) - considered.

RESTRICTIVE COVENANTS - Enforcement - Court finding municipality entitled to enforce age restriction contained in covenant under Land Title Act, s.215.

The developer of real property approached the plaintiff municipality with a proposal for the development of certain land. The plan included the construction of a rental residential building for "active senior citizens" who would become members of the club which owned the land. The land was not zoned for the proposed building. Following public hearings the plaintiff rezoned the land and the developer entered a covenant under s.215 of the Land Title Act which provided that each suite would be occupied by at least one person over age 50. The developer later sought approval to stratify the building to individual strata lots instead of rental units. At the same time the developer sought the elimination of the age restriction in the covenant. The plaintiff granted the stratification request, but declined to remove the age restriction on a number of grounds. Of the 182 units in the building, approximately 150 were occupied in accordance with the restriction. The plaintiff applied for a declaration as to the enforceability of the age restriction. HELD, judgment for plaintiff. The covenant did not breach the age discrimination provisions of the Human Rights Act when it was registered. However, there was no question that the conduct of the owners of the units, if they chose to rent their premises, was subject to the subsequent amendments to the Act prohibiting discrimination on the basis of age. The owners were burdened with the obligation of complying with both the covenant and the Act. The covenant was not ultra vires the plaintiff. Section 215 of the Land Title Act contemplates a covenant restricting "the use of a building" and the covenant did not exceed the plaintiff's powers. The covenant was not obsolete and there was no reason to strike it down under s.31 of the Property Law Act.

North Vancouver (District) v. Lunde, S.C., Allan J., Doc. Vancouver A941209, January 8, 1997, 14 pp. [CLE No. 97-8262] // J. Christopher Grauer, for plaintiff; Peter A. Spencer for three defendants; Alastair Wade, for one defendant; Richard R. DeFilippi, for third parties. // Principal case authority: Faminow v. North Vancouver (District) (1988), 24 B.C.L.R. (2d) 49 (C.A.) - considered.

TAXATION - Real property assessment - Classification - Property held for residential development not being "used" for residential purposes.

The taxpayer, a developer, owned 14 acres of land. Planning was well advanced to develop the land for residential, commercial and civic purposes. The land was zoned for each of those uses among others. By the terms of a restrictive covenant registered against the land, the areas to be developed for each of the intended purposes were established, with some 70% being designated residential. The Assessment Appeal Board concluded that in light of that fact, plus the fact that the taxpayer had spent money on a site survey, soil testing, a geotechnical study, a retail market study and legal fees, all of which were necessary precursors to actual construction on the residential portion, that portion was actually being "used" for residential purposes within the meaning of the Assessment Act so as to be entitled for classification as Class 1 - residential, instead of Class 6 - Business and other. The assessor's appeal was allowed. On further appeal by the taxpayer, HELD, appeal dismissed.

Per Esson J.A. (Prowse J.A. concurring): The taxpayer was contending, in effect, that property being held for residential uses should be classified as residential property. Had that been the legislative purpose, the regulation could easily have been drafted in those words. While it may be unfair to require persons to pay tax at the rate applicable to Class 6 where those persons are engaged in the commendable social purpose of developing land for residential purposes, such a policy matter had to be left to the legislature, not to the assessor or the courts.

Per Lambert J.A. (dissenting): Once a binding commitment to the construction of living quarters is made, the purpose behind the use of the land becomes residential and the land becomes residential in character. That character reflects a present purpose of residential use for land which may still be bare, and that land is therefore "used for residential purposes".

Bosa Development Corp. v. Coquitlam Assessor Area No. 12, C.A., Lambert, Esson & Prowse JJ.A., Doc. Vancouver CA020174, December 23, 1996, 48 pp. [CLE No. 97-8147] // See also Vancouver Assessor Area No. 09 v. Bastion Development Corp., digested below. // Douglas H. Clarke, for appellant; John E. Savage for respondent; Brian J. Wallace, Q.C. and James D. Fraser, for intervenor Concord Pacific Holdings; Patsy J. Scheer, for intervenor City of Vancouver. // Principal cases considered by majority: Burnaby/New Westminster Assessor Area No. 10 v. Reemark XIII Developments Ltd. (1992), B.C. Stated Case 329 (B.C.S.C.); Doc. Vancouver A921572, June 4, 1992 - considered; Eccom Developments Ltd. v. Vancouver Assessor Area No. 09 (1989), B.C. Stated Case 269 (B.C.C.A.) - considered; Verdun v. Toronto Dominion Bank, S.C.C., Doc. 24604, October 31, 1996 - considered.

BCALA CALENDAR INSERTS

If you would like a 1997 insert for your BCALA calendar please send $2.00 and a self-addressed envelope to:
BC Association of Legal Assistants
P.O. Box 4127, Main Post Office
Vancouver, B.C. V6B 3Z6
Attention: Ann Halkett