BENCHERS' DIGEST

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H. H. DAHLEM, Q.C.
Chair, Ad Hoc Committee
Law Foundation of Saskatchewan and
Chair, Law Foundation of Saskatchewan

Harry Dahlem, a partner in the Saskatoon firm of Gauley & Co., commenced his association with the Law Foundation in 1974 as an appointee of the Attorney-General of Saskatchewan. He served as Vice-Chair from 1981 to 1994 inclusive, In December 1994, Mr. Dahlem was appointed as a Law Society representative to the Foundation for a two year term commencing January 1, 1995. At the same time, the Benchers selected him as Chair of the Foundation for the period January 1, 1995 to December 31, 1996. His term was subsequently extended to December 31, 1997.

Foundation Seeks Better Interest Returns to Continue Funding

Since September of 1993, an ad hoc committee composed of members of the Law Foundation and the Law Society has been meeting with all the major banks, trust companies and credit unions to obtain a better return on lawyers' pooled trust accounts. The members of the Law Foundation on this committee are Harry H. Dahlem, Q.C., Chair, Ms. Ann Phillips, Q.C.,Gordon Wicijowski, L.L.D., F.C.A., and Robert Arscott, F.C.A. Other members of the committee which contributed in a major way to its success were Donald McKercher, Q.C., Rob Pletch, Q.C., Neil Gabrielson, Q.C., Shawn Smith, Q.C., and Randy Baker, At all times, Allan Snell, Q.C., counsel for the Law Society of Saskatchewan was very helpful and contributed much in support of the efforts of the ad hoc committee.

The chair and various members of the ad hoc committee met with officials of the various financial institutions some 19 times since September of 1993. Finally, on July 22, 1997, the last outstanding agreement was signed. The committee is now in a position to report the results of the negotiations.

Before the Law Foundation began negotiating with the major financial institutions about interest rates, banks paid interest to the Law Foundation at the rate of prime minus 5% which guaranteed a fair return to the Foundation when interest rates were high. Over this period of time, the prime rate dropped from 9.75% to 4.75%, which meant that the Law Foundation's return would have been reduced to zero, During the first series of negotiations, the ad hoc committee was able to persuade the banks to pay prime less 4.5%. However, it became clear to the members of the Law Foundation that unless a floor rate was established beyond which interest rates could not fall, the Foundation faced a situation where it would have to cut funding in a drastic way. During the period of time when high interest rates prevailed, the Foundation had established a grant stabilization fund in the amount of $3.5 million. However, during the fiscal year of 1996-97, the Foundation had to withdraw $650,000 from this fund. Therefore, in December of 1996, the ad hoc committee again approached all major financial institutions in order to establish a floor rate, The first bank providing the Foundation with a floor rate was the Royal Bank of Canada which, as early as December of 1993, paid prime minus 4.5% and established a 1% floor, Presently, the best return paid to the Foundation is that of Royal Trust.

Also, the Hong Kong Bank responded very positively to the committee's request for improvement in its rates in that it implemented a rate of prime minus 4% with a 1% floor. With the exception of the Canadian Imperial Bank of Commerce which pays prime less 4% but has not committed itself to a floor rate, all major banks pay at the present time prime less 4.5% with a floor of 1%. Since the implementation of these new arrangements with the major financial institutions, the cash flow of the Law Foundation of Saskatchewan has improved and it can now provide funding to its ongoing guarantees without major reductions. This amounts to $1.2 million annually. The Law Foundation of British Columbia was forced to reduce its funding by 15% and advises that deep cuts will be required in each of the next few years if interest rates remain low as forecast. The Law Foundation of Alberta faces similar reductions (20% reduction for 1996).

It is also significant to note that the backs' service charges are paid by the members of the Law Society As required by Rule 911(4) and Section 78(3) of The Legal Profession Act. With the exception of the Law Society of Prince Edward Island, no other Law Foundation receives such support from the members of its society. The Law Foundation of Saskatchewan acknowledges the generosity of Saskatchewan lawyers, The combined 1% floor rate and elimination of service charges gives an effective rate of 1.25% which is as good or better than reflected by other Foundations.

Law Foundation support is critical for key legal programs. The interest on pooled trust accounts is the primary source of income for the Law Foundation; it is used to fund programs and services in communities throughout Saskatchewan in its five mandated areas, legal education, legal research, legal aid, law libraries and law reform. The Court House libraries, a great benefit to the profession and the public, rely on the Law Foundation for most of their funding ($609,000 in 1997). Most of the Foundation grants go to programs designed to make the law and justice system accessible to the less fortunate citizens of Saskatchewan. Its support for public legal education and community legal services includes such programs as PLEA, the Elizabeth Fry Society, John Howard Society, the Sexual Assault Crisis Centre, the Schizophrenia Society, Native organizations and many other programs that provide needed legal services and education to Saskatchewan citizens who are unable to afford a

lawyer. In addition thereto, the Law Foundation has assisted the University of Saskatchewan, College of Law, by establishing a Law Endowment Fund which assists the moot courts, speakers and seminars. The Law Foundation, in conjunction with the University of Saskatchewan, also established the Law Foundation chair which enables the College of Law to engage legal scholars of national and international stature to lecture at the College of Law. CSALE which furthers studies in law, agriculture and environment by combining the talents of the College of Law, College of Agriculture and Environment is beginning to make a major impact, particularly in the farming community. The Law Foundation also has assisted the Saskatchewan Legal Aid Commission with grants enabling it to upgrade its electronic and computer systems. The Native Law Centre at the University of Saskatchewan receives annual funding as well as support from other Canadian Law Foundations.

The Law Foundation is indeed pleased that it was unnecessary to categorize the financial institutions to be grouped from the most to the least preferred for pooled trust deposits based on net effective rate. However, the ad hoc committee without hesitation recognizes, the leadership role that the Royal Bank of Canada, the Hong Kong Bank of Canada and Royal Trust have taken in agreeing to fairer and better returns.

In conclusion, the Law Foundation wishes to express its appreciation to all those members of the Law Society of Saskatchewan, its Presidents, and the Benchers who have made significant contributions in assisting the ad hoc committee in reaching its objective.

Highlights of the Meeting of the Benchers Held September 18 & 19, 1997

(A. Kirsten Logan)

Bar Admission Course

The Bar Admission Course Director, Gisele Dumonceaux, reported to the Admissions and Education Committee that the Second Segment of the 1996-1997 Bar Admission Course concluded at the end of May, 1997 and the results were released at the end of June. The number of students attending the Course (74) was up considerably from previous years when the usual registration was approximately 55 students. The second anomaly for this Segment of the Course was the number of students who failed one or more of the Course examinations, being 10. The failure rate has never been that high, however, all of the students ultimately passed supplemental examinations. The recipient of the SKLES / Law Society of Saskatchewan award for the highest marks was Heather Heavin, who clerked with the Court of Appeal and is now an associate at MacPherson Leslie & Tyerman in Regina. She attained an average of 86.7% over the three Bar Admission Course examinations.

Transfer Examinations

For as long as most members can recall, the requirement for lawyers from other jurisdictions wishing to attain full practice status in Canada has been to write an examination on Provincial Statutes, Practice and Procedure. Those with less than three years have in addition been required to article for six months. That examination was based on a list of various Saskatchewan Statutes and the Rules of Court and it ultimately tested the applicants' ability to memorize. The Interjurisdictional Practice Practice Protocol, signed by the vast majority of the Law Societies in Canada to facilitate interjurisdictional mobility, requires that the transfer requirement be standardized and in particular, that the articling requirement be discontinued.

Ms. Dumonceaux, the Bar Admission Course Director, has been developing a new, more comprehensive transfer examination which would better test applicants' ability to apply Saskatchewan law. The Admissions and Education Committee approved the new examination format which will be two, three-hour open book examinations which may be written in the applicants' home jurisdiction. New rules will be considered by the Benchers at the October Convocation to eliminate the articling requirement. The new examination format should be in place by November 1 1997.

Insurance

The claims experience for the 1996-1997 policy year was an all-time SLIA low of 97. The Insurance Committee is of the opinion that the loss prevention efforts, coupled with the no-fault insurance legislation has contributed to this record low number of claims. The previous two years' claims experience was 104 and 159 respectively.

The Insurance Committee also reviewed the audited financial statements for SLIA for the year ended June 30,1997. The increase in premiums for the 1996-1997 policy year and decreased counsel fees resulted in an increase in members' equity from $177,000 on June 30,1996 to $1,400,000.

The Benchers also approved a new policy relating to the appointment of Benchers as SLIA counsel. As a rule, Benchers are not appointed counsel although occasionally Benchers' partners have been. It was agreed that no Benchers or members of Benchers' firms shall be appointed SLIA counsel during the term of the Benchers' office. Any files referred to a Bencher before he or she became a Bencher may be retained with no new files to be forwarded.

Gender Equity

The Committee is pleased that Madam Justice Georgina Jackson of the Court of Appeal of Saskatchewan has joined the Committee. Judge Bria Huculak has returned from studies in British Columbia and will rejoin the Committee.

The Committee has complied with a majority of the recommendations of the Joint Committee on Accreditation. The Committee is x)f the view that further study is necessary to determine further needs and the effectiveness of the policies developed to date. Plans for a possible planning session to develop new goals are being considered.

At the May segment of the Bar Admission Course, the students attended a session on Professional Responsibility. Part of the session was a presentation by Lawyers Concerned for Lawyers at which time there was a suggestion that LCL could play a role in sexual harassment situations. Unfortunately, this caused some confusion among the students in relation to the role of Safe Counsel appointed by the Law Society.

Safe Counsel have been appointed and are available on a confidential basis to discuss options and to obtain information on the procedures and potential consequences of filing sexual harassment complaints with the Law Society or elsewhere. Lawyers Concerned for Lawyers can provide counseling to members who have experienced sexual harassment and can become involved in mediation in some situations. The roles are separate but both can be of assistance. The students will be advised of the separate roles in an attempt to clarify the situation.

Libraries

Mike McGuire's resignation came into full effect on September 30, 1997. For the moment, day-to-day operations are being maintained at the Regina library by Maxine Seeley, Christine Godlien and Sheila Balkwill. In Saskatoon, day-to-day operations are maintained by Peta Bates, Leila Olfert and Pat Kelly. Overall supervision assistance will be provided by Allan Snell and Kirsten Logan and a determination as to the nature of the position to be filled in light of Mr. McGuire's resignation and the current changing environments in libraries generally will be made as soon as possible in order that a search can be commenced for a candidate. It would appear from an initial review that years of funding restrictions have resulted in some equipment which needs upgrading. It is quite likely that additional funds will have to be expended by the Law Society in the Libraries Department to keep up with equipment needs as well as to deal with an estimated 5% funding reduction from the Law Foundation of Saskatchewan.

The Benchers also agreed with a proposal that LINE, the DOS base computer search system for library catalogues and recent court decisions, be converted to an internet-based operation. It is hoped that this system will be more user-friendly and easier to maintain. Research on the conversion process continues.

Queen's Bench Simplified Procedure

The new Rules for the Simplified Procedure for actions up to $50,000 in the Court of Queen's Bench will come into effect January 1, 1998. The new Rules will be available from the Queen's Printer or the electronic subscription service.

Professional Conduct Ruling

(A. Kirsten Logan)

The mandate of the Ethics Committee is to make rulings on questions of professional ethics for the guidance of the profession. The rulings given by the Ethics Committee relate to the ethics of particular situations and are not determinations of the legal issues which arise from those situations.

Conflict of Interest - Employed Lawyer

Facts:

Lawyer X had been in-house counsel for a corporation at a time when negotiations took place for the employees' collective agreement. She had drafted some portions of the agreement upon instructions from the corporation. Some matters were referred to arbitration where the corporation was represented by separate counsel. Lawyer X then moved to a new firm.

A finding of the Ethics Committee, published in the May, 1997 edition of the Benchers' Digest stated that Lawyer X's new firm could not represent the employees in further arbitration without the consent of the corporation.

The Labour Relations Board heard a matter relating to the dispute. In its ruling there was a clear division of issues. Lawyer X requested a ruling whether the new firm could act on any of the separated issues in the collective agreement.

Ruling:

The Committee was of the opinion that if Lawyer X was consulted by the corporation regarding the negotiations on the collective agreement between the corporation and its employees of which the separated issues were a part, neither Lawyer X nor the new firm could represent the employees before the Labour Relations Board.

Conflict of Interest - Acting for Both Sides

Facts:

Lawyer A acted for both the vendor and purchaser in a real estate transaction. There were tax arrears on the property and the town refused to accept the net sale proceeds for a partial discharge. Lawyer A recognized that he would not be able to complete the sale. He asked whether he could obtain a bond of indemnity from the purchaser and return to the purchaser the purchase price on the understanding that if the vendor obtained judgment against the purchaser, the purchaser would return the funds.

Ruling:

The Committee is of the opinion that Lawyer A cannot act for either party and that his proposal would favour the purchaser. The Committee recommended that Lawyer A should hold the funds in trust until the parties come up with a solution or until a demand is made and the funds can be paid into court.

Conflict - Previous Conversations Lawyer Referral Service

Lawyer B had been consulted by a person through the Lawyer Referral Service. Phone and time records indicated that the conversation lasted 14 minutes. The person alleged that a second conversation took place, however, phone records did not substantiate that allegation. Lawyer B was subsequently retained by the opposing party. That person then made application to have Lawyer B removed from the file.

Mr. Justice McIntyre dismissed the application on the basis that there was no previous relationship to raise the presumption that Lawyer B received confidential information attributable to a solicitor/client relationship.

Trust Conditions - Transfer of Files - Fees

Facts:

Lawyer C had acted for two residual beneficiaries of an estate who were concerned about the actions of the executors named in the will. The executors were requested to renounce. Correspondence was exchanged over several months. Neither executor renounced but two agreed to waive executor's fees. Lawyer C was asked to act as solicitor for the estate.

Questions then arose as to the nature of the property making up the estate and allegations were made that Lawyer C was in conflict of interest. Lawyer C was asked to transfer the file to Lawyer D. Lawyer C requested payment of his account. The executors and Lawyer P alleged the bill was too high. Discussions ensued about negotiating the amount of the account and setting it down for taxation. Demands continued for turning over of the file. Lawyer D did have the original will.

Ruling:

The Committee was not impressed over the "unseemly wrangling" over this file. The Committee was of the view that if Lawyer P wanted the file he should have paid Lawyer C's account. If he was not satisfied with the amount of the account the taxation procedures envision taxation after payment.

Trust Conditions - Sloppy Practice

Facts:

Lawyer E was the executor of an estate. As such, he was selling the deceased's former residence. The purchaser was a realtor who was represented by Lawyer F. The offer to purchase stated in words that the selling price was $47,500, however, the numeric calculations showed the selling price to be $46,500. The realtor's disclosure indicated a selling price of $46,500.

Lawyer E prepared a statement of adjustments based on the $47,500 figure. He imposed trust conditions that the balance to close as per his calculation be paid by a certain date upon use of the transfer. Lawyer F prepared his own statement of adjustments based on the $46,500 figure. Lawyer E claimed interest because the payment was less than the trust condition he had imposed. Lawyer F alleged sharp practice.

Ruling:

The Ethics Committee was dismayed by the sloppy practice shown by Lawyers E & F in this file. Lawyer E acted improperly by using the $47,500 figure as the selling price when he knew there was some confusion about the selling price. Lawyer F was not careful enough to have noticed the amount and not to have accepted the trust conditions which were imposed. Both members were advised that their conduct was not appropriate.

Trust Conditions - Ambiguity

Facts:

Lawyer C sent a transfer of matrimonial property to Lawyer H on the trust condition that the document become "part of an agreement between our clients". He then set out various terms of that agreement. Lawyer H's client did not comply with all of the terms of that agreement. Lawyer G complained that Lawyer H was in breach of trust conditions.

Ruling:

The Committee is of the opinion that the trust condition imposed by Lawyer C was vague. The best reading of it made the specific terms to be part of an agreement between the parties, not obligations on Lawyer H. The Committee could find nothing in the material to indicate that Lawyer H was in breach of trust conditions.

Multidisciplinary Practices

The following article, which is reproduced with the permission of the Law Society of Alberta, appeared in the June 1997 issue of their Benchers' Advisory. We wish to acknowledge and extend our appreciation to the authors, Gordon W. Flynn, Q.C., C.A. and Susan V. R. Billington.

Many questions come to mind when the specter of multidisciplinary practices is raised. This article is intended to highlight the emergence of multidisciplinary practices as a trend both internationally and domestically and to raise some of the issues that The Law Society will have to address. The Ancillary Business and Multidisciplinary Practice Committee has devoted a significant amount of time to conducting research into MDPs and.the approaches being considered within Canada and in other jurisdictions. The Committee solicits input from the membership.

1. What is a multidisciplinary practice?

A multidisciplinary practice is a business arrangement in which individuals with different professional qualifications practice together in partnership and combine their different skills in providing advice and counsel to the consumers of their services. An MDP could include any of the following scenarios:

a) an existing firm of lawyers seeking to add a partner from another discipline;

b) an existing non-legal firm seeking to add a lawyer as a partner;

c) a sole practitioner or law firm joining with many or several other professionals in partnership to provide a "one-stop shop" for their clients.

2. Why are we discussing MDPs and can't we leave things the way they are?

With the global economic trends and the increasing capabilities of technology, "the times they are a changin ..." (to quote a bank commercial not to mention Bob Dylan. The international accounting firms have been quite active since the late 1980's promoting multidisciplinary practices. The basis for this promotion is their desire to remain competitive in the marketplace. In England the relevant statutes have been amended to allow MDPs but the rules of the Law Society continue to prevent lawyers from entering into partnerships with non-lawyers. The Labour Party of England has made clear their intention to mandate MDPs. In New South Wales, Australia both legislation and Law Society rules now allow MDPs although they have not become overwhelmingly popular at this stage.

An April, 1995 report of the Canadian Institute of Chartered Accountants Interprovincial Task Force outlines a clear preference for the establishment and control of MDPs by accountants. It is clear that the Law Society must address the issue of regulation of lawyers who desire to join with professionals of other disciplines to provide legal services to the public in a multidisciplinary practice. The Law Societies of Upper Canada and British Columbia are studying this issue as well.

3. What prevents Alberta lawyers from practicing in an MDP?

The Code of Professional Conduct prohibits the division of fees with non-lawyers except in specific circumstances. The Code also governs confidentiality of information. It is anticipated that if MDPs are approved in principle these provisions of the Code as well as Law Society Rules and The Legal Profession Act will have to be amended.

4. Is a multidisciplinary partnership/practice different from an ancillary business practice?

Ancillary business practice is when a lawyer concurrently practices in a business other than the practice of law. This may include lawyers who wish to practice law and at the same time have the qualifications to engage in another business such as a real estate broker accountant, financial consultant, insurance agent, mortgage broker, trustee in bankruptcy, etc. A multidisciplinary practice is different because it brings together individuals from different professions who practice together in a partnership. Therefore, the ancillary business practices of a lawyer and the multidisciplinary practice are two different matters, although they may overlap: that is a lawyer in a multidisciplinary practice may also be

involved in an ancillary business practice.

5. What are the advantages of multidisciplinary partnerships?

Those in favour of MDPs argue the following advantages:

· a multidisciplinary approach benefits those clients whose problems often cannot be compartmentalized into legal and non-legal issues

· more economical and convenient for clients-the 'one-stop shop'

· provides a more comprehensive approach for both lawyer and client to complex problems

· provides economic benefits to lawyers who have lost their competitive edge to other professionals in certain areas of the marketplace

· provides law firms with the ability to attract and retain non-lawyers by offering them the prospect of part-ownership in the firm

6. What are the disadvantages of multidisciplinary practices?

Those opponents of MDPs argue the following disadvantages of MDPs:

· a threat to the independence of the legal profession as the lawyer's fundamental role is to provide independent legal advice and representation without the interference of other interests. It is argued that the financial interest of non-lawyers in law firms will jeopardize the independence of lawyers. This could lead to a dearth of independent legal counsel

· a risk of unethical conduct of non-lawyer partners that will, by association, bring the legal profession into disrepute in matters

such as:

- client confidentiality

- solicitation

- conflicts of interest

- privilege

- advertising

- insurance

- assurance

- conflicting professional duties

· potential loss of client protections such as privilege and confidentiality

· a threat to self-regulation of the legal profession - lawyers will be seen as just another segment of the general business community as a member of a multidisciplinary team thereby eroding the ability to regulate members of the profession. This could lead to increased regulation from outside the profession.

7. Some issues that arise

A myriad of issues arise from the prospect of lawyers operating in MDPs including:

a) Confidentiality of Client Affairs

The confidentiality of solicitor/client communications are at the heart of the solicitor/client relationship. In a multidisciplinary practice, how can a member ensure the confidentiality of the information that is provided by the client? If the client first meets with a non-lawyer in the partnership which information is then passed on to the lawyer by the non-lawyer partner, is this confidential information? Can all of this be solved by a waiver form at the beginning of the solicitor/client relationship? Is this waiver in the best interests of the client or the partnership? Does this fulfill the mandate of our self-regulating profession for protection of the public interest?

b) Conflicts of Interest

Will the non-lawyer partner be bound by the same standards regarding conflicts of interest as the lawyer partner? What effect will this have on the representation of the client? Because the lawyer has a pecuniary interest in the partnership, is there a risk that matters will be referred to a non-lawyer partner even though this may not be in the clients' best interest? Should there be conditions on the referrals within the partnership?

c) Privilege

What effect will multidisciplinary practices have on the principles of solicitor/client privilege? Will the disclosure of client information on a file to a non-lawyer partner be a waiver of privilege?

Would the fact that a client obtains advice from a lawyer who is part of x multidisciplinary team involving other professionals affect the client's right to j claim privilege? What if the client signed a waiver of confidentiality with the partnership so information can be exchanged within the partnership - is this a waiver of privilege?

d) Control

Who controls the multidisciplinary partnership? Should there be a requirement that lawyers in the firm maintain a majority control?

e) Range of Professionals

Should the range of professionals be limited? Should a preliminary list of professionals be allowed and then allow others as times goes on?

f) Code of Conduct

Does our Code of Conduct only apply to the legal practice of the MDP? Is there a risk that other professionals in the MDP will act in a manner that is contrary to our Code of Professional Conduct and thereby by association bring the legal profession into disrepute? Is there a way to guard against this risk?

g) Trust Monies I Assurance

How will the multidisciplinary practice handle trust funds? Will there be a requirement that all trust funds go through the lawyer's trust account? Will the lawyer hold a separate trust account from the MDP? What effect does this have on the Assurance Fund? Will non lawyer members of the MDP be required to contribute to the Assurance Fund or carry their own insurance for such incidents?

h) Insurance

Will the MDP be required to carry its own liability insurance? How will this affect the lawyers' liability insurance? Should there be a requirement that all non-lawyer members carry their own liability insurance? Should there be a limitation that lawyers maintain control of their own files?

i) Conflicting Professional Obligations

What is professional duties conflict? For example, an accountant may have a duty to report certain financial information and this may conflict with the lawyer's duty of confidentiality: how does this get reconciled?

j) Independence of the Legal Profession.

Does the introduction of MDPs jeopardize the independence of the legal x profession? Will MDPs result in a dearth of independent lawyers? Is

this in the best interests of the public?

k) Self-regulation

Do MDPs jeopardize self-regulation? If lawyers are seen as members of a multidisciplinary team will they lose their identity as members of a distinct profession?

8.Where do we go from here?

The Benchers are about to commence serious deliberations on the issue of MDPs. The developments in other provinces and other countries wilt be monitored. Comments from the membership would be most welcome. Do you believe your ability to compete would be enhanced by expanding the mix of services offered to your clients? Should our Code of Professional Conduct and Rules be amended to remove impediments to our members' ability to adapt to the changing marketplace? Would such changes even benefit small firms who would then be in a position to team up with other professionals?

There are those who believe the concept of MDPs is established and is irreversible. It may be that The Law Society is in no position to approve or disapprove the MDPs. Rather, the Law Society may have to steer the course in such a manner that the protection of the public, which is inherent in an independent, self-governed legal profession, is maintained without unduly restricting lawyers from joining with other professionals to provide maximum service to the public.

Personal Guarantees

Personal guarantees continue to be a source of liability claims against lawyers. It is a strange anomaly that at the point of execution, all clients understand the nature of a personal guarantee and are concerned with the time and cost expended in the lawyer's office. However, at the time of default, many of those same clients no longer understand their legal obligations.

In the recent decision Couture V. Lamonta5ne, (Dec.96, unreported), the plaintiff, through a corporate entity, purchased a hotel and provided as security a personal guarantee. The lawyer, acting for both the plaintiff and the lender, sent the personal guarantee to the plaintiff with the following short letter:

> "Please find enclosed two guarantee forms sent to me for your signature by the Royal Bank in regard to the money advanced on the Stampede Hotel. Please read the forms very carefully and contact me if you wish any explanation. If you are satisfied, please sign them and return them as soon as possible."

The business failed and the plaintiff eventually settled his personal guarantees for the sum of $90,000.

There was contradictory evidence at trial. The plaintiff, who was a successful farmer, gave evidence that he did not understand and was not advised as to the true consequences of the personal guarantee. The trial judge favoured the Plaintiff's evidence and makes several important rulings.

First, with respect to the letter which was earlier reproduced, she states:

> "At a minimum, the defendant should have explained in the letter the importance of the guarantees and the risk the plaintiff was undertaking by signing them

Secondly she states that "there is no question that the defendant had a duty to the plaintiff, his client, to fully explain the personal guarantee to him".

Thirdly, she states that:

> "The fact that the plaintiff was successful in his farming endeavours and had a strong financial base does not mean that he knew the niceties of the law. The defendant had no reason to assume that the plaintiff had a solid understanding of personal guarantees or any other legal document for that matter."

In practice, the use of personal guarantees is so common, and the concepts so elementary, that we may not provide sufficient explanation. The other problem is that at a trial a lawyer's recollection of the event is often lacking. It may be useful to consider the following practices:

1. Use a standard form letter explaining guarantees to clients.

2. If you use a check list, add further detail with respect to personal guarantees.

3. Adopt a standard explanation and practice in all cases.

4. When acting for both the lender and the borrower, consider independent legal advice.

In Memoriam

Timothy Shawn Quinlan, of Regina, died August 11,1997. A graduate of the College of Law, University of Saskatchewan, he articled to Wilfred Meagher and C. Harvey Randall, and was admitted to the Law Society of Saskatchewan in 1980. At the time of his passing, Mr. Quinlan was practicing law with the firm Willows, Howe & Linka.
