Briefly!

Published by Law Courts Center and the Canadian Paralegal Institute JUNE 2010

Demystifying the Role of a District Registrar

Last March 2, 2010, with a month to go before marking her ninth year as district registrar, Kathryn Sainty agreed to an interview at the New Westminster Courts to provide the members of the profession a better understanding of what it is that registrars do. After receiving the gracious support of Chief Justice Bauman, she and a number of her colleagues took time from their hectic schedules to put this article together.

Under section 13(2) of the *Supreme Court Act*: registrars, district registrars and deputy district registrars may carry out the duties assigned to a registrar by the rules and under any other enactment. "A lot of people do not understand what a registrar does. Generally, we are lawyers who have been appointed as judicial officers, unlike deputy district registrars (whose functions are more administrative, and who are seen on the front lines more than we district registrars are). The registrar [the one referred to in subsection (1) of the *Supreme Court Act*] is actually Master McCallum. So, my job title is "District Registrar" but we are usually simply referred to in court as "Madam Registrar", not a "Madam District Registrar". And most lawyers in referring to me or in introducing me would refer to me as "Registrar Sainty". When I sign documents [orders, reasons, memos, etc.] I sign them as "District Registrar Sainty", unless when I deal with bankruptcy matters - then I am simply a registrar."

At present, there are two district registrars for the province: Murray Blok and Sainty, following Registrar Carolyn Bouck's appointment as master last December 11, 2009. And while there currently is no job posting to replace Bouck, Mr. Frank Kraemer, QC, the Executive Director & Senior Counsel Judicial Administration, Superior Courts Judiciary said that there are no maximum or minimum numbers of registrars or masters. Kraemer also noted that masters have concurrent jurisdictions to act as registrars. There are presently twelve masters in the Supreme Court. "The number (of registrars) is determined based on the need to provide service to the public and the resources of the Court."

On Becoming a Registrar

Sainty was called to the bar in 1986. Initially she practiced mainly as a solicitor doing a lot of tax and securities work, and later in her career she practiced mostly family law. She started her career in the courts in 1997 as law officer for the Supreme Court of BC where her principal work was to research matters relating to the judiciary as a whole (for example, the use of cameras in the court room). She was also responsible for the annual report and for screening and interviewing potential law clerks. One day, an opportunity for an appointment as a district registrar came up in New Westminster and she was appointed to the position by (then) Chief Justice Brenner. Eventually, she was moved to Vancouver because there was more work and more complex and longer hearings. These days, Blok and Sainty (as well as the masters who sometimes sit as registrars) share the registrar's work in the Vancouver registry.

Both Sainty and Blok sit all over the province. Often registrars are sent to other registries to do lengthier matters that may take three or four days. For example, in the year 2010, there was registrar's work in New Westminster for 35 weeks. Sainty has sat in Victoria, Nanaimo, Chilliwack and Kelowna. "Everywhere there is SCBC work, there is registrar's work. Sometimes, lawyers come to Vancouver to have their registrars' matters heard. Sometimes we go to other judicial districts or we use technology, especially in outlying registries, as often there is not a day's worth of work. Sainty has in the past conducted the Prince George registrar's hearings by video link.

Kraemer adds: "When a vacancy occurs and/or the need for an additional

(*continued to page 4*)

Dr. Richard Susskind: Dealing with Disruptive Innovation and Technology

"Our challenge is to use innovative information technology to deliver services to clients in new ways." Dr. Richard Susskind This is the second part of the article entitled: "*What Storms are Brewing for Lawyers*".

In 1996, when he wrote *The Future of Law*, he foretold about the ubiquity of email in the profession and that the world wide web would be the first port of call for legal research (not the law library).

"I predicted that e-mail would become the dominant way in which lawyers and their clients would communicate with one another. In today's environment, you will probably not think much about it," Susskind retorts. "But at the time I had people saying that... I was dangerous to the legal profession and I didn't understand confiden-tiality and security and that e-mail would only have a peripheral impact." Today, emails are a way of life.

He asked his audience to keep an open mind as much of what he is saying will take time and the best thing they can do is to begin adjusting. *Now.*

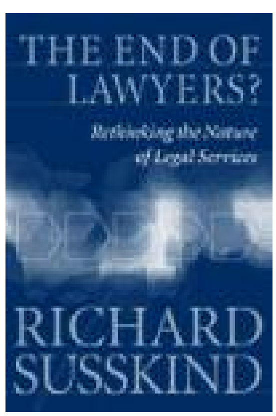
"Our clients expect us to take advantage of our experience and standardise our work. In some cases, the better firms systematise and they go to the extent of leveraging knowledge management. Our internal processes should take advantage of technology: firms should use a digital on-line assembly to allow a good first draft. It will then be left to the lawyer to complete the review."

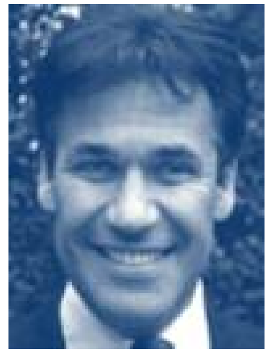
Corporate Clients Have Moved to Outsourcing

Of the twelve ways to source legal services he singled out one: outsourcing because corporate clients are already taking the lead in doing it. Readers will recall that this trend was raised in Briefly**!**'s September 2008 issue.

On January 26, 2006, the *New York Times* reported that the reason for the shift echoes the reason companies are sending other work abroad: they save substantial amounts of money. Some companies say they can reduce certain legal costs by as much as 50 percent, and receive work that rivals what they can obtain in the United States.

Rio Tinto began sending off legal work to CPA Global's facilities in India last June 2009. To date, the routine work has saved Rio TInto 14 million dollars in 6 months. In February 2010, Microsoft





announced that it too was sending its work to CPA Global. More recently, on March 30, BT announced its intent to outsource its work to UnitedLex's facilities in India.

"Globally, if a client wanted to lease lawyers, all they have to do is to work with a temp agency, like these two: Voxius [www.voxius.com] and Axiom [www.axiomle-gal.com]. The lawyers who work there get paid only when they want to work, they get full benefits and there is little overhead - no mahogany paneled board rooms or fancy views."

The message is clear: the routine portion of legal work has to be outsourced; however clients expect to pay for excellent bespoke work.

How Technology Impacts the Profession

Market leaders who ignore disruptive technologies do so at their peril. Using the tale of two giant firms as an analogy: Kodak who moved to offer its clients digital cameras and Polaroid who did not and as a consequence, is no longer around, he asked his audience: will your firm be a Kodak or a Polaroid? If by 2050, the desktop computer will have the same processing power as the human race, why should lawyers be unaffected by this inevitable development?

"Where is your first port to find intelligence: Britannica or Wikipedia? Hard as it is to believe, independent studies have shown that Wikipedia does provide precise information. So why do we need to buy Britannica when Wikipedia is free?"

In Canada, the strong support of the Federation of Law Societies for CANLII means the days of fee for access to case law are numbered. Will the cost of legal research soon be close to free?

Susskind pointed out that the pace by which technology is moving is fast, consider instant messaging, blogs, social media like Linkedin or the ubiquitous FaceBook. Communications used to be one way now everything is two way. *And faster*. In his research, he found that most of the lawyers in FB are not the partners but the juniors. Why do lawyers think they do not have to share information in the same way as others. The reality of course is that the clients of the law firms will share information more so now than before. Because the rapid innovations brought about social media entrepreneurs will enable clients to do so. Interestingly enough, the day after Susskind's lecture, the F8 Facebook conference

(*continued on page 3*)

Dr. Richard Susskind: The Future of Law Has Arrived

(*continued from page 2*)

introduced "Community Pages" which will now make it easier for the public to share (legal) information before seeking legal advice, something which the former Chief Justice Brenner spoke about in the October 2009 issue of Briefly**!**.

Is the end *really* near?
So if the decline is inevitable, is it *really* the end of lawyers? Of course not, in fact there are many opportunities that have begun to arise, consider these six which he delves in detail at the conclusion of his book: expert trusted adviser, legal knowledge engineer, hybrids, legal process analyst, project manager, legal risk manager.

For law students who are the most skeptical, who still think that the practice is still like the old days, he encouraged them to get mainstream legal training but they need to immerse themselves in it. They have to put aside their arrogance in thinking lawyers can over a weekend become experts, by putting sticky notes on their CPD materials.

He admonished the partners not to confuse exploitation with training. Further, law firms should pay their juniors to learn at their expense (and not at their clients' expense).

On how to train lawyers
Susskind describes how their PLTC providers are committing to e-learning (www.bpplawschool.com). But it is at the University of Strathclyde that the most ambitious legal e-learning is found. There, students benefit from the work of Paul Maharg, a pioneer of simulation-based training (www.ggsl.strath.ac.uk/courses). In an online fictional town, Ardcalloch, students play the part of solicitors in virtual law firms, and tutors take on the roles of clients and judges. Students learn by working together on simulated deals and disputes.

Notwithstanding his lamentation in his recent January 2010 *Times* article , "that it would be regrettable, of course, if law students were never to experience the thrill of assembling with peers in a fine hall and listening to an outstanding live performance. But we should not preserve the old ways in the delusion that such performances are commonplace. Unless the lecture is genuinely outstanding (a rarity, students say), the convenience and flexibility of e-learning will trump the benefits of the communal learning experience." To prove his point, Susskind flew across the Atlantic through the Straight of Georgia to deliver an impressive and thought-provoking lecture at the University of Victoria, undeterred by the disruption in flight services last week. Of course, the delivery of his lecture was supplemented by a webcast.

The Future of Law Has Arrived
It may be instructive to bear in mind one of his last quotes by William Gibson: "The future has arrived, it is just not evenly distributed yet." And while his research has a distinct European and American flavour to it, it is not really a big stretch to expect Canadian firms will soon be forced to dance to the same tune.

And with the March 19, 2010 adoption by the Canadian law societies of its National Mobility Agreement, the implication is quite clear: the changes that the big national firms will adopt in order to remain globally competitive will affect even those who practice in the many rural towns in BC.

He is optimistic about the future of law and how it will improve access to justice and encouraged his audience: "The future is very much in your own hands." In the next 3 to 6 years, the smart law firms will create new innovative ways to serve its clients that will spread like wildfire. From the global legal market, Canada cannot avoid ignoring this development.

He will be back again in the Fall to continue his lectures. The members of the profession should take the next few months to discuss his ideas with their colleagues, or at the very least reflect on how some of his predictions may affect how they practice. **!**

Dom Bautista is the Executive Director of Law Courts Center. Write him at dom@lawcourtscenter.com

New Civil Rules Series Update

With less than two months before the new Rules come into effect, your last chance to train with us is on June 5. Set out below are the outlines for the fifth and sixth modules of the series.

Module 5
Module 5 covers three Parts of the new Rules: Part 20 - Special Rules, Part 14 - Costs and Part 15 - Fast Track Litigation.

This module examines two rules under Part 20 (Special Rules) being the rules that relate to persons under a disability and indigent litigants. You will review the new rules as they relate to Costs (Part 14) and become acquainted with the new "Fast Track Litigation" process that allows parties to initiate an expedited process for those actions with an anticipated value of $100,000 or less and which can be heard within 3 days.

Module 6
The final module reviews the Appendices to the Rules as well as the Rules relating to indigent parties and parties under a legal disability. We will consider the changes to the tariff items in Appendix B, and examine the new cost saving measures and revised filing fees found in Appendix C. **!**

Lawyers can register at:
lawcourtscenter.com
Support staff can register at:
canadianparalegalinstitute.com

Demystifying the Role of a District Registrar

(*continued from page 1*)

registrar is identified, the past practice has been to advertise the position and conduct a competition; however, the chief justice also has the right to directly appoint a person into a registrar's position. In the latter case, there is an expectation that the principles of merit will be observed."

As a district registrar, Sainty conducts quasi-judicial hearings such as assessments of costs, reviews of lawyer's bills or inquiries into family law issues (to name a few). At the end of each hearing, Sainty must either give oral reasons for her decision or reserve and prepare written reasons for decision or a report to the court on a matter that has been referred to her for consideration by a judge or master. Her schedule is pretty routine and she tries to maintain it even if she travels to the different registries. She has hearings from Monday to Thursday, and has set aside Fridays for writing her decisions, unless the hearing she is involved in is lengthy and in those instances she sometimes sits on Fridays to ensure a hearing concludes in a timely fashion. Blok, on the other hand has hearings for four weeks and has set aside the fifth week to write his decisions. Sainty spoke about the two longest hearings she has had to handle so far: one that took 27 days and another that took 40 days to finish. Sainty thinks that these two hearings are the two longest registrar's hearings in the record books to date.

To be appointed a district registrar, a person must have been called to the Bar for a minimum of five years. Most of what she learnt has come from self-study and on-the-job training. "When I first got the job, I was more likely to reserve judgments. Over the last nine years, my reserve judgments have become less."

She also has to review and grant (as appropriate) desk orders. This requires her to (sometimes) read materials and make decisions based on those materials. If Sainty cannot make a decision based on the materials provided, she may send a memo or note to counsel asking for additional information. In cases where she has given oral reasons for decision (usually on simpler matters), should a request for a transcript of the oral decision be made, she will often include the case law she has relied on in making her decision, even if not actually cited by her when she gave her oral reasons.

Moving Towards Long and Complex Hearings

The jurisdiction of registrars is completely statutory and therefore it is limited to particular areas such as reviews of lawyers' accounts under the *Legal Professions Act*, assessments of costs under the Tariff of Costs, passing of executors' account (*Estate Act*), and bankruptcy work (Sainty is also appointed as a registrar under the *Bankruptcy and Insolvency Act*) such as trustee opposed discharges of bankrupts, setting of trustee fees, and on occasion reviews of trustee decisions. In bankruptcy matters, a registrar has the same jurisdiction as a judge and can hear most bankruptcy matters, with the consent of all the parties.

Under Rule 32 of the Rules of Court, a judge or master may refer matters to a registrar to ascertain facts, for example when there is a need to establish an accounting related issue such as the income of a person or how much each party has contributed to a contested property.

Historically, registrars' hearings have not been recorded. Many years ago, hearings were conducted in a less formal way. There was even a point in time when some of the district registrars were lay people. Today, hearings in front of registrars may be quite complex.

Sainty will often request that a clerk record a hearing: for example, if the matter is set for a full day; if the claim is more than $25,000; or there is going to be a number of exhibits; or where there might be a difficult litigant. While the number of clerks available is limited, if the hearing has some possibility of becoming contentious, then it is good practice to ask the Supreme Court scheduling office that a hearing be recorded. **!**

The final part of this interview appears next month. This article appears on the web as well.