Briefly!

Published by Law Courts Center and the Canadian Paralegal Institute FEBRUARY 2015

How 30 Minutes Improves A2J at the Provincial Court of BC

Under the Provincial Court Scheduling Project's Assignment Court (AC), parties are guaranteed a hearing date without knowing which judge will hear their case. On the morning of November 18, 2014, Associate Chief Judge Phillips and her colleagues were there to witness the roll out of the Robson Court branch. Room 103 had been designated as the feeder court where cases that are ready to proceed are to be assigned to courtrooms.

There was a steady flow of parties checking in with the court clerk. The court clerk was busy trying to identify and locate the parties for the morning's session, particularly parties to long trials. Minutes before the clock reached 9am, the room was full of people.

Prior to the introduction of AC, courts for years began at 9:30am. It will be interesting to see how well lawyers will adapt to an earlier start time. Counsel who came in early were helpful in providing information as to the type of case, number witnesses, and the like to help determine how much time was going to be needed.

Judge Phillips told me that court administration decided that instead of having a judge preside over court assignment, that they would have a judicial case manager (JCM) instead. The benefits of have a JCM soon became obvious. At 9:03am, JCM Judy Norton began systematically going through the list, to see if parties were ready to proceed.

JCM Norton continued to update the court assignments on her screen, which were instantaneously shown on the many Court Digital Display System screens around the court. These displays have been installed to inform court users of real time courtroom assignments.

Those who were ready to proceed were immediately assigned to a courtroom. Those who were not or were late were given until 9:20am.

JCM Norton knew that all courts had to be ready by 9:30am; the calm demeanour in her face was a reflection of how hard she had worked the week before to get parties ready, according to Judge Phillips.

That morning, JCM Norton obliged crown counsel's request to be allowed to have another case be assigned to the same courtroom. In another, counsel reported that both parties managed to settle at midnight and asked to be taken off the list, freeing up precious judicial time. With a nod, a note and a tap, JCM Norton freed up a spot for an unassigned case that was in the queue. *Talk about efficiency!*

I returned again last January 15, 2015, to see how the CA was working and to see if lawyers were still getting used to the 9am start. That morning, the court clerk was sitting on her first stint, and perhaps sensing the need to help the SRLs in the room, addressed us in between sessions to say: "*Please address the JCM as your Worship; and later the judges as your Ho*nour."

Within minutes of sitting down, the JCM dispatched quickly the cases that were ready. At 9:08 am, JCM left the room to attend to other matters before returning at 9:20 am to assign the rest of the cases on her list. One party showed up late and got bumped off the guaranteed list and was instructed to see the JCM at her office.

Last October 31, 2014, Judge Phillips complimented the Coquitlam civil and family bar for coming in early with their clients and for being truly ready to go. On that January 15 morning, more lawyers than SRLs arrived late at Robson Square.

It is clear that the Provincial Court Scheduling Project's Assignment Court's new 9am start time has vastly improved access to justice in our provincial courts. The use of judicial time, leveraged not only by technology but smart processes like the CA, has allowed the courts to improve in the way it serves the public by providing an accessible, fair, efficient and innovative system of justice.

I look forward to showing my civil litigation class the many Provincial Court of BC innovations on April 16 and 17, 2015. !

Dom Bautista is the executive director of Law Courts Center.

www.lawcourtscenter.com

Feb 10	**Lecture: BC Human Rights Tribunal & SRLs**
Feb 19	**A View from the Bench: On Gender & Cultural Diversity**
March 10	**Lecture: Costs and Public Interest: What are the Access to Justice Considerations?**
March 12	**Seminar: Managing Privilege When Preparing List of Documents**
March 13	**Document Discovery (List of Documents) 101**
March 20	**Modern Litigation Writing 101**
April 9	**Trust Accounting 101 / 102**
April 29	**Managing MVA Files 103**
April 30	**Heads of Damage 101**
May 1	**Clinical Records Studies 101**

Views from the Bench: On Gender and Cultural Diversity

Should the composition of our judiciary mirror our population? How can judges maintain impartiality and the appearance of impartiality when conducting proceedings so as to assure equality under the law, and remain informed about changing attitudes and values specially when the parties appearing before them come from different cultures? Should courts represent our society's commitment to equality as set out in the Charter of Rights and Freedoms? These and many other questions will be addressed by an august panel of Canadian judges on February 19 at 5:30 pm at the Justice Education Society.

Proceeds from this event will fund the Temporary Foreign Worker Uncontested Divorce project of the Amici Curiae Probono Paralegal Programme. CPD hours: Zero.

Equality for Racialized Lawyers: a Challenge for the Profession
Justice Maryka Omatsu of the Ontario Court of Justice
A recent Law Society of Upper Canada report states: "*More than 17% of the lawyers in Ontario are members of racial minorities*." All lawyers agree that the discrimination faced by racialized lawyers affects the reputation of the legal profession, access to justice and the quality of services provided. What can we do about this?

The Imperative of Cultural Awareness
Associate Chief Judge Nancy Philips of the Provincial Court of BC
In order for the justice system to maintain credibility in the diverse society that Canada has become, it is imperative that persons working in it be mindful of cultural differences and backgrounds individuals involved in the system bring with them.

My Journey in Law as a Multicultural Canadian Woman
Justice Neena Sharma of the Supreme Court of BC
Having practiced law for the last 20 years in BC, Justice Sharma, who is of East Indian heritage, will share the positive changes she has seen for women in the profession. After a year on the Bench, she will also talk about the importance of courts being aware of the rich cultural diversity of a modern Canadian society.

RATES: (any materials will be provided electronically and taxes included) GST R128573300

❑ Single Seat Rate (limited to 50 seats):	$ 78.75
❑ Webinar License Per Person:	$ 78.75

REGISTER: www.lawcourtscenter.com

PAYMENTS Please make the cheques payable to Law Courts Center and return to:
Law Courts Center 150 - 840 Howe Street, Vancouver, BC V6Z 2L2.

For more information please email <dom@lawcourtscenter.com>, or call 604-685-2727. v1501

Respectful Language Guidelines: Developing Best Practices

Respect for diversity among legal professionals, firm members, and clients should be reflected in the many ways we communicate. The Law Society of British Columbia provides a Respectful Language Guideline (the "Guideline") which aims to help firm members acknowledge all members of society on an equal basis through all modes of communication - especially language. By exposing areas of contention and presenting examples, techniques, and alternatives in order to avoid using language that might be offensive, this Guideline is to encourage firm members to consider the use of respectful language in our profession. Above all, this Guideline promotes the right, and our respect, of individuals and groups to refer to themselves as they choose.

Here are some best practices.

I. General Principles

1. Personal Characteristics - Relevant?

Avoid including personal characteristics, such as race, sexuality, and disability, unless they are relevant to the communication.

2. Inclusive Language and Person-First Construction

The guideline suggests following the principles of inclusive language and person-first construction. Inclusive language usage deters from stereotypes based on personal characteristics. Person-first construction places people ahead of their personal characteristics. For example, instead of writing "disabled person", use "a person with a disability" where you put the "person" before his or her "disability".

3. Preferred Terms

As mentioned above, the Law Society acknowledges the right of individuals and groups to refer to themselves as they choose. In other words, the principle of "respectful language" must respect the preference of the people being referred to.

4. Gender-Neutral Language

By simply avoiding certain terms, we use language that is gender-neutral which avoids the exclusion or limitation of women. We can achieve this by being mindful of the following:

• False generics: Use nouns and pronouns that are intended to be used for both women and men. Some generics have evolved into meaning male-specific (i.e. "man"), so we should avoid terms which are not gender neutral presently.

• Parallel treatment: Use parallelism to promote overall gender balance. For example, use husband and wife or man and woman instead of man and wife.

• Stereotypes: Use terms that are not demeaning or offensive by avoiding the use of biased or stereotyped terms such as 'lady doctor', 'woman lawyer', and 'male nurse'.

II. Specific Contexts

When communicating to or about specific groups, determining appropriate language and terminology can be complicated and cumbersome. Setting out a universally agreed-upon list of terms that one should avoid is hardly achievable, however, the Guideline aims to identify potential issues or pitfalls.

1. Women

Refer to "4. Gender-Neutral Language".

2. People of Diverse Races, Ethnicities, or Countries of Origin

30% of BC residents are from another country; we must be careful when referring to a person's race, ethnicity, or country of origin. As a general principle, it is best to avoid referring to those characteristics unless it is relevant to the communication. Also, the use of stereotypes and archaic expressions, such as "going Dutch" to mean "splitting the bill", and the assumption of people belonging to a particular group act or think the same way, such as "she's Asian so she probably can't drive" should be avoided as well.

3. People of Aboriginal Descent

The words "Aboriginal," "First Nations," "Indigenous," "Native," and even "Indian" are terms used interchangeably - sometimes by members of the Aboriginal community. However, we should be aware that these terms carry different social and political meanings to different people and may come across offensive. When communicating with specific individuals or groups from the Aboriginal community, it is best to ask what term they prefer.

4. People with Disabilities

Person-first construction should be used, and language that casts disabilities as negative should be avoided. Instead of describing the person as "he suffers from" or "he is a victim of", use the phrase "he is a person who has a significant disability."

5. People who are "LGBT"

Language around LGBT, lesbian, gay, bisexual, or transgender, is delicate as the terminology is still evolving. Generally, the term "homosexual" is often

(continued to page 4)

SCHEDULE FOR MARCH 20, 2015 (9:00 AM TO 5:00 PM)

Law Courts Center

Modern Litigation Writing Workshop

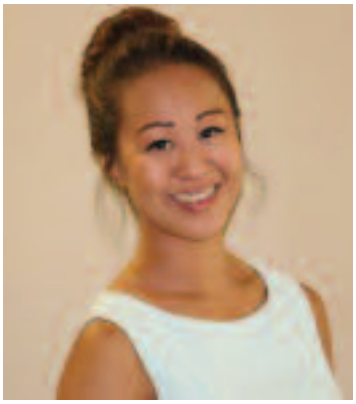
Learn how to write for your clients' benefit effectively, respectfully and ethically.

This workshop has been designed to be practical and interactive – not academic lectures. Participants review many real-life exercises, individually and in small groups.

At the end of the day, they should be able to:

- ❑ Be clear on purpose and effect;
- ❑ Attend to basic correspondence etiquette;
- ❑ Learn to answer the relevant questions ethically;
- ❑ Learn the psychology of delivering good or bad news;
- ❑ Use physical features to aid understanding;
- ❑ Use modern information structure and formats;
- ❑ Organize letters for highest impact; and
- ❑ Conform to the Law Society of BC's Respectful Language Guidelines.

Yvonne Choi says:



"A well-written argument can increase your credibility and persuasiveness. "

COURSE REPORTING

For Law Society of BC reporting of CPD activities, this course is 7 hours long; including 2 hours of professional responsibility and ethics, client care and relations, and/or practice management

LOCATION Law Courts Center CPD Room, 150 - 840 Howe Street, Vancouver, BC V6Z 2L2.

INSTRUCTOR Ms. Yvonne Choi, legal assistant, Harris and Company LLP

QUESTIONS? Please write dom@lawcourtscenter.com or call 604-685-2727.

Registration:

WWW.LAWCOURTSCENTER.COM

Course Fees: (course materials and GST 128573300 included)

❑ Single In-Person Seat	$548.80
❑ Multi-seat or Amici Curiae Rate	$521.36
❑ Please send me a copy of the manual only as I am not able to attend.	TBA

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Judicial Interpretation on Special Costs ... well sort of

I confess to being confused by the Court of Appeal's latest decision in *Gichuru v. Smith*, 2014 BCCA 414. While Gichuru acknowledges that a judge has the discretion to award special costs, it appears that discretion does not extend to a summary assessment of special costs.

Mr. Gichuru's employment was terminated in 2002 but he first sued the defendant in Provincial Court in 2008, and later in Supreme Court in 2009. He also started a human rights proceeding. The trial judge awarded special costs because she found that Mr. Gichuru recklessly alleged that the defendant committed fraud and dishonesty (allegations that are particularly harmful to professions reliant on a good reputation) and maintained these allegations throughout the trial. Mr. Smith was able to present a justifiable argument for special costs.

In *Gichuru*, the Court took a hard stance in that a party seeking special costs must produce evidence of the legal fees incurred and a sufficient description of the services that would indicate the reasonableness of the charge. Evidence is usually provided by way of an invoice between a solicitor and client under the *Legal Profession Act*. While Mr. Smith had drafted a bill of costs, he did not provide proof of his legal fees. Without such evidence, a judge has no authority to assess special costs summarily through inherent jurisdiction. No invoice, no assessment.

Of course, this is completely contrary to what the Court of Appeal decided just one year ago in *Bradshaw v. Stenner*, 2013 BCCA 61 when the Court refused leave to reconsider a trial judge's decision to summarily assess special costs. It noted that the appellant, while in the trial court, had not asked for evidence of the fees charged and went ahead with the proceedings only to turn around and argue in the appeal court that she did need such evidence. Having failed to take the opportunity to ask for evidence at the trial level, the Court of Appeal held that it would not be in the interests of natural justice to allow her another chance to do so at the appeal level.

Previous decisions, at the Supreme Court and Court of Appeal levels, have allowed summary assessments. Summary assessments is thought to be a more economical use of judicial resources than requiring litigants to attend a registrar's hearing for an assessment where the litigation history would have to be set out once again before the Court. A summary assessment is, in effect, a shortcut.

This approach was not supported in *Gichuru*. In fact, the Court in *Gichuru* flatly said, "*cases, such as Bradshaw, that have held that a court can assess special costs absent evidence of actual legal costs were wrongly decided and should not be followed*".

Where does that leave us? How do we reconcile these decisions?

Mr. Smith could still proceed towards an assessment before a registrar. Where I feel that *Gichuru* is galling, however, is at the end of the decision when the Court encourages Mr. Smith to have his costs taxed as a party and party bill because it is a simpler process than the taxation of a bill of special costs. Instead of an assessment, Mr. Smith could elect to have his special costs fixed at $38,000, which was $4,000 more than the amount Mr. Gichuru consented to if the costs were at a party and party level but less than half than the original award of $90,000.

What happened to the Court saying that fixing special costs summarily was a no-no?

It is not that I disagree with the need to have evidence for special costs to be assessed. A basic principle of natural justice is that a party has an opportunity to present his case and this principle should not be breached merely because it is inconvenient to the Court or parties.

I wonder, however, if natural justice would tip more in Mr. Smith's favour if we considered: that he has had to defend himself against Mr. Gichuru in multiple proceedings; that he may never see a dime from Mr. Gichuru based on the finding by the trial judge that Mr. Gichuru had no money (at the time of trial) to pay costs, whatever the amount; that Mr. Smith now faces the option of preparing and attending court yet again to defend his award of special costs; and finally, that a registrar's hearing can be subject to appeal which an lead to the use of more judicial resources.

I suppose I have trouble understanding what makes this matter so strikingly important and complex that the concept of proportionality appears inapplicable in the circumstances. It seems to me that it would be prudent to give some kind of finality to this matter.

It is like looking at the horizon and the closer you think you are to the end, the road keeps going… and going… and going…. !

Sharon Mah is a paralegal at Bull Housser Tupper, She wrote about special costs as Amici Curiae paralegals also prepare Bills of Costs for SRLs.

Resources for Accounting, Tax and Trusts

Accounting, Taxes and Trust Assurance

Presented with the Law Society of BC, Canada Revenue Agency and Ministry of Finance.

For lawyers and articlers claiming CPD hours, the Law Society of BC rules require that when watching an archived video, you must watch it with another lawyer or articling student (not your secretary). This is so you have a chance to discuss it and clarify issues with one another. All license fees are per person, you need to order at least two licenses if you are planning to file for CPD credits.

❑ **Tax on Legal Services Recorded Lecture** (TLS 103r) $288.75
In this 2.75 hour long seminar, the CRA and the Ministry of Finance discuss situations in which both GST and PST could apply in the provision on legal services; the application of taxes on disbursements; best practices to be audit compliant; and where to access tools and information to help your firm comply with the rules. [CPD / Practice management: 2.75 hours]

❑ **Trust Accounting 101 Recorded Lecture** (TRA 103r) $548.80
In this 5.5 long course, Law Society of BC auditors will teach you how to open and operate trust accounts, prepare for compliance reporting and audits. You will understand the professional responsibilities associated with trust accounts. [CPD / Practice management: 5.5 hours]

❑ **Trust Assurance Lecture 2014 Year End Review Recorded Lecture** (TAL 103r) $157.50
In this 1.5 long lecture the Felicia Ciolfitto, manager of the LSBC Trust Assurance Department highlights significant trends and issues that have occurred in 2014. [CPD / Practice management: 1.5 hours]

❑ **Trust Assurance Management Recorded Lecture Handling Unclaimed Trust Funds: Do you Refund, Remit or Retain?** (TAM 101r) $131.25 [CPD / Practice management: 1 hour]
In this hour long lecture, the Law Society of BC discusses how to handle unclaimed trust funds; outline best practices for handling unclaimed trust funds; and be familiar with the publications, resources and forms on the LSBC website.

❑ **Trust Assurance Management Recorded Lecture Trust Accounting Internal Controls: What do you need to know?** (TAM 102r) $131.25 [CPD / Practice management: 1 hour]
In this hour long lecture, the Law Society of BC discusses what is meant by internal controls and its benefits of internal controls; facilitate your development or update your firm's internal control procedures; and be familiar with the publications, resources and forms on the LSBC website.

❑ **Trust Assurance Seminar Lecture** (TAS 102r) $315 [CPD / Practice management: 3 hours]
In this three hour long seminar, the Law Society of BC discusses the Law Society file opening requirements; how to meet the financial reporting requirements of the firm; and how to avoid getting into the discipline digest.

Desk Reference Manuals and Monographs

Prepared in cooperation with the Law Society of BC, Canada Revenue Agency and Ministry of Finance

- ❑ Law Office Accounting 101 Desk Reference Manual $225 (+ GST and shipping)
- ❑ Law Office Management 101 Desk Reference Manual $225 (+ GST and shipping)
- ❑ Trust Accounting 101 Desk Reference Manual $225 (+ GST and shipping)
- ❑ PST and GST FAQs for BC Law Firms Monograph $160 (see the reverse page) + GST

LAW COURTS CENTER: www.lawcourtscenter.com

PAYMENTS Please make the cheques payable to Law Courts Center and return to:
Law Courts Center 150 - 840 Howe Street, Vancouver, BC V6Z 2L2.

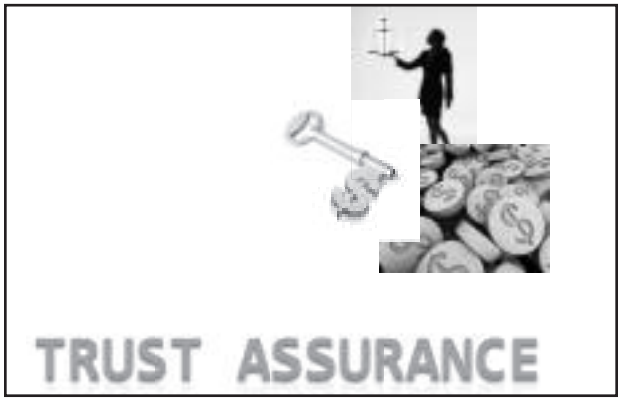
For more information please email <dom@lawcourtscenter.com>, or call 604-685-2727. v1501

SCHEDULE FOR APRIL 9, 2015 (9:00 AM TO 5:00 PM)

Law Courts Center

Trust Accounting 101 – From Fundamentals to Best Practices

Learn about the Trust Regulation Department of the Law Society of BC and seven key concepts in trust accounting. You will also learn how to set up and operate trust accounts pursuant to the *Legal Profession Act* and Law Society of BC Rules. Finally, you will gain an understanding of the reporting requirements of the law society. Discover the best practices and tips from senior auditors of the Law Society of BC Trust Regulation Department. This 7 hour course focuses on professional responsibility, ethics, client care and relations. *You have a choice between attending in-person or by webinar.*



The Top 10 Compliance Audit Exceptions

Trust Accounting Best Practices

The Trust Administration Fee

Trust Accounting 101 - From Fundamentals to Best Practices

These are learning outcomes for this course:

At the conclusion of this the course, including the completion of all pre, in-class and post-course work, the participants should be able to competently:

1. Understand the mandate of the Law Society of British Columbia and the role of its Trust Regulation Department
2. Discuss the duty and ethical obligation that lawyers and support staff have in handling clients' trust funds
3. Explain the key concepts in trust accounting
4. Understand how to correctly receive and withdraw trust funds
5. Understand how to properly handle cash transactions
6. Demonstrate how to correctly reconcile pooled trust accounts
7. Understand the annual trust report filing requirements
8. Apply the Trust Administration Fee (TAF) to eligible trust deposits
9. Report a Division 7 rule violation in writing to the Law Society

LOCATION Law Courts Center CPD Room 150 - 840 Howe St, Vancouver BC V6Z2L2

INSTRUCTORS:

KRISTA ADAMEK Law Society of BC Trust Regulation Department Auditor

DOM BAUTISTA Law Courts Center Executive Director

CHARLES NIP Law Society of BC Trust Regulation Department Auditor

Registration:

For lawyers, go to: WWW.LAWCOURTSCENTER.COM

Course Fees: (course materials and GST 128573300 included)

❑ Single In-Person Seat (TRA 101)	$576.25
❑ Single Webinar Seat License (TRA 102)	$576.25
❑ Please send me a copy of the manual only as I am not able to attend.	$246.75

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Law Courts Center
150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

PST and GST FAQs for BC Law Firms

Having recently passed the first year on the return of PST in BC last April 1 2013, we have updated our tax FAQs monograph originally published in May 10 2013. A number of CRA related questions have been added to this monograph. The questions are listed below and in the next page.

The digital monograph is priced at $168.00 (includes GST). To order a copy, write dom@lawcourtscenter.com.

List of Questions

A. General Questions

A.1. What is the definition of 'legal services' for the purpose of collecting PST?

A.2 What are the general anti-avoidance rules?

A.3 How are we to handle bad debt write offs?

B. Collecting taxes for legal service

B.1 Do we charge PST on every invoice?

B.2 Is there a guide to determinate whether or not contingency files require PST to be charged?

B.3 If a business invoices for work-in-progress (WIP) that includes goods and services preceding the date PST took effect, how is that handled (ie fixed contract price)?

B. 4 Do you have a definition for "carries on business in BC" includes businesses that, other than a Registered Records office, have no other presence in BC, with supporting documentation.

B.5 Place of Supply rules and PST - if we have a client that lives in Ontario, do we bill the client HST at 13% and PST at 7%?

B.6 If a lawyer provides legal services to a client who resides out of British Columbia, when are such services subject to PST?

B.7 We have a client with offices in every province and we are retained by the head office in Ontario to do legal work that involves tangible assets in each province, how do we handle BC's PST?

B.8 How does PST apply to legal services provided to first nations clients?

B.9 The Law Society has introduced a change to billing practices with the new BC Code, effective January 1, 2013. Since the staff time is now included in that section, is the staff time subject to GST only?

B.10 Do lawyers collect tax when providing mediator services?

B.11 Do lawyers collect tax for acting as a Parenting Coordinator?

B. 12 As a 'small seller' does not have to register - why would registration be beneficial or appropriate?

B. 13 Does PST apply on intellectual property matters?

B. 14 Are lawyers who are accepting Bitcoins for payment, required to collect tax? (Note the Law Society of BC does not allow permit Bitcoins for trust funds.)

B. 15 We have situations where we are charging 13% HST and 7% BC PST or GST/QST and BC PST on our invoices because the client is resident of Ontario or Quebec, and the legal services relate to BC. Is this correct?

v1501

FOR OTHER RESOURCES: (INCLUDES HST #128573300)

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B.16 Lawyer's client (the one who benefits from the advice) does not reside in Canada and the address on record is in USA. The lawyer is giving legal advice re: general Canadian sales & marketing, specifically resales involving owners/sellers in Ontario. There is no real property, just advice regarding licensing laws to resale activity in BC and Ontario according to the *Real Estate and Business Brokers Act*. We are confused as to whether any tax is attracted as the client is in USA but the legal advice has to do with two different provinces.

C. Disbursements: the impact of taxes

C.1 Will PST apply to all items as it does with HST (i.e. meals, children's items and previously non-taxable disbursements)?
C.2 Are disbursements incurred in the course of providing legal services subject to PST?
C. 3 Could you provide more information outlining "Disbursements" and "Non Taxable Fees" and charges and how a 'mark-up' would be determined/calculated? How are you determining the "reasonableness" of photocopying / printing / faxing charges? Is there a guide to determination of whether or not costs are "reasonably related" to the "transmission, printing or copying of documents" can include: equipment lease, equipment maintenance, paper, toner, and labour?
C.4 How do we apply PST on services like Quicklaw and other online research tools, where we pay a flat monthly fee? In the case of Quicklaw, we are able to get breakdown on the bill on a matter by matter basis
C.5 Charging PST on scanning of documents done in-house for firms who have gone "paperless".
C.6 If a matter is PST exempt due to the nature (i.e., real property on reserve), is travel time also exempt?
C.7 Decision as to how PST on taxable client disbursements is to be treated: is the PST portion of the disbursement GST/HST taxable or not? Reference to any relevant Acts and other CRA documents, would be appreciated.
C.8 Quicklaw is a monthly subscription for a specific amount. We take the monthly cost and allocate it against all the files that used Quicklaw that month. This is charged to the client at this calculated cost (it is actually listed on the Quicklaw report we print out). We pay PST on our Quicklaw subscription.
C.9 Do we include or not include the hotel tax component and parking tax components when calculating the amount of GST/HST to charge to our clients?
C.10 (a) Is it acceptable by CRA if our firm uses the factor method to calculate the ITC amount on all meals and entertainment reimbursements? For example, a restaurant meal including tip is $50 and the ITC amount is ($50 x 411 04)/2 = $0.96.
(b) Is it acceptable by CRA if a meal expense receipt is not available, and only a credit card statement is used?
(c) For meal consumed at a golf course restaurant, can we claim 50% ITC?
(d) For seminar and workshop that includes a meal and GST amount may or may not be listed on the notice, can we claim ITC using the factor method?
(e) Is a business allowed to claim full ITC on Partner's Retreat? Associate Retreat? Firm function?
(f) Is a spa, boat cruise gift certificate deemed 50% deductibility?
(g) When posting parking, hotel or airfare expenses to client files, can we code the PST amount as non-taxable, and the balance as taxable?
C.11 We are the client's agent. How does this factor into the ruling whether to charge GST/HST or not, if we have not been charged GST/HST? On some of our disbursements such as medical records, BC Online (some of the files), court filings (non-taxable portion), title searches (some of), we are not charged GST/HST. Do we charge GST/HST on these disbursements to our clients, even though we have not paid GST/HST?

D. Transition questions
D.1 How will the transition from HST to PST affect disbursements on contingency fee files?
D.2 Will there be an extended period where the combined HST has to be filed?
D.3 How will we apply for HST refunds (during pure HST only period) once PST comes in?
D.4 What are the substantive differences between the PST program now versus the program before HST was implemented?
D.5. How will tax apply to contingency files that were open prior to April 1, 2013?
D.6 Trust Administration Fee: How do we handle the difference in HST and GST in the first quarter of 2013?
D.7 How will we get overpayments of prepaid PST back? How will we apply for PST refunds with the new PST?

Appendix 1 Canada Revenue Agency & Ministry of Finance March 19, 2014 Powerpoint

Law Courts Center
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150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

On Tenancies and Renovations

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257, the petitioners were served by their landlord with a notice to end tenancy, pursuant to s. 49(6) of the *Residential Tenancy Act*, SBC 2002 c 78 (the "Act"), on the basis that the rental unit they occupied needed renovations which would require the unit to be vacant. The petitioners then sought an order to set aside the notice to end the tenancy, relying on s. 47(4) of the *Act*.

The Dispute Resolution Officer dismissed the tenant's application, and the petitioners appealed the Dispute Resolution Officer's decision on the grounds that the officer did not fully consider whether the renovations required the rental unit to be vacant.

On appeal, the British Columbia Supreme Court discussed what the requirements were in order for s. 49(6) of the *Act* to apply in cases of eviction for purposes of renovations. The main issue was whether the proposed renovations required the rental unit to be vacant. In the analysis, the Court concluded that in order for the requirement to be met, the renovations had to be extensive enough to require vacancy of the space in order to be completed, and that the vacancy could only be achieved by terminating the tenancy.

For this specific renovation, the unit had to be vacant for a short period of time, but the tenants acknowledged the requirement and agreed to temporarily vacate the unit during the required time. At para 23, the Court concluded that in situations where the tenant agrees to vacate the property during the renovation, an end in tenancy is not required and therefore not supported by s. 49(6) of the *Act*. The Dispute Resolution Officer's decision and Order were set aside for failing to consider the tenant's willingness to temporarily empty the unit and whether the renovations could be performed without putting an end to the tenancy.

Accordingly, landlords seeking to terminate tenancies in order to make renovations must remain mindful that the renovations must be so extensive to require vacancy of the space, and that such vacancy can only be achieved by the termination of the tenancy. !

Dom Bautista is grateful for the assistance of Ana Maria Manolache who is a student of the Capilano University Paralegal Programme.

Respectful Language Guidelines

(continued from page 4)

considered insulting, and the derogatory term "queer" is making its way back.

6. Adoptive Families

When having to refer to someone who was adopted, it is preferred to say "Rod was adopted" than "Rod is adopted." When having to refer to person's birth parents, use the phrase "birthmother and birth-father" instead of "real mother and real father."

In short, the Guideline aims to raise awareness among firm members about:

1. how values and attitudes are reflected in words choice and usage;
2. how certain language usage may exclude members of certain minority groups; and
3. how certain language usage may be perceived as reflecting stereotypes or containing demeaning references towards others.

The Practice Resource can be found here: https://www.lawsociety.bc.ca/page.cfm?cid=1005&t=Respectful-Language-Guideline

Yvonne Choi is a legal assistant with Harris LLP and is an Amici Curiae volunteer. On March 20 2015, she will lead the Modern Litigation Writing workshop and will help the participants develop best practices.

A Two Day Course: April 16 and 17, 2014 (9:00 am to 5:00 pm)

Law Courts Center

Civil Litigation 102

This two day program is designed for juniors to gain an understanding of the civil litigation process and its Rules. At the end of their studies, the attendees will be able to put the theory into practice and they will have the tools to successfully assist in a civil litigation file from start to finish.

"The explanations made a difference. It is easier to have someone with so much experience lay it all out rather than just reading the Rules."

For junior lawyers, solos, paralegals and legal secretaries!

""Let me show you how the different parts of civil litigation are connected!"

Course Prerequisite

There is pre-course work that will be assigned.

Course Reporting for CPD

For those with CPD requirements, this course is 14.0 hours long with 1 hour devoted to ethics, professional responsibility, ethics, client care and relations. If you meet 70% of the course expectations, a ***Certificate of Completion*** is issued to you.

Location Law Courts Center CPD Room 840 Howe St #150 Vancouver BC

Instructor Yvonne Choi, Legal Assistant, *Harris & Company LLP*

Reservations Please complete the form below and return to: **Law Courts Center**, Legal Education Program, 150 - 840 Howe Street, Vancouver, BC V6Z 2L2. Make cheques payable to Law Courts Center.

For more information please email <dom@lawcourtscenter.com>, or call 604-685-2727.

Course Fees: (course materials and GST included)

- Single Seat	$924.00
- Multi-seat & Accredited Group Rate (Amici Curiae & Greater Vancouver Legal Nurse Consultant Association)	$872.55
- Please send me a copy of the manual only as I am not able to attend.	$246.75

Registration:

WWW.LAWCOURTSCENTER.COM

150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

1410B!

Law Courts Center

Civil Litigation 102

This is what will be doing on Day 1

9:00 Introductions / Expectations
9:15 Background and Applicable Legislation
9:30 Rules / Notices to the Profession / Practice Directions
9:45 Provincial Court of BC / Small Claims Court
10:15 Coffee
10:30 Pre-Action Considerations
11:00 Limitation Periods
11:15 Naming Parties
11:30 Pleadings Generally
- NCC
- Response
- Reply

12:00 Lunch (*on your own*)
12:45 Field Trip to the BC Court of Appeal and Supreme Court of BC
1:15 – 1:45 Exercise – Drafting Pleadings
1:45 – 2:15 Amending Pleadings
2:15 Service
2:30 Calculation of Time
2:45 Coffee
3:00 Exercise – Calculation of Time
3:15 Discovery Procedures
- List of Documents
- Examination for Discovery
- Interrogatories
- Notice to Admit
- Witness Lists
- Notice to Produce

4:15 Exercise – List of Documents
4:45 Questions / Review Assignment / Reading

This is what will be doing on Day 2

8:45 Provincial Court of BC Tour
9:30 Applications Procedure
10:00 Exercise – Application
10:30 Coffee
10:45 Document Collection and Management
11:15 Pre-Trial Considerations
11:30 Trial Preparation / Trial Management Conference
12:00 Case Planning Procedure
12:15 Lunch (*on your own*)
1:00 Alternatives to Trial Generally
1:15 Fast Track Procedures
1:45 Review Exercise: Counting Time
2:00 Offers to Settle and Mediation
2:15 Orders Generally
2:30 Coffee
2:45 Orders – Consents / Chambers / Trial
3:15 Exercise – Orders
3:45 Costs and Tariff Items (Appendices B & C)
4:15 Review: Legal Jeopardy
4:45 Questions / Review Assignment / Reading

SCHEDULE FOR APRIL 29, 2015 (9:00 AM TO 5:00 PM)

Law Courts Center • Canadian Paralegal Institute

MVA STUDIES 103

A FULL DAY OVERVIEW OF PERSONAL INJURY LITIGATION AND THE KEY COMPONENTS TO PREPARING MVA FILES EFFICIENTLY

The current Rules of Court provide for a shorter time to get the pleadings ready. This is your opportunity to master the mechanics of preparing your file binder, acquiring the needed information in a timely manner, and initiating the chronologies of the claim; regardless of whether your are acting for the plaintiff or defense. Acquire best practices from a seasoned paralegal. Learn to take advantage of the Civil Rules of Court of the Supreme Court of BC.

Plus here are the other learning outcomes for this course:

1. **how to correctly calculate 6 different limitation periods associated with MVA files;**
2. **what information goes into Part 1, Part and Part 3 of a "motor vehicle" Notice of Civil Claim;**
3. **how to effectively utilize chronologies and treatment charts;**
4. **how to make redactions for privilege and irrelevance to clinical records; and**
5. **at least 5 best practices for preparing for a motor vehicle trial.**

CONTINUING PROFESSIONAL DEVELOPMENT CPD REPORTING

For the mandatory Law Society of BC reporting of CPD hours, this course is 7.0 hours with no hours devoted to professional responsibility and ethics. A ***Certificate of Completion*** is issued to you, if you earn at least 70% of the course requisites.

LOCATION Law Courts Center CPD Room, 150 - 840 Howe Street, Vancouver, BC V6Z 2L2.
INSTRUCTOR Gerrie Campbell, Senior Paralegal

QUESTIONS? Please write dom@lawcourtscenter.com or call 604-685-2727.

Registration:

WWW.LAWCOURTSCENTER.COM

Course Fees: (course materials and GST 128573300 included)

❑ Single In-Person Seat	$548.80
❑ Multi-seat or Amici Curiae Rate	$521.36
❑ Please send me a copy of the manual only as I am not able to attend.	$263.30

1502 B!

Law Courts Center
150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

Traffic Accident Police Investigation Report MV 6020 — A Primer

You have been retained to handle your client's motor vehicle accident (MVA) claim. *What now?*

A good place to start is to see if there is an MV6020 Traffic Accident Police Investigation Report (the "police report") available. The police report is required for all accidents when there is:

i) a sustained injury, no matter how minor;

ii) a fatality;

iii) damage to both vehicles total $1,000.00 or more;

iv) damage to property (telephone poles, guard rails or personal property); and

v) any driver that appears to be in violation of the *Criminal Code Of Canada* (impairment by drugs, alcohol or fatigue).

The *Motor Vehicle Act* requires that motor vehicle accidents be reported to the police within 24 hours in urban areas and 48 hours in rural areas. Basic insurance is purchased through the Insurance Corporation of British Columbia (ICBC), and any optional coverage may be purchased through ICBC or through a number of other companies (such as Family Insurance, Canadian Direct, Geico or Intact to name a few). The police do not advise the insurance company of the accident, so a party must also report the incident to their insurance company. The police determine whether there has been a violation of the law and if so, may lay a charge against the offending party. The insurance company determines fault/liability and may consider the police report when determining liability, but it is not the determining factor in their decision. Once liability has been determined, the insurance company will advise the parties.

Not all incidents will have the police and emergency personnel attend at the scene, but a call should be made to the police advising them of the accident. They will give instructions as to what information should be obtained at the scene: date, time, location, injuries, names of all parties involved, any witness information and the nature of the accident. Once a police report is made, all parties are entitled to a copy.

When reading the police report, the first thing to do is to verify information on the report with the information provided by the plaintiff and /or the insurance company.

You will want to confirm a number of particulars: date of incident, the parties involved the vehicle information whether party is the driver and/or the registered owner, plate numbers, year make and model of the vehicles, the estimated amount of damage to each vehicle, location of the accident, whether there is property damage over $1,000.00, and if there is personal injury involved.

See if there are any witnesses listed including their contact information. It is essential to contact all witnesses who can verify the allegations and statements that were taken to provide admissible evidence which may be needed later.

Additionally, you should identify the attending police officer(s) in case you have questions about their report.

Police officers are unlikely to have witnessed the collision themselves but the information gleaned from the police report will assist in preparing the Notice of Civil Claim (NoCC). You should have a copy of the MV6020 code to help you read the police report. The code will help unravel more information. For example, in terms of contributing factors, you will consider any impairments, unsafe speed and seatbelt use. Sometimes, if a party had an epileptic seizure or heart attack that caused or contributed to the MVA, that suspicion might be noted under contributing factors.

Once the NoCC has been filed, defence counsel will be appointed. They will file a Response after which you should prepare, circulate and enter a Consent Order in order to obtain a complete copy of the police file.

It is important to refer to the police file in this case rather than the police report (MV6020), which can be requested before litigation is commenced by the person involved in the accident or his or her counsel.

Once done, then it is time to move on to the other records. **!**

Gerrie Campbell is a senior personal injury paralegal. She will present MVA 103 on April 29 2015.

SCHEDULE FOR APRIL 30, 2015 (9:00 AM TO 5:00 PM)

Law Courts Center • Canadian Paralegal Institute

Heads of Damages 101

This one day is designed to provide learners with an understanding of what heads of damages are in within a personal injury setting.

Learning Outcomes

1) understand concept of common law and stare decisis;

2) understand the concept and function of damages;

3) identify, understand and explain different heads of damage;

4) analyze fact patterns and assess applicable heads of damage; and

5) identify, understand and explain factors which may affect quantum of damages.

This course will make use of pre-course, case studies and post-course work.

COURSE REPORTING FOR CPD

For those with CPD requirements, this course is 7.0 hours long with 0 hours devoted to ethics, professional responsibility, ethics, client care and relations. If you meet 70% of the course expectations, a ***Certificate of Completion*** is issued to you.

LOCATION Law Courts Center CPD Room 840 Howe St #150 Vancouver BC

INSTRUCTOR Brian Gibbard, *Barrister & Solicitor and Mediator*

For more information please email dom@lawcourtscenter.com, or call 604-685-2727.

For junior lawyers, solos, paralegals and legal secretaries!

"Let me show you how to analyze and assess applicable heads of damage!"

Course Fees: (course materials and HST **128573300** included)

- ❑ Single Seat $548.80
- ❑ Multi-seat & Accredited Group Rate (Amici Curiae & Greater Vancouver Legal Nurse Consultant Association) $521.36
- ❑ Please send me a copy of the manual only as I am not able to attend. $263.20

Registration:

For support staff, go to: WWW.CANADIANPARALEGALINSTITUTE.COM

For lawyers, go to: WWW.LAWCOURTSCENTER.COM

150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

1303 B!

Heads of Damages 101

Developments in Damages: Loss of Earning Capacity

The claim by a plaintiff in a personal injury action that he or she has suffered from a loss of or impairment to his or her earning capacity is almost always the most controversial of the damages claimed. Recent developments in this area of the law of damages may have clarified the matter.

The law is well established that plaintiffs may claim for impaired or reduced earning capacity as a result of injuries sustained through a defendant's negligence. In *Palmer v. Goodall* (1993) 53 B.C.L.R. (2d) 44 BCSC Southin J., said:
"*...a plaintiff who is apparently going to be able to earn as much as he could have earned if not injured or who , with retraining on the balance of probabilities will be able to do so, is entitled to some compensation for the impairment. He is entitled to it because for the rest of his life some occupations will be closed to him ...*"

In *Brown v. Golaiy* (1995) 12 B.C.L.R.(3d) 248 B.C.C.A. Taggert J. set the following factors the court will consider in deciding if a plaintiff had made out the case for impaired earning capacity:

"*i) the plaintiff has been rendered less capable overall from earning income from all types of employment;*
ii) the plaintiff is less marketable or attractive as an employee to potential employers;
iii) the plaintiff has lost the ability to take advantage of all job opportunities which would otherwise have been open to him had he not been injured; and
iv) the plaintiff is less valuable to himself as a person capable of earning income in a competitive market."

Both these cases and others reviewing them have been cited with approval many times in British Columbian courts.

More recently, the case of *Perren v. Lalari* 2010 BCCA 140, 3B.C.L.R.(5th)303 has set out to clarify the degree of proof required to establish a claim for loss of earning capacity. The BC Court of Appeal set out what must be proven:

"1) *A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation and 2) It is not loss of earnings but, rather, loss of earning capacity for which compensation must be made....*

Pallos is not authority for the proposition that mere speculation of future loss of earning capacity is sufficient to justify an award for damages for loss of future earning capacity.

A plaintiff must always prove...that there is a real and substantial possibility of a future event leading to an income loss...

On the facts of this case, the trial judge found that there was no substantial possibility of a future event leading to an income loss. That should have been the end of the enquiry. That was a reasonable conclusion on the evidence because there was no evidence that she was limited in performing any realistic alternative occupation."

Perren has been cited with approval in several subsequent cases in this province. When considering if your client has a provable claim for loss of capacity, ask yourself this threshold question: *Does your client's situation fall within the four criteria listed in Brown, and is there a "real and substantial possibility" that the injuries sustained could lead to a loss of income in the future?* **!**

Brian Gibbard, barrister & solicitor, leads the Heads of Damages 101 course on April 30, 2015.

SCHEDULE FOR MAY 1 2015 (9:00 AM TO 5:00 PM)

Law Courts Center

Clinical Records Studies 101

HOW TO READ THE MOST COMMON MEDICAL RECORDS IN BC

The success of any personal injury litigation depends on the gathering and analysis of information. One of the most efficient ways of reducing hundred or thousands of pages of medical information into a concise report is by streamlining the information into a chronology You will learn how to collect the records that you need and how to overcome the many challenges associated with this task. With your records on hand, you will learn how to read each one. You will also have opportunities to discuss Glasgow Coma scores, SOAP, medications and lab tests.

Course Prerequisite: *Medico-Legal Studies 101 or equivalent course.*

COURSE REPORTING FOR CPD

For who are fulfilling their CPD hours, this course is 7.0 hours with no hours devoted to professional responsibility and ethics. In addition, a ***Certificate of Attendance*** *is given to you; or, if you receive a minimum of 70% on the course work, a* ***Certificate of Completion*** *is issued to you.*

Venue: Law Courts Center, 150 - 840 Howe St, Vancouver BC V6Z 2L2

Instructor: Jodi McKinstry, Paralegal *Quinlan Abrioux*

For more information please call **604-685-2727**. **B!** 1502

This is what we will be doing for the day.....

Medical Records
- How the health regions are organised in BC
- Challenges in collecting medical records

Organising Medical Records
- Learning about hospital charts
- Organising a sample chart
- Finding specific information in a record

Reviewing Radiology
- What do they reveal: films, ultrasounds, CTs and MRIs.

Emergency Health Services Ambulance Reports
- Understanding a typical crew report
- Study of what each item means

Glasgow Coma Scores
- Revisiting GCS

Reviewing Medical Records
- Charting different types
- Systems review and SOAP

Medications
- Working with CPS

Laboratory Testing

Putting Everything Together

REGISTER ONLINE:

FOR LAWYERS: www.lawcourtscenter.com

REGISTRATION CRS 101 (INCLUDES HST #128573300)

- ❑ Single seat Rate $548.80
- ❑ Multi-seat or Amici Curiae Rate $521.36

Law Courts Center
150-840 Howe Street, Vancouver, BC Canada V6Z 2L2

SCHEDULE FOR MAY 1 2015 (9:00 AM TO 5:00 PM)

Law Courts Center

Admissibility of Clinical Record ... *Smith v. Wirachowsky* 2009 BCSC 1434

In this case the plaintiff was seeking damages for personal injury resulting from a motor vehicle accident that occurred on March 15, 2007. The plaintiff sustained soft tissue injuries to her neck, back and right shoulder as a result of the accident. At issue was the quantum of damages under the following heads:

1. Pain and suffering and loss of enjoyment of life;
2. Past loss of earnings;
3. Loss of future earning capacity;
4. Loss of housekeeping capacity (past and future);
5. Cost of future care; and
6. Special damages.

During the course of the trial, plaintiff's counsel sought to lead evidence of the plaintiff's complaints regarding her injuries by having her physiotherapist and physician read-in portions of their clinical notes. The plaintiff's lawyer submitted that the clinical notes were admissible to prove that the statements contained therein were made, but not for the truth.

Justice Halfyard heard submissions on this issue from both parties. The parties agreed that the clinical notes qualified as "business records" under s. 42 of the *Evidence Act*. S. 42 provides as follows:

> (2) In proceedings in which direct oral evidence of a fact would be admissible, a statement of a fact in a document is admissible as evidence of the fact if
>
> (a) the document was made or kept in the usual and ordinary course of business, and
>
> (b) it was in the usual and ordinary course of the business to record in that document a statement of the fact at the time it occurred or within a reasonable time after that.

In his reasons, Justice Halfyard discussed the decision of Metzger J. In *Seaman v. Crook* 2003 BCSC 464, where he held that, "statements made to doctors as recorded in clinical records which qualified as business records business records under s. 42 of the *Evidence Act*, are admissible to prove that the plaintiff did make those statements, but not to prove that the statements were true."

Justice Halfyard went on to summarize the law on the issue of admissibility of clinical records as follows:

> In my opinion, the authorities and the rules of evidence establish that the fact that a plaintiff made a particular statement to a doctor or therapist can be relevant to the following issues (where such issues exist):
>
> a) In cross examination of a plaintiff, to prove that the plaintiff made a previous statement (which is alleged to constitute a previous inconsistent statement or damaging admission);
>
> b) In re-examination of the plaintiff, to rebut the suggestion (by defence counsel) of recent fabrication or failure to complain;
>
> c) In cross examination of a doctor who examined or treated the plaintiff, to prove that the plaintiff made a previous statement (which is alleged to constitute a previous inconsistent statement or damaging admission), where the plaintiff denied or did not admit making the statement;
>
> d) Where a doctor's or therapist's particular recommendation for the plaintiff's treatment is challenged, and the plaintiff's statement is relevant to explain why that treatment was prescribed or administered; and
>
> e) In cross examination of a medical expert witness called by either party, where it is alleged that the expert relied on a particular statement made by the plaintiff to him or her; or where it is alleged that the expert disregarded or failed to consider a particular statement made by the plaintiff.

It should be noted that there at least two ways in which a plaintiff's statements recorded in clinical records may become admissible as proof of their truth. The first way is where the plaintiff admits making a particular statement to a doctor or therapist which appears to be inconsistent with the plaintiff's trial testimony, but then adopts the previous statement as being true (and rejects the conflicting trial testimony).

In this case the statements were admissible but the court would need to weigh the credibility of such testimony.

> The second way is where the plaintiff admits making (or is shown to have made) a previous statement recorded in the clinical records which if true, would constitute an admission against interest.

Justice Halfyard considered the purpose for which the physiotherapist's clinical records were being introduced and determined that the statements contained therein were not relevant to any issue in the trial that could have made them admissible. **!**

by Jodi McKinstry
Paralegal Lacroix Mathers