

LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
7TH COUNCIL, 53RD SESSION

TABLED DOCUMENT NO. 10-53

TABLED ON JUNE 20, 1974

THE NORTHWEST TERRITORIES BAR ASSOCIATION

YELLOWKNIFE, N.W.T.

P. O. Box 2668



June 19, 1974

Mr. Nick Sibbeston
Chairman of the
Standing Committee on Legislation
Council of the Northwest Territories
Yellowknife, Northwest Territories

Re: Proposed Law Society of the
Northwest Territories

I enclose Submission of the Northwest Territories Bar Association which I would ask you to table with the Council of the Northwest Territories. This Submission relates to the Administration's recommendations relating to professions and occupations.

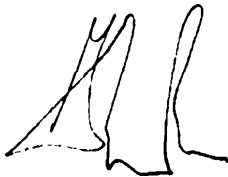
It is essential in the interests of the public that the standards of conduct of the legal profession be regulated. It is also essential that the lawyer be free to act for his client without fear of interference, though always subject to the law of the land.

For these reasons the Northwest Territories Bar Association proposes that the Law Society of the Northwest Territories be created with power to discipline its members and to make available a method of dealing with complaints against lawyers without the confidential information of clients coming into the hands of Government officials.

The enclosed Submission embodies this proposal and discusses the details at length.

I include supporting motion unanimously carried by the Alberta Law Society. I also enclose a telegram from the President of the Canadian Bar Association supporting the establishment of a Law Society in the Northwest Territories. Mr. E. Neil McKelvey, the President of the Canadian Bar Association and Mr. Robert Fraser, President of the Alberta Branch of the Canadian Bar Association met with the Commissioner on May 27 and indicated the Canadian Bar Association fully supported the Northwest Territories Bar in this submission. Mr. W. H. Hurlburt, Vice President of the Alberta

Law Society met with the Commissioner at the same time and conveyed the Law Society of Alberta's support for this submission.

A handwritten signature in black ink, appearing to read 'Graham Price', with a stylized, looped flourish at the end.

Graham Price
President

Pp

Encls.

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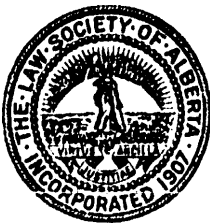
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BT

THE CANADIAN BAR ASSOCIATION WHOLEHEARTEDLY APPROVES OF AND SUPPORTS YOUR REQUEST TO THE COMMISSIONER AND COUNCIL OF THE NORTHWEST TERRITORIES FOR THE ESTABLISHMENT OF A LAW SOCIETY IN THE TERRITORIES. SINCE I WILL BE UNABLE TO ATTEND MYSELF DUE TO CONFLICT WITH OTHER BRANCH MEETINGS I HAVE ASKED MR R P FRASER QC OF CALGARY WHO IS PROVINCIAL CHAIRMAN OF THE ASSOCIATION FOR ALBERTA TO ATTEND ON OUR BEHALF IN YELLOWKNIFE AND RENDER WHATEVER ASSISTANCE WE CAN GIVE YOU IN FURTHERING YOUR SUBMISSION

E VEIL MCKELVEY QC PRESIDENT THE CANADIAN BAR ASSOCIATION.



The Law Society of Alberta

THE COURT HOUSE
611 - 4TH ST. S.W., CALGARY, ALBERTA T2P 1T5

W. B. KELLY, Q.C.
SECRETARY-TREASURER

J. J. OMAN
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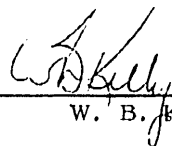
C E R T I F I C A T E

I, WILLIAM BERNARD KELLY, Secretary-Treasurer of The Law Society of Alberta, hereby certify that the Benchers of The Law Society of Alberta passed the following Resolution in Meeting at Jasper, Alberta on the 29th day of May, 1974:

MOTION: That The Law Society of Alberta express its support of the Northwest Territories Bar Association in its endeavours to become a self-regulating body and that The Law Society of Alberta will co-operate in any reasonable way in which it can.

CARRIED Unanimously.

June 11th, 1974.



W. B. Kelly

S U M M A T I O N

Page 1 - Part I

INTRODUCTION

At present the regulation of lawyers is in the hands of the Commissioner

The Northwest Territories Bar Association plays a limited role in the regulation of lawyers

A Law Society which regulates lawyers benefits first and foremost the public

A Law Society does not protect a lawyer

Page 5 - Part II

CREATION OF THE LAW SOCIETY

A five-man Executive, elected annually, would run the day-to-day affairs of the Society

The Executive would seek public input in a number of areas

Page 7 - Part III

MEMBERSHIP AND ENROLLMENT

Monopoly is not appropriate

Students in the Northwest Territories would be required to pass the Alberta Law Society exams before being allowed to practice in the Northwest Territories

Page 8 - Part IV

DISCIPLINE

The lawyer is subject to two disciplines: that of the Law Society and that of the law of the land

Discipline is clearly the most important task for the Law Society

The Discipline Committee would consist mainly of lawyers who live outside the Northwest Territories

All complaints would be directed to the Secretary

The Chairman of the Discipline Committee, a lawyer living outside the Northwest Territories, would review all complaints

An Investigating Committee would look into serious matters

The Law Society would encourage public awareness of the complaints procedure

Page 12 - Part V

PROTECTION OF PERSONS DEALING WITH LAWYERS

The existence of a Law Society is a specific act of furthering the public interest

If a member of the public suffered because of the intentional misdeeds of a lawyer, he would be compensated from a fund set up by the Law Society

The Law Society would require every lawyer to have insurance to cover any mistakes made by the lawyer

The Law Society would require every lawyer to properly maintain a separate account for money held for the client

The Law Society, in the appropriate case, would take over a lawyer's files

Page 15 - Part VI GENERAL

The Law Society would create a number of committees to deal with various matters

The Law Society would not restrict lawyers living outside the Northwest Territories from practising in the Northwest Territories

The Law Society would encourage lawyers to keep aware of changes in the law

Page 16 - Part VII UMBRELLA LEGISLATION

The Legal Profession is unique

A separate Legal Profession Ordinance could conform to a set of broad principles

The Legal Profession Ordinance is specialized legislation

Page 18 - Part VIII CONCLUSION

This submission is made by all lawyers in the Northwest Territories

A draft Legal Profession Ordinance that follows this submission has been given to the Administration

SUBMISSION OF THE NORTHWEST TERRITORIES BAR
ASSOCIATION TO THE COMMISSIONER AND COUNCIL
OF THE NORTHWEST TERRITORIES FOR THE INCOR-
PORATION OF A LAW SOCIETY IN THE NORTHWEST
TERRITORIES

The following is a proposal by the Northwest Territories Bar Association to you regarding changes in the Legal Profession Ordinance and in the government and regulation of the legal profession in the Northwest Territories which the Association feels are now necessary and timely.

PART I - INTRODUCTION

The legal profession of the Northwest Territories has been and now is governed by the Legal Profession Ordinance, R.O.N.W.T. 1956, Chapter 57, as amended. That Ordinance, among other things, defines the practice of law in the Northwest Territories, limits the practice of law to duly qualified barristers and solicitors, defines the criteria and the procedure for becoming a barrister and solicitor in the Northwest Territories and establishes the licensing procedure and the disciplinary procedure.

The Legal Profession Ordinance is structured in such a way that the legal profession is governed and regulated by the Commissioner of the Northwest Territories.

To date the prime function of the government of the Northwest Territories in respect to the legal profession has been to oversee the licensing of lawyers. That role has, for the most part, been a purely clerical function. Those applying for enrollment as a lawyer have simply provided the Registrar with evidence of their qualifications, paid their fees and have been enrolled.

At present the discipline of lawyers in the Northwest Territories is in the hands of the Commissioner of the Northwest Territories. The procedure provided in the Legal Profession Ordinance is for a complaint to be made to the Commissioner and then referred by him, at his discretion, to a board of inquiry appointed by him. This

procedure is very expensive and cumbersome and accordingly has not been used for minor disciplinary infractions. As most complaints against lawyers are for matters involving questions of professional etiquette, rules of advertising by lawyers, and complaints by clients of delay or excessive fees, none of these complaints have been acted upon and accordingly the public has suffered.

This Bar Association has for a number of years met on a regular basis to consider matters of importance to the public and the profession. Among other things this Association has been involved in extensive negotiations with the Territorial and Federal Governments with regard to the Legal Aid program; we have discussed and dealt with the problems of some uniformity in lawyers' fees; we have drafted and adopted a code of legal ethics for the Northwest Territories Bar; we have, at the request of the Territorial Government, examined various pieces of legislation and provided comments to the Administration; we have made an effort to assist in the proper maintenance and development of a law library for the Northwest Territories. During the course of discussions at meetings of the Northwest Territories Bar Association the Bar has reached agreement on a number of practical matters affecting not only lawyers but their clients and the Public at large.

While the Northwest Territories Bar Association has had a role to play, the role has been limited by the inability of the Association to impose rules of conduct upon lawyers and enforce those rules. In practice this has meant that the Bar has been virtually powerless to deal with those complaints which have been made to it concerning lawyers. These complaints have generally not been such as to warrant a formal board of inquiry, but they have warranted some attention. The Bar has also discussed the question of mandatory professional liability insurance for lawyers and has made recommendations concerning this matter which it finds it cannot enforce.

All the common law provinces of Canada have self-regulating legal professions created by Acts of the Provincial Legislatures. It

is the unanimous feeling of the members of the Northwest Territories Bar Association that the time has come for the Northwest Territories legal profession to attain similar status and to take over the functions of the regulation of the legal profession which are now in the hands of the Government of the Northwest Territories. In effect these are the licensing function and the disciplinary function. The profession is of the opinion that these functions cannot be separated.

This Association proposes that an Ordinance be enacted similar to Acts passed by Provincial Legislatures and that the members of the legal profession in the Northwest Territories assume the responsibility for their own regulation.

It is the opinion of this Association that it would be to the benefit of the people of the Northwest Territories to have a self-regulating body through a Law Society. Not only could those persons most affected take an active role in regulating the legal profession; there would be the opportunity for the public to make their voice properly heard and to have some action taken with regard to their complaints.

Because it regulates the conduct of lawyers in the public interest, a Law Society helps to assure the client that his lawyer will adhere to high standards of conduct. Because it is not an arm of government a Law Society helps to assure to the client the right of independent counsel. Because it is administered by elected members of the profession, a Law Society helps to assure lawyers that regulation of their conduct will not be arbitrary and that their legitimate concerns will receive recognition and representation.

An independent self-regulating body benefits first and foremost the public. The client must know and be secure in the knowledge that none of the information that passes between him and his lawyer will be subsequently disclosed to anyone who can use the information against him.

This Association is of the unanimous opinion that it is contrary to democratic principles and a very real danger to have the regulating of the legal profession within the control of a political body. The freedom from government interference that the judiciary, juries, and the legal profession has established in the common law system through many centuries of hard fought and important battles cannot be infringed upon.

The basic point is that the individual lawyer is a necessary part of the administration of justice. It is essential that the citizen has somebody he can go to who will advise him. The availability of an adviser, an advocate, a representative who is able to devote himself solely to the interest of his client is essential. The individual lawyer in the practice of his profession must be free of interference by the State or of the threat of interference by the State, otherwise the citizen has nobody to turn to.

This does not mean that the lawyer is above the law. The Law Society does not protect him nor stand between the lawyer and the law that relates to his conduct.

The lawyer is subject to control by the Courts, both as to conduct and to some extent over fees. Lawyers are also under the control of their professional organization, the Law Society, which regulates their conduct and prescribes standards and acts in the public interest to protect the public and the client.

In essence the lawyer is subject to double-jeopardy: discipline by his own body with respect to conduct, and discipline under the law of the land.

This Association submits that the statutes of the various provinces and in particular, the Legal Profession Act of the Province of Alberta, should be used as a model for a new Legal Profession Ordinance in the Northwest Territories. Our association with the Province of Alberta has been a strong one and most of the active members of the Northwest Territories Bar are also members of the Alberta Law Society.

Officers of this Association have conducted extensive negotiations with the Secretary and other officers of the Alberta Law Society and we are assured of their cooperation and assistance in establishing a Law Society.

PART II - CREATION OF THE LAW SOCIETY
ITS CONSTITUTION AND POWERS

A Law Society of the Northwest Territories would be created. Its initial membership would consist of all those entitled to practice law in the Northwest Territories pursuant to the Legal Profession Ordinance in the Northwest Territories at the time when the new enactment is proclaimed in force.

A Law Society of the Northwest Territories would have all of the powers of a body corporate including the power to hold property and borrow money.

At present the Legal Aid scheme is administered by a Legal Aid Committee created by agreement of the Federal and Territorial Governments. The local Bar takes an active and essential role in the administration of this plan and it would not be proposed at this time to deal with Legal Aid in the Legal Profession Ordinance. It is envisaged that the Law Society would become a party to the existing Legal Aid agreement.

In view of the size of the resident members of our Bar Association (13 private practitioners, 3 Territorial Government lawyers, and 3 Crown Attorneys), we do not feel it would be necessary to create a governing body of Benchers. We are still of such a size where it is as easy to call a general meeting as it would be to call a meeting of the Benchers. The government of the Society would be conducted by the membership as a whole in general meeting, with the various tasks and powers being delegated to members of the Executive of the Society.

It would be necessary for the Society to have a rule-making power, because this is part of the process of self-regulation. All rules

would be brought to the attention of the Territorial Administration.
All rules would be publicized.

The Executive would be composed of five (5) positions:

President	Resident Lawyer
Vice President	Non-Resident Lawyer
Vice President	Resident Lawyer
Secretary	Resident Lawyer
Treasurer	Resident Lawyer

The Vice President, the only non-resident, would be consulted by phone and mail but would not normally attend meetings.

The Executive would seek public input:

- i) in the setting of fees through the guideline tariff that is published by the Bar;
- ii) as to what services should be defined as coming within the definition of the practice of Law and reserved exclusively for lawyers and whether any of these services could be performed by persons other than lawyers, as for example para-legal people and court aide workers;
- iii) in the question of providing legal services at a reasonable cost, considering the means of the client. This concerns Legal Aid programs, pre-paid legal services, group legal plans;
- iv) in dealing with the question of specialization among lawyers and the advantages and disadvantages. It is submitted that practice in a specialized field should not be restricted to specialists. Also, specialists should not be restricted to practice in their field of specialization;
- v) into the desirability of setting up a legal referral service where basic legal advice could be obtained at a minimum cost;

- vi) into the questions of:
 - a) quality of legal services and perhaps making continuing legal education programs compulsory,
 - b) promptness of legal services.

The offices of Secretary and Treasurer could be held by one person.

Election of the Executive would have to be by postal ballot as such a large number of the active members of the Northwest Territories Bar are not resident in the City of Yellowknife or for that matter, in the Northwest Territories.

The Society would have at least two general meetings per year with a provision for additional meetings to be called by the President or by any member of the Executive at the request of five members of the Society. Such meetings would be held at Yellowknife upon five days' notice with a quorum of eight members of the Law Society.

PART III - MEMBERSHIP AND ENROLLMENT

The practice of law requires educational and professional training which cannot be guaranteed without the exclusion of persons not giving proof of these qualifications. In general, exclusion from practice of unqualified persons makes it possible to maintain the standard of service.

Monopoly is not really the appropriate term where admission is available to anyone who chooses to become trained and is capable of so doing. The Law Society would only have the power to assess character and exercise some control over the vocational training (articling period) of the lawyer.

The provisions pertaining to membership and enrollment would be similar to those now contained in the present Legal Profession Ordinance except that the membership roll would be maintained in the office of the Clerk of the Supreme Court of the Northwest Territories, for convenience, and with the Secretary.

The criteria for enrollment of students-at-law would be similar to those at present. The Executive would have the power to determine whether any candidate as a student-at-law met the necessary educational standards. The Society would look for guidance to the Universities and Coordinating Council in Alberta in evaluating law degrees from the various Universities.

The Northwest Territories Bar operates a unique plan with the Law Society of Alberta. Students articled to resident lawyers in the Northwest Territories who are members of the Alberta Law Society enter into articles of clerkship under both the NWT Legal Profession Ordinance and under the Legal Profession Act in Alberta. The student attends lectures given by the Alberta Law Society and writes the Bar Admission exams set by the Alberta Law Society. Upon successful completion of this exam the student is entitled to be admitted to the Alberta Law Society. The successful completion of the Alberta Bar Admission Course entitles the student to admission to the Northwest Territories Bar. We propose to retain this.

A reciprocal arrangement with the Alberta Law Society allowing Alberta students to qualify for admission to the Territories Bar could be worked out.

The NWT Society would have the power to establish a Bar Admissions Course and examination. However, it would not be contemplated that such a course would be created in the immediate future. The number of students articling in the Territories is not sufficiently large to warrant the creation of a separate course and examination.

PART IV - DISCIPLINE

The charge that professionals are subject to a different law than lay persons is without foundation. Professional censure is in addition to the sanctions of the general law. In essence the lawyer is subject to double-jeopardy: discipline by his own body with respect to conduct, as well as discipline under the law of the land.

Discipline is clearly the most difficult and most important task to be performed by the Law Society. The discipline provisions of the Ordinance would be flexible enough to allow for an easy summary determination of minor complaints or a complete investigation and hearing into major complaints.

The discipline process could not be allowed to become a weapon in the hands of persons indifferent to the public interest and hostile to the rights of other persons. The complainant would not be able to take a lawyer to Court as part of the discipline process and thereby expose a lawyer's file and confidential information of the client.

The following criteria would be applied:

"Complaints...be dealt with promptly...
members...be protected from unwarranted complaints...
the Solicitors...be given every opportunity...
full and complete explanation and answer."

Experience elsewhere shows that where complaints are made they are in regard to matters of delay, discourtesy, lack of communication, or excessive fees. These are matters that can be solved quickly by the intervention of the Secretary, an informed and non-interested member of the Society.

The Discipline Committee would be chosen by the general membership upon nomination. The majority of its members would be non-resident, a recognition of the fact that there are too few resident members of the Bar to perform the discipline function.

The Chairman of the Committee would be a non-resident. The number of members would be a minimum of seven. Each investigating committee of three members, would have only one resident lawyer.

The discipline matter would be initiated either by complaint from a member of the public or by the Society coming into possession of information which suggests the possibility that a lawyer's conduct may have been improper.

The Law Society would encourage and support public awareness of the complaint procedure and how a complaint is initiated. In this regard the newly created Division of Consumer Affairs could channel any complaints received to the Secretary of the Law Society so that sector of the public that does not wish to go directly to a lawyer could nonetheless have the complaint dealt with.

All complaints whether made to a lawyer or to a government agency or government official or a member of the public would be directed to the Secretary. The Secretary of the Law Society would ask the lawyer for an explanation. The Secretary could make other inquiries.

The Secretary would refer the matter and the decision, if any, to the Chairman of the discipline committee who could confirm the decision of the Secretary or could ask for further information and inquiries. The Chairman could appoint an investigator to examine the lawyer's records or make other investigations.

The Chairman of the discipline committee could decide there was nothing improper in the lawyer's conduct in which case the matter would be concluded and the complainant informed of the decision. If the Chairman of the discipline committee was of the opinion that the lawyer's conduct was sufficiently below standard to require further action, he would direct that an investigating committee be constituted and that a formal investigation be held.

The investigating committee would be composed of three members of the discipline committee appointed for the particular case. The hearing would be in camera in the form of a trial. The rules of natural justice would be followed. That is, the lawyer would be entitled to notice, entitled to appear through counsel or alone, and to cross examine witnesses who give evidence at the hearing. The lawyer would be required to give evidence.

The hearing would be in camera because almost invariably it would involve the private affairs of one or more clients. The confidence of the client must not be breached by publicity.

At the conclusion of the hearing the investigating committee would either dispose of the matter on the spot or alternatively reserve decision. The decision could be to dismiss the charge or find the lawyer guilty of conduct unbecoming a barrister and solicitor and fine, reprimand, suspend or strike him from the membership roll. Costs recovered from the lawyer would be paid to the Society.

The Chairman of the discipline committee, who would not be a member of the investigating committee, could appeal the investigating committee's decision to the Court of Appeal if he thought it too lenient. The lawyer could appeal if he considered the decision too harsh. The complainant could not appeal the decision.

The procedure outlined above is essentially the Alberta system, which over a number of years and under constant review and revision has worked well.

The Law Society would encourage and support public awareness of the complaint procedure.

There would be a duty imposed upon all lawyers in the Northwest Territories to refer any complaints coming to their attention to the Secretary. There is traditionally a duty upon solicitors to advise the proper officers of the Society of any unbecoming conduct of another solicitor which comes to his attention.

The Law Society in the Northwest Territories would accept the findings of another Law Society which disciplines one of the Northwest Territories non-resident members.

This Association submits that representatives of the profession are the persons best qualified by training and experience to assess the conduct of the individual member. A lay person is not as qualified.

The Ontario Royal Commission's "Inquiry into Human Rights," states:

"in general, questions of professional or occupational misconduct, incompetence and unethical practices are matters which the leading members of a profession or occupation should be best able to judge."

It is not suggested that only lawyers can be discreet. Yet an investigating committee composed solely of members of the legal profession who have access to confidential information is a system which entrusts clients' information to persons professionally conditioned and obliged to respect its secrecy. A lay person without special qualification would not have this safeguard.

The lawyer's file is full of information that belongs to other people that was communicated in private and it must be kept private. In the case where the client complains against the lawyer the situation is rarely one-sided. The other side of the file in the other lawyer's office must also be obtained.

PART V - PROTECTION OF PERSONS DEALING WITH LAWYERS

Self-regulating professions, must demonstrate that the best interests of the public are being served in four basic areas: The public must be assured:

1. That new members may join the profession and practice freely, subject only to the questions of competence and good character.
2. That high standards of professional conduct and practice are maintained by members in their dealings for and on behalf of the public.
3. That in discipline matters each profession ensures that no member is deprived of his right to practice without a full and fair hearing in accordance with natural justice.
4. That in setting basic fees for members of a profession,

the interest of the client is considered and protected from potential abuse.

The present Legal Profession Ordinance for the Northwest Territories gives no extra protection to members of the public dealing with lawyers.

Law Society -- The very existence of a self-regulating legal profession is in itself a specific act of furthering the public interest. The existence of lawyers, free and unfettered, to challenge abuses by the State, to protect the rights of the individual and to advance his rights in dealing both with his fellow citizens and the State, has been the hallmark of enlightened free societies. It has been when the independence of the legal profession was removed or inhibited that the democratic process vanished and the rights of the citizen became subservient to the will of the State.

The Law Society is uniquely in a position to adopt a firm posture and to resist any potential interference by the State, direct or indirect, in the operation of its affairs and in the conduct of its members, because its members and its activities are already subject to full supervisory control by the Courts. Such control has proven to be a completely effective safeguard of the public interest.

Assurance Fund -- The Law Society would create an Assurance Fund to be drawn on to compensate members of the public who suffered loss through the fraud or crime of a member of the legal profession in the course of his legal practice.

By legislation in British Columbia, Ontario and Alberta, interest earned on lawyer's trust accounts is used for various public purposes. If legislation was enacted allowing interest on trust accounts to be used for public purposes, the Law Society would propose that such interest earned be paid into the Assurance Fund. As well the fund would be built up from contributions by lawyers.

The Law Society would not require the client to pursue legal proceedings in order to obtain compensation. The client would look to the assurance fund for reimbursement.

Professional Liability Claims -- At present there is no legislative requirement that lawyers practising law in the Northwest Territories maintain liability insurance to protect their clients against negligence and carelessness of a solicitor. The Northwest Territories Bar Association has approved the principle that such insurance to a minimum of \$100,000 should be carried by each member.

The Association at present is not sufficiently large to create its own insurance fund; however, insurance is available through private insurance companies and is now maintained by all resident solicitors in the Northwest Territories.

The Law Society would require every lawyer to have liability insurance.

The Executive would establish guidelines for minimum liability coverage with power to approve or disapprove any policy carried by a lawyer and power to dispense with the need in a particular case.

Trust Accounts and Accounting -- Resident lawyers now maintain separate client trust accounts. The Law Society would require separate client trust accounts.

An annual certificate from a qualified accountant indicating that the lawyer has maintained a separate fund for his trust money and that the fund is properly reconciled would be required. The discipline committee would follow up all discrepancies which the accountant's report discloses. In addition, the discipline committee or the Chairman would be empowered to order a spot audit. The Law Society auditors, without advance warning, would move in and examine the trust records of practising lawyers.

The system of spot audits would be an important protection to the public. The individual lawyer and the Law Society would bear the expense.

Custody of a lawyer's practice -- The Law Society would in the appropriate case apply to the Court for the appointment of a custodian of a lawyer's practice. The Society would make an application only when there was serious reason to think the lawyer has got his affairs into such a condition that it was not possible to understand them. The custodian would take possession of a lawyer's file and trust money to prevent further deterioration of the situation.

PART VI - GENERAL

The Law Society would designate the rights and powers of an articulated student-at-law, prohibit the practice of law by persons other than qualified barristers and solicitors, prohibit persons holding themselves out as barristers and solicitors unless members of the Society, prohibit the employment of barristers and solicitors who had been suspended or struck off the roll and give protection to members of the Executive and of the Discipline Committee acting in good faith pursuant to the Legal Profession Ordinance and rules created thereunder.

The Law Society would, when money was available, contribute to the purchase of books for the Court House Library. It would develop a liaison committee to discuss with the judiciary matters of common interest to the Bench and the Bar. It would make representations to the Territorial Administration concerning court reporting and the operation of Government offices (Land Titles Office) of particular concern to the profession. It would when asked review proposed Territorial Legislation.

Licence Fees -- The Law Society would charge approximately \$100 for the annual licence fee for resident practitioners; approxi-

mately \$75 for non-resident practitioners. The \$200 admission fee presently paid by incoming lawyers would not be raised. It is recognized that the public in the Northwest Territories is entitled to qualified legal people and for this reason the Law Society would not restrict, through high monetary barriers, lawyers residing outside the Northwest Territories from practising in the Northwest Territories.

Continuing Legal Education -- The Profession in the Northwest Territories recognizes the need for the continuing legal education of lawyers. An active program of seminars and lectures for practising lawyers is run by the Law Society of Alberta and the NWT Bar does participate. Informal lectures do take place from time to time. It is envisaged that leading members of the profession would be invited to the Territories to give brief lectures in areas of interest to the profession.

Tariffs and Fees -- The lawyer's fee tariff is a guide. It is not mandatory that it be followed. It is a guide to the young and inexperienced lawyer who without the guide might easily charge higher than is fair. No lawyer would be charged with accepting a fee in an individual case which is below the tariff guide.

The Clerk of the Court, need not follow the tariff. The Legal Aid Committee follows a fee schedule that is not set by the Legal Profession.

PART VII - UMBRELLA LEGISLATION

Umbrella legislation is inapplicable to the legal profession in the Northwest Territories. The legal profession is unique. Only the lawyer acts for the client and represents the client in his dealings with "others" including fellow citizens and the State. Doctors, etc., deal basically in a professional to client basis only. Further, defence counsel who stands up in Court to assert the rights of an unpopular accused person knows that the Court

if it finds the accused guilty will find him guilty only after he has had an opportunity to have a full defence put forward by counsel independent of the State and unafraid of its power. A profession charged with that responsibility needs a separate statute to regulate its affairs.

Umbrella legislation is not really concerned and should not be concerned with well established professions such as medicine and law, but it rather should be directed toward neoprofessions which are seeking professional status.

There is no objection to the Territorial Council and the Territorial Administration adopting a set of broad principles to which professional legislation should conform and then enacting a Legal Profession Ordinance in conformity with these principles. However, each Ordinance must retain a degree of flexibility consistent with the group being covered and the functions being performed.

Umbrella legislation is inapplicable because of the diversity of the groups involved. There is no reason to think that the intricate discipline procedure necessary for a body whose members are constantly in controversy, like the lawyers, will be suitable for a body such as appraisers, dental hygienists, funeral directors or land surveyors.

The Legal Profession Ordinance dealing as it does with an assurance fund, legal aid, errors and omissions insurance, trust accounts, and libraries, is too specialized to be adapted into a model Act.


To meet changing conditions the Legal Profession must be able to obtain amendments quickly. One of the reasons that the discipline procedure in Alberta has worked so well is that the frequent amendments required have been obtained relatively quickly. This could not be done if 35 professions were to be consulted before an amendment could pass.

PART VIII - CONCLUSION

The Northwest Territories Bar Association recognizes that it is the proper function of the Commissioner and Council of the Northwest Territories to determine the nature and content of any legislation to be passed in respect to the legal profession.

This submission is made by the membership as a whole of the Northwest Territories Bar Association after much consideration and debate. It is presented for your assistance and guidance in considering what legislation should be passed by the Commissioner in Council.

A draft Legal Profession Ordinance prepared in conformity with this submission has been submitted to the Administration.


Graham Price
President

