

BENCHERS' DIGEST



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October, 2004

2005 Budget *by Brian Hendrickson*



Brian Hendrickson is the 2004 Chair of the Finance Committee. Mr. Hendrickson is a Crown Prosecutor in Moose Jaw and has been a Bencher of the Law Society of Saskatchewan since 2000.

The Finance Committee is in the process of finalizing the 2005 budget for the Law Society. This budget will be reviewed by the Benchers for their approval at the October Convocation. The results will be

reported to the membership in November.

As part of the budgetary process, the Finance Committee invited input from other Committees of the Law Society and other organizations and departments, the funding of which impact on the budget. All were asked to identify projects with significant or increased costs. As a result of that process, certain budget pressures that negatively impacted on the 2005 budget became obvious. There were increases sought for diverse projects such as the expansion and continuation of library services and the implementation of the new Bar Admission Course. The input was a great help and it was the Finance Committee's position that the requests for increased funding were appropriate and dedicated to projects consistent with core services that must be provided to the membership and profession. However, the net effect is that the expenditures in the 2005 budget have increased by more than \$100,000.00 over the 2004 budget.

In addition, the Finance Committee recognized there is a need to increase the monetary amount in the Special Fund. This Fund is maintained to compensate losses due to lawyer misappropriation and malfeasance. Maintaining an appropriate level of funding in this account is crucial to ensuring public and client confidence in our ability to continue as a self governing profession. Several recent large defalcations, the details of which have been reported to the membership, have reduced the Fund. In addition, there has been a strain placed on the Fund as a result of money expended for various trusteeships. The Finance Committee requested an actuarial study of the Fund with recommendations as to the appropriate level to be maintained in the Fund. As a result of that study, the Committee recommended to the Benchers that increased money must be put into the Special Fund.

Presently, each member pays \$45.00 annually to the Special Fund. The actuarial study and work

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done by Tom Schonhoffer led the Committee to conclude that this was inadequate. Indeed, roughly \$90,000.00 is required to bring the Fund up to a neutral balance. However, it is also desirable that we continue to grow the money in the Special Fund.

As a result of the budgetary pressures and the need to increase the financial levels in the Special Fund, the Finance Committee recommended various options to the Benchers, all of which would see an

increase in membership fees in 2005. The increased fee will be split between the operating costs of the Law Society and the Special Fund.

While no one wants to advocate increased fees, a comparison with other provinces, including Alberta, demonstrates that Saskatchewan members would continue to pay a lesser fee than many of our national colleagues. In recommending a fee increase, the Finance Committee attempted to strike a balance between keeping the proposed

increase to a reasonable level while ensuring the continued strength of the Special Fund and the continuing operations of the Law Society.

I wanted to thank my fellow colleagues on the Finance Committee, the Benchers and the professional staff of the Law Society administrative office for their invaluable assistance. It is difficult to recommend increased fees but the recommendation was one made in the best interest of the profession and the Law Society.

Highlights of the Meeting of Benchers held September 9th and 10th, 2004

Equity/Diversity

Judy Anderson, Equity Ombuds-person, has held two focus group meetings, one in each of Regina and Saskatoon. A third will be held in Prince Albert. Ms. Anderson is pleased with the response to the meetings and the quality of the discussions. The focus groups have discussed issues such as mentorship (workplace / life balance and retention), civility and accommodation. The suggestions made by the focus groups will be reviewed by the Equity/Diversity Committee and priorities will be determined in order to plan the future direction of the Committee.

The Committee is pleased with Ms. Anderson's work in this area and is optimistic about what may be accomplished.

Bar Admission Program

The new CPLED Bar Admission Course commenced August 3rd, 2004. Two on-line modules have been completed.

The Admissions & Education Committee considered a request to take the Bar Admission Program out of order. Rule 159 requires that the course be taken consecutively. The Committee did not believe that the request could be granted. First of all, the course builds upon itself (i.e. each module is a pre-requisite for the next). Secondly, the electronic modules are no longer available once they are closed (i.e. the modules are available on-line from the contracted service provider for a specific period of time). Thirdly, the agreement with the service provider only allows for the number of seats which had been determined by the number of students who had registered prior to the commencement of the course.

The Committee recognizes that this decision has implications for the student. However, students are advised of the timeline requirements in law school and some students did register for and commence the course prior to obtaining employ-

ment. The Committee also is concerned that because this is the first time the course has been offered in this format, it would not be prudent to change the parameters at this time. The on-line format is shared with Alberta and Manitoba and those jurisdictions have advised that they will not permit students to take the course out of sequence.

Students-at-Law

The Benchers have long required that students-at-law identify themselves as such when signing letters. A member inquired whether this requirement also applied to e-mail from students. The Benchers agreed that students-at-law must identify themselves as students when sending business email.

Budget

The Benchers will approve the 2005 annual fee and budget at the October Convocation. In September, the Finance Committee considered funding requests from SKLESI and

Libraries as well as a report on funding for the Special Fund. At this point, it appears that annual fees will have to be increased and the Finance Committee directed staff to develop some different alternative budgets, including deficit and break-even scenarios. Brian Hendrickson, Chair of the Finance Committee, has a more complete article in this Digest.

Special Fund

In January of this year, the Finance Committee had to deal with the cost of insuring the Special Fund. The Special Fund is required by section 12 of *The Legal Profession Act, 1990* to reimburse persons who suffer pecuniary loss as a result of a member's misappropriation of funds in trust. The Law Society has carried insurance on the fund to cover catastrophic loss. The premium for the coverage increased sharply for 2004. The Finance Committee directed that an actuarial study be obtained to make recommendations for the appropriate level of the fund as well as the appropriate amount of insurance coverage.

The actuarial report, reviewed by the Finance Committee in September, recommends that the Special Fund should be retained at \$2.2 to \$2.5 million dollars. As a result of several defalcations and trusteeships in the last few years, the Special Fund now stands at \$2 million. It is the opinion that an increase of \$65 to the portion of the annual fee attributed to the Special Fund is required just to put the fund into a break-even position. A larger increase may be required to build the fund to the actuarially recommended levels.

Further review will be required by the Benchers in October.

Stuart J. Eisner Memorial Golf Tournament by Allan Snell, Q.C.

On September 3rd, 2004, the first annual Stuart J. Eisner Memorial Golf Tournament was held at the Melfort Golf & Country Club. In spite of the fact that it was held the Friday before the Labour Day weekend and that Melfort, as pretty a town as it is, is somewhat out of the way, upwards of 80 golfers attended, and many more non-golfers were at the banquet Friday night.

The Melfort Golf & Country Club put on a wonderful event and after heavy rains on Thursday, the skies cleared and everyone enjoyed a pleasant afternoon of golf.

A combination of silent auction and live auction called by Grant Hodgins produced over \$8,000.00 for the Stuart J. Eisner Memorial Bursary. Plans are already underway for next year's event. Anyone wishing to make a donation to the bursary can make their contribution to:

University Advancement
University of Saskatchewan
117 Science Place, Room 223 Kirk Hall
Saskatoon, Saskatchewan S7N 5C3

Anyone wishing to make a contribution to a fund to assist Stuart's stepson, Rene Prefontaine, in continuing his education can forward their donation to:

Trevor Blevins
Puetz Blevins Financial Group
204 Main Street, Box 2926
Melfort, Saskatchewan S0E 1A0

Rural Practitioners

Concerns have been expressed that rural practitioners, particularly sole practitioners, face unique challenges in practice including, *inter alia*, isolation, over-work and clients resistant to being billed. The Benchers have appointed a Committee consisting of Michael Fisher, John Will and Bill Holliday to study this issue and make recommendations. Members are asked to provide comments which the Committee can use as the basis for future work. Comments may be forwarded to the Committee members in care of the Law Society office.

Law Society Centennial

PLAN 2007

by Ron Kruzeniski, Q.C.

The Centennial Committee has developed and presented a plan to the Public Relations Committee and the Benchers for celebrating the centennial of the Law Society in 2007. The objectives are:

- educate the public on the contributions the profession and individual lawyers have made to this province;
- inform lawyers of our proud history and our outstanding colleagues, past and present; and
- have some fun along the way.

The plan consists of 21 potential events or projects. They are as follows:

For the public:

- design and use centennial letter-head for the Society;
- design a travelling display and arrange to have it in each courthouse (or local library, museum) in the province for at least a month;
- design a special section of the libraries' web site for centennial information and events;
- produce a 5 to 10 minute video celebrating 100 years of legal history in the province for use when talking to school groups and the public;
- produce 10 historical vignettes, each depicting a legal historical event in the province;
- publish an anniversary magazine, collector's edition, celebrating the 100 years and the many events and legal personalities of the 100 years;

- produce a 100th anniversary pin, limited edition;
- produce and present a commemorative medal;
- produce a print/collage of all the courthouses of the province, limited edition (for presentation and for purchase);
- request Canada Post to produce a special commemorative stamp;
- organize one event with the Alberta Law Society to recognize our joint 100th anniversary;
- produce a centennial calendar with appropriate Saskatchewan photographs.
- organize an event in co-operation with the CBA on Law Day, April 2007.

For the lawyers:

- prepare and print 12 pamphlets or articles on the history of the Society to be printed in various legal publications, the National or the Lawyer's Weekly;
- have something in each digest about the centennial from now to 2007;
- hold a Saskatoon/Regina Gala event with a noted guest speaker and specially honour all living past presidents of the Society;
- publish Iain Mentiplay's history of the Law Society;
- publish a history of the law firms of the province;
- hold a one day conference on the future of Law Societies.

The Public Relations Committee has committed funds for 2004 to this project and a request for 2005 has been submitted. Also a request to the Law Foundation for financial support has been made. This is all part of a multi-year approach to planning, designing, developing and implementing a plan to celebrate the Law Society's centennial.

We are still looking for volunteers to head up our projects. If you are interested, please call me at (306) 787-5427 or Sue Baer at (306) 569-8020.

The plan is to celebrate our centennial throughout the year and not to have just one event that takes place without notice. We want to have at least one event in each month of 2007. When December 31, 2007 comes, I hope we all will say, "Wow, we've had a great celebration."

In Memory Of

MORRIS CYRIL SCHUMIATCHER of Regina, Saskatchewan passed away peacefully on September 23rd, 2004 at the age of 87. “Shummy” to those who knew, loved and admired him, was born in Calgary and graduated from the University of Alberta in 1940 with his Bachelor of Arts and in 1941 with his LL.B., receiving his LL.M. in 1942 from the University of Toronto. After serving with the Royal Canadian Air Force from 1943-1945 he received his Doctorate of Jurisprudence. Dr. Schumiatcher came to Saskatchewan in 1946, accepting the position of Law Office of the Attorney General and later became the personal assistant to the-then Premier, T.C. Douglas. Because he was retained to argue a case before the Privy Council, he was appointed the youngest King’s Counsel in the Commonwealth at the age of 31. He entered private practice in 1949. Dr. Schumiatcher published articles and books and was patron and supporter of numerous organizations, galleries, theatres and artists. Dr. Schumiatcher is survived by his wife of 49 years, Jacqui.

LLOYD (LAZAR) AVRAM of Regina, Saskatchewan passed away on September 28th, 2004 at the age of 76 at the William Booth Special Care Home. Mr. Avram enjoyed a diverse working career that spanned over 60 years, starting out with various employment such as a bellhop, a secretary, and sales. He then entered politics and became mayor of Indian Head and also leading the Social Credit Party until it merged with the Progressive Conservative Party in 1973. Mr. Avram eventually went to the University of Regina at the age of 45 and was admitted to the College of Law, graduating in 1978. He opened up Avram Law Office in 1979 where he spent the next 25 years, becoming a trusted friend and advisor to hundreds of clients, until he suffered a stroke in July, 2004.

Mr. Avram is survived by his wife of 53 years, Kaye, their 4 children and 12 grandchildren.

Times Are Changing

by Judy Anderson, Equity Ombudsperson

Over the past few months I am struck with how often I have heard comments like, “Who knows any more what I can and can’t say or behave in my office. Times have changed.” There is usually an implied message that all is not for the best! My response is usually the same, assuring the person that times have and are changing and that it is best to keep pace or as the old saying goes, “Look out for the on coming train!”

Here are a few examples of just how times have changed:

Gary Neinstein, a lawyer from Toronto was found guilty in November 2003 of sexual harassment and was disbarred. The discipline panel found that between 1988 and 1993 he “sexually harassed a client in a professional context through verbal or physical conduct of a sexual nature including but not limited to engaging in unwanted touching, making sexual suggestive comments and engaging in unwanted contact

or attention after the end of a consensual personal relationship.” In addition he sexually harassed a support person at his firm from 1990-1991 resulting in her leaving the firm.

The five-person panel concluded that although Neinstein’s conduct was not a public protection issue, that his conduct had a significant negative impact on the two victims and on the entire legal profession. In their findings, the panel members wrote, “Every finding of professional

misconduct against a solicitor affects, to some extent the degree of the reputation of the profession. Where that misconduct is characterized by a breach of trust, it strikes at the very core of the profession's value system and the expectation that the public has of the profession. Any reasonable person would find that professional misconduct found in this case to be egregious. The public has every right to expect that such conduct will be treated extremely seriously".

Brian Greenspan, Mr. Neinstein's lawyer, is appealing the decision.

Another highly publicized case, much closer to home, is *The Queen vs. David Ahenakew*. He is being charged with wilfully promoting hatred. Mr. Ahenakew served in Canada's army in which he received the Canadian Decoration for distinguished service and good conduct. He joined the Federation of Saskatchewan Indians Nation in 1967 and was the longest serving chief. In 1978 he received the Order of Canada and later received an Honorary Doctorate of Laws from the University of Regina.

Ahenakew's distinguished past was tarnished at a FSIN conference on Aboriginal Health Care, when delivering his forty five minute infamous speech to almost two hundred delegates. As reported by a CBC reporter, the speech was filled with profanities, anti Semitic comments, bigotry and complaints of the media creating racial conflicts. After the speech, the reporter further questioned Ahenakew on his views regarding Jewish people. These comments and parts of his original speech quickly made the news at a local and national level.

After much angst, Mr. Ahenakew resigned all of his Aboriginal leadership positions and is currently awaiting his trial.

A third example that also received nation wide publicity and a "fall from grace" was the case involving Thomas Haythe. The incident centred around the merger of two large, prestigious law firms, Haythe & Curley of New York and Torys LLP. The merger would have employed over three hundred lawyers and boasted an impressive list of clients. Thomas Haythe attended a party to celebrate the upcoming merger, at which there was alcohol and a number of female colleagues in attendance. Within days of the party, Les Viner, a managing partner declared the incidents at the party to have violated the firm's harassment policy and subsequently Mr Haythe went on medical leave and did not return to the firm.

So, what are the lessons to be learned from these examples? The first lesson is to understand that the goalposts have changed over the past ten years. Society's tolerance for inappropriate behaviour is quickly disappearing. Stephen Hammond in his recently published book, *Managing Human Rights at Work*, writes, "Individuals at all levels of business had better be respectful of people's basic rights or face harsh consequences." He states the consequences are not only the loss of prestige and position, but also the horrendous associated financial costs. It is important that people in the workplace be proactive and become educated. It is foolhardy to remain passively unaware in a society that is quickly changing. To keep current, there are several informative books on the market and our

office is always available to provide seminars or to answer any questions.

The second lesson from these examples is that it is not helpful for colleagues, partners, friends and family to stand idly by and not challenge the inappropriate or unacceptable behaviour. My guess is that for most people, they simply are not aware that the goalposts have been moved and that they are indeed out of sync with the times. Do them a favour and find a way to challenge their thinking before they collide with the oncoming train.

For more information:

Equity Ombudsperson
Judy Anderson
Saskatoon, Sask.
Phone: (306) 242-4885
or toll free (866) 444-4885.

Rulings

Chapter IX – “The Lawyer As Advocate” – Contacting Opposing Counsel’s Expert Witness – June 2004

Facts:

Two lawyers requested a ruling from the Ethics Committee with respect to counsel’s right to interview opposing counsel’s expert witnesses prior to a civil trial. Lawyer A took the position that he was entitled to contact Lawyer B’s experts and requested an opportunity to interview them prior to the trial indicating that it was his duty to cross-examine the expert witnesses, pursue the issue of credibility and their willingness to be interviewed, as well as to pursue defence counsel’s communications with the experts, at trial. Lawyer B indicated that it was her opinion that her experts were under no obligation to be interviewed by Lawyer A who would have the opportunity to cross-examine them at trial in the presence of a Judge to oversee the process. Lawyer B advised her expert that litigation process did not require the expert to provide an opinion regarding issues outside the scope of his area of expertise or even to discuss the matter with opposing counsel prior to trial. Lawyer B explained this to the expert, drafted a letter to Lawyer A and faxed the draft to the expert for review. The draft was accidentally faxed to Lawyer A’s office and Lawyer A took exception to this letter. Lawyer B indicated that it was her opinion that legal counsel is not entitled to communicate directly

with opposing counsel’s experts due to solicitor/client and litigation privilege governing the relationship of legal counsel and his or her expert consultant.

Ruling:

The Ethics Committee indicated that the May 1998 Chapter IX ruling of the Ethics Committee of the Law Society of Saskatchewan stands. The 1998 ruling essentially indicates that there is no property in a witness and counsel retaining the expert may not dissuade the expert from speaking with opposing counsel. Opposing counsel may contact an expert witness prior to the trial. In this situation, the Ethics Committee wished to refer Lawyer A to The Code of Professional Conduct obligation regarding treating witnesses with courtesy, as the quantity of material and tone of correspondence was inappropriate. The Committee is of the view that it is up to the expert witness to decide if he or she wishes to talk to opposing counsel and what he or she will charge for time to review material, if required, and for the time to speak with opposing counsel.

Chapter IX – “The Lawyer As Advocate” – Contacting Opposing Counsel’s Expert Witness – September 2004

This matter was before the Ethics Committee in June 2004 and the parties requested that the Ethics Committee revisit the matter at September Convocation.

Ruling:

The Committee stands by the ruling previously provided to the parties in June 2004. The Ethics Committee was of the view that it has no jurisdiction to provide a legal opinion on privilege. The Committee stands by its previous ruling, in that the statement “no property in a witness” applies equally to expert witnesses. Counsel retaining an expert witness may wish to advise that expert what is and what is not privileged and the pitfalls inherent in speaking to anyone else about the file. There is nothing in the previous or current ruling to indicate that counsel retaining an expert witness cannot advise the expert that he or she has no obligation to speak with opposing counsel. The Committee would like to remind Lawyer A of his duty of courtesy to witnesses and opposing counsel, whether by monitoring the quantity of documentation and frequency same is forwarded for review or simply by being neutral and professional in the tone of his correspondence.

*You are cordially
invited to join the
library in celebrating
the holiday season at
our annual Christmas
reception to be held
Thursday,
December 2, 2004
from 3:00 to 6:00 pm.*

Refreshments will be served

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



Equity Ombudsperson

The Office of the Equity Ombudsperson is committed to eliminating both discrimination and harassment in the legal profession.

If you are a support staff, articling student or lawyer within a law firm, you can contact the Equity Ombudsperson, Judy Anderson, for advice, information and assistance. All information is confidential.

This office is not a lawyer referral service and cannot provide legal advice. Call **toll free: 1-866-444-4885**.
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