

BENCHERS' DIGEST



Volume 17, Issue Number 3

May, 2004

35 Year Certificates



The Public Relations Committee had been discussing a recognition from members practicing for 35 years or more. The Committee took some time to determine an appropriate token. Once the decision to issue a certificate was made, work began on the design. Sue Baer and Kelly Chiu from the Law Society Libraries were instrumental in that endeavour.

The Law Society Rules provide for a Senior Life Membership to be awarded after 50 years. However, the Public Relations Committee held the view that 35 years of practice is a significant milestone and should be acknowledged. We are therefore pleased to recognize the following members as the recipients of the first 35(+) years certificates:

Arnold Quentin Agnew, Q.C.
Saskatoon

James Gary Anderson, Q.C.
Swift Current

Gerald Isadore Averbach
Saskatoon

Allan Paul Beke
Regina

Dr. Alexander John Beke, Q.C.
Regina

Merlis Milton Richard Belsher
Saskatoon

Robert Henry Bertram
Regina

Charles James Walter Biss
Saskatoon

Joseph Raymond Blais
North Battleford

Anthony Ludwig Boryski
Saskatoon

William Zion Brown
La Ronge

Grant Carson
Melfort

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35 Year Certificates

Irwin Boyd Carson
Nipawin

Pab Chinnappa Chetty
Lloydminster

Donald Reed Ching
Regina

Barry Douglas Collins Q.C. (Can)
Saskatoon

David Dysart Conroy
North Battleford

John Douglas Cooper, Q.C.
Moose Jaw

Hartmut Herman Dahlem, Q.C.
Saskatoon

W. Arliss Dellow
Yorkton

Dorothy Dolores Dempsey
Saskatoon

Roy Albert Dickinson, Q.C.
Moose Jaw

Joseph John Anton Dierker, Q.C.
Saskatoon

Ian Donald Henry Disbery, Q.C.
Regina

Delbert Maurice Dynna
Prince Albert

Kristian Albert Eggum, Q.C.
Prince Albert

Robert Bruce Emigh, Q.C. (Can)
Saskatoon

Gerald Lorne Gerrand, Q.C.
Regina

Elton Ronald Gritzfeld, Q.C.
Regina

Silas Eugene Halyk, Q.C.
Saskatoon

Marvin Wayne Henderson
Saskatoon

Harold Theodore Hepting, Q.C.
Unity

Victor Michael Hnatyshyn, Q.C.
Saskatoon

Ajit Kapoor
Melfort

Nicholas Andrew Kaufman, Q.C.
Regina

Lawrence Korchin
Saskatoon

Stanislaus Gabriel Kyba
Yorkton

Terence Anthony Leier, Q.C. (Can)
Regina

Paul John Lewans
Assiniboia

William Patrick MacIsaac, Q.C.
Regina

Kenneth Wayne MacKay, Q.C.
Regina

Harold Hugh MacKay, Q.C.
Regina

Donald Stewart McKercher, Q.C.
Saskatoon

Robert Hamilton McKercher, Q.C.
Saskatoon

Evatt Francis Anthony Merchant, Q.C.
Regina

Robert Wayne Mitchell, Q.C.
Dundurn

William Thomas Molloy, Q.C. (Can)
Saskatoon

Richard Brockington Morris, Q.C.
Regina

Gerald Edward Naylen
Regina

Gordon James Keir Neill, Q.C.
Regina

Stafford Edmond Francis Nimegeers
Weyburn

Clifford Michael Nimegeers
Swift Current

Lyle Oswald Phillips
Moose Jaw

Leo Joseph Francois Pinel
Prince Albert

William Dent Preston
Saskatoon

Ronald Price-Jones
Melfort

Loran Theodore Andrew Priel, Q.C.
Saskatoon

Richard Paul Rendek, Q.C.
Regina

Robert John Rushford, Q.C.
Moose Jaw

Michael Barry Ryan, Q.C.
Regina

Lenard Morris Sali
Calgary

Garth Walter Sandstrom, Q.C.
Saskatoon

**Dr. Douglas Albert Joseph
Schmeiser, Q.C.**
Saskatoon

Mayer Schulman
Saskatoon

Dale Mark Scrivens
Regina

**Gary George William
Semenchuck Q.C.**
Regina

William James Serne
Saskatoon

Marcel Andre Simonot, Q.C.
Prince Albert

Henry Louis Siwak
Prince Albert

Dale Roland Skelton
Rosetown

Emanuel Sonnenschein, Q.C.
Saskatoon

Kim Thorson, Q.C.
Weyburn

Ronald Douglas Thorstad
Saskatoon

Peter Edwin Thuringer, Q.C.
Regina

George James Tkach
Regina

Cornelius Heinrich Toews
Regina

Philip Edward West, Q.C.
Prince Albert

Niall Garrett Ardri Wilson, Q.C.
Regina

Highlights of the Meeting of Benchers held April 1st and 2nd, 2004

ISC Liaison Committee

Further to Ms. Mountain's article in the last *Benchers' Digest*, the issues list has been posted in the Members' Section of the Law Society website.

SKLESI

By now most members will be aware of the departure of Abena Buahene, the Executive Director of SKLESI. As well Bruce Wiwchar, the Bar Admission Course Director, submitted his resignation effective March 12th, 2004. He has accepted a position with the Legal Education Society of Alberta. We wish Bruce well in his new position.

SKLESI has hired a new Executive Director, Jennifer Fudge, from Newfoundland via Vancouver. She commences her new position effective April 26th, 2004. Details about Ms. Fudge are included later in this edition.

In addition, SKLESI has hired Lynn Loewen as Bar Admission Course Director. Lynn had been working at SKLESI as Program Lawyer and was already working on a presentation of the last segment of

the "old" Bar Admission Course to take place in May.

Thanks to the SKLESI staff for their hard work and dedication during this time of transition. Thanks also to Brenda Hildebrandt who, as President of SKLESI, volunteered countless hours in the search for a new Executive Director and Bar Admission Course Director.

Rule Amendments

The Benchers approved another amendment to Rule 149A, which expands the list of criminal or quasi-criminal charges which students, members and applicants for admission or reinstatement must report to the Law Society. In addition, the same individuals must report discipline proceedings from other governing or regulatory bodies.

Rules 162, 163 and 164 were added to give a regulatory framework to the May segment of the "old" Bar Admission Course. The Rules are almost identical to the previous Rules 159 and 160, which had governed the Bar Admission Course that had been amended in February.

No-Fault

The Benchers considered the issue of ongoing funding from the CBA/Law Society Joint Committee on No-Fault.

Members of the Joint Committee appeared before the Benchers and presented a proposed budget for 2004 that included funding for the Committee's day-to-day expenses, and the Victims Coalition website and database. The Joint Committee was also proposing continued advertising to maintain public awareness of the no-fault issue.

Following a presentation, the Benchers had a lengthy discussion. Recognition of the tremendous efforts undertaken by the Joint Committee was front and centre of the discussion. However, it was pointed out that the current government remains committed to no-fault. Ultimately, it was decided that the Law Society funding of the Joint No-Fault Committee would end, but that any expenditures of the Joint No-Fault Committee in 2004 for winding up the Committee would be paid.

Stuart Eisner Memorial Golf Tournament

The first annual Stuart Eisner Memorial Golf Tournament will be held at the Melfort Golf & Country Club in Melfort on September 2nd and 3rd. There will be an opportunity for golf, drinks and hors d'oeuvres on Thursday night and a dinner on Friday night. A fun round of golf on Thursday afternoon is available for people who wish. On Friday, golfers will be able to choose between medal play or Texas scramble format. The cost will be \$75.00 per person, of which \$49.00 will be dedicated to a scholarship in Stuart's name.

This will be an opportunity to have some fun, play some golf, meet people you have not seen for a long time and raise a glass or two in honour of our good friend, Stuart Eisner. Brochures will be available shortly and we will let you know where and when to send your entry fees.

Amending Documents

Part Deux

by Allan Snell, Q.C.

In the March, 2004 *Benchers' Digest*, the penultimate paragraph stated "Similarly signing a jurat in the absence of the affiant is a false representation. The jurat quite clearly says 'Sworn Before Me'."

It has been pointed out to me that it is not uncommon for a witness or an affiant to swear and sign an affidavit before the commissioning officer and then leave before the commissioning officer signs the jurat and completes exhibit stamps, etc. This is, in my view, perfectly acceptable. Again, the jurat says "Sworn Before Me" and as long as it was indeed sworn before the Commissioner, completing the jurat at a later time does not seem to me to be inaccurate or misleading.

Call for Volunteers

on the SKLESI Board of Directors

The Law Society of Saskatchewan is seeking volunteers to serve on the Board of Directors of the Saskatchewan Legal Education Society.

Robert Kennedy, Q.C. and Brenda Hildebrandt currently serve on the SKLESI Board of Directors as joint Law Society of Saskatchewan/Canadian Bar Association representatives. Mr. Kennedy's appointment expires at the end of June, and Ms. Hildebrandt's at the end of September. Members interested in volunteering to serve on the Board of Directors are asked to contact the Law Society office.

Willy Hodgson Award

The Law Society of Saskatchewan invites nominations for the Willy Hodgson Award. The award is presented in memory of C. Willy Hodgson, O.C., SOM, on an annual basis to persons who "exemplify integrity, leadership and character, and have made or are making outstanding contributions to advancing equity and diversity in legal education, the legal profession and/or the administration of justice in Saskatchewan or in Canada". The first recipient of the award was Roger Carter, O.C., Q.C., SOM.

Nominations should include a brief background of the nominee outlining his/her qualifications for receipt of the award. Nominations for the award should be sent to;

Allan T. Snell, Q.C.
The Law Society of Saskatchewan
1100 – 2500 Victoria Avenue
Regina, Saskatchewan
S4P 3X2

Introducing SKLESI's New Executive Director, Jennifer Fudge



Jennifer was born and raised in St. John's, Newfoundland. She received her Bachelor of Arts Degree from Memorial University. A lover of travel, she spent some time living and working in Edinburgh, Scotland, before completing her degree in 1998.

Jennifer began her career at the Public Legal Information Association of Newfoundland as a Program Coordinator. In 1999 she moved to

Vancouver to join the People's Law School. As Program Director, Jennifer faced the challenge to creating and managing the Provincial Innovations Program. Outside of work, Jennifer enjoys running, reading, and glass painting.

Jennifer's first day at SKLESI was April 26th, 2004. She is very excited about this new position and looks forward to the challenges ahead.

In Memory Of

BRIAN EDWARD SINGER of Regina passed away on April 21, 2004 at the age of 56 years after a courageous fight with cancer. Brian was a man of God, a loving and devoted husband, father, grandfather and honourable professional. Mr. Singer was a member of the Law Society of Saskatchewan since June of 1974 until his death, practicing at the law firm of Walker Singer McCannell in Regina.

Mr. Singer is survived by his wife, Donna, his five children, seven grandchildren, his mother, Bonnie and various siblings, nieces, nephews and relatives.



Equity in the Legal Workplace

By Judy Anderson, Equity Ombudsperson

The results of the *Report on Equity and Diversity in Alberta's Legal Profession*, released on January 26, 2004, confirm anecdotal evidence of ongoing discrimination within the legal profession in Alberta. The study was commissioned by Alberta's Joint Committee on Equality, Equity and Diversity to determine if and how changes have occurred since several studies on equality and diversity were conducted in the early 1990's. The findings of the Report were disappointing. In areas where previous studies allowed for comparisons, the survey results indicate that discrimination has decreased only slightly in the past decade.

The objectives of the Report were to:

- Collect data on the nature and the extent of bias within the profession, including discrimination on the grounds of gender, race, disability, and sexual orientation; and
- Collect information about lawyers who are no longer active in the profession and their motivations for leaving.

The study found that a large proportion of those surveyed were disillusioned with the profession. The majority of the men and women who had left practice in the past ten years had done so to seek more personally rewarding opportunities, to avoid the adversarial aspect of practicing law, and to find a better balance in their personal lives. Half of the inactive respondents reported that, if they could do it over again,

they would have chosen different professions. Among the active respondents, and in particular the younger lawyers, there is also a large degree of dissatisfaction with some aspects of legal practice. These areas include long hours of work, a lack of work/life balance, the constant drive for profit, and in some cases, the belief that discrimination has impeded their career advancement.

In particular, Alberta's Report states that:

- Of the active respondents, 92% of the women and 69% of the men thought that there continues to be a bias or discrimination against women.
- 39% of the women, 41% of the lawyers of colour, 40% of disabled lawyers, and 40% of homosexual lawyers had experienced discrimination first-hand in the profession.
- While survey responses from Aboriginal lawyers were negligible, all but one of the Aboriginal focus groups reported that they had experienced overt and profound discrimination in the profession.
- Forms of discrimination reported include racist and sexist comments, denial of opportunities to work on particular files, exclusion from opportunities that would help an individual to further his or her career, and negative career consequences as the result of being or becoming a parent.

The most important aspect of Alberta's recent report is that it identifies areas for improvement in the legal profession. The motivation for legal workplaces to create discrimination-free environments is both moral and financial. Discrimination costs firms in terms of lowered productivity of members and increased turnover. The survey results indicate that younger lawyers want changes to the culture of their workplaces, and that they are increasingly leaving the firms that refuse to build positive work environments. Additionally, firms that embrace diversity find that they are better able to understand and meet their clients' needs.

In Saskatchewan, the Office of the Equity Ombudsperson is available to help legal workplaces tackle specific issues regarding discrimination and to design policies that will build healthier, more diverse work environments. The services of the Equity Ombudsperson are available to all support staff, articling students, lawyers, and firms and are neutral and confidential. If you have questions about establishing or maintaining a discrimination-free work environment, or wish to review your work situation in confidence, contact:

Judy Anderson

Office of the Equity Ombudsperson
242-4885 (in Saskatoon)
1-866-444-4885 (toll-free)
janderson1@sasktel.net

Legal WebCites

By Peta Bates

The Saskatchewan Human Rights Tribunal is an independent, quasi-judicial body that hears complaints under the *Saskatchewan Human Rights Code* that have been referred to it by the Saskatchewan Human Rights Commission. The Tribunal also reviews, at the request of the complainant, a complaint that has been dismissed by the Commission. Decisions of the Tribunal may order remedies such as compensation for lost wages, damages for emotional injuries, and may order preventative measures or anti-discrimination policies.

Saskatchewan Human Rights Tribunal

<http://www.saskhrt.ca/index.htm>

The hearings of the Tribunal are open to the public. After hearing the evidence presented by the parties, the Tribunal issues written reasons. These are available on the Tribunal's web site.

Decision Index

Tribunal decisions are indexed by category (ancestry, colour, disability, family status, age, and sex) and by year (2002-2004). The decisions are in HTML format.

Site Search

To locate a decision by the complainant's name or to search for a specific term in the decision there is a site search engine powered by Google™. The search results are links to the relevant decisions.

Resources Link

The Resources link provides access to the text of the *Saskatchewan Human Rights Code* and regulations in PDF format and to a dozen procedural forms in MS Word format for use by complainants and the Tribunal's members.

Other Information

Also available are biographies of Tribunal members and links to the web sites of the Saskatchewan Human Rights Commission and the Canadian Human Rights Tribunal.

Centennial 2007

by Susan Baer

At the first meeting of the Law Society of Saskatchewan on December 19, 1907, the *Saskatchewan Law Reports* were established as a new series with Mr. Alexander Ross as editor to commence with cases starting on September 16, 1907. The title page of volume 1 published in 1909 describes the contents as "reports of cases decided in the Supreme Court of Saskatchewan, September 15, 1907 to December 31, 1908." The 25 volume set covered cases to 1932 and included

decisions of only superior courts of Saskatchewan.

In "Prairie quires : the history of law reporting in Manitoba and Saskatchewan" published in (1993) 18 *Canadian Law Libraries* p. 7 Ken Whiteway, Head Librarian at the College of Law Library wrote about the Saskatchewan Law Reports:

The series contains some of the best early judgments of John Henderson Lamont who, in 1927, became the second prairie incumbent on the Supreme

Court of Canada (Chief Justice Albert C. Killam of Manitoba served on the SCC from 1903 to 1905). Also represented is some of the best work of William Ferdinand Alphonse Turgeon who was noted for the clarity and conciseness of his judgments. He has been called "the finest writer of judgments on any Saskatchewan bench". (Whiteway quoted from W.H. McConnell, *Prairie Justice* (Calgary: Burroughs, 1980, p. 183).

Finding out more about these judges is far more interesting than knowing that we traded the *Saskatchewan Law Reports* for a set of *Idaho Law Reports* as recorded in the minutes of the Law Society meeting. John Henderson Lamont is probably the first Law Society of Saskatchewan member on the Supreme Court of Canada. Among other events of notoriety, Justice Lamont formed the panel that heard the famous “Persons Case”, the most significant decision on women’s rights in Canada. Justice Lamont in fact agreed with Chief Justice Anglin that the interpretation of “qualified persons” in section 24 of the British North America Act did not include women. Further appealed to the Judicial Committee of the Privy Council, the case was overturned and thus allowed women

to be eligible for and to become members of the Senate of Canada. The “Persons Case” involved the famous five, Irene Parlby, Emily Murphy, Nellie McClung, Henrietta Muir Edwards and Louise Crummy McKinney. It is cited as *Edwards v. Canada (Attorney General)* (1929), [1930] A.C. 124, [1930] 1 D.L.R. 98, [1929] 3 W.W.R. 479, reversing (1928), [1928] S.C.R. 276, [1928] 4 D.L.R. 98.

The Centennial Subcommittee reminds you to share your interesting stories, anecdotes and amazing facts about lawyers, judges, and events in Saskatchewan’s legal community. We would like your stories, pictures, memorabilia, trivia, and ideas for celebrating the Law Society’s 100th anniversary in 2007. The Subcommittee consists of Ron Kruzeniski, Q.C. as Chair, Beth Bil-

son, Q.C., John McIntosh, Q.C., Bill Selnes, and David Conroy. You can contact any member on the subcommittee or send your comments to centennial@lawsociety.sk.ca. We look forward to hearing from you.

For further reading about the famous five, consult the National Library of Canada’s website on Celebrating Women’s Achievements at www.collectionscanada.ca/femmes/index-e.html or consult your local public library.

For further reading about the history of law reporting, consult *Law Reporting and Legal Publishing in Canada : a History*. – Occasional paper no. 2. – Kingston : Canadian Association of Law Libraries, 1996. Available in the Regina and Saskatoon libraries.

Queen’s Bench Practice Manual *by Susan Baer*

A companion to the *Queen’s Bench Rules Annotated* is in preparation with the cooperation of several members of the Bar and judiciary. The Queen’s Bench Practice Manual (QBPM) takes its inspiration from the *Manual of Civil practice and procedure* by Calvin F. Tallis, Q.C., now Mr. Justice Tallis of the Court of Appeal for Saskatchewan. Combining ideas for providing precedents in the members’ section and creating a current version of the manual Justice Tallis wrote in the 1970’s precipitated the Queen’s Bench Practice Manual project. The QBPM is not intended to be a second edition of the *Manual of civil practice and procedure* but rather the QBPM is borrowing the strengths of the practical direction provided in that manual.

The QBPM is attempting to take the experiences of seasoned practitioners from across the province and

to synthesize their collective knowledge in order to:

- improve the quality of pleadings and other court documents prepared by Saskatchewan lawyers in an effort to establish standards for the preparation of documents for court,
- to guide new and young lawyers in preparing court documents,
- and ultimately to improve legal services to the public.

The QBPM will provide young lawyers and sole practitioners with practical guidance in preparing documents for court. The Manual is not an attempt to replicate the teachings of the Bar Admission Course or the Practice Checklist but rather should build on knowledge learned.

The intent is to make the QBPM applicable across the province. To that end, lawyers from across the province are participating in the

project, as well as the Queen’s Bench judiciary and Registrar. The project is in its infancy and it is difficult to predict when the publication will be ready for release. The plan is to make a textbook available for sale, with the precedents loaded in the members’ section for all members to use.

The library is coordinating the project with some financial assistance from the Law Foundation of Saskatchewan. However, it is the contribution of the private Bar that will make this project a success. The following lawyers and judges are donating or have donated their time and expertise to this project, for which the Library is extremely grateful. Their contributions are significant and must be recognized. Reg Watson, Q.C. is the project leader and is credited with the original idea of “updating Justice Tallis’ manual.”

The project team (in random order)

Reg Watson, Q.C.
Brian Scherman
Karen Prisciak
Paul Elash
Al Haubrich
Bob Kennedy, Q.C.
Mike Milani, Q.C.
Marty Popescul, Q.C.
Al Logue, Q.C.
Neil Turcotte
Jan Kernaghan, Q.C.
Tom Irvine
Chief Justice Gerein
Justice Foley
Justice M-E Wright
Justice Matheson
Justice McIntyre

The team members (in random order)

Rick Danyliuk
Shaunt Parthev
Dennis Fisher
Mark Kindrachuk
Barry Hornsberger, Q.C.
Robert Richards, Q.C.
Neil Robertson
Anne Wallace, Q.C.
Bradley Hunter
Gregory Heinrichs, Q.C.
Paul Malone
Sterling McLean
James Struthers
Don Osman
Bill Selnes
Justice Peter Dielschneider
Cathy Tickner

Greg Walen, Q.C.
Brent Barilla
Lucille Lamb
Charita Ohashi
Suzanne Bugeaud
Sharon Pratchler
Susan Amrud, Q.C.
Leslie Belloc-Pinder
Kim Newsham
Betty Ann Pottruff, Q.C.
Nancy Drew
Charlene LaFleur-Graham
Laura Sandstrom-Smith
Jeffrey Brick
Morris P. Bodnar, Q.C.
Kerry R. Chow
Darin C. Chow
Aaron A. Fox, Q.C.
Kearney F. Healy

Lana L. Krogan
Daryl E. Labach
Ronald P. Piche
James A. Plemel, Q.C.
Michael Tochor
Greg Swanson

Non-current members

(in random order)

Gregory Bobbitt, Q.C.
Timothy Keene
Diana Lee
Dale Linn, Q.C.
William Holliday

*Apologies for any
oversights.*

Rulings - February, 2004

Chapter III – “Advising Clients” – Amending Documents Without Client Approval – February 2004

This matter was before the Ethics Committee at both its October 2003 and December 2003 meetings.

Facts:

Lawyer A's office prepared a transfer and attended upon the vendor client to execute same. The transfer was provided to Lawyer B pursuant to the uniform trust condition letter. Lawyer A was contacted by Lawyer B for the purchasers to indicate that the purchasers' designation on the transfer had to be amended to add on the parents of the purchaser. Lawyer A advised that his client was not available and it would take a couple of days to execute a new transfer authorization. The next communication from Lawyer B was that documentation had been submitted to Land Titles Office "Information Services Corporation of Saskatchewan". Lawyer A obtained a copy of the transfer authorization which Lawyer

B had submitted and amended so as to add on two additional names to the transfer authorization. The amendment was not made with Lawyer A's clients' knowledge or consent. Lawyer A was concerned about the practice of documents being amended after delivery. Lawyer B responded that closing the transaction on a timely basis was in the interests of both parties so he amended the transfer authorization received from Lawyer A "in the expectation of receiving deferred approval" from Lawyer A's office. Lawyer A was of the view that his office could not approve the amendment to the document as once that document was executed by his client before a witness the original signatory would have to authorize same if not re-sign the document. A ruling was given in December 2003.

Lawyer A requested that the Ethics Committee revisit the issue. Lawyer A asked, "Specifically when a transfer authorization pursuant to *The Land Titles Act* has been signed before a witness, and the witness has placed their signature thereon, attesting to the fact that he or she witnessed the signator's signature, (and under *The Land Titles Act* that

witness is a lawyer, thereby eliminating the need for an Affidavit of Execution), can a third party amend that document with, or without, the signator's consent, in the absence of the attesting witness?"

Ruling:

In this situation, the witness is witness to the signature of the signator. The importance of the witness' signature is to establish due execution. It is simply evidence establishing that the document was appropriately signed. What is accepted as an authorized amendment does not need to be witnessed by the original witness because there is no evidentiary issue about an authentic execution. The Ethics Committee is of the opinion that a third party may amend such a document, with a signator's consent in the absence of the attesting witness. The signator may authorize by way of Limited Power of Attorney the amendment of such documents. It is the opinion of the Committee that the lawyer would not need to call the witness back in order to amend these documents.

Chapter XIX— “Avoiding Questionable Conduct” – Duty to Meet Financial Obligations

Facts:

Lawyer D was retained to do work for Lawyer E’s corporate client. Lawyer D maintains that all of his instructions with respect to the corporate client came from Lawyer E. All of Lawyer D’s correspondence and reporting was provided directly to Lawyer E. Lawyer D admits that he did speak by telephone with a representative of the corporate client on one occasion. Lawyer D indicated that the telephone conversation was a call from a representative of the corporate client to ensure that Lawyer E had provided Lawyer D with instructions and that they were the same instructions the corporate client representative had relayed to Lawyer E. Lawyer D contends that his corporate client is and always was Lawyer E throughout. Lawyer D invoiced Lawyer E numerous times for work and Lawyer E had paid Lawyer D’s invoices in the past. Lawyer D indicates that Lawyer E refused to pay Lawyer D’s most recent invoice on the basis that the

corporate client and not Lawyer E, was Lawyer D’s client. Lawyer D also notes that Lawyer E did not contact Lawyer D at any point to indicate that the invoices should not be sent to him, but rather should be in the name of the company. Lawyer E did not advise Lawyer D that the company was in receivership until Lawyer D commenced collection proceedings.

Lawyer E’s position is that he did retain Lawyer D on behalf of the corporate client to do specific work. Lawyer E retained Lawyer D on his own behalf and asked that the statement of account be issued in his name. Lawyer E paid this account. It is Lawyer E’s understanding that the representative of the corporate client contacted Lawyer D directly at some time between August and September 2002. Lawyer E indicates that the corporate client hired Lawyer D to do work on a completely different matter. Lawyer E indicated that he was instructed by the corporate client representative to contact Lawyer D with respect to the status of the work. Lawyer E advised the corporate client representative that the work was fine and the corporate client representative asked him to instruct Lawyer D to proceed. Lawyer E did see the accounts on the corporate client

matter begin to arrive at his office, however, he simply forwarded them on to the corporate client for payment. The corporate client became insolvent in 2003 and was unable to pay Lawyer D’s account or Lawyer E’s. Lawyer E indicates that he has spoken to the corporate client representative who states that he retained Lawyer D directly on behalf of the corporation. The corporate representative apparently also indicated to Lawyer E that he would not hesitate to testify on his behalf if the matter was to be tried in Small Claims Court.

Ruling:

The facts of this matter are in dispute. This would necessitate a credibility assessment as the crucial fact is whether or not there was intent.

The Ethics Committee was of the opinion that issues such as this are for the Courts to decide. The Ethics Committee, however, would like to advise Lawyer E to be more careful in dealing with bills on behalf of a client, as he may be seen to be responsible for the bill as “incurred in the course of practice” if he continues to accept bills and forward same to his client, rather than advising the lawyer or other third party to deal directly with the client.

Rulings - April, 2004

Chapter VI – “Conflict of Interest Between Lawyer and Client” - Loaning Money to Clients – April 2004

The Ethics Committee was asked to provide further direction to the Law Society with respect to the

practice of lawyers loaning money to clients.

Ruling:

The Committee reviewed the matters raised which were a loan to a client as an advance on a potential personal injury settlement and a loan to a client in pursuit of a joint venture. The Committee’s first comments were that the loans were not

“papered”, contrary to Chapter VI(d) and Chapter VI(4) of *The Code of Professional Conduct*. As well, the Committee was of the opinion that there were obvious problems inherent in “the firm” in question having loaned money to clients and recording same via firm records. In general, the Committee was of the opinion that loaning money to clients is simply not a

good practice, that this practice is rife with problems and that it is strongly discouraged.

**Chapter XV –
“Responsibility to the
Profession Generally”
– Unprofessional
Correspondence –
April 2004**

The Committee reviewed several pieces of correspondence between Lawyer W, other members and clients, excerpts as follows:

“I am tired of your client’s paternalistic attitudes. What is your client going to do next, drop off boxes of groceries at my client’s doorstep (contrary to the restraining order) and produce store receipts to claim the same as credit towards his spousal support obligations?”

“It appears that your client has been attracting these Court sanctions at both the Chambers and Pre-Trial Conference stages. Is there something about the message from the Court that your client does not understand?”

“Your client, operating personally and as Company X will be reported to the two National Credit Bureaus, being Trans Union of Canada Inc. and Equifax, I am sure with your client’s expertise and alleged abundant grace of God that he will be able to continue his mortgage borrowings without difficulty.”

Ruling:

The Committee would like to remind Lawyer W not to make intemperate comments in profes-

sional correspondence regardless if dealing with difficult clients, adversarial counsel or otherwise.

**Chapter V –
“Impartiality and
Conflict of Interest
Between Clients” –
Acting for an
Estranged Couple on
Two Separate Matters
– April 2004**

Issue:

The Committee was asked by the Professional Standards Committee to review a conflict issue. Lawyer A attended with Mr. R to change his will which would adversely affect Mrs. R while Mrs. R was attending with his lawyer/partner on another matter.

Ruling:

The Committee agreed that in this situation, Lawyer A was likely “off-side” the strict conflict of interest rules as set out by the Supreme Court in R v. Neil. It was the opinion of the Committee that this situation would constitute a conflict of interest in light of the interpretation provided by the Supreme Court of Canada in R v. Neil. However, the Committee was of the opinion that this was a “technical breach” and was satisfied with Lawyer A’s explanation in these particular circumstances in his response to the complaint. The Committee directs no further action with respect to this matter.

**Chapter IV –
“Advising Clients” –
Wrongfully Registered
Writ – April 2004**

Facts:

Client Z complained about Lawyer Z in that a writ was wrongfully registered against his land as he was not the correct debtor. When he followed up with Lawyer Z he complained that she did not take responsibility and remove the Writ. Lawyer Z provided information to the Law Society to indicate that she had reviewed the matter, spoke with Client Z, expected him to get back to her and was not dismissive towards him.

Ruling:

The Ethics Committee recommended that the ISC Liaison Committee speak to ISC about an informational package for the public on how to discharge writs wrongfully registered against their property. The Ethics Committee was of the view that the public will inevitably be affected more often by such writs due to the province-wide registry system. The complainant will be advised that the Law Society will follow up with ISC regarding the Public Relations value in providing some sort of informational package to the public. The Committee suggests that a potential Benchers’ Digest article might be helpful dependent upon the success of the ISC Liaison Committee on this issue.

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