

28th October, 1994

MINUTES OF SPECIAL CONVOCATION

Friday, 28th October, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Blue, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Kiteley, Lamont, Lawrence, Lax, Legge, Lerner, McKinnon, Manes, Moliner, Murphy, Murray, Palmer, Pepper, Peters, Ruby, Scace, Scott, Sealy, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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The reporter was sworn.

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IN PUBLIC

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MOTION

It was moved by Mr. Wardlaw, seconded by Ms. Weaver THAT Joan Lax be appointed a trustee to the Law Foundation of Ontario replacing Donald Lamont.

Carried

REPORT OF THE INSURANCE TASK FORCE AND INSURANCE COMMITTEE

The Treasurer made brief remarks on his observations of the report of the Insurance Committee.

It was moved by Mr. Topp, seconded by Ms. Peters that irrespective of what Convocation decided, the full report of the Committee and the Lindquist, Avey report be distributed to the profession.

Mr. Strosberg presented the Report of the Insurance Task Force and Insurance Committee for Convocation's approval.

(Insurance Report (112 pages) in Convocation file)

Convocation took a brief recess at 10:55 a.m. and resumed at 11:10 a.m.

A debate followed the presentation of the Report.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:15 P.M.

CONVOCATION RECONVENED AT 1:30 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Blue, Bellamy, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Elliott, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Kiteley, Lamont, Lawrence, Lax, McKinnon, Manes, Moliner, Murphy, Murray, Palmer, Pepper, Peters, Ruby, Scace, Scott, Sealy, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of October 27, 1994

Mr. Ruby presented for approval a Report of the Lawyers Fund for Client Compensation Committee regarding the changes to LPIC's policy and its effect on the Fund.

MINUTES OF LUNCHEON MEETING OF THURSDAY, OCTOBER 27, 1994 TO ASSESS THE IMPACT ON THE LAWYERS FUND FOR CLIENT COMPENSATION OF PROPOSED CHANGES TO THE LAWYERS' PROFESSIONAL INDEMNITY COMPANY'S POLICY

PRESENT: C. Ruby (Chair), N. Graham (a Vice-Chair), M. Hickey (a Vice-Chair), K. Howie, S. Lerner, H. Strosberg (Chair, Insurance Committee), S. Thom, and R. Wise; D. McKillop, H. Werry and J. Yakimovich also attended.

POLICY

1. CHANGES TO THE LAWYERS' PROFESSIONAL INDEMNITY COMPANY'S (LPIC'S) POLICY AND ITS EFFECT ON THE LAWYERS FUND FOR CLIENT COMPENSATION (THE FUND)

The Committee discussed two proposed changes to the LPIC's policy which will probably increase claims to the Fund. The proposed changes are as follows:

- a. The reduction of innocent partner coverage from a \$2 million aggregate to \$250,000.
- b. The complete elimination of all claims on the LPIC policy arising in situations where the solicitor is sued because he or she negligently placed or arranged a mortgage investment on behalf of a client and the client suffered a loss (mortgage brokering exception).

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The Committee members were advised that the statistics are not available to demonstrate what innocent partner coverage was costing LPIC. Further, the statistics are not available to quantify the cost of mortgage brokering cases, although it is felt that it is significant.

Compensation staff presented two reports (attached) that attempted to quantify the effect of these proposed changes on the Fund. However, these reports are based primarily on statistics compiled from its records and, as most of these claims are presently being handled by LPIC, the data on which the staff reports are based has limited reliability.

However, the changes will result in more claims to the Fund as the aggregate of \$250,000 will be reached for innocent partners coverage in many cases. Further, what now may be claimed negligent mortgage investment will be at least alleged to be dishonest. More staff will need to be retained to handle the higher volume of anticipated claims.

As to whether the increase in claims will result in more grants remains to be seen. For the innocent partner cases, grants will surely increase because you are dealing with a member who was dishonest. Losses arising out of a mortgage brokering case are often not caused by dishonesty and, therefore, there may be no payment.

The Lawyers Fund for Client Compensation accepts that losses caused by dishonesty ought to be borne by the entire membership of 23,000 and not just by the 17,000 who pay insurance. We, therefore, indicate to Convocation our approval of those aspects of the Report of the Insurance Committee discussed above that will increase the burden of the Fund.

It is anticipated the levy will need to be increased to handle the increased volume in claims.

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

- Copy of a letter from Mr. James N. Yakimovich to Mr. Clayton C. Ruby dated October 26, 1994 re: Projected Impact of Proposed LPIC Recommendations.
- Copy of a memorandum from Ms. Heather A. Werry to Mr. Jim Yakimovich dated October 28, 1994 re: Exposure to Lawyers Fund for Client Compensation if the Lawyers Professional Indemnity Company reduces its per occurrence and aggregate coverage for innocent partner coverage to \$250,000.

It was moved by Mr. Ruby, seconded by Ms. Graham that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE REPORT (cont'd)

It was moved by Mr. Scott, seconded by Mr. Manes that the matter be adjourned to next Wednesday, November 2nd for final disposition.

Lost

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It was moved by Ms. Bellamy, seconded by Ms. Lax that Convocation vote on the supplementary levy for 1994 only and that the remainder of the report be deferred to a date to be set by the Treasurer in order to give Benchers time to assimilate and consult.

Lost

It was moved by Mr. Yachetti, seconded by Mr. Topp that that portion of the report dealing with the volume surcharge be deleted with any necessary consequential amendments to the report.

Lost

It was moved by Ms. Peters, seconded by Ms. Curtis that the proposed supplementary levy for 1994 not apply to sole practitioners and that the supplementary levy for the balance of the profession be increased accordingly.

Lost

It was moved by Mr. Strosberg seconded by Mr. Bastedo that the Report of the Insurance Task Force and Insurance Committee be adopted.

Carried

It was moved by Ms. Curtis, but failed for want of a seconder that only the Report of the Insurance Task Force and the Insurance Committee be distributed to the profession.

It was moved by Mr. McKinnon, seconded by Ms. Weaver that the Report be sent to all County and District Law Libraries and on request to individuals.

Withdrawn

Mr. Strosberg asked that Task Force come up with a recommendation for the distribution of the Report.

The Topp/Peters motion that the Report be distributed to the profession was withdrawn.

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of October 24, 1994

Mr. Bastedo presented that portion of the Report dealing with the financial statements for the Consolidated Errors and Omissions Insurance Fund for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE AND THE INSURANCE COMMITTEE beg leave to report:

Your Committees met on Thursday, the 24th of October, 1994 at 8:00 a.m., the following members being present: T.G. Bastedo (Chair, Finance and Administration Committee), R.W. Cass, C. Curtis, A. Feinstein, N. Finkelstein, M. Moliner, R.W. Murray, J.J. Wardlaw, and M.P. Weaver. Staff in attendance were D.A. Crosbie, D.E. Crack, and D.N. Carey.

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B.
ADMINISTRATION

1. DRAFT AUDITED FINANCIAL STATEMENTS FOR THE CONSOLIDATED ERRORS AND OMISSIONS INSURANCE FUND FOR THE YEAR ENDED JUNE 30, 1994

Draft audited financial statements for the consolidated Errors and Omissions Insurance Fund for the year ended June 30, 1994 were before the meeting.

The Committees were asked to approve the financial statements.

Approved

2. APPOINTMENT OF THE AUDITOR

The Chair of the Finance and Administration Committee will report to Convocation on this matter.

ALL OF WHICH is respectfully submitted

DATED this 28th day of October, 1994

T. Bastedo
Chair

It was moved by Mr. Bastedo, seconded by Mr. Finkelstein that the financial statements for the E & O Fund be adopted.

Carried

THE REPORT WAS ADOPTED

RE: SUSPENSIONS - Meeting of October 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of October, 1994 at 10:30 a.m., the following members being present: T.G. Bastedo (Chair), R.W. Murray (Vice Chair), J.J. Wardlaw (Vice Chair), R.W. Cass, C. Curtis, A. Feinstein, N. Finkelstein, P. Furlong and M. Moliner. Also in attendance was T. Carey. Staff in attendance were D.A. Crosbie, R.F. Tinsley, D.E. Crack, D.N. Carey, and L. Johnstone.

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B.
ADMINISTRATION

1. DRAFT FINANCIAL STATEMENTS TOGETHER WITH THE AUDITORS' OPINION FOR THE YEAR ENDED JUNE 30, 1994

Draft Audited Financial Statements [pages 13 →] for the Society's fiscal year ended June 30, 1994 together with a highlights memorandum from the Director of Finance and Administration [pages 4 - 12] are attached.

The Committee was asked to approve the financial statements for the General Fund and the Lawyers' Fund for Client Compensation.

Approved

The attached statements include the Financial Statements for the Consolidated Errors and Omissions Insurance Fund which are to be presented for approval at a special joint meeting of the Insurance and Finance and Administration Committees on October 27, 1994.

2. GENERAL INSURANCE RENEWAL

The Law Society's general insurance coverage commences on October 1st each year.

In addition to the Law Society also included as named insurers are: the Law Society Foundation, the Lawyers' Professional Indemnity Company, and the Law Foundation of Ontario.

The total premium for the year commencing October 1st, 1994 is \$57,424 compared to \$60,194 last year.

The reason for this decrease is that an examination of the cost for replacement of the buildings at Osgoode Hall indicated that there was over valuation and coverage can be reduced from \$91,700,000 to \$81,088,000.

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			Premiums		
			1994/95 Quote	1993/94 Actual	1992/93 Actual
1.	<i>Property</i> (in addition to General Building & contents, at all locations, includes fine arts, library books, valuable papers etc.) <i>Insurers:</i> Guardian Insurance Company 15% Royal Insurance Company 30% Zurich Insurance Company 55%	\$81,088,000	\$39,243	\$42,182	\$41,265
2.	<i>Boiler & Machinery</i> (includes business interruption) <i>Insurer:</i> Boiler Inspection and Insurers Company	5,000,000	2,581	2,412	2,232
3.	<i>Computer</i> (hardware and software) <i>Insurers:</i> Guardian Insurance Company	2,000,000	5,850	5,850	5,850
4.	<i>Primary General Liability, Crime, Tenants Legal Liability, etc.</i> <i>Insurer:</i> Guardian Insurance Company	5,000,000	8,000	8,000	9,000
5.	<i>Umbrella Liability</i> (in excess of N° 4 above) <i>Insurer:</i> Royal Insurance Company	5,000,000	1,750	1,750	750
TOTAL			\$57,424	\$60,194	\$59,097

The Facilities Subcommittee recommended that the insurance be placed and the above premiums be approved for payment.

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are members¹ who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

In all cases all or part of the late filing fee has been outstanding for four months or more.

The Committee was asked to recommend that the rights and privileges of these members be suspended on October 27, 1994 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 466

¹ to be included in motion to Convocation

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4. SUSPENSION OF MEMBERS - ANNUAL FEES

There are members¹ who have not paid the first instalment of 1994/95 annual fees which were due on July 1, 1994. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on October 27, 1994 effective November 1, 1994 if the fees remain unpaid on that date.

Approved

Note: Motion, see page 466

C.
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

Pursuant to the authority given by the Finance and Administration Committee, the Secretary reported that permission has been given for the following:

October 5, 1994	Medico-Legal Dinner Convocation Hall
October 26, 1994	Judges' Reception Convocation Hall
October 28, 1994	African Legal Clinic Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of October, 1994

T. Bastedo
Chair

It was moved by Mr. Bastedo, seconded by Mr. Murray that Items B.-3. & 4. re: suspensions be adopted.

Carried

ITEMS B.-3. AND 4. WERE ADOPTED

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FINANCE AND ADMINISTRATION COMMITTEE REPORT

Meeting of October 13, 1994

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Bastedo, seconded by Mr. Murray THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from October 27, 1994 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - FAILURE TO PAY ANNUAL FEES

It was moved by Mr. Bastedo, seconded by Mr. Murray THAT having not paid the first instalment of the annual fees for the period July 1st, 1994 to June 30th, 1995, the rights and privileges of each of the members on the attached list be suspended from November 1, 1994 and until their fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

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28th October, 1994

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CONVOCATION ROSE AT 3:50 P.M.

Confirmed in Convocation this day of , 1995.

Treasurer