BENCHES DIGEST

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Profile Of The President



Martel D. Popescul, Q.C. of Prince Albert, SK was elected President of the Law Society of Saskatchewan for 2001 by the Benchers of the Law Society at the Convocation held at Saskatoon on December 7, 2000. He took office on January 1, 2001.

Mr. Popescul was born at Bengough, Saskatchewan and lived on a farm near Kayville for the first several years of his life. His family moved from the farm to Regina where he completed his High School at Campbell Collegiate. Mr. Popescul attended the University of Regina and obtained his Bachelor of Arts degree in 1976. He thereafter

attended the University of Saskatchewan where he obtained his Bachelor of Laws degree in 1979. He articled with the provincial Department of Justice in 1979 and was admitted as a member of the Law Society of Saskatchewan in 1980.

In 1980, Mr. Popescul and his family moved to Prince Albert where he accepted a job as Crown Prosecutor in the Prince Albert Prosecution Unit. In 1982, he joined a Prince Albert law firm, currently known as Sanderson Balicki Popescul where he still practices. Mr. Popescul's practice is diverse and includes criminal law, family law, civil litigation and conducting arbitration hearings.

Mr. Popescul is the past President of the Prince Albert Bar Association and a member of the Canadian Bar Association.

In 1992, he was awarded a federal Queen's Counsel designation and in 2000 was honoured with a provincial Queen's Counsel appointment.

Mr. Popescul has been active in many community, business, sporting and legal organizations including serving for several years as Chair of the local hospital foundation.

Mr. Popescul was elected a Bencher of the Law Society of Saskatchewan in November of 1997. He was re-elected, by acclamation in 2000. He has chaired the Ethics Committee and served on a number of other committees including the Complainant's Review, Annual Meeting, Insurance, Legislation and Policy and Public Relations Committees. He has also been a member of the Board of Directors of the Saskatchewan Lawvers Insurance Association and is currently a representative on the Queen's Bench Bar Judicial Counsel and the Federation of Law Societies of Canada.

Mr. Popescul is married to Dana and they have four very active children.

www.lawsociety.sk.ca

President's Report

I am pleased to report that the operations of the Law Society of Saskatchewan, both financially and administratively, are in excellent shape as we begin another year. Administratively, the Benchers and Law Society staff have been able to continue to operate within budget and without increasing our members' annual fees. Saskatchewan Lawyers Insurance Association continues to display a very positive financial status. Claims against the fund continue to decline, both in number and in amount. Hopefully, this trend will continue with the benefit of reduced premiums being shared by us all.

The year 2001 will be a challenging year for the Benchers. There are many important issues to be determined in the months to come. Perhaps the most significant and potentially far-reaching decision that must be addressed is that relating to "full mobility". The suggestion that lawyers in western Canada be permitted to practice relatively freely across provincial borders seems somewhat progressive. One may have expected that our membership would have opposed any changes that would permit lawyers from other provinces entering our territory. However, the response thus far has been overwhelming in favour of moving in the direction of greater mobility. Our members appear to be of the view that the benefits far outweigh disadvantages.

Also of importance to the legal profession of this province is the implementation of the LAND project. The Law Society takes the position that it is in the best interests of the public and the legal profession to restrict on-line users to qualified members of our profession. As a result, the Law Society will continue to work closely with the government to attempt to ensure

that the LAND project implementation will result in a system that recognizes the value that lawyers add to the land transactions process.

The Law Society continues to encourage the government to introduce changes in legislation respecting Limited Liability Partnerships, Class Action lawsuits and the incorporation of lawyers. We are hopeful that we will be able to convince the legislators that these changes are warranted and ought to be implemented.

The above mentioned issues are just a few of the many significant challenges that lie ahead. However, I am confident that your current group of Benchers and the professional staff of the Law Society will be able to meet the challenge and obtain the results that are justifiably expected by our membership.

Before I became a Bencher, my involvement with the Law Society was limited. The less I had to do with the Law Society-the better I liked it. After all, they were the people that could take away your license if you made a mistake or didn't pay your annual fees. However, I have learned that the Law Society is much more than a regulatory body that enforces rules and collects fees. Certainly, the Law Society sets a budget and collects appropriate fees. It also investigates and disciplines members where appropriate circumstances exist. The Law Society, with its capable and reliable professional staff, is available to assist members in dealing with procedural and/or ethical dilemmas before the problem escalates to a complaint or claim against a lawyer. Dozens of informal opinions are provided to members each year to assist members in choosing the correct course of action in some admittedly tricky areas. The Law Society should be seen by members as a valuable support network available to assist members in appropriate circumstances.

The Libraries, also an important part of the Law Society service, has an excellent staff. They are endeavoring to continue to provide top-notch material, on hard copy and through electronics, to provide lawyers with accurate, economical and user friendly information. They are most knowledgeable and approachable.

I am excited to begin work with the incumbent Benchers and the newly elected Benchers. There is no doubt that this fine group of people bring a lot of intellect and common sense to the table.

I would also like to thank and acknowledge the retiring Benchers: Doug Andrews, Q.C.; Randy Baker, Q.C.; Mary Ellen Hodgins; Daniel Konkin; Maurice LaPrairie, O.C.; Mervin Nidesh, Q.C.; John Stamatinos, Q. C.; Mary Ellen Wellsch; and Jane Lancaster, Q.C. I really don't think that it is fully acknowledged and understood by most practicing lawyers how much time, effort and devotion is expended by these people to insure that the public and the legal profession is administered in a logical, consistent, caring and responsible manner. Thank you for your immense contribution. It was sincerely appreciated. You will be missed.

Lastly, I would like to thank the membership and the Benchers for giving me the opportunity to serve as your President for the year 2001. It is a privilege and a great honour.

I look forward to meeting with as many of our members as possible. If I can assist on any issue relating to Law Society matters, complainants or concerns, I would be pleased to do what I can to help.

Have a healthy and happy new year.

Highlights Of The Meeting Of The Benchers Held December 6, 7 & 8, 2000

The Benchers elected Martel Popescul, Q.C. of Prince Albert as the President of The Law Society of Saskatchewan for the year 2001. Michael W. Milani of Regina was elected Vice-President.

The Benchers welcomed the newly elected Benchers to the December meeting to view the proceedings. An orientation will be held prior to the January meeting.

The Committees for 2001 were appointed. A list, along with the 2001 Convocation dates, are included in this issue.

Lay Benchers

Among the Benchers whose terms expired December 31, 2000 was Mary Ellen Hodgins, the third Lay Bencher ever appointed. Ms. Hodgins, a management consultant specializing in marketing research, was appointed in 1993 and served on most Committees. *The Legal Profession Act* was amended in 1997 to provide for the appointment of up to four Lay Benchers. The Minister of Justice decided to appoint two Lay Benchers, bringing the total number of Lay Benchers to four.

The two new Lay Benchers are Effie Kusznir of Prince Albert and Ron Barsi of Saskatoon. Ms. Kusznir is originally from Ile a la Crosse, now from Prince Albert. She was a prison guard at the Prince Albert Correctional Centre from 1995 to 1997 and at the Pine Grove Correctional Centre in Prince Albert from 1986 to 1988. Most recently, she was the owner of a beauty salon in Prince Albert. Mr. Barsi designs, implements monitors sophisticated environmental programs in mining

environments and related heavy industry with Clifton Associates Ltd.

Uniform Trust Conditions

The Real Estate Committee (started as a subcommittee of the Professional Standards Committee), which consists of real estate practitioners from across Saskatchewan, met at the end of November to discuss the desirability of lawyers being the sole "authorized users" of the automated registration function of the LAND Project. A position paper will be prepared.

Concern is rising regarding the use, or lack thereof, of the Uniform Trust Conditions as set out in the October, 1999 edition of the Benchers Digest. When the Benchers first approved their use, it was agreed that they would not become mandatory, but would be recommended. Two problems are arising: first, that Regina lawyers will not use the uniform trust conditions; second, that in some instances lawyers claim to be using the uniform trust conditions but in fact changes have been made. The Real Estate Committee would like to see the Benchers make the use of the uniform trust conditions mandatory, unless the lawyers by prior agreement change them.

The Benchers were not yet prepared to make the uniform trust conditions mandatory. However, it was suggested that the issue be raised again with the members and that use of the trust conditions be monitored. It was noted that these trust conditions were introduced a year and a half ago and that members should be well-aware of them.

Ultimately, the Benchers passed a motion that:

- 1. All members of the Law Society should use uniform trust conditions without amendment, unless there is agreement; and
- 2. The Benchers monitor the use of the uniform trust conditions over the next several months and reconsider the issue at the April Convocation.

It was noted that any amendments to the trust conditions must be clearly identified and must only be done to suit the deal.

The Benchers will be reviewing this issue at the April Convocation. Please forward your written comments to Kirsten Logan at the Law Society office.

Incorporation

On December 15, 2000, Canadian Bar Association and Law Society representatives met with Kirk McGregor with the Department of Finance to discuss incorporation for lawyers. The focus of the meeting was to determine the possible cost to the government if lawyers were allowed to incorporate. We are in the process of determining how many lawyers have taken advantage of incorporation in the other jurisdictions where it is allowed. The opinions we have received from tax lawyers is that incorporation would really only benefit lawyers in small firms. Our figures show that 41% of the membership practice in firms with three lawyers or less.

Uniform Trust Conditions

In 1999, the Law Society approved and recommended for use by the membership a set of uniform trust conditions for residential real estate transactions across the province. The uniform trust conditions were not made mandatory, however, it was hoped that real estate practitioners would recognize the value of a consistent approach.

The adoption of the uniform trust conditions has been fairly consistent across the province, except in Regina, where there is still a resistance to their implementation. This continues to cause friction when practitioners using the Regina trust conditions and practitioners using the uniform trust conditions find themselves disputing not only interpretation, but the entire rationale and concept behind the use of one or the other. This is something that has found its way to the Professional Standards Committee or Ethics Committee more than once, and continues to be a matter of concern for the Law Society.

Of equal concern is an issue which appears to have been arisen, even where lawyers on both sides of a deal have agreed to use the uniform trust conditions. In some cases, it has been noted that slight amendments have

been made to the uniform trust conditions, as provided

by vendor to purchaser, without notification to the purchaser's lawyer of the amendment. The theory is that a lawyer receiving trust conditions must, on behalf of his or her client, review them to determine if they are acceptable and to ensure compliance.

However, one of the most attractive features of uniform trust conditions is that all lawyers are familiar with them, and when they are provided in the standard form, it is not necessary for a lawyer to make such review. He or she knows already what they say. The Professional Standards Committee is of the view that for a lawyer to provide what purports to be uniform trust conditions, but to include amendments, which are not highlighted in any way, may well be misleading to the recipient, whether or not it is intended to be so.

Therefore, the Professional Standards Committee would like to advise members that any change or amendment to the uniform trust conditions should be highlighted and brought to the attention of the recipient in the letter containing the trust conditions. At a minimum, it is a matter of courtesy and failure to do so may in fact be misconduct.

Rule 1607

Members should be aware that the telephone book advertisements are soon due to be submitted in Regina. Rule 1619 states that "a member shall not, on his or her firm's letterhead or in any other marketing activity, list a person who is not an active member of the Society in good standing, except where that person:

- (a) is appropriately designated as:
 - (i) an inactive member,
 - (ii) a retired member,
 - (iii) a deceased member,
 - (iv) a student-at-law, or
 - (v) a foreign legal consultant, or
- (b) is a member of an inter-jurisdictional law firm".

Members are reminded that students who have not signed the Roll before the telephone directory is released may not be identified as barristers and solicitors. Members in breach of Rule 1619 will be subject to discipline and a \$500 fine.

Q.C. Appointments

The following have been honoured with Queen's Counsel appointments:

Susan Amrud of Regina, admitted to the Bar in 1981
Doug Andrews of Regina, admitted to the Bar in 1976
Leonard Andrychuk of Regina, admitted to the Bar in 1981
Doug Britton of Regina, admitted to the Bar in 1971
John Field of Prince Albert, admitted to the Bar in 1978
Jeffrey Grubb of Regina, admitted to the Bar in 1988
Holly Ann Knott of Saskatoon, admitted to the Bar in 1975
John McIntosh of Swift Current, admitted to the Bar in 1974
John Meldrum of Regina, admitted to the Bar in 1978
Bob Pelton of Regina, admitted to the Bar in 1973
Martel Popescul of Prince Albert, admitted to the Bar in 1980
Brian Scherman of Saskatoon, admitted to the Bar in 1973
Gregory Walen of Saskatoon, admitted to the Bar in 1981

Appointment of Chief Judge

Provincial Court of Saskatchewan by J.B.J. Nutting, former Chief Judge, Provincial Court of Saskatchewan

The Honourable Judge Gerald T. Seniuk has been appointed Chief Judge of the Provincial Court of Saskatchewan, effective January 1, 2001.

Chief Judge Seniuk was appointed a Judge of the Provincial Court of Saskatchewan in 1977. He was born and raised in Saskatoon, and married Jeralyn (nee Steedman), also of Saskatoon, in 1969. They have two sons. Chief Judge Seniuk has been active in judicial organizations, serving executive positions provincially and nationally, and has also contributed to judicial education programs provincially, nationally and internationally. He has published articles on a wide range of judicial topics in various Canadian legal periodicals and journals. He developed a program on Judicial Fact Finding that has been used by judicial educators in Canada and other Commonwealth countries. Chief Judge Seniuk has also been involved in furthering judicial independence both in Canada and internationally through his published articles, video productions and educational programs. Through the office of the Federal Commissioner for Judicial Affairs, he has acted as a judicial consultant to the Canada-Ukraine Judicial Independence project.

2001 Convocation Dates of the Benchers of The Law Society of Saskatchewan

January 25 and 26 – Saskatoon **April** 5 and 6 – Regina **June** 6 and 7 – Regina

Annual Meeting June 7, 8 and 9 – Regina

September 13 and 14 – Nipawin October 25 and 26 – Prince Albert **December** 6 and 7 - Saskatoon

2001 Committee List

Admissions & Education Stuart Eisner (C.) Barry Morgan (V.C.) Beth Bilson Brent Gough Brian Hendrickson Willy Hodgson George Thurlow

Non-Bencher Members: Ken Koshgarian (SKLESI) Abena Buahene Kirsten Logan Allan Snell Marty Popescul

Claims Committee Mike Milani Stuart Eisner Don Phillips Pat Kelly Neil Gabrielson Paul Greening Tom Schonhoffer Kirsten Logan

Complainants' Review All Benchers

Discipline Executive Rob Gibbings (C.) Brent Klause (V.C.) Judy Bell (V.C.)

Ed Komarnicki (V.C.) Lana Krogan (V.C.) Michael Milani (V.C.) Donna Wilson (V.C.) Non-Bencher Members Donna Sigmeth Allan Snell Kirsten Logan Marty Popescul

Ethics Committee Brent Klause (C.) Beth Bilson (V.C.) Stuart Eisner **Rob Gibbings** Brent Gough Effie Kusznir Graeme Mitchell Rick Van Beselaere

Non-Bencher Members Donna Sigmeth Kirsten Logan Allan Snell Marty Popescul

Equity/Diversity Committee Non-Bencher Members: Willy Hodgson (C.) Ed Komarnicki (V.C.) Brian Hendrickson Effie Kusznir Graeme Mitchell Donna Wilson

Non-Bencher Members Katherine Hillman-Weir Hon. Madam Justice Jackson Hon. Madam Justice Wright Hon. Judge Huculak Anil Pandila Kirsten Logan Allan Snell Marty Popescul

Executive Committee Marty Popescul, President Michael Milani, Vice-President Beth Bilson Allan Snell Kirsten Logan

Finance Committee John McIntosh (C.) Michael Milani (V.C.) Ron Barsi Michael Fisher Lana Krogan Alan McIntyre

Kirsten Logan Allan Snell Marty Popescul

Insurance Committee Mike Milani (C.)

Stuart Eisner (V.C.) Lana Krogan Alan McIntyre Rick Van Beselaere

Non-Bencher Members: Paul Greening Tom Schonhoffer Kirsten Logan Allan Snell Marty Popescul

Legislation & Policy Ed Komarnicki (C.) Beth Bilson (V.C.) Ron Barsi Alan McIntyre Graeme Mitchell

Non-Bencher Members Kirsten Logan Allan Snell Marty Popescul

Libraries Committee George Thurlow (C.) Judy Bell (V.C.) Michael Fisher Brent Klause John McIntosh Rick Van Beselaere Non-Bencher Members Sue Baer

Kirsten Logan Allan Snell Marty Popescul

Professional Standards Barry Morgan (C.) John McIntosh (V.C.) Ron Barsi (V.C.) Michael Fisher (V.C.) Brent Gough (V.C.) Brian Hendrickson (V.C.) George Thurlow (V.C.) Donna Wilson (V.C.)

Non-Bencher Members Donna Sigmeth Allan Snell Kirsten Logan Marty Popescul

Public Relations Committee Judy Bell (C.) Rob Gibbings (V.C.) Brent Klause Effie Kusznir Barry Morgan

Non-Bencher Members Allan Snell Kirsten Logan Marty Popescul



By Peta Bates

This column looks at sources of Quebec legislation and case law published in English.

Quebec Civil Code

http://www.lexum.umontreal.ca/ccq/en/index.html

The Centre de recherche en droit public at the Faculty of Law, University of Montreal, provides access to some Quebec laws in English through its LexUM WWW server. The main LexUM site is located at http://www.lexum.umontreal.ca/index_en.html The English language version of the Quebec Civil Code can be accessed by selecting the exact article of the Code or searching the text of the Code for keywords.

The University of Laval Law School provides a summary of the relationship between the Quebec Civil Code and other statute law on their web site located at http://www.bibl.ulaval.ca/ress/droit/qcc42.html

Quebec Charter of Human Rights and Freedoms http://www2.lexum.umontreal.ca/qclrq/en/C12.html

LexUM provides the complete text of the Quebec Charter of Human Rights and Freedoms in English.

Quebec Statutes

http://doc.gouv.qc.ca/en/frame/index.html

The Publications du Québec web site provides English language versions of Quebec acts current to April 1, 1998. Select from an alphabetical list of subjects or search by keyword. Regulations in English will be available by mid-2001.

Quebec Bills

http://doc.gouv.qc.ca/en/frame/index.html

Third reading bills from the last two sessions are available on the Publications du Québec web site. The bills are available in .PDF format (Adobe Acrobat software needed).

Quebec Court of Appeal Decisions

http://www.soquij.qc.ca/jugements

This web site is an exception to the English only theme of the column but as a new initiative it deserves a mention. The société québécoise d'information juridique (SOQUIJ) provides Quebec Court of Appeal decisions from January 1, 2000 to date. Select the year and the month, then click on "soumettre" to obtain a list of the decisions in reverse chronological order. Decisions are available in HTML and Word formats.

Quebec Human Rights Tribunal

http://www2.lexum.umontreal.ca/qctdp/en/anglais/index.htm

LexUM provides a link to all the decisions published in English since 1992 by the Quebec Human Rights Tribunal.

Inter Tran

http://tranexp.com:2000/InterTran

The multi-language text translator Babelfish (http://babelfish.altavista.digital.com/translate.dyn) was mentioned in a previous column. Inter Tran, short for Internet Translator, also translates phrases or paragraphs from French to English or any combination of 25 other languages. In addition you can translate an entire web page by typing the web page destination in the URL box and selecting the desired language.

Another feature of this site is the ability to search the Internet in a language other than English. This feature is found on the Inter Tran page at the Search Tran link. (http://tranexp.com:2000/InterTran?from=eng&to=poe&searchtranform=yes)

Western Law Societies Conveyancing Project

On February 15, 2001, conveyancing practice will change. Lawyers will be able to offer an enhanced service to financial institutions for qualifying mortgages as follows:

- 1. By closing the registration gap. Lawyers will be allowed to release funds on the day that documents are submitted to Land Titles.
- 2. By eliminating the need for a Surveyor's Certificate or Real Property Report.
- 3. By providing a standardized short form report to the lender.

These changes in practice will allow lawyers to provide better services to lenders and make lawyers more competitive.

Plan to attend the televised SKLESI seminar in an area near you on February 16, 2001 at 1:00 P.M.

Members' section password change

Last year at this time, I wrote about the Library Committee's plans to open the databases to all members and create the members' section. Less than a year later, we have four useful databases, several documents, and many links providing our members with valuable information. Many members are finding the web site an integral part of their practice.

As a security measure, we have changed the user ID and password to the members' section for the year 2001. The new ID and password were sent to each member with his/her annual practice certificate. The password became effective on January 3, 2001. The ID and password for 2000 will be de-activated on January 31, 2001. If you have paid your fees and you need the 2001 ID and password, please contact the Law Society administration office.

Inactive members may also get access to the members' section by paying a small fee of \$250 per year. Payments should be directed to the Law Society office.

Queen's Bench Rules Annotated, third edition by McKeague

The new family law rules and forms will be included in the new third edition of the Queen's Bench Rules Annotated. The library is preparing an entirely new edition, which will be housed in one large binder. The new edition will contain a concordance for the new family law rules and forms. More complete citations to the cases in the annotations have been included directly into the text, removing the "infra" and "supra" references. All tables, references, and content have been updated.

Subscribers to the current 2 volume set will receive the new third edition automatically, just like a release would be sent. Cost for the new edition for subscribers is 50% less than the purchase price. The third edition should be ready in February 2001.

Queen's Bench Forms Online

The library has recently prepared the Queen's Bench Forms online. The forms online include the new family law forms. The library was flooded with requests and many wanted the forms in a downloadable format as soon as possible. The library staff worked very hard to prepare the forms so that users can complete the forms electronically.

Access is controlled with a user ID and password that is separate from the members' section password. Subscribers to the Queen's Bench Rules Annotated will receive the access information with the new edition. We are asking for prepayment of the third edition invoice if a lawyer needs access before the printed publication is released in February. Non-subscribers can pay a fee of \$25 per year for access to the forms. Questions and payments can be directed at the library staff.

Sub Committee on Competency

by Jane Lancaster, Q.C.

Following a review of the membership survey results which indicated that the issue of competency was of primary concern to the members, the Benchers in Convocation in September, 1999, and the Professional Standards Committee in October, 1999, moved to strike a subcommittee to consider competency issues. Membership in the committee was composed of the chairs of various Law Society committees such as Ethics, Professional Standards, Discipline, as well as the Dean of the College of Law, Beth Bilson; the Law Society Insurance counsel, Tom Schonhoffer; one of the lay benchers, Judy Bell; Abena Buahene, SKLESI; and two members of the profession, Bill Holliday and Alma Wiebe.

The subcommittee met on four occasions in the spring of 2000, and reviewed material from other law societies in Canada, as well as how other professions had dealt with the issue of competency.

At the September, 2000 Convocation, the Benchers of The Law Society of Saskatchewan hosted representatives from the Alberta Law Society to discuss Alberta's program on competency.

The subcommittee had a great deal of information as to what was in place in other jurisdictions and in other professions, and felt that it was necessary for the subcommittee to identify the issue of competency clearly before jumping to possible solutions. A facilitated workshop for the subcommittee was held in October, 2000, with the goal to arrive at a definition of competency.

During this meeting facilitated by Roderick MacDonald, the subcommittee viewed competency through the eyes of the client, lawyers, the Law Society, and the judiciary primarily, although there was recognition that there may be other stakeholders.

The subcommittee adopted the following draft definition of competence:

- A competent lawyer meets the needs of clients, other lawyers, the legal system and the public by:
- Acquiring and maintaining an appropriate level of qualifications, skills, and knowledge;
- Acting with diligence and honesty;
- Maintaining a satisfactory level of practice management; and
- Fostering professional relationships in which reasonable expectations are met, appropriate strategies are adopted, strong communication links are maintained, and the interest of the public is the prime consideration.

This draft definition has been sent to the Canadian Bar Association, Saskatchewan Trial Lawyers Association, the Saskatchewan courts, the College of Law and the Federal and Saskatchewan Departments of Justice for their comments.

The subcommittee invites the comments of the profession on the draft definition. Please send your comments to The Law Society of Saskatchewan, Attention: Ms. Donna Sigmeth.

New Auditor/Inspector

We are pleased to announce the appointment of our new Auditor/Inspector, John Allen, C.A. Mr. Allen received his CA designation in 1973 and has worked for a number of firms and organizations, most recently, the Regina Health District.

Want to register for a SKLESI seminar, buy a set of BAC materials, or find out who sits on our Board of Directors? We're now only a click away at www. sklesi.org.

Feel free to contact us anytime from anywhere.

BENCHERS' DIGEST



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