



British Columbia Law Institute

A Report on Year Seven

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: 2003/2004

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 creation of the Canadian Centre for Elder Law Studies as a division of the Law Institute as a tangible expression of our commitment to continuing work in this area.
- the advancement of 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 and numerous consultation and background documents.
- the continuation of a public lecture on law reform as a yearly event sponsored by the Institute.

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:
- (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, Q.C.
Institute Chair 1997-2004

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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

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The Institute's offices 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



Gregory K. Steele, Q.C.
Chair 2003-04
Secretary Elect 2004-05



Ann McLean
Vice-Chair 2003-04
Chair Elect 2004-05



Craig Goebel
Secretary 2003-04
Vice-Chair Elect 2004-05



Prof. James MacIntyre, Q.C.
Treasurer 2003-04
Treasurer Elect 2004-05



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



Thomas G. Anderson
Program Director
1997 to date

Annual Law Reform Lecture

Early in 2002, in celebration of the fifth anniversary of the creation of the Law Institute, we sponsored a public lecture on law reform. The success of this event has prompted us to institute a law reform lecture as an annual event. We were honoured to have the second lecture presented by the Hon. Geoff Plant, Q.C., Attorney General of British Columbia, who spoke on "An Attorney General's Perspective on Law Reform and the Role of an Independent Agency." The text of his lecture may be found on the Institute's website. The third lecture on law reform will take place sometime in the fall of 2004 with details to be announced in due course, and posted on our website.

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 moved ahead, more and more possibilities opened up for further action. What the

Institute seemed to have 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 that Elder Law is 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 development of a new and important national body. The creation of the Centre is clearly an idea whose time has come.

The Centre's program is focused on three main areas.

- Research and scholarship.
- Law Reform.
- Development and delivery of information and educational materials.

These headings embrace a variety of projects and activities. The Centre will be consulting 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 will also seek out opportunities to participate in interdisciplinary work with other bodies.

The Centre will be preparing and distributing its own Annual Report outlining its achievements in the first year of its existence and describing its ongoing activities in greater detail. A brief description of the Centre's project work is set out later in this Report.

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 including its work in relation to Legal Issues Affecting Older Adults and the Community Law Reform Project described later.

The Law Foundation has recently 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 Judgments

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 Reform Commission is

Managing the Legacy *continued*

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>

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.

Policy on copying and copyright

The British Columbia Law Institute is concerned about copyright in law reform materials.

In copying materials from our library for bona fide research purposes we are guided by the recent decision of the Supreme Court of Canada in *Law Society of Upper Canada v. Canada Law Book Inc.*, 2004 SCC 13

Publications not available

The British Columbia Law Institute, and its predecessor - the Law Reform Commission of British Columbia - makes every effort to obtain an original printed copy of a publication from other law reform agencies. In some cases, however, an original document could not be supplied, and so the Institute only has a photocopy of key elements of the publication: usually a title page, contents pages and recommendations. For this, and other reasons, the Institute is not able to provide copies of all publications in the Law Reform Database. A list of the categories of such publications may be found at our website.

Our Rates

See side bar at page 13.

- Unfair Contract Terms
- Appointing a Guardian and Standby Guardianship
- Extra Provincial Committeeship Orders

The Attorney General has on a number of occasions expressed his commitment to the continuing reform of private law in the light of changing economic and social needs. The funding we receive from the provincial government gives tangible expression to that commitment and we express our gratitude for this important support.

Fundraising

While the backbone of our financial support is the institutional funders just described it is also important to note the financial support we receive from individuals and firms in the form of contributions. Support from noninstitutional sources has an important symbolic dimension to it. Starting in 1999 we instituted a series of formal fundraising campaigns to solicit individual contributions. The primary focus of our fundraising activity has been the legal profession, the judiciary, and related bodies. Those who respond do so generously and the amounts received play an important part in advancing our program.

Carrying out the Program

Many of our 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. Some of the projects 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 Judgements 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.

A second category of internal document 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. Past projects which fall into this category include the *Builders Lien Act* materials referred to elsewhere in this Report, our Report on Gender-Free Legal Writing and the "Question and Answer" publication on pension division on marriage breakdown.

An alternative approach to program 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.

Implementation

The work of the Law Institute has begun to bear real fruit, with legislation based on its work being brought forward. Last year saw the introduction of the *Trustee Investment Statutes Amendment Act*, 2002. This Act implemented the recommendations made by the Institute in its 1999 Report on Trustee Investment Powers by repealing the archaic "list" of authorized trustee investments and replacing it with the "prudent investor" standard.

The 2003 session of the legislature saw the enactment of the *Enforcement of Canadian Judgments and Decrees Act* as recommended by the Institute in its Report No.8 on the Enforcement of Non-money Judgments from Outside the Province (1999). A companion

piece was the *Court Jurisdiction and Proceeding Transfer Act*. Law Institute personnel played a major role in developing this legislation through the Uniform Law Conference of Canada.

We hope to see further implementation of the Institute's work in future sessions.

Active Projects

A Succession Law Reform Act

This project is a new one, recently added to our program in response to a request from the Ministry of Attorney General.

The succession law of this province is highly fragmented. When a person dies, the rights of the successors may be determined with reference to the common law and a bewildering variety of statutes. These include:

- *Wills Act*
- *Estate Administration Act*
- *Wills Variation Act*
- *Trust and Settlement Variation Act*
- *Perpetuities Act*
- *Trustee Act*
- *Survivorship and Presumption of Death Act*

Clearly the public and their legal advisors would be better served if, to the greatest extent possible, these disparate enactments were brought together. The United States *Uniform Probate Code* provides an excellent example of such a consolidation.

As beneficial as a simple consolidation might be, there is more to be done. Many of these statutes are antiquated in language and effect, and no longer adequately serve the needs of those who must rely on them. Moreover, much of the governing law is not found in the statutes but in the cases where, again, troublesome and inconvenient rules abound.

Many of the deficiencies in the statutes and the common law were addressed by the Law Reform Commission of British Columbia in a series of Reports issued between 1981 and 1992. These include Reports on:

- The Making and Revocation of Wills (1981)
- Presumptions of Survivorship (1982)
- Interpretation of Wills (1982)
- Statutory Succession Rights (Intestate Succession and Wills Variation - 1983)
- Obsolete Remedies Against Estate Property (1987)
- *The Land (Settled Estate) Act* (1988)
- Wills and Changed Circumstances (1989)
- Non-Charitable Purpose Trusts (1992)

Only two of these Reports (*Obsolete Remedies Against Estate Property* and *The Land (Settled Estate) Act*) have been implemented.

The focus of this project is the creation of a new and modern statute governing succession law - a new succession law act that would:

- consolidate the existing enactments,
- implement the past recommendations of the Law Reform Commission to the extent that they continue to provide appropriate solutions to current problems, and
- correct any other defects in the statute law or the case law that require remedial action.

Concentrated work on this Project began in late August 2003 when it became possible to assign a full-time member of Law Institute's legal staff to this project. The first task was to prepare a detailed

Succession Law Project

The Subcommittees and Their Work

Testate Succession Subcommittee

Members:

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

The Testate Succession Subcommittee is examining the areas of testamentary formalities. These include the lapse of gifts to attesting witnesses, holograph wills, revocation by operation of law and by act of the testator, principles of interpretation of wills and the rules governing the admission of extrinsic evidence in interpretation proceedings. Under consideration is a provision giving the power to relieve against the consequences of non-compliance with testamentary formalities, where the court is satisfied that a defectively executed instrument embodies the testamentary intentions of a deceased person. An example is section 23 of the *Wills Act* of Manitoba. This "dispensing power" would extend also to documents and writings intended to alter or revoke a will. The Subcommittee will, in due course, consider the amendment to the *Uniform Wills Act* promulgated in 2003 by the Uniform Law Conference of Canada for the admission to probate of documents in electronic form.

Intestate Succession Subcommittee

Members:

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

This Subcommittee's work to date has concentrated on the intestate distribution scheme in Part X of the *Estate Administration Act*. Areas already examined include:

Succession Law Project

continued

the size of the spousal preferential share; the spousal statutory life estate in the matrimonial home; the size of the spousal share in blended family situations and the scheme of representation where a share of a deceased parent passes to the issue of the parent.

The Subcommittee will shortly embark on a review of the *Wills Variation Act*.

Small Estates Subcommittee

Members:

Bradley L. Anderson
Sherry Evans
Terry Hartshorne
Mark Horne- Chair
Thomas G Kendall, Q.C.
Andrew MacKay

The development of an informal, speedy and inexpensive process for winding up small estates was identified at the outset as a major priority of this project. This was a response to concerns that a means be found to deal with small estates in light of changes to fee structure of the Office of the Public Guardian and Trustee which made it impractical for the Public Guardian and Trustee to be extensively involved with the administration of estates below a certain size.

The Subcommittee is attracted by a procedure for the informal administration of small estates that is available in almost all U.S. jurisdictions. It is reflected in article 3-1201 of the *Uniform Probate Code*. Sometimes called "collection by affidavit," it authorizes an *ad hoc* administrator to deal with the assets of an estate having a gross value below a specified statutory ceiling on the mere filing of an affidavit in the probate registry. It would contain some basic information concerning the deceased, the assets, and the persons entitled to share in their distribution. No court order is necessary. Third parties are statutorily obliged to recognize this authority and are relieved of liability to creditors and heirs if they rely in good faith on such an affidavit in dealing with the

Project Profile describing the various elements that potentially fall within a major Project on Succession Law Reform.

The next task was to revisit the prior reports of the B.C. Law Reform Commission that address succession issues. Since most of these date from the 1980's it was important to review subsequent developments, either in case law or legislation, and identify the current status of the issues addressed by the Commission's recommendations.

Another preliminary task focussed on developing the methodology and approach for carrying out the Project. A small Project Committee was constituted as the central feature of the approach. It was recognized, however, that imposing the entire burden of the Project on a small volunteer Committee would result in an untenable workload and would make it very difficult to complete the Project within the time available. Five Subcommittees were therefore created to examine discrete aspects of the overall Project. The Subcommittees' recommendations and conclusions will feed into the deliberations of the main Committee.

To ensure that the work of the Subcommittees is properly coordinated each member of the main Committee chairs one of the Subcommittees and most members of the main Committee also serve as an ordinary (non-chair) member of a different Subcommittee. The remaining members of the various Subcommittees are drawn from legal practitioners or academics having a particular interest in the focus of the Subcommittees' work. It was attempted to achieve a diversity of perspective as well as geographical diversity when constituting the Subcommittees.

This Subcommittee structure permits a more efficient distribution of the workload, allows larger numbers of persons to have input into the policy development process and gives the main Committee access to special expertise on particular topics.

Having settled the methodology, the final preliminary task was recruiting the main Committee for this Project. It was decided at an early stage that the Chair of the Committee should be D. Peter Ramsay, Q.C. Mr. Ramsay is a member of the Law Institute's Board (a Law Society nominee) has practised in Nanaimo for many years in the wills and succession area and, more recently, has become a member of the Law Faculty at the University of British Columbia (where he is 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. In consultation with Mr. Ramsay, the other members of the main Project Committee were recruited. They are:

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

Prof. Farquhar is also a member of the Law Institute's Board.

The Committee's initial deliberations focussed on the appropriate allocation of the substantive work among the Subcommittees to be created. The following Subcommittee structure emerged:

Subcommittee 1: Wills and Testate Succession

This Subcommittee will focus on the issues surrounding wills and will-making including those addressed in the Law Reform Commission's Reports on The Making and Revocation of Wills, Interpretation of Wills, and Wills and Changed Circumstances. This Subcommittee is chaired by Dr. McClean.

Subcommittee 2: Intestate Succession Wills Variation Act and Family Relations Act Subcommittee

This Subcommittee will generally focus on

the issues raised in the Law Reform Commission's Report on "Statutory Succession Rights" which included intestate succession and wills variation. It will also consider the interface between the *Family Relations Act* and succession law. This Subcommittee is chaired by Ross Tunnicliffe.

Subcommittee 3: Administration of Estates

This Subcommittee will focus on the substance of the *Estate Administration Act*, probate procedure, rules of the court, and personal representatives. It is chaired by Mary Hamilton.

Subcommittee 4: Small Estates

The precise focus of this Subcommittee's work is described in the sidebar. It is chaired by Mark Horne.

Subcommittee 5: Alternate Succession Vehicles and Miscellaneous Issues Subcommittee

This Subcommittee will deal with non-probate transfers on death and issues that do not comfortably fit into the work of the other Subcommittees. It is chaired by Gordon MacRae.

These topical Subcommittees were quickly formed after the initial meetings of the main Committee. A large slate of volunteers, representing a cross section of the Wills and Estates Bar from the Lower Mainland, Vancouver Island, and the Interior of the province, was available to be drawn upon. There was a substantial surplus of volunteers over the number of places on the Subcommittees.

Each Subcommittee has 6 or 7 members, consisting primarily of wills and estates practitioners and law professors. A notary public with extensive wills experience and who is also the Director of Education for the Society of Notaries Public of B.C. sits on the Testate Succession Subcommittee. A lawyer from the Office of the Public Guardian and Trustee sits on the Small Estates Subcommittee and another on the

Estate Administration Subcommittee. A legal member of DIAND with expertise in handling small estates sits on the Small Estates Subcommittee.

The topical Subcommittees immediately set about the task of grappling with the substantive issues in their assigned areas. Each has held several meetings since being formed. Their meetings take place monthly according to a fixed schedule.

The progress of the Subcommittees is reported by the Subcommittee Chairs at monthly meetings of the Project Committee. In addition to serving as a means of monitoring the progress made in particular aspects of the Project, the Project Committee meetings will also provide a forum for discussion and resolution of any potentially conflicting recommendations of Subcommittees that may emerge.

Details of the membership and current activities of the topical Subcommittees are found in the sidebar.

The Project Committee retains principal responsibility for the consolidation and drafting aspects of the Project and will oversee the preparation of the final report. The Subcommittees concentrate on the substantive work of identifying defects in the present law and formulating recommendations for their remediation. It is anticipated that most of the work of the Subcommittees will be completed by mid-2005 or the autumn of 2005. This will be followed by intensive efforts directed at drafting a consolidated reform statute or statutes which will be incorporated into a final report for the Project.

Succession Law Project

continued

administrator. The administrator is likewise obliged by statute to pay the debts of the deceased and distribute the balance according to the will, if any, or to those entitled to take on intestacy.

Estate Administration Subcommittee

Members:

R.C. (Tino) Di Bella
Mary Hamilton - Chair
Helen Low
Hugh McLellan
Catherine Romanko
Margaret Sasges

The Estate Administration Subcommittee is systematically reviewing the *Estate Administration Act* and consulting with court registry officials responsible for probate matters in order to identify problems with the existing legislative framework and rules of court governing probate procedure.

The Subcommittee commenced its work with an examination of section 112 of the *Estate Administration Act*, a complicated provision dealing with notice to beneficiaries, creditors, and other interested parties of an application for a grant of probate or administration.

Alternate Succession Vehicles and Miscellaneous Issues Subcommittee

Members:

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

The Subcommittee's work to date has focused on the beneficiary designation provisions of Parts 3 and 4 of the *Insurance Act* and the provisions of the *Law and Equity Act* concerning designation of beneficiaries of RRSPs, RRIAs, and employee benefit plans.

About the Report

Part 1 of the Report is devoted to a general introduction that explains the need for reform of the *Trustee Act* and the process by which the Commission revised it. Part 2 contains the draft revised *Trustee Act* itself with commentaries on its provisions. An appendix to the Report indicates which provisions of the present *Trustee Act* have been incorporated into the revised Act and the views of the Committee on the appropriate disposition of the remainder.

The proposed Act incorporates all of the recommendations made in the shorter reports described in the text. The recommendations in one of those reports, the Report on Trustee Investment Powers, have already been implemented through the 2002 amendments to the present *Trustee Act*. The language of these amendments has been carried over into the proposed Act.

Some of the more significant changes reflected in the proposed Act are set out below in the sidebar.

Significant Features of the Proposed *Trustee Act*:

- trustees would have the same administrative powers in relation to the trust property as if the property were vested in them absolutely;
- the trustee's duty to provide information to beneficiaries is clarified and expressed in statutory form;
- a framework, automatic for charities and an option for private settlors, is provided for investment on a "total return" basis, i.e. so as to gain maximum return without having to distinguish between income and capital sources and receipts;
- trustees would have the power to apportion expenditures and transfer funds between the income and capital accounts as they consider just and equitable;

Project on Modernizing the *Trustee Act*

When the British Columbia Law Institute was created over seven years ago, one of its first initiatives was to carry forward a project started by the British Columbia Law Reform Commission in relation to trustee legislation. The essential goal of the project was the drafting of a new *Trustee Act* in modern language.

The vitality of the trust and its adaptability to present-day requirements stand in sharp contrast to the mid-Victorian legislation that forms much of the *Trustee Act*. In fact, it is common in British Columbia for trusts to be drafted so as to avoid some of the more archaic features of the Act.

This does not mean that there is no longer a need for a *Trustee Act*. The provisions concerning the court's supervisory jurisdiction, its power to give its opinion to trustees on a matter arising in the course of trust administration, and to grant relief from liability to trustees who have acted reasonably, all derive from it. In addition, it supplies essential administrative powers where a trust is in existence but there is no trust instrument whatsoever or the trust instrument is imperfectly drafted. The *Trustee Act* can still fulfil its original purpose of supplying missing parts in the administrative machinery of trusts and reduce the complexity of trust documents - if it is kept abreast of modern conditions and practices.

The Institute's vehicle for carrying out this project was a Committee that brought the expertise and the experience of its members to bear on the project. The members of the Project Committee are:

Dr. Donovan Waters, Q.C., Bull
Housser & Tupper (Chair)

Prof. James MacIntyre, Q.C., Faculty of
Law, University of British Columbia

Margaret Mason, Bull Housser &
Tupper

Kathleen Cunningham, Royal Bank

Prof. Keith Farquhar, Faculty of Law,
University of British Columbia

Scott Sweatman, Pricewaterhouse-
Coopers LLP.

Arthur L. Close, Q.C., British Columbia
Law Institute

The Reporter to the Committee is Institute
Staff Lawyer Gregory G. Blue

The Committee met regularly over a period of six years from 1997 to 2003. The Committee's process was twofold. The first aspect involved identifying discrete aspects of the existing Act or trust law which raised important policy questions related to reform. Consultation papers containing tentative recommendations were prepared with respect to these subjects and circulated to key organizations in the trust industry, the financial sector, the practising Bar, and academic specialists in trust law, as well as being made available to the general public in hard copy and on the internet. Reports containing the final recommendations, intended for incorporation into a draft revised *Trustee Act*, were then published. The following Reports were generated in this manner:

Trustee Investment Powers

*Statutory Powers of Delegation by
Trustees*

*Statutory Remuneration of
Trustees and Trustees' Accounts*

*Exculpation Clauses in Trust
Instruments*

Total Return Investing by Trustees

*Creditor Access to the Assets of a
Purpose Trust*

*Variation and Termination of
Trusts*

The second aspect of the process was to draft a new *Trustee Act* incorporating changes the Committee considered necessary in a modernized statute. For this purpose the Committee used the draft *Trustee Act* prepared by the Ontario Law Reform Commission as a template, modifying the content and language as it

thought necessary or desirable. The Committee acknowledges its indebtedness to the Ontario Law Reform Commission for that agency's excellent work in the area of trusts.

The Committee chose to retain the concept of the *Trustee Act* as a supplement to the general law of trusts and trust instruments. In other words, the draft Act retains the "default" character of the existing statute. The effect of most of its provisions can be modified or displaced by the terms of an instrument. A few provisions are exceptions to this principle and cannot be overridden by an instrument. The Committee considered, and rejected, the approach of using the *Trustee Act* as a vehicle for a codification of trust law, similar to the U.S. *Uniform Trust Code*.

Civil Enforcement of Judgments

Enforcement of judgments is an essential part of our civil justice scheme and confidence in it is seriously impaired if the enforcement machinery is inefficient or defective. In this project, the Institute will examine and make recommendations for improving the laws of British Columbia respecting the enforcement of judgments.

Most of the province's statute law respecting the enforcement of judgments is to be found in the *Court Order Enforcement Act*. This Act has gone virtually unchanged for many years and the more important provisions respecting execution against personal property have their roots in English legislation enacted over 160 years ago. Throughout, the statute relies on antiquated legal concepts and serves neither debtors nor creditors particularly well.

To the extent that improvements have been introduced in recent years, they have focused on two areas. The first has been to introduce much-needed changes respecting the entitlement of judgment debtors to exemptions from execution. The other change was more controversial and involved the "privatization" of part of the execution process, moving the duties in relation to the seizure and sale of property from the sheriff's office to private bailiffs.

The Committee did not consider that codification of trust principles was necessary, or that it could be done within a reasonable timeframe.

The Committee also decided that some separate enactments dealing with trusts should be brought under the umbrella of a new *Trustee Act*. In particular, the Committee concluded that the *Trustee Act* was an appropriate location for provisions concerning the variation, resettlement and termination of trusts, and incorporated the present *Trust and Settlement Variation Act* into the draft *Trustee Act*, with changes to reflect the Committee's recommendations on the subject.

The Committee Report is undergoing its final editing prior to formal publication.

The need for change has been the subject of a number of different studies in the province. The Law Reform Commission of British Columbia issued five different Reports which examined various aspects of law and procedure. While many of its recommendations retain their currency, others call for reconsideration in the light of changes in the law and practice since they were made.

The need to modernize and update the laws respecting the enforcement of civil judgments has been recognized in a number of jurisdictions. In recent years, other provinces facing similar problems have turned their attention toward improving their laws in this area. A wholly new and integrated scheme of judgment enforcement was brought into force in Alberta. It was based on a major study by the Alberta Law Reform Institute. Newfoundland has also enacted a new *Judgment Enforcement Act*. The Newfoundland statute built on the Alberta work but introduced a number of changes that were necessary to achieve harmony with local practice. More recently, a Report issued in Saskatchewan picked up on these themes and set out a tentative draft act.

Proposed *Trustee Act*

continued

- trustees would be able to act by majority;
- clauses in a trust instrument exempting trustees from liability for breach of trust would be effective according to their terms, but the court would retain a power to declare an exemption clause ineffective in certain circumstances;
- current fixed ceilings on trustee remuneration would be removed; instead the trustee would be allowed compensation that is fair and reasonable in the circumstances;
- trustees would be allowed to take interim compensation during the administration of the trust without an order of the court;
- passing of accounts may be ordered on the application of a beneficiary or the trustee, or at intervals the court may set;
- an "arrangement" (including a variation, resettlement, or revocation) of a trust will take effect without court order if all beneficiaries are of full age and capacity, and give their consent;
- under certain circumstances, the court may approve an arrangement varying, resettling, or revoking a trust even if one or more adult, capacitated beneficiaries refuse consent;
- where a charitable trust fails, the court will have wider powers to approve a cy-près scheme.
- non-charitable purpose trusts may be validly created, with potentially perpetual duration, for purposes corresponding to the purposes for which a society could be created under the *Society Act*, and may be varied on a basis similar to cy-près if they fail or become obsolete.

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.

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.

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.

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 the Institute. It is

These developments inspired the Uniform Law Conference of Canada to add the topic of Civil Enforcement of Judgments to its program. The objectives of this project are to streamline and clarify judgment enforcement procedures and to provide for a searchable registry of monetary judgments. British Columbia has carriage of this project on behalf of the ULCC and the Law Institute is the agent through which this is being done. Institute personnel are heavily involved in a national working group of the ULCC. This includes the contribution of Lyman Robinson, Q.C. who acts as Project Director of the BCLI initiative and who leads the ULCC working group.

Legal Issues Affecting Older Adults

All of the British Columbia Law Institute's work in progress that might be described as "elder law" has now been rolled over into the newly created Canadian Centre for Elder Law Studies described earlier in this Report.

The Project work and other activities of the Centre will be described in greater detail in its own Annual Report and set out below is only a brief sketch of its project work.

The most significant ongoing project of the Centre has been that on Financial Arrangements Between Older Adults and Family Members: Loans and Guarantees. It explores a number of the pitfalls associated with financial transactions within the family, particularly those between parent and child. These pose a danger to parents even where no question of exploitation or financial abuse arises. In 2003 the Centre distributed a consultation paper on this topic and a final report is nearing completion. The recommendations are expected to stress the need for information and education as well as legislation to address particular issues. The final report will likely become available in September 2004.

Community Law Reform Project

Many of the active projects described earlier in this Report are relatively large and involve a major commitment of resources. To focus solely on projects of this kind runs a

This work has culminated in the creation of a draft Uniform Act, with extensive comments, that will be presented to the ULCC when it meets in Regina in late August 2004. It is expected that, at that time, it will be formally adopted as a Uniform Act.

The Uniform Act, as adopted, will form the starting point for recommendations for British Columbia legislation. The emphasis of this work will be to ensure that the Uniform Act interfaces appropriately with our local laws and institutions.

A further initiative has been research in relation to "a legal framework for supportive housing." The law of general application in relation to residential tenancies is not always a comfortable fit with the very special nature of supportive housing.

A recent addition to the Centre's program is focused on the financial device commonly referred to as the "reverse mortgage." While the reverse mortgage may suit the needs of many older adults it may be a bad fit with the needs of others. It is important that seniors entering into these transactions understand fully their implications and the focus of this study will be to identify ways of ensuring that seniors have all of the information they need to make fully informed decisions in relation to reverse mortgages.

Funding for the project work described above has come from a variety of sources including:

- Law Foundation of British Columbia
- Notary Foundation
- Real Estate Foundation
- Canada Mortgage and Housing Corp.

serious risk of distorting the work of a law reform body that attempts to adopt a generalist stance. The Institute recognized at the outset that it was desirable to maintain a number of shorter projects on its program.

Short projects allow the Institute to remain visible during those periods when the larger projects are working their way toward fruition. They also permit us to address a wider range of issues. The reality is that there are many valid law reform measures that do not require intense research or lengthy reports.

Projects that one might describe as “short snappers” or “fixes and patches” have a place in a law reform program where a focus solely on “big issues” would leave many important problems unaddressed.

The Community Law Reform Project is an envelope for work on a group of tightly-focussed topics that share a number of common characteristics. Most of these topics address issues that directly affect ordinary citizens. The Community Law Reform Project may, in certain cases, also provide a vehicle for exploring slightly more technical matters that call for attention.

In selecting topics that fit within the Community Law Reform Project, the Law Institute has been guided by a number of criteria. These criteria include the existence of a well-defined point of departure for the topic, the existence within the topic of legal issues that would not ordinarily be considered by an agency or body other than the Law Institute, and the fact that the resolution of these issues would lie within the legislative competence of the province. Overall, the topics seek to strike a balance between theoretical and technical issues and practical and “justice” issues.

Most topics within the Community Law Reform Project will also have an informal consultation process, which may take various forms. As well, running contemporaneously with the Community Law Reform Project itself, is an informal outreach to various segments of the community. Seeking input on the kinds of projects where work by the Law Institute would be most helpful with a view to adding future topics.

The Law Foundation of British Columbia and the Notary Foundation have provided funding for the Community Law Reform Project. Supplemental funding has been provided by the Ministry of Attorney General in relation to particular topics.

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.

The British Columbia Law Institute has played a leadership role in carrying this project forward including the drafting of a consultation document that will be distributed shortly.

Unfair Contract Terms

Every day most of us engage in activities that are governed by, or involve the creation of, a contract. These include everyday activities that most of us take for

granted like parking a car, using a credit card or buying something.

In many cases these contracts contain terms that give one party a legal advan-

The Institute and the Internet

continued

described in greater detail in the Annual Report for that year.

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 was published both electronically and in printed format. The printed version, over 150 pages, is now out of print.

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. Two years ago the Provincial Government identified the website as a non-core function and ceased hosting it as a cost-cutting measure. The Institute has, therefore, assumed direct responsibility for hosting this valuable resource at the BCLI website.

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 \$15
2. Gender-Free Legal Writing \$15

Institute Publications

continued

3. A Report on Year One (1997-1998) Annual Report	\$15
4. Proposals for a <i>Contract Law Reform Act</i>	\$20
5. Recognition of Spousal and Family Status	\$30
6. Trustee Investment Powers	\$20
7. Statutory Remuneration of Trustees and Trustees' Accounts	\$20
8. 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 <i>Limitation Act</i>	\$25
20. A Report on Year Five (1999 - 2000 Annual Report)	free
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

tage over the other. There is a spectrum of language that might be used to describe it from the relatively mild “one-sided” through “unfair” to “unconscionable” depending on the commentator’s view of how harshly it operates.

An important principle of our law is that contracts -- even one-sided ones -- should be enforced if they are freely made. Everyone benefits by being able to agree upon their legal rights in advance by making a contract, and by being able to rely on the contract being enforced.

But what are the limits of this principle?

Both statute and judge-made laws provide some measure of protection where a contract operates in a seriously unfair way.

Thinking about unfair terms in contracts raises several questions:

What does unfairness mean in this context? Should we be looking at the term itself or the circumstances in which the contract was created or is to be performed?

When is it appropriate for the law to intervene to protect the “victim” of an unfair contract term?

What laws are currently available to provide that protection and are they adequate?

Should protection from unfair contract terms be confined to vulnerable groups such as consumers or be more widely available?

Appointing a Guardian and Standby Guardianship

Parents and other guardians of small children want to feel secure in the knowledge that, if they become unable to care for those children, through death or otherwise, their children’s care will be provided through a process that is both timely and certain. In a short project, the Institute has examined the current law and the need for improvement. A report was issued in March 2004 containing recommendations designed to make the appointment of guardians accessible to more families. Those recommendations

These questions lie at the heart of our project on Unfair Contract Terms.

The British Columbia Law Institute has initiated a consultation process on unfair contract terms. The Law Institute’s Consultation Paper on Unfair Contract Terms was issued in May 2004. The Consultation Paper discusses the legal regulation of contracts based on the fairness of their terms. It examines the position in British Columbia and reviews reforms that have been implemented in other jurisdictions. In conjunction with the Consultation Paper, the Law Institute has also circulated a brochure throughout the province. The function of the brochure is to publicize the Law Institute’s work on unfair contract terms and to elicit responses from business people, consumers, and members of the general public describing their experiences with contract terms that are particularly harsh, grossly one-sided, or unconscionable.

After the time for response has closed, the Law Institute hopes to have a picture of the specific types of contract terms that are causing problems in British Columbia. This information will be used to formulate recommendations considering whether a focussed legislative response to certain unfair contract terms is necessary.

would simplify the appointment process and expand the category of persons who can appoint a guardian (to include guardians who are not parents). These recommendations also introduced the concept of “standby guardianship” whereby a guardian can appoint another person to share guardianship during a period of illness or incapacity.

The full text of the Report is accessible at the Institute’s website.

Extra Provincial Committeeship Orders

The increasing mobility of persons and wealth makes it inevitable that from time to time issues will arise concerning committeeship orders made outside the

province, the extent to which they should be given effect, and the machinery for doing so. The current law provides only a limited response to these issues. Legisla-

tion that is not yet in force would provide a more comprehensive answer but there is a need to integrate these developments and identify clearly the procedures available.

The relevant legislation, current and pending includes:

- *Patients Property Act* s. 31(1)
- *Adult Guardianship Act* ss. 42-43 (not yet in force)
- *Enforcement of Canadian Judgments and Decrees Act* (not yet in force)

When the *Enforcement of Canadian Judgments and Decrees Act* is brought into force there will be two distinct procedures through which extra provincial

committeeship orders can be given effect in British Columbia. Will they co-exist or will, as a matter of statutory interpretation, s. 31 of the *Patients Property Act* continue to be the exclusive remedy on the basis that the more specific provision overrides the more general one? If ss. 42 and 43 of the *Adult Guardianship Act* are brought into force the uncertainty will be compounded. The law will then depend on the obscure interplay between five distinct procedures arising under three different acts.

The need for clarification is obvious and we added a project on this topic to our program earlier in 2004.

Post-Accident Remedial Measures

After an accident occurs on or with a person's property, that person will often take steps to ensure that a similar accident will not occur in the future. Encouraging people to take these post-accident remedial measures is sound public policy. Historically, the courts promoted this policy by the application of an exclusionary rule. Evidence of anything done to prevent the recurrence of an accident could not be used in a lawsuit to prove the person's negligence. However, the British Columbia courts have begun to relax this exclusionary rule. In a number of recent decisions the courts have relied on evidence of steps taken to prevent further accidents as an implied admission of negligence. This new position has the potential to discourage people from taking the necessary measures to ensure that future accidents do not occur on or with their property.

The Law Institute's Report on Post-Accident Remedial Measures was published in January 2004. The Report followed a Consultation Paper issued in spring 2003, which examined the historical exclusionary rule and the recent British Columbia cases that have displayed a trend toward relaxation of the rule. The Report recommended legislation that would forestall the troubling effects of this trend.

The proposed legislation—an amendment to the provincial *Evidence Act*—was set out in the Report. This legislation would provide that evidence of post-accident remedial measures will not be admissible in a trial, unless the evidence is offered to prove a fact other than liability. Such a provision would have the effect of restoring the traditional common law exclusionary rule.

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 recently issued, the Institute suggests that these difficulties would be minimized through the use of a standard form trust document which would clarify the treatment of

Institute Publications

continued

30. Report on Appointing a Guardian and Standby Guardianship \$20

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
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

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

Document Delivery Rates

A charge will be made to recoup the costs associated with the operation of the document delivery service. A schedule of the rates charged in Canadian funds is set out below.

Photocopying Rates

\$5.00 / item to 20 pages
\$0.20 / page thereafter

Plus postage or courier charge

Fax Surcharge

\$0.50/ page in Canada
\$0.75 / page elsewhere

Minimum \$5.00 charge

Document delivery services

continued

E-mail Rates

\$0.50/page - Acrobat/PDF (image only)

Minimum \$5.00 charge

Rush Service Surcharge

\$5.00/item

(next business day)

How to order

Documents may be ordered by mail, fax or e-mail. In addition, when a search of the Law Reform Database is performed, and results are returned, the user is given an opportunity to order one or more of the documents retrieved.

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 86th 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, Q.C., is a British Columbia delegate to the Conference, and participates in a number of the ULCC working groups. Over the past year he has served the Conference as its President.

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. These include the following topics brought before the ULCC and its August 2004 meeting:

- *Uniform Illegal Contracts Act*

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

Builders Liens After the *Shimco* Case

This project addressed a number of concerns that have arisen after the decisions of the British Columbia Supreme Court and the British Columbia Court of Appeal in *Shimco Metal Erectors Ltd. v. Design Steel Constructors Ltd.* The *Shimco* case has established a remedy under the *Builders Lien Act* which surprised many practitioners, property owners, and participants in the construction industry. This remedy is an independent lien against the holdbacks that property owners, contractors, and subcontractors are required to maintain under the *Builders Lien Act*.

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. Work is currently ongoing on this project, which will study the various sources of

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.

A consultation process led to the Law Institute's recommendations for reform. These were set out in its Report on Builders Liens After the *Shimco* Case, issued in February 2004. The Report recommended specific amendments to the *Builders Lien Act* which would have the effect of abolishing this lien against the holdback. These amendments would clear up a number of procedural uncertainties that may result from the implementation of the new remedy, renew the conceptual clarity of the *Builders Lien Act's* remedies, and restore builders lien practice to the position it was widely understood to take before the *Shimco* case.

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 will culminate in a Study Paper, which will provide 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.

Spoliation of Evidence

In the legal context, "spoliation" means the destruction, mutilation, alteration, or concealment of evidence. When spoliation of evidence occurs courts may be forced to render decisions on imperfect evidentiary records, litigants may be frustrated in the prosecution of their actions, and, in extreme cases, people may be effectively denied the opportunity to seek a legal remedy even

though they have suffered harm. Work is currently ongoing on a project that will examine how British Columbia currently addresses spoliation of evidence through the common law and the Rules of Court, whether there are any shortcomings in this approach, and how the courts may overcome these shortcomings by developing the common law.

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 July 1, 2004 our members are

Thomas G. Anderson

Member at large

Prof. Keith Farquhar

U.B.C. Faculty of Law, Dean’s nominee

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

Gordon Turriff, Q.C.

Stikeman Elliott LLP, Member at large

Ann McLean

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

Kim Thorau

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., Law Society nominee

Trudi Brown, Q.C.

Brown Henderson, Member at large

We would like to acknowledge the contribution of Ravi R. Hira, Q.C. and Etel R. Swedahl. They were the initial nominees of the Attorney General appointed shortly after the Institute was created and served until the end of May 2004 when their terms expired. We are grateful to them for the contribution they made to our operation. At the date this Report was settled, their replacements had not yet been named.

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 whole range of issues. Our particular thanks go to Warren Wilson, Q.C., a Governor of the Foundation with special responsibilities for liaison with the Institute, and to Wayne Robertson, the Executive Director of the Foundation. Our thanks also go to the Notary Foundation and its Executive Director, Wayne Braid.

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 British Columbia Branch of the Canadian Bar Association, the Vancouver Bar Association, the Advocate magazine and The Real Estate Foundation for the generous support they have provided both

The Institute and the Uniform Law Conference

continued

- Uniform Amendments to *Enforcement of Canadian Judgments and Decrees Act*

In the past years, BCLI members and staff assisted the ULCC by participating in working groups on:

- Uniform civil enforcement (judgments) legislation
- Uniform personal property security legislation
- *Uniform Public Inquiries Act*

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.

Our links with the western Canadian law reform bodies in Alberta and Saskatchewan and Manitoba have gone a step further and we are participating with them in a joint project. The topic selected for our first joint venture concerns powers of attorney and is described elsewhere in this report.

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.

- Kristy Boyes, Administrative Assistant
- Marcus Patz, Librarian/ Webmaster

Staff Lawyers

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

Margaret Hall
Gregory G. Blue
Kevin Zakreski

We are pleased to have them with us and happily acknowledge the valuable contribution they make to our work.

Students and Research Assistants

The Institute has adopted a policy of attempting, as far as possible, to ensure that a student or recently graduated lawyer has the opportunity to work with the Law Institute in the capacity of research assistant. This normally involves a full-time commitment of four months. Many of our research assistants have been drawn from students of the Faculty of Law, University of Victoria through their co-op program. Over the past year we were assisted, in this capacity, by the following persons:

- Robert Allan
- Thai MacDonald
- Maggie Knowlan

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:

- Brendan Brammall
- May Lee
- Lisa Weich

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

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:

Dr. Donovan Waters, Q.C.
Professor Don MacDougall
D. Peter Ramsay, Q.C.
Professor Lyman Robinson, Q.C.

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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