



# According to Rose

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*Great Wall of China*

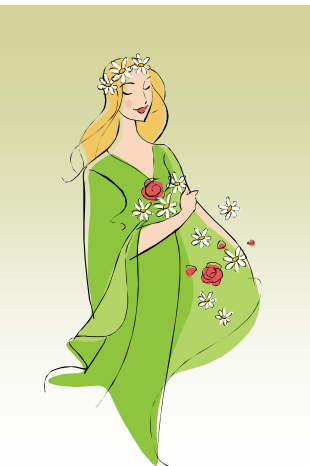
## WHAT'S NEW

We have not published this newsletter for a couple of years due to a variety of reasons but will now be sending this to you once every couple of months. If you have a preference on receiving this newsletter either via electronic version or a hard paper version, please let Darlene at our office know by either calling her at 604-669-2126 or emailing her at [Darlene@rosekeith.bc.ca](mailto:Darlene@rosekeith.bc.ca).

A number of things have happened

over the last couple of years. I had the opportunity to serve as President of the Trial Lawyers Association of British Columbia (TLABC). TLABC has over a thousand lawyers as members. The mandate of TLABC is preservation of access to justice for the citizens of British Columbia. The Association is involved in a wide variety of things, including provision of continuing educa-



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## A PIECE OF MY MIND...

*By Rose Keith...*

You can't live in Vancouver or the lower mainland these days without being inundated of news about the shootings that have been occurring. Our typically Canadian large city is taking on a new character all its own, with extensive apparently gang violence occurring almost daily. It is frightening to watch and has raised many questions for people of British Columbia.



One of the questions that has been raised is whether our judicial system is adequately dealing with the problem, with many pointing to what are seen as lax sentences being handed out to individuals who come into contact with our criminal justice system. I am not only a participant in our judicial system, but a huge advocate of it. Our system may have its problems but I know from travelling to China and studying their judicial system that we are lucky to have the system that we have.

I am not a criminal lawyer and don't purport to be an expert in our criminal law system. I do know however that in British Columbia we are blessed with judges who take their job seriously and who work very hard to ensure that the laws of British Columbia and of Canada are upheld. Our judges are committed to their jobs and do the best they can to ensure that the rights of citizens in this province and country are protected. One of those rights is the presumption that an individual is innocent until proven guilty. This puts the

onus on the prosecution to prove the case. At the same time, basic fundamental rights are protected through our Charter. These basic, fundamental rights ensure that all of us are protected and not subject to the injustices that we see in many other countries.

The media has on occasion cast the blame for the existing state of gang problems on our judges, and our judges being too easy on crime. You have not heard the judges respond to this and in my view that is entirely appropriate. The judges' job is to enforce the law, not to please the public. The fact that our judges do not worry about what the current public view of their actions is proof for all of us that the judges are doing their job, applying the law, and nothing else. We do not want a system where judges are worried about how popular their actions or decisions will be as that will be the day that our system has failed. The laws in Canada and in British Columbia have been made by legislators and interpreted over time by the courts. The right to appeal and the wisdom of our appellate courts ensure that judges have guidance on how to apply the law and that people have recourse to a higher court if there is a fear that a judge has wrongly applied the law. This system has ensured that all of us in British Columbia have access to justice and it is a system that I would not want to see changed. The cause of the current extensive amount of gang violence is not our judges.



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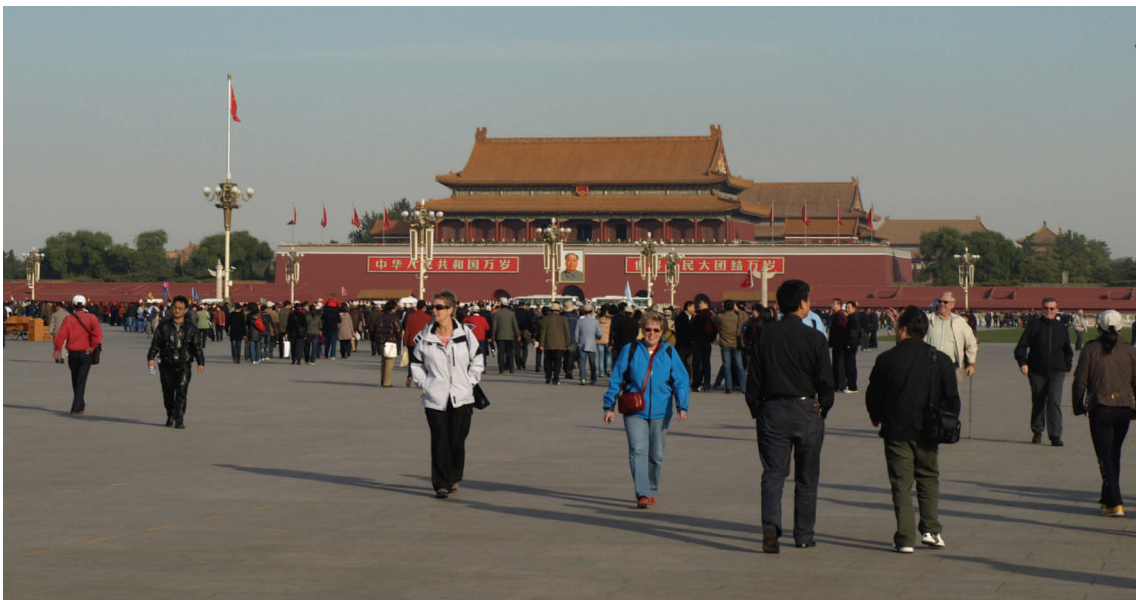
tion to lawyers throughout the province. In my year as President a primary issue was dealing with a proposal to revise the Rules of Court, which in our Associations view would have resulted in it being harder to get to court for the ordinary person by making court processes take longer and be more expensive. This revision to the rules continues to be an ongoing topic for the Association. It was a very busy year for me when I was President. I continue to serve the Association by sitting as a member of the Board of Governors for Vancouver county and I continue to head up our education planning committee which plans the various education events put on by the Association.

In 2008 I was provided with an amazing opportunity to travel to China with a delegation of lawyers. I was

approached by an organization from the United States called People to People and was asked to lead a delegation of Canadian trial lawyers on this trip. We traveled to Beijing, XiAn and Shanghai. While in China we met with the law school, the bar association, an alternate dispute resolution group, saw a trial and met with several different law firms. In addition to the professional aspects of the trip we were able to take part in many cultural activities including climbing the Great Wall, visiting the Terra Cotta Warriors and seeing many other remarkable sites in the various cities that we lived in. It was an amazing trip and gave me a view of China that few ever receive.

At the end of 2008 we moved our offices. We are now located at 1486 West Hastings. It has taken a while to get settled into the new location but we are now moved in and enjoying

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*Tian'anmen Square.*

## FOCUS ON MOTOR VEHICLE ACCIDENT LAW

One of the most pressing issues for individuals after they have been injured in an accident is assistance in funding the cost of care and replacing wages that are lost due to an inability to work because of the accident injuries. This is a very difficult situation for people who have been injured in accidents. Not only do they have the expense associated with obtaining treatment for their injuries but they also have lost their income. Limited compensation is available through ICBC for these types of losses and our office works hard to make sure that all possible funding is obtained for our clients.

The funding that is available is referred to as Part 7 or No Fault Benefits. These benefits are not meant to put you in the position that you would have been if you had not been injured (which is the purpose of the tort claim) but are provided as a minimal safety net of coverage. No Fault Benefits are akin to any other type of insurance policy that you may have experience with. Benefits are paid in defined circumstances and in defined amounts. No Fault Benefits are

a secondary form of insurance, meaning that you must exhaust all other types of insurance coverage that you have available to you prior to your entitlement to these benefits kicking in. This means that you must utilize employment insurance benefits, short and long term disability benefits, sick days and extended health coverage prior to any obligation on the part of ICBC crystallizing. The loss associated with having to use these other forms of insurance is accounted for in your tort claim.

In general, there are three types of benefits available as No Fault Benefits:

1. Medical and Rehabilitation Benefits;
2. Wage Loss;
3. Homemaking capacity.

In each type of benefit, there are rules and restrictions on what can be recovered and how. In the next edition of *According to Rose*, we will focus on Medical and Rehabilitation Benefits, the eligibility requirements, what is available and practical application of the benefits.



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the new space. It is very convenient for clients with parking right outside the office on the street. If you can believe it, there is two hour free parking right in front of our door for those lucky enough to get it. Otherwise, the metred parking in the area is quite reasonable. The move to the new office has meant that Rupert (my Great Dane) is able to spend his days at the office which he greatly enjoys. If you haven't been done to the new office yet, we look forward to seeing you sometime soon.

We have also had staff changes since the newsletter was published. Our staff is as follows:

**Darlene Ferrier** – Darlene came with us from the old office and if you were at the old office you would have met Darlene as she was in charge of reception. We are thrilled that Darlene has joined our office and she is the friendly face that will greet you when you come in the door;

**Romila Pratap** – I worked with Romila years ago at another office. She has been with me for about three years and brings a wealth of experience in ICBC matters;

**Kathryn Zemliya** – Kathryn has been with my office for over a year. She is a top notch paralegal with a great breadth of experience in ICBC matters. Kathryn is the one who will ensure that every possible Part 7 payment is paid.



*Terracotta Warriors Museum.*



## YOUR QUESTIONS ANSWERED

Please email us with any questions that you may have regarding an area of the law and look for the answer in this section of the newsletter.

One question that our office often gets is “why do we send you copies of everything?”. Typically, by the time your case has concluded, you will have piles of paper from our office. We send you everything to make sure that you know exactly what is going on in your case and to ensure that you are aware of all

the documents that are being exchanged between us and the other side. If your case proceeds to a discovery, you can be assured that the other side will have reviewed every piece of paper that has been produced in your case and you should do the same. We have recently moved to more of an electronic system and will be sending you your documents via email in most cases to avoid the pile up of paper that always occurs.

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## DECISIONS OF NOTE



In this section of the newsletter we will provide you with some of the details of cases that have recently been decided in the British Columbia Courts that may be of interest.

In the British Columbia Supreme Court a Judge considered the duties that an employee owed to the employer. The judgment confirmed that employees owe a duty of good faith to their employers. The Judge considered whether in the particular circumstances of that case the employee also owed the employer a fiduciary duty, which would carry with it much more significant responsibilities. In finding that no fiduciary duty was owed by that particular employee, the Judge highlighted

the fact that the employee was not a director of the employer, nor did he hold an equity position with the employer or have check signing authority.

A BCSC judge confirmed that a Plaintiff's high level of athleticism pre accident is a factor to be taken into consideration when assessing non pecuniary damages. This is important in many of our client's cases but also underscores a fundamental principal in the assessment of damages, that the individuals circumstances must be fully considered in every case so that compensation appropriate to compensate the individual for the losses that they have suffered is provided.



## KATHRYN'S KORNER

### How to Make Us Work for You

**So, you've retained our team to help you deal with ICBC or a former employer. To make sure we can do our best to get the benefits you need now and the settlement you deserve, we need your help. Here are a few ways you can help us work for you:**

***Lay your cards on the table:*** Is there anything you've forgotten to tell us about your medical or employment history? Have you had another accident or injury? Have you returned to work? Have you had previous ICBC or WCB claims that may affect your accident claim? Make sure to tell us.

***Don't be a stranger:*** Keep us up to date on what's going on in your life. How are you feeling? What has your doctor or therapist told you? Have you gone back to work or taken additional time off work? Drop us a line...All it takes is a phone call or a click of the "send" button on your email.

***Become a pack rat:*** Have you bought Advil, ice packs, bus tickets, or paid for parking or taxis? Many of these expenses can be submitted to ICBC for reimbursement either immediately or at the time your claim settles. Save your massage, physiotherapy, prescription and drug store receipts and keep track of your mileage when you attend medical and therapy appointments.

***An apple a day:*** Practise good self-care by attending your doctor regularly. Your family doctor will be able to refer you to appropriate therapy and specialist doctors to help you manage your recovery. When our office refers you to a specialist, make sure to attend the appointment.

***Keep an open mind:*** Don't dismiss reasonable suggestions out of hand. If your family doctor recommends getting a gym pass or attending acupuncture, give it a try. Maybe there is a way of modifying your work environment to make it easier to return to work? You have an obligation to mitigate your losses by attending appropriate therapy and making lifestyle changes.






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*Garden of the Big Wild Goose Pagoda.*

## NOTABLE QUOTES

The law, for all its failings, has a noble goal – to make the little bit of life that people can actually control more just. We can't end disease or natural disasters, but we can devise rules for our dealings with one another that fairly weight the rights and needs of everyone and which, therefore, reflect our best vision of ourselves.



*Terracotta Warriors Museum.*

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## OUR AREAS OF PRACTICE

Depending on your experience with our office you may or may not be aware of the types of problems that we routinely assist clients with. We have experience assisting clients with the following types of problems:

- injuries resulting from motor vehicle accidents
- injuries resulting from slips and falls
- injuries resulting from sexual abuse
- loss of employment
- discrimination and harassment
- damages resulting from breach of contract

Referrals in any of the above areas are welcome. If you have friends or family that require legal assistance, please refer them to our office. If we are unable to help them we usually know someone who is able.