The Assistant

British Columbia Association of Legal Assistants *Summer 1996*

PRESIDENT'S COLUMN

By Jasbir Bains

There have been a few changes at the BCALA since the last issue. Linda Donaldson resigned as president and editor of The Assistant in April. However, she is staying on as a director until her term expires. I would like to take this opportunity on behalf of all the directors to thank Linda for all the work and time she has put into the association over the past one and a half years.

As vice-president of the association, I have taken over the role of president until the next AGM. The editor's position has been filled by Ann Halkett, who was also appointed a director and chair of the Newsletter committee. On behalf of the directors I would like to welcome Ann and thank her for accepting the editor's position. This issue is Ann's first as editor. If you would like to help with the production of the newsletter, please telephone Ann Halkett at 689-7400.

The next directors' meeting is an open one. It is scheduled for July 17, 1996, and will be held at the offices of Guild Yule & Co. If you would like to discuss any particular topic, please let me know by telephoning me at 661-1701 and I will place it on the Agenda.

Volunteers Needed

We never have enough volunteers, so if you have some spare time and would like to help, please telephone one of the directors.

AN EVENING WITH LINDSAY KENNEY

Just a quick note regarding the "Evening with Lindsay Kenney" held at the Terminal City Club on March 26, 1996. The seminar was a great success and the evening was enjoyed by all.

The topics were interesting and well presented by speakers Frank Potts and Timothy Delaney. Unfortunately Richard Lindsay was unable to attend due to illness.

A special thank you goes to Anne Taylor and Lee-Ann Windall, both of Lindsay Kenney, for organizing this event.

INSIDE THIS ISSUE:

UPCOMING EVENTS

June 19/96 The Paisley Snail - a video production which demonstrates the story of the most famous case of all time and its impact on the common law around the world. Plan to attend.
Time: 12:15 p.m. - Richards Buell Sutton - 300 - 1111 Melville St.
This is a brown bag event.

July 17/96 Open directors meeting - all members welcome. Come and see how things are done.
Time: 5:15 p.m. - Guild Yule - 20th Floor - 595 Burrard St.
Refreshments will be served.

Sept. 11/96 Annual General Meeting - will feature the election of directors and a report on what the BCALA has been up.
Time: 5:15 p.m. - Guild Yule - 20th Floor - 595 Burrard St.
Refreshments will be served.

ANNOUNCEMENTS

The 1996 Commonwealth Law Conference and Canadian Bar Association Annual Meeting will be held from August 25 to 29, 1996. Volunteers are needed to help with the children's program which begins Sunday evening and runs all day Monday through Wednesday. If interested contact Jim Vilvang or Karen Matthews at 682-3664.

Also, Lee-Ann Windall, who handles programs for the BCALA is getting married in July. We wish her all the best and are sure she will get a sunny day.

THE ASSISTANT

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Advertising

Rates include four yearly issues and are subject to change:

Full page	$100
Half page	$ 50
Quarter page	$ 25
Business card	$ 15

Contact Ann Halkett for details.

History and Purpose

The B.C. 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 Sept. 20, 1996. The editor reserves the right to reject articles and/or edit them for brevity and grammar.

THE FUTURE OF THE LEGAL ASSISTANT PROFESSION - A SUMMARY OF THE APRIL 17th PRESENTATION

By Jerena Laursen,
BC Legal Assistants Resource Centre

Hard work and commitment paid off! The dinner presentation held at the Century Plaza Hotel on April 17, 1976 was informative, motivating and inspirational.

As I mentioned in my opening remarks that evening, my vision for the legal assistant profession is to achieve greater public interest, recognition and understanding; occupational title protection; professional status; a code of ethics; a certification criteria; respect and recognition by the legal profession; guidelines that are the accepted norm for the legal assistant profession; a unified legal assistant profession with a governing body that promotes, supports, guides, protects and, when necessary, disciplines its members; and, ultimately, a provincial statute that legislates all of the above and more.

As the first speaker of the evening, Susan Stupples, Legal Assistant, spoke on the history of the legal assistant profession in British Columbia, presenting an entertaining narration beginning in 1969, and reflecting back to the ancient beginnings of the English legal executive, which profession commenced late in the last century. Her colourful anecdotes kept the audience chuckling and attentive. Susan provided the definition of a legal assistant as evolved by the Committee for the Certification of Legal Assistants, a committee established by The Law Society of British Columbia, as being:

> one who, under the ultimate direction and supervision of a lawyer performs substantive legal work requiring sufficient knowledge of legal concepts such that absent such assistant the lawyer would perform the work,

and recited a chain of events that have occurred during the past 30 years, including the establishment of two legal assistant associations; the inception, accomplishments and demise of the Committee for the Certification of Legal Assistants; legal economics; and the ongoing concerns of legal assistants in this Province.

Our second speaker, John Leech, Executive Director of the Applied Science Technologists and Technicians of BC ("ASTTBC"), qualified his presence by sharing his experiences as an applied science technologist and his involvement in the process of taking that profession through a certification process and ultimately becoming a key player in the writing and implementation of a provincial statute legislating the conduct of his profession. Since I first approached John to seek his counsel on achieving legislation, John has investigated our profession through several sources in order to understand where we are and where we want to be. In the end, he was able to draw parallels between the experiences of his profession and ours. Sharing his favourite Ghandi quotation:

> "If you want to be somewhere, be there.",

he offered options by which we can achieve our goals and objectives, and pointed out that if we don't own it; if we don't believe in it; if we don't share it with a passion, it won't happen. He also assured us that we can find support for our decisions in the Law Society, the Attorney-General's office, our professional Associations, Capilano College, Vancouver Community College, lawyers and clients, and the public in general; and that whatever we choose, we can accomplish economically. He also reminded us that while some legal assistants may feel that their senior status and qualification may preclude their need for certification, the younger members of our profession will look to them for leadership

and guidance moving forward and ensuring that certification is indeed implemented.

While several options are open for consideration, my interpretation of the most effective direction is:

(a) establish a framework within which all legal assistants can be assembled and registered - John suggested that because the BC Association of Legal Assistants ("BCALA") is already a registered society, we can save ourselves time, money and effort if we agree to use that Association as the framework;

(b) seek occupational title protection under Part 9 of the British Columbia Society Act - BCALA is in a position to act on this immediately;

(c) create and implement a certification criteria - again, much of this work has been done, and we can save by striking a committee to finalize that work and amend the bylaws of BCALA to include a certification provision;

(d) that by including a certification provision in the bylaws of BCALA (or any other unified legal assistant association), all members will be deemed to be **legal assistants** under occupational title protection and may be further distinguished as **certified** legal assistants by qualifying under the certification criteria;

(e) that once the ball is rolling and membership supports a desire to do so, work towards professional recognition through legislation can be commenced.

"IF YOU WANT TO BE SOMEWHERE, BE THERE."

Regardless of our ultimate decisions, we will want to remember that seeking professional status can be threatening to already established professions (ie. lawyers and notaries) and therefore, it is important to work harmoniously with such professions to ensure confidence and trust in our decisions, our actions and our accomplishments. We will want to determine what role, if any, the Law Society sees itself playing during the course of this evolution. Not only will we require strong leadership to fulfil our goals, we will also need strong support and commitment from the remainder of the profession. We must determine what goals we want to achieve, and how quickly we want to achieve them.

As John noted during his speech, legislation for the legal assistant profession is a goal I would like to see achieved. Whether the rest of our profession supports my thoughts remains to be seen. What I do see, however, is that legal assistants are talking again following a year of quiet introspection, and this time we are talking about taking care of ourselves.

BCALA has struck a Certification Committee to organize and implement the necessary change to its bylaw and to address and effect occupational title protection. The Canadian Association of Legal Assistants ("CALA") has struck a task force to examine its role as a national association and its relationship with provincial associations. Next month, the BC members of CALA will meet to discuss, among other things, the respective roles of CALA and BCALA. The Resource Centre is stretching out into the Province connecting with legal assistants working outside the Greater Vancouver Area; broadening the unified network of BC legal assistants and establishing liaisons in

communities outside the Greater Vancouver Area who will deliver messages about our progress to legal assistants in those communities.

Hearing about our history and our accomplishments during the past 30 years re-iterates, for me, the need to carry on. We have a vested interest in the continued future of our profession. With that in mind, I propose that, in the not-too-distant future, we hold a general meeting of legal assistants to lay down a plan of action that we all want to follow.

FUTURE SEMINARS

By Lee-Ann Windall, Programs

It is certainly hoped by the directors that we will be able to hold more seminars of the type held on April 17, throughout the year. We need your suggestions and we ask members to contact directors regarding topics they would find interesting. As well, any assistance by members in holding such events would be greatly appreciated.

PACIFIC PRESS CLASSIFIED SECTION

By Jerena Laursen,
BC Legal Assistants Resource Centre

Have you seen it lately? If not, check it out: the Classified Section that is, of both the Vancouver Sun and The Province.

As you may recall, last year I contacted Pacific Press requesting that a designated "legal" column be included in the classified section of each of the Vancouver Sun and The Province. Last fall, I reported to you that the entire classified section was being revamped and that a "legal" column was being considered.

I am pleased to inform you now that the revamping was completed early this Spring and the legal profession now has a designated column for the advertisement of all legal positions, including lawyers, legal assistants, legal secretaries, and other legal support staff.

Initially, the papers experienced some confusion in the placement of advertisements (and legal notices!), but as each week has passed presentation and placement have shown marked improvement. While it may take some getting used to as we retrain our thought process, the ultimate reward will be a quick and efficient method for legal job shopping through the classifieds.

As a legal assistant, I am delighted with the changes. And, enquiries I have made of a few personnel placement agencies confirm that while there was some confusion in the beginning, the change is positive and illustrates a commitment by the papers to draw focused readers to serious advertisements.

JOIN BCALA
Continue your education and professional development.

WRONGFUL DISMISSAL: REMINDERS AND UPDATES

By Karen Green, Lawyer with Lidstone Young Anderson

Many of the mistakes made by employers upon the termination of an employee are the result of common misconceptions about the obligations of an employer upon the termination of an employee. The following is a list of ten such misconceptions and a few short comments with respect to each of them:

1. ***Employees are always entitled to severance pay upon dismissal.***

No. If the employer has just cause to terminate the employment of an employee, the termination may be done without notice and without pay in lieu of notice. If the dismissal is not for just cause, employees are entitled to **reasonable notice** upon termination of their employment (this notice should take the form of a clear indication to the employee, preferably in writing, that his or her employment will end on a specified date). Where notice is not given, the employer must pay the employee pay in lieu of notice, which would include the salary, benefits, outstanding vacation pay and other remuneration to which the employee would have been entitled if he or she had continued working during the notice period.

2. ***The Employment Standards Act sets out an employer's obligation to pay severance pay.***

True in part. The Act sets out the **minimum** standards with respect to notice. While lower level, unskilled jobs are generally covered by these minimum standards, the severance pay to which long term or senior employees are entitled is more often based on the length of the period of reasonable notice for which the severance pay is substituted. The period of reasonable notice is determined by the following factors:

- length of service
- age of the employee
- availability of comparable employment
- whether the employee was convinced to leave another position for the employment
- type of position

On this basis, an employer can expect a notice period of about 1 month for every year of employment to a maximum of 24 months, with most notice periods ranging from 6 to 18 months. But an employee is under a duty to minimize the loss suffered as a result of being denied reasonable notice by looking for comparable employment and an employer can sometimes reduce the amount of the severance payout under an agreement which provides that the payout will be reduced if employment is found, or through negotiation.

3. ***Once an employee has received severance pay, the employer has no further obligations to the employee.***

Not always. An employee who has received severance pay (properly taxed) is still subject to a "notice period", for which pay in lieu of wages or salary may have been paid, but for which certain other obligations may not have been considered. For example, most insurers terminate an employee's eligibility for insurance coverage as of the date of termination and an employee may be entitled to compensation from his or her employer for loss he or she suffers as a result of being denied insurance coverage during the notice period. The principle upon which this is based is that: the employee must be put in the position he or she would have been in had he or she remained employed during the period of notice. It is for this reason that many employers prefer giving working notice to paying an employee severance pay.

Employees who have been dismissed may also lay claims for infliction of mental distress or defamatory libel or slander. However, these

claims are not for breach of the employment contract and must be supported by an act other than the employer's failure to give reasonable notice of termination.

Certain officers of local governments and school boards may also be entitled to a fair hearing before their dismissal is final. Such employees have the right to try to change the minds of the members of the council or board, and the failure of the council or board to provide such a hearing may result in the dismissal resolution being overturned by a court and the employee being reinstated.

An employer, therefore, should seek to obtain a release from the employee upon his or her dismissal, specifying that the employee releases the employer from claims that the employee might otherwise have, including claims for disability compensation or a fair hearing.

4. *The same rules apply to union employees.*

Probably not. It is rare for a collective agreement to provide for notice of termination other than through the layoff and recall provisions. This does not mean that agreements respecting termination cannot be made, but they must be made with the concurrence of the union.

5. *If an employee is partly to blame, the employer may reduce the amount of severance pay.*

No. British Columbia employment law does not support the concept of moderated damages for "near cause". Just cause is like pregnancy, it exists or it does not.

6. *If an employee is unable to do his or her job due to illness or disability, the employer can terminate his or her employment for non-performance.*

Not necessarily. Before an employer can terminate the position of an employee due to illness or disability, the employer is under a duty to accommodate the illness or disability to the point of undue hardship for the employer. This obligation arises under the Human Rights Act, and the employee has the right to lay a claim before the Human Rights Commission or grievance under a collective agreement (or both) if the employer fails to reasonably accommodate his or her illness or disability.

7. *Employers can make changes to employees' positions as part of their general right to manage.*

Not always. If a unilateral change by the employer results in a change to an employee's job that, viewed objectively, amounts to a demotion, the employee may accept the change as a repudiation of his or her employment contract, treat the employment contract as at an end and sue for damages for constructive dismissal.

8. *Since an employer who gives working notice can be stuck with a badly performing employee, it is better to pay severance pay.*

Not necessarily. Employees under working notice still owe their employer the duties of loyalty and service for which they were hired in the first place. They are still subject to the employer's rules and regulations, and can be disciplined for improper conduct or discharged for just cause. This, together with the employer's avoidance of the risks of pay in lieu of notice (noted above), may more than offset the risk of post notice poor performance.

9. *Written employment contracts solve all.*

No. Because of the nature of the employment relationship, and the number of changes that can take place during a period of employment, a written contract can be overtaken by a common law (unwritten) contract, which can result in longer notice periods, greater damages, or other

uncertain obligations to the employee.

10. *Incompetence is just cause for dismissal.*

Yes, but ... . An employer must enter into a well documented system designed to bring an employee's performance up to standard before the employer may dismiss that employee for just cause. The longer an employee is with an employer, the longer the employer is obligated to allow the employee to reach the standard. As well, the employee must be warned that failure to meet the standard will result in summary dismissal.

DISORDER IN THE COURT: A COLLECTION OF 'TRANSCRIPTS'

By Richard Lederer - taken from the Internet

Most language is spoken language, and most words, once they are uttered, vanish forever into the air. But such is not the case with language spoken during courtroom trials, for there exists an army of courtroom reporters whose job it is to take down and preserve every statement made during the proceedings.

Mary Louise Gilman, the venerable editor of the National Shorthand Report has collected many of the more hilarious courtroom bloopers in two books - Humor in the Court (1977) and More Humor in the Court, published a few months ago. From Mrs. Gilman's two volumes, here are some of my favourite transcripts, all recorded by America's keepers of the word:

Q. What is your bother-in-law's name?
A. Borofkin.
Q. What's his first name?
A. I can't remember.
Q. He's been your brother-in-law for years, and you can't remember his first name?
A. No. I tell you I'm too excited. (Rising from the witness chair and pointing to Mr. Borofkin.) Nathan, for God's sake, tell them your first name!

Q. Did you ever stay all night with this man in New York?
A. I refuse to answer that question.
Q. Did you ever stay all night with this man in Chicago?
A. I refuse to answer that question.
Q. Did you ever stay all night with this man in Miami?
A. No.

Q. Now, Mrs. Johnson, how was your first marriage terminated?
A. By death.
Q. And by whose death was it terminated?

Q. Doctor, did you say he was shot in the woods?
A. No, I said he was shot in the lumbar region.

Q. What is your name?
A. Ernestine McDowell.
Q. And what is your marital status?
A. Fair.

Q. Are you married?
A. No, I'm divorced.
Q. And what did your husband do before you divorced him?
A. A lot of things I didn't know about.

Q. And who is this person you are speaking of?
A. My ex-widow said it.

Q. How did you happen to go to Dr. Cherney?
A. Well, a gal down the road had had several

of her children by Dr. Cherney, and said he was really good.

Q. Do you know how far pregnant you are right now?
A. I will be three months November 8th.
Q. Apparently, then, the date of conception was August 8th?
A. Yes.
Q. What were you and your husband doing at that time?

Q. Mrs. Smith, do you believe that you are emotionally unstable?
A. I should be.
Q. How many times have you committed suicide?
A. Four times.

Q. Doctor, how many autopsies have you performed on dead people?
A. All my autopsies have been performed on dead people.

Q. Were you acquainted with the deceased?
A. Yes, sir.
Q. Before or after he died?

Q. Officer, what led you to believe the defendant was under the influence?
A. Because he was argumentary and he couldn't pronunciate his words.

Q. What happened then?
A. He told me, he says, "I have to kill you because you can identify me".
Q. Did he kill you?
A. No.

Q. Mrs. Jones, is your appearance this morning pursuant to a deposition notice which I sent to your attorney?
A. No. This is how I dress when I go to work.

Q. Did he pick the dog up by the ears?
A. No.
Q. What was he doing with the dog's ears?
A. Picking them up in the air.
Q. Where was the dog at this time?
A. Attached to the ears.

PAGINATION WITHOUT A RUBBER STAMP

By Giovanni Polisena, ASAP Printing Centre

Any document selected to form part of a legal file needs to be identified. Numbering individual pages has been the most common solution, but numbering is labour intensive.

Xerox Corporation recently launched an accessory that allows documents to be numbered while being photocopied - the Xerox Litigator.

The Litigator is able to paginate on letter and legal size paper. It prints a number on the bottom right hand side of each page, using up to nine-digit numbers and a 40 character string. It also allows you to add three leading and trailing characters to the page number, thereby giving you an alphanumeric sequence. You can program the page sequence to ascending, descending or fixed. You may also choose to begin the pagination count from any number and you can paginate either on one or both sides of the sheet of paper. The page number comes in 12 point print size and is reproduced at 300 dots per inch.

In order to allocate some space for the pagination, the image of the documents must be reduced to 95%. However, most of you will agree that the ease of numbering more than makes up for the 5% decrease in image size.

Our Xerox Litigator is scheduled for test runs by September when the courts are back in session. If you would like to find out more, please call Dom C. Bautista or myself.

LETTER OF THE LAW

By Derek Brindle and Michael Hewitt, Lawyers with Singleton Urquhart Scott

A recent Supreme Court of Canada decision has significant implications for both the investment community and securities regulators. It not only underscores practical difficulties confronting those in a special relationship with a reporting issuer; but also represents a high-water mark in judicial deference towards the specialized tribunals that govern self-regulating industries.

In Pezim v. British Columbia (Superintendent of Brokers), the directors of the corporate parent of a resource company erected what the Court called a "Chinese Wall" between themselves and the manager of the resource company. Because of this communications barrier, the parent company was not informed of favourable drill hole reports from the resource company. At the same time, both companies undertook options transactions, and the parent company's managing director certified that there were no undisclosed material changes in the affairs of the resource company. Shortly after the options transactions, the resource company issued news releases to the public disclosing the favourable drill hole reports.

The managing directors were suspended by the Security Commission, but the B.C. Court of Appeal reversed the suspensions. In turn, the Supreme Court of Canada allowed the Superintendent of Brokers' appeal of the lower court decision. The Supreme Court argued that although the "Chinese Wall" was meant to protect the managing directors from insider trading offences, it did not relieve them from a duty to inquire about and make timely disclosure of the drill hole results.

The favourable drill hole results qualified as "a fact that significantly affects, or could be reasonably expected to significantly affect, the market value or value of (the issuer's) securities...". According to the Supreme Court, the managing directors had failed to disclose "material changes" in the business and assets of the resource company, as required by section 67 of the Securities Act. The Court therefore upheld the suspensions of the managing directors.

Just as significantly, the Court said that it would afford a large measure of "curial deference" to decisions made by the Security Commission. In other words, the Commission's decisions–short of errors in law or "vexatious" orders–would not be overturned. The Court agreed that the Commission had jurisdiction to decide questions beyond whether the *Act* had been breached. They also had the power to make rulings in the public interest relating to the conduct of market participants and their impact on the efficiency and fairness of the market–even when there were no relevant published policies.

The Supreme Court's hands-off approach to the Commission's decision is part of a trend: an increasing deference on the part of the Courts towards the decisions of specialized tribunals that regulate specific professions and industrial bodies. Similarly, disciplinary tribunals–and other specialized decision-making tribunals that are part of a self-regulating profession's self-governance scheme–can, as a general rule, expect deference from the Courts. Increasingly, it's the specialized tribunals themselves that are becoming the "court of last resort."

GOT SOMETHING TO SAY?
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LAW PRIMER

Case Digests

Ed Note: The following Case Notes are reprinted with the permission of Continuing Legal Education. To order full text judgments telephone (604) 535-1197 or toll free at (800) 927-3377.

ADMINISTRATIVE LAW - Natural justice - Bias - Respondent association's publication in professional magazine of its finding of negligence and unprofessional conduct against petitioner not giving rise to reasonable apprehension of bias of rehearing committee.

An inquiry committee of the respondent professional association found the petitioner engineer guilty on a charge of "incompetence, negligence and unprofessional conduct" and on a charge of failing to provide the investigating committee with certain records. The respondent published its findings and the fact of the petitioner's resulting suspension in its professional magazine. The publication occurred at about the time the respondent would have learned that the petitioner had commenced an appeal by judicial review. The application was dismissed but allowed on appeal. The respondent published the result of the appeal. It then proceeded with a fresh notice of inquiry, on the charge only of professional misconduct, before a new panel of the discipline committee. The petitioner made a preliminary objection on the basis of reasonable apprehension of bias. The panel dismissed the objection and the petitioner again sought judicial review. The application was dismissed and the petitioner appealed. HELD, appeal dismissed. Many adjudicative tribunals validly rehear matters that have been heard by other members of the same tribunal, when it must be assumed that everyone concerned is aware of the previous findings. Those appointed to serve on the discipline committee should be credited with enough intelligence to assume that they do not adopt everything they read, even in the profession's magazine, that they can distinguish between fact and commentary, that they will appreciate the gravity of the task and will approach it with an open mind. Even if a reasonable apprehension of bias were shown to exist, the appeal would fail on the ground of the "doctrine of necessity" or the principle that where the statute itself prescribes the state of affairs that might give rise to an apprehension of bias, the tribunal cannot be said to be acting outside its jurisdiction in following the dictates of the statute. Here, it was possible to constitute a new tribunal whose members did not sit on the first one, so that the "necessity" of risking bias did not arise.

Finch v. Association of Professional Engineers & Geoscientists, C.A., Goldie, Prowse & Newbury JJ.A., Doc. Vancouver CA020528, April 10, 1996, 26 pp. [CLE No. 96-6079] // Jack M. Giles, Q.C. and David A. Goult, for appellant; Kerry A. Short, for respondent. // Principal case authorities: Association des Officiers de Direction du Service de Police v. Commission de Police (1994), 119 D.L.R. (4th) 484 (Que. C.A.); Committee for Justice and Liberty v. National Energy Board (1976), 68 D.L.R. (3d) 716 (S.C.C.); Duncan v. Law Society of Alberta (1991), 80 D.L.R. (4th) 702 (Alta. C.A.); E.A. Manning Ltd. v. Ontario (Securities Commission) (1995), 125 D.L.R. (4th) 305 (Ont. C.A.); Newfoundland Telephone Co. Ltd. v. Board of Commissioners of Public Utilities (1992), 4 Admin. L.R. (2d)

121 (S.C.C.) - applied; Ringrose v. College of Physicians & Surgeons of Alberta, [1977] 1 S.C.R. 814; R. v. Council of the College of Physicians & Surgeons of British Columbia (1970), 15 D.L.R. (3d) 105 (B.C.S.C.) - applied.

CONTEMPT OF COURT - Proceedings for contempt - Court having jurisdiction to find civil contempt where evidence falling short of establishing criminal contempt.

The plaintiff obtained an injunction restraining interference with its logging operations at certain locations. The defendants violated the injunction and the plaintiff brought contempt proceedings. The attorney general assumed conduct of the proceedings. A judge found 23 persons in contempt of court and later considered the penalty. In doing so, the court held that it was first necessary to determine whether the contempt was civil or criminal in each individual case. The court concluded that in each case where there was doubt that the proper characterization was criminal, the contempt should be characterized as civil. Those found in civil contempt appealed, saying that once the proceedings became criminal in nature, the only alternatives before the court were to find them guilty of criminal contempt or to acquit them. HELD, appeal dismissed. Where, as here, civil contempt proceedings are commenced and the attorney general intervenes due to an escalation of disobedience of a court order, at which time the contempt would allegedly reach the plateau of criminal as opposed to civil, it is open to the court to make a finding of civil contempt where it is satisfied that the evidence did not establish beyond a reasonable doubt that the contempt was criminal in nature.

MacMillan Bloedel Ltd. v. British Columbia (Attorney General), C.A., Hinds, Hollinrake & Rowles JJ.A., Doc. Vancouver CA013425, April 9, 1996, 17 pp. [CLE No. 96-6064] // Stuart A. Rush, Q.C. and Stan Guenther, for appellants; Deborah K. Lovett, for Attorney General of B.C. // Case authorities: Everywoman's Health Centre Society v. Bridges, C.A., Doc. Vancouver C886265, February 23, 1989; U.N.A. v. Alberta (Attorney General) (1992), 71 C.C.C. (3d) 225 (S.C.C.).

CONFLICT OF LAWS - Forum conveniens - Court dismissing "anti-suit" injunction to enjoin proceedings in Korean courts.

The parties were both Korean citizens who emigrated to Canada. The plaintiff and the defendant's wife became involved in an affair and the wife moved in with the plaintiff in Canada. The defendant's wife commenced divorce proceedings in British Columbia. The defendant later commenced divorce proceedings in Korea and also initiated criminal proceedings in Korea against his wife and the plaintiff, based on the adultery. The defendant also initiated a civil action against the plaintiff in Korea. The plaintiff attorned to that action and judgment was given against him. The plaintiff commenced an appeal from that judgment and he also brought an action in British Columbia in which he applied for an "anti-suit" injunction to enjoin both the civil and criminal proceedings in Korea. HELD, application dismissed. The Supreme Court of Canada has held that while a restraining order operates in personam on the plaintiff in the foreign suit and not on the foreign court itself, it has the latter effect and therefore raises serious issues of comity. The applicant should thus first seek relief in the foreign court. Where the foreign court assumes jurisdiction on a basis that generally conforms to our rule of private international law relating to the forum non conveniens, that decision will be respected and a Canadian court will not purport to make the decision for the foreign court. Here, the Korean

court had sufficient basis upon which to assume and assert jurisdiction. The tests laid down by the Supreme Court of Canada cannot be taken as being intended to preclude a citizen of a country from being subject to the laws of that country even if that person should emigrate to Canada as a landed immigrant. While the British Columbia courts might not enforce the Korean judgment because of the nature of the tort alleged, that was no reason for precluding the plaintiff, who had business in Korea and who was still a citizen of that country, from being subject to its laws and the jurisdiction of its courts.

Yoo v. Choy, S.C., Davies J., Doc. Vancouver C955743, April 11, 1996, 14 pp. [CLE No. 96-6083] // George F.T. Gregory, for plaintiff; Marie-Helene G. Le Febvre, for defendant. // Case authority: Amchem Products Inc. v. British Columbia (1993), 77 B.C.L.R. (2d) 62 (S.C.C.) - applied.

PRACTICE - Appeals - Evidence - Appeal court refusing to admit videotape taken subsequent to judgment in personal injury action.

Following judgment given in April 1995 in a personal injury action, the defendants conducted video surveillance of the plaintiff in order to learn how serious her injuries were at the time. The defendants applied to introduce the videotape as new evidence on their appeal. HELD, application dismissed. The videotape was taken at the wrong time. Surely the appropriate time would have been either back in November 1993 when the defendants had the opportunity to hear the plaintiff's testimony, or during an adjournment in the trial between November 1993 and May 1994. The application simply did not meet the tests that have been set forth in law.

Brownlee v. Danyluk, C.A., Hinkson, Goldie & Williams JJ.A., Doc. Vancouver CA020281, April 3, 1996 (oral), 4 pp. [CLE No. 96-6308] // See also [1995] D.P.I.L. 27. // J.D. Baker and R.W. Collings, for appellant; Christopher R. Temple, for respondent.

PRACTICE - Class actions - Court certifying action against silicone breast implant manufacturers under Class Proceedings Act.

The plaintiff applied for an order under s.2 of the Class Proceedings Act certifying a class action against certain manufacturers of breast implants and related companies. Counsel for the plaintiff indicated that nearly 1,000 women in British Columbia and outside the province had contacted them to be included in the class. The central question on the application was whether there were common issues amenable to class action proceedings. HELD, application allowed. The two main elements of the plaintiff's case against breast implants, and the basis on which she alleged they were unfit, were their rupture or failure rate and the alleged link between silicone and connective tissue disease. Those were triable issues. The ultimate determination of the issue of causation for any particular member of the class would have to consider factors specific to that individual. As well, the case involved changes in models and variations among the different manufacturers in addition to varied medical conditions allegedly caused by the implants. Those varied questions and the individual issues of causation could not realistically be addressed in a single lawsuit. It was not appropriate that both silicone and saline implants be dealt with in the action. The challenge of addressing the fitness of silicone gel implants as a generic issue would be sufficiently formidable without complicating it further by adding saline implants. The question of whether silicone gel breast implants were

Continued on page 17.

reasonably fit for their intended purpose raised a threshold issue common to all intended members of the class. If the plaintiff succeeded on that issue, then it would move the class a long way to a finding of liability. In practical terms, the plaintiff would be required to establish unfitness against the model of implant with the strongest claim to fitness. The pleadings disclosed a cause of action and there was an identifiable class of two or more persons as required by s.4(1) of the Act. The plaintiff's claims in conspiracy, fraud, misrepresentation and joint venture against the defendants collectively were vague and devoid of the specificity required for those claims to stand. Any claims in contract were not appropriate to class action determination because they could apply only to a limited number of individuals in specific circumstances. Finally, the proposed plaintiff could fairly and adequately represent the interests of the class. She did not have experience with the implants of all the manufacturers and it would be put over for further submissions to determine whether the action should be divided into subclasses for each manufacturer, with separate representatives for each subclass. On the existing pleadings, there was no basis for including in the certification order the plaintiff's claims against the defendant suppliers of the raw materials used in the manufacture of implants.

Harrington v. Dow Corning Corp., S.C., K.C. MacKenzie J., Doc. Vancouver C954330, April 11, 1996, 35 pp. [CLE No. 96-6093] // Deborah A. Acheson, Q.C., David A. Klein and K. Whitley, for plaintiff; Oleh W. Ilnyckyj and Mari A. Worfolk, for defendants Baxter Healthcare Corp. and Baxter International Inc.; Bruce E. McLeod, for defendants Inamed Corp. & McGhan Medical Corp.; Marvin R.V. Storrow and David T. Neave, for defendant Union Carbide Corp.; William S. Berardino, Q.C. and Allan P. Seckel, for defendants Bristol-Myers Squibb Co., Medical Engineering Corp. and The Cooper Companies Inc.; J. Kenneth McEwan and Stacey Silber, for defendant Minnesota Mining & Manufacturing Co.; Derek J. Mullan, Q.C. and D. Weinrath, for Dow-Corning defendants; Robert G. Ward and Jonathan McLean, for defendant Dow Chemical Co.; R. Cooper and L Martz, for defendants McGhan Nusil Corp. // Principal case authorities considered: American Medical Systems Inc., Re, U.S. Ct. App., 6th Cir. No. 95-3303, February 15, 1996; Bendall v. McGhan Medical Corp. (1993), 14 O.R. (3d) 374 (Ont. Gen. Div.); Dante v. Dow Corning, 143 F.R.D. 136 (S.D. Ohio 1992); Dow Corning Corp., Re, 187 B.R. 919 (E.D. Mich. 1995); Fibreboard Corp., Re, 893 F. 2d 706 (5th Cir. 1990); Hollis v. Birch, [1996] 2 W.W.R. 77; Silicone Gel Breast Implants Products Liability Litigation, Re, 793 F.Supp. 1098 (1992).

PRACTICE - Evidence - Tape recordings - Court in matrimonial litigation admitting transcripts of recorded telephone conversations.

The parties were engaged in litigation over child custody, access and maintenance, and spousal maintenance. The court was asked to rule on the admissibility of transcripts of taped telephone conversations between the plaintiff father and his young daughter, and phone conversations between the parties themselves. The plaintiff objected on the basis that the recordings violated his rights under the Charter. HELD, transcripts admitted. The Charter did not apply. This was private litigation. There was no element of governmental action which infringed a guaranteed right or freedom under the Charter. With respect to the conversations between the parties, the defendant was the person intended by the plaintiff to receive the calls and he thereby consented. The transcripts of those calls were admissible. The other transcripts were admissible as well. Although the parties gave conflicting evidence on the

point, it was probable that the plaintiff had been alerted to the fact that his calls were being recorded if he did not already know it. Admitting that evidence would not operate unfairly. The weight to be given to the evidence and its relevance remained in issue.

Bubnick v. Hansen, S.C., Coultas J., Doc. Vancouver F940233, December 18, 1995 (oral), 7 pp. [CLE No. 96-6131] // Paul Daltrop, for plaintiff; Melissa R. Boshier, for defendant. // Case authorities: Sedden v. Sedden, S.C., Doc. Chilliwack D027618, February 22, 1994; R.W.D.S.U., Local 580 v. Dolphin Delivery Ltd. (1986), 33 D.L.R. (4th) 174 (S.C.C.) - applied.

PRACTICE - Transfer to Provincial Court - Plaintiff settling personal injury claim - Court permitting transfer of balance of claim, for punitive and exemplary damages, to Provincial Court.

The plaintiff sued for damages arising out of a motor vehicle accident, including damages for personal injuries and punitive and exemplary damages. The plaintiff settled all of her claims falling under the Insurance (Motor Vehicle) Act for $61,000. She applied under s.13.1 of the Supreme Court Act for an order transferring the remaining claims to the Provincial Court, saying she was prepared to limit her claim for punitive and exemplary damages to $10,000. The defendant opposed the application, saying that the plaintiff was attempting to split the case and avoid an obligation to pay costs at the Supreme Court level if unsuccessful. HELD, application allowed. The tactical advantage that one party may hold over another by seeking to hold the other party in terror of greater costs does not supersede the interest of hearing the matter in a just, speedy and expeditious manner on the merits.

Samain v. Roman, S.C., Master Powers, Doc. Kamloops 22243, March 22, 1996, 8 pp. [CLE No. 96-6030] // John M. Drayton, for plaintiff; Leigh A. Pedersen, for defendant.

FAMILY LAW - Matrimonial home - Sale - Appeal court disapproving practice of "leapfrogging" usual order for sale by way of approval of sale to specific purchaser without market exposure.

The plaintiff wife obtained a master's order approving a sale of the matrimonial home. The order was upheld by a Supreme Court judge. On the defendant husband's appeal, the court observed that no order for sale had ever been made and thus concluded that the order approving the sale was in error. Nevertheless, the court held that the property should be sold and so ordered. The wife applied for special or increased costs of the proceedings in the Supreme Court and in the appeal court. HELD, matter of costs of Supreme Court remitted to that court. The husband did not succeed on a "technical point" as alleged by the wife. There was an important principle involved, i.e., that the court, when exercising its powers under R.43, should not only ensure that an order approving a sale contains all necessary and proper terms, but also should ensure that an order for sale be in place so as to ensure exposure to the market. To leap the step of the ordinary order for sale and immediately approve a sale to a particular purchaser is a process fraught with opportunities for abuse. Had the husband taken the point, he would have been entitled to the costs of the appeal. There would be no costs of the appeal. An important factor in the disposition of costs in the Supreme Court would be the ultimate finding of entitlement. The matter of costs would be remitted to the Supreme Court.

Fright v. Fright, C.A., Southin & Prowse JJ.A., Doc. Vancouver CA019519, March 27, 1996, 13

pp. [CLE No. 96-5968] // J. Grant Hardwick, for appellant; Rene E. Brewer, for respondent.

PRACTICE - Adjournments - Terms - Advance payment - Court having no jurisdiction to order I.C.B.C. to make advance payment where personal injury action adjourned by consent.

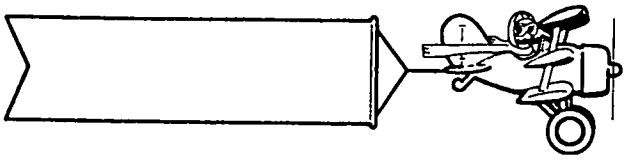
The plaintiff was injured in a motor vehicle accident. He sued for damages. The trial was adjourned by consent at his request to permit him to undergo a CT scan which might resolve some of the issues as to the seriousness and nature of his injuries. The defendant's insurer, I.C.B.C., had made advance payments of $3,500 in total in addition to Pt.7 benefits of $3,000, but refused to make additional advance payments. The plaintiff applied under R.18A for an interim payment order. HELD, application dismissed. There have been a number of cases in recent years in which advance payments have been ordered as a term of granting an adjournment of a trial. The power to make such an order arises under R.1(12) which allows the court to impose terms and conditions when making an order under the rules. Here, there was nothing in the nature of an order for an adjournment to which, under R.1(12), a term might be attached. There was no other authority which would permit the court to make an order for advance payments. As well, even if the case fell within R.1(12), it would be impossible to fix an amount which would meet the requirement that the court be completely satisfied that there is no possibility that the assessment of damages will be less than the amount of the advance payments.

Thambaithurai v. Insurance Corp. of British Columbia, S.C., Esson C.J.S.C., Doc. Vancouver C957451, April 2, 1996, 6 pp. [CLE No. 96-6019] // Mark R. Jette, for plaintiff; Patricia J. Armstrong, for defendant.

EMPLOYMENT - Severance pay // BANKRUPTCY - Administration of estate - Bankruptcy of employer - Employees entitled to severance pay where employer making voluntary assignment in bankruptcy.

The trustee of a partnership of two companies informed the employees of the business that the partnership had made an assignment in bankruptcy, with the result that their employment was terminated. The Director of Employment Standards claimed severance pay on the employees' behalf. The trustee disallowed the claims on the ground that the termination occurred as a result of the bankruptcy, not as the result of termination by the employer. The director appealed. HELD, appeal allowed. The courts have recognized that when a bankruptcy is triggered by a creditor, the termination of the employment relationship is not a termination by the employer. However, a voluntary assignment into bankruptcy is an action which the employer controls and chooses. So while it may be that the technical cause of termination is an operation of law, it is the employer's choice to trigger such operation of law, so it is really the employer who terminates the employment. The employees are thus entitled to severance pay under s.42 of the Employment Standards Act and their claims are provable under s.121 of the Bankruptcy & Insolvency Act.

Director of Employment Standards v. Eland Distributors Ltd. (Trustee of), S.C., Sinclair Prowse J., Doc. Vancouver B155790, B155792, March 15, 1996, 10 pp. [CLE No. 96-5865] // Keith L. Johnston, for appellant; Robert A. Millar, for respondent.



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 us permission to reprint the "Questions & Answers" as selected by Ann Halkett, from its January, 1996 "Registrar's 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.

Bankruptcy and Insolvency Act s.49(3)

Q: Is there a local venue rule in cases of bankruptcy?

A: Yes. Under s.49(3) of the Bankruptcy and Insolvency Act, the assignment into bankruptcy is made "to the official receiver in the locality of the debtor". "Locality of a debtor" is defined by s.2 to mean the principal place

(a) where the debtor has carried on business during the year immediately preceding his bankruptcy;

(b) where the debtor has resided during the year immediately preceding his bankruptcy, or

(c) in cases not coming within (a) or (b) where the greater portion of the debtor's property is situated.

This point was canvassed briefly by the Honourable Mr. Justice Tysoe in oral reasons for judgment in Bankruptcy of South Thompson Guest Ranch Ltd. (Unreported, Vancouver Registry 159235 VA95).

A court has power under s.187(7) to transfer any proceedings under the Act to another bankruptcy district or division on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division.

Court Order Enforcement Act s.4(7)

Q: How long is a garnishing order issued against wages s.4(7) pursuant to the Court Order Enforcement Act in effect? A frequent problem arises when companies continue to send in payments on one garnishing order?

A. The garnishing order is in effect for "wages that would in the ordinary course of employment becoming owing, payable or due within 7 days after the date on which an affidavit had been sworn...".

Registry staff should simply accept payment in without reference to the date of the affidavit or payment of wages. This is an example of where the registry is essentially a simple repository. It would be inappropriate for the registry to, in effect, take the initiative in ruling on a procedural matter by questioning whether to accept a payment in.

Court Order Interest Act

Q: **Could you please advise as to how the prejudgment and post judgment interest rates are ascertained?**

A: Both rates are based on the prime lending rate of the banker to the government. Twice a year, on 1 January and 1 July, the Registrar is advised of the prime lending rate of CIBC, the banker to the government, by the Ministry of Finance and Corporate Relations. A schedule showing the various rates is then prepared and a copy distributed to each Supreme Court Registry.

Court Order Interest Act s.1 and 7

Q: **Can post judgment interest be calculated on a claim which includes prejudgment interest?**

A: Yes. Post judgment interest is calculated on the total amount awarded at the time of judgment, which likely includes both interest and costs.

Employment Standards Act, s.91

Q: **What is a "Determination" filed by the Ministry of Skills Training and Labour?**

A: This replaces a certificate pursuant to s.144 of the Employment Standards Act. A new Act was proclaimed 1 November 1995 which now allows for "Determination" pursuant to s.91 of the Employment Standards Act. These are enforceable in the same manner as a judgment of the Supreme Court. You may still see the odd certificate because there is a transition section from the old Act to the new Act.

Family Relations Act s.36.1

Q: **What is the effect of restraining orders registered with the the Protection Order Registry which are later superseded by a final order of divorce?**

A: We asked Mr. Justice Warren, the Chairman of the Family Law Committee, whether the initial restraining order will be considered interim in light of the final divorce order. It was the opinion of Warren, J. that the restraining order is not rescinded by implication; unless, of course, it is rescinded specifically in the final order of divorce.

Legal Profession Act s. 71.1 and Rule 57 (32.1)

Q: **Must a Registrar sign a certificate under the Legal Profession Act for a bill that has been consented to by both parties?**

A: Where no proceedings have been commenced, ie: by an appointment pursuant to the Legal Profession Act, a Registrar has no authority to sign a certificate. If a file is opened by an appointment and the matter then settles by consent, however, a Registrar must issue the certificate. This situation should be distinguished from the one where an appointment is taken out for a review and the client fails to appear. The solicitor must then satisfy the Registrar concerning the factors in s.71(1) before the Registrar will sign the certificate.

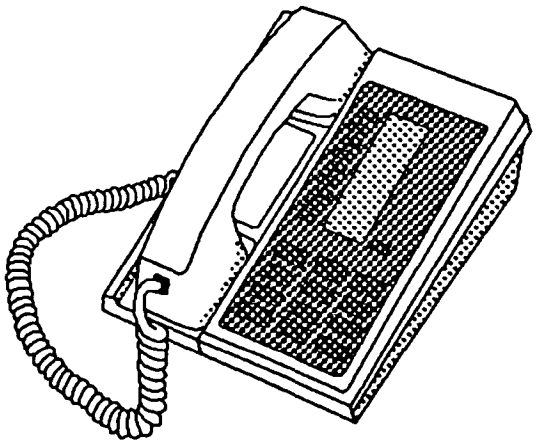
Legal Profession Act s.71(3) & (4)

Q: **In what jurisdiction should a review of a lawyer's bill take place?**

A: Section 71 of the Legal Profession Act states:

"(3) Where the member's bill relates to a court proceeding, the

Continued on page 23.



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appointment to review it shall, unless the parties otherwise agree, be taken out before the registrar in the registry where the proceeding was commenced or to which it was transferred.

(4) In a case other than that referred to in subsection (3), the appointment shall, unless the parties otherwise agree, be taken out before the registrar located nearest to the place of business of the member whose bill is being reviewed".

Rule 41(18)

Q: Can a Registrar include an entitlement to costs at the appointment for settling an order?

A: Yes, Chernoff v. Insurance Corporation of B.C. (1992) 12 C.P.C. (3d) 220. When settling an order, a registrar can include for the benefit of a successful party a term entitling that party to costs except where the judge or master who pronounced the order has determined that costs should not follow the event.

Rule 51(9)

Q: Can correction tape be used on an affidavit filed for use in the Supreme Court?

A: While Registry staff should never refuse to file such an affidavit, they should, however, initial the taped parts of the affidavit if the document is sworn in the course of their duties.

Rules 60(22) & 64(1)

Q: Are the Reasons for Judgment issued in a Divorce Act proceeding or a Family Relations Act proceeding available to the public?

A: Yes. A practice direction issued by the Chief Justice on 17 November 1989 states "Reasons for Judgment should not be considered 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 upon the proper fee being paid".

Appendix C, Section 1, Item 12

Q: What fee applies for filing a notice of appeal from the master or registrar?

A: This falls under Item 12, Schedule 1 of Appendix C:

"For filing an interlocutory application, whether by motion or praecipe, or any other application for which a fee is not payable under this schedule".

PHASED STRATAS: PARK AND SCHOOL SITE DEDICATIONS

By Grant Anderson, Partner at Lidstone Young Anderson

Applications to deposit phased strata plans under Part 2 of the Condominium Act create a number of difficulties for approving officers. The phased strata plan is a curious hybrid of an ordinary strata subdivision and a conventional subdivision under the Land Title Act.

A phased strata plan may be deposited in respect of a single parcel shown on a subdivision plan or in respect of separate parcels (see Section 3 (1) of the Condominium Act). As each phase of the strata plan is deposited, the land in that phase is subdivided from the rest of the parent parcel and is consolidated with the land in any previously deposited phase of the same development, pursuant to Section 77 (3) of the Condominium Act. The strata corporation for the new phase is simultaneously amalgamated with any previous strata corporation for the same development.

The approving officer has three basic roles with respect to the creation of phased strata plans:

1. The applicant must obtain the approving officer's endorsement of the "Form E", which must be filed with the first phase pursuant to Section 77 (2). Form E specifies the number of phases, their boundaries, commencement and completion dates for the construction of each phase, the maximum number of units and types of structures to be constructed, and the unit entitlements. The Form E also identifies the "common facilities" to be provided in conjunction with each phase and the approving officer is given jurisdiction to set the security requirements for such facilities under Section 81.

2. When the first phase is deposited, Sections 77 (2) and 7 (1)(f) of the Condominium Act require that a "Certificate of Approval" be obtained from the approving officer and filed with the plan. For subsequent phases, Section 8 (2) states that:

   "the approving officer shall...issue a certificate of approval for each separate phase, if it substantially complies with the requirements set out for that phase set out in Form E...."

   A certificate issued under Section 8 (2) must be filed with the plan for each phase.

3. The approving officer may allow the applicant to extend the time to proceed with a particular phase under the Form E, or may approve an amendment to the Form E, under Section 78. Extensions of more than one year cannot be granted without approval of the Supreme Court.

Some of the uncertainties relating to phased strata subdivisions include the scope of the "common facilities" for which construction security is required, the extent of the approving officer's discretion (if any) to withhold approval of the Form E or the Certificates of Approval for each phase, and the municipality's obligations when common facilities are not completed.

One of the most contentious issues in relation to phased strata subdivisions at this time is whether the land dedication and cash in lieu requirements of Sections 992 and 992.1 of the Municipal Act are applicable to phased strata subdivisions. With the recent enactment of Section 992.1, developers may now be required to dedicate up to 10% of a site for park and

school purposes, thus the applicability of those sections has significant impact on the profitability of a development.

There does not appear to be any consistency in the manner in which this issue is addressed throughout the province, but on the basis of a completely unscientific survey, it appears that the majority of approving officers are requiring the creation of park and school sites or the payment of cash in lieu before approving the Form E for a phased strata development. This requirement is generally not limited to phased bare land strata development.

Under the literal wording of the Municipal Act, it appears that Sections 992 and 992.1 are applicable to phased strata plans. Subsection (1) of both sections requires that "an owner of land being subdivided" shall comply with the section. For the purposes of the sections, "subdivision" is defined in Section 943 (1) as including a "subdivision under the Condominium Act". Nothing in Sections 992 or 992.1 expressly excludes phased strata subdivisions.

Is the approval and deposit of a phased strata plan a "subdivision of land"?

The definition of "strata plan" in Section 1 of the Condominium Act includes a reference to a plan showing "*land* comprised in the plans being divided into two or more strata lots". Section 77 (3) states that as each phase is deposited, "the *land* in that phase of the plan is *subdivided* from the rest of the single parcel referred to in Section 3 (1)...". At least on first impression, "land" is "subdivided" when a phased strata plan is approved and deposited.

The opponents of park and school site requirements point out that most municipalities do not attempt to enforce Sections 992 or 992.1 in relation to a strata plan which simply creates new strata titled buildings, even though there may be several buildings on one parcel. It is argued that the end result of the phased building strata plan and the building strata plan are the same and that it is inequitable to impose requirements on a strata plan which proceeds in phases when an identical development which is not phased is not made subject to the same requirements.

However, the fact that many municipalities do not apply Sections 992 and 992.1 to building strata plans probably arises more from practicality than from a determination that the sections should not apply to such developments. Quite simply, there is no municipal approving function in respect of the deposit of a strata plan for a previously unoccupied building and thus the municipality and its approving officer have no jurisdiction to withhold any approval until the requirements have been met. Section 8 (1) of the Condominium Act allows a strata plan for a new building to be deposited without any approvals, unless a phased strata plan is involved.

Some owners argue that the requirement for approval of the Form E is not really subdivision approval, but simply a means of ensuring that adequate security is posted for the provision of common facilities. They assert that the approving officer has no real discretion to refuse a phased strata plan if there are no common facilities or if construction costs of the common facilities are adequately secured.

The owners also point out that Section 992 (12) contemplates that when park land is required, "the land shall be shown as park on the plan of subdivision" and that when school land is provided, under Section 992.1 (12) a separate lot is created and transferred for the school site. They argue that strata plans properly consist only of strata lots and common property.

Like many questions concerning the

interpretation of the Condominium Act, this matter will not likely be resolved unless there is litigation over the park and school site requirements or the statutes are amended to make their intent more clear. In the meantime, those approving officers who apply Sections 992 and 992.1 have some justification for their approach.

Finally, note that if Sections 992 and 992.1 are applicable, the 12 month "grace period" in Section 993 is not available to an applicant. Under Section 993 it is only Part 29 *bylaws* which are inapplicable to a subdivision which is pending when the bylaw is enacted; requirements under Sections 992 and 992.1 are established under the Municipal Act, not by bylaws (noting however that who determines the land or cash in lieu option for park is controlled by an official community plan bylaw or rural land use bylaw under Section 992 (2)).

1996 MEMBERSHIP DUES & MEMBERSHIP INFORMATION UPDATE

By Patricia Terlecki, Membership/Treasurer Chair

By now, all of you are aware we have changed our name to the BC Association of Legal Assistants. What you are not aware of is that, at that time, we also changed the Association's fiscal year to run from January to December. In order to align ourselves with our new fiscal year, we have decided to collect dues for June 1, 1996 to December 31, 1996 in the amount of $25.00. Commencing, January 1, 1997, we will collect dues of $50.00 for the year - but, as always, we will forward a reminder letter at the beginning of December. We have prepared a list of members in good standing, with Active years following each of the names. If your name has an Active period of 1995 we ask that you forward a cheque payable to the BC Association of Legal Assistants for $25.00, with the attached membership update form, so that we may update our records. If your name has an active date of 1996 we do not require any membership fees until January 1, 1997. We apologize for any inconvenience this may cause any of you, but we hope this will eliminate any problems in the future regarding membership dues.

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Ms. Maureen McColl
Active - 1995

Ms. Barbara McCloy-Wilkes
Active - 1995

Ms. Sarah McLeod
Active - 1995

Ms. Laurie L. McPherson
Active - 1995

Ms. Jo-anne Milne
Active - 1995

Ms. Anne Moxon
Active - 1995 (Student)

Ms. Sheila Notftall
Active - 1995

Ms. Liz Oikovick
Active - 1995

Ms. Katherine Parent
Active - 1995

Ms. Heather Pellow
Active - 1995

Ms. Beverly Petterson
Active - 1996 (Student)

Ms. Angela Prefontaine
Active - 1996

Ms. Michelle A. Robertson
Active - 1995 (Student)

Ms. Crystal J. Ratzlaff
Active - 1995

Ms. Mary (Dee) Rogers
Active - 1995

Ms. Katherine Robinson
Active - 1995

Ms. Bonny Rose-Lalach
Active - 1995

Ms. Caleen Ross
Active - 1995

Ms. Rita M. Scott
Active - 1995

Ms. Donna Cathcart Shingera
Active - 1995 (Student)

Ms. Susan Leah Spencer
Active - 1995

Ms. Sandra Cameron Spiller
Active - 1995

Ms. Kelly Stromberg
Active - 1995 (Student)

Ms. Michelle Suchow
Active - 1995

Ms. Patricia Terlecki
Active - 1995

Ms. Rhonda Travers
Active - 1995 (Student)

Ms. Laura Ann Vogt
Active - 1995

Ms. Clarice Walaska
Active - 1996

Ms. Pamela Watson
Active - 1995

Ms. Lee-Ann Windall
Active - 1995

Ms. Jackie Wong
Active - 1995

Ms. Helen Wood
Active - 1995

Ms. Miriam Yapp
Active - 1995

Ms. Kristie Westerlaken
Active 1995 - Student

Ms. Wendy Wilson
Active - 1995

Ms. Lisa Urist
Active - 1995

Ms. Ann P. Halkett
Active - 1996

Ms. Kelly Enarson
Active - 1996

Ms. Cindy L. Brandes
Active - 1996

Ms. Christine E. Surinak
Active - 1996

Ms. Randi E. Weiss
Active - 1996

Ms. Lisa McKenzie
Active - 1996

Ms. Amanda M. Doyle-Fleishman
Active - 1996

Mary Gillis
Active 1996 (Corporate Member)

Ms. Kathy Coleopy
Active 1996 (Associate Member)

Mrs. Eve H. Lauder
Active - 1996

Ms. Linda Todhunter
Active - 1996

Ms. Janis Green
Active - 1996

Ms. Heather Stewart
Active - 1996 (Student)

Ms. Cynthia Davidson
Active - 1996

NAME: _____

HOME ADDRESS: _____
_____

WORK ADDRESS: _____
_____

NAME OF FIRM: _____

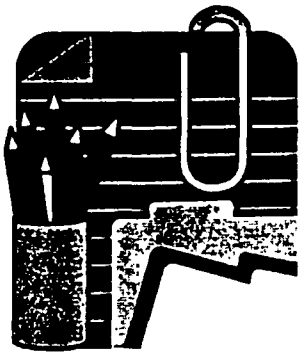
PREFERRED MAILING ADDRESS: Home _____ Work _____

HOME TELEPHONE #: _____ WORK TELEPHONE #: _____

Type of Membership: Renewal ___ Legal Assistant ___
Student ___ Corporate ___

Area of Speciality: _____ Years in current Speciality: ___

Please send cheque for $25 to: BC Association of Legal Assistants
P.O. Box 4127, Main Post Office
Vancouver, B.C. V6B 3Z6



EMPLOYMENT UPDATE BY ARLYN PERSONNEL AGENCIES LTD.

By Arlene Pelrine

Your editor has indicated to us an interest expressed by some BCALA members in acquiring basic guideline information on using an employment agency in their "job search".

As clearly set forth in the Employment Standards Act, under which all employment agencies must be registered, no fee is payable by any individual registering with any agency. Furthermore, no agency is entitled to ask an individual to restrict registration to only that particular agency.

In selecting an agency, you should ensure that you are dealing with individuals who are conversant with the legal job market and who understand what legal assistants do.

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

As we understand the legal assistant salary levels are of interest to all members, and as a result of the ongoing interviews we conduct, we are able to average and generalize as follows:

- post practicum salaries
  $27,600 - $30,000 yr.
- 2 - 5 year salaries
  $32,400 - $39,600 yr.
- 6 years and up
  $40,800 - $54,000 yr.

At present we are recruiting for two senior legal assistant positions, one in ICBC (defence) litigation and the other in securities.

In addition, we are seeking two legal assistants to fill long-term contract positions, again in ICBC defence work.

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