

Briefly!

Published by Law Courts Center and the Canadian Paralegal Institute

JANUARY 2015

Chief Justice McLachlin: On Gender and Cultural Diversity

November 26, 2014 was a very busy day as the news that Ms Suzanne Côté had been appointed to replace Justice Louis LeBel, the second-longest serving judge of the Supreme Court of Canada. That was also the day that Chief Justice McLachlin had graciously sent me a copy of her April 7, 2014 speech to the Canadian Corporate Counsel Association Conference.

Her remarks provided a brief overview of how she came to be the chief justice, from the time she decided that she wanted to be more than someone who would grow up in a small town in Alberta, to having to justify why she sought articles instead of marriage, to having to be on the receiving end of what we today call harassment: "*The best way to deal with these attitudes was not to dwell on them, but to do my work to the best of my ability. To get*

the job done. The proof of women's ability to do the job would lie in the fact that I did it."

She recalled what Judge Bertha Wilson, the first woman judge, whispered to her at her swearing in ceremonies in 1989: "*Three down, six to go!*"

In her twenty six years, she has seen the number of women justices move between four and three; and since the day she spoke, the appointment of Justice Côté, once again brought it up to four women justices.

In her remarks, Chief Justice McLachlin recognized that women have reached parity while not in numbers, but certainly in working relationships. And while gender does not enter into how judges interact with each other, gender is certainly relevant to judging.

One often hears that the courts must be representative of its people. She offered a few suggestions on how the practice of law can help retain women (and men). First, they should consider adopting a more collaborative work model where clients are seen as clients of the firm. Firms might want to recognize that the absurdly high billable hour targets are simply not realistic which impact

disproportionately on women. Second, for general counsel to ensure that women in the law firms they tap to do their work are given an equal opportunity to do the work. Finally, law firms and corporate law departments must ensure that supporting women is not just about parental leave programmes but to accommodate other arrangements that give women some flexibility. She concluded that while great strides have been made, there is a lot of work that needs to be done.

But the most interesting point she said was that courts must represent our society's commitment to equality not only in terms of gender but cultural diversity as well. The double-hyphenated challenges of women who belong to other cultures

brings a new discourse that we must undertake.

As we begin 2015, here are some questions for you to think about. *What particular challenges do racialized minority lawyers face? Is there an imperative of cultural awareness that must be exercised by the bench? How does gender and culture impact access to justice?*

And if you are curious as to what a panel of Canadian women judges have to say, join us on February 19 at 5:30pm for Views from the Bench on Gender and Cultural Diversity. Come and be part of the conversation. !

Dom Bautista is the executive director of Law Courts Center.

Hot Off the Press

**PST and GST
FAQs for BC
Law Firms
Monograph
v150115
\$168**

www.lawcourtscenter.com

Jan 20	Lecture: Orders Do's and Don'ts
Jan 28	Trial Preparation for Civil Plaintiff Firms 101
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: 1.5.



Challenges Faced by Racialized Lawyers

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

Trial Preparation for Plaintiff Firms 101

Mastering the Civil Rules of Court & Best Practices in Trial Preparation

This is your best opportunity to learn about the Civil Rules of Court as they apply to trial preparation. You will work with the different Forms and learn how they can impact your case. This course is a prerequisite to the intermediate level course. For those with trial experience, you will pick up new strategies and for those new to trial preparation, you will learn what must be done and when. Plus we are introducing strategies to make good use of mediation.

Within the context of the new Civil Rules, this course will cover these topics:

- When does trial preparation really begin?
- Developing your documentary evidence.
- Optimizing your experts and their reports.
- Lay witnesses: where to find them and how to keep them.
- Applicable Rules of Court.
- Managing costs for a successful Bill of Costs.
- Reading the opposition.

CONTINUING PROFESSIONAL DEVELOPMENT CPD REPORTING

For lawyers and other professionals, this course provides 7.0 CPD hours, with 1.0 hour 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 St Vancouver BC V6Z 2L2.

INSTRUCTOR Brian Gibbard, Barrister, Solicitor & Mediator

For more information please call 604-685-2727 or write: dom@lawcourtscenter.com.

REGISTER ONLINE:

www.lawcourtscenter.com

REGISTRATION (INCLUDES GST #128573300)

- | | |
|---|----------|
| <input type="checkbox"/> Single Seat | \$548.80 |
| <input type="checkbox"/> Multi-seat or Group Rate for members of Amici Curiae | \$521.36 |
| <input type="checkbox"/> Please send me a copy of the manual only as I am not able to attend. | \$246.75 |

1412 B!



The Importance of Lay Witnesses in Trial Preparation

Preparation of a plaintiff's personal injury claim often emphasizes the importance of expert evidence. This is understandable: the claim will often involve questions on which an expert's opinion is crucial. Experts are expensive and their schedules crowded and so many resources of time and money are used by plaintiffs' counsel retaining, instructing and dealing with experts.

However, lay witness evidence is often critical in establishing the plaintiff's case. They are the people who can provide testimony describing the effects on the plaintiff of an injury. Their evidence can provide the facts on which expert opinion is based: in short, lay witnesses can determine the outcome of a case.

In personal injury cases, "before and after" witnesses are those people who have known the plaintiff both before and after the injury and can provide evidence to the court about the differences they have observed. The judge does not know the plaintiff so the evidence of these witnesses helps to paint a picture of who they were and who they have become. This evidence also serves to flesh out the evidence of experts and put it in every day terms. The anecdotal evidence helps to put the expert's evidence in con-

text, and can also provide the basis for the opinion of the expert.

When taking on a new case it is important to obtain and assess the evidence witnesses can provide as soon as possible. Note that while an expert witness is considered either the plaintiff's witness or the defendant's witness depending on who retained him or her, there is no property in a lay witness. This means that a lay witness can be contacted, interviewed or subpoenaed by either side.

Pay particular attention to liability witnesses. Interview them as soon as possible while their memories are fresh and still accurate. It may be helpful to have them draw a diagram, which becomes part of the statement. Consider asking a witness to attend the accident site with you.

While going through the process of securing their evidence, take the time to establish a rapport with the witness. A witness who understands how important their evidence is to a plaintiff will stay in touch with you so they can be contacted when the trial date arrives. Ask them to give you a call if they are moving or going away to school. Touch base with them every year or so – more often if circumstances

warrant. Do not wait until the week before trial to contact your key witness, only to discover that they have disappeared. Tracing companies cannot work miracles and can be very costly.

Because these witnesses know the plaintiff personally, they probably will not require a subpoena to ensure their attendance at trial, however they may find that having one helps with getting time off work, or excused from class.

It will therefore be important to de-mystify the process by explaining it to them. They may need to be reassured about the importance of their participation, and that it is acceptable if they do not know the answer to every question.

Witnesses are often reluctant to come to court. They may have never been in a court room and are believe that what they see on television mirrors reality. They may have been through a legal process themselves and

found the experience unpleasant.

Members of your litigation team can locate witnesses, make the initial contact and maintain that contact. Now as trial approaches, it is important that the lawyer meet the witness and become familiar with their evidence and demeanor. Ultimately, the lawyer must decide which witnesses he is going to call so he must get to know them, and they need to know him so they are comfortable with the questions they will have to answer.

Early identification and thoughtful and considerate preparation of witnesses, may be the most important factors in determining the outcome of the plaintiff's case. !

In Trial Preparation the Plaintiff 101, Brian Gibbard, who used to litigate and now mediates full time, will explore in more detail the steps necessary to make the best use of mediation. Join him on January 28, 2015.

Supple leather brief cases perfect for chambers, mediations or trials!



B.C. Human Rights Tribunal & SRLs – Understanding the Process (Part 2)

The B.C. Human Rights Tribunal is responsible for facilitating the just and timely resolution of complaints filed with the tribunal under the Human Rights Code. The Tribunal encourages the parties to try to resolve the complaint through mediation. Respondents have an opportunity to respond to a complaint and to apply to dismiss a complaint without a hearing. If the parties do not resolve a complaint and the complaint is not dismissed, the tribunal holds a hearing. Even with the readily accessible case managers, the tribunal process can be a daunting task for Self-Represented Litigants (“SRLs”). During an Amici Curiae Lecture, Ms. Rose Chin, from the Community Legal Assistance Society, thoroughly explained each stage of the Tribunal process and shared her tips on assisting SRLs.

Before filing or responding to a complaint, she suggests browsing the tribunal website which clearly sets the expectations of the tribunal, highlights deadlines, and provides updated practice directions. This is also where you will find the rules of the tribunal, and she strongly emphasizes to spend time reviewing the Rules of Practice.

Commencing a Complaint

The complaint usually begins with Form 1.1 - Individual Complaint – which the complainant must file with the tribunal. Ms. Chin carefully walks through each step of the complaint, and points out certain aspects of the form, such as, Step 2 asks the com-

plainant to identify the areas of discrimination, which are areas of daily life protected under the Human Rights Code and are personal characteristics protected under the Code, including age, colour, physical or mental disability, sex, etc. She pointed out that the complainant does not need to feel restrained; if more than one applies, tick all that apply. Step 3 Respondent(s) Conduct is the part of the form that asks questions to determine if the respondent(s) conduct was discriminatory. She suggests that the complainant should try to use dates to substantiate a strong background and a clear timeline of the consecutive events. It is crucial to summarize all the incidents, provide relevant information to understand the nature of the allegations, and try and include as many incidents as possible; adding to complaints is complicated especially if the incident is out of the six month timeline. She suggests to draft the complaint like a story - start from the beginning by setting the scene, continue by listing the incidents, and end by explaining the outcome of the discriminatory conduct. Before filing the complaint, it is always important to keep a copy!

Responding to a Complaint

Form 2 - Complaint Response is structured quite similarly as Form 1. The form asks you to identify which facts alleged in the complaint form that you agree with, which means you are not in any dispute with those points, and you dis-

agree with, which is also where you would give your version of the story. Ms. Chin advises to agree with points cautiously as the respondents can be cross-examined on those admissions. It is best to only agree to facts that are needed for the sake of the Respondent’s Response.

Disclosure

After the complaint and response are filed, other pre-hearing processes are triggered. The first step to consider is disclosure. The complainant has 35 days from the date the response is filed to provide a List of Documents, List of Witnesses, and Statement of Remedy. Furthermore, there is an ongoing obligation of each party to provide relevant information so that everyone is prepared for proceedings and is aware of the spectrum of the case. Parties should not be surprised at the hearing regarding evidence not disclosed previously.

Application to Dismiss

There are applications that can be made in the pre-hearing time period. The main application is the Application to Dismiss. The respondent has a choice to make this application to try and dismiss the claim before a preliminary hearing. The most common reasons for making these applications are the claim is not furthering the purposes of the Code; there is no reasonable prospect of success; the claim is filed for improper motives; or the claim is filed out of time.

Other Applications and Procedures

There are other applications to the tribunal that may play a role in the complaint process. This may include an application to amend a complaint or response in which the parties may add details, which is adding information to allegations already claimed; and add allegations, which is adding new information such as new incidents of discrimination. If the incidents occurred outside the six month time limit, the applicant is asked to demonstrate why the amendment is important; why the application for the amendment did not happen sooner; whether the hearing can proceed with the set dates; and any other reason that shows allowing the amendment would not affect and delay the process drastically.

Hearing Preparation

The purpose of the hearing is to hear both sides, weigh evidence, consider whether or not the complaint is justified, and then decide on the appropriate remedy. When preparing for a hearing, Ms. Chin encourages SRLs to begin by reviewing the complaint to gather all necessary evidence to prove or disprove the allegations. The response should then be reviewed next; it is helpful to try and anticipate challenges from the other parties, and to prepare for those challenges. She also advises to prepare your witnesses - not only do you want to make arrangements with them as to when to arrive, but to

(continued on page 4)

LAW COURTS CENTER
AMICI CURIAE LECTURE SERIES

January to March 2015

Tuesdays @ 5:30 to 6:30 pm

**A lecture series devoted entirely to looking for ways
to work with Self-Represented Litigants**

Much has written about how the high cost of litigation has caused a number of people to opt to represent themselves. A review of the annual reports of the courts in British Columbia attests to the increasing number of self-represented litigants (SRLs). Stakeholders feel that this trend is a cause for concern. Having themselves is not a phenomnom anymore: they are here to stay. Perhaps the time has come to consider working with SRLs. Working with SRLs, who often do not have the years of education, knowledge of the system, and experience in the field of law, requires the adoption of many best practices. And that is the object of this lecture series.

Orders: Do's and Don'ts for the SRL at the Registry January 20 2015

Deputy District Registrar Farrahnaz Asin of the Vancouver Registry provides a number of best practices to make sure that Orders that SRLs are filing are done properly. A question and answer period will follow her lecture.

CPD 1 hour including 0 hours for professional responsibility and client relations.

Navigating the BCHRT Process and the SRL February 10, 2015

BC Human Rights Tribunal Registrar Steve Adamson will provide advice on how best to assist SRLs who have a matter before the tribunal. The tribunal is responsible for accepting, screening, mediating, and adjudicating human rights complaints . There are on average 1,200 complaints made each year, and many are self-represented.

CPD 1 hour including 0 hours for professional responsibility and client relations.

Costs and Public Interest: What are the Access to Justice Considerations? March 10, 2015

How should courts order costs when SRLs are involved? Master Leslie Muir, having recently published a paper: *What Costs Orders Can We Make?*, expounds her views on costs and public interest given that SRLs aren't your typical "public interest" groups.

CPD 1 hour including 0 hours for professional responsibility and client relations.

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

- | | |
|---|----------|
| <input type="checkbox"/> Single Seat Rate (limited to 30 seats): | \$ 55.50 |
| <input type="checkbox"/> Webinar License Per Person: | \$ 55.50 |
| <input type="checkbox"/> Amici Curaie Pro Bono Paralegal Volunteers and Mentees | Free |

REGISTER: www.lawcourtscenter.com



Law Courts Center

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

Yes, Paralegals Have a Role in A2J, But

As December 2014 drew to a close, three events involving paralegals seemed to weave a interesting tapestry.

One, last December 5, the Law Society of BC decided to enhance access to justice for British Columbians by seeking amendments to the *Legal Profession Act* to permit the law society to establish new classes of legal service providers to engage in limited areas of practice (ie notaries public and paralegals).

Two, last December 12 in our Business of Law Workshop that I presented with Lisa Dawson, we thought we had made a pretty solid case to show that the effective use of paralegals could service clients quite well. In essence, leveraging and supervising designated paralegals (DPs) to appear in a chambers matter not only improves a firm's bottom line, but also

contributes to access to justice.

And yet there seemed to be some hesitancy in the room. It was not until we were in the midst of animated discussions that we were to learn that managing partners from suburban firms did not think paralegals could be billed out because clients did not know what a paralegal is; or that firms in their locale simply did not bill out paralegal time. It made me think of a new bencher who asked me the same question because even he did not know what distinguishes a legal assistant from a paralegal. In other words, while the idea of using DPs was attractive, they could not get past the more fundamental issues of paralegalism.

Three, last December 19, the two year designated paralegal (DPs) family law pilot project in both the Provincial and Supreme

Court had not produced the numbers that the stakeholders had hoped for. As the two-year project drew to a close, there have only been four appearances of DPs in the SCBC and zero in the PCBC. 4:0. For those who have followed my reports, the result should not come as a surprise. The SCBC has now ended its pilot project while the PCBC has extended it until October 1 2015 with no changes to what type of appearances DPs are allowed to do, it appears that the pilot project is all but done. The non-court roles of DPs continue of course. The exceedingly low participation of DPs in court, I suspect are symptomatic of a bigger problem.

There is still a good reason to be concerned about the necessity of having two paralegal titles that the law society has created to improve access to justice – one regulated (designated) and one standard (certified) –

B.C. Human Rights Tribunal & SRLs (Part 2)

(continued from page 3)
order your witnesses to ensure that they have the correct chronology of the story, and to prepare a summary of their evidence. Finally, the SRL should identify the relevant documents that will be referred to in the hearing, and prepare a sufficient number of copies.

Decision

The entire tribunal process can take a substantial amount of time and expense

in preparing submissions, applications, and hearings. After the hearing, it can take up to a year before the parties hear about the outcome; sometimes three years. Thus the tribunal uses settlement meetings and to aid in settlement discussions. Sometimes, parties are much better off parting ways where they were able to settle amicably.

As of January 2015, Amici Curiae pro bono paralegals

have begun assisting SRLs who have to appear before the BC Human Rights Tribunal.

The full article appears on our website. !

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.



Legal Education
Trial Brief Preparation
Legal Printing &
Legal Supplies
legalpresents.com

B! 201501

Briefly! is intended to provide information on new developments in litigation and law practice management.

For information, contact Dom Bautista at 604.685.2727 or at dom@lawcourtscenter.com

Law Courts Center

840 Howe ST #150
Vancouver V6Z 2L2

the more pressing question that ought to be addressed is: if some lawyers and administrators have not figured out what is a paralegal, how can stakeholders explain what a paralegal is to the general public?

In the meantime, all three levels of our courts are busy working on projects to reflect the realities of litigation and its key constituents. More on that next month. !

Dom Bautista is the executive director of Law Courts Center.



On Twitter:
@lccdombautista

SCHEDULE FOR FRIDAY MARCH 13, 2015 (9:00 AM TO 5:00 PM)

Law Courts Center • Canadian Paralegal Institute

Document Discovery A Primer

BUILD YOUR FOUNDATIONS IN PREPARING LISTS OF DOCUMENTS PURSUANT TO RULE 7-1

At the end of your studies, you will:

- understand the purpose of listing documents in Form 22
- understand the obligation placed on counsel to list documents pursuant to Rule 7-1
- be able to identify a document in its various forms
- be familiar with the circumstances in which it is appropriate to list groups of documents
- be able to prepare a relatively simple list of documents
- be able to recognize potentially privileged documents
- understand the ongoing obligation to disclose documents
- be able to revise a list of documents
- be able to prepare an amended list of documents

COURSE PREREQUISITE

There is pre-course work that will be assigned.

COURSE REPORTING FOR CPD

*The Law Society has pre-approved 7.0 course hours towards your Continuing Professional Development requirements. In addition, a **Certificate of Completion** is given to you if you receive a minimum of 70% in the course.*

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

INSTRUCTOR Gerrie Campbell, Senior Paralegal

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.

For junior lawyers, solos, paralegals and legal secretaries!

“Let us examine the fundamental principles and techniques for preparing list of documents that are efficient and effective!”

REGISTER ONLINE:

www.lawcourtscenter.com

REGISTRATION (INCLUDES GST #128573300)

- | | |
|---|----------|
| <input type="checkbox"/> Single Seat | \$548.80 |
| <input type="checkbox"/> Multi-seat or Group Rate for members of Amici Curiae | \$521.36 |
| <input type="checkbox"/> Please send me a copy of the manual only as I am not able to attend. | \$246.75 |

1501 B!



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

1501 B!

Has the scope of discovery narrowed under the SCBC Rules?

In the case of *More Marine Ltd. v. Shearwater Marine Ltd 2011 BCSC 166* (<http://www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc166/2011bcsc166.html>), the Honourable Mr. Justice N. Smith considers the scope of the questions that may be asked of a deponent on oral examination for discovery.

On December 7, 2010 an examination for discovery of William Bonar, a claims adjuster employed by the defendant, Continental Casualty Company, was conducted by the president of More Marine Ltd., Kerry Morris, who was acting on the plaintiffs' behalf.

During the course of the examination Mr. Bonar's counsel objected to a number of questions. In addition, Mr. Bonar did not know the answer to a number of questions and he was requested to inform himself or provide further documents.

In the case at bar, the plaintiff sought an order requiring the continuation of the examination for discovery and compelling answers to certain questions.

In his reasons, Justice Smith noted that under the former Rules the duty to disclose documents and the duty to answer questions on oral examination were controlled by the same test for relevance, which was set out in *Compagnie Financière du Pacifique v. Peruvian Guano Company* (1882), 11 Q.B.D. 55 at 63 (C.A.).

While the former Rule 26 (1) required a party to list all documents relating to every matter in question in the action, the new Rule 7-1 (1) sets the obligation for initial document discovery more narrowly:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

With respect to oral discovery; however, the court noted the rule that sets the scope of proper questioning on an examination for discovery is exactly the same in the new Rules as it was in the old Rules, which is as follows:

Unless the court otherwise orders, a person being examined for discovery

- (a) must answer any question within his or her knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action, and
- (b) is compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relating to any matter in question in the action.

This means that even though the scope of document discovery may have changed the scope of relevancy at an oral discovery remains as that set out in *Peruvian Guano*:

It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may -- not which must -- either directly or indirectly enable the party ... either to advance his own case or to damage the case of his adversary. I have put in the words

"either directly or indirectly," because, as it seems to me, a document can properly be said to contain information which may enable the party ... either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences...

With respect to objections made at discovery the court quoted from *Cominco Ltd. v. Westinghouse Can Ltd.* (1979), 11 B.C.L.R. 142 (C.A) saying, *"rigid limitations rigidly applied can destroy the right to a proper examination for discovery."*

Justice Smith believed that, even though the test for relevancy is the same, the new Rules impose limitations on oral examination for discovery through Rule 7-2 (2), which now limits an examination for discovery to seven hours or to any longer period to which the person being examined consents.

Justice Smith noted that under this Rule, *"there is a greater obligation for the party being examined to avoid unduly objecting or interfering in a way that wastes the time available."*

In conclusion, Justice Smith found that because Mr. Bonar had been asked to inform himself on various questions and because the seven hour time limit had not expired, it was proper for the examination for discovery to continue and he made that order. He also extended the time left on discovery to account for the objections and arguments for objections.

In coming to his conclusion Justice Smith did not comment on each of the questions but gave counsel a general direction for how the continued discovery should go. He found that most of the questions were appropriate and relevant even if they were not properly worded. !

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 Ciofitto, 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

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)

www.lawcourtscenter.com



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 \times 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?

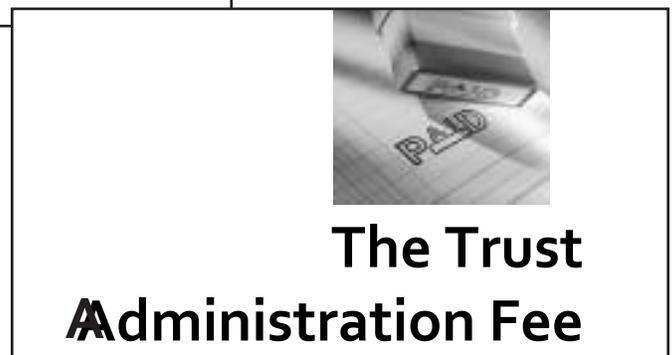
Appendix 1 Canada Revenue Agency & Ministry of Finance March 19, 2014 Powerpoint

v1501



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.*



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)

<input type="checkbox"/> Single In-Person Seat (TRA 101)	\$576.25
<input type="checkbox"/> Single Webinar Seat License (TRA 102)	\$576.25
<input type="checkbox"/> Please send me a copy of the manual only as I am not able to attend.	\$246.75

1501 B!



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