

BENCHERS' DIGEST



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Profile of the President

by Victor Dietz



The Benchers of the Law Society of Saskatchewan elected Victor Dietz, as President, and Rick Danyliuk as Vice-President at their December Convocation held in Saskatoon. They will hold these offices for the Centennial year, 2007.

Vic Dietz was born and raised in Saskatchewan and attended the University of Regina where he received his Bachelor of Arts degree through Campion College in 1978. He then attended the University of Saskatchewan, after a year of working and travel, obtaining a Bachelor of Laws degree in 1982.

Mr. Dietz completed his articles with the firm Olive Waller Zinkhan & Waller and was admitted to the Law

Society of Saskatchewan in 1983. He has practiced with that firm continuously and in 1988 joined the partnership. His primary practice is in the area of debtor-creditor law, representing many Credit Unions throughout the Province.

Mr. Dietz is a member of the Canadian Academy of Recording Arts and Sciences (CARAS). He is legal counsel for Saskatchewan Creative Music 2007 Inc., which has facilitated the Province of Saskatchewan hosting the Junos (Saskatoon), the Canadian Country Music Awards (Regina) and the Western Canadian Music Awards (Moose Jaw) in 2007.

He was elected a Bencher at the Law Society in 2003 and has served on most Committees as well as Chairing the Professional Standards Committee. As Vice-President last year, he chaired the Committee tasked with the Benchers holding a business planning session in June, 2006.

Mr. Dietz has served on the Legal Aid Commission since 2004, and has been a long-standing member of the Canadian Bar Association.

Vic and his partner, Sandra Burrows, are looking forward to "celebrating the Law Society's Centennial year".

It is my honour and privilege to have been elected the President of the Law Society, especially for this year. The Law Society will be celebrating its Centennial. It will be a year to recognize the accomplishments of lawyers in this Province, both past and present.

In 2005 the Public Relations Committee of the Law Society created a Centennial Sub-Committee to put in place plans and events to celebrate our first one hundred years. Mr. Ron Kruzeniski, Q.C. was appointed Chair and he sought out individuals to volunteer their time and talents. The volunteers who stepped forward come from all parts of the Province. They are Beth Bilson, Q.C., William Selnes, Q.C., John McIntosh, Q.C., David Conroy and myself. The Law Society administration also has members on the Committee, namely A. Kirsten Logan, Q.C. and Sue (who keeps things moving) Baer.

The Centennial Sub-Committee retained a coordinator to provide professional services. Lori Boesch has worked in public relations for many years in New York but, being originally from Saskatchewan, she chose to return. We were fortunate to have her join us. Her services are invaluable

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and come at very modest rates in comparison to the “Big Apple” days.

Numerous articles have appeared in the last number of *Benchers Digests* outlining plans for our year long celebration. I am particularly enthusiastic about the “Centennial Series”. Each and every Bar Association in the Province will be putting on an event. There will be one each month this year. The events range from Dinner and luncheons to golf tournaments. I will endeavour to attend each event (especially the golf tourneys) to bring the message of our “100 years of integrity”. Stay tuned as announcements are made and make sure to view the Law Society’s website regularly.

Notwithstanding the Centennial, I am pleased to report the Society is, for all intents and purposes, in excellent shape. One issue upcoming this year is the Law Society’s move to new offices. This was not by design but rather forced upon us in that a lease renewal was not offered. Any move and any improvements to space have an inherent cost. The new premises, as of February, 2007, are located at 1100 – 2002 Victoria Avenue (the eleventh floor of the Avord Tower).

As well, many of you know that one of our Co-Directors, Allan Snell, Q.C., has resigned after 19 years of service, to become the CEO of Saskatchewan Legal Aid. Al will be assuming his new position on February 1st, 2007. His leaving will be a significant loss and he will be greatly missed. We wish him all the best.

As part of my agenda for this year, I have tasked our new Vice-President, Rick Danyliuk, with chairing an *ad hoc* committee to review the Law Society’s committee structure and committees. There have been no changes of significance in our manner of doing business for many years. That is not to say we need revisions, but it is certainly in keeping with our governance discussions that we conduct a review and, if warranted, change. This review will now likely expand to include the structure of the administration office with Al leaving.

This year, and until 2009, the Benchers serving you are Susan Bar-

ber (Regina), Karl Bazin, Q.C. (Swift Current), Thomas Campbell (Kamsack), Richard Danyliuk (Saskatoon), William Holliday (Weyburn), Robert Kennedy, Q.C. (Saskatoon), Paul Korpan, Q.C. (Regina), Ron Kruzeniski, Q.C. (Regina), Eileen Libby (Regina), George Patterson (Moose Jaw), James Taylor (North Battleford), Evert Van Olst (Saskatoon), Greg Walen, Q.C. (Saskatoon), Alma Wiebe, Q.C. (Saskatoon) and John Will (Humboldt). As well, Brent Cotter, Q.C., the Dean of the College of Law, and four public representatives serve as Benchers. Janice Wall and Karen Topolinski are serving their second term each and we are awaiting the appointment of two new public representatives by the Minister of Justice.

There is currently a vacancy in the Prince Albert region which will be filled this month. Hugh Harradence, Q.C. was the representative but was recently appointed to the Provincial Court.

I would like to take this opportunity to express my sincere thanks to those Benchers who concluded their terms at the end of 2006 for all their hard work and efforts. To Michael Fisher, Q.C., Brent Gough, Q.C., Brian Hendrickson, Lana Krogan, Graeme Mitchell, Q.C. and George Thurlow, Q.C., I and our past President, Alma Wiebe, Q.C. say thank you. As well, a big thank you to the two retiring public representatives, Ron Barsi and Effie Kuznir. Their input and perspective were invaluable to our deliberations.

In addition to our centennial celebration, there is much work ahead this year. We, as a Society, are not alone in dealing with issues that affect or may affect lawyers nationally. There are currently discussions taking place regarding the World Trade Organization and international agreements respecting free trade of services, including legal services. There are also issues surrounding money laundering amendments as it relates to lawyers. The Competition Bureau of Canada is reviewing self-regulated professions and the cost of the delivery of services.

Provincially, there are more issues to be addressed regarding title insurance. Some insurers are supplanting the use of lawyers in real estate matters and are ever aggressive in expanding their business and market share. Proposed changes to provincial legislation such as *The Jury Act* may require our intervention raising the debate as to the Society’s mandate of protecting the public interest as opposed to promoting the profession. This is but some of what awaits.

I would be remiss not to congratulate Rick Danyliuk on being elected Vice-President at our last Convocation. I look forward to working with him on the Executive. I know what a great job he has done as a serving Bencher and will do on the Executive team.

Congratulations also must be extended to Michael Milani, Q.C. on being elected First Vice-President of the Federation of Law Societies in November, 2006. He will ascend to the Presidency in November of this year when the Federation meets in Regina. Mike’s work on behalf of the Law Society of Saskatchewan and the Federation has been invaluable and is much appreciated.

I would like to take this opportunity to express my sincere thanks to Alma Wiebe, Q.C., Past President, for more than able guidance of the Society and her mentorship to me. She has not only been a source of knowledge and wisdom but also a true friend.

We cannot go into this year without acknowledging the efficiency, effort and abilities of those who make the day-to-day business of the Law Society happen. I look forward to continuing to work with A. Kirsten Logan, Q.C. (Co-Director), Tom Schonhoffer, Q.C. (Insurance Counsel), Donna Sigmeth (Complaints Counsel), Sue Baer (Director of Libraries), John Allen (Auditor), Rod MacDonald (Practise Advisor), Greg McCullagh (Investigator) and the Administration support staff.

We have much to look forward to and much to do as we celebrate 100 years of integrity.

Highlights of the Meeting of Benchers held November 30th and December 1st, 2006

Election of President and Vice-President

Victor Dietz of Regina was elected the 2007 President and Rick Danyliuk of Saskatoon was elected as Vice-President for 2007.

Form Amendments

Housekeeping amendments were made to Forms TA-2, TA-3, TA-5 and TA-5S. The newly amended Forms are on the Law Society website.

Appointment of Representatives

The Benchers have updated their policy on appointments of representatives.

Under the new policy, the Benchers must determine whether the position may be filled by a Bencher, may not be filled 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 Exec-

utive Committee will then select a candidate from those volunteers who express interest. The policy will be posted on the website.

Honourary Life Memberships

Anna Fung, Q.C., the First Vice-President of the Law Society of British Columbia and Jon van der Krabben, the President of the Law Society of Manitoba, attended the November/December Convocation and were awarded Honourary Life Memberships to the Law Society of Saskatchewan.

Benchers

Congratulations to the newly elected Benchers, being Thomas Campbell from Kamsack, Paul Korpan, Q.C. from Regina, Eileen Libby from Regina, George Patterson from Moose Jaw, James Taylor from North Battleford and Evert Van Olst from Saskatoon.

We wish to thank the outgoing Benchers for their years of dedication and service to the profession. Those departing Benchers are: Ron Barsi (Lay Bencher), Michael Fisher, Q.C. (President 2005), Brent Gough, Q.C. (President 2004), Brian Hendrickson, Lana Krogan-Stevely, Effie Kuznir (Lay Bencher), Graeme Mitchell, Q.C. and George Thurlow, Q.C.

Equity Ombudsperson Report

by Judy Anderson

As Equity Ombudsperson for the Law Society, I receive calls from support staff, lawyers and students who are experiencing difficulties at work. One day, however, I received a call from someone with a remarkable success story. Charmaine Panko, a mother eight children, was able to complete her law degree and work part time on her articles in large part due to the support and flexibility from the College of Law and her employer.

The College of Law allowed Charmaine to attend classes with each of her newborn babies and on one occasion, via the student lounge, with a baby monitor. From there she could listen to lectures while caring for her baby. When it came time to article, Charmaine was fortunate enough to

find a law firm, which accepted her on a part-time basis. Balfour Moss even went so far as to allow Charmaine to bring her newborn baby to work so that she could continue to nurse her infant without having to leave the office. This arrangement continued for three months to the satisfaction of all parties concerned. Charmaine also participated in a student exchange with Knott den Hollander Degenstien who similarly welcomed her and her baby. As Charmaine states, "They [the College of Law, Balfour Moss and Knott den Hollander Degenstien] provided more than accommodation. They embraced an opportunity to act outside of the box. And, by doing so, I have the privilege of choice. "

This story demonstrates the willingness on the part of institutions to accommodate as well as the creativity to come up with innovative solutions. The Law Society is committed to helping employers and employees work toward equity in the workplace and we commend the College of Law, Balfour Moss and other law firms who are striving to create workplaces of choice. They have enhanced their workplace/classrooms to provide healthy and workable options. By keeping the doors open for people with non-traditional schedules and needs, law firms reap the benefits of a diverse staff.

Withdrawal in Criminal Matters

by George Thurlow, Q.C.

You are just leaving Provincial Court after having spoken to a few matters. The Crown asks you whether you will admit something on a trial for later that day. You say “what trial?”. The Crown looks at you as though you have Alzheimers. You both go to look at the Information, each intending to prove to the other you are still competent. You to see that about six months ago your former client had a matter set for trial with you as counsel. They did not show, a bench warrant was issued, **but you remained on record!**. The client was later arrested, set a fresh date on their own, **but you are still on record**. Luckily for you, some crown witnesses aren't there so the matter is adjourned and you withdraw pending the client & you having a “long talk”.

You were lucky. It could have been an out - of - town court point, the crown could have been ready to go to trial, the client could have claimed you were going to do a number of things, the Court might have insisted on you asking permission.

All this stress could have been avoided if when the client missed court and you lost contact you could have withdrawn.

It is not constitutional jurisprudence to withdraw. *The Code of Professional Conduct* says:

“The lawyer owes a duty to the client not to withdraw services except for good cause and upon notice appropriate to the circumstances” [Chapter XII]

One must appear in the appropriate court. One cannot merely file the Form 1 notice as one would do in a civil matter. There are two leading cases on withdrawal. *Leask v. Cronin P.C.J.* [1985] 3 W.W.R. 152 (B.C.S.C.) and *R. v. Creasser* (1996) 43 Alta. L.R. 1 (Alta. C.A.) which, of course, contradict each other.

In *Leask v. Cronin* the British Columbia Supreme Court felt retainer of counsel is a matter of contract

between lawyer and client and not within the Courts jurisdiction. Failure to fulfil the implied terms of proper instructions (both as to the conduct of the matter and financial) is grounds for withdrawal. Justice Mc Kay feels any questioning as to reasons is quite improper. One merely politely advises as to ones withdrawal. The propriety of that contract, and how well the lawyer fulfills it, is to be regulated by the Law Society. Indeed, the Law Society will regulate such matters if there are complaints so they are aware.

R. v. Creasser involves a lawyer withdrawing for non payment of fees (how that reason came before the court is unclear). The Court of Appeal agreed with McKay J. in *Leask v. Cronin P.C.J.* that if there was a difference of opinion as to strategy, instructions to do something improper or foolish, commonly called a “loss of confidence” or “unhappy differences” counsel could withdraw with no questions asked. Indeed *The Code of Professional Conduct* encourages, and in the face of a persistent client requires, the lawyer to withdraw. In withdrawing one cannot discuss the reasons with the court as it could prejudice your client.

But where the issue was the payment of fees, the duty to “use reasonable efforts to expedite the litigation process” *Alberta Code of Professional Conduct Chapter 10 item 21* [for which I cannot find a parallel] trumps the client solicitor contract.

Some would attempt to distinguish these cases since the trial in *Creasser* was in Queens Bench, a court of inherent jurisdiction, while in *Leask v. Cronin P.C.J.* the trial was to be in Provincial Court. As a creation of Statute their powers are more circumscribed. But they have the power to control their own process. And, *Creasser* speaks of “all trial courts”

There is another way to look at this issue. We have an issue of candour.

Mr Creasser's counsel had appeared to set a 2-week trial and appeared later to move the matter to Wetaskiwin. There was an implied representation that he was retained, “instructed” and ready to proceed. The Saskatchewan procedure is even more express since at a Queens Bench management pre-trial the presiding judge asks “Are you to be counsel at trial?”. That is defence counsel's opening. If one automatically says “Yes My Lord” and one is not retained or instructed, one has uttered a falsehood. While fees have not been a relevant issue to me for 30 years, on some occasions when I have not been able to find my client, or have ascertained that he may be working and be able to afford private counsel [the other side of the financial issue] I have been able to advise either the Local Registrar who sets the pre-trial or the presiding Judge. I have never had trouble securing an adjournment to sort that out, although on lack of contact a senior Judge's solution was a bench warrant which he felt would “make the accused available to you”. Speaking of candour one should not characterise a fee issue as “loss of confidence” or “unhappy differences”

I am not saying one cannot withdraw when not paid. The secret is “reasonable notice”. That phrase permeates the Withdrawal chapter of the *Code of Professional Conduct*. If defence counsel in *Leask* or *Creasser* would have tried to withdraw sooner such as before court time is set aside, witnesses subpoenaed etc., they would not have been tied up in appeals, concerned about contempt. It would appear defence counsel put more time, effort and resources into these matters than just doing the trial.

One could look at this as a respect issue. Respect for the client so they are not left stuck at the last minute. Respect for the court as time is being scheduled. Respect for other counsel who would need to pick up the file on

short notice [remember Legal Aid does not have infinite resources of people to be ready on short notice] Respect for other litigants and their counsel that could have used the court time that is lost by the adjournment this withdrawal will require.

Legal Aid has tried to implement two practices to make this work. First-

ly, on duty counsel matters, where we are conducting a show cause but are unsure of the clients financial eligibility [he can't access his pay stubs or tax returns] we place on record that we are there for show cause only, hopefully before we speak of the good job the client has, but might lose if he remains in jail. This is part of the

trend of limited retainers which is becoming a way for access to justice to be improved. Secondly, we try to recheck eligibility about the time the preliminary hearing transcript comes back so we can advise the Judge at the pre-trial.

Office Relocation

Effective February 5th, 2007, the offices of the Law Society of Saskatchewan will be relocating to 1100 – 2002 Victoria Avenue, Regina, Saskatchewan, S4P 0R7. The telephone and fax numbers will remain the same. There will be limited services the week of January 29th, 2007 and the office will be closed on February 2nd, 2007 to facilitate the move.

To All Proposed Principals

Rule 152 requires that members who intend to act as a principal must obtain prior approval. If you think you will be hiring a student please send written notice to A. Kirsten Logan, Q.C. at 1100 – 2002 Victoria Avenue, Regina, Saskatchewan, S4P 0R7 or, if prior to February 2nd, 2007 - 1100 – 2500 Victoria Avenue, Regina, Saskatchewan, S4P 0J3.

Saskatchewan Legal Aid Commission

The Saskatchewan Legal Aid Commission have revised their tariff for Private Bar appointments with the effective date on or after January 1st, 2007.

A copy of the tariff and background information can be found on the Commission's website www.legalaid.sk.ca, under the "For Lawyers" tab.

If you are a lawyer who wishes to provide legal services to eligible legal aid clients and have not applied to be placed on the panel, please complete the prescribed form Schedule E found on the Legal Aid website and return it to the Central Office of the Saskatchewan Legal Aid Commission.

Centennial Update

by Susan Baer

Our Centennial year has now begun! With this issue of the Benchers' Digest, members will be receiving one copy of the Centennial Calendar. Each local bar association contributed money and pictures towards the production of the calendar for which the Centennial Subcommittee is grateful. We would also like to thank the individuals in each local bar association who organized group pictures, took pictures, or arranged to send a picture for the calendar. If a picture did not appear on the printed calendar, the picture will be included in one of the photo albums on the Centennial website.

The calendar is a handy desk reference to the current Centennial events conducted throughout the province. The online version of the calendar is located under **Events Guide** on the centennial website (www.lawsociety.sk.ca/centennial). The details of each event will be provided on the website so members can easily send notice that they plan to attend.

There are many little known historical facts and figures that appear in the calendar. More detailed explanations of our historical events will appear on the Centennial website. Information to the Centennial site will be added weekly, if not more frequently.

The official launch of the Centennial begins with the Regina Bar Association dinner on January 11, followed the next day by the Queen's Counsel ceremony at Government House. We hope to see many members at the various functions throughout the year. It's our time to reflect upon a century of integrity in Law Society.

2006 Queen's Counsel Appointments

Thirteen Saskatchewan lawyers were honoured with Queen's Counsel (QC) appointments on December 28, 2006. **Congratulations** are extended to:

Scott Bartlett is a Senior Crown Prosecutor with the Saskatchewan Department of Justice in North Battleford. He was admitted to the bar in 1976.

Dick Batten is a lawyer with the firm of McKercher McKercher & Whitmore in Saskatoon. He was admitted to the bar in 1978.

Inez Cardinal is a Senior Crown Prosecutor with the Saskatchewan Department of Justice in Saskatoon. She was admitted to the bar in 1991. She is the president of the Canadian Bar Association, Saskatchewan Branch.

Gary Chad is senior vice-president, Governance, Legal and Regulatory

Affairs and corporate secretary for Cameco Corporation. He was admitted to the bar in 1978.

Pamela Cuelenaere is legal director of the Prince Albert area office of the Saskatchewan Legal Aid Commission in Prince Albert. She was admitted to the bar in 1987.

Richard Danyiuk is a lawyer with the firm of McDougall Gauley in Saskatoon. He was admitted to the bar in 1984. He is a Bencher of the Law Society of Saskatchewan.

Victor Dietz is a lawyer with the firm of Olive Waller Zinkhan & Waller in Regina. He was admitted to the bar in 1983. He is the 2007 president of the Law Society of Saskatchewan.

Leonard Francis is a lawyer with the firm of Francis & Company in Meadow Lake. He was admitted to the bar in 1980.

David Hnatyshyn is a lawyer with the firm of Hnatyshyn Gough in Saskatoon. He was admitted to the bar in 1970.

Lucille Lamb is a lawyer with the firm of Stevenson Hood Thornton & Beaubier in Saskatoon. She was admitted to the bar in 1979.

Robert Millar is a lawyer with the firm of McDougall Gauley in Regina. He was admitted to the bar in 1973.

Donald Mullord is legal director of the Saskatoon rural area office of the Saskatchewan Legal Aid Commission. He was first admitted to the Manitoba bar in 1986.

Linda Zarzeczny is Crown Counsel with the Constitutional Law Branch of the Saskatchewan Department of Justice in Regina. She was admitted to the bar in 1982.

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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