BENCHERS'

ADVISORY

ISSUE 56 1907 1998 AUGUST 1998

Inside...

A call to criminal lawyers ● The Criminal Practice Advisory Committee chair, Larry Anderson,Q.C., invites your input on the issues and concerns that affect your practice of criminal law. *2*

Loans to clients *(Can I be a banker too?)* ● Society auditor Glen Arnston outlines the conditions under which a lawyer is allowed to loan money to a client. *3*

Rules of Court update ● The committee is proposing that a number of the developments previously reported upon will become effective September 1, 1998. Alan Macleod,Q.C., and Eric Macklin,Q.C., outline these changes. *4*

Mandatory Pro Bono - agree or disagree? ● The Pro Bono Committee wants your ideas on how the provision of pro bono services in Alberta could be encouraged. *5*

Summit update ● The Justice Summit is scheduled for January 27 to 29, 1999. Your summit representative, Terry Clackson,Q.C., brings you up-to-date. *5*

Civility in the practice of law *Must we be "Rambos" to be effective?* ● Tennessee lawyer Robert Ritchie suggests some solutions to the decline of civility within the legal profession. *6*

Complaint Synopsis *9*

Avoiding inappropriate interview questions *A clarification* ● Equity ombudsperson Joanne Goss replies to your feedback on her last article, "Guidelines for conducting articling interviews: avoiding inappropriate questions." *10*

What can your files tell you about your practice? ● Try this adaptation of the Practice Review Committee's checklist. *11*

Have you "Sharpened your focus"? ● Flying solo *12*

President's message

Legal aid lawyers petition special meeting

by Gordon W. Flynn, Q.C., C.A.

An unusual event occurred in the Law Society recently. The *Legal Profession Act* enables a group of 50 active members to petition the secretary to call a special meeting of the membership. Such a petition signed by 61 lawyers was received by the Law Society in June. The issue provoking this interesting development is the tariff of fees relating to legal services rendered under legal aid certificates. The special meeting was duly called and held July 9 in Edmonton.

While legal aid and the accompanying tariffs are some of the many subjects falling outside my bailiwick, I was able to acquire some background information in preparation for the meeting. Prior to 1970 there existed a needy litigants program for both civil and criminal matters. The legal aid system was instituted July 1, 1970 by an agreement between the Law Society and the provincial Attorney General. In essence, the agreement called for the Attorney General to provide funding and the Law Society to administer the plan. In May, 1973 the Legal Aid Society of Alberta was incorporated to assume the day-to-day administration of the program.

Amendments were made over time to the agreement between the Law Society and the Attorney General, and the current form of the agreement was signed in July of 1979. It is this agreement (rather than a provincial statute) that is the foundation of the legal aid scheme in Alberta.

The federal government has historically provided partial reimbursement to the province for monies expended on criminal legal aid. However, the federal contribution has been shrinking in recent years.

In September, 1996 the Legal Aid Society Tariff Review Committee was formed under the stewardship of Terry Clackson, Q.C. The committee has recently finalized a report which will be presented to the Legal Aid Society board of directors in September. The committee has recommended a number of structural and substantive improvements to make the tariff more user friendly and current. The committee has also proposed a tariff increase by means of omnibus surcharge although the percentage increase has been left to negotiation between the Law Society and the government.

The hourly rate paid to lawyers by Legal Aid has gradually increased from $15 in 1971 to $44 in 1985 and $61 in 1991. There has been no increase in the hourly rate since 1991.

Understandably, a number of lawyers who provide services to the Legal Aid Society feel that they have not been afforded fair treatment. This situation was the impetus behind the petition for the special meeting held on July 9.

About 50 members attended the special meeting and heard a number of well-prepared, thoughtful presentations by concerned members of the bar. The following points, among others, were brought to the attention of the meeting.

- there has been no inflationary increase since 1991;
- "hourly rate" is a misnomer since it does not cover much of the work performed by lawyers in serving legal aid clients;

Back by popular demand, the Law Society offers the fifth annual FREE trust accounting rules seminars...

See page 3

The Law Society of Alberta
#600, 919 - 11th Avenue S.W.
Calgary, Alberta T2R 1P3
Telephone (403) 229-4700
Toll free 1-800-661-9003
Fax (403) 228-1728

The Benchers
Gordon W. Flynn, Q.C., C.A. - President
Janet Andersen
Larry G. Anderson,Q.C.
John D. Bascom, Q.C.
Everett L. Bunnell, Q.C.
Terrance D. Clackson, Q.C.
Anthony L. Friend, Q.C.
Alain Hepner, Q.C.
Cheryl C. Gottselig,Q.C.
Eric F. Macklin, Q.C.
Alan D. Macleod, Q.C.
Bryan E. Mahoney, Q.C.
Virginia M. May, Q.C.
Kenneth G. Nielsen, Q.C.
Simon Renouf
Patricia Rowbotham, Q.C.
Rhonda K. Ruston,Q.C.
W. Paul Sharek,Q.C.
Hugh D. Sommerville,Q.C.
Francine Swanson, Q.C.
Morris Taylor
Jack Watson,Q.C.
Wilfred Willier

Administration
Peter Freeman, Q.C., secretary
David Turner, deputy secretary, education, finance
James McLeod, deputy secretary, conduct
Irene MacEachern, complaints coordinator
Complaints resolution officers:
Linda Threet, Elizabeth Soper,
Angela Gallo-Dewar (Calgary)
Lois MacLean, Maurice Dumont, Q.C. (Edmonton)
Barbara Cooper, practice review
Lindsay MacDonald, counsel
David Guenter, assistant counsel
B. Dore, assurance, professional corporations
B. Gesinghaus, student enrolment & admissions
Steven Dyer, audit
Sharon Lahey / Judy Blackwell, forms S, T, and U
Barry Vogel, Q.C., practice advisor
Paul McLaughlin, practice management
Peg James, risk management
Mel Scott, treasurer
Allison MacKenzie, communications
Professional liability insurance
Sarah J. Brickett, director of insurance
Insurance, all routine calls
Margaret Bayerle, Jackie Hickey,
Gina Mah, Maureen Sikorski
Kerrie Breit

- the defence bar should not be obligated to carry the financial burden of the poor, especially when other professions are not treated in a similar fashion;
- other segments of society are receiving increases in pay rates;
- the liberties and civil rights of the poor are no less important than those of the wealthy.

After much discussion, the meeting passed the following resolutions:

THAT the Law Society of Alberta immediately begin negotiations with the Government of Alberta for an immediate increase in the Legal Aid tariff from the Government of Alberta;

THAT the Law Society of Alberta request an increase in funding for the Legal Aid tariff;

THAT the Law Society of Alberta negotiate with the Government of Alberta for a governmental contribution towards the cost of the professional negligence insurance levy charged lawyers who act on Legal Aid certificates.

I propose to circulate a transcript of the special meeting proceedings to the benchers without delay and to ask for their authority to establish a nominating committee to commence discussions with the government.

As with so many other aspects of my term to date, the legal aid dialogue has proved both interesting and educational. Those of us involved in implementation of the resolutions would like to augment our understanding and appreciation of the issues through input from you, the members. If you have data or ideas that might be helpful to the committee, please forward them immediately to Peter Freeman, Q.C., Secretary, Law Society of Alberta, 600, 919 11th Avenue S.W., Calgary, Alberta .

Gordon Flynn

A call to criminal lawyers

by Larry G. Anderson,Q.C.
chair, Criminal Practice Advisory Committee

There was a time when criminal lawyers seemed like the forgotten few in Law Society circles but over the last decade things have changed. With a full third of the benchers now being criminal lawyers (I am counting Jack Watson and his laptop as two) there can no longer be a perception that the criminal bar is left to fend for itself on matters affecting criminal practice. Quite the contrary, the Criminal Practice Advisory Committee has been active since 1990 and will be particularly busy in the year ahead.

The purpose of the committee is in part advisory. You will see articles in the *Benchers' Advisory* from time to time, like John Bascom's recent article on the proceeds of crime legislation. The committee also has a role in advocating for Alberta's criminal lawyers on several fronts, sometimes at the legislative level, sometimes addressing members' concerns about judicial practices that evolve from time to time.

The three main issues facing the committee at present are (1) assembling and advancing our members' views on the ever evolving proposals to change preliminary inquiries, (2) working on a protocol for the search of lawyers' offices (especially since the relevant Criminal Code provisions were recently struck down) and (3) looming is that subject close to the heart of every criminal lawyer in Alberta - Legal Aid. Is it time to take a fresh look and a pro-active stance?

This is an invitation for your input into these or any other concerns you may have affecting the practice of criminal law in Alberta. We not only welcome your input, we need it. We can improve the position of criminal lawyers in Alberta if we choose to act. You can be assured that your call will not go unanswered. I can be reached through the Law Society offices or at my office - 424-9058 (free, 24 hours a day, if you are in custody).

Loans to clients (Can I be a banker too?)

Ask the auditor

by Glen Arnston, senior auditor
Audit Department

Given the profits generated by Canada's big five banks, it is not surprising that law firms often take a financial interest in their clients vis-a-vis a short term loan. Loans to unrepresented clients are permissible under Chapter 6 (Conflicts of Interest) of the Code of Professional Conduct provided that certain criteria are met:

Specifically, Rule 9, Chapter 6, page 51 states:

> A lawyer must not engage in a business transaction with a client of the lawyer who does not have independent legal representation unless the client consents and the transaction is fair and reasonable to the client in all respects.

The commentary to Rule 9 defines business transactions with clients and includes lending or borrowing money. The key aspect from Rule 9 for purposes of this article is that the transaction - the loan to the client - must be fair and reasonable. Although the term fair and reasonable is open to interpretation, it would appear to exclude loans made at rates far in excess of the prevailing interest rates regardless of the security or lack of security obtained.

The member must also be wary of the circumstances under which the loan is made. The commentary to Rule 9 on page 64 provides sage advice on this issue:

> Before engaging in such a transaction, the lawyer must carefully consider the fiduciary obligations of the lawyer and the likely presumption of undue influence should the client later become dissatisfied. The lawyer will have the onus of proving that the transaction was fair and reasonable from the client's perspective. Subsequent discrepancies between the client's version of events and the lawyer's may be resolved in favour of the client. These factors will override any apparent benefits of the transaction if a client is clearly in an unequal bargaining position due to age, financial position, lack of education or experience, or other similar circumstances.

There are numerous red flags to the membership from the above commentary. Firstly, the law firms are usually lending money to clients who desperately need the funds. Clearly, the member is in a superior financial position. Secondly, by virtue of their education and business acumen, members may be perceived to be in a superior bargaining position. Even when the member and the client are considered as equals, the most sophisticated of clients can become very naive if the matter proceeds to a conduct hearing.

Having met the first requirement, fair and reasonable loan terms and conditions, a second hurdle can be found upon further reading in the Rule 9 commentary (page 65) which states:

> Even if a client is relatively sophisticated, the lawyer must objectively assess whether the client would agree to the same terms and conditions with a person other than the lawyer, and whether the lawyer stands to incur a benefit or advantage that, with due diligence, the lawyer would prevent someone else from obtaining in a transaction with the client. Despite favourable responses to these and similar questions, the client must be advised of all of the advantages of retaining independent counsel. Such consultations should be clearly documented and preferably confirmed in writing. The nature of the matter may also require that the client, while not independently represented in the transactions, obtain independent legal advice regarding the advisability of the transaction.

The above commentary requires the member to advise his client of the advantages of retaining independent counsel on the loan transaction. If the client waives such counsel, the member should obtain a document signed by the client to that effect. The requirement for advising the client about independent counsel does not vary with the terms of the loan. The commentary must be followed even if the terms of the loan clearly benefit the client, such as non-interest bearing, unsecured, or no fixed repayment terms.

Often the Audit Department will encounter loans to clients supported by nothing more than a canceled cheque from the member's general bank account. No documentation exists regarding the terms of the loan and if the client was advised regarding independent counsel. Clearly these situations are not acceptable and place the member in a difficult position should the client ever dispute the loan.

To summarize, lending money to clients is acceptable provided that the requirements of the Code of Professional Conduct are met. The loans must be fair and reasonable to the client and the member must advise the client of the advantages of discussing the loan with independent counsel. Such discussions must be clearly documented and preferably confirmed in writing.

Fifth Annual Trust Accounting Rules Seminars

The Audit Department will be hosting its fifth annual FREE trust accounting rules seminars in Edmonton and Calgary pending sufficient demand. If there is sufficient demand, seminars may be held in Fort McMurray, Grand Prairie, Red Deer, Lethbridge or Medicine Hat.

Geared towards sole practitioners, small firms and new members, the seminars educate members and their staff on accounting rules.

Topics:

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

Calgary: Thursday, December 3
9:00 a.m. to 11:00 a.m.
600, 919 - 11th Avenue S.W.

Edmonton: Friday, December 4
9:00 a.m. to 11:00 a.m.
2610, 10104 - 103 Avenue

For more information or to register for the seminar, please contact Sharon Lahey @ 229-4718, 1-800-661-9003 (Calgary) fax 228-1728 or Joanne Hanlon at 429-3343 1-800-272-8839 (Edmonton), fax 424-1620.

Rules of Court update

Amendments proposed to take effect September 1

Alan D. Macleod,Q.C.

Eric F. Macklin,Q.C.,

Law Society representatives
Rules of Court Committee

The Rules Committee is proposing that a number of the developments reported on in the June *Benchers' Advisory* will become effective September 1st, 1998. They include:

1. Schedule C

You will recall several drafts of the proposed Schedule being circulated to the profession and that we received a lot of feedback which resulted in changes, most of which were set out in the last draft. In addition, the committee has increased taxable costs for cases of less than $10,000 to 75% of the Column 1 costs. Post-judgment taxable costs on cases of less than $10,000 are to be those set out in Column 1. Finally, Chambers Judges can order costs based on item 15 re: appeal factums for special applications if they are important or of a complex nature. Once the new Schedule C takes effect, it will not be restricted to steps taken after that date.

2. Streamlining lawsuits

Those draft rules distributed earlier, subject to some minor amendments, will also become effective September 1st.

3. Summary trial procedure

This is an expanded version of Rule 159 and will permit wider use of the summary application procedure. A draft of this procedure was previously distributed.

4. Rule 218 - expert evidence

This was also distributed previously.

While these changes have been approved by the Rules Committee, Cabinet approval has not yet been obtained. In anticipation of Cabinet approval, however, we felt that the notice to the legal profession was important.

Contingency fees

This item has been the subject of some feedback from the profession, most of it against a suggestion that contingency fees be capped. The Rules Committee has rejected the notion of capping contingency fees. It has also rejected the suggestion that all contingency agreements be the subject of independent legal advice. Nevertheless, the Rules Committee has noted that under the existing rules, contingency agreements are subject to variation by taxing officers. It also notes that costs which are recovered are the client's property and this is clearly spelled out in the Code of Professional Conduct. It is the obligation of all lawyers to account fully to their clients for those costs.

Accordingly, the committee is of the view that clients ought to be informed, both at the time they sign the agreement and at the time the file is concluded, that the account and the contingency agreement are subject to review by a court official and that this ought to be stated in plain language in the agreement and on the accounts.

The committee also noted that it would be much more important, given the enhanced Schedule C, that the Law Society enforce its Code of Conduct with respect to accounting to clients for recovery of taxable fees and disbursements.

The practice of filing contingency agreements with the Court was questioned and the committee's view was that there seemed to be very little utility in this as long as the lawyer maintained a copy of the contingency agreement and an affidavit of execution and an affidavit of service that the agreement had been served upon the client.

Discovery reform

This discussion occupied much of the meeting. A committee, consisting of Justice Belzil (Chair), Justice Brooker, Rob Graesser, Q.C., and Lou Cusano, has been working diligently on recommendations to expedite the discovery process, both with respect to documents and oral discovery. You will recall that this was the subject of our last report, and the recommendations have been distributed previously. While the committee favoured most of the recommendations, the matter has gone back to the committee for some redrafting in light of our comments. We are hopeful that we will be able to agree on a concrete proposal at our next meeting so that the new provisions can take effect sometime next spring. The object here is to encourage a timely production of documents but to eliminate the concept of "tertiary" relevance which results in endless production of documents only marginally relevant. Counsel will also be discouraged from examining every employee and former employee who may conceivably have any knowledge touching the matters in question.

Taxation of solicitor/client fees

There has been some suggestion recently that taxation of accounts ought to be eliminated. This was rejected by the committee, although we agreed that the process should be renamed and the words "taxation", "taxable costs" and "taxing officer" replaced with something more understandable by the public.

These were the items which we believe are of significant interest to our members. As always, we welcome your comments and we acknowledge with thanks the constructive criticism received in the past. Please address your comments to Geoff Ho,Q.C., Alberta Justice, 3rd Floor, 9833 - 109 Street, Edmonton, Alberta T5K 2E8.

Notice of proclamation of Alberta legislation

(Proclamations issued between February 27, 1998 and June 14, 1998)

- Fuel Tax Amendment Act, 1997
  (SA 1997 c11),
  s2(a)
  effective March 20, 1998.
- Miscellaneous Statutes Amendment Act, 1997
  (SA 1997 c18),
  s25(3)
  effective June 4, 1998.

Mandatory pro bono - agree or disagree?

The Pro Bono Committee wants your opinion

by Terrance D. Clackson,Q.C.
chair, Pro Bono Committee

In a previous *Benchers' Advisory*, I advised you that the Law Society was undertaking a review of the pro bono activities of our members and the means of encouraging the continuation and expansion of those efforts.

The Law Society has established a committee to address those issues. Our committee has met on two occasions and has reviewed the techniques used in the United States to encourage pro bono. The committee has also reviewed the ongoing efforts of the Canadian Bar Association and the various mechanisms in use in Alberta.

The committee is planning to meet with representatives of student legal services, student legal assistance and Calgary Legal Guidance in September. The committee hopes that meeting will help in the design of a structure which will serve to rationalize and enhance the delivery of free legal services.

The committee is mindful that structuring the professions' provision of pro bono services will only be successful if the profession accepts the process. Therefore, the purpose of this article is to provide you with an opportunity to comment upon the initiative and to encourage you to provide your views on the provision of free legal advice, generally. In that regard you may wish to consider the following issues:

1. Should the legal profession be more active in the provision of pro bono services?
2. Should there be a mandatory requirement for the provision of pro bono representation?
3. Should the donation of funds or the participation in community organizations be considered as pro bono service?
4. Is there a need to structure the provision of pro bono services either in addition to or in substitution for our existing ad hoc efforts?

I expect that a more specific survey will be circulated in the future, but your views at this time will assist the committee in its review and planning. If you would like to comment, please write to me in care of the Law Society of Alberta, 600, 919 11th Avenue S.W., Calgary, Alberta T2R 1P3.

Summit update

Preparations for the Jan. 27-29 Justice Summit underway

by Terrance D. Clackson,Q.C.
LSA/CBA Joint Committee

The Justice Summit is planned for January 27 through 29 in Calgary. The public consultation process is well underway as are our plans to provide input into the process. Our committee is the joint undertaking of the Law Society and the C.B.A. and includes a cross section of members of the profession.

We had considerable doubt about participating in the process but resolved that participation was necessary in order to ensure that the system was defended against uninformed attack. Additionally, we believe there is some prospect for positive change and, if nothing else, the process will serve to better inform the public as to the workings of the system.

As it stands, the profession will have four delegates of the one hundred and fifty participants at the Summit. The other interest groups will be similarly represented. The bulk of the summiteers (83) will be members of the general public.

At this point, we are canvassing the profession for their ideas on improving the system. You may have been asked for input from one of our committee's members or received a notice seeking your ideas. We intend to collate your responses as our submission to the Summit. We will not be recommending the adoption of any particular suggestion, but will recommend that all suggestions be the subject of further analysis. We don't think the review should end with the Summit. Our position is that the Summit is the start of a more involved process. Therefore we expect to take your suggestions, analyse them and, ultimately, develop a set of workable recommendations for change. Obviously, we cannot conclude this process in advance of the Summit. Indeed, it is likely that the process will take us at least a year.

We are obliged to provide our Summit report to the Working Committee by the end of September and, therefore, your contribution to the profession's effort needs to be provided as soon as possible. I encourage you to take advantage of this opportunity to express your ideas.

Membership survey

Did you receive a questionnaire?

In June approximately 1950 randomly selected Law Society members received a membership questionnaire seeking their views on the practice of law and the role of the Law Society.

Did you return your membership survey?

If you have already completed and returned the questionnaire, please accept our sincere thanks.

If you have received the questionnaire and have not yet returned it, please do so.

Your feedback is extremely important in ensuring that the survey provides an accurate reflection of the membership.

For further information please contact Allison MacKenzie in the Society's Calgary office at 229-4744 or toll free at 1-800-661-9008.

Civility in the practice of law

Must we be "Rambos" to be effective?

The following article, reproduced courtesy of the author, is a subject that has troubled me for some time. I have spoken and written about it on various occasions, and am very impressed with Mr. Ritchie's effort. He discusses the problem in the context of Tennessee, but it applies virtually without change to Alberta. Please read the article and then think about it. *Barry Vogel, Q.C., practice advisor*

by Robert W. Ritchie, Esq., Ritchie, Fels and Dillard, P.C., Knoxville, Tennessee

The problem

The practice of law has always been subject to abuse by those outside of the profession.

This has been true throughout history even though, during significant periods of that history, the disparaged lawyers were taking the lead in the founding of our nation and in fostering every significant social and economic development of that nation.

We have been constantly criticized, vilified and abused by anyone who was on the losing end of any court proceeding and by those whose power or pocketbook was subject to challenge in a judicial proceeding. Some of the criticism of individual lawyers, even groups of lawyers, has been justified, but most of it has not. We have been able to withstand such criticism because of the irrefutable fact that the lawyers of this nation are the foundation of a system of justice that is the cornerstone of democracy. We are the advocates of those who find themselves embroiled in disputes and disagreements, the counselors for those whose lives are disrupted or broken, and the advisers of those whose business and personal endeavors must be according to the laws governing such matters.

We can deal with and survive the criticisms of those outside the profession, meeting those criticisms that are false and accepting and using those criticisms that are constructive. What we cannot survive is the deterioration of the professionalism we extend to each other -- the decline in the civility between lawyers.

The word "civility" may be misleading. It sounds as if we are talking about nothing more than social graces or supposedly outmoded courtesies such as a gentleman walking on the curbside of a lady or standing when she walks into a room. Without deprecating those old-fashioned customs, I suggest that we are talking about the deterioration of something that can, and in some cases does, endanger the effectiveness with which our profession is practiced and our legal system is operated.

United States District Judge Marvin E. Aspen, in an article for the Valparaiso University Law Review, Val. U. Law Review, 28:513, quoted an exchange between two veteran trial lawyers at a deposition. Attorney V had just asked Attorney A for a copy of a document he was using to question the witness:

> Mr. V: Please don't throw it at me.
>
> Mr. A: Take it.
>
> Mr. V: Don't throw it at me.
>
> Mr. A: Don't be a child, Mr. V. You look like a slob the way you're dressed, but you don't have to act like a slob.
>
> . . . . . .
>
> Mr. V: Stop yelling at me. Let's get on with it.
>
> Mr. A: Have you not? You deny I have given you a copy of every document?
>
> Mr. V: You just refused to give it to me.
>
> Mr. A: Do you deny it?
>
> Mr. V: Eventually you threw it at me.
>
> Mr. A: Oh, Mr. V, you're about as childish as you can get. You look like a slob, you act like a slob.
>
> Mr. V: Keep it up.
>
> Mr. A: Your mind belongs in the gutter.

Judge Aspen reports that this was between lawyers involved in a multi billion dollar lawsuit, and unfortunately it was reported in the Chicago Tribune, thereby receiving wide circulation.

We would like to pass this off as something that would only occur in the big city, and certainly we can say that it is an extreme example, but recent studies and the increased concern over such matters indicate that the incivility between and among lawyers is growing to an extent that it is interfering with the effective administration of justice, civil and criminal. When lawyers are quick to characterize as a misrepresentation or a lie an allegation in a pleading with which he or she has a disagreement, when lawyers attack another's position as motivated by an intentional effort to mislead the court, when lawyers conveniently forget that to which they have orally agreed, when trials become battles by personal attacks between adversaries, and when these things are not isolated occurrences by an identifiable few, we have a problem.

I do not believe that it is a problem that has infected the majority of our profession, but even if it has infected an increasing minority of our profession, it is one which we must recognize and with which we must deal effectively.

The causes

The nature of the adversarial process

The seeds of incivility are present in any adversarial or combative engagement. We are adversaries, after all. We are advocating a position on behalf of a client who has a dispute with someone else. That someone else has an advocate, our adversary. Even in compromise one side will often feel that he or she has prevailed or been defeated. We want to win. Often, the pressures are tremendous. There are pressures because of allegiance to our client, and pressures because we know that if we do not win, at least sometimes, we may see our practice evaporate. Emotion becomes involved. The more emotion, the less reason. The adversary becomes the enemy. His or her conduct becomes suspect. He is trying to beat me; he is trying to hurt me. Is it any wonder that we have a problem with civility in our profession?

Yet, as Gee and Garner, in an essay in The Review of Litigation, 15:169 (1996) point out, even deadly combatants had their codes of civility:

> Over the centuries, and throughout the world, those humans who have followed the contentious callings--even the deadly

> ones--have developed their own codes and striven mightily to conform to them, from the chivalry of the Medieval knights and the Code of the Samurai to the duelists on yesterday's Field of Honor, from the fighter pilots in the World Wars down to the Sumo wrestlers, bullfighters and British barristers of today. Why this should be so is hard to tell, but so it has been: not logic but experience, as Holmes said in referring to the life of the law. (citing Oliver Wendell Holmes, The Common Law 1 (1881)).

All of the emotion and all of the pressure will surely drive us to the lowest common denominator unless we become determined to take a different course. Surely, if those who are about the business of killing each other can adhere to basic principles of civility, we can do no less.

The increase in the size of the bar

If there is an increase in the lack of civility, however, it cannot be attributed to the adversarial nature of our profession. Those pressures have always been with us. What is different now?

One thing that is different is the increase in the size of the bar. The number of lawyers has increased nationally between 1970 and 1990 from approximately 275,000 to nearly 800,000.

The number of lawyers at the Tennessee bar has increased from 3197 in 1970 to 7108 today.

The fact of the matter is, we don't know each other as well and to the same extent as we have in the past. Why has that had an impact?

When we were few in number, we knew each other; often we knew our adversary's spouse and children. In the late sixties and early seventies, up to a third of the Knoxville bar ate lunch at the S&W Cafeteria on Gay Street almost every day, and most of the offices were within a block of each other, in the Hamilton National Bank Building, The Park National Bank, The Bank of Knoxville, the Valley Fidelity Bank, the Burwell Building, and the Empire Building. If you "messed over" a colleague, everyone knew it within 24 hours, and you were looked upon with scorn and disdain. While the descriptions of office buildings and gathering places in other Tennessee cities and towns would vary, a similar physical proximity and familiarity could be described in all. There was a sense of collegiality and peer pressure that was a deterrent to incivility.

To be sure, there were problems from time to time, such as the time one of our number ordered the opposing lawyer out of his office during a deposition, only to learn that he was in the other lawyer's office. There were about a half dozen lawyers about whom the word was spread, "to get agreements in writing."

But today, with almost three times the number of lawyers at the Tennessee Bar, we have the increased challenge of anonymity. It is far easier to attribute base motives to an adversary you do not know than someone with whom you have dined and shared war stories. It is easier to misunderstand the statement of an adversary in a pleading when that adversary is nothing or little more than a name at the bottom.

The increase in the spirit of competitiveness

Another cause of an increase in incivility is an increase in the spirit of competitiveness. Instead of a noble and learned profession, imbued with the spirit that produced Jefferson, Madison, and Lincoln, there is an increased tendency to view the practice of law as a business, just another way to make money, a commercial enterprise, in which the emphasis is on the billable hour and the bottom line. In a day in which even a small firm can have an astounding overhead, there is tremendous pressure to bring in fees--to make money. In this latter aspect, there is a tendency for a client to become "piece of business," not a person who has come to you for help to solve a problem in his or her life.

With the number of lawyers increasing faster than the population and faster than the growth of the economy, there is a substantial increase in the competition for the available clientele. There has always been a spirit of competition, but one which results in lawyers having almost as many yellow pages as car dealers is far different from just a few years ago. A spirit of competition which has resulted in writing letters to people who are injured or arrested is the spirit of crass commercialism, not the spirit of a learned profession. Has this produced an edge to our relationships and contributed to the deterioration in civility? Probably so.

The Age of Rambo and Clint Eastwood--No one wants to appear weak

The kinds of tactics which have epitomized the increase in incivility have been called "Hardball" and "scorched earth" tactics. They are also called "Rambo" tactics. Clients often speak of wanting the "meanest," most aggressive lawyer they can find. They have seen the Rambo movies. They have seen Magnum Force, starring Clint Eastwood. The heroes of these movies always come out on top. They not only win their battles, they have the respect of all around them. Don't we want to be like that--strong, brave, disregarding all the rules to get the job done? Civility has little chance in that arena.

Is civil or courteous behavior a sign of weakness? Ronald J. Bilson and Robert Mnookin, in an article entitled "Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation," published in Columbia Law Review, 94 Colum. L. Rev. 509 (1994) said:

> Those lawyers who believe that 'scorched earth' tactics are key to success in matrimonial litigation justify their 'win at any cost' behavior on the basis of zealous advocacy on the client's behalf. In some cases this approach intimidates or wears down the opponent, resulting in victory for the offensively aggressive (and aggressively offensive) lawyer. More often, however, such tactics simply cause delay and divisiveness, increase expense, and waste judicial resources. Enlightened lawyers hold the view that courteous behavior is not a sign of weakness, but is consistent with forceful and effective advocacy. The spirit of cooperation and civility does not simply foster collegiality of the Bar, although that is a welcome side effect, but also promotes justice and efficiency in our legal system.

Common sense will tell you that there is a great difference between being aggressive and forceful and being mean and obnoxious. Perhaps one of the causes of the decline in civility is that we have confused the concepts and, in doing so, have not only undermined the collegiality of the bar, we have greatly damaged our effectiveness as advocates.

Advanced technology

Some feel that the atmosphere conducive to a decline in civility has been created, in part, by the advances in technology during the last twenty years. Computers, overnight mail, and facsimile machines have helped create a far more hectic pace to the practice of law. When someone mailed a letter that you would receive three days later, he or she

did not expect to receive a response the same day. Now a fax is often sent with the expectation that a reply will be forthcoming within the next few minutes or at least during the same day.

You have a conversation with someone and within an hour may receive a letter that purports to memorialize that conversation. If you do not respond immediately, you fear that your adversary will take the ensuing half an hour of silence as agreement, when, in fact, the contents of the letter are not exactly as you recalled the conversation. In the meantime, you are working on something totally unrelated which has to "get out" that afternoon. Now you feel you have to stop what you are doing to respond. Meanwhile, three more calls or faxes come in. The pace, the stress, and the pressure are often unremitting. Under these conditions, it is little wonder that we get edgy and civility takes a back seat. In fact it is just that type of pace, stress, and pressure that have driven many lawyers from our profession.

Computers have also contributed to the strain between lawyers. If we still had typewriters, carbon paper, and no copying machines, you would not see nearly as many pages of interrogatories and requests for admission that bear little relation to the case at hand. Sloppy legal work can contribute as much to the atmosphere of incivility as calling an adversary a bad name.

Solutions

If in fact the legal profession has a problem with an increase in incivility, as it appears we do, what can we do about it? We can look to ourselves, to the courts, and to the educational programs of the bar.

Looking inward

The first thing we must do is to decide for ourselves that conducting our relations with fellow lawyers and the courts in a civil manner is not just the "nice thing to do," but is sufficiently important to warrant our dedicated effort. Writing in the St. Thomas Law Review. Vol. 8, page 113 (1995), in an article entitled "Be Just to One Another: Preliminary Thoughts on Civility, Moral Character, and Professionalism," Mark Neal Ironstone, said:

> Generally speaking, civility is important because it frames common expectations about trust and respect in seeking resolutions through dialogue. Without such mutual confidence, there cannot be an effective meeting of the minds as a way to resolve social disputes and problems. Instead, individuals wind up talking past each other or sinking to the lowest common denominator to strike a short term advantage or to achieve a cheap gain. Virtues of any sort require much more in terms of human dependability and self discipline. They represent a concern for doing what is right regardless of the circumstances.

Despite the abuse which lawyers have endured throughout history, and the increased abuse we have endured during recent years, we have a good reason to be proud of our profession. We should resolve that this profession which has given so much will not be destroyed from within. We will not "eat our own." We will be strong and forceful advocates, but in a manner which does not destroy our professionalism, our collegiality, and our effectiveness.

Recently I had an experience with an adversary that began on a sour note. A response to a routine motion suggested, without foundation, that I was intentionally misleading the court. I was very upset upon receiving the response. I had barely met this attorney and my first impulse was to reply in kind, harshly and in the strongest terms. Instead, I responded in terms suggesting that perhaps there had been a misunderstanding, proceeded to deal with the issues factually, and gently suggested that making such allegations of misconduct without foundation was detrimental to the process. A short time later my adversary called me and suggested that we have lunch. He said something to the effect that this was going to be a tough trial and perhaps it would be good to have a friendly visit before we got into the thick of it. We did so, and established a rapport that carried us through an otherwise highly contentious and hard-fought trial without rancor or further personal problems.

It occurred to me later that, even with a large bar, we do not have to remain strangers, and perhaps a lunch just to get to know one's adversary on a basis separate from the litigation is one way to approach the problem.

Looking to the courts

I think most of us would agree, for the most part, that we are fortunate to have the judges that we have in the State of Tennessee. They maintain orderly courtrooms while permitting us to try our cases. If lawyers are the first line of promoting civility, the judges are the second line and a very important one. It is no secret that some lawyers will go as far and take as much advantage as they can. If the judge presiding over a proceeding in which such a lawyer is participating takes control early and forcefully, much of that type of tactic would be avoided.

I had occasion to see Judge D. Kelly Thomas of Maryville, Tennessee, effectively illustrate that principle a couple of years ago. A prosecutor in his court made a remark which was personal in nature, casting aspersions on his adversary. Judge Thomas immediately stopped the proceedings and admonished the prosecutor, saying that he was not going to tolerate that kind of conduct in his courtroom. The prosecutor was an honorable attorney who probably had been just caught up in the emotion of the moment, but he did not take that approach again, at least not that day.

The judge sets the tone of the courtroom. If the judge is short tempered and uncivil, he or she invites incivility. If the judge is firm in refusing to tolerate personal attacks and incivility by either side, an atmosphere conducive to a more orderly and civil trial will be created.

Looking to the Bar

Lastly, the Tennessee Bar Association and our local bar associations can do their part. We can focus on the issue, discuss it, and encourage the treatment of each other as we want to be treated. We can study suggested guidelines such as the "Proposed Standards for Professional Conduct Within the Seventh Federal Judicial Circuit." Most of what we find there should come automatically to an attorney who cares about our profession and our system of justice, but it certainly does not hurt anything to read them and use them as guides. Perhaps then we can return to the day described by D.A. Frank writing for the Texas Bar Journal in 1939, when he said:

> One of the finest characteristics of the legal profession is its good sportsmanship. To the casual observer . . . lawyers in fighting each other would seem to be perennial enemies. Yet, when a case is completed and especially when court has adjourned, these same lawyers may be found visiting in offices and homes of their opponents, as friends . . . No profession is so imbued with the chivalry of combat as the law. It thrives upon combat, contests, and fights. It does not engender hatreds, jealousies, and envy. It does produce respect, appraisement of ability, and warm friendship. 2 Tex. B.J. 357, 357 (1939).

We are fortunate in Tennessee to have a bar in which the great majority of lawyers want that type of relationship between and among the members of the bar. We have not strayed so far from that ideal that a little focus and a little additional effort on our part will reverse the trend against it.

In memory of...

Mr. Justice Charles Gladstone Virtue, 71, retired, Court of Queen's Bench, Calgary, died May 24, 1998.

Mr. Justice Virtue was born in Lethbridge. Following his graduation from McMaster University with his BA in 1947, he attended the University of Alberta, earning his LLB in 1950. He was called to the Bar in 1951 after completing a period of articles with his father's firm, Virtue, Russell and Morgan.

Mr. Justice Virtue was a leader in the legal community, serving as a bencher of the Law Society of Alberta from 1978 until 1985 and as president from 1984 to 1985. He was also president of the Lethbridge Bar Association, chairman of the Lethbridge Regional Legal Aid Committee and the Alberta Law Foundation. Appointed to the Court of Queen's Bench in 1986, he served until his retirement in 1996. He is survived by his wife Irene, six adult children and nine grandchildren.

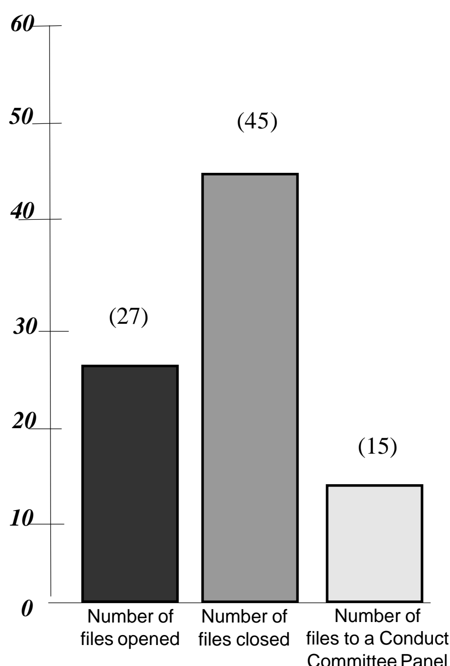
Judge Irwin Arnold Blackstone, 78, retired, Provincial Court of Alberta, died May 6, 1998.

Born and raised in Toronto, Judge Blackstone graduated from Osgoode Hall. He joined the Canadian Officers Training Corp in 1937 and was commissioned as a captain in 1939. In 1946 he moved to Calgary and worked at the Smithbilt Hat Company. In 1955 he returned to the practice of law and was admitted to the Law Society of Alberta. He was appointed Q.C. in 1968 and was sworn in as a judge of the provincial court in 1980.

He was a great supporter of many community and professional organizations including service as a council member of the Canadian Bar Association, chair of the University of Calgary Law School Development Committee's Law School Scholarships Committee, and founder of the Blackstone Medals for the Law School Moot Court. Judge Blackstone is survived by his wife Clara, his two adult daughters and his five grandchildren.

Mr. Justice Hugh John MacDonald, 87, retired, Court of Queen's bench, died June 24, 1998. He is survived by his wife Kathleen, his four adult sons, and thirteen grandchildren.

Complaint synopsis



May & June 1998

Of the 27 files opened (complaints received) in May and June 1998, 14 complaints were from members of the public, 7 were from members of the legal profession, and 6 were generated by the internal processes of the Law Society.

Of the 45 files closed, 21 were closed by a deputy secretary, 15 were closed by a Conduct Committee panel, and 9 were closed by an Appeal Committee.

To date in 1998, 73 discipline files have been opened, and 149 files closed. During the same time frame in 1997, 180 discipline files were opened, and 167 files were closed.

Between January 02, 1998 and July 8, 1998 the complaints resolution program mediated 1,933 informal complaints.

1999 Distinguished Service Awards

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

Award Categories

There are three awards: the Distinguished Service Award for Service to the Community, the Distinguished Service Award for Service to the Profession, and the Distinguished Service Award for Legal Scholarship.

Selection Procedure

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

Presentation of Awards

The 1999 awards will be presented at the Distinguished Service Awards Luncheon at the CBA Mid-winter meeting.

Nomination Process

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

Nomination Deadline

Nominations for this year's awards must be received by Friday, December 11, 1998.

Avoiding inappropriate interview questions

A clarification

by Joanne Goss, equity ombudsperson

I very much appreciate the feedback that I received to my article, "Guidelines for Conducting Articling Interviews: Avoiding Inappropriate Questions" (*Benchers' Advisory*, Issue 55, June 1998). The expressions of endorsement are very positive. But more importantly, the expressions of concern and disagreement are most welcome. Your feedback provides me with the opportunity to clarify what was not expressed clearly in the article and to discuss differing approaches to the very challenging task of selecting articling students who fit the needs and expectations of a firm, legal department or other legal employer.

Misunderstanding has arisen over my comments in the article about the more informal part of the interview which I called the "informal" or "idle" chit chat. I used the wrong language to describe a very important part of the interview, for which I apologize. A candidate's fit with a firm's or legal department's needs and expectations requires more than assessing a candidate's academic achievements. The interview team is also trying to assess the candidate's sense of judgment, balance, objectivity, sincerity, self confidence, patience, ability to focus, team spirit, rapport and general ability to deal with people and difficult situations. Much of this is assessed through more informal questions and discussion at the interview. I agree that this component of the interview is critical and focussed and not at all idle or aimless.

The point which I tried to make regarding the informal or less structured part of the interview is simply caution. An interviewer may inadvertently ask questions in the prohibited areas in this part of the interview because it is less structured and more impromptu. However, the exercise of caution does not mean that this informal approach to interviewing must change or stop. Questions which will help you determine what kind of person the candidate is and assess their fit with the firm or legal department are critical to the employer's decision and, indeed, its future. In exercising caution you should, however, review those questions typically asked and ensure that they are not directly or indirectly about race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status, source of income or sexual orientation, unless of course a bona fide occupational requirement necessitates such a question. This is what I should have said when I stated in the article "your curiosity over an applicant's background or other personal circumstances have no place in the interview...".

One approach to interviewing commonly recommended and which provides the interview team with the widest scope is the use of open ended questions. These types of questions are more challenging to answer and the answers often provide a clearer insight into the candidate. Describe the firm's expectations or provide the candidate with a copy of the job description/firm expectations and ask them to tell you how or why they meet those expectations. Ask them to tell you a little about themselves, their interests and their expectations for the practice of law. Ask the candidate if they have any questions about the firm or legal department, the type of legal work done or the articles. The questions the candidate asks will tell you a lot about their preferences, concerns, strengths and weaknesses. Furthermore, open ended questions allow the candidate to assess for themselves and then describe what components of their life, experiences and personal strengths give them or demonstrate the qualities and skills sought by the firm, legal department or other legal employer. The candidates may themselves refer to their race, religious beliefs, family circumstances, age, etc. That is not inappropriate because the candidate has volunteered the information. What is inappropriate is if the interviewer asks for that specific information, about their culture, beliefs, family circumstances, etc., through direct or indirect questions. Furthermore, the employer cannot deny the candidate a position on the basis of race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status, source of income or sexual orientation whether that information was volunteered by the candidate or not. Hence, it is wise to write down the reasons for selecting the successful candidates over the others interviewed.

The parameters of what is or is not appropriate in conducting employment interviews are continuously evolving and we must adapt as those parameters become clearer and better defined. The style of interview used can vary as widely as the individuals conducting them and will have evolved from years of experience and success. My goal is simply to ensure that our profession continues to be aware of the parameters of appropriate questioning, is sensitive to the issues it raises and sets an example to be emulated.

If you have a human rights concern or question about the articling interview process or more generally call Joanne, 429-3939 (in Edmonton) or toll free at 1-888-429-3939 (outside of Edmonton). For further information you may wish to review the Law Society's "Equality in Employment Interviews" policy containing suggested guidelines on interviewing practices and what to avoid because it is discriminatory. Copies of the policy can be obtained by faxing the Records Administrator at 1-403-228-1728 or downloaded from the Law Society's web site at www.lawsocietyalberta.com.

Mentor Program

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

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

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

What can your files tell you about your practice?

by Peg James, Law Society of Alberta risk management advisor

When members of the Practice Review Committee visit a lawyer, they learn a lot about that lawyer's strengths and weaknesses by examining several client files. Try this adaptation of their checklist to see how much your files reveal about the health and safety of your practice.

Do you open and organize files efficiently?

√ Do you identify files by both name and number? Does your file storage system make files easy for you and others to access?

√ Do you use file opening sheets? Do they set out appropriate details (name, address, telephone and fax numbers, field of practice, terms of retainer, opening date, limitation deadlines)? Do you open files immediately after you receive initial instructions?

√ Do you segregate correspondence from other documents? Do you use sub-files where appropriate (client documents, pleadings, legal research, etc.)? Do you keep correspondence in chronological order? Do you keep the file together with pegs or other fasteners? Do you file copies of all outgoing correspondence? Is incoming correspondence stamped with date of receipt? Are original documents kept clean and unmarked?

√ Do you use checklists or other reminders to ensure that appropriate steps are being followed? Are there "to do" lists on the files?

Are your files complete?

√ Do the files contain a written retainer agreement that sets out the scope of the retainer and the billing method?

√ Do the files contain dated notes of conversations and advice given? Are handwritten notes legible? Are they pinned down rather than on Post-It notes?

√ Do the files contain notes of appearances and meetings?

√ Do the files contain a record of the instructions you received and the advice you gave?

√ If someone else had to take over the file would they, by reviewing the file, be able to understand the case, know what was done last, and know what needs to be done next?

Do letters in your files indicate good client relations?

√ Are you reporting to your client at appropriate stages? Do you send copies of incoming and outgoing correspondence to your client? Does your client have a full and accurate accounting for trust funds?

√ Do your letters show you listen carefully to your clients and respond to their needs? Are you courteous?

√ Do your letters show you answer client concerns or complaints promptly and that your client is satisfied with the progress or outcome?

Do your files reveal other lawyering skills?

√ Do the files reflect that you are following appropriate procedure? Are you paying sufficient attention to detail having regard to the subject matter of the file?

√ Are you making appropriate use of outside experts (surveyors, economists, actuaries, doctors, psychologists, etc.)? Do your records show you pay the accounts of outside experts promptly?

√ Do you impose reasonable trust conditions and refuse to accept unreasonable trusts? Do you observe trust conditions and undertakings meticulously?

√ Do the files show you tackle problems head-on without procrastination?

√ Do you give your services thoroughly and economically, and do you bill your client promptly and accurately? Does the disbursement record show that you are exercising good judgment?

√ Is your legal writing clear, skillful, and suitable to the audience?

If you're not entirely happy with what your files say about the health and safety of your practice, call me. Perhaps I can help. My direct phone line in Calgary is 229-4771. You can also reach me at 1-800-661-9003 or by e-mail at riskadv@lawsocietyalberta.com. I'd like to hear from you.

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

Paul McLaughlin,M.A., LL.B.
Practice Management Advisor
1900 Canada Trust Tower
10104 - 103 Avenue
Edmonton, ALberta
T5J 0H8
429-3343
1-800-272-8839 (toll free)
Fax 1-403-424-1620
pracman@lawsocietyalberta.com

Peg James,B.Ed., LL.B.
Risk Management Advisor
919 - 11th Avenue S.W.
Suite 600
Calgary, Alberta
T2R 1P3
229-4771
1-800-661-9003 (toll free)
Fax 1-403-228-1728
riskadv@lawsocietyalberta.com.

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

Have you "Sharpened your focus"?

Flying Solo

Practice Management Mini-Seminars

Is your competition getting a little tougher?

Lawyers in Calgary, Edmonton, Lloydminster, Red Deer and Medicine Hat may find the competition is heating up. That's because 112 lawyers in those communities attended one or more spring sessions of the four *Sharpening the Focus* practice management mini-seminars put on by Practice Management Advisor Paul McLaughlin in conjunction with LESA.

In Calgary and Edmonton, the seminars were formatted as three two-hour sessions and a four-hour "double-header" on marketing. In Lloydminster, Red Deer and Medicine Hat, they were bundled into two four-and-a-half-hour sessions on successive days. With two exceptions, all sessions started at 4:00 in the afternoon. Although the seminars are targeted at solo or small firms lawyers, some large firm lawyers attended, as well as a sprinkling of support staff.

Attending the sessions - investing in your legal practice

The first seminar is called *The Seven Business Processes in the Law Office*. Participants gain an overview of practice management. The session is broken down as follows:

- production of legal services
- marketing
- personnel management
- financial management
- systems and technology
- communication
- managing the organization, a three-phase process involving goal-setting, planning and implementation

In addition to learning about the seven processes, participants acquire an easy technique for clarifying competing interests that bear on practice management questions.

The next seminar is on **financial management**. Its centrepiece is a graphic representation of the dynamics of cash flow in a law firm based on the analogy of an oil well--a particularly apt analogy in Alberta.

The third seminar is on **communication**. Participants examine the affective goals involved in client communication, as well as their own communication strengths and weaknesses. They also learn new communication techniques from other participants.

During the final seminar on **marketing**, participants analyze the four sources of legal work and gain useful tips on building their practice by letting clients become the marketing staff.

The seminars close with a presentation called *Lawyers are People, Too*. McLaughlin reminds participants that their work is very important, and to continue to do this good work for their clients, they need to take care of themselves, their families, their co-workers and their colleagues as well as their clients. Balance is not just a matter of selfishness, it's also a foundation for integrity.

Participants call the seminars useful and thought provoking

The goal of *Sharpening the Focus* is to facilitate change. In other words, the seminars are designed to increase your knowledge of practice management and to help you make changes that will improve your practice. Throughout the seminars, participants reflect on their practices and make decisions about whether and what to change.

The sessions encompass a range of stimulating learning opportunities --lectures, small group discussions, PowerPoint slides, work sheets, question and answer sessions, audience participation sessions, a case study and more.

The LESA feedback forms indicate a very high level of satisfaction, and as one participant said, the mini sessions, "really made him think." Mission accomplished.

Could you use a little competitive advantage?

If there is enough demand, McLaughlin will repeat the mini-seminars in the Fall in Calgary and/or Edmonton. Please call his Edmonton office if you are interested. He's also willing to present in the smaller centres if there is enough demand and someone is available to help with the local arrangements. (Lethbridge, Grande Prairie and Fort McMurray, are you listening?)

Finally, if anyone anywhere in Alberta would like a custom-designed Sharpening the Focus series for an audience of 10 or more lawyers and/or support staff, contact McLaughlin. He's very flexible.

The Law Society of Alberta Mission Statement

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.

Lawyers disbarred

Trevor Owen Morgan of Edmonton, Alberta resigned in the face of disciplinary action, no longer authorized to practise law, effective June 18, 1998.