



The  
Law Society of  
Upper Canada  
Osgoode Hall, Toronto

plus

# com·mu·ni·qué

Number 8

27th and 28th February 1986

## \* QUEEN'S COUNSEL

Convocation adopted the report of the Special Committee on Queen's Counsel which, except for its introductory paragraphs, reads:

The Committee understands, judging from representations made to the Society by its members, that the profession generally is opposed to the abolition of existing Queen's Counsel patents, favours reforming the basis upon which the honour is to be granted in future and would not object to a moratorium on granting it pending implementation of reform.

The Committee was of the opinion that no valid reason had been shown for revoking existing appointments. The Attorney General has acknowledged "that most present QC's are distinguished, responsible and superbly competent members of the legal community" (extract from a letter to the Chairman dated January 17th, 1986). Any possible advantage that might derive from revoking the few appointments that may be open to question would be far outweighed by the obvious injustice that would result to those who deserve the honour.

The Committee considered legislation which had been passed in British Columbia in 1979 entitled "Queen's Counsel Act" and had before it further information respecting the criteria that are used there in selecting those who are to receive the honour and information touching on the way in which the process functions in that province including the fact that the present system is widely regarded as satisfactory.

The Committee recommends to Convocation that the Attorney General be urged to adopt a similar system in Ontario. The Committee approves of the criteria referred to in a letter of June 19th, 1975 written by H.P. Legg, Treasurer of the Law Society of British Columbia to the Honourable Alex B. Macdonald, Q.C. the then Attorney General of British Columbia. That letter reads in part:

"The Planning Committee of the Benchers of the Law Society of British Columbia has considered the question of the criteria to be adopted in the appointment of Queen's Counsel and after consultation with the Canadian Bar Association (B.C. Branch), has recommended to the Benchers the following criteria:

Professional integrity and good character along with outstanding excellence in the practice of the legal profession as evidenced by one or more of the following:



1. Being generally acknowledged as a leading Counsel;
2. Recognition by other members of the profession as an exceptionally gifted practitioner;
3. The demonstration of exceptional qualities of leadership in the profession, including the conduct of the affairs of the Law Society, the Canadian Bar Association and other lawyers' organizations;
4. Outstanding work in the fields of legal education or legal scholarship.

At a meeting of the Benchers on May 30, 1975 the recommendation of the Planning Committee was adopted and the Benchers requested that the criteria be forwarded to you for consideration."

The reformation of the system of granting the honour in British Columbia did not involve the revocation of existing patents and your Committee has no knowledge of any jurisdiction in which such an arbitrary step has ever been taken.

Your Committee is of the view that the revocation of existing patents should be strongly resisted; no justification for this extraordinary action has been put forward; retroactive legislation is generally bad and has for many years and in all circumstances been regarded with disfavour and as working unfairly. Retroactive legislation to remove Queen's Counsel patents would be unfair to the vast majority of those who hold patents and in particular to those Queen's Counsel who deserve the honour but who are now retired and could not therefore expect to have the honour restored to them under a reformed system of appointments.

Your Committee recommends that Convocation propose reformation of the basis on which the honour of being appointed a Queen's Counsel in Ontario is granted and proposes a selection procedure for consideration by the Attorney General whereby in future the Attorney General act in consultation with a committee composed along the following lines: two members of the judiciary; two senior members of the profession, one from Toronto and the other from outside Toronto to be appointed by Convocation; one Lay Benchers and the President of the County & District Law Associations.

Your Committee recommends that a limit should be placed on the number of Queen's Counsel patents granted in any future year and considers that approximately fifty per year would be an appropriate number.

Your Committee recommends that Convocation oppose any legislation that may be proposed to abolish existing Queen's Counsel patents in Ontario and questions the authority of the legislature to attempt such legislative action.

#### ADVERTISING

In the spring of 1985, Convocation established a Special Committee on Advertising to review the question and make recommendations.

As a starting point, the Committee reviewed the advertising rules of other jurisdictions in Canada and found that in most, the trend is to permit lawyers greater latitude in advertising and for a governing body only to interfere to the extent necessary to protect the public interest and maintain professional standards. For example, four provinces, British Columbia, Manitoba, Alberta and Nova Scotia all allow fee advertising and three, British Columbia, Alberta and Manitoba allow advertising in both print and electronic media.

The changes in British Columbia in December 1985 arose from the work of a Special Committee, formed in 1983, that considered carefully the arguments both for and against advertising by lawyers. While conceding that the areas of most concern to opponents of advertising by lawyers centre on the profession's image, the potential to mislead the public, the possible detrimental effect on the quality of service, the cutting of costs and the creation of an artificial demand for legal services, it found on examination that



there was no empirical data to support these fears. It also found that when weighed with the advantages that flow from improving access to the legal system and clarifying of the basis of legal fees, the continuation of restrictions on advertising could not be supported. The Committee reported that "there is a legitimate need among the members of the public for information about the services lawyers provide and the cost of those services" and that "the movement (to lawyer advertising) is so well entrenched in North America and growing, that to bar or further inhibit such advertising would be to disregard totally, the social and commercial realities of our times."

In December the CBAO council adopted a report of its Special Committee on Advertising by Lawyers which recommends that the Law Society remove the present restrictions and only regulate advertising by lawyers as needed to protect the public and preserve the integrity and stature of the profession. The CBAO noted in recommending that lawyers should be able to advertise their services and fees in any medium that "it is becoming more and more apparent to lawyers that the practice of law in the 1980's must be viewed as a business as well as a profession. Lawyers have become more conscious of and more involved in marketing and client development. Advertising their firms and services is a natural adjunct to an important method of carrying on such activity."

Having reviewed the situation in other jurisdictions and reflected on the CBAO report, the Society's Committee, not unanimously however, was sympathetic to this more liberal approach and is considering recommending to Convocation that the Rules of Professional Conduct governing advertising be amended to allow lawyers more freedom. The exact limits of the extension have not been agreed upon even among those members of the Committee who support the loosening of restrictions. To assist the Committee in its deliberations, a draft rule was prepared which is set out below. It is to be emphasized that neither the Committee nor Convocation has adopted this draft rule. The draft is being circulated to solicit the profession's views on the matter. The Committee will then consider the views of the profession and others who may wish to respond before making its final recommendations to Convocation.

The Committee invites you to develop and express your views on the question of advertising. Your comments should be directed to the Law Society to the attention of Richard F. Tinsley, Deputy Secretary.

#### DRAFT RULE OF PROFESSIONAL CONDUCT - ADVERTISING BY LAWYERS

1. Subject to paragraph 2 of this rule individual lawyers or firms may advertise 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 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.
2. Individual lawyers or firms may advertise fees charged for their services subject to the following conditions:
  - (a) advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances in which higher fees may be charged;
  - (b) if fees are advertised the fact that disbursements are an additional cost must be made clear in the advertisement where practicable;
  - (c) advertisements shall not use words or expressions such as "from . . .", "minimum" or ". . . and up" or the like in referring to the fees to be charged nor shall advertisements indicate that a price is a discount or reduction or special rate;
  - (d) services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising lawyer or firm during the 30 day period following upon the last publication of the fee unless excused by reasonable and proper grounds the burden of establishing which rests upon the lawyer.



## CREDIT CARDS

Payment of lawyers' bills by credit cards was approved in principle, by Convocation in 1978 and a Special Committee was struck to work out the mechanics of implementation. It reported in January 1980 recommending the necessary amendments to the regulation respecting books, records and accounts which were adopted and sent to the Attorney General.

There the matter rested until in 1983 Convocation again approved the use of credit cards for payment of lawyers' accounts.

This February, a regulation was prepared by the Ministry and has gone forward for cabinet approval. The Society will now meet with representatives of the credit card companies to be sure all necessary arrangements are in place and an administrative directive will be issued to members setting out how the payment of accounts by credit card is to be handled in a member's financial accounts.

The form of contract for legal accounts needs to be different from commercial accounts to ensure that the commission paid to the credit card company comes out of the lawyer's general account and not the trust account. It is this special form of contract that the Society is settling and which will be covered by the directive to be issued shortly.

Kenneth Jarvis,  
Secretary.