

# BENCHERS' DIGEST



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## *Changes to the Law Society's Discipline Process*

*by Lana Krogan*



The disciplinary function of the Law Society of Saskatchewan derives its existence and process from *The Legal Profession Act, 1990* and the Law Society's Rules. The process is a lengthy and cautious one ensuring fairness for the member and protection of the public by addressing unacceptable conduct engaged in by members. While a cautious process does not necessarily equate to a lengthy one, that has been the practical reality of the Law Society's disciplinary procedure. The need, however, for an expedited or more summary process in appropriate circumstances has been identified. Recently, a procedure was

fashioned in response and reflected in Rule amendments ratified by the Benchers.

Prior to the amendments, the discipline procedure was as follows. The Law Society receives a complaint or otherwise becomes aware of the activities of a member which may constitute conduct unbecoming. The matter is first reviewed by the Law Society Complaints Officer and if the concern has sufficient merit, it is then referred to the Chairperson of the Discipline Committee. Once referred, the Chairperson of the Discipline Committee conducts a further review of the matter and either directs no further action be taken, or appoints an Investigation Committee to conduct a full examination of the matter. The Law Society has, incidentally, benefited from the assistance of Greg McCullagh who has held the recently created position of Discipline Investigator since its inception approximately a year and a half ago. Mr. McCullagh collects all information relevant to an investigation and presents it to the Investigation Committee for consideration. For

the purposes of uniformity, one of two standing Investigation Committees comprised of members of the Discipline Executive Committee has commonly fulfilled this role. The Investigation Committee is tasked then with assessing the information and providing a report to the Chairperson of the Discipline Committee, containing a recommendation for one of: proceeding with a conduct unbecoming allegation, inviting the member before the Committee for counselling or taking no further action.

Where the Investigation Committee makes a recommendation to proceed with the allegation, a Hearing Committee is then appointed to determine whether the formal complaint is well-founded. The determination is made upon hearing any evidence the Committee considers appropriate in order to adjudicate the matter. If the allegation is well-founded, in some circumstances the Hearing Committee may impose penalty, however, the matter is generally placed before the entire Discipline Committee, comprised of all Benchers, to assess

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penalty. If the allegation is well-founded and disciplinary action is taken, notice of the circumstances and the result are circulated.

The Rules have now been modified. The inclusion of sub-rule 402(3), in part, changes the complexion of the process. Whereas compliance with each step of the outlined process was necessary to journey from beginning to conclusion, this sub-rule enables an abbreviated process beginning at the stage the Investigation Committee is tasked with consideration of the matter. It is the member who chooses whether to embark on this process.

At this stage, the member may, prior to the completion or even commencement of the investigation, admit the allegation of conduct unbecoming and request permission to resign. The Investigation Com-

mittee receives the request and may recommend to the Benchers acceptance of the member's resignation either as a simple resignation or a resignation in the face of discipline, both of which have been defined in the definition section of the Rules, and may also recommend the simultaneous imposition of conditions upon the member. Typically, a condition would include a time period within which the member would not re-apply for admission. An Agreed Statement of Facts would be prepared and provided to the Benchers along with the recommendations. It would then be the decision of the Benchers as to how to respond to the request. The Benchers may certainly accept the resignation or reject it, if appropriate, pending the completion of the previously outlined lengthier process. If the resignation is accepted, either as a

simple resignation or as a resignation in the face of discipline, Rule 495 has also been amended to allow for notice of the resignation to be published and circulated to the membership and various other recipients. This new process dispenses not only with a full investigation of the matter, but also with the appointment of a Hearing Committee and the hearing itself.

For numerous reasons, members may desire their disciplinary matters brought to a conclusion as quickly as possible. The existing process was not always able to accommodate this wish. The new process does. The new process also decreases the cost and time investment of members called upon for duty on these Committees and most importantly, perhaps, ensures that protection of the public is swiftly addressed.

## *Highlights of the Meeting of Benchers held October 23rd and 24th, 2003*

### **2004 Budget**

The Benchers approved the budget for 2004 and set the annual fee at \$1,150. This is the same amount as was set for 2003. As outlined in the letter from the Chair of the Finance Committee, Rick Van Beselaere, the annual fee is broken down as follows:

	2003	2004
Administration	\$441.00	\$438.00
Libraries	282.00	306.00
CanLII (virtual library)	85.00	20.00
Lawyers Concerned for Lawyers (LCL)	19.00	20.00
No Fault Insurance	42.00	42.00
Special Fund Assessment	45.00	45.00
SKLESI Seminars	100.00	145.00
Bar Admission Course	66.00	79.00
Western Bar Course Harmonization	21.00	14.00
Title Insurance & Real Property Practitioner Initiatives	14.00	10.00
Equity Ombudsperson	<u>35.00</u>	<u>31.00</u>
Totals:	<u>\$1,150.00</u>	<u>\$1,150.00</u>

The Law Society of Saskatchewan annual fee is the fifth lowest in Canada. Coupled with the insurance assessment, the total fees paid by Saskatchewan members are the third lowest in the nation. The Benchers are ever mindful of the impact of the fees on the members of the Law Society of Saskatchewan and strive to provide maximum services for the lowest possible cost.

### **Rule Amendments**

The Benchers approved amendments to Rules 1, 402 and 495(1) and (2) in order to implement a simplified discipline procedure where a member wishes to enter a plea of guilty to a complaint of conduct unbecoming a lawyer and to be allowed to resign in the face of discipline. The procedure is outlined in an article elsewhere in this edition authored by the Chair of the Discipline Committee, Lana Krogan.

Amendments to the definitions in Rule 1 deal with "disbarment", "resignation in the face of discipline" and "simple resignation". A new Rule 402(3) was added to set out the actual procedure and amendments to Rule 495(1) and (2) were approved to deal with notification issues.

## *Election of Benchers*

### **CENTRAL ELECTORAL DIVISION**

Hendrickson, Brian (by acclamation)

### **EAST CENTRAL ELECTORAL DIVISION**

Fisher, Michael K. (by acclamation)

### **NORTH EAST ELECTORAL DIVISION**

Will, John (by acclamation)

### **NORTH WEST ELECTORAL DIVISION**

Thurlow, George (by acclamation)

### **PRINCE ALBERT ELECTORAL DIVISION**

Harradence, Hugh, Q.C. (by acclamation)

### **REGINA CITY ELECTORAL DIVISION**

Barber, Sue

Dietz, Victor

Krogan, Lana

Kruzeniski, Ronald

Mitchell, Graeme

### **SASKATOON CITY ELECTORAL DIVISION**

Danyliuk, Richard

Gough, Brent

Kennedy, Robert

Konkin, Daniel

Wiebe, Alma

### **SOUTH EAST ELECTORAL DIVISION**

Holliday, William (by acclamation)

### **SOUTH WEST ELECTORAL DIVISION**

Bazin, Karl

We would like to thank each and every member who agreed to stand for election as a Bencher. The results were very close, which reflects on the excellence of the candidates. We look forward to working with the newly elected Benchers and we would encourage all those who sought office in this election to consider doing so again in 2006.

## *Call for Pro Bono Volunteers*

*by Alan T. Snell, Q.C.*

We all do it. There is not a lawyer in practice who has not, at one time or another, devoted his or her time to representing a client or acting on behalf of an organization or simply providing legal advice to a deserving person (or even undeserving) with no expectation of being paid and purely because he or she knows it is the right thing to do.<sup>1</sup>

The concept and execution of pro bono is very old indeed. So old in fact that it has its own Latin moniker. Nonetheless, it is often difficult to match people who are truly in need of free legal assistance to lawyers who are willing to provide it. There has to be an administrative procedure to accomplish this.

Right now in Saskatchewan there are existing pro bono services, but they are somewhat limited. But we have not, as yet, had in Saskatchewan a coordinated province-wide program of providing legal services for people who are not eligible for Legal Aid and cannot afford to pay for a lawyer. We do now.

Based on a similar project in British Columbia, the Law Society of Saskatchewan, through its Joint Committee (with the Department of Justice, the CBA and the Law School) on Access to Justice, has developed with the Salvation Army just such a program. It will provide an opportunity for lawyers to provide a much needed service to the community at a minimum expenditure of time and effort. This is an opportunity for everyone in the legal profession to prove, in a very visible way, that the public service commitment of lawyers is not just talk.

While we are not yet sure of the uptake by clients, lawyers will be able to choose whether to meet clients in the Salvation Army office or in their own office. They will be able to set their own schedules and determine the extent of legal services provided. For more information, contact the Law Society of Saskatchewan and please give us your name and contact information so that we can put you on our list of pro bono lawyers.

<sup>1</sup>Pro bono is service provided with no expectation of being paid. This is to be distinguished from pro bozo which, as George Thurlow describes it, is providing legal services expecting to be paid after the services are completed and then being disappointed in that expectation.

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# ***Trust Account Forms***

*by John Allen, C.A.*

New trust account forms were developed for year ends commencing December 31, 2002. These new forms generated considerable feedback both in terms of negative comment and helpful information about the state of lawyers' trust accounts.

The follow-up of issues/concerns identified through the use of the new trust account forms is nearing completion. Overall, the process proved effective in identifying issues and initiating corrective action as well as quickly identifying those members/firms in need of further attention. The following are examples of some issues/concerns based on information compiled to September 2003:

<u>Issue/Concern</u>	<u>Purpose</u>
1. Computerized data not backed up regularly or back up not stored off site (63 cases).	To focus member's attention on prevention of data loss.
2. Accounting records not maintained in ink or a double entry accounting system not in use (9 cases).	Basic bookkeeping requirement - Rule 961.
3. Trust cheques not labelled "trust" (7 cases).	Trust cheques must be clearly identified as such - Rule 942.
4. Trust monies received via credit card (44 cases).	This issue had been considered from time to time but the extent of the practice was not known. Analysis of the forms showed that the extent of this practice is greater than previously thought and Rule revisions will be considered immediately.
5. Estate files open for more than 3 years (142 cases).	Initiate review and, in many cases, finalize older estate files.
6. Loans to and from clients by members (15 cases).	Loans to or from clients are not appropriate and follow up was initiated to determine if member/client relationship was compromised (i.e. client advised to obtain independent legal counsel).

Unfortunately, in some cases, the process resulted in significant increases in accounting fees. After carefully weighing the benefits of the process against the cost, the Benchers decided that a "short form" of the Accountant's Report should be developed for use by firms with a good "track record", considering factors such as complaints history, number and type of accounting issues noted in previous years, etc. That form has now been completed and approved by the Finance Committee and will go to the Benchers for implementation effective for December 2003. Firms with a less than admirable "track record" along with a random sample of all firms will be required to use the regular form (also reduced somewhat from last year). Firms with a good "track record" can expect to receive the regular form about once every 5 years.

In addition to the implementation of the Accountant's Report - Short Form, other significant changes include:

1. For the regular form:
  - reduction of file review procedures;
  - reduction of clerical audit procedures for members/firms using approved systems;
  - reduction in number of source documents required to be examined.
2. For the short form:
  - elimination of file review procedures;
  - 50% additional reduction in number of transactions to be examined;
  - elimination of site visit requirement.

The changes to the trust reporting process will:

- (a) reduce accounting fees, particularly for firms approved to utilize the Short Form;
- (b) focus attention on firms experiencing difficulties;
- (c) reward firms having a good "track record".

The revised forms were circulated to representatives of the various accounting bodies and their comments and input have been incorporated where considered appropriate. Their input and suggestions are much appreciated.

I would like to thank all members/firms for their input and patience. I believe the process addresses requirements while maintaining a reporting structure similar to that in place in other provinces.

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## In Memory Of

LORNE LARSON of Saskatoon passed away suddenly in November of 2003 at 57 years of age. He was born in Lestock and grew up in Punnichy until he started university, receiving his Bachelor of Science degree from the University of Saskatchewan. Mr. Larson attended the College of Law at the University of British Columbia. He was called to the Bar in British Columbia in 1973. Mr. Larson joined the McKercher McKercher & Whitmore law firm in 1975, becoming partner in 1977 and remaining with the firm until his passing. Mr. Larson will be remembered by all who knew him as a true gentleman, a man of great integrity, wisdom, class and style.

Mr. Larson is survived by his wife, Vera, and their four daughters.

## Ideas About Equity “Maintaining the Integrity of the Profession”

by Norma Farkvam

Rule XV of the Law Society of Saskatchewan’s *Code of Professional Conduct* states:

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.

Almost any month of the year, most lawyers can find one or two professional activities to take part in. Whether it is committee work, a social function, a business development event, or continuing legal education we all can find something toward which to donate time and effort. Often we don’t even think about the impact our involvement in lawyer activities has toward “maintaining the integrity of the profession”. That seems to just come naturally to most lawyers.

In the Commentary following Rule XV, guiding principal number 4 states:

A lawyer in his or her professional capacity shall not discriminate on the grounds of race, creed, colour, national origin, disability, age, religion, sex, sexual orientation, marital or family status in the employment

of lawyers, articulated students or support staff or in any relations between the lawyer and members of the profession or any other person.

Sexual harassment is a form of discrimination and may broadly be defined as “unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of the harassment”. The lack of an intent to produce feelings of harassment in the complainant is irrelevant.

Lawyers know this principal by heart as well. Most lawyers do not intentionally discriminate against or harass anyone these days. You know when there has been a hint of discriminatory behaviour. Discrimination *feels* unfair. When someone is being treated unfairly, it doesn’t sit well with the average professional. But like anything else in a busy work-day, we sometimes take routine behaviour around the office for granted.

Let’s keep that perceptive edge. I suggest trying this exercise over the next two weeks. Circle the above

three sentences that make up guiding principal number 4, and leave it in a place where you will read it every day at the office. Then think about specific incidents where the potential for discrimination might arise in a typical client/lawyer, staff/lawyer, or lawyer/lawyer situation. Then keep your eyes and ears open in your offices, the coffee room and the hallways. Note any slurs or jibes about ethnicity, sexual orientation or other personal attributes which might hurt or offend those who hear them. Remind your partners, associates and staff that you strive to maintain a respectful workplace.

If you have questions about establishing or maintaining a discrimination-free work environment, call the office of the **Equity Ombudsperson** for the legal profession in Saskatchewan. You can reach me, **Norma Farkvam**, toll-free from anywhere in the province. In Saskatoon call (306) 242-4885. Outside Saskatoon the number is 1 (800) 444-4885. Or you can email me at [farkvam@shaw.ca](mailto:farkvam@shaw.ca)

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## ***Members' Section Passwords***

*by Susan Baer*

Just a reminder about the members' section access: There are two different user names and passwords to access the members' section for 2004; a rural account and an "urban" account. Any member living outside of Regina or Saskatoon who is a resident of Saskatchewan should be using the rural member password. The appropriate passwords are being sent with your Annual Certificate. The new passwords are effective December 1, 2003, and the 2003 account will be deactivated on January 15, 2004. If you have any questions about the passwords, please contact the library staff directly in Regina at 1-877-989-4999 or 569-8020.

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# Legal Web Cites

By Peta Bates

The Automobile Injury Appeal Commission was established in 2002 in response to a recommendation by the Personal Injury Protection Plan Review Committee. The Commission hears appeals from no-fault benefit decisions made under the Personal Injury Protection Plan. The Commission's decisions are available on the Government of Saskatchewan web site.

## **Automobile Injury Appeal Commission**

<http://www.autoinjuryappeal.sk.ca/default.shtml>

The Automobile Injury Appeal Commission provides written decisions to the parties within 60 days of the hearing. The parties have 30 days from the date of the decision to appeal a question of law to the Court of Appeal. Commission decisions are posted on the Commission's web site after this 30-day appeal period has expired.

Decisions are filed under the various benefit headings, such as *Rehabilitation*, *Living Assistance* and *Permanent*

*Impairment Benefits*. The same decision may be listed under several headings if it deals with multiple benefits. The list of decisions is ordered by neutral citation number (eg. 2003 SKAIA 012) with the corresponding style of cause. The neutral citation is a hyperlink to the PDF version of the full decision.

There is no keyword search capability of the entire collection of decisions. This problem will be remedied in 2004 when the Commission decisions are loaded on the Canadian Legal Information Institute (CanLII) web site <http://www.canlii.org/>.

In addition to the decisions, the main page of the Automobile Injury Appeal Commission web site offers links to a list of Board members and telephone and fax contact information. The appeal process and the procedure to vary an award are described and links to application forms are provided.

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## *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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