

BENCHERS' DIGEST

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Report Of The Law Society Uniform Trust Letter Committee

(Randall M. Sandbeck)

The Real Estate Committee was established initially to deal with the issue of the fees charged for residential real estate transactions. The Committee expanded its focus to include uniform trust conditions and disclosure statements where a lawyer acts for more than one party to a real estate transaction.

At the Meeting of the Benchers held February 11 and 12, 1999, the Benchers approved changes to the Tariff regarding real estate transfers and mortgages. Those changes are included with the rule amendments in this mailing. The Benchers also approved the proposed Uniform Trust Condition letter for use in residential land transfers in Saskatchewan.

The members of the Committee are Randy Baker, Gordon Balon, Laurie Burrows, Richard Carlson, Guy Chicoine, Bernard Duchin, Stuart Eisner, Lyle Jones, Randy Katzman, Dan Konkin, David Leland, Lee Mountain, Robert Munkler, George Patterson, Randy Rooke, Randy Sandbeck, Daryl Shirkey, John Stamatinos, Murray Walter, Greg Willows.

There has been a long-standing practice of trust conditions that were 'standard' to geographic regions in the province. These trust conditions were adapted for use primarily in residential real estate transactions in the local area.

The absence of a uniform set of conditions created the following difficulties or concerns:

1. conditions requiring the purchaser's solicitor to pay the balance on closing, irrespective of whether the financial institution advances funds;
2. disputes arising between solicitors as a result of varying trust conditions;
3. periodic amendments or changes to what otherwise were 'standard' conditions in the geographic area;
4. liability and standard of practice concerns arising from the absence of any uniform provincial model of trust conditions.

Many local Bar Associations and the Canadian Bar Association Real Property Sections have worked on aspects of standardizing trust conditions for residential real estate conveyancing, for many years. Through these groups and The Law Society, a committee was formed to work on establishing a uniform set of trust conditions appropriate for residential real estate conveyancing throughout the province. The committee was formed in late 1997 and began its work in 1998.

In its deliberations the committee was mindful of the following:

- a. The existence of a contract between the parties. Solicitors have little or no opportunity to review the contract of purchase and sale entered into between the parties, commonly entered into by way of a Saskatchewan Real Estate Commission Standard Form Contract. The committee felt that the use of trust conditions to alter the contractual agreement should be avoided as much as possible.
- b. The committee considered the impact of legislation in Saskatchewan, including The Limitation of Civil Rights Act, The Land Contracts (Actions) Act, and The Agreements of Sale Cancellation Act. The effect of this legislation upon the contract of purchase and sale was taken into account and reviewed by the committee.
- c. Trust conditions should not create a significant exposure to risk, particularly on the part of the purchaser's solicitor. It was felt trust conditions which have the effect of making a solicitor, in effect, 'guarantee' the conclusion of the transaction were unwarranted. The remedy of the parties is available under the contract, as governed by legislative authority.

- d. The conditions are designed to be uniform in use for the province, with the objective that only modest amendments will be required, if any, upon implementation of the Land Titles Automated Network Development Program.

The final working copy, which was approved by the Benchers on the 11th day of February, 1999, is as follows:

Dear Sirs:

Re: LAW SOCIETY UNIFORM TRUST LETTER FORMAT

Vendor:

Purchaser:

Property:

Possession Date:

Our File:

We are the solicitors for the Vendor in the above-noted transaction and we enclose the following:

1. Transfer of Land;
2. Statement of Adjustments;
3. Duplicate Certificate of Title No. ;
4. Surveyor's Certificate / Real Property Report;
5. G.S.T. Exemption Certificate of Vendor;
6. Partial Discharge of Mortgage No.

The enclosed documents are forwarded to you on the trust conditions set out below in accordance with The Law Society uniform trust letter format.

1. On or before the possession or adjustment date (whichever first occurs, which earlier date is hereinafter referred to as "possession date"), you will forward to this office the difference between the balance due to close hereunder as indicated in our statement of adjustments, and your client's net mortgage proceeds;
2. On or before possession date, you will ensure your client has executed all mortgage documentation necessitated by your client's mortgagee and that you have, or will have, in your possession within a reasonable period of time, all other documents required by your client's mortgagee;
3. As soon as you are in a position to do so, and in any event no later than seven days after the possession date, you tender the Transfer of Land and mortgage documentation to the Land Titles Office for registration;
4. In the event your client is assuming an existing mortgage as partial consideration in the within transaction, you will obtain confirmation from the mortgagee that it approves of the assumption of the mortgage by your client, and that any and all conditions imposed by the mortgagee on the assumption of the mortgage are satisfied, prior to possession date;
5. Forthwith upon receiving confirmation that the Transfer and mortgage have been registered, you will requisition mortgage proceeds from your client's mortgagee;
6. Conditional upon receiving the mortgage proceeds, you will forthwith tender to this office the balance due to close, less funds previously forwarded pursuant to Paragraph 1. hereof, together with interest thereon at the rate of % per annum from the possession date, until the date that funds are received in this office.
7. In the event your client's mortgagee refuses to advance the mortgage proceeds, you will immediately notify this office in writing.
8. Within a reasonable period of time following registration of the within Transfer, you will notify the appropriate municipal authority of the change of ownership.
9. If the Transfer of Land and/or mortgage documents are rejected by the Land Titles Office, you will take reasonable steps to:
 - a. notify our office, advising of the reason for rejection;

- b. correct the documentation or cause it to be corrected if you are able to do so, and resubmit the same for registration;
 - c. forward any document supplied by the vendor, to our office for remedy if necessary, and we undertake to correct such deficiency if we are able to do so, and redeliver the same to your office for you to resubmit for registration.
-

If you are unwilling or unable to accept all of the aforementioned conditions of trust, then the enclosed documents are to be returned to this office forthwith and unused unless an alternative is firstly arrived at in writing with the writer.

We undertake as follows:

- To return the cash to mortgage to you, in the event either of the following circumstances occur:
 - a. title to the subject property does not issue in your client's name free and clear of all encumbrances, save and except for the following encumbrances:
 - i. Any encumbrance registered by or against your client;
 - ii. Easement No. ;
 - iii. Caveat No. ;
 - iv. Mortgage No. .
 - b. your client does not receive vacant possession of the subject property on the possession date.
- 2. That upon your advice that title has issued in your client's name and conditional upon our receipt of the balance of the purchase price as set out in the enclosed statement of adjustments and interest that has accrued thereon in accordance with our conditions of trust, to:
 - a. pay out and cause to be discharged from title, the following encumbrances:
 - i. Mortgage No. ;
 - ii. Caveat No. ;
 - b. to pay any taxes necessary to conform with the statement of adjustments;
 - c. to ensure that all payments are made on the mortgage being assumed by your client in order to conform with the statement of adjustments (if applicable).

In order for us to authorize your client's possession of the property, we will require your confirmation that the trust conditions and undertakings in this letter are acceptable to you.

If either the trust conditions or the undertakings are not acceptable to you, please contact the writer immediately.

Yours truly

Per:

Enclosures

The committee intends to further its work by recommending a short form of correspondence which refers to the uniform trust letter approved by the Benchers, and by promoting the use of certain standard form declarations and disclaimers.

In order to be effective, the Committee recommends the conditions be made mandatory for residential real estate transactions. In commercial transactions, the format may not be appropriate. The uniform trust letter format is designed to become the standard for residential real estate conveyancing, to promote efficiency, cooperation, and reduced liability issues.

Highlights of the Meeting of the Benchers held February 11 & 12, 1999

(A. Kirsten Logan, Q.C.)

Federation of Law Societies of Canada Board of Directors

The Benchers were advised that the Law Society of Manitoba has agreed to the appointment of Maurice Laprairie, Q.C., as the representative of Manitoba and Saskatchewan to the Federation of Law Societies of Canada Board of Directors. At the Federations Mid Winter Meeting held February 19, 20, and 21, 1999, Mr. Laprairie was installed as a director.

New Bencher

The Southeast electoral district held an election to recommend a replacement for Lynn MacDonald upon her appointment to the Bench. Ed Komarnicki, of Estevan, was put forward by the Southeast district and was unanimously approved by the Benchers to serve the remainder of Ms. MacDonald's term.

Land Project

In discussions with the Department of Justice regarding the Land Project, the computerization of the land titles system in Saskatchewan, the Law Society will be taking the position that lawyers should be the sole authorized users of the computerized system. At a recent meeting with the Minister and Deputy Minister of Justice, both the Law Society and CBA representatives put that position forward. It is the Benchers' position that the risk to the lawyers' insurance program will be increased with the new system. It will be necessary for considerable resources to be targeted toward education and other systems. It is the Benchers' opinion that the Law Society should be sure of its position before expending those resources.

Incorporation

Discussions are ongoing with the government regarding incorporation for lawyers. Lawyers who practice in the tax field have been asked to provide estimates on the potential loss of tax revenue if lawyers are allowed to incorporate.

We hope to use this information to rebut the position taken by the Minister of Finance that incorporation would result in a major loss of revenue to the government. The first estimate, from Dwayne Anderson, indicates a potential loss of revenue to the government of less than \$400,000 per year.

Investigation of Benchers and Members of Benchers' Firms

The Discipline Executive has been considering a policy regarding situations where complaints are made against Benchers, members of Benchers' firms or Law Society staff. The following policy was adopted: Where the relationship between the member complained of or the complainant and the staff Complaints Officer is such as to raise a reasonable apprehension of bias, the matter shall be referred to another person designated by the Benchers under Section 40 of The Legal Profession Act, 1990, as Complaints Officer for examination pursuant to Section 40 and Rule 300. Notwithstanding the above, where a complaint appears on its face to be not within the jurisdiction of the Law Society or where it is concerning conduct which is apparently not such as to be subject to action by either the Discipline Committee or the Professional Standards Committee, the Law Society staff Complaints Officer may deal with it in accordance with Rule 300. In all cases where a Bencher, a member of the Bencher's firm or a Law Society staff member is subject to a complaint which is referred to the Chair of Discipline, an investigation committee shall be appointed consisting of non-Bencher members.

John Hampton Defalcation

The Benchers sat as the Discipline Committee to deal with the sentencing of Mr. Hampton. Particulars have been circulated to the membership. Mr. Hampton was disbarred. The Discipline Committee also approved payments from the Special Fund in the amount of \$31,538.32 to cover Mr. Hampton's mis-appropriation and conversion of trust monies.

Bar Admission Course

Rule 160(8)

As was reported in the last Benchers' Digest, the Admissions and Education Committee has been reviewing issues regarding the evaluation process at the Bar Admission Course. One of the concerns that had been expressed was that Rule 160(8) was unclear. Some students and principals believed that if a student failed a segment of the Bar Admission Course, he or she would no longer be allowed to article.

The Benchers approved an amendment to Rule 160(8) to, it is hoped, make it clear that students who fail the first segment of the Bar Admission Course are not required to cease articling. What had been the policy is now incorporated into the Rule; being that a student who fails the first segment may continue under articles, take the next segment, return to articles and repeat the first segment.

Equity/Diversity Committee

Rule 136

At the planning session held last September, one of the recommendations for the then Gender Equity Committee was to expand its focus to include other equity issues besides gender. As you will have noted, Rule 110(1) was amended to change the name of the committee to the Equity/Diversity Committee. The committee has now completed a review of its mandate. The Benchers therefore passed an amendment to Rule 136 which sets out the mandate of the committee to include a development of equity/diversity programs; reviewing Law Society policies to remove the systemic barriers; reviewing policies to determine whether all forms of harassment are addressed; assisting firms to implement equity/diversity programs as well as providing information; and assisting firms to resolve equity/diversity issues in a non-punitive fashion.

Employment Equity

The Committee is working on the development of an employment equity policy for Law Society employees. The aim of the committee is to have this policy registered with the Human Rights Commission. The policy expresses the Law Society's commitment to the elimination of employment barriers which will improve the representation of women, aboriginal people, persons with disabilities and visible minorities in the Law Society's workforce. It is expected that the policy will be finalized at the April Convocation.

AAIA Review

Section 220 of The Automobile Accident Insurance Act provides for a review five years after the amendments implementing the no-fault scheme came into effect. The members of the review panel must be appointed prior to the end of 1999. At a meeting with the Minister and Deputy Minister held in early January, both the Law Society and Canadian Bar Association representatives indicated their desire that an independent person, perhaps a retired judge, be appointed. Letters have been forwarded to the Minister responsible for SGI, Dwayne Lingenfelter, requesting a meeting.

The Benchers agreed to provide funds to the No-Fault Committee to finance an economic analysis of financial data provided by SGI as well as costing estimates for possible reform initiatives. The Committee has retained the firm of Kalesnikoff Martens of Saskatoon. The Benchers agreed with the Committee's submission that any credible presentation to the review process must include cost analysis and therefore agreed to split the cost of the study with Canadian Bar Association.

Borrowing From Clients

At a recent sentencing, the Benchers learned that many members are unaware of the provisions of Chapter VI, Commentary 4 of The Code of Professional Conduct, i.e. that "the lawyer should not borrow from a client who is not in the business of lending money." The footnote goes on to provide that "the onus of proving that the client's interests were fully protected...will rest upon [the lawyer]." Borrowing money from clients not in the business of lending is dangerous both civilly and ethically. So much so that several years ago Form TA-3 (which the majority of members submit annually) was amended to add a declaration that there has been strict compliance with these provisions of the Code.

Failure to comply with the Code, on this issue and all others can result in serious discipline consequences.

Professional Conduct Rulings

(Iain A. Mentiplay, Q.C.)

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 that arise from those situations.

Breach of Trust Conditions Chapter XVI, Commentary 10

Facts:

Lawyer J was acting for a client on a personal injury file. Lawyer R requested that the file be transferred on the trust condition that the amount owing for the lawyer's account for legal fees must be paid in full plus his usual rate of interest upon settlement of the claim or withdrawal of the file from Lawyer R's care. Lawyer R was provided with a copy of Lawyer J's most recent billing statement and his invoice and appendix for work to date. His invoice contained the usual reference to interest at 2% per month on accounts overdue by more than 30 days.

The file took more than two years to settle. The claim was settled and Lawyer R requested a payout figure from Lawyer J. She refused to pay interest and she took the position that she understood the reference to usual interest to be pre-judgement interest rates or normal commercial rates and not compound interest. Lawyer J said that Lawyer R was in breach of trust.

Ruling:

It is the opinion of the Ethics Committee that Lawyer R accepted the trust conditions; however, those conditions were ambiguous. The Committee was not prepared to define what those conditions mean. This is a legal question. The parties will be advised that extreme care is needed when accepting trust conditions.

Confidential Information – Chapter IV

Facts:

Lawyer F was consulted by Client A about representing her in a matrimonial property matter. Lawyer F advised her that she would be in a conflict as Lawyer F had acted for Client A's husband in his purchase of a business a few years ago. Lawyer F recommended that she see Lawyer K as he often refers clients to him if he is in a conflict of interest. At no time did he discuss with her any particulars of her marital problems.

Shortly afterwards, Lawyer F and Lawyer K met casually, at which time, Lawyer F mentioned that he had referred Client A to him as he had an apparent conflict. Lawyer K indicated that he might have a conflict also as he previously acted for Client A's husband and a business partner of his with respect to unrelated matters. Lawyer F told Lawyer K

that he believed Client A's husband may very well waive any such conflict in these circumstances. He did not discuss Client A's marital situation with him.

Some time later, Lawyer F received a telephone message to call the business partner of Client A's husband. Upon returning the call, the husband answered the phone and, to the best of his recollection, his partner was not there. Lawyer F told him that he had recently been asked by his wife to represent her and he declined to do so. He believes that he may have also told him that she was very upset that he could not act for her.

Ruling:

It is the opinion of the Committee that:

1. It was alright for Lawyer F to discuss the file with Lawyer K, but he should be careful not to cross the line into mere gossip.
2. It was completely inexcusable, however, to have told the husband of the contact by Client A. It could be very dangerous, especially in a matrimonial matter. Lawyer F has been advised that this matter was very close to being referred to discipline.
3. Lawyer F can act for the husband as long as no confidential information was obtained from the wife.

Practice of Law Chapter XVII, Commentary 1

Facts:

A corporation in which two lawyers are shareholders, which was incorporated to provide financial advice with respect to financial funding and business brokerage was approached by a corporation to perform the following services:

1. To provide analysis and recommendation with respect to alternatives to raise private and public funds for investment opportunities by the client corporation;
2. To prepare an offering memorandum or prospectus; and
3. To attend all meetings with the Securities Commission with respect to approving the offering memorandum or prospectus. The lawyers wanted to know if this is legal services or a combination of legal services and consulting work.

Ruling:

The Ethics Committee is not in a position to say definitively whether or not these services would be defined as legal services. There is probably a strong legal component. Lawyers will be advised that it is not permissible to provide legal services through a corporation nor there would be any insurance available for errors or omissions where the services are provided by a corporation.

Obligation to a Third Party

Facts:

Lawyer E had acted for a client on a personal injury matter against SGI. The client also claimed on employer disability insurance and received payment with regard to the same injury.

SGI ultimately paid the loss of income to Lawyer E in trust. The disability insurer has requested authorization to see the SGI file. SGI has requested that Lawyer E obtain the client's authorization for SGI to release information to the disability company from their file. The client has refused to provide the authorization as requested. The client wishes to receive the settlement.

Lawyer E has asked the Ethics Committee "What is the lawyer's obligation, knowing of the disability plan's potential claim?" and "Are there any implications if the fees are deducted from the SGI funds providing they are releasable?"

Ruling:

The Ethics Committee is of the opinion that this is a legal question and not an ethical question and was not prepared to provide legal advice. The Lawyer E may wish to consider her obligation to a third party.

The Committee was also of the opinion that Lawyer E has a valid solicitor lien for legal fees. It is perfectly appropriate to deduct the fees from the funds in trust.

Confidential Information Chapter IV

Facts:

Lawyer F acted for a client who suffered in an abusive marital situation. He had strict instructions not to contact the client at home. Since the client did not work outside the home, it was practically impossible to contact her. The client made a deposit against future legal fees. After the services were concluded, there were some funds left in trust. The client then died. Lawyer F asked what steps she should take with respect to the trust funds.

Ruling:

The Committee is of the opinion that Lawyer F had an overriding duty to turn the funds over to the executor but not to disclose the information as to how she received the funds.

Certificate of Independent Legal Advice

Facts:

Lawyer C was asked to prepare and deliver a Certificate of Independent Legal Advice required by the Department of Indian and Northern Affairs to a Band prior to a vote to permit its land to be used for a public road. The Department's position was that an agreement had been reached on the form and wording of the Certificate before the call for the vote. The vote was held and the designation document was duly signed by the Band.

A meeting was held at which advice was given. Lawyer C supplied the Certificate substantially in the form it was agreed upon. The Department wanted the Certificate exactly as worded with blanks of names and dates filled in. They were of the view that Lawyer C had given an undertaking to supply the agreed upon form and content of the Certificate which was a condition for posting of the notice of vote. Lawyer C took the position that he agreed to the form, but that the content that he applied in the form would be dictated by the facts, as they became known. In other words, he could not have given the solicitor's opinion in advance of the events that were anticipated by the Certificate.

A solicitor's Certificate was ultimately submitted once the factual basis for completion of the Certificate was known to him. While he could agree ahead on form, he could not guarantee the content ahead of time.

Ruling:

The Committee is of the opinion that no undertaking had been given and that a lawyer could only certify what has actually occurred.

Volunteers and Paid Counsel

(Allan T. Snell, Q.C.)

The amendments to The Legal Profession Act, 1990, in 1996, provided a much greater range of opportunity for the Law Society to take advantage of non-Bencher members' skill, expertise and willingness to assist in Professional standards and Discipline investigations etc. As well, the Law Society has been utilizing a wider array of programs to

assist the membership and protect the public. These include counseling service, mediation programs, etc. This is in addition of course to the long-standing Law Society policy of hiring non-Bencher members to undertake insurance defence work and discipline prosecutions, where these cannot be handled by in-house counsel.

This raises the question of what assistance does the Law Society ask its members to perform on a volunteer basis and what assistance does the Law Society pay for. At the February 1999 Convocation of Benchers, the Professional Standards Committee and the Discipline Committee held a joint meeting to discuss this matter. After a great deal of discussion, it was determined and resolved by the Benchers that the Law Society ought to continue to pay for Discipline and Insurance counsel and will, in exceptional cases, pay for other professional assistance, but for the most part, members and Benchers alike will be asked to provide assistance on a volunteer basis. In deciding this policy the Benchers wish to emphasize that they do not intend to convey an impression that they value such counsel services higher than the services of a mediator or investigator, for example. Quite the contrary. The value of the work performed for the Law Society by volunteers is exceptional. It was decided, however, that Discipline and Insurance counsel work represent traditional and core functions of the Law Society which must be undertaken and therefore ought to be paid for. Expansion of compensation from Law Society funds will be discouraged in order to stay within the present budget.

Again, the Benchers wish to emphasize that they view as a major strength of our Law Society the ability to call upon members to undertake important and sometimes time-consuming tasks without the expectation of compensation but simply for the common good.

Notes from the Library

(Susan Baer, Director of Libraries)

Several Saskatchewan law firms subscribe to the Saskatchewan Reports, published by Maritime Law Book. Maritime Law Book withdrew its report series from QL in 1997 and has since maintained a web site. It is located at www.mlb.nb.ca. Maritime Law Book uses ISYS as its search engine, which is the same one used by the Saskatchewan and Alberta Queen's Printers.

Maritime Law Book offers full-text judgements that appear in its report series and unreported judgements at its web site. For subscribers, searching and access to the judgements are available at no charge. You must subscribe to the print service for free updating on the web.

Otherwise, users can choose to access the judgements on a pay-per-view basis. Each judgement costs \$1.50 to view and searching without a subscription is free. Should you cancel print and use online only? Sole practitioners can subscribe to a paperbound service for \$60 per volume. There were 13 volumes published in 1998 for a total annual cost of \$780 (without index volumes). A law firm price for the same service is \$90 per volume for an annual cost of \$1,170. In 1998, there were 821 judgements from the three court levels in Saskatchewan received by the Law Society library. If you want to view all of the new judgements on Maritime Law Book website at least once, it would cost \$1,231.50. There is certainly a savings with maintaining a print subscription and the paperbound services are the least expensive.

It is also very difficult to find the new judgements as they are added to their system. There is a delay in getting the judgements into their system. I did not find the recent decisions from February and March that are on our own web site. Through the full-text judgement database offered on the library's web site, you can search by the date to find new judgements. The library has recently added a field to the full-text database for true date searching. It is now possible to search by an exact date or by month and year, to find recent cases. The full-text database is keyword searchable as well and it is possible to combine a keyword search in the text field with a date search in the date field. For example, if you practice criminal law, you may want to search for sexual assault in the full-text field and February 1999 in the date field, to see all judgements on that subject that were released in february 1999. (There are three).

You may want to search for new judgements every Monday. To do this, enter an exact date beginning with the "greater than" (>) symbol. Using Friday's date will pick up Monday's date in your search. Enter as: > February 22 1999. This will retrieve all judgements that are dated after and not including February 22, 1999.

Full-text judgements are added to the database within one day of receiving the judgement. In most cases, the judgements are added in the same day and available for searching on the website the next day.

We will be making changes to the case digest database that will allow date searching in this manner. Completion date is scheduled for July 1999. Cost of subscribing to both databases is only \$95 per year. The arithmetic speaks for itself.

Judicial Appointments

Carol Snell Appointed Provincial Court Judge

The Honorable John Nilson, Q.C., Minister of Justice, announced March 10, 1999, that Carol Snell, Q.C., Director of Special Projects for Saskatchewan Justice Public Prosecutions, was appointed a judge of the Provincial Court of Saskatchewan in Regina. Judge Snell earned a Bachelor of Arts from Queen's University in 1972. In 1977, she completed her Bachelor of Laws at the University of Saskatchewan and articulated with Saskatchewan Justice. In 1978, after being called to the bar, Judge Snell practiced with Saskatchewan Justice for more than 20 years. She has practiced as a Crown Prosecutor, and Crown Solicitor and a Senior Crown Prosecutor before becoming the Director of Special Projects for the Public Prosecutions Branch, a position she held until this appointment. Judge Snell is the co-author of *Breathalyser Law in Saskatchewan* (1978) and the author of several other papers including *Precedents for Prosecutors* (1978) and *An Analysis of Bill C-18* (1985). She has lectured extensively on a variety of criminal law topics at universities and legal conferences throughout Canada. Judge Snell was appointed Queen's Counsel in 1993. She was also honored as the Saskatchewan Legal Education Society's Outstanding Volunteer in 1996.

Barrett Halderman Appointed Provincial Court Judge

On March 10, 1999, The Honorable John Nilson, Q.C., Minister of Justice, announced that Barrett Halderman, a partner in the Humboldt law firm of Munkler & Halderman, was appointed a judge of the Provincial Court of Saskatchewan in Melfort. Judge Halderman earned a Bachelor of Arts from the University of Saskatchewan in 1964 and completed his Bachelor of Laws at Dalhousie Law School in 1971. He served as Secretary and Legal Advisor for the Saskatchewan Government Finance Office from 1973 to 1976. He then practised with the Saskatoon and Weyburn Legal Aid Clinics from 1976 to 1978. Over the past twenty-one years, Judge Halderman has been a partner in the law firm of Munkler & Halderman, representing clients throughout north central Saskatchewan. In addition to his extensive experience at the private bar, Judge Halderman also served as an Acting Judge for the Provincial Court of Saskatchewan. He was president of the North Central Bar Association and past president of the Saskatchewan Branch of the Dalhousie Law School Alumni Association. Judge Halderman has been a member of the Humboldt Town Council since 1988.

Dennis Pelletier Appointed Judge Of The Federal Court Of Canada

The Honourable Anne McLellan, Minister of Justice and Attorney General of Canada, announced February 17, 1999, that Dennis Pelletier was appointed Judge of the Federal Court of Canada, Trial Division. Mr. Justice Pelletier received his Bachelor of Laws from the University of Saskatchewan in 1980, articulated with John Stack of McKercher McKercher, Stack, Korchin & Laing, and was admitted to the Bar in 1981. Since being admitted, Mr. Justice Pelletier continued his employment with the firm of McKercher, McKercher & Whitmore and became a partner of that firm in 1984.

Barbara Gale Welsh, Q.C. Appointed Judge Of The Supreme Court Of Newfoundland, Trial Division

The Honorable Anne McLellan, Minister of Justice and Attorney General of Canada, announced March 10, 1999, that

Barbara Gale Welsh was appointed as Judge of the Supreme Court of Newfoundland, Trial Division, in Corner Brook. Madam Justice Welsh graduated in Law from the University of Saskatchewan in 1983, was admitted to the Bar of Saskatchewan in 1984 and to the Bar of Newfoundland in 1989. Prior to her appointment, Madam Justice Welsh had been a solicitor and a counselor with the Department of Justice of Newfoundland and Labrador. From 1984 to 1989 she practised law with the Department of Justice of Saskatchewan. Prior to that, Madam Justice Welsh was a teacher and taught grade school and special education in Alberta, Northwest Territories and in Labrador.

Medical Reports And Records

(Allan T. Snell, Q.C.)

At a recent meeting the Medical Legal Committee considered the matter of lawyers obtaining medical reports and records (hereinafter Medical Information) on behalf of clients from physicians. There has, in the past, been concern expressed on the part of lawyers that physicians may not provide sufficient information to allow the lawyer to properly advise and represent his or her clients. On the other hand, the physicians are reluctant to provide blanket information to a lawyer with respect to a rather narrow legal issue, particularly when some of the medical information in the possession of the doctor may be embarrassing or extremely confidential to the patient. Inasmuch as both doctor and lawyer are in this circumstance concerned with the best interest of the client/patient, the Committee was of the view that much of the concerns expressed by both professions could be answered by better communication between doctor and lawyer and also with the patient/client. With that in mind, the Committee suggests the following approach to lawyers:

1. Discuss with the client the necessity for the medical information, including what information is necessary and why it is necessary.
2. Advise the client as to the nature of the request that will be put to the physician and determine if the client has any concerns with respect to the lawyers obtaining that information. If there is any information which the client would rather not have disclosed to the lawyer, that issue should be addressed immediately before the request is sent to the physician.
3. The letter to the physician requesting the medical information should be as specific as possible as to what information is required, however, both client and physician should be advised that the determination as to what is relevant information in the context of the client's legal affairs is the responsibility of the lawyer. Thus, it will be of benefit to give the physician some background as to why the information is required, for example, in order to prosecute a claim for damages arising from a specific incident and ask for all information surrounding treatment relating to that incident, as well as any subsequent or pre-existing condition which may affect the client's health, lifestyle, etc.
4. When the medical information has been received, it should be reviewed with the client. The client should be aware of which information will have to be disclosed to the opposing side, and which information may be withheld, including the reasons for both. In other words, the client should have a reasonable understanding of the rules respecting discovery.
5. On occasion, depending on the circumstances, it may be beneficial for the lawyer to phone the physician, as well as sending written request for medical information with the client's consent. This has the advantage of giving the lawyer an opportunity to put to rest any concerns that the physician may have and directing the response and report provided by the physician. It may also be useful in dealing with the question of physicians' costs for providing the report.
6. It is improper for a lawyer to draft a medical report for a physician's signature.

In Memoriam

David McIntyre Tyerman, Q.C. passed away January 12, 1999. He graduated from Law at the University of Saskatchewan in 1928 and went on to article with the McKenzie, Thom firm in Regina for one year and then went on to the MacPherson Leslie firm. He was admitted to the Bar in 1930. Mr. Tyerman was called up to the Navy as an

administrative officer in 1939. He was active on many boards including Hoesch Tubes Limited, Inland Cement Industries Limited, National Light and Power Company Limited, Rodell Equipment Limited, Saskatchewan Cement Limited, Prairie Oil Royalties, Toronto Dominion Bank and Producer's Pipelines Limited, Board of Governors of the Canadian Petroleum Association. He was governor of the Foundation for Legal Research and Canadian Tax Foundation. In 1957, he received his Queen's Counsel appointment.

Paul Hleck, Q.C. passed away on January 22, 1999. Mr. Hleck graduated with his Bachelors of Law degree in 1956 and articulated with MacPherson, Newman and Pierce. He was admitted to the Saskatchewan Bar in 1957 and appointed Queen's Counsel in 1974.

Mr. Hleck served on many committees including Community Planning Association of Canada, Housing and Urban Development Association of Regina, Arbitration and Mediation Institute, Police Commission, Canadian Club of Regina, Kiwanis Club of Wascana and Regina Planning Commission. He also served as Director of SaskOil, Cairns Homes Ltd, and was Patron Director of Saskatchewan Roughrider Football Club. Mr. Hleck was active in the life of the Ukrainian Orthodox Church.

Mr. Hleck retired from his law firm, Hleck Kanuka in August of 1996 to private practice with selected corporate clients and to pursue a role in mediation.
