

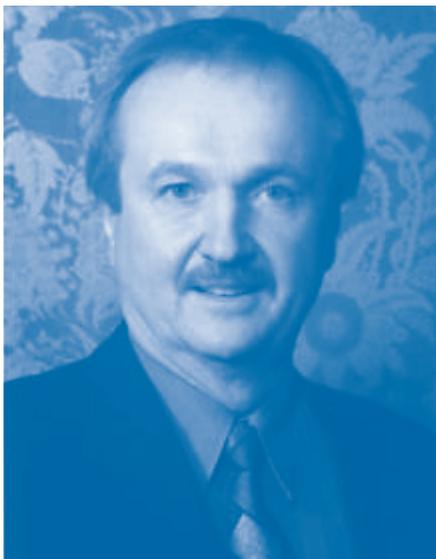
BENCHERS' DIGEST



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Trust Deposits via Credit Card *by John Allen, C.A.*



John Allen, C.A. has been the Law Society of Saskatchewan Auditor/Inspector since 2001. Mr. Allen attended school in Milestone, Saskatchewan and received his CA designation in 1973.

At their June Convocation, the Benchers approved receipt of trust monies (retainers only at this time) via credit card. This issue had been under review for some time by the Western Accounting Rules Harmonization (WARH) Committee, being

senior accounting staff from the Law Societies of Alberta, Manitoba and Saskatchewan. The urgency to deal with this issue increased, however, because information received as part of the annual reporting process indicated that numerous firms were receiving trust monies via credit cards and those receipts were being processed and accounted for in a variety of ways. In addition, a number of firms had requested approval to receive trust funds via credit cards based on public expectations, convenience, etc.

As a result, the Finance Committee decided to deal with this issue on a provincial basis with the hope that harmonization of our processes with Alberta and Manitoba will take place in due course.

Briefly, the process followed included defining acceptable parameters, identifying and analysing alternatives and developing a draft Rule and procedures. Once this was done, a sample of firms that had used or were currently using credit cards to receive trust funds was selected to provide comments/con-

cerns/suggestions on the draft proposal. This process resulted in the following Rule being approved by the Benchers:

Rule 910(6)

A member may receive funds in trust by credit card for retainers only provided:

- (a) trust funds are deposited forthwith to a mixed trust account described in Rule 911;
- (b) associated service charges, fees and discounts are withdrawn from the member's general account;
- (c) charge card sales slips are signed by the payor at the time of the transaction or, if this is not possible, a copy of the completed charge card sales slip containing the client's faxed signature is obtained prior to depositing and is retained on file;
- (d) the client name and file number are recorded on the charge card sales slip;
- (e) the word "trust" appears on the charge card sales slip;

continued on page 2

(f) the receipt is recorded in the trust deposit book and the charge card sales slip is attached to the deposit slip therein.

Rule 913(a) was also revised as follows:

Rule 913(a)

A member who:

(a) receives money in trust via cash or cheque or credit card made payable to the member which in the ordinary course of business upon receipt is paid to the client or to a third party on behalf of the client in the form in which it was received.

Members should be aware that separate charge card systems will be required for trust funds and for general funds – one to deposit general funds to the general account (Rule 911(3)) and the other to deposit trust funds to the trust account (Rule 910).

The member/firm must also ensure that the following procedures are in place:

1. All service charges, discounts, fees, etc. are charged to the member/firm general account. In cases where amounts are charged monthly by the financial institution, it is acceptable for those institutions to record the charge in the trust account once during the month and within two banking days reverse the amount so charged and charge it to the member/firm general account.
2. Service charges, fees, discounts, etc. associated with the process are not charged to the client (i.e. as a disbursement).

3. The amount of the trust transaction is inserted on the credit card slip prior to the client signing the slip.
4. All credit card slips for trust funds are fully completed and signed by the client before being accepted or deposited. Although discouraged, if trust amounts must be received via credit card over the telephone, a copy of the completed charge slip must be faxed to the client with the request that the client sign the copy and fax it back to the member/firm. That signed copy is to be retained on the client's file. Only after this process is complete may the charge slip be deposited to trust.
5. In the case of electronic systems, if the credit card number must be entered manually (i.e. system will not accept the number electronically), the expiry date of the card must be checked and a manual imprint of the card must be taken and retained on file.
6. For purposes of client confidentiality, the credit card slip must not indicate the nature of the legal services, only the words "legal services" plus a file number and a dollar amount.
7. For trust transactions, the words "trust account" must appear on the original credit card slip.
8. The client name and file number is to be recorded on the credit card slip and the copy of the credit card slip attached to the trust deposit slip by date processed.
9. Copies of credit card slips must be retained in accordance with Rule 980.

Please note that credit card companies can and will reverse amounts for up to a year after the original transaction. This issue is similar to that of receiving an NSF cheque into trust but the time of exposure is far greater. Refunds or transaction reversals can be processed by the credit card companies if:

(a) a client's signature is not obtained;

- OR -

(b) an imprint of the card is not available

Note: this makes it necessary in the case of an electronic system to also take a manual imprint of the card if the system will not accept the card and the numbers have to be manually input into the system;

- OR -

(c) the credit card processed manually has an "expired" expiry date.

Members/firms would also be well advised to assess the risk involved in accepting payment from certain individuals in this manner, particularly over the telephone, as Rule 971 still provides that the member is responsible for any trust shortage.

It should be noted that this Rule will be reviewed and could be revised through the WARH Committee process outlined above, but this Rule is not expected to conflict with future recommendations of that Committee. The WARH Committee is also currently reviewing the use of debit cards to receive trust monies.

In conclusion, if anyone has any questions or further clarification is required, please call me.

Highlights of the Meeting of Benchers held June 10th and 11th, 2004

Law Society Annual Meeting

The Law Society Annual Meeting was held Thursday, June 10th, 2004 in Moose Jaw. There were 106 in attendance.

The President of the Law Society, Brent Gough, Q.C., presented Senior Life Memberships to Lyle Oswald "Ozzie" Phillips of Moose Jaw and to Elton Gritzfeld, Q.C. of Regina. Mr. Phillips was admitted to the Law Society on July 2nd, 1954. As well as his legal career, Ozzie played semi-professional hockey, attending a couple of training camps for the Detroit Red Wings. Mr. Gritzfeld was admitted to the Law Society on June 21st, 1954. He was a Bencher from 1979 – 1985, serving as President in 1984. Mr. E. John Moss, Q.C. and Robert L. Pierce, Q.C. formerly of Regina also received Senior Life Memberships, but were unable to attend the meeting.

The members engaged in a spirited discussion of the two resolutions presented to the Annual Meeting.

The first resolution dealt with no-fault. In April of 2004, two members of the Joint No-Fault Committee, Chris Glazer, Q.C. and Chris Boychuk, had appeared before the Benchers to present their funding request for 2004. After much discussion, the Benchers resolved not to grant further funding and directed the Committee to present the funding requirements to wind down the Committee. Although the Joint No-Fault Committee was advised there would be another opportunity to appear before the Benchers, a resolu-

tion was brought before the Annual Meeting as follows:

Resolution from Certain Members of the Saskatoon Bar Association

WHEREAS the imposition of the no-fault system in Saskatchewan affects the rights of all residents in Saskatchewan and raises issues of fairness, justice and access to the courts that require clarification and education for the public interest;

AND WHEREAS the Law Society of Saskatchewan and the Canadian Bar Association, Saskatchewan Branch, have been involved in a Joint Committee which has had the mandate of, among other things, continuing to educate the public as to the effect of the no-fault system on the accident victim's legal rights and remedies and advocating for improvements to the compensation scheme for motor vehicle accident victims;

AND WHEREAS the work of the Joint No-Fault Committee has resulted in significant improvements to the compensation scheme for motor vehicle accident victims but there continues to be a need for the ongoing work of the Committee.

NOW THEREFORE be it resolved that the Law Society of Saskatchewan continue to support and fund the ongoing work of the Joint No-Fault Committee.

All members speaking to the motion were in favour, pointing out the achievements of the Joint Committee to date and the impact of the no-fault provisions on the public in

Saskatchewan. The Benchers abstained from voting but listened carefully to the discussion of the resolution. The resolution passed.

The second resolution dealt with amendments to *The Civil Juries Act* being proposed by the Court. Chief Justice Gerein requested, and was granted, permission to give some background on the proposed amendments. A number of members spoke, several quite passionately. Ultimately the resolution:

WHEREAS section 18(1) of The Jury Act, Chapter J-4.2 of the Statutes of Saskatchewan provides:

18(1) any party may demand a jury in accordance with The Queen's Bench Rules in an action:

- (a) for libel, slander, malicious arrest, malicious prosecution or false imprisonment; or
- (b) where the amount claimed exceeds \$10,000.

AND WHEREAS in January of 2004 the Court of Queen's Bench proposed amendments to The Jury Act that would severely curtail a civil litigant's right to trial by jury;

BE IT RESOLVED that the Law Society of Saskatchewan advise the Court of Queen's Bench and the Minister of Justice that it opposes the proposed amendments to The Jury Act. was passed.

Rule Amendments

Rule 154(3)

The Benchers approved an amendment to Rule 154(3) which will permit students-at-law to serve as clerks at the Tax Court of Canada.

Rule 910(3) and 913

The Benchers approved amendments to Rules 910(3) and 913 which will allow firms to accept payment of retainers into trust by way of credit card. An article on this topic by John Allen, C.A. is the lead article in this edition.

Forms A-1, A-8, A-11, A-12, A-15, P-2 and P-2A

At the April Convocation, the Benchers approved an amendment to Rule 149A which requires members to report certain convictions to the Law Society. In light of those requirements, it was necessary to amend all of the application forms in order to rationalize the question to the new Rule. In addition, Form A-8, Application for Admission as a Lawyer, was re-drafted in order to have it reflect the same perspective as the other application forms.

Forms C-4 and C-5

These forms were amended to clarify that the signator was the Law Society of Saskatchewan.

Appointment to Provincial Court

Congratulations to Daniel Joseph O'Hanlon of North Battleford on his appointment as Judge of the Provincial Court. Judge O'Hanlon was called to the Saskatchewan Bar in 1990 and was a Crown Prosecutor with the Saskatchewan Department of Justice from 1995 to the present.

Special Fund Claims

The Benchers dealt with claims against the Special Fund involving three lawyers. The Benchers approved payments totalling \$54,910.02 which should be the last claims involving Daniel Lamontagne. The total of those claims is \$743,930.36, not including trustee fees or similar costs.

The Benchers approved payments totalling \$53,594.47 regarding Reg Parker's former practice. The total of his claims since 2002 amount to \$54,978.29.

The Benchers also approved a claim against the Special Fund involving Michael Bomek. That claim in the amount of \$451.94 is the only claim received against Mr. Bomek.

Equity Ombudsperson Report by Judy Anderson

So, what is new from the Equity Ombudsperson Office? When I was first appointed as the Equity Ombudsperson in February 2004, the primary mandate of the office was to provide confidential assistance to lawyers, articling students and support staff on issues of discrimination or harassment within the workplace. This continues to be the primary goal.

However, for the past three years, the Equity/Diversity Committee has seen an increasing need to provide law firms with preventive strategies in order to ensure that the workplace is safe and comfortable for all. We are all painfully aware of the huge financial and emotional costs associated with an unproductive office. So how can our office help? If you are a managing partner or law firm administrator and looking for what do to at your next office retreat or staff meeting, our office can assist by providing a variety of seminars on such topics as respectful workplace, managing conflict effectively, team building and dealing with difficult employees to name only a few. In addition to seminars, I am available

to have a confidential discussion about a workplace issue you or your office may be experiencing. It is the goal of this office to provide support and assistance in order for law firms to avoid potential costly problems. It is my intent to deal with all issues in a constructive manner rather than assigning blame. If, however, you or someone in your office is experiencing difficulties, I will ensure that all discussions are in confidence as I am aware of the need to deal with concerns about the firm's reputation and the impact a problem may have on the firm.

Judy Anderson, MSW

The Equity Ombudsperson is Judy Anderson, a social worker with a Masters Degree from the University of Toronto and extensive experience in mediation, workplace training and alternative forms of dispute resolution.

Judy's practice is located in Saskatoon and is separate from the Law Society.

To talk with Judy or to leave a confidential message at any time, please call 242-4885 (in Saskatoon) or 866-444-4885, (outside of Saskatoon).

“Going Out on Your Own” ***by Donna Sigmeth of the*** ***Professional Standards Committee***

One of the most difficult aspects of the practice of law is the actual day-to-day hands-on law office management necessary to keep a practice running smoothly. Lawyers who may be very successful practitioners are not always experienced businesspeople. If you are considering going out on your own you must consider all aspects of the management of a law office, such as payroll, staffing, paying bills, ordering supplies and equipment, setting up efficient computer systems, and in particular, accounting systems and systems for regular billing and collection. All of these things and many more are intrinsic to establishing a successful and lucrative practice.

Time and time again, the Law Society sees failure to have good infrastructure in a small or solo practice causing members great stress personally and financially. Such practitioners have become too busy to take care of business basics which in turn causes them financial stress, unhappy clientele, complaints and potentially insurance claims. A high number of such practitioners who do not have a strong business infrastructure are unable to say “no” to new files coming in the door and simply do not have the time to have a balanced life outside of practice. The Professional Standards Committee sees many practitioners who have not taken holidays in many years and suffer burnout as the “hamster on the wheel syndrome” takes over their lives.

John Allen, C.A., the Auditor/Accountant for the Law

Society of Saskatchewan, has, during his past 3 years with the Law Society been very receptive to calls and visits from members planning to go out on their own. Feedback from members who have dealt with Mr. Allen in this capacity indicates that he has been extremely helpful in providing practical advice with respect to the accounting side of the practice of law and how best to comply with the Rules of the Law Society of Saskatchewan with respect to general and trust accounting.

Another resource I would like to suggest is the SKLESI website on practice management which is located at www.sklesi.org/. This website won awards for SKLESI and is full of practical information about the management of a law practice.

As well, at April 2003 Convocation, the Law Society of Saskatchewan Professional Standards Committee approved a pilot project implementing a process whereby members with complaints before the Professional Standards Committee having practice management difficulties may access proactive assistance to improve their practice management and, hopefully, their business and income accordingly. The theory is that the Professional Standards Committee is prepared to attempt to assist members in a proactive way to resolve practice difficulties and prevent more serious problems in future. This type of practice management review is also of value to Saskatchewan Lawyers’ Insurance

Association in terms of loss prevention. The member receiving practice management assistance will benefit from concentrated attention and input into their practice and their business. The Professional Standards Committee believes that the member should contribute a portion of the costs of such assistance, as it is designed to provide an economic benefit to him or her personally. In these situations, the Law Society has retained Rod MacDonald and his fees are shared between the Law Society, Saskatchewan Lawyers’ Insurance Association and the member under review.

Mr. MacDonald has now acted on two occasions as a practice management advisor to assist members who are having difficulty and have complaints before the Professional Standards Committee. Mr. MacDonald has provided on-site hands-on advice about law office management set-up from the very basic filing systems through to ongoing file, client and accounting and billing management. The Professional Standards Committee will report in the Benchers’ Digest after the two current pilot projects have been concluded as to the outcome with respect to the two members participating, likely in the fall of 2004. Mr. MacDonald is also available to be retained privately by a member or members, either encountering difficulties in practice or wishing to start a small firm or as a sole practitioner.

New Dean of the College of Law

W. Brent Cotter, Q.C. is the new Dean of the College of Law, University of Saskatchewan, effective July 1st, 2004.

Brent Cotter was born in Kam-sack, Saskatchewan and raised in the province. He obtained his high school education at St. Louis College and Vanier College Institute in Moose Jaw. Brent attended the University of Saskatchewan where he obtained his bachelor of commerce degree with honours in marketing in 1971. In 1974, he obtained his bachelor of laws degree from Dalhousie University in Halifax, Nova Scotia. In 1977, Brent received his Master of Laws degree from Dalhousie.

Brent began his teaching career at Dalhousie Law School as an Assistant Professor of Law in 1977. In 1980, he became Associate Professor, a position he held until 1992. During this time, Brent served terms as Associate Dean and Executive Director of Dalhousie Legal Aid Service and was a labour arbitrator and consultant. Brent was Scholar in Residence at Duke University School of Law in Durham, North Carolina (1983-

84) and at the College of Law, University of Saskatchewan (1989-90). In 1991-92, he was visiting professor with the Faculty of Law at the University of Alberta in Edmonton, Alberta, taking up a newly established Chair in legal ethics. Brent's varied teaching responsibilities included a focus on legal ethics and professional responsibility, as well as employment law. He is co-author of the second edition of *Employment Law in Canada*, published by Butterworths in 1993, and author of *Teaching Professional Responsibility in Canada* (1991).

From 1992 to 1997 Brent served as Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan. In July 1997, Brent was appointed Deputy Minister of Intergovernmental and Aboriginal Affairs, as well as Deputy Provincial Secretary. Brent was responsible for all aspects of intergovernmental and aboriginal affairs including international relations, federal-provincial relations, constitutional relations, trade policy and telecommunications and broadcast policy, Indian and Métis

affairs. Responsibilities as Deputy Provincial Secretary included all aspects of protocol, anniversaries and special events for the province as well as French language co-ordination. In March 2002, municipal government relations was combined with this portfolio, creating a new Department of Government Relations and Aboriginal Affairs, extending the Department's responsibilities to include Saskatchewan's relations with all levels of government.

Brent is a member of the Law Society of Saskatchewan and the Nova Scotia Barristers' Society.

Canadian Centre for Professional Education (CPLED) Program Launched in Saskatchewan. Jennifer Fudge, Executive Director, SKLESI

August 3rd marked the start date of the CPLED Program. Articling students were introduced to their new online learning environment at the College of Law and are now in the process of completing year one of the new bar admissions program.

Having only started with SKLESI in April, I have had to come up to speed on CPLED very quickly. During my learning process, I was struck by how many others were learning with me. There seems to be a great deal of curiosity and speculation as to what CPLED is and why we have adopted this new way of doing things. The purpose of this article is to share some of the answers I have come across.

The process that led to the CPLED Program is a lengthy one that started in 2000. CPLED began as a way of looking at the issue of mobility. Was it possible to create a uniform bar admissions course throughout the western provinces that would make the issue of mobility more feasible? The answer was yes and what started out as an idea amongst the 4 western provinces turned into the CPLED Program, a partnership between the three Prairie Provinces.

But why an online program? That seems to be one of the most common questions posed about CPLED. While it is true that the

internet is the way of the future and that we are riding the wave of technology, it is not fair to say that this was the only motivation for the new program. While this is a very exciting project and certainly an innovative way of doing things, the online component of the course offers more than the excitement of new technology. Rather, an online environment ensures that we are keeping pace with advancements in education while also offering new advantages for learners.

The CPLED Program is comprised of 8 modules, 5 online and 3 face-to-face. In developing the CPLED Program, a research project was completed to reveal what skills a new lawyer needs to be successful in their first five years of practice. The results of this study are captured in CPLED's Competency Profile and this profile is the foundation for each of the eight modules students need to successfully complete. The five online modules test for skills that students may demonstrate in isolation, for example legal drafting or preparing affidavits, etc. The three face-to-face modules focus on interpersonal skills such as negotiation or advocacy.

While working in the online environment, students will have to take more responsibility and con-

trol of their learning. They have to complete tasks in a timely manner and demonstrate competence in those tasks by producing a quality product. This teaches the student responsibility and time management

In addition, working online provides more direct feedback for students individually. Because they are able to pose questions directly to their learning group facilitators they have more opportunity for and access to effective feedback for their individual concerns. As well, the weekly assignments ensure that students receive guidance on individual areas of weakness and strength because the facilitator is responding to them personally and not to a class generally.

The CPLED program is also designed to reflect what students will encounter in practice on a daily basis. The students will be working for a virtual firm, titled LEGAL, and will be opening and working on files for fictional clients. As they complete specific tasks, students will be evaluated on the level of skill that they demonstrate in completing the task. For example, in writing a memo following an interview with a fictional client, students will not only be evaluated on whether or not they captured the key points, but also on how clearly they com-

municated those points and whether or not they have expressed an appropriate opinion based on the facts of the interview.

The anticipated end result is not only to license new lawyers who reflect years of substantive learning through law school, but also confident new lawyers who have received authoritative training on how to skillfully utilize that knowledge in their daily practice. The students are not only being tested on what they know of the law, but also their ability to find the answers that they will need in a work environment and their ability to present those answers in a manner that is appropriate to the client or the professional they are dealing with.

So far we have looked at much of the rationale behind the CPLED Program, but what about the practical details? Here are some of the more commonly asked questions:

1. *What are the program requirements for students to successfully complete the CPLED Program?*

Students must complete all learning assignments to a satisfactory level and must achieve a grade of “competency demonstrated” on all competency evaluations. There are 8 competency evaluations in total.

Attendance, participation and professionalism in the online learning environment and during the face-to-face sessions are mandatory.

2. *What role will principals play in ensuring students are able to complete the CPLED Program while articling?*

Principals will need to ensure that students have sufficient time while in the office to work on the CPLED Program. It is estimated that a student will spend anywhere between 8-12 hours per week for each online module. Most of that time should take place in the office during the workday. Students will need to employ effective time management

skills and it is a good idea for students and principals to work out an arrangement together.

Many principals have asked about the degree to which they may assist students. Principals are encouraged to provide very general assistance only, but no specific answers should be provided to students. Also, principals should direct students back to the CPLED website for precedents or examples for student assignments. Everything a student needs will either be available on site or there will be a direct link provided to CPLED approved resources elsewhere.

3. *Where can I get more information about the new CPLED Program?*

For more information visit our website, www.sklesi.org or contact Lynn Loewen, CPLED Program Director, SKLESI. She may be reached by phone at 653 7584 or via email at lloewen@sklesi.org

2007 IS A MILESTONE

In 2007, the Law Society of Saskatchewan will celebrate its 100th anniversary. Yes, our law society was founded in 1907. We have 100 years of rich history and contribution to this province to celebrate.

The Law Society wishes to take some time and energy to recognize this event. It is hoped we can make the public aware of this anniversary, engage lawyers in looking at the history of the society and the prominent members of our profession, and finally just have fun.

A Centennial Committee has been struck to begin planning how, when and where we celebrate in 2007.

Some things being considered are a traveling display that can be set up in each of our major centers, a series of video clips that can be used to promote the anniversary, a centennial pin and medal, a commemorative stamp, a 100th anniversary magazine and a gala held in Saskatoon and Regina.

We want to do most of the preparatory work in 2005 and 2006. The committee is looking for volunteers. If you would like to assist in organizing one of the events, please let us know. Please call Ron Kruzeniski at (306) 787-5427 or Sue Baer at (306) 569-8020.

2007 will be a milestone in our profession's history in this province. Please help us get ready to celebrate reaching that milestone and then in 2007 help us really make it a memorable year.

Legal WebCites

By Peta Bates

The Saskatchewan Law Courts launched their new web site in April 2004. The existing web site for the Court of Appeal is incorporated in this site with a new look and there are new pages for the Court of Queen's Bench and the Provincial Court. Most of the information on the web site is aimed at students, teachers, members of the public and self-represented litigants.

Courts of Saskatchewan

<http://www.sasklawcourts.ca>

Links to each Court are in the centre column and recent headlines, such as judicial appointments, appear to the right of the page. Older media releases are available in a link at the top of the page.

Court of Appeal

Information is provided about the role of the Court of Appeal and its history in the province. Current and past Justices of the Court are featured with portraits and biographical information. The court schedule is posted for the current three month period. The date, time, court room number, case name and file number are provided. Judicial appointments are explained and a link to the Canadian Judicial Council outlines the complaint procedure.

The link to the section entitled *Appealing a Decision* will be useful for self-represented litigants as it describes the limitation period for appeals and the costs involved. When discussing the notice of appeal it would be useful to provide a link directly to the form instead of

to a definition of the term. The Rules and Practice Directives are accessed through a separate link on the Court of Appeal page and are available in HTML and PDF format.

Court of Queen's Bench

The Court of Queen's Bench page provides information about the jurisdiction of the Court and contact information for the judicial centres. The Rules and Practice Directives link to the Queen's Printer web site. Jury selection and the role of the jury are explained.

Of particular use for the non-lawyer are the links to explanations of civil law, criminal law, family law, bankruptcy, enforcement of orders, and wills and estates.

Provincial Court

Information is provided about the jurisdiction and divisions of the Court, Justices of the Peace, the Court offices and circuit points. Court locations and sitting times are accessed through a pop-up map of the province. This format takes time and patience to use; a simple chart would be easier to consult and print. There is an interesting history of the Court based on an article by Judge D. Morris originally published in 2001 in the *Provincial Judges' Journal* and updated in 2002 by Judge B. Henning.

The *Self-Represented Individuals* link describes what happens when an individual is charged with a criminal offence, outlining the types of offences, the procedure in the Court on the first appearance, arrest and bail, the choice of pleading and

choice of Court, and the types of sentences. A link is provided to the *Online Fine Payments* page for summary offence tickets on the Saskatchewan Justice web site.

Courts Education Program

The three levels of Court have formed a Public Information Committee to provide media and educational information on behalf of the Courts. The Court Communications Officer, Colleen Yanush, is the public liaison to this Committee. Judges from each Court are available to visit schools to discuss the role of the courts and the duties of a judge. Information about this program and the "Court Watching" program of class visits to a courtroom are available under the Courts Education Program link.

Virtual Courtroom

The virtual courtroom page gives a 360 degree view of a courtroom and explains the roles of all the participants in a trial. Free QuickTime software is required to view this virtual courtroom.

Court Decisions

Many members of the public will be visiting the Courts web site to find court decisions. From the Courts web page they are directed to the home page of the Law Society of Saskatchewan web site. It would be useful to add further directions such as "For recent judgments consult the *New Judgments* link. To search for older judgments, select *Databases* and then *Fulltext Judgments*".

Rulings – June 2004

Chapter V – “Impartiality and Conflict of Interest Between Clients” – Acting for an Estranged Couple on Two Separate Matters “Part 2” – April 2004/June 2004

The Ethics Committee re-considered this matter during its meeting of June 10th, 2004.

The Committee reviewed the material from Mrs. R’s lawyer not received in time for consideration at the last Ethics Committee meeting of April 1st, 2004.

The Committee confirmed that the ruling it made at the last meeting stands.

Chapter VII “Outside Interests and the Practice of Law”, Chapter VIII “Preservation of Clients’ Property, Chapter XI “Fees” – Withdrawal of Lawyer’s fees from Trust, Not Other monies – June 2004

Facts:

The Law Society received a complaint from Mr. X’s group of companies, who employed Lawyer E as Vice-President and In-house Counsel. A very basic document was drawn up and signed by the parties

indicating that on termination of employment Lawyer E would be paid a sum of money. During the course of employment, Lawyer E placed real estate sale proceeds of Mr. X & Co. in trust with a former associate’s law office. Lawyer E’s employment came to an end and Mr. X and Lawyer E differed as to whether the conclusion was by way of termination or resignation. Lawyer E attempted to obtain payment of the sum of money to which he believed he was entitled under the employment agreement, by attempting to take monies from the real estate sale proceeds held in trust with his former associate’s law firm. The former associate refused to pay the sum of money to Lawyer E and continued to hold the funds in trust.

Ruling:

The Committee was of the opinion that there was no basis upon which Lawyer E could justify taking the sum of money from trust. The sum of money under the employment agreement could not be clearly characterized as solicitor’s fees, in fact, it was based on a very basic employment contract and the facts were disputed with respect to the nature of the conclusion of employment. Issues such as this are for the Courts to decide. The lawyer has no clear right to set off against trust monies in this situation. The Ethics Committee was of the opinion that the former associate lawyer took the

correct position and that it would be prudent to pay the monies into Court.

Chapter V “Impartiality and Conflict of Interest Between Clients” and Chapter V “A” – “Conflicts of Interest” - Merging Associates Representing Opposing Parties to Litigation – June 2004

Facts:

Lawyer S acted for the wife in a family law dispute and Lawyer T acted for the husband. Lawyer S and Lawyer T later became associated and practiced from the same office. The lawyers indicated that they discussed the potential conflict with their respective family law clients and the clients wished both lawyers to continue to act for them. A Pre-Trial Conference took place and the Pre-Trial Judge addressed the conflict concern. At that time, both parties indicated that they would like to remain with their respective lawyers. Settlement was reached at Pre-Trial. After Pre-Trial, Lawyer T, on behalf of the husband acted to enforce the settlement agreement against the wife. The wife was no longer represented by Lawyer S and complained to the Law Society about the conflict.

Ruling:

The Ethics Committee was of the opinion that the conflict in this situation was so fundamental that the clients could not properly waive same. It was predictable that a complaint would occur in these circumstances. Clearly, lawyers should send files like this out of the office when they begin to practice in association. The Committee was of the opinion that, despite the fact that Lawyer S is no longer acting for the wife, Lawyer T must now withdraw and send this file out of the office.

Chapter XVI
“Responsibility to
Lawyers Individually”
– Miscellaneous –
Criticism of Opposing
Counsel before Court
of Appeal – June
2004

Facts:

Crown counsel, on Appeal, complained about allegations of unethical conduct made in a factum by defence counsel against Crown

counsel at trial. Crown counsel for Appeal also complained about the fact that defence counsel did not advise the trial Crown that he planned to make such allegations before the Court of Appeal.

Ruling:

The Committee was of the opinion that if counsel planned to criticize another counsel, it would be appropriate to provide him or her a copy of the factum. However, in the circumstances, service on the Crown was sufficient as it is presumed that the Crown handling the appeal would provide the factum to the trial Crown counsel. The Committee was of the opinion that service on the Crown is equivalent to a factum being served on a law firm. The Committee was of the opinion that defence counsel was entitled to criticize trial counsel and unless the circumstances were such that the Court chastised counsel, or indicated that the arguments were so baseless as to be outrageous, the Ethics Committee would not review the matter further. The Committee recognized that on occasion, the conduct of counsel at trial may be a

legitimate consideration on appeal. The Committee is very reluctant to impose any “chill” upon appellate counsel in raising such issues where appropriate. In these circumstances, the Court reviewed defence counsel’s arguments and did not chastise counsel. The argument was made before the Court of Appeal and defence counsel was not successful on that argument. The Committee is of the view that in these circumstances, the matter would not be reviewed further by the Ethics Committee.

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