

BENCHERS' DIGEST

November 2008

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Mandatory Professional Development

by Gregory Walen, Q.C.



In the June issue of the Benchers' Digest, I reported that at Convocation in April of 2008, the Benchers had approved, in principle, a plan to implement mandatory professional development for members of the Law Society. We have come a long way since then.

Under the leadership and direction of Ron Kruzeniski, Q.C., a sub-committee of the Admissions & Education Committee set out an ambitious schedule involving membership consultation and a plan for implementation. To date, all target dates have been achieved, and at Convocation in October 2008, the Benchers approved a final program for professional development to commence January 1, 2010.

The process of membership consultation was an eye-opener for all concerned. Expecting perhaps some initial opposition to a mandatory plan, the sub-committee was surprised and somewhat heartened by the overwhelming positive responses and very helpful input from the membership.

When membership input was initially solicited in May of 2008, Ron Kruzeniski, Q.C., received 52 responses and suggestions from members. In June of 2008, an initial plan was approved by the Benchers and proposed to the membership by website and Digest for feedback. Twenty-six further responses were received by Ron Kruzeniski, Q.C., from members and a final proposal was put before the Benchers in October 2008 and approved.

Highlights of the final program include requirements that members must complete not fewer than 36 hours of continuing professional development in approved educational activities related to the practice of law in a three year period. The approved educational activities are wide ranging and include many courses and activities that members already take advantage of. Not less than six hours of the 36 hours required in a three year period must pertain to professional responsibility, ethics, client care and practice management.

The plan includes mandatory annual reporting, and failure to either report or complete the number of hours in the three year period may result in an administrative suspension. Complete and full details of the final plan will be communicated to the membership prior to December 31, 2008. During the 2009 year, it is anticipated that the administration of the Law Society of Saskatchewan will be fine tuning the process and procedures for implementation.

The Benchers recognize that the implementation of this program will require time for lawyers to adjust. At the same time, we recognize the program is an evolving process and may, from time to time, require some refinement to adapt to changing circumstances.

I cannot close this article without extending my personal appreciation and the gratitude of the Benchers for the dedication and hard work of Ron Kruzeniski, Q.C., who took on this rather large task and saw it through to completion. One lawyer commented that Ron Kruzeniski, Q.C., is a work horse for the profession. I could not agree more.

Highlights of the Meeting of Benchers

held October 30th and 31st, 2008

BENCHERS' DIGEST

The *Benchers' Digest* is published by the Law Society of Saskatchewan to update Saskatchewan lawyers on policy and regulatory decisions made by the Benchers after each Convocation, to inform members about Society programs and activities, and to provide news and announcements of interest to the legal profession. Members are encouraged to send in articles and photos of interest, however, publication rests with the Editor. Articles and photos can be submitted to llynchuk@lawsociety.sk.ca.

Thank you for your comments and feedback on our new look. We are encouraged and inspired and promise to improve it even more over the course of the next few issues.

Current and archived issues may be viewed on the Law Society Website – see www.lawsociety.sk.ca, "Publications/Benchers' Digest."

Editor
Liz Lynchuk

The Benchers increased the annual practice fee by \$100 to meet the demand of increased programming at the Law Society as well as inflation. In addition, the Benchers passed a budget for 2009, placing additional emphasis on practice management.

The Benchers approved Mandatory Continuing Legal Education. Greg Walen, Q.C., has outlined the principles in his article which appears on the front cover of this issue. The Benchers will work on passing Rules in 2009.

Catherine Knox has been appointed as Chair of the Law Foundation and Robert Kennedy, Q.C.,

has been appointed for an additional one year term to the Legal Aid Commission.

Following a Hearing, Ms. Foluke Laosebikan was admitted as a student-at-law. She will be admitted as a lawyer on condition that she obtain a Certificate from the National Accreditation Committee.

The Benchers approved a proposal to hire an in-house Equity Advisor on a part-time basis.

On the evening of October 30th, the President's Dinner was well attended with 136 guests in attendance.



Left: Peter Hryhorchuk, Benchers of the Law Society



Above:
President's Dinner 2008
A message from the Hon. Donald Morgan, Q.C., Minister of Justice



President's Dinner 2008

Left to right: Victor Dietz, Q.C., past President, Rick Danyliuk, Q.C., President and Karl Bazin, Q.C., Vice-president.



President's Dinner 2008

Trick or Treat! Karl Bazin, Q.C. poses as the President

Scam Alert Update

by John Allen, CA

On October 10, 2008 an email broadcast message was sent to members alerting them about a new scam directed at lawyers' trust accounts. This scam is much more professional than previous scams in that:

1. The scam originates from a cold telephone call to the member/firm. This phone call is very professional and lends credibility to the transaction.
2. The phone call is then followed up with an email(s) and copies of invoices, accounting records and correspondence on company letterhead. Again, all of this is very professional – not like the old "Nigerian" scams with spelling mistakes, language issues, etc.

Description of Scam

1. A cold telephone call is received from someone indicating that the company they represent is owed money by a Canadian company. The caller would like to make arrangements with the member to collect monies owing on their behalf (sounds familiar).
2. Once this contact is made, the member receives a copy of an invoice and/or accounting record showing the amount allegedly owed to the caller's company, along with a covering letter. The covering letter provides the address and contact information of the company allegedly owing the money.
3. The member then sends a demand letter to the company and in return receives a letter and a "certified cheque" payable to the law firm/member – in trust.
4. The member then advises the representative that monies have been received and is provided with wiring instructions.

5. The member is requested to wire the funds shortly after the "certified cheque" or "bank draft" is received. Since the cheque has been "certified" and "bank drafts" are "safe," the member may believe it is safe to wire the funds. **WRONG.**

6. The certified cheque or bank draft is fraudulent and will not be honored by the banking system. The member's trust account will be in overdraft by the amount of funds wired out.

Warning Signs

1. The client is new and unknown to the member.
2. The client is from another area or another country, so there is no face-to-face contact with the client.
3. Email addresses are generic, for example, "live.com," "hotmail," "yahoo," etc.
4. The client may be very patient regarding the collection process to be followed (ie. we have been doing business with this company for years and we want that to continue, so do not be too threatening in your demand letter). Once the "certified cheque" or "bank draft" is received, the client becomes impatient and wants the money to be wired immediately.
5. The collection process is very simple. Collection is probably completed after only one letter or even a phone call. Very little work is done relative to compensation.

Protect Yourself Against Scams/Frauds

1. Know your client. Obtain physical evidence of their existence and confirm that the

evidence is legitimate (by performing corporate searches, google searches, etc.).

2. Be wary. If the deal is "too good to be true," it probably is. Very little work or time is spent compared to the compensation offered.

3. Ensure there is an adequate time lag between the date the "certified cheque" or "bank draft" is deposited and the date when monies are paid from trust. Ask the bank how long it should take for the cheque to clear, and if there is any suspicion whatsoever, double it. If the cheque is from out of the country, be very, very careful.

4. Take the "cheque" or "bank draft" to a local branch of the bank on which it was written and ask them to certify (in this case, recertify) the cheque or verify the bank draft; in the case of a Credit Union, you must go to a local branch of the same Credit Union and ask them to "hold funds." If you do not carry out this procedure yourself, have your bank confirm, preferably in writing, that the "certified cheque" or "bank draft" is authentic by contacting the issuing bank and ensuring that the funds have cleared the banking system.

In conclusion, this scam has been carried out "successfully" in at least one other province. One of our own members stated that the October 10th email alert was instrumental in preventing the scam from working in Saskatchewan.

If you are contacted in regards to this scam or others, we would like to know. Please call John Allen, CA at 569-8242.

Cheque Imaging?

by John Allen, CA

The Canadian Payments Association (CPA), the "organization" responsible for the Canadian Cheque Clearing System, recently posted the following undated announcement on its website:

"CPA Board Decides Not to Proceed Further with Image-Based Clearing Initiative."

The website contains further information, but does not give any indication of how this may affect day-to-day operations of financial institutions (FI's).

Bottom line, this announcement came as a shock to almost everyone and it will take some time for each FI to determine how it will react.

In the meantime, if you are receiving original cancelled (cash) cheques from your FI for your trust and/or general account, please continue to do so. Updates on the impact of this decision will be posted on the Law Society website as they become available.

Global Recession and Trust Accounts

by John Allen, CA

Now more than ever it is paramount that trust monies are insured by either the Canadian Deposit Insurance Corporation (CDIC) or Credit Union Deposit Guarantee Corporation (CUDGC), as outlined in Rule 911. (1)(e).

Trust monies held on deposit in Saskatchewan Credit Unions are fully guaranteed without any additional forms having to be filed by the member.

However, CDIC insures deposits in pooled (mixed) trust bank accounts to a maximum of \$100,000 for each client only if appropriate forms have been filed by the member/firm with the bank. Please refer to the Law Society website for complete information (see "Publications – Trust Account Forms – TA-3 Practice Declaration – Questions and Answers #1").

The bottom line for pooled (mixed) trust accounts is that notification must have been provided to the bank in May 2008, listing each client trust balance contained in the pooled trust account for that bank at April 30, 2008 for required insurance to be in effect (insured to a maximum of \$100,000 per client, otherwise, if proper forms were not filed, only the bank account itself is insured to a maximum of \$100,000). Note that notification must be provided to the bank in May of each year for insurance to remain in effect.

Over the years, some members/firms have advised that they did not file the CDIC form for particular pooled trust accounts for various reasons. For example:

- the account was simply a transfer account and monies are not left in the account for very long
- the amount on deposit in the account at April 30th was zero or less than \$100,000
- the amount on deposit in the account was not over \$100,000 at any time during the year
- the member was not aware of the requirement
- the bank branch was not aware of requirement/form

CDIC forms should have been filed in all of the above cases. A CDIC form must be filed for all pooled trust accounts annually. If you did not file the required form for any of your pooled trust accounts, corrective action is required immediately.

Immediate Corrective Action Required

If a CDIC form was not filed in May 2008, providing required information at April 30, 2008 for each and every pooled trust account (excluding those with Credit Unions), please make sure each client trust balance is insured to the maximum amount of \$100,000 by:

1. obtaining written confirmation from CDIC through your financial institution that each client trust balance in the account is covered to the maximum of \$100,000; or

2. moving the trust funds to another account or financial institution where the requirement is met.

Also, if any trust monies are in accounts/ investments that are not insured by CDIC or CUDGC, please make sure that written authorization stating that the client is aware and in agreement with the funds not being insured is:

- on file
- signed by the client

Otherwise, obtain authorization signed by the client or transfer the funds to an account where they will be covered by CDIC or CUDGC immediately. Also, please note that Treasury Bills are not insured investments.

In certain situations where a client has more than \$100,000 in trust, you may wish to inform them about the maximum insured amount and let them know the name of the financial institution where the funds reside.

If you have any questions, please contact John Allen at 569-8242.

Retention, Storage and Disposition of Client Files

by Rod MacDonald, O.C., Practice Advisor

In October 2007, I embarked on a project regarding the issue of retention, storage and disposition of files. An article was included in the Benchers' Digest to invite and encourage members to work through a three-part

problem solving and planning exercise. Based on the responses as well as my own research, I formulated a report that is included with this issue of the Digest. The report is intended to be used as a general guideline to assist lawyers in

establishing a file management policy that is appropriate for their practise.

Many thanks to all of you who participated and helped make this report possible.

Succession Planning

by John Allen, CA

For some time now, the Law Society of Saskatchewan has been concerned about succession planning or the lack thereof by some of its members.

To determine the magnitude of this issue, questions relating to succession planning were included as part of the annual reporting process (TA-3) for the last 2 years.

Responses to these questions showed that overall, 56% of respondents in the first year had no succession plan. This number improved to 45% in the second year. However, a greater concern was noted regarding sole practitioners where 76% in the first year and 60% in the second year had no succession plan. This concern is accentuated by the fact that over 40% of practitioners are 51 years of age or older.

The problem with not having a succession plan, particularly if you are a sole practitioner,

relates to, among other things, the time and cost required to address requirements of active files and to wind up the practice, including trust accounts. These costs can be very substantial, particularly if no succession plan is in place and the Law Society is required to appoint a trustee. Since the cost of the trustee may have to be paid from the member's estate, it is very important for the member to ensure an appropriate succession plan is in place.

In order to ensure practitioners, particularly sole practitioners, address this issue, the questions on the annual reporting form (TA-3) are being revised for year ends on or after December 1, 2008. The revised questions ask:

- if there is a succession plan in place.
- for the name(s) of member(s) accepting succession responsibilities.
- whether this acceptance agreement is in writing.

- whether, in the case of a sole practitioner, mention of this arrangement is made in the member's Will.

If the answer to any of the above questions is no, corrective action will be required as part of the annual TA-3/TA-5 review process. Since arrangements must be in place as part of the annual report clearing process, **please start making the necessary arrangements now.**

Please note that this article, along with additional information which may be helpful when completing your plan, is available on the Law Society website under "Publications – Succession Planning."

Legal Web Cites

By Peta Bates and Ken Fox, Reference Librarians

Browse By Product Category | Browse By Subject

Currently Browsing 'Product Categories'

[Orders in Council](#)

OC 900/2007 - Ministerial Responsibility Order (Executive Council)

Description:

Title: Ministerial Responsibility Order (Schedules I and II)

Minister: President of the Executive Council

Summary: Repeal Your Honour's Order 415/2007 (May 31, 2007), and replace with this Order outlining Ministerial responsibilities.

See: The Government Organization Act

[Open Document](#)

The Queen's Printer website (<http://www.qp.gov.sk.ca/>) recently added a link to Saskatchewan Orders in Council that are published on the Government of Saskatchewan Publications Centre website. Orders in Council (OIC) are directives issued by the Lieutenant Governor on the advice of Cabinet authorizing policy or administrative decisions. The collection begins in November 2007 with the OICs of the new Saskatchewan Party government. Some OICs are in summary form and others are the complete text.

On the Queen's Printer website, the Orders in Council are listed by year, then by month and day. Subject searching is available but not via the Queen's Printer's "Search Freelaw" search engine. Instead, go to the "Orders in Council" link in the right hand column under the yellow "Publications Centre" heading. The direct link to this page is <http://publications.gov.sk.ca/OrdersInCouncil.cfm>.

Select the "Browse by Subject" tab to see an alphabetical list of subjects. Selecting any subject will take you to a list of OICs on that topic. Each OIC opens to the OIC Summary page that contains the number and title of the Order in Council, the titles of those who signed the OIC, information about what the Order in Council does, and links to any related Acts and Regulations. The full-text OICs have a grey OPEN DOCUMENT button. Otherwise, only the summary is available online. Complete OICs can be obtained from the Government of Saskatchewan Publications Centre if they are not available online.



Pro Bono Law
Saskatchewan

Benchers' Digest Report

www.pbLSask.ca

PRO BONO SERVICE AWARD

The Law Society of Saskatchewan and Pro Bono Law Saskatchewan have partnered and are pleased to announce the creation of a provincial Pro Bono Service Award to be given annually to a Saskatchewan lawyer who has demonstrated a strong commitment to *pro bono* legal services. The award will be presented annually at the Law Society of Saskatchewan Annual General Meeting. Nomination details and a form can be found on the Law Society of Saskatchewan or Pro Bono Law Saskatchewan website. Nominations are due April 30th.

CLASSIC WINS



PHOTO (l-r): Mike Tanton (CLASSIC Board Member), Amanda Dodge (Acting Executive Director), Hon. Louise Arbour, Sarah Buhler (Executive Director), Victoria Coffin (founding student), Dean Brent Cotter (College of Law).

The 2008 Canadian National Pro Bono Awards were presented at the 2nd National Pro Bono Conference Dinner & Canadian Pro Bono Awards Ceremony (www.probonoconference.ca) in Vancouver on September 18, 2008. The Hon. Louise Arbour, former Justice of the Supreme Court of Canada and former United Nations High Commissioner for Human Rights, provided the keynote address at the dinner.

The three honoured recipients of the 2008 awards were Edmonton lawyers Dennis Edney and Nathan Whitting for their work representing Omar Khadr, Saskatchewan's very own Community Legal Assistance Services for Saskatoon Inner City Inc. (CLASSIC), and national law firm Blake, Cassels & Graydon LLP. These awards recognize distinguished service in the provision of *pro bono* legal services to persons of limited means and are awarded as a national celebration of the dedication and commitment of the many lawyers who give their time freely to represent those who need but cannot afford legal assistance and do not qualify for Legal Aid.

SASKATCHEWAN MINISTRY OF JUSTICE RECOGNIZED

The Saskatchewan Ministry of Justice was recognized as a leader in the *pro bono* field at the 2nd National Pro Bono Conference in September 2008. Across Canada, Saskatchewan is the only jurisdiction with a formal *pro bono* policy for lawyers who work for the Ministry of Justice and Attorney General.

PRO BONO SPOTLIGHT

Mark Vanstone, Featured Lawyer



Mark is a partner in the Saskatoon law firm Roe & Company and a volunteer with the Legal Advice Clinic operated by Community Legal Assistance Services for Saskatoon's Inner City (CLASSIC) at White Buffalo Youth Lodge in Saskatoon.

The Legal Advice Clinic is a free legal clinic for individuals who fall below Low Income Cutoff Indicators but do not qualify for Legal Aid. Mark practices primarily in the areas of family and criminal law and is also active in his community and the profession. Mark is the editor of the Saskatchewan Trial Lawyer's quarterly publication, *The Advocate*, and assists with the Western Canada Moot Competition. Mark has volunteered with CLASSIC since 2003 and often assists clients beyond the available time commitment at the Legal Advice Clinic.

— 2009 Convocation Dates of the Benchers — of the Law Society of Saskatchewan

February 12th and 13th – Regina

April 29th, 30th and May 1st – Good Spirit Lake

June 11th and 12th – Regina
(annual meeting set for evening of Thursday, June 11th)

October 8th and 9th – Swift Current

December 3rd and 4th – Saskatoon

Nominations Open for the C. Willy Hodgson Award

The Law Society was pleased to award the 2007 C. Willy Hodgson Award to Community Legal Assistance Services for Saskatchewan Inner City Inc. (CLASSIC) at the Law Society's Annual General Meeting in June of this year.

The C. Willy Hodgson Award is intended to recognize individuals or organizations who exemplify integrity, leadership and character, and have made or are making outstanding contributions to advancing equity and diversity in legal education, the legal profession and/or the administration of justice in Saskatchewan or in Canada.

Nominations are now open for the 2008 award which will be presented in 2009. Nomination forms and more information can be located on the website at www.lawsociety.sk.ca. The deadline for nominations is **November 30, 2008**.

A Century of Integrity: the Law Society of Saskatchewan 1907 to 2007

by Iain Mentiplay, Q.C.

A limited number of copies are for sale at the **reduced** price of **\$60.00** (plus GST; and shipping, if applicable). To purchase your copy, please send a completed Order Form along with payment to the Law Society office or contact Liz Lynchuk at lylynchuk@lawsociety.sk.ca or 569-8242.

For your convenience, we accept VISA, MasterCard, cheque or money order. An Order Form has been included with this issue of the Digest.

Looking for Lost Wills

Deceased: Alfred Peter Cheveldayoff
Date of Will: Unknown
Date of Birth: August 30, 1931
Date of Death: September 20, 2008
Last Residence: Saskatoon

Contact Information: F. Neil Turcotte, Solicitor
 MacPherson Leslie & Tyerman LLP
 Phone: (306) 975-7123

In Memory

David Shury of Battleford passed away October 22, 2008. He is survived by Jane, his wife of 52 years, a daughter, Debi and son Brent. He was born and raised in Wilkie. He attended the University of Saskatchewan and graduated with his law degree in 1954, and received a Queen's Counsel designation in 1981. He practised in the Battlefords until 1993. David was active in a number of organizations and he was particularly interested in politics and baseball. He founded the Saskatchewan Baseball Hall of Fame and Museum in Battleford and received many outstanding awards over the years. To mention a few, he was the recipient of the 2003 Volunteer of the Year Award by Baseball Canada and Major League Baseball, then he was inducted into the Saskatchewan Sports Hall of Fame in 2003 and the North Battleford Sports hall of Fame in 2004. In 2005, he was the recipient of the 2005 Saskatchewan Centennial Leadership Award.

Laurie Meunier of Lloydminster passed away August 19, 2008 after a courageous battle with cancer. She is survived by her husband, Dave and two children, Emily and Jon.

Heather Morrison of Prince Albert passed away in September 2008. She became a member of the Law Society in June 2008.

William Serne of Saskatoon passed away October 6, 2008 at the age of 74. He is survived by his wife of 48 years, Doris, and two daughters, Jill-Ann and Joy-Lynne, and his son James. William was born and raised in Regina. He later moved to Saskatoon and obtained two degrees from the University of Saskatchewan. He graduated with an Engineering Degree in 1956 and a Law Degree in 1963. He was called to the bar in 1964 and practised law until he passed away. William was active in the community, loved the game of hockey and played in the over 60 Hockey League. He also loved politics and was a seasoned campaigner.

Linda Schofield of Knaresborough, North Yorkshire, England, passed away on May 16, 2008 at the age of 64. She is survived by her husband Richard Schofield and two sons, Dr's Bradford and Fletcher Schofield. Linda obtained her Bachelor of Laws from the University of Saskatchewan and was admitted as a member of the Law Society of Saskatchewan in 1983. She served as Deputy Secretary Treasurer of the Law Society during 1984 and 1985. She was admitted to the Ontario Bar in 1990 and worked for the Law Society of British Columbia between 1994 and 1995 before returning with her family to the UK. Following her return to the UK, she was admitted to the Law Society of England and Wales and practised law until 2002 when she retired due to ill health.

EQUITY OMBUDSPERSON

The Office of the Equity Ombudsperson is committed to eliminating both discrimination and harassment in the legal profession.

If you are a support staff, articling student or lawyer within a law firm, you can contact the Equity Ombudsperson, Judy Anderson, for advice, information and assistance. All information is confidential.

This office is not a lawyer referral service and cannot provide legal advice. Call **toll free: 1-866-444-4885**.

This office is funded by The Law Society of Saskatchewan.

LAWYERS CONCERNED FOR LAWYERS

Provides to Saskatchewan lawyers and their family members:

- CONFIDENTIAL assistance in effectively dealing with problems;
- the services of an INDEPENDENT professional consultant;
- services provided without charge.

For confidential information and assistance call 1-800-780-5256,
Regina 352-0680 or Saskatoon 956-5738 or 956-5735

