

MINUTES OF CONVOCATION

Friday, 23rd November, 1990
9:30 a.m.

PRESENT:

The Treasurer, (James M. Spence, Q.C.), Arnup, Bastedo, Bellamy,
Callwood, Campbell, Carey, Cass, Chapnik, Epstein, Farquharson,
Roderic G. Ferguson, Ferrier, Furlong, Ground, Guthrie, Harvey,
Hickey, Howland, Hunt, Kiteley, Lamont, Lawrence, Legge, Lerner,
McKinnon, Murphy, O'Brien, Pepper, Peters, Rock, Scace, Shaffer,
Somerville, Thom, Thoman, Wardlaw, Weaver and Yachetti.

.....

.....

"IN CAMERA"

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

"PUBLIC"

.....

ADMISSIONS COMMITTEE

Ms. Peters presented a further Addendum to the Admissions Committee Report if its meeting on November 23rd, 1990.

ADMISSIONS COMMITTEE - ADDENDUM - NOVEMBER 23RD 1990

B.
ADMINISTRATION

1. EXAMINATION RESULTS - BAR ADMISSION COURSE TRANSFER EXAMINATIONS

The results of the Bar Admission Course Transfer Examinations held in October 1990 were before the Committee. Eight transfer candidates and three requalification candidates sat the examinations for the first time.

The following candidates passed:

Michael Frederick Daniel Armstrong
Gregory Howard Barnett
James Grant Cameron
Nancy Cleman
Sharon Druker
Jonathan Barry Kroft
Brian Robert MacIvor
Peggie Ann Walden

Three candidates failed.

Noted

2. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

The following candidates, having successfully completed the thirty-first Bar Admission Course, filed the necessary documents and paid the required fee of \$210.00 now apply for call to the Bar and to be granted Certificates of Fitness:

Jerry Dan Kovacs
Donna Jeanne McGraw
William Laurence Scott
John Charles Syme

Approved

Transfer from another province - Regulation 4(1)

The following candidate, having passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now applies for call to the Bar and to be granted a Certificate of Fitness:

Brian Robert MacIvor

Province of Alberta

Approved

Transfer from another province - Regulation 4(2)

The following candidates, having passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now apply for call to the Bar and to be granted Certificates of Fitness:

Nancy Cleman

Sharon Gail Druker

Approved

THE ADDENDUM WAS ADOPTED

.....

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar, and the degree of Barrister-at-Law was conferred upon each of them by the Treasurer.

Jerry Dan Kovacs

31st Bar Admission Course

Donna Jeanne McGraw

31st Bar Admission Course

William Laurence Scott

31st Bar Admission Course

John Charles Syme

31st Bar Admission Course

Nancy Cleman

Special, Transfer, Quebec

Sharon Gail Druker

Special, Transfer, Quebec

Brian Robert MacIvor

Special, Transfer, Alberta

Michael Christopher Varabioff Special, Transfer, British Columbia

.....

SPECIAL COMMITTEE ON BENCHER ELECTIONS

Mr. Ferguson presented the Report of the Special Committee on Bencher Elections.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON BENCHER ELECTIONS begs leave to report:

INTRODUCTION

In October, 1989, Convocation adopted a report from the Research and Planning Committee in which it was recommended that a special committee be appointed "to review various issues concerning the election of benchers". At its meeting on November 24, 1989, Convocation established the Special Committee on Bencher Elections and appointed the following benchers to serve as members: Roderic G. Ferguson (Chair), Denise Bellamy, Philip Epstein, Frances Kiteley, Ian W. Outerbridge, Patricia J. Peters, James M. Spence, J. Douglas Thoman and Robert C.

Topp. Colin D. McKinnon was subsequently appointed to the Committee. The following members of staff were invited to participate in the Committee's activities: Andrew Brockett (Research Director), Christine Iannetta (who acted as Secretary to the Committee), Roy Schaeffer (Manager of Benchers Elections) and Richard Tinsley (Secretary).

The Committee set out to provide for the involvement of members in its work. In April, 1990 a three page questionnaire (Appendix #1) was mailed to all 21,450 members in good standing soliciting responses to a number of questions relevant to the concerns of the Committee. In addition, advertisements were placed in Ontario Reports and The Lawyers Weekly. The Committee is pleased to report that 316 submissions were received. A statistical analysis of the responses can be found at Appendix #2.

The Committee has already expressed its gratitude to those who sent written comments. It would now like to record its thanks to the following individuals who made representations in person: Colin L. Campbell, Laura Legge, Ronald Manes, Barry Pepper and Stephen Traviss. The Committee also wishes to thank Derek Hayes and Peter Jones who appeared on behalf of the Canadian Corporate Counsel Association, and Shelley Birenbaum, Suzanne Duncan and Joachim Sparkahl who appeared on behalf of the Committee for Benchers Accountability.

The Committee for Benchers Accountability presented a "Submission on Benchers Election Reform" containing a series of detailed recommendations. Your Committee gave careful attention to this submission and wishes to express its appreciation for the work which underlies it. The submission, together with its supporting data, is to be found at Appendix #3.

Finally, your Committee wishes to record its gratitude to the County and District Law Presidents Association. At the meeting of the County and District Law Presidents on May 11, 1990, the topic of reform to the benchers election process was thoroughly canvassed and debated at length. Subsequently, the Association submitted a brief to the Committee, recommending that a system of regional representation be introduced. Your Committee recognizes the significant amount of time that has been given to this matter by the County and District Presidents and wishes to place on record its appreciation of the Association's thoughtful recommendations. The brief from the County and District Law Presidents Association is to be found at Appendix #4.

RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON BENCHER ELECTIONS

REGIONAL REPRESENTATION

The Special Committee on Benchers Elections (1989) is a successor to the Special Committee on the Election of Benchers which reported to Convocation in May of 1985. The mandate of that Committee was to consider the feasibility of implementing a system of regional representation. Many of the arguments in regard to regional representation, with restrictions on voting, resurfaced in the discussions of the 1989/1990 Committee.

It is interesting to note that the Special Committee which reported in 1985 was unable to reach a consensus on the issue of regional representation. In its report, the 1985 Committee laid out the arguments for and against regional representation and placed a number of different solutions before Convocation. The matter was taken no further. Regional representation appears first to have been discussed in 1870. The fact that it has since been considered on a number of occasions but never implemented may be an indication of its complexity.

72% of the respondents to the questionnaire favoured regional representation. Among the organizations which responded, L'Association des juristes d'expression française de l'Ontario, the County and District Law Presidents Association, the County of York Law Association and Legal Assistance Kent, each expressed positive support for the concept.

Though some respondents expressed concerns about the suitability of basing the system upon the regions set out in the Courts of Justice Act, a significant number believed that some form of regional representation would lead to improved voter turnout and more effective representation in Convocation. The members of the Committee took seriously the view, repeatedly expressed in the submissions received, that members were apathetic toward benchers' elections because they felt no connection with the benchers. The problem has manifested itself in declining voter turnout (71.2% in 1979, 62.5% in 1983 and 54.1% in 1987) and your Committee gave much consideration to means of reversing this disturbing trend.

One of the most persuasive arguments raised against regional representation was that it challenges the tenet that a bencher is elected to govern the profession in the public interest as a representative of all members, not merely as a representative of members in a particular area. It was also noted that a system of regional representation might work against those candidates for election who do not have a distinct regional base.

Your Committee carefully considered these concerns. After much debate, it was decided to recommend a system under which some benchers will be elected by voters within regions and others will be elected by all voters in the province. As will be seen later in this report, your Committee decided not to recommend an increase in the number of elected benchers: their number should remain at forty. Likewise, your Committee is of the view that twenty benchers should continue to be elected from outside Metropolitan Toronto and twenty from within Metropolitan Toronto.

Your Committee has proceeded on the assumption that the changes which it recommends are matters which fall within the rule-making power of Convocation under s. 62(1) of the Law Society Act. If this is true, it will be possible for Convocation to implement the changes in time for the 1991 election of benchers. A legal opinion upon the powers of Convocation in this respect has been sought and it is anticipated that the opinion will be available by the time Convocation considers this report.

Regions

Your Committee recommends that:

The seven regions outside the Municipality of Metropolitan Toronto prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984, c. 11, as amended, be established as electoral regions.

It was one of the recommendations of the County and District Law Presidents Association that the regions established under the Courts of Justice Act (i.e. the Court Reform Regions) should be adopted. The seven regions outside Toronto, with their approximate numbers of voters, are:

North West	(230)
North East	(486)
East	(2,805)
Central East	(844)
Central West	(896)
Central South	(1,771)
South West	(1,559)

Your Committee also considered a proposal that Metropolitan Toronto should be sub-divided into electoral regions. All twenty benchers currently from Metropolitan Toronto practise within the City of Toronto. Lawyers from other parts of the metropolitan area have argued that their practices are markedly different from the practices of the benchers who have traditionally been elected from Metropolitan Toronto. They argued that they ought to be represented on Convocation but that under the current system it is unlikely that any of their number will be

elected. Whether or not these arguments are accepted by Convocation, the fact remains that they are indicative of views that are held by members who practise within Metropolitan Toronto but outside the downtown core. If the principle of regional representation is adopted for areas outside Metropolitan Toronto, a convincing argument can be made that the same principle should apply within Metropolitan Toronto. Accordingly, your Committee recommends that:

The following four electoral regions should be established within the Municipality of Metropolitan Toronto: (1) The City of Toronto. (2) The Borough of East York and The City of Scarborough. (3) The City of York and The City of Etobicoke. (4) The City of North York.

The approximate number of voters within these four divisions is as follows:

City of Toronto	(10,039)
Borough of East York and City of Scarborough	(265)
City of York and City of Etobicoke	(260)
City of North York	(906)

Number of Representatives Per Region

The County and District Law Presidents Association recommended that each region should have two benchers, with an additional bencher for every 750 lawyers over the first 750. At current membership numbers, this formula would give a minimum of two benchers for any region (for example, the North West Region) and a maximum, outside Metropolitan Toronto, of five benchers per region (for example, the East Region). The County and District Law Presidents also recommended that five members be elected at large from any part of the province. Their scheme would have required an increase in the total number of elected benchers to forty-five. Your Committee does not support such an extensive measure of regionalization. Without denying the validity of the arguments in favour of regional representation, it is essential also to preserve the principle that benchers are elected as representatives of all members in the province. Accordingly, your Committee recommends that:

There should be one bencher elected from each of the eleven electoral regions. The remaining thirteen benchers from outside Metropolitan Toronto and the remaining sixteen benchers from within Metropolitan Toronto should be elected by all voters in the province, as at present.

Your Committee acknowledges that the regional election of eleven of forty benchers falls considerably short of the more comprehensive scheme of regional representation proposed by the County and District Law Presidents Association. It was clear however that the majority of the Committee were convinced that this was not the time to recommend such an extensive change. It will be recalled that the 1985 Special Committee was unable to reach consensus. Your Committee has worked hard to formulate a definite proposal. The recommendation that one bencher be elected from each region is a compromise: nevertheless your Committee considers it to be the only measure of regional representation likely to gain the approval of Convocation at this time. If the proposal is adopted, it may be that, following the 1991 election of benchers, Convocation will wish to reconsider the number of benchers elected from each region.

Method of Voting

There are at least two different methods of voting which might reasonably be considered consistent with a scheme of regional representation. Both were included in the report of the 1985 Special Committee on the Election of Benchers.

Under the first method, although there would be regional representatives, they would be elected by all voters in the province. To give effect to this scheme, the candidate from each region receiving the greatest number of votes overall would be elected as regional representative, even though that candidate may have fewer votes than some candidates from other regions who fail to be elected.

The second method might be more accurately described as a constituency scheme. Regional representatives would be elected only by the votes of voters in their own regions. The County and District Law Presidents Association advocated a scheme of this nature. Your Committee has come to the conclusion that this will be the most effective way of ensuring that the objectives of regional representation are achieved. Accordingly, your Committee recommends that:

The benchers who are elected as regional representatives be elected only by the votes of voters within their own regions.

The remaining benchers, thirteen from outside Metropolitan Toronto and sixteen from within Metropolitan Toronto, should continue to be elected by a constituency comprising all voters in the province.

Mechanics of the Scheme Proposed

The scheme recommended by your Committee is, perhaps, most easily explained by outlining a set of draft procedures for the election.

1. Every ballot shall have an identical text, listing the names of all candidates running in the province. The ballot shall be in two parts, the first part listing names of candidates from outside the Municipality of Metropolitan Toronto, the second part listing the names of those candidates from within the Municipality of Metropolitan Toronto. The electoral region of each candidate shall be specified, in brackets, immediately following the name of the candidate.
2. (a) Voters in the North West electoral region shall be sent ballots on green paper.

(b) Voters in the North East electoral region shall be sent ballots on red paper.
[And so on for each of the other 9 electoral regions, a different colour for each one.]
3. Every person entitled to vote at an election of benchers may vote for any number of candidates but not for more than forty in all, twenty from within Metropolitan Toronto and twenty from outside Metropolitan Toronto as provided in section 15 of the Law Society Act. [This is the current wording of subrule 12(3).]
4. When counting the votes, ballots shall first be grouped by separate colours. The candidate from each electoral region receiving the greatest number of votes from voters within that electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher and that candidate's name shall be excluded from any further counting of the ballots.
5. (a) All ballots of every colour, shall than be collected together and counted.

(b) The remaining thirteen candidates from outside Metropolitan Toronto who have the greatest number of votes as reported by the scrutineers shall be certified forthwith by the Secretary as having been elected as benchers.

- (c) The remaining sixteen candidates from within the Municipality of Metropolitan Toronto who have the greatest number of votes as reported by the scrutineers shall be certified forthwith by the Secretary as having been elected as benchers.

It will be noted that under this scheme there is nothing that requires a voter to use any of her forty votes in voting for a candidate or candidates from her own electoral region. She may, if she wishes, cast all forty of her votes for candidates from outside her electoral district. At the same time, it should be recognized that since ten benchers are to be elected from regions other than the voter's own region, her forty votes can be effective in electing no more than thirty benchers.

METHOD OF FILLING VACANCIES

The method of filling vacancies among the benchers is prescribed by s.21 of the Law Society Act:

- 21.(1) Where there is a failure to elect the requisite number of qualified benchers, the remaining benchers shall as soon as convenient supply the deficiency by electing in Convocation the requisite number of qualified members as benchers.
- 21.(2) Where there is a vacancy in the requisite number of benchers, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation a qualified member as a bencher to fill the vacancy, but where at the last quadrennial election of benchers there were more qualified candidates than benchers to be elected, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation as a bencher the qualified member who among the defeated candidates at such election received the greatest number of votes.
- 21.(3) The benchers elected under this section shall, subject to this Act, hold office until their successors take office.

81% of the respondents to the survey were satisfied with the current method of filling vacancies.

Nevertheless, if Convocation adopts the proposal for regional representation, the Rules under s. 62(1) of the Law Society Act will need to make clear that where a regional representative ceases to be a member of Convocation the vacancy is to be filled by a person from the same region. Your Committee has sought a legal opinion as to whether Convocation has power under s. 62(1) to make a rule with this effect. It is anticipated that the opinion will have been received by the time this report is considered by Convocation. In the meantime, your Committee proceeds on the assumption that Convocation has the necessary power. Accordingly, your Committee recommends that:

Convocation should make a rule providing that, for purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchers from a particular electoral region or where there is a vacancy in the requisite number of benchers from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchers was within that particular region.

Two comments should be made. First, the "requisite number of benchers" from any region is, under the proposals in this report, one. The language of the recommended rule change, however, conforms with the wording of s. 21 of the Act and will serve if, at any time, the number of regional representatives for any region is increased.

Second, the proposal is not perfectly consistent with the scheme of regional representation recommended in this report. At an election, regional representatives are to be elected only by the votes of voters in that region. Under the rule now proposed, the person who fills a regional vacancy will be a person from the region but one who becomes a bencher on the strength of all the votes cast for her, province-wide, at the last election. In other words, a person elected to fill a regional vacancy will be a person elected at large, albeit from the region.

The Act requires that a vacancy be filled by "the qualified member who among the defeated candidates at [the last quadrennial] election received the greatest number of votes". Subject to the opinion to be received from Counsel, your Committee assumes that Convocation has power to define a "qualified member" as a member coming from the region in question. Your Committee does not believe that Convocation has power to make a rule which provides that the words "the qualified member who among the defeated candidates at [the last quadrennial] election received the greatest number of votes" shall mean "the candidate from the region in question who received the greatest number of votes cast by voters in that region at the last quadrennial election".

SECTORAL REPRESENTATION

Your Committee considered the case for electing benchers to represent different sectors of the profession. It was suggested that benchers might be elected to represent the following groups:

- Junior Members of the Bar
- Women
- Men
- Identifiable Minorities
- Students
- Members Within Particular Fields of Practice

Your Committee concluded that:

A scheme of sectoral representation, providing for the election of benchers to represent members on the basis of length of time at the bar, sex, minority status, student status or field of practice, should not be adopted.

Those respondents who favoured representation on the basis of age, or year of call to the bar, were particularly concerned at the lack of benchers from the junior bar. While recognizing this fact, your Committee is of the opinion that it would be undesirable to introduce an entrenched representation for any sector of the profession. It has been argued that it is not necessary to be a member of a particular group in order to represent the interests of that group. The analogy with parliamentary representation was noted.

Your Committee was fortified in its conclusion by the fact that the majority of respondents to the questionnaire were opposed to sectoral representation on each of the bases suggested. The percentages of respondents opposed to representation of the different sectors were as follows: age (63%), sex (74%), minority status (80%), student status (71%), field of practice (65%). Many respondents were of the view that while the Society should encourage the involvement of special interest groups, it should not require that they become involved through a scheme of formal representation.

It was further suggested that sectoral representation might entrench and perpetuate divisions within the profession, pitting one group against another.

A significant number of respondents commented that representation by category would amount to reverse discrimination. Others remarked that the allocation of seats on the basis of sex would be offensive in wake of the Society's attempt to avoid sexism in communication. In any case, as increasing numbers of women become senior members of the bar, representation on the basis of sex is seen to be unnecessary.

NUMBER OF BENCHERS

Under the provisions of the Law Society Act, there are forty elected benchers, four appointed ("lay") benchers, the Treasurer and an indeterminate number of persons who are benchers ex officio.

There has been a growing awareness of the heavy workload entailed in serving as a bencher. In the early months of its existence, your Committee considered one of its functions to be an investigation of ways in which the workload of benchers might be alleviated. It subsequently became clear that this was a matter that was under active consideration by the Subcommittee on Benchers' Responsibilities established by the Research and Planning Committee. Accordingly, your Committee makes no recommendations on the matter of bencher workload. Nevertheless, arguments have been advanced that an increase in the number of benchers would alleviate the workload problem. Your Committee does not consider this an appropriate solution to the problem, and understands that the Subcommittee on Benchers' Responsibilities is of the same opinion.

It is the view of the Committee that the policy-making function of Convocation would not be assisted by an increase in the number of benchers.

Your Committee has also borne in mind the spatial limitations of Osgoode Hall and the probability that a decentralization of the decision-making process might occur if numbers were increased. More significantly, with an increase in the number of benchers, it would be difficult to avoid the creation of an "inner group" which would manage the affairs of the Society and make the executive decisions. Your Committee believes that such consequences should be carefully studied before a decision is made to increase the number of benchers.

52% of those who responded to the survey were opposed to an increase in the number of benchers.

At the same time, your Committee is aware that proposals currently coming forward from other committees, particularly the Special Committee on Discipline Procedures, if adopted by Convocation, may well have the effect of increasing significantly the demands made upon the time of benchers. Your Committee notes, however, that a Special Committee on Practice Requirements Reform Implementation has been established to make recommendations on the implementation of the reports concerning reforms in the areas of complaints, discipline and professional standards. Your Committee is of the view that it would be appropriate for that Special Committee to review the need for an increase in the number of benchers in the light of the various proposals for reform that are being considered by Convocation. Accordingly, your Committee recommends that:

The current responsibilities of benchers are not such as to justify an increase in the number of benchers but this matter should be considered by the Special Committee on Practice Requirements Reform Implementation in light of any reforms that are adopted by Convocation.

Your Committee was informed that the proposals for reform currently before Convocation might require an amendment to the Law Society Act to provide for an increase in the number of appointed ("lay") benchers. If such an increase were to be proposed, the number of elected benchers would need to be re-considered. Again, however, this is a matter for the Special Committee charged with implementation of the reforms. Accordingly, your Committee recommends that:

If Convocation decides to recommend an increase in the number of lay benchers, the number of elected benchers should be considered by the Special Committee on Practice Requirements Reform Implementation.

NON-BENCHER INVOLVEMENT

Whether or not the number of benchers is to be increased, your Committee is persuaded that a greater reliance on non-bencher members would be of considerable assistance to benchers in the discharge of their responsibilities. In particular, your Committee favours a greater involvement of non-bencher lawyers in the discipline process: it notes, however, that this is a matter falling within the mandate of the Special Committee on Discipline Procedures.

Non-bencher involvement was favoured by 72% of the respondents. It was suggested by a number of respondents that the benchers restrict themselves to policy matters and place greater reliance on Law Society staff in administration.

Your Committee recommends that:

Rather than increasing the number of benchers, the Society should look to its membership for assistance in committee work of all kinds.

LENGTH OF TERM / STAGGERED TERMS

Your Committee noted that the Law Society of Upper Canada has the longest term of office for benchers of any law society in Canada (see the compilation of provisions relating to the election of governing bodies among the law societies of Canada at Appendix #5). Your Committee considered decreasing the length to a three year term, but could determine no clear benefits to be derived from such a change. 75% of the respondents were against decreasing the length of the term.

71% of questionnaire respondents favoured staggered terms. Such terms would enhance access to the office of bencher and ensure greater continuity in Convocation and committees. Your Committee recommends:

Further consideration should be given to a system of staggered terms, retaining the four-year term but holding elections every two years. This proposal to be enacted when reasonably possible and subject to review by the Finance and Administration Committee.

Your Committee discussed a limitation on the number of terms that a bencher can serve, but concluded that this would amount to unwarranted interference in the democratic process. To the extent that a limitation on length of service is suggested as a means of "rejuvenating" Convocation, your Committee observes that "rejuvenation" occurs in the natural course and does not need to be encouraged artificially by a maximum term.

An overwhelming majority of respondents (95%) believed that benchers should serve for as long as members continue to express confidence in them through their vote.

EX OFFICIO BENCHERS

There are four broad categories of ex officio bencher created by the Law Society Act:

1. Law Officers of the Crown
The Attorney General for Canada, the Solicitor General for Canada and the Attorney General for Ontario are benchers ex officio by virtue of paragraphs 1-3 of s.12(1) of the Act.
2. Former Attorneys General for Ontario
Every person who has held the office of Attorney General for Ontario is a bencher ex officio by virtue of paragraph 4 of s.12(1) of the Act.

3. "Life Benchers"

Every person who was elected at three quinquennial elections and served as a bencher for fifteen years, and every person who is elected at four elections and who serves as a bencher for sixteen years, is a bencher ex officio by virtue of paragraphs 7 and 9 of s.12(1) of the Act.

4. Former Treasurers

Every member who has been or is elected to the office of Treasurer is a bencher ex officio by virtue of s.14 of the Act.

Voting Rights of Ex Officio Benchers

1. The Attorney General for Canada and the Solicitor General for Canada may not vote in Convocation or in committees.
2. The Attorney General for Ontario may vote in Convocation and in committees.
3. Former Attorneys General for Ontario may not vote in Convocation. They may vote in committees other than committees appointed for disciplinary purposes.
4. "Life benchers" may not vote in Convocation. They may vote in committees other than committees appointed for disciplinary purposes.
5. Former Treasurers have all the rights and privileges of elected benchers.

The Questionnaire

The letter sent to all members of the profession asked whether the qualifications for the status of ex officio bencher should be changed. A significant number of respondents were unaware of the role played by ex officio benchers. 55% of the respondents did not want the qualifications changed. Of those who indicated a wish to see change, over half proposed that the status be abolished.

"Life Benchers"

While acknowledging the valuable contribution that has been made to Convocation and its committees by many "life benchers" your Committee is of the opinion that the Society should be governed by persons who are elected by the profession. At the same time, your Committee recognizes that there are, at present, benchers who are in their sixteenth year as members of Convocation. It seems to your Committee entirely proper that the reasonable expectations of these members should be realized and that they should become benchers ex officio in April 1991. Accordingly, your Committee recommends that:

Following the creation of ex officio benchers under paragraph 9 of subsection 12(1) of the Law Society Act in the spring of 1991, an amendment to the Law Society Act should be sought whereby no further persons would be appointed benchers ex officio under the provisions of that paragraph.

Former Treasurers

During the course of the Committee's existence, one member, Mr. James M. Spence, was elected Treasurer of the Society. He declared an interest in the matter of former Treasurers becoming benchers ex officio and took no part in discussions on the issue.

To the extent that it falls within its mandate, your Committee is of the view that there should be no change to the practice of granting to former Treasurers the status of ex officio bencher with all the rights and privileges of an elected bencher. Your Committee notes that the Special Committee on Voting Procedures and Non-Bencher Appointments came to the same conclusions in its report of February 23, 1989.

REMUNERATION

Concern has been expressed that some members are deterred from running for election because they could not afford the loss of income that would be entailed in fulfilling their responsibilities as benchers over a period of four years. Your Committee reviewed various methods of remunerating benchers, but was unable to reach a consensus.

It was agreed that if any system of remuneration is introduced, it must not be one which encourages members to run for election in the hope of monetary reward. Under one scheme considered by the Committee, a bencher would have been entitled to remuneration at the Legal Aid rate for attendance at Convocation, but only if the bencher:

1. had been elected at the beginning of the quadrennial term;
2. had been called to the bar for a period of less than eight years at the time of election; and
3. practised under conditions in which there were fewer than seven other members of the Society in association or partnership with the bencher, or fewer than seven other members of the Society working for the bencher's employer.

Your Committee recognizes that costs to the membership for the maintenance of a program of remuneration would be significant.

60% of the respondents to the questionnaire were opposed to the remuneration of benchers. Many believed that the honour and privilege of serving as a bencher were sufficient reward and that there was no need for other compensation.

Your Committee recommends that:

There should be further study of ways to overcome the financial obstacles which deter members from running for election.

ELECTORAL PROCESS

The Committee reviewed the contents and distribution of campaign materials and decided that:

The Society should absorb the costs of a bulk mailing in which each candidate would be allowed one side of a page, the content to be decided by the candidate, subject to the constraints contained in the laws of libel, the Rules of Professional Conduct and the principles of good taste.

Your Committee was of the view that members of the profession need more information on the candidates in order to make an informed choice. Your Committee was opposed to the Society editing candidates' statements, save for the exceptions noted above, as this might be viewed by members of the profession as an attempt to protect the position of incumbents and inhibit the free flow of information.

Your Committee recognized the need, however, for a disclaimer with the bulk mailing that would stipulate that the views contained in the materials of the mailing were not necessarily those of the Law Society.

63% of the respondents to the questionnaire favoured changes to the electoral process including a cap on election expenses. Your Committee noted that this would be difficult to monitor. It was agreed that your Committee did not have sufficient information on the cost of electoral campaigns and it is therefore recommended that:

Following the 1991 election, the Society should canvass candidates, on an anonymous basis, to ascertain the estimated cost of their campaigns.

The Committee agreed to refer the matter of the mechanics of the electoral process for the forthcoming election to the newly struck Advisory Committee on Benchers' Elections.

VOTER TURNOUT

Your Committee was alarmed by the decreasing participation in the election of Benchers (71.2% in 1979, 62.5% in 1983 and 54.1% in 1987).

Your Committee recommends that:

Various measures by the Law Society, such as a series of advertisements in the legal newspapers and periodicals before and during the election, and a public forum, should be explored in order to increase voter turnout at elections.

IMPLEMENTATION OF THIS REPORT

By paragraph 6 of section 62(1) of the Law Society Act, Convocation is given power to make rules providing for the time and manner of and the methods and procedures for the election of benchers.

The provisions that Convocation has made are to be found at Rules 7-18 (Appendix 6). It is within the power of Convocation to amend, or to add to these Rules. The only constraints upon the powers of Convocation in this matter are to be found in sections 15-21 of the Law Society Act (Appendix 7).

In the final part of this Report, your Committee's recommendations are grouped as follows:

- (1) Recommendations that can be implemented by Convocation.
- (2) Recommendations that will require amendment of the Law Society Act if they are to be implemented.
- (3) Recommendations for consideration by other committees.
- (4) Suggested wording for amendments to the Rules where necessary to implement those changes that are within the power of Convocation.

ALL OF WHICH is respectfully submitted this 26th day of October 1990.

Roderic G. Ferguson
Chair
The Special Committee on
Bencher Elections

SUMMARY OF RECOMMENDATIONS

- (1) Recommendations that can be implemented by Convocation
The seven regions outside the Municipality of Metropolitan Toronto prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984, c. 11, as amended, be established as electoral regions.

The following four electoral regions should be established within the Municipality of Metropolitan Toronto: (1) The City of Toronto. (2) The Borough of East York and The City of Scarborough. (3) The City of York and The City of Etobicoke. (4) The City of North York.

There should be one benchers elected from each of the eleven electoral regions. The remaining thirteen benchers from outside Metropolitan Toronto and the remaining sixteen benchers from within Metropolitan Toronto should be elected by all voters in the province, as at present.

The benchers who are elected as regional representatives be elected only by the votes of voters within their own regions.

Convocation should make a rule providing that, for purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchers from a particular electoral region or where there is a vacancy in the requisite number of benchers from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchers was within that particular region.

Rather than increasing the number of benchers, the Society should look to its membership for assistance in committee work of all kinds.

Note: Motions, see page 143, 144

The Society should absorb the costs of a bulk mailing in which each candidate would be allowed one side of a page, the content to be decided by the candidate, subject to the constraints contained in the laws of libel, the Rules of Professional Conduct and the principles of good taste.

Following the 1991 election, the Society should canvass candidates, on an anonymous basis, to ascertain the estimated cost of their campaigns.

Note: Motion, see page 144

Various measures by the Law Society, such as a series of advertisements in the legal newspapers and periodicals before and during the election, and a public forum, should be explored in order to increase voter turnout at elections.

- (2) Recommendations that will require amendment of the Law Society Act if they are to be implemented.

Further consideration should be given to a system of staggered terms, retaining the four-year term but holding elections every two years. This proposal to be enacted when reasonably possible and subject to review by the Finance and Administration Committee.

Following the creation of ex officio benchers under paragraph 9 of subsection 12(1) of the Law Society Act in the spring of 1991, an amendment to the Law Society Act should be sought whereby no further persons would be appointed benchers ex officio under the provisions of that paragraph.

- (3) Recommendations for consideration by other committees

The current responsibilities of benchers are not such as to justify an increase in the number of benchers but this matter should be considered by the Special Committee on Practice Requirements Reform Implementation in light of any reforms that are adopted by Convocation.

If Convocation decides to recommend an increase in the number of lay benchers, the number of elected benchers should be considered by the Special Committee on Practice Requirements Reform Implementation.

There should be further study of ways to overcome the financial obstacles which deter members from running for election.

- (4) Suggested wording for amendments to the Rules where necessary to implement those changes that are within the power of Convocation.

It is recommended that the following amendments be made to the Rules under subsection 62(1) of the Law Society Act:

1. Rule 10 of the said rules is amended:

- (a) by adding the following paragraph to subrule 10(2):

- (f) may be accompanied by an election statement, typed in regular size type on no more than one side of paper measuring 8-1/2 ins. x 11 ins. (21.5 cms x 28 cms).

- (b) by adding the following subrules:

- (5) The Secretary shall arrange for each election statement to be re-typed in a standard format.

- (6) (a) Where, in the opinion of the Secretary, an election statement infringes the laws of libel, the Rules of Professional Conduct or the principles of good taste, the Secretary shall refer the statement to the Treasurer.

- (b) The Treasurer will appoint two or more ex officio benchers to serve as an editing committee to edit the election statement

- (c) The decision of the editing committee shall be final and the candidate shall immediately be notified of the committee's decision.

- (d) A statement that has been edited by the editing committee shall not contain any mention of the fact that it has been edited unless the candidate so requests.

- (e) A candidate who does not agree with the decision of the editing committee has the right to request that the edited statement not be distributed.

- (f) A request that an edited statement not be distributed must be received by the Secretary no later than twenty-four hours after notice of the decision of the editing committee was sent to the candidate.

- (g) Provided that a request not to distribute an edited statement is received within the time set out in paragraph (f) above, all copies of the statement will be withdrawn from the materials to be sent to electors. Failing receipt of a request within twenty-four hours, as provided for in paragraph (f) above, the edited statement will be included with the materials to be sent to electors under subrule 12(1) below.

2. Subrule 12(1) of the said rules is amended by adding, after the word "envelopes" in the fourth line, the following words:

the election statements received from candidates,

3. Rule 14 of the said rules is repealed and the following substituted therefor:

Certification of Result

- 14 (1) For purposes of this rule,
- (a) a reference to a person, a voter or a candidate from or within a city, a municipality, a borough or a judicial region, is a reference to a person, a voter or a candidate whose address on the records of the Society on the last day for nominations was in that city, municipality, borough or judicial region, as the case may be;
 - (b) "judicial region" means a region prescribed under s. 92a of the Courts of Justice Act, 1984, S.O. 1984., c.11 as amended.
 - (c) "electoral region" means a geographical area defined in any of the paragraphs (a)-(m) of subrule (2).
- (2) Subject to subrule 3:
- (a) The person among the candidates from the City of Toronto who has the highest number of votes cast by voters within the City of Toronto, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (b) The person among the candidates from the Borough of East York and the City of Scarborough who has the highest number of votes cast by voters within the Borough of East York and the City of Scarborough, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (c) The person among the candidates from the City of York and the City of Etobicoke who has the highest number of votes cast by voters within the City of York and the City of Etobicoke, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (d) The person among the candidates from the City of North York who has the highest number of votes cast by voters within the City of North York, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (e) The sixteen other persons from the Municipality of Metropolitan Toronto who have the highest number of votes casts by voters from every electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as benchers.
 - (f) The person among the candidates from the North West judicial region who has the highest number of votes cast by voters within the North West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.

- (g) The person among the candidates from the North East judicial region who has the highest number of votes cast by voters within the North East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (h) The person among the candidates from the East judicial region who has the highest number of votes cast by voters within the East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (i) The person among the candidates from the Central East judicial region who has the highest number of votes cast by voters within the Central East judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (j) The person among the candidates from the Central West judicial region who has the highest number of votes cast by voters within the Central West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (k) The person among the candidates from the Central South judicial region who has the highest number of votes cast by voters within the Central South judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (l) The person among the candidates from the South West judicial region who has the highest number of votes cast by voters within the South West judicial region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (m) The thirteen other persons from outside the Municipality of Metropolitan Toronto who have the highest number of votes cast by voters from every electoral region, as reported by the scrutineers, shall be certified forthwith by the Secretary as having been elected as benchers.
- (3)
- (a) If there is any person certified as having been elected as a bencher under paragraphs (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), or (l), of subrule(2) who by virtue of such election becomes an ex officio bencher, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from that electoral region having the next highest number of votes cast by voters within that electoral region shall be certified forthwith by the Secretary as having been elected as a bencher.
 - (b) If there is any person certified as having been elected as a bencher under paragraph (e) of subrule(2) who by virtue of such election becomes an ex officio bencher, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from

the Municipality of Metropolitan Toronto having the next highest number of votes cast by voters from every electoral region shall be certified forthwith by the Secretary as having been elected as a bencher.

- (c) If there is any person certified as having been elected as a bencher under paragraph (m) of subrule(2) who by virtue of such election becomes an ex officio bencher, the scrutineers shall so report and, subject to subrule(4) of rule 13, the person among the candidates from outside the Municipality of Metropolitan Toronto having the next highest number of votes cast by voters from every electoral region shall be certified forthwith by the Secretary as having been elected as a bencher.

4. The said rules are further amended by adding the following rule after rule 18:

Vacancies

18. A. For purposes of s. 21 of the Law Society Act, where there is a failure to elect the requisite number of benchers from a particular electoral region or where there is a vacancy in the requisite number of benchers from a particular electoral region, the term "qualified member" shall mean a member whose address on the records of the Society on the last day for nominations for the last quadrennial election of benchers was within that particular region.

LIST OF APPENDICES

1. Letter to members of the legal profession, March 30, 1990.
2. Executive summary of responses to the questionnaire.
3. Submission on Benchers Election Reform submitted by the Committee for Bencher Accountability, March 23, 1990.
4. Brief to the Special Committee on Bencher Elections from the County and District Law Presidents Association.
5. Compilation of provisions relating to the election of governing bodies among the law societies of Canada.
6. Rules 7-18 made under s. 62(1) of the Law Society Act, R.S.O. 1980, c. 233.
7. Sections 15-21 of the Law Society Act, R.S.O. 1980, c. 233.
8. Financial implications of recommendations for changes to come into force in time for the 1991 quadrennial election of benchers.

9. Map of the judicial regions established under s. 92a of the Courts of Justice Act, 1984, as amended.

(Appendices attached to Report in Convocation file)

.....

Mr. Ferguson suggested that for ease of reference that the paragraphs under the heading Summary of Recommendations be numbered 1(a) to (e).

It was moved by Mr. Ferguson, seconded by Mr. Thoman that items 1(a) to (e) on page 18 of the Report be adopted.

It was moved by Mr. Bastedo, seconded by Mr. Ferrier that 1(b) be deleted.

Lost

It was moved by Mr. McKinnon, seconded by Ms. Kiteley that the Treasurer be invited to constitute a Special Committee on Benchers Elections immediately on election of new Benchers in 1991 such Committee to report no later than May 1992.

Lost

It was moved by Mr. Farquharson, seconded by Ms. Peters that the issue of Convocation's authority to deal with these amendments be considered before Convocation proceeds further with consideration of the substance of the amendments.

Withdrawn

It was moved by Mr. O'Brien, seconded by Mr. Furlong that:

(a) the Law Society seek amendments to the Law Society Act with regard to 2 matters: (1) insert, at the beginning of subsection 15(2) and at the beginning of subsection 15(3), the words:

"subject to a rule or rules providing for different regional representation,:

(2) in paragraph 6 of subsection 62(1), add, after the word "providing" the words:

"for regional representation and"

and that any decisions taken by Convocation in regard to the other recommendations in the Report be subject to the Society obtaining the necessary amendments and

(b) that if necessary the election be deferred until such amendments are made but in any event no later than November of 1991.

It was moved by Mr. Carey, seconded by Ms. Peters that the guaranteed seat for the City of Toronto be elected from practitioners north of Bloor (excluding Bloor), west of Bathurst (excluding Bathurst), east of Parliament (excluding Parliament).

Mr. Carey accepted an amendment to his motion that there be 5 representatives from Metropolitan Toronto, the City of Toronto to be divided into two areas: (as set out in Mr. Carey's motion). This amendment would further require an amendment to 1(b) and (c) on page 18 of the Report.

Lost

It was moved by Ms. Kiteley, seconded by Mr. O'Brien that 1(c) be amended to read "There should be two Benchers elected from each of the electoral regions outside of Toronto except the northwest and that one be elected from the northwest. The remaining 7 Benchers from outside Metropolitan Toronto and the remaining 16 Benchers from within Metropolitan Toronto should be elected by all the voters in the province."

Lost

It was moved by Mr. Shaffer, seconded by Mr. Farquharson that Ms. Kiteley's motion be amended by deleting "except the northwest and one from the northwest".

Withdrawn

It was moved by Mr. Somerville, seconded by Ms. Weaver that paragraphs 1(a), (b) and the first sentence of paragraph (c) on page 18 of the Report be dealt with together.

Lost

.....

The Hon. Howard G. Hampton, Attorney General of Ontario attended and addressed Convocation briefly on a variety of issues and initiatives to be taken by his Ministry.

.....

CONVOCATION ADJOURNED AT 1:00 P.M.

.....

The Treasurer and Benchers had as their guests for luncheon, The Hon. Howard G. Hampton, Senator Steuart, Mr. Neil Kitchener and Ms. Jennifer Richards (Fox scholars).

.....

CONVOCATION RECONVENED AT 2:40 P.M.

PRESENT:

The Treasurer, (James M. Spence, Q.C.), Arnup, Bastedo, Bellamy, Callwood, Campbell, Carey, Cass, Chapnik, Epstein, Farquharson, Ferrier, Ferguson, Furlong, Ground, Guthrie, Hickey, Howland, Kiteley, Lamont, Lawrence, Legge, Lerner, McKinnon, Murphy, O'Brien, Peters, Rock, Scace, Shaffer, Somerville, Thom, Thoman, Wardlaw, Weaver and Yachetti.

.....

Recommendations 1(a) through (e) on page 18 of the Report were voted on and adopted by Convocation.

It was moved by Mr. Carey but failed for want of a seconder that Mr. O'Brien's motion be deferred.

Convocation then voted on Mr. O'Brien's motion. (see page 143). The first part of the motion regarding seeking amendments to section 15 and section 62(1) of the Act carried on a vote of 20 to 10. That part of the motion deferring the election until the amendments were made was defeated.

It was moved by Ms. Callwood but failed for want of a seconder that the election be deferred no later than 2 months.

It was moved by Mr. Ferguson, seconded by Mr. McKinnon that the two last paragraphs on page 18 dealing with costs of bulk mailing and election expenses be adopted.

Carried

It was moved by Mr. Ferguson, seconded by Mr. McKinnon that any increase in the number of Benchers be subject to Convocation's approval of the Implementation Committee proposals.

Carried

It was moved by Mr. Ferguson, seconded by Mr. McKinnon that the recommendation on the top of page 19 of the Report re: efforts to increase voter turnout be adopted.

Lost

.....

LEGISLATION AND RULES COMMITTEE

The Report of the Legislation and Rules Committee was deferred.

.....

SPECIAL COMMITTEE ON COMPLAINTS PROCEDURES (REPORT #3)

Ms. Callwood presented the Report on the Special Committee on Complaints Procedures.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The special Committee on Complaints Procedures is comprised of the following members: Meg Angevine (staff), Harry Arthurs (President, York University, Patrick Ballantyne (Staff), June Callwood, Tom Carey, Roderick Ferguson, Netty Graham, Scott Kerr (Staff), Jeff Lyons, Colin McKinnon, Ann Merritt (Observer, Attorney-General's Department), Rita Mosevich (Staff), Mark Orkin, Kevin O'Toole (Staff), Allan Rock, Clay Ruby, Arthur Scace, Jim Spence, Jim Wardlaw, John Whyte (Dean, Queen's Law School).

This is the third and final report of the Special Committee on Complaints Procedures.

MINOR NEGLIGENCE AND RELATED ISSUES

INTRODUCTION

The following recommendations deal mainly with the issue of "minor negligence", which has been identified as an area where the Law Society in the past has been unable to respond effectively to complainants.

Based on the statistical data available, at least 25% of all complaints received allege that lawyers have acted negligently in providing legal services to their clients. The present practice is to advise complainants that the Society's investigative authority is restricted to the assessment of complaints based on professional misconduct. They are instructed that they have the option of consulting a second lawyer about any civil remedies that might arise from the actions (or inaction) of their lawyer. Complainants have often expressed dissatisfaction with the Society's position in these cases. One manifestation of this has been a high incidence of requests for Complaints Review.

In attempting to deal with this issue, the Committee focussed on recommendations designed to address the two most common concerns:

- (a) where a lawyer and client are unable to resolve a dispute on issues such as liability and quantum but the amount of any potential recovery by the client is too small to justify court action,

- (b) where the potential claim is substantial but the client has difficulty finding a lawyer who will consider suing another lawyer.

After considerable discussion, the Committee decided to strike a sub-committee composed of Rod Ferguson (Chair), Phil Epstein, Netty Graham, Lin Whitman and Kevin O'Toole (both from the Errors & Omissions Dept.) and Scott Kerr. The objectives of the sub-committee were as follows:

- i) to encourage mediation and resolution of disputes between lawyers and clients whenever possible,
- ii) to devise a procedure to resolve disputes which is fair to both public and profession and will be perceived as such,
- iii) to divert less serious matters from the discipline process,
- iv) to enhance the Society's ability to bring complaints of this kind to a satisfactory and expeditious conclusion,
- v) to devise a process which is consistent with the Society's obligation to identify and respond to concerns regarding the competency of individual lawyers.

The sub-committee reported back to the Committee with detailed proposals which were the subject of discussions both within the Committee as well as the Insurance Committee and representatives of the County & District Presidents. The Committee now wishes to make the following recommendations:

1. Recommendation

"Minor negligence" will be defined as a matter arising from negligence where the amount to be recovered will not exceed \$2,000.

Explanation

The purpose of this recommendation is to ensure the accessibility to the process of a wide range of minor disputes involving allegations of poor quality service. It should be emphasized however that the loss suffered by the complainant must arise as a consequence of some action or inaction on the part of a lawyer.

2. Recommendation

That minor revisions be made to procedures presently employed by the Errors & Omissions Department to facilitate the fair and expeditious resolution of minor negligence claims. The recommended procedural changes are as follows:

- i) Minor claims are to be evaluated in the same manner that have been followed in the past.
- ii) Where a claim is resolved by a member agreeing to reimburse a claimant, the member's rating for purposes of his or her deductible or levy will be unaffected.
- iii) When a matter is resolved in this way, the complainant shall sign a release waiving all other remedies against the lawyer.
- iv) If the Examiner determines there is no basis for a claim, the claimant, shall be so advised and may pursue civil remedies.

- v) Where the member disputes liability and/or damages as assessed by the Examiner, and resolution of the claim amongst all parties is therefore unsuccessful, the Errors and Omissions Department will satisfy the claimant's demands out of a fund created to respond specifically to such cases.

Where claims are so satisfied without the member's agreement, the member's rating shall be affected for the purpose of his or her deductible and levy, subject to paragraph 2 xi) below.

- vi) The fund for the procedure set out in paragraph v) shall be provided from the Complaints Department budget.
- vii) The sum of \$50,000 shall be made available for said fund for a trial period of twelve months.
- viii) A voluntary dispute resolution mechanism will be created to respond to a member's request for a review of cases in which the member disputes liability as assessed and settled by the Examiner (See Clause 2 (v)).
- * ix) Where the voluntary dispute resolution procedure finds against the member, such member shall have right to refer the matter to the Office of the Complaints Resolution Commissioner (see Report #2, Recommendation 5). This Commissioner shall have the authority to review, and, if warranted, reverse the Examiner's decision.
- x) Finally, if such member remains dissatisfied with the decision, the member may seek judicial review.
- xi) Where the original decision of the Examiner with respect to liability is reversed at any stage in the review process described herein, any change in the member's "rating" shall be waived and the member shall not be responsible to reimburse the Society for any payments made on the claim.
- xii) This procedure shall be subject to periodic review by the Director of Insurance.
- xiii) A specific record of all such claims shall be maintained by

*Subject to legislative reform.

the Errors & Omissions Department during a trial period so that the impact of this procedure can be effectively measured.

- xiv) This procedure shall be implemented on a trial basis for a period of twelve months after which the Committee shall evaluate its degree of success.

Explanation

The Committee recognizes that, under existing procedures, Examiners in the Errors & Omissions Department exercise some degree of discretion in responding to claims where negligence is considered questionable and the dollar value of the claim is low. The concern however is that the number of matters satisfactorily resolved is not as high as it should be because Examiners lack the authority to reimburse claimants where negligence and damages are not clearly defined. If a member denies liability or damages in these circumstances, the claimant must pursue remedies in the courts to recover the small amount sought. By establishing a fund to deal with these cases, the claimant can be reimbursed promptly leaving the Society and the member to deal with the issue of the member's liability.

3. Recommendation

That the following steps be taken, in conjunction with the Public Information Committee, to facilitate access by members of the public to lawyers prepared to advise or act in potential negligence claims against other lawyers:

Note: amendment, see page 149

- i) an advertising campaign will be initiated geared specifically toward expanding the roster of lawyers on the Lawyer Referral Service who are willing and able to advise or act for parties in these circumstances,
- ii) a Dial-A-Law tape will be created to help inform the public on the question of lawyer's negligence and what remedies are available,
- iii) the following additional considerations apply when the referral is made by staff in the Complaints or Errors & Omissions Departments or by a Complaints Commissioner or Complaints Resolution Officer:
 - a) members of the roster may act in either an advisory capacity or be selected as counsel to pursue a claim but shall not perform both functions in the same case,
 - b) lawyers acting in an advisory capacity only shall be remunerated by the Law Society at the rate of \$200 an hour for a period not to exceed two hours,

Note: amendment, see page 149

- c) that this procedure be implemented on a trial basis for a period of 6 months after which the Committee shall review its performance,

Explanation

One of the more common complaints made by members of the public is that it is very difficult to find a lawyer who is prepared to sue another lawyer. In many cases, it has been alleged by parties that a lawyer cannot be found to merely advise on the rights and remedies available. This recommendation is aimed at addressing the problem of access, both to counsel and to information about rights and remedies.

GENERAL COMMENTS

The recommendations contained herein are consistent with the general theme of all the Committee's reports, namely that increased emphasis and resources be devoted to conciliation and resolution.

It is also hoped that these recommendations will result in cost savings because of the reduced need for adjusters and counsel.

Finally, the Committee is of the view that the new procedures, taken as a whole will serve as a more effective early warning system for Professional Standards.

ALL OF WHICH is respectfully submitted

"J. Callwood"
Chair

Recommendations 1 and 2 on pages 2 and 3 were voted on and adopted by Convocation.

Ms. Callwood accepted the following amendments to recommendation number 3:

1st paragraph - add the words "in the same community" so the sentence now reads "That the following steps be taken, in conjunction with the Public Information Committee, to facilitate access by members of the public to lawyers prepared to advise or act in potential negligence claims against other lawyers in the same community".

paragraph 3. (iii)(b) - add the words "not to exceed" so the sentence now reads "lawyers acting in an advisory capacity only shall be remunerated by the Law Society at a rate not to exceed \$200 an hour for a period not to exceed two hours".

Recommendation number 3 as amended was adopted.

Convocation approved a trial basis of 1 year with a budget of \$100,000.

.....

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Ground presented the Report of the Finance and Administration Committee of its meeting on November 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of November 1990 at three o'clock in the afternoon, the following members being present: Messrs. Ground (Chair), Guthrie (Vice Chair), Hall, Ms. Harvey, Messrs. Lamont, Lerner, Pepper, Wardlaw and Mrs. Weaver.

B. ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the four months ended October 31st 1990.

Approved

In discussion which ensued several members expressed concern that they had noticed in other committees, of which they are members, certain expenditures were already approaching and in some cases exceeding annual budgeted amounts, particularly for counsel fees.

The Chair is to recommend to the Treasurer and the Under Treasurer that a memorandum be sent by the Treasurer to each Committee Chair and by the Under Treasurer to each manager responsible for a budget area, expressing concern over expenditure controls and also recommending that each committee agenda in future include an item for review of financial statements.

2. BUILDING FINANCING

A memorandum from the Director of Finance was before the meeting and the various financing options were discussed. It was the view of the Committee to pursue the "revolving line of credit" which would provide us with the option to move part or all of our borrowing requirements to a long term basis at a later date if interest rates were more favourable.

Approved

3. FORMAT OF MEETING AGENDAS

A memorandum dated September 20th 1990 from the Director of Finance to the Chair with suggestions of format of Finance and Administration agendas was before the Committee.

The Committee approved the proposed committee agenda formats.

4. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 6 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 6 cases all or part of the late filing fee has been outstanding four months or more. The 6 members owe \$2,040.00 of which \$1,860.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 6 members be suspended on November 23rd 1990 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 154

5. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

The following member has not paid his 1989-90 annual fees which were due on 1st October 1989.

Peter Noel Fulcher

Kingswood, Australia

The committee was asked to recommend that the rights and privileges of this member be suspended by Convocation on 23rd November 1990.

Approved

Note: Motion, see page 154

6. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS INSURANCE

There are many members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period July to December 1990. Three notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on 23rd November 1990.

Approved

Note: Motion, see page 154

7. MEMBERSHIP UNDER RULE 50

(a) Retired Members

The following members who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their membership in the Society without payment of annual fees:

John Thomas Corbett	Perth
James Bryce Lillico	Peterborough
Andrew Grahame McCracken	Victoria, BC
Russell Kennedy McAvoy	Chatsworth
Donald Collver Bradbury	Beamsville
George Sullivan Brown	Ottawa

(b) Incapacitated Members

The following members are incapacitated and unable to practise law and have requested permission to continue their membership in the Society without payment of annual fees:

Clifford Marshall Hames	North York
Louise Jane McIntosh	Gloucester
Joseph Kimball Yakabuski	Toronto

Their applications are in order and the Committee was asked to approve them.

Approved

8. RESIGNATION - REGULATION 12

(a) John Simes has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the bar on the 23rd of March, 1973 and practised law in Ontario only until 1980. His rights and privileges as a member of the Society were suspended on the 21st of February 1985 for failure to pay the 1984-85 fees. Arrears of fees now total \$4,746.00. His annual filings are up to date. The member has requested that he be relieved of publication in the Ontario Reports.

His application is in order and the Committee was asked to approve his resignation without publication and without payment of arrears of fees.

Approved

(b) Cecil Garland Stewart McKeown of Toronto is being permitted to resign his membership through the Finance Committee as directed by Convocation on the 27th of September 1990. David McKillop, the Society's Staff Trustee, attended at Mr. McKeown's office in May 1990 at which time the member produced his books, records and client's files. Mr. McKillop has confirmed that the member's practice has been wound up satisfactorily and for this reason believes that no useful purpose is served in requiring the member to advertise in the Ontario Reports a notice of his intention to resign.

The Committee approved Mr. McKeown's formal application to resign on the condition that he publish his resignation in the Ontario Reports.

The Committee asked the Director of Finance to report back to the January meeting on the current procedures for requiring publication or audits in cases of resignations and retirements and any recommendations for improvements.

9. LEGAL MEETINGS AND ENTERTAINMENT

The Canadian Oral History Association

A request has been made by Christine J. N. Kates, Oral History Co-Ordinator of the Osgoode Society on behalf of the executive of the Canadian Oral History Association for use of the premises at Osgoode Hall as a venue for their 1990/91 conference on May 3rd and 4th 1991.

The Committee was asked to approve this request.

Approved

C.
INFORMATION

1. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Hyman Max Swartz Toronto	Called November 19th 1931 Died June 16th 1989
Warren Bernard Weiss Toronto	Called June 22nd 1960 Died February 25th 1990
Warren Ernest White Burlington	Called June 17th 1943 Died September 12th 1990
Sidney Walter Lynde Toronto	Called September 20th 1957 Died September 17th 1990
William Craig Gibson St. Catharines	Called April 11th 1983 Died September 24th 1990
Charles Thomas Asplund Kingston	Called November 20th 1970 Died September 29th 1990
Mark Thomas Adamson Oakville	Called April 19th 1970 Died September 30th 1990
Gunter Vordemberge Don Mills	Called April 21st 1972 Died September 30th 1990
Frank Vass Toronto	Called September 16th 1948 Died October 21st 1990
Heber Edgar Smith Barrie	Called January 16th 1941 Died October 25th 1990
James Albert Giffen Mossley	Called June 27th 1957 Died October 27th 1990

Noted

(b) Membership in Abeyance

Upon his appointment to the office shown below the membership of the following member has been placed in abeyance under section 31 of The Law Society Act:

Robert Bernard Eisen Toronto	Called June 23rd 1955 Appointed to the Ontario Municipal Board September 4th 1990
---------------------------------	---

Noted

2. LIFE MEMBERS

Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date of 21st November 1990:

Philip Ephraim Band	Toronto
Michael Joseph Cloney	Oakville
Matthew Graham Kneale	Brantford
Peter Levine	Toronto
Ian Macdonald	Windsor
David Walfish	Toronto
Arthur Harvey Zaldin	Toronto

Noted

3. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Tina Mercedes Fulton	Tina Mercedes <u>Woodside</u> (Married Name)
Marie-Therese Sibylle Whalen	Marie-Therese Sibylle <u>Filion</u> (Married Name)
Sheryl Lanys	Sheryl <u>Cheskes</u> (Married Name)
Devon Althea Varep	Devon Althea <u>Jones</u> (Maiden Name)
Cynthia Beth Steinman	Cynthia Beth Borkowsky (Married Name)

Noted

4. STAFF CHANGES

The Director reported that 3 employees have left the employ of the Law Society and 12 have joined. Of these 12 positions, seven were replacements and five were new. Total staff complement is now 303.

Noted

ALL OF WHICH is respectfully submitted

DATED this 23rd day of November 1990

"J. Ground"
Chair

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

- B-Item 1 - Memorandum to the Chair and Members of Finance Committee from Mr. David Crack dated November 5, 1990 re: Financial Statements - Highlights as at October 31st, 1990. (Pages 1 - 7)
- B-Item 3 - Memorandum to Mr. John D. Ground, Q.C. from Mr. David E. Crack dated September 20, 1990 re: Finance and Administration Committee - Agendas. (Pages 8 - 9)

THE REPORT WAS ADOPTED

.....

MOTION TO SUSPEND: FAILURE TO PAY FEE FOR LATE FILING FORM 2/3

It was moved by Mr. Ground, seconded by Mr. Thom THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from the 23rd of November 1990 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

(See list in Convocation file)

Carried

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEES

It was moved by Mr. Ground, seconded by Mr. Thom, THAT having not paid his annual fees for the period July 1st, 1989 to June 30th, 1990, the rights and privileges of the following member be suspended for a period of one year from November 23rd, 1990 and from year to year thereafter, or until his fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Peter Noel Fulcher

Kingswood, Australia

Carried

MOTION TO SUSPEND: FAILURE TO PAY ERRORS AND OMISSIONS INSURANCE LEVY

It was moved by Mr. Ground, seconded by Mr. Thom, THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on 1st of July 1990 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from the 23rd day of November 1990 for one year and from year to year thereafter or until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

(See list in Convocation file)

Carried

.....

RESUMPTION OF PROFESSIONAL STANDARDS COMMITTEE REPORT

Item 1 under Policy re: Interview Fee, was deferred.

.....

SPECIAL COMMITTEE ON REFORMS IMPLEMENTATION

The Report on Reforms Implementation was deferred.

.....

SPECIAL COMMITTEE ON MINORITY GROUPS ASSISTANCE PROGRAMS

The Report on Minority Groups was deferred.

.....

CONVOCATION ADJOURNED AT 4:50 P.M.

.....

Confirmed in Convocation this *25th* day of *January*, *1991*.


Treasurer