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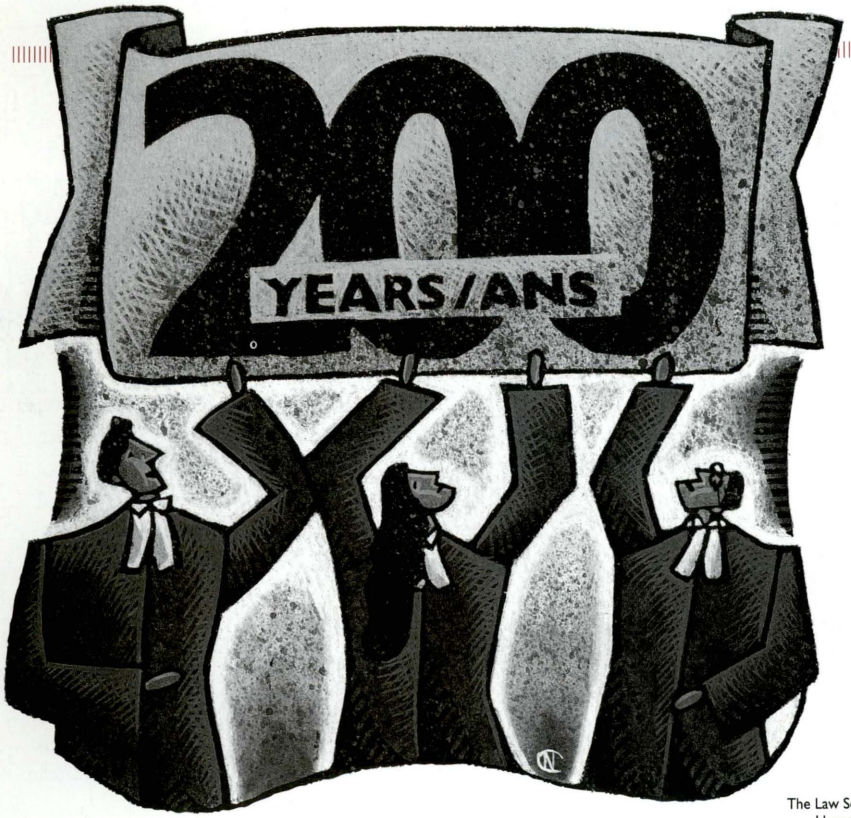
ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



INSIDE/À LIRE

LET RIGHT PREVAIL

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

Welcome to your Gazette

This is the first issue of Ontario Lawyers Gazette, the Law Society's new member publication.

The Gazette will be published every two months (the next issue will be in mid-April) and it replaces the newsletter program that began in 1992.

Why the change?

There's at least two reasons. First, producing and distributing the four newsletters nine times a year was not an efficient means of communication. Second, the old format was not flexible enough to allow the Law Society to give members the quality and quantity of information they said they were looking for. The goal for the Gazette is to provide members with a single, comprehensive package of news and features that can help them keep in touch with Law Society and professional matters.

The Law Society's bicentennial was another factor in launching the Gazette. The desire was to create something new to mark this significant anniversary that would also exist beyond 1997. The title, Ontario Lawyers Gazette, was chosen to retain the link to the "old" Gazette that ceased publication last year. The Law Society thanks Mr. John Honsberger, Q.C., LSM, for the many years he devoted to guiding the Gazette.

> Members are encouraged to submit articles, letters and story ideas

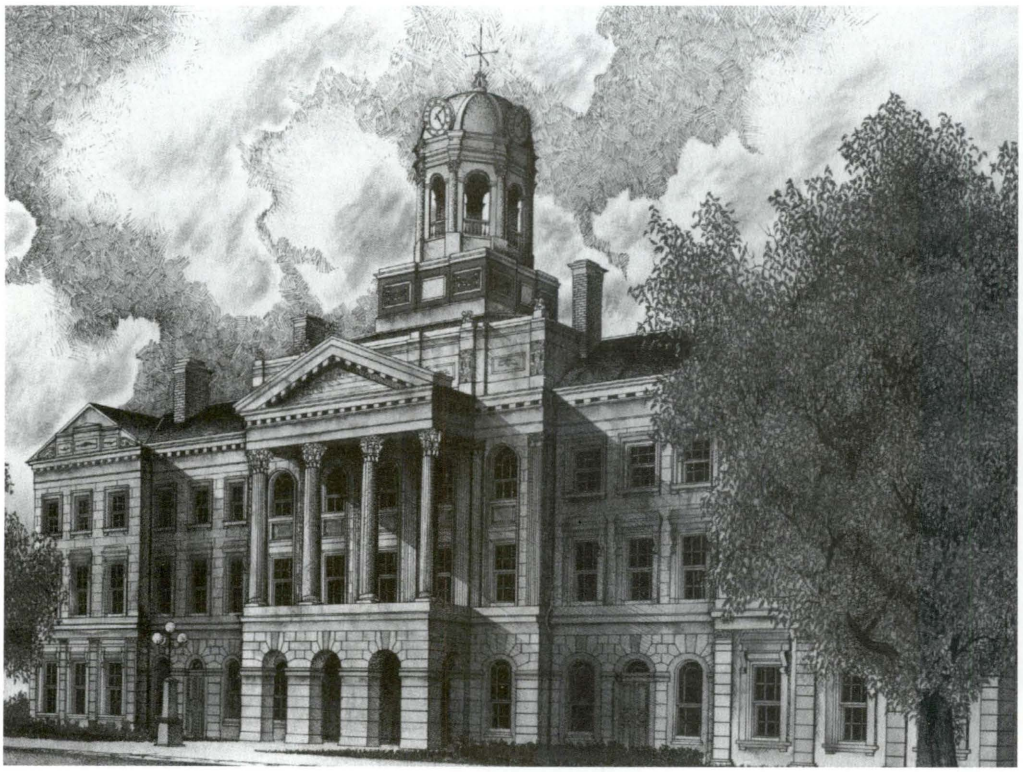
What about content?

The initial content plan for the Gazette was mainly developed with reference to the results of the Law Society's readership survey of November 1996. The feedback received during the past four years from members about the newsletters was also considered.

For future issues, the Gazette will rely heavily on the input from members to help guide its direction. Members are encouraged to submit articles, letters, story ideas, photographs or any other content ideas they believe will be of interest to their colleagues. If something is published that you like, or don't like, let us know. The contact information is in the masthead on page two.

Is there anything else?

Yes. It was recognized that moving to a bi-monthly publication might, on occassion, limit the Law Society's ability to get information to members in a timely manner. To deal with this, a system is being developed to allow "fast-breaking news" to be sent to members quickly and efficiently via fax and/or e-mail. To ensure that as many members as possible are able to receive these updates, it is vital that member records include a fax number. For now, the easiest way to supply an e-mail address is go to Member Sign-in in the Law Society's website at www.lsuc.on.ca ■



ONTARIO'S COURTS

Cobourg, Northumberland County

"One of three Ontario court houses designed to include town halls, Victoria Hall is one of Ontario's most important and impressive public buildings. An exuberant symbol of Cobourg's aspirations, it was the product of one of the province's finest architects, Kivas Tully of Toronto."

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

Benchers reject mandatory CLE proposal

The pursuit of "timely, affordable and accessible" continuing legal education was overwhelmingly endorsed by Convocation in January. However, benchers stopped short of making it mandatory for Ontario's lawyers.

Three recommendations — a "blueprint" for enhancing delivery, improving content and reducing the costs of continuing legal education — were adopted by Convocation. On the question of making CLE compulsory, benchers rejected a proposal to proceed with implementing a mandatory program. Instead they voted in favour of a motion that defers the MCLE decision until they can review how successful the approved recommendations' action plans are at keeping lawyers up to date professionally.

The recommendations are part of a report to Convocation from the MCLE subcommittee. The report was developed following extensive consultation with a "wide variety of legal organizations and practitioners from across the province," in which the profession was asked about its educational needs.

With the acceptance of the three recommendations, Convocation has:

• adopted general principles and minimum expectations for post-call education — focusing on the need for lifelong learning for lawyers and based on the idea that professional competence is maintained and enhanced by on-going professional development. These basic principles recognize and support a core function of the Law Society's regulatory mandate to ensure that lawyers in Ontario meet high standards of learning and competency.

• supported the initiation and coordination of an action plan for enhancing educational opportunities available to the profession. Among the goals is the expansion and improvement of delivery methods making education more accessible, useful, cost-effective and locally available by increasing the expansion of CLE to the country and district level. The intent is to reduce barriers to education by exploring new learning delivery methods using new technologies.

> The Law Society will not be expected to act alone to support the enhancement of post-call learning

• agreed to gather meaningful information on post-call education. Little data is available to determine the number of lawyers who actively pursue learning opportunities after their call to the bar. (Anecdotally, it is believed that about 25 per cent of the profession is active in CLE programs.) The necessary statistical information will allow the Society to assess the effectiveness of CLE.

In its report, the MCLE subcommittee makes it clear that the Law Society will not be expected to act alone to support the enhancement of post-call learning and that all interested parties, from other CLE providers, legal associations and law schools to libraries and individual practitioners should collaborate to ensure that the development of educational policies, opportunities and programs become a priority among the profession. The CBA-O, the County and District Law Presidents' Association, County of York Law Association, and the Advocates' Society have endorsed the recommendations.

In Canada, no province currently has mandatory continuing legal education, however Quebec is expected to implement compulsory education for a number of professions in the near future and other provinces are considering the issue. South of the border, 37 states require lawyers to pursue continuing education following their call. ■

CEO reports on reducing costs and increasing efficiency

Member satisfaction — giving members good value for the fees they pay — is the goal of the Law Society's revamped administration, according to CEO John Saso, who reported to Convocation in January his staff's progress in making the Society a more efficient operation.

Mr. Saso outlined where the Society's operations were in 1995, the changes achieved in 1996 and the goals to be pursued in 1997 as the operations of the Law Society undergo full review and restructuring in the search for greater efficiencies and cost-effectiveness.

As part of Convocation's adoption of the policy governance model (benchers deal with policy; staff with implementation) the Society's administration continues to undergo change. "Significant progress has been made on a number of fronts," Mr. Saso told benchers. "Staff accountability has risen, costs have fallen, efficiencies have increased and the Society's financial and operational vulnerability has been substantially reduced."

In seeking to serve members more effectively, five broad goals direct the administration to be accountable, efficient, cost-effective, service-oriented and results driven. The changes are already evident:

- Operations have been restructured and a number of functions have been consolidated
- The staff complement has been reduced by 15 per cent
- A single cash collection point has replaced the previous system in which monies were collected at 32 different points
- Supplies are now centrally purchased, taking advantage of economies of scale to gain volume discounts, and avoiding over purchasing
- A comprehensive accounting policies and procedures manual now ensure proper financial controls: bank accounts are reconciled within 30 days of month's end; all cheques now require two signing officers; receivables are collected, recorded and deposited within one business day
- Invoicing is now centralized to a single point
- Quarterly financial statements are prepared on time and vetted through appropriate channels

The result of these changes, and others, is that $3.75 million has been cut from operations in 18 months. Many departments have reduced their budgets by over 10 per cent, and some by as much as 35 per cent.

While substantial progress has already been made, the emphasis in 1997 will be to dramatically increase levels of service to members and the public. To that end, Mr. Saso told benchers, a one-stop-shopping-service-centre is being developed. The goal is to have 70 per cent of all inquiries from members dealt with by the Law Society staffer who answers themember's initial call.

Change at the Law Society is moving quickly, but says Mr. Saso, change was long overdue. "Apart from sporadic

TREASURER'S MESSAGE

Program review next phase of governance restructuring

One of the most tangible impacts of our governance restructuring in 1997 will be the benchers' review of Law Society programs. You can expect to hear a lot more about it as the year progresses.

Susan Elliott

In January, Convocation received a report detailing the purposes of the review, the programs to be evaluated, and the steps benchers will follow to carry out the assessment.

Although the program review may result in the change or elimination of some programs, it is not a slash and burn exercise — I can't emphasize that enough. Indeed, it may be that Convocation decides there are new programs the Law Society should be providing for the benefit of the profession or the public. The review is about evaluation, not cutting programs. Benchers will consider the existing program base — where we are — and by measuring the relative value of each program and its appropriateness to the Society's role, determine future program policy — where we want to be.

The program review is the middle part of the three-pronged approach Convocation is taking as it restructures under the policy governance model adopted in 1996. Our next step is to deal with any outstanding issues from the past so that the slate is cleared as we move forward. With that accomplished we'll progress to the program review. Finally, benchers must set course for where we want the Law Society to go in the future. We'll do that by gathering detailed information about the needs of the public and the profession so that we can establish the appropriate policies as we move into the next century.

Convocation's work — along with a parallel operations review on the administrative side at the Law Society (see story on page 4) — is intended to enhance the relevancy and leadership of Convocation, while developing a Law Society that effectively offers members and the public excellent service with greater cost-efficiency.

I don't think it's a coincidence that in the year of the Law Society's bicentennial anniversary we should be so focussed on looking ahead and going forward. We have a proud past of 200 years of safeguarding the people of Ontario's access to a competent and professional bar. Our restructuring will ensure we maintain that legacy and allow us to lead, rather than follow, Ontario's legal profession into the 21st Century.

Susan E Elliott

tinkering, work-in-progress at the Law Society has remained substantially unchanged for the last 10 to15 years. We are now systematically reviewing all of the things that we do...We want to provide services to members in a very effective, accurate, timely and first-time-where-possible basis, and give members and the public the information and the services they need right away."

Complaints and discipline down

Mr. Saso also advised Convocation that the Law Society handled 4,510 complaints last year — a decrease of seven per cent from1995. This continues a downward trend in the number of complaints, which have declined by 22 per cent since 1994. Fewer complaints files are opened because of a change in approach — once, every complaint was formally investigated, but now other ways of settling issues are used and only the "serious" complaints move to investigations.

In discipline the numbers are also moving downward. Compared to the year earlier, the number of complaints authorized and sent to discipline was down 26 per cent in 1996. The reduction stems from the lighter traffic in the complaints department, as well as a change in how Form 2 filings are dealt with by discipline. In 1996, 59 solicitors were suspended, 18 disbarred and 11 granted permission to resign. ■

New bencher joins Convocation

Convocation has a new bencher. Niels Ortved, a partner with McCarthy Tétrault, was elected in January to fill the vacancy created by the appointment of Toronto bencher Stephen Goudge, a litigation and labour lawyer, to the Ontario Court of Appeal.

Mr. Ortved received his law degree from the University of Toronto and was called to the bar in 1973. He practices litigation, civil and criminal law and appears before administrative tribunals. According to the 1995 bencher election guide, Mr. Ortved considers self-regulation, open communication between Convocation, the public and membership, and continuing competence in the bar, as issues of importance.

Niels Ortved

Justice Goudge was a bencher for six years. Mr. Ortved is a newcomer to Convocation. ■

Roll-call votes

At January Convocation, there were four roll-call votes stemming from the debate on mandatory continuing legal education. The first motion dealt with three recommendations in a report to Convocation from the MCLE subcommittee pertaining to supporting and enhancing post-call learning. A fourth recommendation in the same report came with two options — both of which were voted on as separate motions. A third option (motion) was introduced during Convocation.

1. That Convocation adopt three recommendations from the MCLE subcommittee designed to enhance delivery, improve the content and to reduce the cost of post-call education for the Ontario legal profession. Carried 31-3.
2. That continuing legal education not be made mandatory. Lost 26-13.
3. That benchers approve in principle the introduction of MCLE. Lost 22-12.
4. That Convocation defer the final decision on whether to introduce MCLE until the fall of 1998, and that during the period preceding that date, initiatives set out in action plans relating to CLE (and approved by Convocation — see 1, above) should be investigated, pursued and reported on. Carried 29-10. ■

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

	Attend		*Motions**			
January 24, 1997	a.m	p.m.	1	2	3	4
Aaron, Robert	✓	✓	F	A	A	F
Adams, W. Michael	✓		F	F	A	A
Angeles, Nora	✓	✓	F	A	F	A
Armstrong, Robert	✓	✓	F	F	A	A
Arnup, John						
Backhouse, Nancy	✓	✓	F	F	F	A
Banack, Larry	✓	✓	F	F	F	A
Bellamy, Denise	✓	✓		F	F	A
Bobesich, Gordon	✓	✓	A	A	A	F
Carey, Tom	✓		F	F	F	A
Carpenter-Gunn, Kim	✓	✓	F	F	A	A
Chahbar, Abdul Ali						
Cole, Thomas	✓	✓	F	A	A	F
Copeland, Paul	✓	✓		A	A	F
Cronk, Eleanore	✓	✓		F	F	A
Crowe, Marshall	✓	✓	F	A	A	F
Curtis, Carole						
Del Zotto, Elvio	✓	✓	F	F	A	F
Eberts, Mary						
Epstein, Philip	✓	✓	F	F	F	A
Feinstein, Abraham	✓	✓	F	F	F	A
Finkelstein, Neil						
Gottlieb, Gary L.	✓	✓	A	A	A	F
Harvey, Jane	✓		F	F	A	A
Krishna, Virender						
Lamek, Paul						
Legge, Laura	✓		F	F	A	A
MacKenzie, Gavin	✓	✓	F	F	A	A
Manes, Ronald	✓	✓	F	F	A	A
Marrocco, Frank	✓	✓	F	F	A	F
Martin, Arthur						
Millar, Derry	✓	✓	F	F	F	A
Murphy, Daniel						
Murray, Ross	✓	✓	F	F	F	A
O'Brien, Brendan						
O'Connor, Shirley	✓	✓	F	A	F	A
Ortved, Niels	✓	✓	F	F	A	A
Puccini, Helene	✓	✓	F	A	A	F
Rock, Allan						
Ross, Heather	✓		F	F	A	A
Ruby, Clayton	✓	✓		F	A	A
Sachs, Harriet	✓	✓	F	F	A	A
Scace, Arthur						
Scott, David	✓	✓	F	F	A	A
Sealy, Hope	✓	✓	F	F	A	A
Stomp, Tamara						
Strosberg, Harvey	✓	✓	F	F	F	A
Swaye, Gerald	✓		F	F	A	A
Thom, Stuart	✓	✓	A	A	A	F
Topp, Robert	✓		F	F	A	F
Wilson, Richmond	✓	✓	F	F	A	F
Wright, Bradley	✓	✓	F	F	A	F
Elliott, Susan (Treas.)	✓	✓				

Non-voting Benchers in attendance

R. Cass, G.H.T. Farquharson, P. Furlong, D. Lamont, A. Lawrence, 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

CIVIL LITIGATION

Province announces mandatory mediation process

Lawyers are just beginning to digest the implications of Attorney General Charles Harnick's recent announcement that all civil non-family cases in Ontario will be referred to a mandatory mediation process.

Mandatory referral to mediation is scheduled to be in place in Ottawa in the next few weeks and will be implemented in Toronto at the beginning of June. It will be phased in across the province over the next four years.

The Law Society will endeavour to keep members informed about practice issues that will arise from mandatory mediation.

The following summary of the key points of mandatory mediation was prepared by the Ministry of the Attorney General:

- Mediation will be a requirement in the rules of civil procedure.
- Civil (non-family) cases will be referred to a three-hour mandatory mediation session.
- Mediation must take place after filing of the first statement of defence.
- Time extensions for mediation must be approved by the court.
- Litigants who want to opt out of mediation require approval of the court.
- Mediations must be conducted by mediators from an approved roster.
- Parties will be able to select the mediator they want from the roster.
- With the approval of the court, litigants can choose a mediator who is not on the roster.
- Mediators will be from the private sector.
- Mediators will not have to be lawyers to be on the roster.
- Mandatory mediation sessions will be three hours long. Sessions can last longer than three hours if all parties agree.
- If a settlement cannot be reached during mediation, the case continues through the litigation process.
- Alternative dispute resolution (ADR) committees will be set locally to manage the mandatory mediation process.
- Local ADR committees will be responsible for:
  - ensuring that communities are receiving the mediation services they need;
  - applying the standards approved by the Attorney General and the Chief Justice in appointing roster mediators;
  - establishing, managing and monitoring the local roster of mediators;
  - setting local tariffs up to a maximum of $300 per party for the mandatory, three-hour session and one additional hour of preparation time;
  - responding to public concerns or complaints.
- The local ADR committee members will be drawn from:
  - members of the public (including those who use the court system);
  - mediators;
  - members of the legal profession who act for litigants;
  - the judiciary;
  - the Ministry of the Attorney General;
- Mediators on the roster will be required to have appropriate training and experience and must be familiar with the civil dispute process.
- Standards for the mediators will be approved by the Chief Justice of the Ontario Court of Justice and the Attorney General.
- If a party cannot afford the costs of mediation, arrangements will be made for mediation services to be provided free of cost
- To be approved for the roster, mediators must agree to provide some services free of charge.
- Mediations are private and confidential between the parties. ■

CONDUCT & ETHICS

Independent legal advice never routine

For many lawyers, independent legal advice is viewed as a routine task that takes less than 30 minutes and results in a bill of about $50. The person seeking the advice isn't really seen to be a client, which gives lawyers an excuse to do the kind of work they would never dream of doing for their regular clients.

But such attitudes consistently get lawyers into trouble. Independent legal advice that is rushed and fails to ensure that the client truly understands the transaction in question serves no one, including the lawyer giving the advice.

Lawyers who fail to follow certain rules when giving independent legal advice — even if the client has already made a decision and wants it rubber stamped — could find themselves making a claim to the Lawyers' Professional Indemnity Company if the transaction doesn't work out as the client had planned.

By treating independent legal advice more seriously, lawyers are protecting clients from a potentially troublesome situation and themselves from higher insurance premiums.

Independent legal advice is given in situations where a conflict of interest could arise if a party to a transaction doesn't obtain an opinion from a lawyer who's not involved in the matter. Giving inadequate independent legal advice can be as problematic as failing to send a client to another lawyer.

Some of the relatively common situations that call for independent legal advice are:

- In a matrimonial dispute, where both spouses consult the same lawyer during the drawing up of a separation agreement.
- Where beneficiaries to an estate are involved in a disagreement
- Where a lending institution has a fiduciary relationship with a borrower or a risky investment is being considered
- Situations involving the elderly, the infirm, the uneducated and unrepresented parties.

When sending a party on for independent legal advice, it's not adequate to refer them to an associate or partner. In fact, the Ontario Court of Appeal prohibited this in *Bertolo v. Bank of Montreal* (1987) 57 O.R. (2d) 579. It's best to provide the person with a list of a few names of lawyers practising in the relevant area of law.

Various lawyers have written extensively on independent legal advice and how it should be given. They all say that merely asking the client if he or she understands the document in question is not sufficient to satisfy the minimum requirements of independent legal advice.

It's advised that in addition to ensuring that the client understands the nature and effect of the document, the lawyer should be aware of all of the relevant circumstances surrounding the transaction and be able to explain them to the client; be aware of the client's financial situation to determine what impact the transaction will have on the client; and be competent in the area of law in question.

When determining the amount of financial information that needs to be obtained before giving advice, the lawyer should consider the client's age; the level of sophistication and experience of the client; the nature of the transaction; the relationship of the parties involved; the degree of risk to the client; the lawyer's previous experience with the client; the motivation of the client and others involved in the transaction; and the bargaining power between the parties. (Lawyers should not provide independent legal advice for clients considering signing a domestic contract who do not want to provide financial disclosure. Under Section 56(4) of the *Family Law Act*, a court can set aside a domestic contract if significant assets, debts or other liabilities were not disclosed.)

Language is important. If the lawyer is not proficient in the language of the client, an interpreter is necessary to ensure the client fully understands the transaction. The interpreter must be a neutral party. A family member should never be asked to interpret during the giving of independent legal advice because the reliability of his or her interpretation can later be called into question.

In all cases, regardless of a language barrier, information should be relayed to clients in a simple and understandable manner. Before the document is signed, clients should be able to explain, in their own words, their understanding of the transaction.

It's important to be satisfied that the client is exercising free will and judgment. There are a number of relationships that could lead to a presumption of undue influence. While there is no presumption of undue influence in situations involving an employer and employee, or a husband and wife, it doesn't mean that it can't be proven. If a lawyer is not convinced that the client is exercising free will and judgment, the certificate of independent legal advice probably shouldn't be signed — even if that goes against the client's wishes.

In cases where a lawyer advises against the signing of the documents in question but agrees to sign the certificate of independent legal advice because the client wishes to proceed, a witness should be present while the lawyer explains the advice. The client, preferably with the witness present, should sign an acknowledgment stating that the

ILA procedure

When giving independent legal advice, a number of steps should be followed:

- Open a file. You should be certain that copies of all of the documents signed by the client are included in the file. Other material that should be placed in the file include your notes on the factual background of the matter, the financial disclosure given, and the details of what occurred in the interview.
- Confirm advice given to the client in writing.
- Carefully docket time spent on the file.
- Carefully review the certificate of legal advice that's presented by the client. In some situations, it may be preferable for you to write a letter outlining the independent legal advice that was given, rather than signing the certificate.
- Accept payment from the client — not from someone with an interest that's contrary to that of the client.

document is being signed against the lawyer's advice.

A retainer to provide independent legal advice shouldn't be accepted if issues are involved beyond the lawyer's experience and understanding — for example, if general accounting advice is needed. ■

TECHNOLOGY

Paper rules the office, for now

Wherever there is a law office, there are rooms filled with boxes upon boxes of files. Stacked neatly on shelves that sag wearily beneath them or jammed haphazardly into a spare office, the files continue to multiply. It costs money to store them, to organize them, to preserve them. But it has to be done. Lawyers must keep their records.

What if each of those 25-lb. boxes could be reduced to a single CD-ROM? What if a lawyer could sit at her desk, click her mouse and instantly pull up any of the firm's files? The fact is lawyers could do this and more today if they were in a position to spend enough time and money. However, this transition still requires a lot of time and a lot of money. The law firm very likely would continue to fill boxes with paper and have to arrange for their safe-keeping.

As in so many areas, technology has raced ahead of the law. So, regardless of whether it makes intrinsic sense to store a firm's records solely in electronic form, it is still a risky proposition. Canadian courts simply have not ruled about the evidential value of an electronic record. And until they do so — or the government passes legislation clarifying the situation — the advantages of storing files electronically are limited.

That is not to say there are no advantages, however.

London lawyer Norm Peel, who represented then Chief of Defense Staff General Jean Boyle at the Somalia Inquiry, relies heavily on his computer to organize cases, all the more so when he is facing half a million pages of Somalia-related material. But the very volume that makes the computer so valuable also precludes his storing all documents electronically.

"I could take 500,000 pages and start scanning tomorrow, but to what purpose?" he asks.

Instead, he relies on an electronic summary that directs him to the appropriate paper file. "We have the machine that would do it, but I find very little use for scanning," he says.

Although lawyers do not dare use CD-ROMs and other electronic media to replace all paper storage, electronic storage can do two important things: make finding old files and documents much easier and reduce dramatically the paper that must be kept.

Finding files is made easier because, at the very least, files that have been scanned can be tagged with four or five key reference words. Using software designed for the task, a lawyer can search for the key words and pull up an electronic picture of the document. Even better — but more time-consuming and costly — is a document that has been scanned using optical character recognition (OCR) technology. The full text of such a document then can be searched using a number of available programs.

Unfortunately, even the very best scanners and OCR software cannot guarantee 100 per cent accuracy. Therefore, on a large file, some mistakes are inevitable.

"Properly indexed, it certainly would be easier to find a file electronically," says Hugh Laurence, manager of corporate precedents at Fasken Campbell Godfrey. "And it might make sense if you wanted to know the history of a file or if you liked a document from the file and wanted to use it for a current file."

However, the advantages of being able to call up files electronically are insignificant in most cases compared to the cost of implementing such a system. "It's one thing to say that from now on we'll store documents in electronic form, but it's another to say all our information will be available electronically. It's just an immense task that probably isn't worth it for the amount of use you'd get out of it," Laurence suggests.

The other attraction of electronic storage is the possibility of reducing the amount of paper that must be stored.

Nearly every file contains documents that could be scanned and discarded safely. In general, copies of documents that can be replaced, if necessary, by a court or client are candidates for scanning and discarding. The lawyer can refer easily to the electronic form when needed but also has access to an original if required to produce it in court some day.

> Acceptance of electronic files as legal equivalents to paper will happen eventually

Careful consideration should be given in determining which original documents, papers with original signatures and lawyers' handwritten notes can be destroyed (see The Adviser, No.8, July 1986).

If the courts gave electronic documents the stamp of approval tomorrow, there would still be questions awaiting answers. Although some firms store information on magneto-optical cartridges, the majority of electronic storage today is being done on floppy disks or CD-ROMs. Anyone who has used a floppy disk for an extended period knows they eventually give out, and CDs simply haven't been around long enough for anyone to know how long they might last. Assuming there are still CD drives available in 50 years, will the

disks themselves still function?

CD manufacturers have conducted accelerated age testing, subjecting disks to high levels of heat, humidity and light. They conclude a well-maintained disk will last about 100 years, far short of a good paper document.

Even if today's technology worked indefinitely, rapid change in the computer world will make it obsolete sooner rather than later. Thus, one of the costs that should be considered is the need to change storage technology from time to time as new devices are introduced and old ones fade away. A law firm cannot be left sitting with files stored on the equivalent of Beta videotape — safe but unreadable.

Acceptance of electronic files as legal equivalents to paper is still a long way off. But there are signs that it will happen eventually. Land titles are now filed electronically, and statutes are being issued on CDs, making it much easier to search them. These are but small examples in a world where paper is still the surest bet.

"Law is very conservative," says Laurence. "We're not going to be the first ones to test whether an electronic document is admissible in court."

Says Peel: "It's like dragging the past in, but I'm not comfortable going to that fully electronic world if my career is going to turn on whether that fax I sent from my computer really went out." ■

BUSINESS LAW

Client heading for financial trouble?

Business lawyers should be sensitive to tell-tale signs that a client is in financial distress, noted Dan Dowdall of Lang Michener in a recent paper for the LSUC-CLE program "The Six-Minute Business Lawyer."

Too often, even where the signs are recognized their seriousness is not understood and "inappropriate or insufficient action is taken, valuable time wasted and restructuring options lost," he wrote.

Some tips from Mr. Dowdall's paper:

• Where the danger signals are present, the problem is often not legal in nature—"what the client really needs is accounting and business consulting help, if not a trustee in bankruptcy." But since lawyers are "often the only professional help to which the debtor turns," they must accept the challenge of breaking the bad news to a client "who has often lost any real objectivity towards the problem." Usually, business failure is farther along than the client realizes, and accelerating—so "time is always of the essence...[as with] any serious disease, as time passes, the option of a less painful cure is lost, leaving only more draconian measures."

• Often it's best "to get the debtor into the hands of a total stranger with recognized experience in working with troubled companies and developing workout plans." Consider "using the same argument that you would use to encourage a sick friend to go to a doctor"—if he or she proves on examination to be healthy, well and good; "but if your friend is in fact sick, a life could be saved. There is little downside and a lot to gain."

• If you're involved in a lawsuit on behalf of a client where there doesn't "appear to be much merit in the defense and the primary agenda seems to be delaying payment," a solvency problem is likely. Debtors usually "stretch" trade

PRACTICE MANAGEMENT

Keep track of undertakings

Complaints and claims often arise because lawyers don't monitor the status of undertakings given on closing to discharge an institutional mortgage. (For guidelines relating to undertakings on institutional, collateral and other mortgages, see The Adviser Supplement of September 1992.)

Two simple systems can help avoid these problems:

Your tickler system.

Whether it's manual or computerized, make an entry into the system to follow up on outstanding undertakings within an appropriate space of time, whether you gave the undertaking, or accepted it. Put in a further entry for the date you expect to receive either the discharge, or the discharge registration particulars, and continue to do so until the undertaking has been satisfied.

An undertakings binder.

Set up a binder divided into two parts – for undertakings given and undertakings received – and divide each part by the months of the year. Place a copy of an undertaking in the month in which it was given. Then, regularly each month, review the binder to determine which undertakings remain outstanding. The binder format allows you to see at a glance how long a particular undertaking has been languishing, and having a copy of the undertaking in the binder provides a quick reference for its terms. You can then follow up with either the institution supplying the discharge, or the vendor's solicitor, as the case may be, and record your efforts on the copy of the undertaking, for future reference.

The two systems work in tandem to ensure that these outstanding matters are brought to your attention through proactive initiatives on your part, and to reduce the risk of overlooking that final step to file completion. You aren't relying on the financial institution, the other solicitor, or your client to prompt you to take action. Discharge registration information is then provided to the client, and you have avoided the risk of either a complaint or a claim being made against you. An inexpensive, win-win solution for you, your client and your colleagues.

payments only after already exhausting banks and other conventional sources of financing. Is the client paying your fees more slowly than formerly?

• Since companies in trouble often sell assets, if a sale on which you're acting doesn't seem to make business sense, or is being made in a hurry or for what seems a poor price, this can be a danger signal. And a company that "cannibalizes itself may not have much to save in the long term." Rapid downsizing—perhaps evidenced by a stream of wrongful dismissal disputes crossing your desk—can similarly represent "self-cannibalization." Sadly, some clients have "no choice but to strip an otherwise healthy business in an attempt to avoid personal bankruptcy...an example of the captain taking the ship down rather than *vice versa*."

• For the troubled business, "bad builds on bad." It can't achieve cost-effectiveness through such means as bulk buying or trade discounts, causing it to lose even more cash. Undercapitalized businesses find it tough to compete, especially in "low-margin" products.

• "Mezzanine financing, sale/leaseback, shareholder advances or taking of security, unless clearly tied to expansion or replacement financing, are a danger signal," along with "any form of additional high leverage or costly financing."

• Proposed transfers of half-interests in matrimonial property to a spouse may sometimes represent prudent planning, but are often attempted fraudulent conveyances "associated with imminent default." On the other hand, of course, matrimonial difficulties (or partnership or shareholder disputes) are often linked to a business's financial distress. ■

NEW CALLS

Contract can prevent associate angst

With opportunities for newly minted lawyers so difficult to find these days, many new calls are accepting associate arrangements with more senior practitioners in an effort to gain experience and avoid the overhead of setting up their own practices. While the arrangement can be a positive one, in some cases it ends in disillusionment for both the junior and the senior lawyer.

Junior lawyers are particularly vulnerable to ill-advised arrangements. The fact that many are desperate to establish a foothold in the profession accentuates that vulnerability and can cause them to

INSOLVENCY DANGER SIGNALS

Sign of imminent failure

(A)

- seizure by sheriff, landlords or other creditors
- phone answered by trustee or receiver
- trade rumours
- admission of "cash-flow difficulties"
- catastrophic disaster
  - product failure
  - loss of a major customer
  - industry recession
  - change in competitive position (the "Wal-Mart factor")
  - strike
- broken promises of payment
- litigation with trade creditors
- government third-party demands on receivables
- delay in government remittances
- holding cheques
- invoicing before delivery
- booking sales before delivery
- retaining "consultants" to deal with creditors
- in "special loans" at a bank NSF cheques
- temporary closure of facilities

(A-B)

- partial payments
- no fluctuation of account
- no fluctuation of bank account
- company slow to respond to "collection call"
- layoffs
- change of name (in combination with other signals)
- part of business now being conducted in new company (in combination with other signals)
- sale of capital assets (in combination with other signals)
- closing locations (in combination with other signals)
- auditor holding financial statement (unpaid?) (debating going concern assumption)
- principal conveys assets (house to spouse)
- aborted sale or investment in company
- bulk sales of inventory
- discounted sale of inventory
- shareholder takes security from company (in combination with other signals)
- increased use of certified cheques
- grant of PMSI to suppliers ordering goods in uneconomic quantities

Usually means serious trouble

(B)

- erosion in payment pattern
- failure to use payment discounts
- erratic payment pattern
- change in order pattern - shift to competitors
- partner/shareholder discord
- personal discord - "eye off the ball"
- eroding margins
- losses - these must be funded
- company offering excessive discounts
- litigation (can be a sign of distress or can cause the distress)
- increase in investments in inventory or A/R - is this growth of business or collection/sales problem?
- increased aging of A/R and inventory
- no struggle to get guarantee
- change in banks

(B-C)

- excessive lifestyle of owners
- changes in accounting practices - upward revaluation of assets
- slow to produce financial data
- turnover in senior management (especially on financial side)
- cancelled or limited R&D expenditure

Sign of structural weakness

(C)

- undercapitalization
- incomplete management team - sales-driven organization without financial control
- rapid expansion (there are more failures through growth than through contraction)
- excessive dependence on specific customers or markets
- company under- or over-staffed
- LBO - is company over-leveraged?
- management inattention/absence
- change in management - the family business hand-over
- changes in regulatory climate (deregulation)
- increased levels of debt (leverage)
- increased cost of debt (i.e. borrowing from expensive source of funds)
- lack of management ability
- high staff turnover
- principal has personal financial problems (stripping business to deal with same)

leap into situations without fully considering their options or how to protect their interests.

The downside for the senior lawyer usually comes in the form of lost time and additional stress in working under the same roof with a fellow lawyer who has a different understanding of the terms of the relationship.

The problems that can beset an associate status are unique because the arrangement is often a loose one – unlike, say, an employee of a law firm who is on salary (see The Adviser, June 1995). New calls who join as an associate are grateful to gain an office, a secretary and a fax machine – all without incurring the overhead involved in starting up their own practice. They can also enjoy immediate access to clients and a share of the practice's income.

But these benefits can prove illusory. In some situations, overhead is not free: the associate has to pay a monthly charge for rent and support staff. New calls should get their calculators out and figure out how much they can live on. A realistic reckoning might reveal that they would be better off going out on their own. At least 100 per cent of the billings would go into their own pockets.

In a "fictional" example, a junior lawyer's annual billings in her first few years could, at best, be expected to amount to say, $75,000. If the associate arrangement entitles her to a 40 per cut of the gross, that would amount to $30,000. Then she must pay her own insurance and fees, which could amount to about $7,000. If there's an overhead charge of $500 per month, that could trim another $6,000 from her gross income, leaving her with $17,000 before taxes.

Even the one benefit new calls often take as a given in such an arrangement – experience – can prove dubious. The Law Society receives calls from associates who often get files dumped on them with no supervision and who have no one to talk with about their cases. Working with senior counsel is only helpful if they are present and available.

While young lawyers should be wary if offered an associate arrangement, they can protect their interests by having the terms written into a contract. Too often nothing is written down. It is somewhat ironic that a lawyer would go into a significant business relationship without a contract – something they would counsel a client to never do. Such a pact can often prevent unseemly disagreements later in the relationship.

A contract should stipulate the income split between the firm and the junior lawyer on cases she handles. Will it be based on gross or net billings? If much of the billings are collected from Legal Aid, when will the associate be paid – when she bills the client or when the cheque from Legal Aid eventually arrives? And will fees and insurance be paid by the firm or by the associate?

The contract should cover access to secretarial services, fax and photocopier and what charge, if any, is to be paid for these overheads and for office space. It would even be useful to include assurances of proper supervision: the senior lawyer should agree to be available for consultation if needed.

The terms of separation should also be spelled out. Is the associate entitled to inform the clients he has served that he is departing? Some senior lawyers insist that associates simply decamp without telling clients – a restriction intended to minimize the chance that the clients will follow them.

The contract could provide for the departing associate to take a certain number of files with him, but it could be difficult to arrive at an appropriate number and, even if an associate is allowed to take a file, the client may choose not to follow. The contract could also clarify whether the firm is responsible for collection of the departed associate's outstanding billings.

The more specifics that can be built into the arrangement, the greater the chances of mutual satisfaction and the greater the chance that a new call's career will have a positive and rewarding start. ■

LEGAL AID

Review panel to report in June

The Ontario Government recently announced a comprehensive review of the Legal Aid Plan. The independent panel will be chaired by John McCamus, former Chair of the Ontario Law Reform Commission, law professor and former Dean of Osgoode Hall Law School.

The panel will review issues such as the most effective and efficient delivery of services and the range and type of services that are needed, as well as the overall governance of the Plan. The panel will consult the public, lawyers and other stakeholders and will present their final report by June 1997.

The review panel members are:
Madam Justice Joan Lax, Ontario Court, General Division;
David Richardson, senior partner with Ernst and Young, the independent monitor of the Plan;
Geoffrey Zimmerman, Newmarket criminal lawyer and regional director of the Criminal Lawyers' Association;
Sue Brenner, Barrie family law lawyer;
Joe Wilson, Parry Sound Area Director of the Plan; and
Sherry Phillips, Director of Community Health Promotion Programs at Lawrence Heights Community Health Centre in North York.

Six-month account payments

Payment of six-month accounts began in November 1996, and a total of $8 million will be paid out by the end of January 1997. Approximately 4,770 eligible six-month accounts were settled and paid in a special cheque run in November and an additional 904 accounts were paid in December. Additional six-month accounts were processed for payment in a special cheque run January 29, 1997. Eligible six-month accounts will be paid

as funds become available from the government in the spring of 1997.

Prep time for Somalia and Iraq refugee cases

Effective November 26, 1996, the preparation time in the tariff for Somalia and Iraq refugee cases was restored to 16 hours from 10 hours. Normally, countries with a more than 90 per cent acceptance rate are allowed 10 hours of preparation time. These two countries now have an acceptance rate of lower than 90 per cent at the Convention Refugee Determination Division hearings.

Investigations and discipline

Ted Ronen and Lawrence Zimmerman, both of Toronto, have been found guilty of professional misconduct and reprimanded by Convocation for improperly billing Legal Aid for duty counsel services rendered in 1991. The two lawyers repaid the Plan $16,000 each and were ordered to pay the Law Society $1,000 each for the costs of the investigation.

Michael Czuma has agreed to repay the Plan $4,003.61, plus GST and costs, for inadvertent billing errors, including double billing travel and overlapping hours.

Jennifer Reid, of Kingston, has reimbursed $3,394.18 to the Plan after an investigation found 12 instances of overlapping hours and inaccurate accounts and records leading to overbilling.

Six-month rule and interim accounts

Although interim accounts are still a big concern, special consideration may be given if your case is facing lengthy delays. Lawyers who are concerned about the possible application of the "six-month rule" to an interim account due to a lengthy hiatus in the progress of a case may submit an interim account, even if the value of services is less than $500 or the value of disbursements is less than $50.

If you have a case which is ongoing, but is facing lengthy delays, for example while a family assessment is being completed or while a case is on adjournment, submit an interim account, with a letter of explanation.

Regulations require accounts, including duty counsel accounts, to be submitted within six months of completion of the work.

R. v. Badertscher - Rowbotham Application

The Plan recently won a court decision where the accused was determined to have waived his Charter right to counsel after firing his lawyer.

In November, 1994, Mr. Badertscher was charged with impaired driving and failure to provide a breath sample. On March 6, 1996, the accused dismissed his counsel and requested a transfer of his legal aid certificate.

Legal aid refused his request to transfer the certificate because there had not been a complete breakdown in the barrister-client relationship. The accused had previously signed a document acknowledging he understood the limitations of transferring the certificate.

On December 3, 1996, the accused applied for a stay of the proceedings based on an alleged infringement of his Charter right to legal counsel.

In his judgment on December 17, 1996, Judge Thomas Cleary ruled that the accused, by his behavior in firing his lawyer, did not exercise his right to counsel at trial diligently and implicitly waived that right by his conduct.

Duty Counsel

Lawyers cannot bill the Plan as duty counsel for advice provided in the lawyer's office. Lawyers may only bill for attendance in court, attendance at a duty counsel clinic or when authorized to act by the area office as special duty counsel or as mental health duty counsel.

Mentor hotline

The Legal Aid Plan has a mentor hotline program available to lawyers dealing with a legally-aided client. You can get summary telephone advice by calling 416-979-9342 or toll-free at 1-800-668-8258, extension 4734.

The Plan is also searching for new criminal lawyers to act as mentors. If you were called to the bar more than five years ago, and are interested in volunteering as a mentor, please forward your curriculum vitae to Maria Bredin, Executive Assistant to the Deputy Director, Legal. Fax at 416-979-2948 or mail to 375 University Avenue, Suite 404, Toronto, Ontario, M5G 2G1. You can call Maria for more details at 416-204-4734.

New working group on immigration and refugee issues

As a result of a meeting between the Ontario Legal Aid Plan and the Chairperson of the Immigration and Refugee Board, Nurjehan Mawani, and the Deputy Chair John Frecker, a working group will be set up to resolve issues and problems at the IRB, in particular the rate of resumptions. The group will include Mr. Frecker, local representatives from the Board, the Legal Aid Plan and the bar.

Administration costs

Ontario currently has the lowest administration costs for legal aid among all provinces. The Ontario plan is at 8.4 per cent of overall expenditures. The national average is 11 per cent. B. C. ranks second lowest at 9 per cent. ■

Conducting legal research

Ontario Lawyers Gazette is preparing a series of articles to help guide members through the numerous options available in the rapidly changing area of legal research.

To help ensure that the articles deliver useful information, members are invited to submit any ideas, comments, questions and suggestions they have related to legal research.

Please direct all submissions to Janine Miller, Director of Libraries, by fax (416) 367-2635 or e-mail jmiller@lsuc.on.ca

TOUR D'HORIZON

LES PROPOS DE LA TRÉSORIÈRE

L'examen des programmes, prochaine étape de la restructuration

J'aimerais aujourd'hui faire le bilan de la situation en ce qui concerne notre processus de restructuration. En 1997, l'un des effets les plus tangibles de cette réorganisation sera l'examen, par le Conseil, des programmes du Barreau, examen dont nous vous tiendrons régulièrement au courant.

En janvier, le Groupe de travail sur la mise en oeuvre du plan de restructuration a présenté son rapport au Conseil dans lequel il décrivait les objectifs de l'examen, les programmes à évaluer ainsi que le processus à suivre pour guider les membres du Conseil dans leur travail de réflexion.

Bien que l'examen des programmes puisse se traduire par certains changements, voire l'élimination de certains programmes, ce n'est pas un exercice de réduction aveugle des dépenses, et je ne saurais trop le répéter. Il se pourrait même que le Conseil se prononce en faveur de nouveaux programmes dans l'intérêt des membres de la profession ou du public. Le réexamen a pour but d'évaluer les programmes, non de les supprimer. Les membres du Conseil reverront l'offre de programmes actuelle – notre point de départ – et, après avoir attribué une valeur relative à chaque programme et avoir évalué sa pertinence en fonction du rôle du Barreau, ils établiront des principes d'action pour l'avenir – notre destination.

L'examen des programmes occupe une position centrale dans la triple stratégie que poursuit le Conseil pour restructurer les activités du Barreau selon le modèle de régie par formulation des orientations générales adopté en 1996. Nous commencerons par régler les problèmes que nous avons hérités du passé en vue de faire rase et d'aller en avant sans entraves. Nous reverrons ensuite tous les programmes afin, comme je vous le disais, de bien comprendre les services et politiques actuels. Pour finir, les membres du Conseil devront décider de la voie à suivre pour nous conduire vers l'avenir que nous envisageons pour le Barreau. Afin d'y parvenir, nous explorerons en détail, par la collecte de données, les besoins des membres du public et de la profession, ce qui nous permettra d'adopter les politiques nécessaires au XXI[e] siècle.

Les travaux du Conseil, parallèlement à la révision des opérations menée par le responsable administratif du Barreau, visent à renforcer la pertinence et le leadership du Conseil tout en s'assurant que le Barreau offre réellement à ses membres et au public un excellent service axé sur une plus grande efficacité.

Ce n'est pas un hasard si, en cette année où nous célébrons le bicentenaire du Barreau, nous sommes tellement tournés vers l'avenir. Nous pouvons nous enorgueillir d'avoir, deux siècles durant, garanti l'accès des justiciables ontariens à une profession du plus haut calibre. La restructuration nous permettra de préserver nos acquis et de mener la profession juridique de l'Ontario, plutôt que de lui emboîter le pas, à l'aube du XXI[e] siècle.

Susan E Elliott

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.

Le Conseil repousse la FPO

En janvier, le Conseil a réaffirmé l'importance de la formation permanente, mais a rejeté une proposition qui l'aurait rendue obligatoire. En revanche, il a approuvé trois recommandations qui proposent un plan d'action destiné à améliorer la prestation et le contenu des services offerts et à réduire les coûts de la formation permanente. La décision est reportée. Au Canada, aucun barreau n'a encore rendu la formation permanente obligatoire, mais le Québec s'apprête à l'instituer prochainement pour plusieurs professions et la question est à l'étude dans d'autres provinces. (Voir page 4). ■

Efficience et réduction des coûts

Dans son rapport au Conseil, le

directeur général du Barreau a souligné les grands progrès accomplis en matière d'efficience et de rentabilité et a déclaré que la satisfaction des membres constituait l'objectif premier des administrateurs du Barreau. La restructuration et les nombreux changements apportés en conséquence ont entraîné une réduction du budget d'exploitation de l'ordre de 3,75 millions de dollars en l'espace de 18 mois et les compressions budgétaires réalisées par les différents services ont varié entre plus de 10 % et 35 %. L'année 1997 sera consacrée à l'amélioration très nette du service à la profession et au public, notamment par la création d'un «guichet unique». (Voir page 4.) ■

Les déclarations annuelles

Le Conseil a approuvé les deux derniers formulaires de la série, qui marque une étape importante dans la simplification des déclarations annuelles.

Chaque formulaire, dépouillé par balayage électronique, est accompagné de notes explicatives. Pour un complément d'information, nous vous invitons aussi à visiter le site du Barreau (www.lsuc.on.ca) ou à communiquer avec le Service des formulaires, de préférence par courrier électronique ou par télécopieur (lsforms@lsuc.on.ca, téléc/tél. : (416) 947-3932).

Afin de faciliter le traitement des formulaires, nous avons remplacé par un chiffre le dernier caractère du numéro de membre. Nous étudions présentement la possibilité d'adopter ce nouveau numéro pour toutes les opérations du Barreau et de l'Assurance responsabilité civile professionnelle des avocats.

Profil des membres

L'expédition du premier formulaire et des documents d'accompagnement a été retardée à la dernière minute pour des raisons techniques attribuables à notre sous-traitant (chargé de la production et de la compilation) et aux nouveaux procédés appliqués par Postes Canada. Nous vous prions de nous en excuser et de nous remettre dans les plus brefs délais ce formulaire, facile à remplir, sur lequel nous comptons pour envoyer les deux autres formulaires.

Tous les membres du Barreau sans exception doivent nous retourner le Profil des membres. Il ne faut pas le confondre avec le Rapport de l'expert-comptable destiné aux avocates et avocats de pratique privée, car il comprend non seulement des renseignements habituels (profils des cabinets, description des biens en fiducie restant sous la responsabilité de membres ayant cessé d'exercer) mais également des informations sur la profession, qui nous aideront à mieux comprendre ses besoins et ainsi à mieux la diriger.

Le Profil était accompagné d'un document de confirmation des renseignements, que nous vous demandons de vérifier et de corriger, s'il y a des erreurs et omissions, afin que notre banque de données soit plus performante.

Formulaire pour avocats de pratique privée et Rapport de l'expert-comptable

Ces deux formulaires remplacent essentiellement les formules 2 et 3 et devraient vous parvenir dans les deux premières semaines de mars 1997. Le Profil des membres nous permettra de savoir qui devrait en recevoir des copies.

Le Formulaire pour avocats de pratique privée s'adresse aux membres ayant exercé à titre privé (y compris les employés des cabinets d'avocats) ou s'étant occupés de biens en fiducie l'année passée. Il traite de questions professionnelles et ne demande pas l'aide de comptables.

Un Rapport de l'expert-comptable devra être rempli pour les membres qui se sont occupés de biens en fiducie. Veuillez communiquer avec nous si vous ne l'avez pas reçu d'ici la mi-mars. ■

Le point sur le bicentenaire

Félicitations !

Le Barreau tient à féliciter M^es^ André Lacroix et Michel Landry qui recevront le Prix du bicentenaire, créé par le Barreau pour souligner l'altruisme et l'action sociale des membres de la profession. André Lacroix joue un rôle important, et depuis de longtemps années, dans la vie communautaire de Sudbury, en particulier dans les domaines de l'enseignement et du développement économique. Michel Landry, très actif dans la communauté francophone de Prescott et Russell, participe, entre autres, à de nombreuses activités d'éducation populaire et de réforme du droit. (Voir la liste complète des récipiendaires aux page 21).

Au programme

Divers événements témoigneront de la dualité linguistique de l'administration de la justice en Ontario.

- L'exposition «Bonjour Maître! Échange de vues amical sur la profession juridique d'hier à aujourd'hui/You call yourself a lawyer? A friendly exchange on what makes a lawyer then and now». L'exposition, qui suit l'évolution de la profession au cours des deux siècles derniers, a entamé sa tournée dans les musées et les bibliothèques municipales de l'Ontario. On pourra aussi la voir à Osgoode Hall en février 1997 et durant la Semaine du Barreau.
- La Semaine du Barreau. Du 9 au 13 juin 1997, diverses activités en anglais ou en français, y compris des visites guidées et des conférences, auront lieu à Osgoode Hall, classé monument historique et haut-lieu de l'univers juridique.
- Les festivités du 23 mai 1997 à Niagara-On-The-Lake. Les acteurs se répondront en français et en anglais lors des reconstitutions historiques.

La Commission de révision présentera son rapport en juin

Le gouvernement provincial vient de confier la révision complète du Régime d'aide juridique à une commission indépendante sous la direction de John McCamus, ancien président de la Commission de réforme du droit de l'Ontario, professeur de droit et ex-doyen de la faculté de droit Osgoode Hall.

La Commission examinera notamment l'optimisation, la gamme et la nature des services d'aide juridique, de même que l'administration générale du RAJO. Elle consultera le public, la profession et les autres intervenants avant de présenter son rapport final en juin 1997. Sont membres de la Commission :
Madame la juge Joan Lax, Cour de l'Ontario (Division générale),
M. David Richardson, associé principal du cabinet Ernst and Young chargé du contrôle externe du RAJO,
M[e] Geoffrey Zimmerman, criminaliste (Newmarket) et directeur régional de la *Criminal Lawyers' Association*
M[e] Sue Brenner, avocate en droit de la famille (Barrie),
M[e] Joe Wilson, directeur du RAJO pour la région de Parry Sound,
M[me] Sherry Phillips, directrice des activités de promotion de la santé au CSC Lawrence Heights (North York).

Les paiements pour services rendus

D'ici la fin janvier 1997, le RAJO aura déboursé 8 millions de dollars pour le règlement de comptes cumulatifs sur six mois, entamé en novembre 1996. Quelque 4 770 comptes admissibles ont été réglés ce mois-là, suivis de 904 autres en décembre. Les prochains paiements auront lieu le 29 janvier. Le RAJO poursuivra le règlement des comptes admissibles au printemps, dès réception de fonds additionnels du gouvernement.

La préparation des causes des réfugiés de Somalie et d'Irak

Depuis le 26 novembre 1996, le RAJO a rétabli à 16 heures le temps de préparation des causes des réfugiés de ces deux pays. Il l'avait limité à 10 heures, la durée normalement allouée aux causes de personnes originaires de pays dont les demandes de droit d'asile sont accueillies plus de 9 fois sur 10. Or, le taux d'accueil des demandes de ressortissants somaliens et irakiens est retombé en-dessous de ce seuil.

Enquêtes et discipline

M[es] Ted Ronen et Lawrence Zimmerman (Toronto) ont été reconnus coupables de manquement professionnel et réprimandés en Conseil parce qu'ils avaient présenté des comptes d'avocat de service irréguliers à l'égard de services rendus en 1991. Ils ont l'un et l'autre restitué 16 000 $ au RAJO et doivent encore dédommager le Barreau pour ses frais d'enquête en lui versant chacun 1 000 $.
M[e] Michael Czuma a accepté de restituer 4 003,61 $, plus TPS et dépens, parce qu'il avait fait des erreurs de facturation involontaires, y compris des recoupements et redoublements d'heures et de frais de transport.
M[e] Jennifer Reid (Kingston) a restitué 3 394,18 $ après qu'une enquête a mis en lumière 12 recoupements d'heures et des erreurs comptables ayant mené à une facturation excessive.

Les comptes provisoires

Bien que les comptes provisoires soient toujours problématiques, les dossiers qui risquent d'être longtemps inactifs peuvent être traités différemment. Les membres peuvent bénéficier d'une exception à la règle des six mois si leur cause est indûment retardée. Vous pouvez présenter un compte provisoire, même si la valeur des services ou des débours est inférieure à 500 $ ou 50 $ respectivement.

Dès que vous savez qu'un dossier restera longtemps inactif, par exemple parce que vous devez attendre les résultats de l'évaluation familiale ou la reprise d'une audience après un ajournement, présentez un compte provisoire en y joignant une lettre d'explication.

Selon les règlements, le délai de présentation des comptes, *y compris ceux des avocates et avocats de service,* est de six mois après la clôture d'un dossier.

R. c. Badertscher - Rowbotham

Les tribunaux ont récemment rendu un jugement en faveur du RAJO après avoir conclu qu'en congédiant son avocat, l'accusé avait renoncé à son droit constitutionnel à l'assistance d'un avocat.

En novembre 1994, M. Badertscher avait été inculpé de conduite avec facultés affaiblies et de refus de fournir un échantillon d'haleine. Le 6 mars 1996, il renvoya son avocat, puis demanda le transfert de son certificat d'aide juridique.

La demande a été refusée faute d'une rupture définitive de la relation avocat-client. L'accusé avait préalablement reconnu par écrit qu'il comprenait les restrictions relatives au transfert.

Le 3 décembre 1996, l'accusé demanda un sursis de l'instance, invoquant la violation de son droit, garanti par la Charte, à l'assistance d'un avocat.

Le 17 décembre, le juge Thomas Cleary a statué que l'accusé s'était comporté de telle façon lorsqu'il avait renvoyé son avocat qu'il avait usé de son droit de façon insouciante et y avait implicitement renoncé.

Les avocats de service

Les avocats et avocates de service n'ont pas le droit de facturer au RAJO les consultations dans leur cabinet, mais seulement les présences en cour et dans les cliniques d'avocat de service, ainsi que les interventions spéciales autorisées par le bureau régional, y compris dans les établissements psychiatriques.

Le mentorat par téléphone

Les membres qui acceptent des mandats d'aide juridique peuvent obtenir des conseils succincts en appelant la ligne directe de mentorat du RAJO : (416) 979–9342 ou, sans frais, 1–800–668–8258, poste 4734.

Le RAJO cherche aussi des criminalistes ayant plus de cinq ans d'expérience qui accepteraient d'être des mentors. Si vous êtes intéressés, veuillez faire parvenir votre c.v. à M^me^ Maria Bredin, assistante administrative du directeur adjoint, Affaires juridiques, par télécopieur au (416) 979–2948 ou, par courrier, au 375, avenue University, bureau 404, Toronto (Ontario) M5G 2G1. Si vous avez des questions, veuillez appeler Maria au (416) 204–4734.

Nouveau groupe de travail sur l'immigration et les réfugiés

Un nouveau groupe de travail a été créé à la suite de la rencontre du RAJO avec Nurjehan Mawani, présidente de la Commission de l'immigration et du statut de réfugié, et John Frecker, son vice-président. Le groupe de travail sera chargé de régler certains problèmes à la Commission, notamment le taux de réintégration de la citoyenneté, et sera composé de représentants du RAJO, du Barreau et de la Commission, dont M. Frecker.

Les frais d'administration

La part des frais d'administration du RAJO dans ses dépenses totales (8,4 %) est la plus basse au pays : la moyenne des dix provinces se situe à 11 %. La Colombie-Britannique est en deuxième place, avec 9 %. ■

EN PRATIQUE

Les causes civiles seront soumises à la médiation

Comme l'a annoncé récemment le Procureur général de l'Ontario, toutes les causes civiles, à l'exception des causes en matière familiale, seront soumises à la médiation. Ce mode de règlement extrajudiciaire des différends (REJD) sera introduit très prochainement à Ottawa, puis dès le mois de juin à Toronto et il sera en place à l'échelle provinciale d'ici quatre ans. La profession pourra compter sur le Barreau pour mieux comprendre les questions pratiques que cette décision soulève.

Voici les grandes lignes de l'initiative du gouvernement :

La médiation sera une étape obligatoire du règlement des différends, prévue par les Règles de procédure civile. La séance de médiation, de nature confidentielle et d'une durée de trois heures, se tiendra après le dépôt de la première défense et sera assurée par des médiatrices et médiateurs qualifiés du secteur privé, n'exerçant pas forcément la profession d'avocat, inscrits sur des listes locales. Seuls les tribunaux pourront accorder des dispenses. Si les parties ne parviennent pas à régler leur conflit, l'affaire sera alors tranchée par les tribunaux. Le programme de médiation sera géré par des comités locaux de REJD qui veilleront à ce que les différentes localités soient bien desservies, dresseront les listes de médiateurs et médiatrices selon les normes approuvées par le Procureur général et le Juge en chef, fixeront les tarifs de médiation (jusqu'à concurrence de 300 $ par partie) et répondront aux questions et plaintes éventuelles. Les comités se composeront de membres du public, de la profession, de la magistrature et du ministère du Procureur général. ■

www. tribunaux

Vous voulez consulter des décisions judiciaires ?
Avez-vous pensé à l'autoroute électronique ?
Voici quelques points de départ.
Droit canadien (fédéral et provincial) :
Cour suprême du Canada :
http://www.droit.umontreal.ca/Droit/CSC/index_fr.html
CSC (sélection d'arrêts) et autres tribunaux de compétence fédérale ou provinciale : **http://www.qlsys.ca/chezql/html** (Quick Law)
Québec : **http://tribunaux.gouv.qc.ca**
Cours supérieures de la Colombie-Britannique : **http://www.courts.gov.bc.ca**
CRTC : **http://www.crtc.gc.ca/FRN/news/whatsnew.htm**

Vous aurez reconnu, entre autres, le site du Centre de recherche en droit public de l'Université de Montréal (**http://www.droit.umontreal.ca**), véritable mine d'or dans le domaine juridique. Ne manquez pas sa bibliothèque virtuelle en droit canadien (**http://www.droit.umontreal.ca/Biblio/index.html**).

Voici également quelques addresses qui vous donneront accès à certains jugements rendus par les tribunaux américains :
Cour suprême : **http://www.law.cornell.edu/supct/**
Cour d'appel (circuit fédéral) : **http://www.law.emory.edu/fedcircuit**
Cour d'appel (New York) :
http://www.law.cornell.edu/ny/ctap/overview.html

Remerciements à M. Landry

La disparition du papier ?

À quand les fichiers électroniques pour pallier l'encombrement des bureaux d'avocats tout en satisfaisant à l'obligation professionnelle de constituer des dossiers et de les conserver ? En droit comme ailleurs, la technologie a une

longueur d'avance et, de plus, les tribunaux ne se sont pas encore prononcés sur la valeur probante des dossiers électroniques. La technologie présente toutefois d'incontestables avantages (facilité de consultation, capacité de stockage, réduction du papier) malgré ses coûts non négligeables. Elle s'imposera tôt ou tard. (Voir l'article complet à la page 9.) ■

L'avis juridique indépendant

Les juristes ont souvent tendance à traiter l'avis juridique indépendant comme une simple formalité et s'exposent ainsi inutilement, eux et leur clients. On le recommande entre autres lorsqu'il y a un risque de conflit d'intérêts. Il ne suffit pas de s'assurer que les clients comprennent les documents à signer, il faut aussi prendre les précautions habituelles : impartialité, compétence en la matière, examen approfondi de la situation notamment financière des clients et liberté de jugement de ces derniers. Et le dossier doit être aussi complet, de l'ouverture au paiement. (Voir l'article complet à la page 7.) ■

La perquisition d'un cabinet d'avocats

Voici un extrait de la **Liste de contrôle à l'intention des criminalistes** publiée par le Service des normes professionnelles du Barreau. Dans cet article, nous ne traiterons que des perquisitions effectuées en application du Code criminel. Il est conseillé de bien connaître les dispositions de l'article 488.1 du Code, généralement suivies par la police ou les fonctionnaires effectuant une perquisition. Nous rappelons également aux membres qu'ils sont tenus non seulement de protéger le privilège des communications entre client et avocat (secret professionnel) mais également de garder le secret sur les affaires de leurs clients. (Voir également les Règles 4 et 6(6) du *Code de déontologie*.)

1. Si la police prévient le cabinet d'avocats de sa visite, il serait prudent de mettre les documents recherchés en lieu sûr, ce qui permettra de protéger et contrôler les éléments de preuve si l'on assigne par la suite un avocat ou une avocate à témoigner. Aviser les clients visés, leur suggérer d'obtenir immédiatement un avis juridique indépendant, copier les documents pour les clients afin qu'ils puissent, en ce qui concerne la perquisition, prendre des décisions en connaissance de cause.
2. Demander à la police, si elle ne produit pas à son arrivée une copie du mandat de perquisition et des documents à l'appui, de voir les originaux, d'en faire une copie et les lire **attentivement.**
3. Demander à revoir l'article 488.1 du *Code criminel* et à consulter un confrère ou une consoeur.
4. Demander à communiquer avec vos clients pour les informer du mandat de perquisition.
5. Après avoir pris connaissance du mandat et des dispositions de l'article 488.1, invoquer le privilège des communications entre client et avocat au nom d'une cliente ou d'un client **désigné** [par. 488.1(2)]. Noter qu'«une occasion raisonnable de formuler une objection fondée sur le privilège des communications entre client et avocat» doit être donnée avant d'examiner, de copier ou de saisir un document [par. 488.1(8)]. Comme la confidentialité et le privilège visant les documents sont au profit des clients, il y a lieu d'invoquer ce privilège à moins que tous les clients concernés par les documents aient signé en connaissance de cause une renonciation expresse en ce sens.
6. Veiller à faire des copies de tous les documents devant être saisis, ce qui évite d'avoir à demander plus tard l'autorisation de la cour de le faire, conformément au paragraphe 488.1(9) dont nous traiterons plus tard.
7. Si le privilège est invoqué, *sceller les documents* [al. 488.1(2) a)] et confier le paquet scellé à la garde du shérif du district ou du comté où la saisie a été effectuée, sauf convention écrite contraire [al. 488.1(2) b)]. S'il est préférable de confier la garde des documents à une autre personne, veiller à conclure une entente écrite.
8. La perquisition une fois terminée, communiquer avec tous les clients visés et obtenir leurs instructions pour savoir s'il convient de renoncer au privilège ou de l'invoquer et de présenter une demande visée au paragraphe 488.1(3). Voir s'il y a lieu de continuer de représenter les clients ou de les renvoyer vers un confrère ou une consoeur.
9. En cas d'invocation du privilège, suivre la procédure prévue au paragraphe 488.1(3). Les délais prescrits par le *Code* sont très stricts et il convient d'établir un échéancier.
10. Si les clients visés n'ont pu être contactés dans les 14 jours de la mise sous garde des documents, il est conseillé de faire savoir au tribunal qu'ils n'ont été avisés ni de la saisie, ni du droit de présenter une demande en justice.
11. Si l'accès aux documents scellés est demandé, il faut présenter une demande *ex parte* à la Cour de l'Ontario (Division générale) afin qu'elle puisse autoriser, par ordonnance, l'examen ou la copie sous contrôle des documents scellés [par. 488.1(9)].
12. Discuter avec les clients et décider des éléments de preuve pertinents (affidavit, etc.) à présenter à l'appui du privilège. Déterminer qui devrait signer un affidavit (avocat ou client), compte tenu de la probabilité d'un contre-interrogatoire. ■

CHRONIQUE TERMINOLOGIQUE

«Plaidoirie»

Le mot «plaidoirie» s'emploie abusivement en français au sens de *pleadings*. En ce cas, il constitue ce que l'on appelle un faux ami qui est une forme d'anglicisme de vocabulaire.

Le terme *pleading* figure dans la législation fédérale et ontarienne. Dans la première, il est rendu en français par «pièce de plaidoirie», «plaidoirie écrite», «plaidoirie», «acte de procédure» tandis que son pluriel équivaut à «actes de procédure» ou à «plaidoiries».

Dans la seconde, *pleading* est traduit par «acte de procédure» et son pluriel par «procédure écrite».

Selon le **Black's Law Dictionary,** qui ne relève que la forme plurielle du terme, les *pleadings* visent les allégations formelles des demandes et des moyens de défense des parties. Dans le cadre des règles de procédure fédérales américaines, ne constitueraient des *pleadings* qu'une plainte, une réponse, une réponse à une demande reconventionnelle, une réponse à une demande entre défendeurs, une mise en cause ou la réponse d'un mis en cause. La définition de *pleading* du **Jowitt's Dictionary of English Law** est plus large. Selon cet ouvrage, les *pleadings* sont les déclarations écrites que les parties se remettent respectivement jusqu'à ce que soient tranchées les questions de fait et de droit soulevées dans l'action.

Cette dernière acception du terme *pleading* semble plus proche de celle qui a cours dans la législation canadienne et ontarienne et elle recouvre assez justement la notion d'acte de procédure énoncée par Gérard Cornu dans son **Vocabulaire juridique**.

Suivant cet ouvrage, un acte de procédure (*pleading*) consiste en un acte d'une partie ayant pour objet l'introduction, la liaison ou l'extinction d'une instance, le déroulement de la procédure ou l'exécution d'un jugement. Cette notion ne correspond pas à celle de la plaidoirie, qui, selon le même auteur, vise l'action d'exposer oralement des faits et des prétentions.

Quant au terme «procédure écrite», son champ correspond assez bien à celui qui est attribué au terme pleadings dans le **Black's**, mais il ne suffit pas à rendre le champ de la définition que l'on retrouve dans le **Jowit's**. ■

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

TRIBUNE

L'avocat a-t-il le devoir de protéger les droits linguistiques de son client ?

En droit criminel, l'article 531 du *Code criminel* prévoit que le juge doit informer l'accusé de son droit, dans le cas où l'accusé n'est pas représenté par avocat. Le principe sous-jacent à cette distinction vise à protéger l'autonomie de la relation avocat-client. Si l'avocat informe son client de son droit et peut accommoder le choix linguistique du client, aucun problème ne se pose. Cependant, une avocate qui n'est pas bilingue devra informer son client de ses difficultés à assurer une défense dans la langue officielle de son choix. L'accusé aurait alors à choisir entre ses droits linguistiques et son droit à l'avocat de son choix. Comment résoudre ce dilemme ?

Traditionnellement, on assignait un rôle passif à l'État dans la mise en oeuvre des droits à la justice dans sa langue. L'exercice des droits linguistiques, comme de tout autre droit, était la responsabilité du citoyen. Il lui appartenait donc de s'informer, de demander, voire d'exiger que ses droits soient respectés. Cette approche ne peut fonctionner que si l'existence des droits est bien connue et s'il n'y a aucune distorsion extérieure dans le choix que fera la citoyenne d'exercer ses droits. Les inévitables distorsions justifient une conception d'offre active des services. Voir entre autres la discussion du Commissaire aux langues officielles (*L'utilisation équitable du français et de l'anglais devant les tribunaux au Canada*, publié en novembre 1995, à la page 105) à ce sujet qui recommande qu'un formulaire obligatoire informe les personnes accusées de leurs droits linguistiques et que le formulaire identifie aussi leurs préférences linguistiques. Ce fardeau imposé au gouvernement ne remplacera cependant pas la responsabilité du juge ni celle de l'avocat.

> À qui revient la responsabilité d'informer le citoyen de ses droits à un procès criminel en français ? Aux avocats, aux juges ou au gouvernement ?

Le juge a, outre sa responsabilité prévue par le Code criminel dans les cas où l'accusé n'est pas représenté, l'obligation de voir à ce que le droit à un procès équitable ne soit pas brimé. Or, le droit à un procès équitable a nécessairement une connotation linguistique (*R. c. Tran [1994] 2 R.C.S. 951*; voir aussi *R. c. Forsey (1995) 95 C.C.C.(3d) 354.*). Il n'y a pas de procès équitable sans que l'accusé ait le droit de comprendre et de se faire comprendre. Le juge doit y voir. Il se peut donc que le juge doive, dans certaines circonstances, activement protéger les droits linguistiques des accusés.

Cependant, malgré tout, la responsabilité ultime reposera sans doute sur les avocats. Après tout, ce sont eux qui sont chargés de veiller sur les intérêts du client. On peut penser qu'informer le client de ses droits linguistiques devrait faire partie des devoirs professionnels de l'avocat et devrait être reconnu comme tel. De négliger d'informer un client de ses droits linguistiques peut être nuisible au client. De procéder dans sa langue maternelle importe souvent beaucoup au client, et peut-être a-t-il le droit de savoir quand il est possible de l'utiliser. En qui d'autre que son avocate devrait-il avoir confiance pour être mis au courant de ce droit ? Malheureusement, tous les avocats ne savent pas qu'un accusé a absolument le droit à son procès pénal en français en Ontario. Il importe que les avocats s'informent, les droits à un procès équitable de leurs clients en dépendent. ■

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PERSPECTIVE

"The finest advocate in the history of our country"

The following is an excerpt of a tribute given by the Hon. Roy McMurtry, Chief Justice of Ontario, at the memorial service for John J. Robinette on November 22, 1996.

What can one adequately say about the finest advocate in the history of our country? John Robinette has received so many richly deserved accolades from his earliest days at the bar, none of which he sought. He was an inspiration to generations of lawyers. He was at the same time a towering figure, but so down to earth. He will always be remembered for his generosity with other members of the bar.

During the last several days, the legacy of John Robinette has understandably been a subject of much discussion with my judicial colleagues. Everyone agrees that he had a unique gift as an advocate that, if possible, even transcended his brilliance as a student of the law. For many, he is the last of the great barristers who was comfortable before any court or tribunal, regardless of the issue. He had all the skills of a great advocate: examination-in-chief, cross-examination and summing up. However, the quality that set him aside from every other leader of the bar was his unerring judgment. My colleagues who worked closely with John Robinette, such as Justices John Brooke, George Finlayson and David Doherty, have all stressed that he seemed to instinctively know what result was attainable in every case. He therefore always focused the presentation of the evidence and his arguments towards obtaining a realistic goal. His former colleagues had great admiration for his very disciplined approach to every matter, never depending on a lucky break or some last minute inspiration. For them John Robinette's genius was the quality of good judgment, not only in his overall presentation but in his treatment of witnesses, his opponent and the trier of fact, whether a judge or a jury. Part of his genius also was that he always knew when to sit down.

John J. Robinette, 1906-1996
Treasurer's portrait commissioned in 1958

I was speaking to the Rt. Hon. Brian Dickson, former chief justice of Canada, this week and he summed up John Robinette's career very succinctly by stating that he was simply the best counsel that Canada had ever produced. He went on to say that John Robinette was always so very reasonable, courteous and never took unfair advantage of the other side. However, the former chief justice admitted to one concern – and that was that he "had to carefully balance John's arguments for fear of being simply swayed by his charm. He was such a wonderful man."

John Robinette dedicated his life to the law and to his family, and his death leaves all of us with a deep sense of loss. His legacy is embedded in the fabric of our law and in our daily work as lawyers and as judges.

He took part in the great legal issues of his time. John Robinette needs no epitaph because so long as there are lawyers in this country, the name of John Robinette will always be remembered. He is perhaps the greatest lawyer that this country will ever see. Legal greatness in this country will always be measured against the standard of John Robinette.

What else can we say about him except to feel on this occasion the enduring power of his example for all of us. We who have been privileged to be his friends, can take comfort in the fact that his life lives on through his family, and through his abiding influence on the practice of his beloved profession. ■

Bicentennial award recognizes community-spirited lawyers

Some have been practising law for less than a decade, while others have been active members of the bar for over half-a-century. They are former benchers, politicians, war veterans, retired judges. They are active in their churches, local service clubs and are promoters of human rights. You'll find them behind the bench of a local hockey game or wearing a referee's shirt in a kid's soccer tournament. The group includes an Officer of the Order of Canada, a Woman of Distinction award winner, and the holder of a Governor General's Commemorative Medal. You'll find them hard at work with non-profit housing, women's shelters, legal clinics, youth and senior citizen groups, and the humane society. They are included on hospital boards, school boards, city councils and chambers of commerce.

Despite their diversity, these people have at least two things in common. First, they are lawyers with a powerful sense of community giving. And secondly, they share the distinction of being chosen as recipients of the Law Society of Upper Canada's 1997 Bicentennial Award of Merit. The special award — marking the Society's 200th anniversary — recognizes the incredible contribution lawyers make to their towns and cities through community work.

"The Law Society is 200 years old and we wanted to recognize the good work lawyers have done in the community over those two centuries," says

200 YEARS/ANS

1797 – 1997

Susan Elliott, Treasurer, The Law Society of Upper Canada. "What better way to do that than to single out present day lawyers who are making a difference because of their dedication to public service. It's our way of highlighting the good lawyers do, and of thanking the award winners on behalf of the public."

One recipient of the Award of Merit may have summed it up best by saying that "we make a living by what we get, but we make a life by what we give."

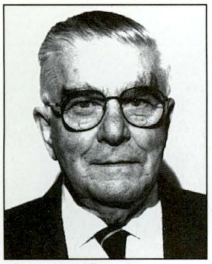
Reviewing the award winners' list of volunteer and community work, it becomes clear that they all recognize that the way to repay their communities is to give something back.

The accomplishments would also make it appear that lawyers are over represented in the ranks of voluntarism. But, that comes as no surprise to one of the winners: "The skills we acquire as a lawyer put us in a position to contribute to very worth while causes."

That winner went on to encourage all members of the legal profession to get involved in community projects. "Just do it," she advises.

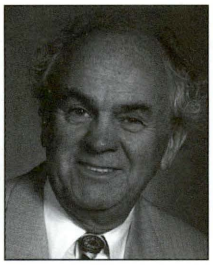
In total 61 Ontario lawyers will receive the Law Society's bicentennial tribute award. Nominated by their county law associations, the winners were chosen by a committee made up of Law Society Treasurer Susan Elliott, the chair of the Society's bicentennial committee Tom Carey, the then president of the County and District Law Presidents' Association Harrison Arrell and the president of the Metropolitan Toronto Lawyers' Association Eva Frank.

Bruce



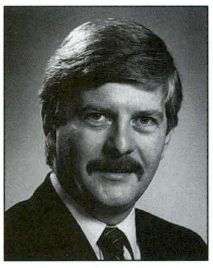
George Cecil Loucks, Q.C.

Carleton



Donald Gordon Grant

Jacqueline Mary Huston



Thomas Campbell Barber

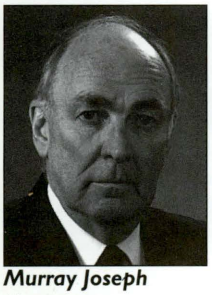
Cochrane

Rino Charles Bragagnolo, Q.C.

Durham

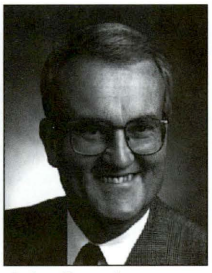
Robert Arthur Alexander

Elgin



Murray Joseph Hennessey

Essex



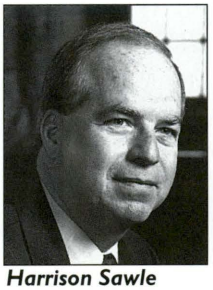
John Douglas Lawson, Q.C.

Marion Elaine Overholt

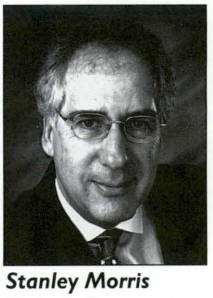
Frontenac

Geraldine Rose Tepper

Hamilton

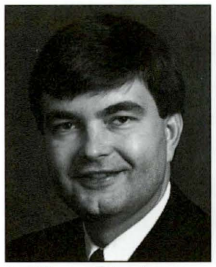


Harrison Sawle Arrell



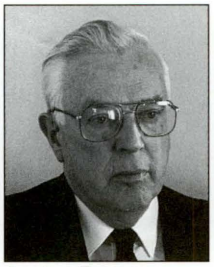
Stanley Morris Tick, Q.C.

Hastings



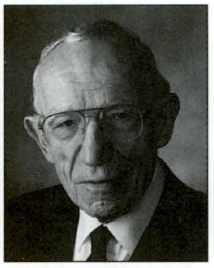
William Charles King

Huron



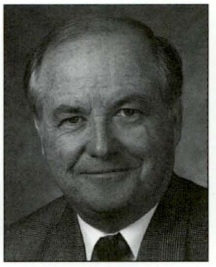
Justice Francis Gerard Carter

Kent



Thomas Charles Odette, Jr., Q.C.

Lambton

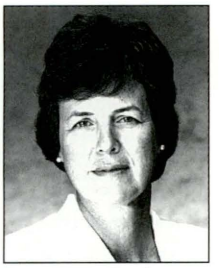


Robert Grant Murray, Q.C.

Leeds-Grenville

Jane Thorburn Monaghan

Middlesex

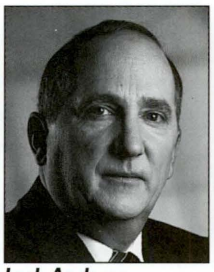


Janet Elizabeth Stewart, Q.C.

Muskoka

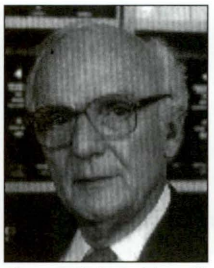
Michael Ernest Fitton, Q.C.

Nipissing



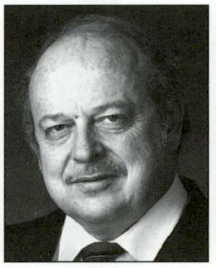
Jack Andrew Wallace

Norfolk



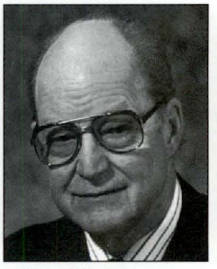
James Robert Tyrrell

Parry Sound



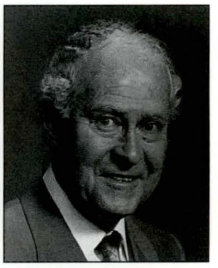
Watson Bruce Cunningham

Perth County



Wilfrid Palmer Gregory, Q.C.

Peterborough



Walter Harold Howell, Q.C.

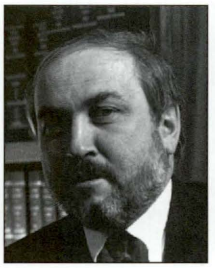
Prescott and Russell

J.H.B. Michel Landry

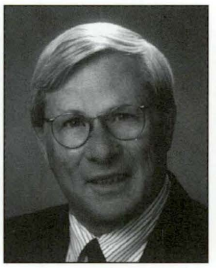
Rainy River

Lawrence Alexander Eustace

Sudbury

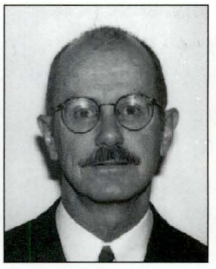


Donald Peter Kuyek



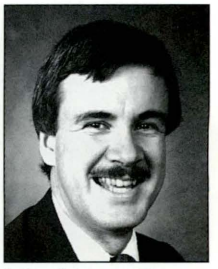
Andre Lacroix

Wellington



Terrence Bruce Jackman

York Region



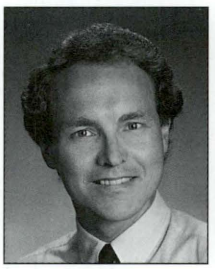
John Stewart Rogers

York County (Metro Toronto Lawyer's Association)

Margaret Juliana Atkinson

Igor Ellyn, Q.C.

Kazuo George Oiye, Q.C.



Randy Allan Pepper

Bert Raphael, Q.C.

Loretta Zubas

Pictures unavailable for:
Algoma ***Robert Jack Falkins***
Brant ***Lawrence T. Pennell***
Dufferin ***Howard Clark Adams, Q.C.***
Grey ***David Lawrence Lovell***
Haldimand *no nominations received*
Halton ***Milena Protich***
Kenora ***Jack Kenneth Doner***
Lanark ***John Steele Kirkland***
Lennox-Addington ***William Alexander Grange***
Lincoln ***Robert Stanley Kemp Welch, Q.C.***
Lindsay ***Carol Elizabeth Jamieson***
Northumberland ***Andrew Mowry Lawson***
Oxford ***Murray Roy Borndahl***
Peel ***John Berton Keyser***
Nancy Margaret Mossip
Renfrew ***Allan Archibald McNab***
Temiskaming *no nominations received*
Simcoe ***Roderic Graham Ferguson***
Stormont, Dundas & Glengarry
Archibald Duncan McDonald
Thunder Bay ***Nicholas John Pustina, Q.C.***
Waterloo ***Robert Charles Pettitt***
Welland ***John Joseph Broderick, Q.C.***
York County ***Mary Lou Fassel***
John Paul Hamilton
Willson Alexander McTavish
Lloyd William Perry

Legalites and Puckchasers: Osgoode Hall on ice

Today, the mention of Osgoode Hall conjures images of courtrooms, lawyers, judges, and a respected law school. A century ago, Osgoode Hall was also the symbol of a student sports organization to be reckoned with.

Osgoode Hall's sports teams, dubbed the "Legalites" by the press, were champions of Canada in rugby football in 1891, Ontario Hockey Association (OHA) senior champions and Stanley Cup contenders in 1894, and winners of the senior title again in 1898.

When the Osgoode team was making its mark in the 1890s, hockey was still a very young sport.

The early game

It is generally accepted that the first recorded hockey game took place in Montreal in 1875. Inspired by related sports such as bandy, shinty, hurley, lacrosse, and even rugby, hockey's rules changed considerably over time, and could vary greatly from one part of the country to another. Hockey's first known written rules date from 1877. The first hockey tournament was organized in 1883 at the Montreal Winter Carnival.

Ontario had its first official team in 1884: the Ottawa Hockey Club. In their early days, organized hockey leagues were still confined to middle class institutions such as amateur athletic associations, universities, garrisons and banks.

In 1890, representatives from a number of these organizations, including Osgoode Hall Law School, met in Toronto and founded the OHA. Its goal was to promote the sport of hockey, to preserve the game's amateur spirit and to encourage "kindly feelings" among members. One of the key movers behind the creation of the OHA was the Hon. Arthur Stanley. His father, Lord Stanley of Preston, Governor General of Canada, donated hockey's most coveted prize, the Stanley Cup, in 1893.

The Legalites

Although it would be logical to assume that the Osgoode team was made up of law students, there is evidence that the team, like many others at the time, used outside players or "ringers". The practice went against the rules, as it breached the principles of amateur sport and fair play, but it was encouraged by the increasing competitiveness of the game. In February 1893, the day before a final game against the Toronto Granites, the Osgoode team was accused of importing players from Ottawa and Kingston. The Granites could not have been spotless themselves: the captain of the team refused to announce his own line-up.

The Legalites were also contenders for the Stanley Cup in 1894. As Ontario champions, their challenge to the winners of the Amateur Hockey Association of Canada series was accepted. Unfortunately, by the time the Association championship was settled, ice conditions had deteriorated to the point that the match had to be cancelled.

At the start of the 1898 season the prospects for the Osgoode team seemed poor. Newspapers reported rumours of dissension within the club's ranks. By the beginning of the OHA's first round of play, they had not been able to organize a

The 1898 OHA Senior Champions

One of the trophy hockey sticks commissioned for the 1898 champions (similar to the one in this photograph) was donated to the Law Society Archives in 1989 by the Smialek family.
(photo courtesy of the Ontario Hockey Association)

single practice. But then their opponents, the University of Toronto's Varsity team, over-confident of winning, lost the first game by a wide margin, thus losing the round despite their win in the second game.

According to Toronto's Evening News, the Legalites then proceeded to beat the Peterborough and Stratford teams "without any undue exertion," and headed for the finals against the reigning champions from Queen's University.

The original Stanley Cup

The Stanley Cup was first presented in 1893 using a challenge system, with the cupholders having to defend their title. Osgoode Hall's challenge in 1894 was derailed by the weather – the outdoor ice melted.

(photo courtesy of the Hockey Hall of Fame)

The Final Match: February 24, 1898

It was a classic confrontation. Osgoode Hall was trying to regain the championship which Queen's had held for the previous three seasons. The ice was perfect. Nearly 1,000 people paid at least 25 cents to see the match at the Mutual Street Rink in Toronto.

The team consisted of Ed Carruthers, forward; Lorne Cosby, point; "Peck" Morrison, forward; Willie Lillie, forward; "Jack" McMurrich, goal; George Carruthers (Ed's brother), cover-point; and Harry Johnston, forward. Of the seven, only McMurrich was a law student. The regular point, Randy Maclennan, was also a genuine Osgoode student, but he was replaced by Cosby at the last minute.

The Queen's team, the Calvinists, could not match the talent of Osgoode's Legalites. Nothing could distract "cool-headed" McMurrich from his goal posts. If the point section was the weak spot of the team, fearless George Carruthers compensated well at cover-point. The Evening News declared him the "king-pin of Ontario hockeyists in this position." In the end, Osgoode's defense came through. The team's speed, determination, and puck-handling could only lead to victory.

Learning of the 7-3 score, Kingston's British Whig promptly complained that the scales were unfairly tipped in favour of Osgoode Hall and that the OHA had exposed its Toronto bias by ordering that only one final game be played, and in Toronto. Despite the media criticism, the Legalites reigned.

Epilogue

As long as the game of hockey was new and the teams young, university teams such as the Legalites could compete with other high calibre teams. As the quality of the game improved, it became more difficult for Osgoode's team to remain competitive. While other teams might keep the same players for years, most university team line-ups had to be rebuilt every year. Law students had to divide their time between work and play, and there was little time to organize a team before the start of the season. By 1929, the Osgoode Hall team had been demoted to a minor league. That year, all the team's players seem to have been Osgoode students, perhaps reflecting the decreased intensity of competition.

The expense of keeping a team on the road for the season was also a financial drain. By 1929, concerns were being expressed about the cost and the viability of athletics at Osgoode. In 1931, organized sports (hockey, rugby, tennis, squash, and basketball) were abandoned.

Sports gradually returned to Osgoode Hall in the form of more individual pursuits such as golf, skiing, and table tennis. Only in the 1950s did a hockey team once again bear the name of Osgoode Hall Law School. The current Osgoode Hall team, the "Owls" (residing at York University), won the championship of their intramural league for the 1995-96 season. As in the 1920s, when the composition of the team changed to reflect the nature of the game, today's lineup hints at changes in the "rules of the game" as a number of the players are now women. ■

Law in literature and law as literature

Go back far enough in any civilization and you will find the disciplines of law and literature united in one occupation. The job description will also include theology because that was the real point of the other two: to embody jurisprudence in a collection of parables, metaphors and fictional narratives that formed religious doctrine. To discover the jurisprudence of North American natives one must examine their parables.

Consider that the Holy Bible is both a book of literature and of law, and is also known as the Word, the Holy Writ and the Great Code. A successful prophet was someone with a special talent for combining law and literature.

Literature creates the desire for belonging while law provides the means. As literature begets culture, law begets society; together they bring about civilization. In common, but in different ways, each speaks to human contradictions. A nation or a people must identify

with and be identified by *both* its laws and its literature.

This is what Rufus Choate clearly understood. In 1833, the successful and articulate Boston lawyer, concerned about the factionalism and fragility of his youthful country, called for "a unifying literature" to complement its new laws. And while Choate did not specifically request that such literature be penned by his professional colleagues, he could not have had anyone else in mind, because in the early decades of the young republic lawyers dominated ideology and culture, and were largely responsible for both its law and its literature. In those days it was the way lawyers were educated. The most notable of these was Washington Irving, a lawyer who became a satirist and at the time was the only American writer to have an international reputation. It came with his *Rip Van Winkle* and *The Legend of Sleepy Hollow*, published in 1819.

> A nation or a people must identify with and be identified by both its laws and its literature

However, Choate said he was thinking of a series of romances on New England history along the lines of Scotland's Waverly novels, which had done so much to advance Scottish national pride and international interest in Scottish traditions. The novels' author, Sir Walter Scott, also a lawyer, had died the previous year. In *Guy Mannering*, his second Waverly novel, Scott writes: "A lawyer without history or literature is a mechanic, a mere working mason..."

And three years after Choate's historic talk a Nova Scotia judge, Thomas Chandler Haliburton, published *The Clockmaker or The Sayings and Doings of Sam Slick of Slickville*, the first of several volumes of humorous tales and the first work to earn an international literary reputation for what was to become Canada.

America was soon to be blessed with a literary renaissance, but it wouldn't be anything that Choate envisioned. A more prescient thinker might have realized that it is conflict, not harmony, that imbues good literature. And it wouldn't be lawyers who would bring about the renaissance. In the years following Choate's plea, pedagogical specialization caused law and literature to diverge. Although not necessarily linked, the country also drifted into civil war, fulfilling Choate's worst fears. But while law and literature were now taught separately writers without legal experience were employing legal-ethical themes in their novels. Such themes were usually inspired by the very historic incidents Choate hoped would be ignored in the interests of national harmony. Good literature hungers for the conflict occasioned by legal or moral contention.

Ten years before Choate's plea James Fenimore Cooper had published *Pioneers* which deals with the irreconcilable conflict between natural and civil law, a theme that was to be explored by Nathaniel Hawthorne in *The Scarlet Letter* of 1850 and *The House of the Seven Gables* the following year. Hawthorne supposedly gravitated toward legal-ethical issues because of his guilt over his ancestors' involvement in the persecution of Quakers and the Salem witch trials back in the seventeenth century. Choate believed such events should be overlooked in the proposed romances. He probably had little patience with Harriet Beecher Stowe's 1852 *Uncle Tom's Cabin*, a highly successful novel responsible for stirring pre-Civil War passions. Herman Melville also never studied law, but was fascinated by it, a characteristic augmented by his father-in-law being chief justice of Massachusetts. The central theme of his end-of-the-century novel *Billy Budd, Sailor*, is young Budd's shipboard trial and execution for fatally striking an officer who had unsuccessfully attempted to entangle him in mutiny.

Such legal-ethical themes were not restricted to works by Americans in the nineteenth century. They can be found in the literature of Dickens, Trollope and Dostoevsky, all writers with no legal background. Besides leaving us an abundance of classical literature, the writers of the nineteenth century have helped inspire the recent development of a new field of critical theory which examines both law *in* literature and law *as* literature. As well, some North American universities have gone back two centuries to add classes in law and literature to their curricula.

Shakespeare is an interesting study. Judge Richard A. Posner, legal scholar and former Stanford law professor, says: "So numerous are the incidental references to law in Shakespeare's plays that people have wondered whether he might not have had some legal training. Indeed, those references have helped persuade some people to attribute Shakespeare's plays to Francis Bacon, a lawyer." And still on Shakespeare, people usually think they're assailing lawyers when they quote Dick (the Butcher) from *Henry VI, Part II*: "The first thing we do, let's kill all the lawyers." In fact, a totalitarian form of government is being plotted and lawyers would interfere with such plans.

> The lawyer as hero was definitely elevated to the pedestal with the advent of the genre of legal thrillers

One could say, generally, that until

recently legal themes have appeared more often in literature by non lawyers than they have in the works of writers with legal training or experience, as the following lists indicate. Writers who left their mark on literature while working as lawyers: Donne, Fielding, Boswell, Haliburton and Scott. Writers who studied law, but didn't practise it, or who chucked law careers in favor of literature: Cicero, Petrach, Chaucer, More, Montaigne, Goethe, Schiller, Carlyle, Balzac, Macaulay, Irving, Flaubert, Tolstoy, Verne, Stevenson, Galsworthy, Proust, Kafka, Kazantzakis, Pasternak and Harper Lee.

As we enter the twentieth century we begin to find legal themes more associated with writers who have been trained in law, as witness Kafka and Lee from the preceding list. Add to them writers who practise law and use it for material: Erle Stanley Gardner, John Mortimer, Scott Turow, John Grisham and William Deverell. The result seems to be a better portrayal of lawyers.

Of course it's hard to make that claim of Kafka. Huld, the objectionable and useless lawyer retained by Joseph K. in *The Trial*, is a clear example of the profession being maligned by one its own. Kafka disparages the whole justice system in this absurd tragedy.

More amiable is English barrister John Mortimer's creation, Rumpole of the Bailey. But does the adorable renegade enhance the reputation of the legal profession when he is presented as an idiosyncratic instance of forensic genius? It often appears that Mortimer, while celebrating Rumpole, is mocking his colleagues.

A clearer picture of a lawyer comes from Harper Lee. She never practised law after studying it at the University of Alabama, choosing to work as an airline clerk. But this did not deter her from bestowing an accolade on the law profession. In 1960, 10 years after graduation, she published *To Kill a Mockingbird*, a novel set in an Alabama town during the 1930s. In it Atticus Finch heroically defends a black man wrongly charged with raping a white woman. The plot is reminiscent of E. M. Forster's 1924 novel, *A Passage to India*.

However, the lawyer as hero was definitely elevated to the pedestal with the advent of the genre of legal thrillers. Lawyer-writer Erle Stanley Gardner's novels, featuring lawyer Perry Mason, had wide appeal. The void left by Gardner's death in 1970 has been filled recently by two successful lawyer-writers, John Grisham and Scott Turow. Their novels have dominated North American best-seller lists during this decade and have inspired scripts for equally successful movies. Grisham's *The Firm*, *The Pelican Brief*, *The Client* and *The Chamber*, have been matched by Turow's *Presumed Innocent*, *The Burden of Proof*, *Pleading Guilty* and *The Laws of Our Fathers*.

Canada's answer to this pair has been West Coast lawyer-writer William Deverell who emerged on the literary scene with *Needles* in 1979. He has been turning out novels ever since, often drawing on his experiences as a Vancouver criminal lawyer. His most recent works are *Kill All the Lawyers* and *Street Legal: The Betrayal*.

Difficult as it may be to view the legal thriller as serious literature, it appears to be the basic genre bridging law and literature today. Will that change? Not likely in this age of specialization. No examination of law and literature could end without longing for the days of generalization when the gap between the two disciplines was much smaller or non-existent. ■

Discipline Digest

At Convocation on January 23, 1997, thirteen matters were scheduled to proceed. Convocation ordered one disbarment, one permission to resign, four suspensions, one reprimand in Convocation and one reprimand in Committee. In one case, a finding of professional misconduct was made and no penalty was imposed. A motion for an interim suspension was denied. Three matters were adjourned to the next sitting of Convocation on April 3, 1997.

In December 1996, discipline matters proceeded before hearing panels over 13.25 hearing days.

MISAPPROPRIATION

Clark, Peter David

Barrie, Ontario

Age 37, Called to the Bar 1986

Particulars of Complaint

Professional Misconduct

- Failed to reply to the Law Society.
- Misappropriated trust funds in the amount of $9,374 deposited in the Solicitor's trust account for an infant settlement.
- Misled clients regarding the misappropriated funds. (2)
- Misled a fellow solicitor regarding the misappropriated funds.
- Misled Official Guardian regarding the misappropriated funds.

Convocation's Disposition (1/23/97)

- Disbarment.

Discipline History

- March 25, 1994: Reprimand in Committee for failing to file and undertook not to practice until filings were completed.
- April 27, 1995: Eight-month suspension with conditions on reinstatement for failing to maintain books and records; misleading the Law Society; failing to reply; failing to serve clients; and practising under suspension.

Counsel for the Solicitor

- Not Represented

Counsel for the Law Society

- Jane Ratchford

MISAPPLICATION OF CLIENT FUNDS

Gardner, Donald Alan

Mississauga, Ontario

Age 52, Called to the Bar 1972

Particulars of Complaint

Professional Misconduct

- Acted for a land development syndicate and knew or ought to have known that a false Land Transfer Deed and a false Land Transfer Tax Affidavit were drafted, executed and registered in the amount of $1,000,000 when the true consideration was $465,000.
- Acted for a syndicate of investors, some of whom he had acted for previously, on the purchase of industrial property for $465,000 from a company in which he had a 25% interest, and failed to insist that the investors obtain independent legal advice.
- Preferred his own interests, or the interests of a client, over the interests of other clients when he acted for a syndicate of investors on the purchase of industrial property from a company in which he and a client had an interest.
- Misapplied approximately $80,000 from a bank account he controlled for an investment syndicate. The Solicitor borrowed these funds without the knowledge and consent of all investors, to invest in a transaction of another syndicate that the Solicitor had been unable to close because of insufficient funds.
- Misapplied some or all of the investment funds of two former clients, who each invested $50,000 in the syndicate.
- Failed to maintain sufficient balances in his trust account to meet his trust obligations with shortages up to $23,783.98.
- Failed to serve his clients in a conscientious, diligent and efficient manner by restructuring an investment syndicate from a subscription of shares in a corporation to a Co-Tenancy Agreement, without seeking his clients' instructions or consent to the restructuring of the transaction.

Convocation's Disposition (1/23/97)

- Permission to resign.

Factors

- Solicitor was responsible and responsive throughout the Law Society's investigation.
- No clients affected by the transactions complained to the Law Society, made claims against the compensation fund or commenced civil suits involving the Law Society's insurer.
- Misapplied funds were repaid without prejudice to the lending syndicate.
- Solicitor was not attempting to benefit himself at expense of other investors.
- Solicitor invested and lost $50,000 of his

Duty counsel needed for Discipline Convocation

The Law Society is again inviting members of the profession to act as duty counsel pro bono on behalf of solicitors who would otherwise be unrepresented before Discipline Convocation. Duty counsel are required to attend at Convocation for a full hearing day. It is Convocation's policy that duty counsel advising solicitors pro bono at Convocation may not subsequently act for those solicitors on the same discipline matter on the basis of a paid retainer. Interested members are asked to contact Georgette Gagnon, Acting Senior Counsel-Discipline at (416) 947-3903.

own money in the transactions.
- Solicitor's bookkeeper was involved in creating the trust shortages and was prosecuted and convicted of theft.
- Solicitor placed sufficient funds in his trust account once he became aware of the trust shortages.
- Solicitor suffered from cancer and had been receiving treatment.
- Solicitor complied with his undertaking not to practise law for the past four years.

Counsel for the Solicitor
- Larry Levine, Q.C.

Counsel for the Law Society
- Neil J. Perrier

FAILED TO DEPOSIT RETAINER IN TRUST

Fay, Francis Xavier
Toronto, Ontario
Age 55, Called to the Bar 1969
Particulars of Complaint
Professional Misconduct
- He failed to deposit $3,000 of client retainer funds into his trust account and failed to make the funds available to client when requested.

Convocation's Disposition (1/23/97)
- Sixteen-month suspension commencing January 23, 1997, to continue until conditions regarding alcoholism treatment fulfilled including report from physician.
- Following return to practise, Solicitor may only accept client retainers through deposit to a trust account maintained by a solicitor approved by the Law Society for a period of sixteen months.
- Convocation noted that the length of suspension was somewhat greater than it might otherwise be due in part to the rehabilitative nature of the suspension.

Factors
- Solicitor suffered from alcoholism at the time the misconduct occurred.
- Solicitor apologized and made restitution to the client.
- Strong character references.

Counsel for the Solicitor
- Paul J. French

Counsel for the Law Society
- Christina Budweth

PRACTISING WHILE SUSPENDED

Janjua, Moeen Mahmood Ahmad
Mississauga, Ontario
Age 55, Called to the Bar 1976
Particulars of Complaint
Professional Misconduct
- Practised during the period November 1, 1994 to December 15, 1994, while suspended for failure to pay his Annual Fees.

Convocation's Disposition (1/23/97)
- Two-and-one-half-month suspension commencing at the conclusion of the Solicitor's current administrative suspension.
- $600 in costs prior to reinstatement.

Discipline History
- June 3, 1986: Reprimand in Committee for failing to maintain books and records and for charging improper fees and disbursements.
- February 19, 1991: Reprimand in Committee for failing to reply to the Law Society and failing to serve clients.
- March 25, 1993: Reprimand in Convocation for failing to file and a six-month suspension for knowingly swearing false declarations.
- December 13, 1994: Reprimand in Committee for failing to cooperate with the Law Society.

Factors
- Practised under suspension for a short period and acted on one purchase and one sale during the suspension.

Counsel for the Solicitor
- Not in attendance and unrepresented (Before the Hearing Panel)
- William C. McDowell, Duty Counsel (At Convocation)

Counsel for the Law Society
- Glenn M. Stuart

PRACTISING WHILE SUSPENDED

Furgiuele, Anthony Leandro
Woodbridge, Ontario
Age 58, Called to the Bar 1966
Particulars of Complaint
Professional Misconduct
- Practised during the period May 26, 1995 to September 22, 1995, while suspended for failure to pay his Errors & Omissions Insurance Levy.

Convocation's Disposition (1/23/97)
- Two-month suspension commencing February 1, 1997.

Factors
- Solicitor faced difficult economic circumstances.
- Solicitor cashed in RRSP funds and applied them to outstanding levy.
- Strong character references.
- Solicitor had personal and matrimonial problems.

Counsel for the Solicitor
- J. Douglas Crane, Q.C.

Counsel for the Law Society
- Rhonda Cohen

MISAPPLICATION OF FUNDS

Miskin, Murray Harrison
Whitby, Ontario
Age 41, Called to the Bar 1981
Particulars of Complaint
Professional Misconduct
- Failed to maintain books and records. (2)
- Failed to maintain sufficient balances in his mixed trust account to meet all trust obligations to clients.
- Improperly removed approximately $9,511.84 from his mixed trust account for his own personal use and benefit over a four month period.
- Misapplied approximately $3,170.17 from his mixed trust account to or on behalf of clients who had no funds or insufficient funds on deposit.
- Continued to operate his trust account while an undischarged bankrupt, in spite of instructions from the Staff Trustee of Law Society to cease operating the account.
- Made disbursements from his mixed trust account of a personal nature and to creditors of his law practice for the purpose of preferring certain creditors prior to his assignment into bankruptcy.
- Failed to serve two estate clients in a conscientious, diligent and efficient manner.

Convocation's Disposition (1/23/97)
- Three-month suspension commencing February 1, 1997, with conditions on reinstatement.
- Solicitor must enrol in the Practice Review Program and have no signing authority over any trust account containing client funds for two years after reinstatement.
- $7,000 in costs to be paid within one year of reinstatement.

Factors
- Solicitor had no discipline history.
- Solicitor made a significant contribution to the profession, notably in the area of arbitration.
- The Committee accepted the Law Society's position that, in general, misconduct of this nature would warrant a twelve-month suspension. However, the Committee refused to recommend a twelve-month suspension in this case as it would have a severe impact on the Solicitor's practice such that he might never be able to recover from it. Convocation

considered this issue and adopted the Committee's recommendation on penalty.

Counsel for the Solicitor

- J. Douglas Crane, Q.C. and Nancy L. Noble

Counsel for the Law Society

- Glenn M. Stuart

FAILED TO FULFILL UNDERTAKING

Bates, Thomas Allan

London, Ontario

Age 52, Called to the Bar 1970

Particulars of Complaint

Professional Misconduct

- Failed to fulfill his undertaking in a timely manner to another lawyer to register a reference plan on title. Dated December 1986, the undertaking was not acted on until the Solicitor was contacted by the Law Society in June 1993 and was not fulfilled by the Solicitor until October 1995.

Convocation's Disposition (1/23/97)

- Reprimand in Convocation.
- $1000 in costs.

Discipline History

- April 15, 1986: Reprimand in Committee for wrongfully appropriating client trust monies for an overdraft in his personal chequing account and for having misled a client and her new Solicitor.
- October 4, 1994: Reprimand in Committee and $1,500 in costs for failing to serve a client in a conscientious, diligent and efficient manner; misleading a client; and failing to promptly advise the Director of Insurance, Errors & Omissions Department of the Law Society, of his potential liability.

Factors

- Subject matter of the complaint existed before and during the time he was last reprimanded and at the time he was required to attend the Practice Review Program.
- Solicitor improved his office practices including introducing computers, tickler systems and better office management.

Counsel for the Solicitor

- Not Represented

Counsel for the Law Society

- Janet L. Brooks

CASE REVIEW

Discrimination results in reprimand

A recent discipline matter considered by Convocation underscores the Law Society's commitment to its two-year-old rule against discrimination.

The solicitor received a public reprimand in Convocation for violating Rule 28 of the Rules of Professional Conduct. The professional misconduct occurred as a result of comments made by the solicitor during a telephone conversation with a former client when referring to the client's new lawyer.

Rule 28, which was adopted in September 1994, states that a "lawyer has a special responsibility to respect the requirements of human rights laws enforced in Ontario and specifically to honour the obligation not to discriminate on grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status or disability with respect to professional employment by lawyers, articling students, or any other person or in professional dealings with other members of the profession or any other person."

The discipline panel hearing the matter found that a solicitor's racist and offensive comments were a form of discrimination because to criticize another lawyer based on the lawyer's ethnic origin or religious beliefs was a pejorative reference intended to discriminate.

The panel also made reference to Rule 14, which states that a lawyer's conduct towards other lawyers should be characterized by courtesy and good faith.

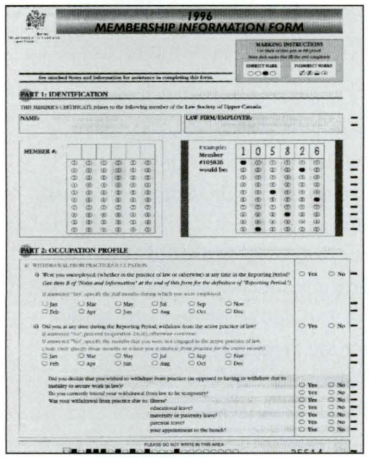
It was the panel's view that the penalty imposed on the solicitor should reflect the Law Society's repudiation of the conduct. It noted that Rule 28 was a relatively new rule and it must be clear to the profession that discriminatory conduct will not be tolerated. The panel recommended that the solicitor be reprimanded in Convocation.

At Convocation, the majority adopted the recommended penalty of a reprimand , although a motion for a higher penalty was made. In her reprimand, the Treasurer stated:

"You are not speaking in the language we understand when you use these words. The remarks you made were not only highly offensive, they were completely inappropriate and without doubt cannot be condoned by any of us in any way. We can't ignore the remarks. We are deeply saddened and entirely offended by them. We entirely reject and repudiate your conduct and want the public and profession to know that under no uncertain terms, there is not one person in this room who agrees with the nature, tone or content of your remarks. The fact that you delivered them in any setting, private or otherwise to any person is smack, the worst form of racism and disrespect. They were not acceptable. They were repugnant to us and we will not and cannot condone or tolerate this conduct.

"The integrity and honour of the profession are at stake when you as a solicitor and a lawyer speak about your fellow human beings in the way you did, when you use the language you did, both the racist language and the offensive language. It casts a shadow on the entire profession. Your remarks bring disrepute to all of us and we all suffer for them and that's the nature of discrimination in general, why it must end and why we have adopted Rule 28. We want the profession to understand that we mean what we say in Rule 28; that this Society, the legal profession, will not tolerate in any way, shape or form, racist conduct or discriminatory conduct by its members." ■

Law Society forms update


1996
MEMBERSHIP INFORMATION FORM

Members should have now received the Membership Information Form. Additional forms for private practitioners will go out in March.

Convocation has approved the remaining new Law Society forms. Designed to enable the Law Society to use computer technology to read and partially process them, the new forms replace a number of documents that the Society requires members to file. These forms will serve as an important beginning to Law Society initiatives that will streamline annual filings.

Comprehensive information accompanies each of the new forms. Additional information is also available from the Law Society web site at www.lsuc.on.ca. Members can also reach the Law Society Forms Services by e-mail at lsforms@lsuc.on.ca, fax (416)947-3932, or phone (416)947-3932. In order to assist us in handling the number of telephone inquiries, we would urge members to contact us by e-mail or by fax.

Members should note that for the purposes of facilitating the processing of these forms, the last digit of their membership numbers were converted from an alphabetic character to a numeric one. The Society is considering whether to adopt this new membership number for Society wide purposes. There will also be discussion with the Lawyers Professional Indemnity Company as to the viability of adopting the same number for their purposes as well.

The Membership Information Form

Members should have received the forms package by the third week of January. The Membership Information Form and enclosures were originally to have been mailed to the profession in December 1996. Regrettably, the mailing was delayed due to unforeseeable last-minute production and distribution difficulties. We apologize for any inconvenience caused by the delay.

The Membership Information Form needs to be completed and filed by all members of the Law Society regardless of whether they were engaged in the active practice of law. Please do not confuse this form with the annual accountant's report for members in private practice. In addition to the more traditional information (such as practice profiles, particulars of client trust property remaining in the control of members who have left the practice of law), this form will provide important data regarding the profession. This statistical data will provide a better understanding of the membership, which will greatly assist and improve the Law Society's ability to

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

BARRY George Francis	1985	Nepean ON
BAZILLI Susan Margaret	1986	Toronto ON
COLBERT Timothy Boyd	1980	Arnprior ON
COOPER Michael Jay	1986	Toronto ON
CROTHERS Henry David	1994	Toronto ON
CUDDY Loftus John Robert	1988	Toronto ON
DILLON John Paul	1976	Toronto ON
EWER Dianne Elizabeth	1996	London ON
FARUQI Lubna	1984	New York NY
GARDNER Donald Alan	1972	Mississauga ON
GOLDSTEIN Howard Hugh	1992	Willowdale ON
GRAHAM John Douglas Clifford	1967	Kitchener ON
GUMIENNY Jacqueline Shirley	1994	Kingston ON
HADFIELD Geoffrey Graham	1988	Niagara Falls ON
HARTMANN Rita Anne	1975	Saco ME
HARVARD John Milton	1974	Strathroy ON
HOSKINSON William Charles	1972	Kitchener ON
HUYCKE Allan Murray	1975	Bracebridge ON
ISLES Robert Max	1990	Toronto ON
KALVIN Bernard Anthony	1989	Toronto ON
KAZMAN Marshall Stephen	1984	Downsview ON
KELLY Miriam Aileen	1963	Toronto ON
MARPLES Ian Robert	1979	Aurora ON
MCKENZIE Henry George	1971	Calgary AB
MCKIE Joy Nerine	1989	Toronto ON
MCNAMARA Shawn Patrick	1996	Hamilton ON
MITCHELL Brian Randall	1987	Montreal PQ
MORGAN John Walter	1992	Sydney NS
MUSTOS William Louis	1986	Toronto ON
NG Nora Duen Yee	1994	Hong Kong
NORTH William John Jamie	1991	Toronto ON
PARK Richard Ronald	1983	Markham ON
PLAMONDON Susan Norma Mary	1976	King City ON
PRYDE William Rodney Rowland	1983	Toronto ON
REID Wendy Diane	1984	Ottawa ON
REIDL Erwin	1981	Kitchener ON
SAVAGE Francis Nicolaas	1978	Ottawa ON
SHERWOOD Gary William	1985	Etobicoke ON
SIDAROUS Mona	1992	St. Sauveur PQ
SMART James Brennan	1992	Guelph ON
WARAKSA Miroslaw Antoni	1979	Toronto ON
WILLIAMS Roy Anthony	1987	Nepean ON
WOLCH Jonathan David Morris	1995	Toronto ON

E & O LEVY REINSTATEMENTS

ADAMS Michael John	1992	Sault Ste. Marie ON
DERBY Bonnie Esther Turner	1976	Toronto ON
KAMIN Bernard Jacob	1963	Markham ON
KRUCK Steven Andreas	1991	Toronto ON
SHAIKH Farida Mir Mohammed	1994	Toronto ON
STEPHENSON Craig Alexander	1993	Brampton ON

ANNUAL FILINGS REINSTATEMENTS

MCCAGUE William Fredrick	1986	Scarborough ON

E&O LEVY SUSPENSIONS - November 15, 1996

GREEN Blair William	1972	Burlington ON
LINZNER Joseph	1979	Pickering ON
ROSS Michael Theodore	1981	Mississauga ON
THOMPSON Shaun Stewart	1990	Etobicoke ON

effectively govern the profession.

The Confirmation of Membership Information sheet was included with the mailing of the Membership Information Form. This confirmation sheet contains particulars of information that the Law Society currently has relating to the member. Members are asked to review this sheet, correct any inaccuracies and provide the missing particulars, so as to verify and improve the basic information in the Law Society database.

The Private Practitioner Form and Public Accountant's Report

These new forms primarily replace forms 2 and 3, and should be received by members in the first half of March 1997. We will be relying on information received and processed from the Membership Information Form in determining who should receive copies.

The Private Practitioner Form needs to be filed by members who engaged in private practice (including employees of law firms) or handled client trust property, during the last year. An accountant need not be retained to complete the Private Practitioner Form since the questions are directly related to practice issues.

A Public Accountant's Report will be required in respect of each member's handling of client trust property. If you believe that you need to file these forms and do not receive copies by the second week of March, please contact us. ■

FYI

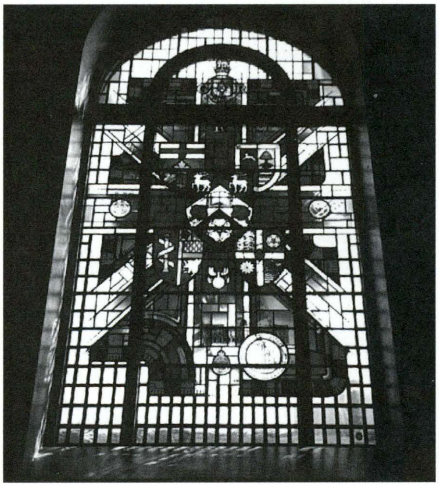
Help the Foundation help the profession

Although its existence may not be common knowledge within Ontario's legal community, for more than 30 years the Law Society Foundation (distinct from the Law Foundation of Ontario) has served the public and the profession by fostering excellence and equity in legal education and by preserving objects of historic significance to Canada's legal heritage.

Anyone who has stopped to admire the stained glass windows in Convocation Hall has seen the tangible results of the Foundation's work. The windows – made possible by donations from the legal community to the Law Society Foundation – trace the roots of the rule of law from the second millennium BC to the establishment of the Law Society of Upper Canada and the Canadian law schools.

Many lawyers have received financial assistance in the form of Foundation bursaries during law school and in the Bar Admission Course. For example, the Bertha Thompson Memorial Bursary, established by Judge Thompson's husband, Bernard Harrison, is awarded each year to a financially needy student in the Bar Admission Course. Similarly, the Gordon F. Henderson, C.C., Q.C., LL.D. Memorial Bursaries, established by the firm Gowling, Strathy & Henderson, are awarded annually in honour of the firm's former chairman and senior partner.

Through the Foundation, prizes for academic excellence in law school and in the Bar Admission Course are made possible. As with bursaries, prizes allow the Foundation to honour the contributions and achievements of members of the profession. For example, the Stuart Thom Prize, donated by Osler, Hoskin & Harcourt, is awarded annually to the student attaining the highest grade in Business Law in the Bar Admission Course.



The windows of Convocation Hall were made possible by the Foundation

The Law Society Foundation was founded in 1962 by a distinguished group of directors and members: J.J. Robinette, Joseph Sedgwick, John Arnup, Cecil Wright and Herbert Allan Borden Leal. Its mandate includes: receiving donations and maintaining funds to foster, encourage and promote legal education; providing financial assistance to law students; restoring and preserving lands and buildings and receiving gifts of muniments, legal memorabilia, books and other written material of significance to Canada's legal heritage and maintaining a museum to display such items.

The Foundation works with prospective donors to achieve their charitable objectives, and is able to issue income tax receipts for donations. Further information about the Foundation may be obtained from Mimi K. Hart, Law Society of Upper Canada, 130 Queen St. West, Toronto, Ontario, M5H 2N6, Tel (416) 947-3420, Fax (416) 947-3403. ■

Status of Bills in the Ontario Legislature

The Ontario government is currently sitting in a rare winter session. The following is a selection of Government Bills which are currently before the Legislature for consideration. Although every effort has been made to present the most accurate information; the most up to date information should be obtained from the sponsoring ministry.

THIRD READING

Bill 57 - Environmental Approvals Improvement Act
(Environment and Energy) Amends the certificate of approvals process; eliminates the Environmental Compensation corporation; and repeals the Ontario Waste Management Corporation Act.

SECOND READING

Bill 84 - Fire Prevention and Protection Act (Solicitor General) municipal costs for the delivery of fire protection and prevention

Bill 96 - Tenant Protection Act
(Municipal Affairs and Housing) Address rent control and reduces bureaucracy

Bill 98 - Development Charges Act
(Municipal Affairs and Housing)

Bill 99 - Workers Compensation Reform Act
(Labour) affected benefits for injured workers and overall finances of WCB

Bill 102 - Community Safety Act
(Solicitor General) Closes legal loopholes enabling justice officials to track criminals and notify the public about dangerous offenders being released into their communities.

Bill 103 - City of Toronto Act
(Municipal Affairs and Housing) Amalgamation of seven existing municipal governments of Metro Toronto into a new municipality to be known as the City of Toronto.

Bill 104 - Fewer School Boards Act
(Education)

Bill 105 - Police Services Amendment Act
(Solicitor General)

Bill 106 - Fair Municipal Finance Act
(Finance) Changes property tax assessment system, eliminates business occupancy tax.

Bill 107 - Water and Sewage Services Improvement Act
(Environment and Energy) Transfers complete ownership to municipalities

Bill 108 - Streamlining of Administration of Provincial Offences Act
(Attorney General) Consolidate administration of traffic and parking tickets and other minor regulatory offences at the municipal level, and transfer associated revenue.

Bill 109 - Local Control of Public Libraries Act
(Citizenship, Culture and Recreation)

"RED TAPE" BILLS

As at February 3, 1997, there were 17 Bills, commonly referred to as the "red tape" bills, before the Legislature. The primary focus of the bills is to streamline the operations of various government ministries The following ministries have such bills in the process:

Ministry of the Attorney General (Bill 61 - third reading and Bill 122 - second reading);
Ministry of Citizenship, Culture and Recreation (Bill 63 - third reading and Bill 114 - second reading);
Ministry of Consumer and Commercial Relations (Bill 64 - third reading and Bill 117 - second reading);
Ministry of Economic Development, Trade and Tourism (Bill 65 - third reading);
Ministry of the Environment and Energy (Bill 66 - third reading and Bill 121 - second reading);
Ministry of Health (Bill 67 - third reading and Bill 118 - second reading);
Ministry of Northern Development and Mines (Bill 68 - third reading and Bill 120 - second reading);
Ministry of the Solicitor General and Correctional Services (Bill 69 - third reading);
Ministry of Finance (Bill 115 - second reading)
Ministry of Agriculture, Food and Rural Affairs (Bill 116 - second reading)
Ministry of Natural Resources (Bill 119 second reading)

The Law Society's recent readership survey indicated that members are very interested in information on courts and legislation. Any feedback or suggestions that can assist us in providing focused and useful information in this area are encouraged and welcome. Contact Sheena Weir: e-mail: sweir@lsuc.on.ca telephone: (416) 947-3338.

A drowning lawyer gets a chance

Bill was a successful lawyer. He had started drinking as a teenager, increasing his consumption during university and law school. After starting practice, he became a social drinker. Eventually, he had a morning eye-opener, a wet lunch, cocktails before dinner, wine with dinner and then a nightcap to help him sleep. As his drinking progressed, his life was negatively affected. He lost clients because of sloppy errors and missed court dates and appointments. He was charged for alcohol-related driving offences and lost his licence. He and his wife separated a few times. Money problems began to plague him.

At his lowest point, he contacted OBAP (Ontario Bar Assistance Program) for help. Through the assistance of a fellow lawyer peer counselor, he began to attend AA regularly, after an intensive program in a treatment facility. The journey to sobriety was filled with slips, crashes and finally, success.

OBAP is endorsed by the Law Society of Upper Canada and The Canadian Bar Association, but is separate and confidential from both. It has been established to help Ontario lawyers and judges whose professional and personal lives are threatened by the impact of problems caused by addiction issues (food, alcohol, drugs) as well as mental health issues.

If you are a Bill or know of a Bill, telephone the 24-hour general helpline 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 1-519-837-3396. ■

Travelling Displays

As part of its bicentennial celebrations, the Law Society has prepared two exhibits that will travel across the province in the months ahead. Take the time to visit when one stops near you. Admission fee is set by each venue, but is often free. For more information, contact Elise Brunet, of the Law Society Archives, at (416) 947-4041.

Crossing the Bar

On the 100th anniversary of the admission of the first woman to the bar in the British Commonwealth, Crossing the Bar reviews a century of the history of women in the legal profession in Ontario.

JANUARY 16 - FEBRUARY 23	**Carleton** University of Ottawa Faculty of Law, Common Law, Ottawa
FEBRUARY 27 - APRIL 6	**Middlesex** University of Western Ontario Law Library, London
APRIL 10 - JUNE 29	**Welland** Port Colbourne Historical and Marine Museum Port Colbourne
JULY 4 - AUGUST 31	**Wellington** Wellington County Museum and Archives, Fergus
SEPTEMBER 4 - SEPTEMBER 21	**York** CBAO, Toronto
SEPTEMBER 25 - NOVEMBER 2	**Frontenac** Queen's University Faculty of Law, Kingston
NOVEMBER 6 - DECEMBER 14	**York** University of Toronto Faculty of Law, Toronto
1998	
JANUARY 5 - FEBRUARY 28	**Peel** Peel Heritage Complex, Brampton
SEPTEMBER	**Middlesex** University of Western Ontario Faculty of Law, London

You call yourself a lawyer?

A friendly disagreement between two lawyers becomes the occasion to review two hundred years of history of the legal profession in Ontario. A lawyer of the past and one of the present compare their background, training and practice in a lively and engaging format.

JANUARY 31 - FEBRUARY 18	**Carleton** Billings Estate, Ottawa
FEBRUARY 11 - MARCH 2	**York** Osgoode Hall, Toronto
FEBRUARY 22 - MARCH 9	**Leeds & Grenville** Brockville Museum, Brockville
MARCH 6 - MARCH 23	**Lindsay (Victoria-Haliburton)** Lindsay Public Library, Lindsay
MARCH 13 - MARCH 30	**Algoma** Sault-Ste-Marie Public Library, Sault-Ste-Marie
MARCH 27 - APRIL 13	**Elgin** Elgin County Public Library, Aylmer
APRIL 3 - APRIL 16	**Rainy River** Fort Frances Museum, Fort Frances
APRIL 17 - APRIL 30	**Lincoln** St. Catharines Public Library, St. Catharines
APRIL 19 - MAY 16	**Thunder Bay** Thunder Bay Museum, Thunder Bay
MAY 3 - MAY 21	**Welland** Niagara Historical Society Museum Niagara-on-the-Lake
MAY 7 - JUNE 22	**York** Osgoode Hall, Toronto

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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 (46)

C7 Section 7
C7-3 $70 Pre-Charge Delay (61)

C8 Search and Seizure
C8-1 $70 Exclusion of Illegally Obtained Evidence (59)
C8-2 $70 Unreasonable Search and Seizure - Consent Searches (25)
C8-3 $70 Seizure of Objects Inadvertently Discovered - Plain View Doctrine (22)
C8-4 $50 Border Searches (28)
C8-5 $50 Reasonable and Probable Grounds for Warrantless Search and Seizure (87)
C8-8 $50 Charter of Rights, s.8 Motor Vehicles (48)
C8-9 $70 Sufficiency of Information for Search Warrants (76)

C9 Section 9
C9-1 $70 The Stopping of Motorists - Release & Imprisonment (81)
C9-2 $50 Unlawful Arrest/Detention for Investigative Purposes (100)

C10 Section 12
C10-1 $50 Cruel and Unusual Punishment (30)

C35 Aboriginal/Treaty Rights
C35-1 $50 Exemption from Excise Duties (13)
C35-2 $50 Hunting and Fishing (27)

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 (28)
D2-1 $70 **Entrapment (28)**
D3-1 $70 **Self-Defence (46)**

D4 Kienapple-Rule Against Multiple Convictions
D4-1 $70 Kienapple Since Hagenlocher and Prince (59)
D4-2 $50 Breach of Probation and Substantive Offence (10)

D5 Abuse of Process
D5-1 $70 General Principles (76)
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 (37)
D6-2 $50 List of Offences for Which Defence Available (19)
D7-1 $50 **Prank - Defence of (10)**
D8-1 $50 **Defence of Necessity (35)**
D9-1 $50 **Defence of Duress (24)**
D10-1 $70 **Provocation as a Defence to Homicide (36)**
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 (17)**

D15 Consent and Other
D15-1 $50 Non - Sexual Assault and The Defence of Consent (29)
D15-2 $70 Sexual Offences and The Defence of Consent (82)
D15-3 $50 Section 150.1 Defences (19)
D16-1 $50 **De Minimis Non Curat Lex - Drug and Non-drug Cases (21)**

(E) EVIDENCE

E1 Admissibility of Statements
E1-1 $70 Procedural & Preliminary Considerations (38)
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 (23)
E1-6 $50 Voluntariness - Inducement (44)
E1-7 $70 Statements of Young Offenders (64)
E1-8 $50 Statements by a Co-Accused (17)
E1-9 $50 Voir Dire - Calling All Police Present (9)
E1-10 $50 Voir Dire - Cross-Examination of Accused (18)
E1-11 $50 Res Gestae Statements (11)
E1-12 $70 Charter of Rights (96)
E1-13 $50 Tainting Doctrine (20)
E1-14 $50 Voluntariness - Interrogation (17)
E1-15 $50 Statements by Impaired Accused-Alcohol and Drugs (14)
E1-16 $50 Admissibility by Accused of his own Statements (21)
E1-17 $50 Voluntariness - Oppressive Circumstances (26)
E1-18 $50 Persons in Authority (24)
E1-20 $50 Procedure Where Accused Denies Making Statement (6)
E1-21 $50 Statements by a Mentally Disabled Accused (16)
E2-1 $70 **Similar Fact Evidence (57)**

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 (7)
E4-2 $70 Eye-Witness Identification - Sufficiency of Evidence (93)
E4-4 $50 Eye-Witness Identification - Similarity of Names (12)
E4-5 $50 Line-Ups (16)
E4-6 $50 Photographic Line-Ups (14)
E4-8 $50 Fingerprints (20)
E4-9 $50 Handwriting (11)
E4-10 $50 Voice (10)
E4-11 $50 Description by Eye-Witness - Hearsay and Non - Hearsay Uses (11)
E4-12 $50 Identification - Procedure - Accused Seated in Body of Courtroom (6)
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 (22)
E5-2 $50 Defence Use of Expert Evidence: Absence of Disposition - Reliability of Complainant (74)
E5-3 $50 Admissibility of Recent Complaint Before 1983 Code Amendments (15)
E5-4 $50 Admissibility of Complaint after Code Amendments - s.275 (59)
E5-5 $70 Admissibility of Prior Sexual Conduct (98)
E5-6 $50 Out-of-Court Statements of Child Complainants For Truth Of Contents (46)

E6 Witnesses, Character and Credibility
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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 (39)
E6-5 $50 Character of Victim - Previous Acts of Violence (16)
E6-6 $50 Prior Inconsistent Statements (39)
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E8-1 $50 **Alibi (21)**

E10 Circumstantial Evidence
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E12-5 $50 Documentary or Certificate Evidence: Reasonable Notice (28)

E13 Photographs
E13-1 $70 Conditions for Admissibility (16)
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E14 Polygraph Evidence
E14-1 $50 Admissibility & Investigative Use (32)

E15 Admissibility of Evidence
E15-1 $50 Prejudice vs. Probative Value (40)
E15-2 $50 Reading in Evidence from The Preliminary Inquiry (26)
E16-1 $50 **The Police Informer Privilege (14)**

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O1 Weapons
O1-1 $70 Proof in Weapon Dangerous Charges (34)
O1-2 $50 Proving an Innocent Object to be a Weapon (14)
O1-3 $50 Carrying a Concealed Weapon (14)
O1-4 $50 Possession of Prohibited Weapons - Orders (31)
O1-5 $50 Possession of Prohibited Weapon - Knife (13)
O1-6 $50 Careless Use/Storage of Firearm - Tests to be Applied (34)
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O1-9 $50 Proving a Gun to be a "Firearm" (17)
O2-2 $70 **Conspiracy - Overview (34)**

O3 Homicide
O3-1 $50 Attempt Murder (20)
O3-2 $50 Cause of Death (14)
O3-3 $50 Death Caused in Pursuance of Unlawful Objects (17)
O3-4 $70 First Degree Murder - Planning and Deliberation (35)
O3-5 $50 Murder and Manslaughter (31)

O4 Parties to an Offence
O4-1 $50 Parties - Aiding and Abetting (44)
O4-2 $50 Parties - Principal Unknown or Unconvicted (10)
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O6 Attempts and Inchoate Crimes
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O8-2 $50 Criminal Negligence (44)
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O8-5 $50 Driving While Disqualified (75)
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O9-1 $50 **Arson and Setting Fire (35)**

O10 Sexual Offences
O10-1 $70 Indecent Acts (23)
O10-2 $70 Gross Indecency (27)
O10-3 $50 Loitering (7)
O10-4 $50 Prostitution and Soliciting (19)
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O10-7 $50 Living on the Avails of Prostitution (13)
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O10-9 $50 Sexual Interference (9)
O10-10 $50 Sexual Exploitation (20)
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O14 Breathalyzer and Impaired
O14-1 $50 Impaired Driving - Evidence of Impairment (80)
O14-2 $50 Care or Control (95)
O14-3 $70 Breathalyzer Demands (60)
O14-4 $50 Breathalyzer Test: "As Soon as Practicable" (44)
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O17-2 $50 Knowledge of the Stolen Nature of Goods (25)
O17-3 $50 Value of Property Stolen or Possessed (10)
O17-4 $70 Possession - Passengers in Motor Vehicles (16)
O17-5 $70 Colour of Right; Lack of Fraudulent Intent (29)
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O17-8 $50 Elements of the Offence (31)

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O18-1 $50 Purse Snatching (8)
O18-3 $50 Theft: Elements of the Offence (17)

O19 Forgery and Uttering
O19-1 $50 Forgery (9)
O19-2 $50 Uttering (13)

O20-1 $70 **False Pretences - N.S.F. Cheques (19)**

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P14-1 $50 Arrest Without Warrant (103)
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P14-4 $50 Intoxicated Condition in a Public Place (16)
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S1-2 $70 Previous Offenders - Outside Ontario (103)
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S1-5 $70 Bank Robbery (47)
S1-6 $50 Conspiracy to Commit Robbery (10)
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S2 Theft, Fraud and False Pretences
S2-1 $70 Defrauding Government Agencies - Welfare Fraud and UIC (36)
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S4 Drugs
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S4-1 $70 Cannabis - Ppt - Ontario (18)
S4-2 $70 Cannabis - Trafficking - Ontario (16)
S4-3 $50 Cannabis - Simple Possession (28)
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S4-5 $50 LSD (30)
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S4-7 $70 Cocaine-Ontario (64)
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S4-13 $50 Importing (34)
S4-14 $50 Ppt - Cannabis - Outside Ontario (54)
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S5-5 $50 Careless Use, Carriage, Handling, Shipping or Storage of a Firearm (9)
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S6 Break and Enter
S6-1 $50 Previous Offenders - Ontario (32)
S6-2 $50 First Offenders - Ontario (7)
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S6-4 $50 Mitigating and Aggravating Factors (16)
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S7 Homicide
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S7-4 $50 Attempt Murder (40)
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S8-1 $50 Sexual Offences Against Children - Non - Breach of Trust (84)
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S8-3 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Outside Ontario (114)
S8-4 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Ontario (58)
S8-5 $50 Sexual Offences - Siblings (9)
S8-6 $50 Buggery (18)
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S8-8 $50 Contributing to Delinquency (Repealed) (3)
S8-9 $50 Sexual Assault - Ontario (49)
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S8-11 $50 Living on Avails; Procuring (20)
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S10 General Principles
S10-2 $50 First Sentence of Imprisonment (32)
S10-3 $50 Reformatory Instead of Penitentiary (28)
S10-5 $50 Time Spent in Custody (27)
S10-6 $50 Previous Convictions - Use of Accused's Record (25)
S10-7 $50 Previous Convictions - Gap Principle (10)
S10-8 $70 Disputed Facts and Unproven Offences (95)
S10-9 $70 Discharge Under The Criminal Code and Y.O.A. (54)
S10-10 $50 Mitigating Factors - Impairment (19)
S10-11 $50 Rehabilitation (36)
S10-12 $50 Leaders and Followers (18)
S10-13 $50 Mitigating Factors - Lack of Sophistication (10)
S10-14 $50 Mitigating Factors - Guilty Plea (14)
S10-15 $50 Mitigating Factors - Co-operation with Authorities (13)
S10-16 $50 Mitigating Factors - Employment (21)

S10-17 $50 Mitigating Factors - Hardship to Dependants (19)
S10-18 $70 Disparity and Conformity (38)
S10-19 $50 Totality Principle (30)
S10-20 $50 Compensation, and Restitution (46)
S10-21 $50 Appeals - Sentence Served (14)
S10-22 $50 Fines (22)
S10-26 $50 Joint Submissions on Sentence (20)
S10-27 $50 Crown Practice - Delay in Prosecution (23)
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 (15)
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S11-1 $70 Wounding (26)

S12 Criminal Negligence and Dangerous Driving

S12-1 $70 Criminal Negligence (49)
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S13 Non-Sexual Assaults

S13-1 $50 Mitigating and Aggravating Factors (8)
S13-2 $50 Offences Against Children and the Elderly (45)
S13-3 $50 Domestic Assaults (91)
S13-4 $50 Assault Bodily Harm - Assault With a Weapon - General (73)
S13-5 $50 Gang Assaults - Premeditated (16)
S13-6 $50 Police Assaults of Prisoners (7)
S13-7 $50 Assault Police, Assaults Against Persons in Authority (25)
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S13-11 $70 Aggravated Assault (41)
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S14-3 $50 Shoplifting (24)
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S17-1 $50 Forcible Confinement (54)
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S18-1 $50 Impaired and Over 80 - Previous Offenders (55)
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S18-4 $50 Impaired and Over 80 - Curative Treatment - Discharges (31)
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S28-1 $50 Perjury (19)
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S30-3 $50 Break and Enter (58)
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(oriented to Ontario Legislation)

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CH2-2 $50 Joint Custody (39)
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CH2-6 $50 Custody/Access Assessments (27)
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CH2-8 $50 Best Interests of Child - Disputes Between Parents and Non-Parents (50)
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CH5-3 $50 Crown Wardship vs. Opportunity to Parent (32)
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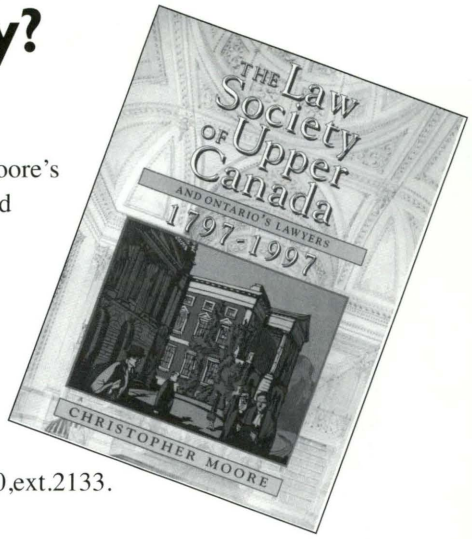

Ten winners will receive a prize of one personally autographed copy of Christopher Moore's book, *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997,* published in February 1997 by the University of Toronto Press.

Answers must be received no later than March 31, 1997. The draw will take place on April 7, 1997. Winners will be notified by telephone. The correct answers will be published in the next issue of the Gazette.

The material for the contest questions was derived from *The Law Society of Upper Canada and Ontario's Lawyers, 1797-1997*, by Christopher Moore. If you can't wait to read all the other fascinating details about lawyers and the Law Society, purchase your copy from Law'NMore, the Law Society shop at Osgoode Hall, tel. 416-947-3300,ext.2133.

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Circle your choice to each question, and send to the address below with your name, phone number and address

1) *How did the first Treasurer of the Law Society die?*

a) malaria b) hit by a falling tree
c) shot in a duel d) drowned

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

a) William Osgoode b) Robert Baldwin
c) the Prince of Wales d) all of the above

3) *How old was John Beverley Robinson when he was appointed acting Attorney General in 1812?*

a) 65 b) 43
c) 34 d) 21

4) *What disaster decimated the legal profession in 1804?*

a) a tornado b) food poisoning
c) the sinking of a ship d) the Spanish flu

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

a) Latin and English composition b) history
c) elements of Euclid d) law

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

a) 1965 b) 1834
c) 1901 d) 1867

7) *When did the Law Society get its first photocopier?*

a) 1947 b) 1978
c) 1965 d) 1971

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

a) 350 b) 400
c) 128 d) 24

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