

BENCHERS' DIGEST



Volume 16, Issue Number 2

March, 2003

Highlights of the Meeting of the Benchers Held February 6th and 7th, 2003

New Bencher Saskatoon Electoral District

The Benchers appointed Alma Wiebe, Q.C. as a Bencher pursuant to section 20 of *The Legal Profession Act, 1990* to replace Donna Wilson, Q.C. who was appointed to the Bench. Ms. Wiebe was appointed on the recommendation of the Saskatoon Bar Association. Ms. Wiebe was admitted to the Law Society in 1979 and practices family law as a partner in the law firm of Walker, Plaxton & Company.

Collaborative Law

The Benchers gave first reading to a proposed Rule 1620 which reads as follows:

1620. A lawyer may not, in any marketing activity, describe him or herself as being qualified to practice collaborative law unless he or she has successfully completed a course approved by the Admissions & Education Committee.

It is expected that the Rule will be given second reading and passed at the next meeting of Benchers to

be held April 3rd and 4th. At that Convocation, the Benchers will also be considering the approval of collaborative law courses which will enable members to comply with the Rule.

The Code of Professional Conduct and Rule Amendments

Rule 942

The Benchers were advised that effective February 3rd, 2003, changes initiated by the Canadian Payments Association will allow payments exceeding \$25 million to be made only by electronic transfer. While we expect this will have a limited effect on our members, it was necessary to take steps since the Rules only permitted payment out of trust by way of cheque.

With the assistance of the Law Society of Alberta, the Benchers approved new sub-rule 942(2) which sets out the process for such electronic transfers in excess of \$25 million. In addition, a new Form TA-8 was approved.

Rule 1203

At the last Convocation, the Benchers approved major amend-

ments to trust account forms TA-3, the Practice Declaration, and TA-5, the Accountants' Report. As part of the package John Allen, the Auditor/Inspector, recommended the deletion of Form TA-4, which is confirmation from the bank. He did not find this report useful. As a result, Form TA-4 was not forwarded to firms as part of the trust account package sent at the beginning of January. The Benchers approved the Rule amendment to delete sub-rule 1203(1)(a)(ii) to eliminate the requirement for filing Form TA-4. Form TA-4 itself was also deleted.

Chapter XV, Commentary 6 of The Code of Professional Conduct

This addition to The Code of Professional Conduct excuses the equity ombudsperson and practice advisor from reporting information about conduct obtained through the office of the equity ombudsperson or practice advisor, except where that conduct involves misappropriation or similar conduct.

CDIC Insurance – Rule 991

Questions 6(a) and (b) in the new trust account form TA-3, the Practice Declaration, refer to

requirements under Rule 991 regarding the Canadian Deposit Insurance Corporation (CDIC). By providing the CDIC declaration to their banks, firms will have CDIC coverage in the amount of \$60,000 for each client whose money is held in a

mixed trust account, as opposed to \$60,000 for the entire account. While this reporting requirement has been contained in the Rules since 1991, some members have not been aware of it. The inclusion of the questions in the new TA-3 have

raised members' awareness. Mr. Allen has prepared an information sheet which appears below and is posted in the Members' Section and the Publications Section of the Law Society website.

CDIC REPORTING REQUIREMENTS (Rule 991)

QUESTION:

Questions 6(a) and 6(b) in the new TA-3 refer to requirements regarding the Canadian Deposit Insurance Corporation (CDIC). I have discussed the annual reporting requirements with my bank and they were not familiar with these requirements. What is the correct procedure?

ANSWER:

Although annual reporting of client trust amounts has been a requirement of CDIC and the Law Society of Saskatchewan and other provinces for many years, many firms have not been meeting this requirement. Accordingly, some bank branches are not familiar with the requirements. A brief summary of these requirements along with a suggested sample reporting letter and format follows. Please keep in mind that the reporting format is the responsibility of each bank so that the format shown below should only be used after checking with your bank to determine if they have specific formatting requirements.

CANADA DEPOSIT INSURANCE CORPORATION (CDIC)

CDIC provides insurance to depositors in the event that a member financial institution is unable to meet its debt obligations. The depositor is generally covered for up to \$60,000.00. Although all financial institutions may not be CDIC insured, major banks are covered whereas credit unions have their own guarantee mechanism. Deposits with credit unions are 100% guaranteed by Credit Union Deposit Guarantee Corporation.

Law firms holding trust funds on behalf of clients must remit an annual client listing to the financial institution (except for credit unions - no report required). This is to ensure that each client is eligible for the \$60,000.00 insurance coverage. If a listing is not provided, the \$60,000.00 coverage must be shared amongst the clients within the trust bank account. The listing must be prepared as of April 30 and sent by the law firm to the financial institution by May 30 each year.

In the event that a law firm commences practice after April 30, the law firm should send the listing to the financial institution after the first trust reconciliation has been completed. Some points to remember when preparing the client listing for CDIC coverage purposes:

1. The client listing must be as of April 30, and must be remitted within 30 days of that date (by May 30).
2. The client listing should include a client number and a dollar amount. The client name is not required to be disclosed under *The CDIC Act* and as such cannot be disclosed under the *Code of Professional Conduct*.
3. The onus is on the law firm to remit the client listing to the financial institution.
4. The client listing is to be sent to the financial institution not the CDIC.
5. Separate interest-bearing accounts (SIBA) should also be included in the listing submitted to the financial institution as the client may be eligible for additional coverage. If the client has funds in the mixed trust bank account and in a SIBA, both deposits could qualify for the \$60,000.00 coverage. To be eligible, the law firm must demonstrate that more than one "distinct trust arrangement" exists. Otherwise, the trust funds for the client will be aggregated and coverage limited to \$60,000.00.
6. SIBA deposits with a maturity of greater than five years are not eligible for coverage under the CDIC Act.
7. U.S. dollar and all other foreign currency accounts are not eligible for coverage under the CDIC Act.

May 15, 20____

Bank of _____
Anywhere, Saskatchewan

Dear Sirs:

Re: Annual CDIC Report

In accordance with CDIC reporting requirements and as set out in the Rules of the Law Society of Saskatchewan (Rule 991), I am attaching a listing of client trust amounts on deposit with your branch as at April 30, 20_____.

If any further information is required, please contact me.

Signed _____
Member

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LAW FIRM
Client Trust Listing
April 30, 20_____

Client	Amount in Trust
#603	\$500.00
#894	1,000.00
#897	800.00
#901	200.00
#902	600.00
#903	400.00
#904	<u>500.00</u>
Balance Mixed Trust Account – April 30, 20_____	\$4,000.00
Separate Interest Bearing Accounts (SIBA's)	
#894	\$50,000.00
#903	46,000.00
Total – April 30, 20_____	<u>\$100,000.00</u>

Date: _____

Signed: _____
Member

Uniform Trust Conditions

A sub-group of the Real Estate Committee, which is made up of real estate practitioners across the province, has been updating the Uniform Trust Conditions to reflect changes in real estate practice in light of the LAND System. The proposed new Uniform Trust Condition letter was on the agenda for consideration by the Benchers at Convocation. However, at the same meeting, the Ethics Committee was considering a request for a ruling on the issue of lawyers for purchasers forwarding to the lawyers for vendors the balance to close and the mortgage proceeds on the possession date, but prior to the registration of the transfer, authorization and mortgage, in order to avoid late payment

interest. The Ethics Committee believes this practice is not appropriate and recommended that the Uniform Trust Condition letter be amended to deal with it.

It is hoped that the changes can be made in order that the Uniform Trust Condition letter can be put to the Benchers for approval at the April Convocation.

Lawyers Selling Real Estate

Another sub-group of the Real Estate Committee is looking into the issue of lawyers selling real estate. Their task is to prepare guidelines for lawyers to sell real estate within the limits set out in section 3(1)(f) and (3) of *The Real Estate Act* and of course, the Rules of

the Law Society of Saskatchewan and *The Code of Professional Conduct*. It is hoped that a report can be ready for consideration by the Benchers at the April Convocation.

Special Fund Claim

The Benchers approved a Special Fund Claim relating to the recent discipline matter involving Reginald Parker of Saskatoon. The claim involved a failure to remit settlement proceeds from a personal injury action to Saskatchewan Hospital Services Plan. This claim was the basis for one of the issues for which Mr. Parker was found guilty of conduct unbecoming a lawyer and was sentenced at a hearing in December, 2002. Mr. Parker was given permission to resign.

In Memory Of

CHRISTINE WILNA (WILLY) HODGSON passed away on February 14th, 2003 at the Moose Jaw Union Hospital after a long battle with cancer. Ms. Hodgson was born in 1935 at Sandy Lake, Saskatchewan. Willy was a Lay Bencher for the Law Society from 1997 – 2001 and provided invaluable service. She was recognized for her career in social work and human resources and her lifelong work to advance Aboriginal people in Saskatchewan. Willy was granted an Order in Canada in late 2002.

Ms. Hodgson is survived by her husband, William, daughters Heather and Fern and sons Bill and Dean.

Notice re: Missed Limitations

As members will have noticed, the annual Insurance Assessments have decreased dramatically in the past few years, from a high of \$2,400 in 1998-99 to \$950 for the current policy year.

In each of the policy years 1993-94 and 1994-95, there were 167 claims. In the 2001-2002 policy year, there were only 66 claims.

While we believe that a large part of this decreasing claims rate is attributable to the success of loss prevention programs, we have not lost sight of the fact that the implementation of No Fault has resulted in the elimination of claims in the “missed limitation – auto accident” category.

The Insurance Committee would like to remind the members that with the return of tort to *The Automobile Accident Insurance Act*, the use of diary and tickler systems to ensure that limitation dates are met is extremely important.

SLIA Claims Committee Award to Don Phillips, Q.C.

In 1998, the Benchers decided to form a Claims Committee which was given the authority to deal with coverage issues, to approve settlements and to instruct and recommend counsel. Mr. Schonhoffer has authority to agree to settlements and to instruct counsel and to settle matters involving \$25,000 or less. The Claims Committee meets periodically to deal with issues beyond the administrative authority granted to Mr. Schonhoffer.

The Claims Committee is made up of the Chair and Vice-Chair of the Insurance Committee, the SLIA representatives to the CLIA Advisory Board: Neil Gabrielson, Q.C. and Michael Milani, Q.C., Don Phillips, Q.C. of SGI and Patrick Kelly, Q.C. of McDougall Gauley. These volunteers have provided excellent advice and guidance on many claims which have gone through the insurance program over the years.

Recently, the Insurance Committee and the Benchers agreed, in recognition of his contributions to the Committee, to present an award of appreciation to Don Phillips, Q.C., an original appointee to the Claims Committee. Mr. Phillips continues to volunteer on the Committee and to provide excellent advice on law and strategy.

Appointment to Federal Court

Congratulations to Jim Russell on his appointment as Judge of the Federal Court of Canada, Trial Division and member *ex officio* of the Federal Court of Appeal in December of 2002. Mr. Russell was called to the Bar of Saskatchewan in 1983 and was an associate and partner of McDougall, Gauley from 1983 to 2002.

Bencher Elections

The year 2003 is an election year for Benchers of your Law Society. Members are encouraged to give serious consideration to putting their names forward or convincing good candidates to stand for election.

Female and Aboriginal lawyers are under-represented as Benchers. Their voices are needed to balance the perspectives on issues before the profession.

Any members who have issues which they wish to be raised informally with either the Queen's Bench or Provincial Court Bar Judicial Councils may contact any of the following members or the Law Society office. Issues are discussed confidentially and the contributors remain anonymous:

**Provincial Court Bar
Judicial Council**

Chief Judge Seniuk
Judge Kolenick
Kenneth Neil
Norma Sim
Barry Morgan
Lana Krogan
Mitchell Holash

**Queen's Bench Bar
Judicial Council**

Chief Justice Gerein
Justice Hunter
Rick Van Beselaere
Robert Gibbings
James Ehmann
Reg Watson

Public Relations

Many of our members are asked to speak at a school for a number of reasons. The teacher may ask students if one of his/her parents is willing to talk to the class about what they do, like on career day functions, or the social science or law class is covering a specific topic and the teacher happens to know a lawyer. The contact is only if the teacher thinks about it or is good friends with a lawyer in the community. In an attempt to increase our profile with teachers in the province so they have a point of contact to arrange for a speaker for their class, the Public Relations Committee prepared a flyer for the Social Sciences Teachers' Symposium. The Social Sciences Teachers' Symposium is a province-wide meeting of teachers being held in Saskatoon this March. Our one-page flyer is designed only to remind the teachers that members of the Law Society are willing to speak to classes on a variety of topics. The Benchers and professional staff volunteered to be the first contact for the teachers, to either act as the speaker or to provide the names to the teacher of lawyers in the appropriate community. Part of the mandate of the Public Relations Committee is to undertake initiatives to raise the standing of the Law Society and its members. Any speaking engagement in the schools should be seen as an opportunity to educate students at an early age about the role of lawyers and the legal system. We appreciate the co-operation of our members.

The Law Society of Saskatchewan Libraries

by Susan Baer

TWL (This Week's Law) ceasing publication

Letters have been sent to all loyal subscribers of *TWL* or *This Week's Law* announcing the discontinuation of the service in print. The last issue of *TWL* is in preparation to complete the 2002 20th Anniversary volume. *TWL* was the Law Society Library's digesting service of all Saskatchewan case law. *TWL* served the needs of Saskatchewan lawyers at a time when computer use was not very prevalent and printed resources for Saskatchewan case law were scarce. Over the years *TWL* developed into a case digesting service and a Saskatchewan legislation tracker. In-house databases were

prepared to produce *TWL* and they continue to be maintained.

When the Law Society created the members' section and opened the research databases to all members, the subscriptions to the printed *TWL* began to fall. The contents of *TWL* are included in the databases in the members' section, albeit not in the exact same format, but they are on your desktop through an Internet connection.

Casemail is an email service that is a derivative of *TWL* and the digest database. It functions similarly to the loose pocket parts to printed law reports, only it is sent via email. *Casemail* contains digests

of cases from Saskatchewan courts with links to the full-text judgment. *Casemail* is located in the members' section or you can request to receive it automatically in your email. You can ask to subscribe to the email service in the members' section or simply send an email message to reference@lawsociety.sk.ca to be signed up for this service. Even if you are uncertainly about computer searching, you can at least receive *Casemail* in your email and read up on Saskatchewan case law.

I would like to thank our loyal subscribers over the years for supporting *TWL*.

SKLESI launches two new web-based services

At www.sklesi.org there are 2 new icons on the left-hand side of the homepage - **SKLESI Online CLE** and the **Practice Management Resource Library**.

SKLESI Online CLE currently offers 15 topics from popular SKLESI SCN and videotaped seminars. You can select individual presentations or work your way through an entire seminar. The presentations vary in length from 15 to 45 minutes and materials accompanying the presentations are downloadable. SKLESI Online CLE is quick and easy to access and payment for your selections is through a secure online payment system. You can view a short demo before purchasing a presentation.

You will need a Pentium PC with a sound card and speakers or headset; Windows 95 or higher or NT 4 or higher; a web browser such as Netscape or Microsoft Internet Explorer versions 4 or higher; Windows Media Player 6.4 or higher; and Adobe Acrobat Reader (the latter three are available on the Net free). A standard 28.8 modem works fine. Online CLE performs a system's check before you access an online presentation.

SKLESI Online CLE is a great way to help in the training of others in the firm who were unable to attend the live seminar or augment your own learning. It is our intention to put online selected presentations of live and televised seminars throughout the year. This is a pilot project with LEGALSPAN.COM, one of the leaders in the field of online continuing legal education...so the more

people use it, the more we can put online.

Presentations from the following seminars can now be purchased online:

- On the Move: Issues of Custody, Access and Mobility in Family Law (Dec. 2002)
- Trial By Paper: Preparing Effective Affidavits under Part 40 (Mar. 2002)
- Sharpening your Focus - Practice Management (May 2001)
- Criminal Law Snapshots (Dec. 2000)

Our **Practice Management Resource Library** has over 70 *Articles, Practice Tips, Recommended Titles, Sample Forms and Annotated Links* and was designed to provide you with inspiration, guidance, and ideas on a variety of practice management topics. There is no subscription fee. The information has been reproduced with permission from a wide range of Canadian and American sources, and you can either read the full text on screen, copy and paste it to your computer, or print it out. The library is divided into the following categories:

- Starting Up
- Strategic Planning, Business Strategies and Leadership
- Law Office Systems
- Human Resources
- Client Services and Marketing
- Technology, Creating Balance
- Winding Down
- Sample Forms
- Links.

At the end of each Article, Practice Tip, and Recommended Title section there is a field for you to send us your thoughts on what you have read or your suggestions for fur-

ther readings. The library is intended to be a "living tree" and we would like you to help us add to it and keep it up to date. We hope, that over time, this library will become a valuable resource for all lawyers regardless if you are in solo, small firm, or large firm practice.

The following individuals participated in the development of the Practice Management Resource Library:

Christine Davern, Office Manager - MacPherson, Leslie & Tyerman
Sheila Denysiuk - Walker Plaxton & Co.

Robert Kennedy, QC - Halyk Kennedy Knox

Andrew Mason - Dufour Scott Phelps & Mason

Donald Osman - Osman Gordon & Co.

Richelle Rae, Student - College of Law, University of Saskatchewan

Dion Rowney, Programmer - Division of Media and Technology, University of Saskatchewan
and Abena Buahene, Executive Director, SKLESI

Don't forget, next time you are on the Net, check out www.sklesi.org

Legal WebCites

By Peta Bates

Tracking federal legislation as it passed through Parliament used to require visits to several web sites: the Parliamentary web site for the text of the bill and its current status, the Parliamentary Research Branch for analysis of the bill, and the web site of the sponsoring federal department for press releases and background papers.

The new LEGISINFO service from the Library of Parliament provides all this information, and more, on one comprehensive web site.

Canada. Library of Parliament. LEGISINFO
<http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E>

The bilingual LEGISINFO service from the Library of Parliament tracks government bills in the House of Commons and Senate. Information provided for each bill includes:

- the text of the bill at all stages from first reading to Royal Assent
- major speeches by all parties at the second reading stage
- key dates for the progress of the bill with links to *Hansard* (updated daily)
- recorded votes with links to *Hansard*
- coming into force information from the text of the bill
- the equivalent year and chapter number for the bill in the Statutes of Canada

- links to a prior version of the bill if it was reintroduced from a previous session
- information from the sponsoring department including press releases and background documents
- a legislative summary of the bill prepared by the Parliamentary Research Branch
- links to related reading including reports from Standing Committees, citations to journal articles on the subject matter of the bill and links to related web sites

For each Parliamentary session the bills are listed chronologically by bill number. There is also a "Find the Bill" search box located at the lower left of the screen that searches across all sessions. Search by bill number (C-2, c2 or 2) or by a keyword or phrase in the title of the bill (*employment insurance*).

Coverage begins with bills introduced in the First Session of the 37th Parliament that ran from January 29, 2001 to September 16, 2002. The service is currently focused on bills from the Second Session that began on September 30, 2002.

The LEGISINFO web site is clean and easy to navigate. Packed with information collected from legislative, governmental and media sources, this web site is a quick and comprehensive source for federal legislative research.

Rulings – Feb 2003

Chapter XVI, “Responsibility to Lawyers Individually” – Undertakings – Writs of Execution - February 2003

Facts:

A member requested a ruling from the Ethics Committee with respect to Writs of Execution. Because of the “auto attach” rule, a Writ of Execution will only attach where there is an exact match of the execution debtor to either the name of the registered owner or the name of the transferee. If Lawyer A acted for a Vendor, Ronald Smith, selling land to John Jones, represented by Lawyer B, a Writ of Execution registered against a “Ron Smith” (one and the same person as the Vendor) would not register against the land because there was not an exact name match. The member inquired about a situation where Lawyer B sends purchase monies to Lawyer A and requires Lawyer A to provide an undertaking to discharge the Writ of Execution. The issues for the Ethics Committee are as follows:

1. Is Lawyer A obligated to provide the undertaking requested by Lawyer B?
2. If Lawyer A is not obligated to provide the undertaking to Lawyer B, does Lawyer A still have a duty or obligation to pay out the Writ of Execution in any event?

Ruling:

1. With respect to issue #1, the Ethics Committee determined that no, the lawyer would not be obligated to provide this undertaking.
2. With respect to issue #2, the Ethics Committee determined that no, if the debtor’s lawyer has not misled the other lawyer there is no “automatic” obligation. It is the other lawyer’s obligation to be alive to the writ issue, and the registering lawyer’s obligation to be accurate about registration.

Chapter III, “Advising Clients” - Writs of Execution - February 2003

Facts:

A member requested a ruling from the Committee with respect to writs of execution. A creditor registered a Writ of Execution in the Writ Registry against John Doe. John Doe’s full legal name is Jonathan Matthew Doe. Mr. Doe wishes to purchase land with money to be borrowed from the financing institution to be secured by

a mortgage. For the purposes of the question, the member asked the Committee to ignore the issue of the bank’s lawyer’s responsibility to protect his or her client.

The writ will only attach if the transfer and mortgage are in the name of John Doe. The writ will not attach if the transfer and mortgage are in the name of Jonathan Doe, Jonathan Matthew Doe, or Matthew Doe. If the lawyers representing the parties in this proposed transaction prepared the documents in a name other than John Doe and submitted same for registration without first searching the Writ Registry, the writ would not attach and the transfer and mortgage would registered clear of the writ. However, conscientious lawyers are to search the Writ Registry before submitting documents to the Land Registry for registration and herein lies the problem. In this example, if a search is done, and the client confirms that he is the John Doe named in the Writ of Execution, is it ethically acceptable for the registering lawyer to proceed with registration of the transfer and mortgage in the name of Jonathan Matthew Doe, knowing that John Doe, against whom the Writ of Execution is registered is the same person as the transferee/mortgagor, Jonathan Matthew Doe?

1. Is it ethically acceptable for the registering lawyer to suggest to Doe that he take title and grant the mortgage in his full name, Jonathan Matthew Doe, rather than in his everyday name, John Doe, in order to avoid attachment of the Writ of Execution?

Ruling:

The Committee indicated that as the member’s hypothetical sets out a situation where a lawyer deliberately advises a client to avoid creditors by registering a particular name, this would be unethical. However, the Committee noted that there is a fine line between giving debtor clients general advice and specifically trying to avoid particular consequences. A lawyer would need to advise the debtor client of consequences in particular situations or could be negligent for failing to do so. It is difficult to answer this hypothetical for this reason and as well because all fact situations differ. As such, this ruling cannot necessarily serve as a blanket ruling for all other situations of this nature.

Chapter VI, “Conflict of Interest Between Lawyer and Client” – Lawyer Acting for Common-Law Spouse - February 2003

Facts:

Lawyer A acted for the Testator, Client A. Client A became ill in the spring of 2000. Lawyer A prepared a will for Client A that spring in which Lawyer A was named as Executor. That fall, a nephew took the will to another lawyer, Lawyer B, and asked that it be amended to remove Lawyer A from the position of Executor. The will was identical other than the change in Executors. The Testator signed the will in the fall 2000 and passed away shortly thereafter. There was a trust for the common-law spouse contained in both the spring 2000 and the fall 2000 wills indicating that the Executor and the common-law spouse would consult to decide what was required for her support. Lawyer A began acting for the common-law spouse as her rights under *The Family Property Act* and *The Dependant’s Relief Act* were not entirely covered off by this will. The two lawyers were attempting to settle matters by varying the trust to give the common-law spouse a definite payment and share the rest among the residual beneficiaries. One residual beneficiary complained to the Law Society about a conflict of interest with respect to Lawyer A. Lawyer A admitted that if the family were to challenge the will on capacity or undue influence, it is possible that he could be called as a witness and would not be able to act on behalf of the common-law spouse. Lawyer A did not believe that he was in a conflict of interest acting for the common-law spouse at this time.

Ruling:

The Ethics Committee was of the opinion that as Lawyer A took instructions from the Testator originally, he should not have acted for the common-law spouse regarding *The Family Property Act* and *The Dependant’s Relief Act* challenge to the will. At the very least, there is a perception or appearance of conflict of interest and, at worst, there could have been an actual conflict.

Chapter IV, “Confidential Information” – Release of Client Files to Executrix, Chapter XI – “Fees” – Billing Another Lawyer for Reviewing Deceased’s Files Before Forwarding to Executrix - February 2003

Facts:

Lawyer D wrote to Lawyer E August 2002 stating “We have been advised that the late Client X may have had dealings with yourself regarding a life insurance policy

and/or the purchase of land”. Lawyer E indicated that Lawyer D’s wording that the deceased had dealings with “yourself”, made Lawyer E think that he was being accused of having had personal dealings with the client. Lawyer E wanted it to be understood that he had never sold life insurance or had business dealings with clients. Lawyer E was frustrated, as he felt Lawyer D was vague in all of her letters and did not give him enough information to locate any of the files of the deceased. Lawyer E took offence to the letters and thought they meant that Lawyer D was accusing him of something or “fishing” as she was not direct about the items for which she was searching. Lawyer E complained that it took a great deal of time to search through old files trying to find any matters with the particular deceased client. Lawyer E indicated that he felt Lawyer D should have simply picked up the telephone, or else been more concise in her correspondence. In her next letter, Lawyer D asked Lawyer E for written confirmation as to whether or not Lawyer E had any dealings with Client X. Lawyer E felt that this request for written confirmation was of concern as he felt that if he said that he could not find any files, Lawyer D would then produce what she had and make it look like Lawyer E was not telling the truth. Lawyer E wondered why, if she had something that indicated he had previously acted, why Lawyer D would not just provide him with details of same. Later on, Lawyer D advised that she was instructed by the Executrix of the Estate of the deceased Client X to determine whether there were any outstanding matters with Lawyer E’s office that required the attention of the Executrix. The client agreed to pay an administrative fee for that search. Lawyer E has now submitted a statement of account totalling over \$900.00 representing his legal fees for the time spent dealing with Lawyer D and undertaking to search for the files. The two lawyers are now in a dispute about this billing.

Ruling:

The Ethics Committee noted that the lawyer has an obligation to review the files of the deceased client in such circumstances and decide if there is a privilege issue. The lawyer needs to satisfy himself or herself that a file of the deceased is a file the Executrix may have or if it is privileged. Depending on the circumstances, Lawyer E may have had to spend some time reviewing matters with the privilege issue in mind and taking a position. This situation is more than a simple file transfer. However, Lawyer E should have advised Lawyer D of the fact that he would charge for his services if she was not able to be more specific about what she required. As

well, the Committee would like to point out to both members that the matter would not have escalated to this point if both counsel had been more concise and reasonable in their dealings with one another.

Chapter XVI, “Responsibility to Lawyers Individually” – Contacting Another Lawyer’s Client - February 2003

Facts:

Lawyer L acted for a debtor, Lawyer M acted for a financial institution. Lawyer L indicated that in June 2002, he was contacted by his client to act on a land sale and by a private investigator/bailiff acting for the financial institution, inquiring about the status of the file. Lawyer L advised the investigator/bailiff that the land in question had been sold, and the investigator advised that his financial institution client held a mortgage and a general security agreement on the property. Lawyer L asked the bailiff to provide him with the loan payout amount, which was done. Lawyer L again contacted the bailiff later in the month for particulars of insurance, legal fees and the security document. Lawyer L was contacted directly the following month by an employee of the financial institution who was handling the file. The employee advised Lawyer L that Lawyer M was now representing the financial institution.

The following month Lawyer L and Lawyer M exchanged particulars and Lawyer M requested payment from Lawyer L’s clients by the end of the following month, failing which he would simply realize on the financial institution’s security. Lawyer L’s clients had concerns about the costs Lawyer M was claiming. The sale went through and Lawyer L tendered funds directly to the financial institution based on the payout amount previously provided by the bailiff, along with a letter indicating that he would not be including funds for costs. The financial institution employee contacted Lawyer L to advise that they would not accept the funds directly, returned them to Lawyer L and asked him to forward same to Lawyer M directly. Lawyer L tendered the funds to Lawyer M, who replied requesting the additional costs. Lawyer L indicates that he paid these balances. Lawyer M complained to the Law Society that he had heard nothing by the deadline he imposed and proceeded to realize on the security when he was advised by his financial institution client that Lawyer L had written to them directly, a month after his deadline. Lawyer M stated that Lawyer L had contacted his client directly, knowing full well that they were represented and not only remitted

monies to the financial institution, but made “substantive legal argument”. Lawyer L indicated that in past, he had tendered funds directly to financial institutions in similar circumstances and that his letter to the financial institution did not make “substantive legal argument”, but simply stated he would not be including funds for costs.

Lawyer M felt that Lawyer L was discourteous in that he dealt with the sale of the property without advising Lawyer M of some delay knowing full well that he planned to realize on the security after the deadline date. Lawyer L indicated that the financial institution was aware of the sale of land through their bailiff agent prior to Lawyer M’s involvement.

Ruling:

The Ethics Committee was of the opinion that this situation represented one of the reasons that the rule against contacting another lawyer’s client directly exists. If Lawyer L sent full payout to the financial institution directly, he should have at least cc’d Lawyer M as a courtesy. If Lawyer L was paying less than the full amount to the financial institution, he was in actuality negotiating with the financial institution for a better deal for the client and in such circumstances should be dealing directly with the lawyer for the financial institution.

Chapter III, “Instructions from 3rd Party” - Taking Will Instructions from Testator’s Nephew - February 2003

Facts:

A Testator’s nephew came to see Lawyer X to have an individual removed as the Testator’s Executor, and that was the only change. Lawyer X indicated that he made the change and sent the will with the nephew. Lawyer X did not see the Testator and was not present when the will was signed.

Ruling:

The Ethics Committee wished to comment on Lawyer X’s practice, as he took instructions from a 3rd party instead of the Testator, and did not see the Testator at all. The Committee wished to warn Lawyer B that this practice is not appropriate and could cause serious problems.

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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The Law Society of Saskatchewan
1100, 2500 Victoria Avenue
Regina, Saskatchewan
Canada S4P 3X2
Telephone (306) 569-8242
Fax (306) 352-2989
e-mail: reception@lawsociety.sk.ca