



# ***Musings of the Central West***

## ***Regional Bencher***



M. Virginia MacLean, Q.C.L.S.M.

Issue #2 – January 2013

---

Year 1 and 1/2 in Review

This is the second issue of Musings. As you recall the Bencher election was in May 2011 so I am now well into the second year of the 4 year term. There have been many changes made by your governing body of Benchers in the past year. The most recent change, which I did not support, related to Articling and the alternative Law Practice Program starting in the 2014-15 licensing year, a pilot project. Many of you may have taken time to watch convocation in action and for those not familiar with the process it may have been a bit of an eye opener. Now all Benchers will move on to support this pilot project. Time alone will demonstrate the wisdom of this decision.

On November 22, 2012 the budget was approved. There was concern that the LibraryCo budget would be cut and some members even considered this to be an attempt to close the county and district libraries. The 2013 budget approved by LibraryCo requested an increase in funding from \$7.3 million to \$7.5million or \$205 per lawyer which was approved (an increase from \$203 per lawyer in the 2012 budget). This is very modest but in the right direction. Clearly the major issue is one of continuing to meet the ever increasing operating costs. The total budget for library services, which includes the Great Library and CanLII, is \$11.8

million or \$322 per lawyer. I received 20 letters and e-mails from lawyers in the Central West Region urging support of an increase in the budget for the county and district libraries. This emphasizes the significance of these libraries to each of the legal communities in the counties and districts. I thank each of you who communicated with me and I will remain vigilant on this most important issue through the remainder of my term.

### Discipline

I would like to provide you with insight into what is without a doubt one of the most important functions of a Benchers - discipline adjudication. I mentioned this duty in passing in my first Musings however I now can fully appreciate what it means and would like to convey to future Benchers candidates how much time and dedication it requires. All Benchers are expected to participate in the discipline adjudication process. This is without compensation because the threshold of hearing attendances per half year is only reached where the hearings are long and many. Even if the threshold is reached the compensation is only a token and cannot begin to compensation for the time out of your practice required to adjudicate. For example, from May 2011 to December 2011 I had 2 hearings for a total of 4 hearing days. From January to May 31, 2012 I had 10.5 hearing days for a total in that year of 14.5 hearing days. In the period starting June 1 2012 to December 2012 I have had a total of 11 hearing days.

The hearings days are not as demanding of your time as the decision writing. Each panel writes its own decision. There is no support beyond excellent editing but there must be a product to edit. As a sole practitioner with no support staff, the writing of the decision can be very onerous depending on the work load. Last year for example I chaired a panel on a very difficult fairly lengthy hearing and was faced with trying to prepare a decision in a timely manner while counsel on a lengthy OMB hearing in Richmond Hill. I am not unfamiliar with administrative law and have appeared before numerous administrative tribunals but the role and responsibilities of an adjudicator are not identical to those of counsel and it takes time and experience to be a good adjudicator. In addition, the lawyer with experience is most likely going to chair the panel and write the decision because most panels consist of three members which usually include a lay adjudicator.

Notwithstanding the work and time, my experience to date on discipline hearing panels has been very rewarding and satisfying. For a better appreciation of the number of hearings handled, take a look at the Law Society's Annual Report. To appreciate the variety, complexities and issues involved in discipline hearings, go to CanLII ([www.canlii.ca](http://www.canlii.ca)), click on Ontario, then Law Society hearings. I was a member of the hearing panel on *Law Society of Upper Canada v. Kimberly Lynne Townley-Smith*, 2012 ONLSHP154 (CanLII) involving a lawyer licensee. I chaired and wrote the decisions on paralegal licensees Jan-Lee McKenzie Hughes, Gerrard Trueman and Tuck Nicole Lorain Lebarge.

The majority of the hearings in which I have been involved as an adjudicator involve allegations of professional misconduct (section 33 *Law Society Act*). Many would not have got to the hearing stage if the licensee had responded and cooperated with the investigation by Law Society staff. Not all hearings can be avoided but hiding one's head in the sand does not make the allegations go away and in most instances magnifies the problem as is very apparent in my adjudicator hearing experiences.

#### Reminder

There is still time to get your nomination in for the Law Society Medal, Lincoln Alexander Award or the Laura Legge Award. Look at the Law Society website for the details. The deadline for nominations is **January 31, 2013**. There is a need for candidates from outside Toronto. Please have your county and district law association take the matter in hand. It is not difficult just requires a candidate to be identified, then a letter to be sent to the Law Society with Candidate's resume together with some letters of support from lawyers, judges or members of the community impacted by achievements of the candidate. If anyone wants more information please contact me.

#### Concluding Remarks

In conclusion I would like to wish everyone the best for 2013. I will continue as elected Bencher attending convocation, the committees to which I have been

appointed namely: Access to Justice, Heritage and Tribunals, the calls to the bar and the occasional judicial swearing in ceremony on behalf of the Treasurer.

If I can help you in any way in my capacity as an elected Bencher, please do not hesitate to contact me.

Virginia

233 Robinson Street, Oakville On L6J 1G5

e-mail: [Virginia@virginiamaclean.com](mailto:Virginia@virginiamaclean.com)

fax 1-800 285 0410

telephone 416 365 1993