

Law Society of Saskatchewan



Bencher Election 2015

**By Thomas Schonhoffer, Q.C.,
Executive Director**

Another 3 years has passed and the next Bencher Election is scheduled for November 2015. This article has two purposes. The first is to encourage lawyers to consider running as Benchers in this election. The second is to reacquaint you with the process for online elections.

Lawyers are privileged to have self-government and must understand that it depends on the work and commitment of many volunteers. I encourage you to give it some thought.

Now that I have you thinking about it, what do you need to know?

The best source of general information is on the Law Society website, in The Legal Profession Act, 1990 and in the Law Society Rules.

The first thing you need to know is whether you qualify. Section 17 of the Act wisely disqualifies any member that is suspended from practice. The other qualification is that you must either work or reside in the constituency in which you seek election. The constituencies are described in Schedule 2 of the Law Society Rules. Other than those minimal qualifications, any member can apply.

Rule 19 requires that candidates be nominated by two members in good standing who reside within the constituency. Nomination forms can be obtained from the Law Society website.

Finally, it is a 3 year commitment, with the option to run for a second term.

This is no soft sell. Being a Bencher requires a lot of time and hard work. To start with, there are usually a minimum of 10 meeting days per year for Convocation. Extra days can be added, as the volume of work requires. There is also committee work, hearings, investigations and other assorted work. I'm guessing that the average Bencher spends at minimum 15 – 20 working days per year. This is a big commitment.

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Bencher Election 2015

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On the flipside, I have been working with Benchers for more than 20 years and can attest that the Bencher experience is overwhelmingly positive. It's very interesting work. At the stage in their careers when most lawyers are becoming bored and cynical, being a Bencher provides a renewal of professional interest and the re-invigoration of a legal career. I can prove it, too. The fact is that after the first 3 years, almost all Benchers run for re-election. If you are thinking of running but have questions, I encourage you to speak with our office or a current or past Bencher.

As mentioned, the second purpose of this article is to explain the online election format.

On approximately September 15th, voter's lists will be posted online. Members will receive an email asking them to check to ensure they are in the correct constituency.

Anyone wishing to be nominated can find a nomination form on the Law Society's website in the election section. Nominations are due October 4, 2015. Nominees are also encouraged to provide a biography, along with a current business-size photo for the website.

By October 15th, all members will receive an email providing them with a link to the Votenet website where they will find biographies for eligible candidates in their electoral district, as well as a ballot. Members will have until midnight November 15th to complete their ballots.

On November 15th, the ballots will be tallied automatically and the winners will be announced.

It is essential to maintain an up-to-date email address on the Law Society database. **Please ensure your email address is current by checking your member profile on the Law Society website.**

Insurance Coverage in Your Retirement Years

By Brad Hunter, Q.C., SLIA Couse

Once you retire you continue to be responsible for the legal services you provided prior to your retirement. When you retire you will remain covered by the \$1 Million mandatory coverage provided by SLIA and you will not have to pay the annual levy for that coverage. You remain covered for any legal services you provided prior to your retirement.

However, excess coverage is treated differently. For your excess coverage the insurance limits available to you are those in place at the time the claim is made against you not at the time you performed the work on which the claim is based. If you want to have excess coverage during your

retirement years you have to maintain an excess insurance policy. If you were in a firm that purchased excess insurance through SLIA/CLIA then you retain that excess insurance coverage so long as your former firm maintains that excess policy. In addition, you can purchase excess coverage on an individual basis provided you had that excess coverage on the date you retired. Accordingly, if on the date you retire you have excess coverage (either as a member of a firm or as a sole practitioner) you can purchase excess coverage for your retirement years. The rates are the standard rates set out below and the limits of liability are in addition to the mandatory \$1 Million coverage.

Limit of Liability	Premium
\$1,000,000 per occurrence /and \$1,000,000 per aggregate	\$343/year
\$2,000,000 per occurrence /and \$1,000,000 per aggregate	\$504/year
\$3,000,000 per occurrence /and \$1,000,000 per aggregate	\$589/year
\$4,000,000 per occurrence /and \$1,000,000 per aggregate	\$624/year
\$9,000,000 per occurrence /and \$1,000,000 per aggregate	\$873/year

Highlights of the Meeting of Benchers

June 19, 2015

The June Bencher meeting is always busy because of the Law Society's relationships with other organizations. In addition to the regular committee and Bencher meetings, there is the Canadian Bar Association Annual General Meeting, the Pro Bono Law Saskatchewan Annual General Meeting and the Queen's Bench Bar Judicial Council meeting.

As mentioned in previous reports, the Law Society has been heavily involved in a governance review over the past year. The regulatory environment for the legal profession is becoming more complex and there is a growing burden on Benchers. The governance review has been very helpful in realigning Bencher priorities. In April, the Benchers reviewed a revised strategic plan and mission statement. Those documents were then used to develop a work plan for the next one to three years. The exercise was designed to identify both ongoing and future Law Society projects and make a determination regarding how strongly they are aligned to the strategic plan.

The Benchers also considered other issues such as the cost of each project in order to begin the process of assigning priorities. As in every organization, resources are limited and it is important to ensure that they are used wisely to achieve the Law Society's priorities.

One of the most important policy issues facing the legal profession is access to legal services. The Law Society has advanced access through a number of projects such as Pro Bono Law Saskatchewan and *Code* changes facilitating limited scope retainers.

The legal profession also has to ask if the unmet needs for legal services can be met through other providers such as a paralegal industry. The Benchers hypothetically considered the implications of significant deregulation of legal services and the legislative implications as part of this continuing process.

The Special Fund exists to compensate the public for losses in lawyer's trust accounts. There are a number of special fund claims arising from the wind-up of Robert Borden's practice. The Benchers considered the process of evaluating special fund claims and assigned responsibility to a committee.

The Law Society also contributes to the selection of Queen's Counsel. This year, the Law Society Queen's Counsel Selection Committee consists of Robert Heinrichs, Q.C., Thomas Healey, Dr. Greg Stevens and Colin Clackson, Q.C.

Outside Director's Liability Insurance Policy

By Thomas Schonhoffer, Q.C., Executive Director

Lawyers are sought after to serve as directors of corporations and often perform a very important community service. In addition, numerous lawyers serve on boards on behalf of the Law Society.

The Law Society has therefore purchased a very basic form of Outside Director's Liability Insurance through the Canadian Bar Insurance Association (CBIA), effective July 1, 2015, to provide a base level of coverage for all practicing members.

Any practicing members of the Law Society subject to a claim in their capacity as a director of an outside board, may consider the ability of this policy to respond for indemnity and defense.

The policy can be found on the Law Society website in the members' section. A note of caution: every policy of insurance has limits, exceptions and conditions. Members should review the policy carefully to determine if it provides sufficient coverage.



Volunteer Profile —Kevin Miller



Kevin Miller started volunteering with CLASSIC in Saskatoon during his first year of Law School. Working at CLASSIC's Legal Advice Clinic helped instill in him the importance of the legal community being involved in, and facilitating, access to justice. He went on in his second year of Law School to become co-manager of CLASSIC's Legal Advice Clinic.

Kevin Miller is employed by Miller Thomson LLP in Regina, and is presently most engaged in organizing and participating in the Small Claims Clinic, a partnership between Miller Thomson and Pro Bono Law Saskatchewan. The clinic allows people who may not be able to afford a lawyer access to legal advice with respect to their small claims matter. Kevin has additionally worked on a number of files through PBLs, a reality made possible by Miller Thomson's commitment to pro-bono work through the PBLs Pro Bono Pledge.

Kevin additionally sits as a board member at Carmichael Outreach, a charity which seeks to assist residents of Regina who are struggling with addictions, poverty, health issues, or overwhelming life crisis'. He also enjoyed himself immensely volunteering at Carmichael Outreach's "Kids Camp" held at Lumsden Beach Camp in 2014. Kevin got to flex some of his skills which are not particularly useful in his day to day work, but which were finely honed over years of being a camp counsellor and camp director (ie. nature walks, leading songs, and insisting on bedtime).

When asked what advice he would have for young lawyers interested in pro bono work, he said "Get involved early and often. Talk to the partners in your firm, and see if they've signed the Pro Bono Pledge. PBLs is very helpful, and can find you something to do which will fit with your skills and schedule. There is no excuse not to get involved."

Thank you for all of your volunteer efforts, Kevin!

In Memory



Thomas Ernest Tekahentake Dore., passed away on June 7, 2015

Philip Edward West, Q.C., passed away on June 25, 2015

Lorne Mysko, passed away on August 12, 2015

Law Society Annual General Meeting



The 76th Annual General Meeting of the Law Society of Saskatchewan was held on June 18th in Regina. In addition to reviewing the Annual Report and Financial Statements for 2014, highlights of the meeting included greeting from Minister Gordon Wyant, Q.C., presentation of the CBA Community Service Award to Brenda Walper-Bossence, Q.C., special presentation to Michael Milani, Q.C., in recognition of his service to the Canadian Lawyers Insurance Association (CLIA), and a presentation on Access to Justice by Deputy Minister Kevin Fenwick, Q.C.

We were pleased by the turn out and hope to see more of our members attend next year in Saskatoon.

Presentation by Law Society President, Brenda Hildebrandt, Q.C., to Michael Milani, Q.C.



The Law Society is pleased to offer the following upcoming Continuing Professional Development activities:

- **[Sidebar Social Series: Withdrawals and Recusals](#) (CPD-123)
Tuesday, September 15, 2015 - Regina
Tuesday, September 22, 2015 - Saskatoon**
- **Presenters:**
 - Justice N. W. Caldwell, *Court of Appeal for Saskatchewan, Saskatoon*
 - Justice M. T. Megaw, *Court of Queen's Bench for Saskatchewan, Regina*
 - Judge H. M. Harradence, *Provincial Court of Saskatchewan, Prince Albert (speaking in Saskatoon)*
 - Judge M. T. Beaton, *Provincial Court of Saskatchewan, Regina (speaking in Regina)*
 - Michael Tochor, Q.C., *MacPherson Leslie & Tyerman LLP, Regina*
- **[Televised Seminar: Family Law: Nailing Down the Deal](#) (CPD-124)
Friday, October 2, 2015 – Broadcast live to 11 centres throughout the province!
*Qualifies for 5.5 CPD Hours, 0.5 of which qualifies as Ethics.***
- **[Gain the Edge!® Negotiation Strategies for Lawyers](#) (CPD-125)
Tuesday, December 1, 2015 - Saskatoon
Wednesday, December 2, 2015 - Regina
Presenter: Marty Latz, [Latz Negotiation Institute](#)
*Qualifies for 6.0 CPD Hours, 1.0 of which qualifies as Ethics.***

Qualifies for 1.5 CPD Hours, which also qualify as Ethics.

**** For students and lawyers with less than 10 years' experience in the practice of law****

For the most up-to-date information about upcoming CPD activities and for further information about the CPD Policy, refer to "Continuing Professional Development" on the Law Society website (www.lawsociety.sk.ca).

Notices

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 2015 award which will be presented in 2016. Nomination forms and more information are located on the Law Society [website](#).

The deadline for nominations is **November 20, 2015**.

QUEEN'S COUNSEL NOMINATIONS

Deadline: October 1, 2015

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. No person shall be appointed who has not been entitled during ten years to practise in the superior courts of the United Kingdom of Great Britain and Ireland or of any province of Canada or of the Northwest Territories or for a portion of such period in one and for the remaining portion of such period in another or others of the said courts;

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 October 1, 2015

Judicial Appointments



May 28, 2015

The Honourable Jeffery D. Kalmakoff has been appointed a judge of the Court of Queen's Bench for Saskatchewan in Regina. Justice Kalmakoff was appointed to the Provincial Court of Saskatchewan in 2009. Prior to his appointment, he'd worked as a Crown prosecutor for almost 15 years. He received his Bachelor of Laws from the University of Saskatchewan in 1993 and was admitted to the Bar in 1994. He replaces Justice Dennis Ball, who elected supernumerary status.

June 19, 2015

The Honourable Daryl E. Labach has been appointed a judge of the Court of Queen's Bench for Saskatchewan in Saskatoon, while the Honourable Gary A.T. Meschishnick has been appointed to the Court in Regina. Justice Labach, previously a judge of the Provincial Court, will fill the vacancy in the Family Law Division left by Madam Justice Ysanne Wilkinson, who elected supernumerary status. Justice Meschishnick will fill the vacancy left by Mr. Justice Fred Kovach, who also elected supernumerary status.

July 24, 2015

The Honourable Vanessa M. Enweani has been appointed a judge of the Provincial Court of Saskatchewan in Saskatoon. Judge Enweani started her law career with MacPherson Leslie and Tyerman in Saskatoon after graduating from the University of Saskatchewan with a law degree in 1993. She focused on civil litigation, and became partner in 2009. Judge Enweani is active in the community and has served as Vice-Chair and Chair of the Saskatoon Royal University Hospital Foundation's Board of Directors. She replaces Judge Daryl Labach, who was recently appointed to the Court of Queen's Bench for Saskatchewan.

New Resources for Members

By Melanie Hodges Neufeld, Director of Legal Resources

The Law Society Library is pleased to report that we have expanded the resources available to our members and the public. In January 2014, we first reported that work had begun on a project to provide complete coverage of reported Saskatchewan decisions on CanLII. Early this summer the project was completed. With the support of the Law Foundation, approximately 16,000 cases were added, expanding our coverage back to 1907. In total, CanLII now has nearly 36,000 Saskatchewan decisions.

We have also expanded the online resources available to our active members via their desktop. Several WestLawNext Canada resources have been added, including:

WestlawNext Canada LawSource

LawSource contains comprehensive coverage of Canadian case law, federal and provincial legislation, Canadian law reviews and journals, KeyCiteCanada case citatory, the Canadian Encyclopedic Digest (C.E.D.) and the Canadian Abridgment.

Canadian Encyclopedic Digest (C.E.D.)

The C.E.D. is a great place to begin your legal research. It provides you with a clear overview of any legal topic and gives you context to cases and legislation relevant to your issue. Over 225 subjects

are listed alphabetically, with sub-topics to pinpoint the area of law you may be interested in.

The Canadian Abridgment

A comprehensive collection of over a million digests of Canadian case law organized by legal issue according to a single taxonomy (The Canadian Abridgment Key Classification System). This collection is exclusive to Carswell, and covers virtually every reported or unreported case received from the courts since 1986, with the exception of Quebec civil law cases

CriminalSource (formerly Criminal Spectrum)

WestlawNext Canada CriminalSource contains a large collection of criminal case law, annotations, commentary, and other tools.

FamilySource

WestlawNext Canada FamilySource contains a large collection of family case law, legislation, and commentary.

LabourSource

Westlaw Canada LabourSource contains a large collection of court, arbitration and labour board decisions, commentary and collective bargaining material.

To access these resources, please visit the Members' Section of the Law Society website.

Senior Life Memberships

The Senior Life Membership is an honour reserved for long-standing members of the Law Society who have a substantial connection to the legal profession in Saskatchewan. At a special luncheon hosted by the Benchers during Convocation on June 19th, certificates were awarded to W. Thomas Molloy, Q.C., and Gary Semenchuck, Q.C. Other recipients included:

- Hans Guenther Dirauf
- Joseph Charles Duperreault, Q.C.
- Robert Alexander Falconer
- Mayer Schulman
- Carl Arnold Wagner, Q.C.
- Philip Edward West, Q.C.



Brenda Hildebrandt, Q.C., presenting Senior Life membership to Gary Semenchuck, Q.C



Tom Molloy, Q.C., and Gary Semenchuck, Q.C., at Senior Life Membership luncheon.

Professional Conduct Rulings

Previous Professional Conduct rulings rendered by the Law Society of Saskatchewan Ethics Committee are [available online](#). The Committee makes rulings which apply the Code of Conduct and the Rules to specific fact situations involving lawyers and are published anonymously as guidance for the profession. The Committee reviews requests for rulings by the members as well as complaints brought forward by the public that do not appear to raise conduct issues but rather "grey area" ethical issues that require discussion.

Date: April 17, 2015
Cite as: 2015 SKLSPC 4
Code Section(s): 4.01(3); 4.01(7); 4.01(8)
Code Headings: Relationship to the Administration of Justice
Classification(s): Duty as a Prosecutor and Agreement on Guilty Plea
Practice Area(s): Criminal Law

Facts:

Lawyer X represented Client A in a criminal matter stemming from several narcotics charges. There was also a co-accused, represented by other counsel during the course of the proceedings. Following a bail review hearing for Client A and the co-accused, Client A was released from custody; the co-accused was not. Lawyer X requested and received Client A's disclosure and reviewed the same with his client.

The Crown sent an identical, jointly addressed, "early resolution letter", to each of Lawyer X and the co-accused's counsel. The Crown did not, in this letter, explicitly state that the offer being extended to each accused was contingent on both accused accepting the Crown's offer; i.e. both accused needed to plead guilty for the offer to stand. When Client A accepted the offer extended by the Crown,

Lawyer X was advised that the offer to his client was contingent on the co-accused accepting the offer as well.

Ruling:

The Ethics Committee considered whether Crown Counsel has an ethical duty to honour an offer of resolution put forward by the Crown, where the offer is extended to co-accused, and only one of the co-accused accepts the terms of the Crown's offer.

The Committee noted that in this particular case, the same offer of resolution was presented to each co-accused. The Committee also noted that it is accepted practice for offers extended by the Crown early in court proceedings, as was the case in this matter, to be withdrawn or modified if Crown Counsel deems it necessary.

The Committee determined that although the letter did not explicitly state the offer being extended to Client A and the co-accused was contingent on both accepting the offer, the letter did not deviate from the standard form of correspondence used by the Crown in such circumstances such that the contingent nature of the offer would not be reasonably assumed to be the case. The Crown did not make an offer that could not be withdrawn as the Crown reserved the right to alter its position in the offer of resolution letter.

Date: April 17, 2015
Cite as: 2015 SKLSPC 3
Code Section(s): 2.02(1); 2.03(1); 3.01(2); 3.02(1); 6.02(1); 6.02(10)
Code Headings: Relationship to Clients; Making Legal Services Available; Responsibility to Lawyers and Others

Classification(s): Quality of Service; Confidentiality; Marketing; Courtesy; Inadvertent Communications
Practice Area(s): Firm Administration

Professional Conduct Rulings

Continued...

Facts:

Firm A had ceased to exist for approximately one year, but Lawyer X (former Partner of Firm A) had learned that his email address associated with Firm A was still in operation. Of additional concern was the fact that no response message was being sent from the email address to indicate to anyone sending a message that the email or firm was no longer valid/in existence. Indeed, no response at all was sent back to a person sending an email to this address. Lawyer X had since opened a new firm, and believed that at least one of his clients who had followed him to the new firm had already been prejudiced as a result of inadvertently and unknowingly sending a message to the old email address.

When Firm A ceased operation, an agreement granted administrative control over the email addresses to Lawyer Y. The Agreement contained the following statement: "Lawyer Y will provide email forwarding to an email address of Lawyer X's choice [for approximately 6 months], after which time, Lawyer Y's email address will be closed." Similar issues also existed with regard to the email address of another former associate of Firm A.

Lawyer Y's position was that he was not obligated to completely cancel the email addresses and that he simply would not use them.

Ruling:

The Committee was of the understanding that "to be closed" in the agreement between Lawyer X and Lawyer Y would mean that, at the very least; senders should receive an automatic response notifying them that the email address is no longer associated with Lawyer X and that he does not have access to any messages sent to that email

address. In this specific circumstance, no benefit was to be gained from these email addresses continuing to exist, so the Committee determined they should be de-activated/cancelled and shut down such that Lawyer Y no longer had access to any emails sent to Lawyer X's former address.

This would also result in an automatic response being sent from the server to the sender notifying them that the email address is not valid or does not exist. With regard to former associates, the level of "closed" and automatic response may depend on the agreement(s) that were in place regarding client ownership when the associates left the firm.

On a general basis, when a lawyer leaves a firm, the email specifically associated with that lawyer must be closed within a reasonable period of time after his or her departure. What is meant by "closed" will be determined by the circumstances of the situation. For example, where an associate leaves an established firm, it is likely that any clients contacting that email address will be remaining as a client of the firm. In that instance, the client should receive an automatic response indicating that the email address is no longer associated with that lawyer and providing an alternate contact in the firm. As another example, where a firm dissolves or ceases to exist, or in any situation where it is not likely that the party administering the email addresses will be retaining control over the departed lawyer's client files, the email should be cancelled such that any messages sent to it cannot be accessed by that administrator. In that case, the client or sender would simply receive an automatic notification that the email address no longer exists.

There are, of course, a number of factors that might come into play in determining what should occur in any given situation. Members are encouraged to contact the Law Society for guidance if it is unclear as to what should occur in any given situation.

Date:	April 17, 2015
Cite as:	2015 SKLSPC 1
Code Section(s):	4.01(2)
Code Headings:	The Lawyer as Advocate
Classification(s):	Advocacy
Practice Area(s):	Family Law

Facts:

Lawyer X was retained to assist Client A with an application to expunge arrears in child support. The day before the matter went to Chambers, Lawyer X met with Client A. Client A, during the course of this meeting, disclosed that they had recently obtained employment at a significantly increased hourly rate pay increase than the employment and

Professional Conduct Rulings

Continued...

income information already filed, by way of affidavit, with the Court.

The Chambers hearing proceeded as scheduled on the following day. Lawyer X did not advise the Court of Client A's change of employment status, nor did he advise opposing counsel of the same. During the course of the Chambers hearing, neither the Court nor opposing counsel asked Lawyer X any questions that necessitated the discussion of Client A's change of employment status.

Immediately following his appearance in Chambers, being uncomfortable knowing that relevant information had not been put to the Court, Lawyer X sought the Law Society's advice and immediately thereafter notified the Court that there may be additional evidence material to the application that should have been disclosed.

Lawyer X subsequently contacted Client A and prepared a supplementary affidavit for execution and filing. Prior to this supplemental affidavit being executed, Client A notified Lawyer X that they had since lost the new employment and Lawyer X acted diligently to notify opposing counsel of the change in circumstances and to convince Client A to provide opposing counsel with a record of employment.

Ruling:

The information not disclosed by Lawyer X to the Court and opposing counsel in the first instance was very relevant to the matter before the Court.

The Committee was concerned with Lawyer X's comments in relation to the fact that he chose not to disclose the information in court "because he was not directly asked about it", as Lawyer X was aware the Court would be relying on facts which were not accurate. Lawyer X was in breach of the Code when he failed to bring to the Court's attention facts relevant to the matter before it. However, given that Lawyer X, recognising his error, immediately took steps to obtain the advice of the Law Society and then followed such advice to rectify the breach in a very timely fashion, further disciplinary action was not necessary.

The membership is reminded of its duty to be honest and forthcoming to the Courts and tribunals before which they appear. It is no defence that the Court did not directly request or address that particular information during the court process. Members can be guided by the previous Ethics Committee ruling, 2010 SKLSPC 7, on what steps to take if they find themselves in a similar situation, such steps including the seeking of an adjournment in order to rectify affidavit evidence before it is placed before the court.

Date:	April 17, 2015
Cite as:	2015 SKLSPC 2
Code Section(s):	2.02(1); 2.06(1)
Code Headings:	Quality of Service; Reasonable Fees and Disbursements
Classification(s):	Quality of Service; Fees and Disbursements
Practice Area(s):	Family Law

Facts:

Lawyer X represented Client A in a family law matter. Lawyer X was retained in the fall of 2013, with a retainer agreement being signed within the first month. Four months later, Client A authorized the transfer of the client file to Lawyer X's new firm

and a second retainer agreement was signed. Over the next four months, Lawyer X performed a number of legal services for Client A. Eventually, Client A hired a new lawyer, and asked Lawyer X to consent to have her accounts Assessed by the Court. Lawyer X did not consent, so Client A filed an Application for leave to have the accounts Assessed. The Judge ordered that three invoices sent by Lawyer X to Client A be referred to the Registrar for Assessment. The Registrar's Assessment resulted in a significant reduction of Lawyer X's account, such that the Registrar's decision was brought to the attention of the Law Society.

Professional Conduct Rulings

Continued...

Ruling:

The Ethics Committee considered whether Lawyer X provided Client A with services of the quality expected of a reasonable practitioner and whether Lawyer X's fees were excessive to the point where the Law Society should review Lawyer X's practices. While the Ethics Committee will

consider Assessment decisions containing particularly scathing criticism(s) regarding the Lawyers' conduct, it appears that, in this case, the Assessment process served its proper purpose in addressing Client A's concerns. The Committee notes that neither the Judge nor the Registrar, in the Application for Assessment or the Assessment decisions, raised issues of conduct or competence that were not adequately addressed by the Court. As such, the Ethics Committee deferred to the Court's decision and determined that no further sanction was necessary.

Date: May 20, 2015
Cite as: 2015 SKLSPC 5
Code Sections: 6.02(6)
Code Headings: Responsibility to Lawyers and Others
Classification(s): Communications
Practice Area(s): Family Law

Facts:

Lawyer X represented Client A, and Lawyer Y represented Client B (former spouse of Client A) in a family law matter in which the Divorce was finalized in 2009. In the fall of 2010, a Consent Order was issued wherein parenting schedules, child support, and division of property were determined. In 2011, Lawyer X filed an Application to vary child support, which was dismissed by the Court, though a Voices of the Children Report was ordered prepared for early 2012. Lawyer Y continued to represent Client B in relation to this application. In spring of 2012, the Voices of Children Report was completed and provided to Client A and Client B.

In the summer of 2012, Lawyer X sent a letter containing a new proposal to vary the parenting and support arrangement directly to Client B. Client B was represented by counsel at the time. Lawyer X said that when Client B was sent the summer 2012 letter, Lawyer X was not certain that Client B was still represented by counsel. This is why he contacted Client B directly.

Ruling:

The Ethics Committee found the Member was in breach of the provisions set out in section 6.02(6) of the Code of Professional Conduct by sending correspondence directly to the Complainant. The Committee concluded that although the court proceedings arising from the Application to Vary had been concluded, the family matter itself was an ongoing concern. Lawyer X did not attempt to contact Lawyer Y prior to contacting Client B. Had Lawyer X done so, this would have obviated the complaint and prevented the breach of 6.02(6) of the Code.

The Committee recommends that in similar circumstances, members should make reasonable effort to contact the last solicitor on record, by phone, letter, or electronically, before sending correspondence directly to an opposing party.

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 melanie@lawsociety.sk.ca.

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

EDITOR

Melanie Hodges Neufeld

EQUITY OFFICE

The Equity Office at the Law Society of Saskatchewan is committed to both eliminating discrimination and harassment and promoting equity in the legal profession. The services of the Equity Office are available to articling students, lawyers and their support staff for advice, information or assistance.

If you have a question or concern about **discrimination or harassment in your workplace**, or if you would like to **improve equity and diversity in your workplace**, please contact the Equity Office.

Toll free @ **1-866-444-4885** or equity@lawsociety.sk.ca

All information is confidential.

A call to the Equity Office is not a complaint to the Law Society. Except for information about the misappropriation of funds, the Equity Office reports only anonymous statistics to the Law Society.

This office is not a lawyer referral service and cannot provide legal advice. For more information, please visit: <http://www.lawsociety.sk.ca/for-lawyers-and-students/equity-office>.

LAWYERS CONCERNED FOR LAWYERS

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