

MINUTES OF CONVOCATION

Friday, 6th December, 2002
9:30 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Banack, Bindman, Bobesich, Braithwaite, Campion, Carey, Cass, Chahbar, Cherniak, Coffey, Curtis, Diamond, Ducharme, Epstein, Feinstein, Finkelstein, Finlayson, Furlong, Go, Gottlieb, Hunter, Lawrence, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan (by telephone), Murray, O'Brien, Ortved, Pilkington, Potter, Puccini, Robins, Ross, St. Lewis, Simpson, Strosberg, Swaye, Topp, Wardlaw, White and Wilson.

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The reporter was sworn.

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TREASURER'S REMARKS

The Treasurer and Benchers welcomed Mr. Finlayson back to Convocation. Mr. Finlayson became a Bencher in 1970 and Treasurer in 1979. He was appointed a justice of the Supreme Court of Ontario (Appellate Division) from 1984 to 1990 when he became a justice of the Court of Appeal of Ontario.

The Treasurer thanked the Communications staff and Susan Lewthwaite in Archives for their work on the recent publication of the historical Gazette.

Benchers were reminded of the signing of the Mobility Agreement which takes place in the Great Library on December 7th at 2:00 p.m.

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Ross, seconded by Mr. Bindman that the Draft Minutes of Convocation of November 21st, 2002 be adopted.

Carried

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CEO'S REPORT

Mr. Heins continued to answer questions on his Report.

NOTICE OF MOTION

Messrs. Banack and Topp gave notice of a motion for the January 2003 Convocation as follows:

That the CEO provide updates quarterly to Convocation throughout 2003 as to the status and progress made in respect of each of the Professional Regulation issues set out in the CEO's report of December 6, 2002.

And in particular to provide a statistical grid to provide easy comparison with the December 2002 reports of the status of complaints, discipline cases and complaints to the Complaints Resolution Commissioner.

CORRECTION TO OCTOBER 31, 2002 DRAFT MINUTES

It was moved by Ms. Ross, seconded by Ms. Puccini that the Minutes of Convocation of October 31, 2002 as originally presented on November 21, 2002 be adopted.

Carried

MOTION – PARALEGALS

It was moved by Mr. Wilson, seconded by Mr. Carey that:

Whereas the Issue of unregulated paralegals remains an unsolved matter, notwithstanding the regular request from the Judges of our Courts.

And whereas it appears unlikely that a resolution will happen without some direction and resolve from the Law Society, who for the past two years has preferred to ‘work behind the scenes’.

And whereas the public for whom we have a mandate to protect daily are in risk, in that legal services are more and more being provided by uneducated, unregulated, and uninsured ‘amateurs’.

Be it resolved that the Paralegal Task Force of the Law Society be immediately repopulated and requested to update its report to Convocation, including a review of events since the last report, an analysis and reconsideration if appropriate of the conclusions reached, and recommendations to Convocation as to what its next steps might be to effect the conclusion of this outstanding matter.

And further that it be assured that adequate funding may be requested, and that the provision of adequate staff assistance be immediately provided to permit the provision of a report within three months of the Committee being repopulated.

It was moved by Ms. Ross, seconded by Ms. St. Lewis that the issue of paralegals be monitored by a working group of the Government Relations Committee which will report to Convocation.

The Ross/St. Lewis motion was accepted as a friendly amendment to the main motion.

Carried

ROLL-CALL VOTE

Banack	For
Bindman	For
Carey	For
Chahbar	For
Cherniak	For
Coffey	For
Curtis	Abstain
Diamond	For
Ducharme	For
Epstein	For
Feinstein	For
Finlayson	For
Go	For

Gottlieb	For
Hunter	For
Marrocco	For
Martin	For
O'Brien	For
Potter	For
Puccini	For
Robins	For
Ross	For
St. Lewis	For
Simpson	For
Strosberg	For
Swaye	For
White	For
Wilson	For

Vote: For – 27; Against – 0; 1 Abstention

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FOR INFORMATION ONLY

Justice Statute Law Amendment Act, 2002

- Amendments to Solicitors Act on Contingency Fees
- New Limitations Act
- Amendments to Public Accountancy Act

Re: Amendments to Solicitors Act on Contingency Fees

MEMORANDUM

To: All Benchers

From: Jim Varro, Policy Advisor, Policy Secretariat, Policy and Legal Affairs

Date: December 6, 2002

Re: *Justice Statute Law Amendment Act, 2002* - Amendments to the *Solicitors Act* to Permit Contingency Fee Arrangements

Introduction

Bill 213, the *Justice Statute Law Amendment Act, 2002*, deals with three unrelated matters, by enacting three schedules:

- a. Schedule A: Contingency Fee Agreements (amendments to the *Solicitors' Act*);
- b. Schedule B: a new *Limitations Act* and
- c. Schedule C: amendments to the *Public Accountancy Act*.

All of the Schedules come into force on proclamation, and Section 2 of the Bill provides that the Schedules may be proclaimed on different dates.

Contingency Fee Agreements

The Bill amends the *Solicitors Act* to regulate lawyers' use of contingency fees. The Bill, relevant pages of which are attached, includes the following provisions:

1. The court cannot reduce an award of costs to a client only because the lawyer and client have agreed to the lawyer's compensation through a contingency fee agreement. (s. 20.1(1))
2. A client may recover the full amount of an award of costs, even if it exceeds the amount payable under a contingency fee agreement, if the award is to be used to pay the client's lawyer. (s. 20.1(2))
3. If the client recovers the full amount of an award of costs as described above, the client is only required to pay to the lawyer the costs and not the amount under the contingency fee agreement, unless the court has approved a contingency fee agreement that provides for payment of both the amount under the agreement and costs awarded under s. 28.1(8). (s. 20.1(3))
4. Contingency fee agreements cannot include, in addition to the fee payable under the agreement, an award of costs or costs obtained as part of a settlement, unless the court, on the joint application of the lawyer and client, approves the payment of costs to the lawyer because of exceptional circumstances. (s. 28.1(8))
5. The amount of a contingency fee can be no more than a maximum percentage of the award or recovery as prescribed by regulation, if a maximum percentage is prescribed. (s. 28.1(5)).
6. The lawyer and client may jointly apply to the court for approval of a fee that is higher than the maximum percentage. (s. 28.1(6))
7. In circumstances other than those described in paragraphs 4 and 6 above, the client may apply for assessment of the lawyer's bill within 30 days of its delivery or one year after its payment. In circumstances to which paragraphs 4 and 6 above apply, the client or lawyer may apply for assessment within the time prescribed by regulation.
8. Contingency fees are prohibited in criminal, quasi-criminal and family matters.(s. 28.1(3))
9. The Lieutenant Governor in Council may make regulations covering
 - a. the maximum percentage of the amount or of the value of the property recovered that may be a contingency fee
 - b. the maximum amount of remuneration that may be paid to a solicitor pursuant to a contingency fee agreement
 - c. treatment of costs awarded or obtained where there is a contingency fee agreement
 - d. prescribing standards and requirements for contingency fee agreements, including the form of the agreements and terms that must be included in contingency fee agreements and prohibiting terms from being included in contingency fee agreements
 - e. duties on solicitors who enter into contingency fee agreements
 - f. the time in which a solicitor or client may apply for an assessment
 - g. exempting persons, actions or proceedings or classes of persons, actions or proceedings from this section, a regulation made under this section or any provision in a regulation. (s. 28.1(12))

Attached to the memorandum, copy of:

Contingency Fee Agreements (amendments to the *Solicitors' Act*).

(Schedule A)

Re: New Limitations Act

MEMORANDUM

To: All Benchers

From: Julia Bass, Policy Advisor, Policy Secretariat, Policy and Legal Affairs

Date: December 6, 2002

Re: Bill 213: the *Limitations Act, 2002*

1. This Act will consolidate and modernize limitations periods in Ontario by placing all limitations periods within a single statute and providing clearer time periods to commence a legal proceeding. It applies primarily to civil and family law claims.
2. A basic limitation period of 2 years is established, with the period running from the day a claim is discovered. This replaces the general limitation periods found in the existing *Limitations Act* and most of the numerous special limitation periods found in individual statutes.
3. The Act will also establish an ultimate limitation period of 15 years that runs from the day the act or omission on which the claim is based takes place. No proceeding may be commenced when the ultimate limitation period has expired, regardless of whether the claim was discovered.
4. There will be a variety of proceedings for which there is no limitation period. These proceedings include:
 - a. A proceeding to enforce court orders and orders of administrative tribunals that are enforceable in the same manner as court orders;
 - b. A proceeding to obtain an order for support, or enforce an agreement for support under the *Family Law Act*;
 - c. A proceeding by the Crown to recover certain monies owing to it, and
 - d. A proceeding in respect of undiscovered environmental claims.
5. As a general rule, where the potential claimant is a minor or incapable, the basic limitation period does not run. Defendants may start the limitation period running by applying to the court to have a litigation guardian appointed, with safeguards to ensure that the rights of minors or incapable persons are protected.
6. There will be special rules for certain claims based on assault and sexual assault, to protect the rights of those who were dependent on or had an intimate relationship with a party to the assault.
7. For claims based on fraud, the ultimate limitation period does not run during any time in which the person against whom the claim is made wilfully concealed essential facts or misled the person with the claim.
8. Numerous provisions of other statutes that relate to limitation periods will be repealed or amended. Some special limitation periods found in individual statutes will be preserved by their placement in the Schedule to the Act. The portion of the existing *Limitations Act* that deals with real property is preserved and retitled the *Real Property Limitations Act*.

Attached to the memorandum, copies of:

- (1) Copy of Bill 213: the Limitations Act, 2002.

Re: Amendments to the Public Accountancy Act

MEMORANDUM

To: All Benchers

From: Jim Varro, Policy Advisor, Policy Secretariat, Policy and Legal Affairs

Date: December 6, 2002

Re: Amendments to the *Public Accountancy Act*

Bill 213, the *Justice Statute Law Amendment Act, 2002*, includes amendments to the *Public Accountancy Act*. Relevant pages of the Bill are attached. The amendments include the following:

1. The composition of The Public Accountants Council is to be established by regulations made by the Lieutenant Governor in Council.¹²
2. The qualifications for being licensed, which currently include membership in The Institute of Chartered Accountants of Ontario, are replaced by a reference to membership in any one of The Certified General Accountants Association of Ontario, The Institute of Chartered Accountants of Ontario and The Society of Management Accountants of Ontario.
3. Grounds on which a public accountant's licence may be revoked after an inquiry are expanded to include revocation if the inquiry finds that the licence holder meets prescribed conditions, which are to be prescribed by the Lieutenant Governor in Council after consultation with The Public Accountants Council.
4. The Public Accountants Council may exercise its regulation-making powers by adopting by reference any code, standard, guideline or procedure.
5. The Attorney General may require The Public Accountants Council to make, amend or revoke a regulation, and if it does not do so within 60 days, the Lieutenant Governor in Council may make a regulation that carries out the intent of the Attorney General's requirement.

Attached to the memorandum, copies of:

- (1) Schedule C, Amendments to Public Accountancy Act.

¹ Currently The Public Accountants Council for the Province of Ontario consists of 15 members, 12 of whom are appointed by the council of The Institute of Chartered Accountants of Ontario and three of whom are elected by licensed public accountants.

CONVOCATION ROSE AT 1:00 P.M.

The Treasurer and Benchers had as their guest for luncheon Mr. David Shields, a co-op student.

Confirmed in Convocation this 23rd day of January, 2003.

Treasurer