

BENCHERS' DIGEST



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Publication of Discipline Decisions

by Allan Snell, Q.C.

Discipline Hearings have been open to the public since November 1, 1994. Thus, members of the public, including the media, have been able to and have attended Discipline Hearings and disseminated the results of those hearings. In addition, the Law Society has, at least for the past 25 years, advised the membership of the results of Discipline Hearings, providing a *précis* of facts and identifying the member involved. This has been available to subscribers of Quick Law since the mid-90's and any member of the public who contacts the Law Society will be given the same information with respect to discipline convictions.

Recently, after a review of the procedures in other jurisdictions in Canada, the Benchers approved a policy which will allow Hearing Committee decisions, Statements of Fact and details of sentencing to be published on the Law Society website and CanLII unless the Hearing Com-

mittee or the Discipline Committee directs otherwise. This will include cases published in the Discipline Digest which go back to approximately 1980. Discipline decisions will be anonymized to the extent that only members of the Law Society will be identified in order to protect the privacy of clients and non-members.

As well, Notices of Hearing, Notices of Sentencing and Notices of Suspension will be published on the website immediately.

This will bring the Law Society of Saskatchewan into line with other Law Societies in Canada who do publish this information. It does not expand the nature of information presently available to the public. Members of the public who wish to have information about a member's discipline record are entitled to that information and are provided it upon request. Notices are also posted in Court Houses.

The Benchers debated this issue over several convocations. It was recognized that even though the information itself was available, making it more easily available online was a significant step. Nonetheless, it was the Benchers' view that it is somewhat disingenuous to have the information available but decline to make it easily accessible.

The Benchers also approved a policy (again in line with other jurisdictions in Canada) whereby member contact information will be published on the web. This will include name, address, phone number and practicing status. This should provide valuable information to the public attempting to find individual lawyers and will also reduce the number of calls presently received by the Law Society from financial institutions who increasingly wish to confirm the practicing status of individuals.

www.lawsociety.sk.ca

Highlights of the Meeting of Benchers held June 22nd and 23rd, 2006

Publication of Discipline Decisions on Website

At the April Convocation, the Benchers had agreed that the Law Society of Saskatchewan discipline decisions dating back to the late 1970s would be published on the Law Society website. The matter was revisited at the June Convocation because, prior to 1994, discipline hearings were held in-camera. After the additional review, it was agreed that the decision would stand to publish discipline decisions on the website. More details are contained in this issue.

Rule Amendment – Form P-5

Amendments to Form P-5 were approved. Form P-5 is completed by new lawyers at the time of signing the Roll. It had been noted that some of the information requested on the form was no longer needed. The new form was included in the mailout with the package of revised Rules.

SKLESI

The appointment of one of the Law Society/CBA representatives on the SKLESI Board of Directors expired and one of the Law Society representatives resigned, leaving two

vacancies on the Board. As a result of a posting on the Law Society website, a number of volunteers put their names forward. One of the criteria for the appointment is previous involvement in either Continuing Legal Education or the Bar Admission Course. The Benchers appointed Tammi Hackl of the Scharfstein Gibbings Walen & Fisher in Saskatoon and Erin Kleisinger of McDougall Gauley in Regina.

Law Society 67th Annual General Meeting June 22nd, 2006 in Waskesiu

The 67th Annual General Meeting of the Law Society of Saskatchewan was held Thursday, June 22nd, 2006 in Waskesiu presided over by the President, Alma Wiebe, Q.C. The meeting itself was low-key in that members had not submitted resolutions for debate. However, the members in attendance enjoyed camaraderie, a great meal and saw senior life memberships awarded to Jack Hagemester, Q.C. and Jack Rushford, Q.C. Roy Laschuk, Q.C. had initially planned to attend but was, at the last minute, unable to do so. Members also had the opportunity, prior to dinner, to meet David Beaubier, a member of the Tax Court of Canada, author of *Prairie Lawyer, Country Judge*.

J.P. Ellson of Olive Waller Zinkhan & Waller in Regina was presented with the Canadian Bar Association, Saskatchewan Branch, Community Service Award in recognition of his considerable volunteer involvement in the arts and music industries in Saskatchewan.

Centennial Update

by Ronald J. Kruzeniski, Q.C., Chair, Centennial Subcommittee

It is September, summer is almost over, and the beginning of our Centennial year is less than four months away. The Law Society has been planning events that will happen throughout our anniversary year. Your Centennial committee has been meeting monthly for the last two and a half years and since April, Lori Boesch, our Centennial coordinator, has been working on our behalf putting in place many details for our celebration activities. Not all things have been finalized but many events are taking shape. This article is intended to give you a brief update and let you know how you can get involved.

Our Centennial plans include an event scheduled in each of our Local Bar Associations. Your local centennial volunteer is helping to coordinate

the activities in your area. It may be a luncheon, a dinner or a golf tournament. Stay tuned for the "Centennial Series" event in your area.

Each Bar Association has also been invited to participate in a calendar we are producing. Photographs have been requested from each. We hope to gather significant dates (whether historical or special event) to include in this 2007 calendar.

Another opportunity for our members to be involved is to participate in the Law Day school visits in cooperation with the Canadian Bar Association, Saskatchewan Branch. More information will follow.

The Law Society is thrilled to have been chosen by Canada Post to receive a commemorative stamp to

recognize our first 100 years. The unveiling of this prestigious item will occur in September 2007, close to our actual anniversary of September 16, 1907.

The President's annual dinner will be expanded in the Centennial year which should be a highlight of our celebrations.

For those of you who volunteered to help, it is still our hope that we can call on you to assist us with organizing and helping with events. We will contact you as we get closer to event time.

We are always interested in your feedback regarding the Centennial. Please call me at (306) 787-5427, Lori Boesch at 738-2045, or Sue Baer at 569-8020.

In Memory Of

Sylvia Batt passed away on June 15th, 2006, at the age of 54 years. Ms. Batt was admitted with the Law Society of Saskatchewan on June 29th, 1981 was employed with the Department of Justice in Ottawa.

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OCA Justice D. Gordon Blair passed away on June 14th, 2006 at the age of 86. Justice Blair was born in Regina and practiced law in Saskatoon and Ottawa, becoming Judge of the Court of Appeal for Ontario in 1976 until his retirement in 1994. He is survived by his wife of 60 years, Sarah, his two children and six grandchildren.

* * * * *

Ronald Coward passed away on July 24th in Sidney, British Columbia. Mr. Coward was admitted with the Law Society of Saskatchewan on November 5th, 1957. His career took him to Canada, Bermuda and the Channel Islands before retiring to Sidney in 1990. Mr. Coward served in Burma and India during WWII. He had many interests and in recent years had devoted much time to family history research. Mr. Coward is survived by his wife, Patricia, his two children and his granddaughter.

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John Francis Howard passed away on June 3rd, 2006. Mr. Howard was admitted with the Law Society of Saskatchewan on September 1st, 1971 and become non-practicing out December 31st, 1998.

Law Society Libraries

by Sarah Sutherland, Saskatoon Librarian

Legal WebCites

For the last instalment of the series examining the *Free Access to the Law Movement*, comprised of the legal information institutes, this article will discuss WorldLII: the World Legal Information Institute.

WorldLII (World Legal Information Institute)
www.worldlii.org

The goal of WorldLII is to provide access to materials from around the world that are accessible from one platform and searchable in one place. WorldLII is a product of cooperation between several organizations and access to databases is provided by other legal information institutes: Australasian Legal Information Institute (AustLII), British and Irish Legal Information Institute (BAILII), Canadian Legal Information Institute (CanLII), Hong Kong Legal Information Institute (HKLII), Legal Information Institute (Cornell) (LII), and Pacific Islands Legal Information Institute (PacLII). The infrastructure for WorldLII's platform and catalogue, as well as all the databases that are only available from WorldLII, are hosted by AustLII.

WorldLII is made up of three main functions: databases, a catalogue, and a web search engine. At the time of writing, WorldLII includes 547 databases from 86 countries; most of the databases are provided by the other legal information institutes, however, there are some databases unique to WorldLII, including decisions from international courts and tribunals, databases from several Asian countries, and databases from South Africa. The regions of the world best represented on WorldLII are Commonwealth or former Commonwealth

countries, especially Australia, the United Kingdom, the Pacific Islands, Canada, New Zealand, and Hong Kong. However, there are databases from other countries, such as Viet Nam, South Africa, Cambodia, East Timor, and the United States.

One of the unique aspects of WorldLII is its collection of decisions and documents from international organizations, including Generic Top Level Domain Name (gTLD) Decisions; Interights Commonwealth Human Rights Law; International Court of Justice; Interights International Human Rights Law; International Tribunal for the Law of the Sea Decisions; World Trade Organization Appellate Body Decisions; World Trade Organization Arbitrators Decisions; World Trade Organization Panel Decisions; EPIC Alert, the online newsletter of the Electronic Privacy Information Center in Washington, DC; and ISIL Year Book of International Humanitarian and Refugee Law (ISILYBIHRL).

WorldLII's catalogue includes links to over 15,000 law related websites from every country in the world. The catalogue is created by volunteer law librarians and other legal specialists, who individually select the websites to be included. It is possible to access the catalogue by country; region; subject; or category, such as court and case law, parliament, publisher, law reform, and others. It is also possible to search the catalogue using keywords. The final element of WorldLII's service is the Websearch: Websearch allows users to search the WorldLII catalogue of listings, the pages included in the WorldLII catalogue, the WorldLII databases, and

Law on Google from the same search interface without re-entering the search.

WorldLII is pursuing several projects. One of these is the International Courts and Tribunals Project. The International Courts and Tribunals Project is an attempt to improve access to the decisions handed down by international courts and tribunals. In the last fifty years the number of such courts has increased dramatically, making it harder to find these judgments, and WorldLII aims to provide access to this material in one place. WorldLII's other projects include providing access to domain name decisions, law journals, law reform materials, privacy law, treaties, and increasing the legal materials available in Spanish online.

An important consideration for Canadian researchers using WorldLII, however, is that because WorldLII uses different software from CanLII, Canadian databases are not searchable in WorldLII, but must be searched through CanLII (www.canlii.org) instead. Canadian websites included in the catalogue are fully accessible through WorldLII, and there are links to CanLII from the WorldLII homepage and from various places allowing an easy transition between the two.

WorldLII has ambitious goals, and its premise is that increased access to an independent and non-profit source for law will promote responsible and effective government. New material is added to WorldLII regularly and its coverage will continue to grow. WorldLII is already a valuable source for international law, and it has the potential to become invaluable. It can be recommended as a good first place

to look for any law-related international document.

There are several members of the *Free Access to the Law Movement* that have not been profiled in this series. They are Droit francophone, comprised of law from Francophone countries in French; CyLaw, Cypriot law in Greek; HKLII (Hong Kong

Legal Information Institute), Hong Kong law in English and Chinese; JuriBurkina, Burkina Faso law in French; NZLII (New Zealand Legal Information Institute), New Zealand law in English; PacLII (Pacific Islands Legal Information Institute), Polynesian law in English; and SAFLII (Southern African Legal Information

Institute), South African and Namibian law in English. All of these sources are important and developing quickly. They are significant tools which are especially important for developing countries where access to legal materials is challenging.

Temporary Closure at Regina Library – Phase 2

by Susan Baer

The second phase of the renovations at the Regina Law Society library will result in the temporary closure of the library from August 17 to September 1, 2006. Reference service will be provided through our library in Saskatoon during that time. Requests for assistance received in Regina will be redirected to the Saskatoon library. Members should also note that phone service to the Regina library will be interrupted on August 29 when the existing telephone service will be disconnected to switch over to the telephone system in the new location.

This is the second phase of the renovations in the Victoria Avenue Courthouse for the Law Society library. The library will have two locations: on the second floor immediately adjacent to the elevator and in the basement. The library staff area will be located on the second floor beside the second floor collection. Once the physical move is completed, the staff will be busy fine-tuning the locations of materials on the second floor and in the basement location.

The basement location is not a storage area, but a continuation of the collection itself.

Library staff will also be working to improve the signage in both locations as well as changing all record-keeping in the library's system to account for the two locations in the Regina library. While the physical move of the collection and staff areas took only weeks, changes to the record-keeping will take considerably longer.

The following is a general breakdown of the split of the collection:

Second Floor

Textbooks

Reference sets

(i.e. Canadian Abridgment)

Saskatchewan legislation

Saskatchewan reports

Federal statutes

Journals

Basement Collection

Historical textbooks

(i.e. older criminal codes)

Law reports (SCR, DLR, WWR)

Provincial law reports

Topical law reports

Provincial and foreign statutes

Foreign law reports

There is a photocopier located in the basement which uses the same auditron codes for each firm. Eventually, there will be a computer for members to use that will have access to the library's catalogue, the Internet and CD-ROM resources.

There are two doors to the library collections on both levels. The same key that members currently hold will open the library doors on the second floor and the basement level. Specifically, the member key will open the west library door on both levels. The basement location will remain locked since library staff will not be located in the basement on a full-time basis.

The daily legal news for the Law Society's website will be provided by the Saskatoon library staff. New Saskatchewan judgments will not be loaded on the website while the Regina library is closed. We appreciate the understanding, patience, and cooperation of our members during this time.

Rulings – June 2006

Chapter VII “Outside Interests and the Practice of Law” – Finder’s Fee (June 2006)

Facts:

Lawyer X asked if she could refer clients to an outside business and receive a referral fee from said business.

Ruling:

This practice is acceptable as long as the “finder fee” relationship between lawyer and other professional is fully disclosed to the client. Client can make an informed decision whether or not to use the referred outside business.

NOTE: The Committee noted that the “referrals” about which Lawyer X was asking are referrals from a lawyer to another professional and the Ethics Committee felt that if the client were fully advised about the referral fee and arrangement between the lawyer and the other professional, this would be fine. This is not to be confused with lawyers paying out referral fees themselves as this is a different issue and the Ethics Committee is uncomfortable with this particular practice.

Chapter XIX, “Avoiding Questionable Conduct” – Photocopying Costs (June 2006)

Facts:

Lawyer F acted for the plaintiff and Lawyer G provided a Statement As To Documents on November 10th, 2003. Lawyer F indicated that he had requested a photocopy of the documents and undertook to pay the reasonable photocopying charges. Lawyer F indicated that sometime between November 2003 and May 2005 he found the documents to be in disarray and wrote to Lawyer G May 26th, 2005 asking him to correct the deficiencies or provide a new set of

copies. Lawyer G replied by sending an Amended Statement As To Documents dated July 27th, 2004 and a further invoice. Lawyer F refused to pay Lawyer G's invoice. Lawyer G argued that only 5 of the 144 documents disclosed required correction and that it took Lawyer F almost 2 years to review the original Statement As To Documents and because of the passage of time, numerous additional documents surfaced. Lawyer G indicated that on or about August 2005, a telephone conference call with the Trial Judge was held. Lawyer F insisted that he should be provided with an entirely new batch of documents and Lawyer G agreed to do so on the understanding that Lawyer F would reimburse his office for the reasonable costs of the photocopying.

Ruling:

Lawyer F provided his undertaking to pay “reasonable” photocopying fees. Members are obligated to pay accounts incurred in the course of practice. Lawyer F alleges that the documents were messy, disorganized or incomplete. There is a dispute between the members with respect to the facts. The Ethics Committee is not in a position to decide whether or not the documents were sent properly in the first place and whether or not billing for the second batch of documents was appropriate. The Committee points out that a great deal of time has been wasted by both members in arguing about this small amount of money. The Code of Professional Conduct in Chapter XVI, cautions members about engaging in “petty haranguing”, particularly about money or billing as it brings the profession into disrepute. Members’ conduct toward one another should be characterized by “courtesy and good faith”. Rather than make some sort of fact determination about the appropriateness of the documents or the bill, the Committee would suggest that the members “split the difference” and “call it a day”.

Chapter XV “Responsibility to the Profession Generally” – Misleading Correspondence (June 2006)

Facts:

A Care Home Administrator complained about Lawyer Y on two points.

1. The tone of his letters to the Administrator asking for information about a deceased resident on behalf of Lawyer Y's client, the son of the deceased. The son was formerly the Power of Attorney for the deceased. One of Lawyer Y's letters stated “If your view that the Power of Attorney ends with the death of the grantor is correct, from whom do you require authorization to in order to comply with our request as contained in the said letter, attached for your reference.”
1. The fact that Lawyer Y communicated directly with individual directors of the care home and did so using out-of-date information.

Ruling:

With respect to issue #1, the Committee noted that Lawyer Y had not asked his client whether or not the deceased had a will, who was named Executor and if there was no will, how many persons of equal relationship were available to be appointed as Administrator. Lawyer Y indicated that he did not wish to spend his client's money on litigation and that he felt he could obtain that information through the co-operation of the Care Home Administrator. The state of the law is very clear that a Power of Attorney ends with the death of the grantor. The member did not obtain information about who would have had the legal right to obtain the information, i.e.: whether or not there was a will and the identity of the Executor named and whether or not there was an Administrator appointed and how many people would have a right to act as Administrator should one be neces-

sary. The Ethics Committee wished to caution the member that he should be careful about the tone and tenor of his communications, as an Officer of the Court it is inappropriate to be seen by

a member of the public to be “bullying” or “less than forthright” and it brings the profession into disrepute.

With respect to issue #2, Lawyer Y used Corporations Branch informa-

tion which apparently was out-of-date and, thus, it was not his fault that he used the inaccurate information.

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.

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Regina 352-0680 or Saskatoon 956-5738 or 956-5735

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