

MINUTES OF SPECIAL CONVOCATION

Saturday, 11th December, 1993  
9:00 a.m.

PRESENT:

The Treasurer, (Paul S.A. Lamek), Arnup, Bastedo, Brennan, Campbell, Carter, R. Cass, Cooper, Copeland, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Hickey, Hill, Howie, Howland, Kiteley, Lamont, Lawrence, Lax, Legge, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, D. O'Connor, Palmer, Pepper, Peters, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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MOTION RE: APPOINTMENT OF SPECIAL COMMITTEE

It was moved by Mr. Lamont, seconded by Mr. Brennan THAT a special committee on Lawyers Fees be appointed and be composed of the following members: Ken Howie (Chair), Colin Campbell, Philip Epstein, Clay Ruby, David Scott and Harvey Strosberg, with the Chair having the authority to add additional members.

Carried

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INSURANCE COMMITTEE

Meeting of November 18, 1993

ITEM 2. - 1994 ERRORS & OMISSIONS LEVY

Mr. Campbell presented a general overview of the 1994 Errors and Omissions Levy requirements.

Mr. Lin Whitman, the Director of Insurance reviewed the factors which are taken into consideration when setting the levy. A memorandum was distributed to the Benchers re: Insurance Update - 1994 Levy, together with the Report of December 7th, 1993 re: Insurance and the Errors and Omissions Levy.

Mr. Don Crosbie, the Under Treasurer addressed the issue of the deficit on the insurance program.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 18th of November, 1993 at 7:00 in the evening, the following members being present: Messrs. Finkelstein (Chair), Campbell, Cass, Epstein, Feinstein, McKinnon, Murray, Wardlaw and Ms. Elliott.

In attendance on behalf of the Finance Committee were Messrs. Krishna, Pepper and Ms. Weaver.

Also in attendance were Messrs. Crosbie, Whitman, Whiklo, Tinsley, Crack, Carey, O'Toole and Ms. Wishart.

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ITEM

1. 1994 ERRORS & OMISSIONS OPERATING BUDGET

The 1994 E & O Department budget, tabled at the meeting, was unanimously approved by your Committee and has been referred to the Special Committee on Priorities & Planning for review. See Appendix "A".

2. 1994 ERRORS & OMISSIONS LEVY

Subject to considering the effects of applying the member's deductible to claim related expenses and/or reducing the LPIC policy limit to \$500,000, the Director's report and recommendations on the 1994 E & O levy requirements, tabled before a joint meeting of the Insurance and Finance Committees, are supported by both Committees. Details of the 1994 E & O levy requirements are contained in Appendix "B". The effects of introducing such a deductible and/or restricting the LPIC policy limit, which were not available at the meeting, are contained in Appendix "C".

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

C. Campbell  
Chair

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

- Item 1. - Errors & Omissions Operating Budget 1994.  
(Appendix "A", pages 1 - 2)
- Item 2. - Paper entitled Introduction to 1994 Levy Work-Up.  
(Appendix "B", pages 1 - 10)
- Item 2. - Report on the effects of introducing deductible and/or restricting LPIC policy limit.  
(Appendix "C")

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Convocation took a brief recess at 10:50 a.m. and resumed at 11:00 a.m.

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ERRORS AND OMISSIONS LEVY (cont'd)

It was moved by Mr. Yachetti, seconded by Ms. Peters that the policy limit be reduced from \$1 million to \$500,000.

Lost

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that the deductible be applicable to defence costs up to \$2,000.

Lost

It was moved by Mr. Topp, seconded by Ms. Curtis that the report be amended to provide payments to be acceptable on March 15, April 15, May 15 and June 15 and that the \$5 surcharge be eliminated.

Lost

Mr. Howie, Chair of the Finance and Administration Committee agreed to eliminate the \$5 surcharge per cheque which was to cover the additional cost of the handling of post-dated cheques.

It was moved by Mr. Campbell, seconded by Mr. Epstein that the 6 month levy proposal (January 1, 1994 to June 1994) set out in the November 18, 1993 Insurance Committee Report (page 10) be adopted.

Carried

LEGAL EDUCATION COMMITTEE

Meeting of December 3, 1993

ITEM A.-A.2 - BAR ADMISSION COURSE: MODIFICATIONS TO 1993 EXAMINATION GRADING PROCEDURES

Mr. Epstein reported to Convocation on the concerns of the students currently in the Bar Admission Course in light of a letter received by Benchers from Holly Rasky, a student. The letter also included materials from Mr. Ian Scott, counsel retained by the students.

Mr. Epstein outlined the development of the students' problems: the shift to short multiple choice type questions, the imposition of numerical scoring rather than pass, fail, honours and the problems encountered by the Joint Committee students and native Canadians.

A draft Discussion Paper re: Exception to Requirements for Standing, was distributed to the Benchers.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Friday, the 3rd of December, 1993, at 1:00 p.m.

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Lloyd Brennan, Joan Lax, Laura Legge, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). Staff in attendance were Marilyn Bode, Deborah Brown, Brenda Duncan, Laurel Evans, Marie Fortier, Mimi Hart, Margaret McSorley, Alexandra Rookes, Lynn Silkauskas, Alexis Singer, Alan Treleaven and Paul Truster.

A.  
POLICY

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A.1 BAR ADMISSION COURSE FINANCIAL ISSUES

- A.1.1 At its Saturday, October 16 retreat the Legal Education Committee considered the funding pressures facing the Bar Admission Course. The Legal Education Committee determined that in principle it would be recommending to Convocation that the current model of Bar Admission Course be continued on as lean a budget as reasonably possible.
- A.1.2 In its past deliberations, the Committee has considered the Law Society's obligation to serve the public interest through effective education and testing of its student members. In light of this obligation, the Committee has determined that it would not be appropriate to move to a United States type of non-teaching model or to return to the previous Ontario Bar Admission Course model.
- A.1.3 An essential feature of the Legal Education Committee's proposal is that, once funding is in place to continue the Bar Admission Course, the Legal Education Committee will be able to conduct the already planned review of the current program. The review will consider whether to develop or adopt another model of program that might be even more effective than the current model in meeting the needs of the public and the profession.
- A.1.4 A draft 1994-1995 budget is attached. (pages 1 - 8) The draft budget is break-even, showing all expenses being covered out of anticipated Law Foundation grants and student tuitions. The tuition increases are as follows: from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase in the 1994-5 budget year) and from \$1780 for Phase Three 1993 to \$2100 for Phase Three 1994 (a 17.9 percent increase in the 1994-5 budget year).
- A.1.5 The Legal Education Committee is concerned that such substantial tuition increases may present a serious barrier to access to the profession, and accordingly supports including in the Law Society 1994-5 budget \$300,000 in bursary funds for financially needy Bar Admission Course students.

- A.1.6 Recommendation: The Legal Education Committee recommends:
- i) That the draft 1994-5 budget be approved.
  - ii) That the \$300,000 student in bursary funds be approved.
- A.2 BAR ADMISSION COURSE: MODIFICATIONS TO 1993 EXAMINATION GRADING PROCEDURES
- A.2.1 The Chair invited Bar Admission Course students to designate student representatives to meet with the Legal Education Committee at its December 3 meeting. The representatives were invited to make any proposals that they might wish.
- A.2.2 The proposals included the examination passing standard, examination content, examination quality, and procedures related to the examination process.
- A.2.3 The Committee decided to recommend to Convocation the two items referred to in A.2.4 (below), and to defer its continuing consideration of other matters to a future meeting.
- A.2.4 Recommendation: The Legal Education Committee recommends, for the Phase Three 1993 Bar Admission Course, that the following exceptions be made to the Requirements for Standing.
- i) That the Director of Education average the total of the student's grades on two designated parts of the Family Law examination and grant a Passing grade on each of those two parts where the averaging raises the grade in each to at least the prescribed passing level. (Information note: The third part, which is the property part, will continue to be graded separately.)
  - ii) That the Director of Education average the total of the student's grades on two designated parts of the Estate Planning examination and grant a Passing grade on each of those two parts where the averaging raises the grade in each to at least the prescribed passing level. (Information note: The third part, which is the tax part, will continue to be graded separately.)
- A.3 MANDATORY CONTINUING LEGAL EDUCATION PROPOSAL
- A.3.1 At its Friday, October 15 retreat the Legal Education Committee considered the report entitled "Mandatory Continuing Legal Education: Should It Be Introduced In Ontario?". The report had first been presented to the Legal Education Committee at its June 10, 1993 meeting by the Continuing Legal Education Subcommittee, formerly chaired by Colin McKinnon.
- A.3.2 At its retreat the Legal Education Committee decided in principle to move forward with a recommendation to Convocation that mandatory continuing legal education be introduced in Ontario, and to ask Convocation to approve the carrying out of the detailed design and other preparatory work that are required in order to present a comprehensive plan to Convocation.
- A.3.3 The Legal Education Committee has prepared a revised report on mandatory continuing legal education and a related budget. (pages 9 - 18)

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- A.3.4 Throughout its discussions, the Legal Education Committee has been mindful of the need for mandatory continuing legal education to be affordable, accessible to every lawyer in Ontario, and of a high quality. Moreover, the proposed scheme is to be developed on the basis that mandatory continuing legal education can be offered on at least a break-even budget basis, once approved initial design and other start-up costs have been incurred.
- A.3.5 The Legal Education Committee, in making its recommendation, notes the dissent of Donald Lamont. Mr. Lamont believes that in the current recessionary times the profession should not be called upon through annual fees or the insurance levy to fund any aspect of mandatory continuing legal education.
- A.3.6 Recommendation: It is recommended that Convocation approve the carrying out of the detailed design and other preparatory work that are required in order to present to Convocation a comprehensive plan for mandatory continuing legal education.

B.  
ADMINISTRATION

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No items this month.

C.  
INFORMATION

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No items this month.

ALL OF WHICH is respectfully submitted

DATED this 11th day of December, 1993

P. Epstein  
Chair

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

- Item A. - A.1.4 - Consolidated Bar Admission Course Proposed Budget, year ended June 30, 1995. (pages 1 - 8)
- Item A. - A.3.3 - Revised Report of the Legal Education Committee on Mandatory Continuing Legal Education. (pages 9 - 18)

It was moved by Mr. Epstein, seconded by Mr. Goudge that Convocation delegate to the Legal Education Committee the authority to amend the standing requirements for this year's Bar Admission Course.

Lost

ROLL-CALL VOTE

|             |         |
|-------------|---------|
| Bastedo     | Against |
| Brennan     | Against |
| Campbell    | For     |
| Carter      | Abstain |
| Copeland    | Against |
| Curtis      | Abstain |
| Elliott     | Abstain |
| Epstein     | Abstain |
| Feinstein   | Against |
| Finkelstein | Against |
| Goudge      | Abstain |
| Hickey      | For     |
| Hill        | Against |
| Howie       | For     |
| Howland     | Against |
| Kiteley     | Against |
| Lamont      | For     |
| Lax         | For     |
| Legge       | For     |
| McKinnon    | Against |
| Manes       | For     |
| Mohideen    | Against |
| Moliner     | Against |
| Murphy      | Against |
| Murray      | Against |
| D. O'Connor | For     |
| Palmer      | Against |
| Peters      | Against |
| Somerville  | Abstain |
| Strosberg   | Against |
| Thom        | For     |
| Topp        | For     |
| Wardlaw     | For     |
| Weaver      | For     |
| Yachetti    | For     |

It was moved by Ms. Kiteley, seconded by Ms. Moliner that for this year's Bar Admission Course, Convocation abolish the rule that students can only write 3 supplemental exams.

Not Put

It was moved by Mr. Murphy, seconded by Ms. Kiteley that for this year only the passmark in the Bar Admission Course exams be 60%.

Not Put

It was moved by Mr. Topp but failed for want of a seconder that the passmark be 50%.

Not Put

Mr. Murray moved that the matter go back to the Committee to bring forward specific recommendations to Convocation.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

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CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Brennan, Campbell, Carter, R. Cass, Cooper, Copeland, Curtis, Elliott, Epstein, Feinstein, Finkelstein, Furlong, Goudge, Hickey, Hill, Howie, Kiteley, Lamont, Lawrence, Legge, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, D. O'Connor, Palmer, Pepper, Peters, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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BAR ADMISSION COURSE (cont'd)

It was moved by Mr. Epstein, seconded by Mr. Goudge that for this year only the students be allowed to write as many supplemental exams as required and that all exams will be pass/fail and be marked on the same standard.

Carried

Mr. Somerville abstained from voting.

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ITEM A.-A.1 - BAR ADMISSION COURSE FINANCIAL ISSUES

Mr. Epstein presented Item A.-A.1 re: Bar Admission Course Financial Issues for Convocation's approval.

It was moved by Mr. Epstein, seconded by Mr. McKinnon that the draft 1994/5 Budget and \$300,000 student bursary funds be approved.

Not Put

It was moved by Mr. Bastedo, seconded by Mr. Feinstein that approval of the bursary funds be deferred until April 1994 when the full Law Society Budget is before Convocation.

Carried

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Convocation took a brief recess at 10:50 a.m. and resumed at 11:00 a.m.

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ERRORS AND OMISSIONS LEVY (cont'd)

It was moved by Mr. Yachetti, seconded by Ms. Peters that the policy limit be reduced from \$1 million to \$500,000.

Lost

It was moved by Mr. Yachetti, seconded by Ms. Kiteley that the deductible be applicable to defence costs up to \$2,000.

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It was moved by Mr. Topp, seconded by Ms. Curtis that the report be amended to provide payments to be acceptable on March 15, April 15, May 15 and June 15 and that the \$5 surcharge be eliminated.

Lost

Mr. Howie, Chair of the Finance and Administration Committee agreed to eliminate the \$5 surcharge per cheque which was to cover the additional cost of the handling of post-dated cheques.

It was moved by Mr. Campbell, seconded by Mr. Epstein that the 6 month levy proposal (January 1, 1994 to June 1994) set out in the November 18, 1993 Insurance Committee Report (page 10) be adopted.

Carried

LEGAL EDUCATION COMMITTEE

Meeting of December 3, 1993

ITEM A.-A.2 - BAR ADMISSION COURSE: MODIFICATIONS TO 1993 EXAMINATION GRADING PROCEDURES

Mr. Epstein reported to Convocation on the concerns of the students currently in the Bar Admission Course in light of a letter received by Benchers from Holly Rasky, a student. The letter also included materials from Mr. Ian Scott, counsel retained by the students.

Mr. Epstein outlined the development of the students' problems: the shift to short multiple choice type questions, the imposition of numerical scoring rather than pass, fail, honours and the problems encountered by the Joint Committee students and native Canadians.

A draft Discussion Paper re: Exception to Requirements for Standing, was distributed to the Benchers.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Friday, the 3rd of December, 1993, at 1:00 p.m.

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Lloyd Brennan, Joan Lax, Laura Legge, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). Staff in attendance were Marilyn Bode, Deborah Brown, Brenda Duncan, Laurel Evans, Marie Fortier, Mimi Hart, Margaret McSorley, Alexandra Rookes, Lynn Silkauskas, Alexis Singer, Alan Treleaven and Paul Truster.

A.  
POLICY

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- A.1            BAR ADMISSION COURSE FINANCIAL ISSUES
- A.1.1        At its Saturday, October 16 retreat the Legal Education Committee considered the funding pressures facing the Bar Admission Course. The Legal Education Committee determined that in principle it would be recommending to Convocation that the current model of Bar Admission Course be continued on as lean a budget as reasonably possible.
- A.1.2        In its past deliberations, the Committee has considered the Law Society's obligation to serve the public interest through effective education and testing of its student members. In light of this obligation, the Committee has determined that it would not be appropriate to move to a United States type of non-teaching model or to return to the previous Ontario Bar Admission Course model.
- A.1.3        An essential feature of the Legal Education Committee's proposal is that, once funding is in place to continue the Bar Admission Course, the Legal Education Committee will be able to conduct the already planned review of the current program. The review will consider whether to develop or adopt another model of program that might be even more effective than the current model in meeting the needs of the public and the profession.
- A.1.4        A draft 1994-1995 budget is attached. (pages 1 - 8) The draft budget is break-even, showing all expenses being covered out of anticipated Law Foundation grants and student tuitions. The tuition increases are as follows: from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase in the 1994-5 budget year) and from \$1780 for Phase Three 1993 to \$2100 for Phase Three 1994 (a 17.9 percent increase in the 1994-5 budget year).
- A.1.5        The Legal Education Committee is concerned that such substantial tuition increases may present a serious barrier to access to the profession, and accordingly supports including in the Law Society 1994-5 budget \$300,000 in bursary funds for financially needy Bar Admission Course students.

It was moved by Mr. Strosberg, seconded by Mr. Finkelstein that the Budget and fee be deferred for 60 days until such time as a proper cost/benefit analysis and thorough report on the viability of the Bar Admission Course could be completed.

Lost

ROLL-CALL VOTE

|             |         |
|-------------|---------|
| Arnup       | Against |
| Bastedo     | Against |
| Brennan     | Against |
| Campbell    | Against |
| Carter      | Against |
| Copeland    | Against |
| Curtis      | For     |
| Elliott     | Against |
| Epstein     | Against |
| Feinstein   | For     |
| Finkelstein | For     |
| Goudge      | Against |
| Hickey      | For     |
| Hill        | For     |
| Howie       | Against |
| Kiteley     | Against |
| Lamont      | For     |
| Legge       | Against |
| McKinnon    | Against |
| Manes       | Against |
| Mohideen    | Against |
| Moliner     | Against |
| Murphy      | Against |
| Murray      | For     |
| D. O'Connor | Against |
| Palmer      | For     |
| Peters      | For     |
| Somerville  | For     |
| Strosberg   | For     |
| Topp        | For     |
| Wardlaw     | Against |
| Weaver      | For     |
| Yachetti    | For     |

It was moved by Mr. Howie, seconded by Mr. Somerville that the Budget be deferred until April 1994.

Carried

ROLL-CALL-VOTE

|             |         |
|-------------|---------|
| Arnup       | For     |
| Bastedo     | For     |
| Brennan     | Against |
| Campbell    | For     |
| Carter      | For     |
| Copeland    | For     |
| Curtis      | Abstain |
| Elliott     | For     |
| Epstein     | Against |
| Feinstein   | For     |
| Finkelstein | For     |
| Goudge      | Against |
| Hickey      | For     |
| Hill        | For     |
| Howie       | For     |
| Kiteley     | Against |
| Lamont      | For     |
| Legge       | Against |
| McKinnon    | For     |
| Manes       | For     |
| Mohideen    | For     |
| Moliner     | Against |
| Murphy      | Against |
| Murray      | For     |
| D. O'Connor | For     |
| Palmer      | For     |
| Peters      | For     |
| Somerville  | For     |
| Strosberg   | For     |
| Topp        | For     |
| Wardlaw     | For     |
| Weaver      | For     |
| Yachetti    | For     |

It was moved by Mr. Manes, seconded by Ms. Peters that the fees be approved for Phase 3, 1994 at \$2,100.

Carried

It was moved by Mr. Strosberg, seconded by Ms. Peters that the question of the continuation of the Bar Admission Course in the present format be brought back by March 1995.

Mr. Strosberg's motion was withdrawn in favour of Ms. Curtis' motion.

It was moved by Ms. Curtis, seconded by Mr. Strosberg that a special committee be appointed to examine the way in which lawyers are licensed including the present structure of the Bar Admission Course and to report back to Convocation by October 1995.

Not Put

It was moved by Mr. Bastedo, seconded by Mr. Manes that the Legal Education Committee's Bar Admission Course Review Committee be permitted to continue its review and report back to Convocation in October, 1994.

Carried

ITEM A.-A.3 - MANDATORY CONTINUING LEGAL EDUCATION PROPOSAL

Mr. Epstein sought approval in principle of the carrying out of the detailed design and other preparatory work required in order to present to Convocation in April 1994 a comprehensive plan for mandatory continuing legal education.

Convocation took a brief recess at 3:15 p.m. and resumed at 3:30 p.m.

It was moved by Mr. Yachetti, seconded by Mr. Manes that approval in principle be deferred, pending the report of the Certification Committee's report on Mandatory Continuing Legal Education on the certification process.

Not Put

Convocation voted on and approved in principle of a detailed design being carried out for mandatory continuing legal education.

THE REPORT AS AMENDED WAS ADOPTED

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PROFESSIONAL CONDUCT COMMITTEE

Meeting of November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of November, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), Braid (Non-Bencher), Cullity, Feinstein, Hickey, Moliner, Scott and Sealy.

A.  
POLICY

1. GENERAL ASSIGNMENT OF ACCOUNTS RECEIVABLE  
BY LAWYER TO THE BANK - LAWYER HAS REFUSED  
TO PROVIDE A LIST OF NAMES OF CLIENTS SO THAT  
GARNISHEE PROCEEDINGS CAN BE COMMENCED -  
LAWYER RELUCTANT TO GIVE THE BANK THE NAMES OF  
THE CLIENTS BECAUSE OF DUTY OF CONFIDENTIALITY

A lawyer made a general assignment of his accounts receivable to the bank who subsequently brought legal proceedings against the lawyer. Counsel for the bank has raised the following concern with the Law Society.

We obtained Judgment on behalf of our client against a lawyer who is a sole practitioner. We conducted an examination in aid of execution and requested that the lawyer provide us with a list of his accounts receivables on a monthly basis, so that we could garnish the monies owing to him. The lawyer refused to provide us with same. Accordingly, we brought a motion for an Order compelling the lawyer to provide us with the list of his accounts receivables on an ongoing basis.

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We attended on this motion on Thursday, September 30, 1993, in front of Master Cork. The motion was unopposed, however, Master Cork was reluctant to make such an Order given a lawyer's duty of confidentiality to his client. Providing us with a list of his accounts receivables would obviously reveal the names of his clients. Master Cork adjourned the motion and requested that we inquire of the Law Society its views on the issue.

We did some research on the issue and were unable to find any cases on point. Our position is that to prohibit a creditor from obtaining a list of the debtor's accounts receivables would prevent the creditor from realizing on its Judgment and would be unjust. Furthermore, the purpose of obtaining the names of the lawyer's clients would not be to obtain information regarding the communications between the lawyer and his client, which appears to be the essence of the confidentiality rule. Accordingly, we do not believe that providing a creditor with a list of lawyer's accounts receivables would be breaching his or her duty of confidentiality to the client.

Please provide us with your opinion as soon as possible so that we can proceed on attempting to realize on the Judgment on behalf of our client.

The bank's lawyer had first written to the Complaints Department which then referred the inquiry to the Professional Conduct Department. Counsel for the bank expressed this concern to the Committee's Secretary:

As discussed, the issue is whether we can obtain a list of a lawyer's accounts receivables, in order to garnish the amounts owing to him, on behalf of a judgment creditor.

In the brief conversation which we had, you mentioned that having a lawyer assign his accounts receivables to the creditor without revealing their names would be more appropriate than providing the creditor with a list of the clients' names. The problem we have with this is that in enforcing a Judgment, we do not believe that we have a right to compel the debtor to assign his accounts receivables to the creditor, however, the creditor does have a right to garnish the accounts receivables.

Several pages from *Solicitor-Client Privilege in Canadian Law* co-authored by Ronald D. Manes and Michael P. Silver may, according to the bank's lawyer be on point (numbered 1 - 8).

The Law Society has approved of the assignment by lawyers of their accounts receivable in a general form, bearing in mind the need for confidentiality.

The Committee noted that the clients, whose outstanding accounts had been the subject of the assignment, would not have known of the assignment. Moreover, only the clients could waive the confidentiality requirement and not the lawyer.

Rule 4 reads as follows:

The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

It stresses the need to protect confidentiality.

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Paragraph 3 of the Commentary focuses on the need to safeguard the identity of the client. It reads as follows:

As a general rule, the lawyer should not disclose having been consulted or retained by a particular person about a particular matter unless the nature of the matter requires such disclosure.

The Committee also acknowledged that a lawyer who was ordered to make disclosure by a court or tribunal was protected by paragraph 10 of the Commentary under the same Rule which reads:

When disclosure is required by law or by order of a court of competent jurisdiction, the lawyer should always be careful not to divulge more information than is required.

The Committee recommends to Convocation that the Chair of the Professional Conduct Committee send a letter to Master Cork indicating that the Professional Conduct Committee had discussed the matter thoroughly and was of the opinion that disclosure should be made only if required by order of the court or with clients' knowledge and consent.

The Committee asks Convocation to adopt the position.

The Committee is planning to refer this matter to the working group that is reviewing Rule 4.

2. REQUEST FOR ADVICE - LAWYER WISHES TO KNOW  
IF PROPOSED FEE ARRANGEMENT WOULD CONTRAVENE  
PROVISION IN RULE 9 ON DIVISION OF FEES

A litigation lawyer with 6 years experience set up his own practice 14 months ago. The lawyer has several unused hours each day.

He has invited a small law firm at different premises to consider retaining him as their agent for litigation work, for which the lawyer would bill the firm at a rate lower than the rate which his experience and ability would justify. The firm would then bill their clients, but would gross up his fees to the rate which would normally be proper for the lawyer to charge, with the knowledge and consent of the clients.

For example, if the lawyer sent an account for 5 hours at \$75 an hour, the law firm would bill the 5 hours at \$150 an hour. A written acknowledgement would be obtained in advance from the client.

The lawyer suggests the situation would be identical to that involving a salaried associate at a law firm in the following particulars:

- (a) The contract of retainer would be made between the firm and the client. The firm would be responsible to the client for the work and for supervising the lawyer;
- (b) The firm would decide what work, if any, the client required and would issue the appropriate original instructions to the lawyer;
- (c) A contract to perform the work, and a duty of care to do so properly, would exist between the firm and the lawyer (which duty might indeed go further than applies between a firm and salaried associate); the lawyer would be a fiduciary of both the firm and the client;

- (d) Both the lawyer, and members of the firm dealing with the client, would be bound by solicitor-client privilege and all professional obligations applicable between lawyer and client.

Depending upon the Committee's determination, the firm's instructions, and the client's needs, the lawyer might or might not meet the client, alone or with members or employees of the firm present.

Rule 9(b) of the Rules of Professional Conduct reads as follows:

The lawyer shall not:

- (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;

The lawyer feels the above arrangement would comply with (i) of this Rule.

As for (ii), the Rule clearly proscribes fee splits between the lawyer and a firm which does nothing but refer the client to the lawyer (i.e. is not responsible to the client in any way).

But in a case such as this, where the firm is retained by the client, issues the original instructions to the lawyer, and remains responsible to the client, the lawyer is unsure of the application of (ii). In particular, he is unsure how an appropriate division of the fee is to be calculated, and how the proportion of responsibilities assumed is to be determined.

If this proposal is unacceptable in its current form, the lawyer would like to be informed of any modifications or restrictions which would make it acceptable.

It should be noted that the Committee has had occasion to consider the situation of an employment agency that helps private law firms, corporate law departments and governments by providing lawyers on a temporary basis. The entity that hires the lawyer pays a sum of money to the agency based on the time the temporary lawyer works there. If the lawyer worked 6 hours, the entity would be billed 6 times the hourly rate of say \$125 an hour. The agency would in turn pay that lawyer but it would be less than \$125 an hour. It also took the position that this arrangement did not constitute the improper division of fees. It noted the very positive benefit served by this agency in helping with access to legal services at the same time as providing part-time work for some members of the profession. The Committee also said that the role of this type of agency should be looked at when the Rules of Professional Conduct are rewritten.

The Committee took the position that the proposed arrangement was in order provided that:

- (1) the client consented; and
- (2) the law firm was assuming responsibility for the work done by the contracting lawyer.

The Committee asks Convocation to adopt this position.

B.  
ADMINISTRATION

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1. PRIORITIES AND PLANNING PROCESS FOR 1994-1995

All Committees are looking at their objectives, projects and programs in the context of their importance and their present and future impact on the Society's budget.

The Committee has taken a preliminary look at its existing budget (1993-1994) with this objective in mind and will discuss the matter further at its January meeting.

C.  
INFORMATION

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1. SPECIAL COMMITTEE TO REVIEW THE  
RULES OF PROFESSIONAL CONDUCT

The Chair reported on the progress being made by the Special Committee.

2. FEDERATION OF LAW SOCIETIES' COMMITTEE  
ON THE MARTIN V. GRAY CASE (CONFLICTS  
CREATED BY THE MIGRATING LAWYER)

The Federation's Committee held its most recent meeting in Toronto on October 23rd.

Mr. Campbell reported on what took place at the meeting. Attached (numbered 9 - 21) is the latest draft produced by the Federation Committee.

ALL OF WHICH is respectfully submitted

DATED this 26th day of November, 1993

M. Somerville  
Chair

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

Item A.-1. - Excerpts from the Solicitor-Client Privilege in Canadian Law.  
(pages 1 - 8)

ITEM A.-1. - GENERAL ASSIGNMENT OF ACCOUNTS RECEIVABLE

Mr. Somerville presented Item A.-1. re: General Assignment of Accounts Receivable for Convocation's approval.

Convocation directed that the letter concerning disclosure be written to the Bank's solicitor and not to the Court.

ITEM A.-2. - REQUEST FOR ADVICE

Mr. Somerville presented Item A.-2. re: Request for Advice for Convocation's approval.

ITEMS A.-1.& 2. WERE ADOPTED  
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FOREIGN LEGAL CONSULTANTS - GENERAL AGREEMENT ON TRADES IN SERVICES (GATS)

The Secretary asked Convocation to give approval to including the Law Society foreign legal consultant regime in the current GATS negotiations.

(see memo and attachments in Convocation file)

It was moved by Mr. Yachetti, seconded by Mr. Brennan that the Law Society's foreign legal consultant regime be included in the current GATS negotiations.

Carried

ADMISSIONS COMMITTEE

Meeting of November 25, 1993

It was moved by Mr. Carter, seconded by Mr. Copeland that the Admissions Report be received.

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 25th of November, 1993 at 8:45 a.m., the following members being present: Mr. Carter (Chair), Ms. Mohideen, Ms. Moliner and Messrs. Lamont and Levy.

Also present: M. Angevine, A. Treleaven, C. Shaw and P. Gyulay.

B.  
ADMINISTRATION

B.1. CRIMINAL CONVICTION - GOOD CHARACTER

B.1.1 Your Committee received material relating to the 'good character' requirement for call to the Bar with respect to a student-at-law currently enrolled in Phase III of the Bar Admission Course.

11th December, 1993

On the basis of the material before it, your Committee recommends that a hearing under section 27(2) of the Law Society Act not be required and that the student be permitted to be called to the Bar.

ALL OF WHICH is respectfully submitted

DATED this 11th day of December, 1993

R. Carter  
Chair

THE REPORT WAS RECEIVED

.....

CONVOCATION ROSE AT 4:10 P.M.

Confirmed in Convocation this        day of                                1993

Treasurer