



## **The History of Lay Benchers at The Law Society of Upper Canada: Marking 40 years of Public Representation**

By Ross Gower

### **INTRODUCTION**

On January 17, 2015, the Law Society of Upper Canada will mark the 40<sup>th</sup> anniversary of the first time lay benchers officially sat in Convocation. This paper provides an overview of the history leading up to the appointment of lay benchers as well as a summary of the achievements of those who were most influential in furthering the public interest.

The series of occurrences that catalyzed the addition of public representation to the Law Society's governing body began in 1964, initiated by an aggressive bill aimed at stifling organized crime. By late 1963, organized crime had become a major problem in Ontario, and the press had highlighted it as a focus issue. *Maclean's* magazine printed a series of articles on the influence of crime cartels, publishing the headline, "Organized Crime's Grip on Ontario", on the cover of its September 21, 1963, issue. The reaction to the bill, which many viewed as an affront to civil rights, was raucous. Public demonstrations, politicians breaking ranks, and the resignation of the Attorney General at the time, all occurred within days of the Attorney General announcing and, bizarrely, criticizing his own legislation. In an effort to ensure his political survival, Premier John Robarts abandoned his support and devised a plan to ensure that the public would view him and his government as civil rights supporters. This led to his establishment of the Royal Commission Inquiry into Civil Rights, headed by former Chief Justice James Chalmers McRuer, whose reports would have an enormous and lasting impact on Ontario's legal profession.

Both the profession and the public have benefited greatly from the work of lay benchers. Some of these accomplished individuals became strong advocates for the Law Society, and they have continually acted in furtherance of the Law Society's public interest mandate. The invaluable work of lay benchers has forever changed the face of the legal profession in Ontario and is currently having an increasing effect on access to justice in the province.

## 1964-1970 –THE MCRUER REPORTS &THE NEW LAW SOCIETY ACT

Professor Harry Arthurs asserted in 1973 that “the move towards public participation stems less from overt popular discontent than from recognition by the bar that accountability to the public is not merely inevitable, but is right in principle as well; this recognition was, of course, spurred by the McRuer Report”.<sup>1</sup> While this statement is true of the events that took place in the early 1970s, it ought to be added that McRuer’s reports were undertaken as a result of civil discontent in 1964.

In 1964, The Honourable James Chalmers McRuer stepped down as Chief Justice of the Ontario High Court to head the Royal Commission Inquiry into Civil Rights (the “Commission”).<sup>2</sup> McRuer was a lawyer and a bencher of the Law Society from 1936 to 1944.<sup>3</sup> He became a judge of the Ontario Court of Appeal in 1944 and was appointed Chief Justice of the High Court of Ontario in 1945.<sup>4</sup> The Commission was established in 1964 “in response to opposition criticism of a government bill, [Bill 99], that would have conferred broad-ranging investigatory powers on the Ontario Police Commission”.<sup>5</sup> Bill 99 contained controversial amendments to Ontario’s *Police Act*. The bill was presented by then Attorney General Frederick Cass as “a weapon against organized crime”<sup>6</sup> but many argued that the bill stripped Ontario residents of civil liberties and rights against police detention.<sup>7</sup> Section 14 of Bill 99 would have given the Ontario Police Commission “the authority to force anyone to give evidence in secret or be jailed indefinitely if they refused”.<sup>8</sup>

Professor Patrick Boyer notes that, “[p]aradoxically, it was Attorney-General Cass himself who initially generated public alarm about his own legislation”.<sup>9</sup> The Attorney General gave the following statement to the press about the bill: “It’s drastic and it’s dangerous and it’s new and it’s terrible legislation in an English common law country.”<sup>10</sup> By these remarks the Attorney General drew fevered opposition to Bill 99. Shortly after, politicians within the governing Progressive Conservative party broke ranks and denounced the controversial amendments in the bill; eventually, Premier John Robarts withdrew his support to distance himself from the ensuing controversy.<sup>11</sup> Attorney

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<sup>1</sup> Harry W Arthurs, “Counsel, Clients and Community” (1973) 11:3 Osgoode Hall LJ 437 at 448, online: Osgoode Digital Commons  
<<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=2248&context=ohlj>> [Arthurs].

<sup>2</sup> David J Mullan, “Willis v McRuer: A Long-Overdue Replay with the Possibility of a Shoot-Out” (2005) 55:3 University of Toronto LJ (2005) 535 at 535, note 2 [Mullan].

<sup>3</sup> Christopher Moore, *The Law Society of Upper Canada and Ontario’s Lawyers: 1797-1997* (Toronto: University of Toronto Press, 1997) at 283 [Moore].

<sup>4</sup> *Ibid* at 284.

<sup>5</sup> Mullan, *supra* note 2 at 535.

<sup>6</sup> Eugene Griffin, “Ontario to Restudy Police Powers Bill”, *Chicago Tribune* (21 March 1964) Section 1-9, online: Chicago Tribune Archives

<<http://archives.chicagotribune.com/1964/03/21/page/9/article/ontario-to-restudy-police-powers-bill>> [Griffin].

<sup>7</sup> *Ibid*.

<sup>8</sup> J Patrick Boyer, *A passion for justice: the legacy of James Chalmers McRuer* (Toronto: The Osgoode Society for Canadian Legal History, 1994) at 298 [Boyer].

<sup>9</sup> *Ibid* at 299.

<sup>10</sup> Griffin, *supra* note 6.

<sup>11</sup> Boyer, *supra* note 8 at 299.

General Cass was ultimately sacrificed due to fierce opposition from politicians of all parties and members of the public, while the bill was sent to committee for further study.<sup>12</sup> Cass' resignation occurred on March 23, 1964,<sup>13</sup> just days after news first broke regarding the proposed legislation. "To extricate himself from the mess, Robarts realized that he needed two things: a new attorney-general [sic] who could regain the public's confidence and trust, and a plan of action to deal with the issues that the controversy over Bill 99 had brought into focus".<sup>14</sup> The Premier tapped Arthur Wishart to replace Cass as Attorney General on March 26, 1964,<sup>15</sup> and soon after "called for the introduction of a new, milder version of Bill 99 and the creation of an inquiry into civil rights."<sup>16</sup> Robarts and Wishart met with McRuer and offered him the opportunity to head the inquiry into civil rights.<sup>17</sup> McRuer accepted on the condition that he also be appointed chairman of a proposed commission on law reform; everyone was in agreement.<sup>18</sup> On May 1, 1964, Premier Roberts announced the establishment of the Royal Commission Inquiry into Civil Rights.<sup>19</sup>

The Commission's mandate was:

1. To examine, study and inquire into the laws of Ontario including the statutes and regulations passed thereunder affecting the personal freedoms, rights and liberties of Canadian citizens and others resident in Ontario for the purpose of determining how far there may be unjustified encroachment on those freedoms, rights and liberties by the Legislature, the Government, its officers and servants, divisions of Provincial Public Service, boards, commissions, committees, other emanations of government, or bodies exercising authority under or administering the laws in Ontario.
2. After due study and consideration to recommend such changes in the laws, procedures and processes as in the opinion of the commission are necessary and desirable to safeguard the fundamental and basic rights, liberties and freedoms of the individual from infringement by the State or any other body.<sup>20</sup>

Between 1968 and 1971, the Commission submitted three reports to the Lieutenant-Governor of the Province of Ontario. The first report was submitted on February 7, 1968,<sup>21</sup> the second on September 15, 1969,<sup>22</sup> and the third was submitted on February

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<sup>12</sup> *Ibid.*

<sup>13</sup> Ontario, Legislative Assembly, *Frederick McIntosh Cass, MPP: Parliamentary History*, online: Legislative Assembly of Ontario <[http://www.ontla.on.ca/web/members/members\\_all\\_detail.do?locale=en&ID=975](http://www.ontla.on.ca/web/members/members_all_detail.do?locale=en&ID=975)>.

<sup>14</sup> *Boyer, supra* note 8 at 299.

<sup>15</sup> Ontario, Legislative Assembly, *Arthur Allison Wishart, MPP: Parliamentary History*, online: Legislative Assembly of Ontario <[http://www.ontla.on.ca/web/members/members\\_detail.do?locale=en&ID=1985](http://www.ontla.on.ca/web/members/members_detail.do?locale=en&ID=1985)>.

<sup>16</sup> *Boyer, supra* note 8 at 300.

<sup>17</sup> *Ibid* at 300-301.

<sup>18</sup> *Ibid* at 301.

<sup>19</sup> *Ibid.*

<sup>20</sup> Hon JC McRuer, *Royal Commission Inquiry into Civil Rights: Report No 1* (Toronto: Queen's Printer, 1968) at xi [*McRuer Report 1*].

<sup>21</sup> *McRuer Report 1, supra* note 20 at v.

<sup>22</sup> Hon JC McRuer, *Royal Commission Inquiry into Civil Rights: Report No 2* (Toronto: Queen's Printer, 1969) at v.

22, 1971<sup>23</sup> (collectively, the “McRuer Reports”). With respect to the professions, the McRuer Reports urged that “organizations governing lawyers, doctors, engineers, and other professionals had to be made more observant of due process in the exercise of their authority, more responsible to their membership, and more effectively subject to scrutiny by the legislature which empowered them.”<sup>24</sup> The reports proposed greater accountability in all the professions, and became the authoritative works used to advocate for lay representation in the legal profession.

By the mid-1960s, Convocation at the Law Society of Upper Canada had begun considering its first full revision of the *Law Society Act* since 1912.<sup>25</sup> While Christopher Moore indicates that the Law Society began discussing changes it wanted to make since 1963, it was not until 1965 when Convocation seriously began to consider a full revision of its governing statute.

Convocation considered a draft of the revised statute in February of 1968 that “mainly reorganized existing legislation and removed redundant or obsolete clauses”.<sup>26</sup> The timing coincided with the submission of McRuer’s first report to the Lieutenant Governor. Moore states that “McRuer’s report helped derail the Law Society’s plans”;<sup>27</sup> however, Convocation put its amended *Law Society Act* back to committee after it reviewed McRuer’s 1968 report.

According to a letter dated June 5, 1969, sent from Treasurer William Howland to Leader of the Liberal Party, Robert Nixon, the Law Society met with interested politicians and consulted the legal profession on numerous occasions.<sup>28</sup> The “proposed Act had been considered at the joint conference which the benchers had with the county and district law associations on November 1, 1968, and the few suggested amendments which had been proposed at that conference were embodied in the draft Act which was approved by Convocation and sent to the profession on December 17, 1968.”<sup>29</sup> Further amendments were sent to every member of the profession on March 20, 1969 for consideration.<sup>30</sup> Law associations indicated their general approval of the draft sent on March 20, as well as the Chief Justice of Ontario and the Supreme Court judges. The revised draft was then approved by convocation on April 18, 1969 and was sent to Attorney General Wishart.<sup>31</sup>

The Attorney General played an active role in the revision process in cooperation with the Law Society. The Attorney General endeavoured to develop the new *Law Society Act* with substantial reconfigurations in respect of how the Law Society operated.

Attorney General Wishart hoped that the proposed legislation would, in accordance with McRuer’s recommendations, “introduce a measure of outside influence into the

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<sup>23</sup> Hon JC McRuer, *Royal Commission Inquiry into Civil Rights: Report No 3* (Toronto: Queen's Printer, 1971) at v.

<sup>24</sup> Moore, *supra* note 3 at 284.

<sup>25</sup> *Ibid* at 283.

<sup>26</sup> *Ibid* at 283.

<sup>27</sup> *Ibid* at 284.

<sup>28</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Parl, 3rd Sess, No 32 (8 April 1970) at 1283-1284 (Bullbrook) [*April 8 1970 Debate*].

<sup>29</sup> *Ibid* at 1282 (Bullbrook).

<sup>30</sup> *Ibid* at 1283 (Bullbrook).

<sup>31</sup> *Ibid* at 1283-1284 (Bullbrook).

processes of professional self-government".<sup>32</sup> In the bill, the "Attorney General, a bencher ex officio of the Law Society, was expressly designated as "the guardian of the public interest in all matters [...] having to do with the legal profession"". <sup>33</sup> In addition, "the Law Society's regulations were made subject to approval by the provincial cabinet and its disciplinary proceedings were made subject to judicial review; and a new Law Society Council with some lay representatives was established "to consider the manner in which [lawyers] are discharging their obligations to members of the public"". <sup>34</sup>

On February 27, 1970, the Attorney General moved first reading of Bill 7 *Law Society Act, bill to consolidate and revise*, in the Legislative Assembly of Ontario, as well as bills to amend both the *Barristers Act* and *Solicitors Act*.<sup>35</sup> It was decided by the Attorney General that there would be no questions at that time.<sup>36</sup> Debates took place during second reading of the bill on April 8, 1970. Member of Provincial Parliament ("MPP") James Bullbrook stated that "the product of all this labour, which the government has docilely accepted, is a pale shadow of Mr. McRuer's recommended reforms."<sup>37</sup>

A central part of the April 8 debate focused on public representation in the governance of the legal profession. Several MPPs, in particular, James Bullbrook, Vernon Singer, and Jim Breithaupt, fiercely advocated for the inclusion of lay representatives in the governing body of Convocation itself to satisfy the public interest. These MPPs argued that Attorney General Wishart's proposed Law Society Council under s. 26, with some lay representation, was "window dressing" and merely paid "lip service to the idea of lay participation".<sup>38</sup> Bullbrook, Singer, and Breithaupt argued that the Law Society Council failed to fulfill the recommendations of the McRuer Reports to date, because McRuer specifically called for "government to appoint lay outsiders to the *governing bodies* of the self-governing professions."<sup>39</sup> The proposed Law Society Council, however, was not a governing body; it was merely advisory. Bullbrook explains that

far from appointing laymen as benchers, the society proposes instead a "law society council" composed of representatives of various departments of the legal profession plus three non-members appointed by the government. The catch here is that this will be three in a council of 73, and the council will have no powers other than "to consider the manner in which the members of the society are discharging their obligations to the public and generally matters affecting the legal profession as a whole." The law society will continue to be run by the benchers.<sup>40</sup>

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<sup>32</sup> *Arthurs, supra* note 1 at 448.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Parl, 3rd Sess, No 4 (27 February 1970) at 96.

<sup>36</sup> *Ibid* at 97.

<sup>37</sup> *April 8 1970 Debate, supra* note 28 at 1285 (Bullbrook).

<sup>38</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 28th Parl, 3rd Sess, No 71 (19 May 1970) at 2874 (Wishart) [*May 19 1970 Debate*].

<sup>39</sup> *April 8 1970 Debate, supra* note 28 at 1285 (Bullbrook).

<sup>40</sup> *April 8 1970 Debate, supra* note 28 at 1285-1286 (Bullbrook).

Contrary to some accounts,<sup>41</sup> while Attorney General Wishart was receptive to some of the changes proposed by the McRuer Report, he was opposed to appointing lay persons as benchers, and took offence to accusations that lay representation on the Law Society Counsel was merely window dressing. He stated the following in response to MPP Bullbrook: "I say that what you are saying is lip service and window dressing for the public. I do not accept it. I do not believe it is realistic. I do not believe that citizen representation on the benchers will result in any better discipline proceedings than are presently carried out."<sup>42</sup>

On May 19, 1970, during committee, Singer put forward a motion in committee with respect to Bill 7 that "[f]ive persons not being members of the law society shall be appointed by the Lieutenant-Governor-in-Council for such term as he sees fit and thereafter shall be benchers."<sup>43</sup> Before the vote, Singer stated the following:

There is a change going on in this province. The province is in some substantial turmoil. People are objecting to things that have been accepted as gospel for years and for generations. The public has a right to know. The public has a right to be represented. Now, at this time, when we are rewriting, probably for the second time in history, The Law Society Act, surely this is the time to make the change. Surely, Mr. Chairman, this is the time when we take a meaningful step.<sup>44</sup>

The motion failed. While the proposed legislation did not go as far as appointing lay persons to the Law Society's governing body, it nevertheless contemplated a degree of public accountability, and represented a crucial step in the movement towards public representation in the Law Society.

## **THE NEW LAW SOCIETY ACT, 1970, AND THE LAW SOCIETY COUNCIL**

The new *Law Society Act* was passed in June 1970<sup>45</sup> and constituted the fifth version of the statute, first enacted by the Parliament of the Province of Upper Canada in 1797.<sup>46</sup> Convocation was expanded from 30 to 40 elected benchers, benchers' terms were reduced from five to four years, and general meetings became obligatory.<sup>47</sup> From this point onward, the regulations would need the assent of the Lieutenant-Governor-in-Council.<sup>48</sup>

In accordance with s. 26 of the new *Law Society Act*, the Law Society Council was established. The Council was required to meet at least twice a year and report to

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<sup>41</sup> See *Moore, supra* note 3 at 248. Moore indicated that the Attorney General had proposed the appointment of lay benchers, but he offers no evidence that this took place. Hansard records indicate that he felt strongly that lay benchers were not necessary.

<sup>42</sup> *May 19 1970 Debate, supra* note 38 at 2874 (Wishart).

<sup>43</sup> *Ibid* at 2869 (Singer).

<sup>44</sup> *Ibid* at 2876 (Singer).

<sup>45</sup> *Moore, supra* note 3 at 284.

<sup>46</sup> William Renwick Riddell, *The Legal Profession in Upper Canada in its Early Periods* (Toronto: The Law Society of Upper Canada, 1916) at 8 [*Riddell*]. The original act was Act 37 Geo III, c 13 (UC). Riddell indicates that the record of the Proceedings of Parliament for the session of 1797 is unavailable and it is not quite certain by whom the original Act was introduced (see *Riddell* at 11).

<sup>47</sup> *Moore, supra* note 3 at 284-285.

<sup>48</sup> *Moore, supra* note 3 at 284.

Convocation as well as to the Lieutenant-Governor-in-Council.<sup>49</sup> It consisted of the following: “the Treasurer, the Chairs and Vice-Chairs of each standing committee of the Law Society; the Vice-President of the Canadian Bar Association, Ontario Branch; the President of each county or district law association or their nominees; a lawyer who was a full-time teacher at a law school; two student lawyers attending the bar admission course; three lawyers who were less than 10 years at the bar, appointed by the Canadian Bar Association, Ontario Branch; and nine non-lawyers appointed by the Lieutenant Governor in Council.”<sup>50</sup> The Council was made up of 91 persons.<sup>51</sup>

At about the same time, Treasurer Sydney Robins, who would also become instrumental in the Law Society’s adoption of its first rule prohibiting discrimination in June 1974, proposed that there should be direct public representation in Convocation and that the Law Society Council should be dissolved.

Following a meeting of the Council in October 1972, a report on the future of the Law Society Council was presented to Convocation in February 1973. The report concluded that the Council was an unwieldy size, its discussions lacked ease and it did not achieve the purpose of providing adequate public representation. Convocation ultimately decided to abolish the Council, requiring an amendment to the *Law Society Act*. Three developments followed. First, while the Law Society had no authority under the *Law Society Act* to appoint lay persons to Convocation, Convocation agreed to invite two lay members of the Council to participate in Convocation. Second, Convocation decided that the *Act* should be further amended to provide for an annual meeting of representatives of the County and District Law Associations and a representative of each of the approved Law Schools in Ontario with the Chairmen and Vice-Chairmen of the Standing Committees of the Law Society and the Treasurer of the Law Society. Third, Convocation decided that four lay people, two within Metropolitan Toronto, and two from outside the Metropolitan area, should be appointed by the Lieutenant-Governor-in-Council as members of Convocation.

Treasurer Robins performed a crucial role in these developments. On January 19, 1973, Mr. Robert J. Faulkner and Mr. Patrick O’Keefe, lay members of the Law Society Council, were the first to sit with Convocation at the Treasurer’s invitation. Different Lay members of the defunct Council attended Convocation by invitation from Treasurer Robins each month until June 15, 1973.

## **BILL 104 - AN AMENDMENT TO ALLOW THE APPOINTMENT OF LAY BENCHERS**

Bill 104, *An Act to Amend the Law Society Act* was presented by the Attorney General of Ontario Dalton Bales for first reading on April 30, 1973. He recognized the failure of the Law Society Council, and, in accordance with the Law Society’s decisions, he proposed that four lay benchers be appointed:

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<sup>49</sup> *LaBelle v Law Society of Upper Canada et al* 52 OR (3d) 398 [2001] OJ No 60 at para 19 [LaBelle].

<sup>50</sup> *Ibid* at para 19.

<sup>51</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Parl, 3rd Sess, No 82 (19 June 1973) at 3491 (Renwick) [June 19 1973 Debate].

After some two years' experience, the Law Society Council in its last report in December, 1972, recommended that it be abolished, as it proved to be too unwieldy to be effective. In its place, it suggested that an annual meeting of a broadly based representative group of the legal profession at large should take place. As a complementary measure, they also recommended the appointment of four lay benchers to the governing body of the Law Society, two from Metropolitan Toronto and two from the remainder of Ontario.<sup>52</sup>

Attorney General Bales continues: "we have considered those recommendations in the light of the experience of the last two years and conclude that they are indeed appropriate. Sections 1 and 2 of the bill before the House carry out those recommendations. Section 1 provides for the appointment of four lay benchers with all the rights and privileges of elected benchers to participate in the government of the society."<sup>53</sup>

The reaction in the legislature was powerful. MPP Michael Cassidy was the first to reply; stating that the bill was "a revolution."<sup>54</sup> However, some of those in favour of lay representation in Convocation, who saw it as a necessary step, harboured doubts as to how well lay benchers would perform, and whether or not their participation would truly be in the public's best interest.

While the essence of Bill 104 was similar to the motion put forward by MPP Singer in 1970, it did not receive the same types of criticisms as his motion. Debates during the bill's second reading reveal that several MPPs opposed it on the basis that four lay persons would be too few to have a substantial impact. MPP Renwick, a lawyer, argued that there ought to be "30 lay representatives and 30 benchers elected in the traditional way", while admitting that this would be "quite an unreal situation".<sup>55</sup> In addition to calling the bill a "sop and an attempt by the legal profession to stem the rise of public indignation that the general public is feeling toward all professions",<sup>56</sup> MPP Melville Germa stated that he "would like to see probably half of the benchers being lay people, trusting that some of them would understand what is going on and would come back and let us know what is really there".<sup>57</sup> Notably, no one put forward arguments against the bill because they were against lay representation in Convocation.

Other concerns about Bill 104 dealt with how the lay benchers would be appointed, and specifically, whether this could be an opportunity to appoint women benchers. At that time, women had not yet been elected as benchers. MPP Singer questioned: "Are the benchers going to be male or female? [...] I don't think there has ever been a lady bencher in the Law Society of Upper Canada and it might be something the Attorney General should have a very good look at."<sup>58</sup>

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<sup>52</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 29th Parl, 3rd Sess, No 32 (30 April 1973) at 1395 (Bales) [*April 30 1973 Debate*].

<sup>53</sup> *Ibid* at 1395 (Bales).

<sup>54</sup> *Ibid* at 1395 (Cassidy).

<sup>55</sup> *June 19 1973 Debate*, *supra* note 51 at 3492 (Renwick).

<sup>56</sup> *Ibid* at 3501 (Germa).

<sup>57</sup> *Ibid*.

<sup>58</sup> *June 19 1973 Debate*, *supra* note 51 at 3490 (Singer).



MPP Margaret Campbell, an accomplished lawyer, and the first Ontario Liberal Party woman to be elected to the provincial legislature,<sup>59</sup> had mixed feelings concerning the appointment of women lay benchers. She explained:

It is very difficult for me to support this bill. Although I am not rising in opposition to it, it is nevertheless difficult for me to accept the fact that this government can appoint as a member of the benchers a woman who is not a lawyer, so that she would then become the first female bencher of the Law Society of Upper Canada [...] I think it could be an affront to every woman practicing law in this province. On the other hand, I can't take the position of requesting that the Attorney General should not appoint a woman, and so I am in a deep quandary about how this bill can be received by all of the very great women – and I'm not including myself – all of the great women in this province who have been very honourably engaged in the practice of the law, and who have not been recognized by their peers.<sup>60</sup>

The general consensus seemed to be that Bill 104 was necessary, but there appeared to be an understanding that the measures it put forward represented the bare minimum of what should have been enacted. For MPP Singer and others, Bill 104 was, at least, three years overdue. For others, the proposed legislation did not go as far as it should have in ensuring public representation on Convocation. From the perspective of an accomplished woman lawyer and politician, it was troubling to think that the first woman bencher might be appointed, and not elected.

The third reading of Bill 104 took place on June 22, 1973, and it received royal assent that same day.<sup>61</sup> As a result, the Law Society of Upper Canada became the first professional body in Ontario to officially include public representation in its governing body.<sup>62</sup>

## THE FIRST LAY BENCHERS AND THE FIRST WOMEN BENCHERS

On Friday January 17, 1975, Treasurer Stuart Thom welcomed the four Benchers appointed by the Lieutenant Governor on 20th November, 1974: Mr. Joseph D. Carrier, Toronto, Mr. Noel Ogilvie, Grimsby, Mrs. Roseanne Sutherland, Sudbury, and Mrs. Reginae M. Tait, Toronto. Roseanne Sutherland and Reginae Tait “were the first women ever to participate in governing the Law Society. Tait recalled being criticized by women lawyers who felt no woman should sit in Convocation until some had actually been elected.”<sup>63</sup> This echoes the sentiments expressed by MPP Margaret Campbell during the

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<sup>59</sup> Bob Hepburn, “Time for Toronto to honour Margaret Campbell: Hepburn”, *The Toronto Star* (24 July 2014), online:

<[http://www.thestar.com/opinion/2014/07/24/time\\_for\\_toronto\\_to\\_honour\\_margaret\\_campbell\\_hepburn.html](http://www.thestar.com/opinion/2014/07/24/time_for_toronto_to_honour_margaret_campbell_hepburn.html)>.

<sup>60</sup> *June 19 1973 Debate*, *supra* note 51 at 3499.

<sup>61</sup> Ontario, Legislative Assembly, *Journals of the Legislative Assembly of the Province of Ontario*, 29th Parl, 3rd Sess, 64th Day (22 June 1973) at 129-130.

<sup>62</sup> Law Society of Upper Canada, *Benchers*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/with.aspx?id=1136>>.

<sup>63</sup> “In memoriam: Reginae Mae Tait”, *Gazette* (Toronto: Law Society of Upper Canada, 2012), online: <<http://www.lawsocietygazette.ca/news/in-memoriam-reginae-mae-tait/>> [*Reginae Mae Tait*].

second reading of Bill 104 in June, 1973.

It is possible that the fact that the first women benchers were appointed lay benchers had an effect on voters in the bencher elections that took place soon afterward. On April 24, 1975, Laura L. Legge became the first woman to be elected in the Law Society's 178-year history, placing 17th out of 20 of those who successfully secured a Metro Toronto seat.<sup>64</sup> Laura Legge was also elected the first woman Treasurer in 1983.<sup>65</sup>

Reginae Tait had a great impact on both the Law Society as an organization, and Osgoode Hall itself. She served as a lay bencher from her appointment in November 1974 (first sitting in Convocation in January 1975) to June 1987.<sup>66</sup> During her time as a bencher, Reginae Tait "sat on more than 10 committees [...] including the Legal Education Committee (1975-1987), the Libraries & Reporting Committee (1975-1987), and the Legal Aid Committee (1978-1987)."<sup>67</sup> From 1980 to 1987, she was the Chair of the Muniments and Memorabilia Committee (the predecessor to the Heritage Committee), and was "instrumental in establishing an archives and Museum of Law".<sup>68</sup> She was the driving force behind persuading Convocation, in 1983, to establish a museum and archival program for historical records and artifacts.<sup>69</sup>

One of Tait's most significant contributions to Osgoode Hall was the stained-glass windows in Convocation Hall. She proposed substituting the 10 clear windows for stained-glass that would depict the history of law in Canada.<sup>70</sup> "Convocation approved the installation of the windows, provided that the costs were covered by donations." Reginae Tait raised the money for their construction, which was made possible by donations from individual lawyers, law firms and legal associations.<sup>71</sup> This was no small task, since each window cost approximately \$30,000 at the time.<sup>72</sup> The windows are, as Reginae Tait proudly stated, "the largest windows in heraldic design in North America and a Canadian treasure".<sup>73</sup>

According to Christopher Moore, "benchers soon came to appreciate the handful of lay appointees, particularly as it became accepted that they were independents, rather than delegates of the government which appointed them."<sup>74</sup> It was found that, as representatives of the public interest, without a specific constituency to represent, "the lay benchers tended to be drawn smoothly into the Convocation process, and they often became vigorous advocates for the Law Society."<sup>75</sup>

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<sup>64</sup> "Law Society elects first woman", *The Toronto Star* (25 April 1975).

<sup>65</sup> Law Society of Upper Canada, *Laura Legge, O. Ont., Q.C.*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/newsarchives.aspx?id=2147485737&cid=2147483771>>; see also Law Society of Upper Canada, *List of Law Society Treasurers*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/with.aspx?id=421>>.

<sup>66</sup> *Reginae Mae Tate*, *supra* note 63.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.* According to records, Canadian artist Christopher Wallis, from London, Ontario, was commissioned to design the windows. He was trained in England by masters of stained-glass.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Moore*, *supra* note 3 at 286.

<sup>75</sup> *Ibid* at 286.

## JUNE CALLWOOD AND THE AMENDMENTS OF 1998

One of the most influential lay benchers was June Callwood, a celebrated journalist, author and social activist, who served as a lay bencher from 1987 to 1991.<sup>76</sup> During her appointment, Callwood produced a report which found that the discipline process at the time was “admirable in its ponderous and judicious dignity when there is evidence of serious misconduct [...] but it is cumbersome and almost useless for most other matters”.<sup>77</sup> Moore notes that “[i]n the wake of her report, the complaints department was put under the authority of a committee of lay benchers and reoriented to satisfy the public’s demand for meaningful responses on even minor complaints and to make the process ‘problem-solving rather than adversarial’”.<sup>78</sup> Callwood’s committee of lay benchers also established a professional standards department to address poor quality legal service to the public.<sup>79</sup>

Callwood’s influence on the Law Society’s evolution in providing better service to the public continued after the conclusion of her term in 1991. In 1998, she played a major role in encouraging MPPs on the Standing Committee on Administration of Justice to advocate for the passage of Bill 53, the *Law Society Amendment Act*, 1998, and had substantially contributed to the bill’s content. Bill 53 proposed a variety of sweeping changes to the *Law Society Act*, including broader investigatory powers.<sup>80</sup> In a particular new provision, which was referred to as the “Callwood amendments”, Callwood sought to further the public interest by establishing a Complaints Resolution Commissioner. As she stated in the committee meeting on December 7, 1998, after the second reading of the bill, the “provision [establishing a Complaints Resolution Commissioner] is now covered in the new legislation, and I am here in a very ovarian sense to defend this because it was my idea”.<sup>81</sup> The Complaints Resolution Commissioner would act as the Law Society’s ombudsperson.

To this day, the Complaints Resolution Commissioner, established by the adoption of Bill 53 and the Callwood amendments, plays a crucial role in the complaint process. A person can apply to the Complaints Resolution Commissioner to review a case “where a complaint against a lawyer or paralegal has been closed by staff in the Complaints

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<sup>76</sup> Catherine Dunphy, “June Callwood, 82: Writer, social activist”, *The Toronto Star* (15 April 2007), online:

<[http://www.thestar.com/news/2007/04/15/june\\_callwood\\_82\\_writer\\_social\\_activist.html](http://www.thestar.com/news/2007/04/15/june_callwood_82_writer_social_activist.html)>; see also, Law Society of Upper Canada, *Lay (Appointed) Benchers of the Law Society of Upper Canada*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/PDC/Archives/Virtual-Archive/Benchers/Lay-%28Appointed%29-Benchers-of-the-Law-Society-of-Upper-Canada/>> [*Lay Benchers*].

<sup>77</sup> Moore supra note 3 at 324.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> For a thorough overview see the “Statement by the Ministry” delivered by Kathleen Beall, Counsel with the policy branch of the Ministry of the Attorney General at: Ontario, Legislative Assembly, *Committee Transcripts: Standing Committee on Administration of Justice* (7 December 1998) at 1533-1550 (Kathleen Beall) [*Standing Committee on Administration of Justice*].

<sup>81</sup> *Ibid* at 1600 (June Callwood).

Resolution or Investigations Department and you are unsatisfied with the result”.<sup>82</sup> The Complaints Resolution Commissioner is “independent of the Law Society of Upper Canada’s professional regulation activities”.<sup>83</sup>

Notably, Bill 53 also increased the number of appointments of lay benchers from four to eight.<sup>84</sup> As a result of the content of these amendments, several lay benchers not only played active roles in advocating for their adoption, they became strong supporters of the Law Society itself. Marion Boyd, the MPP for London Centre, former Attorney General of Ontario and lay *ex officio* bencher at the time, spoke on the issue during its second reading, on October 7, 1998:

I wanted very much to speak to this bill, because as the first layperson, or effectively the first layperson to have been an Attorney General in Ontario, one of the things that was closest to my heart was the efforts that were being made by the law society to revamp its processes to make them more friendly to the consumer, to try and look at the whole process of discipline, the process of working in the public interest around issues that face the practice of law in Ontario, and in fact on streamlining its management and some of its administrative duties.<sup>85</sup>

MPP Boyd, who is now an appointed lay bencher, commended the Law Society for its work. Based on the proposed changes in Bill 53, she concluded, “I think it is important for the public to understand and for all of us to applaud the fact that the law society, in these changes, has clearly come down on the side of being there to further the public interest, to protect the public interest, because that is its prime directive.”<sup>86</sup>

Hope Sealy, a lay bencher from 1992 to June 1998, also advocated strongly in favour of the bill. Sealy worked as a journalist with the Canadian Broadcasting Corporation and the British Broadcasting Corporation before being appointed a lay bencher; in addition, she eventually became the Law Society’s Complaints Resolution Commissioner.<sup>87</sup> She noted in the committee meeting after the bill’s second reading that “the armoury of weapons which the law society currently has to deal with those lawyers [who commit lesser acts of dishonesty or incompetence] is totally insufficient, and lawyers are just too important to the public good for the current situation to continue.”<sup>88</sup> When asked how Convocation has responded in the past to benchers who approach matters without the public good in mind, she stated: “I have been absolutely proud, by and large. [...] There are always going to be the people who have a greater sense of the public good than others, and in my experience, those interested in the public good all have so far carried sway.”<sup>89</sup>

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<sup>82</sup>Law Society of Upper Canada, *Complaints Resolution Commissioner*, online: Law Society of Upper Canada <<http://www.lsuc.on.ca/complaints-resolution-commissioner/>> [*Complaints Commissioner*].

<sup>83</sup> *Ibid.*

<sup>84</sup> *Standing Committee on Administration of Justice*, *supra* note 80 at 1533 (Kathleen Beall).

<sup>85</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 36th Parl, 2nd Sess, No 40 (7 October 1998) at 1740 (Boyd).

<sup>86</sup> *Ibid.*

<sup>87</sup>Government of British Columbia, *Ms. Hope Sealy, Biography and Memberships*, online: Government of British Columbia <<http://www.brdo.gov.bc.ca/memView.asp?Member=217341>>.

<sup>88</sup> *Standing Committee on Administration of Justice*, *supra* note 80 at 1620 (Sealy).

<sup>89</sup> *Standing Committee on Administration of Justice*, *supra* note 80 at 1620 (Sealy).

The third reading of Bill 53 was carried on December 15, 1998, and it received royal assent on December 18, 1998.<sup>90</sup> To this day, the *Law Society Act* requires the appointment of eight lay persons as benchers.<sup>91</sup> Since 1998, there have been no substantial changes in the appointment of lay benchers to Convocation.

### **ACCESS TO JUSTICE ACT, 2006**

The most influential piece of legislation in recent years that amended the *Law Society Act* in furtherance of the public interest was the *Access to Justice Act, 2006*. The *Access to Justice Act*, which was introduced as Bill 14, involved extensive amendments to the *Law Society Act*. The Attorney General at the time, the Hon. Michael Bryant, publicly acknowledged lay bencher Paul Dray as playing a “leadership role with respect to Bill 14”.<sup>92</sup> Among the amendments was that the Law Society would provide for the qualification and regulation of both lawyers and paralegals providing legal services in Ontario under section 4.1. As a result, Bill 14 also established the Paralegal Standing Committee under section 25.1(1). Importantly, the bill also added section 4.2 to the *Law Society Act*, which established *inter alia* that the Law Society has: “a duty to maintain and advance the cause of justice and the rule of law”; “a duty to act so as to facilitate access to justice for the people of Ontario”; and, “a duty to protect the public interest”.<sup>93</sup>

Paul Dray, appointed as a lay bencher in 2003, was the first paralegal bencher.<sup>94</sup> He was one of only a few paralegals to present to the province’s Standing Committee on Justice Policy to support the Law Society regulating paralegals. On September 11, 2006, he stressed to the Standing Committee on Justice Policy that paralegals needed a strong regulatory body and appropriate regulation, which could be provided by the Law Society.<sup>95</sup>

Paul Dray’s one criticism of Bill 14 was that newly-regulated paralegals were not designated as members of the Law Society. In response, an amendment was proposed and included in the third reading of the bill “that would make persons licensed to provide legal services “paralegal members” of the law society.”<sup>96</sup> The third reading was carried

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<sup>90</sup>Ontario, Legislative Assembly, *Bill 53, Law Society Amendment Act, 1998*, 36th Parl, 2nd Session, online:

<[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=1721&isCurrent=false&detailPage=bills\\_detail\\_status](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=1721&isCurrent=false&detailPage=bills_detail_status)>.

<sup>91</sup> *Law Society Act*, RSO 1990, Chapter L 8, at s 23(1), online: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90l08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm)>.

<sup>92</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38 Parl, 2nd Sess (19 October 2006).

<sup>93</sup> Ontario, Legislative Assembly, *Bill 14, Access to Justice Act, 2006*, 38th Parl, 2nd Sess, online: <[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=284&isCurrent=false&ParlSessionID=38%3A2](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=284&isCurrent=false&ParlSessionID=38%3A2)> [*Bill 14*].

<sup>94</sup> Law Society of Upper Canada, *Paul Dray (Bio)*, online: Law Society of Upper Canada <[http://www.lsuc.on.ca/media/about\\_in\\_dray.pdf](http://www.lsuc.on.ca/media/about_in_dray.pdf)> [*Paul Dray Bio*]; see also *Lay Benchers*, *supra* note 76.

<sup>95</sup> Ontario, Legislative Assembly, *Standing Committee on Justice Policy Transcript*, 38th Parl, 2nd Sess (11 September 2006) at 1510 (Dray) [*Justice Policy*].

<sup>96</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess (5 October 2006) at 1550 (David Zimmer).

on October 19, 2006 and the *Access to Justice Act* received royal assent the same day.<sup>97</sup>

Dray's advocacy for the public interest helped lead to the passage of this important legislation and ultimately led to the inclusion of paralegals as members of the Law Society.

## REPRESENTING THE PUBLIC INTEREST TODAY

While the number of lay benchers has not increased since 1998, the work of influential lay benchers continues to shape the way the Law Society operates today. This is especially true of Paul Dray's leadership role in advocating for the *Access to Justice Act*, 2006. Thomas Conway, Treasurer of the Law Society from 2012 to 2014, wrote on June 27, 2014, that the Law Society is still working through the implications of the legislative changes of 2006.<sup>98</sup>

The 2006 addition of the Law Society's "duty to act so as to facilitate access to justice for the people of Ontario" led Treasurer Conway to develop an important Law Society initiative in 2013, called the Treasurer's Advisory Group on Access to Justice. The group was established "to seek information and advice from a broad cross-section of those involved in the justice sector: organizations whose core mandate involves addressing access to justice, lawyer and paralegal associations, courts and government representatives, and academics".<sup>99</sup>

On February 27, 2014, the Treasurer's Advisory Group on Access to Justice Working Group submitted a report to Convocation for decision. Convocation approved the report, which called for the creation of a new internal framework "to facilitate the reinforcement and integration of access to justice objectives, including equity principles, into the core business, functions and operational planning of the Law Society".<sup>100</sup> In addition, Convocation approved the reconstitution of the Treasurer's Advisory Group on Access to Justice to be a standing forum called The Action Group on Access to Justice ("TAG"). TAG's purpose is to foster change and collaboration among the access to justice stakeholders. TAG currently has a number of collaborative initiatives underway.<sup>101</sup> Upon her election in June 2014, Law Society Treasurer Janet Minor, expressed her commitment to addressing access to justice issues, stating: "I look forward to continuing to enhance public confidence in our regulatory processes and working collaboratively

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<sup>97</sup> *Bill 14*, *supra* note 93.

<sup>98</sup> Thomas Conway, "My last post as Treasurer", *Conway Baxter Wilson LLP* (27 June 2014), online: Conway Baxter Wilson LLP <<http://conway.pro/fr/my-last-post-as-treasurer/>>.

<sup>99</sup> Law Society of Upper Canada, "Report of the Treasurer's Advisory Group on Access to Justice Working Group", *Report to Convocation* (23 January 2014), at 6, online: Law Society of Upper Canada

<[http://lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2013/convjan2014\\_treasurersadvisorygroup.pdf](http://lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2013/convjan2014_treasurersadvisorygroup.pdf)>.

<sup>100</sup> *Ibid* at 2.

<sup>101</sup> For examples see: "Examples of TAG Collaborative Initiatives", online: Law Society of Upper Canada <<http://www.lsuc.on.ca/with.aspx?id=2147498877>>.

with our justice partners to identify and deliver concrete solutions to improve the public's access to legal services.”<sup>102</sup>

## **CONCLUSION:**

The “terrible legislation” put forward in 1964, promoted as a weapon against organized crime, had wonderfully positive effects. This sparked a series of events that eventually led to establishing public representation in the governing body of the Law Society of Upper Canada. While lawyers and legal academics initially expressed doubt as to whether lay benchers would be able to adequately represent the public interest and effectively fulfill their duties as benchers, that skepticism quickly vanished. History has proven that some of the most influential benchers have been lay benchers. Forty years later, their work continues to strengthen the Law Society in regulating lawyers and paralegals in the public interest.

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<sup>102</sup> “Janet E. Minor elected Treasurer of the Law Society”, *Canadian News Wire* (26 June 2014), online: <<http://cnw.ca/9xa96>>.

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