

# BENCHERS' DIGEST



Volume 13, Issue Number 4

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## *61st Annual General Meeting Law Society of Saskatchewan*

Waskesiu was the setting for the 61st Annual General Meeting of the Law Society of Saskatchewan, held jointly with the Annual Meeting of the Canadian Bar Association, Saskatchewan Branch. Thanks are extended to the Prince Albert Bar Association for hosting the event. Particular acknowledgement goes to the organizing committee consisting of Ron Parchomchuk, Hugh Harradence, Trevor Klassen, Jeff Lubyk and Tara Chornoby.

As we are well aware, the weather this spring has been "iffy", but the sun broke through at exactly the right time – for the golf tournament on Friday.

The meeting of the Benchers started Tuesday evening with Committee meetings. The meetings of the Benchers as a whole continued through Wednesday and Thursday morning.

SKLESI's Loss Prevention Seminar drew a large crowd, as always. The seminar, Practice

Tips From the Bench, was excellent. A number of the attendees extended their stay over the weekend for the Annual Meeting.

The Thursday registration night at the Waskesiu Golf Course was one of the best of such parties ever. The notices said there would be hors d'oeuvres, but that certainly was an understatement. The shrimp, jambalaya, etc. was great and fit in perfectly with the Zydeco band, "Accordian Crimes".

The Law Society business meetings went smoothly with reports from the President, Randy Baker, Q.C., the Chair of the Insurance Committee, Michael Milani, the Chair of the Professional Standards Committee, Dan Konkin, and the Chair of Discipline, Rob Gibbings. John McIntosh of Swift Current, Chair of the Finance Committee, advised that the Law Society finances are in great shape. Randell Earle, Q.C. of St. John's Newfoundland, President of the Federation of the Law Soci-

eties of Canada, spoke to the delegates about the work of the Federation, including the National Virtual Library, Public-Key Infrastructure (secure e-mail), multi-disciplinary partnerships and the World Trade Organization talks.

The Law Society invited Charles Coffey, Executive Vice-President of the Royal Bank of Canada, to speak to the delegates on "The Business Case for Diversity". His presentation was informative and thought provoking. His point was that the Royal Bank has purposely embraced diversity and as a result, has expanded its market and strengthened its workforce.

The Canadian Bar Association, Saskatchewan Branch meeting was held Saturday morning. Eugene Meehan, President of the CBA, spoke briefly about the goals for his year as President. Mr. Meehan is a great lawyer "booster" and his pride in our profession is a needed shot in the arm. In addition, Eugene was of great

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help guiding an errant bat out of the Waskesiu Community Hall, to the great relief of those attending the marvelous fish fry lunch on Friday. The section meeting was lively with a discussion on funding for the joint Law Society/CBA No Fault Committee and whether the Minister of Justice

should be in attendance at the business meetings.

At the Friday evening event, Clyne Harradence, Q.C. received a Senior Life Membership commemorating 50 years membership in the Law Society. The dinner and the following "improv" entertainment were lots of fun. Valray Longworth, Q.C. was hon-

oured for his volunteer work in the community of Prince Albert on Saturday at the CBA Luncheon.

Our thanks again to the organizing committee and the Prince Albert Bar Association. Thanks also to our special guests and to all members who were in attendance.

## ***Highlights of the Convocation of the Benchers Held May 24 and 25, 2000 in Waskesiu, Saskatchewan***

### ***Interjurisdictional Practice Protocol***

The Benchers passed new Rules 200 to 206 which will allow lawyers from other jurisdictions to practice in Saskatchewan on an occasional basis without "checking in" with the Law Society. "Occasional" is defined as less than 10 matters, taking less than 20 days in total in any year. Lawyers from other Canadian jurisdictions can only avail themselves of these provisions if they have no discipline or criminal records in any jurisdiction. If the visiting lawyer will be appearing in Saskatchewan on more than an occasional basis, full admission will be required. If the visitors have a criminal or discipline record, they must make application for occasional practice as was previously the case. The visiting lawyers must have insurance and defalcation coverage covering their occasional practice in Saskatchewan.

The passing these new Rules now implements the interjurisdictional practice protocol which Saskatchewan signed along with the majority of the other Law Societies in Canada in 1994. It was first implemented in Nova Scotia. Several other Law Societies followed suit. Late last year, the Law Societies of British Columbia and Alberta passed interjurisdictional practice rules which were less convoluted than the earlier models. The Rules recently passed by the Benchers followed the Alberta and British Columbia models. The protocol itself was formulated and signed as a result of a Supreme Court of Canada decision entrenching interjurisdictional mobility of lawyers in Canada.

### ***Powers of the Admissions Committee***

Traditionally, all applications for admission as a student-at-law, lawyer, transfer applicant or law professor and applications for reinstatements

of inactive or suspended members have been considered by the Benchers. The preliminary review is done in the Law Society office and the applications are then referred to the Admissions & Education Committee. The Committee then makes recommendations to the Benchers. Since it is rare that the Benchers do not follow the recommendations of the Committee, it had been proposed that the Rules regarding the handling of such applications be amended to give the power to grant approval to the Admissions & Education Committee.

Other Law Societies were canvassed and it was found that the majority of those Law Societies deal with such applications in Committee. Section 10(d)(e) and (f) of *The Legal Profession Act* give the Benchers the power to make Rules regarding the approval of such applications. Rules 149A, 150, 151, 153, 158, 159, 171, 172, 180 and 181 were amended to give the

Committee the power to approve applications for admission as a student-at-law, as lawyer, as a transfer applicant and law professor, as well as to approve reinstatements of suspended and disqualified members.

In situations where applications are denied, there is a right of appeal to the Benchers. Additionally, the Committee can approve the various forms and may grant waivers of certain Rules, including applications to take the Bar Admission Course out of order.

It is hoped that these Rule amendments will streamline Benchers proceedings.

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

The President of the Law Society, Randy Baker, Q.C., along with the President and Vice-President of the Canadian Bar Association, Saskatchewan Branch, Hugh Harradence, Q.C. and Jeff Grubb, met with the Minister of Justice, Chris Axworthy, Q.C., and the Deputy Minister, John Whyte, Q.C. in early May. Items discussed included PST, electronic access to Saskatchewan statutes, libraries funding, incorporations, limited liability partnership, class action legislation and no fault insurance.

The meeting was held after the provincial budget, so PST was already imposed with regard to legal fees. The discussion centered around the vulnerability of the legal profession in Saskatchewan to Alberta and the issue of access to justice. Many people

require the services of lawyers when they are in crisis situations and an additional 6% to legal fees will be difficult for them. The Minister was advised that a committee of volunteer practitioners would consult with the Department of Finance with regard to guidelines for charging a tax.

With the move by libraries to open the members' section of the website to all practicing members of the Law Society free of charge, it was hoped that the website could provide lawyers with free desktop access to all primary legal materials, including Saskatchewan statutes and Regulations from the Queen's Printer. Department representatives advised that the Queen's Printer is mandated by its legislation to break even and that free access would not be provided. Negotiations will continue.

On the topic of incorporation, the Justice representatives advised that they are supportive of the concept of allowing lawyers to incorporate. The Premier is not opposed. However, the Department of Finance has concerns about potential loss of revenue. As well, the Department of Justice is supportive of limited liability partnerships and class action legislation.

Also discussed was financing of Law Society Libraries and Queen's Counsel appointments.

On the issue of the no fault insurance review, Mr. Axworthy was advised that the Law Society and the Canadian Bar Association, Saskatchewan Branch would continue to sup-

port the joint Law Society/CBA Committee which, having met with members of the Review Committee, had grave misgivings about the independence of the review.

#### ***Meeting with the Opposition***

The President and past-President, Randy Baker, Q.C. and Maurice Laprairie, Q.C., met with members of the opposition. Mr. Baker outlined the various issues facing the Law Society, including no fault, PST, Saskatchewan statutes on-line, incorporations, limited liability partnerships and class action legislation. The meeting was well received on both sides.

#### ***Delivery of Criminal Law Services***

The Benchers were advised of a concern among lawyers practicing criminal law about rumors that Legal Aid lawyers would be representing all accused in custody for first appearance. As well, they had heard all section 11 appointments under *The Young Offenders Act* would also be to Legal Aid.

Jane Lancaster, Chair of the Legal Aid Commission, then advised the Benchers that amendments to *The Legal Aid Act* had recently been given first reading and that an agreement had been reached between the Department of Justice and the Legal Aid Commission to deal with the growing number of court appointed counsel. Pursuant to the agreement, the Legal Aid Commission is looking into more staff to act as duty counsel.

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The Benchers are to set up a special Committee to look into the concerns of the Criminal Law Bar. The Committee is seeking input from the membership. Those wishing to become involved may contact Stuart Eisner at (306) 752-2832 or Doug Andrews at 525-8136.

### ***Federation of Law Societies***

At the March Convocation, the Benchers had approved the expenditure of \$4.00 per practicing member to put towards a proposed Federation of Law Societies Project Fund which would allow various Federation projects to proceed without waiting for delegate meetings twice per year. Examples of such projects are title insurance and the National Virtual Library.

In May, the Benchers were advised that the Federation project fund was not approved by the member Law Societies. It was therefore agreed that the \$4.00 per member allocation would be split and provided to the Federation Virtual Library Project and the National Public-Key Infrastructure Project, which will look at a national Law Society based secure e-mail system.

Maurice Laprairie, Q.C. of MacPherson Leslie & Tyerman in Regina was renewed as the representative for

Saskatchewan and Manitoba on the Federation of Law Societies' Board of Directors.

### ***No Fault Insurance***

The Benchers were advised that the public meeting held by the Victims Coalition in Saskatoon on May 13th, 2000 was attended by approximately 300 people. Pain specialist Dr. Merskey from Toronto was the guest speaker. The Benchers were advised that another no fault public meeting would be held in Prince Albert on June 10, 2000.

The Benchers agreed to continue their support of the joint Law Society/CBA Committee and were not prepared to second guess the Joint Committee's refusal to take part in the PIPP Review. The Joint Committee and the Victims Coalition have serious concerns about the independence of the PIPP Review Committee, and the Benchers agreed to maintain their support of the Joint Committee.

### ***Principals Survey***

The Admissions & Education Committee agreed to conduct an informal survey of principals in order to get some feedback on the format of the Bar Admission Course. The current segmented course of skills training in August and

substantive lectures in May is entering its sixth year. The Committee is interested to receive feedback to help determine whether the format should be altered. It is hoped that the Committee can review the results at the September Convocation.

### ***Leave of Absence***

Section 8 of *The Legal Profession Act* provides that Benchers who are absent for two consecutive Bencher meetings may be removed from office. The Benchers therefore approved a leave of absence for Brent Klause of the Prosecutor's Office in Saskatoon. Mr. Klause is taking a deferred salary leave and with his family will be visiting New Zealand.

### ***Access to Justice***

The Access to Justice Committee was formed as a method of attempting to address some very large and complex questions that arise from the perception that there are a number of people who are unable, for a variety of reasons, to access the formal and informal means of resolving disputes. The problem may be that potential litigants cannot afford the legal costs of taking their case to trial. It may be that they do not feel comfortable in speaking in Small

## ***SKLESI Board of Directors***

The Benchers are pleased to announce the appointment to the SKLESI Board of Directors as a joint Canadian Bar Association, Saskatchewan Branch/ Law Society of Saskatchewan appointee, Darcia Schirr, of the Robertson Stromberg firm in Regina. The Benchers thank all of the members of The Law Society of Saskatchewan and of the judiciary who expressed their interest in the position.

## ***E. M. Culliton Scholarship***

The E. M. Culliton Scholarship has been awarded to Paul Champ. Mr. Champ has been a legal researcher in labour law in Vancouver, British Columbia, has provided court assistance and counseling to persons in Vancouver and has pursued two undergraduate degrees outside of the province. He recently served one year of articles of clerkship with the Department of Justice, Saskatchewan, under the supervision of the Deputy Minister of Justice, John Whyte Q.C. He has just completed the Bar Admission Course and will be admitted as a member of the Law Society of Saskatchewan this summer. Mr. Champ has been accepted into an LL.M. program in Comparative Law at McGill University. His area of research will be the sociological effects of rights litigation that challenges criminal law.

The E. M. Culliton Scholarship Endowment was established in the name of the former Chief Justice of Saskatchewan in 1981 and is awarded to graduates of the College of Law of the University of Saskatchewan or to practicing members of the Law Society of Saskatchewan for the pursuit of graduate studies in criminal law at a recognized institution. The recipient of the scholarship is selected on the basis of exceptional academic record, research potential and on the basis of exceptional service to the practice of law in the Province of Saskatchewan.

Claims Court. It may be that they simply are not aware of the Rentalsman, the Ombudsman of the Human Rights Commission, for example, or if they are aware, they do not know how to deal with these groups. It may even be that they do not know that they have a case or a right which ought to be protected and defended. They may even believe that a wills kit can give them all the information they need to do it themselves. All of the above and more are access to justice issues.

The Access to Justice Committee is comprised of Marty Popescul, Jane Lancaster, Betty Ann Pottruff, Charlene Lafleur-Graham, Jan Kernaghan, Beth Bilson, Doug Surtees and Allan Snell. It started from the proposition that the present system of justice in Saskatchewan, while not perfect, was a good one. Furthermore, while the costs inherent in the formal system such as lawyers' fees and court

services were often high, there was a reason for this and quick fix solutions such as simply lowering fees or promoting more pro bono work by lawyers were not fair and in any event, did not represent any sort of workable and lasting solution. A quality system of justice is (not unexpectedly) not cheap.

Nonetheless the Committee was of the view that an overall assessment of how the system functioned could help identify areas of particular concern and possible means of addressing those concerns. To accomplish this, the Committee has received funding from the Law Foundation to hire a temporary staff person to research and prepare a report which will be the working paper for improving the ability of citizens to meet their legal needs in Saskatchewan.

The Committee has no preconceived ideas or favourite solutions. It is open to comment and suggestions from the membership.

## ***Education and Health Tax (PST)***

In the budget announcement on March 29, 2000, legal services were included in the expansion of the E & H tax. The Vicq Report had suggested that the E & H tax be expanded – including legal services, among other things. Thus, the inclusion of legal services was not a complete surprise. However, the Law Society had sent a letter to the Minister of Finance prior to the budget suggesting a tax on legal services was an access to justice issue, making them more expensive for the consumer. Nevertheless, the amendments to the *Education and Health Tax Act* included tax on legal services.

Unfortunately, the Regulations which would apply to the amendments had not been drafted at the time the budget announcement was made. A committee of practitioners was struck to provide input to the Department of Finance. Final-

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ly, the Department sent an Information Bulletin to all firms by way of fax on June 16, 2000.

Members must apply for a vendor's license. Those forms were included in the June 16, 2000 fax or may be obtained from the Department of Finance.

The tax applies to legal services provided to residents of Saskatchewan which "relate to Saskatchewan", whether the services are provided by Saskatchewan lawyers or not. Exemptions include financial planning that does not include

legal service, acting as trustee or executor or administrator of an estate, mediation, serving on a tribunal or acting as an officer or director of a corporation. In-house counsel work and Legal Aid services are not subject to the tax.

Disbursements such as long distance telephone, fax transmissions, photocopying, land titles fees, Personal Property Registry and Corporations Branch fees, courier charges and conduct money are not subject to tax. Agency fees are not double taxed. Secretarial

services and other overhead charges are taxable, if charged.

Lawyers will be credited for PST paid on accounts which are not collected.

For more information, contact:

Saskatchewan Finance

Revenue Division

2350 Albert Street

Regina, Saskatchewan

S4P 4A6

Toll Free Phone: 1-800-667-6102

Regina Phone: 306-787-6645

Fax: 306-787-9644

### ***Rule 745 Reminder***

Rule 745 of The Rules of Court requires that a lawyer acting on an estate provide the personal representative of the estate with a copy of Rule 745 as well as a tariff of fees for estates.

### ***Queen's Counsel***

Queen's Counsel appointments are made by the Cabinet with the judiciary, the Law Society and the Canadian Bar Association providing input. In the fall, the Benchers will be considering eligible members whose names may be put forward to the joint committee which will, in turn, present a restricted list of recommended lawyers to the Minister of Justice, the Honourable Chris Axworthy, Q.C. Members are invited to submit to the Law Society the names of lawyers whose recognized legal ability, service to the profession and to the public in Saskatchewan, warrant their consideration to the joint committee.

### ***In Memorium***

**Benjamin Francis (Ben) Wolff** of Saskatoon passed away on June 9, 2000 after a short illness at the age of 71 years. Mr. Wolff grew up on a farm near Liberal where he took his schooling until Grade 12. He moved to Saskatoon and obtained his Arts and Law degrees from the University of Saskatchewan. He articulated with Makaroff, Carter and Carter and stayed on in the firm for a few years. He then was a Crown Prosecutor from 1965-1987 when he retired. Mr. Wolff also served in the Naval Reserve at HMCS Unicorn for 27 years. He was executive officer from 1968-1971, retiring with the rank of Lt. Commander. Mr. Wolff is survived by his wife, Doreen (nee Frost), his daughters Deanna and Gail, his son Mark and his only grandchild Kordell.

***Excerpt from SKLESI's 1999 Annual Report  
By Robert Thornton, QC - President  
and Abena Buahene - Executive Director***

It has been said that the legal profession is the only one where professionals are trained to move forward by looking back. It is difficult to contemplate change with this mindset and yet we must if we are to survive as profession. Over the past year we have become acutely aware that the legal profession is standing at a cross-road. When a group of lawyers gather, whether it be on a formal or informal basis, certain issues and topics invariably pop up: changing demographics of our clients; the growth of national law firms with offices in London, Paris, and New York; the emergence of multidisciplinary legal services groups; the use or non-use of technology in the practice of law; the competency of colleagues in a very competitive environment; increased pressures to meet the clients' need for high quality "products" in a short time frame and to do so in a cost-effective and timely manner; and the list goes on. The Board of Directors and the staff at SKLESI are also in tune with the change in the prevailing winds and view them as challenges and opportunities to serve the profession on the educational front.

On the CLE front, we undertook to research and develop a curriculum for the design and delivery of comput-

er technology programming for lawyers. We hired Jerome Tholl a third year student at the College of Law to conduct a needs assessment study on the use of technology (computers) in the Saskatchewan bar. He initially polled 125 lawyers by telephone and then followed up with a detailed questionnaire on what types of programs would be helpful to assist the profession with integrating technology tools into the every-day practice of law. The Report Jerome Tholl submitted confirmed our suspicions that the profession endorses the use of technology and sees the advantages but that many lawyers were unsure or uncomfortable about how to use it effectively themselves or whether the investment in technology would pay off.

As a result of this technology curriculum research project, SKLESI is committed to delivering a number of technology seminars at regular intervals in addition to the usual substantive law seminars. The technology offerings will be a mixture of hands-on workshops where each participant will use a computer terminal to learn new skills and large-group, discussion style seminars focussing, for example, on particular software products and uses, research methods and databases, etc. In 1999 we offered two hands-on workshops one entitled "Intro-

duction to Computers and the Internet" and the other "Legal Resources and the Internet". Both workshops were over-subscribed and will be offered regularly.

Embarking on this technology curriculum was not the only "first". We are pleased to report that the Saskatchewan Trial Lawyers Association and SKLESI offered a joint civil litigation and criminal law conference in the October. We also designed and delivered a loss prevention seminar specifically geared for in-house counsel via two-way videoconferencing.

We have established a continued presence at the Saskatchewan Branch's CBA Mid-Winter Meeting and this year offered a law firm marketing workshop. Delivering skills training seminars remains a priority and in 1999 we note that both the Trial Advocacy and the Persuasive Legal Writing limited enrolment workshops were well received. The Annual Loss Prevention seminar remains a valuable forum in which to address specific practice management issues and we are committed to ensuring that loss prevention practice tips are presented at all SKLESI seminars.

In 1999 we had a total of 1283 lawyers and legal support staff attend 14 different CLE topics. This is very encourag-

ing news in a voluntary CLE jurisdiction.

As in CLE, the BAC also feels the change in the prevailing winds. The BAC is the last opportunity for articulated students to obtain a substantive law refresher in a number of practice areas as well as learn lawyering skills. As more and more newly-called lawyers venture out on their own, how do we ensure as a profession that they are equipped to deal with the unique challenges that await them in practice? The skills that are taught during the BAC assist them with making the transition from law school to law firm. Are we doing enough or could we be doing more to ensure that they

meet a minimum standard of practice?

We were fortunate to have Marusia Kobrynsky return again in August to teach the skills segment of the Course. This has added a continuity to the BAC staff team and the Course. Lawyers transferring from other provinces into Saskatchewan is on the rise and we are charged with setting and administering the transfer examinations.

On the administrative side, we are pleased to report that we remain fiscally viable and responsible. CLE programs and the BAC are run on a cost recovery basis. The CLE seminars that generate additional revenue offset the cost of

delivering the technology workshops or other limited enrolment seminars. We acknowledge and thank the Law Society of Saskatchewan and the Law Foundation of Saskatchewan who provide funding to SKLESI.

The SKLESI Board of Directors and the staff are indebted to the bar and the judiciary who have assisted SKLESI throughout the year in both CLE and the BAC. There is no doubt that without the endless volunteer hours and the expertise the profession donates, SKLESI would not be able to fulfill its mandate. Thank you.

### ***Insurance Levies of Canadian Law Societies***

Law Society	2000-2001	1999-2000
Alberta	1907	2109
British Columbia	1605	1500
Manitoba	1600	1700
New Brunswick	1900	1890
Newfoundland	3800	3800
Northwest Territories	2198	2523
Nova Scotia	1400	1774
Nunavut	2198	2523
Ontario	3150	3150
Prince Edward Island	3930	3730
Quebec/Barreau	1	1
Quebec/Notaires	2900	2950
Saskatchewan	1400	2000
Yukon	2186	2139



# Legal Web Cites

By *Peta Bates*

The recent Supreme Court of Canada case on gun control legislation, Reference re Firearms Act (Can.), 2000 SCC 31 (June 15, 2000), is interesting for a reason quite apart from the main matter at hand. Paragraph 17 of the judgment states:

17 A law's purpose is often stated in the legislation, but it may also be ascertained by reference to extrinsic material such as Hansard and government publications: see Morgentaler supra, at pp. 483-84. While such extrinsic material was at one time inadmissible to facilitate the determination of Parliament's purpose, it is now well accepted that the legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight.

Later in the judgment reference is made to statements made by the Minister of Justice at the time, the Honourable Allan Rock, in his second-reading speech in the House of Commons:

"The government suggests that the object of the regulation of firearms should be the preservation of the safe, civilized and peaceful nature of Canada" (House of Commons Debates, vol. 133, No. 154, 1st Sess., 35th Parl., February 16, 1995, at p. 9706).

Fortunately, electronic publishing of government publications has made it easier to access some of this previously hard-to-find material.

## **Federal Parliamentary Internet Web Site**

Government Bills

[http://www.parl.gc.ca/cgi-bin/36/pb\\_gob.pl?e](http://www.parl.gc.ca/cgi-bin/36/pb_gob.pl?e)

This site contains the text of government bills in the current and last sessions of Parliament. More importantly for our purposes, there are links beside most bill numbers to Legislative Summaries prepared by the Parliamentary Research Branch of the Library of Parliament. These summaries provide a plain language background and analysis of proposed government legislation. They are prepared for Parliamentarians but are not government documents and have no legal status. Each summary contains a legislative history of the bill, a description and analysis of each section, and a summary of commentary on the bill by special interest groups and the media. The only bills which do not have Legislative Summaries are those involving taxation measures, omnibus bills and short self-explanatory bills.

Library of Parliament Research Branch Publications

<http://www.parl.gc.ca/36/rm-library-e.htm#top>

Legislative Summaries are just part of the Parliamentary Research Branch publications available on the Library of Parliament web site. These publications, which are arranged under broad subject headings, include analysis of recent court decisions, summaries of Royal Commission reports, and background papers on a whole range of legal issues.

Hansard Index to Debates of the House of Commons

<http://www.parl.gc.ca/36/2/parlbus/chambus/house/debates/indexe/homepage.html>

Everything that was said by Members of Parliament in the House of Commons is indexed in the Hansard Index. Access is by Member's name and by subjects. The numbers after the entries are the page number in the printed Hansard, the issue number and the time the remarks were made. Hyperlinks are provided from the Index entries to the page in Hansard. The Index is updated daily. There are currently Indexes for the current session (October 1999 to present) and the previous session (September 1997 to September 1999) of Parliament.

Debates of the House of Commons (Hansard)

[http://www.parl.gc.ca/cgi-in/36/pb\\_chb\\_hou\\_deb.pl?e](http://www.parl.gc.ca/cgi-in/36/pb_chb_hou_deb.pl?e)

If you already know the exact issue of Hansard that you need, you can go straight to this site and hyperlink to the Hansard issue for that day.

Debates of the Senate (Hansard)

<http://www.parl.gc.ca/36/2/parlbus/chambus/senate/deb-e/deb-e.htm>

Similarly, the Debates of the Senate are available by date. There is no index for the Senate Debates but the Parliamentary Internet web site has a search engine (select "Search" from the bar on the top of the page) which allows you to keyword search just the Senate Debates. Debates are available for the current and previous session of the Senate.

## Professional Conduct Rulings

### *Lawyer Defending Doctor Who is Expert Witness For Other Side In Another Concurrent Action*

#### **Facts:**

We received a complaint from Lawyer A against Lawyer Z on behalf of his plaintiff client. Lawyer A represented the plaintiff in a medical malpractice jury trial against two doctors. The action was defended by Lawyer Z. Lawyer A retained an expert medical witness, Dr. B, to testify on behalf of the plaintiff. Lawyer A believed he then experienced difficulties with Dr. B including overcharging for a report, failing to provide assistance in preparation for Exams for Discovery, failure to respond to telephone calls, and the Doctor advising on the opening day of Trial that he would not be available to testify on the previously arranged date. Lawyer A Subpoenaed Dr. B to testify later in the Trial and believed that the doctor's testimony undermined rather than assisted the case as the doctor had previously indicated during their Pre-Trial meetings.

The day after the verdict in the Trial, Lawyer A's co-counsel and the plaintiff happened to see Dr. B with Lawyer Z at a Pre-Trial conference at the Court House. Lawyer A then found out that Lawyer Z was defending Dr. B in a separate malpractice case which had coexisted with the plaintiff's

malpractice case. During that same day, the Jury arrived at its verdict allowing the plaintiff's claim but awarding damages which were quite low in the opinion of Lawyer A. Lawyer A complained about Lawyer Z on the following grounds:

- That Lawyer Z failed to disclose either to the Court or to Lawyer A, her solicitor-client relationship with Dr. B, (as a defendant in a separate medical malpractice claim) while the doctor was engaged to act as the plaintiff's expert witness in Lawyer A's case.

- That Lawyer Z not only had an obligation to disclose her solicitor-client relationship with Dr. B to Lawyer A, but Lawyer A also implied that Lawyer Z had an opportunity to influence Dr. B's testimony as expert for the plaintiff in his case.

- That Dr. B may have felt constrained or limited due to the fact that Lawyer Z acted in his defence in a separate matter and thus "modified or softened his testimony" as expert witness for the plaintiff.

- That the disclosure by Lawyer Z and Dr. B was a deliberate strategy of deception with a view to winning against the plaintiff in Lawyer A's case, and contributed in a serious way to a miscarriage of justice.

The matter came before the Trial Judge, post-Trial, in the context of costs. Lawyer A made serious allegations against Lawyer Z and Dr. B in his materials and in his argu-

ment. As well, Lawyer A made serious allegations against Lawyer Z and Dr. B in his Notice of Appeal, which was later abandoned (and Lawyer A indicated was only a "draft"). Lawyer Z felt that Lawyer A made extremely serious allegations in a rather cavalier matter without first attempting to verify same and felt that his behaviour was a rather serious attack on her integrity.

#### **Ruling:**

The Ethics Committee ruled that Lawyer Z had not acted unethically. Furthermore, the Committee rejected out of hand any suggestion of actual impropriety. The Committee was, however, concerned about the public perception that was created by this unique situation. Failing to disclose to opposing counsel the fact that Lawyer Z was currently representing Lawyer A's expert witness on an unrelated matter, had the effect of exposing Lawyer Z to unwarranted and harmful criticism.

The Committee, with the benefit of hindsight, concluded that the preferred course of action would have been for Lawyer A to be informed of the fact that she was currently representing his expert in an unrelated action. This could have been done by either suggesting to Lawyer A's expert, Dr. B, that he disclose the relationship to Lawyer A, or, alternatively, Lawyer Z could have made known the situa-

tion to Lawyer A by telling him directly or by providing to him a copy of the Statement of Defence, which, of course, is a public document available from the Court file.

The Committee was mindful that our Code of Professional Conduct, Chapter IV, Rule 3, requires that a lawyer keep confidential the fact that she has been consulted or retained by a client. However, the Rule permits an exception to this general principle where "...the nature of the matter requires such disclosure". The Committee was of the opinion that the unique circumstances of this situation falls within the exception so as to permit disclosure of the fact that Lawyer Z was currently acting for the expert in a matter that had become public.

The issue here, from the Ethics Committee's perspective, was not that Lawyer Z influenced anyone inappropriately. Rather, as stated above, the Committee is concerned with the public perception. Chapter XIX, Commentary 1, of our Code of Professional Conduct requires lawyers to avoid "even the appearance of impropriety". Disclosing the circumstances of Lawyer Z's representation would have, in the opinion of the Ethics Committee, eliminated or at least reduced any "appearance of impropriety" respecting both Lawyer Z and her client.

After reviewing the entirety of the circumstances, the Ethics Committee expressed concerns about the way the complaint was made against Lawyer Z. The Ethics Committee condemned the

wording of the "draft" appeal of Lawyer A. As well, the Ethics Committee did not condone the fashion in which the complaint was made in that it was strongly worded and aggressive. Complaints made against another member ought not to be made in a cavalier manner or without any solid foundation. The Committee was of the opinion that Lawyer A could have made known his concern relating to his complaint in a fashion that was less inflammatory.

In summary, the Ethics Committee did not believe that Lawyer Z "did anything wrong" but rather the ruling focused on how matters such as this could have been handled to avoid negative public perception and unwarranted criticisms being leveled against lawyers. This Ethics Committee Ruling will not "open the floodgates" and obligate lawyers to reveal client retainers in all circumstances. The ruling, in this case, is very fact specific.

### ***Breach of Trust Conditions***

#### ***Facts:***

Lawyer A complained with respect to Lawyer B in that he accepted and then failed to comply with trust conditions. Lawyer A's office forwarded the file of their former client, Client X, to Lawyer B. The file was forwarded in the following trust conditions by letter:

"As we have not duplicated the file, the enclosed documents are sent upon the following trust conditions:

1) That you return copies of the documents to our office upon demand;

2) That you do not use or duplicate the enclosed documents until such time as you arrange for the payment of the balance of our interim account of May 7, 1998 in the amount of \$3,407.74, as well as our final account which will not exceed \$3,000.00."

The final statement of account was paid, however, the previous account remained owing. Lawyer A wrote to remind Lawyer B several times and received no response. The matter continued from the time of the complaint, November of 1999 to April of 2000 when Lawyer B paid Lawyer A's account.

#### ***Ruling:***

The Committee was of the opinion that Lawyer B's conduct in this circumstance was unethical and he failed to comply with trust conditions contrary to Chapter XVI, Commentary 10 of the Code of Professional Conduct.

### ***Billing Client for Rendering Account***

#### ***Facts:***

Client A had previously complained about Lawyer Z billing for time spent in responding to her complaint to the Law Society. The Ethics Committee had ruled that this was unethical and directed Lawyer Z to delete the time from his bill. Client A provided a further complaint that Lawyer Z was billing her for time spent in providing a bill

that she required for Revenue Canada. Lawyer Z had decided to reverse and write-off the account in its entirety, but stated that he believed that preparing the final account and forwarding the same to the client was part of the file and billable. The Ethics Committee reviewed the issue of lawyers billing their clients for the process of preparing a bill.

**Ruling:**

The Committee ruled that it depends on the specific circumstances as to whether billing for time spent in rendering an account would be appropriate and in all circumstances, such billing to prepare an account should certainly be disclosed to the client. For example, large institutional clients often want special billing done in a particular matter that takes several people several days to prepare.

These large institutions are willing to pay for extra time spent in billing so that the data is produced to them in the manner that they may use it most efficiently. As well, some clients wish to attempt to use legal bills expended in obtaining maintenance, as an income tax deduction. Such a client often requires a detailed breakdown or “splitting out” of time spent in obtaining child maintenance, this breakdown may have to take place several years after the file has been closed, and in such circumstances, could justifiably be billable time.

**Form Demand Letters**

**Facts:**

This matter was referred to the Ethics Committee as Lawyer A was preparing standard demand letters as a “form” for Collection Agency

B. Law Society counsel was of the opinion that this appeared to be an unavoidable implication that Lawyer A was acting on behalf of the creditor client of Collection Agency B and a recipient of a letter would understandably be under this belief. Lawyer A took the position that he was not representing the creditor client and there was no solicitor/client relationship.

**Ruling:**

The Ethics Committee was of the opinion that Lawyer A was holding himself out as counsel for the creditor client of Collection Agency B. Furthermore, providing a signed letter to a non-lawyer for use as the non-lawyer saw fit was very close to assisting in unauthorized practice.

## ***Employment Equity***

At the National “Opportunities and Challenges” Conference sponsored by the Saskatchewan Employment Equity Practitioners Association recently held in Regina, Donna Scott, Chair of the Saskatchewan Human Rights Commission presented The Law Society of Saskatchewan with a certificate of recognition for having implemented and registered an employment equity policy. Thanks are extended to Judy Bell, past Chair of the Equity/Diversity Committee for her assistance and to the Benchers for recognizing her initiative.

### **BENCHERS' DIGEST**



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