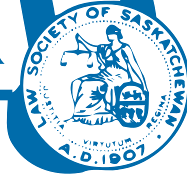
BENCHERS' DIGEST



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Money Laundering

by Rob Gibbings

On March 25th, 2003, the federal government labeled regulations exempting lawyers from the mandatory "suspicious transactions" reporting that had been required of financial intermediaries since November 2001.

This reversal by the federal government followed a series of injunctive orders obtained by the Federation of Law Societies of Canada, the first of which was obtained in British Columbia in November 2001. Similar orders followed across the country, including in Saskatchewan, where the Law Society's counsel was Tom Gauley, Q.C., ably assisted by Allan Snell, Q.C. The government's retrenchment also came three months before a trial was to commence in British Columbia to determine the merits of the constitutional challenge against the mandatory reporting requirements.

As was stated by the Supreme Court of British Columbia in granting the first injunction, the reporting regulations authorized "an unprecedent intrusion into the traditional solicitor/client relationship". These regulations would have seriously eroded the rights of Canadians to independent counsel and to confidentiality when dealing with their lawyers. The importance of the Federation's success in this matter cannot be over-estimated. Many other jurisdictions around the world, including Great Britain and the other members of the European Union, are subject to a mandatory suspicious transactions reporting system to lawyers, and has also re-energized efforts in those jurisdictions which are subject to the system to seek exemptions for lawyers from the reporting requirements.

We in Saskatchewan should be particularly proud of and grateful for the critical role played by Maurice Laprairie, Q.C., Past-President of the Federation of Law Societies, and a Past-President of the Law Society of Saskatchewan. While President of the Federation, Maurice established and worked closely with the Federation's Special Litigation Committee which led the successful court challenges. Maurice is also carrying the message of Canada's success to meeting of Bars from around the world. We should also thank the Law Society of British Columbia which initially urged the Federation to actively pursue this issue.

The battle is far from over. In announcing its latest position, the government restated its view that effective money laundering laws must cover lawyers. Accordingly, the Federation's court challenge in British Columbia has been adjourned for a year while negotiations continue with the government over this issue. Our Law Society continues to wholeheartedly support Maurice and the Federation in these ongoing efforts.

Call for Volunteers on the SKLESI Board of Directors

Graeme Mitchell, Q.C. and Holly Ann Knott, Q.C. currently serve on the SKLESI Board of Directors as joint Law Society of Saskatchewan/Canadian Bar Association representatives. Their tenure ends June 30th. Members interested in volunteering to serve on the Board of Directors are asked to contact the Law Society office.

Highlights of the Meeting of the Benchers Held April 3rd, 2003

Collaborative Law

The Benchers passed new Rule 1620 which reads as follows:

> **Collaborative Law**
>
> 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.

In order that members currently practicing collaborative did not find themselves offside the Rule, the Admissions & Education Committee also approved courses of study in collaborative law. The Committee received extensive information from collaborative law training providers, including information on the current arrangement for the training, being an introductory course in interest-based negotiations, a course in collaborative law and following some undetermined time of practicing collaborative law, an advanced course in collaborative law.

While the Committee is appreciative of the recommendation that collaborative lawyers take advanced training, there was some concern about setting a Law Society policy that would require the advanced training be taken within a certain period of time or after having completed "X" number of files. Therefore, the Committee did not include the advanced training as part of the required training for the purposes of Rule 1620. However, the Committee has no objection to Collaborative Lawyers of Saskatchewan Inc. or collaborative law training providers recommending that lawyers practicing collaborative law in Saskatchewan should take advanced training at an appropriate time.

The standard set by the Admissions & Education Committee to meet the requirements of Rule 1620 is that in order to practice collaborative law in Saskatchewan, members must take an introductory course, interest-based negotiations for a minimum of two days, as well as a minimum two day course in collaborative law.

The courses approved at the April Convocation are: Interest-Based Negotiations presented by Saskatchewan Justice; Interest-Based Negotiations presented by Walter & Walter Mediators; Interest-Based Negotiations presented by Palliser Conflict Resolution Inc.; and Collaborative Law presented by Palliser Conflict Resolution Inc.

Rule Amendments

Professional Corporations – Rule 1403

The Benchers amended Rule 1403(1)(b) regarding the documentation required for the renewal of a practicing permit for a professional corporation. In our first go-around of this process for December 31st, 2002, we found that requiring a current certificate of status, especially for a newly formed corporation, caused some difficulty for the members. Having gone through the process, it was determined that an amendment to Rule 1403 was required. The Benchers therefore agreed to add that as an alternative to a certificate of status, a member may provide a declaration that the professional corporation is in good standing.

Form A-13 - Declaration upon Enrollment

Because of the mobility requirements, members of other Law Societies who are permanently transferring to Saskatchewan cannot take the declaration in Form A-13 as it had been drafted. That document stated that the person had not held him or herself out as entitled to practice in Saskatchewan. Of course, under the Mobility Rules, they certainly can do that. The Form was amended with a clause to exclude holding out pursuant to the mobility provisions.

Form P-1 – Declaration of Non-Practice

Likewise, the Mobility Rules have affected the declaration of non-practice for members of other Law Societies who retain Saskatchewan non-practicing membership. Again, the Form was amended to allow non-practicing members who are practicing members of other Law Societies to take advantage of the mobility provisions while maintaining non-practicing status in Saskatchewan.

LAND Project

Representatives of the Law Society of Saskatchewan have met periodically with Mark MacLeod and other representatives of ISC to discuss the ongoing problems of the LAND system. At every opportunity, the Law Society representatives have pressed Mr. MacLeod, the Minister of Justice and the Deputy Minister for lawyers to be given the opportunity for meaningful input.

ISC representatives have stated that the internal structure of the corporation is part of the reason that such input has been delayed. Recently, the Law Society has been advised that it may now be possible for lawyers to provide input to ISC regarding improvements to the system.

One of the main concerns of the Law Society is that it is in the public interest that the Torrens System be the overriding principle of the LAND system, and that the new system not be simply a computerized information system.

We look forward to making progress to convey concerns to ISC.

University of Regina Senate

The Benchers appointed Darcia Schirr to the Senate of the University of Regina. Ms. Schirr, a 1980 graduate of the University of Regina, is a partner with the Robertson Stromberg firm in Regina, and was a member of the Board of Directors of the University of Regina Alumni Association.

The Law Society of Saskatchewan would like to acknowledge and give credit to Martin Kratz, a member of the Law Society of Alberta, for the following article that was published in the January, 2003 edition of the *Alberta Benchers' Advisory*:

Privacy Legislation soon to Affect Lawyers

Lawyers and law firms are included among the private sector organizations that must come to grips with the new mandatory privacy compliance regime that will be imposed on them under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) or applicable provincial legislation.

Respect for client confidentiality and privacy is a cornerstone of the legal profession. The new mandatory privacy compliance legislation is a further overlay on the protection of client confidentiality.

The original guidelines for the protection of privacy were established by the Organization for Economic Cooperation and Development (OECD) in 1980, which provided the framework for modern privacy legislation. Public sector organizations in Canada adhered to these guidelines in the form of the subsequent privacy statutes and the private sector complied on a voluntary basis. These guidelines become the foundation for the Canadian Standards Association (CSA) Model Code on the Protection of Privacy. It is this model code that many businesses adopted as a way to demonstrate best practices in relation to customer privacy.

In 1995 the European Union (EU) issued a directive on privacy of personal information that had the effect of prohibition EU businesses from sharing personal data with businesses in non-EU countries unless they met privacy requirements that were satisfactory to the EU. Canada responded by introducing a mandatory privacy compliance program for almost all private sector organizations under PIPEDA. The objective was to ensure access to EU business opportunities for Canadian businesses. On December 20th, 2001, the European Commission assessed the provisions of PIPEDA and found that PIPEDA may satisfy the EU's requirement for an adequate level of protection for personal information.

On January 1st, 2001 the federally regulated private sector became bound to comply with the mandatory privacy obligations under PIPEDA. Unless a province has enacted substantially similar displacing legislation, acceptance to the federal government, the federal privacy rules will also apply to the provincially regulated private sector on January 1st, 2004. Alberta has active plans to introduce provincial legislation, expected for the spring of 2003. This provincial legislation would be similar in many respects to the federal law albeit with a provincial regulator providing oversight more relevant to the unique characteristics of the particular province.

The essence of the mandatory privacy legislation is the presumption that all individuals should consent to the use of their personal information. As a result there are several important features of PIPEDA that are relevant to lawyers.

This law is retroactive. The law applies to the disclosure, use and retention of personal information whether that information was collected in the past or will be collected in the future.

The legislative regime is only concerned with personal information on identifiable individuals. The privacy law does not apply to corporate information or data.

The legislation provides a new objective test limiting the individual freedom of Canadians (and perhaps capacity) to consent to certain uses of their personal information. PIPEDA provides an objective minimum standard that an individual can only consent to what a reasonable person would consent to in the circumstances.

The elements of a privacy program are based on the CSA Model Code for the Protection of Privacy. At a high level, the elements of that model code are as follows:

1. Accountability: An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.
2. Identifying Purposes: The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.
3. Consent: The knowledge and consent of the individual are required for the collection use or disclosure of personal information, except when inappropriate.
4. Limiting Collection: The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.
5. Limited Use, Disclosure, and Retention: Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for fulfillment of those purposes.
6. Accuracy: Personal information shall be as accurate, completed, and up-to-date as is necessary for the purposes for which it is to be used.
7. Safeguards: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.
8. Openness: An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.
9. Individual Access: Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
10. Challenging Compliance: An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals for the organization's compliance.

Some groups, such as law enforcement agencies and journalists, have a lawful or investigative need to collect, use and disclose personal information without having to obtain the consent of the concerned individuals. For these reasons, certain exceptions are included. The exemptions and their impact on legal practice will be discussed in future updates.

Lawyers and law firms need to prepare to be compliant with PIPEDA or substantially similar provincial legislation. Some early steps you can take are:

a. Make a decision not to comply. This is serious. It is not going away.
b. Do not wait too long. There is a lot of work involved before January 1st, 2004.
c. Appoint someone in your firm to coordinate your compliance effort. Give that person your support to help you get compliance. That person may end up as your chief privacy officer.
d. Get informed on what the law requires. Information is available from the website of the Privacy Commissioner of Canada www.privcom.gc.ca. There is a CBA FOIP subsection that is addressing the privacy issues at its meeting. Check it out.
e. Make a decision on the approach you will take to obtaining consent. Consider how you will deal with the retroactive aspect of the legislation.
f. Begin an audit of the personal information you have and are collecting, using and disclosing. Begin to understand how you use and disclose that personal information.
g. Review your information technology systems and the security precautions you have in place.
h. Keep posted. Expect further updates in upcoming issues of the Benchers' Advisory regarding some of the special problems of the mismatch between the mandatory privacy regime and aspects of legal practice.

Risk Management

by Thomas Schonhoffer

1. Writs of Execution

We have recently seen an increase in claims for Writs of Execution which have expired without being renewed. The writ becomes statute barred and unenforceable. In addition, lawyers should consider the implications of using the new Writ Registry.

We have posted on the Law Society website a copy of a sample letter we recommend using when reporting to clients. You can access this letter at **www.lawsociety.sk.ca**. The letter will be posted for a short time on the home page and thereafter be in the Members' Section under the heading "SLIA". Our thanks to Michael Milani, Q.C. for allowing us to use this valuable precedent.

2. Retention of Land Titles Files

We have reports that there are errors both in the conversion of titles and in registration at ISC. We are concerned that many of these errors may not be discovered until the land is subsequently transferred many years later.

We are concerned with the long-term risk of having to defend and perhaps pay claims arising out of these errors. We recommend that all real estate files be retained beyond the 7 – 10 years most law firms now retain files.

3. Limitation Periods

Failure to issue claims within the limitation period continues to be the most preventable loss reported. Prior to no-fault, missed limitation periods for auto claims amounted to 16% of all paid losses. Elimination of these claims has helped to reduce your premiums again this year. With the reintroduction of tort, I encourage you to use your diary systems and to issue claims early.

Trust Account Forms

by John Allen, C.A.

Prior to implementing revisions to trust account reporting forms, attempts were made to obtain estimates from accounting firms in regard to additional fees which could be expected. Human nature being what it is, people tend to pay little attention to change until it is implemented. We are aware that in many cases, accounting fees increased considerably more than anticipated and we will be working with the Institute of Chartered Accountants and others to minimize the ongoing effect of this change.

In addition, suggestions received from accountants and members as well as experience gained by working with the forms will be considered when evaluating changes that may be necessitated by the report of the Western Accounting Rules Harmonization project scheduled to be received in early fall.

Confidentiality

The Law Society of Saskatchewan has recently been advised of a case where documents sent by a law firm to an outside translating agency were turned over to the police because of their "suspicious" nature. This caused some embarrassment for both the firm and the client.

Members should be aware that confidential documents or information shared legitimately with outside agencies may well be covered by the blanket of solicitor/client privilege. Even if they are not, the outside agency should be made aware of the importance, professional and legal, of maintaining confidentiality and consideration given to obtaining a written confidentiality agreement. Further, the client should be made aware of the fact that the information is being shared with the outside agency. If the client objects it will be necessary to proceed in another manner.

Uniform Trust Conditions

In February of 1999 the Benchers approved the use of a Uniform Trust Condition letter for residential land transfers in Saskatchewan. The Benchers resisted making the Uniform Trust Condition letter mandatory, concerned that trust conditions cannot alter the agreement between the parties and if the uniform trust conditions did not "fit" a specific transaction, practitioners would be in a difficult position. The Benchers felt a slightly different approach was to prohibit via *The Code of Professional Conduct* the imposition of trust conditions or the giving of undertakings which in effect puts the lawyer in the position of personally guaranteeing payment for the transaction.

With the imposition of the LAND System, some real estate practices have changed, as well as terminology, timing, etc. The Real Estate Committee, which is made up of real estate practitioners across the province, studied the need for new trust conditions in light of the new realities of practice.

The Committee's final product was put before the Benchers at the April Convocation and was approved for use in residential land transfers in Saskatchewan. The letter appears below:

Thanks are extended to Randy Sandbeck, Randy Rooke, Q.C., Chair of the Committee, and the remaining members of the Real Estate Committee for their hard work and dedication to this project.

ATTENTION:

Dear Sirs:

RE: LAW SOCIETY UNIFORM TRUST CONDITION FORMAT
VENDOR:
PURCHASER:
PROPERTY: (THE "PROPERTY")
POSSESSION DATE:
YOUR FILE:
OUR FILE:

We are the solicitors for the Vendor in the above-noted transaction and we enclose the following:

Required Documents:

1. Transfer Authorization of Title No. (the "Transfer Authorization")
2. Statement of Adjustments (the "Statement of Adjustments")
3. Affidavit in compliance with *The Homesteads Act, 1989*
4. Vendor's GST Exemption Certificate.

Optional Documents

1. Photocopy of Title Search Results;
2. Photocopy (Original) Surveyor's Certificate/Real Property Report;
3. Copy of Tax Receipt;
4. Declaration as to Possession

The enclosed documents are forwarded to you on the trust conditions set out below in accordance with The Law Society Uniform Trust Letter Format.

TRUST CONDITIONS:

1. On or before the possession or adjustment date, whichever occurs first, (the earlier date being hereinafter referred to as the "Possession Date") you will:
   (a) Confirm that the within trust conditions and undertakings are acceptable to you. Such confirmation will allow us to authorize your client's possession of the property on the Possession date;

(b) Contact the writer immediately if either these trust conditions or the undertakings are not acceptable to you;
(c) If you are unable or unwilling to accept all of the within trust conditions and undertakings, immediately return the enclosed documents, unused, unless an alternative written agreement is reached.

2. On or before the Possession Date, you will:
   (a) Deliver to this office no less than the difference between the balance due to close hereunder as indicated in the enclosed Statement of Adjustments, and your client's net mortgage proceeds;
   (b) Ensure your client has executed all mortgage documentation, as necessitated by your client's mortgagee and that you have, or will have within a reasonable period of time, all other documents required by your client's mortgagee;
   (c) In the event your client is assuming an existing mortgage as partial consideration of the within transaction, obtain confirmation from the mortgagee that it approves of the assumption of the mortgage by your client, and that any and all conditions imposed by the mortgagee on the assumption of the mortgage are satisfied.

3. As soon as it is reasonably possible and, in any event, not later than 2 business days after the Possession Date, you will complete and submit to the Land Titles Registry a Packet (the "Packet") for registration, utilizing the enclosed Transfer Authorization, which Packet is to include any interest registrations required by your client's mortgagee.

4. Forthwith upon receiving confirmation that the Packet has registered, you will requisition mortgage proceeds from your client's mortgagee, or, in the event the balance due to close has already been paid to our office prior to registration, you will immediately notify our office that the Packet has registered and will forward to our office a photocopy of the new title(s) to the Property.

5. Conditional upon receiving the mortgage proceeds, you will forthwith tender to this office the balance due to close, less funds previously forwarded pursuant to Trust Condition 2(a) hereof, together with interest thereon at the rate of *% per annum from the Possession Date, until the date that funds are received in this office, along with a photocopy of the new title(s) to the Property.

6. In the event your client's mortgagee refuses to advance the mortgage proceeds, you will immediately notify this office in writing.

7. Within a reasonable period of time following registration of title in your client's name, you will notify the appropriate municipal authority of the change of ownership.

8. If the Packet is rejected, or not processed, you will take all reasonable steps to:
   (a) Notify this office;
   (b) Resubmit the Packet if the Packet was not processed; if the Packet was rejected:
      (i) Correct or cause to be corrected any documents that caused the rejection of the Packet if you are able to do so;
      (ii) Return any document supplied by the Vendor to this office for correction, if necessary, and we undertake to correct such deficiency if we are able to do so and deliver the corrected documents to your office;
      (iii) Prepare and submit to the Land Titles Registry a new Packet consistent with the requirements of Trust Condition 3 hereof utilizing the corrected document.

UNDERTAKINGS:

We undertake as follows:

1. To return to you all monies paid by you pursuant to Trust Condition 2(a) hereof in the event either of the following circumstances occur:

(a) Title to the Property does not issue in your client's name free and clear of all registered interests or encumbrances, save and except for the following:
   (i) Interest Register #;
   (ii) Interest Register #;
   (iii) Any interest or encumbrance registered by or against or relating to your client;
(b) Your client does not receive vacant possession of the Property on the Possession Date.

2. That upon your advice that title has issued in your client's name and condition upon our receipt of the balance of the purchase price as set out in the enclosed Statement of Adjustments and interest that has accrued thereon in accordance with our trust conditions to:
(a) Payout and cause to be discharged from title, the following interests:
   (i) Interest Register #;
   (ii) Interest Register #;
(b) Pay any taxes necessary to conform with the Statement of Adjustments;
(c) Make all payments on the mortgage being assumed by your client in order to conform with the Statement of Adjustments (if applicable).

Thank you.

Yours truly,

NAME OF LAW FIRM

Per:

Human Rights

by Equity Ombudsperson, Norma Farkvam

My last article listed laws governing how lawyers are to treat their employees and associates. An astute reader pointed out that I had not mentioned the ***Labour Standards Code*** in that article. Thank you for the observation. I will have something to say about that statute in a future article. Today I want to remind legal employers about the provisions of our Human Rights legislation.

Lawyers and their staff are entitled to work in environments that are free of discrimination. If legal employees feel they have been discriminated against, they can contact the **Equity Ombudsperson** for information.

One of the avenues available to an alleged victim of discrimination is through the Saskatchewan Human Rights (H.R.) Commission. ***The Saskatchewan Human Rights Code*** (the "H.R. Code") promotes and protects individual dignity and equal rights. The H.R. Commission was established under the H.R. Code to promote equity, educate people about human rights, and to investigate complaints of discrimination.

Under the H.R. Code it is unlawful for anyone to discriminate against another person because of age, aboriginal ancestry, other ancestry, family status, gender, marital status, mental disability, physical disability, pregnancy, receipt of public assistance, religion, or sexual orientation. Prohibited areas of discrimination include (amongst other areas) employment, contracts, education, and associations.

If an employee who works with or for a lawyer contacts the Equity Ombudsperson with a complaint about discrimination, the Equity Ombudsperson is there to listen to the complaint, assess the nature of the complaint and inform the individual about potential measures for dealing with the complaint. If the employee chooses to bring his or her concerns before the H.R. Commission, the procedures for investigation and dealing with the matter are set out in the H.R. Code.

The Commission will determine or investigate a meritorious complaint if the person affected by discrimination consents or if the Commission lays the complaint itself, within two years of the discriminatory event. The Commission's authority is extensive,

and includes an opportunity to dismiss, settle, mediate and investigate the complaint. If the Commission deems it appropriate, an inquiry may be conducted into the alleged discriminatory event. The outcome of the inquiry may, at the Commissioner's discretion, be published.

Bear in mind that the H. R. Commission deals with complaints from all members of society, not only the legal profession. In 1996 a survey of complainants and respondents was conducted by the H.R. Commission to determine the participants' level of satisfaction with early resolution of discrimination complaints. Overall, a strong majority of both complainants and respondents were satisfied with the outcome of the H.R. Commission's early resolution processes. Although most were happy with the results, some complainants were disappointed that the respondent was not required to acknowledge they had violated any Human Rights laws. Approximately 30% of the respondents felt that they were pressured to take part in the process, but understood there was nothing better available to them.

Within the legal profession there are several methods for complainants and respondents to find resolution of alleged discriminatory events. For information, contact Norma Farkvam, the Equity Ombudsperson, by email: **farkvam@shaw.ca**; by phone from Saskatoon: (306) 242-4885; by phone outside Saskatoon: (866) 444-4885; or by writing to: Box 22012, RPO Wildwood, Saskatoon, Sk S7H 5P1.

In Memory Of

CHARLES RICHARD QUINNEY, Q.C., passed away suddenly on April 8th, 2003 at the age of 57 years. Richard was born and raised in Kindersley, Saskatchewan, attended the University of Saskatchewan and in 1969, Richard graduated with degrees in Arts and Law. After completing the Bar Admission Course in 1970, Richard joined the Saskatchewan Department of the Attorney General as a full time Prosecutor in Regina.

Richard Quinney was appointed the Director of Agents in 1974 with one of his mandates being to guide the transition to a prosecution service conducted mostly by full time prosecutors employed by the Department of the Attorney General. In 1993, Richard was appointed to lead the prosecution service, a position he held until his untimely death. During his decade as its Executive Director, Richard Quinney completed the conversion to a full time prosecution service, standardized its management structure and practices and was its strongest advocate both within and outside the Department.

Richard Quinney is survived by his wife, Barbara (nee Moynes) and their three children.

ELMER YOUCK, passed away on April 27th, 2003 at the age of 65. Mr. Youck was born and raised in Strasbourg, Saskatchewan. He received his law degree at the University of Saskatchewan in 1961 and joined the law firm of McDougall Ready Hodges where he worked until his retirement in 2000. He continued to practice part-time in Lumsden until his illness forced him to retire completely.

Mr. Youck served a term as Secretary-Treasurer of the Regina Bar Association and a term on a Committee of the Saskatchewan section of the Canadian Bar Association. In 1965, Mr. Youck became a Charter Member of the Downtowners Optimist Club in Regina. Elmer served as Club Secretary, Vice-President and President, and chaired several committees in the Club, and served on various committees for the Alberta, Montana and Saskatchewan District of Optimist International. He also served on the Board of the Ranch Ehrlo Society and was a member of the Senate of the Ranch. He was also on the Board of the TD Bank Friends of the Environment, was on the Board of the Tartan Curling Club, including a term as President, and was active in Ducks Unlimited both in Regina and Lumsden.

Elmer Youck is survived by his wife, Lynn, their three children and three grandchildren.

Ethics Rulings – April 2003

Chapter XVI – "Responsibility to Lawyers Individually" Trust Conditions – Vague, Non-specific Trust Conditions – April 2003

Facts:

Lawyer A provided a trust cheque to Lawyer C along with documents. The documents and the cheque were sent pursuant to trust conditions as follows:

"The agreement and cheque are sent to you in trust on the condition that the same not be used for any purpose until such time as your client executes the documents and you return a duly executed copy of each of the documents to my office. In the event your client refuses to execute the documents you are to return the same and my cheque to my office promptly."

Lawyer C did not cash the cheque or release money and had not acted upon the Judgment document that had been forwarded to him. There was some dispute between the clients about the wording of the Draft Judgment and Lawyer C had communicated with Lawyer A attempting to negotiate wording changes to the Judgment. Lawyer A took the position that Lawyer C breached the trust conditions as he did not execute the documents and when unable to execute the documents did not return the documents and the cheque. Lawyer A pointed out that it was three months before the documents and cheque were returned to him.

Ruling:

The Ethics Committee ruled that there is no merit to Lawyer A's complaint for the following reasons:

1. Lawyer A did nothing about the delay or "condoned" same, as he could simply have picked up the phone or written to Lawyer C to ask for the documents if he did not think they were going to be successful in negotiating wording changes to the documents.
2. Lawyer A's trust condition to "return promptly" somewhat vague. If he had wanted the documents and trust cheque returned by a particular date, he should have provided this date.

Chapter XVI - "Responsibility of Lawyers Individually and Chapter IX – "Lawyer as Advocate" – Lawyer Loss of Objectivity on a file, April 2003

Facts:

This particular matter has been before the Ethics Committee on two previous occasions in the last 23 months. Lawyer C represents Client C, the wife. The now unrepresented opposing party husband has complained again about Lawyer C's conduct on this file. The history of the matter is as follows:

1. The husband first complained about Lawyer C for defying a Court Order effectively staying collection of arrears until trial. Lawyer C was attempting to garnishee from the husband. The Ethics Committee declined to rule at that time on that particular matter as it had been before the Court several times and the Court had every opportunity to disapprove of Lawyer C's conduct and did not do so.
2. The husband then complained that Lawyer C ignored the Court Order by seizing monies from the husband's bank account. Lawyer C indicated that this occurred because the Sheriff had not received the Court Order staying collection. The question the Ethics Committee considered was "Did Lawyer C have a positive obligation to provide the Court Order to the Sheriff's Office and/or withdraw his prior instructions to the Sheriff in order to cease enforcement in compliance with the Court Order." The Committee did not believe that Lawyer C's actions were unethical, however believed that Lawyer C did have a positive obligation to instruct the Sheriff not to continue with enforcement of arrears when he and his client were the ones pursuing enforcement. The Ethics Committee accepted that this was an oversight and encouraged the parties to continue efforts to conclude the matter via civil process.
3. The husband complained again that Lawyer C was trying to collect the arrears again despite the Order of the Court to stay collection until trial. It appears that Lawyer C brought forward an application to Court submitting his client's Affidavit of Arrears in support of the application but did not specifically raise or mention the Court Order staying collection of arrears. The matter was not referred to the Ethics Committee, however, Ms. Sigmeth and Mr. Snell both wrote to Lawyer C to indicate that he should have specifically have mentioned the Order staying collection in the new materials before the Court rather than simply assume the Court would automatically refer to the copy of the prior Order on the Court file.

The husband now complains that Lawyer C had filed evidence as a witness in an Interim Chambers Motion in this matter. Lawyer C filed an Affidavit he had sworn and hired another firm to argue the matter. The application was dismissed. The application and the ongoing legal issues involve interpretation of the Minutes of Settlement between the parties. Lawyer C took the position that the matter in Chambers was on a very narrow issue concerning whether or not certain arrears of support had been extinguished by an earlier agreement. Lawyer C filed his Affidavit setting out his recollection of this matter and had outside counsel argue the matter. There are ongoing disputes about enforcement of the Minutes of Settlement between the parties, but arrears are no longer an issue.

Ruling:

The Ethics Committee accepts Lawyer C's position that the application in which he was a witness dealt with the discrete issue of arrears. Accepting that Lawyer C provided this Affidavit on a narrow issue which is no longer at issue in these proceedings, and there is no danger of him acting as a witness again, the Ethics Committee cannot rule that Lawyer C is disqualified from continuing to act on behalf of his client. However, the history of this matter, including the two previous occasions it was reviewed by the Ethics Committee, causes the Committee to have serious reservations about whether Lawyer C can any longer represent his client objectively. The Committee will leave it to Lawyer C's professional discretion to assess his objectivity and decide whether or not he should continue to act in this matter.

Chapter V - "Impartiality and Conflict of Interest Between Clients", Lawyer Cannot Continue to Represent Opposing Co-Executors, April 2003

Facts:

Client A, Co-Executor of her sister's Estate complained about Lawyer E. Client A and her Co-Executor, Client B, went to see Lawyer E about the Estate on at least two occasions. Lawyer E was the lawyer who drafted the will on behalf of the deceased. The Co-Executor, Client B, was a friend of the deceased. The will stated that Client A and her other living sister were to share the residue of the Estate. Client B was the beneficiary of the specific gift of a vehicle.

Client A wished to have Client B sign off or relinquish his interest in the vehicle as she felt this was her sister's wish. Client B was not prepared to sign off and wanted to administer the will as written. Lawyer E acted for both Co-Executors during the initial attendances and now wishes to act for Client B to uphold the will which Client A perceives as Lawyer E acting against her interests. Lawyer E asked for direction from the Ethics Committee as to whether he could continue to act for Client B including making application on behalf of Client B to have Client A removed as Co-Executor or if he would have to refer the matter out.

Ruling:

Lawyer E is in a conflict of interest and cannot continue to act for one executor against or to remove the other executor and will have to refer both clients out.

Chapter V – "Impartiality and Conflict of Interest Between Clients" – Who is the Client When Dealing with a Company, - April 2003

Facts:

Lawyer K was retained by Individual P. Lawyer K dealt with matters on behalf of Individual P and on the instructions of Individual P and eventually filed documents in the name of Company N, a company controlled by Individual P. Company N changed its name to Company C and took on a new investor. Individual P remained Lawyer K's primary contact with respect to all matters. Individual P provided Lawyer K with further instructions on items involving Company C.

Lawyer K has now been contacted by a lawyer acting for an individual who indicates he is a shareholder for Company C as well as sole Director and President of Company C. The lawyer has requested disclosure of various information involving Company C. Lawyer K has requested a ruling from the Ethics Committee as to whether or not he may disclose information to the new lawyer acting on behalf of Individual C.

Ruling:

The basic issue is "who is the client?"

1. If Lawyer K represents only Individual P, Lawyer K can only disclose material to that individual or his solicitor.
2. If Lawyer K acts for Individual P and Company N (now Company C), Lawyer K can only disclose to that individual, that company and/or their solicitor(s).
3. As the Committee understands it, Individual C is the one requesting information through his/her lawyer. Individual C was never Lawyer K's client. If this is the case, Lawyer K cannot disclose to this new individual or his or her lawyer.

Legal web Cites

By Peta Bates

As of April 1, 2003, the *Canada Gazette* online PDF versions have official status.* Until now only the print copy was considered official. Note that any issues in PDF published prior to April 1, 2003, as well as all HTML versions before and after that date are still considered unofficial.

This is an important first step in making electronic versions of legislation official. All Canadian provinces provide an online version of their statutes but to date none of them are considered official versions.

Canada Gazette Part I
http://canadagazette.gc.ca/partI/index-e.html
(issues from 2002 to date)
http://canadagazette.gc.ca/archives-e.html
(issues from 1998 to 2001)

Proposed regulations, government notices and appointments, and required public notices from private sector companies are published weekly in Part I. The first official PDF issue is April 5, 2003.

Canada Gazette Part II
http://canadagazette.gc.ca/partII/index-e.html
(issues from 2002 to date)
http://canadagazette.gc.ca/archives-e.html
(issues from 1998 to 2001)

Regulations and other statutory instruments like orders in council and proclamations are published bi-weekly in Part II. The first official PDF issue is April 9, 2003.

Canada Gazette Part III
http://canadagazette.gc.ca/partIII/index-e.html
(issues from 1998 to date)

Federal statutes are published in Part III as an interim step before they appear in the bound annual statute volumes. The issue dated January 31, 2003 is the last unofficial part. At time of writing the first official PDF issue had yet to be published.

* Canada Gazette Publication Order, SI/2003-58, P.C. 2003-411 dated March 27, 2003
http://canadagazette.gc.ca/partII/2003/20030409/pdf/g2-13708.pdf

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