

MINUTES OF SPECIAL CONVOCATION

Thursday, 13th November, 1997  
1:00 p.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Armstrong, Banack, R. Cass, Chahbar, Cole, Crowe, DelZotto, Gottlieb, Krishna, Lawrence, Legge, Martin, Murphy, MacKenzie, O'Brien, Puccini, Ruby, Scott, Sealy, Swaye, Wardlaw, Wilson and Wright

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IN PUBLIC

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It was moved by Mr. Ruby, seconded by Mr. Crowe that Convocation waive the 24 hour notice requirement to call a Special Convocation.

Carried

MOTION

REGULATION TO AMEND REGULATION 708 - RE: REPORTING REQUIREMENTS

THE LAW SOCIETY OF UPPER CANADA

PROPOSAL FOR A REGULATION TO BE MADE BY CONVOCATION

November 13, 1997

ACTION REQUESTED OF CONVOCATION

Convocation is asked to exercise its legislative authority under the introductory paragraph, and paragraphs 1 and 3, of section 63 of the *Law Society Act* to make a regulation to revoke section 16 of Regulation 708 (of the Revised Regulations of Ontario, 1990) and to replace it by new sections 16 and 16.1.

(Relevant extracts from section 63 of the *Law Society Act* are contained in Attachment B to this document.)

SUGGESTED FORM OF MOTION FOR CONVOCATION

MOVED, pursuant to the authority granted by the introductory paragraph, and paragraphs 1 and 3, of section 63 of the *Law Society Act*:

That a regulation be made to amend Regulation 708 (of the Revised Regulations of Ontario, 1990) by revoking section 16 and substituting the following:

16. (1) Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

(2) Every member shall submit a report to the Society, by January 31 of each year, in the form or forms prescribed by the rules, in respect of the member's practice of law in Ontario during the period of time specified in the form or forms.

(3) In addition to the report required by subsection (2), members shall submit the following reports to the Society:

1. Every member who engages in the private practice of law in Ontario, except a member described in paragraph 2 or 3, shall submit a report to the Society within ninety days after the termination of his or her fiscal year, in the form or forms prescribed by the rules, in respect of the member's private practice of law in Ontario during the fiscal year.
2. Every member who engages in the private practice of law in Ontario exclusively as an employee of a sole practitioner or law firm shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of the member's private practice of law in Ontario during the previous calendar year and in respect of the member's employment with each sole practitioner or firm with which he or she was employed during the previous calendar year.
3. Every member who engages in the practice of law in Ontario exclusively as an employee of a corporation which is not a member of the Society or as an employee of an unincorporated association which is not a law firm or a member of the Society shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of the member's practice of law in Ontario during the previous calendar year and in respect of the member's employment with each corporation or unincorporated association with which he or she was employed during the previous calendar year.
4. Every member who does not engage in the private practice of law in Ontario but who continues, from his or her private practice of law in Ontario in a previous year, to handle the property of clients as an estate trustee, an attorney appointed under a power of attorney or otherwise, shall submit a report to the Society by March 31 of each year, in the form or forms prescribed by the rules, in respect of each client's property which he or she handled during the previous calendar year.

16.1 (1) The Secretary or the chair or a vice-chair of the Discipline Committee may, at any time and with or without cause, require any member who is required to submit a report under subsection 16(3) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 16(3).

(2) The Secretary or the chair or vice-chair of the Discipline Committee who requires the report shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

(3) For the purpose of permitting the public accountant to complete the report, the member shall,

- (a) grant to the public accountant full access, without restriction, to all files maintained by the member;

- (b) produce to the public accountant all evidence, vouchers, records, books and papers which the public accountant may require; and
- (c) provide to the public accountant such explanations as the public accountant may require.
- (4) For the purpose of permitting the public accountant to complete the report, the public accountant shall,
  - (a) be entitled to confirm independently the particulars of any transaction in the files; and
  - (b) protect any privilege attaching to the documents in the files that he or she examines.
- (5) If a member fails to submit the report of a public accountant within the specified time, the Secretary or the chair or a vice-chair of the Discipline Committee may require an investigation of the member's books and accounts to be made by a person designated by him or her, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.
- (6) Subsections (3) and (4) apply with necessary modifications to the investigation under subsection (5).
- (7) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the member.
- (8) The cost of the investigation under subsection (5) shall be paid for by the member in accordance with the rules.
- (9) Nothing in this section limits the authority under section 18 of the chair or a vice-chair of the Discipline Committee to require an investigation to be made of the books and accounts of any member or the right of Convocation or the Discipline Committee to institute further investigations or to require the filing of other reports.

#### BACKGROUND

- 1 On October 27, 1997, Convocation approved a "self-reporting" model of annual financial reporting by members to the Law Society. Convocation also determined that Regulation 708 (of the Revised Regulations of Ontario, 1990) should be amended to implement the self-reporting model.
- 2 Staff of the Law Society and staff of the Ministry of the Attorney General have drafted amendments to Regulation 708 to implement the self-reporting model of annual financial reporting by members. It is proposed that current section 16 of Regulation 708 be revoked and replaced by new sections 16 and 16.1. The text of new sections 16 and 16.1 is set out above in the "Suggested Form of Motion for Convocation". (The text of current section 16 is contained in Attachment A to this document.)

ATTACHMENT A

THE LAW SOCIETY OF UPPER CANADA

EXTRACT FROM REGULATION 708  
(OF THE REVISED REGULATIONS OF ONTARIO, 1990)

SECTION 16: REPORTING REQUIREMENTS

16. (1) Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

(2) Every member who engages in the private practice of law in Ontario shall file with the Society within six months from the termination of his or her fiscal year a certificate in the form prescribed by the rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the rules in respect of each practice with which he or she was associated since his or her last filing.

(2.1) For the purpose of completing the report required under subsection (2), the public accountant,

- (a) shall have full access, without restriction, to the files maintained by the member under section 15.2;
  - (b) shall be entitled to confirm independently the particulars of any transaction in the files; and
  - (c) shall protect any privilege attaching to the documents in the files.
- (3) Subsections (1) and (2) do not apply to a member,
- (a) who has not engaged in the private practice of law in Ontario since last filing under this section;
  - (b) who has practised exclusively as an employee of a government agency, corporation or other non-member of the Society since last filing under this section; or
  - (c) who has practised exclusively as an employee of a sole practitioner or of a firm and who has not practised on his or her own account apart from such employment since last filing under this section,

if the member files with the Society on or before the 30th day of November in each year a certificate to that effect in the form prescribed by the rules.

(4) Subsections (1), (2) and (3) do not apply to a member who is sixty-five years of age or over and who has permanently retired.

ATTACHMENT B

THE LAW SOCIETY OF UPPER CANADA

EXTRACT FROM THE LAW SOCIETY ACT

SECTION 63: AUTHORITY TO MAKE REGULATIONS

REGULATIONS

63. Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62 and, without limiting the generality of the foregoing,

1. respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members or any class of either of them and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;

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3. requiring and providing for the examination or audit of members' books, records, accounts and transactions and the filing with the Society of reports with respect thereto;

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It was moved by Mr. Ruby, seconded by Ms. Sealy that section 16 of Regulation 708 (of the Revised Regulations of Ontario, 1990) be revoked and be replaced by new sections 16 and 16.1.

Carried

CONVOCATION ROSE AT 1:15 P.M.

Confirmed in Convocation this 28 day of November, 1997

Harvey T. Strosby  
Treasurer