

# BarTalk

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THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch



# NEWS

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## Jerry McHale, QC - New Appointment



After 10 years as Assistant Deputy Minister of the Justice Services Branch at the Ministry of Attorney General, Jerry McHale, QC, has stepped down to pursue an opportunity in academia. On July 1, Mr. McHale began a two-year appointment as the Lam Chair in Law and Public Policy at the University of Victoria. He will teach in the Faculty of Law and the Master of Arts in the Dispute Resolution Program of the School of Public Administration. He will lecture on access to justice, dispute resolution and public policy. During his public service career, Mr. McHale served as Director of the Dispute Resolution Office and was B.C.'s representative during the development of the dispute resolution chapter of the Nisga'a Final Agreement.

## Jay Chalke, QC - New Appointment



Public Guardian and Trustee Jay Chalke, QC, is taking on the leadership role of the Justice Services Branch, effective August 2. Mr. Chalke has served as the Public Guardian and Trustee for the past 12 years where he has guided a range of law reform and organizational changes. Previously, Mr. Chalke served as Deputy Public Guardian and Trustee in Ontario, where he played an instrumental role in the implementation of guardianship legislation. He also served in various positions in the Ontario Ministry of Attorney General and was head of the Review of Certain Practices in New Brunswick Correctional Institutions.

## Mentoring Awards



A big congratulations to Morgan Camley (left) and Elizabeth Yip (right), the 2011 recipients of the Vancouver office, *McCarthy Tétrault* Mentoring Awards. The awards are the firm's national initiative to encourage exceptional mentoring and more than 200 nominations were received from across the firm this year. Winners were selected for "formally or informally" being positive influences on students and associates. They demonstrate genuine interest in another's career development, facilitate opportunities, and provide constructive feedback and coaching. Ms. Camley won the award for Student Mentor of the Year, and Ms. Yip was honoured for being the Associate Mentor of the Year.

## Write Us

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Note: *BarTalk* undertakes every effort to publish letters to the editor, subject to space and editorial discretion. Letters to the editor can also be found in *BarTalk Online* at [www.cba.org/bc](http://www.cba.org/bc).



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Family breakdowns are an old problem always looking for new answers. We look at some innovations, present and prospective. They include legislative changes giving more force to marriage/cohabitation agreements, international child abduction cases and the Hague Convention, the Supreme Court Family Rules one year on, family law mediation, Parenting After Separation and the CBABC role in developing Best Practices Guidelines for family lawyers.

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# FROM THE PRESIDENT

STEPHEN MCPHEE

## All in the Family

Returning to a meaningful practice.

*“Parents are not interested in justice; they’re interested in peace and quiet.”*

– Bill Cosby

**A**nd so it ends. A year in the life of your Branch President – countless trips on the floatplane (I guess I have started to push the statistical safety envelope); a second home with the wonderful staff at the Georgian Court Hotel in Vancouver, and many interesting and productive meetings with lawyers, judges and others.

Waiting for me is a return to a more active law practice. It is appropriate that the theme of this issue of *BarTalk* is family law, because a large part of my practice is family law, and I am looking forward to resuming that practice with renewed energy and vigour.

I am asked with some regularity why I practise family law, or more frequently, why I continue to practise family law. It is almost as if I should have grown out of it, or moved on from it.

The answer to the first question is fairly simple – I started practising in the area because I saw it as the only real way to get litigation experience outside of a criminal law practice. And that still holds true today.

The answer to the second is even simpler – because I enjoy it. I think if one applies Bill’s quote to a family law practice it can have a transformative impact on people’s lives. While I find the law, research and precedent interesting, and am happiest in submissions – my clients just want peace. They want help – not necessarily legal help – but help extricating themselves from a relationship and help moving on.

Some of my most satisfying moments in law have been from seeing the relief wash over the face of a family law client after

we have navigated through a tricky separation, or just made sure they get to see their children during the summer.

Sometimes I think family lawyers should have something akin to the Hippocratic Oath of “First, do no harm.” If we don’t keep that firmly in mind we can do significant harm at a time when clients are vulnerable.

In fact, very recently the CBABC Provincial Council passed a resolution adopting *Best Practice Guidelines for Family Law* that go further than “do no harm” and set very appropriate guidelines for family practice.

The CBABC Working Group – comprised of Family Section Chairs and other practitioners – spent numerous hours investing their energy and enthusiasm into this project. Our Law Society Family Law Task Force similarly collaborated on the project until a consensus was reached on the

wording of the draft, and another recommendation of the BC Justice Review Task Force report “*A New Justice System for Families and Children*” could be checked off.

There are nine guidelines. They are simple, they make sense, and they recognize that family law is

an area of law that requires us to be reminded of the very personal nature of the disputes and the influence lawyers can have in shaping the direction the disputes can take.

Not only did our Provincial Council approve the adoption of the guidelines, but

they also approved the formation of a Bench/Bar Committee to continue to monitor issues that arise in family law and address them in a collaborative way.

That is another reason I enjoy practising family law – it is a community of dedicated colleagues who are unselfish with their time, and (mostly) care quite passionately about their clients and just as importantly about the system in which we all practise.

I am looking forward to re-joining that community of colleagues and putting more of my energy back into practise. Thank you all for a fantastic year!



A handwritten signature in black ink that reads "Stephen". The signature is fluid and cursive.

Stephen McPhee  
president@bccba.org

# EXECUTIVE DIRECTOR

CAROLINE NEVIN

## Is Family Law A Good Career Choice?

Words of wisdom from young lawyers.

In a recent survey of young lawyers enrolled in CBABC Family Law Sections, practitioners spoke frankly about the realities of their experience in law school and early years in their chosen career. Of those who responded, more than half reported that family law constitutes more than 75 per cent of their practice. They gravitated to family law despite a less than positive perception of family law in law school: almost three-quarters said that family law was either not promoted or not portrayed positively in law school; only 27 per cent said it was portrayed as a “reasonably good” or “very good” area of law in which to practice.

The good news is that young lawyers had dramatic improvements in their positive feelings about family law after experience in practising it. When in law school, only 37 per cent thought family law was “somewhat” or “highly” attractive/

interesting; as practising lawyers, that number more than doubled to 78 per cent, and almost three times as many practitioners now rate family law as “highly” attractive/interesting compared to their opinion in law school.

When asked what they would say to a current law student considering family law as a career choice, respondents were remarkably consistent. Here are the top four things young family lawyers said new practitioners should know about practising family law:

- You will get experience in more areas of law than you will find in almost any other career choice: not just in family law but also tax, estates/trusts, property, criminal, employment, mediation and time in court.
- The downside is that it can be challenging dealing with highly emotional parties, can take long hours, and there is a long-term toll from dealing with difficult clients and cases. It’s not for the faint of heart; you need to plan

to take breaks or burn out.

- You will never be out of business; it can be a lucrative area of law and it’s recession-proof.
- It is incredibly rewarding; you help people every day. No other area of law provides this kind of career satisfaction, especially if you like interacting with people. In terms of what they now know that they wished they’d known in law school, young lawyers said:
  - Look at family law early on and decide if it fits – don’t get caught up in the focus on corporate/commercial law.
  - If you decide you’re interested, try to pick up courses in psychology, tax law, financial/accounting skills and mediation/ADR/collaborative practice, and invest in your own emotional balance and stress management skills.
  - Case law alone won’t prepare you – you need to learn from experience, and with more senior lawyers as principals and

mentors. (Note: there’s a reason these lawyers are involved in CBA Family Law Sections!)

- The Family Law Bar is a more cordial, collegial group than you think... a lot is handled by consent and mediation; it’s not all adversarial.

- There’s a shortage of family law lawyers, no shortage of work, and it can be an immensely satisfying career.

A handful of senior practitioners in the Family Law Sections were asked the same questions and had surprisingly similar replies:

they emphasized the personal satisfaction of helping people solve problems every day, and the fascination they still have for practising in an area of law that touches on so many other areas of the law and different ways to practice (mediation, collaborative practice, pre-trial conferencing, *etc.*). They also confirmed the need to gain skills to help manage the emotionality of clients and their issues, and to maintain balance, but that it was both possible and worth it. In the words of one senior practitioner, “I wish I’d known in law school that it was such a fascinating practice area!”



Caroline Nevin  
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TONY WILSON

## That Riot? It Was... a Beauty!

What if the hockey rioters were stoned instead of drunk?

**A**s I write this, the smell of tear gas, charbroiled police cruiser and embarrassment still wafts in the air in downtown Vancouver. It's an unpleasant stench; metaphorically reminiscent of an obscure Paris metro station combined with the scent of a bad Grade 7 science experiment I once did involving sulphur dioxide, iodine and fire. Oh... and add high notes of diesel, testosterone and rum to the aroma. Call it "Eau de Riot." Or "Acqua di Moron."

You know you live in a world-class city when the morning after a massive riot, the streets are covered with shards of broken glass and littered with the detritus of the previous night's looting; scenes of the madness being played (and re-played) on CNN, the BBC and other news networks around the world. But interspersed between the (seemingly few)

police on duty that night, among the broken glass, the burning cars and the rioters, an amazing photograph: a couple lies in a tender embrace in the middle of the road; a momentary kiss among the chaos. Watch for the movie. The soundtrack will include track seven from side two of *The White Album*.

In some cities, people riot over justice. In other cities, people riot about the cost of food. Or they riot to overthrow an undemocratic political regime. In Vancouver, people only seem to riot after the Canucks lose game seven of a Stanley Cup final.

Even I expected a riot that night when I ran into some pretty rowdy 22 year olds walking down Pender Street in front of Revenue Canada's building, drunk as skunks, a mile from the game, at 2:00 p.m. "Spidey-sensing" the danger, I decided to watch the game from home. Couldn't anyone at Vancouver City Hall have contemplated the real potential for trouble that night? Or were they more concerned about

how the Bike Lanes would look on TV?

So with that well deserved zinger off my chest, let me ask this question. If all the 22-year-old rioters (who were happily turned in by their Facebook friends) had been stoned on B.C. Bud or Columbian Gold instead of beer, vodka and rum, would there have been a riot at all? Instead of setting cars on fire, would they all have gone peacefully to a park somewhere to listen to the Grateful Dead on their iPods? Instead of looting The Bay and all those other stores, would they have simply raced to McDonalds for Triple Quarter Pounders and fries? Having seen the dangerous effects of hard liquor on older teens from the emergency room of Royal Columbian hospital once, and having sadly watched Vancouver being smashed up by drunk rioters on June 15th, I have to wonder whether our marijuana laws have it all wrong, and that alcohol is the more dangerous drug.



My second musing is this. As much as I love hockey, why are there hockey riots but not skiing riots, tennis riots or golf riots? If Andy Murray loses at Wimbledon, why aren't there cars burning in the streets of Glasgow? Why aren't legions of Tiger Woods fans smashing

the windows of Restoration Hardware in Pebble Beach and looting the high-end cappuccino makers after a bad round? Why aren't the riot police dragging balaclava-wearing anarchists off to jail after Lindsey Vonn takes a bad fall on the downhill at Aspen? Is there a

connection between violence on the ice and violence off the ice?

In hockey, we count the goals, the assists, the shots, the saves and the hits. And when there's a fight, the crowd erupts in euphoria with every punch. There aren't many sports where fighting is as much a part of the game as the game itself, except maybe... fighting. So when Don Cherry brags about all the punches he's thrown in his career, or suggests that Daniel Sedin shouldn't have let Brad Marchand punch Sedin six or seven times at the end of game 6, why are we surprised if 1000 or so fans, fuelled by way too much alcohol, want to get into the action by punching out someone's lights, (or their store windows), on the streets of Vancouver?

The views expressed herein are strictly those of Tony Wilson and do not reflect the opinions of the CBABC or its members.

PATRICIA JORDAN

## Rechargeable Lithium-Ion Batteries

Thermal runaway, cell rupture and combustion.

If you use a laptop computer, then you are aware that they generate a substantial amount of heat. Rechargeable lithium-ion (Li-ion) batteries can generate enough heat to ignite a fire and cause injury. Since the early 2000s, there have been many battery recalls for millions of rechargeable batteries that power computers, cell phones and other electronic devices.

The rechargeable Li-ion battery is one of the most popular types of rechargeable batteries for portable electronic devices. Over time, the capacity of all rechargeable batteries diminishes and most will fail without incident. If Li-ion batteries overheat or are overcharged, thermal runaway and cell rupture may occur and, in severe cases, even combust. To reduce these risks, Li-ion batteries contain circuitry that shuts down the battery when its voltage is outside the

safe range. While the risk with Li-ion batteries is real, I do not want to give the impression that laptop computers, cell phones and other electronic devices are unsafe to use.

In May 2011, as I was working with my MacBook Pro I heard a noise and felt the computer lift. After turning it over, I was surprised to find the battery was bulging, it had burst. Thankfully, the battery was not leaking and did not damage my computer and I was able to safely remove it. This experience alerted me to the dangers of rechargeable Li-ion batteries. Apple replaced the defective battery at no charge.

My online search for the cause of the rupture lead me to YouTube and several alarming videos of laptops in flames. Search for "Laptops in Flames."

Now, I use electrical power for my laptop and only use the battery when I am away from a power source. It is important to disconnect your laptop power adapter

as well, as they can also overheat and catch on fire. Cell-phones and other electrical devices have also caught on fire because of rechargeable Li-ion batteries.

All rechargeable Li-ion batteries will eventually wear down and hold a charge for less time. A battery will work one day and lose its ability to maintain the charge the next day. Rechargeable Li-ion batteries usually last two to three years, even if they are unused. Check the manufacturing date on the battery to ensure it has not been sitting on a store shelf for several months.

A change in the Li-ion battery life span, such as not lasting as long as it usually does is an indication that one or more of the cells has failed. If a cell develops a short, it could damage other cells within the battery and your electronic device as well. When this occurs, it is best to purchase a new battery and recycle the used battery

at a reputable recycle depot. The CBABC website contains an index of recycling resources in British Columbia at [www.cba.org/BC/Practice\\_Resources/business/recycling.aspx](http://www.cba.org/BC/Practice_Resources/business/recycling.aspx).

### DID YOU KNOW?

- Google stores search requests for 18 months.
- Facebook, LinkedIn and MySpace are often targeted by cyber-criminals seeking personal information supplied by users.
- Facebook, Myspace and YouTube are the top three blocked

websites by corporate network firewalls.

### SITES DU JOUR

Visit [How Stuff Works](http://www.howstuffworks.com) to learn more about lithium-ion batteries at <http://electronics.howstuffworks.com/lithium-ion-battery.htm>

[SeatGuru.com](http://www.seatguru.com) provides comparison charts that identify airlines and airplanes with in-seat laptop power. See "The Ultimate Guide to In-Seat Laptop Power Ports."

[www.SeatGuru.com](http://www.seatguru.com)

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DAVID J. BILINSKY

## Rethinking Lawyering Working together for value.

*Together we'll stand – Divided we'll fall  
Come on now people – Let's get on the ball – And work together...<sup>♪</sup>*  
– Music and Lyrics by: Wilbert Harrison, recorded by Canned Heat.

Ask a lawyer who does divorces about the work that he or she does for clients and they will most probably answer *we practise family law*. As lawyers, we all understand that and it creates a commonality among colleagues – *we are family law lawyers or corporate lawyers or criminal lawyers... etc.*

But ask that question of a person going through a divorce about who they want and you will get a different answer – *we want someone who can get me out of this relationship,*

*help me with custody of my kids and help create an equitable split of the marital property.* With respect, this isn't just about seeing what we do differently from our clients. This goes to the heart of the relationship – clients focus on results. What should we focus on as a lawyer? On creating *value*.

*Why is this important?* Today there are two symptoms that I think indicate that the legal world is not as healthy as we may otherwise think it is. One is the huge growth in the self-represented litigant. The second is the growth of websites and online services that come very, very close to the practice of law (such as legalzoom.com) or other self-help-with-divorce (or similar) sites. The growth of the self-represented litigant represents the fact that legal services cannot be marketed to an increasing slice of society. In other words, this group cannot see the value they would receive for the money they would otherwise spend on lawyers. Those using

those self-help websites see value in the documents and advice that they receive from these web services.

*OK – Why should we care so long as we are busy?* Professions exist because they serve a societal need. If there is a growing segment of society that is not being well served by lawyers, then eventually the need for lawyers to serve that segment will disappear. Other ways of solving the problem will appear. Now part of this is just the natural change in the profession. But when these symptoms start popping up in increasing numbers, this is an indication that a **tipping point** may be nearing... where society rejects lawyers and starts looking for other – more efficient (or having a better value equation) ways of solving some types of problems.

I think this helps us get closer to what lawyers really do (and the value they bring to society). We solve problems. If we are not being

used to solve some types of legal problems, then we may have to re-think how lawyers do what we do. We may have become so caught up in the legal process (court rules, procedures, motions, *etc.*) that we have lost sight of why we created these processes in the first place.

None of this will be easy. Innovation is never easy nor is it always apparent what is the right route to follow. We have to be prepared to let go of some things that we may think are central to the profession – but are not valued by clients. That, I suggest

is the real acid test: we have to change so that we are seen to be rendering value to solve all sorts of legal issues.

As a result, we may end up creating something quite different from the system we have today. It must be more effective, efficient and valued by clients than our current system. Alternate methods of resolving disputes such as Online Dispute Resolution offers great hope. To make such a change a reality, we have to work together.



The views expressed herein are strictly those of the author and may not be shared by the Law Society of British Columbia.

**David J. Bilinsky is the Practice Management Advisor for the Law Society of British Columbia.**

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## Email Management

Email is the bane of most lawyers and law offices. Handling the volume of incoming emails has become a real problem. Fortunately, there are three tools that can help tame the email beast, provided that you are using Microsoft Outlook as your email client. These are “SimplyFile,” “EZDetach” and “Adobe Acrobat Standard” or “Adobe Acrobat Professional.”

### SimplyFile and EZDetach

**SimplyFile** is undoubtedly the best tool I have found for helping with email. It is an Intelligent Filing Assistant for Microsoft Outlook. Once you install the plug-in for Outlook, SimplyFile

“guesses” the folder that an email should go. One click later – and it is filed. It does the same for outgoing emails too – which ensures that all your emails – both incoming and outgoing – are in the correct client folder in Outlook. No more searching in “Sent” to try to find an email that you did on a client file. This filing ability vastly speeds up handling the email avalanche!

The companion product is

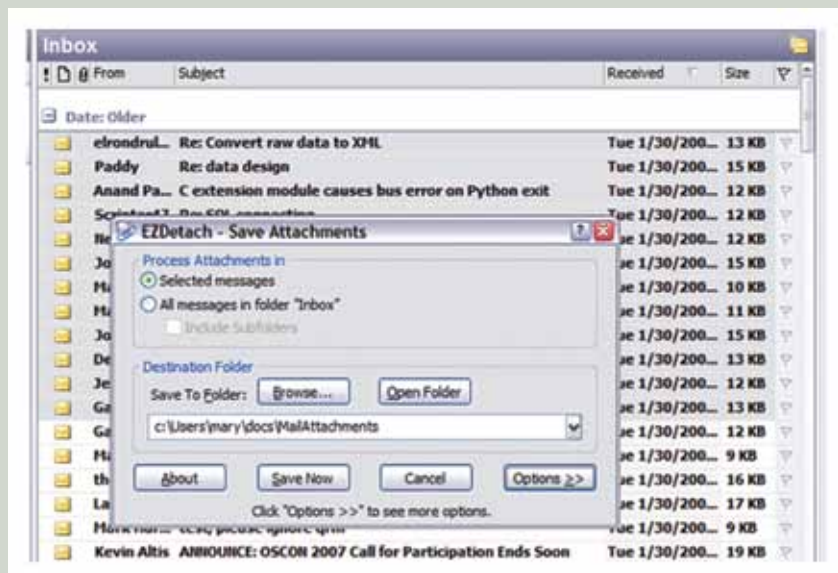
**EZDetach**, which does the same thing for attachments to email – it guesses the folder into which the attachment should go.

Both products can be found at: [www.techhit.com](http://www.techhit.com).

### Adobe Acrobat Standard or Adobe Acrobat Professional

**Adobe Acrobat** – either the standard or professional versions (not the Reader!) has the ability to convert a folder (or series of nested folders) into one large PDF Portfolio. When it comes time to close a client file, you can

use this function to take all those emails that you have just organized using SimplyFile and convert them to a searchable PDF that contains ALL the emails on that client file. You can now delete the emails from Outlook and store the PDF portfolio with the rest of the electronic file in the “Closed Files” partition of your network. This way, the file is accessible, printable and searchable – but the emails no longer take up room in Outlook.



# sections

SECTION UPDATE

## Keep Current A review of provincial Section meetings.

### Family Law Fraser Valley

**Meeting:** May 25, 2011  
**Speaker:** Dr. Michael Elterman  
**Topic:** Parenting Coordinators and Section 15 Reports



### Family Law Vancouver

**Meeting:** March 15, 2011  
**Speakers:** The Honourable Mr. Justice Peter Leask and Craig Neville (photo)  
**Topic:** Parenting Co-ordination – A View from the Bench



### Family Law Victoria

**Meeting:** April 27, 2011  
**Speaker:** Steven Krieger  
**Photo:** Aesha Faux, Co-Chair  
**Topic:** DIVORCEmate 2K11 – Child and Spousal Support Calculations



### CBABC Women Lawyers Forum-Kamloops

**Meeting:** January 19, 2011  
**Speaker:** Candace Cates  
**Photo:** Kathleen Kendall, Co-Chair  
**Topic:** Solicitor Issues for Litigators



### Family Law Fraser Valley

▶ Dr. Elterman introduced the concept of parenting co-ordination and answered general questions about Section 15 reports. He explained that parenting co-ordination started approximately 20 years ago in California and has moved to many jurisdictions since. Dr. Elterman highlighted recent studies that demonstrate that in approximately 10 per cent to 25 per cent of separations, the parties remain in high conflict two to three years post-separation. Dr. Elterman opined that a parenting coordinator is intended for the top 25 per cent of post-separation couples that remain in high conflict long after separation. He also differentiated a parenting coordinator from an individual who provides a Section 15 *Custody and Access* report. The parenting coordinator typically becomes involved after the Court Order or agreement has been signed. Another way to describe a parenting coordinator is an “intense case manager.” Dr. Elterman fielded questions regarding the preparation of Section 15 reports following his presentation. He cautioned counsel about placing the child in a decision-making position, citing the *Views of the Child* report, particularly where there is some concern that the child has been influenced, as this can have devastating effects on the child.

### Family Law Vancouver

▶ Craig Neville discussed the role of the parenting coordinator (PC) in family law. Parenting co-ordination is a child-focused dispute resolution process aimed at assisting high conflict parents in

implementing their parenting plan, monitoring compliance with the plan, as well as resolving conflict between parents on a host of issues in a timely manner. PCs are usually appointed or retained after trial or final settlement. A B.C. roster of parenting coordinators has been established by an interdisciplinary group of senior lawyers, psychologists, clinical counselors and social workers ([www.bcparentingcoordinators.com](http://www.bcparentingcoordinators.com)). The Honourable Mr. Justice Leask supported the use of the PC on many issues because it can be less expensive and faster than returning to court. Mr. Justice Leask has found that parties generally do not disagree on whether or not a PC should be appointed, but rather, how to choose and pay for a PC. He suggested that one objective of appointing a PC is teaching parents the skills necessary to reach decisions on their own.

## Family Law Victoria

Steven Krieger provided an overview of the DIVORCEmate 2K11 software as it relates to child and spousal support calculations. He demonstrated a simple calculation for child support, explaining how to create client files and manage client files and cautioned that if the version is not current, the numbers will not be accurate due to taxes. Mr. Krieger encouraged users to utilize the search engine tool in the top left hand corner of the screen to narrow the selection. When completing calculations in DIVORCEmate, ensure that all details are accurate: when inputting the number of children, users can input whom the children are living with and whether or not the children are disabled and who is claiming their benefits. Mr. Krieger

recommended opening up any fields that are indicated in blue to check that they fit with the clients' particular circumstances. Members are encouraged to contact Mr. Krieger at [skrieger@shaw.ca](mailto:skrieger@shaw.ca) and check out [www.divorcemate.com](http://www.divorcemate.com) if they have questions about using their DIVORCEmate software.

## CBABC Women Lawyers Forum- Kamloops

Candace Cates discussed some dangers associated with Wills and Power of Attorney, specifically issues of capacity and blended families. Capacity is determined by the lawyer. While consulting a physician may be helpful, it is the lawyer who must be satisfied that the individual has the capacity to provide the instructions. Be aware of family dynamics and communication styles, as both can mask the individual's capacity. The notion of "blended families" describes families with children who are not the natural or legally adopted children of both spouses. Because blended families are more common now than what is considered a "normal situation," a lawyer needs to make it clear to the clients that the other individual can change his/her will at any time. She advised that if you want to protect your children in a will, do it within your own instrument and do not rely on your spouse to do it after your death.

**For enrolled CBA members, more detailed information and available minutes from the Section meetings are online at [www.cba.org/bc](http://www.cba.org/bc) in Sections under Professional Development.**

GO ONLINE FOR MORE INFORMATION

## SECTION NEWS



## CBABC Online Section Enrolment Forms: Section Year 2011/2012

We are thrilled to announce that the Section enrolment form for the 2011/2012 Section Year is now available to CBABC members online. Our new online enrolment system allows for a faster, easier and more convenient way of enrolling in your desired Sections, as well as the option to select Section groups at amazing discounts. Your first Section is **free**, with each additional Section at only \$40 + tax for the whole year. After completing the online enrolment, a confirmation email is sent to your specified email address, outlining your Section choices and the amount paid/due.

CBABC likes to reward our early-bird members: complete your online Section enrolment by Friday, **August 12, 2011** and you will be entered in **three draws** for a complimentary two-hour CBABC PD webinar. Please note that payment must be received in full to be eligible for these draws.

Visit [www.cba.org/bc/PD/main/section\\_enrolment.aspx](http://www.cba.org/bc/PD/main/section_enrolment.aspx) to enrol today!

JOHN-PAUL BOYD

## Marriage and Cohabitation Agreements

*White Paper promises improvements.*

At present, marriage agreements must be drafted to balance the court's discretion to ignore unfair property distributions under s. 65 of the *Family Relations Act* against the presumption of equal entitlement set out in s. 56. The agreements of unmarried couples face a similar burden as a result of s. 120.1, which measures the property agreements of unmarried persons on the same yardstick that applies to married spouses. Neither circumstance is satisfactory; both place significant restrictions on people's right to order their own affairs as they wish, and both require couples to address a statutory regime many find counterintuitive.

Change, however, is on the horizon. If the legislative reforms proposed in the Attorney General's 2010 White Paper are implemented, unmarried couples and married spouses will be placed on an equal footing under a scheme that better reflects people's expectations with less chance of judicial intervention.

### PROPERTY DIVISION

The White Paper's scheme for the apportionment of property and debts will apply to all persons qualifying as "spouses," not just married persons. The definition of "spouse" will encompass unmarried couples, including persons who have cohabited for less

than two years but have a child together. Property will be divided into assets acquired before the relationship, which will not normally be shareable except for increases in value, and assets acquired during the relationship, which will be presumptively shared equally.

### PROCEDURAL FAIRNESS

The proposed legislation will allow the court to set aside an agreement when there has been a failure to make adequate disclosure or an absence of fairness in the negotiation process, implementing the key principles of *Rick v. Brandsema* and *Hartshorne v. Hartshorne*. Costs may be awarded where an agreement is set aside on a finding that a party has knowingly failed to make disclosure.

### JUDICIAL INTERVENTION

The proposed legislation will raise the threshold finding of unfairness necessary to set aside an agreement. In the absence of a defect in process or disclosure, the court will only be able to set aside an agreement if it would be "clearly unfair" not to do so, having regard to: the length of time passing since the agreement was executed; the parties' intention to achieve certainty with respect to property

and spousal support; and, the degree to which the agreement meets the act's spousal support objectives. This test may usurp the property distribution scheme as the benchmark for "clear unfairness" in favour of the three enumerated factors, none of which reference the act's provisions for the apportionment of property and debt.

### IMPROVED CERTAINTY

The proposed act will improve the certainty of marriage agreements and cohabitation agreements by unambiguously placing unmarried

persons' property entitlements on a par with those of married spouses, emphasizing the importance of procedural fairness and limiting the court's discretion to make orders in the face of otherwise valid contracts.

More importantly, the act will implement a property division regime more in keeping with people's uninformed expectations than the *Family Relations Act*. Although some people may want a property agreement to avoid sharing property acquired during a relationship, such as an anticipated court award or inheritance, the vast majority wish to preserve the assets they are bringing into a relationship from distribution at its end. The proposed regime distinguishes between pre- and post-cohabitation assets in exactly this manner and allows for more effective and more predictable marriage agreements and cohabitation agreements as a result.



John-Paul Boyd, Vancouver.

# International Child Abduction Cases

*They are more common than you may think.*

**W**hat would you do if a client reported that his or her child had been abducted across international borders?

Cases involving international child abduction can be heart-rending for your clients. The pain of unexpectedly losing contact with a child is often compounded by the complexities of dealing with long distances, a foreign court and family law system, a different language and financial constraints.

Here is some practical information to assist you:

1. Section 55 of the *Family Relations Act* provides that the *Hague Convention on the Civil Aspects of International Child Abduction* has the force of law in B.C. The Convention is an international treaty in force among some 75 countries. It seeks to achieve the prompt return of children wrongfully removed or retained from their place of habitual residence. A removal or retention is wrongful when it is in breach of rights of custody held and exercised by a person, institution or other body. In most Convention cases, children are abducted by a parent. The Convention also operates to secure and facilitate access between parents and children separated by international borders.

2. Central authorities are the persons or offices through which jurisdictions fulfill their

obligations under the Convention. The delegated central authority for B.C. is Penny Lipsack, a lawyer with the Ministry of Attorney General in Victoria.

The central authority assists parents whose children have been abducted either to or from B.C. Through the Convention process, the central authority provides information, advice and support to parents directly, or assists their legal counsel in B.C. or in the other jurisdiction. In particular, the central authority can

- advise if the foreign jurisdiction is a Convention treaty partner with Canada;
- provide an application form for a child's return (or for access);
- provide information about the law and legal aid system in the other jurisdiction or in B.C., as applicable;
- assist the parent in obtaining legal counsel;
- provide information about other resources and courses of action available to the parent;
- provide support to the parent; and
- communicate with the central authority in the other jurisdiction.

3. The Canadian Network of Contact Judges was established to deal with interjurisdictional child custody and abduction cases.

The Honourable Justice Bruce Butler is the contact judge for B.C. He oversees the assignment of Convention cases to judges in the B.C. Supreme Court.

When the Central Authority receives an application in B.C. for the return of a child, the B.C. Supreme Court is notified and a court file is opened. In most cases, soon after the court receives notice, a case conference is held with Justice Butler or with one of the other judges from the panel of judges who are assigned to Hague cases. The object of the conference is to facilitate

the expeditious hearing of the application for the return of the child. A proceeding for return of the child is then commenced by Petition and the case is heard summarily on affidavit evidence.

In the course of a Hague proceeding, the B.C. Supreme Court may engage in direct communications with the court of a foreign jurisdiction. The communications are limited to logistical issues and the exchange of information concerning the proposed return of a child to his or her habitual residence. The parties or their counsel are notified in advance and are given the opportunity to participate in the communications, which take place by video or telephone. A thorough discussion of judicial communication with foreign courts is found in *Hoole v. Hoole* 2008 BCSC 1248.



**For more information, parents or their lawyers can contact Penny Lipsack at 250-356-8433 or [Penelope.Lipsack@gov.bc.ca](mailto:Penelope.Lipsack@gov.bc.ca).**

CHRISTINE MURRAY

## Supreme Court Family Rules – One Year Later *Playing by the (New) Rules.*

The Rules came into force on July 1, 2010 with the intended purpose of “making the family justice system more responsive, accessible and efficient.” The Object of the Rules, set out in Rule 1-3, legislate this purpose, emphasizing:

- the impact that conduct may have on a child;
- minimizing conflict and promoting cooperation;
- securing the just, speedy and inexpensive determination of cases; and
- proportionality in relation to the interest any children affected, the issues in dispute and the complexity of the case.

Over the past year, the Rules have been both amended by further Orders in council and interpreted by the courts. While it is still early to determine if the Rules have achieved the stated purpose, it is clear that the objectives of the Rules are being given weight in the court’s application and interpretation of them.

In *Peck v. Peck*, Wilson J. considered an application for a summary judgment in regard to retroactive child support and pension division pursuant to Rule 11-3 of the Rules. In determining if the matter could be decided summarily Wilson J. stated that “there must be added, to an inquiry into the suitability of an issue for summary determination, the notion

of proportionality, introduced in Rule 1-3 of the Family Rules.”

The objectives of the Rules and proportionality, in relation to a summary trial application, were also of consideration in *Fox v. Fox* (Hyslop J.). It was determined that a summary trial would be an appropriate way to resolve the matters of divorce and property division despite the objection of the Respondent in affidavit evidence:

*“Your Ladyship, we disagree on the facts and evidence. If you are unable to sort this out today, it should be sorted out at trial. This is premature! She wants pieces of the pie to be carved out now, when the pie should be carved (if it’s not already carved and eaten); it should be decided at a trial based on evidence.”*

Proportionality and the objectives of the Rules have also been considered in the award of costs. The case of *Lenko v. Lenko* confirmed that the leading case law on the issue of costs in family law still applies in the new Rules regime.

In considering an application for costs, Cole J., in the case of *Aubin v. Aubin* considered Rule 1-3, both the principles of proportionality and the best interests of the child, when declining to make an order for costs which would “negatively

impact on the respondent’s financial ability to have regular physical access... and would not promote cooperation between the parties and would not minimize conflict.”

This emphasis on proportionality seen in the above noted decisions is consistent with the work of the Supreme Court Rules Revision Committee.

Eugene Raponi, QC sits on the Rules Revision Committee, an appointed committee made up of judges, masters, representatives of court services, legislative drafting counsel and members of the private Bar.



While the work of the Rules Revision Committee is confidential, Mr. Raponi emphasized in an interview on June 6, 2011 that “the approach that the Committee is taking is to allow the courts and the profession ample time for the new Rules

to play out before considering making any recommendations for significant changes.”

The Rules Revision Committee continues to monitor how well the new Rules accomplish the stated purposes set out in Rule 1-3. If you are seeking interpretation of, or revision to, the Rules, without litigation, the Rules Revision Committee receives feedback from the Bar, the Bench and other groups, such as the Canadian Bar Association. Although no official comment has been released, it is likely the Rules Revision Committee is also accepting compliments on the Rules.

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**Family Lawyer Christine Murray practises at Berge Hart Cassels LLP in Vancouver and Victoria.**

# Mediating Family Law Cases

*A menu of choices.*

In family law cases, helping your clients choose the “right” mediator is an important step. There are three main factors to consider: (1) the mediator’s qualifications, skill set and mediation style; (2) the nature of the issues in dispute; and (3) your client’s financial resources. Fortunately, in British Columbia there are mediation services available for family disputes that meet a wide range of client needs.

Mediate BC ([www.mediatebc.com](http://www.mediatebc.com)) administers a **Family Mediator Roster**, which requires each Family Roster mediator to meet certain standards of education and experience, with ongoing requirements for continuing professional development, insurance and compliance with standards of conduct. The Roster also has a complaints process accessible to the public. The Roster’s Directory of Family Mediators allows you to select a mediator in your desired location who has the experience, background or approach that fits your client. For example, your client may benefit from the mediator’s particular professional background, such as law, psychology, social work or accounting.

If your client needs a mediator with a legal background, you can also refer them to the list of **accredited Family Law Mediators** maintained by the **Law Society of British Columbia**. Accredited Family Law Mediators have a minimum

of three years of law practice experience in addition to mediation training. An accredited Family Law Mediator can also give your clients an opinion as to the court’s probable disposition of the issues.

If your client has limited financial resources, options are available. **Family Justice Counsellors** (Family Justice Services, Ministry of Attorney General) provide free mediation services for parties seeking to resolve issues of custody, guardianship, access and support.

In the private sector, some family mediators are willing to charge the **legal aid tariff** for cases involving legal aid clients, and lawyers do not need preapproval from the Legal

## Helping your clients choose the “right” mediator is an important step.

Services Society for a disbursement of three hours of preparation time and four hours of mediation.

Mediate BC, funded generously by the Law Foundation, has several programs that provide no- or low-cost family mediation. The **Family Mediation Practicum Project** (604-516-0788) uses a

co-mediation model to offer mediation services at no charge for issues related to parental responsibility (support, custody, parenting plan); mediations involving property division are available for \$100/session. Property division mediations on a sliding scale are also available through the **Family Mediation Referral Process** at the **Vancouver Justice Access Centre** (1-855-660-8406 or 604-660-8406). If you and your clients are comfortable with technology, consider the **Distance Mediation Project** (<http://distancemediation.ca/>).



This project’s goal is to determine how technology can best be used to provide high quality family mediation services. Parties meet with a specially trained family mediator and engage in mediation from the comfort of their home or office, without having to meet in person; fees are on a sliding scale. Finally, if your client’s dispute concerns a child 19 or over, consider the **Child Support Eligibility Mediation Project**, set to start in early 2012. Mediation will be available at no charge to your client to determine the eligibility of an adult child for support and special expenses.

**Shelina Neallani (left) and Yuki Matsuno (right) are both family law mediators in private practice and managers with Mediate BC.**

DAVID DUNDEE

## The Branch Adopts Best Practices for Family Law *Also authorizes Bench/Bar Committee.*

**A**t the Provincial Council meeting held on June 18th, 2011, CBABC unanimously passed a resolution adopting the *Best Practice Guidelines for Lawyers Practicing Family Law* and approving the formation of a permanent Bench/Bar Committee for family law. Both reflect the Branch's long-standing participation in and dedication to the evolution of family practice in the province.

No one can doubt that family law has evolved significantly in our province, as elsewhere. First there was the pioneering work on family law mediation starting in the mid-1980s. It was followed by the experiment of family justice centres, Parenting After Separation, the development and recognition of collaborative family practice, the more recent introduction of child protection mediation, family duty counsel, parenting coordinators, distance mediation, hear-the-child reporters, judicial case conferences, justice access centres and judicial interviews of children. In the last few years we have seen extensive consultations resulting in the new Supreme Court Family Rules and the White Paper for an entirely new *Family Law Act*.

When the Justice Review Task Force (JRTF) wrote their May 2005 report, *A New Justice System for Children and Families*, they noted that family law stood apart from other civil litigation, with distinct needs and implications

for both clients and for children. They said, "Family law is distinct from other areas of law and the lawyers and judges working in this area must adopt roles, functions and values that are compatible with the needs of families." (p. 8)

That sentiment was echoed both in the White Paper and in the objects to the new Rules. Rule 1-3 says in part that the objects include minimizing conflict, promoting cooperation and being mindful of the impact of the proceeding on children.

One of the recommendations of the JRTF report was that the Law Society consider creating a separate code of conduct for family law. Neither the Law Society nor the CBA liked the idea of a code, but we did agree that it would be worthwhile to explore best practice guidelines or core principles for family law. We have been working together on this idea since January 2008. The final version was produced in March of this year and was presented to the members of our eight Family Law Sections in the months leading up to the June meeting.

It is perhaps as well that this effort took some time. Initially, there was some concern as to why family law should be singled out, or how a statement of best practice guidelines might be used. But I think it has

become obvious to all of us – if it wasn't before – that family law is indeed its own animal. So, rather than resist this distinction, the feeling became, why not embrace it?

In the UK, a group called Resolution did just that. They simply announced that all their members would follow a code of practice that promotes a non-confrontational approach to family problems. This was one of the models we started from.

The Law Society has been clear from the beginning that they were not looking for a regulatory or disciplinary tool. They wanted a

leadership and educational document. That is why they came to the CBA, rather than trying to do it alone. And we are pleased that they did. It took some time, but in the end, we were able to draft a document our members ultimately agreed does reflect

widely accepted best practices.

The Bench/Bar Committee was the idea of the Branch's Working Group, supported by the Law Society and by all three levels of court. We felt that if the goal was to define a new "culture" of family practice, the most effective way of encouraging that was through the court system. We have great expectations for this new committee. We also hope both the profession and the courts will come to accept the guidelines, as we have.

The full text of the best practice guidelines can be found at [www.cba.org/bc/bartalk\\_11\\_15/pdf/best\\_practice\\_guidelines.pdf](http://www.cba.org/bc/bartalk_11_15/pdf/best_practice_guidelines.pdf).

**David Dundee is a lawyer with Paul & Company and Co-Chair of the Kamloops Family Law Section.**



# Putting Children First

*Supporting families through separation with the Parenting After Separation program.*

Separation and divorce have unfortunately become quite common in our society. In fact, it's estimated that about 40 per cent of British Columbia marriages end in divorce before their 30th anniversary.

When couples decide to separate, making the best decisions for their children and the future of their family is paramount. Of course, every situation is unique but separation is often an emotional and difficult time for families.

To help parents make informed decisions for their family's future, the Ministry of Attorney General developed the Parenting After Separation (PAS) program. The program has been provided in British Columbia for more than 12 years.

PAS is a free, three-hour information session to educate parents about how separation can affect children, legal issues to consider and available options for resolving family conflict. Each session is led by a facilitator who is experienced in helping families.

At the PAS session, parents will learn valuable information, including:

- how adults and children experience the process of separation;
- strategies to help families adjust to change;
- effective ways to communicate to reduce conflict;
- options for resolving family disputes, including mediation,

counselling and the court process; and

- resources available in the community for parents and children.

In addition, a handbook – *Parenting After Separation: For your child's future* – is provided as a resource for participants.

The guide provides information about the experience of separation, legal issues and worksheets to help parents plan for their future. The handbook is available online through the ministry's website and in a home study package in some community libraries.

Recognizing the importance of parenting education, completing a PAS session is required in many communities before



**It's estimated that about 40 per cent of British Columbia marriages end in divorce before their 30th anniversary.**

parents can apply to obtain or change custody, access, guardianship or child support orders in provincial court. Since PAS was first piloted in 1998, the number of communities requiring

PAS has grown to 17, including Victoria, Vancouver, Nanaimo, Kelowna, Prince George and Kamloops. The most recent communities added in 2010 were Campbell River, Courtenay, Penticton and Vernon. People can attend any of these sessions voluntarily.

To assist families whose first language is not English, the handbook is available in French, Chinese and Punjabi. In the Lower Mainland, some PAS sessions are also offered in other languages, such as Punjabi.

The ministry has worked closely with the Justice Education Society to plan and assess new ways to offer parenting education. Currently, the society is testing an online version of the PAS program as a way of serving parents in rural or remote communities in British Columbia. The

online version delivers the program through multimedia, including videos, audio, worksheets and interactive exercises.

To provide further support, the ministry has 26 family justice centres around the province and two justice access centres in Vancouver and Nanaimo, which are also excellent resources for parents. These centres are staffed by family justice counsellors who can assist with issues related to separation and divorce. Services are provided free of charge to parents and other family members.

To learn more about the Parenting After Separation program, please visit [www.ag.gov.bc.ca/family-justice/index.htm](http://www.ag.gov.bc.ca/family-justice/index.htm).

**Attorney General Barry Penner, QC**

NATIONAL NEWS

## Catherine Cummings Named CCCA Executive Director



■ Catherine Cummings of Toronto has been named Executive Director of the Canadian Corporate Counsel Association (CCCA). “Cathy brings a wealth of knowledge and experience to the position,” says Robert Patzelt, QC, Chair of the CCCA’s Executive Committee. “She is a skilled leader, strong communicator and well versed in change management and process improvement.”

Her first priority is a full analysis of the results of the recent member survey. “The survey tells us what our members are thinking and what they want,” says Cummings. “The outcomes will guide and inform our decisions in the coming months, as CCCA moves forward on a solid foundation.”

According to the survey, CCCA members indicated that they consider professional development the Association’s most valuable

service, along with protecting core values of the profession and advocacy to governments to promote the interests of lawyers. The CCCA National Spring conference, the Annual Conference and networking opportunities are also highly rated.

The CCCA has a number of initiatives on its plate. The CCCA Annual Conference takes place in Halifax August 14-16, 2011 in conjunction with the CBA’s Canadian Legal Conference. “We are offering our members 12 accredited professional development programs over two days,” says Cummings, “on topics ranging from disaster planning to litigation on a budget.”

### Read more

[www.cba.org/CBA/news/2011\\_Releases/2011-06-30-cathycummings-eng.aspx](http://www.cba.org/CBA/news/2011_Releases/2011-06-30-cathycummings-eng.aspx)

GO ONLINE FOR MORE INFORMATION



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch

## 2012 DIRECTORY

### New Online Directory Updates

Watch your inbox for your online version and complete right away. To advertise, book your preferred area of practice listing or to pre-purchase a 2012 directory download the order form at [www.bccbadirectory.org](http://www.bccbadirectory.org).

Visit [cba.org/BC](http://cba.org/BC) for details.

## PROVINCIAL COUNCIL MEETING – CBABC AWARDS

Photo credit: Patricia Jordan



John-Paul Boyd receives the 2011 Harry Rankin, QC *Pro Bono* Award from CBABC President Stephen McPhee.



Jennifer Conkie receives the 2011 CBABC Equality and Diversity Award from CBABC President Stephen McPhee.



CBABC President Stephen McPhee presents the 2011 President’s Medal to Leonard T. Doust, QC.



Left to right: Stephen McPhee, Lee Akazaki (CBA Ontario), Leonard T. Doust, QC and Analea Wayne (CBA Alberta) were all part of the Legal Aid Panel.

For more info about each award [www.cba.org/bc/Initiatives/main/awards.aspx](http://www.cba.org/bc/Initiatives/main/awards.aspx)

## NOTICE TO THE PROFESSION

### Rules with Respect to Representation at a Mediation Session

■ The Honourable Thomas J. Crabtree, Chief Judge of the B.C. Provincial Court, has issued a new Notice to the Profession regarding mediation of claims for more than \$5000 or for personal injury claims. Rules

7.2 and 7.4 of the Small Claims Rules governs these mediations.

#### Details

[www.courthouselibrary.ca/research/NewsArchive/NewsDetails.aspx?id=6592b594-ff7d-4394-95c6-e30752fa5453](http://www.courthouselibrary.ca/research/NewsArchive/NewsDetails.aspx?id=6592b594-ff7d-4394-95c6-e30752fa5453)

## NATIONAL NEWS

### CBA Announces Exclusive Preferred Provider of Disability Management Services



■ The CBA is pleased to announce our newest Preferred Supplier, Assessment Rehabilitation Services Inc. (A.R.S.) as the exclusive preferred provider of Disability Management Services to the Canadian Bar Association and its member organizations. A.R.S. is a nationally established, industry-recognized provider of Disability Management, Vocational Rehabilitation and

Occupational Medicine solutions across Canada. Established in 1999, A.R.S. has grown to be a steady and prominent pillar in the insurance community with experience in the Employer Market Sector, Health, Disability and Casualty Insurance industries and Workers Safety and Insurance Board (WSIB).

#### More information

[www.cba.org/ABC/member-savings/main/ars.aspx](http://www.cba.org/ABC/member-savings/main/ars.aspx)

## NATIONAL NEWS

### “Mega Trials” Bill Receives Royal Assent

■ On June 26, Bill C-2, *Criminal Code amendments (mega trials)* received Royal Assent. The CBA’s National Criminal Justice Section had presented a submission to the Standing Senate Committee on Legal and Constitutional Affairs on June 22 welcoming the legislation to promote the effective and efficient use of resources, and calling for some priority improvements to make the Bill more operationally effective.

The CBA recommended that a definition of “mega trial” be included in the legislation to avoid overuse of case management, and suggested that criteria be established to ensure that resources are used most appropriately. Suhail Akhtar of Toronto, a member of the National Criminal Justice Section Executive, presented the CBA submission to the Senate Committee.

#### News release

[www.cba.org/CBA/News/2011\\_Releases/2011-06-22-megatrials-eng.aspx](http://www.cba.org/CBA/News/2011_Releases/2011-06-22-megatrials-eng.aspx)

#### Submission

[www.cba.org/CBA/submissions/pdf/11-31-eng.pdf](http://www.cba.org/CBA/submissions/pdf/11-31-eng.pdf)

GO ONLINE FOR MORE INFORMATION

## PROGRAM

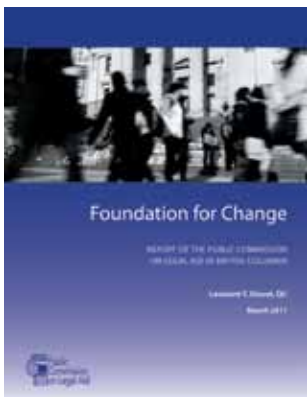
### Lawyer Alert for this Year’s Mentorship Program

■ The CBABC mentorship program is recruiting again this year at the three law faculties in B.C.

Every year lawyers old and young join this exceptional roster; leading new law students into the maze of legal life in the role

of mentor. This is one of the most sought-after programs on campus and depends wholly on lawyers volunteering to be mentors. If you are interested in participating, please contact the UVic student rep at [uvic.mentorship@bccba.org](mailto:uvic.mentorship@bccba.org),

the UBC student rep at [ubc.mentorship@bccba.org](mailto:ubc.mentorship@bccba.org) or the TRU office at [Apappas@tru.ca](mailto:Apappas@tru.ca) and you will be matched with a student in time for the mentoring receptions at each university in October.



## NEWS

### 2011 Legal Aid Roundtable

■ Following the release of the Foundation for Change Report, CBABC hosted a Legal Aid Roundtable meeting on May 25, 2011 to reconnect with participants of a 2009 Roundtable held after a town hall meeting, which resulted in the passage of a resolution about legal aid by many of our organizations. The groups – too numerous to name, but broadly

grouped under the Public Coalition for Legal Services, Bar Associations and Educators, Legal Services Society and the Law Society of British Columbia – met to discuss the recommendations and to what use they planned to put them.

The input and discussion was energizing and productive, with a promise to regroup and continue with the momentum that

has been developed by the Public Commission on Legal Aid.

Some of the key points raised were:

- there is an overarching theme and goal that Legal Aid is an essential service to British Columbians;
- there is a need to expand the public engagement and educate the public about the role of Legal Aid in their communities;
- there are a number of short and mid-term goals that must not be forgotten while we look at the larger picture and they should be integrated as much as possible in a collaborative, consistent way;
- cooperation in allocation of existing resources and partnerships is key;
- there is a need for work and research on the relationship between spending on legal aid and economic benefits in other parts of the justice system and in other areas of government spending, particularly health.

## NEWS

### CLEBC Update

#### CLEBC LAUNCHES NEW SEARCH ENGINE AND IMPROVED ONLINE MANUALS

CLEBC has redesigned its online practice manuals and added a new search engine. The new online manuals are:

- Speedy in loading content.
- Quick and easy to navigate. The expandable table of contents remains visible when navigating through the content of a practice manual.
- Interactive. In early

release, CLEBC editors will add comments to update online practice manual content; within a few months, subscribers will also be able to leave comments.

- Rich. CLEBC's online manuals include links to all cases and legislation cited in the manuals; searchable case and statute tables; downloadable forms and precedents; linking between manuals; and CLEBC's "cases and legislation considered" feature, with references to our entire online library.

The new search engine is:

- Fast.
- Comprehensive, searching all

CLEBC online content, the website and Canadian case law on CanLII.

- Flexible. Allowing searches by product type or practice area only.

Subscribers to a print practice manual have access to the online version. If you haven't set up your username and password, contact customer service at 604-893-2121. We welcome your feedback during this early release; please call customer service, or email us at [custserv@cle.bc.ca](mailto:custserv@cle.bc.ca).

PRACTICE MADE PERFECT



## ACTS IN FORCE

Current from April 20, 2011 to  
June 28, 2011

Legislative Update is provided as part of the CBABC legislative and law reform program. It is a service funded by CBA membership fees, and is, therefore, provided as a benefit of CBA membership. The full version of Legislative Update is now only published online and available to CBA members exclusively at [www.cba.org/bc](http://www.cba.org/bc).

- **ADULT GUARDIANSHIP AND PLANNING STATUTES AMENDMENT ACT, 2007, S.B.C. 2007, C. 34 (BILL 29)**  
Section 1(b)(ii) and (iv) of B.C. Reg. 14/2011 is in force September 1, 2011
- **FORESTS AND RANGE (FIRST NATIONS WOODLAND LICENCE) STATUTES AMENDMENT ACT, 2010, S.B.C. 2010, C. 12 (BILL 13)**  
Sections 1(a) and (b), 2 to 49 and 51 to 59 are in force June 9, 2011
- **FORESTS AND RANGE STATUTES AMENDMENT ACT, 2010, S.B.C. 2010, C. 11 (BILL 7)**  
Section 6 is in force June 15, 2011
- **INSURANCE AMENDMENT ACT, 2009, S.B.C. 2009, C. 16 (BILL 6)**  
Section 4 insofar as it enacts section 2.3 of the *Insurance Act*, section 13 insofar as it repeals section 28 of the *Insurance Act*, section 14 insofar as it enacts section 28.6 of the *Insurance Act*, and section 101 are in force June 17, 2011
- **PROTECTED AREAS OF BRITISH COLUMBIA AMENDMENT ACT, 2009, S.B.C. 2009, C. 19 (BILL 10)**  
Section 2(e) and (h) is in force June 9, 2011
- **PROTECTED AREAS OF BRITISH COLUMBIA AMENDMENT ACT, 2010, S.B.C. 2010, C. 13 (BILL 15)**  
Section 5(a) is in force June 9, 2011
- **MISCELLANEOUS STATUTES AMENDMENT ACT (NO. 2), 2007, S.B.C. 2007, C. 24 (BILL 35)**  
Section 58 is in force April 29, 2011
- **MISCELLANEOUS STATUTES AMENDMENT ACT, 2011, S.B.C. 2011, C. 5 (BILL 7)**  
Sections 1 to 15, 26 and 27 is in force June 17, 2011 and sections 22 to 25 and 28 to 32 are in force September 1, 2011

# Calendar

## AUGUST

**3** The Lawyers Assistance Program of British Columbia: Improving Self-Esteem

**12** Power of Women Leadership Event

**14-16** CBA Canadian Legal Conference and Expo - Halifax

## SEPTEMBER

**14** CBABC PD Webinar: E-Filing and Family Rules

**22** CBABC Women Lawyers Forum's Fall Launch and Hot Tips Event

**28** CBABC PD Seminar: Undertakings - Avoiding the Pitfalls



## NATIONAL NEWS

### CBA Calls for Open and Transparent Appointment Process

Following the announcement in May that Supreme Court of Canada Justices

Binnie and Charron were retiring, CBA President Rod Snow issued a statement to media that called for an open and transparent judicial appointment process, identified the CBA's

merit criteria, urged changes to the *Official Languages Act*, and supported the criteria put in place by the Prime Minister for Mr. Justice Rothstein's appearance before a Parliamentary Committee in 2006.

▲ **Full text of the CBA statement**  
[www.cba.org/CBA/News/2011\\_Releases/2011-05-13-scc.aspx](http://www.cba.org/CBA/News/2011_Releases/2011-05-13-scc.aspx)

## 2011 CBABC/VBA GOLF TOURNAMENT

See page 22 and [www.cba.org/bc/About\\_Us/events\\_2011/golf\\_2011.aspx](http://www.cba.org/bc/About_Us/events_2011/golf_2011.aspx) for more details.  
Photo credit: Patricia Jordan

### WINNING TEAM WITH A SCORE OF 60



### EXUBERANT PARTICIPANTS



## Organizing TIPS

### At the Office

- Control your time instead of letting it control you. Have a plan every day. Make a to do list. You'll accomplish more.
- Schedule appointments and meetings with both beginning and ending times. People are more "to-the-point" when they are up against a deadline.



### ANNUAL EVENT RECAP

## 2011 Golf Tournament

■ The 15th Annual Canadian Bar Association/Vancouver Bar Association Golf Tournament held on June 16, 2011 raised approximately \$10,000 in support of the Law Students Awards Funds.



#### WINNING TEAM: LINDSAY KENNEY LLP WITH A SCORE OF 60 (See photo on page 21):

- Tim Goepel
- Dennis Peterson
- Kevin McLean
- Reid Brooks

#### MOST HONEST GOLFERS: BULL, HOUSSER & TUPPER LLP

- Elizabeth Anderson
- Adeline Kong
- Estel Jeon
- Matt Keen

#### CLOSEST TO THE PIN WINNERS - SPONSORED BY THE COUNSEL NETWORK:

- Katherine MacRae, Legacy Tx & Trust Lawyers
- Ryan Neely, Farris LLP

#### LADY'S LONGEST DRIVE WINNERS:

- Summer Lane, Borden Ladner Gervais LLP
- Janice Shomphe, Harper Grey LLP

#### MEN'S LONGEST DRIVE WINNERS:

- Ryan Patryluk, Heenan Blaikie LLP
- Gordon McRae, Legacy Tax & Trust Lawyers

#### PUTTING CONTEST WINNERS - SPONSORED BY DORSEY & WHITNEY LLP:

- 1st Place:  
Deirdre Herbert, McLellan Herbert
- 2nd Place:  
Jason Brough
- 3rd Place:  
James Gopaulsingh, Lindsay Kenney LLP

The CBABC and the VBA thank our Hole sponsors below, who provided many bonuses for golfers as they made their way around the course.

- Continuing Legal Education Society of B.C.
- Dorsey & Whitney LLP
- ProGroup Sales and Leasing
- The Law Society of B.C.
- The Counsel Network

▲ To read more detailed information about the event, view photos and the list of generous silent auction sponsors go to [www.cba.org/bc/About\\_Us/events\\_2011/golf\\_2011.aspx](http://www.cba.org/bc/About_Us/events_2011/golf_2011.aspx).

GO ONLINE FOR MORE INFORMATION

### SURVEY

## Lawyers' Attitudes to Dispute Resolution

■ Do family law lawyers sue as a first resort and negotiate as a last? Do we promote needless litigation for the sake of our bottom lines?

The notion of lawyers as uncritical, profit-seeking litigators seems implicit in the prefatory remarks to the Attorney General's 2010 White Paper on family law reform and the 2005 final report of the Family Justice Reform Working Group.

Within a few weeks, family law lawyers will be invited to participate in a survey intended to test the accuracy of these assumptions and poll our actual attitudes toward dispute resolution. The survey will take 10 to 15 minutes to complete and the participation of the Family Law Bar is greatly appreciated.

- John-Paul Boyd

## Legal Research Fund

The Law Foundation of British Columbia has established a fund of \$100,000 per year to support legal research in British Columbia.

**PURPOSE OF THE INITIATIVE:** The purpose of the Initiative is to support legal research projects that “advance the knowledge of law, social policy and the administration of justice.”

**WHO CAN APPLY?:** The Fund is open to:

- (a) members of the Law Faculties at the University of British Columbia and the University of Victoria, as long as the application is submitted through their Dean.
- (b) members of other faculties in British Columbia, as long as the research is law-related and the application is submitted by their faculty.
- (c) members of the legal profession in British Columbia who can demonstrate that they have the background, interests and capacity to carry out a project which will meet the stated purpose of this Initiative.
- (d) non-profit organizations with expertise in carrying out legal research.

### THE FOUNDATION SEEKS LETTERS OF INTENT FOR PROPOSALS FOR ONE-TIME PROJECTS:

- To be eligible for funding, a project must fall within the Law Foundation’s legal research fund objectives of advancing the knowledge of law, social policy and the administration of justice, through the identification of areas and issues needing study, and the encouragement and support of projects to address those needs.
- The Law Foundation encourages applicants and projects that reflect the diversity of British Columbia. The Law Foundation’s working definition of diversity is: *Diversity includes age, different abilities, socio-economic level, education, ethnicity, language, family, gender, marital/relationship status, race, religion, work experience, geographic size and location, and sexual orientation.*

**APPLICATION PROCESS:** To be considered, please submit a Letter of Intent by **September 23, 2011** for consideration at the November Law Foundation meeting, by mail, courier, or fax. Please do not email Letters of Intent.

For full details on the Legal Research Fund and what is required in a Letter of Intent please visit [www.lawfoundationbc.org](http://www.lawfoundationbc.org) under Project Funding Available.

The Board of Governors of the Law Foundation of B.C. met on June 18, 2011 and approved funding for a number of continuing programs and projects. Chair Margaret Sasges is pleased to announce that funding totalling \$3,707,440 was approved for 44 programs and projects:

*Funding totalling \$749,700 was approved for the following 13 large projects:*

**\$75,000**  
**PEOPLE’S LAW SCHOOL**  
PLEI for Seniors Project

**\$75,000**  
**SALSBURY COMMUNITY SOCIETY**  
READY for C-11: Navigating Refugee Reform

**\$75,000**  
**WEST COAST PRISON JUSTICE SOCIETY**  
Prisoner’s Human Rights Project (Phase 3)

**\$65,700**  
**MEDIATE BC SOCIETY**  
Child Support Eligibility Mediation Project

**\$65,000**  
**ENVIRONMENTAL LAW CENTRE, UNIVERSITY OF VICTORIA**  
Reliance on Qualified Professionals in B.C. Environmental Regulations

**\$65,000**  
**FIRST CALL: B.C. CHILD AND YOUTH ADVOCACY COALITION**  
B.C. Child Labour Standards Improvement Project

**\$60,000**  
**LEGAL SERVICES SOCIETY**  
Gladue Report Writing Initiative

**\$55,000**  
**B.C. LAW INSTITUTE**  
Rationalizing and Harmonization of B.C. Common Law Tests of Capacity

**\$50,000**  
**ALZHEIMER SOCIETY OF B.C.**  
Decision-making and the Law: Dementia and Personhood

**\$50,000**  
**FRASER REGION COMMUNITY JUSTICE INITIATIVE ASSOCIATION**  
Restorative Justice is the Law Project

**\$50,000**  
**WEST COAST ENVIRONMENTAL LAW**  
A New Approach for Environmental Assessment for B.C. and Canada Project

**\$32,000**  
**ACCESS PROBONO SOCIETY OF BRITISH COLUMBIA**  
Rural and Disabled Access to Pro Bono Legal Services Project

**\$32,000**  
**LAW SOCIETY OF BRITISH COLUMBIA**  
Building Capacity – Supporting Aboriginal Lawyers in B.C. Project

▲ For full details of the programs and projects that received funding, please visit [www.lawfoundationbc.org](http://www.lawfoundationbc.org).



## Conferences

### THE 6TH ANNUAL CBABC BRANCH CONFERENCE

**Date:** November 18-20, 2011

**Speakers:** A selection of quality speakers from Canada and US

**Location:** Las Vegas, Nevada

**Details:** Complete all **12** of your 2011 CPD credits, including the two hour required professional responsibility and ethics, client care and relations, and practice management component. Last year's event sold out - register early to avoid disappointment and to take advantage of early bird rates!

#### Key Note Speaker Spotlight:

This year's Annual Branch Conference closing dinner speaker is Burkey Belser, president and creative director of Greenfield/Belser, an interactive brand design agency focused entirely on services marketing. Participants of the 2006 Las Vegas Conference and the 2007 San Francisco Conference will remember Mr. Belser as



an entertaining speaker who provided valuable insights into advertising and promotion. Mr. Belser has won hundreds of awards in every major field of graphic design, and has been a judge for many of the most prestigious awards shows in the industry - the Communications Arts Design Annual, the WebAwards and the creativity Awards. In 2005, he was awarded the only Lifetime Achievement Award for the Legal Marketing Association (LMA). In 2008, he was inducted into LMA's hall of Fame and the Art Directors club of Metropolitan Washington's Hall of Fame. Be sure to attend Mr. Belser's presentation during the dinner reception on Saturday, November 19, 2011.

## Upcoming Seminar and Webinars:

### The CBABC presents: E-FILING AND FAMILY RULES

**Speakers:** Thomas Broeren, Gordium Associates (Canada) Inc., Janet Clark, Hittrich Lessing Kovacs and Stuart Rennie, Legislation and Law Reform Officer, CBABC (moderator)

**Date:** September 14, 2011

**Time:** 11:30 a.m. - 1:30 p.m.

**Location:** Webinar only

### The CBABC presents: UNDERTAKINGS - AVOIDING THE PITFALLS

**Speakers:** Patricia Bond, North Shore Law LLP and Edward L. Wilson, Lawson Lundell LLP

**Date:** September 28, 2011

**Time:** Registration/Lunch: 12:00 noon, In-Person Seminar: 12:30 p.m. - 2:30 p.m.

**Location:** Law Courts Inn, 4th Floor, 800 Smithe Street, Vancouver, BC V6Z 2E1

Attendance at this seminar will provide you with 100 per cent of the required two-hour professional 2011 CPD credits.

▲ Don't forget to visit our new one-stop PD resource site [www.cba.org/pd/](http://www.cba.org/pd/) to create a personalised account based on your PD needs! Go to [www.cba.org/bc](http://www.cba.org/bc) for updates on Professional Development seminars.

## memberservices

Seasonal promotions and special offers to members are promoted weekly via **CBABC News and Jobs**. Visit the CBABC website for links to various activities and promotions on the MEMBER SAVINGS page under MEMBERSHIP.

#### ▲ Member Discount: Power of Women Leadership Event - August 12

Entertain. Inspire. Empower - one day that will change your life. Rogers Arena, 800 Griffiths Way, Vancouver, B.C.

#### ▲ Preparing for Mediation: A Dispute Resolution Guide by Deborah Lynn Zutter

Preparing for Mediation can be applied in its entirety to disputes or it may be used as a quick reference to review a specific aspect of preparing for dispute resolution.

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## Who's Moving Where and When



### **Phebe Chan**

joins Fraser Milner Casgrain LLP as a senior associate in the firm's Corporate group. She practises in immigration law, with an emphasis on business immigration.



### **Christopher Walker**

has joined Farris, Vaughan, Wills & Murphy LLP's Vancouver office as an associate in the Solicitors group. Chris's practice focuses on corporate and commercial law, including securities, mergers and acquisitions.



### **Elliott Mak**

has joined McCullough O'Connor Irwin LLP as an associate practising corporate and securities law.



### **Charles Rendina**

brings his securities, corporate and commercial and cross-border practice to the Norton Stewart's Business Law Firm. He practises primarily in the area of international business law.



### **Christopher Filipchuk**

has joined Farris, Vaughan, Wills & Murphy LLP's Kelowna office as its newest associate. Chris works primarily in the area of general civil litigation, with particular emphasis on commercial disputes.



### **Michelle Bourbonnais**

as joined Alexander Holburn Beaudin & Lang LLP's Insurance Practice as an associate. Her practice is litigation-based with a focus on insurance defence.



### **Laurel (Nast) Hudson**

has transitioned to a solo practice, still working for Laurel Hudson Law Corporation. You can continue to read Laurel's daily family, criminal law and other legal articles at: [www.hudsonlaw.ca](http://www.hudsonlaw.ca).



### **Patrick Bruce**

as joined Alexander Holburn Beaudin & Lang LLP's Insurance and Strata Property Law Practices as an associate. His practice is litigation-based with a focus on insurance defence.



### **Sunny Aujla**

has joined Farris, Vaughan, Wills & Murphy LLP's Vancouver office as an associate in the Solicitors group. Sunny's practice focuses on corporate and commercial law, including securities, mergers and acquisitions.



### **Eric Regehr**

as joined Alexander Holburn Beaudin & Lang LLP's Insurance Practice as an associate. His practice is litigation-based with a focus on insurance defence.

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**Karen P. Maki**

has joined Shergill & Company, Trial Lawyers, in Surrey, moving from Josephson Associates Barristers in Vancouver. Karen practises in the areas of corporate/commercial and personal injury litigation.



**Thomas Wachowski**

has joined McMillan LLP's Vancouver office as an associate counsel in the firm's Capital Markets and M&A group.



**Rina Jaswal**

has joined Miller Thomson LLP's Vancouver Office. Rina is an associate with the firm's Capital Markets and Securities group. She advises both public and private companies on a variety of matters.



**Jonathan Liteplo**

has joined Fasken Martineau DuMoulin LLP's Vancouver office as a partner in the firm's Global Energy Practice group. He works extensively in the energy and utilities areas.



**Brent Rentiers**

has joined Farris, Vaughan, Wills & Murphy LLP's Kelowna office as an associate in the firm's Litigation group.

# newmembers

## May & June 2011

### Regular Members

**Patricia Hatt**  
Sidney

**Michael Jakeman**  
MacLean Family Law Group  
Vancouver

**Jordan Langlois**  
Kornfeld Mackoff Silber LLP  
Vancouver

**Ryan Lee**  
Drysdale Bacon McStravick  
Coquitlam

**Katherine Owen-King**  
Grant Kovacs Norell  
Vancouver

### Scholar

**Francis Akinuoye**  
Vancouver

### Articling Students

**Michael Beishuizen**  
Thomas, Rondeau LLP  
North Vancouver

**Miranda de Quadros**  
Whitehorse

**Dermot Devine**  
Vancouver

**Shawn Doyle**  
McCarthy Tétrault LLP  
Vancouver

**Maral Fadaeian**  
Blake, Cassels & Graydon LLP  
Vancouver

**Mark Feldthusen**  
Bull, Houser & Tupper LLP  
Vancouver

**Cameron Funnell**  
Oyen Wiggs Green & Mutala LLP  
Vancouver

**Christopher Ghirardi**  
Legal Services Society  
Vancouver

**Jenna Hammond**  
Bull, Houser & Tupper LLP  
Vancouver

**Emily Hedayat Baig**  
Des Friedland & Associates  
Vancouver

**Erika Lambert**  
Bull, Houser & Tupper LLP  
Vancouver

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McCarthy Tétrault LLP  
Vancouver

**Ian McFadgen**

Jonathan J. Israels Law  
Corporation  
Vancouver

**Graeme Nunn**  
Vancouver

**Doinita Panainte**  
Surrey

**Andrew Woodhouse**  
Bull, Houser & Tupper LLP  
Vancouver

### Law Students

**Jessica Abells**  
Vancouver Coastal Health  
Authority  
Victoria

**Eric Aitken**  
Victoria

**Samuel Arden**  
Vancouver

**Bahareh Danaei**  
North Vancouver

**Meghan Forhan**  
Waterloo

**Stephanie Hu**  
Coquitlam

**Michael MacIsaac**  
Lower South River

**Katherine Mackay**  
Delta

**Stephanie Melnychuk**  
Oyen Wiggs Green & Mutala LLP  
Squamish

**Jamie Myrah**  
Victoria

**Matthew Nefstead**  
Devlin Gailus  
Victoria

**Mark Reynolds**  
Toronto

**Emile Scheffel**  
Kamloops

**Christopher Scott**  
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