Briefly!

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空口講白话 無米不成炊: On Limited Scope Pro Bono Services & Accountants

Reading Chief Justice Bauman's latest blog *Talk Doesn't Cook Rice* reminded me of the ancient Chinese saying: 空口講白话 無米不成炊.

Access to Justice BC is BC's response to a national call for action to make family and civil justice more accessible. It is a forum to facilitate open communication and collaborative working relationships among justice system stakeholders. As the head of Access to Justice BC, Chief Justice Bauman has taken on to blogging to convey the progress of this volunteer group.

Of the four examples he listed, let me tackle unbundled legal services or limited scope services. Limited scope services allow a party to choose what legal work that their lawyer will provide to them during the life of their litigation case. A week ago, Jennifer Muller, a former self-represented litigant (SRL), returned to speak at Law Courts Center's Family Law Series, to share her lived experience as a SRL. She recounted how difficult it was to find a lawyer who would provide her with limited scope services.

Law Society of BC President Crossin, QC, in his February 26, 2016 blog mentioned the work that the Access to Legal Services Advisory Committee does and encouraged our members to engage in this very important issue. He also recognized the challenges in getting lawyers to provide limited scope retainer.

Let us set aside the lawyer inertia problem and look at another group of legal professionals: firm accountants.

The fall, Amici Curiae is set to begin providing pro bono limited scope services in drafting the F8 financial statement affidavits for women. The pilot projects will be with its institutional partners Atira Women's Resource Society and the Battered Women's Support Services. And instead of using paralegals, law firm accountants will perform this probono service.

Vicky Law, duty counsel with Battered Women Support Services: "*I think it's fair and safe to say that the majority of the women we work with, if not all, are in an disadvantaged position when it comes to having control over finances. In many situations, the abuser is the one who is working and is able to dictate how the money is used. Women face multiple barriers in separating from their abusers and financial barrier is very common. Women are concerned about how to support her children and herself when her abuser is the sole provider for the family. In other situations, the women is the sole provider but the abuser takes all her money and she does not know how it is being used, all she knows is that she is "required" to bring home this amount in order to keep her family safe.*

There are many benefits in having trained accountants to work with women in drafting their financial statements. First, the financial statement is an affidavit so it needs to be true and complete, to the best of each affiant's ability. There are a lot of information that needs to completed where women are unfamiliar with, i.e. expenses, complete list of assets, debts, real and personal property, etc. The benefits would be that the F8 and provincial financial statement would be more complete and accurate and that she would have a better understanding of her financial circumstance."

To my law firm accountant friends and students, I have long said that as professionals, you have an role in improving access to justice. CJ Bauman's words are true: *Talk Doesn't Cook Rice*, Amici Curiae has a place for you. The faculty includes Nanaimo based SCBC Master Dick and LSBC 2nd VP Merill, QC when we train on August 27, 2016. Join us, won't you?

Dom Bautista is the executive director of Law Courts Center.

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June 9	**Master MacNaughton: Family Law Pleadings**
June11	**Judge Bond: Family Pleadings Generally**
June 16	**Judge McKenzie: Under The Robes Diversity on the Bench Matters**
June 25	**Judge Groves: Family Chambers Procedures**
July 6	**Civil Document Discovery 101**
July 7	**Civil List of Documents) 201**
July 12	**Transgender Clients as SRLs Part 1 #A2J**
July 14	**Public Speaking Workshop**
July 16	**Family Law: Drafting Affidavits**
July 26	**TRC Children of Denial**
Aug 9	**Transgender Clients as SRLs Part 2 #A2J**
Aug 11	**Public Speaking Workshop**
Aug 25	**Advocacy for Transgender Clients**
August 27	**Master Dick Drafting F8 Affidavits**
September 14	**Business of Law 201**
September 15	**Trust Accounting 101 In-Person**
September 15	**Trust Accounting 101 Webinar**

New: Job Posting Service

Dialogue Series June to August 2016

Dialogues (not lectures) are a better way to discern how we as stakeholders in law can be more inclusive towards First Nations and other cultures including gender variant people. Here are 3 events in BC that might be of interest to you. They are available in person or by web.

Venue: Justice Education Society Room 260 800 Hornby St.
Fees: Vary

Diversity Dialogues 108: Under the Robes Diversity on the Bench Matters
June 16, 2016 Thursday 5:30 to 7:30pm (Fee $125)

Join Judge Kael McKenzie – Provincial Court of Manitoba as he facilitates a conversation about diversity on the bench.

When I was appointed to the bench there was much said in the media about the fact that I am transgender. Many asked, "Why does this matter?" It is a valid question because justice is supposed to be blind and judges are supposed to be unbiased. In theory a Judge's personal characteristics are irrelevant, but the reality is that we each bring our own unique experience and perspective to the difficult task of Judging especially with sensitive cases. Does or should the Judiciary reflect Canadian Society? What issues does diversity raise for the public? What if any barriers are there to judicial appointment? Who if anyone should be excluded?

CPD: 2.0 hours including 1.0 hour in client relations, ethics and professional responsibility.

TRC & Law Dialogues 103: Children of Denial (Musqueam Elder Grant)
July 26, 2016 Tuesday 5:30 to 7:30pm (Fee: $78.75)

Elder Grant will lead a dialogue to reflect the challenges growing up as a child of mixed Musqueam and Chinese ancestry in a white British-Canadian-Colonial society.

He will discuss how identity, self respect, culture, spirituality, place of belonging have been denied to Indigenous children through Canadian government acts of exclusion, and how these issues continue to exist today.

CPD: 2.0 hours including 1.0 hour in client relations, ethics and professional responsibility.
Note: Previous Diversity Dialogues are available for viewing. http://tinyurl.com/lccdiversitydialogues

Diversity Dialogues 109: Advocacy For Transgender Clients (Adrienne Smith, counsel)
August 25, 2016 Thursday 5:30 to 7:30pm (Fee: $78.75)

CPD: 2.0 hours including 1.0 hour in client relations, ethics and professional responsibility.

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

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Should a Person's Religion Affect Their Worth & Job Eligibility? 2/2

Should a person's religion affect their worth and eligibility for a job, especially when that job has no relation to religion? This is the final portion of this article. The BC Human Rights Tribunal did not think so. In its recently released decision, *Paquette v. Amaruk Wilderness* and another (No. 4), 2016 BCHRT 35, the Tribunal Member found in favour of Ms. Paquette, the complainant.

In defence to the complaint, the respondents say their e-mails were merely a statement of opinion and had a basis in historical fact. They did not argue that excluding TWU graduates from their company was a bona fide occupational requirement for their business.

The crux of the issue is that the respondents judged her skills and qualifications in part because of her religion. There was nothing to indicate that she would have failed in the proposed job duties because of her faith. In most occupations, job seekers are examined by companies based on their skill set unless there is a bona fide requirement to go beyond that. For example, a Catholic school would be justified in employing only Catholic teachers to teach its Catholic students. In this case, there was nothing that would tie her degree from TWU with being a wilderness guide.

It was undisputed that she applied for and was denied employment with Amaruk. It was also undisputed that she was a Christian. Accordingly, she met the *prima facie* case of discrimination. The Tribunal Member was satisfied based on the e-mails from Amaruk that religion played a part in she rejected application. The Tribunal Member went a step further and found not only was there discrimination based on religion, but religious harassment as well. The e-mails from Amaruk pointedly took issue with the principles embraced by TWU and with Christianity generally.

In regards to the aspect of injury to dignity and self-respect, the Tribunal Member referred to *Movement laïque Québécois v. Saguenay*, 2015 SCC 16, where the Supreme Court of Canada held that religion is an integral part of each person's identity and that "when the state treats his or her religious practices or beliefs as less important or less true than the practices of others, or when it marginalizes her or his religious community in some way, it is not simply rejecting the individual's views and values, it is denying her or his equal worth". The Tribunal Member found that the respondents' harassment of her and their rejection of her application based in part on her religious identity, amounted to a denial of her equal worth. Although she. produced no medical evidence to support the impact of the injury to dignity and self-worth, the Tribunal Member awarded her with $8500 in this regard as well as her travelling expenses to attend the hearing, plus post-judgment interest. Whether the respondents will pay the award is another matter. Before the respondents left the hearing, they declared that they would not honour any monetary award which the Tribunal might make in favour of Ms. Paquette.

The attention this case has received is partly because of the residual fallout from the national and local media attention on TWU's accreditation case and partly because the discrimination was so plain, overt and outrageous that it almost befits a tabloid headline.

There was no reason why Ms. Paquette's education from TWU should have impacted her application for employment as a wilderness guide. Her faith formed a part of her personal identity, which the respondents repeatedly and vehemently attacked. Just as there is a time and place to worship a religion, so too is there a time and place for personal opinions about religion. That time and place is certainly not in a response to a job application. !

Sharon Allegrini heads AC's human rights clinic and is a paralegal at Bull, Housser & Tupper LLP.

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Family Law Schedule Summer 2016

June11 Judge Bond: Family Pleadings Generally
June 16 Diversity Dialogues: Judge McKenzie
Under The Robes Diversity on the Bench Matters
June 25 Judge Groves: Family Chambers Procedures
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View from the Bench: CPCs & TMCs (1/2)

Last April 12, 2016, Mr. Justice Silverman spoke to the Amici Curiae paralegals regarding Case Planning Conferences and Trial Management Conferences, including the amendments to the Supreme Court Civil Rules (the "Rules") effective July 1, 2016. There are no changes to the case planning provisions in the Rules and the amendments concerning costs have been repealed. The amendments to the trial management provisions make up only a small part of the amendments to take effect on July 1, 2016.

Self-represented parties can find general information regarding the Supreme Court Civil Rules at the library, on the internet, or in the British Columbia Annual Practice, containing the consolidated, annotated Supreme Court Civil Rules.

One of the most significant changes from the 2010 amendments is the court's proactive management of actions. Case Planning Conferences (CPCs) and Trial Management Conferences (TMCs) are the biggest examples of that management. There is disagreement amongst counsel and the court as to the effectiveness of CPC's and TMC's, but everyone agrees that they serve a useful purpose. The concept of proportionality is another significant change to the Rules from the 2010 amendments. That concept is referred to more frequently than almost anything else in the Rules.

The common element of CPCs and TMCs is that the focus is on management – management of parties (especially self-represented parties or SRLs), court time management and trial management. The benefits to the court are obvious: trials are ready to proceed and less court time is needed. The benefits to litigants are that they can avoid the usual problems that come up during a trial because they are prepared in advance. The benefits to SRLs is that they have an opportunity to be educated about the process of litigation. During a TMC, each party is made aware of the need to prepare witnesses and know in advance what they will say. The process for discovery of documents and Examinations for Discovery can be reviewed at a CPC. A SRL may not know how to prove a fact through a witness or a document, and the judge or master can advise them. The judge or master has an important role in a CPC or TMC with a self-represented party. Sometimes SRLs come to court with the television concept of ambushing the other side with secret documents and witnesses. It is vital for them to learn in advance that this is not how our court system works.

Prior to 2010, the court held Pre-Trial Conferences. CPC's were only for the largest and most complex cases where a judge was appointed early. The difference between the Pre-Trial Conference and a CPC or TMC is that they are divided into two conferences. The CPC and TMC are held at very different times in the life of the action. CPCs are held early in the action and TMC's in the last months leading up to trial. Trial Briefs are required for TMC's. No Trial Briefs were required for Pre-Trial Conferences. All kinds of applications could be made at a PTC – contested, uncontested, with affidavit evidence or not. Often PTCs would continue for hours. Under the current system, only applications a judge or master concludes can be heard without affidavits can be heard at CPC or TMC. An example would be a contested adjournment application where counsel can make submissions and no evidence is needed.

Judges and masters try to be very flexible with SRLs at TMC and CPCs. If they weren't flexible, trials would not proceed and be heard. The court hopes that SRLs come as prepared as they can.

The July amendments do not affect the CPC provisions. A review of the case planning provisions in Part 5 of the Rules follows.

A Case Planning Conference may be directed by the court pursuant to Rule 5-1(2) and can be combined with a TMC if proportionality issues so dictate. Technically, it is probably not correct to do so.

Notice of a Case Planning Conference must be given in accordance with Rule 5-1(3)(a) 35 days for a first Case Planning Conference, and (b) 7 days for any other Case Planning Conference, in Form 19.

Parties must then exchange Case Plan Proposals pursuant to Rule 5-1(5) and (6), within 14 days of service of Notice of Case Planning Conference for the requesting party and within 14 days of receipt of the opposing parties' Case Plan Proposal, in Form 20. Parties should review the Case Plan Proposal form with proportionality in mind. The form includes such things as discovery of documents, Examinations for Discovery, dispute resolution procedures, expert witnesses, List of Witnesses, mode of trial, estimated trial length and preferred period for trial. The most important items are typically the timing of discovery of documents and Examinations for Discovery. Parties should come to the CPC prepared to discuss their Case Plan Proposal and, importantly, have discussed it with each other. !

The second part of this article appears next month. Our BC Civil Litigation Guide is being updated to reflect these comments.

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Civil Law Schedule Summer 2016

June 16 Diversity Dialogues: Judge McKenzie
Under The Robes Diversity on the Bench Matters
July 6 Document Discovery (List of Documents) 101
July 7 List of Documents 201
July 12 Transgender Clients as SRLs Part 1 #A2J
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Are the Days of the Civility Revolution Coming to an End?

University of Ottawa Professor Adam Dodek recently came to Vancouver to deliver several lectures. Law Courts Center was very fortunate to have hosted him to help raise funds for Amici Curiae clinics. He spoke about the civility revolution and shared his view on why the days of regulating civility is over. Provocative remarks he promised. And delivered (the recording is available.)

Over the last fifteen years, the legal profession in Canada has been engaged in a sustained civility campaign. It has celebrated and elevated civility and prioritized it at the cost of other more important values and issues in the legal profession and in the administration of justice. Dodek explored and revealed the roots of the duty of civility for Canadian lawyers from the 19th century until modern day.

Anchored to his remarks is the book: *In Search of the Ethical Lawyer*, which he co-edited with Professor Alice Woolley. The 11 stories they curated makes one re-think what ethics are really about because of the personal aspects of each lawyer, which can often be lost in the narrative. Notwithstanding the comments I received in social media (ie of course lawyers are ethical, to, I have yet to find one), a close examination of ethics is important in our profession, as Chief Justice Hinkson wrote in referring to the importance of subject: *it is one that is often overlooked, if not ignored.*

In it the authors shared their belief that the facts – people, circumstances, disputes, entities, culture and social structures also matter in the consideration of ethical issues for the Canadian legal profession. Without a rich and rigorous understanding of the personal, social, structural, and cultural circumstances in which they arise, one cannot have a meaningful conversation about the ethical challenges of legal practice, the interpretation and significance of the rules of professional conduct; what it means to be a "good" lawyer (and I add parenthetically, in light of the move by our law society to regulate firms: other legal professionals); the solutions to vexing problems such as access to justice, the meaning of "professionalism"; or indeed, any other issue of legal ethics and professional regulations.

Last May 12, 2016, lawyers, many of whom were benchers and QCs, listened to Dodek as he laid out the reasons why he felt civility is about to run its course. A lecture in Vancouver would not have been complete without discussing one of its members Gerry Laarakker who was disciplined by our law society for professionally misconducting himself in 2009. Dodek felt that all Laarakker did was to stand up to bullies. I managed to catch up with Laarakker just before he boarded his plane to Israel to ask him if there was anything he would like me to say during the lecture on his behalf. He said: "I *have been very heartened by the support I received from my colleagues. I was a bit surprised by the decision of the LSBC discipline panel, but I really don't care what they think. I feel I have done something good as a lawyer in doing what I did.*" I confessed to the audience that I left out parts of his reply because my mother would not have been pleased if I did not.

He ended his remarks with one last thought, that we need to be careful not to use civility and professionalism as a mask for privilege.

I left the evening thinking about what Dodek said to me, that perhaps compared to Ontario, BC is not looking to investigate cases like these.

Last May 31, 2016, our law society ruled on Martin Johnson as having committed professional misconduct. Johnson was cited for being involved in a verbal altercation outside of a courtroom with a RCMP officer who was also a potential witness in a trial where the Johnson represented a client in a criminal matter. In the altercation the officer said to Johnson, "*Don't for a minute think I don't know who you are and what you're all about*," and Johnson replied to the officer "*fuck you*" in an angry and insulting manner. Johnson was found to have committed professional misconduct and was suspended for one month.

In investigating the likes of Laarakker, Foo, Johnson, are our regulators trying to protect lawyers' image or is it trying to protect the public? As our law society is working on the rules to regulate firms, it made me wonder how Johnson's case and other section 47 cases would impact the conduct of BC firms, specially the small firms. I will share with you next time.

As to Dodek's thinking whether regulating civility is waning, I will leave that to you to discern. To order the video or his book, write me.

Dom Bautista is the executive director of Law Courts Center.

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Transgender Law Studies Summer 2016

June 16 Diversity Dialogues: Judge McKenzie

Provincial Court of Manitoba

Under The Robes Diversity on the Bench Matters
Canada's 1st Transgender Judge

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