



# Benchers Bulletin

September 1992 Vol. 1 No.1

## Treasurer sees busy term ahead

I am delighted to have an opportunity to express greetings to the profession in this, the first issue of the *Benchers Bulletin*. The *Bulletin* is a new membership communications initiative launched by the



Allan Rock

Law Society in response to the communications needs of the profession as defined by the survey of the profession undertaken by the Law Society last winter. The program

consists of regular publication and distribution of four newsletters.

Two of those newsletters, the *Errors & Omissions Bulletin* and *The Adviser*, are already familiar to the profession, and are designed to keep members regularly informed about insurance and practice matters. Two new publications have been added. This *Bulletin* is designed to inform lawyers, government and the media about the work of the Benchers from month to month and developments in Law Society policies affecting the legal profession. The *Discipline Digest* will provide bi-monthly summaries of all discipline matters considered by Convocation.

In addition to providing valuable practice and professional advice, it is our intention by publishing these newsletters to ensure that regular information goes to interested persons on matters relating to

policy and self-regulation. I expect that the newsletters will serve as a vital link to the profession throughout the province.

All fee-paying members and life members will receive copies of these publications on a regular basis throughout the year. Suggestions, contributions and helpful hints are welcome, and should be addressed to the Publications Editor, Communications Department, Law Society of Upper Canada.

### Priorities for 1992-1993

The 22 Standing Committees of the Law Society meet at least once each month, and forward to Convocation their recommendations concerning policies, priorities and planning for the Law Society and its programs. Apart from the regular business of administering the Law Society's affairs, there are specific matters that will actively engage the attention of the Benchers during the coming months.

- *The Legal Aid Plan* faces a serious funding shortfall that must be overcome. The most recent estimate is that the Plan will require an additional \$16 million for the current fiscal year, and more may be required depending on spending priorities. Law Society representatives have been meeting with staff at the Ministry of the Attorney General during the summer and into the fall, discussing ways in which these challenges might be met without compromising the quality of service to the public.

To assist the government in addressing the current fiscal crunch, the Law Society has proposed a variety of

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changes, most of which were recommended by tariff sub-committees in family, criminal and immigration law, and are now under discussion with the Attorney General's office. If implemented, we believe that these measures will save the Plan about \$10 million. Throughout, the Law Society has emphasized its continued commitment to the certificate system as the best and most effective means of providing legally-aided services.

We have also participated in discussions concerning the design and implementation of pilot projects in specific areas of practice in which difficulties with access to service have been experienced. While Convocation has authorized Society representatives to co-operate in the establishment and evaluation of pilot projects in the area of family law, the Law Society has also asked for the government's assurance that the pilot projects represent exceptional departures from the standard method of delivery through the judicare system and will not be continued beyond the experimental stage without consultation with the Law Society and the Legal Aid Plan. Our agreement to continue the pilot projects will depend upon our assessment of their effectiveness in dealing with the problems that they are designed to address.

Where the legal aid levy is concerned, I wrote to the Deputy Attorney General during the summer to emphasize the many significant ways which the profession is already contributing to the Legal Aid Plan. I also emphasized the heavy financial burdens lawyers already face in paying fees and other expenses associated with practice.

Finally, the Law Society has been pressing the government for tariff changes requested by the profession in the areas of family, criminal and immigration law.

- *The Rules of Professional Conduct* will be re-examined thoroughly to determine whether they continue to meet the needs of the public and the profession in the present complex age. It has been many years since the *Rules of Professional Conduct* have been systematically re-evaluated, and the commencement of this work marks a timely and important initiative that will likely carry on for some time. The views of the profession will be sought in the course of this study, and the members may expect to hear more from the Law Society in this regard.

- *Access to Legal Services* continues to engage the Benchers' attention. In coming months, Convo-

cation will be asked to consider our policies toward pre-paid legal insurance plans and time will be spent examining the Lawyer Referral Service to ensure that it is designed and administered in the most effective way.

These and other matters will ensure that the coming term will be very busy, as the Benchers address the exciting and challenging task of governing the profession in the public interest. I very much look forward to the months ahead, and to visiting as many areas of the province as possible in order to elaborate upon current issues and seek the views of the profession.

## Changes recommended to OJC

In a special committee report adopted by Convocation this month, the Law Society responded to the Attorney General's request for comment concerning the handling of complaints by the Ontario Judicial Council.

The report made a number of recommendations with respect to the composition of the OJC, its discipline structure and powers and increasing public access to the Council.

Highlights of the recommendations include:

- increasing the range of sanctions available to the Council short of removing a judge from office, including reprimand, suspensions, and requiring that the judge attend professional counselling, educational or training courses
- requiring by statute that the OJC submit an annual report to the legislature detailing, among other things, the number of complaints received, classification of complaints, complaints investigated and dismissed, adjudicative hearings conducted, cases in which sanctions were imposed short of removal from office and the classification of sanctions imposed and the number of dispositions in each class
- adding two more lay persons and a second lawyer to the membership of the OJC
- increasing the number of judges on the OJC from five to six and changing its composition to three federally-appointed and three provincially-appointed judges
- requiring that all hearings be conducted according to the *Statutory Powers Procedures Act* unless the OJC makes an order to the contrary.



## Requalification revisited

A new committee chaired by Toronto Benchers Stephen Goudge has been struck to re-address the issues relating to requalification of members who have who have not been involved in the active practice of law for five or more years. In addition to developing a range of reasonable conditions to be met by applicants who wish to return to practice, the committee will examine the implementation of requalification requirements.

David Sherman is among the non-benchers who has been asked to participate in the work of the joint-committee along with representatives from the Professional Standards, Legal Education, Admissions and Women in the Law Committees. Consultations will be held with the profession to ensure as broad a spectrum of views as possible.

Members wishing to contribute their views or suggestions on this issue are asked to submit them in writing to Susan McCaffrey, Secretary, Requalification Committee.

## Law Society records surplus

Due to the exercise of fiscal restraint measures on the part of departments and committees, the Law Society has generated a surplus of \$166,800 on a budget which had forecast a break even position for the 1992 fiscal year ending June 30th.

The Law Society will continue to pursue every avenue to reduce pressure on membership fees. Professional salaries have been frozen for the next fiscal year and clerical staff raises have been restricted to one per cent.

## Conduct rules to be reviewed

A thorough review of the *Rules of Professional Conduct* is under way and is expected to occupy the efforts of the Professional Conduct Committee over the next year. The committee has commenced its review with an examination of Rule 13, paragraph 1, dealing with the reporting of wrongdoing to the Law Society and Rule 5 dealing with conflict of interest.

The proposed text of the change to Rule 13, para.1, is as follows:

"A lawyer having knowledge that another lawyer has committed a breach of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer shall make a

report to the Law Society unless the knowledge is privileged or it is unlawful to make the report."

The committee is also considering a proposed amendment to Rule 5 (Conflict of Interest) which would prevent a lawyer from representing both the lender and the borrower in a private mortgage transaction.

Members who wish to comment on the proposed changes to Rule 1 and/or Rule 5 are asked to do so in writing to: Stephen Traviss, Secretary, Professional Conduct Committee.

## E&O claims down

Despite the lingering recession, the upward pressure on E&O claims has eased. The first eight months of 1992 recorded 310 fewer claims than the same period last year. From January to August 1992, 2,136 claims were reported at a cost of \$28.8 million compared to 2,446 claims at a cost of \$32.6 million for the same period in 1991.

Although there are no assurances, the Law Society is optimistic that if the downward trend in claim frequency and cost continues throughout 1992 as expected, an additional supplementary levy will not be necessary.

## Parental leave fee reduction

Members taking maternity, paternity or adoption leave are eligible for a *pro rata* reduction in annual fees for the period of months such leave is taken. Those members currently paying either 100 per cent or 50 per cent of the annual fee will be required to pay only 25 per cent of the annual fee during the parental leave period. No further reduction is available to those members currently paying the 25 per cent membership fee.

Members who wish to apply for the parental leave fee reduction must do so in writing to the Admissions and Membership Office.

## Temp lawyers to pay E&O

Members employed by temporary placement agencies who perform professional services on behalf of lawyers or law firms are obligated to pay the E&O levy. Previously, members employed by entities which were not law firms or lawyers and who did not engage in practice or perform professional services outside of such employment, were entitled to exemption from the levy.



## Students need articles

As of mid-September, 20 students who had completed Phase 1 of the Bar Admission Course were still seeking articling placements for the 1992-1993 term. Members who are able to assist these students for the full 12-month period or a portion thereof are asked to contact Mimi Hart, Director of Financial Aid and Placement at (416) 947-3422.

## LSUC Medallists Honoured

Six distinguished members of the Bar were awarded the Law Society medal at a special ceremony at Osgoode Hall on September 10, 1992. This honour, established by the Benchers in 1984, is granted to members of the Society who perform their lawyering tasks with such diligence and effectiveness and so much to the benefit of the profession as to be deserving of special recognition. This year's medallists are:

- John L. Agro, Q.C., Hamilton
- Patrick G. Furlong, Q.C., Windsor
- Bert Raphael, Q.C., Toronto
- Margaret Ross, Ottawa
- Garry D. Watson, Q.C., Toronto
- Gerard B. Weiler, Q.C., Thunder Bay.

## Upcoming Events

- **October 23 & 24**  
Special Convocation and Convocation  
Osgoode Hall 9 a.m.
- **November 6 & 7**  
Law Society Special Lectures: "Administrative Law: Principles, Practice and Pluralism"  
Osgoode Hall 9 a.m. - 5 p.m.  
Register by calling (416) 947-3374  
\$495+GST (incl. text, lunches and program materials)
- **November 11**  
Law Society Annual General Meeting  
Osgoode Hall 4:30 p.m.  
All members are welcome.

The Law Society  
of Upper Canada



Le Barreau  
du Haut-Canada

### Benchers Bulletin

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## Conference sets priorities

Benchers and staff of the Law Society met on September 25th and 26th to set a series of priorities for the coming months. A number of priorities were identified and recommendations were made in the following areas: professional ethics, regulation, standards of competence, certification, conflicts of interest, accessibility of legal services and working conditions in the legal profession. Members will be advised of further developments once committees begin deliberations in their respective areas.

## Treasurer seeks views

Law Society Treasurer Allan Rock would welcome the opportunity to speak to your law association or professional group about Law Society policies, initiatives and services to the profession. Mr. Rock would also welcome the opportunity to hear members' views and concerns. Interested members are invited to call Richard Tinsley, Secretary, at (416) 947-3344.

## Convocation Attendance

Thursday, September 24, 1992

### Morning session

Allan Rock, Treasurer

John Arnup, Tom Bastedo, Denise Bellamy, Lloyd Brennan, Colin Campbell, Ron Cass, Paul Copeland, Maurice Cullity, Carole Curtis, Susan Elliott, Phil Epstein, Abraham Feinstein, Patrick Furlong, Stephen Goudge, Michael Hickey, Casey Hill, Kenneth Howie, William Howland, Ken Jarvis, Fran Kiteley, Virender Krishna, Paul Lamek, Donald Lamont, Allan Lawrence, Joan Lax, Laura Legge, Samuel Lerner, Ronald Manes, Colin McKinnon, Fatima Mohideen, Daniel Murphy, Ross Murray, Brendan O'Brien, Julianne Palmer, Barry Pepper, Patricia Peters, Nora Richardson, Clayton Ruby, Marc Somerville, Harvey Strosberg, Stuart Thom, Robert Topp, Mary Weaver

### Afternoon Session

Allan Rock, Treasurer

John Arnup, Tom Bastedo, Denise Bellamy, Lloyd Brennan, Colin Campbell, Robert Carter, Ron Cass, Paul Copeland, Maurice Cullity, Carole Curtis, Susan Elliott, Phil Epstein, Abraham Feinstein, Patrick Furlong, Stephen Goudge, Michael Hickey, Casey Hill, William Howland, Ken Jarvis, Fran Kiteley, Paul Lamek, Allan Lawrence, Joan Lax, Samuel Lerner, Ronald Manes, Colin McKinnon, Fatima Mohideen, Daniel Murphy, Ross Murray, Dennis O'Connor, Julianne Palmer, Patricia Peters, Clayton Ruby, Hope Sealy, Marc Somerville, Harvey Strosberg, Stuart Thom, Robert Topp, Mary Weaver