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Proceedings of  
Convocation

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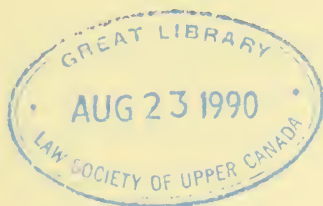




LAW SOCIETY OF UPPER CANADA

SUMMARY OF PROCEEDINGS  
PROCEEDINGS OF CONVOCATION

1987-89



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# THE LAW SOCIETY OF UPPER CANADA

## SUMMARY OF PROCEEDINGS

23 October 1987

For many years the minutes of Convocation were published in the Ontario Reports. Later, they were printed and distributed separately so that the profession and others would know what actions the Benchers had taken and what issues were under consideration. They were edited minutes. Repetitious material was cut away and some private matters deleted. Still, they grew longer and longer and were read by fewer and fewer members. Also, because of their length they took a long time to produce. They had to go back to Convocation for formal approval.

The familiar Communiqué reports on the matters of greatest importance in Convocation concisely and without elaboration. It is very widely read. The Communiqué Plus has expanded on the Communiqué to provide more information but is still limited in scope. It falls far short of minutes.

This is a new publication intended to lie between extended minutes and the Communiqué Plus. It reports fully but still concisely on what is going on in the Society primarily in Convocation. Useful information that would not necessarily appear in formal minutes will be included from time to time.

### HOW CONVOCATION WORKS

The business of the Society is carried on through standing committees. Each Bencher is a member of two or more standing committees. On at least one day each month, all standing committees meet to consider an agenda prepared to raise current matters requiring consideration or action. Before each month's Convocation, Benchers get a copy of each standing committee's report, which contains the recommendations for action by Convocation. During Convocation day,

those who Chair the standing committees present and move adoption of their reports and invite discussion. Usually additional matters are placed before Convocation by the Treasurer as are the reports of any special committees established to consider particular topics. Discipline matters requiring Convocation's attention are ordinarily dealt with at Special Convocations on separate days almost every month.

At the end of this report will be found a list of the present standing committees and their membership.

## MATTERS BEFORE CONVOCATION – OCTOBER 23rd, 1987

### THE ZUBER REPORT

In September Convocation authorized the Treasurer to strike a Special Committee to respond to the Attorney General on the recommendations contained in the "Report of the Ontario Courts' Enquiry", generally called the Zuber Report.

The Attorney General set a deadline for submissions of October the 15th so the Committee under the Chairmanship of Mr. Lamek was instructed to report directly to the Attorney General and then to bring its report to Convocation in October.

The Committee considered only those recommendations that may affect the way in which members of the Society deal with and provide professional services to their clients. The objective of enhancing and reducing the cost of the public's access to the justice system and legal services is of course fully supported by the Society and instances were given in the areas of Legal Aid, Prepaid Legal Services, the Lawyer Referral Service and Dial-A-Law in which the Society has taken significant initiatives to promote easier and less expensive access to the law and to a lawyer of the client's choice.

With respect to particular recommendations the Committee made the following points:

### *Zuber Report – Recommendations*

105. Counsel, in appeal cases, should be required to estimate

the time needed, and except with leave of the court, the estimated time should be the maximum time allowed. This estimate should be given not only to the registrar but should also be transmitted to the court hearing the appeal by inclusion in each factum.

106. Statutory recognition should be given to the power of the court to impose time limits on arguments in appeals.

*The Society's Response:*

Limiting the time for the appeal and argument places a severe limitation on advocacy which is possibly the most significant service that counsel may provide in insuring the rights of his client, particularly at the highest level of his access to justice. Argument is by its nature adapted to the immediate needs of the court and the client within the context of the courtroom at the time. To predetermine the time allowed for argument introduces an artificial restriction on the essence of advocacy.

Additionally, with recent moves in the Supreme Court of Canada limiting the types of cases which it will hear, the provincial Courts of Appeal will, for the great majority of cases be the court of last resort. Accordingly parties should be given enough time to set out their positions adequately. Time limitations might also have the effect of inhibiting judicial intervention in the argument of counsel lessening the quality of the appeal process and quite possibly the ultimate decision. If argument is to be limited, it should only be done with the consent of all counsel involved in the appeal.

*Zuber Report – Recommendations*

Written appeals should be extended to and be mandatory in small civil appeals such as the civil appeals emanating from the Provincial Court civil appeals.

*The Society's Response:*

A written appeal may be appropriate where the client



consents and counsel considers it adequate for the client's needs, but to make it mandatory deprives the client of the advocacy he is entitled to as part of his right to counsel.

To limit appeals in small civil cases to written appeals may appear to minimize the importance of the judicial system to a large proportion of civil litigants.

### *Zuber Report — Recommendations*

112. The Provincial Court (Civil Division) rules should be amended to provide that the pre-trial should be held before the clerk of the court or referee unless otherwise ordered by a judge; and in that instance, the pre-trial must be conducted by a judge.

### *The Society's Response:*

Pre-trial conferences are a significant aspect of the judicial system and should be conducted by a judge and not a clerk who may not possess any legal training. The Provincial Court (Civil Division) is the only contact many members of the public will have with the judicial system and it is important that they perceive that they have been properly dealt with. The less sophisticated the litigant the more important it is their claims are dealt with by a properly trained person.

### *Zuber Report — Recommendations*

118. A voluntary arbitration mechanism should be built into the justice system. After the commencement of a proceeding, either party should be able to propose that the matter be resolved by arbitration. If the other party or parties agree, and the parties agree upon an arbitrator, the matter should proceed forthwith to arbitration. The arbitration should be a procedure of record and the procedure should accord with the principles of natural justice but the strict rules respecting the admissibility of evidence need not be observed. The arbitration award, when rendered, should be filed with the court in which the matter

was commended and be deemed to be a judgment of that court and appealable as a judgment of that court. The fees of the arbitrator should be paid by the parties to the dispute.

*The Society's Response:*

Arbitration mechanisms are presently available where the parties consent. The introduction of arbitration as part of the justice and court system confuses two distinct concepts. Parties agree to arbitration because it is final and non-appealable. Different rules of evidence with different jurisprudence on the concepts add another aspect of uncertainty into the determination of rights. Arbitration mechanisms should be improved and made available but preferably as an alternative method of conflict resolution and not as part of the judicial system.

*Zuber Report – Recommendations*

119. For the assistance of assessment officers, the rules of the various courts should be amended to spell out the principle that the paramount consideration in the assessment of costs is the value of the work done.

120. The *Solicitors Act* should be amended to spell out the principle that solicitor and client assessments of costs should reflect the value of work done.

*The Society's Response:*

The determination of “value of work done” is subjective in the context of an assessment. It is a proper concept but dependent on so many factors that to single it out as paramount without recognition of all the intangible qualities it entails would endanger the fairness of the assessment. The value of work done should continue to be only one of several factors to be considered.

*Zuber Report – Recommendations*

121. A mechanism should be developed whereby there is

some communication between the trial judge and the legal aid authority regarding the length of the trial.

122. Provision should be made that in any trial lasting more than two days, the trial judge should be required to certify whether the duration of the trial was reasonable or unreasonable; and if unreasonable, what an appropriate length would have been. The assessment of legal aid fees should then proceed on the basis of this opinion.

### *The Society's Response:*

The Committee was critical of these recommendations and included its views in its report to the Attorney General.

Convocation however on reviewing the report concluded that both recommendation 121 and 122 should be rejected and authorized the Treasurer to articulate the reasons directly to the Attorney General.

In essence, it was Convocation's view that counsel might feel constrained or inhibited in fulfilling their proper and traditional role as advocates for their clients should the trial judge be invited to decide whether the case had lasted an "unreasonable length". While control of the procedure must and will remain with the trial judge, it is up to counsel to decide what is reasonably required to advance or defend a given cause. Further, Convocation felt that there are safeguards already available to deal with abuses should they occur in both legally aided and other cases, and in both civil and criminal proceedings. Trial judges have shown no hesitation in writing to Legal Aid to express their views about counsel in the appropriate case. In civil actions, Rule 57 provides ample authority for the trial judge to reflect his or her displeasure should the court's time be wasted. For these reasons, Convocation felt that these recommendations should be rejected.

### THE SPECIAL COMMITTEE ON THE STATUS OF LIFE BENCHERS

In September, Convocation authorized the Treasurer to appoint a Special Committee to consider the status and voting rights of Life Benchers. The Treasurer appointed Mr. Bastedo

as Chairman with Messrs. Lerner, Noble, Outerbridge and Pepper.

Historically, Life Benchers had a vote in committee and Convocation. They lost it when the Law Society Act was amended in 1970 except for those who were former Treasurers under the age of 75 years and those who had ever held the office of Attorney General. The Law Society Act was recently amended because of the Charter to permit former Treasurers to vote regardless of their age. The Society has asked that the Act be amended to restore the vote to all Life Benchers primarily so that they could serve on discipline panels, but so far that amendment has not been made.

The Special Committee is to review all of the circumstances touching on the status of Life Benchers including the statutory provision that one may become a Life Bencher after having been elected four times and served at least sixteen years.

#### PARALEGALS

Members will recall that a Bill was placed before the last legislature making certain proposals respecting what are called paralegals. The Society made representations at that time but the legislature prorogued without the Bill being passed. No doubt the question will arise again so a special committee of Mr. Ground (Chairman) and Mr. Bragagnolo, Mrs. Graham, Mr. Guthrie, Miss Kiteley, Messrs. Manes, Ruby and Wood will examine the whole question of the use of paralegals, the protection of the public and the regulation of those who are not lawyers but who may be allowed to perform certain legal services.

#### THE LEGAL EDUCATION COMMITTEE

The Chairman reported on a number of routine matters. An item of particular interest related to the work of the Deputy Director of Legal Education who is designing model curricula for Continuing Legal Education programmes. The process involves identifying about twelve areas of practice (including



civil litigation, family law, real estate and so on) and then creating advisory committees made up of persons practising and teaching in those areas. Each advisory committee will be asked to divide the main areas of practice into more specialized segments, involving the substantive law, procedure and skills in each case. Continuing Legal Education curricula will then be developed to ensure that in a given period (say, three years) the profession will be offered a complete selection of courses for each of the main areas of practice. Each of the programmes will also be available on a "stand alone" basis.

#### THE ADMISSIONS COMMITTEE

Most provinces have adopted an application form to be used by those applying for student membership that is designed to provide full information from which to judge whether they are of good character as required by the governing statutes.

A draft form for use in Ontario similar to those used in other provinces was before the Committee but will come back to a later meeting in amended form for further consideration.

The Committee dealt with nine applications by members wishing to transfer to practice in Ontario from elsewhere in Canada and with a number of other routine matters such as the formal admission to student membership of Bar Admission Course candidates.

#### THE FINANCE COMMITTEE

The balance sheet shows amounts as at September 30th, 1987 compared to the year end, June 30, 1987. Investments stand at \$4,378,390 compared to \$6,028,644 at year end and \$1,592,223 last year. The reduction since year end reflects the fact that the annual fee billing is made this month and most money is received before the year end.

A Law Society Manual is to be published in the form of a three ring binder. It will include The Law Society Act, Regulation and Rules, Barristers Act, Solicitors Act, Professional Conduct Handbook, a Guide to the Law Society including the



names and telephone numbers of key personnel, and sections on a variety of Society services and functions, plus an index.

#### THE LAW FOUNDATION OF ONTARIO

The Society applies each year for grants from the Foundation for such things as the cost of maintaining the Bar Admission Course, maintaining and stocking law libraries throughout the province, producing and promoting the Dial-A-Law programme and restoring the Gazette to four issues a year instead of three. Convocation approved this year's application to the Foundation in the total amount of \$1,580,000. The Foundation is funded from the interest earned on lawyers' mixed trust accounts.

#### LIFE MEMBERS, RETIREMENTS AND DEATHS

The following who have been members for fifty years have become Life Members of the Society and are liable to no further fees:

Norman Alan Ferguson	Toronto
Charles Lea	Toronto
Shirley Armstrong King Logan	Sarnia
Harry Raymond	Toronto
Wolverstan Laird Thomas	London
Donald Roebuck Walkinshaw	Toronto

The following members have retired:

Charles Lachlan McKinnon	Guelph
Leonard Verbeek	Willowdale
John Lamont Stewart	Hamilton

The following members have died:

Frances Johan Lambier	Called April 13th 1986
Hamilton	Died July 23rd 1987
David Sylvester Charlton, Q.C.	Called October 16th 1930
Cambridge (Life Member)	Died June 11th 1987
John Richard Wrigley	Called March 22nd 1974
Ottawa	Died September 12th 1987
Ernest Victor McKague, Q.C.	Called May 20th 1920
Thornhill (Life Member)	Died July 13th 1987

Arthur Lloyd Foote  
Halifax

Called September 18th 1964  
Died January 8th 1987

Donald Joseph Gastmeier, Q.C.  
Mississauga

Called March 25th 1966  
Died September 11th 1987

George James Godo  
Hamilton

Called September 19th 1958  
Died September 1st 1987

#### THE DISCIPLINE COMMITTEE

The most important matter before the policy section of the Committee related to what are called general retainers. In March, 1982 Convocation dealt with the issue of depositing specific retainers in criminal matters into general accounts. At that time, Convocation ruled that Section 14(5)(a) of the Regulation, which provides that money need not be paid into a trust account where a client requests in writing that it be deposited elsewhere, does not permit general retainers to be deposited into a general account. Implementation of the Ruling was delayed so that representations could be made to the Professional Conduct Committee. After hearing from the Criminal Lawyers Association the Professional Conduct Committee upheld the previous ruling and this was confirmed by Convocation in May 1983. Recently, the committee reconsidered its position but recommended that no change be made.

The result of a full discussion of the question in Convocation this month was that the Benchers expressed their disapproval of general retainers in criminal matters and referred the matter back to the Discipline Committee with that direction so that appropriate guidance for the profession can be drafted for circulation.

#### THE PROFESSIONAL CONDUCT COMMITTEE

The following Ruling now governs Billing for calls over cellular phones:

- (1) Outgoing local calls from a cellular phone cannot be recovered from clients as a disbursement;
- (2) incoming calls from a client to a cellular phone can be

recovered from clients as a disbursement (provided the client is advised in advance);

- (3) the long distance element of an outgoing call from a cellular phone invoices provide a breakdown of the charges.

#### THE UNAUTHORIZED PRACTICE COMMITTEE

In addition to its usual chore of dealing with the problem of unqualified people offering legal services to the public and arranging for the necessary prosecutions the Committee considered once again the problem of Manitoba solicitors acting in real estate transactions in North Western Ontario. There is good co-operation between the Law Society of Manitoba and this Society. Instances of this kind of unauthorized practice are being investigated and the appropriate action will be taken.

#### THE PUBLIC INFORMATION COMMITTEE

In addition to its responsibility for the Lawyer Referral service and Dial-A-Law the Committee is developing a programme intended to broaden the knowledge and understanding of members of the legislature about the work of the Benchers and Convocation. It is intended that a liaison will be formed to ensure a continuous flow of useful information.

The Lawyer Referral Service has received 66,766 telephone calls so far this year, with 88,500 expected by the end of the year, an average of 359 calls a day.

So far this year 84,479 telephone calls have been received by Dial-A-Law with 115,000 expected by the end of the year, an average of 454 calls a day.

#### THE COMPENSATION FUND COMMITTEE

The Committee has embarked upon a comprehensive review of its guidelines and discretionary limits on grants. The Committee will report to Convocation with recommendations.

## THE PROFESSIONAL STANDARDS COMMITTEE

The Committee has identified and is working with eight members to help them overcome inadequacies in their methods of practice. It will continue its programme of developing remedial courses and individually tailored assistance for members requiring it.

A network of practitioners is being established throughout the province through whom the Committee will be able to provide service wherever it is needed.

## STANDING COMMITTEES – 1987-88

AS AT 23RD OCTOBER, 1987

## FINANCE

GROUND, J.D. – *Chairman*BRAGAGNOLO, R.C. – *Vice-Chairman*

CARTHY, J.J.

GUTHRIE, H.

HOWIE, K.E.

LAMONT, D.H.L.

MANES, R.D.

NOBLE, C.B.

\*O'BRIEN, B.

\*PEPPER, P.B.C.

\*SCACE, A.R.A.

\*THOM, S.

WARDLAW, J.J.

WEAVER, M.P. (Mrs.)

## LEGAL EDUCATION

ROCK, A.M. – *Chairman*LAMEK, P.S.A. – *Vice-Chairman*LAMONT, D.H.L. – *Vice-Chairman*

BASTEDO, T.G.

CULLITY, M.C.

DORAN, A.B.

EPSTEIN, P.M.

\*GENEST, P.

\*KEMP-WELCH, R.S.

KITELEY, F. (Miss)

MANES, R.D.

O'CONNOR, D.R.

POULIN, E.J. (Ms)

SOPINKA, J.

SPENCE, J.M.

WARDLAW, J.J.

## ADMISSIONS

PHILP, P.G. – *Chairman*WEAVER, M.P. (Mrs.) – *Vice-Chairman*

BRAGAGNOLO, R.C.

GROUND, J.D.

LAMEK, P.S.A.

LAMONT, D.H.L.

\*PEPPER, P.B.C.

PETERS, P.J. (Ms)

ROCK, A.M.

## DISCIPLINE

CHADWICK, J.B. – *Chairman*  
 HICKEY, M.G. – *Vice-Chairman*  
 SOPINKA, J. – *Vice-Chairman*  
*All Members of Convocation*

*Policy Section*

\*CASS, R.W.  
 \*COOPER, A.M.  
 CULLITY, M.C.  
 FARQUHARSON, G.H.T.  
 GRAHAM, N. (Mrs.)  
 LAMEK, P.S.A.

LERNER, S.  
 McKINNON, C.D.  
 PETERS, P.J. (Ms)  
 ROCK, A.M.  
 WOOD, T.M.

## PROFESSIONAL CONDUCT

DORAN, A.B. – *Chairman*  
 LYONS, J.S. – *Vice-Chairman*  
 STROSBERG, H.T. – *Vice-Chairman*  
 CARTER, R.J.  
 CHADWICK, J.B.  
 \*COOPER, A.M.  
 \*GENEST, P.  
 GRAHAM, N. (Mrs.)  
 HICKEY, M.G.

LERNER, S.  
 O'CONNOR, D.R.  
 OUTERBRIDGE, I.W.  
 PHILP, P.G.  
 RUBY, C.C.  
 SOMERVILLE, M.J.  
 SOPINKA, J.

## PROFESSIONAL STANDARDS

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 CULLITY, M.C. – *Vice-Chairman*  
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 FURLONG, P.G.  
 GUTHRIE, H.

LAMEK, P.S.A.  
 SOMERVILLE, M.J.  
 SOSA, T.G.  
 WEAVER, M.P. (Mrs.)

## LEGAL AID

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 CARTER, R.J. – *Vice-Chairman*  
 KITELEY, F. (Miss) – *Vice-Chairman*  
 BASTEDO, T.G.

*Non-Bencher Members:*

CALLWOOD, J. (Ms)  
 GUTHRIE, H.  
 PETERS, P.J. (Ms)  
 POULIN, E.J. (Ms)

BARNES, R.E.  
 McDOWELL, R.H.  
 PAISLEY, V.  
 TOPP, R.C.  
 WALLACE, G.E.

*Student Representative:*

ARCHBOLD, Lynn (Miss)



## PRACTICE AND INSURANCE

FURLONG, P.G. — *Chairman*  
 HOWIE, K.E. — *Vice-Chairman*  
 O'CONNOR, D.R. — *Vice-Chairman*  
 BRAGAGNOLO, R.C.  
 EPSTEIN, P.M.  
 LYONS, J.S.  
 MURPHY, D.J.

NOBLE, C.B.  
 \*O'BRIEN, B.  
 OUTERBRIDGE, I.W.  
 \*SCACE, A.R.A.  
 WARDLAW, J.J.  
 YACHETTI, R.D.

## UNAUTHORIZED PRACTICE

RUBY, C.C. — *Chairman*  
 McKINNON, C.D. — *Vice-Chairman*  
 CARTER, R.J.  
 \*CASS, R.W.  
 FARQUHARSON, G.H.T.  
 FERGUSON, R.G.

GRAHAM, N. (Mrs.)  
 HICKEY, M.G.  
 OUTERBRIDGE, I.W.  
 SOSA, T.G.  
 \*STRAUSS, N.  
 WOOD, T.M.

## LIBRARIES AND REPORTING

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 FARQUHARSON, G.H.T. — *Vice-Chairman*  
 CULLITY, M.C.  
 \*HENDERSON, G.F.

\*LEGGE, L.L. (Mrs.)  
 MURPHY, D.J.  
 STROSBERG, H.T.  
 WOOD, T.M.

## PUBLIC INFORMATION

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 GUTHRIE, H. — *Vice-Chairman*  
 MANES, R.D. — *Vice-Chairman*  
 CALLWOOD, J. (Ms)  
 \*KEMP-WELCH, R.S.  
 KITELEY, F. (Miss)  
 LYONS, J.S.

MacLEOD, H. K. (Mrs.)  
 McKINNON, C.D.  
 RUBY, C.C.  
 \*SCACE, A.R.A.  
 SPENCE, J.M.  
 YACHETTI, R.D.

## COMPENSATION FUND

YACHETTI, R.D. — *Chairman*  
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 CALLWOOD, J. (Ms)  
 DORAN, A.B.  
 GRAHAM, N. (Mrs.)  
 \*HENDERSON, G.F.

LAMONT, D.H.L.  
 \*LEGGE, L.L. (Mrs.)  
 LERNER, S.  
 MacLEOD, H. K. (Mrs.)  
 NOBLE, C.B.  
 STROSBERG, H.T.  
 \*THOM, S.

## LEGISLATION AND RULES

NOBLE, C.B. — *Chairman*

\*LEGGE, L. L. (Mrs.)

POULIN, E.J. (Ms) – *Vice-Chairman*

\*CASS, R.W.

\*STRAUSS, N.

## COUNTY AND DISTRICT LIAISON

MURPHY, D.J. – *Chairman*

FERGUSON, R.G. – *Vice-Chairman*

HOWIE, K.E.

O'CONNOR, D.R.

PETERS, P.J. (Ms)

WARDLAW, J.J.

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BASTEDO, T.G. – *Vice-Chairman*

WOOD, T.M. – *Vice-Chairman*

CHADWICK, J.B.

FERRIER, L.K.

GROUND, J.D.

\*KEMP-WELCH, R.S.

KITELEY, F. (Miss)

MANES, R.D.

McKINNON, C.D.

OUTERBRIDGE, I.W.

POULIN, E.J. (Ms)

ROCK, A.M.

\*SCACE, A.R.A.

SOMERVILLE, M.J.

SPENCE, J.M.

## SPECIAL COMMITTEES

### BUILDING

CARTHY, J.J. – *Chairman*

SOSA, T.G. – *Vice-Chairman*

FERRIER, L.K.

GROUND, J.D.

OGILVIE, N.

\*PEPPER, P.B.C.

\*SCACE, A.R.A.

### CERTIFICATION

SOPINKA, J. – *Chairman*

ROCK, A.M. – *Vice-Chairman*

BASTEDO, T.G.

BRAGAGNOLO, R.C.

FURLONG, P.G.

LYONS, J.S.

MURPHY, D.J.

RUBY, C.C.

YACHETTI, R.D.

### CLINIC FUNDING

EPSTEIN, P.M. – *Chairman*

MacLEOD, H.K. (Mrs.) – *Vice-Chairman*

*Non-Bencher Members:*

CARTER, G.

O'CONNELL, D. (Mrs.)

### J. SHIRLEY DENISON

\*CASS, R.W. – *Chairman*

CALLWOOD, J. (Ms) – *Vice-Chairman*

WEAVER, M.P. (Mrs.)

## MUNIMENTS AND MEMORABILIA

TREASURER – *Provisional Chairman*  
GRAHAM, N. (Mrs.) – *Vice-Chairman*  
CARTHY, J.J.  
DORAN, A.B.  
\*GOODMAN, E.A.

\*LEGGE, L.L. (Mrs.)  
\*PEPPER, P.B.C.  
ROCK, A.M.  
\*SCACE, A.R.A.

*\*Bencher ex officio*



# THE LAW SOCIETY OF UPPER CANADA

## SUMMARY OF PROCEEDINGS

27 November 1987

This is the second issue of a regular publication intended to inform the members of the Society about the work of Convocation. What follows is a summary of the actions taken at the Convocation of November 27th, 1987.

To maintain a family resemblance with the Communiqué and to set these pages apart from the rest of the Ontario Reports, they are printed on buff paper. With the introduction of this regular Summary of Proceedings, the usefulness of the Communiqué and Communiqué Plus may have come to an end. These Proceedings cover at somewhat greater length what formerly appeared in the Communiqué and Communiqué Plus combined and Convocation contemplates discontinuing them if these Proceedings prove convenient and effective. Your views would be welcome and you are invited to express them in writing to the Secretary.

### MATTERS BEFORE CONVOCATION – NOVEMBER 27, 1987

W. Dan Chilcott, Treasurer, appointed Pierre Genest to be the Society's liaison with L'Association des Juristes d'Expression Française de l'Ontario.

Patricia Peters left the membership of the Legal Aid Committee and was replaced by James M. Spence. Carole Curtis, Nola Garton and James Bond were appointed as non-Bencher members of the Committee.

In the previous Proceedings the names of non-Bencher members of three Committees were inadvertently omitted: Harry Arthurs, Shelly Birenbaum, Barry Reiter, David Stager and Garry Watson are non-Bencher members of the Research and Planning Committee; Robert E. Barnes, Roderick McDowell, Victor Paisley, Robert C. Topp and George E. Wallace of the Legal Aid Committee and Neil L. Gold, Dean of the University of Windsor and J. Robert S. Prichard, Dean of

the University of Toronto Law School as members of the Legal Education Committee.

#### ANNUAL MEETING OF THE MEMBERS OF THE LAW SOCIETY – 1987

Convocation had before it the report of the Annual Meeting of the members of the Society and considered the three motions that had been passed.

- The first motion was that Convocation be open except for matters it decides must be discussed in private.

This subject was under active consideration by the Research and Planning Committee before notice of the motion was received. The Committee's recommendations consequently were before this Convocation and after considerable discussion it was decided that several open Convocations would be held on an experimental basis so that their effectiveness can be evaluated.

- The second motion before the Annual Meeting was that the next Annual Meeting be scheduled out of office hours to make it more convenient for members to attend. This will be done and the time and date of the next meeting will be decided at a later Convocation.

- The third motion put to the Annual Meeting was that members of the Ontario Municipal Board be included among those who under Section 31 of The Law Society Act are relieved of paying fees by having their membership in the Society go into abeyance on their appointment. The motion was amended at the meeting to include members of all other Boards and Tribunals who are lawyers and who exercise a judicial function.

Several years ago the Society considered a similar request on behalf of members of the Ontario Municipal Board. Expecting the members of other tribunals to want similar consideration the Society asked the then Attorney General how many lawyers would be affected but never received that information so as to know what the financial impact would be if the amendment were made.



#### LEGAL EDUCATION COMMITTEE

- Convocation considered the rights of students-at-law serving under articles to appear before the Courts. A report was adopted expanding the present rights to include appearances by articling students on uncontested judicial interim hearings in indictable matters. Furthermore, Convocation approved appearances by students in appropriate matters during the teaching term of the Bar Admission Course and before their call to the Bar, on the condition that a member of the Society registers with the Society's Department of Education as a supervising lawyer for a particular student. During the time set out in the registered document, the student would enjoy the rights of appearance now given only to articulated students-at-law.

- Convocation encouraged the Academic Legal Education Committee of the Canadian Bar Association-Ontario to continue its work in designing a pilot project involving co-operative legal education. The CBAO has studied a co-operative venture involving one or more of Ontario's law schools and a variety of practitioners working with a combined academic and practical curriculum toward the training of lawyers. Convocation expressed interest in the concept and invited specific proposals from the CBAO.

- A part-time LL.B. course proposed by the University of Toronto Law School was approved by Convocation. Students accepted into the programme will complete the first year as at present, but will pursue the second and third year courses over four years instead of two. The programme will be offered to only five students each year.

- Video tapes of Continuing Legal Education programmes will henceforth be available at a price of two hundred dollars each. The new policy is intended to broaden the availability of taped programmes and to increase flexibility in their showings. Tapes will be offered for sale two months after the live programmes have been presented.

#### ADMISSIONS COMMITTEE

Good character is a prerequisite for admission to the Society under Section 27 of The Law Society Act.

The most controversial item in the report of the Admissions Committee was a draft new form of application to be filled out by those seeking admission as students-at-law in the articling term of the Bar Admission Course. In addition to the usual questions about educational attainments, students would be asked if they have ever been found guilty of any offence under any statute and whether there is any "event, circumstance, condition or matter not disclosed in your replies to the preceding questions touching your conduct, character or reputation that might be an impediment to your admission or ability to practise or any matter warranting further enquiry by the Law Society such as dependence on alcohol or drugs".

After considerable debate in which these and one or two other questions were criticized as being too intrusive. The form was sent back to the Committee for further consideration.

#### FINANCE COMMITTEE

- As at October 31st, 1987 over 9,000 members had paid their annual fees in full. As a result of this cash inflow investments in the General Fund stand at \$10,600,000. These funds are invested in Bonds and money market securities which are used to fund the Society's activities over the balance of the fiscal year to June 30th, 1988.

Included in that amount is \$3,300,000 collected and held as the Law Society's contribution to help meet the administrative cost of the Ontario Legal Aid Plan. It will be paid over as those costs become known in March 1988.

Both the Errors and Omissions and Compensation Funds are in surplus positions at October 31st.

- Convocation approved this year's per capita grant of \$6.00 per member of the Society for the Federation of Law Societies of Canada, totalling \$104,958 based on 17,493 fee paying members.

The Federation, originally known as the Conference of the Governing Bodies, meets twice a year and provides an opportunity for representatives of the governing bodies across Canada to discuss emerging issues and common problems. It has in recent years provided a forum in which such matters as Legal Education, Errors & Omissions Insurance, occasional

appearances by counsel of one province before the courts of another and the issue of good character have been examined. The experience of one province or territory often helps another, and discussion leads to more uniformity of approach to similar problems.

#### LIFE MEMBERS, RETIREMENTS AND DEATHS

● The following who have been members for fifty years have become Life Members of the Society and are liable to no further fees:

Gordon Rutherford Barron	Paris, Ontario
Marie Lorraine Copeland	Mississauga
Charles Walter Donaldson	Windsor
Alexander Daniel Dymont	Toronto
Stanley Elmer Fennell	Cornwall
Irving Freeman	St. Catharines
Louis Hermant	Toronto
Elliott Lloyd Marrus	Toronto
Douglas Andrew McConachie	Oakville
Tomney Vincent McManamy	Woodstock
Gordon Thomas McMichael	Ottawa
Theodore Pullan Metrick	Ottawa
Harry Lawrence Romberg	Toronto
James Edgar Watson	Windsor

● The following members have retired:

Wallace Graham Chase	Thornhill
Katherine Hanlon Meechan	Toronto
Bradshaw McLean Paulin	Florida
Howard Arnold Phillips	Etobicoke
William Arthur Douglas Rutherford	Toronto
George Warren Armstrong	Toronto
Silas Andrew Blake Ward	Chatham
William Charles Busby	Thornhill
Frederick Patrick Moyer	Guelph
William Ross Callow	Toronto
Charles Edward Clarke	Mississauga
William Edward Hunter Dale	Mississauga
Timothy Stuart Mills	Toronto
Raymond Stuart Tower	Toronto
John Ross Tolmie	Ottawa
Robert Hugh Dunlop	Willowdale
Gordon Irving Purvis	Willowdale
Dean Sidley Dignam	Collingwood

Kenneth Archibald Foulds  
 James Main Duncan  
 Jerome Lynch Cronin  
 Maurice Francis Coughlin  
 William Edgar Raney

Willowdale  
 Mississauga  
 Scarborough  
 Windsor  
 Toronto

● The following members have died:

George Rondeau Brett Leamington (Life Member)	Called October 16, 1930 Died April 10, 1987
John Howard Ready Islington	Called June 15, 1939 Died September 14, 1987
William Herbert Waugh Welland (Life Member)	Called June 19, 1930 Died April 23, 1986
Harry Mundell Vila Burlington	Called June 18, 1931 Died September 23, 1987
Grant Wade Toole Guelph	Called October 19, 1939 Died July 29, 1987
Benjamin Forman Toronto	Called June 28, 1956 Died February 9, 1987
Lloyd Joseph Valin Sudbury	Called September 17, 1942 Died May 25, 1987
Paul Demianenko Toronto	Called June 26, 1958 Died October 20, 1987
Gordon Johnston Hutton Guelph	Called June 23, 1955 Died October 31, 1987

#### RESEARCH AND PLANNING COMMITTEE

In addition to its recommendations concerning open Convocations, the Committee reported to Convocation on its work in two other important areas: issues involved in the delivery of legal services and in demographic studies of the legal profession in Ontario.

● As to the first of them, the Committee reported that research work has now been completed to identify a variety of current issues and future concerns relating to the efficient and affordable delivery of legal services to the public. One of the most pressing and significant of these matters is the availability of alternative dispute resolution mechanisms. A sub-committee

has been directed to study the matter further and to make recommendations.

- So far as demographics are concerned the Committee has collected all available statistics on the legal profession in Ontario and has identified further work that is needed. A sub-committee will propose a plan of action for collecting the data required so that the Society can perfect its understanding of the makeup and needs of the profession in Ontario.

#### LEGAL AID COMMITTEE

- Robert J. Rowe, C.A. has been chosen to succeed Dermot J. McCourt, C.A. as Deputy Director, Finance of the Legal Aid Plan. Mr. McCourt who began with the Plan in 1967 will retire at the end of June 1988. Mr. Rowe has held a number of senior professional appointments and is a member of the Institute of Chartered Accountants of Ontario and the Canadian Institute of Chartered Accountants.

- A new appointment and retirement policy has been adopted for Area Directors. The term of such appointments will be for seven years and will be conditional upon the Area Directors remaining in the active practice of law.

Area Directors who are now over seventy-five will be asked to retire in a year's time; those between sixty-five and seventy-five will serve a little longer than that before retiring and in future all Area Directors will retire upon reaching age sixty-five. Some flexibility was introduced into the application of these new rules to meet particular circumstances.

- The Provincial Auditor's examination of the accounts and financial transactions of the Legal Aid Fund was placed before Convocation. For the year ended March 31, 1987 the Fund paid legal fees and disbursements totalling \$55,594,346 compared to \$44,915,984 in the previous year. The salaries of those employed by the Plan fell slightly from \$2,820,107 in 1986 to \$2,812,067 this year. Cost of administrative expenses of the Plan, however, rose over the year from \$6,882,063 to \$7,252,495.



#### THE LAW FOUNDATION OF ONTARIO

As reported in last month's Proceedings the Society applied for \$1,580,000 from the Law Foundation to help defray the expenses of a number of important services. The Foundation approved a grant in the amount of \$1,377,500. Of the total amount requested by the Society \$675,000 was requested by the Libraries and Reporting Committee to help maintain County & District Law Libraries throughout Ontario. In respect of that request, the Law Foundation saw fit to grant only \$575,000.

#### LIBRARIES AND REPORTING COMMITTEE

In the summer months, the practice has been to close the Great Library on Sundays. This has caused some hardship for those who rely upon that facility, particularly because the law schools' libraries are closed throughout the entire summer. To overcome this difficulty, Convocation has approved the expenditure of sufficient funds to enable the Great Library to be open between 12:00 noon and 5:00 p.m. each Sunday during the summer months.

#### PROFESSIONAL CONDUCT COMMITTEE

The Committee will study the general topic of franchising law offices to identify the practical and policy issues it raises and make recommendations to a later Convocation.

#### PRACTICE AND INSURANCE COMMITTEE

The most interesting feature of this Committee's report disclosed that entertaining and informative video tapes have been made to show graphically the errors into which even careful practitioners may fall. They have been greeted by a mixture of shock and delight by those who have seen them and will be made widely available in conjunction with papers and speeches presented at Continuing Legal Education seminars throughout the province.







## THE LAW SOCIETY OF UPPER CANADA

### SUMMARY OF PROCEEDINGS

#### MATTERS BEFORE CONVOCATION – JANUARY 29TH, 1988

Convocation met from 9:30 a.m. until 3:45 p.m. to consider reports from Standing and Special Committees and two discipline matters.

#### DISCIPLINE

- The Kent Law Association and the Waterloo Law Association were reprimanded in Convocation having been found guilty of professional misconduct. In an Agreed Statement of Facts filed with Convocation the two Associations admitted that their conduct respecting tariffs of fees constituted professional misconduct.

Both Associations had been investigated pursuant to the *Competition Act*. The investigations revealed conduct on the part of the two Associations which led to charges being laid alleging the Associations had engaged in conduct directed toward the commission of an offence, namely conspiring or arranging to lessen unduly competition in the provision of residential real estate legal services. The matter came on before Associate Chief Justice Callaghan in January and on the basis of admissions made by the Associations prohibition orders were issued.

- William Palamar of Toronto was suspended for one month, the suspension to continue thereafter until the solicitor's books and records have been brought up to date. The solicitor had persistently failed to respond to correspondence from the Society and had not made the necessary filings required by the Regulation made under The Law Society Act.

#### SPECIAL COMMITTEE ON CLASSES OF MEMBERSHIP

The report of the Special Committee on Classes of

Membership was before Convocation for consideration. The report recommended that the Society adopt three classes of membership. Category 1 would include all members engaged in the private practice of law in Ontario, all corporate counsel and those government and employed lawyers engaged in positions which require them to be members of The Law Society of Upper Canada. Members in this class would pay the full fee. Category 2 would include those employed in education and government where it is not a term of their employment that they be members of The Law Society of Upper Canada entitled to practise in Ontario and those employed other than in the private practice of law and those members who are out of the province. Members in this class would be required to pay 75% of the fee. Category 3 would include those members who are unemployed, or who have elected not to be employed in practice or otherwise for any reason. Members in this class would be required to pay 25% of the fee.

After some discussion in Convocation, the report was referred back to the Special Committee with a direction that the recommendations concerning the classes of membership be refined. The definitions as set out in the report were not sufficiently precise as to allow members to determine in which category they properly should be.

#### COMPENSATION FUND COMMITTEE

Convocation today adopted a recommendation of the Compensation Fund Committee that the limits placed on grants made from the Compensation Fund be amended.

At present, grants are limited to \$50,000.00 per claimant and \$1,000,000.00 per defaulting solicitor. The Society has discretion to override these limits in appropriate circumstances.

The new per claimant figure is \$60,000.00 to apply to claims where funds were advanced on or after January 1st, 1988. The per solicitor limit is abolished for all claims reported on or after January 1st, 1988 against a solicitor with respect to whom the Society had not received notice of dishonesty before that date.

The per solicitor limit had been subject to criticism as it meant that the sum recovered by a claimant depended on the



amount stolen by the solicitor and the number of clients stolen from. Additionally, it caused delays in processing claims. The Society had to be sure all claims were in before determining the amount to be paid to each client.

#### FINANCE COMMITTEE

- As part of a general review of Provincial Legislation to ensure compliance with Section 15 of the Charter of Rights, the Ministry of the Attorney General has suggested changes to the Regulations made pursuant to The Law Society Act.

However, cases now before the Supreme Court of Canada will clarify the question of discrimination under the Charter of Rights and Freedoms so it would be premature to proceed with the suggested amendments to the Regulation at this time.

#### LIFE MEMBERS, AND DEATHS

- The following who have been members for fifty years have become life members of the Society and are liable to no further fees:

John Julius Bussin  
Lloyd James Tomlinson

Willowdale  
Weston

- The following members have died:

Bruce John Stewart MacDonald, Q.C.  
Windsor (Life Member)

Called February 16th 1928  
Died June 2nd 1986

Geoffrey Cameron Langdon  
Ottawa

Called March 21st 1969  
Died May 25th 1987

Harris Reuben Moscoe, Q.C.  
Toronto

Called September 18th 1930  
Died August 23rd 1987

Jackson Renwick Reid, Q.C.  
Sudbury

Called June 29th 1949  
Died November 18th 1987

Anthony Robert Temple  
Belleville

Called June 29th 1950  
Died June 9th 1987

Cyrus William McDougall  
Kingston

Called April 9th 1979  
Died June 30th 1987

Bernard Bruce Lockwood, Q.C.  
Toronto

Called January 15th 1953  
Died July 8th 1987

Henry David Rotenberg  
Toronto (Life Member)

Called February 16th 1928  
Died October 22nd 1987

Lionel Chevrier, Q.C.  
Montreal

Called November 15th 1928  
Died July 8th 1987

James Murray Gage, Q.C. Burlington (Life Member)	Called June 16th 1932 Died November 5th 1987
Allen Edward Ludlow Wetmore Lindsay (Life Member)	Called January 21st 1937 Died November 26th 1987
David Justin Dore Hamilton (Life Member)	Called October 10th 1934 Died January 31st 1986
Bruce Anthony Dale McGrath Sarnia	Called March 23rd 1973 Died November 10th 1986
George Leslie Mitchell, Q.C. London (Life Member)	Called September 19th 1929 Died December 14th 1987
Paul Clement Birnie, Q.C. North Bay	Called June 21st 1951 Died December 29th 1987
Loris Chapman Scarborough	Called June 22nd 1960 Died April 29th 1987

## SUSPENSIONS

The rights and privileges of the members listed below who have not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due were suspended from the 29th of January 1988 for one year and from year to year thereafter or until the fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer:

Sarah Jean Bagnall	Toronto
Luis Leonidas Douramakos	Toronto
Robert Andrew Kominar	Windsor
Joseph Linzner	Willowdale
Allan Stephan Manson	Kingston
Michael Douglas Scott	Navan
Arunas Anthony Vale	Oakville

## LEGAL AID COMMITTEE

The restructured Legal Aid Plan tariff of fees came into effect on December 18th, 1987. The new tariff is the result of extensive negotiations between the Society and the Attorney General and the staff of his Ministry. On the civil side lawyers will now be paid the same rate for appearing in the Provincial Court as for appearing in the District or Supreme Court. A new item has been added to permit lawyers to spend up to three hours to provide civil advice to victims of domestic assault. The preparation time for which lawyers can receive payment in relation to family law matters and appearances before admini-

strative tribunals has been increased.

With respect to criminal matters the tariff has been simplified and additional block fee items have been created. In these situations a lump sum is paid for all services rendered instead of an hourly rate.

In both civil and criminal matters pre-trial hearings and the extra travel time in northern Ontario have been recognized.

#### CLINIC FUNDING

Convocation received the estimates for the Clinic Funding Committee for 1988/89 in the amount of \$21,942,562.00, representing a 7.54% increase over the previous year. The estimates were approved for transmittal to the Attorney General.

The funding of independent community legal clinics is carried out pursuant to the Clinic Funding Regulation. Under the Regulation, the Clinic Funding Committee which has overall responsibility for clinic funding is composed of five members. Three members are appointed by The Law Society of Upper Canada and two are appointed by the Attorney General and at least one member appointed by the Law Society and one appointed by the Attorney General must be persons who have been associated with clinics. The members of the Clinic Funding Committee are: Philip Epstein, Q.C. (Chairman); Helen King MacLeod; Glenn Carter; Thea Herman; and Dorothy O'Connell.

Applicants for funding must provide evidence of the need for clinic legal services in the community and evidence of a properly constituted Board of Directors. The clinics must demonstrate an ability to provide legal services or paralegal services or both on a basis other than fee for service as defined by the Regulation.

Community legal clinics have been funded by the Ontario Legal Aid Plan since 1976. The Law Society's decision to commence funding for legal clinics recognized that there were serious gaps in the delivery of legal services to low income citizens by the private Bar and the certificate program of the Plan. Community legal clinics are designed to provide specific kinds of legal services which are most needed by the poor and which have not been provided extensively by the private Bar

and the certificate program.

Since 1976, the number of clinics funded by the Ontario Legal Aid Plan has increased from thirteen to sixty-five and the system is nearing the goal of providing services on a province-wide basis.

Community control of clinics exists within a framework of mandatory standards and policies established by the Clinic Funding Committee and The Law Society of Upper Canada. The standards ensure the quality of legal services, public accountability for clinic funds and the non-duplication of services already provided by the certificate program of the Ontario Legal Aid Plan. Over 20,000 people a year are direct referrals to the Legal Aid Plan Certificate Program or to lawyers in private practice. Another 30,000 are referred to a variety of social service and community agencies.

#### PROFESSIONAL CONDUCT COMMITTEE

Convocation considered changes recommended in the way charges are made for title searches. The Committee concluded that a position acceptable to most lawyers and the public would be to require a lawyer acting in a real estate transaction to inform the client of the aggregate cost of the transaction inclusive of fees and all reasonable disbursements including the actual or estimated cost of a title searcher.

Convocation directed that the Real Property Section of CBAO and the County and District Presidents' Association be consulted before the matter is brought back to Convocation.

- The Committee has established a Subcommittee on Franchising. Any member wishing to make submissions should address these to Mr. Stephen Traviss, Senior Counsel – Professional Conduct.

#### LIBRARIES AND REPORTING COMMITTEE

The Committee reported that the Trustees of the Law Foundation had approved a further grant of \$100,000.00 to the Society for County Law Libraries. This is in addition to the \$575,000.00 already granted by the Foundation and represents an increase of \$175,000.00 over the 1987 grant.



The grant will be distributed among all forty-seven counties to meet the annual operating costs of basic periodical subscriptions, basic text and CLE publications and a basic level of staffing.

#### PRACTICE AND INSURANCE COMMITTEE

- A Subcommittee will consider problems encountered by lawyers as a result of standard clauses in Agreements of Purchase and Sale and that require lawyers to give unconditional undertakings to discharge mortgages. The clauses were put in during the falling real estate market of the early 1980's. The Subcommittee will canvass real estate boards, banks and trust companies and government ministries with a view to correcting the problem.

- The Practice Advisory Service in conjunction with the Public Information Department may prepare short audio tapes on various topics of interest to lawyers. The tapes would provide members with quick reference to help to resolve immediate problems. Some areas being considered are conflict of interest, search and seizure, solicitor's liens, how to get help for personal problems such as stress and alcoholism and how to deal with clients or others threatening violence.

#### LEGAL EDUCATION COMMITTEE

- Convocation approved procedures governing the recruitment of articling and summer students. There are few changes from last year for articling positions within Toronto. Student applications for interviews submitted by July 13th, 1988 shall be treated without regard to the date of submission. Interview appointments *must not* be communicated either by letter or orally until 9:00 a.m. Toronto time Friday, July 29th, 1988. The fact that a firm will or will not interview a student may be communicated before that date but the firm must not suggest an interview time before 9:00 a.m. on July 29th, 1988. Interviews must not be conducted before 8:00 a.m. on Monday, August 15th, 1988. No communication of offers of employment shall be made by firms not participating in the matching program before 8:00 a.m. on Monday, August 15th, 1988. All offers must remain open until noon on Monday, August 22nd,



1988 for firms that do not participate in the matching program.

For articling positions outside Metropolitan Toronto which are not included in the matching program, interviews are not to take place nor are offers to be made until after the examinations are over at the end of the student's second academic year.

Summer Employment Recruitment Guidelines: Interview times are not to be communicated either by letter or orally until 9:00 a.m. Toronto time on Friday, February 12th, 1988. Student applications for interviews submitted by February 9th, 1988 shall be treated without regard to date of submission. The fact that a firm will or will not interview a student may be communicated before that date. Interviews must not be conducted before 8:00 a.m. on Monday, February 22nd, 1988 and offers of employment must be left open a reasonable time. Offers made on February 22nd and February 23rd, 1988 must be left open until 5:00 p.m. on February 24th, 1988.

General guidelines for positions outside of Metropolitan Toronto and positions within Metropolitan Toronto not covered by the matching or summer recruitment programs provide that students must be given a proper opportunity to consider any offer and should be notified as soon as possible if no offer is to be made. Firms must not knowingly make offers to students who have already accepted a position elsewhere.

- A comprehensive strategy for out of Toronto CLE courses was approved by Convocation. The strategy includes funding for capital acquisitions and increased annual expenditures on programming. It is intended to ensure that regular and high quality CLE courses are available to practitioners everywhere in Ontario. Several methods will be used including audio tapes, Lexitel conferencing (interactive teleconferencing), joint programming with law schools, satellite broadcasting and increased local live programming in conjunction with County and District Law Associations.

#### APPOINTMENTS

Stuart Thom, Q.C. was named to the Public Information Committee. The Treasurer, Roderic Ferguson, Q.C., Daniel Murphy, Q.C. and John D. Ground, Q.C. were named the Law Society's representatives to the CBAO Council.



## THE LAW SOCIETY OF UPPER CANADA

### SUMMARY OF PROCEEDINGS

MATTERS BEFORE CONVOCATION—26 February 1988

#### THE LAW SOCIETY MEDAL

The Law Society Medal has been awarded to Richard A Bell, John M. Hodgson, Mark Orkin, Ronald J. Rolls and Roland F. Wilson and will be presented at a Special Convocation in Osgoode Hall on Thursday, March 24th.

#### THE LEGAL EDUCATION COMMITTEE

- Convocation adopted the recommendation of the Legal Education Committee that students may spend up to six months of their articles in a law office outside Ontario so long as the student is engaged for all or substantially all of that time on matters relating to Ontario law. The adoption of this policy recognizes the growth in the number of interprovincial law firms, and the common desire among those firms to have their Ontario students spend part of their articles in their offices in other provinces.

- The degree of Doctor of Laws honoris causa will be conferred on The Honourable Mr. Justice G. Arthur Martin and on Laura L. Legge, Q.C. at regular call to the Bar ceremonies in Toronto in April. Each will address those being called on the day they receive the degree.

The Reverend Doctor R. Maurice Boyd will address the graduates at the call to the Bar ceremony in London and those in Ottawa will be addressed by the Reverend Father Roger Guindon, former Rector of the University of Ottawa.

#### OPEN CONVOCATION

For the first time since its founding in 1797 the Society will hold a Regular Convocation outside Osgoode Hall. It will also be the first time for a Regular Convocation to be open to the public.

This historic event will take place in the Conference Centre in the city of Ottawa on the morning of Monday, April 18th, 1988. Special efforts will be made to publicize the occasion to members of the profession and the public. Copies of the agenda and reports to be considered at that Convocation will be made available to those who attend. Arrangements are being made for simultaneous translation from French to English or English to French.

#### THE ADMISSIONS COMMITTEE

The Admissions Committee disposed of a heavy agenda of routine matters none of which need to be referred to in detail here.

#### THE PROFESSIONAL CONDUCT COMMITTEE

Paragraph 6 of the Commentary to Rule 13 of the Professional Conduct Handbook has been changed to make it clear that where experts are retained to give reports (such as medical reports) the lawyer will be bound to pay the reasonable fee incurred unless it has been made plain at the outset that the lawyer will not accept that obligation personally. The Chairman of the Professional Conduct Committee has been authorized to approach the Ontario Medical Association to determine whether the Society and the Association can jointly develop a means of arbitrating or mediating disputes that may arise concerning the reasonableness of doctors' accounts.

#### THE FINANCE COMMITTEE

##### RETIREMENTS AND DEATHS

The following members have retired:

Andrew Stuart LeMesurier	Scarborough
Reginald William Powell	Etobicoke
James Donald Dewar	Mississauga
Robert Lewis Stephenson	Toronto
Maxwell Walker Broley	Toronto
Arthur Joseph Murphy	Toronto
William Howell Green	Parry Sound
Robert Lawrence Hendrie	North York
Thomas Harris Hough	Gloucester
Charles William Fullerton	St. Catharines
Philip Geervarghese Kopparath	Don Mills

Nicholas William Baksi	Windsor
Harry Hamilton Lancaster	St. Catharines
Robert Dunlap Garland	Toronto
Charles de Vere Carpenter	Ouagadougou, Africa
Harold Bernard Nashman	Toronto
Gordon Robert Carton	Mississauga
John Vaclav Honsl	Kemptville
Irwin Wolfe Pasternak	Toronto
Kenneth Young Hinton	Kingston
John Cameron McBride	Ingersoll
John Bradley Gleason	Toronto
George Collins-Williams	Toronto

### The following members have died:

Thomas Clive Thompson, Q.C. Brighton (Life Member)	Called March 17th 1922 Died December 30th 1987
William Harvey Pipe Nova Scotia	Called May 17th 1957 Died December 15th 1987
Darlene Loretta Carter Toronto	Called March 10th 1975 Died January 5th 1988
Colin Duncan Leitch London	Called April 8th 1976 Died January 22nd 1988
Will MacGillivray Pratt, Q.C. Listowel	Called June 15th 1939 Died December 25th 1987

### APPOINTMENT:

Louise Arbour Downsview	Appointed Judge, Supreme Court of Ontario, High Court of Justice December 18th 1987
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### THE LEGAL AID COMMITTEE

Robert E. Barnes, Q.C., LSM and George Wallace, Q.C., LSM retired from the Legal Aid Committee at the end of February.

Mr. Wallace joined the Committee in 1971 and was followed by Mr. Barnes in 1972.

Their very considerable contributions to the development of the Legal Aid Plan in Ontario were acknowledged by Convocation and formally noted in the Society's Minutes.

### THE LIBRARIES AND REPORTING COMMITTEE

The Ontario Reports will soon begin to carry a consolidated



table recording the disposition of all motions for leave to appeal to the Supreme Court of Canada.

#### THE UNAUTHORIZED PRACTICE COMMITTEE

The Law Society's special committee charged with examining the circumstances and the areas in which paralegals may properly serve the public will communicate with a similar committee of the Canadian Bar Association-Ontario. The latter committee was formed to prepare for the National Conference on Access to Civil Justice scheduled for June and to prepare submissions to the Committee of Inquiry on Paralegals that is to be appointed by the Ministry of the Attorney General.

#### THE PUBLIC INFORMATION COMMITTEE

A brochure on the history and activities of the Society will soon be published for the public and the profession. It will describe the workings of the Society, the responsibilities of each of its standing committees and give the names and telephone numbers of Benchers and of the Society's key personnel. It is intended by this means to enlarge the understanding of how the Society carries on its business and of the objectives it seeks to achieve. The brochure will be printed in both the French and English languages.

#### THE PROFESSIONAL STANDARDS COMMITTEE

A sub-committee of the Professional Standards Committee that included both a Crown Attorney and a Defence Counsel has concluded that the setting of standards of competence for lawyers acting in criminal matters is a practicable goal and would like to have the views of the judiciary and of the profession at large on the question of the creation of appropriate standards. They should be addressed to the Committee's secretary, Margaret Angevine.

The Committee will meet early in May to consider the suggestions it has received.

#### SPECIALIZATION

A new sub-committee has been formed under the Chair-



manship of Thomas Bastedo to develop the standards upon which lawyers will be accredited as specialists in the field of family law.

#### DISCIPLINE

- Pierre Chenier of Ottawa, who had been called to the Bar in Quebec in 1970 and in Ontario in 1982 was disbarred. He had been involved in a scheme to defraud the Canadian Armed Forces of the cost of a survey that was never carried out and mingled his personal funds with money he held in trust for clients with a view to defeating creditors.

- Michael David T. Campbell of Toronto was called to the Bar in 1984. The solicitor had unreasonably delayed bringing his professional books and records into compliance with the Society's Rules. Convocation prohibited him from practising alone for the next two years and required him to bring his books and records into strict compliance within six months failing which his right to practise at all will be suspended.

- Leo Edward Ryan of Sarnia was disbarred. He had misappropriated over \$40,000 belonging to an estate of which he was co-executor and solicitor. He had been called to the Bar in 1974.





# THE LAW SOCIETY OF UPPER CANADA

## SUMMARY OF PROCEEDINGS

MATTERS BEFORE CONVOCATION – 25 March 1988

### THE SPECIAL COMMITTEE ON CLASSES OF MEMBERSHIP

Convocation adopted with only minor changes the recommendations of the Special Committee on Classes of Membership.

This important matter has been controversial for many years. Nearly every other province except New Brunswick and Yukon Territory has already established classes of members and the question has been the subject of motion and debate at more than one annual meeting of the profession in Ontario.

The Society's special committee was broadly based and included a number of non-Bencher representatives.

The difficulty has been to balance on the one hand the interests of those who are not practising and who find it hard to pay the full fees, and on the other hand, the need to ensure that the Society will have sufficient revenue to meet its obligations.

Members in the first category will continue to pay full fees, (which include the Compensation Fund levy and the Legal Aid levy), and are those who are engaged in legal practice in respect of the law of Ontario whether they do so here in Ontario or in some other part of the world. Included in this category are law teachers who practise and those Federal, Provincial and Municipal government lawyers and other members who provide legal advice, opinions, or services with respect to Ontario law.

Members in the second category will pay 75% of the full fee (the full fee includes the two levies), and are those who are not engaged in legal practice in respect of Ontario law. Every effort will be made to reduce the fee payable by those in this category to 50% at the earliest possible date when the financial results of these new arrangements are known.

The third category, members who are not gainfully employed, will pay 25% of the full fee (including a proportionate

amount of each levy). In this category are those members who have wholly withdrawn from practice and from all other employment for the purpose, for example, of raising children.

#### THE PROFESSIONAL CONDUCT COMMITTEE

Convocation adopted the Committee's recommendation that no change be made to Rule 5 of the Rules of Professional Conduct which covers conflict of interest. It had been suggested that provision might be made to permit a law firm to advise both sides in a transaction in certain circumstances so long as several safeguards were in place to eliminate prejudice to either client through conflict. The Committee's recommendation was based upon the principle that lawyers should not create even the appearance of conflict and that there is in any event no real need to provide for such a situation.

#### PROPOSED BUSINESS NAMES ACT

The Society has been asked to solicit the views of the profession on the proposed Business Names Act. The objectives of the new legislation are to simplify the business name registration process and to provide the general public with convenient access to information about the identity of users of business names.

The proposed act would result in practical difficulties for law firms. While it would apparently not apply to sole practitioners, a law firm would be required to register with the Ministry and to identify its partners by name. What is more, the legislation would presumably require law firms to file fresh registrations each time a change occurred in its partnership. Firms that failed to comply with the registration requirements would not be able to enforce legal rights and obligations.

Detailed information about the proposal may be obtained from the Ministry of Consumer and Commercial Relations, which has published a discussion paper on the subject. Those lawyers who have comments to make about the proposal in any of its aspects should communicate them directly to the Ministry c/o Henry H. Ozolins, Director of the Registration Division in the Companies Branch at 393 University Avenue, Toronto,

Ontario M7A 2H6. The Society would ask that copies of any such comments be sent as well to the Society at Osgoode Hall.

#### LIFE BENCHERS

The Law Society Act provides that elected Benchers and Lay Benchers have the right to vote in Convocation and committees.

The Statute also confers that right on the Treasurer, the Attorney-General and all those who have held those offices.

The Act used to provide that those who had been elected Benchers four times and served a total of sixteen years, became Life Benchers with the right to vote. This was changed when the Act was amended in 1970 to take the vote away from Life Benchers. In 1983 Convocation resolved to seek an amendment to give them back the vote, but the amendment has not been made during the intervening years.

Convocation decided today to withdraw that request but at the same time to ask a committee to consider whether Life Benchers should be permitted to vote in committee and whether an amendment to the statute should be sought to discontinue the right of former Attorneys General to vote either in committee or in Convocation.

#### OPEN CONVOCATION

Members are reminded that for the first time since 1797 a regular Convocation will be held outside Osgoode Hall. It will take place at the Conference Centre in Ottawa on April 18th beginning at 9:30 in the morning. It is also the first regular Convocation to be open to the public. (Discipline proceedings in committee and before Convocation have for some time been held in public.)

Members who are able to attend are encouraged to do so.



## THE FINANCE COMMITTEE

## RETIREMENTS AND DEATHS

The following members have retired:

William Wallace Barrett	Toronto
John David Sumner Bohme	Toronto
Joseph Wilfred Healy	Toronto
George Richard Hunter	Winnipeg, Manitoba
Donald Alexander Machum	Edmonton, Alberta
John Trevor Morgan	St. Catharines
Wilfred Ray Oliver	Sarnia
Livius Anglin Sherwood	Ottawa

The following members have died:

Kenneth Arnold Frank Gates	Called March 26th 1971
Toronto	Died November 21st 1987
Norman Fead McAuley, Q.C.	Called June 29th 1948
Dryden	Died January 5th 1985
Maxime Nereus Mousseau, Q.C.	Called June 29th 1949
Windsor	Died January 30th 1988
Harold Douglas Peterson, Q.C.	Called September 18th 1941
Bruce Mines	Died March 10th 1987



## THE LAW SOCIETY OF UPPER CANADA

### SUMMARY OF PROCEEDINGS

#### MATTERS BEFORE CONVOCATION—

APRIL 14th, 15th, 18th and 20th, 1988

There were five Convocations in April. Four of them were Special Convocations for the purpose of calling to the Bar a total of 1,093 candidates. The fifth was a Special Convocation that was held in the Conference Centre in Ottawa and was open to the public.

#### OPEN CONVOCATION

For the first time since the Law Society was founded in 1797 Convocation took place outside Toronto. Discipline matters before Convocation have for some time been open to the public but this was the first occasion when the media and the public generally have been present throughout a regular Convocation.

The agenda was a normal one for a regular Convocation and the reports of thirteen standing committees and one special committee were presented, debated and voted on. In a number of instances there were motions in amendment.

#### THE LEGAL EDUCATION COMMITTEE

- Articling recruitment guidelines that had been developed by the County of Carleton Law Association were approved. The text appeared in the May 13th issue of the Ontario Reports.

- Approval was given to the development of a computer classroom to be jointly funded by the Law Society and the Faculty of Law, University of Ottawa. The Society's share of the cost, chiefly for equipment, may be approximately \$70,000. The facility will be shared by the two organizations, and will be used for computer assisted instruction for students in the law school and in the Bar Admission Course as well as for lawyers in continuing legal education programmes.

#### CANADIAN CITIZENSHIP

The most controversial matter before Convocation came forward in the report of the Admissions Committee.

Members will recall that the Law Society Act was amended

in 1986 to provide that as of July 1st, 1989 only Canadian citizens will be eligible to continue to be or to become members of the Law Society and hence qualified to practise law in Ontario.

For many years the Act provided that Canadian citizens or other British Subjects could be called to the Bar. The term "British Subject" became anachronistic and unclear and the Society sought to have it dropped from the Act. The question whether the Canadian citizenship requirement should be retained has been a matter for discussion. The Professional Organizations Committee, which reported in 1979, considered it and gave the following reasons why Canadian citizenship should be required for members of the legal profession:

"Believing that the views expressed in the McRuer Report should prevail over those expressed in the Staff Study, we deem it appropriate for members of the legal profession in Ontario to be Canadian citizens. The legal profession has special responsibilities to the community which it serves to uphold its legal institutions and to promote the administration of justice by those institutions. To us, Canadian citizenship connotes a necessary and desirable commitment to our national institutions and traditions. Recent amendments to the *Citizenship Act* reduce, from five years to three years, the requisite residence period necessary for citizenship. In most cases, this will mean that foreign-born applicants for admission to membership in the legal profession who have been able to satisfy Ontario training or transfer requirements will not face major impediments to entry as a result of a citizenship requirement, given the period of residence that these requirements will normally entail."

The Benchers agreed with that reasoning as did the Annual General Meeting of the members of the Society in 1984. The present Attorney General however would have preferred to see the Canadian citizenship requirement dropped as well and permanent residents, who might be citizens of another country, permitted to become members of the Bar of Ontario. When the Benchers did not agree, the Attorney General stated that he would then amend the Act to delete the reference to British Subjects, and retain the Canadian citizenship requirement and would further provide that those who had become qualified as British Subjects and who had not by July 1st, 1989 become Canadian citizens would, on that day, lose their right to practise.

The question before Convocation was whether to change its

position in view of the Attorney General's action in order to save those members who will be affected by the amendment and who may not be able to become citizens in time from being expelled from the profession. Many aspects of the problem were brought out in debate including the question of the constitutionality of the amendment and in the result the whole matter was referred for consideration to a special committee. The special committee will be asked to report promptly in view of the July 1, 1989 deadline.

#### THE FINANCE COMMITTEE

- The Finance Committee considered a preliminary draft of the Society's consolidated budget and gave approval in principle to the conversion of the Society's employee pension plan from a defined benefit plan to a money purchase plan. The committee also approved of Hay Management Consultants completing the second stage of a review of staff position descriptions and salary ranges comparing them to similar positions in other areas of the market.

- The computer classroom proposed for Ottawa gained the Finance Committee's approval on the condition that the sums the Society must pay be spread out over a period of two to four years so as to be met out of revenues (a condition that has been fulfilled).

The Committee's report dealt with a number of routine matters including the following changes to the rolls and records:

#### LIFE MEMBERS, RETIREMENTS AND DEATHS

- The following member who has been a member for fifty years has become a Life Member of the Society and is liable to no further fees:

Louis William Spencer

Toronto

- The following member has retired:

Harry Walsh

Winnipeg, Manitoba

- The following members have died:

Carlo Daniel Beccario, Q.C.  
Welland

Called September 15th 1949  
Died December 7th 1987

Hon. Richard Albert Bell, Q.C., LSM  
Ottawa

Called June 16th 1938  
Died March 20th 1988



William Wallace Cooper, Q.C. Burlington (Life Member)	Called October 18th 1923 Died February 18th 1988
James Roy Herrington Kingston	Called June 25th 1959 Died January 7th 1988
Charles Frederick MacMillan, Q.C. Toronto	Called September 24th 1952 Died January 21st 1988
Thomas Patrick O'Connor, Q.C. Willowdale (Life Member)	Called June 20th 1935 Died August 5th 1987
William Wilfred John Schuck Willowdale	Called April 7th 1961 Died March 15th 1988

### THE DISCIPLINE COMMITTEE (Policy Section)

The Discipline Committee's policy section reported on the procedures that are followed in dealing with complaints against members of the profession.

Nearly ten years ago a Complaints Review Committee was established composed of one lay Benchers and two elected Benchers. Complainants who were dissatisfied with the way in which their complaints had been disposed of by the Society's staff could appear before the Committee as a last resort and the Committee had power to require further investigation or to make other recommendations for dealing with the matter.

Since late 1986 the Review Committee has been composed entirely of lay Benchers each of whom sits as a Complaints Commissioner at least once a month and more frequently as needed. The Commissioners have outside counsel sitting with them to advise them with respect to matters of law and procedure. The disposition of each complaint rests solely with the Commissioner.

The lay Benchers have met on several occasions in recent months to exchange views, discuss procedures and explore the precise nature and extent of a Commissioner's authority. They made recommendations to the policy section of the Discipline Committee which in turn recommended them to Convocation where they were adopted. The recommendations spell out that the Commissioner may conclude that no further action should be taken in respect of a complaint or that some aspects require further investigation and refer it to the Senior Counsel, Discipline, or alternatively to the Chairman of the Discipline Committee for review.

### DIRECTOR OF THE ONTARIO LEGAL AID PLAN

Robert L. Holden has been chosen to be the next Director



of the Ontario Legal Aid Plan effective October 1st, 1988. He succeeds Andrew Lawson who retires at the end of September. Mr. Holden was called to the Bar in 1971 and has served as Deputy Director since 1983.

#### INFO LAWYER AND HANOVER-CORNELL INC.

The Professional Conduct Committee has considered a new form that Hanover-Cornell Inc. wishes to circulate to the profession to invite them to be included in their computer based legal directory "Info Lawyer".

Convocation has adopted the Committee's recommendation that members be allowed to be listed provided the following changes or requirements are made:

- (1) The areas of practice set out on page one of the form should be removed because it permits a lawyer to list a number of areas and might give the non-lawyer the impression that the lawyer is a specialist in those areas when such is not the case. For example, a lawyer who had handled one entertainment case could conceivably check the box for entertainment law because the wording of the section says "please check area of law practised".
- (2) Item "C" speaks of Areas of Practice and provides that "if you wish, indicate a percentage breakdown and the number of lawyers in each area". The lawyer should be required to give a percentage because it would result in a more accurate description of the practice.
- (3) Item "F" speaks of Representative Clients. Lawyers should only list clients represented if they have the written consent of those clients.

The organization is required to provide to prospective clients a list of all the lawyers qualified to provide the required legal services in their locality rather than the minimum of three set out in the letter from Hanover-Cornell Inc.

#### THE UNAUTHORIZED PRACTICE COMMITTEE

The Society has received counsel's opinion respecting the problem of Manitoba solicitors, who are not qualified to practise in Ontario, purporting to act for members of the public in real estate transactions in the northwestern region of Ontario.

Convocation resolved that the Treasurer discuss the matter with the Law Society of Manitoba with a view to achieving a satisfactory resolution of the problem.

#### CALLS TO THE BAR

On April the 14th four hundred candidates were called to the Bar in Toronto and were addressed by the Honourable Mr. Justice G. Arthur Martin who received the honorary degree of Doctor of Laws. The new members of the Bar took their oaths before Chief Justice Howland.

On April the 15th Laura Legge, a former Treasurer of the Society, received the honorary degree of Doctor of Laws and addressed the four hundred and three candidates who then took the usual oaths before Chief Justice Parker.

Following the open Convocation in Ottawa on Monday the 18th of April, one hundred and ninety-one graduates were addressed by the Reverend Guindon, were called to the Bar and took their oaths before Chief Justice Howland.

The Reverend Doctor Maurice Boyd addressed the ninety-nine students who were called to the Bar in London on April 20th and who took the oaths of office before Associate Chief Justice Callaghan.

The total number of members of the Bar of Ontario now stands at 20,381.



## THE LAW SOCIETY OF UPPER CANADA

### SUMMARY OF PROCEEDINGS

#### MATTERS BEFORE CONVOCATION—MAY 26th and 27th, 1988

##### ELECTIONS OF TREASURER

Laura L. Legge was elected Treasurer to fill the vacancy caused by the elevation of The Honourable Mr. Justice W. Dan Chilcott to the Supreme Court of Ontario. Mrs. Legge will serve until the regular annual election of Treasurer that will take place on Friday, June 24th.

Two candidates, Lee K. Ferrier of Toronto and Roger Yachetti of Hamilton, have been nominated to stand in the June election for Treasurer to serve for the ensuing year.

##### ELECTION OF BENCHER

D. Jane Harvey of Toronto was elected a Bencher to fill the vacancy caused by the appointment of The Honourable Mr. Justice John Sopinka to the Supreme Court of Canada.

##### ANNUAL FEES

Annual fees for membership in the Society, payable next October, have been fixed at:

\$980 for those who are engaged in legal practice in respect of the law of Ontario whether they do so here in Ontario or in some other part of the world. Included in this category are law teachers who practise and those federal, provincial and municipal government lawyers and other members who provide legal advice, opinions, or services with respect to Ontario law;

\$735 for those who are not engaged in legal practice in respect of Ontario law;

\$245 for those who are not gainfully employed. In this category are those members who have wholly withdrawn from practice and from all other employment for the purpose, for example, of raising children.

## LEGAL EDUCATION COMMITTEE—STUDENTS APPEARING IN COURT

Last November Convocation gave approval in principle to proposals brought forward by the Legal Education Committee relating to the appearance of Bar Admission Course students before the courts. The proposals were put before the Attorney General and the Courts Advisory Council for their consideration.

Both the Courts Advisory Council and the Attorney General indicated that they were concerned about one aspect of the proposals. They believed that articling students should not be allowed to appear before the courts in uncontested judicial interim hearings in indictable matters. That proposal has accordingly been dropped from the Committee's recommendation which Convocation has approved in the following form:

“Articled Students-at-Law are permitted to appear:

- (i) On contested motions, consent motions and matters before the Masters and Registrars of the Supreme Court and Bankruptcy Court, including assessment of costs.
- (ii) (a) On without notice and consent matters before the District Court and Surrogate Court and the Unified Family Court and before the Registrars of those courts.
- (b) On simple contested interlocutory motions before the District Court and the Surrogate Court and the Unified Family Court and the Registrars of those Courts, except in such matters as can only be heard by a Judge of the Supreme Court if such matters were in the Supreme Court.
- (c) Subject to the discretion of the Surrogate Court Judge, on the passing of accounts.
- (iii) On examinations for discovery, examinations of judgment debtors, and cross-examinations on affidavits in support of interlocutory motions.
- (iv) On applications in a Provincial Court (Family Division). Students may appear on Contested Crown Wardship Applications in exceptional cases only.
- (v) On proceedings before administrative tribunals.
- (vi) On all summary conviction matters in the Court of first instance, and on remands in indictable offences.



Students-at-Law who are in attendance at the teaching term of the Bar Admission Course or who have completed the teaching term but have not yet been called to the Bar, are permitted the same rights of appearances granted to articulated Students-at-Law, provided that a member of the Ontario bar has filed with the Law Society documentation confirming that the Student-at-Law is under the supervision of that member when making such appearances before the Courts.”

#### ADMISSIONS COMMITTEE – GOOD CHARACTER

The Law Society Act requires that those who are admitted to membership in the Society be of good character. In line with the practice in other provinces the Society has adopted a form of application for student membership that includes questions designed to help the Admissions Committee to determine whether an applicant is of good character. It asks for example whether the applicant has been found guilty of an offence under a statute, has a dependency on alcohol or drugs, or been disciplined as a member of a professional organization.

It is pointed out in the form that affirmative answers to any of the nine questions does not necessarily mean that the applicant will be refused and that in any event before any application can be refused the applicant must be given an opportunity to appear in person before a committee of the Benchers.

#### PROFESSIONAL CONDUCT COMMITTEE

##### • Chinese Walls

An item in the Summary of Proceedings of 25th March 1988 (62 O.R. (2d) Part I) about Rule 5 of the Rules of Professional Conduct covering conflict of interest needs clarification.

Convocation considered whether the Rule should be amended to permit the use of Chinese Walls. The term refers to an arrangement that would enable a law firm to represent different clients in the same transaction by enabling the lawyer representing one side to keep all matters confidential from the lawyer representing the other. The device is used in some law firms in the United States but only with the informed consent of the clients on both sides of the transaction. Convocation however accepted the recommendation of the Professional Conduct Committee that the technique should not be used here. Consequently no amendment is needed to Rule 5.



### • Rule 9—Fees & Disbursements

The present Rule contains very specific guidelines on disbursements intended to be a useful guide to practitioners and to help the audit and discipline departments to determine whether members have acted in accordance with the Rule. A more general Rule however would be less open to abuse, need less interpretation in specific instances and would not need constant updating to keep up with technological changes. Also, the Society should not be involved in how its members handle the administrative details of billing their clients for services rendered.

The pros and cons were debated by the Committee and it was concluded that the Rule should be amended to be more general but to require that the actual or approximate cost of disbursements be fully revealed to the client. Convocation sent the matter back for further consideration and for discussion with the Presidents of the County and District Law Associations.

## DISCIPLINE COMMITTEE (Policy Section)

### • Unclaimed Trust Funds

For years members of the profession have asked what they could do with unclaimed trust funds in their hands. In some instances small amounts have been left unclaimed for many years and dutifully recorded month after month in the firm's accounting records.

Convocation has approved in principle of the Society establishing a trust account to receive unclaimed trust funds. The interest earned on the account would be paid to the Law Foundation and the capital amounts kept to be available to repay to the clients to whom they belong should they come for them in the future.

Guidelines for the profession will be drafted and circulated when the necessary statutory authority is in place.

### • Confidentiality of Investigations

The Society's policy has always been to keep confidential the fact that some member of the profession is under investigation by the Society. It is recognized that a professional reputation is extremely fragile. Random audits are continually being carried out and a lawyer's practice could be harmed by the knowledge that the firm's books and records are being inspected though in fact there is no suspicion of wrongdoing.

Depending upon the nature of the investigation, however, there are in some circumstances persons who legitimately need to know of the investigation. For example, a complainant whose complaint has led to the investigation, witnesses, clients potentially at risk and in some instances, depending upon the circumstances, the Crown, police, and other law societies.

Recent experience indicates that the policy of disclosure should be extended. After studying the matter the policy section of the Discipline Committee has recommended that the Chairman or Vice Chairman of the Committee be authorized to make disclosure of the existence and circumstances of a Law Society investigation to the law partners or employees of the member or members being investigated where appropriate in accordance with the following criteria:

1. where disclosure is necessary to protect clients of the firm;
2. where disclosure would prevent the recurrence of serious misconduct;
3. where disclosure would assist the Society in its investigation;
4. where disclosure appears to be necessary to enable innocent partners to protect themselves from prejudice.

#### PRACTICE & INSURANCE COMMITTEE

##### Insurance Levy

The coverage will go up to one million dollars from the present six hundred thousand dollars under the Society's basic liability insurance plan at a cost of only thirty per cent more than last year. This represents a small net saving for practitioners who now purchase excess insurance to one million dollars or more, as the great majority of practising lawyers do, and better protection for those who do not and for their clients.

The individual deductibles will remain unchanged but the stop loss will go up from twenty-three million dollars to twenty-seven million dollars. This is in line with the Society's policy of remaining in effect self-insured while maintaining true insurance against catastrophe or the depletion of its own fund from which most claims are paid.

The cost of insurance in Ontario compares most favourably with that in any other jurisdiction and could be lower still but for the rise in the frequency of claims and the increasing value of them.

The E&O levy includes \$30.50 to pay for the Practice Advisory Service.

The invoices will be mailed out to the professional shortly.

#### COUNTY LAW LIBRARIES

Books remain the basic tools of the legal profession and there continues to be serious concern among the County law libraries that the funds available are not enough to maintain library holdings at an adequate level. After discussion in Convocation the Benchers voted to increase the County library levy from forty to fifty dollars this year. The levy is included as a component in the annual fee for membership.

#### SPECIALIZATION—CERTIFICATION BOARD

A list of nearly three hundred names was laid before Convocation of members of the profession who have been in practice for twenty years or more and, in the opinion of the Certification Board, are well known among their peers as being specialists with a high standard of practice in the area for which certification is to be given. This core group will provide a base from which the certification programme can legitimately be implemented and will also play an essential part in judging the eligibility of new applicants.

In selecting these practitioners for recognition as specialists in the fields of civil and/or criminal practice it was considered whether those who had been active but are no longer so, should be included. The intention of providing for specialist designation is to represent to the public the level of skill of an individual at the time specialist status is granted and to indicate that the specialist is a practising lawyer. Accordingly, the Board did not include persons who no longer maintain an active practice.

The list of those to be recognized as specialists at this stage is not closed and more qualified practitioners may be added to it. Those already listed will be notified. Benchers whose names appeared on the list did not vote.

#### CONTINGENT FEES

Ontario has moved a step closer to permitting lawyers to enter into contingent fee arrangements with clients. The main reason for doing so is that it will make it easier for members of the public to afford legal services if they are neither wealthy nor eligible for Legal Aid.

Ontario alone among the Canadian provinces has consistently refused to permit contingent fees. What has given the arrangement a bad name in some jurisdictions outside Canada is that it encourages litigation by failing to provide penalties against speculative actions. This has not been a problem under the type of contingent fee arrangements allowed in other Canadian provinces and the rules contemplated in Ontario would be designed to prevent it being a problem here.

The Special Committee on Contingent Fees recommended to Convocation:

1. that it approve in principle the introduction into Ontario of contingent fees in litigation matters other than in:
  - (a) matrimonial proceedings save in cases where proceedings have been commenced to collect arrears in support payments;
  - (b) criminal proceedings;
2. that if it approves in principle of contingent fees that it instruct the Special Committee to work out a detailed scheme for consideration and debate at a later Convocation;
3. that the Attorney General be approached with a request that the Solicitors Act be amended to permit contingent fees after Convocation has completed a twofold procedure, namely adopting in principle the idea of contingent fees and a detailed scheme as to how they could be put into operation in Ontario;

and further that the Attorney General be urged to permit contingent fee arrangements based on the perceived need for greater accessibility to legal services by the middle classes.

Convocation adopted the Committee's recommendations.

The next stage is for the Committee to bring to Convocation for consideration specific rules that would govern contingent fees.

#### DISCIPLINE

Doran Robert Henderson of Kingston had been reprimanded in Committee in 1987 and undertaken that he would respond fully and properly to all communications from the Society in the future. However, later that year and in 1988 he failed to respond to a number of letters and telephone calls from



the Society. He also failed to file the prescribed form respecting his books and records. He was reprimanded in Convocation, required to pay costs of \$1,000 and to provide certain account information to a client together with any sum owing to him. The solicitor was called to the Bar in 1983.

Douglas Biggar James of Perth had failed to disclose and properly account for costs obtained on behalf of certain clients and in one case misled a client respecting the amount of a final settlement. He was reprimanded in Convocation and required to pay costs of \$1,000. The solicitor had been called to the Bar in 1974.

Stephen Charles Kamen of Windsor was permitted to resign his membership in the Society upon certain conditions respecting the verification of his accounting records. He had misled a number of clients with respect to the progress of their matters and became depressed by his inability to practise effectively. He had been called to the Bar in 1977.

Irving Saul Leipziger of Toronto had failed to file the required Forms 2/3 though he had repeatedly promised the Committee that he would do so. He had been found guilty of professional misconduct in 1987 for failure to maintain proper books and records. He has now been suspended from practice until he has made the necessary filings. He was called to the Bar in 1975.

Myles Frederick McLellan of Barrie was reprimanded in Convocation. He had taken a \$10,000 term deposit with the permission of his client and used it to help his own financial difficulties without his client having received independent legal advice. He had been called to the Bar in 1980.

Roger William Morris of Toronto who had been called to the Bar in 1953 was disbarred. He had arranged unauthorized loans reportedly on behalf of clients but failed to obtain adequate security or to take legal action when mortgage securities were in default or to obtain trust declarations for securities held in trust and failed to maintain adequate books and records respecting the loan portfolio. In addition, he had breached an undertaking to the Society by failing to deposit all trust moneys into his mixed trust account which was subject to co-signing controls.





## THE LAW SOCIETY OF UPPER CANADA

### SUMMARY OF PROCEEDINGS

MATTERS BEFORE CONVOCATION—JUNE 23rd and 24th, 1988

#### ELECTION OF TREASURER

Lee K. Ferrier, Q.C. of Toronto was elected Treasurer of the Law Society of Upper Canada.

Mr. Ferrier was educated at McMaster University and the University of Ottawa and was called to the Bar in 1964. He was made a Queen's Counsel in 1976.

A partner in the Toronto firm of Osler, Hoskin and Harcourt, Mr. Ferrier's practice is restricted to family law, a field in which he has been active for many years not only through his membership in legal organizations but also through his co-authorship (with James MacDonald) of the leading family law text, "Canadian Divorce Law and Practice."

He was elected a Bencher of the Law Society first in 1979 and subsequently in 1983 and 1987 and has served on a number of committees most recently as Chairman of the Legal Aid Plan.

Mr. Ferrier is currently a member of the Advocates' Society, the County of York Law Association and the Canadian Bar Association.

#### HONORARY BENCHERS

Pursuant to Rule 48 of the Rules of the Law Society, the following were made honorary benchers of the Law Society:

The Right Honourable Mrs. Margaret Thatcher, Prime Minister of Great Britain at a Special Convocation on Saturday, June 18th, 1988.

Kenneth Jarvis, Q.C., RCA, Under Treasurer and former Secretary of the Law Society at Convocation on June 23rd, 1988.

#### UNDER TREASURER APPOINTMENT

Donald A. Crosbie, Q.C. takes up his appointment as Under Treasurer of the Law Society on July 1st, 1988 succeeding Mr. Kenneth Jarvis, Q.C. is retiring after 30 years with the Law Society.

Mr. Crosbie was born in Brantford, Ontario, and was educated at the University of Toronto and Osgoode Hall Law School. Since his call to the Bar in 1958, he has been employed in the Ontario public service and has been Deputy Minister of four Ministries—Consumer and Commercial Relations, Housing, Revenue and Energy as well as being Chairman of the Civil Service Commission.

#### LAW SOCIETY ANNUAL MEETING

The Annual Meeting of the Law Society will take place at Osgoode Hall on Saturday, October 15th, 1988 commencing at 10:00 a.m. in Convocation Hall. The Annual Meeting is being held on a Saturday in response to a motion made at last year's Annual Meeting that the meeting be held outside of normal office hours. It is hoped that the change will encourage members to attend.

#### LEGAL EDUCATION COMMITTEE—BAR ADMISSION COURSE REFORM

Convocation approved a Report of the Legal Education Committee which recommends far reaching changes to the teaching term of the Bar Admission Course.

The Report follows an extensive study undertaken as a result of concerns that the teaching term had not kept pace with the changing needs of new graduates for both practical and legal training. While there have been incremental changes in the content and format of the teaching term during the last 5 years, it was felt that a thorough review of the course was required.

As a starting point, the Report adopted the following statement of the overall objective of the Bar Admission Course:

To ensure, to the extent that education can do so, that lawyers called to the bar and admitted as solicitors in Ontario are equipped with the skills, knowledge and sense of professional responsibility and purpose that would be required to see them through the initial three years of practice in a style that would assure not only appropriate service of their clients' interests but also a steady, constructive growth of their own professional character and lawyering capacity.

The basic elements of the definition of competence adopted by the Report include a knowledge and understanding of the

nature and function of the law as well as basic substantive law and procedure; the ability to apply that knowledge to specific fact situations; a professional attitude; and the ability to complete legal transactions through the use of knowledge, skills and attitude.

The Bar Admission Course will concentrate on ensuring that students have a knowledge of basic substantive and procedural principles in a number of core areas of the law and on providing the students with the knowledge and skills to practise efficiently and competently. Students will also receive instruction in identifying and resolving issues of professional responsibility.

The core areas of law identified in the Report and in which specific instruction will be given in the course are Civil Procedure, Business Law, Criminal Procedure, Family Law, Real Estate and Public Law. During the process of consultation with members of the profession that was part of the Report's preparation, the Legal Education Committee was made aware of good reasons to consider retaining Wills and Estates as a core course. This will be considered carefully in the design phase of the Committee's work which will now be commenced. Naturally, other areas of law will be incorporated into cases the students will complete during the teaching term.

The skills portion of the course will include instruction on interviewing and counselling, legal writing and drafting, negotiation and mediation, investigation, advocacy, legal research and office management.

Students will apply this knowledge and skill in a series of transactions which will test not only their ability to recognize and resolve legal problems but issues of professional responsibility as well.

Aside from its new focus on practice skills, the structure of the course will change as well. To begin with, it will be shortened considerably. The teaching term will be comprised of four weeks of instruction prior to articling and twelve weeks of instruction following the completion of the articling period of eleven months. Students will receive basic materials in all of the core areas at the beginning of the course. The first stage of the teaching term will concentrate on generic skills and will be offered on three occasions in the summer following graduation from law school. To keep the numbers low in each class, the courses will be offered at all three locations, Toronto, London and Ottawa. The second stage of the articling term involves the students completing a transaction in each of the core areas. In

addition students will receive instruction on practice management.

Students will be assessed both on their ability to perform the skills, and on their knowledge of basic substantive and procedural law in the core areas.

As with any major reform, there are still a number of issues and problems to be resolved including the design of complementary continuing legal education courses and decisions on the most appropriate method of assessing a student's performance during the skills and transactions segments. To ensure there is adequate time to resolve these issues and to hire the permanent staff faculty required to teach the skills portion, the new course design will not be implemented until May, 1990.

It is estimated that the new course will cost more than the present one. Funding will be sought from the traditional sources of funding for the Bar Admission Course; the provincial government, the Law Foundation and student tuition. In addition, Convocation has agreed that the Society should be prepared to make a modest contribution to the overall costs should this become necessary. The profession will be kept advised of developments on the specific design of the course contents and a detailed description of the contents will be published as soon as particulars are known.

#### LEGAL AID COMMITTEE

##### • Objectives of the Legal Aid Plan

Convocation adopted a statement developed by the Steering Committee of the Legal Aid Committee of the objectives of the Legal Aid Plan:

The fundamental principle of the Ontario Legal Aid Plan is to facilitate equality of access to justice through the provision of effective and efficient legal services in a wide range of legal matters to those who are unable to finance these services from their own resources.

The statement then goes on to detail specific objectives including facilitating access to legal services throughout the province both by individuals and by groups with special needs or interests in an efficient and expeditious manner. The text of the full statement may be obtained from the Director of the Legal Aid Plan.



- Composition of the Legal Aid Committee

Another recommendation of the Steering Committee which was also adopted by Convocation involves alterations to the composition of the Legal Aid Committee. The Committee presently has 25 voting members and the recommendation is that this be reduced to 16 while the number of non-voting observer members be reduced from 5 to 2. These changes will be discussed with the Attorney-General.

It was the view of the Steering Committee that a smaller Committee would lead to more meaningful and productive meetings and would encourage more active participation by members of the Legal Aid Committee.

- Legal Aid Set-Off

For the past 18 months members providing legal aid services have been given the option of directing the Legal Aid Plan to set-off the \$175.00 legal aid component of their Society fees against a legal aid bill instead of remitting the amount directly to the Law Society. This option was chosen by 750 solicitors.

The administration of the programme was cumbersome and because of the limited use made of it, a recommendation was made to discontinue it. Prior to making a final decision, a letter was sent to all 750 members requesting their views. Only 75 replies were received. There were 36 in favour of retaining the option, 17 in favour of discontinuing it and 21 who felt that the Society should adopt whatever method is the most convenient and least expensive. One letter expressed strong objection to paying the fee at all.

After reviewing the matter, the Legal Aid Committee recommended and Convocation approved that the optional set-off be discontinued.

#### CLINIC FUNDING COMMITTEE

Convocation approved the recommendation of the Clinic Funding Committee that the application by Peterborough Community Legal Clinic Services to establish a Community legal clinic in Peterborough be approved. This was the third time the application had been before Convocation.

The prior applications were denied because of lack of funds and because the applicant group was not sufficiently representative of the community.

In 1985, the clinic funding staff made an initial decision to fund the application. The Peterborough Law Association



opposed the decision primarily on the basis that there was no demonstrated need for the clinic and that such needs as existed could be met by existing or expanded legal aid certificate services and by pro bono work by members of the local bar.

The Clinic Funding Committee then reviewed the matter and was of the opinion that there was a need in Peterborough for the kind of services offered by a community legal clinic. However, as a result of representations made by the Association, the Committee concluded that the bar should have an opportunity to demonstrate that the type of legal services which would be provided by a clinic could be provided on a pro bono basis by the local bar.

Since 1985, members of the bar have provided, on a volunteer basis, limited legal services from the Area Director's office under the name Peterborough Legal Services. However, the Association's own statistical review indicated that the vast majority of the people seen at the clinic were given summary advice, and only in a small percentage of the cases did members of the volunteer service actually go on to act for the client and deal with the client's legal problems.

Other statistics indicated that relative to the number of persons receiving social assistance and those receiving unemployment insurance benefits, there were extremely few applications made by the local bar on behalf of clients to either the Social Assistance Review Board or the Unemployment Insurance Commission. The Association also indicated that workers' compensation matters were generally referred to legal clinics in Toronto which have greater expertise.

The Committee recognized that the local Bar Association has made an important contribution through Peterborough Legal Services, but felt that this type of organization, which primarily provides summary advice, is not equipped both to represent clients and deal with legal issues that affect the poor in a comprehensive fashion. While the service available to the poor in Peterborough through the voluntary efforts of the private bar is a good one, it cannot provide the same level of service to disadvantaged persons that a community legal clinic can provide.

#### LIBRARIES AND REPORTING

Arrangements have now been concluded to publish Supreme Court of Canada case headnotes in the Ontario Reports. The headnotes will be published after the text of cases.

## DISCIPLINE

The following matters were dealt with at Convocation on June 23rd, 1988:

Allan Ian Wexler of Toronto was Reprimanded in Convocation. As solicitor, executor and trustee of an Estate he breached his fiduciary duty by causing the Estate to loan \$60,000.00 to a limited company without making sufficient inquiries to determine whether the loan was properly secured. The Estate never recovered the amount of the loan because the security received was worthless. The solicitor agreed to refund the amount of his fee to the Estate and undertook to save the Compensation Fund harmless from any claim by the Estate. Mr. Wexler was called to the Bar in 1978.

Gregory Peter Linton Vanular of Pickering was suspended from practice for six months effective July 9th, 1988 and fined \$5,000.00. He misled a financial institution by structuring a mortgage transaction which disguised the price of the property and the fact that the solicitor himself was the borrower. Additionally, he borrowed from clients without ensuring their interests were protected by independent legal advice and during the period from 1984 to 1987 there were frequent unreasonable delays in the completion of work on behalf of clients and on meeting some of the financial obligations incurred in such work. Following his period of suspension the solicitor must practise with an experienced solicitor approved by the Society. The start of the period of suspension was delayed to July 9th, 1988 to allow the solicitor to attend to real estate transactions at the end of June so that his clients would not be inconvenienced. The solicitor was called to the Bar in 1981.

Stephen Lawrence Cappe of Toronto was permitted to resign his membership. He was called to the Bar in 1977. While suffering from a psychiatric condition arising from personal and financial problems he misappropriated \$50,000.00 from an estate of which he was a co-executor and solicitor. The solicitor repaid the monies together with interest prior to detection of the misappropriation, however, for a period of time following the misappropriation and restitution of the monies, he misled his co-executors and others as to the accounts of the estate.

The following matter was dealt with at Convocation on June 24th, 1988:

Michael Alan Weller of Fort Myers, Florida was disbarred. While in practice in Perth, Ontario he borrowed money from a client without ensuring the client received independent legal advice or adequate security, filed a false form 2/3 declaration and failed to produce books and records of his practice despite repeated requests from the Society. Mr. Weller was called to the Bar in 1957.

## FINANCE COMMITTEE

## • The following members have retired:

Ivan St. Clair Sequeira	Mississauga
Grant Cullen Brown	Tillsonburg
Edmund Joseph Walters	Etobicoke
Kenneth Phillips Jarvis	Toronto
Willard Zebedee Estey	Toronto
George Alfred Ault	Ottawa
Horace Reginald Button	Stouffville
William Allan Campbell	Oakville
Murray Edward Corlett	Ottawa
Edward Cayley Elwood	London
Claude Elgin Fallis	Mount Forest
John Arthur Victor Montgomery Gunn	Toronto
John Borden Hamilton	Toronto
James Forsythe Harvey	Hamilton
Aatto Arthur Kajander	Thunder Bay
Charles Boulton Kenny Kirk	London
Donald Edmund McQuigge	Toronto
Joseph Reginald O'Kell	Toronto
John Felix Perrett	Toronto
Stanley Frederick Sharpe	Barrie
Edward Lloyd Sparling	Marmora

## • The following members have died:

William Frederick Fraser Lamson, Q.C.	Called June 28th 1956
North York	Died March 9th 1988
Leonard Lyons	Called June 25th 1959
Windsor	Died April 7th 1988
Nathan Robert Cappe, Q.C.	Called November 21st
Willowdale	1935
	Died December 11th
	1986
Roy McKinley Gillespie, Q.C.	Called June 19th 1952
Mississauga	Died February 10th
	1988

Roland Frederick Wilson, Q.C., LSM  
Toronto

Called November 19th  
1925

Died May 5th 1988

Leonard James Ryan  
Ottawa

Called September 15th  
1932

Died April 29th 1988

Ross William Davidson  
Toronto

Called September 16th  
1954

Died March 15th 1988

William Francis Canary, Q.C.  
Hamilton

Called June 16th 1938

Died May 17th 1988

James MacPherson Stuart, Q.C.  
Sarnia

Called June 29th 1948

Died May 13th 1988

### • Appointments

Bradley Thomas Granger, Q.C.  
London

Appointed Judge,  
Supreme Court of  
Ontario, High Court of  
Justice for Ontario.

March 22nd 1988

William Dan Chilcott, Q.C.  
Ottawa

Appointed Judge,  
Supreme Court of  
Ontario, High Court of  
Justice for Ontario.

May 4th 1988

Richard George Byers, Q.C.  
Picton

Appointed District  
Court Judge

Hastings County

May 3rd 1988

John David Takach, Q.C.  
Toronto

Appointed Provincial  
Court Judge, Criminal  
Division, District of Peel

April 5th 1988

John Sopinka, Q.C.  
Toronto

Appointed Judge,  
Supreme Court of  
Canada

May 24th 1988

James B. Chadwick, Q.C.  
Ottawa

Appointed Judge,  
Supreme Court of  
Ontario, High Court of  
Justice for Ontario

June 7th, 1988







## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

Friday, September 23rd, 1988

#### OPEN CONVOCATION

The first Open Convocation in Toronto took place in Convocation Hall at Osgoode Hall. It marked only the second time a Regular Convocation has been open to the profession and the public, the first having being held in Ottawa in April of this year.

Convocation considered Reports from fifteen Standing Committees and two Special Committees, being the Special Committee on Foreign Legal Consultants and the Special Committee on Citizenship as a requirement of membership in the Society.

#### ELECTION OF BENCHERS

Denise Bellamy of Toronto was elected a Bencher to fill the vacancy caused by the Treasurer, Lee K. Ferrier, having become an ex-officio Bencher. Ms. Bellamy was elected at a Special Convocation held on the 2nd of August 1988.

Earl J. Levy of Toronto was elected a Bencher to fill the vacancy caused by the appointment of the Honourable Mr. Justice James J. Carthy to the Court of Appeal for Ontario.

Bernard Shaffer of Thunder Bay was elected a Bencher to fill the vacancy caused by the appointment of the Honourable Mr. Justice Paul G. Philp to the High Court of Justice of the Supreme Court of Ontario.

#### SPECIAL COMMITTEE ON CANADIAN CITIZENSHIP

After a thorough debate, Convocation resolved to ask the Attorney General of Ontario to amend the Law Society Act to permit permanent residents of Canada to be called to the Bar of Ontario. At present, membership in the Society is open only to Canadian citizens or British subjects, and an amendment enacted in 1987 will limit membership to Canadian citizens as of July 1st, 1989.

In the course of the debate, two distinct and alternative policies were advanced. Those who argued for the retention of the requirement of Canadian citizenship started from the premise that citizenship is a desirable attribute to which all should aspire and they adopted the view put forward by the Professional Organizations Committee which reported on this subject in 1980 as follows:

“We deem it appropriate that members of the legal profession in Ontario can be Canadian citizens. The legal profession has special responsibilities to the community which it serves to uphold its legal institutions and to promote the administration of justice by those institutions. To us Canadian citizenship connotes a necessary and desirable commitment to our national institutions and traditions.”

Those who took the contrary view that membership in the Society should be open to citizens and permanent residents alike wondered whether there is a rational justification for imposing the requirement that members of the Law Society be Canadian citizens. After reviewing the situation in other jurisdictions, the position of other professions in Ontario and the attributes of citizens as opposed to permanent residents, they contended that eligibility for call to the Bar of Ontario should be extended to permanent residents of Canada. They observed that anyone called to the Bar takes the Oath of Allegiance, the Barristers' Oath and the Solicitor's Oath, evidencing perhaps more of a commitment than is required by the taking of the simple oath on becoming a Canadian citizen. They also pointed out that while citizenship confers rights and privileges including the right to enter and leave the country and to remain outside the country, the right to vote, the right to stand for Parliament and the right to a Canadian passport, permanent residents do not have those privileges but do have all the obligations of citizens, including the obligation to obey the laws, to respect the rights of others and to pay taxes. Accordingly, if persons for whatever reason decide not to become Canadian citizens they should not be denied on that basis alone the right to be called to the Bar of Ontario.

In the result, Convocation decided to recommend to the Attorney General that the amendment be sought, broadening eligibility to include permanent residents. Naturally, it will then be a matter entirely for the Legislature.

## SPECIAL COMMITTEE ON FOREIGN LEGAL CONSULTANTS

Convocation had before it the Report of the Special Committee on Foreign Legal Consultants which proposed the establishment of a regime for licensing foreign legal consultants to give advice in Ontario concerning the law of their home jurisdiction. The Report was referred to the Legislation and Rules Committee to determine the jurisdiction of the Law Society to enact such rules.

## LIBRARIES

### ■ Supreme Court of Canada Headnotes

In June the Library Committee approved the cost of publishing the Supreme Court of Canada headnotes in the Ontario Reports. The approval was subject to the concurrence of the Finance Committee to the expenditure of the additional \$29,000. The Finance Committee gave its approval at a meeting on July 5th, 1988 and accordingly the first headnotes will be printed in October.

### ■ Sunday Opening

The Great Library was open during the summer months on Sundays from 12:00 noon to 5:00 p.m. because of the closing of the University of Toronto Law School Library for renovations. The experiment was a success and heavy use was made of the the Great Library throughout the summer. In response to requests from members, the Great Library will be open throughout the coming year on Sundays from 12 noon until 5:00 p.m.

### ■ Use of County Law Libraries

A lawyer practising in Niagara Falls joined the Lincoln Law Association in St. Catharines rather than the Welland Law Association. He then maintained that because he was a member of a county law association he was entitled to use the library maintained by the Welland Law Association even though he was not a member of that association. The law association asked for a clarification of the Law Society's regulation which provides that county law libraries are for the use of paid up members of any county law association.

Convocation supported the view taken by the Library Committee that the member should belong to and use the library facilities of the Law Association in the judicial district in which he practises.

## PUBLIC INFORMATION

## ■ Dial-a-Law—Most Requested Tapes

The following are the most-requested tapes in the Dial-A-Law system for the months of April, May, June and July:

- |                                  |                                |
|----------------------------------|--------------------------------|
| 1. # 10—How to Find a Lawyer     | 6. #430—Dividing Family Assets |
| 2. #380—Separations/Agreements   | 7. #425—Custody & Access       |
| 3. #400—Requirements for Divorce | 8. #790—Making a Will          |
| 4. #545—Tenant's Rights/Duties   | 9. #320—Wrongful Dismissal     |
| 5. #466—Lawyer's Bill Too High?  | 10. #680—Buying a Home         |

## ■ Translation of Dial-a-Law Transcripts into French

The Director has obtained the voluntary co-operation of the Executive Director of the Association Des Juristes D'Expression Francaise de L'Ontario (AJEFO) to have the complete set of Dial-a-Law transcripts translated at no charge by members of the Association. This work should be completed later this year and, will allow the Society to offer this information program to the more than 500,000 French-speaking individuals in Ontario.

## DISCIPLINE POLICY

## ■ Complaints Review

The four lay Benchers sit individually as Complaints Commissioners to review complaints against solicitors where the Society's staff has concluded that there are not reasonable and probable grounds on which to base a sworn complaint of professional misconduct against a member of the Law Society. The Commissioners have the assistance of outside counsel in reviewing the cases. The Commissioners may either uphold the decision of the staff, refer it back for further investigation or forward it directly to the Chairman of the Discipline Committee for consideration.

Out of the 3,700 complaints investigated last year, 81 requests for Complaints Review were received. This represents twice as many as in the previous year. Twenty of the matters heard by the Commissioners were returned to the Discipline Department for further action, and in one of those cases, a formal complaint was issued.

## LEGAL AID

## ■ Appointment of Deputy Director of Legal Aid

Mr. George Biggar has been appointed Deputy Director Legal Aid to fill the vacancy which will be created when the current Deputy Director Legal Aid Mr. Robert Holden assumes



responsibility as Provincial Director on the retirement of Mr. Andrew Lawson on October 1st, 1988. Mr. Holden's appointment was announced in April.

Mr. Biggar who was called to the Bar in 1972 has been the Deputy Legal Accounts officer since 1984. From 1972 to 1984 he was in private practice in Toronto with an emphasis on criminal, civil and matrimonial litigation. While in practice he was actively engaged in the area of Legal Aid and served on several Committees.

■ Appointment of Area Director—Middlesex, Perth and Oxford Counties

Greta Grant, Q.C. retired as Area Director for the counties of Middlesex, Perth and Oxford on August 31st, 1988. Mrs. Grant had been an Area Director since the inception of the plan.

Simon R. R. Davies of London was appointed Area Director to replace Mrs. Grant. Mr. Davies was called to the Bar in 1973 and has been in private practice since that time with the law firm of McLennan, Wright.

● Revised Budget

Last fall the Legal Aid Committee in Convocation approved a budget for 1988-89 in the amount of \$107,582,725 which was submitted to the Attorney-General for funding approval.

In April, the Ministry of the Attorney General advised that the July 1st, 1988 tariff increase would be postponed for reconsideration until the Fall. The average cost of an account was reduced to \$795.00 from the \$815.00 originally budgeted. In addition the Ministry reduced the total number of budgeted accounts from 105,000 to 98,300. The combined affect of these changes results in a total of \$98,741,000 to be funded by the province of Ontario as opposed to \$107,582,725. As in the past it was expected by the Ministry that the Plan would ask for additional funding as required in the Fall.

The experience of the Plan in the first four months of the fiscal year indicates that the government projections are too conservative. Assuming the current rate of processing accounts continues and with the same seasonal fluctuations as last year, as many as 112,000 accounts will be paid in 1988-89. The average cost of accounts paid to July 31st, 1988 is \$850 and this will increase to \$870 by year end. The result is that the budget approved by the government of \$98.7 million will be some \$15.6 million short of the Plan's requirement.



Several meetings have taken place with staff of the Attorney-General, Management Board and Treasury Board and they are aware of the expected shortfall. The monthly operating results of the Plan will be closely monitored in the coming months and it is expected that the shortfall will be funded by the government.

#### PROFESSIONAL CONDUCT

##### ■ Rule 9

The Professional Conduct Committee has reviewed Rule 9 of the Rules of Professional Conduct which deals with disbursements. The purpose of the review was to determine whether or not the rule should be kept in its present form and therefore detail specifically what are acceptable disbursements or whether the Rule should be amended so that it contains only a general statement as to allowable disbursements.

The Committee expressed to Convocation the opinion that Rule 9 should be amended to remove all detailed provisions respecting disbursements. There would be two changes made to Rule 9 and one change to the commentary.

Rule 9 would read (the changes are in italics):

The lawyer shall not:

- (a) Undertake to act for, charge or accept any fee which is not fully disclosed, fair and reasonable; *or when asked to quote a fee by the client shall explain what anticipated disbursements if any will be incurred.*
- (b) divide a fee with another lawyer who is not a partner or associate unless (i) the client consents either expressly or impliedly to the employment of the other lawyer, and (ii) the fees are divided in proportion to the work done and responsibilities assumed;
- (c) charge or accept any amount as a disbursement which is not fully disclosed in a *timely fashion*, fair and reasonable.

Paragraph 4 of the commentary under Rule 9 which now has six sub-paragraphs would be amended by deleting them and replacing them with one short paragraph that would read:

“When preparing and delivering accounts to clients, the lawyer should clearly and separately identify amounts charged as fees and amounts charged as disbursements and should provide a detailed statement of disbursements.”

The matter was before Convocation at this time to attract the attention of the Bench and the profession. The Committee will be asking Convocation in November to accept its recommendations. In the meantime, the following bodies have been asked to give their views: the Practice and Insurance Committee, the County and District Presidents Association and the Real Property Section of the Canadian Bar Association-Ontario.

If any members wish to express opinions or comments on the proposed Rule, they should direct them to Mr. Stephen Traviss, Senior Counsel Professional Conduct at Osgoode Hall.

- **Lawyer's Discretion not to Report a Possible Errors and Omissions Claim**

Paragraph 15 of the commentary to Rule 5 sets out the steps that a lawyer should take when it is thought that an error or an omission may have occurred. They include notifying the client, advising the client to get independent legal advice and notifying the Law Society.

During the last few years a number of lawyers have questioned whether it is necessary in every case to follow the steps noted above. For example, where a lawyer does not believe there has been negligence but has second thoughts about some aspect of a transaction, he or she might write to the Society's Department of Insurance to put it on notice out of an abundance of caution. The lawyer would prefer, however, not to write to the client, not wishing the client to have a want of confidence in the lawyer's abilities especially where there may not even be a claim.

The issue considered by the Professional Conduct Committee was whether there might be circumstances in which a lawyer would be justified in not telling clients that the Law Society's Errors and Omissions Department has been notified of the possibility of a claim.

Convocation endorsed the view of the Committee, which was that given the variety of possible circumstances it was essentially a question of judgment to be exercised by the individual lawyer. While a lawyer may choose not to report to a client because of the apparent insignificance or remoteness of a claim, in deciding not to do so the lawyer must be completely satisfied that there will be no prejudice whatsoever to the client.

- **Booths at Trade Shows**

The Society recently received two inquiries from law firms asking if a firm could have a booth at a trade show at which

various types of businesses would be represented.

The Committee concluded that there would be no problem in a law firm having a booth at a trade show provided that the booth was in good taste and provided that other lawyers or law firms who wish to have a booth would be given an opportunity to do so. Convocation adopted this interpretation of Rule 12.

- OMA–Law Society Joint Mediation

Discussions between the OMA and the Law Society have resulted in a proposed mediation scheme to assist in the vexing problem of payment for medical-legal reports.

A panel of six persons will be established composed of two doctors to be nominated by the OMA, two lawyers to be nominated by the Law Society and two other professionals. From this group panels of three, a lawyer, a doctor and a third professional, would be established to conduct mediations. It will be a consensual process and the panel's recommendation would not be binding on the parties.

If the mediation process proves successful its scope will be extended to cover other difficulties that arise between lawyers and doctors.

The Law Society will pay a set fee to its lawyer nominees and the OMA will compensate its doctor nominees. The OMA and the Law Society will bear equally the fee paid to the third professional.

- Use of Qualified Law Clerk to Conduct Judgement Debtor Examinations

A member wishes to use a law clerk to conduct a judgment debtor examination. The law clerk would not be in the full time employ of the lawyer, thus violating the commentary under Rule 16. Paragraph 2 (d) of the commentary lists a number of matters in the litigation field that may properly be delegated to non-lawyers. The preamble, however, reads: "permissible exceptions include law clerks employed by only one lawyer or law firm..."

The Committee concluded and Convocation concurred that the member's proposed use of the law clerk, although not in his firm's full-time employ, would comply with the spirit of the rule because the law clerk will not be employed by any other lawyer or law firm.

#### FINANCE COMMITTEE

- Financial Reports

The audited financial statements for the year ended June 30th, 1988 were approved by Convocation for presentation to the membership at the annual meeting to be held on October 15th, 1988. The statements will be reproduced in the Annual Report.



### • Classes of Membership

The Finance Committee was asked to consider whether any relief should be given to members suspended for non-payment of the annual fee in light of the Society's adoption of classes of membership. On reviewing the matter, the Committee felt that there should not be any special relief. Many members diligently paid their fees despite the financial burden this placed on them. Those members could not easily be identified and the Committee felt it would be unfair to grant relief to those who had not paid and had been suspended for non-payment of the annual fee.

## LEGAL EDUCATION

### • Regional Director in Ottawa

Ms. Holly Harris has joined the Department of Education as Regional Director in the Ottawa office as of August 3rd, 1988. Ms. Harris is from Ottawa and is a graduate of Carleton University. She received her LL.B. at McGill and her Master of Laws from the University of California at Berkeley. Ms. Harris engaged in the private practice of law in Ottawa for some years before joining the federal government's legal staff. In her most recent position she was Senior Counsel Legal Services for the federal department of Indian and Northern Affairs. She has taught at the Faculty of Law at the University of Ottawa, has served on a number of national and international committees and has written several articles and working papers.

### • Articling Symposium

The Committee received a Report on the articling symposium which was held at Osgoode Hall in the Spring. The report was prepared by the Bar Admission Advisory Committee.

The symposium was convened to consider ways to achieve the enrichment and monitoring of the articling experience. Participants included legal practitioners, academics, members of the judiciary, government representatives and students. Consensus was achieved on a number of key issues. There was clear agreement that the Law Society should take a much more active and visible role in developing and supervising the articling experience.

A heightened role for the Law Society would include the establishment of criteria for approving principals and articling placements, better integration of the articling experience with the teaching term of the Bar Admission Course and the creation of a structure in which the quality of articles could be monitored on a continuing basis.

The Legal Education Committee has created a sub-committee to consider the report and return with concrete proposals for change.

- Recruitment of Summer Students

A sub-committee has also been established to review the guidelines for the recruitment by law firms of summer students and to make recommendations regarding any changes needed. The sub-committee will attempt to report before the recruitment guidelines for next year are promulgated.

- 1989 Special Lectures

This year's Special Lectures, scheduled for February 9th, 10th and 11th, 1989, will focus upon current developments in securities law and administration including recent trends, regulatory structures, disclosure and registration requirements, substantive regulation and enforcement.

The program will commence on the afternoon of Thursday, February 9th with a mock hearing based on the applications by Falconbridge Limited and Noranda Incorporated relating to the sale by Placer Dome Inc. of its controlling position in Falconbridge. The applications were heard by the Ontario Securities Commission on June 28th, 1988. It is intended that many of the counsel, witnesses and members of the Commission who were involved in those applications will participate in the mock hearing.

The mock hearing will provide a focus for the papers to be presented during the next two days. The program will be of particular interest to lawyers practising substantially in the securities field. The use of the mock hearing and subsequent references to the issues illustrated as well as to Charter and administrative law implications generally and to the protection of minority shareholders by the Commission will make the program interesting and useful for lawyers with less extensive experience in the securities field but with some interest in that area.



# RETIRED MEMBERS, LIFE MEMBERS, MEMBERSHIPS RESTORED AND DEATHS

## • The following members have retired:

John Franklin Lake	Toronto
James John Black	Toronto
Herbert Alfred Bunn	Willowdale
Clifford Howard Musclow	Brockville

## • Pursuant to Rule 49, the following are now Life Members of the Society with an effective date of September 15, 1988:

Thomas Herbert Baker	Huntsville
Robert Murray Bell	Toronto
Douglas Thurston Kee	Pointe Aux Roches
Powell Kenneth Laishley	Ottawa
Reginald James Lamon	London
James Ross MacBrien	Toronto
John Denton Reilly	North York
William Kenneth Warrender	Hamilton
John Owrey Weldon	Fonthill

## • The following members have been restored to the Rolls of the Law Society:

Rosalie Silberman Abella (Provincial Court of Ontario)	Restored 19th July 1988
Richard Ian Cartwright (District Court of Ontario)	Restored 1st September 1988

## • The following members have died:

James Vincent Alfred O'Brien Toronto	Called September 28th 1950 Died May 27th 1988
James Fletcher Swayze, Q.C. Welland	Called September 15th 1949 Died May 25th 1988
George Reith Mackie, Q.C. Toronto	Called September 17th 1942 Died May 6th 1988
Percy Claire Finlay, Q.C. Toronto (Life Member)	Called June 19th 1924 Died June 29th 1988
Kenneth Ewart Martin, Q.C. Hamilton	Called November 20th 1924 Died June 15th 1988
Hylard Garfield Chappell, Q.C. Toronto	Called June 17th 1943 Died March 5th 1988
James Douglas Lucas, Q.C. Toronto (Life Member)	Called November 20th 1924 Died October 9th 1987
Ross Rylie, Q.C. Oakville (Life Member)	Called October 16th 1930 Died April 19th 1988
George Arthur Marron Meaford (Life Member)	Called June 21st 1934 Died February 29th 1988
Peter Scarth Osler, Q.C. Toronto	Called June 20th 1940 Died June 18th 1988

MATTERS BEFORE SPECIAL CONVOCATION  
HELD ON SEPTEMBER 22ND, 1988

**Robert Allan Stewart** of Toronto was permitted to resign his membership in the Law Society. While suffering from a mental illness which affected his performance as a lawyer he borrowed \$12,000 from an elderly client without the client's knowledge by disguising the fact that he was the true borrower of the funds. He also failed to respond to correspondence from the Law Society. Robert Allan Stewart was called to the Bar on the 29th day of March 1977.

**Jeffery Leon Stein** who was called to the Bar on the 6th day of April 1983 was disbarred. He had misappropriated some \$126,600 of client's funds.

**Luis Leonidas Douramakos** of Toronto was reprimanded in Convocation. He is not to engage in the sole practice of law without the consent of the Society and in any future practice situations must ensure that another member of the Society is directly responsible for the maintenance of the books and records relating to the practice. The solicitor had failed to exercise adequate supervision over the books and records of his practice, as a result of which he was not aware of the actual trust and general bank account balances which resulted in there being shortages in his trust account from time to time. When he became aware of the trust shortages, the solicitor repaid the funds. Mr. Douramakos was called to the Bar on the 7th day of April 1982.

**Leslie Brian Gomes** of Toronto was disbarred. The solicitor was found guilty of conduct unbecoming a barrister and solicitor as a result of his conviction on four charges of knowingly making false representations under paragraph 121 (1) (a) of the Unemployment Insurance Act and seventeen charges of making a false declaration by failing to make disclosure contrary to paragraph 121 (1) (d) of the Unemployment Insurance Act. The solicitor was called to the Bar on the 6th day of April 1982.

**Michael D. T. Campbell** of Toronto is suspended until such time as his books and records are in compliance with the regulations made pursuant to the Law Society Act. The solicitor had been before Convocation in February at which time he was given six months within which to bring his books and records into compliance with the regulation, failing which the suspension (which has now taken effect) was to follow. Michael D. T. Campbell was called to the Bar on the 9th day of April 1984.



## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

October 28th, 1988

#### ELECTION OF BENCHER

Thomas J. P. Carey of Brampton was elected a Bencher to fill the vacancy caused by the appointment of His Honour Judge Thomas M. Wood to the Provincial Court Family Division.

#### SPECIAL COMMITTEE ON FOREIGN LAWYERS

Convocation adopted the recommendation of the Special Committee on Foreign Lawyers that the Society establish policies relating to the establishment of law offices in Ontario by foreign law firms to give advice on the law of their home jurisdiction. The policy adopted by Convocation is similar to that in effect in many other jurisdictions.

The policy deals only with law firms from jurisdictions outside Canada. For lawyers within Canada, transfer procedures are already in place whereby lawyers from other provinces may be called to the Bar in Ontario. The Rules of Professional Conduct permit the establishment of interprovincial law firms. In recognition of Canada's federal system of government, the Society has also permitted law firms from other provinces to establish offices in Ottawa which are restricted to advising on matters of federal law and to practice before federal courts and boards.

Foreign legal consultants will be strictly limited to advising on the law of their home jurisdiction. Only persons who are members of the Law Society of Upper Canada will be permitted to provide advice on the law of Ontario. Foreign legal consultants will provide a service to individuals and corporations with international dealings. The experience in jurisdictions where the concept has been adopted appears to be positive and there does not appear to be have been any adverse effect on the local profession.

The policy adopted by Convocation provides that the Society may license as foreign legal consultants applicants who:

- (a) are members in good standing of the licensing body in their home jurisdiction, and for at least three of the five preceding years have been actively engaged in the practice of law of that jurisdiction;
- (b) are members in good standing of the licensing body in their home jurisdiction and who have been actively engaged in the practice of law in their home jurisdiction for less than three of the five preceding years provided:
  - (i) they are under the supervision of a foreign legal consultant licensed pursuant to paragraph (a) and the supervisory arrangement has been approved by the Admissions Committee or
  - (ii) they undertake to comply with terms and conditions approved by the Admissions Committee;
- (c) are actually resident in Ontario and have complied with applicable immigration requirements or give an undertaking to take up actual residence in Ontario as soon after the granting of the license as practicable;
- (d) are of good character;
- (e) provide proof of professional errors and omissions insurance in an amount and form satisfactory to the Society;
- (f) undertake to observe the standards of professional conduct which are accepted by the legal profession in Ontario including those set out in the Society's Rules of Professional Conduct;
- (g) undertake to submit to the jurisdiction of the Law Society of Upper Canada in regard to their practice in Ontario.

Foreign Legal Consultants will be permitted to offer their services in Ontario subject to the following limitations:

- (a) they may not hold themselves out as qualified to act as a member of the Law Society of Upper Canada;
- (b) they may not represent clients in any court or before any public administrative body;
- (c) they may not provide advice on matters of Ontario law (which for purposes of these rules includes Canadian law applicable in Ontario);



- (d) they may not prepare or participate in preparing any document or instrument which is or which may be governed by the laws of Ontario unless the client has retained a member of the Law Society of Upper Canada who also participates in the preparation of such document or instrument and reviews the final draft.

To ensure that the public is not misled about the professional qualifications of foreign legal consultants they must on their letterhead and in listings identify themselves by their untranslated title with a translation in brackets with a reference to the country or jurisdiction in which they are licensed.

Applications for licensing as a Foreign Legal Consultant shall be made to the Admissions Committee which will have the authority to approve or deny the application.

#### SPECIAL COMMITTEE ON PREPAID LEGAL SERVICES

Convocation received a report from the Special Committee on Prepaid Legal Services outlining two plans which are currently being marketed in Ontario, namely Caldwell Prepaid Legal Services Inc., and Law Line.

Both plans are of the telephone-access type. A subscriber pays a monthly fee to the company and in return is guaranteed telephone access to a lawyer plus other defined benefits such as a will and further referrals at a set hourly rate. In the case of the Caldwell plan, the legal services will be rendered by a law firm which will also make the referrals to other lawyers. In the case of Law Line, telephone advice will be given by a panel of lawyers retained by Law Line. The other benefits will be provided by practising members of the Bar who have elected to join the program.

The Committee has some reservations about the operation of both plans. First, the question arose whether corporations are in effect practising law. Second, there is the question whether the monies paid by members of the public to the operators of the plan are in fact trust funds, being monies paid for legal services to be rendered in the future. Both companies have submitted responses to the Society's queries and the Committee will be reviewing those responses and if necessary seeking

the opinion of counsel whether the Society's concerns have been dealt with. Both firms have cooperated with the Law Society in attempting to resolve those areas of concern and have made changes to their plans at the suggestion of the Society. It is to be emphasized however, that the Law Society is not endorsing either of the plans.

#### CERTIFICATION BOARD

The Certification Board reported to Convocation on the present status of the certification process for civil and criminal litigation specialists.

A notice to the profession inviting applications for specialist status in the areas of civil and criminal litigation appeared in the November 4th, 1988 edition of the Ontario Reports.

The application process will be as follows:

1. Applicants will first submit their application form, fee, and accompanying documentation to:  
Co-ordinator—Certification Program  
The Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario  
M5S 2H8
2. The Co-ordinator of the Certification Program will examine the application forms to verify their particulars and to make contact with the references.
3. The Board may require that the applicants be interviewed by Specialists in the field. If such an interview takes place, the Specialists will be provided in advance with the application form and the accompanying documentation.
4. If an interview takes place, the Specialists who conduct it will report in writing to the Board.
5. Successful applicants will be notified and, upon payment of the required fee, will be provided with a Certificate of Specialty.

Applicants should note that in those cases in which an interview is to be conducted, the applicant will choose whether the interview is to be conducted by Specialists practising in his/her own geographic area or from some other area of the Province.

### • Standards for Litigation Specialists

Convocation approved three amendments to the litigation standards which were established in June 1987.

**Item 1:** The Practice Experience section of the Civil/Criminal Litigation Standards has been amended to allow for short-term absence from practice without penalty (for reasons of illness, pregnancy or otherwise) prior to date of application.

The wording of this section of the Standards will be as follows:

“Applicants are required to have satisfied the following requirements:

- i. A minimum of seven years in the full-time practice of law in Ontario; and
- ii(a). Five years of recent experience in the full-time practice of law in Ontario, two years of which must be immediately preceding the date of application.

As a general rule, recent experience will mean falling within the seven years immediately preceding the date of application.

- (b). In each of those five years, applicants must have devoted more than one-half of their professional time to the area for which certification is sought.”

**Item 2:** Pursuant to a request by a number of senior judges, section 8 of the standards now indicates that judges and members of tribunals are **not** to be approached by applicants to serve as references.

Section 8 has also been amended reducing the number of references required but adding that one of those references must be a currently certified specialist.

Section 8 of the standards now reads:

“8. Applicants will submit with their application the names of 4-6 lawyers\*, at least one of whom is currently a certified Specialist, who will have personal knowledge of the applicant’s work and who would be willing to provide references in confidence to the Board with respect to the application. The Board will also be at liberty to make inquiries of its own concerning the application.

*\*Applicants should not include judges and members of tribunals as references.*

**Item 3:** The Board approved an additional section at the end of the standards to allow for revocation of the certificate.

“The certified Specialist will be under an obligation to notify the Board if he/she fails to meet the minimum standards at any time during the currency of the Certificate. The Board will retain the power to revoke the Specialist status if applicable.”

#### LEGAL EDUCATION

- Student Employment during the Bar Admission Teaching Course Teaching Term

Convocation adopted a recommendation of the Legal Education Committee that students in the Bar Admission Course not be permitted to provide legal services directly to a member of the public for a fee whether those services be those customarily provided by a lawyer or an agent. A student however, may provide legal services free of charge to friends or relatives where authorized to do so as an agent provided that the student does not make a practise of such activity.

This clarification of the policy regarding student employment was necessary as several students have been carrying on the business of providing services as agents to members of the public for a fee.

#### LEGAL AID

- Financial Eligibility

Convocation today approved a series of recommendations made by the Legal Aid Committee regarding financial eligibility. The recommendations arise out of the work of a sub-committee which was established in the Spring of 1987. At that time many observers of Legal Aid were complaining that people were receiving legal aid assistance who could well afford to retain counsel privately while others believed that the guidelines were too stringent and that many people who should receive legal aid assistance were ineligible. The Canadian Bar Association – Ontario released a report in the Fall of 1986 which included many recommendations concerning financial eligibility and the Attorney General had on many occasions expressed his concern that increasingly the middle-class was being



excluded from the justice system because of an inability to retain counsel.

The sub-committee held its first meeting on April 22nd, 1987 and met on 16 subsequent occasions. Its recommendations, which number eighteen, maintain the basic philosophy of the Legal Aid Plan to serve the client of modest means and that legal aid services should not be used in conjunction with private retainers. The recommendations will now be discussed with the Attorney General's staff. Copies of the complete recommendations may be obtained from the provincial office of the Legal Aid Plan.

#### CLINIC FUNDING COMMITTEE

##### • 1988-89 Clinic Funding Budget

Pursuant to the Regulation on Clinic Funding, the Attorney General has set the Clinic Funding Committee's budget for 1988-89, at \$19,069,550. This is \$2,873,012 less than the amount requested by the Clinic Funding Committee, and approved by Convocation. This has had serious consequences for the funding of community legal clinics this year. The budget approved by the Attorney General includes a 5% increase in the previous year's expenditures, but does not include the \$583,000 in "annualization funds" requested to keep the six new clinics established last year operating for a full 12 months this year. The Committee's requests for additional funds to add 40 new staff to established clinics, and up to six new clinics in this fiscal year, were also denied. The Committee will be able to carry through with its commitments to the new clinics established last year (including the commitment to fund the Peterborough clinic), and provide modest increases to clinics this year.

The budget shortfall for this year will be made up through a combination of cash savings in some areas, and the use of surplus funds held by clinics at March 31st, 1988. The Clinic Funding Committee will, however, have to reduce its expenditures by approximately \$500,000 effective April 1st, 1988, unless additional funds are forthcoming by then. The Attorney General has indicated his support for additional funding for the clinic system this year. A request for more money for this year was made by the Attorney General to Management Board,

however, that request was denied on October 12th, 1988. The decision will be reviewed by Cabinet in the near future.

#### PUBLIC INFORMATION

##### • Need for Lawyer Referral Service Lawyers

There are several areas of the province in which the number of callers to the Lawyer Referral Service far exceed the number of lawyers enrolled in the Lawyer Referral Service in those areas. The situation first became apparent in March 1988 and the situation has been monitored monthly since that time. Although the imbalance has receded in some areas there are a number of areas in the province where it would be beneficial to have additional lawyers on the Lawyer Referral panel particularly in the areas of civil litigation and labour law. The areas of greatest need are York County, York Region, Guelph, Belleville, London and Mississauga.

It is estimated that the Lawyer Referral Service generated in excess of three million dollars last year in billings for those lawyers participating in the program.

An advertisement is to be placed in the Lawyers' Weekly seeking increased participation by the Bar in the Lawyer Referral Service.

##### • Lawyer Referral Service Statistics

MONTH	1987 CALLS/DAILY	1988 CALLS/DAILY	CHANGE	%CHANGE
JANUARY	7,129 (356)	8,390 (420)	1,261	18%
FEBRUARY	7,842 (392)	9,526 (454)	1,684	21%
MARCH	8,141 (370)	11,466 (498)	3,325	41%
APRIL	6,460 (323)	9,567 (503)	3,107	48%
MAY	6,652 (333)	10,281 (490)	3,629	54%
JUNE	7,359 (351)	10,906 (519)	3,527	48%
JULY	7,973 (362)	9,618 (481)	1,645	21%
AUGUST	7,355 (368)	11,398 (518)	4,043	55%
SEPTEMBER	7,835 (373)	10,239 (488)	2,404	31%

RETIREMENT, LIFE MEMBERSHIP,  
DEATHS AND MEMBERSHIP IN ABEYANCE

• The following member has fully retired from the practice of law:

Andrew Mowry Lawson

Toronto

• Pursuant to Rule 49, the following is now a Life Member of the Society with an effective date of October 20, 1988:

Andrew Mowry Lawson

Toronto

• The following members have died:

Ralph Allen Wallace, Q.C. Oshawa (Life Member)	Called September 15th 1932 Died March 29th 1988
Garfield Franklin Montgomery Toronto	Called September 15th 1955 Died June 23rd 1988
Yves Pratte, Q.C. Montreal	Called March 21st 1980 Died June 26th 1988
Joseph Abraham Seter Toronto	Called March 22nd 1974 Died June 4th 1988
Donald Franklin O'Connor Hersey, Q.C. Toronto	Called April 19th 1963 Died July 14th 1988
Salvatore Nasello Toronto	Called March 20th 1975 Died June 5th 1988
Cecil William Robinson Hamilton (Life Member)	Called September 19th 1929 Died April 19th 1988
James MacPherson Stuart, Q.C. Sarnia	Called June 29th 1948 Died May 13th 1988
Walter Ernest Telfer Toronto (Life Member)	Called April 21st 1932 Died April 11th 1988
Maxwell Walker Broley, Q.C. Toronto	Called June 24th 1954 Died June 1st 1988
William Arlington Murray Toronto (Life Member)	Called June 15th 1922 Died October 25th 1987
Frederick William Torrance, Q.C. Toronto (Life Member)	Called June 21st 1923 Died June 2nd 1988
Peter Csont Waterloo	Called March 19th 1970 Died August 10th 1988
Francis William Denton, Q.C. Toronto (Life Member)	Called October 1st 1919 Died November 21st 1987
Norman Stuart Robertson, Q.C. Toronto (Life Member)	Called July 25th 1917 Died August 22nd 1988
John Lamont Stewart Hamilton	Called January 16th 1941 Died June 10th 1988
Heber Franklin Teney, Q.C. Toronto	Called June 26th 1958 Died August 31st 1988

James Emmet Duff Toronto	Called June 23rd 1955 Died November 9th 1987
John Denton Reilly, Q.C. North York	Called September 15th 1938 Died June 22nd 1988
Charles Henry Woods Brampton (Life Member)	Called September 19th 1929 Died August 17th 1988
Walter Maurice Dales Burlington	Called November 21st 1940 Died March 19th 1988
Florence Catherine Eustace Evely Schomberg (Life Member)	Called October 18th 1934 Died July 7th 1987
Irene Francis Domagalski Shelburne	Called September 19th 1958 Died July 5th 1988
Norman Lee Mathews, Q.C. Toronto (Life Member)	Called September 14th 1922 Died April 1st 1988
Russell Dodsley Humphreys, Q.C. Oshawa (Life Member)	Called November 15th 1928 Died May 2nd 1988
Michael Edmond Anka, Q.C. Ottawa	Called November 15th 1945 Died July 15th 1988
Garson Loeb Gordon Scarborough (Life Member)	Called November 19th 1936 Died February 9th 1987
James Gordon Humphrey Oakville (Life Member)	Called October 18th 1934 Died August 26th 1988
Anne Elizabeth Coutts Toronto	Called April 19th 1985 Died September 8th 1988
Michael Thomas Steinmetz Kenora	Called April 11th 1983 Died September 3rd 1988
Kenneth James Higson Grimsby	Called April 10th 1964 Died September 26th 1988

• The following members have been placed in abeyance under section 31 of the Law Society Act:

Robert Paul Boissonneault Kirkland Lake	Called March 21st 1969 Appointed District Court Judge, District of Cochrane June 7th 1988
Donald Gordon Fraser Kenora	Called April 8th 1976 Appointed Provincial Court Judge, Family Division, Judicial District of Kenora June 13th 1988

#### DISCIPLINE MATTERS

##### **George Patrick Kealey**

At a Special Convocation, held on September 22nd, 1988, the rights and privileges of George Patrick Kealey of Ottawa



were suspended for a period of six months. While acting for two clients who were loaning money to a private corporation, he failed to protect their interest by ensuring that the loan transaction was properly evidenced by a security agreement pursuant to the Personal Property Security Act. When he became aware of the deficiency he drew a security agreement and backdated it. The private corporation subsequently went into bankruptcy and the solicitor provided a copy of the security agreement to the trustee in bankruptcy without disclosing the true circumstances surrounding its execution. Mr. Kealey was not represented by counsel at the discipline hearing or before Convocation.

On October 28th, 1988, counsel, on behalf of Mr. Kealey, made a motion before Convocation pursuant to section 47 of the Law Society Act to have Mr. Kealey's rights and privileges restored.

After hearing the submissions of Mr. Kealey's counsel who elaborated on the background to the backdating of the security agreement, Convocation voted to restore Mr. Kealey's rights and privileges and end the suspension as of October 28th, 1988. The solicitor is to consult with the Practice Advisor and must attend those continuing legal education courses recommended by the Practice Advisor.

### **Orlando DaSilva Santos**

Orlando DaSilva Santos of Toronto was reprimanded in Convocation. In a mortgage transaction, after the mortgagor had signed the mortgage, he altered the name of the mortgagee and registered the mortgage without the mortgagor's knowledge or consent.

The solicitor acted for a sub-contractor who had a claim against a general contractor. The general contractor approached the solicitor to obtain funding to repay the debt. The solicitor proposed that the contractor execute a mortgage in favour of a private company which would advance the funds. After the preparation of the mortgage the private company declined to advance the funds. The solicitor then changed the mortgage document by deleting the name of the private company and inserting the name of his client the sub-contractor. The document was then registered against the general contractor's property without his knowledge or consent.

The solicitor had also failed to file with the Society a statutory declaration in the form prescribed by the Rule and a report duly completed by a public accountant.

Orlando DaSilva Santos was called to the Bar on the 10th day of April 1984.



## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

November 25th, 1988

#### OPEN CONVOCATION

Convocation for the third time was open to the profession and the public. The Special Committee on Open Convocation will now review the experience and will report to Convocation in January with recommendations about the continuation of Open Convocations.

#### APPOINTMENTS

Clayton Ruby was appointed the Society's representative to the Attorney General's Committee on Judicial Appointments and Samuel Lerner was appointed the Society's representative to the Canadian Law Information Council.

#### CANADIAN CITIZENSHIP

In September Convocation resolved to ask the Attorney General of Ontario to amend the Law Society Act to permit permanent residents of Canada to be called to the Bar of Ontario. At present, membership in the Society is open only to Canadian citizens or British subjects and an amendment enacted in 1987 would limit membership to Canadian citizens as of July 1st, 1989.

The Society wrote to the Attorney General informing him of the decision of Convocation and requested that an appropriate amendment be made to the Law Society Act. A reply has now been received from the Attorney General indicating that he has instructed his officials to prepare an amendment and that, subject to the approval of the Cabinet and Legislature, the amendment will be passed prior to July 1st, 1989.

## ADMISSIONS COMMITTEE

Pamela Mae Gibson of the New York law firm Sherman and Sterling was approved as a foreign legal consultant pursuant to the policy adopted by Convocation in October.

## SPECIAL COMMITTEE ON PARALEGALS

The major item before Convocation was the report of the Special Committee on Paralegals. The report consisted of a majority report and a minority one. While both reports were based on the premise that there should be no expansion in the scope of work of paralegals beyond that which is currently lawful, the majority and minority reports were at odds on the question of the regulation of paralegals.

Before reviewing the report and the resolutions adopted by Convocation, it should be made clear that the term paralegal as used in the report applies to those persons who are not members of the Law Society of Upper Canada, offer certain types of legal service to the public for a fee and are not supervised by a qualified legal practitioner. This definition encompasses persons providing legal services to the public as "agents" or "counsel" where permitted to do so by statute.

The majority report felt that if the government moved to allow independent paralegals to provide certain legal services directly to the public, then paralegals required regulation to ensure that the public interest was protected. The majority recommended therefore that a regulatory framework be established which would provide for admission requirements including good character and educational qualifications as well as a compulsory liability insurance program, a compensation fund and ethical and disciplinary procedures.

The majority further recommended that any regulatory body established to oversee paralegals be modeled on the Legal Aid Committee of the Law Society and should report to Convocation. This recommendation which would have the Law Society playing a significant role in the governance of paralegals if adopted, would be a reversal of the position adopted by Convocation in 1986. At that time Convocation felt that the Law Society ought not to be involved in view of the perceived



conflict of interest between lawyers and paralegals over the demarcation of those areas in which paralegals would be allowed to provide services directly to the public. The majority, on reviewing the question, felt that although there may well be a perception of a conflict of interest, the Law Society has traditionally accepted the obligation of protecting the public from persons carrying on the unauthorized practice of law and that the Society is the appropriate body to oversee the provision of legal services in Ontario and to protect the public interest in ensuring that legal services are accessible to the public and are provided by properly trained and competent persons.

The minority was of the opinion that if paralegals were restricted to appearing before courts and tribunals where permitted to do so by law then those courts and tribunals should be the bodies to establish regulations to ensure that those appearing before them are educated in the legislative framework within which they operate and have some training in advocacy. In short each court or tribunal should establish some form of certification procedure for those non-lawyers appearing before it. Accordingly there would be no need for the creation of a complex paralegal governing body with its attendant cost and the consequent difficult question of the role of lawyers in the Law Society in the controlling process.

The reports also dealt with other issues including educational and training requirements, and the demarcation of areas of practice.

After a lengthy debate Convocation declined to adopt either the majority or minority report. Instead a series of resolutions were passed and the Committee is to redraft the report in light of the resolutions and report back to Convocation in January. The resolutions adopted by Convocation are:

that the Law Society take the position that the expansion of independent paralegal practice beyond what is currently lawful is not in the public interest;

that the Law Society undertake a public information campaign to alert the public that independent paralegals are not entitled in law or qualified to perform the legal tasks undertaken by them in areas such as wills, family law, real estate and business law and that

independent paralegals do not offer the public the protection that is available through a lawyer such as complaint and discipline procedures, errors and omissions insurance, a compensation fund and a procedure for an impartial assessment of accounts;

that if paralegals are to be allowed to practise independently, some form of regulation is required in the public interest;

that the courts and tribunals before which paralegals are permitted to appear be responsible for regulating the paralegals appearing before them including the setting of ethical standards, educational and training requirements and any auxiliary matters;

that the Society should not, in light of its position that the expansion of independent paralegal practice is not in the public interest and that paralegals appearing before courts and tribunals should be regulated by those courts and tribunals, put forward an alternate proposal for the governance of independent paralegals;

that communications between independent paralegals and their clients not be privileged;

that independent paralegals not be allowed to appear before the Immigration Appeal Board.

#### RETIREMENTS, LIFE MEMBERSHIPS, DEATHS, RESIGNATION AND MEMBERSHIPS IN ABEYANCE

• The following members have fully retired from the practice of law:

Richard Goodman Burt	Toronto
James Lawrence Cowan Jenner	Toronto
Henry Landis	Willowdale
Bertram Russell LeMesurier	Toronto
Alan Robertson MacDonald	Willowdale

• Pursuant to Rule 49, the following are now Life Members of the Society with an effective date of November 25th, 1988:

John Richard David Brimage	Simcoe
Terrence Fleming Flahiff	Westmount
George Francis Denison Goldring	Ridgeville
Irving Himel	Toronto
Frederick John Parry	Waterloo
Osmond Jennings Rowe	Barrie
Stanley Smither	Toronto
Carl Roswold Watson	Ridgetown
Murray Yuffy	Windsor

• The following members have died:

Miles Roger Morrow, Q.C. St. Catharines	Called September 14th 1951 Died June 15th 1988
Paul Louis Spears Toronto	Called April 13th 1978 Died May 30th 1988
Charles Adams Bell, Q.C. Windsor (Life Member)	Called June 21st 1928 Died July 15th 1988
Ronald Charles Merriam, Q.C. Ottawa	Called June 29th 1948 Died October 20th 1987
Peter James Burns, Q.C. Kirkland Lake (Life Member)	Called June 20th 1929 Died July 7th 1988
George Graham Morrow Toronto (Life Member)	Called June 16th 1932 Died March 17th 1987
Louis Maraskas, Q.C. Belleville	Called June 29th 1949 Died August 19th 1988
William Errington, Q.C. Newmarket	Called June 24th 1984 Died December 3rd 1986
Reuben Rodness Toronto (Life Member)	Called January 21st 1926 Died September 3rd 1988
Max Benson, Q.C. Willowdale	Called October 20th 1927 Died April 19th 1988
Neil Claude MacPhee, Q.C. Windsor (Life Member)	Called August 1st 1925 Died April 14th 1987
Thomas Robert Wilcox, Q.C. Kingston	Called September 19th 1940 Died June 22nd 1988
Harold Ernest Roberts Thornhill (Life Member)	Called September 20th 1928 Died March 17th 1988

• The following member was permitted to resign his membership in the Law Society:

Robert Allen Stewart Scarborough	Called March 29th 1977 Permitted to resign— September 22nd 1988
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• The following members have been placed in abeyance under section 31 of the Law Society Act:

Thomas Melville Wood, Q.C. Bracebridge	Called March 23rd 1973 Appointed Provincial Court Judge, Family Division, Judicial District of Muskoka October 14th 1988
William Alexander Jenkins, Q.C. London	Called April 10th 1964 Appointed District Court Judge, County of Middlesex September 6th 1988

## DISCIPLINE MATTERS

**Mario Cornelius Sommer**

Mario Cornelius Sommer of Toronto was suspended for one year and ordered to pay costs incurred by the Society in the course of its investigation in the amount of \$1500. Upon the termination of the period of suspension the solicitor will not be allowed to practise as a sole practitioner nor will he be allowed to be the sole signatory on a trust account.

While acting for a long time client in a series of real estate transactions he misled other solicitors and members of the public by leading them to believe he held funds on deposit in his trust account in regard to specific transactions when in fact there were no such funds on deposit. In addition he misapplied approximately \$8,000 by disbursing funds on behalf of his client from his trust account which funds he knew represented a portion of a deposit he was required to retain in trust pending the closing of a real estate transaction. Lastly, he engaged in sharp practice in that he led a fellow solicitor to believe that a \$100,000 deposit on a real estate transaction would not be forfeited and thereafter without warning or reasonable justification changed his position and caused the deposit to be forfeited.

All of the solicitor's problems stemmed from his involvement with a client who exerted a great deal of influence over the solicitor. The solicitor had acted for the client on approximately 20 previous occasions before the problems arose and had no reason to think that the client would fail to meet commitments in the transactions. However, Convocation would again emphasize to members of the profession the importance of maintaining a correct professional relationship with their clients to preclude the temptation to accommodate a client's interest at the price of their own professional integrity.

**John Stuart Cochrane**

John Stuart Cochrane of Toronto was permitted to resign his membership in the Law Society.

As the solicitor and executor of an estate he loaned two clients estate funds in the amount of \$53,160 without obtaining any security. In so doing the solicitor acted outside the scope of



his authority and failed to protect the estate. He also charged the estate unreasonable fees both in his capacity as an executor and as solicitor of the estate. During the period in which the problems arose the solicitor had severe health problems.

**James Frederick Harris Gray**

James Frederick Harris Gray of Toronto was reprimanded in Convocation.

While acting as solicitor and administrator of an estate he failed to comply with a court order in regard to the estate, failed to reply to correspondence from other solicitors respecting the estate and failed to respond to the Law Society's correspondence.

At the time the solicitor appeared before Convocation he had taken the necessary steps to correct the situation and had taken out and served an appointment for the passing of the accounts of the estate.











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THE LAW SOCIETY OF UPPER CANADA  
PROCEEDINGS OF CONVOCATION

January 27th, 1989

LEGAL EDUCATION COMMITTEE

• **Part-Time LL.B. Programs**

Convocation adopted a recommendation of the Legal Education Committee that approval be given to the establishment of two part-time LL.B. programs, one at the University of Windsor and the other at Queen's University.

The part-time LL.B. programs are intended to provide access to legal education to those who meet the ordinary admission requirements of the law schools but who are unable to pursue a degree on a full-time basis because of social, economic or physical disadvantages. It is to be emphasized that the programs are not intended for those who wish to test their interest in law or who prefer a lighter course load.

At the University of Windsor enrollment in the course will be limited to a maximum of seven students in the first two years. This may be increased to a maximum of fifteen in later years. The students will have to participate in a one to three week intensive academic program at the beginning of their first year of law to give them a common foundation in basic writing and research skills and study preparation. Students will complete the first year law program over a two year period. Courses will be taken in the evening and the law school will be committed to offering regular courses in the evening on a rotational basis and all evening courses will also include full-time students. In addition part-time students will have to participate in a moot and undertake a major research paper. Part-time students will take the same examinations as full-time students and will be subject to the same grading policy and must complete the program in no more than six years.

The part-time program at Queen's will be limited to six students per year. The courses studied in the first years will be decided upon by the student in consultation with the Chair of

the part-time Studies Committee. As with the Windsor program the student must complete the requirements for an LL.B. degree within six years and will be subject to the same grading policy and promotion requirements as full-time students.

### • Summer Student Programs

In September 1988, the Legal Education Committee established a Sub-Committee on Summer Student Programs as a result of the increase in employment of first and second year law students during the summer by law firms. The mandate of the Committee was to determine the extent of the summer student program and to identify any problems encountered by firms and the students and to determine whether the Law Society should alter the current recruitment procedures. A questionnaire indicates that the majority of law firms and the vast majority of students want the summer program to continue. One concern which arose however, was the degree to which law firms were using the summer students as a pool for recruiting their articling students. The report emphasizes that students should not be prejudiced in seeking an articling position with a firm merely because they have not had summer experience with that firm or with another firm. It was felt that at least for larger firms there ought to be some restriction on the number of summer students who are employed as articling students in order to ensure there are available articling positions for those students who do not wish to be employed in a law office during their first or second year of law. The report recommended that firms having more than five articling students be requested either to restrict the numbers of summer students they hire as articling students to 50% of the numbers of articling students they had for the previous year; or restrict the number of summer students they hire in any year to 50% of the total of articling students they hired the previous year. This will ensure that the firms reserve a number of places for students who have not "summered" at the firm.

There was also some concern expressed over the quality of work given or available for summer students especially where there was not enough work in the law firm for both articling and summer students. While the summer student programs do

provide valuable learning experiences for the students the quality of work for articling students must remain the primary focus of concern for law firms. Law firms therefore should restrict the numbers of summer students hired in order to ensure that the important legal experience for articling students is preserved.

In summary the report concluded that the summer student program can provide a valuable experience for a limited number of students interested in this type of employment and fill a need in some law firms. The program should continue in much the same way as in the past without the introduction of the computer matching program used in the articling process. However, the program should be monitored for at least another year and if self-regulation by the profession does not appear to be working, more stringent procedures should be considered at that time.

#### • Recruitment of Articling Students

Convocation approved procedures governing the recruitment of articling and summer students. The Law Society expects its members and students to follow these procedures for the hiring of summer and articling students in spirit as well as in letter and any deliberate circumvention of the restrictions set out in the procedures will be considered professional misconduct on the part of those who participate in or authorize the circumvention.

There are few changes from last year for articling positions within Metropolitan Toronto and outside Metropolitan Toronto where the position is offered through the matching program. Student applications for interviews received by Wednesday, July 12th, 1989 shall be treated without regard to date of submission. Interview appointments must not be communicated either by letter or orally until 9:00 a.m. Toronto time on Friday, July 28th, 1989. The fact that a firm will or will not interview a student may be communicated before that date but the firm must not suggest an interview time before 9:00 a.m. on July 28th, 1989. Interviews must not be conducted before 8:00 a.m. on Monday, August 14th, 1989. For those firms and students participating in the matching program, no communication of ranking intentions shall take place prior to 8:00 a.m. on Monday,

August 14th, 1989 except those firms that have employed summer students may communicate ranking intentions to those students prior to Tuesday, August 1st, 1989. No communication of offers of employment shall be made by firms not participating in the matching program before 8:00 a.m. on Monday, August 14th, 1989. All offers must remain open until noon on Monday, August 21st, 1989 for firms that do not participate in the matching program.

For articling positions outside Metropolitan Toronto and those within Metropolitan Toronto which are not included in the matching program, interviews are not to take place nor are offers to be made until after the examinations are over at the end of the student's second academic year.

For the Regional Municipality of Ottawa-Carleton, no offer should be tendered before June 15th, 1989 and offers made during the first five business days including and subsequent to June 15th, 1989 should remain open for three clear business days including the day the offer was made. Any offer made after that period should remain open for a reasonable period of time.

These procedures have been adopted after discussions with representatives of law firms and other employers of articling students and with student representatives from each law school in Ontario. They will be reviewed again at the end of this recruitment cycle. Anyone wishing to make submissions for consideration by the reviewing committee may do so by contacting the Society's Director of Education, Mr. George Thomson.

#### FINANCE COMMITTEE

##### • Grant to Joint Committee on Court Reform

Convocation on the recommendation of the Finance Committee approved an advance of \$10,000 for the work of the Joint Committee on Court Reform.

#### LEGAL AID PLAN

Convocation approved for submission to the Attorney General a budget for the Legal Aid Plan for fiscal 1989-1990 in the amount of \$158,698,400 an increase of \$26,717,400 over the forecast expenditures for fiscal 1988-1989. The major compo-



nents of the budget are \$109,150,000 for certificate payments and \$23,442,900 for community legal clinics.

### • Dial-a-Law

The Dial-a-Law program has been successfully converted to a telephone interactive program allowing touch-tone telephone users to gain access to the program 24 hours a day, seven days a week. Those not having touch tone telephones may still gain access to the program through a dial-a-law operator during regular business hours. Members of the profession are invited to test the system by calling 947-3333 (Toronto) or 1-800-387-2920 for the balance of the 416 calling area or from area codes 519, 613 and 705, 1-800-387-2992. Modifications are being made to the system on a regular basis as minor problems surface and any suggestions for improvement are sought.

As a result of the computerization program and an advertising campaign there has been a significant increase in the numbers of calls to Dial-a-Law. Statistics Comparing 1988 with 1989 for the period between January 1st and 9th are set out below:

<u>DATE</u>	<u>1988</u>	<u>1989</u>	<u>CHANGE</u>
January 1	0	196	+ 196
January 2	0	703	+ 703
January 3	0	3,424	+ 3,424
January 4	530	1,470	+ 940
January 5	446	1,679	+ 1,233
January 6	407	1,622	+ 1,215
January 7	370	1,264	+ 894
January 8	349	121	- 228
January 9	0	1,318	+ 1,318
<b>TOTALS</b>	<b>2,102</b>	<b>11,797</b>	<b>+ 9,695 + 461%</b>

### PROFESSIONAL CONDUCT COMMITTEE

#### • Amendment of Rule 12—Certification of Specialists

Convocation on the recommendation of the Professional Conduct Committee approved an amendment to Rule 12 of the Rules of Professional Conduct to permit lawyers to indicate that they are a specialist in a particular area of law provided they have been so certified by the Law Society. In addition the provisions relating to the advertising of a restricted practice

were amended to allow lawyers and firms to indicate the areas in which they practise without the necessity of using the term restricted. The necessary amendments will now be drafted by the Legislation and Rules Committee.

### • Rule 9—Disbursements

The Professional Conduct Committee at its May meeting considered whether the Law Society should keep the present Rule 9 which specifically details what are accepted disbursements or whether the Rule should be amended so that it contained only a general statement on disbursements. The consensus of the Committee at its May meeting was that Rule 9 should be amended to contain only a general statement. Notice of the Committee's intention was given to Convocation in May but consideration was deferred until the Fall so that Benchers and other interested groups could receive a complete brief. The Practice and Insurance Committee, the County and District Law Presidents Association and the Real Property Section of the Canadian Bar Association—Ontario were asked for their views. The Committee reviewed the submissions made by these bodies and incorporated their suggestions in the report. The amendments provide that when lawyers are asked to quote a fee they shall explain the nature and approximate amount of any anticipated disbursements to be incurred. Lawyers may not charge or accept any significant amount such as the cost of a title search as a disbursement unless it is fully disclosed in a timely fashion and is fair and reasonable. Sub-paragraphs 4 (b) (c) (d) (e) and (f) of paragraph 4 of the commentary to Rule 9 have been deleted. The Legislation and Rules Committee will now draft a revised Rule 9.

### • Affiliations with other Law Firms

The Law Society has recently received inquiries from a number of law firms in Ontario asking if they may show on their letterhead their association with law firms outside Ontario or their affiliation with another firm or group of law firms. The Professional Conduct Committee recommended and Convocation agreed that there would be no harm in a firm showing an affiliation on its letterhead because this is informational in character. It is assumed that any law firm indicating an affiliation

would in fact have such a relationship otherwise this would be a contravention of Rule 12 in that it would be false or misleading advertising.

- **Telemarketing**

Telemarketing is a phenomena that has arisen in the United States in recent years. Law firms hire a marketing firm to telephone at random members of the public. The telephone message gives information about the law firm and encourages members of the public to use the services of the law firm. The question arose as to whether or not telemarketing contravenes paragraph 4 of Rule 12 of the Rules of Professional Conduct. Paragraph 4 of Rule 12 reads:

A lawyer may not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the lawyer's so doing is to be retained in a particular matter except as a public service. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communications directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such service useful. All such letters or advertising circulars shall be clearly marked "advertisement" on each page thereof.

Convocation concluded that telemarketing by a law firm would contravene paragraph 4 of Rule 12.

- **Lack of Confidentiality in Facsimile Transmissions**

The profession is reminded that there is a lack of confidentiality in facsimile transmission which may result in the confidentiality or privilege of documents sent by facsimile being lost. This loss may harm the client directly or indirectly.

RETIREMENTS, RESIGNATIONS, LIFE MEMBERS,  
MEMBERSHIPS IN ABEYANCE, DEATHS

• The following members have fully retired from the practice of law:

Gordon Harvey Aiken	Orillia
Robert Alfred Best	Toronto
Donald Lane Campbell	Port Hope
Albert James Cavan	Toronto
Wilfred Roland Dupont	Caledon East
Maurice Fagan	North York
Patrick John Fitzgerald	Ottawa
Francis Frederick Gallant	North York
Samuel Gampel	Niagara Falls
Melville Moshe Goldberg	Ottawa
Paul Andrew Henry Hess	North York
Richard Macaulay Ivey	London
W. Alan Newell	Huntsville
Eleanor Colleen Purvis	Toronto

• The following members were permitted to resign their memberships in the Law Society:

Andrew Robert Robertson Calgary, Alberta	Called April 13th, 1981 Permitted to resign – January 27th, 1989
Thomas Frederick Beasley Vancouver, British Columbia	Called April 10th, 1981 Permitted to resign – January 27th, 1989
John Stuart Cochrane North York	Called September 18th, 1959 Permitted to Resign – Convocation November 24th, 1988

• Pursuant to Rule 49, the following are now Life Members of the Society with an effective date of January 19, 1989:

Francis Joseph Cornish	Port Charlotte, FL., U.S.A.
Paul Alexander Dufresne	Cambridge
Byron Wesley Rich	Toronto
William Shub	Willowdale

• The following members have been restored to the Rolls of the Law Society:

Francis Joseph Cornish (District Court of Ontario)	Restored January 3rd, 1989
Wilfred Roland Dupont (Supreme Court of Ontario)	Restored November 21st, 1988



• The following members have died:

James Hugh McGuinness Toronto	Called June 29th 1948 Died September 10th 1987
Thomas Gregory Feeney Ottawa	Called June 26th 1958 Died July 16th 1988
Gregory Frink Ottawa	Called April 19th 1978 Died October 31st 1988
Archibald Donald McAlpine Orangeville	Called September 20th 1945 Died September 8th 1988
John Charles MacCorkindale Willowdale (Life Member)	Called October 21st 1920 Died November 8th 1988
John Owrey Weldon Fonthill (Life Member)	Called September 15th 1938 Died October 31st 1988
Helen Grossman Toronto (Life Member)	Called September 19th 1929 Died November 8th 1988
Stanley William Frolick Weston	Called September 19th 1958 Died June 4th 1988
Frederick Joseph McMahon Don Mills (Former Judge)	Called October 19th 1944 Died March 6th 1988
Gerald George Eastman Kingston	Called September 16th 1960 Died November 12th 1988
Jamie Alexander McQuarrie Lindsay	Called June 29th 1949 Died August 29th 1988
Edward John Gardiner Lindsay	Called March 19th 1970 Died December 11th 1988
Douglas Howard Waghorn St. Mary's	Called March 26th 1965 Died December 9th 1988
Joseph Lexis Staples Lindsay	Called June 29th 1948 Died July 9th 1988
Helene Barbes Ottawa	Called April 9th 1981 Died May 14th 1988

• The following members have been placed in abeyance under section 31 of the Law Society Act:

John Roland Maurice Gautreau, Q.C. Ottawa	Called February 20th 1959 Appointed District Court Judge, Judicial District of Middlesex October 6th 1988
Jean-Gilles Lebel North Bay	Called March 22nd 1974 Appointed Provincial Court Judge, District of Nipissing July 18th 1988
Murray Alexander Mogan, Q.C. Toronto	Called September 19th 1958 Appointed Judge, Tax Court of Canada September 29th 1988

Denis Michael Roberts  
Cornerbrook, Newfoundland

Called March 26th 1971  
Appointed Judge,  
Supreme Court of Newfoundland,  
Trial Division  
July 27th 1988

Louise Vivian Charron  
Ottawa

Called March 25th 1977  
Appointed Judge,  
District Court of Ontario,  
Judicial District of Ottawa-Carleton  
September 29th 1988

Gordon Teskey  
Ottawa

Called June 26th 1958  
Appointed Judge,  
Tax Court of Canada  
September 29th 1988

#### DISCIPLINE MATTER

##### • William Korz

William Korz of Cambridge was reprimanded in Convocation having been found guilty of conduct unbecoming a barrister and solicitor. He became involved in a business venture with two former clients without disclosing that he was judgment proof. If the clients had known that the solicitor was judgment proof they would not have participated in the venture with him. The company eventually failed and the investors were called upon on their guarantees and the two clients sued the solicitor and recovered damages for his breach of duty in failing to disclose his judgment proof status. William Korz was called to the Bar on June 24th, 1954.



## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

February 23rd, 1989

#### RESEARCH & PLANNING

##### • Open Convocation

Convocation today adopted a recommendation contained in a Sub-Committee report of the Research and Planning Committee that the proceedings of Convocation be open to the profession and the public subject to only certain matters being dealt with in camera. The report recognized that this goal may be achieved in various ways and the Society will be experimenting with various methods of making the proceedings of Convocation accessible to the public and the profession such as closed circuit television as an adjunct to direct observation in Convocation room.

The following matters will be dealt with in camera:

- (1) Agenda items dealing with personnel matters;
- (2) matters of litigation or negotiation including negotiations with government;
- (3) agenda items which reveal information of a personal nature and in which the need for privacy outweighs the public interest in disclosure;
- (4) and at the instance of the Treasurer, any other matters shall be dealt with in camera subject to the Treasurer being overruled by a majority vote of Convocation taken in camera that the matter be heard in open Convocation.

The reports of the Committees will be made available on request to the profession, public and media on the Monday prior to Convocation.

#### SPECIAL COMMITTEE ON VOTING PROCEDURES AND NON-BENCHER APPOINTMENTS

The Committee appointed by Convocation with a mandate to review the question of allowing votes to former Attorneys

General and Life Benchers and to make recommendations regarding the appointment of non-Benchers to standing committees reported to Convocation with its recommendations.

In regard to the question of continuing existing voting rights of former and incumbent Attorneys General of Ontario, the Committee recommended that the incumbent Attorney General should retain full voting rights both in Convocation and in Committee while former Attorneys General who remain ex-officio Benchers pursuant to the Law Society Act should retain the right to vote in Committee but should not be permitted to vote in Convocation. This is contrasted with the treatment afforded to former Treasurers who vote in Convocation and Committee. The Committee felt that former Treasurers were in a distinct category as persons who have been elected both by the profession and by the Benchers and who have devoted a considerable amount of time and energy to the work of the Society. They occupy a unique position which should be recognized and represent a resource upon which the Bench can draw to provide a continuity which is beneficial to the Society. For these reasons the Committee recommended and Convocation approved that former Treasurers should retain the right to vote both in Committee and in Convocation.

The Society will now ask the Attorney General for an appropriate change in the Law Society Act.

In regard to the question of allowing votes to Life Benchers, the Committee noted that at the present time there were eight such Benchers. As Life Benchers they no longer have the vote either in Committee or in Convocation. On reviewing the participation by Life Benchers in the affairs of the Society the Committee recommended that Life Benchers be given the right to vote in Committee but they not be allowed to sit on discipline panels nor vote in Convocation. The Committee felt very strongly that in discipline matters as in Convocation the perception should be that members are governed by their elected peers.

In regard to the appointment of non-Benchers to standing committees the Committee reviewed the history of the participation of non-Benchers in the work of the standing and special committees of the Society and concluded that there is a role for



non-Benchers in certain circumstances. The Committee felt that non-Bencher participation in Committees should not be restricted to members of the legal profession but rather that there may well be and indeed there have been situations where lay persons have made valuable contributions. The Committee therefore recommended that non-Benchers who are recruited purely as resource persons and serve in a consultative role to the Committee should not be given voting rights but that non-Benchers who are invited to participate in the deliberations of the Committee in the same manner as any other member of the Committee should be given voting rights.

With respect to the approval and term of appointments of non-Benchers the Committee recommended that each appointment be approved by Convocation and that the term of each appointment be for a specified period or if no period is defined until the next constitution of Committees by the Treasurer.

The recommendations of the Committee were adopted by Convocation.

#### PUBLIC INFORMATION

##### • The Law Society Toll Free Number

The Law Society now has a toll free number for use by members and others wishing to contact the offices of the Society. The toll free number is 1-800-668-7380. This line cannot be used in the 807 calling area and a separate line will be installed in the next few months for the 807 area.

#### LEGAL AID

##### • Criminal Tariff

Convocation approved the following recommendations made in the Legal Aid Committee report regarding the criminal tariff:

- (a) When a bail hearing is conducted on the same day as a guilty plea on a block fee matter all services should be included in the block fee;
- (b) item 7.1(b) of the tariff which lists alternative offenses for which a guilty plea fee is paid even though one of the charges may be withdrawn should be amended by deleting

the reference to section 238(5) of the Criminal Code. One of the offenses listed is the offense of refusing to comply with the demand for breath sample. This charge is customarily proceeded with whether or not there is a plea of guilty to a charge of impaired driving. It is, therefore, appropriate to pay counsel the normal fee for a withdrawal.

- (c) Duty counsel who attend court on a holiday should be paid a block fee. The appropriate fee would be the fee customarily paid pursuant to a legal aid certificate for one bail hearing.

These recommendations will now be passed to the Attorney General for review and approval.

#### • Group Applications and Test Cases Sub-Committee

In October 1977, the Law Society approved a recommendation that all applications for Legal Aid to an area director in the province for any matter that might reasonably be considered a group application, an application for a class action or a test case, should be referred to the sub-committee for its consideration. The sub-committee is a volunteer committee appointed by the Legal Aid Committee and is composed of a Chair and seven members. Currently, five including the Chair, are members of the Ontario Bar in private practice, one is a professor of law and one is a lay member.

Since 1977 with the interruption of approximately a year, the sub-committee has reviewed 150 group applications in test cases. Since January of this year the number of applications has increased substantially and 23 applications have been reviewed.

The sub-committee's role is advisory. It has no statutory jurisdiction but merely reviews applications that are referred to it by area directors or area committees and also applications that are made to it directly by applicants who have become aware of its existence. After providing applicants with an opportunity to respond in writing or in person to its guidelines the sub-committee makes a recommendation to the authority with jurisdiction, that is, the area director, area committee, or Provincial Director, as to whether or not a legal aid certificate should be issued. The sub-committee at present is bound to consider whether applicants are financially eligible for legal aid.

This inflexible restriction is frequently difficult to apply in group and test case situations. Consequently, the sub-committee now proposes to expand its program to include groups of persons and individuals who wish to be represented in court cases involving charter challenges that raise issues of significant public importance who would not ordinarily qualify for legal aid assistance. It is proposed that the funding be sought from the Law Foundation and from the Ministry of the Attorney General to fund this new project on a two year pilot basis. The sub-committee itself would receive and hear applications for funding from interested groups and individuals and decide whether or not to provide funding for specific litigation. Where it decided to provide funding, the sub-committee would allocate a fixed amount to an applicant group or individual for the legal proceeding. The sub-committee's guidelines would be altered for the purpose of consideration of charter cases to remove the rigid financial constraint of qualification for legal aid. It would, however, retain consideration of the availability of private funding, of alternative funding and the contribution through fund raising activities.

After one year the sub-committee will make a recommendation to the Legal Aid Committee as to the need for appeal procedures in the event that the sub-committee refuses to grant assistance to an applicant.

#### PROFESSIONAL CONDUCT COMMITTEE

##### • Use of Facsimile Machines

The Professional Conduct Committee considered a complaint regarding the use of a facsimile machine to serve documents. A lawyer served other lawyers with documents by facsimile machine. The lawyer then refused to accept service of documents sent to him by facsimile machine. The offending lawyer did not put his facsimile machine number on his stationery and refused to give it to other lawyers that he had served by facsimile machine when they requested it.

The Committee concluded and Convocation concurred that the lawyer in question had not lived up to the requirement set out in Rule 14—Responsibility to Lawyers Individually—which reads:

“The lawyer’s conduct towards other lawyers should be characterized by courtesy and good faith.”

The Committee concluded that if lawyers serve documents by facsimile machine on opposing counsel in a particular law suit, they should be prepared to accept service by the same mode in order to comply with the requirements of courtesy and good faith set out in Rule 14.

### • Offer of Vouchers

A lawyer proposed to offer first time clients a voucher with a face value of \$25.00 which could be used by the clients if they were to retain the lawyer in the future. The Committee concluded that the use of vouchers did not meet the requirement of good taste set out in paragraph 2(b) of Rule 12 which specifies that advertising must be “in good taste and not such as to bring the profession into disrepute.”

### • Special Committee on Contingent Fees

The Special Committee which reported to Convocation last May on the basic question of whether or not contingent fees would be of value to litigants in Ontario is preparing its second report. This report will put forward for consideration of Convocation and the Attorney General a detailed scheme as to how contingent fees should be implemented in Ontario. It is expected that the report will be ready for consideration by Convocation late in the Spring.

## UNAUTHORIZED PRACTICE

### • Advertising Campaign—Paralegals

Convocation accepted a recommendation of the Unauthorized Practice Committee that the Society undertake a trial institutional advertising campaign in selected Toronto area newspapers to point out to the public the advantages of retaining a lawyer rather than a paralegal. The theme of the advertisements is “if it’s a matter of law see a lawyer”. The advertisements will be placed in the classified section of newspapers which carry advertisements by paralegals regarding the services that they offer.



## RETIREMENTS, RESIGNATIONS, DEATHS AND MEMBERSHIPS IN ABEYANCE

### • The following members have retired:

Cameron Harold Gage	Hamilton
John Joseph Morley	Stoney Creek
Roland Merton Parker	Berkeley
Richard James Hardy Stanbury	Toronto
William George Weston	Trenton
Alexander Epstein	Toronto
Sidney Freedman	Toronto
William Hay	New York, N.Y., U.S.A.
William Middleton Prest	Goderich
Arthur Norman Stone	Toronto

### • The following members have resigned their membership in the Society:

Henry John Pasierbek	London
Andrew Robert Robertson	Calgary, ALTA.
Sandra Lorraine Robinson	Islington
George Gregory Triantis	Toronto

### • The following members have died:

Jean-Francois Aube	Called March 25th 1977
Timmins	Died October 9th 1988
Gordon Brownhill Graham	Called March 24th 1972
Toronto	Died December 16th 1988
Joseph Reginald O'Kell	Called June 16th 1938
Toronto	Died December 1st 1988
John D. Bowlby	Called September 14th 1951
Burlington (Former Treasurer)	Died January 30th 1989

### • The following members have been placed in abeyance:

Frank Iacobucci	Called February 20th 1970
Ottawa	Appointed Judge, Federal Court of Canada September 2nd 1988
Christopher Michael Speyer	Called March 17th 1967
Brampton	Appointed District Court Judge Judicial District of Peel October 6th 1988
Gerald Stanley Lapkin	Called March 19th 1970
Toronto	Appointed Provincial Court Judge, Judicial District of York November 30th 1988

Ian Angus MacDonnell  
Scarborough

Called March 29th 1977  
Appointed Provincial Court Judge,  
Judicial District of York  
November 30th 1988

Lauren Elizabeth Marshall  
Downsview

Called March 21st 1975  
Appointed Provincial Court Judge,  
Regional Municipality of York  
December 19th 1988

#### DISCIPLINE MATTERS

##### • James William Christie

James William Christie of Sarnia was permitted to resign his membership in the Society. He had improperly borrowed \$6,500 from a client and failed to maintain the books and records required by the Law Society's Regulation and had failed to file his forms 2/3. The solicitor was called to the Bar on the 24th of March 1972.

##### • Ronald Edward Folkes

Ronald Edward Folkes of Brampton was suspended from the practice of law for three months and ordered to pay the cost of the Law Society's investigation in the amount of \$1,000.

The solicitor acted for a client in a hearing before a tribunal despite numerous conflicts of interest caused by his personal and business interests. The solicitor had acted for a client on a purchase of a residential building. After the purchase of the building renovations were made to the building. The renovations were undertaken by a close personal friend of the solicitor. Questions arose as to the value of the renovations and the solicitor continued to act for the client despite the conflict between his duty to the client and his close personal relationship with the contractor and his involvement in the limited company which submitted invoices for work done on the property. Evidence before the tribunal indicated that the solicitor in fact was the proprietor of the limited company although he had no knowledge that it was being used for the renovations. In addition the solicitor filed with the tribunal a statutory declaration respecting the ownership of the property. The declaration was put before the tribunal by the solicitor as the sworn statement of his client. The client however, was unaware of the existence of

the declaration and the solicitor signed it without authorization of the client and then commissioned the declaration knowing the client had not executed or was even aware of its existence. The contents of the declaration were true.

The solicitor was called to the Bar on the 22nd day of March 1974.

#### • **Peter Krawec**

Peter Krawec was disbarred having been found guilty of professional misconduct in that he demonstrated that he was not governable by the Society. He refused to cooperate with the Society's auditors and breached an undertaking to the Society dated March 2nd, 1988.

The Society conducted an audit of the solicitor's firm which disclosed a series of real estate transactions and mortgage financings in which the St. Nicholas Parish (Toronto) Credit Union was involved. The transactions involved the credit union in making mortgage advantages in excess of its 75% statutory limit. The solicitor was a director of the credit union and acted for the credit union and various boards during the transaction. The solicitor undertook to the Society to cooperate with the Society's auditors, refrain from handling trust monies and to assist the new solicitors for St. Nicholas respecting outstanding matters. The solicitor terminated his law partnership but failed however to comply with his undertaking.

Peter Krawec was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April 1976.

#### • **Scott Thomas Milloy**

Scott Thomas Milloy was suspended for three months. The solicitor misappropriated the sum of \$2,500 from his trust account in 1978. The solicitor repaid the amount when the deficiency was discovered by the Society. The misappropriation had occurred when the solicitor, having permitted a limitation period to expire in a motor vehicle claim, kept the information regarding the error from his client and advised the client that the matter had been settled for \$2,500. To account for the funds he debited the trust ledger of an estate. The solicitor then delib-

erately delayed the finalization of the estate. The solicitor ignored the Law Society's request that he provide a complete accounting of the estate funds and that he write reporting letters to the beneficiaries in two estates. The solicitor had a busy criminal law practice in Ontario and is held in high regard by his fellow practitioners and his difficulties took place during a period of time in which he was experiencing personal problems including alcohol abuse.

Scott Thomas Milloy was called to the Bar on the 21st day of March 1969.

### **Nancy Grace Koster**

Nancy Grace Koster of Newmarket was reprimanded in Convocation. She misled a client as to the actual status of her file, failed to respond to letters from the Law Society regarding complaints made by clients and failed to file the financial forms required by the Society's Regulation. The solicitor gave an undertaking to the Society not to take on new matters in the areas of litigation or family law until released from the undertaking by the Society. Nancy Grace Koster was called to the Bar in 1978.

### **Albin Robert Rogala**

Albin Robert Rogala of Stoney Creek was disbarred. From May 1986 to January 1989 he misappropriated some \$2 million from clients and improperly borrowed a further \$174,000 from clients. The solicitor was called to the Bar in 1974.

### **Benjamin Walter Dolinszny**

Benjamin Walter Dolinszny of St. Catharines was reprimanded in Convocation for his failure to serve his clients in a manner consistent with the requirements of the Law Society. He had failed to prepare and maintain proper search procedures in several real estate transactions. He had made it a practice to certify title to some of his clients on the basis of a "plan down" search of title without having supporting root searches as a matter of record in the client's file or in a central repository of search notes documenting the full forty year search as required by Section 105 of the *Registry Act*. The solicitor has undertaken to the Society to rectify his procedures. The solicitor was called to the Bar in 1957.





— THE LAW SOCIETY OF UPPER CANADA  
PROCEEDINGS OF CONVOCATION

March 17th, 1989

Convocation met on March 17th, 1989, and considered reports from sixteen standing and special committees. The reports all dealt with administrative and informational items as most of the committees' meetings in March were devoted to the preparation and review of preliminary budget estimates for the 1989-90 fiscal year which commences July 1st. The preliminary budgets are not voted on in March but are passed on to the Finance Committee for consolidation and review. During April, meetings are held with staff and the chairs of the committees to finalize the budget which is then presented to Convocation at its May meeting.

CALL TO THE BAR

There were four Call to the Bar ceremonies in March: one in London, one in Ottawa, and two in Toronto. A total of 1090 students were called to the Bar. In London, the address was given by Doctor Margaret Somerville of the McGill Centre on Ethics. Madame Justice Bertha Wilson spoke in Ottawa, while in Toronto, the graduates were addressed by the Honourable Douglas Lewis, Attorney General for Canada and Minister of Justice and Yves Fortier cr, Canadian Ambassador and Permanent Representative to the United Nations. Mr. Fortier also received the degree of Doctor of Laws, Honoris Causa from the Law Society in recognition of his contribution to the legal profession in Canada.

## PROCEEDINGS OF CONVOCATION

April 28th, 1989

## PROFESSIONAL STANDARDS COMMITTEE

**• Criminal Law Checklist**

Convocation approved a recommendation of the Professional Standards Committee that copies of its criminal law checklist be printed in a format that can be incorporated in the Law Society manual. The checklist is designed to assist practitioners in the criminal law area and sets out in summary form procedures to be followed in dealing with a criminal law file. The checklist took several months to develop and the Society would like to acknowledge the assistance of the following members of the Bar who served on the sub-committee and were instrumental in making the checklist a reality: Peter Barnes, Esq., Anthony Bryant, Esq., Richard N. Clarke, Esq., Gary G. McNeely, Q.C., Donald R. Oraziatti, Q.C., A.C.R. Whitten, Q.C.

The Professional Standards Committee has sub-committees at work developing checklists in the areas of wills and estates and family law.

## LAW SOCIETY BOOKLET

The Finance Committee's recommendation that the Society spend \$40,000 on printing and distributing an informational booklet about the Law Society was approved by Convocation. The booklet was developed by the Public Information Committee and gives a brief history of the Law Society, its organization and responsibilities as well as outlining the major programs undertaken by the Law Society. It is proposed that the booklet be distributed to elected members at all levels of government, the media and other interested groups.

## LEGAL EDUCATION

**• Advocates Society Institute**

On the recommendation of the Legal Education Committee, Convocation authorized a loan of \$34,000 to the Advocates

Society Institute to assist it in meeting its obligations. The loan demonstrates the Law Society's obligations as a partner with the Advocates Society in supporting the Institute during its formative period. The \$34,000 advance to the Institute will be paid over to the Advocates Society so that the Law Society will be in fact sharing the initial start-up costs with the Advocates Society. The money will be repaid at the end of the year when the cash position of the Institute permits. The Institute has been directed to prepare a budget that will allow for repayment during its current fiscal year of the Law Society's advance as well as amounts advanced by the Advocates Society.

#### ADMISSIONS COMMITTEE

##### • **Foreign Legal Consultants**

Three lawyers from Buffalo, New York, were licensed as foreign legal consultants: Messrs. John C. Braber and Donald C. Lubick of Hodgson, Russ, Andrews, Woods and Goodyear, and Mr. Jonathan Rodwin of Kavinoky and Cook.

#### PROFESSIONAL CONDUCT

##### • **Prepaid Legal Services**

Convocation approved a policy statement governing the participation of members of the Society in for profit prepaid legal service plans. The policy is based extensively on that developed by the American Bar Association's Committee on Prepaid Legal Services and the Society acknowledges its debt to the ABA. The statement is set out in full below:

#### PREPAID LEGAL SERVICES—POLICY STATEMENT

Participation of a lawyer in a for profit Prepaid Legal Service Plan is permissible provided the plan is in compliance with the following guidelines. As a general statement any plan must allow the lawyer to exercise independent professional judgement on behalf of the client, to maintain client confidentiality, to avoid conflicts of interest and to practise in a competent manner. The operation of the plan must not involve improper advertising or solicitation or improper fee sharing and must not interfere in any way in the relationship between the

Law Society and the lawyer. Additionally, the plan must be in compliance with other applicable law and it is incumbent upon the participating lawyer to ensure that the plan is in compliance with this policy, the Rules of Professional Conduct where applicable and other regulatory provisions.

Where the plan or the plan's sponsor is in violation of this policy the lawyer who participates in the plan may be guilty of professional misconduct.

#### PROFESSIONAL INDEPENDENCE

It is essential that neither the provisions of the plan nor the participating lawyer allow the sponsoring entity to interfere with a lawyer's exercise of independent professional judgement on behalf of a client to direct or regulate professional conduct. Rule 3 of the Rules of Professional Conduct provides that lawyer must be both honest and candid when advising clients which includes giving open and undisguised advice about a client's situation and the advice must not be influenced by the lawyer's self-interest.

The plan sponsor should have no dealings with the plan's subscribers on legal issues after their matters have been referred to a lawyer. Once the lawyer-client relationship exists between a plan member and the participating lawyer, that relationship must be no different than the traditional lawyer-client relationship and there should be no interference with that relationship by the plan's sponsor. The agreement between the plan and the participating lawyers should make clear this basic relationship.

While a prepaid plan may not involve explicit direction or regulation of a lawyer's professional judgement in rendering legal services there is a potential for influence. For example there is the potential for control of a lawyer who is sufficiently involved in the plan and therefore financially dependent upon it. To the extent that the participating lawyer's practice is exclusively or predominately dependent on a plan, the issue of assuring the independence of the lawyers professional judgement becomes more serious.

Since prepaid plans may have elements of referral services, insurance plans and direct provision of legal services, there may



be issues relating to the unauthorized practice of law particularly to the extent that a plan may be delivering legal services through its own employees. Whether any aspect of the operation would constitute the unauthorized practice of law will depend on the particular facts. Members are reminded that Rule 19 provides that lawyers should assist in preventing the unauthorized practice of law. If a member is in doubt about whether or not a plan may involve the unauthorized practice of law, advice may be sought from the Unauthorized Practice Committee.

A plan should not contain any requirements which would interfere with the lawyer's responsibilities under Rule 5 governing conflicts of interest. Some plans attempt to prohibit a lawyer from bringing actions against the sponsor or other plan members. As the lawyer's rejection of a matter may in some circumstances mislead the client into believing that the action has no merit, the lawyer must be able to advise the client to seek other counsel. Once a member of a plan becomes a client of a lawyer the solicitor-client relationship exists and the lawyer should ensure that the plan's provisions regarding termination of employment do not contravene Rule 8 governing the circumstances in which a lawyer may properly withdraw services.

Any complaints involving professional misconduct or conduct unbecoming of a solicitor under a plan must be referred by the administrators of the plan to the Law Society for review and appropriate action.

#### COMPETENCE

Regardless of how a plan is structured a participating lawyer must be competent to handle referrals in the covered areas of law and have the ability to limit matters to a volume the lawyer can competently handle.

#### ADVERTISING AND SOLICITATION

A participating lawyer must ensure that all advertising is accurate and that it does not lead to or create unjustified expectations.

Any advertising or solicitation by the plan sponsor, must

conform to Rule 12—Making Legal Services Available subject to the remarks below regarding telemarketing.

Several months ago the Professional Conduct Committee interpreted paragraph 4 of Rule 12 of the Rules of Professional Conduct as prohibiting lawyers from engaging in telemarketing, a process whereby a lawyer or law firm would hire a company or individuals to telephone persons not known to the lawyer or law firm and would recommend to the listener that the services of the lawyer or law firm be retained.

The Professional Conduct Committee did not intend telemarketing to apply to the solicitation of potential subscribers by or on behalf of a prepaid legal service plan. Lawyers may participate in plans which have direct solicitation marketing schemes provided that the personal contact with the potential subscriber is not undertaken by any lawyer who would be providing legal services under the plan. The prohibition extends to organizations controlled by lawyers who would provide the legal advice. The communication permitted by sponsoring entities must not be directed to persons known to need legal services in a particular matter but be designed to inform potential plan members generally of another means of affordable legal services.

### • Request for Proposals

The March issue of Canadian Lawyer contained an article entitled “Answering Request for Proposals.” The story read in part: “Obviously the best way to get an RFP is to develop a good reputation in certain practice areas. However, if you learn that an RFP has been sent to others firms, a polite request to be added to the list is quite proper.”

Convocation agreed with the Professional Conduct Committee that contrary to what was stated in the article it would not be proper for a law firm or a lawyer who had not been asked to submit a proposal to contact the corporation or individual that asked other law firms or lawyers for proposals. Such conduct would clearly fall within the Rule prohibiting soliciting.

### • **City of Toronto By-Law 183-89-Lobbyist Register**

The City of Toronto has passed a by-law to provide for the regulation of lobbyists. The wording of the by-law is extremely general and it could be argued that it even affects a lawyer closing a house deal or a lawyer making an inquiry of a department at City Hall. The by-law provides a requirement to reveal not merely the identity of a client but also the matter being handled for the client. This could result in a breach of Rule 4 (Confidentiality of Information). While the identity of a client is not generally privileged information, what a lawyer is representing or advising a client on usually is unless the matter is in a public forum such as a court or tribunal.

An application challenging the constitutionality of the by-law has been brought in the Supreme Court of Ontario and the Law Society has decided that it should intervene and has retained Mr. George H. Rust-D'Eye as counsel.

### DISCIPLINE MATTERS

#### • **Herbert Gordon Mylks**

Herbert Gordon Mylks of Odessa was permitted to resign his membership in the Society. During a period of when he was under intense pressure because of personal problems he misappropriated some \$56,000 and improperly borrowed \$55,000 from clients. Full restitution has been made by the solicitor and prior to the period in which the misappropriations and borrowings took place his conduct had been exemplary. Herbert Gordon Mylks was called to the Bar in March 1969.

#### • **Andrew Nicholas Kutney**

Andrew Nicholas Kutney of Toronto was reprimanded in Convocation and ordered to pay the costs of the Law Society's investigation in the amount of \$1500. The solicitor also gave an undertaking to the Society not to practise other than as an employed solicitor or as a partner in a law firm and that if he is a partner in a law firm that the books and records would be the responsibility of another solicitor or solicitors of the law firm of which he is a partner. He had failed to respond to the Law Society's inquiries regarding complaints made by his clients and

to letters from the Society regarding questions arising from his annual form 2/3 filing. He also had failed to maintain the books, records and accounts in connection with his practice as required by the Law Society and to make a payment of his deductible under the Society's errors and omissions insurance plan. The solicitor was called to the Bar in March 1973.

• **Michael Elliott Chodos**

Michael Elliott Chodos of Toronto was reprimanded in Convocation. During the course of a Law Society investigation he purged a client file of fourteen letters and made false and misleading statements to several people involved in the investigation in an attempt to conceal his negligence. The solicitor was acting for a client in a litigation matter and during the course of the action gave several undertakings to the solicitors for the defendants. He failed to honour those undertakings despite numerous requests to do so and as a result his client's action was dismissed.

Convocation had before it numerous letters attesting to the solicitor's good character from both members of the public and other lawyers. Also before Convocation was a psychological report indicating that his behavior took place during a period of time when the solicitor was under a great deal of stress arising from a death in the family as well as civil litigation and prior disciplinary proceedings before the Law Society. The solicitor was called to the Bar in 1974.





THE LAW SOCIETY OF UPPER CANADA  
PROCEEDINGS OF CONVOCATION

May 26th, 1989

LAW SOCIETY MEDAL

Convocation awarded the Law Society Medal to A. Alan Borovoy, John Bruce Dunlop, Mary Anne Eberts, Stanley Elmer Fennell, Q.C., and Phillip Barry Chaytor Pepper, Q.C.

The medal was struck in 1985 as an honour to be awarded by the Law Society to members who have made a significant contribution to the profession. The award is made for outstanding service within the profession whether in the area of practice or in the academic sphere or in some other professional capacity. The honour is granted only to members of the Law Society or in recognition of service given while members of the Society.

Alan Borovoy was nominated in recognition of his contribution to the profession and public in raising civil liberty issues while working for the Canadian Civil Liberties Association. Pursuing the goal of civil liberties, he has taken on unpopular causes and has given up a great deal in the way of advancement that might otherwise have been his.

John Bruce Dunlop was nominated for his contribution to the profession as a legal scholar, writer and editor in chief of both the Ontario Reports and the Dominion Law Reports. A law professor since 1957, he has taught thousands of students and imbued them with a respect for the law and legal scholarship and has through his writings and editorial work contributed to the development of the law both in Ontario and throughout Canada.

Mary Anne Eberts was nominated in recognition of her outstanding work in the area of women's rights both in the courts and the political arena and the example she has set to younger members of the Bar through her successful career as a law professor, practitioner and political activist.

Stanley Elmer Fennell, Q.C., was nominated in recognition of his career of long dedication to the profession evidenced by his participation in the CBA and the Law Society. He was

president of the CBAO in 1956-1957 and president of the CBA in 1961-62. Of major importance to the profession not only in Ontario but across Canada, was his work as chairman of the Special Committee of the CBA which revised the Canon of Legal Ethics which resulted in the CBA's code of professional conduct. This became the basis for many of the provincial codes of professional conduct. He was elected a bencher in 1961 and each subsequent election until he became a life bencher in 1977. He is also a past president of the Federation of Law Societies of Canada.

Phillip Barry Chaytor Pepper, Q.C., was nominated in recognition of his long service to the profession both as a Bencher and a practitioner where he sought by example and by precept to maintain and train others in the highest traditions of the Bar. He diligently applied himself to the work of the Society as a chairman and member of numerous committees. He has also displayed the same energy and commitment in his role with the Federation of Law Societies of which he is a past president and as president of the Fox Foundation which funds an exchange program for young lawyers with the Middle Temple.

#### COURT REFORM

Convocation considered the position the Law Society should adopt in regard to the proposals put forward by the Attorney General relating to the Reform of the Court system in Ontario. The Society has had three members on the Joint Committee on Court Reform and has contributed to the cost of the Joint Committee. After a review of the Attorney General's recommendations, it was Convocation's decision that a Special Committee be formed to report to Convocation with respect to the implementation of stage one of the proposed legislation and with respect to both policy and implementation related to stage two. Convocation also decided to offer the assistance requested by the Attorney General with respect to the implementation of stage one.

## SPECIAL COMMITTEE ON FRENCH LANGUAGE SERVICES

The Special Committee which is reviewing the provision of services by the Law Society in the French language was requested in February to prepare a response to the Attorney General's Consultation Paper on the use of French Language in the Courts.

The two specific issues raised by the Attorney General were:

- (1) Should the *Courts of Justice Act, 1984*, be amended to provide for the filing of pleadings and other pre-trial documents in civil proceedings in the Supreme and District Courts in the French language, without the consent of the other parties and without any obligation to provide a translation of the documents into English?
- (2) Should the *Courts of Justice Act, 1984*, be amended to provide for the hearing of motions and other pre-trial hearings before a bilingual judge or officer without the consent of the other parties and without an order from the Court?

It was noted that the governing council of the Canadian Bar Association-Ontario Branch unanimously answered both questions in the affirmative.

After considering the issues the Committee recommended, and Convocation approved, that the Society support the initiatives for reform set out in the Attorney General's Consultation Paper and answer both questions in the affirmative.

In coming to this decision it was noted that in Federal matters the suggestions for reform presented by the Attorney General have long been the law. For example, in an Ontario case, a French speaking litigant may file documents and make arguments in the French language in both the Supreme Court of Canada and the Federal Court of Canada. Translations of documents are at the expense of the parties. The Committee was confident that the litigants will develop means of ensuring that they understand what they most need to without resort to unnecessary translations. As to retaining the services of translators, this should be a cost recoverable as is any other party and party cost relating to the retaining of experts and be at risk just as is any other item of costs.

The Committee felt that the legislation provided ample protection to a party seeking a court provided translation and also offered protection against abuse. The legislation provides that on the request of a party or counsel who speaks either English or French but not both, the court shall provide interpretation or translation facilities where necessary. The Committee also made other suggestions regarding minor amendments to the proposed legislation.

Convocation was mindful that it was dealing with an issue relating to the rights of litigants not lawyers and felt that the amendments proposed by the Committee, if made, will have little effect on the vast majority of litigants and lawyers in Ontario but would be restricted to certain areas where the majority of French speaking Ontarians reside.

As was pointed out in the Attorney General's Consultation Paper and the CBAO submission, section 133 of the *Constitution Act, 1867* has always provided that pleadings may be filed in English or French in the courts of the province of Quebec, without any obligation to provide a translation of the documents into French or English. Similarly there are no restrictions or limitations on the rights to file pleadings and other pre-trial documents in English or French in the courts of the province of New Brunswick or in the courts of the province of Manitoba notwithstanding the fact that the francophone population of these two provinces is much smaller than the francophone population of Ontario.

In light of the government policy in the area of French language services, Convocation feels that the Law Society has a special responsibility to French speaking litigants in the province of Ontario and as indicated above should support the initiatives set out in the Attorney General's Consultation Paper.

Members wishing a copy of the full report may obtain one by writing the Secretary.

#### CERTIFICATION BOARD

The Certification Board has recommended and Convocation has approved, a restructuring of the Board effective July 1st, 1989.



The Board will become a standing committee of Convocation and will have the overall authority, subject to Convocation, over the specialist committees (which are discussed below), the general principles relating to Certification, the types of specialties which may be certified, and any general rules and regulations. There will be seven members appointed by Convocation through the Treasurer. Of the seven members, four will be Benchers and three non-Benchers. At least one member of the Board shall be a lay person.

Initially the terms will be staggered but generally each term should be for a three year period. The lawyers appointed are to be representative of the profession as a whole, both by type of practice and by geographic locality.

Specialty Committees will be established for each specialty in which specialists are to be recognized. The Specialty Committee members will be appointed by the Treasurer in Convocation upon the recommendation of the Certification Board. The Specialty Committee members will be representative of the various facets and interests of that particular specialty and shall comprise members from across the province in so far as that is practicable having regard to the nature of the particular specialty. Each committee shall comprise of no fewer than five and no more than nine members. The committees will have as their first task the recommendation to the Certification Board of the standards required for certification of that particular specialty. The Certification Board shall provide to the new specialty committees such assistance as is necessary to assist the specialty committee in the drafting of the standards for the new specialty in part to ensure uniformity in all areas of specialty. It will be the responsibility of each specialty committee to recommend to the Certification Board those members who are qualified to be recognized as specialists.

#### RE-QUALIFICATION REQUIREMENTS

In January 1988, Convocation adopted a recommendation of the Admissions Committee that members who had either through suspension or resignation not practised for five years or more, be required to sit the Bar Admission Course exams

prior to being reinstated as members in good standing. Since that decision, the Society has adopted a system of classes of membership which will enable it to identify members who have not been engaged in the active practice of law for an extended period of time. The question arises as to what requirements should be imposed on such members when they wish to commence practising again. A Special Committee comprising members of the Admissions, Legal Education and Professional Standards Committees has been formed to review existing policies and to formulate a unified approach to the problem. In view of the urgent need for reform in this area, the Special Committee has been asked to report to Convocation in September if possible. Those members of the profession wishing to comment on the issue should direct their correspondence to the Secretary.

#### FINANCE COMMITTEE

The Society has completed its budget process for the 1989/90 fiscal year, which runs from July 1st 1989 to June 30th 1990.

The total expenditure budget for the operations of the Law Society (excluding the Errors and Omissions Insurance and Compensation Funds) is \$14,553,146, an increase of 12.6% over 1988/89. Major new initiatives in the Complaints and Discipline departments, expansion of the Dial-a-Law service, and new programmes in Certification, Research and Planning and Professional Standards contributed to the increase.

It is possible to minimize the effect of these costs through a reduction in the Compensation Fund portion of the Annual Fee, and a net addition of 800 new members to the Rolls.

The fees have been set as follows:

	General County			Compensation		1988/89
	Fund	Library	O.L.A.P.	Fund	Total	Comparative
	Fee	Fee				
I Full Fee	\$605	\$57	\$183	\$52	\$897	\$980
II 75% Fee	454	43	137	39	673	735
III 25% Fee	151	14	46	13	224	245

In 1988/89 the Society introduced its new “classes of members” policy which allowed for two new categories of fees for (i) those members employed but not practising law, who paid an amount of 75% of the full practising member’s fee, and (ii) those members who may be unemployed or in full time attendance at a college or university, who paid 25% of the full practising member’s fee. At that time the Society made a commitment to review the levels of fees and decide whether the category which was assessed at 75% of the full fee could be reduced to 50%. Convocation has decided for two reasons not to make this change in 1989/90 but to review the situation again when setting the fees for 1990/91. First, the budget includes a substantial reduction in the Compensation Fund levy which allows for a reduction of approximately 8.5% for each of the three categories of fees for 1989/90. Second, the practising members face a 15% increase in their Errors and Omissions insurance levy next year. Any reduction in the fees for the second and third categories of membership must ultimately be borne by those paying the full fee.

#### PRACTICE AND INSURANCE—ERRORS AND OMISSIONS INSURANCE

Convocation approved the recommendation of the Practice and Insurance Committee that the Society’s errors and omissions insurance program be insured through Lloyds of London. For the last seven years the program has been insured through American Home Assurance Company and the Society has had an excellent relationship with American Home. The Society and its professional insurance advisors were of the opinion however, that the proposed premium set by American Home for the July 1st, 1989, to June 30th, 1990 policy term was not a reasonable reflection of the insurer’s share of the risk. Competitive quotes were sought from other insurers and in the final analysis the quotation submitted by Lloyds of London was the one selected.

Members will have received a letter from the Director of Insurance setting out the details of the levy for the coming year. Due to a substantial increase in the frequency of claims made against members over the past 12 months, the levies have been

increased approximately 15% ranging from \$1,405.00 for members with no claims made within the past five years to a maximum of \$5,600 for those with four or more claims made within the past five years.

#### DISCIPLINE POLICY

##### • **Mortgage Portfolios**

During the period 1981 to 1988, out of a total of \$12.2 million in grants made from the Compensation Fund some \$6.7 million was attributable to losses arising out of mortgage portfolios held in trust by lawyers for their clients. As a result of the magnitude of the losses arising out of mortgage investments by lawyers on behalf of clients the Discipline Policy Committee recommended and Convocation agreed that the filing of forms 4 and 5 which deal with mortgage investments be made mandatory. Form 4 is an authorization to be signed by the client authorizing the lawyer to invest the client's money in a mortgage. The form sets out in detail the security for the mortgage, the terms, the rate of interest and other relevant information. Form 5 is a report to the client from the lawyer confirming the details of the investment. The Legislation and Rules Committee has been asked to draft the necessary amendments to the Regulation.



COMMONWEALTH LAW CONFERENCE, AUCKLAND, NEW ZEALAND,  
APRIL 16TH-19TH, 1990

The organizers of the Commonwealth Law Conference in Auckland, New Zealand have asked that we remind the profession of the conference and further advise that acceptances have already been received from the following speakers:

Lord Mackay of Clashfern, the Lord Chancellor of England.

Justice Mohamed Shahabuddeen of the International Court of Justice.

Justice Bertha Wilson of the Supreme Court of Canada.

Chief Justice Enoch Dumbushena of Zimbabwe.

Justice Rajsoomer Lallah of the Supreme Court of Mauritius.

Dr. F.M.B. Reynolds, Editor of the Law Quarterly Review.

Professor Christie Weeramantry of Monash University, Australia.

Sir William Wade of Cambridge University, one of the Commonwealth's leading academic writers and expert on administrative law.

Sir Patrick Neill, Q.C., Warden of All Souls, Oxford.

Justice Sujata V. Manohar of the High Court of Bombay.

Chief Justice Mohammed Bell of the Supreme Court of Nigeria.

Justice James Muirhead of the Supreme Court of Western Australia.

The conference programme will contain a wide range of topic of contemporary legal interest, as well as a diverse social and cultural programme.

For further information and pre-registration forms contact:

Commonwealth Law Conference

P.O. Box 12-422

Auckland

New Zealand

International Facsimile: 64-9-525-1243





## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

June 23rd, 1989

#### ELECTION OF TREASURER

Lee K. Ferrier, Q.C. of Toronto was re-elected, by acclamation, Treasurer for the coming year.

A partner in the Toronto firm of Osler, Hoskin and Harcourt, Mr. Ferrier's practice is restricted to Family Law, a field in which he has been active for many years not only through his membership in legal organizations but also through his co-authorship (with James MacDonald) of the leading family law text, "Canadian Divorce Law and Practice."

He was elected a Benchler of the Law Society first in 1979 and subsequently in 1983 and 1987 and has served on a number of committees most recently as Chairman of the Legal Aid Plan.

#### ANNUAL MEETING

The 1988-89 Annual Meeting of the Law Society will take place on Wednesday, October 11th, 1989, at 5:00 p.m. in Convocation Hall at Osgoode Hall.

Further details will be announced in the Ontario Reports.

#### INCORPORATION OF LAW PRACTICES

In 1984, Convocation approved in principle, the incorporation of law practices and requested the Attorney General prepare appropriate legislation. No action was taken on the request at that time.

The Law Society is now preparing a general revision of the Law Society Act and it was felt appropriate to review the issue of incorporation of law practices in light of developments since 1984. The 1984 recommendations were patterned on the legislation in Alberta which restricted share holding to members of the Law Society. Since then members of the Law Society of British Columbia have been allowed to incorporate law practices and British Columbia has adopted less restrictive provisions which allow non-voting shares to be held by members of the family of members who must hold the voting shares. One of the recom-

mendations brought forward by the Committee reviewing the issue of incorporation is that employees of law corporations be permitted to hold non-voting shares. No legislation in any province or territory of Canada presently permits this. Notwithstanding the lack of precedent respecting employees, it was felt that the inclusion of both employees and family members in the corporation as non-voting share holders should be allowed as it provides a very useful mechanism to reward and motivate employees and would allow members the same opportunities in regard to tax planning enjoyed by other incorporated entities. The major criticism of non-lawyer share holders would appear to be caused by the historic practice of limiting partnerships to members of the Society. It is felt that by limiting the share holding of such non-members of the Society to non-voting shares and by requiring that all directors be members of the Society the major potential criticism is avoided.

The British Columbia legislation also contains provisions that enable incorporation as a "personal law corporation" in which all voting shares are held by a single lawyer and as a "law corporation" in which the voting shares may be held by a number of lawyers. In both cases, non-voting shares may be held by family members and in the case of a law corporation by a personal law corporation.

It is felt that there are advantages generally in the administration of benefit packages, particularly pension plans, if incorporations can be set up at the "law corporation" level and applied to employees and share holders.

The 1984 report did not contemplate the application of incorporation to interprovincial law firms although it did envisage law corporations practising in partnership. Convocation has concluded that there is no reason why an interprovincial law partnership could not also consist of incorporated partners. It is requesting therefore that in the enabling legislation where reference is made to a member of the Law Society who may hold voting shares in an incorporated law practice, the provision should be broad enough to include a person who is entitled to enter into a law partnership with an Ontario member.

One of the basic conditions that has attached to any discussion of the incorporation of law practices has been that the mem-



bers of the incorporation should not be able to hide behind the corporate veil and avoid the personal liability that now attaches to practising members of the Law Society. Convocation has not altered its position in this regard. The provisions of the enabling legislation which maintain the personal liability of members who practise under a corporate form are to be retained.

In summary the Committee recommended and Convocation approved that:

1. Legislation permitting the incorporation of law practices should permit the holding of non-voting shares by employees of the corporation and by family members of the members of the Law Society who hold voting shares of the corporation. Any definition of "employee", "family member" and the conditions attaching to the non-voting shares and to their ownership could be prescribed by regulation until sufficient experience has been gained with incorporated law practices to justify defining the terms more permanently in the legislation. Only voting shareholders should be directors.
2. Ontario should adopt the British Columbia model which allows for the incorporation of a "personal law corporation" in which there is a sole voting shareholder and director who is a member of the Society, and for the incorporation of a "law corporation" in which there are two or more voting shareholders who are members of the Society and in which a personal law corporation may be a shareholder. In both cases, employees and family members should be allowed as non-voting shareholders.
3. The enabling legislation should permit the members or persons who are qualified to become members of an inter-provincial firm to become voting shareholders in a law corporation.
4. The provisions of the enabling legislation which maintain the personal liability of members who practice under a corporate form should be retained.

These recommendations will now be passed to the Attorney-General.

## LEGAL EDUCATION

**• Co-operative Legal Education Program, Queen's University**

Convocation approved recommendations made by the Legal Education Committee concerning the Co-operative Legal Education Program being developed at the Queen's University faculty of law.

The Co-operative Program, which will be a pilot project of 25 students, provides for a four year course consisting of six academic terms and five placement terms with each term being approximately four months long. It is proposed that students be in four different placements for the five placement terms with two consecutive terms spent in one placement. At least one placement will be in a public legal setting (government law office, legal aid clinic, administrative tribunal) and at least one in private practice. On the completion of the four year course, it is proposed that the students be permitted to enter the teaching term of the Bar Admission Course directly without the necessity of articling. Exemption was also sought from the proposed one month pre-articling course which will form part of the revised Bar Admission Course program. The Legal Education Committee recommended and Convocation endorsed approval in principle of the proposal that registrants in the Queen's University faculty of law co-operative legal education program who successfully complete the program be eligible to enroll in the second portion of the Bar Admission Course teaching term without completing the Bar Admission Course one month teaching term or the articling requirement. The program must comply with the Queen's proposal and more specifically: the content of the curriculum must cover the elements taught in the Bar Admission Course one month teaching term and the five placements must include two consecutive four month terms in a setting that would qualify as an articling position with each student being assigned to a lawyer serving as the student's principal.

## FINANCE COMMITTEE

### • Grant to Joint Committee on Court Reform

Convocation approved the recommendation of the Finance Committee that a grant of \$10,000 be made in fiscal 1989-90 to the Joint Committee on Court Reform. The Society had previously given a grant of \$10,000 in fiscal 1988-89.

## RESEARCH AND PLANNING

### • Gender Neutral Communication

Convocation accepted a recommendation of the Research and Planning Committee that the Society adopt a policy on gender neutral communication to reinforce the Society's commitment to gender parity. This commitment is reflected in the Rule 13 Commentary five interdiction against discrimination based on sex. A manual will be prepared in conjunction with the Public Information Committee to assist in the implementation of the policy and for distribution to the profession.

The policy adopted is:

1. Written communications and publications shall be in gender-neutral language. The Law Society reserves the right to edit any publications so that the language will be gender-neutral.
2. Persons engaged in Law Society matters are encouraged to use gender-neutral language in oral communication.
3. Speakers, lecturers, teachers, and workshop leaders are encouraged to use gender-neutral language in the Bar Admission Course and in Continuing Legal Education courses, and other Law Society programs.
4. Bar Admission Course students are encouraged to employ gender-neutral language in written and oral communications.
5. Law Society programs, including Bar Admission and Continuing Legal Education courses, shall in their content be consistent with the Law Society policy of communicating gender parity.

## FRENCH LANGUAGE SERVICES

Convocation approved, subject to the approval by the Finance Committee of the financial impact, a French Language Services policy proposal developed by the Committee. The specific provisions approved by Convocation are:

1. The Law Society is committed to providing services in the French language to its own members and to the public from Osgoode Hall and other Society offices in Toronto and from our facilities in the city of Ottawa.
2. The Law Society is committed to providing instruction and materials in the French language to students pursuing the Bar Admission Course in the city of Ottawa.
3. The Law Society is committed to providing Continuing Legal Education programs in the French language.
4. The Law Society is committed to reviewing its existing programs and future programs with the goal of bringing these programs into conformity with its policy on the provision of French language services.
5. The above commitments are subject to such limits as circumstances make reasonable and necessary with the goal of having the policy substantially implemented within three years.
6. The French Language Services Policy shall be reviewed annually to determine the progress of its implementation and to consider how particular programs might be improved.
7. For the purposes of implementing and monitoring its policy, the French Language Services Committee should be made a Standing Committee of the Law Society of Upper Canada.

The policy is a result of the work of the Special Committee on French Language Services over the past months. The issue has not been whether the Society should have such a policy since in fact a number of ad hoc policies are already in place particularly in the area of Public Information and Legal Education. publicly described and what steps should be taken to most effectively implement a French Language Services policy.



As was noted in the May proceedings of Convocation the Ontario government is already committed to the provision of a significant level of French Language Services. This is evidenced by the wording of sub-section 135.(1) of the **Courts of Justice Act**: "the official languages of the Courts of Ontario are English and French." The commitment of the government is further set out in the French Language Services Act 1986 which recognizes that the French language has an historic honoured place in Ontario's society and is recognized by the Constitution as an official language in Canada. Accordingly the government adopted a policy that a person has the right to communicate in French with and to receive available services in French from any head or central office of a government agency or institution of the legislature that is designated by the regulations (made pursuant to the French Language Services Act 1986) and has the same right in respect of any other office or such agency or institution that is located in or serves an area designated in the schedule to the French Language Services Act 1986.

The Provincial government's extensive support and encouragement of the use of French language in Ontario particularly in the Courts and education has created and will continue to create very significant pressures on the Law Society to reflect these changes. For some time, francophone organizations including l'association des juristes expression française de l'Ontario (l'AJEFO) and the association canadienne-française de l'Ontario (A.C.F.O.) have been encouraging the adoption of French language services by the Law Society of Upper Canada. It is now theoretically possible for unilingual francophones and indeed any student to complete their legal education including the call to the Bar in the French language. The University of Ottawa law school now has a dynamic common law section taught in the French language. Student registration for this program has increased dramatically. In the last four years 85 persons have undertaken their seminar training at the Bar Admission Course in Ottawa.

In the next few years it is anticipated there will develop a significant francophone Bar concentrated primarily in eastern and northern Ontario. Those members of the Bar will practise law almost exclusively in the French language. As a result, demand for bilingual services from the Law Society will dramatically increase and the Society must be prepared to meet this demand.

It is estimated that approximately \$200,000 would be required in the first year to enable the Law Society to make substantial progress in the implementation of a policy. This amount includes the salary of a French language services coordinator who might also serve as a basic translator supported by a bilingual secretary. The translation into French of the Annual Report and various forms, publications of other documents used by the Law Society together with some French language training for key personnel would use the balance of this allocation of money. It should be noted that with a French Language Services policy in place, significant amounts of money may be recovered from the Federal government and a staff translator would reduce translation costs even further. (Note that this is subject to the approval of the Finance Committee).

#### DISCIPLINE MATTERS

##### • **Robert Emerson Pritchard**

Robert Emerson Pritchard of Sault Ste. Marie was suspended for a period of one month commencing July 1st, 1989. The solicitor had failed to serve clients in a conscientious, diligent and efficient manner by failing to follow instructions to launch appeals respecting criminal convictions and sentences in a timely fashion in six instances. The solicitor further misled the clients respecting the status of their appeals. In coming to its decision Convocation took into account a report from a clinical psychologist the solicitor's general reputation for competence, honesty and integrity, and the fact that the solicitor has practised without incident since his call to the Bar in March 1971.

##### • **Amita Mohini Sud**

Amita Mohini Sud of Toronto was suspended from the practice of law for a period of six months and ordered to pay the costs of the Society's investigation in the amount of \$1000. Following the period of suspension her practice of law must be supervised by a duly qualified member of the Society for a period of one year. The solicitor counselled immigration clients to mislead immigration authorities during examinations under oath conducted by Immigration Canada. The events giving rise to the issue of the discipline complaint took place shortly after the solicitor was

called to the Bar and while she was employed by another solicitor. Ms. Sud has cooperated fully with the Law Society in the course of its investigation and there was character evidence before the Society to indicate that this was an isolated series of events and that the solicitor would not be likely to repeat the behaviour. Amita Mohini Sud was called to the Bar in April 1986.

• **Bruce Perreault**

Bruce Perreault of Toronto was permitted to resign his membership in the Society. He was found guilty of professional misconduct in that during the years 1981 to 1985 he deprived his clients and other members of the public of the sum of \$200,000 more or less by recourse to misrepresentations which induced these persons to give money to the solicitor. During the period of time in which the events giving rise to the discipline complaint took place the solicitor was suffering from a severe psychiatric disorder and was also an alcoholic. While his mental illness did not prevent him from appreciating the nature and quality of his acts or from knowing they were wrong, the illness influenced the solicitor's behaviour significantly. Bruce Perreault was called to the Bar in April 1978.

• **Douglas Hugh Forsythe**

Douglas Hugh Forsythe of Ottawa was suspended for a period of one year and on his return to practice he will not be permitted to practice as a sole practitioner but must engage in the practice of law only as an employed solicitor. In addition he will not be permitted to have sole signing authority over any trust funds and will be required to furnish to the Law Society trust comparisons every four months for any practice he is connected with. The solicitor breached an undertaking to the Law Society not to engage in the private practice of law and while his rights and privileges as a member of the Law Society were suspended for non-payment of his errors and omissions levy, he continued to practise law and hold himself out as a barrister and solicitor. In addition he failed to serve clients in a diligent and efficient fashion and failed to maintain the books and records and accounts for his practice as required by the Society's Regulation and failed to cooperate with the Society's audit staff. The solicitor was called to the Bar in April 1964.

• **James William Orme**

James William Orme of Hamilton was suspended from the practice of law for a period of one month effective July 1st, 1989. The solicitor held the assets of an elderly client under a power of attorney and caused his client to make an improvident investment without security and without having full knowledge of the facts in favour of another of the solicitor's clients who was judgment proof. The solicitor had no personal financial interest in the transaction and has completely indemnified the client for the loss sustained. James William Orme was called to the Bar in March 1977.

• **David Arthur Allport**

David Arthur Allport of Toronto was suspended for a period of two months commencing August 5th, 1989. He was found to be guilty of professional misconduct for failing to be on guard against becoming the tool of unscrupulous clients. The solicitor had acted on several improper real estate transactions between William Player and Seaway Trust Company from January 1981 until November 1982. The Discipline Committee hearing the matter concluded and Convocation agreed that the solicitor had not been dishonest and that he had not been aware of any fraud or conspiracy to commit fraud. The solicitor cooperated fully with the Society in its investigation of the allegations. This factor together with the fact that the solicitor did not benefit financially himself from the transactions other than through legal fees and the fact that there were substantial number of letters from clients and colleagues attesting to his good character, led the Committee to the conclusion which Convocation accepted that a two month suspension was the appropriate penalty. Convocation wishes to remind the profession of the need to be on guard against unscrupulous clients and wishes to make the profession aware that but for the enormous number of mitigating circumstances in this case a higher penalty would have been imposed. David Arthur Allport was called to the Bar in April 1963.





## THE LAW SOCIETY OF UPPER CANADA

### PROCEEDINGS OF CONVOCATION

October 27th, 1989

#### SPECIAL COMMITTEES

The Treasurer has created three Special Committees to consider and make recommendations concerning important areas of the Society's work.

#### **Discipline Procedures**

This Special Committee has been formed to review the Law Society Act and Regulations as they relate to the investigation, institution and prosecution of discipline complaints with a view to formulating a complete code of procedure for discipline matters. Some of the areas to be studied include review of decisions made at various stages of the process, the composition of panels hearing complaints and the scope of the review of committee decisions by Convocation. A copy of the full terms of reference is available on request.

#### **Complaints**

The second of the Special Committees will review the process by which complaints from members of the public and the profession are received, evaluated and reviewed by the Society and make recommendations as to how it may be improved. Some of the areas to be considered by the Special Committee include:

- (a) Whether complainants might be assisted at the beginning of the process in formulating their complaints more cogently, so that investigations can be undertaken more quickly, and so that those complaints that are properly made to other bodies (the Ombudsman, the assessment officers) can be redirected immediately;
- (b) Decentralizing the Complaint review process so that the cost and inconvenience to the complainant of attending in Toronto can be avoided or substantially reduced;

- (c) Weaknesses in the complaints process and limitations on available remedies that result in becoming frustrated and that interfere with the disposition of complaints in a manner consistent with the Society's dual goals of professional governance and service to the public;
- (d) Improved communications with the profession to make it more aware of the types of inadequate service that are giving rise to complaints;
- (e) Alternative complaint resolution procedures that can efficiently and effectively deal with complaints involving shoddy work or negligence where the amount of money involved does not warrant litigation to settle the matter.

As part of its report, the Special Committee will be developing a concise statement of the objectives of the complaints process that will be used to inform the public about their rights and the profession about its responsibilities.

### **Minority Groups Assistance Program**

This special Committee will carry out a preliminary study of existing information and recommend whether the Law Society by itself or in co-operation with other organizations should establish a program to encourage and assist persons from minority groups that are under-represented in the legal profession in Ontario to become lawyers. If the Special Committee recommends such a program, the report will also indicate the nature of the program, the target groups, estimated costs and the proposed sources of funding.

### **CERTIFICATION BOARD**

#### **• Amendment to Standards**

Convocation approved the following amendment to the general standards governing all areas of speciality:

“It is assumed that all applicants adhere to the highest standards of professional conduct. The Certification Board has adopted the following policy:

- (a) any applicant who has ever been convicted of profes-

sional misconduct or conduct unbecoming may be denied certification for that reason alone. In determining whether to exercise a discretion in favour of such an application, the Board will consider all the circumstances, and, in particular, will consider:

- (i) the nature of the offence;
  - (ii) the date when the offence was committed; and
  - (iii) the applicant's conduct since the date of the conviction.
- (b) where a discipline investigation or complaint is pending at the date when the application is received, the Board will postpone consideration of the application until the discipline matter has been disposed of it in its entirety, whether by final order or otherwise."

### • Family Law Standards

The Certification Board recommended and Convocation approved standards for Certification as a family law specialist. The standards are set out in their entirety.

#### WHO MAY BE CERTIFIED AS A SPECIALIST

The Certification Board ("the Board") may certify as family law specialists those applicants who, having met the criteria set forth below, satisfy the Family Law Specialty Committee and the Board that, by reason of their knowledge of and their experience in family law, they are fit to be identified to the public as having a special ability to practise in the field of family law.

Applicants shall be required to establish that they have broad and varied experience in the area of family law. They shall have acquired a thorough knowledge of procedures and substantive law relating to the practice of family law.

#### DEFINITION OF FAMILY LAW

The practice of family law is the practice of law dealing with all aspects of domestic relationships within or outside marriage such as annulment, separation and divorce, property

and support issues, child custody, child protection matters and adoption.

#### PRACTICE EXPERIENCE

Applicants are required to have satisfied the following requirements:

- i. A minimum of seven years in the full-time practice of law in Ontario; and
- ii (a). Five years of recent experience in the full-time practice of law in Ontario, two years of which must be immediately preceding the date of application.  
As a general rule, recent experience shall mean falling within the seven years immediately preceding the date of application.
- (b). In each of those five years, the applicant must have devoted at least one-half of professional time to the practice of family law.

#### FAMILY LAW EXPERIENCE

The applicant shall have demonstrated substantial involvement in contested family law matters sufficient to demonstrate special ability. Substantial involvement may include active participation in interviewing, giving advice and opinions, preparations of pleadings, examinations before trial, interlocutory proceedings, presentation of evidence, negotiation of settlement, alternate dispute resolution, and submission of argument.

During the five years of recent experience defined in paragraph ii. (a) of practice experience above, the applicant shall have had carriage of at least 15 contested family law matters of substance in which a proceeding was commenced, some of which shall have proceeded to trial.

#### EDUCATION

Applicants will be expected to have participated in at least 12 hours per year of Board-approved continuing legal education programs in subjects related to the practice of family law, either



as a registrant or a participant, in each of the three years preceding date of application for certification. The Family Law Specialty Committee and the Board will also consider, in lieu of or in addition to the above, books and articles published, speeches given and courses taught by applicants on subjects directly related to the practice of family law.

#### REFERENCES

Applicants will submit with their application the names of four to six lawyers\*, at least one of whom is currently a certified Family Law Specialist\*\*, who will have personal knowledge of the applicant's work and who would be willing to provide references in confidence to the Family Law Specialty Committee and the Board with respect to the application. The Family Law Specialty Committee and the Board will also be at liberty to make inquiries of their own concerning the application.

\* Applicants should not include judges, members of tribunals, or members of the Board of Family Law Specialty Committee as references.

\*\* The requirement of a Family Law Specialist reference shall not apply until the date of one year from the commencement of the Family Law specialty program.

#### INTERVIEW

Applicants may be required to attend for an interview.

#### GENERAL PROVISIONS

Applicants for certification shall include the applicant's Declaration providing evidence with respect to the matters dealt with herein.

The Board will publish the names of applicants in the Ontario Reports.

#### CURRENCY OF CERTIFICATE

Certificates of specialty shall have currency for a period of five years from their date of issue, after which they shall automatically lapse.

Applications for recertification shall be governed by the same standards then applicable for certification.

## REVOCATION

The certified Specialist will be under an obligation to notify the Board if he/she fails to meet the minimum standards at any time during the currency of the Certificate. The Board will retain the power to revoke the Specialist status if applicable.

## SPECIALTY COMMITTEE MEMBERSHIP

On the recommendation of the Certification Board, Convocation has approved the appointment of the following persons to membership on the three Specialty Committees created to date. Their terms in office will vary from one to three years, with the objective that there will be an element of continuity with regular changes in membership.

### *Civil Litigation Specialty Committee*

Kathryn Chalmers-of Toronto

C. Scott Ritchie-of London

Margaret Ross-of Ottawa

Mary Anne Sanderson-of Toronto

David Stockwood-of Toronto

Peter Webb-of Toronto

### *Criminal Litigation Specialty Committee*

Nola Garton-of Toronto

Alan Gold-of Toronto

P. Berk Keaney-of Sudbury

Michael Neville-of Ottawa

S. Casey Hill-of Toronto

### *Family Law Specialty Committee*

Thomas Bastedo (Chair)-of Toronto

George Czutrin-of Hamilton

Philip Epstein-of Toronto

Ian Fisher-of Windsor

William Inch-of Sudbury

Evlyn McGivney-of Toronto

Ruth Mesbur-of Toronto

Nancy Mossip-of Mississauga

H. Hunter Phillips-of Ottawa

The profession may obtain detailed information about the administration and advantages of the Certification Program by calling or writing Sarah Thomson, Co-ordinator of the Program, at Osgoode Hall, Toronto, M5H 2N6 (1-416-947-4062).

#### PROFESSIONAL CONDUCT

##### • Discounting Fees

A law firm wrote to the Society to ask if it was improper to put a notation at the bottom of its accounts to clients that fees will be discounted by 2% if the bill is paid within 10 days. The Committee concluded that such a discount was not prohibited by the Rules of Professional Conduct provided there was a genuine discount. Firms contemplating this type of notation should review the requirements for legitimate discounts as set out in the Competition Act. Convocation approved the Committee's decision.

##### • Pre-paid Legal Service Guidelines

The Society's attention has been drawn to the fact that some lawyers may become involved in prepaid legal services plans as either directors or owners. For example, a plan may be actively marketed by a lawyer and the lawyer's firm will be providing the legal services. Disclosure should be made to any potential subscriber of the link between the prepaid legal services company and the law firm providing the legal services.

The Committee concluded and Convocation agreed that the following paragraph should be added to the guidelines previously adopted as the penultimate paragraph under Professional Independence.

Where a lawyer or law firm rendering legal services as part of a legal services plan has an interest directly or indirectly in that plan in terms of ownership, the client shall be advised of the exact nature of the interest and the lawyer shall obtain the written acknowledgement of that interest by the client and the client's consent to act.

##### • Advertising

A lawyer has asked if his firm could place an advertisement in a newspaper informing the public that certain members of

the firm would be available on a without charge basis during designated hours. Convocation accepted the recommendation of the Committee that the proposal was acceptable provided the following steps are taken:

- (1) a record is kept of each caller's name and address;
- (2) a detailed record was kept of the questions asked and the answers given;
- (3) and a check was made of the firm's client list to ensure there were no conflicts.

Without these steps there is danger that any firm providing such a service might be exposing itself to both claims based on negligence and allegations of professional misconduct.

#### DISCIPLINE COMMITTEE

##### • Confidentiality of Law Society Investigations

The question sometimes arises whether the Law Society may properly communicate to the police or to regulatory authorities information it has learned about a member during the course of a Society investigation. Where the information constitutes *prima facie* evidence of a crime, or creates concern that the commission of a crime may be imminent, the public interest becomes relevant. The circumstances vary widely in such cases, however, and the Discipline Committee felt that clear guidelines are needed to assist it in its work.

Convocation approved the following guidelines developed by the Discipline Policy Committee respecting the disclosure of information about a member under investigation:

1. The Society may co-operate with requests for information and/or material, but only if it has a legitimate interest in the matter.
2. If the Society requires assistance in an investigation it may initiate contact with the appropriate authorities.
3. If the Society has knowledge of a member's conduct which is serious enough to be of interest to law enforcement authorities or other regulatory bodies it may initiate the disclosure, but only when it is in the public interest to do so.



4. The present policy, which permits disclosure in the proper case only to the Crown or police should be broadened, to permit disclosure to other law enforcement authorities and regulatory bodies in the discretion of the Chair or a Vice-Chair.
5. The member should be notified of the fact of the disclosure and that it was authorized by the Chair of the Committee.
6. Certain information should be exempted from disclosure:
  - (a) privileged communication between a member and his client;
  - (b) statements made by a member to the Society in the expectation that they would remain confidential.
7. The Society should no longer maintain the policy of objecting to a Court's request for production on disclosure.

#### • Disclosure to Partners and Associates

The Society is sometimes faced with a situation where a member of a law firm fails to reply to letters from the Society or is being investigated by the Society for some other cause. In the past, other members of the firm have often not been informed by the Law Society that one of their partners or associates is under investigation. The Discipline Policy Committee, on reviewing this issue, felt that in many instances the involvement of the law firm in such cases might forestall further proceedings by providing the information required or by taking other appropriate action. The Committee recommended and Convocation approved the following policy:

1. Where a member who is the subject of a complaint has refused to respond to the Society's communications, the Complaints Department may, upon notice to the member, contact a partner or senior associate of the member's firm.

2. Where the subject matter of a complaint is of a serious nature, the Chair or a Vice-Chair may authorize the Discipline Department to contact a partner or senior associate of the member's firm at the outset of the investigation.

### • Discipline

Stanley Francis Dudzic of Hamilton was permitted to resign his membership in the Law Society. The solicitor was found guilty of professional misconduct in that he misappropriated \$20,000 from a client and borrowed \$22,000 in questionable circumstances from the same client. He also assisted another client to take advantage of senile residents in a nursing home by preparing and participating in the execution of wills and powers of attorney in favour of the client (an owner of the nursing home) when he knew that the persons executing the wills and powers of attorney lacked the requisite capacity. In granting the solicitor permission to resign Convocation had in mind the fact that the solicitor made restitution and none of the residents of the nursing home suffered any losses and the character evidence submitted on behalf of the solicitor from members in the profession including three judges and a crown attorney. The solicitor had participated actively not only in professional associations but had played major roles in several community organizations as well. Stanley Francis Dudzic was Called to the Bar in June 1960.

## PROCEEDINGS OF CONVOCATION

October 26th 1989

### • Robert Allen Horwood

Robert Allan Horwood of Toronto was reprimanded in Convocation. He had failed to provide replies to letters from the Law Society and had failed to file the necessary forms respecting his books and records. The solicitor has now filed the necessary material with the Law Society and has undertaken to co-operate with the Professional Standards Committee in a review of his practice. Robert Allan Horwood was Called to the Bar in March 1984.

### • David Elliott Waterhouse

David Elliott Waterhouse of Niagara Falls who was Called to the Bar in April 1976 was disbarred. He had demonstrated that he was ungovernable by the Law Society and not suited to the practice of law as a result of his unethical conduct in real estate and litigation transactions and in his dealings with the Law Society. During the course of a Law Society audit of his books and records a number of inadequacies resulting from the solicitor's failure to properly maintain his books and records were uncovered. As a result of the deficiencies co-signing controls were placed on the solicitor's trust account. In addition to agreeing to the co-signing controls the solicitor signed an undertaking that he would accept no new clients and would wind down his practice. The solicitor breached the terms of his undertaking to the Society by acting in four new real estate matters. In addition he failed to carry out clients' instructions in regard to legal actions commenced on their behalf. The solicitor then misled the clients as to the state of the files. The Discipline Committee concluded and Convocation agreed that the solicitor's past conduct of deceit both to the Society and to his clients, his breach of the undertakings given to the Society, the many breaches of his obligations to his clients and the fact that he has been ungovernable by the Society rendered him unsuitable to continue in the practice of law.

### • Kalmen Naton Goldstein

Kalmen Naton Goldstein of the City of Toronto was suspended for a minimum of two months with the suspension to continue until his books and records are submitted to the Law Society and a Section 35 hearing into his ability to practise law is completed. The solicitor's books and records were in a state of continual disarray and he exhibited a pattern of transferring client retainers from his trust account to his general account prior to providing the required services. In January 1989 he abandoned his practice without making adequate arrangements to protect the interests of his clients. Convocation had before it a psychiatric report indicating that the solicitor during this period of time was in a state of depression. As a result of the psychiatric report it was felt that this was an appropriate case for the recommendation that the solicitor be reviewed pursuant to the provisions of Section 35 of the *Law Society Act*.

- **William Loren Kennedy**

William Loren Kennedy of Hamilton was reprimanded in Convocation. He failed to file with the Law Society the necessary forms regarding his books and records required by the Regulation. The solicitor has brought his filings up to date. William Loren Kennedy was Called to the Bar in September 1953.

- **Michael Angelo Spensieri**

Michael Angelo Spensieri of North York was permitted to resign his membership in the Society. During the period 1983 to 1988 he accepted funds for investment from clients in an aggregate amount of more than \$2,000,000. He failed to deposit these monies in a trust account as required by the Regulation and co-mingled his own monies with those of his clients. When called upon to do so he failed to provide an accounting to clients and to the Law Society. Psychiatric evidence indicated that the solicitor during this period suffered from a bi-polar mood disorder known as manic-depressive illness. While his mental illness did not prevent him from appreciating the nature and quality of his acts or from knowing they were wrong, his illness influenced his behaviour significantly. Convocation was informed that most of the \$2,000,000 had been returned to clients and that the short fall may be in the order of \$90,000. The solicitor was Called to the Bar in March 1984.

- **George Struk**

George Struk of Brampton was reprimanded in Convocation and fined \$2,500 for failing to file with the Law Society the forms required by the Regulation for his fiscal years 1985, 1986 and 1987. The solicitor has brought his filings up to date and in addition to the reprimand and fine the solicitor has undertaken to file monthly trust comparisons for the next year which will include his trust bank statements, his trust listings and trust bank reconciliations. In default of such undertaking the solicitor is to be suspended for a period of 18 months. George Struk was Called to the Bar in March 1974.



• **Eberhard Peter Von Ketelhodt**

Eberhard Peter Von Ketelhodt of Toronto was permitted to resign his membership in the Law Society. The solicitor was found guilty of professional misconduct in having misappropriated the sum of \$190,000 from an estate. The solicitor then loaned the money to another client. The solicitor has made restitution. In light of the solicitor's age, 69, and in light of the fact that the solicitor himself did not benefit from the misappropriation and the fact that restitution has been made Convocation was of the view that resignation was an appropriate penalty. Eberhard Von Ketelhodt was Called to the Bar in March 1966.

• **Nicolas Carlos Canizares**

Nicolas Carlos Canizares of Toronto was disbarred. He had been found guilty of conduct unbecoming a barrister and solicitor in that in concert with clients of his law practice he engaged in the unlawful distribution and sale of substantial quantities of the narcotic cocaine. The solicitor was Called to the Bar in April 1982.

• **Leslie Howard Mitchnick**

Leslie Howard Mitchnick of Hamilton was suspended for two years. The solicitor was found guilty of professional misconduct in that during the period August 1987 to June 1988 he misappropriated the sum of \$22,770 from a client and engaged in a practice of depositing or transferring client funds to the general bank account of his law firm prior to completing the required services and rendering fee billings. This resulted in ongoing apparent personal liabilities to his clients which totalled some \$24,000 as of June 30th, 1988. All monies owing to clients have been repaid. The professional misconduct took place at a time when the solicitor was addicted to cocaine. Convocation had before it psychiatric evidence indicating that the solicitor was undergoing a course of treatment and had successfully attended and completed a drug treatment therapy program at Bryn Llyn Hospital in Buffalo and had taken followup treatment through the Rush Hall Chemical Dependency Treatment program in

St. Catharines. In addition to medical evidence there was a great deal of character evidence from practitioners in the Hamilton area attesting to the high regard the legal community had for the solicitor both professionally and personally. Following his re-instatement after the period of suspension the solicitor will be subject to the following conditions: to supervision as directed by the Law Society for a period of 5 years after his re-instatement, not to operate his own trust account for a period of 5 years after re-instatement, to attend as required for all medical treatment as directed by his attending physicians; and to submit himself to random drug testing both during his period of suspension and for a 5 year period thereafter at the request of the Law Society. The solicitor was Called to the Bar in April 1978.



THE LAW SOCIETY OF UPPER CANADA  
PROCEEDINGS OF CONVOCATION

November 23rd, 1989

• **Irving Saul Leipziger**

Irving Saul Leipziger of Toronto was permitted to resign. The solicitor failed to maintain the necessary books and records regarding his practice and breached an undertaking to the Society to provide information to the Society's auditors for examination. The solicitor had been given every opportunity to bring his records up to date and to provide the necessary information but had failed to do so. While the records that are available do not reveal any irregularities, without the completion of proper records, the Society cannot determine that all funds are properly accounted for. On the basis of the solicitor's continued failure to comply with the Society's requirements, Convocation concluded that the solicitor was ungovernable. Irving Saul Leipziger was Called to the Bar in 1975.

• **Allan Murray Zuker**

Allan Murray Zuker of Brampton was reprimanded in Convocation. He had been found guilty of conduct unbecoming a barrister and solicitor for engaging in sexual activity with one female client and attempting to engage in sexual activity with two other female clients. All three clients had retained the solicitor in regard to matrimonial matters. A psychiatric report indicated that the discipline proceeding would act as a strong deterrent to any repetition of the behaviour which led to the complaint. The solicitor was Called to the Bar in 1962.

• **David Eric Howlett**

David Eric Howlett of Niagara Falls was suspended for a period of one month and thereafter indefinitely until his books and records are in order and the forms required by the Regulation are filed. To allow the solicitor the opportunity to ensure his clients are adequately served, Convocation deferred

the imposition of the period of suspension until December 15th, 1989. There was no indication of dishonesty on the part of the solicitor however due to personal problems the solicitor's accounting records are not complete. When reinstated the solicitor will not be permitted to practise as a sole practitioner for a period of two years. David Eric Howlett was Called to the Bar in 1983.

### • Legal Education

SUMMER STUDENT RECRUITMENT PROCEDURES FOR THE SUMMER OF 1990.

The Law Society continues to monitor summer student programs, particularly to determine whether they are having an undesirable effect on the articling recruitment process. A sub-committee of the Legal Education Committee, chaired by Donald H. L. Lamont, Q.C., has examined data obtained through survey questionnaires distributed to law firms and students during the past two years. The sub-committee reported to Convocation through the Legal Education Committee with its observations and recommendations.

Of particular note is the sub-committee's finding that law firms that hire more than five articling students appear to be complying with the guidelines adopted in January of 1989 suggesting that they hire no more than half of their articling students from among those who worked with them during the summers. Nonetheless, the trend appears to be for medium and large-sized firms to fill an increasing number of articling positions with former summer students. Large firms filled an average of 28% of the articling positions with former summer students in 1987 and 41% in 1989. For medium-sized firms, the percentages were 17% in 1987 rising to 19% in 1989.

The sub-committee felt, and Convocation agreed, that there is no justification at present for greater intervention by the Law Society. Nonetheless,

- the monitoring of summer student programs will continue, and consideration will be given to distributing survey questionnaires to students in the law schools asking for their perspective and comments;



- the computer match program will not be extended to the summer student recruitment process, lest the impression be given that the Law Society wishes to institutionalize the summer student programs;
- further action may be taken should it appear in the future that law firms are not complying with the voluntary guidelines.

Convocation also noted that both law firms and summer students felt that the legal experience gained by students during the summer programs was valuable to both parties and that it met the legitimate demand by some students for early exposure to work in law offices.

The actual recruiting guidelines governing the selection of students for the summer of 1990 will be published soon in the Ontario Reports. The guidelines, together with additional background information, are available from the Law Society's Placement Office.

## PROCEEDINGS OF CONVOCATION

November 24th, 1989

### ADMISSIONS COMMITTEE

#### • Re P

Convocation considered at length the report of the Admissions Committee on the application of one P to become a member of the Law Society. P had been convicted of sexually assaulting his daughter and one count of sexual intercourse with a female not his wife between the ages of 14 and 16 years. The female involved on this charge was a deaf minor. The issue was whether the applicant P was of "good character" which is required as a condition precedent to membership by section 28(2) of the Law Society Act. A panel of the Admissions Committee had conducted a hearing lasting four days, and had concluded that the applicant did not meet the requirement of "good character".

After hearing submissions by counsel for the applicant, for the Law Society and for the Women's Legal Education and

Action Fund (which had been granted intervenor status before the Committee), Convocation adopted the recommendation of the Admissions Committee that P be refused membership in the Society.

#### PROFESSIONAL CONDUCT

##### • Security of Court Facilities

Paragraph 6 of the Commentary under Rule 11 requires a lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility to notify the Security Co-ordinator who is usually the sheriff of the judicial district. By virtue of the Police and Sheriffs Statute Law Amendment Act 1987 municipal police forces will as of January 1st, 1990 be responsible for security in the courts. Accordingly, paragraph 6 has been amended to provide that a lawyer should notify the local police force.

##### • Ontario Motorist Protection Act

The Treasurer was given the authority by Convocation to strike a special committee to review the proposed legislation and report to Convocation on those matters in the proposed statute that bear on the Society's responsibility to govern the profession in the public interest.

Convocation also dealt with 11 other standing special committee reports which were all of an administrative or informational nature.









