

BENCHERS' DIGEST



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Law Society/CBA Withdraw from Appearing before No-Fault Review Committee

The Automobile Accident Insurance Act (the Act) provides that on the fifth anniversary of the introduction of no-fault there will be a review of the legislation. Section 220(5) of the Act reads as follows:

220(5) The Review Committee shall review and report to the Lieutenant Governor in Council **on matters concerning this part**, the regulations made pursuant to this part and the administration of this part and the regulations made pursuant to this part. [emphasis added]

The “part” referred to is Part 8 of the Act which includes section 102. For all intents and purposes section 102 abolishes the tort system for personal injuries sustained in automobile accidents. The Joint Committee of the Law Society and CBA (the Joint Committee) was and is of the view that this provided the Review Committee with the widest mandate possible to review all aspects of no-fault and the tort system and to make any comparisons and recommendations it desired. This view was consistent with numerous political assurances we had received, to the effect that this would be a “no-holds barred” review, with all options open for consideration, up to and including repeal. Although the Joint Committee has not recommended a complete repeal of Part 8, a

major overhaul, to change the balance in favour of tort and reintroducing meaningful access to the courts has consistently been the cornerstone of the Committee’s objectives

The first meeting of the Review Committee was held on February 11, 2000. During the course of that meeting representatives of the Joint Committee outlined the issues that they proposed to discuss and present evidence on. The first issue that the Joint Committee raised was a philosophical review of both the no-fault and tort systems. The Joint Committee representatives were shocked when the Review Committee stated that this issue would not be considered and produced for the first time their written interpretation of their mandate as follows:

Mandate of the PIPP Review Committee

1. The mandate of the Review Committee is broadly defined as reviewing all aspects of the Personal Injury Protection Plan (More specifically found in Section 220 of *The Automobile Accident Insurance Act*.)
2. More specifically, the committee has agreed to accede to the request of the Minister that it deal with the following issues:

- i) an assessment of whether PIPP has met its original objectives;
- ii) an evaluation of the long-term financial consequences of PIPP; the impact on recovery times of injured persons, the adequacy of rehabilitation services and the adequacy of and timelines of benefit provisions;
- iii) a comparison of injury programs in other Canadian jurisdictions to assess premium and benefit levels, timelines of benefit payments and effectiveness of appeal process;
- iv) pricing of any proposals from the report by an independent actuary; and
- v) evaluation of any proposals from the report to determine their health-related impact.

The Review Committee told the members of the Joint Committee that they would not review or compare the no fault system with tort systems in place in other provinces, nor would it consider the Saskatchewan system as it existed before January 1, 1995, on the basis of their declared interpretation of their mandate. The Joint Committee argued that the legislation permitted a broad review and that the Government had assured the Joint Committee that the Review Committee’s mandate was extremely broad including the right to

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determine that there should be a return to the tort system or some hybrid thereof. Nonetheless, the Review Committee declared that their interpretation of their mandate was “carved in stone” and that if Joint Committee did not like it they should pursue any “remedy” that they saw fit. Representatives of the Joint Committee advised that in light of this position they would have to seek direction from the other members of their Committee but that it was likely they would withdraw from any further representation before the Review Committee.

Representatives of the Coalition Against No-Fault, representing numerous victims and groups opposed to the present no-fault system, issued a press release on February 13, 2000, indicating that, based on the announced mandate of the Review Committee, the Coalition had decided to boycott the Review process.

An emergency meeting was held with the full Joint Committee and it was determined that the only course of

action was to withdraw from what was destined to be a meaningless and superficial process. A press release was issued on February 14 confirming that the Joint Committee would not participate in the Review Committee. Later, on February 14 the Review Committee added an additional paragraph to its declared interpretation of the mandate as follows:

3. The Committee does not perceive this mandate as a direction to conduct a parallel review of the personal injury protection provided before the implementation of Part VIII, or the comparison of that system with the protection provided by Part VIII, or the determination of which system of protection better serves the interests of the people of Saskatchewan. Rather, the focus is on how Part VIII has been implemented over the past five years and if problems are shown to have arisen, how they might best be solved. Any recommendations which the committee may receive

might entail enhancements and improvements involving a return to a procedure previously in place, acceptance of one adopted in another jurisdiction or one that may now be original in nature. This is the basis upon which the Committee intends to apply the above stated legislative mandate.

The Joint Committee’s position is that this additional paragraph is not a proper interpretation of the legislative mandate.

The Joint Committee is now considering how best to continue its representation and how to effect a meaningful review of the no-fault legislation. The members of the Joint Committee are committed to receiving input from the people of Saskatchewan on their views with respect to this legislation and to educating population on all the insurance options available. The goal is that the people of Saskatchewan have and enjoy the best personal injury system that can be reasonably afforded.

Lawyers Concerned For Lawyers

(Ed Stephens)

Since its creation in 1987, Lawyers Concerned for Lawyers has helped 645 clients in Saskatchewan. Funded by lawyers through the annual fees paid to the Law Society of Saskatchewan, LCL exists on a \$40,000.00 per year budget. It is managed by a Board of Directors made up of interested persons including lawyers and judges from all over Saskatchewan.

Originally, LCL’s focus was on alcoholism. Last year, 72 clients were provided confidential assistance for all types of concerns including relationship, stress, psychological, financial, gambling, drugs and alcohol problems. They include lawyers, judges, articling students, spouses and children. Since its inception, LCL has been available to lawyers and their families with instant assistance for apparently insurmountable problems. Those seeking

help usually did so because their situation was so bad that it seemed irreparable. All were helped. Most have continued with their professional and private lives after learning how to cope. The successes by far outnumber the failures much to the delight of our insurers.

Recognition is growing among lawyers that practicing law is exacting and can take a heavy toll emotionally, mentally, physically and sometimes financially. LCL has become proactive with an emphasis on awareness and prevention. Three large Saskatchewan law firms have recently participated in LCL workshops. Through LCL’s affiliation with LPAC (Legal Profession Assistance Conference of the Canadian Bar Association), we are in possession of a number of course materials. LPAC provides continuing education, support and expertise

to the Provincial Lawyer Assistance Programs across Canada.

LCL Board Members emphasize and rigorously apply the rule of confidentiality in all aspects of LCL’s various activities. Professional counselors from P.A.R. Consulting Ltd. are the front line receptors of calls for help as they staff the 24 hour telephone lines. They deal with clients on a very confidential basis and a client’s identity is never revealed to any Board member or anyone else without the client’s permission. Referrals are also received by individual Board members on occasion. Absolute confidentiality is assured and supported by legislation. Neither LCL Board members, the Benchers or other employees of the Law Society are ever made aware of the identity of any client. This strong emphasis on confidentiality and LCL’s track record has prompted many clients to approach LCL

for help with confidence that their privacy will not be violated.

Soon, every lawyer in Saskatchewan will be receiving a letter which will include our newly acquired logo. It was created by Tim Brown of Regina and depicts the rising sun and provides the positive, hopeful image of the culmination of an individual's struggle through a dark period in his or her life. LCL helps

people achieve that new and positive outlook on life.

If you want to talk about LCL or for any reason whatsoever, call any of the Board members listed below. If you would rather speak to a counselor then call 1-800-780-5256. Check out our web page at <http://CityLightsNews.com/lcl.htm>

LCL Board Members for the year 2000 are: Ed Stephens - President, James

Korpan - Vice President, Melanie Baldwin - Secretary, Mae Boa - Treasurer, John Comrie Q.C. - Past President, Directors: The Honourable Justice William Vancise, The Honourable Justice Scottie McLellan, The Honourable Judge Ernie Bobowski, Peter Foley Q.C., Peter Glendinning, Leanne Bellegarde-Daniels, Bruce Ritter and Leanne Johnson.

Will Instructions

In July 1989 an article appeared in the *Benchers' Digest* advising members that it is improper to accept instruction for the preparation of Wills from a trust company. Various cases and legal authors were cited in that article and there did not seem to be much doubt that the proposition is in fact correct. Nonetheless it happens occasionally that in the course of doing work for a trust company, a lawyer will be asked to prepare a Will on the instructions of the trust company on behalf of that company's client. A lawyer may justify this on the basis that he or she is simply acting for the trust company and his or her responsibility is to the trust company. This is not the case. In preparing a Will the client is always the testator. It is therefore necessary in order to properly determine the testator's wishes to speak with him or her directly and in the course of the solicitor/client relationship.

Provincial Court Bar Judicial

All members who practice in the Provincial Court should be aware of the Provincial Court Bar Judicial. It is composed of Chief Judge Nutting, Judge Kolenick, Ken Neil of Unity, Gerald Morin, Q.C. of Prince Albert, Norma Sim of Saskatoon, Barry

Morgan of Saskatoon and Allan Snell, Q.C. of Regina.

The purpose of the council to deal with issues of concern as between the Bench and the Bar. These issues may not be serious enough to invoke the disciplinary procedures of either the

Saskatchewan Judicial Council or the Law Society, however, require some resolution. Matters will be dealt with on a strictly confidential basis and if so desired, anonymously. Contact can be made to any of the above persons or care of the Law Society.

Highlights of Convocation Held January 27-28, 2000

Limitations Manual

The long awaited Limitations Manual should be ready for distribution shortly. This project began several years ago with initial funding from the Law Foundation. Mike McGuire, the former Director of Libraries, had spearheaded the project and with his departure, the project stalled.

The project was taken over by the Insurance Committee with Tom Schonhoffer as editor. The Committee wished the earlier form of the Manual to have a wider scope and cover more legislation.

Mr. Schonhoffer has spent numerous hours of research and in addition hired law students to review each statute in force in Saskatchewan to check for limitation periods.

The Manual is extensively indexed and is annotated with Saskatchewan decisions. The Insurance Committee believes that this will be an invaluable loss prevention tool. Therefore, all insured Members will be provided with a copy. Eventually, it will be included in the Member's section of the website at www.lawsociety.sk.ca.

2000 Budget

Now that the Libraries funding is settled for the year 2000 (as reported last issue) the Benchers were able to deal with the budget for the year 2000. It was approved and confirmed that the annual fee for 2000 will not be increased.

Interjurisdictional Practice Protocol

More jurisdictions in Canada have passed rules implementing the interjurisdictional practice protocol to ease practice mobility in Canada. Alberta

and British Columbia have most recently passed rules which allow members of other Law Societies in Canada to practice in Alberta or British Columbia without "checking in" as long as those members have appropriate insurance coverage and do not have a discipline history or criminal record. Such ability to practice is limited to not more than ten matters and not more than twenty days spent in total in any one year.

The interjurisdictional practice protocol was signed by the majority of The Law Societies of Canada in 1994 and a number of jurisdictions have now implemented it. The Admissions and Education Committee will be reviewing rules for possible adoption at the next meeting. In the interim, the Benchers have waived the occasional practice application fee of \$100.00.

Admissions Procedures

The Committee will be reviewing the application processes for students-at-law and as a lawyer in order that they may be streamlined. Rule amendments will be brought to the Committee for review at the next meeting.

Bar Admission Course

The Admissions and Education Committee has undertaken to review the Bar Admission Course in the upcoming year. It has been five years since the two segment course was introduced. With Saskatchewan Legal Education Society Inc., which administers the course, the Committee will review the examination process, the two segment concept and skills training vs. substantive law. The Committee hopes to report to the Benchers by the end of the year.

Federation Update

The Federation of Law Societies of Canada held its Mid-Winter Meeting in Whitehorse in February. Matters to be discussed included potential model rules for multi-disciplinary practices, virtual libraries, PKI or national certifying authority for E-Commerce, and the National Real Estate Project.

The Federation's Copyright Committee is pleased with the recent decision from the Federal Court of Canada which provides that The Law Society of

Upper Canada Library can copy cases for members of the Law Society but not texts.

Annual Meeting

The annual meeting will be held May 25-27, 2000 in Waskesiu. SKLESI will be presenting a loss prevention seminar on Thursday afternoon featuring practice tips from the Court. The Limitations Manual will also be part of the seminar. Registration will be on Thursday evening with a Zydeco band providing the entertainment. Friday morning begins with the Law Society Annual Meeting as well as address by the Vice-President of the Royal Bank of Canada on equity diversity issues and possibly an address by the CBA President. Friday afternoon is available for golf or an outing on the paddle wheeler. The Friday evening the banquet features entertainment provided by an improvisation group called Don't Mind Us. Saturday morning will be the bear pit and resolution session and the CBA meeting. The CBA lunch will follow to conclude the annual meeting.

Saskatchewan Legal Education Society Board of Directors

There is an opening for a joint Law Society/Canadian Bar Association appointee to the SKLESI Board. Interested members of the Law Society and members of the judiciary can contact Kirsten Logan at the Law Society

In Memoriam

Bernard Falconer was born on September 7, 1925 in Vladimirovka, Russia and came to Canada with his parents at the age of 2 weeks. Mr. Falconer received his degree of Bachelor of Laws from the University of Saskatchewan in 1953. Mr. Falconer practiced law for 12 years in Herbert, Saskatchewan and moved his practice to Moose Jaw, Saskatchewan for the remainder. Next to his family, the needs of Mr. Falconer's clients were very important to him, often referring to them as "his children".

Mr. Falconer passed away on January 16, 2000 at the age of 74 and leaves surviving his wife, Rose and his three children.

In Memoriam

Reginald James Balfour was born in Regina, the son of Reginald McLeod Balfour and Martha (McElmoyle). A partner in the law firm of Balfour Moss, Mr. Balfour was elected to Parliament in 1972, and re-elected in 1974. He was summoned to the Senate in 1979, serving on many standing committees.

Mr. Balfour passed away on December 12, 1999 in Phoenix, Arizona, predeceased in 1994 by his wife, Beverly Jane (Davidson) and in 1990 by his son, Reginald William Balfour. Mr. Balfour is survived by his three children.

New Judge in La Ronge

Justice Minister Chris Axworthy has announced that Sid Robinson, Director of the Northern Area Office of the Saskatchewan Legal Aid Commission, has been appointed a judge of the Provincial Court of Saskatchewan in La Ronge.

"Judge Robinson's vast knowledge of criminal and family law will serve him well in his new role as Provincial Court Judge," Axworthy said. "His 20 years

experience living in the north and appearing in northern courts has given him a unique understanding of the justice issues facing northern residents."

Judge Robinson earned a Bachelor of Laws from the University of Saskatchewan in 1976 and was called to the bar in Saskatchewan in 1978.

He began his career as a staff lawyer with the Meadow Lake Legal Services Society. He then went on to work at the

Yetha Ayisiniwuk Legal Services Society in La Ronge, before becoming the Area Director of the Saskatchewan Legal Aid Commission's Battlefords Area Office.

Judge Robinson takes an active interest in his community and has been involved with several different community organizations. He currently serves as the president of the Lac La Ronge Conservatory Association Inc.

Notes from the Library

(Sue Baer, Director of Libraries)

The screenshot shows a Microsoft Internet Explorer browser window displaying the website <http://www.lawsociety.sk.ca/NewLook/Members/memberstemp.htm>. The page features the Law Society of Saskatchewan logo and a navigation menu with links for Databases, Help, Contact Us, and Home. The main content area is titled "LAW SOCIETY MEMBERS' SECTION" and is organized into several columns and sections:

- Case Law and Databases:**
 - Databases:**
 - Digests: Court of Appeal, Queen's Bench, and Provincial Court case digests from 1987 to date.
 - Fulltext Judgments: Court of Appeal, Queen's Bench, and Provincial Court fulltext judgments from 1994 to current.
 - Status of Bills: An index of legislation from the Saskatchewan Legislature.
 - CLE Index: An index of papers published by the Saskatchewan Continuing Legal Education Society, Saskatchewan Trial Lawyers Association, Canadian Bar Association Saskatchewan Branch.
 - Case Mail:** A dropdown menu labeled "select issue".
- Tables & Indices:**
 - Pre-judgment interest rates
 - Bank of Canada rates **New!**
 - Current
 - Historical (1935-1999)
 - Consumer Price Index **New!**
 - Federal Child Support Guidelines Simplified Tables **New!**
 - Public Service Allowable Expenses **New!**
- Lawyer Services:**
 - Approved mediation courses
 - E.M. Culliton Scholarship Endowment
- Documents:**
 - Suggested Procedure in Applications for Court Appointed Counsel at a Rate Higher than the Legal Aid Tariff
 - Guidelines for Suspended, Resigned or Disbarred
- Publications:** A vertical sidebar on the right containing icons and links for "Current Awareness", "Calendar of Events", and "Library Catalogue".

If you have not been to the Law Society's web site lately, you are missing an excellent source for Saskatchewan legal information.

The home page contains the latest breaking case law from the

Saskatchewan courts for those cases that the media loves to cover. We link directly to the Supreme Court of Canada decisions on our home page to make it easy for you to find the latest judgments from our highest court.

You need the most recent versions of Internet Explorer or Netscape Navigator to use our site properly. Due to the searchable databases, there are many java applets (small programs within programs) programmed into the database

software. You will not be able to use the databases if you are using browsers that are over a year old. We have links to sites on the Internet where you can download current versions of the browsers. You will also need Adobe Acrobat Reader® to use our site properly. If you have a subscription to the Queen's Printer site, you probably already have Adobe loaded onto your computer. We load judgments and other documents using Adobe to improve their appearance online and for printing. There is a link to the Adobe site on our home page if you need to download a copy to your computer.

Featured in this picture is the new Members' section. We have the same great databases, which now link to PDF versions (uses Adobe Acrobat) of judgments as well as linking to our fulltext judgment database. Go to the Members' section directly from the home page. The databases are accessible in the Members' section so you will not have to go to the database page any longer. The site is constantly improving by adding more features or improving accessibility and functionality of our databases. Remember the Members' section is still in its infant stages. It will continue to develop and more docu-

ments and features will be added as they become available.

We recently received an excellent suggestion to provide the calculations for the pre-judgment interest rates along with the table that we had already posted. We now have that additional table available for your use, which we will continue to update. It is not quite apparent from looking at the members' section that there are two tables under the pre-judgment interest rate link.

The members' section requires a separate account and password. All firms were contacted in February with the new account and password information. If you have yet to receive this information or you need to confirm the information, please call us in Regina (569-8020; 1-877-989-4999) or Saskatoon (933-5141; 1-888-989-7499). For those out of town, please use our toll-free numbers.

For the law firms that had purchased subscriptions to the databases, the prorated refund cheques are being mailed in March. All subscriptions were prorated to December 31, 1999 when we opened the access to our databases for our members. The middle of the month was used to determine the refunds.

Lawyer Referral

At the last library committee meeting, we discussed placing the lawyer referral service on the web site. It would not replace the existing telephone service, but offer an additional location for members of the public to find lawyers across the province who practice in certain areas of law. We will ensure that it is clear that the Law Society is not endorsing the firms listed, but merely providing a list for consultation. If you have been thinking about registering with the lawyer referral service, please do so soon so you can be included on the new web version later this year. The lawyer referral contains a large amount of data that will take us time to convert into a web version format. It will appear on the web site in the second half of 2000.

There are several other documents and one new database in the planning stages for the Members' section. The Law Society's web site is very dynamic now. We are trying to bring you the information you need in one easy to find location so you can minimize your "surfing" on the World Wide Web. To look at our site every day, we suggest making the Law Society's site your default site when you load your browser! You can find us at: <http://www.lawsociety.sk.ca>.

Legal WebCites

by Peta Bates

This column will look at Alberta legal information available free of charge on the web.

Alberta Courts Web Site
(<http://www.albertacourts.ab.ca/index.html>)

This efficient site provides coordinated access to Alberta judgments and information about the Alberta courts. Court of Appeal and Provincial Court judgments are available and presumably the Queen's Bench judgments will be added in the future.

Court of Appeal and Provincial Court Judgments
(<http://www.albertacourts.ab.ca/webpage/jdb/jdb.htm>)

Judgments from the Alberta Court of Appeal and the Provincial Court of Alberta are available from January 1, 1998, in WordPerfect format. The judgments are loaded on the web site, if possible, within 48 hours. There are various options for accessing the judgments. You can look at just "This Week's Judgments" or at a month by month chronological listing for each court.

If you don't know the name of the case or want to search for subject terms there is a search engine which uses ISYS software. This menu search screen contains a series of boxes which allow you to define your search. The first box limits the search to either a particular court or just civil or criminal judgments. The next box allows you to enter your search term and subsequent boxes build up the search structure by adding connectors (AND, OR, NOT, WITHIN). Click the

OK button to run the search. A list of cases is retrieved. Clicking on the case name pulls up the fulltext of the judgment. A "First Hit" button at the top of the page locates your highlighted search term in the case. Other buttons allow you to move between retrieved cases.

Finally, for those who can't be bothered typing search terms into boxes, the "Plain English Query" search option allows you to type a sentence ("Does the driver of a snowmobile have to wear a helmet in Alberta?") and retrieve cases which are, hopefully, on point. On-line help is available for all these search options.

Alberta Queen's Printer
(<http://www.gov.ab.ca/qp/>)

The Alberta Queen's Printer offers a subscription service for their laws and regulations which is similar to the one available through the Saskatchewan Queen's Printer.

Alberta's service, called "QP Source", updates the statutes and regulations daily and costs \$230 annually for the first subscription and \$100 for each additional subscription. However, unlike Saskatchewan, Alberta also offers free access to their statutes and regulations on the web. The public access site is updated four times a year.

Statutes of Alberta
(<http://www.gov.ab.ca/qp/acts.html>)

The site consists of an alphabetical list of all the Alberta statutes. These are available in a simple text format which is quick and easy to download. As I

write this column (mid-February) the statutes are current to October 11, 1999. The province of Alberta holds the copyright in the statutes so the text of the statutes on the web is not considered an official version. The statutes do not contain the maps, charts or graphs which appear in the print version.

Regulations of Alberta
(<http://www.gov.ab.ca/qp/regs.html>)

Alberta regulations are available in the same alphabetical list format as the statutes. The regulations are also current to October 11, 1999 and are not considered official versions. Forms are included in the regulations.

Court Rules and Forms
(<http://www.gov.ab.ca/qp/rules.html>)

Court rules for the Alberta Court of Appeal, Queen's Bench and Surrogate Court, as well as Practice Directions for all three courts are also available on the public Queen's Printer site. They are current to November 1999. In addition, there are guidelines for preparing criminal and civil notices of appeal, appeal books and factums. The process of taxing a lawyer's bill of costs is also discussed.

From this site you can also send email to the Court of Appeal Registry office in either Edmonton or Calgary.

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.

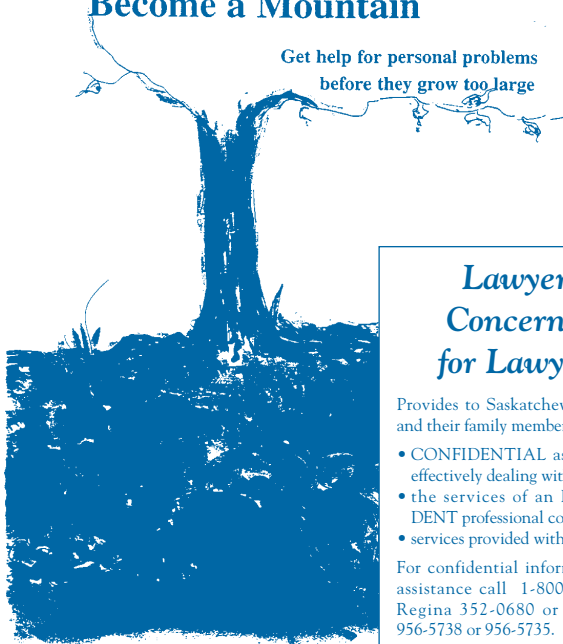
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Don't Let Your Molehill Become a Mountain



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.

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 306-569-8242, 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.

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

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