

BENCHERS' DIGEST

August 2011

Volume 24, Issue Number 3

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Practice Review Program

By: Heather Laing



The Professional Standards Committee is pleased to have the opportunity to highlight the importance and benefits of the Practice Review Program. This expanded Program was launched in 2009 and changed the focus from being complaints driven and reactive to being proactive and accessible. It extended the role of the Practice Advisor and services to members who meet any of the following criteria:

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 and senior lawyers who had previously worked in a large firm or corporate environment. "Sole practitioners" also includes members who practice in association where expenses are shared but there is no real firm management or consistency in office and accounting procedures.

The primary function of the Professional Standards Committee is to ensure that the standards of competency prescribed by the Benchers are upheld. The Practice Review Program is further designed to protect the public by identifying problems in a member's practice, ideally, before a complaint arises. The majority of complaints against members received by the Law Society relate to lawyer delay, failure to respond, lack of communication and quality of legal services provided. In short, the complaints are primarily competence based. In many of these cases, poor file and office management were found to be the underlying problem.

When a matter is referred to the Practice Advisor, an on-site, hands-on review of the member's office procedures, accounting system, file organization, file opening and closing practices, diary system, case advancement and general management of office, staff and clients is conducted. When Rod MacDonald, O.C. retired in 2010, the Law Society was pleased to welcome Victor Dietz, O.C., Jeffrey Scott

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Practice Review Program

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and Brent Gough, O.C. as Practice Advisors. The Practice Advisors provide practical and concrete advice for improvement and will assist the member in implementation of the recommendations.

Recently, a senior practitioner in a large centre went through the Practice Review Program on a complaints-based referral. While initially of the view that the complaint was not worthy of the attention that the Law Society was paying to it, the member soon recognized that *"in retrospect ... the shortcomings in my dealings with the complainant clients was entirely due to lack of acknowledgment by me in what was important to those clients."* After several months of successfully implementing the steps and procedures identified by the Practice Advisor, the member was no longer a cynic but was an advocate of the benefits of the program: *"In summary, I think that the greatest change to take place as a result of these events is one of attitude. Ours is a problem-solving, often highly adversarial business, and it is not likely that every client will think that they have been well-served. None-the-less, I have a resolve that I did not necessarily have before to try to give an even effort to every client and be able to show it to be so from a well maintained file record."*

The message which the Professional Standards Committee desires to send is that the Practice Review Program is available to all members and should be viewed as an opportunity to learn from experienced practitioners with knowledge and experience in law office management. For any members who do not meet the criteria noted on the previous page, the Practice Review Program is available, though a fee is payable by the member. Currently, there are 10 new sole practitioners who are taking advantage of the Practice Review Program offered by the Law Society at no charge. The feedback has been overwhelmingly positive.

Should you have any questions about the Practice Review Program or wish to access assistance and/or the services of a Practice Advisor, you may contact the Chair of the Professional Standards Committee, Heather Laing, Vice Chair Robert Heinrichs, or Law Society Complaints Counsel, Donna Sigmeth and Jody Martin.

Highlights of the Meeting of Benchers held June 23 and 24, 2011

For the first time in approximately 35 years, there are new law schools opening in Canada. Thompson Rivers University in Kamloops, BC will begin taking students in 2011 and Lakehead University in Thunder Bay, ON will begin taking students in 2012. The Law Society of Saskatchewan will recognize both Colleges as degree granting institutions for the purpose of admission of students-at-law, on condition that they comply with the Federation of Law Societies Common Law Degree requirements.

The Law Society repealed Rules 570 – 573 requiring lawyers to obtain Law Society approval before holding themselves out as Mediators. The Rules were inconsistent with other Law Society practices that do not require approval for types of specialization. In addition, it was difficult to define and enforce the minimum qualifications necessary for mediation. Finally, the *Code of Professional Conduct* deals adequately with many of the mediation Rules.

The Rules requiring each insured member to acquire loss prevention credits were formally repealed. The Benchers replaced this scheme with the current Continuing Professional Development requirements, which began January 1, 2009.

The Discipline Committee reported on several new policies, including forms for Pre-Hearing Conferences, victim statements and an Abeyance Policy that governs discipline proceedings when there are concurrent prosecutions, such as criminal charges.

Eileen Libby, O.C., William Roe, O.C., Michael Megaw, O.C. and Lorne Mysko were appointed to the 2011 Queen's Counsel Appointment Committee. In previous years, the nomination deadline was the first week of November. Please be advised that this year's nominations are due by **October 3rd** to allow the committee more time to review the applications. We would like to remind members that the applications must contain sufficient detailed

information for the committee to make a reasonable decision.

Beth Bilson, O.C. served as a Bencher of the Law Society for two terms: 1999 – 2002 and 2010 – 2011. We would like to thank her for her dedicated service. We welcome the new Dean at the College of Law, Dr. Sanjeev Anand, to Convocation.



Beth Bilson, O.C.

Law Society Annual General Meeting

June 23, 2011 – Regina

The Law Society's Annual General meeting took place on June 23rd in Regina. One hundred members and guests were in attendance.

Senior Life Membership certificates were presented to 8 members in attendance:

Allan Beke, John Beke, O.C., Robert Bertram, Barry Collins, O.C., Joseph Dierker, O.C., Robert Emigh, O.C., Ernest Gaudet, Gordon Neill, O.C. (Ronald Price-Jones, William Tufts and Edwin Tollefson, O.C. were unable to attend.)

Perry Erhardt, O.C., President of the CBA, presented the CBA Community Service Award to Melvin Gerspacher.



Paul Korpan, O.C. presents award to Joseph Dierker, O.C., Senior Life Member



Melvin Gerspacher, recipient of the CBA Community Service Award

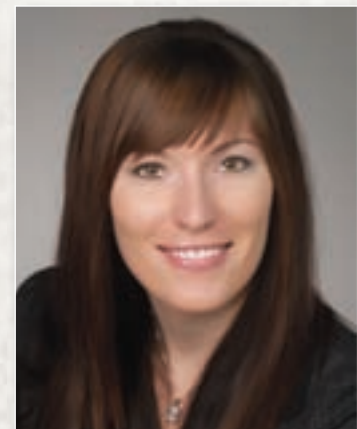
Stephanie Yakimowski Joins the Law Society

The Law Society of Saskatchewan is pleased to announce that Stephanie Yakimowski, CA has assumed the role of Senior Auditor. Stephanie will work in conjunction with John Allen, CA completing spot audits and investigations.

Stephanie received her Bachelor of Business Administration from the University of Regina in 2007. After receiving her degree, she articulated at a mid-sized accounting firm in Medicine Hat and received her designation as a Chartered Accountant in February of 2011.

During her time articling, Stephanie managed audits, completed a number of trust audits, and also completed personal and corporate tax returns for clients.

Stephanie joined the team at the Law Society on August 2, 2011. She is excited about her new position and is looking forward to the new experiences and opportunities that lay ahead.



Stephanie Yakimowski

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

Wrestling with Alligators

Two Suggestions for Dealing with Ethical Dilemmas

by: Michael Tochor, O.C., MacPherson Leslie & Tyerman LLP

One day, I was sitting in my office and my phone rang. It was a client who told me that he was going to shoot someone. He was upset, had a gun, and was going to shoot this person the next time he saw him.

What was I supposed to do?

Every lawyer, at one point or another, has faced an ethical dilemma. While the *Code of Professional Conduct* is designed to set out the principles we are to follow, often a reading of the *Code* and the Commentaries can raise more questions than answers. The *Code*, at first blush, seems to be a simple, straightforward set of rules. Yet, it sets out a vast array of obligations that lawyers have to a varied cast of characters: our clients, opposing lawyers, third parties, judges, and even the lawyers that we practice with. To complicate things further, sometimes we have professional obligations that may conflict with other obligations. See, for example, *Smith v. Jones*, [1999] S.C.J. No. 15.

And, to be sure, a lawyer's miss-step on an ethical issue can turn into a high stakes game. Just ask Paul Bernardo's former lawyer, Ken Murray. He was faced with a difficult issue for a notorious client: what to do with physical evidence (videotapes) that the police failed to locate. While in an ethical no-man's land, Mr. Murray made decisions that later propelled him in front of a superior court judge on a charge of attempting to obstruct justice. Although he was ultimately acquitted after an ordeal that lasted several years (see *R. v. Murray*, [2000] O.J. No. 2182), he left the practice of law before his trial.

We have all had sleepless nights worrying about whether we were doing the right thing. The part that scares me, though, is that there are likely more nights that I should have been worrying but I wasn't, because I was not alive to something I should have been aware of.

After some sleepless nights myself, I have come across two suggestions that have helped me immeasurably when wrestling with problems of this kind.

First, never make a decision on an ethical issue by yourself.

This is the single best piece of advice I have ever received, and I wish I could take credit for thinking of it.

When I got the phone call from the client threatening to shoot someone, the first thing I did was barge into the office of one of my law partners and recite the call. We started with the *Code of Professional Conduct* and then hashed out whether the communication of the threat to me was part of a privileged conversation. We discussed whether it was reasonable to believe that the threat would be carried out. We also hashed out whether there was an obligation to provide a warning to the targeted person and, if so, how to accomplish that.

A thorough series of discussions (not just one or two) with someone else provided me with new points of view to consider. Talking about this from different angles pointed me in directions that I would not have thought about myself. It allowed me to weigh things that hadn't crossed my mind. These discussions helped me figure out a way to appropriately balance my obligation of confidentiality to my client, along with the concern for public safety.

Whether you practice in a large firm, a small firm, or on your own, there are always senior colleagues who are willing to discuss difficult issues with you. The important lesson is that no difficult ethical issue should ever be addressed alone.

Second, consider contacting the Law Society for assistance.

Yes, I know this might sound unusual, but I suggest you consider calling the Law Society.

I recognize that there may be a natural reticence to open our kimonos to the governing body – after all, they are the ones that can discipline us. However, I have done this on a few occasions and have been impressed with the time and attention that has been given to my concerns. While it is true that the Law Society has the obligation to mete out discipline to members, another less recognized part of its mandate is to provide advice and support for members.

I have contacted the Law Society more than once when the police called me and requested information about a client, and I have also called them when I was considering whether I could withdraw from the services of a client before a trial. On each occasion, I received the benefit of their views.

Having the Law Society provide guidance on certain professional issues has a number of advantages. The Law Society has likely seen the problem before and may be able to offer you the benefit of their experience; there may be no need for you to reinvent the wheel. As well, going to the Law Society can promote a uniformity of response to certain issues (such as police requests for client information) from all lawyers in the province. If three lawyers are wrestling with the same problem that you are, it is better for all of us if the Law Society is aware of the issue and can provide ground rules for the future. Life would have been much easier for Ken Murray if the Law Society of Upper Canada had published their guidelines for handling physical evidence before he found the videotapes, instead of after.

Therefore, when an ethical issue is pounding at your door, consider calling the Law Society. They may well prevent another sleepless night.

New Insurance Counsel

The Law Society is pleased to have Tim Brown join the Society as Insurance Counsel for SLIA. He joins Stephen McLellan in serving the needs of lawyers around the province.

After graduating from Campion College at the University of Regina, Tim attended the College of Law at the University of Saskatchewan, completing his degree in 1991. That year, he articulated with MacPherson Leslie & Tyerman and was called to the Bar in July of 1992. He joined the Department of Public Prosecutions following his admission to the Bar and in 1993 joined the firm of Stewart, Johnson and Langaard. In 1996, he commenced his own practice, with an emphasis on litigation, primarily in the areas of Criminal Law and the *Canadian Charter of Rights and Freedoms*. He has worked closely with the Saskatchewan Legal Aid Commission and

was most recently a member of the staff of the Regina office.

Over the years, Tim has served as a Deputy Rentalsman and as a Hearing Officer with the Automobile Injury Appeal Commission. He is the past President of the South Saskatchewan Criminal Defence Lawyers Association and has been a guest speaker at continuing legal education seminars held by SKLESJ, the Law Society of Saskatchewan and at *en banc* meetings of the Saskatchewan Courts.

In addition to his work as a lawyer, Tim has enjoyed coaching football and basketball over the years and has been known to sneak away for the odd round of golf. He is also a visual artist whose paintings can be seen in various homes, offices and establishments around town. He is very excited to join the SLIA team.



Tim Brown

New Dean at the College of Law

Dr. Sanjeev Anand is the new Dean at the College of Law, effective July 1, 2011, for a five year term.

This appointment also means that he becomes a Bencher of the Law Society of Saskatchewan. The Law Society is governed by a board of 23 Benchers, including 4 Public Representatives appointed by the Lieutenant Governor in Council, as well as the Dean of the College of Law. We welcome Dr. Anand in his new role as Bencher.

Dr. Anand obtained a Juris Doctor from Osgoode Hall at York University, a Master of Laws from the University of Alberta, and a PhD degree in Law from Osgoode

Hall. He started out by working with the Legal Aid Society of Alberta and later the Department of Justice (Alberta). After teaching at Osgoode Hall, he joined the University of Saskatchewan in 1999 as an assistant professor at the Law College. In 2001, he became an assistant professor at the University of Alberta, Faculty of Law, eventually working his way to becoming a full professor in 2006.

He wrote over 30 articles for various journals and is co-author of the books *Principles of Criminal Law* and *Youth Criminal Justice Law*. His work has been referenced by many courts, including the Supreme Court of Canada.



Dr. Sanjeev Anand
(photo provided by the College of Law)



Pro Bono Law
Saskatchewan

Benchers' Digest Report

Kara-Dawn Jordan, Executive Director

www.pblsask.ca

PRO BONO LAW SASKATCHEWAN WELCOMES NICOLE SARAUER



Nicole joined PBLs as a full time Programs Manager/Staff Lawyer in July of 2011. Nicole graduated with Distinction from the University of Saskatchewan, College of Law, in 2009 and was called to the bar in 2010. Prior to joining PBLs, Nicole articulated and practiced with Kanuka Thuringer LLP in Regina where she received a variety of experiences in civil litigation, business finance, corporate, family and criminal law. She appeared for clients both at the Provincial Court and Queen's Bench level. Nicole is active on numerous Boards, including Lawyers Concerned for Lawyers, where she is currently the Vice-President, and the Regina Women's Community Centre, where she is also a volunteer for their 24-hour Sexual Assault Hotline. She also volunteers annually with the Regina Folk Festival. Nicole participated in numerous *pro bono* projects during law school and had taken on some *pro bono* work prior to joining PBLs. She also participated in the clinic program with CLASSIC while in her last year of law school, where she learned a love for advocacy work,

poverty law, human rights law and the importance of volunteering. We are excited to have Nicole join PBLs and are looking forward to the future!

NEW ADDITIONS TO PBLs's BOARD OF DIRECTORS

LINDSAY GATES

Lindsay is an associate at Kanuka Thuringer LLP in the Swift Current office and was active in assisting with the opening of the Swift Current Free Legal Clinic. She continues to volunteer her time at the clinic on a regular basis.

CHRIS LAFONTAINE

Chris is currently the Executive Director of the Aboriginal Courtworker Program and is passionate about issues surrounding access to justice through his work in the court system.

PRO BONO SPOTLIGHT

www.pblsask.ca/spotlight.shtml



Randi Arnot, Featured Lawyer

Randi has practiced law in Prince Albert since 1984 and is currently a senior partner with the firm of Arnot Heffernan Blenner-

Hassett in that city. Randi is an experienced litigator, mediator and collaborative lawyer. Her practice primarily consists of dispute resolution, family law, employment law and assisting those with Residential School Claims. She is also a mediator with SGI and an arbitrator for S.G.E.U. member disputes regarding their disability plan. Randi is an active member in her community and has served a number of organizations including S.O.C.O., National Council of Women of Canada, Provincial Counsel of Women Saskatchewan, Prince Albert Council of Women, Girl Guides of Canada, KAIROS, Prince Albert Co-Operative Health Centre, University of Regina Senate and numerous others. Despite her many obligations, Randi also dedicates a significant amount of time and energy to providing *pro bono* legal services through PBLs programs. Randi is a volunteer with the Prince Albert Free Legal Clinic providing summary legal advice to low income clients on a regular basis. She also volunteers as a mentor to other lawyers providing *pro bono* legal services in the province and is a member of our General Panel Program, our Solicitor Program, and our Child & Youth Panel Program. Particularly noteworthy is Randi's work with the Child & Youth Panel Program, a partnership between the Children's Advocate Office and PBLs. The program provides independent access and legal representation to children and youth in Saskatchewan going through child welfare proceedings. Randi is currently the sole lawyer performing this important and ground breaking work in Northern Saskatchewan and one of a handful across the province. As one of her fellow volunteers states, Randi is "a role model to new and 'seasoned' lawyers across the province." Thank you Randi for your remarkable contributions!

Law Grad Receives Scholarship

REGINA – One law school graduate is receiving a scholarship for continuing studies in criminal law.

The 2011 E.M. Culliton Scholarship has been awarded to Maria Lynn Freeland of Prince Albert in the amount of \$10,000.

Maria Lynn Freeland graduated from the College of Law, University of Saskatchewan, in 1986. She is currently working on her thesis at the University of Saskatchewan, with a Convocation date of April 2012.

Maria Lynn is writing her thesis in the area of criminal law. She will review the recent Supreme Court of Canada case of *R v JA* dealing with erotic asphyxiation and consider the issue of whether it is possible to legally consent in advance to sexual activity while asleep, intoxicated or unconscious.

The thesis will compare the legal and policy considerations of an individual's right to consent to sexual activities of their choice, to the legal and policy considerations involved in violence in sport. It will analyze the social value of boxing matches, UFC events and hockey games, to the social value of consenting adults engaging in sexual activities of their choice.

In addition to writing at the University of Saskatchewan, Maria Lynn will be researching at the University of British Columbia (Vancouver, BC), Bond University (Gold Coast, Australia) and Leeds University (Leeds, England).

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 Nominations

New Deadline – October 3, 2011

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 Law Society's selection criteria for the designation of Queen's Counsel, as well as the Nomination Form, can be obtained from our website at www.lawsociety.sk.ca under *Call for volunteers, nominations, applications, etc.*

The deadline for nominations is October 3, 2011.

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 2011 award which will be presented in 2012. Nomination forms and more information can be located on the website at www.lawsociety.sk.ca. The deadline for nominations is **November 25, 2011**.

In Memory

Former Saskatchewan Premier **Allan Blakeney** passed away on April 16, 2011.

He was born in Bridgewater, NS, earned a gold medal in law from Dalhousie University, then won a Rhodes Scholarship to study at Oxford in the late 1940's. He married Molly Schwartz in Halifax and then moved to Regina to work as a legal advisor with the Government Finance Office (now called Crown Investments Corp.).

His wife passed away in 1957, leaving him with two small children. He married Anne Gorham two years later. By then, he had left public service and was practising law.

Blakeney was interested in the policies of Tommy Douglas. He came to Saskatchewan with the intent to work for a period of time, but made it his permanent home, serving as civil servant, MLA, Minister, Opposition Leader and Premier. He was most proud of his contribution to implementing medicare. He believed that people deserved the right to quality care in order to live their best life and contribute to society.

He leaves behind his wife Anne and four children: Hugh, Barbara, Margaret and David.

** Excerpts rendered from obituaries printed in local newspapers.*

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, O.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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BENCHERS' DIGEST

Published by:

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