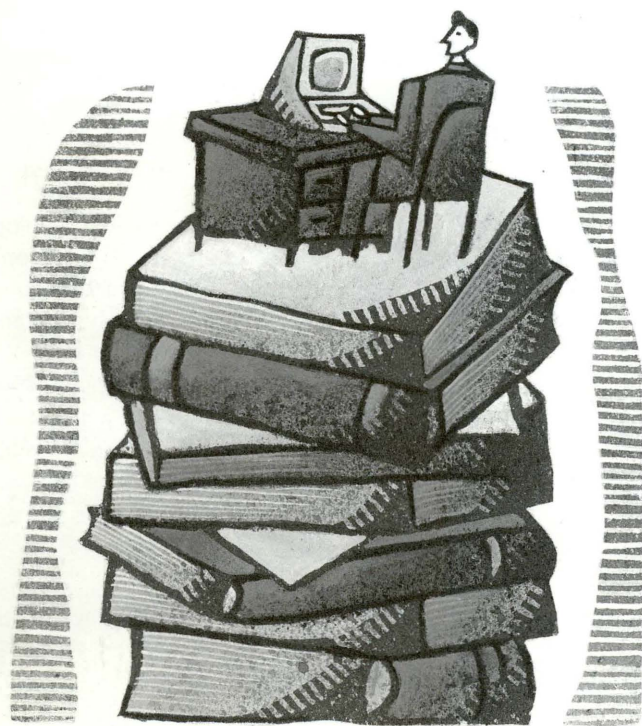


# ONTARIO LAWYERS GAZETTE

LA REVUE DES JURISTES DE L'ONTARIO



## INSIDE/À LIRE

MEMBER FEES AND  
FORMS SET FOR 1998

ELECTRONIC REGISTRATION

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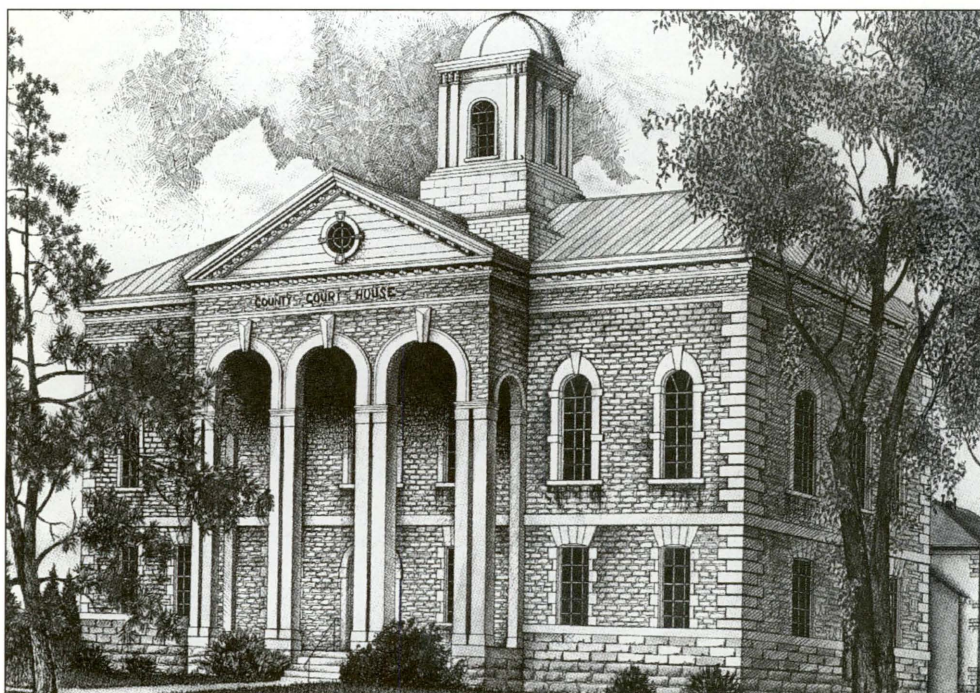
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# ONTARIO LAWYERS GAZETTE

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## CONVOCATION

### Break-even budget holds the line on 1998 member fees

THE ANNUAL FEE PAID by members to the Law Society will remain virtually unchanged in 1998 following the approval of a break-even Law Society budget by Convocation on November 28.

The total fee for full-fee paying members in 1998 will be \$1,747, a decline of \$2 from 1997. Full-fee paying members can save an additional \$50 by using a new prompt payment option, which provides for the \$50 discount if fees are paid by January 31, 1998 (see story on page 30).

As well, at their October meeting, benchers approved a recommendation by the Lawyers' Professional Indemnity Company (LPIC) board that the base premium for coverage be reduced, saving members another \$500. (see *OLG* Sep/Oct 1997, p.5).

While the annual fee remains steady, there are several key changes to the various components which make up the fee. As forecast, the \$600 LPIC capitalization levy was eliminated now that LPIC has been sufficiently capitalized.

The legal aid levy was reduced by \$147 to \$119, as a result of continued reductions to legal aid's administrative expenses; and the insurance levy waiver fund – used to assist members who have difficulty paying the insurance levy because they are in severe financial difficulty – has been reduced by \$5 to a single dollar (which will not adversely affect the health of the fund).

Despite the decreases in certain levies, Convocation agreed with the finance and audit committee's recommendation to use the reductions to avoid a fee increase for

members, and to fund other important initiatives. The single largest increase was in the Lawyers Fund for Client Compensation levy, which increased from \$1 per member to \$320 in order to maintain the financial viability of the Fund and to finance audit programs. (For more on the Compensation Fund, see the Treasurer's Message, and story on page 7).

A new budget item for 1998 is a \$150 levy for a technology and research infrastructure fund, aimed at assisting members in adopting the necessary skills and tools to remain competitive in the current technological environment. A further \$75 portion of the total fee will fund Project 200, the Society's ongoing operational restructuring program which is designed to reduce the operational expenses of the Society over the long term.

An Osgoode Hall capital fund (\$50 levy) will be established to finance much-needed repairs to Osgoode Hall over the

next decade.

The general membership fee, which funds all Law Society programs and administration, increases by \$156 in 1998 to \$916. Among new areas of expenditure in the general fee are the implementation of initiatives to promote equity and diversity in the profession (see *OLG* May/Jun 1997, p.8) and the introduction of a formalized government relations program.

Regarding operational budget cuts, the Dial-a-Law service will shift the way it delivers legal information to the public, moving from a primarily telephone-based system to one that is accessible only through the Internet. Search Law will no longer be available to members in 1998. Recent electronic search capabilities – installed in each County and District Law Library (see story, p. 37) – and private providers have resulted in Search Law no longer being financially viable. ■

#### Breakdown of the total fee for full-fee paying members

	1998	1997	change
General Membership Fee	\$916	\$760	up \$156
County Library levy	116	116	no change
Legal Aid levy	119	266	dwn \$147
Insurance levy waiver fund	1	6	dwn \$5
Lawyers Fund for Client Compensation:	320	1	up \$319
Insurance capitalization	—	600	dwn \$600
Technology & Research Infrastructure Fund	150	—	up \$150
Osgoode Hall Capital Fund	50	—	up \$ 50
Project 200	75	—	up \$ 75
<b>Total</b>	<b>\$1,747</b>	<b>\$1,749</b>	<b>dwn \$2</b>
(less prompt payment reduction)	(50)		
<b>Total with discount</b>	<b>\$1,697</b>		



# Maintaining public confidence in the profession

The first thing we do, let's kill all the lawyers.  
*King Henry VI, Part II*

HOW OFTEN HAVE YOU heard or seen this admonition? Shakespeare, of course, did not mean for it to be taken literally, or even seriously. But wander now into any well stocked novelty or t-shirt shop and you will likely find the sentence boldly emblazoned there. It is a centuries-old bias against lawyers that they somehow signify negative forces. Hence, too, all the bad jokes.

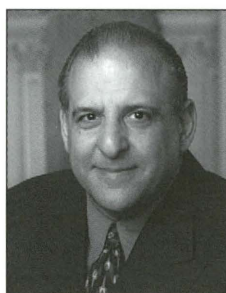
I want to take up briefly the image of the dishonest lawyer not merely to gauge its relative accuracy or inaccuracy but also to describe Convocation's position on how all of us need to be aware of and respond to those who continue to sully our overall reputation as a profession.

There are about 16,500 practising lawyers in the province, and in 1996 for every 1,000 members in private practice, an average of only 1.4 of them were prosecuted for the misuses of trust money. From a strictly statistical point of view, it thus seems clear that a thundering majority of lawyers serve the profession honourably and ethically.

But the statistics also show, unmistakably, that a very few among us are not honourable or ethical and are therefore unworthy of our and the public's trust. It goes without saying that our responsibility as a profession is to identify and discipline these few if we wish to insist upon the high integrity of the profession and to gain or re-gain the public's confidence. Ultimately, our goal must be to ensure the protection of the public, a goal always beyond our grasp so long as we tolerate or fail to deal squarely with dishonesty or incompetency.

The best way to protect the public and to maintain an honest profession is to investigate allegations of dishonesty promptly, fully, and efficiently and, when allegations are proven, to discipline fairly and decisively. This is our collective

responsibility, to each other and to the public. So too, since 1953, has it been our collective responsibility to relieve the hardship of those who suffer financial losses as a result of the machinations of dishonest lawyers through the Society's Lawyers Fund for Client Compensation.



**Harvey T. Strosberg**

For 45 years now, the purpose of the Fund has not changed. When in 1953 benchers accepted a committee report recommending creation of the Fund, they wrote: "The Society should adopt some method whereby members of the public may be compensated...or those infrequent occasions when [they] suffer actual monetary loss as the direct result of dishonesty of a solicitor...The protection of the public would be improved and the collective interests of the profession advanced if [the Fund] were established."

From the beginning, then, the Fund has been financed by lawyers, not by the government or another agency, through the annual Society membership fee. The levy has fluctuated greatly over time: in the first several years members paid \$10; in the early 1980's the levy rose to \$300; since 1991, it has fallen to \$1. A large balance in the Fund and a healthy level of earned investment income have helped to maintain the Fund and to justify the very modest levy in recent years.

However, declining interest rates and growing claim values have signalled a needed change. In budget deliberations in November, benchers approved an increase in the Fund's per member levy to \$320 (which includes \$245 to properly finance the Fund and \$75 to create a program of enhanced audit). Convocation recognized that the \$1 levy was artificially low and

that an increase was essential to ensure the long term viability of the Fund.

Many will ask: Why should *honest* lawyers pay for the misdeeds of their dishonest counterparts? The best answer is perhaps to be found in the fact that law is a *profession*, a whole body of persons engaged in a special calling. Because this is so, what one member does affects and should invite the response of the entire collectivity of members. When one lawyer steals, we are all damaged thereby and our responsibility is to take action to ensure the protection of the public and the dignity and honour of the group as a whole. Simply put, if we wish to assert that our profession is one of integrity and honesty, then we must be willing to pay whatever price is necessary to abide our commitment. The Compensation Fund is a measure of the proof of that commitment.

Steps have also been taken to broaden the protection offered by the Fund. Convocation recently approved changes to the Fund's guidelines, closing the gap between where a lawyer's liability insurance leaves off and the Compensation Fund begins. The changes effectively extend the Fund's safety net to include, within the definition of "dishonesty," those rare instances in which a lawyer abuses the system, blocking a client's ability to seek redress through the lawyer's liability insurance.

Again, there appears to be only a few dishonest lawyers – as of November 30, 1997, only 68 files of this nature (representing that many members, past and present) were active in the Fund. But even a small number sullies the reputation of the whole. I hope and trust that the profession will continue to support the Compensation Fund, a powerful symbol of the profession's commitment to uphold the common good. ■

*Harvey T. Strosberg*



# Self reporting and new audit regime approved

WITH AN EYE TOWARDS further reducing the number of dishonest lawyers and lowering lawyers' operating expenses, at the October meeting of Convocation benchers approved changes to the way members report their financial information to the Law Society.

The new program – which required provincial government approval – ends a mandatory requirement that members provide a public accountant's report of their books and records within six months of the end of each financial year.

Lawyers will still be required to "self report" certain financial information to the Society using a modified Private Practitioner Form (formerly known as Form 2). The Society will also begin monitoring financial irregularities through the introduction of a new program of focused and random audits of lawyers' financial records.

In a report to Convocation, the Lawyers Fund for Client Compensation committee estimated that between \$5 million and \$7 million is spent annually by the Ontario bar to have accountants prepare financial reviews (the old Form 3). While the new program accounts for \$75 of the increase in the 1998 compensation fund levy (see budget story, page 4), removing the requirement for an accountant may translate into an estimated savings of between \$300 and \$425 for a sole practitioner, about \$500 to \$1,000 for smaller law firms and up to \$25,000 for the largest firms in the province.

The auditing and self-reporting model is also designed to indirectly save money by improving the detection of unscrupulous lawyers who steal from their clients, and thereby resulting in fewer grant payments from the Lawyers Fund for Client Compensation.

But, as Compensation Fund committee chair Clayton Ruby told benchers, the real reason for the change is not about cost savings. "If this was just designed to save money...I'd say let someone else do

that... This will, I am convinced, protect the public better by stopping defalcations before they can occur. It's good for [the profession's] honour that we pay back [from the Compensation Fund] when someone has stolen money... It is better for our honour and our integrity to prevent those thefts and that's what [the audits] are about."

A dual program of audits will be used by the Law Society. Random audits will target every practising member of the bar and are intended to have a deterrent effect because members will know that an auditor from the Society will be visiting their firm to check books and records. It is expected that each firm will be audited every two years.

The second approach – focused audits – will target members who meet a "profile" developed jointly by the Society and Lawyers' Professional Indemnity Company. Profile criteria which will likely spark a focused audit are expected to include:

- trust account problems
- questionable record keeping practices
- failure to file complete financial reports on a timely basis

- "history" of complaints, LPIC claims or Compensation Fund claims.

At a special meeting of Convocation in December, when approving the new private practitioners or self-reporting form, benchers also approved a motion which clearly states that Convocation accepts as a "matter of policy that the profile to be developed for focused audits [will] not include the fact that a lawyer did not engage an accountant to complete the financial reporting section of the form."

The number of dishonest lawyers in Ontario is small. In its report, the Compensation Fund committee writes that in 1996 for every 1,000 members in private practice, only 1.4 lawyers were the subject of prosecution for the misuse of trust money.

The Society will introduce the auditing programs and self reporting forms in 1998, as the provincial government has expeditiously approved the relevant regulations. As well, benchers directed that once in place, the auditing program be reviewed and an assessment of its operations be brought back to Convocation in two years. ■

## In Memoriam

The treasurer, benchers and staff of the Law Society note with sadness the recent death of Stuart Thom, Q.C. Mr. Thom, who was first elected a bencher in 1966 and served as treasurer from 1974 to 1976, was 91.

Mr. Thom received his BA from the University of Toronto in 1927 and his LL.B. in 1929 from the University of Saskatchewan. After his call to the bar in 1930, he practised law in Saskatchewan for ten years until joining the Canadian navy during the Second World War. He retired with the rank of Lieutenant-Commander in 1945.

The majority of Mr. Thom's impressive legal career was spent with

the Toronto firm of Osler, Hoskin and Harcourt, where he spent almost a quarter of a century. He was appointed Queen's Counsel in 1957 and granted an honorary LL.D. from the Law Society in 1979. During the early 1980s, he was the head of the commission that reviewed Ontario's rent legislation.

Mr. Thom remained very active in the affairs of the Society until this past August. He served on numerous standing committees of Convocation, including three years as chair of the discipline committee.

Mr. Thom and his dedication to the legal profession will be missed.



# Compensation fund changes improve client protection

THE LAW SOCIETY has moved to provide greater protection for members of the public who suffer financial loss because of their lawyer's dishonesty. At their October meeting, benchers approved changes to the guidelines for distributing payments to the public from the Lawyers Fund for Client Compensation. The new guidelines will bridge the gap between where a lawyer's liability insurance leaves off and the Compensation Fund begins.

The changes expand the definition of dishonesty under the rules of the Compensation Fund so that clients will now be able to seek assistance when they are financially compromised because their lawyer failed to notify the Lawyers' Professional Indemnity Company of a potential claim. When lawyers are accidentally negligent they are required by the Law Society and by the terms of their LPIC policy to report it so a claim may be filed.

In the past, in the few cases where lawyers have deliberately failed to report, LPIC was left unable to provide coverage. Because the lawyer's original conduct was negligent and not dishonest, the Fund was also unable to help and the client had no where else to turn for help – other than to the courts.

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## The gap between liability insurance and the Fund has been bridged

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Now, when a lawyer deliberately fails to report, is uncooperative, or fails to report in a timely fashion to LPIC – with the intent of purposefully preventing a client from winning costs or damages – the action will be viewed as dishonesty and the client will be able to

seek compensation from the Fund.

Normally, the Compensation Fund only considers claims dealing with money actually stolen by a lawyer from a client. However, under these special circumstances the Fund will, in effect, pay damages and costs. The amount of money awarded to clients will be determined by taking into account what the Fund, in its discretion, considers appropriate in each case. The fund has a grant ceiling of \$100,000 per claimant.

Instances where clients fall between the two safety nets – LPIC and the Compensation Fund – are rare. A report presented to Convocation by the Compensation Fund committee estimates that there are only two or three cases a year. However, benchers agreed that the Society has an obligation to end such inequity and to take action to better protect the public from losses resulting from the misconduct of lawyers. ■

## New committee to look at enhancing CLE in Ontario

A NEW LIAISON committee bringing together representatives from the province's not-for-profit providers of continuing legal education (CLE) was approved by benchers in November. The goal of the new committee will be to investigate and develop means of enhancing CLE in Ontario.

Larry Banack, vice-chair of the professional development and competence committee, told Convocation that the new committee will take a serious look at alternatives to how CLE is currently delivered. Key issues to be explored include the expanded use of technology, such as the Internet or satellite broadcasts, to provide CLE to members who live outside large metropolitan centres, and more cost-effective methods of program delivery.

The new liaison group, set to meet for the first time in early 1998, will

include members of the Canadian Bar Association-Ontario (CBAO), the County and District Law Presidents' Association (CDLPA), the Advocates' Society, and the Lawyers' Professional Indemnity Company (LPIC). The liaison group's role will be to advise the professional development committee on the above-mentioned issues. In addition to the liaison group, the Law Society and the CBAO are planning a two-day symposium to discuss CLE enhancement with CDLPA early in 1998.

### *Prepaid CLE*

Also on the issue of CLE, benchers were informed of a new approach to post-call education. In a letter to CBAO, CDLPA and The Advocates' Society, and circulated to Convocation, Treasurer Harvey Strosberg outlined a "significant" new proposal for the delivery of CLE.

Known as prepaid CLE, the system would be supported through members' annual fees to the Law Society. All lawyers in the province would then be entitled to attend CLE sessions throughout the year, having already paid for a combination of live programs and published information through their annual fee. Access to hard copy of CLE papers would be on a paper-by-paper basis, rather than the present system which requires the purchase of a binder containing a number of papers, some of which may be of no interest to a particular purchaser. Written materials could also, of course, be available electronically from an Internet site, or be published in the Ontario Reports. "In my view the proposal is a significant step forward, and in keeping with the Law Society's commitment to enhanced continuing legal education for members...



wherever they practise across the province," said Mr. Strosberg in the letter.

Highlighting successful cooperation between the Society and other CLE providers in the past, the treasurer noted that the "question of responsibility for delivery is a matter for discussion." He continued by writing that each organization brings "distinct and complementary strengths and assets" to the current administration of CLE programs, and to the task of developing new, creative and more effective post-call education initiatives.

A pre-paid program would call for all lawyers to pay a modest amount to have access to CLE. Preliminary figures suggest the program could be offered for between \$40 and \$100 per member annually. That compares to the \$500 to \$1,000 paid by lawyers who currently attend a few CLE programs each year.

However, benchers were reminded that the idea of prepaid CLE is not yet being advocated by the professional development committee, but simply presented as one of what will likely be several CLE alternatives to be considered by the new CLE liaison committee as it explores how to improve post-call learning in Ontario. ■

## Protocol codifies Law Society's dealings with complainants

THE LAW SOCIETY HAS formalized a set of principles and practices designed to improve how the organization deals with people who bring forward concerns about lawyers. The codified "protocol for complainants" was approved by benchers at their November meeting.

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Much of  
the protocol  
is a  
formalization of  
current practice

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The protocol covers a wide range of matters, including everything from directing the Society to communicate with complainants in plain language, to defining what type of information a complainant should expect to receive from the Society.

Much of what the protocol presents is simply a formalization of current

practice, but by adding improvements and codifying the process Convocation has underscored its commitment that people should be allowed into the process which results from their complaints about lawyers. The protocol also dovetails with the Society's drive to become more "customer" focused as part of its ongoing operational restructuring.

Some highlights of the new complainants' protocol are:

- Complainants should be treated professionally and with courtesy
- Information about the regulatory process should be readily available
- Communication between the Society and complainants should be in "plain language," in English or French when requested, or in the language of the complainant where possible.
- Where required, the Society should assist people in registering a complaint.
- Complainants should be regularly informed and have access to information about their complaints
- Receipt of complaints, and notifica-

## Advocates' Society to provide duty counsel for hearings

Described as an offer too good for the Law Society to refuse, a program offering *pro bono* duty counsel for unrepresented lawyers appearing before discipline hearings is expected to begin in the spring following approval of the idea by benchers at their November meeting. No means test will be required before the assistance is offered.

As the regulatory body for Ontario's lawyers, providing the service itself could have put the Law Society into a conflict of interest, so the Advocates'

Society will administer the program and will collect and maintain, from its membership, a roster of qualified and trained counsel who will offer the duty counsel services as volunteers. All lawyers chosen will receive training offered by the Law Society. Training is expected to take place in February with the program set to begin in March.

About one-third of lawyers appearing before disciplinary hearing panels are not represented and currently no duty counsel services are available to them. Such services have been available

at Discipline Convocations since 1992.

The effectiveness of the program will be assessed before Convocation considers a suggested second phase which would include offering other *pro bono* services performed by duty counsel, such as representing members facing contested discipline hearings. A means test would be implemented at that stage. As well, once the project has been running successfully, lawyers other than members of the Advocates' Society will be considered for the program's roster.



tion of complaint authorization and Convocation's final disposition should be acknowledged within 14 days

- Written reasons for not proceeding with a complaint should be provided
- Complainants should be properly informed of the outcome of discipline hearings
- Complainants should be advised as to the various process milestones in the discipline process (e.g. hearing dates, the right to attend the hearings, etc).

Along with the newly adopted protocol, the Society will continue to use reports similar to victim impact statements in disciplinary proceedings in

keeping with a policy set in 1992.

Following the adoption of the protocol, the professional regulation committee which formulated the guidelines for complainant involvement, was directed by benchers to turn its attention to codifying the rights of lawyers facing professional misconduct proceedings. As well, the committee has been asked to study additional enhancements to the complainant's protocol including the development of an instructional video to explain the Society's regulatory functions to the public, the possibility of accepting non-written complaints (e.g. on audio tape), and the feasibility of placing time limits on processing complaints. ■

## Task force defines the competent lawyer

A DEFINITION OF A competent lawyer, developed by Convocation's task force on competence, was approved by benchers at their November meeting.

In its report, the task force noted that in defining competence it is "not what lawyers *can* do that is important, but what they *do* do. It is the manner in which the skills, abilities, and attributes lawyers are expected to have are interwoven to serve client needs that forms the key to the definition of competence." The approved description of a

## Recommendations coming for underspent legal aid funds

BENCHERS RECEIVED A clarification and update about the so-called legal aid "surplus" at a special meeting of Convocation in December. Legal aid committee chair Robert Armstrong told benchers that what the media have recently been calling a surplus is actually a case of underspending by the Ontario Legal Aid Plan (OLAP) compared to forecast spending levels. As of the end of November, the underspending amounted to about \$27 million.

At the committee's urging, officials from OLAP have been meeting with the various legal aid stakeholders and service providers. From these discussions, the legal aid committee will develop a recommendation, for Convocation's consideration in January, as to how the underspent funds should be distributed, and to find out where the need is the greatest. "It's my hope...that virtually all of the money that is available...will go to address the concerns that we all hear about – the backlog in the courts, the under-represented accused in criminal cases, the under-represented people in family court," said Mr. Armstrong.

The underspending has resulted from several factors, according to the legal aid committee. Lawyers are accepting fewer clients with legal aid certificates; the Plan's budget is conservative; clients believe the cutbacks to be so severe that they don't even try to get legal aid; and finally, the Plan is paying out less than it expected because of lower than expected rates being charged back to the Plan.

The committee's recommendation on how to use the underspent funds will also be taken to the provincial government for its approval, Mr. Armstrong said. ■



**Former Chief Justice Brian Dickson becomes honorary bencher**

Convocation has bestowed the title of honorary bencher upon the Rt. Hon. Brian Dickson, former Chief Justice of Canada. Pictured above is Treasurer Harvey Strosberg (left) and Justice Dickson at a special ceremony held December 13th at Osgoode Hall. Justice Dickson was appointed to the Supreme Court of Canada in 1973 and served as Chief Justice from 1984 until his retirement in 1990. He is a life bencher of the Law Society of Manitoba, an honorary bencher of Lincoln's Inn and has received numerous awards and honours during his distinguished career. The other current honorary benchers of the Law Society are the Queen Mother, Prince Charles, the Rt. Hon. Margaret Thatcher, Kenneth Jarvis Q.C. and the Hon. Lincoln Alexander, Q.C.



competent lawyer is as follows:

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

- knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices
- investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate courses of action
- implementing the chosen course of action through the application of appropriate skills including:
  - legal research
  - analysis
  - application of the law to the relevant facts
  - writing and drafting
  - negotiation
  - alternative dispute resolution
  - advocacy
  - problem solving ability

as each matter requires;

- communicating in a timely and effective manner at all stages of the matter;
- performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
- applying intellectual capacity, judgment and deliberation to all functions;
- complying in letter and in spirit with the Rules of Professional Conduct;
- recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to

ensure the client is appropriately served;

- managing one's practice effectively;
- pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- adapting to changing professional requirements, standards, techniques and practices.

The definition is not meant to "describe competent practice in specific practice areas, but rather the critical functions and attributes that all lawyers must have." The definition is meant, the report states, to act as a guide for members and not as a list of standards.

Now that benchers have approved the definition, the next step involves sharing it with the legal profession. The definition will now be included in a revised forward to the Professional Conduct Handbook, used to guide competence-related work undertaken by the Society, and will be provided to the various legal associations, organizations and law schools around the province. ■

## Roll-call votes

1. Moved that a self-reporting model for conveying members' financial information to the Society be adopted along with a program of random and focused audits. Carried, 29 to 5.
2. Moved that a report from the Governance Restructuring Implementation task force – which recommended staff be given decision-making authority, in routine matters outside the realm of discipline, based upon clearly established Convocation guidelines (policy) and direction – be sent back to committee for further discussion and be circulated to all committees before being brought back to Convocation. Carried, 14 to 10. ■

## CONVOCATION ATTENDANCE AND ROLL-CALL VOTES

Oct/Nov/Dec	Attend			Motions*	
	27/10	28/11	12/12	1	2
Aaron, Robert	✓		✓	F	F
Adams, W. Michael	✓	✓	✓	F	A
Angeles, Nora	✓	✓	✓	F	F
Armstrong, Robert	✓	✓	✓		
Arnup, John		✓			
Backhouse, Nancy		✓	✓		
Banack, Larry	✓	✓	✓	F	F
Bobesich, Gordon		✓			
Carey, Tom		✓			
Carpenter-Gunn, Kim	✓	✓	✓	F	F
Carter, William		✓	✓		
Chahbar, Abdul Ali		✓			
Cole, Thomas	✓	✓		A	
Copeland, Paul	✓		✓	F	
Cronk, Eleanore	✓	✓		F	
Crowe, Marshall	✓	✓	✓	F	F
Curtis, Carole	✓	✓	✓	A	A
Del Zotto, Elvio	✓	✓	✓	F	A
Eberts, Mary	✓		✓	F	F
Elliott, Susan					
Epstein, Philip	✓	✓		F	A
Feinstein, Abraham	✓	✓	✓	F	A
Finkelstein, Neil	✓	✓	✓	F	A
Gottlieb, Gary L.	✓	✓	✓	F	F
Harvey, Jane		✓	✓		
Krishna, Virender		✓	✓		
Lamek, Paul		✓			
Legge, Laura	✓	✓		F	
MacKenzie, Gavin	✓	✓	✓	F	A
Manes, Ronald	✓	✓	✓	F	
Marrocco, Frank	✓	✓		F	
Martin, Arthur					
Martin, Robert	✓			F	A
Millar, Derry	✓	✓	✓	F	A
Murphy, Daniel	✓	✓	✓	F	F
Murray, Ross	✓	✓	✓	F	
O'Brien, Brendan	✓	✓		F	F
O'Connor, Shirley					
Ortved, Niels	✓	✓	✓	F	
Puccini, Helene	✓	✓	✓	A	F
Rock, Allan					
Ross, Heather	✓	✓	✓	F	F
Ruby, Clayton	✓	✓	✓	F	F
Sachs, Harriet	✓	✓		F	
Scace, Arthur					
Scott, David					
Sealy, Hope	✓	✓	✓	F	F
Stomp, Tamara	✓	✓		A	F
Swaye, Gerald	✓	✓	✓	F	A
Topp, Robert		✓	✓		
Wilson, Richmond		✓	✓		
Wright, Bradley	✓	✓	✓	A	
Strosberg, Harvey (Treas.)	✓	✓	✓		

### Non-voting Benchers in attendance

Oct. 27/97 - R. Cass, D. Lamont, A. Lawrence

Nov. 28/97 - R. Cass, G.H.T. Farquharson, K. Jarvis, D. Lamont, A. Lawrence, J. Wardlaw

Dec. 12/97 - R. Cass, K. Jarvis, D. Lamont, A. Lawrence

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

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information?

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## IN PRACTICE

### REAL ESTATE

## Electronic registration gaining momentum

THERE'S NO QUESTION that Ontario solicitors are interested in the electronic registration regime coming soon to real estate practice. A recent seminar on the topic, jointly sponsored by Law Society-CBAO-CDLPA, attracted 3,600 practitioners – a record attendance for any continuing legal education event in the province. The one-day session was held in Toronto and was transmitted live by satellite to major centres around Ontario.

The electronic registration system has not yet been fully developed and will necessarily evolve as more and more practitioners start to use and refine it. It's currently anticipated that all provincial registry offices could be automated by November 1999.

The volume of paper transactions make a strong case for automation: there are more than 700,000 title documents registered every year in Ontario, and that's expected to jump to 900,000 by the end of 1998.

Accommodating the electronic registration process means significant changes to practice standards. In recognition of this, Convocation last June adopted the final report of the joint CBAO-Law Society committee on electronic registration of title documents.

The committee's co-chair (along with Downsview lawyer Maurizio Romanin) is Ottawa solicitor James F. Leal. He says the group's 41 recommendations include 14 suggested practice directives and three changes to the Rules of Professional Conduct, along with a number of other technical or consultation proposals.

Michael Seto, a Law Society staff representative on the electronic legislation committee, points out that Convocation has only approved the report for the purposes of the "beta test" or shakedown cruise of electronic registration scheduled to begin in Middlesex county in early 1998. As with the registration system itself, any changes to practice standards will require testing and likely refinements.

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### The system

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### will evolve

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### as more

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### practitioners

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### use it

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A committee (either the same one which prepared the report or a newly constituted one) will monitor electronic registration as it unfolds, both in its beta version and later across the province, Seto says.

London solicitor J.H. "Kim" Little, also a committee member, will be deeply involved in this local testing. Right now, he points out, closing a real estate transaction electronically has parallels to a conventional closing, but the electronic method can be done without the lawyers having to meet face-to-face or even leaving their offices.

The vendor's lawyer (or staff conveyancer) would start the transaction by

opening an electronic file "pre-populated" with the land parcel information as it currently appears in the automated registry. (The system presupposes a fully automated registry and Middlesex is one of the few jurisdictions in the province where that is currently available.)

The pre-population of the document with registry data, says Little, will not only eliminate keystrokes but will do away with a host of common mistakes which plague paper-based conveyancing and make documents unregistrable: mis-described lot numbers, missing page numbers and other irritating clerical errors.

The vendor's lawyer follows a number of standardized steps and creates electronic "documents" containing required "statements" depending on the type of document (e.g. declaring the vendor's age and capacity plus routine *Family Law Act* or *Planning Act* matters). The standardized documents must be electronically "signed" by the lawyer on behalf of the client; and the purchaser's lawyer need not inquire into the documentary evidence supporting them. As Leal says, these will streamline the conveyancing process because the lawyer will not need to re-read the same standard document with every transaction.

After preparing the vendor's documentation, the lawyer will release it to the purchaser's solicitor who will, in a secure electronic environment, add the buyer's information to the document, plus complete the purchaser's standardized statements and land transfer tax forms.



The two lawyers can also add and exchange all the normal closing documentation including statements of adjustment, undertakings, declarations and directions.

As lawyers will be "signing" documents on behalf of clients, written instructions and acknowledgments of facts from the client is considered to be required practice. To assist in this, the system will generate a standardized acknowledgment and direction, containing information which the lawyer has entered into the registration documents. The lawyer can print this and have clients review and sign it when meeting them prior to closing.

Because the parties don't meet face-to-face, lawyers will also likely need to close transactions in escrow. The lawyers could agree to hold funds in trust and not release them until registration undertakings are complete, the certified cheque arrives or the keys are delivered, for example. The joint committee proposes a new rule of professional conduct that will deal specifically with these escrow obligations, as well as a standardized escrow agreement to facilitate registration.

Execution of the electronic escrow agreement will allow the registration by the solicitor (usually the purchaser's) directly to the registry office, but it must bear a lawyer's electronic signature.

This will be done (as with all required signatures) by the lawyer inserting a personal, customized and encrypted disk into the office computer. Only after the lawyer's secret identifying "pass phrase" is keyed in can the "signed" document be registered - at any registry office in the province.

It's not yet possible to transfer the entire purchase price directly from the buyer's solicitor's trust account to the vendor's solicitor's trust account, says Maria Borkowski, product marketing manager with Teranet Land Information Services Inc., which designed the electronic registry software.

However, Leal predicts full purchase price transfer will happen "before the mil-

lennium" and Borkowski says Teranet and the Law Society are actively working on this feature for the next software upgrade.

One hurdle is that the Law Society regulation which permits electronic withdrawals from solicitor's trust accounts will not pragmatically work well with the new registration system. However, Little indicates that there is "an effort underway to change this" and allow electronic withdrawals straight from the lawyer's trust account or a special account set up for the purpose. The joint committee has suggested, as an interim measure at least, that the Law Society undertake measures to implement an efficient means of transferring trust funds for the payment of land transfer tax and registration fees. Payment of on-line charges will be automatically deducted from an account with Teranet in which lawyers will need to maintain sufficient balances to pay for such costs. However, land transfer tax and registration fees are considered to be too substantial to expect lawyers to "pre-deposit" with Teranet.

Some lawyers will like the added security of electronic registration. Borkowski points out that anyone can walk into a registry office and register any document against title - the "entire paper system runs on trust" and signatures are rarely checked. But with electronic registration, only those documents bearing the proper electronic signatures will be registered. Kingston solicitor (and benchler) E. Susan Elliott points out in a paper presented at the November 10 seminar, that the database of lawyers acceptable to do registrations will be updated so only Law Society members in good standing will be allowed to register documents containing statements of law. Consequently, lawyers who become suspended (for example, for non-payment of Law Society fees or LPIC levies) may suddenly find themselves unable to register.

The Teraview software has a one-time license fee of \$295, and there will be online charges that will vary with level of

use, says Borkowski. Also, Leal acknowledges that many lawyers worry about the costs of new computer equipment to accommodate the system. However, the required system is basically off-the-shelf office technology that can be bought anywhere for a reasonable price. He estimates the savings gained through added efficiency in real estate transactions could pay for the system within a year.

The recommended system requirements for electronic registration are: a Pentium processor with 32 MB of RAM; Windows 95; a 28.8 baud (at least) modem; Super VGA colour monitor; and, a laser printer with 6 MB of RAM. Elliott notes that the early versions of the electronic registration software will not run through a network, so a dedicated terminal may be required. ■

## Briefly...

### *New City of Toronto*

As the Municipality of Metropolitan Toronto ceased to exist as of Jan. 1, 1998, the Ministry of the Attorney General has advised the Law Society of minor changes that should be implemented when commissioning or notarizing affidavits in this geographic area. Current rubber stamps remain valid, but the words "Now City of Toronto" should be added in writing below the imprint. For more information on this subject, contact the ministry.

### *Controlling Crime*

The Ontario Crime Control Commission, which was recently created by the provincial government, will be hosting a conference focusing on international strategies that have successfully reduced crime. The conference will be held at the Delta Chelsea Inn in Toronto on Feb. 12 and 13, 1998. For information or registration material, contact Christine Johnston at (416) 314-0876.



## Review rules before delegating work to non-lawyers

AS LAWYERS AND LAW firms juggle files to ensure that work is done as efficiently as possible, the Law Society is frequently dealing with questions about the kind of work non-lawyers can do.

The Rules of Professional Conduct contain comprehensive provisions on the subject of delegation of legal work, says Felecia M. Smith, acting director of the Law Society's Practice Advisory Service.

Rule 16 and its commentaries not only create special rules governing permissible delegation to law clerks and other firm employees, but they also focus on specific practice areas, such as real estate, corporate-commercial, estates and litigation.

The central principle is that lawyers shall not permit a non-lawyer to perform any of the duties that only a lawyer may perform; and, for greater clarity, Commentary 3, outlines a non-exhaustive list of these duties. For example, a lawyer may not permit a non-lawyer to take instructions from new clients; fix fees where no schedule of fees is in use; give legal opinions or undertakings; or, permit a non-lawyer to hold himself or herself out as a lawyer.

Because of uncertain economic times,

says Smith, it is currently "a common phenomenon that lawyers have found themselves in the position of working at law firms, but employed in non-lawyer positions, like secretaries, clerks or paralegals."

Those members, she stresses, must be reminded that they're employed as non-lawyer functionaries and not as lawyers. Generally, such employees will not be bound by the same liability insurance obligations as firm members actually practising as lawyers.

To be in compliance with Rule 16, firms employing Law Society members as non-lawyer employees must take care not to hold those persons out as lawyers. In the same way, members working in those non-lawyer positions are equally bound by Rule 16, and must not permit their employers to hold them out as lawyers.

Additional problems arise, says Smith, when non-lawyer employees appear in court for the firm. While Commentary 2(d) of Rule 16 permits "law clerks" to appear on routine adjournments (or where non-lawyers are permitted by statute to appear), other non-lawyers working with a lawyer may not attend or appear in

court, except in support of a lawyer also in attendance.

Permissible delegation is also exceeded where a non-lawyer operates or manages a branch office for a law firm, but there's no lawyer in full-time attendance. Paragraph 4 of Rule 16 stipulates all law offices, including branches, must at "all times" be effectively supervised by a lawyer. Therefore, a non-lawyer branch-office employee who is supervised solely by a lawyer who divides his or her time between two offices, would presumably be a violation of the paragraph.

Paragraph 3 calls for lawyers to "review the non-lawyer's work at sufficiently frequent intervals to ensure its proper and timely completion."

Because of the wide variation in legal work and custom, it's impossible to lay down specific practices to comply with the paragraph, but Smith suggests firms might want to develop "internal policies or guidelines" to ensure full compliance with Rule 16.

A good starting point, she says, is for all persons at the firm, lawyers and non-lawyers alike to read the rule and establish local and specific parameters for permissible delegation. ■

## TECHNOLOGY

### Creating, storing and retrieving digital legal information

THE ONSLAUGHT OF THE digital age is challenging the traditional ways in which the legal community conducts research and preserves legal documents, a recent symposium of practitioners and law librarians has been told.

Information experts attending "The Official Version," a national summit meeting held in Toronto in November, noted that the issue of preserving the legal record is key to ensuring access to it in the future. Instead of publishing information in books which can then be cata-

logued, the profession must come to grips with the growing electronic publishing field and adopt standards to ease the transition to an electronic world.

Daniel Poulin, a professor at the University of Montreal and the director of the Public Law Research Centre, says that the digital era means that "we can publish more than before." However, unless courts and governments adopt standards and policies to govern how they maintain records and archive judgments and statutes, there is the risk information will

be unretrievable and lost. "Clearly," he says, "it's a hard task."

Huw Morgan, vice-president and chief technology officer of Carswell, says the digital era means more publishing opportunities and an increase in the flow of information. He notes that legal publishers currently collect more than 18,000 judgments a year from Canadian courts. As we move forward in the electronic era, the challenge will be to maintain "completeness and accuracy" of the official court record in judgments and the legisla-



tive record in statutes.

While governments are taking steps to ensure their information is preserved electronically, the courts have been slower to address the issue, although a working committee of judges is studying the matter.

Poulin notes in a paper presented to the meeting that a recent survey conducted by the Canadian Judicial Council found that of 24 courts surveyed, only 11 have developed a policy or strategy for preserving judgments in electronic form.

But merely storing such information on a disk is not enough, he says, noting that changes in technology have already rendered obsolete the 5.25-inch floppy disks that computers originally used. The smaller 3.5-inch disks currently vogue will likely give way to CDs, which in turn will be replaced by newer technology. Archive maintenance becomes an issue, for as information ages it must be maintained and migrated to new storage media as they are developed.

Another challenge in preserving the court and statutory record lies in choosing the format that it should be stored in. Word processing packages change over time and the likelihood that computers could access such files in 20 or 30 years is questionable. For example, in the few short years that word processing packages have been widely used, the industry has already seen the demise of one-time popular packages such as WordStar and MacWrite. As well, many software packages have had six or more major revisions and some have difficulty accessing documents created in an older version.

The text format, which allows any type of computer operating system to access a document and read it, is not enough, Poulin says, because such things as formatting are lost. Archivists, he says, "are still looking for the ideal storage medium for preserving electronic documents."

One possibility, conference participants heard, is the Standardized General Markup Language (SGML). It can run on any computer and is non-proprietary. The

downside is that SGML, and its subset XML (extended mark-up language), are expensive to implement. Other current options include Hypertext Mark-Up Language (HTML), which is used to encode documents posted on the World Wide Web, and PDF Acrobat format, which was developed by Adobe Systems and is being used by some U.S. government departments for archiving purposes.

Poulin notes that preserving statutory material has additional challenges. While a final draft of a judgment usually comprises a single document, a statute can have unlimited versions and amendments and presents a "more difficult problem" than judgments. One option is to archive each version of a statute as it's amended, but that's "cumbersome." Another option would be to archive each section when it's amended. However, he says, it doesn't work well with heavily modified acts like the *Income Tax Act*.

Standards must also be adopted for organizing files so that information can be found. That means determining how information should be named so that files

can be easily understood and recognized. Poulin says the time has come to "reconsider assigning codes to Canadian courts so that all of their judgments can be readily cited without reference to commercial publications." He suggests sequentially numbering the judgments from each court and following a proposal put forth by the American Bar Association, in which the cite would list the year of the judgment, the level of court and the sequential number. If a portion of a judgment was being cited, then the writer could refer to the paragraph in which the material appeared in the text. For example, 1998 ONCA 15, 26, would mean the 15th judgment of the Ontario Court of Appeal in 1998 at paragraph 26.

Other challenges that the profession must come to grips with include ensuring that information is authentic. Poulin notes that it is relatively easy to create "false" electronic documents, so archived documents must have a system in place to verify the authenticity and integrity of the information that a person is researching. ■

#### PRACTICE MANAGEMENT

## Getting the most from your phonebook ad investment

ALTHOUGH THE MAJORITY of people find lawyers by personal recommendation or word-of-mouth, at least 11 per cent look in the Yellow Pages, a 1992 study conducted for the Law Society found. A 1997 survey by the research firm Canadian Facts, conducted to measure consumers' usage of specific Yellow Pages headings, found that 51 per cent of the consumers who look up lawyers have no specific name in mind.

These and other statistics underline the idea that Yellow Pages ads can be an important tool for attracting new clients and growing a practice.

But take a close look at the lawyers' ads in the Yellow Pages. Do they reflect the information requirements of today's

consumers? Are they eye-catching and as attractive as possible? Lawyers need to consider these and other questions before deciding to spend marketing dollars on a Yellow Pages ad.

People usually call a lawyer when they need one for a specific situation or purpose, so even if they've received a recommendation in the past they may turn to the directory to shop around. And because people often don't want others to know they need legal assistance, the Yellow Pages allow consumers to do their own confidential research.

Lawyers who want to get the biggest bang from their advertising buck need to do their homework. At the end of the year you want to be confident that the ad is an



asset that is generating revenue and not just an expense with an uncertain benefit.

Some publishers offer tracking services that can tell who has called, but most lawyers will need to keep track of their ads themselves. Be sure to make your tracking system easy and convenient, so you and the others in your office will use it. One way is to have a special telephone number which you advertise only in the Yellow Pages. Another alternative is to keep a simple questionnaire by the phone and ask new callers where they got your name and whether they saw your ad.

When deciding what information you want in your ad, try to answer the follow-

## Rules on advertising

Advertising by lawyers is governed by Rule 12 of the Rules of Professional Conduct.

Section 2 of the Rule reads: "...individual lawyers or firms may advertise their services or fees in any medium including the use of brochures and similar documents provided the advertising: (a) is not false or misleading and any factual information in the advertisement is verifiable; (b) is in good taste and not such as to bring the profession or the administration of justice into disrepute; (c) does not compare services or charges with other lawyers or firms."

Other sections of the Rule deal specifically with the advertising of fees, restrictions on soliciting and the use of a lawyer's name or firm name in advertising.

While there is no mention of the Internet in Rule 12, advertising on the information highway is treated the same as ads found in more traditional media. The Law Society has to date received no complaints about members' advertisements on the Internet.

Members are urged to review Rule 12 to ensure their marketing efforts are in compliance. The complete Rules of Professional Conduct can be found on the Law Society's website at [http://www.lsuc.on.ca/services/services\\_rules\\_en.shtml](http://www.lsuc.on.ca/services/services_rules_en.shtml)

ing questions in a way that will set you apart from your competitors:

- what is most important to your potential clients? Surveys indicate that consumers value interpersonal and communication skills. Be sure to write an ad that is easy to understand. Do not use legal jargon. Emphasize your willingness to keep the client informed.
- what do you offer? Let people know your areas of expertise. Since consumers are also concerned with trustworthiness and experience, include information about how long you've been in practice in the community, and list your professional memberships.
- how does your practice operate? More than ever before, consumers are looking for convenience. If available, emphasize your emergency telephone hours, free estimates and evening or weekend office hours. And since price is an issue to most people, you may want to emphasize your competitive rates, and your expertise in working with the individual to meet his or her needs.
- what's special about you? Do you offer 25 years of experience, a bilingual staff or a 24-hour assistance line? Will you visit people at home, or provide a weekly written up-date to the client? Include value-

## LEGAL AID

### Submit accounts within six months

THE ONTARIO LEGAL Aid Plan is strictly enforcing the six-month rule requiring that accounts be submitted no later than six months after the completion of the work. Lawyers who submit accounts more than six months after the completion of a case will not be paid unless they can provide evidence of illness or incapacity. The six-month rule also applies to all duty counsel accounts.

Please note that the six-month rule applies to all current accounts and is different than "six month accounts" which were older accounts that were required to be submitted before December 1995 and are being paid out in special cheque runs.

added services you offer clients that set you apart from the competition.

Once the information for the ad has been determined it's important to think about design. When you purchase or renew a display ad, ask the sales rep what design resources are available to you at no extra cost. Look around at other ads, not just in the Yellow Pages or for lawyers. Consider what catches your eye, and use that approach in your ad. Always ask to see what your ad will look like before it is printed in the directory.

Many publishers now offer electronic options that enable the advertiser to update information more than once a year and allow the consumer to interact with the advertiser. One such option is the Consumer Tips information line. Advertisers can purchase a sponsorship message that is played before the consumer tip. Following the tip, callers have the option to be connected directly with the advertiser's firm.

Directory publishers are also going online with their Yellow Pages to help link buyers and sellers, and many will link to individual web sites or e-mail addresses. In Ontario, this service is offered by TeleDirect at [www.yellow-pages.ca](http://www.yellow-pages.ca) ■

The Plan must pay lawyers' accounts in accordance with the Regulation, however it can no longer carry accounts forward indefinitely, as this would prevent the Plan from knowing its exact liability for unpaid accounts. As a result of more business-like operating procedures, including the six-month rule, the Plan is able to pay over 90 per cent of standard form accounts within 30 days of receipt and over 80 per cent of all non-standard form, interim and supplementary accounts within 60 days of receipt.

If you are submitting an account more than six months after completion of the work, you should include a letter explain-



ing the delay.

In files where nothing has happened for three or four months, lawyers should seek instructions from their client and submit an interim or final account to the Legal Accounts Department. If you have lost touch with a client, or have not received instructions to proceed, then you have six months from the last contact with the client in which to submit an account. You may submit an interim account even if the fees are less than \$500, with a letter of explanation.

If you have a client with multiple certificates, the six-month rule is applied to the work authorized on each certificate. The time limit is calculated separately for each certificate.

If you have submitted an account and the Legal Accounts Department requires more information (further authorization or a letter requesting a discretionary increase), please submit the additional information to Legal Accounts within six months of the request being made. If you have submitted an account and have not received correspondence or payment after 90 days, you are responsible for following up with the Legal Accounts department.

### **Family law expansion**

Family law coverage expanded as of April 1, 1997. Most priority two categories are now eligible for legal aid certificates, making an extra 5,000 certificates available per year. One additional time authorization in very complex family law cases is now available. The amount of money for discretionary increases for family cases has been doubled.

This year to date, the Plan has issued almost 17 per cent less than the budgeted number of family law certificates. By making more certificates available and allowing lawyers more time to work on complex cases, the Plan hopes to make sure every dollar budgeted for family law is spent. Lawyers or clients with questions about eligibility or time issue allotments for family law cases should call their local legal aid office.

### **New software calculates child support**

The Research Facility has new software that can help in calculating child support payments if you are acting on a certificate. A new standard memorandum on the Child Support Guidelines is also available free to lawyers acting on a certificate or for purchase by other lawyers.

Ontario's new Bill 128, *Uniform Federal and Provincial Child Support Guidelines Act*, S.O. 1997, Chapter 20 comes into force December 1, 1997. The *Guidelines* should make calculating child support amounts much easier where it is simply a matter of using the Tables to translate a payor's income into a support amount.

However, for complicated cases, the new software, DIVORCEmate's *GUIDE-line Calculator*, can make calculations easy, especially for cases involving extraordinary expenses, children over the age of majority, split or shared custody, a payor's income over \$150,000, or special provisions for child support.

Similar software called *SOLmate* can help to calculate the comparison of household standards of living that is required when either a payer or a recipient spouse applies for a different child support amount on the basis of undue hardship.

The *VARYmate Variation Optimizer* compares support amounts under the previous regime with amounts under the new Guidelines. Contact Lori-Anne DeBorba at the Research Facility, (416) 979-1321 ext. 6407 or fax to (416) 979-8946, to access this software or the new standard memorandum on the guidelines.

### **Clarification of tariff wordings**

A few new certificate codes and wordings took effect November 1, 1997:

- An appeal from a finding of not criminally responsible (CC96) will now be treated like an appeal from conviction, with the same number of hours, up to a maximum of 35 hours.
- In family law, an additional allotment of time is now allowed for interim appeals proceeding first to an opinion to the area

committee (FC70) and if authorized, representation on the appeal (FC72). This is the same procedure as appeals of interim orders under the civil tariff.

- A new family law direction code (FD15) allows area directors to ask for copies of updated financial statements and statements of net family property. This will allow area directors either to reassess an applicant or to secure the Plan's lien against specific property.

### **O'Connor and Rowbotham applications**

In Sault Ste. Marie Ontario Court (General Division), Mr. Justice W.L. Whalen recently appointed counsel in an *O'Connor* application for a minor appearing as a witness in a sexual assault trial. The Attorney General was ordered to bear the costs of the retainer. In a similar ruling in the *Her Majesty the Queen v. D.J.D.*, Judge M.A. Scott in Oshawa ruled on the consent of the Crown that counsel for the witnesses in a sexual assault trial be designated *amicus curiae*. The Ministry of the Attorney General (and not the Legal Aid Plan), was ordered to reimburse counsel for all services.

In a *Rowbotham* application in the Ontario Court (Provincial Division) in Napanee, Judge J.P. Coulson ruled that the application did not meet the four criteria set out in *Rowbotham*. The applicant had been refused legal aid as he had refused to make a financial contribution towards his legal costs. Although the allegations were found to be serious, carrying the threat of jail, the matter was not complex. The Judge ruled that the applicant could reapply for legal aid. The Judge also declined to order that counsel for the applicant be paid either by the Attorney General or by the Legal Aid Plan because there had been no appeal to the Area Committee.

### **Area Directors**

The Plan acknowledges with sadness the passing of Bill Green, one of the original area directors who served the district of Parry Sound from 1967 to his retirement in 1987. ■





# TOUR D'HORIZON

## LES PROPOS DU TRÉSORIER

### S'assurer d'avoir la confiance du public

La première chose à faire, c'est de tuer tous les avocats.

*Henri VI, Partie II*

COMBIEN DE FOIS avez-vous lu ou entendu cette admonestation? Loin de Shakespeare l'idée de se prendre au pied de la lettre ni même au sérieux. Mais entrez dans quelque boutique de nouveautés et vous y trouverez probablement une foule d'articles arborant fièrement cette citation. Le vieux préjugé de l'avocat malveillant a alimenté bien des plaisanteries de mauvais goût.

Je m'attarde un instant sur l'image de l'avocat malhonnête, non seulement pour juger de son bien-fondé, mais également pour invoquer la position du Conseil, selon laquelle les membres du Barreau ne doivent pas ignorer les comportements qui ternissent la réputation de leur profession.

L'Ontario compte environ 16 500 avocats en exercice; en 1996, sur 1 000 membres en pratique privée, seulement 1,4 avocat a été poursuivi pour malversation. Du point de vue statistique, on peut proclamer que l'écrasante majorité des juristes servent honorablement leur profession, dans le respect de l'éthique.

Mais les chiffres révèlent également, et indubitablement, qu'un petit nombre d'entre nous dérogent à l'honneur et à l'éthique et ne méritent pas notre confiance ni celle du public. Il va sans dire qu'il est de notre devoir, en tant que corps professionnel, d'identifier ces personnes et de prendre des mesures

disciplinaires si nous voulons faire valoir notre intégrité et gagner, ou regagner, la confiance du public. Notre but ultime est de protéger l'intérêt du public, but futile si nous tolérons la malhonnêteté et l'incompétence et négligeons d'agir en conséquence.

La meilleure solution est d'enquêter sans tarder, et sans réserve, sur les allégations d'agissements malhonnêtes et de prendre des mesures disciplinaires équitables et péremptoires lorsqu'elles sont justifiées. Il s'agit là d'une responsabilité collective, envers chacun d'entre nous et le public. Par l'entremise du Fonds d'indemnisation de la clientèle, nous assumons aussi depuis 1953 la responsabilité collective de dédommager les personnes qui subissent des préjudices financiers à la suite d'agissements malhonnêtes de la part de nos membres.

Le but du Fonds est demeuré le même depuis 45 ans. Lorsqu'il a approuvé sa création en 1953, le Conseil avait jugé qu'un tel Fonds protégerait

l'intérêt du public et les intérêts communs de la profession.

Depuis le début, ce sont les avocates et les avocats, non le gouvernement ou un organisme quelconque, qui financent le Fonds par leur cotisation annuelle, laquelle a grandement fluctué au cours des années. D'abord fixée à 10 \$, elle a grimpé à 300 \$ dans les années 1980, pour ensuite retomber à un dollar en 1991 grâce au solde important du Fonds et aux revenus appréciables tirés de placements.

La baisse des taux d'intérêt et l'augmentation des indemnités versées nous obligent cependant à revoir cette contribution. En novembre, le Conseil a approuvé le relèvement de la contribution à 320 \$ - soit 245 \$ pour le Fonds d'indemnisation même et 75 \$ pour le programme de vérification renforcé -, reconnaissant qu'à un dollar, elle était artificiellement basse et que la viabilité du Fonds commandait une telle hausse.

Plusieurs se demanderont sans doute pourquoi les membres *honnêtes* devraient payer pour les méfaits de leurs collègues malhonnêtes. Rappelons que le droit est une *profession*, une vocation partagée par un ensemble de personnes. Lorsqu'un membre détourne des fonds ou manque de probité, la réputation de tous les avocats et avocates s'en trouve compromise. Il nous incombe de prendre des mesures pour assurer la protection du public et notre dignité collective. Si nous désirons affirmer l'intégrité de notre profession, nous devons être prêts



*Le Barreau  
vous souhaite de  
Joyeuses Fêtes et  
une Bonne et  
Heureuse Année.*



à en payer le prix. Le Fonds d'indemnisation témoigne de cette volonté.

Le Conseil a également approuvé des changements qui combleront l'écart entre l'étendue de l'assurance responsabilité civile professionnelle des membres et celle du Fonds d'indemnisation. Ces dispositions élargissent la couverture du Fonds et incluent dans la définition de «malhonnêteté» les rares occasions où un membre fraude le système et où le client ne peut obtenir réparation par le truchement de l'assurance responsabilité.

Soulignons, encore une fois, que les membres malhonnêtes ne sont pas légion : au 30 novembre 1997, le Fonds comptait seulement 68 dossiers actifs. Mais même ce petit nombre entache la réputation du groupe. Je suis convaincu que les membres du Barreau continueront à soutenir le Fonds d'indemnisation, symbole puissant de notre engagement à protéger le bien commun. ■

Harvey T. Strussberg

#### EN DIRECT DU CONSEIL

##### **Points saillants du budget**

Le 28 novembre, le Conseil a approuvé un budget équilibré qui maintient à 1 747 \$ la cotisation annuelle (avec réduction de 50 \$ en cas de paiement rapide), permet d'assurer la viabilité du Fonds d'indemnisation de la clientèle et de financer un programme de vérification d'envergure, la restructuration du Barreau ainsi que de nouvelles initiatives : recherche et technologie, équité, relations avec le gouvernement, préservation de l'édifice historique. La composition de la cotisation a été profondément modifiée : la réduction, voire l'élimination (recapitalisation de l'ARCPA) de certaines composantes s'accompagne de hausses importantes dans d'autres domaines (indemnisation, nouvelles initiatives). Ce budget annonce également la disparition du

## La personnalisation des formulaires

DANS UNE ENVELOPPE aux couleurs du Barreau, les membres recevront début janvier le Profil des membres de 1997 qu'ils devront nous retourner d'ici le 31 janvier 1998. Fidèle à notre volonté de simplifier le processus, nous avons personnalisé ce formulaire en pré-imprimant les données réunies l'année passée. Par conséquent, il suffira à chacun et chacune d'entre vous de vérifier l'exactitude des renseignements y figurant et d'y apporter toute modification nécessaire, en remplissant les «bulles» nécessaires. N'égarez pas l'enveloppe bordeaux et gris, ce formulaire est irremplaçable !

Cette année, le Profil des membres comprend quelques nouvelles questions intéressant particulièrement l'ARCPA et visant à faire avancer le dossier de la formation permanente. Par ailleurs, il est accompagné d'un questionnaire anonyme sur les parte-

nariats multidisciplinaires, question qu'étudie présentement un groupe de travail du Barreau.

Enfin, l'informatisation va bon train et les membres pourront bientôt remettre des formulaires électroniques par l'intermédiaire d'un serveur sécuritaire relié au site web du Barreau. Le projet-pilote a démarré et, à ce stade, il est possible de remplir, *en anglais uniquement*, le Profil des membres ([www.lsuc.on.ca/eForms](http://www.lsuc.on.ca/eForms)). Après l'évaluation, lorsque les questions techniques auront été réglées, les membres pourront en toute confidentialité remplir tous les formulaires, dans l'une ou l'autre des langues officielles. Chaque membre recevra, pour les besoins des formulaires, un mot de passe à durée déterminée et l'accès sera doublement protégé par une vérification préalable des renseignements signalétiques par courrier électronique.

service de recherche informatisée (Docu-droit) et la diffusion de l'information juridique au public (Téléphone juridique) par Internet.

##### **Auto-déclaration et vérification**

Soucieux de toujours combattre la malhonnêteté et d'alléger les charges financières des membres de la profession, le Conseil s'est prononcé en faveur de l'auto-déclaration de l'information financière, alliée à un programme de vérifications ponctuelles et approfondies, pour 1998.

Ce nouveau programme, qui mettra fin à l'obligation de produire un rapport d'expert-comptable dans les six mois de la fin de l'exercice, a été approuvé par le gouvernement. Les membres économiseront, grâce au nouveau mode de divulgation de l'information financière (l'auto-déclaration) entre 300 \$ et

25 000 \$, selon la taille de leur cabinet. Le volet vérification, financé par une partie (75 \$) de la cotisation versée au Fonds d'indemnisation de la clientèle permettra d'éliminer les pratiques malhonnêtes, et partant, les indemnités versées. Il comprendra des vérifications ponctuelles touchant des membres choisis au hasard, d'où un effet dissuasif, ainsi que des vérifications approfondies visant les membres qui sont connus par le Barreau et l'ARCPA pour leur gestion comptable ou financière problématique ou qui ont déjà fait l'objet de plusieurs plaintes ou réclamations.

##### **La compétence**

Une nouvelle définition de la compétence, axée sur la notion de service et les fonctions et qualités ainsi exigées de l'avocat, vient d'être approuvée et fera



bientôt l'objet d'une nouvelle règle de déontologie.

### **Avocats de service et discipline**

Les membres qui ne sont pas représentés lors des audiences de discipline, présentement un sur trois, pourront, au printemps prochain, bénéficier des conseils d'avocates et avocats de service, sans test d'admissibilité préalable. Ce service est déjà offert, depuis 1992, à l'étape du Conseil de discipline. Pour éviter tout risque de conflit d'intérêts, il a été convenu que l'*Advocates' Society* serait chargée de la gestion de ce programme, notamment en maintenant un répertoire des membres habilités à agir en cette qualité, membres qui recevront d'ailleurs une formation appropriée à partir de février prochain.

### **AIDE JURIDIQUE**

## **La règle des six mois**

LE RÉGIME applique strictement la règle des six mois selon laquelle les avocats et avocates doivent présenter leurs comptes au plus tard six mois après l'exécution du mandat. Les comptes présentés plus tard ne seront pas payés sauf en cas de maladie ou d'incapacité. Cette règle s'applique également aux comptes des avocats et avocates de service.

Il faut noter que la règle des six mois s'applique à tous les comptes courants et qu'elle diffère des «comptes de six mois», ceux-ci étant de plus vieux comptes qu'il fallait présenter avant décembre 1995 et qui font présentement l'objet de paiements spéciaux.

Le Régime doit certes payer les comptes conformément au Règlement mais, s'il reportait ces paiements indéfiniment, il ne pourrait connaître avec précision son obligation vis-à-vis des comptes impayés. Depuis qu'il a adopté des pratiques plus efficaces, dont la règle des six mois, le Régime réussit à

### **Discipline**

En octobre et novembre derniers, le Conseil a pris des sanctions disciplinaires contre 25 avocats et avocates. Il a prononcé la radiation de M<sup>es</sup> F.A. Ault (conduite indigne), C.M. Cloutier (procureur incontrôlable), A.H. Coles (conduite indigne), D.M. Topp (défaut de répondre au Barreau et de coopérer) et K.R. Bruce (détournement de fonds), a autorisé à démissionner M<sup>e</sup> F.R. Mott-Trille (détournement de fonds), a suspendu les droits de M<sup>es</sup> M.V.R. Phelps (12 mois - clients induits en erreur), J.M. Porter (12 mois - fonds mal crédités), W.A. Singer (9 mois - dépenses générales portées au compte en fiducie), F.A. Thériault (6 mois + dépens - clients induits en erreur), S.B. Kravetz (5 mois - inobservation des conditions d'entiercement), P.E. Mallon (4 mois + inspection professionnelle -

exercice sous suspension), C.P. Moss (3 mois - défaut de répondre au Barreau), W. Wysocky (3 mois - service à la clientèle inadéquat), W.S. Mathers (2 mois - exercice sous suspension), R.W. Paskar (un mois et demi + dépens - violation des règles de l'Aide juridique), O.E. Massimiliano (un mois - emprunts à la clientèle), K.L. Clarke (un mois - registres non produits), L. Muzzatti (un mois - défaut de s'acquitter d'une obligation financière), G.B. Clark (un mois + conditions - service à la clientèle inadéquat), T.M. Hicks (un mois - exercice sous suspension), M. Takatsch (un mois - défaut de répondre au Barreau et de remettre au client son dossier) et P.N. Ward (un mois - service à la clientèle inadéquat) et a réprimandé M<sup>es</sup> J.R. Hunter (+ dépens - inobservation de directives) et P.G. Martin (défaut de déposer les honoraires provisionnels). ■

payer plus de 90 % des comptes types dans les 30 jours de leur réception et plus de 80 % de tous les autres comptes, comptes provisoires et supplémentaires dans les 60 jours de leur réception.

Si vous présentez un compte plus de six mois après la fin du mandat, vous devriez l'accompagner d'une lettre justifiant le retard.

Dans les dossiers inactifs depuis trois ou quatre mois, vous devriez demander des instructions à votre client ou cliente et présenter un compte provisoire ou final au Service des comptes juridiques. Si vous avez perdu le contact avec un client ou une cliente et n'avez reçu aucune instruction pour poursuivre l'affaire, vous disposez alors d'un délai de six mois à compter du dernier contact pour présenter votre compte. Vous pouvez remettre un compte provisoire même si les honoraires sont inférieurs à 500 \$, avec une note explicative.

Si votre cliente ou client est muni de plusieurs certificats, la règle des six

mois s'applique au travail autorisé par chacun des certificats dont les délais font l'objet d'un calcul séparé.

Si le Service des comptes juridiques exige des renseignements au sujet d'un compte déjà présenté (une autorisation supplémentaire ou une lettre demandant une augmentation discrétionnaire), veuillez lui envoyer ces renseignements dans les six mois de la demande. Si vous avez présenté un compte et n'avez reçu ni accusé de réception ni paiement après 90 jours, il vous incombe de communiquer avec le Service des comptes.

### **Précisions d'ordre tarifaire**

L'Aide juridique a procédé à des mises au point et a adopté un nouveau code le 1<sup>er</sup> novembre 1997.

1. L'appel d'un jugement ne reconnaissant aucune responsabilité criminelle (CC96) sera dorénavant traité comme un appel à l'encontre d'une déclaration de culpabilité, avec le même nombre d'heures, jusqu'à concurrence de 35 heures.



2. En droit de la famille, on accorde maintenant plus de temps aux appels provisoires, d'abord pour une opinion au comité régional (FC70) et, si l'autorisation est accordée, pour la représentation en appel (FC72). Cette procédure s'apparente à celle des appels à l'encontre d'ordonnances provisoires sous le tarif en matière civile.

3. Un nouveau code en droit de la famille (FD15) permet aux directions régionales de demander une mise à jour d'états financiers ou de relevés de biens familiaux nets. Elles peuvent ainsi réévaluer l'admissibilité d'un prestataire ou faire grever un bien spécifique d'un privilège en faveur du Régime.

### **Les précédents O'Connor et Rowbotham**

À la Cour de l'Ontario (Division générale) de Sault Ste. Marie, le juge W.L. Whalen a récemment, dans une requête du type O'Connor, constitué avocat pour représenter un mineur assigné comme témoin dans une cause d'agression sexuelle. Le procureur général a dû payer les honoraires de l'avocat. Dans *R. c. D.J.D.*, une affaire similaire, le juge M.A. Scott d'Oshawa a statué, avec le consentement de la Couronne, que l'avocat des témoins dans une cause d'agression sexuelle soit désigné *amicus curiae*. On a ordonné au ministère du Procureur général (et non au Régime d'aide juridique) de payer l'avocat pour tous ses services.

Dans une requête du type Rowbotham déposée devant la Cour de l'Ontario (Division provinciale) à Napanee, le juge J.P. Coulson a statué que la requête ne réunissait pas les quatre critères énoncés dans Rowbotham. On avait rejeté la demande d'aide juridique du requérant pour le motif qu'il avait refusé de contribuer au paiement de ses frais juridiques. Même si les allégations étaient assez graves pour entraîner l'emprisonnement, l'affaire n'était pas complexe. Le juge était d'avis que le requérant pouvait faire une nouvelle

demande d'aide juridique. Il a refusé d'ordonner que l'avocat du requérant soit payé par le procureur général ou par le Régime d'aide juridique parce qu'on n'en avait pas appelé au comité régional.

### **Directeurs régionaux**

Le Régime signale avec tristesse le décès de M<sup>e</sup> Bill Green, l'un des premiers directeurs régionaux, qui a dirigé le bureau de Parry Sound de 1967 jusqu'à sa retraite en 1987. ■

## **À ne pas manquer**

- Des séances de formation intensive en médiation, organisées par l'AJEFO (613-562-5866).
  - «C'est votre droit». Vidéocassette gratuite à l'intention de tous ceux et celles qui pratiquent le droit en français en Ontario. Présentation, par domaine de pratique, des ressources et procédures existantes (416-869-1047 ou 1-800-668-8900).
  - Le Dictionnaire canadien de com-
- mon law contenant la terminologie normalisée en droit des biens et droit successoral, publié par les Éditions Yvon-Blais (838 pages, 75 \$).
- Éléments de common law (et aperçu comparatif du droit civil québécois), sous la direction de Louise Bélanger-Hardy et Aline Grenon. Analyse du droit privé et des différences entre les deux systèmes de droit canadien (Carswell, 656 pages, 48 \$).

## **EN PRATIQUE**

# **La comptabilité, de mois en mois**

LORSQU'ARRIVE LA fin du mois, il est temps de faire ses comptes, tout simplement en répondant à quelques questions. Toutefois, comme les relevés de banque ne vous parviennent que quelques jours après la fin du mois officielle, vous avez, selon les règlements d'application de la *Loi sur le Barreau*, jusqu'au 15 du mois suivant pour procéder à votre propre vérification comptable. Ce que nous vous proposons ici est un aide-mémoire, non une directive.

1. Combien d'argent ai-je déposé dans mon compte en fiducie ce mois-ci ?
2. Combien d'argent ai-je retiré du compte en fiducie ?
3. Sommes-nous d'accord, la banque et moi, sur le solde du compte en fiducie en fin de mois ?
4. À qui précisément appartiennent les fonds qui se trouvent dans mon compte en fiducie en fin de mois ?
5. Combien d'argent ai-je déposé dans mon compte général ce mois-ci ?

6. Combien d'argent ai-je retiré de mon compte général ce mois-ci ?
7. Sommes-nous d'accord, la banque et moi, sur le solde du compte général en fin de mois ?
8. Quel est le montant des bénéfices réalisés ce mois-ci, ou de mes pertes ?
9. Quel est le montant total de mes factures pour le mois ?
10. Combien me doivent mes clients en fin du mois ?
11. Combien dois-je à mes fournisseurs en fin du mois ?
12. Ai-je remis au gouvernement tous les paiements exigibles ce mois-ci : TPS, retenues sur le salaire, impôt sur le revenu des particuliers ?

Si vous êtes dans l'impossibilité de répondre à certaines de ces questions, la gestion de votre cabinet laisse à désirer. Et si vous ne pouvez répondre aux quatre premières, c'est le Barreau qui vous demandera des comptes. ■



# Le point sur les pensions alimentaires pour enfants

M<sup>e</sup> Nathalie Boutet

LE 1<sup>ER</sup> MAI 1997, Ottawa a changé le traitement fiscal et la façon de calculer la pension alimentaire pour enfants en amendant la *Loi sur le divorce* et la *Loi de l'impôt sur le revenu* et en prescrivant des mesures obligatoires d'uniformisation, sous le nom de Lignes directrices sur les pensions alimentaires pour enfants. Des modifications à la loi provinciale, la *Loi sur le droit de la famille*, seront promulguées le 1<sup>er</sup> décembre 1997 pour correspondre aux lignes directrices fédérales.

Ces changements n'affectent pas les ordonnances rendues avant le 1<sup>er</sup> mai 1997 ni leur traitement fiscal, pas plus que les contrats passés avant cette date. Ils ne touchent pas les pensions alimentaires pour époux, sauf que la pension alimentaire pour enfants a préséance. De plus, tout parent peut faire une demande pour que son ordonnance soit assujettie aux nouvelles lignes directrices.

Auparavant, la loi ne stipulait pas de méthode particulière pour déterminer le montant à payer, et les avocats devaient déterminer les incidences fiscales pour majorer le montant à payer par le montant additionnel d'impôt que le récipiendaire devait payer.

Le montant de l'ordonnance alimentaire pour enfants est maintenant calculé en additionnant deux éléments (alinéas 3(1) a) et b) des Lignes directrices) : le montant de base prescrit par une table et les dépenses spéciales déterminées en application de l'article 7 des Lignes directrices.

Les montants fixés par la table sont basés sur trois facteurs: le revenu annuel brut du payeur, le nombre d'enfants et la province où réside le payeur. On ne tient pas compte du revenu du récipiendaire.

Les dépenses spéciales varieront d'une famille à l'autre. Une fois établies, elle seront payées par les

parents en proportion de leur salaire respectif. Sont des dépenses spéciales : a) les frais de garde engagés pour permettre au parent ayant la garde d'occuper un emploi, b) les primes d'assurance médicale et dentaire attribuables à l'enfant, c) les frais relatifs aux soins de santé non assurés, d) les frais extraordinaires relatifs aux programmes éducatifs, e) les frais relatifs aux études post-secondaires et f) les frais extraordinaires relatifs aux activités parascolaires.

## Peut-on s'attendre, à la lumière d'une décision récente, à une interprétation large des dépenses spéciales ?

On peut demander au tribunal de dévier de l'application stricte de la table dans des circonstances limitées : si l'enfant est majeur [paragraphe 3(2)], si le revenu annuel du payeur est supérieur à 150 000 \$ (article 4), si le payeur tient lieu de parent à l'égard d'un autre enfant (article 5), dans les cas de garde exclusive (article 8) ou partagée (article 9) ou si le payeur éprouve des difficultés excessives (article 10).

Les modifications à la *Loi de l'impôt sur le revenu* stipulent que, depuis le 1<sup>er</sup> mai 1997, le payeur ne peut plus déduire le montant de la pension alimentaire pour enfants de son revenu et le récipiendaire ne doit plus l'inclure dans son salaire. Elles touchent toute nouvelle ordonnance, qu'elle soit en vertu de la *Loi sur le divorce* ou de la *Loi sur le droit de la famille*, et tout contrat ou entente relatif à la pension alimentaire pour enfants.

La jurisprudence confirme que le

## Remerciements

En cette fin d'année, nous aimerions exprimer notre profonde gratitude à tous nos collaborateurs et collaboratrices dont la plume est venue alimenter les débats : M<sup>es</sup> Céline Allard, Nathalie Boutet, Nathalie Desrosiers, J.-M. Ferland, Madeleine Hébert, Michel Landry, Étienne Saint-Aubin, M. Étienne Sepulchre.

calcul est plus simple et les montants sont plus uniformes. Quelques points contentieux demeurent, notamment les dépenses spéciales et la détermination du salaire du payeur. En ce qui concerne les dépenses spéciales, voir *Forrester c. Forrester*, J.O. n° 3437, 19 août 1997; *Thomson c. Howard*, J.O. n° 4431, 24 septembre 1997; *D.S. c. S.T.S.*, J.O. n° 4061, 30 septembre 1997; *Shellby c. Shellby*, J.O. n° 2608, 20 juin 1997 et *Reyhalian c. Reyhalian*, J.O. n° 1617, 21 avril 1997. Pour ce qui est de la détermination du salaire du payeur, voir *Quintal c. Quintal*, J.O. n° 3444, 22 août 1997; *D.E.P. c. B.A.P.*, J.O. n° 4265, 28 août 1997; *Mol c. Mol*, J.O. n° 4060, 30 octobre 1997; *Kowalski c. Kowalski*, J.O. n° 050, 23-27 juin 1997 et *Shellby c. Shellby*, J.O. n° 2608, 20 juin 1997.

La cause *Middleton c. MacPherson* (J.A. n° 614, 12 juin 1997) est également très informative car la Cour a répondu à 12 questions concernant l'application des Lignes directrices. Madame la juge Moreau a interprété l'article 7 largement en reconnaissant plusieurs dépenses spéciales, ce qui a surpris les avocats qui s'attendaient à une interprétation plus restrictive. Ont été acceptés les activités sportives parascolaires telle une journée de ski, les sorties éducatives, la supervision du dîner à l'école et les loisirs tel le ballet. Les frais d'inscription à l'école et les fournitures scolaires ont été rejetés.

Selon la juge, pour déterminer le montant à payer lors d'une garde



partagée (article 9), le tribunal n'est pas astreint à un calcul semblable à celui prescrit à l'article 8 et doit considérer séparément les facteurs établis aux trois alinéas de l'article 9. Il peut également ordonner le paiement de dépenses spéciales en calculant le montant à payer selon l'article 9, bien que l'alinéa a) ne

mentionne que l'application de la table, non les dépenses spéciales. De même, le tribunal peut, bien qu'avec prudence, considérer les demandes de difficultés excessives par les récipiendaires autant que par les payeurs.

Il sera intéressant d'analyser avec plus de recul l'évolution de la jurispru-

dence, notamment à la suite des modifications à la loi provinciale. ■

*M<sup>e</sup> Nathalie Boutet pratique le droit de la famille à son compte et fait office de juge suppléante à la Cour des petites créances depuis 1995. Elle est également administratrice régionale de l'AJEFO depuis 1993.*

## Du besoin de constance et de précision en rédaction et en traduction juridiques

*M. Étienne Sepulchre*

MÊME SI LA PLUPART des juristes s'accordent pour dire qu'en rédaction et en traduction juridiques, il convient d'employer rigoureusement les mêmes termes pour désigner une même notion de droit et d'éviter les termes polysémiques, c'est-à-dire des termes capables d'exprimer plus d'une notion, certains juristes d'expression française ont une approche plus littéraire et considèrent que le français courant et le français juridique sont si imbriqués l'un dans l'autre qu'on ne saurait être rigoureusement uniforme dans l'emploi du vocabulaire juridique ni éviter systématiquement l'emploi de termes polysémiques. Le style juridique se doit alors d'être souple, léger et agréable à lire en empruntant certaines des caractéristiques du style littéraire.

À leur avis, il n'y aurait pas de mal à employer, par exemple, les mots «préjudice», «dommage» et, à la rigueur, «tort» de façon interchangeable à l'intérieur d'un même texte juridique. L'un éclairer l'autre et, ensemble, ces sy-nonymes contribuent à rompre la monotonie du texte. De même, il n'y aurait pas de mal à employer en français un même terme, comme «cession», pour désigner à la fois les concepts anglais de «assignment», de «grant» et de «transfer».

D'autres juristes, au contraire, adoptent une approche beaucoup plus technique et estiment que le besoin de sécurité juridique (ou de certitude du droit) suppose l'emploi d'une terminologie rigoureusement uniforme à l'intérieur

d'un même texte juridique, voire d'une même famille de textes, ainsi que l'emploi de termes monosémiques. Cela rend les textes juridiques sans doute plus arides et moins élégants, mais ils offrent au moins plus de sécurité en ce sens que leurs effets sont davantage prévisibles. Si l'on adopte le terme français «préjudice», il faut alors s'en tenir à ce mot, dans toute la mesure du possible, tout au long du texte. Les termes anglais «assignment», «grant» et «transfer» se rendraient respectivement par «cession», «concession» et «transfert».

Laquelle des deux approches convient le mieux à la common law en français? La question se pose-t-elle véritablement? Pour y répondre, il convient de se rappeler que les origines de la common law se reflètent dans les caractéristiques de l'anglais de la common law. C'est un système de droit, au départ, assez procédurier dont la langue est essentiellement technique, voire ésotérique, et donc moins intégrée à l'anglais courant que le français juridique ne l'est au français courant. C'est là une caractéristique importante du langage de la common law que certains auteurs, comme Melinkoff, dénoncent et que d'autres, comme les partisans de la lisibilité, cherchent à redresser. En attendant, toutefois, que se cristallise une forme plus conviviale du langage de la common law, la prudence est conseillée afin d'éviter de tomber dans le piège de la facilité, sous peine de diluer les notions à exprimer.

Cela étant, il faut bien reconnaître que

la technicité du style est aussi une question de niveau de langue. Il en existe deux en droit : le français juridique parlé, à l'occasion écrit, communément appelé «langue du Palais», et le français juridique écrit employé dans des textes qui produisent des effets juridiques ou qui, de quelque autre manière, portent à conséquence.

En common law, il va de soi que la langue du Palais est inévitablement moins châtiée que la langue écrite et donc plus chatoyante et souple. La langue écrite, elle, reste pour l'instant technique en raison de la nature même de la common law. D'où la nécessité de faire preuve de constance et de précision terminologiques dans les communications écrites en droit.

Par constance terminologique, on entend l'emploi d'un même mot pour désigner une même notion non seulement à l'intérieur d'un texte, mais également à l'intérieur d'une famille de textes. C'est ainsi, par exemple, que si l'on rédige un texte juridique en se fondant sur une loi habilitante, il faut respecter la terminologie de la loi habilitante.

Par précision terminologique, on entend, d'une part, l'emploi d'un terme spécifique approprié pour désigner une notion spécifique et, d'autre part, l'emploi d'un terme générique approprié pour désigner une notion générique. ■

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## PERSPECTIVE

### Ontario law schools react to magazine survey

ONTARIO'S SIX LAW schools ranked everywhere from the top to the bottom in the first ever Maclean's magazine survey of Canadian law schools.

The survey, published in the Oct. 6 issue, was the first offshoot of the magazine's annual survey and ranking of Canadian universities. Following several months of negotiations and discussions with law school deans across the country, the magazine agreed not to tabulate an overall ranking of the country's 16 law schools as it does with its look at universities.

Instead, it offered two sets of rankings: one based on feedback from recent graduates and another based on opinions of judges, lawyers and academics. In both cases, the University of Toronto came out on top, much to the pleasure of students and faculty, says Assistant Dean Bonnie Croll. "Everyone was very delighted."

While U of T celebrated its strong showing, most other Ontario schools were less thrilled. Some have taken the criticism to heart, undertaking reviews of their operations to ensure they do better if and when Maclean's conducts another survey. Others questioned the methodology of the survey and the way the results were reported. Despite the complaints, however, all of the deans contacted said they would participate in another Maclean's survey if asked.

The magazine has no immediate plans to repeat the survey, certainly not next year, says Victor Dwyer, education editor at Maclean's. "We don't think we

could do law schools every year. We had wanted to do a graduate or professional school for some time, and it took a while to decide what we would do and how we would do it."

Graduates graded their schools in four categories. U of T was first in the quality of law school category, while the University of Ottawa was last. In fact, three of the bottom four in this category were from Ontario. Osgoode Hall Law School was ranked at 15 and the University of Western Ontario at 13. Toronto also topped the quality of teaching category, where three Ontario schools filled out the bottom three positions: Queen's University, Osgoode and Western. The relevance of curriculum category was led by the University of New Brunswick, while the University of Victoria topped the quality of learning environment segment, an area where Osgoode was last.

In addition to the dual rankings, Maclean's canvassed the schools themselves for a wide variety of information about median LSAT scores and grades of those admitted. It also published rankings on topics such as scholarships and bursaries, faculty to student ratios, fees, computer workstations, and library sizes and acquisitions. Each school worked for weeks to provide this information.

The magazine sees the exercise as a valuable information tool for readers, but it also has a tremendous effect on circulation, Dwyer says. The law school issue sold about 20,000 copies, double a typical issue. The only bigger seller is the overall university issue which sells about 60,000. However, it is on newsstands for a month rather than just a week. Although the magazine has not decided officially to do another professional or graduate school next fall, the

#### How they ranked

	Recent Graduates	Judges, Lawyers and Academics
Toronto	1	1
Windsor	5	12
Western	12	13
Queen's	13	11
Ottawa	14	14
Osgoode	16	4



large circulation numbers may well dictate that it become a tradition to go along with the general university issue.

Perhaps the biggest surprise of the law survey was the last-place showing of Osgoode in the survey of recent graduates. The figure stood in stark contrast to the school's 5th place showing among professional peers. As expected, Dean Marilyn Pilkington says the graduate results are "a tremendous concern to us." However, she questions the methods used to gather the information.

Maclean's says only that "virtually every law school graduate called to the bar in the past three years," was mailed a survey. Of the 3,997 surveys distributed, 1,227 were completed and returned. Maclean's quoted pollster Allan Gregg calling the 30.6 per cent return rate, "very respectable." The response rate of 5,570 judges, lawyers and legal academics surveyed for the second set of results was significantly lower, however, at only nine per cent.

Says Pilkington: "We don't know how many Osgoode graduates respond-

ed and we don't know how large the difference was between first and last place. Large schools don't tend to do as well in a survey like this because it measures areas where small schools will perform better. In a similar reputational survey in the U.S., large schools did not do very well. Harvard was ranked 158, and the number one school was Washington and Lee."

Notwithstanding her concerns about the survey methods, Pilkington organized a forum in mid-November to discuss the future of her law school. It attracted 150 students, alumni and faculty. "Out of that came a very interesting document, so in a way the survey has provided a positive opportunity to get people's attention. We're turning it to positive use."

At Queen's – which overall ranked 13th among graduates and 7th among its peer community – outgoing Dean Donald Carter noted the lag time of students surveyed and notable changes his school has made in several areas. "Students called to the bar in the last three years would have graduated from 1993 to 1995," he noted. "We were not surprised by graduate reaction because we had done our own exit surveys and heard about many of the same issues. So we have made a lot of changes in the last few years."

Among the changes: a major renovation of the law facilities and a revamped curriculum. New in the last couple of years is a civil law/common law program that operates in conjunction with the University of Sherbrooke. As well, Queen's now offers two co-op legal education programs that allow students to emerge with dual degrees in Industrial Relations or Urban and Regional Planning in addition to a traditional law degree.

One of the most forceful critics of the survey and methods used has been Eileen Gillese, dean of the law school at Western. The school was ranked 12th by graduates and 11th by professional

peers.

Among her concerns was the prominent placement of the survey of graduates in Maclean's. On a page devoted to "The Grad Report", the schools were ranked under the heading: Best Overall. "Maclean's said there would be no overall ranking, but looking at the magazine,

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Some schools

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questioned

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survey

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that's not what the average person understands."

She joined others in wondering about the way graduates were surveyed. "I've had nearly 200 letters from students who didn't receive surveys, so we would like information about who was surveyed. We can get no clear answer as to numbers received from each school. It would be helpful to know if there were 20, 200 or 2,000 respondents from Western."

Gillese says the information provided by schools is more accurate and gives a better picture of the strengths of each institution. "For example, we plan to increase the number of bursaries and scholarships we offer because those numbers are quantifiable and we can use them. (Western finished dead last in the area of scholarships. Five per cent of full-time students received one. It finished 7th in bursaries, with 22 per cent of students receiving funds.)

Despite her criticism, Gillese would cooperate again. "I would always work with Maclean's. What they're trying to do is laudable, but I would hope to see a more responsible way of obtaining information from graduates. They expect good quality data from the schools, so it is not too much to expect

#### MEMBER FORUM

### Hot topic

The Gazette and the Law Society's web site have teamed up to allow members to have their say on issues of interest to the profession.

Each issue of the Gazette introduces a new "hot topic" and invites members to respond through the Discussion Forum at [www.lsuc.on.ca](http://www.lsuc.on.ca). Members must have completed the sign-in to access the forum, which is located in the "Members On-line" section under "Services and Information for Lawyers."

The topic for this issue is: **What is your opinion of the recent Maclean's law school survey?**

Participating is easy: visit the hot topic, read what your colleagues think and leave your message.



them to gather reliable data. It is difficult to deal with unreliable data.”

One of the largest gaps between graduate and peer responses was at the University of Windsor, where graduates ranked the school an impressive 5th, but its professional peers placed the school 14th. If anything, says Dean Juanita Westmoreland-Traore, the results show how long it takes to build a reputation within the profession. “We are the youngest school in the province (est. 1969), so to be fair, one would have to

take that into account.”

Her biggest complaint was the fact that all information was presented as rankings. “All our preparations and discussions were in terms of it not being a ranking. Doing it that way does not allow for the individuality of schools. But we were generally encouraged by responses to questions about our faculty.”

She says the school will launch several initiatives in the coming months and years, although none of them can be

attributed to the survey results. “We are in a planning process, and we were before Maclean’s published its results. We are still a growing and evolving school, and we’re not motivated by the survey. I don’t think we should be.”

The University of Ottawa placed 14th among graduates and 13th among professional peers. Its highest ranking among various categories was 11th in the leaders of tomorrow category voted by professional peers. Dean Sanda Rodgers was unavailable for comment. ■

## John Sopinka, 1933–1997

*The following tribute was given by Treasurer Harvey T. Strosberg, Q.C. at the recent memorial service for The Honourable Mr. Justice John Sopinka. Justice Sopinka served as a Law Society bencher from 1983 until his appointment to the Supreme Court of Canada in 1988.*

RENOWNED AS HE WAS as a jurist and, before that, as a counsel, author, and bencher, John Sopinka never once sought his own aggrandizement. Routinely, he placed the interests of his clients, the profession, the court, the litigants and the public before his own. He believed passionately in the dignity of the human person, especially the less fortunate, the disenfranchised, the voiceless.

Long before he became a judge, John was my mentor. Like so many others, I was privileged to be one of his articling students. And I am proud to say that as a teacher, as a mentor and friend, he was and remains a great inspiration for me and for all the other students and lawyers who had the pleasure to serve with him.

John taught his students advocacy skills by performing, and urging his students to perform, before every court and before every tribunal and audience. He showed us the way. As a student, I marvelled when in one week he appeared in the Provincial Judges’

Court as defence counsel in a bawdy house trial and in the Supreme Court of Canada as appellant’s counsel in a contract dispute.

John also taught us to analyze the law, to articulate the underlying assumptions, to intellectually challenge these assumptions, then to marshal our arguments so as to better persuade the

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We  
at the bar  
feel  
his loss  
intensely

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court to adopt our vision of what the law should be.

And he acted on these teachings as a litigator, as a bencher and as judge. Many of us in this profession, far less courageous and less insightful than he, like to persuade ourselves that the processes of law are more-or-less fixed and impersonal. John saw it differently. He knew and understood that both lawyers and judges, if they wish to transcend ordinary experience, inevitably change the direction of the law and, in so doing, they truly make a difference. And his judgment in *Regina*

*v. Stinchcombe* is but one shining example.

John’s prodigious intellect made a huge difference primarily because even though a Lord, he never lost the common touch. He pointed a direction. And the direction he gave us in the breadth and scope of his judgments and writings will shape the progress of our law and guide us for decades to come.

Someone remarked recently that great teachers regard themselves as executors of an infinitely precious and inexhaustible legacy, a legacy they are eager to bequeath to any beneficiary who can be persuaded to accept it. John was just such a teacher. And to him, we who were guided by him, we who were his beneficiaries, owe our love and respect for and obsession with the law.

We at the bar feel his loss intensely. We know all too well that although he must be replaced he cannot be replaced. A part of our soul has left us.

On behalf of the benchers and every lawyer in Ontario, I say from my heart: John, we love you. We already miss you. We shall never forget you. We shall never forget your teachings. And I say to Marie, Melanie and Randy: be strengthened in the absolute certainty that John was, for all of us, truly one of Canada’s most precious natural resources. ■



# Much depends on dinner

By Elise Brunet

FOOD TAKES ON A SPECIAL significance during the holiday season. And while eating is a physiological necessity, the importance of food in human culture goes well beyond nutrition. As we strove to distance ourselves from beasts, food was regulated with strict codes of behaviour. Rules prescribe what is eaten, how, when and with whom.

Food also acquired new emotional, cultural and symbolic meanings. We use food for emotional comfort, we offer it as a reward and withdraw it for punishment. In fact, food permeates most human activities from the celebration of important events in our lives, religious ceremonies, to business negotiation or even seduction.

Some argue that food is one of the main engines of history: didn't the price of bread cost Marie-Antoinette her head and change France forever? Didn't the search for a more direct road to precious spices lead Columbus to the shores of America? Wasn't the face of Canada permanently changed when roting potatoes forced hundreds of thousands of Irish to immigrate to our country?

In all societies eating is an essential means of initiating and cultivating relationships. To be accepted at a table is to be considered an equal. Through the sharing of food and drink,

the community perpetuates itself.

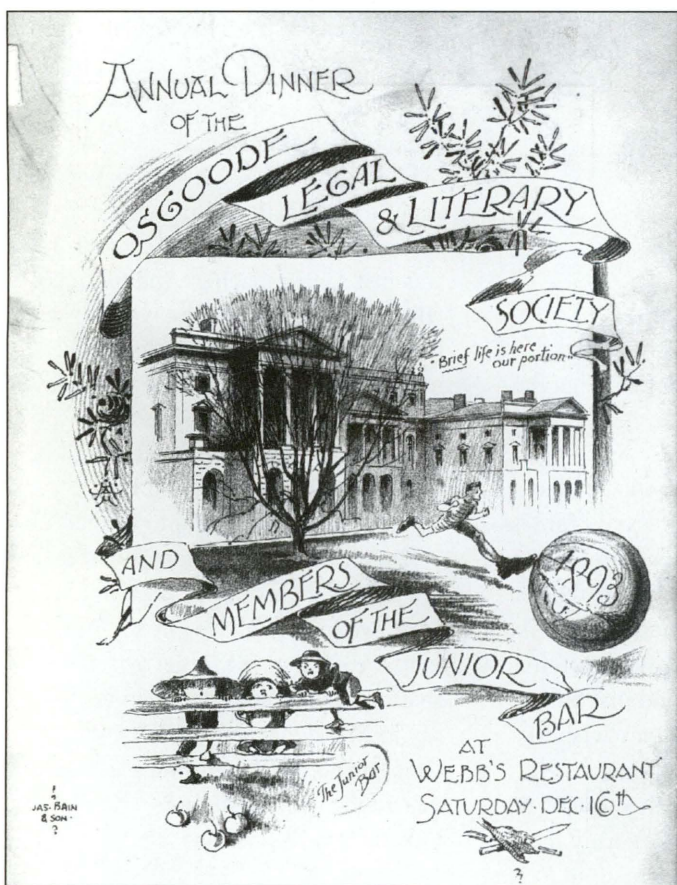
This was not lost on professional guilds. The word companion means "one who eats bread with another." The Great Hall was and remains the physical and spiritual heart of the Inns of Court in England. Even today, law students in England have to "keep term" – eat a set number of dinners in hall – to be eligible to be called to the bar. Champions of the tradition argue that it allows students an opportunity to learn by experience, to understand the etiquette of the profession, to meet, mix and argue with practitioners. It also allows them to meet fellow students from all over the world.

## Food & the Law Society

Although Ontario borrowed much from the Inns of Court, the dinners never caught on here. William Warren Baldwin, who was Treasurer intermittently from 1811 to 1836, had envisioned Osgoode Hall as the physical means to attain the ideals of the Inns, namely in elevating the character of the bar. One of the stated motivations for building Osgoode Hall was to "accommodate the youth studying the profession." Boarders moved in as soon as the first building was completed. Meals were provided, although they were not mandatory. Members of the Bar were encouraged to take their meals at Osgoode Hall, but whether that was done to make the catering service profitable or to emulate the traditions of the Inns is not clear.

Students had limited interest in Baldwin's ideals and after confrontations about the quality of the food, fist fights, drinking bouts and unpaid bills, the experiment came to an end. Until the construction of Convocation Hall and a lunch room one floor below it in 1882, there seems to have been no proper facilities for luncheons and dinner for students or the members of the profession. The Hall was built as an examination room and was converted into a dining room only in 1957. The lunchroom's existence was always in flux and it never provided the "communion of the fellowship of the law" fostered by the Inns' dinners.

If the lunchroom failed in bringing the profession



## 1893 Annual Dinner Menu:

Oysters: Long Beach on the shell  
Hors D'oeuvres: Salted almonds and French olives  
Soup: mock turtle and consomme a la macedonie  
Fish: boiled salmon, lobster sauce with pommes parisienne  
Entrées: sweetbread croquettes, green salad, chicken en aspic jelly  
Joints: roast rib of beef, brown gravy; boiled young turkey, oyster sauce  
Roman punch  
Game: Mallard duck, currant jelly; partridge, bread sauce  
Entremets: Victoria pudding, sauce Madeire; lemon meringue, sherry jellies, charlotte russe  
Celery and cheese  
Neapolitan ice cream, water ice  
Macaroons, glaces, bonbons  
Fruits: oranges, grapes, bananas  
Lemonade, coffee



together, there were many occasions for lawyers to wine and dine and share each other's company. Professional organizations such as the Lawyers' Club have been organizing regular dinners since their inception. The minutes of the Law Society contain many requests to use the premises for entertainment purposes, either as part of a conference, for a dinner honouring a distinguished member or for a celebration of graduation. Students organizations were very active in that respect and over the years they organized many dinners and balls. The menu of their 1893 annual dinner (see sidebar) was typical of formal meals of the day and shows that they took these occa-

sions very seriously.

The menu concluded with a series of toasts to those the junior bar looked up to: the Queen, the senior bar and to those to whom they were mentors and protectors: the student at law and the ladies (this was 1893 after all). There is no doubt that after so much food and drink the diners would have felt very much in harmony with their fellow jurists. Back at the office the next day – notwithstanding the hangover – they would have felt that they truly belonged to a special community. ■

*Ms. Brunet is curator of the Law Society Archives.*

## The Canadian dream – delusion or inspiration?

*By James W. St.G. Walker*

CANADIANS DON'T ALWAYS articulate our national dream quite so precisely as Americans do, but MP Serge Joyal seems to have captured it neatly when he introduced the *Charter of Rights and Freedoms* to the House of Commons on 19 February 1981:

Canada is a dream, a dream of equality, a dream of liberty, a dream in which the right to be different is guaranteed in the basic law, in which the rights of Canadians as Canadians, because they belong to this country are the same everywhere, whether they are men or women, native or from mother countries, or whether they are immigrants full of hope who have just arrived dreaming of liberty and justice.

I have tested this dream historically against four Supreme Court cases extending from 1914 to 1955: *Quong Wing v. the King*; *Christie v. York*; *Noble and Wolf v. Alley*; and *Narine-Singh v. Attorney General*....

Quong Wing was fined five dollars for employing two white women in his Moose Jaw restaurant in 1912. He refused to accept the fine or the stereotypes embedded in a new Saskatchewan law forbidding Chinese to hire white women. With the moral and financial support of Chinese all across Canada, Quong Wing took his demand for racial equality to the Supreme Court of Canada.

Fred Christie tried to buy a beer at the York Tavern, located inside the Montreal Forum, while attending a hockey game in 1936. When he was refused service on the grounds of colour, he brought a suit against the tavern, claiming a right to be served equally in a publicly-licensed establishment. Literally, nickels and dimes were collected in the Montreal black community to send Christie's challenge to the Supreme Court of Canada.

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### Four notable Supreme Court cases from 1914 to 1955

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In 1948, Bernard Wolf made an offer on a cottage at a Lake Huron resort. But the neighbours invoked a covenant declaring that no "person of the Jewish ... or coloured race or blood" could purchase land there. Mr. Wolf took the case to court to have the covenant invalidated, and with the help of the Canadian Jewish Congress carried his appeal to the Supreme Court of Canada.

Finally Harry Singh, a Trinidadian of East Indian ancestry, tried to immigrate in 1953 but was ordered deported as a

member of the "Asian race". Just a year earlier the *Immigration Act* had eliminated "race" as a ground for exclusion from Canada, and so Mr. Singh looked to the courts to overturn his expulsion. Backed by the Toronto Labour Committee for Human Rights, and with the unpaid services of lawyer Andrew Brewin, the Singh case went to the Supreme Court of Canada.

These cases certainly reveal that the appellant parties held to a Canadian dream of equality. Each of them was taken up by a minority community as a test case, a cause for struggle and sometimes sacrifice. But each of them also illuminated the majority society's attitude toward "race" and law, and a different version of the dream. Ultimately each case became a precedent, affecting the way majority and minorities lived in Canada and the relations between them. The challenge was defined by the appellant, provoking a response not just from the law as written but from the prevailing legal sensibility about what is a "right" and who holds it. One of the things I found most interesting is the "common sense" that existed in the period under examination, the implicit understandings as well as the explicit rules. Courtroom deliberations can provide a fruitful research resource for the social history of Canada, especially for those groups or issues which are under-represented in the more standard sources. In the files of the Supreme



Court of Canada, case law and social history converge....

As I examined these files I noticed a contingent connection between what was accepted as "common sense" and the definition of "rights" at a given time.... In the Quong Wing case, lawyers argued over a Chinese-Canadian's right to employ whomever he chose, and the province's right to protect white women from the Chinese. The right of the women to choose their own employment was not even raised in 1912-14. Though the two female employees were in court, and testified, and said Quong Wing was a decent employer and a gentleman, nobody considered their rights....

Another illustration of "common sense" appeared during the Singh case, when a *Star Weekly* editorial gave a devastating condemnation of racial discrimination — and then praised Canada's tough immigration laws for keeping Africans and Asians out, and therefore preventing discrimination.... More recently, I heard Anne Michaels on CBC radio shortly after she won the Orange Prize this year. Asked if she had any problem with the fact that only women novelists are eligible for this prize, she replied: "Oh no! By removing gender from consideration you ensure that the prize will be awarded exclusively on merit."

So common sense changes, and so do the rights we can claim and the logic with which we claim them....

It occurs to me that you cannot understand the law unless you understand the context in which it was formulated. Just as I have argued that legal cases give us access to social history, I would argue that social history can lend insight into the law and its interpretation....

In 1943, Hugh Burnett, a black man in Dresden Ontario, wrote to Justice Minister St. Laurent to complain that even in his soldier's uniform he could not be served in any restaurant in his

home town. The deputy minister replied that the Supreme Court of Canada had confirmed in *Christie v. York* that the law of Canada allowed the restaurants to refuse him service.

We have become accustomed to think of "race" as a social construct. I think these cases, and even this one story from Dresden, illustrate that "race" was also a legal artifact. Common attitudes were legitimized and dignified by law. A decision about a Montreal tavern affects a restaurant in Dresden; in fact the *Christie* precedent was used in court to justify racial discrimination into the 1960s.

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Our definition  
of rights  
is contingent  
upon the context  
within which we exist

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I understand that in our law schools *Christie v. York* is normally considered as a question of contract and freedom of commerce. Of course that is how the Supreme Court of Canada expressed itself because in 1939 that's the kind of question they could answer. But when you put that decision in the context of Canadian social history and race relations you get, I suggest, a richer and more realistic understanding of the case law....

Law was too deeply imbued in conventional wisdom, in common sense, to be overturned with a logical legal argument. In *Narine-Singh* the courts admitted that "race" had been explicitly eliminated as a consideration by the *Immigration Act* of 1952, but they were able to find that parliament had not intended any meaningful change in immigration policy.... Before the law relating to race was changed in Canada there was widespread community involvement, legisla-

tive initiatives, newspaper campaigns, to redefine the problem, to establish the logic of a different set of questions. Only then were new solutions attempted....

What was true in the past is true today; that is, our definition of rights and our understanding of law is contingent upon the context within which we exist. History isn't over. We are not morally superior to the judges who told Quong Wing he must fire his employees, nor will our definitions be suitable for all future generations. Things will change, the law will change, but not all by itself....

Canadians do have a dream, and it has survived wake-up calls from Quong Wing to Harry Singh. It has survived because it represents something real about Canadians: we would not select these characteristics for ourselves, even link them to our national identity, unless we held them to be valuable. The national dream indicates that Canadians want a tolerant nation, and a legal system that promotes equality. Left undisturbed, the dream will remain a delusion, fooling us into thinking that all is well, discouraging deliberate interference. After all, if it ain't broke, why fix it?

As an alternative we can examine the dream and learn whether our reality has fallen short or continues to fall short of our ideal. Then the dream can serve as an inspiration, as a target we can move toward. Like the delusion, the inspiration must surely have legal implications. Recognized as an unrealized ambition, the dream can become a force for positive change. ■

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*Mr. Walker is a Professor of History at the University of Waterloo. This article is excerpted from a talk given before the Osgoode Society for Canadian Legal History in June 1997. Race, Rights and the Law in the Supreme Court of Canada: Historical Case Studies was published by the Osgoode Society in late October and is available for \$35 plus GST. To order telephone (416) 947-3321*





## MEMBERSHIP

### Personalization and eForms streamline annual filings

MEMBERS SHOULD RECEIVE their personalized 1997 Membership Information Forms (MIF) by early January 1998. The form will arrive in a distinctive burgundy and grey envelope.

As part of the Law Society's continuing efforts to streamline the filings of annual membership information, this year's form is personalized with information currently on the Law Society's database. Except for some new questions that will serve to simplify filing requirements with the Lawyers' Professional Indemnity Company, members for the most part will simply need to review the form to confirm the accuracy of the pre-printed answers. If any answers are no longer correct, members will fill in the "bubble" corresponding to the correct answer.

The MIF must be filed either in paper form or by e-filing (see below) by January 31, 1998.

It is hoped that the distinctive envelope will assist members in ensuring that the personalized form is not lost or misplaced. As replacement personalized forms will likely be unavailable, members are urged to remind office staff to be on the look out for the forms envelope.

Another exciting initiative is the introduction of electronic filing (or e-filing) as an alternative to the completion and mailing of the paper form.

Scheduled to be available in early January 1998, the Law Society web site ([www.lsuc.on.ca/eForms/](http://www.lsuc.on.ca/eForms/)) will contain the facility to e-file your 1997 MIF. The

"eForms" portion of the site will provide a secure method to electronically:

- view your personalized MIF;
- amend preprinted answers that are no longer correct;
- complete new questions; and,
- file your form.

Members who choose e-filing will be able to print both draft and final versions of their MIF from their computers. It will not be necessary to complete the entire form in one visit. As long as their passwords have not expired, users will be able to complete sections of the form at different times prior to filing the entire form.

Members will need to apply for a password through the web site (detailed instructions for "eForms" will be available online). This password is in addition to the password used to enter the Members Online section of the web site. As it is anticipated that it will take a business day or two to obtain a password because of the expected volume of requests, members contemplating e-filing shouldn't wait for the last moment to request a password.

To obtain an eForms password, members will need to provide a current e-mail address and other personal information when applying. The address is vital because the application for access as well as the receipt of a filing will be responded to via e-mail. The password will expire automatically after a fixed period.

For e-filing of the MIF, users will be required to use Netscape 3.0 (or newer)

as their browser. A link will be provided so that members can access and download the current version of the Netscape browser if necessary. Internet Explorer will not be supported for e-filing of the 1997 MIF. However, it is anticipated that expansion of the site for e-filing of other forms will provide for the use of Internet Explorer.

Also, as eForms is a pilot project and given tight time frames for development and testing, regrettably, a French version will not be available for filing of the MIF.

Members are urged to explore eForms and provide feedback and comments for improvements and refinement. ■

#### Is your contact information current?

It is extremely important that members keep the Law Society informed of any changes to contact information. This includes address, phone, fax or e-mail. You can notify the Law Society by:

- Mail: Accounting/Membership Department, Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto ON, M5H 2N6
- Fax: (416) 947-3916
- Phone: (416) 947-3318
- E-mail: [records@lsuc.on.ca](mailto:records@lsuc.on.ca)



# New options available for paying member fees

IT'S THAT TIME of year again – Law Society fees are soon due. With more than 27,000 members, the Society's job of making the fee collection process as easy as possible for Ontario's lawyers is an ongoing challenge.

In 1998, members will have more flexibility for paying their membership fees as a result of Convocation approving a set of enhanced payment options: cheque, credit card or pre-authorized payments.



**Brenda  
Albuquerque-Boutilier**

"In developing the payment options, we tried to address concerns we've heard in the past from members," says Brenda Albuquerque-Boutilier, accounting manager for the Law Society. "The new options represent the Society's response to requests by lawyers who have asked us to make it easier to pay fees."

Cheques in the amount of the full fee owed and post dated to May 1, 1998, will continue to be accepted, which sidesteps a previous problem of cheques languishing in the mail while payment deadlines were missed.

The credit card payment option has been enhanced, making it available to every member, not just those who could go to Osgoode Hall in person. Now members simply fill out a credit card option on the invoice and return it to the Society by May 1, 1998. "The changes mean that every member will be able to pay by credit card, not just those close enough to visit Osgoode Hall," says Ms. Albuquerque-Boutilier. "As well, paying by credit card provides some additional time for members, between the actual date payment is made to the Law Society, and the due date for the credit card bill."

The pre-authorized payment plan is not new, but it has been improved considerably. The process has been streamlined by eliminating the need for several post-dated cheques and for back-and-forth correspondence between the Society and members. All that's required now is for a member to fill out a form – part of the fee invoice – and attach a voided cheque and send it back to the Society by January 15, 1998. The member's bank account will then be debited each month (February to December '98). As well, the option is now available to every lawyer and members no longer have to indicate they are suffering financial difficulty to qualify. The payment plan also helps with budgeting by "spread-

ing the cost out over the year," she says.

Ms. Albuquerque-Boutilier says another new addition to the fee payment process – one sure to be popular – is the introduction of a prompt payment discount. Full fee-paying members will save \$50 if fees are paid by January 30, 1998, while other membership categories will save either \$25 or \$12.50.

"We at the Law Society receive hundreds of phone calls every year at this time from members with concerns and suggestions for streamlining the payment process. We hope that we've come up with some solutions as captured in Convocation's approval of the new payment options," says Ms. Albuquerque-Boutilier. ■

## Discipline Digest

TWENTY-ONE MATTERS proceeded at Convocation on October 21 and 28, 1997. Convocation ordered three disbarments, one permission to resign, ten suspensions, administered two reprimands, and dismissed one matter. Four other matters were adjourned to be heard at a later sitting of Convocation. Janet Leiper and Raj Anand offered their assistance as Duty Counsel on October 21 and 28, 1997, respectively.

Fifteen matters were scheduled to proceed at Convocation on November 27, 1997. Convocation ordered one

disbarment, one permission to resign, and seven suspensions. Six matters were adjourned to the next sitting of Convocation. Convocation also granted a motion to amend an order. John Rosen offered his assistance as Duty Counsel at Convocation.

In September 1997, there were 37 hearing days on which discipline matters proceeded before hearing panels of Benchers of the Law Society. Discipline matters proceeded before hearing panels on 33.5 hearing days in October 1997 and on 29 hearing days in November 1997.

### CONDUCT UNBECOMING Ault, Frank Arthur

Ottawa, Ontario  
Age 51, Called to Bar in 1975  
*Particulars of Complaint*  
Conduct Unbecoming

- On July 31, 1996, the Solicitor was convicted of ten counts of the criminal offence that he, between September 1, 1995 and January 31, 1996, did by deceit, falsehood or other fraudulent means defraud clients, of a sum of money exceeding five thousand dollars, contrary to section 380(1)(a) of the *Criminal Code of Canada*. The Solicitor misappropriated a total of approximately \$800,000.

tor misappropriated a total of approximately \$800,000.

*Convocation's Disposition (10/28/97)*

- Disbarment  
Counsel for the Solicitor  
Not Represented  
Counsel for the Law Society  
Christina Budweth

### UNGOVERNABILITY Cloutier, Christopher Marc

Orleans, Ontario  
Age 39, Called to the Bar 1984  
*Particulars of Complaint*



#### Professional Misconduct

- Failed to produce books and records.

*Recommended Penalty (10/23/97)*

- Disbarment on the grounds that the Solicitor is ungovernable.

*Convocation's Disposition (11/27/97)*

- Disbarment

#### Discipline History

- On March 23, 1995, Convocation ordered the Solicitor suspended for eight months for practising under suspension in 1992, to take effect after the current administrative suspension;
- On November 23, 1995, Convocation ordered the Solicitor suspended for one month definite and indefinitely thereafter until his filings are completed, to take effect after the current administrative suspension. Costs of \$400 were ordered but have not been paid yet.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

### CONDUCT UNBECOMING

#### Coles, Alan Herbert

Thornhill, Ontario

Age 55, Called to Bar in 1970

#### Particulars of Complaint

##### Conduct Unbecoming

- On September 3, 1993, the Solicitor was convicted by the Ontario Court of Justice (General Division) of the offence that he, between January 1, 1983 and September 29, 1986, did unlawfully evade or attempt to evade taxes in the amount of \$15,113,050 imposed by the *Income Tax Act*, R.S.C. 1952, Chapter 148, as amended, upon two companies in which he held an interest, by making false claims in relation to Part VIII, Scientific Research Expenditures, in the amount of \$30,226,100 for taxation years 1984 and 1986, contrary to paragraph 239(1)(d) of the *Income Tax Act*, R.S.C. 1952, Chapter 148, as amended, for which he was sentenced to a forty-eight month term of imprisonment;
- Admitted in a sworn affidavit dated August 31, 1993 to the criminal offence of perjury during the course of a receivership examination.

*Convocation's Disposition (10/28/97)*

- Disbarment

*Counsel for the Solicitor*

Arie Gaertner (at Committee)

Raj Anand, Duty Counsel (at Convocation)

*Counsel for the Law Society*

Elizabeth Cowie

### MISAPPLICATION OF CLIENT FUNDS

#### Mott-Trille, Frank Radley

Brampton, Ontario

Age 65, Called to Bar in 1954

#### Particulars of Complaint

##### Professional Misconduct

- Misapplied approximately \$35,000 from a client;
- Misapplied approximately \$89,131.13 from the estate of a client;
- Misapplied approximately \$65,000 from the estate of a client;
- Misappropriated of approximately \$45,000 from the estate of a client by using funds to prepay fees on an unrelated matter;
- Misapplied approximately \$675,000 in trust funds belonging to a client;
- Transferred \$224,745.41 from his trust account to his general account for fees and disbursements prior to delivery of a fee billing;
- Misapplied approximately \$30,000 in trust funds held for two beneficiaries.

*Convocation's Disposition (10/21/97)*

Permission to resign, otherwise disbarment

*Counsel for the Solicitor*

Charles C. Mark, Q.C.

*Counsel for the Society*

Christina Budweth and Glenn M. Stuart

### FAILED TO REPLY OR COOPERATE WITH THE LAW SOCIETY

#### Topp, Dennis Michael

North York, Ontario

Age 59, Called to Bar in 1975

#### Particulars of Complaint

##### Professional Misconduct

- Failed to report to a client upon completion of a mortgage transaction;
- Failed to reply to the Law Society regarding a complaint against him;
- Failed to comply with an Undertaking to the Law Society to reply promptly to communications from the Law Society;
- Failed to cooperate with the Law Society by failing to produce books and records for examination.

*Hearing Panel's Recommendation (07/16/97)*

- Suspension for three months providing the Solicitor produce the material sought by the Law Society, failing which, disbarment;
- \$1,750 in costs.

*Convocation's Disposition (10/28/97)*

- Disbarment (Solicitor did not produce materials or appear at Convocation);
- \$1,750 in costs.

#### Discipline Record

- On December 4, 1990 the Solicitor was reprimanded in Committee for swearing a

false affidavit and deceiving clients.

- On July 11, 1995 the Solicitor was reprimanded in Committee and signed an Undertaking not to practice law for six months and to deliver his files to the Society or another lawyer within seven days for practicing law while under suspension.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Christina Budweth

### MISAPPROPRIATION

#### Bruce, Kenneth Ross

Kingston, Ontario

Age 54, Called to the Bar 1972

#### Particulars of Complaint

##### Professional Misconduct

- Misappropriation of trust funds totalling \$18,834.80;
- Misapplication of about \$3,386.23;
- Failed to maintain sufficient balances in trust;
- Borrowed money from client and failed to disclose the borrowing to the Society; and
- Practise during suspension.

*Recommended Penalty (10/20/97)*

- Disbarment

*Convocation's Disposition (11/27/97)*

- Permission to Resign, resignation tendered at Convocation

#### Discipline History

- In September 1995, the Solicitor was suspended for one month and month to month thereafter until he made his annual filings and replied to the Law Society. The Solicitor remains suspended;
- In November 1994, the Solicitor was Reprimanded in Committee and ordered to pay \$450 in costs for failing to make his annual filings and failing to reply to the Law Society.

*Counsel for the Solicitor*

William Bishop (at Committee)

*Counsel for the Law Society*

Christina Budweth

### MISLEADING CLIENTS

#### Phelps, Margaret Vera Rose

Niagara Falls, Ontario

Age 35, Called to Bar in 1988

#### Particulars of Complaint

##### Professional Misconduct

- Failed to serve the client while acting in a matrimonial matter in a conscientious, diligent and efficient manner by failing to follow client's instructions to pursue a claim for support;
- Misled the client as to steps that had to be taken on the client's behalf;



- Misrepresented to the client that an order had been obtained by fabricating a court order;
- Commissioned a Statement of Arrears for a client which she knew was false;
- Failed to reply to the Law Society regarding a complaint against her in connection with the aforementioned.

*Convocation's Disposition (10/28/97)*

- Suspension for twelve months fixed and indefinitely thereafter until she replies to the Law Society with respect to the complaint against her and complies with certain conditions.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Christina Budweth

## IMPROPER APPROPRIATION OF FUNDS

### Porter, Janice Marie

London, Ontario

Age 37, Called to Bar in 1987

*Particulars of Complaint*

Professional Misconduct

- Improperly appropriated \$48,253.07 received for services rendered on behalf of the law firm the Solicitor worked for with respect to work performed and billed to the Ontario Legal Aid Plan and the Canadian Auto Workers Legal Services Plan;
- Improperly appropriated \$21,795 received from clients of the law firm for services rendered;
- Improperly appropriated \$7,315 received as retainers from clients of the firm.

*Convocation's Disposition (10/28/97)*

- Suspension for twelve months to commence at conclusion of current administrative suspension.

*Counsel for the Solicitor*

Harry Black, Q.C. (at Committee)

Raj Anand, Duty Counsel (at Convocation)

*Counsel for the Law Society*

Janet L. Brooks

## OPERATE GENERAL ACCOUNT TRANSACTIONS THROUGH MIXED TRUST ACCOUNT

### Singer, Warren Arnold

Toronto, Ontario

Age 36, Called to the Bar 1991

*Particulars of Complaint*

Professional Misconduct

- Operated general account transactions through mixed trust account;
- Failed to maintain books and records;

- Failed to produce books and records; and

Practiced under suspension

*Recommended Penalty (07/27/97)*

- Suspension for nine months and indefinitely thereafter until the books and records are brought up-to-date

*Convocation's Disposition (11/27/97)*

- Suspension for nine months, to begin September 25, 1997 and to continue indefinitely until the books and records are brought up-to-date.

*Discipline History*

None

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Georgette Gagnon (Before Committee)

Lesley Cameron (At Convocation)

## MISLEADING CLIENTS

### Therault, Frank Andrew

Kitchener, Ontario

Age 41, Called to Bar in 1987

*Particulars of Complaint*

Professional Misconduct

- Failed to file Forms 2/3 with the Society;
- Failed to serve a client in a conscientious, diligent and efficient manner by failing to file a Statement of Claim for his client as ordered by the court and failing to keep his client reasonably informed;
- Misled a client by advising her that her matter had been placed on a trial list when he had not filed a Statement of Claim or placed it on the list;
- Failed to serve a client in a conscientious, diligent and efficient manner by failing to return telephone calls and unreasonably delaying in advancing his client's matter as instructed;
- Misled a client by advising him that his matter had been advanced and a settlement reached through court proceedings, when proceedings had never been instituted.

*Convocation's Disposition (10/28/97)*

- Suspension for six months fixed and indefinitely thereafter until filings have been made, to commence after current administrative suspension is ended;
- \$400 in costs.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Georgette Gagnon and Elizabeth Cowie (at Committee)

Elizabeth Cowie (at Convocation)

## FAILURE TO COMPLY WITH ESCROW CONDITIONS

### Kravetz, Shayna Bella

Toronto, Ontario

Called to the Bar 1981

*Particulars of Complaint*

Professional Misconduct

- Failed to comply with escrow conditions before disbursing settlement funds to herself;
- Withdrew money from her trust account for payment of her fees prior to delivery a fee billing;
- Failed to replace the funds which she had earlier paid to herself before issuing a trust cheque, thus creating a trust shortage;
- Practised under suspension from December 2, 1994 to April 7, 1995;
- Failed to produce books and records to the Law Society for an audit; and
- Failed to file Forms 2 and 3.

*Recommended Penalty (05/21/97)*

- Suspension for five months, commencing at the conclusion of the current administrative suspension, and continuing indefinitely until the outstanding filings are made.

*Convocation's Disposition (11/27/97)*

- Suspension for five months, commencing at the conclusion of the current administrative suspension, and continuing indefinitely until the outstanding filings are made and the required books and records are produced to the Law Society.

*Discipline History*

- On September 14, 1993, the Solicitor was Reprimanded in Committee for failing to file and was ordered to pay costs in the amount of \$500.
- On June 7, 1995, the Solicitor was Reprimanded in Committee for failing to file and practising under suspension. The Solicitor also undertook to perform 20 consecutive days of volunteer unpaid legal services; to report in writing to the Law Society within 10 days of completion and not to practise during these 20 days.
- On June 12, 1996, the Solicitor was Reprimanded in Committee for failing to honour a financial obligation and failing to reply to the Law Society, and was ordered to pay costs in the amount of \$300.

*Counsel for the Solicitor*

Karen Crozier (before Committee)

*Counsel for the Law Society*

Glenn M. Stuart



## **PRACTICING UNDER SUSPENSION**

### **Mallon, Paul Edward**

Mississauga, Ontario

Age 46, Called to Bar in 1978

*Particulars of Complaint*

Professional Misconduct

- Failed to produce his books and records to the Law Society for examination;
- Practised while under suspension from January 26, 1996, to April 3, 1996;
- Failed to file Forms 2/3 with the Law Society;
- Breached an Undertaking to the Law Society to make his filings for the fiscal year ending January 3, 1996, on or before September 30, 1996.

*Convocation's Disposition (10/28/97)*

- Suspension for four months fixed and thereafter indefinitely until the books and records of the Solicitor are produced and all filings are brought up to date;
- Upon resumption of practice, the Solicitor must enrol in the Practice Review Program.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Glenn M. Stuart

## **FAILED TO REPLY TO THE LAW SOCIETY**

### **Moss, Clifford Paul**

Toronto, Ontario

Age 34, Called to Bar in 1989

*Particulars of Complaint*

Professional Misconduct

- Breached an order of Convocation by failing to pay costs of \$750 ordered on February 22, 1996;
- Failed to reply to the Law Society regarding the costs ordered by Convocation;
- Failed to reply to the Law Society regarding inadequacies in his books and records;
- Failed to reply to the Law Society regarding a complaint against him (3);
- Failed to reply to the Law Society;
- Failed to file Forms 2/3 with the Law Society.

*Convocation's Disposition (10/28/97)*

- Suspension for three months fixed and indefinitely thereafter until the Solicitor has made the requisite filings and produced his books and records to the Society.

*Discipline Record*

- On March 14, 1995, the Solicitor was Reprimanded in Committee and ordered to pay \$200 in costs for failing to file his forms 2/3 with the Society;
- On February 22, 1996, the Solicitor was

Reprimanded in Convocation and ordered to pay \$750 in costs for failing to reply to the Law Society, failing to serve clients, and failing to report to clients.

*Counsel for the Solicitor*

Edward White

*Counsel for the Law Society*

Georgette Gagnon (at Committee)

Elizabeth Cowie (at Convocation)

## **FAILED TO SERVE CLIENTS**

### **Wysocky, Walter**

Toronto, Ontario

Age 43, Called to Bar in 1981

*Particulars of Complaint*

Professional Misconduct

- Failed to cooperate with the Law Society by failing to produce books and records for examination;
- Abused court process by appearing before the court in connection with a motion for summary judgement without preparing adequate material on which to argue the motion;
- Failed to serve clients in a conscientious, diligent and efficient manner by unreasonably delaying the progress of an action;
- Abused the court process by filing a Writ of Seizure and Sale contrary to the findings of the court;
- Failed to comply with court orders made personally against the Solicitor (2);
- Failed to respond to the Law Society (4);
- Failed to honour a financial obligation incurred in relation to a client (2);
- Corresponded in an unprofessional tone with fellow Solicitors (3);
- Communicated in an unprofessional manner with opposing counsel by making inappropriate comments during the recess of a hearing;
- Failed to file Forms 2/3 with the Society.

*Convocation's Disposition (10/28/97)*

- Suspension for three months commencing August 1, 1997 and thereafter indefinitely until the Solicitor complies with certain conditions.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

## **PRACTISING WHILE UNDER SUSPENSION**

### **Mathers, William Sutherland**

Kincardine, Ontario

Age 46, Called to Bar in 1986

*Particulars of Complaint*

Professional Misconduct

- (i) Failed to cooperate with the Law Society

by failing to produce books and records for examination;

- (ii) Practised while under suspension.

*Hearing Panel's Recommendation (08/13/97)*

- (i) Reprimand in Convocation if Solicitor provides the Society with his books and records by the date of Convocation, failing which, suspension for one month fixed to be served concurrently with the two-month suspension and thereafter indefinitely until the Solicitor provides the Law Society with his books and records;

- (ii) Suspension for two months.

*Convocation's Disposition (10/28/97)*

- Suspension for two months fixed and indefinitely thereafter until the Solicitor's books and records are produced to the satisfaction of the Law Society (Solicitor did not provide books and records by date of Convocation).

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

## **BREACH OF LEGAL AID PLAN RULES**

### **Paskar, Roland William**

Mississauga, Ontario

Age 50, Called to the Bar 1986

*Particulars of Complaint*

Professional Misconduct

- Submitted an account to the Legal Aid Plan for fees that were not properly payable;
- Breached an agreement with the Legal Aid Plan;
- Breached the terms of a suspension imposed on him by the Legal Aid Plan;

*Convocation's Disposition (11/27/97)*

- Suspension for one-and-a-half-months commencing December 1, 1997, and continuing indefinitely until the Solicitor provides a medical report satisfactory to the Secretary confirming that he is fit to practise law; and
- Costs payable to the Law Society in the amount of \$750.

*Discipline History*

- On April 30, 1997, the Solicitor was Reprimanded in Committee for failing to accurately and comprehensively present evidence which he tendered on an *ex parte* motion and failing to meaningfully reply to the Law Society; and
- On October 24, 1996, the Solicitor was Reprimanded in Convocation upon his signing a detailed undertaking with respect to the future operation of his practice. The Solicitor was found guilty of professional misconduct for improperly obtaining



and misapplying trust funds, misleading another solicitor in a real estate transaction, failing to honour financial obligations; failing to deposit client funds to trust account, and failing to maintain books and records.

*Counsel for the Solicitor*

Joseph Schwartz

*Counsel for the Law Society*

Glenn M. Stuart

### **BORROWING FROM A CLIENT** **Massimiliano, Oliverio Eugenio**

Sudbury, Ontario

Age 45, Called to Bar in 1990

*Particulars of Complaint*

Professional Misconduct

- Made inappropriate representations to the court;
- Borrowed from a client (3);
- Failed to declare in his Form 2, filed with the Society, that he had borrowed funds from clients;
- Communicated in an unprofessional tone with a fellow Solicitor (2);
- Communicated in an unprofessional, offensive and distasteful tone with a client involving direct and demeaning comments of a sexual nature;
- Failed to reply to the Law Society regarding a complaint against him;
- Failed to behave courteously and in good faith towards a fellow Solicitor by threatening physical violence.

*Hearing Panel's Recommendation (07/03/97)*

- Suspension for one month provided the Solicitor comply with certain conditions by the date of Convocation, including payment of \$5,000 in costs in installments of \$1,000 for the next five years without interest, writing letters of apology to various persons, entering an anger management counselling program and working with a mentor for one year, failing which, suspension for three months fixed and thereafter indefinitely until conditions are fulfilled.

*Convocation's Disposition (10/28/97)*

- Suspension for one month (Solicitor complied with conditions set out in order of the Discipline Committee).

*Counsel for the Solicitor*

Brian Greenspan

*Counsel for the Law Society*

Jane Ratchford (at Committee)

Elizabeth Cowie (at Convocation)

### **FAILURE TO PRODUCE BOOKS AND RECORDS**

**Clarke, Kenneth Leo**

Toronto, Ontario

Age 51, Called to the Bar 1978

*Particulars of Complaint*

Professional Misconduct

- Failed to produce all of his books and records, including his entire file in an estate matter, for the purpose of an audit.

*Recommended Penalty (10/21/97)*

- If the Solicitor produces the required documents prior to hearing in Convocation, the Solicitor should be Reprimanded in Convocation; failing which
- If the Solicitor does not produce the required material, one-month suspension to commence at the conclusion of any administrative suspension, and continue indefinitely until the Solicitor produces the required material.
- Costs in the sum of \$3,050 payable to the Law Society.

*Convocation's Disposition (11/27/97)*

- One-month suspension to commence at the conclusion of the current administrative suspension, and to continue indefinitely until the Solicitor produces the required material.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Dayna Simon (Articling Student) (at Committee)

Glenn M. Stuart (at Convocation)

### **FAILED TO HONOUR A FINANCIAL OBLIGATION**

**Muzzatti, Leo**

Windsor, Ontario

Age 38, Called to Bar in 1985

*Particulars of Complaint*

Professional Misconduct

- Failed to honour a financial obligation by breaching an order of a Discipline Committee to pay \$600 in expenses;
- Failed to reply to the Law Society regarding an audit of the Solicitor's books and records.

*Hearing Panel's Recommendation (08/26/97)*

- Suspension for one month provided that outstanding costs ordered by the Discipline Committee are paid and the materials requested by the Law Society are produced by September 2, 1997, failing which, suspension for three months if the Solicitor pays the costs ordered and produces the materials by the date of Convocation, failing which, suspension until costs are paid and materials are produced and a

three-month suspension following compliance.

*Convocation's Disposition (10/28/97)*

- Suspension for one month (Solicitor paid costs and provided books and records by September 2, 1997).

*Discipline Record*

- On February 7, 1995, the Solicitor was reprimanded in Committee and ordered to pay \$150 in costs for failing to file his forms 2/3 with the Law Society;
- On November 28, 1995, the Solicitor was reprimanded in Committee and ordered to pay \$600 in costs for failing to reply to the Law Society regarding a complaint against him.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

### **FAILED TO SERVE CLIENT** **Clark, Gordon Bruce**

Toronto, Ontario

Age 47, Called to the Bar 1976

*Particulars of Complaint*

Professional Misconduct

- Failed to comply with written undertaking to the Law Society by failing to enter into and co-operate with the Practice Review Program;
- Failed to serve a client in a conscientious, diligent and efficient manner;
- Failed to account to his client; and
- Failed to reply to the Law Society regarding a client complaint.

*Recommended Penalty (06/27/97)*

- Reprimand in Convocation with conditions as follows:
  - costs of \$1,000 payable to the Law Society by December 1, 1996;
  - the Solicitor must provide copies of all correspondence between him and the Law Society to his counsel for a two-year period;
- the Solicitor must comply with the Practice Review Program; and,
- the Solicitor must seek psychological or psychiatric assistance and participate in any recommended therapy.

*Convocation's Disposition (11/27/97)*

- One-month suspension, commencing December 13, 1997 with conditions as follows:
  - costs of \$1,000 (already paid to the Law Society);
  - the Solicitor must provide copies of all correspondence between him and The Law Society to his counsel for a two-year period;



- upon the Solicitor's reinstatement, he must enrol in and co-operate with the Practice Review Program; and,
- the Solicitor must seek psychological or psychiatric assistance and participate in any recommended therapy.

#### Discipline History

- On May 31, 1994, the Solicitor was Reprimanded in Committee and ordered to pay costs of \$1,000 for failing to file and failing to reply to communications from a client and the Law Society; and

- On August 2, 1995, the Solicitor was Reprimanded in Committee and ordered to pay costs of \$200 for failing to reply to the Law Society's request for his response to inadequacies discovered in his books and records.

#### Counsel for the Solicitor

Ian R. Mang

#### Counsel for the Law Society

Neil J. Perrier (at Committee)

Glenn M. Stuart (at Convocation)

## PRACTICING WHILE UNDER SUSPENSION

**Hicks, Thomas Michael**

Toronto, Ontario

Age 34, Called to Bar in 1990

#### Particulars of Complaint

Professional Misconduct

- Practised while under suspension (2);
- Failed to file his Forms 2/3 with the Society.

#### Convocation's Disposition (10/28/97)

- One-month fixed suspension to com-

## Membership Suspensions & Reinstatements

Members whose names appear below have been suspended for administrative reasons (non-payment of annual fees, errors and omissions insurance levies, or late filing); or have been reinstated after previously being suspended. The year after each members name is the year of call to the Ontario bar. Enquiries regarding members listed below should be directed to (416) 947-3315.

### ANNUAL FEE REINSTATEMENTS

ARMSTRONG Timothy James	1993	Oakville ON
BALDACHIN Alan Guy	1995	USA
BEATTIE Susan Elizabeth	1993	Scarborough ON
BERMAN Howard Michael	1981	Courtney BC
CHARTIER Mary Margaret Louise	1981	Ottawa ON
DRUMMOND David Ross	1981	Kingston ON
ELBIRT Richard John	1976	Scarborough ON
FLEMING Paul Giulio Robert	1986	London ON
HISCOX Diane	1990	Ottawa ON
HOBDAY Oliver John	1996	Senneville PQ
KINNEY Shelagh Mary	1989	Vancouver BC
KOLLER Marie-Gabrielle Helene	1980	AUSTRIA
KUZMICH George	1981	Scarborough ON
LININGTON Brenda Gail	1990	Toronto ON
MCMURRAY Hilarie Ivy	1991	Victoria BC
NATHU Shamshudin Amirali	1993	North Vancouver BC
OLIVIER Anne Renee	1990	Cantley PQ
PERDUE Richard Rutland	1971	Toronto BC
RACHFALOWSKI Henry Anthony	1980	Barrie ON
SAREEN IVA	1979	USA
SIBBLIES Langston Richard McKenzie	1990	Mississauga
ONSIDAROUS Mona	1992	St. Sauveur PQ
SMITH Douglas Gordon	1983	HONG KONG
WONNACOTT John Spence	1984	Belleville ON

### ANNUAL FILINGS REINSTATEMENTS

WILSON Andrew James	1991	Ottawa ON
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### ANNUAL FEE SUSPENSIONS - October 1, 1997

BLACK Darren Michael	1997	Woodstock ON
BROWN Angus Graham	1997	Toronto ON
CALLAGHAN Michael John	1997	Lery PQ
CLEARWATER Thomas James	1997	Calgary AB
COONEY Steven Christopher	1997	Toronto ON
DESLAURIERS Darcy Stephen	1997	Toronto ON
DOOREY David Jonathan	1997	Vancouver BC
GIBSON Robert Patrick	1997	Toronto ON
KOS Kirsten Elizabeth	1997	USA
LANGLOIS Linda Elizabeth	1997	Ottawa ON
LEVY Ori Mordechai	1978	Toronto ON
MINNIE Sheila Marie	1997	Vancouver BC
PYPER Andrew Derek	1997	Peterborough ON

RUSSELL Tyrol Douglas	1997	Vancouver BC
YELEN Larry	1997	London ON

### E&O LEVY SUSPENSIONS - October 1, 1997

BRAITHWAITE Stephen Dennis Andrew	1972	Markham ON
DAWSON William James	1989	Toronto ON
DUCE William Ernest	1969	Brantford ON
LANTEIGNE Nellie Maria	1978	Sudbury ON
LIGHTNING Denise Lesley	1996	Hobbema AB
LONG Julia Anne	1995	Ottawa ON
MARKOFF Michael Alexander	1982	Richmond Hill ON
MATTHEW Leroy Valentine	1983	Mississauga ON
MCDONELL Steven Charles	1983	Ottawa ON
MERSEREAU Marie Alexandra	1987	USA
RICHARDSON Ryan Thomas	1996	Windsor ON
WISE Leonard Allan	1969	Bowmanville ON

### E&O LEVY SUSPENSIONS - November 3, 1997

BRAND Carl Arthur	1981	Toronto ON
DILLON Leo James	1986	Toronto ON
DUPUIS Laurie Ann	1990	Napanee ON
MACLAUCHLAN Lucienne	1992	Odessa ON
STEPHENSON Craig Alexander	1993	Brampton ON

### NSF SUSPENSIONS

The following members were suspended on October 1, 1997 for NSF payment of the 1997 Membership Fee:

BRYCE David Gordon	1980	Toronto ON
ITTMAN Richard Michael	1980	Richmond Hill ON
MORROW Lisa Suzanne	1994	Don Mills ON
SMALE Martha Jane	1991	Mississauga ON
STRAUB Linus Philipp Fritz	1978	Toronto ON
THOMSON Donald Andrew	1978	Parry Sound ON
VANDERVORT Lucinda Ann	1979	Saskatoon SK

The following members were suspended on October 1, 1997 for NSF payment of the 1997 E&O Insurance Levy:

MARTIN Peter Guy	1990	Toronto ON
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mence forthwith and indefinitely thereafter until filings are made.

#### *Discipline Record*

- On November 28, 1995, the Solicitor was reprimanded in Committee for failing to reply to the Law Society regarding three complaints by clients.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

### **FAILED TO REPLY TO COMMUNICATIONS FROM THE LAW SOCIETY AND RELEASE FILE TO CLIENT**

**Michael Takatsch**

Toronto, Ontario

Age 46, Called to the Bar 1980

*Particulars of Complaint*

Professional Misconduct

- Failed to release client file;
- Failed to reply to the Law Society regarding a client complaint.

*Recommended Penalty (10/21/97)*

- If the Solicitor satisfactorily replies to the Law Society prior to the hearing before Convocation, Reprimand in Committee; failing which
- The Solicitor should be suspended for a fixed period of one month and thereafter indefinitely on a month-to-month basis until such time as he satisfactorily replies to the Law Society.

*Convocation's Disposition (11/27/97)*

- One-month suspension effective November 27, 1997, to continue until satisfactory reply to Law Society.

*Discipline History*

- None.

*Counsel for the Solicitor*

Not Represented

*Counsel for the Law Society*

Rhonda Cohen

### **FAILURE TO SERVE CLIENT**

**Ward, Peter Newton**

Bracebridge, Ontario

Age 47, Called to the Bar 1987

*Particulars of Complaint*

Professional Misconduct

- Failed to serve client by failing to initiate a claim within the limitation period;
- Misled client with respect to status of a claim; and
- Failed to reply promptly to correspondence from the Law Society.

*Recommended Penalty (10/09/97)*

- One-month suspension

*Convocation's Disposition (11/27/97)*

- One-month suspension beginning December 14, 1997

*Factors*

- Joint submission from both counsel as to penalty; and
- There appears to be no loss that will inure to the client.

*Discipline History*

- On February 14, 1990, the Solicitor was Reprimanded in Committee for failing to reply to the Law Society regarding two client complaints.

*Counsel for the Solicitor*

Brian Heller

*Counsel for the Law Society*

Glenn M. Stuart

### **FAILED TO COMPLY WITH A DIRECTION**

**Hunter, Joseph Reed**

Toronto, Ontario

Age 68, Called to Bar in 1956

*Particulars of Complaint*

Professional Misconduct

- Failed to comply with the terms of two directions by which the Solicitor agreed to be bound.

*Convocation's Disposition (10/28/97)*

- Reprimand in Convocation;
- \$3,500 in costs.

*Discipline Record*

- On June 22, 1993, the Solicitor was Reprimanded in Committee and ordered to pay \$3,000 in costs for misstating material facts regarding the financial circumstances of his client to the Bank thereby inducing the Bank to settle potential litigation with his client.

*Counsel for the Solicitor*

V. Ross Morrison

*Counsel for the Law Society*

Glenn M. Stuart

### **FAILED TO DEPOSIT RETAINER MONIES**

**Martin, Peter Guy**

Toronto, Ontario

Age 36, Called to Bar in 1990

*Particulars of Complaint*

Professional Misconduct

- Failed to produce client files for examination;
- Failed to comply with an Acknowledgment to the Law Society by failing to cooperate with the Law Society;
- Failed to deposit retainer monies received in trust from a client into a trust account;
- Failed to account to a client with respect to monies provided by the client as a retainer;
- Failed to reply to the Law Society regarding a complaint made against him.

*Hearing Panels Recommendation (06/17/97)*

- Reprimand in Convocation if Solicitor provides a supervisory plan satisfactory to the Law Society by the date of Convocation, failing which, suspension for 30 days.

*Convocation's Disposition (10/28/97)*

- Reprimand in Convocation (Solicitor provided a supervisory plan satisfactory to Convocation).

*Counsel for the Solicitor*

Colin D. Adams (at Committee)

Not Represented (at Convocation)

*Counsel for the Law Society*

Georgette Gagnon (at Committee)

Catherine Braid (at Convocation) ■

## Season's greetings

*The benchers and staff*

*of the Law Society of Upper Canada*

*wish members and their families*

*a safe and happy holiday season*

*and extend their best wishes*

*for a prosperous New Year.*





## FYI

### Copyright is focus of lawsuit against legal publishers

THE LAW SOCIETY of Upper Canada has commenced legal action against several law book publishers – Carswell's, CCH and Canada Law Book – to obtain a court declaration that the Society and its members do not infringe the copyright of the law book publishers when photocopying legal materials (judicial decisions, statutes and other source-of-law materials) for private study, research or use in court. The Society believes that use of these materials in this way constitutes "fair dealing" under the *Copyright Act*.

The legal publishers have charged that the Law Society's "copy service" –

which, for an administrative fee, provides lawyers with photocopies of legal materials in the Society's library holdings – is a violation of their copyright. (see related story on law firm photocopying in *OLG*, Mar/Apr 1997, p.11)

Treasurer Harvey Strosberg says the Law Society has decided that because the question of imposing a license fee on the use of, and access to, the law is an issue of important public policy, it should be left to the courts to resolve.

"Access to law and to published judicial decisions and legislation is fundamental to the administration of justice in Canada. The very legal process depends on such access and, as a matter of public interest, it must take priority over any private interests seeking to obtain additional payment from the public's use of legal resource materials. As well as an impediment to justice, the additional cost to individuals, the court system, legal aid plans and to government, if

### Great Library enhances service with networked CDs

WITH THE RECENT installation of its CD-ROM network, the Great Library has moved a step closer to offering researchers a fully networked electronic environment. Using a combination of CD drives, changers and hard drives, the library's network has the capacity to access over 150 disks.

Patrons connect to the network from workstations already in place for the online catalogue. CD-ROM searching is available in all of the county libraries as well as the Great Library.

An immediate benefit of networking has been the reduction or elimination of waiting time for users of the most popular CD titles. Depending on the licence agreement, several patrons can now access the same disk simultaneously. Full-text indexing,

speed, ease of use and lack of online charges are some of the additional benefits of the new technology.

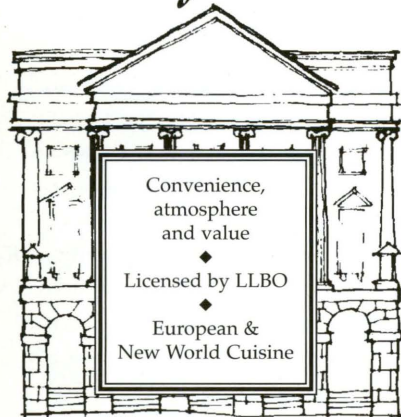
Some of the information currently available over the library's network includes the full text of federal and Ontario statutes, a number of law report series and disks geared to particular practice areas such as bankruptcy or criminal law.

In future phases of expanding the network, the library is looking to include features such as QuickLaw searching, Internet access, word processing and e-mail.

Researching with CD-ROMs is fast and easy. Members are encouraged to visit their library to try out some of these products. Library staff can provide assistance and advise about the availability of training.

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royalties for copying legal source materials were in place, would be enormous," Mr. Strosberg says.

The Law Society seeks declaratory relief from the court. The claim asks the courts to decide that the copying of

selected portions of legal materials for the purpose of research, private study or for use in connection with judicial or government proceedings constitutes fair dealing and not an infringement of any copyright owned by the law book publishers.

The Law Society's statement of claim may be obtained from Ontario Court (General Division) or from the Society's website at [http://www.lsuc.on.ca/services/state-ment\\_claim\\_copyright\\_en.shtml](http://www.lsuc.on.ca/services/state-ment_claim_copyright_en.shtml) ■

## OBAP

# Sober and a top practitioner

IN A DOZEN YEARS OF practicing law, Phillip had attracted a loyal national, and international clientele, producing substantial annual billings with an income at the top of the profession. Apart from his role as a lawyer and as a single parent, he had no personal life.

It would never have occurred to any client, friend or family member to describe Phillip as an alcoholic. If someone had made such an allegation, his clients, friends, colleagues and judges of the profession would have been outraged at such a slur and they would have defended Phillip and his reputation.

Unknown to anyone other than himself, Phillip would put in a full day at the office, come home and make supper for the children and put them to bed. When they were in bed by nine o'clock, he would begin to drink and would routinely consume the equivalent of six ounces of hard liquor each and every evening. Drunk by his own bed time, he would go to sleep to repeat the same process the following day. Over the three years between age thirty-five and thirty-eight, Phillip's drinking would become more systemic, and it would increase to the twelve ounce per day level. Drinking would become more important in his life and he would plan vacations and time off around opportunities to drink. Although aware that any consumption of alcohol in excess of five or six ounces per day was a serious health hazard, Phillip would block out this knowledge and convince himself that his drinking was a suitable cure for his loneliness, lack of self-fulfilment, pain from arthritis or any other excuse

he could rationalize and justify.

Occasionally, Phillip would go on the wagon and abstain from alcohol. He noticed that he rarely lasted as long as he had planned. As soon as he did resume drinking, he would revert to his previous level of consumption within days. He believed that he couldn't have a drinking problem, however, since he never suffered withdrawal symptoms.

On a return from a week long vacation in which he drank constantly, Phillip would allow himself to see where he was going and the dangers he was taking with his health and with his life. After delaying for several weeks, he contacted the Ontario Bar Alcoholism Hotline phone number and left his name and telephone number. Within an hour, three lawyers contacted him by telephone and one agreed to meet with him the following day.

The next day Phillip met with Jim, a lawyer who had been sober for over twelve months following years of heavy drinking that had cost him dearly and nearly resulted in his expulsion from the profession. Jim talked about his compulsion to drink and Phillip quickly understood the similarities in his own drinking pattern. Jim offered a perfect example of where Phillip was going and Phillip realized that his decision to remain sober temporarily would have to become permanent. Phillip joined a self-help recovery group and began a program of personal recovery that put him in contact with other recovering sober alcoholics in the legal profession and elsewhere. Ten years later, Phillip is sober, healthy, happy and he is still a

top practitioner.

OBAP provides ongoing volunteer peer support to lawyers, judges and law students who suffer from addiction, eating disorders, stress and mental illness. If you are depressed to the point of suicide or know of someone that you are concerned about, please telephone the OBAP 24-hour general helpline, in complete confidence, at 1-800-667-5722. The 24 hour women's helpline is 1-800-641-4409. To contact the volunteer Executive Director, call John Starzynski at 519-837-9459 or fax at 519-837-3396. The Program Manager, Moira Tobin can be reached at 416-869-1047 ext. 347. ■

## Search-Law closure

DUE TO FINANCIAL considerations, Convocation has decided to discontinue Search-Law, the Law Society's computer-assisted legal research service. Search-Law's offices in both Toronto and Ottawa were closed effective December 31, 1997. Search-Law's research lawyers, Mary Pigott and Margaret Truesdale, would like to thank all clients for their support over the past 14 years.

Margaret Truesdale will continue to provide an online legal research service to the profession on a private basis. The Wrongful Dismissal Database will remain available through her. For further information, or to order a search, contact her directly at (613) 747-1116 or toll-free 1-888-400-0904.

For further information on Search-Law, please contact Ms. Janine Miller, Director of Libraries, at (416) 947-3438. ■



# The Research Facility



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### NEW THIS ISSUE

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- C4-1 \$70 Right to be Informed of the Offence (36)
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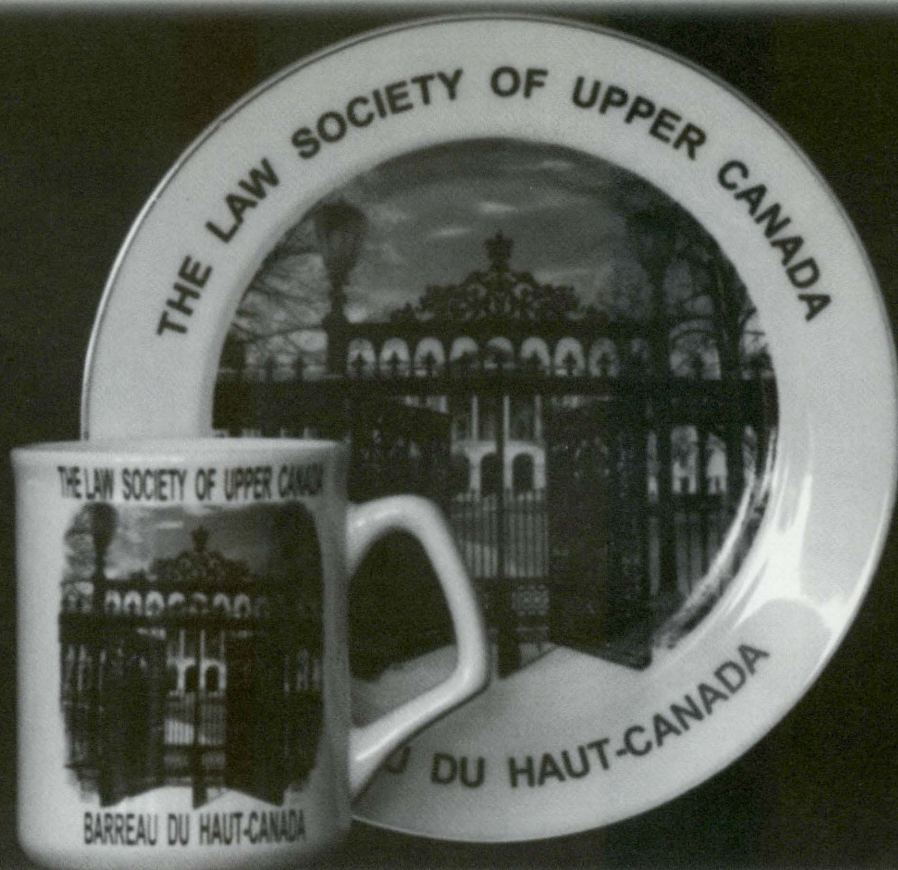
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