

BENCHERS' DIGEST



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Mr. Morgan is a partner with the law firm of Morgan Theberge in Saskatoon, Saskatchewan and is currently the Chair of the Admissions & Education Committee, as well as being the Vice Chair of the Finance Committee, and a member of the Complainants' Review Committee and the Public Relations Committee of The Law Society of Saskatchewan.

Those of you who took the bar course a number of years ago will recall that the course comprised of only one segment, taken in May, after which the exams were written. Five years ago, the format was changed to introduce a two-segment bar course; the first segment, taught in August, deals primarily with skills training, and is designed to help the new articling student obtain the necessary skills to apply during the balance of his or her articling year. The second segment, held in May, is very similar to the previous one-segment portion.

As the "new system" has been in

place for approximately five years, the Admissions & Education Committee determined it would be useful to conduct a survey to obtain feedback of some of those members who had participated as principals or students.

The survey was sent to 193 lawyers, 115 of whom responded. Of those, 44 percent had participated in the Saskatchewan bar course, as both a principal and a student, 37 percent had participated as a student only, and 17 percent had participated as a principal only. Of those who had participated in the Saskatchewan bar course as students, slightly more than one-half had participated in the one-segment bar course.

Most of those who had taken the one-segment bar course felt they did not have sufficient grounding in legal skills when they started articles, but most felt they had acquired that by the time they had completed articles.

Of those who had participated in the two-segment course, the overwhelming majority felt the content in the August segment was of assistance to them during articles.

Of those principals who had experience with both the one-segment and two-segment bar course, they were equally split as to which they preferred.

Dealing with the two-segment bar course, roughly half of the principals said it was not disruptive to the practice to have the student gone from the office for two separate

periods, and almost 70 percent felt the student was better able to assist the principal after attending the August skills segment.

In light of those findings, it is felt that the two-segment bar course should be continued, although we may do some minor revisions to certain aspects of the format. The Admissions & Education Committee feels that placing a greater emphasis on skills training for junior lawyers is in keeping with the results of the overall membership survey conducted in 1999, in which 66 percent of the respondents indicated they felt that the Law Society should exercise more control over the content and quality of articling. Coupled with the overwhelming response from the 1999 survey that indicated continuing legal education should be mandatory, it is clear that the membership wants to ensure the continuing quality and competence of all lawyers, not just newly-admitted ones.

There are a number of other issues pertaining to the bar course which the Admissions & Education Committee is dealing with, summarized as follows:

The content and quality of the articling experience

We have found that the articling experience varies widely from student to student. Some firms have clearly defined areas of responsibility for their students, and some firms

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tend to take more of an ad hoc approach. In light of the diverse experience that students receive during their articles, we will be taking an increased initiative in the coming years to communicate with principals at an early stage, and more often, to detail the areas and responsibilities we would like to see students exposed to.

The examination process

At the present time, the bar course exams are open book, and we have been considering changing that format to closed book. After much consideration, we have decided to continue the open book format. Although there are pros and cons to each method, or view is that the open book format allows us to examine on more specific questions. We also feel it more fairly allows us to set questions in which we can test the student's ability to identify, analyze, and provide a solution to a specific legal problem, and in a way that is more reflective of how we as practising lawyers approach the matters we are presented with.

We also looked at the issue of whether we should keep a comprehensive exam format, in which questions in various areas of law are posed, or move to setting more specific exams, for example, one specifically on criminal procedure, one specifically on real

estate practice, etc. Whereas it might be preferable in some cases to go to a more specific exam format, budgetary constraints, as well as considerations as to the size of our province and available pool of instructors, make a more comprehensive exam format preferable at this time.

Accommodation issues

In direct response to the increasing number of Aboriginal students entering the profession, and in recognition of the importance that all lawyers have a basic knowledge of Aboriginal issues in particular areas of law, we are in the process of examining the entire bar course content for the purpose of incorporating Aboriginal issues in individual areas of law where appropriate. Whereas this will likely be of greatest advantage to those students going through the course itself, the bar course materials and updates are of course available for the use of all practitioners.

The changing demographics of students seeking admission to the practice is encouraging, as it is important that the legal profession reflect the populace it serves. This includes students from a variety of cultural backgrounds and students who have physical limitations. In some cases, this requires that we

consider ways to fairly examine applications for admission, at the same time recognizing the need for adherence to our established high standards for admission. We have found it is impossible to lay out specific rules and regulations to be followed in each case, as of course each case is different. What we have done is to put in place a mechanism in which students who desire accommodation will have the opportunity to make a request for same in a timely fashion, thereby allowing us, in appropriate circumstances, to fashion a tailor-made and fair solution to the particular problem of that individual.

Finally, although far from being settled, there are on-going discussions between some of the western law societies about sharing common aspects of each province's bar course. As there is a growing movement towards increased mobility for lawyers, this is somewhat of a companion issue. You can expect to hear more about this in the future.

If you have any comments, suggestions or concerns respecting the bar course, please contact any member of the Admissions & Education Committee.

In Memory of

Douglas Alexander Whittaker passed away peacefully at his Moose Jaw home surrounded by his family on November 11, 2000 at the age of 75 years. Mr. Whittaker was born in Moose Jaw and attended school there. He served as a Plying officer with the RCAF from 1942 to 1945, and served as 2nd Lt. in the 20th Armoured Regiment of the Moose Jaw Militia. In 1949 Mr. Whittaker earned his Bachelor of Law degree from the University of Saskatchewan and was admitted to the Saskatchewan Bar in 1951. He practiced law in Moose Jaw from 1951 to 1979, when he became the Continuing Legal Education Director for Saskatchewan at Saskatoon for the period of 1979 to 1983. Mr. Whittaker returned to private practice in Moose Jaw from 1983 to 1995.

Mr. Whittaker believed in giving back to the community and served on numerous boards and committees. He was chairman of the RCAF Benevolent Association, on the executive of the Moose Jaw Kinsmen Club, chairman of the Moose Jaw Public School Board, active on the Boards of the Providence Hospital, United Services Institutes, Moose Jaw Diversified Services, Canadian Club and St. Andrews College Saskatoon.

Mr. Whittaker is survived by his wife Doris (nee Grigg), their three children and their five grandchildren.

Highlights Of The Meeting Of The Benchers Held October 25, 26 & 27, 2000

Incorporation

A meeting of representatives from the Canadian Bar Association, The Law Society of Saskatchewan and the Saskatchewan Institute of Chartered Accountants with the Minister of Finance, Eric Cline, was arranged by Jeff Grubb, current President of the Saskatchewan Section of the Canadian Bar Association. At the meeting, the lawyers and accountants suggested to the Minister that since physicians will be allowed to incorporate their practices, that ability should be granted to other professions.

The Minister was advised that a large number of members are leaving the Province, particularly to Alberta and that it is important to keep lawyers in rural Saskatchewan. Since incorporation will realistically only benefit lawyers in small (one to two person) firms, the potential loss of revenue to the Province would be minimal. However, since a large number of small firms are in the rural areas, there could be a significant benefit to those lawyers and those rural areas.

The Minister advised that the Government is less opposed to incorporation than it previously had been. However, the possible economic impact is certainly an issue. He advised that he considered the meeting as a pre-budget consultation. While he would not promise that incorporation would be included in the next budget, he invited lawyer representatives to meet with the Department of Finance personnel to confirm the

revenue-neutral position suggested by the Law Society and the CBA. We are awaiting the scheduling of such a meeting.

2001 Budget

The Benchers approved the budget for 2001 which set the fees at \$1,010 which has remained constant for the past ten years. As reported in the Annual Fees Notice, the budget anticipates a small deficit. However, that can be covered from the accumulated surplus. Combined with the insurance assessment at \$1,400, the practicing fee for The Law Society of Saskatchewan is the third lowest in Canada.

Credit Card Deposits

A member had inquired whether clients could put money into a lawyer's trust account using a credit card. Rule 910 requires that trust money may only be deposited to a trust account. Funds received by credit card may be either general or trust. Therefore, Mr. Ogrady recommended that if deposits to trust by way of credit card are allowed, the credit card account should be designated as "trust". Upon receipt, the funds should be transferred to either general or mixed trust, as the case may be. The Finance Committee will be reviewing a draft Rule amendment in December.

Land Project

Discussions with the Land Project continue regarding the issues of lawyers being the only "authorized users" of electronic registration, especially for transfers and

mortgages. The Chairs of Professional Standards Committee, Insurance Committee and Admissions & Education Committee will meet to discuss how lawyers will be qualified as authorized users. The issues include education, examinations and insurance.

Law Society Gold Medal

The Law Society has, for the last several years, provided to the University of Saskatchewan College of Law a gold medal to present to the top graduate. Dean Bilson advised that the differential between the first and second place graduates is often only one-hundredths of a percentile. The Benchers have agreed that commencing in 2001, the Law Society will sponsor gold, silver and bronze medals to the top three graduates at the College of Law, University of Saskatchewan.

Honourary Life Membership

The Benchers unanimously approved the presentation of an Honourary Life Membership in the Law Society to Donald Kenneth MacPherson, Q.C., former Chief Justice of the Court of Queen's Bench for Saskatchewan. Mr. MacPherson's Certificate was presented during a meeting of the Regina Bar Association at which the Benchers of the Law Society were guests. The Canadian Bar Association also presented Mr. MacPherson with an Honourary Membership.

SKLESI Plans Third Trial Advocacy Workshop for 2001

SKLESI has begun planning of the third Trial Advocacy Workshop, to be held in November, 2001. The first two very popular workshops were held in Saskatoon in 1998 and Regina in 1999. Each year, twenty-four lawyers worked for three days with 12 outstanding faculty members in an intensive workshop setting. The goal was to develop their basic advocacy skills. The 1998 and 1999 faculty consisted of The Honourable Chief Justice W. F. Gerein, The Honourable Mr. Justice P. Foley, The Honourable Madam Justice Y. G. Wilkinson, The Honourable Mr. Justice D. H. Wright, The Honourable Mr.

Justice T. C. Zarzeczny, Morris Bodnar, Q.C., Jim Ehmann, Richard Elson, Aaron Fox, Q.C., Christine Glazer, Q.C., Maurice Laprairie, Q.C., Diana Lee, Karen Prisciak and Gary Young, Q.C. The workshops filled up very quickly and were proclaimed a success by the participants and faculty alike.

Due to the success of the course, SKLESI intends to proceed in 2001 with advocacy training that serves the needs of Saskatchewan lawyers. To that end, we will be enclosing a short questionnaire with our 2001 calendar of seminars, which you will receive in mid-December. What we need to

know from you is: do you want SKLESI repeat its successful 3-day workshop or is there another option such as exams for discovery or advanced cross-examination that would better serve your needs? If you would like some input into the content of the 2001 workshop, please complete the questionnaire when you receive it and fax it to SKLESI before the end of the year. If you plan on attending the 2001 workshop, watch for a brochure in the Spring of 2001.

Quality of Service

One of the most common complaints that the Law Society receives is that the lawyer has not completed the client's work within a reasonable time. Often this is a result of failure of communication between the lawyer and the client, which results in the client having expectations which cannot be met. Occasionally there is delay in the prosecution of a client's file as a result of pressure of other work. This is something that we all experience, however, it is not sufficient justification for a delay which may prejudice the client.

Recently, a member quite candidly advised the Professional Standards Committee that the reason he had not attended to a file as quickly as the client wished was simply that the client was not wealthy and he expected that the client would not pay his bill when it was finally presented.

The Professional Standards Committee would like to emphasize to the membership that when a member undertakes to perform legal services on behalf of a client, he or she must provide quality legal services regardless of the client's circumstances. This includes ensuring that the file is attended to and that all reasonable steps are taken to ensure the best possible result for the client. It may be in some circumstances that clients, who cannot afford to pay a lawyer's usual fees will agree to have the lawyer act on only part of the entire matter. If this is the case, the client must be advised and agree unequivocally as to the extent of the lawyer's representation, and further, the client must be advised as to the potential consequences of limited representation. Furthermore, if the client is content that there may be more than usual delay in completion of the file, this may be permissible as it falls within the general requirement that a lawyer follow his or her client's instructions. However, an unreasonable delay on the part of the lawyer which results from his or her unilaterally placing the client on a lower priority than other clients or other business is not acceptable. If a lawyer feels that he or she cannot attend to the file within a reasonable time, the client should be advised of that and given the opportunity to find other counsel.

This Week's Law (TWL)

This Week's Law, which has been produced by the Law Society library since 1982, will be receiving a facelift with the new volume in 2001.

"TWL", as it is more commonly known, is a looseleaf publication of digests and indexes of Saskatchewan case law. Releases are prepared approximately 9 times per year. The printed digesting service can be a useful addition to a busy law office. Digests are prepared by a Saskatchewan lawyer and edited by library staff. TWL mirrors the online version in the members' section, but provides many more tables and indexes than appear online. Using TWL allows browsing of the digests and tables which can be very difficult and awkward in an online environment.

The library will be revamping the tables so that it will be easier to use the print and the online together. The access numbers (for example QB99145 or CA00101) will be included in the tables and indexes along with the printed page citations. Updated pages will have release number and date information.

The following tables are included:

Table of cases, which includes citations to printed law reports
Cases judicially considered
Saskatchewan Statutes judicially considered

Federal Statutes judicially considered
Saskatchewan Rules judicially considered
Subject index.

Using the printed subject index in conjunction with the online database can improve your search results. Standard subject headings are used to describe the legal concepts. By referring to the printed subject index, you may get a better idea of the terms to use in the subject field of the database. Also, reviewing the digests and looking closely at the words and terms used will also give you a better idea on what terms to select for your online search, whether you are searching in the digest database or the fulltext judgment database. The library has an extensive list of preferred formats of terms and words for use in the digests. In order to make it easier to search the digest field, the library is providing some consistency in a field that usually does not have controls. For example, the library uses "bylaw" as one word in the digest field, instead of a hyphenated word, "by-law". The hyphen is translated into a space in the online search making your term "by law". In many databases, a word such as "by" is called a stop word. The computer is set to ignore certain words placed in the search, as they may be too common or considered unimportant in a searching

environment. Many stop words are prepositions (to, from, by, at). In a legal database, using the word "law" as a search term is not specific enough to yield good search results. Therefore, we prefer the format "bylaw" in our digest database.

You may want to translate some of the knowledge gained from reading TWL when searching the fulltext judgment database, in case the judge has used "marihuana" and not "marijuana," for example. The researcher's mind must be open to all different variations of spelling in a fulltext judgment database, because the text is not edited for consistency of terminology from one judgment to the next. By reading the printed digests in TWL, you will begin to see word preferences and abbreviation usage or non-usage. Using the preferred term in the digest database will improve your search results. Remembering variant spellings and including them in your search will improve your search results in the fulltext judgment database.

If none of this is making sense, the library staff can help you formulate your search queries. Call in Saskatoon 933-5141, toll-free 1-888-989-7499; in Regina 569-8020, toll-free 1-877-989-4999.

TWL includes binders, tabs, and updates in the annual subscription cost of \$230.

Nestor Ogrady, Auditor/Inspector, Retirement

It is with regret that we announce the impending retirement of Nestor Ogrady, CA, Auditor/Inspector. Mr. Ogrady began with the Law Society in January of 1988. He has transformed the position from simply confirming compliance with the Rules relating to trust accounts to providing practical advice to lawyers for their accounting and other administrative systems. In addition, he assisted the Law Society in modernizing its accounting procedures and has helped train our staff to become more independent. Mr. Ogrady will be greatly missed.

Legal WebCites

By Peta Bates

This column will look at the current state of Ontario legislation and judicial decisions on the Internet and then look ahead to some exciting future developments in electronic legislation.

Ontario Statutes

<http://209.195.107.57/en/index.html>

The Ontario statutes web site is maintained by the Management Board Secretariat of Publications Ontario. Ontario statutes are consolidated to July 1, 1999. Private acts and repealed statutes are not included. Amendments not yet in force are listed at the end of the statute. The Folio search software divides the screen into left and right frames. On the left is an alphabetical list of statute titles. On the right is the text of the statutes. To see one side or the other exclusively you can use your cursor to move the middle dividing line to the left or right to minimize or expand the left or right screen. (Move your cursor over the vertical dividing line until the arrow turns into a horizontal double-pointed arrow, then hold down your mouse button and drag the line to the left or the right.)

If you know the name of the statute simply find it in the alphabetical list on the left side of the screen. Double click on the plus signs to open up the list of statutes beginning with a particular letter and then click on the name of the statute. The print button at the top of your screen will print the text of the statute. If your statute is long, only the first 5 pages will be printed and you will have to click on the "next" arrow at the bottom of the fifth page to retrieve the next 5 pages. Alternately, you can highlight a portion of the text and save it to a computer file to print later.

If you need to search to find the relevant statutes, enter your keywords in the search box located at the bottom of the screen. The "and" command is simply a space between the words, the "or" command is the word "or", and a phrase is contained in quotation marks. The search results will list all the statutes where your terms are found in the left screen and the text of the statutes in the right screen.

Ontario Regulations

<http://209.195.107.57/en/index.html>

Ontario regulations are displayed in a similar manner to the statutes with the alphabetical list of regulations in the left frame and the text of the regulations in the right frame.

Regulations are listed alphabetically under the enabling act. The best way to print a regulation is to highlight and select the text, then under "File" select "Print" and check "Print Selection Only".

Ontario Bills

<http://www.ontla.on.ca/Documents/documentsindex.htm>

First, second and third reading copies of bills from the current session of the Ontario legislature are available in both PDF and HTML format. The bills are indexed alphabetically by short title and numerically by bill number. Proclamation dates are provided. Both French and English versions are available. There is no archive for past legislative sessions.

Ontario Courts / Judicial Decisions

<http://www.ontariocourts.on.ca/appeal.htm>

The Ontario Courts website has information about judges, practice directions and weekly court lists for the Ontario Court of Appeal, the Ontario Superior Court of Justice and the Ontario Court of Justice. In addition, judgments from the Ontario Court of Appeal are available from June 1998 to date. The earlier judgments are in HTML format and the newer judgments are also in PDF format. The search engine allows keyword searching across each year or all judgments. The "search tips" link provides instructions on using Boolean operators and proximity connectors to structure your search.

Rules of the Ontario Court of Justice in Criminal Proceedings

http://www.ontariocourts.on.ca/ontario_court_justice/provincial_rules/english/index.htm

This copy of the court rules and forms is current to November 1998.

Rules of the Ontario Superior Court of Justice Family Court Branch

http://www.ontariocourts.on.ca/family_court/rules/english/index.htm

This copy of the court rules and forms is current to September 15, 1999.

The Future of Ontario Electronic Legislation

A joint press release in September 2000 from the Ontario Attorney General's Department and the Department of Consumer and Commercial Relations announced Ontario's new bilingual electronic statutes service called *e-Laws*. Starting in December 2000, updated legislation incorporating all amendments will be available online within 14 days of enactment of the amendments. By the end of 2001, there will

be access within 24 hours. The unique feature of e-Laws is "point-in-time searching" which will provide access to earlier versions of a law as it was at a point in time selected by the user. The service will be available at no charge on the Internet.

Ungovernable Members

Most matters which come before the Discipline Committee are relatively minor. It is, fortunately, unusual in Saskatchewan to have hearings involving conduct which result in severe penalties.

Unfortunately, a very few members appear again and again on the agenda of the Discipline Committee, usually with respect to allegations of the same type: delay, failure to follow client's instructions, failing to respond to fellow solicitors, incompetent representation, etc. On their own and as isolated cases, these types of complaints may not be considered at the more serious end of the spectrum. They are generally handled in a summary fashion which does not result in any significant penalty, even if there is a conviction for conduct unbecoming.

In most cases, this response by the Benchers is effective and the member does not repeat. However, in some cases, it does not seem to have the effect of altering the practice. Similar complaints are received within months, sometimes weeks, of the resolution of the previous ones. It is in these cases that progressive discipline is appropriate.

The Benchers are of the view that there is a point where the continuation of unacceptable

conduct in the face of counselling, practice assistance and sanctions by the Law Society demands a more effective response. To allow such lawyers to continue to practice, is, in their view, contrary to the public interest and the mandate of the Law Society to protect the public from lawyers who cannot maintain the standard requirements of members of the Law Society. *The Legal Profession Act* defines conduct unbecoming as follows:

"Any act or conduct, whether or not disgraceful or dishonourable, that:

- (i) is inimical to the best interests of the public or the members; or
- (ii) tends to harm the standing of the legal profession generally; and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii)."

A continued pattern of unacceptably low practice standards fits that definition. Furthermore, the Law Society's duty to govern the profession is called into question by lawyers who are unable or unwilling to take the steps necessary to improve their practice to the required level, *even after* such

necessity has been brought to their attention.

Other jurisdictions in Canada have, for some time, utilized the concept referred to as "ungovernability" to address this problem. A lawyer is found to be ungovernable and therefore unfit to practice in circumstances where the Law Society is unable to satisfactorily assure the public and the profession that his or her practice and conduct will meet the required standard. The inevitable penalty for a lawyer found to be ungovernable is disbarment or permission to resign. It is inconceivable that a lawyer who fails consistently and regularly to comply with the Rules and *The Code of Professional Conduct* should be entitled to practice in Saskatchewan. To allow that would make a mockery of the concept of self-government.

This notice is intended to advise of the Benchers' understanding of their function and responsibility in the discipline forum. It will not fetter the discretion of individual sentencing Committees to award the penalty most fitting the individual and the circumstances of each case. Indeed it is intended to assist in determining what is most fitting.

Election of Benchers

CENTRAL ELECTORAL DIVISION

Brian Hendrickson

NORTH EAST ELECTORAL DIVISION

Eisner, Stuart (by acclamation)

NORTH WEST ELECTORAL DIVISION

Thurlow, George (by acclamation)

PRINCE ALBERT ELECTORAL DIVISION

Popescul, Martel, Q.C. (by acclamation) – President for 2001

REGINA CITY ELECTORAL DIVISION

Krogan, Lana
McIntyre, Alan
Milani, Michael
Mitchell, Graeme, Q.C.
Van Beselaere, Rick

SASKATOON CITY ELECTORAL DIVISION

Gibbings, Robert
Gough, W. Brent
Klaue, Brent
Morgan, Barry
Wilson, Donna

SOUTH EAST ELECTORAL DIVISION

Komarnicki, Edward (by acclamation)

SOUTH WEST ELECTORAL DIVISION

McIntosh, John (by acclamation)

We would like to thank each and every member who agreed to stand for election as a Bencher. The results were very close, which reflects on the excellence of the candidates. We look forward to working with the newly elected Benchers and we would encourage all those who sought office in this election to consider doing so again in 2003.

Attention All Real Estate Lawyers

The Law Societies of British Columbia, Alberta, Saskatchewan, and Manitoba will be implementing new practice standards, which are intended to assist lawyers in providing better service to financial institutions on residential mortgages. The Western Canadian protocol is intended to reduce the time required on closing by the following:

1. Eliminating the need for a Surveyors Certificate;
2. Allowing funds to be disbursed at the time documents are submitted to Land Titles for registration.

If the lawyer follows the correct protocol, any losses suffered by a financial institution because of the new standards will be paid by Saskatchewan Lawyer's Insurance Association without the

contribution of a deductible. It is intended that the new standards will provide a competitive advantage to lawyers while incurring minimal risk.

Please watch the Benchers Digest for more details and mark your calendars for the Saskatchewan Legal Education Society Inc. seminar scheduled for February 16, 2001.

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