



# Benchers Bulletin

September 1993 Vol. 2 No. 1

## Government business tops Convocation agenda

A special session of Convocation was held on September 23 to consider a number of issues arising from discussions and on-going negotiations with the Ontario government. Proposed amendments to the *Law Society Act* which are necessary to implement discipline reform initiatives were considered in-camera in accordance with established policy. Two other matters were debated in open session: pooled trust accounts and family support order enforcement.

### *Discipline reform*

The debate on discipline reform centred on whether Convocation would reconsider the recommendations concerning the number and responsibilities of lay benchers as set out in the Report of the Special Committee on Discipline Procedures (the Yachetti Report) that was adopted in 1990.

The Report recommended increased participation by lay benchers in discipline proceedings. To meet that objective, the report proposed that an additional four lay benchers be appointed by the provincial government. Unlike existing lay benchers who are involved in all aspects of the work of the governing body, the proposed appointees would be active only in the areas of discipline and complaints.

At the Special Convocation, the issue was whether the approval given in 1990 should now be varied so as to increase the number of additional lay benchers from four to six and to have them participate fully in the work of Convocation as do the existing four lay benchers and the 40 benchers elected by the profession.

During the debate, concerns were expressed that any further increase in the total number of government-appointed lay benchers beyond the 10 now proposed could pose a threat to the independence and self-governance of the legal profession. The valuable contribution made by lay benchers to the Society's work was clearly acknowledged and the overwhelming majority of benchers decided to vary their previous ap-

proval so as to provide for a total of 10 lay benchers in the Society's discipline reform initiative. Convocation also decided that the quorum for Convocation should be increased to 15 from 10. A special committee will be struck to prepare a description of the tasks and responsibilities of lay benchers to assist the provincial government in the appointment process.

### *Pooled trust accounts*

Funding for a number of professional and public programs is at risk due to a continuing de-

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## Treasurer's Message

I am pleased to express greetings to the profession on the first anniversary of the launch of the Benchers Bulletin. As your new Treasurer, I intend to make liberal use of the Bulletin during the Convocation year to ensure the profession is kept fully informed of new policies and emerging issues at the Law Society.



**Paul Lamek**

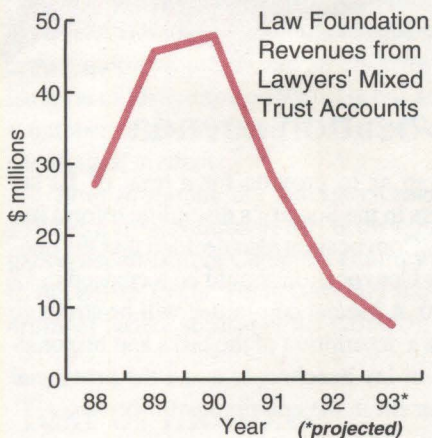
I encourage all members to take an active part in the affairs of their Society and if you have comments, suggestions or opinions on any of the myriad of issues that come to your attention, the Society would be pleased to hear from you. I speak for all benchers when I say that your input is a valued contribution to the work of Committees and Convocation.

Although Convocation has only recently begun, you will note from the items in this issue that there are already a number of pressing matters on the Society's agenda. I look forward to a fruitful dialogue with the profession on the many challenges that lie ahead.



cline in Law Foundation revenues. The Foundation, which collects the interest on lawyers' mixed trust accounts, contributes a substantial portion of its funds to subsidize legal education and research, the operation of law libraries and parties to class proceedings.

In addition, the Foundation is required by statute to contribute 75 per cent of its funds to the Ontario Legal



Aid Plan. Low interest rates will result in an estimated \$9-\$10 million less than anticipated being transferred to legal aid this fiscal year.

In recent years, the Law Foundation has been receiving inter-

est on mixed trust accounts at rates negotiated individually with each financial institution and averaging prime less five per cent. With prime now sitting at five and six per cent, mixed trust accounts are generating 3/4 per cent interest or between \$7 and \$8 million compared to the \$48 million generated in 1990/91. The daily balance in mixed trust accounts is estimated at \$500 million.

The Ministry of the Attorney General has proposed that the *Law Society Act* be amended to require lawyers who control mixed trust accounts at the major banks to set up a joint mixed trust account with the Law Foundation. This would allow the Foundation to direct the banks to pool all or a specified amount of the daily float in the mixed trust accounts for the purpose of investing the funds in financial instruments bearing higher interest rates than those currently offered by the banks. An overdraft arrangement would safe-guard any temporary shortage of funds caused by pooling and investment.

Benchers deferred their decision on the government's proposal to the October Convocation pending further information from the government and representations from the profession. Members are encouraged to forward their comments in writing to Donald Crosbie, Under-Treasurer.

#### **Family support order enforcement**

The Ministry of the Attorney General is also seeking the input and support of professional licensing bodies, including the Law Society, for a program to assist in the enforcement of family support orders.

The government proposes to intercept persons who default on family support orders when they apply for a license to carry on some activity. In addition to professional licenses, trade, automobile, drivers' and hunting and

fishing licenses are being considered in the proposed program.

While cursory estimates place the number of lawyers in default of family support orders at only about 100 out of a total membership of 26,000, it was thought important that the legal profession take a leadership role in addressing this social problem.

The government's proposal would require a licensing body to run a list of license applicants against a list of support defaulters provided by the Family Support Plan (FSP). Where a match is made and confirmed, the defaulter would be advised the licence issued is valid for 150 days unless satisfactory arrangements are made within that period for the payment of support. The 150-day period is based on a California model and is intended to give defaulters time to apply for variation orders where necessary. If no satisfactory arrangements are made, the defaulters' licenses would be suspended.

As of June 1993, over \$617 million in FSP arrears was owed either directly to recipients or to the Ontario government. Only 22 per cent of the 35,205 cases with support deduction orders were in full compliance according to recent statistics provided by the FSP. The government's efforts to collect funds through support deduction orders (which are in effect garnishee orders) are hampered in cases where payors are either mobile or self-employed.

In considering the government's scheme, benchers noted that, for the first time in the Society's 200-year history, the process for determining whether a membership should be suspended would not include the Law Society. The Society would be required to act on a direction or certificate of a government department and no appeal to the Society would be allowed.

Benchers expressed concern that the government's proposal posed an undue threat to the profession's self-governance. A special committee struck to review the proposal, comprised of benchers Fran Kiteley, Colin Campbell and Philip Epstein, was directed to work towards a solution that would preserve the principle of self-government while at the same time serving the socially desirable objective of ensuring that members honour their financial obligations pursuant to a support order.

Members are encouraged to submit comments and suggestions to Fran Kiteley, Chair, Family Support Order Enforcement Committee.

### **Students seeking articles**

Some 47 qualified students continue to seek articles for the articling term which began in early September. The Society is anxious to hear from members who are considering making articling positions available either on a full-time or part-time basis. Members are urged to contact the Society's Placement Director, Mimi Hart, at (416) 947-3422.



## Non-benchers lawyers added to committees

Fourteen members of the profession have been selected to serve on Law Society committees for a two-year period commencing September 1993. More than 330 members of the profession responded to the Society's call for lawyer volunteers by submitting applications over the summer. The following members were appointed:

Hilary Warder Abicht	Professional Standards
Debora A. Batstone	Lawyers Fund for Client Compensation
Katherine F. Braid	Professional Conduct
Fran Carnerie	Research & Planning
Christopher J. Duvernety	Communications
Patricia Hennessey	Women in the Legal Profession
Barbara G. Humphrey	Women in the Legal Profession
Brigid Yee Wai Luke	Women in the Legal Profession
Mary E. Martin	Discipline Policy
Deborah McPhadden	Discipline Policy
Mohan Prabhu	Legal Education
Marc Rosenberg	Legal Education
Michael G. Somers	Research & Planning
Rhonda A. Wise	Lawyers Fund for Client Compensation

It is expected that the new members will bring points of view to the committees which would not otherwise be represented and that they will assist with efforts to enhance communication between the Society and its members.

## Law Society records surplus

The Law Society of Upper Canada ended its fiscal year on June 30, 1993, and recorded a \$1.5 million operating surplus in its General Fund. The Fund accounts for all Society revenues and expenditures with the exception of the Errors & Omissions insurance fund and the Lawyers Fund for Client Compensation.

The surplus includes \$500,000 that had been budgeted for repayment of the Society's building debt. The additional \$1 million surplus was generated by a combination of aggressive internal cost-cutting measures and savings realized due to falling interest rates on the build-

ing loan. Fourteen of the Society's 25 departments were able to shave expenditures from their budgets and return unspent monies to the General Fund at year end. The surplus will allow for a further \$500,000 retirement of the building debt.

The Lawyers Fund for Client Compensation, which currently levies each member \$1 annually to compensate clients for losses incurred as a result of their lawyers' dishonesty, remains sound with \$29.6 million in reserves against a maximum of \$16.1 in outstanding grants once limits are applied.

The Errors & Omissions Insurance Fund continues to suffer from the adverse affects of the protracted recession and low interest rates. Financial statements for fiscal 1993 show a deficit of \$37.9 million as compared to a \$18 million deficit for the previous year. Measures to retire that deficit by the 1997 target date will be explored during the levy setting process which begins in October. Options to be considered will include raising the base levy and/or increasing the supplemental levy which is currently set at \$450.

## Suspension notices

The following members were suspended on September 24, 1993 for paying their 1992/93 annual fees with a cheque that was subsequently returned N.S.F.:

Joseph Angelo Macaluso	Hamilton
Jeffrey Mark Levy	Toronto

The following members were suspended on September 24, 1993 for paying their 1992/93 errors & omissions levy with a cheque that was subsequently returned N.S.F.:

Delbert Orland Stewart	Windsor
Edward Albert Rice	Toronto
William Edward Horman	Waterloo
Kenneth David Lea Lackner	Toronto
Walter Fox	Toronto
Steven Jay Carr	Markham

The following members were suspended on September 24, 1993 for non-payment of late filing fees:

Michael Barry Biderman	London
Edwin Davies Cass	Toronto
Thoman Edward Barton Chown	Toronto
Kevin Eugene Deveaux	Nova Scotia
Botond Gabor Fejes	Toronto
Charles Cameron Finley	Toronto
Mary Katherine MacFadyen	Ottawa
Mark Harrison Newman	Toronto
Richard Michael Hugh Power	Toronto
Dana Lynn Roth	U.S.A.
Lewis Harvey Rosenberg	Toronto



## LSUC appoints counsel

The Law Society welcomes Michael F. Brown, who assumed his new position as Senior Discipline Counsel effective October 4. He replaces Gavin MacKenzie who left the post in July to return to private practice.

Mr. Brown is the former Acting Director of Criminal Prosecutions at the Ministry of the Attorney General. He has been conducting prosecutions against police officers, crown attorneys, judges and others involved in the administration of justice since 1990. He has acted as counsel in a number of prosecutions against police charged in the shooting of civilians.

Prior to joining the Attorney General's Ministry in 1984 as a crown attorney, Mr. Brown practised in the litigation department of Campbell Godfrey following his call to the bar in 1981. He is currently the vice-chair of the criminal justice section of the CBA(O).

## Text of motions

**#1** Moved by Hope Sealy, seconded by Fran Kiteley. That the Report of the Special Committee on Discipline Procedures (the Yachetti Report), adopted in 1990, be amended to allow for a total of 10 lay benchers and that the duties and responsibilities of the additional lay benchers not be restricted to discipline matters and that quorum for Convocation be increased from 10 to 15. Carried.

**#2** Moved by Patricia Peters, seconded by James Wardlaw. That the Yachetti Report be amended to provide for the replacement of additional lay benchers by non-bencher lawyers for discipline matters. Lost.

**#3** Moved by Fran Kiteley, seconded by Phil Epstein. That the Report of the Special Committee on Family Support Order Enforcement be adopted. Lost.

**#4** Moved by David Scott, seconded by Abe Feinstein. That report of the Special Committee on Family Support Order Enforcement be referred back to the Special Committee it determine whether there are alternative procedures that would preserve the principle of self-government while at the same time serve the socially desirable objective of ensuring that members honour their financial obligations pursuant to a support order. Carried unanimously.

The Law Society  
of Upper Canada



Le Barreau  
du Haut-Canada

### Benchers Bulletin

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## Convocation attendance and roll-call votes

Sept. 23/24, 1993	Attend		Motions*			
	23 a.m.	24 p.m.	1	2	3	4
Arnup, John						
Bastedo, Thomas						
Bellamy, Denise	✓	✓	F	A		
Bragagnolo, Rino	✓	✓	F	A	A	F
Brennan, Lloyd	✓	✓	F	A	F	F
Campbell, Colin		✓				
Carter, Robert		✓				
Copeland, Paul						
Cullity, Maurice	✓	✓	F	A	A	F
Curtis, Carole						
Elliott, Susan	✓	✓	F		F	F
Epstein, Philip	✓	✓	F	A	F	F
Feinstein, Abraham	✓	✓	F	A	A	F
Finkelstein, Neil						
Goudge, Stephen	✓	✓	F	A	F	F
Graham, Netty	✓	✓	F	A	F	F
Hickey, Michael	✓	✓	F	A	A	F
Hill, Casey		✓				
Howie, Kenneth	✓	✓			F	F
Howland, William		✓				
Kiteley, Frances	✓	✓	F	A	F	F
Krishna, Virender		✓				
Lamont, Donald	✓	✓	A	A	A	F
Lax, Joan	✓	✓	F	A	F	F
Legge, Laura						
Lerner, Samuel						
Levy, Earl						
McKinnon, Colin	✓	✓	F	A	A	F
Manes, Ronald		✓				
Martin, Arthur						
Mohideen, Fatima	✓	✓	F	A	F	F
Moliner, Marie	✓	✓	Ab	Ab		
Murphy, Daniel	✓	✓	F	A		
Murray, Ross	✓	✓	F	A	A	F
O'Brien, Brendan		✓				
O'Connor, Dennis		✓				
O'Connor, Shirley						
Palmer, Julaine	✓	✓	F	A		
Peters, Patricia	✓	✓	A	F	A	F
Richardson, Nora						
Robinette, John						
Rock, Allan						
Ruby, Clayton						
Scace, Arthur	✓	✓				
Scott, David	✓	✓	F	A	A	F
Sealy, Hope	✓	✓	F	A		
Somerville, Marc	✓	✓	F	A	A	F
Strosberg, Harvey		✓				
Thom, Stuart	✓	✓	F	A		
Topp, Robert	✓	✓	A	A	A	F
Wardlaw, James	✓	✓	F	A		
Weaver, Mary	✓	✓	F	A	A	F
Yachetti, Roger						
Lamek, Paul (Treas.)	✓	✓				

### Non-voting Benchers in attendance

R. Cass, G.H. Farquharson, P. Furlong, K. Jarvis, A. Lawrence, P.B. Pepper

\***Motions** A=against, F=for, Ab=abstain

Text of motions and results are summarized in an article on this page.