

**BRITISH COLUMBIA LAW INSTITUTE &  
CANADIAN CENTRE FOR ELDER LAW**



**annual report 2011**



# REPORT OF THE CHAIR

**J**anuary 6, 2012 is the fifteenth anniversary of the establishment of the British Columbia Law Institute (BCLI) as an independent, not-for-profit society.

## The Next Fifteen Years

We are celebrating fifteen years of successful projects and our development as a robust law reform agency both in general law issues and issues affecting older adults in Canada. In 2003 we were able to establish the Canadian Centre for Elder Law (CCEL).

Our story begins before 1997. More than two decades of work by the BC Law Reform Commission allowed BCLI to stand on the shoulders of its predecessor:

- Arthur Close, QC (Director) and Greg Steele, QC (Member Emeritus), QC had worked in the BC Law Reform Commission and brought law reform expertise and understanding of the ongoing need for BC law reform;
- BCLI inherited valuable BC Law Reform Commission research and reports which often provide useful starting points for new initiatives; and
- The discontinuance of funding of the BC Law Reform Commission provided a re-

minder all that ongoing interest in and commitment to law reform work must never be taken for granted.

Our future is both challenging and exciting.

## Continuing Need for Independent Reform Work

A just, well-understood and well-respected legal system is the foundation of a free and secure society. Societies change continuously. Demographic profiles change (witness the aging of Canada's population). Economies flourish and contract impacting social and legal relationships. Technologies develop and impact societal norms, and environmental changes occur naturally and through human intervention. The constant changes require legal research and law reform work to review and update existing laws and introduce new laws to meet changing needs.

We are confident that there will be no shortage of important and relevant projects now and in the future.

## Financial Stability

Maintaining and improving our financial stability will continue to provide challenges. As a small not-for-profit, charitable society, we do not aim to earn profits or develop sig-

nificant capital reserves. As a consequence, each financial period brings new challenges to ensure that we have the resources to continue our programs and activities. We benefit from the generous continuing support of the Law Foundation of British Columbia, and the British Columbia Ministry of Attorney General. These and other funders provide resources for many specific legal research and law reform projects. (A complete list of recent funders appears on the final page of the report.)

While low interest rates may benefit the Canadian economy, such short-term interest rates negatively impact funders and agencies such as BCLI who rely on their support.

We will continue to manage our financial resources with great care to ensure our ongoing success.

### Ongoing Value - Volunteer Experts

We are most grateful for the continuing participation of volunteer experts on the Board, on Project Committees and in other BCLI / CCEL activities. By assembling the best legal and subject-matter experts on our Project Committees, we bring the very best expertise and experience to law reform issues. Volunteer participants benefit from the shared learning in the expert groups. Participating lawyers and notaries also receive credits for continuing professional development.

We will continue to seek and value the par-

ticipation of judges, lawyers, notaries, and subject-matter experts as we examine issues and develop recommendations for updated and new laws. We welcome expressions of interest from would-be volunteers.

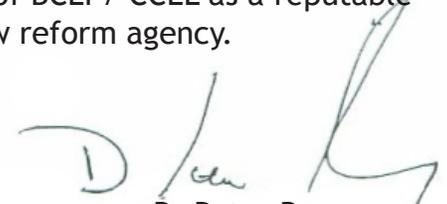
### A Bright Future

In conclusion, we anticipate a bright future with abundant opportunities. Our activities

benefit British Columbians and Canadians in many substantial ways. A strong and supportive Board, experienced and dedicated staff of expert law reformers and knowledgeable volunteers will continue to bring experience, sound judgment, thorough legal

research and creative law reform writing to achieve our mission of best in legal research and law reform work and best in outreach relating to law reform.

BCLI / CCEL has provided and will continue to provide excellent legal research and law reform support for legislative, regulatory and practice improvements in British Columbia and beyond. I am confident that the Province will be well-served in future by the ongoing excellent work of BCLI / CCEL as a reputable independent law reform agency.



D. Peter Ramsay  
Chair

**“We welcome expressions of interest from would-be volunteers.”**

*Peter Ramsay, Q.C.*



# REPORT OF THE EXECUTIVE DIRECTOR

**B**CLI's independent law reform work continues to make significant contributions in British Columbia and beyond. Independent, reputable law reform work is important and needed for three principal reasons:

## 5 - 15 - 40

No, it's not a tennis game - it's law reform in British Columbia. 2012 marks 5 years since I became Executive Director of BCLI / CCEL; January 2012 saw the 15th anniversary of the formation of the British Columbia Law Institute; and April 2012 is the 40th anniversary of the work in law reform by Director and former Executive Director of BCLI, Arthur Close, QC. A special thanks and congratulations to Arthur for a lifetime of law reform contributions in British Columbia.

As we celebrate the various anniversaries, we are grateful to have had another successful year in 2011.

Most significantly, we were pleased to see the passage of Bill 16, the Family Law Act. Bill 16 incorporates four law reform reports published by BCLI. The reports are: The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings, (1998); Report on Appointing a Guardian and Standby Guardianship, (2004); Pension Division on Marriage Breakdown, (2006); and Report on the Parental Support Obligation in Section 90 of

the Family Relations Act, (2007).

The incorporation of BCLI's work in legislation is the best evidence of the success of our activities. In this case, the new Act also serves to remind us of the extended amount of time often required between our legal research and writing and ultimate passage into law.

During 2011, we have carried out an extensive array of law reform work and related activities:

- completed several law reform projects, including Elder & Guardian Mediation (3 year), Unfair Contracts Relief (2 year), Practice Support relating to Undue Influence regarding the new Wills Estates and Succession Act (1 year), Counterpoint Project (1 year);
- continued several law reform projects toward completion including Assisted Living, BC (target September 2012); Real Property - Phase 2 (target March 2012); Family Status Ground in Human Rights (target April 2012), Common Law Capacity (target September 2013) Strata Property - Phase 1 (target December 2012) and ULCC Uniform Trustee Act (target August 2012);
- continued liaison and support of legislative initiatives in progress such as imple-

## REPORT OF THE EXECUTIVE DIRECTOR

mentation of the Wills, Estates, and Succession Act and new Probate Rules; and

- Successfully carried out many outreach activities supporting legal research and law reform such as the 2011 GREAT-debate, presentation for the National Judicial Institute entitled Judging Women: Aging, Mental Health and Culture, and research for, and delivery with Age Friendly Business of a series entitled Aging and the Law.

In August, 2011, BCLI / CCEL moved from its Annex 1 office into Suite 321, Allard Hall, the new UBC Faculty of Law Building at 1822 East Mall. Since Allard Hall was constructed on the site of the former law school building, our street address remains unchanged. BCLI's space in Allard Hall has been fully supported by the large generous capital contribution made by the Law Foundation of BC in the development of Allard Hall, the new Faculty of Law building. The Allard Hall facilities provide an exceptional working environment for BCLI and have significantly enhanced opportunities for interaction and collaboration with UBC Faculty of Law members, law students and others located in Allard Hall.

Since 2007, we have used the LRP Tracking System to consistently measure our successes and maintain focus on our priorities. (See details on page xx). There are three main keys to our success:

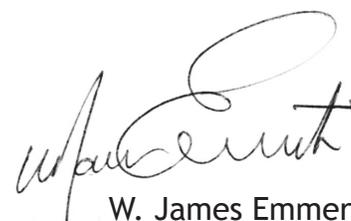
1. Professionalism, expertise and experience in law reform - These qualities manifest themselves constantly in the work of our many expert volunteers on project committees, our scholarly,

knowledgeable and dedicated staff; and a diverse and dedicated Board.

2. Strong Values - Though we often face questions and issues that lend themselves to partisan or emotive analysis, we strive continuously and successfully to adhere to key values including professionalism, objectivity, team-work, non-partisanship, and non-political orientation. This orientation enables followers and governments to rely on BCLI / CCEL for professional, expert, and thorough work directly simply to doing the right thing.
3. Continuous Improvement - There is no room in today's world for complacency. We regularly challenge ourselves to improve in everything we do. While our activities often display little drama, BCLI / CCEL works continuously to improve efficiency, effective public outreach and communication.

On a personal note, I am most grateful for the exemplary, ongoing support of our Board and each of the Staff members of BCLI / CCEL. Thank you to all.

With these exceptional strengths and capabilities, I am confident that BCLI and CCEL will realize another exemplary year in 2012.



W. James Emmerton  
Executive Director



# REPORT OF THE NATIONAL DIRECTOR

**T**o speak of Canada’s aging population—the increase in life expectancies, older people forming a larger percentage of the population, the anticipated retirement of baby boomers—barely requires a citation any longer. The demographics are escalating to truism status.

In Canada there has emerged a kind of fear-mongering about the potential negative social and economic impacts of an aging population. In particular, concerns are expressed regarding the reduction in our workforce, additional costs to our healthcare system and public pension regime, and strain on younger family members to provide care to aging parents and spouses. Metaphors of devastation abound: the grey wave is a silver tsunami.

Metaphors have power. For those of us residing on the wet west coast, the language of tsunami strikes at the heart, tapping into our worst fears. In the wake of the well-publicized tsunami that hit the Japanese coast in March 2011, the loss and suffering associated with such a powerful natural event may now feel more terrifying and immediate to the rest of the country. Although communities and governments have been at pains to emphasize more positive notions of independence and

activity into old age, the dominant rhetoric of the silver tsunami portrays the aging of our population as a negative, if not dangerous phenomenon.

Now, I am neither a statistician, nor a seismologist, but I am fairly certain that our population is aging much more gradually than is suggested by the image of a tsunami. This stealth is precisely what is giving us so much time to talk about the demographics of aging.

**“We discourage metaphors of devastation. The age wave is not a tsunami.”**

*Krista James*

Certainly, these demographics are important and worth talking about. But I encourage a step away from metaphors of devastation.

In terms of our individual practice, an aging population presents an opportunity on so many levels. An aging workforce provides us with sites for pushing further notions of inclusive workplace design: is your workplace set up to accommodate some of the challenges associated with aging so that you can maintain the wisdom key staff have accumulated over years of practice? An aging client base provides us with the motivation to explore how to deliver services that target the needs and interests of older clients and their family members. At a deeper

## CANADA'S AGING POPULATION: THREAT OR OPPORTUNITY?

level, such a challenge is fundamentally about learning how to do our work better. We have always had older clients. But the reality of volume provides both the impetus to expand our expertise and the cumulated experiences that will teach us how to do things better next time around.

In recent years the Canadian Centre for Elder Law has been focused on developing resources that will help various organizations to enhance their capacity to address issues associated with an aging population. In 2011 we published a number of resources. The *Counterpoint Project* includes series of plain language brochures, factsheets and videos that provide basic legal information to help health and social service practitioners to respond appropriately to concerns about abuse and neglect of older patients and clients. The slate of tools includes a booklet for institutions and employers that provides a snapshot of our legal research and a series of guidelines for developing improved practices. See <http://www.bcli.org/ccel/projects/counterpoint-project>.

*Elder Abuse and Neglect: What Volunteers Need to Know* is an introductory PowerPoint presentation that provides a basic summary of the law, guiding principles for responding to abuse, the names of agencies that respond to reports of elder abuse, and organizations that provide legal advice, referrals and victim assistance. The workshop includes slide notes such that almost anyone within an organiza-

tion can deliver the workshop to front line volunteers and boards of directors—without any additional training. English and French language versions of the presentation exist for each province and territory. See <http://www.bcli.org/ccel/projects/elder-abuse-and-neglect-what-volunteers-need-know>.

**“We want to support you to take advantage of the opportunity presented by an aging population.”**

*Krista James*

2011 has been a busy year. These are just a couple of examples of how we are creating tools to support communities and practitioners to seize the opportunity aging presents to enhance capacity to deliver services to older people. Almost all of the resources we have developed are available for free from our website. We encourage you to check them out, and to send us your ideas for other publications. You can email me personally at [kjames@bcli.org](mailto:kjames@bcli.org). Here's to another great year.



Krista James  
National Director  
Canadian Centre for Elder Law

# CURRENT MEMBERS AND DIRECTORS OF BCLI

Name	Appointed By	Since	Most Recent	Term Expiry
Prof. Joost Blom, Q.C.	At large	12/05/2007	12/05/2007	12/04/2012
Dean Mary Anne Bobinski	University of British Columbia, Faculty of Law	04/01/2010	04/01/2010	03/31/2012
Arthur Close, Q.C.	At large	01/06/1997	01/11/2012	09/12/2012
R. C. (“Tino”) Di Bella	Canadian Bar Association, B.C. Branch	04/01/2008	04/01/2011	03/31/2014
Richard Evans	Society of Notaries Public, B.C.	08/01/2010	08/01/2010	07/31/2013
Prof. Robert Howell	University of Victoria, Faculty of Law	09/01/2008	09/01/2008	08/31/2013
Fiona Hunter	The Law Society of British Columbia	05/01/2009	05/01/2009	04/30/2012
Lisa Peters	At large	10/04/2010	10/04/2010	10/03/2013
Geoff Plant, Q.C.	Attorney General of British Columbia	02/07/2008	02/07/2011	02/07/2014
Peter Ramsay, Q.C.	The Law Society of British Columbia	06/06/2002	04/01/2010	03/31/2013
Andrea Rolls	At large	04/01/2010	04/01/2010	03/31/2013
Stanley Rule	At large	10/04/2010	10/04/2010	10/03/2013
Kenneth C. Mackenzie, Q.C.	At large	01/11/2012	01/11/2012	01/10/2015
<i>Vacancy</i>	<i>Attorney General of British Columbia</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

The reference to “At large” in the above table indicates the 6 members/directors who are appointed by the 9 ‘institution-appointed’ members. Traditionally, one “At large” member/director has been a non-lawyer, currently Andrea Rolls.

## BOARD COMMITTEES AND STAFF

**Executive Committee** - meets as required and has the full power of the Board of Directors, except for the approval of commitments over \$ 75,000 or matters delegated to another Committee of the Board.

Members include Peter Ramsay, Q.C., Prof. Joost Blom, Q.C., R.C. (Tino) Di Bella, Geoff Plant, Q.C., and Jim Emmerton (ex officio).

**Audit, Finance & Risk Committee** - meets at least four times per year and assists the Board of Directors in fulfilling its oversight responsibility relating to financial, accounting and risk matters.

Members include Lisa Peters (Chair), R.C. (Tino) Di Bella, Richard Evans, Fiona Hunter, and Stanley Rule.

**Program Committee** - meets at least twice per year and assists the Board of Directors in fulfilling its responsibilities relating to the development and approval of law reform projects and public education and outreach

projects.

Members include Prof. Joost Blom, Q.C. (Chair), Dean Mary Anne Bobinski, Arthur Close, Q.C., Christine Elliott, and Prof. Robert Howell.

**Nominating Committee** - meets at least once per year and assists the Board of Directors relating to the appointment of members, officers and committee members.

Members include Prof. Joost Blom, Q.C., Arthur Close, Q.C., Fiona Hunter, D. Peter Ramsay, Q.C. and Andrea Rolls.

BCLI has three Judicial Liaisons:

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

Below is a summary of the current staff.

<b>Executive Director</b> Jim Emmerton	<b>National Director, CCEL / Staff Lawyer</b> Krista James
<b>Senior Staff Lawyer</b> Greg Blue, Q.C.	<b>Staff Lawyer &amp; Secretary</b> Kevin Zakreski
<b>Staff Lawyer</b> Emma J. Butt	<b>Office Manager</b> Elizabeth Pinsent
<b>Public Interest Articling Student</b> Kisa Macdonald to May 2012	

# PROJECTS AND ACTIVITIES REPORTS

## BCLI

### BOUGHTON / BCLI GREAT DEBATE

**Project Manager:** Jim Emmerton

The 2011 GREATdebate was held Wednesday, October 26th, 2011, at the Pan Pacific Hotel in Vancouver, Canada. The fourth such debate, this year's subject was as follows: "Be it resolved that the torts of champerty and maintenance should be abolished in British Columbia."

This year's winners were the Hon. Chief Justice Robert Bauman and Emily Clough of Alexander Holburn Beaudin + Lang.

Planning for next year's debate has already begun. The event remains an exceptional opportunity for members of the bar and the judiciary to enjoy a social and educational evening among their peers.

### FAMILY STATUS GROUND IN HUMAN RIGHTS IN BC

**Project Managers:** Krista James and Emma Butt

**Project Committee:** Lauren Bates, Tom Beasley, Devyn Cousineau

In face of recent confusing jurisprudence and the changing landscape of family law in BC, the BC Family Status Legal Research Project has been established to research and analyse the family status ground, and prepare a discussion paper that:

- Provides a thorough review of legislation and jurisprudence in relation to the family status ground in Canada;
- Describes the issues and problems with the family status ground in BC;
- Develops scholarly research and analysis of issues relating to the family status ground;
- Identifies further issues for exploration in relation to the family status ground; and
- If appropriate, identifies a further legal research, law reform or legal education project in this area.

The project's expected completion date is April 2012. It was generously funded by the Law Foundation of BC.

### UNFAIR CONTRACTS RELIEF

**Project Manager:** Kevin Zakreski

**Project Committee:** Prof. Joost Blom, QC, Margaret Easton, Russell Getz, Do-Ellen Hansen, Allan Parker, QC, Lisa Peters, Peter Rubin, Tony Wilson

This project examines how the law of contracts treats issues relating to unfairness, as made manifest in the concepts of unconscionability, duress, undue influence, good faith and misrepresentation. Its goal is to consider leading options for reform in this area of law and to propose legislative changes to enact those reforms.

This project is now completed. It was funded by the Law Foundation of BC.

### POTENTIAL TESTAMENTARY UNDUE INFLUENCE: RECOMMENDED PRACTICES FOR WILLS PRACTITIONERS

**Project Manager:** Greg Blue, Q.C.

**Project Committee:** Peter Ramsay, Q.C. (Chair), Penny Bain, Amanda Brown, Kathleen Cunningham, Dr. Martha Donnelly, Sandra Enticknap, R. H. (“Rick”) Evans, Margrett George, Stanley Rule, Laurie Salvador

This project, funded by the Notary Foundation of BC, was aimed at developing recommended practices for legal practitioners to counteract potential testamentary undue influence and insulate wills against challenges on that ground.

The text of the main publication for this project, entitled Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide was approved for publication in October 2011. It is available for download on the BCLI website.

### RATIONALING AND HARMONIZATION OF BC COMMON-LAW TESTS OF CAPACITY PROJECT

**Project Manager:** Kevin Zakreski

**Project Committee:** Andrew MacKay (Chair), R. C. (Tino) Di Bella, Russell Getz, Kimberly Kuntz, Roger Lee, Barbara Lindsay, Catherine Romanko, Laurie Salvador, Jack Styan, Geoffrey White

The project examines the different standards of mental capacity that are currently applied in British Columbia and investigates the feasibility and desirability of eliminating inconsistencies and anomalies in tests of mental capacity.

The project is funded by the Law Foundation of BC and the Notary Foundation of BC. Its expected completion date is October 2013.

### REAL PROPERTY REFORM PROJECT - PHASE 2

**Project Manager:** Greg Blue, Q.C.

**Project Committee:** A. J. (Bertie) McClean, QC (Chair), Christine Elliott, Prof. Robert G. Howell, Ken Jacques, Susan Mercer, Peter Mueller, Prof. Tony Sheppard, Ian Cassie, Ross Langford, Paul Scambler, QC, Calvin Ross, Lisa Vogt

This project examined the following areas of real property law:

- 1) the effect of section 29 of the Land Title Act and notice of an unregistered interest;
- 2) section 35 of the Property Law Act and judicial extinguishment of incorporeal interests;
- 3) severance of joint tenancy and other issues of co-ownership, including the four unities rule, and the Partition of Property Act;

- 4) restrictive covenants; and
- 5) the doctrine of implied grant.

The project was funded by the Law Foundation of BC, the Notary Foundation of BC and the Real Estate Foundation of BC. The project's final reports were approved in early 2012.

### STRATA PROJECT LAW PROJECT - PHASE I

**Project Manager:** Kevin Zakreski

This one-year legal-research and analysis project looks broadly at developments in strata-property law. Its goal is to consider the challenges facing this area of the law and to narrow them down to a group of leading issues for reform, which would then be used to form the basis for a (separate) phase two law-reform project.

This project is funded by the Notary Foundation of BC.

### ULCC UNIFORM TRUSTEE ACT

**Project Manager:** Greg Blue, Q.C.

BCLI is represented in the Working Group and the smaller Drafting Group appointed by the Uniform Law Conference of Canada to develop a report on a Uniform Trustee Act for presentation to the ULCC. The project stems from the 2004 BCLI report A Modern Trustee Act for British Columbia.

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

## CCEL

### ASSISTED LIVING, B.C. PROJECT

**Project Manager:** Jim Emmerton

**Project Committee:** Jim Emmerton (Chair), Joan Braun, Sandra Golightly, Fiona Hunter, Carly Hyman, Al Jina, Mike Krabbendam, Martha Jane Lewis, Linda Angus, Jane Purdie, QC, Marlene Williams

This project is intended to address issues relating to assisted living in British Columbia, specifically in the areas of housing and tenancy, consumer and residential rights, employment and labour, dispute resolution and health and safety.

This project is funded by the Law Foundation of BC and the Notary Foundation of BC. Its expected completion date is Fall 2012.

### COUNTERPOINT PROJECT

**Project Manager:** Krista James

Based on existing jurisprudence on elder abuse and neglect, this project involves the creation of a discussion paper, educational materials and other resources designed to enhance the capacity of health care and social service professionals to prevent and respond promptly and appropriately to incidents of elder abuse and neglect.

The project is complete, its resultant materials now available on the BCLI website. It was funded by the Public Health Agency of Canada (PHAC).



## ELDER AND GUARDIANSHIP MEDIATION PROJECT

**Project Managers:** Krista James & Emma Butt

This project involved research and production of a number of materials in support of elder and guardianship mediation in BC. The report was intended to lay a foundation for the development of best practices in this area.

Research for the project included comparative literature reviews of the United States, Canada and Australia.

The project is now complete. It was funded by the Law Foundation of BC.

## PRE-PREVALENCE STUDY REGARDING ELDER ABUSE AND NEGLECT IN CANADA

**Project Manager:** Krista James

CCEL is supporting the National Initiative for Care of the Elderly's (NICE Network) pre-prevalence project on elder abuse and neglect in Canada. This project contains a number of sub-projects, including:

- 1) clearly defining elder abuse and neglect;
- 2) developing instruments for measuring elder abuse and neglect;
- 3) validation of measurement instruments;
- 4) ethical considerations; and
- 5) consensus development, pathway for knowledge transfer.

The project is funded by Human Resources and Skills Development Canada (HRSDC) and its expected completion date is in 2012.

## AGE-FRIENDLY BUSINESS – ELDER FINANCIAL ABUSE TRAINING WEBINAR FOR FINANCIAL SECTOR STAFF

**Project Manager:** Krista James

This project involved producing a national Age-Friendly Business (AFB) has engaged the CCEL to develop content for a webinar on elder financial abuse awareness for financial sector staff, with the particular target audience of customer-facing staff with banks and credit unions. The contract is to develop the core content for a workshop with national relevance, with the understanding that a few sections of the workshop will vary from jurisdiction to jurisdiction.

# BRITISH COLUMBIA LAW INSTITUTE & CANADIAN CENTRE FOR ELDER LAW



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## APPRECIATION

The British Columbia Law Institute and Canadian Centre for Elder Law acknowledges and thanks our many supporters, partners and collaborators who make our efforts so successful.

The volunteer Board and project committee members  
The Law Foundation of BC,  
The Ministry of Attorney General of BC  
Notary Foundation of BC  
Real Estate Foundation of BC  
Human Resources and Skills Development Canada (HRSDC)  
Public Health Agency of Canada (PHAC)  
Ministry of Labour of BC  
CLE BC  
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UBC Faculty of Law  
UVic Faculty of Law

Ministry of Finance of BC  
BC Centre for Elder Advocacy and Support (BC CEAS)  
Advocacy Center for the Elderly (ACE)  
Alberta Law Reform Institute (ALRI)  
Law Commission of Ontario (LCO)  
Law Foundation of Ontario  
Social Enterprise and Innovations Development (SEDI)  
NICE Network  
BC Collaborative  
Public Guardian & Trustee of BC  
Law Society of BC  
Canadian Bar Association, BC Branch (CBABC)