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THERE ARE NO SHORTAGES OF NASTY SUPERLATIVES FOR THE CREDIT CRISIS

Let's dust off the Roller-coaster Analogy while we hang on tight

By Warren Haag, CA
Manning Elliott LLP

Most Vancouverites are quite familiar with the site of the PNE's old wooden roller-coaster.

Those of us who are real fans can probably describe the entire ride from beginning to end. And even though we know what to expect each time we jump on board, we're still excited with anticipation and a touch of nervous anxiety about whether or not the train will stay on the tracks.



Warren Haag, CA

Roller-coaster → to Page 4



The PNE's wooden roller-coaster
A metaphoric thrill a minute

PACIFIC NATIONAL EXHIBITION

A LOOK AHEAD AT BCLMA'S PLANS FOR THIS YEAR

Communications expand, relationships widening for BCLMA in 2009/2010

By Stephanie Marsh
BCLMA President

Our robust executive team has contributed to the success of many annual events and to several new initiatives that all serve to uphold and improve the professionalism of our fine association. Here's some of what we accomplished this past year, and what you can expect in the coming months:

STAYING IN TOUCH The 2006 Membership Survey asked for more communication and involvement from the Executive. We have worked hard to connect with you, creating a new level of communication and responsiveness.

At least one Executive Board member attends every subsection event, and we strive to keep you informed either through e-mails, the website or this, the TOPICS newsletter.

In 2009, a monthly 'e-bulletin' will be sent to you to keep you abreast of breaking news. We look forward to your feedback on this new communication vehicle.

NEW POLICIES & PROCEDURES You all now know about the newly implemented *Policies & Procedures* (P&P) document that we developed with our corporate lawyer at Edwards, Kenny & Bray. The new P&P addresses several areas that required attention in order to become



Stephanie Marsh

compliant with our bylaws. The P&P are effective immediately and are subject to change as decided by the directors by resolution.

The most radical change is how we reference individuals within the association. Full members are now known as *Representatives* and Subsection Members are now known as *Affiliates*. Firms remain the *Member* (as outlined in the bylaws).

RELATIONSHIP-BUILDING In October, we sponsored Professional Legal Management Week (PLMW), a week-long program of international scope that supports all levels of legal managers, and brings awareness to the profession.

Our logo appeared on all PLMW materials, and we contributed an article to PLMW's magazine. Our participation in this program generated some global awareness of the BCLMA.

We are also combining our resources to co-host webinars that explore topics relevant to both Canadian and American audiences. Several of you participated in the 'Green' webinar during PLMW week.

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Our next webinar is a joint-effort of the ALA, The Law Office Management Association – Ontario (TLOMA), the CBA and the BCLMA.

The Better Mousetrap: Strategies for Meeting Associate, Partner and Client Expectations will see B.C. lawyers James Bond of Lang Michener’s Vancouver office and Sarah Klinger of Cardinal Law in Victoria discuss the needs of today’s associates, which are often quite different from those of the senior practitioners in a firm. Event details are currently posted on our website.

If you attended our Fall conference in Whistler, you might have had the opportunity to meet Edmund Reid, the-then Vice-President of TLOMA. I’m pleased to report that Edmund has just been elected President of TLOMA for this cal-



Edmund Reid

endar year. Edmund and I are sharing ideas and best practices to keep our organizations efficient and thriving.

The BCLMA will continue to embrace collaborative opportunities with these and other organizations that share our vision for advancement and development of our legal management professionals.

NEW WEBSITE, NEW LOGO, NEW NEWSLETTER

We are scheduled to launch the new BCLMA website in February. The new site is much more contemporary, clear and concise. Vendor logos appear as part of sponsorship agreements or as paid advertising space. Better navigation and search functions are just a few of the enhancements.

Along with the new site comes a new logo. It’s not substantially different from the recent logo but it is cleaner and less confusing. (Not many people knew that the four green boxes behind the last letter

of ‘BCLMA’ were meant to represent the four corners of the province.)

This edition of *TOPICS* reflects the design elements of the new website – linear, clean, contained – and incorporates the new logo.

ONE SUCCESSFUL EVENT AFTER ANOTHER

Those joining the BCLMA for the first time were invited to meet one another, current and former Directors and Officers of the Executive as well subsection leaders at the inaugural New Members Breakfast reception in September.

Questions about membership benefits, volunteer opportunities and events were answered in this casual setting over coffee and muffins.

Our next Breakfast, now entitled *Colleagues & Coffee*, will be hosted in February. All new BCLMA registrants will be invited by e-mail.

Our 2008 educational conference, *Un-*

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der Construction, was an outstanding success! Thank you to everyone who attended, and to those who volunteered their time and effort to make the conference so spectacular. And special thanks to our sponsors who made significant contributions:

- ✓ Dye & Durham (Platinum)
- ✓ LaserNetworks (Gold)
- ✓ Canon (Silver)
- ✓ Ricoh (Silver)
- ✓ ZSA Legal Recruitment (Silver)
- ✓ Arcprint & Imaging (Bronze)
- ✓ IKON Offices Solutions (Bronze)
- ✓ Systems Auditing (Bronze) and
- ✓ Van Houtte Coffee Services (Bronze)

More than 80 people attended the annual Managing Partners Dinner at Terminal City Club in November. Ken Bagshaw, the Chief Legal Officer of The Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC), provided an overview of the 2010 Games. Dave MacFarlane, of HUB International, along with Laura Reid and Stephen Danvers of Arlyn Reid, were the event's sponsors. BCLMA will continue to focus on the impact of the Games to our region and our Firms as we count down to 2010.


Wow! We hosted a record 125 people at the Winter Social at the Watermark Restaurant in Kitsilano in December.

We had excellent feedback on the event design; food stations, high-tops and

small groups of tables kept everyone mixing and mingling throughout the evening. Victor Montagliani and Dave MacFarlane of HUB International, along with Connie Fenyo, Cynthia Nerland, Clive Belliam and Chris Ackerman of Dye & Durham, were the event's sponsors.

I, along with the Executive Board and Subsection Chairs, look forward to con-

**80+ ATTENDED THE
MANAGING PARTNERS
DINNER**

tinuing to support you within your firms as we proceed into 2009. Please contact me or any member of the executive with your questions, concerns and feedback; the contact information is on the last page of this newsletter. *Thank You!* 

New look for TOPICS

A brand new year, a brand new look. This edition of TOPICS, the first of 2009, and the first of our 25th Anniversary editions, reflects the crisp, clean look of the new BCLMA: linear, clean and contained.

We've introduced a new colour palette, one that uses the updated version of our emblem as a baseline for its modern colour scheme of blues, greens and oranges.

We've also introduced new typefaces: The main body copy is set in Baskerville, designed by an Englishman, John Baskerville, in the 1750s. It's a typeface that's almost effortless to read, and it provides us with the look and feel of tradition on screen and in print. On the other hand we've set our headlines in variations on Shannon. Designed in 1982 by Janice Fishman and Kris Holmes, its modern character provides information in a glance.



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What's Next?

Mark your calendar with these upcoming events and important dates:

March 11, 2009

*Joint Webinar
The Better Mousetrap: Strategies for Meeting Associate, Partner and Client Expectations.*

April 2, 2009

*BCLMA Annual General Meeting
Nominations for the 2009/10 Executive Board are now being accepted. E-mail Jane Kennedy at Membership@BCLMA.org*

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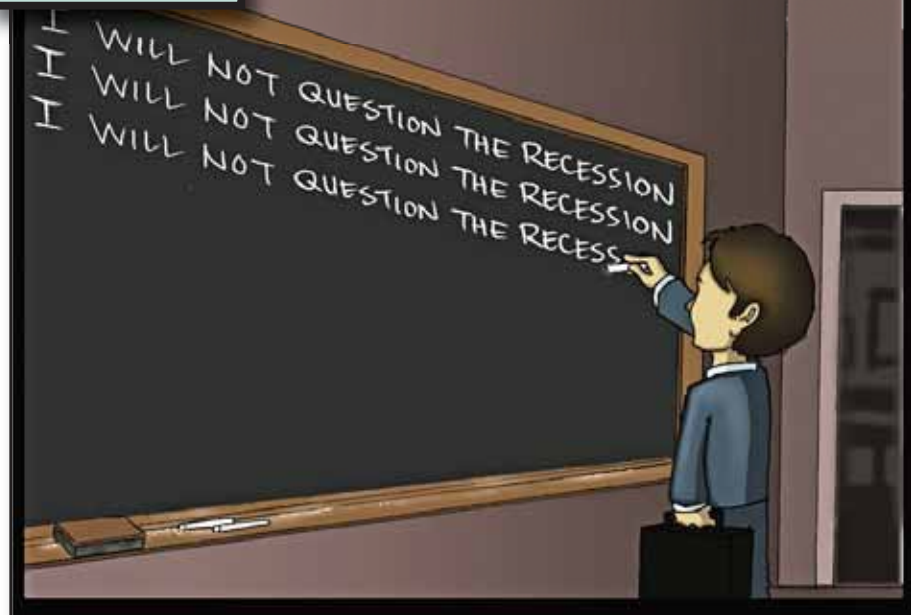
But for all of its breathtaking plunges and unexpected sharp turns, I've never heard of the trains de-railing, and the old wooden structure itself is likely to remain standing short of an earthquake or the PNE ever actually moving from Hastings Park.

Historical data shows us that it's reasonable to expect market volatility. Actually going through it, however, can be downright scary, all jokes about outrageous media headlines aside. But enduring volatility such as we've recently seen seems to be part of the cost of admission.

tant, of the downside of investing. But standing beside the old wooden roller-coaster, as long as you open your eyes, you'll notice that there's more than one up-and-down on the ride.

As we all go coasting to the valley bottom of this economic event, whose final resting point and overall significance remains undetermined, I've got the following thoughts rattling around in my mind to share, from the perspective of a chartered accountant in public practice.

THE FIRM



PROFESSIONAL SERVICES BUSINESS RISK

The business volume of service providers, professional or otherwise, is strongly influenced by the business prospects of our clients. Obviously, clients' businesses which are tied to or influenced by the cost of borrowing or general consumption in the economy, or clients who simply have heavy debt-loads, are bound to be feeling the need to tighten their expenditure taps due to the credit crunch.

It's also common for distressed businesses to put off paying their trade credit accounts for as long as they can, as this is an easier way of borrowing than dealing directly with a formal lender. So it's certainly more important than ever to consider what each of your clients does, and think about just how much the credit crunch may be affecting them.

Service providers with diversified client groups may find little need to modify their short-term plans, while those with concentrations of clients in affected industries will need to plan for some uncertainty or a decrease in business volume.

To the extent that your business may be exposed, the most common short-term responses will be to cut back on discretionary expenses, and limit increases in wage costs.

More importantly in the longer term will be to monitor staff activity levels—making sure everyone has enough to do, and not too much capacity is left on the table—and review concentrations of client groups. Much the same as investing in the financial markets, putting all of your client eggs in one basket magnifies

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Drawing an analogy between roller-coasters and financial markets is about as original as writing an article on this topic these days. During October and November, I was entertained by countless media reports citing the current market correction as 'history in the making' and prophesying impending financial doom, economic disaster and so on and so forth—real cheery and repetitive stuff.

I'm not suggesting that what we've witnessed in the financial markets during the past few months is insignificant, nor that investing in the financial markets should be treated with the same care-free attitude adopted when jumping on an amusement park ride. Rather, the decision to invest one's hard-earned cash in the financial markets is similar to the evaluation we make standing beside the old wooden roller-coaster as we size up its various ups and downs, twists and turns.

As recently as seven or eight years ago, a sequence of events—the bursting of the dot.com bubble, 9/11, and the accounting scandals involving Enron and WorldCom—deflated financial markets and triggered a recession experienced in many parts of the world. While many investors lost more than a few dollars as a result of that round of economic uncertainty, a recovery eventually took place.

Since the beginning of that recovery period and until this past October, anyone who put their money back in to financial markets, or just left it there all along, likely became used to decent, and potentially huge returns, year after year, with 2007 and the first three quarters of 2008 perhaps being the most outstanding and unbelievable of all.

About five years of steady returns, in some cases double-digit, helps block out the bad memories, both recent and dis-

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Roller-coaster → from Page 4

how much a downturn in a sector of the economy will affect your business.

PERSONAL INVESTMENTS AND RETIREMENT SAVINGS

Whether your money is invested in a managed pension plan, self-directed RRSP or non-sheltered play-dough account, it's pretty difficult to just sit back and watch the value of everything you're holding plunge. Personally, I've been quite annoyed listening to all of the experts tell us not to panic. By definition, someone with a lot more money, and presumably more well informed than me, is panicking in order to produce the significant decline in financial markets we've seen during in recent months.

When financial markets become volatile, it's important to remember why you put your money there in the first place. Unless you're on the cusp of retirement, or simply need to withdraw funds right away for whatever reason, it's likely that the best course of action is to keep your money in the market.

I won't say 'don't panic,' because a volatile market is a cause for concern, or if you do feel the need to do something, then be sure that any actions you take are consistent with your long-term objectives.

For example, the knee-jerk response for many when a mutual fund (or any security) takes a nose-dive is to sell it, and move the money in to something secure like a GIC. But this decision simply turns an unrealized loss into a real one, and potentially parks your cash outside of any sort of investment that is going to participate in a future recovery.

Other than active market players who have the day-to-day involvement and experience to make money on short-term speculation in the markets, most of us who are invested in financial markets put our money there because, over the long-haul, financial markets provide a better return than secured investments.

When your investment holdings decline in value, before making the deci-

sion to sell and realize a loss, there should be some consideration as to why the investment declined in value, and serious thinking about whether the investment has the potential to rebound. Only when you've given up on an investment that's in a loss position should you pull the trigger.

For an investment that isn't in a sheltered retirement account, there's also the added motivation of having the realized loss available to offset capital gains. Of particular interest in 2008 is that many people had record capital gains in 2007. Realized losses in 2008 can be carried

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back to 2007 to trigger a refund of taxes previously paid.

Probably one of the most challenging questions for a lot of us in the winter of 2008/2009, however, is what to do with the money we were planning on putting in to our RRSP.

No one likes the idea of seeing their current year's contribution immediately decline in value due to a volatile market. At the same time, when the market stabilizes and starts to recover, anyone who bought in or around the bottom of this current spate of volatility will stand to see a better return than someone who waited. Every expert's crystal ball seems to say something different about what's going to happen.

It's truly a tough call right now about what might happen in the short run to anything you invest. While it's hard to imagine the markets taking a further dive than what's already been experienced, never say never. But if the purpose of investing for retirement is to experience long-term appreciation, then anything that happens in the short run should be made up for over a longer-term time horizon.

THE VALUE OF THE US DOLLAR As if watching the value of your retirement savings decline wasn't noteworthy enough all on its own, the Canadian dollar's value against the US dollar also slipped southwards.

Actually, if you compare currency exchange rates beyond the US dollar, it's more the case that the US dollar has appreciated against most currencies, which may seem surprising depending on which school of thought you subscribe to when it comes to what affects currency exchange rates.

Whatever the cause may be, the change in the exchange rate really only matters to the extent you do business with the US, or have investments denominated in US dollars. In fact, if you have US dollar denominated investments in your portfolio, they are now worth more due to the exchange effect, which may offset some of the losses otherwise being experienced.

Perhaps the most immediately relevant


observation about the exchange rate for the average Vancouverite is for all of us who were planning on a fun-in-the-sun vacation before they did, or doing some cross-border shopping someplace in the States.

That trip certainly got a little more expensive than it was last year, but, if only considering the exchange rate, it's still cheaper than it was five years ago, when we hadn't even reached an 80-cent dollar since the early 90's.

COMPARING APPLES For accountants like myself, and other data-oriented types, there seems to be a fair bit of comfort to be found during times like these in citing quantitative statistics from previous economic events, whether we're really comparing apples to apples.

I guess the prevailing idea behind this mode of thought is this: if it happened before, and life went on, then we should be okay this time, too.

For non-numbers folks looking for comfort or an explanation of what we're all currently experiencing in the financial markets, I always end up returning to the roller-coaster analogy. If you decide to get on board, you've hopefully made that choice having had a good look at what you were in for.

If the actual experience of the ride of the past few months has you thinking 'this isn't for me', then it's time to get some advice, and consider your options before going around for another lap. 

Warren Haag, CA is a Senior Manager at Manning Elliott LLP. He works primarily with privately owned businesses and not-for-profit organizations. Manning Elliott LLP is a regional firm of chartered accountants, with offices in Vancouver and Abbotsford.

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A PANEL PRESENTATION BY THE BCLMA

Paralegal profession: More than just a 9-to-5 occupation

By **Dom Bautista,**
Executive Director,
Law Courts Centre

The British Columbia Legal Management Association partnered with the Canadian Paralegal Institute on October 3 to present a panel discussion on the current status of paralegals.

The panel discussion was led by moderator Tina Giallonardo, the Director of Human Resources & Facilities at Miller Thomson. Panel members included Raf Sansalone of Borden Ladner Gervais, Joyce Bruce of Cowley & Company, Maureen O’Leary of Jeffery & Calder, and Gary Carter of Paine Edmonds.

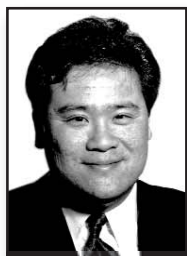
Tina posed several questions to the panel, starting with a general inquiry as to how each firm used paralegals.

Joyce Bruce, whose firm has three, finds that their paralegals provide the accessibility and support that clients often desire when going through stressful legal situations.

At the other end of the spectrum, Raf Sansalone’s firm currently has 54 paralegals to their 130 lawyers. She has observed that their clients want to know who is on their legal team, and understand that paralegals provide cost-effective legal services.

Tina asked the panel how they attract and retain paralegals. Joyce said that their firm provides recognition when it’s due, and seeks staff input on procedures and other internal issues. She also encourages paralegals to attend mediations, and sit in on trials whenever possible. Maureen makes an effort to see that each paralegal is exposed to a broad spectrum of work rather than being slotted doing limited and repetitive tasks.

The panel was asked what makes a paralegal qualified and what they look for when recruiting new staff. Joyce looks for someone who shows initiative while Gary says there’s no substitute for substantive training, without which there are holes in



Dom Bautista

the paralegal’s knowledge. He feels that extensive training, regardless of where it is obtained, is essential to defining a paralegal. Gary also looks for other skill sets that the person may be able to apply to the role, such as a back-

ground in nursing or business.

When asked how they supported their paralegals, each panel member mentioned respect, and that each paralegal should be shown respect for their experience and training, and for the effort they put into their work.

There was a general consensus that while paralegals are technically employees, paralegals are professionals who should be treated as such, and who should think of themselves that way. Raf explained that in their firm, the roles of paralegal and legal administrative assistant are quite distinct and, as an example, described that a paralegal is expected to handle tasks independently from start to finish.

There was variety in the enhancements offered by the firms, including flexibility in the hours of work, independence

and autonomy, individual offices, paid tuition and parking privileges.

Gary Carter has a special perspective on these issues because, in addition to being the human resources manager at Paine Edmonds, he also works as a paralegal. He made the important point that with respect comes responsibility, which

**EACH PARALEGAL SHOULD
BE SHOWN RESPECT FOR
THEIR EXPERIENCE AND
TRAINING, AND FOR THE
EFFORT THEY PUT INTO
THEIR WORK**

must be accepted if paralegals want to be considered professionals.

He suggested that if you find there’s a problem on a file, don’t just go to the lawyer with the problem, rather go to the lawyer with a proposed solution or plan for addressing the situation, thereby earning the respect associated with the professional standing.

The managers’ message was consistent: being a paralegal is not your standard 9-to-5 job, but one that has growth and potential for those wanting to put in the effort.

From their perspective, it’s a profession that requires give and take on the part of the paralegal and the law firm from which both parties benefit and ultimately, so do our clients.



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Renting your home during the 2010 Games requires caution in the setup

By Paula Butler

There's only a year until the Olympic and Paralympic Games begin in British Columbia, and many people are considering renting out their homes during the Games.

There is a clear financial benefit to doing this – Internet information indicates that the average nightly rates range from about \$200 per bedroom per night in Richmond, to an average rate of almost \$500 per bedroom per night in Whistler. There are, however, a number of other factors to consider before renting out your home.

To begin with, it is important to review your city's bylaws to determine if they impact on your ability to rent your home, or part of it. City bylaws may impose guidelines on this type of rental properties, such as the number and type of fire extinguishers that are required. If you own a condominium, you will want to check the strata corporation's bylaws regarding temporary rentals. Some strata corporations strictly forbid it.

Secondly, you need to consider the method by which you are going to rent your home. There are many free or inexpensive websites available on which to list your property, such as *Craigslist* and *www.rent2010.net*. If you choose this route, you will deal directly with potential renters, and you will ultimately receive all of the rental income from the arrangement. It is a good idea to obtain a deposit once an arrangement is confirmed, as it helps both parties feel more secure in the rental.

The other option is to list your home with a rental agency. Agencies take a percentage of the booking total, about 25% of the rent. They will market the property, deal with potential renters – although you will likely be given the choice of whether to approve a particular rental – and greet the renters when they arrive. They will generally take a damage de-



Paula Butler

posit as well. Both you, as homeowner, and the renter, might consider setting up an escrow arrangement whereby all funds are deposited with a neutral third party, such as an attorney or a trust company, until the rental period is over.

You might also consider having a look at the *Residential Tenancy Act*, to ensure whether it applies to your arrangement. Section 4 states that "This *Act* does not apply to... living accommodation occupied as vacation or travel accommoda-


tion," but a legal opinion about whether that's actually the case can save you from surprises later on.

Remember that renting your home may not be as hassle-free as you think. You will need to take pictures of your

CONSIDER LOOKING AT THE RESIDENTIAL TENANCY ACT

home for placement on the Internet. This can pose a security issue for you.

You will also need to review your home insurance to ensure that you have adequate coverage in case of damage by the renter.

Closets and drawers need to be cleaned out, valuables should be removed to storage or locked up and clutter should be minimized. Apart from a spring cleaning, make sure everything is 'tidy.' 



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SYSTEMATIC DUE DILIGENCE

New client-ID demands a more-intimate relationship with clients this year

In January, Gowling Lafleur Henderson LLP published a concise bulletin that outlines the



requirements of the *Client Identification and Verification* system. The information here may help you if you haven't yet implemented a strategy to address these requirements:

As of December 31, 2008, lawyers in most Canadian jurisdictions became subject to new rules requiring us to identify our clients in a prescribed manner at the start of every new matter or engagement. (An exception is Quebec, which will be required to do so later this year)

In some circumstances, we will also be obliged to verify client identities by obtaining copies of original documents that substantiate the identification information we have obtained.

These requirements are part of a worldwide initiative to combat money laundering, terrorist financing and fraud. This kind of regime may not be new to our clients, as other organizations and professionals, such as banks and accountants, are already subject to similar rules.

The identification information we need to gather is fairly basic. For each in-

dividual client, we will need to obtain a full name, addresses for business and home and phone numbers, as well as the client's occupation or vocation. For clients that are *organizations* – a term used in the rules that includes corporations, trusts, partnerships and other associations – we must obtain a full business name, address and telephone number, incorporation or business registration number (if applicable), and the nature of the client's business.



For each organization, we also need to obtain the name, contact information and position of individuals who instruct us. For existing clients, some of that information may already be in our files, but there may be information gaps that the rules will require us to fill.

We may also need to review documents in order to verify identification information when we are handling funds on behalf of our clients, or instructing others on the handling of funds for our clients, though not in all circumstances – there are several exemptions.

When we are required to verify a client's identity, the rules obligate us to take copies of original documents that attest to the information we have collected, and which can reasonably be relied upon.

For individuals, these documents would include a passport and a driver's licence.

For organizations, we need to obtain documents that are filed with, or issued by, public authorities. If those are not available, we may need to ask for copies of documents such as trust deeds or partnership agreements. In some situations, we also need to obtain additional information about significant shareholders and directors.

We are assuring our clients and prospective clients that we will secure private identification and verification information provided to us in the same manner that we safeguard all other client information. We will also try to minimize any inconvenience that results from this new regime.

Most firms have already created their own templates to collect this information. Some have hosted seminars for their clients so that they are fully aware of what is required of them.

You are encouraged to share your tips and tricks with your colleagues so that all Firms will be compliant as soon as possible and we can all get back to providing clients with the essential services only we can provide.

MAKING THE MOVES...

WELCOME, NEW AFFILIATES!

Sarah Munro, Knowledge Management, Singleton Urquhart... **Aimee Zunkli**, Finance, Slater Vecchio... **Jean Crowe**, Marketing, Lindsay Kenney... **Dirk Fleming**, Technology, Lindsay Kenney... **Burton Wong**, Technology & Trainers, Heenan Blaikie... **Shelley Ward**, Human Resources, Davidson Lawyers LLP... **Donna Embree**, Human Resources, The Law Society of BC... **Pelar Davidson**, Finance, Oyen Wiggs Green & Mutala... **Sheila Tham**, Finance, Watson Goepel Maledy... **Bernice Chong**, Facilities Subsection, The Law Society of B.C.

WELCOME, NEW REPRESENTATIVES!

Fiona MacNeil, Administrator, Kornfeld, Mackoff, Silber LLP, Vancouver... **Sheila Noftall**, Administrator, Mair Jensen Blair LLP, Kamloops... **Lisa Lorenz**, Administrator, Macaulay McColl, Vancouver

*In accordance with our bylaws, firms are the BCLMA's **Members**. **Representatives** were formerly known as Full Members. **Affiliates** were formerly known as Subsection Members. The list of the Affiliate Chairs and Co-Chairs as of the date of publication is always on the last page of each TOPICS. You can also go to our website for the latest list.*

JOAN TOUCHED A LOT OF PEOPLE

Colleagues, friends remember Joan Keir

Joan Keir passed away quietly at home, with her dear friend Sally by her side, on Friday, October 31st, 2008

Lang Michener hosted a memorial service in November to honour Joan's life. Her friends, as well as those she was associated with in the business community were invited. Lang Michener's Chairman, Stephen Wortley, Joan's brother, Dave and Joan's son, Fraser, shared some of their favourite stories about Joan.

Here, we share ours.

I knew Joan for many years through VALA. We worked together for a number of years on TOPICS. I always envied the amount Joan knew about everything we discussed and, even more so, her ability to write about it. She wrote a profile about me for an issue of TOPICS and I thought she was so good at making a silk purse out of a sow's ear. I was almost as proud of Joan as I was of my son when they shared the same graduation ceremony at Simon Fraser University, [when she received] her MBA.

Because we both lived on the North Shore, we shared a ride home from meetings. What wonderful conversations about children, travel, trials and tribulations. It was amazing how many situations we worked through on those short commutes.

Donna Oseen, DLO

Joan could only be described as the life of any party – whether an actual party or a financial subsection meeting, her special brand of humour and level of interest stood her out from the crowd. She was such a bright lady, both in intelligence and personality. We miss her.

Sandy King and Bill

What I will always remember about Joan: Her faith in people and their abilities (she empowers people to excel). She did not give up on you.

Didn't matter if you were the receptionist or an assistant or the head of the firm, she would listen to your thoughts and ideas.

Her belief in BCLMA and its networking and resources.

Her creativity... She was a top-notch scrapbooker of all her adventures.

Her passion for education and travel. She went back to school for her MBA when she had a



Joan Keir

small child and drove a taxi, of all things, to pay for it.

Her honesty (no bull with her!)

Her ability to acknowledge her own mistakes, and her willingness to correct them.

Her ability to make you feel important. She always had time for you.

I'd say one of my most valued possessions is my reference letter from Joan Keir.

As one of the lawyers at Lang Michener put it... she was a very "cool woman."

She was one of my favourite people, that's for sure. I'll miss her very much.

Lesley Loree, Lang Michener

One of my memories of Joan was when we were serving on the TOPICS board in the olden days, when the issue was printed and snail-mailed.

We decided that we should put a picture of the TOPICS Editorial Board in one of the editions. Joan was not interested in

a shot of us putting on our plastic smiles, standing in front of a coloured backdrop with a white umbrella used to get the "natural" light.

Instead we all jumped into Joan's car and off we went to Stanley park. Some of the old timers will remember the shot of us in the Stanley Park Hollow Tree. We had a blast. Joan always put life into everything she did. We all followed her and felt good about doing so.

Bob Waterman, Richards Buell Sutton

Joan left Ratcliff & Company in North Vancouver 14 years before I became Administrator, however I have some fond personal memories of the times that I met and spoke with her in our encounters at BCLMA events and meetings. I know from conversations and e-mails with her before, and after, she left Vancouver for Victoria, that she regretted leaving behind many friends and workmates in her former workplaces and with BCLMA. However, she certainly enjoyed a new life and career in Victoria, and we spoke of her establishing a significant BCLMA presence in Victoria. A positive and dear person who I will always remember.

Doug Ausman, Ratcliff & Company

I worked with Joan on the TOPICS Editorial Board for just a short time. I thought she was pretty cool.

When I learned she rode her Harley Davidson to the BCLMA Fresh Tracks conference in Whistler in 2007, well, then I knew she was cool.

Stephanie Marsh, Fasken Martineau

Joan was the Administrator at Ratcliff & Company in North Vancouver from 1981-1988. She came to us after completing her Management Diploma at BCIT, and subsequently obtained her MBA.

She was enthusiastic about doing a good job, and was a positive role model, both as a business person and most importantly, as a human being. She constantly reminded us of our potential and allowed us to grow dramatically in our positions and firmly believed in the team approach.

She had a marvellous sense of humour and, because of our relatively small size (around 20 people), we got to know her on a social level as well. We all admired the fact that she was a

Remembering Joan → to Page 13

UM... SORRY... NO, REALLY...

Great managers know when – and how – to apologize

By **Bill Lampton, Ph.D.**

During my speech and seminar at the BCLMA conference in Whistler last October, I directed participants through a range of communication topics that managers need to understand and implement daily.

However, there is one important communication strategy we didn't explore. So I welcome this opportunity to share guidelines on when and how to apologize.

To clarify what I'm talking about, I'll use Tom O'Leary's definition of an apology as "taking responsibility for disturbance in a relationship."

I confess, without reservation, that my 23-year management career included many mistakes. Possibly yours has, too.

Examples:

- ✓ Playing favorites, giving more perks to staff members we like;
- ✓ Deciding on a situation before we have all the facts;
- ✓ Taking credit for an idea that originated with another team member;

- ✓ Reprimanding an employee in a meeting;
- ✓ Changing deadlines, upsetting everyone's schedule;
- ✓ Not giving a fair hearing to dissenters;
- ✓ Failing to understand the personal needs of colleagues.

Sound familiar?

Well then, how do we repair the damage and regain the credibility we lost?

The answer isn't complex. Just be willing to say you made a mistake and then offer an apology—one that is unmistakably sincere.

Now, I am aware that apologizing isn't all that popular. Notice these common comments:

"He's his own man."

"He did it his way."

"She's rather hard headed, but that's her nature."



Bill Lampton

"Once she has made up her mind, she will never back down."

Truly, that level of stubborn pride is unfortunate, because offering a genuine, heartfelt apology accomplishes wonders. Among them:

- ✓ You prevent having the hostility escalate;
 - ✓ You repair a damaged relationship, even those that seemed hopeless;
 - ✓ Instead of "losing face," you will gain esteem;
 - ✓ You feel better, because apologizing is therapeutic;
 - ✓ Your associates will welcome your stance as a peacemaker.
- "Well," you say, "Sounds good. What guidelines should I follow?"
- ✓ *Apologize without excuses.* "I wasn't feeling well that day" weakens your remorse;
 - ✓ *Apologize soon after the incident.* "Don't let the sun go down on your wrath" is an ancient adage that's still true;
 - ✓ *Apologize face to face when possible.* Extra power surfaces when we show up;
 - ✓ *Apologize to those who witnessed* That means to everybody who witnessed the misdeed, as well as to the recipient;
 - ✓ *Assure the injured party.* Say something like, "This won't happen again."

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single mom and had taken on this responsible position in order to better life for her son and herself. She said that she felt that she had learned her trade at Ratcliff and had many mistakes – like all of us on the road to fulfilling our careers, but I believe that anyone who met her immediately felt her honest concerns for whatever they talked to her about and she endeavoured to assist in whatever way she could.

She could make those tough decisions when necessary, but always with fairness.

We were sorry to see her leave when she did, but she knew that in order to grow, she had to move on to the challenges of a larger firm. We kept in touch socially right up until a couple of years ago. Even with her busy schedule, she could still make time for a group of us old Rats for dinner.

One year, Joan arranged Christmas dinner for our firm at an old established inn on the North Shore. We were to attend a local dance club after dinner.

Joan, thinking ahead about the issue of drinking and driving, rented a mini-bus to ferry us all to the dance club.

To save the firm some expense, she decided she would drive the bus – she had been a taxi driver in one of her former careers, and still held the proper type of license.

We all enjoyed a rather substantial amount of Christmas cheer, notable as she loaded us onto the bus.

As we drove away, one of the party-goers, who was sitting by the door, leaned against it. The next thing we know, it opened as Joan took a corner, and he was hanging onto the door handle for his life! I think that was the only time I saw her turn white with fright!

Luckily, he didn't fall out, and we continued on to the club to enjoy the rest of the evening.

She never volunteered to be our bus driver again. I think she felt that once was enough!

Dolores Fossum, Ratcliff & Company

I worked with Joan when she was the Administrator at Ratcliff & Company from 1981–1988, and again when I was on a four-month contract at Owen Bird in 1992.

Joan was an inspiration to me. She helped me and other support staff move forward as working women.

Elaine Hannay, a corporate paralegal at Ratcliff, and I feel that she enabled us to be who we are today by supporting us to be paralegals, and creating a respectful workplace environment.

Mary C. Downey, Ratcliff & Company

WORKING TOWARD THE BREAKING POINT

Stress can take a heavy toll on the body; here's how to ensure it's not on yours

By Mandie Allan, RCN

Stress is a psychological and physiological response to events that upset our personal balance in some way.

When faced with a threat, whether to our physical safety or emotional equilibrium, the body's defenses kick into high gear in a rapid, automatic process known as the fight-or-flight response. We all know what this stress response feels like: heart pounding in the chest, muscles tensing, breath coming faster, every sense on red alert.

Extended or repeated activation of the stress response takes a heavy toll on the body. Prolonged exposure to stress increases your risk of ailments like heart disease, obesity, infection, anxiety, depression and memory problems. Because of the widespread damage it can cause, it's essential to learn how to deal with stress in a more positive way and reduce its impact on your daily life.

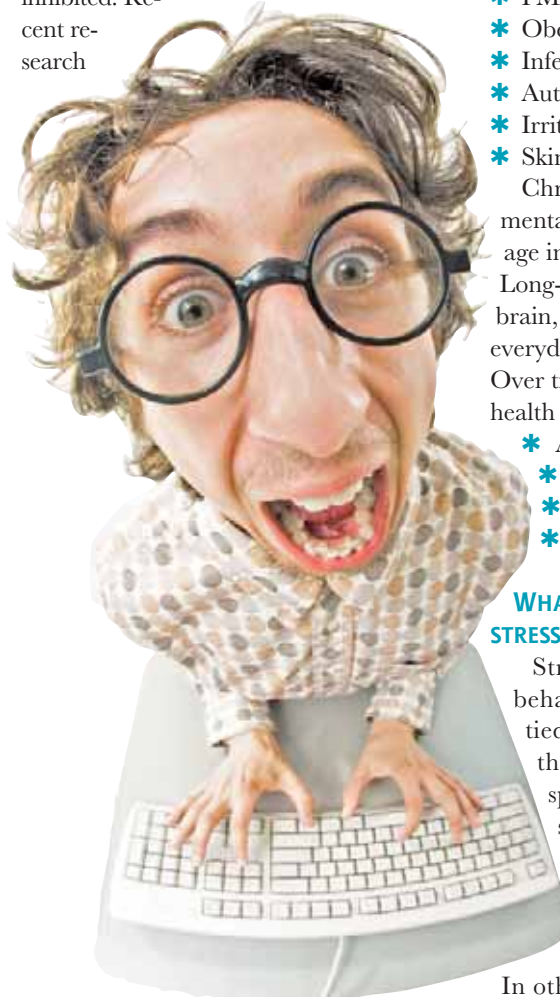
HOW OUR BODY IS AFFECTED The fight-or-flight stress response involves a cascade of biological changes that prepare us for emergency action. When danger is sensed, a small part of the brain called the hypothalamus sets off a chemical alarm.

The sympathetic nervous system responds by releasing a flood of stress hormones, including adrenaline, norepinephrine, and cortisol. These stress hormones race through the bloodstream, readying us to either flee the scene or battle it out.

Heart rate and blood flow to the large muscles increase so we can run faster and fight harder. Blood vessels under the skin constrict to prevent blood loss in case of injury, pupils dilate so we can see better, and our blood sugar ramps up, giving us an energy boost and speeding up reaction time.

At the same time, body processes not

essential to immediate survival are suppressed. The digestive and reproductive systems slow down, growth hormones are switched off, and the immune response is inhibited. Recent research



suggests that anywhere from 60% to 90% of illness is stress-related.

The physical wear and tear of stress includes damage to the cardiovascular system and suppression of the immune system.

Stress compromises your ability to fight off disease and infection, throws your digestive system off balance, makes it difficult to conceive a baby, and can even stunt growth in children.

Many medical conditions are caused or exacerbated by stress, including:

- * Chronic pain
- * Migraines
- * Ulcers
- * Heartburn
- * High blood pressure
- * Heart disease
- * Diabetes
- * Asthma
- * PMS
- * Obesity
- * Infertility
- * Autoimmune diseases
- * Irritable bowel syndrome
- * Skin problems

Chronic stress grinds away at your mental health, causing emotional damage in addition to physical ailments. Long-term stress can even rewire the brain, leaving you more vulnerable to everyday pressures and less able to cope. Over time, stress can lead to mental health problems such as:

- * Anxiety
- * Depression
- * Eating disorders, and
- * Substance abuse

WHAT ARE THE SYMPTOMS OF STRESS?

Stress affects the mind, body, and behavior in many ways – all directly tied to the physiological changes of the fight-or-flight response. The specific signs and symptoms of stress vary widely from person to person. Some people primarily experience physical symptoms, such as low back pain, stomach problems, and skin outbreaks.

In others, the stress pattern centers around emotional symptoms, such as crying jags or hypersensitivity, a negative change in the way they think or behave.

The table on the next page shows some of the common warning signs and symptoms of stress. Use it to identify the symptoms you typically experience when you're under stress.

If you know your red flags, you can take early steps to deal with the stressful

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situation before it – or your emotions – spiral out of control. (See table on the right.)

HOW DOES EXERCISE HELP US COMBAT STRESS?

We have heard it so many times before that there are many benefits to exercise, especially when used to lower stress. If everyone knows that exercise is important, then why is stress, disease and fatigue prevalent in today’s society? The answer is simple. We know what to do; we just aren’t doing it.

Experts agree that the best way to manage stress is through exercise. Exercise has been proven to relax the body and mind, burn fat, improve cardiovascular system, bring in more oxygen, reduce the chance of diseases, lower blood pressure and the list goes on. During the stress response, many chemical reactions occur in the body preparing it to what is known as the fight-or-flight response.

In today’s society, we do not have much of an outlet or time to readily burn off the stress or pent up negative emotions. Therefore, we carry it with us creating emotional and physical problems. Exercise can help by providing an outlet for negative emotions such as worry, irritability, depression, hostility, anger, frustration, and anxiety.

You can dissipate these feelings by simply taking it out on the tennis court, by running, or punching a bag.

Regular exercise provides the opportunity to manage the fight-or-flight response and helps the body to return to a homeostasis or balanced state more quickly.

WHAT ARE THE BENEFITS OF EXERCISE ON OUR HEALTH?

During aerobic exercise, you repeatedly move large muscles in your arms, legs and hips. You’ll notice your body’s responses quickly.

You’ll breathe faster and more deeply. This maximizes the amount of oxygen in your blood. Your heart will beat faster, which increases blood flow to your muscles and back to your lungs. Your small

Stress Warning Signs and Symptoms	
Cognitive Symptoms	Emotional Symptoms
Memory problems	Moodiness
Indecisiveness	Agitation
Inability to concentrate	Restlessness
Trouble thinking clearly	Short temper
Poor judgment	Irritability, impatience
Seeing only the negative	Inability to relax
Anxious or racing thoughts	Feeling tense and on edge
Constant worrying	Feeling overwhelmed
Loss of objectivity	Sense of loneliness and isolation
Fearful anticipation	Depression or general unhappiness
Physical Symptoms	Behavioral Symptoms
Headaches or backaches	Eating more, or less
Muscle tension and stiffness	Sleeping too much or too little
Diarrhea or constipation	Isolating yourself from others
Nausea, dizziness	Procrastination, neglecting responsibilities
Insomnia	Using alcohol, cigarettes, or drugs to relax
Chest pain, rapid heartbeat	Nervous habits (e.g. nail biting, pacing)
Weight gain or loss	Teeth grinding or jaw clenching
Skin breakouts (hives, eczema)	Overdoing activities (i.e., exercising, shopping)
Loss of sex drive	Overreacting to unexpected problems
Frequent colds	Picking fights with others

Keep in mind that the signs and symptoms of stress can also be caused by other psychological and medical problems. If you’re experiencing any of the warning signs of stress, it’s important to see a doctor for a full evaluation. Your doctor can help you determine whether your symptoms are stress-related.

blood vessels (capillaries) will widen to deliver more oxygen to your muscles and carry away waste products, such as carbon dioxide and lactic acid. Your body will even release endorphins, natural painkillers that promote an increased sense of well-being.

Regardless of your age, weight or athletic ability, aerobic exercise is good for you. As your body adapts to regular aerobic exercise, you’ll get stronger and more efficient. Consider some of the many ways that aerobic exercise can help you feel better and enjoy life to the fullest.

Regular aerobic exercise can:

- * *Reduce health risks.* Aerobic exercise reduces the risk of many conditions, including obesity, heart disease, high blood pressure, type 2 diabetes, stroke and certain types of cancer. Weight-bearing aerobic exercises, such as walking, reduce the risk of osteoporosis.
- * *Help you manage chronic conditions.* Aerobic exercise helps lower high blood pressure, control blood sugar and relieve chronic muscle pain. If you’ve had a heart attack, aerobic exercise can help prevent subsequent attacks.
- * *Keep excess pounds at bay.* Combined with

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a healthy diet, aerobic exercise can help you lose weight – and keep it off.

- * *Ward off viral illnesses.* Aerobic exercise activates your immune system. This leaves you less susceptible to minor viral illnesses, such as colds and flu.
- * *Keep your arteries clear.* Aerobic exercise increases the concentration of high-density lipoprotein (HDL, or “good”) cholesterol and decreases the concentration of low-density lipoprotein (LDL, or “bad”) cholesterol in your blood. The potential result? Less buildup of plaques in your arteries.
- * *Strengthen your heart.* A stronger heart doesn’t need to beat as fast. A stronger heart also pumps blood more efficiently, which improves blood flow to all parts of your body.
- * *Boost your mood.* Aerobic exercise can ease the gloominess of depression and reduce the tension associated with anxiety, as well as promote relaxation.
- * *Increase your stamina.* Aerobic exercise may make you tired in the short term. But over the long term, you’ll enjoy increased stamina and reduced fatigue.
- * *Stay active and independent as you get older.*

Aerobic exercise keeps your muscles strong, which can help you maintain mobility as you get older. Aerobic exercise also keeps your mind sharp. Researchers say that at least 30 minutes of aerobic exercise three days a week can reduce cognitive decline in older adults.

HOW YOU GET STARTED First check with your doctor before you begin any exercise. Once you have your doctor’s OK, start slowly. You might walk five minutes in the morning and five minutes in the evening. The next day, add a few minutes to each walking session. Pick up the pace a bit, too. Soon, you could be walking briskly for 30 minutes a day – and reaping all the benefits of regular aerobic exercise.

Select exercises that you enjoy and can do for at least 30 minutes, three to five days a week. Exercise does not necessarily mean hitting the gym and making an ordeal out of it. It can simply be a walk around your neighborhood or dancing to some tunes. Try to think “activity” verses “exercise”. When you are in an active mind-frame, you will purposely park a little farther, do stretches at the computer, take the stairs instead of the elevator, etc.

Other options might include cross-country skiing, aerobic dancing, swimming, stair climbing, bicycling, jogging, elliptical training or rowing. If you have a condition that limits your ability to exercise, ask your doctor about alternatives.

If you have arthritis, for example, aquatic exercises may give you the benefits of aerobic exercise without stressing your joints. Commit that you will begin to be more active and stick to your exercises or activities for 21 days. Why 21? Research has showed that it takes about 21 days to create a habit.


Document how you feel after the 21 days. Your stress levels should be lowered, you should feel more energized, and see some physical changes such as a slimmer physique. Live longer and stay healthier with just 30 minutes of aerobic exercise a day.

Mandie Allan is a Registered Cardiac Nurse and Personal Trainer

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Then there is another vital step: Forgive *yourself* for your blunder, and move on to other priorities.

Once you have righted a wrong, free yourself to give complete concentration to other problems that need your attention.

An apology ranks among the highest levels of managerial communication. Genuine apologies work miracles, for those who give them – and those who accept them. 

Bill Lampton, Ph.D., “The Complete Communicator,” helps individuals and organizations strengthen their communication, customer service, sales, and motivation.

<http://www.championshipcommunication.com>
drbill@championshipcommunication.com

BCLMA ANNUAL GENERAL MEETING

**Thursday, April 2
 11:45a.m. – 1:00p.m.
 offices of
 Fasken Martineau
 2900 – 550 Burrard St.**

- The Year in Review
- Financial Report
- Executive Board Elections

WATCH FOR YOUR OFFICIAL AGM PACKAGE



New to the BCLMA?

Learn more about our thriving association at this casual gathering of new BCLMA registrants, Subsection Chairs and Executive Board Members.

**Monday March 2
 7:30a.m. – 8:30a.m.
 Fasken Martineau
 2900 – 550 Burrard Street**

OFFICIAL INVITATIONS WILL BE SENT

YOU BE THE JUDGE

By Paula Butler, Lawyer

Here's the case we posed to you last issue, followed by selection of responses from individuals of the BCLMA. On the right is a new scenario for you to judge, and, below it, are instructions on how to let us know what you would do in that situation.

Bonus! A respondent will be randomly chosen to receive a \$25 gift certificate to Chevron. Note that your response remains 100% anonymous unless you attach your E-Business Signature with your text. Even if you identify yourself to us to be entered into the draw, your participation will remain anonymous to our readers. We won't publish your name, neither as a respondent nor as a winner. And, yes, we awarded a \$25 Chevron gift card in connection with the comments for this month's scenario.

Paula Butler is a sole practitioner who specializes in labour and employment law from her office in West Vancouver.

The case of Megan & the protest

Megan Milton has been a legal secretary at Hamilton, Hayward for three years.

Megan is an avid environmentalist and participates in a number of environmental protection organizations. In this capacity, Megan becomes deeply involved in protesting the logging of some old-growth trees in the interior of B.C. She is interviewed by local media and appears in newspapers and news broadcasts while chained to one of the trees.

It turns out that the company planning on logging the trees, MacDonald Blondell, is a client of Hamilton, Hayward. After



Megan's picture appears in some newspapers in Toronto, the firm receives a call from the CEO of MacDonald Blondell who is quite upset that an employee of the company's law firm is leading a protest against its logging plans and practices.

You, the Administrator of Hamilton, Hayward, get a call from the Firm's Managing Partner, who demands that Megan be fired. *What do you tell her?*

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OUR NEW SCENARIO – TELL US WHAT YOU'D DO IN:

THE CASE OF LUIGI, BILL AND TODD

Luigi and Associates is law firm that has grown quickly from eight people, to a firm with 24 people.

Along with that growth has come a variety of recruiting, retention and morale issues that has led to some unhappy staff. Susan Luigi decides that she is going to try to raise firm morale by encouraging social interaction, and imple-



ments Friday evening drinks and pizza, starting at 4:30 p.m. in the firm boardroom.

The first few Friday nights are fun, and everyone deems the social nights a success. Last Friday, two of the associates, Bill and Todd, had a few glasses of wine at the firm, and then went out to a bar around the corner from the firm and had four or five more drinks. Bill then decided to drive Todd home, believing himself to sober enough to make it home safely. On the way home, Bill ran into the side of the Burrard Street Bridge, instantly killing Todd.

Does the firm have any liability for Todd's death?

HOW TO BE OUR JUDGE

TO RESPOND: WWW.BCLMA.ORG

This feature of TOPICS, compiled by Vancouver lawyer Paula Butler, is designed to get you thinking about workplace scenarios that might happen – or have happened – to you.

Read the case above, aimed at challenging your management ability. Then, click on the BCLMA domain below to go directly to the website.

On the home page, click on the **Respond to Topics Scenario** button to arrive at the You Be The Judge response form. Describe how you would answer the question at the end of the scenario. **Submissions are 100% anonymous. Neither sender's name nor the firm's name will be revealed to the editors – only your response.** Next edition, we'll print a selection of your anonymous responses – and provide a new scenario.

BCLMA Winter Social – Chilly Cheers Abound on a Winter’s Eve!



Jane Kennedy, BCLMA Administrator



Kathy Barry of Farris with Supporting Sponsors Sarah Anderson and Siobhan Rea of ZSA



Kathy Hogarth of Lawson Lundell and Carina Bittel of Clark Wilson



The McCarthy Tetrault crew,
Top row, left to right: Lani Carcha, Susan Dick, Reshmi Naicker
Bottom row, left to right: Eileen Fong, Amirlyn Hadjirul, Lori Maida



Sonia Kenward and Brenda Plowman, both of Fasken Martineau



Rita Koivunen, Kelly Mann and Sara Berner, all of Stikeman Elliott



Ann Johnston of Bull Houser Tupper and Eric Pederson of Farris with Event Sponsor Victor Montagiani of HUB International



Brenda Johnson and Gillian Crabtree of Edwards, Kenny & Bray with Doug Ausman, Past-President; Gary Carter, Director; and Sheila Ausman



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Event Sponsors Chris Ackerman, Clive Belliam and Connie Fenyo of Dye & Durham with Elaine Holmes of Lindsay Kenney



Sarah Kushka, Ken Brennan, Andrea Dawson, Belina Calim and Anne Nkomo, all of Gowlings

WHERE DOES COMMERCIAL INFRINGEMENT OF VANOC'S BRANDING BEGIN – AND END?

The commercial ring around The Rings needs to be fuzzy to ensure it works

By Peter Morgan

It's about a year before the 2010 Olympic Games begin, and so, until the Paralympics end in March, 2010, the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) will be involved in one of the most critical stages in the corporate life of the cat-and-mouse that goes on behind the scenes at any Games: deciding whether to use the big stick in the velvet glove of brand protection.

In the next few pages, we'll offer two detailed points of view by VANOC itself on what federal copyright and brand legislation means for it, now that it's had a year to think about it and, in some cases, use it. We'll show you how much it intends to control its branding and potentially use the legislation. We also offer reasons why it is so difficult for VANOC itself to draw clearly defined boundaries around its image so ethical organizations



VANOC's Olympic emblem: We're allowed to use it here because VANOC's brand-protection plan says, "Members of the print, broadcast and electronic media may use the emblem only as expressly permitted by the media guidelines (for editorial purposes only)."

can know whether they're straying over the line.

Many businesses throughout the country, and, for that matter, the entire Canadian cultural industry, would like to say, "If I cross that line, I'll be sued; if I go right up to it, I won't." We'll also talk about what VANOC knows from previous experience by the IOC and other organizing committees. We also offer VANOC's own understanding of Canadian business branding practices.

The Canadian government, working with VANOC, brought into force in December 2007, a tough new law, the 15-page Olympic and Paralympic Marks Act, to help VANOC protect its branding between now and the end of 2010.

Since then there has been a wide-ranging debate in legal and business circles about whether the law, coupled with existing Canadian legislation dealing with intellectual property, was necessary, or even constitutional.

The basic concepts of the legislation are not new to VANOC nor the federal government; there was a similar law brought into place for the 1988 Calgary Winter Olympics.

But a lot has changed since then in the way Canadian business understands the value of intellectual property, the value of

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RESPONSE: *I don't think we should fire Megan until we have more facts. For instance, did she know that the firm represented MacDonald Blondell? If so, were her actions premeditated? Certainly, her current activity can't continue or the firm will lose a client. I would speak to the Partners for their input.*

Hi, this is Paula.

This is a difficult situation, and you are correct in thinking that we need more facts to determine the appropriate outcome.

Generally speaking, an appropriate balance is required regarding political activity between an employee's right to freedom of expression and an employer's interest in maintaining an impartial

and effective workforce, free from conflicts of interest.

In this case, just cause for termination may be an appropriate response if Megan had worked on MacDonald Blondell's files and used information from those files to further her political activity.

As well, if the firm has conflict-of-interest guidelines, either through a policy or employment contracts, that require employees to disclose potential conflicts, and Megan intentionally didn't disclose her potential conflict, then discipline or termination may be appropriate.

Be aware that if Megan is fired either for cause, or terminated without cause, she may bring a human-rights complaint that Hamilton, Hayward discrimi-

nated against her on the basis of her political belief. The firm would no doubt contest this claim.

However, if Megan is unaware that MacDonald Blondell is a client of the firm, or unaware that a conflict exists, it may be appropriate to sit down with Megan and agree to a strategy that allows her a political voice, but stops the conflict between her current activities and the firm's business interests.

This could include her agreement to take a less active role in the environmental organizations, and an agreement that she will never work on MacDonald Blondell's files.

Given the complexity and potential pitfalls of this situation, obtaining legal advice before taking any action is a good idea.



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such property itself has grown considerably since then.

Today, the Olympic brand is the single most valuable mark in the world, and there are a lot of ambush marketers – from international companies to protestors, who want to share in the glaring power of that eye-watering limelight. There are not many organizations in the world that can ask Nelson Mandela if he'll do an ad for them, and there is only one, so far, to whom he has said yes, and that's the IOC.

There's also the way in which the immense value generated by its carefully honed branding and image is controlled by the International Olympic Committee and its franchisees, such as VANOC, to the point where it has grown to command literally billions of dollars in revenues.

The IOC's brand control and marketing, through everything it does, including its Vancouver franchise, has become much more sophisticated since 1988.

It's important to keep in mind that VANOC is just that in many ways, a franchisee. It has the general freedom to operate within Canada as it sees fit in order to host the 2010 Winter Olympics and Paralympics, but it has its own contractual and ethical obligations to stay within the container load of its own bid documents plus the boat load of requirements, contracts, business principles, corporate practices and traditions of the IOC in order to carry out that mandate.

The Canadian, BC and civic governments that help it host the Games are all willing supporters, but the agreement about what they will and won't do, and how the public money flows, was drawn up in 2002, and there was a lot of thought put into that agreement by all quarters before signatures were applied, since it channels about \$2 billion. How the private, corporate money and their rights and obligations flow is also held to strict legal bounds, with the essence being marketing exclusivity within a business category, with the rights and responsibilities protected all round by contracts and

lawyers, including a number of lawyers working in BC.

Charles Hotel left the Vancouver law firm of Lawson Lundell LLP in early 2006 to become one of VANOC's key strategists in its Legal department, which is headed by Chief Legal Officer Ken Bagshaw, QC, who spoke at the BCLMA's Managing Partners Dinner last fall. We'll also bring in commentary from Bill Cooper, VANOC's director of Corporate Rights & Management. They both spoke to a small

THERE ARE A NUMBER OF DEFINITIONS ABOUT WHAT AMBUSH MARKETING IS. VANOC HAS ONE, TOO

group of people in Vancouver recently about public concerns involving VANOC's brand protection concepts.

Here's how Hotel explains why VANOC needed the legislation in the first place. "Principally, there are three reasons," he says. "One was to fulfill contractual obligations, the second one was, after assessing the existing law, the determination the existing law was insufficient in protecting the Olympic brand in the way we wanted to protect it, and the third issue was the need to secure the necessary private-sector funds to fund our operational budget."

Hotel says the first issue, fulfilment, came from the IOC itself during the bid phase in 2002. "The International Olympic Committee required that the Government of Canada commit to protecting the Olympic brand in Canada. Likewise, in our agreements with our partners, our sponsors and our licensees, we've also made agreements to protect the Olympic brand. We need [their] private-sector funds to put into our operating budget."

It's the comfort of brand protection and the pure association of business and governments with the powerful, and carefully cultivated IOC brand, and immense goodwill associated with it that

puts millions of those dollars in VANOC's operating budget, he suggests.

From other information, we know exclusivity is not just for corporate sponsors, but also for broadcasters around the globe, who pay for the right to be the sole distributor of the Games live, streaming and in replay in their home country, and for licensees to produce products, with royalties on brand use flowing back to VANOC.

All told, VANOC estimates branding is expected to bring in about C\$1.2 billion, net of C\$197.2 million in marking rights royalties it has to pay out and the C\$178 million it expects to pay to an IOC subsidiary, Olympic Broadcast Services Vancouver, which will be providing the pooled camera and sound coverage for all of the rights-holding broadcasters of the Games – the broadcasters who have bought the rights to cover the games live in their home countries around the world.

The second point, assessing whether existing Canadian intellectual-property law was sufficient, showed there were a couple of holes in the armour that needed to be plugged. "The existing laws didn't allow us to protect ourselves against one key thing, and that was ambush marketing," says Hotel.

There are a number of definitions about what ambush marketing is, which range from situations where organizations use some public-relations type of method to simply jump into the public spotlight VANOC has constructed, and become part of the glow long enough to pump sales, to those that set out to simply lie to consumers that they are connected to the Games, rake in money and disappear, such as happened with websites during the Beijing Games that allegedly took thousands of dollars in travel money from innocent tourists heading for the Games because they thought they were dealing with a legitimate firm.

Hotel, however, has a specific definition: "That's a business that attempts to fool consumers into believing that their business, or their products, are associated with the Games in a commercial context.

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It's commercially focused. From our experience with past Games, including Beijing, ambush marketing on a commercial scale will occur in Vancouver. We need something to protect against ambush marketing."

VANOC says the protection is crucial because it's committed to mounting what Hotel and other VANOC managers call "spectacular Games" in 2010, and the fact that VANOC's also determined to leave a financial legacy for sports if it can generate a surplus. For the last few years, it had C\$100 million in its contingency fund, but as a result of today's financial situation, VANOC chair Jack Poole says the organization's goal right now is simply to break even. But if it doesn't have to touch that contingency, a specific percentage of those funds, and any other surplus funds, are destined to go into a predetermined trust for sports in Canada and to the Canadian Olympic Committee and its athlete programs; an arrangement also decided in 2002 between VANOC and governments during the bid phase.

The operating budget of C\$1.7 billion is funded principally from private sector money and value-in-kind, and in large part from companies operating outside of the south-western British Columbia area

– many of them from outside of Canada itself – and a large part of the budget is spent within British Columbia. Hotel lists them: "Sponsorship, licensing and merchandise, ticket sales and broadcast. Maximizing those revenues to put towards our operating budget tells us to manage the brand carefully."

Hotel says there are three sections to the new law that are the most important for VANOC: Sections 3, 4 and 6. "Section 3 goes to the use of Olympic and Paralympic marks, and prohibition against those uses in connection with a business itself," he says. "There are two things I'd like to point out: its use in connection with business. This act applies to commercial activities. The second thing is the definition of Olympic and Paralympic marks: Schedules 1 and 2 list them; Schedule 2 is the list of Vancouver 2010-specific marks, they have a sunset provision. They fall away at the end of December, 2010. Section 4 [of the legislation] relates to ambush marketing, the component we're most concerned about."

That's the section about companies misleading the public by claiming they are endorsed or authorized by VANOC, "Or," says Hotel, "that a business association exists between the business and the Olympic and Paralympic brands. The key is that it's restricted to commercial

activities; it's the focus of the Act." Schedule 3 includes words such as 'winter', 'gold', 'silver' and 'bronze.' Hotel says, "There's been a mischaracterization as these being protected marks. That is wrong. The Act does not grant VANOC any protection in those marks from any perspective whatsoever. The schedule has a relatively limited purpose. All that Schedule 3 does is say that if there is a claim of a company creating a misleading business association, a judge can look at the combination of those marks in determining whether such an association is actually created. If somebody goes out and uses 'winter' or 'gold medal' [in some non-commercial context], VANOC does not have protection under the Act."

The Act, he reiterates, is focused on commercial activities.

Section 6 is the third main important component of the Act for VANOC, according to Hotel. "It allows VANOC to get more immediate relief, in terms of going to a court and asking for an order to stop a certain commercial activity. So, during the Games window, it will be critical to our partners, who paid a lot of money towards the right to associate with the Games, that another corporation can't come in and trade on the goodwill of the Games. We have the ability to stop that commercial association. And Section

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'No-go zones' in brand legislation exist to protect freedoms

There are built-in no-go zones for VANOC's legal department when it comes to branding that are incorporated directly into the 2010 branding-protection legislation, and both of those zones are based on Canada's constitutionally protected right to free speech.

For instance, news media can freely report on any aspect of the Games, and run associated pictures or video of the branding, or the logos themselves, as long as it's in context with a news story about the Games. It can even run photos, for example, of any branding VANOC

might decide to contest in, say, the courts, if the media were reporting on the court story, also without running afoul of VANOC.

Other exemptions under the act: anything done for the purposes of parody or criticism of the Games. David Wortherspoon, a trade-mark litigator for the law firm of Fasken Martineau, is careful to point out that he isn't a lawyer representing VANOC when he says, "That's not a use in connection with a business."

That doesn't mean, Wortherspoon notes, the Act itself is clear. For example, he says, "Inclusion of an Olympic mark in a work by the author, and here's a quote from the Act, 'is not, in and of itself, a use in connection with business, if the work is not reproduced on a commercial scale', whatever the hell that means."

Wortherspoon says he's considered what it might mean. "You have the Copyright Act, and you have protection under the Copyright Act for certain things, and you get protection [from violating somebody's copyright] unless you produce more than 50. So, if we use that as analogy, maybe a commercial scale is something that is produced in numbers more than 50."

So far, no judge has looked at the matter in a formal case to nail down the concept.

Adds Wortherspoon, "You have to think about this Act" – which attempts to provide a balance between public rights and monopoly rights granted to creators – "and what the Olympics is trying to achieve, and do you think: it is a fair balance; is it the right balance?"

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6 is also time-limited; it only goes to December 2010, then it falls off the table, like the Schedule 2 marks. This section allows VANOC to get a more-expedient remedy, but VANOC still has to go to court, and still has to convince a judge that the claim is justified.”

Hotel also notes that there are some exceptions built into the Act. “There’s a grandfather clause... this Act is forward-looking; it’s not retroactive. It also codified certain things: news reporting, parody or criticism – [they’re] not a use in connection with a business... so this Act does not apply.”

There’s also a clarification about artistic work. “What this clarification says is that the use of an Olympic or Paralympic mark in an artistic work, by the author of that work, is not, in itself, a use in connection with a business, if the work is not reproduced on a commercial scale.”

Hotel says artistic “commercial scale” needs to be seen by VANOC in context before any action takes place to block it. “It will depend on considerations such as distribution channels and targeted audiences... The fact of the matter is that it won’t be black and white, because it’s situation-dependent.”

Hotel says that when VANOC was meeting the federal government during the draft stage of the legislation in 2007, it made a commitment, “that we will apply the legislation in a disciplined, fair and transparent manner. We also committed to come out and engage public groups to let them know our personality, and how we view the application of the Act. If it’s in a commercial context, each case will be assessed on a case-by-case basis, within that commitment that it be a fair and disciplined evaluation.”

And, he adds, “we still stand by that commitment.”

VANOC has had a year or so now to

actually deal with the concepts, with the hundreds – yes, hundreds – of branding issues it has handled since 2006, so we’ll see if it feels balance is important to its protection concepts, and whether it feels that being as transparent as possible about its boundaries is a risk – one it’s deliberately taking.

Bill Cooper, the director of Corporate Rights & Management for VANOC, doesn’t look like a man who’s comfortable carrying around a large, spiked mace. We’re speaking figuratively here. He doesn’t actually have one nearby to whack VANOC-brand transgressors and ambush marketers... at least, we don’t think so.

We’re not even sure he’d need one; VANOC managed to stare down Esso Canada, the division of Imperial Oil that attempted several years ago to offer Torino Winter Olympic tickets simply as a prize in a contest.

The strength of VANOC’s objections
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You take it to market; VANOC scores

VANOC uses a scoring system to help it decide whether there’s infringement. It primarily looks at six factors. Each of them is rated between one (low concern, as defined by VANOC) and three (high concern), then the numbers for each are added to get a total score.

VANOC says eight or below is considered, in most instances, unlikely to be infringement and the case is closed, subject only to periodic monitoring to ensure it stays low.

A score between nine and 13 is a potential infringement, and goes to a second, more detailed review stage, to determine whether an infringement has likely occurred. A score of 14 or higher is considered, in most instances, to be a likely infringement.

Those six factors:

- * **Factually accurate use:** Use of the brand (or other marks or images that have the potential of creating a business association with the Olympic or Paralympic Movements) must be accurately used without distortion or modification.
- * **Relevant use:** Use of the brand (or oth-

er marks or images that have the potential of creating a business association with the Olympic or Paralympic Movements) will be of low concern to VANOC if they are relevant to a larger initiative or storyline and do not constitute gratuitous references (or a disproportionate number of references) to the Olympic or Paralympic Movements in an overtly promotional manner which contributes to the creation of an unauthorized business association.

- * **Commercially neutral:** Use of the brand (or other marks or images that have the potential of creating a business association with the Olympic or Paralympic Movements) will be of low concern to VANOC if they are used in a commercially-neutral manner that does not contribute to the creation of an unauthorized business association between the Olympic/Paralympic Movement and a commercial entity or that is not used in a manner that otherwise commercially exploits the brand.
- * **Undue prominence:** Use of statutory marks (or other marks or images that have the potential of creating a business association with the Olympic or Paralympic Move-

ments) will be of low concern to VANOC if they do not enjoy undue prominence within the context of the overall initiative or storyline. For example, the use of the brand which is included in a proportional manner within a larger list, story or calendar of events with other similar, non-commercial marks, statements or concepts will be a matter of low concern for VANOC, provided such use does not create an unauthorized association with the Olympic or Paralympic Movements.

- * **Use of Olympic or Paralympic visuals:** Use of Olympic or Paralympic visuals – logos, archival Games imagery, team uniforms or Olympic medals – in connection with a business will typically be of high concern. By their nature, such visuals would create an association with the Olympic or Paralympic Movements.
- * **Unauthorized association:** The final factor considered is whether there are any other elements that constitute an infringement of the brand or an unauthorized business association. Such elements include the timing and strategic placement of the advertising or communication tactics in question.

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seemed enough: It included a formal news conference, with dozens of reporters and cameras, headlined by a stern VANOC CEO, John Furlong, telling Esso to back off the turf of Petro-Canada – VANOC’s fuels sponsor and Esso competitor – which had rights via VANOC to market the Torino, Beijing, Vancouver and London, England, Games within Canada. It had agreed to pay VANOC C\$62.5 million for those rights.

Esso was taken aback by the whole thing; it hadn’t specifically intended to create a commercial association with the 2010 Games.

It was a corporate sponsor of Hockey Canada, one of the national sports federations that would be involved in the 2010 Olympics, and that organization was also taken aback, because Esso was running the contest in connection with Hockey Canada’s marketing. After about 10 days of brinkmanship, Esso decided to retool its prize. VANOC promptly praised it publicly for doing so.

But that was then, and Cooper says now the case load of firms attempting to ambush market the 2010 Games is “very significant.”

He says the Canadian marketplace is strong, and “a large portion of the Canadian population loves the amateur-sports stories, especially the winter ones, so there’s been a lot of traffic around our brand. We deal with in excess of a case a day, and at certain times it can be as many as five cases a day. And my definition of a case is from someone calling to ask ‘Hey, is this okay?’, through to us becoming aware, independently of us, of some company using our brand, and [then] taking it upon ourselves to analyze whether it’s fair use or not, and determining whether we should contact them.”

Cooper says that out of the hundreds of cases that VANOC’s dealt with since 2006, “Well over 95% of them we have resolved through voluntary compliance. The Canadian marketplace certainly wants to tell a story. Sometimes it wants to parody, sometimes it wants to criticize, sometimes it wants to celebrate. But the

Canadian marketplace is not a malicious one. I don’t think VANOC is operating in fear that we’re going to suddenly get ambushed on a great scale.”

In fact, he sees the idea of talking about branding and VANOC’s position on it, is a great opportunity, that the more VANOC is able to get its tolerance thresholds out, “our caseload will continue to be easier, and once the Canadian marketplace knows the boundaries, they will largely – not completely, but largely – play within them.”

But Hotel is convinced there will be other firms in the future that will attempt to take advantage of the high-profile Olympics, just as there have been at each previous set of Games going back decades. VANOC has dealt with inadvertent associations that have included a North Vancouver-area dog food company and the name of one of its products, to a firm owned by a former Whistler municipal councillor. Nothing, so far, has gone to litigation.

“My job is a day-to-day one,” Cooper says. “We field inquiries from the public, but we also implement the day-to-day interpretation of Bill C-47 [the *Olympic and Paralympic Marks Act*], and all the other tools and interpretations that we have in place to fulfill our obligations to all the partners who have made the Games possible. But the critical partner in making the Games possible is the Canadian public at large, be it artistic, amateur sports, media – whoever it may be. Because, if we are to rise to the objective we’ve set for ourselves, to stage a spectacular Games, we need Canada to celebrate the Games... They’re Canada’s Games, and we mean that.”

Just about everybody has a different interpretation of what *celebrate* and *the Games* means to them, he agrees. “What that means to me on a day-to-day basis is that interpreting our obligations, and trying to achieve our objective of meeting all of our obligations to all of our partners, needs to be balanced with the ability, the wherewithal, the breathing room, the elbow room, for Canada to engage in Canada’s Games... Everything we do, we try to strike that balance between protecting what we need to

protect, in order to make the Games financially viable, but, at the same time, doing it in such a manner that Canada is allowed to engage in the Games.”

Engage? Celebrate? How does he mean that in a branding context? “We need librarians to decorate their library without any fear [of infringing on VANOC branding]. We need that to happen. We need rec centre managers to inspire kids in their swimming programs and their Olympic dreams of 2012. We need them to use the brand in that manner. We need all those elements of society to engage in that. All those sort of applications are non-commercial in nature, and we’re seeing that from afar, that use of the brand taking place. We’re not picking up the phone and calling them, we’re not asking them to curtail that. In fact, we offer everything from mascot appearances to stickers to accentuate, to accelerate, that enthusiasm.”

VANOC has published public mark-usage guidelines both on the web and in

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BCLMA SPRING / SUMMER SOCIAL

Save The Date!

**Thursday, June 11
Stanley Park**

**Pitch 'n' Putt • 4 p.m.
Dinner at the
Fish House • 6 p.m.**

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a physical booklet form – it’s called *Real 2010, Protecting the Brand*, and it has sent copies of it to advertising and communications agencies across Canada.

Cooper has also crossed the country, talking to more than 60 groups per year, on the subject. “They map out thresholds of what we believe will be fair engagement, and unfair engagement. That process is an important one [for us], because we really believe that for us to fairly and transparently manage the protection that Bill C-47 affords to us, we need to give the Canadian population direction, and fill the void, and let them know what our thresholds are, so that before they embark on their creative, on their advertising process. Before they spend dollars, they have those goal posts and fence lines.”

He notes, somewhat surprisingly, that he feels there’s a risk to VANOC in doing that kind of work.

The risk, he says, “is that we openly give a road map to people to show them how close they can come to the Games without being a rights-holder. But we openly accept that risk, because that’s the only way we can let the marketplace know how they can engage with the Games without fear of any reprimand.”

Cooper says, and Hotel agrees, VANOC takes the concept of carefully assessing potential brand violations seriously. “The moment I woke up one morning and saw a Vancouver Sun headline, where it was insinuated that we had protected ‘friend’ and we’d stop someone from selling ‘friendly hamburgers’, it became a nightmare morning for me, because that is not at all true. And it’s not a win at all, from VANOC’s perspective, to have that perception be out there. We’re not in this game to protect individual pieces of trademark. It’s not our mandate, it’s not our objective, nor would it serve us any purpose. We are in this game to protect the commercial rights our partners have paid significantly to have exclusive rights to. And when an activity starts to invade that space, to assault the value that we’ve guaranteed to deliver to

those partners, then we will take action.”

Cooper says that part of VANOC’s assessment process is to ensure that how VANOC reacts is “appropriate to the case in question.”

When the commercial activity has a national scale, he says, “and directly, negatively, impacts an obligation that we have to one of our clients, we need to take action swiftly to protect their rights. If we don’t, they [the client] could with-

OUR ASSESSMENT MODEL ISN’T SOMEONE SENDING A CEASE-AND-DESIST LETTER.

hold funds from the Games, and we, in turn, would be unable to meet our financial objectives in staging financially balanced, or hopefully, revenue-positive, Games, which is an important legacy for the province of BC, and of Canada.”

Cooper sidesteps the issue of profit; whether, for instance, non-profit organizations could safely use VANOC branding to raise funds by putting Olympic artwork on coffee mugs. “Our priority is unauthorized commercial relations, so we have a very open frame of mind when we talk about non-profits.”

Cooper does not say it, though, but VANOC is a non-profit organization and it’s in the process of raising more than C\$1 billion in commercially related funds, so the fact that an organization is a non-profit doesn’t automatically give it a free pass from VANOC scrutiny. Nor does any legislation.

But he says nailing down what “commercial scale” means – isn’t something that he can do, either. “It’s difficult to give confidence in that area, and that is not unique to this [new] law. It’s a reality that’s not related solely to the 2010 Games. It’s a reality related to the larger body of trade-mark and copyright law. We’re not going to resolve it before the 2010 Games... but we’re not going to allow anything to detract from us staging the Games.”

But he says that if VANOC publicly took on a charity or a non-profit for violating its branding, it “is something from which we would enjoy no benefit from curtailing, in fact, we would suffer from curtailing it.”

Hotel, VANOC’s lawyer, agrees. “It will not hold us in good stead if we were going out and enforcing for the sake of enforcing. We take a bigger perspective; our assessment model isn’t just someone sending a cease-and-desist letter. There are all the factors we take into consideration – engaging the public, commercial harm. It’s tough for us to say, yeah, you can produce and here’s the number; it’s always contextual. If [the number] was, say, a hundred, but it was being distributed through a competing sponsor, that would be a challenge [for VANOC]. Our guidelines are a framework, and you can argue it’s not perfect, that it’s subjective, and you’re right, but at least they take you inside our decision-making, and we want that to be as transparent as possible.” Sometimes numbers aren’t the answer either.

For example, if a single laser light show played out an unauthorized display of the Olympic rings in wide public view, it’d likely be considered art by VANOC, even if the artist did it with unseen commercial support. But if the laser beam, below the rings, painted the name or logo of a company that wasn’t a VANOC sponsor, that’d be a much different story, particularly if it was during the Games-time period. VANOC would consider such a display as causing it significant commercial harm.

“It would even have a domino effect that would affect the provincial government. Which ever one of our clients who was harmed by that would probably withhold payment to us and that, in turn, wouldn’t allow us to reach our financial goals.”

The BC government is backing specific financial losses incurred by VANOC, which is why he mentions that. “It’s when that commercial support starts to build a message that is Olympic– or Paralympic-related, it doesn’t have the right to tell that story.”

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WINTER 2008/2009

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This issue is also available in PDF format at:

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Published by: **MORGAN:Newsletters Ltd.**

BRITISH COLUMBIA
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The BCLMA, founded in 1972, is a non-profit organization with 95 Representatives and more than 220 Affiliates across B.C. It is the BCLMA's goal to provide educational and networking opportunities, to enhance skills as legal administrators and managers, and to provide professional and personal benefits its registrants..

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- The Discussion Board on our website enables Representatives and Affiliates to quickly get questions answered and obtain advice from others who may have faced similar situations. The best way to get involved is to become a part of the BCLMA.

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