

ONTARIO

LAWYERS

GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



INSIDE/À LIRE

TREASURER ELECTION
ON JUNE 27

TITLE INSURANCE

BICENTENNIAL CELEBRATIONS AT
NIAGARA-ON-THE-LAKE

JUDICIAL APPOINTMENTS

LA DÉMYSTIFICATION
DU PROCÈS BILINGUE



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

Postage stamp a tribute to the profession

ONE OF THE DEFINING moments marking the Law Society's bicentennial in 1997 has been Canada Post's decision to strike a stamp in honour of the Society's 200th anniversary.

The 45-cent stamp was unveiled on May 23, 1997, during a special ceremony at Niagara-on-the-Lake. The event was the culmination of years of persistence, dedication and hard work by bencher Barry Pepper, who has championed the idea of a Law Society stamp from the very beginning.

Also on the initiative of Mr. Pepper, every member of the Law Society will receive a stamp in recognition of the bicentennial. Enclosed with this issue of the *Ontario Lawyers Gazette*, please find a limited-edition, first-day cover of the Law Society stamp.

A philatelic collector's item, the stamp features a recent Robert White photograph of Osgoode Hall, the seat of the Law Society. Stamp designer Les Holloway used sepia tones to give the stamp an aged and distinguished appear-

ance. The stamp also includes the Society's seal in red wax, while the yellow-coloured lower half of the stamp is meant to represent parchment paper.

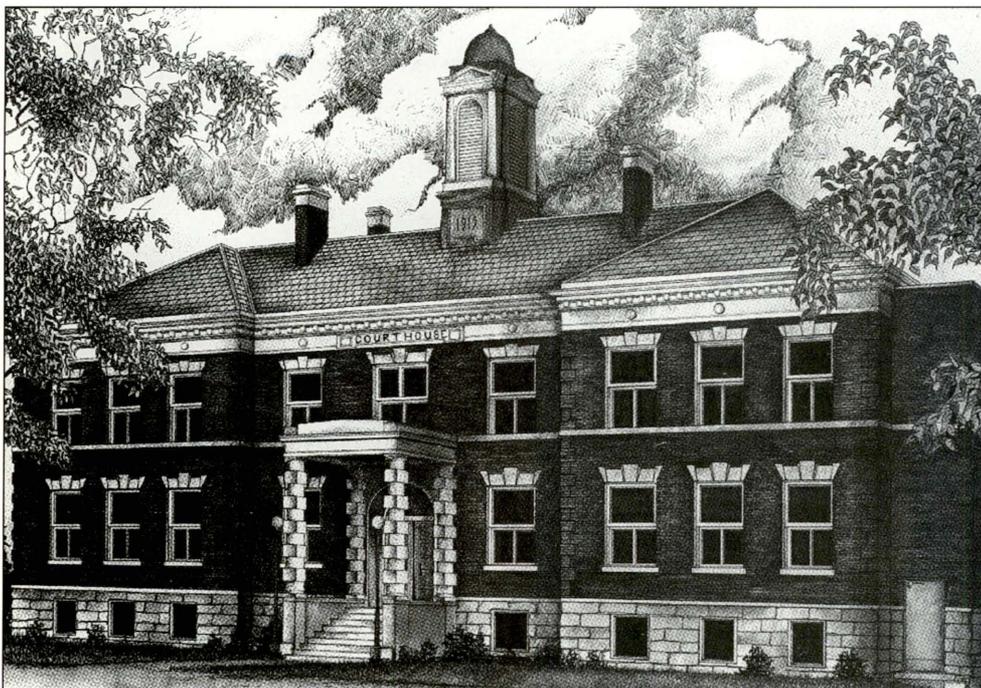
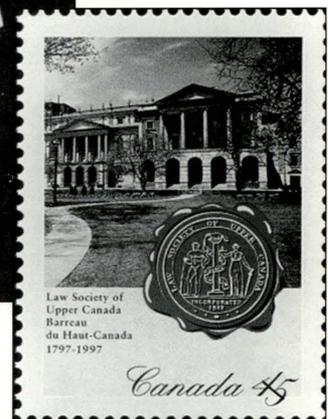
The stamp pays tribute to the

positive impact that the Ontario legal profession has had, and continues to have, on every segment of Canadian society. The Law Society trusts members will be proud to have the

stamp, which is meant to honour not just the Law Society but the legal profession as a whole. ■



Bencher Barry Pepper, Q.C., LSM, (left) unveils Law Society stamp with Peter McInenly of Canada Post. Members are receiving a first-day cover of the stamp with this issue of the *Gazette*.



ONTARIO'S COURTS

Fort Frances, Rainy River District

"The present Rainy River District Court House was constructed in 1913-14, and is the first permanent judicial building for the district. Though all the Northern Ontario court houses were designed by the provincial Department of Public Works, they evince considerable visual diversity. The closest parallel to this structure is the Kenora District Court House."

From Court Houses in Ontario, 1979, by Stephen Britton Osler. Reprinted by permission of Carswell – a division of Thomson Canada Limited.

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CONTENTS/SOMMAIRE



4 CONVOCATION

Harvey Strosberg and Tom Carey seek bencher votes in treasurer election

*Treasurer's Message: a rewarding experience
CDLPA and CBAO discuss unified organization
Concrete measures to eliminate discrimination*

*Motions and financial statements at annual meeting
Recommendations for civil justice review*



12 IN PRACTICE

*Getting up to speed on title insurance
Public Guardian implements new fee schedule
Moving client files from lawyer to lawyer
Court recording pilot projects reviewed
Legal aid numbers and other news
Form for electronic trust transfers*



19 TOUR D'HORIZON

Le bilan de la trésorière

La promotion active de l'équité

Le télévirement des fonds en fiducie

*Que faire lorsqu'un confrère est sous le coup
d'une suspension?*

Deux langues à la fois : tour de Babel ou défi réalisable?



25 PERSPECTIVE

Fewer lawyers holding public office

Many hurdles to the bar in Japan

Ontario family law: a modest proposal

Duels held dual threat in Upper Canada

A bicentennial day to remember



31 MEMBERSHIP

Ensure that the Law Society can reach you

Discipline case summaries

Client borrowing and the Rules

Suspensions and reinstatements



40 FYI

Judicial appointments summary

Research Facility Catalogue

Law'NMore

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CONVOCATION

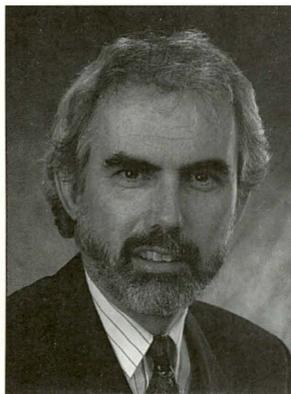
Two candidates running in treasurer election

THE LAW SOCIETY WILL have a new treasurer when Convocation meets on June 27. Benchers will vote for one of two candidates to succeed Susan Elliott, who has held the position for the past two years. The election statements appearing below were provided to the Gazette by candidates Tom Carey and Harvey Strosberg.

Tom Carey

This Treasurer election is about leadership, leadership style, and governance. We've started the change process at the Law Society. I want to complete it.

I was called in 1979 and practise criminal law (as a certified specialist) in my own small firm in Mississauga. I have been a bencher for five years, over three different terms, starting in 1988. Being a bencher required a lot of hard work, and I was willing to do it, including chairing several committees.



Tom Carey

Mississauga

Age: 44

Called to bar: 1979

Years in Convocation: 5

Most of the benchers governing the Law Society today were elected, amidst a crisis of confidence in the Law Society spawned by spiralling insurance rates and Legal Aid crises, to do things differently: to represent all lawyers, to open up the governing process and to focus the Law Society on core functions. The last two years have begun to address these concerns.

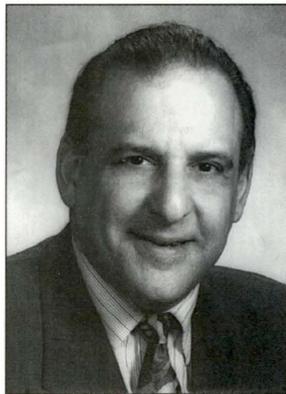
When I became a bencher in 1988, Convocation was decidedly different, with closed door

meetings and private votes. Those days are gone, and the institution has changed dramatically in recent years. Governance restructuring and the Project 200 review of our core functions are not finished. I am committed to carrying them through to conclusion. Any large organization must re-examine and renew its structure on a regular basis.

The Treasurer sets the agenda for progress and the task is demanding. This job is no longer a part-time honorific, a reward for services rendered. I will be a full-time Treasurer. I am willing and able to take a leave of absence from my

Harvey Strosberg

Since my first election as a bencher in May 1987, I have served on many committees and as chair of Equity in Legal Education and Practice, Policy and Planning, Discipline Policy, and the 1994 Insurance Task Force. Since 1994, I have been chair of LPIC's Board of Directors. During these 10 years, I have come to know well the Society's operations and policies, and if elected Treasurer I believe I am ready for the task.



Harvey Strosberg

Windsor

Age: 52

Called to bar: 1971

Years in Convocation: 10

As Treasurer, I would continue and complete the process of governance reform which will provide Convocation the framework necessary to formulate policy decisions in the interests of the profession and the public.

Policy decisions inevitably require thoughtful, comprehensive deliberation. A Treasurer inevitably seeks out and relies upon the good advice of all benchers. As Treasurer, I will devote my efforts to upholding and enhancing collegiality among benchers. Collegiality is an essential aspect of benchers'

work. With it, benchers can forge consensus on all important issues and thereby truly lead the profession.

As indicated earlier, I have been immersed in LPIC since 1994 when the insurance deficit was found to have soared over \$150 million. Much has changed since then, including members' fees. In 1997, on a 100 per cent basis, the Society's annual membership fee was \$1,749 and LPIC's premium was \$5,150, totalling \$6,899. This will not do. As the deficit is now less than \$50 million, for 1998, I propose a \$1,000 reduction in these fees, in part, by eliminating the \$600

Carey...

practice to be Treasurer.

Bringing together the diverse ideas represented at Convocation into a collegial harmonious working team is a challenge. The Law Society must continue to reach out to the other professional organizations and determine together how to best fulfil different roles. The Treasurer needs to liaise with the public and the government to address important issues. The Treasurer must continue to get out and meet the bar, and work with lawyers throughout the province.

Leadership means creating an atmosphere where all viewpoints are welcome, listening to those viewpoints, and creating a team that can work together and forge a consensus. Governing the profession requires tough decisions, many of them unpopular. There shouldn't be antagonism between the profession and the Law Society, although there currently is; self government should not mean self-loathing. Governing in the public interest means providing the public with affordable access to the highest quality legal services. All concerned in the process must work together. ■

Strosberg...

insurance capitalization levy.

Beyond the always relevant issue of fees, the profession must also position itself strategically to deal with the manifold challenges inherent in its relationship with the Government of Ontario. At times, the Society's dealings with the government have not been as organized and productive as they could be. Political decisions inevitably affect the interests of the profession and the public in legal matters. The funding of legal aid is a striking example. As a matter of high priority in 1997-98, the Society should develop a long-term strategy to deal with government on all issues of mutual interest.

The ability of lawyers to compete in the marketplace is also a matter of paramount concern. Wherever necessary, the Society's rules and regulations must be adjusted to permit lawyers to meet and beat the competition. Issues such as multi-discipline partnerships, paralegals, contingency fees, competency and numbers in the profession must therefore be addressed directly and decisively. There can be a strong independent bar only if lawyers have a fair opportunity to earn a reasonable livelihood. ■

TREASURER'S MESSAGE

Two years of changes and challenges

WHEN I TOOK OFFICE as Treasurer of the Law Society two years ago, Convocation included 22 newly elected benchers (out of 40) and one newly appointed lay bencher (out of 4) – thus we had a group



Susan Elliott

that was mainly new to the process and had never before participated directly at this level of professional governance.

Convocation was a group ready for new ideas, but

at the same time had to learn to work together to make sure effective policy and direction would be the mainstay of our meetings.

I am pleased to report that after two years of debating the major issues – everything from the ongoing crisis with the government's withdrawal of financial and philosophical support for legal aid and the turn around in the stability and efficiency at the Lawyers' Professional

Indemnity Company, to numbers in the profession and mandatory continuing legal education – benchers have learned to use their differences of opinion to build constructive consensus.

By now you've heard a lot about the adoption of the policy governance model we are following in Convocation. Simply put, it means benchers attend to goals and vision, while the administrative side of the Law Society is directed to implement the programs required to turn the leadership and direction of Convocation into practical reality.

Adopting such change – altering two centuries of practice – is a noteworthy accomplishment. A true hallmark of policy governance is the growth of cooperation and positive debate in a climate where differences of opinion are heard and examined. Benchers have adopted a framework that allows us to reach consensus despite a healthy mix of opinions and views on the issues that confront the profession. The new model of governance arms the Society for meeting the many changes the future will

bring, and challenges us to always look forward, not backward.

Prime examples of Convocation's renewed focus on leadership include: two task forces recently established (see *OLG* Mar/Apr 1997) which are considering the impact of change on the profession and the definition of competence among the membership; the approval of a report and recommendation on improving equity, diversity and equality in the Ontario bar (see story on page 8); and the restructuring work we've directed staff at the Society to carry out in order to make the Society as "customer" focused and efficient as possible.

Policy governance has helped benchers to pause and clearly consider the role of the Law Society and to understand that our mission is to regulate the profession in the public interest. And while it is true that we also look out for the interests of the profession – where they serve the public interest – the line between those two goals is not always crystal clear on all occasions.

The distinction will become much less

muddled if a proposed merger between the County and District Law Presidents' Association (CDLPA) and the Canadian Bar Association Ontario (CBAO) comes to fruition (see story on this page).

While still in its infancy, the joining of forces is an idea which I whole heartedly support. It is an idea that bodes well for the profession. With a new association primarily representing the interests of the province's lawyers, the Law Society will be better able to focus on its role as the regulatory and disciplinary body of the profession in Ontario.

This is not to say the Society will stop providing programs and services to the membership, especially if such action supports and fosters a strong bar and thus benefits the public. But, if the proposed merger is successful, any areas of conflict which exist between "self-regulation" and "self-promotion" of lawyers can be allocated to the right body and receive, as a result, the proper treatment.

With two clearly defined organizations – one serving the public interest, the other the concerns of lawyers – the resulting "whole" will better serve the profession and the public. And by sharing the goal of providing Ontario with the highest standard of legal services possible, the Society and a newly merged lawyers' association would naturally work closely together. I think I speak on behalf of every benchers in saying the idea is an exciting one and Convocation looks forward to taking an active part in making it a reality.

This is to be my last message as Treasurer — my successor will be elected at June Convocation. I have enjoyed the responsibilities of Treasurer these past two years. I can't think of a greater challenge for any lawyer, or a more interesting job!

I wish the best of luck to the new Treasurer, knowing that whichever candidate is chosen by benchers, he will receive the same full support from Convocation and from the membership as I received. I would like to thank the benchers, all who have worked so diligently to responsibly

debate the issues each month. As Treasurer I made it a point to put the "big" questions on the agenda because I believe important issues must continually be discussed, and I was rewarded by members of Convocation who provided the intelligent consideration and constructive input required when discussing such difficult topics.

I would also like to thank CEO John Saso, the senior management team and all the staff at the Law Society. Their commitment to Ontario's legal profession made my job that much easier. I am

This province has
one of the finest
bars in the world

proud of the accomplishments made so far, and those to come, as Mr. Saso and his staff work to create a more efficient Society – one better able to serve the membership and the public.

Finally, I would like to thank the lawyers of Ontario with whom I have worked during my two years as Treasurer. This province has one of the finest bars in the world, one that continually distinguishes itself with professional behaviour and excellence. I have also had the pleasure this year of travelling the province to present the Bicentennial Award of Merit to 62 Ontario lawyers who have been recognized for their contributions to their communities, making our province a better place in which to live and work.

I have taken great pride in having had the opportunity to serve as Treasurer – the position has proven to be incredibly challenging, interesting, and intellectually stimulating. Again, I thank everyone for their support during the last two years and invite benchers, members and staff to join me in offering our complete support to the new Treasurer. ■

Susan Elliott

Lawyers' groups consider merger into single association

ONTARIO'S LAWYERS may soon speak with a single voice if a proposed merger of two major legal organizations in the province goes ahead. The County and District Law Presidents' Association (CDLPA), and the Canadian Bar Association-Ontario (CBAO) have been discussing the idea of joining forces – along with the Metropolitan Toronto Lawyers' Association (MTLA) – to form a unified organization that would act as a lawyer's "union," putting the interests of the membership first.

CDLPA approved a resolution and a memorandum of understanding (MOU) (see sidebar) on the issue at the group's May 8 plenary session. The CBAO council was scheduled to consider the issue on June 13th and the MTLA has approved the MOU in principle.

While the details of the idea have yet to be formulated, the MOU between the CBAO and CDLPA says the purpose of the new organization – as yet unnamed – is "to speak with one voice to advance the interests of lawyers."

As well, the MOU suggests that the Law Society would collect membership fees and transfer certain programs and their funding to the new association. Treasurer Susan Elliott says she welcomes the idea of a focussed lawyers' group, but adds that it is too early to comment on any specific proposals until the work of actually shaping the new organization begins. The Treasurer adds that it makes sense to have a group representing primarily the interests of lawyers to complement the Law Society's focus on serving the public interest.

CDLPA chair Richard Gates says to be successful the idea will have to include a close working relationship with the Law Society. "It makes sense

to me to have benchers and Law Society staff involvement from the very beginning since this is only going to work if the Law Society supports it," Gates says.

In a memo to council members, CBAO president Michelle Fuerst says

the need for giving lawyers "a strong and unified voice...is obvious and increasing" given the Law Society's clear responsibility to govern first in the public interest.

If the CBAO council approves the

MOU the next step will be to form an implementation committee to begin the work of defining the structure of the organization, including things such as bylaws, elections, governance, operating procedures and finances. ■

"The lawyers of Ontario desire to have one voice..."

Memorandum of Understanding Resolution

The County And District Law Presidents' Association, May 8, 1997 Plenary Session

WHEREAS the lawyers of Ontario desire to have one voice to speak on behalf of lawyers;

AND WHEREAS a Memorandum of Understanding (MOU) has been entered into between the CBAO and CDLPA, with the concurrence of the MTLA;

AND WHEREAS it appears that the MOU has not fully addressed all issues necessary to move forward the creation of an organization to articulate a single voice for lawyers for Ontario;

NOW THEREFORE BE IT RESOLVED THAT:

The Memorandum of Understanding (MOU) is approved in principle.

CDLPA's negotiating committee renew negotiations with CBAO and MTLA within the following parameters:

CBAO, CDLPA & MTLA agree that the underlying philosophy and organizing principles of the proposed new organization is representative of lawyers' interests in Ontario;

The merger into a new proposed organization is dependent on developing a funding formula acceptable to the County & District Law Associations;

That the Law Society of Upper Canada's (LSUC) agreement in principle to the proposed new organization, including mandatory paid membership of all LSUC members in the proposed new organization, be obtained early in the negotiating or implementation process;

That the Government of Ontario's agreement in principle to the proposed new organization be addressed as soon as practicable;

MOVED: John Clark, Essex

SECONDED: Norman Pickell, Huron

CARRIED

Memorandum Of Understanding

1. Canadian Bar Association - Ontario and the County and District Law Presidents' Association, with the concurrence of Metropolitan Toronto Lawyers' Association agree to the merger of CBAO and CDLPA into a new organization with a new name.

The new organization shall promote, enhance, and strengthen local law associations in the province.

The new organization shall have an association with the Canadian Bar Association.

2. STATEMENT OF PURPOSE

To speak with one voice to advance the interests of lawyers.

3. THE STRUCTURE OF THE NEW ORGANIZATION

I. Decision-making process

(a) Council/Plenary

Council/Plenary shall consist of voting and non-voting members.

(i) Voting members

1. a representative of each County and District Law Association (47)
 2. representatives at large from Metropolitan Toronto (50) max
 3. Representatives at large from outside Toronto elected regionally (16)
 4. Executive (20)
- (Total 133)

(ii) Non-Voting Members

1. Past Presidents of CBAO
2. Past Chairs of CDLPA
3. Appointed members by Council/Plenary
 - (b) Executive Committee
 1. The officers (6)
 2. Other members to reflect the appropriate regional representation (14 app.)
 - (c) Officers

The Officers will include the President.

Vice-President, Secretary, Treasurer.

Immediate Past President and Executive Director

II. Sections and Committees

The existing Sections and Committees of the founding organizations shall be merged and continued under the new organizations.

4. ECONOMIC CONSIDERATIONS

The objective will be to reduce the aggregate cost of membership fees in this organization, local law associations, and the Law Society of Upper Canada.

In pursuit of this objective, this organization will:

- (a) Request that the Law Society of Upper Canada (LSUC):
 - (i) implement central collection of membership fees for the new organization and local law associations;
 - (ii) transfer certain LSUC programmes and functions, together with corresponding funding;
 - (iii) adopt central collection of library fees.
- (b) Existing revenue generating activities of the respective organizations shall be continued.

It is recognized that a portion of the fees of this organization will be allocated to CBA in order to advance the interests of Ontario lawyers at the national level.

5. IMPLEMENTATION

Provided there is approval by the respective organizations an Implementation Committee shall be established to effect the merger as quickly as possible.

Measures will build equity and diversity in the profession

IN A UNANIMOUS DECISION at the bicentennial meeting of Convocation in Niagara-on-the-Lake on May 23, benchers accepted 16 broad-ranging recommendations designed to provide concrete measures to eliminate discrimination, and to achieve equity and diversity in the legal profession.

While considerable progress has been made in terms of opening the profession to more women and minority groups, and eliminating barriers to their advancement within the profession, benchers agreed that the steps taken by the Law Society to date have not been enough to effectively combat discrimination and promote equity. This latest action by benchers, however, was described as a powerful step beyond simply making broad statements of intent. "The recommendations attempt to remedy the short-sighted, reactive, scattered approach and provide a long range, pro-active and cohesive plan which would be properly funded and monitored for effectiveness," said

Those doing business
with the Law Society
must demonstrate
a commitment to
equity and diversity

bencher Nancy Backhouse, an author of the report presented to Convocation.

Bencher Eleanor Cronk agreed that the recommendations arm the Law Society for bringing about real change. "There has been a genuine commitment [from the bar] to change, but without the ammunition to effect change, without the tools to actually deal with the problems...it was extremely difficult in a meaningful way to achieve any real change. What these reports do, I believe, is to provide for the first

time...some very clear direction as to how we can actually [achieve equity and diversity goals]."

A key recommendation commits the Law Society to allocate appropriate human and financial resources to implementing equity policies. Another promotes the development of a program that would in effect require all those that do business with the Law Society – including law firms and suppliers – to demonstrate a commitment to equity and diversity. "We're stepping up to the mark and saying as the governing body...there will be minimum requirements expected by us in order to do business with us...you must show us you mean what you say and that you have a commitment behind your equity and diversity policies," Ms. Cronk said.

The recommendations, part of the Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (available on the Law Society's web site www.lsuc.on.ca) also include those that direct the Society: to adopt policy which actively promotes equity; to act as a resource to the profession on issues of diversity and equity; and to promote participation in the governance of the profession by a diverse cross section of the membership.

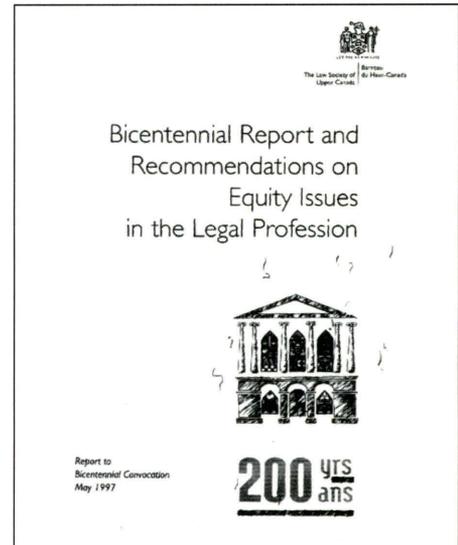
Other recommendations include a call for demographic research and regular audits of existing programs to ensure equity compliance. Several others deal specifically with equity promotion in the bar admission course, in CLE programs, when dealing with foreign lawyer accreditation, and in setting Law Society fees.

Now that it operates within a policy-governance framework, Convocation also adopted a set of policy statements defining the results to be achieved through equity initiatives. The policy statements adopted are:

- The Law Society is committed to the elimination of discriminatory practices in the legal profession

- The Law Society is committed to the achievement of equity and diversity within the legal profession

Along with accepting the equity report and recommendations, and related policy statements, benchers also



accepted a report summarizing the results of a follow-up longitudinal survey of 1,600 Ontario lawyers called to the bar between 1975 and 1990. The findings of the survey – that women lawyers still earn less than men, continue to enjoy less decision-making authority than men, are less likely to own businesses, hold management positions or work in capacities involving autonomy, authority or decision making power, and are more likely to abandon the profession of law – provided a significant impetus for the development of the equity report recommendations. Other studies, including those of blacks in the profession and articling students, revealed the problem of discrimination was not confined to discrimination against women in the profession.

The study of black students and recently called lawyers found that certain areas of practice – corporate/commercial, securities and taxation – were effectively closed to black lawyers. Articling students also reported being subjected to inappropriate questions or offensive

remarks during job interviews about everything from their age and family status, to sexual orientation and heritage.

"[The recommendations accepted by Convocation] go beyond gender discrimination," said bencher Harriet Sachs, an author of the bicentennial report on equity. "We know from the research that has been done across Canada...that barriers continue to exist

for the advancement of women and minorities... We have learned that [the Law Society must] provide leadership in this area... In reaching this conclusion we asked ourselves why we should spend money on equity and diversity when so many in our profession are hurting and are desperate for us to decrease rather than increase the programs we fund. There are two answers

to this question: First, it is when times are tough that those who are already disadvantaged are further marginalized. Second, we have no choice. Now that we know we must act. For if we do not, everything we do is tainted. It has been 100 years [since the first woman was called to the Ontario bar]. These recommendations come not a moment too soon." ■

Annual general meeting highlights

TWO MOTIONS PRESENTED by members of the profession at the Law Society's annual general meeting on May 7th were defeated. Members first voted against a wide sweeping motion related to a high incidence of failures by 1996 French bar admission course (BAC) students in Ottawa. The motion suggested the failure rate (more than 30 per cent) was linked to the norm-referencing marking system used to grade licensing examinations, and the fact that francophone students are required to write exams translated from English. It also asked that the French program not be offered at all in 1997 until the Law Society conducts a review to address the various concerns arising from the failure rate.

In speaking against the motion, however, bencher Philip Epstein who chairs the admissions and equity committee – which sets policy for the BAC – pointed out that the Law Society had entered mediation with a group of French BAC students to address their concerns and had implemented several recommendations from the resulting agreement including remarking the exams, the holding of tutorials to help students prepare for the writing of supplemental exams and an extension of the time allotted to write the supplementals. Mr. Epstein also argued that the marking system for the bar admission exams – based on the norm-referencing model currently used by a number of licensing bodies including the Royal College of

Physicians and Surgeons of Canada – is extremely fair and follows widely recognized and accepted marking practices.

The second defeated motion called on the Law Society to allow members to buy errors and omissions insurance from private insurers rather than through the Lawyers' Professional Indemnity Company (LPIC) – suggesting that a free-market system for insurance would lower rates for lawyers who practice exclusively in certain low-risk areas, such as criminal law. Bencher Harvey Strosberg, chair of LPIC's board of directors, argued that an open market would dictate who could and could not

practice law because certain segments of the bar – for example, sole practitioners and real estate lawyers – might not be able to afford insurance, or could be denied coverage outright.

The point was also made that Convocation had addressed this issue at length last fall and had voted to maintain the status quo for the time being, while agreeing to revisit the issue from time to time.

Financial statements

The Law Society's 1996 audited financial statements were also presented at the annual meeting. These are the



Treasurer Susan Elliott and Ross Murray, chair of Finance and Audit committee, present annual report. (photo by Andrew Schalk)

financial highlights:

- The 12 months ended December 31, 1996 resulted in a deficit of \$1.024 million – \$200,000 better than budget – for an 18 month accumulated sur-

plus of \$1.061 million. (The Society created an 18 month budget as the result of the change in its fiscal year end in 1995).

- Total revenues exceeded budget by

\$747,000. Substantially lower than anticipated interest rates adversely affected income from investment sources and planned investment income was less than budget by \$348,000.

- With the exception of the bar admission course – which recorded a small deficit of \$2,000 – all program areas achieved target with an overall budgetary expense reduction of \$317,000.
- Savings in program costs minimized the over-spending in our general administration and restructuring expenses which were \$376,000 above budget. Cost efficiencies have been realized resulting from restructuring the Society. Over the 18-month period ending December 31, 1996, total annualized expenditures have been reduced by \$1.945 million.
- The balance at December 31, 1996 for the Lawyers Fund for Client Compensation – the fund that compensates clients for losses resulting from their lawyer's theft or dishonesty – was \$24,144,000. The Fund's deficit for 1996 – \$2,373,000 – was \$618,000 less than projected. The Society has embarked on a review of the Fund to ensure its long-term financial health.
- The combined deficit for the errors and omissions insurance fund at December 31, 1996 was reduced to \$78.3 million, down by \$40.1 million from December 1995 and approximately half of what it was in 1994. The target for completely retiring the deficit is the end of 1999.

The complete 1996 audited financial statements for the Law Society can be found in the annual report which can be obtained from the Law Society at (416) 946-3465, or accessed on the Society's Internet web site at www.lsuc.on.ca ■

Law Society input on civil justice review

Convocation wants to be actively involved in the province's overhaul of the civil justice system.

Benches approved a motion at their April 25 meeting offering the Society's input to the Canadian Bar Association (CBA) and the government of Ontario which are beginning to implement recommendations found in two sets of reports examining the civil justice system in Canada and in Ontario, respectively.

More than 165 detailed and interrelated recommendations arose from reports developed by the CBA's task

force report, "Systems of Civil Justice," and the Ontario Civil Justice Review – a joint initiative of the Ontario Court of Justice (General Division) and the Ministry of the Attorney General. The recommendations were considered by a working group of Convocation's Professional Development and Competence committee. In its report to benches, the group identified those recommendations that related to the Society's role as a regulator and others that have an impact on lawyers generally, and offered its own recommendations on the contribution the Law Society should make to the implementation process.

The recommendations relating to

the Society's jurisdiction range from questions surrounding the increased use of mediators and arbitrators in the justice system and alternative dispute resolution (ADR), to solicitor-client relationships and fees. In a report to Convocation, the Professional Development and Competence committee underlined the importance of having the Law Society monitor those matters which have an

impact on the Society's mission to advance the cause of justice and the rule of law.

As part of the motion approved by benches, Convocation will

contact the CBA and the Ministry of the Attorney General to indicate the Society's interest in participating in the implementation committee work.

The CBA created its task force on civil justice in the spring of 1995 "to inquire into the state of the civil justice system in Canada and to develop strategies and mechanisms to assist in the continued modernization of the system." The province's Civil Justice Review's mandate was "to develop an overall strategy for the civil justice system in an effort to provide a speedier, more streamlined and more efficient structure which will maximize the utilization of public resources allocated to civil justice."

It is important
to monitor
those matters
affecting the
Society's mission

New bencher

CONVOCATION HAS a new bencher.

William D.T. Carter, a partner with Borden & Elliot, was elected at Convocation in April. He fills a vacancy created when Toronto bencher Denise Bellamy, the former director of legal services for the Ontario Management Board Secretariat, was appointed to the Ontario Court (General Division). Justice Bellamy had been a bencher since 1988.

Mr. Carter received his law degree from the University of Toronto and was called to the bar in 1977. Mr. Carter is a civil litigator with an emphasis on health law. In the 1995 bencher election guide, he cited fiscal integrity at the Law Society, diversity in the profession and adequately funded legal aid as issues of importance. ■

Discipline hearing rules streamlined

REVISED "RULES OF THE discipline hearing process" were approved by benchers at the April 25 Convocation. The revisions update the existing rules largely by codifying procedures that had developed over time, but that were not reflected in the collected rules.

The revised rules of the discipline process put the rules adopted by Convocation in 1992 and all pre-existing rules in a unified package, as well as incorporating newly developed practices so there is now one comprehensive, central set of rules. A background paper presented to Convocation states that the old set of procedural rules resulted in a system "that fail[ed] to enhance the efficiency of or simplify the discipline process for the Society, solicitors charged and their counsel, and the public, including complainants." Simply, it is now easier for everyone involved in the discipline

process – including complainants and charged lawyers and their counsel — to understand what's involved and what's expected of them.

Among the practices formalized is the increased use of one-bencher hearings on less serious discipline matters, such as failure to file or failure to reply to the Law Society. Also incorporated into the new code was Convocation's decision of last year which gave the Law Society the right to exercise the power of interim suspension.

The changes also streamline the pre-hearing process. The Hearing Management Tribunal (formerly the Hearing Assignment Tribunal) had been solely a vehicle of scheduling, but has evolved and incorporated into the procedural rules to also deal with certain specified interlocutory matters. Also captured by the new rules is the practice which prohibits a bencher who conducts a pre-hearing conference from sitting as a member of the committee hearing the complaint without the consent of all parties. ■

Roll-call votes

There were no roll-call votes at Convocation on April 25.

The votes below were on May 23.

1. That benchers accept the Bicentennial Report and Recommendations on Equity, and a longitudinal survey of Ontario Lawyers from 1990 to 1996 and that benchers adopt two policy statements:

- The Law Society is committed to the elimination of discriminatory practices in the legal profession, and;
- The Law Society is committed to the achievement of equity and diversity within the legal profession. Carried.

2. That Convocation table a motion which asked that the Law Society conduct and promote research into the challenges confronting the legal profession set out in the Barriers and Opportunities Report (i.e. balancing career and family and personal life, numbers in the profession, legal aid, access to justice, and insurance fees). Lost 34 to 7. ■

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

April 25, 1997 & May 23, 1997	Attend		Motions*	
	Apr. 25	May 23	1	2
Aaron, Robert	✓	✓	F	A
Adams, W. Michael	✓	✓	F	F
Angeles, Nora	✓	✓	F	F
Armstrong, Robert	✓	✓	F	F
Arnup, John	✓	✓	F	F
Backhouse, Nancy	✓	✓	F	F
Banack, Larry	✓	✓	F	F
Bobesich, Gordon	✓	✓	F	A
Carey, Tom	✓	✓	F	F
Carpenter-Gunn, Kim	✓	✓	F	F
Carter, William	✓	✓	F	F
Chahbar, Abdul Ali	✓	✓	F	F
Cole, Thomas	✓	✓	F	A
Copeland, Paul	✓	✓	F	F
Cronk, Eleanore	✓	✓	F	F
Crowe, Marshall	✓			
Curtis, Carole		✓	F	F
Del Zotto, Elvio	✓	✓	F	F
Eberts, Mary	✓	✓	F	F
Epstein, Philip	✓	✓	F	F
Feinstein, Abraham	✓	✓	F	F
Finkelstein, Neil	✓			
Gottlieb, Gary L.		✓	F	A
Harvey, Jane	✓	✓	F	A
Krishna, Virender		✓	F	F
Lamek, Paul		✓	F	F
Legge, Laura				
MacKenzie, Gavin	✓	✓	F	F
Manes, Ronald		✓	F	F
Marrocco, Frank	✓	✓	F	F
Martin, Arthur				
Millar, Derry	✓			
Murphy, Daniel		✓	F	F
Murray, Ross	✓	✓	F	F
O'Brien, Brendan	✓	✓	F	F
O'Connor, Shirley		✓	F	F
Ortved, Niels	✓			
Puccini, Helene	✓	✓	F	F
Rock, Allan				
Ross, Heather		✓	F	F
Ruby, Clayton	✓	✓	F	A
Sachs, Harriet	✓	✓	F	F
Scace, Arthur				
Scott, David	✓			
Sealy, Hope	✓	✓	F	F
Stomp, Tamara	✓	✓	F	F
Strosberg, Harvey	✓	✓	F	F
Swaye, Gerald	✓	✓	F	A
Thom, Stuart	✓			
Topp, Robert				
Wilson, Richmond	✓	✓	F	F
Wright, Bradley	✓	✓	F	F
Elliott, Susan (Treas.)	✓	✓		

Non-voting Benchers in attendance

April 25, 1997 – R. Cass, D. Lamont, A. Lawrence, P. B.C. Pepper

May 23, 1997 – R. Cass, G.H.T. Farquharson, P. Furlong, K. Jarvis, D. Lamont, A. Lawrence, P. B.C. Pepper, R. Yachetti, J. Wardlaw

*Motions A=against F=for Ab=abstain

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



IN PRACTICE

REAL ESTATE

Title insurance begins to transform conveyancing

A RECENT CLE PROGRAM (see sidebar) provided practitioners with information on the background and concepts of title insurance as well as some of the more nuts-and-bolts aspects of providing advice and protection to clients when using this product.

Below are extracts from a wide-ranging paper prepared by Brian Bucknall, a senior real estate practitioner in Toronto (with the assistance of Scott Lau), that was presented at the program.

• *Title insurers are required to obtain a certificate of title from an independent solicitor before issuing a policy. Lawyers, working within the strictures of Rule 5 of the Rules of Professional Conduct, may act for both a purchaser and a mortgagee. But can a lawyer, with proper disclosure, act concurrently for a purchaser, a mortgagee and a title insurance company?*

“Assuming full disclosure and assuming a transaction in which the lawyer can remain confident that the interests of the parties are not diverging, I see no conflict of interest in this set of relationships. In financing transactions, the borrower frequently pays its lawyer to provide opinions on which the lender and the lender’s counsel rely. Paying a lawyer to provide a certificate on which a title insurance company will rely is no different”.

• *Is the solicitor retained by the insurer as a second client in the same transaction; or is the preparation and production of a title certificate simply a service which the purchaser requests the solicitor to provide to the insurer?*

“The latter arrangement is likely to be

the standard...the model most frequently used will, I believe, be the model used with residential financings—the lawyer acts for the purchaser as well as the mortgagee and provides legal opinions to both, at the expense of the purchaser”.

• *What if the title certificate is inaccurate or incomplete? What if a title problem surfaces after the policy of title insurance has been put in place?*

Providing a
title certificate
is equivalent
to providing a
title opinion

“A lawyer who is retained and paid by a title insurer would, of course, have the same obligations to that client as to any other. I do not believe the situation is materially different if the lawyer is engaged, and paid, by the purchaser to provide the title certificate to the insurer...the insurer is intending to rely on the title certificate and to undertake legal obligations based on the lawyer’s work. At the very least, a suit for negligent misstatement would apply if the certificate is wrong”.

• *Would the insurer pursue a lawyer where the certificate is wrong?*

“The answers given by title insurers to this perennial question are, to put it politely, indirect. The insurers clearly have a right to sue, though we are fre-

quently told that the right is seldom exercised and...only where the most egregious errors have occurred. To date, there have not been any cases in Canada brought by any title insurance company against a solicitor.”

The TitlePlus subscription agreement between the solicitor and LPIC provides that the solicitor will not be liable for any costs, expenses or legal fees incurred in connection with any claim made under the TitlePlus policy. In addition, LPIC agrees to waive any rights of subrogation it may have against the solicitor. The solicitor will be liable to LPIC for any loss resulting from the solicitor’s failure to comply with the terms of the Agreement because of her/her intentional act or omission or gross negligence, or any fraudulent act or omission by the solicitor. And the solicitor will reimburse LPIC for the first \$500 paid by LPIC in respect of each claim.

First American Title Insurance materials state that with the use of the policy, the solicitor will still be liable for his/her opinion to the title insurer, but only to the extent of willful misconduct or gross negligence.

• *But would a title insurer have access to the lawyer’s professional insurance where an inaccuracy in a certificate caused damage to a purchaser?*

“My understanding is that a lawyer who provides a title certificate to a title insurer is in exactly the same position as a lawyer who provides a title opinion to a lender. The work involved is a legal service and the lawyer is insured with regard to difficulties which arise by reference to

that service”.

• *What if the insurer offers “to set a flat fee for the preparation of a title certificate in a particular transaction in which its policy is used?” Is such an arrangement proper?*

“Obviously, the arrangement will have been fully explained to all participants. Anything less than full explanation would be an impropriety. That having been said, the first question in analyzing such an arrangement is, ‘Does the lawyer obtain some private advantage which is of no benefit to the client?’ ”

Assume the lawyer gives the client the insurance alternatives as (i) a conventional legal opinion, (ii) a policy of title insurance from a private title insurer, or (iii) a TitlePlus policy of title opinion.

“The Rules of Professional Conduct contemplate circumstances in which a lawyer provides one service for the benefit of two clients and advises that the cost of the service should be split between the clients (the lawyer cannot ‘double-dip’ the fees) but if they are split other than equally, the clients should agree to the split which is being made.

GOVERNMENT

Public Guardian and Trustee charging new fees for services

THE LAW SOCIETY recently received communication from a solicitor who was concerned about receiving an invoice for legal services rendered from the Office of the Public Guardian and Trustee (PGT).

The solicitor, representing a charity involved in litigation, sent a required statutory notice about the litigation to the PGT, and PGT lawyers (apparently on their own initiative) later appeared in court to speak to a preliminary motion.

The solicitor was later surprised to receive a substantial account for the lawyers’ time for their appearance in court.

On querying the account, he was given a document entitled “Fees of The Public Guardian and Trustee,” promulgated pursuant to s.8(2) of the *Public Guardian and Trustee Act*, R.S.O. 1990

c. P. 51, as amended.

This schedule of fees was signed by the Attorney General on March 29, 1996, the day after Bill 19, an “omnibus” bill amending several estates-related statutes, received Royal Assent. Subsection 75(2) of the Bill amended s. 8 to allow the PGT to “charge fees for anything done...under this or any other Act.”

The fee schedule is little known outside the charities bar, and Jay M. Chalke, Deputy Public Guardian and Trustee - Legal Services, acknowledges that it has never been published in the government’s *Ontario Gazette*, although he says, “we’re giving it out to anyone who asks for it.”

The PGT, Chalke says, has always collected fees for its work, but in the

which is directly relevant to the client’s expenses on a transaction and there is no increase in the lawyer’s remuneration.” ■

Program points to future?

The May 6 CLE program on title insurance used satellite technology to reach nearly 3,000 lawyers in 14 centres throughout the province.

The program – offered jointly by the Law Society, CBA-O and CDLPA, and sponsored by LPIC – originated from the Metro Toronto Convention Centre with broadcast to members in Barrie, Brampton, Hamilton, Kenora, Kingston, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins and Windsor.

Title insurance is the second largest CLE event in Ontario (surpassed only by the 1985 program on the then-new Rules of Civil Procedure), but it may well be eclipsed in its turn by the sequel – the upcoming November 10 program on electronic registration (see back cover).

This success has encouraged speculation that satellite transmission may be the solution to a chronic problem facing CLE providers – namely, delivering programs more equitably to all regions of the province. But the still-high cost of the technology suggests it may be most appropriate and efficient for those programs most likely to generate unusually high attendance – typically, programs on major new legislation and where there is an outside sponsor to offset expenses.

An advisory group is currently working to advise the Professional Development and Competence Committee on various matters, including how to increase access to CLE – technologically and otherwise – and lower its cost.

- the amendment to previously issued letters patent for a charitable corporation (\$150); and
- where there is a passing of accounts and no attendance is required at a hearing, the fee is equal to costs under Tariff C of the Rules of Civil Procedure.

When PGT solicitors are required to

attend a hearing (or render any other legal service) the hourly rates of legal counsel vary range from \$100 to \$200, depending on years of experience.

Chalke stresses that the fee schedule is currently under "active review" and the PGT welcomes comments or input from the bar. The new fee schedule, he

says, will be published in the *Ontario Gazette*, "so it'll be out there in a public way." Comments may be sent to: Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, Ontario M5G 2M6
Fax: (416) 326-1366 ■

CONDUCT & ETHICS

Facilitating file transfers between lawyers

WHEN THE SOLICITOR-CLIENT relationship ends, either because the client loses confidence in his or her lawyer, or the lawyer is obliged to withdraw under Rule 8 of the Rules of Professional Conduct, it usually becomes necessary to transfer the client's file to a successor solicitor.

This transfer can often be a delicate

operation. In making the transfer, some lawyers are very defensive about which parts of the file should be passed along to the successor solicitor. Some lawyers will often routinely photocopy and retain everything, while a recipient lawyer will often insist on complete transfer of all file documents.

The client is generally entitled to any file document that was in existence before the lawyer was retained or any document that was prepared by the lawyer for the client's benefit.

The lawyer owns any correspondence from the client, including letters of authorization and instruction. The client is

Terminating a retainer

While the client may put an end to the solicitor-client relationship at any time, a lawyer does not enjoy the same privilege. He or she must complete the legal service as ably as possible unless there is justifiable cause to end the relationship.

That's the essence of Rule 8 of the Rules of Professional Conduct, which sets out the circumstances where a lawyer may terminate a relationship with the client. Avoiding prejudice to the client is the overriding ethical factor in all lawyer-driven terminations.

For example, a lawyer must insure the client is given adequate notice of the termination, and must do everything possible to minimize expense and assure the orderly transfer of the matter to a successor lawyer. (see story above)

Under certain circumstances, a lawyer will be under a positive duty to withdraw, for example after discharge by the client, or when instructed to do something inconsistent with his or her duty to the court.

If the client is guilty of "dishonourable conduct" or has taken a position solely to harass or maliciously injure another, the lawyer is also under a duty to withdraw.

A lawyer may also withdraw at his or her option when there's a serious loss of confidence between the lawyer and client – when the client deceives the lawyer, for example.

And the lawyer may withdraw where the client fails to pay fees or cover disbursements, but a lawyer cannot withdraw for non-payment if it would result in serious

prejudice to the client.

Avoiding prejudice is largely a matter of timing and properly servicing clients: Lawyers who are good at managing their clients create less prejudice when terminating the relationship.

Section 6 of Rule 8 sets out specific provisions for criminal proceedings, where terminating the retainer for non-payment is allowed unless the trial date is too soon for the client to adequately brief another lawyer.

Some lawyers are concerned with the practical problem of terminating a retainer when the client holds a non-transferable legal aid certificate. Often judges will not allow a lawyer off the record because it effectively means the client will be unrepresented as legal aid funding will lapse with the retainer.

Being forced to stay on the record puts lawyers in a difficult position. Even where the client signs a Notice of Intent to Act in Person, the client often doesn't understand what he or she is signing.

When lawyers want to get off the record, they can make things easier by voicing their willingness to co-operate with successor counsel and facilitating the transfer of the file.

If a motion is needed to get off the record, it's usually not necessary to go into elaborate detail over the reasons why the solicitor-client relationship has broken down; indeed in some contexts any detailed disclosure could result in prejudice to the client.

Section 15.04 of the Rules of Civil Procedure provides details for a solicitor seeking to get off the record.

entitled to copies of any letters sent by the lawyer to a third party.

Vouchers for disbursements made for the client belong to the client, but notes of interviews, trial preparation, office journals and account books belong to the lawyer. (For more on document ownership, see: "A Lawyer's Authority Over Documents on Termination of Retainer," *The Law Society of Upper Canada Gazette*, Volume XV, No. 1, March 1981; p. 103. See also: *Cordery on Solicitors* (8th Edition), Butterworths, London; p. 89).

In some circumstances, it may be useful for lawyers to facilitate the transfer by a face-to-face meeting where they can determine what the successor actually needs to carry on with the client's retainer.

Nevertheless, the transferring lawyer should always take care to retain what's needed to defend himself or herself in the event of an assessment of costs or a future negligence suit from the client.

Often a smooth transfer is clouded by the matter of an outstanding account for services, with the former solicitor asserting a solicitor's lien over the client's documents.

While the section 8 of Rule 8 imposes a duty on lawyers to deliver "all papers and property," the duty is nevertheless subject to the lawyer's right of lien and section 10 offers a general guideline for its enforcement – it shouldn't be enforced where it would "prejudice materially the client's position."

Notwithstanding Rule 8, the Law

Society has no jurisdiction to order a lawyer to deliver up a file or forgo the assertion of a lien. Only a court of law can make such an order. (For a useful guide see: "Solicitors' Liens," *The Law Society of Upper Canada Gazette*, Volume XIX, No. 1, March 1985; p. 91).

Even where there's an unpaid account, a transfer meeting between lawyers is recommended, with the former solicitor permitting a full examination of the file as a gesture of good faith.

The successor may discover the file contents are not needed to carry on with the client's case, or may conclude they are indispensable, in which case he or she may want to press the new client to settle the account. If the client believes the fee is too high, he or she can seek an assessment of the account.

The new lawyer may consider paying the outstanding fees, but this should be done only where the client agrees, in advance, that such moneys are a loan, not a gift, and a fair rate of interest is agreed upon.

The successor lawyer may also give an undertaking that outstanding fees will be paid personally, or from the proceeds of litigation, but such an undertaking will only be good only as long as the successor lawyer has the file in his or her possession.

If the former lawyer refuses to hand over the file despite the successor's offer of an undertaking, the successor may be entitled to obtain the file contents through an order obtained through the court. Such

an order will require the former lawyer to deliver the file and it's a relatively simple and inexpensive method.

Even when both lawyers facilitate a smooth transfer of the file, costs can become an issue. There are no clear guidelines, but it is usually easier if the former lawyer absorbs the time cost of the transfer, if at all possible.

"Clients changing lawyers are often not happy," says Stephen Traviss, the Law Society's senior counsel for professional conduct. "A lawyer will usually

An outstanding
account for services
often clouds
a smooth
transfer

have less aggravation if he or she just doesn't send an account for the transfer."

Still, if a former lawyer insists on being paid for time spent, he or she might try to get an agency account from the lawyer who's taking over the file, especially if the former lawyer spends time getting the successor up to speed.

"An hour spent with someone who's familiar with the file can be absolutely invaluable and in the long run, can be a great time-saver for the successor," says Traviss. ■

THE COURTS

Report coming on future of high-tech courtrooms

AFTER MORE THAN TWO years of experimenting with recording systems in three Ontario court houses, the Joint Committee on Court Reporting is in the final stages of preparing its report for the Attorney General. The report could form the basis for a province-wide transformation of court rooms or it could be the final chapter in an experiment that has

received mixed reviews.

In late 1994 and early 1995, court houses in London, Picton and North Bay were equipped with sensitive recording and amplification equipment. As part of the transformation, the jobs of court reporters and clerks were merged into a single clerk-monitor position. In addition to performing traditional clerk duties, the

clerk-monitor was responsible for operating the tape recorder and keeping a written log that corresponded with the recording.

The pilot project was designed to answer four basic questions:

- could a recording system capture and record an accurate court record?
- could transcripts be produced more

quickly for less money?

- could the jobs of reporters and clerks could be merged?
- would operating such a system would save money?

Local evaluation committees were established in all three cities. They worked with an independent evaluator appointed by the Ministry and interviewed various participants in the system. Each local committee has produced a report about the pilot project. Those reports have been forwarded to the Joint Committee.

Although the final report has not been written, several observations are common to all three test sites, according to Mike Uhlmann, project director of court support services with the Ministry and formerly manager of the pilot project.

Among those surveyed, almost exactly half liked the new system and half did not. A breakdown of opinions based on job categories was not available. At the time the system was implemented, many lawyers complained that private conversations with clients were amplified

The experiments in
London, Picton
and North Bay
have received
mixed reviews

throughout the court room and recorded. And some initial transcripts contained numerous errors.

Another problem has been acknowledged by the Ministry and would be changed if the program were launched on a wider basis. "The ability to combine the functions of court reporters and clerks was difficult in very busy courtrooms," Uhlmann says. "In courts with a lot of paper work, like first appearance courts, it was impossible to combine the functions."

The Ministry is pleased with the

accuracy of records and transcripts. Uhlmann says the error rate was "well below three per cent," a benchmark used when court reporters are tested. As well, he said, the time required to get transcripts was reduced. The average turnaround was 17 days, although emergency transcripts were processed more quickly.

The total cost of the project is not available. However, the contract to install equipment in 22 courtrooms in London was worth \$600,000. Uhlmann says the savings realized during the pilot suggests the cost of the equipment could be paid off in about three years, after which the

LEGAL AID

Facts and figures for 1996/97

THE PLAN ISSUED 74,792 certificates in the fiscal year ended March 31, 1997. In criminal law, the Plan issued 51,347 certificates, 13,973 for family law, 5,761 for immigration and refugee law cases and 3,711 for other civil cases.

In actual certificate costs, 49.6 per cent of the money spent went to criminal certificates, 35.3 per cent was spent on family, 9.8 per cent was spent on immigration and refugee and 6.3 per cent was spent on other civil certificates. The average cost per case was \$1,642. In criminal law, the average case cost was \$1,399, family was \$1,897, immigration was \$2,429 and other civil cases were \$1,689 on average.

Level three lawyers (the most senior lawyers) accepted 49 per cent of all certificates acknowledged. In criminal law, 56 per cent of certificates acknowledged were accepted by level three lawyers, 24 per cent by level two (intermediate) lawyers and 20 per cent by lawyers at level one level (basic level of experience). In family law, 33 per cent were acknowledged by level three, 28 per cent by level two and 38 per cent at level one.

Over 105,118 final accounts were paid during the fiscal year, with 90 per

cent of final accounts being paid within 60 days. This was the first year that lawyers were operating with hard caps on fees paid. Capping amounts were set at \$150,000 for level one lawyers, \$168,750 for level two lawyers and \$187,500 for level three lawyers. No one reached the capping level. Twenty-two lawyers reached 90 per cent of their cap, 51 lawyers were paid 75 per cent of the capping amount, 210 reached 50 per cent of the cap and 700 received fees up to 25 per cent of the cap.

province would be saving money operating court rooms.

Costs are likely to be higher today though, not just because of inflation but because the equipment used in the test was not sophisticated enough. Uhlmann says future systems should be digital rather than analog. They would be more reliable and could more easily be integrated into a high-tech court room.

He also says that the study has shown that a "one-size-fits-all approach just won't work. One kind of technology will not suit all court rooms."

The Joint Committee does not have a deadline for submitting its report. ■

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Child support variations and duty counsel

New federal legislation governing child support guidelines came into effect May 1, 1997. These new guidelines constitute a change in circumstances for many parents which will allow them to request changes to their existing child support payments through the courts.

The provincial government has increased counter staff in every courthouse by an equivalent of 67 full-time employees to help assist people with this new legislation. The counter staff will hand out information kits and forms for Ontario Court, Provincial Division, give general information and provide

general advice on how to fill out the forms. They will not, however, be offering any legal advice. Forms for the Ontario Court, General Division, are available from Grand and Toy stores across the province.

The federal government has allocated \$18 million for Ontario to be spent over five years to deal with the expected increase in demand for access to the justice system. However, neither they nor the provincial government have agreed to allocate any of that money to legal aid.

Duty counsel should direct to the court counter staff anyone asking for information or help with a variation of an existing support order. If legal advice is required, duty counsel may provide assistance consistent with existing service standards and budgets. In other words, duty counsel may provide advice, review forms and help in negotiations and settlements. Financial eligibility tests must be administered in phase I areas where testing is ongoing before providing help in negotiations and settlements.

Update on refugee law office

After two full years of operation, the Refugee Law Office pilot project has been extended until June 30, 1998, which will allow more time for a thorough analysis of the effectiveness of a staff-delivery system. During the last year, staff have been reduced from 13 to eight, including a director, two other lawyers, three paralegals and two support staff.

Congratulations to Joe Wilson

Joe Wilson, Area Director for Parry Sound Region since 1991 has been appointed to the Provincial Court Bench in Parry Sound. We have appreciated Joe's dedication and hard work over the last six years, and wish him well in his new position. We're also delighted that he will be staying on the McCamus Legal Aid Review. Lisa Lund has agreed to assume the position of Acting Area Director until the fall 1997.

Investigations

Last year, the Plan has investigated and referred to the Law Society 44 lawyers for practising while under suspension. When the Plan becomes aware that a lawyer has billed for services rendered during a suspension, it reduces the accounts payable to these lawyers for the full amount and takes steps to recover money already paid. All lawyers who bill the Plan while under suspension are reported to the Law Society.

The total amount to be recovered this year from lawyers practising while suspended totals \$166,627.07.

During 1996/97, the Plan reported the following list of 15 lawyers who billed \$2,000 or more while under suspension: Sarah Bagnall, Alexander Burke, John Dingle, John Duthie, David Hovland, Donald Iatzko, Marva Jemmott, William Mathers, Richard Matthews, James Millard, Bruce Rice, Walton Rose, Terence Shaughnessy, René St. Fort and Arthur Stern.

New duty counsel account forms

Starting in mid-June, area offices began distributing new form 12 and 13 duty counsel statement of account forms. The new criminal forms (form 12) are green and the family forms (form 13) are ivory. They are effective for services

provided from July 2, 1997 onwards. The format on the back for type of service provided has changed to allow the Plan to collect and report on more comprehensive information on duty counsel services. The quality and availability of information on the duty counsel services provided are in direct relation to the Plan's ability to justify its budgets and costs, therefore duty counsel lawyers should make every effort to report fully on all the services they are providing.

Have your client's circumstances changed?

Please remember that if your legally assisted client's circumstances have changed since you began work on the case, you must inform legal aid. For example, you must inform the Plan if your client is released from jail, returns to a job, receives assets from the sale of a home, or gets a job.

Legal Aid on the World Wide Web

Legal Aid information is available on the Law Society's site on the World Wide Web. Go to www.lsuc.on.ca/services/services_legal_aid.html to get Legal Aid's annual report, its submission to the Legal Aid Review and updates on duty counsel and family law. ■

TECHNOLOGY

Lawyers' map to the information highway

THE INTERNET PRESENTS enormous opportunities for the legal community in everything from marketing legal services through web pages to online research and continuing education programs.

But lawyers need to watch for the potholes in the information highway, says Leigh Webber, vice-president of the Practice Management Institute Inc. in Minneapolis, who spoke to Law Society benchers recently about the electronic era and its impact on the legal profession.

He notes that more and more law

firms are establishing web pages and communicating with their clients through e-mail. While these developments offer benefits and convenience to clients and the public, Webber, a former assistant executive director of the B.C. Legal Education Society, advises firms to make sure they have taken steps to limit exposure to liability.

Sending e-mail documents that are confidential and intended to be protected by solicitor-client privilege can be dangerous (see *OLG* Mar/Apr 1997, p.11). The problem, he explains, is in the structure of the Internet, in that a copy of a

message passes through a number of intermediaries enroute to the intended recipient. Technicians at Internet Service Providers (ISPs) have access to this mail and "any tech can read them," he says. ISPs will often make backup tapes of information on its system, which is later stored. That becomes fodder for smart litigators, who seek to discover such materials.

In terms of research on the net, Webber says one concern is that you do not know who compiled the information you've found or how up to date it is. "There is no assurance of accuracy."

Lawyers also need to ensure that the information they provide on their web pages is up to date and does not amount to issuing legal advice. Proper disclaimers should be made to limit potential negligence claims.

Firms should also ensure that their electronic systems have firewalls or other security measures to prevent hackers from entering and getting access to confidential files. Webber notes that in the infamous Oklahoma City bombing case, a Texas newspaper published what it purported to be a confession made by the accused to his lawyers, which was apparently obtained by someone accessing the firm's files.

There will also be questions raised in the future about jurisdictional issues, he predicts. Technically, someone in California could set up a web page to provide legal advice on Ontario law to Ontario residents. This will present challenges to regulators in the future.

Despite the bumps in the road, Webber says the Internet is here to stay. It was designed to withstand nuclear attack so that if some connections go down, information is re-routed to other servers, which makes blocking out or eliminating access to information very difficult.

On the plus side for the profession, the Internet has great potential for delivering legal education programs, he concludes. The audio and video capabilities of the Net and office computers means

that lawyers in distant places will likely one day sit at their computer and participate in an interactive, real-time broadcast of a CLE seminar. Or, better yet, the seminar could be stored in the computer and viewed at a convenient time, complete with fast forward and rewind capabilities. ■

FAMILY LAW

Child support guidelines

The recent introduction of the federal Child Support Guidelines has meant fundamental changes for family law practitioners.

The guidelines took effect on May 1, 1997 and they must be considered when drafting domestic contracts.

The stated objectives of the

guidelines are:

- to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- to ensure consistent treatment of spouses and children who are in similar circumstances.

The guidelines and simplified tables are available from the Department of Justice's website at http://canada.justice.gc.ca/Orientations/Pensions/Child/index_en.html ■

REGULATION

Electronic trust transfer requisition form

Further to the article in the Mar/Apr 1997 edition of the *Ontario Lawyers Gazette* (p. 18), Convocation on April 25, 1997 prescribed the Electronic Trust Transfer Requisition Form. Members will recall that changes were made to Regulation 708 permitting the use of electronic means to transfer funds out of trust accounts provided that stipulated minimum system and procedural requirements were implemented.

One such requirement is an Electronic Trust Transfer Requisition Form as prescribed by Convocation, signed by a lawyer.

The requisition form must contain particulars of the:

- amount of funds to be transferred;
- client name and file reference number;
- reason for payment;

- trust account to be debited (name of financial institution and account number);
- name of recipient;
- account to be credited (name of financial institution, branch address and account number);
- person requisitioning electronic trust transfer (signed and dated);
- person entering details of transfer (signed); and
- person authorizing transfer at computer terminal (signed).

The requisition form is available from the "Services and Information for Lawyers" section of the Law Society website (www.lsuc.on.ca). It can also be obtained from Practice Advisory at tel. (416) 947-3369. Members with questions about the form can contact the Audit Statutory Advisor at tel. (416) 947-5257.



TOUR D'HORIZON

LES PROPOS DE LA TRÉSORIÈRE

Deux années marquées par le changement et d'importants enjeux

LORSQUE J'AI PRIS mes fonctions de trésorière voici deux ans, le Conseil accueillait 22 nouveaux membres élus (sur 40) et un nouveau membre nommé (sur 4). Nous formions donc un groupe largement étranger au système, n'ayant



Susan Elliott

jamais jusqu'alors participé directement à cette instance de la réglementation professionnelle.

Ce groupe était acquis à l'innovation,

mais devait en même temps apprendre la coopération afin que les réunions du Conseil se traduisent par des positions et une direction réelles.

J'ai le plaisir de vous informer qu'à l'issue de ces deux années où nous avons débattu de tous les grands dossiers - de la crise chronique de l'aide juridique liée au désengagement financier et philosophique du gouvernement, du redressement de la compagnie d'assurances, du nombre d'avocats dans la province à la formation permanente obligatoire - les conseillères et les conseillers ont appris à concilier leurs divergences d'opinions et découvert les vertus du consensus.

Vous connaissez bien maintenant notre nouveau modèle de régie interne, fondé sur les orientations générales. Cela signifie tout simplement que les membres du Conseil définissent les objectifs et la vision globale du Barreau

tandis que la direction met en pratique, par des programmes concrets, l'impulsion donnée par le Conseil.

Ce changement, qui bouleversait deux siècles d'usages, ne fut pas une mince affaire. La marque distinctive de notre modèle de régie interne est de favoriser la coopération et le débat constructif dans un milieu valorisant les différences d'opinion. Les membres du Conseil ont adopté une structure nous permettant de parvenir à un consensus malgré la saine diversité des points de vue sur les questions d'actualité professionnelle. Ce nouveau mode de régie interne arme le Barreau face aux multiples enjeux de l'avenir. Il nous force à toujours regarder en avant et non en arrière.

Le Conseil a retrouvé son rôle de chef de file comme le montrent maintes initiatives importantes : formation récente de deux groupes de travail (voir le numéro de mars/avril 1997 de la Revue) chargés d'examiner les effets du changement sur la profession et de définir la notion de compétence professionnelle, approbation des recommandations du rapport sur la promotion active de l'équité, de la diversité et de l'égalité au sein de la profession, et mouvement de restructuration impliquant le personnel du Barreau pour focaliser autant que possible notre organisme sur le service à la clientèle et l'efficacité.

Grâce à notre modèle de régie interne, le Conseil a pris le temps d'examiner clairement le rôle du Barreau, à nous à qui il nous incombe de réglementer la profession dans l'intérêt

du public. Et s'il est vrai que nous défendons également les intérêts de la profession - qui est au service du public -, la séparation de ces deux objectifs fondamentaux n'est pas toujours parfaitement claire.

Cette distinction ressortira mieux si le projet de fusion entre l'Association des bâtonniers de comté et de district et l'Association du Barreau canadien - Ontario se réalise.

L'idée encore embryonnaire d'une union emporte mon adhésion pleine et entière. C'est une idée qui augure bien pour la profession car lorsqu'une nouvelle association représentera principalement les intérêts des juristes ontariens, le Barreau sera mieux placé pour exercer ses fonctions de réglementation et de discipline.

Cela ne veut pas dire que le Barreau n'offrira plus de programmes et services à ses membres, surtout lorsqu'ils renforcent la profession et ainsi l'intérêt public. Si le projet de fusion porte fruit, les sources de conflit entre l'autonomie, ou autoréglementation, et la promotion des intérêts des avocates et des avocats pourront tout simplement être soumise

Cette section vous est destinée à vous juristes francophones et francophiles de l'Ontario. Si vous désirez y publier des articles, écrivez-nous : Barreau du Haut-Canada, Osgoode Hall, Services en français, 130, rue Queen ouest, Toronto, ON M5H 2N6, (416) 947-5202. dpicouet@lsuc.on.ca.

à l'organisme concerné et ainsi recevoir l'attention nécessaire.

La résultante de ces deux forces - deux organismes aux missions bien définies (l'intérêt public dans un cas, les préoccupations des membres dans l'autre) - servira la profession et le public. Unis dans la volonté de doter l'Ontario des normes les plus élevées en matière de services juridiques, le Barreau et la nouvelle association auront tout naturellement tendance à agir de concert. Je crois pouvoir dire au nom de tous les membres du Conseil que l'idée nous enchante et que le Conseil espère s'associer activement à cette nouvelle réalité.

C'est la dernière fois que je m'adresse à vous en qualité de trésorière car mon successeur sera élu à l'assemblée du Conseil au mois de juin. J'ai assumé avec enthousiasme les fonctions de ma charge ces deux dernières années. Je ne peux imaginer de défi supérieur pour un avocat ni d'occupation plus intéressante!

Je souhaite bonne chance à mon suc-

cesseur qui, quel que soit le candidat choisi par le Conseil, bénéficiera comme moi de l'appui total du Conseil et de nos membres. J'aimerais remercier tous les membres du Conseil, qui ont fait preuve de tant de diligence pour discuter en profondeur des questions à l'ordre du jour chaque mois. En ma qualité de trésorière, j'ai tenu à débattre des grands dossiers qui méritent, selon moi, d'être constamment examinés et j'ai été récompensée par une équipe qui a fait montre de l'intelligence et de l'esprit constructif qu'exigeaient ces questions épineuses.

J'aimerais aussi remercier le directeur général, John Saso, l'équipe de direction ainsi que le personnel du Barreau dont l'engagement aux côtés de la profession juridique m'a grandement facilité la tâche. C'est avec fierté que je pense à nos réalisations et aux prochaines, alors que John Saso et le personnel s'emploient à accroître l'efficacité du Barreau et, partant, la qualité des services offerts à la profession et au public.

En terminant, j'aimerais remercier toutes les avocates et tous les avocats de l'Ontario avec lesquels j'ai travaillé comme trésorière. Notre profession juridique compte parmi les meilleures du monde, brillant par sa rigueur et son excellence. Cette année, j'ai eu également le plaisir de remettre les Prix du bicentenaire à 62 de nos collègues les plus méritants en hommage à leur engagement communautaire, qui font de cette province un lieu où il fait bon vivre et travailler.

Je suis très heureuse d'avoir eu l'occasion et l'honneur d'être trésorière, charge qui s'est avérée incroyablement exigeante, intéressante et intellectuellement stimulante. De nouveau, je remercie tous ceux et toutes celles qui m'ont accordé leur soutien au cours des deux dernières années et j'invite le Conseil et la profession à se joindre à moi pour appuyer sans faille le nouveau trésorier. ■

Susan F. Hirst

Promotion active de l'équité et de la diversité

LE CONSEIL, RÉUNI à Niagara-on-the-Lake le 23 mai pour la célébration du bicentenaire, s'est engagé à prendre des mesures concrètes afin d'éliminer la discrimination et d'assurer l'équité et la diversité au sein de la profession juridique. Ces deux objectifs sont maintenant inscrits dans des déclarations de principes du Barreau.

Tout en soulignant les progrès accomplis à l'égard des femmes et des groupes minoritaires, le Conseil a loué le plan d'action inscrit dans les recommandations du rapport sur l'équité qu'il a approuvées. Parmi les plus importantes, citons l'obligation d'affecter les ressources financières et humaines

nécessaires à la mise en oeuvre de politiques d'équité et la mise sur pied d'un programme qui assujettirait en pratique les cabinets et autres fournisseurs du Barreau à faire la preuve de pratiques acceptables en matière d'équité. Le rapport prône également l'adoption de politiques proactives précises, des contrôles réguliers, une étude démographique. Ces recommandations s'appuient sur d'autres études détaillant la discrimination à l'encontre des femmes, des avocats noirs et des stagiaires.

Télévirement des fonds en fiducie

La demande de télévirement des fonds en fiducie, prévue par le Règlement de l'Ontario 47/1997 approuvé le 14 février dernier, a été prescrite par le Conseil

lors de sa réunion du 25 avril 1997. La modification au Règlement 708 permet effectivement aux membres de sortir des fonds d'un compte en fiducie au moyen d'un système de télévirement (transfert de fonds électronique), compte tenu des exigences minimales énoncées aux paragraphes (10.1) à (10.4) du Règlement. La demande de télévirement de fonds en fiducie prescrite par le Conseil doit obligatoirement contenir les renseignements suivants :

- le montant du virement,
- le nom du client et le numéro de dossier,
- la raison du versement,
- le compte en fiducie à débiter (avec mention du nom de l'institution financière et du numéro de compte),
- le nom du bénéficiaire,
- le compte à créditer (avec mention du nom de l'institution financière, de

- l'adresse de la succursale et du numéro de compte),
- le nom et la signature de la personne demandant le télévirement des fonds en fiducie, ainsi que la date de la demande
- le nom et la signature de la personne ayant entré les données relatives au virement
- le nom et la signature de la personne ayant autorisé le virement à l'ordinaire.

Pour obtenir de plus amples renseignements ou une copie du formulaire, veuillez communiquer avec le Service des formulaires au (416) 947-3932 ou avec le Service de consultation sur la pratique au (416) 947-3369.

Discipline

En avril et mai derniers, le Conseil a pris des sanctions disciplinaires contre 17 avocats et une avocate. Il a prononcé la radiation de M^{es} R.N.I. Bates (détournement de fonds), A.P. Dufresne (détournement de fonds), S.D. Goldberg (détournement de fonds/procureur incontrôlable) et S. Jaffer (procureur incontrôlable); a autorisé à démissionner M^{es} A. Epstein (conflit d'intérêts) et I. Goodman (conflit d'intérêts); a suspendu les droits de M^{es} W.G. Punnett (tribunaux/confrères induits en erreur), D.E. Howlett (exercice sous suspension), J. W. Evans (conflit d'intérêts), W.L. Riley (défaut de rendre compte), D.S. Hovland (exercice sous suspension), B.M. Toneguzzi (service à la clientèle inadéquat), B.E. Caminsky (violation d'un engagement), M.K.I.

La francisation du site du Barreau

Le site Web du Barreau (<http://www.lsuc.on.ca>) est en pleine transformation et vous devriez pouvoir y naviguer dans la langue de Molière ou de Shakespeare dans le courant de l'été.

Rumack (conflit d'intérêts) et C.J. Wallace (formulaires non produits); a réprimandé M^{es} N.F. Williams (service à la clientèle inadéquat), M. Henry (non-communication de dossier) et A. Tassy (conduite indigne).

En bref

- Le Conseil souhaite participer activement à la refonte de la justice civile, aux côtés de l'ABC et du ministère du Procureur général, et s'associer à la mise en oeuvre des recommandations qui a débuté. Il compte faire entendre sa voix sur toutes les questions touchant la profession, sur son rôle d'organisme directeur, et plus généralement sur la promotion de la justice et la primauté du droit.
- Assemblée générale annuelle : rejet des motions présentées (Échec aux examens du CFP en français et souscription de l'assurance responsabilité sur le marché) et présentation des états financiers vérifiés faisant état de bonnes nouvelles : produits supérieurs aux prévisions budgétaires, amélioration des déficits du Fonds d'administration générale, du Fonds d'indemnisation de la clientèle et du

Qui sera trésorier?

Le Conseil élira son nouveau chef le 27 juin 1997. Voir les déclarations des deux candidats, Tom Carey et Harvey Strosberg, à la page 4.

Fonds d'assurance responsabilité professionnelle, réduction du coût des programmes et économies liées à la restructuration. Veuillez composer le (416) 947-3465 pour obtenir une copie du rapport annuel en français ou en anglais.

- William Carter du cabinet Borden & Elliot remplace au Conseil Denise Bellamy, nommée juge à la Cour de l'Ontario (Division générale) à Toronto. Reçue au barreau en 1980 et conseillère depuis 1988, Denise Bellamy a dirigé les services juridiques au Secrétariat du Conseil de gestion du gouvernement provincial et a oeuvré au sein de la Fédération des professions juridiques du Canada et du Centre ontarien de formation à la plaidoirie.
- De nouvelles règles applicables aux procédures disciplinaires du Barreau, sorte de codification des pratiques de ces dernières années, ont été approuvées.

L'AIDE JURIDIQUE

Bilan sommaire de 1996-1997

LE RÉGIME A délivré 74 792 certificats au cours de l'exercice terminé le 31 mars 1997. Ainsi, 51 347 certificats ont été délivrés en matière criminelle, 13 973 en droit de la famille, 5 761 en matière d'immigration et d'aide aux réfugiés et 3 711 dans d'autres causes civiles.

En ce qui concerne les coûts des certificats, 49,6 % des sommes ont été dépensées en matière criminelle, 35,3 % en droit de la famille, 9,8 % en matière d'immigration et d'aide aux réfugiés et

6,3 % dans d'autres affaires civiles. Le coût moyen d'une affaire s'est chiffré à 1 642 \$, soit 1 399 \$ en matière criminelle, 1 897 \$ en droit de la famille, 2 429 \$ en matière d'immigration et 1 689 \$ dans les autres affaires en matière civile.

Les avocats et avocates de niveau III (le plus haut niveau d'expérience) ont accepté 49 % des certificats reconnus. En matière criminelle, 56 % des certificats reconnus ont été acceptés par des professionnels de niveau III, 24 % par

ceux de niveau II (niveau intermédiaire) et 20 % par des membres de niveau I (premier niveau d'expérience). En droit de la famille, le niveau III a accepté 33 % des certificats, le niveau II 28 % et le niveau I 38 %.

Le Régime a payé plus de 105 118 comptes finaux au cours de l'exercice, dont 90 % dans les 60 jours de leur réception. C'était la première année qu'on plafonnait les honoraires juridiques, respectivement à 150 000 \$ (niveau I), 168 750 \$ (niveau II) et 187 500 \$ (niveau III). Aucun avocat n'a atteint le maximum. Par ailleurs, les revenus de 22 avocats et avocates se sont élevés à 90 % du plafond, 51 en ont retiré 75 %, 210 ont atteint 50 % et 700 ont reçu des honoraires allant jusqu'à 25 % du maximum.

Modifications d'ordonnances alimentaires et avocats de service

La nouvelle loi fédérale touchant les aliments aux enfants est entrée en vigueur le 1^{er} mai 1997. Les nouvelles lignes directrices changent la situation de nombreux parents, qui pourront s'adresser aux tribunaux pour faire modifier une ordonnance alimentaire en faveur d'un enfant.

Le gouvernement provincial a augmenté le personnel dans tous les palais de justice en les dotant de l'équivalent de 67 postes à temps plein à la suite de l'adoption de la nouvelle loi. Ces employés distribueront des trousseaux d'information et des formulaires pour la Division provinciale de la Cour de l'Ontario, renseigneront le public et l'aideront à remplir les formulaires. Toutefois, ils ne prodigueront aucun conseil juridique. Les formulaires de la Division générale sont disponibles dans les magasins Grand & Toy de la province.

Le gouvernement fédéral a accordé 18 millions de dollars, sur cinq ans, à l'Ontario pour répondre à l'augmentation prévue de la demande de services juridiques. Par contre, ni le gouvernement fédéral ni le gouvernement

provincial n'ont convenu d'en allouer une partie à l'aide juridique.

Les avocats et avocates de service devraient diriger vers les greffes des tribunaux les personnes en quête de renseignements ou d'aide au sujet de la modification d'une ordonnance alimentaire. Les avocats de service doivent dispenser les conseils juridiques nécessaires en respectant les normes et les budgets existants. En bref, les avocats et avocates de service peuvent donner des conseils, revoir les formulaires et aider à négocier et régler des cas. Avant d'intervenir dans une négociation ou un règlement, il y a lieu d'appliquer les critères d'admissibilité financière dans les secteurs où ceux-ci sont mis à l'essai dans la phase I du programme.

Bureau d'aide aux réfugiés

Mis en place il y a deux ans, le projet-pilote du Bureau d'aide aux réfugiés a été prolongé jusqu'au 30 juin 1998 afin de permettre une meilleure évaluation des services offerts par des avocates et avocats salariés. Pendant la dernière année, le personnel est passé de treize à huit membres et comprend le directeur, deux autres avocats, trois techniciens et techniciennes juridiques ainsi que deux membres du personnel de soutien.

Félicitations adressées à Joe Wilson

M^e Joe Wilson, directeur régional à Parry Sound depuis 1991, a accédé à la magistrature provinciale à Parry Sound. M^e Joe Wilson a démontré un grand dévouement ces six dernières années et nous lui souhaitons une longue carrière. Nous sommes ravis qu'il reste membre de la Commission McCamus sur la révision de l'aide juridique. M^e Lisa Lund a accepté d'être directrice régionale intérimaire jusqu'à l'automne 1997.

Enquêtes

L'an dernier, le Régime a enquêté sur les activités de 44 avocats et avocates qui auraient exercé sous le coup d'une suspension; ces cas ont été déferés au Barreau. Dès que le Régime constate qu'un avocat a présenté une facture pour des services rendus sous suspension, il réduit le compte payable à cet avocat du plein montant et prend des mesures pour recouvrer les sommes déjà payées. Le Régime dénonce au Barreau tous les avocats et avocates qui se livrent à cette pratique.

Le montant à récupérer se chiffre au total à 166 627,07 \$. Au cours de l'exercice 1996-1997, le Régime a publié le nom de 15 professionnels sous suspension qui ont facturé des honoraires de 2 000 \$ ou plus :

M^{es} Sarah Bagnall, Alexander Burke, John Dingle, John Duthie, David Hovland, Donald Iatzko, Marva Jemmott, William Mathers, Richard Matthews, James Millard, Bruce Rice, Walton Rose, Terence Shaughnessy, René St. Fort et Arthur Stern.

Nouveaux formulaires pour les avocats de service

À la mi-juin, les bureaux régionaux ont commencé à distribuer les nouveaux formulaires 12 et 13, ou états de compte des avocats de service. Le formulaire 12 (matière criminelle) est vert et le formulaire 13 (droit de la famille) est de couleur ivoire. Il faut les utiliser pour les services fournis après le 1^{er} juillet. Les rubriques au verso (types de services rendus) ont été modifiées pour permettre au Régime de recueillir des renseignements plus complets sur les services ainsi offerts. Le Régime pourra justifier son budget, ses besoins et ses dépenses d'autant mieux que l'information fournie sera précise. Il importe donc que

Des réponses à vos questions

Dans ce nouveau dépliant, l'Aide juridique répond aux questions les plus fréquentes sur les services offerts en droit de la famille, notamment dans le domaine de la violence faite aux femmes. Vous pouvez en obtenir une copie en téléphonant à Elaine Gamble, coordinatrice des communications, au (416) 204-4728.

les avocats et avocates de service fassent une description complète des services qu'ils rendent.

La situation de votre client a-t-elle changée?

N'oubliez pas de signaler à l'Aide juridique tout changement intervenu dans la situation de votre client ou cliente depuis le début de votre mandat. Ainsi, vous devez informer le Régime si, par exemple, votre client ou cliente est libéré de prison, reprend son emploi, reçoit de l'argent provenant de la vente d'un immeuble ou décroche un emploi.

L'Aide juridique sur Internet

Le site du Barreau contient de l'informa-

tion en matière d'aide juridique. L'adresse www.lsuc.on.ca/services/services_legal_aid.html vous donne accès au rapport annuel de l'Aide juridique, aux observations présentées à la Commission sur la révision de l'aide juridique et à de l'information sur les avocats de service et le droit de la famille. ■

Le transfert d'un dossier

Lorsque la relation procureur-client prend fin, le transfert du dossier s'impose, mais peut s'avérer délicat. Est-il nécessaire de tout remettre à l'avocat qui prend la relève? À qui appartient

les pièces du dossier? Comment se protéger en cas de contestation ultérieure? Que faire lorsque des honoraires ou débours n'ont pas encore été payés? Qui peut ordonner le transfert? Une rencontre entre les deux avocats est toujours conseillée car elle vous aidera à débroussailler le terrain. N'oubliez pas non plus que, selon la Règle 8 du *Code de déontologie*, les membres sont dans l'obligation de remettre tous les documents et biens à leurs clients, sous réserve d'un privilège, privilège qu'ils ne sauraient faire valoir s'il risque de compromettre gravement la position des clients. (Voir les articles sur la rupture du mandat et le transfert à la page 14.) ■

EN PRATIQUE

Lorsqu'un confrère est suspendu

QUI N'A PAS DÉCOUVERT, un jour ou l'autre, que l'avocat de la partie adverse était sous le coup d'une suspension? Et qui ne s'est pas demandé quelles étaient la conduite à adopter, les mesures immédiates à prendre? Le Barreau se tient à votre disposition pour répondre à vos questions précises, vous remettre des lignes directrices et vous propose en attendant quelques principes généraux.

Si le dossier porte une transaction commerciale, immobilière ou autre

1. Avant de communiquer le moins possible avec la partie adverse, écrivez au membre dont les droits ont été suspendus pour l'informer que vous êtes au courant et dites-lui que vous serez peut-être dans l'obligation de traiter directement avec son client ou sa cliente. Demandez-lui de vous donner, dans un délai précis, le nom de la personne le remplaçant, faute de quoi vous devrez entrer en contact avec sa cliente ou son client désormais non représenté. N'acceptez aucun engagement de l'avocate ou l'avocat suspendu. N'acceptez pas non plus de l'autre partie des directives visant à remettre des fonds à l'avocate ou l'avocat sous suspension, qui ne peut d'ailleurs pas détenir en main tierce des fonds ou documents.
2. Traitez la partie adverse comme si elle n'était pas représentée et efforcez-vous de la convaincre de retenir les services d'un membre en règle. Dans tout rapport direct, abstenez-vous de lui donner des conseils juridiques et faites-lui bien

comprendre qu'elle ne peut pas s'attendre à ce que vous lui en prodiguez.

3. Adressez et envoyez directement à la partie adverse toutes les réquisitions et la correspondance.
4. L'offre réelle des sommes dues et des documents doit être faite directement à l'autre partie; de même, les avis et documents à signifier doivent lui être signifiés directement.
5. Ne négociez rien avec l'avocate ou l'avocat suspendu «en qualité de mandataire» de la partie adverse (prolongation du délai de présentation des réquisitions, report de la date de clôture, renonciation à certains droits de la partie adverse, modification quelconque des modalités du contrat). Faites directement à la partie non représentée par un membre en règle l'offre réelle des sommes dues ou des documents.
6. Sachez que l'avocate ou l'avocat sous suspension ne peut remplir les déclarations prévues par la *Loi sur l'aménagement du territoire* qui figurent sur la formule 1 de la *Loi portant réforme de l'enregistrement immobilier*.

Dans le cas de poursuites judiciaires

1. Écrivez à l'avocate ou l'avocat suspendu et demandez-lui, d'une part, de confier le dossier à un membre en règle et, d'autre part, de signifier et de déposer, dans un délai précis, l'avis de constitution d'un nouveau procureur, faute de quoi tous les documents seront signifiés directement au client ou à la cliente n'étant plus représenté.
2. Abstenez-vous de donner des conseils juridiques à la partie adverse lorsque vous traitez avec elle.
3. Ne négociez pas avec l'avocate ou l'avocat suspendu «en qualité de mandataire» de l'autre partie, qu'il s'agisse des modalités de la transaction, des offres de transaction, des dates d'enquête préalable ou des contre-interrogatoires.

Deux langues à la fois: tour de Babel ou défi réalisable dans un climat serein ?

M^e Saint-Aubin

SURPRISE POUR CERTAINS, le droit d'utiliser le français comme langue officielle dans toutes les instances, partout en Ontario, fait pourtant désormais partie de notre droit. Bien que ces dispositions de la *Loi sur les tribunaux judiciaires* (articles 125 et 126) soient en vigueur depuis près de deux décennies, la surprise est parfois telle qu'on semble pris au dépourvu quant à la façon d'opérer. Puisqu'il est souhaitable que l'exercice de ce droit ne cause pas de drame (du moins pas plus qu'il n'existe présentement dans le monde du litige), voici quelques suggestions pour que tout se déroule bien dans ces instances civiles.

Dans un milieu aussi divers que l'Ontario, il était prévu que l'usage du français comme langue officielle se ferait souvent dans un contexte où il faudrait tout autant respecter les droits linguistiques des parties en cause qui utiliseraient «l'autre langue officielle», c'est-à-dire l'anglais. D'ailleurs, avant de mettre ces dispositions en vigueur, plusieurs modèles ont été mis à l'épreuve au moyen de procès simulés, grâce à la participation des étudiants de la Faculté de droit de l'Université d'Ottawa.

Les éléments essentiels, selon les articles de la Loi et du règlement qui s'y rattache, sont les suivants :

Le juge est bilingue et en mesure de recevoir la preuve directement sans l'intervention d'un interprète.

Cet aspect est à lui seul la plus grande réalisation de l'oeuvre amorcée courageusement en 1975 par l'honorable R. Roy McMurtry, alors Procureur général de l'Ontario et actuel juge en chef de l'Ontario. Pour bien respecter l'intention de la loi, il est crucial que le

juge soit tout à fait en mesure de comprendre directement toute la preuve, reçue en français ou en anglais. Le juge ne doit pas avoir à compter sur l'interprète.

Chacun peut témoigner dans la langue officielle de son choix.

Cela devrait aller de soi mais une approche plus restrictive, qui portait atteinte à ce principe, a parfois été adoptée. Autrement dit, le justiciable de langue française qui exerce son droit devrait être libre de témoigner en partie en anglais s'il le désire.

Rappelons-nous que
le but de la démarche,
c'est que la justice soit
rendue et qu'il soit
manifeste qu'elle
ait été rendue.

Les présentations des avocats se font dans la langue officielle de leur choix, sans contrainte de la part du tribunal ou de celle de leur confrères.

Personne ne devrait avoir à «prouver» quoi que ce soit ou avoir à éviter de déplaire à qui que ce soit.

L'interprétation dite «consécutif» fournie par un interprète professionnel agréé par le ministre du Procureur général est prévue pour les parties et les avocats qui ne comprennent pas les deux langues officielles.

Les procès simulés ont démontré qu'il n'était pas possible d'éviter cette forme d'interprétation «effectuée au cours de

pauses périodiques dans les échanges et exposés oraux et de façon que toutes les personnes présentes l'entendent». Sinon les avocats n'auraient pas le temps de faire objection à une question qu'ils jugent inappropriée. Le recours à l'interprétation simultanée est lourd et coûteux.

Le tribunal devrait créer un climat favorable à l'usage des deux langues.

S'il est vrai que le Règlement n'aborde pas, dans les moindres détails, le déroulement des procès bilingues, il reconnaît au juge un grand pouvoir discrétionnaire à cet égard. Aussi appartient-il au juge de faire des interventions opportunes et rassurantes dans les deux langues.

Les parties peuvent s'entendre pour adapter les procédures aux circonstances.

Une partie qui comprend l'autre langue devrait pouvoir renoncer au recours à l'interprétation consécutive qui alourdit les procédures. Personne ne devrait être astreint à une démarche rigide qui ne correspond pas aux besoins.

Rappelons-nous que le but de la démarche, c'est que la justice soit rendue et qu'il soit manifeste qu'elle ait été rendue. Le justiciable de langue française, qui comprend peut-être bien l'anglais, devrait malgré tout avoir la possibilité de témoigner et d'être accepté dans sa langue, en toute liberté. Voilà l'essentiel. Le reste est secondaire. ■

M^e Saint-Aubin exerce le droit en tant que directeur de la Clinique juridique Stormont, Dundas et Glengarry. Premier coordonnateur des services en français au ministère du Procureur général, il a été responsable de la mise sur pied d'un système judiciaire bilingue en Ontario.



PERSPECTIVE

The legal profession's role in politics is diminishing

AS THIS IS BEING WRITTEN many lawyers in Ontario and across Canada have temporarily abandoned their practices and are hard at work on the hustings, trying to solicit enough votes to secure a seat in our 36th Parliament. In the popular imagination law and politics are symbiotic vocations: the public assumes most politicians start out as lawyers, and as for those who take up the law, it further assumes they are looking for an easy entrée into a glamorous and rewarding political career.

The public view in this case is slowly losing its factual foundation. It had more validity back in the nineteenth century when lawyers occupied up to 40 per cent of the seats in our House of Commons and an even greater proportion of our federal cabinet portfolios. (In the last House of Commons, Ontario lawyers held 19 per cent of the province's seats, compared to the national average of 17 per cent.)

If the trend of the past 130 years has continued, the new Parliament elected on June 2 has an even smaller proportion of lawyers than the previous one, although the public perception linking law and politics will probably take longer to abate than the arithmetic. But numbers will have to drop considerably before they reflect lawyers' ratio to society: 1:500; their ratio in the last Commons: 1:6. In the past, at least, lawyers stood a better chance of getting elected than non-lawyers. Once elected they were favored for a cabinet appointment, as witness the ministry of the last Parliament in which lawyers held 36 per cent of the posts, more than double their Commons repre-

sentation. And three-quarters of our prime ministers have been lawyers. Starting with up to 40 per cent of Commons seats in the half century after Confederation and sliding to one-third by the end of the Second World War and then to 17 per cent in the last Parliament, lawyers have endured a slow but gradual fading of their political presence.

In an analysis of the Seventeenth Parliament (1930-35) for his *The Canadian House of Commons: Representation* (University of Toronto Press, 1963) Prof.

Tocqueville

perceived a

political system

favouring lawyers

Norman Ward found that while farmers represented 28.8 per cent of the labour force, but held 20 per cent of the seats, lawyers, who represented only two-tenths of one per cent of the labour force, held 33 per cent of the seats. Findings such as these later inspired Prof. John Porter to conclude in his now classic *The Vertical Mosaic* (University of Toronto Press, 1965) that lawyers dominated Canada's political elite. Porter's study of the two decades preceding his book's publication showed that the number of lawyers in federal cabinets had actually increased to 60 per cent, compared to 48 per cent in the period between Confederation and the Second World War. About this turn of events Porter wrote: "Thus curiously, the

extension of democracy has brought about not a widening, but a further narrowing in the occupational background of the political directorate."

A quarter of a century later the University of Toronto's David A. A. Stager examined this phenomenon in *Lawyers in Canada*: "Lawyers have always been the major occupation represented in elected public offices in Canada. At the beginning of 1985, lawyers made up one-fifth of the House of Commons and 10 to 20 per cent of provincial legislatures..." Stager noted that lawyers also make their political presence felt as campaign managers, policy advisers, lobbyists, spokespersons and as representatives or members of interest groups.

In the United States, more than half the presidents have been lawyers, but in its Congress and state legislatures the proportion of lawyers is far greater than in the similar Canadian institutions. For example, in the three decades preceding 1968 the percentage of lawyers in the U.S. House of Representatives was between 55 and 59 and in the U.S. Senate between 57 and 74. In his celebrated 1830s inquiry into American democracy Alexis de Tocqueville perceived a political system favouring lawyers, "for when the wealthy, the noble and the prince are excluded from the government, the lawyers take possession of it...since they are the only men of information and sagacity."

He wasn't the first to expect lawyers to supplant a repudiated aristocracy; a decade earlier Upper Canada's Bishop John Strachan postulated: "Lawyers must,

from the very nature of our political institutions – from there being no great landed proprietors – no privileged orders – become the most powerful profession and must in time possess more influence and authority than any other.” As it turned out both men were amazingly prescient, although this is the only point they agreed on as regards democracy. Tocqueville, its great champion, was an aristocrat and was trained as a lawyer. Strachan despised democracy: he viewed it as some malignant American contrivance and tried to exclude it from Upper Canada. But this teacher, clergyman and pillar of the Family Compact had no aristocratic forbears; he was, in fact, the son of a Scottish quarryman. Unable to forestall democracy he ensured his son had a legal education.

Has the practice in our two North American democracies shown unequivocally that Tocqueville and Strachan were correct; that it is the absence of a nobility that has allowed the law profession to prevail in politics? If this were the case one might expect lawyers in the United Kingdom to play only a minor role in politics. There the aristocracy thrives in a democratic milieu. It dominates the House of Lords, of course, but is also well represented in the Commons. As David Podmore shows in *Solicitors and the Wider Community* (Heinemann, 1980) barristers and solicitors taken together are the best represented occupation in the British House of Commons, numbering about 20 per cent throughout this century and not declining, as in North America. Stager argues that the fact this figure is lower than its comparable North American statistics shows that “lawyers are a substitute for a governing class because they are able to combine politics and their professional practice, in terms of both skills and time required.” Although this argument seems to ignore the public philosophy of Tocqueville and Strachan it helps to explain the apparent political eclipse of lawyers in Canada.

In the past many Canadian lawyers, like Old Country aristocrats, had the freedom to abandon their occupations from

time to time to participate in public affairs. While they attended brief legislative sessions, law partners would keep things in order back home and possibly ensure continued income. Legislators’ stipends were pitifully small until recently. If a more demanding cabinet appointment required abandonment of law practice there was higher compensation plus the opportunity of a judicial or other government appointment later to allay concern about retirement income. But being a member of Parliament is no longer a part-time job. Legislative sessions are longer and constituents more demanding. This has been acknowledged with increased pay and pensions for politicians. And more lawyers are realizing they cannot treat their practices as ancillary operations and keep pace with professional developments. In fact, if they’re interested in a political career, they find they must aban-

don their legal occupations while serving the public.

The spheres of law and politics have both changed since 1965 when Porter wrote: “Lawyers...are about the only persons for whom sustained political activity is not incompatible with the career system. People in other occupations tend to lose out in their career chances, whereas legal careers may, in fact, be enhanced through a stint in politics.” Social scientists such as Porter would welcome the diminishing role of lawyers in politics as democratic progress and a social benefit. They argue that a legal background narrows a politician’s view of social and economic issues, to society’s detriment. They are getting their wish, not because of a democratic advance against elitism, but because the inexorable division of labour is making the life of the lawyer-politician untenable. ■

Perseverance and stamina crucial ingredients for Japanese law students

By *Barrie McKenna*,
The Globe and Mail, Tokyo

IT HAS BEEN A DECADE since Yoshitaro Nomura passed Japan’s national bar exam, but he sometimes still wakes up at night in a sweat, dreaming that he is back at cram school.

“It’s a nightmare,” said Mr. Nomura, 40, recalling the gruelling series of tests that he endured to become a lawyer. “When I wake up I am so relieved.”

Mr. Nomura, who’s now on staff at the Japan Federation of Bar Associations in Tokyo, is among the lucky ones. He passed the exam on his sixth attempt in 1986 and became a lawyer two years later at 30, after completing a mandatory apprenticeship at the Supreme Court of Japan.

Across Japan this month, 25,000 students are living Mr. Nomura’s nightmare. The latest crop of law students are now busily preparing for the first of three sets of mandatory legal exams, held each year on the second Sunday in

May.

Yoko Matsumoto (she does not want her real name used) has already failed the exam seven times, and at 38 wonders whether she’ll ever become a lawyer after devoting some of her best years exclusively to passing the exam.

“If I have a good day I’ll become a lawyer; if I don’t, I don’t know if I’ll try again,” she said.

Law students typically require seven or more attempts to pass the bar exam.

Yet they persevere. Last year, 25,454 students wrote the bar exam, and only 734, or less than 3 per cent, passed. And that was a bumper crop. When Mr. Nomura passed his exams, he was among only 2 per cent of successful applicants.

Most applicants graduate from university law faculties, but this is not mandatory, and law schools don’t award degrees, as they do in Canada or the United States.

Only a handful will pass the bar

exams immediately after completing their formal legal studies, and only then after spending 15 to 16 hours a day studying. The rest will spend years attending specialized cram schools at a cost of up to 100,000 yen a month (roughly \$1,000).

"I needed some time to drink and play," Mr. Nomura said sheepishly, explaining why it took him six years to pass the bar exam.

It isn't that Mr. Nomura and Ms. Matsumoto were ill-prepared, or that the government is trying to stem a glut of lawyers by raising the entry criteria. Indeed, many would argue that the country has an acute shortage of lawyers, particularly as an increasing number of people fight human rights abuses at home and in the workplace. Those kinds of disputes have traditionally been swept under the carpet or resolved out of court.

At last count, there were fewer than

16,000 lawyers in Japan, or one for every 8,125 Japanese.

By comparison, there is a lawyer for every 483 Canadians. With a population less than a quarter that of Japan, Canada has 62,000 lawyers, 47,000 of whom are in active practice. And every year, Canadian law schools churn out another 2,500 new graduates.

But like much else in Japan, the legal fraternity is a tightly regulated club. And the bar exams, graded on a bell curve, are used to strictly control entry into the prestigious profession.

The Supreme Court of Japan, which oversees the examination process and certifies lawyers, has proposed lowering the bar slightly to allow 1,000 new lawyers a year.

But the move is being resisted by lawyers and justice ministry officials, who argue that the rigours of safeguarding Japan's justice system require strict

entry criteria. They point to litigious North Americans as an example of too many lawyers being a bad thing.

And because lawyers can become Crown prosecutors or judges immediately upon certification, there is a fear that lowering the standards may lead to inexperienced people filling these posts.

Faced with such hurdles, many young Japanese go to the United States to train as lawyers, returning to Japan to offer their services to domestic companies trying to wade through the complexities of the American legal system.

Critics have argued that keeping 25,000 of Japan's best and brightest young people glued to law books for years, memorizing legal statutes, may be a less-than-efficient allocation of labour. ■

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The Globe and Mail*

Family law in Ontario requires guiding principles and values

By Willson A. McTavish, Q.C., LSM

FAMILY LAW IN ONTARIO, as elsewhere, needs attention and co-ordination.

Lawyers, mediators, judges, counsellors and the public all agree that the current system is too court oriented.

The sheer volume of cases – 85,000 annually – is clogging the Ontario family court system. Some children are treated like property while parents fill the courts with bitter fights over money, assets and support. The combative atmosphere, exemplified by the current reaction to Child Support Guidelines, makes it more difficult for separating couples to reach a settlement and develop a co-operative relationship once their separation is declared final by a court judgment.

Most volatile are the issues of who will get control of or pay for the children. I estimate a high percentage of separating families end up going to court to resolve these struggles. Some litigants want revenge on their former wives or husbands. There is evidence that such anger

and conflict severely injure children. Regardless of the level of battle, the negative interactions during separation can have lasting impact on both the parties involved and their children.

Given these drawbacks, an increasing number of couples are opting out of our

Some children
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bitter fights

family court system to manage their own divorces and separation agreements. They are "unrepresented litigants".

Unfortunately, without adequate legal help, they often end up with an incomplete or unfair settlement.

Guiding principles and core values

Statistics from the Courts Administration Division of the Ministry of the Attorney General illustrate the following:

- It may be that more than one-half of civil and criminal law court filings are in family/young offenders law.
- Family law conflicts are arguably the most important of the courts' business but are often given the lowest priority on the trial lists, being assigned last to whatever judges are available to take them.
- All family law cases in Ontario are prepared as if they are going to trial.
- Parties resist paying court-ordered child support and spousal support and make it difficult for the non-custodial parent to have access to the children.
- Non-custodial parents become frustrated in trying to get time with their children.
- The trend toward unrepresented parties

is increasing at an accelerating rate.

We need to create a vision with guiding principles and core values. I suggest the following:

“Ontario families involved in divorce or related family conflicts are served by a comprehensive family law system that provides non-adversarial dispute resolution, counselling, education and related legal services. This system is staffed by highly skilled practitioners who acknowledge the importance of the family and children, understand family law and strive to serve the best interests of all family members.”

This vision could be implemented and interpreted with reference to the following principles:

- *Welfare and Protection of Children:* The welfare and protection of children shall be paramount in the resolution of family conflicts.

- *Relationship Education:* Children must learn to develop healthy relationships and to resolve conflicts in peaceful ways.

- *Support for Parenting:* Whenever possible and appropriate, children shall continue to have both parents in their lives and parents shall be encouraged to work out agreements between themselves regarding their children.

- *Family Safety & Security:* The safety and economic well-being of family members shall be given priority.

- *Non-Adversarial Dispute Resolution:* Family members in conflict must have appropriate forums in which to grieve and accept change.

- *Support for Families:* All families deserve respect and the support of social policy.

A comprehensive Family Conflict Management System, therefore, is needed to provide a wide range of activities to help individuals before, during and after a conflict. Such a system might include the following core values:

- *School curricula.* To promote stability in relationships, children in elementary grades through high school should learn about conflict resolution, relationship

management and family life skills.

- *Pre-marital education.* Couples applying for marriage licenses should take preparation courses about children and parenting, problem-solving and conflict management.

- *Family Resource Centres.* These centres should provide training, information and education to help families resolve conflict, protect children and explore options other than separation and divorce.

- *Conflict Management Services.* Family Resource Centres, Community Dispute Resolution Centres, Family Court and private service providers should offer seminars in conflict resolution, options counselling and case assessment.

- *Formal Conflict Resolution.* Community Dispute Resolution Centres, Family Court and private service providers should offer conflict resolution alternatives including mediation, evaluation, settlement conferences, arbitration, trial and appeal.

- *Formal Closure and Follow-up.* Individuals should have the option to follow an institutionalized ritual to formally close a dissolved relationship.

I respectfully suggest that the Attorney General, with the Ministers of Education, Health and Community and Social Services, should focus on specific steps to achieve the above by:

- Government's endorsement of the vision, guiding principles, core values and a comprehensive Family Conflict Management System.

- Establish student peer mediation projects in all high schools in Ontario.

- School curriculum should include conflict resolution and family life skills.

- Require that a package of information about divorce guidelines and local family services be made available at courthouses and government offices that serve children and families.

- Family resource centres.

- Authorize pilot projects for family court to experiment with additional components such as a parent education and family law information program.

- Options counselling.

- Mediation.

- Parent education.

- Assistance to unrepresented litigants.

- Response to domestic violence.

- Language changes to replace terms such as “custody” and “access” with “parenting plans”, “time sharing”, “contact parent”, “residential parent”, etc.

- Visitation enforcement.

- Require full disclosure of assets in family law disputes and enact penalties for failure to disclose marital assets.

- Expand the jurisdiction of Family Court across Ontario.

- Require all court orders involving children to make it clear that access to children is not to be withheld if child support is unpaid, and vice versa.

- Co-ordinate all family law matters in the administration of justice under one executive responsible to the deputy attorney general.

Conclusion

At present, many couples are finding the legal system more trouble than it's worth. Some of them do not have the education and resources they need to properly handle a family law case on their own.

The Office of the Children's Lawyer is committed to assisting in the creation of a comprehensive family conflict management system that will help provide children and adults with the education and tools they need to act responsibly in entering, continuing or dissolving relationships. We in my office strongly believe that the current adversarial system should be reformed to a more constructive, civilized approach that will protect the adverse interests of the parties involved, their children and our society as a whole. ■

Mr. McTavish is The Children's Lawyer at the Ministry of the Attorney General. The views in this article are his own (based on the Oregon Task Force on Family Law report of May 1996) and are published to stimulate discussion amongst the bar, bench and others dealing with children and their families.

Honour, guns and lawyers

By Cecilia Morgan

LAWYERS WERE PARTICIPANTS in many of the two dozen challenges to a duel that took place in Upper Canada between 1793 and the late 1840s.

Duels, although illegal, were tolerated by the authorities as long as they were conducted according to precise “gentlemanly” rules. The “gentlemen” who issued and accepted challenges were generally upper or middle class, white, and Anglo-American or British.

For some men an insult concerning the sexual chastity of their wife, fiancée, or other female relative (the most popular and romantic image of duelling)

might provoke them to a challenge. If other factors were involved, such as political rivalry, an insult to a woman’s chastity was deemed a socially acceptable reason for issuing a challenge.

Such was the case in the fatal shooting of the first Attorney-General of Upper Canada, John White, by John Small, the Clerk of the Executive Council, on January 3, 1800. The affair was precipitated by comments that White had made about the chastity of Small’s wife, Elizabeth. These comments were rapidly passed around the small elite group clustered around the colonial seat of government at York, a society that had created an

elaborate social life in which observations of rank and status were of crucial importance and upper-class women’s sexual probity was essential if they wished to maintain their social position. Elizabeth Small was then snubbed by her peers and, once Small became aware of the reasons behind this behaviour, he challenged White to a duel. The two men met “back of the government buildings” at the foot of Berkeley Street on January 3, 1800. White had stated that he would not aim at Small since he did not want to hurt him. Both pistols, however, went off simultaneously, leaving White mortally wounded. He died thirty-six hours later and, in a grand gesture common to many unsuccessful duellists,

200
YEARS/ANS

1797 – 1997

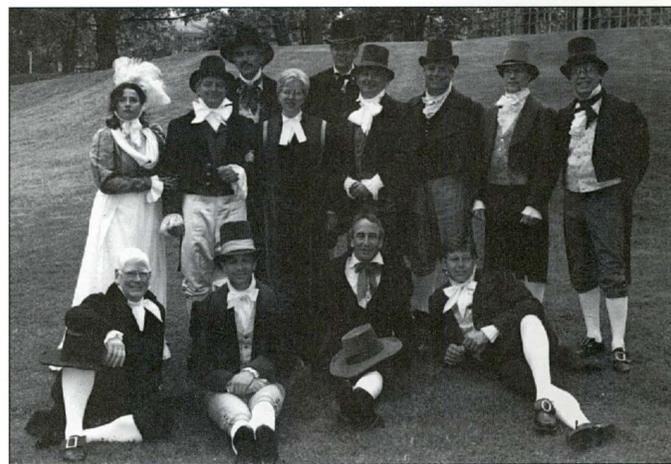
In a respite from an otherwise dreary spring, the sun shone at Niagara-on-the-Lake for Bicentennial celebrations on May 23.



The festivities got underway with a procession (above) to Simcoe Park, where the Law Society’s founding and early years were dramatized. Town crier Allan Freeman (right) guided visitors through the afternoon’s events.



An affair gone wrong between Elizabeth Small and Attorney General and first Treasurer John White (Gina Wilkinson and Guy Bannerman) leads to White’s death in a duel with Mrs. Small’s husband (Jonathan Tanner).



The cast of “Events and Characters Surrounding the Birth of the Law Society” included current benchers portraying some of the founding members, pictured here with Treasurer Susan Elliott.

forgave all involved. Small was tried for murder on January 20 but was acquitted since no one had actually seen the shot that killed White.

In the duel between law students John Wilson and Robert Lyon held in Perth in 1830, insults to a woman's virtue were also linked to a man's insecurities about his class position with the result that Wilson, the challenger, fatally wounded Lyon and was tried for

Duelling was
not meant
to replace
the legal
process

murder. Lyon had made certain remarks concerning the behaviour of a Miss Hughes. Wilson and Lyon had words about this incident and, after a scuffle in which Lyon knocked him down, Wilson challenged him. Wilson justified his behaviour by citing both manly protectiveness of female virtue and the need to assert his own honour. In the courtroom, Wilson defended his challenge since Lyon, a much bigger and heavier man, had "knocked him down." Wilson, the son of a poor farmer, was sensitive about his "humble origin" and felt that he must issue a challenge "in order to maintain his standing in society." Had he "been of a higher walk," he would have treated Lyon with disdain but, because of his background, he felt it "the more necessary to be tenacious of his character and scrupulous about preserving it from taint." Otherwise, he believed, his fellow law students would have treated him with contempt, a belief shared by some of the witnesses. John Beverley Robinson presided over Wilson's trial and in his address to the jury reminded them that "the practice of private combat has its immediate origin in high example, even of Kings." The jury

then acquitted Wilson.

A duel might be fought over issues of professional integrity; such was the case in 1812 when the lawyer William Warren Baldwin decided that he could no longer tolerate the "insolence" he had suffered in court at the hands of Attorney-General John Macdonnell and issued a challenge. In a letter to his wife Phoebe, written the night before the duel, Baldwin apologized for his decision. "I beseech you to pardon this step which I am about to take, not to indulge a rash or resentful spirit, but to protect me from insults which as a gentleman I cannot submit to. I feel that I am in the hands of the Almighty – his will be done." But when the two men met the next morning at a spot on the Toronto Islands, Baldwin fired aside, the two shook hands and the matter ostensibly came to an end.

Duelling might appear to be a privately controlled and monitored form of justice engaged in by those who saw themselves as outside or above the law. But as so many duellists were lawyers and some were judges, it is difficult to see duelling as the refuge of those excluded from state-sanctioned criminal or civil justice. Duelling was an alternative to legal action that was meant not to replace but instead to supplement the legal process with which so many Upper Canadian duellists were familiar. Moreover, although most duellists came from the upper echelons of colonial society, these men did not believe themselves to be completely above the law. Their predecessors' examples, as well as knowledge of British legal customs surrounding duelling, made it quite clear that those whose encounters resulted in death would face a jury's verdict – and it might not be a favourable one. "Do not be too sure of an acquittal," warned Samuel Jarvis's friend, Jonas Jones, shortly before the former's trial for killing John Ridout. Jones felt the jury would be prejudiced against Jarvis.

But an acquittal might actually confirm the justice of the duellist's actions

– at least for those who supported duelling. For lawyers, law students, and those other men who supported the code of honour, the duel and the possible trial took on the status of legal and cultural rituals. By fighting the duel men first put themselves on the margins of the law, following a code of behaviour that was clearly forbidden. Yet obeying the directives of the code of honour – giving an opponent fair warning, shooting from the required distance, and calling off the conflict once a man was wounded – also increased a duellist's chance of being acquitted by the same legal process that had brought him to trial (and no Upper Canadian duellist was executed for killing his opponent). The entwined rituals of duel and trial might, paradoxically, subvert official condemnation of duelling.

But both duel and trial might go awry, as both processes were charged with uncertainties. Some duellists were aware that they might not survive the encounter. Even unwritten "gentleman's agreements" that no physical harm would be sustained in the course of a duel might be broken, deliberately or by mishap. A challenge might be accepted but the challenger might not prove to be a "real" gentleman, either because of past misdeeds or because of his behaviour during the duel (as was purported to be the case with Jarvis). A jury might have doubts that a duel had been properly conducted. And many others argued that engaging in physical combat stripped these men of their status of gentleman; for them, duelling was not a manifestation of manly honour. From the death of John White to the 1840s, editorial writers, columnists, and correspondents to the newspapers expressed their disapproval of the practice. ■

Ms. Morgan is an assistant professor with the Department of Theory and Policy Studies, O.I.S.E./University of Toronto. This article was adapted from "In Search of the Phantom Misnamed Honour: Duelling in Upper Canada" Canadian Historical Review Vol. 76, No. 4 (Dec. 1995).



MEMBERSHIP

Discipline Digest

SIX MATTERS PROCEEDED before Convocation on April 24, 1997. Convocation ordered two disbarments, three suspensions, and administered one reprimand. Two other matters were adjourned to be heard at a later sitting of Convocation. John F. Rook Q.C. offered his assistance as Duty Counsel. On May 22, 1997, 12 matters proceeded before Convocation. Convocation ordered two

disbarments, two permissions to resign, six suspensions, and administered two reprimands. Scott K. Fenton offered his assistance as Duty Counsel.

In March 1997, there were 44.5 hearing days on which discipline matters proceeded before hearing panels of Benchers of the Law Society. Discipline matters proceeded before hearing panels on 30.5 hearing days in April 1997.

MISAPPROPRIATION

Bates, Robert Noel Irving

Burlington, Ontario

Age 56, Called to the Bar 1968

2 Separate Hearings/Reports

Particulars of Complaint (Report #1)

Professional Misconduct

- Misappropriated funds in the amount of \$90,000, more or less, when he drew said amount on a Letter of Credit to be used for payment of fees incurred by a client in a litigation matter, for a purpose other than that for which he was entitled to draw them;
- Misappropriated funds in the amount of \$44,150.05, more or less, when he drew said amount on a Letter of Credit to be used for the payment of the accounts of agent solicitors who had performed services for his client;

Particulars of Complaint (Report #2)

Professional Misconduct

- Misappropriated funds in the amount of \$11,454 received from a client to be paid to a third party in settlement of a judgment insofar as he misapplied those funds towards his fees;
- Sent a misleading letter to a client which confirmed that he would hold the \$11,454 in trust when the Solicitor had already disbursed the funds;
- Misappropriated \$25,255 from a client when he charged her disbursements for

his co-counsel at an inflated rate and for more hours than were actually provided;

- Rendered a misleading statement of account for legal services;
- Acted in a conflict of interest when he caused a mortgage to be registered on title to his client's property as collateral for legal fees without ensuring the client obtained independent legal advice;
- Improperly borrowed \$50,000 from a client;
- Misappropriated \$70,000 from his trust account;
- Misled a client by representing that he had invested those trust funds in a mortgage, when in fact he had misappropriated the monies from his trust account.
- Failed to file his Forms 2/3 with the Society.

Convocation's Disposition

(Reports #1 & #2) (05/22/97)

• Disbarment

Discipline History

- In 1984, the Solicitor was reprimanded in Convocation for suppressing information which ought to have been disclosed to opposing counsel and to the court.

Counsel for the Solicitor

Frederick Forsyth

(Before Hearing Panel #1)

Not Represented

(Before Hearing Panel #2)

Not Represented

(At Convocation) (#1 & #2)

Counsel for the Law Society

Neil J. Perrier (Before Hearing Panel #1)

Glenn M. Stuart (Before Hearing Panel #2)

Glenn M. Stuart

(At Convocation) (#1 & #2)

MISAPPROPRIATION

Dufresne, Alexandre Patterson

Republic of Korea

Age 49, Called to the Bar 1977

Particulars of Complaint

Professional Misconduct

- Misappropriated client funds from two separate clients in the amounts of \$2,458.59 and \$13,982.53;
- Misappropriated general trust funds in the amount of \$6,002.40 from his law firm;
- Borrowed in excess of \$60,000 from clients who were neither lending nor similar institutions, nor related persons;
- Deliberately misled clients with respect to the status of trust funds;

Convocation's Disposition (04/24/97)

• Disbarment

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Glenn M. Stuart

Is your contact information current?

It is extremely important that members keep the Law Society informed of any changes to contact information. This includes address, phone, fax or e-mail. You can notify the Law Society by:

• Mail: Accounting/Membership Department, Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto ON, M5H 2N6

• Fax: (416) 947-3916

• Phone: (416) 947-3318

• E-mail: records@lsuc.on.ca

**MISAPPROPRIATION /
UNGOVERNABILITY**
Goldberg, Stanley David

Toronto, Ontario

Age 51, Called to the Bar 1972

2 Separate Hearings/Reports

Particulars of Complaint (Report #1)

Professional Misconduct

- Failed to fulfil a financial obligation incurred in connection with his practise in the amount of \$790.21;
- Failed to comply with his undertaking to the Society to meet financial obligations incurred on behalf of clients;
- Failed to reply to the Society regarding a complaint (x3);
- Failed to provide an account of the proceeds from a real estate purchase and sale to his clients;
- Failed to comply with his undertaking to the Society to reply promptly to communications from the Society (x2);
- Failed to cooperate with the Society's attempts to conduct an audit by failing to produce his books and records;
- Failed to file his Forms 2/3 with the Society within six months of the termination of his fiscal year ended January 31, 1995;
- Failed to serve clients in a conscientious, diligent and efficient manner by failing to proceed in a timely manner with actions commenced in the District Court of Ontario, failing to properly advise clients respecting their obligations to fulfil undertakings on examinations for discovery, and failing to advise his clients that their action was dismissed for failure to comply with undertakings;
- Charged fees of \$20,781.06 after advising a client that fees would not exceed \$5,000;
- Removed the sum of \$16,719.67 from trust before delivering an account to the client;
- Failed to cooperate with the Society representative's attempts to conduct an audit by failing to produce his books and records.

Committee's Recommendation (#1) (03/05/97)

- Disbarment, unless the Solicitor attends before Convocation and provides a persuasive explanation, in which case the Committee recommended that the Solicitor be suspended for twelve months, with the suspension to continue until the Solicitor provides a medical certificate to the Secretary of the Society confirming his fitness to practise law.

Particulars of Complaint (Report #2)

Professional Misconduct

- Accepted an offer to settle an action in the District Court of Ontario on behalf of his clients (including infant clients), without his clients' instructions;
- Misappropriated \$30,139, more or less, which he held in trust for his clients (including infant clients);
- Failed to reply to the Society regarding a complaint;
- Practised law between May 26, 1995, and February 26, 1996, while his rights and privileges as a member of the Law Society were suspended due to the Solicitor's failure to pay his errors and omissions levy;
- Failed to comply with his undertaking to the Society not to engage in the practice of law pending the completion of several complaints before a Discipline Committee or Convocation.

Committee's Recommendation (#2) (04/18/97)

• Disbarment

Convocation's Disposition (05/22/97)

(Reports #1 & #2)

• Disbarment

Discipline History

- In May 1995, the Solicitor was suspended for two months and indefinitely thereafter for failure to file his Forms 2/3 for the fiscal year ended January 31, 1994, failure to reply to the Society, and failure to comply with his undertaking to the Society;
- In March 1995, the Solicitor was reprimanded in Convocation and ordered to pay costs of \$1,000 for failure to file his Forms 2/3 for the fiscal year ended January 31, 1993;
- In December 1991, the Solicitor was reprimanded in Committee for failure to reply to the Society and failure to comply with an undertaking;
- In June 1991, the Solicitor was reprimanded in Committee for failure to reply and failure to honour a financial obligation.

Counsel for the Solicitor

Not Represented (#1 & #2)

Counsel for the Law Society

Georgette Gagnon (#1 & #2)

UNGOVERNABILITY

Jaffer, Sadrudin

Scarborough, Ontario

Age 60, Called to the Bar 1976

Particulars of Complaint

Professional Misconduct

- Failed to reply to the Law Society regarding the submission of his trust bank statements to the Society, despite several communications;
- Failed to reply to the Law Society regarding complaints, despite several communications (5);

- Failed to attend a judgment debtor examination which resulted in an Order finding him in contempt of court and ordering that he be committed to jail for ten days;
- Failed to comply in a meaningful way with his undertaking given to the Law Society on June 8, 1994, that he enter into the Practice Review Program;

Convocation's Disposition (04/24/97)

• Disbarment

Discipline History

- In June 1996, the Solicitor was suspended for a period of three months, commencing at the conclusion of any administrative suspension, and indefinitely thereafter until his books and records are brought into good standing to the satisfaction of the Law Society. Reinstatement subject to the following conditions: (1) He must have made restitution in the amount of \$1,481 to clients; (2) He must continue to cooperate and participate with the Practice Review Programme; (3) He must submit to the Audit Department of the Society, monthly trust reconciliations, on a monthly basis, for a period of two years; (4) He must bring all outstanding filings up to date; and (5) He must pay costs to the Society in the amount of \$5,000. This penalty was with respect to a finding of professional misconduct for: paying office and personal expenses directly from his trust account; breaching Regulation 708 of the *Law Society Act* respecting books records and accounts; delaying the Society's examination of his books, records and accounts, failing to reply to the Society regarding a complaint; failing to discharge an execution registered against his client despite being provided with the funds to do so; and failing to account to a client.
- In August 1995, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$200 for failing to file his Forms with the Law Society for the fiscal year ended December 31, 1993.
- In June 1994, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500 for failing to file his Forms with the Law Society for the fiscal year ended December 31, 1992. The Solicitor also provided an oral undertaking to enter the Society's Practice Review Program.
- In April 1986, the Solicitor was reprimanded in Committee and ordered to pay costs of \$1,000 for failing to maintain his books, records and accounts and for failing to file his Forms with the Society

for the fiscal year ended December 31, 1985.

Counsel for the Solicitor
Not Represented
Counsel for the Law Society
Jane Ratchford

ACTED IN A CONFLICT OF INTEREST

Epstein, Arnold

Etobicoke, Ontario
Age 61, Called to the Bar 1966
Particulars of Complaint

Professional Misconduct

- Acted in a conflict of interest with respect to a mortgage registered in favour of his clients, by taking a \$100,000 interest in a mortgage upon its sale without disclosure to the clients, and subsequently selling pieces of his \$100,000 interest in the mortgage to investor clients without disclosing to them that they were purchasing his interest;
- Acted in a conflict of interest and preferred his own personal interests to those of his clients in respect of mortgage loan advances (3);
- Failed to disclose to clients his receipt of an arranging fee for setting up mortgages;
- Failed to serve his mortgagee client, a financial institution, in a conscientious, diligent and efficient manner by reporting to his client that it had obtained a good and valid first mortgage on a property, when in fact the mortgage stood third in position by virtue of the fact that the Solicitor failed to register discharges of two prior mortgages;
- Failed to advise his client of material facts regarding a mortgagor in respect of a mortgage loan advance;
- Failed to protect the interests of his investor clients with respect to a mortgage loan advance (2);
- Failed to serve his client, in trust, in a conscientious, diligent and efficient manner by failing to register the mortgage security in a timely manner, which resulted in a loss to the clients, and by failing to deliver a reporting letter in a timely manner.

Convocation's Disposition (05/22/97)

- Permission to Resign, effective May 22, 1997.

Counsel for the Solicitor

Mark Sandler (Before the Hearing Panel)
Scott K. Fenton, Duty Counsel
(At Convocation)

Counsel for the Law Society
Jane Ratchford

ACTED IN A CONFLICT OF INTEREST

Goodman, Irving

Toronto, Ontario
Age 63, Called to the Bar 1959
Particulars of Complaint

Professional Misconduct

- Acted in a conflict of interest in five lending transactions in which he acted for the lender and another client and where in each transaction, the Solicitor was aware that the client used aliases as both borrower and as guarantor. The amount of the five loan transactions totalled \$707,702.17, more or less.
- Breached his fiduciary duty to his lender clients by acting for both the lender and the borrower/guarantor in each of the loan transactions, and not disclosing to his lender clients that the guarantor and the borrower in each transaction was one and the same person;
- Failed to immediately withdraw his services from both his clients when it became clear that the Solicitor's employment by the clients in one of the loan transactions would cause him to breach his respective obligations to each of his clients;
- Purported to represent two individuals by issuing a mortgage enforcement proceeding in the Ontario Court (General Division) on the basis of instructions received by a third party, without first confirming, the authority of the third party and the commencement and the disposition of the proceedings, with said individuals;
- Failed to take steps to enforce a default judgement obtained in the mortgage enforcement proceedings, on the basis of instructions received from a third party, without confirming the authority of the third party.

Convocation's Disposition (05/22/97)

- Permission to Resign, effective May 22, 1997

Counsel for the Solicitor

David Goodman

Counsel for the Law Society

Jane Ratchford

MISLED COURT AND FELLOW SOLICITOR

Punnett, William Gerald

Guelph, Ontario
Age 57, Called to the Bar 1969
Particulars of Complaint

Professional Misconduct

In connection with one client and one piece of property he:

- Misled Halton Region ("Halton") regarding the terms of an Order-in Council and

subsequently attempted to rely on what he believed to be an error made by a clerk employed by Halton, which error was based on the Solicitor's misrepresentation;

- Transferred one lot of a property from a client to himself knowing that the transfer was void under the *Planning Act* because the lot had not been properly severed, and for the improper purpose of depriving an individual of the right to purchase the property in anticipation that he would exercise an option to purchase;
- Swore a false Land Transfer Tax Act Affidavit which improperly stated that there was (or was to be) consideration of \$42,000 in respect of the transaction, when in fact no consideration passed and none was intended to;
- Entered into an Agreement of Purchase and Sale with a third party for the lot transferred into his name, knowing that the lot was not properly severed and that he could not legally transfer title;
- Applied for a building permit on the said lot, knowingly relying on Halton's error and failing to disclose prior unsuccessful attempts to obtain a legal severance;
- Brought a mandamus application to compel the issuance of a building permit to which he was not entitled;
- Created a sham sale of the property to a client and misled a fellow solicitor that the transaction was legitimate in an attempt to obtain judicial validation of the transfer;
- Attempted to mislead the court by bringing a Vendor's and Purchaser's Application based on the sham sale, failing to disclose the prior unsuccessful efforts to "legitimize" the transaction;
- Attempted to mislead the court and a fellow solicitor in the course of a Vendor's and Purchaser's Application by maintaining his position regarding the validity of the conveyance to himself, which position he knew to be invalid, and by failing to disclose to the court and the fellow solicitor the prior unsuccessful attempts to obtain a judicial legitimation for the transfer;
- Attempted to secure a \$10,000 payment to himself in exchange for the transfer of the lot from himself to another individual, although he knew that he had no legal right to convey the lot;
- Misled either the Society or the Court by providing to the Society an explanation of the false affidavit that was different from the explanation which he provided when giving sworn evidence in court;
- Filed false Forms 2 for the years 1988-

- 1991, inclusive, in which he failed to disclose that he held property in trust for a client, or in the alternative gave false evidence on an examination for discovery regarding whether he was holding property in trust for a client or holding it partly in trust for her and partly as security for his fees;
- Breached an undertaking to a fellow solicitor to hold \$15,000 in trust pending completion of the Society's investigation, by failing to continue to hold such monies in trust.

Convocation's Disposition (05/22/97)

- Twelve-month suspension commencing June 1, 1997.
- Costs of \$7,500

Counsel for the Solicitor

Peter Madorin

Counsel for the Law Society

Christina Budweth

PRACTISED UNDER SUSPENSION

Howlett, David Eric

Niagara Falls, Ontario

Age 42, Called to the Bar 1983

Particulars of Complaint

Professional Misconduct

- Practised law while his rights and privileges as a member of the Society were suspended from November 2, 1992 to April 27, 1993.
- Breached an Order of Convocation dated November 23, 1989 whereby he was suspended and ordered not to practise as a sole practitioner for two years upon being reinstated.
- Failed to file with the Society his Forms 2/3 for the fiscal year ended November 30, 1992.

Hearing Panel's Recommendation (1/11/1996)

- Disbarment

Convocation's Disposition (04/24/97)

- Six-month suspension commencing April 24, 1997 to run concurrently with any administrative suspension.
- Solicitor to enrol in the Practice Review Program immediately upon the resumption of practice and to complete the program.

Discipline History

- In June 1996, the Solicitor was suspended for three months to commence at the conclusion of his current administrative suspension and ordered to participate in Practice Review Program with respect to his: failure to comply with a personal undertaking given to a fellow solicitor, failure to respond to communications from a fellow solicitor, and failure to reply to the Law Society regarding a complaint

by a fellow solicitor.

- In November 1989, the Solicitor was suspended for one month commencing December 15, 1989, to continue indefinitely until his books and records are in order and his outstanding Forms 2/3 are filed and an order that upon reinstatement the Solicitor will not be able to practise as a sole practitioner for a period of two years, with respect to his: failure to properly maintain his books and records, failure to cooperate with the Society by failing to produce all the documents requested by the Society, failure to reply to communications from the Society, clients, and fellow solicitors, practising while under suspension on February 26, 1988, failure to properly serve clients by not registering charges/mortgages, transfers/deeds, not issuing reporting letters and not providing accountings in a prompt fashion, breaching a written undertaking to a fellow solicitor, and failing to file his Forms 2/3 for the fiscal year ended November 30, 1987.

Counsel for the Solicitor

Not Represented

(Before the Hearing Panel)

John F. Rook, Q.C., Duty Counsel

(At Convocation)

Counsel for the Law Society

Lesley Cameron

ACTED IN A CONFLICT OF INTEREST

Evans, John William

Lindsay, Ontario

Age 50, Called to the Bar 1974

Particulars of Complaint

Professional Misconduct

- Borrowed \$170,133.12 from his investor clients through a company he controlled and failed to ensure those clients received independent legal advice contrary to Rule 7 of the Rules of Professional Conduct, and further failed to disclose that the borrower was a non-entity and not the legal owner of the mortgaged property;
- Borrowed \$29,070.89 from his investor clients and failed to ensure those clients received independent legal advice contrary to Rule 7 of the Rules of Professional Conduct;
- Acted in a conflict of interest on two mortgage transactions by representing both the mortgagor and the mortgagees and failed to advise his lender client of the nature of the conflict and to either obtain the client's informed consent to act or ensure that the client obtained independent legal advice;

- Failed to ensure that a loan by one client to another client was adequately secured;
- Contravened Rule 23(3) of the Rules of Professional Conduct by failing to provide relevant information to his investor client in relation to a mortgage transaction. The information included the following facts: the Solicitor had a direct or indirect interest in the mortgage; the borrower was unemployed at the time of the investment; the purpose of the mortgage was to repay funds that had been stolen by the mortgagor; and, the Solicitor had personally made some interests payments on behalf of the mortgagor client after the mortgagor defaulted.
- Invested trust funds belonging to a client without first obtaining the client's informed consent and authority to do so and without creating any documentation to accurately evidence this investment;
- Issued a cheque from his trust account payable to "cash";
- Completed an audit questionnaire and delivered to the Society Form 2 Certificates which falsely stated that the Solicitor had not been directly or indirectly indebted to a client;
- Completed an audit questionnaire and delivered to the Society Form 2 Certificates which falsely stated that the Solicitor had not directly or indirectly participated in a syndicated mortgage investment.

Convocation's Disposition (05/22/97)

- Four-month suspension, commencing June 1, 1997, on the following conditions:
 - (1) The Solicitor will not act for non-institutional mortgagees until allowed to do so by the Secretary of the Law Society;
 - (2) The Solicitor will be supervised for one year by another solicitor;
 - (3) The Solicitor will undertake not to make investments for clients of his legal practice;
 - (4) Existing client investors will be notified by the Solicitor in writing within thirty days that they should obtain independent legal advice regarding specified mortgages;
 - (5) The Solicitor will pay costs of \$5000 to the Law Society over a period of twelve months from the time of his reinstatement;
 - (6) The Solicitor will pay \$5000 to a specified client before this matter reaches Convocation.

By the time the matter reached Convocation, the Solicitor had complied with conditions (3), (4), and (6) listed above.

Discipline History

- In January 1995, the Solicitor was reprimanded in Committee with respect to a finding of professional misconduct for his failure to reply to correspondence from the Society regarding a complaint and failure to comply with an undertaking to the Society to answer all correspondence from the Society within two weeks.

Counsel for the Solicitor

Steven A. Skurka

Counsel for the Law Society

Glenn M. Stuart

FAILED TO ACCOUNT TO CLIENTS Riley, William Leo

Ottawa, Ontario

Age 53, Called to the Bar 1970

Particulars of Complaint

Professional Misconduct

- Failed to file Forms 2/3 within six months of his fiscal year ended January 31, 1994;
- Failed to cooperate with the Law Society's attempts to conduct an audit by failing to produce his books and records;
- Failed to reply to the Law Society regarding a complaint (x6);
- Failed to reply to another solicitor (x3);
- Failed to account to clients for all funds entrusted to him (x3);
- Failed to transfer client files.

Hearing Panel's Recommendation (1/11/96)

- Indefinite suspension until the Solicitor provides the Society with a written report from a psychiatrist stating that he is fit to resume practising law; and has made all of his required filings.

Convocation's Disposition (04/24/97)

- Three-month fixed suspension commencing April 24, 1997, to continue indefinitely until the Solicitor provides a written report from a psychiatrist which states that he is fit to resume practising law and has made all of his required filings.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Georgette Gagnon

PRACTISED UNDER SUSPENSION Hovland, David Samuel

Toronto, Ontario

Age 44, Called to the Bar 1992

Particulars of Complaint

Professional Misconduct

- Breached an Order of Convocation to suspend his practice for failure to pay a late filing fee, by continuing to practise during the period of his suspension from March 25, 1994 to May 31, 1994.

Convocation's Disposition (05/22/97)

- Two-month suspension to commence at the conclusion of his current administrative suspension.
- Costs of \$500.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Neil J. Perrier

(Before the Hearing Panel)

Glenn M. Stuart (At Convocation)

FAILED TO SERVE CLIENTS Toneguzzi, Bruno Mario

Nepean, Ontario

Age 47, Called to the Bar 1977

2 Separate Hearings/Reports

Particulars of Complaint (Report #1)

Professional Misconduct

- Failed to act in a conscientious, diligent and efficient manner by failing to fulfill undertakings to persons and their solicitors;
- Failed to reply to the Society in respect of the investigation of a complaint against the Solicitor (x3);
- Failed to serve his client in a conscientious, diligent and efficient manner by failing to consult properly with his client as to the processing and disposition of a claim for lien filed by the Solicitor on the client's behalf;

Committee's Recommendation (#1) (01/17/97)

- One-month suspension and a satisfactory medical letter

Particulars of Complaint (Report #2)

Professional Misconduct

- Failed to fulfill an undertaking to obtain an order from the Court releasing an administration bond issued in respect of an estate (x2);
- Failed to reply to the Society regarding the investigation of a complaint, despite several communications.

Committee's Recommendation (#2) (04/23/97)

- One-month suspension consecutive to the suspension recommended by the Committee on January 17, 1997, to continue indefinitely until on the following conditions are met:

- (1) The Solicitor obtains the release of the two administration bonds;
- (2) The Solicitor pays the outstanding administration bond premiums;
- (3) The Solicitor obtains a medical report, satisfactory to the Law Society, indicating that the Solicitor is fit to practise law;
- (4) The Solicitor enrolls the Practice Review Program (if and when the Solicitor returns to practice).

Convocation's Disposition

(Reports #1 & #2)(05/22/97)

- Two-month suspension to commence June 1, 1997, and to continue indefinitely until the conditions recommended by the second Committee (04/23/97) have been met.

Discipline History

- In April 1990, the Solicitor was reprimanded in Committee for failing to reply to communications from the Law Society and failing to file his Forms 2 and 3 within six months of his fiscal years ending April 30, 1988 and April 30, 1989.
- Commencing December 1, 1992, the Solicitor was suspended for a period of one month and thereafter indefinitely until his filings for the years 1988, 1989, 1990 and 1991 were completed and he paid costs to the Law Society fixed in the amount of \$350. The suspension concluded on March 1, 1995 and was based upon a finding of professional misconduct in that he:
 - a) practised law while under suspension during the period September 28, 1990 to April 22, 1991;
 - b) failed to comply with a verbal undertaking given to a Discipline Committee on April 11, 1990, and failed to file his Forms 2/3 for his fiscal years ending April 30, 1988 and April 30, 1989 by June 1, 1990; and
 - c) failed to file Forms 2/3 for his fiscal years ending April 30, 1990 and April 30, 1991.
- In March 1993, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$300 for failing to reply to the Law Society with respect to the investigation of a complaint.

Counsel for the Solicitor

James M. O'Grady Q.C. (#1)

Not Represented (#2)

Counsel for the Law Society

Neil J. Perrier (#1)

(Before the Hearing Panel)

Rhonda Cohen (#2)

(Before the Hearing Panel)

Rhonda Cohen (#1 & #2)

(At Convocation)

BREACHED ACKNOWLEDGEMENT Caminsky, Beverlie Ellen

Ottawa, Ontario

Age 34, Called to the Bar 1993

Particulars of Complaint

Professional Misconduct

- Breached Acknowledgement to the Law Society, dated August 17, 1995, by failing to provide all outstanding filings by

October 9, 1995, despite two letters of reminder from the Society
Convocation's Disposition (05/22/97)

- One-month suspension commencing May 22, 1997, to continue month to month thereafter until her filings are completed in a manner satisfactory to the Society.

Discipline History

- In August 1995, the Solicitor was reprimanded in Committee with respect to a finding of professional misconduct for her failure to file her forms 2/3 since her call to the Bar.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Elizabeth Cowie and Jane Ratchford
(Before the Hearing Panel)
Elizabeth Cowie (At Convocation)

ACTED IN A CONFLICT OF INTEREST

Rumack, Martin King Ian

Toronto, Ontario

Age 51, Called to the Bar 1973

Particulars of Complaint

Professional Misconduct

- Acted in a conflict of interest by acting for the borrower(s) and lenders, in a number of real estate transactions;
- Acted in a conflict of interest by acting in the role of broker in a number of real estate transactions in which he also acted for the borrowers or the lenders, or both.
- Breached Rule 23(2)(b) of the Rules of Professional Conduct in regard to three properties;
- Failed to reveal relevant information to lender clients about the status of mortgages, including that he was personally making mortgage payments and that various power of sale proceedings had been instituted in regards to three properties;
- Violated Rule 5 of the Rules of Professional Conduct by continuing to be involved in transactions when the mortgage payments he received began to be returned due to non-sufficient funds and power of sale proceedings were commenced.

Convocation's Disposition (04/24/97)

- Thirty-day suspension commencing June 6, 1997.
- Upon reinstatement the Solicitor is subject to the following conditions:
 - (1) He is prohibited from acting for both the vendor and the purchaser in a real estate transaction;

- (2) He is prohibited from acting on both sides of a real estate transaction except where the mortgagee is an institutional lender;
- (3) He is to enrol in and cooperate with the Practice Review Program of the Law Society;
- (4) He is required to offer his services to the Law Society by lecturing on the perils and dangers of acting in a conflict of interest and the related matters that have caused him to be before the Law Society, and he must prepare a paper for the use of the Law Society, LPIC or a similar type of body on the same subject;
- (5) He must pay the Law Society costs in the amount of \$20,000 payable in yearly installments of \$2,500 commencing six months after his return to practice.

Counsel for the Solicitor

Brian Greenspan

Counsel for the Law Society

Janet L. Brooks

FAILED TO FILE FORMS
Wallace, Clayton James

Hamilton, Ontario

Age 39, Called to the Bar 1987

Particulars of Complaint

Professional Misconduct

- Failed to file with the Society, his Forms 2/3 within six months of the fiscal year ended January 31, 1995.
- Committee's Recommendation (04/17/97)*
- Reprimand in Convocation if his filings are completed by the date of Convocation, failing which he be suspended for a fixed period of one month and indefinitely thereafter until his filings are completed.

Convocation's Disposition (05/22/97)

- One-month suspension to commence at the conclusion of all other periods of suspension, and thereafter indefinitely until outstanding obligations to the Society have been fulfilled.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Rhonda Cohen

FAILED TO SERVE CLIENTS
Williams, Norman Franklin

Hamilton, Ontario

Age 55, Called to the Bar 1971

Particulars of Complaint

Professional Misconduct

- Failed to serve a client and demonstrated discourtesy to the court in connection with the defence of a client on criminal

charges by: accepting a brief when he had a conflicting previous court commitment on the date scheduled for trial; and by failing to bring a timely motion for an adjournment;

- Failed to serve clients in respect of an expropriation by: failing to take required steps to obtain payment for the property expropriated, with the result that the monies were paid into court; and by failing to take the necessary steps to have the monies paid out of court in a timely manner;
- Failed to serve a client by: failing to commence an appeal of the client's criminal conviction, notwithstanding the client's instructions and the Solicitor's agreement to do so; writing to the client after the appeal period had expired recanting his offer to conduct the appeal free of charge; and failing to respond to the client's numerous inquiries for information about the status of his appeal;
- Failed to advise the client that he had not commenced an appeal of the criminal conviction;
- Swore an affidavit in support of a motion to extend the time to appeal the criminal conviction, which was not filed, and which was false and misleading;
- Failed to serve clients in the refinancing of a property, by: registering a mortgage which was to be a first mortgage without registering discharges of three prior encumbrances and subsequently failing to obtain registered discharges of the three prior encumbrances in a timely manner; incorrectly advising his mortgagor clients that two of the encumbrances were discharged when they were still outstanding; and incorrectly reporting to his mortgagee client that its mortgage was first in priority.

Convocation's Disposition (05/22/97)

- Reprimand in Convocation.
- Costs of \$5,000, payable over time.

Counsel for the Solicitor

Brian Greenspan

Counsel for the Law Society

Lesley Cameron

FAILED TO RELEASE A FILE
Henry, Mark

Newmarket, Ontario

Age 41, Called to the Bar 1983

Particulars of Complaint

Professional Misconduct

- Failed to reply to the Society regarding a complaint, despite several communications;
- Failed to reply with reasonable

- promptness to communications from another solicitor;
- Failed to provide reports to the Office of the Children's Lawyer (formerly the Office of the Official Guardian) with respect to matters for which he had been retained to act;
 - Failed to release a file to the Office of the Children's Lawyer with respect to a matter for which he had been retained to act.

Committee's Recommendation (04/17/97)

- Reprimand in Convocation provided that the Solicitor responds satisfactorily to the Official Guardian's office, failing which the Solicitor should be suspended for one month.
- Costs of \$500.

Convocation's Disposition (05/22/97)

- Reprimand in Convocation, as a satisfactory response was made.
- Costs of \$500.

Discipline History

- In January 1991, the Solicitor was reprimanded in Committee with costs of \$500, with respect to a finding of professional misconduct for his breach of an undertaking to a fellow solicitor and for failure to reply to the Society regarding a complaint.
- In April 1992, the Solicitor was reprimanded in Committee with costs of \$1000 for failure to satisfy an order of the Committee to pay costs in the amount of \$500 and for failure to reply to the Society regarding two complaints made against him.

Counsel for the Solicitor

Not Represented

Counsel for the Law Society

Allan Maclure
(Before the Hearing Panel)
Rhonda Cohen
(At Convocation)

CONDUCT UNBECOMING

Tassy, Antal

Cambridge, Ontario
Age 46, Called to the Bar 1992
Particulars of Complaint

Conduct Unbecoming

- Found guilty of a charge of assault on July 29, 1994;
- Convicted of assault on April 19, 1995;
- Convicted of assault while carrying a weapon, a wooden walking stick, on May 21, 1996.

Hearing Panel's Recommendation (01/28/97)

- Thirty-day suspension to continue indefinitely thereafter until he produces a psychiatric opinion, acceptable to the

- Society, stating that: he is fit to practise law and is able to serve clients; that he presents no danger to clients; and that he is able to exercise self-governance so that members of the public are not hurt;
- If the Solicitor obtains the required psychiatric assessment indicating he is able to practise law, and Convocation agrees, the suspension should be reduced to a reprimand in Convocation.

Convocation's Disposition (04/24/97)

- Reprimand in Convocation, as an acceptable psychiatric letter was provided.

Counsel for the Solicitor

David St. C. Bond
(Before the Hearing Panel)
John F. Rook, Q.C., Duty Counsel
(At Convocation)

Counsel for the Law Society

Janet L. Brooks ■

CASE REVIEW

Borrowing from "clients"

RULE 7 OF THE Rules of Professional Conduct exists in order to ensure that there is no conflict between the lawyer's own interest and the lawyer's duty to the client. There is an absolute prohibition on borrowing from clients unless: (a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or (b) in the case of a loan from a related person as defined by the *Income Tax Act* (Canada) the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice.

Part two of the Rule provides that in any transaction, other than one involving a lending or financial institution, in which money is borrowed from a client by the lawyer's spouse or by a business entity in which either the lawyer or the lawyer's spouse, or both, have a direct or indirect substantial interest, the lawyer must be able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal representation.

Part three of Rule 7 indicates that the Rule may apply even where a solicitor and client relationship is not present. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice in respect of the loan or

investment, then the lawyer will be considered bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

In one recent case, a lawyer was acting as a solicitor for and co-executor of an estate. He asked the co-executrix, who was also a beneficiary of the estate, to lend money to a third party. The lawyer did not advise the co-executrix that in fact, he or his spouse was the borrower. At the hearing, the lawyer denied a breach of Rule 7 on the basis that the co-executrix was not a client. The Discipline Committee found that the co-executrix looked to the lawyer for guidance and advice in respect of the loan and found that the co-executrix was a client for the purposes of Rule 7.

The Committee also stated that generally, an executor of an estate for which a solicitor is acting will, in the absence of other circumstances, be in the same position as a client, especially if the executor/client is unsophisticated with respect to executorial duties.

It was the Committee's view that the spirit of Rule 7 is to protect those members of the public who are in a non-arms-length situation with a lawyer where they would ordinarily be placing a high degree of weight on the advice from the lawyer, and would be in a position of trusting the lawyer to be absolutely candid and to uphold the highest traditions of integrity and openness with members of the public. ■

Membership Suspensions & Reinstatements

MEMBERS WHOSE NAMES appear below have been suspended for administrative reasons (non-payment of annual fees, errors and omissions insurance levies, or late filing); or have been reinstated after previously being suspended. The year after each member's name is the year of call to the Ontario bar. Enquiries regarding members listed below should be directed to (416) 947-3315.

ANNUAL FEE REINSTATEMENTS

ADAMS Rossanne Eunice	1996	Barrie ON
ALEXANDER Michael Ian	1990	Toronto ON
ANDISON Douglas	1957	Woodview ON
ARMSTRONG Laura Annrd Joseph	1993	FRANCE
BAASCH Birgit	1995	Ottawa ON
BATTEN Andrew Bentham	1990	Toronto ON
DEN OTTER Norine Elizabeth	1993	Vancouver BC
GIGNAC Sebastien Andre Teisserenc	1992	Montreal, PQ
JANCZUR Jacek Adalbert	1994	Toronto ON
LEE Jong Bum	1992	KOREA
MARSHALL Charles Scott	1996	HONG KONG
MARTIN Peter Guy	1990	Toronto ON
MOSS Clifford Paul	1989	Willowdale ON
PYKE Brigid	1996	Wolfe Island ON
STEVENS Sandra	1993	Toronto ON
VARGA-PAPP Steve Thomas	1985	Concord ON
WEIHS Brian Andrew	1993	Toronto, ON

E & O LEVY REINSTATEMENTS

MARTINS Fernando Daniel Ascencao	1993	Toronto ON
LUBEK Melvyn	1976	Willowdale ON

ANNUAL FEE SUSPENSIONS

ACHESON Edward Frederick	1992	Oakville ON
ADINKRAH Kofi Oti	1994	Etobicoke ON
ADSETT Hugh Cameron	1995	Prescott ON
AINSLIE Dorothy Margaret	1991	Toronto ON
AISENBERG Ronald Jacob	1985	Toronto ON
ALSOP Robin Lynne Deborah	1989	ENGLAND
ANDREW William Arthur Roland	1978	Rosedale BC
ARKI Lajos	1982	Limoges ON
ARMSTRONG Maureen Lynn	1995	Ottawa ON
ASCOLI Pauline	1989	USA
ATKINS Drew Gordon	1994	Calgary AB
ATLAS David	1991	Toronto ON
AUSTEN Mark Andrew	1994	ENGLAND
BAILEY Donald Allan	1989	Kingston ON
BALDACHIN Alan Guy	1995	Willowdale ON
BALL Debrah Agnes	1983	ENGLAND
BANBURY Joseph Tremlett	1971	Brighton ON
BARK Sung Jin	1993	Toronto ON
BARLOW Robert Leonard Edgar	1986	London ON
BARRETTE Joseph Jean Pierre	1994	Mont Laurier PQ
BARRETTE Renee Marie	1984	UK
BARTKIW David Michael	1994	Hamilton ON
BASTIEN Mary Ann Estelle	1990	Dundas ON
BEATTIE Susan Elizabeth	1993	Scarborough ON
BEDARD Joseph Jean Marc Roland Robert	1986	Ottawa ON
BELFER-RIMER Heather Lynn	1990	Nepean ON
BELL Teresa Maria	1983	London ON
BERGH Colin Schreuder	1962	Aylmer PQ
BERLINER Lloyd Ian	1990	Truro NS
BERNSTEIN Jordana Robin	1996	Willowdale ON
BLAKE Carol Mary	1989	Kingston ON
BLAKE Robert Arnold	1980	Caledonia ON
BLAKE Sandra Leah	1992	Toronto ON
BLOOM Krista Marie	1988	West Flamborough ON
BONDAR Aldona Vassal	1959	Sault Ste. Marie ON
BROCKENSHIRE Deborah Henrietta	1990	New Westminster BC
BRODIE Paige	1988	USA
BRODKIN Mark Lindsay	1996	Toronto ON
BROWN Craig	1979	London ON
BROWN Michael James	1995	Toronto ON
BROWN Nedra Tamara	1996	Chatman NB
BROWN Tarry Ann	1981	Sioux Lookout ON
BROWN William Maurice Raymond	1983	Etobicoke ON
BURNS Michael Thomas	1995	North York ON
BYRNE Robert Henry	1985	USA
CAISSIE Jocelyne Marie	1996	Fredericton NB
CAPE Edmund Andrew	1979	Toronto ON
CARLSON Kay Martha	1981	Oshawa ON
CARMICHAEL Michael Edward	1988	Ottawa ON
CATTO Sally Elizabeth	1995	Toronto ON
CHANG Mary Catherine	1990	Burlington ON
CHETTY Iyavar Moonsamy	1994	Ottawa ON
CLADEMENOS Andrew George	1979	North York ON
CLARKE Peter Alan	1993	Mississauga ON
COFFIN Kenneth Neil	1989	Brampton ON
CONN Avi Daniel	1993	Toronto ON
CONOVER Taggart Sydne Gillian	1990	Cobourg ON

COON Peter Baptiste	1996	Ottawa ON
CRAIGEN Cynthia Rose	1990	Gloucester ON
CRANN Gordon Parker	1991	North York ON
CRITTENDEN Jon David	1979	Oakville ON
CROCKETT Carol Ann	1985	Manotick ON
CUSTANCE Alice Dianne	1971	Russell ON
CUTHBERTSON Celia Mary	1990	Toronto ON
DAVIE Katherine Paula	1996	Gloucester ON
DAVIS Charlotte Anne	1989	North York ON
DAYA Roshni	1995	Scarborough ON
DELANY John Ernest	1953	Toronto ON
DI MARTINO Peter Gabriel	1980	Brampton ON
DI TRANI Emilia Addolorata	1990	Willowdale ON
DITTMAR Lee Stefanie Anne	1988	Aurora ON
DODDS Maria Clare	1992	Toronto ON
DONOSO Ignacio Alberto	1995	USA
DUNNE Alan Edmund	1995	Peterborough ON
EGGETT Christopher Charles	1992	Windsor ON
ELLIOTT Stephen Douglas	1978	Aurora ON
EMERSON Melissa Ann	1994	Toronto ON
ERNEWEIN Brian Joseph	1985	Ottawa ON
FEASBY Janet Alexandra	1979	Toronto ON
FEASBY Lisa Marie	1991	KOREA
FEDDER Catherine Pearl	1988	Vancouver BC
FELD Alan Harold	1989	ISRAEL
FERGUSON Andriene Elizabeth	1993	Etobicoke ON
FERRACUTI Paul Thomas	1989	St. Catharines ON
FISHER Kenneth Jonathan	1991	Toronto ON
FLEMING Anne Victoria	1995	Toronto ON
FLYNN Shawn Bernard	1982	Yellowknife NT
FOELL Barbara Cecile	1975	Kitchener ON
FRASER Sean Robert	1996	Toronto ON
FRIESEN Marianne Elaine	1993	Regina SK
FRYERS Clifford Howard	1977	Calgary AB
GAHAN Jeffrey Mark	1985	Toronto ON
GARDINER Gillian Lesley	1994	Vancouver BC
GAUTHIER Noel Roger	1962	Gloucester ON
GOLDBERGER Roy	1981	Toronto ON
GOLDENBERG Edward Stephen	1985	Ottawa ON
GORDON Robin Adele	1996	Toronto ON
GOSBEE Douglas Christopher	1993	Scarborough ON
GRAF Rosemarie Helga	1996	North York ON
GRAIF Michael Robert	1993	USA
GRANT Andrew MacGregor	1996	Halifax NS
GREGORY Johanne	1988	UNITED ARAB EMIRATES
GREYER Marie Nathalie	1994	Toronto ON
GRMOVSEK Stanko Jose	1995	Weston ON
HACKER Roger William	1971	USA
HARRINGTON Daniel Leo John	1975	Edmonton AB
HARRINGTON James Philip	1967	Bath ON
HARRIS Robert Stewart	1996	Toronto ON
HECTOR Glenn George	1989	Ottawa ON
HELFAND Lisa Gayle	1988	Ottawa ON
HERMISTON Sandra Ruth	1986	Edmonton AB
HERTZMAN Leonard Benjamin	1990	AUSTRALIA
HISCOX Diane	1990	Ottawa ON
HORN Frank	1982	Kingston ON
HORNSTEIN David Scott	1979	Sault Ste. Marie ON
HORWOOD Robert Allan	1974	Mississauga ON
HORWOOD Robert Earl	1987	Hull PQ
HOWE Norman Iverson Maxwell	1992	Vancouver BC
HUGHES Kate Ann	1987	Vancouver BC
HUTCHINSON Allan Charles	1990	Downsview ON
IATZKO Donald Kenneth	1989	Windsor ON
INNOCENTE Leo Anthony	1966	Windsor ON
IRVINE Marie Anne	1982	Vancouver BC
JAKUES Donna Elizabeth	1985	Tilbury ON
JENNESS Craig Andrew	1988	Osgoode ON
JIBRIL Abdurahman Hosh	1995	Etobicoke ON
JOHNSTON Gary William	1994	USA
JOHNSTON John Andrew Agnew	1980	Thunder Bay ON
JORDAN Richard Scott	1994	Chatsworth ON
KALIA Seema	1995	USA
KATZ Leala Rona Birnboim	1992	Toronto ON
KATZ Martin Fredric	1988	Mississauga ON
KAUFMANIS Eric	1986	Richmond BC
KAY Guy Gavriel	1981	Toronto ON
KAZDAN Joseph Frank	1976	North York ON
KENNEDY Edward Stephen	1987	Winnipeg MB
KENNETT Steven Alexander	1990	Calgary AB
KENT Darrell Thomas	1993	Toronto ON

KILLAS Mark Constantine	1990	Richmond BC	REID Christopher Arnold	1982	USA
KIMURA Donald Isamu	1971	Toronto ON	REINSTEIN Philip	1974	Downsview ON
KOVACS Bertha Rita	1991	Toronto ON	RICHARDSON Deborah Lynn	1996	Toronto ON
KRAMER Maryanne Elizabeth	1994	Toronto ON	RIDEOUT Michele Christine	1995	Toronto ON
KRIEGER Karine	1991	Toronto ON	RIDOUT Peter William King	1993	Calgary AB
KRUEGER Cathrine Elizabeth	1984	Nepean ON	RINGLER Scott Douglas	1992	Toronto ON
KUCHAR Perry Gardner	1994	Vancouver BC	RODGERS Ronald Charles	1979	Hamilton ON
KWINTER Stephen	1979	Toronto ON	ROGERS Deborah Mary Catharine	1987	Ottawa ON
LAIDLAW Guy Gordon Gaylord	1974	Gananoque ON	ROSENBERG Howard Stephen	1991	USA
LALANI Alikarim	1996	North Vancouver BC	RUSSELL William Kirk	1994	Morpeth ON
LANE Donna Ruth	1981	USA	RUTHERFORD Barbara Lynn	1989	SWITZERLAND
LANE George Arthur	1980	USA	RYCROFT Nora Barrera	1988	USA
LANGFORD Ann Lynn	1977	Victoria BC	SAMUEL Scott Robert	1986	Toronto ON
LEFAS Agnes Segolene	1982	FRANCE	SAMUELS Mina Beth	1992	USA
LEGAULT Marie Jacqueline Rolande Suzanne	1990	Hull QC	SAREEN Iva	1979	USA
LEHMAN Joel Howard	1995	Toronto ON	SATTLER Debra Lynne	1993	Toronto ON
LEPINE Wayne David	1994	Burlington ON	SAUMURE Jean Denis	1991	Clarence Creek ON
LEARNER Yale Howard	1987	BARBADOS	SAWERS Robert James	1989	Calgary AB
LESARGE Paul Edward	1993	London ON	SCHIPPER Nathan Samuel David	1994	USA
LESSARD Stephane	1993	Ile Des Soeurs PQ	SEHMI Paula Harbalwinder	1992	Mississauga ON
LEVIN Sidney David	1983	Toronto ON	SETO Fabian	1996	Oshawa ON
LEVY Harold Joseph	1970	Toronto ON	SHANNON David William	1996	Toronto ON
LEWIS Marion Catherine Randall	1992	Langley BC	SHAPIRO Alan Abraham	1981	Toronto ON
LIEW Gailina Jia-Hsin	1994	Toronto ON	SHAPLAND James Cecil Fegan	1970	Toronto ON
LINDZON Irving S	1965	USA	SHAW Joseph Myles Gerard	1996	Vancouver BC
LOCKLEY Jane Elizabeth	1981	Kelowna BC	SHEFFIELD Elizabeth Anne	1974	Whitehorse YT
LONG Michael Julius	1996	Toronto ON	SHELDRIK Byron Melville	1989	UNITED KINGDOM
LOPEZ Suzanne Nicola	1994	Oakville ON	SHINYA Wayne Masuo	1981	Ottawa ON
LORD Douglas James	1972	High River AB	SIDAROUS Mona	1992	St. Sauveur PQ
LUNENFELD Allan Harry	1980	Belleville ON	SINCLAIR Neil Victor	1977	Toronto ON
LUTZ Brian Hutchings	1993	Edmonton AB	SMART Steven James	1993	COLOMBIA
LYNDON Gregory Johnson	1991	Vancouver BC	SMITH David Bradford	1986	Oakville ON
LYON Arthur William	1976	Toronto ON	SMITH Douglas Gordon	1983	HONG KONG
MACFARLANE Craig Bryn	1976	Vancouver BC	SMITH Michael Alan	1996	Caledon ON
MACKIE Lora Lynn	1994	Little Current ON	SMOLYNEC Natalia	1986	Ottawa ON
MACLAUHLAN Lucienne	1992	Odessa ON	SNIDER Wayne Michael	1983	Oakville ON
MACMILLAN Leanne Margaret	1992	UNITED KINGDOM	SODA Fabrizio	1988	ITALY
MACPHEE Suzanne Margaret	1995	Ottawa ON	SOHN Joshua Bari	1993	Vancouver BC
MAIN Sally-Ann Ferens	1992	Toronto ON	STERLING Helen Marion	1992	Brampton ON
MARCHAND Donna Marie	1996	Toronto ON	STEWART Gordon Bruce	1993	Toronto ON
MARKIN Joseph	1974	Toronto ON	STOCKWELL John Anthony	1969	Peterborough ON
MARPLES Ian Robert	1979	Aurora ON	STONE Denise Lynn	1995	Ottawa ON
MARSHALL Douglas Geoffery	1953	Oakville ON	SUTCLIFFE James Ernest	1992	Vancouver BC
MARSHALL Gregory Steven	1994	Truro NS	SUTHERLAND Ruth Emily	1983	Guelph ON
MARTIN Robert Derek	1993	Toronto ON	THOMAS James Ronald	1983	Toronto ON
MARTINEZ Juan Carlos	1995	Toronto ON	THOMPSON Pamela Ann	1984	Kingston ON
MATUSIAK Norman Gerald	1964	Etobicoke ON	TOBIAS Colin Arthur	1992	Scarborough ON
MCADAM Judith Elizabeth	1988	Richmond Hill ON	TORTIS Vincenzo-Ascenzo	1990	Hamilton ON
MCCARTHY Daniel Eugene	1990	Burnstown ON	TRONEAU Lauren Marie	1988	Ottawa ON
MCCONNELL Malcolm Hazen	1977	Toronto ON	TROTT Jack Edward	1986	USA
MCGREGOR John Rattray	1972	USA	TUMNER Katharine Paula	1988	Yellowknife NT
MCISAAC John William	1977	Edmonton AB	TURNER Wendy Carol	1994	Halifax NS
MCISAAC Mary Margaret Louise Chartier	1981	Ottawa ON	VALERI Patrizia Ersilia	1994	Burlington ON
MCKELVEY Darcie Deborah Lynn	1979	Toronto ON	VANDERLEEK Gordon Peter	1988	London ON
MCKEON James Dennis	1959	Parksville BC	VASILAROS Dennis Constantin	1978	Port Elgin ON
MCKIE Joy Nerine	1989	Toronto ON	VIGNA Roxanne Marcelle	1987	Sudbury ON
MCMURRAY Hilarie Ivy	1991	Victoria BC	VUKADINOVIC Vida	1984	Toronto ON
MICHAUD Pilar Marie	1996	Etobicoke ON	WAIND Robert Bryson	1971	Clarksburg ON
MICHNA Richard Scott	1979	Toronto ON	WANG Weimin	1996	P R China
MIKELBERG David Jonathan	1986	Toronto ON	WARREN Priva Janice	1994	Toronto ON
MITCHELL Brian Randall	1987	Montreal PQ	WATANABE Akira Garry	1991	Ottawa ON
MITCHELL Christine Jane	1980	Sidney BC	WATERHOUSE Mark Peter	1989	HONG KONG
MITCHELL Donald Gilbert Anthony Joseph	1969	Montreal PQ	WEISS Gerald Leslie	1985	Downsview ON
MORGAN John Walter	1992	Sydney NS	WICKHAM Andrea Jane	1990	Toronto ON
MORRIS Nancy Susan	1995	Toronto ON	WILLSON Jonathan Winston	1996	Toronto ON
MORRIS Sandra Louise	1991	Toronto ON	WOLCH Jonathan David Morris	1995	Toronto ON
MUIR Louise Elsie Mary	1992	Winnipeg MB	WONG Gabriel Wing Kay	1995	Scarborough ON
MUKERJI Sraboni Nipa	1988	Willowdale ON	WONNACOTT John Spence	1984	Trenton ON
MULLROONEY Michael James	1979	Calgary AB	WOOLFSON Frederick David	1983	Thornhill ON
MURPHY Paul Joseph	1982	USA	WRONSKI Paul Bernard	1993	Toronto ON
MURRAY Keith James	1993	Toronto ON	WYATT Douglass Walter	1976	Brockville ON
MURRAY Kelly Ann	1994	Milton ON	YAP-SAM Bernadette Angela	1989	USA
NATHU Shamshudin Amirali	1993	North Vancouver BC	YOUNG David Paul	1994	Vancouver BC
NG Serena	1995	North York ON	YOUNG John Andrew	1996	Ottawa ON
NICKLESON Douglas Gerald	1988	Windsor ON	ZAMBELLI Maria Pia	1988	Cote St. Luc PQ
NISBET William Paul	1970	Toronto ON	ZAVA Franco Giovanni	1989	Victoria BC
NOVAK Wayne Sydney	1978	Thornhill ON	ZAVA Terry Lynn Clegg	1989	Victoria BC
ORTIZ Steffi Ursula Goehlich	1990	Ottawa ON			
PACE Micheal Anthony Paul	1990	Weston ON			
PALIDWOR Catherine Marie	1995	Ottawa ON	E & O SUSPENSIONS		
PARLOUR Alix Elizabeth	1986	HONG KONG	BARRATT Martin Clifford	1993	Markham ON
PAUL Cathryn Lesley	1996	Vancouver BC	BROOKS Wayne Norris	1994	St. Catharines ON
PEPE Michael Francis Gerrard	1981	USA	CLARKE Gordon Stanley	1975	Caledon East ON
PERKELL Victor Louis	1993	Toronto ON	CUSACK Patrick Leo Wayne	1985	Orleans ON
PETERS Tracy Sabina	1995	ENGLAND	KAMIN Bernard Jacob	1963	Markham ON
PHELPS Margaret Vera Rose	1988	Niagara Falls ON	LAPLANTE Marie Cecile Brigitte	1991	Hawkesbury ON
POLLOCK Elaine Diane	1986	Ottawa ON	NELSON Rebecca Lyn	1992	Toronto ON
PUKITIS Olgerts Joseph	1965	Sidney BC	SCOTT Bruce Edward	1971	Toronto ON
QURESHI Sameena Khawar	1994	Edmonton AB	WINCH Joel Wilfred	1964	Toronto ON
RADFORD Robert Leslie	1970	Toronto ON	WONG Chi-Wah	1987	Toronto ON



FYI

Ontario judicial appointments

BELOW IS A LISTING of judicial appointments made in Ontario this year to June 1997. The summary information was compiled primarily from news releases issued by the federal Department of Justice and the provincial Ministry of the Attorney General. The date after each summary is the date the appointment was announced.

Ontario Court (General Division)

Catherine Aitken was called to the bar in 1975 and graduated in law from Queen's University. Madam Justice Aitken was a partner with the firm of Steinberg, Aitken, Allard since 1996. She previously practised law in Ottawa with the firms of Nelligan, Power and Aitken, Greenberg. Her main area of practise was family law. She has been assigned to Ottawa (March 19).

Denise Bellamy was called to the bar in 1980 and graduated in law from Osgoode Hall. Madam Justice Bellamy first practised law as an assistant Crown attorney for the Ministry of the Attorney General in Toronto and Newmarket. She has held the positions of President of the Federation of Law Societies of Canada and Vice-President of the Ontario Centre for Advocacy Training. She served as an elected bencher of the Law Society of Upper Canada, and is a member of the *Association des juristes d'expression française de l'Ontario*. She has been assigned to Toronto (April 16).

Arthur Gans was called to the bar in 1974 and graduated in law from the University of Toronto. Mr. Justice Gans first practised law with the firm of Miller, Thomson, Lewis & Healy. In 1987, he joined the firm of Fogler, Rubinnoff, with whom he mainly practised

civil and administrative litigation. He was certified as a specialist in civil litigation by the Law Society of Upper Canada in 1991. He has been assigned to Toronto (March 19).

Bernard Manton was called to the bar in 1962 and graduated in law from the University of Ottawa. Mr. Justice Manton practised civil litigation in Ottawa and has been a partner with Beament, Green, Dust since 1985. He is a member of the *Association des juristes d'expression française de l'Ontario*. He has been assigned to Ottawa (March 19).

Mary Anne Sanderson was called to the bar in 1976 and graduated in law from the University of Windsor. Madam Justice Sanderson is a past-president of the Advocates Society and she practised civil litigation with the firm of Lerner and Associates from 1977 to 1981 in London, and since then in Toronto. She has been assigned to Toronto (March 19).

Katherine Swinton was called to the bar in 1979, graduated in law from Osgoode Hall, and received her LL.M. from Yale in 1977. Madam Justice Swinton has taught in the areas of constitutional and labour law at the University of Toronto and has also published extensively on these subjects. She has acted as a labour arbitrator in the private and public sectors since 1979. She has

been vice-chair of the Ontario Public Service Grievance Settlement Board and chair of the Ontario Education Relations Commission. Since 1996, she has been a member of the Disputes Settlement Panel, Agreement on Internal Trade. She has been assigned to Ottawa (March 19).

Ontario Court (Provincial Division)

Lesley Baldwin was called to the bar in 1981 and graduated in law from the University of Windsor. Judge Baldwin worked in the Office of the Official Guardian as counsel from 1979-84 and provided legal services to the Ministry of Skills Development and Colleges and Universities from 1985-87. Until her appointment, Ms. Baldwin was an assistant crown attorney in Peel Region and Toronto prosecuting Criminal Code offences in provincial and general division court. She has also lectured at Osgoode Hall in criminal procedure. She has been assigned to the Central West judicial region (May 2).

George J. Brophy was called to the bar in 1976 and graduated in law from Osgoode Hall. Judge Brophy was a sole practitioner in Luchknow since 1980. He has been a member of the Legal Aid Criminal and Civil Panels, and of the Official Guardian Child Representation Panel. He has been a Deputy Judge for

the Ontario Court of Justice (General Division) Small Claims court for many years and an Adoption Licensee for the Province of Ontario. He has been assigned to Sarnia (April 10).

Ian Bruce Cowan was called to the bar in 1971 and graduated in law from the University of Toronto. Judge Cowan began his career as a duty counsel in the Mississauga criminal and family courts while operating a private practice. He worked as an agent for the Attorney General of Canada in Peel and Toronto, prosecuting drug cases and other charges under excise, bankruptcy, customs and immigration law. Judge Cowan also helped establish the Peel Children's Foundation, and has been a director of the criminal law subsection of the Canadian Bar Association-Ontario. He has been assigned to Toronto (January 14).

Bruce Duncan was called to the Ontario bar in 1986 after previously being called to the Alberta bar and graduated in law from Osgoode Hall. Judge Duncan served as a defence lawyer in private practice from 1988 until his appointment. He was a counsel in the Crown Law Office Criminal in Toronto from 1987-88, assistant Crown attorney in Etobicoke from 1986-87, and assistant Crown attorney in Calgary from 1976-84. He has lectured in criminal procedure and written bar admission

course materials in both Alberta and Ontario. He has been assigned to Brampton (April 10).

Richard Jennis was called to the bar in 1980 and graduated in law from Dalhousie University. Judge Jennis has specialized in criminal law since 1986. In 1992, he authored the Hamilton Criminal Lawyers Association's submission to the Attorney General's advisory committee on charge screening, disclosure and resolution discussions. He was a certified specialist in criminal litigation and a member of the Legal Aid committee for Hamilton-Wentworth since 1984. He has been assigned to St. Catharines (May 2).

Cathy Mocha was called to the bar in 1985 and graduated in law from the University of Western Ontario. Judge Mocha served as Crown attorney in the Etobicoke office since February 1995, after serving as acting Crown attorney in Scarborough, Etobicoke and Haileybury. She has lectured at conferences of the Ontario Crown Attorney Association, Law Society bar admission courses and the Bick Police College. She has been assigned to Toronto (April 10).

Julia Morneau was called to the bar in 1984 and graduated in law from the University of Western Ontario. Judge Morneau has been a sole practitioner since 1985 with emphasis on criminal

and family law. Since 1991, she has also prosecuted provincial offences for the Ministry of Transportation in Owen Sound and was a founding director of Crime Stoppers of Grey and Bruce Inc. She has been assigned to Owen Sound (May 2).

Joseph Wilson was called to the bar in 1974 and graduated in law from the University of Western Ontario. Judge Wilson was a part-time assistant Crown attorney since 1975 and a deputy judge of the Small Claims Court since 1980. He was an area director of the Ontario Legal Aid Plan since 1991. Mr. Wilson is currently a member of the Legal Aid Review Panel which is reviewing all aspects of legal aid in Ontario. He has also lectured to Georgian College students on legal matters. He has been assigned to Parry Sound (May 2). ■

Corrections

The Gazette regrets any inconvenience caused by the following errors that appeared in the Mar/Apr edition:

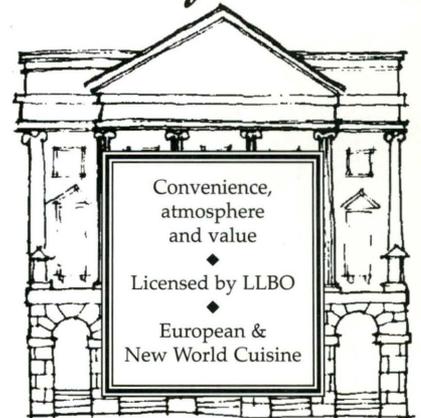
- The correct amount for the asset test for legal aid duty counsel is \$500 (p.8).
- The correct telephone number for Professional Conduct is (416) 947-3350 (p.32).

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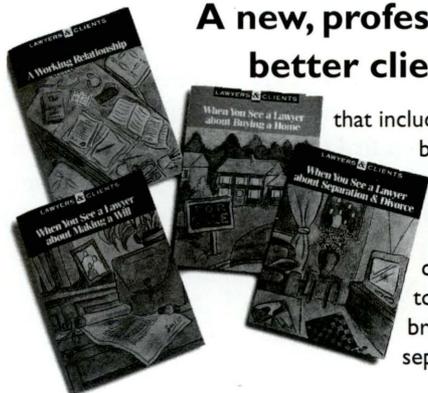
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NEW THIS ISSUE

C9 SECTION 9

- C9-3 \$70 Arbitrary Detention (91)
 C9-4 \$70 Arbitrary Imprisonment (31)

D15 CONSENT AND OTHER DEFENCES

- D15-3 \$50 Sexual Offences - Section 150.1 (22)

E5 EVIDENCE IN SEXUAL ASSAULT CASES

- E5-8 \$50 Corroboration (35)

E15 ADMISSIBILITY OF EVIDENCE

- E15-3 \$50 Hearsay - Deceased's Statements and Others (45)

P14 ARREST

- P14-7 \$70 Elements of an Arrest and Unlawful Arrests (36)

(C) CHARTER OF RIGHTS - COR

(No. of pages in brackets)

- C3-1 \$70 Trial within a Reasonable Time (78)
 C4-1 \$70 Right to be Informed of the Offence (36)
C5 Reverse Onus
 C5-2 \$70 Challenges to Reverse Onus Provisions (93)
C6 Right to Counsel
 C6-1 \$70 Warning - Timing and Content (62)
 C6-2 \$50 Waiving and Understanding the Right to Counsel (59)
 C6-3 \$50 "Detention" in Breathalyzer and Non - Breathalyzer Cases (111)
 C6-4 \$70 Trial Issues: Adjournments, Legal Aid Funding, Competency, and Counsel of Choice (49)
 C6-5 \$50 Privacy (28)
 C6-6 \$50 Exclusion of Evidence (89)
 C6-7 \$70 Opportunity to Exercise Right (60)
 C6-8 \$70 Duty to Cease Questioning (52)
 C6-9 \$70 Re - Informing - Understanding of Jeopardy (43)

C7 Section 7

- C7-3 \$70 Pre-Charge Delay (61)

C8 Search and Seizure

- C8-1 \$70 Exclusion of Illegally Obtained Evidence (65)
 C8-2 \$70 Unreasonable Search and Seizure - Consent Searches (20)
 C8-3 \$70 Seizure of Objects Inadvertently Discovered - Plain View Doctrine (21)
 C8-4 \$50 Border Searches (28)
 C8-5 \$50 Reasonable and Probable Grounds for Warrantless Search and Seizure (91)
 C8-8 \$50 Charter of Rights, s.8 Motor Vehicles (50)
 C8-9 \$70 Sufficiency of Information for Search Warrants (76)

C9 Section 9

- C9-1 \$70 Arbitrary Stopping of Motorists (55)
 C9-2 \$50 Arbitrary Arrest (69)
 C9-3 \$70 Arbitrary Detention (91)
 C9-4 \$70 Arbitrary Imprisonment (31)

C10 Section 12

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

C35 Aboriginal/Treaty Rights

- C35-1 \$50 Exemption from Excise Duties (12)
 C35-2 \$50 Hunting and Fishing (36)

CRIMINAL LAW MEMORANDA

Note codes as follows:

(D) DEFENCES (E) EVIDENCE (O) OFFENCES
 (P) PROCEDURES (S) SENTENCE

(D) DEFENCES

D1 Insanity and Automatism

- D1-1 \$50 Automatism (21)
 D1-2 \$50 Non-Insane Automatism and Intoxication (13)
 D1-3 \$70 Mental Disorder (52)

- D1-4 \$50 Epilepsy (9)
 D1-6 \$50 Fitness to Stand Trial (26)
D2-1 \$70 Entrapment (27)
D3-1 \$70 Self-Defence (47)
D4 Kienapple-Rule Against Multiple Convictions
 D4-1 \$70 Kienapple Since Hagenlocher and Prince (57)
 D4-2 \$50 Breach of Probation and Substantive Offence (9)
D5 Abuse of Process
 D5-1 \$70 General Principles (70)
 D5-2 \$70 Multiple Proceedings - Relaying Charges (43)
 D5-3 \$50 Multiple Proceedings - Splitting Case (17)
 D5-4 \$70 Multiple Proceedings - Perjury Charges - Issue Estoppel and Abuse of Process (18)
 D5-5 \$70 Concurrent Proceedings - Collection Agency Principle and Other Ulterior Motives (21)
 D5-6 \$70 Breach of Undertaking by Crown (29)
D6 Drunkenness
 D6-1 \$50 Defence of Drunkenness (36)
 D6-2 \$50 Drunkenness - List of Offences (19)
D7-1 \$50 Prank - Defence of (10)
D8-1 \$50 Necessity (35)
D9-1 \$50 Duress (22)
D10-1 \$70 Provocation as a Defence to Homicide (35)
D11-1 \$50 Diminished Responsibility (17)
D12-1 \$50 Accident as a Defence to Homicide (7)
D13-1 \$50 Defence of Abandonment and Innocent Finder (9)
D14-1 \$50 Officially Induced Error (19)
D15 Consent and Other
 D15-1 \$50 Non - Sexual Assault (32)
 D15-2 \$70 Sexual Offences (73)
 D15-3 \$50 Sexual Offences - Section 150.1 (22)
D16-1 \$50 De Minimis Non Curat Lex - Drug and Non-drug Cases (20)

(E) EVIDENCE

E1 Admissibility of Statements

- E1-1 \$70 Procedural & Preliminary Considerations (34)
 E1-3 \$50 Convictions Based Solely on Accused's Confession (7)
 E1-4 \$50 Statements with Respect to Other Offences (7)
 E1-5 \$50 Recording of Statements (27)
 E1-6 \$50 Voluntariness - Inducement (43)
 E1-7 \$70 Young Offenders (61)
 E1-8 \$50 Statements by a Co-Accused (16)
 E1-9 \$50 Voir Dire - Calling All Police Present (8)
 E1-10 \$50 Voir Dire - Cross-Examination of Accused (18)
 E1-11 \$50 Res Gestae Statements (10)
 E1-12 \$70 Charter of Rights (90)
 E1-13 \$50 Tainting Doctrine (18)
 E1-14 \$50 Voluntariness - Interrogation (15)
 E1-15 \$50 Impaired Accused-Alcohol and Drugs (11)
 E1-16 \$50 Accused's Own Statements (21)
 E1-17 \$50 Voluntariness - Oppressive Circumstances (25)
 E1-18 \$50 Persons in Authority (24)
 E1-20 \$50 Accused Denies Making Statement (7)
 E1-21 \$50 Mentally Disabled Accused (15)
E2-1 \$70 Similar Fact Evidence (61)
E3 Accomplice Evidence
 E3-1 \$70 Common Law and Statutory Corroboration after Vetrovec (25)
 E3-4 \$70 Co-Accused as Crown Witness (29)

E4 Identification

- E4-1 \$50 Eye-Witness - Admissibility (14)
 E4-2 \$70 Sufficiency of Evidence (60)
 E4-4 \$50 Similarity of Names (12)
 E4-5 \$50 Line-Ups (17)
 E4-6 \$50 Photographic Line-Ups (14)
 E4-8 \$50 Fingerprints (21)
 E4-9 \$50 Handwriting (11)
 E4-10 \$50 Voice (10)
 E4-11 \$50 Eye-Witness Description Use (12)

- E4-12 \$50 Seated in Body of Courtroom - Accused (5)
 E4-13 \$70 Break and Enter Cases (18)
E5 Evidence in Sexual Assault Cases
 E5-1 \$50 Admissibility of Prior Sexual Conduct Before 1983 Code Amendments (56)
 E5-2 \$50 Defence Use of Expert Evidence: Absence of Disposition - Reliability of Complainant (76)
 E5-3 \$50 Admissibility of Recent Complaint Before 1983 Code Amendments (14)
 E5-4 \$50 Admissibility of Complaint after Code Amendments - s.275 (62)
 E5-5 \$70 Admissibility of Prior Sexual Conduct (67)
 E5-6 \$50 Out-of-Court Statements of Child Complainants For Truth Of Contents (45)
 E5-7 \$70 Credibility and Character (100)
 E5-8 \$50 Corroboration (35)
E6 Witnesses, Character and Credibility
 E6-1 \$70 Collateral Fact Rule (27)
 E6-2 \$70 Youthful Witnesses - Competence, Videotapes and Screens (56)
 E6-3 \$70 Unsavoury Witnesses (29)
 E6-4 \$50 Examination of Witnesses Prior Criminal Record and Past Disreputable Conduct (37)
 E6-5 \$50 Character of Victim - Previous Acts of Violence (15)
 E6-6 \$50 Prior Inconsistent Statements (50)
E7-1 \$70 Doctrine of Recent Possession (25)
E8-1 \$50 Alibi (21)
E10 Circumstantial Evidence
 E10-1 \$50 Consciousness of Guilt - Flight (19)
E12 Documents
 E12-5 \$50 Certificate Evidence Notice (30)
E13 Photographs
 E13-1 \$70 Conditions for Admissibility (16)
 E13-2 \$50 Videotapes and Films (13)
E14 Polygraph Evidence
 E14-1 \$50 Admissibility & Investigative Use (32)
E15 Admissibility of Evidence
 E15-1 \$50 Prejudice vs. Probative Value (46)
 E15-2 \$50 Reading in Evidence from The Preliminary Inquiry (26)
 E15-3 \$50 Hearsay - Deceased's Statements and Others (45)
E16-1 \$50 The Police Informer Privilege (16)
(O) OFFENCES
O1 Weapons
 O1-1 \$70 Proof in Weapon Dangerous Charges (34)
 O1-2 \$50 Proving an Innocent Object to be a Weapon (18)
 O1-3 \$50 Carrying a Concealed Weapon (18)
 O1-4 \$50 Possession of Prohibited Weapons - Orders (38)
 O1-5 \$50 Possession of Prohibited Weapon - Knife (13)
 O1-6 \$50 Careless Use/Storage of Firearm - Tests to be Applied (39)
 O1-8 \$50 Pointing a Firearm: s.86.1 (10)
 O1-9 \$50 Proving a Gun to be a "Firearm" (16)
O2-2 \$70 Conspiracy - Overview (27)
O3 Homicide
 O3-1 \$50 Attempt Murder (19)
 O3-2 \$50 Cause of Death (14)
 O3-3 \$50 Death Caused in Pursuance of Unlawful Objects (16)
 O3-4 \$70 First Degree Murder - Planning and Deliberation (33)
 O3-5 \$50 Murder and Manslaughter (29)
O4 Parties to an Offence
 O4-1 \$50 Parties - Aiding and Abetting (44)
 O4-2 \$50 Parties - Principal Unknown or Unconvicted (10)
 O4-3 \$50 Abandonment of Joint Venture (5)
O6 Attempts and Inchoate Crimes
 O6-1 \$50 Attempts - Definition (40)
 O6-2 \$50 Counselling Commission of an Offence (13) (Note: for Attempt Murder, O3-1)
O7-1 \$70 Possession - General (32)

08 Criminal Negligence, Dangerous and Careless Driving

- 08-1 \$70 Criminally Negligent Driving (68)
 08-2 \$50 Criminal Negligence (45)
 08-3 \$70 Dangerous Driving (118)
 08-4 \$50 Careless Driving (32)
 08-5 \$50 Driving While Disqualified (75)
 08-6 \$50 Driving In Excess of Speed Limit (50)

09-1 Arson and Setting Fire (38)**010 Sexual Offences**

- 010-1 \$70 Indecent Acts (24)
 010-2 \$70 Gross Indecency (26)
 010-3 \$50 Loitering (7)
 010-4 \$50 Prostitution and Soliciting (20)
 010-5 \$70 Common Bawdy House (23)
 010-6 \$70 Sexual Assault (44)
 010-7 \$50 Living on the Avails of Prostitution (13)
 010-8 \$50 Procuring and Exercising Control (27)
 010-9 \$50 Sexual Interference (9)
 010-10 \$50 Sexual Exploitation (21)
 010-11 \$50 Invitation to Sexual Touching (11)
 010-12 \$70 Indecent Assault (21)
 010-13 \$70 Incest (19)

011-1 Extortion (12)**012-1 Possession of Burglar's Tools - (18)****013-1 Break and Enter; Unlawfully in Dwelling (51)****014 Breathalyzer and Impaired**

- 014-1 \$50 Evidence of Impairment (99)
 014-2 \$50 Care or Control (102)
 014-3 \$70 Breathalyzer Demands (68)
 014-4 \$50 Breathalyzer Test: "As Soon as Practicable" (43)
 014-5 \$70 Evidence to the Contrary (93)
 014-6 \$50 Breathalyzer Certificates (58)
 014-7 \$50 Impaired Driving - Over 80 - Mens Rea (39)
 014-8 \$50 Causing Death or Bodily Harm (40)
 014-9 \$50 Blood Samples and Seizures (108)
 014-10 \$70 Breath Samples and Seizures (107)
 014-11 \$70 Screening Demands and Evidence (90)
 014-12 \$70 A.L.E.R.T. Model J3A Recall (41)
 014-13 \$70 Refusals - Reasonable Excuse (68)

015-1 Fail to Remain - Code s.252 (33)**016-1 Personation (10)****017 Theft and Possession Stolen Goods**

- 017-1 \$50 Proof of Stolen Nature of Goods and Ownership (25)
 017-2 \$50 Knowledge of the Stolen Nature of Goods (24)
 017-3 \$50 Value of Property Stolen or Possessed (10)
 017-4 \$70 Possession - Passengers in Motor Vehicles (15)
 017-5 \$70 Colour of Right; Lack of Fraudulent Intent (26)
 017-6 \$50 Shoplifting (22)
 017-7 \$50 Distinction Between Theft and Joyriding (7)
 017-8 \$50 Elements of the Offence (30)

018 Robbery

- 018-1 \$50 Purse Snatching (7)
 018-3 \$50 Theft: Elements of the Offence (16)

019 Forgery and Uttering

- 019-1 \$50 Forgery (10)
 019-2 \$50 Uttering (13)

020-1 False Pretences (18)**021 Cause Disturbance**

- 021-1 \$50 Definition and Constituent Elements (18)
 021-2 \$50 Specific Means of Causing A Disturbance (14)

022 Mischief

- 022-1 \$50 Mens Rea (15)
 022-2 \$50 Actus Reus (17)

023 Fraud

- 023-1 \$70 The Nature of the Offence (61)
 023-2 \$70 Welfare Fraud (40)
 023-3 \$50 Counterfeiting and Credit Card Offences (22)
 023-4 \$50 Secret Commissions and Bribery Offences (14)
 023-5 \$50 Unemployment Insurance Offences (9)
 024-1 \$50 Threats, False Messages & Harassing Phone Calls (41)

025 Assaults; Wounding

- 025-1 \$70 Assault Bodily Harm /Weapon (20)
 025-2 \$70 Wounding and Aggravated Assault (21)
 025-3 \$70 Assault Generally and Common Assault (39)
 025-4 \$70 Use of Corrective Force: Parents and Children - Teachers and Pupils (25)

026 Probation, Recognizance, Undertaking

- 026-1 \$50 Breach of Undertaking or Probation Failing to Comply (66)
 026-2 \$50 Breach of Probation - Young Offender (17)
 026-3 \$50 Breach of Probation Evidence Issues (19)
 026-4 \$50 Commence, Vary, Appeal, Stay (18)

027 Kidnapping and Abduction

- 027-1 \$50 Abduction of Children (27)
 027-2 \$50 Unlawful Confinement (8)
 027-3 \$50 Abduction in Contravention of Custody Order (6)

- 027-4 \$50 Abandon Child - Fail to Provide (20)

029 Trespassing at Night

- 029-1 \$50 Definition and Constituent Elements (7)

030-1 \$50 Breach of Probation - Evidentiary Considerations (18)**031 Drugs**

- 031-1 \$50 Trafficking - Definition (34)
 031-2 \$50 Trafficking - Defences - Agent for the Purchaser (9)
 031-3 \$70 Possession in Narcotics Cases (44)
 031-4 \$70 Possession for the Purpose of Trafficking - Circumstantial Evidence re Purpose of Trafficking (28)
 031-5 \$70 Conspiracy - Drugs (27)
 031-6 \$70 Drugs - Evidence (18)
 031-7 \$50 Importing (11)
 031-8 \$50 Cultivation (8)

033 Mens Rea

- 033-1 \$50 Mens Rea in Non-Code Offences (33)

034-1 \$70 Obstruct Justice - Elements of Offence (22)**035-1 \$70 Obstruct Police - Elements of Offence (48)****036-1 \$50 Public Mischief - Definition (19)****037-1 \$70 Obscenity (57)****038 Provincial Offences**

- 038-1 \$70 Failure to Stop for Police Officer H.T.A. s.216 (28)
 038-2 \$50 Driving While License Under Suspension (22)
 038-3 \$50 The Tresspass to Property Act (12)

039-1 \$70 Assault Police/Resist Arrest (26)**040-1 \$50 Perjury (16)****041-1 \$50 Escape from Lawful Custody (14)****042-1 \$50 Peace Bonds (Keeping the Peace) (23)****043-1 \$50 Criminal Harassment (27)****(P) PROCEDURES****P1-1 \$50 Change of Venue - General (31)****P2-1 \$70 Guilty Pleas - Withdrawal of Pleas (46)****P3 Preliminary Inquiry**

- P3-1 \$50 Test for Committal for Trial (33)
 P3-4 \$50 Quashing Committal for Trial (48)

P4 Disclosure

- P4-2 \$70 Right to Disclosure (144)
 P4-3 \$70 Third Party Records (81)
 P4-4 \$70 Remedies (49)

P5 Jurisdiction

- P5-1 \$70 Procedural Irregularities and Loss of Jurisdiction (29)
 P5-2 \$70 Jurisdiction - Territory, Person, Offence (41)

P6 Joinder and Severance

- P6-2 \$50 Severance of Accused (22)
 P6-3 \$50 Joinder and Severance (28)

P7 Appeals

- P7-1 \$50 Grounds - Failure of Judge to Consider or Appreciate (75)

P9 Res Judicata

- P9-1 \$50 Autrefois Acquit - Availability (23)

P10-1 \$50 Juries - Challenge for Cause (52)**P11 Judicial Interim Release**

- P11-1 \$50 Murder - Release Pending Trial (36)
 P11-2 \$50 Judicial Interim Release - Bail Review (35)
 P11-3 \$50 Judicial Interim Release - Bail Hearing (35)

P13 Indictments and Informations

- P13-1 \$70 Sufficiency of Information (43)
 P13-2 \$70 Variance and Amendment (38)
 P13-3 \$50 Procedures on Informations (7)
 P13-4 \$50 Formal Defects in Informations or Court Process (15)
 P13-5 \$50 Duplicity (16)

P14 Arrest

- P14-1 \$50 Arrest Without Warrant (91)
 P14-2 \$50 Duty Not to Arrest - Code s.450(2) (26)
 P14-3 \$70 Strip Search Incidental to Arrest (81)
 P14-4 \$50 Intoxicated Condition in a Public Place (21)
 P14-5 \$70 Arrest by Private Citizen (45)
 P14-6 \$70 Entry of Premises to Arrest (41)
 P14-7 \$70 Elements of an Arrest and Unlawful Arrests (36)

P15-1 \$70 Young Offenders - s.16 Transfers (89)**P16-1 \$50 Judges - Bias or Partiality (45)****P17-1 \$70 Elections (40)****P19-1 \$50 Mistrials (17)****P21-1 \$50 Included Offences (33)****P24-1 \$50 Duty to Call All Material Evidence (19)****(S) SENTENCE****S1 Robbery**

- S1-1 \$50 Previous Offenders - Ontario (54)
 S1-2 \$70 Previous Offenders - Outside Ontario (101)
 S1-3 \$50 First Offenders - Ontario (22)
 S1-4 \$50 First Offenders - Outside Ontario (32)

- S1-5 \$70 Bank Robbery (48)
 S1-6 \$50 Conspiracy to Commit Robbery (10)
 S1-7 \$50 Attempt Robbery (17)

S2 Theft, Fraud and False Pretences

- S2-1 \$70 Defrauding Government Agencies - Welfare Fraud and UIC (36)
 S2-2 \$70 Breach of Trust (78)
 S2-3 \$70 Business Frauds (48)
 S2-4 \$70 Cheque Passing Schemes (28)
 S2-5 \$50 Thefts and Frauds - Criminal Breach of Trust - Lawyers (14)
 S2-6 \$50 Medical Frauds (4)

S3-1 \$70 Dangerous Offender Applications (108)**S4 Drugs**

- ("Ppt" - Possession for the Purpose of Trafficking)
 S4-1 \$70 Cannabis - Ppt - Ontario (18)
 S4-2 \$70 Cannabis - Trafficking - Ontario (15)
 S4-3 \$50 Cannabis - Simple Possession (27)
 S4-4 \$50 Unlawful Cultivation - Marijuana (13)
 S4-5 \$50 LSD (28)
 S4-6 \$70 Heroin (56)
 S4-7 \$70 Cocaine-Ontario (64)
 S4-8 \$50 Phencyclidine (11)
 S4-9 \$50 Cannabis - Conspiracy to Traffic (21)
 S4-10 \$50 Methamphetamine (11)
 S4-11 \$50 Psilocybin (7)
 S4-12 \$50 Morphine (10)
 S4-13 \$50 Importing (34)
 S4-14 \$50 Ppt - Cannabis - Outside Ontario (52)
 S4-15 \$50 Cannabis - Trafficking - Outside Ontario (43)
 S4-16 \$50 Cocaine - Outside Ontario (75)

S5 Weapons

- S5-1 \$70 Weapon Dangerous (54)
 S5-2 \$70 Use of Firearm (54)
 S5-3 \$50 Possession of Prohibited and Restricted Weapons (30)
 S5-4 \$50 Pointing Firearm (10)
 S5-5 \$50 Careless Use, Carriage, Handling, Shipping or Storage of a Firearm (9)
 S5-6 \$50 Carrying Concealed Weapon s.89 (5)

S6 Break and Enter

- S6-1 \$50 Previous Offenders - Ontario (32)
 S6-2 \$50 First Offenders - Ontario (8)
 S6-3 \$70 Previous Offenders - Outside Ontario (116)
 S6-4 \$50 Mitigating and Aggravating Factors (16)
 S6-5 \$50 First Offenders - Outside Ontario (32)

S7 Homicide

- S7-1 \$50 Manslaughter - Ontario (48)
 S7-2 \$50 Manslaughter - Outside Ontario (62)
 S7-4 \$50 Attempt Murder (38)
 S7-5 \$70 Second Degree Murder- Parole Non-Eligibility (89)

S8 Sexual Offences

- S8-1 \$50 Sexual Offences Against Children - Non - Breach of Trust (85)
 S8-2 \$50 Sexual Offences Against Children - Non - Parental Breach of Trust (106)
 S8-3 \$50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Outside Ontario (116)
 S8-4 \$50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Ontario (57)
 S8-5 \$50 Sexual Offences - Siblings (9)
 S8-6 \$50 Anal Intercourse (18)
 S8-7 \$50 Obscene Publications, etc. (6)
 S8-8 \$50 Contributing to Delinquency (Repealed) (2)
 S8-9 \$50 Sexual Assault - Ontario (49)
 S8-10 \$50 Sexual Assault - Outside Ontario (92)
 S8-11 \$50 Living on Avails; Procuring (21)
 S8-12 \$50 Common Bawdy House (4)
 S8-13 \$50 Rape and Attempted Rape (Repealed) (39)
 S8-14 \$50 Indecent Assault (Female) (Repealed) (16)
 S8-15 \$50 Intercourse with Female Under 14/14-16(Repealed) (12)

S8-16 \$50 Gross Indecency and Indecent Act Consenting Adults (s. 157 Repealed) (4)**S9-1 \$50 Arson and Setting Fire (36)****S10 General Principles**

- S10-2 \$50 First Sentence of Imprisonment (33)
 S10-3 \$50 Reformatory Instead of Penitentiary (31)
 S10-5 \$50 Time Spent in Custody (28)
 S10-6 \$50 Use of Accused's Prior Record (29)
 S10-7 \$50 Prior Record - Gap Principle (10)
 S10-8 \$70 Disputed Facts and Unproven Offences (98)
 S10-9 \$70 Discharges (50)
 S10-10 \$50 Impairment (21)
 S10-11 \$50 Rehabilitation (36)
 S10-12 \$50 Leaders and Followers (19)
 S10-13 \$50 Lack of Sophistication (11)
 S10-14 \$50 Guilty Plea (22)
 S10-15 \$50 Co-operation with Authorities (13)
 S10-16 \$50 Employment (27)

S10-17 \$50 Hardship to Dependents (23)
 S10-18 \$70 Disparity and Conformity (39)
 S10-19 \$50 Totality Principle (33)
 S10-20 \$50 Compensation, and Restitution (44)
 S10-21 \$50 Appeals - Sentence Served (14)
 S10-22 \$50 Fines (20)
 S10-26 \$50 Joint Submissions on Sentence (21)
 S10-27 \$50 Delay in Prosecution (21)
 S10-29 \$70 Effect of Mental Disorder on Sentencing (40)
 S10-31 \$50 Concurrent and Consecutive Sentences (58)
 S10-32 \$50 Past Offences, No Convictions (16)
 S10-33 \$50 Victim Impact Statement (25)
S11-1 \$70 Wounding (26)
S12 Criminal Negligence and Dangerous Driving
 S12-1 \$70 Criminal Negligence (48)
 S12-2 \$70 Dangerous Driving (89)
S13 Non-Sexual Assaults
 S13-1 \$50 Mitigating and Aggravating Factors (8)
 S13-2 \$50 Offences Against Children and the Elderly (44)
 S13-3 \$50 Domestic Assaults (94)
 S13-4 \$50 Assault Bodily Harm
 - Assault With a Weapon - General (72)
 S13-5 \$50 Gang Assaults - Premeditated (15)
 S13-6 \$50 Police Assaults of Prisoners (7)
 S13-7 \$50 Assault Police, Assaults Against Persons in Authority (26)
 S13-8 \$50 Prison Assaults - Inmate Fights (4)
 S13-9 \$50 Street Attacks (9)
 S13-10 \$50 Assaults Arising from Sports (4)
 S13-11 \$70 Aggravated Assault (40)
 S13-12 \$50 Common Assault (31)
S14 Theft and Possession
 S14-1 \$70 Theft and Possession Over - Previous Offenders (77)
 S14-2 \$50 Theft and Possession Over - First Offenders (29)
 S14-3 \$50 Shoplifting (24)
 S14-4 \$50 Theft and Possession Under - Non - shoplifting (36)
S15-1 \$50 Fail to Remain (25)
S16 Forgery, Uttering, Personation
 S16-1 \$70 Uttering (28)
 S16-2 \$50 Forgery (15)
 S16-3 \$50 Personation (9)
S17 Kidnapping and Forcible Confinement
 S17-1 \$50 Forcible Confinement (53)
 S17-2 \$50 Kidnapping (19)
S18 Impaired Driving
 S18-1 \$50 Impaired and Over 80 - Previous Offenders (55)
 S18-2 \$50 Impaired Driving - Proof of Prior Convictions (42)
 S18-3 \$50 Impaired and Over 80 - First Offenders (34)
 S18-4 \$50 Curative Treatment - Discharges (30)
 S18-5 \$50 Impaired Driving Causing Bodily Harm/Death (41)
S19-1 \$50 Obstruct Justice (18)
S20-1 \$50 Credit Card Offences (15)
S21-1 \$50 Extortion (21)
S22-1 \$50 Public Mischief (9)
S23-1 \$50 Uttering Threats s.264.1 and False Messages s.372 (46)
S24-1 \$50 Mischief to Property (41)
S25-1 \$50 Obstruct Police (10)
S27 Fail to Appear/Fail to Comply
 S27-1 \$50 Breach of Probation (25)
 S27-2 \$50 Fail to Appear (10)
 S27-3 \$50 Breach of Recognizance (26)
S28-1 \$50 Perjury (17)
S29-1 \$50 Escape Custody and Unlawfully at Large (27)
S30 Young Offenders Act - Dispositions
 S30-1 \$50 General Principles (54)
 S30-2 \$50 Robbery (23)
 S30-3 \$50 Break and Enter (56)
 S30-4 \$50 Assault (24)
 S30-5 \$50 Theft and Possession (35)
 S30-6 \$50 Sexual Assault (19)
 S30-7 \$50 Weapons Offences (12)
 S30-8 \$50 Escape Custody and Unlawfully at Large (7)
S31-1 \$50 Criminal Negligence - Non-Motor Vehicle (12)
S32-1 \$50 Causing a Disturbance (5)

CH1-2 \$50 Re-Opening Paternity (16)
CH2 Custody
 CH2-1 \$50 Tender Years Doctrine (19)
 CH2-2 \$50 Joint Custody (44)
 CH2-3 \$70 Best Interests of Child, s.24(2) C.L.R.A. (85)
 CH2-4 \$50 Removal of Child from the Jurisdiction (12)
 CH2-5 \$50 Variation of Custody Orders (71)
 CH2-6 \$50 Custody/Access Assessments (28)
 CH2-7 \$50 Custody - Jurisdiction (47)
 CH2-8 \$50 Best Interests of Child - Disputes Between Parents and Non-Parents (50)
 CH2-9 \$50 Best Interests of Child - Conduct of Parents (47)
CH3 Access
 CH3-1 \$50 Access - General Principles (74)
 CH3-2 \$50 Access - Enforcement - Contempt Proceedings (27)
 CH3-3 \$50 Access/Custody - Standing to Apply - Meaning of "Any Other Person" s.21, C.L.R.A. (23)
 CH3-4 \$50 Transportation Cost and the Exercise of Access (20)
 CH3-5 \$50 Grandparents' Right to Access (20)
 CH3-6 \$50 Conduct of Parents (30)
CH4 Adoption
 CH4-1 \$50 Dispensing With Consent of Natural Parent (42)
 CH4-2 \$50 Post Adoption - Access By Natural Parent (27)
CH5 Children in Need of Protection - C.F.S.A.
 CH5-1 \$70 Crown Wardship Orders - When Made (80)
 CH5-2 \$50 Crown Wardship and Parental Access (43)
 CH5-3 \$50 Crown Wardship vs. Opportunity to Parent (35)
 CH5-4 \$50 Termination of Crown Wardship (23)
 CH5-5 \$50 Supervisory Orders - When Made (33)
 CH5-6 \$50 Child Abuse Register - Expunction Hearing (25)
 CH5-7 \$50 Costs Against Children's Aid Society or Official Guardian (18)
 CH5-8 \$50 Orders for Temporary Care and Custody- Test (21)

(DIV) DIVORCE
 DIV1-1 \$70 Cruelty - Mental or Physical (27)

(DP) PROPERTY
DP3 Trusts
 DP3-1 \$50 Resulting and Constructive Trusts (60)
DP4 Net Family Property
 DP4-1 \$50 Unequal Division - Unconscionable (43)
 DP4-2 \$50 "Separated" - "Separate and Apart" (23)
DP20 Net Family Property
 DP20-1 \$50 Valuation of a Business Interest (17)

(MH) MATRIMONIAL HOME
 MH1-1 \$50 Exclusive Possession (40)
 MH1-2 \$50 Occupation Rent (24)

(PRO) PROCEDURE
PRO Costs
 PRO1-1 \$50 Effect of Offers to Settle (26)
 PRO1-2 \$50 Custody/Access Proceedings (26)
 PRO2-1 \$50 Limitation Periods Under the Family Law Act (14)
 PRO2-2 \$50 Financial Statements - Duty to Disclose (14)
PRO3 Practice and Procedure - venue
 PRO3-1 \$50 Naming Place of Hearing and Change of Venue (26)
PRO20 Procedure
 PRO20-1 \$50 Contempt - Rule 60.11 (1) (21)

(RE) RESTRAINING ORDERS
 RE1-1 \$50 Non-Harassment Orders - Family Law Act, s.46 (12)
 RE2-1 \$50 Preservation Orders - Family Law Act, s.12 (15)

(SA) SEPARATION AGREEMENTS
SA1 Setting Aside Separation Agreements
 SA1-1 \$70 Common Law Grounds of Invalidity (56)
 SA1-2 \$70 Overriding Waivers/Provisions for Spousal Support in Divorce Proceedings (43)
 SA1-3 \$70 Effect of Reconciliation (12)
 SA1-4 \$50 Effect of Separation Agreements in Applications For Child Support (42)
 SA1-5 \$50 Interpretation of Separation Agreements Release Clauses (19)

(SD) SUPPORT (DIVORCE)
SD1 Spousal Support
 SD1-1 \$70 Variation of Permanent Orders (81)
 SD1-2 \$50 New Partners - Income or Assets (26)
 SD1-3 \$50 Arrears - Reduction or Rescission (74)
 SD1-4 \$50 Effect of Delay - Initial Application (18)

SD1-5 \$50 Effect of Cohabitation (48)
 SD1-6 \$50 Nominal or "In Case" Awards (8)
 SD1-7 \$50 Retirees - Mandatory and Early (24)
 SD1-8 \$50 Interim and Interim Interim Application (73)
 SD1-10 \$50 Limited Term Orders (35)
 SD1-11 \$50 Lump Sum Orders (41)
SD2 Child Support
 SD2-1 \$50 Meaning of "In Loco Parentis" (27)
 SD2-2 \$50 Children over 16 Attending University (42)
 SD2-3 \$50 Effect of Delay - Initial Application (14)
 SD2-4 \$50 Lump Sum Child Support Orders (25)
SE1 Support Enforcement
 SE1-1 \$50 Garnishment (40)
 SE1-2 \$50 Default Hearing (36)
 SE1-3 \$50 Staying Enforcement (16)

(SU) SUPPORT (PROVINCIAL)
SU1 Child Support
 SU1-1 \$50 Parental Obligation
 - "Withdrawn From Parental Control" (37)
 SU1-2 \$50 "Demonstrated Settled Intention to Treat" (32)
 SU1-3 \$50 Relationship Between Child Support and Access (16)
 SU1-4 \$50 Child Support - Assessment of Quantum - General Principles (57)
 SU1-5 \$50 Apportionment Between Multiple Parents (20)
SU2 Spousal Support
 SU2-1 \$50 Extended Definition of "Spouse" - "Cohabited Continuously for a Period of Not Less Than 5 Years" (27)
 SU2-2 \$50 Duty to be Self-Supporting (31)
 SU2-3 \$50 Marriage of Short Duration - Quantum - Two Years or Less (21)
 SU2-4 \$50 Conduct Decreasing or Increasing Quantum - s.33(10) F.L.A. (14)
 SU2-5 \$50 Ability to Pay - Voluntary Reduction of Income (55)
 SU2-6 \$50 Entitlement - Need (52)
 SU2-7 \$50 Social Assistance (21)
SU3 Support Orders
 SU3-1 \$50 Secured Orders: Transfer of Property (37)
 SU3-2 \$50 Retroactive Orders (31)

CIVIL LAW MEMORANDA
 (All-Canada orientation unless specified otherwise.)

(BAN) BANKRUPTCY
BAN1 Discharges
 BAN1-1 \$50 Judgment Debtor Avoiding Judgment Against Him (11)

(CON) CONTRACTS
CON1 Relief and Remedies
 CON1-1 \$50 Non Est Factum (34)
DEB1 Debtor and Creditor
 DEB1-1 \$50 Notice of Requirements (19)

(DAM) DAMAGES
DAM1 Section 61, Family Law Act
 DAM1-1 \$50 Dependants' Damages - Quantum (55)
 DAM1-2 \$70 Dependants' Damages - Entitlement and Procedure (61)
DAM2 Intentional Torts
 DAM2-1 \$50 Damages for Assault and Sexual Assault (74)
 DAM2-2 \$50 Damages for False Imprisonment (19)
DAM4 Personal Injuries
 DAM4-1 \$50 Loss of Organs: Spleen, Pancreas, Gall Bladder and Kidney (23)
 DAM4-2 \$50 Minor Head Injuries - Concussions - Headaches - Case Digests (19)
 DAM4-3 \$50 Lower Back Injuries - Sprains, Contusions and Bruises - Case Digests (63)
 DAM4-4 \$70 Knees - Case Digests (83)
 DAM4-5 \$50 Ankles - Case Digests (47)
 DAM4-6 \$50 Dental Injuries - Teeth (15)
 DAM4-7 \$50 Facial Numbness - Paresthesia (15)
 DAM4-8 \$50 Temporomandibular Joint Syndrome - "TMJ" (22)
 DAM4-9 \$50 Nose Injuries (16)
 DAM4-10 \$50 Eye Injuries (20)
 DAM4-11 \$50 Burns (18)
 DAM4-12 \$50 Facial Scarring - Children (14)
 DAM4-13 \$50 Post Traumatic Stress Disorder (50)
 DAM4-14 \$50 Rib Injuries (12)
 DAM4-15 \$50 Dog Bites (14)

(EMP) EMPLOYMENT
EMP1 Wrongful Dismissal - Damages
 EMP1-1 \$70 Reasonable Notice - Managers (70)
 EMP1-2 \$50 Reasonable Notice - Salespersons (41)

FAMILY LAW MEMORANDA
 (oriented to Ontario Legislation)

(CH) CHILDREN
CH1 Paternity
 CH1-1 \$70 Establishing Parentage (58)

- EMP1-3 \$50 Reasonable Notice - Professionals (43)
- EMP1-4 \$50 Reasonable Notice - Foremen/Forewomen (30)
- EMP1-5 \$50 Reasonable Notice - Senior Executives (43)
- EMP1-6 \$50 Reasonable Notice
- Miscellaneous Employee Categories (67)
- EMP1-7 \$50 Mental Distress (62)
- EMP1-8 \$50 Punitive Damages
- Damages for Loss of Reputation (58)
- EMP1-9 \$50 Fringe Benefits - Medical and Dental (17)
- EMP1-10 \$50 Calculation - Salespersons' Commission (37)
- EMP1-11 \$50 Reasonable Notice - Probationary Employees (34)
- EMP1-12 \$50 Mitigation (77)
- EMP1-13 \$50 Loss of Benefits - Car (19)
- EMP2 Dismissal of Employee - Just Cause**
- EMP2-1 \$50 Illness of Employee (30)
- EMP2-2 \$50 Dishonesty (41)
- EMP2-3 \$50 Personality Conflicts (49)
- EMP2-4 \$50 Dishonesty - Examples of Misconduct (65)
- EMP2-5 \$50 Insolence, Insubordination and Willful Disobedience (50)
- EMP2-6 \$50 Lateness and Absenteeism (28)
- EMP2-7 \$50 Disloyalty and Conflict of Interest (28)
- EMP2-8 \$50 Alcohol and Drugs, Sexual Misconduct, Assault, Miscellaneous (28)
- EMP2-9 \$50 Incompetence - Managers (25)
- EMP2-10 \$50 Incompetence - Salespersons and Sales Managers (25)
- EMP2-11 \$50 Incompetence - Professionals (13)
- EMP2-12 \$50 Incompetence - Senior Executives and Directors (13)
- EMP2-13 \$50 Incompetence - Forepersons, Superintendents and Supervisors (11)
- EMP2-14 \$50 Incompetence - Miscellaneous - Employees (20)
- EMP3 Wrongful Dismissal - Status and Notice**
- EMP3-2 \$50 Part-time and Casual Employees (17)
- EMP4 Wrongful Dismissal - Constructive Dismissal**
- EMP4-1 \$50 Geographical Transfer of Employee (23)
- EMP4-2 \$50 Reduced Earnings: Fixed Salary (26)
- EMP4-3 \$50 Reduced Earnings: Commission, Bonus, Car (38)
- EMP4-4 \$50 Change in Duties/Job Description (29)
- EMP4-5 \$70 Demotions: Management Employees (37)
- EMP4-6 \$50 Demotions: Non Management Employees - intro & cases (24)
- EMP4-7 \$50 Work Hours and Illness (21)
- EMP4-8 \$50 Changes in Reporting Arrangements; loss of office (16)
- EMP4-9 \$50 Miscellaneous cases (34)
- EMP4-10 \$50 Defence - Condonation by employee (12)
- EMP5 Contract of Employment**
- EMP5-1 \$50 - Termination Provisions
- Enforceability and Interpretation - (48)

(INS) INSURANCE

- INS1-1 \$50 Agents and Brokers - Negligence re Clients (47)**
- INS2 Contract of Insurance**
- INS2-1 \$50 "Insured" - Wrongful Act of Co-Insured (23)
- INS3 Auto Insurance**
- INS3-1 \$50 Exclusions - Insured Driving While Intoxicated (24)
- INS3-2 \$50 Use or Operation of Automobile (19)
- INS3-3 \$50 Statutory Conditions - Permitting Use by Another While Intoxicated or Unlicensed or Unqualified (14)
- INS3-4 \$50 Disability Benefits
- Meaning of Totally Disabled (36)

- INS3-5 \$50 No-Fault Automobile Insurance: Scope and Operation of s. 266 of the Insurance Act (27)

(LAN) LANDLORD AND TENANT

- LAN1-1 \$50 Early Termination of Residential Tenancies: Illegal Acts on Premises (15)

(LIM) LIMITATIONS

- LIM1-1 \$70 Public Authorities Protection Act, s.11 (45)**
- LIM2-1 \$50 Medical Malpractice - Doctors and Hospitals (15)**

(NEG) NEGLIGENCE

- NEG1 Defences**
- NEG1-1 \$70 Volent Non Fit Injuria and Contributory Negligence - Willing Passengers (30)
- NEG1-2 \$50 Contributory Negligence - Child Pedestrians (18)
- NEG2 Duty and Standard of Care Professionals**
- NEG2-5 \$50 Lawyers - Legal and Investment Advice - Performance of Clients' Instructions (42)
- NEG2-6 \$50 Lawyers - Real Estate Transactions (42)
- NEG2-7 \$50 Lawyers - Limitation Periods, Conduct of Action, Settlements (25)
- NEG2-15 \$50 Lawyers - Existence of Solicitor/Client Relationship and Duties to Third Parties (21)
- NEG2-16 \$50 Medical Malpractice - Patient's Consent to Treatment (50)
- NEG2-17 \$50 Duty to Intoxicated Person (23)
- NEG2-18 \$50 Medical Malpractice - Specific Procedures - Tubal Ligation/Abortions /Wrongful Births (18)
- Parent and School Authorities**
- NEG2-1 \$50 School Authorities' Duty to Supervise (25)
- NEG2-2 \$50 Child Pedestrians - Parents' Duty to Supervise Children (11)
- NEG2-4 \$50 Parents' Duty to Supervise Children - Non Pedestrian Cases (27)
- Motor Vehicles - Pedestrians and Cyclists**
- NEG2-8 \$50 Pedestrians - Crossing Outside Designated Place (45)
- NEG2-10 \$50 Pedestrians - Walking, Standing or Creating Obstruction in or Beside Roadway (25)
- NEG2-11 \$50 Pedestrians - Intoxicated (26)
- NEG2-12 \$50 Pedestrians - Crossing at or near Intersection or Cross walk (44)
- NEG2-13 \$50 Pedestrians - Miscellaneous Cases (56)
- NEG2-14 \$50 Pedestrians - Places other than Highways and Involving Police Officers or Disabled Persons (29)
- NEG2-2 \$50 Child Pedestrians - Parents' Duty to Supervise Children (10)
- NEG2-3 \$50 Child Cyclists - Drivers' Duty and Standard of Care; Contributory Negligence; Parental Supervision (22)
- NEG2-9 \$50 Adult Cyclists (26)
- NEG3 Vicarious Liability**
- NEG3-1 \$50 Vehicle Owners' Liability - Consent (39)
- NEG3-2 \$50 Owner of a Motor Vehicle (9)
- NEG4 Liability of Municipalities**
- NEG4-1 \$50 Ice and Snow on Sidewalks (22)
- NEG4-2 \$50 Disrepair of Sidewalks (26)
- NEG5-1 \$50 Dog Owner's Liability (7)

(OCC) OCCUPIERS' LIABILITY

- OCC1 General Principles**
- OCC1-1 \$50 General Principles (85)

OCC2 Swimming and Diving Accidents

- OCC2-1 \$50 Swimming and Diving Accidents; Accidents on Pool Premises (18)

OCC3 Slip and Fall

- OCC3-1 \$50 Uneven and Other Deceptive (Non-slippery) Surfaces; Obstructions (54)
- OCC3-2 \$50 Ice and Snow - Parking Lots and Means of Access (Exterior), Privately Controlled (39)

OCC4 Recreation and Sport Premises

- OCC4-1 \$50 Duty re Facilities and Activities (52)

(REA) REAL PROPERTY

- REAL-1 \$50 Certificate of Pending Litigation (20)

(SAL) SALE OF GOODS - DEFECTIVE VEHICLES

- SAL1-1 \$50 Breach of Warranties or Conditions; Fundamental Breach; Illegal Business Practices (25)

(TOR) INTENTIONAL TORTS

- (Damages Not Included)
- TOR1 Assault, False Arrest and Imprisonment**
- TOR1-2 \$50 False Arrest, Assault, False Imprisonment - No Police or Security Guards (13)
- TOR1-3 \$50 Assault - No Police or Security Guards (63)
- TOR1-4 \$50 Excessive Force in Making Arrest (23)
- TOR1-5 \$50 Sexual Assault (37)
- TOR2-1 \$70 Malicious Prosecution - Elements and Defences (48)**
- TOR3-1 \$50 Nervous Shock - Negligent and Intentional Infliction (23)**
- TOR4-1 \$50 Assault - Bars, Restaurants, Night Clubs**
- Liability of Owner for Assaults by Employees and Patrons (28)

(REF) REFUGEES

- REF2-1 \$70 Errors of Law or Fact (92)
- REF3-1 \$70 Natural Justice Issues (78)
- REF4-1 \$50 Change of Circumstances (25)
- REF6-1 \$50 Gender - Related Persecution (45)
- REF7-1 \$70 Nationality and Statelessness (35)
- REF8-1 \$50 Exclusion Clause - Article 1 (E) (12)
- REF9-1 \$50 Exclusion Clause - Article 1(F) (53)
- REF10-1 \$50 Grounds of Persecution - Religion (9)
- REF11-1 \$50 Grounds of Persecution - Political Opinion (11)
- REF12-1 \$50 Intenal Flight Alternative (14)
- REF13-1 \$50 Persecution-Definition (50)

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