

BENCHERS' DIGEST



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Law Society Snapshots

by Allan T. Snell, Q.C.

We assume that most members of the Law Society have an insatiable appetite for snippets of information about the goings on in the Law Society. This appetite generally remains hidden, in accordance with lawyers' natural reticence. In fact, they will go to great lengths to conceal their fascination with Law Society activities by, for example, reacting to newsbriefs coming out of our office with such transparently disingenuous responses as "Law Society who?" and "Huh?" We do know how much you really want to know all about Law Society activities, however, and so we present the following snapshot of some of the things we are presently dealing with:

1. **Money Laundering:** The Law Society and Federation of Law Societies have launched an application to exempt lawyers from the reporting provisions of the *Proceeds of Crime (Money Laundering) Act*. The application for an interim exemption will be heard April 11th before Chief Justice Gerein. As of the date of this article, exemptions have been

granted in British Columbia, Ontario, Nova Scotia and in a modified way, Alberta. D.E. Gauley, Q.C. represents the Law Society. This matter is of extreme importance because until and unless lawyers in Saskatchewan are exempted, we are required to report "suspicious transactions" of clients to FINTRAC, without advising the client(s) this has been done.

2. **Mobility:** The Western Provinces are still in the lead in allowing six months occasional practice for members of reciprocating jurisdictions, but work continues at a national level. We are presently engaged in trying to revise and harmonize entrance and Bar Course requirements, Compensation Funds, CLE, trust accounting and professional standards across the west.
3. **Land Titles:** The implementation of the LAND System proceeds apace. Law Society

volunteers and Committees are working hard to assist ISC in dealing with problems that arise and suggesting modifications.

4. **Discipline:** Activity in the discipline sphere has been uncharacteristically brisk. We don't like this. We would rather do other things, like . . .
5. **Civility and Professional Image:** These are actually two separate initiatives, but are closely connected. Both are Joint Committees of the CBA and the Law Society, and both have joint members with the Law Society Public Relations Committee (although they are not on speaking terms. Kidding.). We think it is important that lawyers who, in the minds of most people, represent the system of law are respected and in turn treat others with respect.

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6. **Incorporation:** There are more and more of you practicing through professional corporations. Some of you even have two.

7. **New Positions:** In Lamontagne's broad and churning wake, the Benchers determined to tighten up our spot audit program. As some of you know, John Allen spent many happy days in Meadow Lake trying to unravel the accounting mess. This meant that he was unavailable for other duties. As well, the Benchers resolved that more intensive review of members' trust accounts was occasionally required than had been previously undertaken. Therefore, they authorized the hiring of another auditor on a part-time basis in order to ensure that the Law Society has the resources necessary to deliver the new program and also to deal effectively with urgent matters.

In the same vein, the Benchers have long been concerned that discipline investigations have not been handled consistently. Many investigations have been undertaken by non-Bencher members on a volunteer basis and Benchers themselves, of

course, are volunteers. All of them have busy practices of their own and in complex investigations, this means both a delay in completing the investigation and an unfair imposition on the volunteer. This situation is unique to Saskatchewan, as most other Law Societies of our size and larger have staff performing the investigations. We are going to try this on a test basis. It is hoped it will increase the speed and consistency of investigations.

Finally, the Law Society has advertised for an Equity Ombudsperson. Again, we are following the lead of other provinces who report that this position is much more effective than the previous Safe Counsel.

8. **Real Estate Practice:** Title insurance has insinuated itself into Saskatchewan in spite of a very questionable justification for it. The Law Society has been working with other Torrens System provinces to try to establish a closing regime that will convince the financial institutions that lawyers still, as always, provide the best and safest way to transfer property and register security.

The pressure from extra-provincial title insurers has been strong. Although the Bank of Montreal has recently stopped using a particular title insurance-based closing service, there is still a very good chance that title insurers will be a greater presence in Saskatchewan. We must not be complacent.

Some lawyers have indicated their intention to move into a broader area of real estate practice to involve themselves at an earlier stage in the process, which does not sound like a bad idea at all.

9. **Access to Justice:** The Committee is working to establish programs to lower some of the barriers presently existing for persons who need legal assistance, but who are unable to afford it. It is a vast and daunting task, but we have a vast and daunting Committee. Expect to hear more later this year.

I think that is enough for now. If we give you too much information, we will lose our aura of mystery.

Highlights of the Meeting of the Benchers Held February 7 and 8, 2002

Attendance at the Bar Admission Course

At the December Convocation, the Admissions & Education Committee met with four students who had attendance issues at the Bar Admission Course. During the meeting, the Committee stressed issues of professionalism, courtesy, reputation and attendance to detail relating to completion and filing of affidavits.

The focus of the first segment of the Bar Admission Course is on skills training. The students are divided into three classes. Various exercises and assessments are done in small groups. Late arrivals and unauthorized absences can create havoc with the arrangements and cause disruption for the other students.

Rule 160 requires that students must attend all classes of the Bar Admission Course. The Bar Admission Course Director has some discretion to approve absences. The Admissions & Education Committee will be amending the policy with regard to absences to make the expectations of the Committee with regard to attendance more clear.

Professional Corporations

The Province passed the Regulations regarding professional corporations in December. To date, 82 requests for legal professional corporations have been submitted, and 61 permits have been issued. The Ethics Committee has under review the question whether lawyers who have incorporated their practices must disclose that on their letterhead.

It should be noted that Forms C-1 and C-3 were in error. PST is not assessed on Law Society fees. The

Forms have been amended and are available on the website under the Law Society Rules section in the Publications portion of our website.

Discipline Investigator

The Benchers have agreed to a pilot project which would see a staff position discipline investigator hired on a contract basis. Currently, when complaints are received the Complaints Officer, Donna Sigmeth, obtains information and determines whether further action by the Law Society may be necessary. The file is then referred to the Chair of the Discipline Committee, who must review the file and determine whether, pursuant to Rule 400(2), no further action is necessary, an informal conduct review should be conducted, or an Investigation Committee should be appointed.

Benchers and/or members can be appointed to Investigation Committees. The Investigation Committee must review the file, conduct an investigation by contacting witnesses, obtaining technical experts (at times) and make recommendations whether or not charges should be laid. This must take place while the members of the Investigation Committee carry on their own practices.

The proposal for an investigator foresees some investigation being done before the referral of the file to the Chair of the Discipline Committee. The investigator could conduct interviews and hire experts, if necessary. Once the investigator completes the work, a report would be prepared and if the Chair of the Discipline Committee recommends an investigation be appointed, the Investigation Committee can review

the report and determine or more information is necessary. The additional information can also be gathered by the investigator. It is expected that this proposed system will expedite the discipline investigation process, and create more consistency in investigations.

The major differences between the proposed system and the present system are:

- the investigation is done at the beginning. This has the advantage of speeding up the entire process, and also leaving the investigation in the hands of staff who do not have to intersperse it with regular jobs.
 - there is very little time expenditure required for the formal Investigation Committee. It will receive reports and make decisions on the basis of those reports, or possibly oral representations from the Complaints Officer and/or a Law Society investigator. It is possible that a three person investigation panel would be meeting on a regular basis to deal with all complaints and there would be a high degree of consistency and expertise in the investigation panel.
 - the investigation/review is consistent and more professional, and makes the job of the Investigation Committee, the Chair of the Discipline Committee and the prosecuting counsel much easier.
 - the process should be speeded up to the benefit of complainants and members alike.
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Ethics Rulings - February 2002 Convocation

Chapter V – Impartiality and Conflict of Interest Between Clients – Acting Against a Former Client - February 2002

Facts:

Lawyer D and Lawyer E requested a Ruling from the Ethics Committee with respect to a potential conflict of interest. Lawyer E is currently acting as defence counsel for an accused, Client E, when he previously acted for the “victim”, crown witness, Client D. The accused, Client E, was alleged to have stolen a piece of equipment from Client D, and sold same.

The preliminary inquiry was held in May 2001. A trial was scheduled for December 2001. During November 2001, Lawyer E advised Lawyer D that the piece of equipment in question had not been owned by Client D personally, but rather by a Limited Company. Lawyer D interviewed his witness with respect to this issue and Client D stated that Lawyer E had previously worked as his lawyer at the relevant time and “should know about this”. Lawyer E admitted assisting Client D twelve years prior, in negotiations with the bank with respect to the piece of equipment and signing the Minutes of Settlement which were filed with the Court. Lawyer D was concerned that Lawyer E may have confidential knowledge which would assist him in a particular defence, for instance, that the piece of equipment had

been left in storage by Client D to protect the asset from seizure by creditors. Client D was interviewed by the Complaints Officer and indicated that he believed Lawyer E knew things about his business that another lawyer could not simply find from review of the Court file and that Lawyer E could use this confidential information against him.

Ruling:

The Committee ruled that Lawyer E was in a conflict of interest. However, the Committee wished to make it clear that its Ruling was confined to a very narrow set of facts, in that the piece of equipment which was the subject of the theft was the very piece of equipment concerning which Lawyer E had dealt with Client D some years before. The chain of title and the circumstances and motivation surrounding the storage of the piece of equipment appeared to be relevant issues. There was also a perception of conflict held by Client D

The Committee recognized that the issue of conflict had arisen very late in these proceedings. A court may choose to proceed notwithstanding a conflict when there has been a delay in the conflict being raised. The Committee was not prepared to deal with this issue, and was of the view that the Court was in the best position to determine whether the conflict was sufficient to warrant removal of counsel from the file on the eve of trial.

Chapter V – Impartiality and Conflict of Interest Between Clients – Representing Both Parents in a Child Protection Matter – February 2002

Facts:

The Law Society received inquiries from Police Officers with respect to a perceived conflict of interest situation. Police Officers were concerned that a lawyer was representing both the mother and the father in a situation where children were to be removed from the home by the Department of Social Services. The protection concern arose due to sexual abuse allegations made by the children, the alleged perpetrator being the father. The concern arose when the lawyer defending the father on criminal charges also represented the mother of the children with respect to the child protection matter. Counsel for the Department of Social Services took the position that the parents in such a situation have a divergent interest and the mother should not be represented by the same lawyer representing the father. Counsel for the mother and father took the position that the father and mother wished to resume their relationship as a family and were confident they could deal with the matter internally, and wanted to work toward this goal. The Department of Social Services’ counsel indicated that if the mother shared the father’s view that the children were not in jeopardy and that there was no “concern”, the mother may be a potential

Ethics Rulings - February 2002 Convocation

(continued)

protection concern for the department. The parties asked the Ethics Committee for a ruling with respect to this matter.

Ruling:

The Committee ruled that there was a potential for conflict, but based on the facts before them, the conflict was not yet “realized”. The Department of Social Services’ position that, if a mother did not recognize that there was cause for concern that she may herself become a protection concern, may be the position the department will have to pursue. The lawyer cannot necessarily “divide” the couple if both the mother and father are on-side and wish to be represented by the same lawyer. The lawyer may only advise the couple of the kinds of concerns the department may have in this regard.

**Chapter IV – Confidential Information – Lawyer
Releasing Client Information
Obtained on one file to All
Creditors in Client’s Bankruptcy –
February 2002**

Facts:

Client G complained about Lawyer H December 31st, 2001. Lawyer H had written a letter to Client G’s Trustee in Bankruptcy raising some of Client G’s personal issues with respect to her common-law living arrangement and her daughter’s living arrangements, and copied it to each and every one of her creditors. Lawyer H had previously been Client G’s divorce lawyer for a couple of years, and Client G felt that Lawyer H unnecessarily

shared personal information with all of her creditors. Client G did not dispute Lawyer H corresponding with her Trustee in Bankruptcy, but viewed the copying of this letter to each and every one of her creditors as a breach of solicitor/client privilege. Lawyer H took the position that he believed it necessary to advise other unsecured creditors such as himself in order that they would be able to protect themselves against potential fraud or misconduct within the bankruptcy. Lawyer H also noted that he lived close to Client G and it was public knowledge that she was involved in a common-law relationship, of which she did not advise her trustee.

Ruling:

Even if it was public knowledge, Lawyer H obtained this information originally through solicitor/client relationship, and should not have disclosed this to Client G’s other creditors. There is an exception to solicitor/client privilege to the “extent necessary to collect fees”. The Committee was of the opinion that advising the Trustee in Bankruptcy was sufficient and that advising the creditors was beyond the “extent necessary” in order to collect fees.

**Chapter XIX – Avoiding
Questionable Conduct – Duty
to Pay Accounts Incurred in
the Course of Practice –
February 2002**

Facts:

Expert J complained about Lawyer E for failure to pay Expert J’s account as incurred in the course of practice. Expert J was an expert wit-

ness who prepared assessments for the case, and then testified with respect to those assessments. Lawyer E did not pay Expert J’s account, and when Expert J pursued the issue, Lawyer E indicated that it was his understanding that Expert J would await judgment prior to receiving her fees. This was not Expert J’s understanding. The Ethics Committee reviewed the matter in October and ruled that Lawyer E was clearly obligated to pay the expert’s account which remained unpaid, and reminded the lawyer that he had a professional obligation to pay accounts due as incurred in the course of practice. The matter came forward again as Lawyer E disputed the reasonableness of the account civilly and, thus, still refuses to pay the account.

Ruling:

The Committee indicates that if Expert J obtains judgment against Lawyer E, and Lawyer E doesn’t pay, the Committee may then be able to review this matter again. The Committee reviewed prior correspondence, and was of the opinion that Lawyer E had said enough in correspondence earlier on about being “astonished” at the amount of the account, etc., that reasonableness of the account could arguably be a legitimate concern. The Ethics Committee cannot become involved in disputes as to the reasonableness of an account, and cannot prevent a lawyer from entering into same. At this point, Expert J has no alternative but to proceed to collect her account through civil process, and address Lawyer E’s arguments about reasonableness of same.

In Memory Of

VALRAY J. LONGWORTH, Q.C. passed away on February 23, 2002 at his home in Prince Albert. Mr. Longworth was born near Tway, Saskatchewan on November 11, 1932. His greatest joy and biggest investment was his family. His commitments were whole-hearted and included St. Michael's Church and a wide range of community activities. While the practice of law commanded the bulk of his attention, he found time to serve the community as mayor for a brief time when his children were very young. The Separate School Board, Kinsmen Club, Civil Facilities Association and many fundraising projects drew on his gifts of leadership, organization, enthusiasm and generosity. He prized the time he spent fishing, outfitting, golfing and cooking for family and friends.

Mr. Longworth is survived by his wife of 44 years, Helen (nee Ogle), their seven children and eight grandchildren.



HAROLD P. PICK, Q.C. of Victoria, British Columbia, passed away on March 21st at the age of 76. Mr. Pick was admitted to the Bar in 1959 and was with law firms in Regina, Estevan, Swift Current and Weyburn until 1977 when he was appointed senior Crown Prosecutor in Regina. He received designation as Queen's Counsel in January, 1977 and in 1980 accepted a position as General Counsel to the Saskatchewan Legal Aid Commission, serving in Regina and later in Saskatoon until his retirement in 1994 when he took up residence in British Columbia.

NOTICE

TO: ALL MEMBERS OF
THE LAW SOCIETY OF SASKATCHEWAN

*This is to advise that the
63rd Annual Meeting
of
The Law Society of Saskatchewan
will be held on
Thursday, June 6th @ 6:30 p.m.
at the
Picadilly Café,
215 – 1st Avenue N.E.
in Swift Current.*

Trust Account Forms

As a result of the Lamontagne defalcation, there is a view that the annual trust account forms do not provide as much information as they could. John Allen, the auditor/inspector, has been compiling information and forms from the other jurisdictions in Canada. He has proposed new forms, Report of Accountant (currently Form TA-5), and the Annual Practice Declaration (currently form TA-3).

The proposed forms are more extensive. It is expected that accountants will charge more for the completion of the report. On the other hand, Mr. Allen will have more helpful information for the spot audit program, and may have earlier warning systems for potential problems. The proposed new forms are loaded onto our website in the Members' Section at www.lawsociety.sk.ca/newlook/members/trust.htm. We welcome members to view the proposed forms and provide Mr. Allen with input.

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