

# BENCHERS' DIGEST



Volume 12, Issue Number 6

December, 1999

## *Professional Standards*

*(Daniel B. Konkin)*



From a recent membership survey, the results of which were delivered to The Law Society in June of 1999, a number of issues stand out that bear comment. From a Professional Standards point of view, there are at least two issues that I would like to discuss. These are the members statement that the "highest overall priority by far was assigned to dealing with lawyers who practice in an incompetent matter" and the results of this study appear to demonstrate that a good number of the lawyers do not feel that they understand what the Professional Standards/Discipline process is all about.

The two comments, although seemingly widely discrepant, may well have a very common root. Members who do not understand The Law Society process may well feel little or nothing is being done with regard to policing the competence of our membership.

The intent of this article is to in part inform members of the functions provided by The Law Society in this regard and to describe the new initiatives undertaken by The Law Society on behalf of its members.

Strictly under *The Legal Professions Act*, the now Professional Standards Committee was enacted as the Competence and Standards Committee. Also under the Act, where the complaints officer reviews a complaint and determines that it deals with a matter of competency, that complaint is referred to the chair of the Professional Standards Committee (Competency and Standards). This committee is now empowered to review issues with competency. Prior to 1992 there was no Competency/Professional Standards Committee. All investigations were handled under discipline as discipline issues. In the 1990s the average number of Professional Standards (Competency) Investigations up to 1998 was 10/year. In 1999 to date, there have been 30 investigations commenced.

This is not because our members are becoming more incompetent and it is

also not because The Law Society has decided to go on "witch hunts". The simple fact is that in the last four or five years, The Law Society has taken the approach that many matters are more aptly dealt with at the Professional Standards level as opposed to waiting for them to become discipline and/or insurance issues. I must say that my experience as vice-chair and now chair of Professional Standards has left me optimistic about the future of the profession in Saskatchewan. Almost every lawyer contacted by myself or an Investigation Committee has offered full cooperation and has welcomed our committee in for practice review. In general, our members have also accepted our comments and suggestions in a way that makes one believe that our members truly are prepared to accept criticism and guidance offered in a constructive attempt to improve their practice.

Perhaps a more interventionist approach of The Law Society at an early stage will help demonstrate to our members that we are interested in competency issues and are prepared to investigate and assist our members in that regard.

However, in addition, we are now looking at amendments to our rules which would give The Law Society more latitude to act in cases where true incompetence is the issue. To that end, the Benchers have requested a sub-com-

[www.lawsociety.sk.ca](http://www.lawsociety.sk.ca)

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mittee on competency be struck to review our current procedure, the procedures of other law societies and other professional bodies to make recommendations to The Law Society about amending our rules. Law Societies such as The Law Society of Alberta and the Law Society of Upper Canada have recently gone through this type of review process and have drafted reports with recommended amendments to their rules. This may well be the starting point for our review.

The overriding question is "How does The Law Society or an Investigation Committee determine competence on

any given issue?" We all have had experiences with other lawyers where we think at the end of the day that that lawyer must be incompetent given the way that he or she have handled a particular matter. However, when you delve into the question a number of issues arise that may impact on ones determination of whether or not that behaviour was competent. Some of these considerations might be:

1. How specialized was the area of law in question?
2. What support systems (library, mentorship, other legal expertise)

were available to the lawyer in question?

3. Are there different standards for competence depending on whether the lawyer is rural or urban, small or large practice, practicing in a "preferred" area of practice or not?

In the most recent Benchers' Digest we asked for input and submissions from our membership on the issue of competency. I believe that it is only with the input of our membership that we will arrive at a system acceptable to and supported by the membership. We look forward to responses of those who would care to respond.

## **Highlights of the Meeting of the Benchers held October 28 and 29, 1999** *(A. Kirsten Logan, Q.C.)*

### **Annual Fees**

By now the membership will have received the invoice for the annual fees for 2000. The fee will remain at the nine-year level of \$1,010. This is a reminder that the fees are due by December 1, 1999. A penalty of \$10 per day is charged for late payment.

### **Libraries**

While the Benchers agreed that the Annual Fee should not be increased in 2000, the budget was not approved. The budget had been prepared before an application had been made to the Law Foundation of Saskatchewan for funding for Libraries. That application was not approved in its entirety. The Law Foundation is a generous supporter of the Law Society Libraries, in 1999, providing a grant in the amount of approximately \$576,000.

The request by Libraries for 2000 was significantly higher than in 1999, reflecting the need to improve facilities and resources after several years of cutbacks. In addition, there are several initiatives being proposed to continue to move into electronics. Unfortunately, it is not possible to run the Libraries with only print products or only electronic access. This is especially true in this period of transition when some of the membership has difficulty with the elec-

tronic format. Some may think that the electronic or "virtual" library is cheaper than print, however, that is not the case. Having and maintaining an electronic or "virtual" library requires significant expenditures of labour and equipment. Additionally, while the access to electronic materials is vast, there is a view that there will always be a place for print. Thus, Libraries is faced with maintaining both systems. As well, Libraries are facing significantly decreased revenue, especially from the photocopiers in the various land titles offices.

Because of the shortfall in the Libraries budget, the Benchers deferred approval of the 2000 budget. Discussions are ongoing with the Law Foundation with regard to one-time costs. The Libraries Committee will continue to review the Libraries proposed program for 2000 and make recommendations in January. Thus, the final figure of the proposed deficit for Libraries was unknown at the time of Convocation.

The options the Benchers will then have to consider once the consultations are complete will be funding any deficit from surplus; directing cutbacks in the Libraries program; or directing cutbacks in all departments. The Benchers were not prepared to increase the annual fee.

We will keep you posted.

### **Meeting with the Minister and Deputy Minister**

The Executive Committee met with the new Minister of Justice, the Honourable Chris Axworthy, and the Deputy Minister, John Whyte, immediately following Convocation. Matters discussed included:

- Legal Aid Steering Committee
- Lay Benchers
- No-Fault
- Incorporation
- Class-Action Legislation
- Government of Saskatchewan Policy Re Contracting Legal Work
- Law Society Library Budget
- Lawyers Commenting to Media
- Aboriginal Justice Issues
- Registry Systems
- Future of the Legal Profession
- Law Foundation

### **Dinner with Cabinet**

The Benchers have invited the provincial cabinet to a dinner on November 23, 1999. It is an opportunity for the Benchers to express to the Cabinet Ministers their concerns regarding various issues common to the Law Society and the Government of Saskatchewan. Topics to be discussed will include:

- Government Equity Policies on Appointments and Hiring Counsel
- No-Fault Insurance
- Incorporation of Law Practices
- Class-Action Legislation
- Legal Aid Funding
- The LAND System

### **Multi-Disciplinary Partnerships**

The Benchers approved in principle a report prepared by a Special Committee of the Federation of Law Societies of Canada which deals with this issue. The Special Committee's recommendation is that lawyers should be allowed to participate in multi-disciplinary partnerships but need not be in control of the partnership in order to do so. Lawyers must agree to abide by certain rules if they are permitted to participate. At issue are certain of the core values of the legal profession such as solicitor/client privilege and conflicts of interest. In any event, the Benchers are supportive of

the Federation Committee pursuing the development of possible model rules to deal with multi-disciplinary partnerships.

### **Rule 170**

As was proposed at the last meeting, the Benchers passed an amendment to Rule 170 which would allow Quebec lawyers with civil law degrees to transfer into Saskatchewan by writing a special common-law examination rather than being required to have their education qualifications assessed by the National Committee on Accreditation.

### **Minister of Justice – Membership**

The Benchers approved the new Minister of Justice and Attorney General for Saskatchewan, the Honourable Chris Axworthy, for admission as a lawyer in Saskatchewan. Mr. Axworthy received his law degree in 1970 and

received his Masters of Laws from McGill University in 1971. He taught law at the University of New Brunswick and Dalhousie Law School before moving to Saskatoon in 1984 to establish the Centre of the Study of Co-operatives. He was the Director of the Centre and Professor of Law at the University of Saskatchewan until 1988.

Mr. Axworthy was first elected to Parliament on November 20, 1988, as the NDP MP for Saskatoon-Clark's Crossing. He was re-elected for a second term on October 25, 1993. Mr. Axworthy was re-elected for a third term on June 2, 1997, as the NDP MP for Saskatoon-Rosetown-Biggan.

Mr. Axworthy was elected as the MLA for Saskatoon-Fairview on June 28, 1999 and re-elected during the general election on September 16, 1999. He was appointed Minister of Justice and Attorney General for the Province of Saskatchewan on September 30, 1999.

## ***Auditor's Corner***

*(By Nestor Ogrady, C.A.)*

At the conclusion of the last decade of the century, I think it is appropriate to analyze the product of one's efforts. Computerization has been implemented in the majority of offices, "single entry" accounting system are non-existent, and the old one-write system has been all but replaced. Overall, the integrity and "compliance" of the new system is in most cases adequate. Our efforts must now be directed to the improvement of internal control and the analytical aspects that are available by virtue of computerization.

Unfortunately, we do still have a number of practitioners who simply defy compliance with some of the more basic rules. They do not maintain any records, and a disturbing number do not reconcile their trust or general accounts on a timely basis. I have encountered several situations where trust transactions are recorded for incorrect amounts and, in some cases, are not recorded at all resulting in substantial overpayments. These errors would have been recognized and corrected if timely reconciliations had been maintained. In one instance a banking institution honoured forged cheques. When confronted, they refused to accept responsibility because the matter had not been brought to their attention within the required thirty days. Similarly, a good number of offices do not request month-end bank statements to support invested trust funds. Usually, these members also do not reconcile the funds as required by Rule 970. Increasing the frequency of inspections of these members' records is labour intensive and costly. I will be proposing to the Discipline Committee that commencing next year, any member who continues to contravene the rules governing the operation of either trust or office accounts shall be referred to discipline and may be assessed costs. Those that may be affected by this will no doubt consider the proposal harsh. However, I believe this is in total fairness to those members who make every effort to maintain proper records.

An ever-increasing number of practitioners make a point of contacting me for help with accounting problems they encounter. This is a preventative measure and I really appreciate being contacted. Please do not hesitate to call me whenever you encounter accounting difficulties. I may not get back to you the same day, but I will as soon as your call comes to my attention.

In the next issue, I will comment on some of the less common do's and don'ts.

Compliments of the season to all.

## ***Lawyers in the News***

Don Miller, of Hunter Miller in Regina, ran the Minneapolis Marathon on October 3, 1999 in 3 hours, 18 minutes, 18 seconds. His goal was to qualify for the Boston Marathon, which he did (the qualifying time is 3:20:00). The Boston Marathon will be held on April 17, 2000. Both marathons are 26.2 very long miles.

## *You Be The Judge*

*(Daniel B. Konkin)*

Lawyer X is approached by a person for whom he has done little or no work and asked if he would act as lawyer for a company which is going to the public to raise funds for a money-making venture. The prospective client tells the lawyer that he will not need to be involved other than acting as the agent for the company to receive funds; hold them in escrow and transfer them for investment purposes. For this service, the lawyer would be paid a minimum fee plus his normal hourly rate for the work involved. The lawyer agrees to the arrangement and everything seems to go along appropriately until the RCMP show up at the lawyer's office; seize his files under a fraud investigation of the client. In addition, three complaints are received by The Law Society from people who invested money in the transaction about the lawyer's involvement with the "fraud artist".

Q. Did the lawyer act appropriately? If not, what more should he or she have done?

A. (CLIA Loss Prevention Bulletin of September, 1999, Bulletin #108)

From a con artist's perspective, duping a lawyer is very attractive. Not because lawyers are easily targeted—they are not. But if one lawyer can be tricked into participating in a questionable scheme—for example, by passing funds through his or her trust account—a con artist may be successful in persuading many other people that it is legitimate.

Lawyers are seen as credible, and people may believe that a lawyer's involvement means the transaction is legitimate and secure. If the lawyer's involvement does not amount to the practice of law, however, exactly the opposite is true. The lawyer may not be covered by liability insurance, and both investors and the lawyer may face losses.

For any transaction in which you are involved, and particularly those

involving investment schemes, it is always sound to think through the issues: Do you fully understand the transaction? Are you satisfied the investment is legitimate: Are you satisfied as to the nature and authenticity of the securities involved? Are you satisfied the source of the funds is legitimate? If a financial institution is involved, are you satisfied that it actually exists and is legitimate? Are you offering legal services and advice, and acting as a lawyer in the transaction? Are your obligations clear? If the answer is "no" to any of these questions, why are you involved?

Through lack of caution, a lawyer might unwittingly be caught in an improper scheme, and may face serious financial risks and other consequences. It merits a second look.

*(From Alert! a publication of the Lawyers Insurance Fund, Law Society of British Columbia 1999: No 2 June)*

## *No Fault Insurance*

*(Maurice Laprairie, Q.C.)*

Enclosed with this mailing of the Benchers' Digest is a special edition of the Saskatchewan Advocate produced by the Saskatchewan Trial Lawyers' Association. The topic of this publication is No-Fault Insurance. Many of the articles appearing in the publication were written by members of the Joint Law Society/CBA No-Fault Committee. In addition, you will find enclosed copies of sample brochures prepared by the Joint No-Fault Committee for distri-

bution to members of the public. Additional copies of these brochures are available by contacting the Law Society, CBA or Trial Lawyers Association.

The Committee is pleased to note that the Government recently appointed Justice Thomas Wakeling to head the review of no-fault insurance. The Committee proposed Justice Wakeling's name as its first choice for chair of the No-Fault Review Committee and is therefore understandably pleased to see

the Government make this appointment. A great deal of work will have to be done within the next few months and the committee asks that all those interested in volunteering their time to please contact us by phoning or writing: Dan Shapiro, Q.C., Chairman Joint Committee, c/o Brayford Shapiro, 311 – 21st Street East, Saskatoon, Saskatchewan, S7K 0C1, Telephone: (306) 244-5656, Fax: (306) 244-5644.

## *In Memoriam*

**Daniel Hamoline, Q.C.** passed away on Thursday, November 25, 1999. Mr. Hamoline was born on April 16, 1949. He grew up in Aberdeen, Saskatchewan. He completed a B.A. (U. of S., 1970), a M.S.W. (U. of T., 1974) and a LL.B. (U. of S., 1981) and was recently designated as Queen's Counsel. After articling with Donald Cameron of the Battlefords and Area Legal Services Society in 1981 and 1982, he signed the Roll on November 26, 1982. Mr. Hamoline maintained a non-practicing status to pursue mediation and resumed active practice in January of 1986 when he began to actively conduct mediation with Fifth Avenue Counselling & Mediation. He has provided mediation training courses approved by the Law Society for lawyers to act as mediators.

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## Notes from the Library

(Susan Baer)

### **New look to the web site**

Welcome to our web site's new look, launched on November 1, 1999. If you haven't visited the Law Society's web site lately, you are missing our great new features.

The new arrangement and appearance of the materials makes navigation around the site and within documents even more effective than before. We have expanded and develop our services to include a members' section, current updates on breaking cases and legal issues, and a reference bookshelf linking to frequently used research sources.

At present, the members' section is open to all visitors. In the future, we will secure the area with a password so documents specific to the profession are accessible only by Law Society members. This new feature includes the Pre-judgment interest rates, the Uniform Trust Letter committee report and Guidelines for Suspended, Resigned or Disbarred Members. Other useful documents will continue to be added as the section expands and evolves. There is also a specific area in the members' section that provides information on new books, new cases, updates on legislation and articles appearing in recent journals.

Current awareness information can also be found on the home page. The newly designed centre column provides links to new cases and legislation, appointments to various levels of the Canadian judiciary and those "hot" cases that our members are asking about before the judgments have barely left the bench. Our goal is to keep members informed of topical issues by providing links to relevant sites such as the recent copyright decision by the Federal Court. By setting the Law Society's site as your default homepage, you can be informed of current legal happenings at a glance.

With the improved navigation of search results, the database page is handy to have bookmarked. A "next record" button now exists at the bottom of the search results pages in the full text database and the digest database will soon have the same navigation fea-

tures. We are working to improve the search screens, the help sections, and the navigation. Over the following months, you will notice changes that should make searching easier.

Bookmarking favourite pages is a common practice. This is just a reminder to go to our home page at <http://www.lawsociety.sk.ca>, find your favourite pages and update your favourites/bookmarks. This will ensure you are using the current search screens and links.

Our knowledgeable library staff has now taken over the design and updating of the web site almost completely from the computer company who helped create the original site. We have learned together how to create hyperlinked databases that operate on the cutting edge of online searchable judgment and digest databases. Saskatchewan was the first and only law society library to offer dial-in access and the first law society in Canada to initiate an Internet-based search facility for judgments. Other jurisdictions are now using DB/TEXTworks and WebPublisher as well and we share with each other our experiences and advice. Our strength, gained through experience, is technical expertise.

### **Courthouse Libraries Management Group**

With the rising prices of books and subscriptions, no one library can subscribe to everything that is needed to practice law. We participate in a resource sharing agreement with the Courthouse Libraries Management Group to facilitate access to materials for all of our members. The resource sharing agreement allows us to concentrate on core areas in our collection, and through cooperation with other jurisdictions, create a network of interdependent collections. The Courthouse Libraries Management Group is an adhoc committee of law librarians, who are the directors of law society or courthouse libraries across the country. Each province and territory has a repre-

sentative rounded out by the Supreme Court of Canada librarian.

The Courthouse Libraries Management Group researched and prepared the *Canadian Courthouse and Law Society Library Standards*, which were presented to the Federation of Law Societies in 1998. The standards are scheduled for review every two years since it is difficult to predict the extent of the impact of electronic legal materials on the already strained library collection budgets.

### **Virtual Library Workgroup**

Coming to a consensus on the definition of a virtual library and how it should be delivered are difficult questions but are so fundamental to the successful development of a virtual library. The Virtual Library Workgroup, a subcommittee of the Federation of Law Societies Technology Committee, sprung up after several discussions on the concept of a seamless search interface for Internet-based primary legal materials. I wrote a report on the topic in August 1998 which is providing some background information for the workgroup, and helps to illustrate how complex and involved the concept of a virtual library is. The workgroup is composed of lawyers from across the country and a librarian from each of Saskatchewan, Ontario and Quebec. The workgroup meets regularly by telephone to bring the concept of the virtual library into reality. This is an enormous undertaking. How the virtual library develops will depend on the creation costs and the available funding for such a large project.

Through our participation in the Courthouse Libraries Management Group and the Virtual Libraries Workgroup, the Law Society of Saskatchewan library system is helping to develop the law library of the future, in whatever form it takes. We are there -- at the organizational level, examining, reviewing, and evaluating how the technological advances will be able to improve the delivery of legal information to the benefit of all members.

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# Legal WebCites

by Peta Bates

The next four columns will review the legal statutes and judgments available on the web for the western provinces.

## **Revised Statutes of British Columbia, 1996**

<http://www.qp.gov.bc.ca/bcstats/index.htm>

The Queen's Printer of British Columbia maintains this site. The disclaimer states that the HTML version of the statutes is "for private study or research purposes only, and is not the official version of the Statutes". Copyright, which is owned by the Province of British Columbia, contains a definition of legal use:

Persons may make a single copy of specific Acts, in whole or in part, for Personal Use or for Legal Use. Personal Use refers to private study or private research; it does not include permission to make more than one copy. Legal Use refers to reproduction for use within letters of advice provided by a lawyer, accountant or other professional as well as reproduction for use in judicial, administrative or parliamentary proceedings.

The Revised Statutes of British Columbia are current to December 31, 1996. Since then the consolidated statutes on the web site have been updated with "Amendment No.1", current to October 31, 1997. What's wrong with this picture? Here we have cutting edge technology with information which is two years out of date. It is possible to find amendments since October 1997 but the process is cumbersome. Each act has a "Table of Legislative Changes" which lists amendments up to October 31, 1997. For amendments after that date there are links to third reading

bills from 1997, 1998 and 1999. The bills are listed by bill number or alphabetically. Technically, all the information you need to update a statute is available on this web site but from a user's point of view the Revised Statutes of British Columbia web site will realize its potential only when there is a further consolidation of annual statutes into the 1996 revision.

## **British Columbia Regulations**

[http://www.qp.gov.bc.ca/stat\\_re/g/regs/bulletin/](http://www.qp.gov.bc.ca/stat_re/g/regs/bulletin/)

British Columbia Gazettes and the B.C. regulations which they contain are not available on the web. This British Columbia Queen's Printer site offers only an alphabetical listing of regulations published under each statute for the years 1998 and 1999. Print copies of the Gazettes must still be consulted for the fulltext of the regulations.

## **British Columbia Superior Courts Web Site**

<http://www.courts.gov.bc.ca/welcome.htm>

This web site contains the reasons for judgment from the British Columbia Court of Appeal and Supreme Court since January 1996. The database is updated daily and oral reasons for judgment are available as they are transcribed. The judgments are in a generic text format which can be downloaded and imported into word processing software. A disclaimer states that the official version of the reasons for judgment is the signed original in the court file. The judgments are arranged chronologically for each year in subject categories. A simple search query is available for all judgments. Searches can be limited to a specific year or court. The main search connectors are "and",

"or" and "near" (two words within 50 words of each other). Quotation marks are not needed for a phrase search. All this information is available in a Help link. Don't even consider looking at the Advanced Help - it is clearly written by a programmer who actually thinks that normal people care about "vector queries". Search results can be viewed by highlighted words "in context" or in the fulltext of the judgment.

The site also has lists of judges, the Practice Directives from both courts, court order interest rates and annual reports.

An interesting feature on this site is the "Compendium of Law and Judges", a project of Chief Justice Allan McEachern, with contributions from other judges and law clerks. The Compendium provides a general description of the law and the judiciary of British Columbia under the headings "Law, Courts, the Judiciary and the Legal Profession", "Canadian Charter of Rights", and "Criminal Law, Evidence and Procedure". The Chief Justice explains his reasons in the section entitled "Why Write This Compendium?"

As is often said about cases in court, legal truth may usually be found in the details. We have not found that the media have the time or the resources to furnish the details that are necessary for an informed understanding of law, judges and judging. Accordingly, my literary colleagues and I, contrary to much conventional wisdom, have decided to collaborate in the preparation of this compendium — not to explain our decisions, but rather to explain our institution and its workings.

The tone of this Compendium is learned, witty and candid. The footnotes are full of fascinating anecdotes and are well worth a read.

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# Professional Conduct Rulings

(Donna Sigmeth)

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.

## **Demand Letters/E-Mails – October, 1999, Miscellaneous**

### **Facts:**

Client A complained that he had received a demand e-mail from Lawyer A which read in part as follows: “I do not care if you have been unable to secure financing. You must deposit the money. If your loan proceeds are not yet available, you must take a cash advance against your MasterCard or Visa, or obtain the funds from your parents.”

### **Ruling:**

The Ethics Committee was of the opinion that the collection e-mail was somewhat unprofessional and in poor taste; however, the statement in the collection e-mail was not unethical.

## **Responsibility to Lawyers Individually – October, 1999 Chapter XVI**

### **Facts:**

Lawyer A complained of Lawyer B contacting her client, an organization, Client ABC, directly. Lawyer B, in response, complained about Lawyer A for failing to answer his telephone calls and faxes and having left town without leaving anyone in her office in charge of the file when the matter was time-sensitive and rather urgent.

### **Ruling:**

The Ethics Committee was of the opinion that Lawyer B’s conduct in directly contacting Client ABC when that agency was represented by Lawyer A, was unethical. However, the Ethics Committee wished to remind Lawyer A that she should have been more diligent with respect to leaving the Client ABC file with someone in her office to take care of incoming calls and faxes so as not to have put Lawyer B in the position to have to make such a decision on a time-sensitive matter.

## **Inappropriate Correspondence – October, 1999 Miscellaneous**

### **Facts:**

Lawyer X wrote a letter on behalf of his client, Client A, to Mr. B, an unrep-

resented party on the other side of a civil dispute. The letter asked Mr. B to stop defaming Client A in the community by alleging they were in financial difficulty, as the statements were untrue. Lawyer X wrote a letter, a portion of which read as follows: “Your allegations of any financial difficulty experienced by Client A is groundless and we hereby demand that you cease to make any further reference to such position to any third parties whatsoever. Further, we note that your account in the approximate amount of \$700.00 to Client A has remained outstanding since early in the fall, and perhaps we should be making allegations as to your financial difficulties as you could not even pay a \$700.00 to \$800.00 bill.”

### **Ruling:**

The Ethics Committee was of the opinion that the letter written by Lawyer X was unprofessional but not unethical, and wished to warn Lawyer X to be cautious and exercise temperate judgment particularly when dealing with difficult clients/parties.

## **Acting as Witness and as Lawyer in Same Action – October 1999 Chapter IV**

### **Facts:**

Ms. B, ex-wife of Mr. A brought a complaint against Lawyer X. Lawyer X was a witness in a family law trial on behalf of Mr. A. Two years later, Lawyer X acted as Mr. A’s lawyer with respect to negotiating summer access terms with Ms. B, who was unrepresented at the time. At the time when summer access terms were being negotiated, Mr. A was bound by his undertaking in another matter to have no contact with Ms. B except through a member of The Law Society of Saskatchewan. Approximately two weeks later, Lawyer X was no longer acting as Mr. A’s lawyer but did swear an Affidavit in support of Mr. A’s Chambers Application in the same family law action.

### **Ruling:**

The Ethics Committee was of the opinion that they had insufficient material before them to rule that Lawyer X’s conduct was unethical, but were of the opinion that it was likely unwise to act as witness and lawyer in family law matters. But, the Ethics Committee did have enough information to determine that it would be unethical for Lawyer X to act as Mr. A’s lawyer in this same

matter from that point forward. See: *Code of Professional Conduct* Chapter IV, Commentary 5 “The Lawyer as Witness”

## **Lawyer’s Responsibility to Lawyers/Return of Documents Where no Trust Conditions Imposed – October 1999 Chapter XVI “Miscellaneous”**

### **Facts:**

Lawyer A (representing the wife, Client A) sent agreements in a family law matter to Lawyer B so that Lawyer B could provide independent legal advice to the husband, Client B. Lawyer A sent the agreements over to Lawyer B simply requesting return of executed copies, but did not impose trust conditions. Lawyer B was requested by Client B to provide the executed copies of the agreement to client B directly and simply retain one on his file. Lawyer B acted as per his client’s instructions, and would not return any copies of the fully executed agreement to Lawyer A as Lawyer A had not imposed trust conditions. Lawyer B was of the opinion that he must follow his client’s instructions and was under no obligation to Lawyer A as no trust conditions had been imposed. This situation could have prejudiced Lawyer A’s client a great deal, had there been a child maintenance provision in the agreement which was required to be registered with the Maintenance Enforcement Office, fortunately, such a clause did not exist in this agreement.

### **Ruling:**

The Ethics Committee was of the opinion that despite the lack of trust conditions, it is improper for a lawyer not to return documents simply on request, as custom dictates trust conditions should not always be absolutely necessary and that there is a higher professional obligation not to take advantage of such a situation. The Committee referred Lawyer B to the *Code of Professional Conduct* Chapter XVI, Commentary 4 “Sharp Practice”. “The lawyer should avoid sharp practice and not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving any sacrifice of the client’s rights.”

## Safe Counsel

Available on a confidential basis to discuss options available and to obtain information on the procedures and potential consequences of filing sexual harassment complaints with the Law Society or elsewhere.

Karen Prisciak

Robertson

Stromberg, Saskatoon  
(306)652-7575

Reg Watson

Balfour Moss, Regina  
(306)347-8300

Cathy Zuck

S.U.N., Saskatoon  
(306)665-2100

## Practice and Career Adviser

Frank MacBean, Q.C., is available to assist lawyers in assessing their practice and careers. For confidential information and assistance call: (306)773-9343.

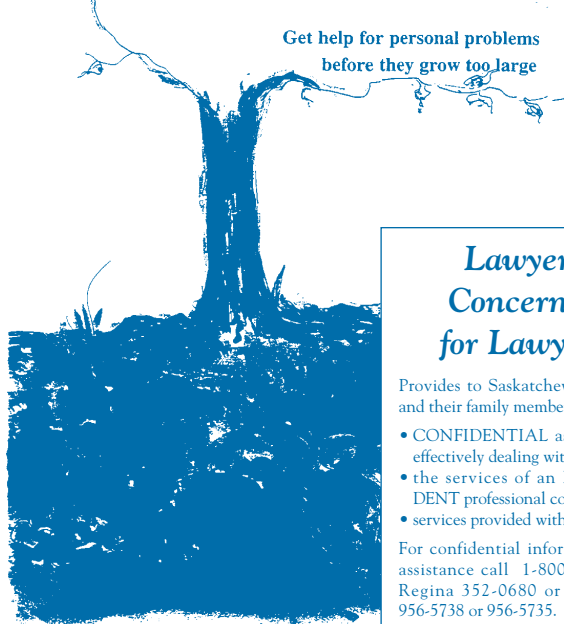
## Mentor Program

The Mentor Program, operational since 1990, is designed to provide less experienced lawyers with the assistance of more experienced counsel.

Members requiring the assistance of a mentor may call the mentor program receptionist at 306-569-2261, in Regina.

To be eligible to utilize the program, members must have completed a Waiver of Liability and have returned it to the Law Society office. Copies of the waiver may be obtained by contacting the mentor program receptionist.

## Don't Let Your Molehill Become a Mountain



Get help for personal problems  
before they grow too large

### Lawyers Concerned for Lawyers

Provides to Saskatchewan lawyers  
and their family members:

- CONFIDENTIAL assistance in effectively dealing with problems;
- the services of an INDEPENDENT professional consultant;
- services provided without charge

For confidential information and assistance call 1-800-780-5256, Regina 352-0680 or Saskatoon 956-5738 or 956-5735.

## Law Practice Self-Assessment Guide

Assists lawyers to improve the quality of their practice methods based on the assumption that an effective system of quality assurance, achieved through internal procedures and organization, has an important impact on performance.

The Guide is available free of charge to any member by contacting the Law Society office at:

(306) 569-8242

## BENCHERS' DIGEST



Published by:  
The Law Society of Saskatchewan  
1100, 2500 Victoria Avenue  
Regina, Saskatchewan  
Canada S4P 3X2  
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