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- Financial backing
- Dedication to serving the public

Those are the characteristics of a BC Notary Public.

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The Scrivener: What’s in a Name?

“A professional penman, a copyist, a scribe . . . a Notary.” Thus the Oxford English Dictionary describes a Scrivener, the craftsman charged with ensuring that the written affairs of others flow smoothly, seamlessly, and accurately. Where a Scrivener must record the files accurately, it’s the Notary whose Seal is bond.

We chose The Scrivener as the name of our magazine to celebrate the Notary’s role in drafting, communicating, authenticating, and getting the facts straight. We strive to publish articles about points of law and the Notary profession for the education and enjoyment of our members, our allied professionals in business, and the public.
Aftter reading “French Notaries and the American Mortgage Crisis,” a recent article by Peter L. Murray, a Visiting Professor of Law at Harvard University, I was reminded of the protection our legal system affords buyers and mortgagors (borrowers) in British Columbia.

The subject of Mr. Murray’s article is the crisis in real estate mortgage lending in the United States that occurred in 2007 and created a disastrous failure in the American financial system. He examines the American home mortgage debacle and its toll on the American population when millions of homeowners were forced out of their homes by foreclosures.

Mr. Murray states, “It has become evident that the largely unregulated marketplace in home mortgage financing in the U.S. has given birth to practices of predatory mortgage lending under which one-sided and recondite mortgage instruments were palmed off on unwitting consumers by overzealous and unscrupulous purveyors of financing.”

The economic crisis that rocked the American economy also has been felt in Europe and around the world. Despite significant drops in real estate values, most European economies were spared the disastrous effect of the American home mortgage crisis. European business practices and legal institutions may be better able to protect home mortgage customers than the marketplace-oriented legal environment in the United States.

Could the American crisis have been prevented in part with all parties receiving independent advice such as that provided by civil law Notaries in France who have a monopoly on property conveyancing and who have a duty to provide neutral advice to all parties in such transactions?

In contrast to the American financial system, in Canada borrowers and buyers are protected to a degree by the federal and provincial governments’ regulatory oversight of financial institutions, which has assisted in preventing a similar financial crisis to what took place in the United States.

One example is the recent changes in the lending policies of the federal government’s mortgage default insurance provider Canada Mortgage & Housing Corporation (CMHC). At the direction of the federal government, CMHC tightened the lending limits for mortgages insured by CMHC, which resulted in decreased lending ratios and contributed to calming the hectic real estate mortgage lending environment in Canada.

In British Columbia, BC Notaries facilitate the majority of real estate and mortgage transactions. When they provide legal advice to their clients who are buying and selling property, BC Notaries are under the regulation of The Society of Notaries Public of British Columbia.

While it is not uncommon for a Notary to act for both the buyer or borrower and the lender in a residential transaction, the Notary makes a disclosure to all parties of that dual role and, in the rare event a conflict in the Notary’s duty to either party arises, the Notary will remove himself or herself and not act for either party. In all cases, the clients do receive legal advice and understand the nature and effect of the transaction and the documents before signing.

In the past I have looked enviously to our neighbours to the south as world leaders in merchandising and marketing. Peter Murray’s article has caused me to reconsider.

While they may be leaders in those areas, it appears that safeguarding the interests of the public may rank behind the interests of financial institutions. I can only imagine the chaos that arose in the United States in the absence of such protection.
I would like to extend my usual Welcome to this issue of The Scrivener!

Inside, you will find many interesting articles around our theme of Immigration. Some of the stories will captivate you—for example, the story of Joanne's fight for survival and how she ended up more than halfway around the world in the middle of British Columbia in an environment totally different than she had ever imagined.

There is no doubt that Canada is a multicultural country. A visit to most of our major cities is like travelling to 100 countries in a day! Although I didn’t realize it at the time, I was very fortunate to grow up in a town surrounded by various cultures.

I grew up in the small northern community of Kitimat, BC. In the 1950s, the Aluminum Company of Canada carved out a mountain with a multimile tunnel to divert water to a generating station and, out of the wilderness, the town of Kitimat was born.

I have fond memories of the street where I grew up. All my friends were from places I had never heard of.

The aluminum smelter was built there because Kitimat was located at the head of an inlet called Douglas Channel. The ice-free natural harbour allowed large ships to unload ingredients such as bauxite for creating the aluminum and of course to ship the finished product. The Aluminum Company of Canada needed labourers for this new smelting plant and staffed their new plant with people from all over the world.

I have fond memories of the street where I grew up. All my friends were from places I had never heard of. Of course I visited their homes often as a youngster in school and experienced so many things that would become life-molding events for me.

My friend Karl was from Poland; his father had somehow found his way to Kitimat and taken work with the Aluminum Company. His mother did not speak any English and a visit to his house after school or on weekends always involved having soup.

The parents of my friends Maria and Raul were from Portugal and their house always smelled of baked bread and Mr. DaSilva’s wine. He was always making wine, it seemed. Most homes in Kitimat had basements and the wine was made and kept there. Sleeping over at Raul’s always meant being in the basement and smelling like wine. My mother used to check my breath when I came home!

My friend Costa was from Greece; he and his parents had immigrated from Athens and had to adapt to life in a small northern community where Winter started in November and did not end until March and involved huge amounts of snow. It was Costa’s job to shovel the drive and in the Winter, that could be 3 times a day!

My friend John just down the street was from Germany; he and his sister and two brothers were all over 6 feet tall. The environment in their home was very formal—you were expected to wear a good pair of pants and a good shirt when invited to stay for dinner and the boys had to wear ties. I loved sleeping over because they had enormous feather beds that we did not have at our house.

I had numerous Italian friends and visited them often. My parents and my aunt and uncle became good friends with Tony, a young Italian man from Udine in Northern Italy. He had been recruited to work in Kitimat because of his mechanical training. There was no work for him at home so he immigrated to Canada.
The International Flavour of British Columbia

In the previous article, Wayne Braid talked about the cultural richness and diversity he experienced growing up in Kitimat.

As a kid, I lived in southwestern Ontario outside the City of London in the “police village” of Byron. (It had one police officer.) The pupils in our public school were pretty much the same in that we were WASPS—white, Anglo-Saxon, and Protestant. That was the way it was back then and there.

We were keen when a blonde girl arrived from the United States to join our Grade 5 class. Then a new boy came from England—impossibly far away—and although Robert sounded different, he was a WASP. He stayed only a year, then went West with his parents to a place called Vancouver, at the other side of the country. My young mind wondered why anyone would want to live over there!

You could say that my early years were insular and lacking international experience and flavour.

Through a quirk of Fate, I later moved to the cosmopolitan mix of British Columbia and am still learning first-hand from people from other cultures about their interesting traditions and customs. Now in my neighbourhood and in my daily conversations with BC Notaries, I enjoy the opportunity to interact with individuals from various countries of origin.

A man I know thinks we should all be colour-blind when it comes to skin colour. I know he means well but that approach does not recognize a person’s heritage, which goes much much deeper than colour. I prefer to acknowledge our similarities and celebrate our differences!

According to the 2006 Census, 27.5% of the BC population was born outside of Canada.

(Updated numbers are scheduled for release in February 2013.)

Many thanks to Victoria Notary Leta Best for inspiring the theme of this issue. The upcoming Winter Scrivener will focus on Citizenship, a natural extension of Immigration.

Thanks, too, to BC Notaries Filip de Sagher and Alex Ning for coordinating the writing of the Immigration articles and for assisting us to vet them for the magazine.

I urge you to visit our website and have a look at the many different languages served by our members.

Ciao! ▲
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The mass movement of peoples is as old as time and as current as today’s flight schedules.

It’s an ongoing phenomenon that has changed the face of Canada and will continue to do so.

Originating in the Greek language, the word *diaspora* means dispersion—to scatter and sow. The term is evolving in language and meaning and usage.

Capitalized, *Diaspora* is historically tied to both the dispersion of Jews after the Babylonian Exile in 586 BC and to the communities in which they scattered “in exile” outside Palestine or what is the present-day state of Israel. From Alexandria, Egypt, throughout the Middle East into Europe and North America, the Jewish Diaspora contains rich history, relevant to scholars and followers of today’s events.

Not capitalized, the term *diaspora* forms a wide array of interest, a deep study of all peoples’ movements and why they settle far from their established or ancestral homes.

The history books are replete with human migration, sometimes of epic proportion. It includes the dispersion of people with common roots:

- because of colonial rule, the migration of people to settle another territory for their labour or trade purposes;
- forced political partitions—India-Pakistan, for instance;
- the creation of nations; or
- the mass starvations in Ireland, the Ukraine, or China.

There are so many untold or forgotten stories.

**The history books are replete with human migration, sometimes of epic proportion.**

**Closer to Home**

In North America, forced human migration—the long walk of the Navajo or the Trail of Tears—is a common topic in American history courses, as is a growing understanding of First Nations losing their traditional territories and being moved onto reservations in Canada. The daily migration across the Rio Grande is another ongoing example of diaspora as El Norte signifies economic opportunity. There are many others.

More recently, diasporas of Vietnamese Boat People, Cambodians fleeing the Killing Fields of the Khmer Rouge, the Sri Lankan Tamils, and Iranians fleeing the Iranian Revolution following the fall of the Shah are some of the possibly endless examples of mass movements of people.

The recent wars in the former Yugoslavia where millions of Croats, Bosnian and Kosovans, Serbs, and others fled vicious ethnic conflicts are but a string of events causing diasporas in that region’s history—from the Ottoman Turks, from World Wars I and II, from Communism, moving on into Europe as “guest workers” in that and other destinations.

The forever wars in Afghanistan and Iraq as well have resulted in both the internal displacement of millions of people as well as refugees and those selected as suitable to respective countries’ immigration policies.

Sometimes, without conflict and within countries, the concept of diasporas has placed in context, even defined, the migration of rural populations to swelling cities where the jobs are.

Natural disasters can trigger what can be considered diasporas, for instance the New Orleans diaspora where displaced people have not yet returned from fleeing the hurricane in 2005.
In Halifax, Nova Scotia, more than one million immigrants were processed into Canada through Pier 21 between 1928 and 1971.

Pier 21

In Halifax, Nova Scotia, more than one million immigrants were processed into Canada through Pier 21 between 1928 and 1971. One in five Canadians today has a connection to Pier 21. For more than 40 years, European immigrants disembarked from passenger ships at that terminal to begin new lives in Canada.

Train travel from Halifax distributed immigrants throughout Canada, among them some 40,000 war brides and their 22,000 children.

As travel by air increased, Halifax was superseded by Toronto and Pearson International Airport became the most important point of entry for immigrants into Canada. Many stayed in Toronto, transforming it from Toronto the Good to what many consider a “World” in a City, a mosaic of ethnic diversity—rich, like Vancouver, and replenished in culinary and other cultural wealth.

Every community in British Columbia can trace its residents to historic twists of fate, luck, and free will that led individuals and families to their jurisdictions. Every community has benefitted from newcomers in one way or another.

Economic Realities

It isn’t a stretch to consider the economic realities in Canada today in the discussion.

While yesterday it was common for friends and relatives to go to work in the “big smoke” of Toronto, it is just as common today for people to go to other parts of the country or to a thousand different locations internationally.

How many readers know of family, friends, and acquaintances who are working overseas, in northern oil and gas fields or in Los Angeles, as a comedian, actor, or musician?
Throughout history, the right type of immigrant—those preferred and desirable at the time by nation states—has always been screened for character qualities and health and investment and labour possibilities. As well, immigration helps to maintain fertility rates.

Canada is today relying on immigration for its population increase as the rate of natural increase—births in excess of deaths—has declined. The fertility rate among immigrant women who arrived in Canada from 1996 to 2001, according to Statistics Canada, was 3.1 children per woman compared to a rate of 1.5 children among women who have lived in Canada for a longer period.

By contrast, in the late 1950s, the number of children per woman in Canada was approaching 4.0. Today, according to Statistics Canada, the natural replacement population level of 2.1 children per woman is not being attained.

Understanding the occurrence and reasons for the migration of large numbers of people—in reaction to whatever economic, security, environmental, humanitarian, or climatic cause—is as relevant to Canada’s immigration policies this decade as it was following the Great Wars in Europe in the 20th Century.

Expect mass movements of people to continue, even accelerate.

There are many ongoing diasporas in the world right now and countless people will continue to resettle within Canada, to and from other countries, as they have done forever.

What is different this century is that people can remain connected to their direct kith and kin back home through computer technology and many and varied evolving forms of social media. The reality of this double-edged sword requires heightened communication with everyone to reinforce Canadian values and official languages and impart the rule of law and the academic and economic opportunities within all of our communities.

Everywhere is changing, from Kabul to Courtenay, from Baghdad to Burnaby, from Tehran to Terrace. None of us can really go home again.

With immigrants and those long-settled here, our intelligence may not be measured so much by what we can learn, but rather by how much we can forget and move forward together. ▲

Nigel Atkin teaches in UVic’s Diploma Program in Public Relations. As an international development consultant specializing in strategy, communication, and ethics, he recently served in both Iraq and Afghanistan.

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Immigrate or Emigrate:
A Life-Long Journey

I migrated. That is, I moved from point A to point B and “never the twain shall meet”—Rudyard Kipling from *The Ballad of East and West*.

Did I emigrate or did I immigrate? Did I move away or did I reach my destination? The topic of immigration is full of paradoxes that take a lifetime to satisfy. Immigration is a journey.

Some factors push you away—war, famine, or poverty. Prosecution for race or religion. A hankering for freedom.

Some factors pull you—a better job, a beautiful girl you want to marry, the green grass on the other side of the fence.

Emigration affects the people “back home.” Some think, *Good riddance, you traitor. Is it that much better over there?*

Or they miss you; it’s as if they had to bury you already.

Immigration affects your new community. People make you feel welcome or they want to send you back. Both sentiments are never far from the surface.

And you?

Will you keep your identity and honour your culture from point A or will you integrate and do in your new Rome as the Romans do?

How long will you hold on to your roots, your language, your food, your traditions?

Will you stay in touch with fellow migrants or ignore them?

Can you adapt and learn the strange new language and customs? Your children don’t have to adapt; they are the new people and that leads to generational conflicts.

And so you escaped but where will you die?

**Built by immigrants, Canada is a young country that understands and respects the newcomers, whatever luggage they carry.**

Will you return because you made a bad decision? Point B doesn’t understand you but point A doesn’t want you anymore. Or you feel good in both places and you can’t make up your mind. You want the best of both.

Did the Roman Empire disappear because of a lack of immigrants or by being flooded by too many of them? Even Edward Gibbon in his masterful book, *The History of the Decline and Fall of the Roman Empire*, is of two minds on that subject.

Immigration changes societies and it changes continents. How many continents were affected by the slave trade, a forced form of migration? No one writes better about that terrible journey than Hugh Thomas in his masterpiece, *The Slave Trade*.

With the discovery of the new worlds came colonists, another form of migration. Did they paint on a blank canvas or de-possess an existing society?

And the Jewish people are forever linked with their exodus or involuntary departure from a homeland and their consequent Diaspora or *hegira*—dispersal all over the world with the eternal thought to return. A burden, indeed.

The beauty of Canada—one of its many beauties—is its support for this journey. Built by immigrants, Canada is a young country that understands and respects the newcomers, whatever luggage they carry.

And while Canada wrestles with the many paradoxes, we wrestle together and thus this country grows and develops in the place where I feel good. Seneca wrote, *ubi bene, ibi patriam*—where you feel good, there’s your fatherland.

Canada is my home. ▲

**Filip de Sagher** and his wife **Hilde Deprez** have their Notary office, Deprez & Associates, in Point Grey.

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www.fdsimmigration.ca
Immigration is one of the few areas of explicitly concurrent jurisdictions under the Constitution Act of 1867.

Section 95 states that both provincial as well as federal legislatures may make laws in relation to immigration. As of today, the Federal Government has entered into bilateral agreements with all provinces to allow them to support the immigration of persons who have expressed an interest in settling in their province and that the province believes will be able to contribute to the economic development of that province.

In essence, under these agreements the provinces are responsible for selecting potential immigrants, while Citizenship and Immigration Canada (CIC) is responsible for assessing the candidates’ admissibility.

In recent years, the British Columbia Provincial Nominee Program (BC PNP) has become one of the most attractive and probably the most successful in all of Canada.

In recent years, the British Columbia Provincial Nominee Program (BC PNP) has become one of the most attractive and probably the most successful in all of Canada.

Despite those numbers, the demand for the program continues to grow exponentially. As of December 1, 2011, there were nearly 70,000 foreign workers and 66,000 foreign students present in British Columbia. This number is growing as some 45,000 foreign workers and 29,000 foreign students come to BC annually.

Those are the very people who may potentially qualify for nomination under one of the Streams of the Strategic Occupations Component of the BC PNP (listed below), specifically designed for international graduates and temporary foreign workers.

**Skilled Workers**
They normally must have a postsecondary education or training with several years of employment experience in a professional, management, technical, trades, or other skilled occupation.

**International Graduates**
They must satisfy the requirements for an eligible degree or diploma from a recognized postsecondary institution in Canada within the last 2 years. An International Graduate must have accepted an indeterminate, full-time job offer from a BC employer.

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The BC PNP program does not require that International Graduates have previous work experience.

**Entry Level and Semiskilled Workers**

They must have worked for their employer in BC full-time in an eligible occupation for a period of at least 9 consecutive months immediately prior to the date their BC PNP application is submitted.

**Designated Health Professionals**

Applications under this stream are limited to

1. registered nurses, psychiatric nurses, and physicians recruited by provincial and regional health authorities administered through Health Match BC, and

2. midwives who meet the Provincial Nominee Program’s requirements.

**International Postgraduates**

This pilot project aims to support BC’s universities in attracting top students from around the globe (3-year pilot program ends May 28, 2013). Nominee applicants in this stream must have satisfied the requirements for an eligible master or doctorate degree from a recognized postsecondary institution in BC within the last 2 years.

To qualify under the BC PNP, a potential candidate and his or her employer (in most categories) must meet the following requirements:

- The nominee applicant intends to settle in BC and has the ability to become economically established.
- If the nominee applicant is currently in Canada, he or she must maintain legal immigration status throughout the process and must not be subject to a removal order.
- The nominee applicant does not have an active refugee claim.
- If the nominee applicant is currently outside Canada, he or she must not be in contravention of the Immigration Act and must have a legal status in the country in which he or she is currently residing.
- The employer has offered—and the nominee applicant has accepted—permanent and full-time employment in an eligible occupation.
- The nominee applicant is qualified to do the job.
- The wage offered is competitive with BC wage rates for the occupation.
- The nominee applicant’s occupation offers good long-term prospects.

**Canada has always been one of the most desirable immigration destinations in the world.**

- The employer
  - is financially sound, with a history of good workplace and business practices;
  - has been operating in BC for at least 1 year (2 years for an entry level and semiskilled employer); and
  - currently has at least 5 permanent full-time employees or full-time equivalents (3 if located outside of Metro Vancouver).
- The nominee applicant may not own 10% or more of the supporting employer company.
- The employment of a foreign worker will be of significant economic benefit to BC.
- The employment of a foreign worker will not adversely affect the settlement of a labour dispute or the employment of anyone involved in any such dispute.
- The employer has actively recruited locally to fill the position and was unable to find qualified candidates from among citizens or permanent residents of Canada.

**Business Immigration**

Canada has always been one of the most desirable immigration destinations in the world. The country has been especially attractive for business immigrants after the financial crisis that began in 2007. For example, in 2011 Forbes ranked Canada as the best country for business. Canada was found to be ahead of New Zealand and Hong Kong, which placed 2nd and 3rd respectively. The US ranked 10th, down from 9th a year ago. Forbes ranked the countries based on 11 factors including property rights, innovation, taxes, technology, corruption, freedom, red tape, investor protection, and stock market performance.³

At the same time, Vancouver is considered one of the most livable cities. For many years the Economist Intelligence Unit’s livability report has shown Vancouver on the list of top 10 cities as the ideal destination, thanks to a widespread availability of goods and services, low personal risk, and an effective infrastructure.⁴

As a result, immigration to British Columbia under the business immigration component of the BC PNP has become increasingly attractive to business immigrants from all around the world. British Columbia offers accelerated immigration for qualified entrepreneurs who are ready to invest and settle in the Greater Vancouver area or anywhere in BC. The BC PNP nominates for permanent residence potential immigrants who have the ability to establish themselves successfully in BC and to develop and actively manage a business that will provide significant economic benefits to the province. Below is a brief overview of the BC PNP business immigration programs.

**Business Skills Category**

Applicants for nomination in the Business Skills category will be required to do the following.

- Make a personal investment of at least CAN$400,000 to establish or purchase and expand an eligible business.


• Create at least three new jobs in the business for Canadians or permanent residents, except when the applicant is applying as a regional Succession Plan Buyout that reduces this requirement by one job for each existing job to be maintained.
• Own at least 33 ⅓% of the equity of the business.
• Provide active and ongoing participation in the day-to-day management and direction of the business.
• Demonstrate that they have
  • the skills and experience necessary to establish and operate a commercially viable business in BC;
  • a personal net worth of at least CAN$800,000 obtained from legal sources;
  • sufficient unencumbered personal funds to make the required investment; and
  • a viable business proposal.
• Sign a performance agreement with the Province of British Columbia.
• Sign a deposit agreement with the Province of British Columbia, if they are seeking a Fast-Track nomination.  

Principal Applicants and Key Staff
Principal applicants in the Business Skills category may include one foreign key staff person essential to the proposed business as a co-applicant for nomination, but must still create three jobs for Canadians or permanent residents.

Business Succession Plan Buyout
Business Skills applicants who commit to purchasing an existing business will have their stipulated job creation requirements reduced by one job for each existing job that is to be maintained for Canadian citizens or permanent residents. Those applications will receive priority processing.

In addition to meeting the requirements for the business skills category, the following additional requirements must be met.
The target business must
• be located outside the Vancouver metropolitan area and the Abbotsford metropolitan area;
• be operated by the same owner for a minimum of 5 years;
• have employees, other than family members; and
• be actively in operation.
The applicant must
• complete an exploratory visit to meet the retiring owners and, where feasible, the local Economic Development Office;
• operate the business for a minimum of 1 full year prior to being considered for nomination (or make a conditionally refundable CAN$125,000 deposit with the Province of British Columbia in the case of Fast-Track nominees), with long-term intentions of continuing to operate the business;
• use the succession plan buyout transaction to result in a complete change of ownership whereby the purchaser(s) take full control of the business.

Companies applying in this category will be required to do the following.
• Make a minimum equity investment of $500,000.
• Create at least three jobs for Canadians or permanent residents in BC for each nominee applicant put forward by the company (except when the applicant is applying as a regional Succession Plan Buyout that reduces this requirement by one job for each existing job to be maintained).
• Demonstrate a record of good business practices and successful business operations outside of Canada that are relevant to the proposed business.
• Establish or purchase and expand an eligible business anywhere in BC.
• Incorporate a Canadian subsidiary or register an extraprovincial company in BC to operate the proposed business.
• Demonstrate that the nominee applicants are qualified senior personnel who are essential to establishing or expanding and operating the proposed business in BC.
• Sign a Performance Agreement with the Province of British Columbia.

Regional Business Category
Applicants for nomination in the Regional Business category will be required to do the following.
• Make a personal investment of at least CAN$200,000 to establish or purchase and expand an eligible business anywhere in BC outside of the Vancouver metropolitan area and the Abbotsford metropolitan area.
• Create at least one new job in the business for a Canadian or permanent resident, except when the applicant is applying as a regional Succession Plan Buyout.
• Own at least 33 ⅓% of the equity of the business.

The Strategic Projects category assists foreign-controlled companies establishing an eligible business in BC...

Strategic Projects Category
The Strategic Projects category assists foreign-controlled companies establishing an eligible business in BC with the timely entry of foreign key managerial, professional, or technical staff—up to a maximum of five per company—who intend to become permanent residents of Canada and settle in BC.
• Provide active and ongoing participation in the day-to-day management and direction of the business.
• Demonstrate that they have
  ▪ the skills and experience necessary to establish and operate a commercially viable business in BC;
  ▪ a personal net worth of at least CAN$400,000 obtained from legal sources;
  ▪ sufficient unencumbered personal funds to make the required investment; and
  ▪ a viable business proposal.
• Sign a Performance Agreement with the Province of British Columbia.
• Sign a Deposit Agreement with the Province of British Columbia if they are seeking a Fast-Track nomination.

Investment in the Business
There are specific rules and requirements to be noted if you are considering the purchase of an existing business.

For example
• If you are buying the shares of an existing operating business, no more than 2/3 of the applicable minimum personal investment can apply to the purchase of shares and you must acquire ownership and control of at least 1/3 of the business.
• The shares you buy to purchase the business must be common full-voting shares and must not have a redemption option.
• If you are buying the assets of an existing business, no more than 2/3 of the applicable personal investment can be applied to the purchase of those assets.
• At least 1/3 of the required applicable minimum investment for the category must be directed toward expansion and/ or improvement of the existing business.
The applicable minimum personal investment cannot be applied to the purchase of real estate unless you can satisfy the BC PNP that the real estate is essential to the business, in which case no more than 2/3 of this investment can be applied for this purpose.

The applicable minimum personal investment can be applied to the following types of business costs, provided the amounts are reasonable for the business involved:

- Machinery, equipment, furniture, and fixtures
- Leasehold improvements
- Inventory
- Patents and licences
- Franchise purchase fees
- Allowable real estate and franchises
- Initial promotion and marketing
- Other start-up expenses, such as incorporation and permit fees and legal and other professional fees

If, because of the nature of your business, you are unable to apply the full amount of the minimum required personal equity investment to these types of expenditures, you may apply the balance to wages, building rent, and other normal operating expenses—excluding any payments to yourself or family members—during

- the first 6 months of operations, if you are establishing a new business, or
- 3 months, if you are buying a franchise or an existing business.

It should be noted that the requirements above represent only the minimum eligibility thresholds; meeting the minimum requirements does not guarantee approval. BC PNP establishes the nomination targets for the program and gives priority to candidates who demonstrate the greatest potential to create a successful business and contribute economically to the province. It is therefore recommended that you not commit to any investment until you have successfully passed your selection interview and signed a Performance Agreement with the Government of British Columbia.

Igor Chebunin is a BC Notary Public and a member of the Immigration Consultants of Canada Regulatory Council (ICCRC). His practice is in downtown Vancouver. His consulting firm specializes in Economic Class applications (Provincial Nominees, Business Immigration, etc.), Temporary Status (Work and Study permits), and Family Class Sponsorships.

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Regulating the Profession: Immigration Consultants of Canada Regulatory Council

Just over a year old, ICCRC (Immigration Consultants of Canada Regulatory Council) has made significant strides as the new regulator for immigration consultants.

In accordance with our policies on transparency and accountability, and by partnering with the Federal Government, we have been working on regulating and educating registered consultants while protecting the consumers of immigration services.

Applicants who choose to use a Regulated Canadian Immigration Consultant (RCIC) can rest assured that they are receiving qualified advice and representation in all matters pertaining to the Immigration and Refugee Protection Act.

High Education Standards
ICCRC has set in place demanding education standards. All ICCRC Members and future members/students must meet the ICCRC admissions standards. They must:

• be proficient in English/French;
• carry errors and omissions insurance;
• take continual professional development (CPD); and
• attend mandatory practice management education (PME) training sessions to maintain their status as a Regulated Canadian Immigration Consultant (RCIC).

Every member is bound by the Code of Professional Ethics that protects their clients against bad or unethical practices.

All ICCRC Members and future members/students must meet the ICCRC admissions standards.

New students must successfully complete a postgraduate diploma program from an accredited immigration practitioner course specializing in immigration and refugee law. Recently, the Education Council of ICCRC agreed to increase the required course length from 180 hours to 500 hours. Upon graduation, students must write the Full Skills Examination administered by the Council.

Members of ICCRC must take 16 hours per year of immigration-related education and attend mandatory courses on practice management. Recently, all 2250 members completed a 1-day course on Client Accounts at ICCRC classrooms across the country or online through our Real-Time Remote technology. At the end of May, a second course started on Retainer Agreements.

The purpose of our Practice Management Education (PME) courses is to be preventative; we have identified that 80 percent of the complaints against members are caused by misunderstandings.

Complaints and Discipline Process, Appendix A and B

The Complaints form is publicly available online on our website. The submission is taken by an intake officer who is at arm’s length from our staff and members. The investigation is then managed at arm’s length by the complaints and discipline team and referred to the Complaints Committee, if required.

We have installed and are supporting a team of professional intake officers to handle all complaints in an expeditious and fair manner. Since July 1, 2011, we have handled over 446 complaints with the following results.

• 76% were closed.
• 29% were sent to CBSA.
• 1.7% were sent to a provincial law society.
In general, a consumer filing a complaint against an ICCRC member will be contacted within a week by an Intake officer; that allows the consumer to know that his or her issue is being taken seriously. All complaints are investigated thoroughly and all parties are continuously advised of the results. Complainants receive a professional response and ICCRC members get a fair hearing. Unsupported complaints are dismissed.

Fighting Unauthorized Representatives

Although not part of our direct mandate, in the event a complaint is filed against someone who is not a regulated consultant with ICCRC or a member of a provincial law society, the complaint is still investigated by our intake team. The results are forwarded to the relevant authorities, such as the police, RCMP, CBSA, or Canadian Embassy.

Bill C-35 makes it a criminal offence for anyone who is not an Authorized Representative to provide advice for a fee. The searchable database on our website provides consumers with readily available tools that will help protect them from unauthorized providers of immigration services who contravene the provisions of Canadian law.

Of the 163 complaints received against nonmembers, all have been investigated and turned over to the Canadian Border Services Agency for possible criminal prosecution. If the alleged criminals are not Canadian citizens or permanent residents, CBSA will enter their names in a database that could see them denied entry into Canada due to inadmissibility. ICCRC members overseas are encouraged to alert local authorities on the activities of fraudulent agents. The names are also sent to the CBSA liaison at the appropriate Visa Posts where they are placed on a blacklist.

All complaints are investigated thoroughly and all parties are continuously advised of the results.

Compliance

The Council’s Complaints and Discipline process is clear and straightforward. Complaints are handled promptly to ensure a fast resolution while preserving consumer protection. Efforts will be made to work with members to help and support them in remedying any issues they may have with their practice.
People from all over the world make applications to come to the promised land of Canada.

They may come via many categories of immigration, including Family Class, Skilled Worker Class, Entrepreneur Class, Investor Class, Self-Employed Class, Canadian Experience Class, or Refugee Class.

Once they arrive in Canada for landing as a Permanent Resident, Section 28 of the Immigration and Refugee Protection Act SC 2002 Chapter 27 (IRPA) applies. The Permanent Resident (PR) is required to maintain his or her Residency Obligation as prescribed under Section 28, as follows.

28. (1) A permanent resident must comply with a residency obligation with respect to every 5-year period.

(2) The following provisions govern the residency obligation under subsection (1):

(a) a permanent resident complies with the residency obligation with respect to a 5-year period if, on each of a total of at least 730 days in that 5-year period, he or she is

(i) physically present in Canada,

(ii) outside Canada accompanying a Canadian citizen who is his or her spouse or common-law partner or, in the case of a child, his or her parent,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province.

The “Five-Year Period” is a moving window; that is to say, at any date of examination by an officer (inland immigration officer, border service officer at a Port of Entry, or overseas visa officer), the PR must satisfy the examining officer that he or she has remained in Canada physically for at least 730 days (2 years) cumulatively during the immediate 5 years.

In the event the PR has been landed in Canada for less than 5 years, the days in Canada from the time of his or her landing to the date of examination—plus the remaining days in the “Five-Year Period”—must total at least 730. Otherwise, the PR is in breach of his Residency Obligation and runs the risk of losing PR status.

There are exceptions to the 730 days in Canada requirement as set out in IRPA Section 28 (2)(ii) and (iii). The days spent outside of Canada are counted as In-Canada days if

- the PR is out of Canada accompanying a Canadian citizen spouse;
- out of Canada while employed on a full-time basis by a Canadian business; or
- employed by the federal or province governments posted outside of Canada.

Affluent Asian families longing for the good living conditions of Canada frequently found themselves facing the dilemma of giving up lucrative established financial opportunities in their home country to enjoy good nonmonetary lives of Canada. They arranged their family affairs to allow the spouse and children to reside and study in Canada, while the principal income-earning spouse commuted back and forth between Canada and the home country, to maintain their financial earnings.

Some went to the trouble of setting up a paper business in Canada so they could claim to be employed by...
a Canadian business in compliance with Section 28(2)(iii). That is usually met with suspicion by the examining officer—IPRA Section 61(2) states that a Canadian business does not include a business that serves primarily to allow a permanent resident to comply with his or her resident obligation while outside of Canada.

A common misconception of most PRs is that their PR status is safe until the expiry date of the Permanent Resident Card (PR Card) and that they will have an officer’s examination during the 5-year currency of their PR Card. As stated above, the “Five-Year Period” under examination is calculated from the date of examination to the immediate 5 years preceding the date of examination.

For the 5-year period of examination, the examining officer would not count any days the person spent outside Canada. For example, a PR remained in Canada after landing for 2 full years, but left Canada after that and has not returned to Canada since. When examined by an officer at the end of year 6, all of the PR’s first year of 365 days in Canada will not be counted; he or she will be in breach of IRPA Section 28.

Another common misconception among PRs is that once their PR Card expires, they are no longer a permanent resident of Canada. We should bear in mind that the PR Card is simply an administrative tool to identify the PR’s status as such and to control his or her entry into Canada through a “Commercial Transporter”—airlines, bus lines, and so on; the fact that the PR Card has expired does not remove his or her status as a permanent resident.

The PR will lose PR status only when

- a Section 44 report is issued as a result of an examination by an officer;
- a Minister’s Delegate has confirmed the PR to be a person described under Section 28; and
- the Delegate has issued the PR a Departure Order requiring him or her to leave Canada within a specified period, usually 30 days.

Here is an analogy: A Canadian citizen’s passport has expired but the person is still a Canadian citizen and has not lost citizenship just because his or her passport expired.

If a Departure Order is issued, the PR will have a right of appeal to the Immigration Appeal Division of the Immigration and Refuge Board (IAD) within 30 days (60 days if the negative determination is made when the PR is outside of Canada).

The IAD Appeal can be based on law or on equitable relief, commonly known as Humanitarian and Compassionate factors (H & C) or a mixture of law and H & C.

As with most things in life, advance planning goes a long way toward solving life’s problems.

- The appeal is based on law if it is alleged that the examining officer made a mistake in the calculation of days or did not credit the qualifying days out of Canada as set out in Section 28(2)(ii) or (iii).
- In an appeal based on H & C, the IAD has jurisdiction to consider all the factors, such as the following:
  1. The nature, extent, and degree of noncompliance with the residency obligation
  2. The reasons for the failure to comply
  3. The length of time an appellant lived in Canada and the degree to which the appellant is established here
  4. The continuing connections the appellant has to Canada, including connections to family members here
  5. The degree of establishment of the appellant outside of Canada
  6. The appellant’s reasons for leaving Canada, and any or all attempts made to return to Canada since

7. Whether the appellant sought to return to Canada at the first reasonable and available opportunity
8. Hardship and dislocation to family members in Canada if the appellant ultimately ceases to be a permanent resident of Canada as a result of his or her noncompliance
9. Hardship to the appellant if he or she ultimately ceases to be a permanent resident as a result of his or her noncompliance
10. “Best Interests of the Child”
11. IRPA Section 3 “the Objectives of this Act with respect to immigration are” in 3(d) “to see that families are reunited in Canada”

The list is not exhaustive; it is subject only to the skills and ingenuity of a good advocate at the Appeal Hearing.

So, what is a PR to do to ensure he or she does not run afoul of the Residency Obligation? As with most things in life, advance planning goes a long way toward solving life’s problems. Here is one example of advance planning.

- The family lands in Canada; the income-earning parent settles the spouse and children in Canada, then goes back to the home country to toil for the family income. His PR status is safe for the first 3 years—or 3 years plus the number of days he stayed in Canada. Always bear in mind that the requirement is 2 years out of 5.
- After this safe period, he must stay away from Canada and not make any application such as renewal of his PR Card.
- He must not apply for a Permanent Resident Travel Document (PRTD) to return to Canada after the expiry of his PR Card.
- If he makes an application for these documents or at the time he is questioned by Canada Border Services Agency (CBSA) at a port of entry, he runs the risk of being...
Canadian officers usually do not have the power or the resources to investigate permanent residents outside of Canada.

- His spouse applies for Canadian citizenship after she completes the residency requirement for citizenship of 1095 days (3 years out of the preceding 4 years).
- She receives her Canadian citizenship after about 14 months of processing, then moves back to the home country to live with her spouse.
- When the spouse lives with the PR in their home country and calculates he has 730 qualifying days under Section 28, he can make application for the renewal of his expired PR Card.
- An officer has the jurisdiction to examine only the 5 years immediately preceding the date of examination.
- Another plan may be for the PR to relinquish his PR status prior to an officer’s negative finding and apply to immigrate to Canada in the future when he is ready to live permanently in Canada, sponsored under the Family Class by his Canadian citizen or PR spouse. Children can sponsor their parent only when they reach 18; that sponsorship is subject to other requirements including minimum income. The Parents and Grandparents Class is currently under a moratorium.

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To be a sponsor, the applicant must be a Canadian citizen or a permanent resident.

In case the sponsor lives outside Canada, it will be approved only if the sponsor is a Canadian citizen and the sponsor satisfies Immigration that the sponsor will return to Canada for permanent residency when the applicant is approved for permanent residency.

If the person to be sponsored is already in Canada, the sponsor has two options regarding the process: The in-Canada application or the overseas application.

For the in-Canada application, it is possible to complete the process even if the sponsored person no longer has legal immigration status in Canada. If the person being sponsored leaves Canada before being granted permanent residency, however, he or she might be barred from re-entering Canada. In that case, the sponsor has to start another application outside Canada.

• If you chose the outside of Canada application—the overseas application—and the person to be sponsored is already inside Canada, the person will eventually have to travel to his or her home country to get the visa.

• If the person to be sponsored is outside Canada, the only option is the outside of Canada or overseas application.

The main difference between the applications inside and outside of Canada is that for the application outside Canada, there is a possibility of appeal if the result is negative; the appeal is not possible if the application is done inside Canada.

No matter the type of relationship, for the process to be successful it must be true, authentic, and genuine.

Another difference is the processing time; usually the process of application from outside Canada takes less time than from inside.

One advantage when applying inside Canada is to apply for a work permit and provincial medical coverage. Once the applicant receives the “Approval in Principle Letter,” the sponsored person is allowed to work in Canada, even before the permanent resident status is approved.

Canadian immigration laws basically recognize three types of relationships: Marriage, common law, and conjugal partner. Canada accepts those relationships for couples of the opposite sex and of the same sex.

The marriage could have occurred in Canada or in any other part of the world, as long as the marriage is valid under the law of the country where it took place and under Canadian law. A common law union for immigration purposes is recognized when the couple lives as spouses for at least a year.

A conjugal relationship is defined when the couple is in exceptional circumstances beyond their control that prevent them from getting married or qualifying as common law partners or spouses by living together. This third type is a very delicate case; for the immigration process to be successful, the case must be very well documented and believable.

No matter the type of relationship, for the process to be successful it must be true, authentic, and genuine. Arranged marriage is accepted because that is a common practice for certain cultures and the marriage is not primarily for the purpose of gaining Canadian status.
The sponsor

• must not have had problems with Immigration or the Canadian government;

• must be single or divorced or, if still legally married, has lived apart and separated from the legal spouse for a period of at least 1 year—see CIC Manual OP2, Section 5.18 at http://www.cic.gc.ca/english/resources/manuals/op/op02-eng.pdf;

• must not be a bankrupt;

• must not be in jail; and

• must not be receiving welfare benefits unless for disability. In that case, the minimum income for the sponsor can be disregarded, but the sponsor is directly responsible for the sponsored spouse for a period of 3 years.

On the other hand, the person being sponsored—as well as the dependents that will be coming into Canada with him or her—must have medical exams and criminal record checks.

The spouse may bring his or her children into Canada if they

• are younger than 22 years and are not married;

• were students before they turned 22; or

• are handicapped and dependent.

Note: On November 5, 2011, Citizenship and Immigration Canada stopped accepting applications to sponsor parents or grandparents for permanent residency. Only spouses or partners can be sponsored. Parents and grandparents can, however, apply for a Super Visa that allows them to make visits to Canada for up to 2 years. Steven Le talks about the Super Visa in the article that follows. ▲

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In the recent years, Citizenship and Immigration Canada (CIC) has made many changes to their immigration programs and policies.

One of the recent major changes includes the sponsorship of parents and grandparents and the introduction of “Super Visa.” In the Summer of 2011, Bill C-35 also came into force that made changes in the IP 09 (Use of Representative) and the replacement of the organization designated to regulate certified immigration consultants.

On November 5, 2011, CIC put a temporary pause on accepting new parents’ and grandparents’ sponsorship applications for 2 years. It came as a surprise to the public and the immigration consultant community.

To counter the concerns and the impact of this pause, starting on December 1, 2011, CIC currently allows parents and grandparents who are not from visa-exempt countries to apply for Super Visa, basically a temporary resident multi-entry visa valid up to 10 years with an extended authorized stay for a period of up to 2 years.

Subsequently, for the CIC visa officers to grant this special Super Visa, applicants—visiting parents and grandparents—would have to meet basic eligibility criteria that include the following.

- An invitation Letter from children or grandchildren (a Canadian Citizen or a Permanent Resident) from Canada; this letter normally needs to be notarized.
- Proof of relationship to the inviter(s), who must meet Low-Income Cut-off (LICO)
- Medical examination
- Private medical insurance from a Canadian insurance company for a minimum period of 1 year from the date of entering Canada

Visiting parents and grandparents from visa-exempted countries still need to make an application to the Visa Office Abroad (without paying a fee) for the extended authorized stay for a period of up to 2 years. If they qualify, they will be issued an introduction letter confirming they have met the above eligibility criteria.

On May 18, 2012, Citizenship, Immigration and Multiculturalism Minister Jason Kenney announced that more than 3500 Parent and Grandparent Super Visa applications have been approved since the introduction of Super Visa on December 1, 2011. The approval rate is currently 83 percent.

On June 30, 2011, Bill C-35 (an Act to amend the Immigration and Refugee Protection Act, IRPA) came into force. This Bill essentially introduced changes in the IP 09 (Use of Representative) and the replacement of the Canadian Society of Immigration Consultant (CSIC) with the Immigration Consultants of Canada Regulatory Council (ICCRC) as the organization designated to regulate certified immigration consultants. That was another huge step forward for the immigration consultants and the public. Overall, this change was meant to increase the level of protection to the public against the use of an unauthorized representative with pay and/or other consideration.
Anyone who provides immigration advice for compensation at the pre-application stage must be an Authorized Representative.

- Bill C-35 makes it an offence for anyone who is not an Authorized Representative to provide immigration advice for a fee or other consideration.
- It is now also an offence for anyone other than an Authorized Representative to represent and/or advise a client on an immigration matter for a fee and/or other consideration at any stage of an immigration application or proceeding. That includes the period before a proceeding begins or an application is submitted. **Anyone who provides immigration advice for compensation at the pre-application stage must be an Authorized Representative.**
- Uncompensated third parties, such as family members and friends, can still act on behalf of an applicant. IP-09 clearly defines an Authorized Representative to be an ICCRC Member in good standing, a member in good standing from a Canadian provincial/territorial law society, or a Québec Notary.

It is now mandatory to submit a Use of Representative Form (IMM 5476) with an immigration application.

- if the applicant used the services of a representative to assist him or her to prepare the application, or
- if the applicant wishes to appoint a representative to conduct business on his or her behalf with CIC or CBSA (the Canadian Border Services Agency).

If officers discover and obtain proof that the applicant is providing compensation or other consideration for the services of a concealed representative while his or her application is being processed, they may consider refusing the application because of misrepresentation. Therefore, failure to disclose the use of a compensated representative may be considered misrepresentation.

The consequence to the applicant for a finding of misrepresentation is that he or she is not admissible for a period of 2 years to Canada and may also be charged under the offences section of IRPA. The objectives of the Regulations and IRPA that govern the use of Representatives are to ensure that the public is represented in a professional, ethical, and lawful manner and to preserve the integrity of our Canadian immigration programs.

As an immigrant to Canada himself and from his work with the public as a Notary Public, Steven recognized the need for a well-trained, qualified, and honest immigration consultant to assist people to bring their loved ones to Canada. Since their introduction, Steven’s office has obtained Super Visas for several of his clients, especially those who otherwise would have had to wait a long time for their sponsorship application to be processed before they could see their children and grandchildren in Canada. In addition, once the visitors—those parents or grandparents with single-entry temporary visa—are in Canada, Steven has been able to apply and extend their stay up to 2 years.

Steven Le is a BC Notary practising in the City of Vancouver; he is also a Certified Immigration Consultant and a Member in Good Standing of the Immigration Consultants of Canada Regulatory Council (ICCRC). Fluent in English, Cantonese, and Vietnamese, Steven finds immigration work very interesting and rewarding when he sees families reunited and people start their new lives in Canada. His focus is business class immigration, immigration appeals, temporary visas, study permits, work permits, and spousal sponsorships.

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The federal Temporary Foreign Worker (TFW) Program exists to fill Canadian labour market shortages on a temporary basis.

As a class within the TFW Program, the Live-in Caregiver Program (LCP) admits qualified foreign nationals to provide care to children, the elderly, and people with disabilities. Live-in caregivers are expected to work and live in their employers’ homes and are required to have either 6 months of full-time caregiver training or 1 year of relevant work experience. It is the only class within the TFW program providing a pathway to Canadian permanent residence.

To be eligible to apply for permanent residency, live-in caregivers must complete either:

- 24 months of full-time authorized work within 4 years of entering the LCP, or
- 3900 hours of full-time authorized work (including a maximum of 390 overtime hours) within a minimum of 22 months and a maximum of 4 years of their date of entry.

The LCP has three defining features.

1. Live-in caregivers must reside in their employer’s home.
2. They are authorized to do only care-giving work. While they may be asked to do light household chores, their work must be predominantly care-related.
3. Live-in caregivers are authorized only to work for the employer named on their work permit. To change employers, they must obtain a new work permit, a process that can take upward of 4 months.

...many live-in caregivers endure exploitative and abusive work conditions to achieve their goal of becoming Canadian permanent residents.

The LCP’s structure creates unique challenges for live-in caregivers. The most common issues concern working conditions and overtime pay.

Because live-in caregivers reside with their employers, the line between working hours and personal time is often blurred. Employers commonly perceive their caregivers as always on-call or as a member of the family who is happy to provide free care outside their regular hours.

Another major issue is the restrictions imposed by live-in caregiver work permits. Live-in caregivers who lose their jobs struggle to support themselves during the months it takes to secure new employment and a new work permit.

Furthermore, the lengthy process jeopardizes their ability to complete the LCP within 4 years of their date of entry. As a result, many live-in caregivers endure exploitative and abusive work conditions to achieve their goal of becoming Canadian permanent residents.

Many live-in caregivers who wish to report exploitative conditions or who need help to navigate complex immigration processes do not qualify for legal aid unless they are at risk of being removed from Canada. The West Coast Domestic Workers’ Association (WCDWA) is an organization dedicated to bridging that access-to-justice gap. The organization deals with approximately 2500 legal matters on behalf of live-in caregivers each year.

The Notary Foundation generously supports WCDWA’s work. This year, the Notary Foundation is funding a public legal education project for temporary foreign workers, in particular, live-in caregivers. The aim of the project is to raise awareness about employment standards and immigration matters among temporary foreign workers through the distribution of information pamphlets and booklets and through a website.

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Kate Feeney is a third-year law student at the University of Victoria.
**Introduction**

A very common issue in the Immigration practice at Boughton Law Corporation arises when persons seeking entry to either Canada or to the United States are advised by an examining officer at the Port of Entry or Airport that they are criminally inadmissible due to criminality.

For persons seeking entry for a commercial purpose, that can have a devastating impact on their ability to conduct cross-border commercial transactions.

Those Canadian and American companies with cross-border commercial interests should have a basic understanding of both

- the Canadian legislation as it will impact the entry of foreign nationals to Canada, and
- the corresponding American legislation, when sending Canadian-based employees to the United States.

**Criminal Inadmissibility to Canada: Generally**

From a Canadian perspective, by which we mean the entry of foreign nationals into Canada, the consequences of a conviction of a foreign national seeking entry to Canada for a temporary purpose are outlined in the *Immigration and Refugee Protection Act*, more particularly at section 36 of the statute.

Section 36(2)(b) states as follows:

A foreign national is inadmissible on grounds of criminality for

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament

At section 36(3) the following subparagraphs are relevant:

(c) An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

(d) Inadmissibility under subsections 1 and 2 may not be based on the conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal; and

(e) The matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated.

The practical effect of the combination of section 36(2)(b) and section 36(3) is, at first instance, to determine whether a foreign conviction in an American state equates to an offence under the Canadian Criminal Code.

The Federal Court of Canada has ruled that equivalencies are established as follows in *Hill v. Canada*:

1. by comparison of a precise wording of each statute;
2. by examining the evidence before an adjudicator either orally or by documentation, to ascertain whether or not that evidence was sufficient to establish the essential ingredients of the offence in Canada had been proven in the foreign proceedings; and
3. a combination of elements one and two.

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1 *Hill v. Canada*, 1987, 783, NR 315
If the equivalency is established, the method by which the foreign matter was prosecuted is not relevant to the issue of inadmissibility due to the operation of section 36(3)(a) of the Immigration and Refugee Protection Act. Notwithstanding that the matter was treated for prosecutorial purposes as a misdemeanour in the US state, Canadian immigration legislation deems the equivalent offence in Canada would be treated as punishable by way of indictment.

For example, if a conviction under section 23152 (b) of the California Vehicle Code, for driving a vehicle with 0.08 percent or more by weight of alcohol in an individual’s blood stream, would equate to a conviction under section 253 of the Canadian Criminal Code, the fact that the conviction was treated in the United States as a misdemeanour continues to render a foreign national inadmissible to Canada.

A person convicted of the equivalent indictable offence will be inadmissible to Canada for a prescribed period after termination of sentence imposed. Section 18 of the Immigration Regulations issued pursuant to the Immigration and Refugee Protection Act states that the prescribed period is 5 years “after completion of the imposed sentence.” The imposed sentence includes periods of probation. Once the prescribed period has passed, the individual must apply for Criminal Rehabilitation.

In the intervening period of time between conviction and approval of rehabilitation, the method of entry for business purposes will require an application for a temporary resident permit.

Please be advised, however, that those provisions in foreign legislation that have comparable provisions under Canadian law to eliminate or expunge a conviction may be used to eliminate criminal inadmissibility to Canada in certain circumstances. In particular, the expungement provisions must exist in a jurisdiction with laws and a legal system similar to the Canadian system of law.

As the Federal Court stated in Barnet v. Canada:

Where another country, whose legal system is based on similar foundations and values as our own, has an active legislation which reflects goals and objectives analogous to those encompassed with our own system, then that law should be accorded respect and recognized for purposes of Canadian immigration law.

Therefore if an expungement of the conviction can be obtained from the American state where the offence took place, that solution would be more efficient than submitting and waiting for approval of a rehabilitation application under Canadian immigration law. The US state expungement will remove the criminal inadmissibility and permit the foreign national entry to Canada.

For those Canadian nationals seeking entry to the United States, there are some different considerations.

For those Canadian nationals seeking entry to the United States, there are some different considerations.

Criminal Inadmissibility to the United States: Generally

Pursuant to the Immigration and Nationality Act (“INA”) § 212(a)(2), (A), generally any “alien” who is convicted of or admits having committed, or who admits committing acts which constitute the essential elements of

(I) a crime involving moral turpitude (other than a purely political offence) or an attempt or conspiracy to commit such a crime; or

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the

United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

is inadmissible.

The following are circumstances and crimes that will generally make an alien inadmissible to the United States regardless of whether the crime is classified as a Crime Involving Moral Turpitude (“CIMT”).

Multiple Criminal Convictions

Any alien who has been convicted of two or more criminal offences (other than purely political offences), regardless of whether the conviction was in a single trial or whether the offences arose from a single scheme of misconduct and regardless of whether the offences involved moral turpitude, for which the aggregate sentences to confinement was more than 5 years, is inadmissible.

A conviction or admission of the essential elements of the following crimes will also generally result in criminal inadmissibility to the United States.

- Controlled Substance Trafficking (including family members who received financial or other benefit from such trafficking)4
- Prostitution and Commercialized Vice5
- Money Laundering6

Conviction is Not Essential for Criminal Inadmissibility

It is important to note that the INA does not always require a conviction to determine an alien’s inadmissibility to the United States. For specified offences, it is enough that an alien admits to committing a crime or if an officer has reason to believe a crime was committed. Legal advice should be sought to determine if an admission was made in accordance with INA §212(a)(2)(A).

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2 Barnet v. Canada, 1996, 33 Imm. L. R. (2nd) 1
3 United States immigration law defines an “alien” as any person who is not a citizen or national of the United States.
4 INA §212(a)(2)(C),
5 INA §212(a)(2)(D)
6 INA § 212(a)(3)(I),
What is a Conviction?
In circumstances where a conviction is required, it is important to be aware of the definition of a conviction. According to INA §101(a)(48)(A), the term conviction means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and
(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

By reason of this statute, an absolute discharge is not considered a conviction based on the fact that there is no restraint on the alien’s liberty. A conditional discharge, however, would be considered a conviction based on the conditions imposed as they are considered a restraint on the alien’s liberty. A suspended sentence would also be classified as a conviction pursuant to INA §101(a)(48).

US case law has held that generally the INA will classify an offence as a conviction if the conviction is final by a court of competent jurisdiction and all direct appeal avenues have been exhausted. An appeal route that requires leave is considered final.

Foreign Pardons
The US does not recognize foreign pardons as removing criminal inadmissibility. The United States will only recognize pardons from the Governor of a US state or a pardon from the President of the United States. If a pardon has been obtained, however, it may be helpful in demonstrating rehabilitation.

![The US does not recognize foreign pardons as removing criminal inadmissibility.](image)

Exceptions
In certain situations, despite the involvement in criminal activity an alien may be permitted to take advantage of an exception. An exception to INA §212(a)(2)(A)(i) above exists at INA §212(a)(2)(A)(ii) in the following two circumstances where an alien committed only one crime:

- **Juvenile Offense Exception**
  1. The crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
  2. An alien tried a convicted for 1 year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

- **Petty Offense Exception**
  1. the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for 1 year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

It is helpful to note that although the wording of the petty offence exception applies where an alien committed only one crime, it should be interpreted as applicable where the alien committed only one CIMT.

In other words, if an alien committed one CIMT eligible for the exception and another crime not classified as a CIMT (other than a controlled substance crime or various other crimes), then the petty offense exception can be used to overcome the inadmissibility.

If an alien was inadmissible for 2 crimes—one eligible CIMT and 1 controlled substance offence—the alien would be inadmissible based on the controlled substance offence and would require a waiver for that offence. The petty offense exemption would not be available where the alien was guilty of two CIMT offences.

Court Records
To establish that an alien is entitled to the benefit of an exception to inadmissibility or is not inadmissible pursuant to the INA, court records should be available to present to a US Customs and Border Protection (USCBP) Officer at the Port of Entry.

Nonimmigrant Waivers of Inadmissibility
Where an alien is subject to one of the grounds of criminality and is not entitled to take advantage of one of the exceptions, to be permitted to enter the United States the alien will require a nonimmigrant waiver, namely an Application for Advance Permission to Enter as a Nonimmigrant, which is submitted on Form I-192.

Often, although the alien may not be technically inadmissible to the United States but the Port of Entry officer has advised the alien a waiver is required, it will be necessary to submit a waiver application explaining why the alien is not inadmissible to the United States.

7 Gragada v. U.S. INS, 12 F.3d 919 (9th Cir. 1993); Pino v. Landon, 349 U.S. 901 (1955); Aguilera-Enriquez v. INS, 516 F.2d 565, 570 (6th Cir. 1975); Will v. INS, 447 F.2d 529, 532 (7th Cir. 1971)

8 Morales–Alvarado v. INS, 655 F.2d 172 (9th Cir. 1981)

9 Pursuant to 22 Code of Federal Regulations §40.21(a)(2)(ii), an alien tried a convicted as an adult for a violent felony committed after the age of 15 will be treated as an adult.

10 Including prostitution, commercialized vice, money laundering.
For Canadians, waiver applications are generally accepted at a Port of Entry or pre-clearance facilities at Canadian airports and then forwarded by the US CBP officer to the Admissibility Review Office (ARO).\(^ {11}\)

Generally, the adjudication process for waivers can take anywhere from 4 to 12 months.\(^ {12}\) Before an application for a nonimmigrant waiver is submitted, Canadians must obtain a criminal check from the RCMP, which must be submitted with the I-192 and a Form G-325A (biographical data form) and other supporting documents and forms.

In most cases waivers are initially granted for a 1-year term but may be granted for a maximum period of 5 years. In determining whether to issue a nonimmigrant waiver, the factors outlined in the precedent decision of Matter of Hranka\(^ {13}\) are balanced in each case. The factors are

- a. the risk of harm to society if the applicant is admitted;
- b. the seriousness of the applicant’s prior violations; and
- c. the person’s reasons for wishing to enter the United States.

In assessing the eligibility for a waiver, documentary evidence in support of the application includes

- a. a detailed affidavit submitted by the applicant outlining the facts and circumstances of the criminality;
- b. reference letters from the applicant’s employer confirming employment or evidence of self-employment;
- c. character references from friends and family attesting to the applicant’s good moral character;
- d. copies of the alien’s court records and pardon, if applicable; and
- e. documentation in support of the reasons the applicant wishes to enter the United States.

\(^{11}\) There are different procedures for individuals requiring a visa to enter the US as a nonimmigrant at 9 FAM S.40.301.

\(^{12}\) This is based on processing times currently and may change at any time.

\(^{13}\) 16 I. & N. Dec. 491 (BIA 1978)

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**Humanitarian Parole**

Because a nonimmigrant waiver may take several months to process, in accordance with INA §212(d)(5)(A) if there are urgent humanitarian reasons or significant public benefit grounds that can be shown to demonstrate why the alien should be permitted to enter the United States, the alien may be “parolled” into the United States for a limited purpose and often limited duration.

Generally, there is an extremely high burden for the alien to meet to be granted humanitarian parole. Examples where it will be seriously considered could include death or serious illness of a close relative in the United States or when the alien requires medical care that is not available in Canada.

**Conclusion**

The evaluation and assessment of whether an individual may be criminally inadmissible to Canada or the United States can be complex and often arises once an individual has been turned away from the Port of Entry. It is essential that the applicant heed the warning of the border official and not return unless well prepared. It may be preferable to retain legal counsel to assist with determining an individual’s criminal inadmissibility. ▲

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Regulated Immigration Consultants

THE SCRIVENER: You are the National President of the Canadian Association of Professional Immigration Consultants. What is CAPIC?

HEMLIN: The Canadian Association of Professional Immigration Consultants—ACCPI L’Association Canadienne des Conseillers Professionnels en Immigration (CAPIC-ACCPI)—is the largest nonprofit professional association for Canadian Immigration Consultants. CAPIC was founded on the four pillars of Education, Information, Lobbying, and Recognition.

The Scrivener:

HEMLIN: CAPIC itself was established in 2006 as a merger between two then-existing Immigration Consultant Associations—the Organization of Professional Immigration Consultants and the Association of Immigration Consultants of Canada.

THE SCRIVENER: Please tell us about your personal professional background in the practice of immigration.

HEMLIN: I began in Immigration somewhat by happenstance. I came to Vancouver in 1979 and while job hunting, applied to the Federal Public Service Commission. I was asked what I knew about Immigration, to which my reply was not much. I began working as an Officer at Vancouver Airport the next week.

My move from Immigration to private practice was similarly serendipitous. Having resigned my position to travel, I was approached by a number of community leaders with whom I had become acquainted while with the Government and suffice to say that I began my professional practice within days of leaving my job.

THE SCRIVENER: In the past, there have been some negative stories on immigration consultants. With the regulating of immigration consultants in 2004, did you see any changes to the practice?

HEMLIN: My short answer is YES! Of course we have had growing pains. In our instance, we’ve had rather prolonged growing pains through the establishment of two different Regulators. Today, we see a much better infrastructure and required practice management protocols that reflect those in other professions.

THE SCRIVENER: What is the role of CAPIC in the professional immigration world?

HEMLIN: CAPIC is similar to the Canadian Bar Association. We work closely with our regulator—the Immigration Consultants of Canada Regulatory Council—and with all levels of government and others involved in the Immigration objectives or mandate and so on. We also provide a comprehensive and ongoing education seminar program delivered at a reasonable cost for all Immigration Consultants and interested parties.

THE SCRIVENER: Why is it important for a prospective immigrant to use a regulated immigration consultant, rather than someone billed as an Immigration Consultant?
HEMLIN: Regulated Immigration Consultants—along with lawyers, some paralegals, and Québec Notaires—are the only persons legally entitled to act as representatives in Immigration matters. Regulated Consultants have the requisite training and expertise to properly assist clients in navigating the often Byzantine procedures involved in the many different layers of Canadian Immigration today.

In addition to the training, we are required to continually update our Professional Development and must carry Errors and Omissions insurance. Further, all Registered Canadian Immigration Consultants must abide by a strict Code of Ethics and Professional Conduct as laid down by our Regulator.

THE SCRIVENER: We know there have been quite a number of recent changes to the Canadian immigration laws and procedure. Please highlight some of the changes.

HEMLIN: Wow, and they just keep coming! The Immigration landscape is best described as a work in progress. I believe the Federal Government understands the enormous changes Canada will undergo over the next 10 years as the Baby Boom generation attains retirement age. Indeed, it has already begun.

So I think you will see a gradual increase in the total number of immigrants over that same period. That will be coupled with a simultaneous increase on the enforcement side of things. It makes for an extremely interesting—or frustrating—kind of practice.

THE SCRIVENER: How do you see the current changes affecting or going to affect Canada’s intake of needed immigrants for our aging workforce?

HEMLIN: I believe there will be a gradual increase in the total number of immigrants over the next 10 years. There also will be substantial increases in the number of temporary foreign workers and foreign students who will be given pathways to Permanent Residency.

THE SCRIVENER: Canada has been successful in attracting the well educated and the good managers of the world in the past to immigrate to Canada. Do you see the current changes affecting this?

HEMLIN: Some recently announced policies will negatively affect that ability. The Government’s decision to return over 280,000 applications—mostly from Asia and made up of many, many highly skilled people—has given us a black eye in that region. New ministerial Instruction legislation will allow Citizenship and Immigration to do that at will in the future.

The Government’s decision to return over 280,000 applications...has given us a black eye in that region.

I wonder how we will be able to continue to attract the best and the brightest, saying in effect “trust us” to complete your processing, when we have such a track record.

Similarly, recent proposed changes to the Federal Skilled Worker program will, I believe, effectively shut out up to 90 percent of our usual Immigrant intake from Asia and non-English/French speaking areas of the world, due to an unusually high language requirement and bar for not attaining it.

Second, our competitors for this same talent will be heating up. The United States will be using a similar selection process to our highly successful one and I worry that they will soon be taking the cream while we are napping and doing things that affect our good name abroad.

THE SCRIVENER: This may be a difficult question. If you had a crystal ball, what would you see as the state of Canadian immigration in the next 3 to 5 years?

HEMLIN: I believe you will see far greater numbers of applicants being processed through Provincial Nominee programs, both for skilled workers and business. The provinces seem to have a much better grasp of their immediate, short, and long-term needs than the Federal Government does; I think they can deliver the goods, so to speak, where they are most needed.

THE SCRIVENER: How might the role of a professional immigration practitioner evolve over the same period of time?

HEMLIN: I think that for a person to become a Registered Consultant, he or she will require a specialized Diploma and Degree prerequisite. Different areas of expertise may also be recognized, such as Appeals or Business Immigration, Skilled Worker Recruitment, and so on.

THE SCRIVENER: Thank you for taking time to speak with us; I know how busy you are in the current interesting time in the immigration world. We really appreciate it.

HEMLIN: The pleasure was all mine. ▲

Jeffrey Hemlin has over 33 years of experience in Immigration matters. The current National President of the Canadian Association of Professional Immigration Consultants, he was employed for 7 years by the Canada Employment and Immigration Commission as a Senior Immigration Officer/Refugee Affairs, Student and School Liaison Officer, Immigration Counsellor, and Immigration Examining Officer. He is a Member in good standing of the Immigration Consultants of Canada Regulatory Council, the regulatory licensing body for Immigration Consultants authorized to practise by Citizenship and Immigration Canada.

He and his wife Dr. Jennie Yu Shi have two sons and a daughter. Jeff actively contributes to many of his children’s activities, including the Little Mountain Baseball Challenger Division, Canucks Autism Network, Vancouver Thunderbirds Minor Hockey Association, Vancouver Killarney Minor Lacrosse Association, Vancouver Academy of Music, and the Royal Canadian Sea Cadets.

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One of the many challenges of immigrating to Canada is to get your children to integrate into their new community.

The schools recognize this is a very significant challenge for children; schools with high immigrant populations may have a SWIS worker (settlement worker in school) to assist children with what can be a difficult transition.

Praven Pather, a SWIS worker in Victoria, says there are many challenges for children in coping with a new community, from cold weather and new food that may upset their stomachs, to cultural issues such as language, socializing, school expectations, and trying to establish a new identity for themselves.

Praven has found that children who enroll in sport tend to find it easier to establish their own identity and to thrive in their new community.

Many immigrants come from countries where sport is not an integral part of the culture. Parents from such countries may have very little personal experience with sport and may not be able to teach their children basic athletic skills such as proper throwing technique.

New Immigrant families may also experience financial challenges that may mean there is no money left in the family budget for children to participate in sport.

The Victoria Foundation, through its Smart & Caring Community Fund, has recently established a Physical Literacy program to help children learn the athletic fundamentals of running, jumping, throwing, and kicking.

Children who enroll in sport tend to find it easier to establish their own identity and to thrive in their new community.

The SWIS worker may assist parents with finding sports for their children, completing applications for sport registration, and obtaining assistance in funding sports participation.

One group that assists children to participate in sport is KidSport, with Chapters in many cities throughout the province. KidSport’s motto is “So All Kids Can Play.”

KidSport Victoria provides funding for a significant number of new immigrant children to participate in the sport of their choice, if paying sport registration fees is beyond the means of the family. One young boy who recently received a KidSport grant is Bhavraj Walia, whose family recently immigrated to Canada from India. His mother Ravinder is a single working mother who does not speak much English but she knows how excited her son is to be able to play ice hockey for the first time.

Thanks to equipment provided by the NHLPA (National Hockey League Player’s Association) and the Ryan O’Byrne Foundation, Bhavraj will be suiting up for hockey this Winter.

The KidSport Victoria website (www.kidsportvictoria.ca) offers information about how KidSport grants can be obtained and ways you can help support KidSport “So All Kids Can Play.”

Steve Turner is a retired lawyer and Co-Chair of KidSport Victoria, the second-largest KidSport chapter in Canada, funding over 600 children a year.

KidSport’s funding comes from donations made by the public.

www.kidsportvictoria.ca
Big dinners on Sunday were a family event when I was growing up in British Columbia.

For many of us, it was a time to get together and cook up a great feast, while others caught up on the week’s activities or watched an Indian movie from “Bollywood.” They all talked about “back home.” As a child, it was difficult for me to understand what they meant because Canada was my home.

Last week, my mother and I went for a stroll in the local park. We discussed my parents’ emigration to Canada and the culture shock they felt when they arrived from Punjab, India.

The first immigrants from India were military servicemen from the British Army. My mother and father arrived at a time when most immigrants were agricultural labourers. Many found lumber mills and farms an ideal starting point.

While still in India, my mother had heard fabulous stories about Canada and fantasized about meeting her extended family already living here. She was the eldest of nine; although it was difficult to leave her remote village, in July 1977 she boarded a plane. She left before my father because her visa was approved first.

She remembers the walk through the airport as the most unbearable moment of her life. She didn’t know what to expect in Canada.

She remembers the walk through the airport as the most unbearable moment of her life. She didn’t know what to expect in Canada. Would she be able to contact her family in India or visit them? Would her lifestyle change drastically?

Upon arriving in Vancouver, she marvelled at the beautifully lit-up city but was sad when she thought about family and friends. The 72 hours since she had left felt like a lifetime.

In March 1978, my father travelled from Punjab to Canada. He had heard many stories about Canadian life. He came from a smaller family—his parents and two siblings. He spent a lot of his time with his father and uncles who were heavily involved in local politics.

My father was the second child from his family to venture out of India. He was looking forward to meeting many of his first cousins and other family members who had already come to Canada. Naturally social, he made friends on his flight; people who spoke different languages were able to communicate with one another through facial expressions and hand gestures.

When he arrived in Vancouver, he especially noticed the air seemed cleaner and fresher. It was then he knew he would be able to provide his future family with better opportunities. He calls it “a utopia moment.”

Everything was new to my parents—the environment, the people, the culture, and the laws but it didn’t take them long to adjust to the Canadian lifestyle; they were young and eager to start their new life together. Their biggest challenge...
was being away from their families for the first time but they made friends by finding a commonality, regardless of people’s different values or beliefs. They were married in April 1979 at a Sikh temple in Vancouver.

They started their own family, participated in community life, and enjoyed social comforts—all important components of a prosperous life.

My father’s first job was as a sawmill worker in Boston Bar. When the mill was shut down, they settled in the Fraser Valley. Over the next 30 years, he worked in the BC forest industry, mastering many trades and skills under physically intense conditions and moving up through several supervisory positions.

They started their own family, participated in community life, and enjoyed social comforts—all important components of a prosperous life.

They are grateful to the early Indo-Canadian immigrants. If it weren’t for their struggles and enduring the challenges they faced in Canada, there would not have been a successful integration of future Indo-Canadian immigrants into the social, cultural, and political aspects of our society.

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He needs your help...

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SPEAKING FOR ANIMALS
My family’s association with the Mach family began in 1979.

My uncle Michael Bond was greatly moved by the plight of the many Vietnamese people who had fled to refugee camps. He needed five adults to commit to the sponsorship of two young girls. The sponsors were my sisters Linda Borno and Judy Bond and family friends Ray and Yannick Abersek.

Thus began the paperwork and an unforgettable journey of two very bewildered and frightened young ladies. In October 1979, they arrived at the Prince George airport. Imagine the climate and culture shock they must have experienced!

The girls lived with Ray and Yannick for a while, then Joanne moved into the home of my parents, Dick and Roseanna Bond. My parents were old pros through raising eight of us, so the new addition was quickly assimilated into our family; Tran became one more sister.

On October 16, 1979, the local paper ran a small blurb about the event in the “Talk of the Town” article: “Say a big Canadian hello to Vanderhoof’s newest residents My Tran Tran and Van Thi Thu Nguyen, a pair of Vietnamese refugees who arrived in Vanderhoof last Wednesday evening via Kuala Lumpur and Edmonton.”

They were the first Vietnamese refugees to settle in the Vanderhoof region, but they were not the last. Many other groups and churches got on board to help out by sponsoring people and families in need.

The 19- and 20-year-old women had spent months in the dreaded internment camps of Malaysia. Thanks to their caring sponsors, they had a home and a future in the Nechako Valley.

Because of language barriers, we got their names wrong. From the time they arrived, the girls were known to us as Tran and Van. Many years later, Tran (Joanne) told us we were using her surname to address her, but the name Tran had stuck. I don’t think she minds too much.

I first met Joanne when I was visiting from my home in Sidney in the Spring of 1980. I had heard all about her from my family and was excited to get to know her. She quickly won me over with her sweet smile and her amazing recipe for sticky rice that she would make as a special treat.

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**How It All Started**

Joanne’s Sticky Rice

**Ingredients**
- 1 cup Thai sticky rice (glutinous rice)
- 1 can coconut milk
- 1 tablespoon white sugar
- ¼ teaspoon salt
- ½ teaspoon cornstarch (or tapioca flour)
- 2 ripe Thai mangos

**Instructions**
1. Soak 1 cup of dry sticky rice in cold water overnight or for a few hours.
2. Drain the rice and rinse it thoroughly with cold water. Put the rice in a steamer and steam for about 20 minutes. (Tip: Make a hole in the middle of the rice before steaming to allow the steam to circulate throughout.)
3. Make the coconut sauce while the rice is steaming.

**Coconut Sauce**
Pour a can of coconut milk into a saucepan. Stir in the sugar and salt. Cook over medium heat, stirring frequently without letting it boil. In a separate bowl, whisk together a few teaspoons of water and the cornstarch. Stir the cornstarch mixture into the coconut milk and continue to heat until the coconut sauce becomes thick.

4. When the sticky rice is cooked, spoon it out right away or else it will stick to the steamer when it starts cooling.
5. Peel and slice the mangos.
6. Place the sticky rice on a plate and arrange mango slices beside it. Drizzle with the coconut sauce.
We wish to thank Susan Davis Mercer and The Scrivener magazine for giving us this opportunity to tell our story and relate the events of my journey from Vietnam to Canada.

Life before Canada and the Journey on The Boat

I decided to leave my home in 1975 because the ongoing war caused my family pain, suffering, and economic unrest. With the fall of Saigon on April 30, 1975, the political system endured a radical change and the once-booming economy collapsed. There was a sense of fear and uncertainty in the air and for my parents, there was an inevitable feeling of hopelessness and despair. The eldest of 10 young siblings, I felt an overwhelming urgency and responsibility to do something about our situation. My parents lost their jobs and our family savings became of little worth due to the constant change in currency. The $100 bill we saved yesterday was worth $10 the next day. We were constantly worried about our livelihood. Images of fire and war and sounds of the bombing were in my mind daily. My only chance and hope was to join hundreds of thousands of refugees fleeing by boat in search of a life in a place that would bring peace and stability for my family.

I spent the next 4 years saving money and preparing to leave Saigon. On May 1, 1979, I boarded a fishing boat and left the shores of Southern Vietnam, near the city Cau Mau.

Day 1

This boat was 15 yards long, packed tightly with 170 men, women, and children. The planks felt unsteady when I stepped on board, perhaps forecasting the uncertain and dangerous journey that lay ahead. The boat looked incapable of going into the treacherous waters of the South China Sea and there were too many people on it.

It had 2 decks—the top and the basement. The top was for the elderly and the children. I was immediately ushered down into the basement.

I started wondering how all those people were going to breathe down there. The air was muggy; you could see from the passengers' expressions that they were breathing hard. I heard the engine start and my heart raced with excitement and fear, which made me feel sick to my stomach.

When they stopped the engine, I started wondering how we were going to make our way through the waters. I was immediately taken aback by the experience. I was able to see the people on the top deck, and they were shouting that we were back at the dock. Apparently, the boat was too small to make it through the waters.
heavy with the passengers and luggage together. The captain asked everyone to get rid of their luggage before we could attempt to depart again.

We all got off the boat. I had originally brought a tote bag with some clothes, medicine, and two jars of homemade lemon drops. I gave my belongings to someone and took only my raincoat, medicine, a $10 bill (US), a gold ring, and a jar of the lemon drops—they were thirst-quenchers. Finally, everyone re-boarded in single file; we were allowed to carry only a bottle of water and some food.

Once again I found myself crammed into the basement deck with at least 100 people—sardines tightly packed together. Once the boat left the coast for good, I cried quietly. My heart was breaking for I knew I might never see my family and my home again. My future was uncertain; we didn’t know if we would survive the journey or perish at sea as many others had.

After the first few unbearable hours, I felt sick; no air was getting through to the rushing water below. Two small openings between the top and bottom decks. People on the top were sitting with their backs against one another, covering the openings.

I kept straining my neck upward to catch the few breaths of air that came through when someone above shifted position. Everyone around me was literally gasping for air and the lack of oxygen made me feel nauseous; I had to think of a way to get myself onto the top deck.

I asked to go to the washroom, which was on the top. The toilet was literally four pieces of plywood hastily nailed together, forming a small hole through to the water beneath; two planks served as the seat. I stayed in the washroom with my head over the opening to the rushing water below.

I hung onto a pole and threw up. A woman with a stick was beating people who didn’t comply with her orders to stay in the basement. I was not allowed to sit on the top deck but because I was ill, she let me stay in the washroom for a short while. When I had nothing left in my stomach, I was forced back into the basement. It was horrible. People were seasick and couldn’t make it up to the washroom in time. The stench was unbearable.

That first night we steered into a massive storm. The violent winds and tides rocked our boat as if we were a toy. People were screaming, crying, vomiting, and praying to the gods to save the boat.

Rain and seawater were thrown in through the openings and into the basement. I thought we were going to be flooded. During the storm, I grabbed a spot beside a pole at the edge of the boat and hung on with all my might. The deck above was in chaos with people clambering around. The lightning flashes made everyone’s faces a frightening ghostly white.

We managed to survive that night without casualties or significant damage. Everyone was soaking wet from the rain and seawater. Like many others, I developed a fever. I stayed by the pole and because the stick lady knew I would be ill any moment, she allowed me to keep that spot for the rest of the 15-day journey.

**Day 2 and 3**

The second day was calm at sea and we continued in the direction of Malaysia. On the third day, after some hot porridge, we were all ecstatic to see in the distance a ship approaching us. We shouted with joy as if we were being rescued.

What we thought was a rescue boat on that late morning turned out to be a ship full of pirates.

The pirates demanded that all passengers take out their money, gold, and jewellery. They threatened that if we didn’t give them all we had, they would kill us. Most people put something into the pirates’ palms; I had only $10 and a small gold ring and was desperate to hang onto those valuables for as long as I could. I would need them when I arrived in my new country.

One of the pirates discovered that the old woman beside me was hiding her jade necklace and hit her face several times. I was so scared, my head was almost down to my feet.

Suddenly, we heard screaming and the pirate left to see what was going on. One of them had found a small gold bar beside a man and was outraged that they had been cheated. The pirate pulled the man up by his hair and held a machete to his neck, saying that if he found more gold, he would behead him. I was only a few passengers away.

The man began to sob and his family did, too, including his pregnant wife. All fell to their knees, begging the pirate to release him. They desperately tried to explain that the gold bar did not belong to them. The grandmother frantically pointed at the wife’s stomach; the pirate’s machete was drawing blood, which was dripping down.

After the mother and father begged relentlessly, the pirate dropped the man. While we were on their ship or would what to do. Would the pirates kill us while we were on their ship or would they destroy our boat, then throw all 170 of us into the sea? Some of the passengers stayed, while some went over to the pirates’ ship.
I was part of the group of passengers that had to move onto their boat. While the basement passengers were being transferred, the pirates grabbed a few girls and abused and raped them. On the pirate ship, they passed a hat around, forcing everyone to put in their gold and money. When it circled to me, I clenched my shaking fist tightly and pretended to drop something into the hat, then quickly passed it on. The pirates took a few shots at our boat to further scare the passengers. After their hellish doings, we returned back to our boat and the pirates left us.

**Day 4**

This was a day of sorrow and sadness. Not one passenger said a word; you could hear crying throughout the boat. Their faces were expressionless. We had no drinking water and everyone was too traumatized to move.

I was the only single person and had to watch out for myself. I had no family member, relative, or friend to help me. I sat on my tiny spot, near the end of the boat, with my arm tightly wrapped around the pole. There was nothing in sight but the endless blackness of the ocean. The future seemed desolate. All we could do was wait and hope we would not run into any more pirates.

**Day 5**

Around 11 AM, as I was dozing off with my arm tightly wrapped around the pole, another boat came—another pirate boat. There was fear in everyone’s eyes.

For some reason this time, I decided to run straight down to the basement and right into the middle of everyone. I remember shaking as I forced myself into a tiny ball. I heard a loud bang as the pirate ship, which was again a lot larger than our tiny fishing boat, T-boned us.

About 30 pirates started to terrorize the people on the top. They demanded gold and valuables and assaulted our people and further damaged our boat. My teeth chattered uncontrollably while I hid behind two big men who saved me from being taken by a pirate who had come down to search the bottom deck.

Another nightmare was happening but we had to stay alive.

Two hours after this attack, another boat came, but this time the pirates swam over with knives between their teeth. I couldn’t run to the basement this time and the chaos started up again.

Quickly, I covered my entire face with black engine oil and grabbed a small child who was left crying on the deck. Angry there was little gold and jewellery to take, they started to pry at gold teeth with knives and pliers and to torture people so they would give more valuables. As I sat shivering with the child in my arms, she kept biting me.

When the pirate came around to me, I quickly tossed my gold ring into his hand, knowing I could not pretend this time. He passed by me quickly without taking more than a glance at my dirtied face. Because I was tiny and unpleasant looking, the pirate quickly noticed the young girl beside me. The pirates tore off her shirt and assaulted her while everyone around sat frozen, unable to help the young girl.

The pirates were not happy with the lack of loot and did a second search of each person. I had only my $10 left, which I had to give up. After those pirates left, everyone was pale with the look of death on their faces; I was left with nothing in my pockets.

That night, we heard another ship approaching our boat and quickly shut off all the lights and turned the engine on full blast. More pirates were in hot pursuit as we headed into the darkness, not knowing which direction we were going. All that mattered was not being captured.

I kept looking back and saw the lights of the pirates’ boat. During the chase, the pregnant woman gave birth to her son. We continued fleeing from the pirates until early morning when we finally lost them.

Our bad luck had not run out yet; we were now without a compass—a pirate had stolen it. Our boat was lost in the open waters of the Pacific for days. My tongue was dry as sandpaper; we had no water or food. I still had lemon drops, which I shared.

Every day, the sun glaring down on us without mercy. A woman died during those 15 days and left her five children without their mother; the youngest was only 2 months old. I remember hallucinating and losing consciousness at times. I kept pushing on my stomach to suppress the hunger until I could finally ignore the pain.

On the 16th day, we spotted a small island somewhere in Malaysia. There were already two boats on the island with people waiting for help. We found many coconut trees and tropical plants. A small stream ran through the foliage and the bird chili plants. Everyone grabbed what looked edible, including the fiery hot chilies—our first food in 2 weeks. We spent 45 days on that island. Pretty soon, we had eaten all that was available and we were starvating again.

I was bitten by a poisonous mosquito and felt the symptoms of malaria—dizzy, nauseous, and extremely thirsty. I became very ill. I could not recognize people and fell into a coma-like sleep for a few days. People tried to wake me by pinching me and poking me with needles. It hurt but I could not respond. I did not have an ounce of strength to open my eyes or tell them I was still alive.

They were about to bury me. I heard someone say, “Poor girl, she has no family with her; they will never know their daughter died here.” Miraculously, tears rolled down my cheeks...

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I kept looking back and saw the lights of the pirates’ boat. During the
The first thing I saw was the tide coming in and the moon shining above me. I slowly recovered over the next few days and regained my strength.

People had a fire burning to attract the attention of any plane or ship. Finally a military helicopter spotted the smoke and landed on the island. Two men came out of the aircraft and people ran to them, crying and shouting. They hugged the two men and thanked them for saving our lives. We were going to get off the island to join thousands of refugees at a large camp situated on the coast of Malaysia.

A week later, we were transported by a big ship and a long bus ride to an overcrowded refugee camp where people had been waiting for months and years to immigrate to the US, Canada, Australia, and the European countries.

I lived at the camp for 3 months. Immigration officers from various countries came to the camp to interview us. Mine was a big-bearded man with a translator seated beside him. I was so nervous! He asked me a few questions about myself and why I wanted to go to Canada. When he asked what I was going to do for a living, I told him I would clean washrooms. He laughed loudly and clapped his hands. Everyone stopped and stared. He said I had given him a very good answer and that Canada welcomed people who worked hard and could give back to the country. He signed my papers accepting me to Canada. I could not wait to leave the camp behind and start a new life.

Arriving in Canada

As the plane touched down in Prince George, my heart was racing. I was anxious to meet my sponsor family.

I was the last one on the plane with another girl about my age; we were waiting to meet our sponsor family. The moment I saw Michael Bond (Uncle Mike), Judy Bond, Linda Borno, and Ray and Yannick Abersek, I was overwhelmed with emotions. I couldn’t imagine how these people, who did not know who I was, would be so kind-hearted to reach out and sponsor me to Canada. My first home in Canada was with Yannick, Ray, and their son Regis. They were of immense support and introduced me to life in Canada.

My Impression of Canada

My first impression of Canada was beyond what I had imagined. The people were so kind, honest, and polite to me. They treated me like an equal, as one of their own, not as a foreigner from the other side of the world. That is the Canadian spirit.

I was given a home to live in, food to eat, a job, and most important, hope that I could build a life here in Canada and see my family in Vietnam once again.

Vanderhoof

I was determined to work hard and persevere because my sponsor family had given me the opportunity to start a life in Canada. When I lived with Roseanna (whom I called Mom) and her family, I was able to learn English and begin the process of sponsoring my family to Canada. Her children always talked to me even though I could only nod and smile at times. Her daughter Linda and I would sit together with dictionaries in our laps to help me learn how to form sentences.

Linda was always by my side and motivating me. When I was upset and missing my family, she was so understanding and was always there for me. Linda showed me what a person who is beautiful inside and out is like.

1981, Prince George, sending the application for sponsoring my family of 13 from Vietnam to Vanderhoof
I remember meeting Susan for the first time with her own family. I thought a movie star had walked into our home! Susan was (and still is) so lovely and elegant. I was so happy when everyone was home during Christmas and felt like a butterfly filled with joy. I always thought I was so lucky to be with such a warm and loving family.

Roseanna treated me as if I were her own daughter and her children saw me as their sister. I knew that Roseanna’s children—Susan, Judy, Linda, Beverley, Marcia, Roger, Bill, and Kathy—would always be there for me whenever I needed them. This family was beaming with love and they shared their laughter and tears with me.

I was given a job at the Bond Brothers’ Sawmill so I could send money back to my family. I learned how to work many different jobs and gained invaluable friendships, even if we did have to communicate with our hands. It made work so much fun and put a smile on everyone’s face! It seemed like we were playing charades at work; it warmed everyone up with laughter.

I worked at the sawmill for 10 years and within 5 years was able to sponsor my whole family to Canada. I was ecstatic when I found out all 13 members of my family could leave Vietnam and join me in building a life in this wonderful country.

Meeting Cliff
I met Cliff through the local church. My husband’s family was also Chinese, born in Vietnam; they had lived in the refugee camp in Hong Kong before being sponsored to Canada. Coming to Canada completely changed Cliff’s life and gave him the freedom to decide his future.

We moved to Vancouver in 1989. Cliff was very determined to start his own business. He worked very hard and often long hours putting his heart into his business. Steadily his business grew every year. He imported food products from Thailand, Malaysia, Singapore, and China. During the years of our business-making, we endured countless obstacles and every day was a new challenge. It has been 21 years since we started our import wholesale business. Today, our products are distributed throughout the Lower Mainland and to provinces across Canada.

I was given the chance to build a new life in my new home. I keep working hard because I want to give back and show my appreciation. I always encourage my daughters to never give up and to cherish life and the people we care about.

By Joanne’s Daughters
Angela and Eileen
We never cease to be in admiration of our parent’s story of how they fled their war-stricken land thousands of miles away to come to Canada. We are so fortunate and grateful to be Canadian citizens and to be born into such a loving family. They have never stopped working and they never gave up, no matter how difficult their path as new emigrants.

The near-death journey that our mother took by boat and the months she spent waiting in the refugee camp on the Malaysian island exemplify her strength, courage, and determination that we have learned to embrace as our values.

The 33 years she has spent in Canada truly answered the question posed to her by the immigration officer at the refugee camp in 1979, “What would you do in Canada?” She has worked hard and captured every opportunity Canada gave her. Our father’s perseverance, resilience, and sacrifice also inspire us to put our very best effort into the things we do.
Beside the new challenge of settling into a new home and new culture, immigrants to Canada sooner or later will have to face the Canadian income tax system.

When moving to a new country, it is better to know from the outset what the tax issues are so proper steps can be taken to benefit from some of the rules.

I moved to Canada 25 years ago as a newlywed young man excited to embark on a new life experience. When I stepped onto Canadian soil, I had no idea of the tax system; I only knew that in my home country Italy, the tax regime was very strict and people were devising all sort of tricks to “minimize” taxes.

For Canadian tax purposes, individuals moving to Canada will generally be considered residents. Canada’s Income Tax Act does not make reference to citizenship or immigration status. It simply states that Canadian tax “residents” are bound annually to pay tax on their worldwide income and to declare the existence of substantial foreign assets located outside Canada. The latter obligation is called “foreign asset disclosure.”

Residency is determined on the facts of each case. Here are some examples.

- The nature of the stay in Canada
- The length of the stay
- Whether or not the individual is accompanied by his or her family
- The individual’s centre of economic interests
- The individual’s intentions
- Whether or not the individual is registered in a municipal register to vote
- The place where bank accounts are held
- The place where the person’s assets are located
- The terms of employment
- Entitlement to subsidized healthcare

It is possible for an individual to be considered resident of more than one country under the domestic laws of each country. In that case, the individual could be subject to double taxation; there are, however, relief provisions in place such as tax treaties and conventions that Canada has signed with other countries. Those conventions will provide for determination of residency between the two countries that will override the domestic law.

For the most part, an individual moving to Canada with his or her family to start a new life generally will be considered a resident of Canada for tax purposes.

As mentioned earlier, all Canadian tax residents must report their annual income and pay tax on it. The annual income includes any worldwide income from employment, interest, rent, dividends, capital gains, and pension. If any tax is paid in the foreign country, the Canadian tax system provides for a foreign tax credit to reduce or minimize the burden of double taxation.

Some tax concessions are available to new immigrants.

Deemed Acquisition Rule

Prior to establishing residency in Canada, an individual is deemed to have disposed of all his or her assets—other than taxable Canadian property—and to have re-acquired the same assets at fair market value. Accordingly, gains or losses accrued prior to becoming a Canadian resident are irrelevant when calculating Canadian tax liability at the time.
the property is sold. The immigrant will calculate the capital gain or loss based on the fair market value at the date of immigration.

Thus, if an individual has highly appreciated assets and establishes residency in Canada prior to selling the asset and if the gain is not subject to tax in another country, he or she may not be taxed on a portion of capital gain. On the other hand, if assets have declined in value prior to moving to Canada, the loss is not available to offset other capital gains earned while in Canada.

As mentioned above, taxable Canadian properties owned by the immigrant prior to moving to Canada are not subject to the tax concession and their cost basis will be the original cost at the time of purchase. Taxable Canadian properties include real property situated in Canada, property used to carry on a business in Canada, certain shares of public corporations, shares of private corporations resident in Canada, and Canadian resource property.

It is recommended that an individual moving to Canada prepare an inventory of the assets owned and establish the market value at the time of entry in Canada. That documentation will be valuable when the assets are sold at a later date.

**Immigration Trust**

If an individual immigrating to Canada has significant non-Canadian investments that will be subject to Canada’s high tax rates once the individual has established Canadian residency, the individual can set up a foreign trust before moving to Canada.

The income from the investment can be sheltered from Canadian taxation for a period of up to 60 months, provided the income earned in the trust is not distributed to a Canadian resident who was the settlor.

That strategy may be advantageous if the trust can be established in a low tax-rate jurisdiction. For the trust to be considered a nonresident trust, it must be established and settled prior to the settlor and beneficiaries establishing residency in Canada. In addition, the majority of the trustees must be nonresident of Canada.

An immigrant individual can contribute his or her foreign investment to the trust for his or her own or family benefit prior to immigrating and avoid Canadian tax for 60 months, provided the income is not paid to the beneficiaries. If after the 60-month period the settlor remains resident of Canada, the income from the trust will be subject to Canadian income tax.

That is a particularly complex matter where expert advice should be obtained before making any decisions as to whether to establish the trust.

**It is recommended that an individual moving to Canada prepare an inventory of the assets owned and establish the market value at the time of entry in Canada.**

**Employment Income**

Employment income is taxed when received.

- If an individual earns employment income abroad while nonresident but is not paid until moving to Canada, the income will be taxable in Canada.
- The individual will receive a foreign tax credit.
- There is, however, the risk that higher tax will be paid because the income will be taxed at the individual’s marginal tax rate but the foreign tax credit is calculated at the average rate.
- It is therefore a good tax planning strategy to receive all the employment income earned abroad prior to moving to Canada.

**Rental Income**

When individuals immigrate to Canada, they will often rent-out their property in their home country until they sell it or until they return. Rental income on a foreign property, net of the rental expenses, is included in the resident’s Canadian taxable income.

**Moving Expenses**

Moving expenses to immigrate to Canada are generally not deductible. In planning the move for employment purposes into Canada, it is advisable that the employer reimburse the new employee for moving expenses. Moving expense reimbursements are not taxable to an employee, provided they are reasonable in the circumstances.

**Personal Tax Credits**

Every taxpayer is entitled to personal exemptions. For example, in 2011 the first $10,382 of income was not taxable. The basic personal exemption, however, is calculated and pro-rated based on the period of residence. If the new immigrant moved to Canada in December, the immigrant would be entitled only to \( \frac{1}{2} \) of the exemption. It is therefore important to choose a moving date that will maximize the benefit of the exemption. There is one exception to this rule—if the individual immigrant has earned more than 90 percent of the income in Canada, the individual is entitled to the full personal exemption.

The tax consequences of moving to Canada and establishing Canadian residency may result in additional tax costs for the individual. The costs may be reduced with adequate tax planning prior to the move and, keeping in consideration the immigrant’s individual circumstances, he or she should seek the advice of a tax professional while planning the move.

Andrea Agnoloni is a BC Notary Public practising in North Vancouver. He is also a Certified General Accountant with EPR — North Vancouver, an Independent Firm of EPR Canada Group Inc.

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**Correction from the Summer Scrivener, page 72:**

“The value of the building will not be taxable but the land will qualify only for the principal residence exemption if it can be considered as contributing to the use and enjoyment of the property and the land does not exceed a half hectare in size or 2.47 1.235 acres.”
My interest in Immigration came from the work my mom did after she got home from her regular day job at an office. She would help a friend or a friend of a friend to complete the immigration forms to sponsor a family member or respond to letters from Immigration Canada. My mother did all of this without charging; it was simply helping from the heart.

At that time, I was working as a paralegal in a law firm. My mother would often ask me to help create cover letters, letters of explanation, declarations, or even submissions to the appeal board. I found myself slowly getting involved with the inquiries. Those documents would often require the services of a Notary Public because many of them had to be sworn, notarized, and/or certified.

My desire and need for efficiency led me to study to become a BC Notary. I earned my commission in 2000.

It is now 2012. My mother, who is semi-retired and living in the Philippines part-time, assists me with my practice as my consultant and immigration agent. My 21-year-old daughter Keshia Corrales Nelson has completed the Immigration course and will be licensed to practise. She is also completing her bachelor’s degree at the University of Alberta and will apply and register with the BC Notaries.

In my Immigration practice, I have seen every type of immigration issue, every type of immigration obstacle... many, many different problems. I have a soft spot for all of them. I have always wanted to help as much as I can and the best that I can.

Being an Immigration Consultant is a very satisfying profession. I not only help the immediate issue at hand but eventually I serve the next generation of the family, too. That is priceless!

Editha Corrales Nelson is a Regulated Canadian Immigration Consultant with the Immigration Consultants of Canada Regulatory Council, and a Notary Public in the City of Burnaby. Her preferred areas of practice are Real Estate Transfers and Mortgages, Powers of Attorney, Wills Preparation, International Legal Documents, Name Changes, Affidavits, Letters of Invitation, Statutory Declarations, Drafting of Business Contracts, and other BC Notary services.

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They were five Notaries from the capital city of Beijing, led by the Chair of the Notaries Association of Beijing Yankui Yao of the Beijing Hengxin Public Notary Office, together with Jie Ma, Deputy Counsel of the Beijing Bureau of Justice; Zhongjing Chen, Deputy Director, Beijing Fangyuan Public Notary Office; Shuming Yang, Deputy Director, Beijing Changan Public Notary Office; and Xiangmei Wang, Deputy Director of the Beijing Xinde Public Notary Office.

Chief Executive Officer Wayne Braid and BC Notaries Susan Tong and Alex Ning played host to the visitors in a very productive and informative meeting at The Society’s downtown Vancouver office.

Notary Alex Ning describes the meeting. “The visitors were informed of the role and office of a Notary in our province and the selection criteria necessary to become a British Columbia Notary, including the education requirements of a Master’s degree and the statutory examinations. They told us a Chinese Notary is required to have a law degree, then the graduate can select from four career paths—a Notary, a judge, a prosecutor, or a lawyer. To become a Notary, additional education is required through their Notary college. The person must pass various examinations to qualify as a practising Chinese Notary.

“Initially licensed to practise by the Chinese Foreign Affairs Ministry, Chinese Notaries are now under the supervision of China’s Ministry of Justice. They practise mainly in two major areas—domestic economic matters (civil practice) and international economic matters.

“The delegation was most gracious and brought gifts to The Society. The Chinese Notaries also extended an invitation to our members to visit them in Beijing. It was a useful exchange of ideas and fellowship with our visitors from afar.”

The Chinese Notaries also extended an invitation to our members to visit them in Beijing.

The delegation was most gracious and brought gifts to The Society.
The Coast Coal Harbour Hotel once again hosted a BC Notary conference. The great efforts of the Hotel staff, The Society staff, and our presenters helped this event run smoothly. The learning and the fun continued aboard the Coral Princess as she sailed down the West Coast in perfect weather.

Ron Usher

Ron Usher is the General Counsel for The Society of Notaries Public of British Columbia. His presentation featuring great tips for Notaries was a big hit. Ron and his skillful ukulele stylings are a crowd favourite at our conferences. This year for the occasion, he wrote a very fine ballad with a BC Notary twist.

Todd McKendrick

Todd is Associate Counsel with MacKenzie Fujisawa LLP; his practice focuses on defending professional negligence claims, disciplinary matters, real estate and estate litigation and advising on risk management. He teaches the Philosophy of Law to BC Notary students in the Master of Arts in Applied Legal Studies at SFU. Todd's presentation on trending practice issues was delivered with a healthy dose of reality and accompanying anecdotes.

Wayne Braid

Our CEO and Secretary Wayne Braid updated us on various issues in which The Society and the membership are currently involved. His candor and supportive comments were well placed, as always. Wayne also gave us a sneak peek into exciting changes to come in our province and their effect on our day-to-day Notary practices.

Cheryl Stephens

Cheryl Stephens has provided workshops to clients all over North America. Her presentation focused on the use of plain language communication. She offered helpful examples and effective tips for improving written communication in our daily practices.

A big thanks to The Society’s staff for putting on another great conference! Our conferences are always well received. This event was a perfect mixture of education sessions, the AGM, a Welcome Reception, and the President’s Gala Dinner, followed by a 3-day cruise to California.
Musicians for the President’s Dinner Event
Sax Player, Carla Sleightholme; Keyboard Player, Vashti Fairbairn

Cam Sherk, MJ Gandolfo, Rimpy and Raman Sadhra
Roy and Dawn Cammack

Verky-Lyn Lao and Amber Rooke
Rebecca Magallanes
Quang Duong and Susan Tong
Peter and Dolores Ramsay with John Eastwood
STEREOTYPE

“Poor kids on the Downtown Eastside can’t be helped, their parents are too messed up. THERE’S NO HOPE.”

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For more information on leaving a bequest, contact Carey Bornn at 604.215.5441 or cbornn@ugm.ca
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THE BOARD OF DIRECTORS getting ready to follow piper Marvin Hawke (at right) into the President’s Dinner

Margot Rutherford, Lorne Mann, Lorna Tutte and Leona Castle

Rob Gordon, Val Wilson, Ron Usher, and Peter Ramsay

Rob Mitchell, Bryanne Eastwood, Debra Mitchell, and Laurie Salvador

Ruben and Maureen Friesen

The Board of Directors getting ready to follow piper Marvin Hawke (at right) into the President’s Dinner

Tarlok Sablok

Ron Usher and Sharon Liebau

Editha Corrales Nelson and Leta Best

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Welcome to The 25-Year Club!

Dan Campbell, Lorraine Wait, Esther Chiu, and Martin Kastelein

Here are the other members of our 25-Year Club.

Malek Allibhai
Brent Atkinson
Leta Best
Naib Brar
William Brown
Gordon Buntain
Janet Byrd
Roy Cammack
Agatha Chung
Susan Davis
Christopher Dupuis
Robert Ellington
Richard Evans
Glory Ewen
Elick Fedewich
James Fulton
Amber Goddyn
Garry Gracey
Marian Gravelle
Jon Harris
Charlene Hood
Leda Kwichak
Wayne Letourneau
Irene Littlejohns
Gregory Litwin
Christine Lloyd
Arlene Luoma
Kenneth MacKinlay
C. Keri Martens
Daryl McLane
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Prit Narwal
Alexander Ning
Seiko Ouchi
Margaret Rankin
James Robinson
Margot Rutherford
Tarlok Sablok
Laurie Salvador
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Pankaj Shah
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Robert Simpson
Jagdish Singh
Frank Spartano
George Tanco
Adrian Wong
Patricia Wong
David Wright

The Prize Winners!

Vanessa Noga and Hilde Deprez
Rob Mitchell and David Watts
Vanessa Noga and John Eastwood
Rimpy Sadhra and Suky Cheema
Cherry Inglis and Her Big Prize!

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- BC Notaries
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- MLAs and MPs
- Life Insurance Brokers and Agents
- Accountants
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- Libraries: Public and Private, including Law Society, Legal Services, Educational Facilities
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Advertising Deadline for the Winter 2012 Issue: November 22

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On September 16, Rick Evans was recognized by The Society for his outstanding service and contribution to the BC Notary profession.

He was a Director of The Society for 12 years and President from 1988 to 1990. He has a BSc degree and a diploma in Urban Land Economics with the Appraisal Option, both from UBC; a BC real estate agent's licence; and a general insurance agent's licence.

Rick worked in a stock broker's office before joining the Nanaimo real estate and insurance agency owned by his father, Notary Jack Evans, also a former president of The Society. He managed the agency and sold real estate and insurance and in 1975, qualified as a BC Notary.

Rick served as a Governor of the Real Estate Institute of British Columbia and was actively involved in the instruction of new real estate licensees in the preparation of the Contract of Purchase and Sale.

As part of REIBC's continuing professional education program, he instructed licensees throughout the province on Title Searching, in the classroom and via the Internet. In the area of continuing education for BC Notaries, Rick often instructs on the drafting of Wills. His preferred areas of practice are the preparation of Wills, Powers of Attorney, and Representation Agreements.

He has served as Education Co-ordinator for The Society and as a mediator in Small Claims Court with the Court Mediation Program. Rick was 1 of 3 statute-appointed examiners for new Notary students, responsible for drafting, invigilating, and marking 2 of the 6 exams graduates from SFU's Master of Arts in Applied Legal Studies program must pass before becoming Notaries. Most recently, Rick made a strong contribution to the Testate Succession Sub-Committee of the British Columbia Law Institute (BCLI) Succession Law Reform Project as part of a team of legal professionals responsible for the final drafting of the new Wills, Estates and Succession Act.

As a Practice Inspector for The Society, Rick helps ensure that BC Notaries follow best-practice procedures.

Rick and his wife Carol enjoy a blended family of 5 adult children and 6 grandchildren.
Meet Richard Olson,
New Instructor for BC Notary Students

Many experienced professionals impart their considerable expertise to the BC Notary students enrolled in the Master of Arts in Applied Legal Studies degree at SFU.

Richard Olson has joined that faculty in the area of real estate law.

Born in Vancouver in 1949, Richard earned a BA in Art History from UBC and along the way spent 6 months backpacking in Europe—he was there for the coup in Greece, an airplane bombing in Rome, and a political assassination in Spain. Undeterred, he maintains his passion for travel, food, and history.

His first thought of going into law came to him in 1976 while leaving a Small Claims Courtroom, after testifying in a motor vehicle accident case.

“The unsuccessful plaintiff, who had driven into the side of a truck in plain view, muttered ‘Goddam truck drivers all stick together’ as he pushed past me to leave. It had been a really interesting case . . . perhaps law might be a career to pursue? That was my first major ‘butterfly effect.’ In 1977, I was accepted into UBC Law School and, 35 years later, still count several classmates as very good friends.

“I applied for articles in some small firms and was not offered a position. That second ‘butterfly effect’ turned out to be a wonderful thing. I went to France the next year to take a French immersion course. Following graduation, I applied to clerk in the BC Supreme Court and was successful; I clerked for 7 judges for a year.

“Once I started clerking, I decided to apply to big firms. My interview with Russell & DuMoulin covered a number of topics—travel, food, wine, and art, with brief mention of law. I articled at Russell & DuMoulin for 6 months (clerking counts for half of articles) and was hired as an associate shortly after my call to the BC Bar on November 10, 1982.

“In my many trips to Europe, mostly France and Italy, I have enjoyed some wonderful meals, usually in small local restaurants.

“The recession was in full swing; I did a great deal of insolvency-related court work as well as commercial litigation. I eventually was able to concentrate on real estate litigation and especially commercial tenancies and banking litigation, including cheques and bills of exchange. I became a partner of the firm in 1989, just before it jumped from 100 lawyers to over 150.

“In 2002, 2 years after Russell & DuMoulin became part of Fasken Martineau DuMoulin LLP, I resigned. For the next 4 years I practised from a home office. I began writing the text, A Commercial Tenancy Handbook, which was completed in February 2004 and published by Carswell that November. I update the text annually.

“In 2006 I joined, as associate counsel, McKechnie & Company, a small boutique in Yaletown that specializes in construction and real estate litigation. These days, I sit as an arbitrator in commercial and real estate disputes and advise clients on a variety of matters.

“I rarely go to court. I have been involved in many Continuing Legal Education courses as a presenter, chair, or co-chair. I serve on the Board of the Allard Prize for International Integrity that will be launched shortly; the initial prize will be awarded in 2013. Two of my short stories have won prizes and have been published in The Advocate.

“In my many trips to Europe, mostly France and Italy, I have enjoyed some wonderful meals, usually in small local restaurants.

“I cook in a range of styles; make my own sausages, duck confit, and preserves; and occasionally make paella for 30 or more friends. My wife—who retired 4 years ago after 35 years as a dietitian—paints, draws, writes a weekly blog about her photographs and artwork, and shares the kitchen with me.”

rjo@mckechnie.bc.ca
Thank you!

I recently received a grant from the Notary Foundation of BC and really appreciate your help.

Your support has alleviated my financial situation; I don’t have to worry about borrowing school equipment from others.

In my spare time, I volunteer at a policing station, generally patrolling the Chinese community to check car licences and speed. I have made three good friends there with many mutual interests such as playing music, volunteering, and a future in the law.

I also volunteer at Kiwassa Neighbourhood House to help immigrants adapt to their new environment. As a leader, my basic responsibility is to take the immigrants to explore Vancouver. That is so much fun!

I have been in Canada for about 6 years. If I returned to my home country, I would not have a chance to go to college because of my financial situation. I am very grateful for what I have. Living in Canada brings me hope. People are very generous and polite.

As for now, I am in the Legal Studies program at Douglas College with the goal of becoming a police officer or a lawyer.

Best regards,
Johnny Guan

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The Community Law Advocacy Program in Maple Ridge/Pitt Meadows

The Community Law Advocacy Program of Maple Ridge/Pitt Meadows Community Services has been able to extend its advocacy services, thanks to the Notary Foundation Grant.

A barrier to advocacy services was identified after a number of clients voiced their concerns about setting up appointments. Many clients who require the assistance of an advocate do not have access to a telephone. For some clients, the expense of calling and the challenge with their mobility was enough of a hurdle for them to forego the services. As a result, an entire day of service in the program is now dedicated to drop-in clients only.

In addition, the Notary Foundation funding has enabled the program to start developing a booklet that will provide advocacy clients with local community resources and information on issues specific to the Maple Ridge and Pitt Meadows communities.

Our advocacy program deeply impacts the lives of people on a daily basis.

One example is a client who had his income-assistance cheques reduced by $100 each month over the course of a year, resulting in grave hardship.

- The client did not know how to remedy the situation, despite his inquiries about it.
- The client came to the Community Law Advocacy Program to see an advocate about the issue.
- The advocate wrote a letter on his behalf, asking for someone to look into the deductions.
- Shortly thereafter, the client called the advocate to say he had received a cheque for the total amount of the deductions.

That is just one scenario of many that demonstrate the value of the advocacy program.

The Community Law Advocacy Program provides information, advice/assistance, referrals, and representation for a variety of issues including the following.

- Welfare Issues: Income Assistance and Hardship Issues
- Employment Issues: Employment Insurance, Canada Pension Plan, CPP Disability, Old Age Security
- Housing: BC Housing, Residential Tenancy Issues for Tenants, Rental Assistance Program
- Consumer/Debt Issues
- Senior Advocacy

The program is a free service open to all residents of Maple Ridge and Pitt Meadows.

Charlotte Kingsbury and Ashley Singh are Legal Advocates for Maple Ridge/Pitt Meadows Community Services

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www.comservice.bc.ca
The Board of Governors of the Notary Foundation of BC is comprised of

- 8 members of the Board of Directors of The Society of Notaries Public of BC;
- 1 representative from the Attorney General’s office in Victoria;
- 2 Directors-at-Large, appointed by the Attorney General; and
- the Executive Officer.

The members from The Society are elected by the Directors of The Society from among their ranks, for a 3-year period.

The Current Governors

Susan Davis, Chair
Ken Sherk
John Eastwood
Akash Sablok

G. W. (Wayne) Braid, Executive Officer of the Notary Foundation, is responsible for the administration of the office and staff, and the diverse investment funds of the Foundation.

The Board of Governors meets quarterly to consider applications for funding from various organizations and to set policy, review the Foundation’s financial status, and provide direction for the administration of the Foundation.

The Governors of the Foundation have the responsibility of guiding the Foundation in its mandate to disperse the funds generated by interest on BC Notaries’ Trust Accounts.

The Notary Foundation funds are used for the following purposes.

1. Legal education
2. Legal research
3. Legal aid
4. Education and Continuing Education for BC Notaries and applicants who have enrolled to become BC Notaries
5. Establishment, operation, and maintenance of law libraries in BC
6. Contributions to the Special Fund established under the Notaries Act of BC

Funds earned to date from BC Notaries’ Trust Accounts.

As at June 30, 2012 (Audited)
I serve this risotto with baked salmon and steamed asparagus. It can also be served on its own as a main course dish. It has the perfect lemony tang and the Parmesan gives it richness. Please enjoy!

Prep time: 10 minutes
Cooking time: 45 minutes
Serves: 6 side dishes or 4 main course meals

Ingredients
- 6 cups low-sodium chicken broth
- 3½ tablespoons unsalted butter
- 1½ tablespoons olive oil
- 2 large shallots, chopped into fine dice
- 2 cups Arborio rice or medium-grain white rice
- ¼ cup dry white wine
- 1 cup freshly grated Parmesan cheese
- 2 tablespoons chopped fresh parsley
- 2 tablespoons fresh lemon juice
- 4 teaspoons lemon zest
- ½ teaspoon sea salt to taste (you may need to add more or less)
- Freshly ground black pepper to taste

Directions

Bring broth to a simmer in a large saucepan over medium heat. Reduce to low; cover to keep warm.

Melt 1½ tablespoons butter with the olive oil in a heavy saucepan over medium heat. Add shallots and sauté until tender, about 6 minutes.

Add rice, stir 1 minute, long enough to coat with the butter and olive oil. Add white wine and stir until evaporated, about 30 seconds. Add 1½ cups of hot broth to the rice, simmer until absorbed, stirring frequently.

Add remaining broth to the rice, ½ cup at a time, allowing broth to be absorbed before adding more and stirring frequently until rice is creamy and tender, about 35 minutes.

Stir in Parmesan cheese and remaining 2 tablespoons of butter. Stir in parsley, lemon juice, and lemon zest. Season with salt and pepper. Make sure everyone is sitting down and ready to eat, because you want to serve the risotto while it’s still hot and creamy. Risotto will seize up very quickly and become thick and sticky as it cools or sits on the heat for too long. Transfer to bowls or dinner plates and serve.

Katheryn Leszczynski posts several tasty dishes to her website each week.

Visit Katheryn’s Kitchen at http://katherynskitchen.com. She is also on Facebook.
The Summer Scrivener looks fantastic! I appreciate how well it is laid out and how easy it is to read—and the choice of articles is excellent. Thank you for doing such a great job!

Carla Rieger
1.866.294.2988
or 604-222-2276
Carla@ArtistryofChange.com

One of our team members, a registered nurse who specializes in memory testing, brought a copy of The Scrivener magazine to our monthly meeting and we were given the link to the issue’s PDF online in our meeting minutes. www.notaries.bc.ca/scrivener

In your Spring theme of “Working Together,” you have woven a thread that reaches out to people’s current needs. Our ODETT team members are all about connecting and networking.

I had a good chuckle at the thoughts expressed by Ron Usher in the Cover Story interview and particularly enjoyed the articles by Pauline Buck and Viveca Ellis, who wrote about Andrea Voltans.

We will be sharing The Scrivener as a resource here on Vancouver Island. The magazine is a current, valuable legal resource piece for many caregivers and seniors.

Sincerely,
Elise Willson
gladysu@telus.net

ODETT stands for Oceanside Dementia Education Task Team. We are passionate, ordinary people who saw a need in our community. ODETT was officially formed June 1, 2009, to give us a forum to share our concerns, our caregiving journey, our dementia, our professional expertise, and our variety of skills. The team is ever-changing and we are always looking for people to join in. The best description for our goal as a team is on this website. https://sites.google.com/site/oceansidedementiaeducationteam/

The Victoria Foundation was honoured and delighted to welcome the Governor General of Canada, The Right Honourable David Johnston, to Victoria on July 19, 2012, for the launch of our Smart & Caring Community Fund. The Governor General is focusing on three priorities during his term: philanthropy and volunteerism; learning and innovation; and families and children. The physical literacy program I wrote about in the Summer Scrivener received the first grant from the new Smart & Caring fund and is a perfect meld of all those priorities.

David Johnston spoke eloquently and passionately about Canada and the difference each of us can make; the crowd of over 500 was inspired by his message. Everyone thoroughly enjoyed having children from The Cridge Centre for the Family demonstrate their physical literacy skills, with coaching from Pacific Institute for Sport Excellence staff.

The Governor General also presented Caring Canadian Awards to 10 residents of BC, recognizing them for their volunteer contributions to their communities. He stayed to visit with many people after the event. Even those who did not get to meet him personally were touched by his words. Here is one of his most memorable quotes from that special day.

“Individual communities may prosper, but only when we work collectively can we realize our greatest potential: To be a smarter, more caring nation.”

Louise MacDonald
Director
Governance and Executive Operations
Victoria Foundation
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We Love to Hear From You!
scrivener@society.notaries.bc.ca

Volume 21 Number 3 Fall 2012
The Scrivener
The founding members of Odd Squad recognized the potential for creating an educational tool from this world of addiction and crime in the hopes of preventing at-risk youth from embarking on this path. What began as beat police officers capturing images with a camera has evolved to multiple feature-length documentary films and small-group presentations about drug and gang awareness. Over 100,000 young people have watched our documentaries. The amount raised that evening was $420,000.

Odd Squad was founded in 1997. The beat work on the Downtown Eastside of Vancouver of a group of police officers provided unprecedented access to the tragic life stories and first-hand experience of the deadly consequences of people making poor choices.

Over 100,000 young people have watched our documentaries.

The founding members of Odd Squad recognized the potential for creating an educational tool from this world of addiction and crime in the hopes of preventing at-risk youth from embarking on this path.

What began as beat police officers capturing images with a camera has evolved to multiple feature-length documentary films and small-group presentations about drug and gang awareness. Over 100,000 young people have watched our documentaries. This year to date (August 2012), we have done over 15,000 presentations, directly reaching over 38,000 young people.

We are now formally called “Odd Squad Productions.” A multitude of active and retired police members and an onslaught of volunteers keep this not-for-profit charitable organization busy and productive. Marking their 15-year anniversary in 2012, founding members Toby Hinton, Mark Steinkampf, Al Arsenault, and Chris Graham continue to give their time, experience, and expertise to Odd Squad.

In 2003, The National Film Board of Canada and Odd Squad produced the hard-hitting and often graphic documentary, Through A Blue Lens. Documenting life on the Downtown Eastside of Vancouver and exposing the reality of drug addiction, the film has gained national attention.

The members of Odd Squad have never looked back. The past decade has seen them divide their time to produce award-winning documentaries, make presentations to numerous groups, and create new avenues and programs to help spread their message.

Almost 1000 people attended... corporate sponsors and their guests, Olympians, professional athletes, local celebrities, and members of the VPD, RCMP, and other law enforcement agencies. Luminaries included Winnipeg Jets player Evander Kane, Mayor Gregor Robertson, VPD Chief Constable Jim Chu, and Board member and musician Jim Byrnes. The purpose of the event was to help raise the funding Odd Squad needs to continue to provide presentations, film documentaries, and peer mentorships designed to educate youth on the dangers of drug use and criminal behaviour.

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Gala Fundraiser

On Thursday, June 2, BC Notary Akash Sablok was Master of Ceremonies for the 2012 Odd Squad Gala Fundraiser at the Vancouver Convention Centre.

The purpose of the event was to help raise the funding Odd Squad needs to continue to provide presentations, film documentaries, and peer mentorships designed to educate youth on the dangers of drug use and criminal behaviour. Almost 1000 people attended... corporate sponsors and their guests, Olympians, professional athletes, local celebrities, and members of the VPD, RCMP, and other law enforcement agencies. Luminaries included Winnipeg Jets player Evander Kane, Mayor Gregor Robertson, VPD Chief Constable Jim Chu, and Board member and musician Jim Byrnes. The amount raised that evening was $420,000.
With the success of *Tears for April*, a documentary that chronicles the daily struggles and relentless addiction of Downtown Eastside resident April Reoch, the members of Odd Squad switched gears. They produced a story that portrays the correlation between drug use and crime: *Stolen Lives*. Recognizing the ever-growing concern about youth violence and gang involvement, Odd Squad then focused on bringing awareness to the reality of gang life in *Guns and Gangs*.

Those documentaries are making their way into schools and community colleges along with formal educational guides produced by the members of Odd Squad who have expertise in that area.

Odd Squad has developed and is involved in several programs that engage youth directly. One that is seeing remarkable results is the Peer-to-Peer program: High school students who provide a positive example and who are well respected in the school are mentored by members of Odd Squad about drugs, gangs, and the importance of social responsibility. The students participate in presentations by Odd Squad members and are taken on a tour of the Downtown Eastside to observe the realities of the neighbourhood. The students, in turn, take the information and their observations back to their schools to relay what they have learned to the student body.

Founding member Chris Graham heads the hockey-based peer-to-peer program that involves active members of the Western Hockey League speaking to youths about the power of positive choices in life. Additionally, members of Odd Squad have combined presentations to at-risk youth with demonstrations of judo to impress upon them the power of participation in a group activity in the gym instead of on the streets.

Odd Squad recognizes social media and the other technologies to which their youth audiences respond and are implementing fitting production methods. Odd Squad is currently working on video podcasts that correspond to the documentary work and is focusing on new delivery platforms such as iTunes to engage and interact with wider audiences.

The delivery methods to youths may be ever-evolving but the message remains consistent. Odd Squad believes in the power of preventative measures and a strong dose of reality to help drive the message.

Doug Charlton has been engaged with Odd Squad for close to a decade. He has an MBA from Newcastle University (UK), has held a senior management position within the British Government, and has run his own successful franchise business for many years. A former police officer, he brings his knowledge and understanding of the profession. Doug will assume the position of interim COO at Odd Squad in October 2012.

www.oddsquad.com
Eighty percent of Canadians will support a charity during their lifetime, yet only 8 percent have included a gift to a charity in their Will.

What is startling is that 5 times more people would consider making a gift in their Will if their advisor discussed the options with them.

In the Fall 2010 issue of The Scrivener, I shared thoughts about asking the philanthropic question—“Through my volunteer and financial support, what impact do I wish to have in my community?”—with regard to planning financial and estate matters.

This article, presented in two parts, is about the next phase of the relationship: The role of the charity as the beneficiary of the estate.

Rights and Obligations
The rights of the charitable beneficiary are common to all beneficiaries under a Will.1 They include the right
- to receive a copy of the Will,
- to receive notice of who is applying for probate, and
- to be apprised of the progress of the administration of the estate.

Where the charity is a residual beneficiary, it has the right to receive an accounting from the executor, to ask questions, and to proceed to a hearing in which the court reviews the accounts (called a passing of accounts) to resolve any disputes, if necessary. The charity will generally ask up front for the disclosure statement that describes the assets, liabilities, and distribution plan in the Will. While that document is provided when the executor’s accounting is presented later in the administration, for budget and planning purposes charities often want to confirm their entitlement to the gift and estimate their share. Where the charity is receiving a specific dollar amount, it will receive only the copy of the Will and notice and will not otherwise be entitled to review the executor’s accounting.

...people would consider making a gift in their Will if their advisor discussed the options with them.

As the steward of public funds, the charity has both fiduciary and moral obligations to the donor, the charity’s supporters, and the people who ultimately rely on the charity’s services. They include safeguarding the charity’s interest in the estate and using the gift as intended by the donor. The charity will monitor the accounting to ensure the gift is not diminished due to unsubstantiated executor, accounting, or legal expenses.

The charity must conduct itself in a reasonable and fair-minded manner throughout the administration of the estate. Where the donor was known to the charity during the donor’s lifetime, the charity will also be guided by that history in ensuring the donor’s wishes are met.

Gifts
Charities can receive cash legacies, bequests of real or personal property, securities, interests in testamentary trusts, remainder interests in life estates, and all or part of the residue of the estate. Many of those gifts are capable of generating a tax credit to the benefit of the individual’s final return, assuming they are, by definition, “gifts by Will.”

Subsection 118.1(5) of the Income Tax Act provides that when an individual makes a gift by his or her Will, the gift is deemed to have been made by the individual immediately prior to death. It is important to distinguish between offsetting the tax liability of the deceased and the deceased’s estate, which is a separate taxable entity.
- If the gift is a “gift by Will,” then 100% of the tax payable in the year of death and in the year preceding death potentially can be eliminated. In addition, any carry-

1 Adapted from the Estate Guide for the Not-For-Profit Beneficiary, 2nd edition, Greater Vancouver Roundtable of the Canadian Association of Gift Planners
forwards of unused charitable donations made in the 5 years preceding death may be applied against the year of death and the preceding year tax returns.

- If the gift is not a “gift by Will,” the tax credit accrues to the estate and may be used to offset up to 75% of the income of the estate in the year of the gift. This distinction is important because the greater income (and therefore the greater tax liability) is most often connected to the deceased’s terminal return, rather than the estate’s return.

A donation tax credit is not available to an individual or the estate unless the entity named to receive the gift is a Canadian registered charity or qualified donee under the Income Tax Act.

For those drafting the Will, it is important to ensure the legal name of the charity is used and not

- the name under which the charity does its work in the public eye,
- the name that is a commonly used short form of the legal name, or
- a name that may be mistaken with another charity.

A searchable database of registered charities in Canada is maintained by the Charities Directorate of the Canada Revenue Agency. The database provides a starting point to determine if the organization is a registered charity or if further investigation is required by the executor.

Record-Keeping

From the charity’s perspective, in addition to the official record of gifts for tax recepiting purposes, the charity will typically keep a file of the donor’s intentions. That may include supporting documentation such as the deed of gift or fund agreement where an endowment is being created and the intended purpose cannot be met. That is more likely where the charity is dealing with a family member or friend appointed as executor who may not be familiar with the requirements of the role.

- If the gift is to be used for other similar purposes if the intended purpose cannot be met.
- The charity may seek advice from professionals.

Executor’s Contacts with the Charity

When the Will arrives, the charity may find the estate is simple, with

- a specific amount left to the charity,
- the charity properly named, and
- sufficient money to pay the gift.

It could also be a complex gift of residue where the charity is misnamed or the gift is for a purpose that cannot be met or where the Will is being challenged—and everything in between.

In considering the options, the charity will look at the terms of the gift and whether it can carry out those terms. The charity will look at the authority given to the executor and trustee regarding disposition of assets, including

- the power to transfer assets in specie (in the form it was at the date of death) to the charity,
- the provisions for executor’s fees, and
- information on whether a charging clause allows the professional executor to charge professional fees for his or her work.

Throughout the administration, the charity will monitor the administration of the estate and keep tabs on the progress, receive the interim distributions, and review the accounting and releases as required. The charity is ultimately responsible for valuing the gift and issuing the official income tax receipt.

The charity may rely on advisors such as real estate appraisers or agents to value real property, brokers to value gifts of securities, or accountants for valuation of company interests. There may also be specific gift-acceptance issues dealing with environmental liability or insurance coverage for personal property—all of which may involve seeking advice from professionals.

The charity may also seek advice from legal counsel if the executor fails to keep the charity informed of the progress of the administration or to release funds because the charity is misnamed or the stated purpose of the gift cannot be fulfilled. That is more likely where the charity is dealing with a family member or friend appointed as executor who may not be familiar with the requirements of the role.

In the next article, I will talk about the considerations for the executor and the charity in ensuring the client’s intentions are met.

Sara Neely, LLB, CFRE, is the Director of Philanthropic Services at the Victoria Foundation, Canada’s second-oldest community foundation.

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www.victoriafoundation.bc.ca

Most charities will encourage donors to keep the use of the gift as broad as possible...

As the rapport builds, the donor can speak with the charity representatives to let them know the types of information and methods of communication he or she prefers and how the donor wishes to be recognized.

Another consideration is the designation of the gift. Most charities will encourage donors to keep the use of the gift as broad as possible, knowing the particular program, service, or research initiative may change over time. The charity likely will have a record of the donor’s wishes in its file.

As the rapport builds, the donor can speak with the charity representatives to let them know the types of information and methods of communication he or she prefers and how the donor wishes to be recognized.

Another consideration is the designation of the gift. Most charities will encourage donors to keep the use of the gift as broad as possible, knowing the particular program, service, or research initiative may change over time. The charity likely will have a record of the donor’s wishes in its file.

If the gift is to be used for a specific purpose, it is important to check to see if there is a “power to vary” clause in the Will or deed of gift, permitting the charity to use the gift for other similar purposes if the intended purpose cannot be met.

It is also a reflection of the relationship between the donor and the chosen charities, which will vary depending on the donor’s interests and wishes. Getting to know the people who deliver an organization’s programs and services and the volunteer leadership can be very meaningful. It helps the donor better understand how the contributions are managed and the impact of the donor’s financial support on the beneficiaries of the services.

2 http://www.cra-arc.gc.ca/chrts-gvng/lstngs/menu-eng.html
With a population of close to 200 million people, Brazil has overtaken the UK to become the world’s 6th-largest economy.

Brazil is well known for its Carnival, beautiful beaches, soccer, jokes, and Samba. Most people don’t know that from 1964 to 1985, a military government ruled Brazil. After more than 20 years of being led by the authoritarian regime, Brazil made its transition to democracy as has no other country in the world—without bloodshed. Well, at least theoretically.

Brazilian music is recognized and appreciated worldwide. The country rarely has any natural disasters and the weather is always nice; in some cities, the sun shines year round. The Brazilian soil is rich and can grow almost anything.

For those reasons and many other gifts from Heaven, Brazilians are proud to claim “God is Brazilian!”

Experiencing Brazil

The best-kept secret in Brazil is the Island of Fernando de Noronha, which has the top two beaches in Brazil—Praia do Leo and Baía do Sancho. Both beaches offer warm crystal-clear blue water with areas for swimming and snorkelling. This area is home to many friendly dolphins. When I visited the Island a few years ago, I took an ecological tour and was able to swim with the dolphins. What an unforgettable experience it was!

Fernando de Noronha is an archipelago in the Atlantic Ocean about 354 kilometres offshore from the Brazilian coast in the Northeast Region. In 2001, UNESCO declared it a World Heritage Site.

The waters around Fernando de Noronha island are a mecca for divers. Underwater visibility is up to 50 metres; the submarine life includes over 200 species of fish, 5 shark species, sea turtles, and dolphins, to name a few. There is great snorkelling, especially at the tidal pool. Only 18 to 24 inches deep, the pool contains a remarkable diversity of animals. Due to the delicate ecological structure, the administration of the Island limits the number of visitors to 100 per day.

Most of the immense Brazilian territory is inaccessible, as well as extremely abundant in mineral resources and oil. Brazil has the largest tropical forest and oxygen reserve in the world—the Amazon...
jungle. I lived and worked in Porto Trombetas, a town of 5000 people in the middle of the Amazon jungle, for almost 5 years. Kayaking in the remote and peaceful lakes and streams was my favourite hobby at that time.

Other islands dot the coast and each one is breathtaking! The Brazilian coastline measures 7491 kilometres, the 16th-longest national coastline of the world. The entire coast lies adjacent to the Atlantic Ocean.

While living in Brazil many years ago, I was fortunate to have the opportunity to travel by bicycle from Rio de Janeiro, in the Southeast, to Maceio City, in the Northeast. Four friends and I rode our bikes about 2500 kilometres for 20 days! Although exhausting, our trip was amazing and totally worthy. We were blessed by many hours of sightseeing that beautiful coast, which we could not have seen if we had taken the bus or a plane!

For a clear picture of Brazil, visit at least one city of each of the five regions. Then you will see and experience five different “Brazils.”

For a clear picture of Brazil, visit at least one city of each of the five regions of Brazil.

1. North Region
The Amazon Rainforest is located here; vegetation is dominant in almost every state of this region. It has the lowest population density in the country. Cities are spread far apart and few paved highways serve the region, which is almost isolated from the rest of Brazil. The biggest region, the North Region counts for almost half of the entire country of Brazil.

Brazil may have the largest Catholic population in the world but, in the State of Bahia, Catholicism comes in second after Candomblé, an Afro-Brazilian religion with rituals that must be experienced by any foreigner who wants to understand the Brazilian culture. Spread all over Brazil, Candomblé is practised the most in the City of Salvador. It has more than 1000 Candomblé temples and 166 Catholic churches.

2. Northeast Region
This was the first region discovered by Portugal in 1500. It is the home of the first Brazilian capital, Salvador, in the state of Bahia, the most impoverished in Brazil. Brazilians from Northeast are generally more easygoing and less stressed compared to the rest of the country. The vast majority of the warmest and most pristine beaches are located in this region. When the tide is low, many natural pools form along the beautiful coastline.

Brazil, the current capital of Brazil, is located there.

3. Central-West Region
With a low population density, most of the land in this region is used for grazing instead of agriculture. The region is also the least industrialized in the country, based mainly in food and meat processing. Brasilia, the current capital of Brazil, is located there.

4. Southeast Region
This is the major powerhouse of the Brazilian economy, responsible for 58 percent of the Brazilian GDP (approximately $320 billion). It is also the most populated region in the country, home of the three most important national metropolitan areas: São Paulo, Rio de Janeiro, and Belo Horizonte. From living in Rio to the fullest, I can honestly say there is no other city in the world like Rio de Janeiro! Going to Ipanema Beach on Sunday is the experience of a lifetime!
Notaries Public in Brazil

In the Colony of Brazil, the public appointment or promotion of a Notary was a lifelong right as the result of a legacy. Later on, some cases of buying and selling of the post were discovered.

The oldest historical reference to Notaries in the legislation is from January 15, 1305, in Portugal when D. Denis instituted the Notaries’ Regiment, approximately 200 years before Brazil was colonized by Portugal.

The Notary organization in Brazil is relatively new compared to other countries that have legislation and secular tradition in the profession. France, for instance, has more than 200 years of history of basic Notary law.

The Brazilian Constitution of 1988 established that for a person to become a Notary Public and hold a Notary Office, he or she must pass public examinations, be a lawyer, and be evaluated by his or her peers in the Notary profession. Notaries can not engage in any other occupation except the law. The Notary is delegated to work in a specific city and cannot perform legal work outside that area. A public legal document drawn by a Notary out of his or her designated city is null and void.

There are still Notary offices in Brazil run by nonjurists whose business has been passed from generation to generation.

Although the delegation is nontransferrable to a third person, the Notary is able to designate substitutes to manage Notary functions during absences and when the Notary is impeded. This substitute person is permitted to practise simultaneously all the services of the Notary, except drawing Wills.

Registration of Property

Property is registered in Brazil via private Notaries Public, under justice control. With the government Real Estate Registry in Brazil, each property can be registered at only one registry for the area that stores the entire transaction history and physical identification of that specific property. Thus, many Brazilians buy and sell property without a Notary.

The registration of the deed in the Real Estate Registry is required for the transfer of ownership of the property. Registration can be arranged directly by the parties or by a Notary.

Fees for Notary services are fixed and determined by each State through the Notary District.

References


São Paulo

5. South Region

It is characterized by its high standard of living. Southern cities in Brazil have the highest HDI (Human Development Index) levels: Florianópolis: 0.975; Porto Alegre: 0.969; Curitiba: 0.980 (1996). The South Region, along with the state of São Paulo, also has a strong immigrant presence; many inhabitants are descended from Italian, German, Portuguese, Spanish, Polish, and Japanese immigrants, to name a few. The world-famous Iguazu Falls is located in this region; it is a must-see attraction!

Soccer in Brazil

Soccer, or “futebol” as Brazilians call it, is the most popular sport in the country. Many Brazilian children learn to play it early, before they learn how to read or even speak! The Brazilian national soccer team has won the FIFA World Cup tournament a record five times—1958, 1962, 1970, 1994, and 2002. It is the only team to succeed in qualifying for every World Cup competition ever held.

The Brazilian soccer team is among the favourites to win the trophy every time the World Cup competition is scheduled. After winning its 3rd World Cup in 1970, Brazil was awarded the Jules Rimet Trophy permanently.

Pelé, perhaps the world’s most recognized sport player, led the Brazilian team to victory in three World Cup championships. Although already retired from the fields, Pelé still has the highest number of goals scored in the history of soccer. Brazil’s fast-flowing attacking style of play is unique, characterized by creativity and its well-known tricky move called “Ginga.”

Most Brazilians have great physical coordination and a natural rhythm associated with Samba and Capoeira, an Afro-Brazilian mixed martial art characterized by dancing and playing to the rhythm of African drums.

The soccer stadium of Maracanã is the biggest in the world with a capacity of almost 200,000 people.

So now you have all the reasons to attend the next Soccer World Cup in Brazil in 2014. I will be there, for sure! ▲

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On September 28, 2012, the BC Association Appraisal Institute of Canada held its Annual General Meeting and the first meeting of the 2012/2013 Board. The Association has a membership of over 1000 designated and candidate members throughout the province.

Georgina Ironmonger, AACI, P.App, of the Kootenay Chapter is the new President for a 1-year term. Gina is the Owner and Manager of Keystone Appraisals Inc., a full-service independent real estate appraisal firm located in Trail, BC, servicing the Kootenay/Boundary area.

She is also the President of Vision Property Advisors, a collective group of Appraisers and Certified Reserve Planners who provide Depreciation Reports and Insurance Appraisals for strata corporations throughout the province of BC.

As an active appraiser/consultant for the past 20 years, Gina has worked for both private and crown corporations in various parts of the province. She has served the AIC-BC as Treasurer/Secretary for the Northwest Chapter and has been a Kootenay Chapter Director since 2007.

Immediate Past President
1st Vice President
2nd Vice President

The Other Members of the Provincial Board
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Bryan Chambers, AACI, P.App, Okanagan Chapter
Doug Janzen, AACI, P.App, Fraser Valley Chapter

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Doyle Childs, AACI, P.App
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Courtenay
Victoria

The BC Association of the Appraisal Institute of Canada is the provincial professional association of real estate appraisers. The provincial association is affiliated with the national Appraisal Institute of Canada and is comprised of eight chapters in BC. Members are awarded designations after completing extensive education, applied experience, and demonstration programs.

Members are governed by a strict code of Ethics and CUSPAP (Canadian Uniformed Standards of Professional Appraisal Practice) that ensures high standards are maintained in appraisal assignments by all members. Professional designations conferred by AIC are AACI, P.App, and CRA.

AACI (Accredited Appraiser Canadian Institute) identifies a fully accredited member in the BC Association of the Appraisal Institute of Canada and indicates the individual’s competence in a wide range of residential and commercial/industrial real estate appraisal.

P.App (Professional Appraiser) is used in conjunction with the AACI designation only.

CRA (Canadian Residential Appraiser) identifies competency in appraising residential properties and dwellings of no more than four units.
Witess: Do you swear to tell the truth, the whole truth, and nothing but the truth?

Answer: “I do so swear, so help me God.”

But do witnesses really tell the truth? How do we know one way or another? As the old saw goes, “We don’t know what we don’t know.” That is especially the case when it comes to assessing the truthfulness of a witness.

Perjury is easily committed, prosecutions rare, and convictions rarer still.

In the mid-1980s the BC Trial Lawyers put on a fascinating seminar entitled “Liars.” Various presenters explored everyday lies ranging from meaningless flattery (I like your tie) to half-truths, from white lies to bald-faced lies, and everything in between. It brought home just how much deception we experience in our daily lives.

The most telling part of the seminar involved the audience trying to discern the credibility of various actors. Participants were first given a few minutes of training from secret-service manuals. The manuals illustrated how to focus on the speakers’ eyes and facial expressions to discern credibility.

The actors’ faces were filmed at close range as they were shown vivid photographs ranging from the benign to the horrific—from cute babies to burn victims. The actors were asked to describe the very opposite of what was depicted. In other words, if shown a disgusting photograph, the actors’ role was to convincingly describe the image as something very beautiful.

Many of us were very confident of our ability to pick out the deceptions but Surprise!—the actors fooled virtually all. When the individual scores were tabulated, almost everyone fared very poorly. Indeed, a well-respected Supreme Court justice did not score well.

That leads to the obvious question—Should our courts set aside their historical reluctance to rely upon technology to better determine credibility?

Historical Assessments of Credibility

The rules of evidence were developed in a much simpler era when people lived in small communities. Historically, swearing an oath had real religious consequences in the minds of most. Furthermore, the historical role of trials in the common law system was to settle disputes. Discovering the truth has never been part of that function.

Throughout history, people have tried various methods of securing information from others, ranging from torture to modern day incentives like rewards offered in exchange for testimony. Our common law system historically used trial-by-ordeal to supposedly determine credibility. Viewed by today’s standards, those exercises were completely irrational.

The search for the behavioural indicators of lying can be traced as far back as Ancient Greece. They believed there was a relationship between a person’s heart rate and his or her veracity. Similarly, 4000 years ago the Chinese developed a system to listen to a speaker’s heartbeat to measure the truthfulness of his statements. The Kenyans, on the other hand, used a test of food, believing that saliva decreased when an individual was lying.

The first “lie detection” test was administered in the late 1800s by two Italians, a criminologist and a physiologist. They measured the blood pressure and pulse changes in suspects being questioned about alleged participation in various crimes.

In modern trials, new technologies such as DNA testing have become widely accepted. The use of other technologies, such as polygraph, have been strictly limited—basically because the courts have found that such evidence would usurp the ultimate role of the court to determine credibility.
Present Day
These days, so-called “lie detectors” have given way to polygraphs—the “forensic science of the psycho-physiologic detection of deception.”

John Weller, President of Pacific Polygraph Services Ltd., is a court-recognized expert in polygraph testing. He writes, “The polygraph examination, using a validated technique, is at least 90 percent accurate without considering inconclusive results. An inconclusive result is where the data recorded from the examinee during the testing phase is ambiguous and the examiner, in fairness to the examinee, is not prepared to make a decision.”

Mr. Weller explains there are three possible outcomes of polygraph examination: Fail, Pass, and Inconclusive—usually due to extreme nervousness.

While that range of accuracy is clearly not foolproof, it certainly seems to be very reliable. It leads to the question of whether test results should be admissible in civil cases, subject to the judge determining what if any weight ought to be given to the polygraph evidence.

The Legal Status of Polygraph
Over the years, our courts have been reluctant to admit evidence of polygraph test results. Industry, on the other hand, has increasingly come to rely on those tests. Government spy agencies routinely use polygraph as an investigatory tool.

Defence counsel test their clients to determine how to conduct their defence. The insurance industry is reliant on polygraph testing—it is estimated that 15 percent of insurance claims are fraudulent.

Apparantly, a polygraph examination in Vancouver costs about $500.

The Polygraph Examination
How it Works
The polygraph examination results are founded on the scientific basis that when a person lies in response to relevant questions, the fear of detection has effects on the central nervous system.

Certain physiological changes occur uncontrollably when a person lies. There may be a wide range of physiological changes recorded on a graph that the examiner then interprets and diagnoses. Through the proper use of the polygraph, the trained and skilled examiner can apparently diagnose deception, just as a radiologist can diagnose a hairline fracture on an x-ray.

For example, when co-author Trevor Todd lied about his birth month, he would have bet he successfully fooled the examiner. Nevertheless examiner John Weller quickly called Mr. Todd on this lie.

Three physiological functions are measured by the polygraph instrument—commonly referred to as the cardio, the pneumo, and the galvo sections.

1. The Cardio-Sphymograph section records the subject’s pulse rate, pulse wave amplitude, relative blood pressures, and any changes in each. It is believed by some examiners to be the most important section for the detection of deception.

2. The Pneumograph section records the subject’s respiratory or breathing movements.

3. The Galvanograph section records the activities of the individual’s sweat glands.

When conducting an examination, the skilled examiner first establishes the subject’s normal patterns and then conducts the interrogation with all three recording sections activated, balanced, and operating. The subject is instructed to answer each question with a simple Yes or No. The questions will include a mixed bag of irrelevant and relevant questions with both known and unknown answers. Examiners typically do not ask about religious, political, and sexual preferences.

Polygraph expert John Weller quickly dismissed the urban myth that sociopaths can fool the machine—he says they cannot.

Clearly, no instrument alone can diagnose anything—one must always rely upon the skill of a trained expert to draw the appropriate conclusions from the examination conducted.

Canadian Law
Although there is Supreme Court of Canada authority that polygraph results are not admissible in criminal cases for the truth of their contents, the question of the admissibility of polygraph evidence is not entirely closed—particularly in civil cases. In civil cases, polygraph questions seem to arise most often in disputed custody proceedings involving allegations of sexual abuse of children.

There are three perspectives to evidence involving the polygraph.

1. Did a party volunteer to take a polygraph and if so, is this admissible? (Sort of the opposite of conscientiousness of guilt.) It appears it may be so in some circumstances (see for example Whiten v. Pilot Insurance Co. 2002 SCC 18 at para 24).

2. The questions and answers admissible? And if so, for what purpose? For example, an admission against interest may be admissible. (Petti v. George Coppel Jewellers Ltd. 2008 CANLII 10051)

3. Are the results of the test admissible? It appears not in criminal cases, but the door may still be open in civil cases as noted below.

For a quick review of the relevant cases, the decision of Justice Scarth in E.W. v. D.W. aka D.K. 2005 BCSC 890 is very helpful. It contains a good review and analysis of the conflicting Canadian decisions including a case favouring admitting such evidence, Walden v. Walden (1987) BCJ. No. 1205.
Justice Scarth summarized that case as follows.

[11] Walden was a case concerning a father’s right to access to his two daughters. He sought to introduce evidence of two polygraph or lie detector tests taken by him over a two year period.

[12] The Honourable Judge Robinson (as he then was) admitted the evidence subject to production for cross-examination of the polygraph operator in each instance. In his oral reasons for this ruling, Robinson L.J.S.C. recognized that in general polygraph evidence, particularly in criminal cases, has not been admitted because it is contrary to the rules regarding self-serving evidence and hearsay evidence if the accused does not testify, and contrary to the rule regarding the calling of an expert witness on the question of his credibility if he does testify. Robinson L.J.S.C. stated:

I am simply of the view that any evidence relative to credibility, if probative and relevant, should be admissible and in my judgment the result of a polygraph test, where the issue is alleged sexual abuse of children, and the person alleged to have committed the abuse has given evidence, the polygraph evidence should be admissible. I need not add that its weight is entirely a matter for the finder of fact.

Justice Scarth then observes that Walden has not been followed because shortly after that case, a bare majority of the Supreme Court of Canada ruled otherwise in R. v. Béland, [1987] 2 S.C.R. 398. In a 4:3 decision, the majority ruled inadmissible the results of polygraph testing of an accused person in a criminal trial.

Justice Scarth paraphrases the majority reasoning as follows.

[4] In writing for the majority of the Court, Mr. Justice McIntyre gives four basic reasons for excluding the polygraph evidence in the Béland case: (1) it would offend the rule against oath-helping; (2) it would offend the rule against the admission of past out-of-court
consistent statements by a witness; (3) it would offend the rule relating to character evidence; and (4) it would offend the expert evidence rule. At para 18, Mr. Justice McIntyre states:

…it is my opinion, based upon a consideration of rules of evidence long established and applied in our courts, that the polygraph has no place in the judicial process where it is employed as a tool to determine or to test the credibility of witnesses.

Justice Scarth later refers to the dissenting view.

[8] As Madam Justice Wilson, writing in dissent for herself and Mr. Justice Lamer (as he then was) in Bélard, pointed out at para 5, Mr. Justice Spence, writing for himself and Chief Justice Laskin in Phillion stated

I reserve my view as to whether, under other circumstances, evidence given by an operator of a polygraph apparatus could ever be admissible.

There may be circumstances where such evidence should be admitted but certainly the evidence proposed to be given by Mr. Reid [the polygraph expert] in this appeal was hearsay evidence of the worst self-serving type. (emphasis added)

In terms of summarizing the law, another helpful case is Petti v. George Coppell Jewellers Ltd., 2008 CanLII 10051, a successful appeal from a Small Claims decision where the trial judge suggested the parties undergo polygraph testing and then relied on the results completely.

Conclusion

Technological advances have improved polygraph testing greatly. Thus, if the machine is operated by a qualified examiner, the results are approximately 90 percent accurate, excluding nonconclusive results. Such testing appears far more reliable than many types of direct evidence routinely admitted in our trials and certainly more certain than our civil burden of proof. Apparently lawyers are one of the chief clients of polygraph examiners.

Surely polygraph test results should be admissible evidence in civil actions, subject always to the question of what weight ought to be accorded to that evidence. Ultimately, the court will remain the ultimate judge of credibility but it seems we should at least consider polygraph results, given our obviously limited human ability to correctly discern liars. ▲

Judith Miliken, QC, has practised law for 36 years in the areas of commercial law, criminal law, and most recently estate litigation. She practises estate litigation together with her husband Trevor Todd.

Trevor Todd restricts his practice to Wills, estates, and estate litigation. He has practised law for 38 years and is a past chair of the Wills and Trusts (Vancouver) Subsection, BC Branch of the Canadian Bar Association, and a past president of the Trial Lawyers Association of BC. Trevor frequently lectures to the Trial Lawyers, CLE, and the BC Notaries and he also teaches estate law to new Notaries. His website includes 30 articles on various topics of estate law.
For my recent survey, I asked several hundred people who speak in front of groups to list their biggest challenges when giving presentations.

The top answers were being too self-conscious, anxious, and freezing up. That was a concern even for advanced presenters.

**Mental Rehearsal is Key**

When the stakes are high and the pressure is on, even Olympic athletes feel challenged to be their best. That’s why they do something called “Mental Rehearsal.” It’s where a sprinter will run through the entire race—from start to finish—in his or her mind, over and over again, before the competition.

Golfers, basketball players, concert pianists, and top salespeople do that all the time. You can do it, too.

Mental rehearsal allows you to enter a level of greater confidence; it’s a form of simulation. As a result, when you are presenting to your audience face-to-face,

- you tend to perform better,
- you make wiser decisions, and
- you are more at ease and more articulate.

**The Unconscious Stores Bad Programs**

The personal unconscious is a reservoir of material that was once conscious but that has been forgotten or suppressed in the mind.

*Thanks to Wikipedia and Carl Jung*

Your unconscious is full of good and useful programs such as knowing how to ride a bike. That is an efficiency of the mind. If your unconscious didn’t store information, you’d have to re-learn riding a bike each time.

The downside? The unconscious mind also stores programs that are not good or useful. For example, perhaps you were in a play as a child and you messed up your lines, so you stored a program that said something like, “Public speaking is stressful.” You made that decision before you had the ability to discern a good program from a bad one. You have probably forgotten you made it, yet that decision could be affecting your success as an adult.

We make plenty of decisions that end up becoming default programs. That’s why despite a conscious goal to be better, our behaviour can keep matching the unconscious programming.

**Re-Programming Your Unconscious about Your Performance Expectations**

If you have a program in your unconscious that says “Public speaking is stressful,” you can expect that behaviour from yourself. You will be unconsciously supporting that world view by perhaps procrastinating about preparing, staying up late the night before, not drinking enough water, forgetting your notes, and so on.

Mental rehearsal is like re-programming your unconscious to create a new path that might say “Public speaking is enjoyable.” Over time, that can become the new habit of mind; your old choice will be replaced and disappear. Then your expectations for the public speaking experience—and thus your behaviour—will be much more supportive of good performance.

**How to Mentally Rehearse**

1. Sit with your back straight, feet flat on the floor. Close your eyes and relax.
2. Run through the entire presentation—before, during, and after—in your mind’s eye. Use all your 5 senses: sight, sound, feelings, even smells and tastes.
3. Imagine everything going the way you want it to go, with you at your best!

Spend just 5 minutes doing this each day leading up to your presentation. If a negative image comes up, imagine hitting the “Delete” key in your mind, then go back to the positive images you want to imprint.

Your actual presentation may not go exactly the way you imagined, but it will be much closer to the mark than if you didn’t do the rehearsals.

**Carla Rieger** is an expert on communication skills at work and the author of *Storytelling in Business* http://www.carlarieger.com/online_store/#storytelling

She leads an online group coaching method called “Winning Them Over,” a step-by-step process for creating your personal marketing presentation.

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The Future of Land Surveying in British Columbia

The Class of 2011 – 2012

Leadership for the Association of BC Land Surveyors

Since March of this year, the Board of Management has been actively seeking a Chief Administrative Officer (CAO) for the Association.

The hiring process lasted until mid-June when the Board selected the candidate of their choice. Not an easy task. The Board is confident they have selected the right person for the Association now and in the future and, after a brief learning period, it will be full steam ahead with this change.

Chad Rintoul assumed his new position as CAO on September 10, 2012. He lives in North Saanich, not far from the Association office. A dynamic, self-motivated professional, Chad has extensive international and domestic business leadership experience in both the private and public not-for-profit sectors, with significant focus on government relations.

His leadership skills are highlighted by the following.

- Development of the Victoria International Airport Master Plan as Chair of Planning & Development
- Leader of initiatives to increase funding from a municipal government partner by 18% during a period of fiscal restraint as Executive Director of a nonprofit society
- 12 years’ experience in the international resource construction sector
- Local involvement as a P3 partner in a recently completed $24 million highway overpass project
- Past Chair of a local municipal government liaison committee for a major civil construction project
- Regular engagement working collaboratively with DND, tenants, local municipalities, First Nations, and environmental groups as a member of the Victoria Airport Authority Consultative Committee

Chad will be joining the travelling Board this year to meet our members and get first-hand experience of the workings of the Association and the Regional Groups. He will be a great addition to the leadership team at the Association; the Board of Management is looking forward to implementing the strategic plan and enhancing the image of the land surveying profession under Chad’s direction.

The Association of BC Land Surveyors has developed a good working relationship on a number of items of mutual interest with The Society of Notaries Public of British Columbia. That will continue to grow under Chad’s leadership.
Peter Dales English

Peter passed away peacefully on July 6, 2012, surrounded by family and friends, after a short but courageous battle with cancer. He was in his 57th year.

Peter was predeceased by his mother Denise on July 5, 2012. He is survived by his three brothers, Mark, Anthony, and David; their wives and partners Leslie, Bonnie, and Debbie; and his nieces and nephews Kevin, Kelsey, Elissa, and Audrey. Peter was commissioned as a BC Notary Public on June 13, 2002, and retired from practice on June 15, 2012.

Larry Frederick Ference

Larry passed away suddenly August 8, 2012, at home after celebrating his 71st birthday. Larry retired from his BC Notary practice in 2008. Known for his passion for cars, he was a strong, proud, and caring person with a big heart who loved spending time with family, especially his grandkids. He will be missed by Barbara, his wife of 49 years; daughter Cindy and her boyfriend Boyd; son Bryan and his wife Shamaine; grandkids Lucas, Marcus, Trey, and Devon; Uncle Mickey; and his sisters Joan, Helen, and Chris.

Where in the World Has The Scrivener Been?

In the 25th annual Seniors Games recently held in Burnaby, more than 3600 people, 55 years and older, from all over BC took part in 26 different sports modalities. Some participants over age 90 swam the 800-metre with strength and grace. Notary Marco Castro won a Bronze medal. The next Games event is in Kamloops in August 2013. “I will be there!” he promises!

Juliana Chow, 12-year-old daughter of Notary Reg Chow, at Peggy’s Cove lighthouse during a 10-day driving tour of the Maritimes with her mom, aunt, and grandma. They feasted on fresh chowder, shellfish, and lobster every day and visited the birthplace of Anne of Green Gables.

Be the Magazine!

Send your news and a photo to The Scrivener.
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As the Number One mortgage broker team with Invis in Canada, we are true team-players. We value our collaboration with BC Notaries and lawyers. We know that working with dedicated professionals throughout the financing process is what creates a great customer experience.

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