



The Law Society of
Upper Canada

Barreau
du Haut-Canada

benchers Bulletin

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122 candidates entered in bench election

A near record number of candidates has entered the bench election race. The ballot will include the names of 122 Ontario lawyers—76 from inside and 46 from outside Metropolitan Toronto.

The number of candidates seeking office in 1995 represents a 50 per cent increase over 1991 when 80 members ran, but is 26 shy of the record set in 1979 when 148 members vied for the 40 available seats. A new record has been set however in 1995—33 women (21 from inside and 12 from outside Metro) have declared their candidacy.

Ballots and candidate booklets will be mailed to the membership in early April.

Members may vote for up to 20 candidates from inside Toronto and up to 20 candidates from outside Toronto.

Ballots must be returned to the Law Society by May 1st.

A complete list of bench candidates appears on page three.

Law Society to tackle real estate issues

Serious problems affecting the practice of real estate law in Ontario have prompted benchers to establish a special committee to recommend solutions that fall within the scope of the Law Society's mandate. A preliminary review group of six benchers has identified several issues requiring urgent attention.

Among other things, the Special Committee on the Practice of Real Estate will determine whether tariffs or fee guidelines for real estate services should be implemented and how such a scheme could be put into place without contravening the *Combines Investigation Act*. The last time attempts were made to establish tariff and fee guidelines in the mid 1980's, they were struck down by the federal government under the Act. Since then a highly competitive real estate bar has driven down real estate transaction fees to levels that make it impossible, in many cases, to provide comprehensive and satisfactory services to clients. The result has been an increase in the number of professional liability claims against lawyers who practise real estate law.

The special committee will also examine the role of title insurance in Ontario and will determine what options are available to the Society or the Lawyers' Professional Indemnity

Company (LPIC) to deal with this issue. The preliminary report noted that if all real estate transactions in Ontario were carried out under title insurance, the cost to the public would be higher than the costs required to support a fully funded liability insurance program. Fees paid for title insurance are often in excess of what a competent real estate lawyer charges, and the protection provided by LPIC is at least equal if not greater than that provided by such insurance in most cases.

The encroachment of unsupervised paralegals in the real estate field was also singled out for attention especially given the lack of regulation of paralegal activities and the absence of any enforced standards of competence. According to the report of the preliminary review group, members of the public do not understand the hazards associated with retaining the services of fee cutters and unsupervised paralegals. The need to publicize these risks and inform the public of the value of retaining competent services will also be reviewed by the special committee.

Other issues to be considered include the lack of proper education in real estate law. Since it is not a required subject at law school, it is possible for lawyers to be called to the

bar with only the limited knowledge of real estate law gained during the bar admission course.

In the course of its deliberations, the Special Committee on the Practice of Real Estate Law will consult with the Ontario Real Estate Lawyers' Association, the County and District Law Presidents' Association and the CBA(O) real estate section. The special committee comprises six benchers: Susan Elliott, Abe Feinstein, Donald Lamont, Laura Legge, Jim Wardlaw and Mary Weaver.

Conflict of interest guidelines for benchers adopted

The Law Society has adopted a report setting out conflict of interest guidelines for benchers. The nine-bencher Special Committee on Con-

flicts of Interest that included a government-appointed lay bencher was constituted last spring as a result of the debate in Convocation concerning the selection and compensation of counsel to represent the Law Society in legal matters.

The committee examined a panoply of issues in several areas over which the Society has jurisdiction, including legal aid and insurance, that might give rise to a conflict between an individual bencher's interest and the best interest of the Society and the public. For example, the committee examined whether a bencher or bencher whose firm acts for LPIC may participate in debates or decisions regarding the setting of counsel fee schedules and changes to insurance coverage or deductibles. Similarly, the committee considered whether benchers who represent legally-aided clients ought to participate in decisions about service cuts,

tariff changes, funding of disbursements or the introduction of staff delivery models. Also under review was the issue of whether benchers employed by the Ontario government should take part in decisions affecting the Legal Aid Plan, government negotiations or amendments to the *Law Society Act* which affect the relationship between the Society and the government.

The following is a summary of the conflict of interest guidelines adopted by Convocation in February: **Quasi-judicial matters.** Benchers are prohibited from appearing as counsel on any quasi-judicial matter affecting members rights or privileges such as discipline, incapacity, admission, readmission or competency hearings. This prohibition does not extend to a member of a bencher firm, but in such cases the bencher member of the firm may not participate in the hearing in any way. Benchers will also be excluded from deliberations if a member of their firm provides evidence at a Society hearing.

Insurance retainers. Benchers and their firms will not be excluded from the pool of counsel eligible to undertake LPIC work as some of these individuals and firms possess substantial expertise in the area of lawyer's negligence. Instead, the Society will establish criteria to ensure that counsel provide competent and cost-effective legal service and that the Society's and LPIC's work is distributed equitably having regard for specific expertise, geographic location, gender, equity and resources. In each case where counsel is retained, a justification for the particular choice must be set out in writing. The Society will publish a list semi-annually of all law firms retained during the preceding six month period, specifying amounts billed by each firm.

Solicitor-client relationships. Benchers are to refrain from partici-

Membership Suspensions & Reinstatements

Members whose names appear below have been suspended for administrative reasons (non-payment of annual fees, errors and omissions levies or late filing fees) 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 should be directed to the Membership Records Department, (416) 947-3318.

Annual Filing Suspensions

The Following members were suspended on January 27, 1995, for the non-payment of late filing fee:

Bluteau Andre	1989	Ottawa, ON
Brogden Edward John	1970	Sarnia, ON
Drumm Lorraine C.	1991	Kitchener, ON

Annual Fees Reinstatements

Aylward Carol Ann	1991	Halifax NS
Byrne John Philip Stephen	1972	Toronto ON
Donohue Raymond Vincent	1956	Sarnia ON
England Katherine Anne	1991	Toronto ON
Harris Lesley Ellen	1987	Santa Monica USA
Horn Frank	1982	Kingston ON
L'Heureux Willard John	1973	Calgary AB
Martin James Ralph	1991	Harrow ON
Nisbet William Paul	1970	Toronto ON
Soo Richard Kai Dak	1994	Toronto ON
Sykes Ward Alan	1988	Toronto ON

E&O Levy Reinstatements

Barry Leroy Patrick	1990	Toronto ON
Braithwaite Stephen Dennis J.	1972	Mississauga ON
Bruce Kenneth Ross	1972	Kingston ON

pating in matters where they or their firms act for clients whose interests would be significantly affected by Convocation's decision. Similarly, if benchers possess privileged solicitor-client information pertaining to issues under consideration which might affect their decisions, they ought not to participate in these matters.

Benchers as employees. Where a bencher's employer has a significant interest in a matter before Convocation that is distinct from the interest of the profession at large, that bencher should not take part in the deliberations on that matter. This guideline would exclude, for example, benchers employed by the Ontario government from participating in most matters affecting the Legal Aid Plan. In addition, bencher employees must not participate in matters where they possess confidential information by virtue of their employment which could influence their decisions.

Copies of the full report of the Special Committee on Conflicts of Interest are available by calling the Communications Department at (416) 947-3465 or 1-800-668-7380.

Awards and honours at bar calls

The Law Society called 1,077 new lawyers to the bar of Ontario in February 1995.

The students who received the highest grades in the bar admission course are: Laura Kathleen Fric, awarded the Treasurer's Medal (first), Mitchell Bruce Charness (second), Cheryl Anne Beckett (third), and Tanya Marion Goldberg (fourth).

Alan Borovoy, counsel to the Canadian Civil Liberties Association and Robert Prichard, President of the University of Toronto, were awarded doctorates of law *honoris causa*.

Bencher election candidates

Outside Toronto

Adams, H. Clark, Q.C. *Orangeville*
 Adams, W. Michael *Stroud*
 Bisceglia, Joseph A. *Sault Ste. Marie*
 Bobesich, Gordon Z. *Mississauga*
 Bunning, Les *Gloucester*
 Carey, Thomas J. P. *Mississauga*
 Carpenter-Gunn, Kim A. *Hamilton*
 Cole, Thomas E. *Lakefield*
 Crowe, Marshall A. *Ottawa*
 Dantzer, Ian T. *London*
 Dymond, A. Christopher *Richmond Hill*
 Elliott, E. Susan *Kingston*
 Feinstein, Abraham *Ottawa*
 Foley, Sean *St. Catharines*
 Ford, Donna M. *Picton*
 Harris, Holly A. *Ottawa*
 Inch, John A. *North Bay*
 Johnson, George *Hamilton*
 Krishna, Vern, Q.C. *Ottawa*
 Kroes, Marianne P. *Windsor*
 Lalande, Randall W. *Sudbury*
 Lyon, Cecil J. *Kanata*
 MacDonald, Joan M. *Hamilton*
 MacKenzie, Gavin *Markham*
 Malpass, Peggy *Ottawa*
 Martin, Rob *London*
 McKinnon, Colin D., Q.C. *Ottawa*
 Murphy, Daniel J. Q.C. *Goderich*
 Murray, D. Scott *Arnprior*
 Murray, Ross W., Q.C. *Thunder Bay*
 O'Brien, Bernard F. *Oshawa*
 Palmer, (Karen) Julaine *Peterborough*
 Paquette, Ryan M., Q.C. *Hamilton*
 Peters, Patricia J., Q.C. *Ottawa*
 Puccini, Helene Bruce *Ottawa*
 Raciunas, Zenon *Richmond Hill*
 Rady, Andre J. *London*
 Ross, Heather J. *Goderich*
 Scott, David W., Q.C. *Ottawa*
 Smith, Robert James *Hawkesbury*
 Stomp, Tamara *Windsor*
 Strosberg, Harvey T. *Windsor*
 Swaye, Gerald A., Q.C. *Hamilton*
 Topp, Robert C. *Sudbury*
 Wilson, Richmond C. E. *Manotick*
 Wright, Bradley H. *Nepean*

Metropolitan Toronto

Aaron, Robert (Bob)
 Adair, Geoffrey D. E.
 Archibald, Charles E., Q.C.
 Armstrong, Robert P.
 Backhouse, Nancy
 Baker, Mark G.
 Banack, Larry
 Barnett, J. D. (Doug)
 Bastedo, Thomas G.
 Bellamy, Denise
 Benotto, Mary Lou
 Blue, Ian A., Q.C.
 Brown, Beverly

Bur, Donald F.
 Carnerie, Fran J.
 Carter, William D. T.
 Copeland, Paul
 Cronk, Eleanore A.
 Curtis, Carole
 Davis, Abraham Barry
 Dekany, Andrew C.
 Delzotto, Elvio L.
 DuVernet, Christopher J.
 Eberts, Mary
 Epstein, Philip M.
 Finkelstein, A. C. (Al)
 Finkelstein, Neil
 Galati, Rocco
 Gluckstein, Bernard L., Q.C.
 Gomberg, Frank
 Gottlieb, Gary Lloyd, Q.C.
 Goudge, Stephen T., Q.C.
 Gray, Margaret A.
 Green, Mendel M., Q.C.
 Haber, Harvey M., Q.C.
 Harvey, Jane
 Hendrickson, Barbara
 Herbert, Jacinth A.
 Hunt, Diana
 James, Erica L.
 Kauffman, Aubrey E.
 Keenan, Jennifer E.
 Kruzick, Emile R.
 Kuszelewski, Ray W.
 Lax, Joan L.
 Lomer, Michael
 MacDonald, Norman
 Manes, Ronald D.
 Mantha, Hubert E.
 Marrocco, Frank N., Q.C.
 Merenda, Sal
 Milbourn, Paul
 Millar, W. A. Derry
 Moliner, Marie
 Murray, Grant
 Muttart, Daved M.
 Neuberger, Joseph A.
 O'Connor, David F.
 Ortved, Niels
 Outerbridge, Ian W.
 Panzica, Norman
 Parker, William J., Q.C.
 Polika, Julian
 Radomski, Harry
 Radomsky, Louis
 Ruby, Clayton C.
 Sabia, Maureen J.
 Sachs, Harriet
 Silver, H. Markham
 Slan, Paul D.
 Smith, Cindy L.
 Steinberg, Irwin
 Stover, Herb
 Teitel, Murray
 Thomas, Marlene
 Wong, Newton

Appeal court judge to head insurance tendering process

The Honourable Samuel G. McD. Grange will chair a committee to oversee the Lawyers' Professional Indemnity Company's (LPIC) tendering process upon his retirement from the Ontario Court of Appeal bench in March 1995. The committee, that will also include LPIC President Malcolm Heins and Claims V.P. Caron Wishart, will select qualified lawyers and firms to do the legal defence work for LPIC and its insured members. Insureds will be free to select legal representation from the panel of lawyers and firms chosen through the tender process.

LPIC had resisted any move by Convocation to prohibit benchers or bencher firms from doing defence work on LPIC's behalf on the grounds that the assignment of legal counsel to defend an insured is a matter to be decided by the insured member and LPIC. Interference in this process could be subject to challenge by the insured member and reinsurers and could potentially expose LPIC to litigation.

Insurance update

Board nominations. Convocation has adopted a recommendation from LPIC's board of directors that the CBA(O), the Advocates Society and the County and District Law Presi-

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dent's Association, nominate qualified candidates for appointment to the LPIC board. Convocation would then select persons from the pool of nominees to sit on the board which has also requested that potential candidates be knowledgeable about financial and insurance matters.

Tender packages. Law firms interested in LPIC defence work are invited to obtain tender packages by calling LPIC locally at (416) 947-3439 or 1-800-410-1013. LPIC will be retaining services from members experienced in the areas of repair, mediation/arbitration, defence, risk management and loss prevention support and general claims support.

Risk transfer. LPIC has succeeded in transferring 57 per cent of its 1995 risk to the commercial insurance market. The placement of reinsurance from ground up (above the member's deductible) to the policy limit on a quota share basis will reduce the risk of LPIC's exposure.

Roll call votes

1. That the selection of a new Under-Treasurer be deferred until after the bencher election. Lost 24 to 4, with two abstentions.
2. That the Law Society proceed with the search and selection of a new Under-Treasurer to assume the role of chief executive officer of the Society. Carried 20 to 7, with two abstentions.
3. That the Report of the Special Committee on Conflicts of interest be adopted in principle as amended. Carried 22 to 3, with one abstention.
4. That the question of whether benchers should be paid at the minimum legal aid rate to a maximum of \$30,000 per year be placed on the ballot in the upcoming bencher election. Lost 16 to 6, with one abstention.
5. That the Treasurer appoint a committee to consider the issue of bencher remuneration and that the membership be polled on this issue. Carried 17 to 5, with one abstention.

Convocation attendance and roll-call votes

Feb. 24, 1995	Attend		Motions*				
	a.m.	p.m.	1	2	3	4	5
Arnup, John	✓		Ab	Ab			
Bastedo, Thomas	✓		A	F			
Bellamy, Denise							
Blue, Ian	✓	✓			F	A	A
Bragagnolo, Rino							
Brennan, Lloyd	✓	✓	A	F	F	A	F
Campbell, Colin	✓	✓	A	A	F	A	F
Carey, Tom	✓	✓	A	A	A	A	F
Carter, Robert	✓	✓	A	F	F	A	A
Copeland, Paul	✓	✓	F	F	F	F	F
Cullity, Maurice							
Curtis, Carole							
Elliott, Susan							
Epstein, Philip	✓	✓	F	F	Ab	A	F
Feinstein, Abraham	✓	✓	A	F	F	A	F
Finkelstein, Neil	✓	✓	A	F	F	A	F
Goudge, Stephen	✓	✓	A	A	F	A	F
Graham, Netty	✓	✓				Ab	Ab
Hickey, Michael							
Howie, Kenneth	✓	✓			F		
Kiteley, Frances	✓	✓	Ab	Ab	F	F	F
Krishna, Virender							
Lamont, Donald	✓	✓	A	A	F	A	A
Lax, Joan	✓	✓	A	F	F	F	F
Legge, Laura	✓		A	F			
Lerner, Samuel							
Levy, Earl							
McKinnon, Colin							
Manes, Ronald							
Martin, Arthur							
Moliner, Marie	✓	✓	A	F	F	A	F
Murphy, Daniel	✓	✓	A	F	F		
Murray, Ross	✓	✓	A	F	F	A	F
O'Brien, Brendan							
O'Connor, Dennis							
O'Connor, Shirley	✓		A	F			
Palmer, Julaine	✓	✓	F	F	F	F	F
Peters, Patricia	✓	✓	A	F	F	F	F
Richardson, Nora	✓		A	F			
Rock, Allan							
Ruby, Clayton	✓	✓	F	F	A		
Scace, Arthur	✓		A	F			
Scott, David	✓		A	A			
Sealy, Hope	✓	✓	A	A	F	A	F
Somerville, Marc	✓		A	F			
Strosberg, Harvey	✓	✓	A	A	F	F	F
Thom, Stuart	✓	✓	A	F	F	A	A
Topp, Robert							
Wardlaw, James	✓	✓			F	A	A
Weaver, Mary	✓	✓			F	A	F
Yachetti, Roger	✓	✓	A	A	A		
Lamek, Paul (Treas.)	✓	✓					

Non-voting Benchers in attendance

R. Cass, G.H. Farquharson, P. Furlong, A. Lawrence

*Motions A=against F=for Ab=abstain

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