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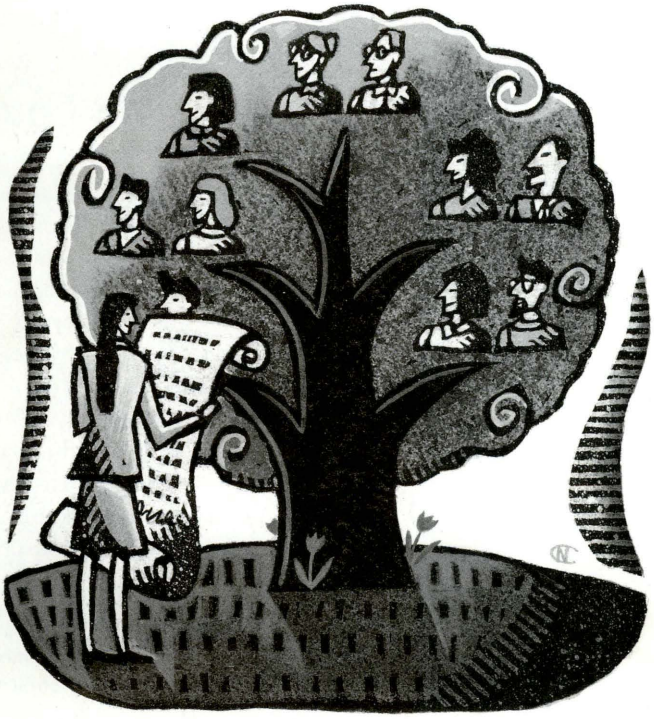
ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



INSIDE/À LIRE

LET RIGHT PREVAIL

The Law Society of Upper Canada | Barreau du Haut-Canada

LSUC celebrates bicentennial

WHEN YOU'RE CELEBRATING a 200th anniversary, it only seems fair that there be more than one party.

Members are invited to attend any of a series of events that are being held to mark the bicentennial in the months ahead.

The first event is on Friday, May 23, at Niagara-on-the-Lake, whose Lord Mayor has declared the day as "Law Society Day". (Niagara-on-the-Lake was the scene of the founding of the Law Society in 1797.) Things get underway around 2 p.m. with a parade from Queen's Landing to Simcoe Park. At the park, visitors will be entertained with an afternoon of short plays, music and speeches by various dignitaries, including Treasurer Susan Elliott, Chief Justice Roy McMurtry and Justice Minister Allan Rock.

The week of June 9-13 has been designated as "Law Society Week" in Toronto. The details are still being finalized, but there will be something happening at Osgoode Hall everyday: lectures, concerts, presentations and exhibits. Be sure to drop by for a visit. For more information on the bicentennial, contact Kelly Swinney at (416)947-3904.

200 YEARS/ANS

1797 – 1997

For those who can't make it to the events, there are other ways to take part in the bicentennial. Philatelists, or anyone who sends letters, will be interested in the Law Society postage stamp being issued by Canada Post. It should be available at the end of May.

Book lovers will want to add Christopher Moore's *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* to their libraries. (For more on this book see the story on page 40.)

There are also two exhibits that are traveling the province in the months ahead. "Crossing the Bar" reviews a century of women in the Ontario legal profession. "You call yourself a Lawyer?" is a engaging exhibit that looks 200 years of being an Ontario lawyer. (An exhibit schedule can be found at page 34 of the Jan/Feb Gazette.) For more information on the exhibits, contact Elise Brunet, of the Law Society Archives, at (416) 947-4041. ■

News you can use?

For the Ontario Lawyers Gazette to stay relevant, it needs feedback and contributions from its readers. Members are encouraged to submit articles, letters, story ideas, photographs or any other content they believe will be of interest to their colleagues. Contact information is in the masthead on page three.

ONTARIO'S COURTS

Guelph, Wellington County

"One of three Ontario court houses designed in the battlemented Scottish Gothic mode, this building reminds one as much of an armoury as a judicial structure. It was designed by the Toronto architect and topographical artist, Thomas Young, and built by William Allen between 1841 and 1843; over the years, numerous additions have been made, but the impressive castle-like facade remains unimpaired."

From Court Houses in Ontario, *1979, by Stephen Britton Osler. Reprinted by permission of Carswell – a division of Thomson Canada Limited.*

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CONVOCATION

Bencher pay to be subject of member vote

BY A MARGIN OF A single vote, Convocation voted at its February meeting to support the principle of paying benchers an honorarium. At the same time, benchers also agreed to put the question to members in a referendum.

Convocation resolved to put the matter of bencher pay to a vote by the membership during the next round of bencher elections in the spring of 1999. In the meantime a committee will be struck to investigate and report on a number of issues including whether the question should be tagged onto the election ballot itself and what process should be followed.

Such a direct method of polling the opinions of members would be a first for the Law Society, although benchers have made several attempts in recent history to get Convocation to approve referendums. In 1992, a motion to hold a referendum on the question of deleting the oath to Queen in the rules was defeated. Similarly in 1993, benchers rejected the idea of holding a plebiscite on the issue of changing the name of the Law Society of Upper Canada to the Law Society of Ontario.

The number of hours worked by benchers is as varied as the individuals who make up Convocation. However, there is some research that provides a glimpse of the number of hours devoted to Convocation work. On average, for scheduled meetings only — this does not include things such as sub-committee or task force work — benchers can expect to put in about 144 hours each year.

Of course, bencher work can routinely include much more than scheduled meetings, and two reports by the Research and Planning Committee came to similar results on the number of hours spent by benchers on Law Society business. A 1992 study indicated a median work load of 47.5 hours every month, while a similar report in 1990 suggested benchers put in an average of 46 hours each month.

> The referendum set for the 1999 election would be a first for the Law Society

How benchers will be paid, for what, and when a system of remuneration would kick in are just some of the questions Convocation must now sort out. The Finance and Audit Committee, in a report to Convocation, offered no recommendations on these matters. Instead, the committee's report provided seven possible options for paying benchers for their Law Society work:

1. All hours paid at $67 per hour (the legal aid rate)
2. $67 per hour for discipline and admissions hearings only
3. $67 per hours in excess of bencher average for discipline and admissions hearings
4. Per diem rate of $177 paid on hours in excess of bencher average for discipline and admissions hearings
5. Annual honorarium of $12,000
6. Per diem of $177 for all bencher functions
7. Per diem of $177 for admission and discipline hearings only ($100 for half days)

Of the seven options, an annual honorarium (number 5, above) is the most expensive with a price tag of $468,000 per year, or $19 per member. Option 3 is the least expensive at an estimated cost of $49,400 per year or $2 per member.

The debate on the narrowly won motion was split along fairly clear lines – those in support suggested that paying benchers will promote diversity in the make up of Convocation. Minorities and sole and small firm practitioners will be able to afford the time to do Law Society work. Those opposed argued the membership cannot afford to pay benchers, at least not at this time, and that the only bencher reward should remain the honour the post confers. (For a flavour of the discussion, see In Debate on page 5.)

On a related matter, Convocation voted to amend policy regarding benchers' expenses. Although not practiced, an antiquated procedure only made provisions for reimbursing out-of-town benchers for their costs. All benchers are now officially "entitled to be reimbursed by the Society for reasonable expenses incurred by them in the performance of their duties as benchers." Benchers must now support their expense reports with receipts. ■

Should there be remuneration for benchers?

BY A VOTE OF 22 TO 21, benchers have supported, in principle, the payment of an honorarium to benchers. The following excerpts of the arguments presented on the question are taken from the official transcripts of the February 28, 1997, Convocation.

AGAINST

Gerald Swaye:
"I am taking the position that benchers should not receive any remuneration whatsoever. ...all of us knew this job coming in...we all knew the time commitments, and if you didn't know the time commitment coming in then perhaps you should have inquired. It's an absolute conflict of interest for us to set remuneration for ourselves. ...The Society has gone on for about two hundred years, and there's never been any payment for benchers. ...from my position of view it's an absolute privilege for those who sit in this room to represent our constituents, to represent 26,500 lawyers. ...this is one of the things that [we] are donating back to [our] profession. And I'll say this to anyone. If you can't do it, then give up the job.

Neil Finklestein:
"...we regulate the profession in the public interest. ...We perform public service on behalf of the public. Should the profession be subsidizing that?

David Scott:
"...on the under-representation question...the adverse impact on sole practitioners and lawyers in small firms. ...that unless there is pay associated with this task there will be an under-representation [of these groups.] ...if you look at the statistics [you find this is not the case]. If you look at the situation now compared to the preceding Bench there are double the number of sole practitioners now than there were in the last Bench: six versus three. And if you take the two-to-five-lawyer small firms, there are now 14 lawyers...compared to nine earlier. ...So what you have essentially is 37 per cent of the practicing profession – sole practitioners and lawyers in [small] firms – are represented by 50 per cent of the Bench. So the prediction that was made ... that we cannot attract lawyers from sole practice and small firms just hasn't been borne out. In fact, on the Bench, there is an over-representation. ...to still argue that we can't attract these people because there is no pay associated with it, I think is inappropriate. My submission to Convocation is that it is fundamentally wrong for us to be doing this. There is no point saying we will only pay the next Bench if three-quarters of us are the next Bench. I believe there are enormous benefits to being a Bencher, and they may be insufficient to attract everybody, but the privilege associated with it, the rewarding work, the opportunity that we have to serve the public and indeed to raise our profiles as individuals within the community of lawyers is in my submission worthwhile.

> Money could be used to reduce member fees

Barry Pepper
(Ex-Officio bencher):
"...we are not running a youth parliament here.This isn't a question of getting certain young people in and paying them. It was always considered an honour to be a bencher by

continues ...

FOR

Paul Copeland:
"...one of the issues is whether or not there are people who are dissuaded from seeking the position of bencher by reason of the economic hardships that are imposed upon them. My view is there are a number of people who are dissuaded from running because of that. My view also is that it is very difficult, at least for some of us, and I put myself in that category, to put in the time that's necessary to do the job here because of the economic consequences. ...I think it is essential that people be in a position to run and seek office as a Bencher and then be able to participate as a bencher without suffering the economic hardship that is inherent from working at this position."

Tamara Stomp:
"I have...talked to other people who had considered running for bencher election, and they have said the reason [they have not run] is because of financial consequences. [Paying benchers is not] going to bring in people who merely want to do this job just so they can get paid. [Becoming a bencher is] still subject to election by your peers. So that means that [members] are not going to elect someone whom they don't think is going to represent them fairly and who just wants the job because they can therefore now get paid for it...."

Clayton Ruby:
"I have been doing this work on an unpaid basis since 1979, and for my part I can keep on doing it without pay. I looked around the room and noticed that you were different. We have changed the composition of the Bench considerably, but the sacrifice for some people in order to do this work has been extraordinary, particularly those from out of town, and those who are women, and those younger.

> The economic sacrifice dissuades people from running

But if you come from a big downtown firm you don't have that problem. So I simply say the differential impact of the work here is really very marked. ...if we really want the Bench to be as involved as it can for every individual member we have got to acknowledge that difference and deal with it. ...The second aspect... . Is anyone excluded by the present rules? Who is not present at the table? ...I look around the room and...I don't see enough young people, I don't see the lawyers who work for minorities, I don't' see very many minority members... I don't see many people who work for human rights organizations. I see lots of gaps in who is here, and I think that kind of change will come when we make it possible for those with less lucrative practices, who spend less time in the boardrooms, to come here and run. It is important we do it. It's long overdue."

Gary Gottlieb:
"The fact of the matter is that I will do this job whether I'm paid or not, and I will continue to do it. I know most of you here will

continues ...

AGAINST

the profession. I think it still is. But it won't be if we start paying people. You can't have it both ways."

Vern Krishna:

"...we are already paid. We are paid very highly. We are paid with honour, we are paid with respect, we are paid with profile. We are paid in many different ways. We are now simply saying we want to be paid with cash. ...When you change the nature of the volunteer activities to payment in cash, you sully the process. ...I don't believe this is an access issue. ...there are people here of all colours and stripes, genders, sexes, single, married, the whole works It has improved substantially, and it will continue to improve, and improve the next time round even more, but not because you will offer pay. That will not solve the problem. You will simply sully the process. Finally...if we...have the financial wherewithal to afford payment to our people would we not be better off taking that amount of money and reducing [member] fees?"

Daniel Murphy:

"I disagree with the comments that if we voted for bencher remuneration it would change the make-up of this Bench. ...I can tell you over the years I have encouraged lawyer after lawyer to run for this Bench, and the reason they are not here is they can't get elected. If you look at the list of 120 or 125 people that run, there are young lawyers there, there are people from diverse ethnic backgrounds, people of colour and so on, but they are not elected. ... So the problem isn't a question of remuneration to benchers; the problem is it's very difficult to get elected to this Bench unless you have some name recognition and/or an organization that can support you." ■

FOR

continue to do it, as long as you are able, no matter what the personal and economic sacrifices that you have to make. This job...requires an inordinate amount of time. We have to take a lot of our time from our practices to do this. ...I am looking for competitors in the next Bencher campaign. I want people to run against me, I want people to run against me that are going to be representative of the ordinary bar, so I encourage them and I tell them they should be running, and the first thing they say to me is that they can't afford it. The present system...is not working. There's not a diversity of race, there's not a diversity of racial background, there's not a proper diversity, proper representative of lawyers from different economic segments of the bar. This bench is not truly reflective of the make-up of our profession...it is only right that a modest honorarium be paid so that the make-up of this room will be more reflective of our profession."

Marshall Crowe:

"...there should be some form of bencher remuneration. [But], I don't think we should do anything until we have made some progress [on bringing down the level of fees paid by members]. In short, I think the idea of putting it as a referendum question...would be a very good idea."

Elvio DelZotto:

"Some form of bencher remuneration in my view would ensure that there is a better representation, there is a more equal representation, and there is a more diverse representation. ... I think it's an access issue. ... Those people who don't need the money, who don't want the money, don't have to take the money." ■

Task forces will study the "future" and professional competence

CONVOCATION HAS approved the terms of reference for two new task forces. The competence task force will review and assess the question of what is a competent lawyer. The "futures" task force is intended to be a far reaching study of change in the profession and a look at future directions, asking the question, "where is the practice of law headed and what are the implications for the Society and lawyers?"

Futures

The futures task force will basically take a look at change – what it means for the practice of law, and what it means for the Law Society as the regulator of the province's legal profession. Profound change is occurring across society and the task force will research existing information to come to some conclusions about what issues will face lawyers in the next century – issues such as:

- the globalization of the practice of law (the international flavour of business, for example, often requires legal advice that crosses borders) and the implications that has for legal regulation
- questioning how the Society can continue to regulate effectively without impeding the ability of lawyers to stay competitive by keeping pace with the changing marketplace
- considering whether it is in the public interest for the Society to assist lawyers in the face of change through retraining or skills updating.

As outlined in the terms of reference for the task force, approved by benchers at April 4th Convocation, two issues will get specific attention. The first is multi-disciplinary practices. The multi-disciplinary approach in business is a growing trend. Currently, however, Law Society rules effectively prohibit lawyers from practicing with other professions such as accountants, for example, because of Society concerns over several issues including conflict of interest and client confidentiality.

The second specific issue to be looked at by the task force will be the impact of technological advances by governments and financial institutions on the practice of law. For example, the electronic registration and electronic dissemination of information including court and litigation processes and conveyancing systems is already happening. This not only has an impact on how lawyers will work (i.e. less paper-based systems), but will require lawyers to gain the skills needed to use the new technology.

The task force will not conduct new studies, but will instead use a wealth of research already done by groups such as the American Bar Association, the Law

Society of New South Wales (Australia) and Barreau du Quebec (see page 26). Professional researchers will be hired to assist with the information gathering – funding will be provided by LPIC. (See the Treasurer's Message for more on the futures task force.)

Competence

The competence task force will proceed in two phases. The first will focus on developing a working definition of competence. There is no current overall starting point on the issue of professional competence, nothing current – that takes into account the evolution and future changes of the legal profession – that defines what constitutes a competent lawyer. Rule 2 of the rules of professional conduct currently addresses the issue. However, the job of the task force is to provide direction on competence in light of a changing profession.

Secondly, everything the Law Society does is meant to enhance the professionalism and competence of members. With a working definition of competence in place, phase two of the task forces work can then consider the effectiveness of Society programs in assisting members to be the best lawyers they can be.

Phase two will define how the Law Society will carry out its role to assist members to know the standards of competence, and to measure the Society's programs to determine if they are meeting the goals of competence as defined. The second stage will also provide a framework for any new initiatives considered by the Law Society, and offer guidance to Society staff when it comes time to apply or implement programs dealing with issues of competence.

In the terms of reference approved by benchers at February 28th Convocation, it is made clear that the task force will "not seek to undertake another major study of the competence issue, but rather [will consider] the meaningful work already done, and [adapt that] work to the Law Society's needs." From there, options will be provided to Convocation on the role the Law Society should have in developing, maintaining, improving and enforcing competence of the membership.

A phase one report is expected at November Convocation. ■

TREASURER'S MESSAGE

Meeting tomorrow's challenges

This is a year of looking ahead and of looking back for the Law Society. With 1997 our bicentennial year, we find ourselves taking an historical backward glance at 200 years of history. But we also find ourselves at the dawn of a new millennium and the reality is that change is all around us – the future is here today.

Susan Elliott

We must be ready as a profession to meet the challenges the future will bring. But more, we must prepare ourselves to stay ahead of change in order to not only survive but to prosper, as well.

Technological change is being imposed on the profession by its growing use in government and by business. Financial institutions, our courts and land registry systems are undergoing profound technological change which directly affects the practice of law and our ability as lawyers to serve the public. These changes present opportunities and challenges. The Internet, for example, provides the potential for lawyers to give legal advice across borders with few restrictions – how should the Law Society encourage and enable lawyers to discover and exploit emerging markets, while also regulating the profession?

In answer, the Society must continue to regulate the practice of law in the public interest while fostering an environment which allows members to retain a competitive edge in the climate of transformation that surrounds us.

Faced with a rapidly changing world, Convocation has launched a forward-looking task force (see article on page 6) that will engage us in a far-reaching study of the future directions of the profession. The task force will also prompt immediate discussion on how lawyers can begin – today – preparing for the practice of law as it will look in the future.

I believe the task force has the potential to be one of Convocation's most important initiatives. It's about understanding and confronting the implications change will have on the balance we must maintain between regulating in the public interest and ensuring a learned membership. The Society's rules and regulations must evolve so they do not unnecessarily restrict the ability of members to change with the times, while maintaining regulations which protect the public. The futures task force will provide the direction needed to do this successfully.

Invitation

I would also like to take this opportunity to invite you to be my guest on May 23rd in historic Simcoe Park in downtown Niagara-on-the-Lake for the Law Society's bicentennial celebrations. There will be highlights of the Society's rich past, musical performances, noted speakers and the unveiling of the Law Society postage stamp. It promises to be a wonderful time and I hope as many members as possible are able to attend. (For more on the bicentennial see page 2)

Susan E Elliott

Benchers approve duty counsel means test and debate submission to government legal aid review

CONVOCATION HAS given the go ahead for the implementation of a means test for legal aid duty counsel. The pilot project — covering certain services in family and criminal court — will be phased in across the province after an initial test period in several courts.

The financial eligibility test for duty counsel will be about the same as the test for a legal aid certificate. As part of regular duty counsel interviews, clients will complete and sign a one-page form. The range of annual incomes that will determine eligibility run from $18,000 for an individual to $43,000 for a family of five people. The asset test will be $5,000. (For more details of the program see page 16)

In a report to Convocation, in which the means test was recommended, the Legal Aid Committee expressed concern that too many people who, if they applied, would not qualify for a legal aid certificate are using the services of duty counsel. "It is expected that this measure will allow duty counsel to focus more attention on the needs of those who meet the financial limits," the report states. "Focusing the resources of the Plan on the financially disadvantaged ...is consistent with the policy objective of ensuring that such resources...are targeted to those in greatest financial need."

In opposing the means test, some benchers shared a judicial criticism that limiting access to duty counsel will result in even greater numbers of people appearing without representation in court, causing longer delays and limiting access to justice. However, Convocation agreed with the committee that it is not the role of the Legal Aid Plan to correct the problems facing the courts.

"Duty counsel services are being resorted to, in our view, to sort of balance out, or to compensate for some of the problems that have been caused by financial cutbacks," committee chair, Mary Eberts told Convocation. "When judges particularly complained that...partial withdrawal of some duty counsel services will make things harder, then I suppose the ultimate reaction of the Legal Aid Committee...is, well, perhaps that will place ownership of the problem where it belongs. [We] should not be papering over the problems that have been caused by this government's radical withdrawal of funds...Our small budget cannot make up for [for that]," Eberts said.

> Will the Law Society continue to administer the Plan when the MOU expires?

According to the Legal Aid Plan annual report, 495,129 people were assisted by duty counsel in fiscal 1996, an increase of almost 40,000 clients over 1995. Legal aid provides three types of duty counsel assistance — a 24-hour telephone advice service for people in custody; salaried staff duty counsel located in criminal and young offender courts giving advice, conducting bail hearings and representing clients on guilty pleas; and private bar duty counsel who provide many of the same functions as staff duty counsel in addition to providing civil law services.

Legal aid review

Also on the Legal Aid Plan, Convocation debated the content and tone of a submission to be presented by the Law Society and Ontario Legal Aid Plan to the provincial government's legal aid review, chaired by John McCamus.

Among the positions approved by benchers at Convocation's April 4th meeting for inclusion in the submission is the question as to whether the Law Society will continue to administer the Plan at the conclusion of the present memorandum of understanding (MOU). The MOU, which expires in March 1999, is a four-year financial plan outlining government funding for the Legal Aid Plan.

A draft of the submission to the McCamus review from the Society states: "The question of whether administration of the Plan should remain with the Law Society is, from the Society's viewpoint, tied to the question of whether the Plan will be properly funded to deliver the appropriate range of services to the disadvantaged. Without proper funding it is unlikely that the Law Society will continue to want to administer the Plan beyond the expiry of the MOU."

At the same time, however, Convocation expressed the view that the Society, as an independent administrator of the plan, is in the best position to retain responsibility for the Plan for a number of reasons, including:

- 30 years of "institutional knowledge" of the Plan, its workings and its history and the Society's ability, as a result, to understand when change and improvement are required
- a well-developed infrastructure at the Society which fits with the needs of running legal aid
- Convocation's track record for balancing the interests of legal aid clients, service providers and government
- the Society's devotion to the values of access to justice and advancing the rule of law.

The Society's submission to the McCamus review also asks that should

another body administer legal aid, that organization "must also be independent, particularly of government but also of the public and the profession," and that any new administrator should be "independently appointed, contain members whose expertise will allow them to understand the plan...and have a commitment to the objectives of the Plan."

Convocation also directed that the report to McCamus incorporate the sentiment expressed by several benchers including David Scott, who told Convocation, "...the government has emasculated this [Legal Aid] Plan...There is a disgraceful retreat here from a Plan that was a great ornament in this province and if we are not screaming about it, nobody else will...we should be making strong public statements that the public is not well served. There is a two-tiered system. There is a double standard. And the poor in this province are not being served by this system."

With the expiry of the MOU less than two years away, benchers approved a motion to establish an MOU transition planning team to work with the provincial government to address any issues arising from the ending of the agreement, and to deal with new funding arrangements between the government and either the Law Society or a new body chosen to administer the Plan. The planning team – with representation from each of Convocation's committees and Law Society staff – will report its findings to Convocation at least one year before the MOU concludes. ■

Title insurance prompts new rule of professional conduct

CHANGES IN REAL ESTATE conveyancing — specifically the introduction of title insurance and TitlePlus — have resulted in the approval by Convocation of Rule 30, a new rule of professional conduct: Lawyers' Duties with Respect to Title Insurance in Real Estate Conveyancing.

A report of the Professional Regulation Committee argued the need for a rule that would provide clear guidance to lawyers who are now required to discuss title insurance with real estate clients. The committee noted that the rule essentially responds to the fact that title insurance will be offered through lawyers and that they will in effect be providing professional advice on insurance.

TitlePlus, approved by Convocation in September of 1996, is a voluntary program that repackages the legal services provided by real estate lawyers. It consists of two components — a software package that prompts a lawyer through the required steps of a residential real estate transaction, and a special policy that provides title and legal services protection for home buyers.

Rule 30 emphasizes lawyers' obligations to clients when title insurance is an issue in an conveyancing transaction. The rule:

- prohibits compensation to lawyers for recommending a specific title insurance product
- addresses the supervision/delegation issue within lawyers' offices — for example, by outlining what duties may not be carried out by non-lawyers
- requires disclosure to clients on the relationship between the profession, the Law Society and LPIC concerning TitlePlus

Lawyers' obligations to clients are emphasized in the new Rule 30

- provides commentary on the specific obligations required of lawyers.

The new rule reads as follows:

Rule 30

Lawyers' Duties with Respect to Title Insurance in Real Estate Conveyancing

RULE

1. The lawyer owes the client a duty to assess all reasonable options to assure title when advising clients with respect to a real estate conveyance. The lawyer must advise the client that title insurance is not mandatory and is not the only option available to protect the client's interests in a real estate transaction.
2. The lawyer cannot receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product to his or her client. The lawyer must disclose that no commission or fee is being furnished by any insurer, agent or intermediary to the lawyer with respect to any title insurance coverage.
3. The lawyer may not permit a non-lawyer to:
   (a) provide advice to the client with respect to any insurance, including title insurance without supervision;
   (b) present insurance options or information regarding premiums to the client without supervision;
   (c) recommend one insurance product over another without supervision;
   (d) give legal opinions regarding the insurance coverage obtained.
4. If discussing TitlePlus insurance with the client, the lawyer must fully disclose the relationship between the legal profession, the Law Society of Upper Canada and the Lawyers' Professional Indemnity Corporation (LPIC).

COMMENTARY

1. The lawyer should advise the client

of the options available to protect the client's interests and minimize the client's risks in a real estate transaction. The lawyer should be cognizant of when title insurance may be an appropriate option. Although title insurance is intended to protect the client against title risks, it is not a substitute for a lawyer's services in a real estate transaction.

2. The lawyer should be knowledgeable about title insurance and discuss the advantages, conditions and limitations of the various options and coverages generally available to the client through title insurance with the client. Before recommending a specific title insurance product, the lawyer should be knowledgeable about the product and undergo such training as may be necessary in order to acquire such knowledge.
3. The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. For the purposes of this rule, "lawyer" includes the lawyer's firm, any employee or associate of the firm or any related entity. ■

Lawyers must receive reprimands in person

At the April 4th Convocation, benchers considered a report from the professional regulation committee on the matter of issuing reprimands as a disciplinary penalty when the lawyer is not in attendance. Convocation accepted the committee's recommendation that a lawyer be required to receive a reprimand in person unless there are compelling circumstances that prevent the lawyer from doing so. The following is the policy endorsed by Convocation:

A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, unless there are compelling circumstances which would dictate otherwise. The onus rests with the lawyers to satisfy Convocation or Committee respecting the merits of those circumstances before the lawyer is permitted to receive the reprimand other than by attending at Convocation or Committee.

Roll-call votes

1. That benchers are entitled to be reimbursed by the Society for reasonable expenses incurred by them in the performance of their duties as benchers. Carried 26 to 10 with one abstention.
2. That benchers are in favour of some form of honorarium being paid to benchers. Carried 22 to 21 with two abstentions.
3. That the motion on a holding a referendum on the question of bencher pay (see number 4, below) be tabled. Lost 29 to 16.
4. That the question of payment of an honorarium to benchers be referred to the members in a referendum. Carried 32 to 12 with one abstention.
5. That benchers approve the introduction of financial elegibility tests for duty counsel services as outlined in a report to Convocation from the legal aid committee. Carried 29 to 7.

Correction:

An error occurred in the list of roll-call votes in the last issue (Jan/Feb 1997) of the Gazette. Columns two and four were transposed by mistake. So as printed, motion 2 in the column listing the votes corresponds with the motion described in point four. Likewise, motion 4 in the vote listings corresponds with the motion described at point number 2. We apologize for any confusion this may have caused. ■

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

February 28, 1997 & *April 4,1997*	*Attend* Feb. 28	Apr. 4	*Motions** 1	2	3	4	5
Aaron, Robert	✓	✓	F	F	F	A	F
Adams, W. Michael	✓	✓	F	A	A	F	F
Angeles, Nora	✓	✓		F	F	A	F
Armstrong, Robert	✓	✓	F	A	A	F	F
Arnup, John	✓	✓		A	A	F	F
Backhouse, Nancy	✓	✓	F	A	A	F	A
Banack, Larry	✓	✓	A	A	A	F	F
Bellamy, Denise		✓					
Bobesich, Gordon	✓		F	F	A	F	A
Carey, Tom	✓	✓	F	F	F	A	F
Carpenter-Gunn, Kim	✓	✓	F	F	F	A	A
Chahbar, Abdul Ali	✓	✓	A	Ab	A	F	F
Cole, Thomas	✓	✓	F	F	F	F	A
Copeland, Paul	✓	✓	F	F	F	F	F
Cronk, Eleanore		✓					
Crowe, Marshall	✓	✓	F	F	A	F	F
Curtis, Carole	✓	✓	A	F	F	A	
Del Zotto, Elvio	✓	✓	A	F	F	A	F
Eberts, Mary	✓	✓		A	A	F	F
Epstein, Philip	✓	✓		A	A	F	
Feinstein, Abraham	✓	✓	F	F	A	F	F
Finkelstein, Neil	✓	✓	F	A	A	F	F
Gottlieb, Gary L.	✓	✓	F	F	F	A	F
Harvey, Jane	✓	✓	F	A	A	F	F
Krishna, Virender	✓	✓	F	A	A	F	
Lamek, Paul		✓					
Legge, Laura	✓		A	A	A	F	
MacKenzie, Gavin	✓	✓	A	A	A	F	F
Manes, Ronald	✓			A	F	F	
Marrocco, Frank	✓	✓	A	A	A	F	F
Martin, Arthur							
Millar, Derry	✓						
Murphy, Daniel	✓		F	A	A	F	
Murray, Ross	✓	✓	F	F	A	F	A
O'Brien, Brendan	✓		F	A	A	F	
O'Connor, Shirley							
Ortved, Niels	✓	✓	A	A	A	F	F
Puccini, Helene	✓	✓	F	F	F	A	F
Rock, Allan							
Ross, Heather	✓	✓	A	F	F	A	F
Ruby, Clayton	✓		F	F	F	A	A
Sachs, Harriet	✓	✓		F	F	F	A
Scace, Arthur	✓			A	A	F	
Scott, David	✓	✓	F	A	A	F	F
Sealy, Hope	✓	✓	Ab	Ab	A	Ab	F
Stomp, Tamara	✓	✓	F	F	F	A	F
Strosberg, Harvey	✓	✓	F	F	A	F	
Swaye, Gerald	✓	✓	F	A	A	F	F
Thom, Stuart	✓	✓	F	F	A	F	F
Topp, Robert	✓	✓		A	A	F	F
Wilson, Richmond	✓	✓	A	F	A	A	F
Wright, Bradley	✓	✓	F	F	F	F	F
Elliott, Susan (Treas.)	✓	✓					

Non-voting Benchers in attendance

February 28, 1997 – R. Cass, P. Furlong, D. Lamont, P. B.C. Pepper, J. Wardlaw

April 4, 1997 – G.H.T. Farquharson, P. B.C. Pepper, J. Wardlaw

***Motions** A=against F=for Ab=abstain

Text of motions that required a roll-call vote are outlined in an article on this page.

IN PRACTICE

NOTICE

Publishers seeking royalties for law firm photocopying

COPYRIGHT IS ABOUT to become a serious issue for law firms throughout the province. Legal publishers, represented by CANCOPY (Canadian Copyright Licensing Agency), are pressing to collect royalties from law firms that photocopy legal publications.

It is not clear whether the revised copyright bill, Bill C-32, will make it out of the Senate and back to the House of Commons for a final vote before an expected June election. Interest groups ranging from writers to publishers to literacy groups have lined up to complain about various parts of the bill; some have suggested it would be better if it were killed by an election call.

Should it pass, the new legislation would place new restrictions on a practice known as fair dealing, which allows people using materials for research purposes to photocopy without paying a royalty. Libraries owned by commercial entities — such as law firms — would be given less fair-dealing freedom than public libraries.

The Federation of Law Societies of Canada (FLSC) believes the bill does not clarify the scope of fair dealing to permit law firms to provide access to the primary and secondary sources of the law to the judiciary and the public. To date, Justice Minister Allan Rock has said the question of an exception for judicial proceedings, as well as issues of Crown and parliamentary copyright, will be referred to the next phase of copyright reform.

Firm should obtain more information before signing agreement

It is a measure of how difficult it has been to amend Canada's copyright rules that the government chose to break the job into at least three distinct sections. Bill C-32 is the second phase of the process.

No matter what happens to Bill C-32, CANCOPY is determined to begin collecting photocopying royalties from law firms. It has started discussions with the FLSC in hopes of implementing a Law Firm Photocopying Licence with law firms outside Quebec. It was urged to do so by the Committee of Major Legal Publishers. Several legal publishers have recently become members of CANCOPY.

"This action was not prompted by the legislation. It's just the natural evolution of the work in our corporate licensing department," said Diana Barry, public relations manager with CANCOPY. "We have schools and universities covered, and now we're targeting businesses that do a lot of photocopying. Obviously law firms fall into that category."

The draft licence proposes an initial annual royalty payment of $30 per lawyer, which would be collected by CANCOPY and partly redistributed to legal publishers. However, there has been no indication as to what the payment will be in future years. The FLSC is reviewing the proposed licence and will be meeting with CANCOPY representatives.

CANCOPY plans to begin approaching law firms by early summer, asking that they sign an agreement. Law firms are urged to consult with the Law Society (Janine Miller, 416-947-3438) or the Federation (Diane Bourque, 514-875-6350) to obtain more information before signing an agreement. ■

TECHNOLOGY

Safe e-mail practises protect lawyers and clients

ELECTRONIC MAIL HAS emerged as the preferred way for many businesspeople to communicate, not only among co-workers but with colleagues and associates around the world. So it makes sense for law firms to get on board as well, right?

Many firms have already decided the answer is yes. They are wired to the Internet, allowing individuals to send e-mail messages to other lawyers and clients. If nothing else, it can be viewed as a client service — adapting to the way the client wishes to communicate.

But not everyone is convinced that posting personal, sometimes privileged,

communication on a vast electronic grid is such a good idea. Once a message is sent through the phone line and perhaps bounced off a satellite, it is fair game for anyone with the know-how and desire to intercept it. Advocates of e-mail argue this kind of theft is highly improbable. They also argue that faxes and traditional mail are at least as likely to be intercepted – possibly more so – if someone is intent on snooping.

What may turn the tide in favour of e-mail are new encryption programs that ensure only the intended person is able to read an electronic message (see sidebar). An e-mail system souped up with the latest encryption software is infinitely more secure than a fax machine that sits in a mail room, inviting passers-by to investigate the tray of incoming faxes. And after-hours visitors to your office will find it much more difficult to break your computer password and rifle through your e-mail than to examine files on or in your desk.

The bottom line with any communication – electronic or otherwise – is client confidentiality. The Law Society does not have an e-mail policy *per se*, but lawyers still need to take reasonable precautions to keep information private. It is advisable to obtain a client's consent in writing to use the Internet for communication purposes after informing him or her of the risks.

One of the most common causes of e-mail becoming "public" is human error. Stories abound of people who clicked the name just below or above the line they intended to select from their address list, thus sending a message to the wrong person. Although it is possible to dial the wrong fax number, a misdialled number is more likely to be a voice line.

The most serious threat to e-mail security would also be the most serious threat to all other communication: an intentional campaign to intercept information.

"It is possible that your Internet provider could be paid to extract messages sent by a law firm," says Anthony DeFazekas, an articling student at Keyser Mason Ball in Mississauga who has researched the use of e-mail by law firms. "The chances of that are probably fairly low, however. And if it was not done through the Internet provider, then we're talking about tapping phone lines or figuring out what route messages are taking and breaking into the right computer at exactly the right time. Let's understand how unlikely this is outside the world of movies," he said.

Law firms that send voluminous amounts of e-mail to a large client often set up "tunnels," which are dedicated lines, through which e-mail messages are sent directly to and from the client.

The biggest problem with e-mail, Mr. DeFazekas suggests, is the way some people use and abuse it. He encourages lawyers to treat it much as they would voice mail, answering messages in a timely fashion and using software to inform someone sending a message when the recipient is out of the office for a week and will not be checking for e-mail messages. ■

Security conscious

There are several security issues lawyers should be aware of so they can be confident when using e-mail.

To begin with, some messages should be confidential, available to be read by the intended recipient exclusively. The only way a message should gain a wider audience is if the sender or receiver chooses to distribute it.

Secondly, messages should be authentic. The receiver of a message must be confident it was sent by the person purported to have sent it. Imposters sending messages under someone else's name can create chaos.

Similarly, the integrity of the message should be ensured. A message that has been tampered with is just as troublesome as a message sent by an imposter.

When e-mail is used to conduct negotiations or other business arrangements, it often is necessary to verify that a message was received and at what time. It is also important to verify the other party's acknowledgement that the original messages was received.

Although the context is e-mail, these concerns are similar to those any lawyer would have about any communication. The key is to think about e-mail in the same way one would a letter or other document and then to use appropriate software to accomplish these goals.

Public key encryption is an increasingly popular security tool and it is becoming much more user-friendly. It allows e-mail senders to encrypt and/or digitally sign messages with a click of a mouse. Each user has a private key and a public key (which are a complex mathematical formulas). For example, Susan gives her public key to friends and associates or posts it on a publicly accessible "key ring" so people can use it to send her messages. Only she can read messages sent in this fashion, using her private key to unlock them. Similarly, Susan can digitally sign messages she sends with her private key, and holders of her public key can use it to verify a message was really sent by Susan.

One such program is PGPmail 4.5, from PGP Inc. (The letters stand for Pretty Good Privacy.) To date the program only works with Eudora or Netscape e-mail programs. However, the company is creating plug-ins for other systems. More information is available at www.pgp.com.

CONDUCT & ETHICS

Avoiding potential trouble in a hot real estate market

AFTER SEVERAL YEARS of low mortgage rates, the real estate market is starting to heat up again. Housing resales nationwide were up more than 27 per cent last year compared to the year before, and construction of new houses is at a two-year high.

This is good news for real estate lawyers, many of whom have had to supplement their real estate practices with other kinds of work. However, a booming market also can create legal and ethical snares that many lawyers will not have encountered for several years, if ever.

The general rule of thumb is that a lawyer should not act for more than one side in a real estate transaction. By following this rule consistently, a lawyer will avoid the vast majority of potential pitfalls. However, there are times when a lawyer will decide to make an exception to the rule, for any number of reasons. When he or she does so, it is imperative that each party involved in the deal is informed of this information in writing. It is best to do this at the beginning of a transaction and also to make reference to it in the report on title, written once the deal has been completed.

It is also wise to require the notified parties to acknowledge, in writing, they have been informed. Although some clients, especially banks, will consider this precaution unnecessary, the few moments it takes to do it are a small price to protect both the client and the lawyer.

Problems are most likely to arise when a property is being "flipped" and the intermediary owner stands to make a significant profit. Sometimes a lawyer will end up representing clients B and C, in an arrangement where A sells to B who immediately sells to C. It is essential in this case that the lawyer inform C he is also representing B, revealing all relevant information about the purchase. If A sells for $100,000 and B turns around and sells the same property to C for $130,000, a lawyer representing B and C must tell C that the property is being "flipped".

Similarly, if a lawyer represents both C and a bank that is giving C a mortgage on the property, the lawyer must inform the bank of all relevant information. This may cause problems for C if the bank has granted the mortgage based on the purchase price C is paying. But the lawyer is bound by the simple rule requiring him to share all relevant information about the deal with all parties he or she represents.

Another problem may arise when a client comes to a solicitor with a deal already in hand. The client may have negotiated a terrific deal or may be holding a dog. In either case, the lawyer needs to spell out, in a formal retainer, precisely what advice he or she is being paid to give. In most cases, this means clarifying the fact that business advice is not being given. Making the client understand the limits of the retainer has two effects: first, the client may be prompted to have someone review the deal from a business point of view; second, it protects the lawyer from any future action if the buyer is unhappy with the arrangement later on and looks to the lawyer for compensation for a bad deal.

Lastly, solicitors should be aware they may have continuing obligations to bank clients even years after a deal is completed. Five years or more later, if a lawyer who worked on the deal knows, for example, that a bank has decreed no additional mortgages may be placed on a property, he or she can get into trouble if another client is helped to secure a mortgage to the detriment of the bank's interests. The ramifications of this situation are less clear, but lawyers need to approach similar situations carefully. ■

PRACTICE MANAGEMENT

Dealings can create partnership liability

THE RECENT ONTARIO COURT of Appeal case of *McDonic v. Hetherington*, [1997] O.J. No 51 (C.A. no. C22634) provides a useful object lesson on liability for the activities of law firm partners.

In 1985, two elderly sisters engaged W. (now a disbarred solicitor) to invest in mortgages for them. As a result of his imprudent and undersecured investments they lost more than $240,000. They sued W.'s firm partners but lost at trial because the judge ruled their investments were unknown to the partners and W. had "exclusive control" over them.

Moreover, citing an 1853 case, the judge ruled W. was not "acting as a lawyer" but an independent "scrivener" (an investment adviser). Plus, he was not acting within the scope of his apparent authority because nothing in his conduct induced the plaintiffs to believe he was acting for the firm.

The Court of Appeal resoundingly overturned this decision, finding all firm partners liable under ss. 6, 11 and 12(a) of the *Partnership Act*, R.S.O. 1990, c. P. 5, which codifies the elements of vicarious liability.

Mr. Justice Doherty (with Weiler and Laskin JJ.A. concurring) found that rather than having exclusive control of the funds, W. had used his firm's trust account to both invest the sisters' capital and pay them by monthly cheques (some of which were signed by other partners).

That clearly made them firm clients and the other partners liable. The appeal court observed the sisters were charged fees for use of the firm's accounting system, plus W. occupied offices at the firm and correspondence was always on firm letterhead — he was clearly acting within the scope of the firm's apparent authority. The decision also found that investment advice was clearly within the normal course of business of the modern law firm, notwithstanding any contrary 1853 ruling.

The partners attempted to defend by raising their firm's unwritten "policy," which was to consult with clients before investments were made, something W. had ignored. This was not enough to relieve them from liability, however.

The case shows that partners can still be liable for the acts of a colleague even when they're not fully aware of the precise nature of client dealings.

Lawyers may well want to exercise some care to ensure one partner is not using the firm to engage in activities which would expose other partners to unintended joint and several liability. ■

OFFICE MANAGEMENT

Revenue Canada policy affects GST on disbursements

LAW SOCIETY MEMBERS having been grappling with some confusion as to when (and whether) to charge Goods and Services Tax (GST) on disbursements. While Revenue Canada declared a temporary moratorium on GST assessment of lawyers' disbursements, that officially came to an end effective April 1, 1997, with a new Policy covering disbursements.

The new Policy, formulated in consultation with the Law Society and the Canadian Bar Association's Sales and Commodity Tax Section, clarifies which disbursements are to be considered as "incurred as agent" and which are "not incurred as agent."

Disbursements "incurred as agent" retain their GST-exempt status, so the client need not be billed GST for these. But those "*not* incurred as agent" must be billed with added GST whether or not the lawyer paid GST when incurring the disbursement.

Because the new Policy has come into effect so recently, lawyers are urged to change their billing systems immediately so they can fully account for the different disbursement types. The date the disbursement was incurred is irrelevant, i.e. if you are preparing an account in mid-April and it includes disbursements by you prior to April 1, 1997, these disbursement should be treated in accordance with the new policy and GST applied where required.

Revenue Canada has also placed an "effective date" of Jan. 1, 1991 for its new Policy, which means if lawyers have incorrectly collected or paid GST other than as outlined in the Policy, they won't be allowed a refund or rebate.

The Policy offers practical examples of disbursements "incurred as agent" and "not incurred as agent." Generally, it points out, common disbursements such as charges for telephone calls, photocopier use, courier costs, travel and postage, will *not* be exempt from GST.

In the real property practice area disbursements for: application fees paid to municipal governments; and registration fees for transfer of title, encumbrances, discharges or changes to claims, will be GST exempt.

However, land titles search fees or searches in municipal records for tax arrears, or outstanding work orders, will *not* be GST exempt, nor will any disbursement paid to a government body to ascertain bankruptcy, environmental or personal property security status.

In the civil litigation arena, GST-exempt disbursements include: court fees to start an action; fees for notice of motion or application; fees for filing a defence; and fees for summoning witnesses.

Also exempt are any fees paid for execution orders, judgment certificates, writs of possession and writs of seizure and sale.

But non-exempt disbursements include: witness fees (expert and otherwise), fees for transcription and recording services, document service fees and fees required to obtain transcripts.

The Policy also spells out practical examples in intellectual property practice, corporate-commercial law and wills and estates practice.

The Law Society has raised with Revenue Canada the possibility of lawyers using client trust funds for disbursements in order to avoid the effect of the Policy, but Revenue Canada has indicated that it would not give a different interpretation to the Policy on this basis.

Members should ensure that bookkeepers and other assistants understand that GST is not being charged on GST. Most current accounting practices are likely correct. The only change is with respect to a small number of disbursements in which GST has not been paid but needs to be charged to the client.

A complete copy of the Policy can be found at the Law Society's Internet website at www.lsuc.on.ca/services/services_notices.html.

Those without Internet access can obtain a copy through the Law Society's fax-on-demand service at (416) 504-0687 (when prompted request document 1120); or, it should be available at your local Revenue Canada office.

The Law Society suggests any questions about the Policy be directed to Revenue Canada or to your accountant or tax advisor. ■

Did you know...

about the new GST policy in mid-March? A notice was sent to members by broadcast fax and e-mail. The Law Society will be using these cost-efficient methods to distribute timely information that can't wait for the Ontario Lawyers Gazette. To ensure that you receive these notices you must have a fax number in your member record. (One fax is sent to each unique number, i.e. six lawyers sharing a fax machine would receive one fax.) The easiest way to supply an e-mail address is through the Member Sign-in section of the Law Society's website at www.lsuc.on.ca (you will need to know your member number to obtain access).

CLIENT RELATIONS

Assessing fee assessments

WHILE THE PROFESSION waits for word from the Ontario government about its proposals to change the current court-connected fee assessment system, lawyers can still work to avoid situations that create client fee disputes in the first place.

As reported in the Nov.1996 *Benchers Bulletin*, one of the government's proposals was to have assessments provided by fee-for-service assessment officers affiliated with a non-governmental private body. Convocation accepted the government's invitation to take part in a review of the current system, but many benchers agreed any user fee applied to assessments would impede access to justice.

When contacted by *Ontario Lawyers Gazette*, Attorney General Charles Harnick said he is waiting for his officials "to develop some proposals I can take to the profession and the public and see which one is the most acceptable." Those proposals, he added, are being done "as fast as they can possibly be done — but I haven't seen anything I've been particularly happy with up to now."

Whenever the Minister does offer his revised proposals, the three principal stakeholder organizations – the Law Society, CBA-O and The Advocates' Society – have agreed to a unified approach for any consultation or review process.

A less formal review of the assessment system took place at the recent Law Society CLE program "No Pain, No Gain: Solicitor and Client Assessments." Program attendees heard presentations indicating that the current fee assessment system is alive and well, and also picked up practical information for dealing with and avoiding fee disputes.

Mark M. Orkin, Q.C., a well-known authority on the law of fees and costs, presented a paper entitled "On a Clear Day: Overview of the Rules and Update on Government Privatization Initiatives."

Much of the current confusion stems from the government's indecision on exactly how it will change the assessment system, Mr. Orkin said. He pointed out that solicitor-client fee assessment is a 400-year-old right enjoyed by both lawyers and clients. And superior courts "still have an inherent jurisdiction to review solicitors' accounts, which they occasionally exercise."

Along with the "enormous public interest" associated with assessment, Mr. Orkin added that he fears a privatized system might not pass constitutional muster. It would also lack credibility for the public, because it would no longer be seen as controlled "by someone performing a judicial function."

While the present $53 fee charged for an assessment may be a bargain, he said, private fee assessors paid by the parties might drive disputants to lower-cost regular courts to settle their accounts – something which wouldn't make already overworked judges happy.

In another presentation, Toronto lawyer Harvey Spiegel, Q.C. discussed retainer agreements as "a useful tool in avoiding solicitor-client conflicts and facilitating their resolution when they arise."

Retainer agreements should be carefully drafted and must be in strict compliance with ss. 15 through 32 of the *Solicitors Act* if they are to be enforced using the special procedures contained in s. 23 of the Act.

Mr. Spiegel also pointed out that following the case of *Greenspan, Rosenberg and Helmut Buxbaum* (1987), 17 C.P.C. 213, a procedure now exists under *Solicitors Act* s. 17 so that retainer agreements may be approved by an assessment officer.

While such approval might sometimes not sit well with clients, Mr. Spiegel noted that in lengthy or complex cases, getting such approval "at the outset" might well forestall any future challenge to the retainer's terms by an unhappy client.

Above all, he stressed that the key to avoiding disputes lies in good communication skills, including returning phone calls, sending out interim bills and routinely sending copies of all relevant pleadings or correspondence to clients.

Toronto lawyer Ed Upenieks' presentation, "All your Ducks in a Row: Preparing for the Hearing," offered practitioners useful hints when representing either the solicitor or the client at an assessment.

Lawyers for clients should include all related accounts for legal services (even if they're fully paid) for the assessment officer's consideration. And the solicitor's *entire* file should be looked at, including all dockets. These should be carefully examined for mathematical errors and duplication, along with excessive in-house conferencing or research time.

> Retainer agreements are a useful tool for avoiding fee disputes

Lawyers for solicitors should ensure the file is completely organized for the assessment officer's perusal and experts should be engaged if necessary to justify any questionable disbursements.

When acting for either side, it's especially important to prepare arguments keeping in mind the nine factors to consider at an assessment, as laid down by the Court of Appeal in *Cohen v. Kealey & Blaney* (1985), 26 C.P.C. (2d) 211.

Finally, said Mr. Upenieks, when doing assessment work it's very important to have a written retainer and a firm understanding as to your fees when acting for either party, but especially a client.

"Remember, the client has already had problems with payment with one lawyer. Also bear in mind that the better you do on behalf of the client at the assessment, the more likely the client is to assess your account." ■

New measures expand family law services

THE TARIFF CUTS AND prioritization of family law cases have had a tremendous effect on both family law clients and lawyers over the last year. The Legal Aid Committee has voted on three new measures which will improve service to clients and widen eligibility for family law certificates. Starting April 1, 1997, an extra 5,000 certificates were made available for each of the next two years. The changes also include one additional time-issue allotment in very complex cases, double the amount of money available for discretionary increases and an extension of eligibility to include many Priority Two issues.

The major issue in difficult family law cases is now eligible for one additional time issue allotment. For example, in custody cases, the basic allocation of 6.5 hours plus 11.5 hours will be extended, so that an additional 11.5 hours is available for the custody issue. The additional time issue allotment will only be available for very complex cases—approximately 10 per cent of all the family law cases the Plan receives and does not apply to child protection cases. This change will allow lawyers to have more time to prepare cases, and provide better service to clients.

The amount of money available for discretionary increases on family cases has been doubled. As well, most second priority issues are now eligible for certificates. These include:

- variations of custody where there is no emergency
- child or spousal support when custody has changed
- enforcement of support if there is merit
- initial applications for access to maintain an established parent/child bond
- preservation of property if there is a risk of dissipation (a spouse's business, for example).

Variations of support are not eligible for certificates. The extra time issue allotment and discretionary fees also apply to all certificates issued after April 1, 1996, unless a final account was submitted prior to April 1, 1997.

McCamus Legal Aid Review Panel

Convocation has approved the Legal Aid Plan's submission entitled *Access to Justice: Legal Aid in Ontario* to the McCamus Legal Aid Review. The submission details the history of the Plan, the evolution of services and funding and the cuts that have taken place which have affected clients and lawyers. The paper also outlines the effects of those cuts on the quality and availability of service and is now public. If you would like a copy of the report, please call Kelly Villeneuve at 416-979-1446, extension 6240.

The Ontario Legal Aid Review is inviting the bar to an open meeting April 28, 1997 to discuss the future of legal aid in Ontario. Interested members of the bar can attend and advise the review of their concerns and proposals regarding: client needs, goals of the Plan, governance structure and delivery models. The meeting is scheduled for April 28, 1997, between 7:00 pm and 9:00 pm at the Bennett Lecture Hall, Flavelle House, Faculty of Law, University of Toronto, 78 Queen's Park Crescent. Copies of the Review's consultation paper are available by calling 416-326-4195.

Eligibility testing for duty counsel

Beginning April 1, 1997, legal aid is implementing a test phase of limited financial eligibility testing for some duty counsel services. Phase one of the testing program has begun in the following courts: Ottawa, Chatham, Sault Ste. Marie, Hamilton and Toronto (College Park and North York). By limiting eligibility for duty counsel services, the Plan is focusing on those clients who are most in need and who can benefit most from its services.

Financial testing should only apply to approximately 15 percent of criminal duty counsel services and 25 per cent of family duty counsel services. Testing in the criminal courts applies to bail hearings, guilty pleas, sentencing and speak to sentencing after guilty pleas. In family court, testing applies to representation at motion, pretrial and trials, garnishment hearings, show cause hearings for the Family Support Plan, negotiations and settlements.

Duty counsel are only available for people who are due to appear in court that day. People who do not qualify can either hire their own private lawyer, or represent themselves. Duty counsel lawyers will help people arrange for private counsel that day where possible.

Changes to cheque runs

Due to the Plan's switch to accrual accounting, as required by the Law Society, some cheque runs will be affected over the coming months.

Regular cheque runs will still be every Monday, with direct deposits on the Friday of that week. However, because of new month-end requirements, there will be some exceptions. Lawyers will be notified in the cheque run prior to any changes.

Investigations and discipline

Rod Vanier, of Ottawa, has agreed to remove his name from all Legal Aid panels, after he was found to have billed his client privately while retained under a legal aid certificate secured by a lien.

Mr. Vanier has further agreed to reduce his fees to that of the Legal Aid Tariff rates, mark his account paid in full and forward the difference to the legal aid client. He will also pay the Plan $100 for administration costs to remove the lien.

Hard cap starts fresh

The hard cap for fees allocated on accounts paid during the fiscal year, began fresh as of April 1, 1997. When the new fiscal year begins, every lawyer starts with a clean slate in relation to the hard cap on fees allocated and paid during the year, regardless of when received. The hard cap does not apply to accounts submitted prior to December 1995 under the six-month rule implementation program.

Inadvertence in billing accounts

The Plan is now strictly enforcing the rule of submitting accounts within six months

of the work being completed. The grounds for discretion to extend the time include illness or incapacity. The Plan will not extend the time based on "inadvertence" or administrative difficulties on the part of the lawyer or the lawyer's office.

Have your costs exceeded the original estimate?

Just as you would with a private retainer, you must advise the legal aid area director when the estimated or actual amount to be billed on the certificate may exceed the amount agreed to in the payment agreement.

Clarifying duty counsel functions

In the sections of the Legal Aid Regulations which set out duty counsel functions, the word "shall" is directory, not mandatory.

This means that duty counsel should provide the services appropriate to the circumstances of the client, subject to the needs of other clients before the courts and the time available. Duty counsel should not take unreasonable instructions nor act for clients whose demands are vexatious.

New provincial office staff

Two new staff members have joined provincial office: Elaine Gamble as Communications Coordinator, and Keith Wilkins as Co-ordinator of Client Services. Ms. Gamble has a background in media and public relations and is doing communications planning and writing for staff, lawyers and the media. Call her with any public relations inquiries or concerns at 416-204-4728.

Keith Wilkins, moved from the Area Director of Ottawa to his new position April 1. He is working with area directors and traveling to area offices to assist them in understanding and implementing policies. ■

CIVIL LITIGATION

Government developing mandatory mediation details

FOLLOWING THE announcement of the Ontario government's mandatory mediation program for civil cases *(see OLG,* Jan/Feb 1997*)*, the initial questions for lawyers can be generally grouped around two broad areas:

- How can lawyers themselves participate in the mediation process? and
- What must lawyers do to help their clients through such mediation?

Many of the details of the program are currently being developed. Officials from the Ministry of the Attorney General are working out a rule of civil procedure to govern the mediation process. The program's developers are also trying to set down a "consistent philosophy" of mediation. "The minister is very anxious that we do not allow mediation to be used as a delaying tactic," says Victoria Vidal-Ribas, Director of the Toronto Alternative Dispute Resolution Centre. (Toronto's mandatory mediation program will unfold in June, but the program is up and running in Ottawa, at least as a six-month pilot project.)

All civil cases in Ottawa (except for family, construction lien and bankruptcy matters) are being sent for mediation, which is being offered inside a full case-managed court structure under the supervision of General Division Regional Senior Justice James Chadwick.

The Ottawa experience probably offers a good predictor of how the province-wide program will look, although everyone agrees the mandatory system is still finding its feet.

The program in Ottawa is supervised by a local volunteer ADR committee which has representation from the local bar, bench, ministry staff, mediator community and public. This committee decides which mediators (both lawyer and non-lawyer) get on the local roster, which so far has 26 names. The roster is updated monthly and an additional 12 to 15 names will be added soon, explains Master Robert N. Beaudoin, one of the founders of the project and Ontario's first Case Management Master. (As this issue of the Gazette was going to press it was announced that Julian Polika has been appointed Case Management Master for Toronto.)

> Ottawa will be a good predictor for the province-wide program

The committee looks for candidates who not only have experience or training in mediation, but who also have an understanding of "rights-based" dispute resolution, either from courts or administrative tribunals.

While a formalized application process has not been developed (Vidal-Ribas says a recruitment campaign and application procedure are in the offing), most candidates send in their c.v. and a letter. They are pre-screened, then interviewed by two committee members. The applicants must also write a short essay outlining their vision of ADR.

Only mediators on the roster can provide court-mandated private mediation. The roster can be found in the courthouse office of the ADR co-ordinator or at the county law association library.

Lawyers for the parties either agree on a choice of mediators, or if they can't agree, the case management master (or judge) appoints one for them. Mediation must occur within 60 days of the filing of a defence, and can be at a lawyer's office or at the mediator's premises.

Mediators must have a policy of professional liability insurance in place, and, says Master Beaudoin, most lawyers will probably already be covered by the LPIC policy.

All mediators must subscribe to a code of conduct which mandates impartiality and creates an obligation to disclose any potential conflict of interest to the parties. If the parties agree to proceed despite an

apparent conflict, the mediation continues. If they don't agree, the mediator must withdraw.

Officials have released a substantial practice direction for the pilot project and it outlines many of the steps lawyers must take with their clients to prepare for mediation.

At least seven days before the scheduled mediation, lawyers must file a brief "Statement of Issues" (along with appended documentation) to the mediator and the other party, plus they must sign a confidentiality agreement.

Lawyers and clients must attend *in person*, or if a business representative is sent, that agent must have authority to make a final decision (or a principal decision-maker must be available by phone during the mediation).

Following the mediation session, the mediator provides a certificate stating only that either a total or partial settlement was reached, or no settlement was reached. No comment is made on the conduct of the parties, or what occurred at the session.

Ottawa mediators can charge a maximum fee of $500 (representing one hour of preparation time three hours of mediation, at $125 per hour) and the bill is split between all the parties. (This differs from the current Toronto rate of $150 per hour to a maximum of $300 *per party* for four hours – Vidal-Ribas says mediators' fees are effectively higher when there are more than two parties.) The parties may continue past the four hours at a rate agreed on by everyone.

Master Beaudoin says the mediators can't charge their fees "up front," but must use the "special examiner" model, where the lawyers undertake to pay the mediator's bill, and then are reimbursed by their own clients.

As well, mediators must provide services *pro bono* when dealing with an impecunious party. That party would have to qualify for the Legal Aid Plan's eligibility means test to be considered impecunious. ■

REGULATIONS

Procedures set for electronic transfers

RECENT REGULATORY CHANGES will allow lawyers to use electronic means to transfer funds out of trust accounts.

Ontario Regulation 47/97 amends Regulation 708 (made under the *Law Society Act)* to stipulate minimum procedures to ensure that an audit trail is maintained.

However, before members can avail themselves of this technology, Convocation must prescribe a requisition form (see below). A proposed Requisition Form may be considered by Convocation at the end of April.

Overview

Members should refer to O. Reg. 47/97 for specifics (published in the March 1, 1997 edition of the provincial government's Ontario Gazette). The following are highlights:

- A lawyer must complete a prescribed Requisition Form setting out the details of the transfer.
- The electronic transfer system used by lawyers must require a separation of duties between entering and authorizing the transfer.
- The system must produce a confirmation from the financial institution.
- The lawyer must compare the confirmation with the Requisition Form to verify that the proper instructions were conveyed and received.
- The Requisition Forms and confirmations form part of the law firm's accounting records and must be retained for at least six years pursuant to Regulation 708.

Members should refer directly to the regulation for specifics of the requirements. Additionally, members should review the agreements governing electronic funds transfers from their financial institutions. Particular attention should be paid to issues such as the actual effective timing of transfers and reversibility of transactions.

Members who have further questions after a review of the regulatory changes may direct them to the Audit Statutory Adviser by e-mail to lsforms@lsuc.on.ca or by phone to (416)947-5257, or to the Law Society Practice Advisory Service at (416)947-3369. ■

BOOKS & RECORDS

Computer accounting requirements

Recent upgrades to some computer accounting programs allow for correcting entries to be made against posted cheques and receipts as well as the option to print certain documents without the original erroneous entries and corrections. PCLaw's newest version (v.3 for Win95) and NewViews are two examples.

Members will need to be careful when generating monthly hard copies of records for their practices. Section 15 of Regulation 708 requires that books of original entry must be maintained for at least six years for trust receipts, trust disbursements, general receipts, general disbursements and fees (unless a chronological file of fee billings is kept). Many accounting programs do not retain this information indefinitely and data older than a couple of years may be automatically deleted. Where a computerized accounting program is used, the above books of original entry (journals, reports or registers) should be printed monthly and stored at least for the periods stipulated in the Regulation.

Reports that do not include the original erroneous entries and corrections may results in an incomplete and potentially misleading record for the purposes of the Regulation. Reports printed as practice-related records should be generated with the option that all correcting entries are included in order to compile a proper audit trail.

TOUR D'HORIZON

LES PROPOS DE LA TRÉSORIÈRE

Relever les défis de demain

Cette année est marquée par une double réflexion : sur l'avenir et sur le passé. En 1997, à l'heure du bicentenaire, le Barreau se penche sur son histoire vieille de 200 ans mais, à l'aube d'un nouveau millénaire, il fait aussi face à un monde en pleine mutation où l'avenir est inscrit dans le présent.

Notre profession doit être prête à relever les défis que l'avenir nous réserve. Elle doit même conserver une longueur d'avance afin de prospérer, et non seulement de survivre.

Les juristes ne peuvent rester à l'écart des changements technologiques dont l'importance va croissant dans les secteurs privé et public. Les institutions financières, les tribunaux et les systèmes d'enregistrement immobilier connaissent une évolution technologique profonde qui se répercute directement sur l'exercice du droit et les services que nous offrons au public. Or, cette évolution ouvre de nouvelles perspectives, lance de nouveaux défis. Grâce à Internet, par exemple, les juristes peuvent exercer leur rôle de conseiller juridique à travers le monde pratiquement sans entraves. Quels moyens le Barreau devrait-il alors donner à la profession pour l'encourager à découvrir et à exploiter les débouchés naissants tout en la réglementant ?

Le Barreau doit veiller à réglementer la pratique du droit dans l'intérêt public tout en créant un environnement favorable aux membres, au maintien de leur avantage compétitif malgré les transformations que nous vivons.

Face à un monde en pleine mutation, le Conseil a créé un groupe de travail tourné vers l'avenir (voir l'article à la page 6) qui nous invitera à analyser en profondeur les orientations futures de la profession. De plus, il engagera immédiatement la discussion sur les mesures que peuvent prendre - dès aujourd'hui - les juristes pour se préparer à leur profession de demain.

Je crois que ce groupe de travail pourrait constituer l'une des inititiatives les plus importantes du Conseil. Il s'agit de comprendre et d'anticiper les répercussions des changements sur l'équilibre que nous nous devons de maintenir entre la réglementation dans l'intérêt public et une profession au savoir étendu. Le Barreau doit veiller à ce que la réglementation de la profession ne l'empêche pas inutilement d'évoluer tout en assurant la protection du public. Le groupe de travail nous fournira les orientations nécessaires pour mener à bien cette tâche.

J'aimerais également saisir cette occasion pour vous inviter à participer aux célébrations du bicentenaire qui se dérouleront le 23 mai à Niagara-on-the-Lake dans le parc historique Simcoe. Le programme des festivités comprend des reconstitutions des grands moments de la riche histoire du Barreau, de la musique, des conférenciers de renom et la présentation officielle du timbre du Barreau. Cette journée s'annonce formidable et j'espère que les membres viendront le plus nombreux possible (voir la description des activités à la page 2).

Susan E. Elliott

Référendum sur la rémunération des conseillers

Les conseillers et les conseillères devraient-ils être rémunérés ? C'est une question que le Conseil a décidé de soumettre aux membres de la profession lors d'un référendum, le premier, organisé à l'occasion des prochaines élections des membres du Conseil au printemps de 1999. Le Conseil, lui, s'est déjà prononcé, à une voix près, en faveur du principe de la rémunération. Un comité sera chargé d'étudier les aspect pratiques de la question.

Selon les études effectuées, les membres du Conseil consacreraient en moyenne 144 heures par année aux réunions régulières du Barreau. Si l'on tient compte de leurs autres activités, on en arrive à une valeur médiane de 46 à 47,5 heures par mois.

Sept options ont été présentées au Conseil à qui il incombera de déterminer le type de rémunération, les fonctions rémunérées et l'entrée en vigueur du nouveau système. Elles vont d'un tarif horaire de 67 $ à une indemnité annuelle de 12 000 $.

Cette section vous est destinée à vous juristes francophones et francophiles de l'Ontario. Si vous désirez y publier des articles, écrivez-nous : Barreau du Haut-Canada, Osgoode Hall, Services en français, 130, rue Queen ouest, Toronto, ON M5H 2N6, (416) 947-5202. dpicouet@lsuc.on.ca.

Avocats de service et révision de l'aide juridique

Le 4 avril, le Conseil a approuvé l'application, à titre d'essai, des nouveaux critères d'admissibilité financière concernant les services fournis par les avocates et avocats de service en matières familiale et criminelle. Certains membres du Conseil se sont élevés contre ces nouveaux critères plus rigoureux, affirmant qu'ils limiteraient l'accès à la justice. Le Comité a fait valoir que le Régime entendait mettre le gros de ses ressources au service des plus démunis, mais que le recours aux avocates et avocats de service ne pouvait résoudre les problèmes causés par la réduction du financement gouvernemental. Près d'un demi-million de personnes ont eu recours aux avocates et avocats de service en 1996.

Le Conseil a aussi examiné le mémoire que présenteront le Barreau et le Régime d'aide juridique à la Commission McCamus sur la révision de l'aide juridique. Il a assujetti la décision de continuer d'administrer le RAJO, à l'expiration du protocole d'entente en mars 1999, à la suffisance du financement. Il a souligné l'importance de l'indépendance de l'administrateur du Régime et s'est dit le mieux placé, compte tenu de son expérience et de sa mission, pour le gérer. Le Conseil a inclus dans le futur rapport l'opinion exprimée par certains face à l'état scandaleux du Régime et l'obligation du Barreau de décrier un programme n'aidant plus les personnes défavorisées. Par ailleurs, le Conseil formera une équipe qui, de concert avec le gouvernement, préparera la transition. Il recevra ses conclusions au moins un an avant la fin de l'entente.

Assemblée générale annuelle

Les membres sont invités à l'assemblée générale annuelle du Barreau qui se tiendra le mercredi 7 mai 1997 à 17 heures 15 dans l'amphithéâtre principal d'Osgoode Hall. Deux résolutions seront mises aux voix.

Résolution n^{o} 1

ATTENDU QUE plus de 50 pour cent des étudiantes et des étudiants ont échoué au programme français du Cours de formation professionnelle du Barreau du Haut-Canada;

QUE certains étudiants et étudiantes du programme français ont intenté un procès au Barreau du Haut-Canada, que le différend a été soumis à la médiation et qu'elle s'est soldée par la signature d'un accord entre le Barreau du Haut-Canada et les étudiants et étudiantes et le rejet de l'action sans dépens eu égard à l'accord;

ET QUE le Barreau du Haut-Canada a, de mauvaise foi, ignoré et violé les modalités de l'accord à l'égard de la sélection des personnes procédant à une nouvelle correction, des consignes données à ces personnes pour qu'elles repèrent les difficultés linguistiques, de l'absence de préparation aux examens et de l'exclusion de l'AJEFO de la révision du Cours de formation linguistique;

QU'IL SOIT RÉSOLU que les étudiants et les étudiantes qui ont échoué ne soient pas victimes de nouvelles injustices et qu'un comité spécial de conseillers et conseillères composé de francophones soit formé pour redresser immédiatement les torts causés aux étudiantes et étudiants;

QUE le Barreau du Haut-Canada demande des explications au Comité de la formation qui a institué un système d'examens qui entraîne automatiquement un taux d'échec d'environ 10 pour cent par examen sans savoir si les résultats de l'étudiant satisfont à des normes minimales de compétence, ce qui est totalement contraire à la position expresse du Conseil, d'autant plus que cette méthode s'est manifestement traduite par un taux d'échec global de 30 pour cent;

QUE, s'il était dans l'intention du Barreau du Haut-Canada de réduire le nombre de membres, les frais engagés par les étudiantes et étudiants inscrits au programme leur soient remboursés puisqu'ils n'en ont jamais été avisés;

QUE le Barreau du Haut-Canada engage les services d'un expert en examens multilingues pour déterminer s'il est fondamentalement équitable, pour les francophones et les anglophones, d'exiger que les étudiantes et étudiants francophones subissent un examen traduit;

QUE le Conseil examine publiquement la totalité du Cours de formation professionnelle de 1996 pour déterminer si la méthode choisie ne s'est pas avérée involontairement discriminatoire à l'égard de tous les groupes minoritaires et que, si problème il y a, des mesures correctives soient prises immédiatement pour les étudiantes et les étudiants désirant toujours être admis;

ET QUE le programme français ne soit pas offert en 1997 jusqu'à ce que le Barreau du Haut-Canada l'ait réexaminé dans sa totalité de concert avec les groupes francophones intéressés.

Résolution n^{o} 2

QU'IL SOIT RÉSOLU que les membres du Barreau du Haut-Canada soient autorisés à souscrire leur assurance responsabilité civile professionnelle auprès de l'assureur de leur choix et qu'ils ne soient pas obligés de la souscrire auprès de l'Assurance de responsabilité civile professionnelle des avocats.

Compétence et avenir de la profession

Deux nouveaux groupes de travail sont prêts à se mettre à l'oeuvre, l'un sur la compétence professionnelle, l'autre sur l'évolution de la profession, les enjeux et tendances (mondialisation, pluridisciplinarité, technologie) pour la profession et le Barreau (voir l'article au complet à la page 6).

Discipline

Le 3 avril 1997, le Conseil a pris des sanctions disciplinaires contre 15 avocats. Il a prononcé la radiation de M^{es} C.S. Godfrey et T.M. Kinnaird, autorisé à démissionner M^{e} F.B. Sussmann, prononcé la suspension des droits de M^{es} D.R. Adema, A.J. Bickerton, L.L. Boughner, A.M. Butler, H.H. Hacker, L.I. Herman, D.M. McOuat, M.J. Moberg, D.F. Morris, C.J. Publow et C.J. Wallace, et réprimandé M^{e} B.E.T. Derby. Voir la description détaillée des manquements et sanctions à la page 34.

Assurance de titres

L'évolution du droit immobilier, l'assurance de titres et le système TitlePlus ont conduit le Conseil à adopter une nouvelle règle de déontologie dans ce domaine, étant donné que les juristes seront appelés à fournir des conseils professionnels en assurance. (Voir l'article au complet à la page 9.) ■

Assermentations

Près de 1 000 avocats et avocates ont été reçus au Barreau de l'Ontario lors des cérémonies d'assermentation qui se sont tenues à London, Ottawa et Toronto. Un certain nombre de distinctions et prix sont décernés aux étudiants et étudiantes à ces occasions et, cette année, la trésorière, Me Susan Elliott a également eu l'honneur de décerner des doctorats en droit honorifiques à l'écrivaine et militante June Callwood et au ministre fédéral de la Justice Allan Rock.

L'AIDE JURIDIQUE

Extension des services en droit de la famille

LA RÉDUCTION DU TARIF et l'établissement de priorités en droit de la famille ont profondément touché la prestation des services. Le Comité de l'aide juridique a adopté trois nouvelles mesures propres à améliorer les services et à élargir l'accès aux certificats en matière familiale. Dès le 1er avril 1997, 5 000 certificats additionnels pourront être délivrés au cours de chacune des deux prochaines années. Ces mesures comportent aussi une allocation temps/matière additionnelle dans les affaires très complexes, l'accroissement de 100 % des fonds disponibles pour les augmentations discrétionnaires et l'inclusion de nombreux cas de seconde priorité (Catégorie II).

En droit de la famille, les cas difficiles pourront donner lieu à une allocation supplémentaire. Ainsi, en matière de garde, une tranche de 11,5 heures s'ajoutera aux allocations de base de 6,5 heures et de 11,5 heures. Accordée dans les cas très complexes, soit environ 10 % des causes familiales, sauf en matière de protection de l'enfance, cette allocation supplémentaire permettra de consacrer plus de temps à la préparation des causes et de fournir un meilleur service aux bénéficiaires.

L'aide juridique a donc doublé les fonds disponibles pour les augmentations discrétionnaires et couvre aujourd'hui la plupart des cas de la Catégorie II, y compris : la modification d'une ordonnance de garde (cas non urgents); les aliments en faveur du conjoint/des enfants (garde modifiée); l'exécution d'une ordonnance alimentaire (cas bien fondés); les premières demandes de droit de visite pour maintenir le lien parent/enfant; la conservation de biens en cas de dilapidation appréhendée (par ex., commerce d'un conjoint).

L'allocation additionnelle et les frais discrétionnaires visent tous les certificats délivrés après le 1er avril 1996, à l'exception des comptes finaux remis avant le 1er avril 1997.

La Commission invite la profession à venir discuter de l'avenir de l'Aide juridique à la réunion qui se tiendra le 28 avril 1997, de 19 h à 21 h, à la faculté de droit (salle Bennett, maison Flavelle) de l'Université de Toronto au 78, Queen's Park Crescent.

Critères d'admissibilité des avocats de service

Depuis le 1er avril 1997, l'Aide juridique applique à titre d'essai des critères d'admissibilité financière plus rigoureux visant certains services fournis par les avocats et avocates de service. La première phase de ce nouveau programme a été mise en oeuvre à Ottawa, Chatham, Sault Ste. Marie, Hamilton et Toronto (College Park et North York). Bien que limitant l'admissibilité, le Régime entend aider avant tout les plus démunis, la clientèle qui profite d'avantage de ses services.

Les critères ne devraient toucher qu'environ 15 % des services en matière criminelle et 25 % des services en droit de la famille. Les matières criminelles comprennent les enquêtes sur les questionnements, les plaidoyers de culpabilité, les prononcés de sentence et les représentations sur sentence à la suite de plaidoyers de culpabilité. En droit de la famille, les critères s'appliquent aux représentations sur motion, aux conférences préparatoires et aux procès, aux audiences de saisie-arrêt, aux audiences de justification/aliments, aux négociations et aux transactions.

Les services ne sont fournis qu'aux personnes assignées à comparaître ce jour-là. Celles qui ne sont pas admissibles doivent payer elles-mêmes leur avocat, ou encore assurer leur propre représentation. Les avocates et avocats de service les aideront, dans la mesure du possible, à obtenir un mandat privé ce jour-là.

Émission des chèques

La nouvelle méthode de comptabilité d'exercice, adoptée à la demande du Barreau, entraînera certains changements relativement à l'émission des chèques.

Les chèques seront encore émis le lundi, les dépôts directs ayant lieu le vendredi de la même semaine. Toutefois, on prévoit certaines exceptions à cause des nouvelles exigences de fin de mois. Les changements seront annoncés dans l'envoi immédiatement antérieur.

Sanctions disciplinaires

Me Rod Vanier, d'Ottawa, a accepté de rayer son nom de tous les tableaux d'aide juridique après qu'il eut facturé personnellement un client alors que ses services avaient été retenus par un certificat assorti

d'un privilège. Me Vanier a de plus convenu de facturer ses services au tarif de l'aide juridique, de considérer que son compte a été intégralement payé et de remettre le solde au bénéficiaire. Il versera 100 $ au Régime en frais d'administration pour éteindre le privilège.

Plafonnement des revenus

Les limites fixées aux comptes payés durant l'exercice s'appliquent de nouveau à compter du 1er avril 1997. Le début de l'exercice marque le début du calcul des honoraires versés, peu importe la date de réception des comptes. Les plafonds ne s'appliquent pas aux comptes présentés avant décembre 1995 en vertu de la règle des six mois.

Comptes "oubliés"

Le Régime exige maintenant que les comptes soient présentés dans les six mois de la fin du mandat. L'incapacité, notamment physique, pourra justifier la prorogation de ce délai, mais non la "négligence" des membres ou les difficultés administratives.

Fonctions de l'avocat de service

Dans les dispositions du Règlement où il est question des fonctions de l'avocat de service, le terme «doit» a valeur indicative et non impérative. L'avocat ou l'avocate de service devrait donc fournir les services requis par la situation du ou de la bénéficiaire, sous réserve des besoins des autres clients et du temps disponible. Il n'y a pas lieu de donner suite à des instructions extravagantes ou demandes vexatoires.

Du sang neuf au bureau provincial

Le personnel du bureau provincial s'est enrichi de deux nouveaux membres : Elaine Gamble, coordonnatrice des communications, et Keith Wilkins, coordonnateur des services à la clientèle. Mme Gamble, qui a de l'expérience dans les relations avec le public et les médias, se chargera des communications à l'intention du personnel, des juristes et des médias. Adressez-lui toutes vos questions concernant les relations publiques : (416) 204-4728.

Me Keith Wilkins a quitté la direction régionale d'Ottawa pour prendre ses nouvelles fonctions le 1er avril. Il aidera les directrices et directeurs régionaux à mettre en oeuvre les politiques du Régime. ■

ACTUALITÉ LÉGISLATIVE

Voici une sélection des projets de loi qui sont présentement débattus à l'assemblée législative.

Pr. loi 57 - Loi de 1996 sur l'amélioration du processus d'autorisation environnementale (Environnement et Énergie) [2e lecture : 30 septembre 1996].

Pr. loi 84 - Loi de 1996 sur la prévention et la protection contre l'incendie (Solliciteur général) [2e lecture : 24 février 1997].

Pr. loi 96 - Loi de 1996 sur la protection des locataires (Affaires municipales et Logement) [présenté le 21 novembre 1996].

Pr. loi 98 - Loi de 1996 sur les redevances d'aménagement (Affaires municipales et Logement) [2e lecture : 6 mars 1997].

Pr. loi 99 - Loi de 1996 portant réforme de la Loi sur les accidents du travail (Travail) [présenté le 26 novembre 1996].

Pr. loi 102 - Loi de 1996 sur la sécurité de la collectivité (Solliciteur général) [présenté le 12 décembre 1996].

Pr. loi 103 - Loi de 1996 sur la cité de Toronto (Affaires municipales et Logement) [2e lecture : 31 janvier 1997].

Pr. loi 104 - Loi de 1997 réduisant le nombre de conseils scolaires (Éducation] [2e lecture : 12 février 1997].

Pr. loi 105 - Loi de 1997 modifiant la Loi sur les services policiers (Solliciteur général) [2e lecture : 24 février 1997].

Pr. loi 106 - Loi de 1997 sur le financement équitable des municipalités (Finances) [2e lecture : 6 mars 1997].

Pr. loi 107 - Loi de 1997 sur l'amélioration des services d'eau et d'égout (Environnement et Énergie) [2e lecture : 24 février 1997].

Pr. loi 108 - Loi de 1997 simplifiant l'administration en ce qui a trait aux infractions provinciales (Procureur général) [2e lecture : 27 février 1997].

Pr. loi 109 - Loi de 1997 sur le contrôle local des bibliothèques publiques (Affaires civiques, Culture et Loisirs) [2e lecture : 5 mars 1997].

EN PRATIQUE

Quand peut-on sans risque se débarrasser de ses dossiers ?

QUESTION TRÈS DÉLICATE vous répondra le Service de consultation du Barreau, souvent interrogé à ce sujet. Selon l'alinéa 15(2) b) du Règlement 708 de la *Loi sur le Barreau*, lui-même assujetti aux dispositions de la *Loi de l'impôt sur le revenu*, les membres doivent conserver leurs livres comptables et registres de fiducie pendant six et dix ans respectivement. Pour ce qui est des dossiers-clients, la décision incombe entièrement à l'avocat.

Quels sont les critères ? Il est conseillé avant tout d'évaluer l'utilité future des documents et l'existence d'autres sources d'information (Bureau d'enregistrement des actes, tribunaux, etc.), ainsi que vos obligations découlant de la responsabilité civile professionnelle. La responsabilité de l'avocat pourrait demeurer entière à l'égard du titre si la cliente pour laquelle il s'est occupé de l'achat d'une maison en est toujours, à sa connaissance, propriétaire. Il y aurait lieu de conserver le dossier.

Prenons quelques exemples.

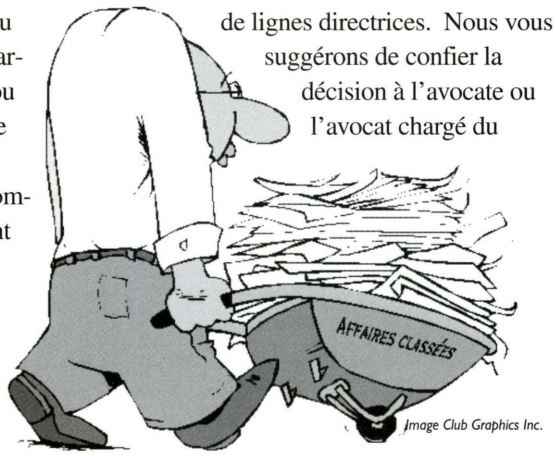
Dans le cas d'une succession prévoyant un roulement en faveur du conjoint ou le partage de l'actif successoral en nature, l'avocat aurait probablement à consulter son dossier pour déterminer le coût d'acquisition lors de l'aliénation des biens. En l'absence de roulement, de distribution en nature et de fiducie, le dossier pourrait être détruit au bout de six ans. À condition d'avoir respecté toutes les exigences de la *Loi de l'impôt sur le revenu*. De plus, il serait prudent de conserver un relevé vu que les biens reçus en héritage interviennent dans le calcul fort complexe du patrimoine familial et de son partage selon la *Loi sur le droit de la famille*.

De même, l'avocate pourrait se défaire d'un dossier six ans après la vente d'un terrain si elle sait *réellement* que les clients pour lesquels elle s'est occupée de l'achat ont vendu le terrain. Les rumeurs ou les changements d'adresse ne prouvent rien. Détruire le dossier d'achat pourrait laisser entendre que l'avocate s'est occupée de la vente ultérieure. Par ailleurs, selon le commentaire 8(l) de la Règle 2 du *Code de déontologie*, les membres sont tenus de conserver toutes les notes sur la recherche de titre, par exemple dans un registre central.

D'après la cause *Consumers Glass Co.*

Ltd. c. Foundation Co. of Canada Ltd., (1985) 51 O.R. (2d), 385 (C.A), les délais de prescription applicables en cas de négligence professionnelle relèvent de la responsabilité délictuelle et non du droit des contrats : ils courent à partir du moment où le client a pris ou aurait raisonnablement dû prendre connaissance d'un acte ou d'une omission ayant entraîné un fait dommageable. Force serait alors, étant donné les règles de preuve en responsabilité professionnelle, de conserver presque indéfiniment un grand nombre de dossiers.

Certains membres ont pris l'habitude de remettre à leurs clients les dossiers classés. C'est une pratique discutable parce qu'elle prive l'avocat ou l'avocate de documentation en cas de questions ou de contestation ultérieures. Certaines pièces du dossier, telles les notes personnelles, pourraient aussi prêter à controverse.



Chaque avocat ou cabinet doit donc décider au cas par cas. Il n'est pas nécessaire de demander l'autorisation du Barreau, mais il serait souhaitable de se doter de lignes directrices. Nous vous suggérons de confier la décision à l'avocate ou l'avocat chargé du dossier et nous vous rappelons que, bien souvent, des pièces du dossier appartiennent aux clients et doivent leur être remis. Voir, par exemple, la cause *Aggio c. Rosenberg*, 24 C.P.C., 7, pour bien différencier ce qui appartient à l'avocat de ce qui appartient au client.

Les documents à détruire doivent être déchiquetés ou incinérés pour protéger les communications entre l'avocat et le client, qu'il s'agisse de documents officiels ou de toute feuille de papier pouvant contenir des renseignements confidentiels (ébauches de lettres et de testaments, correspondance, etc.). Imaginez votre embarras, ou celui de votre cliente, si une lettre s'égarait et tombait dans les mains d'une personne susceptible de lui nuire ou voulant faire le procès de méthodes apparemment imprudentes. Ces dernières années, la soi-disant négligence des médecins a déjà fait la une des journaux.

Une fois le dossier archivé en lieu sûr, il est recommandé de se fixer une date, à inscrire dans un calendrier ou un système de rappel, pour en reconsidérer la destruction éventuelle. Et pourquoi ne pas microfilmer les documents importants ? ■

CHRONIQUE TERMINOLOGIQUE

Les éléments constitutifs d'un texte juridique

LA NOMENCLATURE des éléments constitutifs de textes juridiques varie selon qu'il s'agit d'un acte privé ou d'un texte législatif. Dans chacun des deux cas, l'on constate certains abus de langue.

Commençons par les textes juridiques privés, comme les contrats. L'élément fondamental du contrat est la clause du contrat et, à la limite, la stipulation du contrat. Le mot «clause» est suffisamment passe-partout pour s'employer sans trop de risques. Le terme «stipulation», lui, possède un sens un peu plus spécialisé et mérite plus d'attention.

En effet, la stipulation dans un contrat est en somme une clause expresse, ajoutée parfois à la demande de l'une des parties au contrat. Il en va ainsi, par exemple, des contrats d'adhésion entre consommateurs et commerçants. Le contrat étant pré-imprimé, le consommateur appose souvent sa signature au bas du contrat en acceptant telles quelles les clauses pré-imprimées. S'il insiste pour modifier une clause particulière du contrat ou pour en ajouter une, on dira qu'il s'agit d'une stipulation de sa part.

En matière de contrats, il faut redoubler de prudence lorsqu'on emploie le mot «terme». En effet, il ne s'emploie pas généralement au singulier pour désigner la clause d'un contrat et ne correspond donc pas au mot *term* en anglais. Au singulier, le mot «terme» désigne plutôt l'échéance du contrat. Le terme d'un contrat, c'est donc sa limite dans le temps. On dit ainsi d'un contrat qu'il vient à terme lorsque sa durée de validité normale expire. Le contraste entre le sens de «clause» et celui de «terme» employé au singulier ressort bien dans l'expression «clause de déchéance du terme» qui correspond à l'expression anglaise *acceleration clause*.

Employé au pluriel, «termes» peut avoir le sens de clauses. Néanmoins, il est recommandé d'employer le mot «modalités» pour rendre le syntagme *terms and conditions* d'un contrat, ou encore d'employer tout simplement le mot «conditions» pourvu que, en contexte, il n'y ait pas de risque de confusion possible entre les conditions et les garanties du contrat.

Passons aux textes législatifs. La maxime «Le législateur dispose et les parties stipulent» est utile pour se rappeler de ne pas employer le mot «stipulation» pour désigner l'élément constitutif fondamental d'une loi ou d'un règlement : la disposition. Même s'il est, à la limite, correct d'employer le mot «disposition» à l'égard d'un contrat, l'inverse n'est pas vrai. Le substantif «stipulation» et le verbe correspondant «stipuler» sont réservés aux actes juridiques privés. On dira donc qu'une loi énonce, prévoit ou dispose main non qu'elle stipule quelque chose.

En outre, si le terme «disposition» possède un sens très large, il vaut mieux, en bon français juridique, préciser le genre de disposition visée. En anglais, on ne se formalise pas trop : on emploie souvent le mot *section* à toutes les sauces. En français, il convient de parler, dans l'ordre décroissant des dispositions d'un texte législatif, d'article, de paragraphe, d'alinéa,

de sous-alinéa et ainsi de suite. On y gagne en précision dans les renvois et les citations. Les lecteurs qui veulent en savoir plus auront avantage à consulter à ce sujet le **Guide canadien de rédaction législative française** publié par le gouvernement fédéral. Ils y trouveront une explication détaillée de la nomenclature des éléments constitutifs d'un texte législatif.

Dans une chronique subséquente, nous aborderons la nomenclature des macro-éléments d'un texte juridique : les parties, les sections, les clauses liminaires, le préambule, les attendus, le dispositif, etc. ■

Source : Centre de traduction et de documentation juridiques, Ottawa.

TRIBUNE

Commentaire d'arrêt : *Trewin* c. *Jones*

Me Céline T. Allard

LA COUR D'APPEL de l'Ontario a récemment été appelée à se prononcer sur la portée du paragraphe 17(4) de la *Loi sur le divorce* en matière de modification d'un jugement octroyant à une épouse une pension alimentaire d'une durée déterminée par la réalisation d'un événement précis.

Il est intéressant de noter qu'il s'agit là de la première cause antérieure à *Moge c. Moge* que la Cour d'appel doit examiner à la lumière des nouveaux principes énoncés par la Cour Suprême du Canada.

Les faits de l'arrêt *Trewin c. Jones* sont simples. En décembre 1994, l'épouse présentait une requête pour la prolongation de la durée et l'augmentation du montant de l'ordonnance alimentaire accordée par le juge MacDonald à la suite d'un procès tenu en mars 1992.

Au moment de l'audition de la requête en modification, l'épouse était âgée de 51 ans. Son revenu annuel était de 13 000 $ provenant d'intérêts générés par l'investissement de la somme reçue suite à l'égalisation des biens familiaux nets.

Il s'agissait essentiellement d'un mariage «traditionnel»: l'épouse, une infirmière autorisée, avait consacré la majeure partie des 24 années de leur vie commune aux tâches domestiques et aux soins de leurs deux enfants. Une fois les enfants aux études, l'épouse avait travaillé à temps partiel comme infirmière-réceptionniste et suivi certains cours universitaires à temps partiel. De son côté, l'époux avait eu le loisir de compléter un doctorat pendant le mariage et jouissait d'un emploi assuré et d'un revenu annuel de 74 000 $.

Sur la question des aliments, le juge MacDonald a émis certaines réserves quant à la décision de l'épouse de poursuivre des études dans le domaine de l'éducation alors qu'un recyclage dans le domaine des soins de la santé semblait plus indiqué. Le juge de première instance a toutefois reconnu que l'épouse était en droit de poursuivre son objectif en vue d'un changement de carrière. Toutefois, il a jugé que l'épouse serait financièrement autonome à partir du 1er janvier 1995, date à laquelle l'obligation alimentaire de l'époux prendrait fin.

> La Cour d'appel de l'Ontario reconnaît au conjoint le droit de changer de carrière même s'il ne s'agit pas toujours de la décision économique la plus judicieuse.

Cette approche restrictive, qui se fonde sur la notion de l'indépendance économique comme critère fondamental en matière d'aliments pour conjoints, adoptée par le juge du procès, a été suivie par le juge Cosgrove qui présidait à l'audition de la requête. Malgré l'évolution du droit actuel en matière d'aliments, le juge Cosgrove a rejeté la requête en modification de l'épouse au motif qu'il n'existait aucun changement dans la situation des parties tel que prévu par le par. 17(4) de la *Loi sur le divorce.*

Les attentes louables exprimées par le juge MacDonald ne s'étaient tout simplement pas matérialisées: non seulement l'épouse était-elle incapable de se trouver un emploi comme enseignante ou infirmière mais elle en était réduite à devoir également empiéter sur son capital pour subvenir à ses modestes besoins.

Le procureur de l'époux a tenté sans succès de convaincre le tribunal d'appel qu'il n'existait aucun changement puisque le but visé par l'ordonnance de durée déterminée était de subvenir aux besoins de l'épouse pendant la période de recyclage nécessaire.

La Cour d'appel a statué qu'une telle interprétation de la décision du juge MacDonald était tout à fait contraire à l'indépendance économique visée à l'al. 15(7)d) de la *Loi sur le divorce.* La mise en garde comprise dans l'expression «dans la mesure du possible» vise à décourager les attentes irréalistes des parties et des tribunaux dans le cas de conjoints qui ont quitté le marché du travail pendant de nombreuses années.

Un des aspects importants du jugement de la Cour d'appel est le commentaire, en *obiter*, qui porte sur la reconnaissance du droit d'un conjoint de faire, lors de l'échec du mariage, un nouveau choix de carrière selon ses aspirations, même s'il ne s'agit pas toujours de la décision la plus judicieuse sur le plan économique. L'estime de soi et la satisfaction professionnelle du conjoint sont des éléments qui se doivent d'être considérés dans l'analyse de l'objectif d'indépendance économique.

La Cour d'appel de l'Ontario a également été saisie d'un pourvoi en vertu du par. 17(10) de la *Loi sur le divorce.* La Cour a pris le tout en délibéré et sa décision est attendue avec impatience.

Me Céline T. Allard exerce le droit de la famille à Ottawa et se spécialise aussi en médiation et arbitrage.

PERSPECTIVE

Legal trends suggest tough road ahead for law firms

BENCHERS AND LAW society officials got a glimpse of the future of legal practice earlier this month at a presentation by law firm consultant Ward Bower.

Bower, a partner at Altman, Weil, Pensa Inc. in Newton Square, Penn., has studied economic, demographic and marketplace trends that all indicate fundamental changes are ahead for the profession.

A "mature market" for legal services is emerging that will be driven on the one hand by consolidation and on the other by expanding boutique firms. The big will get bigger and the small will remain plentiful. But, unlike many legal pundits, Bower still sees a place for mid-size firms.

"The idea that mid-size firms are inevitably facing a bleak future is not the case. If a mid-size firm is focused on core competencies, where it can compete with anybody in the marketplace and it is well managed, it can be equally successful if not more so than large firms."

Regardless of firm size, the overall situation is not likely to get better. "We have in many segments of the marketplace, an over supply of legal services," said Bower, whose firm provides management advice to law firms around the world.

Within the next three years, there will be one million licensed lawyers in the U.S. practising law. The American persons per lawyer ratio is about 250:1, down from 400:1 a decade ago. In Washington, D.C. the ratio drops to a staggering one lawyer for every 25 residents.

As well, the profession is younger, with the average age below 40. Women make up about 23 per cent of licensed lawyers and more than 50 per cent of law school enrollment.

The emergence in some countries of multi-disciplinary partnerships, or MDPs, in which lawyers are partners with non-lawyers is another market issue the profession in North America will likely have to deal with. The "big six" accounting firms are actively developing their legal service capabilities, he said.

Ward Bower
Lawyer and law firm management consultant

Mature marketplace

Bower described seven characteristics of a mature marketplace which can be gleaned from industries such as accounting and financial institutions, which have already seen their markets mature. The seven are:

- *Consolidation.* Expect to see more mergers. There are now three firms in the world that boast more than 1,000 lawyers. The leader, Baker & McKenzie, recently added its 2,000th lawyer;
- *Brand Name Recognition.* While law firms, unlike their accounting cousins, are not yet household names, sophisticated business circles know who the leading firms are.
- *Price competition.* Requests for proposals, "beauty contests," competitive bids and demands by clients for lower legal bills are becoming more common.
- *Client Sophistication.* Today's purchaser of legal services in the corporate world is more likely to be a skilled in-house lawyer as opposed to a lay business executive.
- *Marketing.* In mature markets, service providers spend between three and seven per cent of revenues on client promotion.
- *Shakeout.* Firms fail, leading to more consolidation and the growth of boutiques.
- *Incursion.* The marketplace is vulnerable to other service providers entering the fray in areas like wills and estate, tax law and litigation. As well, there is growth in the paralegal industry.

Surviving in a mature marketplace means lawyers in the future will have to understand their costs and develop creative billing strategies, such as fixed fees. Such fees must be designed to enhance a client's bottom line while at the same time be a financial benefit to partners.

"Smart law firms are offering those kind of alternatives. There are enough inefficiencies in the way that legal services are delivered both in the United

States and Canada that it's possible to create a win-win situation, where on a per matter basis the cost to the client is less and the profit margin for the law firm is greater."

Bower cited surveys conducted by his firm that showed between 1985-95, revenue per lawyer at U.S. law firms increased by 60 per cent. Associate compensation was up about 60 per cent and partnership compensation was up about 58 per cent, "which is good until you consider the Consumer Price Index was up over 50 per cent over the same period."

Also on the down side of the ledger, law firm overhead increased 80 per cent. "The end result is that partners in U.S. firms are working harder than ever to barely stay even in terms of real disposable income.

"You don't have to be a Nobel Prize economist to figure out what's going to happen sometime in the future if these kind of trends persist."

Billable hours are "finite resources. There are only 8,760 hours in a year. A lot of firms hit their limit in terms of billable hours in the early 1990s," he said, prompting the need to find alternative billing methods.

In addition, clients are more thrifty and sophisticated when it comes to reviewing their legal bills. In the U.S., companies that audit legal bills on a contingency basis have found a niche in the market. Clients now ask who is doing the work and they question the number of hours spent on a file. The audit firms will go through a bill line by line and cross reference it to the file and time records to look for discrepancies, which "are typically resolved in favour of the client rather than the law firm."

This has resulted in billing reductions, writedowns and in extreme cases, mail fraud charges, because bills are sent through the post. "There are quite a few U.S. lawyers in jail ... on mail fraud charges as a result of legal bills that misrepresented time. Some people are partners who didn't even work on matters."

Bower said one "big problem" he sees in Canadian firms is that "there is an awful lot of junior work being done by partners, who are attempting to do it at partner billing rates."

Clients are "getting smart enough" to know that some tasks do not require a lawyer with 30 years of experience but can be accomplished by a lawyer with five years of experience. "They're not willing to pay the differential in rates.

"The smart firms are getting this work to the proper level and are placing other firms at a competitive disadvantage. Clients will always go with the firm that is more efficient."

Beside rooting out inefficiencies, lawyers must become more business-like in the way they manage their practice. For example, outbound referrals are a law firm's "biggest asset" and should be managed in a way that maximizes the referral. Outbound referrals to other firms should be monitored and compared with reciprocal inbound referrals to ensure that the firm is getting "the expected consideration" for their outbound referrals. "They should be directed in a way as to most likely develop reciprocal inbound referrals," Bower advised.

Firms must also look at their marketing budgets and spend these dollars more wisely. He said it is "just stupid" to allocate a marketing budget to every partner. "There's some people you don't want hanging out with clients." ■

Quebec bar considers future scenarios and professional image

THE BARREAU DU QUEBEC is warning its 17,000 members they must embrace a culture of change, marked by the adoption of information technology and a more entrepreneurial approach to their practices, in order to cope with the upheaval in their operating environment.

The report of the Barreau's Committee on the Future of the Profession, entitled "The Practice of Law in Quebec and the Future of the Profession," was unanimously approved by the organization's governors last June. The committee was formed in June 1994 to examine the short-term and long-term trends in the practice of law, establish objectives for the year 2000 and identify actions required to achieve those objectives.

Barreau spokesman Leon Bedard acknowledges that the report offers a "vision" for the profession rather than a specific blueprint for its overhaul. "It doesn't provide ready-to-wear solutions. It attempts to promote a change in the outlook of lawyers. Law must be considered as a business rather than a liberal profession where you sit in your office and wait for clients to come to you."

Perhaps because of the generality of its recommendations, the report has had little impact thus far. While the Barreau has committed $150,000 to publicize the report and has made it available without charge to members, only 400 requests for it have been received to date. (Another 1,000 copies have been distributed to members of the Barreau's committees.)

The report outlines the vulnerability of existing and future practitioners to a rapidly changing set of social, political, economic and technological factors.

In assessing the social climate, it notes that the "greying" of the Quebec population and the increasing impoverishment of a segment of society will significantly impact the legal practice. While the poorest of the poor may still obtain legal aid, a growing segment of Quebeckers are slipping below the poverty line yet remain just above the income level eligible for legal aid.

In the political sphere, the rapidly ris-

ing cost of the judicial system has created pressures on the Quebec government to revise the billing system. In future, lawyers paid from public funds may receive a lump sum for a set of services performed rather than a separate payment for each service. Such a revised billing system would be designed to prod lawyers into becoming more efficient.

In the technology sphere, computerization makes it possible to deploy new management styles, organizational approaches and work methods in legal services, thus raising productivity. Yet a 1994 study found that only 54 per cent of Quebec lawyers use a computer (although the number rises to 68 per cent among those under 30 years). Moreover, even when firms do use computer software, it is mainly for word processing rather than for legal research.

Three scenarios

In discussing possible responses to these dynamics, the report considers three potential scenarios. In the "status quo scenario," the Barreau does not intervene. The total number of lawyers continues to grow despite lower demand and the erosion of their sphere of activity to non-lawyers, such as defendants' rights collectives, accountants and notaries, likely resulting in a loss of income for many lawyers. (Barristers, or *avocats*, and solicitors, or *notaires*, are separate professions in Quebec. The Chambres des Notaires has approximately 4,000 members.)

In the "Albanian scenario," the Barreau seeks ways to stabilize competition, both outside and within the profession. It tries to prevent non-lawyers from poaching on the profession's turf and sets quotas for the entry of new lawyers. (About 300 to 400 new lawyers enter the Quebec market annually.) But enforcement against non-lawyers would not bear fruit for several years, while quotas would discriminate against the younger generation and further hurt the profession's image among the public.

The report opts instead for the "Singapore scenario," in which the profession adopts a proactive attitude toward change. For example, the profession would not only assimilate the various information technologies; it would also adopt new work methods that permit rapid production at low cost without sacrificing quality in legal services. It would be crucial, in this scenario, to raise the skill level of lawyers and improve the profession's image.

To spur implementation of the Singapore scenario, the report offers a plan of action for both the Barreau and for the profession. The report assigns the Barreau a leadership role in fostering the emergence of a new culture of openness within the profession. This means establishing a process that leads to consensus among the majority of lawyers.

The report makes clear that lawyers themselves must be agents of change – while acknowledging that their ability to embrace the new culture will depend on the tools made available to them, both through their university training and through continuing education.

A major focus of continuing education would be to give lawyers the basic knowledge necessary to evaluate market potential. They need to know what economic sectors are lucrative for the practise of law, and have a sound knowledge of the emerging sectors. They also need to grasp the globalization of law and the increasing importance of non-traditional services, such as alternative dispute resolution.

The report urges lawyers to improve their public image, stating flatly that "people have no confidence in lawyers." The new approach it urges for lawyers would entail not merely increasing the demand for their services but also providing better quality at a more affordable price. This approach could open a significant new market: the middle class and small businesses.

To persuade the public of the potential usefulness of lawyers, the Barreau has run a $450,000 advertising campaign, financed by a $40 levy per member. (The levy also funded the $150,000 publicity campaign for the committee report). The television ad blitz included three 30-second spots, appearing a total of 486 times on the four major French-language networks in January and February of this year. The Barreau also ran six print ads in the Montreal Gazette.

While the campaign's theme – consulting a lawyer before problems become extremely serious – has been a staple of the Barreau's ads in previous years, the new spots had a more emotional edge. Instead of focusing on legal services in the abstract, the commercials had actors speak directly to the audience in an attempt to involve them on a more human level.

> Raising lawyers' skill levels and improving the profession's image is crucial

One spot focused on family law, another on commercial law, and the third on contracts. In the family-law spot, a man sitting on a couch is bidding *adieu* to his soon-to-be ex-wife. Saying that she's the one who wished to leave, he insists that he's keeping the house and all the contents. He pushes a packed suitcase towards his wife, telling her to find refuge at her mother's. The message: if you're not careful, this could happen to you. If your marriage is crumbling, better to consult a lawyer before it's all over rather than after.

The Barreau has commissioned an independent survey to gauge viewer reaction to the campaign. The poll (also covered by the $40 levy), asked how many viewers saw the ads and, among those who did, whether they gave them new information on when to seek legal advice – and whether they would be more likely to consult a lawyer than a notary, accountant or other non-lawyer. The results are not available yet. ■

Library became "great" during the 1800's

THE PRESENT-DAY GREAT LIBRARY – with its inspiring reading room, soothing American Room, intriguing converted court rooms and 120,000 volumes – is the third incarnation of the Law Society's library at Osgoode Hall.

As early as 1800, a mere three years after its creation, the Law Society was considering the acquisition of a library. Treasurer William Warren Baldwin expressed the need for a building to "... transact business, collect and deposit a library and to accommodate the youth studying for the profession." The library was to be a repository of knowledge, but it was also to serve the mandate of the Society in supporting the administration of justice.

The first wing of Osgoode Hall, started in 1829, was designed in the austere Regency style. It was simple, serious and solid: just the image that the young Law Society wanted to convey to visitors. The library occupied a small room on the ground floor.

In 1843, troops brought in to quell any leftover belligerence from Upper Canadian rebels left their accommodations at Osgoode Hall and the Law Society accepted an offer from the government to provide a new home for the courts in exchange for financial assistance to repair the building. Along with introducing a large library on the second floor of the centre range, the project renovated the existing wings of the building and added a wing on the west side. By then, a more confident Law Society, firmly entrenched as the legal profession's governing body, traded the simplicity of Regency for an affluent Palladian identity.

Repeated pleas for better accommodation for the courts soon led the Law Society to start building again. The building campaign of 1857-60 altered the west wing, gutted and rebuilt the centre wing and extended it northward. The Great Library that we know today, along with the current façade and the main entrance hall (the Rotunda), date from that period. The renovations and additions reaffirmed the architectural prominence of the building.

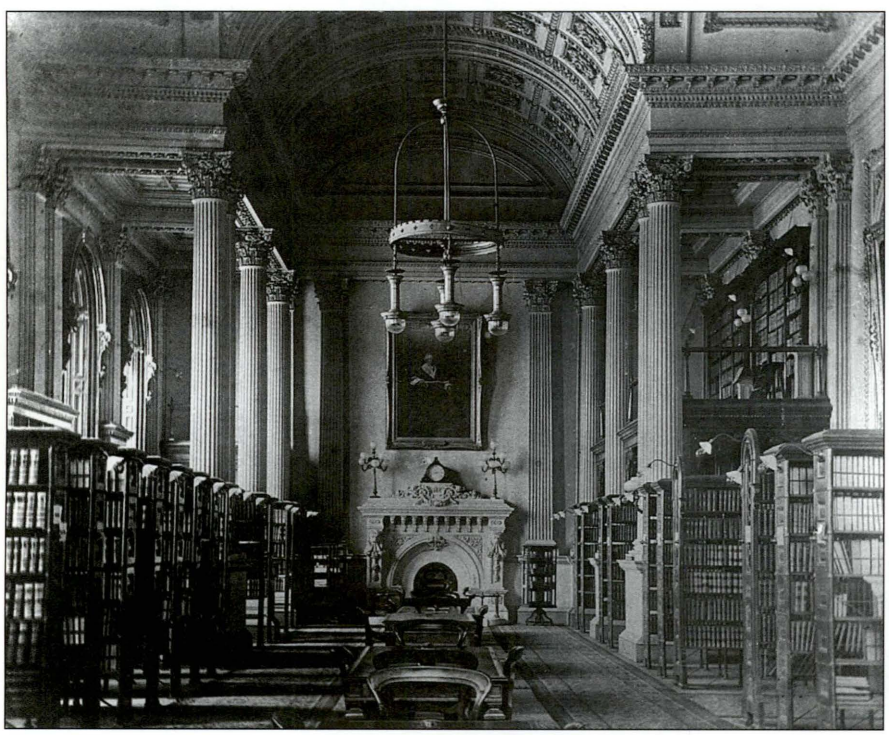
Detail of the library columns

The luxuriant acanthus leaves and helices of the capitals of the Library columns contrast with the restrained Ionic columns in the Rotunda.

(Photographer Genevieve Tait)

The new library was so impressive that Henry Scadding, rector of one of the largest churches in Toronto and one of the city's earliest historians, commented in 1873 that the library must "...independently of its contents, tend to create a love of legal study and research." The pomp and the proportions of the room made it ideal for ceremonial occasions and, over the years, balls, banquets and funeral processions have periodically eclipsed its scholarly functions.

Perhaps the grandest of these gatherings was organized to celebrate the completion of the building expansion itself. On September 8, 1860, the Prince of Wales, the future King Edward VII, was the guest of honour at a ball which brought a thousand people to Osgoode Hall. For the occasion, both the outside and the inside of the building were lit with tiny rows of gas jets. Flags and flowers completed the decor. After the addresses, the Prince proceeded to the library where he was made an honorary member of the Law Society. ■



Great Library [1890-94]

Very little has changed in the fabric of the Library in 140 years. The incandescent lights appeared in 1890 to complement the existing gas lighting. Arc lights had been tried earlier, but found unsatisfactory. The gasolier hanging from the dome was taken down in 1894.

(LSUC Archives, Photograph Collection, 994.126)

This article is based in part on research notes compiled by Karen Cohen for an upcoming display on the Great Library.

Lawyers becoming judges: law on a different plane

PROBABLY EVERY LAWYER has given at least passing thought to the idea of being elevated to the bench, an appointment regarded, both inside and outside the profession, as the ideal promotion for an ambitious and industrious practitioner.

A judge in Canada enjoys more than job security and financial independence; the position also brings social status and professional prestige. It is no exaggeration to call Canada's judiciary a meritorious nobility, a noteworthy distinction in a country devoid of the feudal variety. Judges tower above politicians, business people, academics, military officers, artists and, of course, lawyers. Some ambassadors might enjoy as much respect, but they're all abroad. No, a lawyer can't be blamed for wanting to become a judge. Most important, only a lawyer *can* become one.

Unfortunately, this job qualification loses significance when one looks at the math: there are approximately 1,000 federally appointed judges in Canada and about half that many again picked by the provinces, for a total of around 2,500. Canada has more than 65,000 lawyers, so the ratio to judicial positions is greater than 25:1. A surge in vacancies is not likely. Judges are being created at an earlier age and have longer to go to retirement; as well, observers foresee there will be limited need to increase their numbers, given the introduction of alternatives to court combat, such as mediation.

The fact remains that whatever the number of judicial vacancies, they will be filled by lawyers, and it is this prerequisite that leads many to believe that a judgeship is a natural step up for a lawyer, similar to moving from department manager to president; same business, more responsibility. Actually, it's more like putting an air traffic controller in the cockpit of a jumbo jet; same business, entirely different work. This comes as a surprise to most judges and it is something they cannot adequately prepare for, no matter how long they apprentice as lawyers.

This doesn't mean lawyers are ill-advised to yearn for judicial appointments. Flying a big plane can be exhilarating after years in the control tower; it's just a matter of figuring out those mysterious screens and switches. Happily for judges, and for the public which depends so much on them, they appear to find much satisfaction in their new jobs, once they settle in, because they feel they are making a genuine contribution to society.

Surprisingly, this satisfaction has not been eroded in the past fifteen years by the increased attention raised by the *Charter of Rights and Freedoms*. The Charter's need for judicial elucidation has not only made more challenges for judges it's nudged them into greater public prominence. Decisions affect more than the person in the dock, and with greater freedom of expression protected by the Charter judges find themselves criticized frequently by interest groups and the press. From appointment to demeanor to decisions, every stage of a judge's career glares in the harsh light cast by the Charter's prism. Judges have shown themselves to be adaptable, but the world they inhabit is beyond the imagination of the public, the politicians and the lawyers.

> "Judgitis" is the belief that orders made outside the court will be obeyed

These are some of the surprises a new judge may encounter:

- As a lawyer little or no time was spent in court, now almost all of it is.
- There's a lot more work, but more can be accomplished because of fewer files and fewer interruptions.
- While a resolute outlook and a narrow focus were useful in law practice, flexibility and a broad focus work better now.
- Deportment is a persistent worry, even after work, necessitating isolation from former colleagues and much of the non-legal community; fraternization with other judges is permitted.

Prof. Ian Greene, a York University political scientist who has studied judges from both a personal and an institutional standpoint, says isolation is one of their worst occupational hazards. It comes as a direct consequence of the aloofness judges feel they must maintain to feel and be seen as independent, a utilitarian imperative for the judiciary.

For the book *Judges and Judging,* Greene and co-author Peter McCormick surveyed judges in Ontario and Alberta and found 70 per cent felt isolation to be a circumstance of their professional aloofness; 40 per cent said this isolation was significant and affected their families as well.

Another occupational hazard Greene discovered is what he calls *judgitis*, "a disease that begins to set in after judges discover they can make orders in the courtroom and get obeyed." *Judgitis*, according to Greene, is the belief they will be similarly obeyed outside the courtroom – a belief that can cause friction with court staff and families. "They do this without realizing it and feel bad when it's pointed out," he says.

Another transition for judges is learning to listen and not intervene in the arguments before them. "This can be frustrating," Greene says, "especially if a judge sees a lawyer is not properly representing a client or is pleading a hopeless case."

If the judge is someone who previously relished the adversarial environment of the courtroom, ordinary adjudication may prove to be somewhat humdrum as well as frustrating. Keeping out of the fray will be difficult, at first. And if the judge had a penchant in practice for discussing interesting or difficult cases with colleagues, another form of isolation will be encountered: a judge primarily works alone when making a decision.

The work, however, does have some redeeming elements. There is, for example, the luxury of being able to focus only on the trial, rather than having innumerable files going at once and switching from one case to another with every appointment or telephone call. In fact the biggest difference a new judge may discover is a tidier desk with a telephone that is usually silent.

Although judicial independence is vigilantly protected by judges because they know it is fundamental to their success, it can be severely undermined in the body politic by the appointment process, over which they have no control. It is doubtlessly a testament to this vigilance and the quality of our judicial incumbents that political patronage has not become a cause célèbre, although it is gnawing source of controversy. A dearth of corruption and scandal among judges has deprived the issue of political animus. Only in the 1984 federal election debate, when Brian Mulroney bludgeoned John Turner over six judicial patronage appointments, did the issue receive wide notice. Nevertheless, a study by Professors Peter Russell and Jacob Ziegel of the University of Toronto found "only marginal" improvements during Mulroney's first term in office. "One hundred and eight appointees, just under half the total number (47.4 per cent), had a known political association with the Conservative Party," they wrote. For its second term the government introduced permanent screening committees across Canada and an application system. The professors have yet to complete their study of these innovations, but Ziegel doesn't expect big changes. Nor does he anticipate improvements will be found under the Liberals. "It's most unfortunate, but patronage remains a consideration," he says. Ziegel would agree with most other observers that political patronage is practically unavoidable so long as all reform stops short of eliminating the minister's office (either federal or provincial) from the process. What various reforms have managed to achieve, however, is the recruitment of good candidates and the sifting out of bad ones.

Ontario's system for recruiting and screening candidates for provincial court appointments, created in 1988, has been widely viewed as exemplary, even in the matter of patronage. Recently, however, Attorney General Charles Harnick has been asking for longer lists from the province's judicial assessment committee, presumably to give him more latitude. His actions have inspired Paul Copeland, a lawyer-member of the committee and a Law Society bencher, to warn that the province is savaging its strategy to have independent judges appointed strictly on the basis of merit. The committee's work is becoming "almost meaningless," he said. Although we may be witnessing a restoration of patronage, the committee's screening function at least eliminates the risk of appointing incapable people.

There are defenders of patronage who argue that holding political allegiance shouldn't be an obstacle to becoming a judge, that there is no evidence it impairs a person's judgment, that in fact political experience can be beneficial on the bench; and with progressive selection procedures which can certify the judiciary's integrity no one should worry too much about patronage.

Many political scientists, lawyers and law professors see the problem as something that goes beyond day-to-day performance to embody a general perception of the justice system. Prof. Martin L. Friedland of the University of Toronto law faculty addressed this idea in his 1995 report for the Canadian Judicial Council on independence and accountability. He said an appointment that rewards political service may be seen as compromising a judge's independence because an obligation to the government has been created. That perception damages public confidence in the judiciary and makes a judge's life more difficult. Most experts feel the judiciary and the public deserve better. ■

Warning signs?

By Marcel Strigberger

BEING A LAWYER, it does not sit well with me to see companies trying to wiggle out of legal responsibilities. I abhor those "We are not responsible" signs. It was therefore with some trepidation that I recently went on my first ever ski trip.

I pulled into the parking lot of the Winter Wonderland Can't Help But Have a Good Time Valley Ski Centre. I observed a sign reading, "Not responsible for damage to cars." I mentioned it to my wife and she said, "You're the only person who ever notices these. It's only a sign."

Only a sign? You don't say that to a lawyer. That's like telling a bull, "Hey, it's only a red cape."

We then went inside to rent equipment. The place required you to sign a form containing a large waiver in red that read "The ticket holder agrees that the centre is not responsible for any loss, injury, death or other inconveniences. HOWEVER CAUSED. If you don't like it you can turn around and make that two-hour trip back to Toronto and have your kids chew your head off in the car."

No, not the kids ordeal. I realized this place had me over a barrel.

Fifteen minutes later I headed out to the slopes after figuring out how to get my skis on.

There were several runs and it was not too hard to deduce their degree of toughness from their names. It did not take an Olympic downhiller to conclude that amateurs had best avoid slopes such as Matterhorn Maniac or Tyrolian Devil's Drop. I headed straight for Pampers Playhill.

As I queued up for the chairlift, (yes, it did require a lift to get up even there) I caught another notice nearby reading "Do not ride this conveyance if you ever contemplate suing us for stalls, falls, or electric shock. No insurance. Have a nice day."

When I got to my chair, an attendant made me initial a form which acknowledged that I saw the sign. He must have seen me pulling my toque over my eyes.

We arrived at the summit 15 seconds

later. Okay, so it wasn't Mont Blanc. I aimed myself in a downward direction and off I went. I took a spill right after bellowing my "Geronimo".

As I tried to stand up, a bevy of assistants in orange outfits ran over to my aid. I told one orange lady I was okay but a bit shaken up. She whipped out a form asking me to initial line 14 which read, "Notwithstanding that I have just taken a spill, I feel fine, even better than before."

I next expected a St. Bernard to attend and offer me some brandy, (after signing a waiver for him of course).

But the dog did not arrive and so I inched my way off the hill and headed to the cafeteria for some hot chocolate. As I paid the cashier she pointed to the placard on the wall which stated "Food poisoning is a known risk of eating. But it's not our risk."

I thought about that lady in New Mexico who successfully sued McDonald's for thousands for burns suffered after spilling hot coffee on herself while driving her car. I realized in this place you might have trouble getting a loonie even if the owner turned out to be another Lizzy Borden who went around whacking patrons on the head with a skiboard.

At the end of the day I appreciated that this trip had been a total success; I got to the parking lot and my car was still there.

All I had to do now was find my way to the main highway. I asked the parking lot attendant. He gave some directions and lifted the gate after I acknowledged to him in writing that he was not responsible if he was mistaken. ■

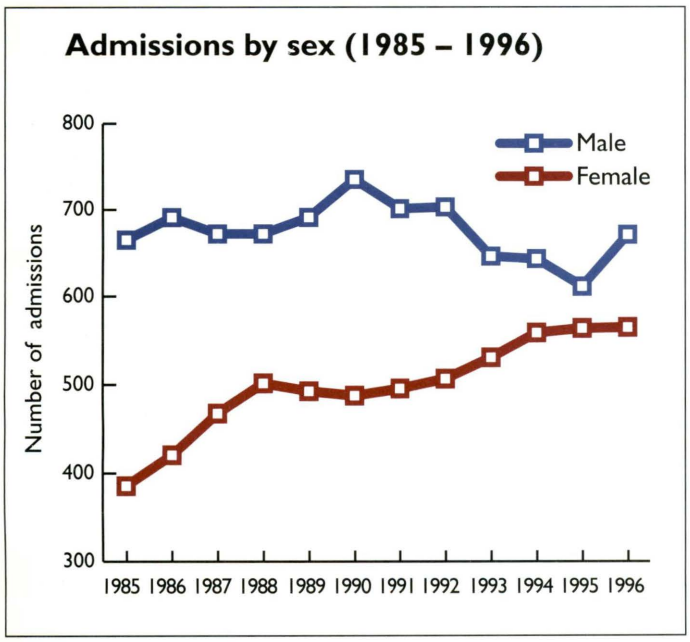
Mr. Strigberger is a Toronto lawyer and author of the recently published book Birth, Death and Other Trivialities.

MEMBERSHIP

1997 Call to the bar

FOUR SPECIAL CONVOCATIONS were held this past February to call almost 1,000 new Ontario lawyers to the bar. In Ottawa, 144 new calls were sworn in at the National Arts Centre on February 19th. Author Christopher Moore, whose newest book chronicles the history of the Law Society, was the keynote speaker. In Toronto on February 21st. 773 new lawyers were sworn in at two ceremonies at Roy Thompson Hall. Law Society Treasurer Susan Elliott conferred the honorary degree of Doctor of Laws on this year's guest speakers – author and social activist June Callwood and Federal Justice Minister Allan Rock. On February 24th, in London, another 72 graduates were called to the bar, where again Christopher Moore addressed those gathered.

The events also marked the presentation of prizes won by the graduates high achievement in bar admission courses in Toronto, Ottawa and London. Congratulations to all winners:



Elisabeth Slasor Prize
(for estate planning)
David Jeffrey Brown,
Karen Dawn Michelle Leef
Daina Inara Groskaufmanis

Herbert Egerton Harris Advocacy Scholarship (for civil litigation)
Leslie Anne Kinsman
Richard Andrew Elliott
Jin Won Kim
Jeffrey John Simpson
Susan Kim Paterson

The International Academy of Trial Lawyers Plaque
(for civil litigation)
Susan Kim Paterson

The Practitioners Prize in Real Estate
Richard Michael Kimel

Birnbaum Q.C. Scholarships
(for estate planning)
First Prize –
Elina Constance Yakimov
Second Prize –
Rhonda Lynn Maines,
Alexander John Killoch
Third Prize –
Nicole Samara Rosenberg,
Katherine Elizabeth Kaur Basi

William Belmont Common, Q.C. Prize for Criminal Procedure
Catherine Leslie Maunder

The Stuart Thom Prize
(for business law)
Bryan Todd McNulty
Robert Alexander Vaux

The Beverly Genest Prize
(for family law)
Michael Anthony Rayner

continues...

The McCarthy Tétrault Business Law Prize
Bryan Todd McNulty
Robert Alexander Vaux
Ian Bertrand Lee
Mark Edward McElheran
Michael Anthony Rayner

Treasurer's Medal, The Roland O. Daly Scholarship, and The Margaret McNulty Award (for excellence in overall bar admission grades)
Robert Alexander Vaux

The The Harcourts Advocacy Award
Ian Bertrand Lee

The Law Society First Prize (for excellence in overall bar admission grades)
Alan Veng Bun Lo

The Law Society Second Prize
Anne Elizabeth Butler

The Law Society Third Prize
Edward Joseph Preto

Margaret P. Hyndman, O.C., Q.C., D.C.L. Prize (for business law)
Ian Bertrand Lee
Mark Edward McElheran

The Arthur Wentworth Roebuck Award (for family law)
Heidi Lee Houghman

The Samuel Lerner, Q.C. Prize in General Advocacy
Rosemarie Franca Galli

The Isadore Levinter Prize (for public law)
Lonny Gordon Knox

The Isadore Levinter Memorial Award for excellence in overall bar admission course grades)
Alan Veng Bun Lo

Joseph Sedgwick, Q.C. Prize for Criminal Procedure, and The Vera L. Parsons Prize (for criminal procedure)
Robin Allan Flumerfelt

The Gowling, Strathy & Henderson Prize (for excellence in overall bar admission course grades)
Mark Edward McElheran

The Pensa & Associates Prize, and The E.J. McGrath Prize (for excellence in overall bar admission course grades)
Terry Neil Armstrong

The Edwin George Long, K.C. Memorial Scholarship (for excellence in overall bar admission grades)
Alan Veng Bun Lo
Robert Alexander Vaux ■

Law Society services promote professionalism and competence

MANY LAWYERS THINK of the Law Society in terms of disciplinary action. That is not unreasonable since much of what we do at the Law Society involves dealing with complaints about lawyers.

But the Law Society is much more than that. Indeed, the support services offered by the Society are designed to keep lawyers from ever having to face the disciplinary process, or defend a negligence claim. The Law Society works to generally enhance the professionalism and competence of our membership.

What is often seen in disciplinary and negligence cases are lawyers who could have avoided trouble if only they had asked questions or sought help at the time the trouble arose. The Law Society encourages members, and their staff, to seek the guidance and use the resources of the Law Society when faced with tough questions and situations. The Law Society's ultimate goal in protecting the public interest is to avoid having any lawyer harm his or her career because of a lack of information about our processes or programs.

What follows is a description of many of the programs and services which members may find useful as they practice law.

- ***Start-up Workshops***

Start-up workshops are now offered as part of the bar admission course, however, they are also offered generally on a regular basis (at least one each month). They are designed to provide pragmatic advice for members who want to start their own law practice. The day-long sessions cover everything from choosing the right location and getting the required financing, to selecting the right office technology and understanding fees and billing procedures. *Free of charge. Call (416) 947-3369*

- ***Practice Advisory***

Confidential, peer-to-peer advice by telephone, Practice Advisory offers answers for lawyers facing virtually any problem encountered in the practice of law, including ethical, practice-related and personal issues. *Free of charge for lawyers and their staff. Call: (416) 947-3369*

- ***Professional Conduct***

When a lawyer is facing an unclear ethical legal question, a ruling may be sought through the professional conduct department. This service is particularly useful when in need of the interpretation of existing rules, in determining if there is in fact a rule on point, and if not, what course of action the lawyer should pursue. *Free. Phone: Stephen Traviss, Senior Counsel, (416) 947-3370*

- ***Continuing Legal Education (CLE) Bursary Program***

A lawyer's education should not end upon graduation and needs to be a career long process. One of the best ways to stay current is with programs offered through Continuing Legal Education. For lawyers who earn an annual income of less than $35,000 a bursary is available which entitles them to a 50 per cent discount off the price of up to four CLE programs per year. Also available are "early-bird" or two-program discounts of between 10 and 35 per cent. *For more information including costs and program descriptions, call: (416) 947-3380*

- ***The Great Library***

The Great Library provides assistance and advice on legal research to members. Specific or factual information can be obtained through the library's inquiry service by telephone, fax, e-mail or in person. Individual or group instruction in the use of information resources such as CD-ROMs or the *Canadian Abridgment* is offered on a regular basis. *Reference Inquiry Service free; charges apply for photocopying. Call:(416) 947-3400*
Search-Law carries out on-line legal research for members on a fee for service basis. *Charges apply for searches. Call: (416) 947-3477*

- ***Lawyer Referral Service***

Approximately 175,000 referrals will be made to Ontario lawyers through the Lawyer Referral Service (LRS) in 1997, generating a conservatively estimated $15 million for lawyers who belong to the service. Any Law Society member in good standing can be listed with LRS. *Annual fee of $133.75 per calendar year.*

Call: (416) 947-3465 in Toronto; 1-800- 668-7380 elsewhere in Ontario

- ***LINK – Lawyers Assistance Program***

LINK offers confidential counseling services for members and student members who are experiencing stress, anxiety, depression and marital/family and alcohol/drug abuse problems, or who need career counseling or financial planning advice. Through this service, members, as part of their annual fees, may attend four sessions of counseling. If additional assistance is required, the care provider (Corporate Health Consultants) can refer you to an appropriate community resource, at the member's expense. LINK is available 24-hours a day, seven days a week. *Free. Call: (905) 278-1491, or 1-800-268-5211 (toll free)*

- ***OBAP***

It's not a program of the Law Society, but the Society supports the Ontario Bar Assistance Program. OBAP provides confidential peer assistance to lawyers (and judges) suffering from stress, burnout, addiction and other personal problems. *Free.*
Call, toll free: 1-800-667-5722; Women's issues, 1-800-641-4409 ■

MEMBER FORMS

PPF? PAR? MIF? Reminder!

ALL MEMBERS IN PRIVATE PRACTICE (including lawyers employed with law firms) and those non-practising members who, according to Law Society records, have handled client trust funds, should have now received the new Private Practitioner Form (PPF) and Public Accountant's Report to Lawyer (PAR).

As with the old Forms 2 and 3, they are due within six months of a member's fiscal year end. Employed lawyers who need not file a PAR (i.e. who have not handled client trust property outside their employment with their employer/law firm) should submit their PPF by June 30, 1997.

Reminder notices have also been sent out to members who have not submitted their Membership Information Forms (MIF), which were mailed in January 1997 to all members and were due the end of January. Members do not need to retain an accountant to complete this form. Given delays in the mailing

Annual general meeting on May 7

Members are invited to attend the Law Society's annual general meeting on Wednesday, May 7, 1997 at 5:15 p.m. in the main lecture hall at Osgoode Hall.

The order of business will be: a review of minutes of the previous annual meeting; report of the work of the Society and the committees of the Society and Convocation; presentation of the audited financial statements; matters of professional interest; and motions.

Two motions were received from members of the profession for consideration at the meeting. To be considered at the annual meeting, motions must have been received by March 27,1997, and signed by 10 members in good standing of the Law Society.

Motion 1

Whereas the Law Society of Upper Canada has failed over 50 per cent of the 1996 French bar admission students.

And whereas some of the French bar admission students sued the Law Society of Upper Canada and the students and LSUC entered mediation. As a result of the mediation an agreement was signed by the Law Society of Upper Canada and the students and the action was dismissed without cost in consideration of the agreement.

And whereas the Law Society of Upper Canada has in bad faith ignored the terms of the agreement and failed to honour the terms of the agreement in relation to the selection of the re-markers, the instructions to the re-markers to look for linguistic problems, the failure to provide an examination preparation course and a failure to include the LAJEFO in a review of the bar admission course.

Be it resolved that the students who have failed the course not be subjected to further unfairness and that a special committee of benchers be struck composed of Francophone benchers to right the wrongs done to the students immediately.

Be it further resolved that the LSUC call to account the education committee who have set an examination system that results in an automatic failure rate of approximately 10 per cent per exam without any regard to whether the student's performance meets a minimum standard of competence. This being completely contrary to the express position of Convocation. Further, the clear effect of this method has been to set a 30 per cent overall failure rate.

Be it further resolved that if the LSUC's intention was to reduce the members that the students who entered the program be refunded their money as they were never notified of this plan.

Be it further resolved that the Law Society employ the services of an expert on multi-lingual exams to determine whether it is ever fair to both the French group and the English group to have the French group write a translated exam.

Be it further resolved that the whole of the bar admission course of 1996 be reviewed by Convocation in public to determine whether the method chosen has not resulted in the unintentional discrimination against all minority groups and that if it is determined to be a problem to immediately rectify the problem for those students still seeking admission.

Be it further resolved that the French program not be offered in 1997 until such time as the LSUC reviews the whole of the program with interested French language groups.

Motion 2

Resolved that members of the Law Society of Upper Canada be permitted to place errors and omissions insurance with an insurer of their choice and not be compelled to place errors and omission insurance with the Lawyers' Professional Indemnity Company.

process, the deadline for the MIF was relaxed, but as indicated in the reminder notices, they are now due.

If you still have not received a MIF or if you believe that you need to file a PPF and a PAR but have not received a set, please contact Forms Services at the particulars noted below.

As with the MIF, questions on the new PPF and PAR have been designed to be answered by filling in corresponding "bubbles" in blue or black ink, or as recommended, with a HB pencil. Except for schedules containing explanations for and particulars of exceptions, no text is required. These forms enable the information to be captured electronically, which in turn will serve as the platform for future initiatives such as the Law Society reporting back to members static information and alternative methods of filing (such as electronic or e-filing).

The PPF and PAR were prescribed by Convocation on January 24, 1997. Consequently, members should now make all filings using the new forms. In recognition that some period of transition was required, Forms Services has accepted some filings made on old forms 2/3. However, for those members whose filings on the old forms were accepted, the Law Society will be unable to convert their filing information into digital format. This will preclude these members from using the full range of filing facilitating initiatives contemplated for fiscal 1997 filings. A "full" filing in 1998 using the (then) prescribed forms will be required from these members.

Aside from the layout, the PPF remains very similar to the former Form 2. However, the PAR has undergone substantial changes. Some of these changes are:

• ***Standardization of Accountants' Review Procedure***
In addition to changes in format, we have incorporated several substantial changes in the required review. The questions have been rephrased to better define (and in most cases, greatly simplify) the review that must be conducted. There is better guidance as to what is required from your accountant.

• ***Optional Schedules Available***
Where exceptions are noted on the PAR, optional schedules are available for your accountant. They can be down loaded from our web site (http://www.lsuc.on.ca/services/optional_schedules.html) or obtained from Forms Services.

• ***Joint Filings***
Another innovation is the introduction of "joint filings" of Public Accountant's Reports. Partners of firms are no longer required to *each* submit a copy of the accountant's report; they can now elect on their PPF to adopt and rely on a single filing of an accountant's report for the firm.

Extensive information materials accompany the forms and additional information is available from the membership forms page on the Law Society web site (http://www.lsuc.on.ca/services/services_membership_forms.html). If you have additional comments or questions, you can contact us by e-mail (lsforms@lsuc.on.ca), fax (416-947-3990), mail or telephone to Forms Services (416-947-3932). To assist us in managing the large volumes of telephone calls, we would ask that members with e-mail and fax facilities to use them in contacting us. This will allow us to more promptly address all inquiries. ■

Discipline Digest

FIFTEEN MATTERS proceeded before Convocation on April 3, 1997. Con-vocation ordered two disbarments, one permission to resign, 11 suspensions, and administered one reprimand. Five other matters were adjourned to the next sitting of Convocation on April 24, 1997. Todd Ducharme attended as Duty Counsel to assist unrepresented solicitors who requested representation.

In January 1997, there were 37 hearing days on which discipline matters proceeded before hearing panels of Benchers of the Law Society. Discipline matters proceeded before hearing panels on 23.5 hearing days in February 1997.

MISAPPROPRIATION
Godfrey, Christopher Stanley
North York, Ontario
Age 46, Called to the Bar 1978
Particulars of Complaint
Professional Misconduct

- Misapplied $21,771.54 more or less from his mixed trust account on or about August 10, 1994, by paying this amount from his mixed trust account to various third parties for the benefit of a client.
- Misappropriated $8,228.46 more or less from his mixed trust account, between September 10, 1994 and October 25, 1994.
- Acted in a conflict of interest, by representing both the borrower and the lender in connection with a mortgage transaction, without complying with the provision of Rule 5 of the Rules of Professional Conduct and in the course of doing so failed to serve one of the clients by: failing to disclose to her that there were arrears on the existing first mortgage at the date of her mortgage advance; releasing mortgage funds without ensuring that the client had obtained appropriate mortgage security; and failing to report and account to the client respecting the transaction.
- In regard to the same transaction, preferred his own interests to those of his client by paying himself $84,712.39 in fees from a mortgage advance, without ensuring that the client receive the first mortgage security which the Solicitor had been instructed to obtain.
- Allowed his trust account to be overdrawn in the amount of $9,554.13, more or less on or about January 16, 1995.
- Failed to complete and maintain forms 4 and 5 as required by Section 15.2 of Regulation 708 under the *Law Society Act*.
- Breached an undertaking to withhold sufficient funds from the proceeds of a sale to release a charge on equipment being purchased.
- Breached fiduciary duty to clients by presigning blank trust cheques, to be used by his office staff when the Solicitor was not in the office.

Convocation's Disposition (04/03/97)

- Disbarment

Factors

- The Solicitor suffered from a compulsive gambling illness, characterized by participation in high risk financial schemes; however, Convocation found that this illness was not what drove his behaviour.
- The Solicitor knew that he was not in complete control of himself when he returned to law in 1991, after a significant period away from the practice, yet he chose to impose those risks on the public.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Christina Budweth

FAILURE TO SERVE CLIENTS / UNGOVERNABILITY

Kinnaird, Timothy Michael

Toronto, Ontario

Age 39, Called to the Bar 1990

Particulars of Complaint

Professional Misconduct

- Failed to serve clients in a conscientious, diligent and efficient manner (8).
- Failed to fulfill obligations to other solicitors to attend to payment of expert accounts and professional services (2).
- Failed to honour financial obligations incurred in relation to his practice (5) totalling $13,200.72 more or less.
- Failed to answer professional letters communications from three fellow solicitors.
- Failed to fulfill an undertaking to another solicitor to deliver certified funds in payment of taxes and to provide mortgage discharge particulars.
- Failed to reply to the Law Society regarding complaints (23).
- Breached undertaking to the Law Society to reply promptly to communications from the Law Society (2).
- Breached an Order of Convocation that he suspend his practise for failure to pay his annual fees, by continuing to practise from December 1 to December 29, 1992.
- Used his trust account for personal transactions, contrary to the *Law Society Act*.
- Issued trust cheques payable to cash, contrary to the *Law Society Act*.
- Failed to cooperate with the Law Society's examiner regarding an audit of books and records.
- Failed to reply to the Law Society's requests to provide a response to inadequacies discovered during an audit of his books and records.
- Failed to reply to the Law Society.
- Failed to comply with an undertaking to the Law Society to enrol and participate in the Practice Review Program.

Convocation's Disposition (04/03/97)

- Disbarment

Discipline History

- September 1993: Reprimand in Committee for failing to fulfill a financial obligation, failing to reply to the Law Society and failing to file his Form 2 for the fiscal year ended November 30, 1991.
- October 1994: Reprimand in Committee for failing to reply to the Law Society on three separate matters.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Georgette Gagnon

FAILURE TO SERVE CLIENTS

Sussmann, Frederick Bernard

Ottawa, Ontario

Age 79, Called to the Bar 1973

(Previously called in the United States)

Particulars of Complaint

Professional Misconduct

- Failed to serve a client in a conscientious, diligent and efficient manner in that: he failed to provide proper legal advice regarding the client's dispute with his mortgagee; he rendered excessive accounts to the client; and he failed to refund a retainer with interest and costs in the amount of $3,100 to his client, pursuant to an Order of an Assessment Officer from 1992.
- Failed to serve a second client in a conscientious, diligent and efficient manner in that: he persuaded his clients to pursue litigation that was frivolous and vexatious; he rendered excessive accounts to his clients; and he failed to refund fees with interest and costs in the amount of $47,553.24 to his clients pursuant to an Order of an Assessment Officer from 1995.

Hearing Panel's Recommendation (11/28/96)

- Disbarment

Convocation's Disposition (04/03/97)

- Permission to Resign

Factors

- In recommending disbarment, the Hearing Panel found that the Solicitor displayed a lack of remorse for his actions, evidenced in part by his behaviour in leaving the hearing while it was underway and failing to return.
- In granting the Solicitor permission to resign, Convocation considered that the Solicitor's remorse was evidenced by the tendering of his resignation. Convocation also considered: the Solicitor's age at the time of the misconduct; that the Solicitor is almost eighty years old at the present time; and the Solicitor's academic career and previously unblemished record.

Counsel for the Solicitor

Not Represented
(Before the Hearing Panel)
Glen Schruder
(At Convocation - by conference call)

Counsel for the Law Society

Neil J. Perrier (Before the Hearing Panel)
Christina Budweth (At Convocation)

MISAPPLICATION OF FUNDS

Hacker, Harvey Howard

Toronto, Ontario

Age 51, Called to the Bar 1975

Particulars of Complaint

Professional Misconduct

- Misapplied mortgage payments received from clients in trust in the sum of $200,000 and $10,493.17.
- Failed to act in a diligent, conscientious and efficient manner by: failing to prepare and send a report to clients in connection with their mortgage investments (14); failing to prepare trust declarations in connection with mortgages held in trust for clients (8); failing to obtain appraisal reports on properties being encumbered in favour of clients, thereby failing to ensure that clients' investments were adequately secured (9); discharging a mortgage he held in trust for clients, without the knowledge or authority of his clients and without the mortgage debt being satisfied; and postponing a mortgage held in trust for clients without the knowledge or authority of his clients (2).
- Acted in a conflict of interest by acting for both the lender and the borrower in mortgage transactions (14).
- Provided a personal guarantee for a mortgage from a borrower-client which was in his name in trust for his lender-clients (3).
- Breached Regulation 708 under the *Law Society Act* by: failing to deposit trust monies into a trust account; withdrawing monies from trust without sending a fee billing or other written notification; and preparing trust cheques payable to cash.
- Failed to reply promptly to communications from the Law Society.
- Failed to serve clients in a conscientious, diligent and efficient manner in connection with mortgage investments by: advancing the client's funds for the benefit of the mortgagor before obtaining security; and

failing to follow client instructions with respect to the term of investment.
- Misled clients with respect to the existence of a mortgage on a property.
- Misled client with respect to the purchase price of properties in connection with mortgage investments.
- Failed to adequately disclose the presence of a conflicting interest between clients and failed to obtain the written consent of these clients.

Convocation's Disposition (04/03/97)
- Fifteen-month suspension commencing January 23, 1997.
- $6000 in costs, payable over time.
- Undertaking from the Solicitor not to act for both lender and borrower in mortgage transactions except where the lender is a financial institution and not to represent both vendor and purchaser when acting on a real estate transaction.

Factors
- The Solicitor's cooperation with the Law Society avoided the necessity of a lengthy hearing.
- The Solicitor did not receive any financial compensation or benefit, apart from fees.
- There was no evidence of dishonesty.
- The Solicitor made some restitution to some of the clients who had lost money, by placing a mortgage on his personal residence.
- The Solicitor was candid and remorseful.
- The Solicitor did not have a discipline history.

Counsel for the Solicitor
Joseph J. Faust

Counsel for the Law Society
Lesley Cameron

IMPROPER BORROWING FROM CLIENTS
Herman, Lawrence Isadore
North York, Ontario
Age 51, Called to the Bar 1973

Particulars of Complaint
Conduct Unbecoming
- Knowingly conducted the business of leasing and operating a gravel pit in a deliberately misleading manner against the lessee of the gravel pit.

Professional Misconduct
- Transferred $10,623.79 from his trust account to his general account on or about April 11, 1989, purportedly for fees and disbursements, for which no fee billing or other written notification was delivered.
- Improperly transferred the sum of $20,000 from his mixed trust account to a general account, thereby causing a trust shortage, on or about July 20, 1989.
- Failed to maintain sufficient balances on deposit in his trust account to meet all of his trust obligations during the period of July 20, 1989 to February 27, 1990.
- Breached Rule 7(2) of the Rules of Professional Conduct by failing to ensure that clients interests were fully protected by the nature of the case and by independent legal representation in respect of six borrowings by the Solicitor or a corporation controlled by his wife, from three clients in the aggregate amount of $1,548,097.25 more or less.
- Failed to disclose the initial client borrowings on his Form 2 annual filing with the Law Society.
- Improperly executed the names of two clients on real estate documents in order to facilitate the closing of a transaction.
- Disbursed the sum of $30,000 on account of fees from his trust account directly to a business run by the Solicitor and failed to record the receipt of said funds in his general account receipts book.
- Engaged in unsatisfactory professional practice by investing $75,000 more or less, belonging to a client, without ensuring that his client had security until almost one year later when a mortgage was registered in his client's favour.
- Failed to cooperate fully with the Law Society's auditor.

Convocation's Disposition (04/03/97)
- Six-month suspension commencing April 4, 1997.
- Costs of $7,500 to be paid before reinstatement, failing which suspension will continue until costs are paid.

Factors
- No clients suffered a loss as a result of the Solicitor's actions.
- The trust fund infractions were minor in all of the circumstances.
- After being made aware of discrepancies, the Solicitor brought his books and records up to standard.
- The borrower-clients freely and voluntarily lent money to the Solicitor or his wife.
- The Solicitor admitted his misconduct and has given an undertaking not to borrow from clients, directly or indirectly.
- There was no evidence of the Solicitor intentionally misleading the Law Society.
- The Solicitor does not have a discipline history and has been practising for twenty-three years.

Counsel for the Solicitor
John DaRe

Counsel for the Law Society
Rhonda Cohen

FAILURE TO SERVE A CLIENT
Boughner, Laura Lee
Windsor, Ontario
Age 46, Called to the Bar 1990

Particulars of Complaint
Professional Misconduct
- Failed to serve a client in a conscientious, diligent and efficient manner in that she failed to complete a mortgage transaction on a property.
- Failed to reply to communications from the Law Society regarding a complaint against the Solicitor made by a financial institution.

Convocation's Disposition (04/03/97)
- Three-month suspension commencing at the conclusion of her administrative suspension.
- Costs of $1000.
- Suspension to continue in effect until the costs are paid.

Discipline History
- March 1996: Finding of professional misconduct for failing to file her Forms 2/3 for the fiscal years ended November 30, 1993, and November 30, 1994. The hearing panel recommended that the penalty be a reprimand in Convocation if the Solicitor's filings were made before the matter reached Convocation, failing which the penalty would be a one-month suspension to continue month to month until the filings are up to date. As of April 3, 1997, the matter had not yet reached Convocation.

Factors
- The Solicitor did not cooperate with the Law Society or participate in the hearing.
- The Solicitor is not currently practising law.
- The Solicitor does not have a prior discipline record.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Rhonda Cohen

FAILURE TO PRODUCE BOOKS AND RECORDS
Wallace, Clayton James
Hamilton, Ontario
Age 39, Called to the Bar 1987

Particulars of Complaint
Professional Misconduct
- Failed to produce his books and records for the purpose of an audit by a Law Society representative.

Convocation's Disposition (04/03/97)
- Suspension until the Solicitor complies with

his obligation to produce his books and records to the Law Society, and a further suspension of three months following his compliance.

Discipline History

- March 1996: Finding of professional misconduct for failing to file his Forms 2/3 for the fiscal year ended January 31, 1995. The hearing panel recommended that the penalty be a reprimand in Convocation if the Solicitor's filings were made before the matter reached Convocation, failing which the penalty would be a one-month suspension to continue month to month until his filings are up to date. As of April 3, 1997, the matter had not yet reached Convocation.

Factors

- The Solicitor has a discipline history.
- The Solicitor did not cooperate with the Law Society or participate in the hearing.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Rhonda Cohen

FAILURE TO PRODUCE BOOKS AND RECORDS
Moberg, Michael James
Niagara Falls, Ontario
Age 33, Called to the Bar 1992

Particulars of Complaint
Professional Misconduct

- Failed to cooperate with the Law Society by failing to produce the books and records of his practice.

Hearing Panel's Recommendation (12/11/96)

- Reprimand in Convocation if books and records are produced to the Law Society examiner by the time the matter reaches Convocation, failing which the Solicitor be suspended for one month and month to month thereafter until the books and records are properly produced, such suspension to commence at the conclusion of current administrative suspension.
- Costs of $1,250.

Convocation's Disposition (04/03/97)

- One-month suspension to continue month to month thereafter until books and records are produced to the examiner, such suspension to commence at the conclusion of current administrative suspension.
- Costs of $1,250.

Factors

- Books and records were not produced by the date of Convocation.

Counsel for the Solicitor
Not Represented

Representative for the Law Society
Audrey Cado (Before the Hearing Panel)

Counsel for the Law Society
Glenn M. Stuart (At Convocation)

FAILURE TO FILE FORMS
Adema, Dean Randall
Brampton, Ontario
Age 31, Called to the Bar 1993

Particulars of Complaint
Professional Misconduct

- Failed to file his Forms 2/3 within six months of the termination of the fiscal year ended March 31, 1995.

Hearing Panel's Recommendation (09/12/96)

- Three-month suspension to continue month to month thereafter until filings are completed to the satisfaction of the Law Society, such suspension to commence at the conclusion of current administrative suspension.
- $500 in costs.

Convocation's Disposition (04/03/97)

- One-month suspension to continue month to month thereafter until filings are completed to the satisfaction of the Law Society, such suspension to commence at the conclusion of current administrative suspension.

Discipline History

- January 1996: Reprimand in Committee for failing to cooperate with the Society on an audit of his books and records.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Allan Maclure (Before the Hearing Panel)
Elizabeth Cowie (At Convocation)

FAILURE TO REPLY TO THE LAW SOCIETY
Butler, Anthony Morris
Ottawa, Ontario
Age 53, Called to the Bar 1970

Particulars of Complaint
Professional Misconduct

- Failed to reply to the Law Society regarding a client complaint.

Convocation's Disposition (04/03/97)

- One-month suspension commencing at the conclusion of his current suspension, and continuing month to month thereafter until he has satisfactorily responded to the Secretary of the Law Society regarding the complaint.

Discipline History

- April 1994: Reprimand in Convocation for failing to file his Forms 2/3 within six months of the termination of the fiscal year ended September 30, 1992.
- September 1995: One-month suspension to commence October 6, 1995, and to continue month to month thereafter until filings are made and pay costs of $500.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Jane Ratchford

FAILURE TO FILE FORMS
McOuat, Darlene Mae
Toronto, Ontario
Age 31, Called to the Bar 1991

Particulars of Complaint
Professional Misconduct

- Failed to file her Forms by November 30, 1995.

Hearing Panel's Recommendation (12/11/96)

- Reprimand in Convocation if necessary filings are made by the time the matter reaches Convocation, failing which the Solicitor be suspended for one month and month to month thereafter until the filings are up to date.

Convocation's Disposition (04/03/97)

- One-month suspension to continue month to month thereafter until filings are up to date, such suspension to commence at the conclusion of current administrative suspension.

Factors

- Forms were not filed by date of Convocation.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Glenn M. Stuart

FAILURE TO FILE FORMS
Morris, Donald Frederick
Ottawa, Ontario
Age 43, Called to the Bar 1990

Particulars of Complaint
Professional Misconduct

- Failed to file his Forms 2/3 within six months of the termination of the fiscal years ended November 30, 1994 and November 30, 1995.

Convocation's Disposition (04/03/97)

- One-month suspension to continue month to month thereafter until filings are completed.

Counsel for the Solicitor
Not Represented

Counsel for the Law Society
Jane Ratchford

UNPROFESSIONAL / ABUSIVE COMMUNICATIONS
Publow, Charles Jellett
Richmond, Ontario
Age 54, Called to the Bar 1978
Particulars of Complaint
Professional Misconduct
- Failed to deal with another solicitor courteously and in good faith by transmitting an abusive message to a fellow solicitor by facsimile.

Hearing Panel's Recommendation (01/16/97)
- Disbarment

Convocation's Disposition (04/03/97)
- Thirty-day-suspension to commence at conclusion of current administrative suspension.

Factors
- Convocation overturned finding by hearing panel that failure to attend Invitation to Attend constituted professional misconduct.
- Convocation also overturned another finding by the hearing panel on the evidence before it on the ground that it was not clearly supported by the panel's reasons.
- Convocation also overturned finding that Solicitor was ungovernable, and the consequential finding that termination of his membership was required.

Counsel for the Solicitor
Not Represented
Counsel for the Law Society
Glenn M. Stuart

FAILURE TO SERVE A CLIENT
Bickerton, Albert John
Toronto, Ontario
Age 64, Called to the Bar 1978
Particulars of Complaint
Professional Misconduct
- Failed to reply to the Law Society regarding a client complaint.
- Failed to serve a client in a conscientious, diligent and efficient manner in respect of a zoning violation matter.
- Failed to produce books and records.
- Failed to comply with an Undertaking to the Law Society.
- Failed to file his Forms 2/3 for his fiscal year ended January 31, 1994.

Convocation's Disposition (04/03/97)
- Suspension from the practice of law except under the following conditions:
  1. The Solicitor continue to receive psychiatric treatment from his current treating psychiatrist, or another psychiatrist preapproved by the Secretary of the Law Society at the frequency considered appropriate by such psychiatrist;
  2. The Secretary of the Law Society receive quarterly reports from such psychiatrist asserting that the Solicitor

CASE REVIEW

Interim suspension ordered for the first time

IN A RECENT DECISION, Convocation imposed an interim suspension on a Solicitor's right to practise pending Convocation's final resolution of discipline proceedings against the Solicitor. This marks the first instance in which Convocation has made such an order.

Convocation is authorized to order interim suspensions of a member's rights and privileges by Rules adopted by Convocation in February 1996, under section 24.1 of the *Statutory Powers Procedure Act*. The Rules provide that, where a complaint has been properly filed and served, a motion may be made to the discipline committee, or in cases of urgency, to Convocation, for an interim order suspending the member's rights and privileges or imposing conditions on them.

If, at the conclusion of a motion before the discipline committee, the committee is satisfied that protection of the public requires that an interim order of suspension to be made, the committee shall recommend such an order to Convocation.

The Rules provide that evidence on a motion for an interim suspension should be given by affidavit. However, the committee in this matter determined that this provision is a directory, and not a mandatory, requirement, to be applied having regard to the circumstances of each case. The committee concluded that the objectives of this provision, the convenient management of evidence and adequate notice to the Solicitor of the case to meet, were satisfied in this matter. The motion proceeded on viva voce evidence which had been previously disclosed to the solicitor.

The language and structure of the Rule allows a motion to be brought before a committee as either a separate proceeding or as part of another proceeding already before the committee. In the instant case, the Society brought its interim suspension motion in conjunction with its submissions on penalty following the committee's decision that professional misconduct had been established.

For an interim suspension to be granted, Convocation and, where applicable, the committee, must be satisfied that a suspension is necessary to protect the public. In the recent case, the Solicitor was found guilty by two separate discipline committees of professional misconduct involving misappropriation of over $250,000 in trust funds, misleading clients about funds being held in trust, preferring the solicitor's interest in financial dealings with clients, and failing to file annual returns. At both hearings, the respective committees recommended the penalty of disbarment. The second committee had a concern that the Solicitor's conduct throughout the discipline process showed a pattern of attempting to delay, manipulate and derail the proceedings. The Solicitor had refused to enter into a written undertaking not to practice until the matter was before Convocation. However, at Convocation the Society's position that the Solicitor's undertaking should not be accepted was adopted, as the history of the Solicitor's conduct through the proceedings showed that his undertaking could not be relied upon and it was necessary to suspend him to enable the Law Society to give effect to the Solicitor's removal from practice.

In situations where the public, including both existing and potential clients, will be at risk of further harm, and the Solicitor cannot be relied upon to voluntarily protect the public, Convocation may grant an interim suspension of the member's rights and privileges, in accordance with its Rules. ■

has no mental illness which renders him incapable of practising law, including addiction to alcohol or drugs;

3. The Solicitor practise law only as an employee and under the supervision of a member of the Law Society of Upper Canada in good standing and pre-approved by the Secretary of the Law Society and will not operate a general or trust bank account;
4. The Solicitor provide the Law Society with a letter from any such member stating that he or she is familiar with the Solicitor's discipline history and conditions under which the Solicitor is permitted to practice and that he or she has agreed to supervise the Solicitor; and
5. The Solicitor make his annual filings for his fiscal year ended January 31, 1994, and such conditions will apply until such time as the Secretary of the Law Society agrees to dispense with or vary these conditions or until an order is made under Section 47 of the *Law Society Act.*

Discipline History

- April 1989: Reprimand in Committee for failing to account to a client and failing to cooperate with an audit investigation and was ordered to pay costs of $2000.
- January 1991: Reprimand in Convocation for failing to comply with an order of the Discipline Committee and failing to reply to the Law Society.
- September 1991: Reprimand in Convocation for failing to file for the fiscal years ended January 31, 1989, and January 31, 1990.
- May 1993: Reprimand in Committee for failing to serve a client, failing to reply to another solicitor, failing to cooperate with the Law Society, failing to file, failing to reply to the Law Society and failing to satisfy a financial obligation.

Factors

- The Solicitor's misconduct can be adequately explained by a medical condition, now in remission.

Counsel for the Solicitor

Michael Lomer

Counsel for the Law Society

Lesley Cameron

FAILURE TO REPLY TO THE LAW SOCIETY
Derby, Bonnie Esther Turner

Toronto, Ontario

Age 48, Called to the Bar 1976

Particulars of Complaint

Professional Misconduct

- Failed to reply to correspondence from the Law Society regarding inadequacies discovered in her books and records by a Law Society examiner.

Convocation's Disposition (04/03/97)

- Reprimand in Convocation.
- Costs of $1,075.

Discipline History

- July 1991: Reprimand in Committee for failing to serve a client and for misleading a client.
- November 1994: Reprimand in Committee and ordered to pay costs of $200 with respect to her failure to file for the fiscal year ended February 28, 1993.
- April 1995: Reprimand in Committee with respect to her failure to file for the fiscal year ended February 28, 1995.

Counsel for the Solicitor

Not Represented

Representative for the Law Society

Audrey Cado (Before the Hearing Panel)

Counsel for the Law Society

Glenn M. Stuart (At Convocation) ■

Membership Suspensions & Reinstatements

Members whose names appear below have been suspended for administrative reasons (non-payment of annual fees, errors and omissions insurance levies, or late filing); or have been reinstated after previously being suspended. The year after each member's name is the year of call to the Ontario bar. Enquiries regarding members listed below should be directed to (416) 947-3318.

ANNUAL FEE REINSTATEMENTS

ANDRACHUK Rose	1981	Toronto ON
BJARNASON Halldor Kenneth	1991	Vancouver BC
BLACK Christopher Charles	1978	North York ON
BROOKS Nan Ellen	1991	Toronto ON
BUNTING Margaret Anne	1990	Toronto ON
CONWAY Suzanne Marie	1993	Toronto ON
CROOKS Sharon Janelle	1991	Edmonton AB
DIDIER Emmanuel Marie Bernard	1994	Ottawa ON
DOUCET Dawun Michelle	1989	Halifax NS
FREEDMAN Gary Michael	1977	Toronto ON
GAHAN Jeffrey Mark	1985	Toronto ON
GOULET Michel Richard Joseph	1995	Winnipeg MB
JONES Morris Guy	1979	Toronto ON
LANDSBERG-LEWIS Ilana Nachama	1994	Brooklyn NY
LAW Howard Aaron	1988	Toronto ON
LEE Quen Tai	1994	Hong Kong
LEVY Harold Joseph	1970	Toronto ON
LINKLATER Irene	1991	Winnipeg MB
LONGO George Peter	1964	Woodbridge ON
LUNENFELD Allan Harry	1980	Belleville ON
MERRICK Jefferey	1990	Vancouver BC
O'NEIL John D'Arcy Askin	1962	Nepean ON
PIBWORTH Stephen David	1995	Ajax ON
POORE David Robert	1994	Victoria BC
PRYPASNIAK Carolyn Ann	1982	Scarborough ON
ROBERN Naomi Tobey	1989	Stratford ON
ROBSON Graham Edward	1994	Winnipeg MB
SAREEN Iva	1979	Torrance CA
SARTISON Delayne Marie	1989	Vancouver BC
SELTZER Jeffrey David	1995	Chicago IL
SILVERSTEIN Louis Michael	1972	Don Mills ON
TALAGA Monica Leslie	1991	Ottawa ON
YOUNG Judith	1993	Toronto ON

E & O LEVY REINSTATEMENTS

GREEN Blair William	1972	Burlington ON
LINZNER Joseph	1979	Pickering ON
PHILP Michael Wesley	1989	Guelph ON
QUIST Stephen Harry	1980	Kemptville ON
THOMPSON Shaun Stewart	1990	Etobicoke ON

ANNUAL FILINGS REINSTATEMENTS

ANDREW James William	1975	Oakville ON

E&O LEVY SUSPENSIONS - January 24, 1997

STEFOFF James	1970	Toronto ON

E&O LEVY SUSPENSIONS - February 28, 1997

GODDARD Andrew Guy Edward	1993	Toronto ON
MENEILLEY Douglas Arthur	1987	Ottawa ON

NSF SUSPENSIONS

The following members were suspended on January 24, 1997 for NSF payment of the 1996 E&O Insurance Levy:

ANDERSON William Hodge	1993	Oakville ON
BERK Lawrence	1983	Toronto ON

The following members were suspended on January 24, 1997 for NSF payment of the 1996 6-month Membership Fee:

KENDALL Christopher Nigel William	1994	Western Australia
KERI Catherine Jane	1992	Vancouver BC

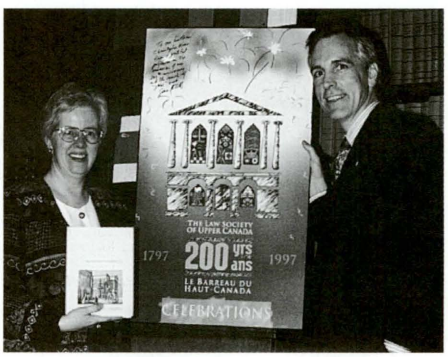
FYI

Book launches bicentennial

MORE THAN 200 GUESTS attended the official launch of award-winning author Christopher Moore's *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* at Osgoode Hall on February 27 – kicking off what will be a series of events celebrating the Law Society's bicentennial (see page two).

"A legal history might sound a bit dry to some," Treasurer Susan Elliott told the guests, "but that's clearly not the case with this book. It's an interesting, page-turning story of the legal profession and it's told with humour, mystery and even scandal. I think anyone involved with the law or interested in Ontario's past will find the book fascinating."

The book takes readers behind the wrought iron fences and stately lawns of Osgoode Hall to offer an intimate account of one of Ontario's most powerful institutions. The book weaves its way through accounts of lawyers wandering the backwoods of early Ontario on horseback to deliver legal services, and the profound legal reforms of the late nineteenth century. It takes an in-depth look at the tremendous growth of the legal profession in the post-war years and the historic struggle of women and minorities to find a voice and a place in the Ontario bar. The book wraps up with an examination of recent issues facing the province's legal profession.



Treasurer Susan Elliott and author Christopher Moore

The contest

Readers of the inaugaral issue of Ontario Lawyers Gazette were given the chance to win an autographed copy of *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* by answering eight questions about the history of the Law Society and the legal profession in Ontario.

Thanks to all who entered the contest and congratulations to the ten winners! Seven of them submitted entries with all eight correct answers. In addition, two had seven correct answers, and one had six. The winners are, in alphabetical order: Bob Aaron of Toronto; John D. Ayre of Simcoe; Alison Colvin of Toronto; Andrew Confente of Hamilton; Richard Desrocher of Toronto; Eric R. Finn of Toronto; L.M. Keay of Don Mills; William S. McCarthy of Blenheim; Larry Stein of Downsview; R. Wise of Toronto.

Anyone who is interested in purchasing a copy of the book can drop into the Law'NMore at Osgoode Hall or order by phone at (416) 947-3300, ext.2133. The cost is $45.00 + tax.

Contest answers

1. How did the first Treasurer of the Law Society die?

c) John White died thirty-six hours after being wounded in a duel by James Small, husband of White's former mistress Elizabeth Small, in January 1800. White had provoked Small into challenging him to a duel by casting aspersions on the character of Mrs. Small, who, he said, "had once been the kept woman of an English aristocrat who, when he tired of her, paid Small to marry her."

2. Who was described as "an easy, rich, indolent bachelor"?

a) William Osgoode was so described in a letter to him from his friend Joseph Jekyll, written in March 1804.

3. How old was John Beverley Robinson when he was appointed Acting Attorney General in 1812?

d) Robinson was only 21 years old when honoured with the appointment.

4. What disaster decimated the legal profession in 1804?

c) The sinking of a ship, the *Speedy*, in Lake Ontario, while en route from York to Newcastle where a murder trial was to take place. Among the 20 who died was a King's Bench Judge, the Solicitor General, and the Treasurer of the Law Society.

5. Which subject was not on the entrance examination for aspiring students at law in 1830?

d) The answer is law. Christopher Moore explains in the book that to demonstrate suitability for the profession in the early period, the applicant had to display evidence that he was a gentleman, and "a liberal education rooted in the classics could be taken as the mark of a gentleman."

6. When was the following complaint heard in Osgoode Hall: "...the tea and coffee also are of a decidedly inferior quality"?

b) This complaint was first heard in 1834, when student boarders complained generally about the food and drink they were served. In addition to the coffee and tea, they complained about the meat as "almost uniformly of the coarsest kind" and the bread as "sour and indigestible."

7. When did the Law Society get its first photocopier?

c) In 1965; it got its first cheque-writing machine two years earlier, in 1963.

8. How many lawyers did the largest firm in Canada have in 1950?

d) The answer is 24. However, the size of large firms doubled by 1961 and tripled by 1971; explosive growth came in the 1980s. ■

OBAP

"I'm Fed Up With My Life"

ALTHOUGH OUTWARDLY she hated the kidding of being called "Slim Kim", secretly Kimberley adopted the behaviors to fulfill this image. She felt guilty about eating and so, to numb her thoughts and feelings, she began to refuse to eat in public. An overwhelming fear of gaining weight and becoming fat led her to "feel fat", even when emaciated. Hundreds of sit-ups and miles of daily running took over her life. When she got into university and then law school, she became socially withdrawn and would not talk to her friends about her concerns around her weight and shape. In fact, she had trouble experiencing any feelings at all.

After graduation and beginning a highly stressful job in a large law firm, Kim would lie about what she had eaten. Eventually, she would consume large amounts of food in a short period of time in the company of colleagues and would then use any of the following methods to purge to prevent weight gain: self-induced vomiting, laxatives, diuretics, enemas or compulsive exercise. Afterwards, Kim would feel disgusted with herself and guilty over these actions. Her ability to handle stressful situations was lessening.

Eventually, after years of suffering from anorexia nervosa and bulimia nervosa, her irritability, mood swings and depression caught up to her. Kim was hospitalized where she was taught healthy eating patterns while being brought up to a normal body weight. The emotional issues that triggered her behaviors were identified so that coping strategies were developed to help Kim deal with her body image, her beliefs and her day-to-day stresses. She continues aftercare support to assist her long-term recovery.

If you are a Kim or know a Kim, please telephone the Ontario Bar Assistance Program 24-hour general hotline anytime, in confidence, at 1-800-667-5722 for ongoing peer support. The 24-hour women's helpline is 1-800-641-4409. To contact the volunteer Executive Director, call John Starzynski at 1-519-837-9459 or fax at 1-519-837-3396. ■

OTTAWA JOINT CLE PROGRAMMES

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For information, contact:
Michelle Assaff, CCLA, 613-233-7386

Commercialization & Privatization: The New Business of Government
Chair: Steven Chaplin
May 2, 1997 9:00 a.m. - 4:30 p.m.
All governments are in the process of commercializing or privatizing many aspects of their operations. With a focus on the recent experiences of the federal government, find out about the structures of commercialization and employment issues from all sides - government, labour and the new employer. Ethics, privacy and regulatory issues will be discussed. The employee takeovers of aspects of the National Capital Commission, the Canada Communication Group experience and, most recently, Nav-Canada will be explored. Post-commercialization concerns, including future regulation and enforcement are also on the agenda. Faculty will include: Steven Chaplin, Susan Dorion, Richard Fujarczuk, Norman Manchevsky, Bill Nelson, Eugene Oscapella, Tamara Parschim-Rybkin, Claire Scullion and Neil Wilson.
6+ years of practice:
$195.00 + $13.65 GST = $208.65
0-5 years of practice:
$140.00 + $9.80 GST = $149.80
Articling/BAC student:
$90.00 + $6.30 GST = $96.30
Law School student:
$40.00 + 2.80 GST = $42.80

Recent Developments and Crucial Changes in the Law of Costs
Co-Chairs: Robert M. Nelson, Sylvia Corthorn, and Ian R. Stauffer
May 16, 1997 8:30 a.m. - 1:30 p.m.
There have been numerous changes in the law of costs in the past few years. The new costs consequences of Offers to Settle, Simplified Rules, ADR and Case Management have brought about a number of innovations in terms of costs assessment. These novelties combined with the future changes in assessment procedures will certainly alter the way civil law practitioners will deal with costs in the future at all judicial levels. There will be ample opportunity for questions, and registrants are encouraged to send in any queries they may have, in advance, along with their registration. The programme will feature a panel of experienced professionals including: Fay Brunning-Howard, John Cardill, Sylvia Cor-thorn, Peter Cronyn, Bill Garay, Brook Grant, Jim O'Grady, Denis Power and Ian Stauffer.
$125.00 + $8.75 GST = $133.75

Real Property in the Federal Government
Co-Chairs: Emanuel Montenegrino and Michael Richard
June 13, 1997 8:30 a.m. - 12:00 noon
This programme will provide you with practical up-to-date information concerning real property and the federal government. Recognized experts in various fields will provide presentations on: the unique legal status of property owned by the federal government, the applicability of the Construction Lien Act to federal real property, native land issues, the "taxation" of federal real property and federal expropriations. Faculty will include: William Burrows, John Clay, Peter Grimes, Sandy McGregor, Vic Melski, Emanuel Montenegrino, Wendy Reid, and Michael Richard.
$125.00 + $8.75 GST = $133.75 ■

Status of Bills in the Ontario Legislature

The following is a selection of Government Bills which are currently before the 36th Legislature (First Session) for consideration. Although ever effort has been made to present accurate information; please consult the sponsoring ministry for most up-to-date status.

Bill 57 - Environmental Approvals Improvement Act (Environment and Energy)[Second reading: September 30, 1996]

Bill 84 - Fire Prevention and Protection Act (Solicitor General) [Second reading: February 24, 1997]

Bill 98 - Development Charges Act (Municipal Affairs and Housing) [Second reading: March 6, 1997]

Bill 103 - City of Toronto Act (Municipal Affairs and Housing) [Second reading: January 31, 1997]

Bill 104 - Fewer School Boards Act (Education) [Second reading: February 12, 1997]

Bill 105- Police Services Amendment Act (Solicitor General) [Second reading February 24, 1997]

Bill 106 - Fair Municipal Finance Act (Finance) [Second reading: March 6, 1997]

Bill 107 - Water and Sewage Services Improvement Act (Environment and Energy) [Second reading: February 24, 1997]

Bill 108 - Streamlining of Administration of Provincial Offences Act (Attorney General) [Second reading: February 27, 1997]

Bill 109 - Local Control of Public Libraries Act (Citizenship, Culture and Recreation) [Second reading: March 5, 1997]

Bill 96 - Tenant Protection Act (Municipal Affairs and Housing) [Introduced: November 21, 1996]

Bill 99 - Workers Compensation Reform Act (Labour) [Introduced: November 26, 1996]

Bill 102 - Community Safety Act (Solicitor General) [Introduced: December 12, 1996]

Red Tape Bills
There are 17 red tape bills before the legislature and there has been no change in their status (since Jan/Feb Gazette).

The Research Facility

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Adele Worland
Director of Research

NEW THIS MONTH
APRIL 1997

(REF) REFUGEES

REF13-1 $50 Persecution-Definition (50)

(IP) C. AND H.R. INFORMATION PACKAGES

IPXX* $15 H.R. only updates - Nov. 1996

NEW FAX NUMBER – 979-8946

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(C) CHARTER OF RIGHTS - COR

(No. of pages in brackets)

C3-1 $70 Trial within a Reasonable Time (79)
C4-1 $70 Right to be Informed of the Offence (36)

C5 Reverse Onus

C5-2 $70 Challenges to Reverse Onus Provisions (99)

C6 Right to Counsel

C6-1 $70 Warning - Timing and Content (69)
C6-2 $50 Waiving and Understanding the Right to Counsel (63)
C6-3 $50 "Detention" in Breathalyzer and Non - Breathalyzer Cases (77)
C6-4 $70 Trial Issues: Adjournments, Legal Aid Funding, Competency, and Counsel of Choice (49)
C6-5 $50 Privacy (30)
C6-6 $50 Exclusion of Evidence (85)
C6-7 $70 Opportunity to Exercise Right (63)
C6-8 $70 Duty to Cease Questioning (56)
C6-9 $70 Re - Informing - Understanding of Jeopardy (43)

C7 Section 7

C7-3 $70 Pre-Charge Delay (61)

C8 Search and Seizure

C8-1 $70 Exclusion of Illegally Obtained Evidence (65)
C8-2 $70 Unreasonable Search and Seizure - Consent Searches (20)
C8-3 $70 Seizure of Objects Inadvertently Discovered - Plain View Doctrine (21)
C8-4 $50 Border Searches (28)
C8-5 $50 Reasonable and Probable Grounds for Warrantless Search and Seizure (91)
C8-8 $50 Charter of Rights, s.8 Motor Vehicles (50)
C8-9 $70 Sufficiency of Information for Search Warrants (76)

C9 Section 9

C9-1 $70 The Stopping of Motorists - Release & Imprisonment (83)
C9-2 $50 Unlawful Arrest/Detention for Investigative Purposes (110)

C10 Section 12

C10-1 $50 Cruel and Unusual Punishment (30)

C35 Aboriginal/Treaty Rights

C35-1 $50 Exemption from Excise Duties (12)
C35-2 $50 Hunting and Fishing (36)

CRIMINAL LAW MEMORANDA

Note codes as follows:

(D) DEFENCES **(E) EVIDENCE** **(O) OFFENCES**
(P) PROCEDURES **(S) SENTENCE**

(D) DEFENCES

D1 Insanity and Automatism

D1-1 $50 Automatism (21)
D1-2 $50 Non-Insane Automatism and Intoxication (13)
D1-3 $70 Mental Disorder (52)
D1-4 $50 Epilepsy (9)
D1-6 $50 Fitness to Stand Trial (26)
D2-1 $70 **Entrapment (27)**
D3-1 $70 **Self-Defence (47)**

D4 Kienapple-Rule Against Multiple Convictions

D4-1 $70 Kienapple Since Hagenlocher and Prince (57)
D4-2 $50 Breach of Probation and Substantive Offence (9)

D5 Abuse of Process

D5-1 $70 General Principles (70)
D5-2 $70 Multiple Proceedings - Relaying Charges (43)
D5-3 $50 Multiple Proceedings - Splitting Case (17)
D5-4 $70 Multiple Proceedings - Perjury Charges - Issue Estoppel and Abuse of Process (18)
D5-5 $70 Concurrent Proceedings - Collection Agency Principle and Other Ulterior Motives (21)
D5-6 $70 Breach of Undertaking by Crown (29)

D6 Drunkenness

D6-1 $50 Defence of Drunkenness (36)
D6-2 $50 List of Offences for Which Defence Available (19)
D7-1 $50 **Prank - Defence of (10)**
D8-1 $50 **Defence of Necessity (36)**
D9-1 $50 **Defence of Duress (24)**
D10-1 $70 **Provocation as a Defence to Homicide (35)**
D11-1 $50 **Diminished Responsibility (17)**
D12-1 $50 **Accident as a Defence to Homicide (7)**
D13-1 $50 **Defence of Abandonment and Innocent Finder (9)**
D14-1 $50 **Officially Induced Error (19)**

D15 Consent and Other

D15-1 $50 Non - Sexual Assault and The Defence of Consent (31)
D15-2 $70 Sexual Offences and The Defence of Consent (71)
D16-1 $50 **De Minimis Non Curat Lex - Drug and Non-drug Cases (20)**

(E) EVIDENCE

E1 Admissibility of Statements

E1-1 $70 Procedural & Preliminary Considerations (34)
E1-3 $50 Convictions Based Solely on Accused's Confession (7)
E1-4 $50 Statements with Respect to Other Offences (7)
E1-5 $50 Recording of Statements (27)
E1-6 $50 Voluntariness - Inducement (43)
E1-7 $70 Statements of Young Offenders (59)
E1-8 $50 Statements by a Co-Accused (16)
E1-9 $50 Voir Dire - Calling All Police Present (8)
E1-10 $50 Voir Dire - Cross-Examination of Accused (18)
E1-11 $50 Res Gestae Statements (10)
E1-12 $70 Charter of Rights (90)
E1-13 $50 Tainting Doctrine (18)
E1-14 $50 Voluntariness - Interrogation (15)
E1-15 $50 Statements by Impaired Accused-Alcohol and Drugs (11)
E1-16 $50 Admissibility by Accused of his own Statements (21)
E1-17 $50 Voluntariness - Oppressive Circumstances (25)
E1-18 $50 Persons in Authority (24)
E1-20 $50 Procedure Where Accused Denies Making Statement (7)
E1-21 $50 Statements by a Mentally Disabled Accused (15)
E2-1 $70 **Similar Fact Evidence (61)**

E3 Accomplice Evidence

E3-1 $70 Common Law and Statutory Corroboration after Vetrovec (25)
E3-4 $70 Co- Accused as Crown Witness (29)

E4 Identification

E4-1 $50 Eye-Witness Identification - Admissibility of Prior Out-Of-Court Identification (14)
E4-2 $70 Eye-Witness Identification - Sufficiency of Evidence (57)
E4-4 $50 Eye-Witness Identification - Similarity of Names (12)
E4-5 $50 Line-Ups (17)
E4-6 $50 Photographic Line-Ups (14)
E4-8 $50 Fingerprints (21)
E4-9 $50 Handwriting (11)
E4-10 $50 Voice (10)
E4-11 $50 Description by Eye-Witness - Hearsay and Non - Hearsay Uses (12)
E4-12 $50 Identification - Procedure - Accused Seated in Body of Courtroom (5)
E4-13 $70 Identification in Break and Enter Cases (18)

E5 Evidence in Sexual Assault Cases

E5-1 $50 Admissibility of Prior Sexual Conduct Before 1983 Code Amendments (56)
E5-2 $50 Defence Use of Expert Evidence: Absence of Disposition - Reliability of Complainant (87)
E5-3 $50 Admissibility of Recent Complaint Before 1983 Code Amendments (14)
E5-4 $50 Admissibility of Complaint after Code Amendments - s.275 (62)
E5-5 $70 Admissibility of Prior Sexual Conduct (67)
E5-6 $50 Out-of-Court Statements of Child Complainants For Truth Of Contents (54)
E5-7 $70 Credibility and Character (100)

E6 Witnesses, Character and Credibility

E6-1 $70 Collateral Fact Rule (27)
E6-2 $70 Youthful Witnesses - Competence, Videotapes and Screens (56)
E6-3 $70 Unsavoury Witnesses (29)
E6-4 $50 Examination of Witnesses Prior Criminal Record and Past Disreputable Conduct (37)
E6-5 $50 Character of Victim - Previous Acts of Violence (15)
E6-6 $50 Prior Inconsistent Statements (50)
E7-1 $70 **Doctrine of Recent Possession (25)**
E8-1 $50 **Alibi (21)**

E10 Circumstantial Evidence

E10-1 $50 Consciousness of Guilt - Flight (19)

E12 Documents

E12-5 $50 Documentary or Certificate Evidence: Reasonable Notice (29)

E13 Photographs

E13-1 $70 Conditions for Admissibility (16)
E13-2 $50 Videotapes and Films (13)

E14 Polygraph Evidence

E14-1 $50 Admissibility & Investigative Use (32)

E15 Admissibility of Evidence

E15-1 $50 Prejudice vs. Probative Value (46)
E15-2 $50 Reading in Evidence from The Preliminary Inquiry (26)
E16-1 $50 **The Police Informer Privilege (16)**

(O) OFFENCES

O1 Weapons

O1-1 $70 Proof in Weapon Dangerous Charges (34)
O1-2 $50 Proving an Innocent Object to be a Weapon (18)
O1-3 $50 Carrying a Concealed Weapon (18)
O1-4 $50 Possession of Prohibited Weapons - Orders (38)
O1-5 $50 Possession of Prohibited Weapon - Knife (13)
O1-6 $50 Careless Use/Storage of Firearm - Tests to be Applied (39)
O1-8 $50 Pointing a Firearm: s.86.1 (10)
O1-9 $50 Proving a Gun to be a "Firearm" (16)
O2-2 $70 **Conspiracy - Overview (27)**

O3 Homicide

O3-1 $50 Attempt Murder (19)
O3-2 $50 Cause of Death (14)
O3-3 $50 Death Caused in Pursuance of Unlawful Objects (16)
O3-4 $70 First Degree Murder - Planning and Deliberation (33)
O3-5 $50 Murder and Manslaughter (29)

O4 Parties to an Offence

O4-1 $50 Parties - Aiding and Abetting (44)
O4-2 $50 Parties - Principal Unknown or Unconvicted (10)
O4-3 $50 Abandonment of Joint Venture (5)

O6 Attempts and Inchoate Crimes

O6-1 $50 Attempts - Definition (40)
O6-2 $50 Counselling Commission of an Offence (13) (Note: for Attempt Murder, O3-1)
O7-1 $70 **Possession - General (32)**

O8 Criminal Negligence, Dangerous and Careless Driving

O8-1 $70 Criminally Negligent Driving (68)
O8-2 $50 Criminal Negligence (45)
O8-3 $70 Dangerous Driving (118)
O8-4 $50 Careless Driving (32)
O8-5 $50 Driving While Disquallified (75)
O8-6 $50 Driving In Excess of Speed Limit (50)

O9-1 $50 **Arson and Setting Fire (38)**

O10 Sexual Offences

O10-1 $70 Indecent Acts (24)
O10-2 $70 Gross Indecency (26)
O10-3 $50 Loitering (7)
O10-4 $50 Prostitution and Soliciting (20)
O10-5 $70 Common Bawdy House (23)
O10-6 $70 Sexual Assault (44)
O10-7 $50 Living on the Avails of Prostitution (13)
O10-8 $50 Procuring and Exercising Control (27)
O10-9 $50 Sexual Interference (9)
O10-10 $50 Sexual Exploitation (21)
O10-11 $50 Invitation to Sexual Touching (11)
O10-12 $70 Indecent Assault (21)
O10-13 $70 Incest (19)

O11-1 $70 **Extortion - Definition (12)**
O12-1 $50 **Possession of Burglar's Tools - (18)**
O13-1 $50 **Break and Enter; Unlawfully in Dwelling (51)**

O14 Breathalyzer and Impaired

O14-1 $50 Impaired Driving - Evidence of Impairment (95)
O14-2 $50 Care or Control (102)
O14-3 $70 Breathalyzer Demands (68)
O14-4 $50 Breathalyzer Test: "As Soon as Practicable" (43)
O14-5 $70 Evidence to the Contrary (93)
O14-6 $50 Breathalyzer Certificate - Evidence of Blood - Alcohol Level (53)
O14-7 $50 Impaired Driving - Over 80 - Mens Rea (39)
O14-8 $50 Impaired Driving Causing Death or Bodily Harm - Causation (40)
O14-9 $50 Blood Samples and Seizures (108)
O14-10 $70 Breath Samples and Seizures (107)
O14-11 $70 Screening Demands and Evidence (90)
O14-12 $70 A.L.E.R.T. Model J3A Recall (41)
O14-13 $70 Refusals - Reasonable Excuse (68)

O15-1 $50 **Fail to Remain - Code s.252 (33)**
O16-1 $50 **Personation (10)**

O17 Theft and Possession Stolen Goods

O17-1 $50 Proof of Stolen Nature of Goods and Ownership (25)
O17-2 $50 Knowledge of the Stolen Nature of Goods (24)
O17-3 $50 Value of Property Stolen or Possessed (10)
O17-4 $70 Possession - Passengers in Motor Vehicles (15)
O17-5 $70 Colour of Right; Lack of Fraudulent Intent (26)
O17-6 $50 Shoplifting (22)
O17-7 $50 Distinction Between Theft and Joyriding (7)
O17-8 $50 Elements of the Offence (30)

O18 Robbery

O18-1 $50 Purse Snatching (7)
O18-3 $50 Theft: Elements of the Offence (16)

O19 Forgery and Uttering

O19-1 $50 Forgery (10)
O19-2 $50 Uttering (13)

O20-1 $70 **False Pretences - N.S.F. Cheques (18)**

O21 Cause Disturbance

O21-1 $50 Definition and Constituent Elements (18)
O21-2 $50 Specific Means of Causing A Disturbance (14)

O22 Mischief

O22-1 $50 Mens Rea - General Intent - Wilfully (15)
O22-2 $50 Actus Reus-Damage -Obstructs, Interrupts, Interferes (16)

O23 Fraud

O23-1 $70 The Nature of the Offence (61)
O23-2 $70 Welfare Fraud (40)
O23-3 $50 Counterfeiting and Credit Card Offences (22)
O23-4 $50 Secret Commissions and Bribery Offences (14)
O23-5 $50 Unemployment Insurance Offences (9)
O24-1 $50 Threats; False Messages and Harassing Telephone Calls (39)

O25 Assaults; Wounding

O25-1 $70 Assault Bodily Harm /Weapon (20)
O25-2 $70 Wounding and Aggravated Assault (21)
O25-3 $70 Assault Generally and Common Assault (39)
O25-4 $70 Use of Corrective Force: Parents and Children - Teachers and Pupils (25)

O26 Probation, Recognizance, Undertaking

O26-1 $50 Breach of Undertaking or Probation Failing to Comply (66)
O26-2 $50 Breach of Probation - Young Offender (17)
O26-3 $50 Breach of Probation Evidence Issues (19)
O26-4 $50 Commence, Vary, Appeal, Stay (18)

O27 Kidnapping and Abduction

O27-1 $50 Abduction Offences:s. 280, s. 281, s. 282, s. 283 (27)
O27-2 $50 Unlawful Confinement (8)
O27-3 $50 Abduction in Contravention of Custody Order (6)
O27-4 $50 Abandon Child - Fail to Provide (20)

O29 Trespassing at Night

O29-1 $50 Definition and Constituent Elements (7)

O30-1 $50 Breach of Probation - Evidentiary Considerations (18)

O31 Drugs

O31-1 $50 Trafficking - Definition (34)
O31-2 $50 Trafficking - Defences - Agent for the Purchaser (9)
O31-3 $70 Possession in Narcotics Cases (44)
O31-4 $70 Possession for the Purpose of Trafficking - Circumstantial Evidence re Purpose of Trafficking (28)
O31-5 $70 Conspiracy - Drugs (27)
O31-6 $70 Drugs - Evidence (18)
O31-7 $50 Importing (11)
O31-8 $50 Cultivation (8)

O33 Mens Rea

O33-1 $50 Categorization of Non-Code Offences: Strict or Absolute Liability or Full Mens Rea (33)

O34-1 $70 **Obstruct Justice - Elements of Offence (22)**
O35-1 $70 **Obstruct Police - Elements of Offence (48)**
O36-1 $50 **Public Mischief - Definition (19)**
O37-1 $70 **Obscenity (57)**

O38 Provincial Offences

O38-1 $70 Failure to Stop for Police Officer H.T.A. s.216 (28)
O38-2 $50 Driving While License Under Suspension (22)
O38-3 $50 The Tresspass to Property Act (12)

O39-1 $70 **Assault Police/Resist Arrest (26)**
O40-1 $50 **Perjury (16)**
O41-1 $50 **Escape from Lawful Custody (14)**
O42-1 $50 **Peace Bonds (Keeping the Peace) (23)**
O43-1 $50 **Criminal Harassment (27)**

(P) PROCEDURES

P1-1 $50 **Change of Venue - General (31)**
P2-1 $70 **Guilty Pleas - Withdrawal of Pleas (46)**

P3 Preliminary Inquiry

P3-1 $50 Test for Committal for Trial (33)
P3-4 $50 Quashing Committal forTrial (48)

P4 Disclosure

P4-2 $70 **Right to Disclosure (144)**
P4-3 $70 Third Party Records (81)
P4-4 $70 Remedies (49)

P5 Jurisdiction

P5-1 $70 Procedural Irregularities and Loss of Jurisdiction (29)
P5-2 $70 Jurisdiction - Territory, Person, Offence (41)

P6 Joinder and Severance

P6-2 $50 Severance of Accused (22)
P6-3 $50 Joinder and Severance (28)

P7 Appeals

P7-1 $50 Grounds - Failure of Judge to Consider or Appreciate (75)

P9 Res Judicata

P9-1 $50 Autrefois Acquit - Availability (23)

P10-1 $50 **Juries - Challenge for Cause (52)**

P11 Judicial Interim Release

P11-1 $50 Murder - Release Pending Trial (36)
P11-2 $50 Judicial Interim Release - Bail Review (35)
P11-3 $50 Judicial Interim Release - Bail Hearing (35)

P13 Indictments and Informations

P13-1 $70 Sufficiency of Information (43)
P13-2 $70 Variance and Amendment (38)
P13-3 $50 Procedures on Informations (7)
P13-4 $50 Formal Defects in Informations or Court Process (15)
P13-5 $50 Duplicity (16)

P14 Arrest

P14-1 $50 Arrest Without Warrant (91)
P14-2 $50 Duty Not to Arrest - Code s.450(2) (26)
P14-3 $70 Strip Search Incidental to Arrest (81)
P14-4 $50 Intoxicated Condition in a Public Place (21)
P14-5 $70 Arrest by Private Citizen (45)
P14-6 $70 Entry of Premises to Arrest (41)

P15-1 $70 **Young Offenders - Transfer to Ordinary Court (89)**
P16-1 $50 **Judges - Bias or Partiality (45)**
P17-1 $70 **Elections (40)**
P19-1 $50 **Mistrials (17)**
P21-1 $50 **Included Offences (33)**
P24-1 $50 **Duty to Call All Material Evidence (19)**

(S) SENTENCE

S1 Robbery

S1-1 $50 Previous Offenders - Ontario (54)
S1-2 $70 Previous Offenders - Outside Ontario (101)
S1-3 $50 First Offenders - Ontario (22)
S1-4 $50 First Offenders - Outside Ontario (32)
S1-5 $70 Bank Robbery (48)
S1-6 $50 Conspiracy to Commit Robbery (10)
S1-7 $50 Attempt Robbery (17)

S2 Theft, Fraud and False Pretences

S2-1 $70 Defrauding Government Agencies - Welfare Fraud and UIC (36)
S2-2 $70 Breach of Trust (78)
S2-3 $70 Business Frauds (48)
S2-4 $70 Cheque Passing Schemes (28)
S2-5 $50 Thefts and Frauds - Criminal Breach of Trust - Lawyers (14)
S2-6 $50 Medical Frauds (4)

S3-1 $70 **Dangerous Offender Applications (108)**

S4 Drugs

("Ppt" - Possession for the Purpose of Trafficking)

S4-1 $70 Cannabis - Ppt - Ontario (18)
S4-2 $70 Cannabis - Trafficking - Ontario (15)
S4-3 $50 Cannabis - Simple Possession (27)
S4-4 $50 Unlawful Cultivation - Marijuana (13)
S4-5 $50 LSD (28)
S4-6 $70 Heroin (56)
S4-7 $70 Cocaine-Ontario (64)
S4-8 $50 Phencyclidine (11)
S4-9 $50 Cannabis - Conspiracy to Traffic (21)
S4-10 $50 Methamphetamine (11)
S4-11 $50 Psilocybin (7)
S4-12 $50 Morphine (10)
S4-13 $50 Importing (34)
S4-14 $50 Ppt - Cannabis - Outside Ontario (52)
S4-15 $50 Cannabis - Trafficking - Outside Ontario (43)
S4-16 $50 Cocaine - Outside Ontario (75)

S5 Weapons

S5-1 $70 Weapon Dangerous (54)
S5-2 $70 Use of Firearm (54)
S5-3 $50 Possession of Prohibited and Restricted Weapons (30)
S5-4 $50 Pointing Firearm (10)
S5-5 $50 Careless Use, Carriage, Handling, Shipping or Storage of a Firearm (9)
S5-6 $50 Carrying Concealed Weapon s.89 (5)

S6 Break and Enter

S6-1 $50 Previous Offenders - Ontario (32)
S6-2 $50 First Offenders - Ontario (8)
S6-3 $70 Previous Offenders - Outside Ontario (116)
S6-4 $50 Mitigating and Aggravating Factors (16)
S6-5 $50 First Offenders - Outside Ontario (32)

S7 Homicide

S7-1 $50 Manslaughter - Ontario (48)
S7-2 $50 Manslaughter - Outside Ontario (62)
S7-4 $50 Attempt Murder (38)
S7-5 $70 Second Degree Murder- Parole Non-Eligibility (89)

S8 Sexual Offences

S8-1 $50 Sexual Offences Against Children - Non - Breach of Trust (85)
S8-2 $50 Sexual Offences Against Children - Non - Parental Breach of Trust (106)
S8-3 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Outside Ontario (116)
S8-4 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Ontario (57)
S8-5 $50 Sexual Offences - Siblings (9)
S8-6 $50 Buggery (18)
S8-7 $50 Obscene Publications, etc. (6)
S8-8 $50 Contributing to Delinquency (Repealed) (2)
S8-9 $50 Sexual Assault - Ontario (49)
S8-10 $50 Sexual Assault - Outside Ontario (92)
S8-11 $50 Living on Avails; Procuring (21)
S8-12 $50 Common Bawdy House (4)
S8-13 $50 Rape and Attempted Rape (Repealed) (39)
S8-14 $50 Indecent Assault (Female) (Repealed) (16)
S8-15 $50 Intercourse with Female Under 14/14-16(Repealed) (12)
S8-16 $50 Gross Indecency and Indecent Act Consenting Adults (s. 157 Repealed) (4)

S9-1 $50 **Arson and Setting Fire (36)**

S10 General Principles

S10-2 $50 First Sentence of Imprisonment (33)
S10-3 $50 Reformatory Instead of Penitentiary (31)
S10-5 $50 Time Spent in Custody (28)
S10-6 $50 Previous Convictions - Use of Accused's Record (27)
S10-7 $50 Previous Convictions - Gap Principle (10)
S10-8 $70 Disputed Facts and Unproven Offences (98)
S10-9 $70 Discharge Under The Criminal Code and Y.O.A. (48)
S10-10 $50 Mitigating Factors - Impairment (19)
S10-11 $50 Rehabilitation (36)
S10-12 $50 Leaders and Followers (19)
S10-13 $50 Mitigating Factors - Lack of Sophistication (9)
S10-14 $50 Mitigating Factors - Guilty Plea (19)

S10-15 $50 Mitigating Factors - Co-operation with Authorities (12)
S10-16 $50 Mitigating Factors - Employment (23)
S10-17 $50 Mitigating Factors - Hardship to Dependants (20)
S10-18 $70 Disparity and Conformity (39)
S10-19 $50 Totality Principle (33)
S10-20 $50 Compensation, and Restitution (44)
S10-21 $50 Appeals - Sentence Served (14)
S10-22 $50 Fines (20)
S10-26 $50 Joint Submissions on Sentence (21)
S10-27 $50 Crown Practice - Delay in Prosecution (24)
S10-29 $70 Effect of Mental Disorder on Sentencing (40)
S10-31 $50 Concurrent and Consecutive Sentences (58)
S10-32 $50 Past Offences, No Convictions (16)
S10-33 $50 Victim Impact Statement (25)

S11-1 $70 **Wounding (26)**

S12 Criminal Negligence and Dangerous Driving

S12-1 $70 Criminal Negligence (48)
S12-2 $70 Dangerous Driving (89)

S13 Non-Sexual Assaults

S13-1 $50 Mitigating and Aggravating Factors (8)
S13-2 $50 Offences Against Children and the Elderly (44)
S13-3 $50 Domestic Assaults (94)
S13-4 $50 Assault Bodily Harm - Assault With a Weapon - General (72)
S13-5 $50 Gang Assaults - Premeditated (15)
S13-6 $50 Police Assaults of Prisoners (7)
S13-7 $50 Assault Police, Assaults Against Persons in Authority (26)
S13-8 $50 Prison Assaults - Inmate Fights (4)
S13-9 $50 Street Attacks (9)
S13-10 $50 Assaults Arising from Sports (4)
S13-11 $70 Aggravated Assault (40)
S13-12 $50 Common Assault (31)

S14 Theft and Possession

S14-1 $70 Theft and Possession Over - Previous Offenders (77)
S14-2 $50 Theft and Possession Over - First Offenders (29)
S14-3 $50 Shoplifting (24)
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S15-1 $50 **Fail to Remain (25)**

S16 Forgery, Uttering, Personation

S16-1 $70 Uttering (28)
S16-2 $50 Forgery (15)
S16-3 $50 Personation (9)

S17 Kidnapping and Forcible Confinement

S17-1 $50 Forcible Confinement (53)
S17-2 $50 Kidnapping (19)

S18 Impaired Driving

S18-1 $50 Impaired and Over 80 - Previous Offenders (55)
S18-2 $50 Impaired Driving - Proof of Prior Convictions (42)
S18-3 $50 Impaired and Over 80 - First Offenders (34)
S18-4 $50 Impaired and Over 80 - Curative Treatment - Discharges (29)
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S19-1 $50 **Obstruct Justice (18)**
S20-1 $50 **Credit Card Offences (15)**
S21-1 $50 **Extortion (21)**
S22-1 $50 **Public Mischief (9)**
S23-1 $50 **Uttering Threats s.264.1 and False Messages s.372 (46)**
S24-1 $50 **Mischief to Property (41)**
S25-1 $50 **Obstruct Police (10)**

S27 Fail to Appear/Fail to Comply

S27-1 $50 Breach of Probation (25)
S27-2 $50 Fail to Appear (10)
S27-3 $50 Breach of Recognizance (26)

S28-1 $50 **Perjury (17)**
S29-1 $50 **Escape Custody and Unlawfully at Large (27)**

S30 Young Offenders Act - Dispositions

S30-1 $50 General Principles (54)
S30-2 $50 Robbery (23)
S30-3 $50 Break and Enter (56)
S30-4 $50 Assault (24)
S30-5 $50 Theft and Possession (35)
S30-6 $50 Sexual Assault (19)
S30-7 $50 Weapons Offences (12)
S30-8 $50 Escape Custody and Unlawfully at Large (7)

S31-1 $50 **Criminal Negligence - Non-Motor Vehicle (12)**
S32-1 $50 **Causing a Disturbance (5)**

FAMILY LAW MEMORANDA

(oriented to Ontario Legislation)

(CH) CHILDREN

CH1 Paternity

CH1-1 $70 Establishing Parentage (58)
CH1-2 $50 Re-Opening Paternity (16)

CH2 Custody

CH2-1 $50 Tender Years Doctrine (19)
CH2-2 $50 Joint Custody (44)
CH2-3 $70 Best Interests of Child, s.24(2) C.L.R.A. (85)
CH2-4 $50 Removal of Child from the Jurisdiction (12)
CH2-5 $50 Variation of Custody Orders (71)
CH2-6 $50 Custody/Access Assessments (28)
CH2-7 $50 Custody - Jurisdiction (47)
CH2-8 $50 Best Interests of Child - Disputes Between Parents and Non-Parents (50)
CH2-9 $50 Best Interests of Child -Conduct of Parents (47)

CH3 Access

CH3-1 $50 Access - General Principles (74)
CH3-2 $50 Access - Enforcement - Contempt Proceedings (27)
CH3-3 $50 Access/Custody - Standing to Apply - Meaning of "Any Other Person" s.21, C.L.R.A. (23)
CH3-4 $50 Transportation Cost and the Exercise of Access (20)
CH3-5 $50 Grandparents' Right to Access (20)
CH3-6 $50 Conduct of Parents (30)

CH4 Adoption

CH4-1 $50 Dispensing With Consent of Natural Parent (42)
CH4-2 $50 Post Adoption - Access By Natural Parent (27)

CH5 Children in Need of Protection - C.F.S.A.

CH5-1 $70 Crown Wardship Orders - When Made (80)
CH5-2 $50 Crown Wardship and Parental Access (43)
CH5-3 $50 Crown Wardship vs. Opportunity to Parent (35)
CH5-4 $50 Termination of Crown Wardship (23)
CH5-5 $50 Supervisory Orders - When Made (33)
CH5-6 $50 Child Abuse Register - Expunction Hearing (25)
CH5-7 $50 Costs Against Children's Aid Society or Official Guardian (18)
CH5-8 $50 Orders for Temporary Care and Custody- Test (21)

(DIV) DIVORCE

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(DP) PROPERTY

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DP4 Net Family Property

DP4-1 $50 Unequal Division - Unconscionable (43)
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DP20 Net Family Property

DP20-1 $50 Valuation of a Business Interest (17)

(MH) MATRIMONIAL HOME

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MH1-2 $50 Occupation Rent (24)

(PRO) PROCEDURE

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PRO1-2 $50 Custody/Access Proceedings (26)
PRO2-1 $50 Extension of Limitation Periods Under the Family Law Act (14)
PRO2-2 $50 Financial Statements - Duty to Disclose (14)

PR03 Practice and Procedure - venue

PRO3-1 $50 Naming Place of Hearing and Change of Venue (26)

PR020 Procedure

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RE2-1 $50 Preservation Orders - Family Law Act, s.12 (15)

(SA) SEPARATION AGREEMENTS

SA1 Setting Aside Separation Agreements

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SA1-2 $70 Overriding Waivers/Provisions for Spousal Support in Divorce Proceedings (43)
SA1-3 $70 Effect of Reconciliation (12)
SA1-4 $50 Effect of Separation Agreements in Applications For Child Support (42)
SA1-5 $50 Interpretation of Separation Agreements Release Clauses (19)

(SD) SUPPORT (DIVORCE)

SD1 Spousal Support

SD1-1 $70 Variation of Permanent Orders (81)
SD1-2 $50 Spouses' New Partners - Consideration of Their Income or Assets (26)
SD1-3 $50 Arrears - Reduction or Rescission (74)
SD1-4 $50 Effect of Delay - Initial Application (18)
SD1-5 $50 Effect of Cohabitation (48)
SD1-6 $50 Nominal or "In Case" Awards (8)
SD1-7 $50 Retirees - Mandatory and Early (24)
SD1-8 $50 Interim and Interim Interim Application (73)
SD1-10 $50 Limited Term Orders (35)
SD1-11 $50 Lump Sum Orders (41)

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SD2-1 $50 Meaning of "In Loco Parentis" (27)
SD2-2 $50 Children over 16 Attending University (42)
SD2-3 $50 Effect of Delay - Initial Application (14)
SD2-4 $50 Lump Sum Child Support Orders (25)

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SE1-3 $50 Staying Enforcement (16)

(SU) SUPPORT (PROVINCIAL)

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SU1-2 $50 "Demonstrated Settled Intention to Treat" (32)
SU1-3 $50 Relationship Between Child Support and Access (16)
SU1-4 $50 Child Support - Assessment of Quantum - General Principles (57)
SU1-5 $50 Apportionment Between Multiple Parents (20)

SU2 Spousal Support

SU2-1 $50 Extended Definition of "Spouse" - "Cohabited Continuously for a Period of Not Less Than 5 Years" (27)
SU2-2 $50 Duty to be Self-Supporting (31)
SU2-3 $50 Marriage of Short Duration - Quantum - Two Years or Less (21)
SU2-4 $50 Conduct Decreasing or Increasing Quantum - s.33(10) F.L.A. (14)
SU2-5 $50 Ability to Pay - Voluntary Reduction of Income (55)
SU2-6 $50 Entitlement - Need (52)
SU2-7 $50 Social Assistance (21)

SU3 Support Orders

SU3-1 $50 Secured Orders: Transfer of Property (37)
SU3-2 $50 Retroactive Orders (31)

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(All-Canada orientation unless specified otherwise.)

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BAN1-1 $50 Judgment Debtor Avoiding Judgment Against Him (11)

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DEB1 Debtor and Creditor

DEB1-1 $50 Notice of Requirements (19)

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DAM2 Intentional Torts

DAM2-1 $50 Damages for Assault and Sexual Assault (74)
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DAM4-1 $50 Loss of Organs: Spleen, Pancreas, Gall Bladder and Kidney (23)
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DAM4-3 $50 Lower Back Injuries - Sprains, Contusions and Bruises - Case Digests (63)
DAM4-4 $50 Knees - Case Digests (83)
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DAM4-6 $50 Dental Injuries - Teeth (15)
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DAM4-8 $50 Temporomandibular Joint Syndrome -"TMJ" (22)
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DAM4-10 $50 Eye Injuries (20)
DAM4-11 $50 Burns (18)
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DAM4-14 $50 Rib Injuries (12)
DAM4-15 $50 Dog Bites (14)

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EMP2-7 $50 Disloyalty and Conflict of Interest (28)
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EMP2-9 $50 Incompetence - Managers (25)
EMP2-10 $50 Incompetence - Salespersons and Sales Managers (25)
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EMP2-12 $50 Incompetence - Senior Executives and Directors (13)
EMP2-13 $50 Incompetence - Forepersons, Superintendents and Supervisors (11)
EMP2-14 $50 Incompetence - Miscellaneous - Employees (20)

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EMP3-2 $50 Part-time and Casual Employees (17)

EMP4 Wrongful Dismissal - Constructive Dismissal
EMP4-1 $50 Geographical Transfer of Employee (23)
EMP4-2 $50 Reduced Earnings: Fixed Salary (26)
EMP4-3 $50 Reduced Earnings: Commission, Bonus, Car (38)
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EMP4-9 $50 Miscellaneous cases (34)
EMP4-10 $50 Defence - Condonation by employee (12)

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EMP5-1 $50 - Termination Provisions
- Enforceability and Interpretation - (48)

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INS2-1 $50 "Insured" - Wrongful Act of Co-Insured (23)

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INS3-2 $50 Use or Operation of Automobile (19)
INS3-3 $50 Statutory Conditions - Permitting Use by Another While Intoxicated or Unlicensed or Unqualified (14)
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- Meaning of Totally Disabled (36)
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NEG2-7 $50 Lawyers - Limitation Periods, Conduct of Action, Settlements (25)
NEG2-15 $50 Lawyers - Existence of Solicitor/Client Relationship and Duties to Third Parties (21)
NEG2-16 $50 Medical Malpractice - Patient's Consent to Treatment (50)
NEG2-17 $50 Duty to Intoxicated Person (23)
NEG2-18 $50 Medical Malpractice - Specific Procedures - Tubal Ligation/Abortions /Wrongful Births (18)

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NEG2-2 $50 Child Pedestrians - Parents' Duty to Supervise Children (11)
NEG2-4 $50 Parents' Duty to Supervise Children - Non Pedestrian Cases (27)

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NEG2-14 $50 Pedestrians - Places other than Highways and Involving Police Officers or Disabled Persons (29)
NEG2-2 $50 Child Pedestrians - Parents' Duty to Supervise Children (10)
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NEG3 Vicarious Liability
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NEG5-1 $50 Dog Owner's Liability (7)

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OCC1-1 $50 General Principles (85)

OCC2 Swimming and Diving Accidents
OCC2-1 $50 Swimming and Diving Accidents; Accidents on Pool Premises (18)

OCC3 Slip and Fall
OCC3-1 $50 Uneven and Other Deceptive (Non-slippery) Surfaces; Obstructions (54)
OCC3-2 $50 Ice and Snow - Parking Lots and Means of Access (Exterior), Privately Controlled (39)

OCC4 Recreation and Sport Premises
OCC4-1 $50 Duty re Facilities and Activities (52)

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SAL1-1 $50 Breach of Warranties or Conditions; Fundamental Breach; Illegal Business Practices (25)

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(Damages Not Included)

TOR1 Assault, False Arrest and Imprisonment
TOR1-2 $50 False Arrest, Assault, False Imprisonment - No Police or Security Guards (13)
TOR1-3 $50 Assault - No Police or Security Guards (63)
TOR1-4 $50 Excessive Force in Making Arrest (23)
TOR1-5 $50 Sexual Assault (37)

TOR2-1 $70 Malicious Prosecution -Elements and Defences (48)
TOR3-1 $50 Nervous Shock - Negligent and Intentional Infliction (23)
TOR4-1 $50 Assault - Bars, Restaurants, Night Clubs -Liability of Owner for Assaults by Employees and Patrons (28)

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REF3-1 $70 Natural Justice Issues (78)
REF4-1 $50 Change of Circumstances (25)
REF6-1 $50 Gender - Related Persecution (45)
REF7-1 $70 Nationality and Statelessness (35)
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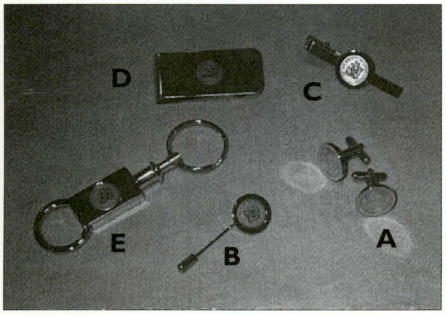

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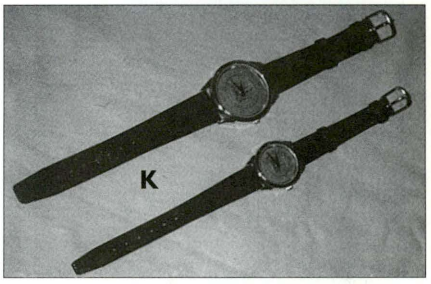

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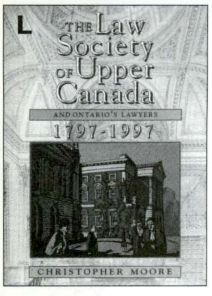

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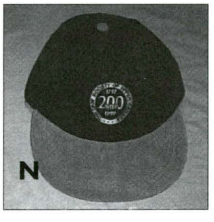

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With the introduction of the new TitlePLUS policy this summer, and the availability of other title insurance products, title insurance is here to stay. It will affect every lawyer practising real estate in Ontario. You must understand the relevant concepts, and how title insurance works, in order to properly advise and obtain the best protection for your clients. This essential program will be transmitted live via satellite from Toronto to the centres across Ontario indicated [at left]. The new TitlePLUS product and other available title insurance products will be critically analyzed and compared.

The low registration fee ($75 + $5.25 GST = $80.25) includes coffee, lunch and extensive materials, including precedents. The program is presented jointly by LSUC, CBAO and CDLPA; the registration fee has been reduced substantially thanks to LPIC's generous sponsorship.

PART II: Electronic Registration, October 24, 1997, 9:00 a.m. to 5:00 p.m.
To register (or for further information) call (416) 947-3374 or toll-free 1-800-668-7380, Ext. 3374.

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