

BENCHERS' DIGEST



Volume 18, Issue Number 5

September, 2005

Implementation of Rule 909, Cash Transactions

By John Allen, CA

The following information is provided to clarify requirements and answer questions that may arise when implementing Rule 909, developed by the Federation of Law Societies of Canada and passed by the Law Society of Saskatchewan in June 2005.

RULE 909(1)

A member shall not receive or accept from a person, cash in an aggregate amount of \$7,500.00 or more Canadian dollars in respect of any one client matter or transaction.

This "aggregate amount of \$7,500.00" pertains to cash received over the life of the file effective from the date that members were advised of the requirement.

RULE 909(4)

Despite paragraph 3, paragraph 1 does not apply when the member receives cash

(d) in an amount of \$7,500.00 or more for professional fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.

Since refunds or partial refunds of monies originally received in cash must be made in cash, the question arises as to how this cash is to be withdrawn from trust. The procedure to meet this requirement will be for the firm to prepare a trust cheque payable to the member or employee who takes it to the bank. The explanation portion of the cheque and the cheque

register must show the client name or client reference. The member/employee endorses the cheque and obtains the specific amount of cash required. When the cash is given to the client, the client must sign a receipt or acknowledgement that the monies were received. That receipt or acknowledgement is also required to be signed and dated by the lawyer or employee providing the cash to the client.

RULE 909(5)

Every member, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the member's practice, shall maintain:

- (a) a book of original entry identifying the method by which money is received in trust for a client, and
- (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.

Members are required to record the form (i.e. cash, cheque, etc.) in which all monies (trust and general) are received by the firm. This can be done by adding a column to the book of the original entry where this information can be recorded.

In certain computer systems, the firm may be unable to dedicate a specific column for this function and, in those cases, the required information

can be shown in the description section of the book of original entry. For example:

John Doe (cash)	\$ 500.00
Sam Smith (cheque)	\$1,000.00

RULE 909(6)

Every member who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom the cash is received, the amount of cash received, the client for whom the cash is received, any file number in respect of which cash is received and containing the signature authorized by the member who receives cash and of the person from whom cash is received.

A separate pre-numbered receipt book should be used but in systems where computerized receipts are produced, those receipts are considered acceptable if they incorporate all information and are signed as required by the Rule. These receipts must be filed in numerical order "like a book".

If monies are received outside of the office (i.e. at Court), the member may find it necessary to carry a receipt book with himself/herself to facilitate this Rule.

If further information or clarification is required, please contact John Allen at 569-8242.

Highlights of the Meeting of the Benchers held September 8th and 9th, 2005



Gregory Walen, Q.C.

New Bencher

Following the appointment of Justice Daniel Konkin to the Court of Queen's Bench, the Benchers are pleased to announce that Greg Walen, Q.C. has been appointed as a Bencher pursuant to Section 20(b) of *The Legal Profession Act, 1990*. Mr. Walen is a partner of the firm Scharfstein Gibbings Walen & Fisher in Saskatoon. Mr. Walen was the first runner up in the 2003 election for the Saskatoon Electoral District.

Library Space

The Sub-committee of the Library Committee plus members of the Administration staff met several times over the summer to review options for Library space as a result of the plans by Court Services to renovate the Regina Court House which would require a split of the Regina Library on the second floor and in the basement. The Committee has looked at such options as building, purchasing, leasing other space and remaining in the Court House. The Benchers directed the Sub-committee to continue its review of the various options.

Convocation

The Benchers agreed to reduce the number of Convocations from six to five in 2006. The schedule of Convocations are as follows:

February 22nd, 23rd and 24th, 2006

April 26th, 27th and 28th, 2006

June 21st, 22nd and 23rd, 2006

September 6th, 7th and 8th, 2006

November 29th, 30th and Dec. 1st, 2006

The Benchers will continue to discuss whether a special planning session should be held.

University of Saskatchewan Senate

The Law Society of Saskatchewan has a representative on the University of Saskatchewan Senate. This Senate Committee on Outreach and Public Service is reviewing the role of the University in the area of "Outreach and Engagement" that might afford the University greater visibility and enhance funding opportunities. One of the areas the Committee is reviewing is continuing education for graduates of the University of Saskatchewan. The Benchers were asked for input regarding increased involvement by the University in continuing legal education and libraries.

Currently, the College of Law is one of the members of Saskatchewan Legal Education Society Inc. (SKLESI) and pursuant to the Unanimous Member's Agreement, has two positions on the SKLESI Board of Directors. The Law Society is satisfied with the level of involvement that the College of Law, University of Saskatchewan, has in the delivering of continuing legal education. Regarding library services, the Benchers noted that the Law Society Library and the College of Law Library exchange information regularly and work cooperatively on a number of levels. However, the clientele of the two

Library services are different and the Benchers are of the opinion that Library services are most effectively delivered to the members of the Law Society of Saskatchewan through the Law Society Library.

Reading Requirement – National Mobility Agreement

Saskatchewan signed the National Mobility Agreement in 2003. The Mobility Agreement allows certain members of reciprocating jurisdictions in Canada to practice temporarily in Saskatchewan for up to 100 days per year. In addition, members from reciprocating jurisdictions who wish to transfer into Saskatchewan on a permanent basis are not required to pass the transfer examinations, but are required to complete a reading requirement. In 2005, SKLESI staff reviewed some of the materials included in the reading list and recommended to the Admissions & Education Committee that the reading requirement be updated. The Admissions & Education Committee has approved the updated list, which can be found on both SKLESI's and the Law Society's websites (www.sklesi.org or www.lawsociety.sk.ca).

The new reading list will be required for those persons who apply for full transfer after September 8, 2005.

Amendment to The Code of Professional Conduct

At the June Convocation, the Benchers passed a Rule restricting how members may receive cash payments from clients. The Rule was one recommended by the Federation of Law Societies of Canada. That Model Rule also contained a Commentary. At the September Convocation, the Benchers passed an amendment to *The Code of Professional Conduct* being a new Commentary 7 to Chapter VIII, which exhorts lawyers to be vigilant

about the possibility of assisting a client in dishonesty or fraud.

Defalcations

Larry Kirk

The Benchers approved payment of the special fund in the amount of approximately \$25,000, subject to confirmation of rates and 10% with-

holding tax payable to CRA, being the remainder of a claim of the family of a beneficiary of an Estate which had been administered by Mr. Kirk.

Ronald Bader

The Benchers approved payment from the special fund in the amount of \$6,516.81 following discipline proceedings in 1999, a Court application

and a Hearing pursuant to Rule 706(1).

Kenneth Wasylyshen

The Benchers approved payment from the special fund in the amount of \$3,744, being an amount unaccounted for by Mr. Wasylyshen while acting in a real estate transaction.

Law Society Centennial 2007

By Ron Kruzeniski, Chair, Centennial Sub-committee

Alberta Centennial

Mr. Doug McGillivray, President of the Law Society of Alberta, attended the last Benchers meeting in September. As you know, the Alberta Law Society will also celebrate its Centennial in 2007. As part of the Benchers' meeting, Mr. McGillivray gave a brief update on the Centennial celebrations planned by the Law Society of Alberta. While Alberta may not have as many projects planned as Saskatchewan, they do have an ambitious schedule ahead of them. Similar to Saskatchewan, they have decided on a legacy project that centres around pro-bono clinics and establishing a sustainable fund with which to develop the project. They plan on several lawyer-centric functions which include lunches and dinners throughout the province in the Centennial

year. Alberta's Legal Archive is working on a legal history book that should be published in 2007. One of the projects includes an historical play.

The Law Society and two University Law Schools are planning an international conference which will be held in Banff. The theme is yet to be determined but it will cover high-end legal education. They anticipate invitees from across Canada as speakers.

As we are planning in Saskatchewan, Alberta is also planning on celebrating its Centennial with a gala evening to be conducted in Calgary and Edmonton simultaneously with a video link connection. Saskatchewan is planning a gala event to be held simultaneously in Saskatoon and Regina in September 2007. Both Law Societies have agreed to

conduct a joint Bencher meeting as one of their business meetings throughout the year. Our Law Societies have also worked together to request commemorative stamps for our Law Societies through Canada Post.

Planning continues on the Law Society of Saskatchewan's Centennial celebrations. A logo and theme have been selected. The legacy project will be in the area of literacy and consideration is being given to engaging an events co-ordinator to assist in implementing our many plans. The Law Society's theme for the Centennial is "100 Years of Integrity."

We are still looking for volunteers. Individuals willing to lead the planning of a particular project or event should contact Ron Kruzeniski or Sue Baer to volunteer.



*We are once again seeking experienced members to agree to act as **Mentors** in the areas of:*

- Administrative and labour law,
- Bankruptcy and receiverships,
- Civil litigation,
- Corporate and commercial law,
- Criminal law,
- Environmental law,
- Ethics and professional conduct,
- Family law,
- Probate,
- Real property; and
- Taxation

*Please contact **The Law Society** at (306) 569-8242 if you are interested in being a Mentor.*

Library Service Fees

by Susan Baer, Director of Libraries

At the September meeting of the Libraries Committee, the Benchers approved an increase in the library service fees to be implemented in 2006. The following chart provides the services and the 2006 and present (2005) rates.

Library Service Fees Schedule

Photocopies/Printing	2006 Rate	2005 Rate
Base rate	\$0.25 per page	\$0.25 per page
In town by library staff	\$5 min. charge up to 20 pages, \$1 per page thereafter	\$1.00 per page
Out of province/Canada	\$10 min. charge up to 20 pages (Discretionary. Other charges may apply)	n/a
Faxing	2006 Rate	2005 Rate
Rural members	No charge - photocopy cost only	No charge - photocopy costs only
All other	\$5 flat fee plus applicable photocopy costs	\$0.85 per page
Articles/content from website	2006 Rate	2005 Rate
	\$5 per item	\$0.25 per page
Computer searches	2006 Rate	2005 Rate
Case locate	\$5 per case	\$0.25 per page
Case analytics	\$10 per case	
Note up	\$20 up to 2 cases, noted up in 3 places	Search cost - cost of service Search fee - 1.5 x search cost
Subject search	2 times cost of search (min. \$25)	Administration fee - \$11.00
Research fee	2006 Rate	2005 Rate
	\$60 per hour, min. 15 minutes	\$32 per hour, min. 15 minutes
Interlibrary Loans	2006 Rate	2005 Rate
Photocopy	\$5 up to 20 pages*	\$0.25 per page
Book loan	Direct cost charged to requester*	Direct cost charged to requester*
Late charges for ILL	\$25 per item	n/a
Expedited fee	2006 Rate	2005 Rate
Library can provide same day service for photocopy requests received before 2:00 pm**	Regular library fees apply	Regular library fees apply
Under 3 hours and/or after 2:00 pm	\$25 per item plus applicable library fees	n/a
Delinquent fees	2006 Rate	2005 Rate
Overdue account charge	\$50 reinstatement fee	\$50 reinstatement fee
Lost books	\$25 plus cost of item	\$25 plus cost of item

*Discretionary

**Does not apply to research and computer search requests

The library is moving towards flat rate fees for certain services to simplify the transactions and to recover more of the cost of delivering the service. The base rate for photocopying will remain at 25¢ per page for self-serve copying or for rural members.

Application of the charges for getting photocopies from another library (or source) or a book loan on interlibrary loan will depend on the nature of the request. Generally, there may not be a charge, depending on the volume and nature of the request. However, the late charge for returning a book borrowed on interlibrary loan is a new fee. Returning items to the borrowing library after the due date will affect our chances of borrowing from that library in the future.

The case locator service fee applies regardless of which online source is used to locate the case. The case analytics fee applies when the citation information is missing or incorrect to the point where considerable time is spent locating the correct case. Noting up and subject searching fees are applicable per item, not on the number of online or printed services the reference staff use for research. The library staff will note up cases on QL, LawSource, as well as the Law Society's databases.

Most requests for information are handled on the same day with copies being sent to the requester within 24 to 48 hours. Research and some computer search requests can take longer and reference staff try to accommodate the members' deadlines. There will be a new service fee for rush service or an expedited fee. The expedited fee will apply in those instances where staff are contacted after 2:00 p.m. and are asked to fax the information before 5:00 p.m. There may be other instances where the expedited fee may apply and those will be discussed with the member at the time of the request.

The rate changes are scheduled to come into effect January 1, 2006.

Judicial Appointment

Congratulations to Daniel B. Konkin on his appointment as Judge of the Saskatchewan Court of Queen's Bench. He will be assigned to Swift Current by the Chief Justice.

Mr. Justice Konkin was admitted to the Saskatchewan Bar in 1982 and was a partner with McKercher McKercher & Whitmore prior to his appointment.

Saskatchewan Proclamations Table

by Susan Baer, Director of Libraries

There are two proclamation tables accessible from the Law Society's home page. One lists Saskatchewan proclamation information as received from the Lieutenant Governor for Saskatchewan. The other lists Canada proclamation information as received from the Privy Council Office. In this

issue, we will look at the Saskatchewan proclamations table.

The proclamations table includes those statutes or acts that are brought into force *by proclamation*. It does not include those statutes that come into force on a date specified within the bill or by Royal Assent. The proclamations table is updated as soon as the

information is received from the Lieutenant Governor. Normally, proclamations are faxed to the library the same day the proclamations are issued. Proclamations of acts that have wide application will be posted in the News section of the website as well as in the appropriate proclamations table.

The screenshot shows a web browser window titled "SK Proclamations - Microsoft Internet Explorer". The page header includes "The Law Society of Saskatchewan" and navigation links for "Databases", "Help", "Contact Us", and "Home". The main heading is "Saskatchewan Proclamations". Below this, there is a paragraph explaining that proclamations are added as they are received with the most recent first, and that the table lists only those statutes that require a proclamation date to come into force. A table follows with four columns: Act, Cite, Sections, and CIF. The table lists four acts: Electrical Inspection Amendment Act, 2004; Medical Profession Amendment Act, 2004; Planning and Development Amendment Act, 2005; and Automobile Accident Insurance Amendment Act, 2005. To the right of the table is a sidebar with links to "New Judgments", "Legislation Update", "SK Proclamations", "Can. Proclamations", "SCC Judgments", "Members' Section", and "Judges' Section". At the bottom of the sidebar, there is a note: "Please go to the Queen's Printer's web site for fulltext of the acts listed here." and a link to "Saskatchewan Limitations Manual".

Act	Cite	Sections	CIF
Electrical Inspection Amendment Act, 2004	S.S. 2004, c. 56	s. 17	Sept. 9, 2005
Medical Profession Amendment Act, 2004	S.S. 2004, c. 60	Whole Act	Jul. 18, 2005
Planning and Development Amendment Act, 2005	S.S. 2005, c. 24	Whole act except those portions of s. 5 that add s. 13.2 and 13.6 to the Act and s. 9, 10, 16, 19 to 21, 27(1), (2) and 38	Jul. 1, 2005
Automobile Accident Insurance Amendment Act, 2005	S.S. 2005, c. 5	s. 1 to 4, 7 and 8	Jun. 28, 2005

The Saskatchewan Proclamations table

There are three places where Saskatchewan proclamation information can be found on the Law Society's website:

Saskatchewan Proclamations table	2001 to present
Saskatchewan Bills database	1993 to present
Legislation Update Bills table	24th Legislature, 2nd session (2001) to present

Once the information is received from the Lieutenant Governor's office, the proclamation information is added to the Saskatchewan Bills

database. The Saskatchewan Bills database provides an index of all Saskatchewan bills introduced in the Saskatchewan Legislature from 1993 to the present. Each bill is analyzed for its effect on existing Saskatchewan legislation. Amended, repealed and new sections of Saskatchewan statutes are noted for each bill. All readings are traced for each bill and the date in force and retroactive provisions are also provided. You can search the database in a number of ways, including the name of the act in which you are interested, the bill number, the bill name, or the session of the legisla-

ture. The results show the status of the bill, including the effective date, regardless of how the bill was brought into force.

The database also produces the Legislation Update table which is accessible from the Law Society's home page. Both the Saskatchewan Bills database and the Legislation Update Bills table were covered in the June 2005 issue of the *Benchers' Digest*.

Contact the library staff in Regina or Saskatoon for help using the databases or tables.

Law Society Libraries

By Sarah Sutherland, Saskatoon Librarian

Legal WebCites

For the next several issues of the *Benchers' Digest*, this column will focus on the Legal Information Institutes providing free legal materials in different countries. The first article will discuss CanLII (Canadian Legal Information Institute), funded by the Federation of Law Societies of Canada, which is developing into a major source for Canadian legislation and case law. Subsequent articles will discuss sites from other jurisdictions, including AustLII (Australasian Legal Information Institute), WorldLII (World Legal Information Institute), CommonLII (Commonwealth Legal Information Institute), BaiLII (British and Irish Legal Information Institute) and LII (Legal Information Institute, Cornell University Law School).

CanLII (Canadian Legal Information Institute)

<http://www.canlii.ca>

CanLII includes the consolidated statutes and regulations for every jurisdiction in Canada, with the

exception of British Columbia. A free version of British Columbian statutes and regulations is available from the Queen's Printer website, but it is not updated as often, as the Queen's Printer's fee is based on service. Nunavut legislation is available on CanLII, but it is not part of the searchable collection. CanLII has judgments from the superior courts of every jurisdiction in Canada and every provincial or territorial court level, with the exception of Prince Edward Island.

CanLII's case law collection is expanding to include administrative tribunal decisions from British Columbia, Saskatchewan, Ontario, Quebec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and the Northwest Territories. These collections are especially strong in privacy and labour. CanLII also includes discipline decisions from the Law Society of Upper Canada and the Law Society of British Columbia.

The collections on CanLII vary in the depth and breadth of their cover-

age, with different date ranges and currency. Given the speed at which they have developed in the last four years, it is likely that over time both the depth and breadth of CanLII's collections will continue to improve. To assess the extent or currency of any given collection, follow the "Scope of Coverage" link near the top of the CanLII homepage, which leads to a page giving the particulars on coverage for all the collections. Please note that some cases outside the stated ranges are included on CanLII.

CanLII has developed rapidly in the four years since its official launch in 2001, continually adding new materials and improving search capability, especially with the introduction of its new search engine ELIISA in January 2005. ELIISA offers the ability to easily limit a search to particular jurisdictions, to particular types of material such as statutes or case law and to particular courts. This search engine also allows any case with a neutral citation to be noted up by following a link under the case citation

and it has the capability to refine searches in the results page.

CanLII has recently added legislative historical snapshots to its collections, which has the potential to develop into a very valuable service. At present, the versions are not dated from the date new legislation was introduced, but from the date CanLII captured the information. However, given CanLII's rapid development so far, this feature is likely to evolve over time. The available dates for the historical snapshots of legislation differ among jurisdictions, but currently they range from early 2003 to 2005.

CanLII now has its own citation which it applies to the electronic cases in its collections. The CanLII citation will be extremely useful for citing unreported cases that do not possess a neutral citation, instead of defaulting to a commercial database citation. When a case uses a CanLII citation, a user does not need a commercial account to access it. The following is an example of a CanLII citation: *Goyal v. Singh*, 2002 CanLII 2748 (ON S.C.). The elements of the citation are the style of cause, followed by the year of the decision, an indication that the source of the citation is CanLII, an accession number assigned to

cases, and the jurisdiction and court identifier.

Another recent development is RefLex: the RefLex project involves coding that links citations directly to legislation and case law in the CanLII collection. If a case is not in CanLII's collection, citations to the printed law reports are provided.

The LexUM team, who develop and maintain CanLII, were recently awarded the Hugh Lawford Award for Excellence in Legal Publishing for 2005 - 2006. This award recognizes innovation and quality in legal publishing.

Rulings – September 2005

Chapter XI, Fees – "Fee Splitting – Sharing Estate Fees with Staff," September 2005

Facts:

Lawyer Z indicated that he gives 5% of the fees he charges on Estates to his staff member doing estate work. Al Snell asked the Committee to review whether or not paying a staff member a percentage of legal fees in this situation would be considered fee splitting and prohibited by *The Code of Professional Conduct*.

The Committee discussed the principle behind the prohibition against fee splitting. It was the view of the Committee that a profit sharing arrangement with employees such as the one under review was unlikely to raise concerns about independence that were at the heart of the prohibition. It was, in fact, more of a tied bonus than actual fee splitting. The Lawyer's professional duties and responsibilities were unaffected.

Ruling:

The Committee was of the opinion that Lawyer Z's compensation of his legal assistant by paying her 5% of his fee for her work on Estates did not offend the principle on which the Rule prohibiting fee splitting was

based, Chapter XI, Commentary 8 of *The Code of Professional Conduct*.

Chapter V - "Impartiality and Conflict of Interest Between Clients," Lawyer Cannot Continue to Represent Opposing Co-Executors, September 2005

Facts:

One Executor and one beneficiary of an estate complained about Lawyer D firstly, in that Lawyer D acted for both the estate and for the beneficiaries purchasing estate real estate in a rather acrimonious estate situation, and secondly, that Lawyer D preferred the interests of one Executor over the other, particularly, in acting against one of the Executors in an attempt to have her removed as Executor on the estate.

Ruling:

The Committee would point Lawyer D to a previous ruling of the Ethics Committee of April 2003 which states in part:

"Chapter V - "Impartiality and Conflict of Interest Between Clients", Lawyer Cannot Continue to Represent Opposing Co-Executors, April 2003...

Ruling:

Lawyer E is in a conflict of interest and cannot continue to act for one executor against or to remove the other executor and will have to refer both clients out."

The Committee would point out that a lawyer in Lawyer D's position could, in some situations, remain as estate lawyer, but both Executors would have to be sent out to other lawyers to bring the application to remove an Executor. However, the estate lawyer would have to withdraw rather than choose one Co-Executor over the other. In this situation, Lawyer D should have also sent the beneficiaries out of the office to independent counsel when those beneficiaries purchased real estate from the estate, particularly in light of the fact that it was difficult for the parties to even agree on a process of tender for purchasing assets from the estate. In the circumstances, as opposing counsel agrees that there is no point in having Lawyer D removed at this juncture, the Committee accepts that Lawyer D may stay on the file in an attempt to negotiate settlement between all of the parties. However, the Committee cautions Lawyer D to be more cautious in future to avoid putting himself in such a quagmire of conflict between clients.

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)

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

BENCHERS' DIGEST



Published by:
The Law Society of Saskatchewan
1100, 2500 Victoria Avenue
Regina, Saskatchewan
Canada S4P 3X2
Telephone (306) 569-8242
Fax (306) 352-2989
e-mail: reception@lawsociety.sk.ca