

12th January, 1995

MINUTES OF SPECIAL CONVOCATION

Thursday, 12th January, 1995
12:30 p.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Blue, Bellamy, Brennan, Campbell, Carey, R. Cass, Copeland, Cullity, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Goudge, Hickey, Lawrence, Lax, McKinnon, Moliner, Murray, O'Brien, Palmer, Peters, Richardson, Scott, Thom, Topp and Weaver.

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The reporter was sworn.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer set out a number of issues that had yet to be completed in the balance of the term, in particular, the Bar Admission Course Review and the work of the Special Committee on Conflicts of Interest. He urged benchers to alert him to any other matters which should be proceeded with before the end of the term.

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SPECIAL COMMITTEE ON BENCHER ELECTIONS

Meetings of October 27, November 9 and 24, 1994

Ms. Bellamy presented the Report of the Special Committee on Bencher Elections for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Special Committee on Bencher Elections begs leave to report:

The Special Committee on Bencher Elections was struck by Convocation on September 23, 1994 to consider:

- 1) whether there should be any guidelines or limits in respect of campaign expenses incurred by candidates or by other individuals or organizations on their behalf; and,
- 2) how the Law Society might facilitate better communication between the candidates and the electorate in the forthcoming bencher election.

The committee comprises the following members:

Dennis O'Connor (Chair)
Denise Bellamy
Carole Curtis
Susan Elliott
Colin McKinnon
W.A. Derry Millar
Meg Angevine (Staff)

It has met on October 27th, November 9th and November 24th, 1994.

In addition to canvassing the views of committee members on the issues under consideration, input was sought from a number of legal organizations in Ontario. A list of these organizations is included as Appendix A to this report.

Responses were received from:

1. Ontario Real Estate Lawyers Association (ORELA)
2. CBA(O)
3. Committee for Bencher Accountability
4. Advocates' Society
5. County and District Law Presidents' Association (CDLPA)
6. Criminal Lawyers' Association
7. Law Officers of the Crown
8. The Canadian Corporate Counsel Association
9. Association des juristes d'expression française de l'Ontario (AJEFO)

In a number of cases there was no substantive response to the matters raised.

In examining the issues set out in the committee's mandate, deliberations were informed by the premise that it was in the interests of the Law Society, the profession and the public that the election of benchers be conducted in a manner which promotes certain fundamental principles, namely: that

- (a) there be a level playing field for all candidates

- (b) there be a high level of voter participation in the election.

With these objectives in mind your committee reviewed what steps the Law Society is currently taking or might take to further them.

The following questions were considered:

1. Should a limit be imposed upon candidates' campaign expenses?

This issue was a thorny one for the committee and generated significant debate. The committee could not reach consensus on whether mandatory restrictions on spending ought to be imposed upon candidates.

The arguments in favour of such restrictions included:

- a) Assuming an appropriate dollar figure could be agreed upon, imposing a restriction on spending would be a very effective element in the creation of a level playing field for all candidates in the election.
- b) The profession would support such limits.
- c) Spending limits would encourage younger members, women, members of minority groups, small practitioners and those outside the traditional practice of law, to stand for election. In the absence of spending limits, these individuals might otherwise be intimidated by the potential spending power of candidates from larger, more established firms with substantial financial resources.

On the contra side, it was argued that:

- d) The imposition of spending limits would tend to favour incumbent benchers over other candidates.
- e) In order for the imposition of spending limits to be meaningful, there would have to be a system in place to enforce those limits. This would require a reporting mechanism with provision for auditing of candidates' reports and ultimately a penalty for non-compliance. It was agreed that even if the cost of putting such an administrative infrastructure in place could be justified, there was not sufficient time to do so before the 1995 election.
- f) Defining what types of expenditures would be subject to control and second, arriving at a reasonable and realistic dollar amount is a problematic exercise fraught with a number of discretionary variables.
- g) Spending limits would deter associations and interest groups within the profession from offering financial support to candidates who they believe would best represent the views of their constituency on the bench. This could mitigate against the objective of broadening representation in Convocation.

Following its discussion, the committee concluded that it could not, at this time, make any recommendations concerning spending limits other than to suggest that a new special committee be struck following the 1995 election to revisit the issue.

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The committee agreed, however, that it was appropriate to offer some guidance to the candidates. In particular, it was felt that some of the suggestions offered by ORELA in its response were useful and ought to be incorporated in the material provided to each candidate in the election. Accordingly, it is recommended that candidates and their supporters should be reminded that they should conduct themselves in a manner which is consistent with their obligations and responsibilities as members of the legal profession. Furthermore, members and the candidates they support should be governed by standards of fairness, good taste, good judgment and professionalism in the conduct of their campaign.

The committee then focused on the election process and considered the following question:

2. What steps might the Law Society take to improve communications between candidates and the electorate in the May 1995 benchers election?

At the outset, it was universally agreed that the brochure produced for the 1991 election was a very beneficial tool for candidates and the membership alike and that the Law Society should definitely continue to produce one in some form or other.

After some discussion, the Committee recommends that:

- a) The brochure be expanded to permit each candidate up to two pages (1,200 words) in the Law Society brochure, with the format to be essentially the same as in 1991, i.e. photograph, brief biographical sketch and candidate's election statement.

Note: Motion, see page 119

- b) A non-refundable deposit of \$100 be payable by each candidate upon submission of his or her signed nomination paper to assist in defraying the higher costs of producing an expanded candidate guide.

Note: Motion, see page 120

- c) That in order to facilitate completion of the expanded candidate guide in time for the mailing of the election package to the profession, the deadline for nominations be moved to February 24, 1995 (instead of March 7, 1995) and a list of the candidates be included with the February 1995 *Benchers Bulletin*. The purpose of this recommendation is to advise the membership, at the earliest opportunity, who are the candidates in the upcoming election.
- d) That the dates for production of the preliminary and final voters' lists be moved to February 8, 1995 and March 10, 1995 respectively to allow for a slightly earlier mailing of the ballots to the members. The committee noted that the suggested changes in dates will not materially affect the content of the voters' list.
- e) That the Law Society absorb the cost of the return postage on the ballots in order to reduce the risk of insufficient postage being affixed by members. This occurred in the last benchers election and resulted in many members having their ballots returned.

All of which is respectfully submitted

D. O'Connor
Chair

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

A list of legal organizations who were canvassed on various issues regarding the Bencher elections.

It was moved by Ms. Bellamy, seconded by Ms. Elliott that the Report be adopted.

It was moved by Mr. Topp, seconded by Mr. Carey that Item 2. (c) be deleted re: that the deadline for nominations be moved to February 24, 1995 instead of March 7, 1995.

Withdrawn

It was moved by Ms. Peters, seconded by Mr. Murray that Item 2. (a) be deleted re: that the brochure be expanded to permit each candidate up to two pages.

Carried

ROLL-CALL VOTE

Arnup	Against
Bastedo	For
Bellamy	Against
Brennan	For
Carey	For
Copeland	For
Cullity	For
Elliott	Against
Epstein	For
Feinstein	For
Finkelstein	Against
Goudge	For
Hickey	For
Lax	For
McKinnon	Against
Moliner	For
Murray	For
O'Brien	For
Palmer	For
Peters	For
Richardson	For
Scott	For
Thom	Abstain
Topp	For
Weaver	For

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It was moved by Mr. Topp, seconded by Mr. Carey that Item 2.(b) be deleted re: that a non-refundable deposit of \$100 be payable by each candidate upon submission of his or her signed nomination paper.

Carried

ROLL-CALL VOTE

Arnup	For
Bastedo	For
Bellamy	For
Brennan	For
Carey	For
Copeland	For
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	For
Goudge	For
Hickey	For
Lax	For
McKinnon	For
Moliner	For
Murray	For
O'Brien	For
Palmer	For
Peters	For
Richardson	Against
Scott	For
Thom	For
Topp	For
Weaver	For

The Treasurer outlined the steps taken by the Law Society to alert the media of today's Convocation.

In addition the Treasurer advised that the Liaison Group requested that (1) all candidates be invited to identify the issues they feel are significant and outline their position on them in the Law Society brochure and (2) the nomination package include information on the extent of the commitment involved.

It was moved by Mr. Carey but failed for want of a seconder that a new paragraph (f) be added that all members be encouraged to keep their spending in connection with their campaign to a limit of \$10,000

The Report was voted on and adopted as amended.

THE REPORT AS AMENDED WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of January 12, 1995

Mr. Cullity presented the Report of the Legislation and Rules Committee for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

12th January, 1995

Your Committee met on Thursday, the 12th of January, 1995, at 11:30 a.m., the following members being present: M. Cullity (Chair), S. Thom.

M. Hickey and P. Peters attended to make a quorum.

Also present: A. Brockett, E. Spears.

A.
POLICY

No items to report.

B.
ADMINISTRATION

B.1. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 9: VOTERS LISTS FOR BENCHER ELECTIONS: AMENDMENTS

B.1.1. Recommendation

B.1.1.1. That, subject to Convocation adopting the recommendation of the Special Committee on Benchers Elections that Rule 9 of the Rules made under subsection 62(1) of the Law Society Act be amended as specified in the report of that Committee, Rule 9 be amended as follows:

1. In subrule (1), the word "last" to be deleted and replaced by the word "eighth".
2. In subrule (2), the word "last" to be deleted and replaced by the word "eighth".
3. In subrule (3), the phrase "1st day of March" to be deleted and replaced by the phrase "13th day of February", and the number "15th" to be deleted and replaced by the number "3rd".
4. In subrule (4), the number "24th" to be deleted and replaced by the number "10th".
5. In subrule (6), the number "24th" to be deleted and replaced by the number "10th".

If amended, the affected parts of Rule 9 will read (amended text underlined):

9. (1) The Secretary shall, as of the eighth day of February of the year of an election, make out and sign an alphabetical list of the members of the Society in good standing on that date, not being under suspension and, subject to subrules 3, 4 and 5, that list subject to subrule 7 shall be the list of members entitled to vote at the election.

(2) The Secretary shall, as of the eighth day of February of the year of an election, make out and sign an alphabetical list of student members who may be called to the bar and thus become members entitled to vote at the election.

(3) During the period commencing the 13th day of February and ending the 3rd day of March of the year of an election the lists mentioned in subrules 1 and 2 may be examined by any member or student member of the Society during normal business hours at the office of the Secretary and if, within that period a member or student member of the Society complains in writing to the Secretary of the improper omission or insertion of any name in the lists, the Secretary shall forthwith examine into the complaint and rectify any error the Secretary may find.

(4) Any member or student member of the Society, who is dissatisfied with the decision of the Secretary may in writing require the Secretary to refer the decision to the three scrutineers who have been designated for the purpose by Convocation and who shall forthwith review the matter and give their decision to the Secretary before the 10th day of March of the year of the election.

* * * *

(6) The lists as they stand on the 10th day of March of the year of the election shall be signed by the Secretary and at least three of the scrutineers, and constitute the lists of those entitled to vote at the election, subject to subrule 7 except that the scrutineers later shall delete from the voters lists the name of any student member not called to the bar on or before the 30th day of April of the year of an election and thus not entitled to vote in the election, and the name of any member or student member who dies or becomes disentitled on or before the date on which ballots are mailed by the Secretary.

* * * *

B.1.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended Rule 9.

B.1.2. Explanation

B.1.2.1. At present, Rule 9 of the Rules made under subsection 62(1) of the *Law Society Act* reads, in part:

9. (1) The Secretary shall, as of the last day of February of the year of an election, make out and sign an alphabetical list of the members of the Society in good standing on that date, not being under suspension and, subject to subrules 3, 4 and 5, that list subject to subrule 7 shall be the list of members entitled to vote at the election.

(2) The Secretary shall, as of the last day of February of the year of an election, make out and sign an alphabetical list of student members who may be called to the bar and thus become members entitled to vote at the election.

(3) During the period commencing the 1st day of March and ending the 15th day of March of the year of an election the lists mentioned in subrules 1 and 2 may be examined by any member or student member of the Society during normal business hours at the office of the Secretary and if, within that period a member or student member of the Society complains in writing to the Secretary of the improper omission or insertion of any name in the lists, the Secretary shall forthwith examine into the complaint and rectify any error the Secretary may find.

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(4) Any member or student member of the Society, who is dissatisfied with the decision of the Secretary may in writing require the Secretary to refer the decision to the three scrutineers who have been designated for the purpose by Convocation and who shall forthwith review the matter and give their decision to the Secretary before the 24th day of March of the year of the election.

(6) The lists as they stand on the 24th day of March of the year of the election shall be signed by the Secretary and at least three of the scrutineers, and constitute the lists of those entitled to vote at the election, subject to subrule 7 except that the scrutineers later shall delete from the voters lists the name of any student member not called to the bar on or before the 30th day of April of the year of an election and thus not entitled to vote in the election, and the name of any member or student member who dies or becomes disentitled on or before the date on which ballots are mailed by the Secretary.

B.1.2.2. On Thursday, January 12, 1995, in the afternoon, the Special Committee on Benchers Elections will submit a report to a special meeting of Convocation. The report will propose a number of date changes to Rule 9. If the proposals are approved by Convocation they will need to be implemented straightaway. At its meeting on Thursday morning, January 12, 1995, the Legislation and Rules Committee considered proposed amendments to Rule 9 so as to expedite implementation of the recommendations of the Special Committee on Benchers Elections should they be adopted by Convocation at its special meeting.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 10: NOMINATION PROCEDURES FOR BENCHER ELECTIONS: AMENDMENTS

B.2.1. Recommendation

B.2.1.1. That, subject to Convocation adopting the recommendation of the Special Committee on Benchers Elections that Rule 10 of the Rules made under subsection 62(1) of the Law Society Act be amended as specified in the report of that Committee, Rule 10 be amended as follows:

1. In clause (e) of subrule (2), the word "and" to be added after the semi-colon.
2. In clause (f) of subrule (2), the word "an" before the word "election" to be deleted and replaced by the words "a typed".
3. In clause (f) of subrule (2), the comma after the word "statement" and the words "typed on no more than one side of a paper measuring 8 1/2 inches by 11 inches (21.5 centimeters by 28 centimeters)" to be deleted and replaced by the words "of no more than 1200 words on no more than two pages".
4. In subrule (2), clauses (c), (d), (e) and (f) to be renumbered (d), (e), (f) and (g) respectively.
5. In subrule (2), a new clause (c) to be added to read:

"shall be accompanied by a non-refundable deposit of \$100".

Note: Motion, see page 125

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6. In subrule (3), the phrase "7th day of March" to be deleted and replaced by the phrase "24th day of February".

If amended, the affected parts of Rule 10 will read (amended text underlined):

10.

* * * *

- (2) The nomination paper:
- (a) shall be in writing;
- (b) shall be signed by at least ten members entitled to vote at the election and, if not so signed, is void;
- (c) shall be accompanied by a non-refundable deposit of \$100;
- (d) shall be signed by the nominee indicating the nominee's assent to be a candidate and, if not so signed, is void;
- (e) may include a head and shoulders, black and white photograph of the nominee, minimum passport size and maximum 8 inches by 10 inches, which may be reproduced in a booklet with biographical information to assist members in voting at the election;
- (f) may include up to 100 words of biographical information provided by the nominee; and
- (g) may be accompanied by a typed election statement of not more than 1200 words on no more than two pages;

(3) Every nomination paper shall be delivered or sent by mail to the office of the Secretary so as to be received thereat before 5:00 p.m. on the 24th day of February of the year of the election and, if not so received, is void.

* * * *

B.2.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended Rule 10.

B.2.2. Explanation

B.2.2.1. At present, Rule 10 of the Rules made under subsection 62(1) of the *Law Society Act* reads, in part:

10.

- (2) The nomination paper:
- (a) shall be in writing;

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- (b) shall be signed by at least ten members entitled to vote at the election and, if not so signed, is void;
 - (c) shall be signed by the nominee indicating the nominee's assent to be a candidate and, if not so signed, is void;
 - (d) may include a head and shoulders, black and white photograph of the nominee, minimum passport size and maximum 8 inches by 10 inches, which may be reproduced in a booklet with biographical information to assist members in voting at the election;
 - (e) may include up to 100 words of biographical information provided by the nominee;
 - (f) may be accompanied by an election statement, typed on no more than one side of a paper measuring 8 1/2 inches by 11 inches (21.5 centimeters by 28 centimeters).
- (3) Every nomination paper shall be delivered or sent by mail to the office of the Secretary so as to be received thereat before 5:00 p.m. on the 7th day of March of the year of the election and, if not so received, is void.

B.2.2.2. On Thursday, January 12, 1995, in the afternoon, the Special Committee on Bencher Elections will submit a report to a special meeting of Convocation. The report will propose a number of changes to Rule 10. If the proposals are approved by Convocation they will need to be implemented straightaway. At its meeting on Thursday morning, January 12, 1995, the Legislation and Rules Committee considered proposed amendments to Rule 10 so as to expedite implementation of the recommendations of the Special Committee on Bencher Elections should they be adopted by Convocation at its special meeting.

C.
INFORMATION

No items to report.

ALL OF WHICH is respectfully submitted

DATED this 12th day of January, 1995

M. Cullity
Chair

The following amendments were made as a result of the disposition of the Report of the Special Committee on Bencher Elections:

Item B.2.1.1. - 2., 3., 4. and 5. (deleted)

It was moved by Mr. Cullity, seconded by Mr. O'Brien that the Report as amended be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

12th January, 1995

The Treasurer remarked briefly on the Reasons prepared by The Honourable J. Borins with respect to the regional election of benchers.

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CONVOCATION ROSE AT 1:20 P.M.

Confirmed in Convocation this day of , 1995.

Treasurer