



The
Law Society of
Upper Canada
Osgoode Hall, Toronto

Plus

com·mu·ni·qué

Number 1

24th and 25th January, 1985

This is the first issue of a new publication. Its purpose is to flesh out some of the more interesting matters dealt with by Convocation that cannot be covered adequately in the Communiqué. It will not attempt to relate everything that occurred in Convocation.

The Benchers met yesterday to dispose of a number of discipline matters that are reported in the Communiqué and to deal with some of the more routine reports of standing committees such as those of the Libraries and Reporting Committee two reports of the Compensation Fund Committee, the Unauthorized Practice Committee and several others. Today the reports of the Legal Education Committee and Admissions Committee involved no matters that need to be reported. The same is true of the Legal Aid Committee, the Building Committee and the Special Committee on J. Shirley Denison Bequest and of reports on housekeeping matters. Four Candidates were called to the Bar, three transferring from practice in other provinces and one who is a full time faculty member in an Ontario law school. The full minutes of a regular Convocation amount to approximately 100 printed pages. Often the Discipline Convocation produces a like number of pages. It is not practicable to precis material of such quantity and variety so only those items which are thought to be of most interest to the profession as a whole will be chosen for inclusion here.

Incorporation of Law Practices

Members will recall that at the end of November last, Convocation approved in principle of seeking amendments to the Law Society Act to permit lawyers to incorporate their law practices so as to be able to benefit from the tax provisions respecting small businesses. The Society's Legislation and Rules Committee has been considering appropriate amendments to seek and material is now being forwarded to the Attorney General for his consideration. Incorporation will chiefly benefit small firms and only be of limited help to medium sized or large ones. The Committee's report runs to 6 pages and is available to those who wish to have a copy.

Prepaid Legal Costs

The question of prepaid legal costs arose first in the context of insurance. More than 10 years ago a few insurers were interested in offering legal costs

insurance and at that time the Society took the position that it would permit its members to be involved in such plans only if they provided open panels of lawyers. That is to say that anyone obtaining the insurance would be able to use its benefits to retain the lawyer of their own choice. The Superintendent of Insurance agreed with this position. Such plans enjoyed a limited success.

Now, as the economic climate brightens, organized labour is bargaining to have prepaid legal costs included among employee benefits. Such plans offer legal advice and assistance either through staff lawyers employed full time to serve union members or through co-operating lawyers who agree to the terms of the plan including a scale of remuneration.

One difficulty with these plans from the Law Society's point of view is that they involve 'steering' which contravenes the present Rule 13 of the Rules of Professional Conduct, Commentary 17 (f) and (g). Another more serious difficulty is that some such plans do not provide for open panels.

The Society, however, is impressed with the intention of the plans it has seen and with the undoubted benefits that will flow from them to union members and today Convocation adopted a report of a special committee recommending that members of the Society be permitted to participate in prepaid legal service plans including those operating on a staff lawyer or panel basis provided that beneficiaries under such plans are able to select any staff or co-operating lawyer under the plan and that any lawyer who agrees to the terms of the plan can become a co-operating lawyer. In addition, solicitor-client privilege and confidentiality must be maintained and the plan operated so as not to involve a participating lawyer in any breaches of the Society's Rules. This will preserve the right of everyone covered under such a plan to choose their own lawyer. Rule 13 will be changed to permit steering under such plans.

Lawyers Acting as Mortgage Brokers

The question of lawyers acting as mortgage brokers and the legitimate activities of lawyers in the context of mortgage transactions has been under consideration by the Professional Conduct Committee and the Discipline Committee for years. A number of reports have come forward to Convocation but each time failed to receive support. The difficulty has always been to distinguish the proper services which lawyers have traditionally provided to their clients in mortgage transactions from those which experience has shown have jeopardized the client's position and led to situations which have resulted in claims against the Compensation Fund.

Now at last the sub committee of the Professional Conduct Committee after much labour has brought forward a draft rule which Convocation has adopted in principle for the purpose of having it distributed to the profession as a whole for comment and suggestion. The draft is too long to include here and no precis could do justice to it so both the report and the draft rule will go out to the members in a separate mailing.

Members are urged to give careful consideration to the draft and to address their comments on it in writing to the Secretary.

* Law Society Fees, Levies and Classes of Membership

Many members of the Society, particularly those who are not practising because they are outside Ontario or for other reasons have urged that they be permitted to maintain their membership in the Society at a reduced fee. Most feel that they should not be required to pay the Compensation Fund levy because they do not handle clients' trust funds.

The question has been a matter of concern to the Finance Committee over the years and has been considered on several occasions. Comparison has been made with other provincial Bars that offer non-practising status to members not engaged in active practice. The situation has been exacerbated by rising costs during a period of economic recession and the undoubted hardship that this has caused to many members particularly those who have been unable to find employment or who are experiencing difficulty in establishing their own practices.

Against this it has been argued that the Society's expenses must be met from the fees of its members and that the Compensation Fund levy is a corporate responsibility to be shouldered by all who wish to call themselves members of the Bar of Ontario. It is not convincing to say that because a member does not handle trust funds or engage in private practice that they pose no risk to the fund. The vast majority of practitioners pose no risk and it is invidious to suggest that only those who practise should be required to support the fund.

A sub committee of the Finance Committee has once again given careful consideration to establishing classes of membership. It has recommended that a special committee be formed to consider applications for relief from payment of annual fees and Compensation Fund levy on grounds of extreme financial hardship by members called to the Bar within the three year period preceding application but that no other change be made in the present fee structure.

Interprovincial Law Firms

The Benchers voted today to change existing commentary 8(b) of Rule 13 of the Rules of Professional Conduct to read 'a firm name shall only include the names of persons who, if living, are qualified to practise in Ontario or in any other province or territory of Canada where the firm carries on its practice, or, if dead, who were qualified to practise in Ontario or in any other province or territory of Canada where the firm carries on its practice'.

They also adopted in principle a new rule to be numbered 22 which will permit lawyers to enter into agreements with lawyers in other Canadian jurisdictions to form an interprovincial law firm provided they comply with certain requirements. In this context an interprovincial law firm is one that carries on the practice of law in more than one province or territory of Canada.

The requirements take for granted that anyone who practises law in Ontario must be a member of the Law Society and go on to provide that members of interprovincial law firms in the province must comply with the Society's requirements and ensure that the firm's books, records and accounts pertaining to their Ontario practice are available to the Society's auditors or their designated agent and that members of such firms must ensure that their partners, associates or employees who are not qualified to practise in Ontario do not do so and are not held out as qualified to do so.

Reporting Breaches

Recently a member's client told him his former solicitor had stolen money from him and gave instructions that the member was to make every effort to recover the money but forbade him to inform the Society of the theft. The member concluded that his primary responsibility was to his client and carried out the instructions. The client's money was recovered by the defaulting lawyer robbing Peter to pay Paul and the delay in the Society discovering the situation resulted in very substantial claims against the Compensation Fund. Convocation has now adopted the recommendation of a sub committee of the Professional Conduct Committee that paragraph 1 of the commentary of Rule 14 be changed by the addition of the following:

'... However, a lawyer may not act on a client's instructions to recover from another lawyer funds allegedly misappropriated by that other lawyer without revealing the allegation of misappropriation to the Law Society. In such circumstances the lawyer may act on the instructions only if the client authorizes disclosure of the allegation to the Law Society.'

The report including the draft addition to the rule will be circulated for the profession's comments.

Ontario Reports Data Base

The Society's data base of the full text of the Ontario Reports from 1931 to the present will soon be available on the Quic/Law retrieval system. It will be the largest law report data base available and will have several distinct features. Members will be able to subscribe for direct access to the Ontario Reports and other data bases or to utilize the Society's Search-Law Service Bureau. Questions about the availability of the data base should be directed to the Chief Librarian at 947-3397 or in writing to the Great Library, Osgoode Hall.

Kenneth Jarvis,
Secretary.