THE ASSISTANT

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

PRESIDENT'S COLUMN

By Jasbir Bains

Let me begin by wishing all our members and readers a happy and prosperous new year.

The tenure of the current Board will be a short one. The present Board has decided that the next Annual General Meeting will be held on April 9, 1997. The main reason for this is that after the September A.G.M. the new Board does not have sufficient time to plan for the Christmas/new year period. Having the A.G.M. in April gives the Board ample time to plan events for the rest of the year. On another note, we are looking for a location to hold our A.G.M., so if anyone has access to a large boardroom we could borrow for the evening, please let me know. I can be reached at 661-1701. Also, I would be pleased to receive nominations for directors. Remember, we have to have a minimum of five directors and ideally there should be at least eight to 10 directors.

On December 12, 1996, we co-hosted a Christmas reception with Agentis Information Services Inc. at which several door prizes were awarded. At least five people walked off with some very nice gifts. I would like to take this opportunity to thank everyone at Agentis, especially Hildi Steuart and Rita Scott, who helped put together the reception. Also, I would like to thank Ann Halkett, our editor, for taking on the responsibility of co-ordinating the event with Agentis. Without these people the reception would not have been possible.

Although approximately 50 people were present at the reception we were disappointed that we did not see more of our members. I realize it was probably a busy time for most people, but the success of such events depends on the turnout. Further, we can only schedule more events if members are ready to support us. The organizers of such events put in a lot of time and effort and their reward should be a good turnout. Overall the reception was a success and we will try to arrange similar receptions on an annual basis.

In this issue you will find the results of our salary survey. On behalf of the directors, I would like to thank everyone who participated in the survey. We realize salary surveys are important to our members and we will endeavour to do more in the future.

Finally, by now you should have received your membership renewal forms for 1997. Please take a minute to complete the form and send it in as soon as possible.

INSIDE THIS ISSUE:

FROM THE EDITOR'S DESK

By Ann Halkett

Thank you to everyone who returned the reader survey enclosed with the last issue of "The Assistant". Your comments made an impression and as a result I have decided to devote some issues to the practice of specific areas of law. For instance this issue has numerous corporate commercial articles.

UPCOMING EVENTS

March 6/97 UBC Law Librarian Allen Soroka will speak on how to conduct legal research on the Internet. As well Cheryl Stephens, partner in Plain Language Partners, will speak on Lawyers for Literacy. A package she developed in conjunction with the Law Society.
Time: 5:30 p.m. - Ladner Downs
Refreshments to be served.

Please telephone 844-5505 to confirm attendance so enough handouts will be available.

April 9/97 Annual General Meeting. Place and time have yet to be announced.
Refreshments will be served.

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: Jasbir Bains.

CORRECTION

In the winter 1996 issue of "The Assistant" we neglected to point out that the B.C. Legal Assistants Resource Centre, run by Jerena Laursen, invited BCALA and CALA to co-host the April 17, 1996 dinner.

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

Committees/Directors

President:	
Jasbir Bains	661-1701
Vice President Public Relations:	
Jerena Laursen	240-0333
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Gemma Hale	685-1343
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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 Patricia Terlecki.

Submissions

Articles for The Assistant are gladly accepted. If possible please provide submissions in both hard copy and disk form (formatted for Word Perfect 5.1) The deadline for submissions for the next issue is April 25, 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.

OCCUPATIONAL TITLE PROTECTION UPDATE

By Glennis Bryson

In September 1996 the Directors of the BC Association of Legal Assistants filed an application with the Registrar of Companies in Victoria, B.C., pursuant to Part 9.1 of the Society Act of British Columbia, for occupational title protection for the words "Registered Legal Assistant" and the initials "RLA"

The Registrar is currently conducting searches to ensure that no conflicts exist to the group of words or initials that BCALA has applied to have protected and is contacting other professional bodies who may have an interest or objection to the protection of the word group or letters being registered.

After completion of the foregoing, if the Registrar considers it in the public interest, he may register the Society under Part 9.1 of the Society Act and issue a certificate of registration identifying the words and initials which have been designated for the exclusive use of BCALA and its members. The Registrar's office has advised that it could take up to one year before a decision is made. In the interim, we would be pleased to receive applications for membership from legal assistants in all areas of the Province.

Further information of the progress of the application will be provided in the next issue of the newsletter.

MEMBERSHIP UPDATE

By Patricia Terlecki

We are looking forward to an exciting new year and I would like to take this opportunity to remind everyone that renewal notices have been mailed. If you have not received notification, please contact me at 844-5505 and I will be happy to send one to you.

As well, I would like to welcome the following new members to the association. We hope to see them at some of the meetings and events planned for 1997:

Elizabeth Almeida
Joyce Bellislie
Jennifer Calhoun
Christel Deas
Tracy Gausdal
Tomina Lazar
Elizabeth Olkovick
Lindsay Salt
Marie Stenzel
Gary Weintz
Carol Anton
Alice Marie Birk
Catherine Condon
Donna Egan
Tina Laciereno
Juanita Maglio
Joyce Rose
J. Miguel Santos
Melanie Walker

Anyone interested in becoming a director or assisting on any of the numerous committees is asked to contact a director. As you know, we are always looking for interested parties with innovative minds.

Down to statistics. As of December 31, 1996 we had a total of 139 registered members. We are sad to report that 33 of those members have decided to discontinue their membership leaving a balance of 106 of which 75 are Voting Members, 25 Students, 4 Associate Members and 2 Honourary Members.

NO-FAULT COMMITTEE UPDATE

By Dee Rogers, Chair

As this is a topic which needs no introduction, I'll get right to the point.

The campaign regarding no-fault insurance may be coming to a conclusion in the next few weeks! The Allen Review Team is still accepting submissions on the subject until the end of January and will then finalize its recommendations to Premier Clark in a report due by the end of February.

Mr. Doug Allen was appointed by Premier Clark to head the Review Team which would accept submissions from interested groups and individuals and hear personal presentations through the month of January. This amounts to the public's involvement in the matter which the government has long been promising. But allotting **one month** for a province wide submission process on an issue which has the potential of affecting every single British Columbian is dreadfully inadequate and throws the integrity of the entire process into question.

The BCALA No-Fault Committee sent a letter to its entire network asking people to fax a letter to Mr. Allen, letting him know its thoughts and feelings about No-Fault. Many people kindly copied me with these letters and I appreciate the effort. My thanks to Jerena Laursen, Vice President, who took the "bull by the horns" and faxed my letter to KISS FM. It was read on air on Monday, January 21st, along with my home number and the response from the general public was tremendous. There are many people out there who want to do something but just need a little help to get started.

As a result, along with this edition of "The Assistant", you will find a letter to Premier Clark which has been set up for your convenience. Please make blank copies for your co-workers, relatives, etc. and get them writing too! Premier Clark's fax number in Vancouver is 660-0279 and in Victoria it is 250-387-0087.

Your letter will have DOUBLE the impact if you sent a "copy" to your MLA, regardless of whether he/she is NDP, LIBERAL or otherwise.

In the course of this debate, Mr. Clark has said that he does not support a pure no-fault system. He has also said that he will not make the legislation retroactive. Both of these points are crucial to the implementation of fair, equitable auto insurance in this province. DO NOT LET HIM FORGET HIS WORDS.

Please take a moment to jot down a few points on the attached letter and fax it to the Premier. We must keep the pressure on the government right up until the Legislature reconvenes, to hear the people of the province on this issue and not just proceed with the NDP agenda of "money, money, where's the money".

Remember - auto insurance reserves exist to serve the needs of injured motorists and their families. They do not exist to be a supplementary source of money for our government!

For more information telephone 273-3741.

CORPORATIONS TAKE A SHINE TO PARALEGALS

By Rosie Black

In the legal department of Toronto-based consulting engineers Delcan Group Inc., Mary Anne Sherk prepares contracts, sets up new corporations, administers trademarks, monitors bills from outside counsel and handles many other tasks expected of the typical in-house lawyer. Yet, Sherk is not a lawyer.

She is among the new wave of corporate paralegals. Working alongside general counsel and assistant corporate secretary Rob Falconi, she offers the company a cost-effective alternative to hiring another lawyer. "A paralegal can do a lot of this administrative work and it frees up my time to focus on the actual legal work," says Falconi.

Though the ranks of in-house counsel in Canada, at about 5,000, have swelled in recent years, more general counsel are finding paralegals a cheaper and sometimes better alternative to hiring another in-house lawyer. From meeting regulatory filing requirements to contract administration and even negotiations, a well-trained corporate paralegal can easily handle many of the technical roles of lawyers. The problem, it seems, may be a shortage of available talent.

Unlike the U.S., most Canadian law firms have been slow to integrate supervised paralegals into their operations, often preferring to have work done by the junior lawyers commanding higher fees.

But it's a different story in the corporate world where in-house counsel seem to be a lot more savvy about what's cost-effective. "Maybe the reason is corporations are being forced to find ways to keep costs down," says Art James, general counsel for IBM Canada Ltd. in Markham, Ont.

Certainly, the cost between a lawyer and paralegal is significant. The going rate for a junior in-house lawyer with a few years' experience starts in the $75,000-$90,000 range while an experienced paralegal fetches anywhere from $30,000-$55,000.

IBM has one of the largest inside law departments in Canada with 16 lawyers, but it has only one paralegal and that's something James would dearly love to change. "I'd like to have more, but the good ones are as rare as hen's teeth," he says.

James sees "a growing need" for paralegals in corporations, but he's looking for more than the real estate law clerks and secretaries-cum-paralegals coming out of most community colleges. In his view, a corporate paralegal needs plenty of business experience on top of training as a legal technician. "You could take them into a meeting and they could start to put together base agreements," he foresees, "then the lawyer can polish them after that.

"What's taking an enormous amount of time now is the grunt work that's needed by lawyers to do the new and growing number of customized contracts," he says, adding that another advantage to paralegals over lawyers is that they can stay with a contract during its lifetime - something a busy in-house lawyer would be reluctant to do. "If there's a way to do this with people who aren't lawyers, then I think you're economically going to be ahead of the game."

Robin McDonald seems to be ahead of the game. As general counsel and sole inside lawyer for engineering firm Foster Wheeler Ltd. of St. Catharines, Ont., he is outnumbered two-to-one by his paralegals.

"I have a couple of contract administrators and a part of their job is to review and comment on the legal terms and conditions," he says. They also work closely on finance issues and internal controls with project managers once a contract has been approved, something a lawyer typically doesn't want to get involved with.

And paralegals could be doing a lot more to save lawyers money and time, says Lynn Sweeney, president of the 700-member Institute of Law Clerks of Ontario and a clerk at law firm Lazier Hicky Langs O'Neal in Hamilton, Ont.

"There's a great deal law clerks can do in litigation support, trial preparation, even securities," she says, noting there's also a growing faction of clerks in criminal law.

In many respects, law clerks and paralegals need to work on their image. Most lawyers have a view of law clerks as little more than recent high school grads or glorified legal secretaries.

Sweeney says the experienced business people that in-house counsel say are in short supply are actually being turned out in greater numbers these days from community colleges as more mature students return to school for a new career.

Another problem is that clerks lack an official certification process. Since anyone can hang out a shingle as a paralegal there's no easy way for recruiters to separate the wheat from the chaff. In some provinces, such as Ontario, clerk associations are trying to fill the gap with their own continuing education programs and certificate programs, but most in-house counsel regard those programs as more suited to private law firms.

Still, corporate paralegals are making in-roads. In some circles, in fact, the suggestion is made that companies might even be able to get by with just paralegals and no inside lawyers. The Law Society of Upper Canada, for one, suggests there's nothing in its rules stopping that.

Ajit John, the LSUC lawyer who monitors reports of unauthorized practice, says a sophisticated corporation is free to rely on any employee for legal advice so long as it's aware of the paralegal's lack of proper legal training. The law society is primarily concerned only with paralegals who offer their services to the public without lawyerly supervision.

Would a corporation want to go that route? Falconi doesn't think so. "The paralegal alone is not going to have the experience of a lawyer to identify the business risks and manage those risks," says Falconi. "The lawyer can identify legal issues that may not be readily apparent and I don't think a paralegal could make recommendations on corporate policies or compliance programs."

Even Sweeney thinks it would be a mistake to expect paralegals to replace lawyers. "There are many responsibilities a paralegal or law clerk can handle, but I think a large sophisticated corporation needs lawyers. We are designed to relieve the lawyers of the routine parts of the law, so they can deal with more complex matters."

And, IBM's James laments corporate paralegals may find even they have competition in the future from an unlikely source. "The sad thing I'm seeing," he says, "is that any corporation or law firm can pick up graduate lawyers now to perform these same skills for a paralegal's salary."

CORPORATE FORMS U P D A T E

A number of the Company Act, Society Act and non-prescribed extra-provincial forms have been revised and are available from the Registrar of Companies office:

Company Act

Form 3	-	Notice of Offices
Form 4	-	Notice of Change of Offices
Form 10/11	-	Notice of Directors
Form 18	-	Annual Report BC Company
Form 15	-	Statement on Registration Extra-provincial Company
Form 16	-	Notice of Change of Attorney
Form 19	-	Annual Report Extra-provincial Company
Form 25	-	Instrument of Continuation

Non-prescribed extra-provincial

Notice of Change of Address of Attorney
Notice of Directors for Extra-provincial Company
Change of Head Office in the Province
Change of Head Office Outside the Province

Society Act

Form 5 -	Notice of Address of Society
Form 7 -	Notice of Change in Directors other than at an Annual General Meeting
Form 11 -	Society Annual Report

Note: Corporate forms may be adapted to your word processor after being vetted by the registry for correct format and content.

ORGANIZATION AND MANAGEMENT OF CORPORATE RECORDS/SERVICES DEPARTMENT

By Marie L. Stenzl, Corporate Paralegal Consultant
Chapter excerpt from the C.L.E. publication "Managing Your Law Firm"

A. Function

A law firm's corporate records/services department maintains the corporate records of British Columbia companies and societies, Federal corporations and extra-provincial companies entered in the department's system at the request of individual lawyers. The department produces work in connection with these companies under the direct supervision of the lawyer responsible. Some examples of the type of work produced by the department are:

(a) incorporate and organize British Columbia and Canada Business Corporations Act companies;
(b) corporate changes to existing companies;
(c) extra-provincial registrations in all provinces and ongoing maintenance of those registrations;
(d) preparation of annual reports and annual consent resolutions;
(e) voluntary dissolutions;
(f) partnership registrations; and
(g) examinations of corporate records.

The department should be equipped and all staff fully trained to carry out corporate searches and name reservations at the Corporate Registry in Victoria and in all other provinces in Canada.

Lawyers, articling students and secretaries should be encouraged to use the department as a source of information with respect to corporate precedents and corporate procedures.

B. Location

The department should be centrally located, with easy access to corporate record books and seals which are stored on appropriate shelving in alphabetical or numerical order.

C. Staff

The staff in the department work under the direct supervision of a lawyer, legal assistant or corporate records supervisor. The corporate records supervisor should be a senior corporate legal assistant with experience in supervising corporate records clerks. To promote the use of the department by lawyers, and to assist the corporate records supervisor in implementing new department policies, it is helpful to form a Corporate Services Committee consisting of a partner and two or more associate lawyers who are familiar with the type of corporate work produced by the department. The department is a good training ground for corporate records clerks who are aspiring to become corporate legal assistants because of the variety of corporate work produced and the opportunity to work independently. To reduce staff turnover and keep staff motivated, it is important for the corporate records supervisor to ensure that lawyers are using the department to its full potential.

D. Procedural Manual

A procedures manual is an important tool used to assist the corporate records supervisor in training corporate records clerks, and to ensure the uniformity of the day to day operation procedures in the department. The following are some examples of the matters which should be dealt with in a procedures manual:

(a) department functions;
(b) registers and share certificates;
(c) seals;
(d) name reservations;
(e) company searches;
(f) opening and closing minute books/files and letting companies lapse;
(g) fees and time recording;
(h) records office examination;
(i) company name change;
(j) annual general business;
(k) shelf companies; and
(l) list of agents.

Continued on page 11.

In addition, the procedures manual should contain checklists and samples of the various materials used in the day to day operation of the department.

E. Precedents

The department should have a complete and up-to-date set of corporate precedents to reduce the production time of preparing routine corporate documents. The corporate precedents should be reviewed regularly by the corporate records supervisor together with a lawyer or committee to ensure they are up-to-date and the corporate records supervisor should be responsible for their maintenance. It is important for the corporate records supervisor to encourage lawyers, articling students and secretaries to suggest any changes or improvements to the corporate precedents.

F. Technology

The department should be self-sufficient in the production of documents and should not have to depend on other departments such as word processing.

G. Marketing

An efficiently functioning department staffed by qualified corporate legal assistants and records clerks can be marketed by the firm to its clients as a means of providing legal work at a lower cost to its clients.

LITIGATION SCHOLARSHIP

ASAP Printing Centre recently endowed a scholarship for students specializing in litigation in the legal assistant program at Vancouver Community College. There will be two $250 scholarships awarded each term. One for a student who has a reached a high 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 will administer the scholarship, so all inquiries should be made at VCC.

For those not familiar with the VCC program it is designed as continuing legal education for law firm staff through evening and Saturday courses. Students proceed at their own pace and usually complete the certificate program in a one to two year period. The VCC certificate is granted in one of three practice area specializations: litigation, conveyancing or corporate commercial. Individual courses are open to anyone with law office experience. For more information call the City Centre Campus at 443-8380.

TEACHING POSITION

Vancouver Community College City Centre Campus is looking for a senior conveyancer to teach an advanced conveyancing course for its legal assistant program. If interested telephone Cheryl Stephens at 739-0443 for more information.

GOING PUBLIC - THE PROS AND CONS

By Daryl E. Clark, Lawyer with Richards Buell Sutton

The decision to go public is one of the most critical decisions a company can make. Once a company makes a decision to sell its shares to the public, virtually all facets of the company's operations will feel the effects. The following is an outline of the major advantages and disadvantages for going public, followed by some of the factors considered by underwriters in assessing whether a company is suitable for effecting an initial public offering (IPO).

Advantages of Going Public

1. *Raise Capital*: The principal reason companies go public is to raise cost-efficient funds with which to finance their operating and growth objectives.

Continued on page 13.

2. *Enhance Ability to Obtain Future Capital*: In addition to raising capital from the IPO, going public can help the company to obtain future growth of capital.

3. *Use of Shares as a Medium of Exchange and Valuation*: Public companies often find they can issue shares (instead of paying cash) to acquire other businesses.

4. *Provide Liquidity and Value for Shareholders*: Once the company has successfully completed a public offering, shareholders, instead of holding shares with limited marketability, will hold shares that can be more readily sold in the market (subject to any Escrow or holding period requirements) or used as collateral for loans.

5. *Provide Employee Incentives*: The companies frequently offer share incentives, such as stock option and purchase plans to attract and retain key personnel.

6. *Enhance Company Prestige and Visibility*: Through press releases and other public disclosures and through daily listing in the Stock Market tables, a company becomes known in the business and financial community by institutional and private investors, by the press and the general public.

Potential Disadvantages

1. *Loss of Privacy and Confidentiality*: When a company shifts to public status, it is required to reveal what can be highly sensitive information, such as compensation paid to key executives, special incentives for management and many of the plans and strategies that underlie the company's objectives.

2. *Restrictions on Management Decision Making*: While the management of a privately held company generally is free to act spontaneously, the management of a public company must obtain the prior approval of the board of directors on certain major matters, and on special matters must even seek the consent of the shareholders.

3. *Increase Pressure for Short-Term Performance*: The financial community and individual shareholders focus on short-term performance of the company.

4. *Costs*: Beyond the initial offering there are continuing costs of the periodic reports and proxy statements that are filed with regulatory authorities and distributed to shareholders as well as professional fees for additional required services, such as legal, accounting and transfer agent services.

5. *Potential Loss of Control by the Entrepreneur*: When a company goes public, there is a possibility that if enough shares are issued an investor or a group of investors could obtain control from the present owners.

Suitability to Public Markets

Once the various positive and negative factors of going public have been weighed, management must examine whether the company has the attributes which would make it an attractive vehicle for underwriters to commit their time and resources to. Since underwriters are compensated on the success of offerings, they will undertake only those issues that they are reasonably confident will successfully sell.

Management should carefully examine the regulatory requirements, their industry and their company specifics to ensure that as many critical attributes for success are in place prior to commencing the IPO process.

Examples of company specifics which could be critical to the success of any IPO offering would normally include the following:

1. *Several Years of Strong Earnings*: There are no hard-and-fast rules regarding minimum levels of revenue and profit required before a company can go public. While a history of profits is

always attractive, many development stage companies have successfully raised funds based solely on the potential of their venture and management.

2. *Tangible Net Asset Backing*: Underwriters and investors look for the net worth position of a company as supported by tangible net assets. Deferred costs, deferred research and development and goodwill will be discounted in this evaluation.

3. *Growth History Potential*: A history and potential for strong growth is important to a successful offering. The company must be able to objectively delineate anticipated growth opportunities (e.g. internal growth, acquisitions, new products, foreign markets). Planned growth is often related to the planned expenditure of funds from the proceeds of issue.

4. *Proprietary Advantages*: Technology, patents, trademarks and other proprietary advantages provide a basis for companies to earn or the potential to earn, higher than average profits and therefore provide investors with returns commensurate and relative to the share issue price.

5. *Barriers to Entry*: Certain businesses or industries may have regulatory, contractual or other barriers to entry. Such barriers can also provide the company the opportunity to earn higher than average profits. Significant prior investments in research and development or significant capital expenditures required in the business are examples which might discourage competitive activity.

6. *Similar Public Companies*: The market place can react favourably to examples of similar companies and how they have fared upon going public. For comparison purposes for Canadian issues many examples are found in the U.S. market place.

7. *Appropriate Management Team*: Does management possess sufficient depth and experience to carry out its objectives? The company may need to supplement or upgrade its financial and operating team before it goes public. Changes in the board of directors are often appropriate - for example, adding outside directors that provide an advisory function.

Conclusion

The foregoing represents a very general outline of some of the matters that a company considering going public should take into account.

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 articles for "The Assistant" as well as individuals to be part of a lecture series. If interested in sharing your knowledge and experience with others please telephone Ann Halkett at 689-7400.

LAW AND THE INTERNET IN CANADA

By Cheryl Stephens

Consultant with Plain Language Partners, offering legal writing, plain language, and internet services. Visit her at http://plainlanguage.com

With a proliferation of resources on the Internet, it helps to find a one-stop shopping centre for your specific needs. In B.C. we have the CLE Webside and nationally the ACJNet site.

The Access to Justice Network (ACJNet) was the first major Canadian Internet resource and it continues to grow and expand as a service to the legal community. It is really the definitive source for Canadian justice information and services on the Internet.

ACJNet's World Wide Web 'kiosk' opens doors to people, documents, databases, statutes, regulations and other sources that will help you find out about law and the justice community in Canada. ACJNet is a non-profit law mall on the World Wide Web: ACJNet. This service is co-sponsored by the Department of Justice, the Legal Studies Program at the University of Edmonton and Web Network (Canada's largest non-profit electronic information centre).

If you have WWW software such as Netscape or Mosaic and an Internet account, all you need is the ACJNet URL: http://www.acjnet.org/acjnet/

The ACJNet kiosk provides free access to:

-searchable listings of federal and provincial laws and regulations and a link to the Supreme Court decisions database
-a library of publications on legal topics ranging from child abuse, consumer education, criminal justice, legal aid, immigration, and pensions, to young offenders
-online conferences and discussion forums for specific interest groups
-searchable databases and access to library catalogues
-directories of organizations in Canada interested in law and justice Internet sites
-links to numerous other Canadian law and justice Internet sites
-access to listservs and newsgroups
-online training workshops

Searching For Help

The Internet is a valuable resource for information and for networking. Legal resources on the Internet are growing daily. One way to approach your research on the Internet is to use a research service called a search engine. You can start from Netscape's *NetSearch* button to access most available search engines. Each engine has its own guidelines for use, but most resemble the boolean searches you have become familiar with through using QuickLaw. So, give some thought to the key words that will lead to your goal, and give *NetSearch* a try. Or use these direct addresses:
Virtual Legal Search Engines:
http://www.dreamscape.com/frankvad/search.legal.html:
Yahoo: Regional: Countries: Canada: Government:Law:
http://www.yahoo.com/Regional/Countries/Canada/Government/Law

Networking

For networking and other professional concerns, there are discussion groups, email lists, online newsletters, and directories of people with similar interests. In law you might try sites like these: –

American Bar Association: http://www.abanet.org/
Canadian Bar Association Home Page:
http://www.cba.org/
BC Continuing Legal Education: http://www.cle.bc.ca/
National Association of Legal Assistants:
http://www.nala.org/
Law Office Management & Administration Report:
http://ioma.com/ioma/lomar/
Legal Secretaries International Inc.:
http://www.compassnet.com/legalsec

There are many American sites for legal resources. Many "law malls" exist on-line with the primary

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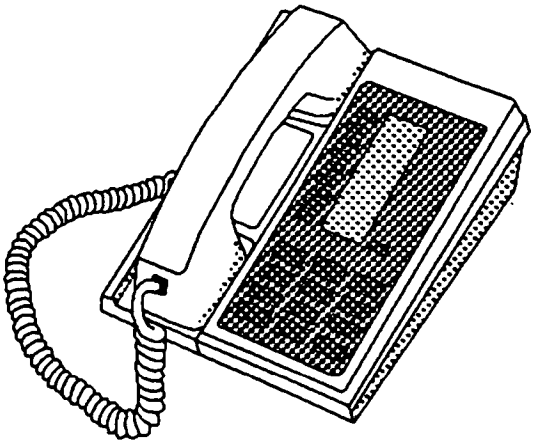

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purpose of advertising available legal services. Some malls also sponsor discussion groups and other services.

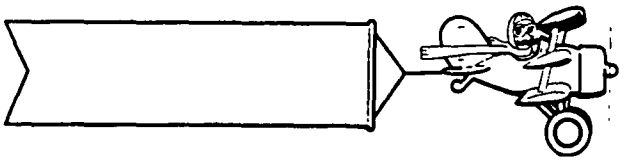
Canadian Resources

For a short cut and quick reference to many Canadian and American legal resources try *ACJNet's Law and Justice Links* page at
http://www.acjnet.org/resource/res-gen.html#1

On January 13, 1997, these links were effective: *excerpts from*

ACJNet - Law and Justice Links
Canadian legal resources

Alan Gahtan's Canadian Legal Resources:
http://gahtan.com/lawlinks
Canadian Government and Research Documents (Micromedia's CREDO):
http:///www.micromedia.on.ca/cgi-bin/searchcri
Canadian Government Information on the Internet:
http://www.lib.uwaterloo.ca/discipline/Government/CanGuide/
The Canadian Law Office:
http://www.thelawoffice.com/Intl_Off/CAN/Default.htm
Canadian Legal FAQs:
http://www.extension.ualberta.ca/legalfaqs/
Canadian Legal Resources on the World Wide Web by Peter Sim:
http://www.mbnet.mb.ca:80/~psim/can_law.html
Guide to Internet Resources in Criminal Law and Criminal Justice:
http://www.law.ubc.ca/centres/icclr/icclr/guide/guid.html
Internet Legal Resources:
http://www.ironclad.com/sites.html
Judith Bower's Law Lists:
http://www.law.ubc.ca/guests/bowers.html
National Library of Canada: http://www.nlc-bnc.ca
Parliamentary Internet: http://www.parl.gc.ca
The Surfing Lawyer: http://www.netlegal.com
Virtual Canadian Law Library:
http://www.droit.umontreal.ca/Biblio/index_en.html



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 October, 1996 "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
s.15(1) Q. **Where is the authority for sealing adoption files?**

A There is no statutory authority to seal an adoption file. Each registry, however, must ensure that s.15(1) is complied with.

The "new" Adoption Act, S.B.C. 48 was proclaimed in November 1996. The confidentiality provision is contained in s.43:

"An application for an order under this Act or any document filed in court in connection with the application may be searched only:
(a) by order of the court, or
(b) at the request of the superintendent."

Adoption Act
s.15(2) Q. **How would you comply with a request from an adopting parent or an adopted child to certify a true copy of an adoption order?**

A. Section 15(2) allows a registrar to certify the copy that has been delivered to the registry by the above parties:

"Nothing in subsection (1) prevents a registrar from certifying as a copy of an adoption order a document prepared and delivered to him by the adopting parent or an adopted child named in the adoption order, if in fact the document is a copy

of the order."

Offence Act s.&2(6) Q. **What form of certificate is used pursuant to s.72(6) of the Offence Act when filing for enforcement in the Supreme Court?**

A. This section has recently been amended by Bill 10, 1996 s.27 to allow certificates to be filed in Provincial Court as well as Supreme Court. Section 72(6) is set out as follows.

"If a person fails to pay
(a) a fine in accordance with an order made under subsection (2), or
(b) a fine payable as a result of the person being deemed to have pleaded guilty to the contravention of an enactment alleged in a violation ticket,
a certificate of a person designated in the regulations may be filed with the Supreme Court or the Provincial Court...."

Real Estate Act s.48(2)Q. **How does money get paid into court and out of court once a matter is settled pursuant to s.48(2) of the Real Estate Act?**

A. Payment in may be made ex parte. The agent who holds the deposit in dispute files a praecipe (pursuant to Rule 10(2)), a draft of the order, and an affidavit setting out the requirements of s.48(2) On the court being satisfied the requirements have been met, an order may be made for payment in.

A payment out application must be spoken to before the court unless the parties consent.

Section 48(5) states:
"money paid into court under subsection (2) shall not be paid out of court except by order of a court...."

Rule 41(16)

Q. **Could a Registrar issue a consent order pursuant to Rule 41(16) allowing a matter against two named defendants to be tried separately?**

A. No, this must be referred to the court pursuant to Rule 41(16)(d).

Rule 41(16)(a) & Rule 6

Q. **Is a party represented by a committee in a Patients Property Act application, or a person represented by an executor in an estate matter, a person under a "legal disability"?**

A. A "person under a legal disability" refers to a living person and not to a dead one. Thus, the term refers to someone who is either mentally incapable or is legally incapable because he or she is under the age of majority.

Exercise caution when you think a party may be under a "legal disability" and refer the matter to court under Rule 41(16)(d)

Rule 42(12) & Residential Tenancy Act 51

Q. **If a landlord seeks a writ of possession based on an order for possession issued by an arbitrator pursuant to the provisions of the Residential Tenancy Act, which has been filed with the Supreme Court, what are the requirements for service on the tenant?**

A. Section 44 of the Residential Tenancy Act provides that the order of the arbitrator may be filed in the Supreme Court and enforced as a Supreme Court order. After that order has been filed with the Supreme Court, it must then be served on the tenant in accordance with Rule 42(12) and an affidavit in support must be filed before a writ of possession will issue. This means that a landlord might be required to serve the tenant twice, once in accordance with the requirements of the Residential Tenancy Act and, again after the order has become an order of the Supreme Court, in accordance with the Supreme Court Rules.

While this might seem an onerous requirement on the part of the landlord, it should be noted that the service requirements under Rule 51 of the Residential Tenancy Act are fairly broad and include posting a notice in a conspicuous place on some part of the subject property. The service requirements of the Rules require that an individual be served by leaving a copy of the document with him or her (Rule 11(2)(a)).

Rule 42(25), Appendix C, Schedule 3

Q. **Is conduct money required to be served with a Subpoena to Debtor?**

A. The effect of the amendments to Schedule 3 of Appendix C of the Rules of Court is that a party subpoenaed to attend an examination under Rule 42 is not entitled to the daily witness fee. With respect to expenses, if the individual subpoenaed lives less than 8 kilometres from the place of examination, no conduct money is due; if the

distance is more than 8 kilometres, the debtor is entitled to $.30 per kilometre; if the debtor resides more than 200 kilometres from the place of hearing, the minimum return airfare must be provided together with $.30 per kilometre each way from his or her residence to the departure airport and from the arrival airport to the place where the examination is conducted. Where appropriate, allowances for meal expenses will be required.

Rule 45(3)

Q. **Is Rule 45(3) available to a party seeking an ex parte restraining order in a divorce matter?**

A. Yes, injunctive relief is available under Rule 45(3), allowing injunctions to be granted prior to the commencement of proceedings. Ex party restraining orders are frequently requested at the beginning of matrimonial proceedings and urgency may not, by itself, provide a reason for the granting of an injunction prior to the commencement of the proceeding

In a Family Relations Act matter, it is typical to refer to the specific sections of the Family Relations Act under which relief is sought.

Rule 60(22)

Q. **Is an order made in a proceeding under the Divorce Act or the Family Relations Act, and entered in an "order book" pursuant to Rule 41(25) a searchable document?**

A. We believe matrimonial orders are searchable. This conclusion was reached by analogy: while Rule 60(22) refers specifically to a "registry file", the status of Reasons for Judgment is clarified in Practice Direction #2 of Chief Justice Esson dated November 17, 1989.

"Reasons for Judgment should not be considered as part of the court file, even though a copy may be kept there. Reasons for Judgment are in a different category from the court file and should be available to the public either through the press file or by an application to search a file through the proper fee being paid."

Rule 66(25)

Q. **What form is used if a party fails to attend a s.18 Family Maintenance Enforcement Act hearing?**

A. Form 119 in the Supreme Court Rules:

Rule 60(25):
"A summons under Section 18 of the Family Maintenance Enforcement Act requiring a debtor to appear at a default hearing before the Supreme Court shall be in form 119."

Rule 62(5)(6)

Q. **Why is the original grant given out to the applicant in a probate matter, and how can the registry certify a true copy of the grant without the original?**

A. While there is no specific authority for this practice, it can be inferred from Rule 62(5) and (6);

"(5) In an action for the revocation of a grant of probate or administration,
(a) if the action is commenced by a person to whom the grant was made, **the person shall lodge the grant with the registrar...**
(b) if a defendant to the action **has the grant in his possession or under his control, the defendant shall lodge it with the registrar**...."

"(6) Where a person fails to comply with subrule (5), the registrar may issue a citation in form 85 calling on the person **to bring the grant into the registrar's office**,...." [emphasis added]

Form 85 requires the person to deliver the "original" grant. A certified copy of the grant can be made from the copy of the grant that is kept in the Probate file. We do not need the original to certify a true copy. We must only be satisfied it is a copy of the original document.

CHAMBERS PROJECT

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

Beginning February 1, 1997, the Vancouver Chambers Pilot Project will commence and will be in effect for one year. This project, commonly referred to as the "Binder Project" is the result of a survey conducted by Madam Justice Sinclair Prowse in 1995 and recommendations made by the Chambers

Committee chaired by Her Ladyship.

As set out in the Notice from the Chief Justice dated November 26, 1996, the object of the pilot project is to improve the efficiency of the chambers system. The ultimate goal is to work towards a fixed time list.

Based on surveys conducted by Madam Justice Sinclair Prowse, it was discovered that almost 50% of Chambers applications were adjourned, not only due to lack of Court time, but because counsel were not prepared or could not appear on the date chosen by the applicant.

The Chambers Committee, which was formed in March 1996, made the following recommendations:

- conduct a pilot project for all chambers courts at the Vancouver Law Courts for approximately one year
- extend the notice periods for the majority of Chambers applications
- implement a binder system
- set applications according to time estimates
- judges and masters adopt the practice of keeping counsel to their time estimates
- judges and masters adopt the practice of awarding costs on a lump sum basis at the conclusion of each chambers application
- collect statistics during the pilot project to determine success
- other recommendations were made regarding future considerations, based on the evaluation of the pilot

Procedures under the new Rule 65, which has been passed solely for the term of the project - are a departure from what we are all used to. Rule 65 applies to Chambers applications heard in Vancouver that were set for hearing by a document that was filed after February 1, 1997.

There are exceptions to this rule detailed under 65(3) which are as follows:

- short leave
- desk orders
- reference by a registrar re: frivolous and vexatious matters
- Examiner's report
- Directions re: notice of appeal
- Summary appeal
- release on breach of civil restraining order
- summons for default hearing under FMEA
- Indigent status
- summons under the Commercial Tenancy Act
- Application to reduce security under Small Claims Act

Instead of counsel filing a notice of motion and then serving the other side, they must now serve the documents **before** they are filed in the Registry.

The documents include: a notice of motion, supporting affidavits, an outline (Form 125) setting out the nature of the application, relief sought, and factual and legal basis on which the relief is sought.

If the other side wishes to oppose the application or to receive notice of the time and place of the hearing, they must deliver to all parties of record an outline in Form 125 and two copies of material upon which they wish to rely.

There are also changes to the response time. Under Rule 18A, the respondent has 14 clear days to respond and for any other application, six clear days.

Once counsel are prepared to go ahead, the applicant must organize all the material in a binder and file it at the Court registry. Attached to the binder will be a Notice of Hearing, the original and a copy of the notice of motion or outline or praecipe detailing what the application is for. This "binder" cannot be filed sooner than 1:00 p.m. two days before the hearing and no later than 12:00 noon the day before the hearing. The original notice of motion, outlines of the applicant and respondent and original affidavit will go directly to the file. The court file will not be pulled for the majority of applications.

The Court file will only be pulled if the master or judge requests it.

NO ADDITIONAL MATERIAL MAY BE FILED WITHOUT LEAVE OF THE COURT.

If counsel want to file additional material in the courtroom, they must ask the court's permission. If granted, the original will be retained and filed in the Registry after court has adjourned.

ADJOURNMENTS:

Telephone adjournments will not be accepted after February 1, 1997. If counsel wish to adjourn before the hearing, they must fax in a praecipe as attached to the Practice Direction dated December 19, 1996. This is required in order to collect statistics on why matters are adjourned and to arrange the return of the binder to counsel.

If adjourned in court, the binder is returned to the applicant. The only exception to this is if the application is adjourned to the next day. Then, the the binder is retained in the Courtroom. Also, if judgment is reserved, the binder must be retained.

If counsel do not retrieve the binder, the registry will dispose of the documents and recycle the binders.

Any matter over one hour and under two hours will be set to commence at 11:00 a.m. Shorter applications will continue to be set for 9:45 a.m.

Hopefully, with the increased communication between counsel, the number of chambers applications will be reduced.

Also, with the binder method, the Court will have all the material presented to it in a complete and organized manner. The Court will be able to deal with Chambers applications in a more efficient way.

BCALA SALARY SURVEY RESULTS

We would like to take this opportunity to thank everyone who participated in the salary survey. Out of 70 surveys 50 were returned. Here are the results. As you can appreciate, some questions were not filled out correctly or were left blank and therefore those answers are not reported.

What is your job title?

Legal Assistant	46/50
Legal Secretary	1/50
Paralegal/Secretary	1/50
Medical Consultant	1/50
Administrative Assistant	1/50

In what environment do you work?

Law Firm	43/50
Corporation	5/50
Government Agency	1/50
Self Employed	1/50

Employment basis:

Full-time	46/50
Part-time	2/50
Freelance	1/50
Independent	1/50

What level of education do you have?

(a) Legal?

Legal Assistant Certificate	21/50
Legal Secretarial Course	9/50
Legal Assistant Diploma	25/50
Other	

(b) Formal

Some College	19/50
Bachelors Degree	23/50
Masters Degree	3/50
Other	3/50

Office Space and Secretarial Assistance:

Private Office	31/50
Partitioned Office	8/50
Shared Office	6/50
Work Area	1/50
Personal Secretary	1/50
Shared Secretary	20/50
Computer Terminal	23/50
Word Processing Pool	4/50

Word Processing Pool	4/50

Pension and/or Profit Sharing Participation

Yes	16/50
No	32/50

The following are provided by the employer:

Business Cards	38/50
Parking	10/50
CLE Courses	41/50
Job Sharing	5/50
Firm/Company Retreat	5/50
Firm Credit Card	1/50
Flex Time	4/50
Travel/Mileage	9/50
Paid Personal Days Off	2/50
Child Care	0/50
Maternity Leave	1/50
Meal Allowance	6/50
Expense Account	4/50
Professional Dues	29/50
Other: Cap. College	1/50

What are your two most pressing on-the-job concerns?

- Wages and benefits
- Lack of public/professional knowledge of the difference between a legal secretary and a certified legal assistant
- concerned that working in small office, may be loosing skills instead of adding them
- pay does not reflect qualifications and responsibilities endured
- answering the phones and direct clients to wait when they have an appointment when involved in a file
- not enough time
- job insecurity - loss of employment
- no fault insurance,
- salary commensurate with quality and level of work being performed
- recognition
- lack of staff
- work load - too much
- reduced support staff and keeping up with technological changes
- meeting limitations and deadlines for group of lawyers - workload - burnout
- the "glass ceiling" syndrome. There is a limit to how far we can develop ourselves/position (including salary) regardless of how competent or experienced we become
- sharing work with multiple lawyers and secretaries on same file
- training junior legal assistants and newly called lawyers
- increased speed provided by better technology translates into lawyers who want everything even faster than before so its hard to keep up with demand
- maintaining client rapport
- file management and time for follow-up
- title protection recognition
- managing staff
- constant last minute rushes occur at times when I have closings to look after
- dealing with time restraints on files referred to me by my network and on files assigned to me by partners

What do you like best about your current position?

- Very small office - no politics - very flexible and laid back
- no over time other than the odd day or " hour here or there. Treated very well, lunches, dinner, etc.
- interesting work
- responsibility - challenge - fellow workers - environment
- flexible days off, management flexible as to vacations, responsibility on the job, appreciation for a job well done, pleasant working environment
- challenge of specializing in a type of law that is very specialized
- independence
- secretarial and word processing assistance, paid parking
- benefits are good
- relationship with clients

What do you like least?

- No secretarial assistance
- Small office sometimes lonely and have to do more administrative/office stuff
- being referred to as a secretary by other offices
- pressure - workload
- the threat of no-fault car insurance would result in loss of job
- demanding, moody, demonstrative boss, lots of pressure and heavy case load. No overflow assistance.
- lack of steady income; isolation - no other staff to discuss issues with
- billing targets and other competitive legal assistants within the firm
- legal assistants don't communicate among themselves and are not "united" on issues affecting them
- too much hierarchy
- not enough challenge
- lawyer's bad attitudes
- expected to work late and weekends with clients with no compensation (i.e. bonus or larger raises)
- stressful environment
- long hours
- lawyers who want to use computer technology but refuse to learn anything about it
- timekeeping
- lack of guidance
- lack of positive feedback

Billable Hours/Compensation and Benefits

Years	Area of Law	Lawyers	No. Hrs Worked per Week	Salary	Benefits
1 year	Estates, Family Law, Litigation, Real Estate	1 -10	35-40	$18,800 - $27,600	2-3 weeks vacation, medical, dental, disability, and bonus ranging from 0 to $400.00
		20 - 50	40	$37,200 - $39,600	4 weeks vacation, medical, dental, life, disability
2 years	Litigation, Insurance	1 - 10	30-45	$30,960 - $34,200	3 weeks vacation, medical, dental, life, disability
		10 - 20	37	$34,800	3 weeks vacation, vision, life, dental, disability and extended medical
		20 - 50	45-50	$32,400	3 weeks vacation, life, dental, disability, extended medical
3 years	Litigation, Insurance	10 - 20	45	$45,000	3 weeks vacation, medical, life, dental, disability, vision, maternity, extended medical
4 years	Litigation	1 - 10	40 - 50	$39,600	3 weeks vacation, medical, dental, disability, maternity, extended medical
		20 - 50	40	$35,000 - $39,600	3 weeks vacation, medical, life, dental, disability, vision, extended medical
		100 +	40	$39,000	3 weeks vacation, medical, life, dental, disability, vision, extended medical, bonus ranging from $1,000
		Self Employed		$30,000 + (depends on availability of work)	
5 years	Litigation	1 - 10	35	$33,500	3 weeks vacation, medical, life, dental, disability, vision, extended medical
		20 - 50	37.5	$40,000 - $47,265	3 weeks vacation, medical, life, dental, disability, vision, maternity, extended
		50 - 100	40	$45,000	4 weeks vacation

6 years	Insurance. Litigation	1 - 10	35 -40	$42,500 - $49,500	3-4 weeks vacation, medical, life, dental, disability, maternity, extended medical, bonus ranging from $500 to $5,000
		20 - 50	35	$39,600	3-4 weeks vacation, medical, life, dental, disability, maternity, extended medical
		50 - 100	30	$44,500	22 days, medical, life, dental, disability, vision, maternity, extended medical
7 years	Corporate, Commercial, Insurance, Litigation, Secured Lending	20 - 50	32 - 35	$34,000 - $54,500	3 - 4 weeks vacation, medical, life, dental, disability, extended, vision
		50 - 100		$47,000	3 weeks vacation, medical, dental, disability
8 years	Real Estate, Litigation, Family, Insurance	1 - 10	35 -40	$38,400 - $46,800	3-4 weeks vacation, medical, dental, maternity, extended medical, disability, bonus ranging from $600
		10 - 20	40	$47,000	3 weeks vacation plus 16 time off days, medical, life, dental, disability, vision, maternity, extended medical
9 years	Litigation	100 +	35	$45,000	5 weeks vacation, medical, life, dental, disability, maternity, extended medical, bonus ranging from $800
10 yrs	Family, Litigation, Taxation, Insurance	1 -10	35	$42,000	4 weeks vacation, life dental, disability, maternity and extended medical, bonus ranging from $600
		50 - 100	45	$49,500	4 weeks vacation, medical, life, dental, disability, extended medical
13 yrs	Litigation, Insurance	1 - 10	38 - 40	$42,600	3 weeks vacation, medical, life, dental, disability, vision, maternity, extended medical, bonus ranging from $250.00
		20 - 50	37 - 40	$40,000	5 weeks vacation, medical, life, dental, disability, maternity, extended medical
	Corporate	100 +	45 -50	$54,000	5 weeks vacation, medical, dental, life, extended medical
14 yrs	Real Estate, Commercial	20 - 50	50	$33,900	5 weeks vacation, medical, life, dental, disability, maternity, extended

15 yrs	Litigation	10 - 20	40 - 45	$50,000	4 weeks vacation, medical, dental, extended medical
16 yrs	Litigation	20 - 50	40	$60,000	4 weeks vacation, medical, life, dental, disability, extended, bonus ranging from $3,000
19 yrs	Litigation, Insurance	100 +	45 - 50	$54,000	5 weeks vacation, medical, life, dental, disability, extended medical, fitness centre
20 yrs	Litigation, Corporate, Taxation, Commercial	1 - 10	35 - 36	$42,000 - $52,000	3 - 4 weeks vacation, medical, dental, disability, extended medical, life
21 yrs	Corporate, Commercial, Securities, Taxation	1 - 10	40	$50,200	4-5 weeks vacation, life, dental, disability, vision, extended medical
23 yrs	Real Estate	20 - 50		$53,820	4 weeks vacation, medical, dental, extended medical, bonus ranging from $2,500
24 yrs	Litigation, Estates, Corporate, Real Estate	1 -10	40	$50,000	4 weeks vacation, medical, life, dental, disability, vision, extended medical, bonus ranging from $500

LAW PRIMER

Case Digests

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INTELLECTUAL PROPERTY - Remedies - Court refusing interim injunction in passing off action between competing beer brewers.

In 1992 the plaintiff brewing company introduced across Canada a "premium" draft beer, sold mainly in cans. The label on the can was the result of extensive research. In 1995 the defendant brewing company introduced a draft beer, sold only in cans in British Columbia. It was a "price brand" beer, intended to compete with both premium and price brand beers and thus was sold at a lower price than other non-price brand draft beers, including the plaintiff's draft beer. The defendant's can was similar in appearance to the plaintiff's can. The plaintiff brought an action alleging copyright infringement, passing off and breach of the Trade Practices Act. The plaintiff applied for an interim injunction to restrain the defendant from using the particular "trade dress" or "get-up" used in the marketing of the competing product, which it alleged was a deliberate attempt to trade on the goodwill and reputation associated with the plaintiff's beer can. HELD, application dismissed. The evidence revealed that the advertising and marketing of beer in Canada, including the design of the packaging, is crucial to the success of a particular beer brand. Although survey evidence or public opinion polling is admissible when approved

statistical methods, social research techniques and interview methods are employed, here, the public opinion poll relied on by the plaintiff was faulty. It included ambiguous questions and failed to distinguish between respondents who, when shown the defendant's can, either thought of or were reminded of another brand, and respondents who believed the product was that of another brewer. The survey results were inadmissible and, even if admissible, they were of little weight. The plaintiff failed to show that its trade dress or get-up was distinctive. The parties' cans were similar, but the similarity consisted of design elements common to the industry and not unique to the plaintiff. There were distinguishing features on the defendant's can, not the least of which was its own brand name in large letters across the face of the can.

Labatt Brewing Co. Ltd. v. Molson Breweries, S.C., Vickers J., Doc. Vancouver C965259, November 8, 1996, 20 pp. [CLE No. 97-7733] // Michael D. Manson and T.P. Lo, for plaintiff; Stein K. Gudmundseth, for defendant. // Principal case authority: British Columbia (Attorney General) v. Wale (1986), 9 B.C.L.R. (2d) 333 (C.A.) - applied. // Expert evidence: R. Corbin, market researcher - accepted; A. Reid, market researcher - rejected.

LANDLORD & TENANT - Leases - Interpretation - Implied terms - Defendant using premises for manufacturing lead products - Court finding implied term requiring premises to be returned free of contamination.

The defendant leased premises from the plaintiff for a number of years. The defendant used the premises for its lead products manufacturing business. The operation involved the pouring of molten lead into "lead pots." Some spillage occurred in the process and the defendant's employees generally used a shovel to scrape hardened spills off the floor. When the defendant notified the plaintiff that it would be vacating the premises, the plaintiff retained an expert to check the premises for lead contamination. The expert considered the concrete floor to have been contaminated and informed the plaintiff that the area could be sealed with paint or the surface layer of the floor removed and disposed of. The expert pointed out that if the paint option were chosen, the problem would resurface whenever the paint became worn. The plaintiff chose the much more expensive alternative and sought to recover the $14,162 cost from the defendant. Including a claim for $21,534 to cover rent for six months, at the end of which time the remediation was completed, and expert's fees of $8,090, the plaintiff brought a claim for repairs in the amount of $67,004. HELD, judgment for plaintiff for $35,091. The plaintiff did not have to prove that the lead contamination posed a health hazard since both the plaintiff's expert and one later retained by the defendant agreed that the levels of lead had to be reduced or removed. It was not unreasonable for the plaintiff to elect the remediation method that would permanently remove the lead. A related issue was whether the defendant, as a tenant, had an obligation to return the premises in an uncontaminated condition. The lease required the premises to be delivered up in good repair and condition, subject to reasonable wear and tear. It was clear the parties did not direct their minds to the possibility of lead contamination. However, recent authority suggests that in today's commercial world, unless a lease provides otherwise, it is an implied term that the lands are to be returned uncontaminated. The defendant was liable under that implied term. As for damages, the plaintiff was not entitled to the full rent claim. The remediation only took one month and the plaintiff was entitled to rent for that amount of time, there being no evidence that it otherwise would have had a tenant for the premises for the six months claimed. The plaintiff was entitled to the balance of its claim except $802 claimed for drywall repairs carried out by its own employees and $4,892 for a soil analysis. There was no evidence that the soil surrounding the premises was contaminated and the analysis was unnecessary. Also, the plaintiff was not entitled to interest at 24% per annum under the lease. The lease provision applied only where the tenant failed to perform "the covenants and conditions" contained in the lease and it did not apply to the implied obligation to return the site in an uncontaminated condition. The plaintiff was not

entitled to judgment against the personal defendant, the principal of the corporate defendant. It was not shown that he was aware of the contamination hazard.

Progressive Enterprises Ltd. v. Cascade Lead Products Ltd., S.C., Loo J., Doc. Vancouver C950537, December 5, 1996, 27 pp. [CLE No. 97-7958] // James D. Spears, for plaintiff; Sandy John Kovacs, for defendants. // Case authorities: Darmac Credit Corp. v. Great Western Containers Inc., [1994] A.J. No. 915 (Alta. Q.B.) - applied; Homestar Holdings Ltd. v. Old Country Inn Ltd. (1996), 8 B.C.L.R. (2d) 211 (S.C.); Kreeft v. Pioneer Steel Ltd. (1978), 8 B.C.L.R. 138 (Co. Ct.); Privest Properties Ltd. v. Foundation Co. of Canada (1995), 11 B.C.L.R. (3d) 1 (S.C.) - distinguished. // Expert evidence: Mr. Gaherty, environmental engineer; Dr. R. Lockhart, workplace environmental safety.

REAL PROPERTY - 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.

SECURITIES - Securities commissions - Securities Commission and Superintendent of Brokers negligent in dealing with reinstatement of mutual funds salesman and acting without jurisdiction in imposing conditions of registration - Defence of good faith under Securities Act and common law available.

The plaintiff was a mutual funds salesman and the principal of a licensed mutual fund dealer, S.Ltd. Following the market "crash" in October 1987, S.Ltd. was unable to maintain the minimum capital requirement of $25,000 imposed by the Securities Act on mutual fund dealers. The Superintendent of Brokers obtained an order appointing a receiver of the company. The plaintiff wished to make use of the company's client lists and files before its clients were "scattered to the four winds" and to regain his profile in the mutual fund industry by advertising and otherwise. However, he was first required by the Act to become employed by another registered dealer and to be approved by the Superintendent for reinstatement of his registration. The plaintiff sought

reinstatement in February 1988 but did not obtain it until August 1988, when he was reinstated on four conditions. Those included a complete winding up report in respect of S.Ltd., advice to the Superintendent of any claims against the company and the plaintiff personally, a requirement that the plaintiff maintain a "low profile", i.e., no radio or television appearances, etc., until April 1989, and that he maintain employment with Y.Co. until April 1989. The plaintiff sued, alleging that the Superintendent and the defendant Securities Commission mishandled and delayed his application and improperly imposed the conditions, thus depriving him of important business opportunities between August 1988 and June 1989. He claimed the defendants were negligent, abused their public offices, interfered with his contractual relations and breached his rights under the Charter. The trial judge found that the defendants had been negligent in failing for some months to send the plaintiff a "form letter" setting out the applicable requirements for registration, and that they misled him with ambiguous and conflicting advice. The court held, however, that nothing done by the defendants impeded the plaintiff from obtaining employment prior to July 1988, when he was hired by Y.Co. and that any negligence of the defendants was protected by the defence available under s.152 of the Act of having acted in good faith. The judge also held that the Superintendent erred in assuming he held a residual jurisdiction over the plaintiff's registration as a salesman, when in fact the jurisdiction lay with the Vancouver Stock Exchange. The judge held that the defendants acted without jurisdiction in imposing the four conditions. In that regard, the judge held that the good faith defence under s.152 was not available, but that a common law good faith defence applied. The judge dismissed the action and the plaintiff appealed. HELD, appeal dismissed. As far as the negligent acts of the defendants in the February-July 1988 "pre-registration" period were concerned, the trial judge did not err in holding that the good faith defences applied. With respect to the post-registration period, the real complaint was with the "low profile" requirement. The trial judge noted that requirement "bluntly prevented the plaintiff from resuming his former style of business". The judge found that the defendants' motives in imposing the conditions were aimed at avoiding a public perception that the plaintiff was back in business while a bankrupt and that the motives were not improper or unreasonable. Thus the judge was correct in finding that the defence of good faith at common law was available.

Stenner v. British Columbia Securities Commission, C.A., Rowles, Donald & Newbury JJ.A., Doc. Vancouver CA018128, October 9, 1996, 30 pp. [CLE No. 97-7491] // Robert E. Breivik and Gavin Crickmore, for appellant; David Clifton Prowse, for respondents. // Principal case authorities: Lymburn v. Mayland, [1932] A.C. 318 (J.C.P.C.); Pask v. McDonald, [1980] 6 W.W.R. 133 (Sask. Dist. Ct.), aff'd [1983] 6 W.W.R. 287 (Sask. C.A.); Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

TAXATION - Real property assessment - Procedure - Appeal court upholding decision of Assessment Appeal Board requiring assessor to make disclosure to taxpayer of sensitive information provided by third parties.

In arriving at the actual value of the respondent taxpayer's large commercial development, the expert appraisers of the respondent and the appellant assessor employed different capitalization rates. Their results translated into a difference of $7.5 million in the actual value. Both experts used the sales of comparable properties to determine the capitalization rate. During its cross-examination of the assessor's expert, the respondent sought information in the assessor's possession relating to the comparable properties. The assessor objected on the ground that the information had been provided in confidence by third parties, was private, and that disclosure would be contrary to s.15 of the Assessment Act. The Assessment Appeal Board ruled that the capitalization rates on the sales of the six comparable properties were relevant and material, and ordered the assessor to provide that information. In its reasons, the board commented that the test was whether disclosure of sensitive financial information provided by third parties was necessary to fairly

dispose of the proceedings, and that denying the respondent access to the information could be tantamount to precluding the respondent from testing the basis of the expert's opinion. The Supreme Court, in response to questions stated with respect to the production of the evidence, gave the opinion that the board did not err in holding that: the information received by the assessor was not confidential or private information; the third parties should not receive notice of the application for production; the information was relevant and material and should be produced; and there was not a confidential relationship between the assessor and third parties providing information. The chambers judge said that decisions as to materiality and relevancy were within the purview of the board alone. The assessor appealed. HELD, appeal dismissed. There was no basis to interfere with the board's decision requiring disclosure when the information was found to be necessary to a fair hearing after a proper enquiry during which the interests of the affected third parties were considered. With respect to the stated questions, the chambers judge over-reached in stating that decisions of relevance and materiality were within the exclusive purview of the board. In exceptional circumstances, not present here, an error in such a decision could require a reviewing court's intervention. The chambers judge should have either sent back for amendment or declined to answer the questions pertaining to whether the information received by the assessor was confidential or private and whether there was a confidential relationship between the assessor and third parties providing information, because those questions did not state any meaningful questions of law. Information provided by third parties is obviously private, but an expectation that the assessor treat such information as confidential as far as possible does not mean it is for the assessor's eyes alone. The question with respect to notice to third parties was neither felicitously worded nor capable of a yes or no answer as there was no holding in the board's reasons that third parties should not receive notice. A policy of notice to third parties was not warranted, but the board had not foreclosed the possibility of its hearing third parties in appropriate cases.

Vancouver Assessor Area No. 09 v. Lord Realty Holdings Ltd., C.A., Southin, Newbury & Huddart JJ.A., Doc. Vancouver CA020021, October 7, 1996, 18 pp. [CLE No. 97-7437] // Guy P. Holeksa, for appellant; Raymond J. Richardson, for respondent. // Principal case authorities: M. (A.) v. Ryan (1994), 98 B.C.L.R. (2d) 1 (C.A.); MacMillan Bloedel Ltd. v. Assessors for Victoria (1981), B.C. Stated Case 157 (S.C.).

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
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