



# British Columbia Law Institute

## A Report on Year Three

### About the British Columbia Law Institute

#### 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.

### BRITISH COLUMBIA LAW INSTITUTE

#### Constitution

2. The purposes of the society are to:
  - (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
  - (b) promote improvement of the administration of justice and respect for the rule of law, and
  - (c) promote and carry out scholarly legal research.



**Gregory K. Steele**  
Institute Chair

#### Highlights: 1999/2000

The past year saw the Institute continue its growth and development as a law reform body. This is reflected in a number of developments that took place or are in progress at the time this report is published. These include

- the relocation of the Institute's premises to The University of British Columbia in space adjacent to the Faculty of Law
- a formal fundraising campaign to help the Institute secure its financial sustainability
- the creation of a new full time position, that of staff lawyer, whose responsibilities will focus primarily on project work.
- the continuing development of the Institute's program of law reform with the addition of a number of new projects.

Our relationship with other organizations having similar aims continues to strengthen and prosper. These include the Uniform Law Conference of Canada, the Federation of Law Reform Agencies of Canada, the Law Commission of Canada and the Canadian Conference on Personal Property Security Law.

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## Background to the Creation of the Institute

The Institute was created in response to a decision by the Ministry of Attorney General to withdraw program funding from the Law Reform Commission of British Columbia after the end of March 1997. The disappearance of the Commission, without replacement, had the potential to create a serious vacuum in the legal resources available to the people of British Columbia and carried a significant risk that the tangible and intellectual assets of the Commission would become dissipated and irretrievably lost

After some consultation to test the support for maintaining an institutional law reform presence in British Columbia, the founding members incorporated the Institute as a successor body to the Commission. They had two hopes. The first was that the Ministry of Attorney General would permit a “rollover” of the assets and program of the Commission into this new body. The second was that sufficient financial support could be found to enable the Institute to continue, at least in part, the work of the Commission and to carry out a useful law reform program. Both of these hopes have been realized.

## About Our Predecessor The Law Reform Commission of British Columbia

The Law Reform Commission was created in 1969 by an act of the Provincial Legislature and began its operations in 1970. The Commission ceased operations at the end of March 1997 following a decision by the Provincial Government to discontinue funding it.

Over the 27 years of its existence the Commission submitted more than 140 reports on a wide variety of topics.

Most of the Commission’s work remains accessible. Printed copies of many of its reports and other documents are available through the Institute.

## How to Find Us

British Columbia Law Institute

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The University of British Columbia

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E-mail: [bcli@bcli.org](mailto:bcli@bcli.org) WWW: <http://www.bcli.org>

The Institute’s elected executive members are:

**Gregory Steele** - Chair  
**Ann McLean** - Vice-chair  
**Gordon Turriff** - Secretary  
**James MacIntyre, Q.C.** - Treasurer

Arthur L. Close, Q.C. is Executive Director.



## Premises

During the first years of its operation, the Institute maintained its offices in space generously provided, on a rent-free basis, by the Law Society of British Columbia. This assistance was invaluable to us by making office space one less item to worry about in the process of launching the Institute and making it a “going concern.”

As the Institute developed, however, it outgrew the space the Law Society was able to make available. The Institute’s long range plan had been to add to its full time staff and provide a “working environment” to people who are attached to the Institute for shorter periods of time or for

particular purposes. This led us to search for alternative accommodation for the Institute. By far the most promising possibility we identified was to move the Institute offices to the The University of British Columbia and that relocation took place in November 1999.

Our offices are now located in the Law Annex building which is adjacent to the main Law School (Curtis) Building.

## Fundraising

The main source of operational funding for the Institute has been a grant from the British Columbia Law Foundation. The Institute has also received, from several other sources, grants that assist the Institute to carry out particular projects. In addition to grants, project work has also been funded through contractual arrangements with the provincial government and other bodies.

Relying as heavily as we do on project funding places severe limitations on the kinds of projects the Institute can undertake. Programming decisions should not be driven by the question of whether a financial sponsor for a project can be found. The proper criteria are whether a project should be undertaken and whether we are the appropriate body to carry it out.

Our response to the need to expand our funding base was a formal fundraising campaign carried out in the autumn of 1999. The primary focus of our fundraising activity was the legal profession and its institutions and the judiciary. With financial help from the Law Foundation the Institute engaged a fundraising consultant to assist us in developing a formal fundraising strategy.

We are encouraged by the results of our fundraising venture. Those who responded did so generously and the amounts received will play an important part in carrying forward our program. In particular, the fundraising proceeds, combined with other revenue sources, have enabled us to create a new internal position. We are in the final stages of recruiting a Staff Lawyer who will be concerned solely with project and program work. This additional person will add immeasurably to our capacity to carry out our mandate.

At the same time, we must be realistic in regarding this fundraising initiative as the first step on a long road toward financial sustainability. We propose to build on the success of our campaign and fundraising of this kind will continue to be a feature of the Institute's activities.

## The BCLRC Library

A particularly challenging aspect of the move was finding a home for a substantial portion of the law library that the Institute inherited from the Law Reform Commission. Over the years the Law Reform Commission had built up a very substantial law library and when it ceased operations in 1997 all of these holdings, apart from the "core collection," were held in offsite storage. The stored materials constituted approximately eighty percent of the Commission's total holdings. They were retained against the possibility that the Institute might wish, at some future time, to re-establish the full library.

In our new premises we are close to a major law library and it became clear that there was little point continuing to retain the non-core collection. The vast majority of the collection was given away to various organizations. The first choice was given to various public institutions that maintain law libraries, including the Courthouse Law Library Society, the Ministry of Attorney General and the libraries maintained by the two Faculties of Law in British Columbia. The remaining volumes found a home with various law firms in the province.

## Managing the Legacy of the Law Reform Commission

The Institute has concluded an agreement with the provincial government concerning the legacy of the former Law Reform Commission. There are two aspects to this.

First, the tangible assets of the Law Reform Commission have been transferred to the Institute for a token amount.

Second, the Provincial Government has granted a licence to the Institute to deal with the intellectual property left by the Law Reform Commission, including the contents of its reports and working papers. The Institute is thus enabled to distribute, reissue and sublicense these materials.

### Managing the Legacy of the Law Reform Commission *continued*

Our principal goal for the publications of the Law Reform Commission is to ensure that this body of work continues to remain accessible to the public. Elsewhere in this Report, we describe the steps the Institute has taken to ensure that the work of the Law Reform Commission is accessible through the Internet. The Institute also has an inventory of printed reports and documents which are available for purchase at a nominal charge. Ordering information may be found at our website.

<http://www.bcli.org>

### The Institute and the Internet

The Institute is dedicated to the use of the Internet as a medium for gathering and disseminating relevant legal information. The Institute maintains a site on the World Wide Web (WWW) at the following address:

<http://www.bcli.org>

There are a number of features at the website.

### Institutional and Project Information

Visitors to our website will find comprehensive information respecting the Institute and its structure and up-to-date information about the status of its ongoing projects.

## Program Development

As we work toward financial sustainability, the Institute is emerging as a Law Reform body capable of taking on a wider range of projects and able to respond more flexibly to concerns and project suggestions brought to its attention.

Accordingly, the Institute is developing a structured and wide reaching process of consultation in relation to the contents of its program. In particular, the Institute will canvas the legal profession as well as community groups and organizations that are interested in the law. In this way, we expect to build a law reform body that is sensitive and responsive to the needs of the community.

## Project Work: Carried Out Internally

Many of our projects are carried out relying largely on the Institute's own internal resources including the work of Board Members, the Executive Director and the Institute's research staff. Many of these have a "law reform" flavour and normally result in recommendations for changes in the law. Past reports in this category include our reports on the Recognition of Spousal and Family Status, the Enforcement of Non-money Judgments from Outside the Province, Proposals for a *Contract Law Reform Act* and The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings. During the past year a new project to be carried out internally was added to our program. It is described below.

A second category of internal project focuses mainly on the creation of information resources to improve access to the law or to provide a base from which reform work can be done. Past projects which fall into this category include the *Builders Lien Act* materials referred to elsewhere in this Report and our Report on Gender-Free Legal Writing. A further project of this kind was undertaken in the last year in cooperation with the Law Commission of Canada and is described below.

## Personal Relationships - Federal Statutes Database Project

The Law Commission of Canada and the Institute entered into a Memorandum of Understanding in August, 1999, for the development of a database (the Personal Relationships Database) consisting of all references in the Statutes of Canada to family-like relationships. The database was designed to be a research tool for:

- (a) assessing the extent to which the federal statutes currently recognize traditional and non-traditional relationships;
- (b) identifying the purposes for which family relationships are referred to in legislation (that is, the range of rights, benefits, entitlements and

obligations that are created or regulated by statute);

(c) determining whether policies are applied consistently from statute to statute (or within a particular statute); and

(d) developing policy for revising federal legislation dealing with family relationships.

Work was begun in August 1999 and completed in February 2000. Additional work was carried out in April, 2000, as a result of the introduction in Parliament of Bill C-23 entitled the *Modernization of Benefits and Obligations Act*.

The database consists of 1698 records, each consisting of a section or subsection of legislation, a summary of the provi-

sion, notes analysing the family terms used in it according to categories of relationship, and how the provision is to be classified as to its purpose.

The database is intended to be a research tool for examining Canada's statutory law governing family relationships. It can be searched, and records can be sorted, in a variety of ways allowing "snapshots" to be taken, and detailed comparisons to be made, to determine, among other things, the dimensions of Canadian legal policy relating to family relationships.

We hope to make the database available to the public generally. Discussions are currently underway with the Law Commission of Canada exploring ways in which this might be done.

## Project on Shell Companies: Lifting the Corporate Veil

In law, a company has its own legal identity, separate from the company's employees, officers, directors, and shareholders. These individuals are not liable for the debts or obligations of the company. As a general rule this is a good policy but occasionally it may allow the company to be used as a vehicle for abusive conduct. Some examples are:

A person owns more than one company and deliberately leaves one of them undercapitalized. When debts or other liabilities are incurred by this company, and creditors pursue what is owed to them, there are no assets to satisfy these debts even though the other related company has sufficient funds.

A residential builder creates a company for each new development and shortly after all the units have been sold, the funds are removed from the company leaving it a mere shell. There may be sound business reasons for struc-

turing the development this way but one result is that if any claims are made against the company based on poor quality work, the buyers may find it difficult or impossible to have their claims satisfied. This was one of the issues identified in the Institute's project on "New Home Warranties."

Sometimes the law will ignore the separate existence of the company and hold parent companies, shareholders, or officers liable for acts or omissions of the offending corporation. The courts, for example, may impose liability where the company is clearly being used as a vehicle for fraud. In other instances a statute may impose liability upon an officer or director of a company. For instance, in the *Employment Standards Act* (s.96) a director or officer is directly liable for up to two months wages for each employee if they are not paid by the company. The finding of liability behind the corporate structure is sometimes referred to as "lifting the corporate veil."

### The Institute and the Internet *continued*

#### The Law Reform Database

This is a legal resource unique in the world. It is, in essence, a computerized index to almost 7,000 reports, consultation documents and other publications of law reform agencies worldwide and we continue to add to the database. We also provide a service under which documents in our collection can be made available to users who would not otherwise have access to them. Details of our document photocopy service can be found at our website.

<http://www.bcli.org>

#### British Columbia Law Reform Commission Publications On-line

The Institute has carried forward the work of the Law Reform Commission in making the publications of that body available through the Internet. During the past year, we completed a project to make all of the final reports of the Law Reform Commission accessible. These reports are now available through the Internet at our website and may be browsed on-line or downloaded in either of the two most popular word processing formats.

The next phase of this task will be to bring selected study papers and consultation papers into the website for access.

#### Division of Pensions on Marriage Breakdown

This Internet resource, originally created by the Law Reform Commission, provides information on the operation of British Columbia's legislation in relation to pension division on divorce. The Institute continues to maintain this site but has not had the resources to update it to reflect recent legislative developments and case law. We are currently seeking a sponsor to assist us in this task.

**The Institute and the Internet**  
*continued*

**Builders Lien Act Materials**

The enactment in 1997 of the *Builders Lien Act* was the culmination of 25 years of work toward the creation of new and modern legislation in this area. The background to the Act included a report issued by the Law Reform Commission in 1972. We were therefore pleased to respond when the Ministry of Employment and Investment invited the Institute to prepare some resource information that would assist users in coming to grips with this new legislation. Pursuant to this arrangement, a printed publication and an Internet website were developed.

At the heart of these materials is a document entitled "Questions and Answers on the New *Builders Lien Act*" which has been published both electronically and in printed format. The printed version, over 150 pages, may be ordered through the Ministry.

The electronic version was heavily coded for easy Internet access and allows the user to move seamlessly between various parts of the publication and the legislation itself. It can be reached through a link at the Institute's website.

<http://www.bcli.org>

**Limitation Act Case Finder**

The Institute supports a database of cases decided under the *Limitation Act*. The database may be searched interactively through queries based on section numbers or keywords. We hope, during the coming year, to significantly extend and enrich this database.

The response by the courts and the legislature to abuse of the corporate structure has always been on an *ad hoc* basis driven by the particular circumstances of each problem. There has developed no unified theory to provide guidance on when it is appropriate to find liability behind the corporate structure or, where it is appropriate to lift the corporate veil, the legal theory on which liability should be imposed.

While this project has its roots in our work on new home warranties, a separate project on lifting the corporate veil was formally added to our program late in 1999. It will review this area of law with a view to developing and restating a rational set of principles along with recommendations for legislative change if appropriate. This project is in its initial stages. Our Staff Lawyer will have primary responsibility for carrying it forward.

**Project Work Carried out Through Committees**

The second approach to program work is through the use of Project Committees. These Committees normally work more or less independently of the Institute's Board. Each Committee usually has two or more Board Members as part of its own membership. Committee members serve voluntarily with the assistance of a paid reporter. The four projects being carried forward through such committees are described below, including a new project on an aspect of elderly persons and the law.

**Project on Modernizing the *Trustee Act***

The ultimate goal of this project is not merely to redraft the Act in modern language but to make it serve the needs of contemporary trusteeship. Many features of the Act are out of step with present-day business practice and some are significant obstacles to efficient trust administration. This is especially true of the statutory investment powers and requirements relating to registration of securities.

Further, the *Trustee Act* has been a catch-all over the years for many kinds of provisions that do not necessarily concern trusts and should now be more properly located in the *Estate Administration Act*, the *Property Law Act* and possibly other statutes.

The essential goals in this project are to:

- identify provisions in the Act that have outlived their usefulness, or are inconsistent with current sound business and financial practices and require revision for this reason, even if there is still a case for retention.

- formulate positions on the issues addressed by those provisions or that are raised by their repeal.
- formulate positions on areas of trust law that may not be specifically addressed in the current *Trustee Act*, but which call for consideration in light of the demands of modern trusteeship.
- once necessary policy decisions have been made, formulate recommendations to implement them.
- draft a new *Trustee Act* in modern language incorporating what needs to be retained from the current Act as well as provisions reflecting new policy.

In previous years the Project Committee issued final reports on two topics. The first of these reports, titled *Trustee Investment Powers*, contained recommendations designed to free trustees from the

“legal list” currently contained in the *Trustee Act* which restricts investments to those enumerated in the list. The second report was *Statutory Remuneration of Trustees and Trustees’ Accounts* and set out recommendations that address the number of issues surrounding those topics.

During the past year the Project Committee issued documents that addressed three additional topics. The first of these topics was the delegation of trustee powers. A consultation paper setting out provisional conclusions and proposals was distributed late in 1999. This was followed by the Committee’s final report issued in July 2000. The basic thrust of the Committee’s recommendations is to define and rationalize the rules that determine the extent to which the duties of a trustee may properly be delegated to others including the possibility of using a power of attorney for this purpose.

Another document recently issued is the Committee’s *Consultation Paper on Total Return Investing by Trustees*. This paper addresses the problem that the traditional distinction between the income of a trust and its capital growth is no longer consistent with modern investment practice.

## Project on Civil Remedies for Sexual Assault

Civil claims based on sexual harm are a relatively new phenomenon. Their numbers appear to be growing in proportion to society’s awareness of the frequency and harms of sexual assault. In August 1997, in response to concerns that a coherent set of legal principles has yet to emerge in this area, the British Columbia Law Institute created the Project Committee on Civil Remedies for Sexual Assault.

In June 1999, the Committee issued a working paper to a select but diverse audience reflecting its research, preliminary consultations and analysis of issues relating to remedies in civil sexual assault actions.

The Committee proposes that an alternative strategy should be available to settlors and trustees for the more rational and effective management of trust assets.

A further topic examined by the Project Committee has been the topic of exculpation clauses. These are provisions inserted in a trust instrument designed to insulate the trustee from liability for misconduct or negligence in the management of the trust. Concern has been expressed that these clauses go much further than is required for the legitimate protection of trustees. The Project Committee is in the final stages of preparing a consultation paper with tentative proposals describing the proper effect and ambit of these clauses.

The members of the Project Committee are:

Dr. Donovan Waters, Q.C. (Chair)  
James MacIntyre, Q.C.  
Margaret Mason  
Kathleen Cunningham  
Arthur L. Close, Q.C.

Gregory G. Blue is Reporter to the Committee.

Civil actions for damages are one means by which survivors may seek redress after they have been sexually assaulted. Other remedies available include criminal proceedings, criminal injuries compensation, human rights complaints, negotiated or unilateral compensation packages, and public and private inquiries.

The Committee’s working paper assumes that actions for damages are an important means of pursuing redress for sexual assault. The courts play a leading role in establishing how our society will compensate claims of sexual assault, and in framing the issues, developing compensatory principles, and influencing other proceedings for dealing with sexual assault. Since this is a relatively new

## Publication List

Here is a list of publications of the British Columbia Law Institute since its creation. Each can be purchased from the Institute for the price noted along with a charge for postage and handling.

### Reports

1. The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings \$10
2. Gender-Free Legal Writing \$10
3. A Report on Year One (1997-1998 Annual Report) \$10
4. Proposals for a *Contract Law Reform Act* \$15
5. Recognition of Spousal and Family Status \$25
6. Trustee Investment Powers \$15
7. Statutory Remuneration of Trustees and Trustees’ Accounts \$15
8. Enforcement of Non-money Judgments From Outside the Province \$15
9. A Report on Year Two (1998-1999 Annual Report) \$10
10. Interim Report on New Home Warranties \$15
11. Statutory Powers of Delegation by Trustees \$15

### Other Publications

1. Consultation Paper on Trustee Investment Powers \$10
2. Consultation Paper on Trustee Remuneration and Trustees’ Accounts \$10
3. Working Paper on Civil Remedies for Sexual Assault \$35
4. Consultation Paper on Statutory Powers of Delegation by Trustees \$10
5. Consultation Paper on Total Return Investing by Trustees \$10

Institute publications may be ordered by mail, telephone or fax, or through the Institute’s website.

## The Institute and the Uniform Law Conference

The Uniform Law Conference of Canada is an inter-provincial organization created for the purpose of promoting uniformity of legislation among the Canadian territories and provinces. It is now in its 82<sup>nd</sup> year of operation and a significant number of British Columbia statutes are based on Uniform Acts promulgated by the Conference.

Two people attached to the Institute participate actively in the work of the Uniform Law Conference. Institute Chair, Gregory Steele, is a British Columbia delegate to the Conference, is a member of the Civil Section Steering Committee and participates in a number of the ULCC working groups.

The Institute's Executive Director, Arthur L. Close, Q.C. has, for the past two years, served as Chair of the Civil Law Section of the Conference. As such, he has been responsible for

- coordinating the work of the Section
- chairing the Steering Committee
- developing new uniform law projects
- setting the agenda for and ultimately chairing the meeting of the Civil Section in Winnipeg in August 1999

He has also assumed special responsibility for the Conference's commercial law initiative.

In the past year, BCLI members assisted the ULCC by participating in working groups on:

- *Uniform Foreign Judgments Act*
- Uniform legislation on unclaimed intangible property

area of the law, this paper analyses civil sexual assault cases with a view to determining whether reforms are required to meet the needs of plaintiffs, defendants, and society.

The working paper reviews the law relating to liability for sexual assault as background to a detailed discussion of issues relating to damages, and concludes with examination of several important procedural matters. Some issues are specific to the context of sexual assault cases. Other issues may apply more broadly, but have particular significance in sexual assault cases.

As a starting point, the paper assumes that liability against the defendant(s) has been proved. The principles underlying the working paper are:

- Sexual assault is a serious matter, resulting in inherent harm to survivors. This harm has not yet been fully recognized by the civil justice system.
- Civil remedies at law, while imperfect, are an important means of recognizing the serious nature of sexual assault, awarding compensation to survivors, changing the behaviour of and deterring defendants, and establishing benchmarks for use in other proceedings.
- It is a reasonable expectation for survivors of sexual assault to look to the civil courts as a means of redress.
- The general purpose of the civil damages system is to restore the plaintiff to the state he or she was in before the wrongful conduct. The challenge in sexual assault cases is to recognize and quantify the plaintiff's harm and consequent injuries into a damage award which reflects that restorative principle.
- There must be attention to differences in the circumstances of survivors, and to differing forms of harm which flow from sexual assault.
- While sexual assault cases raise some issues which are unique, damage awards for sexual assault should, as far as possible, be in line with awards made in other tort cases.

- The potential impact of sexual assault damage awards on non-profit organizations, government, and society more generally is an issue meriting attention.

One of the main goals of the working paper is to inform legal professionals and the wider public about the operation of the law in civil sexual assault cases. It has been circulated for comment to persons and groups representing survivors and defendants, and to legal professionals.

During the past year, the Project Committee has met to consider the submissions received in response to the working paper.

In addition, in January 2000 a major consultation session was held, attended by representatives of interested persons and groups as well as the Committee Members and selected members of the Institute's Board. This session gave the Committee Members very useful insight into the issues as perceived by "frontline" workers who confront the daily reality of assisting survivors of sexual assault.

The Committee's final report is now in preparation and in due course it will be submitted to the Institute's Board for consideration.

The full text of the working paper may be browsed or downloaded at the Institute's website. A limited number of copies of the working paper are available for purchase from the Institute.

Members of the Project Committee on Civil Remedies for Sexual Assault at the time the working paper was settled were:

Prof. John McLaren (Chair)  
Prof. Christine Boyle  
Dean Jamie Cassels  
Arthur Close, Q.C.  
Megan Ellis  
Etel Swedahl  
Dr. Roy O'Shaughnessy

Jennifer Koshan is the Researcher/Reporter for the Committee.

## Project Committee on New Home Warranties

The work of our Project Committee on New Home Warranties has been described in previous Annual Reports. The main development in the last year was the submission of the Project Committee's Interim Report. The report outlines the Committee's work on this topic and its relationship to government initiatives that culminated in the *Home Owner Protection Act* passed in 1998.

In particular, recommendations emanating from the Committee form the basis of the statutory warranties set out in section 23 of that Act.

## The Law and the Elderly

When the Institute's program of law reform was initially developed, it identified three general categories where its attention would be focused. One of these was "Family Law and the Protection of Vulnerable Persons." A project addressing legal issues that particularly affect elderly persons falls into this category and was recently added to our program. In the course of the project we expect to examine a number of issues but the one with which we will start concerns certain kinds of family agreements and their potential for financial abuse of elderly persons.

There is an expectation that children will support and maintain their aged parents. This expectation normally reflects the natural love and affection of children for their parents and in many societies this is the only basis on which maintenance and support rests.

In some places, (such as British Columbia) the law has evolved further and it is possible to identify an additional basis that transforms what is essentially a moral obligation into a legal one. This is a contractual obligation arising under an agreement under which some or all of the

While the Project Committee remains in existence, it is currently dormant. We wish to extend our thanks to those Committee Members who participated in its work.

The members of the Project Committee are:

Professor Mary-Anne Waldron (Chair)  
Martin Taylor, Q.C.  
Arthur L. Close, Q.C.  
Glen Urquhart, Q.C.  
David Morris  
Derek Neale  
John Fraser

The Reporter to the Committee is  
Gregory G. Blue.

parent's property is conveyed to the child in return for a promise of "lifetime" support or care. As our society ages, it may be expected that issues arising in this context will become increasingly more common, making it all the more important that the legal rules that apply be functional and well-defined.

The contractual obligation operates most unevenly. Arrangements where a parent transfers property to a child with the expectation of living with the child for some indefinite period are becoming more common. Unfortunately, family arrangements are often informal and supported by little or no documentation. Parent and child often have different expectations concerning these arrangements which, for that reason, often end unhappily.

Often these kinds of family transactions represent a divestment of control over property by a parent, who places a great deal of faith in the child.

Because of the informality of these types of family transactions, the result may be that the property transfer is effective, but the other obligations are not legally

## Homeowner Protection Act S.B.C. 1998, c. 31

### Statutory protection

23. (1) A residential builder and a vendor of a new home are both deemed to have agreed with the owner, to the extent of labour, materials and design supplied, used or arranged by the residential builder or vendor, that the new home
- (a) is reasonably fit for habitation,
  - (b) has been constructed from materials that are of good quality and reasonably fit for the purpose, and
  - (c) has been designed and constructed with ordinary competence, skill and care.
- (2) Any term of an agreement that purports to waive, exclude, limit or qualify the protection under subsection (1) is of no effect.
- (3) The protection under subsection (1) is for the benefit of whoever is the owner of the new home from time to time until the end of the period within which an action may be brought under subsection (5), and that owner is deemed
- (a) to have given good consideration for the benefit of the protection, and
  - (b) to be the only person entitled to recover damages for a breach of the protection.
- (4) Despite subsection (3), if the ownership of the new home changes during the course of an action for breach of the protection under subsection (1), the new owner is entitled to be substituted as plaintiff and to enforce all rights that the former owner could have enforced.
- (5) [Limitation of actions]
  - (6) [Other laws]
  - (7) [Application]

## The Institute and Other Law Reform Bodies

A priority continues to be establishing and maintaining links with other law reform bodies. Participation in the world wide “community” of law reform bodies is important. It ensures that the work of the Institute is widely exposed and that the Institute is kept up-to-date with the work of other bodies through arrangements for the exchange of documents. Receiving reports and documents from other law reform bodies enables us to keep the Law Reform Database up-to-date.

We also maintain special links with our Canadian counterparts. This is done through active participation in the Federation of Law Reform Agencies of Canada, an umbrella organization covering groups like the Institute and by participating in *ad hoc* gatherings of Canadian law reformers.

A special relationship is evolving with the Law Commission of Canada. We have been honored by visits from its immediate past president Roderick MacDonald on several occasions. We look forward to working with that Commission’s new President Nathalie DesRosiers.

Elsewhere in this report we describe our cooperative venture with the LCC in developing the Federal Statutes database on personal relationships. This has been most rewarding venture for us and we look forward to further opportunities to carry out cooperative work.

The Institute’s Executive Director has also been active in working with the LCC toward the development of a project on “Federal Security Interests.” This project forms part of the commercial law work of the Uniform Law Conference.

enforceable against the child. Even where an obligation can be identified, its nature and extent may be unclear.

Some would argue that family arrangements of this nature should impose on the child obligations possibly similar to those expected of trustees. Unfortunately, however, the law for the most part views these as being no different from commercial or business arrangements and, blind to the family nature of the transaction, applies traditional concepts of contract law to resolve disputes that subsequently arise. There is a need to inquire whether some other approach for dealing with these problems should be made available.

This project addresses the uncertainty and potential unfairness that surrounds these contractual obligations. It will:

- Examine the legal context in which contractual arrangements operate with particular emphasis on informal arrangements and their enforcement.

- Gather empirical information concerning the extent to which such arrangements are used in the community.
- Gather empirical and anecdotal information concerning the extent to which the legitimate expectations of the elderly under such arrangements are not met, including instances of financial abuse.
- Identify the principles that should govern the enforceability of such arrangements.
- Consider the need for a legislative restatement of these principles or other legislation to enhance or regulate the enforcement of informal arrangements.

This project will be carried out through a Project Committee and we are currently in the process of constituting it. We hope to be drawing on a variety of organizations and bodies concerned with the welfare of the elderly. We expect that our Staff Lawyer will be acting as reporter to the Committee.

## Membership

The bylaws of the Institute provide for fourteen members. Eight of these members are appointed by persons and bodies within the legal community while the remainder are “members-at-large.” One of the member-at-large positions is reserved for a person without legal training or experience.

As of July 1, 2000 our members are

**Thomas G. Anderson**

Member-at-large

**Prof. Christine Boyle**

U.B.C. Faculty of Law, Dean’s nominee

**Trudi Brown, Q.C.**

Member-at-large

**Arthur L. Close, Q.C.**

B.C. Law Institute, Member at large

**Sholto Heberton, Q.C.**

McCarthy Tetrault, Law Society nominee

**Prof. Hester Lessard**

U. Vic. Faculty of Law, Dean’s nominee

**Douglas Robinson, Q.C.**

Lawson Lundell Lawson & McIntosh.,  
CBA (BC) nominee

**James MacIntyre, Q.C.**

Law Society nominee

**Ann McLean**

Min. of A.G., CBA (BC) nominee

**Ravi. R. Hira, Q.C.**

Watson Goepel Maledy, A.G. nominee

**Gregory Steele**

Steele Urquhart Payne, Member-at-large

**Etel R. Swedahl**

Swedahl McPherson, A.G. nominee

**Gordon Turriff**

Douglas Symes & Brissenden, Member-at-large

This list reflects one vacancy and a number of changes from the previous year. The pressure of other responsibilities led to the resignation of three of our members: Cathy Moss, Dean Jamie Cassels, and Hon. Martin Taylor, Q.C. We wish to thank all of these individuals for the time they devoted and energy they brought to the work of the Institute. We wish to acknowledge, in particular, the role played by Martin Taylor who was one of our five founding members and a tower of strength and wisdom in our first months.

The new members of our Board are Trudi Brown, Q.C. (a past Treasurer of the Law Society of British Columbia) and Professor Hester Lessard of the Faculty of Law, University of Victoria.

We have one vacancy: the member-at-large position reserved for a non-lawyer.

## Our Friends and Supporters

Our work to date would not have been possible but for the generous support of our friends, supporters and volunteers.

The contribution of the Law Foundation is particularly noteworthy. Apart from financial support, the Foundation has been a welcome source of advice and assistance on a whole range of issues. Our particular thanks to the Hon. Madam Justice Alison Beames, a Governor of the Foundation with special responsibilities for liaison with the Institute, and Pat Pitsula, the Executive Director of the Foundation.

We wish also to acknowledge the important support received from the Law Society of British Columbia. During the first two and a half years of the Institute's operations these were centered in office space provided by the Law Society on a rent free basis. Apart from the financial benefit conferred by that arrangement it had a highly symbolic dimension, as a gesture of support in principle for the work the Institute does.

Our thanks also go to the Faculty of Law at The University of British Columbia. While the space we occupy is not rent-free our arrangement with the Faculty of Law has made it very affordable and these arrangements carry with them a number of offsetting savings. We wish particularly to express our appreciation for the assistance that Dean Joost Blom, Q.C., and Assistant Dean Elizabeth Edinger have given us in relation to our relocation.

## BRITISH COLUMBIA LAW INSTITUTE

### Bylaws

- ...
4. (1) The society shall consist of 14 members as follows:
- (a) two persons appointed by the Attorney General;
  - (b) two persons appointed by the executive committee of the Law Society of British Columbia;
  - (c) two persons appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association;
  - (d) one person appointed by the Dean of the Faculty of Law, University of British Columbia;
  - (e) one person appointed by the Dean of the Faculty of Law, University of Victoria;
  - (f) five persons appointed by the persons appointed under clauses (a) to (e);
  - (g) one person appointed by the persons appointed under clauses (a) to (f).
4. (2) The applicants for incorporation of the society are deemed to be persons appointed under Bylaw 4(1)(f).
- (3) Membership in the society is for a term of 5 years or until successors are appointed, and a member may be reappointed.
- ...
25. The directors of the Society shall be the members of the Society from time to time and
- (a) every person who is appointed as a member under Bylaw 4(1) or is deemed to be appointed as a member under Bylaw 4(2) becomes a director at the time the person is appointed, and
  - (b) every person who becomes a director, ceases to be a director at the time the person ceases to be a member

## BCLI Support Staff

We wish to acknowledge the important role played by Institute staff in keeping things running smoothly on a day-to-day basis.

- Malise Wong, Administrative Assistant
- Marcus Patz, Librarian/Webmaster

We wish particularly to thank Tracy Lee who served as our Administrative Assistant from the Institute's inception until December 1999. Her skills were most important to us during the difficult startup period and she is warmly remembered.

## Staff Lawyer

We referred earlier to the creation of an internal position to accommodate a Staff Lawyer whose responsibilities will focus solely on program work. This is a significant milestone in the growth of the Institute. We have engaged Margaret Hall to fill this position. Margaret received her undergraduate law degree from Queens University and her LLM from the University of British Columbia. She has been a law teacher at the University of Ottawa and the Native Law Centre in Saskatoon. We are pleased that Margaret has joined us and look forward to working with her.

## Students and Research Assistants

The Institute has adopted a policy of attempting, as far as possible, to ensure that a student/research assistant, from one of the two provincial Faculties of Law, forms part of our core operation throughout the year. This has been made possible through participation in the University of Victoria, Cooperative Program. The following people have been attached to the Institute in that capacity:

- Reiko West
- Lois Patterson
- John Richardson
- Martin Bauer
- Jesse Gelber
- Talman Rodocker
- Jeffrey Bryant

Our Research Assistants make a significant contribution to our operation and we wish to express our gratitude to them.

We also wish to thank the British Columbia Branch of the Canadian Bar Association, the Vancouver Bar Association, The Advocate Magazine, The Real Estate Foundation and The Canadian Bankers Association for the generous support they have provided both generally and in relation to particular projects.

We also wish to acknowledge the significant contribution made by the participants in our Project Committees - the members and reporters and particularly those people who have accepted the responsibility of chairing the Committees:

- Dr. Donovan Waters, Q.C.
- Professor John McLaren
- Professor Mary-Anne Waldron

Finally, the British Columbia Law Institute wishes to thank all those individuals and firms who provided financial support in the past year through their generous response to our fundraising campaign.

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