



The  
Law Society of  
Upper Canada  
Osgoode Hall, Toronto

plus

# com·mu·ni·qué

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## The Law Society Medal

In June 1984, Convocation acting on the recommendation of the Special Committee on Law Society Honours established the Law Society Medal to be awarded to members of the Society for contributions made as a lawyer to the profession.

The presentation of the medals will take place at a dinner to be held at Osgoode Hall. The purpose of the award is to recognize outstanding service to the profession. The number of medals awarded in any one year is expected to be small and in some years it may be that no award will be made.

A Selection Committee has been established to receive nominations and recommend to Convocation those to whom the award is to be made. The Committee is composed of the Treasurer of the Law Society who is also the Chairman, the Chief Justice of Ontario, the President of the Canadian Bar Association, Ontario, the President of the Advocates' Society, the Chairman of the Ontario Law Deans and four Benchers elected by Convocation to serve for a period of three years.

The Committee now invites nominations for the Law Society Medal. Nominators are asked to set forth reasons and give the names of references. In doing so nominators should have in mind the purpose of the award; to recognize outstanding service within the profession whether in the area of practice, the academic sphere or in some other professional capacity where the service is in accordance with the highest ideals of the legal profession. The award may be made for devotion to professional duties over a long period or for a single outstanding act of service.

The Law Society Medal is to be granted only to members of the Law Society of Upper Canada in recognition of service given while a member of the Society.

Nominations should be sent to the Law Society of Upper Canada to the attention of Richard Tinsley, Deputy Secretary, so as to be received by Friday, the 28th day of June 1985.

### Court Security

Members are reminded of their obligation under Rule 12, Commentary 6 of the Rules of Professional Conduct to alert the appropriate court officials when they have reasonable grounds to believe that a dangerous situation is likely to develop at a court facility. Where possible the member should suggest solutions to the expected problem such as:

- (a) the necessity for further security;
- (b) that judgment ought to be reserved;
- (c) such other measures as may seem advisable.

In Metropolitan Toronto a special court security telephone line 365-7575 has been established. A call to this number will alert the Court Security Co-Ordinator who will take any necessary action. Outside of Toronto members should call the local sheriff or the police department.

\* Professional Fees - Rule 10 (to incorporate old Rules 10 & 10.1)

Members are asked to consider the following proposed revision of Rule 10 of the Rules of Professional Conduct and to address comments or suggestions to the Society to the attention of Stephen Traviss, Senior Counsel, Professional Conduct:

## FEES AND DISBURSEMENTS

### RULE 10

The lawyer shall not:

- (a) undertake to act for, charge or accept any fee which is not fully disclosed, fair and reasonable;
- (b) divide a fee with another lawyer who is not a partner or associate unless (i) the client consents either expressly or impliedly to the employment of the other lawyer, and (ii) the fees are divided in proportion to the work done and responsibilities assumed;
- (c) charge or accept any amount as a disbursement which is not fully disclosed, fair and reasonable;
- (d) appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the Regulation made under the Law Society Act.

#### *Commentary*

#### **Reasonableness of Fee**

1. A fair and reasonable fee will depend upon and reflect such factors as:
  - (a) the time and effort required and spent;
  - (b) the difficulty and importance of the matter;
  - (c) whether special skill or service has been required and provided;
  - (d) the amount involved or the value of the subject matter;
  - (e) the results obtained;
  - (f) fees authorized by statute or regulation or suggested fee schedule of a law association;
  - (g) such special circumstances as loss of other employment, uncertainty of reward or urgency.

A fee will not be fair and reasonable if it cannot be justified in the light of all pertinent circumstances, including the factors mentioned.

2. It is in keeping with the best traditions of the legal profession to reduce or waive a fee in a situation where there is hardship or poverty, or the client or prospective client would otherwise effectively be deprived of legal advice or representation.

The lawyer should not, however, offer to provide legal services at reduced rates for the purpose of attracting clients.

3. In matters where the lawyer is acting for two or more clients, there is a duty to divide the fees and disbursements equitably between them in the absence of agreement otherwise.

#### Fees and Disbursements

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

(b) The lawyer is permitted to charge as disbursements only bona fide and specified payments made to others or for which the lawyer is liable in connection with the matter being handled for the client and which can be readily identified as having been incurred on the client's behalf. Examples, and they are not intended to be exhaustive include registry office charges for searches or for registration of documents, the cost of searches under the Bank Act, searches for security registrations, bankruptcy searches, corporate searches, land transfer tax, municipal taxes, and medical reports and such other disbursements as may be permitted under 4(c).

(c) It is improper to charge as a disbursement any direct or indirect cost incurred for a labour or service portion of a transaction by a person who is an employee of the lawyer, or to charge as a disbursement any item normally included as a part of office costs or overhead, except for the following which may be charged as disbursements:

- (i) long distance calls at either actual cost or minimum station-to-station call rates or in the case of the use of a Watts line a reasonable charge per call;
- (ii) photocopies at not more than the rate set from time to time by the Practice Advisory Service approved by Convocation and published in the Communiqué;
- (iii) automobile expenses that are reasonably necessary to perform the required services on behalf of the client at the rate or rates per kilometre set from time to time by the Practice Advisory Service approved by Convocation and published in the Communiqué;
- (iv) air, train and taxi fares, and parking expenses;
- (v) postage, courier and other delivery charges including taxi delivery, provided that delivery charges other than postage were reasonably necessary under all the circumstances and were not incurred because of some default or neglect on the part of the lawyer;
- (vi) in place of charging for postage, photocopies and telephone calls as specific items, a lawyer may make a small block charge to cover estimated postage, photocopy and telephone expenses in an amount not to exceed the amount set from time to time by the Practice Advisory Service approved by Convocation and published in the Communiqué.

(d) A fee for a real estate transaction (purchase, sale, mortgage, etc.) must include the costs incurred by the lawyer for services incidental to the transaction (such as title searches and closing attendances) performed by a law clerk, conveyancer or other person, whether or not an employee of the lawyer. It is improper to indicate these costs separately either as a fee charge or as a disbursement charge. This paragraph is intended to apply to an average real estate transaction, such as one involving a single family residential property. In some cases unusually high title search expenses may be incurred, for example on some farm transactions, land assembly for development purposes, industrial or commercial complexes, or mortgage transactions involving a number of parcels of land. Such cases may be considered an exception to the principle stated above, and where the client through experience or otherwise is well informed about real estate transactions generally and agrees to such an arrangement the reasonable costs of lengthy or complicated title searches may be charged to the client as a disbursement. Notwithstanding the foregoing, it is permitted to make charges for agency arrangements in accordance with clause (f) below.

(e) Save as provided in paragraph (d) of this Commentary, it is proper to include in a billing a charge calculated reasonably to recover the cost of specialized office services, provided that in quoting and billing such charges they are not characterized as a disbursement. Examples, and they are not intended to be exhaustive, include:

- (i) word processing charges;
- (ii) Quiclaw or other commercial data base charges;
- (iii) payment to an employee of the solicitor for overtime;
- (iv) telex and facsimile machines.

(f) The traditional practice of lawyers charging as disbursements fees paid to other lawyers pursuant to agency arrangements is permitted, provided that the agency arrangement is reasonably necessary, and there is not a course of conduct that indicates that a lawyer makes a practice of entering into agency arrangements as a means of circumventing the intent and spirit of this Rule.

(g) Where the lawyer incurs a cost on behalf of the client in a transaction with a person or firm with whom the lawyer is not at arm's length such as a service or management company, it is permissible to include as a disbursement charge to the client such portion of the cost that would have been permitted pursuant to subparagraphs (b), (c) and (f) of this Commentary had the cost been incurred in an arm's length transaction. For the purposes of this sub-paragraph it is improper to include as a disbursement charge to the client any portion of the cost incurred that represents a labour, service, overhead or profit element of the person or firm in question except those charges permitted in sub-paragraph (c).

#### **Avoidance of Disputes about Fees and Disbursements**

5. Breach of this Rule and misunderstandings about fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. The lawyer should try to avoid controversy with the client about fees, and should be ready to explain the basis for the charges (especially if the client is unsophisticated or uninformed as to the proper basis and measurements for fees). The lawyer should give the client a fair estimate of fees and disbursements pointing out any uncertainties involved, so that the client may be able to make an informed decision. This is particularly important concerning fee charges or disbursements which the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs which may substantially affect the amount of a fee or disbursement the lawyer should forestall misunderstandings or disputes by immediate explanation to the client.

#### **Interest**

6. The lawyer may charge the client interest on an overdue account only as permitted by the Solicitors Act.

#### **Division of Fees**

7. Any arrangement whereby lawyers directly or indirectly share, split or divide fees with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the lawyer's office, is improper and constitutes professional misconduct. It is equally improper for a lawyer to give any financial or other reward to such persons for referring business.

Thus an arrangement between a lawyer and a conveyancer to divide fees on applications for Probate or Administration is improper whether both participate in the work or not.

It is also improper for the lawyer, in return for a fee, to permit the lawyer's name to be placed on such applications which have been prepared by the conveyancer.

A lawyer shall not enter into a lease or arrangement whereby a landlord directly or indirectly shares in the fees or revenues generated by the law practice.

This does not prohibit an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold.

#### **Hidden Fees**

8. The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance or other compensation whatsoever related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client and, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, the consent of such other person or agency.

#### **Effect of Rule**

9. Members are reminded that the fees, charges or disbursements of lawyers are subject to taxation pursuant of the provisions of the Solicitors Act. Compliance with this Rule and the commentaries should not be taken as assurance that the fees, charges or disbursements will be regarded as fair and reasonable by the Taxing Officer.

#### **Champerty and Contingent Fees**

10. A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject matter of litigation being conducted by him. It is improper for the lawyer to enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the Solicitors Act.

Kenneth Jarvis,  
Secretary.