

BENCHERS' DIGEST



Volume 19, Issue Number 4

October, 2006

Civil Jury Reform

by Rick Danyliuk



Over the past two years an issue has arisen with respect to the use of juries in Saskatchewan civil cases. The initiative for changes to the Jury Act came from the Court of Queen's Bench. Concern was raised that jury notices had been, and likely would continue to be, served in cases where the use of a jury was seen as inappropriate. Such cases could lead to injustice. This concern was communicated to the Bar by then Chief Justice Gerein.

Reaction was swift. The Saskatchewan Trial Lawyers' Association raised opposition to the movement, citing the freedom of citizens to select juries as one of the integral compo-

nents of our civil justice process. At an Annual Meeting, members of the Law Society voted in favour of a resolution opposing any changes to the jury system. Sask Justice took a relatively neutral position, as the impetus for change did not have its genesis within the Department. However, Justice was prepared to listen and facilitate further discussion on this contentious matter.

In an effort to ensure positions were properly communicated and discussed, Justice Gerein formed an ad hoc working committee to review the matter. The Chief Justice chaired. Representatives from the Law Society, Canadian Bar Association, STLA and Justice attended.

The Bench indicated it had no wish to abolish civil jury trials on a wholesale basis. Rather, it was concerned about the use of a jury in (for example) long and complex commercial litigation, where the ability of a jury to maintain attention and establish an understanding of the facts was seen as suspect. The representatives of the various groups from the practicing Bar were, to varying degrees, concerned about the erosion of basic rights for litigants and that this intrusion into the use of juries might be "the thin edge of the wedge".

Initially, it was agreed that a scientific study be commissioned. Dr. Jeff Pfeiffer interviewed former jurors as well as judges and lawyers with civil jury experience. The purpose was to determine how well jurors understood the issues they were called upon to determine.

The upshot of this study was that the lawyers felt their words were all perfectly understood, with some doubt as to whether jurors could understand judges. The judges felt they spoke with clarity but had misgivings as to whether jurors could follow the lawyers' comments. Not surprisingly, the truth appears to be somewhere in between, with juries being able to understand some (but not all) of what both judges and lawyers said to them. The study confirmed that jurors have limited attention spans, and are no more excited about pitting in for long and dreary litigation than are judges or lawyers.

Unfortunately, while useful, the study did not totally solve the problem. Several meetings were held, with much discussion. Chief Justice Gerein was succeeded by Chief Justice Laing, who continued with the ad hoc committee's work. Sadly, at none of the meetings was liquor served.

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It was acknowledged by the representatives for the practicing Bar that some way was needed to deal with a jury notice in a case that was clearly inappropriate. These cases were seen as limited in type and number, and primarily dealt with cases such as “monster” commercial litigation.

The LSS, CBA and STLA representatives combined their efforts to create a draft proposal which would address the concerns of the Bench while safeguarding the rights of litigants and not eroding the ability to obtain full access to justice. This proposal was forwarded to the other stakeholders this fall, and certainly is not the final word on the subject (although it appears to be brilliant!).

The proposal deals with cases involving a “commercial transaction”, which would not include traditional jury cases such as personal injury,

defamation, malicious prosecution and false imprisonment. It provides that where a party to such a case feels it is not suitable for a jury, at least 60 days before trial, it may make a Chambers application to set aside the notice. The onus is on that party to demonstrate the existence of “extraordinary circumstances”. That term would be defined as including: a case involving a prolonged examination of documents or accounts; trials of over three weeks; cases where the main issue is the interpretation of a will, deed or document; and cases where the principal issue is a matter of law, not fact.

I hasten to reiterate this is a working draft, which has not been fully reviewed or accepted by all members of the ad hoc committee. It would have to be ratified or authorized before being enshrined as legislation.

Acknowledgement must be made of the contributions of the members of the committee: Justices Gerein and Laing; Reg Watson Q.C. (STLA); Bob Leurer Q.C. (CBA); Susan Amrud Q.C. and Tim Epp (Justice). All have contributed far more than I have. Despite initially having positions that were polarized, all members remained respectful and genuinely listened to the other side of the story. It has been my privilege to be the Law Society’s representative.

The committee members from the LSS, CBA and STLA welcome any comments, criticisms or suggestions from members. This is an important issue going to the heart of access to justice in our civil system, and all members are encouraged to take an active interest in it.

Highlights of the Meeting of Benchers held September 7th and 8th, 2006

Rule Amendments

The Rules of the Law Society of Saskatchewan received a major overhaul effective July 1st, 2006 to correlate to the amendments to *The Legal Profession Act*. Those changes were reported in the June, 2006 edition. The Benchers approved further amendments to Rules 154(1)(b), 302(3) and 1101(3) to complete that correlation. In addition, the Benchers approved an amendment to Rule 573 to provide that lawyers in private practice who provide contract services to Mediation Services under Part VII of *The Queen’s Bench Act* are not required to complete the contract required under Rule 573(1).

Queen’s Counsel Selection Committee

The Selection Committee in place for 2005 found that it had received nominations in many different formats and found it difficult to rationalize the different approaches. The Committee has recommended to the Benchers that a nomination form be utilized and posted on the website. That nomination form has now been posted.

In addition, the Minister of Justice had asked the Law Society for its opinion relating to the impact of a criminal or discipline record on the granting of or the removal of a Q.C. It was the opinion of the Benchers that since the designation is awarded by the Crown, the decision to remove the designation should be made by the Crown and the Law Society would not be offended if the Minister removed a Q.C. from a person who had been subject to criminal or discipline charges.

Appointment of Representatives

The Benchers have updated their policy on appointments of representatives.

Periodically, the Law Society is asked to name representatives to various organizations. While the Law Society had a policy to handle this since the 1980s, it was felt that the policy should be updated.

Under the new policy, the Benchers must determine whether the position may be fulfilled by a Bencher, may not be fulfilled by a Bencher, may not be fulfilled by a Bencher, or may be filled by either a Bencher or a member. Criteria for the position will be determined, and then a notice will be posted on the website asking for volunteers. The Benchers or the Executive Committee will then select a candidate from those volunteers who express interest.

Auditor Comments

by John Allen, P.A.

This is the first of what may become an ongoing column to draw attention to particular accounting issues affecting members and to offer advice/suggestions on how each issue can/should be addressed. If you have any suggestions on topics you would like addressed, please give me a call. You may want to forward this column to your office staff for their information as well.

Cheque Imaging

The Canadian Payments Association (CPA) has decided to move towards a digital imaging and cheque clearing system. Implementation of this system is to be completed in stages with the timing of each stage varying between financial institutions. Completion is currently scheduled for 2008. The new system will allow financial institutions to record cancelled cheques digitally and then

destroy the originals. This means that original cancelled cheques will not be returned to your office. All financial institutions will be implementing this change by providing "digital" images to account holders via photocopy and/or CD, online inquiry services, etc., depending on the financial institution.

It should be noted that in anticipation of this change, some financial institutions may have already stopped returning original cancelled cheques and are providing account holders with only photocopies of trust and/or general cheques. Law Society Rules require original cancelled cheques to be obtained and retained by law firms, so firms must ensure they receive original cancelled cheques back from their financial institutions.

If your financial institution is no longer returning your original cancelled cheques, please contact me and

also contact the financial institution immediately and request:

- all original cancelled cheques be returned to your office in the future.
- all original cancelled cheques be returned retroactively to the date of discontinuance.

The CPA issued a consultation document in November 2005 and the Federation of Law Societies responded to the CPA in February 2006 outlining its concerns in areas of security, accountability, evidentiary reliability and technical and cost implications. The Federation has not advised the Law Society of any response to date.

The Law Society of Saskatchewan will keep members informed of ongoing developments in this area. If you have any questions in regard to this or other financial issues, please contact me at 569-8242.

In Memory Of

HNATYSHYN, Victor of Saskatoon passed away on August 29th, 2006 at the age of 66 years. Raised in Saskatoon, he attended the University of Saskatchewan, obtaining his B.A. in 1962 and his LL.B. in 1964. After completing his articles in Regina, Victor joined the family law firm in Saskatoon and was awarded the Queen's Council designation in 1986. He was President of the Saskatchewan Bar Association and the Saskatoon Club and served as a member of the 25th Street Theatre Board and the Estate Planning Council.

Mr. Hnatyshyn is survived by his brother, David, his sister, Elizabeth and his sister-in-law, Gerda, and their families.

* * * * *

MAZER, Raymond of Weyburn passed away on August 17th, 2006 at the age of 54 years. Mr. Mazer was admitted to the Bar in 1976 and had his own law firm in Weyburn, Saskatchewan.

Mr. Mazer is survived by his wife, Darlene, his daughters, Mandi and Mallory, his parents and family members.

Regina Library Renovation Update

by Susan Baer, Director of Libraries

Legal WebCites

The renovations to the Regina courthouse continue with a re-location of courtroom number five and the construction of additional judges' offices. The library portion of the renovation is almost completed. The library has moved into the newly renovated space; however, finishing touches remain to be done.

The main library on the second floor now has plug-ins for laptops that allows direct access to the Internet. It is possible to print from your laptop to the online public access computer (OPAC) printer located in the library. The following are procedures to print using your laptop to the printer located in the library:

To print from user laptop to OPAC printer:

You will need a patch cable to connect your laptop to the data jack in the library. If you do not have one, you can borrow one from the Reference Desk.

Step 1: Add printer to laptop

1. Click **Start**
2. Select **Settings**
3. Select **Printers and Faxes**
4. Click **Add a printer**

5. Click **Next** on **Add Printer Wizard**
6. Select **A network printer, or a printer attached to another computer**
7. Click **Next**
8. Select **Connect to this printer** (or to browse a printer, select this option and click **Next**)
9. In the name box below, enter \\ref1\hp
10. Click **Next**
11. Enter **guest** in user name box
12. Enter **puffin0155** in password box
13. Uncheck **Remember my password**
14. Select **No** on **Do you want to use this printer as default?**
15. Click **Next**
16. Click **Finish**

Step 2: Print from application (such as Word, WordPerfect, Excel, Internet Explorer):

1. Click **File**
2. Click **Print**
3. Select **HP LaserJet 1100 (MS) on ref1**

In the basement collection, where the primary materials are located, connecting to the Internet is also possible at various locations. Printing is not yet available from the basement. Once a printer is acquired for the basement, a similar procedure will be available for printing from your laptop to the printer in the library. Copies of the instructions will be located in the library.

Also located in the basement is a photocopier with auditron codes. The auditron codes loaded into that photocopier are identical to the codes used in the main library.

We would like to thank the Saskatchewan Department of Justice and Saskatchewan Property Management (SPM) for their support and co-operation during the renovation project. We appreciate our members' understanding and support during this transition and ask for your continued patience while we adjust to our new location and the adjustment of the policies and procedures.

Centennial Committee Update

by Ron Kruzeniski, Q.P., Chair

Our final greeting before we launch the Centennial year. Plans are coming together and we look forward to celebrating with each and every one of you. We have scheduled an event (with the cooperation of a rep in your neighbourhood) in each of the Local Bar Association areas. These events are scheduled throughout the Centennial year from January to December.

We are introducing the Centennial year activities during the bencher convocation scheduled in Regina January 10-12, 2007. Regina will host the first of the Centennial Series events on Thursday evening. The next day at

the QC ceremony scheduled at Government House incoming President Dietz will announce the schedule of activities and introduce our slogan 'a century of integrity'. If you are in Regina and would like to attend the ceremony and kick-off press conference please let us know.

Some merchandise is being produced with the Centennial logo that will be available at the Law Society website. The first items are Men's and Women's golf shirts (with your firm name as well if you choose). An order form is enclosed if you are interested.

All members will be receiving a calendar (with the next edition of the Benchers' Digest) that will highlight the centennial event schedule as well as include historical events and meetings/conferences submitted by legal organizations. Updated information will also be available at www.lawsociety.sk.ca/centennial.

We are looking forward to our centennial year celebrations! Hope you will participate. Contact a member of the committee or Lori Boesch for more information about the events or to volunteer (lboesch@imagewireless.ca or 306 738 2045).

Centennial

by Victor Dietz

We are at the stage when we can start counting the "sleeps" as our Centennial year approaches. To think our Society will be celebrating 100 years of existence is in some ways mind-boggling and yet it engenders a feeling of pride and accomplishment. None of us have been here the whole time but many have for a good portion. As you have seen from previous articles and those contained herein, we have a great deal planned. This will be a celebration like no other. It will bring most of us together in one form or another. The Centennial Committee has committed time and effort and we are sure you will appreciate the events, merchandise, gifts and memorabilia. This is our time to recognize and reflect upon the past with visions for the future. Let us get excited about ourselves now and applaud a century of service and integrity.

2007 Convocation Dates

January 10th, 11th and 12th – Regina
March 14th, 15th and 16th – Saskatoon
May 30th, 31st and June 1st – Yorkton
(Annual Meeting set for evening of May 31st)
September 26th, 27th and 28th – Cypress Hills
(joint meeting with Alberta Law Society)
October 17th, 18th and 19th - Regina
(President's Dinner the evening of October 19th)
December 5th, 6th and 7th - Saskatoon

Saskatchewan CPLED Prize Award

by Lynn Loewen, CPLED Bar Admission Program Director

The Law Society of Saskatchewan and the Saskatchewan Legal Education Society (SKLESI) are pleased to announce that they will provide an award to the student who has demonstrated outstanding performance during the Saskatchewan CPLED Bar Admission Program. The Saskatchewan CPLED Prize is designed to highlight the qualities desirable for lawyers and to encourage students to behave in ways that will enhance the practice of law in Saskatchewan. The award will be presented annually at the Call to the Bar Ceremony, beginning in the fall of 2006.

In order to select the candidates, several sources of information, including online facilitators, instructors and SKLESI staff, will be consulted to identify the student or students who demonstrate the following three criteria:

1. Participation
2. Quality of work
3. Collegiality and civility

Participation includes participating in all aspects of the program, including emails, bulletin board postings and any other interactions students may

have had either online or during face to face sessions. The CPLED Program emphasizes learning by doing, and participation is key to success. In order to meet this criteria, students would have demonstrated a willingness to participate in or aid discussion and would have been fully engaged in the online process.

The criteria for **quality of work** is not the highest mark, as the assignments and competency evaluations are graded on a "competency demonstrated / competency not yet demonstrated" basis. To meet this criteria a student would have consistently done competent work and demonstrated a willingness to improve the quality of his or her work.

It is vital that beginning lawyers realize the importance of **collegiality and civility**. According to the *Code of Professional Conduct*, the standard of conduct expected is to treat others with respect, integrity and courtesy. A lawyer's conduct should be characterized by courtesy and good faith. In order to meet this criteria, the student would have consistently demonstrated these characteristics in their interac-

tions with facilitators, presenters, fellow students, and SKLESI staff.

The outstanding student in the 2005 – 2006 CPLED Program is Sonia Eggerman. Sonia excelled in all categories, and as well, demonstrated a positive attitude during the program.

In addition to the honour of being selected, Sonia will receive artwork and admission to a SKLESI continuing legal education seminar. Sonia articulated with the Court of Queen's Bench, and her principal was Madam Justice C.L. Dawson. Sonia is currently working for six months as an intern with the CBA's Young Professional Program in Namibia. Congratulations Sonia!

The 2006-2007 CPLED Bar Admission Program is well under way, with a new group of students in the program. I encourage all students to consider the criteria for the prize, both to be eligible for the award, but also, and more importantly, to begin to practice habits that will stand them in good stead throughout their legal careers.

Congratulations

The Honourable Vic Toews, Q.C., Minister of Justice and Attorney General of Canada, announced the following appointment:

The Honourable Martel D. Popescul, Q.C., partner with the firm of Sanderson Balicki Popescul of Prince Albert, is appointed a Judge of Her Majesty's Court of Queen's Bench for Saskatchewan. He replaces Mr. R.D. Laing (Saskatoon) who was appointed Chief Justice of the Court as of January 1st, 2006.

Mr. Justice Popescul received a Bachelor of Laws in 1979 from the University of Saskatchewan and a Bachelor of Arts (with Distinction) in 1976 from the University of Regina and was admitted to the Bar of Saskatchewan in 1980. He practised as a Crown Prosecutor, Saskatchewan Department of Justice before moving to private practice. Mr. Popescul had a general practice, particularly family law, criminal law, civil litigation and arbitration. He is a Past President and Bencher of the Law Society of Saskatchewan. Very active in the community, Mr. Justice Popescul was Chair of the Victoria Hospital Foundation and Governor of the Prince Albert Raiders Hockey Club.

The appointment is effective immediately.

Centennial Website – <http://www.lawsociety.sk.ca/centennial>

With the launch of the Law Society's centennial around the corner, the Law Society library is gearing up for the year by creating the centennial website. A welcome message is now loaded at <http://www.lawsociety.sk.ca/centennial> and contact information for the members of the Centennial subcommittee and Lori Boesch, the Centennial coordinator is presently on the website. The centennial website will officially launch in January 2007 when the centennial logo will appear on the Law Society's home page as the entry point into the centennial website.

The Centennial subcommittee created the plan for the celebrations so that events or activities will occur throughout the year. The website will take a similar approach to the information and pictures to share with everyone. Each month the centennial website will present new information and pictures to pique your interest. The **Events Guide** will be a prominent feature of the website, incorporating the centennial events as well as noting significant historical events and achievements. The events guide will be the online version of the centennial calendar that will be sent to each member in January 2007.

Two features on the website will require participation from our members to be successful. We are asking you to share favourite photos and memories with us. Under the **Photo Album**, you will be able to send your photos to include on the centennial website. Under **Your Stories**, you can submit your anecdotes and stories (all in good taste of course), so your memories about a colleague, special event, or special time can be recorded and

shared, adding to the richness of the Saskatchewan legal heritage of which we are so proud.

Centennial Logo

The Centennial subcommittee has agreed that broad use of the logo should be encouraged with the membership. To facilitate the logo's use, the centennial website contains a link to various versions of the logo. The centennial logo includes the words "Law Society of Saskatchewan Centennial" and the Latin motto from the seal, "*Justitia Virtutum Regina*". There are two versions of the logo, the horizontal and the stacked, both in colour and in black and white. The formats available are jpg, gif and tif.

Guidelines for appropriate use of the logo will be available from the same location on the website. It is important that the members adhere to the usage guidelines so that the visual identity for the Centennial remains consistent. We encourage the use of the logo on a firm's letterhead and a summary of the guidelines should be observed:

- The centennial logo should not be incorporated into existing letterhead in such a way as to form part of the letterhead.
- If colour is used, it must use the proper pantones for the blue and gold.
- If resized, it should remain proportional.
- The logo should not be disassembled.

There will be Centennial merchandise available for members, including the calendar, the pin, golf shirts and more. Members are not permitted to produce their own merchandise with

the Centennial logo. If you would like to see a specific memento, please contact Lori Boesch with your ideas.

Other downloads available through the Centennial website are beautiful computer wallpaper and screen savers. Kelly Chiu, the Law Society's web administrator, has developed centennial desktop designs using her own photographs of the Saskatchewan landscape and applying the centennial logo. The desktop designs (wallpaper for your computer) will be available for use by our members. There are 10 designs available in four resolutions each. There are two screen savers from which to choose so even when your computer is idle, the centennial images can still be seen. Downloading and installation help is available on the centennial website to use either the screen savers or apply the beautiful scenes on your computer. Look for the logo and downloads under **Memorabilia** on the centennial website.

We are looking forward to highlighting the Law Society's and our members' accomplishments through the Centennial website. I am always interested in your comments and look forward to your participation throughout the Centennial year.

Members' Section Passwords

Just a reminder about the members' section access: the new passwords for the members' section are being sent with your practice certificates. The new passwords are effective December 4, 2006 and the 2006 accounts will be de-activated on January 17, 2007. If you have any questions about the password, please contact the Library staff in Regina directly at 1-877-989-4999 or 569-8020.

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

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
