

BENCHERS' DIGEST



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An Update from the Joint No-Fault Committee

The following article will appear in an upcoming edition of the Advocate and is gratefully used with the permission of the Saskatchewan Trial Lawyers Association. The only additional comment required is that no member of the Law Society of Saskatchewan should advise which type of insurance should be chosen.

As many of you will be aware, the Joint No-Fault Committee works closely with the Coalition Against No-Fault Insurance, which is a large group of individuals and organizations who have banded together to fight for the repeal of the no-fault system of automobile insurance in Saskatchewan. The Coalition, with the assistance of the Joint No-Fault Committee, was instrumental in developing an alternative to the no-fault scheme, known as the Premier Option. The Premier Option arose out of a study by an independent group of accountants, economists and actuaries and has been promoted by both the Coalition and the Joint No-Fault Committee as the best automobile insurance program for the people of Saskatchewan. The Premier Option was designed to meet several goals. It advocated restoring access to the courts by allowing acci-

dent victims to sue those responsible for injuring them. At the same time, certain benefits would be available for all injured persons regardless of who was at fault for the accident. It also aimed to keep insurance premiums affordable by recommending such things as the introduction of a deductible of \$5,000.00 on awards for non-pecuniary damages, and the ability of the court to order compensation in the form of a structured settlement. As well, the Premier Option recommended a number of accident prevention measures, fraud and theft prevention measures, service enhancement measures and material damage measures.

Rather than adopting the Premier Option, SGI has chosen to retain the no-fault scheme, but to give people the choice of opting out of no-fault and electing tort coverage. SGI is promoting its tort election option as being based on the Premier Option. It is true that the tort election option incorporates some of the elements of the Premier Option, however the Premier Option was always intended to be a stand-alone system of automobile insurance that would replace no-fault, not be an adjunct to it. It was never intended to be a part of

what has become an incredibly complicated system of automobile insurance in Saskatchewan. It is no accident (no pun intended) that such a complicated, dual system of automobile insurance does not exist anywhere else in North America.

Under this new system, which comes into effect on January 1, 2003, every resident of Saskatchewan will need to choose between the no-fault scheme and the tort option. If a person does not elect the tort option, she will be deemed to fall within the no-fault system by default.

The Joint No-Fault Committee feels it is extremely unfair to require the people of Saskatchewan to make this choice. First, the automobile insurance system in Saskatchewan has become so complicated that it will be extremely difficult for people to make informed decisions. In fact, it is so complicated that the government and SGI felt it necessary to include in the legislation a provision prohibiting claims against any employee or agent of SGI and any employee of a licence issuer who gives advice or instruction to an individual concerning the available options, provided the person was acting in good faith (see s.28 of *The*

www.lawsociety.sk.ca

Automobile Accident Insurance Amendment Act, 2002).

Second, it is impossible to know in advance which type of coverage will be more beneficial to the victim, since that will depend on such things as the circumstances of the accident, the seriousness of the injuries and the availability of sufficient insurance to satisfy a tort claim. Generally speaking, one would expect that a person who is at fault for an accident, or involved in a single vehicle accident, will be better off under no-fault. On the other hand, one would expect

that a person who is not at fault for an accident will likely be better off under tort coverage.

The Coalition shares these concerns about the complicated system SGI is proposing to introduce. Many of the problems with no-fault remain. One of the biggest such problems is the control exercised by SGI adjusters over a victim's medical treatment. Starting on November 18, the Coalition will be sponsoring a number of television ads on CTV pointing out some of the continuing problems with no-fault, and high-

lighting the fact that it is impossible to make a rational choice between the two systems before a person knows the nature of the accident and the extent of their injuries.

The Coalition and the Joint No-Fault Committee are continuing their efforts to convince the government and SGI to abandon the needlessly complicated system of automobile insurance that has been introduced, abandon no-fault in its entirety, and adopt the Premier Option.

Highlights of the Meeting of the Benchers Held October 23rd, 24th and 25th

Guidelines for Lawyers Fees in Real Estate Transactions

The Benchers approved new fee guidelines for residential and farm land real estate transactions. The new guidelines are an initiative of the Law Society Real Estate Committee which is made up of practitioners across the province. The Committee, noting that the previous tariff was last updated in 1988, recommended that new guidelines be developed, bearing in mind increasing overhead expenses and the time and care necessary to complete transactions under the new LAND System.

The Law Society of Saskatchewan does not require compliance with the guidelines. They are intended to assist lawyers to determine whether their fees in real estate transactions are fair and reasonable.

The Benchers would like to thank the members of the Real Estate Committee for the time and effort spent in considering this issue. Particularly, kudos are extended to the members of the Sub-Committee who spearheaded the initiative, namely John Stamatinos, Q.C., Lyle

Jones, Patrick Zawislak, George Patterson and Daryl Shirkey.

The guidelines will be circulated to the membership as part of the Handbook. In the meantime, they can be found in the Members' Section at www.lawsociety.sk.ca.

Annual Fees

By the time this is mailed, most members will have paid the 2003 annual practicing fee, which was increased for the first time since 1991. Along with the annual fee notice was a letter from John McIntosh, Q.C., Chair of the Finance Committee, outlining the issues considered by the Finance Committee and the Benchers, as well as the various organizations and projects to which the Law Society provides funding.

The cost of the basic Law Society operations have not increased overly much. However, additional or expanded programs in Libraries, Equity/Diversity, Discipline Investigations, the Bar Admission Course, the Joint No-Fault Committee and Lawyers Concerned for Lawyers have grown to the

extent that the practicing fee had to be increased.

The Benchers are extremely proud of the Libraries operation, which is largely funded by the Law Foundation of Saskatchewan. Many of the Libraries' services reduce the requirements of individual lawyers in firms to maintain their own libraries, often at considerable expense.

Rule Amendments

The Benchers approved three Rule amendments at the October Convocation.

Rule 212

This Rule was amended to require suspended or disqualified members who apply for reinstatement to pay any outstanding fees (i.e. the non-payment of which resulted in suspension or disqualification) along with the reinstatement fee. Payment of the annual fee in intervening years is not required.

Rule 800

A new subrule 1A was added to provide a new annual fee schedule for Lloydminster lawyers. Because

of the City of Lloydminster's unique geographic location on the border of Alberta and Saskatchewan, and in recognition of the six month mobility rule, the Benchers agreed that the majority of the annual fee would be reduced by ½, with the exception of the amounts allocated to the Libraries and the Joint No-Fault Committee, which are to be paid in full.

Rule 1402

Rules were passed last year which set out the process for lawyers and firms to apply to practice as corporations. One of the requirements is a permit from the Law Society. In order to obtain the permits, the firms are required to provide a completed

Form C1, a copy of the articles of incorporation including any amendments, a current certificate of status issued pursuant to *The Business Corporations Act*, the fee prescribed by the Benchers in Schedule 1 and any other information required by the Executive Director.

Rule 1402 was amended to eliminate the need for a certificate of status from the Corporations Branch if the incorporation occurs less than 60 days prior to the application for the permit.

Deposits to Trust via Credit Cards

Currently, making a deposit into trust by way of credit card is not

permitted. However, it would appear that some firms may be engaging in the practice and that many clients would like to have that option. The Finance Committee is studying the issue to determine whether the practice should be allowed. Areas of concern include:

- depositing only into trust, i.e. not into general and transfer into trust
- accounting for the merchant discount
- the ability of the client to cancel a transaction through the credit card company

This matter will continue on the agenda of the Finance Committee.

In Memory Of

THOMAS S. TAMAKI passed away peacefully on November 2nd, 2002 in Regina. Mr. Tamaki was born in New Westminster, British Columbia in 1918 and was the second oldest of four brothers. He lived in British Columbia until 1942 when he moved to Regina, and later to Saskatoon to attend the University of Saskatchewan, graduating from the College of Law. He married his wife and worked in Regina for the Provincial Government for thirty years with the Departments of Natural Resources, Mineral Resources and later at Energy and Mines. Mr. Tamaki retired from his position as Associate Deputy Minister in 1983 and enjoyed a healthy retirement. He was a generous caring husband, father, grandfather and great grandfather. He was an avid gardener, enjoyed travelling, bridge, golf, curling, lawn and alley bowling, oratorical activities and had "Rider Pride".

Mr. Tamaki is survived by his wife of Mabel (nee Kitagawa), their four children, five grandchildren and three great-grandchildren.

HUGH McLAUGHLIN, Q.C. passed away at home with his wife at his side in Swift Current on October 24, 2002. Mr. McLaughlin was born in Moose Jaw on December 2, 1939 and spent his first 10 years in Archydale, where his family then moved to Indian Head. He received his B.A. from the University of Saskatchewan in 1961, after which he worked as a social worker in the Moose Jaw Hospital, spent a year in Europe and worked on many pipelines. In 1965 he married and entered the College of Law. Mr. McLaughlin articulated with the firm of Donnelly, Polley and Krueger in Swift

Current where he remained. In 1983 he received a Queen's Council designation. He continued to practice law, first with Krueger, McLaughlin and Forrester and then under the firm name of McLaughlin, Forrester and Heinrichs, where he retired due to illness in August of 2002. Mr. McLaughlin enjoyed the practice of law, was a ball player, a hunter and a fisherman.

Mr. McLaughlin is survived by his wife, Sharon (nee Roche), their two children and three grandchildren.

BERNARD BITZ of Saskatoon, passed away at the age of 45 years from his battle with cystic fibrosis on November 6th, 2002 while under the care of the staff in ICU at the Royal University Hospital. Mr. Bitz was born in 1956 and grew up and attended school at Allan. He then attended the University of Saskatoon, pursuing both history and law. Mr. Bitz was admitted to the Bar in 1983 and began practicing first in Assiniboia then in Saskatoon. In 1992 he established the practice of Benesh Bitz & Company with his friend, John Benesh. Mr. Bitz' intense love for and pride in his children, Christopher and Catherine, was fundamental in his desire to remain healthy. These efforts were rewarded on July 19th, 2000 when he underwent a double lung transplant. With the love and care of his children and his companion, Margie, and the support of his family and many friends, Bernard's next 2½ years were spent in good health. Mr. Bitz was involved with the Knights of Columbus and the Rotary Club of Saskatoon.

Mr. Bitz is survived by his companion, Margie Rouhani, and his two children, Christopher, age 13 and Catherine, age 12.

The Law Society of Saskatchewan Libraries

by Susan Baer

Copyright in the library – Update

In the September issue of the Benchers' Digest, we wrote about changing procedures in order to comply with the recent FCA decision regarding copyright. We have had several comments from our members and we will be simplifying the procedures starting in January 2003.

After the 2003 membership list has been compiled, each member will receive a package which will include a revised photocopy declaration. The revision will include a line regarding the renewal of the photocopy declaration form with subsequent membership renewals. The library will maintain a file of signed photocopy declarations. When the membership renewal is sent next year, it will include a line regarding the photocopy declaration and its renewal. Each member must read and complete the declaration. Once on file, renewal of your annual membership will renew your photocopy declaration.

We thank those members who did send in signed copies of the photocopy declaration. We will ask you to sign the revised declaration, which will be the copy kept on file at the library.

Reminder

The library will be switching to a quarterly billing system starting in 2003. This procedure applies to library services only. Library services include photocopying in the library, computer searches, research requests, interlibrary loan requests, and any other fee-based service for legal information that applies to our members. For the photocopies done on the law firm's auditor account, we will continue to read the account monthly and provide that monthly amount on the quarterly invoice. Anticipated billing periods are March 15, June 15, September 15, and December 15. The new procedure should reduce the number of cheques written by the law firms for relatively small amounts. Publication invoices will still be billed as orders are placed, or as the updates are released.

Overdue accounts procedure

Just to let members know of our overdue account procedure, the library provides the Secretary of the Law Society with a monthly listing of all unpaid balances that are more than 90 days overdue. The list includes the name of the law firm, the lawyer who requested the library service, the invoice number, the invoice date, and the amount overdue. The Secretary uses this information for issuing certificates of good standing.

The library sends a statement of account to the law firm for accounts 30 days overdue. If the account remains unpaid after 60 days, the library sends a demand letter, requesting payment within 14 days of receipt. If payment remains outstanding, the Director will forward the information to the Chair of the Libraries Committee for review. After 90 days, the library automatically suspends library services until the account is reconciled.

Uniform Trust Conditions

In May of 2002 a new Commentary 10A was added to Chapter XVI *The Code of Professional Conduct* which prohibits the imposition of or the acceptance of a trust condition which "requires the lawyer for the purchaser to guarantee closure of the transaction by personally guaranteeing payment of the entire purchase price".

In adopting the new *Code* provision, the Benchers were mindful of the Uniform Trust Conditions, the use of which the Benchers have encouraged since their introduction in 1999. While the Benchers were not prepared to make the trust conditions mandatory, many of the principles behind them, including facilitation of transactions between different areas of the province and reduced liability issues, were considered important enough to require this new *Code* provision.

It is the Benchers' position that it is the role of lawyers to facilitate the transfer of the property and to provide their clients with an opinion that they in fact received the relative interests in accordance with the agreement they signed. That role does not include a guarantee that, for example, the mortgage lender will in fact advance the funds. In such a situation, the parties have remedies pursuant to their contract and as governed by legislation.

Members are urged to become more familiar with Chapter XVI, Commentary 10A and the Uniform Trust Conditions which were circulated to the members in the April, 1999 edition of the Benchers' Digest.

Legal WebCites

By Peta Bates

This column will complete the cross-Canada survey of online legislative and judicial sources for Canadian jurisdictions. All the statute consolidations mentioned here are considered unofficial versions. The official version is the paper copy published by the respective Queen's Printers.

New Brunswick. Statutes and Regulations

<http://www.gnb.ca/0062/acts/index-e.asp>

The Department of Justice web site provides an alphabetical list by statute name with links to the regulations. An alternate list of acts by department is provided. Keyword searches of the acts and regulations are available. To view the French version of all legislation click on the *Français* button. The legislation is current to March 31, 2002.

New Brunswick. Rules of Court

<http://www.gnb.ca/0062/acts/rulescourt-e.asp>

The Department of Justice web site also provides a copy of the Rules of Court which govern proceedings in the New Brunswick Court of Queen's Bench and Court of Appeal. Court forms are available.

New Brunswick. Court of Appeal. Judgments

<http://www.canlii.org/nb/cas/nbca/>

Decisions are available on the CanLII web site from April 2001 to date.

New Brunswick. Court of Queen's Bench. Judgments

<http://www.canlii.org/nb/cas/nbqb/>

A recent addition to the CanLII web site, the decisions begin in March 2002.

Newfoundland & Labrador. Statutes and Regulations

<http://www.gov.nf.ca/hoa/st/>

The Newfoundland & Labrador House of Assembly web site provides an alphabetical list of statutes with associated regulations, as well as an alphabetical list of regulations and a keyword search for both. The legislation is current to August 30, 2002. Annual statutes are available from 1995 to date (<http://www.gov.nf.ca/hoa/sr/>).

Newfoundland & Labrador. Supreme Court. Rules of Court

<http://www.gov.nf.ca/HOA/regulations/rc86rules.htm>

The rules of the Supreme Court are available as a regulation under the Judicature Act on the House of Assembly web page.

Newfoundland & Labrador. Court of Appeal. Judgments

<http://www.canlii.org/nf/cas/nfca/>

Court of Appeal judgments are available on the CanLII web site from January 2001. Family judgments are excluded.

Newfoundland & Labrador. Provincial Court. Judgments

<http://www.canlii.org/nf/cas/nfpc/>

Provincial Court judgments are available on the CanLII web site from March 2001. Family judgments are excluded.

Nova Scotia. Statutes and Regulations

<http://www.gov.ns.ca/legislature/legc/index.htm>

The Office of the Legislative Council web site provides the statutes of Nova Scotia consolidated to August 29, 2002. Access the statutes by means of an alphabetical list or a keyword search. The regulations are maintained by another department, the Registry of Regulations, on a different web page. Regulations are listed by enabling act and by department. There is no keyword search capability.

Nova Scotia. Civil Procedure Rules

<http://www.courts.ns.ca/Rules/toc.htm>

The Courts of Nova Scotia web site provides the Civil Procedure Rules which govern proceedings in the Nova Scotia Court of Appeal and the Supreme Court, including the Family Division of the Supreme Court.

Nova Scotia Barristers Society Library. Judgments Database

<http://24.222.3.230/dbtw-wpd/qsets/LNQBE.HTM>

Decisions of the Court of Appeal and Supreme Court from 1997 to date are digested in a database on the Nova Scotia Barristers Society web page. Fulltext judgments are available from 1999.

Prince Edward Island. Statutes and Regulations

<http://www.gov.pe.ca/law/statutes/index.php3>

The Legislative Counsel web site provides an alphabetical list of statutes updated to March 31, 2000. Also available is a list of statutes by department and a keyword search option. Individual regulations are available in the Royal Gazette from 1999 to date <http://www.gov.pe.ca/royalgazette/index.php3>. A keyword search option is available. There is no consolidation of the regulations.

Prince Edward Island. Supreme Court. Annotated Rules of Civil Procedure

<http://www.gov.pe.ca/courts/supreme/rules/index.php3>

The annotated Rules of Civil Procedure are available on the Supreme Court web site. The text of the rules is keyword searchable.

Prince Edward Island. Supreme Court. Judgments

<http://www.gov.pe.ca/courts/supreme/reasons.php3>

Fulltext judgments are available on the Supreme Court web site from January 1997 to date. The judgments are searchable by date, area of law and keyword.

Equity Ombudsperson

The Equity Ombudsperson, **Norma Farkvam**, provides neutral and confidential assistance to lawyers, articling students and support staff working for legal employers who ask for help in resolving complaints of discrimination or harassment. Norma may be contacted at: Box 22012, RPO Wildwood, Saskatoon, S7H 5P1. She can also be reached at (306) 242-4885 or toll free throughout Saskatchewan at (866) 444-4885.

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