

BENCHERS' DIGEST



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Happy Anniversary!

by Ronald Kruzeniski, Q.C.



The official anniversary date is fast approaching – September 16, 1907 was the date of the signing of *The Legal Profession Act* and the beginning of the Law Society of Saskatchewan.

In recognition of this date, the Province of Saskatchewan and our thirteen cities - Estevan, Humboldt, Lloydminster, Melfort, Melville, Moose Jaw, North Battleford, Prince Albert, Regina, Saskatoon, Swift Current, Weyburn and Yorkton - are proclaiming September 9 - 16 as **Law Society Centennial Week**.

Activities are being scheduled to enable the members (you!) to get involved and celebrate this milestone. There is information in this edition as to events that you can participate in, scheduled from now until the end of our Centennial year. I will highlight a few here, but be sure to read the specific articles and flyers enclosed that contain more information.

School visits - members are encouraged to visit schools during Law Society Centennial Week (September 10 - 14). We have developed an outline (with assistance from Jan Cowie) that you may use to visit a school in your community (flyer enclosed). Lori Boesch (lboesch@imagewireless.ca or 306-738-2045) can mail out magnets and/or tattoos for student hand-outs. Please contact the principals of your schools (or Lori Boesch) to set up a visit! A PowerPoint presentation is available on the website (www.lawsociety.sk.ca/centennial) for member and teacher use.

Law 30 Essay contest – please encourage high school students in your communities to write an essay on the topic ‘Do you believe that open and equal access to justice still exists or is it a thing of the past?’ The winning essay will be selected by volunteer judges (please let us know if you are interested) and printed in the December Benchers’ Digest. The essay

winner and their school will receive \$1,000.

New members of the Law Society of Saskatchewan will be welcomed with a page in the Leader-Post and StarPhoenix newspapers (we will also provide the photos to the Saskatchewan Weekly Newspaper Association). Lawyers that have signed the membership roll between September 1, 2006 and September 1, 2007 have been invited to participate.

Some firms/associations may be planning ‘**Introduction to the Bar**’ events to welcome new members to their areas. Please consider hosting this event during Law Week.

The Law Society of Saskatchewan Centennial **Commemorative Stamp Celebration** is being held at Government House (Regina) on September 13th. The Canada Post stamp will be unveiled at 10:00. We are honoured that Lieutenant Governor Barnhart will host this prestigious event.

Our schedule of upcoming Centennial Series events being hosted by each Local Bar Association includes:

August 24th - Prince Albert Bar Association is hosting a golf tournament at Elk Ridge Resort with tee times beginning at 11:00 a.m. The tournament will be followed by dinner. Contact Heather Sherdahl (sherdahl.sbp@sasktel.net or phone 764-2222).



www.lawsociety.sk.ca

September 7th - Yorkton Bar Association and Melville Bar Association have scheduled a golf tournament. Contact Kevin Bell (bell.kreklewich_bkc@sasktel.net or phone 728-5468) or Darren Grindle (darren.rbkr@sasktel.net or phone 783-8523 X5).

October 11th (date change) - Battlefords Bar Association is planning an activity followed by supper. Contact Brenda Korchinski (bkorchinski@justice.gov.sk.ca or phone 466-7788).

November 17th - Kerrobert Bar Association event is planned mid-month. Contact Suzanne Jeanson (neil.jeanson@sasktel.net or phone 228-2631).

The **President's Centennial Gala** will be held at the Conexus Arts Centre in Regina on October 19, 2007. We are looking forward to an enthusiastic response from our members to join together for this celebration! The program will include the very entertaining Rick Danyliuk, Q.C. as emcee for the evening with a few words from the well-travelled Vic Dietz, Q.C. (who as president has attended every Centennial Series event thus far). The Jack Semple Band will provide entertainment, so wear your dancing shoes. Hope to see you all there!

A ticket form is included in this mail-out. Payment by cheque is preferred (we can also accept VISA).

Our centennial year has been one of activity and change. It is exciting

that **Tom Schonhoffer, Q.C.** begins his tenure as Executive Director during 2007, our Centennial year. Congratulations Tom, enjoy your new challenges.

We are also excited to announce a new **member communication** initiative. An email news service is being released within the next few weeks. Sue Baer's article will address the particulars, but suffice it to say, you will appreciate the ease at which you will be able to receive legal research information and notices to the profession.

Thanks to everyone for their enthusiasm, organization, planning and attendance at the Centennial events to date. Looking forward to seeing everyone at the gala!

Thomas J. Schonhoffer, Q.C. appointed Executive Director



A new position initially feels overwhelming. I am fortunate that I have been well prepared.

Fourteen years ago I accepted a position with Saskatchewan Lawyers'

Insurance Association Inc. Since that day, I have been employed by lawyers to serve lawyer clients. Together, they have modelled all the best examples of what it means to be a lawyer. I have had many mentors.

First, I would like to thank the Benchers for their vote of confidence in making my appointment.

Allan T. Snell, Q.C. and A. Kirsten Logan, Q.C., former Co-Directors of Administration, were always generous in sharing their experience and insight. I am in the unenviable circumstance of having to fill more than one big pair of shoes at the Law Society. (Actually, Kirsten's shoes are small and sequined, but that is not a metaphor for her contributions.)

In my experience, the Benchers are among the most thoughtful, hard working and sincere members of the profession. They represent a broad cross-section of the legal profession and a debate of the Benchers is likely

to expose all the issues. It has been my privilege to know the Benchers and to listen to the debates over the years.

I have also had the opportunity to meet most of the lawyers in the province, even if it was under the unhappy circumstance of an insurance claim. These lawyers are genuinely concerned with the best interests of their clients and their communities. They have shared their experience in the legal profession with me.

In a recent article in Maclean's Magazine entitled, "Lawyers are Rats," Philip Slayton described his own sordid experience in the world of law. His experience is the antithesis of my experience in the Saskatchewan legal village.

The spirit of legal professionalism and honour is alive and well in Saskatchewan. The Law Society of Saskatchewan looks forward to working with each of you to promote that spirit.

Reché McKeague Joins the Law Society



The Law Society is pleased to announce Reché McKeague has been appointed Assistant Complaints Counsel, effective July 30, 2007. This is a new position designed to cope with the increasing numbers of complaints and to reduce the time to process complaints.

Reché was called to the Bar in 2006 and was previously an associate with Robertson Stromberg Pederson in Saskatoon. Welcome Reché!

Highlights of the Meeting of the Benchers held May 31st and June 1st, 2007

Mandatory CLE

Continuing competency is an issue for most professions. The Admissions & Education Committee will be studying the issue and making recommendations to the Benchers.

Model Code of Conduct

The Federation of Law Societies has forwarded a draft Model Code of Conduct for review by the Law Society.

Courthouse Security

The Department of Justice is implementing new measures to provide security at each of its court facilities. The Law Society has been attempting to ensure that security does not affect lawyer access and solicitor/client privilege.

Appointments

Randy Sandbeck has been appointed to the Western Conveyancing Protocol Committee. Donna Taylor has been appointed to the University of Saskatchewan Senate.

Loss Prevention Surcharge

The Insurance Committee reported that the loss prevention surcharge has been increased to \$500 for the 2007-2008 policy year.

The Law Society's 68th Annual General Meeting May 31, 2007 in Yorkton

The 68th Annual General Meeting of the Law Society of Saskatchewan was held Thursday, May 31, 2007 at Yorkton. Victor Dietz, Q.C., President of the Law Society of Saskatchewan, welcomed all attendees and presented the Annual Report. Ron Kruzeniski, Q.C., presented the financial statements and made a motion to approve the auditors.

Richard Danyliuk, Q.C., presented and spoke to a resolution supporting limited amendments to *The Jury Act*. The motion, a copy of which is included in this mailout, was passed.

Honorary Life Memberships were presented to Arnold Agnew, Q.C., George Hardy and Donald McKercher, Q.C. Unfortunately, none of the recipients were able to attend.

Our thanks to the Yorkton Bar Association for their efforts in organizing this event.

The Law Society of the North-West Territories: A Unified Body, Separated, But Not Dissimilar¹

by Leyna Roenspies, University of Saskatchewan Graduate 2007

The Law Society of Alberta and the Law Society of Saskatchewan were once a united organization amalgamated under the banner of the Law Society of the North-West Territories. The boundaries of early Canada were expanded west with the acquisition of Rupert's Land and the North-West Territories from the Hudson's Bay Company into the Dominion. These lands were given the title of the North-West Territories and included what we now recognize as the provinces of Alberta and Saskatchewan. In 1882, the Territories were divided into the provisional districts of Assiniboia, Saskatchewan, Alberta and Athabasca. Prior to this there were a limited number of urban centres as well as a limited number of barristers and solicitors. Iain A. Mentiplay's book, "A Century of Integrity: The Law Society of Saskatchewan 1907 to 2007", tells us that in 1882, Battleford was the second largest community in the Territories as well as its capital since 1876. However, by 1883 the railway had reached the North-West Territories and Regina had captured the capital crown from the now remote northern community of Battleford. During this time, the profession was regulated by an Ordinance passed in 1885, which regulated the education of the profession within the Territory limiting the availability of applications to men of good character that were at least 21 years old. This Ordinance appeared to be a sufficient attempt at regulation in the Canadian west as the limited population produced only 55 attorneys in 1885. However, by 1898 that number had increased to 176 legal practitioners and recognition that the North-West Territories needed a more formal regulatory body of the profession.

As a result, Ordinance 21, *The Legal Profession Ordinance*, incorporated the Law Society of the North-West Territories on September 18th, 1898. The Society consisted of nine Benchers. Every lawyer in the Territories was entitled to vote, and annually they chose at least one Bencher from each of the judicial districts. In 1900 an amendment was passed that allowed the Benchers to serve for three years. The first president of the Society was William Cayley Hamilton, Q.C. from Regina and the first vice-president was Norman D. Beck, Q.C. from Edmonton. The names of these men as well as the names of all legal practitioners in Alberta and Saskatchewan from January 1886 to January 1899 were listed in the Law Society of the North-West Territories Roll, which was created in 1898. This Roll continued to be used by the Law Society of Saskatchewan until 1911.

The Roll was not the only thing that confirmed the establishment of the fledgling Law Society of the North-West Territories. During the years of 1899 and 1900, the annually elected Benchers would meet semi-annually. However, after 1900, the Benchers held their office for three years rather than one, which reflected the Law Society's evolution into a more formal organization. As a result, the Benchers decided that in order to save money they should meet annually. Originally the Benchers intended to meet alternatively in Regina and then Calgary, but a negotiated arrangement with the Canadian Pacific Railway allowed the Society to save money on transportation. With a little extra cash in their pockets, the Benchers decided to meet in Banff, rather than Regina, and the first annual meeting of the Law Society of the North-West Territories was held there on July 20, 1900. Two subse-

quent meetings were held in Banff in July 1906 and August 1907.

It appears as though the success of the 1900 meeting inspired the July 22, 1900 resolution that the Secretary would correspond with the Secretaries of the Law Societies of British Columbia and Manitoba to try and arrange for a similar excursion by the CPR so that the three western societies could, along with their families, meet in Banff during August of the following year. Whether or not such an excursion occurred is not nearly as relevant as the apparent success of the first meeting, which triggered an immediate planning of the next event.

As the 19th century came to a close, the North-West Territories was opening its boundaries. People flowed into the region, expanding and exploding urban centres and along with them the western legal profession. Although the Territories were rapidly growing, they lacked the money necessary for successful sustenance and received little more than bored neglect from the federal legislature. The reverberation of these events was the demand for the establishment of provincial status. Many, including Premier Haultain, supported the idea of a single province while others bolstered for two or three separate divisions. The debate was quieted in February 1905 with the release of the Autonomy Bills and their announcement of the creation of two provinces, Alberta and Saskatchewan. On September 1, 1905 *The Saskatchewan Act* was passed which established the largest parts of the Assiniboia and Saskatchewan districts as the province of Saskatchewan. At the same time, Alberta was also declared a province and incorporated the districts of Alberta and Athabasca.

Although separate provinces, the two infant prefectures continued to practice law under the regulation of the Law Society of the North-West Territories, but this was only a brief moment as in 1907 two separate provincial societies were established by simultaneous and identical legislation in both provincial legislatures. *The Legal Profession Act* from 1907 established the Law Society of Saskatchewan, which at its birth had 168 members. Although burgeoning out on its own, Saskatchewan did not forget its brothers in Alberta and a provision of *The Legal Profession Act* stated that a person enrolled in the Bar of the North-West Territories as

of September 16, 1907 was entitled to practice law in Saskatchewan even though they lived in Alberta. The only necessity was to present a written request to the Secretary of the Law Society of Saskatchewan and an enrollment fee of 2 dollars. Since the law of the North-West Territories was still in force in both of the provinces, this acknowledgment of the West's legal past was a practical compromise to a new era of the profession.

Thus, 100 years from its creation, the Law Society of Saskatchewan, like its fledgling roots, recognizes the close connection between Alberta and Saskatchewan. As we celebrate our centennial year together,

Saskatchewan recognizes that the Law Society of Alberta and the Law Society of Saskatchewan were once a single body, and although now they are separate, they are most definitely not dissimilar as they share an auspicious past, as well as a continuing future of integrity. We congratulate the Law Society of Alberta on its centennial, while celebrating our first 100 years!

¹The author used facts and statistics from W.H. McConnell's *Prairie Justice* and Iain Mentiplay's *A Century of Integrity: The Law Society of Saskatchewan 1907 to 2007*.

The Law Society's History Book

A Century of Integrity: Law Society of Saskatchewan 1907 to 2007

by Iain Mentiplay, Q.C.

The Law Society's history book of the last 100 years will be launched in December 2007. The library is accepting advance orders for copies of the book. Quantities are limited and members should place their orders as soon as possible to ensure that they receive a copy. At approximately 400 pages, *A Century of Integrity* may be the largest published collection of pictures of our legal profession available anywhere.

The Law Society history book contains information on the development of the Law Society, its services and members. *A Century of Integrity* is a tribute to all the members who have helped to shape the Province of Saskatchewan by providing legal services to their clients, serving in various political capacities, serving on numerous boards and commissions, and volunteering in their communities.

The history book is a hard-cover coffee table book, fully illustrated. A publication flyer is included in this issue of the Benchers' Digest or order forms can be found on the Law Society's website. Quantities are limited. Reserve your copy today at the bargain price of \$100 plus tax. Contact the library at 569-8020 or 1-877-989-4999 for more information.

Law Grads Receive Scholarships

The 2007 E.M. Culliton Scholarship has been awarded to Jessie Buydens of Saskatoon and Brendan W. Pyle of Regina, each receiving a \$5,000 scholarship.

Ms. Buydens graduated from the College of Law, University of Saskatchewan, in May 2006. She is currently articling with the Provincial Court of Saskatchewan. She is enrolled in a Masters of Law program at the University of Saskatchewan

and is working on a thesis examining the need for alternative measures to assist children who are being exploited in the sex trade.

Mr. Pyle is a member of the Law Society of Saskatchewan who graduated from the College of Law, University of Saskatchewan, in May 2001. He is beginning course work at Osgoode Hall Law School.

The E.M. Culliton Scholarship was established in 1981 in honour of the

former Chief Justice of Saskatchewan. It is awarded to graduates of the College of Law at the University of Saskatchewan for the pursuit of graduate studies in criminal law.

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

Loss Prevention Surcharge

by Thomas J. Schonhoffer, Q.C.

The Insurance Committee has passed a resolution increasing the loss prevention surcharge to \$500. We strongly suggest that you review Rule 605a and begin planning your year so that you are not surprised by the additional charge in June.

The Benchers of the Law Society are currently studying compulsory legal education. We note that lawyers are one of the few professions which do not require some form of compulsory continuing education.

The insurance program instituted loss prevention credits in 1994 in response to increased claims. While there is no empirical evidence to link loss prevention directly to reduced claims, we can report that over the last 13 years, both the number of claims and the cost of claims have decreased. This reduction is of great

importance to the profession. First, reducing errors is essential in maintaining public confidence and the integrity of the profession. Secondly, it has drastically reduced insurance costs from a high of \$2,300 to last year's assessment of \$300.

On reviewing our financial statements this year, a substantial increase in the number of lawyers paying the loss prevention surcharge was noted. On further investigation, we detected that the numbers have gone up steadily in the last number of years. Now, almost one-third of all lawyers pay the loss prevention surcharge.

The purpose of the credit system was to encourage lawyers to attend continuing legal education and not to raise revenue. The increase in the number of surcharges shows that the current \$200 surcharge is an insuffi-

cient incentive and an increase to \$500 is necessary.

It is also timely to review the SLIA Policy for loss prevention credits. Promotional materials from SKLESI, the Trial Lawyers' Association and the CBA advise the participant as to the number of loss prevention credits. Credits are also available for other courses which are not pre-approved. If you attend a course which is not pre-approved, you can also apply for a loss prevention credit. The criteria are generally that the course must be approximately one day in duration and have some legal content which relates to your area of practice. If you require credit for your educational endeavours, please direct inquiries to the attention of Joanne Husli at the Law Society office.

JUDICIAL APPOINTMENTS

Donna Scott, Q.C. was appointed a judge of the Provincial Court in Saskatoon, effective April 27, 2007. She attended the University of Saskatchewan where she received her Bachelor of Arts and Bachelor of Laws. Judge Scott was in private practice until 1986 and then became a Crown Solicitor with Saskatchewan Justice and the Local Registrar for the Unified Family Court. In 1996, she was appointed Chief Commissioner of the Saskatchewan Human Rights Commission.

The Honourable Ysanne G. Wilkinson, a judge of the Saskatchewan Court of Queen's Bench since 1996, was appointed a judge of the Saskatchewan Court of Appeal, effective June 1, 2007. She replaces Madam Justice M.A. Gerwing of Regina who elected to become a supernumerary judge. Madam Justice Wilkinson attended the University of Saskatchewan, graduating with a Bachelor of Arts in 1974 and a Bachelor of Laws in 1977.

The Honourable Maurice J. Herauf, Q.C. was appointed a judge of the Saskatchewan Court of Queen's Bench, effective June 1, 2007. He replaces Mr. Justice D.K. Krueger who passed away recently. In 1986, Justice Herauf received a Bachelor of Laws from the University of Saskatchewan and was admitted to the Bar of Saskatchewan in 1987. Before his appointment to the bench, Justice Herauf was the Registrar of the Court of Appeal/Registrar in Bankruptcy.

Judge Carol Snell has been appointed the next Chief Judge of the Provincial Court of Saskatchewan, effective January 1, 2008. Judge Snell graduated from Queen's University with a Bachelor of Arts in 1972. She completed her Bachelor of Laws at the University of Saskatchewan in 1977 and then articulated with Saskatchewan Justice. Judge Snell was called to the Bar in 1978 and practised with Saskatchewan Justice for over 20 years.

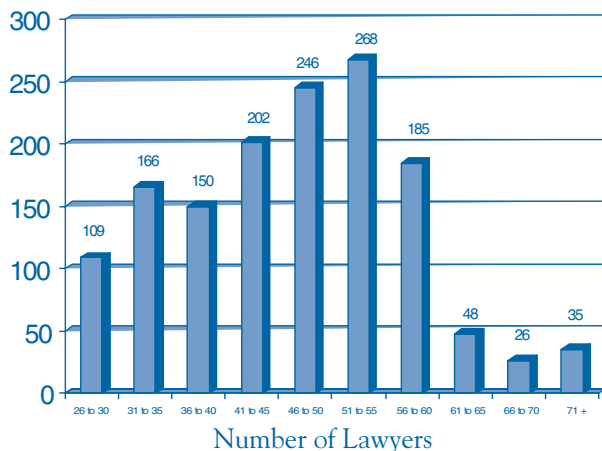
Stanley David Loewen was appointed a judge of the Provincial Court for Prince Albert, effective July 3, 2007. Judge Loewen graduated from the University of Saskatchewan with a Bachelor of Laws degree in 1978. He was admitted to the Bar in 1979 and was in private practice in Prince Albert ever since.

Succession Planning

by John Allen, CA

The importance of succession planning has been discussed for many years. Recently, the true impact was determined when it became necessary to pay a trustee to wind up the practice of a deceased member. This, coupled with the increasing age of practising lawyers as shown in the following chart, indicates that we have a potential problem on our hands.

Practicing Lawyers in Saskatchewan by Age as of December 31, 2006



Total Number of Practicing Lawyers = 1,435

In order to determine the extent of the problem and also to increase members' awareness of the issue, firms completing the current Annual Practice Declaration form were asked "Does the firm have a succession plan in place in case a member is no longer able to carry on the practice of law (i.e. illness, injury, death, etc.)?" Responses received from December 2006 to July 2007 are summarized below:

Firm – Signing Authority Number of Members	Succession Plan		
	Yes	No	Total
1	38	113	151
2	27	20	47
3-5	37	15	52
6-10	13	4	17
11-15	1	0	1
16 and over	6	0	6
Total responses to date	122	152	274

It should be noted that in summarizing the above information, firms were categorized as having a plan even if the plan was informal. In other words, the statistics collected are biased in favour of firms having succession plans and still it appears that we have a very significant problem.

In 2006, Mr. Al Snell, then Co-Administrator of the Law Society, prepared a draft brief regarding succession plans. Much of the following discussion is based on information included in that brief. Thanks Al. Thanks also go out to Ron Kruzeniski and Tom Schonhoffer for their input.

The discussion can be divided into two parts:

1. Lawyers With Partners

- Clients are clients of the firm and surviving partners are responsible for all clients.
- It is suggested that partners should anticipate the possibility of death or disbarment of a partner as they would the dissolution of the firm. The partnership agreement should address existing and ongoing overhead and debt issues, as well as the question of any equity belonging to the deceased lawyer which would be the property of his or her estate.

- The proceeds of any insurance policies taken out on the member should be payable to the firm.

2. Sole Practitioners

- The 2005 amendments to *The Legal Profession Act, 1990* provide that a judge may "direct that the costs of the trustee appointed pursuant to the section be paid by the member or the member's estate as the case may be". To protect the assets of the estate, it is imperative to have a succession plan.
- Choose a successor lawyer(s) who has agreed to step in immediately upon death. It is recommended that the parties have a written agreement.
- The successor lawyer should understand the practice and be comfortable in assuming responsibility. A reciprocating agreement between two sole practitioners is possible. Thought should be given as to

whether the successor lawyer has the time, expertise and resources to manage the deceased's practice as well as his/her own. It may be preferable to name a successor lawyer who practices with a larger firm with more resources.

- Every lawyer should maintain a list of current open files so that the successor lawyer will know where to start.
- There should be a list of passwords to computers and a list describing the nature and location of important documents (for example, Wills, including the lawyer's own Will, contracts, leases, etc.). Any safety deposit boxes or other storage facilities used by the practice should be identified and the location of keys or codes identified.
- There should be a list of all current bank accounts, investments made on behalf of clients, and

any financial arrangements or dealings of the practice.

- The member should consider including a clause in his/her Will directing the executor(s) to authorize the named successor lawyer to conduct transactions relating to the operation of the law firm (including all trust and general bank accounts) as soon as possible upon the death of the member.
- The member should also consider providing the named successor lawyer with a similar authorization (ie. Power of Attorney) conditional upon the member being unable to continue to provide legal services (ie. injury, disbarment, etc.) while he/she is alive.
- The written agreement with the successor lawyer should deal with work-in-progress at the time of death. For example, it is suggested that in most cases, it is appropriate to immediately bill open files in order to distinguish cut-off of fees belonging to the estate from those which will be earned by the successor lawyer. There should also be a provision for the split of fees on open contingency files. For example, on a 20% contingency, it may be provided in the agreement that the deceased's estate is entitled to 10% and the successor lawyer is entitled to 10%. It could also provide for arbitration as to a proper split of the contingency

or third party assessment. It also could provide for a calculation of hourly rate fees of either the deceased or the successor lawyer to be deducted from the percentage recovered on contingency with the balance going to the other party.

- It is possible, initially at least, that the income derived from the practice will not support the overhead. It is therefore imperative that the succession plan provide for funding of the practice and it is suggested that a policy of insurance or some other access to funds be provided in order to supply capital to pay overhead and expense costs.
- All lawyers should be current in file destruction procedures to avoid leaving the successor lawyer and the deceased lawyer's family with a backlog of closed files.

Responsibilities of a Successor Lawyer

- A successor lawyer should immediately conduct a conflict search and a triage of open files to determine which need immediate attention.
- All open client materials and files should be located.
- Clients, courts and lawyers on the other side of files should be notified.
- Ensure all trust accounts are balanced and accessible.
- There should be an early discussion of the transition with family or rep-

resentatives of the estate in order to avoid misunderstandings concerning the value of the practice as an asset of the estate and the difference between the legal responsibilities of the successor lawyer to clients and the legitimate interest of the estate in the practice as an asset.

- Arrange for any necessary transfer of files.
- Bill files as of date of death or according to the agreement.

It is strongly suggested that successor members be familiar with the practice (i.e. spend a bit of time annually to review these guidelines with the practitioner and become familiar with location of client lists, files, documents, bank accounts, accounting records, etc.).

Although having a written succession plan in place is not currently a Law Society rule, it is hoped that members will develop succession plans or review existing succession plans based on information contained herein. A question is being added to the Practice Declaration (TA3) form effective December, 2007 to monitor the progress made in addressing this issue.

The preceding information is provided for use to the membership as a guideline and is not intended to be all inclusive or to cover all or every conceivable circumstance. The member's professional judgment and expertise must be applied to each situation, whether planning for succession or being the successor lawyer.

Nominations open for the C. Willy Hodgson Award

The Law Society was pleased to award the 2006 C. Willy Hodgson Award to Judge Gerry Morin in a ceremony held in Prince Albert in March of this year.

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

Nominations are now open for the 2007 award which will be presented in 2008. Nomination forms and more information can be located on the website at www.lawsociety.sk.ca.

The deadline for nominations is **November 30, 2007**.

The Regina Library

by Susan Baer, Director of Libraries

Courthouse Security

The Department of Justice will be enhancing security in a number of courthouses across the province. *The Court Security Act*, S.S. 2007, c. C-43.11 authorizes sheriffs to screen a person for weapons before the person enters a court facility, and establishes restricted zones requiring authorization for entry. While the legislation has been passed, the Department is presently developing policies and procedures in order to implement airport-style security screening procedures in Saskatchewan courthouses prior to proclaiming the legislation. Court Services has consulted with stakeholders in the cities of Regina, Saskatoon and Prince Albert and is interested in any additional comments or concerns from members that may deal with solicitor-client privilege, searching of persons in general or any other concerns regarding the future screening procedures. The courthouses in Regina, Saskatoon and the Prince Albert Provincial Courthouse will have the airport-style security equipment installed later in 2007 and/or early in 2008. If you have concerns or questions, contact Linda Bogard, Executive Director of Court Services at 306-787-5680 or by email at lbogard@justice.gov.sk.ca.

Email Broadcast Communication

As part of an overall communications strategy, the Law Society will be implementing broadcast email messages to communicate with all of its members. Through the generous support of the LexUM team at the University of Montreal, the same team who loads judgments and statutes on the CanLII website (www.canlii.org), the email broadcast software is generously being made freely available to the Law Society of Saskatchewan.

In order to receive a message on the broadcast, a member needs an

email address. Email addresses have been entered into the system and a welcome message has been sent to each member. If you have not received a welcome message, please contact the Law Society library at asalter@lawsociety.sk.ca. If members prefer, they can provide their secretary or assistant's email address so important communication can be relayed through their support staff.

The type of communication that members should expect to receive from the Law Society are notices to the profession that may have previously been faxed to the members, notices of suspensions and disbarments, legal research information and notices of SKLESI continuing legal education seminars. At this point in the implementation, the overall communication strategy is still being developed at the Law Society and more information regarding the types of postings, frequency and nature of postings will be forthcoming to the membership.

Members should note that the method of faxing information to the members will now cease and a broadcast via email will be used as a communications medium.

For further information regarding the email broadcasting, please contact Susan Baer at 1-877-989-4999 or (306) 569-8020.

Student Essay Contest

The Law Society is sponsoring an essay contest for Saskatchewan high school students as part of its Centennial celebration. Members are encouraged to participate by attending a local school during Law Week September 9 - 15, 2007. An information sheet offering suggestions for discussion topics is enclosed with the Benchers' Digest.

Wondering why the Law Society of Saskatchewan is holding an essay contest about the legal profession?

The Law Society of Saskatchewan exists to licence and regulate

Saskatchewan lawyers. In fact, the most important responsibility of the Law Society is to protect the public interest in the administration of justice.

How does the Law Society do that? The Law Society sets and enforces standards of professional conduct for lawyers. The job of the Law Society is to make sure that the public is served by a legal profession that is honourable, competent and independent.

That's why the theme of the Centennial celebration of the Law Society of Saskatchewan is "**A Century of Integrity**". It reminds all Saskatchewan lawyers that our most important responsibility is to act as guardians of excellence in the justice system.

What's so important about integrity? Integrity is more than just a personal characteristic. It's true that the Law Society expects, and demands, that a person practicing law is moral, has ethical principles, a dedication to truth, honesty and fairness, and that a lawyer is sincere and compassionate. Integrity is also a powerful tool. Integrity is how the Law Society promotes the public good and the ethical practice of the law.

We know that the public doesn't always see lawyers as the poster-people for integrity, though.

Why is this? Are lawyers different from other professions? Sure, doctors, accountants and building contractors face complaints that they didn't act fairly or honestly. Is there a difference when someone makes a complaint against a lawyer? If there is, why is there a difference?

One of the roles of the Law Society is to hear complaints from the public and it can discipline lawyers who act unethically or who make errors that have affected a person's access to justice. Lawyers have standards of practice and face discipline if they fail to meet those standards, so why is the profession sometimes seen as unethical?

In this Centennial year, the members of the Law Society of Saskatchewan are not just recognizing our past achievements, we are also looking forward. We believe that literacy is the key to understanding rights. One of the ways we can promote fair and open access to justice is to help everyone learn about the justice system and understand the purpose and goals of the Law Society. Jan Cowie from Farm Credit Canada is the project manager for the

essay contest. She can be reached at (306) 780-8531 or jan.cowie@fcc-fac.ca.

A copy of the essay contest flyer is enclosed with the Benchers' Digest. Contest rules and guidelines are available on the Law Society's website.

Practice Checklist

SKLESI has prepared updated contents to the Practice Checklist which is now available on the website. It is

located in the members' section under Documents. All contents are available to print and replace the contents of your existing binders. A notice containing more information is included in this mailout.

Members can use the Find command in Adobe to locate specific words in each chapter. A fully searchable version is planned for the future. Updates on its availability will be sent to members directly.

Legal WebCites

By Peta Bates

In the last column we looked at the coverage and currency of the UK Statute Law Database. In this column we take a closer look at some of the editorial enhancements including the attributes, annotations, amendments, text versions and links to affected legislation.

The UK Statute Law Database – Department for Constitutional Affairs

<http://www.statutelaw.gov.uk/>

Once you have found your statute using the A-Z index of statute titles, or the chronological list of legislation, or the Quick Search keyword box, you are presented with the title of the statute and titles for each section, all of which are links to the fulltext. To open the entire statute, click on the statute title.

Attributes

To the left of the statute text is an icon of a green "A" with an open book. Clicking on this icon displays the "attributes" of the statute, that is, the dates this version is in effect, the jurisdictions within the UK that are covered by the legislation, whether the statute has a provision to make secondary legislation (regulations), and whether the statute contains a "blanket amendment" (one that affects multiple pieces of legislation).

There is an attribute icon for the statute as a whole as well as for each individual section.

Annotations

Each section has numbered footnotes after it explaining textual amendments and commencement information. (In Canadian legislation this would correspond to the amendment history located at the end of statute sections and the coming into force (CIF) provisions located in the Table of Public Statutes.) Amendment information after 2002 has red hyperlinks to the text of the amending statute. There is an option to view the text without these annotations.

Amendments and Repeals

Amendments appear in blue font in brackets within the text of the statute. Amendments not yet in force are indicated in blue italic font within brackets. Repealed text is indicated by a row of three dots. An entire repealed section is indicated by a line of dots.

Text Versions

Point-in-time is available from the "basedate" of February 1, 1991. The text as of that date is "version one". Subsequent amendments are given version numbers and the start and end dates for each version are indicated. Prospective versions are created for legislative amendments that are not

yet in force. These are indicated by a blue "P" icon. There may also be a different version of a section for the various jurisdictions in the UK. This is indicated by an orange "C" icon for "concurrent versions".

Links to Affected Legislation

A statute containing an amending provision that has been enacted will have a link, indicated by a purple arrow icon, to the text of the amended statute. Conversely, a statute that has been amended will have a link in the footnote annotation to the text of the amending statute.

Keyword Searching

Using the "text search" box on the Advanced Search screen you can look for legislation that contains specific words or phrases. The link to "search tips" outlines the Boolean search options. In the search results, a red star indicates the location of your search terms which are highlighted in yellow.

Conclusion

There is no doubt the UK Statute Law Database is a complex and highly sophisticated service. At first glance, the number of icons, footnotes, versions and attributes can be overwhelming. Fortunately, the Database has well-organized help screens, a useful FAQ and the various icons are explained in a banner at the top of the screen.

Rulings – May/June, 2007

Chapter XVI, “Responsibility to Lawyers Individually”, Tape Recording Conversation without informing of intention to do so, May/June 2007

Facts:

Lawyer A, acting for the wife in a family law matter, complained about the conduct of Lawyer B, acting for the husband. Lawyer B allowed a telephone call from the wife received by the husband to be tape recorded in his office. Lawyer B further indicated to Lawyer A that he planned to use the recording against the wife in Court. Lawyer B responded to the complaint indicating the husband had been in his office for an attendance when he received a cell phone call from the wife. Lawyer B's client used a recording device at Lawyer B's office to record this call. Lawyer B took the position that as he was not a party to the conversation and took no part in the conversation or the recording of same that he was not in breach of *The Code of Professional Conduct* Chapter XVI, Commentary 5 which states:

“Lawyer should not use a tape recorder or any other device to record a conversation whether with a client, another lawyer or anyone else, even if lawful, without first informing the other person of the intention to do so.”

Ruling:

The Committee is of the view that in light of the prohibition contained in *The Code of Professional Conduct*, it was inappropriate for Lawyer B to be involved at all in the tape recording of the telephone call with the opposing party or even to be seen to be a party by allowing it to take place in his office without telling the caller wife. The Ethics Committee wishes to remind Lawyer B and the profession of the existence of this prohibition in Chapter XVI, Commentary 5 of *The Code of Professional Conduct*.

Chapter V, “Impartiality and Conflict of Interest Between Clients”, Suing a Former Client, May/June 2007

Facts:

A complaint was received from the lawyer acting for the guardian of a dependent adult. Lawyer G represents the minor children and husband of the dependant adult as plaintiffs. Lawyer G is suing the guardian and the dependant adult for failure to obtain SGI benefits as a result of the motor vehicle accident which incapacitated her, in order to provide financial support for her minor children. The lawyer for the guardian and dependent adult indicated that in the preparation of the Statement as to Documents that she found two documents indicating that Lawyer G had acted for the dependant adult in spring 2004. Lawyer G responded indicating that his current client, the husband of the dependant adult, told him that the dependant adult consented to this law suit. Lawyer G indicates that the interests of the husband and the dependant adult are not adverse and he is suing the dependant adult in order to help her dependant children.

Ruling:

The Committee was of the view that Lawyer G was in a conflict of interest as he has now sued the dependant adult he previously represented in 2004. The presumption of conflict has not been rebutted by Lawyer G as he would not indicate whether he represented the dependant adult on “the same or a related matter” or not. *R. v. Neill*, [2002]3 S.C.R. 631, expands the lawyers “duty of loyalty”. Lawyer G is suing a former client. As he has not been able to rebut the presumption of conflict, the Ethics Committee is of the view that Lawyer G is in a conflict of interest.

Chapter V, “Impartiality and Conflict of Interest Between Clients”, Preferring the Interests of one client over another client, May/June 2007

Facts:

A client, Ms. vendor of a business, complained about Lawyer Y. Lawyer Y had previously acted for the vendor and her late husband in various residential purchases and, as well, in incorporating a numbered company to establish a commercial business. Mr. vendor died in February 1998 and Lawyer Y also acted to assist Ms. vendor with estate matters. In 2001, Ms. vendor decided to sell the business to an employee. The employee purchaser and Ms. vendor both consulted with Lawyer Y who prepared an agreement May 4th, 2001 and a further agreement June 19, 2001 as the employee incorporated the company. The employee purchaser defaulted in paying the purchase price. Lawyer Y attempted to negotiate settlement between the vendor and the employee purchaser. Ms. vendor went to another lawyer in November 2005 to enforce the agreement and collect the balance of the purchase price. Lawyer Y continued acting on behalf of the employee purchasers. Ms. vendor's new counsel raised the conflict with Lawyer Y and sued the employee purchaser. Lawyer Y advised opposing counsel that he was not in a conflict of interest and filed a Notice of Intent to Defend and then a Statement of Defence on behalf of the employee purchaser. Lawyer Y excused his conduct indicating that the employee purchaser was in a poor financial situation which did not permit him to obtain other legal counsel to defend the action.

Ruling:

The Ethics Committee was of the view that Lawyer Y was clearly in a conflict of interest situation and should not have carried on acting for one party in litigation when he had previously acted for both parties. Lawyer Y should not have continued to act for both sides once he was no longer able to negotiate the dispute between the parties. Clearly, at the point where the vendor retained her own counsel to enforce the agreement, Lawyer Y should have withdrawn from the matter. Although Lawyer Y's failure to recognize this conflict of interest causes concern on the part of the Ethics Committee, the Committee decided this was not a matter for discipline.

Queen's Counsel

Queen's Counsel appointments are made by the Cabinet in consultation with the judiciary, the Law Society and the Canadian Bar Association.

Members are invited to submit to the Law Society the names of lawyers who warrant consideration by the joint committee. Candidates will exemplify the following characteristics:

- demonstrated superior legal ability
- good character and integrity
- contributions to the legal profession, legal education and the community

The deadline for nominations is **November 1st, 2007**.

(Nomination forms can be obtained from the Law Society website at www.lawsociety.sk.ca)

In Memory of

Garth Walter Sandstrom, Q.C. passed away on June 1, 2007. He graduated from the College of Law, University of Saskatchewan, in 1960 and enjoyed a distinguished career in law. Garth worked for many years with the Attorney General, was a well-respected law professor and a partner in private practice. He was predeceased by his partner, Lois, in November, 2002. He is survived by his children Cathi, Lori and Kurt.

Marvin W. Henderson passed away on June 19, 2007. He is survived by his wife, Lucille, and his children Jim and Susan. Marvin obtained a degree in Commerce and a degree in Law from the University of Saskatchewan. He was an active leader in his community, promoting multiculturalism and charitable causes.

The Honourable Mr. Justice Joseph Gagne passed away on June 3, 2007. He joined the RCAF during World War II and served in England. After the war, he attended the College of Law at the University of Saskatchewan, graduating in 1949. He was appointed to the Court of Queen's Bench in 1980, serving 15 years as a judge in the Family Court.

Samuel Beckie passed away in June, 2007. He graduated from the College of Law, University of Saskatchewan, in May 1971. On July 13, 1972, Samuel was enrolled as a barrister and solicitor in the Law Society of Saskatchewan.

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