

BENCHERS' DIGEST

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www.lawsociety.sk.ca

The Code of Professional Conduct

Gregory Walen, Q.C.



On February 12, 2012, the Benchers of the Law Society adopted a new *Code of Professional Conduct* which will take effect on July 1, 2012. The new *Code* adopts, in large part, the *Model Code of Professional Conduct* developed by the Federation of Law Societies and replaces the *Code* that has guided lawyers in this province since 1991. Many Law Societies across Canada have adopted the new *Code* with minor variations to reflect regional differences.

As the preface to the new *Code* states, the Benchers attempt to define and

illustrate appropriate standards of conduct expected in a lawyer's professional relationship with clients, the profession and the justice system. The *Code* provides a framework within which the lawyer may fulfill the duties of integrity, competency and loyalty to the client.

The hard work of many individuals in our province and across Canada in the drafting and refining of the new *Code* must be recognized. As early as 2004, the Federation of Law Societies started work on developing the new *Code* that we have just adopted. In 2005, the Co-Director of Administration of the Law Society of Saskatchewan, Allan Snell, Q.C., chaired the first committee of the Federation of Law Societies tasked with the responsibility of drafting the new *Code*. Since that time, Benchers, staff and administration of our Law Society have worked tirelessly to produce the final draft passed by the Benchers in February of this year.

Since the *Code of Professional Conduct* is fundamental to our members' conduct and the Law Society's function as regulator, it is essential that all lawyers become familiar with the new *Code* and the changes that have been approved. Training related to the new *Code* is mandatory and is being provided to our members at no cost. The training must be completed by all active members by December 31, 2012. Members will be entitled to report this free training as two (2) CPD hours, which will also qualify as Ethics hours.

The *Code* training is being offered via live in-person sessions in the following centres: Saskatoon (4), Regina (4), Estevan, Lloydminster, North Battleford, Prince Albert, Swift Current and Yorkton. The sessions will be two hours in length and will consist of both a lecture portion and an interactive portion. Private training

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The Code of Professional Conduct

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sessions are available upon request for a fee. The training will be available via recorded webinar for all active members of the Law Society who do not reside in Saskatchewan and for members unable to attend a live session due to exceptional circumstances.

The instructor for the *Code* training is W. Brent Cotter, Q.C. Mr. Cotter has significant expertise in the area of Legal Ethics. He is currently a professor at the College of Law at the University of

Saskatchewan, having joined the faculty as Dean of the College of Law in 2004 and serving in that role from 2004 to 2010. During his tenure as Dean of the College, he served as a Benchers of our Law Society. In addition to teaching in the field of Legal Ethics, Mr. Cotter has authored a number of works on the subject.

To register for a *Code* training session, please refer to the brochure and registration form on the Law Society website.

Benchers Election 2012... and other interesting things you should know

by: Tom Schonhoffer, Q.C., Executive Director

Ever thought about being a Benchers? An election will be held this November and I wanted to get people thinking about it over the summer. There will be openings in Prince Albert, Saskatoon, Regina, South East and Central districts and possibly more.

Yes, being a Benchers is a significant time commitment, but my observation is that most lawyers find it a very rewarding way to renew interest in the profession. This year will also be the first time the election will be conducted online, so make sure your email address is current.

Its insurance time again, so don't forget to pay your annual premiums before June 15th. The Rules provide for penalties thereafter. Some members choose insurance renewal as a time to exit the profession. Don't forget to change your status to non-practicing, retired, or whatever the circumstance may dictate.

Speaking of insurance, anyone in private practice should really consider excess insurance. The mandatory limits for insurance have remained at one million dollars since 1988. Considering inflation

and the fact that defense costs erode the million dollar limit, there has been a considerable decline in coverage. Excess insurance must be purchased by each member of a firm. For more information on excess coverage, contact Ruth Armstrong at the Law Society.

Once more, speaking about insurance, Michael Milani, Q.C., has been elected as Chair of the Canadian Lawyers Insurance Association. Holding a position on such a national organization is recognition of the respect for Michael's hard work over the years.

Speaking of recognition, Kearney Healy has been awarded the C. Willy Hodgson Award for 2011. The award was named after Willy Hodgson, a former Benchers of the Law Society, and is in recognition of lawyers that have made outstanding contributions to advancing equity and diversity in the administration of justice. The award will be presented at the Annual General Meeting in Saskatoon on June 21st and is another good reason to attend.

I was reading an article from *The Irish Independent*, advising that the Law

Society has made it mandatory to have each side represented by independent counsel in farm transfers. Although similar regulations are not currently before this Law Society, it is a reminder of the implicit conflicts that occur, especially in inter-generational transfers. Be very careful.

Another interesting article from the Law Society *Gazette* advises that in England and Wales, a solicitor's regulatory authority is entitled to license alternate business structures with non-lawyer ownership. Among the first licensees is the Co-Op, and the headline is "Legal Services Outperform Groceries at the Co-Op." Could this be the future in Saskatchewan?

The Law Society passed a significantly revised *Code of Conduct* in February and announced mandatory *Code* training by email. Within the first two days, there were over 500 registrations. Thanks to all of you who pay attention to Law Society emails. They are an important and effective way for us to communicate.

BENCHERS' DIGEST

The *Benchers' Digest* is published by the Law Society of Saskatchewan to update Saskatchewan lawyers on policy and regulatory decisions made by the Benchers after each Convocation, to inform members about Society programs and activities, and to provide news and announcements of interest to the legal profession. Members are encouraged to send in articles and photos of interest, however, publication rests with the Editor. Articles and photos can be submitted to llynchuk@lawsociety.sk.ca.

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

EDITOR

Liz Lynchuk

Highlights of the Meeting of Benchers

February 9th and 10th, 2012

Pat Quaroni, Chair of the Law Foundation of Saskatchewan, attended to provide an annual report. Revenues to the Foundation have dropped because of low interest rates; however, the Foundation has a grant stabilization reserve.

A report was received by Jeffrey Scott, Practice Advisor of the Law Society of Saskatchewan. Mr. Scott works with practitioners on competency issues.

Graeme Mitchell, O.C., provided a report from the Federation of Law Societies. One of the priorities of the Federation is to achieve national standards in all core areas, including education, admissions, discipline and the *Code of Conduct*.

The Law Society adopted the Federation of Law Societies *Model Code of Conduct*, effective July 1, 2012. The former *Code of Conduct* will be repealed on that date.

Highlights of the Meeting of Benchers

April 26th and 27th, 2012

The Benchers held Convocation at Jackfish Lodge, which also provided an opportunity to meet with members of both the Battleford and Kerrobert Bar Associations.

Insurance is one of the cornerstones of professional responsibility and each year the Benchers are charged with establishing a yearly levy. This year, the levy is \$1,025 for each practicing member. The insurance rates charged to members have been heavily subsidized out of surplus for over the last 10 years. As claims slowly increase, earnings from investments fall, and the proportion of surplus is diminished. We expect

insurance rates to gradually climb to the indicated rate of \$2,100 in coming years.

The Law Society's audited financial statements for the year ending December 31, 2011 were approved by the Benchers.

The Benchers reviewed the Advertising Rules to ensure that they are consistent with the new *Code of Conduct* and the mandate of the Law Society. The matter was tabled to next Convocation.

The Benchers have authorized an online election for the upcoming Benchers Election in November 2012. Final Rule

amendments were also tabled to June Convocation.

The University of Montreal was approved as a degree granting institution for the purpose of admission as a student-at-law in Saskatchewan.

The Benchers approved, in principle, the Law Society purchasing outside director liability coverage from the Canadian Bar Insurance Association (CBIA). The policy would provide coverage to each active member of the Law Society. We will be providing more information on this coverage at a later date.

Addendum signed to Include Quebec Notaries in National Mobility Agreement

Canada's Law Societies have taken another step in the implementation of national mobility for members of the legal profession with the formal signing of an Addendum to the Quebec Mobility Agreement, extending Canada's national mobility regime to Quebec notaries.

The signing ceremony was held March 15, 2012 during the Federation's Semi-Annual Conference in Yellowknife, Northwest Territories.

"When the members of the Federation entered into the National Mobility Agreement in 2002 and the Territorial Mobility Agreement in 2006, we established ourselves as leaders in professional mobility" the President of the Federation



of Law Societies of Canada, John J.L. Hunter, O.C., told the representatives at the signing ceremony.

The Addendum, Mr. Hunter noted, means there is now a system of mobility in Canada that permits every Canadian lawyer and Quebec notary to move between jurisdictions.

"This is a tremendous accomplishment," Mr. Hunter said. "In crafting a mobility regime that covers lawyers and notaries from common law and civil law jurisdictions we have perhaps demonstrated that despite our different legal traditions we are more alike than we are different. And this is something of which we should be very proud."

Queen's Counsel Ceremony

January 29, 2012 Government House

Regina

Left to Right: **Gregory Willows, Q.C.,**
The Hon. J. Klebuc, Chief
Justice of Saskatchewan and the
Hon. M.D. Popescul, Chief Justice of
the Court of Queen's Bench

*(Photo taken by: Daunine
 McLauchlin Photography)*



Back Row: **Barry Wilcox, Q.C., David Thera, Q.C., Craig Zawada, Q.C., Melvin Gerspacher, Q.C., Ronald Balacko, Q.C., Robert Kirkpatrick, Q.C., Timothy Macleod, Q.C., Donna Sigmeth, Q.C., Gregory Willows, Q.C.**

Front Row: **Mitch McAdam, Q.C., Rodney Rath, Q.C., Hon. Dr. Gordon Barnhart, Hon. Don Morgan, Q.C., Rosanne Newman, Q.C., Dr. Sanjeev Anand, Q.C.**

(Photo provided by the Department of Justice)



Left to Right: Lieutenant Governor Gordon L. Barnhart, Ronald Balacko, Q.C., and Minister Don Morgan, Q.C.

(Photo taken by: Daunine McLauchlin Photography)



Left to Right: Lieutenant Governor Gordon L. Barnhart, Dr. Sanjeev Anand, Q.C., and Minister Don Morgan, Q.C.

(Photo taken by: Daunine McLauchlin Photography)



Left to Right: Stepdaughter Emma, Spouse Robin Johnson and Donna Sigmeth, Q.C.

(Photo taken by: Daunine McLauchlin Photography)

Senior Life Members

The Law Society is pleased to announce our 2012 Senior Life Members. Certificates will be presented at our Annual General Meeting in Regina scheduled for the evening of Thursday, June 21st, 2012.

William Brown
Hartmut Dahlem, Q.C.
Kristian Eggum, Q.C.

Silas Halyk, Q.C.
David MacLean
Peter Sorokan, Q.C.

Drop Dead Rule

by: Tim Brown, SLIA Counsel

If you are a Saskatchewan Lawyer who represents Plaintiff's in Alberta Courts, you absolutely need to be aware of Rule 4.33 of the new *Alberta Rules of Court* which is scheduled to come into effect on November 1, 2012. This rule relating to dismissal of actions for long delay, known as the "Drop Dead Rule," is going to replace the existing rule 244.1 and will significantly reduce the timeframe during which an action can lay dormant before it "drops dead" from 5 years to 2 years.

November 1st, 2012 represents the two year anniversary of transitional provisions entitling a Defendant to bring an application to have a matter dismissed either 2 years from the date of the last material step taken on a file or the time that was left of the five years under the old rule, whichever is less.

Under the new rule, where no "thing" has been done to "significantly" advance the action, the Court "shall" dismiss the action against the applicant, rendering dismissal mandatory in fact appropriate cases. This wording has been changed from the old provision which referred to "material advances" suggesting a deliberate change in meaning. At present, we can advise that the transitional rules, which also use the word "significantly," have been given the same interpretation as the old rule [*Bahcheli v. Yorkton Securities Inc.* and *Orion Securities Inc.*, 2010 ABQB 824].

According to that jurisprudence, the appropriate inquiry is whether, looking back, a thing done in an action moved the lawsuit closer to a trial in a meaningful way [*Alberta v. Morasch*,

2000 ABCA 24; *The City of Calgary v. Chisan*, 2000 ABCA 313]. This is an inquiry which obviously involves a careful consideration of the unique facts of each case. However, be advised that the Courts have given a fairly stringent interpretation to what might constitute such a step. By way of example:

- Involvement in collateral administrative proceedings will not count as a step which significantly advances the matter unless it is shown that the proceedings are inexorably linked to the action proper [*Bahcheli*, supra; *Chisan*, supra.];
- Acts which satisfy prior commitments, such as the delivery of previously promised documents are not likely to be categorized as steps which significantly advance the action [*Smith v. Alberta* (1996) 49 C.P.C. (3d) 94]; and
- Setting a date for an examination for discovery or delivering a draft certificate of readiness will not likely be enough, even though these steps are contemplated by the Rules, because to qualify as "significant" such a step must be completed, not merely commenced [*Morasch*, supra].

The Alberta Court of Appeal has, in general terms, spelled out that: a procedural step contemplated by the Rules will always be a thing which materially advances a trial; procedural steps contemplated by the Rules, although not required by the Rules may also be enough to materially advance an action; and an action may be materially advanced by other things

even though they are not procedural steps (i.e. an agreement to limit the discovery of documents or the scope of discoveries) [*Morasch*, supra.].

How this Rule will be judicially interpreted in the future is unknown, but there is concern that the change in wording may up the ante for Plaintiffs, the apprehension being that a "significant" advance signifies something more than a "material" advance. Such an interpretation would be in keeping with the apparently remedial nature of this amendment and the overall purposes of the new rules which aim to resolve claims in a timely manner as stated in Rule 1.2(1). As a result of these concerns, there has been significant push back from Plaintiff's Counsel in Alberta, which we understand may result in further amendments. It has been suggested that this may cause a further delay of this provision coming into force until November of 2013.

An Alberta Civil Trial Lawyers Association Seminar on the new rules is being held on Friday, April 27, 2012. Some light may be shed on these issues by the various presenters. Materials can be purchased from the ACTLA online. At present, we are discussing options which may make these materials available to our members at a reduced rate and, if interested, it may be worthwhile contacting our offices to see if this arrangement has been made prior to purchase.

For the most current updates, you can check the Legal Education Society of Alberta website at www.lesa.org.



Pro Bono Law
Saskatchewan

Benchers' Digest Report

Kara-Dawn Jordan, Executive Director

www.pblsask.ca

3rd Annual Lawyers' Charity Gala and 2011 Pro Bono Service Award

Pro Bono Law Saskatchewan would like to congratulate CLASSIC on hosting a very successful 3rd Annual Lawyers' Charity Gala. The evening provided a great opportunity for members of the legal community to come together to have some fun and support a great cause. The funds raised this year went to CLASSIC, which runs legal advice clinics and legal information sessions in Saskatoon through the efforts of volunteer students, staff and volunteer lawyers.



Left to right:
**Gregory Walen, Q.C.,
Heather Laing, and
Paul Korpan, Q.C. at the
Lawyers' Charity Gala**
*(Photo taken by: Kerri
Froese Photography)*

The 2011 Pro Bono Service Award was presented at the Gala to Don McIver, a partner at Hnatyshyn Gough in Saskatoon. The Pro Bono Service Award is an award presented jointly by the Law Society and PBLS to recognize outstanding pro bono service.



Left to right: **Don McIver, 2011 Pro Bono Service Award Recipient, pictured with Victor Dietz, Q.C., President, PBLS**

Don has a longstanding history of community involvement. He is currently a member of the Board of the Saskatoon Branch, Canadian Mental Health Association and has historically been involved in the Meewasin Foundation and the Saskatchewan Community Mediation Services Board. Don is also a long-time volunteer with CLASSIC in Saskatoon. The

staff at CLASSIC holds Don in high esteem for his dedication to clients. Don also receives praise for his ability to relate to clients, providing them with advice that is appropriate for their circumstances and explaining difficult concepts in a way that clients understand.

Pro Bono Law Saskatchewan Annual General Meeting

The PBLS Annual General Meeting will be held in conjunction with the Law Society Annual General Meeting on **Thursday, June 21, 2012** in Saskatoon at the Bessborough Hotel. Cocktails are at 6:30 p.m., dinner to be served at 7:00 p.m. To reserve a seat, please contact Liz at the Law Society at llynchuk@lawsociety.sk.ca.

Judicial Appointments

The Honourable Inez J. Cardinal has been appointed a judge of the Provincial Court. Judge Cardinal will work temporarily in Meadow Lake until November 2012 and then will be placed permanently in Melfort. Judge Cardinal will replace Judge Lorna Dyck, currently in Melfort, who will transfer to the Provincial Court at North Battleford in November.

Judge Cardinal received a Diploma in Renewable Resources Technology from the Kelsey Institute of Applied Arts and Sciences, and later, a Bachelor of Laws from the University of Saskatchewan in 1990. In 1991, she started her career at Public Prosecutions in Regina and has since worked in the Saskatoon and La Ronge offices of Public Prosecutions. Since 2006, she has been the designated prosecutor for environmental offenses. She also received her Queen's Counsel designation in 2006.

Since 2000, Judge Cardinal has been a sessional lecturer with the First Nations University of Canada at its Campus in Prince Albert, lecturing in the areas of Human Justice and Indigenous Studies. She has been a presenter for the CBA at the local, provincial and national level. She has also frequently spoken in Canada and the United States on subjects related to environmental law. In 2009, Judge Cardinal received the Resource Management Conservation Award from the Saskatchewan Wildlife Federation.

The Honourable Brian Barrington-Foote has been appointed a judge of the Court of Queen's Bench in Regina. He will replace Madam Justice E.J. Gunn, who elected to become a supernumerary judge as of September 1, 2011.

Mr. Justice Barrington-Foote received a Bachelor of Arts from Simon Fraser

University in 1973 and a law degree from the University of Saskatchewan in 1977. He was admitted to the Saskatchewan Bar in 1985, the Alberta Bar in 1992 and was also a past member of the BC Bar. He received a Queen's Counsel designation in 1988.

Mr. Justice Barrington-Foote had been a partner with MacPherson Leslie & Tyerman since 2002. From 1995 – 2002, he was a partner with McKercher McKercher & Whitmore, and before that, with Burnet, Duckworth & Palmer in Calgary. He was Deputy Minister and Deputy Attorney General of the Saskatchewan Department of Justice from 1987 to 1992. He also practised law in BC from 1977 to 1985. He practised in the areas of Aboriginal law, labour and employment, civil litigation, constitutional law, commercial law and administrative law.

In Memory

The Honourable Grant Armstrong, former judge, passed away on January 9, 2012. He leaves behind his wife Mary and two children, Jane and Doug.

Grant Armstrong was born in Regina and attended the College of Law at the University of Saskatchewan. He was admitted to the Law Society of Saskatchewan in 1951 and practiced law for 34 years. He received a Queen's Counsel designation in 1973.

He also served as a Bencher of the Law Society of Saskatchewan, and later served as its President in 1977. It was during his term as president that the Benchers adopted the new *Code of Professional Conduct*, which was to take effect on January 1, 1978. The new *Code* would replace the *Canons of Legal Ethics* adopted in 1973.

Grant Armstrong also served as a director of the Federation of Law Societies of Canada from 1975 - 1980 and as President from 1980 - 1981. He was appointed a judge of the Court of Queen's Bench in Regina in 1985 and remained until his retirement in 2001.

He also served with the Royal Canadian Artillery during WWII and was a member of Regina's Royal United Services Institute. He was also involved with the United Way for many years, as well as the Knox Metropolitan Church, serving as Trustee from the 1950's until his death.

J.H. Clyne Harradence, Q.C. passed away on March 17, 2012. He is survived by his wife, Helen, of 62 years and 4 sons, David, Keith, James and the Hon. Judge Hugh M. Harradence.

Clyne Harradence served in the R.C.A.F. during WWII and graduated from the University of Saskatchewan, College of Law, in 1949. He articulated with the Right Hon. John G. Diefenbaker in Prince Albert.

Mr. Harradence became a member of the Saskatchewan Bar in 1950 and practised until 2002. He was a distinguished member of the Canadian criminal defence bar, and along with his brother Milt, made the family name known for high standards of practise in Canadian criminal law. He also served as a lead hostage negotiator for the maximum security Saskatchewan Federal Penitentiary.

He was interested in politics and was active in the Liberal Party of Canada as co-chair of the national party convention in Winnipeg in 1980. He also did *pro bono* work for the Anglican Church of Canada; 42 years as the Chancellor of the Diocese of Saskatchewan and co-chair of the National Anglican Synods from 1980 - 1983. His work for the church resulted in a Doctorate of Canon Law from the College of Emmanuel & St. Chad, University of Emmanuel College, as well as the Anglican Award of Merit in 2007.

The Honourable William Matheson, former judge, passed away on March 15, 2012. He leaves behind his wife, Margaret Joan, and sons Garth, Bruce and Scott and daughter Allison.

Mr. Matheson graduated from the University of Saskatchewan with a bachelor of commerce degree in 1952 and then obtained his bachelor of laws in 1957. He joined MacPherson Leslie Tyerman in 1957 and received a Queen's

Counsel designation in 1976. He served as a Bencher of the Law Society from 1978 - 1979. Then in 1982 he was appointed justice of the Court of Queen's Bench, and, later, justice of the Court Martial Appeal Court of Canada in 1994. In 2005, he retired from both courts and returned to MacPherson Leslie & Tyerman LLP as counsel where he worked until his passing.

Robert Pierce, Q.C., passed away on March 17, 2012 in Calgary. He leaves behind his wife Eleanor and three children, Brad, Jennifer and Susannah.

Mr. Pierce graduated from the University of Saskatchewan with his law degree in 1952 and was admitted to the Bar in 1954. He was a founding member of the Regina law firm MacPherson Neuman and Pierce. He received his Queen's Counsel designation in 1964.

After two decades as a successful lawyer in Saskatchewan, he moved to Calgary in 1973 and joined the Alberta Gas Trunk Line Company. There, he served as president of NOVA Corporation of Alberta; chairman, CEO and president of Alberta Gas Ethylene and Novacor Chemicals; and chairman, president and CEO of Foothills Pipe Lines. He received the honour as Member of the Order of Canada in 2006 for his contribution to the evolution and growth of the Canadian petrochemical industry.

** 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, 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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BENCHERS' DIGEST

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