

MINUTES OF CONVOCATION

Thursday, 7th December, 1995  
2:00 p.m.

PRESENT:

The Treasurer (Susan Elliott), Aaron, Adams, Angeles, Arnup, Backhouse, Banack, Bellamy, Bobesich, R. Cass, Cole, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Feinstein, Finkelstein, Furlong, Gottlieb, Goudge, Krishna, Lamont, Lawrence, Lax, Legge, MacKenzie, Manes, Millar, Murphy, O'Brien, O'Connor, Puccini, Ross, Scace, Scott, Swaye, Wilson and Wright.

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IN PUBLIC

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COMMITTEE APPOINTMENT

It was moved by Mr. Wright, seconded by Mr. Feinstein THAT Derry Millar and Larry Banack be added as members of the Specialist Certification Board.

Carried

TREASURER'S REMARKS

The Treasurer introduced Convocation's guests, Mr. Grant Burnyeat, the Treasurer of the Law Society of British Columbia, and Secretary, Mr. Bryan Ralph, who would address the Benchers after the presentation of the interim Report of the Special Committee on Governance.

REPORT OF THE SPECIAL COMMITTEE ON GOVERNANCE

Mr. Feinstein presented the interim Report of the Special Committee on Governance for debate and decision by Convocation.

REPORT OF THE SPECIAL COMMITTEE ON GOVERNANCE

Background and Context

*Terms of reference*

The Governance Committee was constituted in August 1995 for the purpose of:

- recommending such changes to the Law Society's method of governance as are consistent with the duties and obligations of a policy-making board taking into account the special circumstances arising from Convocation's quasi-judicial responsibilities

- developing policies to ensure effective governance, such policies to define, among other things, the following: the processes and structures of the Society's governance, the respective roles and responsibilities of benchers and staff, the limits imposed upon the staff's discretion and jurisdiction, and finally, the results it wishes to achieve for its various constituencies, otherwise known as the Society's "ends".

#### *Committee meetings*

The committee has met on four occasions for a period of three hours each time and comprises the following members: Abe Feinstein (chair), Ron Manes (vice-chair), Eleanore Cronk, Mary Eberts, Philip Epstein, Ross Murray, Hope Sealy, Harvey Strosberg, Rich Wilson. Susan Elliott has also attended all meetings of this committee as have John Saso and Richard Tinsley. Gemma Zecchini is the Secretary to the committee.

#### *Why a review of Convocation's governance method is necessary*

The committee was formed in response to a number of incidents and issues that have arisen in the Society's recent history, most notably:

- the \$154 million LPIC deficit which was brought to light in the fall of 1994 and called into question Convocation's accountability, management's competence and the Society's overall stewardship over its financial resources
- the crisis over legal aid funding which has dominated the Society's agenda since 1993 and has forced Convocation to react to the demands of a legal aid bar battered by recession and a determined, cash-starved government
- general support among benchers that the Society should adopt a pro-active, forward-looking agenda for the future
- a loss of good will among members, prompted largely by the very visible crises in insurance and legal aid, but also by the growing perception that the Society has lost touch with the contemporary needs, values and aspirations of the Ontario legal profession. Less than half the membership (45%) bothered to cast ballots in the spring 1995 bencher election--a decline of eight per cent in voter turnout from the 1991 bencher election.

#### *Flaws with current governance method*

Limitations in the Society's method of governance bear some responsibility for creating or exacerbating the problems outlined above. The following measures would go a long way towards making the Society less crisis prone:

- the Society needs clear policies and guidelines to ensure that the organization is managed efficiently and effectively
- Convocation ought to engage in regular strategic planning or direction setting to avoid becoming the captive of externally generated crises or demands
- to sustain its relevance to its various publics, the Society must adopt an outward focus--it must clearly express what results it wishes to achieve for each of its various external constituencies
- mechanisms should be instituted to ensure regular consultation and input from a variety of perspectives prior to decision-making. (Consultations during a crisis (ie. LPIC and Legal Aid) are less than ideal tools for obtaining thoughtful feedback on issues.)
- roles and responsibilities of benchers and staff and their respective accountability need better definition

## The Committee's Work

### *Survey of benchers*

One of the committee's first tasks was to draft a survey asking benchers to identify problems with the Society's governance and suggest areas for improvement. Surveys designed to provide feedback on bencher roles and responsibilities, the Law Society's committee structure and governance process and bencher-staff relations were distributed to all benchers and recent former benchers during the second week of September. A total of 48 responses were received--37 from current benchers and 11 from recent former benchers. The responses from both groups were more or less consistent.

Among the 37 current benchers who responded the survey found that:

- over three quarters of benchers agreed that there are too many committees
- six in ten benchers said that committee work takes up too much time
- a clear majority of respondents--over 60 per cent--were unclear as to the purpose and mandate of many bencher committees
- the majority agreed that committees should be used sparingly to develop policy on specific topics and not at all to monitor organizational performance on that topic
- only three out of 37 respondents agreed that committee agendas were stimulating and made the best use of bencher's time and leadership skills; only four out of 37 respondents said they found Convocation's agendas stimulating

In addition, the survey identified bencher concerns in a number of other areas. The Society's discipline process drew a number of suggestions about how to improve efficiency and avoid spending excessive effort on minor administrative matters. Many benchers expressed a strong desire to use their leadership skills in the following ways: creating a vision for the Society's future as well as improving the decision-making and policy-making process. The portion of the survey dealing with committees and Convocation prompted a number of comments about Convocation being an inadequate structure for important policy formulation and decision-making. One respondent noted that, "It (Convocation) is too big and too much grand-standing goes on."

### *Literature review, consultations and workshop*

Armed with the results of the bencher survey, Governance Committee members also canvassed the available literature on the subject of board governance which is still largely in its infancy. The committee consulted over 20 articles and abstracts as well as three texts including John Carver's *Boards that Make a Difference*, widely considered the bible of non-profit governance today.

The Committee explored the policy model of governance espoused by Carver and others in great detail. The board policies of four not-for-profit organizations were consulted to gain a better understanding of how policy governance principles were applied to various institutions, namely:

- the Law Society of British Columbia (which adopted the Carver model two years ago)
- the YWCA of Canada (a national women's advocacy organization which has been operating according to Carver's principles since 1992)
- Georgian and Niagara Colleges of Applied Arts and Technology (two Ontario post-secondary institutions whose boards have recently adopted the policy governance model).

On October 26, 1995, John Carver was invited to deliver a one-day seminar on board governance to Law Society benchers and senior staff. At the last meeting of the Governance Committee on November 8, 1995 a conference call was held with Grant Burnyeat and Bryan Ralph, the Treasurer and Secretary respectively of the Law Society of British Columbia.

In addition to the policy governance model, the Committee looked at working board, management board and membership board models in an attempt to identify possible solutions to the Society's structural and procedural problems.

## Objectives of Good Governance

### *Good governance satisfies eight objectives*

Recognizing that there is no one best way to design and manage a nonprofit board, the committee concluded that any of the recommendations for change that it proposed must fit the requirements created by the Society's history, culture, future plans and the personalities of benchers and senior staff. The committee then identified a series of eight objectives considered necessary to the practice of good governance, namely:

1. Vision. Convocation should be preoccupied with outward vision rather than internal administrative detail. The focus of Convocation's work should be on what it wishes to achieve for whom within its overall mission rather than on the minutiae of program details.
2. Direction. Convocation should focus on setting policies and long-term strategic directions for the Law Society. Benchers should turn their attention regularly to setting the overall purpose and agenda for the Society--why it exists, who it should service, what services, programs and activities it should engage in and what values and ethical guidelines it should follow in providing them. Without such direction, the Law Society's work is aimless and the institution becomes a sitting duck for its adversaries and the crises they manufacture. (Incidentally, 9 in 10 benchers who responded to the governance survey identified policy-making as a very important function.)
3. Definition of roles and responsibilities. Bencher and staff roles must be clearly distinguished and appropriate accountability defined. Leaky accountability occurs when benchers do staff work and vice-versa.
4. Proper fiscal and legal oversight. Convocation must ensure that the Society behaves in a fiscally and legally responsible manner. Appropriate policies and guidelines should be instituted to deal with, among other things, asset administration, capital budgeting, property management and compliance with various laws applying to the organization.
5. Adequate funding. Convocation must ensure that adequate funds are available to achieve the Society's objectives as defined by Convocation.
6. Sound management. Convocation must ensure that the Society is managed efficiently and effectively, e.g. that it has proper administrative structures and policies, information systems, human resource policies, etc.
7. Consultation and advocacy. Convocation's role is to "take the inside out" by representing the interests of the organization to its external publics; and, "bringing the outside in" by ensuring that the interests of key external constituencies are made known inside the Law Society. This will ensure that a greater variety of perspectives are considered prior to decision-making.

- 8. Effective self-management (of Convocation). Convocation must ensure that the structures and procedures it adopts will allow it to function effectively eg. committees, conflict guidelines, meeting rules, role of officers, etc.

Issues for debate and decision by Convocation

Before going any further in its work, the Governance Committee is seeking a mandate from Convocation and requires that the issues set out below be fully debated and decided.

- 1. Is Convocation committed to a fundamental change in the manner in which it governs?
- 2. Are the eight objectives identified by the Governance Committee as being essential to good governance ones that Convocation wishes to achieve through its governance structure?
- 3. Is it Convocation's direction that the Governance Committee should draft policies that are consistent with the objectives of good governance expressed above?

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Remarks were made by Messrs. Burnyeat and Ralph who then took questions from the Bench.

The following issues were voted on and adopted.

- 1. Is Convocation committed to a fundamental change in the manner in which it governs?  
Carried
- 2. Are the eight objectives identified by the Governance Committee as being essential to good governance ones that Convocation wishes to achieve through its governance structure?  
Carried
- 3. Is it Convocation's direction that the Governance Committee should draft policies that are consistent with the objectives of good governance expressed above?  
Carried

THE REPORT WAS ADOPTED

ORDERS

The following Orders were filed with Convocation.

7th December, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Chi Wing Chung,  
of the City of North York, a  
Barrister and Solicitor (hereinafter  
referred to as "the Solicitor

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of June, 1995, in the presence of Counsel for the Society, the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Chi Wing Chung be Reprimanded in Convocation.

DATED this 27th day of October, 1995

"P. Epstein"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Stanley David Goldberg, of the City of Toronto, a  
Barrister and Solicitor (hereinafter  
referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of June, 1995, in the presence of Counsel for the Society, the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

7th December, 1995

CONVOCATION HEREBY ORDERS that Stanley David Goldberg be suspended for a period of two months and thereafter until his filings are completed.

DATED this 27th day of October, 1995

"P. Epstein"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Allan Horwood, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of May, 1995, in the presence of Counsel for the Society, the Solicitor and his counsel being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Allan Horwood be suspended for a period of six months commencing November 1, 1995 and pay costs in the amount of \$5,000.

DATED this 27th day of October, 1995

"S. Elliott"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

7th December, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thomas Alan Kelly, of the City of Oakville, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society, the Solicitor not being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thomas Alan Kelly be suspended for a period of three months, and thereafter until he has provided a satisfactory reply to the Law Society and permitted an audit of his books and records.

DATED this 27th day of October, 1995

"C. Curtis"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Anthony William Klymko, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of January, 1995, in the presence of Counsel for the Society, the Solicitor not being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

7th December, 1995

CONVOCATION HEREBY ORDERS that Anthony William Klymko attend at the Staff Trustee's office within ninety days of notice of the Order of Convocation, to cooperate in the winding up of his practice and tender his resignation, failing which, that he be disbarred.

DATED this 27th day of October, 1995

"C. Curtis"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Juergen Frederick Sagel, of the City of Kitchener, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of March, 1995, in the presence of Counsel for the Society, the Solicitor and his Counsel being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Juergen Frederick Sagel be suspended for a period of six months commencing November 1, 1995 and pay costs in the amount of \$5,000.

DATED this 27th day of October, 1995

"P. Epstein"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

7th December, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Timothy David Salomaa, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 1st day of June, 1995, in the presence of Counsel for the Society, the Solicitor and his Counsel being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Timothy David Salomaa be suspended for a period of three months commencing December 1, 1995; that he enrol in the Practice Review Programme of the Professional Standards Department; that he undertake not to act for both sides in any transaction; that he pay costs in the amount of \$6,000 prior to resuming the practice of law; and, that he undertake not to attempt to set aside the mortgage on his cottage property.

DATED this 27th day of October, 1995

"C. Curtis"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Alan Bernard Silver, of the Town of Dundas, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society, the Solicitor not being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

7th December, 1995

CONVOCATION HEREBY ORDERS that Alan Bernard Silver be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 27th day of October, 1995

"C. Curtis"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Irene Stich, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 1st day of June, 1995, in the presence of Counsel for the Society, the Solicitor not being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that should Irene Stich comply with her Undertaking to the Law Society by December 31, 1995 that she be suspended for a period of twelve months, failing which, that she be disbarred.

DATED this 27th day of October, 1995

"C. Curtis"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"  
Secretary

Filed

CONVOCATION ROSE AT 4:40 P.M.

Confirmed in Convocation this 23 day of February, 1996

  
Treasurer