

BENCHERS' DIGEST

August 2009

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www.lawsociety.sk.ca

Practice Review Program

by: Donna Sigmeth,
Deputy Director/Complaints Counsel



The Law Society of Saskatchewan is pleased to announce an addition to the Professional Standards Practice Advisor Program - the Practice Review Program.

A survey of the membership conducted in 1999 revealed a desire for the Law Society to do something tangible to ensure member competence. The Professional Standards Committee piloted the Practice Advisor Program in 2003 and the Program was made permanent in 2005. The purpose of the Program is not disciplinary, but rather educational and supportive, to ensure that members bring adequate skills and knowledge to the practice of law.

The Program utilizes the services of Rod MacDonald, Q.C., a senior practitioner and consultant from Radville, Saskatchewan who has extensive knowledge and experience in office management. The majority of complaints referred to the Professional Standards Committee and to Mr. MacDonald relate to delay, failure to respond, lack of communication and quality of legal services provided. In many cases, poor file and office management appear to be at the root of the problem for the member. When a matter is referred to Mr. MacDonald as Practice Advisor, he conducts an on-site, hands-on review of the member's office procedures, accounting, file organization, file opening and closing practices, case advancement and general management of office, staff and clients. Mr. MacDonald may provide practical, concrete advice for improvement and assist in implementation. The great majority of the "exit interviews" and comments from members who have completed the program have been very positive. The implementation of suggestions and advice received from Mr. MacDonald has not only reduced the likelihood of future complaints, but has resulted in members avoiding discipline.

While the Practice Advisor Program has been very successful, the Professional Standards Committee observed that it was not able to provide assistance to all members who were struggling with practice issues and required assistance. The Program has been "complaints driven" and "reactive," as only members with complaint matters were referred by Complaints Counsel to the Professional Standards Committee and were able to access the Practice Advisor Program. The Committee has, for many years, sought to improve upon and add to the options available to it to more proactively assist members in maintaining appropriate standards of practice and thus, to protect the public. The program has been modified to be more proactive rather than reactive. The program is designed to further protect the public by identifying problems in a member's practice before a complaint arises.

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Practice Review Program

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This new program, simply called the Practice Review Program, will extend the Practice Advisor's role and the services to members who meet any of the following criteria. The participation of practitioners in the programs will be compulsory. The criteria capture the majority of the issues that cause problems, claims and complaints.

1. New sole practitioners*
2. Number of SLIA claims
3. Number, nature, seriousness and timeframe of complaints
4. Number of accounting issues
5. Concerns raised by the Courts and/or members
6. Failure to meet mandatory professional development requirements

*"New sole practitioners" includes both junior lawyers and more senior lawyers from a larger firm environment. "Sole practitioners" also includes members who are in a loose association of a few members where expenses are shared but there is no real "firm management" or consistency of procedures.

Over time, the Committee has observed that a significant majority of the complaints referred to the Professional Standards or Discipline Committees involve sole practitioners. The Law Society is aware that sole and small firm lawyers are under great pressure to both manage an efficient and profitable business and do the competent and expedient legal work necessary to keep clients happy. It is hoped that further developments in the proactive Professional Standards area will assist members to avoid complaints and insurance claims and to have a successful and profitable practice.

Several new sole practitioners without a complaints history were offered Mr. MacDonald's assistance on a voluntary basis and they enthusiastically agreed. The feedback from these members has been positive. The Law Society receives requests from new sole practitioners for assistance with firm set up and practice advice and is pleased to offer this service free of charge.

The Law Society of Saskatchewan has an obligation to take meaningful and proactive measures to assess and monitor the competence of the membership. Other professions are taking measures to ensure competence and the Law Society needs to take similarly proactive steps. This is particularly important as self-regulation of the legal profession is under serious scrutiny and other commonwealth jurisdictions have lost the power to self-regulate for failing to demonstrate that they were carrying out their role appropriately. The Practice Advisor and Practice Review Programs are some of the ways the Law Society demonstrates that it is taking its role in protecting the public seriously, while assisting its membership in maintaining efficient and ultimately lucrative practices.

Should you have any questions about the Practice Advisor Program and the Practice Review Program, or wish to access assistance of same, you may contact the Chair of the Professional Standards Committee, Greg Walen, Q.C., Vice Chair Alma Wiebe, Q.C. or Law Society Complaints Counsel, Donna Sigmeth and Melanie Hodges Neufeld.

(See Ontario Practice Review Program article of June 2009 "A Helpful Kind of Interference" at www.CanadianLawyer.com.)

Library Review Update

by Ronald Kruzeniski, Q.C.

The Library Review Task Force has released its *Preliminary Report to the Benchers Evaluation of Resources and Services: Law Society of Saskatchewan Libraries*. The preliminary report has 13 recommendations covering library services, management of branch libraries and general operations. We need member comments on these recommendations. The

comments will be used as part of the strategic plan for the libraries and included in the Final Report to the Benchers which will be presented at September Convocation.

The report is located in the Members' Section at <http://www.lawsociety.sk.ca/newlook/Members/commentsreport.pdf>.

Please send comments and questions to Toby Willis-Camp, Director of Libraries, twilliscamp@lawsociety.sk.ca before **August 31, 2009**. The Library Review Task Force thanks all members for their participation in this library review process.

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.

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

EDITOR

Liz Lynchuk

Highlights of the Meeting of Benchers

held June 11th and 12th, 2009

Following a survey of the members, the Benchers considered a preliminary report on the delivery of library services. The report is on the website and all members are invited to review the report and provide feedback on the recommendations.

The Benchers reviewed lengthy accounting Rule changes. I refer you to an article in this edition by John Allen, CA.

The term "mail" has been defined in the Rules to now include delivery of documents by courier, facsimile and email.

Members are reminded that nominations for Queen's Counsel will be available on the website. The Law Society's Queen's Counsel Appointment Committee will include Richard Danyliuk, Q.C., Paul Korpan, Q.C., Karen Topolinski and James Plemel, Q.C.

Sterling McLean was suspended for 4 months and details of the charges are on the Law Society website. Mr. McLean has appealed and the suspension has been stayed.

Law Society Annual General Meeting

June 11, 2009, Regina

The Law Society's Annual General meeting took place on June 11th in Regina. A Resolution to elect a new lawyer Benchers was passed at the meeting. A copy of the Resolution has been included as a miscellaneous sheet in this issue of the Digest.

Senior Life Membership certificates were presented to Nicholas Kaufman, Q.C., William MacIsaac, Q.C. and Joseph Kanuka, Q.C. Their photo is captured below.



Senior Life Members

Left to right: Nicholas Kaufman, Q.C., William MacIsaac, Q.C. and Joseph Kanuka, Q.C.

Murray Sawatzky, Q.C., President of the Canadian Bar Association, presented the CBA Community Service award to David Gerecke, also depicted below.



Left to Right: David Gerecke, Balfour Moss, accepts CBA Community Service Award from Murray Sawatzky, Q.C.



Murray Sawatzky, Q.C., President of the Canadian Bar Association, brings greetings from the CBA

Trust Accounting/Financial Rule Changes

by John Allen, CA

At the June 2009 meeting of the Benchers, a number of revisions to financial requirements set out in Parts 13 - 16 of the Rules were approved, effective *September 1, 2009*. A number of these changes have previously been implemented through the year end review process. Changes were kept to a minimum, pending harmonization of accounting Rules with other provinces, as summarized below. The revised Rules will be posted to the Law Society website in August 2009 with major revisions.

1. Cash Receipts and Refunds

Rule 909(4)(d) Refund of cash received be made in cash only if the refund is \$1,000 or more. The requirement for larger refunds to be made in cash rather than by cheque is to prevent money laundering. Also, the member is required to obtain a receipt signed by the person receiving the cash.

Members are required to prepare a separate receipt and obtain the signature of the person from whom the cash is received only if the amount received is in excess of \$500.

2. Deposit of Trust Funds

Rules 910(1), 910(2)(a), 912(1), 912(4) and (5), 913(a) and (b), 942(1) and 942(5)

All trust monies received must be deposited directly and firstly to a mixed (pooled) trust account and trust disbursements must be made only from a mixed (pooled) trust account.

3. Receipt of Funds by Debit or Credit Card

Rule 910(3) sets out requirements for use of debit and credit cards for receiving trust or general monies. Revisions remove the requirement for charge slips to be signed by the payor or a faxed signature from the payor authorizing credit card charges to be on file.

Members are reminded that if the payor has not signed the credit card slip and the charge is reversed by the credit card company (which can happen up to a year or even longer after the transaction), the member is required to make up the resulting trust shortfall (Rule 971(1)).

4. Members' Personal Trust Transactions

Rule 910(5) provides guidelines to members who handle their own transactions through trust. Money must be handled in the normal course of a legal file and paid out expeditiously.

5. Cheque Images

Rule 911(1)(a) provides for receipt/retention of cheque images, however, receipt/retention of original cancelled cheques, if available, rather than images, is strongly encouraged for both trust and general accounts.

6. Recording Interest on Separate Interest Bearing Accounts (SIBA)

Rule 912(3) requires interest on SIBA accounts to be recorded within 30 days of being paid into or added to the account balance by the financial institution.

7. Reporting to Clients

Rule 941(3) requires members to report to clients in writing upon completion of a matter or upon reasonable request from the client.

8. Timely Payout of Trust Monies

Rule 942(4) requires trust monies to be paid out expeditiously upon conclusion of a matter.

9. Retention of Financial Records

Rule 961(2) requires certain financial records to be printed monthly with other information being maintained electronically, only if it can be printed upon demand.

Rule 961(2)(d) requires backup of electronic accounting system information at least monthly, ensuring the back up is safe and secure (frequency of backup is dependant upon volume).

10. Deadline for Reconciliation of Trust and General Accounts

Rules 963(3), 965(1) and (2), 970(4) and 1220(2)

Deadline for reconciling trust and general accounts extended to 30 days after the month end.

11. Member Responsible for Financial Operations

Rule 970(5) requires a member to review, sign and date bank reconciliations as reinforcement of a member's responsibility for accuracy and completeness of records.

12. Reporting Trust Shortages to the Law Society

Rule 971(2) increases the minimum amount of individual client trust overdraft which must be reported in writing to the Law Society to \$1,000.

13. Onsite Storage

Rule 981(1)(a) and (2)(a) reduces the requirement for onsite storage of financial records from 5 years to 2 years.

14. Termination of Practice

Rule 1050(1) requires firms to pay out all trust funds and close all trust accounts within 90 days of withdrawing from or winding up a practice.

Rule 1050(2) requires terminating law firms to make arrangements for storage and preservation of ongoing documents (including Wills) and to advise the Law Society of those arrangements.

15. Withdrawal of Practice Certificate

Rule 1208(2) provides for the withdrawal of a member's practice certificate if monthly reports requested by the Law Society are not received on a timely basis.

16. Removal of Ability to Hold Funds in Trust at Client's Request

Changes to Rule 1301(2) removes the ability of a member to hold monies in trust simply at a client's request.

In addition to the above, some minor "housekeeping" changes were made. A more extensive "summary" as well as revised Rules will be available on the Law Society website in August 2009. For a complete list of the changes, please contact John Allen.

New Director of Education at the Law Society



The Law Society of Saskatchewan is pleased to announce that Andrea Johnston has assumed the role of Director of Education, a new position that was created as a result of the Law Society's decision to establish an internal Education Department.

Andrea is a graduate of the College of Law at the University of Saskatchewan. She articled with Cawood Walker Demmans Baldwin in North Battleford and was called to the Bar in 2001. Following the completion of her articles, Andrea moved back to Saskatoon where she worked predominantly in the area of corporate commercial law. She comes to the Law Society from the University of Saskatchewan where she was the Contracts

Coordinator. Prior to her position with the University, Andrea practiced corporate commercial law at McDougall Gauley LLP in Saskatoon. Outside the practice of law, Andrea sits on the Board of Directors for Ringette Saskatchewan and is actively involved in the sport of ringette as a player, coach and ref.

With the implementation of mandatory continuing professional development in Saskatchewan, the goal of the Law Society is to encourage and expand educational opportunities to fit the needs of all lawyers. Andrea looks forward to taking on this challenging new role as the Director of Education.

Welcome to the 21st Century Announcement to all Members

by Timothy Huber, Counsel

Things are changing at the Law Society. This summer, the Law Society is implementing a new Membership Management database that will improve many of the interactions that the membership and the public have with the Law Society. The new database will also result in significant savings in administration time, which in turn will help to maintain annual membership fees at the lowest level possible. Gone are the days of the abacus.

Some notable changes for members include:

- Online profiles and unique passwords for each member;
- Online editing of member information (address, phone, place of work) that is updated to the Law Society office and the online Member Search feature in real time;
- Enhanced Online Member Search feature, including links to firm website and the option to include your email address;
- Online annual renewal and payment of annual fees (fees may be paid online by credit card or by cheque);
- More communication to members via email, meaning less wasted paper and postage;
- Greater accuracy and consistency.

In the month of August, each member will be assigned a user name (the member's Barrister number) and a unique password. After the first use, this password may be changed to a password of the member's choice. This password will allow members access to their personal profile page containing their personal and firm contact information through the Law Society website. Various details including home address, home phone, email, and place of work may be edited by the member to ensure that the information available to the Law Society and to the public is correct. The changes made by members in their profile area will be instantaneously reflected in the Law Society database and the Online Member Search.

In addition to maintaining member information, the personal profile page will also be the portal through which all members may complete their annual renewal and fee payment online. This online renewal process will take only minutes. Payment options will include online payment by credit card or an option to mail a cheque to pay for a single member or an entire firm. We expect that this feature will make the renewal process much more efficient for both members and Law Society Administration.

The new Membership Management database also includes an enhanced Online Member Search function for the Law Society web page. This function will be connected in real time to the member profile. The Online Member Search will include information for the public such as member's name, city, organization/firm name and work contact information. Members who wish to have their email included on the Online Member Search may select the "Publish Email" feature on their personal profile page. Firm websites may also be included in the Online Member Search for firms who provide their web address to the Law Society.

As the new system rolls out, more information will be made available to the membership on the features of the new database and how those features are used. For those members who are less comfortable with computers, both the Online Member Search and the Personal Profile Page come equipped with detailed Help buttons on how to use each feature, just in case. Welcome to the 21st Century!

If you have any questions in relation to the new database, please contact the Law Society at reception@lawsociety.sk.ca or (306) 569-8242.



100 LAWYER VOLUNTEERS AND GROWING!

Pro Bono Law Saskatchewan is proud to announce that we have reached the milestone of over 100 lawyers volunteering with PBLS programs! Thank you to the many lawyers who have generously contributed their time and effort to our ever-growing programs and services – much appreciated!

The PBLS office is also growing. A warm welcome to Jennifer Lee who has been hired as a legal assistant. In addition to general legal assistant duties, Jennifer's days are filled with talking to members of the public who are in need of legal services and directing them to available resources. Welcome Jennifer!

PBLS ANNUAL GENERAL MEETING

Pro Bono Law Saskatchewan's first Annual General Meeting was held on June 11, 2009 in Regina. Members of the Law Society of Saskatchewan are also members of PBLS and entitled to vote at the AGM. The meeting was fast-moving and resulted in the transition from an interim Board of Directors to a permanent Board that is representative of the community that PBLS serves, the partners we work with, and the legal profession more broadly.

Returning Directors

Victor Dietz, Q.C. (President)
Richard Danyliuk, Q.C. (Vice-President)
Alma Wiebe, Q.C.

New Directors

Michelle Ouellette, Q.C. (CBA Representative)
Allan Snell, Q.C. (Legal Aid Representative)
Kathy Depko (Community Representative)
Major Sandra Reid (Community Representative)

Welcome to the new Directors and thanks to those continuing on!

In addition, the Annual Report for PBLS was made available at the AGM. Highlights of the 2008 Report are as follows:

- 675 individuals received assistance through a free legal clinic in Saskatchewan
- 53 individuals received full representation through a Panel Program

- 4,017 individuals visited the PBLS website, generating 80,971 hits

- 400 plus individuals called the PBLS office seeking services and information

Anyone wishing to obtain a copy of the PBLS 2008 Annual Report can contact our office at 569-3098 or visit the PBLS website.

PRO BONO SERVICE AWARD

The Pro Bono Service Award is an award presented annually in recognition of the contribution of lawyers in Saskatchewan to supporting access to justice for persons of limited means. The award is presented to recognize outstanding *pro bono* service in any or of all of the following activities:

- delivering *pro bono* legal services;
- assisting with the establishment of *pro bono* programs;
- coordinating *pro bono* services;
- education and advocacy to promote a *pro bono* culture.



The recipient of the 2008 Pro Bono Service Award is Charmaine Panko. Charmaine practices at Balfour Moss LLP in Saskatoon primarily in the areas of civil litigation, administrative law, corporate and commercial law, family law, and wills and estates. She is a recognized collaborative lawyer and mediator and has contributed a significant number

of volunteer hours to the Child & Youth Pro Bono Panel. In early 2008, this program was introduced as a partnership between the Children's Advocate Office and PBLS. It is an interim initiative providing independent access to legal representation for children and youth involved in child welfare proceedings. As a volunteer lawyer, Charmaine has accepted 52 referrals for representation of children and youth and continues as an active Panel member. Charmaine has ably assisted these children and youth, navigating through uncharted legal territory in Saskatchewan with grace, humour and kindness, while also assisting other Panel volunteers by providing encouragement, support and mentoring.

In addition to Charmaine's *pro bono* service, Charmaine volunteers her time within the legal community with positions on the Public Legal Education Association of Saskatchewan Board, the Saskatchewan Branch of the Canadian Bar Association, the Collaborative Lawyers of Saskatchewan Board, and the ADR Institute of Saskatchewan. In addition to these contributions, Charmaine is active in her community and church and the mother of nine children!

In the words of one of Charmaine's nominators for this award, "Charmaine exemplifies the finest commitment of access to justice...Charmaine has the gift of assisting children identify their needs and wishes and then provides this information to the court. The quality of her engagement with the children is what is also very impressive. The youth are so comfortable with Charmaine in sharing their concerns that they often raise issues that aren't within the legal realm, and yet she still does her best to help them with those concerns as much as she is able ... It would be difficult to find anyone who has a greater enthusiasm for helping children and in fact, people of all ages, and who commits such long hours when involved in many other personal and professional responsibilities. One can only speculate when Charmaine sleeps."

Thank you Charmaine, for your *pro bono* commitment and congratulations on receiving the 2008 Pro Bono Service Award!

Bench Election

2009 is an election year for Benchers of the Law Society of Saskatchewan.

Members are encouraged to put their names forward or convince good candidates to stand for election. Female and Aboriginal lawyers are under-represented as Benchers. A Notice has been included as an insert with this issue of the Digest.

Law Grads Receive Scholarships

The 2009 E.M. Culliton Scholarship has been awarded to Leah Howie of Regina and Ashley Smith of Saskatoon, each receiving a \$7,500 scholarship.

Ms. Howie graduated from the College of Law, University of Saskatchewan, in 2008. Leah will commence graduate studies in criminal law in October 2009 and has been accepted at both Oxbow and Cambridge. Areas of special interest are the liability of government lawyers who give legal advice to justify or support illegal state action, how the state prosecutes and penalizes terrorist activities, and the analysis between Canada and other countries such as Australia, New Zealand, and the United States, regarding the interaction of Indigenous peoples within their criminal justice systems. Her goal is to have her paper published in a journal.

Ms. Smith graduated from the College of Law, University of Saskatchewan, in 2007. Ashley is currently enrolled in a graduate studies program at Osgoode Hall and anticipates completion in the fall of 2009. Ashley's thesis will discuss the impact and effectiveness of victim impact statements on the Canadian Criminal Justice System. Ashley's goal is to also have her paper published.

The E.M. Culliton Scholarship was established in 1981 in honour of the former Chief Justice of Saskatchewan. It is awarded to graduates of the College of Law at the University of Saskatchewan for the pursuit of graduate studies in criminal law.

Recipients are selected on the basis of exceptional academic record, research potential and exceptional service to the practice of law in Saskatchewan.

Queen's Counsel

The designation of Queen's Counsel is made by the Minister of Justice through a selection process that includes consultation with the Law Society of Saskatchewan, the Canadian Bar Association and the Courts.

The selection of the Law Society's nominees for the designation of Queen's Counsel will be based upon the following criteria:

As prerequisite qualifications:

1. Demonstrated superior legal ability;
2. Proof of good character and integrity;
3. Ten years admission with the Saskatchewan Bar;

As further qualifications, the following criteria, each of equal weight:

4. Contributions as a legal professional to the community;
5. Contributions to the community generally; and
6. Contributions to the legal profession.

The Law Society will also, in its recommendations, take into account considerations of gender, diversity and geography.

The deadline for nominations is **November 3rd, 2009**.

Nomination forms can be obtained from the Law Society website at www.lawsociety.sk.ca

Nominations open for the C. Willy Hodgson Award

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 2009 award which will be presented in 2010. Nomination forms and more information can be located on the website at www.lawsociety.sk.ca. The deadline for nominations is **November 27, 2009**.

In Memory

Judge Russel Rathgeber of Regina passed away June 20, 2009. He is survived by his wife Marlene and children Lane and Leslie. Judge Rathgeber was appointed a Judge of the Provincial Court of Melville on April 1, 1985.

Judge Edward Gosselin of Melfort passed away June 13, 2009. He is survived by his wife Jeannette and his children Marc, Hillary, Colin and Brendan. Judge Gosselin graduated from the University of Saskatchewan, College of Law, in 1973. He was the Director of Legal Aid in Melfort for five years and was called to the Bench in 1979 where he served as Judge of the Provincial Court in Melfort and surrounding area for 28 years.

William Somerville of Ontario passed away in June, 2009.

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, Kathryn Ford, Q.C., 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.

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