

BENCHERS' DIGEST



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Professional Corporations and Limited Liability Partnerships, Western Mobility and Multi-Disciplinary Practices

by Edward Komarnicki



Mr. Komarnicki is a partner with the law firm of Komarnicki Trobert located in Estevan, Saskatchewan and is a Bencher of The Law Society of Saskatchewan. He became a Bencher in 1998 and was re-elected in 2000. He is the Chair of the Legislation & Policy Committee.

The issue of Incorporation and Limited Liability Partnerships (LLP's) have been before the legislation for quite some time. Now, with the passage of the enabling legislation, draft Rules dealing with Professional Corporations and LLP's have been circulated to the membership for comment.

Professional Corporations and Limited Liability Partnerships

The application process and permission regarding the use of professional corporations anticipates the

applicant first providing the necessary information and proposed Articles of Incorporation to the Law Society to ensure that the proposed name of the corporation is acceptable, that the voting shares will be legally and beneficially owned by members of the Law Society, and that the directors will be members of the Law Society.

Essentially the corporation may carry on the business of providing professional services "that may lawfully be performed by members of the Law Society". It is proposed that non-voting shares must be owned by members of the Law Society, spouses as defined, children or parents of practising members of the Law Society who own the voting shares or a trust, whose beneficiaries are members, spouses, children or parents of members of the Law Society. The corporation must be wholly owned by the defined group. It is hoped that by so defining the share ownership, the membership will be given some flexibility in estate and tax planning.

Similarly, it is proposed that a law firm which includes a professional corporation or partnership may apply to the Corporations Branch to be registered as an LLP. The application and other necessary information to process the application shall

also be provided to the Law Society. Upon being satisfied that the proposed LLP will engage only in the practise of law, there are one or more partners in the proposed LLP, each member has professional liability insurance which is substantially equivalent to that provided by SLIA, and the Rules are otherwise complied with a Certificate of Entitlement to Practise Law in Saskatchewan as an LLP will be issued.

Upon registration, an LLP shall be required to give notice to all its existing clients advising of its registration and explaining in general terms the potential changes in liability to the partners. Essentially, a partner in a limited liability partnership shall not be personally liable for a partnership obligation solely by reason of being a partner.

We look forward to your input on these Rules.

Western Mobility

Proposed Rules are being drafted to allow a visiting lawyer to practise law in Saskatchewan without a permit for no more than six months during any twelve month period if one or more of the extra-provincial Law Societies of which the visiting lawyer is a practising member allows members of the Saskatchewan Law

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Society to practise law in that jurisdiction without requirements substantially more restrictive than that of the Saskatchewan Law Society. This would be an extension to practising for no more than ten legal matters and not more than 20 days in total during any twelve month period. Consideration is being given to requiring a visiting lawyer to notify the Law Society in writing of the intention to practise pursuant to the Rule. The Rules also deal with issues of professional liability insurance, defalcation coverage, disciplinary and conduct matters. Mobility rules have recently been passed in Alberta.

Multi-Disciplinary Practises

Given the expansion of the concept of mobility of lawyers as between at least western provinces,

the introduction of professional corporations the non-voting shares which may be owned by a limited group of non-members and limited liability partnerships the future issue facing the Law Society is the position it should take regarding multi-disciplinary practises (MDP's). This issue by far is a more difficult one and I invite members at large to provide input. Except as proposed in professional corporations, fee splitting and fee sharing with any person other than a member of the Law Society has not been allowed. An MDP is essentially an organizational structure or an affiliation of two or more organizational structures owned or consisting of at least one lawyer and one non-lawyer in which the organizational structures have agreed to share fees or profits from the delivery of legal and/or non-legal services.

Among other issues is the fact that whether non-lawyers should share in profits generated by the profession of legal services by lawyers. A restrictive approach would allow lawyers to collaborate with non-lawyers for the delivery of legal services and would permit non-lawyer partners in law firms provided that the law firms were controlled by lawyers. Effectively, lawyers would be the final decision makers within the practise. A less restrictive approach would give the lawyers all or a measure of control in the MDP's delivery of legal services as opposed to the practise and business of an MDP. What degree of control, how is it to be achieved, the respect of core values and whether non-lawyers, except as provided in professional corporations, should be allowed as partners are all matters to be debated.

Highlights of the Meeting of the Benchers held April 5 and 6, 2001

Special Fund Payment

As members will have read in the Discipline Digest, Mr. Daniel Lamontagne was disbarred at Convocation following his plea of guilty to charges of conduct unbecoming a lawyer in relation to a number of defalcations. The Benchers have approved payments from the Special Fund in the amount of \$409,333.11. The payments related to nine files. Investigation of other Special Fund claims continues.

Western Law Societies Mobility

The Legislation and Policy Committee continues to study the proposed Rules which would expand the existing 10-20-12 Rule (10 matters, taking 20 days or less, in a 12 month period) to 6 months. The interjurisdictional practice protocol is a "no check-in" system. The Committee has concerns that if

lawyers from out of province might be practicing in Saskatchewan for up to 6 months at a time, there should be some ability for The Law Society of Saskatchewan to know that these lawyers are here. Discussions with the other western provinces for a uniform mobility rule will continue. A meeting of the four western provinces is scheduled at the end of May.

Annual Fee Refunds

The Law Society of Saskatchewan's policy has been that the annual fee is not refunded for members who take out inactive status during the year, except in the case of death or parental leave. Now that the annual fee may be paid quarterly by electronic debit (commencing with the 2002 fees), the Finance Committee has approved a policy of providing refunds on a quarterly basis.

Insurance Assessment

The SLIA assessment for the 2001 - 2002 policy year will be due June 15, 2001. A special meeting of the Benchers will be held May 4, 2001 to set that assessment. It is expected that the premium will again be reduced. The Insurance Committee did not approve the electronic quarterly payment system for SLIA, because of the loss prevention credit surcharge and the claims paid surcharge, as well as the payment of a portion of the assessment to CLIA.

Loss Prevention Credits

A meeting was held with several members who, either representing themselves or other organizations, had over the years requested an expansion of the loss prevention credit system. Currently, Rule 605(a) requires that over a 3 year

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Legal web Cites

By Peta Bates

Continuing on our cross-Canada tour of provincial legal web sites, this column looks at legislation and judicial decisions from the north.

Northwest Territories Statutes

http://legis.acjnet.org//TNO/Loi/a_en.html

The statutes are listed alphabetically and are available in WordPerfect and .PDF formats (requires free Adobe Acrobat reader software loaded on your computer). Some of the larger statutes have to be downloaded in two parts. Current to September 1, 2000.

Northwest Territories Regulations

http://legis.acjnet.org//TNO/reg/index_en.html

Regulations, listed under the enabling act, are available in WordPerfect and .PDF formats. Current to January 1, 2001.

Northwest Territories Status of Bills

<http://www.assembly.gov.nt.ca/Legislation/MainActs.html>

The status of bills chart provides summaries (not the fulltext) of bills from the current session of the NWT Legislature.

Northwest Territories Judicial Decisions

<http://nwt.andornot.com/default.htm>

Judgments from the NWT Supreme Court and Court of Appeal are available from the 1970's to date. The database provides short keyword summaries with links to the fulltext of most decisions. At time of writing no cases decided in 2001 were yet available. The database uses the same software as the Saskatchewan Law Society Case Digests database including the word wheels feature.

Northwest Territories Court Rules

http://legis.acjnet.org//TNO/rules_en.html

Supreme Court and Court of Appeal rules are current to September 2000.

Citing Nunavut Legislation

<http://www.nunavutcourtofjustice.ca/citation.htm>

When Nunavut became Canada's third territory many of the statutes of the Northwest Territories were duplicated for Nunavut effective April 1, 1999. Other statutes were specifically enacted for Nunavut prior to April 1, 1999. Nunavut has subsequently passed its own statutes after April 1, 1999. This page is a guide for citing each of the three types of legislation.

Nunavut Consolidated Acts

<http://www.nunavutcourtofjustice.ca/library/consolacts.htm>

These are the NWT statutes which were duplicated for Nunavut. They are current to April 1, 1999 in .PDF format. Amendments since that date are provided in the form of a table of amendments with links to the amending bill.

Nunavut Statutes

<http://www.nunavutcourtofjustice.ca/library/statutes.htm>

These are the statutes passed by Nunavut after it became a territory on April 1, 1999. They are available in .PDF and Word format. The Consolidated Statutes of Nunavut are expected to be published in the next fiscal year.

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period, all insured members must earn 3 loss prevention credits or be subject to a \$200 surcharge. Currently, only SKLESI seminars are eligible for such credits.

It was noted that SLIA's claim experience is down significantly since the Rule was introduced in 1994. In that year, there were 167 claims. In the first three quarters of the current policy year, only 55 claims have been made.

It was clear from the meeting that the participants believe there are merits to this system, but they would like to see some changes.

At Convocation, the Insurance Committee reviewed the issue. It was agreed that the loss prevention credit system should be modified. At the next Convocation, the Insurance Committee will consider proposed Rule amendments which would see the possibility of non-SKLESI seminars being assigned 1 loss prevention credit as determined by SLIA counsel and the Chair of the Insurance Committee. Only SLIA seminars could be assigned 3 loss prevention credits. This will come into effect commencing with the assessment due June 15, 2002.

First Year Scholarship

The Law Society awards a scholarship to a student entering the College of Law, University of Saskatchewan, each year. A selection committee would interview a number of candidates and award the scholarship to the student who demonstrates academic and general achievements and qualities needed for the attainment of distinction in the legal profession. The scholarship, in the amount of \$2,000, was renewable in the second and third year if the student maintained an average over 70%.

At the request of the College of Law, the Benchers agreed to amend the terms of the reference of the scholarship. The College would like to see the scholarship used as a recruiting tool. This was impossible under the previous arrangement, as the interviews could not be conducted until after the commencement of the school term. Thus, the candidate will no longer be selected by a Law Society committee. The College of Law will select the candidate. In addition, it was agreed that the amount of the scholarship would be consolidated. Rather than \$2,000 be awarded in each of first,

second and third years, the award of \$6,000 will be granted in the student's first year.

Bar Admission Course Standards

Members of the Admissions & Education Committee and the Equity/Diversity Committee met with representations from the Federation of Saskatchewan Indian Nations, Greg Ahenakew, First Vice-Chair, and Dannette Starr-Spaeth, to discuss Bar Admission Course standards. The FSIN representatives were of the view that the standards for passing the Bar Admission Course should not be different for Aboriginal students than other students. It was their view that encouraging more Aboriginal students to enter law at an early age, and encouraging firms to hire Aboriginal students-at-law and provide them with mentorship, would be beneficial and of more assistance to get Aboriginal students through the Bar Admission Course than holding them to some different standard.

— FEE ESTIMATES —

Nobody has to be reminded that of all potentials for friction between lawyer and client, none is more frequently realized than the matters of lawyers' fees. In the past, the Benchers have encouraged members to make use of such tools as engagement letters, interim billing and value billing, to ensure that there is as little room for misunderstanding as possible in this most delicate of areas. Fee estimates are also useful but can turn on you.

Clients naturally enough want to know what legal services are going to cost. Sometimes it is difficult, if not impossible, to give a firm estimate because of the many uncertainties involved as the case progresses. Nonetheless, most lawyers do, quite appropriately, attempt to provide a ballpark figure for the cost of legal services so the client can

budget appropriately. This is unexceptionable, except where, without proper qualifications upon the estimate, the client may believe he or she is receiving a firm quote. This is potentially worse than no estimate at all.

Lawyers may feel very comfortable in providing a quote for services to be provided in circumstances where past experience, or the existence of a formal or informal tariff, allows more certainty. The problem arises where, when they do provide a quote for fee for service without qualification, the client sees them as insuring against unforeseen complications which may require more time and effort than originally contemplated.

For example a member, on the basis of past experience, may feel that defence of a simple drinking

and driving prosecution may be properly costed out at \$2,500. If the client is told that is the fee without anything more, then that is the fee, regardless of the emergence of unforeseen complications with respect to the availability of witnesses, expert evidence, delays, etc.

Unless the lawyer is prepared to provide such insurance, clients should be advised at the time the quote is given that it is conditional upon the case proceeding in the expected fashion. They should be told that unexpected complications or delays beyond the control of the lawyer may result in additional costs. Quite apart from any legal interpretation, from an ethical point of view the clients' reasonable expectations must be met.

SKLESI News

On April 25, 2001 SKLESI had its annual meeting with its shareholders - the Law Society of Saskatchewan, the Canadian Bar Association Saskatchewan and the College of Law.

Here is an excerpt from the 2000 Annual Report from the Directors.

Education is not the filling of a pail, but the lighting of a fire.

– Y.B. Yeats

Since our inception in 1993, we have been most fortunate to be on a solid financial footing. This is due to the ongoing commitment of the Law Society and the Law Foundation to provide core funding to the SKLESI so that it can offer the Bar Admission Course annually as well as provide a wide range of continuing legal education programs to the profession. In September 2000, the funding agencies and SKLESI signed an agreement whereby funding for the BAC has been stabilized over the next five years. The ongoing dedication of the Bench and Bar to volunteer their professional time and expertise to teach, purchase our publications, and attend CLE seminars has also enabled us to generate additional

income for special projects.

One such project that was initiated in 1999 and is now part of our curriculum is the regular offerings of computer technology hands-on workshops and seminars. Ms. Kim Petrescue, our contract program lawyer, has been an enthusiastic and effective co-ordinator and has done a great job putting programs together in an area where it is a real challenge to find resources.

In April of 2000 the Board of Directors and senior staff participated in a strategic planning session facilitated by Hugh Robertson, QC the Executive Director of the Legal Education Society of Alberta (LESA). As a result of our deliberations, the Board identified a number of long range organizational goals. Some of these goals are as follows.

- * Use technology to complement the delivery of current BAC and CLE products and services

- * Design and implement on a regular basis practice management programs

- * Identify and develop a strategy to meet the educational needs of senior practitioners

- * Devise a tutorial/ mentor support program to assist students during the BAC

- * Develop a strategy to forge close

er educational ties between the College of Law, SKLESI, and the profession in furtherance of the legal educational continuum.

The year 2000 was an extremely busy year for the organization. CLE had over 1500 registrants attend seminars. The Estate Planning SCN set a new televised seminar attendance record with 187 lawyers tuning in from around the province. We were very privileged to team up with the College of Law to deliver a family law conference chaired by Professor Julian Payne, QC, a prominent family law scholar. The response to our technology hands-on workshops and presentation/ discussion style seminars has been encouraging.

During the summer of 2000 with the assistance of our summer student Jan Durston, we worked with the Law Society's Admissions and Education Committee to develop a survey concerning the two-segment bar course. The "new" BAC was first implemented in 1994 and we were curious as to whether articulated students and principals were benefiting from the concentration of skills training. One hundred and fifteen lawyers who had been either principal and student, principal only, or student only completed the survey.

HERE'S A BRIEF SUMMARY OF THE MAJOR FINDINGS:

- Students who had participated in the one-segment BAC felt that although they did not have a sufficient grounding in legal skills when they started their articles, they were much more comfortable with their legal skills once they finished articles. The majority also agreed that the classes they took in law school were of assistance to them during their articles.
- Almost all of the students who had participated in the two-segment BAC agreed that the August segment assisted them with their articles and that the August/May split should not be changed. Very few students would have preferred to take a one-segment Course.
- Principals did not show a strong preference for either the two-segment or one-segment formats of the BAC. Almost all principals agreed that students have a good basic knowledge of the law when they began their articles, but most also agreed that the student's practical skills were lacking when they began their articles. There was no strong support for the argument that having the student away from the office for two separate periods to attend the BAC was disruptive. Instead, the majority of principals agreed that the student was better able to assist them after attending the August skills segment.

One other interesting but not surprising piece of data came out of the survey - the need for business/ practice management sessions at some point during one's legal education. SKLESI has already begun to offer a variety of seminars that address practice management issues.

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In Memory of

GAVIN DOUGLAS EVANS GORDON passed away suddenly on March 30, 2001 at the age of 38. Mr. Gordon attended Massey School and Luther College in Regina. After graduating from Luther, Mr. Gordon led an energetic life filled with friends, family and hard work. He attended the University of Regina and studied chemistry and math and completed a Bachelor of Laws at the University of Saskatchewan. After taking the Bar, he articulated with the firm Martin McLeod Werry in Regina, then moved to KMP Law. He subsequently acquired Great Plains Accounting and Estate Planning with his partner, Ken Brodt, and operated a branch office for KMP Law.

Mr. Gordon is survived by his wife, Brenda (nee Berkan) and daughter, Sidney Bryn.



ROBERT (BOB) GEORGE TRELEAVEN passed away peacefully on January 18, 2001 at the age of 71. Mr. Treleaven attended school in Regina and graduated from the University of Saskatchewan in 1952. He practiced law in Nipawin, Saskatchewan for 35 years. His love of playing piano and singing will be remembered by many.

Mr. Treleaven is survived by his wife, Gilda (nee Mills), and two daughters, Michelle Edge and Chantal Tkach, as well as six grandchildren.



HONOURABLE RICHARD A. CRUICKSHANK, Q.C. passed away on March 27, 2001 at the age of 86. Mr. Cruickshank was born in North Battleford, where he received his early education. He graduated from the University of Saskatchewan with his B.A. in 1935 and his LL.B. (with distinction) in 1938. He was President of the Regina Bar Association in 1952, served on both the Regina Collegiate Institute Board and the Regina Public School Board and in 1959 was general campaign Vice-Chairman of the Regina United Appeal. Mr. Cruickshank enlisted in the Royal Canadian Navy in October, 1939 and was called for service in 1940. After the war, he was with the law firm of Balfour, Davidson and Cruickshank from 1945 - 1952. After a few years being with the Saskatchewan Oil and Gas Conservation Board, he started practising law with Nicol, Cruickshank and Keith in 1966 where he was named a Queen's Counsel. He was appointed to the Bench in 1970, and served as a Judge of the District Court of Saskatchewan and a Judge of the Court of Queen's Bench of Saskatchewan from 1970 until late 1982, at which time he retired.

Mr. Cruickshank is survived by his daughter, Janice.

— ANNOUNCEMENT —

Congratulations to Bill Johnson of the Gerrand Rath Johnson Law Firm in Regina on his being elected Second Vice-President of the Canadian Bar Association. Mr. Johnson brings over twenty years active national involvement in the Canadian Bar Association including, among other things, being a member of the Legislation and Law Reform Committee from 1995 - 1999 and being National Chair of the Legislation and Law Reform Committee from 1997 - 1999, being Director of the Law for the Future Fund from 1993 - present, and being CBA Representative on the Saskatchewan Advisory Committee on Federal Judicial Appointments from 1994 - 1999. Mr. Johnson also brings over twenty-five years practicing as a solicitor in civil litigation and general practice.

SKLESI NEWS...cont'd. from previous page

We thank Mr. Justice Robert Laing for serving as a member of the SKLESI Board until February 2000. Ken Koshgarian submitted his resignation as BAC Director in January of 2001. We thank Ken for his great contribution to the BAC both as administrator and instructor.

On a national level SKLESI continues to be very active and contributes to the development of legal education initiatives through the Association of Canadian Legal Education Directors (ACLED). At our annual meeting, the Western Bar Admission Course Directors resolved to share law office management (LOM) materials and learning objectives with the view of designing a common LOM module. On the CLE side with Manitoba, we undertook to participate in an online practice management pilot project in the spring of 2001. This project is an initiative of our Alberta counterpart LESA. On an international level, Abena Buahene is on the Planning Committee for the annual conference of the Association of Continuing Legal Education Administrators to be held in Chicago in the summer of 2001.

Looking back on the year 2000 and our sixth year of operation, we can truly stand back and say that we have lit a few new fires.

Robert Thornton, QC
President

Abena Buahene
Executive Director



You will not have to be connected to the Internet to read the digests, taking up valuable online time. You won't have to remember to check each issue twice a month. It will be sent to you free of charge so you can read it at your convenience without being connected to the Internet. If there are cases where you would like to read the full judgment, you can still link from Case Mail, but you

will need to reconnect to the Internet at that point.

Case Mail is one of the excellent services located in the Members' section of the Law Society's web site. It was developed to provide members with an easy to read current awareness service of Saskatchewan case law. Case Mail resembles the small soft cover parts of a printed law report series, only it is in electronic form. Case Mail contains digests of Saskatchewan case law with links to the fulltext judgment. It is issued twice per month, at the first and middle of the month, and requires Adobe Acrobat to read the fulltext judgments.

There are two ways for members to receive Case Mail:

1. Go to the members' section and access it at the first and middle of the month by clicking on the drop down box, or,
2. Request to receive Case Mail directly to your email twice a month. There is no charge for this service to members.

Susan Baer

Case Mail in the Members' section

For firms that have dial up access to the Internet with a limited number of hours per month, receiving Case Mail by email is very beneficial. Once Case Mail is received in your mailbox, it resides on your hard drive.



Nunavut Regulations (to April 1, 1999)

http://legis.acjnet.org/nunavut/reg/index_en.html

The regulations, listed under the enabling act, are current to April 1, 1999 and available in WordPerfect and .PDF format.

Nunavut Regulations (after April 1, 1999)

[http://www.nunavutcourtofjustice.ca/library/amended.htm#Amendments%20to%20Nunavut%20Regulations%20\(occurring%20after%20April%201,%201999\)\)](http://www.nunavutcourtofjustice.ca/library/amended.htm#Amendments%20to%20Nunavut%20Regulations%20(occurring%20after%20April%201,%201999)))

New and amending regulations published after April 1, 1999, are available in the “Has it been amended - Regulations” chart. Links are provided to the fulltext of the regulation.

Nunavut Bills

<http://www.assembly.nu.ca/english/bills/index.html>

Bills before the current Legislature are available on the Legislative Assembly web page in .PDF and Word 97 format.

Nunavut Judicial Decisions

<http://www.canlii.org/nu/cas/nucj/>

Judgments from the Nunavut Court of Justice are available on the CANLII web site listed alphabetically by style of cause and chronologically by year. There is a keyword search capability.

Nunavut Rules of Court

<http://www.nunavutcourtofjustice.ca/rules.htm>

The rules of the NWT Supreme Court as adopted by the Nunavut Court of Justice and Practice Directives are available in .PDF and Word formats.

Yukon Statutes

http://legis.acjnet.org/cgi-bin/folioisa.dll/e_stats.nfo/query=*/toc/{@1}

Yukon statutes are consolidated to the Revised Statutes of the Yukon, 1986 and then available as annual statute volumes to 1999.

Yukon Regulations

http://legis.acjnet.org/cgi-bin/folioisa.dll/eng_reg.nfo/query=*/toc/{@1}?collapse={@9}

The fulltext of individual regulations (not consolidated) are listed under the enabling acts. Current to December 31, 1999.

Yukon Gazette

<http://www.gov.yk.ca/depts/dgs/gazette/index.html>

Regulations from January 2000 to date are available in issues of the Yukon Gazette.

Yukon Status of Bills

<http://www.gov.yk.ca/leg-assembly/progress.html>

This is a progress of bills chart only (not the fulltext of the bill) from the current session of the Legislature.

Yukon Judicial Decisions (Supreme Court)

<http://www.canlii.org/yk/cas/yksc/>

Judgments from the Supreme Court of the Yukon Territory are available on the CANLII web site from September 2000 to date. They are listed alphabetically by style of cause and chronologically by year and there is a keyword search capability.

Yukon Judicial Decisions (Court of Appeal)

<http://www.canlii.org/yk/cas/ykca/>

The CANLII site also provides a database of judgments pertaining to the Yukon which were decided by the British Columbia Court of Appeal from 1996 to date.
