



# British Columbia Law Institute

## A Report on Year Six

### 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: 2002/2003

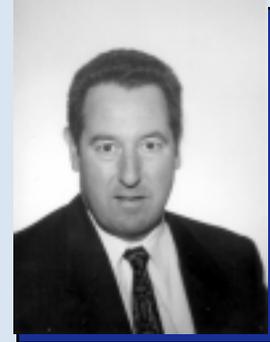
The past year saw the Institute continue its growth and development as a law reform body. This is reflected in a number of developments that took place or are in progress at the time this Report is published. These include

- the financial sustainability of the Law Institute has been greatly advanced through arrangements for additional operational and project funding from the Ministry of Attorney General.
- major new project funding from the Law Foundation of British Columbia and the Notary Foundation.
- the addition of new projects to the Institute's program, including a major project on Succession Law Reform, and substantial progress on existing projects.
- implementation in legislation of Institute recommendations.
- the institution of a public lecture on law reform as a yearly event sponsored by the Institute

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

#### B.C. Law Institute Constitution

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



**Gregory K. Steele, Q.C.**  
Institute Chair

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## BRITISH COLUMBIA LAW INSTITUTE

### Bylaws

- ...
4. (1) The society shall consist of 14 members as follows:
- (a) two persons appointed by the Attorney General;
  - (b) two persons appointed by the executive committee of the Law Society of British Columbia;
  - (c) two persons appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association;
  - (d) one person appointed by the Dean of the Faculty of Law, University of British Columbia;
  - (e) one person appointed by the Dean of the Faculty of Law, University of Victoria;
  - (f) five persons appointed by the persons appointed under clauses (a) to (e);
  - (g) one person appointed by the persons appointed under clauses (a) to (f).
4. (2) The applicants for incorporation of the society are deemed to be persons appointed under Bylaw 4(1)(f).
- (3) Membership in the society is for a term of 5 years or until successors are appointed, and a member may be reappointed.
- ...
25. The directors of the Society shall be the members of the Society from time to time and
- (a) every person who is appointed as a member under Bylaw 4(1) or is deemed to be appointed as a member under Bylaw 4(2) becomes a director at the time the person is appointed, and
  - (b) every person who becomes a director, ceases to be a director at the time the person ceases to be a member

## How to Find Us

British Columbia Law Institute

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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.

The Institute's elected executive members are:

**Gregory Steele, Q.C.** - Chair  
**Ann McLean** - Vice-chair  
**Craig Goebel** - Secretary  
**Prof. James MacIntyre, Q.C.** - Treasurer

**Arthur L. Close, Q.C.** is Executive Director  
**Thomas G. Anderson** is Program Director



## Annual Law Reform Lecture

Early in 2002, in celebration of the fifth anniversary of the creation of the Law Institute it sponsored a public lecture on law reform, followed by a reception. The featured speaker was the Hon. Mr. Justice Kenneth C. Mackenzie of the Court of Appeal for British Columbia who spoke on "Where Does Law Reform Go From Here." The success of this event has prompted us to institute a law reform lecture as what we hope will become, an annual event. The second lecture on law reform will take place sometime in the autumn months of 2003 with details to be announced in due course, and posted on our website.

## Relationship with the Provincial Government

In our previous Annual Report we pointed to the need for funding from the Provincial Government if the Law Institute is to be effective in carrying out its mandate. We expressed a degree of optimism that sustaining funding, providing both operational and project support, would be provided when provincial finances permit.

This optimism proved to be justified. In the spring of 2003 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 particular projects embraced by this funding arrangement include a major project on Succession Law Reform, described later in this Annual Report, and a group of shorter projects.

The Attorney General has previously expressed his "commitment to the continuing reform of private law in the light of changing economic and social needs." This funding

initiative gives tangible expression to that commitment and we express our gratitude for this important new support.

## Foundation Support

Since its creation the Law Institute has been the beneficiary of substantial support from the British Columbia Law Foundation. Foundation support which had previously been directed to the Law Reform Commission of British Columbia was redirected to the Institute and has continued on a sustaining basis. The Law Foundation also has provided funding for specific projects carried out by the Law Institute including its work in relation to Legal Issues Affecting Seniors and most recently the Community Law Reform Project described later.

The Law Foundation has recently been joined by the Notary Foundation as a supporter of the Institute's project work. The latter provided funding assistance that enabled the publication of a brochure in relation to "care agreements" and it has now joined the Law Foundation as a co-funder of the Community Law Reform Project.

The support we receive from both Foundations is vital to us and it is important that this contribution be widely recognized.

## Fundraising

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

## Carrying out the Program

Many of our projects, particularly the shorter ones, are carried out relying largely on the Institute's own internal resources including the work of Board Members, the Executive Director, the Staff Lawyers and Research Assistants. Some of the projects have a "law reform" flavour and normally result in recommendations for changes in the law. Past Reports in this category include our Reports on the Recognition of Spousal and Family Status, the Enforcement of Non-money Judgements from Outside the Province, Proposals for a *Contract Law Reform Act* and The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings.

A second category of internal document focuses mainly on the creation of information resources to improve access to the law or to provide an information-base from which further work can be done. Past projects which fall into this category include the *Builders Lien Act* materials referred to elsewhere in this Report, our Report on Gender-Free Legal Writing and the "Question and Answer" publication on pension division on marriage breakdown.

An alternative approach to program work, which is being used extensively in relation to larger projects, is to use external Project Committees. These Committees usually work quite independently of the Institute's Board, although each Committee normally has two or more Board Members as part of its own membership and the Board passes on Committee work in progress and on completion. Committee members serve voluntarily with the assistance of a paid reporter. Several projects are now being carried forward through such committees.

## Background to the Creation of the Institute

The Institute was created in response to a decision by the Ministry of Attorney General 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 not been lost.

## 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 principle goal is to ensure that the body of work carried out by the Law Reform Commission continues to be accessible to the public. Elsewhere in this Report, we describe the steps the Institute has taken to ensure that the work of the Law Reform Commission is

### Managing the Legacy *continued*

accessible through the Internet. The Institute also has an inventory of printed reports and documents which are available for purchase at a nominal charge. Ordering information may be found at our website.

<http://www.bcli.org>

### The Institute and the Internet

The Institute is dedicated to the use of the Internet as a medium for gathering and disseminating relevant legal information. The Institute maintains a site on the World Wide Web (WWW) at the following address:

<http://www.bcli.org>

There are a number of features at the website.

### Institutional and Project Information

Visitors to our website will find comprehensive information respecting the Institute and its structure, and up-to-date information about the status of its ongoing projects.

### The Law Reform Database

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

### British Columbia Law Reform Commission Publications On-line

The Institute has carried forward the work of the Law Reform Commission in making the publications of that body available through the Internet. During the past year, we completed a project to make all of the final reports of the Law Reform Commission accessible. These reports are now available through the Internet at our website and may be browsed on-line or downloaded in either of the two most popular word processing formats.

## Implementation

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

The most recent session of the legislature saw the enactment of the *Enforcement of Canadian Judgments and Decrees Act* as recommended by the Institute in its Report No.8 on the Enforcement of Non-money Judgments from Outside the Province (1999). A companion piece was the *Court Jurisdiction and Proceeding Transfer Act*. Law Institute personnel played a major role in developing this legislation through the Uniform Law Conference of Canada.

## Active Projects

### A Succession Law Reform Act

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

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

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

Clearly the public and their legal advisors would be better served if all of these disparate enactments were brought together within a single statute. The United States *Uniform Probate Code* provides an excellent example of such a consolidation.

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

statutes but in the cases where, again, troublesome and inconvenient rules abound.

Many of the deficiencies in the statutes and the common law were addressed by the Law Reform Commission of British Columbia in a series of Reports issued between 1981 and 1996. These include Reports on:

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

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

The focus of this project is the creation of a new and modern statute governing succession law - a single new succession

law act that would:

- consolidate the existing enactments into a single statute,
- implement the past recommendations of the Law Reform Commission to the extent that the Committee members regard them as appropriate solutions to current problems, and
- remedy any other defects in the statute law or the case law that require remedial action.

## Civil Enforcement of Judgments

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

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

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

The need for change has been the subject of a number of different studies in the province. The Law Reform Commission of British Columbia issued five different Reports which examined various aspects

The Law Institute is currently developing more detailed terms of reference for the project. These will provide a road map for future work. Once that task is completed we expect to be constituting a Project Committee, supported by Institute personnel, who will carry the work forward.

of law and procedure. While many of its recommendations retain their currency, others call for reconsideration in the light of changes in the law and practice since they were made.

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

These developments inspired the Uniform Law Conference of Canada to add the topic of Civil Enforcement of Judgments to its program. The objectives of this project are to streamline and clarify judgment enforcement procedures and to provide for a searchable registry of monetary judgments. British Columbia has carriage of this project on behalf of the ULCC and the Law Institute is the agent through which this is being done. Institute

### The Institute and the Internet *continued*

#### **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.

#### **Builders Lien Act Materials**

The enactment in 1997 of the *Builders Lien Act* was the culmination of 25 years of work toward the creation of new and modern legislation in this area. The background to the Act included a report issued by the Law Reform Commission in 1972. We were therefore pleased to respond when the Ministry of Employment and Investment invited the Institute to prepare some resource information that would assist users in coming to grips with this new legislation. Pursuant to this arrangement, a printed publication and an Internet website were developed.

At the heart of these materials is a document entitled "Questions and Answers on the New *Builders Lien Act*", which has been published both electronically and in printed format. The printed version, over 150 pages, may be ordered through the Ministry.

The electronic version was heavily coded for easy Internet access and allows the user to move seamlessly between various parts of the publication and the legislation itself. Two years ago, the website was identified by the Provincial Government as a non-core function. The Institute has, therefore, assumed direct responsibility for hosting it at the BCLI website:

<http://www.bcli.org>

## Publication List

Here is a list of publications of the British Columbia Law Institute since its creation. Each can be purchased from the Institute for the price noted along with a charge for postage and handling.

### Reports

1. The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings \$15
2. Gender-Free Legal Writing \$15
3. A Report on Year One (1997-1998) Annual Report \$15
4. Proposals for a *Contract Law Reform Act* \$20
5. Recognition of Spousal and Family Status \$30
6. Trustee Investment Powers \$20
7. Statutory Remuneration of Trustees and Trustees' Accounts \$20
8. 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. Report on Civil Remedies for Sexual Assault \$40
15. A Report on Year Four (2000-2001 Annual Report) \$15
16. Total Return Investing by Trustees \$20
17. Exculpation Clauses in Trust Instruments \$20
18. Private Care Agreements Between Older Adults and Friends or Family Members \$25
19. The Ultimate Limitation Period: Updating the *Limitation Act* \$25
20. A Report on Year Five (1999 - 2000 Annual Report) free
21. Healthcare decisions and End-of-life Issues: Terms of Reference for a Possible Project \$25
22. Builders Liens and Arbitration \$20

personnel are heavily involved in a national working group of the ULCC. This includes the contribution of Lyman Robinson, Q.C. who acts as Project Director of the BCLI initiative and who leads the ULCC working group. The work

being carried out for the ULCC will form the starting point for recommendations for B.C. legislation. The work of the ULCC is now sufficiently well advanced that we expect to be able to start work on a B.C. specific version during the coming year.

## Project on Modernizing the *Trustee Act*

The ultimate goal of this very large project is to ensure that the *Trustee Act* serves the needs of contemporary trusteeship. Many of its features are out of step with present-day business practice and constitute significant obstacles to efficient trust administration. Moreover, the *Trustee Act* has been a catchall over the years for many kinds of provisions that do not necessarily concern trusts and should now be more properly located in other legislation.

The essential goal of this project is to draft a new *Trustee Act* in modern language incorporating what needs to be retained from the current Act as well as provisions reflecting new policy.

In pursuing this goal the Project Committee has focused not only on the development of a new Act but on bringing forward recommendations on discrete issues arising in relation to trust law which, while ultimately intended for inclusion in the new Act, are also capable of being implemented in isolation. The Committee has issued shorter Reports on the following individual topics:

- Trustee Investment Powers (No.6)
- Statutory Remuneration of Trustees and Trustees' Accounts (No.7)
- Statutory Powers of Delegation by Trustees (No.11)
- Total Return Investing by Trustees (No.16)
- Exculpation Clauses in Trust Instruments (No.17)
- Creditor Access to the Assets of a Purpose Trust (No.24)

Report No.24 addressed the distortion in the law created by the decision of the

Ontario Court of Appeal in the liquidation of the religious order, the *Christian Brothers* in Canada, which jeopardized two Vancouver area schools. In addition the Committee distributed a consultation paper with suggestions to increase the effectiveness of the current *Trust and Settlement Variation Act*. The full text of both of these documents may be found at the Institute's website.

The Committee has made substantial progress in relation to its main task, the development of a new *Trustee Act*. The fruits of the Committee's deliberations have recently come together in a tentative preliminary draft, with commentaries, of a new Act. The Committee will be reconstituting itself after the summer break to deal with a handful of outstanding issues and plan its next steps. The Members of the Project Committee are:

Dr. Donovan Waters, Q.C., Bull Houser & Tupper (Chair)  
 Prof. James MacIntyre, Q.C., Faculty of Law, University of British Columbia  
 Margaret Mason, Bull Houser & Tupper  
 Kathleen Cunningham, Royal Bank  
 Prof. Keith Farquhar, Faculty of Law, University of British Columbia  
 Scott Sweatman, PricewaterhouseCoopers Inc.  
 Arthur L. Close, Q.C., British Columbia Law Institute

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

## Legal Issues Affecting Seniors

When the Institute's program of law reform was initially developed, it identified three general categories where its attention would be focused. One of these was "Family Law and the Protection of Vulnerable Persons." A project addressing legal issues that particularly affect elderly persons falls into this category and was added to our program two years ago.

To assist the Institute in carrying out this project, it created the Project Committee on Legal Issues Affecting Seniors. Its members are:

Professor Emeritus Donald MacDougall,  
UBC Faculty of Law (Chair)  
Charmaine Spencer - SFU Gerontology  
Centre  
Marlene Scott, Q.C. - Barrister and  
Solicitor (retired)  
Gregory Steele, Q.C. - Barrister and  
Solicitor, B.C. Law Institute  
Noreen Brox - Barrister and Solicitor,  
McCarthy Tetrault  
Kathy Doerksen - Seniors' Advocate  
Pat MacDonald - Seniors' Advocate  
Gordon Turriff, Q.C. - Barrister and  
Solicitor, B.C. Law Institute  
Carol Ward-Hall - Executive Director, B.C.  
Coalition to Eliminate Abuse of Seniors

The Reporter to the Committee is Institute Staff Lawyer Margaret Hall.

Ultimately, the Committee will consider several "seniors" questions. It began with a consideration of certain kinds of agreements, usually with family members to provide care, and their potential to harm the interests of elderly persons. A "care agreement" involves a senior's transfer of property (usually the family home) to a family member or friend in exchange for a promise of care and support in the home.

The issues and dangers surrounding these arrangements were the subject of analysis

## Powers of Attorney

The Institute has joined with its counterparts in Alberta, Saskatchewan, and Manitoba to commence work on what may

and recommendations in the Institute's 2002 Report on Private Care Agreements Between Older Adults and Friends or Family Members. That Report was supplemented by an information brochure outlining the "what-ifs" that seniors and caregivers should consider before entering into care agreements. 65,000 copies of the brochure were printed and distributed through community sources.

A background paper exploring the legal issues in greater depth was prepared and is available at the Institute's website. The background paper was published in the *Estates, Trusts & Pensions Journal*, (2002) 21 E.T.P.J. 209.

The Institute's work in this area has moved on to a second phase. It examines financial arrangements between older adults and family members, particularly the use of home equity to provide financial assistance the characterization of undocumented intrafamily loans and problems associated with guarantees. The Committee will presently issue a Consultation Paper exploring these issues.

A final initiative concerning legal issues affecting seniors is research in relation to "a legal framework for supportive housing." The law of general application in relation to residential tenancies is not always a comfortable fit with the very special nature of supportive housing. Legal issues surrounding supportive housing have acquired special importance in the light of the provincial government's increased commitment to the concept in delivering services to seniors. Work in this area is being undertaken with financial support from Canada Mortgage and Housing.

be a series of joint projects. The hope is to identify topics that have a "mobility" aspect to them so the residents of the

### Publication List

*continued*

23. Uniform Liens Act	\$25
24. Creditor Access to the Assets of a Purpose Trust	\$20

### Other Publications

1. Consultation Paper on Trustee Investment Powers	\$15
2. Consultation Paper on Trustee Remuneration 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 Private Care Agreements Between Older Adults and Friends or Family Members	\$15
9. Consultation Paper on the Variation and Termination of Trusts	\$15
10. Consultation Paper on Post-Accident Remedial Measures	\$15
11. Consultation Paper on A Legal Framework for Informal Public Appeal Funds	\$15

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

## The Institute and the Uniform Law Conference

The Uniform Law Conference of Canada is an inter-provincial organization created for the purpose of promoting uniformity of legislation among the Canadian territories and provinces. It is now in its 85<sup>th</sup> year of operation and a significant number of British Columbia statutes are based on Uniform Acts promulgated by the Conference.

Two people attached to the Institute participate actively in the work of the Uniform Law Conference. Institute Chair, Gregory Steele, Q.C., is a British Columbia delegate to the Conference, and participates in a number of the ULCC working groups. Over the past year he has served on the Conference Executive as Vice President and will assume the Presidency in August 2003.

The Institute's Executive Director, Arthur L. Close, Q.C., from 1998 to 2000, served as Chair of the Civil Law Section of the Conference. As such, he was responsible for

- coordinating the work of the Section and developing new uniform law projects
- setting the agenda for and chairing the meetings of the civil section in 1999 and 2000.

In August 2001 Arthur was elected President of the Conference and served in that capacity until 2002, assuming responsibility for the overall management and direction of the Conference.

During the past year, as immediate Past President, he has continued to serve on its Executive and also assumed special responsibility for the financial administration of the Conference's Commercial Law Strategy.

In the past year, BCLI members assisted the ULCC by participating in working groups on:

- Uniform *Foreign Judgments Act*
- Uniform legislation on unclaimed intangible property

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

## Project on Shell Companies: Lifting the Corporate Veil

In law, a company has its own legal identity, separate from the company's employees, officers, directors, and shareholders. These individuals are not liable for the debts or obligations of the company. As a general rule this is a good policy, but occasionally it may allow the company to be used as a vehicle for abusive conduct. Some examples are:

A person owns more than one company and deliberately leaves one of them undercapitalized. When debts or other liabilities are incurred by this company, and creditors pursue what is owed to them, then there are no assets to satisfy these debts even though the other related company has sufficient funds.

A residential builder creates a company for each new development and shortly after all the units have been sold, the funds are removed from the company leaving it a mere shell. There may be sound business reasons for structuring the development this way but one result is that if any claims are made against the company based on poor quality work, the buyers may find it difficult or impossible to have their claims satisfied. This was one of the issues identified in the Institute's project on "New Home Warranties" although no conclusions emerged.

Sometimes the law will ignore the separate existence of the company and hold parent companies, shareholders, or officers liable for acts or omissions of the offending corporation. The courts, for example, may impose liability where the company is clearly being used as a

vehicle for fraud. In other instances a statute may impose liability upon an officer or director of a company. For instance, in the *Employment Standards Act* (s.96) a director or officer is directly liable for up to two months wages for each employee if they are not paid by the company. The finding of liability behind the corporate structure is sometimes referred to as "lifting the corporate veil."

The response by the courts and the legislature to abuse of the corporate structure has always been *ad hoc*, driven by the particular circumstances of each problem. There has developed no unified theory to provide guidance on when it is the legal theory on which liability should be imposed.

While this project has its roots in our work on new home warranties, a separate project on lifting the corporate veil was formally added to our program late in 1999. It was our hope to review this area of law with a view to developing and restating a rational set of principles along with recommendations for legislative change if appropriate.

Previous Annual Reports have described the challenges we have faced in coming to grips with this project. While we remain committed to it, we have deferred active work on it in the light of more pressing project priorities. We continue to gather background materials to sharpen our views on the relevant questions against the day when we are in a position to reactivate this project.

## Short Projects

### Introduction

The active projects described earlier in this Report are all 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 fruition. They also permit us to address a wider range of issues. The reality is that there are many valid law reform measures that do not require intense research or lengthy reports.

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

many important problems unaddressed.

The short projects that form part of our current program fall into three groups. The first are projects that reflect work carried out by the Institute out of its own internal resources. This is the way, historically, that our short projects have been brought forward and for convenience we referred to them as “internal projects.” A second a group of projects are those that concern matters of particular interest to the Attorney General and for which funding is being expressly provided by the Ministry. The identity of the projects that will constitute this group was under discussion with the Ministry at the time this Report was settled.

The third, and largest, group of short projects are those that fall within our Community Law Reform Project (hereafter the CLR Project) described in greater detail below.

### Internal Projects

Reports were submitted on two short

internal projects in the past year.

### Builders Liens and Arbitration

This Report, submitted in September 2002 contained recommendations designed to clarify the relationship between the enforcement of rights arising under the *Builders Lien Act* and the arbitration process. The former are normally asserted through ordinary civil litigation while a central focus of arbitration

is to keep disputes out of the courts. The recommendations are designed to enable parties to preserve their rights under the *Builders Lien Act* while at the same time maintaining the integrity of the arbitration process. The Report contained draft legislation.

### Report on the Uniform Liens Act

The law of liens provides a right, arising by operation of law, to retain the property of another to secure payment of a debt or performance of an obligation. The law governing the commercial liens of repairers, storers and common carriers no longer provides appropriate security as it is out of date, inflexible, and inefficient. The Institute’s Report embodies recommendations to revise the law concerning

governing these liens. The principle recommendation is that the *Uniform Liens Act*, prepared by the Uniform Law Conference of Canada, be adopted to govern these liens. This Act provides a modern comprehensive approach to commercial liens and effectively harmonizes this area of law with *Personal Property Security Act* principles.

### The Institute and the Uniform Law Conference

*continued*

- Uniform civil enforcement (judgments) legislation
- Uniform personal property security legislation

### The Institute and Other Law Reform Bodies

A priority continues to be establishing and maintaining links with other law reform bodies. Participation in the world wide “community” of law reform bodies is important. It ensures that the work of the Institute is widely exposed and that the Institute is kept up-to-date with the work of other bodies through arrangements for the exchange of documents. Receiving reports and documents from other law reform bodies enables us to keep the Law Reform Database up-to-date.

We also maintain special links with our Canadian counterparts. This is done through active participation in the Federation of Law Reform Agencies of Canada, an umbrella organization covering groups like the Institute, and by participating in *ad hoc* gatherings of Canadian law reformers.

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

### 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. While some copyright holders derive a significant portion of their revenue from

**Law Reform Document  
Photocopy Serve  
continued**

the sale of their publications, others are less concerned with copying and reprinting so long as appropriate credit is given. The general view seems to be that these materials deserve wide dissemination and that it is in the general interest of the community of law reform bodies, worldwide, to facilitate this.

Bearing this in mind, we have developed a "fair use" policy concerning the extent to which requests for copies will be accommodated:

- Rule 1 The portions of a publication that may be copied is not limited where:
- (a) the publication is out-of-print, or
  - (b) the body that issued the publication has ceased operations.
- Rule 2 For the purposes of Rule 10
- (a) a publication that is more than 3 years old and which was created for consultation purposes, or
  - (b) any other publication that is more than 10 years old is deemed to be out-of-print.
- Rule 3 For publications not covered by rule 1, copying would be limited to:
- (a) a summary of recommendations (including draft legislation), executive summary or the like,
  - (b) a single chapter comprising no more than 20% of the publication,
  - (c) the table of contents of the publication, and
  - (d) pages containing the correct title, publication identifiers and institutional information concerning the publishing body.

**Publications not available**

The British Columbia Law Institute, and its predecessor - the Law Reform Commission of British Columbia - makes every effort to obtain an original printed copy of a publication from other law reform agencies. In some cases, however, an original document could not be supplied, and so the Institute only has a photocopy of key elements of the publication: usually a title page,

## Community Law Reform Project

This project is an envelope for work on a group of tightly focussed topics that address issues that impact most directly on ordinary citizens. Funding for the CLR Project has been provided by the Law Foundation and the Notary Foundation. Included in the Project is an element of "outreach" to attempt to identify community priorities in relation to law reform.

The Law Institute expects to complete work on approximately five different short topics under the envelope of the CLR

Project and make substantial progress on a number of others. These will be drawn from a longer list submitted to the funding bodies.

Work has already commenced on two of these and priorities are being developed in relation to the remaining projects we believe can be completed within the time period covered by the funding arrangement.

## Post-Accident Remedial Measures

A Consultation Paper has been issued on the topic. It addresses a concern that arises out of the law of evidence. After an accident occurs on or with a person's property, that person will frequently take steps to ensure a similar incident will not occur in the future. A question has arisen whether persons may leave a dangerous condition unaltered in order to avoid having post-accident remedial or

precautionary measures used in evidence against them in relation to the incident that has already occurred.

The Consultation Paper explores the desirability of limiting the ways in which such evidence can be used to ensure that people are not deterred from remedying dangerous conditions.

## A Legal Framework for Public Appeal Funds

Appeals to the public for donations are normally carried out by registered charities operating within an organized legal environment. But spontaneous appeals occur frequently as well, especially after a disaster like a fire or flood or the publication of a news item about a family or individual in some sort of distress. These spontaneous appeals are often begun by a single person or a small group and the generous response is often such that the amount collected goes well beyond what is required to meet the original need. The way in which such a surplus can be dealt with can give rise to significant legal issues.

In a Consultation Paper recently issued, the Institute suggests that these difficulties would be minimized through the use of a standard form trust document which would clarify the treatment of a surplus and provide a legal framework which is 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.

## 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, 2003 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

**Ravi R. Hira, Q.C.**

Watson Goepel Maledy, A.G. nominee

**Prof. James MacIntyre, Q.C.**

U.B.C., Law Society 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

**Etel R. Swedahl**

Swedahl McPherson, A.G. nominee

**Trudi Brown, Q.C.**

Brown Henderson, Member at large

**Gordon Turriff, Q.C.**

Stikeman Elliott LLP, Member at large

The membership of the Institute did not change during the past year.

## Our Friends and Supporters

Our work to date would not have been possible but for the generous support of our friends, supporters and volunteers.

The contribution of the Law Foundation has already been mentioned. Apart from financial support, the Foundation has been a welcome source of advice and assistance on a whole range of issues. Our particular thanks go to Warren Wilson, Q.C., a Governor of the Foundation with special responsibilities for liaison with the Institute, and to Wayne Robertson, the Executive Director of the Foundation. Our thanks also go to the Notary Foundation and its Executive Director, Wayne Braid.

We also acknowledge the important contribution of the Faculty of Law at The University of British Columbia for our current accommodation. While the space we occupy is not rent-free, our arrangement with the Faculty of Law has made it very affordable and the accommodations carry with them a number of offsetting savings. We wish particularly to express our appreciation for the assistance that former Dean Joost Blom, Q.C. and Associate Dean Elizabeth Edinger have given us. We hope to enjoy an equally fruitful relationship with the new Dean, Mary Anne Bobinski, and those assisting her.

### Law Reform Document Photocopy Service

*continued*

contents pages and recommendations. For this, and other reasons, the Institute is not able to provide copies of all publications in the Law Reform Database. A list of the categories of such publications may be found at our website.

### Our Rates

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  
\$0.25 / page thereafter

#### Fax Surcharge

\$1.00 / page in Canada  
\$2.00 / page elsewhere

#### Rush Service Surcharge

\$5.00 / item  
(next business day)

#### Other Charges

shipping - postage  
or courier charges

### 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.

### BCLI Support Staff

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

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

### Staff Lawyers

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

Margaret Hall  
Gregory G. Blue  
Kevin Zakreski

### **Staff Lawyers**

*continued*

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

### **Past Staff**

We would like to acknowledge the contribution of two staff members who left us during the past year. They are:

Caroline Carter, Staff Lawyer  
Malise Wong, Administrative Assistant

Both contributed greatly to our work during the time they were with us.

### **Students and Research Assistants**

The Institute has adopted a policy of attempting, as far as possible, to ensure that a student/research assistant, from one of the two provincial Faculties of Law, forms part of our core operation throughout the year. Over the past two years, owing to financial constraints, we were forced to scale back our commitment to the student program and adopt a somewhat different approach.

During the past year we were assisted by students in the capacity of interns and volunteers on a basis involving a limited time commitment. The individuals who assisted us in this way are:

- Ciaran Aiken
- Jordan Laporte
- Lisa Weich

We are grateful to them for the assistance they've given us. Starting in September 2003 we hope to reinstitute a fully fledged law student/research assistant program.

We wish as well to thank the British Columbia Branch of 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:

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

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

### **Partner**

The Advocate

Canadian Bar Association, B.C. Branch

### **Benefactor**

James M. MacIntyre, Q.C.  
Blake, Cassels & Graydon  
Steele Urquhart Payne

Hon. Mr. Justice Grant D. Burnyeat  
Borden Ladner Gervais  
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### **Associate**

Hon. Bryan Williams, Q.C.  
Hon. Martin Taylor, Q.C.  
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Hon. Mr. Justice Randall S.K. Wong

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Arthur Close, Q.C.  
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### **Anonymous Donations**

### **Support in Kind**

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