



The Law Society of
Upper Canada

Barreau
du Haut-Canada

benchers Bulletin

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Law Society, government reach Legal Aid funding agreement

A much-needed \$45-million boost to resolve Legal Aid's funding crisis has been approved by the Law Society and the provincial cabinet. The additional funds will begin flowing to the Plan in early October and officials will move quickly to expedite the payment of lawyers' accounts, some of which have been outstanding for several months.

It will take some time before the Plan is fully current with account payments but it is expected that payments will be made according to established guidelines before year-end in March 1995. Those guidelines stipulate that standard form accounts be paid within 30 days and settled accounts be paid within 60 days.

Under the terms of the financial agreement reached between the Law Society's negotiating team, headed by Toronto-benchers Stephen Goudge, and representatives of the Ministry of the Attorney General, the government would not increase its allocation to the Legal Aid Plan. It will,

however, enable the Plan to clear up the backlog of lawyers' accounts by advancing the payment of \$15 million that is in the current budget, loaning \$10 million to the Plan and guaranteeing loans of up to \$35 million from commercial lenders.

A four-year management plan will be put in place by the Law Society to repay the loans with interest and restore the Plan to a sound financial footing. This plan includes:

- Limited service reductions in civil law legal aid. The Plan has declared a moratorium on legal aid certificates in actions for clients suing or being sued for debt and in real estate matters involving disputes over title/ownership. Certificates for plaintiffs in most personal injury claims will be issued to cover disbursements only, except for Ontario Motorist Protection Plan mediation. Certificates will no longer be provided for impaired driving unless an individual's liberty or livelihood is at risk. These measures will save \$12.5 million over the four-year period covered by the management plan.
- No change of solicitor will be allowed in criminal, civil and refugee law except in extraordinary circumstances. One change of solicitor for good reason will be allowed in family law. This measure alone

is expected to save \$11 million over four years.

- Tariffs for uncontested divorces and uncontested bail hearings will be reduced by 50 per cent, saving the Plan \$10 million by 1998/99.
- The Ministry of the Attorney General will implement diversion in criminal and young offender matters to reduce demand for legal aid certificates by some \$13 million in the next four years.
- The balance of funds required to repay the loans are to be raised through a combination of Law Foundation interest and administrative savings. Additional funds will also be sought from other sources such as the federal government and the Law Foundation reserve fund.

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- Howland bequest



Law Society Medal Winners

Five members of the Ontario bar have been awarded the Law Society medal for outstanding service to the profession. *Story on back page.*

In addition to the above measures, it is anticipated that the Plan's financial obligations will be reduced in coming years due to a steady abatement in the demand for legal aid. In 1993, the Plan issued a record-high of 231,000 certificates. However, only an estimated 214,00 certificates were issued in the year ending March 31, 1994. If the current downward trend continues, it is estimated that the Plan will grant about 182,000 certificates in 1995, 164,000 in 1996, 159,000 in 1997 and 149,000 in 1998.

A memorandum of understanding spelling out the terms of the fi-

nancial package includes three basic principles, namely:

- Agreement on the part of the government and the Law Society to retain the present delivery system for legal aid with its primary reliance on the judicare system over the next four fiscal years.
- Guaranteed funding on the part of the government for the next five years at the following levels: \$194.7 million (1994), \$188 million (1995), \$167.2 million (1996-1999).
- The Law Society's commitment to manage within the allocations provided.

Regional election of benchers may be in place for 1995 vote

The Law Society will press ahead with plans to institute provisions necessary to hold benchner elections on a regional basis next spring.

To overcome the possibility that the Society may be unable to secure legislative amendments to the *Law Society Act* in time to prepare ballots and receive nominations for an April 1995 vote, it will make an application to the Ontario Court (General Division) for an interpretation of the *Law Society Act* to determine whether the scheme of regional election of benchers adopted in 1993 can be implemented by way of the Society's rule-making powers. In October 1990, the Law Society received a legal opinion to the effect that a scheme of regional elections could be implemented by way of rules. However, in the course of a debate in Convocation, doubts were expressed as to whether Convocation had the necessary power and a decision was made to imple-

ment the scheme by way of legislative amendment.

Under the current electoral regime as set out in section 15 of the Act, every four years 20 benchers are elected from within Metro Toronto and a further 20 are elected outside of Metro Toronto. Under the regional scheme this would remain the same. The major change involves the election of nine regional benchers among the total of 40 elected—one from each of the seven judicial regions outside of Metro Toronto and one each from the City of Toronto and the metropolitan area. Regional representatives will be elected solely on the strength of votes cast by voters in their respective regions. In each region the candidate receiving the greatest number of votes cast by voters in that region will be automatically declared the regional benchner.

The Society will keep members informed of developments in this matter as they arise.

Non-discrimination rule in force

A new rule on non-discrimination has been approved by the Law Society, bringing to 28 the number of professional conduct rules currently in force. Rule 28 replaces and expands upon Commentary 5 of Rule 13, "Responsibility to the Profession Generally", by setting out the particular obligation on members of the profession to avoid discrimination and clarifying the Law Society's expectations of members' conduct.

Rule 28: Non-Discrimination

The lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and specifically to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offenses (as defined in the Ontario Human Rights Code), marital status, family status or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.

Commentary. The Law Society of Upper Canada acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

Members must ensure that no one is denied services or receives inferior service on the basis of the grounds noted in the Rule. Members must ensure that their employment practices do not offend the Rule. Discrimination in employment or in the provision of services not only fails

to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation.

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of

the prohibited grounds. The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

Ontario human rights law excepts from discrimination special programs designed to relieve disad-

vantage for individuals or groups identified on the basis of the groups noted in the Code.

The Rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community of Ontario.

E&O changes board structure, releases legal service billings

Changes to the Law Society's insurance program have begun with a new president and a reformed board structure having received approval by Convocation this month. Mr. Joshua Liswood, a law partner in the firm Sawers Liswood, has been appointed LPIC's new interim president.

The insurance program's new structure will provide for the Society's insurance committee to be folded into the LPIC board which would be expanded from six to 15 members some of whom would be non-bencher appointees with expertise in insurance, business and finance matters.

An insurance task force chaired by Windsor bencher Harvey Strosberg has been working since June to investigate and review the Society's program. The work of the task force has been assisted by an independent team of actuaries, accountants, management consultants and counsel.

Next month the insurance task force will issue its full report including recommendations with respect to LPIC policy changes, premiums and levies.

In response to requests received from many members, the Society has released a list of law firms in Ontario that have provided legal services to LPIC, including their total billings (rounded to nearest dollar) for the period July

1993 to June 1994. Asterisks next to a firm name indicate that a bencher is a partner.

<i>Firm Name (Location)</i>	<i>Total</i>
O'Donnell & Scott (Toronto)	\$2,517,206
Borden & Elliot (Toronto)*	2,166,746
Blaney, McMurtry, Stapells (Toronto)	1,485,090
John Cannings (Toronto)	1,427,341
Genest, Murray, DesBrisay & Lamek (Toronto)*	1,342,523
Nelligan, Power (Ottawa)	1,192,543
Strauss, Cooper (Toronto)*	1,003,141
Torkin, Manes (Toronto)*	809,466
Goodman & Carr (Toronto)	718,404
Epstein, Cole (Toronto)*	694,891
Fogler, Rubinoff (Toronto)	622,012
Shibley, Righton (Toronto)	574,466
Pensa & Associates (London)	569,648
Oatley, Purser (Barrie)	545,472
Cassels, Brock & Blackwell (Toronto)	544,517
Weir, Foulds (Toronto)	532,246
McCarthy, Tetrault (Toronto)*	513,724
Koskie & Minsky (Toronto)	491,784
Paterson, MacDougall (Toronto)	344,911
McDonald & Hayden (Toronto)	280,225
Osler, Hoskin & Harcourt (Toronto)*	275,561
Hughes, Amys (Toronto)	271,426
Thomson, Rogers (Toronto)*	265,525
John F. Evans (Hamilton)	256,981
Agro, Zaffiro, Parente, Orzel & Baker (Hamilton)	235,287
Pallett, Valo (Mississauga)	228,271
Martin, Scrimshaw (Thunder Bay)	216,345
Copp, Cosman, Pavey, Law & Wannop (Cambridge)	186,877
Blake, Cassels, Graydon (Toronto)*	186,326
Smith, Lyons, Torrance, Stevenson & Mayer (Toronto)*	171,555
Lilly, Blott (Toronto)	170,082
Gardiner, Roberts (Toronto)	159,309
Farano, Green (Toronto)	158,815

Cohen, Highley, Vogel & Dawson (London)	151,169
Dale, Dingwall (Toronto)	144,093
Lenczner, Slaght, Royce, Smith Giffin (Toronto)	137,925
Lerner & Associates (Toronto)	125,619
Weaver, Simmons (Sudbury)*	121,668
O'Donnell, Robertson & Sanfilippo (Toronto)	103,869
Scott & Aylen (Ottawa)*	100,069
Minden, Gross, Grafstein, Greenstein (Toronto)	86,882
Beament, Green, Dust (Ottawa)*	85,139
Desmarais, Keenan, Beaudry (Sudbury)	63,546
Madorin, Snyder, Carere (Kitchener)	53,907
Evans, Bragagnolo, Sullivan (Timmins)*	52,937
Crouchman, Nelson (Kingston)	52,600
Gignac, Sutts (Windsor)*	49,275
Templeman, Brady, Menninga, Kort, Sullivan & Fairbrothers (Belleville)	48,872
Gordon, Traub (Toronto)	46,979
Dingwall, McLaughlin (Toronto)	43,861
Fasken, Campbell, Godfrey (Toronto)	35,984
Tepper Law Office (Kingston)	33,110
Gilbert, Wright & Kirby (Toronto)	21,660
McTague, Clark (Windsor)	20,285
Barrett, Cummings, Seto (Hamilton)	10,652
Paroian, Raphael, Courey, Cohen & Houston (Windsor)	9,811
Gowling, Strathy & Henderson (Toronto)*	9,085
Lamont & Lamont (Toronto)*	8,809
Atlin, Cohen, Armel (Toronto)	8,475
Siskind, Cromary, Ivey & Dowler (London)	6,642
Sugg & Fitton (Bracebridge)	5,521
Donnelly & Murphy (Goderich)*	2,561
Keyser, Mason, Bell (Mississauga)	546
Hicks, Morley, Hamilton, Stewart, Storie (Toronto)	(325)
TOTAL	\$26,104,824

Law Society Medal winners

Five members of the Ontario bar have been awarded the Law Society medal for outstanding service to the profession. An award ceremony will take place at Osgoode Hall on October 26. The Treasurer and benchers of the Society extend their warmest congratulations to recipients who have served their profession with distinction.

Miriam Kelly has made a significant contribution to legal education since her call to the bar 31 years ago. She chaired numerous CLE programs for the CBA and has taught in the real estate section of the bar admission course for the past 20 years. Ms. Kelly was co-author of the CBA(O) real estate checklist.

Fran Kiteley has served with distinction as a bencher of the Society since 1987, during which time she authored the first study to examine the role of women in the Ontario legal profession. She also chaired the Legal Aid Committee and has been active in the CBA(O) executive for several years. She has contributed generously to public and professional legal education since her call to the bar in 1976.

A former president of the CBA(O) and a former bencher of the Law Society, **Bernard Schaffer** has practised in Thunder Bay since his call to the bar 55 years ago. He has also served on the Board of Governors of Lakehead University and is a life fellow of the Foundation for Legal Research.

William Simpson, Q.C., has worked

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Education benefits from bequest

The Law Society gratefully acknowledges the generous financial bequest from the estate of the late Hon. William Howland, former Chief Justice of Ontario and former Treasurer of the Society. According to the terms of the bequest, the funds will be used for the purposes of furthering legal education. Mr. Howland died in London, England, on May 13, 1994.

tirelessly in the field of continuing legal education since his call to the bar 27 years ago. He is a former president of the County of Carleton Law Association, founding president of the Medical-Legal Society of Ottawa Carleton and founder of the CCLA Annual Litigation Update Program.

A former director, officer and president of The Advocates' Society, **Peter Webb** has made a substantial contribution to legal education since his call to the bar in 1957. He has headed the civil procedure section of the bar admission course and chaired the Society's civil litigation specialist committee from 1988-1993.

Roll call votes

1. That Convocation approve the recommendation of the Legislation and Rules Committee to seek a judicial ruling as to whether the Society may institute regional bencher elections according to its rule-making powers under the *Law Society Act*. Carried 27 to 6 with one abstention.
2. That Convocation approve the recommendation of the Professional Conduct Committee that the practice of retaining counsel adopted by the Canadian Medical Protective Association does not offend the Rules of Professional Conduct. Carried 19 to 5 with one abstention.

Convocation attendance and roll-call votes

Sept. 23, 1994	Attend		Motions*	
	a.m.	p.m.	1	2
Arnup, John				
Bastedo, Thomas				
Bellamy, Denise				
Blue, Ian	✓	✓	F	F
Bragagnolo, Rino	✓	✓	F	F
Brennan, Lloyd	✓	✓	F	A
Campbell, Colin				
Carter, Robert	✓	✓	F	
Copeland, Paul	✓	✓	F	A
Cullity, Maurice	✓	✓	F	F
Curtis, Carole	✓	✓	A	A
Elliott, Susan	✓	✓	A	F
Epstein, Philip				
Feinstein, Abraham	✓	✓	F	F
Finkelstein, Neil	✓	✓	F	F
Goudge, Stephen	✓	✓		
Graham, Netty	✓	✓	F	F
Hickey, Michael				
Howie, Kenneth	✓	✓	F	F
Kiteley, Frances	✓	✓	F	A
Krishna, Virender	✓		F	
Lamont, Donald	✓			
Lax, Joan	✓	✓	F	Ab
Legge, Laura	✓	✓	F	F
Lerner, Samuel	✓	✓	F	
Levy, Earl				
McKinnon, Colin	✓	✓	F	
Manes, Ronald	✓	✓	F	F
Martin, Arthur				
Mohideen, Fatima				
Moliner, Marie	✓	✓	A	F
Murphy, Daniel	✓	✓		F
Murray, Ross	✓	✓	F	
O'Brien, Brendan	✓		F	
O'Connor, Dennis	✓	✓	F	
O'Connor, Shirley	✓	✓	Ab	F
Palmer, Julaine	✓	✓	F	
Peters, Patricia	✓	✓	A	F
Richardson, Nora	✓		A	
Rock, Allan				
Ruby, Clayton	✓	✓	A	A
Scace, Arthur	✓	✓	F	
Scott, David				
Sealy, Hope	✓	✓	F	F
Somerville, Marc				
Strosberg, Harvey	✓	✓	F	
Thom, Stuart	✓	✓		F
Topp, Robert	✓	✓	F	F
Wardlaw, James	✓	✓	F	F
Weaver, Mary	✓	✓	F	F
Yachetti, Roger				
Lamek, Paul (Treas.)	✓	✓		

Non-voting Benchers in attendance

R. Cass, P. Furlong

**Motions* A=against F=for Ab=abstain
Text of motions that required a role-call vote are outlined in an article on this page.