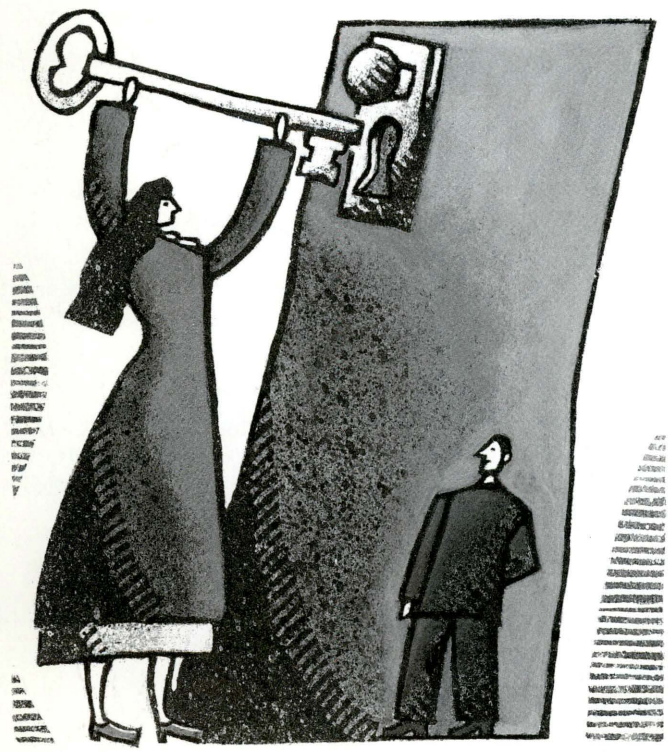
SEPTEMBRE/OCTOBRE • SEPTEMBER/OCTOBER 1997

ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



INSIDE/À LIRE

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Personalized member forms to arrive in new package

To help prevent important forms from being lost or thrown out, the Law Society will be mailing the 1997 Member Information Form (MIF) in a distinctive burgundy and grey envelope.

The forms, in their new packaging, will be mailed in early December. They must be completed and filed by the end of January 1998. It is of added importance this year that members (and their staff) do not misplace the forms because they will be personalized — information considered unchanging from year to year will be already filled in on the forms.

As a result of the personalization, members will simply have to review the form to confirm the accuracy of the information, supply any missing information or note any changes required. While this format will make completing the forms a great deal easier for members, it creates a problem if they are lost.

The Society will not be able to supply additional personalized forms to replace those lost or misplaced. If your 1997 MIF does go missing you will be required to obtain and complete a new, blank form or file electronically (see below).

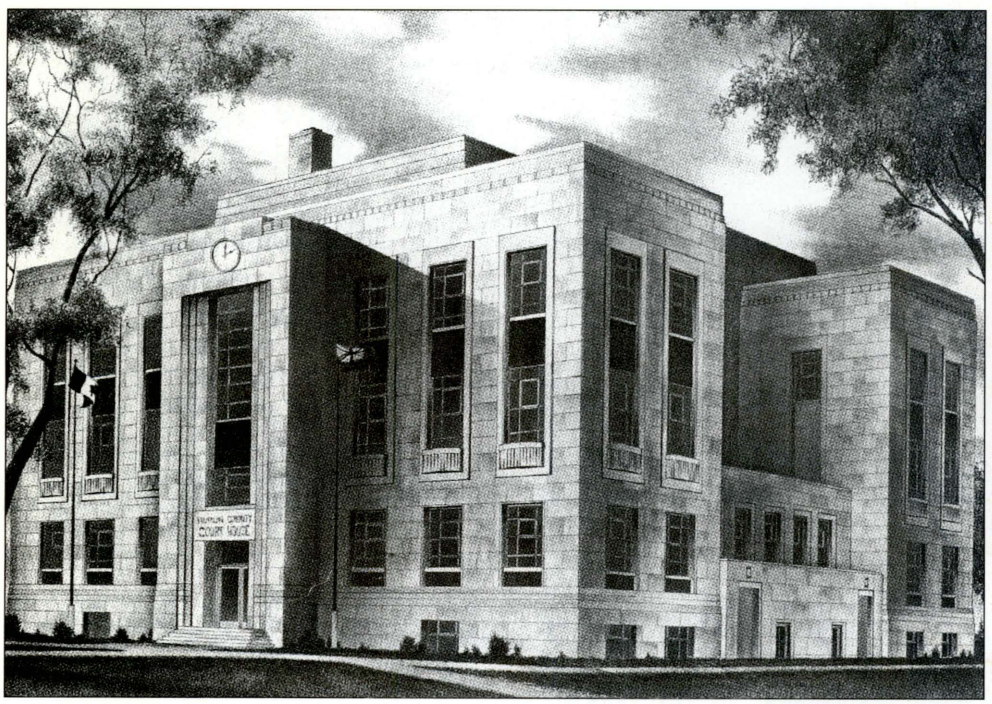
The Law Society is looking at ways to allow members to file information electronically, likely through a secure section of the Law Society's web site. The capability to electronically file is expected to be in place within the next few months —

Electronic filing may be in place within the next few months

watch for notices in upcoming editions of the Ontario Lawyers Gazette, as well on the web site.

A number of other changes to the MIF were approved by Convocation at its September meeting:

- The practice profiles section has been amended to include the information that is annually required by the Lawyers Professional Indemnity Company. This will allow LPIC to discontinue seeking the same information. Obviously, this information from a member's MIF will be shared with LPIC.
- The real estate profile section on the 1997 MIF has been enhanced to also capture information particularly germane to LPIC.
- In keeping with Convocation's decision to compile information relevant to the issue of Mandatory Continuing Legal Education (see *OLG* Jan/Feb 1997), a set of questions has been added in relation to the membership's on going learning activities.
- Members should expect a separate survey in the MIF mailing package dealing with Multi-Disciplinary Practices. These questions are considered important to assist the Law Society's task force on multi-disciplinary practices in its work on this timely issue. A separate form is being used because Convocation decided the survey should be anonymous. ■



ONTARIO'S COURTS

Goderich, Huron County

"Tragically, Huron County's original court house was destroyed by fire during the 1950's, though its jail survives. This is the county's second judicial building, designed in a style typical of the public buildings of its day."

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

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CONVOCATION

TREASURER'S MESSAGE

Profession can't ignore the growing impact of technology

The times change and we change with them.
- Lothair I [from Owen's *Epigrammata*, 1615]

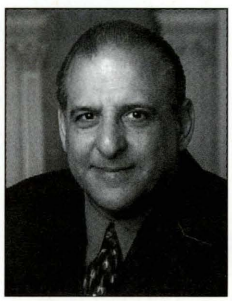
ALTHOUGH FOR MANY change can be irksome, in the legal profession we resist it at our peril. The truth is that the way we used to carry on business as recently as a decade or two ago no longer suffices. The typing pool, for example, is a faint memory. What would we do now without the computer and the fax? The government, the courts, our clients, our offices, ourselves: all changed, changed utterly, to meet the challenges and opportunities offered by technology and a relentlessly competitive marketplace.

One area of the profession which has responded quickly and decisively to the new technology is the real estate bar. The province is putting the title documentation process on-line, and TitlePlus title insurance includes a software program which prompts lawyers through the steps of a real estate transaction.

Similar technological advancements will soon affect all areas of the profession. Last month, indeed, the province's civil courts ushered in a pilot project in which law firms will be allowed to file court documents electronically from their offices using computers and e-mail (see story, p. 14). Access to the digital information will then be available from the court house's computer system to anyone equipped to receive it. No more paper.

Whether it's real estate conveyancing or the filing of court documents, the reality is that very soon every lawyer in the province will need to have, and be able to use, a computer and other technological communications tools. These things are, or are shortly to become, at once essential and necessary.

As the governing body of the Ontario legal profession, the Law Society should lead and assist the membership in understanding that technology will soon provide the key instruments for practising law. The benchers should also assure members that they ought not to be viewed as arbitrary or disagreeable. To the contrary, what technology promises is greater efficiencies, cost effectiveness, the reduction of duplication and paper-handling, and increased capacity to compete.



Harvey T. Strosberg

The Society itself is actively seeking to come of technological age in the exercise of its own daily operations, especially in regard to information gathering. It has changed most of its forms and in the process has begun to gather so much meaningful data that other professional regulators are turning to the Society for assistance in creating their own electronic, membership data banks. The Society's new forms are thus principally intended to allow members and the Society to harness the efficiencies of technology. The changes made have already allowed the Society to build a solid, strategic foundation of information while at the same time reducing the annual filing obligations of our members.

The strategy will unfold in phases, and the ultimate end is to arrive at the electronic filing of forms, with members and the Society communicating via computer. The gains in efficiency and the savings in cost will be great. There will be less paper and fewer mailings. There will also be no need for members to provide the same information to the Society year after year. Linked electronically, members will only have to tap into the Society's database and provide any changes in information as required.

Over the next few years, as the technological wave builds, it will become more apparent that the Society can help spur members into the new century. Members will eventually be required to communicate electronically with the Society, thereby demonstrating their technological capacity and their ability to function in a bar in which computer literacy will be the *sine qua non*.

Technological change is being imposed upon the profession and we cannot resist it. Nor should lawyers resist the electronic age and ignore the awesome possibilities of increasing efficiency and competitiveness. The Law Society's role will be to strike and hold the balance between regulator of the profession and protector of the public interest, all within an environment conducive to healthy competition. ■

Harvey T. Strosberg

McCamus committee makes recommendations on legal aid

A PROVINCIALLY APPOINTED independent committee reviewing legal aid and the legal clinic system in Ontario released its recommendations in September. Headed up by Osgoode Hall professor John McCamus, the review committee's recommendations include: the suggestion that there be greater experimentation with service levels and service delivery methods; a firm commitment from government for multi-year funding and the maintenance of current funding levels; and the view that an organization other than the Law Society should administer legal aid.

In responding to the McCamus report, Treasurer Harvey Strosberg said it is important to remember that the ideas in the report are not government policy.

"Professor McCamus has produced a very comprehensive report, and the next step is for Convocation to seriously review the McCamus report and then work cooperatively with the Attorney General, along with other stakeholders, as the government maps out the future course for legal aid in Ontario. It is now our job to consider the practical implications of the McCamus recommendations. One of our concerns, for example, is that the report doesn't deal with the costs of the ideas it presents," said Mr. Strosberg.

Funding for the Ontario Legal Aid Plan (OLAP) is currently laid out in a memorandum of understanding (MOU) signed by the province and the Law Society in 1994. The MOU ends in March 1999 and a special task force has been struck by Convocation to consider the issues surrounding the agreement's expiry.

Basically, two fundamental questions will have to be dealt with by Convocation on this issue, said Mr. Strosberg. "One, does the Society wish to continue administrating the plan? – that will be measured against the kind of commitment the government is willing and able to give to legal aid. Second, benchers will have to decide if the Society is better able to support the public interest as legal aid administrator, or as an active outsider working to uphold and to guarantee the public s access to legal aid."

Mr. Strosberg added that as the end of the MOU approaches the Society will be working closely with the Attorney General to help reshape legal aid. "Whatever changes are in store for legal aid, I think the Attorney General shares the Law Society s view that any changes must be made in the interests of the public and in support of access to justice," he said.

At Convocation in September, the legal aid committee reported that it will be holding a series of meetings over the next few months to consider the McCamus report. As part of the process the committee is seeking input from various organizations involved with legal aid and will be compiling information on the different delivery modes suggested in the McCamus report and by others in order to analyze their potential effectiveness. The committee will also develop recommendations on the question of governance of the legal aid plan and hopes to report to Convocation early in the new year.

A limited number of copies of the McCamus Report, "A Blueprint for Publicly Funded Legal Services," are available from the Ontario Legal Aid Review until Nov. 15, tel. (416) 326-4188. After Nov. 15, copies can be obtained through Publications Ontario. ■

MEMBER FORUM

Hot topic

The Gazette and the Law Society's web site have teamed up to allow members to have their say on issues of interest to the profession.

Each issue of the Gazette introduces a new "hot topic" and invites members to respond through the Discussion Forum at www.lsuc.on.ca. Members must have completed the sign-in to access the forum, which is located in the "Members On-line" section under "Services and Information for Lawyers."

The topic for this issue is: **Should the Law Society continue to administer the legal aid plan after the MOU expires in 1999?**

Participating is easy: visit the hot topic, read what your colleagues think and leave your message.

LPIC base premium to be reduced by nearly 10 per cent for 1998

AT THE SEPTEMBER meeting of Convocation, benchers approved a recommendation from the Lawyers' Professional Indemnity Company (LPIC) to reduce the base premium for LPIC coverage by 9.7 per cent in 1998. The premium will drop from $5,150 to $4,650, a reduction of $500.

As well as decreasing the premium, LPIC's board is recommending that the $600 per member capital levy — which has been included in the Law Society's annual membership fee in the last three years — be eliminated in 1998 because LPIC is now appropriately capitalized. Any final decision on the capital levy must first go through the Law Society's finance committee and then be approved by Convocation. That will occur during the normal budget deliberations in October and November.

The reduction in LPIC's base premium results from a leveling off in the number of claims. LPIC president Malcolm

Heins told benchers that the cost of claims has stabilized at around $65 to $70 million per annum – about 2,000 claims each year.

Further reductions in claims and thus premiums are unlikely over the short term. However, Mr. Heins predicted that all things remaining equal, title insurance could result in a "significant dent in the average premium" in the next three to five years.

Two new insurance options are being offered

LPIC is also offering two new insurance options. Innocent party coverage, a product not currently available to sole practitioners on the commercial market, will allow lawyers to purchase insurance that protects members of the public against the dishonest, fraudulent or malicious acts of sole practitioner lawyers. Major changes in real estate conveyancing – including the introduction of electronic registration, and the related use of escrow closings, and concerns from financial institutions involved in escrow closings – will make access to this kind of coverage a necessity for sole practitioners.

LPIC will also offer excess liability insurance coverage to firms interested in increasing their coverage above the mandatory limits provided under the standard LPIC program. The focus for this optional program will be smaller firms, which historically have tended not to purchase excess insurance protection. (About 11 per cent of firms with five members or less buy excess insurance, according to LPIC data.) Mr. Heins suggested that this low participation rate by smaller firms likely has more to do with lack of awareness of the need for excess coverage than with cost, as affordable excess coverage is readily available. LPIC will offer excess coverage of up to $4 million per claim/$8 million in the aggregate on a firm basis. This optional coverage will be underwritten on an individual firm basis, and will be competitively priced.

As part of the LPIC report, Convocation also approved the recommendation that if certain conditions are met, title-insured real estate transactions be excluded from the $50 surcharge currently levied on lawyers. ■

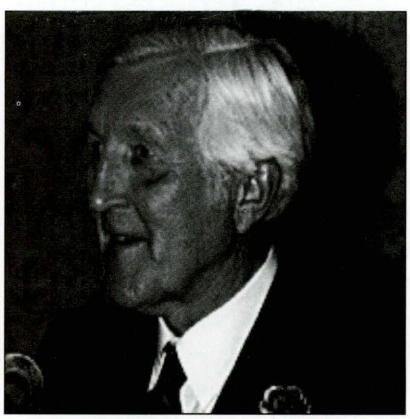
In memoriam

Barry Pepper, Q.C., LSM, one of Convocation's and the legal profession's strongest adherents, passed away on September 3, 1997, at the age of 74. Mr. Pepper, a life bencher, was a member of Convocation for over 32 years and served as chair of several committees, including finance.

Passionate about history, Mr. Pepper played a pivotal role in the Society's bicentennial celebrations this year and was instrumental in having Canada Post issue a commemorative stamp in recognition of the Society's 200th anniversary.

Called to the bar in 1950 and first elected a bencher in 1965, Mr. Pepper held the position of president of both the Advocates' Society and the Federation of Law Societies. He was a fellow of the American College of Trial Lawyers and flew overseas with the Royal Canadian Air Force during the Second World War.

Mr. Pepper and his commitment to the Law Society and the legal profession will be missed.



Barry Pepper, Q.C., LSM

Financial reporting requirements under review

CHANGES COULD BE in store for the way the Law Society requires members to report their financial affairs.

In a report presented to Convocation in September, the Lawyers Fund for Client Compensation committee recommended the adoption of a "self-reporting model" which would end a mandatory requirement that lawyers provide a public accountant's report of their books and records within six months of the end of each fiscal year.

Committee chair Clayton Ruby told benchers that the goal is to find less a expensive, more meaningful way to gather the required financial information from members. He suggested the benefits of the current "Public Accountant's Report" are quite limited since the information provided does not constitute an audit. "Can we enhance the benefits [of reporting financial information]?," Mr. Ruby asked benchers. "The fact is that despite the universal filing of a public accountant's report, we have often not been able to use them to detect the kind of problems we're concerned with. It simply doesn't get at it."

It currently costs from a minimum of $500 (for a small sole practitioner's practice) to $25,000 (for the largest firms) to have an accountant complete

the form. The recommended model will permit members to complete, by themselves, a modified Law Society form – though hiring a public accountant to help would remain an option.

If adopted, self reporting would see a return of spot or focused audits of lawyers' financial records. Although all members of the Law Society will be considered for audit, the committee's report points out that "firms which display compliance with records keeping requirements and money handling standards" and who have proper staffing levels can expect few visits from the auditors. The majority of the inspection resources will be directed toward "firms which display factors which may give rise to claims or who display poor trust records keeping practices."

The committee suggests that the Society work with the Lawyers' Professional Indemnity Company (LPIC) to

Self reporting could eliminate accountant's report

develop a profile of firms that should receive more audit attention. Other factors that could spark a focused audit include trust account problems, a history of poor record keeping practices, failure to file complete financial reports on time, or profiles based on a history with the complaints department or the compensation fund.

Convocation was also presented with two minority reports on the issue – both concerned with the auditing aspect of the recommended model – feeling it unfavourably targets the real estate bar.

While recommending a self-reporting model, the committee also considered three alternative models: a full audit, an enhancement of the current system with requirements for additional procedures to be done by an accountant, and retaining the present model while adding focused audits.

A vote on the report was adjourned until the October meeting of Convocation to give the professional regulation committee an opportunity to study the proposal in greater detail.

Financial review

The compensation fund committee also gave notice that it will be recommending that the Fund levy be increased in 1998. Because of a large balance in the Fund and the investment income earned, since 1991 the per-member annual levy has only been $1. In its report to Convocation, the compensation fund committee said an extensive review of the financial health of the Plan has concluded that it is no longer possible to charge "an artificially low levy and maintain the long term viability of the Fund."

While the Fund is currently healthy, its balance is decreasing, claim payments are increasing, and investment income is also declining due to low interest rates. The result is that for the first time in over a decade the Fund balance will fall below $20 million this year and, if the levy remains at $1, is projected to drop under $15 million by the end of 1998. Without changes, the Fund balance could be exhausted in 2001.

In its report to Convocation, the committee stated "failure to act [by increasing the levy to ensure the Fund's continued viability] would be unacceptable to the profession and unacceptable to the public." At the same time, the committee noted that increasing the levy will "only be justifiable if measures are taken to reduce the level of future claims." The recommendations regarding changes to financial reporting by members (see above) are part of those measures.

The 1998 compensation fund levy will be set as part of the Society's budget discussions in November and December. ■

New committee chairs named

At a special meeting on September 11, benchers ratified appointments to Convocation's standing committees, the Lawyers' Professional Indemnity Company board of directors, and approved the formation of two new committees.

Treasurer Harvey Strosberg has identified building effective working relationships with all levels of government as a top priority for the Law Society, and a new government relations committee chaired by Frank Marrocco has been established as a result.

A litigation committee – established to oversee law suits between the Society and third parties that have important policy implications for the Society – has also been struck. It will be chaired by Ottawa bencher David Scott.

Thunder Bay bencher Ross Murray was named chair of the Lawyers' Professional Indemnity Company board of directors.

The chairs of the other standing committees are as follows:

Admissions and Equity:
Philip Epstein

Clinic Funding:
Derry Millar

Discipline Authorization:
Eleanore Cronk

Finance and Audit:
Vern Krishna

Lawyers Fund for Client Compensation: Clayton Ruby

Legal Aid:
Robert Armstrong

Professional Development & Competence: Mary Eberts

Professional Regulation:
Eleanore Cronk

Bencher receives CBA award

TORONTO BENCHER Eleanore Cronk has been honoured with the Canadian Bar Association's 1997 Louis St-Laurent Award of Excellence.

Ms. Cronk, a litigator with the Toronto firm Lax O'Sullivan Cronk, has been a bencher since 1995 and is chair of Convocation's professional regulation and discipline authorization committees. Her work with the CBA includes chairing its recent task force on systems of civil justice.

Eleanore Cronk

In announcing the award, CBA president Russell Lusk, Q.C. called Ms. Cronk "an outstanding advocate, a dynamic force dedicated to the betterment of the administration of justice." He added: "Her remarkable intellect, integrity and leadership abilities have contributed to the success of her many endeavours."

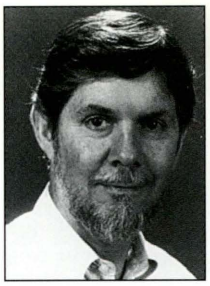
Called to the bar in 1977, Ms. Cronk is a past-president of the Advocates' Society and a fellow of the American College of Trial Lawyers.

The Louis St-Laurent Award was created five years ago by the CBA to recognize distinguished or exceptional service to the overall goals of the association. ■

New bencher elected

CONVOCATION HAS a new bencher. Rob Martin, a professor of law at the University of Western Ontario, was elected at Convocation in September. He fills the vacancy created with the election of Harvey Strosberg, Q.C. to the position of Treasurer.

Published widely on law, politics and mass media, Mr. Martin is a regular contributor to the *Law Times*. He has taught law at universities in several Africa countries including Tanzania, Lesotho, Kenya and Mauritius.



Rob Martin

Mr. Martin received his LL.B at the University of Toronto and his LL.M at the University of London. He was called to the bar in 1978. ■

Convocation adjusts meeting schedule

BENCHERS VOTED unanimously in September to adjust their committee meeting and Convocation schedules to accommodate the religious observances of their fellow members.

The vote followed the recommendation of a committee struck to examine if and how meetings could be scheduled to avoid conflicting with the holy days or the Sabbath of members of various religious faiths. Chaired by bencher Philip Epstein, the committee was comprised of the Honourable Justice Stephen Goudge; the Honourable Justice Rosalie Abella; Rabbi Michael Stroh, President of the Toronto Board of Rabbis; Steven Weiss, an orthodox Jewish lawyer; bencher Harriet Sachs; and Raj Anand, a human rights lawyer.

In future, dates for Convocation, discipline Convocation, committee meetings or any other scheduled meeting of the Law Society will be chosen so there will be no conflict for individuals wishing to observe a holy day or the Sabbath. On Fridays during the dark winter months of November, January and February, Convocation will commence at 8 a.m. and end at 3 p.m.

With the policy now in place, it will be possible to foresee scheduling conflicts four years in advance, unless a bencher is elected in mid-term. The committee reported that no more than eight such occasions are likely to arise in any calendar year. ■

CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

September 26 1997	*Attend*	*Motions**
Aaron, Robert	✓	
Adams, W. Michael	✓	
Angeles, Nora	✓	
Armstrong, Robert	✓	
Arnup, John		
Backhouse, Nancy	✓	
Banack, Larry		
Bobesich, Gordon	✓	
Carey, Tom	✓	
Carpenter-Gunn, Kim	✓	
Carter, William	✓	
Chahbar, Abdul Ali	✓	
Cole, Thomas		
Copeland, Paul		
Cronk, Eleanore	✓	
Crowe, Marshall	✓	
Curtis, Carole	✓	
Del Zotto, Elvio	✓	
Eberts, Mary		
Elliott, Susan	✓	
Epstein, Philip	✓	
Feinstein, Abraham	✓	
Finkelstein, Neil	✓	
Gottlieb, Gary L.	✓	
Harvey, Jane		
Krishna, Virender	✓	
Lamek, Paul		
Legge, Laura	✓	
MacKenzie, Gavin	✓	
Manes, Ronald	✓	
Marrocco, Frank	✓	
Martin, Arthur		
Martin, Robert	✓	
Millar, Derry		
Murphy, Daniel		
Murray, Ross	✓	
O'Brien, Brendan		
O'Connor, Shirley		
Ortved, Niels	✓	
Puccini, Helene	✓	
Rock, Allan		
Ross, Heather		
Ruby, Clayton	✓	
Sachs, Harriet	✓	
Scace, Arthur		
Scott, David	✓	
Sealy, Hope	✓	
Stomp, Tamara	✓	
Swaye, Gerald	✓	
Thom, Stuart		
Topp, Robert	✓	
Wilson, Richmond	✓	
Wright, Bradley	✓	
Strosberg, Harvey (Treas.)	✓	

Non-voting Benchers in attendance

R. Cass, G.H.T. Farquharson, P. Furlong, K. Jarvis, D. Lamont, A. Lawrence

Motions A=against F=for Ab=abstain

There were no motions requiring a roll-call vote at September 26 Convocation

IN PRACTICE

PRACTICE MANAGEMENT

Clients are key when buying or selling a legal practice

IT'S BEEN SAID THAT the quickest way to enter a market is to buy into it. But there are a number of issues that should be considered before applying this maxim to legal practices.

Purchasing a practice is not like buying most businesses. Rather, what you are purchasing is someone else's legacy and there's no guarantee the income stream generated by the practice will continue under new ownership.

Patrick Bowles of the Toronto accounting firm Clarke, Henning, says the key in the sale of any practice is the clients. If they stay with the new firm, there's value; if they don't, then the purchase price needs to reflect that.

With that in mind, lawyers looking to buy or sell a practice need to take specific steps to ensure they get value for their money, says Patricia Rogerson, who recently retired as director of the practice advisory service at the Law Society.

Rogerson has had first-hand experience with the purchase and sale of practices both as a trustee at the Law Society – where she dealt with practices where lawyers had either died or were disbarred – and with the sale of her own practice when she joined the organization.

Here are nine issues to consider when buying or selling a practice:

• *Will the selling lawyer stay on?*
Rogerson says "you'll have a much more successful transition if you are actually there for a while when the new person comes in." That way, the selling lawyer can answer questions and assist in the interaction between existing clients and the new lawyer.

• *Where will the clients go?*
A client's willingness to remain with the practice could be based as much on location and staffing as it is on the new lawyers.

Rogerson says from her experience, "most people are nervous at the idea of building up a relationship with a new lawyer. They are happier if they can still be at the same place. That is why it makes a difference whether the secretary or support staff stay on."

Both sides should take specific steps to ensure a proper valuation

The bottom line is that clients are "free to go wherever the clients want to go," notes Rogerson. Because of that, Bowles says the parties should arrange meetings in advance among key clients and the new lawyers to increase the likelihood that the clients will transfer work to the new firm.

• *Valuing goodwill.*
Experts say goodwill is best measured based on a professional valuation or as a percentage of billings. While Law Society rules prohibit fee splitting, parties may negotiate payment of accounts receivable.

At a minimum, Bowles says, the parties should consider retaining an agreed upon independent accounting expert. As well, each side should have their own advisor to "stop the matter from becoming personal" in the heat of negotiations.

He advises purchasers to look at the core client base. That way, the purchaser can assess whether the income flows from a "real substantial client base" as opposed to a "walk-in," nomadic practice. If the heart of the practice is return clients, there is a better likelihood of the revenue being transferred to the new firm.

As well, it should be ascertained who brought in such business. In some cases, it could be referrals from a key staff member, such as a secretary or a clerk. If that's the case, the purchasing firm should ensure that the person responsible for generating the business continues with the new firm.

• *Assessing receivables and collections*
Average annual billings tell only part of the firm's business history. It is the amount collected which reflects the true value of the firm. Bowles says attention should be paid to the time it takes to collect money. If a firm is collecting only two-thirds of its billables within the standard 90-day period, the nature of the practice might be such that the rest will be difficult to collect and the price should reflect that.

• *Work in progress (WIP)*
Usually the selling lawyer will bill clients for the work completed to the date of closing, but it is not always practical for the client to pay at that stage of a file's life. The parties can agree to pay for WIP at the time of collection, or build it into the purchase price. If the matter involves a flat fee, as opposed to hourly billings, the parties need to agree on the pro-rated amount owed to the selling lawyer.
• *Are firm systems compatible?*
One factor that can be overlooked is whether the technology of the two firms is compatible or interchangeable. The buyer should ensure that if the files are in an electronic format, the purchasing firm has the technology to access the files.
• *Storing old files*
The increased cost of storing old files, along with the fact that files are bigger compared to what they used to be, means that "nowadays, people don't want closed files," says Rogerson. The parties will have to decide what will happen to the old files.
• *Contacting the Law Society*
While lawyers are under no obligation to advise the Law Society that they've sold their practice, it's a good idea to let the staff trustee office know anyway, because that office gets the calls from people who say their lawyer has disappeared. If the Society knows about the sale, officials can assist clients in tracking down their files.
• *Avoiding disputes*
Bowles notes that the last thing a lawyer needs is to become entrapped in litigation involving the sale of a practice. He suggests the parties include a clause in the sale-purchase agreement that sets out how they will deal with a dispute.

He adds that expectations need to be managed. "Some lawyers look at their practice as a nest egg to sell at the time of retirement. It doesn't work out that way. They don't always get what they're looking for." ■

OFFICE MANAGEMENT

Fraud targets trust accounts

The Law Society was recently made aware of an incident in which a law firm was the target of an attempted fraud upon its trust account.

The firm received a call from a potential new client from outside the province who indicated that he needed legal work done and requested to know the amount of the firm's retainer.

A junior lawyer at the firm advised the caller of the retainer amount and the potential client indicated that he would wire it immediately to the firm's account. The lawyer provided the caller with the trust account number.

The firm's bank then received a request from a person impersonating the junior lawyer requesting that funds be transferred from the firm's trust account to another bank in another province. Although the caller advised the bank of the names of various persons who were employed at the firm's bank and advised that he knew these people personally, the bank refused to make the transfer and contacted the firm to advise them of the request.

As a precaution, the firm requested a new account number and cheques for its trust account.

To avoid the expense and inconvenience of dealing with such a fraud attempt, members should be wary of providing trust account numbers to individuals who are not known to the firm.

CONDUCT & ETHICS

Retired lawyers who dabble in practice walk fine line

LAWYER WALTER J. STIL greets his clients with the usual enthusiasm he has exhibited in his past 45 years of practice.

Although now retired, he maintains an office as part of his partnership agreement at Stil, Grohwing and Howe, where he greets clients, engages in volunteer work and mingles with his cohorts.

One day I.M Trobuled, an old friend and former client that Stil hasn't seen since he retired, seeks his advice on a business matter involving the partnership agreement that Stil drafted a decade before.

Stil invites him into the office where they share a coffee and chat. Stil comments about the situation and urges Trobuled to see his partner Growhing, who now manages the file and is the firm's corporate law expert.

Unfortunately, Trobuled acts on Stil's comments, without speaking to Growhing, only to learn that the Ontario *Business Corporations Act* has changed and the steps he took to deal with his brewing partnership dispute has violated the Act to his detriment. He now faces a shareholder oppression action.

Months later, Trobuled and his new lawyers sue Stil and the firm for negligence. Lawyers for his former partners' have taken the position that Stil acted on his own and they are not liable for any damages. Stil, whose liability policy was not in effect because he was retired, faces the prospect of footing his own hefty legal bill, at a time when his income is greatly reduced and he should be enjoying the life of leisure.

While the situation described above is fictional, the fact is that lawyers who retire but continue to hang around the

office can pose a liability problem.

"It's not only a risk to the lawyer, it's a risk to the firm," says Felecia Smith, acting director of practice advisory services at the Law Society.

As the legal community ages and more lawyers opt to retire, the risks will only increase, Smith adds.

> If you're not insured, you can't practise law

Even now, Smith says she "gets lots of questions" from retired lawyers asking if it's okay to notarize documents or commission affidavits. "We can't stop you, but you had better be careful about what you are doing," she tells them.

About 136 lawyers retired from the Law Society last year and that number is expected to spiral as the baby boom generation starts hitting the retirement years. "It was never really a problem before, but now we have an aging population, where people are living longer and working longer," Smith said.

The potential for problems is most acute at large firms and in big firms in small communities, where long-time lawyers have built strong reputations and client bases. They often have a hard time letting go. It doesn't help that the clients continue to want advice only from their former lawyer or that the firm can see the business benefits in having the name partner hanging around.

There is little on paper indicating what a retired lawyer can or can't do. The bottom line is that if you're not insured, you can't practice law.

Under Law Society rules, when lawyers turn 65 and are "permanently retired," they can apply to the Law Society to have their membership without paying the annual membership fees. That doesn't mean they are insured.

The key words are "permanently retired," notes Smith. If a lawyer dabbles, then they may not be permanently retired and are not entitled to the break on fees. As well, without insurance coverage, they are exposed to damages that could wipe out years of hard-fought earnings.

If they continue to have dealings with a client, Smith says, "the client can easily come back and say, 'He gave me legal advice,' when in fact the lawyer didn't, but the client confused it as legal advice."

Retiring lawyers have to realize that they can't have it both ways. "You can't say you're leaving and then continue on."

While Law Society rules permit firms to continue using the names of deceased or retired partners on their letterhead, Smith says it's wise to note on the letterhead that a partner is retired. That way clients are warned as to the lawyer's status. ■

REAL ESTATE

Title insurance and complying with Rule 30

SINCE ITS ADDITION to the Law Society's *Rules of Professional Conduct* in February of this year, Rule 30 (see *OLG*, Mar/Apr 1997, p.9) has given real estate lawyers and their firms something new to consider when working on files and completing purchase or mortgage transactions. In short, the rule requires lawyers to inform their clients about the availability and merits of title insurance.

Long a staple of real estate deals in several states in the United States, title insurance has been far less common in Canada. Partially because land registry records tend to be more complete and easier to access in Canada and partially because clients large and small have nearly always been comfortable with solicitors' opinions on matters of title, clients have opted for insurance very infrequently.

Small though it is, the demand for title insurance is growing. The Lawyers' Professional Indemnity Company (LPIC) – which has introduced the online TitlePlus insurance in partnership with Chicago Title Insurance Company – has worked hard in recent months to educate lawyers about instances when insurance can be useful in closing a deal.

Since Rule 30 was issued, many lawyers wondered exactly how far they were now required to go in explaining what title insurance is, what it costs and why a client might consider purchasing it.

Although opinions differ about how useful title insurance is and the manner in which a lawyer should discuss it with clients, practitioners agree the rule has forced them to make changes in the way they deal with clients. Some lawyers contacted are still in the process of evaluating their approach to the rule and are prepared to change procedures in the coming months.

Many lawyers have found that title insurance sometimes is the only way to close a troubled deal, one in which land boundaries and previous survey results

> Inform clients about the availability and merits

are in dispute or simply don't exist. In such cases, banks often insist on title insurance before signing on. But this was the case long before Rule 30 came into force. "We have recommended title insurance on a number of occasions in

the past," says Craig Carter, who practises real estate law at Fasken, Campbell, Godfrey in Toronto. "We use it if we feel it can solve a deal-breaking problem and facilitate a closing."

Practically speaking, the rule has no effect on red-flag files that would have required insurance anyway, rule or no rule. It is, however, having an effect on the way firms handle simpler transactions: straightforward commercial deals or simple residential purchases.

Clients involved in these simpler deals now hear about title insurance, in many cases for the very first time. For the most part, they decide against insurance if for no other reason than the cost.

Someone who has always relied on a solicitor's opinion and never had a problem is unlikely to opt for a more expensive route. In some cases, doubts can be cleared up for a fraction of the cost of insurance.

Brian Bucknall, a real estate practitioner at Osler Hoskin & Harcourt in Toronto, recalls a transaction best described as "a jigsaw puzzle. So we got a quote for title insurance and compared it to the cost of hiring a land surveyor to create a computer model of the entire piece of property. The cost of the surveyor was less than 20 per cent of the title insurance in that case."

Several firms are still grappling with how best to comply with Rule 30. At Fasken Campbell Godfrey, Carter says

> Title insurance can sometimes facilitate a closing

the firm has decided that solicitor's opinions are nearly always sufficient for clients. Therefore, "We're not dealing with title insurance on every transaction."

However, the firm has amended the standard preliminary letter it sends to clients and now mentions title insurance. It also attaches a copy of the CBA-O brochure, entitled "Working With a Lawyer When You Buy a Home" and invites each client to discuss title insurance with his or her lawyer. "We discuss it on a problem-by-problem basis, but we make sure the client receives the information and is aware that title insurance is available," Carter said.

Like Carter, Bucknall has used title insurance for many years to push difficult deals over the finish line. But in response to the new rule, the firm has held two in-house seminars, one of which was conducted by First American Title Insurance Company, the most active of the U.S. companies making forays into Canada.

"We need to keep educating our people on the concept of coverage and risk," he says, suggesting a program of continuing education is called for. At Osler Hoskin & Harcourt, title insurance has been added to the list of items lawyers discuss with clients when they meet to go over a transaction. But Bucknall notes that in residential transactions, even those valued at $1 million or more, the premium is almost always prohibitive. It is in larger, more complicated cases where the art of assessing the value of the product is needed. "Making that decision is the really tricky part," and something still to be discussed in upcoming firm meetings, he said.

"You have to recognize the client is trading some legal work and that should diminish the legal fees. If you then compare the saving achieved to the cost of the premium and it's close, then the client can have some extra protection for roughly the same money. Because there is some value in insurance. It goes a step beyond a lawyer's opinion."

There is an additional factor that makes it difficult for lawyers not only to assess the need for insurance but also to recommend a provider. With so few clients opting for insurance, there are even fewer that make a claim and follow

Hydro arrears update

Ontario Hydro recently announced a new policy on arrears of charges for electricity supplied directly to single family residential properties (see OLG, Jul/Aug 1997, p.12). Briefly, the company indicated that it will no longer issue arrears certificates in respect of the sale of such properties nor will it report orally to purchasers or their solicitors in respect of the state of the vendor's account for electricity charges.

The Municipal Electric Association, which represents municipal electric utilities supplying electricity under the Public Utilities Act, has asked the Law Society to draw lawyers' attention to the fact that the changes referred to above relate only to Ontario Hydro's direct residential customers (usually rural customers). In particular, the association notes that municipal electric utilities and public utilities will continue to:

- provide the service of issuing arrears certificates in respect of property sales;
- supply appropriate reports, when requested, on the sale of a property; and
- exercise their rights under the Public Utilities Act to claim a lien and charge upon land for arrears of charges for electricity supplied to a property.

For more information, contact Mary-Jo Corkum, co-ordinator, Utility Administration at the Municipal Electric Association, (416) 483-7739.

the process to the end. So lawyers have little experience with the various providers to offer opinions about which companies are best to deal with. And Bucknall says there would be ethical considerations if a firm made an arrangement with an insurer to secure a better price for clients in exchange for a positive recommendation from the law firm.

"I doubt that would ever happen unless we could be satisfied the coverage was the best available with better premiums so it would be an advantage to our clients. But we haven't even thought along those lines. I think we'll get into a circumstance that we're in with our banking clients: When a client comes in we can recommend a bank because we know they are good to deal with."

In addition to TitlePlus and First American, another provider attempting to break into the Canadian market is Texas-based Stewart Title Guarantee. ■

LEGAL AID

Court rulings on right to funded counsel

IN TWO RECENT JUDGMENTS, the Ontario Court (General Division) confirmed that the *Charter of Rights and Freedoms* does not entitle a person to funded counsel. The Court in *Fowler v. Fowler* and in *Matthews v. Matthews* refused to follow the *Stewart v. Stewart* decision in which Mr. Justice Stong ordered funded counsel in a matrimonial proceeding on the basis that the Charter entitled the applicant to such relief. The Stewart order was made *ex parte* against the Plan.

Beyond finding that the Stewart decision was in error on the law, the Fowler and Matthews decisions support the principle that the *Legal Aid Act*, and the regulations made thereunder, provides a complete statutory scheme for the provision of legal aid services. Further, such decisions endorse the validity of the Plan's priority guidelines in the context of family law proceedings.

In the criminal courts, a July 1997 decision by Judge Bordeleau dismissed another Rowbotham application, where the applicant, Danielle Belanger, had applied for a stay of proceedings on impaired driving charges as her application for legal aid had been refused because she was not facing incarceration. The judge held that counsel was not necessary to ensure a fair trial in this case and the offences were not complex or serious as compared to Rowbotham.

In another recent case, the court accepted the Crown Attorney's offer of counsel for a victim witness in a sexual assault proceeding, funded by the Ministry of the Attorney General. Judge M.A. Scott ruled that the court was duty-bound pursuant to the decision of *Regina v. O'Connor* to name a lawyer as *amicus curiae* for the two witnesses, and that the lawyer would be reimbursed for all services by the Ontario Government, not through the Legal Aid Plan.

Investigations and Discipline

Michael Woods, of Mississauga, has agreed to remove his name from all Legal Aid panels after he was found to have billed his client privately while retained under a legal aid certificate.

Lawyers are obliged to report changes to client's circumstances

Solicitor John C. Moore, of Toronto, has agreed to repay the Plan $3,739.04 for accidentally overbilling the Plan over a two-year period. The overbilling included double-billed travel, incorrectly billed waiting time and overlapping hours.

In August, four legal aid clients were charged and convicted in criminal court of making false statements to legal aid. The Investigations Department will be increasing its efforts to weed out applicants who have misrepresented their financial circumstances, and where appropriate, refer such cases to Crown Attorneys for prosecution.

Lawyers are reminded that under sections 78 and 79 of the *Legal Aid Act* regulations, lawyers are obliged to report any circumstances which indicate that a client may have misrepresented his or her circumstances in applying for a certificate. Lawyers are also obliged to report any change in their clients' circumstances which would indicate that the client is no longer eligible for legal aid.

Big Case Management for criminal cases

Lawyers are reminded that the Big Case Management program is available for serious criminal cases. It is mandatory to advise the area director in any of the following circumstances:

- For a matter other than a charge of first degree or second degree murder, the total fees and disbursements are likely to exceed $20,000.
- For a charge of first degree or second degree murder, the total fees and disbursements are likely to exceed $30,000.
- If the proceeding involves more than one accused person, the total fees and disbursements for all accused persons are likely to exceed $50,000.
- If the preliminary hearing is likely to take more than two weeks.

Failure to notify the plan of these circumstances may result in non-payment of fees and disbursements which exceed tariff maximums.

Under the big case management pro-

gram, a budget is set for the certificate, usually by way of an allowance of hours for preparation time based on the predicted length of the hearing and the complexity of the matter.

While not mandatory, the program is also available for serious or complex criminal cases in the $10,000 to $20,000 range, at the discretion of the area director.

All accounts submitted under a certificate which is in the big case management program should include a heading "Case Managed Matter", to ensure that they are paid according to the budget.

Even if a matter is case managed, the account must still comply with tariff requirements. Dates, times of day and a brief description of services rendered must be included for each entry on the account. Disbursement accounts from expert witnesses and private investigators must also meet these requirements.

New duty counsel account forms

The Plan is no longer accepting the old duty counsel account forms. The new criminal (form 12) and family (form 13) duty counsel account forms (green and ivory respectively) must be used by all duty counsel for all accounts submitted. You can get supplies of these forms at your local legal aid office.

Legal Aid on the World Wide Web

The Ontario Legal Aid Plan has its own website. Visit us at *http://www.legalaid.on.ca*. The site contains information on new programs and changes which affect lawyers and clients. The site also contains general and historical information about the Plan, updated addresses and phone numbers for local area offices and an e-mail address for comments and questions. Send any e-mail to info@legalaid.on.ca. ■

TECHNOLOGY

Firms participating in civil litigation e-filing pilot project

NEARLY 100 TORONTO-AREA law firms are participating in a pilot project that allows lawyers to file a variety of civil litigation pleadings electronically, radically changing the way civil suits are handled. By next spring, the six-month project will have been evaluated and the Ministry of the Attorney General will decide whether to expand the program throughout the province.

In theory, the project represents a dramatic improvement in the process of filing records required during a civil suit. In Toronto alone, a fully implemented system of electronic filing would replace nearly a quarter-million documents filed annually by law firms, using an arcane system of messengers standing in long lines to communicate with court staff. Moving the system ahead a few centuries also has the potential of saving about $9 million per year for litigants and the government, officials estimate.

All participants volunteered to test the system; they represent a range of firms from the very large to the very small. In June, four law firms began testing the system. Live filings commenced in August and in early September all participating firms began filing documents electronically. Using an electronic template in WordPerfect or Microsoft Word format, a lawyer can file any of the following documents: commencing documents such as statements of claim or petitions for divorce; defending documents such as statements of defense, replies and answers; third-party claims; jury notices; notices to file financial statement; certificates of service; requisitions to note default; requisitions for default judgment; writ of seizure and sale. The next step contemplated is the addition of technology permitting material required in legal motions to be filed and processed electronically as well.

> The system uses encryption and secure phone lines

Once the template is filled in, the lawyer connects to the court server using a modem and an encrypted electronic "key" that identifies him or her as an authorized user. All transactions travel along secure Bell Canada phone lines and not over the Internet. The system will accept documents 22 hours a day, seven days a week. At the court, a software package titled Sustain accepts the form, verifies its accuracy and deducts a fee from an account the law firm has established for that purpose. If the form is not accepted, the lawyer receives an e-mail message explaining why and requesting more information. Once accepted, the document is tagged with a court file number, and the lawyer receives electronic verification that the document has been received and filed.

Proponents of the system say the chances of files being lost will be greatly reduced when compared to the current system, eliminating delays while files are tracked down. However, to make the system work as efficiently as possible, judges will need to have computers in their offices to read the documents that arrive electronically. The efficiency of the system would be

reduced greatly if documents were simply printed out at the court end instead of at individual law firms. (Law firms will continue to make hard copies of documents anyway for backup and filing purposes.)

Documents that are e-filed will be just as accessible to the public as traditional documents are today. Viewing on a computer screen is free; print-outs are subject to the equivalent of a photocopying charge.

A steering committee, chaired by Toronto Regional Senior Justice Susan Lang, developed the program and will survey participants after three and six months of testing. The steering committee also will produce a report for the Ministry in the spring.

Ontario is the first province to introduce e-filing of civil documents, a response to the recommendation of the Civil Justice Review that technology be integrated into courtrooms to make the system quicker, cheaper and more efficient. The e-filing initiative is part of a larger case management project that establishes time guidelines to move cases through the court expeditiously. ■

CIVIL LITIGATION

Profession invited to review draft rule for mandatory mediation

THE CIVIL RULES Committee is requesting submissions on the Ontario government's draft rule for mandatory mediation.

The Committee has reviewed a draft rule proposed by the Ministry of the Attorney General that would form an amendment to the *Rules of Civil Procedure*. The Rules Committee has suggested revisions to the proposed draft rule and is circulating these suggestions together with a discussion paper on the mandatory mediation proposal and the original Ministry draft. This document is available in WordPerfect format on the Law Society's website at *http://www.lsuc.on.ca/services/services_civil_rules_committee-en.shtml*. A limited number of printed copies are available by contacting: The ADR Centre, 77 Grenville St., 8th Floor, Toronto, ON M5S 1B3, tel (416) 314-8355.

Mandatory mediation, first announced in January 1997 (see *OLG*, Jan/Feb 1997, p.7), will affect most civil litigants and civil litigators in the province. Essentially, the proposal requires all civil litigants (with a few exceptions) bringing contested cases in the General Division to submit their cases to a private-sector mediator for three hours of mediation within 60/90 days of the filing of the first statement of defence. Under the scheme, litigants will pay the costs of mandatory mediation.

Lawyers who are involved in civil litigation cases in the General Division or who are interested in the proposal for other reasons, are encouraged to consider the material and to offer written comments to the Committee. Submissions should be directed by 10 November, 1997, to:
Mr. John H. Kromkamp,
Secretary Civil Rules Committee,
Osgoode Hall,
130 Queen Street West, Toronto,
Ontario M5H 2N5,
email: coafiler@gov.on.ca ■

TOUR D'HORIZON

LES PROPOS DU TRÉSORIER

L'emprise croissante de la technologie est inévitable

Les temps changent, et nous les suivons.
- Lothaire Ier [Épigrammes d'Owen, 1615]

SI LE CHANGEMENT contrarie souvent, la profession ne peut s'y opposer qu'à ses risques et périls. À vrai dire, notre façon d'exercer notre profession, voici même 10 ou 20 ans, ne suffit plus. Qui se souvient encore, par exemple, du «pool de dactylos»? Que ferions-nous aujourd'hui sans ordinateur, sans télécopieur? Le gouvernement, les tribunaux, notre clientèle, nos bureaux, nous-mêmes : tout a radicalement changé devant les enjeux et les débouchés qu'ouvrent la technologie et la concurrence implacable.

Le secteur de l'immobilier a, lui, réagi vite et d'une façon décisive aux nouvelles technologies. La procédure de documentation des titres sera bientôt en ligne et le logiciel accompagnant l'assurance TitrePlus guide les avocates et les avocats tout au long de l'opération immobilière.

Le progrès technologique touchera bientôt de façon analogue tous les autres avocats. D'ailleurs, le mois dernier, les tribunaux civils ontariens ont lancé un projet-pilote permettant aux cabinets de déposer leurs documents de procédure de leur écran d'ordinateur et par courrier électronique (voir page 14). Quiconque dispose de l'équipement nécessaire pourra accéder directement à l'information numérique dans le système informatique des palais de justice. Fini le papier.

Qu'il s'agisse d'une cession immobilière ou du dépôt des documents de procédure, en réalité, tous les juristes ontariens sans exception devront avoir et savoir utiliser l'ordinateur et les autres technologies de la communication, outils qui sont dès maintenant indispensables, ou le deviendront sous peu.

Organisme de réglementation professionnelle, le Barreau devrait montrer la voie et faire comprendre à ses membres que la technologie leur fournira bientôt les instruments clés de la pratique du droit. Le Conseil devrait également combattre l'idée que la technologie est arbitraire et gênante. Au contraire, elle promet une plus grande efficience et rentabilité, moins de tâches répétitives et de paperasserie, mais une compétitivité supérieure.

Le Barreau prend des mesures concrètes pour exploiter pleinement la technologie dans son fonctionnement quotidien, surtout en matière de recueil des données. Il a remanié la plupart de ses formulaires et, ce faisant, il a commencé à recueillir tant de données essentielles que d'autres organismes de réglementation professionnelle se tournent vers lui pour mettre au point leurs banques de données sur les membres. Les nouveaux formulaires du Barreau ont donc pour objectif premier d'aider le Barreau et ses membres à tirer parti de l'efficacité technologique. Grâce à ces modifications, le Barreau dispose de bases solides et stratégiques pour la collecte d'informations, réduisant ainsi le nombre de déclarations à produire.

Cette stratégie, étape par étape, finira par déboucher sur le dépôt électronique des formulaires et la communication, par ordinateur, entre le Barreau et ses membres. D'où une efficience accrue et des économies importantes, ainsi que la disparition progressive du papier et la baisse du nombre d'envois. Les membres n'auront plus à remettre les mêmes renseignements au Barreau d'année en année. Grâce aux liaisons électroniques, il suffira d'insérer les changements requis dans notre base de données.

Le virage technologique s'accentuant au cours des années à venir, il sera de plus en plus évident que le Barreau est en mesure de faciliter l'adaptation de ses membres au siècle prochain. Les membres devront communiquer avec le Barreau par voie électronique, démontrant ainsi leurs compétences technologiques et la possibilité d'exercer leur profession, lorsque la connaissance de l'informatique sera devenue une condition *sine qua non*.

Le changement technologique s'impose à la profession, qui ne peut s'y opposer. Nous ne pouvons pas non plus nous opposer à l'ère électronique ni ignorer les possibilités extraordinaires que recèlent l'efficacité et la compétitivité accrues. Le rôle du Barreau sera de trouver et de maintenir un équilibre entre réglementation de la profession et défense de l'intérêt public, dans un climat favorable à une concurrence vive. ■

Harvey T. Strosberg

EN DIRECT DU CONSEIL

Recommandations sur l'Aide juridique

En septembre, le Comité d'examen de l'Aide juridique a publié son rapport («Plan d'action pour des services juridiques publics subventionnés») dans lequel il recommande notamment une combinaison novatrice des services et modes de prestation, l'engagement gouvernemental en faveur d'un financement pluriannuel et du maintien des services actuels, ainsi que l'administration du Régime par un organisme autre que le Barreau.

Le trésorier a déclaré que le Barreau étudierait le rapport, y compris ses incidences financières, et oeuvrerait, en collaboration avec le ministère, à la refonte de l'Aide juridique. Le Conseil, quant à lui, devra décider s'il veut continuer de gérer le Régime et si le Barreau est le mieux placé pour promouvoir l'accessibilité à la justice. Au cours des prochains mois, le Comité de l'aide juridique sollicitera l'avis des différents intervenants sur les recommandations et la structure de gestion.

Baisse de la cotisation d'assurance

Le Conseil a approuvé la baisse de la cotisation d'assurance de base, qui s'élèvera à 4650 $ en 1998, soit une réduction de 9,7 % ou 500 dollars attribuable à la stabilisation des réclamations. L'ARCPA avait également préconisé l'élimination de la cotisation de recapitalisation (600 $), devenue superflue. La décision sera prise d'ici la fin de l'année. Parallèlement, l'ARCPA se propose d'offrir à ses membres deux nouveaux types d'assurance, l'assurance responsabilité du fait d'autrui et l'assurance complémentaire.

Information financière

Si le rapport du Comité du Fonds d'indemnisation de la clientèle est approuvé, les membres pourraient être dispensés de l'obligation de présenter un rapport d'expert-comptable dans les six mois suivant la fin de leur exercice. L'information financière serait remise directement par les membres, moyennant un formulaire spécial. L'augmentation du nombre de vérifications ponctuelles qui en résulterait viserait en majorité les cabinets d'avocats dont les pratiques comptables laissent traditionnellement à désirer.

Discipline

Le 25 septembre 1997, le Conseil a prononcé la radiation de M^e^ D.S. Hovland (procureur incontrôlable), suspendu les droits de M^es^ L. Schlossler (défaut de rendre compte), J.R. Dingle (détournement de fonds), S.E. German (conflit d'intérêts), réprimandé M^es^ E. Brown (conduite indigne), K.L. Crozier (registres non produits) et J.A. Ledwon (article 35).

AIDE JURIDIQUE

Décisions judiciaires sur le financement des honoraires d'avocat

DANS DEUX JUGEMENTS récents, la Cour de l'Ontario (Division générale) a confirmé que la *Charte des droits et libertés* ne prévoyait pas la prise en charge par l'État des honoraires d'avocat. Dans *Fowler c. Fowler* et dans *Matthews c. Matthews*, la Cour n'a pas suivi *Stewart c. Stewart*, affaire dans laquelle le juge Strong avait conclu que la partie requérante pouvait invoquer la Charte pour se faire représenter aux frais de l'État dans une cause matrimoniale. Dans l'affaire *Stewart*, l'ordonnance avait été rendue contre le Régime et en l'absence de celui-ci. En plus de conclure que *Stewart* était entaché d'une erreur de droit, Fowler et Matthews reconnaissent que la *Loi sur l'aide juridique* et ses règlements d'application forment un régime législatif universel de prestation de services d'aide juridique. En outre, ces jugements approuvent les lignes directrices du Régime accordant la priorité aux causes familiales.

Dans une affaire criminelle, le juge Bordeleau rejetait en juillet 1997 une autre requête du type Rowbotham, dans laquelle la requérante, Danielle Bélanger, demandait qu'on sursoit à l'accusation de conduite avec les facultés affaiblies, sa demande d'aide juridique ayant été rejetée parce qu'elle ne risquait pas l'emprisonnement. Le juge a statué que la tenue d'un procès équitable ne nécessitait pas la représentation par avocat, les infractions n'étant pas aussi graves et complexes que dans Rowbotham. Dans une autre affaire récente, le tribunal a accepté l'offre du procureur de la Couronne d'assurer, aux frais du ministère du Procureur général, la représentation d'un témoin de la victime dans une cause d'agression sexuelle. Le juge M.A. Scott s'est fondé sur le précédent *Regina c. O'Connor* pour décider que la cour devait désigner un avocat comme *amicus curiae* à l'égard des deux témoins et que le gouvernement de l'Ontario paierait les services du représentant juridique.

Enquêtes et sanctions disciplinaires

M^e^ Michael Woods (Mississauga) se retirera de toutes les listes d'aide juridique vu qu'on a découvert qu'il avait facturé directement son client malgré un mandat de l'Aide juridique. M^e^ John C. Moore (Toronto) remboursera 3 739,04 $ au Régime après l'avoir accidentellement facturé en trop sur une période de deux ans (frais de déplacement facturés en double, temps d'attente irrégulièrement facturé et chevauchements d'heures).

En août, quatre bénéficiaires ont été déclarés coupables, en cour criminelle, de fausses déclarations. Le Service des enquêtes redoublera d'efforts pour éliminer les personnes qui faussent leur situation financière et, s'il l'estime indiqué, il les dénoncera auprès des procureurs de la Couronne.

Nous vous rappelons que les articles 78 et 79 de la Loi et des règlements vous obligent à signaler toute circonstance indiquant des déclarations inexactes dans les demandes de certificat et tout changement de situation rendant les bénéficiaires inadmissibles à l'aide juridique.

Programme de gestion des causes importantes en matière criminelle

Nous vous rappelons également qu'il existe un programme applicable aux causes criminelles importantes. Il faut obligatoirement prévenir la direction régionale dans les cas suivants, sinon le Régime pourra refuser de payer l'excédent.

– Accusation de meurtre au premier ou au second degré : honoraires et débours dépassant probablement 30 000 $.
– Autres affaires : honoraires et débours dépassant probablement 20 000 $.
– Plus d'un accusé : honoraires et débours dépassant probablement 50 000 $.
– Enquête préliminaire susceptible de dépasser deux semaines.

En vertu du programme de gestion des causes importantes, le certificat est assorti d'un budget, habituellement sous forme d'heures de préparation allouées en fonction de la longueur prévue de l'audition de la cause et de la complexité de l'affaire.

Le programme s'applique aussi, mais de façon facultative, aux causes criminelles graves et complexes de l'ordre de 10 000 $ à 20 000 $, à la discrétion de chaque direction régionale.

Tous les comptes présentés en vertu d'un certificat assujetti au programme devraient porter la mention «Gestion d'une cause importante», pour s'assurer qu'ils sont payés conformément au budget établi, et respecter les exigences du tarif. Chaque élément doit comporter la date et le moment de la journée où le service a été rendu ainsi qu'une brève description de celui-ci. Les comptes de débours des témoins experts et des enquêteurs privés doivent aussi être conformes au tarif.

Nouveaux formulaires de compte

Le Régime n'accepte plus les anciens formulaires d'avocat de service. Il faut se servir des nouveaux formulaires en matière criminelle (formulaire n° 12) et en matière familiale (formulaire n°13), respectivement vert et ivoire, disponibles aux bureaux locaux d'Aide juridique.

L'Aide juridique sur Internet

Le Régime a son propre site Internet à *http://www.legalaid.on.ca*. Le site contient de l'information sur les programmes et les nouveautés intéressant la profession et la clientèle, des renseignements généraux et historiques au sujet du Régime, une mise à jour des adresses et numéros de téléphone des bureaux régionaux et une adresse électronique pour vos questions et commentaires (*info@legalaid.on.ca*). ■

EN PRATIQUE

Vous quittez un cabinet d'avocats?

SI CETTE SITUATION relève avant tout du droit du travail et mérite qu'on demande conseil à un expert en la matière, elle soulève également des questions d'ordre éthique : obligations du cabinet et de l'avocat, traitement des clients, publicité des services, protection, etc.

Lorsque les avocats d'un cabinet s'engagent à offrir des services juridiques à des clients au nom de leur cabinet, on les considère habituellement comme des clients du cabinet. Indépendamment des questions de fond, il serait donc intempestif que l'avocat ou l'avocate qui compte partir se mette directement en contact avec les clients du cabinet sans avoir obtenu au préalable son autorisation. Idéalement, c'est le cabinet qui devrait communiquer avec les clients visés et les informer du départ imminent. Il serait poli de leur donner une idée des projets d'avenir de la personne quittant le cabinet. Si la situation s'y prête, le cabinet peut leur donner l'assurance que d'autres avocats associés au cabinet pourraient reprendre leurs dossiers. Toutefois, si un client ou une cliente tient à ce que son dossier ne change pas de mains, le cabinet devrait obtenir de sa part des directives écrites.

Que les clients aient été prévenus ou non par le cabinet, l'avocat ou l'avocate peut, après avoir quitté, envoyer des cartes publicitaires indiquant sa nouvelle adresse professionnelle. Rien ne s'oppose à ce qu'il avise ainsi les clients du cabinet. Toutefois, cette annonce ne peut contenir que le nom, l'adresse, le numéro de téléphone et de télécopieur de son nouveau cabinet, ainsi que tout renseignement concernant ses nouvelles activités. Il ne peut s'agir en aucun cas d'une offre de services se rapportant à des dossiers en cours ou pour l'avenir, ou encore d'une sollicitation directe auprès des clients de son ancien cabinet. Si, par contre, ce sont les clients du cabinet qui lui demandent personnellement de reprendre un dossier du cabinet ou de continuer à les représenter, l'avocat ou l'avocate peut alors envoyer à son ancien cabinet des directives autorisant le transfert du dossier et des fonds en fiducie en question, signées par le client ou la cliente.

Il est impératif de tenir les clients à l'écart de tout conflit opposant le cabinet à l'avocat. Ils doivent conserver la possibilité de retenir l'avocat ou le cabinet d'avocats de leur choix, tout comme ils ont le droit d'être informés, de manière professionnelle et en temps opportun, du départ de la personne qui veille à leurs intérêts. ■

POINT DE LANGUE

Le zeugme et l'anacoluthe

LORSQUE LA FONTAINE écrit : «Et pleurés du vieillard, il grava sur leur marbre ...», il recourt à une anacoluthe, c'est-à-dire à une «rupture ou discontinuité dans la construction [de la] phrase» (*Le Robert*). Si cet auteur avait tenu à éviter cette rupture, il aurait pu dire, banalement, et en sacrifiant une image forte : «Et les ayant pleurés, il grava sur leur marbre ...».

Et lorsque le procureur de la Couronne affirme que l'accusé «entre et sort de prison comme bon lui semble», il se permet un zeugme. Il s'agit d'une construction malheureuse de termes se construisant différemment qui «peut affecter le genre, le nombre, la syntaxe des compléments ou des propositions» et dans laquelle «le mot sous-entendu n'est pas conforme au terme exprimé» (Henry Moirier, *Dictionnaire de poétique et de rhétorique*). Le procureur aurait pu déclarer que l'accusé «entre en prison ou en sort comme bon lui semble».

L'anacoluthe et le zeugme étaient admis ou même recommandés au XVII[e] siècle. Aujourd'hui encore, ils peuvent conférer une saveur particulière à la phrase et ils ne sont pas uniformément condamnés. Dans *Information et persuasion — Écrire*, Thomas Gergely souligne qu'on retrouve l'anacoluthe dans la correspondance, au stade des formules de conclusion : «Dans l'attente de votre réponse, veuillez agréer ...». Quant au zeugme, *Le Robert* le définit comme une «[c]onstruction qui consiste à ne pas énoncer de nouveau, quand l'esprit peut les rétablir aisément, un mot ou un groupe de mots déjà exprimés dans une proposition immédiatement voisine»; ce dictionnaire cite, à cet égard, Victor Hugo : «L'air était plein d'encens et les prés de verdure».

Le zeugme et l'anacoluthe fautifs relèvent du solécisme, que *Le Robert* définit comme un «emploi syntaxique fautif, de formes existant par ailleurs dans la langue». Mal utilisés, ces procédés cessent d'enrichir le texte, pour entraver la lecture ou semer l'ambiguïté. Ainsi (anacoluthe) : «Après être sorti de prison, les activités criminelles de l'accusé se sont poursuivies.». Il vaudrait mieux dire : «Après être sorti de prison, l'accusé a poursuivi ses activités criminelles». Cette formulation nous aurait évité d'imprimer un changement brusque à la direction de la phrase : il est clair que le sujet de l'infinitif passé est «l'accusé» et non «les activités criminelles». Autre exemple (zeugme) : «La disposition invoquée répond et soulève certaines questions.» L'on devrait dire : «La disposition invoquée répond à certaines questions mais elle en soulève d'autres.». On s'aperçoit ici que des verbes différents commandent souvent l'emploi de prépositions différentes devant le complément. C'est une question à laquelle il faut rester particulièrement attentif en rédaction juridique.

Un pas dans la bonne direction : demandons-nous si les différents membres de nos phrases ont le même sujet (anacoluthe) et quel type de complément — direct, indirect, circonstanciel — et, par conséquent, quel type de préposition, commandent les différents verbes que nous alignons (zeugme). ■

Source : Centre de traduction et de documentation juridiques (CTDJ), Ottawa

DOSSIER TECHNOLOGIE

La seconde vague d'outils pour les juristes

M[e] Jean-Marc A. Ferland

NOUS AVONS TRAITÉ, dans notre dernier article, des logiciels les plus communément utilisés au sein des études d'avocats, soit les applications de traitement de texte, de comptabilité et de recherche télématique auprès des fournisseurs traditionnels. Nous complétons ici ce survol en traitant sommairement des logiciels de «gestion de la pratique» (banques de données), de quelques autres outils et, pour finir, de l'incontournable inforoute.

Les logiciels de gestion de la pratique sont, pour les avocats, ce qu'est le traitement de texte pour les secrétaires juridiques. Une bonne tranche de notre temps est en effet consacrée à discuter avec nos clients ou confrères, à gérer les dossiers ou l'agenda et à colliger ce temps, pour facturer. Tous les avocats ont au moins une liste de clients regroupant quelques renseignements de base pour chaque dossier. La banque de données fournit un levier inestimable par rapport à cette façon surannée de faire.

Elle permet évidemment de rassembler beaucoup plus d'informations utiles, outre les numéros de téléphone, de télécopieur ou de dossier, dont les adresses (électroniques et autres) de tous les intervenants au dossier, et surtout de mémoriser des notes, par exemple en prévision d'un rapport au client. Une fois installé, le logiciel permet bien sûr de faire des recherches, selon n'importe quel critère (le nom du confrère ou d'un expert au dossier, par exemple).

La complexité et la spécificité de notre profession ont sans doute ralenti le développement de progiciels la ciblant plus spécifiquement. Plusieurs d'entre nous avaient d'ailleurs pallié initialement à cette lacune en façonnant, selon leurs propres besoins, un logiciel de banque de données «grand public», tels *Acces* de Microsoft ou *Filemaker Pro* de Claris. Avec l'arrivée du mode multitâches, certains précurseurs ont tiré profit d'autres applications spécifiques à la gestion du temps, à la rédaction automatisée des documents ou à la comptabilité.

Avec le temps, des logiciels de gestion de notre pratique furent développés, dont *Maître*, *Pro Memoria*, *Gestion Légale*, *Juris Concept*, qui allient en français et de façon intégrée la plupart ou la totalité des tâches qui suivent :

- la signalisation, par une seule touche, d'un numéro de téléphone mémorisé, et même, à l'aide de la fonction téléphonique identifiant la personne qui nous appelle, l'accès automatique au dossier du client pertinent (fonction encore très nouvelle), ce qui permet d'amorcer tout de suite le chronomètre intégré pour la comptabilisation du temps et d'accéder au reste des informations résumées au dossier;
- le suivi de l'indispensable agenda, avec des collaborateurs à l'interne si nécessaire, l'administration de dossiers volumineux et à intervenants multiples, via des rappels, la vérification des conflits d'intérêts, des délais de prescription, etc., ainsi que la connexion aisée de l'ordinateur avec l'agenda électronique portatif, pour une mise à jour régulière;
- le suivi et la gestion commune des déboursés et du temps, pour chacun des dossiers, permettant la préparation de divers rapports (productivité, etc.) et de factures modélisables, qu'on peut même importer dans les principaux logiciels de traitement de texte;
- la comptabilité de toute l'étude, y compris le suivi des comptes en fidéicommis (fiducie);
- la rédaction automatisée de documents standard et la préparation facilitée d'envois en nombre.

Il existe, bien sûr, des logiciels distincts et bon marché pour accomplir indépendamment une ou quelques-unes des fonctions énumérées plus haut (voir le guide de l'acheteur 1997 proposé par le *Canadian Lawyer* d'août 1997, pp. 23 et suivantes). Nous proposerons, dans un prochain article, quelques réflexions d'ordre pratique voire philosophique (coûts-bénéfices notamment) quant à l'usage de tels logiciels disparates avec une banque de données «grand public» par opposition aux applications intégrées de gestion de la pratique. Une chose est sûre, peu importe la solution spécifique choisie : investir dans la gestion informatisée rapporte de riches dividendes.

Les technologies de l'information offrent aussi tout un éventail d'autres outils à l'avocat selon ses besoins particuliers. Ainsi, de plus en plus d'éditeurs juridiques nous offrent leurs produits sur disque optique (CD-ROM). Ce média de stockage, étonnamment puissant avec la technologie DVD, rend le «livre» vivant. Outre qu'il permet de puissantes recherches dans des recueils considérables de droit, il offre aussi l'option de copier ou d'adapter ces textes (jurisprudence, formulaires de procédure, etc.) à nos documents. Publications Ontario offre d'ailleurs les lois et règlements de l'Ontario en format bilingue sur CD-ROM.

Investir dans la gestion informatisée de la pratique rapporte de riches dividendes

Ces sources du droit s'appuient généralement sur des progiciels de recherche «plein texte» (Folio, Naturel, etc.) aussi disponibles pour la gestion documentaire d'une étude d'avocats. Les chiffriers (*Excel*, *Lotus*, *Quattro Pro*), quant à eux, sont fort utiles pour élaborer des tableaux de calcul impliquant plusieurs variables, dont des taux d'intérêts ou des loyers fluctuants et cumulatifs. L'essor des communications a aussi servi aux juristes, notamment via le télécopieur-modem, pour profiter du télétravail et ... de la vie, sans être confiné au bureau !

Les communications digitales et l'inforoute constituent justement, tout comme les futuristes l'avaient anticipé il y a presque trente ans, l'élément déclencheur du raz-de-marée informatique actuel, et de cette révolution déjà irréversible de notre façon de pratiquer le droit. À ce sujet, nous sommes d'avis que le courrier électronique représente le plus beau joyau de l'inforoute pour notre pratique. L'attrait de cet outil, aussi appelé «courriel», provient notamment de sa facilité d'utilisation, de sa rapidité d'exécution, du fait que, pour un accès de base de quelque cinq dollars par mois, l'on peut recevoir et expédier à travers le monde un ou des dizaines de messages simultanément, même des documents complexes de tous types et sous forme électronique, donc remaniables par le destinataire. Un parallèle évident se dessine entre la croissance fulgurante du courriel et l'avènement du télécopieur, à la fin des années 1980, qui a pris tout le monde par surprise. N'attendez pas d'être les derniers à être «branchés», surtout que nos clients le sont depuis longtemps et ont même leur site Web, sorte de vitrine virtuelle accessible via l'Internet.

Ce réseau global d'ordinateurs et de sous-réseaux offre à l'avocat une quantité phénoménale d'information de tous genres. En fait, cette pléthore de documents ou de «sites» constituait justement pour l'Internet un certain handicap pendant ses années de démarrage, en dépit du fait qu'il existe depuis longtemps des outils puissants pour aiguiller les recherches. Jusqu'à récemment en effet, notamment à cause de difficultés techniques reliées au paiement électronique en ligne, l'Internet reposait sur une philosophie de dissémination gratuite de l'information. Or, sur l'inforoute, ce qui est gratuit n'est pas nécessairement dépourvu de valeur, bien au contraire. Ainsi, le recherchiste peut y trouver de riches sources jurisprudentielles et statutaires, dont les arrêts de la Cour Suprême et d'autres tribunaux canadiens, ainsi que la législation fédérale.

Or, le Web actuel évolue encore à une vitesse fulgurante, et sa vocation initiale se diversifie, allant de la mise en marché actuelle ou pressentie (sous forme multimédia) à d'éventuelles consultations par vidéo-conférence ou à la livraison (et la facturation) à distance d'autres services juridiques. Ainsi l'Internet, d'abord garni de façon sporadique et mal perçu, acquiert sa maturité de façon extrêmement rapide. Il devient pour le monde juridique une des composantes incontournables de la dissémination et du transport de l'information.

L'informatique juridique regroupe donc plusieurs outils qui s'imbriquent : quincaillerie (lecteur CD, modem, etc.), logiciels, voire contrats de services (accès Internet ou télématique). Les experts s'entendent pour «condamner» les praticiens à recourir à la technologie de l'information, heureusement devenue abordable et conviviale. Dans un prochain article, nous proposerons certaines réflexions réalistes sur l'opportunité d'investir temps et argent pour tenter de rattraper ce train en marche, ou de suivre sa course effrénée.

Me J.-M. Ferland (ferland@megalegal.com, http://www.megalegal.com/ferland) pratique le droit commercial, immobilier et international à Montréal. Avocat plaideur, il s'implique dans l'informatique juridique depuis une douzaine d'années, ayant notamment été président de l'AQDIJ.

Le Réseau francophone des cliniques juridiques de l'Ontario

Me Michel Landry

AU PRINTEMPS DE 1995, un groupe de juristes travaillant dans les cliniques juridiques communautaires décide de former un regroupement provincial dans le but de «réseauter» et d'établir l'infrastructure nécessaire pour veiller aux besoins de la clientèle francophone de l'Ontario. C'est ainsi que naît le Réseau, association rassemblant plus d'une vingtaine de cliniques juridiques en province. Cétait une des façons de répondre au rapport du Professeur Marc Cousineau, mandaté par le ministère du Procureur général, sur les lacunes de l'accès à la justice des francophones de l'Ontario.

Le Réseau a pour but d'améliorer et de promouvoir les services offerts par les cliniques juridiques à la population franco-ontarienne.

Il existe 74 cliniques communautaires et six cliniques étudiantes dans la province. Créées pour venir en aide aux personnes démunies, les cliniques fournissent divers services : informations sommaires, représentation, éducation, organisation communautaire. Elles oeuvrent aussi en faveur de la réforme du droit.

Sur 80 cliniques, près de 55 sont situées dans les régions désignées par la *Loi sur les services en français*. Plus de 25 cliniques offrent un certain niveau de service en français. Certaines ne font que dispenser des conseils sommaires, d'autres offrent toute la gamme de services en français.

Le Réseau, quant à lui, fait porter ses efforts sur la création de documentation juridique pour les intervenants et intervenantes, la production de matériel éducatif et communautaire et la recommandation de mesures de réforme pour améliorer les services en français devant les tribunaux administratifs de la province. La formation des membres joue aussi un rôle important.

Le but ultime du Réseau est de s'assurer que, dans l'Ontario français, les personnes démunies ont accès à des services juridiques dans leur langue.

Les buts et objectifs du Réseau sont les suivants :

1. Établir et faciliter la communication entre les francophones concernés par la problématique des cliniques juridiques communautaires.
2. Déterminer les questions, besoins et dossiers prioritaires de la clientèle francophone et développer des stratégies en vue de répondre aux besoins identifiés.
3. Promouvoir le développement de services en français au niveau des cliniques juridiques communautaires.
4. Servir de porte-parole auprès des autorités compétentes afin de promouvoir les intérêts des francophones au sein des cliniques juridiques.
5. Rassembler, identifier et créer des ressources matérielles (modèles, logiciels, etc.) qui faciliteront la mise en oeuvre des services juridiques.
6. Développer de façon concertée des outils de travail, des matériaux de formation et d'éducation communautaire en français pour les cliniques.
7. Donner de la formation en français aux intervenantes et intervenants juridiques.

Le Réseau a créé des documents juridiques et des lexiques en français, notamment dans les domaines de l'assistance sociale et de la location immobilière. Il a organisé des sessions de formation en rédaction juridique. C'est un organisme actif et dynamique.

Me Michel Landry est le nouvel avocat directeur de la Clinique juridique communautaire de l'Université d'Ottawa. Il a dirigé la Clinique de Prescott et Russell (Hawkesbury) durant plus de cinq ans. Il vient de recevoir l'Ordre du mérite, à l'occasion du bicentenaire du Barreau du Haut-Canada, pour son travail communautaire.

PERSPECTIVE

On reviving the royal warrant

By Brian Bucknall

FINDING THE ARTICLE, "Do Good Lawyers Need Silk Robes?" in the recent edition of the *Ontario Lawyers Gazette* (Jul/Aug 1997, p. 19) was a distinct, and distinctly unpleasant, surprise. It was a bit like meeting Huck Finn at his own funeral. I thought this idea was well and truly dead.

Some years ago, one of my colleagues took a provincial appointment as Queen's Counsel. As was the custom, I sent him a letter of congratulation. I told him how charming it was to find that he had taken the royal warrant. It was a distinction he shared with Fortrum & Mason's plum puddings and Ballantine's scotch, two other of my favourite things.

For that is what the QC designation is, a royal warrant. It is a shortened version of the standard formula found in tiny script under royal crests on various commodities. The silk gown might as well have embroidered on its collar "By Appointment to Her Majesty the Queen, Purveyors of Legal Counsel".

The QC designation does have its own history. As the article's author pointed out, Sir Francis Bacon was one of the earliest, if not the earliest, person to enjoy this designation. He enjoyed the designation, however, because he did offer counsel to Her Majesty (Elizabeth I, in that case) on points of law and policy. (There is no historical evidence that the Queen honoured him for his services as an advocate in her courts.) Sir Francis' successors are, of course, Attorneys General and Solicitors General throughout the Commonwealth.

Exactly how and why the QC designation was wrenched loose from its functional foundation and turned into a professional ornament has never been clear. It is not even clear why the members of the legal profession should have hankered after the honours prized by tradesmen. Other professions have not been so moved. There are no "Queen's Surgeons", Queen's Dentists" or "Queen's Accountants".

> QC's share a distinction with various commodities

By some lights, the traditions of the profession would have dictated the opposite response. Lawyers are famously the adversaries of Her Majesty's governments in all of their incursions on the lives of citizens. One might have thought that the independence of the Bar would suggest a disdain for the marks of special favour which a government might, from time to time, grant or withhold.

For whatever reason, the QC designation has persisted, and even thrived, in the more traditional jurisdictions. It is well to remember, however, that in places like England and Australia the customs of the bar have made "taking silk" a risky enterprise. In those jurisdictions barristers must always be instructed by solicitors and the barrister who wears silk must always be assisted by a junior barrister. The litigant who opts to be represented by a QC is paying at least three sets of legal fees in order to be heard. A lawyer electing to take the royal warrant in such jurisdictions must be very confident of his or her clientele.

All of this is, to say the least, quaintly archaic in the North American context. In a world where the costs of even commonplace litigation are considered to be beyond the reach of any client other than a corporation or a person of wealth clinging to such outmoded symbolism seems tasteless.

The customs of the bar have managed to keep the QC designation within its traditional bounds in other jurisdictions. This has never been the case in Canada. Didn't we all get tired of the annual list (usually over 100 long) of Ontario lawyers who had caught the provincial government's eye and on that basis claimed the royal warrant? A senior and experienced lawyer might know 20 per cent of the names on the list. Among that group would be people he or she held in the highest regard as well as people whom he or she had learned to treat with great caution.

What we have now, instead of QC's, is a system of honours administered by the profession, in the interests of the profession and without the fear or favour of the political realm. The Law Society's medals (perhaps five a year), the Bar Association's Award of Distin-

guished Service (also up to five a year), the Advocates Society medal (one a year), the Law Foundation's Guthrie Medal (one a year) are honours which are widely recognized and, in my experience, universally celebrated. I have never encountered a member of the profession who could criticize a recipient of any of those marks of distinction.

The idea that, as the article suggests, Queen's Park is "conducting a review of the suspended practice" which "could possibly lead to its return" fills me with horror. Who, after a 13-year hiatus, should the government honour? Should the appointment be made to five or 10 people in each year in recognition of outstanding service – thereby inflating outrageously the qualifications of the existing legion of QC's? Should the old practice of offering 100 or more a year be reinstated with some acknowledgement of the passage of time? (Imagine a list of 1,300 QC's on New Year's Day 1998.) Should we return to the tradition of honouring barristers only? Does anyone still imagine that the deliberations of courts and the arguments of advocates are the final and highest definition of our profession's contribution to society?

If this is, as it appears to be, a trial balloon, it should be pricked (pop!). The Queen's Counsel designation is dead in Ontario and should remain so. Away with it (be off!). ■

Mr. Bucknall is a partner at Osler, Hoskin & Harcourt in Toronto.

A tradition of providing legal services "for the good"

By Wilfred Popoff

ASK ANY MEMBER OF THE public about free legal services and you'll soon be involved in a conversation about the current state of legal aid. Ask a lawyer the same question and most likely you will be apprised of the virtues of *pro bono* legal work.

While it is government-sponsored legal aid that currently occupies the public spotlight, *pro bono* or free legal service has been around for as long as there have been lawyers. And when governments got into the business of paying lawyers to attend to the poor more than a quarter of a century ago, it did not put an end to *pro bono* practice. Most lawyers regard *pro bono* work as a professional obligation, an ethical imperative. In Canada the value of such work may reach $200 million annually.

In 1950, the Law Society of Upper Canada (LSUC) established the first legal aid program in this province entirely with donated work, without the aegis of government or the use of any public money. It wasn't until 1967 that the province got involved.

There was some professional opposition when the LSUC proposed organizing and implementing legal aid. Not because lawyers feared they would be directed by their governing body to donate services, but because they saw no need for an organized legal aid strategy; existing, informal *pro bono* arrangements were adequate, they felt.

During the Depression, Ontario lawyers had provided voluntary legal aid to the many destitute. In the war that followed, the LSUC supported a Canadian Bar Association (CBA) project to provide *pro bono* legal advice for soldiers and spouses. It continued for several years after the war. Once the formal structure of the war-time program had established itself in the public consciousness it was difficult to abandon. Moreover, the CBA passed a resolution in 1947 saying it was the legal profession's collective responsibility to provide services to those who couldn't afford them and that it was up to provincial law societies to make all this happen.

The resolution was one of several promoting *pro bono* work the CBA would pass in the years ahead and it was expressing what is strongly rooted in the ethical code of the legal profession, whether in Canada, the United Kingdom or the United States. Traditionally, lawyers have postulated professional services must be provided where needed, regardless of the economic circumstances of a defendant or litigant.

Whose obligation is it to provide legal representation?

Go back far enough in history and you will find that even current billing practices of lawyers were once held to be unethical. In Sir William Blackstone's 18th-century England, a barrister could "maintain no action for his fees." An honorarium could be accepted, but only as a gratuity; a counsellor could not demand an honorarium without "doing wrong to his reputation." The famous jurist and legal commentator said barristers must follow the example of their professional antecedents, the ancient Roman orators, who did not charge their clients.

More recently lawyers have been inspired by constitutional rights to legal representation. Canada's *Charter of Rights and Freedoms* states: "Everyone has the right on arrest or detention to retain and instruct counsel without delay." On this point the 1982 *Constitution Act* reflects the 1960 Canadian *Bill of Rights*.

But whose obligation is it to provide legal representation,

the government's or the legal profession's? Most people will say it's the government's, and invoke its obligation to adequately fund legal aid programs. But there was no government-sponsored legal aid when the Canadian *Bill of Rights* was passed in 1960. This debate has raged longer in the United States where right to counsel is enshrined in its *Bill of Rights*, passed at the first session of Congress.

In this decade, Canadian lawyers have become more conscious of their *pro bono* obligations because of the work of the Young Lawyers Conference (YLC) of the CBA. In 1991, the YLC was instrumental in getting the CBA's National Council to pass another resolution encouraging more *pro bono* work by all lawyers. (It had passed two similar ones in the 1980s.) A second part of the 1991 resolution urged law schools, law societies and law firms to implement policies recognizing the value of *pro bono* work.

A 1996 plan to present yet another resolution to the CBA that would recommend lawyers perform a minimum number of *pro bono* hours a year was abandoned. It was felt it too closely emulated a 1990 American Bar Association rule of conduct which says every lawyer should aspire to 50 hours of *pro bono* work a year. Instead the YLC published an editorial in its newsletter urging the CBA to challenge Canada's 100 biggest law firms to contribute between three and five per cent of their billable hours to *pro bono* service.

As well, back in 1994 , the YLC and its parent body established a juried national annual award to recognize *pro bono* service, and winners usually have exceeded the 50-hour U.S. standard, although this isn't the only criterion by which they're chosen.

A person who has been involved in these projects for most of this decade is Tom Ullyett, a lawyer with the Yukon department of justice. Ullyett served on the YLC's national executive from 1991 to August of this year. He says a great deal of inspiration to advance *pro bono* work came from a speech by Mr. Justice John Major of the Supreme Court of Canada to a CBA meeting in 1994. He reminded lawyers of their professional responsibility to assist people who cannot otherwise afford legal services. By a coincidence the *pro bono* award was begun the same year, but it was in the works before Mr. Justice Major's address.

Ullyett says no one knows the amount of pro bono work done in Canada, but conservatively estimates it to be at least equal to the two per cent claimed by American lawyers. With most Canadian lawyers billing a minimum of 1,500 hours a year, it would amount to 30 hours, worth $3,000 at a rate of $100 an hour. There are more than 65,000 lawyers in Canada so that works out to at least $195 million; it's easily much more than that.

To be called *pro bono* work there must be an intent by the lawyer to provide a service without an expectation of a fee, says Ullyett. That means an unpaid bill can't simply be moved into the *pro bono* account. As for the quality of pro bono service, Ullyett says it is no different than paid work. "I haven't seen any indication of lawyers cutting corners. After all, their name is on the product. It all goes back to their code of conduct."

Mr. Popoff is a freelance writer and editor.

Grace Marks murder trial captivated Upper Canada

Our publication of today is stained by an account of one of the most atrocious, diabolical acts that ever disgraced this or any other country. The murder of a master by two of his servants, preceded by that of a fellow servant in order to clear the way for the final accomplishment of their bloody intentions. This double murder was committed for the purpose of possessing themselves of the property of the man whose bread they had eaten - the shelter of whose roof they had shared!!

The Toronto Star & Transcript
August 2, 1843

THUS BEGAN THE PRESS coverage of one of the most sensational murder cases of 19th century Ontario, revived in Margaret Atwood's latest book *Alias Grace*. Serious crimes were not common in Upper Canada in the 1830s and 1840s and the criminal calendar of the assizes was often light. In the 1840s an average of only 100 prisoners a year were sent to the penitentiary in Kingston, more than half of them with convictions for simple larceny. What made this a particularly heinous crime was the fact that it was a direct attack on the moral order. By killing their master and stealing his property, the accused were shaking the foundations upon which Upper Canadian society rested.

On July 23, 1843, just outside of the village of Richmond Hill, Grace Marks and James McDermott killed Thomas Kinnear, their master, and Nancy Montgomery, Kinnear's housekeeper and mistress. Montgomery was killed while Kinnear was in town for business. She suffered an axe blow at the back of the

Chief Justice John Beverly Robinson, who had been treasurer of the Law Society in the 1820s, presided at the trials in 1843.

head, but died of asphyxiation, strangled with Marks' handkerchief. Kinnear was killed when he returned later that day. He died of a gunshot wound to the chest. Marks and McDermott packed the house's valuables in the victim's wagon and fled to Toronto. There they caught a steamer to Lewiston, where they were apprehended. The prisoners were brought back to Toronto and incarcerated in the city jail.

While the bodies of the victims were studied by the coroner's jury, the prisoners were examined in a crowded City Hall by the mayor and a number of magistrates constituted as a grand jury. The examination lasted until late in the afternoon, at which point the witnesses were bound over to appear at the trial. The accused were remanded while awaiting the verdict of the Coroner's jury. The jury returned a verdict of " wilful murder" on the deaths of both victims.

The grand jury was so distressed by the crime that the mayor petitioned the government to issue a Special Commission for the trial of the prisoners rather than wait for the next assize. He argued that in this unprecedented case it was essential to make a strong impression on the public mind by expediting the trial and punishing the culprits. In 1843, Commissions of Assizes were issued twice a year and the mayor would have had to wait until the court reached Toronto on its circuit around the province. The request was denied.

A huge crowd assembled on November 3 to watch the trial proceedings. Around noon, the prisoners were brought into the courtroom. Both pleaded "not guilty." Kenneth McKenzie, the defence counsel, made some remarks on the charges and demanded that the accused be tried separately, which was granted. James McDermott faced the court first. During the reading of the indictment, a rumour that the floor of the courtroom was collapsing triggered a rush for the door.

The Hon. William Hume Blake represented the Crown as Acting Queen's Counsel at the trials of McDermott and Marks. (LSUC Fine Art Collection, #255)

The alarm proved unfounded and as the commotion subsided, William Hume Blake, on behalf of Attorney General Robert Baldwin, opened the case. Twelve witnesses, including the coroner and the high bailiff were called.

Halfway through the testimonies, the din in the room was so great that the reporter of the *Star & Transcript* had to give up and rely on the notes of a colleague with a better seat. Mr. McKenzie then addressed the jury for the defence. Mr. Blake concluded with a short speech. Chief Justice John Beverly Robinson summed up the evidence. The jury retired and returned, 10 minutes later, with a verdict of "guilty." James McDermott was sentenced to hang on November 21, 1943. The trial had lasted over 12 hours.

Grace Marks was tried the next day. The evidence was essentially the same. Many of the witnesses testified to the good character of the accused and the defence argued that Marks had been intimidated into taking part in the crimes. The jury was not swayed and returned a verdict of "guilty," although it recommended mercy on the grounds of her youth (she was 16), the "weakness of her sex" and a presumed lack of judgement. Marks was condemned to death. Her lawyer's persistence and public petitions led to the commutation of her sentence. She entered the provincial penitentiary in Kingston on November 19, 1843. McDermott was executed at noon, November 21, 1843, at the New Gaol.

Only the murder of Thomas Kinnear was tried. The death sentence imposed on McDermott and Marks eliminated the need for an additional trial. In 1872, after almost 30 years in confinement, Grace Marks was pardoned. Nancy Montgomery and Thomas Kinnear lie in unmarked graves in the Presbyterian churchyard in Richmond Hill. ■

MEMBERSHIP

Discipline Digest

SEVEN MATTERS PROCEEDED before Convocation on September 25, 1997. Convocation ordered one disbarment, four suspensions, and administered two reprimands. Four other matters were adjourned to be heard at a later sitting of Convocation. Scott K. Fenton offered his assistance as Duty Counsel.

In July 1997, there were 43 hearing days and 3 hours on which discipline matters proceeded before hearing panels of Benchers of the Law Society. Discipline matters proceeded before hearing panels on 29 hearing days in August 1997.

UNGOVERNABILITY
Hovland, David Samuel

Toronto, Ontario
Age 44, Call to the Bar 1992
Particulars of Complaint
Professional Misconduct

- Practised while under suspension (2);
- Failed to cooperate with the Law Society by not producing his books and records for the purpose of an examination;
- Failed to file his Forms 2/3 with the Society.

Convocation's Disposition (09/25/97)

- Disbarment

Discipline Record

- On April 27, 1995, the Solicitor was reprimanded in Convocation and ordered to pay $250 in costs for failing to file since his call to the Bar in February 1992;
- On May 23, 1997, the Solicitor was suspended for two months and ordered to pay $500 in costs for practising while under suspension.

Counsel for the Solicitor
Not Represented
Counsel for the Law Society
Glenn M. Stuart

MISAPPLICATION OF FUNDS
Dingle, John Rorie

Toronto, Ontario
Age 54, Called to the Bar 1973
Particulars of Complaint
Professional Misconduct

- Failed to reply to the Law Society regarding a complaint;
- Failed to fulfill a financial obligation for agency services incurred in connection with his practice;
- Misapplied the sum of $224.20 which was paid to him by the Ontario Legal Aid Plan in relation to an agency account from another solicitor.

Hearing Panel's Recommendation (05/16/97)

- Reprimand in Convocation provided he paid all accounts owed for agency services provided by the other solicitor before matter reaches Convocation, failing which a suspension for one month definite to continue indefinitely until accounts are paid and he produces for examination by the Law Society required books and records, obtains a medical report that he is fit to return to practice, completes all required filings, and complies with his prior Undertaking to a Discipline Committee to pay $500 in costs.

Convocation's Disposition (09/25/97)

- Suspension to commence forthwith for one month definite and to continue indefinitely thereafter until account owed for agency services is paid by the Solicitor. (Solicitor did not satisfy the agent's account prior to Convocation. Convocation omitted remaining conditions as they were the subject of an existing order of Convocation.)

Discipline Record

- On July 4, 1984, the Solicitor was reprimanded in Convocation for failing to serve a client, failing to co-operate with the Law Society, and practising while under suspension;
- On March 10, 1994 the Solicitor was reprimanded in Committee for failing to file his forms 2/3 for the fiscal year ending May 31, 1992;
- On October 11, 1995, the Solicitor was suspended for six months, and indefinitely thereafter until certain conditions were satisfied, for failing to make the requisite annual filings, failing to honour a financial obligation, breaching an Undertaking to the Law Society, failing to co-operate with an audit of his books and records, and practicing while under suspension.

Counsel for the Solicitor
Not Represented
Counsel for the Law Society
Glenn M. Stuart

ACTING IN A CONFLICT OF INTEREST
German, Seymour Elliot

Toronto, Ontario
Age 55, Called to Bar 1968
Particulars of Complaint

Is your contact information current?

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

- Mail: Accounting/Membership Department, Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto ON, M5H 2N6
- Fax: (416) 947-3916
- Phone: (416) 947-3318
- E-mail: records@lsuc.on.ca

Professional Misconduct

- Acted in a conflict of interest in respect to a number of mortgage transactions by failing, among other omissions, to disclose to investor clients that he was also acting for the mortgagor;
- Personally guaranteed clients' investments in a mortgage (2);
- Failed to maintain necessary books and records;
- Failed to reply to the Law Society regarding deficiencies in his annual filings;
- Failed to file his Forms 2/3 with the Society.

Convocation's Disposition (09/25/97)

- Suspension for one month to commence October 1, 1997;
- Solicitor prohibited from acting for both sides of a real estate transaction involving a private, non-institutional mortgagee and mortgagor in the same transaction.

Counsel for the Solicitor
Theodore Kerzner, Q.C.
Counsel for the Law Society
Jane Ratchford (at Committee)
Glenn M. Stuart (at Convocation)

CONDUCT UNBECOMING
Brown, Edmond O'Donoghue

Brampton, Ontario
Age 54, Called to Bar 1975
Particulars of Complaint
Conduct Unbecoming

- On October 15, 1992, the Solicitor was convicted of the offence that he, between March 22 and October 4, 1991, willfully attempted to obstruct the course of justice. While representing a person known to him to be Cameron Alphonso Mitchell, charged under the name Donovan Flynn, with the offense of aggravated assault and possession of an offensive weapon in the Ontario (Provincial Division), he held out to the court that Cameron Alphonso Mitchell was Donovan Flynn, contrary to the *Criminal Code of Canada*, section 139(2).

Convocation's Disposition (09/25/97)

- Reprimand in Convocation;
- $3000 in costs.

Counsel for the Solicitor
Edward Greenspan, Q.C. (at Committee)
Edward Greenspan, Q.C.
& Andrew Matheson (at Convocation)
Counsel for the Law Society
Christina Budweth

FAILED TO PRODUCE BOOKS, RECORDS, AND OTHER DOCUMENTS DURING A LAW SOCIETY INVESTIGATION
Crozier, Karen Lea

Toronto, Ontario
Age 44, Called to the Bar 1991
Particulars of Complaint
Professional Misconduct

- Failed to cooperate with the Law Society by failing to provide books, records and client files of her practice for examination;
- Failed to reply to the Law Society regarding inadequacies discovered in her books and records.

Hearing Panel's Recommendation (05/21/97)

- Reprimand in Convocation if she provides corrected client cards by the date the matter is heard by Convocation, failing which suspension for one month fixed and thereafter indefinitely until compliance;
- $2000 in costs to be paid over a period of six months commencing from the date of Convocation's imposition of penalty.

Convocation's Disposition (09/25/97)

- Reprimand in Convocation (Solicitor produced client cards prior to Convocation)

Counsel for the Solicitor
Not Represented
Counsel for the Law Society
Jane Ratchford (at Committee)
Rhonda Cohen (at Convocation)

REPORT TO CONVOCATION UNDER SECTION 35
Ledwon, Jane Ann

North Bay, Ontario
Age 36, Call to Bar 1993
Disposition of Convocation (09/25/97)

- Pursuant to section 35 of the *Law Society Act*, suspension until Convocation is satisfied by a Committee of Convocation, that the Solicitor is no longer incapable of practising law.

Counsel for the Solicitor
Charles C. Mark
Counsel for the Society
Georgette Gagnon (at Committee)
Lesley Cameron (at Convocation) ■

Membership Suspensions & Reinstatements

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

ANNUAL FEE REINSTATEMENTS

BLAKE Carol Mary	1989	ON
BLAKE Sandra Leah	1992	Toronto ON
FELD Alan Harold	1989	ISRAEL
FROST John Francis Anthony	1984	Toronto ON
GOSBEE Douglas Christopher	1993	Scarborough ON
HUNKING Lowell Charles	1989	Huntsville ON
JENNESS Craig Andrew	1988	Osgoode ON
KATCHEN Bernard David	1979	Toronto ON
LAMBO Donald Van	1979	USA
LAVEAUX Franck	1994	Ottawa ON
LEHMAN Joel Howard	1995	Toronto ON
MACKIE Lora Lynn	1994	Little Current ON
MARTIN James Ralph	1991	Harrow ON
MILLAR Douglas Robert	1989	Toronto ON
NOVAK Wayne Sydney	1978	Thornhill ON
PICARD Claude Joseph	1984	Toronto ON
SMITH Ainslie Linell	1988	Barrie ON
VUJICIC Jovo	1995	Hamilton ON
WALTER Bernd	1973	Victoria BC
ZAMBELLI Maria Pia	1988	Cote St-Luc, PQ

E & O LEVY REINSTATEMENTS

CROOKS Darlene Yvonne Paula	1991	Peterborough ON
LINGL Michelle Lee	1988	Toronto ON
THAM Ping Sheung	1973	Richmond Hill

Pilot project deals with filing-extension applications

THERE ARE CURRENTLY no provisions in Law Society legislation, regulations, rules or policies that enable the granting of extensions of time for lawyers to file their "Private Practitioner Form" and "Public Accountant's Report to Lawyer." Subsection 16(2) of Regulation 708 simply states that lawyers must make their filings "within six months from the termination of his or her fiscal year..."

However, the Law Society receives a number of requests for deadline extensions every year. At the September meeting of Convocation, this issue was addressed by the implementation of a one-year pilot project that provides for a formal application process. Some of the highlights of the pilot project are:

- a formal form (Application to Extend Filing Deadline) has been developed, which is to be completed by applicants and supported by a copy of the trust comparisons of the month-end most recent to the application;
- the member is required to provide an undertaking that (s)he will make the required filings within the extension period granted and will, during the period of the extension, remit monthly trust comparisons;
- requests will be considered by benchers (the Chair or Vice-Chairs of Discipline) on the recommendation of Law Society staff; and
- guidelines will be developed and adopted to ensure consistency of application.

Members should note that the granting of an extension will be an exceptional occurrence and should not assume that an extension will be given as a matter of course. Applications should be made on a timely basis and well in advance of the filing due date. Note that there is no ability to waive the requirement to file.

Additional information can be obtained through Law Society Forms Services (416-947-3932). The Law Society web site (*www.lsuc.on.ca*) will also be updated to contain more information and the applicable forms for down loading. ■

FYI

Notices to the Profession

Graduate Placement Service

The service for the placement of graduates of the current Bar Admission Course will commence Tuesday, October 1, 1997. Those wishing to employ graduates upon their call to the bar in February, 1998 should write to:
The Placement Office
Education Department
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario M5H 2N6
FAX (416) 947-3403
Letters should contain as complete particulars as possible of the position available including: the number of lawyers in the firm; the firm's areas of practice; a full description of the work the graduate will be expected to handle; and the name of the lawyer who will receive applications.

The articling and professional placement services continue to operate from the Placement Office. Those with articling vacancies for the current term and the 1998-1999 year and those seeking lawyers with experience at the bar may list with the Society's placement service by writing to the address noted above.

Elliott Rapheal Pepper Memorial Trust

Friends and colleagues of Elliott Pepper have established a memorial fund to commemorate his significant contributions to the profession, particularly in the area of family law. Members of the profession wishing to honour the memory of Elliott Pepper by contributing to a commemorative project in legal education may do so in care of the Law Society Foundation.

Tax deductible contributions to the Elliott Rapheal Pepper Memorial Trust should be sent to:
The Law Society Foundation
c/o Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6
Attention: Mimi K. Hart

Members of the committee establishing this Trust are: Philip M. Epstein, Q.C., Thomas Bastedo, Q.C., A. Burke Doran, Q.C., Malcolm C. Kronby, Q.C., Stephen M. Grant, Gerald P. Sadvari and Jack M. Straitman.

The Law Society Foundation (Foundation) is a charitable organization (distinct from the Law Foundation of Ontario) incorporated in 1962 by letters patent. The objects of the Foundation include receiving donations and maintaining funds to be used for the benefit of the legal community through the fostering, encouraging and promoting of legal education in Ontario.

Re: Mid-term Articling Evaluations

Principals and Students are reminded that mid-term articling evaluations will be distributed to both students and principals in late October. Each principal and student must complete and submit the evaluation form by February 1, 1998. The mid-term evaluation assist students and principals to monitor the student's progress toward the educational objectives set out in the education plan and to identify areas that need to be focussed on in the remaining months of articles.

If you have any questions regarding the mid-term evaluation process, please contact:
Zelia Pereira
Articling Co-ordinator
The Articling Office
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6
(416) 947-3445 or
Toll Free at 1-800-668-7380
e-mail: zpereira@lsuc.on.ca ■

OBAP

This lawyer will be missed

A LAWYER IN MY office building died recently. You may have read the obituary in the newspaper. You probably didn't know that he took his own life, leaping from a building onto Dundas Street. I read the eulogy delivered by his rabbi and learned a little about the man I had met on the elevators in my building. I had been concerned about this lawyer for several years. He was often vague and distant and he had a harsh temper, even with me, a friendly passer-by. Sometimes, he smelled heavily of liquor, even first thing in the morning. I knew he was in trouble. I sent him a notice inviting him to a meeting of our lawyers Alcoholics Anonymous meetings which just happens to be in our boardroom on the first Thursday of every month. He never came. I tried chatting in the hallways but he walked away. Everything about him told me that he wasn't ready for help or to talk about his loneliness and isolation. Most days I was far too busy to give this stranger any further thought. Since his suicide, however, I have given a lot of thought. I know that most suicide is preventable, that most people give warning signs of their plan to kill themselves, and that anyone, like you or me, can help prevent such a death. If this poor man had called a suicide distress centre or the Ontario Bar Assistance Program (OBAP), he might have found the support he needed to face life on life's terms. From his eulogy, I learned that he had a chronic bone disease and he had been in great distress for some time. I also learned that he was a kindly and giving man who is much missed by his family, colleagues and clients. I suspect that I am one of many who wishes he hadn't died.

The Ontario Bar Assistance Program is a sponsor of the CBA's Legal Profession Assistance Conference *National Workshop in* Toronto on October 17 and 18, 1997. The first session of the Conference is on suicide prevention.

News you can use?

For the Ontario Lawyers Gazette to stay relevant, it needs feedback and contributions from its readers. Members are encouraged to submit articles, letters, story ideas, photographs or any other content they believe will be of interest to their colleagues. Contact information is in the masthead on page three.

Lawyers die by suicide at a rate that is twice that of the general population. It is time we all learned to respect and cherish each other as lawyers and as people . I plan to go to the Conference and learn about suicide prevention. If I don't reach out to another lawyer who is suffering, who will?

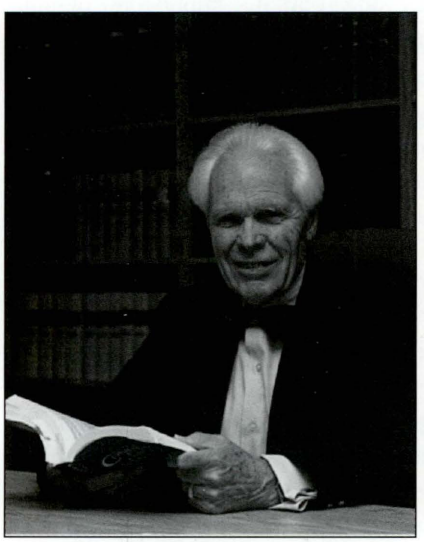
If you or someone in our profession needs help, call OBAP @ 1-800-667-LPAC. OBAP is not part of the Law Society and is totally confidential. ■

Ontario lawyer receives advocacy award

W. GLEN HOW, Q.C., was presented the Award for Courageous Advocacy from the American College of Trial Lawyers at its recent conference in Vancouver.

Mr. How, who practises in Georgetown, began his career in 1943 fighting for basic freedoms of religion and speeech. He has been a trial lawyer and general counsel for Jehovah's Witnesses in Canada for more than 50 years.

The Award for Courageous Advocacy has been granted only 10 times since it was created in 1964. It is given to lawyers who have shown outstanding courage in defending unpopular causes and often difficult cases.



W. Glen How, Q.C. is the first Canadian to receive the Award for Courageous Advocacy.

Looking for Law Society information?

www.lsuc.on.ca

Correction

The e-mail address for subscribing to the Supreme Court of Canada's mailing list is lyris@listserv.scc-csc.gc.ca. An incorrect address appeared in an article in the July/August issue. The Gazette regrets any inconvenience this error may have caused.

The Research Facility

OLAP LSUC

Suite 404, 375 University Avenue
Toronto, Ontario, Canada M5G 2G1
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Facsimile: (416) 979-8946
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NEW THIS ISSUE

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CRIMINAL LAW MEMORANDA

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(P) PROCEDURES **(S) SENTENCE**

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E1-7 $70 Young Offenders (61)
E1-8 $50 Statements by a Co-Accused (16)
E1-9 $50 Voir Dire - Calling All Police Present (8)
E1-10 $50 Voir Dire - Cross-Examination of Accused (18)
E1-11 $50 Res Gestae Statements (10)
E1-12 $70 Charter of Rights (90)
E1-13 $50 Tainting Doctrine (18)
E1-14 $50 Voluntariness - Interrogation (15)
E1-15 $50 Impaired Accused-Alcohol and Drugs (11)
E1-16 $50 Accused's Own Statements (21)
E1-17 $50 Voluntariness - Oppressive Circumstances (25)
E1-18 $50 Persons in Authority (24)
E1-20 $50 Accused Denies Making Statement (7)
E1-21 $50 Mentally Disabled Accused (15)
E2-1 $70 **Similar Fact Evidence (61)**
E3 Accomplice Evidence
E3-1 $70 Common Law and Statutory Corroboration after Vetrovec (25)
E3-4 $70 Co- Accused as Crown Witness (29)
E4 Identification
E4-1 $50 Eye-Witness - Admissibility (14)
E4-2 $70 Sufficiency of Evidence (60)
E4-4 $50 Similarity of Names (12)
E4-5 $50 Line-Ups (17)
E4-6 $50 Photographic Line-Ups (14)
E4-8 $50 Fingerprints (21)
E4-9 $50 Handwriting (11)
E4-10 $50 Voice (10)
E4-11 $50 Eye-Witness Description Use (12)
E4-12 $50 Seated in Body of Courtroom - Accused (5)
E4-13 $70 Break and Enter Cases (18)
E5 Evidence in Sexual Assault Cases
E5-1 $50 Admissibility of Prior Sexual Conduct Before 1983 Code Amendments (56)
E5-2 $50 Defence Use of Expert Evidence: Absence of Disposition - Reliability of Complainant (87)
E5-3 $50 Admissibility of Recent Complaint Before 1983 Code Amendments (14)
E5-4 $50 Complaint After 1983 (67)
E5-5 $70 Admissibility of Prior Sexual Conduct (67)
E5-6 $50 Statements of Child Complainants (45)
E5-7 $70 Credibility and Character (100)
E5-8 $50 Corroboration (35)
E6 Witnesses, Character and Credibility
E6-1 $70 Collateral Fact Rule (27)
E6-2 $70 Youthful Witnesses (55)
E6-3 $70 Unsavoury Witnesses (29)
E6-4 $50 Prior Criminal Record and Disreputable Conduct (41)
E6-5 $50 Victim - Previous Acts of Violence (15)
E6-6 $50 Prior Inconsistent Statements (50)
E7-1 $70 **Doctrine of Recent Possession (25)**
E8-1 $50 **Alibi (21)**
E10 Circumstantial Evidence
E10-1 $50 Consciousness of Guilt - Flight (19)
E12 Documents
E12-5 $50 Certificate Evidence Notice (30)
E13 Photographs
E13-1 $70 Conditions for Admissibility (16)
E13-2 $50 Videotapes and Films (13)
E14 Polygraph Evidence
E14-1 $50 Admissibility & Investigative Use (32)
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E15-3 $50 Hearsay - Deceased's Statements and Others (45)
E16-1 $50 **The Police Informer Privilege (16)**

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O1-2 $50 Innocent Object as Weapon (18)
O1-3 $50 Carrying a Concealed Weapon (18)
O1-4 $50 Possession of Prohibited Weapons - Orders (38)
O1-5 $50 Possession Prohibited Weapon - Knife (13)
O1-6 $50 Careless Use/Storage of Firearm (43)
O1-8 $50 Pointing a Firearm: s.86.1 (10)
O1-9 $50 Proving a Gun to be a "Firearm" (16)
O2-2 $70 **Conspiracy - Overview (27)**
O3 Homicide
O3-1 $50 Attempt Murder (19)
O3-2 $50 Cause of Death (14)
O3-3 $50 Death Caused in Pursuance of Unlawful Objects (16)
O3-4 $70 First Degree Murder - Planning and Deliberation (33)
O3-5 $50 Murder and Manslaughter (29)
O4 Parties to an Offence
O4-1 $50 Parties - Aiding and Abetting (44)
O4-2 $50 Parties - Principal Unknown or Unconvicted (10)
O4-3 $50 Abandonment of Joint Venture (5)
O6 Attempts and Inchoate Crimes
O6-1 $50 Attempts - Definition (40)
O6-2 $50 Counselling Commission of an Offence (13) (Note: for Attempt Murder, O3-1)
O7-1 $70 **Possession - General (32)**
O8 Criminal Negligence, Dangerous and Careless Driving
O8-1 $70 Criminally Negligent Driving (68)
O8-2 $50 Criminal Negligence (45)
O8-3 $70 Dangerous Driving (118)
O8-4 $50 Careless Driving (32)
O8-5 $50 Driving While Disqualified (75)
O8-6 $50 Driving In Excess of Speed Limit (50)
O9-1 $50 **Arson and Setting Fire (38)**
O10 Sexual Offences
O10-1 $70 Indecent Acts (24)
O10-2 $70 Gross Indecency (26)
O10-3 $50 Loitering (7)
O10-4 $50 Prostitution and Soliciting (20)
O10-5 $70 Common Bawdy House (23)
O10-6 $70 Sexual Assault (44)
O10-7 $50 Living on Avails of Prostitution (13)
O10-8 $50 Procuring and Exercising Control (27)

PRICES INCLUDE G.S.T.

O10-9 $50 Sexual Interference (9)
O10-10 $50 Sexual Exploitation (21)
O10-11 $50 Invitation to Sexual Touching (11)
O10-12 $70 Indecent Assault (21)
O10-13 $70 Incest (19)
O11-1 $70 **Extortion (12)**
O12-1 $50 **Possession of Burglar's Tools - (18)**
O13-1 $50 **Break and Enter; Unlawfully in Dwelling (51)**

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O14-1 $50 Evidence of Impairment (99)
O14-2 $50 Care or Control (102)
O14-3 $70 Breathalyzer Demands (68)
O14-4 $50 Breathalyzer Test: "As Soon as Practicable" (43)
O14-5 $70 Evidence to the Contrary (93)
O14-6 $50 Breathalyzer Certificates (58)
O14-7 $50 Impaired Driving - Over 80 - Mens Rea (39)
O14-8 $50 Causing Death or Bodily Harm (40)
O14-9 $50 Blood Samples and Seizures (108)
O14-10 $70 Breath Samples and Seizures (107)
O14-11 $70 Screening Demands and Evidence (90)
O14-12 $70 A.L.E.R.T. Model J3A Recall (41)
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O17 Theft and Possession Stolen Goods
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O17-2 $50 Knowledge of the Stolen Nature of Goods (24)
O17-3 $50 Value of Property Stolen or Possessed (10)
O17-4 $70 Possession - Passengers in Motor Vehicles (15)
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O17-6 $50 Shoplifting (22)
O17-7 $50 Distinction Between Theft and Joyriding (7)
O17-8 $50 Theft: Elements of the Offence (30)

O18 Robbery
O18-1 $50 Purse Snatching (7)
O18-3 $50 Elements of the Offence (16)

O19 Forgery and Uttering
O19-1 $50 Forgery (10)
O19-2 $50 Uttering (13)
O20-1 $70 **False Pretences (18)**

O21 Cause Disturbance
O21-1 $50 Definition and Constituent Elements (18)
O21-2 $50 Specific Means of Causing A Disturbance (14)

O22 Mischief
O22-1 $50 Mens Rea (15)
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O23 Fraud
O23-1 $70 The Nature of the Offence (61)
O23-2 $70 Welfare Fraud (40)
O23-3 $50 Counterfeiting and Credit Card Offences (22)
O23-4 $50 Secret Commissions and Bribery Offences (14)
O23-5 $50 Unemployment Insurance Offences (9)
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O25 Assaults; Wounding
O25-1 $70 Assault Bodily Harm /Weapon (20)
O25-2 $70 Wounding and Aggravated Assault (21)
O25-3 $70 Assault Generally and Common Assault (39)
O25-4 $70 Use of Corrective Force: Parents and Children - Teachers and Pupils (25)

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O26-1 $50 Breach of Undertaking or Probation Failing to Comply (66)
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O26-3 $50 Breach of Probation Evidence Issues (19)
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O27 Kidnapping and Abduction
O27-1 $50 Abduction of Children (27)
O27-2 $50 Unlawful Confinement (8)
O27-3 $50 Abduction in Contravention of Custody Order (6)
O27-4 $50 Abandon Child - Fail to Provide (20)

O29 Trespassing at Night
O29-1 $50 Definition and Constituent Elements (7)
O30-1 $50 Breach of Probation - Evidentiary Considerations (18)

O31 Drugs
O31-1 $50 Trafficking - Definition (34)
O31-2 $50 Trafficking - Defences - Agent for the Purchaser (9)
O31-3 $70 Possession in Narcotics Cases (44)
O31-4 $70 Possession for the Purpose of Trafficking - Circumstantial Evidence re Purpose of Trafficking (28)
O31-5 $70 Conspiracy - Drugs (27)
O31-6 $70 Drugs - Evidence (18)
O31-7 $50 Importing (11)
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O33 Mens Rea
O33-1 $50 Mens Rea in Non-Code Offences (33)
O34-1 $70 **Obstruct Justice - Elements of Offence (22)**
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O36-1 $50 **Public Mischief - Definition (19)**
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O38-1 $70 Failure to Stop for Police Officer H.T.A. s.216 (28)
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O38-3 $50 The Tresspass to Property Act (12)
O39-1 $70 **Assault Police/Resist Arrest (26)**
O40-1 $50 **Perjury (16)**
O41-1 $50 **Escape from Lawful Custody (14)**
O42-1 $50 **Peace Bonds (Keeping the Peace) (23)**
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P4-2 $70 **Right to Disclosure (144)**
P4-3 $70 Third Party Records (81)
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P5-1 $70 Procedural Irregularities and Loss of Jurisdiction (29)
P5-2 $70 Jurisdiction - Territory, Person, Offence (41)

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P11-1 $50 Murder - Release Pending Trial (36)
P11-2 $50 Judicial Interim Release - Bail Review (35)
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P13-1 $70 Sufficiency of Information (43)
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P13-3 $50 Procedures on Informations (7)
P13-4 $50 Formal Defects in Informations or Court Process (15)
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P14-1 $50 Reasonable and Probable Grounds for Arrest (91)
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P14-4 $50 Intoxicated Condition in a Public Place (21)
P14-5 $70 Arrest by Private Citizen (45)
P14-6 $70 Entry of Premises to Arrest (41)
P14-7 $70 Elements of an Arrest and Unlawful Arrests (36)
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P16-1 $50 **Judges - Bias or Partiality (45)**
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P21-1 $50 **Included Offences (33)**
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S1-2 $70 Previous Offenders - Outside Ontario (101)
S1-3 $50 First Offenders - Ontario (22)
S1-4 $50 First Offenders - Outside Ontario (32)
S1-5 $70 Bank Robbery (48)
S1-6 $50 Conspiracy to Commit Robbery (10)
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S2 Theft, Fraud and False Pretences
S2-1 $70 Defrauding Government Agencies - Welfare Fraud and UIC (36)
S2-2 $70 Breach of Trust (78)
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S4 Drugs
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S4-1 $70 Cannabis - Ppt - Ontario (18)
S4-2 $70 Cannabis - Trafficking - Ontario (15)
S4-3 $50 Cannabis - Simple Possession (27)
S4-4 $50 Unlawful Cultivation - Marijuana (13)
S4-5 $50 LSD (28)
S4-6 $70 Heroin (56)
S4-7 $70 Cocaine-Ontario (64)
S4-8 $50 Phencyclidine (11)
S4-9 $50 Cannabis - Conspiracy to Traffic (21)
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S4-12 $50 Morphine (10)
S4-13 $50 Importing (34)
S4-14 $50 Cannabis - Ppt - Outside Ontario (52)
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S5 Weapons
S5-1 $70 Weapon Dangerous (54)
S5-2 $70 Use of Firearm (54)
S5-3 $50 Possession of Prohibited and Restricted Weapons (30)
S5-4 $50 Pointing Firearm (10)
S5-5 $50 Careless Use, Carriage, Handling, Shipping or Storage of a Firearm (9)
S5-6 $50 Carrying Concealed Weapon (5)

S6 Break and Enter
S6-1 $50 Previous Offenders - Ontario (32)
S6-2 $50 First Offenders - Ontario (8)
S6-3 $70 Previous Offenders - Outside Ontario (116)
S6-4 $50 Mitigating and Aggravating Factors (16)
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S7 Homicide
S7-1 $50 Manslaughter - Ontario (48)
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S7-4 $50 Attempt Murder (38)
S7-5 $70 Second Degree Murder- Parole Non-Eligibility (89)

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S8-1 $50 Sexual Offences Against Children - Non - Breach of Trust (85)
S8-2 $50 Sexual Offences Against Children - Non - Parental Breach of Trust (106)
S8-3 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Outside Ontario (116)
S8-4 $50 Sexual Offences Against Children - Parents/ Those in Loco Parentis - Ontario (57)
S8-5 $50 Sexual Offences - Siblings (9)
S8-6 $50 Anal Intercourse (18)
S8-7 $50 Obscene Publications, etc. (6)
S8-8 $50 Contributing to Delinquency (Repealed) (2)
S8-9 $50 Sexual Assault - Ontario (49)
S8-10 $50 Sexual Assault - Outside Ontario (92)
S8-11 $50 Living on Avails; Procuring (21)
S8-12 $50 Common Bawdy House (4)
S8-13 $50 Rape and Attempted Rape (Repealed) (39)
S8-14 $50 Indecent Assault (Female) (Repealed) (16)
S8-15 $50 Intercourse with Female Under 14/14-16(Repealed) (12)
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S9-1 $50 **Arson and Setting Fire (36)**

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S10-3 $50 Reformatory Instead of Penitentiary (31)
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S10-6 $50 Use of Accused's Prior Record (29)
S10-7 $50 Prior Record - Gap Principle (10)
S10-8 $70 Disputed Facts and Unproven Offences (98)
S10-9 $70 Discharges (50)
S10-10 $50 Impairment (21)
S10-11 $50 Rehabilitation (36)
S10-12 $50 Leaders and Followers (19)
S10-13 $50 Lack of Sophistication (11)
S10-14 $50 Guilty Plea (22)
S10-15 $50 Co-operation with Authorities (13)
S10-16 $50 Employment (27)
S10-17 $50 Hardship to Dependents (23)
S10-18 $70 Disparity and Conformity (39)
S10-19 $50 Totality Principle (33)
S10-20 $50 Compensation, and Restitution (44)
S10-21 $50 Appeals - Sentence Served (14)
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S10-27 $50 Delay in Prosecution (21)
S10-29 $70 Mental Disorder (44)
S10-31 $50 Concurrent and Consecutive Sentences (58)
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S10-33 $50 Victim Impact Statement (25)
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S12-1 $70 Criminal Negligence (48)
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S13 Non-Sexual Assaults
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S13-3 $50 Domestic Assaults (94)
S13-4 $50 Assault Bodily Harm - Assault With a Weapon - General (72)
S13-5 $50 Gang Assaults - Premeditated (15)
S13-6 $50 Police Assaults of Prisoners (7)
S13-7 $50 Assault Police, Assaults Against Persons in Authority (26)
S13-8 $50 Prison Assaults - Inmate Fights (4)
S13-9 $50 Street Attacks (9)
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S13-11 $70 Aggravated Assault (40)
S13-12 $50 Common Assault (31)
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S14-2 $50 Theft and Possession Over - First Offenders (29)
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S18-1 $50 Impaired and Over 80 - Previous Offenders (55)
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S18-4 $50 Curative Treatment - Discharges (30)
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S30-7 $50 Weapons Offences (12)
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FAMILY LAW MEMORANDA

(oriented to Ontario Legislation)

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CH2-2 $50 Joint Custody (44)
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CH2-6 $50 Custody/Access Assessments (28)
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CH4-2 $50 Post Adoption - Access By Natural Parent (27)
CH5 Children in Need of Protection - C.F.S.A.
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CH5-3 $50 Crown Wardship vs. Opportunity to Parent (35)
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SU2-1 $50 Extended Definition of "Spouse" - "Cohabited Continuously for a Period of Not Less Than 5 Years" (27)
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SU2-4 $50 Conduct Decreasing or Increasing Quantum - s.33(10) F.L.A. (14)
SU2-5 $50 Ability to Pay - Voluntary Reduction of Income (55)
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CIVIL LAW MEMORANDA

(All-Canada orientation unless specified otherwise.)

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BAN1-1 $50 Judgment Debtor Avoiding Judgment Against Him (11)

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DAM2-2 $50 Damages for False Imprisonment (19)
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DAM4-11 $50 Burns (18)
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The Research Facility

- Damages for Loss of Reputation (58)
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EMP2-8 $50 Alcohol and Drugs, Sexual Misconduct, Assault, Miscellaneous (28)
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EMP4 Wrongful Dismissal - Constructive Dismissal
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EMP4-2 $50 Reduced Earnings: Fixed Salary (26)
EMP4-3 $50 Reduced Earnings: Commission, Bonus, Car (38)
EMP4-4 $50 Change in Duties/Job Description (29)
EMP4-5 $70 Demotions: Management Employees (37)
EMP4-6 $50 Demotions: Non Management Employees - intro & cases (24)
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EMP4-8 $50 Changes in Reporting Arrangements; loss of office (16)
EMP4-9 $50 Miscellaneous cases (34)
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LIM2-1 $50 **Medical Malpractice - Doctors and Hospitals (15)**

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NEG2-6 $50 Lawyers - Real Estate Transactions (42)
NEG2-7 $50 Lawyers - Limitation Periods, Conduct of Action, Settlements (25)
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NEG2-17 $50 Duty to Intoxicated Person (23)
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NEG2-2 $50 Child Pedestrians - Parents' Duty to Supervise Children (10)
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OCC3 Slip and Fall
OCC3-1 $50 Uneven and Other Deceptive (Non-slippery) Surfaces; Obstructions (54)
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(Damages Not Included)

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TOR1-5 $50 Sexual Assault (37)

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REF8-1 $50 Exclusion Clause - Article 1 (E) (12)
REF9-1 $50 Exclusion Clause - Article 1(F) (53)
REF10-1 $50 Grounds of Persecution - Religion (9)
REF11-1 $50 Grounds of Persecution - Political Opinion (11)
REF12-1 $50 Intenal Flight Alternative (14)
REF13-1 $50 Persecution-Definition (50)

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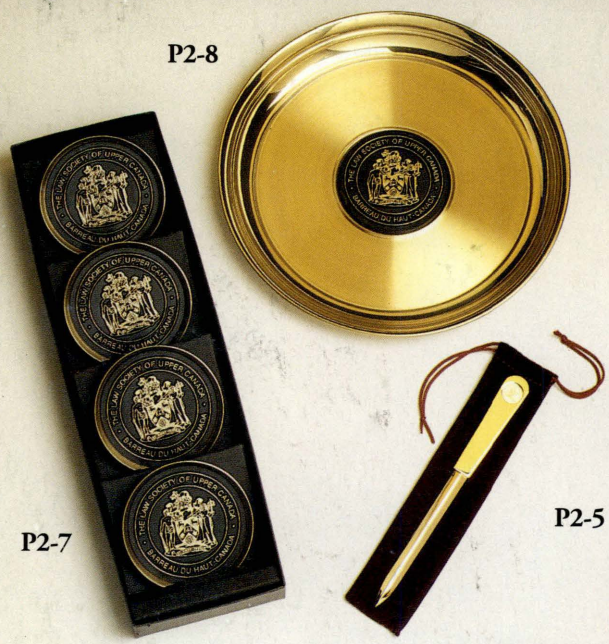

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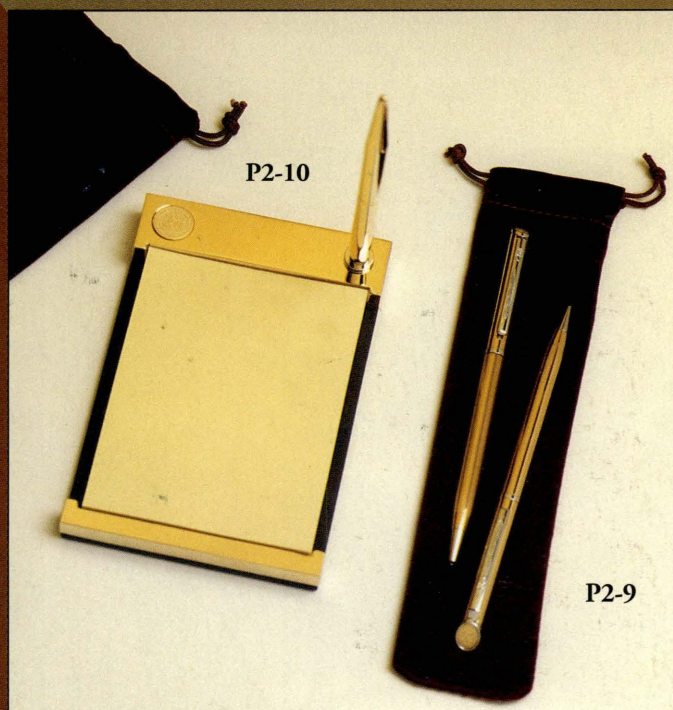

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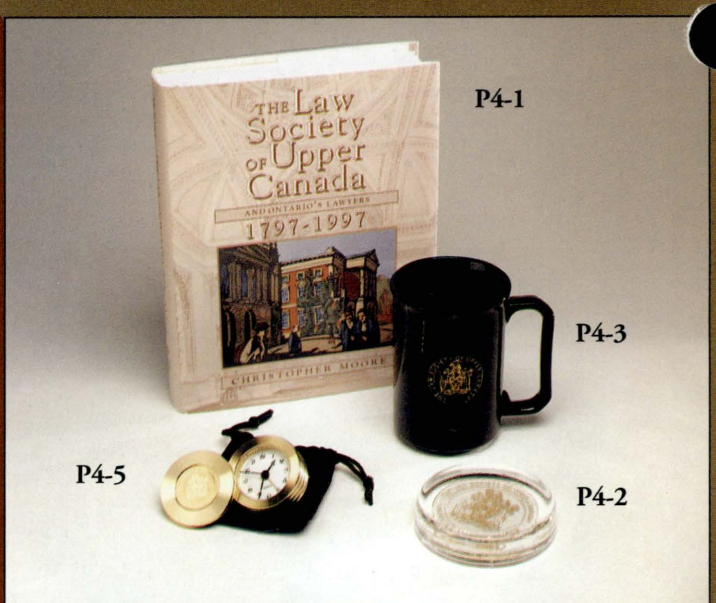

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