



**British Columbia Law Institute
and
Canadian Centre for Elder Law**



annual report 2007

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.

How to Find Us

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RENEWAL AND DEVELOPMENT



2007 has been an exciting year of renewal and development for BCLI and the Canadian Centre for Elder Law (“CCEL”), formerly the Canadian Centre for Elder Law Studies. With a new Strategic Plan, significant renewal on our Board of Directors, a new Executive Director and Staff Lawyer, expanded funding, and identification of many new opportunities, BCLI is optimistically building a bright future.

Our new integrated logo, on display on this cover, represents the diversity of our expanding organization and our ongoing commitment to work as a united team - both internally and in concert with our critical friends. The feather quill is the new symbol of the BCLI, and the simplified elder flower, which you may recognize in a slightly different form

from Elder Law Conference material, has become the new icon of the CCEL.

This revitalization embodied by our new visual identity is also reflected in the recent renaming of the Canadian Centre for Elder Law Studies - the Canadian Centre for Elder Law (“CCEL”) - responding to a need for a simpler, easier-to-remember name.

We know that we achieve much greater success when working as a collaborative team, both internally and with external people and organizations. Internally, we have organized ourselves into two divisions, the BC Law Reform Group (BCLRG) and the CCEL, and members of each division assist the other division on projects and activities as needed.

Also consistent with our team approach, this combined Annual Report replaces two separate BCLI and CCEL Annual Reports and communicates our status, strategy and plans in one friendly, easy-to-read Annual Report. Our first interim report, the Summer Snapshot, was issued in July 2007 and is planned to be a regular reporting feature.

Early in 2008 we began to update our websites, www.bcli.org and www.ccel.org, which are being designed to be inviting, easy to use, and support our public outreach focus.

We are a small not-for-profit charitable organization focused on the best in law reform, the legal aspects of elder law issues, and the best in outreach relating to those issues. However, with good organization, dedication, professionalism and the extensive critical support of many external contributor-friends we are successfully moving forward many projects and activities. Currently BCLI and CCEL maintain more ongoing projects than ever before, including projects with national and international scope. Our continuing successes support our vision for a society with just and efficient laws, broad understanding of our legal system, and excellent education and effective community outreach systems.

REPORT OF THE CHAIR

Ron Skolrood

This is an exciting time for law reform in British Columbia and beyond. BCLI has completed ten years of successful law reform activities and outreach. During this time BCLI has progressed from a start-up society into one of the preeminent law reform agencies in Canada, with a strong division, the Canadian Centre for Elder Law, making a substantial impact on national and international issues in elder law.

I am confident that we are in a strong position for the future. Our team of five staff lawyers and ongoing legal research assistants are bringing great experience, dedication and energy to our activities. We have a number of projects underway, including the Society Act Project and the Family Caregiving Project which are well-planned, well supported with external Committees and well funded. Our Program Committee is actively considering a number of new projects for the future.



In August 2007, the Board approved our first Strategic Plan. An integral part of the Strategic Plan is the recognition of the maturing nature of BCLI and the evolving role of the Board of Directors. Where formerly our Board played an active and direct role in law reform projects, the Board is now evolving toward a role which is more focused on governance while continuing to overview and approve our principal product, law reform reports and related documents and activities. At the September 2007 Board and Annual General meetings, we established several Committees which will facilitate improvements to our governance processes.

During the year, there has been substantial renewal in membership on the Board.

- We express our thanks and gratitude for the great work which has been done for BCLI by members who resigned or retired including Craig Goebel, James MacIntyre, Keith Farquhar, Robert Grant, and Tom Anderson.
- Ann McLean resigned from the Chair in December 2007, but remains as Past Chair and a member of the Executive Committee. Her term expires in March 2008.
- New appointments during the year are Kathleen Cunningham, Kevin Woodall, Prof. Margaret Hall and Prof. Joost Blom, QC.

Our renewed Board has an increased number of women, and increased expertise in both elder law and finance issues. The combination of experienced directors and new appointments brings increased wisdom, experience and creativity to our Board.

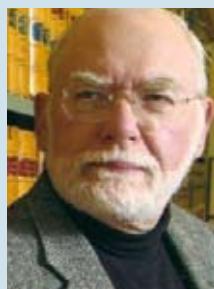
The Board is pleased and grateful that BCLI is well supported by several key financial stakeholders. During 2007 the Law Foundation of BC doubled its operating support and

has provided additional key funding for infrastructure improvements and several law reform and public education initiatives. The Ministry of the Attorney General has continued to provide core operational funding support and funding for several law reform projects. The Notary Foundation, the Real Estate Foundation and the British Columbia Real Estate Association have all provided law reform project funding and many law firms have contributed either directly or through support of the successful Canadian Conference on Elder Law or participation in BCLI committees. On behalf of the Board, thank you all for your generous and continuing support of the important work of law reform, in elder law issues and in public outreach.

And finally, having recently accepted this appointment when Ann McLean retired as Chair, I would like to close by thanking her for ten years of conscientious leadership and dedication, both of which are reflected in our current strength. I look forward to working with the BCLI team to support the further growth of this exciting organization in 2008.



Prof. Joost Blom, Q.C.



Arthur L. Close, Q.C.



Kathleen Cunningham



Lorne Dunn



Prof. Margaret Hall



Ann McLean



David Pihl, Q.C.



D. Peter Ramsay, Q.C.



Gregory Steele, Q.C.

BOARD OF DIRECTORS

Not pictured: Prof. Freya Kodar, Kim Thorau, Kevin Woodall



REPORT OF THE EXECUTIVE DIRECTOR

W. James Emmerton

I am delighted to take this opportunity to share my first annual Executive Director Report. 2007 has been a strong year for BCLI and I am pleased to report excellent results in relation to numerous projects and activities.

During 2007, the BCLI team initiated diverse projects and completed significant publications, such as the Report on the Parental Support Obligation in Section 90 of the Family Relations Act. We have conducted our most successful Canadian Conference on Elder Law and completed several law reform projects. In our internal operations, we have completed a Strategic Plan and with the support of the Law Foundation improved our infrastructure by obtaining new computer hardware and software, reorganizing our office for greater efficiency, and begun updating our websites. All of this gives us great confidence for the future of BCLI.



BCLI maintains a superb group of five staff lawyers, part-time research assistants, research lawyers and administrative support staff who possess great knowledge, experience and enthusiasm for law reform and the outreach work of BCLI and CCEL. BCLI is fortunate to have an experienced and dedicated 14 member Board bringing a wealth of diversity, expertise and experience to both our governance and law reform activities. In addition, many of our Projects are led by volunteer Committees comprised of experts in the specific areas of the law being studied. From a financial perspective, we are fortunate and most grateful to have strong operational and project-directed support from the Law Foundation, the Ministry of the Attorney General, the Notary Foundation, the Real Estate Foundation, the Real Estate Association and numerous other private contributors. As a not-for-profit society aiming to do the best work in law reform and be best in outreach relating to law reform, the great support of these groups is critical to our ongoing success.

By mid-August, 2007, we completed and obtained Board approval for our first Strategic Plan. Based on extensive consultations with Board members and key external stakeholders, our strategic Vision, Mission and Values provide a clear roadmap to establish obtainable goals and realize our strategic mission to be a leader in law reform by carrying out:

- the best in scholarly law reform research and writing; and
- the best in outreach relating to law reform.

We have already realized a number of successes targeted in our Operating Plan, including greater community outreach and collaboration, excellent progress on law reform projects and improved financial results. A direct result of these successes is a surge in optimism in the future of BCLI which will propel us forward to greater success.

As a significant strategic goal we are expanding our outreach activities in a number of areas.

- With the Law Foundation of BC as a key supporter, we are participating in the development of a Public Legal Education and Information Portal Initiative by which we will make much of our stored Reports, research and other information easily searchable on a publicly accessible information Portal;
- We have expanded key university relationships with UBC Faculty of Law, UVic Faculty of Law, Simon Fraser U. and through CCEL, with several American universities. Expanded relationships include collaborating with Advanced Research Courses, working together on job placements, and engaging students in the production of the first issue of the *Canadian Journal of Elder Law*, which will be published in 2008.
- We have spoken to external groups such as the Canadian Bar Association, the Law Society and private law firms;
- We have given radio interviews and provided commentaries for the news media; and
- We are assisting other groups with projects consistent with our strategic goals such as supporting the establishment with BC CEAS, of an Elder Law Clinic in Vancouver.

A number of BCLI's recent research projects and collaborations now extend our work beyond the boundaries of this province. This year we produced a report on the law of adult abuse and neglect for the government of Newfoundland, participated in the Uniform Law Conference of Canada initiative to draft model legislation on unincorporated associations, collaborated with the four Western provinces to author the Report on Enduring Powers of Attorney, which proposes a standardized legal approach to be adopted by all Canadian jurisdictions, and worked with the Federation of Law Reform Agencies of Canada on projects of mutual interest. CCEL National Director Laura Watts spoke at conferences in Beijing and the Netherlands this year, and in early 2008 she will address the Senate in Ottawa and the (US) National Association of Elder Law Attorneys in Hawaii. The Canadian Conference of Elder Law presenters included scholars from Australia, Israel, Nigeria, Scotland and the United States.

We are committed to continuing to grow and develop our outreach activities and competencies as it is evident that we can always achieve greater results by working together.

I am pleased and gratified with the great progress we have made during 2007, building on the sound foundation established by Arthur Close, Q.C. who led BCLI through its first formative ten years. We most welcome the participation of everyone interested in supporting and assisting the important work of law reform and public education and outreach relating to law reform.

A special thanks to our dedicated staff who demonstrate, every day, strong dedication and expertise in everything we do.

CANADIAN CENTRE FOR ELDER LAW

Laura Watts

The Canadian Centre for Elder Law (“CCEL”), formally the Canadian Centre for Elder Law Studies, has had an excellent year, marked by both our most successful and international conference to date, as well as a number of exciting law reform and legal outreach initiatives that have allowed us to develop and enhance many of our community partnerships.

The third annual Canadian Conference on Elder Law entitled, “Moving Forward, Moving Beyond”, saw 255 participants, including attendees from Australia, New Zealand, Scotland, Nigeria, Israel, and all over the United States and Canada. It featured a Keynote Address by the Right Honourable Chief Justice of Canada Beverley McLachlin, a dinner with Globe and Mail writer Michael Valpy, and a Plenary Address by the Honourable Federal Minister of Justice and Attorney General Robert Nicholson. Other highlights of the conference were the fascinating distinguished lecture on elder law delivered by Professor Rebecca Morgan of Stetson University, Florida, which reviewed notable US jurisprudence on the politics of dying, and a special plenary discussion on advance care planning lead by Judith Wahl, Executive Director of the Advocacy Centre for the Elderly and President of the National Canadian Bar Association Elder Law Section. The Closing Plenary jointly led by BC Public Guardian and Trustee Jay Chalke, QC, and the New South Wales, Australia Public Trustee Peter Whitehead reflected the truly international nature of this conference.



We were deeply honoured to be able to offer such high caliber speakers to the community of professionals engaged in elder law issues. Many thanks to our sponsors, Westminster Savings Credit Union, the Law Foundation of BC, Simon Fraser University, the Public Guardian and Trustee of British Columbia, Hull and Hull, LLP, Vancouver Coastal Health Re:Act, the BC Notaries, Enfield Watts Lawyers, the UBC Faculty of Law and Fasken Martineau. The theme of next year's conference is guardianship. Watch the CCEL website for the call for papers.

CCEL has many exciting projects on the horizon. One of our local community partners, the BC Coalition to Eliminate Abuse and Neglect of Seniors (“BCCEAS”), has received funding to open an elder legal clinic that will provide free civil law and other legal assistance to older adults in BC. CCEL has been assisting BCCEAS with its needs assessment and will continue to assist BCCEAS with the set-up of the clinic throughout 2008. We have also been participating in the coalition of professionals working with the office of the Public Guardian and Trustee of BC to make recommendations for regulations to accompany the new guardianship legislation. For another partner, the Adult Abuse and Neglect Collaborative, we have been conducting an inter-jurisdictional review of the law and policy governing

mental capability, with the ultimate goal of supporting the Collaborative to create tools for standardizing and ameliorating practice in this area. The Family Caregiving Project, funded by the Law Foundation of BC, will afford us the opportunity to review and assess the broad spectrum of laws governing leave, accommodation and other entitlements available to individuals providing care to family members, and like all of the projects discussed above, will allow us to work with a diverse group of professionals with expertise in law, healthcare and social work. Though our outcomes are focused on law reform and legal outreach, we collaborate and consult with experts outside of the legal community in order to effect a truly thorough investigation of the issues affecting older adults. We will continue this practice in 2008.

Finally, we are pleased to announce that this year will mark the publication of the inaugural issue of the *Canadian Journal of Elder Law*. Feel free to contact us now to order a subscription or ensure timely receipt of this first issue, which will feature articles on family care agreements, electoral rights and capacity, advance care planning, predatory lending practices and many other current issues in the practice of elder law.

This year the papers submitted for the Gregory K. Steele, QC Student Prize in Elder Law were so strong that we were compelled to award the top prize to two students, Caily DiPuma of UBC, and Angela Bespflug of UVIC. Both of these papers will be re-printed in a future issue of the *Canadian Journal of Elder Law*. The work of first and second winners of this annual prize will appear in the 2008 issue.

CCEL will continue its law reform and public outreach activities in support of older adults and welcomes your comments and support in these important activities. We expect 2008 to be another year of growth, learning and expansion of our extensive network of friends working on issues affecting older adults.

ELDER LAW CLINIC

The Law Foundation of BC has provided the BC Coalition to Eliminate Abuse of Seniors (“BCCEAS”) with funding to open a legal clinic to serve BC seniors. The objective of the clinic will be to provide access to justice for older adults in BC who cannot otherwise obtain legal services, and the clinic will have lawyers on staff, making it possible to provide legal representation in civil matters. The clinic will be the second legal clinic to open in Canada with a mandate to specifically serve older adults – the only existing seniors’ legal clinic being Toronto’s Advocacy Centre for the Elderly – and the first such clinic in Western Canada.

BCLI has been involved in the creation of this clinic from the outset, contributing to initial planning and fundraising activities, and more recently working with BCCEAS to direct a Needs Assessment with respect to the scope of services, eligibility and other matters in relation to the establishment of this Older Adult Law Clinic. Laura Watts, Canadian Centre for Elder Law National Director, will be on a part-time secondment in 2008 to support the ongoing development of the Clinic, scheduled to open its doors in Vancouver on July 1, 2008.

PROJECT REPORTS

Greg Blue

Defective Contracts Relief Project

At common law, a contract is unenforceable if its formation, terms, or performance would somehow contravene a statute, common law rule, or rule of public policy. Such legally defective contracts are classified as “illegal,” even though most are entered into in good faith without any criminal or unethical intent.

The basic rule preventing enforceability of illegal contracts can have very harsh and unjust consequences. As illegal contracts give rise to neither rights nor liabilities, the court has no power to rescind them or award damages for their breach. Where property has been transferred or money paid under a contract that proves to be legally defective, one party may be deprived of property or suffer other losses without any means of redress, while the other receives an unjustified windfall. The chips simply fall where they may.

The former Law Reform Commission of B.C. recommended changes to alleviate the harshness of the common law rule of absolute unenforceability in its 1983 Report on Illegal Transactions. Shortly after its formation, BCLI issued a proposal for a Contract Law Reform Act that would have implemented those changes together with others in several areas of contract law. Subsequently, the Uniform Law Conference of Canada promulgated a Uniform Illegal Contracts Act based largely on the work of the Law Reform Commission of B.C. and BCLI in this area, but which also reflected some later thinking and case law developments. In 2007 BCLI began a project to examine the issues associated with implementation of the Uniform Illegal Contracts Act in B.C. and make recommendations on them. The project is supported by funding from the Ministry of Attorney General. It will conclude with the issuance of a report in 2008.

Privacy Act Project

British Columbia led the Commonwealth when it enacted the Privacy Act in 1968. The Act makes it an actionable tort to violate an individual’s privacy. The Act was intended to correct a deficiency in the common law, which did not recognize a right to privacy. In the decades intervening since the Act was passed, however, privacy has emerged as an issue of huge importance. The 1968 Act does not adequately address the possibilities for invasion of privacy that all citizens now face, nor does it reflect many of the features of later privacy legislation passed elsewhere in Canada, such as provision for injunctive relief. The Act has also been interpreted very narrowly, resulting in it being a relatively ineffectual instrument for protecting privacy interests.

With the support of the Ministry of Attorney General, BCLI launched a project on the provincial Privacy Act in 2006. BCLI issued a Consultation Paper in mid-2007 that proposed amendments designed to bring the Privacy Act into line with current circumstances and incorporate some features of more detailed recent privacy legislation enacted by several other provinces. The Consultation Paper also addressed stalking as a distinct form of privacy violation. It proposed the introduction of a new

statutory tort of stalking that would provide a civil remedy to complement other remedies available to stalking victims. BCLI will issue a final report on the Privacy Act in early 2008.

Probate Rules Reform Project

The Probate Rules Reform Project is a logical sequel to the Succession Law Reform Project completed in 2006. Due to the timeline of the latter project, which concentrated on reform of legislation and common law, it was not feasible to include in it a detailed review of Rules 61 and 62 of the B.C. Supreme Court Rules (known as the “Probate Rules”). The Probate Rules contain detailed elements of procedure regarding the proof of wills in common and solemn form, granting and revocation of probate and administration, and resealing of foreign grants. A revision of the Probate Rules is required, however, before the process of reform of succession law can be considered complete.

In 2007 BCLI began work on the Probate Rules Reform Project, with support from the Ministry of Attorney General. The goals of the project are to streamline probate procedures, harmonize the Probate Rules with the proposed succession reform legislation, and ensure that the reformed Probate Rules are compatible with the general reform of civil procedure stemming from the report of the B.C. Civil Justice Review Task Force, which is in the process of implementation. Mr. Justice M. Macaulay, the Chair of the Supreme Court Rules Revision Committee, has welcomed the BCLI project on the Probate Rules, as other priorities prevent the Rules Revision Committee from undertaking a detailed review of those particular rules at this point in time.

The BCLI project is being carried out with the assistance of a Project Committee chaired by D. Peter Ramsay, Q.C., a director of BCLI and a practitioner and teacher of succession law. The appointment of Master Douglas Baker, a member of the Rules Revision Committee, to the Probate Rules Project Committee has established the basis for an ongoing liaison between the two bodies.

The members of the Probate Rules Project Committee are:

COMMITTEE MEMBER	AFFILIATION
Dr. Peter Ramsay, Q.C. - chair	University of British Columbia
Jim Andrews	Supreme Court of British Columbia, Probate / Bankruptcy Registry
Master Douglas Baker	Supreme Court of British Columbia
Jane Dardi	Legacy Tax + Trust Lawyers
R. C. (Tino) DiBella	Jawl & Bundon
Roger Lee	Davis & Co.
Andrew MacKay	Alexander Holburn Beaudin & Laing
Hugh McLellan	McLellan Herbert
Margaret Sasges	Clay & Co
Scott Wheeler	South Island District, Court Services Branch

PROJECT REPORTS

Greg Blue

BCLI will likely issue a consultative document based on the work of the Project Committee during 2008. The Probate Rules Reform Project is scheduled for completion in early 2009, with the objective being the development of a new set of draft revised probate rules for recommendation to the Supreme Court Rules Revision Committee and the Attorney General.

Real Property Reform Project – Phase 1

As B.C. moves closer towards a fully electronic system of land registration and conveyancing, it is appropriate to review and modernize the substantive legal principles on which that system depends. BCLI proposes to embark on a major project on reform of the law of real property, focusing on areas not already being addressed by the work of other bodies.

Phase 1 of the Real Property Reform Project is the planning and definition phase, devoted to assessing the feasibility and scope of a large law reform project in this area, and setting appropriate priorities for subject-matter and resources. Phase 1 was funded by the Law Foundation of British Columbia, the Notary Foundation, the Real Estate Foundation, and the British Columbia Real Estate Association.

Phase 1 commenced in June 2007. An Advisory Committee was formed to assist in determining the extent of need for reform and in identifying priorities. The Advisory Committee consisted of legal practitioners and representatives of organizations having a significant stake in the state of real property law in B.C. Its members were:

COMMITTEE MEMBER	AFFILIATION
Ralston Alexander, Q.C.	Cook Roberts
Janet Cunningham ¹	British Columbia Real Estate Association
Craig Johnston	Land Title and Survey Authority
Robert Laing	British Columbia Real Estate Association
Dr. A.J. McClean, Q.C.	Fasken Martineau Dean Emeritus, UBC Faculty of Law
Peter Mueller	Association of British Columbia Land Surveyors
Ken Sherk	Society of Notaries Public of British Columbia
Prof. Tony Sheppard	UBC Faculty of Law
Peter Tolensky	Clark, Wilson Chair, Vancouver Real Estate Section Canadian Bar Association (B.C. Branch)

1. Ms. Cunningham represented the B.C. Real Estate Association at the first meeting of the Advisory Committee in place of Mr. Laing, who took part in the subsequent meetings.

Phase 1 was completed in December 2007 with the approval by the BCLI Board of a report containing the outlines of a potential project (Phase 2) that initially would encompass:

- (a) the effect of section 29 of the *Land Title Act* and notice of an unregistered interest;
- (b) section 35 of the *Property Law Act* and judicial extinguishment of incorporeal interests;
- (c) severance of joint tenancy and other issues of co-ownership, including the four unities rule, and the *Partition of Property Act*;
- (d) restrictive covenants;
- (e) the doctrine of implied grant.

Further matters connected with the operation of the *Land Title Act* may be added to Phase 2, depending on the outcome of legislative advisory work being carried out by other bodies of which BCLI has become aware in the course of Phase 1.

The report suggested mid-2008 for the commencement of Phase 2, depending on the availability of funding.

In early 2008 BCLI will meet with the four funding bodies to discuss the Phase 1 report. Decisions regarding the implementation of the project plan for Phase 2 will be made in concert with those bodies. If Phase 2 proceeds, it is anticipated to take at least two and possibly three years to complete.



L-R: Peter Mueller, Robert Laing, Peter Tolensky, Ralston Alexander, Greg Blue, Jim Emmerton.

PROJECT REPORTS

Krista James

Family Caregiving

There is a pressing need to clarify and evaluate the laws surrounding leave, work place accommodation, and related rights and benefits available to those who deliver care to family members. To date, little cogent research has been assembled on this dynamic area of law, despite the increasing prevalence of family caregiving in BC.

Certainly, the delivery of care through family members is not a new phenomenon. However, certain cultural shifts - the full participation of women in the paid labour force, the rising percentage of Canada's population beyond retirement, increasing life expectancy, and the integration of cultures with different values regarding institutional care - have impacted the family care landscape in a manner not recognized by the law. Although BCLI has yet to investigate this issue thoroughly, our brief survey of literature suggests that an estimated 80% of elder care in BC comes from informal care providers, predominantly relatives (Premier's Council on Aging, 2006), and that women continue to provide the majority of unpaid care (Statistics Canada, 2003).

The Law Foundation of BC has provided BCLI with funding for a 2 year legal research project on family caregiving law in BC. The research will include an inter-jurisdictional analysis of family care leave provisions including human rights law, labour law, employment law, constitutional law, taxation law and pensions and benefits entitlements. The focus of this project will be the care of elderly parents, grandparents and disabled adult children, capturing the care needs of adults living with mental health issues, physical and developmental disabilities, addictions and long term illnesses.

A diverse advisory committee of professionals working in Human Rights, employment law and family care will guide our work and community consultation with stakeholders working with family care issues will occur throughout the project. The committee, depicted below, had its first meeting in December. The focus of early 2008 will be on reviewing the law with the aim of sharing our findings and preliminary recommendations with professionals and community stakeholders starting in June. The Family Caregiving Project will culminate in the publication of a joint BCLI and CCEL study paper containing directions for law reform in August 2009 and the dissemination of educational materials before the end of that year.

The Vanguard Project

Last year, on behalf of the BC Adult Abuse and Neglect Prevention Collaborative, the BC Coalition to Eliminate Abuse of Seniors retained BCLI to provide research services in relation to identifying and critiquing legislation governing capability and extracting best practices from existing policy and protocols currently guiding capacity assessment. This work requires a broad inter-jurisdictional and cross-disciplinary review of the law and policy of capability. As part of our work we are assisting the Collaborative to develop an interdisciplinary provincial protocol that will serve as a resource

for health care professionals, criminal justice personnel, lawyers, judges, doctors and other practitioners who come into contact with vulnerable adults in their work, as well as drafting comparative legal summaries and making recommendations for law reform and increased access to justice. The ultimate goal is to clarify the law and harmonize practice in this area. This project has provided BCLI with a unique opportunity to work with leading practitioners in health care, community support and social work.

To date BCLI has completed the bulk of the legal research in this area, subject to updates that will be required to reflect the anticipated proclamation of Bill 29, the *Adult Guardianship and Planning Statutes Amendment Act*. This year our work will be focussed on further examination of policy, procedures and protocols in relation to capability assessment produced in Canada and abroad. The provincial protocol will be complete by October 2008, its contents disseminated at the discretion of the Collaborative.

Canadian Journal of Elder Law

This year BCLI will publish the first issue of the *Canadian Journal of Elder Law*. The journal is a peer-reviewed publication supported by an editorial committee with international membership and edited by the staff of the BCLI. The current members of the editorial committee are:

COMMITTEE MEMBER	AFFILIATION
Chris Belcher	Farrer & Co (UK)
Dr. Israel Doron	University of Haifa, Israel
Sue Field	University of Western Sydney
Dr. Elaine Gallagher	UVIC Centre on Aging
Dr. Robert M. Gordon	School of Criminology (SFU)
Margaret Hall	UBC Faculty of Law
Dr. Kirtsten Kramar	University of Winnipeg
Oliver Lewis	Mental Disability Advocacy Centre Budapest, Hungary
Anita Smith	Australian Guardianship and Administration Committee, Australia
Judith Wahl	Advocacy Centre for the Elderly (TO)

The first issue will feature a number of leading papers presented at past Canadian Elder Law Conferences as well as the 2005 and 2006 winners of the Gregory K. Steele, Q.C. Prize for best graduate or undergraduate law student paper on Elder Law. Contributions include scholars from across Canada, the United States and Australia writing on topics such as guardianship, advance care planning and elder abuse. The first issue should be available for distribution in April 2008. Information on how to access copies will be published on our website in March of this year. Expect to see further issues on the shelves of law libraries in upcoming years.

PROJECT REPORTS

Kevin Zakreski

Society Act Reform Project

The Society Act provides for the incorporation of not-for-profit bodies in British Columbia. The Act also sets out the legal framework for the organization, governance, financial affairs, amalgamation, and termination of societies.

The current version of the Society Act was enacted in 1977 and has seen little substantive amendment since enactment. In this 30-year period, new legislation has been brought in to govern for-profit corporations and the not-for-profit sector has grown in ways and expanded into new areas that were not foreseen in 1977. As a result of these changes, the Society Act is now out of date.

BCLI is engaged in a two-year project intended to develop a modern and comprehensive legal framework for societies in British Columbia. The Society Act Reform Project is made possible by a grant from the Law Foundation of British Columbia. Work on the project is being carried out by a volunteer project committee, which has the following members:

COMMITTEE MEMBER	AFFILIATION
Margaret Mason - chair	Bull, Housser & Tupper LLP
Ken Burnett	Miller Thomson LLP
Colleen Kelly	Volunteer Vancouver
Bob Kucheran	BC Pharmacy Association student-at-law & ex-CEO
Murray Landa	UBC Development Office, Gift and Estate Planning
Mike Mangan	Barrister & Solicitor
Kim Thorau	Perrin, Thorau & Associates

The initial phase of the project was concerned with studying the current *Society Act* and recent changes in the law of not-for-profit corporations, with the goal of producing tentative recommendations for public consultation. This work culminated in a consultation paper, currently in circulation, and on which BCLI continues to accept feedback. The second phase of the project will result in the publication of a final report, including a draft of a new *Society Act*. The target publication date for this report is July 2008.

Commercial Tenancy Act Reform Project

A lease governs the relationship between two parties commonly referred to as a landlord and a tenant. The landlord grants the tenant exclusive possession of a piece of land for a defined period of time (called a term). In exchange, the tenant makes payments to the landlord called rent. Rent is

usually payable on a periodic basis over the life of the term. A lease may apply to an individual's residence (a residential lease) or it may apply to the premises from which a business operates (a commercial lease).

Since most businesses operate from premises they lease, commercial leasing is an important component of British Columbia's economy. However, commercial leasing is also saddled with some of the most out of date legislation in force in this province. The central piece of legislation in this area is the *Commercial Tenancy Act*, which was enacted in 1897 and is, in fact, largely a consolidation of even older British legislation dating from the seventeenth and eighteenth centuries. Little in the Act, including its archaic and often impenetrable language, has changed since 1897.

Generously funded by the Real Estate Foundation of British Columbia and the Notary Foundation of British Columbia, the *Commercial Tenancy Act* Reform Project aims to provide BC with a modern legal framework for commercial leasing. The project has two main phases. First, there is the study of reforms in the area of commercial leasing, which will lead to tentative recommendations that will be presented to the public for comment. Second, a final report will be published, which will include a draft of a new *Commercial Tenancy Act*, in June 2009.

The *Commercial Tenancy Act* Reform Project is being carried out by a volunteer project committee with the following members:

COMMITTEE MEMBER	AFFILIATION
Richard Olson - chair	MaKechnie & Co.
Arthur L. Close, Q.C.	British Columbia Law Institute
Sandy Lloyd	Borden Ladner Gervais
Ann McLean	British Columbia Law Institute
Justice Mary V. Newbury	Court of Appeal for British Columbia
Greg Umbach	Blake, Cassels & Graydon

Public Legal Education and Information Portal Project

The Public Legal Education and Information Portal Project has its origin in a broader PLEI Portal Initiative. This broader PLEI Portal Initiative began more than two years ago when a working group was formed to study the possibility of developing an online companion to a publication of the British Columbia Courthouse Library Society called the *Catalogue of Public Legal Education and Information Resources in British Columbia*. The broader initiative gained urgency this year when it received a grant from the Law Foundation of British Columbia. The goal of the PLEI Portal Project is to provide a gateway to legal information and education resources in British Columbia through a website equipped with a focussed searching tool.

BCLI is preparing for the advent of the PLEI Portal in two distinct but related projects. The goal

of one project is to upgrade our websites to make them friendlier to the general public. The goal of the second project is to muster our existing legal information and education resources, currently found in a variety of formats, and make them available in the most accessible format for users of the PLEI Portal.

These projects have been made possible by a pair of grants from The Law Foundation of British Columbia.

Unincorporated Nonprofit Associations

The unincorporated nonprofit association is the default mode of nonprofit activity. Whenever people band together to carry out one or more nonprofit purposes and take no steps to incorporate or create a charitable trust, they form an unincorporated nonprofit association. This category includes everything from small-scale members' clubs, charities, neighbourhood groups, and athletic teams, up to larger groups, such as trade unions, political parties, religious organizations, and professional sports leagues.

BCLI is currently involved in developing a harmonized legal framework for unincorporated nonprofit associations in North America. This is a collaborative undertaking jointly being carried out by the Uniform Law Conference of Canada, the National Conference of Commissioners on Uniform State Laws, and the Mexican Conference of Commissioners on Uniform State Laws. The ultimate aim is to provide unincorporated nonprofit associations with a modern legal framework, which will harmonize rules found in North America's two legal traditions and three national jurisdictions.

The members of the ULCC Team are:

TEAM MEMBER	AFFILIATION
Arthur L. Close, Q.C. <i>ULCC Team leader</i>	British Columbia Law Institute
Prof. Michelle Cumyn	Faculté de droit, Université Laval
Jake Harms	Manitoba Department of Justice
Prof. Tom Telfer	University of Western Ontario Faculty of Law
Kevin Zakreski <i>reporter to the ULCC Team</i>	British Columbia Law Institute

Funding for this joint project has been provided by the National Conference of Commissioners on Uniform State Laws, the Uniform Law Conference of Canada, and Justice Canada.

SUSTAINED FUNDING INITIATIVE

The Case for Sustained Funding of Law Reform

BCLI believes that ongoing non-government law reform work is an essential element of a healthy democratic society based on the rule of law. While governments carry the ultimate responsibility for enacting new laws and law reforms, there is a clear, necessary role for independent, professional, objective, non-political assessment of the law and needs for improvement.

BCLI regards itself as an ‘inter-dependent’ law reform agency. ‘Inter-dependence’ has two aspects. First, we are very cognizant of the ongoing need to be professional and objective in our law reform work so that readers can always be assured that analyses done and recommendations are made based on objective, critical research without obligation or orientation toward any political agenda. At the same time, we are strong believers in the power of teamwork and collaboration both with government and private organizations. Accordingly we work with both government and critical non-government supports. Our non-government support, notably led by the Law Foundation and supported by an army of volunteers, allows us to perform our law reform projects and public legal education and outreach activities in a professional and objective manner. We estimate that BCLI received over one million dollars of expert volunteer time during 2007, thus providing significant leverage value for all of our financial supporters.

However, the picture is dramatically different in other jurisdictions in Canada. There is no law reform agency operating at the Federal level, in Quebec, Prince Edward Island, Newfoundland, the North West Territories, the Yukon or in Nunavut. The Ontario Commission was restarted in 2007 and law reform agencies in some other provinces exist solely at the pleasure of the government in power. In the past, exclusive reliance on the government in power has resulted in the eradication of several law reform agencies including the loss of the BC Law Reform Commission, as a result of which BCLI was created in 1997.

BCLI desires law reform agencies in all jurisdictions in Canada to work collaboratively toward creating and maintaining a strong nation based on the rule of law. BCLI must also continue to build its own financial strength in order to ensure future survival through inevitable financial challenges.

During 2007 and on a continuing basis, BCLI is working with key friends such as law foundations in Canada, other law reform agencies through the Federation of Law Reform Agencies of Canada (FOLRAC), governments and members of the public to develop means and structures to support non-government professional, objective, ongoing law reform.

We are looking forward to making progress in this area and hope to be able to discuss successes in future reports.

Principal Funders in 2007

- The Law Foundation of British Columbia
- Ministry of the Attorney General
- Notary Foundation
- British Columbia Real Estate Association
- Real Estate Foundation



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