

MINUTES OF SPECIAL CONVOCATION

Thursday, 13th February, 2003
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Banack, Bindman, Bobesich, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak (by telephone), Coffey, Crowe, Diamond, Divinsky, Ducharme, Epstein, Feinstein, Finlayson, Finkelstein, Furlong, Go, Gottlieb, Harris, Hunter, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan, Murray, O'Brien, Ortved, Porter, Potter, Puccini, Robins, Ross, Ruby, St. Lewis, Simpson, Swaye, Topp (by telephone), White and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer reminded Benchers about the celebration of Black History Month being held at the Law Society today.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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 IN PUBLIC

EQUITY & ABORIGINAL ISSUES COMMITTEE/COMITI SUR L'ÉQUITÉ ET LES AFFAIRES
 AUTOCHTONES REPORT (continued)

Re: Recommendations 1.b. and 1.c.

Ms. Puccini presented amendments to recommendations 1.b. and 1.c. set out on page 2 of the Equity & Aboriginal Committee Report.

Equity and Aboriginal Issues Committee/
 Comité sur l'équité et les affaires autochtones
 January 23, 2003

Report to Convocation
 As amended January 13, 2003

Purpose of Report: Decision

Prepared by the Equity Initiatives Department

OVERVIEW OF POLICY ISSUE

BENCHER REMUNERATION

Request of Convocation

1. That Convocation consider the report from the Committee and approve the following recommendations:
 - a. Ex-officio benchers that participate in the business of the Law Society and elected benchers shall be remunerated for duties performed as benchers, effective from the date of the Convocation meeting in June 2003.
 - b. An annual honorarium at a rate of \$25,000 for elected benchers will be paid on request from the bencher. The amount of \$25,000 will be prorated for partial years.
 - c. An honorarium of \$250 per half day (three hours or less) and \$400 per full day (over three hours) for participation in Law Society business will be paid to ex-officio benchers on request from the bencher. Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters.

Summary of the Issue

2. The Committee presents a report proposing the adoption of remuneration for benchers. The report submits that the most convincing rationale in favour of bencher remuneration is the argument that benchers devote countless hours of service to the Law Society, which merits some recognition for the contribution made to the profession and the Law Society. Bencher remuneration would alleviate some financial hardship but is not intended to compensate for lost income or the opportunity to earn income.

3. The report proposes that elected benchers receive an annual honorarium at a fair level of \$25,000 per year for a total cost of \$1,000,000 (cost per member: \$36). It is an amount that is not so high as to be seen as a compensation for lost income or the opportunity to earn income.
4. The report also proposes that the Law Society should acknowledge the participation of ex-officio benchers in the business of the Law Society by providing an honorarium of \$250 per half day (three hours or less) and \$400 per day for time spent at Convocation, committee meetings (including task forces), calls to the bar and attendance at discipline matters. Such a policy would cost approximately \$154,000 or \$6 per member.

THE REPORT

Terms Of Reference/Committee Process

5. The Committee met on January 8, 2003. Committee members in attendance were Paul Copeland (Chair), Derry Millar (Vice-Chair), Helene Puccini (Vice-Chair), Stephen Bindman, Gary Gottlieb, Janet Minor, Judith Potter and Bradley Wright. Others in attendance were Nathalie Boutet (representative of the Association des juristes d'expression française) and staff Josée Bouchard, Katherine Corrick, Margaret Froh and Giang Nguyen.
6. The Committee is reporting on the following matter:

Policy – For Decision

- Bencher remuneration

BENCHER REMUNERATION

Background

7. In 1990, the Special Committee on Bencher Elections (Committee on Election) noted concerns that some members are deterred from running for election because they cannot afford the financial burden related to fulfilling the responsibilities of a bencher. It was agreed that a system of remuneration should not encourage members to run for election in the hope of monetary reward. The Committee on Elections recommended that there be further study of ways to overcome the financial obstacles that deter members from running for election.
8. In 1994, the Women in the Legal Profession Committee (the WLPC) presented a proposal to Convocation that elected benchers receive remuneration stating that the financial loss occasioned by serving on Convocation deters many women and others in the profession from seeking election as benchers¹. Convocation asked the WLPC to continue the study and report to Convocation on January 27, 1995.
9. On January 27, 1995, the WLPC recommended that Convocation approve a policy that would entitle elected benchers to be remunerated for work performed on behalf of the Law Society². The recommendation was based partly on the hypothesis that bencher remuneration would encourage greater participation by those who lack the support of a firm or a steady form of income to afford the time that is required to play a significant role in the business of Convocation and its committees.
10. On February 13, 1997, the Finance and Audit Committee discussed the merits of Bencher remuneration. A majority of the members agreed, in principle, to some form of remuneration for Benchers. A number of Committee members felt that access was an issue and that many practitioners would not be able to run for bencher because of the time commitment required. Other members of the Committee felt that the position

¹ See Appendix 1 for November 25, 1994, Minutes of Convocation & Transcript of Debate.

² See Appendix 2 for January 27, 1995 Minutes of Convocation & Transcript of Debate.

of benchers is a volunteer position and should not be remunerated. There was consensus on compensation for attendance at discipline and admissions hearings.

11. In 1997, Convocation adopted a motion that approved in principle, subject to further study, some form of honorarium to benchers³. A further motion that a referendum on benchers remuneration be held at the next benchers election was carried.
12. The 1997 motion was consistent with Recommendation 7b of the *Bicentennial Report* which states that “In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of communities within the profession: ... (b)Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse communities (including equality-seeking communities) in the governance of the profession⁴”.
13. In January 1999, Convocation considered the Report of the Task Force on the 1999 Benchers Election and Referendum (1999 Election Report), which concluded that the Law Society did not have the legal authority to conduct a binding referendum and recommended that the Law Society not conduct a binding or an advisory referendum.
14. The 1999 Election Report recognized that Convocation had made a policy decision to remunerate benchers. It noted however that the decision had been made under a different statute and that the new legislation would affect the workload of benchers both positively and negatively. The 1999 Election Report recommended that a task force of benchers be struck to study the new demands placed on benchers time and develop options for a remuneration scheme for Convocation’s consideration in January 2000.
15. On January 22, 1999, Convocation rejected a motion to pay an honorarium to benchers. Convocation instead adopted a motion that an advisory referendum be held on the issue of benchers remuneration at the 1999 election.
16. In February 1999, Convocation adopted a motion that the following question be included on the ballot: ‘are you in favour of some form of honorarium being paid to benchers?’
17. Of 11,351 voters, 3,915 voters (34%) were in favour of benchers remuneration, 5,406 (48%) were against, 2,021 (18%) did not respond to the question and 9 ballots were spoiled. While the implied conclusion might be that the majority of the membership opposed an honorarium, that conclusion does not necessarily follow. A significant minority did not respond to the question and the impact of non-respondents has not been assessed. In April 2000, a report including the results of the referendum was prepared and distributed to all benchers.
18. This report addresses the following issues.
 - Part I: Benchers Remuneration
 - Part II: Methods of Remuneration and Financial Implications
 - Part III: Referendum

³ See Appendix 3 for February 28, 1997 Minutes of Convocation.

⁴ Recommendation 7b of *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

Part I: Benchers Remuneration

Arguments in Favour of Benchers Remuneration

19. Convocation has debated the issue of providing benchers with some form of remuneration beyond compensation of reasonable expenses incurred while providing services to the Law Society. The main arguments in favour of benchers remuneration include⁵:
 - a. Benchers devote long hours of service: Benchers devote many hours to the Law Society, which takes time away not only from work but also from family and other charitable activities. Accordingly, some form of remuneration should be provided to acknowledge the contributions made by benchers to the Law Society.
 - b. Economic hardship: Payment of some form of remuneration will partially decrease hardship for those who otherwise might not afford to dedicate the time required to be a benchers.
 - c. Increased benchers diversity: We believe that benchers remuneration would alleviate some of the economic burden related to serving as benchers. Benchers remuneration is not the only initiative that may promote the participation of diverse communities in the governance of the profession. However, it is one initiative that may reduce barriers to participation in the governance of the profession for those in lower income categories, including women and lawyers from equity-seeking communities⁶.
20. Perhaps the most convincing rationale in favour of some form of benchers remuneration is the argument that benchers devote countless hours of service to the Law Society, which merits some recognition for the contribution made to the profession.
21. The Law Society collects some data on the amount of time spent by benchers to Law Society business.
22. *Convocation*: There are normally ten regularly scheduled monthly meetings and additional meetings such as Special Convocations and Committees of the Whole. There have typically been three of these additional meetings in recent years for an annual total of thirteen days or 91 hours⁷.
23. *Discipline matters*: The Hearing Coordinator maintains records of benchers attendance for discipline matters, including time spent on pre-hearing conferences, hearing panels, appeal panels, appeal management tribunals and hearing management tribunals. The records do not include time spent on the Proceedings Authorization Committee, preparation time, or time spent on decision writing, all of which is quite onerous. In 2001, the Hearings Coordinator recorded formal time spent on discipline matters by elected and ex-officio benchers (excluding lay benchers) to amount to 2,823 hours. The time spent on discipline matters is doubled to take into account time spent on activities such as preparation time and decision writing, giving a total of 5,646 hours per year. Assuming there are 15 ex-officio benchers that participate in the business of the Law Society (“participating ex-officio benchers”⁸) and 40 elected benchers for a total of 55 benchers, the average time spent by each benchers on discipline matters is 103 hours per year. Time spent by in-town and out-of-town benchers on discipline matters is approximately equal⁹.

⁵ Arguments raised in the *Guide for Voters* (Toronto: Law Society of Upper Canada, 1999) at 5.

⁶ See Appendix 4 for statistical information on diversity within the pool of candidates and elected benchers in the 1999 benchers election.

⁷ See Appendix 5 for Record of Attendance.

⁸ The number of participating ex-officio benchers varies. The calculations are based on the assumption that there are 15 participating ex-officio benchers. Ex-officio benchers include Ex-Treasurers, Ex-Attorney Generals and ex-officio non-voting benchers.

⁹ Provided by the Hearing Coordinator of the Law Society of Upper Canada.

24. *Committee meetings:* There are normally nine regularly scheduled monthly committee meeting days during the year. In a typical year there are always additional meetings for task forces and working groups. Three additional meeting days per year has been added to account for the additional workload, for a total of twelve days or 84 hours per bencher¹⁰.
25. *Calls to the bar:* There are normally two major calls to the bar in Toronto and one each in London and Ottawa for a total of four meetings. If each meeting takes four hours (excluding travel), a total of 16 hours per bencher is spent at calls to the Bar¹¹.
26. *Travel time:* The Finance Department estimates that out-of-town benchers spend an average of 4 hours for return trips, amounting to 87 hours per bencher per year on travel time.
27. *Time spent on Law Society business:* Based on the above analysis, the time spent on Law Society business by elected and participating ex-officio benchers is onerous and is even more onerous for out-of-town benchers who spend time traveling on Law Society business. The Finance Department of the Law Society estimates that elected and participating ex-officio Toronto benchers spend an estimated 294 hours per bencher per year (42 days per year) and elected and participating ex-officio out-of-town benchers spend an estimated 372 hours per bencher per year (54 days per year) on Law Society business. The Committee notes that, in addition, there are many hours spent reading voluminous materials for meetings and Convocation. The Committee suggests that the number of hours spent by benchers on Law Society business is significantly higher than the estimated 294 hours per Toronto bencher and 372 hours per out-of-town bencher.

Arguments Against Bencher Remuneration

28. Arguments against bencher remuneration include¹²:
- a. *Bencher efficiency:* The real issue is the unreasonable amount of time that some benchers have to dedicate to Law Society business. The underlying problem is one of bencher efficiency, such as discipline processes that are often unnecessarily lengthy, the workload is sometimes unequally distributed among benchers and terms of office are prolonged. The Committee agrees that bencher remuneration may not create more time and efficiency. However, It is an important initiative to recognize the service rendered by benchers to the profession.
 - b. *Honour:* Benchers are paid with honour, not cash. Benchers are compensated with respect, an increase in their profile within the profession and potential contacts. The Committee recognizes the rewards associated with being a bencher. However, this should not preclude the Law Society from remunerating its benchers. A bencher remuneration policy would allow benchers who do not require remuneration to forego the right to request the remuneration.
 - c. *Service is voluntary in nature:* The service provided by benchers to the Law Society and the legal profession is voluntary in nature. The service benchers give to the Law Society is community service freely given. Bencher remuneration is not meant to compensate for lost income or the opportunity to earn income, it is meant only to recognize contribution made to the Law Society and the legal profession.

¹⁰ Provided by the Finance Department of the Law Society of Upper Canada.

¹¹ Provided by the Finance Department of the Law Society of Upper Canada.

¹² The arguments are outlined in the *Guide for Voters, 1999, supra* note 1 at 5.

Analysis for Benchers Remuneration

29. The voluntary nature of the service provided by benchers and the honour associated with serving as a bencher are not contested. A system of remuneration or honorarium for benchers should not be one that would encourage members to run for election in the hope of monetary reward. The rationale for paying an honorarium is not to replace income lost by benchers or opportunity to earn income, but to acknowledge and recognize the contributions of benchers to the Law Society and the onerous amount of time spent on Law Society business.
30. Lay benchers of the Law Society of Upper Canada receive \$177 per diem from the Ontario government for time spent on Law Society business.
31. The Special Committee on Election and Remuneration of Treasurer and Election of Benchers presented similar arguments to Convocation on January 28, 1983 regarding the question of the remuneration of the Treasurer. Before that date, Convocation had regarded as inappropriate for an elected officer to be paid. Some considered that it would demean the office and perhaps attract to it candidates having an interest in receiving the remuneration. Those in favour of the proposal were of the view that the work of the Treasurer had increased with the general increase in the Society's responsibilities and that some worthy candidates for the office might be excluded from it by the financial sacrifice required in the absence of remuneration. The Committee recommended that an honorarium be paid to the Treasurer in addition to meeting the reasonable expenses in discharging the duties of office and that the amount of the honorarium should be set so as to make it possible for any worthy candidate to permit his or her name to be put forward but not so high as to be an attraction in itself. Convocation adopted the recommendation to pay an honorarium to the Treasurer. The Treasurer of the Law Society receives a \$89,925 annual honorarium.

Other Law Societies and Governing Professions

32. It is useful to consider whether adopting a practice of bencher remuneration would be out of step with other law societies or other professions¹³.

Barreau du Québec

33. The Barreau du Québec established in 2002 a Comité sur la rémunération des membres du Conseil général et du Comité administratif to study the issue of remuneration of its General Council and its Executive Committee¹⁴. The committee prepared a report outlining the following facts :
 - a. Other Canadian law societies do not remunerate their benchers.
 - b. An assessment of the practices of other professional governing bodies in Quebec indicates that, with the exception of chartered accountants, all governing bodies (physicians and surgeons, nurses, accountants, notaries and engineers) provide some form of remuneration (between \$250 and \$570 per diem) to their directors.
 - c. The North-American legal profession considers that the service rendered by benchers to the governing body and the legal profession is voluntary in nature.
 - d. Some members of the committee on remuneration of members of the General Council indicated that members of the General Council spend approximately 10 to 12 days per year on General Council business. The adoption of some form of remuneration would not compensate for loss of income but would represent a symbolic acknowledgement for the services rendered to the Barreau du Québec and to the profession. The remuneration would also be an incentive for qualified candidates to offer their services to the Barreau du Québec.

¹³ See Appendix 6 for Bencher Remuneration by Other Law Societies.

¹⁴ The General Council is the Barreau du Québec's decision-making body, which is tantamount to the Law Society of Upper Canada's Convocation. It comprises 37 members, including the President and Vice-President, 31 elected delegates and 4 members appointed by Quebec's professional board, the Office des professions. The General Council meets at least every four months and no less than four times a year.

34. On March 21 and 22, 2002, the General Council considered a report from the Comité spécial sur la rémunération des membres du Conseil général et du Comité administratif regarding the issue of remuneration of members of the General Council and members of the Executive Committee. The committee recommended to the General Council that no remuneration be paid to members of the General Council. It further recommended that the committee continue to study non-financial ways to acknowledge the contributions of members of the General Council. The committee's recommendations against the adoption of some form of remuneration were based on the following observations :
- a. The Barreau du Québec must acknowledge the contributions of members of its General Council;
 - b. However, it is important to recognize the voluntary nature of services provided by members of the General Council to the Barreau du Québec and the legal profession;
 - c. Recognition of General Council members' contributions to the Barreau du Québec and the legal profession should not be monetary in nature.
35. Notwithstanding the recommendations of the committee, the General Council adopted the following resolution:
- That members of the General Council, with the exception of the President and the Vice-President, receive an honorarium to the amount of \$300 per diem for General Council meetings.
36. The arguments raised by General Council of the Barreau du Québec in favour of benchers remuneration included the additional costs and time away from practice for out-of-town members. Members of the General Council made it clear that the remuneration would be symbolic and was not meant to compensate for lost income or overhead costs.
37. The Barreau du Québec also provides remuneration to its Executive Committee to the amount of \$600 per diem for Executive Committee meetings. The Executive Committee is made up of ten members of the General Council. It meets as frequently as needed (every two weeks, on average) and sees to the day-to-day administration between meetings of the General Council, whose powers it exercises (except those exercised by regulation). It reports its decisions to the General Council, which may modify or rescind them, without prejudice to vested rights, however.

Other Law Societies

38. The Law Society of Saskatchewan provides an honorarium of \$300 per day for discipline cases but does not provide remuneration to benchers for other services performed on behalf of the Law Society.
39. Other law societies in Canada do not provide benchers remuneration¹⁵.

Governing Bodies of Ontario Professions

40. Governing bodies of Ontario professions recognize the voluntary nature of the work performed by their directors. However, most governing bodies offer some form of honorarium to their directors, which varies in type and rate, based in part on the nature of the profession (see Appendix 2). It is generally accepted amongst the governing bodies that the rationale for paying an honorarium to elected members of boards of directors is not to compensate for lost income or opportunity to earn income but to recognize service voluntarily rendered.
41. Perhaps the professions that may be more closely compared with the legal profession are those that have members in diverse types of employment, such as in private practice in small, medium or large organizations, in partnerships, employed with the government or in academia. Rates of honorarium vary greatly amongst professional governing bodies. For example, the College of Physiotherapists (\$210 per diem) and the College of Chiropractors of Ontario (\$300 per diem) pay relatively low rates. The College of Psychologists of Ontario provides an additional allowance for overheads for those in private practice (\$295 per diem generally plus \$195 per diem if in private practice). The College of Veterinarians of Ontario

¹⁵ See Appendix 4

(\$400 per diem), the College of Optometrists of Ontario (\$500 per diem), the College of Physicians and Surgeons of Ontario (\$750 per diem) and the Royal College of Dental Surgeons (\$795 per diem) provide higher rates.

42. Of the professions surveyed, all governing bodies that provide an honorarium to their elected directors have created discipline committees composed of elected directors. In all of these cases, the directors receive an honorarium for their work on discipline committees at the same rate as the rate of attendance at other committee meetings. This is the case for the Royal College of Dental Surgeons of Ontario, the College of Nurses of Ontario, the College of Optometrists of Ontario, the Ontario College of Pharmacists, the College of Physicians and Surgeons of Ontario, the College of Physiotherapists of Ontario, the College of Chiropractors of Ontario, the College of Psychologists of Ontario and the College of Veterinarians of Ontario.
43. A minority of governing bodies surveyed emphasize that members of their governing bodies are volunteers and do not receive any honorarium for services rendered, including discipline matters. These include: the Institute of Chartered Accountants of Ontario, the Certified General Accountants Association of Ontario, the Ontario Association of Architects and the Professional Engineers of Ontario.
44. Although not the governing body of a profession, the Lawyers' Professional Indemnity Company provides the following payment to its directors (other than elected Benchers of the Law Society of Upper Canada)¹⁶:
- \$8,000 retainer per annum
 - \$1,000 for directors in attendance at board of directors' meetings
 - \$750 for directors in attendance at committee meetings
 - \$2,000 retainer per annum for directors elected to committees
 - \$2,000 retainer per annum for committee chairs
 - \$3,000 retainer per annum for vice-chairs.
 - Retainers are cumulative.
45. Legal Aid Ontario also provides an honorarium for its Board members (including benchers) of \$375 for work done in excess of 3 hours per day and \$188 for 3 hours or less per day.

Recommendation: Institute Bencher Honorarium

46. As mentioned above, the rationale for instituting bencher honorarium is to acknowledge the contribution of benchers and the onerous amount of time spent on Law Society business. The demands on benchers are significant. The amount of the honorarium should not be so large as to encourage members to run for election in the hope of monetary reward. As mentioned above, bencher remuneration would not be intended to compensate for lost income or the opportunity to earn income.

Request to Convocation

47. That Convocation consider the report of the Committee and approve the following recommendation:

Ex-officio benchers that participate in the business of the Law Society and elected benchers shall be remunerated for duties performed as benchers, effective from the date of the Convocation meeting in June 2003.

¹⁶ By-Law 11 of the Lawyers' Professional Indemnity Company passed April 24, 2002.

Part II: Methods of Remuneration and Financial Implications

Methods of remuneration

48. There are various methods that could be used to remunerate benchers. The administrative processes required to manage bencher remuneration would vary from the simple to more complex depending on the method of remuneration.
49. If Convocation approves the recommendation that elected and participating ex-officio benchers be remunerated for participating in the business of the Law Society, Convocation must decide whether benchers will be remunerated according to an hourly rate, a daily rate and/or a meeting rate, an annual honorarium or a mixture.
50. *Hourly rate:* If the remuneration is intended to compensate for lost time, such as lost hours of billable time, this method of remuneration might best achieve this objective. It would, however, require the most complex administration and mean greater administrative costs.
51. *Daily or meeting rate:* This method would also compensate for lost time but not as accurately as a method of compensation based on an hourly rate. The administration of such a scheme would, however, not be as complex as the administration of an hourly rate scheme and administrative costs would be reduced.
52. *Annual honorarium:* If the remuneration is intended to recognize the service to the public and the profession an annual honorarium might best satisfy this objective. It would require the least administrative involvement once rules for bencher eligibility are established.
53. *A mixture:* This would comprise an annual honorarium plus an hourly, daily or meeting rate. This method of compensation would recognize the service to the public and the profession and compensate for lost time related to bencher responsibilities. This method of compensation would require fairly complex administration and lead to high administration costs.
54. The Committee submits that one of the main objective of remunerating benchers is to recognize the service to the public and to the profession. The Committee recommends that the method of remuneration that would best achieve this objective is the adoption of an annual honorarium.
55. If an alternative method of remuneration is adopted, Convocation will have to determine which bencher activities should be compensated: discipline, Convocation, committee, call to the Bar and travel time.
56. The Committee submits that, at the very least, remuneration for time spent on disciplinary matters, including travel time, should be compensated. Time spent on extended disciplinary matters can be onerous.

Financial Implications

57. The Finance Department of the Law Society has estimated the costs of bencher remuneration for activities requiring extensive bencher time commitment. The following costs are based on calculations made by the Finance Department of the Law Society. The calculations take into account the remuneration of elected benchers (40) and participating ex-officio benchers (15). The Treasurer already receives an honorarium, so is excluded from the calculation. Lay benchers are excluded from the calculation as they receive remuneration from the provincial government to the amount of \$177 per diem.
58. The following is an overview of costs for bencher remuneration based on an annual honorarium and on an hourly rate. The estimated costs for bencher remuneration based on a per diem at the highest legal aid rates is similar to the costs at an hourly rate.
59. *Annual honorarium:* Presented below is the cost of remunerating benchers on an annual honorarium for:

- 40 elected benchers;
- 20 elected outside Toronto benchers and 20 elected Toronto benchers (a different levels of compensation); or
- 55 elected and participating ex-officio benchers.

60. The following costs take into account the costs of remuneration for all elected benchers at the same level of compensation/ for elected outside Toronto benchers at a slightly higher level of compensation than for Toronto benchers to account for additional travel time/ for elected and ex-officio benchers at the same level of compensation. The table also presents the estimated costs to members based on 2003 projected membership of 28,000 full fee paying equivalent members.

| RATE | NUMBER OF BENCHERS | TOTAL COST | COST TO MEMBER |
|----------|---|-------------|----------------|
| \$20,000 | 40 elected benchers | \$800,000 | \$29.00 |
| \$20,000 | 20 elected Toronto benchers | \$900,000 | \$33.00 |
| \$25,000 | 20 elected outside Toronto benchers | | |
| \$20,000 | 55 elected and participating ex-officio benchers | \$1,100,000 | \$40.00 |
| \$25,000 | 40 elected benchers | \$1,000,000 | \$36.00 |
| \$25,000 | 20 elected Toronto benchers | \$1,100,000 | \$40.00 |
| \$30,000 | 20 outside Toronto benchers | | |
| \$25,000 | 55 elected benchers and participating ex-officio benchers | \$1,375,000 | \$49.00 |
| \$30,000 | 40 elected benchers | \$1,200,000 | \$43.00 |
| \$30,000 | 20 elected Toronto benchers | \$1,300,000 | \$47.00 |
| \$35,000 | 20 elected outside Toronto benchers | | |
| \$30,000 | 55 elected benchers and participating ex-officio benchers | \$1,650,000 | \$59.00 |

61. *Hourly rate:* Remunerating elected and ex-officio benchers for hours devoted to all primary bencher activities is estimated to cost the Law Society just over \$1.3 million. Primary bencher activities are discipline, Convocation, committee, call to the Bar and travel. The calculations are based on highest legal aid rate of \$88/hour (calculations for travel time are based on highest legal aid rate of \$45/hour). The average annual income for outside Toronto benchers under the hourly remuneration method would be \$26,347 and for Toronto benchers, \$21,835.
62. The following table indicates costs, per activity, of remuneration on an hourly basis, average remuneration for elected and ex-officio benchers and the estimated costs to the membership based on 2003 projected membership of 28,000 full fee paying equivalent members.

| ACTIVITY | COSTS (based on highest legal aid rate: \$88/hour) | AVERAGE REVENUE PER BENCHER | COST TO MEMBER |
|-----------------|--|-----------------------------|----------------|
| Discipline | \$497,000 ¹⁷ | \$9,036 | \$18 |
| Convocation | \$345,945 ¹⁸ | \$6,289 | \$12 |
| Committee | \$319,334 ¹⁹ | \$5,806 | \$11 |
| Call to the Bar | \$38,720 ²⁰ | \$704 | \$1 |
| Travel | \$126,360 ²¹ | \$4512 | \$5 |
| TOTAL | \$1,327,359 | \$26,347 ²² | \$47 |

63. The administrative costs and implications of maintaining an hourly rate remunerative system would be more onerous than the annual honorarium method. The Law Society would have to hire one person whose primary job would be to administer time dockets, tax issues etc. at a cost attributable to bencher remuneration of approximately \$30,000.

¹⁷ The Hearing Coordinator maintains records of bencher attendance for discipline matters which includes time spent on pre-hearing conferences, discipline panels, appeal panels, appeal management tribunals and hearing management tribunals. It does not include time spent on Proceedings Authorization Committee, preparation time and time spent on decisions, and any other time related to discipline processes not included above. In the year 2001, the Hearings Coordinator recorded formal time spent on discipline matters of 2,823 hours by elected and ex-officio benchers (excluding lay benchers). This is doubled for other time spent (preparation, closing etc) outside the logged period, giving a total of 5,646 hours. Time spent by in-town and out-of-town benchers on discipline matters is approximately equal.

¹⁸ There are normally ten regularly scheduled monthly Convocations during the year. During the year there are normally additional meetings such as Special Convocations and Committees of the Whole. There have typically been three of these additional meetings in recent years for an annual total of thirteen days or 91 hours. There are 40 elected benchers and 15 ex-officio benchers for a total of 55 benchers excluding lay benchers. If an attendance rate of 66% is assumed, 36 benchers need to be remunerated for 91 hours of attendance, for a total of 3,276 hours at \$88 / hour for a value of \$288,288. Adding 20% for preparation time gives a total of \$345,945.

¹⁹ There are normally nine regularly scheduled monthly Committee meetings during the year. In a typical year there are normally additional meetings for task forces and working groups, so three additional meetings per year can be added to account for this additional work load, for a total of twelve days or 84 hours. There are 40 elected benchers and 15 ex-officio benchers for a total of 55 benchers excluding lay benchers. If an attendance rate of 66% is assumed, 36 benchers need to be remunerated for 84 hours of attendance, for a total of 3,024 hours at \$88 / hour for a value of \$266,112. Adding 20% for preparation time gives a total of \$319,334.

²⁰ There are normally two major calls to the bar in Toronto and one each in London and Ottawa for a total of four meetings to attend. If each meeting takes four hours (excludes travel) and bencher attendance is 50%, the four calls to the bar will cost approximately \$38,720 at \$88 / hour.

²¹ The rate used to calculate compensation for travel time is the highest legal aid rate of \$45/hour. An average time of 4 hours is used for return trips by out-of-town benchers only. No provision has been made for the travel time of in-town benchers.

²² It is estimated that the average revenue per bencher would be different for outside Toronto benchers, at \$26,347 and Toronto benchers, at \$21,835.

Submissions

64. *Elected benchers:* If the remuneration is intended to recognize the service to the public and to the profession an annual honorarium may best satisfy this objective. The Committee believes that a fair level for bencher remuneration would be \$25,000 for elected benchers for a total cost of \$1,000,000. The cost to members is not significant at \$36. The administrative costs for this type of bencher remuneration would be negligible and could be absorbed into the normal account payable function.
65. *Ex-officio benchers that participate in Law Society business:* The Committee recognizes that ex-officio benchers often spend long hours performing duties as benchers. The Committee submits that the Law Society should acknowledge the participation of ex-officio benchers in the business of the Law Society by providing an honorarium of \$250 per half day (three hours or less) and \$400 per day for time spent at Convocation, committee meetings (including task forces), calls to the bar and attendance at discipline matters. Such a policy would cost approximately \$154,800²³ or \$6 per member. The administrative costs and implications of maintaining a remunerative system based on a daily rate for ex-officio and life benchers would be more onerous than the annual honorarium method.
66. *Alternative submissions:* In the alternative, the Committee submits that at the very least, elected and ex-officio benchers should be compensated for time spent on disciplinary hearings, including preparation time and decision-writing time and travel time. The average level of remuneration for discipline matters is \$9,036 for elected and ex-officio members for a cost of \$497,000. The cost to members is nominal at \$18. If travel time is also compensated, the average level of remuneration amounts to \$9,678 for a cost of \$532,280 and the cost to the membership is raised to \$19. The Committee submits that the cost to the membership for compensating for disciplinary matters and travel time is nominal. However, the administrative costs and implication of maintaining this method of remuneration is more onerous than adopting a remuneration method based on an annual honorarium.

Request to Convocation

67. That Convocation consider the report of the Committee and approve the following recommendations:

An annual honorarium at a rate of \$25,000 for elected benchers will be paid on request from the bencher. The amount of \$25,000 will be prorated for partial years.

An honorarium of \$250 per half day (three hours or less) and \$400 per full day (over three hours) for participation in Law Society business will be paid to ex-officio benchers on request from the bencher. Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters.

Part III Referendum

68. The manner in which benchers have governed the profession is reflected in the by-laws made by Convocation pursuant to section 62 of the *Law Society Act*²⁴, which states that Convocation may make by-laws relating to the affairs of the Law Society.
69. The Task Force on the 1999 Bencher Election and Referenda (the Task Force Report) outlined the advantages and disadvantages of referenda in political life. The advantages include the fact that it is democratic, allows for accountability and legitimacy and can be used as an educational tool. The

²³ The cost is based on the assumption that there are 15 participating ex-officio benchers. The costs are calculated based on the number of days spent at Convocation, committee meetings, calls to the bar and on discipline matters at a rate of \$400 per day. Attendance rate for Convocation and committee meetings is assumed at 66% and at calls to the Bar at 50%. We assume that there are seven hours in one day. Travel time is not included in this calculation.

²⁴ R.S.O. 1990, c. L8.

disadvantages include the fact that it distorts policy-making, subverts parliamentary democracy, is unnecessary and expensive and there is a risk that well-funded interest groups may dominate the debate.

70. The Task Force Report also discussed the advantages and disadvantages of holding a referendum on the issue of bencher remuneration. In favour of a referendum, the report noted that bencher remuneration is a fundamental issue that voters, not Convocation, should decide; it can strengthen the profession's confidence in the Law Society and Convocation; and it can educate the profession.
71. The arguments against holding a referendum on the issues include the fact that the complex issue of increasing and diversifying access to the bench becomes a simplistic question of paying benchers; the possibility of undermining the delegated authority of Convocation and its legal obligation to govern the profession; the fact that the Law Society could consult through surveys, consultation hearings and the Internet at less expense; and some benchers will have significantly greater resources to lobby for their view points.
72. The Report indicates that those who believe that the use of referenda is a useful democratic device point out as well that this process should not be trivialized or overused.
73. A non-binding referendum question on the issue of bencher remuneration was included on the ballot in the 1999 Bencher Election. The results of the non-binding referendum indicated 48% of voters against and 34% for some form of bencher honorarium. A report including the results of the referendum was prepared but never considered by Convocation.
74. The Committee is of the view that the referendum was not binding and it is left to Convocation to make a final decision on bencher remuneration. It also notes that, even if a majority of voters were against bencher honorarium, a significant proportion of voters did not respond to the question. This may be due to a number of factors, including the location of the question on the ballot, the fact that the question was vague and did not include a description of the type of bencher remuneration, the level of remuneration or the costs to the membership. Further, although a list of arguments in favour of and against an honorarium was included in the *Bencher Election Guide for Voters*, the list was incomplete. The Committee submits that Convocation is the decision-making body of the Law Society and should vote on the issue of bencher remuneration.
75. The Committee is of the view that the Law Society should not hold a second referendum on bencher remuneration. The disadvantages of holding a referendum on bencher remuneration are more convincing than the enumerated advantages.

Bencher Functions

Policy

1. attendance at Convocation
2. attendance at committee meetings
3. attendance at task force, working group meetings
4. preparation (reading material) for meetings
5. attendance at consultation meetings, e.g. meetings with government, OBA, CDLPA

Regulatory

6. attendance on Hearing Panel
7. attendance on Appeal Panel
8. preparation for Hearing or Appeal Panel
9. preparation of reasons for Hearing or Appeal Panel
10. conduct of pre-trial conferences
11. sitting as Hearing Management Tribunal bencher
12. acting as Hearing Panel Chair
13. acting as Appeal Panel Chair

14. attendance at Proceedings Authorization Committee meetings
15. preparation for Proceedings Authorization Committee meetings
16. acting as Summary Disposition Benchers
17. reviewing proposal orders (following practice review)

Other

18. attendance at calls to the bar
19. participation on organizations connected to the Law Society as the Law Society's representative – e.g. Law Foundation, Law Society Foundation, LibraryCo, LawPRO
20. participation on outside organization as Law Society's representative – e.g. Civil Rules Committee, Judicial Appointments Advisory Committee, Canadian National Exhibition Board
21. attendance at Annual General Meeting
22. ceremonial and other attendances at Law Society events – e.g. equity events
23. attendance at judicial swearing-in ceremonies

| Law Societies | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
|-----------------------------|---|--|---|---|--|---|--|
| Barreau du Québec | Per diem: Members of General Council:\$300 | 0 | Per diem: Executive committee members: \$600 (full day) and \$300 (half day) | 0 | President of discipline committee: \$120 per hour for hearing | President of discipline committees: \$120 per hour for decision writing | Some allocation for out-of-town travel for presidents of discipline committees |
| Law Society of Saskatchewan | 0 | 0 | 0 | 0 | Per diem: \$300 (less than 3 days hearing) More than 3 day hearing: In town bencher: \$800 Out of town bencher: \$1000 | 0 | 0 |
| Other Law Societies | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| Regulatory Body | Board of Directors meetings | Preparation time for Board of Directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
|--|--|--|--|---|--|---------------------------------|--|
| Lawyers' Professional Indemnity Company ¹ | <p>Directors (other than elected benchers of LSUC):</p> <p>\$8,000 annual retainer</p> <p>Vice-chair: \$3,000 annual retainer</p> <p>Director in attendance at Board meetings: \$1,000</p> <p>All retainers are cumulative</p> | 0 | <p>Directors (other than elected benchers of LSUC):</p> <p>Directed elected to a committee: \$2000 annual retainer</p> <p>Committee chair: \$2,000 annual retainer</p> <p>Director in attendance at a committee meeting: \$750</p> <p>All retainers are cumulative</p> | 0 | Audit Committee/ Conduct Review Committee remunerated as other committees | 0 | 0 |
| Regulatory Body | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
| Legal Aid Ontario | <p>\$375 (more than 3 hours)</p> <p>\$188 (less than 3 hours)</p> <p>Includes LSUC benchers</p> | \$375 (more than 3 hours) | \$375 (more than 3 hours) | \$375 (more than 3 hours) | N/A | N/A | N/A |

¹ By-law 11 passed April 24, 2002.

| | | | | | | | |
|--|--|--|--|---|--|--|---|
| Institute of Chartered Accountants of Ontario | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Certified General Accountants Association of Ontario | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ontario Association of Architects | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Regulatory Body | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
| College of Chiropractors of Ontario ² | Per diem: \$300 (over 3 hours) \$150 (less than 3 hours) | Per diem: Chair: \$300 Members: \$150 (full-day meeting) \$75 (half-day meetings) | Per diem: \$300 (over 3 hours) \$150 (less than 3 hours) | Per diem: Chair: \$300 Members: \$150 (full-day meetings) \$75 (half-day meetings) | Per diem: \$300 (over 3 hours) \$150 (less than 3 hours) including pre-hearing conferences and pre-hearing motions. | Author of Discipline, Complaints or Fitness to Practice Committee decision: one per diem per day (7 hours work). Max. of 3 per diems but no prep time. | More than 3 hours or 300 km: \$250 More than 1 hour and less than 3 hours and/or 300 km: \$125 |
| Professional Engineers of Ontario ³ | 0 | 0 | 0 | 0 | 3 first days of hearing: 0 Consecutive days: \$125 per half day of hearing | 0 | 0 |
| College of Nurses of Ontario | \$175 per diem | \$175 per diem | \$175 per diem | \$175 per diem | \$175 per diem | \$175 per diem | \$175 per diem |

² By-law 9: Remuneration Approved in principle by Council: February 24, 2001.

³ By-law 1 of the Association of Professional Engineers of Ontario.

| Regulatory Body | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
|---|--|--|--|---|--|---|--|
| College of Optometrists of Ontario | Per diem: \$500 | Chair: \$250 | Per diem: \$500 | Chair: \$250 | Per diem: \$500 | Chair: \$250 | 0 |
| Ontario College of Pharmacists ⁴ | Per diem: \$195 (out of community member) & additional \$30 for 2 nd day and consecutive days or \$130 in lieu of per diem if arrival necessary the night prior to meeting \$140 if within home district | 0 | Per diem: \$195 (out of community member) & additional \$30 for 2 nd day and consecutive days or \$130 in lieu of per diem if arrival the night prior to a meeting \$140 if within home district | 0 | Per diem: \$195 (out of community member) & additional \$30 for 2 nd day and consecutive days or \$130 in lieu of per diem if arrival the night prior to a meeting \$140 if within home district | 0 | 0 (see per diem for meetings) |
| College of Physicians and Surgeons of Ontario | Per diem: \$375 (half day) | 0 | Per diem: \$375 (half day) | 0 | Per diem: \$375 (half day) Max 1 day | Per diem: \$375 (half day) Max. 2 days | Per diem: \$375 (half day) |
| Regulatory Body | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
| College of Physiotherapists of Ontario | \$210 per diem or \$30 per hour | 0 | \$210 per diem or \$30 per hour | 0 | \$210 per diem or \$30 per hour | If 7 hours or more \$210 per diem. Less than 7 hours: \$30 per hour | 0 |

⁴ By-law 1 of the Ontario College of Pharmacists, article 7.

| Regulatory Body | Board of directors meetings | Preparation time for board of directors meetings | Meetings of committees | Preparation time for meetings of committees | Discipline | Preparation time for discipline | Out-of-town travel (in addition to expenses) |
|--|--|--|---|---|---|---------------------------------------|---|
| College of Psychologists of Ontario ⁵ | Per diem: \$295 (4 hours) \$148 (2 to 4 hours) Additional \$125 per diem overhead allowance (members in private practice) | 0 | Per diem: Council members: \$295 (4 hours) and \$148 (2 to 4 hours) College members: \$275 (4 hours) and \$138 (2 to 4 hours) Additional \$125 per diem overhead allowance (members in private practice) | Complaints Committee, Executive Committee and Registration Committee: 1 day for each day of meeting. Complex cases: up to 2 additional days. | Per diem: Council members: \$295 (4 hours) and \$148 (2 to 4 hours) College members: \$275 (4 hours) and \$138 (2 to 4 hours) Additional \$125 per diem overhead allowance (members in private practice) | Author of decision: half day per diem | Northern Ontario and travel day prior to meeting: 50% per diem for round trip Outside of Ontario travel: per diem paid in half day increments Professional members of Council and Committee who travel before 4 p.m. preceding a meeting: extra half day per diem |

⁵ Policy on Professional Council Member and Committee Member Per Diems and Expenses, College of Psychologists of Ontario, July 2, 2002.

LAW SOCIETY OF UPPER CANADA
BENCHER REMUNERATION

Assumptions For Financial Model Recommended In Report of Equity and
Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones

1. The per diem rates as recommended in the Report of the Equity and Aboriginal Issues Committee:
 - \$400 per full day (over three hours)
 - \$250 per half day.
2. A maximum of one per diem is paid per 24 hour day. No additional amounts are paid if work exceeds 7.5 hours in a day.
3. Per diem is paid for attendance only. Time for contributions such as travel and preparation are excluded.
4. The number of Convocation and Committees days is based on the Law Society's calendar and the assumption of one additional "special" Convocation per year. To be conservative, full attendance has been assumed.
5. The total of 95 discipline hearing days is based on records maintained by the Legal Affairs Department.

LAW SOCIETY OF UPPER CANADA
BENCHER REMUNERATION

ASSUMPTIONS FOR PER DIEM FINANCIAL MODEL

6. Three possible per diem rates have been selected:
 - \$375 - the rate for the Legal Aid Board of Directors
 - \$625 - approximates a days pay of 7.5 hours at the top Legal Aid rate of \$87.94. Also approximates the annual flat fee of \$25,000 if 40 days are contributed.
 - \$750 – approximates top rate paid by similar organizations and provides a range.
7. The full per diem is paid for 3 hours or more contributed in a day. A half per diem is paid for less than 3 hours per day. A maximum of one per diem is paid per 24 hour day. No additional amounts are paid if work exceeds 7.5 hours in a day.
8. Travel time is only eligible for the per diem if the return trip exceeds 100km. The benchers from outside the GTA have been surveyed, and average travel time is 5.5 hours, which in practical terms translates into one per diem for travel for each attendance.
9. Preparation for policy work (Convocation and Committees) is estimated at half a day (i.e. receives the per diem for 3 hours or less) for each day of attendance at meetings.
10. Preparation for discipline work combined with work after hearings is estimated at 100% of attendance time which equates to one per diem in addition to attendance.
11. The number of Convocation and Committees days is based on the Law Society's calendar and the assumption of one additional "special" Convocation per year. To be conservative full attendance has been assumed.
12. The total of 95 discipline hearing days is based on records maintained by the Legal Affairs Department.

Attached to the original Report in Convocation file, copies of:

- (1) Copy of the Report of the Women in the Legal Profession Committee, November 25, 1994 from the LSUC Minutes of Convocation & Transcript of Debate –Public.
(Appendix 1, pages 25 – 27)
- (2) Copy of the Report of the Women in the Legal Profession Committee, January 27, 1995 from the LSUC Minutes of Convocation & Transcript of Debate – Public.
(Appendix 2, pages 28 – 55)
- (3) Copy of the Finance and Audit Committee Policy Report, February 28, 1997 from the LSUC Minutes of Convocation & Transcript of Debate – Public.
(Appendix 3, pages 56 – 71).
- (4) Copy of statistical information on diversity within the pool of candidates and elected benchers in the 1999 bencher election.
(Appendix 4, page 72)
- (5) Copy of Benchers Record of Attendance.
(Appendix 5, pages 73 – 75)
- (6) Copy of Bencher Remuneration by Other Law Societies.
(Appendix 6, page 76)
- (7) Copy of Honorarium Paid by Various Governing Professions (Updated October, 2002).
(Appendix 7, pages 77 – 80)
- (8) Copy of Opinion (in camera).

It was moved by Ms. Puccini, seconded by Ms. Potter that recommendation 1.b. be deleted and that recommendation 1.c. be amended and approved as follows:

An honorarium of \$250 per half day (three hours or less) and \$400 per full day (over three hours) for participation in Law Society business will be paid to benchers and ex officio benchers on request from the bencher. Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters but not including travel and preparation time.

A debate followed.

Cherniak/Hunter Motion – Amendment to 1.c.

It was moved by Mr. Cherniak, seconded by Mr. Hunter that elected Benchers be paid an honorarium restricted to sitting on discipline and competence matters calculated at the rate of \$500.00 for each sitting day and pro rated for any part thereof, said honorarium not to include any non-sitting time, and to be subject to an annual, non-paid qualifying period of five full sitting days, all subject to approval of the majority voting in a referendum to be conducted at the next Bencher elections.

Wright/Chahbar Motion – Amendment to 1.c.

It was moved by Mr. Wright, seconded by Mr. Chahbar that Benchers devote 24 days per year in public service on bencher activities without remuneration and that, for bencher activities over 24 days, they be remunerated at a rate of \$500 per day and \$300 per half day.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the Wright/Chahbar motion on remuneration be tabled.

Lost

ROLL-CALL VOTE

| | |
|----------------|---------|
| Aaron | For |
| Bindman | Against |
| Bobesich | For |
| Braithwaite | Against |
| Campion | Against |
| Carey | Against |
| Carpenter-Gunn | Against |
| Chahbar | Against |
| Cherniak | Against |
| Coffey | Against |
| Crowe | Against |
| Diamond | Against |
| Ducharme | Against |
| Epstein | Against |
| Feinstein | Against |
| Finkelstein | Against |
| Finlayson | Against |
| Go | Against |
| Gottlieb | For |
| Harris | Against |
| Hunter | Against |
| Legge | Against |
| MacKenzie | Against |
| Marrocco | Against |
| Martin | Against |
| Millar | Against |
| Minor | Against |
| Mulligan | Against |
| Murray | Against |
| O'Brien | Against |
| Ortved | Against |
| Porter | Against |
| Potter | Against |
| Puccini | Against |
| Robins | Against |
| Ross | Against |
| Ruby | Against |
| St. Lewis | Against |
| Simpson | Against |
| Swaye | Against |
| Topp | Against |
| White | Against |
| Wright | Against |

Vote: 40 Against; 3 For

The following amendments to the Wright/Chahbar motion were accepted:

- After the word “Benchers” the words “(except lay Benchers)” be added;
- After the word “activities” the words “over 24 days including time spent at Convocation, committee meetings including task forces, calls to the bar and attending discipline matters but not including travel and preparation time” be added.

The following Wright/Chahbar motion on remuneration as amended was voted on and lost.

“It was moved by Mr. Wright, seconded by Mr. Chahbar that Benchers (except lay Benchers) devote 24 days per year in public service on bencher activities without remuneration and that, for bencher activities over 24 days including time spent at Convocation, committee meetings including task forces, calls to the bar and attending discipline matters, but not including travel and preparation time they be remunerated at a rate of \$500 per day and \$300 per half day.”

ROLL-CALL VOTE

| | |
|----------------|---------|
| Aaron | Against |
| Banack | Against |
| Bindman | For |
| Bobesich | Against |
| Braithwaite | Against |
| Campion | Against |
| Carpenter-Gunn | Against |
| Chahbar | For |
| Cherniak | Against |
| Coffey | For |
| Crowe | Against |
| Diamond | For |
| Ducharme | Against |
| Epstein | For |
| Feinstein | For |
| Finkelstein | Against |
| Finlayson | Against |
| Go | For |
| Gottlieb | Against |
| Harris | Against |
| Hunter | Against |
| Legge | Against |
| MacKenzie | For |
| Marrocco | For |
| Martin | Against |
| Millar | Against |
| Minor | Against |
| Mulligan | Against |
| Murray | Against |
| O’Brien | Pass |
| Ortved | Against |
| Porter | Against |
| Potter | Against |
| Puccini | Against |
| Robins | Against |
| Ross | Against |
| Ruby | For |
| St. Lewis | For |
| Simpson | For |
| Swaye | Against |

| | |
|--------|---------|
| Topp | Against |
| White | For |
| Wright | For |

Vote: 28 Against; 14 For

Cherniak/Hunter Motion

It was moved by Mr. Ducharme, seconded by Ms. St. Lewis that the Cherniak/Hunter motion be amended by deleting the words “discipline and competence matters” and inserting the words “participating in the regulatory process” as enumerated at Tab 4 in paragraphs 6, 7, 10-14, 16 and 17.

The Ducharme/St. Lewis amendment was accepted.

It was moved by Ms. Minor, seconded by Ms. Ross that the Cherniak/Hunter motion be further amended by adding the words “and committee meetings and task force and working group meetings” following the words “participating in the regulatory process” as enumerated at Tab 4 in paragraphs 2 and 3.

It was moved by Mr. Bindman, seconded by Ms. Potter that the Minor/Ross be amended to indicate that the five days only apply to participation in the regulatory process.

Withdrawn

The following Minor/Ross amendment to the Cherniak/Hunter motion was voted on and lost.

“It was moved by Mr. Cherniak, seconded by Mr. Hunter that elected Benchers be paid an honorarium restricted to participating in the regulatory process and committee meetings and task force and working group meetings calculated at the rate of \$500.00 for each sitting day and pro rated for any part thereof, said honorarium not to include any non-sitting time, and to be subject to an annual, non-paid qualifying period of five full sitting days, all subject to approval of the majority voting in a referendum to be conducted at the next Bencher elections.”

ROLL-CALL VOTE

| | |
|----------------|---------|
| Aaron | For |
| Banack | Against |
| Bindman | For |
| Bobesich | Against |
| Braithwaite | Against |
| Campion | Against |
| Carpenter-Gunn | For |
| Chahbar | For |
| Cherniak | Against |
| Coffey | Against |
| Crowe | Against |
| Diamond | For |
| Ducharme | Against |
| Epstein | For |
| Feinstein | For |
| Finkelstein | Against |
| Finlayson | Against |
| Go | For |
| Gottlieb | Against |
| Harris | Against |
| Hunter | Against |
| Legge | Against |

| | |
|-----------|---------|
| MacKenzie | Against |
| Marrocco | Against |
| Martin | Against |
| Millar | For |
| Minor | For |
| Mulligan | For |
| Murray | Against |
| Ortved | Against |
| Porter | Against |
| Potter | For |
| Puccini | Against |
| Robins | Against |
| Ross | For |
| Ruby | For |
| St. Lewis | For |
| Simpson | For |
| Swaye | Against |
| Topp | Against |
| White | For |
| Wright | Against |

Vote: 25 Against; 17 For

The Cherniak/Hunter motion was amended by deleting the word “elected” before “Benchers” and adding the words “(except lay Benchers)” and deleting the words “all subject to approval of the majority voting in a referendum to be conducted at the next Bencher elections.”

The following Cherniak/Hunter motion as amended was voted on and lost.

“It was moved by Mr. Cherniak, seconded by Mr. Hunter that Benchers (except lay Benchers) be paid an honorarium restricted to participating in the regulatory process (attendance on Hearing Panel, attendance on Appeal Panel, conduct of pre-trial conferences, sitting as Hearing Management Tribunal bencher, acting as Hearing Panel Chair, acting as Appeal Panel Chair, attendance at Proceedings Authorization Committee meetings, acting as Summary Disposition bencher, reviewing proposal orders following practice review), calculated at the rate of \$500.00 for each sitting day and pro rated for any part thereof, said honorarium not to include any non-sitting time, and to be subject to an annual, non-paid qualifying period of five full sitting days.”

ROLL-CALL VOTE

| | |
|----------------|---------|
| Aaron | Against |
| Banack | For |
| Bindman | Against |
| Bobesich | Against |
| Braithwaite | Against |
| Campion | Against |
| Carpenter-Gunn | Against |
| Chahbar | For |
| Cherniak | For |
| Coffey | For |
| Crowe | Against |
| Diamond | Against |
| Ducharme | For |
| Epstein | For |
| Feinstein | Against |

| | |
|-------------|---------|
| Finkelstein | Against |
| Finlayson | Against |
| Go | Against |
| Gottlieb | Against |
| Harris | Against |
| Hunter | For |
| Legge | Against |
| MacKenzie | Against |
| Marrocco | Against |
| Martin | Against |
| Millar | For |
| Minor | For |
| Mulligan | Against |
| Murray | Against |
| Ortved | Against |
| Porter | Against |
| Potter | Against |
| Puccini | Against |
| Robins | For |
| Ross | Against |
| Ruby | For |
| St. Lewis | For |
| Simpson | Against |
| Swaye | Against |
| Topp | Against |
| White | For |
| Wright | Against |

Vote: 29 Against; 13 For

Puccini/Potter Motion

It was moved by Mr. Swaye, seconded by Mr. Epstein that the Puccini/Potter motion be amended by deleting the words “on request from the benchers.”

The amendment was accepted.

The following Puccini/Potter motion as amended was voted on and lost.

“An honorarium of \$250 per half day (three hours or less) and \$400 per full day (over three hours) for participation in Law Society business will be paid to benchers (except lay benchers). Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters but not including travel and preparation time.”

ROLL-CALL VOTE

| | |
|----------------|---------|
| Aaron | For |
| Banack | Against |
| Bindman | For |
| Bobesich | For |
| Braithwaite | For |
| Campion | Against |
| Carpenter-Gunn | For |

| | |
|-------------|---------|
| Chahbar | Against |
| Cherniak | Against |
| Coffey | Against |
| Crowe | For |
| Diamond | For |
| Ducharme | Against |
| Epstein | Against |
| Feinstein | For |
| Finkelstein | Against |
| Finlayson | Against |
| Go | For |
| Gottlieb | For |
| Harris | For |
| Hunter | Against |
| Legge | Against |
| MacKenzie | Against |
| Marrocco | Against |
| Martin | Against |
| Millar | Against |
| Minor | Against |
| Mulligan | For |
| Murray | For |
| Ortved | Against |
| Porter | Against |
| Potter | For |
| Puccini | For |
| Robins | Against |
| Ross | For |
| Ruby | Against |
| St. Lewis | Against |
| Simpson | For |
| Swaye | Against |
| Topp | Against |
| White | Against |
| Wright | Against |

Vote: 25 Against; 17 For

Ducharme/Hunter Motion Re: Referendum

It was moved by Mr. Ducharme, seconded by Mr. Hunter that:

Resolved that any Bencher remuneration scheme approved by Convocation will not be implemented unless it has been approved in a referendum of the membership to be held at the same time as the Bencher election. Such approval shall require a simple majority of votes cast with respect to the question.

Withdrawn

Wright/Chahbar Motion – Re: Establishment of an Independent Commission

It was moved by Mr. Wright, seconded by Mr. Chahbar that an independent commission be struck to investigate, consult and report on the quantum, coverage and specifics of implementation of bencher remuneration, and to report to Convocation within a reasonable time.

It was moved by Mr. Bindman, seconded by Mr. Aaron that the Wright/Chahbar motion on an independent commission be tabled.

Lost

Mr. Wright outlined the intent of his motion.

The Wright/Chahbar motion was withdrawn on the Treasurer's undertaking to bring the matter back to Convocation at a later date.

CONVOCATION ROSE AT 12:30 NOON

Confirmed in Convocation this 27th day of February, 2003

Treasurer