

Law Society of Saskatchewan



A Strategy to Meet the Challenges

By Craig Zawada, Q.C.

The image of lawyers as resistant to change has become a stereotype. It is obviously a little unfair because a system that depends on precedent cannot be changing with every whim. There are also abundant examples of how the creativity of lawyers has changed the profession and even society. We would not have lasted for centuries without constant adaptation, after all.

That creativity is being tested these days while the pace of change throughout the world accelerates. The results and stresses are obvious – alternative business structures, challenges in access to justice and continuing disruption by the internet are just some of the challenges demanding change in almost everything we do. We cannot expect to survive and flourish as lawyers simply because we have a long history. The Benchers have spent increasing time on how to proactively manage those transformations rather than merely react.

This has been a long-term project and has intensified in the past year. It resulted in the adoption of new strategy principles for the Law Society at April Convocation. As chair of the Governance Committee and a relatively new Bencher, I have been impressed with the urgency and effectiveness that the Benchers devoted to a massive topic over a relatively short time-frame. None of these issues are easy. Every legal regulator is facing similar questions and searching for answers.

Although finding solutions will be difficult, it of course does not mean we should avoid the issues. Quite the reverse; there is enormous opportunity for Saskatchewan lawyers to be leaders in developing solutions as well as collaborate with others.

There will be a large impact on our members. It also creates even more questions and issues so the ultimate results are months or even years ahead. There will need to be much communication and consultation with our members as the

Inside This Issue

<i>A Strategy to Meet the Challenges</i>	1
Highlights of the Meeting of Benchers February 13	3
Highlights of the Meeting of Benchers April 13 – 16	4
Queen's Counsel Ceremony	5
<i>Did You Know...</i>	5
Law Society of Saskatchewan Rule Amendments	6
<i>In Memory</i>	6
PBLS Volunteer Profile	7
Upcoming CPD Activities	7
Code of Professional Conduct Amendments	8
<i>Multi-Material Recycling Program</i>	9
Equity Office	10
Lawyers Concerned for Lawyers	10

A Strategy to Meet the Challenges

Continued...

plans are developed. I appreciate the opportunity to spend some time here setting that stage. With help from experts the Law Society has applied best governance practices to develop “strategy”. This includes our Vision (what we want to be/achieve), Mission (why we exist), Values (the core beliefs governing how we conduct affairs) and strategic objectives (the priority items to concentrate on).

All of these are big, and there is not enough room here to fully discuss their background. In any event, a dialogue is needed so there is understanding of all the elements that must be included. For example, while our members are an important stakeholder, there are others – the public at large, government and the justice system are just a few. Any strategy has to accommodate all of these and still maintain fundamental principles such as public protection and confidence in the legal system.

In terms of what we want to be, the following Vision was adopted:

The Law Society of Saskatchewan is a leader in fostering public confidence through effective and innovative regulation of legal services.

A Mission states the reason why we exist:

Acting in the public interest, the Law Society of Saskatchewan:

- (i) protects the public by regulating competence and integrity in legal services;*
- (ii) promotes access to legal services;*
- (iii) ensures the independence of the legal profession; and*
- (iv) advances the administration of justice and the rule of law.*

The final piece of a strategy is to determine not only goals that fit with these pieces but, most importantly, to prioritize them. This particular piece is still being fleshed out. It will need to be adjusted and adapt to changing circumstances, but the Benchers believe that the following three items will provide the most value to members and other stakeholders while we all grapple with the challenges ahead:

These are all done with a set of core beliefs and principles that form the Law Society’s Values:

Integrity – The Law Society acts honestly and ethically.

Accountability – The Law Society is responsible for its actions and ensures transparent communication and process.

Fairness – The Law Society treats all people fairly, respectfully and consistently through impartial application of policies, procedures and practices.

Independence – The Law Society is an independent and autonomous regulator.

Inclusivity – The Law Society supports inclusion, equity and diversity.

Access – The Law Society promotes access to appropriate legal services.

1. Improving confidence in the LSS among all stakeholders

This will require us to improve our performance in carrying out core legislative duties by strengthening the complaint resolution and tribunal processes. It may require additional staff and training, increased communication and collaboration with stakeholders and developing new dispute resolution strategies.

A Strategy to Meet the Challenges

Continued...

2. Improve capacity, competence and knowledge of the membership

The Law Society will increase and expand its proactive programming to enhance the capacity, competence and knowledge of its membership. We will increase engagement with and expand our role as a resource to support the membership. This is vitally important – too often the Law Society is seen as “the enemy” simply because of its disciplinary role. We need to foster a more complete view where we are recognized as a resource for the benefit of members. There is a fine difference between compliance and enforcement but it is an important distinction.

3. Improve access to legal services

Access to legal services, or the lack thereof, is a struggle taking place throughout the world. It covers everything from diversity to the cost of legal services. We will help improve access to legal services throughout Saskatchewan by exploring

ways to remove barriers to access, redefine the scope of practice for lawyers and diversify the legal service delivery models that are authorized in this province.

There will undoubtedly continue to be vigorous debate among Benchers around all of these, particularly when it comes to specific measures that can be implemented. That is intentional – we will need to gather the best ideas to handle the enormous issues facing us in the years ahead. We want to face them proactively instead of reactively, and our members deserve full communication throughout.

Much more detail on strategy will follow in the coming weeks and months but we will be seeking as much input from members as possible. Feel free to speak with any Bencher to share your thoughts – we are always available to answer any questions about the process or results and ready to benefit from the wisdom of our members.

Highlights of the Meeting of Benchers

February 13, 2015

The Law Society relies on many members who volunteer their time for public interest programs. At Convocation, Eileen Libby, Q.C., and Merlis Belsher were appointed to the Law Foundation for a second term.

The Law Society honours those who have made a significant contribution to their communities and have been members for 50 years. This year’s recipients include:

- William Molloy, Q.C.
- Robert Falconer
- Gary Semenchuck, Q.C.
- Carl Wagner, Q.C.
- Philip West, Q.C
- Mayer Schulman
- Joseph Duperreault, Q.C.
- Hans Dirauf

Regulation of the legal profession is becoming more complex. It is essential for the Law Society to periodically review what it does and how it does it. In terms of what it does, the Benchers engaged in a strategic planning session in February. Benchers looked at how we currently do business and whether it aligns with the legislative mandate and the evolving nature of legal services. Law Society governance has been under review for approximately the last year. It has resulted in the development of a revised Governance Policy Manual and approval of completely revised committee terms of reference in February.

Amendments to the Code of Professional Conduct and the Law Society Rules were also approved and are outlined in separate articles.

Highlights of the Meeting of Benchers

April 16 – 17, 2015

The Benchers of the Law Society have made governance a priority over the last year. It involves defining goals for the future and creating an efficient process for reaching those goals. The work product from the February strategic planning session was refined by the Governance Committee, with recommendations for [a mission statement, a vision and values](#) for the Law Society. These recommendations were adopted at Convocation and can be viewed on the Law Society website. Amendments to the [Open Convocation Policy](#) regarding *in camera* meetings was also approved and can be viewed on our website.

The insurance levy for the term beginning July 1, 2015, was approved at \$1,560 plus GST. This amount is unchanged from last year. It is to be noted that the levy is below the \$2,387/member calculated by the actuary because insurance rates are subsidized by a surplus in Saskatchewan Lawyers' Insurance Association Inc.

The Benchers approved the audited financial statements for the year ended December 31, 2014. Your Law Society fees have been stable over the last five years in spite of increased demand for Law Society work and inflationary pressure. Through efficient management the Society ran a significant surplus in 2014. The audited financial statements will be available at the Annual General Meeting and in our Annual Report which will be posted to the website soon.

The President and Vice President of the Law Society make a big commitment to the profession that we estimate is in the range of 700 – 800 hours/year. Such a commitment would be difficult for some practitioners, so the Law Society has paid an honorarium for a number of years, which was set at \$40,000 for the President and \$15,000 for the Vice President in 2013. The honorariums are reviewed every two years and an increase corresponding to the consumer price index was approved.

Darrel Pink, CEO of the Nova Scotia Barrister's Society, visited Convocation and spoke about their project to transform regulation of the legal profession. Nova Scotia studied other models of regulation around the

world and concluded that a compliance-based form of entity regulation has the potential to both reduce the amount of regulation that law firms face and improve the quality of service to the public. The Benchers will watch the Nova Scotia experiment with great interest.

Access to legal services is always on the agenda and the Law Society has undertaken a review of its own regulation to determine where it enhances or inhibits access to legal services. One of the most important issues is who delivers legal services and whether providers other than lawyers can do so. The Benchers authorized the Access to Legal Services Committee to study the issue of other providers and make recommendations to Convocation.

As always, this is only a summary of the highlights. The complete Bencher Minutes are available on the Law Society website.

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

Queen's Counsel Ceremony

February 4, 2015



(Photo provided by the Department of Justice)

Front row from left to right: James S. Kerby, Colin D. Clackson, David M. Stack, Linda A. Christensen, Diana K. Lee, Barry D. Bridges

Back row from left to right: Mary M. Donlevy-Konkin, Gail D. Wartman, Robert R. Heinrichs, Doug G. Kosloski, Deron A. Kuski, Conrad D. Hadubiak, Brent D. Barilla, Patricia Quaroni

Missing: W. Dean Sinclair

DID YOU KNOW...

By Valerie Payne
Complaints Counsel

...that with recent amendments made to The Rules of the Law Society of Saskatchewan, which came into effect on July 1, 2014, it has become **mandatory** for lawyers who practice with firms in Saskatchewan to maintain a succession plan for the member's law practice? Rule 1801 requires a Succession Plan to contemplate the unique arrangements that will be necessary in the event of each of **temporary disability, long-term disability and death**.

Among other things, a Succession Plan *shall* include (where applicable) adequate arrangements for open and closed files, wills, important original client documents, and trust accounts. A [draft template Succession Agreement](#) is available on the Law Society's website. It is also recommended that Powers of Attorney be entered into which are sufficient to allow your successor to access your general and/or trust accounts, if necessary. Check with your bank to determine what requirements they would have to allow such an arrangement.

Law Society of Saskatchewan Rule Amendments

The governance review required amendments to the Law Society of Saskatchewan Rules (the “Rules”) to remove inconsistencies and redundancies in committee descriptions. Rules 125 – 132 have been deleted in their entirety, as most of their content is already contained elsewhere in the Rules or in *The Legal Profession Act, 1990*.

Further amendments were made to add clarity to Rules 111 and 113, which govern the membership and quorum requirements for the committees. Rule 135 will remain in its original location and has been amended to clearly state that the Discipline Executive Committee is a standing sub-committee of the Discipline Committee, established by the Benchers to carry out the policy functions of that committee.

A number of rules have been relocated within the Rules as follows:

- Rule 127(4), respecting unauthorized practice has been relocated as new Rule 1702 under Part 20, “Commencement of Proceedings”
- Rule 129(2), which states that *The Code of Professional Conduct* (the “Code”) published by the Society and as amended from time to time constitutes a Rule of the Society, has been relocated to Part 1, “Definitions” at the outset of the Rules
- Rules 136, 137 and 138 have been relocated to Part 8, “Professional Standards and Discipline”, as Rules 389.1, 398.2 and 403, respectively

A number of other minor amendments were made to modernize the Rules in accordance with changes to Law Society practice, the National Mobility Agreement and Saskatchewan Lawyers’ Insurance Association Inc. (See Rules 303, 323, 400.1(5), 600, 601, and 605.)

The Benchers have also approved amendments to the Rules respecting members subject to bankruptcy proceedings under Part 13, “Accounting.” Minor amendments were made to make it clear that Rules 1010 – 1013 apply to all types of bankruptcy proceedings, including consumer proposals. The most significant amendments were made to Rule 1012 to allow for increased discretion with respect to the practice conditions that can be imposed.

The Benchers approved minor amendments to Part 7A of the Rules regarding National Mobility and Interjurisdictional Practice.

The definition of “Permit” in Rule 192 was amended to provide additional clarity.

Rule 295(2)(g) was amended to fix an incorrect Rule reference.

Disciplinary categories and the economic nexus category are already set out in Subrules 195(2)(d) – (g), therefore, Rule 196(1), *Temporary Mobility Requiring Interjurisdictional Practice Permit*, was amended to reference Subrules 195(2)(d) – (g).

In order to apply for admission as a transfer lawyer pursuant to Rule 206, the applicant must be a practising member in good standing in a National Mobility Agreement (NMA) jurisdiction. The applicant’s home jurisdiction would have already verified that the lawyer holds the required degree or NCA Certificate, therefore, it is repetitive and redundant for the Law Society of Saskatchewan to request such proof. Removal of this requirement from Rule 206(1)(b) was approved by the Benchers.

Amendments to the Rules, [Release 2015-3](#), are located on the Law Society website.

In Memory



G.A. Morley AseLINE passed away on March 14, 2015

Stewart Douglas Orr passed away on May 11, 20



Volunteer Profile — Andrew Hitchcock

Andrew grew up in Regina and attended undergraduate studies at both the University of Saskatchewan and the University of Regina. He obtained a Bachelor of Arts in Political Science from the University of Regina, and convocated from the University of Saskatchewan College of Law in 2002. He served as a Law Clerk to the Saskatchewan Court of Queen's Bench for his articling period, and thereafter went into private practice, with a focus on criminal law and labour law. After several years in private practice, he joined the Regina City Area office of Legal Aid, where he has been for more than five years. In addition to his work as a Public Defender, he has been a volunteer at the Regina Free Legal Clinic since its inception, where he sees clients in the area of criminal law. Andrew often goes above and beyond his volunteer duties and provides full service representation pro bono to many low income individuals. Thank you for all of your volunteer efforts, Andrew!



Law Society of Saskatchewan Continuing Professional Development

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

- **[Webinar: Immigration Law: Citizenship Law Update](#)**
Presenter: Chris Veeman, *Veeman Law*
Tuesday, June 2, 2015
- **[Legal Research Bootcamp](#)**
Wednesday, June 10, 2015 (PM) – Saskatoon
Thursday, June 11, 2015 (PM) – Regina
**Registration limited to 48 participants at each centre.*
- **[The Saskatchewan Employment Act: Turning 1 is So Much Fun!](#)**
Tuesday, June 23, 2015 (PM) – Regina
Wednesday, June 24, 2015 (PM) – Saskatoon

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).

Code of Professional Conduct Amendments

At February 2015 Convocation, the Benchers approved various amendments to the *Code of Professional Conduct*, which were adopted by the Federation of Law Societies of Canada in October of 2014. Further amendments to the commentaries in the Conflicts section 2.04(41) were required, so the Law Society delayed posting notice of the February amendments until the latest amendments were also approved. A summary of the amendments approved at both February and April Convocation is contained herein.

Amendments:

Most of the amendments pertain to conflicts of interest, including amendments to:

- the definitions section;
- the main conflicts of interest rules flowing from the decision of the Supreme Court of Canada in *Canadian National Railway Co. v McKercher LLP*, 2013 SCC 39. (See Rules 2.04(1) and 2.04(2) and related Commentary; Rule 2.04(4); Rules 2.04(10) and 2.04(11) and related Commentary); and
- the rules on doing business with clients. (See Rules 2.04(27) – (39) and related Commentary.)

There are also significant amendments to the conflicts rules respecting transfers between law firms. Generally speaking, the guiding principles have been simplified and the focus was narrowed to actual possession of confidential information rather than imputed knowledge. See Definitions; Rules 2.03(8) and related Commentary (new), and 2.04(17) – (23) and related Commentary.

Finally, references to “interprovincial law firms” have been removed and replaced with “interjurisdictional law firms.” See Definitions; and Rule 2.06(8) and related Commentary.

New Rules:

The most significant amendment to the conflicts chapter of the Code is the addition of rules related to short-term limited summary legal services. Short-term summary legal services are defined as advice or representation of a limited nature provided to a client

under the auspices of a pro-bono or not-for-profit legal services provider, a definition broad enough to include a wide range of not-for-profit providers, including Legal Aid Duty Counsel. The goal of these new rules is to facilitate the provision of short-term summary legal services by reducing the scope of the conflicts check required in this particular context. See **new rules 2.04(2A) to 2.04(2D), and related Commentary**, as well as Commentary for Rule 2.01(2).

The Benchers also approved **new rules 2.02(2.1) and 2.02(2.2)** on language rights, which require lawyers to advise clients of their right to proceed in the official language of their choice, when appropriate.

Another new rule prohibits the concealment, destruction or alteration of incriminating physical evidence and was added to the “Lawyer as Advocate” chapter of the Code as **Rule 4.01(2A)**. The commentary following the rule provides detailed guidance on the scope and application of the rule. Most of the commentary following Rule 2.05(6) has been relocated to follow this new rule. See also amendments to Rule 4.01(2).

Amendments to Commentary Following Rule 2.04(41):

It was determined that the commentary in Rule 2.04(41), consisting of four paragraphs on various topics, was out of place. To correct this section, the first and second paragraphs of the commentary from 2.04(41) were relocated to 2.04(5) and the third paragraph was moved to 2.04(39).

A new definition of “lawyer” had been added to Rule 2.04(27), which rendered the fourth paragraph of the commentary unnecessary. As well, keeping the fourth paragraph could cause confusion, as the description of what constitutes an associate of the lawyer is not precisely the same in each passage. Therefore, the fourth paragraph of section 2.04(41) commentary was deleted.

For a full review of the [Code](#) changes, please see our website.

Multi-Material Recycling Program: Implications for Saskatchewan Law Firms

By Barbra Bailey
Policy Counsel

As of January 1, 2015, businesses and organizations that distribute household goods and paper in Saskatchewan are required to share the costs of collecting and recycling these materials with municipalities. The Environmental Protection Branch of the Ministry of Environment has advised that some Saskatchewan law firms may be affected by this new program.

The Multi-Material Recycling Program (the “Program”) **focuses on the packaging and paper that is delivered from a business to a customer’s home and includes the business’ logo.** It does not apply to paper and packaging that is already being recycled by a business. The program is operated by Multi-Material Stewardship Western (MMSW), a non-profit organization that operates similar programs in British Columbia, Manitoba and Ontario.

Certain Saskatchewan businesses or organizations that supply or distribute packaging or printed paper to Saskatchewan households are required to register with MMSW, report the tonnage of packaging and paper produced or distributed and pay fees based on that tonnage.

There are three tiers to the Program, categorized by the size of the business:

1. Small businesses (those with annual revenue of less than \$2 million that produce less than 1 tonne of *applicable* paper per year, or consist of a single office) are exempt from the requirements of the Program;
2. Medium businesses (those with annual revenue of \$2 – 5 million) were required to register and pay a flat annual fee of \$500 as of January 1, 2015, but are not required to begin reporting tonnage of applicable paper until January 1, 2017. After that time, they will be required to pay fees in accordance with their tonnage;
3. Large businesses (those with annual revenue of over \$5 million) were required to begin reporting tonnage of applicable paper and paying fees in accordance with their tonnage as of January 1, 2015.

Any firm that meets the criteria for **medium or large businesses** and **delivers paper to clients that includes a law firm logo**, even if it’s correspondence or an invoice that the client is expecting to receive, must register with MMSW and can do so by visiting <http://www.mmsk.ca/>.

If you have further questions, please contact Stephanie Walton at the Environmental Protection Branch of the Ministry of Environment at 306-787-2916 or stephanie.walton@gov.sk.ca. You can also visit the following websites for more information:

MMRP Fact Sheet: <http://www.environment.gov.sk.ca/adx/asp/adxGetMedia.aspx?DocID=56a67e2a-0b1c-4fde-b25f-2ecef15c5903>

FAQs: <http://www.environment.gov.sk.ca/adx/asp/adxGetMedia.aspx?DocID=3612a8e6-4447-4274-a5d9-cc5b259c235c>

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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