

ADVISORY



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President's message



by Terrance D. Clackson, Q.C.

As I write this column, summer has finally arrived. Traditionally, summer results in a slowing of activity for the elected representatives of the Law Society. Let's hope this summer is no exception.

However slow the summer may be, the spring has been busy. A number of activities have filled our agenda since my last report.

Edmonton MLA David Hancock, Q.C. appointed as Minister of Justice/ Attorney General

We have had the opportunity to meet the new Minister of Justice, Edmonton MLA David Hancock, Q.C., to review issues of joint interest. The meeting went well. It is clear that his approach to the profession, the judiciary and the administration of justice is substantially different from that of his predecessor. We believe that relations with Alberta Justice will improve.

The Minister will be following up on the Justice Summit and plans to adopt the former minister's advisory committee idea. The committee, which will consist of many of the same persons who served on the summit steering committee, will serve the dual role of advising on new initiatives and providing input on possible improvements to the existing system. I will

represent the Law Society on the advisory committee.

Legal Aid Negotiations

Our negotiating committee has been meeting with Alberta Justice to hammer out the terms for the mediation process. The members present at the town hall meeting held in Edmonton made it clear that

- those members providing legal aid service do not want us to withdraw from the program.
- the fees received per certificate are horribly inadequate.

We remain hopeful that the mediation process will result in some movement on the government's part.

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Benchers to consider contingency fee changes at the October convocation

See page 5 for details

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President's message

(Cont'd from page 1)

We have received a proposal from the Legal Aid Board regarding a new governance structure for the Legal Aid Society. The benchers will be considering this proposal at the October convocation. We are also considering a request to make room at the negotiating table for the Legal Aid Board.

Application for Reinstatement of Maurice Sychuk

Mr. Sychuk has applied for reinstatement to the Law Society's rolls. Rule 108 of *The Rules of the Law Society* mandates, that subject to section 83 of *The Legal Profession Act*, a disbarred person may apply to the benchers for reinstatement as a member of the Law Society of Alberta. *The Rules* requires the benchers to appoint a Committee of Inquiry to hear from Mr. Sychuk and any other persons supporting or contesting the application.

The Committee of Inquiry conducted this process at the Law Society's Calgary office July 19 through 21. Now that the hearing is concluded, the Committee of Inquiry is preparing a report providing their recommendations to the benchers. The benchers will consider the report, the recommendations and hear from interested parties in a special convocation on September 30 and October 1.

In order to ensure all interested parties are aware of this process, a notice advising the legal profession of the application was circulated to the legal profession in June. In addition, legal notices advising the public of Mr. Sychuk's application were placed in both the Calgary Herald and the Edmonton

Journal, and interested parties were invited to respond.

Contingency Fees

I'd like to thank all of you who participated in the consultation process on contingency fees. We found your input enlightening and thoroughly enjoyed the opportunity to meet with you. I'd also like to thank the local bar associations for their help in organizing the town hall meetings in rural Alberta.

The Contingency Fee Committee's recommendations are detailed in another column in this *Advisory*. Please consider what is being proposed and let us know what you think.

Deputy secretary David Turner retires after 21 years

David Turner, our deputy secretary in charge of membership and finance is retiring in September following 21 years of service. Mr. Turner's commitment, dedication and expertise to this Society are legendary. He will be sorely missed by benchers, members and staff alike. In the interim, the search for his replacement continues. The position has been advertised nationally. We hope to have concluded the process by September.

In conclusion, here's hoping that your summer and mine are relaxing and enjoyable.



CLARIFICATION

Court of Queen's Bench judgments are not available via the Internet.

The web site, www.albertacourts.ab.ca, provides judgments from Alberta courts except the Court of Queen's bench, as well as valuable information on all three levels of our courts, including the Court of Queen's Bench. We apologize for any inconvenience this may have caused.

For more information please see page 15.

People

David Turner retires

Following 21 years as deputy secretary of the Law Society of Alberta, David Turner is retiring.



“Dave has made a remarkable contribution to this law society and the legal profession in Alberta,” says Society president Terry Clackson. “He has been responsible for numerous functions over the years including credentialing and finance, and his talents and abilities will be sorely missed.”

After graduating from the University of Saskatchewan in 1965, Mr. Turner worked in private practice in Saskatchewan and the North West Territories. Following a stint with the federal government in Ottawa he joined the Law Society of Alberta on May 1, 1978.

Meeting the needs of Alberta’s less than 2,000 lawyers, the Law Society of Alberta was a small organization. The Society’s eight full-time and two part-time employees were housed in modest quarters in the basement of the Calgary court house. Mr. Turner’s first morning on the job was spent turning a previous forms’ closet into his new office.

Mr. Turner’s contributions over the past 21 years have been significant. Among his achievements, improving the professional liability insurance system and implementing an in-house audit department stand out as pivotal, both of which have provided long term benefits to the profession and the public.

Between 1978 and 1982 Mr. Turner initiated a series of changes to the insurance program, including instituting revised reporting requirements for members and a new mode of generating statistical data on the nature of claims. As a result, the Society’s insurance program became firmly established, positioning the Law Society of Alberta to become self-insuring rather than remaining

dependant on private insurers.

Mr. Turner’s efforts to establish an in-house audit program also proved very beneficial to the Law Society of Alberta. Previously, the Law Society relied on private chartered accountancy firms for audits. These private firms used students and first year accountants to perform audits. Mr. Turner convinced the benchers and the finance committee to establish an in-house audit department, now headed by Steven Dyer. As a result, our auditors are now familiar not only with accounting principles but with how law offices function. Accordingly, they are better able to identify early signs of mismanagement and potential trust defalcations.

Reflecting over the past 21 years, Mr. Turners says the Law Society of Alberta has become much more sophisticated without burdening its members either financially or in a regulatory way. “I get a great deal of satisfaction from having been part of that,” says Mr. Turner, “and a great deal of satisfaction from being a member of the Society’s dedicated staff. A great deal of credit must also go the benchers who give their time and talent freely to ensure the legal profession is a profession to be proud of. Right now, the Law Society of Alberta has the best balance possible between being a regulator and providing support and assistance to the membership.

“I believe both the legal profession and the public are very well served by the Law Society of Alberta. The best examples of this are the conduct, professional liability, bar admission, and audit programs, the practice advisor’s services, and the newly developed practice review program.”

Looking forward to retirement, Mr. Turner’s plans include travel, resuming his studies of history and philosophy, and leisure with his family and friends.

1999 Viscount Bennett Awards

Alberta graduate students Ian Bruggs, Cori Ghitter, Erin Nelson, and Nickie Vlavianos have been selected as the 1999 recipients of the Viscount Bennett scholarships valued between \$5,000 and \$15,000. The scholarships are funded from a trust fund established with a gift

from the Right Honourable Viscount Bennett, P.C., K.C. The annual awards for post graduate studies in law are presented to individuals with high scholastic abilities who are dedicated to their community and profession, and wish to further their legal education.

Nickie Vlavianos

graduated from the University of Alberta, after attending the University of Calgary as a letter of permission student. She received the Stikeman Elliott Carswell Prize in Taxation Law and the McCarthy Tetrault Prize in Evidence and Civil Litigation.



Vlavianos articulated with the Court of Queen’s Bench and Field Atkinson Perraton in Calgary, remaining as an associate with that firm until entering the LL.M. program at the University of Calgary in 1998. Her research deals with environmental liability and the oil and gas industry in Alberta, in particular issues related to well abandonment, reclamation and contaminated sites.



Ian Brungs completed a specialization degree in Mathematics and economics prior to entering into the Faculty of Law at the University of

Alberta. After completing his law degree in April 1998, Brungs articulated for 10 months at the Court of Appeal and at the Court of Queen’s Bench in Edmonton. For the duration of his articles he worked at Blake, Cassels & Graydon in Calgary.

In the fall of 1999, Brungs will attend Oxford in the Masters program with a focus on trusts and restitution. He intends on returning to Alberta and practising law in the area of litigation.

Corinne Ghitter graduated from the University of Calgary Faculty of Law in 1994 and went on to clerk at the Court of Queen’s Bench and Court of Appeal of

Cont’d page 4



David Sinclair, Q.C., celebrates 50 years as a member of the Alberta Bar. On June 13th, during an event in Mr. Sinclair's honour at the Southern Alberta Pioneer's Memorial Building, Alan Macleod, Q.C., president-elect, presented Mr. Sinclair with a certificate recognizing his 50 years as a member of the Law Society of Alberta.

Viscount Bennett Awards (Cont'd)

Alberta. After completing her articles at Atkinson Milvain, she remained with that firm as it became Field Atkinson Perraton.



Ghitter entered the LLM program at the University of British Columbia in 1998. Her work centres on feminist theory and tort law. Her thesis will look at how considerations of race, class and gender intersect in the award of tort damages for loss of earning capacity.

Erin Nelson

received her LL.B. from the University of Alberta in 1995. After clerking for Mr. Justice John Sopinka at the Supreme Court of Canada, she completed her articles and was admitted to the bar in 1997. Since that time she has worked with the Health Law Institute in the Faculty of Law, University of Alberta.



Currently enrolled as a candidate for the J.S.D. Degree at Columbia University, Nelson plans to focus her research on the regulation of reproduction.

Maclean E. Jones, Q.C., receives Society's Lifetime Achievement Award

On May 25th, John Martland, Q.C., past president, Law Society of Alberta, presented Maclean E. Jones, Q.C., with the Society's Lifetime Achievement Award.

The Lifetime Achievement Award is presented in recognition of an individual member's accumulative contributions to the legal profession and the greater community outside of the practice of law. During the course of their legal career, through their ongoing efforts and contributions, recipients of this award have had a positive impact on the public's opinion of the legal profession and the administration of justice.

Free Sixth Annual Trust Accounting Rules Seminars

The Audit Department is holding its sixth annual FREE trust accounting rules seminar in Edmonton and Calgary pending sufficient demand. Geared towards sole practitioners, small firms and new members, the seminars educate members and their staff on accounting rules.

Calgary: Thursday, December 9
9:00 a.m. to 11:00 a.m.
600, 919 - 11th Avenue S.W.

Edmonton: Friday, December 10
9:00 a.m. to 11:00 a.m.
2610, 10104 - 103 Avenue

Topics:

- ◆ A review of the accounting rules
 - books and records required
 - trust reconciliations
 - rules on handling trust funds|
- ◆ A review of relative sections of the Code
- ◆ Common audit exceptions and how to avoid them
- ◆ Tips
- ◆ Q & A

To register:

Please fax your completed registration form to Joanne Hanlon @ (780) 424-1620. The deadline for both seminars is Friday December 3, 1999.

Registration Form

Calgary seminar Edmonton seminar

Name _____

Phone number _____

Lawyer

Bookkeeper/Secretary

Other _____

Would you prefer a morning or afternoon time slot?

Morning

Afternoon

For additional information please call Joanne Hanlon @ (780) 429-3341 or 1-800-272-8839.

Policy Guideline on the use of In-custody Informant Evidence

Alberta Justice has released the "Policy Guideline on the use of In-custody Informant Evidence."

Would you like a copy? Written requests should be submitted, by fax, to the attention of Don Loucks, Central Records Administrator, 403-228-1728 (fax).

Contingency fees



Benchers to consider changes at next convocation

by Alan Macleod, Q.C., President-elect

Much has been written and said about contingency fees in Alberta recently. As you know, a committee was established by the Law Society to consider the matter. The benchers and our Secretary have toured much of Alberta seeking the views of our members in many judicial centres. We have received and reviewed a great deal of correspondence on the issue. We want to thank the members for their input, most of which was very thoughtful and valuable. A report was submitted to the Jasper Convocation in June and after much discussion, it was decided to publish the recommendations of the committee by way of this article. The matter is on the agenda for our meeting in Edmonton in the early fall, at which time the recommendations will be debated and voted upon.

It is not our intention to review all of the arguments here as they have been exhaustively dealt with in our discussions and in the correspondence received from our members. It is, however, fair to say that everyone agrees that contingency agreements provide access to our courts for people who would otherwise not be able to afford litigation. Moreover, virtually all plaintiff victims prefer contingency agreements to hourly rates, and there seems to be a reasonably high level of client satisfaction over the use of contingency agreements. The consuming public is becoming more knowledgeable and advertising is making the market more competitive. Everyone seems to agree it is unfair to review contingency agreements and contingency accounts in hindsight and indeed, our court officers recognize that. The relevant time to assess whether or not a percentage is appropriate is at the time the agreement is entered into. Some cases are very profitable, but others are disastrous. The good cases subsidize the bad ones.

We are informed that court administrators do not wish to receive and arrange

storage of contingency agreements, and it is likely that in the future, there will be no requirement that a contingency agreement be filed. As long as there is a procedure in place to ensure the client receives a copy of the agreement, the practice of filing is unnecessary.

With respect to concerns expressed by the former Minister of Justice, the consensus of our members and of the committee was the concerns raised were really related to something akin to class actions. The committee recommends the government take steps to legislate with respect to class actions. Indeed, we are told the Alberta Institute of Law Reform is already considering the matter.

The overwhelming majority of those canvassed recognize the responsibility of the Law Society to protect the public from any potential abuse. Fundamentally, our right to govern ourselves depends upon how well we serve the public. However, the committee's view is that contingency agreements serve the public well and that there are only a few areas that require attention. These areas are as follows:

1. The whole context of taxable fees is very difficult to explain to clients, many of whom do not understand the impact of such fees at the time a contingency agreement is entered into. We are delighted to hear that the Rules of Court Committee is recommending that the use of the words "taxable" and "taxing" will be removed from our rules as far as court costs are concerned.

However, most people acknowledge the potential for a conflict where a contingency agreement provides that either all of the court fees go to the lawyer or alternatively, all of the court fees go to the client. A lawyer is in a clear conflict in negotiating these issues with the defendant. Most people agree that conflict should be removed.

2. Contingency agreements are subject to review by a court officer or a judge. It is important that the client know of that right. Often there will be years between entering into a contingency agreement and rendering the account and it is at the latter stage when it is important for the clients to know their rights with respect to review of the agreement. The overwhelming majority of those consulted agreed clients should be informed of their right to have the agreement reviewed at the time the bill is rendered.
3. The most difficult area surrounds the issue as to whether at the time the agreement is entered into, the client and the lawyer are on equal terms. The client is often unsophisticated and vulnerable. Some people thought that clients should be sent out for independent advice. Others were insulted by this concept. Still others wondered who was going to pay for this independent legal advice. The suggestion that found favour with the committee was the idea of a "cooling off period." In other words, the client would have a set period after signing the agreement within which to advise the lawyer that the agreement is abandoned.
4. Concern has been expressed that while the Rules of Court expressly provide that a client may change their lawyer in a contingency arrangement, many lawyers provide in the agreement that if the contract is so terminated, the lawyer is to be paid on an hourly basis before the file is transferred. This is inconsistent with the agreement to take the matter on a contingency, and gives the lawyer the best of both worlds while making it unduly hard for a client to change lawyers, particularly after a significant amount of work has been done.
5. A number of our members suggested the Law Society approve a standard

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Contingency fees (Cont'd)

form of contingency agreement. The committee agrees. It is anticipated that a form will be drafted and placed before the benchers for their approval. It is not anticipated at this time that it would be made mandatory. Similarly, a brochure will be prepared for the benchers' approval and made available to our membership for the purpose of distributing to clients.

The committee's recommendations which will be debated at the benchers' meeting in Edmonton on October 7th include the following:

1. The client should be informed in clear terms at the time the agreement is signed and at the time the account is rendered of the client's right to have the contingency agreement reviewed by the court.
2. As it is anticipated that contingency agreements will soon no longer be filed

with the clerk, it is recommended that lawyers be required to serve the client with the agreement and maintain proof of that service. The client ought to have three business days after service of the agreement to notify the lawyer that the agreement is abandoned. That right is to be communicated to the client and included in the contingency agreement.

3. Whenever the contingency agreement specifies the fee is a percentage of the settlement or the award, that same percentage ought to be applied to the taxable fees. For example, if the contingency fee agreement provides for a fee in the amount of 25% of the settlement or award, then the lawyer will receive 25% of the taxable fees in addition to 25% of the settlement or the award. On the other hand, if the arrangement called for a higher fee (other than a percentage) where a certain result is achieved, there would be nothing wrong with agreeing that the taxable fees would go to the lawyer as

long as the client fully understood the implications of that.

4. The Rules of Court provide that notwithstanding anything to the contrary contained in a contingency arrangement, a client may change solicitors before the conclusion of the retainer. If this occurs, the contingency arrangement ought not to compel the client to pay any portion of the fees until the contingency is realized. If the firms involved cannot sort out the appropriate division of fees to be paid upon the occurrence of the contingency, it ought to be dealt with by resort to the court.
5. A draft standard contingency agreement and a brochure on the subject should be prepared for approval by the benchers and then made available to the membership for their use.

Once again, we wish to thank the membership for their extremely valuable contribution to this debate.



by Allan G.P. Shewchuk, president
Calgary Courthouse Education Society

Do you ever hear a joke about an untrustworthy lawyer or read a scathing editorial about judges ruining our society and wonder, how could this have happened to a profession that does so many good deeds? What do kids think when they hear such things without ever seeing what really happens in a courtroom?

In 1989 the Courthouse Education Program was created to fill a need in Calgary School curriculums related to students learning about the legal system. Prior to the Courthouse Education Program, teachers and students who wanted to see a real trial would wander down to Queen's Bench and hope to catch an interesting proceeding. Unfortunately, many criminal trials were too "rough" for tender ears and, occasionally, students had to sit through builders lien trials.

So, with the help of the Calgary Bar Association, a full time employee was hired to guide classes through the court-

house. However, that did not solve the problem of what was on the daily docket. So, with the further help of The Alberta Law Foundation, mock trial programs were created.

Some examples of trials for students include the 1959 case of *R. v. Kogogolak*, in which a starving Inuit family shot a charging musk-ox and saved their lives. The R.C.M.P. charged Kogogolak with killing an endangered species. Children learn about traditional Inuit culture and re-enact the trial in gowns. After coming to their own decision, they discover that the original trial Judge, Mr. Justice Jack Sissons, with his understanding of the Inuit way of life, tempered the law with common sense and delivered justice without adhering to the letter of the law.

An excellent program for Grade 3 students is called "The Case of the Borrowed Bronco." In this program the children have an opportunity through discussion, role-play, art work and storytelling, to learn how the Bloods met the N.W.M.P. A Blood man finds an abandoned Bronco on the plains. In his culture, it is his horse to take. The new

police force have different ideas. The students learn how different systems of property collided and were resolved. The students run a criminal trial, learn how the Bloods would have dealt with the dispute, and have the opportunity to sit in on a native sentencing circle.

Each year more programs are developed to meet the curriculum needs of our students. In 1993 the program became bilingual, reaching out to French immersion schools. By 1997, a formal Society was incorporated. Since then funding from The Law Society, The Wild Rose Foundation, the Alberta Law Foundation and The Calgary Bar (with guidance from Honorary Chairman Chief Justice Moore) have raised the program to new heights.

Do you want to help us grow even further? We need new board members and volunteers. If you would like to help with this valuable program please contact us in writing c/o The Calgary Courthouse Education Program, 530-7th Avenue S.W., Calgary, Alberta, T2P OY3 or by fax at (403) 297-5294.

All we're looking for is a little respect!

R-E-S-P-E-C-T!

The Practice Review Committee



Providing a helping hand

by Virginia M. May, Q.C.
Chair, Practice Review Committee

The practice of law is stressful enough in the good times. A helping hand should never be rejected. The Practice Review Committee is that helping hand.

The Practice Review Committee of the Law Society of Alberta is authorized to identify members encountering difficulties in their law practices and to take proactive steps to assist such members in whatever manner the committee may see fit. The committee's focus is remedial and rehabilitative, not disciplinary.

Below I have attempted to set out the objectives and processes of the Practice Review Committee to assist members in understanding the value of total honesty, full disclosure and cooperation with a review undertaken by the Practice Review Committee and to assist the membership generally in encouraging members to voluntarily come forward to the committee to seek assistance where they may benefit from such a referral. The committee can receive referrals from any branch of the Law Society including the secretary, conduct, insurance, complaints officers, audit and education.

The jurisdiction of the committee comes from Section 49 of the *Legal Profession Act*. The committee provides remedial and supportive assistance to members whose ability to practice is impaired by:

- medical problems,
- substance abuse,
- stress,
- financial problems,
- practice problems related to the process of aging,
- inappropriate attitudes,
- legal incompetence,
- poor practice management, or
- any other conduct that raises concerns about a member's competence.

Our main objective is to help the member achieve and maintain an acceptable standard of practice. The Practice Review Committee obtains information about a member's practice through visits, meetings and/or practice reviews.

The jurisdiction of the Practice Review Committee can arise in four ways:

1. When the Conduct Committee requests a general review and assessment of a member's conduct pursuant to Section 55 of the *Legal Profession Act*;
2. When a Hearing Committee finds a member guilty of conduct deserving of sanction by reason of incompetence and refers the member to the Practice Review Committee pursuant to Section 70 of the *Legal Profession Act*;
3. A referral from another Law Society department. These referrals enable the committee to identify and to assist members encountering difficulties in their law practices. These referrals are voluntary and do not require a report back to the Conduct Committee;
4. A voluntary self-referral by a member who realizes the need for assistance as a result of problems or potential problems in any of the areas outlined above.

A member who is referred to the Practice Review Committee for potential remedial assistance and rehabilitative assistance, whether that member comes into the committee's jurisdiction voluntarily or by way of a referral from conduct or another Law Society department, will participate in a meeting conducted by a panel of three Law Society members working with a Law Society staff member. The meeting will usually take place at the Law Society office and there will be discussion about the factors that have brought the member to the Practice Review Committee's attention.

Practice Reviews are carried out by the committee representative and a senior practitioner. The practice review team

spends a full day, on-site, performing an in-depth review of the member's practice. The review involves a structured interview with the member and an examination of any aspect of the practice the reviewers wish to review, including files, accounting records, and practice management systems and procedures. A detailed written report is forwarded to the committee.

The criterion used to assess a member's standard of practice are based on the Code of Professional Conduct, which describes competence as including:

- professionalism,
- knowledge of law, legal procedures, and institutions,
- sound professional judgment,
- skill,
- management and organization,
- intellectual and emotional capacity to perform competently,
- experience, and
- maintenance and improvement of knowledge and skills.

Based on the information gathered, the reviewers make any number of recommendations to improve the member's competence. The committee may require the member to undertake to:

- take courses and pass exams in specific areas of law;
- practice in specific settings or with a senior practitioner;
- restrict practice to specific areas of law;
- continue practising under specified conditions;
- continue with medical or other treatment, and
- report to the committee on a regular basis.

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The Practice Review Committee (Cont'd)

The Practice Review Committee monitors the member's compliance with the undertakings, conditions and restrictions and reports to the Conduct Committee on the member's progress on mandatory referrals.

The committee may also report back to the referring Law Society department if that department has requested a report.

If you are subject to a practice review, you are entitled to fair treatment including:

- the right to be represented by counsel;
- a competent, unbiased practice review team;

- reasonable notice of when the practice review or visit will be conducted, and
- an opportunity to review and respond to the practice review before it is acted upon by the Practice Review Committee.

The Practice Review Committee is the helping arm of the Law Society to those who voluntarily recognize their need for help in remaining a competent practitioner. The Law Society is very concerned that there are practising members who do not come to its attention through any of the formal channels by which the committee acquires jurisdiction, but who, if they came forward voluntarily, would be greatly assisted by the facilities and support systems available through the Practice Review Committee. There is a

particular concern that many senior practitioners who continue to practice because of their financial needs may be in need of the kind of remedial assistance that could be available to them. If you know such a member, we ask you to encourage them to come forward and contact the Law Society if they feel that they could benefit from such help.

Benchers to consider student hiring rules

by Simon Renouf, chair
Credentials and Education Committee



Firms hiring articling students should be aware of significant proposals to change - and regulate - the procedures for hiring articling students. The proposals are

under active consideration by the benchers and will be debated at the November 1999 convocation.

The proposals, presented to the June convocation by the Law Society's Credentials and Education Committee, were the work of a subcommittee made up of the deans of the University of Alberta and the University of Calgary law schools. The proposals have been approved in principle by the committee, but have not yet been adopted by the benchers. The report discusses some shortcomings with the current system (or non system) for hiring students, and recommends that the Law Society adopt firm rules governing the hiring of students-at-law.

Key elements of the proposals include:

- The adoption of a matching program
- Rule-based time lines for student interviews and job offers (For example, no interviews prior to the second Monday in June following the completion of the student's second year of law school.)
- Firms would be prohibited from asking students to disclose their intentions prior to the match or offer dates
- Recruitment activity would be prohibited for a specific period in June of each year, after which any offer made by a firm would have to be left open for a reasonable period of time

The benchers have asked for input from the profession, as the proposals would represent a significant change in the process for hiring articling students. These proposals could become rules of the Law Society binding on all firms.

Would you like a copy of the report? Please fax your written request to attention of Don Louks, Central Records, the Law Society of Alberta @ (403)228-1728.

Legal Aid negotiations update

by Simon Renouf
Chair, Legal Aid Negotiating Committee

The Law Society's Legal Aid Negotiating Committee (Simon Renouf, John Bascom, Richard O'Gorman and Mona Duckett) has continued to meet with representatives of Alberta Justice in an effort to secure appropriate government funding for the legal aid plan, implementation of the long-awaited tariff restructuring, and increases in the notional hourly rate.

The most recent meetings were held on June 8 and June 30. In addition to Alberta Justice representatives, legal aid treasurer Barry Gardiner, FCA, and chair Doug Hudson have also been in attendance.

Barry Gardiner has provided both negotiating committees with extensive data related to the current legal aid expenditures as well as the cost of various levels and structures for the notional hourly rate. He will be preparing a detailed cost analysis of the proposed revised tariff which was adopted in principle by the legal aid board of directors in 1998.

The negotiating committees will next meet in early September.

The Protection Against Family Violence Act

New family violence legislation became effective June 1, 1999



by Bryan E. Mahoney, Q.C.
Chair, Family Law Advisory Committee

The **Protection Against Family Violence Act** and regulations came into effect on June 1, 1999, as a response to public demand for more effective methods of dealing with family violence. The **Act** is important legislation and provides three options for those who deal with family violence: the **Emergency Protection Order**, the **Queen's Bench Protection Order**, and the **Warrant Permitting Entry**. Consult the **Act** and regulations directly.

1. Definitions

Family violence includes forced confinement, sexual abuse, or any act, threatened act, or reasonable fear that injury or property damage (or reasonable fear that injury or property damage) will occur. To classify as family violence, these acts must be carried out with the intention to intimidate or harm a family member. Family violence does not include those situations where a parent uses reasonable force to correct a child.

Family member includes married and co-habiting couples, parents, relatives who live together, children and guardians. (see more definitions under s. 1 of the **Act**)

2. Emergency Protection Order (EPO)

Police respond to an incident of family violence and determine if it is appropriate to apply for an **EPO**. Police can apply for an **EPO** by phoning a provincial court judge or justice of the peace any time during the day or night. The order will be granted if, on the balance of probabilities, the judge or justice of the peace determines that family violence has occurred and immediate protection is needed. The order will include a date for review by the Court of Queen's Bench. An **EPO** may include **terms** to:

- keep abusive family members away from the home, workplace, school or other premises where family members might be present;
- prohibit abusive family members from contacting or communicating with other family members;
- grant exclusive rights to occupy the home to certain family members for a specified period;
- direct police to remove abusive family members from the home temporarily;
- direct police to accompany family members to their home and supervise the removal of personal belongings;
- direct police to seize and store weapons, and
- specify any other provision for the immediate protection of family members.

The police officer will give one copy of the **EPO** to the respondent and another copy to the claimant. Once the respondent has actual notice by personal service (or substitutional service if ordered) of the **EPO**, the order may be enforced.

A review of the **EPO** by the Court of Queen's Bench must be scheduled within **7 working days** of the date the order is issued. At the review, a justice of the Court of Queen's Bench may:

- confirm the **EPO**,
- revoke the **EPO**,
- direct that an oral hearing be held,
- issue a new order.

Frivolous and vexatious claims are prohibited (s.13). Presumably, anyone who makes such a false claim can be charged with public mischief under the *Criminal Code* of Canada.

3. Queen's Bench Protection Order

Any new protection order resulting from the review of an **EPO** is called a **Queen's Bench Protection Order**. The **Act** also allows claimants to apply for protection orders directly from the Court of Queen's Bench. A protection order can be in force for up to one year and may be extended for further one-year periods.

The **Queen's Bench Protection Order** can include all the same terms specified in the **EPO** (see 2 above) and it can also:

- require the respondent to reimburse the claimant for any monetary losses suffered as a result of family violence;
- allow either party to temporarily possess specified personal property;
- direct either party not to deal with property they both have an interest in;
- require the respondent to post a bond to ensure compliance with the terms of the order, and
- require any or all family members involved in family violence to receive counselling.

4. Warrant Permitting Entry

Police can apply, without notice to the respondent, for a **Warrant Permitting Entry** when:

- the police officer states on oath that he/she has been refused access to the family member, and
- the family member may have been the subject of family violence and will be found at the place to be searched.

The warrant allows police to enter the home to search for, assist, or examine family members and remove them from the home with their consent.

Cont'd page 10

5. Breaches of Protection Orders

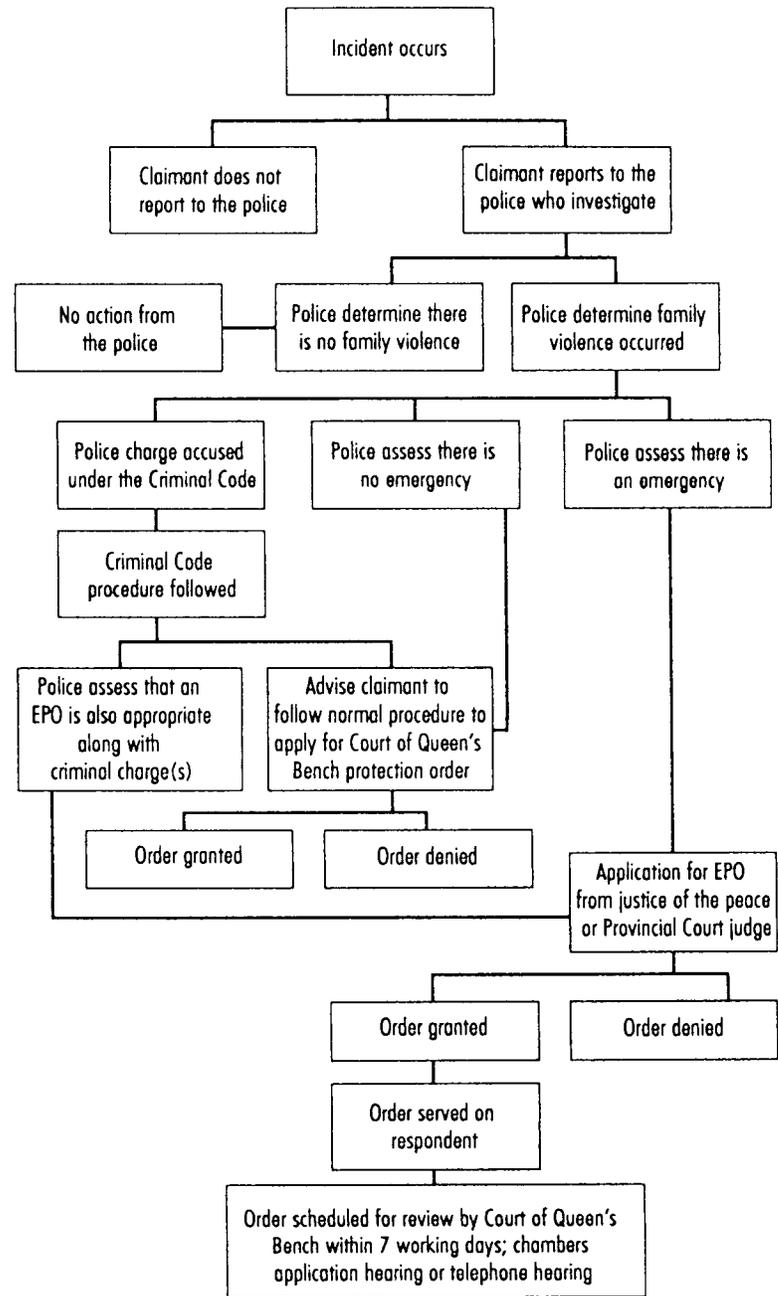
Conditions of protection orders are enforced under s.127 of the *Criminal Code* or under the power of the Court of Queen's Bench to cite for civil contempt. The process under s.127 of the *Criminal Code* is a criminal process enforced by police and Crown prosecutors. In the case of civil contempt, the protection order may provide police with authority to arrest a person who is in breach of the order. However, enforcement of the order is the responsibility of the claimant because it was made under civil law. These sanctions do not apply when the breaches involve an obligation to pay money. Such breaches are dealt with using the maintenance enforcement system.

6. First Nation Communities

The Act applies on reserves but the provisions prohibiting contact only apply if the band amends its bylaws to make the provision for exclusive occupation of the home available to its band members.

* Enclosed with this issue of the *Benchers' Advisory* is an "Emergency Protection Order Intake Sheet Checklist."

Protection Against Family Violence Act Process



Lawsearch
 Manual & on-line legal research
 Canadian, Commonwealth & U.S.
 case law, legislation & literature
 Free consultation!
 Calgary: 403.297.2415
 Edmonton: 780.421.8660

Law society team raises over \$5,000 for cancer research



Calgary police prepare the Q.C. Gang for transportation to their bail hearing. Through their participation in Jail'n Bail on June 17th our team, consisting of Jim McLeod (deputy secretary, LSA), Francine Swanson, Q.C. (bencher), Alan Macleod, Q.C. (bencher, president-elect), Peter Freeman, Q.C. (secretary), and Anthony Friend, Q.C. (absent from picture), raised more than \$5,500 for the Cancer Society.

CLIA advisory board to meet in Calgary

The advisory board of our professional liability insurer, Canadian Lawyers Insurance Association, will hold its fall board meeting in Calgary on September 17 and 18. The advisory board consists of representatives from the eight provinces and territories for whom CLIA is the insurer, and a Canadian Bar Association representative. Phyllis Smith Q.C. of Emery Jamieson in Edmonton is the Alberta representative on the advisory board.

Did you know that CLIA is now online at www.clia.ca. Be sure to visit the new site.

Revised Statutes of Alberta (RSA) 2000

A Revised Statutes of Alberta (RSA) will be published in 2000. The RSA 2000 project will address all content and structure changes to the Alberta Statutes up to De-

ember 31, 2000. RSA 2000 will incorporate the use of new technologies to help streamline the recording and publishing process of the Statutes. As part of the project, all Statutes will be converted from WordPerfect 6.1 (current format) to Word '97. The conversion from WordPerfect to Word will dictate a complete reprinting and production of the Statutes in their various print and electronic formats. The conversion will also affect the various print and electronic formats for Alberta Regulations, Bills, Orders in Council, as well as the Alberta Gazette. All existing Statutes and Regulations in their various formats will be marked obsolete.

Yukon CLE cancelled

The Federation of Law Societies, the National Criminal and Family Law Sections, and the Law Society of the Yukon CLE scheduled for September 17 & 18th is cancelled. This CLE will be rescheduled for a later date. For additional information contact Jan Graham, the Law Society of the Yukon: telephone (867)668-4231; fax (867)667-7556 or by email @ lsy@yknet.yk.ca.

Hospitals Act Amendments

by Jane Rotnem, barrister & solicitor

In the last *Advisory*, you were reminded that in several instances the Minister of Health has an independent right to recover its past and future cost of health services provided to a plaintiff. Please note that where the tortfeasor is not insured by an **Alberta motor vehicle policy**, the Minister of Health has an independent right of recovery. In addition to the previous examples given, if the tortfeasor is insured by an out of province insurer, such as S.G.I. or I.C.B.C., then the Minister of Health can recover.

It was suggested last time that you should sue on behalf of the Minister of Health when issuing your statement of claim. That is the safest practice if the limitation date to issue the claim is approaching. It is the practice being following by the vast majority of plaintiffs' counsel.

I remind you that Her Majesty the Queen in Right of Alberta must be named as a plaintiff. The hospital's claim is no longer in-

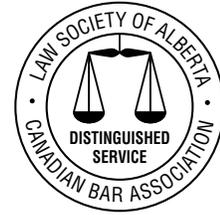
cluded as a subrogated claim of the injured plaintiff.

Provided plaintiff's counsel is not faced with a tight limitation deadline, then you can provide notice to Alberta Health of the potential claim, following which you will be provided with its value. If Alberta Health concludes the claim is large enough to warrant pursuing, it will request you to act on its behalf.

By Section 92.1(1) of the amendments to the *Hospitals Act*, it is compulsory that you give notice to Alberta Health. It is not compulsory that you act on its behalf. If you do not act, then Alberta Health will pursue its claim with the aid of the Department of Justice.

I refer you to the paper presented by Kevan Peterson, Alberta Health, at the Banff Refresher Course - Civil Litigation - April 24th to 28th, 1999. It includes a precedent for the Notice advising of a potential claim and a draft Statement of Claim.

2000 Distinguished Service Awards



The Canadian Bar Association (Alberta Branch) and the Law Society of Alberta are seeking nominations for the sixth annual Distinguished Service Awards. These awards will be presented in recognition of outstanding contributions made by Alberta lawyers to the community, the profession and legal scholarship.

Award categories

- Distinguished Service to the Community
- Distinguished Service to the Profession
- Distinguished Service in Legal Scholarship

Selection Procedure

The Selection Committee will review nominations in light of the following criteria: role model for other lawyers, dedication, results, creativity, initiative, individual achievement, enrichment, impact and effective contribution to the role of law in society. Additional information is available on the nomination form.

Awards Presentation

The awards presentation will be held during a special luncheon on Friday, January 28th at the Westin Calgary, in conjunction with the Canadian Bar Association-Alberta Branch Mid-winter meeting.

Nomination Process

Nominators shall complete a nomination form (included with this Advisory; also available from the CBA and the Law Society). Nominations are kept on file for two years. Nominations submitted for the 1999 awards need not be submitted for the 2000 awards as they will be automatically considered for 2000.

Nomination Deadline

Nominations for this year's awards must be received by Friday December 10, 1999.



Will you be too old to practise, but *too poor to retire*?

by Peg James, Risk management advisor
Helping you build a safe, healthy practice.

Although we've not collected equivalent statistics in Alberta, a 1989 St Louis Bar survey points out an important practice risk for lawyers to consider early in their careers. The survey found that 55 percent of lawyers aged 60-64 were working full time for purely economic reasons. Twenty four percent of full-time lawyers aged 65 or older reported they could not afford to retire. Another study revealed that solo practitioners were most likely to delay retirement, with a median retirement age of 75.

When should you start planning for your retirement?

As soon as you are admitted to practice.

Life is good when you, as a healthy senior lawyer, continue to practice by choice. But life can be traumatic and uncertain if you find yourself practising only because you must. Your client numbers may dwindle because clients want a lawyer who's their peer or because they're concerned about whether an older lawyer will be able to perform. Lower energy levels may make it harder for you to keep up to date with changes in the law, technology, etc. You may resent having to spend time on your practice if it robs you of the opportunity to indulge other interests. And, if not planned for, the transition to retirement itself might be abrupt and difficult for both you and your family. Worse yet, those few elderly lawyers who continue to practice when they are clearly incapacitated create a real problem for both clients and colleagues.

Some larger firms help their lawyers get ready for retirement with mandatory

retirement ages, compensation packages, gradual reduction in hours, or 'partner emeritus' status. Middle sized firms often deal with retirement in a partnership agreement, or at least require partners to make the maximum contribution to their RRSP each year. But in today's climate of economic uncertainty, even if the firm you're with now has retirement planning in place, you can't count on being with that firm until you retire.

It's important to take personal responsibility for your financial well-being so you're prepared when you reach the retirement age that's right for you. The earlier you start, the easier it is to reach your goal.

- *Maximize your RRSP contributions.* Make it a goal to have given the maximum to your RRSPs for at least 15 years by the time you're 50.
- *Seek expert financial advice.* Take a course on planning for retirement, and develop a relationship with a financial planner you trust.
- *Buy appropriate business interruption insurance.* Accidents or illness can force retirement upon you well before you're 65.
- *Develop a retirement plan.* What you want to do in retirement will determine how much you have to save.
- *If you're a sole practitioner, decide how you'll end your practice.* Will you sell it? Associate a junior lawyer early enough to make a smooth transition? Have a plan in place for winding up your practice yourself or getting another person to do it?

What about lawyers who are already in the unenviable position of being too old to practice but too poor to retire? Perhaps the best place to start is the ASSIST program or the Practice Advisor's office. Both can offer one-on-one counseling or direct you to other resources. (At a meeting of the CBA Senior Lawyers'

Subsection in Edmonton, Mr. Ed Piasta suggested that a sole practitioner whose finances force continued practice could associate with a firm and develop a specialized and limited practice with monitoring by that firm. Unfortunately, it might be hard to find firms willing to take senior lawyers on that basis.)

Alert: new limitation period added to EPEA

If you advise clients who buy or sell corporations or real property about when they are free from any associated causes of action, you will want to know about a recent amendment to the Alberta *Environmental Protection and Enhancement Act*. The amendment allows a judge to extend a limitation period for the commencement of a civil proceeding where the basis of the proceeding is an alleged adverse effect resulting from an alleged release of substances into the environment. For a helpful discussion of this amendment, see *News Briefs*, the newsletter of the Environmental Law Centre Vol. 14, No.1, 1999, page 5.

Please feel free to call me for help with managing your practice risks. My direct phone line in Calgary is 229-4771. You can also reach me at 1-800-661-9003 or by e-mail at riskadv@lawsocietyalberta.com. I'd like to hear from you.

Have you called us lately?

ALIA welcomes questions about your liability insurance including questions about the levy, exemptions from the insurance program, coverage issues, or excess coverage.

We especially want to hear from you if there's a hint of a claim against you. Call 229-4716/1-800-661-1694 or fax 403-244-3072I.

Looking for some quick advice on a practice problem?

**Through the Mentor Program, someone to ask is only a phone call away.
For details see page 13**

Mentor Program

The Mentor Program operates out of the office of the Practice Advisor. A caller identifies the area in which he or she requires help and is given the names and phone numbers of two mentors. The areas of law covered by the Mentor Program are Family Law, Criminal Law, Wills and Estates, Real Property, and Civil Litigation. The mentors are experienced counsel in their areas. If neither of the mentors can be reached, the caller is entitled to call back for additional names. It is understood the program and the mentors accept no liability arising from the assistance given, and users must independently verify advice and ultimately use their own professional judgement.

While the Mentor Program provides a valuable service to young and inexperienced lawyers, it is also available to lawyers with many years of experience who are simply treading in unfamiliar waters.

To contact the program, telephone 429-3343 (for Edmonton practitioners); toll free 1-800-272-8839 (outside of Edmonton)

The Practice Advisor's Office



Barry Vogel, Q.C.
Practice Advisor
919 - 11th Avenue S.W.
Suite 600
Calgary, Alberta
T2R 1P3
229-4714
1-800-661-2135 (toll free)
Fax 1-403-228-1728



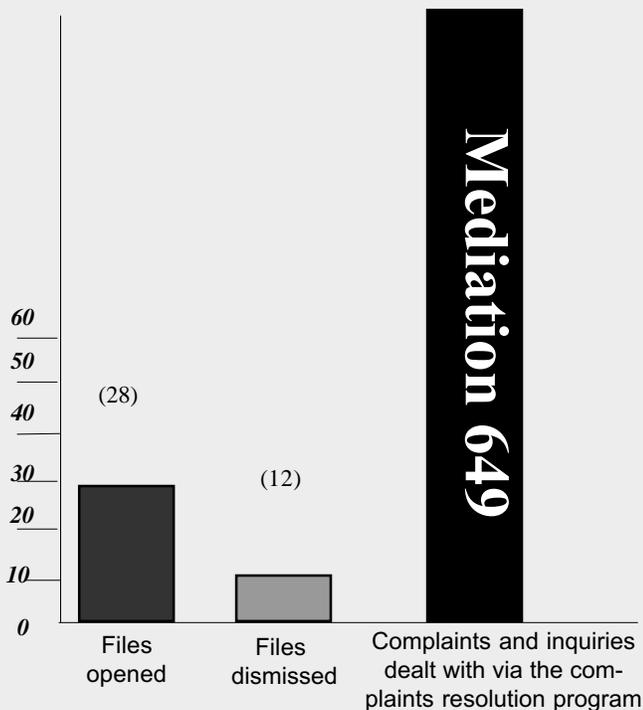
Paul McLaughlin, M.A., LL.B.
Practice Management Advisor
1900 Canada Trust Tower
10104 - 103 Avenue
Edmonton,
T5J 0H8
429-3343
1-800-272-8839 (toll free)
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Fax 1-403-228-1728
riskadv@lawsocietyalberta.com

The members of the Practice Advisor's Office, Barry Vogel, Paul McLaughlin, and Peg James will travel anywhere in Alberta for personal meetings with members where appropriate. All contacts are strictly confidential, and services are free. Call us any time.

Complaint Synopsis - May 1 to June 30, 1999



Of the 28 files opened as formal complaints between May 1 and June 30, 1999, 12 complaints were from members of the public, 7 were from members of the legal profession, and 9 were generated by the internal processes of the Law Society. To date in 1999, 104 formal complaint files have been opened.

Twelve complaints were dismissed by a deputy secretary; six complaints were directed to investigation; 14 complaints were referred to a Conduct Committee panel; 4 complaints were directed to hearing.

Between May 1 and June 30, 1999 the complaints resolution program dealt with 649 informal complaints and inquiries.



Benchers pass competence initiatives

by Susan V.R. Billington
The Law Society of Alberta

At their June 1996 convocation, the Benchers placed priority on the issue of lawyer competence initiatives. The Competency Planning Committee was struck under the leadership of Terrance D. Clackson, Q.C. (current Law Society president). The Committee members were selected by the Executive Committee of the Law Society to reflect the diverse nature of the profession including junior, intermediate and senior lawyers; barristers and solicitors; men and women; benchers, non-benchers and past benchers; practitioners from large, intermediate and small firms.

The Committee members were Terry Clackson, Q.C., chair, Patricia Blocksom, Q.C., Mae Chow, Mark G. Eade, William H. Hurlburt, Q.C., Bryan E. Mahoney, Q.C., James B. Rooney, Q.C., Michelle M. Simpson, Phyllis A. Smith, Q.C., Peter Freeman, Q.C. (secretary LSA) and Susan V.R. Billington (project director, LSA).

The benchers gave the committee a broad mandate to develop plans and initiatives to ensure and enhance the competence of the members of the Society. This mandate included reviewing the existing competency initiatives of the Society and making recommendations regarding additional competence initiatives that might be appropriate and plans for the implementation of those initiatives. The committee was first convened in December 1996 and met extensively over a period of one and one half years. The committee reported to the benchers on three occasions: June 1997, May 1998 and November 1998.

The committee presented its interim report to the benchers in June 1997. The benchers requested the committee direct its continuing efforts on improving the competence of marginally competent members of the Society and the remediation of those members who had shown themselves to be incompetent. The benchers also asked the committee to recommend ways in which members who proved themselves impervi-

ous to assistance might be removed from the profession.

The committee embarked on a further one year project that culminated with *The Report of the Competency Planning Committee* in May, 1998. The report made 20 recommendations on a broad range of competency issues. The committee concluded that the development of a lawyer's competence is a continuum which begins long before a member is admitted to the Bar and continues throughout a lawyer's practising career. The committee focused on three different periods along this continuum:

- Pre-bar admission education;
- the Bar Admission program, and
- Post-call or life-long learning.

Recommendations respecting competence were made regarding each of these periods along the continuum. The committee focused on the need for practice management training along this continuum. Further, the committee made specific recommendations on identifying and dealing with incompetence. This aspect of the report deals with the need for the Society to develop tools for the early discovery of members who are in need of assistance and methods of remediation for those members.

If remediation is unsuccessful, the report makes recommendations for a process to remove the incorrigibly incompetent member from the profession. This part of the report focussed on fair hearing and evidential requirements. Finally, the report recommends a reorganization of the competence structure and systems of the Law Society to accomplish and implement the recommendations.

The benchers considered the report at convocation on May 29 and 30, 1998. The benchers responded positively to the report, accepting in principle the bulk of the committee's recommendations. The benchers asked the committee to reconvene to address three matters:

- a definition of practice management;
- to obtain feedback from the stakeholder committees of the Law Society including the Education, Practice Review and Conduct committees and the Legal Education Society, and
- to provide further input on the implementation strategies for the recommendations.

The Implementation Report of the Competency Planning Committee, which was passed by benchers in November 1998, addressed these three matters and provided revised recommendations that incorporated the feedback from the various committees and LESA. The committee further recommended a person be appointed to oversee the implementation of the recommendations of the Competency Planning Committee. The responsibility for the implementation of the recommendations of the Competency Planning Committee will be undertaken by the deputy executive director. A search for this position is currently under way as reported by Terry Clackson in his President's Message in the last *Advisory*.

The Report of the Competency Planning Committee (May 1998) and *The Implementation Report of the Competency Planning Committee (November 1998)* will steer the course for the lawyer competence initiatives of the Society in the coming years. The full text of both reports are available on our website at www.lawsocietyalberta.com.

The Equity Ombudsperson



If you have a question or concern about harassment, call Joanne Goss @ 429-3939 (in Edmonton) or toll free @ 1-888-429-3939 (outside of Edmonton), to discuss your rights and what can be done to resolve the problem. The sooner the problem or concern is raised, the better and the more effectively it can be addressed. Joanne provides confidential mediation of workplace harassment issues.

Alberta courts website

by Robert Leigh, Law Society library, Calgary

The Alberta courts now post their judgments on the Internet at no charge. New judgments are scheduled to be added 48 hours after release. As of the time of writing, the judgments of the Court of Appeal and Provincial Court since January 1998 are posted. The Court of Queen's Bench will participate at a future date.

The site uses ISYS software with which you may be familiar as it is also used by the Alberta Queen's Printer and by Maritime Law Book. It is important to be aware that this application of the software is set up to display on a larger monitor so that some function buttons are offscreen to the right on a regular monitor, and further options may be offscreen at the bottom so scrolling is necessary.

The opening screen offers three approaches to the judgments. THIS WEEK'S JUDGMENTS is an excellent current awareness tool. If you know the style of cause of a recent judgment you could click on JUDGMENTS BY MONTH and then the court level to find

the text efficiently. Most frequently you will select SEARCH ALL JUDGMENTS. Less experienced searchers may want to stay with the menu template which is presented first. Others will want to scroll down to the command search option. In either mode the searches are Boolean but, because ISYS is simpler software than FOLIOVIEWS or Quicklaw's, the results should be regarded only as a starting point for research.

The result of the search is a list of cases. Click on the name of a case and you access the full text of the judgment. You may save it using your browser software, or print by clicking on either ORIGINAL WORD PERFECT at the head of the judgment or using your browser's software.

While you will normally use the site to download judgments, the Court of Appeal and Queen's Bench Practice Notes are available, and the "Links" button (off to the far right) will connect you with the sites of B.C., Ontario, Federal and Supreme Courts and with Federal and Alberta Legislation.

Duty to Report

by Joanne Goss, Equity ombudsperson

Chapter 3, Rule 4 of the Law Society's Code of Professional Conduct states that:

"A lawyer must report to the Law Society any conduct of which the lawyer has personal knowledge and which in the lawyer's reasonable opinion, acting in good faith, raises a serious question about the competence, honesty or trustworthiness of another lawyer, or is likely to harm any person."

The commentary on this rule clarifies the rule and explains the circumstances a lawyer must consider in fulfilling this duty. In 1998, the benchers of the Law Society further clarified the duty in relation to incidents of harassment and discrimination. The benchers stated that:

(a) Where the conduct is criminal in nature, there is clearly a duty to report.

(b) In all other cases there is no duty to report where the conduct is being actively addressed through the firm's internal harassment policy or through the Office of the Equity Ombudsperson.

(c) Where no action is being taken by the firm or through the Equity Ombudsperson, the member should consult the Practice Advisor.

(d) Discussing the conduct with the Equity Ombudsperson does not fulfill the member's duty to report. The report must be made directly to the Law Society.

It may be helpful to keep this clarification for future reference.

Notice of Proclamation of Alberta Legislation (for Proclamations issued between March 11, 1999 and June 24, 1999)

- Alberta Science, Research and Technology Authority Act (SA 1998 cA-37.3), **effective April 1, 1999.**
- Child Welfare Amendment Act, 1999 (SA 1999 c4), ss 4, 5, 9(b), 11, 12, 13, 14(b) and 15 **effective April 22, 1999.**
- Protection Against Family Violence Act (SA 1998 cP-19.2), **effective June 1, 1999.**
- Balanced Budget and Debt Retirement Act (SA 1995 cB-0.5), repealed, except ss1(b), 4, 5 and 10 and the Schedule, **effective May 20, 1999.**
- Fiscal Responsibility Act (SA 1999 cF-11.5), s10 **effective May 20, 1999.**
- Alberta Personal Property Bill of Rights (SA 1998 cA-35.05), **effective June 1, 1999.**
- Securities Amendment Act, 1999 (SA 1999 c15), **effective June 1, 1999.**
- Tax Statutes Amendment Act, 1998 (SA 1998 c40), s1(16)(a) and (c) **effective June 30, 1999.**

My name is Bob

Reprinted courtesy of the Ontario Bar Assistance Program

My name is Bob. I am a lawyer and a real person. At least, I must be a real person because the things that have happened to me happen to real human beings, even lawyers. This is a true story.

I ran a thriving practice in a small town in another province. I was married, had two young children and a happy home. I had the respect of my peers.

However, under the facade, my marriage was breaking down. I was becoming more stressed as I realized that the end was near. I began to hide in my work, spending many hours in the office, but achieving less and less.

Do you need help?
Have you got a problem?
Food? Alcohol? Drugs? Depression?
Gambling? Stress?
Relationships? Money\$
Control?

Help is available.

ASSIST helps Alberta lawyers and their immediate families who are coping with personal problems, such as substance abuse, alcoholism, stress and burn out.

The program is voluntary and completely confidential. Individuals seeking treatment are not in any way identified to the Law Society of Alberta or the Canadian Bar Association.

In Calgary call: 237-8880

**Red Deer & South call:
1-800-461-8908**

In Edmonton call: 448-0628

**North of Red Deer call:
1-800-782-5457**

Your call will be answered by Kelly, Luttmner & Associates, an independent counselling office.

My work suffered so much that I was audited due to complaints and discrepancies. Disciplinary proceedings started which added more stress. My marriage ended. My wife and I agreed to joint custody with our children alternating two week periods with me and their mother.

I knew about the bar assistance program but I did not call. After all, I am a lawyer and to admit problems was to admit weakness and an inability to deal with issues. What would other lawyers think? What would the community think? It couldn't be depression. Depression was not an illness, I thought, and people only used it as an excuse.

The downward spiral continued until my Society hearing, where the issues were resolved as errors but with no deceit or dishonesty. I was suspended for three months and had to have my practice evaluated prior to being reinstated. Matters were being settled, or so it seemed on the surface. But I was close to bankruptcy. With not being in the office to look after my files, more complaints were filed. My membership lapsed and I had to reapply for admission. The stress had finally become too much. I had a breakdown.

But I refused help. I went to doctors to tell them that everything would be all right when I got back to work. For some reason I believed that I had to be strong for everyone and that weakness or any indication of it was the enemy. I tried to cope through drinking. I was in pain and refused to acknowledge it. Suicide began to look attractive: my debts would be paid, my children cared for and, most importantly, the pain would stop. My plans were made. Final calls were made. Meanwhile my mother-in-law had called the police as she feared for my safety and knew I had a shotgun. The police chose that moment to arrive.

A good friend - a non-judgmental, loving friend - took me to a hospital where I committed myself for depression. My father came to help me. I had not had the courage to ask him for help before. I have now had two years of intensive psychotherapy and medication therapy. I am recovering. I have a new agreement with my wife regarding joint custody of our children. They spend quality time

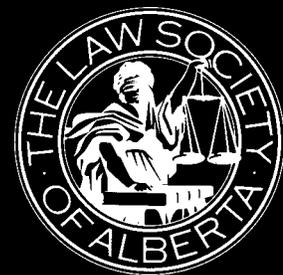


with me. I am looking to reinstatement of my licence to practice.

My legal problems are still not over, but I now know that depression is more than a bad feeling that can be dealt with by working hard and putting on a brave face. Now, I would not hesitate to call for help, especially to another lawyer who has "been there," who would know how badly I feel and how to help me.

The ASSIST program provides volunteer support to lawyers, law students and their immediate families who suffer from addictions and mental health issues. If you have seen parts of yourself in Bob's story or recognize someone you know in it, please telephone the confidential ASSIST program.

Our Mission



To serve the public interest by promoting a high standard of legal services and professional conduct through the governance and regulation of an independent legal profession.