



**British Columbia Law Institute  
*and*  
Canadian Centre for Elder Law**

**annual report 2008**

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## Our Mission

The British Columbia Law Institute was created in January 1997 by incorporation under the Provincial Society Act. The purposes of the institute are to work toward the improvement and modernization of the law and the administration of, and access to justice. It does this through researching the law and developing recommendations about the ways in which the law of the province should be changed.

## How to Find Us

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WWW: <http://www.bcli.org>

# REPORT OF THE CHAIR



*2008* was another successful year for the British Columbia Law Institute (BCLI) and the Canadian Centre for Elder Law (CCEL). We achieved many successes in our continuing law reform programs and new activities. We completed and released six law reform studies and reports in diverse areas of law and social interest. During 2008 we also released the first issue of the Canadian Journal of Elder Law, Canada's only peer-reviewed elder law journal, which marks an important development in elder law education and outreach. Other highlights included: playing an important supportive role in the development and start-up of British Columbia's first Elder Law Clinic; holding the first annual Great Debate; and hosting the fourth annual Canadian / International Conference on Elder Law and World Study Group. Financially, we realized a modest net gain.

In difficult economic times, the improvement and reform of the law can be forgotten, neglected or given a 'back seat'. Ironically, it is at such times that legal improvements and reforms are often most needed. As major social and economic changes occur, leadership in independent and impartial law reform is more important than ever. BCLI is ready and able to meet these challenges and is uniquely placed to positively contribute to the improvement of society, particularly in challenging times. Our mandate embodies our commitment to providing excellence in relevant, reliable and impartial recommendations for improvement and reform of the law. As needs and opportunities arise, we will extend our reach and focus to meet evolving needs.

We continue to be in a strong position to meet the challenges of the future and draw upon many resources to move our mandate forward.

Our volunteer Board members and Judicial Liaisons bring broad expertise, experience and creativity in law reform matters. The Board's Program Committee reviews potential areas of law reform and provides advice and guidance for development of our future law reform and outreach program.

The BCLI Board continues to function very effectively and during 2008 has experienced substantial renewal in membership. New appointments during the year were R.C. (Tino) Di Bella, Prof. Bob Howell, Prof. Michelle LeBaron and Geoff Plant, Q.C. During the early part of 2009, the Law Society of BC and the Canadian Bar Association, BC Branch will each appoint an additional Board member. We express our sincere thanks and gratitude for the great work done for BCLI by Board members whose terms ended in 2008, including Ann McLean (past Chair), Prof. Freya Kodar, Prof. Margaret Hall, and Kevin Woodall.

BCLI is committed to increasing our focus on diversity in Board membership, project committees, and consultation. We engaged lawyers from both England and Thailand as research assistants in

2008 and are supporting the establishment of a new law reform agency in Samoa.

Our staff team of five lawyers, an articling student, office manager and legal research assistants bring great experience, dedication and energy to our activities. We are well supported by a host of volunteers comprised of judges, lawyers, professors and other experts dedicated to law reform and related outreach activities. Our Project Committees and Advisory Committees provide invaluable support for the various law reform projects.

### **Financial Support**

BCLI is supported by several key financial stakeholders. During 2008, The Law Foundation of BC continued its substantial operating support and has provided key funding for project and outreach initiatives. The Ministry of Attorney General has continued to provide core operational funding and funding for several law reform projects. The Notary Foundation of BC, the Real Estate Foundation of BC, the Good Samaritan Society of Canada, Westminster Savings Credit Union, Boughton Law Corporation and the BC Real Estate Association have all provided project funding. Many organizations, law firms and individuals have contributed either directly or through support of activities such as the successful Canadian Conference on Elder Law, the Great Debate or participation in BCLI committees.

Thank you all for your generous and continuing support of the work in law reform and related public outreach both relating to general law and elder law issues.



*Ron Skolrood*  
Chair

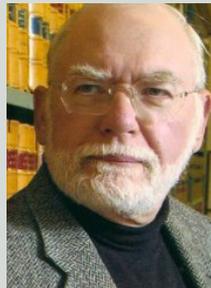
## BOARD OF DIRECTORS



*Prof. Joost Blom, Q.C.*



*J.P. Boyd*



*Arthur L. Close, Q.C.*



*R. C. ("Tino") Di Bella*



*Lorne Dunn*

## Current Members and Directors of the British Columbia Law Institute

Name	Appointed By	Since	Most Recent	Term Expiry
Prof. Joost Blom, Q.C.	At large	Dec 5/07	Dec 5/07	Dec 4/12
J. P. Boyd	CBA BC	Mar 1/09	Mar 1/09	Aug 1/10
Arthur Close, Q.C.	At large	Jan 6/97	Jan 6/07	Jan 5/12
R. C. (Tino) Di Bella	CBA BC	Ap 1/08	Ap 1/08	Mar 31/11
Lorne Dunn	At large	Oct 4/05	Oct 4/05	Oct 3/10
Prof. Bob Howell	UVic Law	Sep 1/08	Sep 1/08	Aug 31/13
Fiona Hunter	Law Society	May 1/09	May 1/09	Apr 30/12
Prof. Michelle LeBaron	UBC Law	Oct 1/08	Oct 1/08	Sep 30/09
David Pihl	At large	Oct 4/05	Oct 4/05	Oct 3/10
Geoff Plant, Q.C.	AG	Feb 7/08	Feb 7/08	Feb 6/11
Prof. Peter Ramsay, Q.C.	Law Society	Jun 6/02	Jun 6/07	Jun 5/12
Ron Skolrood	AG	Sep 10/04	Oct 23/07	Oct 22/10
Gregory Steele, Q.C.	At large	Jan 6/97	Jan 6/07	Jan 5/12
Kim Thorau	At large	May 1/01	Sep 14/06	Sep 13/09

The reference to “At large” in the above table indicates the 6 members/directors who are appointed by the 8 ‘institution-appointed’ members. Traditionally, one “At large” member/director has been a non-lawyer. This position is currently filled by Kim Thorau.



*Prof. Bob Howell*



*Fiona Hunter*



*Prof. Michelle LeBaron*



*David Pihl, Q.C.*



*Geoff Plant, Q.C.*

## Board Committees

**Executive Committee** – meets as required and has the full power of the Board of Directors, except for the approval of commitments over \$ 75,000 or matters delegated to another Committee of the Board.

Members include Ron Skolrood, (Chair), Arthur Close, Q.C., Peter Ramsay, Q.C., Greg Steele, Q.C. and Jim Emmerton (*ex officio*).

**Audit, Finance & Risk Committee** – meets at least four times per year and assists the Board of Directors in fulfilling its oversight responsibility relating to financial, accounting and risk matters.

Members include Greg Steele, Q.C. (Chair), Lorne Dunn, Ron Skolrood and Kim Thorau.

**Program Committee** – meets at least twice per year and assists the Board of Directors in fulfilling its responsibilities relating to the development and approval of law reform projects and public education and outreach projects.

Members include Joost Blom, Q.C. (Chair), Arthur Close, Q.C., Robert Howell and Geoff Plant, Q.C.

**Nominating Committee** – meets at least once per year and assists the Board of Directors relating to the appointment of members, officers and committee members.

Members include David Pihl, Q.C. (Chair), Arthur Close, Q.C., Geoff Plant, Q.C., and Ron Skolrood.



*D. Peter Ramsay, Q.C.*



*Gregory Steele, Q.C.*



*Ron Skolrood*

**Not Pictured:**  
*Kim Thorau*

# REPORT OF THE EXECUTIVE DIRECTOR

2008 was a great year for the British Columbia Law Institute (BCLI). We achieved many successes and 'firsts'.

- BCLI completed and published six law reform studies and reports dealing with the *Society Act*, *Privacy Act*, *Defective Contracts Relief*, *Predatory Lending*, *Commercial Tenancy*, and *Assisted Living*.
- We hosted the fourth successful Canadian / International Conference on Elder Law and the fourth World Study Group.
- We published the first volume of the Canadian Journal of Elder Law.
- We supported the development and start-up of the first BC Elder Law Clinic.
- With Boughton Law Corp. we co-hosted the first annual Great Debate.
- BCLI developed a new easy-to-use website, [www.bcli.org](http://www.bcli.org), replacing our aging earlier websites.



We have continued to build on our strong foundation as a law reform organization for successes in 2009.

- During 2008, BCLI initiated or continued several law reform projects including *Probate Rules Reform*, the *Commercial Tenancy Act*, *Family Caregiving*, *Real Property – Phase 2*, *Vanguard* (capacity regarding older adults), and *Law Reform Material On-Line* (a project to continue placing our law reform materials on-line in an updated and searchable fashion).
- We are working with our Program Committee, key funders and stakeholders to develop new projects and activities that will continue to contribute to our goals and will be making announcements of these throughout the year.
- Having launched the new website, [www.bcli.org](http://www.bcli.org) we requested and obtained user feedback and are continuing to improve its effectiveness and ease of use.
- As the world becomes more focused on survival economics there is a risk that improvements and reforms of the law can be forgotten or given a back seat. We will be increasing our efforts to bring attention to law reform needs and secure appropriate funding for law reform projects and activities.

Our success depends upon working collaboratively both internally and with external people and

organizations. BCLI is most grateful for all of our volunteers on the Board, on project and advisory committees, and in many other activities. We will continue to build on these relationships.

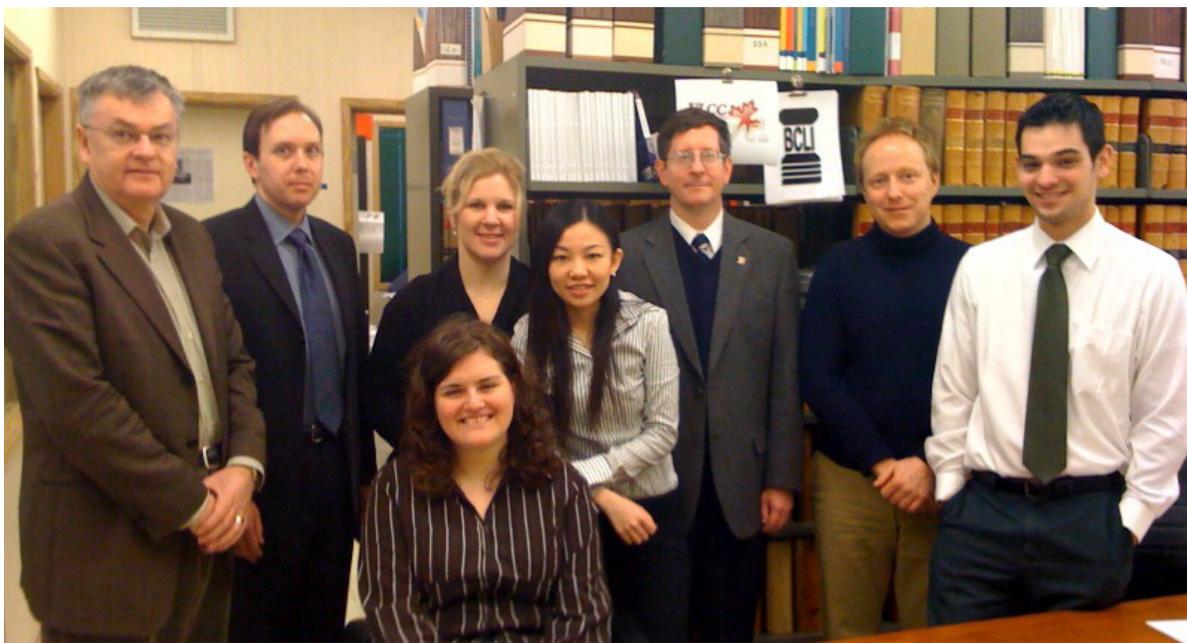
BCLI is committed to independence, non-partisanship and impartiality in carrying out its law reform activities. We are, at the same time, keenly aware of the need to gain attention for and support efforts to move our law reform recommendations forward into new legislation. During the coming year we will continue to develop and expand our relationships with key government bodies to improve the awareness of our studies and reports and gain support for legislative implementation and improvements.

As a result of reactions to the major economic downturn, BCLI will exert the necessary extraordinary efforts to obtain adequate ongoing funding. Further, BCLI has only a small amount of sustaining funding. We will continue to seek ways to build a substantial sustaining fund.

Finally, on behalf of BCLI, I express heartfelt thanks and appreciation to our dedicated staff who daily demonstrate strong dedication and expertise in everything we do. Thanks to all.



*W. James (Jim) Emmerton*



The BCLI staff pose with Thai volunteer Lyn Khositrunwanich.

# CANADIAN CENTRE FOR ELDER LAW

*The* Canadian Centre for Elder Law (CCEL), formerly the Canadian Centre for Elder Law Studies, has had an excellent year, marked by both our highly successful and international conference, as well as a number of exciting law reform and legal outreach initiatives that have allowed us to develop and enhance many of our community partnerships.



- **Canadian / International Conference on Elder Law** - From November 13 – 15, 2008, CCEL hosted the fourth annual Canadian / International Conference on Elder Law at the Sheraton Wall Centre in Vancouver. The conference, held in conjunction with the International Guardianship Network, drew experts from across Canada, the United States, Europe, the Caribbean and Japan to discuss the themes of capacity, capability, support, guardianship, inter-jurisdictional recognition and law reform.
- **World Study Group** - The elder law conference began with the fourth, and best-attended yet, meeting of the World Study Group, which is a forum in which academics from around the world can discuss developments within their jurisdictions. The event was hosted by Sue Field, Public Trustee NSW Fellow in Elder Law, Australia. Fascinating new work on elder law issues was presented. The World Study Group also saw the launch of the first book published about Elder Law theory, edited by Dr. Israel Doron and published by Springer Publications.
- **Canadian Journal of Elder Law** – During 2008, CCEL published the inaugural issue of the Canadian Journal of Elder Law, an academic journal. The Canadian Journal of Elder Law is Canada’s only peer-reviewed elder law journal marking an important development in elder law education and outreach.
- **Assisted Living** - In December, 2008 the CCEL published a discussion paper on Assisted Living. It provides a starting point to engage in a national conversation about a critical “middle option” of health / housing in Canada. The paper can be downloaded at our website, and we are accepting responses to the paper until March 31, 2009.
- **Selected Other Projects** - The CCEL has been working on other major projects throughout the year. Some projects that have been ongoing relate to Advance Care Planning, Elder and Guardianship Mediation, and Elder Abuse and Neglect issues raised in legislation, case law and policies. The CCEL also completed drafting a Provincial Strategy Document on Vulnerability and Capacity issues in British Columbia for the BC Adult Abuse and Neglect Collaborative. On this “Vanguard Project”, CCEL worked with other collaborative members and researchers to create a substantial body of work on capacity, vulnerability and abuse, including a law reform paper, background papers, annotated bibliographies, a legal matrix tool and a multi-jurisdictional legislative chart.

## Outreach and Support

At the CCEL, we work with local community partners to further our mandate of outreach and support. A recent example of this is recent work we have done with the BC Centre for Elder Advocacy and Support (BCCEAS).

Changing demographics make it inevitable that Elder Law is an area of significantly increased importance. The dedicated national focus that the CCEL brings to this area is unique in Canada and promotes the development of Elder Law as a coherent body of knowledge and law. The overarching goal of the CCEL is to provide a nexus between older adults and the law, to create a positive impact on Canadian society and in the field of elder law generally. Members of our staff make professional and community-based presentations and work hard to ensure that older adults have an improved relationship with the law across Canada.

**Elder Law Clinic** - The Law Foundation of BC provided BCCEAS with funding to open a legal clinic to serve BC seniors. The objective of the clinic is to provide access to justice for older adults in BC who cannot otherwise obtain legal services. The clinic, which opened in mid 2008, is the second legal clinic to open in Canada with a mandate to specifically serve older adults – the only existing seniors' legal clinic being Toronto's Advocacy Centre for the Elderly – and the first such clinic in Western Canada.

The CCEL has several important and challenging legal research and law reform projects underway in 2009 and expects another successful and invigorating year. As an integral part of BCLI we work efficiently and effectively as a team. My thanks and appreciation to all of our friends and colleagues both internally and externally whose great work is so important to our continuing success.



*Laura Watts*

*National Director, CCEL & Staff Lawyer, BCLI*

# PROJECT REPORTS

## *Assisted Living Project*

**Project Leader: Laura Watts**

As part of the contract that the CCEL entered into with the Good Samaritan Society of Canada (GSS), CCEL produced a Consultation Paper on issues raised by Assisted Living and Supportive Housing in Canada. This project was carried out in-house by staff and research assistants. Research results were presented to the GSS October Conference and the Consultation Paper was reviewed and approved by the Board at the October 29 meeting. As a result of the issues raised in this Report, BCLI is considering a law reform, legal research and writing project relating to British Columbia legislation.

The Assisted Living Discussion Paper provides a starting point to engage in a national conversation about a critical “middle option” of health / housing in Canada. This middle option, labelled supportive housing / assisted living (SH / AL) in this project, lies at the centre of a seniors’ housing continuum that is bookended by independent living at one end, and high care long-term residential facilities at the other. While SH / AL varies in lexicon and substance across Canada, it is often broadly described as independent living that includes some forms of personal and health care services. SH / AL is already of significant concern to Canadians, and with the impending “age wave” will only be more so in the immediate future. It is clear that Canadians will need to find legislative and regulatory systems that make sense and govern the entire “field” of issues, while at the same time staying true to the chosen philosophical underpinnings of SH / AL.

In order to achieve this, a more focused discussion on the needs of residents and operators must begin. The paper brings key past, current and selected future trends in SH / AL together to prompt discussion and to assist in creating a common understanding of challenges. This is crucial due to the fact that the laws and policies governing SH / AL in Canada are fragmented, jurisdictionally bound and difficult to grasp for layperson and professional alike. A snapshot and analysis of key provincial and national legislative issues are provided in this paper.

This Discussion Paper briefly overviews some of the political and social evolution of seniors’ housing in Canada. While modern SH / AL is still a relatively novel concept, it has been evolving over the course of the last century. The paper maps social housing’s evolution through the Depression, the disability rights movements of the 1970s and 80s and up to the present day. Second, it reviews some key elements of a comprehensive legislative scheme for SH / AL. This includes the discussion of a scenario that highlights some typical legal issues and concerns that may arise. Third, the Discussion Paper reviews key legislative governance across all 13 Canadian jurisdictions. Fourth, an analysis of common themes across jurisdictions is considered. These themes are identified and discussed by asking three important questions:

- A. Whose responsibility is it and who is providing services?
- B. Can old and new models exist harmoniously in the same jurisdiction?

## C. How do regulation and philosophy interact?

Fifth, some emergent future legal issues in SH / AL are suggested. Issues of growing importance such as smoking, gay, lesbian and bisexual issues, transgendered issues, physical or mental challenges, and alcohol and drug use are all discussed. The Discussion Paper suggests a series of questions to prompt further consideration of these issues, which are integral to the underpinning philosophy of independence that SH / AL.

The Discussion Paper concludes by asking a series of questions, and inviting input and consultation on these questions and other issues not specifically raised, in order to better inform the process. The scope of the paper is to identify issues and engage in comparative research, but does not extend to creating draft legislation.

The paper can be downloaded at our website.

## ***Bill 29 - Practice Guideline Working Group***

As part of the contract that the BCLI entered into for the Vanguard Project, the BCLI agreed to assist with analysis and critique of upcoming amendments to the *Patients Property Act*, *Adult Guardianship Act*, *Representation Agreement Act* and *Power of Attorney Act* (Bill 29). Work on Bill 29 has been completed. In 2008 the working group worked on the Regulations and the accompanying Practice Guidelines for Assessment of Incapability for Guardianship Applications. The Regulations and Practice Guidelines were scheduled for completion in March 2008 and the Regulations proposal was completed at that time. Draft regulations were released for comment by the AG's office and were open for review until December 15, 2008.

## ***Canadian Conference on Elder Law***

### **Project Leader: Laura Watts**

From November 13 – 15, 2008, CCEL hosted the fourth annual Canadian Conference on Elder Law in Vancouver. The conference brought together lawyers, community members, health specialists, researchers and older adults to examine legal issues affecting elders from around the globe. Held in conjunction with the International Guardianship Network, the conference drew experts from across Canada, the United States, Europe, the Caribbean, and Japan to discuss the themes of capacity, capability, support, guardianship, inter-jurisdictional recognition and law reform.

The bulk of the conference was dedicated to discussing adult guardianship legislation. Special attention was made to the upcoming changes in British Columbia's guardianship regime. Jay Chalke, Q.C., the Public Guardian and Trustee of BC, and Dr. Robert Gordon gave a legislative update on the potential changes to guardianship, personal care planning and care facility admission once Bill 29 is brought into force. International guardianship recognition, and the portability of guardianship plans across borders was also discussed. This is an area of growing importance as older Canadians and Americans choose to split their time between two residences to avoid extreme weather. These snowbirds may have difficulty navigating through the different laws that vary internationally, and

within nations such as Canada, the United States and Australia.

The conference was highlighted by addresses from speakers such as the Honourable Alexa McDonough, Oliver Lewis, Executive Director of the Budapest-based Mental Disabilities Advocacy Centre, Peter Whitehead, Public Trustee, NSW Australia, Erica Wood, American Bar Association Commission on Law and Aging, Naomi Karp, AARP, Prof. Kees Blankman of Vrije University, Netherlands, Craig Reaves, President of NAELA and many more from across Canada and around the world.

Dr. Makato Arai delivered the inaugural Distinguished Lecture in Guardianship Law and members of his delegation provided an exciting presentation on the upcoming World Congress on Adult Guardianship Law in Japan, 2010. The Steele Student Paper Prize in Elder Law was awarded to Ms. Melissa Hunt of William Mitchell College of Law. Ms. Hunt is a student of Prof. Kimberly Dayton and a clerk at the Centre for Elder Justice and Reform.

Our dinner speaker was none other than media mogul and Canadian Association of Retired Persons' new President, Moses Znaimer, who presented a multi-media presentation and then hosted a dynamic Q & A session.

The Canadian / International Conference on Elder Law will next be hosted in 2010. Stay tuned for details to follow!

## ***Canadian Journal of Elder Law***

### **Project Leader: Laura Watts**

In 2008, the CCEL published the inaugural issue of the Canadian Journal of Elder Law (CJEL). The CJEL is the only Canadian peer-reviewed journal focused on elder law issues. An academic journal, the CJEL's goal is to promote the scholarly exploration of issues of law and aging.

The CJEL publishes manuscripts on law reform, elder law issues, the intersection of law and policy and other issues of key consideration for lawyers practising in this area of law. The scope of this journal makes it an excellent publication for lawyers practising in the areas of wills, estates, trusts, pensions and benefits, health law, family law, long-term care, guardianship and inter-jurisdictional law.

Many of the materials published in the CJEL were preliminarily developed at various Canadian / International Conferences on Elder Law. The CJEL accepts scholarly peer-reviewed submissions from academics, as well as non-peer reviewed material for its "notes" section and an "international updates" section. Published articles and notes are of specific interest to scholars and practitioners in the areas of law, gerontology, social work, bio-ethics, medical ethics, and health or medicine. For more information on the journal, or to read abstracts, please visit our website at [www.bcli.org/cjel](http://www.bcli.org/cjel).

## ***Commercial Tenancy Act Reform Project***

### **Project Leader: Kevin Zakreski**

Funded by the Real Estate Foundation of British Columbia and the Notary Foundation of British Columbia, the *Commercial Tenancy Act* Reform Project aims to provide BC with a modern legal framework for commercial leasing. British Columbia's legislation on commercial leasing is badly out of date, consisting mainly of a statute adopted in the late nineteenth century that was based on even earlier English legislation. The project has two main phases. First, there has been the study of reforms in the area of commercial leasing, which has led to publication of a consultation paper in September 2008, presenting tentative recommendations for public comment. Second, a final report will be published, which will include a draft of a new *Commercial Tenancy Act*, in June 2009.

The *Commercial Tenancy Act* Reform Project is being carried out by a volunteer project committee with the following members:

<b>COMMITTEE MEMBER</b>	<b>AFFILIATION</b>
Richard Olson - chair	associate counsel, McKechnie & Co.
Arthur L. Close, Q.C.	British Columbia Law Institute
Sandy Lloyd	former partner, Borden Ladner Gervais LLP
Ann McLean	Legal Services Branch, Ministry of Attorney General
Justice Mary V. Newbury	Court of Appeal for British Columbia
Greg Umbach	Blake, Cassels & Graydon LLP

## ***Defective Contracts Relief Project***

### **Project Leader: Greg Blue**

2008 saw the completion of the Defective Contracts Relief Project. At common law, a contract is unenforceable if its formation, terms or performance would somehow contravene a statute, common law rule or rule of public policy. Such legally defective contracts are classified as "illegal," even though most are entered into in good faith without any criminal or unethical intent. The *Uniform Illegal Contracts Act* was developed by the Uniform Law Conference of Canada to moderate the unjust results that sometimes flow from rigid application of the common law rule. In 2007 BCLI began a project to examine the issues associated with implementation of the *Uniform Illegal Contracts Act* in B.C. The *Report on Relief Under Legally Defective Contracts: The Uniform Illegal Contracts Act* was completed in 2008 and provided to the Ministry of Attorney General.

## ***Elder Law Clinic - BC CEAS Support***

The Law Foundation of BC has provided the BC Coalition to Eliminate Abuse of Seniors (BCCEAS) with funding to open a legal clinic to serve BC seniors. The elder law clinic project was a success

and the clinic held an official opening in September 2008. The objective of the clinic is to provide access to justice for older adults in BC who cannot otherwise obtain legal services, and the clinic has staff lawyers, making it possible to provide legal representation in civil matters. The clinic is the second legal clinic to open in Canada with a mandate to specifically serve older adults and is the first such clinic in Western Canada. The first seniors' legal clinic in Canada is Toronto's Advocacy Centre for the Elderly.

BCLI has been involved in the creation of this clinic from the outset, contributing to initial planning and fundraising activities, working with BCCEAS to direct a Needs Assessment with respect to the scope of services, eligibility and other matters in relation to the establishment of this Older Adult Law Clinic. Laura Watts was seconded on a part-time basis in 2008 to support the development of the clinic. Laura will continue to assist in an informal way in providing strategic direction to the clinic and as a representative of CCEL, which is a key collaborator with BCCEAS.

For information on this much-needed clinic see: [www.bcceas.ca](http://www.bcceas.ca).

### ***Elder and Guardianship Mediation Project***

**Project Leader: Laura Watts**

BCLI commenced the Elder and Guardianship Mediation Project in November 2008 to research and produce material in support of elder and guardianship mediation in BC. An advisory committee and project schedule is being established and initial research is underway. Laura Watts will present the Project's findings at the International Guardianship Network / AGAC Conference in 2009 as part of a panel presentation.

### ***Enduring Powers of Attorney***

**Project Leader: Laura Watts**

The Project was a joint project of the Western Canada Law Reform Agencies (WCLRA), which included the Manitoba, Saskatchewan, Alberta and British Columbia law reform agencies. The BCLI Board reviewed various drafts with a final review and approval in early 2008. *The Final Report on Enduring Powers of Attorney* approved by all of the participating law reform agencies in 2008 has been released and distributed by the Alberta Law Reform Institute.

### ***Family Caregiving***

**Project Leader: Krista James**

The Law Foundation of BC has provided BCLI with funding for a two year legal research project on family caregiving law in BC. The research includes an inter-jurisdictional analysis of family care leave provisions including human rights law, labour law, employment law, constitutional law, taxation law and pensions and benefits entitlements. The focus of this project will be the care of elderly parents, grandparents and disabled adult children, capturing the care needs of adults living with mental health issues, physical and developmental disabilities, addictions and long term illnesses.

The project was originally scheduled from September 2007 to September 2009. Since Krista James has been on maternity leave and has returned in February 2009, we requested and received permission to place the project on hiatus for six months. Advisory committee meetings resumed in early 2009.

COMMITTEE MEMBER	AFFILIATION
Krista James - chair	staff lawyer, British Columbia Law Institute
Joan Braun	executive director, BC Centre for Elder Advocacy and Support
Marjorie Brown	associate lawyer, Victory Square Law Office
Sherman Chan	director of settlement services, Mosaic
Francis Kelly	barrister and solicitor, Community Legal Assistance Society
Freya Kodar	faculty member, Faculty of Law, University of Victoria
Paul McLean	partner, Harris & Co.
Joanie Sims-Gould	post-doctoral research fellow, UBC School of Social Work and Family Studies
Jack Styan	executive director, PLAN

## ***Law Reform Material On-Line Project***

### **Project Leader: Kevin Zakreski**

This is phase 2 of the PLEI Portal Project and is designed to muster our existing library of legal information and education resources and make them available online through our website, and as appropriate, through the “Clicklaw” PLEI Portal website. Funded by the Law Foundation of British Columbia, the project commenced on November 1, 2008. We have formed an Advisory Committee with the following members:

COMMITTEE MEMBER	AFFILIATION
Jim Emmerton - chair	British Columbia Law Institute
Kim Thorau	Perrin, Thorau & Associates
Ana Rosa Blue	WorkSafe BC
Anna Holeton	Faculty of Law, University of British Columbia
Lisa Peters	Lawson Lundell LLP

COMMITTEE MEMBER	AFFILIATION
Lisa Nevens	Student-at-law, University of British Columbia
Chris Gill	Student-at-law, University of Victoria
Desy Wahyuni	Courthouse Libraries BC

The first meeting of the Advisory Committee was held in January 2009 and a first interim project report has been filed with The Law Foundation.

## ***Predatory Lending Issues in Canada***

**Project Leader: Kevin Zakreski**

Predatory lending is the practice whereby a lender deceptively persuades a borrower to agree to abusive loan terms. It is closely tied to the concept of subprime mortgage lending, which is the practice of making loans to borrowers who do not qualify for the best market interest rates (who tend to be people with poor or non-existent credit history or low income). A lender may be expected to require less favourable loan terms in exchange for dealing with a comparatively more risky borrower. But, if the surrounding circumstances include a vulnerable borrower easily taken advantage of due to their own desperate financial circumstances, the situation may be characterized as predatory. Although anyone could be a victim of predatory lending, older adults often fit the profile of having a scant (or even non-existent) credit history, low income and financial need, all of which predatory lenders tend to seek out.

CCEL published the *Study Paper on Predatory Lending Issues in Canada* in February 2008. We are interested in receiving comments on the Study Paper.

## ***Privacy Act Project***

**Project Leader: Greg Blue**

We completed the *Privacy Act Project* in 2008. In 2006, BCLI launched a project on the provincial *Privacy Act*, with the support of the Ministry of Attorney General. The provincial Act deals with the tortious aspects of breach of privacy and appropriation of personality. BCLI issued a Consultation Paper on its reform in mid 2007. The final report issued in 2008 proposes amendments designed to bring the 40-year-old *Privacy Act* into line with current circumstances and incorporate some features of more detailed recent privacy legislation enacted by several other provinces. The report also addresses stalking as a distinct form of privacy violation.

## ***Probate Rules Reform Project***

**Project Leader: Greg Blue**

In 2007 BCLI began work on the Probate Rules Reform Project, with support from the Ministry of Attorney General. The goals of the project are to streamline probate procedures, harmonize the rules of

court concerning probate matters with the proposed succession reform legislation and ensure that the reformed probate rules are compatible with the general reform of civil procedure now underway as a result of the report of the B.C. Civil Justice Review Task Force.

A Project Committee was formed and held its first meeting in December 2007. Work on this project continued throughout 2008. A process for liaison with the Supreme Court Rules Revision Committee is in place. Issuance of a Consultation Paper is planned.

The members of the Probate Rules Project Committee are:

COMMITTEE MEMBER	AFFILIATION
D. Peter Ramsay, Q.C. - chair	Faculty of Law, University of British Columbia Ramsay Lampman Rhodes
Jim Andrews	Supreme Court of British Columbia, Probate / Bankruptcy Registry
Master Douglas Baker	Supreme Court of British Columbia
R. C. (Tino) Di Bella	Jawl & Bundon
Roger Lee	Davis LLP
Andrew MacKay	Alexander Holburn Beaudin & Lang LLP
Hugh McLellan	McLellan Herbert
Margaret Sasges	Clay & Co.
Genevieve Taylor	Legacy Tax & Trust Lawyers
Kathryn Thomson	Consultant to Court Services Branch, Ministry of Attorney General
Scott Wheeler	Supreme Court of British Columbia, South Island District Probate Registry

Tyler Nyvall attends meetings of the Project Committee as the designated Ministry of Attorney General liaison official. The Project Committee was supported in 2008 by BCLI senior staff lawyer Greg Blue, research lawyers Carolyn Laws and Andrew McIntosh, research assistant Christopher Bettencourt, and Setareh Javadi, articulated student.

## ***Public Legal Education and Information Portal Projects***

### **Project Leader: Kevin Zakreski**

The Public Legal Education and Information Portal Project had its origin in a broader PLEI Portal Initiative. The goal of the PLEI Portal Project is to provide a gateway to legal information and education

resources in British Columbia through a website equipped with a focused searching tool.

BCLI completed two distinct but related projects in 2008. Through the first project we combined our websites to provide a single updated easy-to-use website. In the second project we began to muster our existing legal information and education resources, currently found in a variety of formats, and make them available in the most accessible format for users of the PLEI Portal.

We completed both projects in November 2008.

## ***Real Property Reform Project - Phase 2*** **Project Leader: Greg Blue**

BCLI commenced Phase 2 of the Real Property Reform Project in 2008. As B.C. moves closer towards a fully electronic system of land registration and conveyancing, it is appropriate to review and modernize the substantive legal principles on which that system depends. Phase 1 of the Real Property Reform Project was a scoping exercise conducted in 2007 with the aid of an Advisory Committee. It identified areas of real property law where reform was needed and which were not already being reviewed by other bodies reporting to government. Phase 2 consists of active law reform work on five areas identified in Phase 1, namely:

- (a) the effect of section 29 of the *Land Title Act* and notice of an unregistered interest;
- (b) section 35 of the *Property Law Act* and judicial extinguishment of incorporeal interests;
- (c) severance of joint tenancy and other issues of co-ownership, including the four unities rule and the *Partition of Property Act*;
- (d) the general law of restrictive covenants;
- (e) the doctrine of implied grant.

Phase 2 is funded by the Law Foundation of British Columbia, the Notary Foundation, and the Real Estate Foundation of British Columbia. It will extend over 2-3 years and is being carried out with the aid of an expert Project Committee. Consultative documents will be issued and a consultation period will precede formulation of a final report. A decision will be taken at a later stage as to whether to issue a single report or separate reports for each of the areas covered by the project.

The members of the Real Property Reform Project Committee are:

COMMITTEE MEMBER	AFFILIATION
Dr. A. J. McClean, Q.C. - chair	Fasken Martineau DuMoulin LLP
Ian W. Cassie	Fasken Martineau DuMoulin LLP
Christine Elliott	Barrister and Solicitor
Prof. Robert G. Howell	Faculty of Law, University of Victoria
Kenneth Jacques	Barrister and Solicitor Former Registrar, Victoria Land Title Office
Ross Langford	Farris, Vaughan, Wills & Murphy LLP
Susan Mercer	Society of Notaries Public of British Columbia
Peter Mueller	Association of British Columbia Land Surveyors
Calvin Ross	Real Estate Institute of British Columbia
Paul Scambler, Q.C.	Clay and Co.
Prof. Tony Sheppard	Faculty of Law, University of British Columbia
Lisa Vogt	McCarthy Tétrault LLP

The Project Committee is supported by staff lawyers Greg Blue and Kevin Zakreski, research lawyer Andrew McIntosh and articulated student Setareh Javadi.

## ***Society Act Reform Project*** **Project Leader: Kevin Zakreski**

The *Society Act* provides for the incorporation of not-for-profit bodies in British Columbia. The Act also sets out the legal framework for the organization, governance, financial affairs, amalgamation and termination of societies.

The current version of the *Society Act* was enacted in 1977 and has seen little substantive amendment since enactment. In this 30-year period, new legislation has been brought in to govern for-profit corporations and the not-for-profit sector has grown in ways and expanded into new areas that were not foreseen in 1977. As a result of these changes, the *Society Act* is now out of date.

BCLI has completed a two-year project intended to develop a modern and comprehensive legal framework for societies in British Columbia. The project was made possible by a grant from the Law Foundation of British Columbia. Work on the project was carried out by a volunteer project committee, which has the following members:

COMMITTEE MEMBER	AFFILIATION
Margaret Mason - chair	Bull, Housser & Tupper LLP
Ken Burnett	Miller Thomson LLP
Colleen Kelly	Volunteer Vancouver
Bob Kucheran	student-at-law, University of British Columbia former CEO, BC Pharmacy Association
Murray Landa	UBC Development Office, Gift and Estate Planning
Mike Mangan	Barrister & Solicitor
Kim Thorau	Perrin, Thorau & Associates

The final report for the project was published in July 2008. After publication, Chair Margaret Mason, Project Manager Kevin Zakreski and Jim Emmerton met with representatives of the Ministry of Finance for a detailed discussion of the report and its recommendations.

### *Unincorporated Nonprofit Associations*

The unincorporated nonprofit association is the default mode of nonprofit activity. Whenever people band together to carry out one or more nonprofit purposes and take no steps to incorporate or create a charitable trust, they form an unincorporated nonprofit association. This category includes everything from small-scale members' clubs, charities, neighbourhood groups and athletic teams, up to larger groups, such as trade unions, political parties, religious organizations and professional sports leagues.

BCLI co-led the development of a harmonized legal framework for unincorporated nonprofit associations in North America. This project was a collaborative undertaking jointly carried out by the Uniform Law Conference of Canada, the Uniform Law Commissioners (formerly the National Conference of Commissioners on Uniform State Laws), and the Mexican Center of Uniform Law. The three organizations sought to provide unincorporated nonprofit associations with a modern legal framework, which will harmonize rules found in North America's two legal traditions and three national jurisdictions. BCLI led the Canadian common law aspects of the project.

The members of the ULCC Team are:

TEAM MEMBER	AFFILIATION
Arthur L. Close, Q.C. <i>ULCC Team leader</i>	British Columbia Law Institute
Prof. Michelle Cumyn	Faculté de droit, Université Laval
Jake Harms	Manitoba Department of Justice
Prof. Tom Telfer	University of Western Ontario Faculty of Law
Kevin Zakreski <i>reporter to the ULCC Team</i>	British Columbia Law Institute

At the annual meeting in Quebec City in August, 2008 the Uniform Law Conference of Canada reviewed and adopted the final Canadian reports, including draft legislation for the common law and civil law.

Copies of the Uniform Unincorporated Nonprofit Associations Act were distributed in late November 2008 to the chairs of various CBA sections with an interest in this area of the law for comment.

Funding for this joint project was provided by the Uniform Law Commissioners, the Uniform Law Conference of Canada, and Justice Canada.

## ***Vanguard Project***

### **Project Leader: Laura Watts**

In 2006, on behalf of the BC Adult Abuse and Neglect Prevention Collaborative, the BC Coalition to Eliminate Abuse of Seniors retained BCLI to provide research services in relation to identifying and critiquing legislation governing capability and extracting best practices from existing policy and protocols currently guiding capacity assessment.

The Project required a broad inter-jurisdictional and cross-disciplinary review of the law and policy of capability. As part of our work, BCLI assisted the Collaborative to develop an interdisciplinary provincial protocol that will serve as a resource for health care professionals, criminal justice personnel, lawyers, judges, doctors and other practitioners who come into contact with vulnerable adults in their work, as well as drafting comparative legal summaries and making recommendations for law reform and increased access to justice. This project has provided BCLI with a unique opportunity to work with leading practitioners in health care, community support and social work.

The research has been completed and a summary was presented at the July 2008 meeting of the Collaborative. BCLI completed all Vanguard materials, excepting two background papers on housing and immigration, created by Charmaine Spencer. The completed Project was handed to the funder, The Law Foundation in January 2009 by project manager, Joan Braun.

# PERFORMANCE MEASUREMENT

BCLI believes that ongoing non-government law reform work is an essential element of a healthy democratic society based on the rule of law. While governments carry the ultimate responsibility for enacting new laws and law reforms, there is a clear, necessary role for independent, professional, objective, non-political assessment of the law and needs for improvement. Independent law reform agencies also play an important role in raising awareness and understanding of law reform issues.

We recognize the need to measure the success of our work. In 2008, BCLI implemented a simple, motivating means to plan for, act upon and measure progress. We track Law Reform Points (LRPs) using the indicators set out below. The results serve as a major indicator of our effectiveness on an ongoing basis.

<b>Indicator</b>	<b>LRPs</b>
Legislation passed or Recommendation implemented or adopted	5
New or renewed funding	4
Judicial, academic, or professional citation	3
Third party project or review invitation	2
Third party notice / publicity	1

During fiscal 2008 and fiscal 2009, we recorded the following LRPs.

Quarter ended	Jun '07	Sep '07	Dec '07	Mar '08	Jun '08	Sep '08	Dec '08
Law Reform Points (LRPs)	<b>30</b>	<b>10</b>	<b>70*</b>	<b>26</b>	<b>39</b>	<b>57</b>	<b>151*</b>

\* During these quarters we hosted the Canadian / International Conference on Elder Law and in '08, the first annual Great Debate.



Winners of the 2008 Great Debate, BCLI Board Member Prof. Robert Howell and Bough-ton lawyer Tony Wilson pose with their trophy.

# OUTREACH

Outreach activities form an essential part of our work as they provide opportunities to inform the public of law reform issues, attract interest in law reform and increase awareness and support for BCLI and CCEL. Here are key highlights of our outreach activities in 2008.

1. CCEL hosted the 2008 Canadian / International Conference on Elder Law and World Study Group from November 13 – 15, 2008. This was the fourth consecutive year of hosting these events. Attendance of about 150 people featured participation from Europe, Asia, Africa and across Canada and the USA. Formal feedback returns again rated the Conference and World Study Group very positively at over 4.6 out of 5.0 overall.
2. BCLI co-hosted the first annual Boughton - BCLI Great Debate. The Debate, moderated by CBC's Rick Cluff, featured debating teams representing the University of British Columbia Law School and the University of Victoria Law School. The Debate on the topic RESOLVED that copyright laws have no place in the modern iWorld was educational, entertaining and generally a resounding success. Our thanks to all those who attended and made it such a memorable night. We are planning to make this dinner and debate a yearly event. Special thanks to Boughton Law Corporation who provided key sponsorship support to the first Great Debate.
3. During 2008 we assisted BC CEAS with the development and opening of the first Elder Law Clinic in British Columbia. We provided extensive planning and start-up management advice involving strategic planning, organizational advice and recruitment assistance. Laura Watts will continue to provide management assistance and support on an ongoing basis.



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