BENCHERS' DIGEST

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Profile of the President
Robert Gibbings, Q.C.

Robert Gibbings, Q.C. of Saskatoon, Saskatchewan was elected President of the Law Society of Saskatchewan by the Benchers of the Law Society at the Convocation held at Saskatoon on December 5th, 2002. He took office on January 1st, 2003.

Mr. Gibbings was born in Rosetown, Saskatchewan and attended elementary and high school in Regina. Mr. Gibbings received his Bachelor of Arts from the University of Saskatchewan in Regina and then attended the College of Law at the University of Saskatchewan in Saskatoon where he obtained his Bachelor of Laws Degree in 1980. In 2002 he received his Queen's Counsel designation.

Mr. Gibbings articled to the firm of Goldstein & Goldstein and was admitted to the Law Society of Saskatchewan in 1981. He has practiced with the firm continuously since his articles and became a partner in the firm in 1986. The firm is now known as Scharfstein Gibbings Walen & Fisher. Mr. Gibbings has a general practice of law with an emphasis on insurance litigation, commercial law and administrative law.

From 1981 to 1998 Mr. Gibbings was a sessional lecturer in Business Law in the College of Commerce at the University of Saskatchewan. He has also lectured in Trial Advocacy at the College of Law. He has been a co-ordinator and presenter at a number of continuing legal education seminars for SKLESI, and is a member of SKLESI's Board of Directors, also serving on the Program Committee.

Mr. Gibbings is Chair of the Saskatchewan Legal Aid Commission and has been a member of the Commission since 1998.

Mr. Gibbings is a past president of the Saskatoon Bar Association and a member of the Saskatchewan Trial Lawyers Association.

He was elected a Bencher of the Law Society of Saskatchewan in November, 1997 and re-elected in 2000. He has been a member of numerous committees. He has chaired the Ethics Committee and for two years was Chair of the Discipline Committee. He is currently a representative on the Queen's Bench Bar Judicial Council, the Saskatchewan Judicial Council, the Council of the Canadian Bar Association (Saskatchewan Branch), and the Federation of Law Societies of Canada.

Mr. Gibbings has been active in community affairs. For two years he was President of The Saskatchewan Jazz Festival Inc., has coached minor basketball, and has been active in his church as a member of vestry and as lay reader.

Rob is married to Kate (Patton) Gibbings and they are the exceedingly proud parents of four children.

President's Report

On December 7th, 2002, eight Canadian Law Societies signed an agreement which, subject to passage of the appropriate rules in each jurisdiction, will permit lawyers of the common law signatories, in good standing in their jurisdiction, to provide legal services in or with respect to the law of another common law signatory for up to 100 days in a year without permit. Qualified lawyers who are of good character will also be allowed to become permanent members of other common law signatory jurisdictions without having to pass transfer exams. The Barreau du Quebec is also a signatory, but as a civil law jurisdiction, different rules will apply. It is hoped that other provinces and territories will enter into the agreement as well, leading to truly national mobility for Canadian lawyers.

The National Mobility Agreement is an extension of the current Western Mobility Protocol under which lawyers in the western provinces are entitled to practice for up to 6 months in any 12 month period in any of other western provinces.

There are many issues which will need to be resolved in the actual implementation of national mobility. A national registry of lawyers will be required in order to monitor an individual lawyer's entitlement to mobility. What will that registry look like and what information should it contain? Who will discipline a lawyer – will it be the lawyer's "home" jurisdiction, or the "host" jurisdiction in which the lawyer is temporarily practicing? Is there a need for a common Code of Conduct? Should there be commonality in levels of insurance, and in special or defalcation funds? Is there wisdom in delivering bar courses in similar ways and with similar content?

Despite all the questions, national mobility is likely to become a reality, and soon. It is an exciting concept for Saskatchewan lawyers. It reflects the reality of practice – solicitors' work has been done cross-borders for years. It also reflects the reality of our clients, whose businesses and personal affairs cross borders more and more frequently. We should be able to follow our clients and provide services to them wherever they need and demand them. Saskatchewan lawyers are the equals of any others in providing quality service.

The discussions leading to full implementation of mobility will frequently take place through the auspices of the Federation of Law Societies of Canada. Many of us are not as familiar with the Federation as we might be, but it is an extremely important organization. It facilitates communication among its 14 members on issues of national interest. It has also recently been proactive in bringing challenges in respect to the proceeds of crime and anti-terrorism legislation with (to this point) great success. The Federation is currently undergoing a restructuring process, from which it is hoped it will emerge as more representative and more responsive.

There are other issues here at home which have your Society's close attention. We now have a "Choice" system of automobile injury insurance. The Law Society sees it as being in the public interest that as much factual information as possible be provided to the public concerning the options available to them. However, and unfortunately, it appears that the ultimate decision on the choice to be made is so difficult as to be impossible to advise upon. The Law Society will be closely monitoring the actual implementation and practice effect of the "Choice" system.

The Law Society continues to lobby and communicate with the Government of Saskatchewan and Information Services Corporation with respect to the Land Titles System. There have been many difficulties, but improvements as well. We will continue to insist that the system be the best system it can be in order to serve and protect the public interest.

All of us as members of the Law Society are extremely fortunate to have such dedicated and capable professional and support staff of the Society. While not wishing to omit any of them from special mention, which they all deserve, I would particularly like to thank Susan Baer, Director of Libraries, who is (without exaggeration) transforming the delivery of library services to the membership. Her work has been nationally recognized. We are the envy of all other Law Societies in having her with us.

On behalf of all of you I would like to thank Mr. Michael Milani, Q.C. for his outstanding work as our President in 2002, both here and on the national scene.

I am pleased to tell you that Rick Van Beselaere of Balfour Moss in Regina was elected Vice-President of the Law Society at the Benchers Convocation in December, 2002. Mr. Van Beselaere is Chair of the Finance Committee, a Vice-Chair of the Discipline Committee and a member of the Public Relations Committee.

I am very grateful for the privilege of serving as President for this year. I wish to thank the membership and the Benchers for giving me this opportunity, and my firm, and of course my family, for their ongoing support.

Robert J. Gibbings, Q.C.

The Discipline Process of the Law Society of Saskatchewan

by Barry Morgan

The mission statement of the Law Society mandates the Society:

> ***To govern the legal profession by upholding high standards of competence and integrity; ensuring the independence of the profession; advancing the administration of justice, the profession and the Rule of Law, all in the public interest.***

A necessary part of our statutory mandate is to discipline lawyers for conduct unbecoming which can, in some situations, include practicing law in an incompetent manner. One cannot lose sight of the fact, however, that the essential aim of that discipline process is to ensure that the public is protected.

The present discipline process is rather formal, to ensure that members facing the discipline process, as well as the public, are dealt with in a fair and open manner. The statutory framework for the discipline process is set out in Sections 34.1 through 59 of *The Legal Profession Act, 1990*, as well as Rules 400 through 496. In addition, the Benchers and professional staff have instituted certain policies to carry out the process.

All too often, the process is very time consuming. In order to better serve the public, the Benchers have passed new policies that will hopefully, in appropriate circumstances, make the system more efficient. These new policies can be set out in two broad categories.

The first category is designed to provide a more summary procedure for disposing of complaints which are to proceed to a hearing, if the member elects to utilize this process. Under the present system, once a complaint has been investigated, and a Hearing Committee appointed, if often takes months until the matter is heard. In preparation for the hearing, usually held before a three-member panel, complete disclosure is provided to the member, and in many cases an Agreed Statement of Facts is presented to the panel. The hearing then proceeds, and once a decision is rendered, depending on the penalty sought by the Investigation Committee, the Hearing Committee itself may make an Order respecting the member. In more serious cases, that is carried out by all the Benchers not otherwise disqualified from hearing the matter, before the Discipline Committee.

The policy the Benchers have now adopted is that, as soon as the Investigation Committee's recommendation that the matter proceed to hearing is received, full disclosure will be provided to the member. He or she would be advised at that time as to the Order the Investigation Committee will seek if the complaint is found to be well-founded, be that by way of the hearing process or an admission of professional misconduct by the member. In the event the member decides to admit the allegations, rather than appoint a three-member Hearing Committee, a one-member committee would be quickly convened for the purpose of accepting that admission. Depending on the sanction being sought, that individual could deal with the matter at that hearing, and the matter would be concluded at a very early stage. Alternatively, the matter could be referred to the Discipline Committee for imposition of the appropriate sanction at the next Convocation. In either event, the matter would be dealt with much faster than is presently the case.

The second major policy shift is that the Benchers have agreed that, in appropriate circumstances, they will accept an offer of resignation in the face of discipline, which will be equivalent to a disbarment. This policy change entails a significant shift in thinking, and is admittedly not without its detractors. This article will hopefully be of assistance to the membership in understanding the reasons for this policy change.

There appears to be some resistance among members in allowing members to resign in a situation such as this, as there is apparently seen to be some salutary effect in pronouncing disbarment as a sanction.

The reasoning behind the policy shift is simply this: disbarment is not a permanent sanction, and if the purpose of our legislation is to govern the legal profession with protection of the public as the foremost objective, a non-permanent removal of the member's right to practice does not necessarily protect the public in some cases. Whereas disbarred members do not in most cases apply for re-admission, they are certainly entitled to. Obviously, an application for re-admission would need to be reviewed with an eye towards determining that, if the member is re-admitted, the public would be protected. However, it has specifically been found by the courts that some type of time restriction on re-admission is not proper. Accordingly, a disbarred member could theoretically reapply for membership almost immediately after being disbarred. Whether or not the application would be successful, of course, is another matter. However, the right to re-apply exists, and has

to be received and reviewed without reference to the date of the disbarment.

Further, in cases where a member is disbarred, he or she often appeals that decision, and is often allowed to continue practicing pending the outcome of the appeal.

The cost, time expended, and uncertainty respecting a resolution of disbarment are all factors that have gone into the Benchers' decision to accept resignation in the face of discipline as an appropriate resolution in some cases.

The advantage of this policy shift is that conditions can be placed on a member's request to resign, which would well include an undertaking of the member not to appeal that resolution, nor to apply for re-admission as a member of the Law Society for a defined period of time, or, potentially, ever.

The crucial element, from the Benchers' perspective, of this policy is simply that the role of the Discipline Committee in assessing penalty is not to punish; the role is to protect the public. Any discipline sentence must meet that goal. From that, it follows that a resignation in the face of discipline may be a more appropriate resolution than disbarment, as it would provide certainty and finality to the discipline process.

The Benchers would appreciate your input on this matter, and you are encouraged to provide your thoughts to the Law Society offices.

Ideas About Equity

by Norma Farkvam, Equity Ombudsperson

It would surprise me today if anyone claimed unlawful discrimination is OK. Yet some lawyers still exercise old habits that infringe on basic employee rights which are now well established in law. As we start into a new year this is a good time to remind ourselves of the anti-discrimination laws and rules by which lawyers are bound.

1. Human Rights Law

The Saskatchewan Human Rights Code recognizes "the inherent dignity and the equal inalienable rights of all members of the human family." (section 3). As members of this human family, lawyers and their staff are entitled to work in environments that are free of discrimination. Employer law firms cannot permit attitudes and behaviours that deny employees and associates their inherent dignity and equal rights.

2. CBA Code

The Canadian Bar Association has amended its Constitution and By-laws to include promotion of equality in the legal profession.

With a goal to eliminate discrimination the CBA *Code of Professional Conduct* at Chapter XX states the following Rule:

> "The lawyer shall respect the requirements of human rights and constitutional laws in force in Canada, and in the respective provinces and territories thereof, and shall not discriminate on grounds including, but not limited to, race, language, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, or disability."

3. Law Society Code

The Law Society of Saskatchewan's mission statement is "To govern the legal profession by upholding high standards of competence and integrity; ensuring the independence of the profession; advancing the administration of justice, the profession and the rule of law; all in the public interest."

In fulfilling its mission, The Law Society of Saskatchewan's *Code of Professional Conduct* states the following at Rule XV:

> "RULE: The lawyer should assist in maintaining the integrity of the profession and should participate in its activities."

The Commentary following Rule XV includes the following Guiding Principle (number 4):

> "A lawyer in his or her professional capacity shall not discriminate on the grounds of race, creed, colour, national origin, disability, age, religion, sex, sexual orientation, marital or family status in the employment of lawyers, articled students or support staff or in any relations between the lawyer and members of the profession or any other person.
>
> Sexual harassment is a form of discrimination and may broadly be defined as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of the harassment". The lack of an intent to produce feelings of harassment in the complainant is irrelevant."

4. Criminal Code

In the extreme, discriminatory behaviour and harassment that lead to assault or inciting hatred are crimes. The Criminal Code of Canada deals with these at Part VIII.

I plan to write articles for the *Bencher's Digest* throughout the year, elaborating on these codes, rules and other guidelines. If you have questions, or if your firm is interested in a private in-service on related topics, please give me a call. You can reach me, **Norma Farkvam**, your **Equity Ombudsperson**, toll-free from anywhere in the province. In Saskatoon call (306) 242-4885. Outside Saskatoon the number is 1 (800) 444-4885.

NOTICE TO ALL MEMBERS OF THE LAW SOCIETY OF SASKATCHEWAN

Re: Revisions to Forms TA-3 and TA-5

Form TA-3 (Practice Declaration – Yellow) and Form TA-5 (Report of Accountant's– White) were amended by the Benchers to be more extensive than those used in previous years. The previous forms were first introduced more than twenty years ago and have remained in force with few changes since that time.

The new forms are the result of a wide-ranging project by John Allen, C.A. who, following the Daniel Lamontagne defalcation, was directed by the Benchers to review the trust account forms to determine how they could become more "reliable". While it had been understood that the Accountants would be answerable upon signing the TA-5, the review of the document in light of the defalcation revealed that the report's statements were minimal.

As part of this project, Mr. Allen reviewed the trust account forms from the other jurisdictions in Canada, consulted with accounting firms, the Provincial Auditor and others. In addition, draft copies of the forms were posted on the Law Society website for most of 2002 to allow all members an opportunity for input to the process.

The Benchers, in approving these forms, appreciate that members may face some increased cost to have their annual trust account review completed. While these forms are more extensive, the expectation is that the procedures followed by most firms already meet most of the standards reflected by the forms.

While these forms in no way constitute an audit, the Benchers hope that these new forms will be part of a significant enhancement in the trust account surveillance program and reduce all members' risk for Special Fund payments.

Background

by George Thurlow

When Allan T. Snell Q.C. called on January 3rd 2001 to advise that one of my constituents, Daniel Lamontagne, had just confessed to stealing about $720,000.00 in trust money, I was more than surprised. I was shocked. Having practised in the same town as Mr. Lamontagne since 1979 when he articled, I thought I knew him. Besides, his accounts were inspected annually and the Law Society auditor had been through a while ago on spot audits. I felt he had neither the time as a busy sole practitioner nor the expertise to falsify a set of books well enough to pass inspection.

Once Gerald Perkins as the trustee and I calmed down the irate clients, dealt with files needing immediate work or court appearances, reviewed the files for errors and omissions and once John Allen C.A had the "books" reconstructed by an accountant and ascertained that Mr. Lamontagne's estimate of his defalcation was close, we turned to how he did it so as to prevent recurrence and to consider the responsibility of his accountant.

Mr. Lamontagne's actions were simple. He did his own trust books while his secretary [who was as surprised as the rest of us] did the general accounts. He would take from trust as he needed money, representing this to his secretary as fees so she would write a receipt but no bill. He would attribute this to some client with sufficient money in trust whether work had been done or not. In turn, he would make up the shortage in that account by attributing some payments to whatever other client account had enough money. The numbers balanced, albeit with a year end trust total of much less than it should have been.

He had his books "inspected" by an accountant in Saskatoon who charged $250.00 simply to sign the form. If the accountant had looked carefully into the records or into

client files to determine whether payments were appropriate or bills were within reason this technique would have been caught. However, the Accountants Report (TA-5) only required the accountant to state that:

1. There were trust and general accounts;
2. There were trust and general journals;
3. There were client ledgers;
4. There were billing books used for receivables [the fraudulent bills were not listed];
5. There were bank statements and deposit books;
6. There were reconciliations prepared for each month [albeit just before the inspection and thus the old forms could be complied with. As well, the old forms had the member assure The Law Society by statutory declaration, that he has complied with the rules respecting trust accounts. But if someone will steal he might also perjure himself].

The new forms require the accountant to review the billings more closely.

Billings from trust are also causing problems for other members. Less sophisticated clients have trouble with lawyers holding their money in trust. For the lawyer to be able to transfer funds to their general account after writing a bill causes them that much more trouble. So those members who transfer first and bill later, even when the bill is fair, put all members in a bad light. Rule 941 requires one to write the bill first, and deliver the bill right away. This also gives the client fair warning so a bill may be taxed while the events are fresh in everyone's minds. While the existence of a bill may be verified from the *fees book* the auditor must look in the file to see if it was sent.

In addition to being contrary to Rule 940, billing, then leaving the money in trust also causes problems, this time with Canada Customs and Revenue. Some members may be tempted to leave funds in trust after writing the bill so as to hide the revenue or even avoid demands from C.C.R.A. if they have fallen behind in their remittances. As Allen Snell Q.C. pointed out in an article in a previous edition of Benchers' Digest, we have an understanding with C.C.R.A. that lawyers trust account records are not to be audited by them since they hold client money. If lawyers are hiding their own money in the trust account that understanding will break down and we will have to litigate to assert privilege. Thus, the Law Society Rules must ensure the immediate transfer to the lawyer's general account.

We recognize that the completion of the new Trust Account Forms may cost more in accountants fees. How much will depend on what your accountant was doing for you before. We feel it will still be cheaper than another defalcation. This one was paid from reserves and the surplus from a former insurance plan but another large one would result in a levy on the members.

In Memory Of

JAMES EGERTON ROBB passed away in Regina on May 2nd, 2002. Mr. Robb was born in Kelowna, British Columbia in 1925 and had moved to Fort Qu'Appelle where he completed his Bachelor of Laws in 1960 and articled at Gerrand & Gerrand and then practiced at the Robb & Dowling Law Firm in Regina.

Mr. Robb is survived by his wife, Eileen, and his two children.

RAMON JOHN (Ray) HNATYSHYN, passed away at the age of 68 of complications from pancreatitis in Ottawa in December, 2002. Mr. Hnatyshyn was admitted as a member of the Law Society of Saskatchewan in 1957 and was employed with the law firm of Hnatyshyn, Sandstrom & Company in Saskatoon.

Mr. Hnatyshyn was a former Conservative MP and cabinet minister who served as Governor General from January, 1990 to February, 1995. He was a member of Parliament for 14 years, first elected to the House of Commons in 1974, and served as a cabinet minister in two Conservative administrations

Mr. Hnatyshyn is survived by his wife, Gerda, and their two sons.

Appointments to the Bench

Congratulations to R. Shawn Smith, Q.C. and Donna Wilson, Q.C. on their appointments to the Queen's Bench Court of Saskatchewan. Mr. Justice R. S. Smith has been appointed to the Family Court in Saskatoon and Madam Justice Wilson will sit in Regina.

Many Thanks....

The Benchers and professional staff of the Law Society of Saskatchewan wish to express their sincere thanks to members of the profession who volunteered their time to investigate complaints for the Professional Standards Committee, Discipline Committee, and Hearing Committee and to prepare the necessary reports for the Committees' consideration. As well, our thanks to those who act as "alternate" Complaints Officers when staff and Benchers are in a conflict. Also, we would like to extend thanks to Law Society members and members of the Judiciary who have contributed their time as members of various Law Society Committees and as Law Society representatives to other organizations. The Benchers recognize that the vocation of law is demanding and greatly appreciate the invaluable contribution of the time of Law Society members and members of the Judiciary. To those who volunteered in previous years, your time was also greatly appreciated. We have now implemented the practice of publishing a "thank you" list to recognize such contributions. As our computer record keeping system is still relatively new, we extend pre-emptive apologies to anyone we may have omitted.

Chapter XV of *The Code of Professional Conduct* states that: *"The lawyer should assist in maintaining the integrity of the profession and should participate in its activities."* The Committees' volunteers have done just that! Many thanks to the following:

NON-BENCHER VOLUNTEERS FOR 2002

Investigations/Hearings

Victor Dietz
Daniel Konkin
L. Ted Priel, Q.C.
Darcia Schirr
Alma Wiebe, Q.C.
Christine Glazer, Q.C.
Jane Lancaster, Q.C.
Leslie Prosser, Q.C.
William Selnes
Robert Kennedy, Q.C.
David McKeague, Q.C.
Merrilee Rasmussen, Q.C.
Norma Sim, Q.C.

Complaints Officer Designates

Randall Baker, Q.C.
Larry Zatlyn, Q.C.

Law Society Committee Members

Randy Baker, Q.C.
Judge Guy Chicoine
David Leland
George Patterson
Daryl Shirkey
Greg Willows
Hon. Mdm. Justice Jackson
Anil Pandila
Betty Ann Pottruff, Q.C.
David Kowalishen
Gordon Balon
Lyle Jones
Lee Mountain
Randy Rooke, Q.C.
John Stamatinos, Q.C.
Patrick Zawislak
Hon. Mdm.Justice Wright
Nancy Hopkins, Q.C.
Jan Kernaghan, Q.C.
Richard Carlson
Randy Katzman
Robert Munkler
Randy Sandbeck
Murray Walter, Q.C.
Katherine Hillman-Weir
Hon. Justice B. Huculak
Jane Lancaster, Q.C.
Doug Surtees

Claims Committee

Don Philips, Q.C.
Neil Gabrielson, Q.C.
Pat Kelly, Q.C.

Law Society Representatives to Other Organizations

Neil Gabrielson, Q.C.
Chief Justice F. W. Gerein
Randy Baker, Q.C.
Bruce Wirth
Gary Young, Q.C.
Honourable D. Hunter
Darcia Schirr
Catherine Zuck
Daniel Konkin
Maurice Laprairie, Q.C.
Karen Prisciak, Q.C.
Marusia Kobrynsky
Ken Neil
James Ehmann, Q.C.
W. Randall Rooke, Q.C.
Holly Ann Knott, Q.C.
Chief Justice E.D. Bayda
John Stamatinos, Q.C.
Christine Glazer, Q.C.
Reg Watson, Q.C.
Norma Sim, Q.C.
Robert Kennedy, Q.C.
Brenda Hildebrandt

Q.C. Appointments for 2003

Congratulations are extended to the following members who have been honoured with Queen's Counsel appointments:

Lloyd Balicki of Prince Albert, admitted to the Bar in 1976

James Ehmann of Regina, admitted to the Bar in 1981

Rob Gibbings of Saskatoon, admitted to the Bar in 1981

Douglas Kovatch of Regina, admitted to the Bar in 1978

Kenneth Lerner of Regina, admitted to the Bar in 1967

Donald Phillips of Regina, admitted to the Bar in 1975

James Plemel of Saskatoon, admitted to the Bar in 1975

Karen Prisciak of Saskatoon, admitted to the Bar in 1985

Douglas Richardson of Saskatoon, admitted to the Bar in 1976

William Roe of Saskatoon, admitted to the Bar in 1977

Brenda Walper-Bossence of Moose Jaw, admitted to the Bar in 1976

Reginald Watson of Regina, admitted to the Bar in 1980

Donald Worme of Saskatoon, admitted to the Bar in 1986

Bar Course Harmonization Project

The Law Society of Saskatchewan has received funding from the Law Foundation of Saskatchewan which will allow us to participate in the Western Bar Course Harmonization Project. This project arose as a result of the Mobility Rules passed in the four Western Provinces in 2001. An Education Task Force was struck to explore the feasibility of some form of harmonization of the Bar Admission Courses offered in each Western Province.

As a result of this, a project director, Sheila Redel, on leave from Manitoba Continuing Legal Education, has been hired and work has begun on the development of a new Bar Admission Course. The following is Ms. Redel's report:

> The Alberta/Saskatchewan/Manitoba Bar Admission Development Project has now completed six months of its two-year mandate, and is well on track for the new course's target implementation date of mid-2004. Funding for the project has been provided through the Alberta Law Foundation, the Law Society of Manitoba, the Saskatchewan Law Foundation and Law Society of Saskatchewan.
>
> The first phase of the project has focused on research into what new lawyers really do in their practice. An extensive three-province survey and young practitioner focus groups have shown that some of the assumptions we have made over the years have changed as the nature of practice has evolved. For example, our research shows that, although many young lawyers classify themselves as civil litigators, they actually spend much more of their time initiating actions and negotiating settlements than they do in the courtroom.
>
> The new course will be primarily skills based, and will follow the competency profile adopted by the Benchers of Saskatchewan, Alberta and Manitoba late last year. Rather than the traditional lecture-based approach, a portion of the course will be delivered on-line, and other educational technologies will assist in reducing the amount of time students will be spending in the classroom.
>
> The next phase of the project will be to design the curriculum for the new course. The challenge will be to use technology effectively to place course activities in a realistic practice environment. The plan is to use 'virtual' clients to provide the student with the sorts of messy real life problems that often arise in a typical practice.

If you have any comments or questions about the new Bar Admission Course, contact the project director, Sheila Redel at sredel@lawsociety.mb.ca, or by telephone at (204) 926-2020.

Ethics Rulings

Chapter IX – "The Lawyer as Advocate" –Requesting Information about Opposing Party beyond scope of Court Order– October 2002

Facts:

The Defendants, Mr. and Mrs. A, complained about Lawyer B in that he obtained details of their financial dealings with a financial institution, pursuant to a Court Order, and they believed he was not entitled to obtain that information. Mr. and Mrs. A complained to the Federal Privacy Commissioner who ruled that the disclosure of their personal financial information to Lawyer B by the financial institution in the circumstances constituted a contravention of The Privacy Act, and that Mr. and Mrs. A's complaint against the financial institution was well founded. The Commissioner's decision stated that "no reasonable person" would interpret the Court Order as providing implicit direction to release the said personal information.

Lawyer B indicated that he received a Mareva injunction from the Court to seize all of the assets of Mr. and Mrs. A due to the fact that Mrs. A had allegedly taken money from Lawyer B's clients. Lawyer B indicated that in order to seize the assets and know what was available, it would be necessary to serve a copy of the Order on every financial institution with whom Client A's dealt. In asking the financial institution for the information, Lawyer B requested "Please provide our office immediately as to the balance owing to you by the A's and whether or not they have any other liabilities to your organization or investments therewith. We look forward to your reply by fax, today, if possible". The Court Order provided that Mr. and Mrs. A were restrained from dealing with, disposing of or removing from the province any and all assets, and restrained from encumbering any assets, and provided Lawyer B leave to serve a copy of the Order on all financial institutions to bind assets. The Court Order did not specifically allow Lawyer B to obtain information about debts or liabilities. Lawyer B indicated that he wanted to know the value of particular items of property and to ascertain equity available after liabilities. Lawyer B indicated that he did not interpret the Order to actually authorize him to obtain that information nor did he mean to suggest this. Although Lawyer B sent the same blanket letter to all financial institutions requesting the same information, this financial institution was the only one who provided it. Lawyer B indicated that he would be more careful in the future in such instances and write letters to accompany Court Orders that "would stick to the letter of the Order".

Ruling:

The Ethics Committee was of the opinion that Lawyer B's actions were not deliberate and thus, were not unethical. However, the Ethics Committee indicated that it is desirable for lawyers to ensure that individuals or institutions are not misled by letters accompanying Court Orders. The Ethics Committee agreed with Lawyer B's suggestion that he would in future consider potential Privacy Act problems and stick to the letter of the Order in correspondence serving Orders on individuals or financial institutions.

Chapter XVI – "Responsibility to Lawyers Individually" –Trust Conditions – Holdback of Trust monies – October 2002

Facts:

Lawyer V, lawyer for the vendors, complained about Lawyer P, lawyer for the purchasers, as he believed that Lawyer P's distribution of a holdback was a violation of a trust condition or undertaking as set out in Lawyer P's letters. Lawyer V agreed on the appropriate amount of holdback, to be held until the situation was resolved. The material is clear that the parties agreed that there were two potential alternative methods by which the situation could be resolved.

Lawyer P's clients explored the two possibilities for resolution and chose one method to resolve the matter. The contractor who resolved the difficulty was paid by Lawyer P and Lawyer P then disbursed the remaining monies from the holdback to Lawyer V's office.

Ruling:

Lawyer P maintained the holdback until the dispute was resolved. Lawyer P did not do anything unethical or inappropriate by paying the contractor who resolved the problem and disbursing the remainder of funds to Lawyer V and his clients. If Lawyer V wanted the holdback maintained until his clients approved the choice of resolution and/or the choice of contractor and the quote, he should have been more succinct in setting out this condition or requirement at the outset. It should be noted as well that the Committee commented

that two letters of significance were omitted by Lawyer V in bringing his side of the story forward. These letters were crucial because in one of the letters that was excluded, Lawyer V clearly acquiesced to one of the options for resolution. As a result, the Committee concluded that Lawyer P had done nothing wrong and was clearly acting ethically and responsibly.

Chapter XVI – "Responsibility to Lawyers Individually" –Trust Conditions – Holdback of Trust monies – December 2002

Facts:

Lawyer V asked that the October 2002 matter be revisited by the Ethics Committee in December 2002. The Ethics Committee revisited same and was of the opinion that the original ruling would stand.

Ruling:

The Ethics Committee viewed the issue of trust conditions between lawyers as very serious. However, the Committee concluded that there was an honest difference of opinion between the two solicitors as to the meaning of the subject trust condition. This was in no sense a criticism of the drafting of the conditions, but rather reflected the unfortunate reality that from time to time misunderstandings can occur. Additionally, it appears to the Committee that Lawyer V's client could choose to seek redress through some of the avenues he had previously suggested in his correspondence.

Chapter VXI – Miscellaneous - "Duty to Other Lawyers" – Disclosure at Exchange of Documents Stage of Litigation – October 2002

Facts:

A member acted for a Defendant business in various litigation matters. In the first case against the Defendant to go to trial, the Defendant was unsuccessful. This case has been appealed. A second case about a similar matter is at the exchange of documents stage. Counsel for the Plaintiff in the second case did not raise any issue with respect to the Defendant having lost the first case, and made an offer to settle the matter. The Defendant's lawyer believes the trial judge's decision is correct, although the matter is under appeal. The lawyer questioned whether or not he had an obligation to advise counsel for the Plaintiff on the second case of the previous decision at the exchange of documents stage as it could affect the offer.

Ruling:

The Committee was of the opinion that the lawyer for the Defendant business was under no obligation to tell the other lawyer about the prior decision at this time. There is no obligation at the disclosure stage to perform the other side's research for them because they have made an offer to settle. Although the Defendant's lawyer may feel some discomfort in such a situation, he cannot disadvantage his own client by telling the other side what he knows.

Chapter IX, "The Lawyer as Advocate" Disclosure of Family Law Information in Related Prosecution – December 2002

Facts:

The Ethics Committee reviewed two issues raised by an opposing client in a family law matter against a family law lawyer:

1. A jointly commissioned psychiatric report was prepared for the purposes of custody and access assessment in Family Law Court. Was it appropriate that such a report be used by one party against the other party in a criminal law proceeding involving the same parties?
2. Was it appropriate for opposing counsel in a family law matter to share a judge's comments made at a family law Pre-Trial with a prosecutor in the criminal proceedings arising from the family law matter, or was there some assumption of confidentiality on the part of the Judge with respect to comments not made in open court being disclosed for another purpose in another proceeding?

Ruling:

1. With respect to issue #1, a jointly commissioned report submitted for purposes of family law proceedings was provided to a prosecutor in a related criminal matter. As the report was jointly commissioned, it was not inappropriate for the lawyer to provide the report to the prosecutor. It would be up to the prosecutor to decide if the report was relevant to the criminal law proceeding, and up to the Court to decide on admissibility.
2. With respect to family law counsel sharing comments made by a Judge at a family law Pre-Trial with the prosecutor in a related

criminal matter, this was a breach of Rule 191(15) of the Court of Queen's Bench Rules. The Committee was of the opinion that the rule was clear, the lawyer ought not to have done this, as the comments were privileged information.

The Committee reminded the lawyer to be mindful of her obligation to remain objective on the facts of this case and her obligation to comply with the Rules of Court. The Committee concluded that this particular incident was an error in judgment and directed no further sanction against the lawyer in this matter.

Chapter XVI - "Responsibility to Lawyers Individually (Misc.) – Prompt Response to Other Lawyer – December 2002

Facts:

Lawyer Z acted for a financial institution which held a mortgage against Lawyer D's clients' property and was in the process of foreclosing. In July, another financial institution sent money to Lawyer Z to pay out the mortgage. Lawyer Z wrote to the other financial institution and to Lawyer D in July to request recoverable costs and to advise that he would not provide a discharge unless all costs plus accrued interest were paid. Lawyer D was not prompt in responding. Taxation of account was held and an amount was agreed to. The money was then sent to Lawyer Z. Lawyer Z applied the money to the debt leaving a small outstanding balance of interest. Lawyer D complained that Lawyer Z should have applied the money against the outstanding mortgage account balance instead of threatening to commence foreclosure proceedings for a small amount and claiming costs on a solicitor/client basis.

Ruling:

The Ethics Committee ruled that Lawyer Z acted appropriately and the issue was precipitated by Lawyer D's lack of response. It is a "legal" or "business" strategy decision as to whether or not the bank chooses to foreclose and the Ethics Committee declines to answer legal questions of this nature.

Chapter XVI – "Responsibility to Lawyers Individually (Misc.) –Lack of Communication Between Lawyers – December 2002.

Facts:

Lawyer Z acted for a financial institution and was to receive net proceeds after the sale of a company and assets by Lawyer W's client. There was a dispute between the lawyers as to what "net proceeds" should be. Lawyer W was not entirely direct in telling the number amounts to Lawyer Z when asked. When it came down to the closing, a sum of money in property taxes was to be deducted from the money to be paid to the financial institution. Lawyer Z complained that Lawyer W had misled him, and that indeed Lawyer W's clients had "forborne" taking action on this claim. The Ethics Committee reviewed whether or not there was indeed an agreement to forebear by Lawyer W and his clients, and whether or not Lawyer Z "misled" Lawyer W with respect to the amount of the eventual proceeds.

Ruling:

The Ethics Committee ruled that each lawyer had an interpretation of what was meant by "net proceeds" and of whether or not there was forbearance by Lawyer W's client. The Ethics Committee was of the opinion that it would have been preferable for both lawyers to turn their minds to the issues at the outset, however, there is nothing unethical in the conduct of either lawyer.

Chapter III – "Advising Clients" – Backdating Commercial Documents – December 2002

A member inquired about backdating commercial documents. The Committee was in agreement that one can date a document on the date it is signed and it must be the date the document is actually signed. However, it is common to say that the document is signed "effective as of _____ date" or "dated for reference _____ date" if the document was to be effective on a date prior to actual execution.

Clients should be advised that they may not always achieve a desired result even if a document is backdated "effective as of _____". A lawyer can act on the instructions of an accountant in such circumstances, but must clearly inform a client exactly whose advice the client is relying on. If the question being asked is "whether or not a person can put the wrong dates in a document and rely on same", the answer would, of course, be "no".

Chapter XIV – " Advertising, Solicitation and Making Legal Services Available" – Advertising Cumulative Years of Experience – December 2002

Facts:

A member inquired as to lawyers advertising "cumulative" years of experience among lawyers in an office.

Ruling:

The Committee is of the opinion that it could be misleading to the public to advertise that several members of a firm have 50 years of experience, particularly when it seems to indicate that the members of the firm each have 50 years of experience in the Supreme Court of Canada. The Ethics Committee advised firms using this advertising technique that their advertisements read as if all lawyers have 50 years of experience and/or have 50 years of experience in the Supreme Court of Canada, and that the Ethics Committee was of the opinion that this could mislead the public. The Committee would like to advise the membership that this type of advertisement could indeed be misleading, that this practice is not condoned by the Law Society of Saskatchewan, and that members should not do this in future advertisements.

Chapter V – "Impartiality and Conflict of Interest Between Clients" AND Chapter IV – "Confidential Information" – Cannot Advise Current Client about a Former Client's Affairs – December 2002

Facts:

Lawyer X's client, Mrs. X, was an elderly woman who required home care assistance. Mrs. X hired Y to act in this capacity. Lawyer X knew of Y as someone who had lost her home care license and who had been accused of taking advantage of seniors, as Lawyer X's firm previously represented Y in this regard. Lawyer X acted for Mrs. X with respect to will and estate matters and Mrs. X continued to ask her about various home care providers. Lawyer X wanted to know how to handle the situation.

Ruling:

The Ethics Committee was of the opinion that Lawyer X has no choice but to send her client, Mrs. X, to another lawyer on the issue of the Homecare/Y relationship, as she cannot speak about a former client of the firm, i.e. Y.

The Law Society of Saskatchewan Libraries

by Susan Baer

Annual Password Change to Members' Section

This is a reminder that the password and user id for the members' section changes every year with membership renewals. The new user id and password were sent to you with your annual practice certificate. The 2002 user id and password were disabled on January 15, 2003. The user id changes every year as well as the password. This procedure allows for the overlap of the old password and new password during that transition period and over the busy Christmas season. If your computer stores your password, remember to change the user id when you enter the new password. Non-practicing or inactive members may still access the members' section for an annual fee of $250.

Commercial Databases in the Members' Section

In December 2002, the library loaded a new service to a variety of databases that are produced by commercial publishers, meaning ones that the library staff have not created themselves. Included in the databases are two legal databases: the Index to *Canadian Legal Literature (ICLL)* and *LegalTrac*. The ICLL database is one of the databases offered on QL Systems and will be added to WestlaweCarswell later this year. For those members who do not subscribe to an online service, these should be welcomed additions to the research databases for use on our website.

The commercial databases are located in the members' section and are databases that are paid for under the Multitype Database Licensing Program. These databases are not offered for free on the Internet. The Library contributes money to this program to provide the databases to you at your desktop. The Multitype Database Licensing Program is a consortium, where many Saskatchewan libraries finance the bulk purchase of access to electronic information databases for every resident in Saskatchewan. You may receive the same access to these databases at your public library by using your public library barcode. We gratefully acknowledge the assis-

tance of the Provincial Library in bringing this service to your desktop.

We provide access to eleven databases under the topics of law, health, business and general reference. T*he Index to Canadian Legal Literature* indexes law journals, law reports (the articles in them), selected books, book reviews, theses, various CLE materials and seminar proceedings. It contains only citations to articles and is strictly Canadian in focus. Once you locate articles you need, you can ask the library staff to get copies of them for you.

LegalTrac contains citations and articles from major law reviews, law journals, legal newspapers, speciality law and bar association journals. It is mostly American in content, but does have international coverage. It contains some fulltext articles and citations. If your search uncovers citations only, you may ask the library staff to help locate copies of articles for you.

The Business databases are useful for a broader perspective on a topic, depending on your research. For example, a recent search on privacy issues and court judgments produced a larger number of relevant articles in the business databases than in the legal databases.

The Health databases are useful for drug information and descriptions of medical conditions. The General reference databases index selected newspapers, reference works, periodicals, and journals that cover topics such as computers, environmental issues, politics, biographies, economics, education, sports and industry. There is one database called the *Directory of Associations in Canada* which provides detailed listings of approximately 19,500 Canadian associations and international associations relevant to Canadians.

One kudo about access: some users may require passwords **other than the members' section user id and password**. The passwords to these databases must remain confidential to our members or to those inactive members who pay for access to the members' section. If you get prompted for the password and have not yet received it, or, if you are having difficulty accessing the databases, please contact the Regina library and ask for Kelly Chiu. The Provincial Library is working with us to change this procedure in the future. Until then, members will have to contact the Regina library for the password.

For help in locating articles, or, for help in forming your search, please ask for the reference staff at the Saskatoon or Regina libraries.

Copyright

Each member should receive a package in early 2003 from the Law Society regarding copyright. The Chairman of the Libraries Committee is sending a letter with a new copyright declaration form. Each member must read the copyright notice, sign the photocopy declaration, and return it to the library in Regina. You must sign the revised copyright declaration, even if you have already submitted a copy to the library. If you have questions, please contact Susan Baer at sbaer@lawsociety.sk.ca or phone at 569-8020, toll-free at 1-877-989-4999.

Legal Web Cites

By Peta Bates

In November 2002 Manitoba statutes and regulations were made available on a free web site hosted by the Manitoba Queen's Printer. Statutes are in HTML format and regulations are in PDF format. The legislation on the web site is provided for convenience only and is considered an unofficial version. Reference should be made to the print statutes in the annual volumes or the regulations in The Manitoba Gazette.

Manitoba. Statutes
http://web2.gov.mb.ca/laws/statutes/index.php

The web site contains the Continuing Consolidation of the Statutes of Manitoba (C.C.S.M.) as well as various municipal acts and private acts. The currency of each act is indicated at the top right corner of the first page.

Each act has a Table of Contents link located under the name of the act. The Table of Contents provides hyperlinks to the relevant sections of the act. Amending acts are listed after each section. References to acts passed after 1995 are hyperlinks so that you can view the actual amendment in the annual statute volume.

Both English and French versions of statutes are provided. To switch to the other language, click on the "Français" or "English" link at the top right corner of the statute or click on the section number of the act.

Regulations made pursuant to each act are found under the "Regulations" link located under the name of the act.

Statutes not yet in force are listed in the Table of Statutes with a link to the text in the annual statute volume.

Keyword Searching the Statutes

The keyword search screen is accessed by the "Search the Acts" link at the top right of the home page. Search queries are constructed using the "and", "or" and "not" connectors, quotation marks for a phrase, and the " * " for retrieving alternate endings to a root word.

The search results page includes the search query, the date and time of the search and a list of statutes that contain the search terms. You can choose to view the entire statute or just the paragraphs where the terms appear.

Manitoba. Regulations
http://web2.gov.mb.ca/laws/regs/index.php

The regulations are also available in both English and French versions in PDF format. Each statute has a link to its own regulations and there is also a link on the home page to the Table of Regulations. Some of the schedules to the regulations are still incomplete so some of the forms may be missing.

There is no keyword search capability for the regulations as a whole although individual regulations can be searched using the Acrobat Reader's "find" command.

Manitoba Queen's Bench Rules
http://web2.gov.mb.ca/laws/regs/qbre.php

The Queen's Bench Rules (Manitoba Regulation 553/88 as amended) are also available on this web site. The Table of Contents provides links to specific sections in the rules.

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