



# Benchers Bulletin

November 1992 Vol. 1 No. 3

## Focus on requalification

In April 1992, Convocation adopted in principle the recommendations contained in a report submitted by the Special Committee on Requalification which would require lawyers who had not practised for five or more years to re-

establish their proficiency in the law. The report was referred to the Professional Standards Committee, which was to develop a set of requirements that would need to be met by



**Stephen Goudge**

members wishing to return to practising status.

In response to the considerable interest generated by members of the profession and in recognition of the fact that the task of establishing requirements would require input from a variety of Law Society committees, a joint sub-committee was struck in September 1992. The Joint Sub-committee on Requalification is comprised of Benchers from the Professional Standards, Admissions, Legal Education and Women in the Legal Profession committees and non-Benchers who are representative of lawyers potentially affected by a requalification policy.

Toronto Benchers Stephen Goudge, chair of the Joint Sub-committee on

Requalification addresses some of the issues committee members will consider over the coming months.

*Q: The Law Society has a requalification policy that was established in 1986. Is there a need to change the current practice?*

SG: Currently, members who have been suspended for five years or more for non-payment of Law Society membership fees must requalify in order to return to active practice. Our rationale is that it is reasonable to conclude that some members who have withdrawn from practice may not have kept current with the law and procedures in Ontario and should, therefore, be required to establish their proficiency.

This criterion however, does not capture those members who can continue to pay fees while not actively practising. It often proves discriminatory, particularly towards women who leave practice to raise families and may not have the financial resources to pay their annual fees.

*The April 1992 Report of the Special*

*continues...*

### *Season's Greetings*

The Treasurer, Benchers and Staff of the Law Society of Upper Canada wish all members a joyous holiday season and extend their best wishes for a happy and prosperous New Year.



#### *In this issue:*

- 1993 E&O levy
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*definition of "practising law" which would require many of those who had not engaged in conventional practice for a period of five or more years to requalify. Will the Joint Committee re-examine the definition of "practising law" and to whom will a new requalification policy apply?*

The fundamental concern and core mandate of the sub-committee is the identification of the target group which should be required to requalify. Members of the sub-committee agree that this is the most important issue. The spectrum ranges from, at one extreme, the view that no one need requalify to, at the other extreme, a very narrow definition of lawyers in practice, requiring a significant portion of the membership to do so. In the past, the payment of fees was the only criterion by which the need to requalify was assessed and Convocation has determined that this does not provide adequate protection for the public and may not be fair.

The sub-committee recognizes that many members of the Law Society are employed in occupations where they use their legal skills without technically engaging in the practice of law. Governments, university law schools, publishing houses and tribunals are just a few examples of the non-traditional workplaces where lawyers are often employed. There is every reason to believe that the segment of the legal profession employed outside of conventional private practice is likely to increase. In recent years, the Bar Admission Course has been offering seminars on alternative careers in an effort to expose students to non-traditional avenues of employment which will, following their call to the Bar, permit them to use and maintain their legal skills and allow them to remain part of the legal community.

Ultimately, our objective is to develop a policy that will ensure the competence of practitioners who return to practice after periods of absence, and that will be sufficiently flexible to take into account the many variable circumstances that it is intended to provide for. In achieving this objective, the sub-committee will consider who has to requalify, what they have to do, how they do it, and how the Law Society monitors their qualifications.

*Is it the sub-committee's intention to establish set requirements that will need to be met by every member who has to requalify?*

No. The committee will develop a range of reason-

able conditions that might be imposed upon those members and former members required to requalify. The policy will aim towards sufficient flexibility to accommodate the various reasons why members withdrew from active practice.

*Will a future requalification policy affect those members currently under suspension or those currently not engaged in private practice?*

We are aware that a number of members would fall into these two categories. The sub-committee will explore a range of options and will consult widely before issuing its recommendations.

*Concerns have been raised about the possible discriminatory effect of a requalification policy that calls into question the competence of certain members while others are left unchallenged. There is no guarantee that members who have a particular practice focus would be competent to start practising in another area of law. Will the sub-committee be addressing this concern?*

This point was effectively made by some of those who criticized the Society's initial position this past spring. We aim to create a fair and even-handed policy, and the sub-committee may well recommend measures for practising lawyers who wish to change the nature of their work, to ensure that they are fully trained and competent in any work they take on.

*In addition to appointing non-Bencher members in non-traditional areas of employment on the sub-committee, will the Law Society be consulting with the profession on the development of a requalification policy?*

The Joint Sub-committee welcomes the views of all members of the profession. In addition, it will solicit the views of a number of professional organizations such as the County and District Law Associations; women's groups; the CBA; the Association of Law Officers of the Crown; the Ontario Crown Attorney's Association; the Association of Law Teachers and other Law Societies.

Although individuals are encouraged to address any issue of concern to them regarding requalification, the sub-committee is particularly interested in receiving comment on a number of items that form part of its agenda. These include the nature of the deficiencies a requalification policy should address; the target group(s) to whom the policy should apply; reasonable requirements



to be imposed on members required to requalify and the implementation of requalification requirements.

**Written submissions should be directed to the attention of Susan McCaffrey, Secretary, Requalification Committee, by no later than January 29, 1993.**

## E&O levy set for 1993

Due to a projected deficit of \$19.4 million and a combination of decreasing interest rates and increased reinsurance costs, the Errors & Omissions levy will increase by 21.5 per cent effective January 1993.

Lawyers with no successful claims filed against them over the past five years—about 95 per cent of the 16,400 practising lawyers in Ontario—will see their premiums rise to \$3,000 next year from \$2,450 this year. Lawyers in the highest risk category with at least four claims filed in the last five year period will pay up to \$13,310. Included in the premium is a \$250 supplemental levy which is required to pay down the current deficit in the insurance fund by December 1996.

The levy will be billed in two instalments, with payment covering the first six months of 1993 due on January 1.

## Proposed immigration pilot projects seen as premature

The Law Society will not participate with the Ministry of the Attorney General in discussions about pilot project staff models in immigration and refugee law until pending changes to the federal *Immigration Act* are proclaimed.

It is anticipated that once Bill C-86 is passed early in the new year, demand for legal aid certificates in immigration and refugee matters may decrease by up to 60 per cent. The Legal Aid Committee is of the view that until the effects of the legislation are known, discussions concerning possible pilot projects are premature. The matter will be reviewed once again by the Legal Aid Committee following proclamation.

## Sub-committees to establish practice standards

Three joint sub-committees comprised of Professional Standards and Legal Aid have been created

by the Law Society to address the issue of standards in family, criminal and immigration law practice. The sub-committees are scheduled to report to Convocation by April 1993.

Standards developed by the joint sub-committees and adopted by Convocation will apply to all members of the Law Society, whether they are providing services pursuant to a legal aid certificate or a private retainer.

A 14-member sub-committee chaired by Bruce Durno was struck in September 1992 to establish the feasibility of standards of professional practice for admission to and retention on criminal legal aid panels. The existing sub-committee will be preserved, but its mandate will be expanded to consider standards of practice for all criminal practitioners. In addition, its membership will be broadened to include three or four representatives from the Professional Standards Committee.

## Annual meeting highlights

The Law Society held its annual general meeting on November 11 at Osgoode Hall. Treasurer Allan Rock reported on the work of the Society and its committees and Finance Chair Kenneth Howie presented the audited financial statements for the year ending June 30, 1992, which showed a small operating surplus of \$166,800 in the General Fund.

Two motions, introduced by members of the Committee for Benchers Accountability, were passed and will be considered by Convocation sometime in the 1993 winter/spring session. The first motion would remove the right of former Treasurers to vote in Convocation and the second would require any person standing for election as Treasurer to have been elected as a benchers in the immediately preceding election.

Limited copies of the Law Society's 1992 Annual Report are available by contacting the Communications Department at (416) 947-3465.

## Class action coming to Ontario

Civil law practitioners can look forward to class action litigation in Ontario as early as January 1993, following the proclamation of the *Class Proceedings Act* (Bill 28) and the *Law Society Amendment Act* (Bill 29).

The *Class Proceedings Act* will provide lawyers with a sophisticated procedure designed to enable class action litigation in Ontario. In the past,



representative proceedings have only been possible pursuant to Rule 12 of the Rules Of Civil Procedure or a specific statutory provision such as Section 119 of the *Landlord and Tenant Act*. Once the new law is proclaimed, it will be possible for one individual—a representative plaintiff—to come forward on behalf of a class of similarly situated individuals and retain counsel to litigate on behalf of all of the groups' claims.

The procedures provided by the *Class Proceedings Act* are significantly different from traditional two-party litigation. Special rules are provided specifying who can speak for a group and governing the conduct of the action, including the assessment of damages.

The Act also provides for judgment distribution to class members to facilitate the disbursement of large judgments comprised of small individual amounts and many other aspects of the litigation.

Of particular interest to both practitioners and class litigants is the availability of contingency fee arrangements. With respect to fees, the Act provides a variety of special rules and requirements, including a requirement that agreements with respect to fees and disbursements must be in writing, the provisions for calculating the contingency fee, and the payment of lawyers fees and disbursements in the event of success, to mention but a few.

The traditional financial barriers to class action litigation created by the high cost of disbursements and the risk of adverse costs awards has been addressed through the creation of a litigation fund known as the "Class Proceedings Fund" which will be administered by the Law Foundation of Ontario. This fund will make available \$500,000 over the first two years of its operation to assist representative plaintiffs with the cost of disbursements in class actions. It will also indemnify a representative plaintiff who used the fund in the event there is an adverse costs award against the representative plaintiff at the conclusion of the litigation.

This new legislation will present some profound challenges which will require that civil litigators familiarize themselves with a variety of financial, ethical and other issues as they use this sophisticated new procedure for class actions on behalf of clients.

To assist the profession in understanding and dealing with these new challenges, the Law Society has prepared a set of guidelines for interested

lawyers entitled "The Challenges of Class Proceedings for Civil Litigators." To order a copy, contact the Communications Department at (416) 947-3334.

## Committee initiates assessment of sexual harassment policy

Last February, the Law Society's recommended personnel policy regarding employment-related sexual harassment was distributed to the managing partners of Ontario law firms. Copies were also furnished on request to an additional 381 members of the Society.

The Women in the Legal Profession Committee is initiating an assessment of the policy in terms of its substantive content, its impact on lawyers, and any experiences related to its implementation in law firm settings. Managing partners will receive a questionnaire in the near future asking for their comments on the policy. Members who have received copies of the policy are invited to forward their comments in writing by January 22, 1993 to Susan Elliott, Chair, Women in the Legal Profession Committee. Copies of the policy may be obtained by calling (416) 947-5230.

## New system proposed for discipline procedures

A number of administrative changes are being proposed to the Law Society's discipline procedures which are designed to speed and streamline the current discipline process. If adopted, the changes can be implemented without amending *The Law Society Act*.

The new system being proposed by the Discipline Policy Committee will assign complaints to either a fast, standard or complex track depending on their seriousness or complexity. A number of recommendations have also been put forward to govern the relationship between Convocation and Discipline Committees. The new policy requests that Convocation adopt a policy of deference to a discipline committee's findings of fact and recommendations as to penalty save under certain specific circumstances. The rules of procedure applicable following delivery of a discipline committee report will be formally spelled out.

Members are invited to obtain copies of the proposed changes by contacting the Discipline



Department at (416) 947-3355. Comments are welcome and should be submitted in writing to Gavin MacKenzie, Senior Counsel-Discipline, by January 22, 1993.

## Lawyer Referral members to pay fee in new year

In order to offset administrative costs and broaden its marketing and advertising efforts, the Lawyer Referral Service will be charging a \$50 annual fee to participating lawyers as of January 1993. Prior to recommending the implementation of the \$50 fee, the LRS surveyed a number of North American jurisdictions, many of which typically charge panel membership fees of \$50-\$150 in addition to five-to-ten per cent of the fees generated by the referral.

The Lawyer Referral Service, which was launched in Ontario in 1970, receives over 700 calls per day from prospective clients. The LRS conservatively estimates that during 1992, over \$6 million in fees will have been generated for panel lawyers through its referrals.

The Lawyer Referral Service can be accessed from anywhere in Ontario through 10 local and 10 toll-free lines. Eight LRS agents are available to assist LRS clients in both official languages. The willing participation and support of LRS panel members has been crucial to the successful operation of the program. New members are always welcome.

## Voice mail comes to Osgoode

In order to serve members more efficiently, the Law Society is enhancing its telephone system with the addition of voice mail. Installation of the system will take place between December 7 and 18.

The new system will allow members to call Law Society staff directly and, if that person is unavailable, will allow members to leave a detailed, confidential message which will be returned as soon as possible. Personal assistance may be obtained by pressing "0".

Law Society telephone and fax numbers will remain the same. A telephone list for members' use will be included in the January issue of the Benchers Bulletin. Members are asked to notify the Law Society if they encounter any difficulties with the new system.

## Eight non-Benchers join LSUC committees

Treasurer Allan Rock is pleased to announce the appointment of eight non-Bencher members who will serve on Law Society standing committees for the period September 1992 to June 1993. The members selected, and the committees to which they have been appointed are:

**Carolyn D. Ateah** (Oakville)  
Communications

**Kenneth Golish** (Windsor)  
Libraries and Reporting

**Jacinth Herbert** (Toronto)  
Research & Planning

**James M. Klotz** (Toronto)  
Discipline Policy

**Jane Monaghan** (Elgin)  
Women in the Legal Profession

**Louis Radomsky** (Toronto)  
Legal Education

**R. Mitchell Rowe** (Ottawa)  
Professional Conduct

**Martha B. Trofimenko** (Toronto)  
Professional Standards

Non-Bencher members have been added to a number of standing committees on an experimental basis with a view towards broadening the profession's representation on the governing body. Over the next few months, the Law Society will monitor its experience with this program and discuss whether to adopt a permanent policy of appointing non-Bencher lawyers to certain committees. Any permanent policy will include a formal selection procedure to be applied in determining future appointments.

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## En français?

Si vous désirez obtenir ce bulletin en français ou tout autre document du Barreau déjà publié en français, veuillez en aviser le Service des communications.

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## Upcoming events

- **January 6**  
Interfaith Service
- **January 28**  
Discipline Convocation
- **January 29**  
Regular Convocation
- **Calls to the Bar**
  - February 5 Ottawa
  - February 8 London
  - February 9 Toronto

## Treasurer's diary

Treasurer Allan Rock continued his round of appearances at the meetings of various professional organizations throughout the province to speak about current matters of interest at the Law Society. Mr. Rock spoke to the Delos Davis Law Guild about initiatives being undertaken by the Equity in Legal Education and Practice Committee. He addressed the most recent developments in legal aid at the County & District Law Presidents' Association Annual Meeting and the Criminal Lawyers' Association Annual Convention. He attended the Oxford County Law Association Annual Meeting in Ingersoll and spoke also to members of Le Barreau du Quebec and Le Chambre de Notaires in Montreal.

Mr. Rock will attend the meetings of local law associations in Peterborough on December 11 and Lindsay on January 7. Opportunities to speak at your local law association or professional organization's meeting are welcomed.

The Law Society  
of Upper Canada



Le Barreau  
du Haut-Canada

### Benchers Bulletin

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## Convocation attendance and roll-call votes

Nov. 27, 1992	Attend		Motion One*
	a.m.	p.m.	
Arnup, John	✓		Abstain
Bastedo, Thomas	✓		Against
Bellamy, Denise	✓	✓	Against
Bragagnolo, Rino			
Brennan, Lloyd	✓	✓	
Campbell, Colin	✓		Against
Carter, Robert			
Copeland, Paul			
Cullity, Maurice	✓	✓	Against
Curtis, Carole	✓	✓	For
Elliott, Susan	✓	✓	For
Epstein, Philip	✓		Against
Feinstein, Abraham	✓	✓	Against
Finkelstein, Neil			
Goudge, Stephen	✓	✓	Against
Graham, Netty	✓	✓	Against
Hickey, Michael			
Hill, Stephen	✓		
Howie, Kenneth			
Howland, William			
Kiteley, Frances	✓	✓	Against
Krishna, Virender	✓	✓	
Lamek, Paul	✓	✓	Against
Lamont, Donald	✓	✓	
Lax, Joan	✓		Against
Legge, Laura			
Lerner, Samuel			
Levy, Earl	✓		
McKinnon, Colin	✓	✓	Against
Manes, Ronald			
Martin, Arthur			
Mohideen, Fatima	✓		Against
Murphy, Daniel			
Murray, Ross	✓	✓	Against
O'Brien, Brendan	✓		
O'Connor, Dennis	✓		Against
O'Connor, Shirley	✓	✓	Abstain
Palmer, Julaine	✓		Against
Peters, Patricia	✓	✓	
Richardson, Nora	✓	✓	Against
Robinette, John			
Ruby, Clayton			
Scace, Arthur	✓		
Scott, David	✓	✓	Against
Sealy, Hope	✓	✓	Against
Somerville, Marc	✓		
Spence, James	✓		
Strosberg, Harvey	✓		For
Thom, Stuart	✓	✓	Against
Topp, Robert			
Wardlaw, James	✓		Against
Weaver, Mary	✓	✓	Against
Yachetti, Roger	✓		Against
Rock, Allan (Treas.)	✓	✓	

### Non-voting Benchers in attendance

Patrick Furlong, Kenneth Jarvis, P.B. Pepper.

### \*Motion One

A motion introduced by H. Strosberg and seconded by D. Scott to postpone the \$250 supplemental E&O levy for six months was lost by a vote of 23 to 3 with two abstentions.