



**British Columbia Law Institute**  
*and*  
**Canadian Centre for Elder Law**  
annual report 2009

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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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# REPORT OF THE CHAIR



*2009* was a difficult year. Many people found themselves dealing with the effects of job loss, as well as substantial losses of savings due to market declines and spectacular fraud schemes. National and regional governments attempted to support listless economies while faced with extreme budgetary pressures from dwindling revenues caused by the general business decline.

In 2010 we are poised at the beginning of another significant change that will have an impact on the economy in British Columbia and Canada. Next year the leading edge of the post-war baby-boom generation will reach age 65, continuing an inexorable shift to an on-average older population.

In many ways law reform work is more important during periods of turbulent and rapid change. British Columbians and Canadians are in particular need of laws and policies that respond to current and emerging realities. Legislation is required to support safe environments for older adults, encourage new economic activity, increase access to justice, and clarify and assist business and consumer transactions.

The British Columbia Law Institute upholds the ongoing development of laws that are both just and efficient and promote the general improvement of society. We strive to produce professional, independent, non-political, and non-partisan publications that will facilitate further legal research and law reform, and to continuously improve our capacity to undertake this work. To this end, we support and participate in regular public legal education and community engagement activities that enhance understanding of the legal system by both the legal profession and the larger community. We work constructively and collaboratively with a host of stakeholders to achieve optimal results in all our activities. These three elements – legal research that makes recommendations for improvement and reform of the law, public legal education, and community outreach – form the three pillars of our practice, and collectively they ensure our legal system can continue to evolve in order to serve the changing needs of society.

A major achievement for BCLI in 2009 was the substantial implementation of our Succession Law Report in the *Wills, Estates and Succession Act, S.B.C. 2009, c. 13*. This event represents a significant victory for British Columbians in that it provides for the long overdue modernization and improvement in the law governing estates and succession. The Succession Law Project was completed over several years and involved 29 volunteer experts who participated in over 100 committee meetings. More recently, BCLI also provided support and advice to the provincial government with respect to the implementation stage of this new law.

BCLI maintains an extensive law reform program. In 2009 we completed two substantial law re-

form projects and co-led the completion of a third, the Vanguard Project. We continued work on five multi-year projects, initiated four projects during the year, and are considering a number of new projects in 2010.

Beyond legal research and law reform work, BCLI carries out extensive outreach activities including, in 2009, the second annual Boughton / BCLI GREAT*debate*, a ‘webinar’ series on Elder Law, participation in the National Initiative for the Care of the Elderly (NICE) Network, and co-hosting, with Stetson University, the 5th annual World Study Group on elder law issues.

The strength of our reputation and the superior quality of our work is only possible due to the exceptional contributions made by our staff and many volunteers including Board members, Judicial Liaisons and scores of lawyers and non-lawyers who provide subject-matter expertise on our law reform Advisory Committees, Project Committees and in other activities. Most sincere thanks are due to all of our volunteers, who have made invaluable contributions of expertise to law reform and related outreach activities.

The BCLI Board provides strong leadership and benefits from both experience and renewal in membership. In 2010 the members will appoint a new non-lawyer to replace Ms. Kim Thorau, who provided excellent advice and counsel over more than eight years. During 2009, new appointments to the Board included John-Paul Boyd, Fiona Hunter and Prof. Judith Mosoff.

Our staff team of five lawyers, an articling student, office manager and ongoing legal research assistants bring great experience, dedication and energy to our activities. Thanks to all of the staff for continued exceptional work. Special congratulations to Senior Staff Lawyer, Greg Blue, Q.C., who was appointed Queen’s Counsel in December 2009, recognizing his long-time dedication and expertise in law reform in British Columbia.

BCLI is supported by several key financial stakeholders. During 2009, The Law Foundation of BC continued its substantial operating support and has provided key funding for project and outreach initiatives. The Notary Foundation of BC, the Real Estate Foundation of BC, the Federal Government, the Ministry of Attorney General for B.C., Scotiatrust, Boughton Law Corporation, and Lawson Lundell LLP all provided project funding in 2009. Organizations, such as UBC Law, UVic Law, Stetson Law, and many law firms and individuals contributed either directly or through support of activities such as the successful Canadian Conference on Elder Law or the GREAT*debate* or participation in BCLI committees.

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



*Ron Skolrood*  
Chair

## 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 3/09	Mar 3/09	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. Judith Mosoff	UBC Law	Oct 1/09	Oct 1/09	Mar 31/10
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
<i>vacancy</i>	At large			

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.

## BOARD OF DIRECTORS



**Ron Skolrood**  
Chair



**D. Peter Ramsay, Q.C.**  
Vice-Chair



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

## 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), Peter Ramsay, Q.C., Geoff Plant, Q.C., R.C. (“Tino”) Di Bella, 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 R.C. (“Tino”) Di Bella (Chair), Lorne Dunn, Fiona Hunter, Ron Skolrood, and Greg Steele, Q.C.

**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 Prof. Joost Blom, Q.C. (Chair), Arthur Close, Q.C., John-Paul Boyd, Prof. Robert Howell, and Prof. Judith Mosoff.

**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., Fiona Hunter, Lorne A. J. Dunn, and D. Peter Ramsay, Q.C.

BCLI has three Judicial Liaisons:

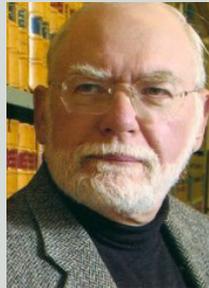
- Honourable Madam Justice Mary Newbury, Court of Appeal for B.C.
- Honourable Madam Justice Lynn Smith, Supreme Court of B.C.
- Honourable Judge Gurmail Gill, Provincial Court of B.C.



*Prof. Joost Blom, Q.C.*



*J.P. Boyd*



*Arthur L. Close, Q.C.*



*Lorne Dunn*



*Prof. Bob Howell*

# STAFF



*Pictured, from left to right: (back row) Kevin Zakreski, Greg Blue, Q.C., Jim Emmerton, (front row) Elizabeth Pinsent, and Laura Watts.*

Below is a summary of our current staff:

<b>Executive Director</b> Jim Emmerton	<b>Senior Staff Lawyer</b> Greg Blue, Q.C.
<b>Staff Lawyer</b> Kevin Zakreski	<b>Staff Lawyer</b> Krista James
<b>National Director, CCEL / Staff Lawyer</b> Laura Watts	<b>Office Manager</b> Elizabeth Pinsent
<b>Public Interest Articling Student</b> Emma Butt	<b>Research Lawyer</b> Andrew McIntosh
<b>Research Lawyer</b> Kristine Chew	<b>UVic Co-op Student</b> Kisa Macdonald



*Fiona Hunter*



*Prof. Judith Mosoff*



*David Pihl, Q.C.*



*Geoff Plant, Q.C.*



*Gregory Steele, Q.C.*

# REPORT OF THE EXECUTIVE DIRECTOR

As described throughout this Annual Report, the British Columbia Law Institute has achieved many successes in 2009 and has a robust ongoing program of legal research and law reform projects and related activities.

There are many opportunities for needed law reform work in future. We have developed proposals for projects in several important areas.

**BC Franchise Law** - In 2005, the Uniform Law Conference of Canada (ULCC) completed a study of franchise law issues and adopted a Uniform Franchise Act which can be adopted, with appropriate adaptation, in the various provinces and territories including British Columbia.



Franchises are ubiquitous in British Columbia. There are thousands of franchise operations often operated by unsophisticated franchisees who lack sufficient resources, expertise and bargaining power to protect their interests in dealings with more sophisticated, often national or multi-national, franchisors. In many jurisdictions in the United States and in Canada, franchise legislation provides safeguards such as a requirement for fair dealing, disclosure obligations of franchisors and dispute resolution processes. This proposed Project is needed to carry out the research and develop recommendations to allow the seamless implementation of uniform franchise legislation in British Columbia.

**Emerging Lending Issues In Canada** - Consumers, small business owners and lenders have experienced problems in the area of debt arrangements, which have been made more difficult by the recent global economic recession. The lack of an efficient, fair and reliable debt market for consumers and small business owners prevents the orderly and rapid return of a robust economy.

BCLI is proposing a project that will focus on lending arrangements made with consumer and small business borrowers where the loaned amounts are up to, e.g. \$3 million. It is directed to making lending arrangements more efficacious, providing greater protections for both borrowers and lenders, and promoting greater confidence and stability in lending markets.

**Elder Abuse and Neglect** – There is evidence that elder abuse and neglect is a significant issue in Canada. In the reality of an aging population, neglect and abuse issues could be expected to continue to grow unless appropriate study and ameliorative actions are taken. CCEL has done initial work in this area and intends to pursue other research and law reform work to support understanding of the issues, assess the prevalence of the problem and develop reforms, policies and practices directed to reducing the harms caused by elder abuse and neglect.

In Canada, general respect for the rule of law has persisted since Confederation, more than 140 years ago. At the same time our broad acceptance of the rule of law may often cause us to take our peace, order and good governance for granted.

Ongoing, thoughtful law reform is essential to a well-respected legal system and is at the foundation of a free and secure society. Our society is constantly changing: populations grow or decrease, and demographic profiles shift — witness the aging of Canada's population. New technologies transform societal norms, and sweeping environmental changes occur naturally and through human intervention. Constant change drives a need for new laws and regular review and update of existing laws.

It is widely accepted that there is a need for enduring, professional non-political and non-partisan law reform work to support and supplement the law reform activities of government. The activities of BCLI / CCEL are directly focused on meeting this need. Our consistent dedication to law reform provides stable leadership for the necessary improvements to our laws, policies and practices and is a cornerstone to continued respect for the rule of law.

We will work collaboratively with all stakeholders whose vision is for a society characterized by just and efficient laws that appropriately serve the evolving needs of society. To assist in reaching out to an ever-increasing list of friends and to help clarify our mandate, we have added taglines to our names, British Columbia Law Institute ~ ***the law reform people*** and Canadian Centre for Elder Law ~ ***law reform for older adults***.

Finally, a word about the BCLI / CCEL staff. We remain a small group of six people, supplemented as resources permit, with one to four researchers. All BCLI staff members are totally committed to law reform work and bring great dedication, expertise and efficiency to independent law reform work. On behalf of BCLI and CCEL, I express heartfelt thanks and appreciation to all of our dedicated staff for their continued stellar contributions. Thanks to all.

We are especially proud of Greg Blue, Q.C. this year. Greg was the key staff lawyer on the Succession Law Project and its implementation into the new Wills, Estates and Succession Act in 2009. In recognition of this and many years of excellent work in law reform and law practice, the Honourable Attorney General, Michael de Jong, Q.C. granted the designation of Queen's Counsel to Greg in December 2009. Special congratulations to Greg Blue, Q.C. this year and thanks for the great work for BCLI and for law reform in British Columbia.



*W. James (Jim) Emmerton*

# CANADIAN CENTRE FOR ELDER LAW

*In* Jim Collins' bestselling book *Good to Great*, he tells the story of the 'flywheel'. He asks us to imagine a huge, heavy flywheel – a massive metal disk mounted horizontally on an axel, about 30 feet in diameter, 2 feet thick and weighing about 5,000 pounds. He then asks us to imagine being told to get the flywheel rotating on the axle as fast and as long as possible.

The story continues with the great effort of pushing the enormous flywheel forward, imperceptibly first, then inch-by-inch. After hours of effort the flywheel finally makes a full rotation. With consistent and dogged effort, finally the flywheel builds up speed and rotates smoothly and quickly.

Then he asks us to ponder how we would answer the question “What was the one big push that caused this thing to go so fast?” He notes that the question is nonsensical. All the effort was applied continuously – some small efforts, some larger pushes. All efforts contributed to the resulting momentum.

When I was reflecting on the work and achievements of the Canadian Centre for Elder Law over the past year, I was constantly pulled back to this metaphor.

As a Centre, and as a field, we have come so far. Yet there is no one specific 'push' that has been the defining feature. Rather, it has been an accumulation of efforts – local, regional, national and international – which have made our flywheel spin. Elder Law, and the CCEL, are well on their way and moving forward at a rapid and unstoppable rate.

When the CCEL was formally instituted in 2003, 'Elder Law' in Canada consistently seemed to require a detailed explanation and justification. What was Elder Law, and why did it matter?

At the time, there were few publications and even less academic literature in the country on law and aging issues, although some key leaders were making cutting edge contributions. Elder Law courses were nearly unheard of within law faculties. Few reports existed reviewing the role of law in aging issues and there was very little broad national awareness of issues of law and aging either within the legal profession or its associations, such as the Canadian Bar Association. Many businesses and organizations did not easily grasp how Elder Law issues pertained to them, or what responsibility they have to address these concerns.

How much has changed since 2003? “Elder Law” is now a much more broadly accepted moniker, and the 'why does it matter' question seems to have been generally answered. Canadians are much more aware of the rising age demographic and have a deeper understanding of why addressing issues now is of significant importance.



Canada is now a recognized leader in Elder Law issues internationally. Publications, texts, journals, law faculty courses, law and aging courses within other academic disciplines and research grants have all been developed on Elder Law issues. The Federal Government has allocated \$13 million over three years to combat Elder Abuse and Neglect, with the Federal Department of Justice as a ministerial partner. Four Canadian / International Conferences on Elder Law and five meetings of the World Study Group on Elder Law have been held since 2005, with a Joint Canadian Conference on Elder Law and World Study Group on Elder Law event planned for Fall 2010, in Toronto, Ontario. Canadian law reform agencies have all taken up Elder Law issues and leaders in law reform have spoken at Continuing Legal Education and other conferences or events consistently on these issues. Public consultation and media interest has significantly grown, with enquiries from media and dedicated law and aging columns or blogs on the upswing. Major reports such as the Canadian Senate Special Committee on Aging have highlighted the legal issues facing seniors and made specific recommendations in order to improve access to justice for older Canadians. The Office of the Parliamentary Budget Officer's Fiscal Sustainability Report highlights the aging demographic as one of the key economic, legal and policy drivers in Canada's economic future today.

Additionally, law and aging issues are taking up permanency in broader organizations. For example, in 2009, The International Federation on Aging established a Law and Aging Committee, and increasingly, organizations, businesses and Ombuds-programs are seriously addressing law and aging issues within their service provision and purview.

This flywheel movement has produced significant results in the area of legal clinic services to older Canadians in recent years. For example, the CCEL is particularly pleased to have been directly involved in the planning and implementing of the new BC Elder Law Clinic, under the excellent leadership of BC Centre for Elder Advocacy and Support's Executive Director, Joan Braun. After nearly 25 years, Canada now has a second legal clinic dedicated to seniors. But the flywheel on elder law clinics is starting to pick up momentum - discussions for other legal services clinics for older Canadians are being developed in Manitoba, Nova Scotia and other jurisdictions as well.

Where will it all lead? The flywheel – while moving under its own momentum – must stay well grounded in place and have the structural supports to enable the positive developments of projects and issues. The Canadian Centre for Elder Law is committed to being that structural support in this country, and to work cooperatively and collaboratively with partners in, and outside of Canada, to move the field safely, and positively, forward. In these years of economic and political change, there has been no shortage of work. It is our goal to ensure that there are appropriate resources and opportunities for those working in our field to be supported in the needed, and important, work on Elder Law issues. We look forward to working with you in the coming year.



*Laura Watts*

*National Director, CCEL & Staff Lawyer, BCLI*

# PROJECTS AND ACTIVITIES

For easy reference, our law reform projects and activities are detailed below in alphabetical order for both the BC Law Reform Group and for Canadian Centre for Elder Law.

## ***BC Law Reform Group***

### **1.1 Boughton / BCLI GREATdebate**

**Project Manager: Jim Emmerton**

BCLI held a very successful second annual Boughton / BCLI GREATdebate on October 28, 2009 at the Law Courts Inn. Boughton Law Corp. again partnered with BCLI, providing a cash contribution and in-kind marketing support. The Debate topic was: *RESOLVED that the hourly rate for lawyers compares to the asteroid for dinosaurs.*

A UVic Law debate team led by UVic Law Dean Donna Greschner, with UVic Law graduate Tony Wilson (Boughton Law Corp.) arguing FOR the resolution. They were challenged by a UBC Law debate team comprised of Dean Mary Anne Bobinski and UBC Law graduate Michael Bain arguing AGAINST the resolution.

Court of Appeal Chief Justice Lance Finch led a panel of three to judge the Debate including the Honourable Chief Justice Robert Bauman, and former B.C. Attorney General, the Honourable Wally Oppal, Q.C.

There were a number of positive outcomes from the GREATdebate:

- The GREATdebate provided an excellent opportunity for BCLI to build relationships with members of the judiciary and practicing Bar.
- The debate was extremely well presented by the debaters with excellent moderation by CBC's Rick Cluff.
- The judging panel delivered a unanimous and hilarious decision in favour of the UBC team.
- Sponsorships, new this year, added interest and economic support.
- Net proceeds were shared with UVic Law.

### **1.2 Commercial Tenancy Act Reform Project Project Manager: Kevin Zakreski**

British Columbia's *Commercial Tenancy Act* is badly out of date. Enacted in the late 1890s, the Act largely restates English legislation from the eighteenth and nineteenth centuries. The Commercial Tenancy Act Reform Project examined the creation of a new and relevant legal framework for an important area of the British Columbia economy. The goal of the project was to publish a final report, including draft legislation and commentary.



*Attendees at the 2009 Boughton / BCLI GREATdebate sit down to dinner before the show.*

The project was carried out by a volunteer project committee. The membership of the project committee was:

Committee Member	Affiliation
Richard Olson (Chair to April 2009)	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

The final report for the project was approved by the BCLI board and published in October 2009. The report includes draft legislation, which focuses on four areas of present concern in commercial leasing: provisions implied in leases; the landlord's consent to an assignment of a lease or a sublease; the application of contractual principles to leases; and the bankruptcy of the tenant. It also contains an enabling provision for a new summary dispute resolution procedure, which is spelled out in a draft regulation. Finally, it sweeps away a number of obsolete provisions from the current Act. The draft legislation is the product of several committee meetings and extensive public consultation.

### 1.3 Law Reform Material On-Line Project **Project Manager: Kevin Zakreski**

The project, funded with the generous support of The Law Foundation, commenced in November 1, 2008 with the objective of making BCLI law reform materials accessible online. The British Columbia Law Institute maintains an extensive library that includes all BCLI and CCEL publications, as well as reports of the Law Reform Commission of British Columbia, elder law resources, and publications from other law reform agencies from the four corners of the world. Many of the items in this library are not available online in any form.

The project is being conducted with the assistance of an Advisory Committee, which has the following members:

<b>Committee Member</b>	<b>Affiliation</b>
Jim Emmerton (Chair)	British Columbia Law Institute
Ana Rosa Blue	WorkSafe BC
Chris Gill	Student-at-law, University of Victoria
Anna Holeton	Faculty of Law, University of British Columbia
Linda Nevens	Student-at-law, University of British Columbia
Lisa Peters	Lawson Lundel LLP
Kim Thorau	Perrin, Thorau & Associates
Desy Wahyuni	Courthouse Libraries BC

During the first half of the project, the BCLI website has been redeveloped, brief summaries and executive summaries have been created for all BCLI and CCEL projects, and all substantive law-reform reports of the Law Reform Commission of British Columbia have been posted online, along with brief summaries and executive summaries of each report. Goals for the second half of the project include the creation of an online elder law resources library and upgrades to the world law reform database.

### 1.4 Probate Rules Reform Project **Project Manager: Greg Blue, Q.C.**

This is a large project for reform of the rules of court governing contentious and non-contentious probate procedures (Rules 61 and 62). This is a sequel to the Succession Law Reform Project and has been funded by the Ministry of Attorney General and Scotiatrust. Specific objectives are to:

- (a) harmonize the probate rules with proposed reforms to estate administration legislation emerging from the Succession Law Reform Project;
- (b) revise the probate rules to better reflect the reality of computerization of the British Columbia Supreme Court's civil registry and eliminate obsolete procedures; and,

(c) ensure that the reformed rules are compatible with the general reform of the B.C. Supreme Court Rules currently underway.

The 11-member Project Committee comprises wills and estates solicitors and litigators, a Master of the Supreme Court, and two court registry officials responsible for probate business.

Committee Member	Affiliation
D. Peter Ramsay, Q.C. (Chair)	Faculty of Law, University of British Columbia Ramsay Lampman Rhodes
Jim Andrews	Probate / Bankruptcy Registry, Supreme Court of British Columbia
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	South Island District Probate Registry, Supreme Court of British Columbia

Tyler Nyvall attends meetings of the Project Committee as the designated Ministry of Attorney General liaison official.

Issuance of a consultation document containing detailed tentative reform recommendations, possibly in the form of a complete draft of new probate rules with commentaries, is planned in 2010. Consultation with stakeholders such as the CBA Wills and Trusts Sections and Court Services Branch, as well as the standard public vetting of the consultation document through the BCLI web site and limited print distribution, will precede preparation of a final report with draft probate rules and commentaries to be submitted to the Attorney General.

The Project Committee is proceeding on a schedule for completion in late 2010.

### **1.5 Real Property Review Project – Phase 2 Project Manager: Greg Blue, Q.C.**

The Real Property Project – Phase 2 is directed to reforming five areas of B.C. real property law which had been identified in the Phase 1 report, 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) restrictive covenants; and,
- (e) the doctrine of implied grant.

The Project is being funded by the Notary Foundation, the Real Estate Foundation and The Law Foundation and is being carried out by a volunteer Project Committee.

Committee Member	Affiliation
Dr. A. J. McClean, Q.C. (Chair)	Fasken Martineau Dumoulin LLP
Ian W. Cassie	Fasken Martineau DuMoulin LLP
Christine Elliot	Sole practitioner
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
Susen Mercer	Society of Notaries Public of British Columbia
Peter Mueller	Association of British Columbia Land Surveyors
Calvin Ross	Real Estate Institute of British Columbia
Peter Scambler, Q.C.	Clay and Co.
Prof. Tony Sheppard	Faculty of Law, University of British Columbia
Lisa Vogt	McCarthy Tétrault LLP

Phase 2 will extend over two to three years. The Project Committee continues to meet monthly. A draft consultation paper on the area covered by paragraph (a) above was approved and released for comment in late 2009.

## 1.6 Succession Law Reform Project and the Wills, Estates and Succession Act, 2009

In September 2009, the *Wills, Estates and Succession Act* (Bill 4) was passed. The Act implements in substantial part the recommendations made in the BCLI Succession Law Reform Project and is a great success for all involved in that Project. The Act is slated to be brought into force sometime in 2011.

The BCLI Succession Law Reform Project was completed with the support of the Ministry of Attorney General over three years, with 29 volunteer expert Project Committee members and BCLI staff having attended over 100 Project Committee and subcommittee meetings dedicated to modernizing this important area of the law. Greg Blue, Q.C. was engaged in consultation with the Ministry of Attorney General as the proposed legislation proceeded.

Special appreciation goes to Peter Ramsay, Q.C., Chair of the Project and to Greg Blue, Q.C., who acted as staff project manager.

The Honourable Michael de Jong, Q.C., Attorney General, has sent special thanks and congratulations to all those involved.

### **1.7 ULCC Uniform Trustee Act**

BCLI is represented in the Working Group and the smaller Drafting Group appointed by the Uniform Law Conference of Canada to develop a report on a *Uniform Trustee Act* for presentation to the ULCC. The impetus behind the ULCC project was the endorsement by the Society of Trust and Estate Planners (STEP Canada) of the 2004 BCLI report *A Modern Trustee Act for British Columbia* at its 2007 annual convention. The national Working and Drafting Groups have drawn principally from the BCLI report in preparing a draft *Uniform Trustee Act*.

The Ministry of Attorney General (B.C.) has opted to participate in the ULCC project and lend drafting resources to it, rather than proceeding unilaterally with reform of the present *Trustee Act* (B.C.). The Working and Drafting Groups are chaired by Russell Getz of the Civil / Family Law Policy Office, B.C. Ministry of Attorney General.

Former BCLI Project Committee Chair Donovan W.M. Waters, Q.C., Arthur L. Close, Q.C., and Greg Blue, Q.C., are members of the ULCC Working Group. Arthur Close, Q.C., and Greg Blue, Q.C., are also members of the Drafting Group.

The Working and Drafting Groups convene on scheduled dates by conference call.

The Working Group has completed its review of the BCLI report. Drafting of a *Uniform Trustee Act* based largely on Part Two of the BCLI Report as well as the deliberations of the Working Group is underway. The Project is expected to be completed for delivery to the Uniform Law Conference of Canada annual conference in August 2010.

The work of BCLI will continue to be directed from the Ministry of Attorney General which has provided funding to BCLI relating to work on this Project.

### **1.8 Unfair Contracts Relief**

**Project Manager: Kevin Zakreski**

The Law Foundation is generously funding a two-year project dealing with unfair contracts relief. The project is examining several areas of contract law that are considered unfair for recommendations for reform. The project will build on the BCLI studies on unfair contracts and predatory lending pub-

lished in 2005 and 2008 respectively.

The Project is being carried out by a Project Committee, with the following members:

Committee Member	Affiliation
Prof. Joost Blom, Q.C. (Chair)	Faculty of Law, University of British Columbia
Margaret Easton	The Meridian Aging Project former credit union executive
Russell Getz	Ministry of Attorney General of British Columbia
Do-Ellen Hansen	Borden Ladner Gervais LLP
Allan Parker, Q.C.	Western Canada Society to Access Justice
Lisa Peters	Lawson Lundell LLP
Peter Rubin	Blake Cassels & Graydon LLP
Tony Wilson	Boughton Law Corp.

The committee has decided to focus the project on examining the following contract-law concepts: (1) unconscionability; (2) duress; (3) undue influence; (4) good faith; (5) exclusion clauses; and (6) misrepresentation. These concepts were selected because they can usefully be employed as themes for organizing consideration of more highly specific issues relating to contractual unfairness. They also serve to connect problems that are currently encountered by contracting parties with a long-standing body of jurisprudence. The committee has agreed on a regular meeting schedule for the upcoming year. Its goals for 2010 include considering the major legal issues that arise in connection with each of the six concepts, formulating tentative recommendations for reform, and issuing a consultation paper.

## *Canadian Centre for Elder Law*

### **2.1 Assisted Living, BC Project**

**Project Coordinator: Jim Emmerton**

Following the publication of a Discussion Paper entitled Assisted Living: Past, Present and Future Legal Trends in Canada, the Notary Foundation and The Law Foundation of BC are generously providing funding for a large three year project on Assisted Living issues in British Columbia.

The Project is being carried out by a Project Committee.

Committee Member	Affiliation
Jim Emmerton (Chair)	British Columbia Law Institute
Joan Braun	B.C. Centre for Elder Advocacy and Support
Sandra Golightly	Fraser Health Authority

Committee Member	Affiliation
Fiona Hunter	Horne Coupar
Carly Hyman	BC Ombudsperson
Al Jina	Park Place Seniors Living
Mike Krabbendam	Manoah Manor / BC Seniors Living Association
Martha Lewis	Tenant Resources & Advisory Centre (TRAC)
Marg McNeil	B.C. Housing
Jane Anne Purdie, Q.C.	Hambrook & Company
Marlene Williams	B.C. Seniors Living Association

Ms. Susan Adams, Registrar and CEO, Office of the Assisted Living Registrar, is acting as an observer to the Project Committee.

This is a large project involving several significant topic areas. Jim Emmerton will coordinate the project and each staff lawyer will manage specific issues.

In addition to the Project Committee, an Advisory Group will be engaged for periodic feedback and input on project direction and issues. The project will include obtaining substantive public input on assisted living priorities and issues, legal research, broad consultation, and legal drafting directed ultimately to recommendations for legislative reforms.

The Project Committee began meeting in late 2009 and is continuing to hold meetings.

## 2.2 Canadian Conference on Elder Law

**Activity Manager: Laura Watts**

The CCEL hosted four successful conferences in the four years prior to 2009. Each conference also included a World Study Group session. In 2009, rather than hosting a full conference, a World Study Group session was held jointly with Stetson University's Centre for Excellence in Elder Law. On November 19-20, 2009 the Canadian Centre for Elder Law and Stetson University, Florida co-hosted a World Study Group in at Stetson University in Florida. This was a highly successful two-day forum.

Planning is in process for the fifth Canadian / International Elder Law Conference for October / November 2010 in Toronto and will involve key partners such as the Law Commission of Ontario, the International Federation on Aging, the NICE Network, the Advocacy Centre for the Elderly, and CARP. The Conference will again include a one-day World Study Group.

## 2.3 CASA Elder Law Webinar Series

**Project Manager: Laura Watts**

The CCEL collaborated with the Canadian Academy of Senior Advisors (CASA) to develop and deliver a 12-session webinar series on Elder Law targeted towards professionals working with older clients. The "Aging and the Law" series was prepared and taught by Laura Watts with the last session

held on December 15, 2009. The series, which was divided into three parts, consisted of four one-hour webinars covering a range of legal issues associated with aging and the older client, including:

- Families and contracts (private care arrangements, grandparents' rights, financial arrangements)
- Substitute decision-making, consent and capacity, powers of attorney etc.
- Privacy
- Professional responsibility and practice standards
- Elder abuse
- Caregiving and leave

The series is complete and was quite successful. CCEL and CASA are currently exploring other potential future areas of collaboration.

#### **2.4 Elder and Guardianship Mediation Project      Project Manager: Laura Watts**

The Law Foundation of British Columbia is providing funding for a legal research project relating to Elder and Guardianship Mediation. This is a two year project involving research and production of a number of materials in support of elder and guardianship mediation in B.C.

The project commenced in November 2008. Research on this project has now concluded. Research has included comparative literature reviews of US / Canada / Australia. Consultant Joan Braun and Laura Watts attended a four-day intensive US training session in Elder Mediation. Numerous presentations have been made on this project, including a one day session presentation with Family Mediation Canada. Drafting of the Consultation Paper is underway and will be finished very shortly. Shorter issues have been circulated for comment. The researchers are directly connecting with key mediation players such as Family Mediation Canada and the Dispute Resolution Office to work on recommendations and practical standards in the field. BC CEAS is already working on developing an elder mediation initiative in future years to address this need.

#### **2.5 Family Caregiving Leave Project      Project Manager: Krista James**

This was a two-year legal research project funded by the Law Foundation to research family caregiving employment leave and other entitlements (such as employment insurance and tax credits) provided for employed persons in B.C. who need to attend to adult caregiving duties. The project examined employment standards, employment insurance, tax, pensions, human rights and other relevant legislation and case law, as well as the practices of a cross-section of employers. The work also included a comprehensive literature survey, comparison with a number of key countries, and consultation with B.C. family caregivers. The project culminated in a major study paper examining the issues and providing recommendations for future study and reform. The full set of materials, which includes comparative tables and a set of educational materials, was completed in early 2010 and will be available on our website shortly.

The Project was completed with the assistance of an Advisory Committee.

Committee Member	Affiliation
Krista James (Chair)	British Columbia Law Institute
Joan Braun	B.C. Centre for Elder Advocacy And Support
Marjorie Brown	Victory Square Law Office
Sherman Chan	MOSAIC
Frances Kelly	Community Legal Assistance Society (CLAS)
Prof. Freya Kodar	Faculty of Law, University of Victoria
Paul McLean	Harris & Co.
Joanie Sims-Gould, Ph. D.	Faculty of Medicine, University of British Columbia
Jack Styan	Executive Director, Plan BC

## 2.6 NICE Network

### Project Manager: Laura Watts

NICE is an international network of researchers, practitioners and students dedicated to improving the care of older adults, both in Canada and abroad. It is a federally funded NCE Centre of Excellence.

Members of this network represent a broad spectrum of disciplines and professions, including geriatric medicine, gerontological nursing, gerontological social work, gerontology, rehabilitation science, sociology, psychology, policy and law. NICE operates through a network of Theme Teams and Committees. Theme Teams review evidenced-based literature to develop user-friendly, interdisciplinary, team-based tools. They then work to disseminate these tools into practice, thus moving research into practice. Committees work to identify best practices, advocate for curricula changes, and support students in the field of aging. Theme Teams and Committees are made up of researchers, practitioners and students from varied disciplines, which helps foster interdisciplinary collaboration.

During 2009, Laura Watts assisted in representing the NICE Network at the International Association of Gerontology and Geriatrics World Congress in July (expenses paid by NICE). CCEL is currently exploring two possible small projects for tool development with NICE which deal with consent/capacity issues and family caregiving issues. Additionally, the CCEL has agreed to be a 'collaborator' on a SSHRC/CURA project on knowledge exchange and aging issues. Final determination for this grant will be made in 2010. Laura is also involved with a NICE Network / HRSDC funded "pre-prevalence study" on elder abuse in Canada.

Laura Watts will continue to participate in NICE meetings primarily by telephone and seek opportuni-

ties for CCEL to support the work with research and writing projects.

## **2.7 Substitute Decision-Making in Health**

**Project Manager: Laura Watts**

ULCC has approved a BCLI / CCEL proposal for Phase 1 of a project on Substitute Decision-making in Health in Canada. We are seeking funding support for the project which will proceed when funding is confirmed. We will report to the ULCC in Halifax in August, 2010, on progress with the Project.

## **2.8 Vanguard Project**

**Project Manager: Laura Watts/Krista James**

This was a two-year legal research project to examine issues relating to abuse and neglect of vulnerable adults who fall anywhere along the capacity continuum and particularly vulnerable adults with capacity concerns. The project was funded by a Law Foundation grant that was awarded to BC CEAS and the BC Adult Abuse and Neglect Prevention Collaborative (the “Collaborative”). BC CEAS and the Collaborative then contracted with BCLI to conduct a large portion of the research, and with a researcher at Simon Fraser University to conduct a smaller portion of the research.

The completed Project was handed to the funder in January 2009. However, two events were held later this past year to further work in relation to this Project. In September, a formal launch of the Vanguard report was held in conjunction with the National Crime Prevention Conference in Surrey, B.C., with a keynote address by Ida Chong, the Minister Responsible for Seniors (Healthy Living and Sport). In October, the Collaborative conducted an all-day inter-disciplinary working meeting as a first step in implementation of the recommendations of the report. Key individuals working in justice, housing, finance and other areas discussed selected recommendations of the report at this meeting. BCLI staff assisted with facilitating the meeting and introducing the report to participants.

## Strategic Planning

BCLI operates with a Strategic Plan, most recently updated in April 1, 2009. The next review of the Strategic Plan is scheduled for the last half of fiscal 2010-2011.

## Staff Development

Staff lawyers continue to attend and provide lectures to the Continuing Legal Education and other professional development programs to continue to be current in targeted areas of law.

BCLI and BC CEAS have collaborated on an innovative approach to hold personnel development activities at very low cost by having:

- Jim Emmerton lead the personnel development day for BC CEAS; and
- Joan Braun lead the personnel development day for BCLI.

In December 2009, the Minister of Attorney awarded the title of Queen's Counsel to Greg Blue. Greg Blue has a long successful track record in law reform and has provided exceptional service in managing the Succession Law Reform Project including consulting with Government during the implementation of the new Wills, Estates and Succession Act. Special congratulations to Greg Blue, Q.C. this year.



*Jim Emmerton congratulates Greg Blue, Q.C. on his recent appointment.*



*Prof. Tony Sheppard and Jim Emmerton witness the commencement of demolition on February 2, 2010.*

## ***The Future UBC Law Building***

The British Columbia Law Institute works from its modest offices in Law Faculty Annex 1 on the UBC campus. On February 2, 2010, demolition began on the main UBC Law Faculty building. The new Faculty of Law building is planned to open in the fall 2011 and will include offices for BCLI. When relocated in the new building, we look forward to continuing to build on our positive relationships with UBC Faculty, law students and others who will be using the new facility.



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