

BENCHERS' DIGEST



Volume 16, Issue Number 5

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Snapshots #3

by A. Allan T. Sncell, Q.C.

As it has been a year since the last Law Society Snapshots and the cries of outrage and howls of indignation following Snapshots #2 have died down somewhat, it seemed appropriate to try another one. We are very conscious of the fact that the Law Society runs on the money of its members and we want to be seen as recognizing our accountability to you. So, from the windowless, dusty, garret atop the Canadian Oils Building, we report the following:

1. Pro Bono

This is not a description of what Sonny became when he and Cher first starting getting paid to sing. It actually, in our context, refers to several initiatives to match people who are unable to afford legal counsel with lawyers who are willing to act for them or provide them with advice.

Following on a similar experience in British Columbia, we have been working with the Salvation Army to organize a pro bono plan which, is it hoped, will cover most of the province. We will be looking for volunteers and more details will follow shortly.

2. Mobility

As of July 1st, 2003, six provinces in Canada (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia) have implemented the National Mobility Agreement. There are ongoing issues that must be addressed involving insurance, discipline, etc., as well as maintenance of the National Database which allows the Law Societies to keep track of mobile lawyers. Interestingly, although Saskatchewan had budgeted for a decline in out-of-province memberships as a result of mobility, since July 1st we have had six people from Alberta alone transfer into Saskatchewan to become members.

3. Federation of Law Society

The new structure of the Federation was approved and has been implemented, with the next meeting to be held in Victoria in November. Michael Milani, Q.C. is our very able council member and Mike has agreed to be personally responsible for ensuring the relevance and effectiveness of the Federation.

The Federation, in addition to its value as a clearinghouse for information across the provinces and the

forging of invaluable interjurisdictional relationships, has also intervened in the last year in cases involving money laundering, judicial review of Law Society discipline decisions, copyright issues, search warrants and solicitor/client privilege.

4. CanLII

This is a shameless plug. CanLII, the free electronic database of recent caselaw and statutes in Canada, gets better daily. If you have not already tried it, check it out at www.canlii.ca and search your brains out.

5. Bencher Elections

By the time you read this, the candidates for this year's Bencher election will be set. On behalf of the staff at the Law Society, and members generally, I would like to thank all past, present and future Benchers who give so generously of their time in service of the profession and the public. We encourage you all to cast your ballots in contested elections and confirm that where Benchers have been acclaimed, it was not a matter of member complacency, but

www.lawsociety.sk.ca

rather the quality of the candidate acclaimed.

Our Lay Benchers, Ron Barsi and Effie Kuszniir, are also deserving of thanks for their assistance to our profession. We look forward to their continued assistance as well as that of two new Lay Benchers who we anticipate will be appointed by the Lieutenant-Governor in Council before year-end.

6. School Project

Many of you have, at the invitation of individual teachers, attended classrooms and made presentations to primary or secondary school students. After much reflection and debate, this appeared to the Joint Committee of Justice/CBA and the Law Society to be a "good thing". Therefore efforts have been undertaken, through PLEA, to not only encourage such attendances by lawyers, but to provide the lawyers with guidelines for speaking to students including, where appropriate, model lesson plans. It is to everyone's benefit that citizens have a good grounding in the basics of our legal system. An intensive program has been planned for the editorial staff of the Star Phoenix.

7. Bar Course

SKLESI is under contract to the Law Society to provide the Bar Course to students who wish to become members of the Law Society. Not connected necessarily with, but parallel to the mobility initiative, the western provinces have been working on harmonizing, as much as possible, the different bar courses in order to save expense by consolidating resources and at the same time provide a better product. Beginning this year, a portion of the bar course was delivered via the internet.

8. The Code of Professional Conduct

Alberta, Saskatchewan and Manitoba have once again muscled to the forefront of the national Law Society crowd in developing a model Code of Professional Conduct. This will provide a similar structure for any province that wishes to adopt it, but still provide sufficient flexibility to allow for regional differences. The push will be made to work with the other provinces to make it a national Code.

9. LAND Project

We are working with ISC. They are amenable to suggestion and things are getting better. Enough said.

10. Torrens Project

As a result of challenges to the Torrens System posed by various circumstances, the Torrens System provinces banded together a couple of years ago to attempt to convince financial institutions that they could rely on the Torrens System without resort to title insurance, except in very limited circumstances, and further that it is cheaper, more efficient and less cumbersome for their clients to utilize lawyers to prepare and execute documentation than to go through third party corporations. The result was the Western Conveyance Protocol. The Committee continues its work in this regard.



The above is an incomplete list. There are many other things that we do, several of which I should have done already.

Rule Amendments passed at the Meeting of Benchers held September 11th and 12th, 2003

Form P-4 - Certificate of Standing

Under the National Mobility Agreement a lawyer is not eligible for interjurisdictional practice without a permit if he or she has a discipline record. Prior to the Mobility Agreement being signed, there had been an understanding among the majority of the Law Societies that discipline convictions more than ten years old would not be disclosed on Certificates of

Standing. Now, because of the National Mobility Agreement, all discipline matters of which a member has been convicted must be disclosed. The Benchers agreed to an amendment of question #3(c) of Form P-4, the Certificate of Standing, to remove the ten year limit on disclosure of discipline convictions.

Chapter II of The Code of Professional Conduct

As a result of study by a special Law Society Committee on compe-

tence and the working of continuing legal educators, Benchers and Law Society staff in Western Canada, a competence profile for newly called lawyers was developed and adopted by the Law Societies in Western Canada. It was agreed that the resulting definition of 'competence' should be included as the Rule in Chapter II of the Code which deals with competence.

Personal Information Protection and Electronic Documents Act

by Allan Snell, Q.C.

There was an article in May, 2003 edition of The Benchers' Digest regarding the Personal Information *Protection and Electronic Documents Act* (PIPEDA), which set out the ten principles of personal information management developed by the Canadian Standards Association, upon which PIPEDA is based. Contrary to a significant and (I hope) obvious typographical error, law firms were encouraged to take steps immediately to ensure compliance as of the January 1st, 2004 implementation date. This is a further reminder.

The very first thing that law firms should do is designate a compliance officer. It will be that person's responsibility to familiarize him or herself with the PIPEDA legislation and ensure that policies and procedures are implemented to protect personal information, receive and respond to inquiries regarding personal information, train staff as to these policies and practices, and provide sufficient explanation in a form that can be understood by individuals who inquire.

Firms will also have to be familiar with the PIPEDA rules regarding identification of the purpose of collecting information and the degree of consent required of an individual who provides that information. The general rule is that only information which is explicitly specified and being obtained for legitimate purposes can be sought.

Furthermore, procedures and policies should be developed for the retention of information (information no longer required should be destroyed) concerning security safeguards and disclosure. An individual, with certain exceptions, must have access to information held about him or herself, as well as to whom that information has been disclosed.

It is unclear at this stage to what extent a law firm's operation will be affected by PIPEDA. The restrictions on the collection and use of information may well be extremely troublesome when dealing with third party personal information in litigation, for example. A narrow reading of the legislation might restrict the use that could be made of private investigators, for example, to breaches of statute law or breach of contract.

To the extent that PIPEDA allows individuals greater awareness and control over personal information which may be held by organizations, it is surely a good thing. Nonetheless, personal information about individuals is often crucial to a client's case and, depending on the relationship between the individual and the client, obtaining that information with the individual's knowledge and consent may be difficult.

January 1st is coming very quickly. Law firms will have to be ready.

Notice to Bar

Practice on Foreclosure Proceedings

At their last *en banc* meeting, the members of the Court of Queen's Bench discussed certain practice issues that have arisen in foreclosure proceedings. They wish to advise the Bar of the following:

- a. **Affidavit of Value.** Some inconsistency has developed as to what will be accepted as evidence of value. This has arisen because, in some cases, bank officials who live outside of Saskatchewan are swearing affidavits stating the value of property located in Saskatchewan. In these situations, some judges have required a certificate appraisal while others have allowed the affidavit of the bank official. The judges have agreed that they should have reliable evidence of value and, in most instances, this requirement will be met by the filing of an affidavit of value if the basis for that opinion is clearly set out in the affidavit. This direction will apply both at the appointment stage and the decree nisi stage.
- b. **Renewal of Mortgage.** The correct procedure is to have the lender file the current renewal of the mortgage instead of filing only the original mortgage documentation.
- c. **Solicitor/Client Costs on Order Nisi for Foreclosure.** Rule 565 specifies that the judge awarding solicitor/client costs on an order nisi for foreclosure shall assess the costs. There is no provision for the Local Registrar to assess these costs. Accordingly, the appropriate procedure is to file material relating to the solicitor/client costs with the application for order nisi. It must also be remembered that the costs incurred prior to leave being granted will not be ordered unless there are special circumstances. Accordingly, if you are applying for those costs, you must include information about the special circumstances upon which you are basing this application.

Members' Section and Rural Members

As in previous years, the Law Society will be sending out information about the members' section access for 2004 with the membership renewal packages. Members located in communities outside of Saskatoon and Regina will receive a different user name and password than members located in Regina and Saskatoon. The user name and password for rural members is the first step in enhancing desktop delivery of electronic resources for rural members. The new user name and passwords will be issued with your practice certificates and will be activated on December 1, 2003. The 2003 password that you are currently using will be de-activated on January 15, 2004. Any inquiries about access to the members' section with the appropriate user signon should be directed to the Library at 1-877-989-4999 or 569-8020.

Desktop Access for Rural Members

Creating the members' section in the year 2000 helped the Library to deliver Saskatchewan case law and other relevant databases to the desktops of all members. Shortly thereafter the Saskatchewan Queen's Printer opened the Saskatchewan statutes and regulations to the public. The Library is attempting to broaden the scope of what is now being offered at the desktop for our rural members. Presently, the Regina and Saskatoon libraries offer a selection of CD-ROMs, including the Canadian Case Digests (Canadian Abridgment), the Canadian Encyclopedic Digest, and the Saskatchewan Decisions. To provide equivalent resources to rural members is more challenging and delivery to the rural members' desktop is the solution we are seeking.

The Library has already provided a link to some commercial databases in the members' section through our participation in the Multi-type Database Licensing Project administered by the Saskatchewan Provincial Library. The most relevant databases in this repertoire are the *Index to Canadian Legal Literature* and *LegalTrac* to which all members have access. The next step is to provide access to some other legal publications that are produced by Carswell, Canada Law Book, or CCH, for example that will be relevant for our practitioners in the rural areas. We are hoping to finalize agreements for desktop access for our rural members some time in the year 2004. The Library will be contacting the rural members, notifying them when access will occur, what training may be offered, how to receive training, and what services will be available on the desktop.

The Law Society will continue to maintain the rural libraries in print by focusing on relevant textbooks on core topics. The Library will deliver case law and statutes to the desktops of our members, with a focus on Saskatchewan jurisprudence. CanLII (www.canlii.ca) is also an important resource to support desktop access for all members. Any questions and comments may be directed to Susan Baer, Director of Libraries, at 1-877-989-4999 or 569-8020.

Martin's Criminal Code 2004

Subscribers to Martin's Criminal Code should note that specific sections in the 2004 Code appear to be in force that will not be brought into force until December 1, 2003. The following sections are affected: **Sections 535, 536(2), 536(4), 536(4.1), 536(4.2), 536(4.3), 536.1(2) to (5), 536.2, 536.3, 536.4, 536.5, 537(1)(i), 537(1)(j), 537(1)(j.1), 537(1.1), 540(1)(a), 540(7) to 540(9), 549(1.1), 549(2), 554(2), 555(3)(a), 555.1(3), 555.1(4), 556(2)(b), 556(3), 556(4), 557, 560(1), 561(2), 561.1(1) to (3), 561.1(5) to (7), 562.1(1) to (2), 563.1(1), 565(2), 566.1(1) to (2), 567, 567.1, 568, 569(1), 574, 577, 598(2), 646, and 715(4).** (Amendments from S.C. 2002, c. 13, CIF by Order in Council SI/2002-106 and amended by SI/2003-127). We recommend using your 2003 Martin's Criminal Code for those sections until December 1, 2003. Canada Law Book sent a green Correction Notice with each Criminal Code which should be kept with your copy. The first supplement to Martin's Criminal Code has now been issued. There are updates to several statutes in the Code, including the Canada Evidence Act, Controlled Drugs and Substances Act, and the Youth Criminal Justice Act.

Additional information can be found at Canada Law Book's website at www.canadalawbook.ca. On their home page, select Law Update (on the left panel of choices). In the new window, select "e-notes" which appears

in a small red box near the top left-hand side of the page. You will then see Martin's Annual Criminal Code electronic updates.

Subscribers to Martin's through the Library's bulk purchasing program will begin receiving forwarded copies of the supplements and correction notices posted on Canada Law Book's website via email from the Library staff. You should feel free to forward the supplements to members in your firm. We will continue to mail the printed supplements to bulk purchase subscribers but now you will receive the information sooner.

The first supplement on Canada Law Book's website is 22 pages long. You can find out how long a web document is by using the Print Preview feature on your browser. Select File, then Print Preview. Once in print preview, the top status bar will tell you the number of pages. You may want to wait until you receive the copy that will file in your Criminal Code before deciding to print a copy of the email attachment.

Reflecting Back on Ten Years of Service

Motion

That the Corporation use the acronym "SKLESI".
Moved: Mel Annand. Seconded: Nancy Hopkins. Unanimous.

So reads the first motion passed by the Saskatchewan Legal Education Society Inc. Board of Directors on August 12, 1993. This all began on June 22, 1993 as four lawyers placed their signature on a document called the Unanimous Member Agreement. These individuals - Les Prosser, QC on behalf of the Law Society of Saskatchewan, Pam Haidenger-Bains on behalf of the Canadian Bar Association Saskatchewan, Peter MacKinnon, QC on behalf of the College of Law and Madeleine Butschler on behalf of the Society - agreed to co-operate to "develop and administer a bar admission course" and promote "post law school legal education in Saskatchewan to maintain a high standard of practice among all members of the legal profession".

The members of SKLESI's first Board of Directors were Mel Annand, Russ Buglass, Madeleine Butschler (first Executive Director), John Comrie, QC, Neil Gabrielson, QC, Mr. Justice Frank Gerein, Caroline Gorsalitz, Nancy Hopkins, QC, Judge Bria Huculak, Kirsten Logan, Madam Justice Georgina Jackson and Gene Anne Smith.

The Minutes of the August 12th inaugural meeting show that Nancy Hopkins, QC and Mel Annand were elected President and Vice-President respectively, then the Board got down to business identifying tasks and establishing priorities for this new entity.

From reading the Minutes and Reports it is obvious that the Board took on those tasks with zeal, commitment and humour. 1993 and 1994 were years spent building a solid foundation. The Board and Executive Director were busy hiring personnel, negotiating office and equipment leases, working on funding submissions, developing policies and internal fiscal structures, entertaining proposals for the redesign of the bar admission course, broadcasting the first of many televised (SCN) seminars, delivering CLE seminars, and the list goes on. It is fair to say that we have been going full steam ahead since that inaugural Board meeting.

Here are just a few highlights of SKLESI's accomplishments over the past ten years.

- Offered the first televised (SCN) seminar entitled *Office Manage-*

ment: More Than Just Managing (1993)

- Transformed the bar admission course (BAC) from a substantive law and statute based course to a skills-based training course (1994)
- Introduced the SKLESI Volunteer Awards (1994)
- Established special registration fee for non-practicing lawyers and those who have reduced practices due to parental responsibilities (1994)
- Conducted a legal support staff needs assessment and made a commitment to deliver legal support staff seminars as part of the CLE curriculum (1995)
- Launched an annual subscription service of Labour Relations Board decisions and published a 20 year index (1995)
- Published the Saskatchewan Practice Checklist Manual (1997)
- Co-ordinated the Future of the Legal Profession Conference (1997)
- Delivered skills training in trial advocacy and legal writing (1998)

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- Lobbied for and implemented a new loss prevention credit system (1998)
 - Developed and implemented a computer technology curriculum (1999)
 - Co-sponsored, with the College of Law, a Family Law Conference with national speakers (2000)
 - Conducted a BAC Skills Assessment Survey with principals and former articling students (2000)
 - Participated in a task force charged with developing a competency profile of the “newly-called” lawyer which was adopted by the four Western law societies (2001)
 - Commenced the process of incorporating Aboriginal legal issues in the BAC materials (2001)
 - Partnered with Legalspan to offer on-line selected presentations and materials from seminars (2002)
 - Received the “green light” to work with Manitoba and Alberta to design a primarily on-line bar admission course (2002)
 - Launched a comprehensive on-line Practice Management Resource Library (2003)
 - Piloted a BAC on-line module on Ethics (2003)
- Over the past ten years, SKLESI has offered 136 seminars, provided

13,248 attendees with seminar materials, ordered 1599 pots of coffee, marked over 1500 examinations and 480 opinion letters, and had thousands of volunteer hours donated.

We would not be able to accomplish any of this if it were not for the dedication and commitment of the Bench and Bar and for the support from the Law Society of Saskatchewan and the Law Foundation of Saskatchewan. All that remains to be said is **Thank You** and cheers to the next ten years!

*Submitted by Abena Buahene,
Executive Director*

In Memory Of



STUART EISNER died suddenly on October 9th, 2003 at the age of 48. He leaves to mourn him his wife, Diane, son Rene, sister Sherry and her husband Michael Mahon and family, as well as his parents, Shirley and Jack Eisner, Q.C. He leaves a great many others to mourn him as well.

Stuart was self-effacing, usually hilariously so. He was often loud, crude and sometimes took it right to the edge. He was also kind, loyal, funny, smart and deeply committed to doing the right thing. He had a deep sense of honour and justice and the courage to back it up.

Stuart was just finishing his second term as a Bencher of the Law Society of Saskatchewan. Stuart served on the Discipline Executive, Ethics, Insurance, Legislation & Policy and Professional Standards Committees and was Chair of the Admissions & Education and Libraries Committees.

His legal career included brief stints in British Columbia and Saskatoon, where he was a member of the Saskatoon Bar Association Executive and a founding director of PLEA. Since 1986 he practiced in Melfort in partnership with Michael Mahon and, most recently, as a sole practitioner. He saw his role at the Bencher table as a spokesman for small rural firms and he took that role seriously. He contributed. He was a good lawyer.

This is being written the day after, about 12 hours after he died. The phone has been ringing. There are tears and there will be more. Stuart's passing has left a hole in many lives and we do not know yet how to deal with that. Except that we will miss him.

Your are cordially invited
to join the library
in celebrating the holiday season
at our annual Christmas reception
to be held
on Thursday, November 27,2003
from 3:00 to 6:00 p.m.

Refreshments will be served

Law Society Library
2nd Floor, Courthouse
2425 Victoria Ave.
Regina.



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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