



British Columbia Law Institute

A Report on Year Eight

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: 2004/2005

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 continued growth 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 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 six 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.



Ann McLean

Institute Chair 2004-05

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BRITISH COLUMBIA 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

How to Find Us

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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



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



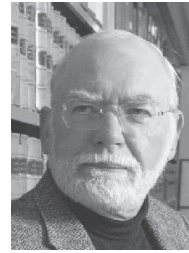
Craig Goebel
Vice-Chair 2004-05
Secretary 2003-04



Gregory K. Steele, Q.C.
Secretary 2004-05
Chair 1997-2004



Prof. James MacIntyre, Q.C.
Treasurer 2003-05



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 2004 lecture presented by Professor Mary Anne Bobinski, Dean of the Faculty of Law, University of British Columbia. She spoke on "Comparative Approaches to the Machinery of Law Reform." The fourth lecture on law reform will take place sometime in the fall of 2005 with details to be announced in due course, and posted on our website.

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

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. Most recently in its 2005 "Service Plan" the Ministry stated as its number one goal to be "a leader in law reform and innovative justice processes" and went on to say:

The ministry will be a centre for law reform and innovative justice policies, practices and processes. The ministry will be strategic and forward-thinking and will foster dialogue and collaboration throughout the broader justice sector. The ministry will influence, stimulate, coordinate and implement reform and innovation within the Province.... The law has a profound practical effect on the legal rights, duties and liabilities of individuals and organizations in our society. Law and justice processes must keep pace with contemporary society. The ministry has a lead role in the debate and development of law that is just, principled, easy to understand and serves the public interest.

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 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 was clearly an idea whose time had come.

Managing the Legacy

continued

the Institute has taken to ensure that the work of the Law Reform Commission is accessible through the Internet. The Institute also has an inventory of printed reports and documents which are available for purchase at a nominal charge. Ordering information may be found at our website:

<http://www.bcli.org>

CCELS Highlights

Canadian Conference on Elder Law

The CCELS is organizing the first Canadian Conference on Elder Law. It will take place October 29 and 30 in Vancouver at the Sheraton Wall Centre. It is 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 is 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 will be keynote speaker.

Report on Financial Arrangements Between Older Adults and Family Members: Loans and Guarantees

This Report arises out of project work initiated by the Law Institute. It concerns arrangements that involve a financial benefit conferred by a person on that person's child or grandchild. These benefits most often take the form of loans or guarantees and reflect the wholly laudable desire of older adults to help their family members. They may, however, have a very negative impact on financial security and family relationships. The Report contains recommendations for reducing or mitigating the problems associated with these family loans and guarantees.

Reverse Mortgages

A reverse mortgage is a type of rising debt, non-recourse loan secured by a mortgage against the borrower's

CCELS Highlights

continued

principal residence. Reverse mortgages are marketed to “house rich, income poor” senior citizens. They are not specifically regulated in British Columbia. The CCELS has issued a Consultation Paper on Reverse Mortgages that surveys the background on reverse mortgages, the present state of regulation in British Columbia, and the legislation in place in other jurisdictions. It concludes by asking readers to give their opinions on introducing legislation governing reverse mortgages.

Elder Abuse Legislative Review

The CCELS has just completed a comprehensive review of Elder Abuse legislation across Canada. The review, entitled “Legislating Against Elder Abuse: Canadian Trends” identifies provincial and federal legislative initiatives that protect older adults from abuse, neglect and self-neglect. The results of the survey are summarized in a cross-jurisdictional comparative table currently available at the CCELS website with the full review coming soon. The study and table will, in due course, also be available for purchase on CD-Rom.

Viatical and Seniors’ Settlements

Viatical settlements are transactions in which a person sells the benefits of a life insurance policy to a third party in return for a lump sum cash payment equal to a percentage of the policy’s face value. They first emerged in response to the increasing needs of AIDS patients, but have grown exponentially in the United States since the early 1990s and a new spin-off product has emerged. This is the “Seniors’ Settlement” under which a healthy senior citizen sells the benefits of a life insurance policy to a third party in return for a lump sum cash payment equal to a percentage of the life insurance policy’s face value. Research has commenced concerning the legal framework within which these settlements operate and the need, if any, for legislative intervention.

The Centre has now entered its third 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.

Fundraising

While the backbone of our financial support is our institutional funders, 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 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.lienlaws.ca website referred to elsewhere, our Report on Gender-Free Legal Writing and the “Question and Answer” publication on pension division on marriage breakdown.

Implementation

The work of the Law Institute has begun to bear real fruit, with legislation based on its work being brought forward. 2002 saw the introduction of the *Trustee Investment Statutes Amendment Act*. That 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 Proceedings Transfer Act*. Law Institute personnel played a major role in developing this legislation through the Uniform Law Conference of Canada.

In addition, Institute work was the catalyst for the 2004 *Charitable Purposes Preservation Act*. We hope to see further implementation of the Institute's work in future sessions.

Projects Active in 2004-2005

A Succession Law Reform Act

This project was added to our program in 2003 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.

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 8 Reports issued between 1981 and 1992. The recommendations made in those Reports went largely unimplemented.

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.

The project is being carried forward through a structured group of committees with an interlocking membership and which are composed largely of practicing lawyers serving on a volunteer basis. At the centre is the main Project Committee that performs a steering function and has the principal responsi-

bility for the consolidation and drafting aspects of the Project. It will oversee the preparation of the final report. The members of the Project Committee are:

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

The Chair of the Project Committee is D. Peter Ramsay, Q.C. Mr. Ramsay, a member of the Law Institute's Board (a Law Society nominee), has practiced 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. Prof. Farquhar is also a member of the Institute's Board.

In addition to the Project Committee are five Subcommittees created to examine discrete aspects of the overall Project. Each Subcommittee is chaired by a member of the main Project Committee. Most members of the main Committee also serve as an ordinary (non-Chair) member of one of the other Subcommittees. The remaining members of the various Subcommittees are drawn from legal practitioners or academics having a particular interest in the focus of the Subcommittee's work. An attempt was made to achieve a diversity of perspective as well as geographical diversity when constituting the Subcommittees. The membership of the Subcommittees and the scope of their activity is set out in the sidebar.

It is anticipated that most of the work of the Subcommittees will be completed by

Succession Law Project

The Subcommittees and Their Work

Testate Succession Subcommittee

Members:

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

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.

Intestate Succession Subcommittee

Members:

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

This Subcommittee's work is focused on the intestate distribution scheme in Part 10 of the *Estate Administration Act*. It will also be examining 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
Anita Nadziejko

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

Succession Law Project

continued

concerns that a means be found to deal with small estates in light of changes to the 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.

Estate Administration Subcommittee

Members:

R.C. (Tino) Di Bella
Elizabeth Glassford
Mary Hamilton - Chair
Helen Low
Hugh McLellan
Anita Nadziejko
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.

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 is 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, RRIFs and employee benefit plans.

the autumn of 2005. This will be followed by intensive efforts directed at formulating a consolidated reform statute or statutes

which will be incorporated into a final report for the Project.

Unnecessary Requirements for Sworn Statements

In 1974 the Attorney General requested the Law Reform Commission of British Columbia to:

- (a) examine the extent to which the Statutes of British Columbia require, or provide for the use of affidavits and statutory declarations in non-court matters; and
- (b) explore the rationale behind those uses and consider the desirability of eliminating the need for them or developing less complex alternative devices designed to achieve the same end.

The Commission acceded to this request and in 1976 submitted to the Attorney General its Report on "Extrajudicial Use of Sworn Statements." The Commission concluded that the statutes contain innumerable provisions that require information to be provided on various occasions in the form of a "sworn statement" which may result in the avoidance of otherwise unimpeachable transactions, and may cause unnecessary cost, delay and inconvenience. The Commission observed further the requirement is inconsistently applied.

The Commission's research identified over 400 instances in which a provincial statute imposed requirements defined with reference to oaths, affirmations, affidavits and statutory declarations. It recommended that a large number of these be repealed outright or replaced by a simple provision

making it a provincial offence to provide false information. No steps were taken to implement these recommendations in an omnibus fashion although the Commission's analysis and suggestions may have had some impact on later legislation.

All of the provisions identified by the Commission were either contained in the 1960 revision of the provincial statutes, or in one of the statutes enacted in the 16 years that followed. Since the Report was submitted there have been two separate statute revisions and eight additional years of provincial statutes. At this distance it is not immediately possible to say how far the Law Reform Commission's recommendations and suggestions have found their way into law or how far they have been overtaken by intervening legislation.

Anecdotal evidence suggests that the statute book is not yet clear of unnecessary verification formalities. Whether those that have come to light are isolated examples or whether they are some evidence of a problem as extensive as that identified by the Law Reform Commission in its 1976 report is something that can only be answered through a fresh look at the area. The concerns that prompted the Attorney General to refer this matter to the Law Reform Commission in 1974 retain their force and a project was recently added to the Institute's program to carry out the necessary research and bring forward appropriate recommendations.

Project on Modernizing the *Trustee Act*

In January 2005 the Law Institute formally released its Report on “A Modern Trustee Act for British Columbia.” When the Institute was created over eight 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 current *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.

There is a continuing need for a *Trustee Act*. It is the source of 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. 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 were:

Dr. Donovan Waters, Q.C., Horne Coupar (Chair)

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

Margaret Mason, Bull Houser & Tupper

Kathleen Cunningham, Royal Trust

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

Scott Sweatman, Blake Cassels & Graydon LLP

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

The Reporter to the Committee was 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. They were also 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. Most of 2004 was devoted to refining the draft legislation and the commentary to it.

About the *Trustee Act* 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 will 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 is provided for investment on a “total return” basis so as to gain maximum return without having to distinguish between income and capital sources and receipts;
- trustees will have the power to apportion expenditures and transfer funds between the income and capital accounts;
- trustees will be able to act by majority;

Proposed Trustee Act

continued

- exemption clauses in a trust instrument take effect subject to a power to declare an exemption clause ineffective in certain circumstances;
- current fixed ceilings on trustee remuneration will be removed;
- trustees will be allowed to take interim compensation during the administration of the trust without an order of the court;
- 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 refuses consent;
- under certain circumstances, 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.

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, as does the U.S. *Uniform Trust Code*.

Civil Enforcement of Money 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 March, the Institute submitted a Report containing 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.

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. Wholly new and integrated schemes of judgment enforcement have been brought into force in Alberta and Newfoundland.

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

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 Report is accessible at the Institute’s website.

searchable registry of monetary judgments.

British Columbia had carriage of this project on behalf of the ULCC and the Law Institute was the agent through which this was done. Institute personnel were heavily involved in a national working group of the ULCC. This includes the contribution of Lyman Robinson, Q.C. who acted as Project Director of the BCLI initiative and who led the ULCC working group, Arthur L. Close, Q.C., the Institute’s Executive Director who was a member of the working group, and Kevin Zakreski, a staff lawyer with the Institute, who served as Reporter to the project.

This work culminated in the creation of a draft Uniform Act, with extensive comments, that was adopted by the ULCC in August 2004.

With the Uniform Act being finalized, the task of developing a reformed civil enforcement statute for British Columbia entered its second phase. It must be stressed that the Uniform Act presents a model for law reform. It does not resolve all the issues that enacting provinces will face in bringing legislation into force. Each province will have a unique set of implementation issues to resolve. The Institute focused on a number of pressing implementation issues for British Columbia.

There is a range of subjects that can be characterized as implementation issues - from small details up to broad policy issues. In

some cases the Uniform Act itself pushes an implementation issue to the surface. For example, it contains a number of “blank spaces” meant to accommodate references to the relevant provincial law. Beyond that level of detail, the Uniform Act also presents some choices in policy. Part 10, which contains two options for enforcing judgments against land, is an example of this type of implementation issue.

Other implementation issues are subtler. A number of them arise from differences in the existing civil enforcement systems of the provinces. Certain provisions that appear in the *Court Order Enforcement Act* do not appear in the leading civil enforcement statute of most other provinces. The Uniform Act follows the consensus position of the provinces. Where this solution would result in the loss of an important provision from the *Court Order Enforcement Act*, the BCLI has recommended reenacting the provisions as part of the new legislation. Differences among the approaches to personal property security also raise implementation issues for the Uniform Act. Where the Uniform Act strays from the approach taken in British Columbia’s *Personal Property Security Act*, the Institute has recommended certain changes that do not depart significantly from the spirit of the Uniform Act but which promote harmony between the civil enforcement and personal property security systems. Finally, some aspects of British Columbia civil procedure and practice before the courts have prompted changes to

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 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 frui-

some provisions of the Uniform Act.

A number of topics that could be considered implementation issues have not been addressed in the Institute’s recommendations. The implementation of the Uniform Act will have profound consequences for the family maintenance enforcement system. These consequences deserve study in their own right; they cannot simply be grafted onto a study of the Uniform Act. Finally, the implementation of the Uniform Act will fundamentally change the tasks of the people who carry out the enforcement of judgments, the enforcement officers. Under the current system, the role once occupied by the sheriff is now occupied by private court bailiffs. The implementation of the Uniform Act need not alter that structure, which may remain largely a matter of agreement between the provincial government and the court bailiff firms. The Institute has not attempted to develop a statutory structure to govern this relationship although some suggestions for updating the contractual relations that are currently in place have been put forward.

British Columbia’s system for the civil enforcement of money judgments is in need of fundamental reform. The Uniform Act, subject to the modifications the Institute recommends, provides a good model for the reform that is needed.

The Report may be found at the Law Institute’s website.

tion. 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-

The Institute and the Internet *continued*

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

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.

Publication List

continued

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 <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. 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 <i>Limitation Act</i>	\$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

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 consid-

ered 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.

The Law Foundation of British Columbia and the Notary Foundation have provided initial 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 re-

sponsibilities 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 toward the end of 2005. 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.

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.

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.

In many cases these contracts contain terms that give one party a legal advantage 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.

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 a number of issues that lie at the heart of our project on Unfair Contract Terms.

An important principle of our law is that

The initial phase of the Law Institute's project on unfair contract terms focused on consultations with the public. A Consultation Paper, published in May 2004, posed a number of questions, which asked readers to describe their experiences with specific unfair contract terms and to comment on a number of strategies for dealing with unfair contract terms. These questions were also posted in an interactive format on the Law Institute's website. In addition to the Consultation Paper, a brochure summarizing the Law Institute's project on unfair contract terms was prepared. Fifty thousand copies of the brochure were printed and distributed to the public through such institutions and agencies as libraries, chambers of commerce, unions, municipalities, and condominium management associations. Finally, a press release was prepared and sent to print and broadcast media in British Columbia.

The volume of responses received was not high. Their content was taken into account in formulating the development of this project. Few respondents were directly concerned with the general questions relating to unfair contract terms. Many responses identify concerns over issues that are far removed from legislative control of unfair contract terms. These include responses concerned with various aspects of family law, employment and labour law issues, residential tenancy agreements, government

tendering procedures, and strata corporation governance. The responses raise a number of serious legal and social issues. In some cases, they touch on topics that could form the subject of future law reform projects. A number of the concerns related to family law have already been addressed in work of the former British Columbia Law Reform Commission.

Both the modest number of responses received in the consultation phase of this project and the nature of the responses suggest that the time may not yet be ripe for legislative reform. It was the Institute's view that the response to the consultation did not provide an adequate foundation to recommend legislative intervention. That said, unfair contract terms will continue to pose a challenge for the courts—and for consumers, nonprofit agencies, strata corporations, small businesses, and others. Specific, concrete problems may arise in the future and call for recommendations for legislative action.

The Law Institute plans to maintain a watching brief on unfair contract terms. It has issued an Interim Report both to make available the results of its research and consultation and as a spur to the further discussion and consideration of unfair contract terms. The Interim Report may be found at the Institute's website.

Leases of Unsubdivided Land and the Top Line Case

This is a new project focused on the legal issues that arose in the wake of the Court of Appeal's decision in *International Paper Industries Ltd. v. Top Line Industries Inc.* The *Top Line* case involved a lease of a portion of a parcel of land. The parties in *Top Line* neglected to obtain approval to subdivide the land in this manner. The court ruled that, in consequence of this breach of the subdivision requirements of the *Land Title Act*, the lease must be considered void *ab initio*.

This ruling surprised many real estate lawyers. It has also proved to be a continuing

source of frustration to persons involved in commercial leasing and agriculture. The *Top Line* case has imposed additional costs on these persons. In addition, by giving persons a means to escape from their contractual obligations, it has added uncertainty to the law and raised the volume of litigation.

In October 2004 the Law Institute published a consultation paper asking readers for their views on whether reform of the law was needed in response to *Top Line*. It also presented a range of options for reform for readers to consider, including a proposed

Publication List

continued

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

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

Other Publications

continued

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.

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, like 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.

amendment to the *Land Title Act*, general illegal contracts legislation leaving the matter to the courts.

The Institute received a number of thoughtful responses to the consultation paper from leading practitioners in this area of the law. They were of great assistance to the Law Institute in the second phase of the project, which involved the publication of a final Report in July 2005.

Recognition of Adult Guardianship Orders from Outside the Province

The increasing mobility of persons and wealth makes it inevitable that from time to time issues will arise concerning committee 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. Legislation 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 extraprovincial committee 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

The recommendations in this Report set out proposed legislation that would hold parties to such purported leases to the contractual obligations that they have entered into. This result may be achieved without undue harm to local control of land development and to the land title system because the law has evolved a variety of other procedures, in addition to subdivision control, to protect these interests.

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 a project on this topic was added to our program in 2004.

Our Final Report, issued in March 2005, describes the current and pending procedures and sets out recommendations concerning what the Institute considers to be the most appropriate approach. The general thrust of the recommendations is that the *Enforcement of Canadian Judgments and Decrees Act* should be the principal vehicle for giving effect to adult guardianship orders emanating from other Canadian provinces and territories. This is a position that was implicitly endorsed by the Institute in its 1999 Report on the "Enforcement of Non-Money Judgments from Outside the Province."

Special provisions would make the *Enforcement of Canadian Judgments and Decrees Act* procedure available to government officials of other provinces who assume guardianship responsibilities by operation of law. So far as non-Canadian orders are concerned, the report recommends a confirmation procedure analogous to the one that exists for the "resealing" of foreign probate orders.

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 Pa-

per, 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.

The Institute's consultation continues.

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.

Spoilation 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.

The common law has long recognized the seriousness of spoliation of evidence and the problems it causes. In order to address these problems, the courts have developed evidentiary and procedural rules to restore

accuracy to the trial process, to sanction litigants who damage, mutilate, alter or conceal evidence, and to provide limited compensation to litigants who are harmed by spoliation of evidence.

An Institute Report issued in November 2004 examined those evidentiary and procedural rules and discussed proposals for the further development of the law. The proposals for reform seek to refine the existing rules and to promote the development of a tort of spoliation of evidence that would provide a substantive remedy in those cases that are currently beyond the reach of the existing rules.

Law Reform Document Photocopy Services *continued*

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

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 87th 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. Over the past year he has served the Con-

The Institute and Other Law

Reform Bodies

continued

ference as its Immediate Past 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. He currently serves as a member of a ULCC working group developing a *Uniform Charitable Fundraising 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, 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 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.

Pension Division on Marriage Breakdown

When a marriage breaks down often the single most important asset that must be divided is the pension entitlements that have been earned by one or both spouses. But a pension is a very complicated asset and, as a result, very detailed rules are required to ensure that it is divided fairly between the parties. These rules, now found in Part 6 of the *Family Relations Act*, were first enacted in 1995 and are based on recommendations made by the Law Reform Commission of British Columbia three years earlier. The operation of the rules are explained in detail in the Institute's publication "Questions and Answers about Pension Division on Marriage Breakdown."

The last 10 years have seen a number of developments that impact on the operation of the rules. The background of pension law against which they operate has changed. The application of the rules in particular circumstances has identified issues on which clarification would be desirable. The experience of pension authorities in administering the rules suggest certain changes would be helpful. The Ministry of Attorney General has requested that the Institute undertake a short project that would examine how the rules are working and to develop recommendations regarding any changes to the legislation that may be required to address problems that have arisen. This project is now underway.

A Resource on Lien Laws

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.

Three years ago the Provincial Government identified the website as a non-core function and ceased hosting it as a costcutting measure. The Institute, therefore, assumed direct responsibility for hosting this valuable resource at the BCLI website. The availability of the site was quickly noted by the officials of the province's Land Title Branch, which had discontinued the practice of providing forms for the filing of lien claims. Potential lien claimants were referred to our website as a place where the necessary forms could be downloaded. In response to a significantly increased volume of internet traffic we established the materials, with only minor changes, as a stand-alone website accessible at www.builderslienlaw.ca.

But a site focused solely on builders liens overlooks the very significant volume of law reform activity directed at other liens and similar forms of non-consensual security such as:

- Garagekeepers' and repairers' liens
- Carriers' liens
- Tugboat liens
- Warehouse and storage liens
- Woodworkers' liens
- Livestock liens

The Law Institute is in the process of creating a new website that embraces law reform information in relation to these liens as well as builders liens. When operational it will be accessible at www.lienlaws.ca.

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, 2005 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

Ronald Skolrood

Lawson Lundell LLP, Attorney General nominee

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. Faculty of Law, Law Society nominee

Robert Grant

Heenan Blaikie LLP, Attorney General nominee

We would like to acknowledge the contribution of two former members of the Law Institute: Trudi Brown, Q.C. and Gordon Turriff, Q.C. Both were members-at-large. Trudi served from 2000 to 2005. Gordon was one of the founding members of the Law Institute and served from the time of its creation in 1997. We are grateful to them for the contribution they made to the success of the Institute. 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 wide 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 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:

BCLI Staff

continued

- Kristy Boyes, Administrative Assistant (to December 2004)
- Julia Paskovic, Administrative Assistant (from January 2005)
- Marcus Patz, Librarian/Webmaster

Staff Lawyers

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

Gregory G. Blue
Kevin Zakreski
Laura Watts

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 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. Over the past year we were assisted, in this capacity, by the following persons:

- Maggie Knowlan
- Andrea Clarke
- Aimee King
- Sharon MacMillan
- Julie Lawrence
- Priscilla Chong
- Valerie Vojnic

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
- Wendy Harrison
- Elaine Vale
- 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 By-law 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 By-law 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

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

We wish to thank the following firms for allowing the Succession Law Reform Project Committee and the Subcommittees to hold their frequent meetings at their respective offices during the past year:

Alexander Holburn Beaudin & Lang Clark, Wilson Davis & Co.	Fasken Martineau DuMoulin LLP Legacy Tax + Trust Lawyers RBC Investments, Trusts Services
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Special thanks also go to the firm of Bull Housser & Tupper for its particular contribution to our project on modernizing the *Trustee Act*. They allowed the Project Committee to conduct its meetings at their office premises over an extended period and hosted a reception marking the “launch” of the final Report.

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.

Partner

The Advocate
Canadian Bar Association, B.C. Branch

Benefactor

James M. MacIntyre, Q.C.
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Hon. Chief Justice Donald C.J. Brenner
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Hon. Mdm. Justice M. Anne Rowles
Hon. Mdm. Justice Risa Levine
Fasken Martineau DuMoulin LLP

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