

# BENCHERS' DIGEST



Volume 18, Issue Number 4

August, 2005

## *Pilot Project has Landed*

*By Alma Wiebe, Q.C.*



*Alma Wiebe, Q.C. is currently the Vice-President of the Law Society. She resides in Saskatoon where she practices at the office of A.S.K. Law. She is the Chair of the Ethics Committee, Vice-Chair of the Finance Committee and one of the Vice-Chairs of the Professional Standards Committee.*

By way of background, the Professional Standards Committee is a committee of the Law Society established pursuant to *The Legal Profession Act*. The primary function of this committee is to ensure that the standards of competency prescribed by the Benchers are upheld. This is not a disciplinary function, but rather educational and supportive to ensure that

members bring adequate skills and knowledge to the practice of law.

The majority of the complaints against members received by the Law Society in 2004 (not unlike previous years) related to lawyer delay, failure to respond, lack of communication and quality of legal services provided. In other words, they fell within the arena of competence as opposed to discipline. In many cases, poor file and office management appeared to be at the root of the problem for the member.

Under the Rules of the Law Society, the Professional Standards Committee has certain tools at its disposal to deal with issues of competence. The Committee has, for many years, sought to improve upon and add to the options available to it to assist members in maintaining or regaining appropriate standards of practice. Lawyers Concerned for Lawyers and the Mentor Program are direct results of these efforts. Following a survey of the membership conducted in 1999, the Law Society struck a committee, the Sub Committee on Competence, to provide guidance in this regard. One of the Sub-Committees recommendations was that a Practice Advisor or Practice Review person be hired. As a result of this recommendation, the Professional Standards Committee agreed to pilot the Practice Advisor Project in 2003 using the services of

Rod MacDonald, a senior practitioner and consultant from Radville, Saskatchewan with extensive knowledge and experience in office management and organization. The idea being that Mr. MacDonald would be engaged on a case-by-case basis to conduct on-site, hands-on reviews of members' office procedures, accounting, file organization, file opening and closing practices, case advancement and general management of office, staff and clients. The second step in each case would be for Mr. MacDonald to provide practical, concrete advice for improvement. Lastly, he would follow up with the member from time to time as required. Of course, Mr. MacDonald's services would only be engaged in circumstances where the member agreed to participate in the program.

The first member referred to Mr. MacDonald by the Professional Standards Committee in 2003 was the subject of several client complaints of a similar nature and was keen to improve his practice and deal with some inefficiencies. Mr. MacDonald made a number of visits to the member's office and developed a plan to improve the operation of the law firm. The pilot project was well received by the member and implementation of the advice received quickly resulted in a more efficient and lucrative practice while at the same time reducing the likelihood of future complaints. The

[www.lawsociety.sk.ca](http://www.lawsociety.sk.ca)

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## ***Pilot Project has Landed*** *(continued)* By Alma Wiebe, Q.C.

member wrote to the Professional Standards Committee providing very positive feedback with respect to the pilot.

In light of this success, the committee resolved to continue and expand the program to assist other members in 2004. By June 2005, Mr. MacDonald was acting or had acted as a Practice Advisor to seven members, each of whom had two or more quality of service complaints against them. Typically, the experience of the members involved in the project as reported to the Professional Standards Committee was that they saw significant benefits in terms of increased efficiency, productivity and psychological well-being. SLIA views the Practice Advisor Program as a loss prevention tool and accordingly, costs of each case undertaken by the Practice Advisor have been split between SLIA, the Law Society and the member.

Mr. MacDonald states that his educational background in mediation and negotiation have been of value to him as a Practice Advisor in dealing with practitioners. In his view, the focus in each case must be on joint problem solving. If the practitioner does not "buy in," the Advisor's role is limited. For his part, Mr. MacDonald stated that he has to appreciate that not everyone is prepared to manage an office in the way that he does and that

problem solving creativity is required in order for system changes to be sustainable.

Typically, when a matter is referred to the Practice Advisor, he will contact the member immediately to discuss the process, obtain some understanding of their situation and "set the tone". He then arranges to spend a full day with the member reviewing each aspect of their case management from the opening of a file, taking instructions from a client, note making, filing, diarization and recording lawyer's time to billing and closing the file. Having completed this exercise, the Practice Advisor is in a position to assess the member's legal and management practices. Mr. MacDonald advises that he is a firm believer in complete transparency and advises the member what observations he has made and will be reporting to the Professional Standards Committee. He then develops a work plan for the member and follows up with the member in accordance with the time lines outlined in the work plan. This is followed by a second and generally a third in-office visit. Each case requires three to six days of the Practice Advisor's time.

Mr. MacDonald has observed a few common themes among the practitioners he has worked with as a Practice Advisor. Those being that mess, clutter and dirt in an office is

often symptomatic of other problems, i.e. feeling overwhelmed and/or fearful. Another common phenomenon is that lawyers frequently do not read their financial statements or are unable to read their financial statements in such a way as to identify the patterns, problems and possible solutions to financial woes.

The Professional Standards Committee has watched the development of the Practice Advisor Program carefully over the last several years. The member's response to the program has, almost without exception, been extremely positive. In light of the success of the pilot project, the Professional Standards Committee was pleased, in June of 2005, to make the program permanent and to continue to engage Mr. MacDonald on a case-by-case basis as directed by the Committee.

Should you have any questions about the Practice Advisor Program, you may contact any member of the Committee or the Law Society's Complaint's Counsel, Donna Sigmeth. The current composition of the Professional Standards Committee is: Vic Dietz (Chair), Sue Barber (Vice-Chair), Ron Barsi (Vice-Chair), Brent Gough, Q.C. (Vice-Chair), Bob Kennedy, Q.C. (Vice-Chair), Dan Konkin (Vice-Chair), Alma Wiebe, Q.C. (Vice-Chair).

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### ***... Call for Volunteers on the SKLESI Board of Directors***

The Law Society of Saskatchewan is looking for interested members to serve on the Board of Directors of the Saskatchewan Legal Education Society.

Donna Driedger and Sharon Pratchler served on the SKLESI Board of Directors as joint Law Society of Saskatchewan/Canadian Bar Association representatives. Ms. Driedger has relocated to Calgary and Ms. Pratchler has accepted a position on the Executive Committee of the CBA.

Members interested in volunteering to serve on the Board of Directors are asked to contact the Law Society office at (306) 569-8242 or the CBA office at (306) 244-3898.

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## ***Highlights of the Meeting of the Benchers held June 9th and 10th, 2005***

### **STUDENTS APPEARING IN PROVINCIAL COURT**

Questions have arisen in the past few years whether articling students may appear on indictable matters in provincial court. Many years ago, the answer was simpler to find, using the definition of "counsel" in *The Criminal Code of Canada* and a section which stated that in indictable matters, an accused could appear personally or by "counsel."

Over the years, the many amendments to *The Criminal Code of Canada* have made finding it more complex, however, the answer remains that students-at-law may not appear on indictable matters. Section 2 defines "counsel" as "barrister and solicitor." That hasn't changed. Section 650.01 allows an accused to designate "counsel of record." Once that is done, the accused may appear by such counsel for certain proceedings without being present.

Section 540 provides that in preliminary enquiries, cross examination may be conducted only by counsel or the accused. Section 646 provides that at trial, evidence will be taken in the same private fashion as at the preliminary enquiry. Section 650 provides that an accused may enter a full answer in defence by counsel.

Questions have also been raised whether students-at-law can appear on behalf of the Crown. The *Code* defines "prosecutor" as "counsel acting for the Attorney General."

Section 800 allows an accused on summary conviction to appear by counsel or agent, however, Section 802.1 prohibits agents from appearing if the offence is punishable by a term of imprisonment of 6 months or more.

The Law Society acknowledges the assistance of Chief Judge Seniuk, former associate Chief Judge McMurtry and associate Chief Judge Snell for their assistance in providing guidance in this matter.

### **RULE AMENDMENTS**

In February the Benchers approved an amendment to the Rules (reported

in the March 2005 Digest) which restricted the amount of cash that members may receive from clients. This amendment was in response to concerns raised about money laundering by the federal government, financial institutions, etc. The Federation of Law Societies recommended that individual jurisdictions adopt a Rule prohibiting the receipt of more than \$7,500 by members and the Benchers agreed that this was appropriate. Modern commerce has largely obviated the need for large cash transactions and by and large members are comfortable with Rules that require their clients to convert large amounts of cash to some form of negotiable instrument through financial institutions prior to their use by the lawyer.

At the June Convocation, the Benchers passed amendments to Rules 900 and 909 which provide clearer guidance to members as to the cash receipt requirements. In addition, there is now a record keeping requirement. An explanatory commentary giving the background and rationale to the Rules was tabled for consideration at the September Convocation. The amendments will be circulated to the membership.

### **LEGAL PROFESSION ACT AMENDMENTS**

The Law Society received a few comments from the membership as a result of the posting of the list of proposed amendments on the Law Society website, the article in the May Bencher's Digest and the presentation of the list at the Annual Meeting in Humboldt. Discussions are under way with Legislative Services and it is hoped that a draft bill will be ready by late summer.

### **LIBRARY SPACE**

For several months, there have been discussions among Sue Baer, Director of Libraries Services, Court Services and Architects regarding renovations at the Regina Court House. These renovations will result in a large part of the library space on the

second floor being removed with other space being provided in the basement. Therefore, a large portion of the collection will be moved to the basement of the Court House. Because of security issues, the public will not be able to access the basement area. The Libraries Committee is of the opinion that the renovations being offered are not adequate for the appropriate operation of the Library. As a result, the Benchers have appointed a Building Committee to review options and their ramifications.

### **ANNUAL MEETING**

The Law Society Annual Meeting was held at the Bella Vista Inn in Humboldt on June 9, 2005. The meeting was well attended. No resolutions had been submitted to the meeting, however, presentations of Senior Life Memberships were made to Jacob Eisner, Q.C. of Melfort and Niall Garrett Wilson, Q.C. of Regina. R.H. McKeercher, Q.C., George Tkach and Richard Rendek, Q.C. were unable to attend the meeting to receive their Certificates.

Prior to the meeting, Dean Brent Cotter, Q.C. made a presentation on the College of Law Building of our Future Campaign. The Campaign has collected \$1.3 million to date.

The Canadian Bar Association's Annual Meeting was also held on June 9, 2005 in Humboldt. Those in attendance heard addresses by Chief Justice Bayda, Chief Justice Gerein and Chief Judge Seniuk. The CBA Community Service Award was presented to Henry Kloppenburg, Q.C.

### **LARRY KIRK DEFALCATION**

The Benchers approved a portion of a claim by the family of a beneficiary of an estate being administered by Mr. Kirk. \$22,000 will be paid immediately. The Benchers will obtain advice to determine the possible liability for tax with regard to the remainder of the claim.



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## Law Society Centennial 2007

by Susan Baer, Director of Libraries

In case you are quizzed at your next dinner party about the Law Society's Centennial, the following are the facts with which you can thrill (and impress) your dinner guests.

The enabling legislation creating the Law Society of Saskatchewan was called *An Act respecting the Legal Profession and the Law Society of Saskatchewan* cited as *The Legal Profession Act, S.S. 1907, c. 19*. The statute came into force on September 16, 1907. Interestingly enough, a dinner party (the extent to be determined) to celebrate our Centennial has been booked for the weekend of September 14th and 15th, 2007! Mark your calendar now so you don't miss this Gala event!

Our Law Society possesses the minutes of the Law Society of the Northwest Territories before the Law Societies of Saskatchewan and Alberta were created. From those minutes, we know that the last Convocation of the Law Society of the Northwest Territories, as it then was, occurred in Banff, Alberta in August 1907. Convening the last meeting was N.D. Beck, Q.C. from Edmonton as President of the Law Society.

Those lucky Benchers who would ride the train to travel to the Rockies to meet in Banff appear to have been elected when the NWT Law Society was incorporated. There were nine Benchers in the NWT Law Society, five of whom were from the Saskatchewan side of the NWT:

- W. C. Hamilton, Q.C. from Regina was the original president of the Law Society of the NWT. Upon his death in 1901, N.D. Beck, Q.C. became president, having held the position of vice president.
- Wellington B. Willoughby, K.C. of Moose Jaw replaced W.C. Hamilton.

- Stepping in as vice president was Edward L. Elwood, from Moosomin.
- James McKay, Q.C. from Prince Albert.
- Norman Mackenzie, K.C. from Regina was the secretary-treasurer. The first Benchers of the Law Society of Saskatchewan were:

Edward L. Elwood                      President  
Norman Mackenzie, K.C.              Vice President  
James McKay, Q.C.                      Prince Albert  
Wellington B.

Willoughby, K.C.                      Moose Jaw  
Herbert Acheson                      Saskatoon  
James Balfour, K.C.                      Regina  
Frank Ford, Q.C.                      Regina  
Charles E. Wood                      Regina  
John A.M. Patrick, K.C.                  Yorkton

Your historical trivia should include who was the reigning monarch at the time, since that determined whether the lawyer received a Q.C. or a K.C. Of course, we know that anyone with a Q.C. would have been a more senior practitioner because Queen Victoria as the longest reigning monarch to date reigned until 1901. King Edward VII reigned from January 22, 1901 to May 6, 1910, thus the K.C. designation. If your memory is faulty regarding the regnal years, you can find an interesting chart in the members' section of the website under "Tables and Indices" called Regnal Years of English Sovereigns. (*Extremely useful for deciphering historical statute citations*).

There are presently 17 Benchers elected in 9 electoral districts, plus 5 appointed (Dean of the Law School and 4 lay Benchers) for a total of 22 Benchers. The first elections of our Law Society did not include any electoral districts. There was a resolution in 1910 to change the election of the Benchers to use the judicial districts as electoral districts for the Law Society. This was defeated so each Bencher continued to represent all

constituents. It wasn't until 1935 that electoral districts were introduced.

The present complement of Benchers includes 6 women. In 1907, there were no provisions for admitting women as members of the Law Society under *The Legal Profession Act*. It was not until 1912 when Margaret I. Burgess applied for admission as a student-at-law that the issue of women in the legal profession in Saskatchewan was raised. Miss Burgess's initial application was refused. She and Mattie S. Boyles were admitted as students-at-law in June 1913 after amendments to *The Legal Profession Act* were passed on January 11, 1913 to allow women to apply for admission.

There were 207 names carried to the new roll of the Law Society of Saskatchewan when it was commissioned in 1911. In 1907, there were 197 members. Present day membership is approximately 1,450 members.

The date and location of the first Convocation of the Law Society of Saskatchewan was in the Courthouse in Regina on December 19, 1907. Cecil Bell was the secretary-treasurer with an office at the Wetmore Hall Law School in Regina. There were four areas of business for the Benchers: admissions, complaints, discipline, and libraries.

Much of this information was gleaned from the Law Society's book, which is presently being edited. Mr. Iain Mentiplay has researched and collected a wealth of data regarding our Law Society for the book. Some of this information will find its way to the Law Society's Centennial website when it is developed. Look for the edited copy of the *History of the Law Society* to be launched in our Centennial year.

And a final reminder, we are still looking for volunteers for the Centennial. You can contact Ron Kruzeniski or Susan Baer to get involved.

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## Rulings – June 2005

### **Chapter V, Impartiality and Conflict of Interest Between Clients – Acting as Lawyer for Wife after having acted for Couple, June 2005**

#### **Facts:**

Lawyer S acted for a couple in their 60's who were getting married two years ago. The couple attended with Lawyer S to give instructions for joint Wills. He prepared same and they both came back, together, to sign before Lawyer S. The Wills left everything to each other as spouse and, in the event the spouse predeceased, the assets were to be split between the respective spouse's children from prior relationships. Lawyer S is now repre-

senting the wife in a divorce from the husband. The husband was extremely uncomfortable with this as he believed Lawyer S was acting on his behalf when they did the Wills. At that time, they discussed assets brought into the marriage and assets which were part of the marriage and now Lawyer S is acting against him with respect to a division of these assets.

#### **Ruling:**

In a situation of joint Wills representation, it could be conflict of interest for a lawyer to then later act against one of the parties in a situation where the division of those assets was at issue, such as in a divorce matter. Financial disclosure would be

provided in the course of the family law matter and confidential information would not likely be disclosed that was not already disclosed in the family law matter. However, *The Code of Professional Conduct* states that a lawyer cannot act against a former client in the same or related matter and these matters were arguably related.

The Committee found Lawyer S to be in a conflict of interest as he acted for both the husband and the wife and now purports to act against the husband on a "related matter". The related matter is the division of assets which were previously the subject of the Wills attendance when Lawyer S attended with the husband and wife together.

### **Queen's Counsel**

Queen's Counsel appointments are made by the Cabinet with the judiciary, the Law Society and the Canadian Bar Association providing input. In the fall, the Benchers will be considering eligible members whose names may be put forward to the joint committee which will, in turn, present a restricted list of recommended lawyers to the Minister of Justice, the Honourable Frank Quennell, Q.C. Members are invited to submit to the Law Society the names of lawyers whose recognized legal ability, service to the profession and to the public in Saskatchewan, warrant their consideration to the joint committee.

### **Willy Hodgson Award**



Nomination forms are available to put forward the names of persons for the C. Willy Hodgson Award.

The award is presented to individuals or organizations who exemplify integrity, leadership and character and have made or are making outstanding contributions to advancing equity and diversity, legal education, the legal profession and/or the administration of justice in Saskatchewan or Canada.

Please submit nominations for the award by November 30th to:

**Allan T. Snell, Q.C.**  
The Law Society of Saskatchewan  
1100 – 2500 Victoria Avenue  
Regina SK S4P 3X2  
Phone: (306) 569-8242

(Nomination forms can be obtained from the Law Society website at [www.lawsociety.sk.ca](http://www.lawsociety.sk.ca))

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# *Index to Canadian Legal Literature*

by Susan Baer, Director of Libraries

*Index to Canadian Legal Literature* (ICLL) is a bibliographic database which indexes journals, law reports, books, book reviews, theses, essay collections and Canadiana Forthcoming Books. Also, the Data Collection Network includes contributions from law libraries across Canada. For example, our Law Society library sends in the entries for all of the Saskatchewan CLE materials to the Data Collection Network. The records found in the ICLL pertain to articles, monographs, case comments, annotations, and seminar proceedings as selected by the legal editors of ICLL.

The most current legal literature written appears in journals and conference proceedings. Emerging topics and papers delivered by expert practitioners will be indexed in the *Index to Canadian Legal Literature*. Case commentaries and interpretations of recent Supreme Court of Canada

decisions appear as regular features in many law journals. A periodical index such as the *Index to Canadian Legal Literature* can be a treasure trove of valuable information.

The *Index to Canadian Legal Literature* is back as part of the databases in the Multitype Database Licensing Project. The Multitype Database Licensing Project was first mentioned in volume 16, issue 1 of the *Bencher's Digest*. The Multitype Database Licensing Project is a consortium, where many Saskatchewan libraries finance the bulk purchase of access to electronic information databases for every resident in Saskatchewan. The Saskatchewan Provincial Library administers the program. You may have noticed the same databases offered through your public library. In the past year, the *Index to Canadian Legal Literature* has not been available through the Multitype Database

Licensing Project, as the previous publisher, Micromedia, ceased producing the *Index* in an online format. Carswell, the print publisher, makes the ICLL available through *LawSource*.

Now all of our members have access to ICLL through *LawSource* as a result of negotiations by the Multitype Licensing Board. Even if you have access to *LawSource* through an account with your firm or the Law Society, it is still a good idea to use the Multitype Database Licensing access. Your subscription renewal with Carswell is based on the amount of use under your account. Access through the Law Society's website to the ICLL will not count towards activity under your firm's account, therefore allowing you to reduce the usage under your account which should reduce the potential increase to your firm's subscription at renewal.

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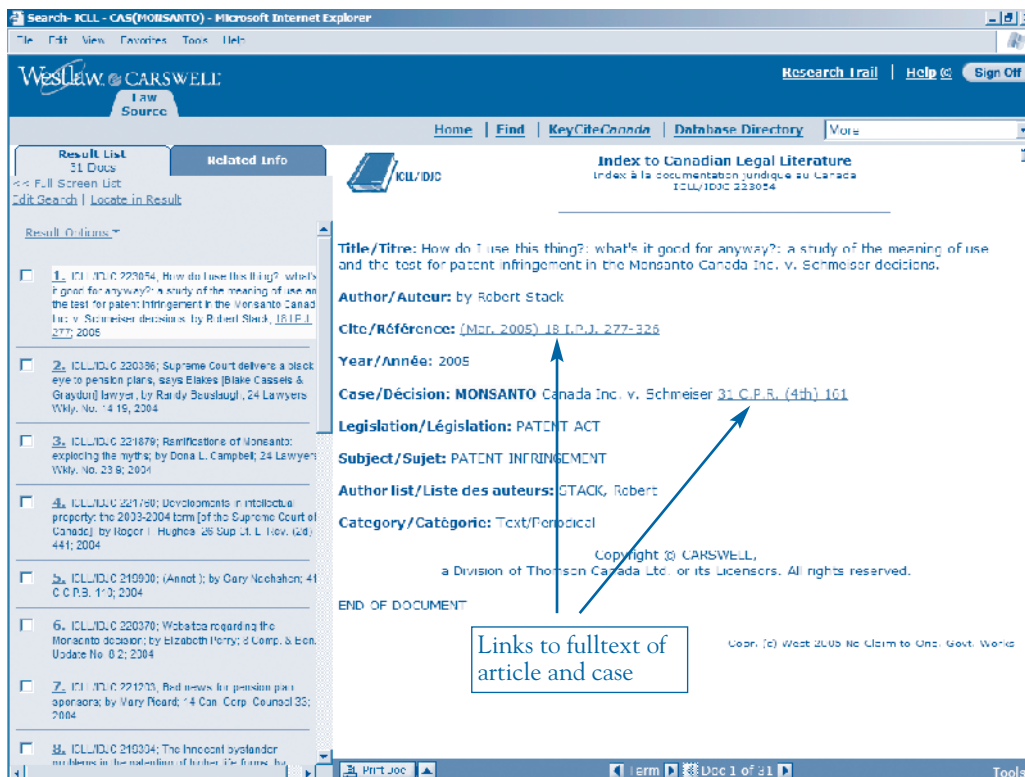
To find the link on the Law Society's website:

- Enter the members' section
- Select **Commercial Databases** under the Case Law and Databases section
- Select *Index to Canadian Legal Literature*
- A page with **Your location** will appear. The drop down list is not in alphabetical order. Scroll until you see **Law Society of Saskatchewan** and select.
- Click on **Go**. Internet Explorer users can also hit the Enter key.

This will bring you to the main *LawSource* page on WestlaweCarswell. The *Index to Canadian Legal Literature* is located on the right-hand side under the heading **Custom Search Templates**.

There are several search boxes designed to search specific information located in fields such as title, author, subject or case name. To illustrate some of the features of the ICLL, we can search for articles on the *Monsanto Canada Inc. v. Schmeiser, 2004 SCC 34* decision. By typing in *Monsanto* into the **Case** search box, 31 documents are retrieved.

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The display of the first record shows that the article appears in the *Intellectual Property Journal*, which contains a link to the fulltext of the article. There is also a link to the case from the ICLL record. Not every record in the ICLL database will contain a link to the fulltext of an article. Presently the links are limited to those journals that Carswell publishes or where permissions are given by other publishers. Fulltext of articles from the

*Saskatchewan Law Review* appear selectively from 1984 to 1993.

#### of special note ...

Access to the fulltext for Multitype Database Licensing users is supposed to be blocked by Carswell's system. Presently, when testing this feature, a new window opens to indicate that the document you have requested is not part of your subscription plan. It warns you that by clicking **OK**, you can proceed to the fulltext at an additional charge. It is unclear under

which account the charge is being incurred. This may change before press time and the fulltext feature may be disabled altogether.

Members using the ICLL can contact the library's reference staff for copies of any articles. These can be provided from the library's collection or on an interlibrary loan basis. Contact the reference staff in Regina or Saskatoon for help in using the ICLL or to request copies of articles.

## Photocopy Codes at the Library

by Susan Baer, Director of Libraries

Each law firm has a photocopy code to record photocopying done at the Law Society libraries in Regina and Saskatoon. The library keeps the photocopy codes confidential. They are not given out indiscriminately.

Our members move from law firm to law firm or government department quite regularly. When this occurs, the library maintains the same photocopy code for the law firm or government department, unless the law firm or department directs the library to change the code. When a firm makes major changes such as dissolving,

merging, or changing personnel, discrepancies can arise regarding who is responsible for the photocopying charges incurred during the transition.

We are asking firms to advise library staff immediately of any changes in their firms that may necessitate changing the firm's photocopy code. Members are responsible for charges to their particular codes and if the library is not advised of changes, we will not be able to adjust the charges that may be incurred by unauthorized use of the code.

If a firm dissolves, the photocopy code assigned to that firm will be deactivated and any charges accumulated on the code will be invoiced immediately. However, *the library needs to be notified directly with a specific request to deactivate the photocopy code.*

In order to request a new code, members will be asked to complete a form which allows the firm to itemize those authorized to use the firm's photocopy code. Debbie Orr in our Regina library can answer any specific questions regarding the implementation or cancellation of photocopy codes.

## *Law Grads Receive Scholarships*

REGINA – Two Saskatchewan law school graduates are receiving scholarships for continuing studies in criminal law.

The 2005 E.M. Culliton Scholarship has been awarded to two people: Zena Charowsky, who received \$15,000 and Melanie Hodges, who received \$10,000. Both are graduates of the College of Law at the University of Saskatchewan.

“The scholarship committee is especially pleased to assist the studies of two local people”, said Chief Justice of Saskatchewan, E. D. Bayda, *Chair of the Culliton Scholarship Committee*. “This year substantial amounts were granted to support these relevant legal topics.”

Ms. Charowsky is a member of the Law Society of Saskatchewan who graduated from the College of Law at the University of Saskatchewan in May 2003. She is enrolled in the Masters of Law program at Cambridge University and is working on two theses that deal with criminal law: history of English civil and criminal law and the philosophy of criminal law.

Ms. Hodges graduated from the College of Law at the University of Saskatchewan in May 2005 and is remaining there to work on her Masters of Law degree. Her thesis will focus on the use of restorative justice in cases of sexual assault.

The E.M. Culliton Scholarship was established in 1981 in honour of the former Chief Justice of Saskatchewan. It is awarded to graduates of the College of Law at the University of Saskatchewan for the pursuit of graduate studies in criminal law.

Recipients are selected on the basis of exceptional academic record, research potential and exceptional service to the practice of law in Saskatchewan.

## *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**.

This office is funded by The Law Society of Saskatchewan.

## *Lawyers Concerned for Lawyers*

Provides to Saskatchewan lawyers and their family members:

- ◆ CONFIDENTIAL assistance in effectively dealing with problems;
- ◆ the services of an INDEPENDENT professional consultant;
- ◆ services provided without charge

For confidential information and assistance call 1-800-780-5256, Regina 352-0680 or Saskatoon 956-5738 or 956-5735

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Published by:  
The Law Society of Saskatchewan  
1100, 2500 Victoria Avenue  
Regina, Saskatchewan  
Canada S4P 3X2  
Telephone (306) 569-8242  
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