

BENCHERS' DIGEST



Volume 13, Issue Number 3

May, 2000

Bencher's Digest Highlights

Equity/Diversity Issues

The focus of the Equity/Diversity this year is education. Charles Coffey, Vice-President of the Royal Bank of Canada, will be speaking at the Annual Meeting in Waskesiu. His topic will be "The Case for Diversity: A Business Perspective". The Committee is looking forward to hearing of the experience and insight of Mr. Coffey and the Royal Bank and the positives equity and diversity bring to business.

In the fall, the Benchers will be taking part in an awareness session known as "The Equity Game". As well, the Committee will be asking the equity ombudsperson from the Law Society of Alberta to come to a Benchers meeting to provide information on their program.

The Benchers adopted a policy on Workplace Equity for Law Society Appointments and Work by Outside Lawyers and Law Firms. It provides that the Law Society will engage the services of outside lawyers or firms where it is satisfied that the firms have workplace equity policies in place. Such policies must include the principles of employment equity, anti-discrimination and reasonable accommodation. In order to receive Law Society work, firms must:

1. Make a commitment in writing to respect workplace equity principles;

2. Communicate their commitment to all staff within the firm;
3. Report on the representation of designated groups among lawyers within the firms, upon request; and
4. Have and implement a workplace equity policy and action plan.

The policy is being circulated in this mailout.

Complaint Procedure

The Discipline Executive Committee approved a new "complaints form" designed to assist complainants to "focus" their complaints. This form, which ultimately will be available on the Law Society website, will be forwarded to complainants who initiate contact with the Law Society by telephone. It asks the complainant to set out some preliminary issues and what area of law is involved. The more detailed written complaint can then be attached to the form.

Many complainants who call the Law Society office indicate they do not know how to put their complaint into writing as is required by the Law Society Rules. It is hoped this form will assist such complainants to clearly state the nature of their concerns which will also assist the members in preparing their responses. An analysis of the results will be conducted at the end of the year.

Professional Standards Investigations

When a complaint is referred to the professional standards Committee, one of the options available is a Law Office Management Review. The Chair or Vice-Chair of the Professional Standards Committee will appoint an Investigation Committee and may recommend that such a review be conducted. It is usual for such Investigation Committees to be non-Benchers who practice in the area of law from which the complaint arose.

As non-Bencher volunteers, the Investigation Committees may be unfamiliar with the professional standards processes. The Committee has long had guidelines and checklists for conducting the actual review. Now, a sample report format has been developed to help standardize the reports. It is hoped this will assist the Investigation Committees and the lawyers under review as well as the Professional Standards Committee.

Interjurisdictional Practice Protocol

The Benchers will be considering at the May Convocation, Rule amendments to the interjurisdictional practice protocol signed by the majority of the Law Societies of Canada in 1994. The protocol was developed in response to a decision of the Supreme Court of Cana-

da in the late 1980's which entrenched inter-provincial mobility of lawyers in Canada.

The protocol was partially implemented in Saskatchewan in 1997 when the six month articling period for transfer applicants less than three years at the Bar was abolished in favour of a more rigorous transfer examination. The remaining provisions of the protocol have been under review for several years. Basically, the protocol allows lawyers from other jurisdictions to practice occasionally in a host jurisdiction without "checking in" with the host Law Society. The protocol, as first presented, was complex requiring, inter alia, host lawyers of record for matters involving jurisdiction-specific law. Recently, Alberta and British Columbia adopted rules to implement a more simplified procedure. Occasional practice

remains defined as up to ten matters and less than twenty days in any given year in the host jurisdiction. A visiting lawyer may practice occasionally without checking in if he or she has had no insurance claims or discipline action. Insurance coverage from the home jurisdiction which extends to occasional practice in the host jurisdiction will be required. The jurisdiction-specific law provisions were deleted.

The proposed Rules anticipate that lawyers wishing to transfer to Saskatchewan or who will be practicing more than occasionally will require full admission. Visiting lawyers who have insurance or discipline histories will be required to "check in" under the current occasional practice Rules. The proposed Rules will be before the Benchers in May.

Acting Complaints Officers

On occasion, the Law Society receives complaints against Benchers or Law Society staff. To deal with such complaints in-house raises perceptions of conflict of interest. Therefore, the Benchers have appointed Patrick Kelly, Q.C. of Regina and Barry Singer, Q.C. of Saskatoon to act as complaints officers for such instances.

Defalcation

The Benchers approved payment of defalcation claims relating to the disbarment of Wesley John Eli Hampton, of Saskatoon, last year. The total amount of special fund claims relating to this matter is now \$31,715.64.

PST

The Law Society has named a Committee consisting of Dave Kowalishen, Rochelle Verret, Dwayne Anderson and Charlene Richmond to meet with representatives from the Department of Finance to discuss issues relating to the imposition of PST on lawyers' fees. The first meeting was held April 25, 2000. Since the regulations have not yet been finalized, it is hoped that input of these members from small and large firms and those with CA designations will deal with such issues as contingency fees, uncollectable accounts and disbursements.

In Memoriam

Robert Thompson Flannigan passed away in Prince Albert on March 10, 2000 after a valiant battle with emphysema. Mr. Flannigan was born in Saskatoon on February 17, 1930. After attending the College of Law and retiring from law in 1978, Mr. Flannigan became the first Director of the Prince Albert Council on Alcohol and Drug Abuse Outpatient Treatment Centre. Mr. Flannigan is survived by his wife, Moira, "Molly", his four step-children and several step-grandchildren.

Notice of Congratulations

Her Excellency the Governor-General of Canada has announced the entry of William Arthur Reed into the Order of Military Merit. Induction into the Order will take place at Rideau Hall, Ottawa, May 26, 2000.

Captain (N) William A. Reed is the Senior Colonel/Captain (Navy) in the Office of the Judge Advocate General and the Canadian Forces Legal Branch. Raised in Prince Albert, Saskatchewan, he obtained both his B.A. and LL. B. from the University of Saskatchewan in Saskatoon where he was actively involved in a number of ventures and undertakings; most notably he conceived the idea and directed the first Legal Follies – now an annual event at the College of Law. Captain (N) Reed was admitted to The Law Society of Saskatchewan in 1970 and after two years of private practice, entered the Canadian Forces Regular Force Legal Branch where his early duties were primarily as trial counsel, prosecuting and defending extensively in court martials throughout Canada, Europe and Puerto Rico. He has occupied a number of senior positions in the Canadian Forces Legal Branch. He sat from 1984 to 1987 as a Military Judge in Canada, Europe and the United States. He has enjoyed and continues a distinguished career of service as a barrister in uniform.

Married 22 years to his wife, Karen, they presently reside in Ottawa with their daughter Beth.

Legal WebCites

By Peta Bates

Manitoba has yet to make its regulations or court judgments available in electronic form on the Internet. Their court registry, on the other hand, has set up an online search service to locate information about actions before the courts.

Manitoba Statutes

<http://www.gov.mb.ca/chc/statpub/free/index.html>

The government of Manitoba provides electronic access to their statutes through a subscription service and also on a free Internet site. The subscription service costs \$100 for a single user who already subscribes to the print statutes and \$276 for a single user of the electronic service only. Statutes on the subscription service are updated regularly and there is a search engine. Statutes on the free site are updated annually. At the time of writing (April 2000) the statutes on the free site were consolidated to September 1999. On both sites the statutes are in .pdf format which requires current Adobe Acrobat software (available free of charge on the Internet).

The free site provides an alphabetical list of statutes and their chapter numbers in the Continuing Consolidation of the Statutes of Manitoba (C.C.S.M.). There is no search engine which will search for keywords across all the statutes but once you have selected a particular statute the "find" command in Adobe is available to locate words within the statute. Click on the binoculars ("Find") icon on the Adobe tool bar at the top of the statute page and type your search term. Typing "reg" will locate all occurrences of the terms "regulation", "regulatory", "self-regulating", etc. Click on the small binoculars ("Find Again") to page through your highlighted search terms in the statute. The Adobe tool bar also provides icons for saving the statute as a .pdf file and for printing it. Section histories are provided. The Manitoba government holds copyright in the statutes and the electronic version of the statutes is unofficial.

Also located on this site are copies of Manitoba bills from 1998 to date (these appear to be first reading copies) and Chapters (bills as passed) from 1997.

"Keyword in Title" Index to the Manitoba Statutes

<http://www.rrc.mb.ca/library/2statu.htm>

Red River College Library in Winnipeg has produced an online index to keywords in the titles of the Manitoba statutes and bills on the free statutes web site. Although it lacks the power of a search engine, this keyword index is a useful tool for accessing the legislation. It provides direct links to the statutes and bills from the index terms.

Manitoba Queen's Bench Rules

<http://www.gov.mb.ca/chc/statpub/free/rulesindexen.html>

The Court of Queen's Bench Rules (Reg. 553/88) and forms are available on the government of Manitoba web site. At the time of writing they were consolidated up to Reg. 120/99 (November 1999). The online Rules are not considered an official version.

Manitoba Court Registry

<http://www.jus.gov.mb.ca>

The Court Information Systems Services division of Manitoba Justice maintains the Manitoba Court Registry, a searchable index for actions in the Court of Appeal (1991-date) and the Court of Queen's Bench (1984-date). Here you can find out the status of an action, documents filed and hearings scheduled by means of a file number or name search. You can view the daily court hearing list, search upcoming hearings, view available court dates by type of hearing, and find the pre-judgment and post-judgment interest rates.

Notes from the Library

In determining the usefulness of some of the law report series in print, we have started analyzing their contents. For legal research, it is useful to know the coverage of the different materials so you can assess where else to search. So far we have been able to assess the contents of the Saskatchewan Reports, the Dominion Law Reports, and the Western Weekly Reports. We have compared this to the number of judgments we receive and enter into our fulltext judgment database. I have reproduced some of the results of the above report series for 1999 for your information. To determine the number of judgments released by a jurisdiction other than Saskatchewan in one year, I used the number of judgments appearing in QL. This will provide at least an approximation for the other jurisdic-

tions, assuming that QL receives almost every judgment from the various courts.

I find it extremely interesting that the Saskatchewan Reports contained approximately 54% of the total Saskatchewan judgments released in 1999. The Saskatchewan Reports concentrate their reporting on Court of Appeal decisions, which comprised 84% of the total cases reported in 1999 volumes. Every fifth bound volume of the Saskatchewan Reports is completely Court of Appeal decisions and no others. (Occasionally Supreme Court of Canada decisions appealed from Saskatchewan are included in the Saskatchewan Reports.) This method of reporting is probably used to produce the Western Appeal Cases, which reports the four western provinces' appeal cases. Only one provincial court decision

was reported in 1999. There are approximately 12 volumes produced per year, excluding indexes and tables at an annual subscription cost of \$1896. Shipping and taxes are extra. You receive all of the judgments on the Law Society's web site in the members' section.

Sask R - 1999

	Digests	Fulltext	Sask R	% of cases reported in Sask R
CA	158	158	132	83.54
QB	705	704	373	52.91
PC	79	79	1	1.27
TOTAL	942	941	506	53.72

The *Dominion Law Reports* reported only approximately 3% of Saskatchewan case law in 1999. The *Dominion Law Reports* have a high concentration of Ontario, British Columbia and Supreme Court of Canada decisions. Approximately 92% of the Supreme Court of Canada decisions released in 1999 were reported in the 1999 volumes of the *Dominion Law Reports*. Only 3% of the Ontario's courts decisions are reported in the *Dominion Law Reports*, however, this occupies almost 30% of the contents of one year of the series. British Columbia was not much different with 3.28% of their total cases. Saskatchewan decisions occupied approximately 5% of the volumes in 1999 *Dominion Law Reports*. There are approximately 12 volumes produced per year, excluding indexes and tables at an annual subscription cost of \$1800. Shipping and taxes are extra.

DLR - 1999

Jurisdiction	No. of cases (QL)	No. of cases reported in DLR	% of cases reported in DL	% of total DLR coverage in 1999
SCC	78	72	92.31	13.36
FCC	1901	38	2.00	7.05
AB	1735	38	2.19	7.05
BC	3227	106	3.28	19.67
SK	941	26	2.76	4.82
MN	575	23	4.00	4.27
ON	4877	157	3.22	29.13
TOTAL	13334	460	3.45	85.35

More than one third (38%) of the content of the *Western Weekly Reports* consists of cases from the Alberta courts. 17% of the content includes Saskatchewan decisions, which represents about 11% of the cases from 1999. There are 12 volumes

per year published excluding indexes and tables at an annual subscription cost of \$2,040. Shipping and taxes are extra.

WWR - 1999

Jurisdiction	No. of cases (QL)	No. of cases reported in WWR	% of cases reported in WWR	% of total WWR coverage in 1999
SCC	78	40	51.28	6.58
FCC	1901	0	0.00	0.00
AB	1735	236	13.60	38.82
BC	3227	128	3.97	21.05
SK	941	105	11.16	17.27
MN	575	99	17.22	16.28
TOTAL	8457	608	7.19	100

Of course, many of these judgments are now online on the Internet or available from commercial services. Many of you have already cancelled your printed report series and rely on the Law Society libraries to maintain print if you require it. We too are looking at the electronic environment to help us reduce our costs. It may be too early for our entire library system to realize large savings by using different formats, but certainly we are not ignoring the different formats. The Neutral Citation Standard will certainly help in the conversion to using electronic sources when citing a decision. The Saskatchewan superior courts are committed to using the neutral citation on all of their judgments. The library records the neutral citation in one field for easy tracking. Many of the other jurisdictions are adopting the neutral citation standard and actively began using it in the year 2000. A citation such as 2000 SKCA 47 will refer to R. v. Berntson regardless of the report series or electronic source. Almost every Saskatchewan decision from 2000 contains the neutral citation.

We will continue our analysis of the content of report series and cover the topical law report series, such as *Carswell's Practice Cases*, *Reports of Family Law*, and the criminal reporting series, along with the provincial law report series. When analyzing the topical and provincial report series, we will be looking at the degree of overlap with other reporters. When many of the law report series cost between \$150 and \$200 per volume, it is worth a bit of analysis to know exactly what you are purchasing. We did not include the online environment in our analysis since that was not part of the scope of our research at this point.

I would like to thank Pat Kelly and Peta Bates from our Saskatoon library for conducting the first round statistics for our analysis.

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