



THE ADVISORY

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.

From the President: Why the Regulator is talking about Access to Justice

By Peter Michalyshyn QC, President, Law Society of Alberta



Public concern for access to justice continues to increase. At the Law Society of Alberta, we've asked ourselves – what is the role of the regulator of the legal profession in addressing access to justice issues?

After all, access problems are often attributed to the apparent high cost of legal services. Well, it's the market, and not the law society, that regulates the cost of legal services. Some people feel that access is inhibited by civil rules that add to complexity, delay, and again, high costs. But civil justice reform is not central to the law society's core mandate as a regulator of legal professionals.

The Law Society's proper role becomes clearer when we define the issue not just as access to justice, but as "access to legal services". The law society clearly regulates legal services,

starting with setting standards for admission to practice, and continuing with the regulation of scope of the practice of law under the Legal Profession Act. After accounting for some specific exceptions for legal agents/paralegals, lawyers are left with a near monopoly on the provision of legal services to Albertans. We justify that monopoly by promising to regulate lawyers in the public interest. We define the public interest to include the preservation of an independent, self governing profession.

We risk jeopardizing that independence and self governance if the current understanding of "legal services" effectively restricts supply because only lawyers can provide those services. There is evidence that a short supply of lawyers to perform legal services for ordinary Albertans is contributing to the access to justice problem. Law schools graduate about as many students now as they did 30 years ago. Lawyers are leaving practice but specifically they are leaving private practice which particularly affects access to legal services for ordinary consumers. Of roughly 8,300 lawyers in active practice in Alberta, only about 5,500 are in private practice, and only about half of those are in smaller firms of four or less,

firms that one would expect most likely to provide "personal" legal services. It is in this environment that as a regulator, the LSA has a duty to lead an inquiry into alternate ways in which certain legal services might be delivered to Albertans. ■

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Education

- LL.B, University of Alberta, 1988
- B.A., Journalism, Carleton, 1983
- B.A., University of Alberta, 1982

Professional Experience

- Admitted to Alberta Bar, 1989
- 1998 - to present, Chatwin LLP
- 1994 - 1998, Associate, Chatwin Cox
- 1992 - 1994, Crown counsel, Constitutional Law Branch, Alberta Justice
- 1989-1992, Associate, Pringle & Associates

- 1988 - 1989, Articled, Field & Field

Professional Community Activities

- Elected Bencher 2004 to present
- Law Society Committees include: Executive, Conduct, Civil Practice Advisory, CPD, Unauthorized Practice, Finance, Credentials & Education, Insurance, Practice Review, and Appeals
- Lecturer for LESA, CBA, Alberta Civil Trial Lawyers Association (ACTLA), Canadian Defense Lawyers (CDL), Bar Ad Course
- Executive member, CBA sections (Constitutional Law/Civil Liberties; Civil Litigation; Insurance)



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Client ID Rule Amendments Aligned with Model Rule

The Client Identification and Verification Rules 118.1 up to and including 118.10 were amended to create closer alignment with the Federation of Law Societies of Canada's (FLSC) Model Rule.

The new "know your client" rules were in effect December 31, 2008. On December 12, 2008, the FLSC gave final approval to an amended Model Rule for Client Identification and Verification.

These amendments represent the intended interpretation of the earlier Model Rule, and of the LSA Rules, and are the standard which lawyers must meet.

A summary of the new LSA rules, along with an interpretation guideline and client identification and verification flow chart are posted on the LSA website at www.lawsociety.ab.ca

Feedback Needed on Advisory and Website

Please take a moment to participate in the 2009 Law Society of Alberta's survey on the Advisory and website. To better improve its communications to lawyers, the Law Society of Alberta invites your feedback and comments.

Go to: www.lawsociety.ab.ca

Thank you.

Law Society Reviews Alternative Delivery of Some Legal Services

At a time when Albertans find it difficult to retain lawyers, the Law Society will look at alternative means of delivering certain legal services.

Part of the inquiry will ask how non-lawyers (agents or paralegals) could increase access to legal services within a regulated environment while protecting the public interest.

The LSA's initiative stems from ongoing concerns in the Courts, Alberta Justice, and among other players in the administration of justice that concrete steps are needed to address access to justice issue. While the LSA has made no decision that it wants to regulate non-lawyer providers, it does have unique expertise as a regulator to lead the alternate legal services inquiry.

The LSA intends to lead the inquiry in partnership with Alberta Justice. Concurrently, Alberta Justice

is leading an inquiry into the role that limited retainers – unbundling of legal services – might play in increasing access to justice. It is expected that both initiatives will unfold under a new Access Steering Committee with leadership from the LSA, Alberta Justice, the Courts, and other interested parties.

Within the next few months, the alternative delivery initiative will conduct a high-level overview that identifies issues and the need for resources to go forward. The inquiry will unfold in a principled and transparent way with the involvement of a wide range of people and institutions affected by the status quo and by possible changes to it.

The LSA intends not to be bound by conventional wisdom or current models of non-lawyer regulation. The LSA will continue to be guided by the primary principle that it act in the public interest.

Benchers Form New Access to Justice Committee

As the Law Society of Alberta moves forward with a specific inquiry into alternate delivery of legal services, the Benchers have agreed also to remain broadly involved in access to justice issues by forming an Access to Justice Committee.

The Committee's mandate flows from the LSA's 2006 strategic goal adopted by the Benchers to "...uphold and preserve the fundamental principles of justice, including the rule of law, the independence of the bench and bar, effective and equal access to justice and to promote equity and diversity in the legal profession."

While many of the LSA's activities relate to this goal, the Access to Justice Committee will have effective and equal access to justice and the promotion of equity and diversity in the legal profession as its primary focus. The Committee's work will encompass what until now has been the work of the Pro Bono and the Equity, Equality and Diversity (EED) Committees. It will inform and advise the benchers about developments in these areas, and will recommend to the Benchers how the LSA can best pursue, within its mandate, access to justice, and equity and diversity in the profession.

How LSA Strives to Increase Access to Justice

By Don Thompson, QC, Executive Director, Law Society of Alberta



How will the LSA's service offerings increase access to justice? What do programs such as Complaints, Assurance Fund and Lawyer Referral do to make our justice system more accessible to the public?

The following services strive to uphold standards of competence of lawyers.

Complaints Process:

The LSA offers a process to resolve complaints regarding a lawyer's conduct. The service is available to clients, judges, lawyers, financial institutions, business creditors, general public and through internal referrals by the executive director of the LSA. The complaints process is

initiated when a lawyer's actions may have breached the Code of Professional Conduct that governs how lawyers are to conduct themselves in their practice.

Assurance Fund

The LSA maintains the assurance fund to compensate clients for misappropriation or wrongful use of trust funds by their lawyer. The loss must meet the criteria outlined in the Legal Profession Act. The assurance department receives and investigates claims for compensation and brings each claim before the executive director.

Lawyer Referral

The Lawyer Referral Service is a program operated by the LSA to assist people in finding a lawyer who will provide them with the legal services they require. It is an information service and is not connected with Legal Aid. Nor does it provide any form of financially subsidized legal service. ■■

LSA Bencher Priorities 2009

The following are the list of Bencher priorities for 2009:

- Alternative delivery of legal services – explore whether or how non-lawyers might provide legal services in order to increase the public's access to legal services.
- Security of Trust Funds Implementation.
- Continuing Professional Development – designing and implementing year two of the program.
- Model Code of Conduct – LSA to decide whether and to what extent it will adopt the Federation of Law Societies' model code of conduct.
- S.57 Guideline – will describe factors to be considered and process to be followed in dealing with matters pursuant to s.57.
- Resignation Guideline – adopt amendments to the existing guidelines.
- Hearing & Pre-hearing Guidelines, Appeals & Pre-appeals Guidelines – amendments to the existing guidelines.

- National Standards – FLSC has agreed in principle to adopt standards for the operation of key regulatory processes, as well as an oversight function to monitor compliance with these standards.

New additions to the list of priorities:

- Review of charging and hearing process for conduct matters; simplified conduct hearing process.
- Quality Assurance Audits – develop an audit in which some proportion of the profession is audited for the quality of legal work delivered in their practices.
- Sole Practitioner Support – develop programs to support sole practitioners.
- Governance Review – establish a governance committee or task force to deal with three to five issues around Bencher elections.
- Access to Justice – initiatives.
- QB Costs – a proposal to review Schedule C costs under the Rules of Court.

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Welcome to New Benchers

The Benchers of the Law Society recently welcomed the following new Benchers:

- **Rose Carter, QC**
Bennett Jones LLP, Edmonton AB
- **James Eamon, QC**
Gowling Lafleur Henderson LLP, Calgary AB
- **Fred Fenwick, QC**
Miller Thomson LLP, Calgary AB
- **Kevin Feth**
Field LLP, Edmonton AB
- **James Glass**
Duhamel Manning Feehan Warrender Glass LLP – Red Deer, AB
- **Frederica Schutz**
Emery Jamieson LLP, Edmonton, AB
- **Scott Watson, QC**
McLellan Ross LLP, Edmonton, AB
- **Tony Young**
A.G. Young Legal Centre, Calgary AB ■■

Fillable LSA Forms Online Now

The Law Society of Alberta is introducing electronically fillable forms on its website starting with the following forms:

- Form S (Form 5-1)
- Form T (Form 5-2)
- Form U (Form 5-3)
- Request to Change Contact Particulars

The forms work with Adobe's Acrobat Reader standard software. The forms are available on the website at www.lawsociety.ab.ca

Forms can still be completed manually as there is also a print-only version of each form available. ■■



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Trust Accounting Seminars May 27-28, 2009

The LSA's annual Trust Accounting seminars are intended to educate lawyers, especially sole practitioners, small firms, new lawyers and staff on the Rules of the Law Society of Alberta (Part 5) relating to financial records, accounts and trust money.

Topics include:

- Books and records required and tips for maintaining them,
- Trust reconciliations and how to recognize problems,
- Rules on handling trust funds.
- Common audit exceptions and how to avoid them, and
- Special topics:
 - Credit card accounts — how do I set them up?
 - Current trends (electronic banking, cheque imaging, etc).

Trust Seminars will be held:

Edmonton - May 27th, 9:00am - 12:00 noon
River Valley Room
Crowne Plaza Chateau Lacombe
10111 Bellamy Hill
Edmonton, AB T5J 1N7
(780) 428-6611

Calgary - May 28th, 9:00am - 12:00 noon
South Building, Lower Level, Mac E4
Telus Convention Centre
120 - 9 Avenue SW
Calgary AB T2G 0P3
(403) 261-8500

Please register by May 20, 2009 by contacting Donna Kanomata, Administrative Assistant at (403) 229-4784, fax (403) 541-4817 or by email at Donna.Kanomata@lawsociety.ab.ca

Registration forms are also available on our website: www.lawsociety.ab.ca

Avoiding the Drink at the 'Last Chance Saloon'

By W. Brent Cotter, QC, Dean of the College of Law, University of Saskatchewan

This is a summary of his presentation at the LSA's Plenary, "Why Independence Matters", held at the Alberta Law Conference on January 29, 2009.

First, I will offer the perspective of a few critics of lawyer self-regulation. Second, I will reflect on some of the features of the lawyering environment, offering context for the third aspect — some of the trends and challenges to self-regulation, and fourth I will offer my own 'ranking' of the significance and invasiveness of these challenges. Finally I will end with a suggested approach on the part of the legal profession to enable it to preserve and retain the core of its regulatory authority.

1. Perspectives of Lawyer Self-Regulation

The state of self-regulation of the legal profession, and the claims that it is in its final days, have been asserted by critics of the legal profession, and some academics, for decades. Many of the most sensational criticisms of the legal profession are excessive. At the same time, there are instances of institutional failures of self-regulation that have invited both criticism and investigation and in some cases reform.

The answer to the question, "Challenges to lawyer self-regulation: are they a passing fad or the beginning of the end for self-regulation?" is somewhere in between.

2. Contextual Observations

A few contextual observations clarify points that are often submerged in myth:

a. Self-regulation of lawyers by lawyers is not as long-standing as lawyers claim. This is certainly the case in the US and Canada, where any modern form of self-regulation is less than a century old.

b. Self-regulation is claimed to be critical to ensure that the work of lawyers be independent of the state. Statutory self-regulation is authority delegated to the profession by the state and much of the work of lawyers without reference to the state.

c. Lawyers have often misunderstood the essence of their own obligations. Historically, the fundamentals of self-regulatory authority have often been misunderstood.

d. Lawyers have often over-valued the 'special expertise' they bring to self-regulation. It is unquestionably true that most lawyers, by virtue of their training and experience, have developed skills that can assist them in the performance of regulating their membership. That doesn't necessarily exclude others — such as non-lawyers — from this work,

e. The public is sceptical of elites. We have become more questioning of political leaders, our religious leaders and professions in general.

3. Challenges to Lawyer Self-Regulation

What follows is my own preliminary sense of the range of interventions occurring in common law jurisdictions:

a. A division of regulatory and 'promotional' roles. i.e. the New Zealand Lawyers and Conveyancers Act. Initiatives aimed to separate the 'public interest' dimensions of regulation from the promotion of lawyers' interests.

b. A recognition of the primary responsibility of law societies to regulate in the public interest. The Government of Nova Scotia included in its Legal Profession Act a statement that: 'The purpose of the Society is to uphold and protect the public interest in the practice of law.'

c. Improvements in the regimes of regulation. Law Societies are becoming committed to regulation of their members and sophisticated in detecting problems with lawyer conduct, and addressing them in timely, sometimes pre-emptive, ways.

d. The establishment of 'ombuds' regimes in many jurisdictions, with specific responsibilities to oversee the performance of law societies' regulatory functions, i.e. Legal Services Ombudsman in England,

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Access to Justice Key to Confidence in Justice System

By the Honourable Alison Redford, QC, Minister of Justice and Attorney General, Government of Alberta



Access to justice is fundamental to a stable, peaceful, prosperous society and is a primary focus of the Ministry of Justice. Albertans need to know the justice system is available to them, not just available to a select, privileged few. I want Albertans to be confident that an effective, fair justice system is in place to serve them. My ministry has been working collaboratively with other justice stakeholders, including the Law Society, on a wide range of initiatives to ensure Albertans have a variety of services available to assist them in resolving their legal difficulties. As lawyers throughout the justice system, we all have a stake and responsibility ensuring the administration of justice is enhanced.

Work is ongoing to develop a new Court Case Management program to make effective use of limited

Provincial Court and Court Services resources. Part of this program is Crown File Ownership, where the Crown assumes responsibility of a file from the beginning to the end of the court process. This approach has proved successful in reducing lead times to trial and reducing backlog.

On January 5, 2009, a fourth Law Information Centre (LinC) opened in the Calgary Courts Centre to assist self-represented litigants navigate the justice system. We also continue our work on a number of other initiatives including expanding dispute resolution programs, streamlining family justice system processes, reducing lead times to trial and exploring options for reducing costs associated with legal services.

These are just a few examples of the innovative work Alberta Justice is currently doing. We all have to work together to explore how we can continue to remove barriers to justice. Access to justice is the key to increasing Albertans' confidence in the justice system. ■

Challenges to Lawyer Self-Regulation

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Scottish Legal Services Ombudsman and Legal Services Commissioner in New South Wales. The insights of these Ombudspersons can be critical and influential. In a report, the outgoing Legal Services Ombudsman in England warned the legal profession there that it was "drinking at the last chance saloon".

e. The creation of 'new professions', and expanded regulatory regimes, under 'lawyer-led regulation'. i.e. 'conveyancers' in New Zealand and 'independent paralegals' in Ontario. The development of 'near to legal' professions shows commitment to other legal service delivery forms to improve access to justice.

f. Greater involvement of 'public members' in all

aspects of the regulatory regimes. i.e. 'public', or 'lay' membership in law societies.

g. Direct 'take-over' of regulatory functions under independently established regimes dealing with aspects of lawyer regulation. Initiatives in the Australian states of Victoria, Queensland and perhaps Tasmania have resulted in 'the beginning of the end' of lawyer self-regulation'. In England, the oversight regulator, the Legal Services Board, is composed of a majority of non-lawyers.

h. The potential intervention by "outside agencies", i.e. Competition Agencies. Canada's competition agency examined lawyers in the Bureau's recent review of professions.

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Recruitment Rules Add Clarity Around Recruitment

Amendments to the LSA's Recruitment Rules were approved by the Benchers at their February 5, 2009 meeting.

Rule 49.2(1)(b) was amended to add clarity around recruitment activity concerning second-year law students. Rule 49.2(3.1) was added to provide additional direction for non-participating employers involved in recruiting activities. These rules can be viewed at www.lawsociety.ab.ca ■

LSA Bencher Priorities 2009

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- Complaint Appeal Guideline — create a new guideline dealing with this part of the process.
- Privilege and the Legal Profession Act — consider revisions to the LPA to make clearer the LSA's responsibilities in dealing with privileged documents.
- Complaints against Staff and Benchers — develop guidelines, and provide procedural guidance to the President and President-Elect.
- Public Bencher Meeting Policy — determine the policy governing public bencher meetings. ■

Highlights of the 2009 Business Plan

Membership:

- E-Business Capabilities

Complaints and Conduct Hearings:

- Enhance the Risk Assessment Program

Public Protection (Assurance Fund):

- Enhanced Assurance Fund claims process

Professionalism and Competence:

- Complete a review of the first full cycle of the CPD program

Tributes Come from All Government Levels

The bar admission began with a pipe ceremony and welcome by Chief Marvin Yellowbird, Samson Cree Nation, at the Jonas Applegarth Theatre. Before the Honourable Chief Justice A.H. Wachowich of the Court of Queen's Bench, Koren Lightning-Earle was admitted to the Alberta bar on February 26, 2009. Tributes were also made by:

- The Honourable Mr. Justice L.S. Mandamin, Federal Court of Canada
- Dr. Wilton Littlechild, QC, IPC, International Chief of Treaty No. 6 Confederacy and Regional Chief AFN of Treaties 6, 7, 8 (Alberta), and
- Stanley H. Rutwind, QC, Assistant Deputy Minister of Aboriginal Relations, Government of Alberta

Your Annual Fees at Work

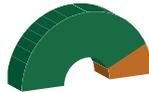
2009 Annual Fees for Lawyers who are Active Members

Components	2009	2009 (%)	2008	2008 (%)	Change from 2008 to 2009 (%)
Annual Fee (LSA)	\$1,270	34%	\$1,160	31%	9%
Assurance Fund (LSA)	\$665	18%	\$635	17%	5%
Insurance Levy (ALIA)	\$1,800	48%	\$1,900	51%	(5%)
Total	\$3,735	100%	\$3,695	100%	\$40 or 1%

General Fund, Assurance Fund and ALIA Revenues and Expenses

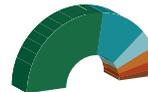
REVENUES
\$ 32,294K

- Fees – 86%
- Investment income – 14%



EXPENSES
\$ 35,924K

- Public Protection – 55%
- Organizational support – 23%
- Complaints and conduct hearings – 9%
- Professionalism and competence – 6%
- Governance – 4%
- Membership – 3%



Admission of New Lawyer Makes Justice Accessible in Home Community

By Shirish P. Chotalia, QC, Benchler, Law Society of Alberta

(The following is a summary of her bar admission tribute to Koren Lightning-Earle.)

When my friend Eileen Sasakamoose, a Hobbema, Alberta barrister and solicitor asked me to participate in the Bar admission ceremony of her articling student, Koren Rickie Lightning-Earle, I was struck by the importance of the event.

A young female Aboriginal lawyer was to join the ranks of our noble profession. She was to become a catalyst for positive change in her community. Koren, who graduated from the University of Alberta, follows in the footsteps of her principal who has, for more than 20 years, assisted Aboriginal Albertans with their daily "bread and butter" legal struggles.

Whether it is a will, a criminal case, a family law situation or a case of residential abuse, Eileen Sasakamoose has been there to assist. She has done so without request

for recognition or significant compensation. Koren follows these footsteps into a profession which strives for equality in the search for justice.



S. Chotalia (left) K. Lightning-Earle (centre) and E. Sasakamoose (right)

Today, Koren's admission to the LSA realizes part of the promise of the franchise: through education, dedication and perseverance she enters the forum where she can understand and analyze the law, and counsel her community upon its rights and obligations. In this role, she can defend the best interests of people through sage counsel and guidance. She is the "gold" of her community - her legal counsel and service will be given from the experience and perspective of an Aboriginal woman.

Roundtable Continues to Build the Pro Bono Network

By Rod Jerke, QC, President, Pro Bono Law Alberta; and President-Elect, Law Society of Alberta



PBLA hosted its third annual roundtable and provided stakeholders with professional development and networking opportunities. The fall 2008 event was designed to develop new ideas to enhance the network of pro bono stakeholders by building on the successes of both the clinics and PBLA.

PBLA is on track with its strategic objectives to focus project development in three key areas:

1. expanding the legal advice model to new locations,
2. supporting the work of the existing clinics, and
3. enhancing the profession's culture of pro bono legal service

Lawyer Donations Support Clinics

Alberta lawyers contributed over \$20,000 in response to a fundraising letter sent by the 2007 LSA President Jim Peacock, QC. These funds have been equally distributed among all pro bono clinics. The profession continues to financially support the delivery of pro bono work throughout the province in a variety of other ways. That financial

contribution is gratefully acknowledged, as well as the time and energy that the profession contributes to the actual delivery of pro bono legal services.

Law Firms Acting to Support Pro Bono Culture

The PBLA's best practice guide for law firms entitled Investing in *Pro Bono: A Best Practice Guide for Pro Bono Legal Services by Law Firms* is now available on the PBLA website, www.pbla.ca. It provides practical information and a policy template for creating a successful pro bono legal services program and thereby increasing lawyers' participation.

New Office Location for PBLA

PBLA has moved from its offices at the Law Society of Alberta to new premises. Effective March 1st, PBLA is located at:

401, 255 – 17 Ave. SW, Calgary AB T2S 2T8
Phone: (403) 541-4840, Fax: (403) 229-4488

Inquiries may be directed to

Gillian Marriott, Executive Director: Gillian.Marriott@pbla.ca
Cecelia Frohlick, Project Manager: Cecelia.Frohlick@pbla.ca
Myra Skerrett, Executive Assistant: Myra.Skerrett@pbla.ca ■■

Network Enables Lawyers to Contribute to Access to Justice

The Law Society of Alberta's Strategic Plan includes a goal to "uphold and preserve the fundamental principles of justice, including ... effective and equal access to justice..."

In 1998, the Benchers established the Pro Bono Committee, which worked to expand the nationally recognized pro bono legal clinic model beyond Calgary, as well as undertaking other initiatives, including extending insurance coverage to retired and inactive lawyers providing pro bono (that is, for free) legal services at clinics. Clinics modeled after Calgary Legal Guidance are now operating in Calgary, Edmonton, Red Deer, Lethbridge and Grande Prairie. The Children's Legal and Educational

Resource Centre, which specifically addresses the legal needs of youth, operates in Calgary. In 2007, the Benchers took a bold step to increase access to justice by endorsing and financially supporting the formation of a provincial pro bono organization: Pro Bono Law Alberta (PBLA). PBLA builds on the robust culture of pro bono service in Alberta's legal profession and increases access to justice. It works with lawyers to create new and effective opportunities for them to provide legal service pro bono. PBLA's new programs include a pro bono legal clinic that recently opened its doors in Grande Prairie, and a relationship between Borden Ladner Gervais LLP and the Children's Legal and Educational Resource Centre for the delivery of pro bono legal services. ■■

Advantages of a Law Firm Pro Bono Policy

There are many reasons why law firms adopt pro bono programs:

- Helps recruit talented law students and new lawyers by differentiating the firm by its commitment to pro bono legal work.
- Increases job satisfaction of the firm's lawyers by encouraging personally rewarding work and providing a challenge that may not otherwise be available.
- Creates opportunities for lawyers to develop skills and enhance training.
- Creates a culture of goodwill within the law firm.
- Enables the firm to provide its lawyers with an opportunity to give back to society.
- Provides for better supervision, quality control and tracking of pro bono work done by the firm.
- Promotes a positive profile for the firm in the community.
- Strengthens relationships within the firm by encouraging senior lawyers to work with junior lawyers.
- Builds public confidence in lawyers and the justice system. ■■

Important Notice: Effective Date of LSA Member Cards

Please Note: The current LSA membership card, which states an expiry date of March 15, 2009 is valid until March 31, 2009.

We will be issuing new cards for eligible members with an expiry date of March 31, 2010 by the end of this month. In the meantime, the membership card which lists an expiry date of March 15, 2009 is valid until March 31, 2009. ■■

Challenges to Lawyer Self-Regulation *continued from page 05*

4. Conclusion

Some of these developments are here to stay or, where they have not occurred, will be difficult to resist. Some fundamental principles need protection such as:

- developing regulatory regimes for professions on the 'edges' of providing legal services.
- Not leaving the public-interest 'scope of practice' guardianship to leadership of professions whose own scope of practice is under apparent attack and erosion.

Some of the more intrusive initiatives are not inevitable. We need to be attentive, pro-active and public-spirited with respect to the positive features of these challenges, to see them as opportunities to govern better and build greater public confidence in professional governance. On the whole, I do not think that we are 'drinking at the Last Chance Saloon' as was suggested with respect to England. The dregs at the bottom of the bottle, that last drink, can often be the bitterest taste of all. ■■

Summary of Disciplinary Matters Including Hearing Reports issued between January 1, 2009 and March 9, 2009

In this Summary of Disciplinary Matters for the first two months of 2009, the LSA seeks to educate and inform lawyers on its role as a self-regulator in the public interest. The LSA completed 3 hearings and issued 6 hearing reports during this time, three of which are summarized below.

Reprimand of A.

A "perfect storm" involving a partner away on compassionate leave, a staff member departing, an office move, a busy real estate market and a tight labour pool were all factors contributing to the circumstances which resulted in **A.** being reprimanded.

In this case, **A.** was acting for a vendor in a residential real estate transaction who had entered into a purchase agreement. During the transaction process, there was no response from **A.** to communications from the purchaser's lawyer to **A.** between Feb. 8 - April 5, 2007 and April 18 - Sept 26, 2007. On October 29, 2007, the purchaser's lawyer made a complaint to the Law Society. Part of **A.**'s response to the LSA is as follows:

"With respect to the matter, I wish to offer my apologies to (the purchaser's lawyer) for not responding to his correspondence. This neglect was not intentional but a result of a number of factors including significant work load, my office moving earlier this year and the assistant responsible for the file leaving this firm..."

A. faced three citations when she met the hearing panel on February 18, 2009:

- (1) failing to respond in a timely manner to communications from another lawyer that contemplated a reply;
- (2) failing to comply with obligations to remedy and return a defective document within a reasonable period of time (amended);
- (3) failing to respond to the LSA in a timely basis and in a complete and appropriate manner;

all of which was conduct deserving of sanction.

In its report, the Hearing Committee noted that the periods of delay in responding did "establish a failure to respond in a timely manner to communications from another lawyer". With respect to the second citation, the committee noted that **A.**'s "response was not timely, nor punctual, and there was a further contravention of Chapter 4, Rule 5" of the Code of Professional Conduct. On the third citation, the committee did not observe Chapter 3, Rule 3 of the code being contravened.

The committee noted that **A.** has provided good service to the public, had no prior record, and has since put procedures in place to rectify file management problems. The committee concluded that "the conduct in question arose during what was referred to by both counsel as a 'perfect storm'.

A reprimand was issued, and **A.** was directed to pay one-third of the actual costs of the hearing.

Fine for B.

Concerned with the need to maintain public confidence in the legal profession, a LSA hearing committee ordered **B.** to pay a fine and hearing costs for breaching his fiduciary duty.

B. was fined \$2,500 for breaching his fiduciary duty by the lending of the funds and failing to respond to, and disclose the fact of the loan to representatives of the other claimants.

During the hearing, an application was made by the LSA to consolidate the first three citations into one and dismiss

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the fourth. The hearing proceeded on the basis of one citation as follows, in that **B.**:

- (a) breached fiduciary duty by “lending” real estate funds of one estate (S.E.) without authority;
- (b) was less than candid with the executor of another estate (I.E.), the beneficiary of the funds in question, by failing to disclose in a timely manner that **B.** had “lent” funds of the S.E. estate; and
- (c) failed to respond in a timely manner to communications to telephone calls from the executor of the I.E. estate;

all of which breached the Code of Professional Conduct, and that such conduct is deserving of sanction.

The borrower was one of the beneficiaries of the second estate but as such, was entitled to a share of the estate funds that was smaller than the amount of the loan to her. In sanctioning the member, the hearing committee noted that, “while this was **B.**’s first conviction in disciplinary proceedings, a reprimand would not satisfactorily indicate the seriousness of the member’s behavior.”

The committee noted that it is satisfied that **B.** will not repeat this behavior, “it is concerned about the need to maintain the public confidence in the integrity of the legal profession, and the need to consider, in sanctioning, the aspect of providing a general deterrent to other members.” The committee gave **B.** 60 days from the date of delivery of the actual costs to pay both the fine and costs (\$5,000)

Disbarment of C.

In finding the conduct of **C.** to be a serious breach of the Code of Professional Conduct and the Rules of the LSA, a LSA hearing committee unanimously agreed to the disbarment of **C.**

Counsel for the LSA noted two main factors to be considered in determining what sanctions to impose on **C.** The first being protection of the public interest and, second, maintaining confidence in the legal profession.

The disbarment arose after the hearing committee met September 11, 2008 to review three citations against **C.**

It was alleged that **C.** had:

- (1) failed to follow the accounting rules of the LSA;
- (2) failed to cooperate fully with an investigation with the LSA; and
- (3) failed to respond to the LSA on a timely basis, and in a complete and appropriate manner;

And that such conduct is conduct deserving of sanction.

An audit of the financial records of **C.**’s practice pursuant to Rule 130 was commenced in October 2005. At the time, **C.** had not filed Forms S and T for the years 2003 and 2004, and Form S for the year 2005. At the beginning of the audit, **C.** noted to the LSA auditor that there were GST arrears plus interest and penalties in relation to **C.**’s law practice and that quarterly remittances were behind in filing GST returns. The LSA’s audit report noted numerous exceptions including some of the following:

- (i) Trust receipt journal not properly maintained
- (ii) Trust ledger cards not properly maintained
- (iii) General receipts and disbursements journal not current
- (iv) Trust reconciliation not properly complete
- (v) Duplicate cash receipt book not maintained
- (vi) Trust funds not expeditiously deposited into trust.

C. was required to bring **C.**’s accounts in compliance with LSA’s accounting rules by December 23, 2005. **C.** did not comply with any of the above.

C. had been suspended in March 2006 as a result of an earlier discipline hearing and had not applied for reinstatement. The report noted that in addition to protecting the public interest and maintaining confidence in the legal profession, “the issue of preservation of self governance of the profession must be considered a major factor.”

The committee noted, “in particular, the overwhelming evidence of the ungovernability of the Member based on his lack of response to or cooperation with the LSA, his failure to attend the pre-hearing conference and to participate in the scheduling of or to attend this hearing.” ■■

Electronic Versions of Factums on Appeals to be Posted on SCC Website

The Office of the Registrar of the Supreme Court of Canada has issued a policy governing access to SCC court records that came into effect February 9, 2009.

Pursuant to this policy, the SCC will be posting on its website the electronic version of factums on appeals filed on or after February 9, 2009.

Parties will be required to provide an electronic version of a factum that omits personal information about an individual, information that is subject to a publication ban or any other information that is not part of the public record. The policy for access to SCC court records can be found at www.scc-csc.gc.ca. The guidelines for printed and electronic versions of appeal documents, are also available on the SCC website.

For further information about the policy, please contact Barbara Kincaid, General Counsel at law-droit@scc-csc.gc.ca. For information about the electronic filing guideline, please contact Joanne Laniel, Manager, Registry Services at 613-996-7810 ■■

Alberta Lawyers' Assistance Society: The Economic Downturn

By Craig Kinsman, Executive Director



Are you an articling student or junior lawyer in fear of losing your job? Or perhaps a sole practitioner or lawyer in a small firm faced with a client base that has shrunk and overhead that hasn't? Are you a partner who's just taken a large pay cut or been asked to leave your firm? Or maybe a senior lawyer close to what was to be a comfortable retirement but now faced with practising well past when you had planned? Are you a lawyer who's been hurt in some way by the economic downturn?

Economic troubles can cause or contribute to personal problems or exacerbate existing personal challenges.

You are not alone. Call Assist for direct professional assistance and referral services at 1-877-498-6898 (toll-free) or call me at (877) 737-5508 (toll-free) to learn more about Assist and how we may be able to help.

Assist is an independent, charitable society. www.albertalawyersassist.ca

Ethically Speaking: Choosing and Refusing Clients - An Access Issue

By Ross McLeod, QC, Practice Advisor, Law Society of Alberta



Cases making news recently remind us that the way lawyers choose their clients may impact access to justice. Canadian lawyers enjoy considerable discretion in deciding to take on a client, but declining

all Legal Aid work, for instance, should have no place in its exercise. A general refusal by a lawyer to represent unpopular or repugnant clients can also result in ineffective or even no representation.

Ponzi schemer Bernie Madoff's lawyer suffered recent criticism in the press. There was no long queue of lawyers waiting to defend alleged hate crime accused, David Ahenakew, although he was acquitted in a Saskatchewan court recently. Accused child pornographer, David Sharpe, went unrepresented for a time, in part because of the abhorrent nature of the allegations against him. (*R.v. Sharpe* (2001), 150 C.C.C. (3d) 321 (S.C.C.)). Famously, an Alberta provincial cabinet minister wrote a letter to a Red Deer newspaper criticizing defence counsel for representing an alleged child pornographer. In it, Stockwell Day suggested that the lawyer himself supported the possession and production of child pornography. (*Goddard v. Day*, [2000] A.J. 1375).

On the other hand, representing an unpopular client can also bring heroic notoriety to lawyers and pride to the profession. An entire class of clientele may go unrepresented because of political or public opinion. Two Edmonton lawyers were recently recognized for their courage in representing a Guantanamo Bay detainee who is a Canadian citizen. But in January 2007, the pro bono movement to represent Guantanamo prisoners was chilled to hear a U.S. Assistant Deputy Secretary of Defence suggest that defence suppliers pressure their outside law firms to stop providing those services.

It is generally accepted that Alberta lawyers have discretion

to refuse to represent certain clients, including those who may be unpopular or repugnant. Among themselves, at least, lawyers understand that they are not necessarily seen to adopt the world view of their clients nor are they held personally and morally accountable for the beliefs and conduct of them.

The LSA's Code of Professional Conduct, Chapter 4, commentary 11 includes the following:

While a lawyer is entitled to decline to act in a meritorious matter provided that reasonable steps are taken to assist the client in finding competent representation (see Rule #5 of Chapter 1, Relationship of the Lawyer to Society and the Justice System), it is usually the unpopular client who will encounter the most difficulty in obtaining legal assistance. Representing a client does not constitute approval of the client's views or activities, and representation by a lawyer with personal reservations may be preferable to no representation at all.

How can a lawyer balance personal morality with the right of access to justice? Lawyers owe their clients a duty of loyalty that binds them to provide zealous representation and to avoid conflicts of interest to those clients they choose to represent. Withdrawal from the retainer may not always be easy. Where a lawyer's personal beliefs interfere with the ability to provide competent effective representation, the Code (Ch. 1, R.5) says that a "lawyer must not decline to act in a meritorious matter unless the lawyer makes reasonable efforts to assist the client in obtaining competent representation".

The commentary mentioned above, however, also means that lawyers should avoid shunning unpopular clients. If a "lawyer's objectivity is impaired to the extent that the lawyer would be unable to properly and competently carry out the representation" (Ch. 6, R.8), then the lawyer must not act. (See also Ch. 9, R.3) Moreover, lawyers should decline when the client gives illegal and unethical instructions, taking over representation of another lawyer's client without being sure that the prior retainer is in fact terminated, in the face of a conflict of interest

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TILMA Simplifies Extra-Provincial Corporate Registrations

By Susan Billington, QC, Policy and Program Counsel, Law Society of Alberta

The Trade, Investment and Labour Mobility Agreement (TILMA) between the governments of Alberta and BC will be fully implemented by April 2009. For corporate registrations, TILMA will simplify and, in some cases, eliminate the additional registration and reporting requirements for businesses incorporating or registering in one province and extra-provincially registering in the other. Generally, businesses registering in one province will be deemed to have met the requirements of the other province.

The process to complete the registration of an Alberta corporation in Alberta including professional corporations and limited liability partnerships will not change with the implementation of TILMA.

For the extra-provincial registration of an Alberta corporation in BC, including limited partnerships and limited liability partnerships, additional information will be required including names search and fee, attorney for service and head office address. This information is then electronically communicated to the corporate registry office in BC. A similar process is used in BC when extra-provincially registering a BC corporation in Alberta.

Full details regarding registration requirements for

Alberta corporations, limited partnerships and limited liability partnerships seeking extra-provincial registration will be published in the Alberta Corporate Registry (CORES) online policy and procedure manual.

Registration of trade names and general partnerships is not affected by TILMA.

Please visit www.tilma.ca/tilma_and_you/businessFaqs.asp for regular TILMA updates. Or call the Corporate Registry help desk at 780-422-1705 (Edmonton only) or 1-800-661-3723 (other areas).

Advantages of TILMA for Business

- A corporation will only have to deal with its home jurisdiction to accomplish registration in both jurisdictions.
- Requirement for filing of annual returns or to file charter amendments in the extra-provincial jurisdiction is eliminated
- Life events of the corporation in the home jurisdiction (e.g. dissolution, amalgamation) are electronically communicated to the extra-provincial jurisdiction ■

Ethically Speaking: Choosing and Refusing Clients - An Access Issue

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or when the lawyer will be a witness. In *Ethics and Canadian Criminal Law*, (Irwin Law Inc. 2001), authors Proulx and Layton provide a helpful matrix for balancing mere distaste against sincere distaste in choosing and refusing clients (at pp. 109 – 110). Alberta lawyers have a positive duty to make legal services available to those who most need them (Ch.1, R.4) and an excellent record of doing exactly that. This does not mean that they have to accept every client who walks in the door, according to the notional cab rank rule. In making

sure that no one goes unrepresented unfairly, the Code makes it clear that mere distaste for the client's cause is not enough to refuse a retainer. It is improper for lawyers to discriminate in choice of clients for the proscribed human rights grounds, including race, religion and sexual orientation (Ch.1, R.9). However, where a lawyer's personal beliefs cannot be overcome and effective representation is not possible, then the Code provides guidance for the ethical exercise of the discretion to decline to act. ■

CPLD Program - The Next Step

By Trevor Clarke, Managing Director,
CPLD Alberta

Preparing students for the next step in their careers was the key objective of the last day of the CPLD program.

The final day was held February 13, 2009 in both Edmonton and Calgary. It focused on the processes involved in planning their admissions to the Bar, the taking of the oath during their Bar admission ceremonies and their enrolment in the LSA as a barrister and solicitor.

The LSA described the procedures that need to be followed after completing the CPLD Program. Insight was provided into the services provided by the Alberta Lawyers Insurance Association. The Legal Education Society of Alberta advised the students how they provide continuing legal education to help meet Continuing Professional Development requirements and to stay current in their practice areas.

The Canadian Bar Association advised the students of the benefits of being a member and stressed that one of CBA's objectives is to improve and promote access to justice. Representatives of Legal Aid Alberta, Pro Bono Alberta, Calgary Legal Guidance and the Edmonton Community Legal Centre discussed the importance of providing legal services to improve access to justice for people in need. ■■

THE LAW SOCIETY OF ALBERTA

Suite 500, 919 - 11th Ave SW
Calgary, Alberta T2R 1P3
Telephone 403-229-4700
Fax 403-228-1728
Toll Free 1-800-661-9003

201 Scotia Place, Tower 2
10060 Jasper Ave.
Edmonton, AB T5J 3R8
Telephone 780-429-3343
Fax 780-424-1620
Toll Free 1-800-272-8839

www.lawsociety.ab.ca

Editor Sheila Serup
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