



British Columbia Law Institute

A Report on Year Nine

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.

Highlights: 2005 / 2006

This Report describes the work of the Institute for the year preceding June 30, 2006, a year which 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 continued growth of the Canadian Centre for Elder Law Studies, a division of the Law Institute, as a tangible expression of our commitment to continuing the work in this area.
- the continued financial sustainability of the Law Institute through the provision of operational and project funding from the Ministry of Attorney General to supplement Law Foundation funding.
- the addition of new projects to the Institute’s program and substantial progress on existing projects.
- the publication of five Final Reports on substantive topics including a major Report on Succession Law Reform.
- the publication of numerous consultation and background documents.

Our relationship with other organizations having similar aims continues to strengthen and prosper.

B.C. Law Institute Constitution

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



Ann McLean
Institute Chair 2004-06

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LAW INSTITUTE

Background to the Creation of the Institute

The Institute was created in response to a decision by the former government 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. The founding members of the Institute are gratified that the momentum and legacy of the Law Reform Commission has been maintained.

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.

Managing the Legacy of the Law Reform Commission

The Institute has assumed responsibility for managing the legacy of the Law Reform Commission. Our principal goal is to ensure that the body of work carried out by the Law Reform Commission continues to be accessible to the public. Elsewhere in this Report, we describe the steps the Institute has taken to ensure that the work of the Law

How to Find Us

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The Institute's officers are located in the Law Annex building, which is adjacent to the main Law School (Curtis) Building at the University of British Columbia.

Institute Leadership



Ann McLean
Chair 2004-06
Vice-Chair 2003-04



Craig Goebel
Vice-Chair 2004-06
Secretary 2003-04



Gregory K. Steele, Q.C.
Secretary 2004-06
Chair 1997-04



Prof. James MacIntyre, Q.C.
Treasurer 2003-06



Arthur L. Close, Q.C.
Executive Director
1997 to date



Thomas G. Anderson, Q.C.
Program Director
1997 to date

Foundation Support

Since its creation the Law Institute has been the beneficiary of substantial support from the British Columbia Law Foundation. Foundation support which had previously been directed to the Law Reform Commission of British Columbia was redirected to the Institute and has continued on a sustaining basis. The Law Foundation also has provided funding for specific projects carried out by the Law Institute.

More recently, the Law Foundation has been joined by the Notary Foundation and the Real Estate Foundation as supporters of the Institute's project work. The support we receive from all these Foundations is vital to us and it is important that this contribution be widely recognized.

Provincial Government Support

Previous Annual Reports pointed out the need for funding from the provincial government if the Law Institute is to become effective in carrying out its mandate. In the spring of 2003 the government responded and arrangements were put in place with the Ministry of Attorney General involving a three-year commitment of funding support. The arrangement embraces funding for Institute operations generally and for specific projects. The specific projects embraced by government funding include the following:

- A Succession Law Reform Act
- Civil Enforcement of Money Judgments
- Unfair Contract Terms
- Appointing a Guardian and Standby Guardianship
- Recognition of Adult Guardianship Orders from Outside the Province
- Unnecessary Requirements for Sworn Statements
- Pension Division on Marriage Breakdown

Arrangements have been made with the Ministry for a continuation of this support and projects to be undertaken in the coming year include work in relation to the *Privacy Act* and section 90 of the *Family Relations Act*. These are described later in this Report.

The Ministry of Attorney General has on a number of occasions expressed its commitment to the continuing reform of private law in the light of changing economic and social needs.

It is a privilege to function in an environment that is truly receptive to law reform work. The funding we receive from the provincial government gives tangible expression to its commitment to law reform and we express our gratitude for this important support.

Canadian Centre for Elder Law Studies

By the middle of 2003 it became clear that the Law Institute's work in relation to the law and older adults had taken on a life of its own. What had started out as a single project, with a relatively narrow focus, moved on to further project work. As the project work progressed, more and more possibilities opened up for further action. What emerged was not so much a project as an ongoing program that appeared to stretch into the future for an indefinite time. The Law Institute's response was the creation of a new entity to be known as the Canadian Centre for Elder Law Studies (the Centre).

Changing demographics make it inevitable for Elder Law to be a growth area, but, surprisingly, no Canadian organization has come into being with a dedicated focus on it. The law and the elderly is a subject that has been underserved by the law reform community and by legal academics and researchers generally in Canada. Work in the area of "Elder Law" is much more developed elsewhere, particularly in the United States and Australia. We sensed an opportunity for the Law Institute to be the pioneer in the

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>

CCELS Highlights

Canadian Conference on Elder Law

In late October, 2005 the CCELS organized the first Canadian Conference on Elder Law. Held in Vancouver at the Sheraton Wall Centre it was a public conference aimed at educating professional groups, lawyers, community members, advocates, health specialists, researchers and interested individuals on important legal issues relating to older adults. The goal of the conference was to promote contribution and access to a knowledge base pertaining to legal issues affecting older adults, with a view to reducing vulnerability, social isolation and abuse. The Hon. Flora Macdonald was the keynote speaker. We regard the Conference as a great success and the planning for a second conference, to be held October 14 - 15, 2006, is well advanced. Its theme will be "Legal and Societal Challenges of Aging: A View for Positive Change."

Aging With Challenges

The CCELS is engaged in a Law Foundation funded project on legal aspects of "aging with challenges." The concept of "Aging with Challenges" includes aging persons who also have issues of disease, physical or mental challenges, interaction with the penal corrections systems, or specific health concerns. Cultural challenges will also be considered under this rubric. The project includes three targeted research areas. The first is to define "aging with challenges," in consultation with community groups, health organizations, the medical community and other stakeholders. The second is an analysis of legal barriers inhibiting challenged persons from aging with safety, dignity and self-determination. The third concerns denial of services and involves a review of law, policy and practices in relation to access

to necessary programs, housing and supports.

Canadian Journal on Elder Law

An outcome of our Canadian Conference on Elder Law is the collecting and editing of selected conference papers for publication in the first edition of the Canadian Journal of Elder Law. This will be the first Canadian periodical considering the issues of older adults and the law.

Reverse Mortgages

A Report on Reverse Mortgages was issued under the joint auspices of the CCELS and the Law Institute. Details may be found at page 7 of this Report.

Tenancy Rights in Assisted and Supportive Living Facilities

Until recently, a significant legal void existed in the area of tenant's rights in supportive housing, assisted living and care facilities with the "renter" of a unit having few legal tenancy rights or safeguards relating to that housing arrangement. A significant step in changing this came with the enactment in May, 2006 of the *Tenancy Statutes Amendment Act* that creates a framework establishing rights and responsibilities in this context. This Act, however, has not yet been proclaimed into force and the provincial government is committed to consult with key organizations concerning regulations, policies and procedures before this occurs. The CCELS has been invited to be part of the consultation process and we intend to participate fully.

Viatical Settlements

A Study Paper on Viatical Settlements was issued under the joint auspices of the CCELS and the Law Institute. Details may be found at page 8 of this Report.

development of a new and important national body. The creation of the Centre was clearly an idea whose time had come.

The Centre has now entered its fourth year of operation. Its program is focused on three main areas - research and scholarship, law reform and the development and delivery of information and educational materials. These headings embrace a variety of projects and activities. The Centre consults widely in the development of its program to identify projects and activities that are responsive to the needs of older adults and those who assist and advise them. The Centre also seeks out opportunities to participate in interdisciplinary work with other bodies.

The Centre prepares and distributes its own Annual Report outlining its achievements to date and describing its ongoing activities and project work in greater detail. Some highlights are set out in the sidebar. Further information is available at the Centre's website at www.ccels.ca.

Carrying out the Program

Many of our law reform projects, particularly the shorter ones, are carried out relying largely on the Institute's own internal resources including the work of Board Members, the Executive Director, the Staff Lawyers and Research Assistants. An alternative approach to law reform work, which has been used extensively in relation to larger projects, is to use external Project Committees. These Committees normally have two or more Board Members as part of their own membership. Committee members serve voluntarily with the assistance of a paid reporter. The Board normally adopts Committee recommendations although it retains ultimate responsibility for recommendations made in the name of the Institute.

A second kind of activity focuses mainly on the creation of information resources to improve access to the law or to provide an information-base from which further work can be done. Activities which fall into this category include the creation of the www.builderslienlaw.ca website referred to elsewhere, our Report on Gender-Free Legal Writing and the "Question and Answer" publication on pension division on marriage breakdown.

Projects Active in 2005-2006

A Succession Law Reform Act

The law of succession is among the most archaic areas of private law. British Columbia legislation dealing with various aspects of succession is highly fragmented and spread throughout a forest of statutes. The British Columbia Law Institute initiated the Succession Law Reform Project in 2003 with support from the Ministry of Attorney General in order to redress the long neglect of this area. The goals of the Project were to reduce the number of separate succession-related enactments through consolidation and to modernize the statutory and common law dealing with succession on death.

The Project included a review of the law and legislation governing alternate succession vehicles that are sometimes referred to as “will substitutes,” such as insurance and retirement savings plan beneficiary designations, as well as the more traditional subjects of succession law: wills, intestate succession, dependants relief legislation and probate procedure.

The Project culminated in a Final Report titled “Wills, Estates and Succession: A Modern Legal Framework.” It was submitted in late June 2006. Part One of the Report provides an overview of the current law, its deficiencies and, in general terms, the recommendations for reform. Part Two of the Report addresses reform in greater detail through draft legislation that is accompanied by an extensive commentary. Part Two also incorporates the recommendations for a new small estates procedure contained in an Interim Report on Summary Administration of Small Estates that was issued earlier.

The Project was carried forward through a structured group of committees with an interlocking membership and which were composed largely of practising lawyers serving on a volunteer basis. At the centre was the main Project Committee that performed a co-ordinating function and had the principal responsibility for the consolidation and drafting aspects of the Project. It supervised the preparation of the final Report. The members of the Project Committee were:

D. Peter Ramsay, Q.C.	Ross D. Tunnicliffe	Mark Horne
Gordon MacRae	Mary Hamilton	Dr. A. J. McClean, Q.C.
Prof. Keith Farquhar		

Chair of the Project Committee was D. Peter Ramsay, Q.C. Mr. Ramsay is a member of the Law Institute’s Board and has practiced in Nanaimo for many years in the wills and succession area. He is also a member of the Law Faculty at the University of British Columbia teaching, among other things, succession law. These qualifications, as well as his enthusiasm for the Project, made him an ideal person to head it up. Prof. Farquhar is also a member of the Institute’s Board.

In addition to the Project Committee were five Subcommittees created to examine discrete aspects of the overall Project. Each Subcommittee was chaired by a member of the main Project Committee and most members of the main Committee also served as an ordinary (non-Chair) member of one of the other Subcommittees. The remaining members of the various Subcommittees were drawn from legal practitioners or academics having a particular interest in the focus of the Subcommittee’s work. It was attempted to achieve a diversity of perspective as well as geographical diversity when constituting the Subcommittees. The membership of the Subcommittees is set out below.

Testate Succession Subcommittee

Dr. A.J. McClean, Q.C. – Chair	James Baird	Jim Burns
Sandra Enticknap	Richard H. Evans	Fiona Hunter
Kirsten Jenkins		

Succession Law Project

Some of the issues addressed in the Report of the Succession Law Reform Project include:

Testate Succession

- a “dispensing power”
- gifts to a witness
- revocation by subsequent marriage
- gifts to a divorced spouse (“deemed lapse”)
- extended definition of “spouse”
- rectification of wills
- privileged wills: military, mariners and married minors
- rules of law concerning the interpretation and effect of wills
- gifts of encumbered property
- convention on form of international will

Intestate Succession

- preferential share of surviving spouse
- application of “deemed lapse” concept in intestacy
- statutory life estate in family home
- distribution to more remote kindred

Small Estates

- a summary procedure for estates of \$50,000 or less

Dependants Relief (wills variation legislation)

- application in an intestacy
- basis of relief - surviving spouse - congruence with family property law
- basis of relief - children - reasonable and necessary maintenance
- eligibility for, and duration of, relief for children
- anti-avoidance provisions

Estate Administration

- notices and notice periods
- bonding of administrators
- resealing of non-BC grants

Other Issues

- RRSPs and RRFs: beneficiary designations assimilated to *Insurance Act* designations
- reformed survivorship

presumptions

- *Power of Appointment Act* redrafted
- *Escheat Act* clarified

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's website may be found at:

<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.

The Law Reform Database

This is a legal resource unique in the world. It is, in essence, a computerized index of over 7,000 reports, consultation documents and other publications of law reform agencies worldwide, and we continue to add to the database.

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. We have now 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 the most popular word processing formats.

Division of Pensions on Marriage Breakdown

This Internet resource provides information on the operation of British Columbia's legislation in relation to pension division on divorce. The original version was created by the Law Reform Commission, but in 2001 a wholly new and revised version was issued by

Intestate Succession Subcommittee

Ross D. Tunnicliffe – Chair	James Carphin, Q.C.	Jane Dardi
Keith Farquhar	Deidre Herbert	Mark Horne

Estate Administration Subcommittee

Mary Hamilton – Chair	R.C. (Tino) Di Bella	Elizabeth Glassford
Helen Low	Hugh McLellan	Anita Nadziejko
Catherine Romanko	Margaret Sasges	

Small Estates Subcommittee

Mark Horne – Chair	Bradley L. Anderson	Sherry Evans
Elizabeth Glassford	Terry Hartshorne	Andrew MacKay
Anita Nadziejko	Thomas G. Kendall, Q.C. (2005)	

Alternate Succession Vehicles and Miscellaneous Issues Subcommittee

Gordon MacRae – Chair	Valli Chettiar	Keith Farquhar
Marilyn Kerfoot	Ross D. Tunnicliffe	Geoffrey White

The Institute recommends enactment of the draft Wills, Estates and Succession Act set out in Part Two of the Final Report. This will bring the law of succession in British Columbia into line with contemporary needs and realities and will provide a functional legal framework for the transfer of property on death for a considerable time to come. The Report is available at the Law Institute's website.

Unnecessary Requirements for Sworn Statements

In a 1976 Report the Law Reform Commission of British Columbia recommended the repeal of a large number of legislative provisions that require the use of a "sworn statement." That term embraces a variety of statements under oath or under affirmation, including affidavits, solemn declarations, and statutory declarations. There is a family resemblance among all of these documents, as each requires a person to perform certain formal requirements that are primarily intended to assure the truth of the statement. Requirements for sworn statements in out-of-court settings appear in a wide variety of British Columbia statutes and regulations.

The 1976 Report provided a framework for analyzing these provisions and set out recommendations for modernizing and simplifying the law. While the framework, analysis and conclusions retain their force, the specific statutory provisions they reference are now 30 years out of date. At the invitation of the Attorney General we returned to this topic. In a Report issued in March 2006 we updated the earlier work in a form that would permit its implementation within the structure of our current statute book. The Report is available at the Institute's website.

Pension Division on Marriage Breakdown A Ten Year Review of Part 6 of the *Family Relations Act*

It has been over ten years since the enactment of what is now Part 6 of the *Family Relations Act*. Under that Act, a pension is a family asset that must be divided between the parties to a marriage on its breakdown. But a pension is a very complex form of asset which requires a sophisticated body of rules if it is to be divided fairly. The function of Part 6 of the *Family Relations Act*, and its supporting regulations, is to provide a legal framework for pension division that achieves this goal. Since Part 6 was enacted, the background of law and practice against which it operates has seen a number of changes. This made a ten year review of Part 6 most appropriate and we were pleased to accept the invitation of the Attorney General to carry out such a review.

The Institute constituted a Project Committee composed of experts in pension law and administration and in family law. The Committee brought forward 36 recommendations for changes to Part 6 - some major, some minor and some simple “housekeeping” changes. These are set out in a Report submitted in May 2006. We are grateful to the distinguished members of the Project Committee on Pension Division, who volunteered their time and whose expertise and hard work is evident in the detailed recommendations made. The members of the Project Committee were:

Thomas G. Anderson, Q.C. - Chair	Wayne Arnold
Diane Bell	Judith Brown-Rudersdorfer
Paul Daykin	Murray Campbell
Kim Kenyon	Elizabeth Gorman
	Stephanie Griffith
	Brenda Petrie
	Gregory K. Steele, Q.C.

Pensions are often the most valuable asset acquired by spouses during their relationship and the matters addressed in this Report are of vital importance to the people of British Columbia. The Report is available at the Institute’s website.

Reverse Mortgages

A reverse mortgage is a type of loan secured by a mortgage of real estate. Reverse mortgages differ from conventional mortgages in a number of ways, but their most important differences involve repayment and eligibility. A reverse mortgage is a rising debt loan. Unlike conventional mortgages, reverse mortgages do not require a borrower to make periodic repayments of principal and interest. In many cases, borrowers invest the proceeds in an annuity or other asset that provides them with an enhanced income. The loan is repaid, usually in an amount much larger than the amount of the original loan, after the borrower’s death or when the borrower’s principal residence is sold or abandoned. In British Columbia (as in most other jurisdictions), only senior citizens are eligible to borrow under a reverse mortgage.

The existing law, and the cost of consumer credit disclosure provisions of Part 5 of the *Business Practices and Consumer Protection Act*, which came into force on July 1, 2006, does not provide an adequate legal framework for reverse mortgages. In February 2006 the Institute submitted a Report

the Institute. It is described in greater detail in the Annual Report for that year. A revised version is being considered if action is taken on the ten-year review. See p. 7.

Publication List

Here is a list of Reports 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.

1. The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings \$15
2. Gender-Free Legal Writing \$15
3. A Report on Year One (1997 - 1998) Annual Report \$15
4. Proposals for a *Contract Law Reform Act* \$20
5. Recognition of Spousal and Family Status \$30
6. Trustee Investment Powers \$20
7. Statutory Remuneration of Trustees and Trustees’ Accounts \$20
8. The Enforcement of Non-money Judgments From Outside the Province \$20
9. A Report on Year Two (1998 - 1999) Annual Report \$15
10. Interim Report on New Home Warranties \$20
11. Statutory Powers of Delegation by Trustees \$20
12. A Report on Year Three (1999 - 2000 Annual Report) \$15
13. Pension Division on Marriage Breakdown (2001 Revision)
 - Printed Version \$40
 - CD-Rom Version \$20
14. Civil Remedies for Sexual Assault \$40
15. A Report on Year Four (2000 - 2001 Annual Report) \$15
16. Total Return Investing by Trustees \$20
17. Exculpation Clauses in Trust Instruments \$20
18. Private Care Agreements Between Older Adults and Friends or Family Members \$25
19. The Ultimate Limitation Period: Updating the *Limitation Act* \$25
20. A Report on Year Five (2001 - 2002 Annual Report) \$15
21. Healthcare decisions and End-of-life Issues: Terms of Reference for a Possible Project \$25
22. Builders Liens and Arbitration \$20
23. Uniform Liens Act \$25
24. Creditor Access to the Assets of

a Purpose Trust	\$20
25. The Variation and Termination of Trusts	\$20
26. A Report on Year Six (2002 - 2003 Annual Report)	\$15
27. The Builders Lien Act and the Pipeline Problem	\$20
28. Post-Accident Remedial Measures	\$20
29. Builders Liens After the Shimco Case	\$20
30. Report on Appointing a Guardian and Standby Guardianship	\$20
31. A Report on Year Seven (2003 - 2004 Annual Report)	\$15
32. Financial Arrangements Between Older Adults and Family Members: Loans and Guarantees	\$25
33. A Modern Trustee Act for British Columbia	\$40
34. Spoliation of Evidence	\$25
35. Unfair Contract Terms: An Interim Report	\$20
36. Report on the Recognition of Adult Guardianship Orders from Outside the Province	\$25
37. Uniform Civil Enforcement of Money Judgments Act	\$35
38. Report on Leases of Unsubdivided Land and the Top Line Case	\$20
39. A Report on Year Eight (2004 - 2005 Annual Report)	\$15
40. Interim Report on Summary Administration of Small Estates	\$30
41. Report on Reverse Mortgages	\$20
42. Report on Unnecessary Requirements for Sworn Statements	\$30
43. Study Paper on Viatical Settlements	\$40
44. Pension Division On Marriage Breakdown	\$30
45. Wills, Estates and Succession: A Modern Legal Framework	\$50

Other Publications

1. Consultation Paper on Trustee Investment Powers	\$15
2. Consultation Paper on Statutory Remuneration of Trustees and Trustees' Accounts	\$15
3. Working Paper on Civil Remedies for Sexual Assault	\$40
4. Consultation Paper on Statutory Powers of Delegation by Trustees	\$15
5. Consultation Paper on Total Return Investing by Trustees	\$15
6. Consultation Paper on Exculpation Clauses in Trust Instruments	\$15

recommending legislation to specifically address reverse mortgages. The proposed legislation is focused on disclosure and related consumer protection measures. It is designed to ensure that reverse mortgage borrowers have the tools necessary to evaluate the legal and financial merits of the transaction. The Report is available at the Institute's website.

Viatical Settlements

A viatical settlement is a transaction in which an insured person with diminished life expectancy transfers the entitlement to receive the death benefit under the policy of insurance to another person. This other person agrees immediately to pay the insured person an amount that is less than the face value of the death benefit and undertakes to pay the premiums for the insurance policy as they come due.

In most jurisdictions in Canada, legislation directed at trading in insurance policies renders viatical settlements illegal. There is a more vigorous viatical settlement industry in the United States that, in recent years, has transformed itself from one focused on patients suffering from terminal diseases to one focused on senior citizens. This shift, coupled with the rising numbers of senior citizens, has led to a notable expansion of the use of viatical settlements there.

In May 2006, a Study Paper on this topic was issued. Its purpose was to provide the groundwork for a law reform project that will make recommendations on whether Canadian provinces and territories should remove their barriers to the creation of a viatical settlement industry and, if they do, what sort of legal framework should be created for the new industry. The paper is available at the Institute's website.

Powers of Attorney

The Institute has joined with its counterparts in Alberta, Saskatchewan, and Manitoba to commence work on what may be a series of joint projects. The hope is to identify topics that have a "mobility" aspect to them so the residents of the western provinces can more easily relocate with minimal disruption to their affairs. The first topic identified for action concerns powers of attorney and the aim is to ensure that powers of attorney created in one province, particularly enduring powers of attorney, receive appropriate recognition in other provinces. The project is also expected to develop a restatement of the duties and responsibilities of an agent where they arise under a power of attorney.

Late in 2004, the "Consortium" members jointly issued a consultation paper seeking responses to a number of issues and suggestions made. A copy of the paper is available at the Institute's website. The Consortium is meeting regularly to consider the responses and develop final recommendations. A final report is expected soon. The Institute's work in relation to this project is now being carried out under the auspices of the Canadian Centre for Elder Law Studies.

A Legal Framework for Public Appeal Funds

Appeals to the public for donations are normally carried out by registered charities operating within an organized legal environment. But spontaneous appeals occur frequently as well, especially after a disaster like a fire or flood or the publication of a news item about a family or individual in some sort of distress. These spontaneous appeals are often begun by a single person or a small group and the generous response is often such that the amount collected goes well beyond what is required to meet the original need. The way in which such a surplus can be dealt with can give rise to significant legal issues. In a Consultation Paper, the Institute suggests that these difficulties would be minimized through the use of a standard form trust document which would clarify the treatment of a surplus and provide a legal framework which is otherwise often lacking in spontaneous appeals.

The fact that these appeals very frequently involve opening a bank account into which the proceeds are to be paid provides an appropriate point of entry through which the use of a standard form document can be encouraged.

Work has commenced on the development of final recommendations.

The Personal Liability of Society Directors and Officers

Nonprofit organizations and their volunteers play an important role in society. In recent years their prominence has been increasing, as they take on more activities and responsibilities. The greater demands that have been placed on nonprofit organizations have heightened concerns about the consequences of nonprofit organizations and their volunteers causing harm. There is increased anxiety over lawsuits. The focus of this project is the various sources of personal liability faced by directors and officers or incorporated nonprofit organizations and the attempts to reform that law in this area that have been implemented in jurisdictions outside British Columbia. This research has culminated in a Study Paper that provides information and analysis of approaches to reform that have been attempted elsewhere, with a view to seeing which approaches are most in harmony with the needs of British Columbia's nonprofit sector.

The Study Paper may be found at the Institute's website. We continue to invite views and responses on the issues raised in the paper.

Parental Support

Section 90 of the *Family Relations Act* imposes on an adult child a qualified obligation to support a parent that is dependent on the child because of age, illness, infirmity or economic circumstances. Due to changing demographics an increasing number of people are in a position where they may find themselves owing support obligations to both parents and children at the same time.

The obligation created by section 90 is, in practice, seldom invoked and there is no coherent body of principles to which judges can look to determine either the entitlement to, or the amount of, parental support. The Institute has been invited to assist the Ministry of Attorney General in its comprehensive review of the

7. Consultation Paper on Private Care Arrangements Between Older Adults and Friends or Family Members \$15
8. Consultation Paper on the Variation and Termination of Trusts \$15
9. Consultation Paper on Post-Accident Remedial Measures \$15
10. Consultation Paper on A Legal Framework for Informal Public Appeal Funds \$15
11. Consultation Paper on Builders Liens After the Shimco Case \$15
12. Consultation Paper on Unfair Contract Terms (CD ROM) \$15
13. Study Paper on the Personal Liability of Society Directors and Officers \$15
14. Consultation Paper on Leases of Unsubdivided Land and the Top Line Case \$15

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

Law Reform Document Photocopy Service

The British Columbia Law Institute provides a service under which documents in our collection can be made available to users who would not otherwise have access to them.

Details may be found at 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 88th 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. Former Institute Chair, Gregory Steele, Q.C., is a British Columbia delegate to the Conference, and participates in a number of the ULCC working groups. He is a Past President of the Conference.

The Institute's Executive Director, Arthur L. Close, Q.C., has been a

British Columbia delegate to the ULCC since 1978. He has served the ULCC in a number of capacities including Chair of the civil law section (1998-2000) and President (2001-02).

Mr. Close has also served as Project Leader on a number of initiatives in the development of Uniform Acts. He currently serves as the leader of the Canadian "team" working in conjunction with the National Conference of Commissioners on Uniform State Laws and the Mexican Centre of Uniform Laws in the creation of a harmonized legal framework for unincorporated associations in North America.

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 receives wide exposure 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.

BCLI Staff

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

- Julia Paskovic, Administrative Assistant
- Marcus Patz, Librarian/ Webmaster

Staff Lawyers

The Institute is served by three full-time Staff Lawyers whose responsibilities focus primarily on program

Family Relations Act by undertaking a short project to examine policy and legislative issues relating to parental support. It will culminate in a Report that considers the need for any changes to section 90 and what they might be.

Privacy Act

British Columbia led the Commonwealth when it enacted the *Privacy Act* in 1968 in the wake of controversy over electronic eavesdropping. The *Privacy Act* was aimed at correcting a deficiency of the common law, which did not recognize a right to privacy. The Act makes it an actionable tort, without proof of damage, to violate the privacy of an individual. The right to privacy created by the Act is not absolute, however, and is subject to limitations and qualifications set out.

In the last two decades, privacy has become an issue of enormous importance. Access to the Internet has brought a vast range of opportunities and ways in which an individual's privacy may be violated. Identity theft, which is greatly facilitated by illicit applications of digital technology to violate privacy, has emerged as a grave danger to our society.

The Act has not been amended in the 38 years since it was enacted. It does not adequately address the challenges of new technology. Nor does it incorporate improvements that have emerged elsewhere such as greater specificity as to remedies and the inclusion of stalking as a civil wrong. The Institute has, with the support of the Ministry of Attorney General, launched a project for a thorough review of the *Privacy Act* with a view to bringing its terms into keeping with present circumstances.

Improving and Modernizing the Society Act

The *Society Act* provides for the incorporation of nonprofit bodies. It also sets out the legal framework for the organization, governance, and dissolution of societies. In the nearly thirty years since the last major revision of the *Society Act* a number of developments have occurred. British Columbia has enacted a new for-profit corporate statute, other jurisdictions have begun to move on fundamental revisions of their nonprofit incorporation laws, and the nonprofit sector has developed in ways that could not have been anticipated in the 1970s. The time is right to take a fresh look at the *Society Act* with a view to its modernization and improvement.

The Law Institute has added to its program a comprehensive review of the Act and work is now in its initial stages. This project is made possible by financial assistance from the Law Foundation.

Membership

The bylaws of the Institute provide for fourteen members. Eight of these members are appointed by stakeholder groups 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 June 30, 2006 our members are:

Ann McLean

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

Thomas G. Anderson, Q.C.

Anderson Pension Law Consulting
Member at large

Prof. Martha O'Brien

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

Arthur L. Close, Q.C.

B.C. Law Institute, Member at large

D. Peter Ramsay, Q.C.

Ramsay Thompson, Law Society nominee

Ronald Skolrood

Lawson Lundell LLP, Attorney General
nominee

David H. Pihl, Q.C.

Pihl & Associates
Member at large

Keith Farquhar

U.B.C. Faculty of Law, Dean's nominee

Kim Thorau

Perrin Thorau & Associates Ltd.
Member at large

Craig Goebel

Insurance Corp. of B.C., CBA (BC) nominee

Gregory Steele, Q.C.

Steele Urquhart Payne, Member at large

Prof. James MacIntyre, Q.C.

U.B.C. Faculty of Law, Law Society nominee

Robert Grant

Heenan Blaikie LLP, Attorney General
nominee

Lorne A.J. Dunn

Heather, Sadler, Jenkins
Member at large

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 has already been mentioned. Apart from financial support, the Foundation has been a welcome source of advice and assistance on a wide range of issues. Our particular thanks go to Master Ian Caldwell, a Governor of the Law Foundation with Special Responsibilities for Liaison with the Institute, Warren Wilson, Q.C., our former Liaison Governor and to Wayne Robertson the Executive Director of the Foundation. Our thanks also go to the Notary Foundation and the Real Estate Foundation and to their Executive Directors, Wayne Braid and Tim Pringle respectively.

We also acknowledge the important contribution of the Faculty of Law at the University of British Columbia for our current accommodation. While the space we occupy is not rent-free, our arrangement with the Faculty of Law has made it very affordable and the accommodations carry with them a number of offsetting savings. We wish particularly to express our appreciation for the support that Dean Mary Anne Bobinski, and those assisting her, have given us.

We wish as well to thank the Ministry of Attorney General, the British Columbia Branch of the Canadian Bar Association, the Vancouver Bar Association and the Advocate magazine for the generous support they have provided both generally and in relation to particular projects.

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

D. Peter Ramsay, Q.C.

Thomas G. Anderson, Q.C.

work.

- Gregory G. Blue
- Laura Watts
- Kevin Zakreski

We are pleased to have them with us and happily acknowledge the valuable contribution they make to our work. Laura Watts's time is largely devoted to the Canadian Centre for Elder Law Studies, which she serves as Program Director.

Students and Research Assistants

The Institute attaches a great deal of importance to the involvement of law students and recent graduates in its work through its Research Assistant program. This normally involves a full-time commitment of four months. Over the past year our work was greatly enhanced by the following people who served as Research Assistants:

- Mike Barrenger
- Priscilla Chong
- Andrea Clarke
- Julie Lawrence
- Nadja Rence
- Tanya Saito
- Leah Sandhu
- Brandi Stocks

A first for the Law Institute in the past year is the formal engagement of an articling student under a shared article arrangement entered into with the cooperation of the Law Society of British Columbia and the financial assistance of the Law Foundation of British Columbia. Our articling student is: Leah Sandhu.

During the past year we have also been assisted by a number of individuals serving as interns and volunteers on a basis involving a limited time commitment. Those who assisted us in this way are:

- Wendy Harrison
- Grace Loh

We are grateful to them for their interest in working with us.

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

We wish to thank the following firms for allowing the Institute's various Committees and Subcommittees to hold their frequent meetings at their respective offices during the past year:

Legacy Tax + Trust Lawyers
Clark, Wilson LLP
Davis & Co. LLP
Lawson Lundell LLP

Fasken Martineau DuMoulin LLP
Alexander Holburn Beaudin & Lang LLP
RBC Investments, Trusts Services

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

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The Advocate

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