



**TAB 9**

**Report to Convocation  
November 28, 2014**

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**Heritage Committee**

**Committee Members**

Constance Backhouse (Chair)  
Patrick Furlong  
Virginia MacLean  
Nicholas Pustina  
Jan Richardson

**Purposes of Report: Information**

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## **COMMITTEE PROCESS**

1. The Committee met on November 11, 2014. Committee members Constance Backhouse (Chair), Pat Furlong, Virginia MacLean, Nicholas Pustina and Jan Richardson participated. Staff members Paul Leatherdale and Sophia Spurdakos also attended.

## INFORMATION

## HISTORIC DISCIPLINE DATA PROJECT – REPORT

**Issue**

2. In 2011 Convocation approved a Heritage Committee proposal for a project to gather historic discipline data. The project has now been completed and the final report for Convocation's information is set out here.
3. The project results provide easily accessible information on historic discipline processes and outcomes and lay the groundwork for legal historians who may wish to build on what has been learned.

**Rationale for the Project**

4. The history of the legal profession's discipline processes, although researched in other jurisdictions, has not been studied in any depth in Canada.
5. Prior to 1986, discipline hearings at the Law Society were held in camera. Outcomes of the proceedings were generally public, but were not easily accessible as there was no catalogue of the information. Material that was originally *in camera* remains so, but the public information in the Law Society's Archives' nonetheless provides a wealth of historic information.
6. The goals of the Historical Discipline Data project were to undertake research and provide information on the Law Society's historic discipline process, which researchers and the public could subsequently access. More specifically the project has,
  - a. identified disciplinary records in the custody of the Law Society Archives;
  - b. documented the historical discipline process and types of disciplinary actions the Law Society took historically, with emphasis on public sources; and
  - c. enhanced the accessibility of public information.

**The Findings**

7. The project research focused on one major source of information that is publically accessible and used two additional sources, which are not public, as tools to confirm and verify the research from the public source. Overall, the public records researched cover the period from 1879 - 1982, but it was determined that the period from 1879 to 1950 was the appropriate range for a historic focus.<sup>1</sup> The data dating from 1879 to 1913 will be posted on the Law Society's public website, with one additional year of data added annually up to 1950 so that data on matters occurring 100 years ago or earlier will be available on-line.
8. The research undertaken is important as a first step in making future in depth analytical work more feasible. Primary research such as this provides the necessary informational groundwork essential to move forward in a topic area. The Committee is satisfied that legal

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<sup>1</sup>The later public information can be accessed through the Archives department.

historians can build on this data to undertake studies at the next level of analysis. Indeed, the Committee, through the Chair, has already had discussions with a Canadian legal historian who may be interested in using the project data as a starting point for future study.

9. The Law Society's Archivist, Paul Leatherdale, undertook all the research for this project, using his in depth understanding of Law Society materials to analyze the sources effectively and catalogue the information. The Committee expresses its thanks to him for his invaluable role in the project and the value of his meticulous research.<sup>2</sup>

### Discussion

10. The first step in the project was to prepare a list of sources under the custody of the Archives department that document discipline information. A number of these are not publicly accessible, but others are. The Table of Sources is set out at [TAB 9.1.1: Table of Sources](#). Public documents are identified.
11. As set out above, to ensure the effective use of the available research time it was decided to focus on one main public source: the Printed Minutes of Convocation, which begin in 1879.
12. The two other sources used were the Original Minutes of Convocation, which begin in 1797 and the Discipline Committee Minute Books, up to 1950 which begin in 1915. Both sources are *in camera* for the entire period under focus.
13. The research has produced a chronological listing of all discipline matters recorded in the Published Minutes of Convocation. The information for the period 1879-1913 will shortly be available on the Law Society's website.

The listing records,

- a. in most cases, the name or initials of the person against whom the complaint was made or disciplinary action taken. In some cases no name is provided in which case this is indicated;
- b. the birth date, where known;
- c. the date of call to the bar if the lawyer was a barrister;<sup>3</sup>
- d. the date of the disciplinary matter as it appears in the Published Minutes of Convocation;
- e. particulars of the complaint or reasons for the disciplinary action (if known);
- f. a description of the disciplinary hearing or action taken by the Discipline Committee;
- g. the outcome of the disciplinary matter;

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<sup>2</sup> As a result of all the research being undertaken entirely in-house the project has been completed without using any of the \$10,000 budget allocated to it.

<sup>3</sup> Dates of birth and call dates were not part of the Minutes, but were obtained from other sources to make the record more complete.

- h. the type of member of the Law Society (Those recorded as barristers were both barrister and solicitor. Those recorded as a solicitor were only solicitors. Students-at-law are also identified); and
  - i. notes about the entries where applicable.
14. While each file is unique, the overall data does reveal a number of common themes as follows:
- a. A number of the complaints arise in the context of the lawyer's involvement in litigation. It is not always clear from the available information how the lawyer's behaviour is impugned, leaving open a question of whether the complaint is about sharp or unethical practice of some type or may in fact be about quality of service. In a number of case the name of the lawsuit is provided, which could be useful to future researchers.
  - b. A significant number of complaints involve allegations of unauthorized practice (e.g. a student-a-law representing himself as a lawyer or a solicitor representing himself as a barrister). This raises questions about the barrister-solicitor divide and the ultimate elimination of a divided bar in Ontario as well as questions of the reasons for so many of these complaints.
  - c. A number of complaints are resolved with the Law Society determining that the proper forum for resolution is the courts. In those complaints related to fees the Law Society notes that it has no jurisdiction to intervene. To some degree these types of complaints speak to breakdowns in communication between lawyer and client.
  - d. The complaints range from the very minor (failed to return a book to the library; abused library privileges) to consideration of disbarment following criminal conviction.
  - e. A number of complainants are members of the judiciary or well-known lawyers. Often the complainant is a client who is dismayed with the lawyer's behaviour for reasons not part of the data. Interestingly, a noticeable proportion of clients complaining about the lawyer are female. It would be interesting to explore whether the status of the complainant had an impact on the outcome of the matter.
  - f. A number of lawyers appear on more than one occasion as counsel to members accused or to the Law Society. It would be interesting to explore this fact. Was there sufficient work in this area for a lawyer to specialize in it?
  - g. It is very common to find the complainant named in the public document, even when the lawyer is not. The complainant's right to privacy does not appear to be a concern, while the lawyer's is. Over the decades, there has been a steady evolution in the issue of identification of parties, which might be interesting to explore further.

15. What these observations reveal is that even with the limited available information in the public record patterns in the discipline process emerge that careful research could further investigate.
16. Possible other topic areas for further study emerge from the research as follows:
  - a. **The Evolution of the Law Society's Regulation and Discipline Processes:** Spanning as it does two centuries of discipline matters, the research reveals at a high level the Law Society's regulatory evolution,
    - i. in the way in which it reported discipline matters;
    - ii. its changing views of privacy (members not named; complainants named);
    - iii. the evolution of matters that resulted in disbarments;
    - iv. increasing standardization of reporting methods (certain matters of lesser severity no longer reported);
    - v. the changing nature of the origin of complaints (in early data primarily from the Courts in regard to behaviour of barristers);
    - vi. the gradual increase in the number of discipline matters per year, which could be a function of a number of factors including an absence of regulatory culture or less formal ways of dealing with disciplinary offences in the early years of self-regulation, a gradual increase in the number of lawyers, leading to greater likelihood of disciplinary offences, economic downturns leading to higher numbers of infractions, increase in direct client complaints, etc.);
    - vii. the introduction of a formal Committee on Discipline in 1877; and
    - viii. the impact of technology on regulatory processes (e.g. the use of typewritten discipline reports begins in 1912).
  - b. **Using the Data for Further Inquiries:** In general, the data does not reveal information respecting the member's type of practice, ethnicity or religion. It does often identify the town in which the member practises. Historians interested in determining more detail and possible trends in the information can use the compiled data to conduct newspaper searches as well as obtain information from genealogical records, tax rolls, voter lists, etc.
  - c. **Developing Historic Context for the Data:** As a regulator of the legal profession in the public interest the Law Society may consider discipline data primarily from the perspective of risk and public harm. Any discussion and analysis of the data must consider this view, but from a historic perspective the context within which members intersect with the discipline process may also shed light on regulation, its strengths and weaknesses and its evolution, the challenges of regulation.
17. The historic discipline data project has resulted in the accumulation of a wealth of information previously scattered throughout the Law Society records. The data collected will prove an invaluable resource to legal researchers and to the Archives department itself.

**HISTORIC DISCIPLINE DATA PROJECT  
TABLE OF SOURCES**

This Table identifies the various sources of information in the Law Society's Archives respecting discipline data information, with a focus on historic discipline data, the subject of this project. For each source, the type of record is identified, with the periods covered by the data, a brief description of the content of the record and whether it is an *in camera* or public source set out. Some records are both. The majority of sources in the Table are *in camera*.

| <b>Record</b>                                 | <b>Date range</b>                              | <b>Description</b>  | <b>In Camera</b>   | <b>Public</b>   |
|---|--|---|--|---|
| Minutes of Convocation                        | 1797 – 1856,<br>1865 – 1881,<br>1893 – present | The official minutes of the proceedings of Convocation.   | √<br>1797 – February 1989,<br>some matters are still<br>reported in camera   | √<br>March 1989 – present,<br>plus three trial public<br>Convocations in 1988 |
| Convocation files                             | 1922 – present                                 | Contain supporting material to the Minutes of Convocation: agendas, correspondence, original reports to Convocation, orders, etc. Include files relating to the discipline convocations (ca. 1974-2000).  | √<br>Correspondence, most<br>reports to Convocation<br>up to Feb. 1989, in<br>camera reports to<br>Convocation after<br>March 1989 | √<br>Orders, most reports<br>to Convocation (after<br>March 1989)             |
| Printed Minutes of Convocation                | 1879-1927,<br>1936-1982                        | Abridged version of the minutes of Convocation published in the Canada Law Journal and later the Ontario Weekly Notes and Ontario Reports.  |  | √   |
| Discipline Committee minute books and agendas | 1915-1984                                      | Minute books and annotated agendas documenting meetings and decisions of the Discipline Committee.  | √  |   |
| Discipline Committee dockets                  | 1912-1922,<br>1956-1977                        | Volumes contain a registers of complaints, which record the names of the complainants and respondents, the nature of the complaint, and a chronological listing of actions and communications by the Committee. It appears that the discipline docket summaries for the period of the 1930s and 1940s were placed in the individual's member file. The dockets were replaced by situation sheets. | √  |   |

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|---|-------------------------|--|---|---|
| Indices to Discipline Dockets             | 1938-1955               | Volumes contain an index to solicitors complained about and an index to complainants.  | √ |   |
| Discipline Committee administrative files | 1920-1974,<br>1981-1984 | Files maintained by the secretary to the Discipline Committee. Most relate to particular subjects, not discipline cases, but a review of the files could be done to determine whether any records pertain to individual discipline matters.  | √ |   |
| Discipline hearings minute books          | 1964-1987               | Volumes contain handwritten notes of discipline hearings.  | √ |   |
| Authorization memoranda                   | 1991-1996               | Document requests for authorization of disciplinary action by the Discipline, Complaints, Audit, and Investigations departments. Submitted to the Chair and Vice-Chairs of the Discipline Committee, later the Discipline Authorization Committee.   | √ |   |
| Member files                              | ca. 1915 – present      | The general member file contains documentation about many aspects of the member's activity with the Law Society (admission and education, articling, fees, military service, press clippings, etc.). The files contain documentation about discipline matters until ca. 1970 and documentation on complaints until the early 1980s. The earliest files contain very little documentation about the member. | √ |   |
| Communiqué                                | 1971-1987               | Newsletter published by the LSUC. Reported discipline decisions and other profession-related matters.  |   | √ |
| Discipline Digest                         | 1992-1996               | Newsletter published by the LSUC. Reported on discipline matters.  |   | √ |
| Ontario Lawyers Gazette                   | 1997 – present          | Periodical published by the LSUC. Includes information on discipline matters.  |   | √ |