SPECIAL CONVOCATION

Thursday, 25th May, 2000
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Backhouse, Banack, Bindman, Braithwaite, Carey, Carpenter-Gunn, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Feinstein, Hunter, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murray, Ortved, Pilkington, Porter, Potter, Puccini, Ross, Simpson, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer briefed Convocation on the upcoming visit of Archbishop Desmond Tutu and the arrangements made to grant him an honourary LL.D. on June 15th, 2000.

PROPOSED RULES OF PROFESSIONAL CONDUCT

Report to Convocation
April 28, 2000

Final Report of the Task Force on
Review of the Rules of Professional Conduct

ADDENDUM #2
MAY 25, 2000

Purpose of Report: Decision

INTRODUCTION

1. This second Addendum to the April 28, 2000 Task Force report discusses matters considered by the Task Force at its meeting on May 18, 2000, including a summary of the options discussed on April 28 on rule 2.03(2) and the subrules which follow it on justified or permitted disclosure.

2. In addition, the Task Force is including at Tab 1 a copy of the April 27, 2000 memorandum from the co-chairs of the Task Force, distributed on April 28, which identifies those rules on which major policy decisions should be made. It was agreed on April 28 that these rules would be the first to be discussed in Convocation.

3. Where appropriate, additional discussion of the rules listed in the April 27 memorandum is included in this second addendum. Reference for discussion purposes on May 25, however, must also made to the three documents listed below:

   - Reference to the "gold" book means the document entitled "April 28, 2000 Revised Proposed Rules of Professional Conduct".
   - Reference to the "red" book means the document entitled "Report to Convocation April 28, 2000, Final Report of the Task Force on Review of the Rules of Professional Conduct".
   - Reference to the "white" book means the document entitled "Report to Convocation April 28, 2000, Final Report of the Task Force on Review of the Rules of Professional Conduct - ADDENDUM".

4. The following items are also attached to this addendum:

   - three submissions, distributed to benchers on April 28, which were received from the following individuals or groups immediately prior to April 28 Convocation:

Criminal Lawyers Association	Tab 2
Ontario Crown Attorneys Association	Tab 3
Murray Segal, Assistant Deputy Attorney General	Tab 4

   - a memorandum prepared by Paul Perell on exceptions to solicitor and client privilege at Tab 5; and
   - a commentary on *Smith v. Jones* by David Layton at Tab 6.

DISCUSSION OF RULE ISSUES

<u>*Rule 2.03 - Confidentiality*</u> (page 20, gold book)

5. The following is a summary of the options discussed at April 28, 2000 Convocation with respect to rule 2.03(2) through "new" (6). The Task Force proposal is as follows:

> *Justified or Permitted Disclosure*
>
> *(2) When required by law or by order of a tribunal of competent jurisdiction, a lawyer shall disclose confidential information, but the lawyer shall not disclose more information than is required.*
>
> *(3) Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including psychological harm that substantially interferes with health or well-being, the lawyer may disclose confidential information to prevent the death or harm, but shall not disclose more information than is required.*
>
> *(4) Where a lawyer has reasonable grounds for believing that there is imminent risk of substantial harm to the welfare or security of a child or other vulnerable person, the*

lawyer may disclose confidential information to prevent the harm, but shall not disclose more information than is required.

(5) Where a lawyer has reasonable grounds for believing that there is imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed, the lawyer may disclose confidential information to prevent the fraud, but shall not disclose more information than is required.

(6) Where a lawyer has reasonable ground for believing that there is imminent risk that an offence against the administration of law and justice is likely to be committed and it would cause substantial harm, the lawyer may disclose confidential information to prevent the offence, but shall not disclose more information than is required.

[the words "public order or" have been deleted from the second line of (6)]

6. New subrule (6) above (to be distinguished from subrule (6) in the gold book which would be renumbered as (7)) arose from the Ontario Crown Attorneys Association suggestion that disclosure be permitted to prevent crimes against the administration of justice, such as jury tampering, with which the Task Force agreed.

7. Bencher Earl Cherniak proposed that the words *"but is not bound to"* be added after the word "disclose" in each of subrules (4), (5) and (6).

8. Bencher James Wardlaw proposed that the words *"serious"* before "bodily harm in subrule (3), *"substantial"* before "harm" in subrule (4) and *"substantial"* before "financial" in subrule (5) be deleted.

9. The Task Force reviewed a suggestion from Clayton Ruby that subrules (3) to (5) should be combined into one rule in recognition of the difficult judgment call involved in this area, and with the objective of providing more specific guidance.

10. The Task Force proposes that certain aspects of his suggestion be incorporated into the commentary following rule 2.03(1) as the second paragraph of the commentary, the proposed text of which is as follows:

Rule 2.03(1) additional commentary

The rule prohibits disclosure of confidential information because confidentiality and loyalty are fundamental to the relationship between a lawyer and client and legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, there are some very exceptional situations identified in the following subrules where disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare, and even in these situations, the lawyer should not disclose more information than is required.

11. Although not discussed at April 28 Convocation, the following issue also arose in the context of rule 2.03(3) just prior to April 28. The suggestion was made that the rule on security of court facilities (rule 4.06(3)) should be worded in such a way as to make it clear that a lawyer has a duty to warn the court about security concerns even if the concern is based on a confidential communication from the lawyer's client.

12. The Task Force agreed that this change should be made. Accordingly, the commentary under rule 2.03 should be amended by addition of the following language as the last paragraph of the commentary following rule 2.03(1) , with a cross-reference to rule 4.06(3):

> Rule 2.03(1) additional commentary
>
> *A lawyer may have an obligation to disclose information under subrule 4.06(3) (Security of Court Facilities). If client information is involved in those situations, the lawyer should be guided by the provisions of Rule 2.03.*

13. The Criminal Lawyers' Association (CLA) takes the position that only subrule (3) of rule 2.03 (in the language reflected below) should be adopted (i.e., that subrules (4), (5) and (6) be deleted) on the basis that the erosion of solicitor-client confidentiality must be resisted. The Task Force does not agree that these subrules should be deleted.

14. At April 28 Convocation, bencher Todd Ducharme, in agreeing with the CLA proposal, put forward the following version of rule 2.03(3), based on the CLA's proposed language:

> 2.03(3) *Where a lawyer has reasonable grounds for believing and does believe that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm, that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.*

15. Mr. Cherniak was of the view that the obligation in subrule (3) above should be mandatory and would substitute the word *"must"* for "may" in the fifth line above.

16. The Task Force has included with this addendum two documents found at Tabs 5 and 6 which may assist in clarifying the issues surrounding the exceptions to solicitor and client privilege in the context of this rule.

Rule 2.04 - Avoidance of Conflicts of Interest (page 22 gold book)

17. As noted in the April 28 report of the Task Force, and as reported in April 1999, the Task Force considered an issue raised by a member responding to the call for input on whether it was necessary for firms in representing multiple parties in a transaction to advise them that no information as between the clients could be kept confidential. The member, John B. Laskin, advocated a more flexible approach, based on the scheme outlined in current Rule 29 for lawyers transferring between law firms. This issue was the subject of extensive discussion within the Task Force, which went as far as reviewing a draft of a new rule prepared by Mr. Perell, set out below:

Despite paragraph (b) of subrule 2.04(6), where a law firm accepts employment for more than one client in a matter or transaction, the law firm may treat information received from one client as confidential and not disclose it to the other clients, if each client, after having received advice from a lawyer independent of the law firm about the risks of this arrangement, consents to it in writing, and each client is represented by a different lawyer at the law firm and the firm institutes satisfactory screening measures.

18. The Task Force view as expressed in the red book (page 35) was that this proposal should be highlighted for Convocation's review as a thoughtful recommendation for a suggested policy change. However, the Task Force determined that if the suggested rule is adopted, a commentary should follow, modelled on that contained in the joint retainer rule, to the effect that in some circumstances it would be undesirable for lawyers in the same firm to act for more than one party to a transaction on the basis that confidential information is not shared among them. Proposed language for the commentary is as follows:

The above subrule allows the clients to consent to a modification of the provision that govern a joint retainer. However, in some situations, although all the clients concerned would consent, a law firm should not accept a joint retainer under this subrule. For example, in a matter in which one of the clients was less sophisticated or more vulnerable than the other, acting under this subrule would be undesirable because the less sophisticated and more vulnerable client may later regret his or her consent and perceive the situation as having been one in which the law firm gave preferential and better services to the other client.

<u>*Rule 3.04 - Advertising*</u> (page 54 gold book)

19. As a result of a communication from the president of the Ontario Real Estate Lawyers Association (ORELA) to its members, the Task Force, immediately prior to April 28, 2000 Convocation received a large number of letters and communications from ORELA members expressing grave concern about the deletion in the proposed advertising rule (rule 3.04) of the prohibition against advertisements that compare services or fees. These letters were reproduced and provided to benchers at April 28 Convocation.

20. The Task Force's proposal is as follows:

Advertising Services Permitted

3.04 (1) Subject to subrule (3), a lawyer or a law firm may advertise their services or fees in any medium including the use of brochures and similar documents provided the advertising:

(a) is not false or misleading; and

(b) is not such as to bring the profession or the administration of justice into disrepute.

21. ORELA proposes that the following paragraph, which now appears in current Rule 12, paragraph 2(c), be included in rule 3.04(1):

(c) does not compare services or charges with other lawyers or firms.

22. The Task Force is providing both options for Convocation's consideration.

23. Prior to April 28 Convocation, bencher Richmond Wilson communicated to the co-chairs his concern about deletion in rule 3.04(1) of the good taste requirement (please see Tab 5 in the first Addendum to the Task Force's report (the white book)). The current rule on advertising, rule 12(2)(b), states that advertising is permitted provided that it *"is in good taste and not such as to bring the profession or the administration of justice into disrepute".*

24. The Task Force affirms its position that the good taste requirement should be deleted for the reasons outlined in its report (the red book, pages 49 and 50), and believes that the proposed rule and the enhanced commentary on page 55 of the gold book, which appears below, sufficiently address good taste issues in advertising. The commentary reads:

> *The means by which it is sought to make legal services more readily available to the public must be consistent with the public interest and must not detract from the integrity, independence, dignity or effectiveness of the legal profession.*

<u>*Rule 4.01 - Advocacy*</u> (page 58 gold book)

25. The Criminal Lawyers Association (CLA) raised concerns about the fourth paragraph of the commentary following rule 4.01(1). The Task Force proposal is as follows:

> *In adversary proceedings that may affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child.*

26. The CLA, based on its submission at Tab 2, proposes that this commentary either be deleted or be amended to read:

> *In adversary <u>other than criminal</u> proceedings that ~~may~~ <u>will directly</u> affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child.*

27. The CLA also expressed concerns about rule 4.01(2)(l), and the commentary which follows it. The Task Force's proposal is:

> *When acting as an advocate, a lawyer shall not:*
>
> ...
>
> *(l) when representing an accused or potential accused influence or attempt to influence a vulnerable complainant or potential complainant concerning the laying, prosecution or withdrawal of criminal charges;*
>
> *Commentary:*
>
> *A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle*

any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused and accordingly the lawyer's comments may be partisan. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.
[last sentence added as of April 28, 2000]

28. Based on its submission found at Tab 2, the CLA proposes that the rule should simply read:

A lawyer should not take unfair advantage of a vulnerable person.

29. The CLA also suggests that the last sentence of the commentary read:
When communicating with a vulnerable person, it is prudent to have a witness present.

30. These matters are placed before Convocation for its consideration.

31. Barry Leon, a lawyer with Torys, wrote the co-chairs of the Task Force with a suggestion that rule 4.01(4)(b) be amended. The Task Force's proposal is:

Discovery Obligations

(4) Where the rules of a tribunal require the parties to produce documents or attend on examinations for discovery, a lawyer when acting as an advocate

...

(b) shall assist and supervise the client in fulfilling his or her obligations to make full disclosure; and

32. Mr. Leon's concern was that the obligation to supervise may be unrealistic and over-reaching. The Task Force, after discussing the issue, and noting a debate that occurred in a review of similar issues at the Civil Rules Committee, decided that the rule should be amended by deleting the words "and supervise" so that (b) would read as follows:

(b) shall assist the client in fulfilling his or her obligations to make full disclosure; and

<u>Rule 4.03 - Interviewing Witnesses</u> (page 65 gold book)

33. The Task Force agreed with another amendment suggested by Mr. Leon, to delete the word "professionally" before the word "represented" in rule 4.03(2) on page 65 of the gold book so that it would read as follows:

(2) A lawyer shall not approach or deal with a person who is represented by another lawyer save through or with the consent of that party's lawyer.

34. The final issue arising from Mr. Leon's submission related to rule 4.03(3)(b). The Task Force agreed with Mr. Leon's comment that the word "persons" at the beginning of that paragraph (b) (gold book page 66) is unduly wide and could arguably include anyone who can be a third party in an action. The Task Force agreed that the rule was drafted too broadly and is proposing that the paragraph be amended to delete the words "persons, including" and add the words "and agents" after "employees", so that the paragraph would read as follows:

> *(3) Where a corporation or other organization has retained a lawyer on a matter, another lawyer seeking information about that matter shall not, without the consent of the lawyer representing the corporation or organization, approach or deal with*
>
> ...
>
> *(b) employees and agents of the corporation or organization, whose acts or omissions in connection with the matter are in issue or whose acts or omissions may expose the corporation or organization to civil or criminal liability.*

Attached to the original Report in Convocation file copies of:

(1) A copy of a memorandum to All Benchers from Gavin MacKenzie and Derry Millar dated April 27, 2000. (Tab 1)

(2) A copy of a fax from Mr. Paul Stern to Mr. Jim Varro re: Criminal Lawyers' Association - Submissions to Convocation re Rules of Professional Conduct dated April 27, 2000. (Tab 2)

(3) A copy of a letter from Ms. Sarah Welch, President of the Ontario Crown Attorney's Association to Mr. Robert Armstrong dated April 25, 2000. (Tab 3)

(4) A copy of a memorandum from Mr. Murray Segal, Assistant Deputy Attorney General, Criminal Law, Ministry of the Attorney General dated April 27, 2000. (Tab 4)

(5) A copy of a memorandum from Mr. Paul Perell to the Law Society Task Force on the Rules of Professional Conduct dated May 5, 2000 re: Exceptions to Solicitor and Client Privilege. (Tab 5)

(6) A copy of a commentary on Smith v. Jones by David Layton. (Tab 6)

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It was moved by T. Ducharme, seconded by Mr. Aaron that Convocation continue with the debate on the Rules but not vote on them today.

Not Put

Mr. MacKenzie summarized for Convocation's consideration the options discussed at Convocation on April 28th, 2000 with respect to Rule 2.03(2) through "new" (6).

Rule 2.03 Justified or Permitted Disclosure (page 20 of the gold book and page 2 of the gray book)

The Task Force proposal is as follows:

"(2) When required by law or by order of a tribunal of competent jurisdiction, a lawyer shall disclose confidential information, but the lawyer shall not disclose more information than is required.

(3) Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including psychological harm that substantially interferes with health or well-being, the lawyer may disclose confidential information to prevent the death or harm, but shall not disclose more information than is required.

(4) Where a lawyer has reasonable grounds for believing that there is imminent risk of substantial harm to the welfare or security of a child or other vulnerable person, the lawyer may disclose confidential information to prevent the harm, but shall not disclose more information than is required.

(5) Where a lawyer has reasonable grounds for believing that there is imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed, the lawyer may disclose confidential information to prevent the fraud, but shall not disclose more information than is required.

(6) Where a lawyer has reasonable ground for believing that there is imminent risk that an offence against the administration of law and justice is likely to be committed and it would cause substantial harm, the lawyer may disclose confidential information to prevent the offence, but shall not disclose more information than is required."

The Task Force proposed an addition to the Commentary following Rule 2.03(1) as the second paragraph of the Commentary suggested by Mr. Ruby and further amended by Messrs. T. Ducharme/Ruby (underline) at Convocation on April 28th, 2000.

"The rule prohibits disclosure of confidential information because confidentiality and loyalty are fundamental to the relationship between a lawyer and client and legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, there are some very exceptional situations identified in the following subrules where disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare, and even in these situations, the lawyer should not disclose more information than is required."

Motions made at Convocation on April 28th, 2000

T. Ducharme/Carey Motion that paragraphs (4), (5) and (6) be deleted and the following wording for Rule 2.03(3) be inserted based on the Criminal Lawyers Association's proposed language.

"Where a lawyer has reasonable grounds for believing and does believe that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm, that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required."

Mr. Ducharme, moved a further amendment to the wording of his Rule 2.03(3) motion made on April 28th by changing the words in the first line before the word "that" to read: "Where a lawyer believes upon reasonable grounds "

Mr. Cherniak suggested that the word "may" be changed to "must" in the proposed language of the T. Ducharme/Carey motion so that the subject phrase would then read:

"the lawyer must disclose....."

It was moved by Mr. Cherniak, seconded by Mr. Porter that paragraphs (4), (5) and new (6) be retained but the words "but is not bound to" be added after the word "may" in paragraphs (4), (5) and new (6). The subject phrases would then read:

"the lawyer may but is not bound to disclose confidential information....."

.....

The Benchers debated the proposed Rules.

It was moved by Mr. Copeland, seconded by Mr. Simpson and accepted by the Chair that the words before "that" in the first line of Rule 2.03 (3) on page 2 of the gray book be substituted with the words "where a lawyer believes upon reasonable grounds...." as set out at the top of page 5 of the gray book (T. Ducharme/Carey motion) and that paragraphs (4), (5) and (6) be amended by adding the words "pursuant to judicial order where practicable" after the words "may disclose".

It was moved by Ms. Potter, seconded by Mr. Bindman that the word "may" in paragraph (4) be changed to the word "must" ("the lawyer must disclose....") and the words "pursuant to judicial order where practicable" be removed.

Not Put

It was moved by Mr. Topp, seconded by Mr. Aaron that in the T. Ducharme/Carey motion the words "including serious psychological harm, that substantially interferes with health or well-being" be deleted.

Not Put

Convocation took a recess at 10:40 a.m. and resumed at 11:00 a.m.

The debate resumed on the issue of disclosure in the context of Rule 2.03(3) being mandatory and that disclosure in paragraphs (4), (5) and (6) being permissible and that the exception in Rule 2.03(3) be limited to the Smith v. Jones exception.

It was moved by Ms. Pilkington, seconded by Mr. Wright that the word "may" in paragraphs (4), (5) and (6) be changed to "should" (".....the lawyer should disclose....")

Not Put

The T. Ducharme/Carey motion as amended to delete subrules (4), (5) and (6) and adopt the language for Rule 2.03(3) put forward by the Criminal Lawyers Association was voted on and carried.

Rule 2.03(3)

"Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required."

ROLL-CALL VOTE

Backhouse	For
Bindman	Against
Braithwaite	For
Carey	For
Carpenter-Gunn	For
Cherniak	Against
Coffey	For
Copeland	Against
Crowe	For
Curtis	Against
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Feinstein	For
Hunter	For
Laskin	Against
MacKenzie	Against
Manes	For
Marrocco	For
Millar	Against
Murray	Against
Ortved	For
Pilkington	Against
Potter	Against
Puccini	For
Ross	Against
Simpson	For
Swaye	For
Topp	For
Wilson	Against
Wright	Against

Vote: 19 - For; 13 - Against

It was moved by Ms. Pilkington, seconded by Mr. Cherniak that in Rule 2.03(3) the word "may" be deleted and the words "should, unless there are compelling reasons to the contrary" be inserted. The phrase would then read:

".....the lawyer should, unless there are compelling reasons to the contrary disclose, pursuant to judicial order where practicable....."

Lost

ROLL-CALL VOTE

Backhouse	Against
Bindman	For
Braithwaite	Against
Carey	Against
Carpenter-Gunn	Against
Chahbar	Against
Cherniak	For
Coffey	Against
Copeland	Against
Crowe	Against
Curtis	For
DiGiuseppe	Against
E. Ducharme	Against
T. Ducharme	Against
Epstein	For
Feinstein	Against
Hunter	Against
Laskin	For
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Murray	Against
Ortved	Against
Pilkington	For
Potter	For
Puccini	Against
Ross	Against
Simpson	Against
Swaye	Against
Topp	Against
Wilson	Against
Wright	For

Vote: 25 - Against; 8 - For

Ms. Potter moved that Rule 2.03(4) be restored and that the word "may" be changed to "must" ("...the lawyer must disclose confidential information....").

The Treasurer ruled the motion out of order as a result of the acceptance of the T. Ducharme/Carey motion.

Rule 2.04 - Avoidance of Conflicts of Interest (page 22 of gold book)

The Task Force drafted a new Rule and Commentary set out on pages 5 and 6 of the gray book as an option for Convocation's consideration as follows:

> "Despite paragraph (b) of subrule 2.04(6), where a law firm accepts employment for more than one client in a matter or transaction, the law firm may treat information received from one client as confidential and not disclose it to the other clients, if each client, after having received advice from a lawyer independent of the law firm about the risks of this arrangement, consents to it in writing, and each client is represented by a different lawyer at the law firm and the firm institutes satisfactory screening measures.
>
> *Commentary*
>
> The above subrule allows the clients to consent to a modification of the provision that govern a joint retainer. However, in some situations, although all the clients concerned would consent, a law firm should not accept a joint retainer under this subrule. For example, in a matter in which one of the clients was less sophisticated or more vulnerable than the other, acting under this subrule would be undesirable because the less sophisticated and more vulnerable client may later regret his or her consent and perceive the situation as having been one in which the law firm gave preferential and better services to the other client."

It was moved by Mr. Cherniak, seconded by Mr. Wilson that the draft new Rule be amended to apply only to commercial and real estate transactions.

Carried

ROLL-CALL VOTE

Backhouse	For
Bindman	For
Braithwaite	Against
Carpenter-Gunn	Against
Chahbar	For
Cherniak	For
Coffey	For
Copeland	For
Crowe	For
Curtis	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Feinstein	For
Hunter	For

Laskin	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Murray	For
Ortved	For
Pilkington	For
Potter	For
Puccini	For
Ross	For
Simpson	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote: 30 - For; 2 - Against

It was moved by Mr. Wright, seconded by Mr. Epstein that the wording of the Commentary to the draft new Rule be amended to provide that it applies only to sophisticated clients.

Carried

ROLL-CALL VOTE

Backhouse	For
Bindman	For
Braithwaite	Against
Carpenter-Gunn	Against
Chahbar	For
Cherniak	For
Coffey	For
Copeland	For
Crowe	For
Curtis	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Feinstein	For
Hunter	For
Laskin	For
MacKenzie	For
Manes	For
Marrocco	For
Millar	For
Murray	For
Ortved	For

Pilkington	For
Potter	For
Puccini	For
Ross	For
Simpson	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote: 30 - For; 2 - Against

It was moved by Mr. Ortved, seconded by Mr. Swaye that the proposed new Rule and Commentary to Rule 2.04 (2.04(7)) as set out on pages 5 and 6 of the gray book be adopted as amended.

Lost

ROLL-CALL VOTE

Backhouse	For
Bindman	For
Braithwaite	Against
Carpenter-Gunn	Against
Chahbar	For
Cherniak	For
Coffey	For
Copeland	Against
Crowe	For
Curtis	Against
DiGiuseppe	Against
E. Ducharme	Against
T. Ducharme	Against
Epstein	For
Feinstein	Against
Hunter	Against
Laskin	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Murray	Against
Ortved	For
Pilkington	For
Potter	Against
Puccini	Against

Ross	Against
Simpson	Against
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote: 19 - Against; 13 - For

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:55 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Aaron, Backhouse, Bindman, Carey, Carpenter-Gunn, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Feinstein, Hunter, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murray, Ortved, Pilkington, Porter, Potter, Puccini, Ross, Simpson, Swaye, Topp, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE PROPOSED NEW RULES OF PROFESSIONAL CONDUCT

Rule 2.04 (11) and (12) - Prohibition Against Acting for Borrower and Lender (pages 26 and 27 of gold book)

It was moved by Mr. MacKenzie, seconded by Mr. Millar that paragraphs (11) and (12) be adopted with the amendment that the opening phrase of subrule (12) read:

"Provided that there is no violation of this rule, a lawyer may act....".

Carried

Rule 2.08 (8) - Division of Fees and Referral Fees (page 45 of the gold book)

The Chair asked that page 45 of the gold book be amended to reflect the changes proposed by the Task Force set out in the Addendum (white book) on page 5 as follows:

- That in Rule 2.08 (7) the words "either expressly or impliedly" be deleted after the word "consents". The sentence would then read:

  "Where the client consents, fees for a matter may be divided between lawyers."

- That in Rule 2.08 (9) the words "for the referral of business" be added after the word "reward". The sentence would then read:

  "A lawyer shall not directly or indirectly share, split or divide his or her fees or give any financial or other reward for the referral of business to conveyancers, notaries public, students, clerks or other persons who are not lawyers."

It was moved by Mr. Bindman but failed for want of a seconder that the fee not be passed on to the client.

It was moved by Mr. Cherniak, seconded by Mr. Wilson and accepted by the Chair that in Rule 2.08 (7) the words "provided that the fees divided are in proportion to the work done and the responsibilities assumed" be added at the end of the sentence.

It was suggested by Mr. Aaron and accepted by the Chair that the words "for the referral of business" added in Rule 2.08 (9) be placed at the end of the sentence, which would then read:

"A lawyer shall not directly or indirectly share, split or divide his or her fees or give any financial or other reward to conveyancers, notaries public, students, clerks or other persons who are not lawyers for the referral of business."

It was moved by Mr. Aaron, seconded by Ms. Curtis that the words "real estate agents or brokers" be added after the word "clerks" in Rule 2.08 (9). The motion was further amended and accepted by the Chair to delete the words "conveyancers, notaries public, students, clerks or other persons who are not lawyers" and insert the words "any person who is not a lawyer".

An amendment was proposed by Mr. Aaron and accepted by the Chair to delete the words "probate or administration" set out in the Commentary after Rule 2.08 (9) and be replaced with the words "certificate of appointment of an estate trustee" or in the alternative that the Commentary be deleted.

It was suggested that the matter be referred back to the Task Force.

The Task Force agreed with the deletion of the Commentary.

An amendment was proposed by Ms. Pilkington and accepted by the Chair to delete the word "business" in Rule 2.08 (9) and add the words "client or client matters."

It was moved by Mr. Aaron, seconded by Mr. Wright that the issue concerning the referral to lawyers by title insurance companies as a matter for the Commentary be referred back to the Task Force for consideration.

Carried

It was moved by Mr. Wilson, seconded by Mr. Bindman that in Rule 2.08 (8) (a) the words "and does not increase the total amount of the fee charged to the client", be added. The paragraph would then read:

"(a) the fee is reasonable and does not increase the total amount of the fee charged to the client"

Carried

The proposed Rule 2.08 (8) as amended was voted on and approved.

ROLL-CALL VOTE

Aaron	For
Bindman	Against
Carey	For
Carpenter-Gunn	For
Chahbar	Against
Cherniak	Against
Coffey	Against
Copeland	For
Crowe	For
Curtis	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	Against
Epstein	For
Feinstein	For
Hunter	Against
Laskin	Against
MacKenzie	For
Manes	Against
Marrocco	For
Millar	For
Murray	For
Ortved	For
Pilkington	For
Porter	For
Potter	Against
Puccini	For
Ross	For
Simpson	For
Swaye	For
Topp	Against
Wilson	For
Wright	Against

Vote: 22 - For; 11 - Against

It was moved by Ms. Curtis, seconded by Mr. Aaron that in Rule 2.08 (7) the words "provided that the fees divided are in proportion to the work done and the responsibilities assumed" at the end of the rule be deleted.

Lost

It was moved by Mr. Wright, seconded by Mr. Bindman that Rule 2.08 (7) be referred back to the Task Force in light of "old" Rule 9.

Lost

Proposed Rule 2.08 (7) as amended was voted on and adopted.

It was moved by Mr. MacKenzie, seconded by Mr. Millar that proposed Rule 2.08 (9) as amended be adopted.

Carried

Rule 3.04 - Advertising (pages 54 and 55 of the gold book)

It was moved by Mr. T. Ducharme, seconded by Mr. Aaron that a subparagraph (c) to Rule 3.04 (1) be added to read as follows:

"(c) does not compare services or charges with other lawyers or firms."

An amendment was suggested by Mr. Carey and accepted by the Chair that the word "law" be inserted before "firms" in the proposed new subparagraph (c).

Carried

ROLL-CALL VOTE

Aaron	For
Bindman	For
Carey	For
Carpenter-Gunn	For
Chahbar	For
Cherniak	For
Coffey	For
Copeland	Against
Crowe	For
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For
Epstein	Abstain
Feinstein	For
Hunter	For
Laskin	For
MacKenzie	Against
Millar	For

Murray	For
Porter	For
Potter	For
Puccini	For
Ross	Abstain
Simpson	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote: 24 - For; 2 - Against; 2 Abstentions

It was moved by Mr. Wilson, seconded by Mr. Aaron that the words "is in good taste and" be inserted at the beginning of subparagraph (b) of Rule 3.04 (1) so that the subparagraph would then read:

"(b) is in good taste and is not such as to bring the profession or the administration of justice into disrepute"

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Millar that Rule 3.04(1) as amended be adopted.

Carried

CONVOCATION ROSE AT 5:25 P.M.

Confirmed in Convocation this 22 day of June, 2000

Treasurer