

Banack's Bencher News #92

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GOVERNANCE REFORM: Amendments to the Law Society Act implementing the governance reform approved by Convocation in December are contained in the most recent budget bill, which was tabled in the Ontario legislature. The provisions are contained in Schedule 13 and can be viewed at http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session2/b016.pdf. Once the legislation is passed, it will be necessary for Convocation to address the balance of the reform provisions through Bylaw amendments.

LAW SOCIETY LITIGATION: Today was the first Convocation held following the March public announcement of the settlement of the 1997 Law Society litigation. Following up on the press release issued by the Law Society, the Chief Executive Officer, Malcolm Heins delivered a comprehensive report to Convocation. I urge you to read it in its entirety at http://www.kmlaw.ca/site_documents/ChiefExecutiveofficerreporttoconvocation_22April10.pdf. It has been reported that the 1994/1995 anger and frustration in the Profession resulted in a view then, that some third party must be responsible for the \$1.54 million deficit. However Mr. Heins has now advised that "This view was over simplified to the point of being incorrect". The Defendants in the law suit aggressively defended saying that in fact it was the actions of the Law Society, LAWPRO and Benchers that contributed to the deficit which they asserted was not recoverable in any event. Without any admission of liability, the Defendants agreed in a mediation, to settle the claim for \$8.0 million. Chief Justice Winkler as mediator recommended the settlement figure as a reasonable one and fair to all parties. The Law Society negotiating committee unanimously agreed with the settlement having regard for the risks in pursuing the action and an assessment of recoverable damages. \$5.0 million is the net recovery on the settlement, after deducting all costs. The settlement was paid to the Law Society Errors & Omissions Fund which financed the litigation.

ONTARIO REPORTS: Since the beginning of April we have been receiving a hard copy and a digital edition of the ORs. BUT THIS WILL NOT CONTINUE. If you wish to continue receiving a hard copy of the Ontario Reports, it will be necessary to reply to a Law Society email to be sent during the coming weeks indicating your election to receive only the paper version. If you do not reply, you will only receive the electronic version. This is clearly the beginning of the end to the not so attractive stack of ORs art, in the corners of many lawyers' offices.

LAWPRO PREMIUMS/HST: There is no final word yet how LAWPRO will deal with the HST implication for existing liability reserves. The LAWPRO report approved by Convocation on September 24, 2009 proposed a special levy of practicing lawyers. However, that was not implemented and we will not likely hear anything on this issue until we see LAWPRO's proposals for the 2011 insurance program.

That may be because LAWPRO accessed the Errors & Omissions Insurance Fund of the Law Society to the extent of \$10.2 million to fund the HST liability. This reduced that fund balance as at December 31, 2009 to \$57 million. Subsequent to the year end, the Law Society litigation was concluded and the settlement funds of \$8 million were deposited to that Fund. This substantially replenished the balance and has reduced the seriousness of the issue for the time being.

LAWPRO LOSS: In 2009 LAWPRO suffered a loss of about \$6.4 million dollars in contrast with a 2008 profit of \$7.0 million dollars. That swing of \$13 million dollars arose for a number of reasons including a decrease of investment income, a significant increase of insurance claims resulting in the highest number since 1994 and the adverse affect of the newly introduced HST for Ontario.

PARALEGAL ELECTION: The Law Society held the first Canadian Paralegal election. Conducted electronically, it was efficient and much more cost effective than Bencher elections to date. Hopefully the enormous quadrennial Bencher election expense can be reduced in the future by learning from this experience. The Chair of the Paralegal Standing Committee is Cathy Corsetti and Paralegal Benchers in Convocation are R. Paul Dray and Michelle Haigh.

AUDITED FINANCIAL STATEMENTS: Convocation approved without debate the audited Financial Statements for the Law Society and LibraryCo Inc. In 2009 the Law Society had a deficit of \$904,000.00. Deloitte Touche was reappointed as the Law Society Auditor for the eighth year. Discussions will take place at committee level about the possibility of tendering for audit services in the future.

ASIAN & SOUTH ASIAN HERITAGE MONTH: The Society will be convening a panel discussion in the Lamont Learning Centre on May 10, 2010 at 4:00 p.m. to consider a new framework for discussing human rights in a pluralistic society.

CONVOCATION REPORTS: All reports to Convocation can be viewed at <http://www.lsuc.on.ca/news/>. In order to more fully understand the issues facing Convocation, you may wish to review previous editions of Banack's Bencher News at http://www.kmlaw.ca/publications/banacks_bencher_news_home.aspx.

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