

The Law Society  
of British Columbia



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# BENCHERS' BULLETIN

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## Advocating for equal opportunities

SARAH KHAN, STAFF counsel with BC Public Interest Advocacy Centre, may be legally blind, but you would never know that unless she told you.

"I really don't spend much time thinking about my vision," Khan said in a recent telephone interview, an hour before flying to London to meet three of her Scottish aunts for an eightieth birthday celebration. "Technology has made it easy to enlarge the font size on documents now. At midnight last night, I was able to download and print parts of a map of the London Underground, after blowing it up to 200 per cent."

Born in Vancouver, Khan spent six of her school years in Indonesia with her parents — her engineer father was working there on several irrigation projects — before returning to Burnaby to finish high school. "The years in Indonesia were wonderful," she reflected. "I also saw a lot of inequality, and was interested in finding out why some people have so much and others have so little. And of course, the same questions apply in Canada."

Khan's own family personifies diversity: her father is Pakistani and her mother is Scottish. "In Indonesia, people often thought I was Dutch, which was not a positive association in their post-colonial society," Khan said. "I became very conscious of the effects of colonialism and the need for equality."

Khan's experiences in the Burnaby school system, in Asian Studies at SFU and UBC, and at the University of Victoria law school were very positive, as she received the support and accommodation she needed.

"At UBC, Crane Library and the Disability Resource Centre gave me access to larger print exams," recalled Khan. "At UVic law school, Professor Heather Raven made sure I had the accommodation I needed. I participated in the co-op program, through which I met some fine lawyers, including Jeff Hoskins (General Counsel and Director of Policy and Legal Services) at the Law

Society, where I spent a great summer as a co-op intern.

"I articled with Ratcliff and Company — a North Vancouver firm specializing in First Nations law — where I received a solid grounding in administrative law and litigation, preparing me well for the public interest litigation and advocacy work I have been doing with BC PIAC since 2000."

On behalf of a coalition of 15 organizations from communities across BC, Sarah Khan and BC PIAC filed a systemic complaint with the Ombudsman about unfair practices experienced by low-income people who need assistance from the Ministry of Employment and Income Assistance. The complaint resulted in many changes to the ministry's processes for handling applications, home visits and reconsideration of benefits entitlements. Together with the Farm Workers Legal Advocacy Program and Community Legal Assistance Society, Khan assists farm workers with eligibility for employment insurance and other benefits. She also has represented many people in suits by the provincial government for overpayments of income assistance and disability benefits.

For Marla Gilsig, a sole practitioner in Vancouver, the path to and through the practice of law has been both less direct and more arduous.

Gilsig grew up in Surrey and Vancouver. During her elementary school years, she was in and out of hospital with an autoimmune disease that caused frequent infections and left her with significant bilateral hearing loss — normal hearing at lower pitches, with drastically diminished hearing in the higher frequencies.

"The doctors thought it would be too stressful for me to deal with the hearing issue as a child already struggling with severe and recurring infections, so they never told me about my hearing loss," Gilsig said with a remarkable lack of bitterness. "So, I struggled to learn Hebrew and then French — both oral languages — during those very difficult childhood years."

After completing an undergraduate degree at the University of Toronto, Gilsig returned to the west coast to earn a law degree at the University of Victoria, graduating in 1978 as a member of its inaugural law school class — all without hearing aids or any other accommodation for her hearing disability. "By then I knew I had trouble hearing higher pitched voices, and had been examined by a number of otolaryngologists, but I still had no idea of the cause or extent of my hearing loss," she said.

After Gilsig had worked for two and a half years as a prosecutor for the provincial Ministry of Attorney General, one day a court reporter called her over to listen to a tape of the afternoon's proceedings. "I was shocked to hear myself asking witnesses to repeat their answers, again and again," Gilsig recalled. "'I think you have serious hearing loss,' the reporter told me."

"Back I went for another hearing test. This time my otolaryngologist said I had a severe hearing loss and needed to wear hearing aids in both ears. Over the years my doctors had hidden my hearing loss from me by saying that I did not need hearing aids, when they should have said, 'Marla you have severe bilateral hearing loss. But your type of hearing loss is very rare, and presently there are no hearing aids manufactured that will help you.'"

In those days, rehabilitation services were not available for people with a hearing disability; the doctors and audiologist had given Gilsig two hearing aids and sent her on her way. "When I had completed the provincial government job application form, I indicated I did not have a disability," she said. "I thought if I told the ministry that they had hired a Crown Counsel with a severe hearing loss, they would fire me. So, I quit."

Gilsig soon found work as a staff lawyer with the Legal Services Society. After two years there, she left law for three years to focus on her health issues.

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In 1986 she returned as a sole practitioner. Over the next 15 years Gilsig developed a mixed litigation and solicitor's practice, working on a number of precedent-setting cases that determined whether designated groups have the right to access specific types of government services and resources. She has also established and served on the legal committees of the Canadian Hard of Hearing Association, Canadian Disabilities Rights Council and Learning Disabilities Association of BC.

In 1998, Gilsig was diagnosed with fibromyalgia, also known as soft tissue rheumatism, fibrositis and non-articular rheumatism. Fibromyalgia is incurable, with symptoms that include chronic pain in joints and soft tissue, fatigue and migraine headaches.

In 2000, Marla Gilsig's marriage of 17 years fell apart, and she became the single mother of nine-year old Sam and 13-year old Carly. The following year Gilsig closed her practice to concentrate on her health.

"I immersed myself in the study of fibromyalgia and the characteristics of my own case," Gilsig said. "Likely another

product of my autoimmune disease, fibromyalgia is incurable, but it can be managed."

"The keys are balance and flexibility. If I manage my diet and sleep, work and exercise when I'm feeling strong, and rest when I'm feeling weak, then I'm fine."

By 2006, Gilsig had turned her remarkable tenacity to preparing for her return to practice, successfully completing the Law Society's requalification examinations after seven months of study. "I could not have done it without the support of the CBA's Women Lawyers Forum, particularly the guidance of chair Debra Van Ginkel, QC and the mentoring of Brenda Edwards," Gilsig said. "Brenda gave me great advice and encouragement, and she showed me how to get past my embarrassment about using technology to supplement my hearing."

Gilsig believes that her personal and professional strengths have been both stretched and reinforced by her health challenges. "I had to cultivate investigative, analytical and problem-solving skills," she said. "I found reserves of determination and resourcefulness that allowed me to turn problems into successes."

After returning to active practice last year, Gilsig applied to more than 40 organizations, including law firms, public and private corporations, government and non-profit organizations, without success.

"It has been discouraging," she said. "We have certainly made progress in recent years, but the barriers are still very much there — on several levels. Organizations react with fear to an older woman returning to practice after a number of years and dealing with health issues.

"They have trouble seeing the strengths being offered, like loyalty, judgment and perseverance. And, they overstate the degree of accommodation and support needed. For example, a good wide area FM audio system can be installed for less than \$1,500, for the benefit of so many people!"

Perhaps discouraged but certainly undeterred, "Marla Gilsig, Barrister and Solicitor" has re-opened for business. Alongside her client and public service work, Gilsig makes time to serve as the Canadian Bar Association's chair of general practice, solo and small firm section, for both the BC

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## Lila Quastel: Access through accessibility

Lila Quastel is a great example of the value that volunteers bring to the Law Society. A practising occupational therapist, Quastel is a lay member of the Equity and Diversity Committee and chairs its Disability Research Working Group.

Her focus is on improving access to BC's courthouses for people with disabilities. "Two years ago, Art Vertlieb, QC [Chair of the Equity and Diversity Committee] set up a meeting for me with Chief Judge Stansfield of the Provincial Court," Quastel said. "Judge Stansfield was very supportive from the beginning, telling me that a number of judges had already expressed their concerns about physical barriers to justice in courthouses around the province — from wheelchair access

and acoustics to lighting and sightlines.

"Chief Judge Stansfield introduced me to Assistant Deputy Minister Helen Pedneault of the Ministry of Attorney General's court services branch, and Program Manager Larry Cade of the ministry's facilities services division: both have been great people to work with.

"Ms. Pedneault supported the recommendations made regarding planning for future facilities and resolving existing issues to improve courthouse accessibility, and has written to the Law Society requesting they appoint a representative to work with the facilities program manager to develop next steps."

Ms. Quastel is an Assistant Professor



Emerita at the UBC Faculty of Medicine's School of Rehabilitation Sciences, and a former chairperson of the Canadian Occupational Therapy Certification Examination Committee.



## Record attendance at sixth annual media law workshop

MORE THAN 60 reporters, editors and news directors attended the seventh annual Law Society – Jack Webster Foundation Media Law Workshop in Victoria on November 6.

The goal of these workshops is to encourage fair and accurate reporting of the courts and to foster links between the media, the legal profession and the judiciary.

This year's panellists were Chief Judge Hugh Stansfield, Neal Hall from the *Vancouver Sun* and media lawyers David Sutherland of Sutherland and Associates in

Vancouver and Michael Sherr of Pearlman Lindholm in Victoria.

The workshop, *Reporting on the Courts: What You Should Know... and Do*, provided reporters with an overview of legal issues surrounding publication bans and contempt of court.

The Law Society first initiated media law workshops on current legal and justice system issues in 1994. Since 2001, they have been offered in partnership with the Jack Webster Foundation. The workshops are free to journalists and news editors.❖

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branch and national offices.

Sarah Khan also knows the barriers are still there. "I have been fortunate to have been accepted and accommodated by many institutions and many people along the way," she said. "I know that many others with disabilities have been less fortunate, and have had to try to justify their accommodation needs again and again, often without success."

"Some of the most serious barriers faced by people with disabilities are the perceptions and attitudes of other people. I see acceptance and accommodation for people with disabilities as basic equality

rights under provincial and federal human rights legislation, and under section 15 of the *Charter*."

In its 2001 report, *Lawyers with Disabilities: Identifying Barriers to Equality*, the Law Society's Disability Research Working Group relied on the following statement by the Supreme Court of Canada in *Eaton v. Brant County Board of Education*, [1997] 1 SCR 241 as its starting point for applying s. 15(1) of the *Charter* to the concept of disability and the purpose of "accommodation:"

Exclusion from the mainstream of society results from the construction of a society based solely on "mainstream" attributes to which the disabled will

## McKnight wins award for legal journalism

The Law Society has sponsored the Jack Webster Award for Excellence in Legal Journalism since 2000. The award honours a journalist or team of journalists for a story about legal issues, the administration of justice or the legal profession in BC.

Peter McKnight, a columnist with the *Vancouver Sun*, won this year's award for his series of columns on legal issues.

Jack Webster, a renowned BC journalist, along with UBC professor Dr. Anne Autor, became the Law Society's first lay Benchers in 1988. Founded in 1986, the Jack Webster Foundation carries on Webster's legacy by promoting and recognizing the achievements of BC reporters with the Jack Webster Awards.

never be able to gain access. It is the failure to make reasonable accommodations, to fine-tune society so that its structures and assumptions do not prevent the disabled from participation, which results in discrimination against the disabled.

As Marla Gilsig put it, "Giving lawyers with disabilities an equal opportunity to practise law, ensures that the legal system and legal profession can properly serve people with disabilities. In turn, that helps the society to fulfill its duty under the *Legal Profession Act* 'to protect the public interest in the administration of justice by protecting the rights and freedoms of all persons.'❖



*Marla Gilsig (left) and Sarah Khan, at the office of the BC Public Interest Advocacy Centre.*



# A perspective on the role of women in law today

by Anna K. Fung, QC

I WOULD LIKE to devote my final column as President to all female legal practitioners. I preface my remarks by noting that the views that I express here are not those of the Law Society, but my own. The views I express are influenced by my perspective as a Chinese Canadian and by my experiences practising law in large downtown law firms and large Vancouver companies—organizations that are predominantly male and predominantly white. My insights will not strike you as particularly profound or earth-shattering, but I hope they will give you some food for thought and a basis for reflecting on how you might wish to approach the practice of law from now on.

First of all, we should remember just how far women have come in the practice of law. Less than a century ago in 1908, the Secretary of the Law Society of British Columbia, Oscar Bass, wrote to an Ontario colleague in these terms:

I beg to say that the fair sex have not yet threatened to invade the legal profession in British Columbia. The Benchers not yet having had to consider the application of a modern Blackstone in petticoats to enter the profession, it is difficult to say what their feelings would be or what decision they would reach.

What has changed since? A lot in some ways and not so much in others.

Today, female students make up more than 50 per cent of Canadian law schools. Every year, more and more women take home gold medals. Women manage to get hired by law firms just as much as men do. Yet, there appears to be a much higher attrition rate for women leaving law than there is for men. Female lawyers in general still earn less money than their male counterparts, and they are less likely to be in positions of power and influence compared to their male peers. Why is that, and why should we care?

There is a lot of speculation as to why

women are leaving law. One is that women leave the practice of law because they want to have children. Some women have told me that they did not feel that they could continue in private practice after having children because of the lack of support from the partners in their law firm for the decrease in billable hours that is associated with maternity leave and the demands of juggling a family with their law practice.

The private practice of law today is becoming more and more of a business rather than a profession. Law firms earn a profit by urging lawyers to maximize the number of hours they bill, which essentially makes lawyers slaves to the billable

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*The reality is that in most law firms, lawyers take lengthy parental leave at peril to their standing in the firm, career advancement prospects and retention of existing clients.*

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hour. To expect a firm to put the demands of family obligations above the earning of profit may be unrealistic and amount to asking for the impossible.

The challenges that the billable hour system presents to maintaining work-life balance do not apply solely to women. In my experience, law firms are just as brutal on men whose billings don't meet the established billing targets as they are on women who don't meet targets for "family" reasons. In short, most law firms today, given the high salaries that lawyers command, will not tolerate underperforming associates, even underperforming partners, regardless of the reasons for that underperformance.

You may argue that not billing 2,000 hours a year because you want to spend time with your children is not

## BENCHERS' BULLETIN

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities. BC lawyers are responsible for reading these publications to ensure they are aware of current standards, policies and guidelines.

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor at bdaisley@lsbc.org. Additional subscriptions to Law Society newsletters may be ordered at a cost of \$50.00 (plus GST) per year by contacting the subscriptions assistant at communications@lsbc.org. To review current and archived issues of the *Bulletin* online, see "Publications & Forms/Newsletters" at lawsociety.bc.ca.

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underperformance. However, from an economic perspective, an hour not billed is an hour that the other lawyers in the firm have to subsidize. That is the brutal truth. The more enlightened lawyers recognize that that type of "subsidy" is worthwhile for societal reasons and are prepared to accept that as the price they must pay to keep women and men in the practice of law. But the less enlightened lawyers say no accommodation at all should be made for those who choose to spend less time at work for "personal" reasons.

The reality is that, in most law firms, lawyers take lengthy parental leave at peril to their standing in the firm, career advancement prospects and retention of existing clients. One litigation partner in a large national law firm discovered just that, upon her return from maternity leave following the birth of her second child. While her partners were seemingly supportive of her first maternity leave, they were distinctly less so of her second. When she returned to work, she discovered that many of her clients had been referred to other lawyers in the firm who were determined to hang onto them. Shortly thereafter, she left the comfort of the large firm and started her own sole practice, working from her home. She is now blissfully happy and financially sound as a sole practitioner.

Now for some good news. I know of another partner in a downtown firm who voluntarily left the partnership to raise her children while they were young and then rejoined her old firm after her children were grown, first as an associate and then as a full partner. Similarly, I know of several, although admittedly not many, capable and competent partners in large law firms who are happily practising law and raising young children at the same time.

This leads me to the first truth that women in law must learn: know yourself, be crystal clear and brutally honest with yourself about what you value most in your life and then live your life accordingly. Put another way, if you follow your passion, the rest may or may not follow, but at least you won't be wondering at the end of your life, "what if I had lived my life differently?"

There is no question that the practice of law is demanding, stressful and requires a huge time commitment. Sometimes, it is important to have the courage to admit

that to yourself and move on to other pursuits that better suit you and what you value most in life.

If having children and being a mother are important to you, then you may not want to wait until you are fully established in your legal career before you do so, because by the time you have concluded that the time is right, it might just be too late. If a firm's maternity leave policy or the availability of flex-time or part-time work arrangements is important to you, do the due diligence before you join the firm, not after.

Consider the second truth for women in the law: do not define or limit yourself by others' stereotypes and perceptions of what women ought to be. Be strong enough to resist societal norms or myths that limit women's achievements. Not all women want or are cut out to be mothers or caregivers. Assertive women are sometimes portrayed and joked about as "ball busters" or "pseudo-men." That sometimes

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*Or we can do the most difficult thing that there is to do: continue to make our mark in the established law firms, stay actively involved in the legal community and politics, and speak out. By speaking out, we can help to effect larger, institutional change for the betterment of all women.*

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leads us to downplay our abilities and skills at work, because we want to be popular or well liked, and we don't want to be one of "those" women in law firms who are denigrated for not having a life or family outside of work. By doing so, we short-change ourselves because we fail to set our goals high or bold enough.

When it was suggested to me that I should consider running for the presidency of the Law Society of BC, I was initially reluctant to do so. In the entire history of the Law Society, there had not been one single person of visible minority who had served as President. I was also conscious of the fact that I was not in mainstream private practice, having moved on to being corporate counsel after seven years of private practice. I felt that those two would be deadly strikes against me. Then, of course there was that third strike —

I was a woman, and there had only ever been three female Presidents in the 120 plus year history of the Law Society. How could I possibly win against my older male Caucasian colleagues?

If I had listened to my own misgivings and foreclosed my own opportunity to run for the Presidency despite others' encouragement, I would not be President today. So, it is important for all of us to take a chance once in a while and dare to be bold and risk failure, to spur us on to greater achievement. I say that because the first time that I ran for the Law Society presidency, I was unsuccessful and I was crushed by my failure, but I put my pride aside and ran again for the position the following year, and lo and behold, I won!

I turn now to the third truth for women in the law: recognize that you cannot—and should not—do it alone. The practice of law is a monolithic institution, and you cannot change the structure of institutions overnight. To make any change, you need support and assistance from many men and women. Develop allies in and outside of the law that you can count on to be a sounding board, a promoter and supporter of issues that matter to you.

That brings me to the fourth truth for women in the law. While it's important to build a network of contacts in the legal community, it's equally important to find fulfillment outside of the legal profession. Find other outlets for your creativity, abilities and energy. Seek out those things or those people that will add quality, not simply quantity, to our lives, whether it is writing a novel, doing pro bono work, volunteering in ways that are meaningful to us, accompanying our child on a school field trip, or simply finding time to visit a sick friend or elderly parent.

The final thing that I want to emphasize is that for women who are struggling to remain in law, we can choose to respond in various ways to the existence of what is an apparent glass ceiling in the workplace. We can sit back and adopt a "victim mentality" and blame the fact that we are born female for that missed promotion, failure to make partner or get the corner office or land that lucrative client. We can hide our identity and pretend that we are exactly the same as any male lawyers and

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