

BENCHERS'

DIGEST

August 2012

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Bencher Election 2012

Thomas Schonhoffer, Q.C.



Another 3 years has passed and the next Bencher election is scheduled for November 2012. This article has two purposes. The first is to encourage lawyers to consider running as Benchers in this election. The second is to explain the process for online elections.

We are privileged to have a self-regulated profession. Anyone following legal news knows that self-regulation has been lost in many historically similar commonwealth legal systems, such as England, Wales, Scotland, Ireland and Australia. Self-government requires the work of many volunteers.

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 am guessing that the average Bencher spends a minimum of approximately 15 – 20 working days per year, plus additional time outside working hours. This is a big commitment.

On the flipside, I have been working with Benchers for almost 20 years and can attest that the Bencher experience is overwhelmingly positive. At the stage in their careers when most lawyers are becoming bored and cynical, being a Bencher provides a renewal of professional interest and a re-invigoration of a legal career. If you are thinking of running, I encourage you to speak with a current or past Bencher.

Candidates may run in all constituencies, but to date, there will be vacancies in the following constituencies:

- Regina
- South East (Estevan/Weyburn)
- East Central (Yorkton/Melville)
- Central (Moose Jaw)
- Saskatoon
- Prince Albert

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Bencher Election 2012

Continued...

Nominations close October 4, 2012.

As mentioned, the second purpose of this article is to explain the new online election format. In the past, the Rules required posting voting lists in court houses and mailing ballots to each member. This is a cumbersome and inefficient process by today's standards. This year's election will be conducted online for the first time and members can find all the information they require either on the Law Society Website or on the election facilitator's website at Votenet.com.

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

Anyone wishing to be nominated can find a nomination form online on the Law Society's website in the election section.

Nominations are due October 4, 2012. 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 16th, 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 website.**

Highlights of the Meeting of Benchers

June 21st and 22nd, 2012

The Law Society depends heavily on volunteers and makes appointments to numerous boards and committees. In June, Jerome Tholl was appointed as a Law Society representative to the Senate of the University of Regina; Shannon Metivier was appointed as an alternate board member to the Canadian Lawyers Insurance Association; Gary Zabos, O.C., Lorraine St. Cyr, and Dr. Greg Stevens were appointed to the Queen's Counsel Selection Committee.

The cover of this issue is dedicated to the upcoming Bencher election. Substantial Rule amendments were required to allow this election process.

Another feature in this issue is an article on the amended Advertising Rules. Once again, substantial Rule amendments were required.

The Benchers considered three claims against the Special Fund advanced by clients of Bonnie Grace Marwood. Two claims for a total amount of \$2,500 were paid.

Dorothy Olson was suspended for three months. Further information can be found on the Law Society website.

Presidents' Reception Friday, October 5, 2012

by: Gregory Walen, O.C.

The College of Law's Centennial Gala weekend takes place on October 5 to 7, 2012.

The past Presidents of the Law Society of Saskatchewan are hosting a reception on Friday, October 5th at the Top of the Inn, Sheraton Cavalier Hotel between 5:30 and 8:30 p.m. for all those attending the gala festivities that weekend. Kick off the celebration by reconnecting with former classmates, colleagues and friends! Dress is business casual and there is no need to RSVP.

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

Law Society Annual General Meeting

June 21, 2012 Saskatoon

The Law Society's Annual General meeting took place on June 21st in Saskatoon. Just over one hundred members and guests were in attendance.

Senior Life Membership certificates were presented to 5 members in attendance: Hartmut Dahlem, Q.C., Kristian Eggum, Q.C., David MacLean, Peter Sorokan, Q.C. and Silas Halyk, Q.C. William Brown was unable to attend.



left to right: Hartmut Dahlem, Q.C. accepts Senior Life Certificate from Gregory Walen, Q.C.

Kearney Healy was the recipient of the 2011 Willy Hodgson Award. Heather Hodgson, daughter of Willy Hodgson, presented the award to Kearney Healy, depicted in the photo below.



Heather Hodgson and Kearney Healy, recipient of the 2011 Willy Hodgson Award.

The 2012 CBA Community Service Award was presented to Neil Robertson, Q.C. A photo of the presentation is depicted below.



left to right: Gail Wartman, CBA Membership Chair, Neil Robertson, Q.C. (recipient of CBA Community Service Award) and David Thera, Q.C., President of the CBA



left to right: John Hunter, Q.C., President of the Federation of Law Societies of Canada and Gregory Walen, Q.C., President of the Law Society of Saskatchewan

Advertising Rules and the new Code of Professional Conduct

by: Barbra Bailey, Policy Counsel

In the past, advertisement of legal services was guided by Part 19 of the Law Society of Saskatchewan Rules (the “Rules”). As of July 1, 2012, advertising is regulated by the new *Code of Professional Conduct* (the “Code”). Chapter 3 (pages 74-79), entitled “Marketing of Legal Services,” is dedicated to the topic. Chapter 3 was drafted with reference to the most current jurisprudence and a report by the Competition Bureau in 2007 recommending that self-regulated professions should be restricting advertising as little as possible, as it is in the public interest to allow consumers to have access to as much information as possible in order to make an informed decision as to which services they choose. As the new *Code* addresses the topic of advertising in much more detail than did the old *Code*, the bulk of the advertising Rules in Part 19 are no longer necessary. **Members should, however, take note that Rule 1602.1, along with a corresponding definition, remains in Part 19 of the Rules.**

Rule 1602.1 governs the manner in which prospective clients in a weakened state may be contacted for the purpose of soliciting the prospective client’s legal work. Rule 1602.1 will eventually be repealed and the *Code* will be amended to include portions of the Rule as needed, but for the time being, Rule 1602.1, along with the definition of “weakened state” in Rule 1600, will remain in the Rules. **Members soliciting legal services of prospective clients in a weakened state should pay particular attention to this Rule.** Primary examples include, but are not limited to, the following: **residential school claims under the Independent Assessment Process (IAP); class action law suits; and personal injury law suits.**

While the advertising Rules contained in the *Code* are generally very similar to those previously found in Part 19 of the Rules, there are some substantial differences. Broadly speaking, Chapter

3 aims to balance the protection of the public with the independence of the profession by being minimally intrusive on members’ freedom of expression. Accordingly, the restrictions set out in the *Code* are more general than the Rules previously set out in Part 19, with the overarching restrictions being that advertising must not:

- be false or misleading;
- amount to coercion, duress or harassment;
- take advantage of a vulnerable person; or
- otherwise bring the profession or the administration of justice into disrepute.

Other important changes to note are listed below, according to the corresponding headings in the new *Code*:

3.01 Making Legal Services Available

- There are no longer any rules specific to the penalties for violating rules respecting advertisement of legal services. Violations will be prosecuted under the *Code* as any breach of the *Code* would be.
- There are no longer any rules with respect to lawyer/firm letterheads.
- There are no longer any restrictions on former judges or former members of administrative tribunals which prohibit them from alluding to former judicial status or former status as a member of the tribunal. **The only mention of former judges returning to practice regards a three-year prohibition on the former judge’s appearance before the courts.**

3.02 Marketing

- There are no longer any requirements to keep promotional material for a specific amount of time (formerly required by Rule 1618), although this remains good practice.

- Members are no longer prohibited from comparing their fees to those of other lawyers in their advertisements (formerly required by Rule 1611(c)). There has also been a slight change in the standard for the description of fees in advertisements. The Rules formerly required a statement of fees to “sufficiently describe the fees and services” while the *Code* requires the advertised fee to be “reasonably precise as to the services offered for each fee quoted.”

3.03 Advertising Nature of Practice

- Members are no longer required to provide an annual declaration/undertaking to the Law Society declaring that the member has complied with the requirements formerly set out in Rules 1612 and 1614 in order to advertise a preferred or restricted area of practice. Instead, members should take guidance from section 3.03(1) of the *Code*, which allows advertisements to describe a lawyer’s proficiency or experience in an area of law, as long as the representations are accurate, demonstrably true and not misleading.
- Lawyers must not advertise as specialists in a specified field, as there is no such certification process in Saskatchewan; lawyers are therefore prohibited from using titles such as “specialist,” “expert,” “leader,” or any similar designation.

Members are encouraged to contact the Law Society with any questions regarding these and any other changes to the *Code*. It is always better to seek approval in advance if there is any uncertainty. We would be happy to answer any questions you may have.

Future of Law Conference

by: Dwight Newman, College of Law, Conference Committee Chair

The College of Law is hosting a premier conference event in early November that Saskatchewan practitioners cannot afford to miss. The Future of Law Conference will bridge academic and practitioner interests in speakers and topics and provide both directly useful information and a chance to reflect on the future of the profession.

The keynote speaker is Richard Susskind (the well-known author of *The End of Lawyers? Rethinking the Nature of Legal Services*). There will also be a plenary address by Ian Binnie and plenary presentations by Patrick Glenn (award-winning professor from McGill) and Paul Paton (from McGeorge and a regular commentator in Canadian legal media on profession issues).

The conference begins the evening of Thursday November 1, with an opening address by Judge Abdul Koroma (formerly of the International

Court of Justice in the Hague) followed by an opening reception, and then runs the full day on Friday November 2, concluding with a banquet that evening.

Panelists also include a range of other academics who work on matters of interest to the bar, with just a few of them ranging from Lorne Sossin to Adam Dodek and Michael Trebilcock to Michael Geist. Other speakers will include practitioners, legal regulators, and others with something to say on issues like law firm mergers, shifts to alternative forms of legal practice structure, emerging challenges to self-regulation, and impacts of technology on legal practice. This is a conference truly not to miss.

The conference has been approved for 8 Saskatchewan CPD hours, 3 of which qualify as Ethics hours and comes shortly before the end of the first three-year rotation, so the hours are useful now and into coming

years. Approval of CPD hours for other jurisdictions is also pending.

Sponsors include the College of Law, Law Foundation of Saskatchewan, CBA Saskatchewan and University of Saskatchewan Conference Fund; further sponsorship opportunities are available (contact Dwight Newman). The conference committee has involved Dwight Newman from the College of Law as chair, Doug Surtees as another faculty representative, Greg Walen, Q.C. from the Law Society, Curtis Onishenko from CBA Saskatchewan (with prior representation by Perry Erhardt, Q.C.), and Samer Awadh and Chelsea Wilson from the student body.

More details about the conference, registration, hotel blocks and so on are all at www.futureoflawconference.com. Early-bird rates are available. Space is limited. The committee invites you to register today.

Changes at the Saskatoon Library



Peta Bates has retired as librarian after 33 years of service and will travel for a year.

The Law Society is thankful for her dedicated commitment to the library

and the innovative projects that she and the library staff have provided to the legal profession. Saskatchewan is too small to attract much attention from publishers, so it was necessary to develop local resources. The library published the annotated Queen's Bench Rules of Court and created a database of Saskatchewan case digests linked to fulltext decisions. They also assisted CanLII in 2000 by providing the initial collection of Saskatchewan case law. Library staff track Saskatchewan legislation and regulations and compile information from a variety of sources to create databases which provide a historical record for the legal profession. They also collaborate with the Court of Appeal librarian to publish the Court of Appeal sentencing digest database. Law journals, articles, newsletters and seminar materials are indexed and a link to the fulltext is provided, where possible. This is a unique resource for Saskatchewan lawyers.

Back in 1997-98, Peta designed the Law Society's website and launched it at the Annual Meeting in June 1998. The Law Society of Saskatchewan had a web presence before many other Canadian Law Societies.

Peta has served on the Executive of the Canadian Association of Law Libraries, served on the planning committee for two national conferences and was chair of the conference planning committee for the 2008 CALL conference. Peta's proudest achievement was receiving the Denis Marshall Memorial Award for Excellence in Law Librarianship in 2009, the highest honour awarded to a law librarian by the Canadian Association of Law Libraries.

We thank Peta for 33 years of commitment and hard work at the Law Society library.

Outside Director's Liability Insurance Policy

by: Thomas Schonhoffer, Q.C.

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, 2012, 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.

Judicial Appointments

The Honourable F. Neil Turcotte has been appointed a judge of the Court of Queen's Bench in Saskatoon, Family Division. He will replace Mr. Justice R.S. Smith, who transferred to the General Division in June 2012.

Justice Turcotte was a partner with MacPherson Leslie & Tyerman LLP since 2001 and had worked with the firm since 1999. He practiced in the areas of wills, estates, civil litigation and family law. Justice Turcotte has been a chair of the French Juristes section in Saskatchewan, as well as member and board member of the Saskatchewan Trial Lawyers Association. He has also coached the Laskin Moot Team for the College of Law at the U of S since 1996. Since 1990, he has been a member, board member and past president of l'Association des juristes d'expression française and a member on the Panel of Experts of the Federal Language Rights Support since 2009.

The Honourable Darin Chow of Moose Jaw has been appointed a judge of the Provincial Court in Yorkton. Judge Chow replaces Judge Klause who is transferring to the Provincial Court in Saskatoon.

Judge Chow practiced with Whittaker, Craik and Chow until 1997 and then became partner of Chow & Company, which later became Chow McLeod. His areas of practice were family law and criminal defence. In 2008, he was appointed an Inquest Coroner and presided over three Coroner's Inquests in Regina.

Judge Chow has been elected twice to Moose Jaw City Council and has been involved in many community organizations. He was also a founding member of the Moose Jaw Businessmen's Club, raising funds for important causes in the community.



Pro Bono Law
Saskatchewan

Benchers' Digest Report

Nicole Sarauer, Acting Executive Director
www.pblsask.ca

PRO BONO LAW SASKATCHEWAN WELCOMES BARBRA BAILEY

Barbra joins PBLS as Programs Manager/Staff Lawyer, as Nicole Sarauer has now moved to Acting Executive Director while Kara-Dawn Jordan is on maternity leave.

Barbra earned both her Bachelor of Arts and Juris Doctor from the University of Saskatchewan and was admitted to the Saskatchewan bar in 2009. During law school, Barbra volunteered with Pro Bono Students Canada and was a

founding member of the Scales of Social Justice, a club dedicated to improving access to justice among other social justice causes. Barbra also acted as VP of Academic Affairs for the Law Students' Association. Following law school, Barbra practiced with the law firm of Miller Thomson LLP (formerly Balfour Moss LLP) for three years before completing a one-year term with the Law Society of Saskatchewan, acting as Policy Counsel. Barbra has been a volunteer youth mentor with the Regina Open Door Society's Homework Help Club for the past two years. Barbra will be a great asset to our team!

Queen's Counsel Nominations

Deadline – October 3, 2012

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 3, 2012.

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 2012 award which will be presented in 2013. Nomination forms and more information can be located on the website at www.lawsociety.sk.ca. The deadline for nominations is **November 23, 2012**.

Law Grad Receives Scholarship

The 2012 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 June 2013.

Maria Lynn is writing her thesis in the area of criminal law. Her 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 has conducted research 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.

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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The seal of the Law Society of Saskatchewan is a large, light blue circular emblem in the background. It features a central crest with a book and a torch, surrounded by the text "LAW SOCIETY OF SASKATCHEWAN" and "VIRTUTUM". At the bottom, it says "A.D. 1907".

BENCHERS' DIGEST

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