

MINUTES OF CONVOCATION

Friday, 24th June, 1994
9:15 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Bastedo, Bellamy, Blue, Bragagnolo, Brennan, Campbell, Carter, R. Cass, Cooper, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Graham, Hickey, Howie, Jarvis, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, Lerner, Levy, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, D. O'Connor, S. O'Connor, Palmer, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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ELECTION OF TREASURER

The Secretary reported that at the May Convocation one nomination for the position of Treasurer was received - that of Mr. Paul Lamek by Mr. Scott and Ms. Elliott. Mr. Lamek was re-elected Treasurer by acclamation for the coming year.

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MOTION

ELECTION OF BENCHER

It was moved by Ms. Weaver, seconded by Mr. Scott THAT Ian A. Blue be elected a Bencher to fill the vacancy resulting from the appointment to the Bencher of His Honour S. Casey Hill.

Carried

TREASURER'S REMARKS

The Treasurer addressed Convocation:-

"...I want to thank Convocation for the privilege of having been permitted to serve as president for the last 12 months.

I've been asked often if I have enjoyed the year and I say in absolute candour that it's been frequently enjoyable. It has, I say, equally been frustrating but it is endlessly interesting, and I am grateful to Convocation not only for giving me the opportunity to serve, but for the constant support and encouragement and patient tolerance that has been extended to me and also for the total co-operation that I have received.

I do not recall once having asked any bencher to undertake a task or to give me advice or thoughts on a topic without having an immediate and eager co-operative response. I am very grateful for that.

I am grateful to the staff of the Society, especially, of course, to the senior management, Don Crosbie, Richard Tinsley, Meg Angevine and the heads of departments and to their staffs who have worked so hard and so supportively and co-operatively through the year. Their support has been unflinching and unskimping and I am grateful for it.

No doubt on occasion I have made suggestions and requests that have made them in private roll their eyes, but they've been patient and they've been kind and I think they feel we're now getting to understand how things should work.

Of course I am very grateful and I mean it, despite the events that are swirling around us, very grateful to Convocation for having elected me for a second term.

As this morning and the events of recent weeks have demonstrated, the challenges facing Convocation in the short and in the long term are enormous. But with the wisdom and the support of Convocation and the staff and the profession, I am confident we will be able to look back next June with satisfaction and pride upon a year of accomplishments.

24th June, 1994

What is clear to me from my visits to almost 20 county law associations in the course of the last year and what is clear to other benchers who have spoken to me and expressed concerns about it, is that these issues which have so occupied our attention in the last few weeks and which we will be addressing today have obviously provoked strong responses from the profession, and those responses seem to me and to others that in truth manifest a far wider and deeper measure of alienation in the profession from what happens in this place.

Increasingly, I think the profession is expressing doubt and scepticism about the Law Society and its relevance to the concerns of the daily life and frequently harsh reality of practice, and in my view, those wider concerns have to be addressed.

The Society must demonstrate its willingness not only its willingness, its eagerness - to address those matters. And what I should very much appreciate is the thinking and the advice of benchers and of the profession over the course of this summer so that we may be in a position at the end of the summer to take steps to confront and deal with what I will regretfully conclude is an underlying widespread malaise.

As with many problems no doubt a large element here involves communication or lack of communication, and I think we must address that. We've got to do more than that.

I may in September urge of chairs and vice-chairs and members of committees to go out and talk, and more important to listen, to these concerns that are being increasingly expressed in the profession. I may raise the question as it's been raised with me as to whether we should in the late fall convene a conference involving all the stakeholders in the operation of this profession; the academic community, the bar, government, and of course ourselves, other institutions such as Canadian Bar Associate, Advocates Society, Criminal Lawyers' Association to define, address and I hope come to some kind of resolution of these very serious and deep-seated problems that go to the questions such as those which constantly vex the profession - numbers, fees for service and that sort of thing - addressing them in the broader context of quality of service to the public and whether quality can indeed survive in the face of the onslaught that are being faced by members of the profession throughout this province.

I think we've got to address those issues in a responsible and rational way and involve all other stakeholders in that discussion and I hope possible solution."

MOTION

CONSTITUTION OF STANDING COMMITTEES

It was moved by Ms. Weaver, seconded by Mr. Scott THAT the Chairs and Vice-Chairs for the coming year be as set out in the attached list with the Treasurer having been given the authority to appoint Vice-Chairs and members to Committees as required.

Carried

ADMISSIONS

Chair	-	C. L. Campbell
Vice-Chairs	-	D.H.L. Lamont
		F. Mohideen

CERTIFICATION

Chair - R. D. Yachetti
Vice-Chair - R. D. Manes

CLINIC FUNDING

Chair - J. Lax
Vice-Chair - P. Copeland

COMMUNICATIONS

Chair - D. Bellamy
Vice-Chair - H. Sealy

COUNTY & DISTRICT LIAISON

Chair - R. C. Topp
Vice-Chair - A. Feinstein

DISCIPLINE

Chair - D. W. Scott
Vice-Chairs - D. R. O'Connor
D. Bellamy
R. C. Topp

EQUITY

Chair - M.E.R. Moliner
Vice-Chair - D. R. O'Connor

FINANCE

Chair - T. D. Bastedo
Vice-Chairs - J. J. Wardlaw
R. W. Murray

FRENCH LANGUAGE

Chair - V. Krishna

INSURANCE

Chair - H. T. Strosberg
Vice-Chairs - A. Feinstein
R. W. Murray

INVESTMENT

Chair - J. J. Wardlaw

LAWYERS' FUND

Chair - C. C. Ruby

LEGAL AID

Chair - S. T. Goudge
Vice-Chairs - P. Copeland
L. Brennan

LEGAL EDUCATION

Chair	-	P. M. Epstein
Vice-Chairs	-	C. D. McKinnon
		E. S. Elliott
		D.H.L. Lamont

LEGISLATION

Chair	-	M. C. Cullity
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LIBRARIES

Chair	-	E. S. Elliott
Vice-Chair	-	R. C. Topp

PROFESSIONAL CONDUCT

Chair	-	M. J. Somerville
Vice-Chair	-	F. Kiteley

PROFESSIONAL STANDARDS

Chair	-	C. D. McKinnon
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RESEARCH & PLANNING

Chair	-	L. Brennan
Vice-Chair	-	F. Mohideen

UNAUTHORIZED PRACTICE

Chair	-	P. J. Peters
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WOMEN IN THE LEGAL PROFESSION

Chair	-	P. Copeland
Vice-Chair	-	N. Richardson
	

AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Ms. Weaver, seconded by Mr. Scott THAT the Reports listed in paragraph 5 of the Agenda (Reports to be taken as read) including the Report of the Unauthorized Practice Committee, be adopted.

Carried

- Admissions
- Communications
- County & District Liaison
- Discipline (2 Reports - 1 in camera)
- Equity in Legal Education and Practice
- Finance and Administration
- Heritage
- Insurance (2 Reports)
- Investment
- Lawyers Fund for Client Compensation
- Legal Education (excluding Item A.-A.1.)
- Legislation and Rules
- Libraries and Reporting (2 Reports - 1 in camera)
- May Draft Minutes

Professional Conduct
 Professional Standards
 Relief and Assistance
 Research and Planning (excluding Item A.-A.1.)
 Specialist Certification Board
 Unauthorized Practice
 Women in the Legal Profession

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 9:30 a.m., the following members being present: Mr. Carter (Chair), Ms. Moliner, Ms. Mohideen and Mr. Lamont.

Also present: M. Angevine, C. Shaw, P. Gyulay

B.
ADMINISTRATION

B.1. APPLICATION FOR REINSTATEMENT FOLLOWING SUSPENSION

B.1.2. M. C. Carole A. Marinett was called to the Bar April 9th, 1981. She was suspended for non-payment of the annual fee February 25, 1983.

B.1.3. Ms. Marinett successfully completed the requalification examination in June 1994. She requests that, upon paying the outstanding arrears of fees or on making suitable arrangements with the Director of Finance, she be reinstated.

Approved

B.2. Gerald J. Boyaner was called to the Bar April 13, 1981. He was suspended for non-payment of the annual fee February 26, 1982.

B.2.1. Mr. Boyaner successfully completed the requalification examination in May 1994. He requests, that upon paying the outstanding arrears of fees or on making suitable arrangements with the Director of Finance, he be reinstated.

Approved

B.3. REINSTATEMENT FOLLOWING SUSPENSION - SPECIAL PETITION FOR WAIVER OF EXAMINATIONS

B.3.1. Susan Conrad was called to the Bar April 24, 1988. She was suspended for non-payment of the E & O levy November 25, 1988. Ms. Conrad now seeks to be reinstated without being required to sit the requalification examinations.

24th June, 1994

- B.3.2. In her letter of application dated June 3, 1994 Ms. Conrad provides information on the employment positions she has held during the period of her suspension. She states that she hopes to be able to continue working in government in the area of legal policy and research, and does not anticipate seeking work in the private practice of law.

Your Committee recommends that the applicant be reinstated to a non-practising membership category conditional on her giving an undertaking that she will not engage in the practice of Ontario law without first obtaining the Society's permission and, in the Society's discretion, completing the Society's requirements for requalification at that time.

B.4. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

- B.4.1. Anne Giardini was called to the Bar March 30, 1990. She resigned her membership at her own request effective February 25, 1994. Ms. Giardini now applies for readmission.

- B.4.2. In her letter of application dated June 7, 1994 Ms. Giardini states that she resigned her membership when she moved with her husband who was transferred to Kamloops, British Columbia. She has now been offered an opportunity to practise as a corporate counsel in Kamloops.

- B.4.3. There were no outstanding fees at the time of her resignation. She has paid the readmission fee.

Approved

- B.5. Stephanie A. McManus was called to the Bar April 13, 1987. She resigned her membership at her own request effective March 25, 1994. Ms. McManus applies for readmission.

- B.5.1. In her letter of application dated May 27, 1994 Ms. McManus states that she resigned her membership as the position in which she was employed with the Federal government did not require her to be a member of the Law Society. She has subsequently been offered employment with the National Transportation Agency in a capacity requiring membership of the Law Society.

- B.5.2. Ms. McManus has paid the arrears of fees which were outstanding at the time of her resignation.

Approved

B.6. DIRECT TRANSFER - COMMON LAW - SECTION 4(1)

- B.6.1. The following candidates have met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

- | | | |
|--------|-----------------------|------------------------------|
| B.6.2. | Paul James Gibney | Province of British Columbia |
| | Margaret Jean Murray | Province of Manitoba |
| | Thomas Edward Pittman | Province of Nova Scotia |
| | Edna Jennifer Warren | Province of Alberta |

Approved

B.7. DIRECT TRANSFER - COMMON LAW - SECTION 4(1) SPECIAL PETITION

B.7.1. The following candidate will have met the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act by July 23, 1994 and requests permission to proceed with the transfer in order to prepare for the September 1994 examinations:

Daniel Victor Misutka Province of Alberta

Your Committee recommends that the applicant be permitted to proceed conditional upon his providing proof to the Law Society that he has fulfilled the requisite three years of practice prior to the date of the examination.

B.8. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.8.1. The following candidates have met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Avrom Abraham Gomberg
Gregory Newman
Andre Pretto
Sylvie Eva Roussel

Approved

B.9. DIRECT TRANSFER - QUEBEC - SECTION 4(2) - PETITION TO SIT TRANSFER EXAMINATION ON UNDERTAKING TO COMPLETE REQUISITE 3 YEARS

B.9.1. A petition was before the Committee from a member of the Quebec Bar who will have the requisite three years of practice for the purpose of transfer by the end of November 1994. The petitioner asked permission to sit the transfer examination in September 1994 when he would be short the three years by two months.

Your Committee reviewed the material before it and recommends that the petitioner be permitted to sit the transfer examination in September 1994 on an undertaking that he will complete the requisite three years in practice before being eligible for call.

B.10. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.10.1. The following candidates have completed successfully the May 1994 transfer examination:

Paul Robert Arkin, Jr.	Province of Nova Scotia
Pamela Gay Legg	Province of Alberta
Victor Peter Leginsky	Province of Alberta
M. C. Carole A. Marinett	(requalification)

Noted

B.11. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.11.1. Bar Admission Course

The following candidate having successfully completed the 33rd Bar Admission Course now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Regulation Convocation on June 24th, 1994:

Verena Jean Fraser

Approved

B.11.6. Full-Time Members of Faculties of Approved Law Schools

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under s. 5 Reg. 709 on May 27th, 1994. She has filed the necessary documents and complied with the requirements of the Society:

Myra Joy Tawfik

Faculty of Law,
The University of Windsor

Fee: \$200.00

Approved

B.11.7. The following dean of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under s. 5 Reg. 708 on May 27th, 1994. He has filed the necessary documents and complied with the requirements of the Society:

Jeffrey Bruce Berryman

Faculty of Law,
The University of Windsor

Fee: \$200.00

Approved

C.
INFORMATION

C.1. SPECIAL CONVOCATION CEREMONIES - TENTATIVE DATES 1995

C.1.2. The following are the tentative dates for the Special Convocation ceremonies in 1995 for Bar Admission Course candidates for the committee's consideration:

Thursday, February 9th, 1995 - OTTAWA - National Arts Centre

Tuesday, February 14th, 1995 - LONDON - Radisson Hotel

Thursday, February 16th, 1995 - TORONTO - Roy Thomson Hall

Noted

C.2. PERMANENT RESIDENCY STATUS APPROVED

C.2.1. Jack Douglas Pappalardo was permitted to be called to the Ontario Bar on giving an undertaking to continue to pursue his application for permanent residency status. Mr. Pappalardo has provided the Society with proof that he obtained the status of permanent resident effective May 27, 1994.

Noted

C.3. APPLICATIONS FOR ADMISSION CONSIDERED BY THE COMMITTEE WITH RESPECT TO 'GOOD CHARACTER'

C.3.1. In the period October 1993 to May 1994 the Committee reviewed 12 applications for admission with respect to the "good character" requirement for call to the Bar. The Committee concluded that in respect of 3 of the applicants a hearing should be held to determine the issue of "good character" pursuant to section 27.

Noted

C.4. LIFE MEMBERS

C.4.1. Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date of June 15, 1994:

Gabriel Gilles Aubry	Alexandria
Gern Ann Levis	Islington
Douglas Garney Milne	Toronto
Hugh T. Nichol	Whitby
Benjamin B. Shekter	Hamilton
Ross Victor Smiley	Scarborough
Margaret Rosetta Smith	Toronto
James Almonte Yanch	Oshawa

Noted

C.5. CHANGES OF NAME

C.5.1. (a) Members

<u>From</u>	<u>To</u>
Victoria Woodburn <u>Coombs</u>	Victoria Woodburn <u>Coombs Archdekin</u> (Marriage Certificate)
Sandra <u>Foti</u>	Sandra <u>Tanner</u> (Marriage Certificate)

Noted

(b) Student Member

<u>From</u>	<u>To</u>
Anita <u>Barzilai</u>	Anita <u>Goldman</u> (Marriage Certificate)
Catherine Anne <u>McCann</u>	Catherine Anne <u>McCann-Kyte</u> (Marriage Certificate)

Noted

C.6. ROLLS AND RECORDS

C.6.1. (a) Deaths

C.6.2. The following members have died:

Robert Scott White Toronto	Called January 17, 1946 Died November 27, 1992
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William Basil Stasiv Mississauga	Called September 21, 1939 Died March 5, 1993
Arnold David Wilson Ottawa	Called June 28, 1942 Died April 18, 1994
John Kuzmochka Toronto	Called June 28, 1956 Died April 26, 1994
Thomas Peter McIver Toronto	Called June 29, 1948 Died May 12, 1994

Noted

C.6.3. (b) Permission to Resign

C.6.4. The following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

Meyer Korman Brampton	Called March 20, 1975 Permitted to Resign-Convocation May 26, 1994
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Noted

C.6.5. (d) Membership in Abeyance

C.6.6. Upon their appointments to the offices shown below, the membership of the following members has been placed in abeyance under Section 31 of The Law Society Act:

C.6.7. Romain William Michael Pitt Toronto	Called March 26, 1965 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Sidney Norman Lederman Toronto	Called March 22, 1968 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Sidney Norman Lederman Toronto	Called March 22, 1968 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Thomas Ronald Lofchik Hamilton	Called March 24, 1972 Appointed to Ontario Court of Justice (General Division) April 22, 1994

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Timothy Arthur Culver
Burlington

Called March 22, 1974
Appointed to Ontario Court of
Justice
(Provincial Division)
April 22, 1994

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

R. Carter
Chair

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994, the following members being present: Ross Murray (Vice-Chair), Susan Elliott, Allan Lawrence, and Stuart Thom. Staff representation: Diane Partenio, Richard Tinsley, and Gemma Zecchini.

C.

INFORMATION

1. Call Statistics

The Lawyer Referral Service received 16,911 calls this month for a total of 76,066 since the beginning of this year. This represents an average of 738 calls/day. Dial-A-Law received 21,048 calls, for a total of 102,863 calls for the year to date, representing an average of 717 calls/day.

ALL OF WHICH is respectfully submitted

DATED this 9th day of June, 1994

D. Bellamy
Chair

THE REPORT WAS ADOPTED

24th June, 1994

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

On Thursday, the 9th of June, 1994 at 11:30 a.m., the County and District Law Presidents' Association Executive were in attendance: D. DiGiuseppe, S. Foley, R. Gates, M. Hornseth and R. Sonley. Staff in attendance were: M. Angevine and A. John (Secretary).

1. RESOLUTIONS PASSED AT THE MAY 12 AND 13, 1994 PLENARY

The following Resolutions were passed by the County and District Law Presidents' Association at the Plenary in May 1994:

(1) CDLPA Levy

A sizeable increase in the levy was approved along with a new fee schedule passed in May 1994. This revised fee will be in addition to the special levy passed at the November 1992 Plenary.

(2) Judicare Equivalent Family Law Clinic

The CDLPA registered its opposition to the introduction of a Judicare Equivalent Family Law Clinic by way of pilot project or otherwise.

(3) Legal Aid - Access to Legal Services

The CDLPA recommended that a proposal, other than the one suggested by the Legal Aid Subcommittee, be found which answers questions about access to legal services contained in the "Ross Proposal".

(4) Legal Aid Funding

The CDLPA resolved that the Government of Ontario address the issue of its chronic underfunding of the Ontario Legal Aid Plan and meet its obligations mandated under the Legal Aid Act. (Unanimous).

(5) Legal Aid - Bill Hearings, Young Offender Matters, Impaired Driving, Etc.

The CDLPA opposes the particular suggestions for cost reductions considered by the Legal Aid Committee at its January 13, 1994 meeting. The Association also opposes any changes to the Legal Aid Act or Regulations which would affect an individual's right to counsel of choice, or derogate from the presumption of innocence.

(6) Official Guardians' Panel - Rates of Pay

The CDLPA resolved that the rate of pay for agents of the Official Guardian be amended to reflect an experience increase similar to the one used for the Legal Aid Panel. (Unanimous).

(7) Library Reform

The CDLPA Library Committee produced a report in February 1994 entitled "Funding County Libraries - Reform Proposal". The CDLPA asked that the Report be tabled and that the Association liaise with the Law Society's Canada Review Subcommittee on the issues of autonomy, funding, expenditures and equitable distribution of the cost of funding. The Association also resolved that the Report be provided to all CDLPA Presidents in advance of the November 1994 Plenary and that the matter be placed on the agenda for the said Plenary. (Unanimous).

(8) LIBRARY - IMPROVEMENTS IN TECHNOLOGY

The Association resolved that the Law Society's Review Committee consider the issues of access by County Law Libraries to electronic legal material and electronic equipment. (Unanimous).

(9) ERRORS AND OMISSIONS INSURANCE

The Association supports the view that the anticipated deficit be spread over the greatest amount of years possible, ten years being the minimum.

2. NOVEMBER 1994 PLENARY

The following dates, November 9, 10 and 11, 1994 have been set aside for the next CDLPA Plenary. The Plenary would coincide with the Law Society's annual meeting planned for Wednesday, November 9, 1994 at 5 p.m.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

R. Bragagnolo
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE (Public Report)

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 1:30 in the afternoon, the following members being present:

D. Scott (Vice-Chair), D. O'Connor (Vice-Chair), S. Goudge, N. Graham, M. Moliner, M. Martin, D. McPhadden, S. Thom.

M. Brown, S. Kerr, J. Yakimovich, G. Macri, S. Jenkins, E. McIntyre and J. Brooks also attended.

A.
POLICY

None

B.
ADMINISTRATION

B.1 RESPONSIBILITY OF THE SOCIETY FOR FORMER MEMBERS' FILES

B.1.1. The Staff Trustees' Office sought the advice of the Committee with respect to a policy of dealing with client files from (former) law practices.

- B.1.2. The Staff Trustees' Office receives requests to take possession of client files of members and former members. Requests are typically made by relatives of former members, Trustees-in-Bankruptcy, former associates of members or owners and landlords of commercial or residential property where files have been left behind or in storage. Over the past two years, there has been a recurring demand against the Society by an auctioneer asserting a lien against the Society pursuant to the Repair and Storage Liens Act.
- B.1.3. There is no statutory authority which places responsibility on the Society for clients' files. The Society assumes responsibility for client files in two situations: (1) where a s. 43 Trusteeship Order is obtained, and (2) where, in the Staff Trustees' discretion, the Society agrees to take custody of client files. In both situations the storage, retrieval and destruction of the files are issues. Eileen McIntyre, Staff Trustee, addressed the Committee on these issues.
- B.1.4. Your Committee discussed, in particular, the various interests which were served in preserving the contents of the files, and the administrative and storage costs associated with culling, storing and shipping files. The Committee questioned whether under certain circumstances retrieval costs to clients, however minimal, were appropriate.
- B.1.5. After discussion, your Committee approved the creation of a Sub-Committee to consider the issues of (1) whether the Society should assume responsibility for client files of (former) members; (2) if so, under what conditions; and (3) whether the Society should implement a fee payable by clients requesting their files from off-site storage. This Sub-Committee, to be chaired by N. Graham, shall report its recommendations to the Committee. In the interim, the Staff Trustees' Office shall continue its current practice with respect to client files of (former) law practices.

B.2 TRANSMISSION OF CONFIDENTIAL/SENSITIVE INFORMATION BY FACSIMILE

- B.2.1. At the request of the Chair and Vice-Chairs of this Committee, the circumstances or conditions under which lawyers may send, by facsimile transmission, materials containing sensitive or confidential information were discussed.
- B.2.2. Your Committee considered a fact situation in which material of a sensitive nature was sent by facsimile transmission to a facsimile machine in a common area of the intended recipient's place of employment. No attempt was made to alert the intended recipient, the opposing party in litigation, that the material was being transmitted.
- B.2.3. Your Committee expressed concern that precautions should be taken in order to ensure that confidential or sensitive information is not disclosed through facsimile transmissions to clients, other lawyers or third parties.
- B.2.4. Your Committee resolved that the Practice Advisory Service be asked to place an item in "The Adviser" on the issue and that the Professional Conduct Rules Committee be alerted to your Committee's concerns.

C.
INFORMATION

C.1. RULE 20 APPLICATION - HYMAN BERGEL TO EMPLOY MEYER KORMAN
 (PERMISSION TO RESIGN: MAY 26, 1994)

C.1.1. The Committee had before it an application by Hyman Bergel to employ Meyer Korman as a law clerk. Mr. Korman was granted permission to resign on May 26, 1994.

C.1.2. Following discussion, the Committee rejected the application.

C.2. AUTHORIZATION OF DISCIPLINE CHARGES

C.2.1. Once a month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

C.2.2. The following table shows the number of requests made by Discipline, Complaints and Audit staff for the months of January through June 1994.

	Sought	Authorized
JANUARY		
Discipline	3	3
Complaints	11	8
Audit	6	5
TOTAL:	20	16
FEBRUARY		
Discipline	4	4
Complaints	20	17
Audit	32	32
TOTAL:	56	53
MARCH		
Discipline	3	2
Complaints	11	10
Audit	37	35
TOTAL	51	47
APRIL		
Discipline	6	5
Complaints	14	14
Audit	5	5
TOTAL	25	24

MAY		
Discipline	9	9
Complaints	21	17
Audit	41	41
TOTAL	71	67
JUNE		
Discipline	2	2
Complaints	9	8
Audit	17	13
TOTAL	28	23

SUMMARY:

Total number of charges authorized to date for 1994	
January	20
February	56
March	51
April	24
May	67
June	23
TOTAL	241

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

H. Strosberg
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE (In Camera Report)

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EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June 1994, the following persons being present: Stephen Goudge (Chair), Colin McKinnon, Marie Moliner, Shirley O'Connor, Nora Richardson, David Scott, Donald Crosbie, Mimi Hart and Alexis Singer.

C.
INFORMATION

- C.1 Commission on Systemic Racism
- C.1.1 The committee received an oral report from Colin McKinnon on a meeting he and the Chair had with the Commission on Systemic Racism on June 8, 1994.
- C.1.2 Mr. McKinnon was attending in his capacity as Chair of the Professional Standards Committee but the discussion in addition to dealing with standards touched on proposed Rule 28. He reported on the interest of the Commission in the Law Society using the occasion of the distribution of proposed Rule 28 as an opportunity to provide the profession with statistics on the demographics of the minority groups in the province and the legal profession.

C.2 "Record of Offences" and Rule 28

C.2.1 The committee received a memorandum from Andrew Brockett drawing attention to the fact that discrimination on the basis of "record of offences" is a prohibited ground of discrimination only in respect of employment and is not a prohibited ground of discrimination in respect of services, goods and facilities.

C.2.2 The committee decided that rather than attempt to rewrite the rule to accommodate this distinction that it could be explained in the accompanying material and left to prosecutorial discretion.

C.3 Meeting with the National Council of Canadian Filipino Associations (NCCFA)

C.3.1 The Chair reported on a meeting with the National Council of Canadian Filipino Associations and the issue of assistance to foreign-trained lawyers seeking to qualify in Ontario. Discussions of how the NCCFA might best assist in this matter has led to the suggestion that the development of a pre-law course to assist foreign-trained lawyers to understand the Canadian legal system might be desirable. The Chair has undertaken to arrange a meeting with Dean Pilkington and representatives from the NCCFA to discuss this suggestion.

C.4 CBAO Equity Committee

C.4.1 The Under Treasurer reported on a meeting with the CBAO Equity Committee. The CBAO committee is anxious to cooperate with the Law Society Equity Committee and this appears to be a logical approach to the workings of the two committees.

C.5 Letter from Tim Murphy, M.P.P.

C.5.1 A letter from Tim Murphy, M.P.P. has been referred to the Equity Committee. In his letter Mr. Murphy was seeking the cooperation of the Equity Committee in introducing bright high school students from minority groups to the legal profession. He was thinking basically of clerical work in the summer time. The Chair agreed that he would contact Mr. Murphy and offer to write follow-up letters to any firms contacted by Mr. Murphy suggesting their cooperation.

C.6 L.S.U.C. Employment Equity Plan - Staff Report

C.6.1 The committee received a progress report on the development of the Employment Equity Plan for Law Society staff. While the staff plan envisaged completion of the Equity Plan by the Summer of 1995, the committee was advised that the new government legislation and regulations will require that a head count or staff identification exercise be carried out in 1996 and that the start-up date or certification date for the Employment Equity Plan would have to be closely related to this survey date. It was agreed that the Law Society would proceed with the development of its plan on the staff timetable and that we could adjust to the requirements of the *Employment Equity Act* as required when we reach that point in time.

- C.7. Development of Educational Program on Employment Equity and Equity Law
- C.7.1 The Chair reported briefly to the committee that Joanne St.Lewis will be working on the Employment Equity Backgrounder which she hopes to finish in June. Similarly, Judith Keene will be working on a Equity Law Backgrounder which she hopes to complete over the summer. Both of these studies were essential first steps in the development of the communication program associated with Rule 28.
- C.7.2 A subcommittee was struck to meet with Gemma Zecchini to discuss the information package that should accompany the release of Rule 28. Those involved in the subcommittee will be Stephen Goudge, Denise Bellamy, Marie Moliner and David Scott.

ALL OF WHICH is respectfully submitted

DATED this 24TH day of June 1994

S. Goudge
Chair

THE REPORT WAS ADOPTED

HERITAGE COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 4:30 p.m., the following members being present: Hickey (Chair), Palmer and Wardlaw. The following staff members were present: S. Binnie, E. Brunet, A. Langlois and S. Traviss.

A.
POLICY

1. TRAVELLING VERSION OF CROSSING THE BAR EXHIBITION

The Committee has approved a travelling version of this most successful exhibition chronicling the role of women in the legal profession in Ontario. Funds committed by the Committee on Women in the Legal Profession now make a travelling version possible.

This decision does not require Convocation's approval but it was thought advisable to let the Benchers know. Parts of the exhibition will be on display at the annual meeting of the Canadian Bar Association in Toronto in August.

C.
INFORMATION

1. SIGNIFICANT NEW ACQUISITIONS

Ms. Ann-Marie Langlois reported on some new acquisitions by the Archives that included the Knighthood Patent and Seal of Sir Adam Wilson, the briefcase of Sir Charles Moss, artifacts and photographs from the estate of the late Margaret Hyndman, Q.C. together with the papers of the Lawyers Club (the oldest voluntary legal organization in Ontario).

2. USER POLICY

The Committee was advised that a paper by Mrs. Susan Binnie on a possible user fee policy will be presented to a meeting in the Fall. It will include input from the users of archival facilities.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

M. Hickey
Chair

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meetings of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Lamek (Treasurer), Finkelstein, Hickey, Cass, Feinstein, Lerner, McKinnon, Wardlaw, Murray, Epstein, Murphy, Blue and Mesdames Elliott and Palmer.

In attendance representing the Finance Committee was Mr. Somerville and Madam Weaver.

Also in attendance were Messrs. Crosbie, Tinsley, Crack, Anderson, Whiklo and O'Toole.

ITEM

1. PRESIDENT'S MONTHLY REPORT

The President's monthly report is attached as Appendix "A".

24th June, 1994

2. OUTSTANDING ITEMS

a) Transactional Levy Subcommittee

Mr. Feinstein presented a status report on Subcommittee activity advising that the Subcommittee was scheduled to meet again on Thursday June 9, 1994. Your Committee has requested that a general report on the Subcommittee's deliberations be available for review by Convocation in June following which the information will be provided to the profession for consideration.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

C. Campbell
Chair

Attached to the original Report in Convocation file, copies of:

Item 1 - Report of the President of LPIC to the Insurance Committee for the month of May, 1994. (Appendix "A", pages 1 - 6)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 11:00 in the forenoon, the following members being present: Messrs. Campbell (Chair), Finkelstein, Hickey, Bastedo, Cass, Feinstein, Lerner, McKinnon, Scace, Wardlaw, Murray, Epstein, Murphy, Blue and Mesdames Elliott and Palmer.

In attendance representing the Finance Committee Messrs. Wardlaw (Chair), Somerville, Hill, Krishna, Scott and Mesdames Weaver, Lax and Mohideen.

Also in attendance were Messrs. Crosbie, Crack, Anderson, O'Toole, Whiklo, Carey, Pelly, Kinch, and Yule.

ITEM

1. 1994 LEVY

The Insurance and Finance Committees met jointly pursuant to the decision by Convocation to defer setting the base levy for the second half of 1994 until June, and to defer setting the supplemental deficit recovery levy until September. The deferral in levy setting is to allow time:

- a) for input from the profession on the levy setting process,
- b) for further study of the projected 1994 levy requirements, and
- c) for consideration of the possibility of a reduced levy for certain categories of members.

24th June, 1994

Because the Law Society continued to receive input from the profession respecting the levy setting process, discussion focused on the projected 1994 base levy requirements and consideration of the possibility of reducing the levy for certain categories of members effective July 1, 1994. The President's discussion paper in this regard is attached as Appendix "A".

Your Committee will meet again shortly to consider and respond to the submissions received from the profession and to conclude its deliberations on the 1994 base levy.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

C. Campbell
Chair

Attached to the original Report in Convocation file, copies of:

Item 1. - Discussion Paper for Joint Meeting of the Insurance & Finance
Committees - June 9, 1994. (Appendix "A", pages 1 - 7)

THE REPORTS WERE ADOPTED

INVESTMENT COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at nine-thirty in the morning, the following members being present: Mr. Wardlaw (Chair). Staff member present was David Carey.

24th June, 1994

B.
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summary for the various Law Society Funds together with supporting documentation for the month ended May 31, 1994 (Schedule A).

Approved

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

J. Wardlaw
Chair

Attached to the original Report in Convocation file, copies of:

Item B.-1. - Investment Report Summary for the various Law Society Funds
for month ended May 31, 1994. (Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994, at 10:30 a.m. the following members being present: C. Ruby (Chair), S. Lerner (Vice-Chair), D. Batstone, N. Graham, M. Hickey, S. Thom, and R. Wise; S. Hickling, D. McKillop, H. Werry and J. Yakimovich also attended.

A.
POLICY

No Items

24th June, 1994

B.
ADMINISTRATION

1. APPLICATIONS FOR THE POSITION OF REFEREE

Advertisements for applicants to the position of Referee were placed in the Ontario Reports and the Lawyer's Weekly. Approximately two hundred applications were received.

As the Committee believes that hearings should generally be held where the claimant resides or the solicitor involved carried on his or her practice, six of the nine chosen should be from the Toronto area and three should be from outside areas - preferably Ottawa, Windsor or London and a northern community. All applicants should have approximately ten years of private practice and preferably some litigation experience.

IT IS RECOMMENDED that, pursuant to s.51 of the *Law Society Act*, Convocation appoint Anne Barrett, Mary Dionysakopoulos, Sydney Harris, Anil Kapoor, Catherine Kennedy, June Maresca, Eva Marszewski, Linda Rothstein, and Philip Zylberberg as Referees to the Lawyers Fund for Client Compensation.

C.
INFORMATION

1. REFEREE REPORT AND STAFF MEMORANDA

The Referee Report and Staff Memoranda that were approved by the Review Sub-Committee were before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. Copies of the Financial Summary for April 1994 and graphs showing the relationship between claims made and claims outstanding with limits applied and without limits applied are attached. (Pgs. C1 - C4)

3. Accounts approved by staff in May amounted to \$15,349.

4. SOLICITOR #31 - ASSIGNMENT OF FUNDS BY JOYCE LAPOINTE

The Committee considered a recovery situation concerning a solicitor in which grants of over \$240,000 have already been paid. The recovery to the Fund is dependent on the Law Society giving a release and indemnity to a former client of the solicitor.

IT IS RECOMMENDED that the Lawyers Fund for Client Compensation accept the recovery in exchange for the release and indemnity as proposed.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

C. Ruby
Chair

Attached to the original Report in Convocation file, copies of:

Item C.-1. - Referee Report and Staff Memoranda dated June 9, 1994.
(Schedule "A")

Item C.-2. - Financial Summary for April 1994.

(marked C1 - C4)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE requests leave to report:

The Committee met on Thursday, the 9th of June, 1994, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Colin McKinnon (Vice-chair), Susan Elliott, Stephen Goudge, Joan Lax, Mohan Prabhu (non-Bencher member) and Marc Rosenberg (non-Bencher member). Ian Blue also attended. The following staff were in attendance: Deborah Brown, Marie Fortier, Mimi Hart, Alexandra Rookes, Lynn Silkauskas and Alexis Singer.

A.
POLICY

A.1 SUPPLEMENTARY PROPOSAL RE: FINANCIAL ASSISTANCE TO BAR
ADMISSION COURSE STUDENTS

A.1.1 At the April 22, 1994 meeting of Convocation, the Legal Education Committee presented a proposal to provide additional assistance to students in Bar Admission Course, to alleviate the financial hardship for the most needy students that is associated with the considerable increase in tuition fees for 1994. The proposal recognized the severe financial difficulties being experienced by some Bar Admission Course students as a result of mounting student loan debt, the recession, and the changing composition of the law school class, which includes single parents and students supporting families as well as single students without family support. The proposal recommended that \$100,000 be allocated to the Bar Admission Course to enhance its existing bursary (grant) funds of \$30,000.

A.1.2 The proposal was reduced from the original request of \$300,000, recognizing the constraints under which the Priorities and Planning Committee was operating. Student need beyond the \$100,000 level was to be dealt with under the existing Law Society Student Loan Program. The \$100,000 was to be allocated to the most financially needy students, many of whom, due to existing debt or other compelling circumstances, might not be able to repay a loan or might suffer so much hardship that their call to the bar could be blocked.

- A.1.3 At its December 11, 1993 meeting, Convocation had approved increases in Bar Admission tuition from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase) and from \$1780 for Phase Three 1993 to \$2100 for Phase Three 1994 (a 17.9 percent increase). The recommendation of the Legal Education Committee at its December 3, 1993 meeting for the tuition increases had been linked to a request for the new bursary funds for financially needy Bar Admission Course students. Convocation on December 11, however, deferred consideration of the bursary request while approving the tuition increases on their own.
- A.1.4 On April 22, 1994 Convocation decided against the bursary request, after debating a motion that did not clarify the source of the bursary funds. It has been suggested to the Chair of the Legal Education Committee by some Benchers that had the source of funding for the bursary proposal been part of the motion and a vote taken on the two possible funding options (an increase in the fee or a draw against the surplus), the proposal might have succeeded on one of the options.
- A.1.5 The Legal Education Committee, at its meeting of May 12, 1994, decided to recommend that Convocation allocate funds to be used to provide financial assistance to needy students in the Bar Admission Course. The recommendation was not considered by Convocation in May. Convocation should, however, make a decision at its June 24 meeting if the funding is to be in place to assist needy students in Phase Three of the 1994 Bar Admission Course, beginning on September 8, 1994.
- A.1.6 The Legal Education Committee strongly supports the proposal. The Committee's recommendation to increase student tuition fees in the Bar Admission Course was linked to an enhanced bursary program to address the hardship and access issues that a substantial tuition increase will certainly create. As it stands today, there is an increase in tuition of approximately 20% and no additional funds for student bursaries.
- A.1.7 The Committee requests that the issue be readdressed, by specifically identifying the funding options, and offers an additional funding option (#3 below) in the event that one of the two preferred options (#1 or #2) is not approved. The Committee recommends reconsideration based on its serious concern over the splitting of the tuition and bursary items, and the severe implications for needy students of offering financial assistance composed only of additional debt.
- A.1.8 Recommendation: It is recommended that Convocation allocate funds to provide financial assistance to needy students in the Bar Admission Course. Convocation is asked to approve one of the following options:
1. A fund to create a non-repayable tuition credit for the most needy students. The fund would be created out of the Law Society surplus, in an amount not to exceed \$100,000.

2. A bursary fund for the most needy students, in an amount not to exceed \$100,000. The fund would be created either :
 - a) out of the Law Society surplus, or
 - b) by increasing the annual fee by approximately \$5 per member to produce \$100,000.
3. A request on the annual fee notice for a voluntary charitable donation to the Law Society Foundation to support a Bar Admission Course bursary fund.

B.
ADMINISTRATION

No regular business and administration this month.

C.
INFORMATION

C.1 BAR ADMISSION COURSE: NEW SENIOR INSTRUCTORS FOR OTTAWA

C.1.1 The Bar Admission Course Senior Instructors in Ottawa and the Regional Director of Education for Ottawa, Marie Fortier, have worked together to appoint a number of new Senior Instructors to assist in the enhancement and expansion of the French language stream of the Bar Admission Course.

C.1.2 The new appointees are as follows:

- a) Civil Litigation:
Kevin Doyle, joining Timothy Ray
- b) Estate Planning:
Denis Sicotte, joining Bernard Roach
- c) Family Law:
Céline Allard, joining Hunter Phillips
- d) Criminal Procedure:
Gilles Charlebois, joining Donald Macdougall
- e) Public Law:
Guy Pratte, joining James Smellie
- f) Business Law (Corporate):
Yves Ménard, joining Geoffrey Howard

g) Business Law (Insolvency):

Marc Jolicoeur, joining Martin Black

h) Business Law (Tax):

Carole Chouinard, joining Deen Olsen

C.2 ANNUAL MEETING AND DINNER OF THE LEGAL EDUCATION COMMITTEE AND THE BAR ADMISSION COURSE SECTION HEADS

C.2.1 The annual meeting and dinner of the Legal Education Committee and Bar Admission Course Section Heads, including Senior Instructors from London and Ottawa, is scheduled to begin at 4:00 p.m. on Wednesday, June 22 in Convocation Room. A reception will follow at 6:00 p.m. with dinner in the Benchers' Dining Room at 6:30 p.m. This is a significant occasion not only for acknowledging the tremendous contribution made by the profession to the Bar Admission Course, but also for consulting on the direction of the Bar Admission Course.

C.3 ARTICLING SUBCOMMITTEE

C.3.1 The Subcommittee met at 8:00 a.m. on May 27th. In attendance were Stephen Goudge (Chair of the Subcommittee), Janne Burton, Mohan Prabhu, Marc Rosenberg, and Jay Rudolph. Staff members attending were Marilyn Bode, Deborah Brown, Mimi Hart, Lynn Silkauskas and Alan Treleven.

C.3.2 The Subcommittee gave conditional approval to a further 10 applications from members to serve as articling principals for the 1993-94 articling year. To May, approximately 1367 members have applied to serve as principals for the 1993-94 articling year. Of those, 1358 applications have been approved. One application was denied as the member was found to be dishonest by a referee of the Lawyers' Fund for Client Compensation. The remaining applications have been deferred as audit investigations, discipline investigations and Lawyers' Fund For Client Compensation hearings are pending.

C.3.3 The Subcommittee also gave conditional approval to a further 70 applications from prospective articling principals for the 1994-95 articling term. To May, approximately 799 members have applied and been approved to serve as principals for the 1994-95 articling term.

C.3.4 The Subcommittee also gave conditional approval to 432 members who were approved to serve as articling principals for the 1993-94 articling term but who have not to date indicated that they wished to renew their articling principal applications for the 1994-95 articling term. This will enable the Articling Director's office to respond more expeditiously should these members decide that they wish to serve as articling principals.

C.3.5 The Subcommittee gave special consideration to the applications of two members. One member was applying for the 1993-94 articling term, the other for the 1994-95 articling term. Both applications were approved. In one instance the member had less than three years of private practice experience but had many years of experience running a business prior to the member's call to the bar. The Legal Education Committee has previously authorized the Articling Subcommittee to approve members with less than three years practice

experience in exceptional circumstances such as this. A final decision on the other application had been deferred by the Subcommittee at its April meeting as a Lawyers' Fund for Client Compensation hearing was pending. That hearing has now been adjourned until potential Discipline proceedings are concluded. As no Counsel Brief has yet been issued by the Audit Department, and no formal complaint has been authorized to proceed with Discipline hearings, the Articling Subcommittee decided it must approve the member's application.

- C.3.6 The first policy item was a consideration of the issue of educational materials for articling principals. This item had been deferred from the April meeting of the Subcommittee. The extent, form and content of such materials, in written or videotaped format, was discussed.
- C.3.7 The Subcommittee believes strongly in the importance of educational materials for articling principals. It noted that these materials are required by the *Proposals for Articling Reform* report, approved by Convocation in October of 1990. The Subcommittee believes that additional written materials for articling principals would be of limited benefit. The Subcommittee believes the videotaped format is a more effective one. A videotape is also cost-effective when alternatives such as an articling conference for principals are considered. The Subcommittee decided to proceed to the script development stage of a videotape that articling principals and students would view together at the outset of the articling term. The Subcommittee will review the proposal again once a script has been developed.
- C.3.8 The second policy item was a consideration of articling placement issues. The Director of Placement spoke to these issues.
- C.3.9 The first matter was a reconsideration of whether the current voluntary self-identification categories on the Bar Admission Course application form should be expanded beyond Visible Minority, Aboriginal and Disabled, to include a wider range of groups protected under Human Rights legislation, and in particular whether the form should invite students to self-identify sexual orientation. The matter was raised by the Ad Hoc Committee of Unplaced and Unpaid Articling Students. After discussion of the item in April, it was agreed that Mimi Hart would draft questions(s) for the Subcommittee's review, and conduct a survey of the Ontario law schools. The Subcommittee considered the draft question and the results of the survey. The Subcommittee agreed with the approach taken in the draft question but wanted to ensure that the voluntary nature of the question is underscored on the application form and that its placement on the form in relation to other equity and placement questions is clarified. The Subcommittee asked to see a draft of the relevant sections of the application form at the June meeting.
- C.3.10 The second matter was an update on the 1994-95 articling placement numbers. Data on how many of the 217 students who indicated in January, 1994 that they continued to seek articles for the 1994-95 year was not yet available as only 100 students had responded to a letter requesting up-to-date information. The Director of Placement provided a chart profiling the 100 students who had responded, which demonstrates the quality of applicants available. The Placement Office is following up with the students who have not responded, and will continue to monitor the situation. In the meantime, several initiatives are under way to assist unplaced students, including a

resume writing and interview skills workshop, which is being offered to Phase One students without articles. The workshop is being conducted by a consultant engaged by the Placement Office to assist with various activities in the area of articling placement.

- C.3.11 The third matter was a report on an articling placement brainstorming session held on May 17, 1994. This matter was reported by the Chair of the Subcommittee. Representatives of the Canadian Bar Association - Ontario, the Ontario Court (General Division), the Ontario Law Deans, the Ministry of the Attorney General, and the Federal Department of Justice met with the Chair of the Legal Education Committee, the Chair of the Articling Subcommittee and staff. Initiatives taken by the Law Society to ameliorate the current insufficiency of articling positions and to consider additional efforts that might be undertaken by the group were discussed. The group agreed to undertake immediate work in two areas. First, a brief will be prepared to be read at the outset of each continuing legal education session offered over the summer. The brief will bring lawyers in attendance up-to-date as to the number of unplaced students and the need for additional articling positions. Second, the group considered and decided to act upon a proposal to establish a mentor program matching unplaced students with members of the bar who will provide encouragement and advice. The group also considered options to generate additional articling positions for students. This group will meet again in June to continue its work. Additional members will be invited.
- C.3.12 The fourth item reported was the results of the Articling Interview Questionnaire administered to students in Phase One (Session One) of the 1994 Bar Admission Course. The survey results indicate a modest reduction in the number of students reporting inappropriate questions during articling interviews and in the number of inappropriate questions asked of students reporting such incidents. It is hoped that the Interim Guidelines on Articling Interviews distributed to the profession in the Summer of 1993 were partly responsible for the overall improvement. It was noted that further work in this area is being undertaken by the Equity Committee in conjunction with the education materials being developed with draft Rule #28.
- C.3.13 The final articling placement matter concerned publication of the Policy Statement on Unpaid Articles, which was approved by Convocation in April. Discussion dealt with the slight risk that publication of the policy, in the Ontario Reports for example, might encourage more unpaid or nominally compensated positions. It was agreed that the policy would not be published in the Ontario Reports but that the policy would continue to be provided by the Placement Office to members who offer such positions, to students who inquire about such arrangements, and to others as appropriate.
- C.3.14 The third policy item was a report by the Director of Education on the progress of the issue of student representation on the Articling Subcommittee. This matter had been raised by the Ad Hoc Committee of Unplaced and Unpaid Articling Students. The members of the Subcommittee agreed at its April meeting that two student representatives should be recommended for the 1994-95 articling term. The two representatives would be elected by the students during Phase One of the Bar Admission Course. Currently, there is one articling student, Carmel Sakran, on the Subcommittee. He was appointed. The Director of Education reported that he was arranging for the election of the two student representatives from among the student representatives elected by each class of students in Phase

One, 1994. The Phase One class representatives will select from among themselves the two individuals to be appointed to the Articling Subcommittee, effective September 1994.

- C.3.15 The fourth policy item was a discussion of a Law Society letter or information circular outlining the credentials of Joint Committee on Accreditation students. It would be provided to J.C.A. students on request to assist them in their search for articling positions. The item was tabled for further discussion in June.
- C.3.16 The fifth policy item was a consideration of a revised notice to students without articling jobs drafted by the Ad Hoc Committee of Unplaced and Unpaid Articling Students. A notice considered by the Subcommittee at its April meeting was not approved for distribution. The Subcommittee discussed the revised notice submitted by the Ad Hoc Committee. It was tabled for further discussion.
- C.3.17 The only information item was the nine day suspension for non-payment of the errors and omissions insurance levy of a member serving as an articling principal in the 1993-94 articling term. A cheque mailed by the member was never received by the Law Society. The member had another cheque prepared, certified and delivered to the Law Society immediately upon being notified of the suspension. The student articulated to the member contacted the Articling Director to enquire if the time spent during the period of suspension would count toward the student's 52-week articling requirement. The student was advised that the time would count.
- C.3.18 The next meeting of the Subcommittee is at 8:00 a.m. on Friday, June 24, 1994.
- C.4 BAR ADMISSION COURSE SUBCOMMITTEE
- C.4.1 The Bar Admission Course Subcommittee held its fourth meeting on Saturday, May 28, 1994. The following members were in attendance: Philip Epstein (Chair), Mark Austen, Lloyd Brennan, Neil Gold, Stephen Goudge, Laura Legge, and Mohan Prabhu. Staff in attendance were: Erika Abner of the Bar Admission Course Faculty and Alan Treleven.
- C.4.2 The Subcommittee began by reviewing a proposal for a new Bar Admission Course that would include the current Phase One and a new loss prevention course and examination. The significant departure from the existing Bar Admission Course would be that the proposed model would allow students considerable choice in selecting courses and the related examinations, so that students would not continue to write individual examinations in as broad a range of courses. A new examination would be a loss prevention examination.
- C.4.3 There was then discussion about the role of loss prevention in the Bar Admission Course, and whether the Bar Admission Course ought to be centered on or at least focused significantly upon loss prevention methods. There was a general consensus that errors and omissions problems should receive significant attention, but that controlling the errors and omissions problems should be a significant feature of mandatory continuing legal education.

C.4.4 The discussion then moved to whether there ought to be a wider range of examinations than in the proposal that was under discussion. It was decided to ask the Director to produce a new discussion proposal for the June meeting that would incorporate examinations in a specified broader range of subjects as Bar Admission Course entrance examinations.

C.4.5 At the next meeting it was decided to focus specifically on the following matters:

- 1) Further discussion of a proposed new model of Bar Admission Course, including budget implications.
- 2) The role and future of articling.
- 3) The transition between the current Bar Admission Course and a potential new model.

C.4.6 The next meeting of the Bar Admission Course Subcommittee is at 9:00 a.m. on Saturday, June 25.

C.5 BAR ADMISSION COURSE: TESTING AND EXAMINATION ACCOMMODATION FOR STUDENTS WITH DISABILITIES

C.5.1 The Law Society is committed to ensuring that Bar Admission Course students with disabilities receive reasonable testing and examination accommodations that maintain credible and valid assessment practices.

C.5.2 To that end, the Legal Education Committee and Convocation in May approved section 17 of the new Requirements for Standing governing Phase Three of the 1994 Bar Admission Course.:

17. (1) A student who is disadvantaged by a personal circumstance beyond the student's control that is not employment-related may apply in writing to the Registrar for permission to complete the course work, write the examinations, or complete the computerized accounting examination by procedures that will minimize the disadvantage as much as reasonably possible.
- (2) The Registrar may grant the application only if satisfied that a personal circumstance beyond the student's control that is not employment-related disadvantages the student.
- (3) The application must describe the procedures that will minimize the disadvantage as much as reasonably possible.
- (4) A student must apply in sufficient time before the course work, examination, or the computerized accounting examination to permit adjustments to be made.
- (5) The Registrar may require the student to provide documentation to substantiate the basis for the student's application.

- C.5.3 Students interested in applying under section 17 will receive notification of the policy and the procedures for application in advance of Phase Three. In administering the policy, the Registrar and staff of the Bar Admission Course will be guided by a document entitled: "Testing and Examination Accommodation for Candidates with Disabilities". (pages 1 - 7)
- C.6 REPORT ON REQUALIFICATION
- C.6.1 This item was on the Agenda of the Legal Education Committee at its May 12, 1994 meeting, but was deferred due to shortage of time.
- C.6.2 On March 25, 1994, Convocation approved the Report on Requalification, with some amendments.
- C.6.3 The Report requires all members, regardless of their fee-paying status, to complete a "qualification status" form annually indicating whether they make substantial use of their legal skills on a regular basis in their current work. The Report includes a provision for a pre-emptive regime that will prescribe steps that each member who is not in the ongoing "qualified" category can take to ensure that the member's legal skills will be preserved so as to avoid being required to requalify.
- C.6.4 The Report includes the following provisions as items 7 and 8:
- 7) The Admissions Committee, the Legal Education Committee and the Professional Standards Committee will be asked jointly to develop the range of steps a member can take to preserve his or her legal skills through the pre-emptive regime.
 - 8) The Admissions Committee, the Legal Education Committee, and the Professional Standards Committee will be asked jointly to develop a range of reasonable conditions to be met by members who have not participated in the pre-emptive regime, and are therefore required to re-qualify.
- C.6.5 Such steps or conditions, according to the Report, might include continuing legal education and volunteer work.
- C.6.6 The recommendations to be made by the new joint-Subcommittee may very well depend on recommendations to be developed in relation to mandatory continuing legal education and the bar admission course.
- C.6.7 At its April 14, 1994 meeting, the Professional Standards Committee appointed Mary Weaver and Susan McCaffrey, Professional Standards Director, as its representatives on the joint-Subcommittee, and invited the Legal Education Committee and Admissions Committee to each name two persons to a joint-Subcommittee.
- C.6.8 The Chair of the Legal Education Committee will designate either two of its members, or one of its members and one of the Department of Education staff, to be appointed by the Director, to join the joint-Subcommittee.

24th June, 1994

C.7 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.7.1 The Report, prepared by Paul Truster, Program Lawyer of the Continuing Legal Education Department, is attached. (pages 8 - 12)

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

P. Epstein
Chair

Attached to the original Report in Convocation file, copies of:

Item C.-C.5.3 - Document entitled Test & Examination Accommodation for Candidates with Disabilities. (pages 1 - 7)

Item C.-C.7.1 - Continuing Legal Education - Report on Courses. (pages 8 - 12)

Item A.-A.1 was deferred to September Convocation.

THE REPORT WITH THE EXCEPTION OF ITEM A.-A.1 WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994, at 11:30 a.m., the following members being present: M. Cullity (Chair), the Hon. A. Lawrence, S. Thom, R. Topp.

Also present: A. Brockett, E. Spears.

A.
POLICY

No items to report.

B.
ADMINISTRATION

B.1. LAW SOCIETY ACT: SECTION 12: BENCHERS BY VIRTUE OF THEIR OFFICE: MODIFICATION OF PROPOSED AMENDMENTS

B.1.1. Recommendation

B.1.1.1. That the text of proposed paragraph 5 of subsection 12(1) of the *Law Society Act*, adopted by Convocation on April 24, 1992, be amended to read as follows:

Every person who has completed three full terms or a total of four thousand, three hundred and seventy days service as an elected bencher.

[Amended text underlined.]

B.1.2. Explanation

B.1.2.1. Under the existing provisions of the *Law Society Act*, a person who is elected a bencher at four elections and who serves as a bencher for sixteen years becomes a "bencher by virtue of office". (*Law Society Act*, paragraph 6 of subsection 12(1).)

B.1.2.2. On April 24, 1992, Convocation adopted a recommendation that the eligibility requirements should be reduced. The new requirement for status as a "bencher by virtue of office" would be the completion of three full terms or a total of 4,383 days service as an elected bencher. The following draft wording was approved by Convocation:

12.(1) The following, if and while they are members, are benchers by virtue of their office:

* * * *

5. Every person who has completed three full terms or a total of four thousand, three hundred and eighty-three days service as an elected bencher.

(1.1) For the purposes of paragraph 5 of subsection 12(1) a "full term" is a period of time commencing at the first regular Convocation following an election of benchers and ending, in the fourth year thereafter, at the first regular Convocation following the next election of benchers.

[Proposed amendments, as adopted by Convocation, underlined.]

B.1.2.3. The figure of 4,383 days is intended to equal the number of days in three consecutive "full terms". It was calculated by counting the number of days in three consecutive "full terms" commencing the final Friday in May (the first regular Convocation) after the 1983 election of benchers (when elected benchers took office) and ending the final Friday in May (the first regular Convocation) after the 1995 election of benchers (when elected benchers will take office).

B.1.2.4. It has become apparent that, because of leap years and the dates on which the first regular Convocation after an election of benchers may fall, a bencher who has the equivalent of 12 years service as an elected bencher may be several days short of 4,383 days. It has been suggested that some flexibility be built into the eligibility requirement by reducing the number of qualifying days to 4,370.

B.2. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SECTION 4: ADMISSION BY TRANSFER FROM OTHER CANADIAN JURISDICTIONS

B.2.1. Recommendation

B.2.1.1. That, subject to Convocation adopting the recommendation of the Admissions and Membership Committee that section 4 of Regulation 708 be amended as specified in the report of that Committee, section 4 of Regulation 708 be revoked and replaced by the following:

4.(1) Upon the recommendation of the Committee, an applicant who is qualified to practise law in any province or territory of Canada outside Ontario may be called to the bar and admitted as a solicitor provided the applicant,

- (a) (i) is a graduate of a law course, approved by Convocation, in a university in Canada; or
- (ii) has a certificate of qualification issued by the Joint Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
- (b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the application, has been engaged in,
 - (i) the active practice of law as a member of a law society or equivalent body which is a member society of the Federation of Law Societies of Canada;
 - (ii) the pre-call education program of a member society of the Federation of Law Societies of Canada; or
 - (iii) a combination of the activities referred to in subclauses (i) and (ii);
- (c) files a certificate of good standing issued by a member society of the Federation of Law Societies of Canada; and
- (d) passes the transfer examination as prescribed from time to time by Convocation.

(2) For the purposes of this section, an applicant shall be deemed to have been engaged in the pre-call education program of a member society of the Federation of Law Societies of Canada when,

- (a) enrolled and participating in a teaching or education program prescribed by that society and distinct from a university law course; or

(b) serving under articles of clerkship to a member of that society in accordance with the rules or regulations of that society.

(3) On each occasion when a candidate for call and admission under subsection (1) sits the transfer examinations referred to in clause (1)(d) the candidate must present evidence that the candidate,

(a) has been engaged in the activities set out in subclauses (i), (ii) or (iii) of clause (1)(b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the examination; and

(b) is a member in good standing of a member society of the Federation of Law Societies of Canada.

B.2.1.2. That Convocation request the Attorney General to arrange for a similar amendment to be made to the French text of Regulation 708.

B.2.2. Explanation

B.2.2.1. At present, section 4 of Regulation 708 provides for admission to the Society by transfer from other Canadian jurisdictions. Subsection (1) deals with applicants from common law jurisdictions. Subsections (2) and (3) deal with applicants from Quebec. The section currently reads:

4.(1) Upon the recommendation of the Committee, an applicant may be called to the bar and admitted as a solicitor who,

(a) has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five year period immediately preceding the application;

(b) files a certificate of good standing;

(c) passes the prescribed examinations on the statutes of Ontario and procedure in Ontario; and

(d) presents evidence of the time or times during which and the place or places where he or she has been engaged in the active practice of law.

(2) Upon the recommendation of the Committee, an applicant may be called to the bar and admitted as a solicitor who,

(a) has been engaged in the active practice of law in the Province of Quebec for a period or periods totalling at least three years within the five year period immediately preceding his or her application;

(b) files a certificate of good standing;

(c) presents evidence of the time or times during which and the place or places where he or she has been engaged in the active practice of law;

- (d) passes a comprehensive examination on the common law of Ontario; and
- (e) passes the prescribed examinations on the statutes of Ontario and procedure in Ontario.

(3) Upon the recommendation of the Committee, an applicant who has been engaged in the active practice of law in the Province of Quebec,

- (a) may be admitted to the Society as a student member in the Bar Admission Course upon,
 - (i) filing a certificate of good standing, and
 - (ii) successfully completing a one year conversion course in common law; and
- (b) may be called to the bar and admitted as a solicitor upon successfully completing the Bar Admission Course.

B.2.2.2. At its meeting on May 12, 1994, the Admissions and Membership Committee approved proposed amendments to section 4 of Regulation 708 establishing a uniform set of provisions for applicants from any Canadian jurisdiction. The amendments were included in the Committee's report to Convocation on May 27, 1994; however, the matter was put over to be considered in June.

B.2.2.3. At its meeting on June 9, 1994, the Legislation and Rules Committee considered draft wording for the proposed amendments to section 4 so as to expedite implementation of the recommendation of the Admissions and Membership Committee should it be adopted by Convocation in June.

B.3. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: FRENCH VERSION OF SUBSECTION 3(2): DEFINITION OF COMITE

B.3.1. Recommendation

B.3.1.1. That in the French version of subsection 3(2) of Regulation 708, in the definition of the word "Comité", before the word "des", the word "chargé" be added, so that the definition of the word "Comité" will read:

"Comité" Le Comité chargé des adhésions.

[Amended text underlined.]

B.3.2. Explanation

B.3.2.1. On September 24, 1993, Convocation, in the exercise of its power under section 63 of the *Law Society Act*, made a regulation to amend subsection 3(2) of Regulation 708 by adding, in the definition of the word "Committee", after the word "Admissions", the words "and Membership", so that the definition of the word "Committee" in subsection 3(2) would read:

"Committee" means the Admissions and Membership Committee.

[Added text underlined.]

- B.3.2.2. The reason for the amendment was the change of name of the Admissions Committee to the Admissions and Membership Committee. This change of name required amendments to the Rules made under subsection 62(1) of the *Law Society Act*, as well as the amendment to subsection 3(2) of Regulation 708.
- B.3.2.3. The French translation of amendments to the Rules is the responsibility of the French Language Services Committee. Amendments to Regulation 708 are translated by the Office of Legislative Counsel, Ministry of the Attorney General.
- B.3.2.4. For the sake of consistency between the French version of the Rules and the French version of Regulation 708, it was decided to ask the French Language Services Department to translate the amendment to subsection 3(2) of Regulation 708, and to request the Attorney General to arrange for the French version of subsection 3(2) of Regulation 708 to be amended accordingly.
- B.3.2.5. The French Language Services Department, in consultation with a linguistic advisor at the Office of Legislative Counsel, translated the amendment to subsection 3(2) of Regulation 708 as follows:

«Comité» Le Comité chargé des adhésions.

[Amended text underlined.]

(Prior to the amendment, the definition of "Comité" read: "Le Comité des admissions".) Unfortunately, in the letter to the Attorney General, the word "chargé" was inadvertently omitted.

- B.3.2.6. The amendment to subsection 3(2) of Regulation 708 was approved by the Lieutenant Governor in Council. The amended subsection 3(2) came into force on January 31, 1994. The French version of the amended subsection 3(2) reads, incorrectly:

«Comité» Le Comité des adhésions.

C.
INFORMATION

No items to report.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

M. Cullity
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE (Public Report)

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994, at 9:00 a.m., the following members being present:

D. Murphy, (Chair), R Topp (Vice-Chair), T. Bastedo, M. Cullity, M. Hickey, M. Weaver and M. Hennessy. G. Howell also attended.

A.
POLICY

no items

B.
ADMINISTRATION

1. County Libraries - Sub-Committee Review of Expenses & Revenues - Charts providing Financial Information

The Committee considered the following charts providing financial information on certain aspects of the expenses of the county library system:

1. A one-page chart recently compiled, showing the wage rates (or salary) paid to the 47 county librarians, along with the hours per week of those librarians who work part-time for their county law association.
2. A two-page chart which lists the services which have been identified as Basic Subscriptions for the county library system. The first page includes Digest & Research Tools, Reports, Statutes/Reference, and Loose Leaf Services, at a 1993 cost of \$28,457. The second page lists Loose Leaf Textbooks chosen as basic titles up to 1992, and shows the number of updates to these textbooks that were released in 1993, at a cost of \$12,736. The grand total for the two-page chart is \$41,193.
3. A two-page extract from a recent Carswell bulletin, showing the projected cost of the various Canadian Abridgment components for the remainder of 1994. Given the cost for the first five months of 1994, the total projected cost for the full Canadian Abridgment service (including 5% for shipping and handling) will be just over eight thousand dollars (\$8,050).

The above charts were supplied to the full Committee as preliminary information, and will be fully reviewed by the Sub-Committee examining the finances of the county library system.

Further to the May 1994 Report to Convocation, the Chair will be finalizing the chair and members of the Sub-Committee shortly.

24th June, 1994

C.
INFORMATION

no items

ALL OF WHICH is respectfully submitted

Dated this 24th day of June, 1994

D. Murphy
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE (In Camera Report)

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

PROFESSIONAL STANDARDS COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, at 3:00 p.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), R. Carter, R. Cass, N. Graham, D. Murphy, H. Warder-Abicht.

Also Present: N. Amico, S. McCaffrey, P. Rogerson.

A.
POLICY

A.1. RULE 2 - REVISED FORMAT

A.1.1. The Committee considered the annotated version of the draft Rule 2 as provided by the Special Committee to review the Rules of Professional Conduct. It has recommended that the comments provided by the Special Committee be circulated among the Special Committee members and that it provide to the Professional Standards Committee its consensus regarding Rule 2, rather than the individual comments of individual members, in order to provide the Committee with greater guidance in redrafting the rule.

A.2. STRATEGIC PLANNING CONFERENCE RECOMMENDATION

A.2.1. At its March meeting, the Committee considered the following recommendation arising from the Strategic Planning Conference:

That the Communications Committee and the Professional Standards Committee review the legal services provided to the public through the Lawyer Referral Service to ensure that they are of an appropriate professional standard.

The Committee concluded that the recommendation was dealt with, in part, through the removal from the Lawyer Referral Service roster of the names of members authorized to participate in the Practice Review Programme.

The Committee also recommended that the Communications Committee consider requiring lawyers seeking to be listed on the Referral Service to certify on the application form their ability to practise in the area(s) of law selected by them.

The Committee was requested to propose possible wording for this purpose. The Committee recommends that a statement be added to Part II of the application form for the Lawyer Referral Service as follows:

"In completing this form, members are reminded of their obligations pursuant to Rule 2 to be competent to perform legal services undertaken on a client's behalf."

The Committee suggests that this statement be added when the application form is next printed or amended.

B.
ADMINISTRATION

B.1. PRACTICE REVIEW PROGRAMME - FILE CLOSURE

- B.1.1. One Practice Review file was closed on the basis of the member's successful completion of the Programme. The member, who was called to the bar in 1985, was authorized for participation in the Programme in September of 1993 based on a referral from the Audit department. At the time of authorization, the member had received 5 complaints and 3 insurance claims. A review of the practice was conducted in November of 1993 and staff attended in March of 1994. His practice was found to be basically well organized, with a few inadequate office procedures. Several recommendations were made to the member and, as a result, the member has made numerous changes to his practice. The member has received no further complaints or claims and appears to have improved the quality of his practice.

C.
INFORMATION

C.1. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

- C.1.1. There are 142 open files in the Programme, although 9 of those files are in abeyance, due to discipline proceedings, suspensions or other causes. Approximately 20 of the participants are women, 7 of whom were authorized to participate in fiscal 1993/94. In May, Benchers Lloyd Brennan and David Scott sat as review panellists for three participating lawyers to discuss their practice difficulties and make further recommendations.
- C.1.2. In June, approximately 60 reviewers are expected to attend the information seminar for the lawyers who conduct practice reviews. The seminar will include presentations from different departments of the Law Society that refer members to the Programme, a session on practice management issues by Milton Zwicker, a panel discussion by Benchers Susan Elliott and Ronald Cass on the review panel portion of the process, and a panel and open floor discussion by reviewers. Colin McKinnon will introduce the seminar, and staff from the Professional Standards Department will provide background information and additional assistance as required.
- C.1.3. Staff from the Complaints, Audit & Investigation, and Standards departments met with their counterparts from the Barreau du Québec. The meeting provided a valuable opportunity to learn from the experiences, mistakes, and successes of each other, and was of particular interest in the context of the staff discussions on reforms to the *Law Society Act*.

C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.2.1. The Practice Advisory Service responded to 735 calls in April; 36% of the calls were from members called to the Bar during and after 1990.

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- C.2.2. The Rules of Professional Conduct, specifically the conflict rules continue to generate a large number of calls. Of particular concern are calls from junior lawyers negotiating an associate relationship with a more senior lawyer. Often the junior is identified as a sole practitioner, but trust money goes into the senior's trust account and accounts are rendered in the name of the "association." These relationships can easily lead to exploitation of the junior lawyer, and in addition cause problems with the Audit requirements that sole practitioners have their own trust account.
- C.2.3. Many lawyers have been calling in the past week about the expected increase in the insurance levy. These callers have been neither angry, nor seeking information about the increase, but rather requesting information on how to close down their practices. There appear to be three particularly vulnerable groups: practitioners approaching retirement, practitioners who are newly-called, and practitioners engaged in part-time practice (mostly mothers of young children.)

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

C. McKinnon
Chair

THE REPORT WAS ADOPTED

SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE begs leave to report:

Your Committee met on Thursday the 9th of June 1994 at 1:15p.m. in the afternoon, the following members being present: M.P. Weaver (Chair). Also present was D.E. Crack.

R.
ADMINISTRATION

1. REQUEST FOR FUNDS - J.SHIRLEY DENISON FUND

A request for financial assistance from the wife of a member who was suspended in 1969 for discipline purposes was before the committee.

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The Committee reviewed the applicant's financial statement and other relevant facts. The applicant, who had been working, is now unemployed and is currently attending school to upgrade her skills, but her unemployment benefits will end in September. She supports her daughter who is in full-time attendance in nursing school.

A grant of \$1,900 was recommended to enable the applicant to pay two outstanding debts.

Approved

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994.

M. Weaver
Chair

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 8:00am, the following members being present:

R. Murray (in the Chair), F. Carnerie, S. Elliott, A. Feinstein A. Lawrence and F. Mohideen.

Also present: R. Tinsley, A Brockett, E. Spears, G. Zecchini and S. Hodgett.

A.
POLICY

A.1. STATEMENT ON THE ROLE OF THE LAW SOCIETY

A.1.1. Your Committee discussed and adopted the Final Report of the Subcommittee on the Role of the Law Society. The Role Statement Report is transmitted to Convocation with this Report, and the Research and Planning Committee recommends that Convocation:

- (a) adopt the Role Statement and Commentary;
- (b) direct the Priorities and Planning Committee or its successor committee to employ the Role Statement, the Commentary and the Report of the Subcommittee as a guide in preparing budgetary and program recommendations in future fiscal years;

24th June, 1994

- (c) direct all committees to review their current and proposed activities, programs and proposals in light of the Role Statement, the Commentary and the Report of the Subcommittee;
- (d) direct all committees and departments to include the Role Statement prominently in all major policy documents and documents providing information about the Law Society to the public; and
- (e) direct that the Role Statement and Commentary be supplied together when the Role Statement is requested by a member of the profession or the public.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. CONVOCAATION TRANSCRIPT

- C.1.1. Pursuant to a recommendation of the Research and Planning Committee, the transcripts of Convocation are distributed on computer disk to all 47 County Law Libraries. The Libraries have reported that the transcripts are rarely consulted. The Committee has requested that a notice be placed in the *Bencher's Bulletin* drawing attention to the availability of the transcripts.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June 1994

L. Brennan
Chair

Attached to the original Report in Convocation file, copies of:

- A.-Item A.1. - Final Report of the Subcommittee on the Role of the Law Society dated June 9, 1994 together with the Role Statement Report.

(pages 1 - 41)

Item A.-A.1. was deferred to September Convocation.

THE REPORT WITH THE EXCEPTION OF A.-A.1. WAS ADOPTED

24th June, 1994

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 9:30 a.m., the following members being present: P. Peters (Chair), N. Finkelstein (Vice Chair), N. Graham, M. Hickey, S. Lerner and M. Weaver (Vice Chair). Staff in attendance was: A. John (Secretary).

A

POLICY

1. SECTION 50 PROSECUTIONS - NOTICE OF DISCUSSION AT CONVOCATION

During 1993, the Unauthorized Practice Department received 182 complaints concerning alleged unauthorized practice. The Department investigated 47 of these but prosecuted only 6 because of financial limitations. In an effort to deal realistically with the rapid expansion of paralegal activities in Ontario, the Unauthorized Practice Committee requested a substantial budget increase for 1994/95. However, the Priorities and Planning Committee recommended that the budget remain at the same as last year's level. Accordingly, the Committee must limit prosecutions to a small number of cases. Unfortunately, many (meritorious) cases will not move forward to prosecution even when there is ample evidence to support a conviction under s. 50 of the Law Society Act.

Your Committee wishes to give notice to Convocation that a full debate of the Law Society's role in prosecutions under s. 50 for the unauthorized practice of law, will take place in the fall of 1994. Your Committee is of the view that the activities of the Unauthorized Practice Committee should be suspended after June 30, 1995 unless adequate funding is provided.

ALL OF WHICH is respectfully submitted

DATED the 24th day of June, 1994

P. Peters
Chair

Attached to the original Report in Convocation file, copies of:

A.-Item 1. - List of Prosecutions.

(page 2)

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The WOMEN IN THE LEGAL PROFESSION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at 3:00 pm, the following members being present:

S. Elliott (Chair), S. Goudge, P. Hennesey, J. Lax, B. Luke, J. Palmer, and N. Richardson

Also present: E. Brunet, A. Singer, E. Spears and S. Hodgett

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. CROSSING THE BAR - TRAVELLING VERSION

B.1.1. Elise Brunet, the Curator of Archives, spoke to the Committee concerning the proposal for a travelling version of the very successful museum exhibition, *Crossing the Bar*. The exhibition focused on the history of women in the legal profession. A travelling exhibition could be sent to various sites around the province.

B.1.2. The Committee has considered the proposal, including written materials provided by Ms. Brunet, and considers it an important communications opportunity for the Law Society. There has already been some interest in the legal community, including strong interest from one law school, to host the exhibition. The Committee will provide \$5,000, the bulk of the funds required, to prepare a travelling exhibition.

C.
INFORMATION

C.1. MODEL POLICY ON EMPLOYMENT-RELATED SEXUAL HARASSMENT FOR SMALL LAW FIRMS

C.1.1. On January 24, 1992 Convocation approved "A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment." Following approval, the Policy was distributed to all managing partners of law

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firms in Ontario. Copies of the model policy were also distributed to members of the profession upon request. The Policy was distributed with the following statement

Convocation recognizes that sexual harassment is a complex problem that raises contentious issues. The steps recommended in the policy are certainly not the only approach that can be taken. The Law Society intends to review the recommended policy in light of experience.

- C.1.2. A review of the policy was carried out in April 1993. A questionnaire was mailed to all managing partners of law firms in Ontario. A staff report concerning the questionnaire was received by the Committee in January, 1994.
- C.1.3. The questionnaire results led the Committee to conclude that the model policy was of less utility to small law firms. The model policy includes formal procedures and the appointment of Advisers. These measures are beyond the capability and need of most small law firms.
- C.1.4. As a result the Committee has recast the model policy into a simplified and concise form for use by small law firms. A member of the Committee who has extensive experience with employment policies drafted a small law firm policy which is in accordance with the previous policy adopted by Convocation. The policy adapted for small law firms is at Attachment A to this report.
- C.1.5. Your Committee will make this policy for small law firms available to the profession. It has consulted with the Communications Department concerning distribution of the policy. Initially an announcement will be placed in *The Advisor* explaining the policy and inviting members of the profession who might find such a policy useful to request a copy from the Law Society.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

S. Elliott
Chair

Attached to the original Report in Convocation file, copies of:

- C.-Item C.1. - Policy for use by small law firms re: Workplace Sexual Harassment. (Attachment A - A-6)

THE REPORT WAS ADOPTED

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon each of them.

Verena Jean Fraser	33rd Bar Admission Course
Elisabeth Vasiliki Atsaidis	35th Bar Admission Course
Velupillai Balasubramaniam	35th Bar Admission Course
Wayne Norris Brooks	35th Bar Admission Course
Patrick Joseph Clifford	35th Bar Admission Course
Jean Claude Dubuisson	35th Bar Admission Course
Roy Anthony Dullege	35th Bar Admission Course
Stanley Chang Woon Foo	35th Bar Admission Course
Evelyn Diana Huber	35th Bar Admission Course
Audrey Kathryn Kendall	35th Bar Admission Course
Catherine Anne McCann-Kyte	35th Bar Admission Course
Brian Douglas Munro	35th Bar Admission Course
Heather Elizabeth Mitchell	35th Bar Admission Course
Grant Douglas Nelles	35th Bar Admission Course
Benedict Patrick Derry O'Halloran	35th Bar Admission Course
Hugh Myles Briscoe O'Reilly	35th Bar Admission Course
Fernando Pietramala	35th Bar Admission Course
Sharon Janeen Sargint	35th Bar Admission Course
David Laurence Sterns	35th Bar Admission Course
Priva Janice Warren	35th Bar Admission Course
John Robert Andrew Wilson	35th Bar Admission Course
Lily K. Yew	35th Bar Admission Course
Dana Jeanine Young	35th Bar Admission Course
Paul Robert Arkin	Special, Transfer, Nova Scotia
Jean-Pierre Blais	Special, Transfer, Quebec
Peter Edwin Falk	Special, Transfer, Manitoba
Donald Alan Jackson	Special, Transfer, Alberta
Pamela Gay Legg	Special, Transfer, Alberta
Victor Peter Leginsky	Special, Transfer, Alberta
Indra Lynne Chandanee Maharaj	Special, Transfer, Manitoba
Debra Joy Poon	Special, Transfer, Alberta
Michelle Tarney Taj	Special, Transfer, Nova Scotia
Jeffrey Bruce Berryman	Dean, Faculty of Law, University of Windsor
Myra Joy Tawfik	Professor, Faculty of Law, University of Windsor

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AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of June 9, 1994

Mr. Howie presented Items B.-3. & 4. re: Suspensions for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

24th June, 1994

Your Committee met on Thursday, the 9th of June, 1994 at 10:30 a.m., the following members being present: J.J. Wardlaw (Vice Chair in the Chair), M. Somerville (Vice Chair), T.G. Bastedo, R.W. Cass, A. Feinstein, N. Finkelstein, V. Krishna, R.W. Murray and W.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

A.
POLICY

1. REINSTATEMENT FEE

When Convocation approved the implementation of a reinstatement fee for suspended members who wished to be reinstated to good standing, no authority was granted to staff to waive that fee in any circumstances.

It now appears, through experience, that there are cases where this fee is financially onerous. For instance, there were several members in the last suspension, who for various reasons, simply failed to fill out their Errors and Omissions exemption form. Many of these members are not employed or are in other areas of work, and in most cases the reinstatement fee of \$150 plus GST is a burden at this time.

The Committee was asked to grant authority to the Director of Finance and the Secretary or Deputy Secretary to waive this fee in certain circumstances.

Approved

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director of Finance and Administration presented highlights memoranda for the General Fund and the Lawyers' Fund for Client Compensation for the ten months ended April 30, 1994 [pages 4 - 7] and the Consolidated Errors and Omissions Insurance Fund Financial Statements as at December 31, 1993. [pages 8 - 12]

Approved

2. ASSIGNMENT OF LEGAL AID ACCOUNTS

At Convocation in April the Chair of the Legal Aid Committee raised the issue that many members had asked whether the Society would allow the assignment of Legal Aid accounts in payment of annual fees and levies. The issue was raised in the context of the Legal Aid Plan's difficulty in making payments to members due to funding restraints by the provincial government.

Convocation rejected the plan on the grounds that it would be difficult to administer and would give preferential treatment to some lawyers over others. For instance, there are many lawyers who do not do Legal Aid work or are having difficulty collecting their accounts receivable and even some lawyers doing work for government, other than Legal Aid, who must wait for payment.

The Chair, at the request of the Chair of the Legal Aid Committee, has asked that the matter be reconsidered by the Finance and Administration Committee and that the Committee further consider ways that the Society could accommodate some form of assignment or offset of Legal Aid accounts against annual fees and levies. A memorandum from the Chair to the Finance and Administration Committee was before the meeting. [pages 13 - 14]

Denied

A further motion was made that notice of the current program in place to defer payment of fees or levies by members experiencing financial hardship be circularized to the profession indicating that every reasonable accommodation will be made to those lawyers who derive a significant amount of income from the Legal Aid Plan.

Denied

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are members who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

In all cases, all or part of the late filing fee has been outstanding for four months or more.

The Committee was asked to recommend that the rights and privileges of these members be suspended on June 24, 1994 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 117

4. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are members who paid their Annual Fees or their Errors and Omissions Insurance levies with cheques which were subsequently dishonoured by the bank.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on June 24, 1994 if the fees or levies remain unpaid on that date.

Approved

Note: Motion, see page 117

5. MEMBERSHIP UNDER RULE 50

Retired Members

The following members, who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their memberships in the Society without payment of annual fees:

Ronald William Cass	Belleville
Bryant Marcus Kassirer	Toronto
Douglas Campbell Woolley	Toronto

Their applications are in order and the Committee was asked to approve them.

Approved

6. RESIGNATION - REGULATION 12

The following members have applied for permission to resign their membership in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports.

(a) Kevin Ian Munro of Melbourne, Australia was called to the Bar on March 31, 1989 and has never practised law in Ontario since his call.

(b) Timothy Hollinrake Pettit of West Vancouver, BC, was called to the Bar on October 22, 1993 and has never practised law in Ontario since his call. The Annual Fee for 1993/94 is outstanding.

(c) Dale Elizabeth Bruce of Aurora, was called to the Bar on March 31, 1989 and practised law from April 1989 to June 1989 with the firm Prousky & Biback, and from July 1989 to April 1990 with the firm Malach, Fidler. She did not handle trust accounts or clients' property during this period. Arrangements have been made to clients' satisfaction for the assumption of all clients' files by other lawyers in the respective firms. She is not aware of any claims made against her.

(d) John MacKay Judson of Islington, was called to the Bar on April 12, 1962 and practised with the firm McCarthy Tetrault until September 1992 when he retired. He declares that all trust funds or clients' property for which he was responsible has been accounted for and paid over to the persons entitled thereto. All client matters have been completed and disposed or arrangements made to clients' satisfaction. He is not aware of any claims made against him.

Their Declarations/Affidavits are in order and the Committee was asked to approve them.

Approved

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

K. Howie
Chair

Attached to the original Report in Convocation file, copies of:

- B.-Item 1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated June 2, 1994 re: April 1994 Financial Highlights. (pages 4 - 7)
- B.-Item 1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated June 2, 1994 re: Consolidated Errors and Omissions Insurance Fund Financial Statements as at December 31, 1993. (pages 8 - 12)
- B.-Item 2. - Memorandum from Mr. Ken Howie to the Members of the Finance and Administration Committee dated June 9, 1994 re: Assignment of Legal Aid Accounts - Agenda Item B.2. (pages 13 - 14)

THE BALANCE OF THE REPORT WAS ADOPTED

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Howie, seconded by Mr. Wardlaw THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from June 24, 1994 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - N.S.F. CHEQUES

It was moved by Mr. Howie, seconded by Mr. Wardlaw THAT the rights and privileges of each member who paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank and whose name appears on the attached list be suspended from June 24, 1994 and until the necessary fee or levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

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INSURANCE COMMITTEE (3rd Report)

Re: Joint Meeting of Insurance and Finance Committees - June 23, 1994

Mr. Campbell presented the Report of the joint committee meeting of the Insurance and Finance Committees on the E & O levy which was followed by a debate.

MINUTES OF A JOINT MEETING
OF THE
INSURANCE AND FINANCE COMMITTEES

Thursday, June 27, 1994 8:00 am

There were two items before the Joint Committee: first the levy recommendation, and secondly, a report from the subcommittee on transaction fees.

1. Levy Recommendation

The Chair presented a summary of the responses that have been received by the Law Society, LPIC and various of the Benchers respecting the May levy proposal. A more comprehensive summary is being prepared and will be available to Benchers, but in brief the concerns of members may be classed as follows:

- (i) A very strong concern by many members who advised that their income and, particularly their gross fee billings from practice, will not enable them to pay any increased levy at this time.

- (ii) A concern expressed by many members that they do not consider themselves at risk and therefore should not have to pay the same levy as those who are considered at risk.
- (iii) That the insurance levy not be implemented in a way that would have the result of fragmenting and alienating groups within the profession.

The basic issue before the Joint Committee was whether an increased levy should be implemented now to take into account the current actuarial projections on which losses for 1994 are estimated, or whether any further increased levy, beyond that which was previously announced and commenced as of January 1994, should be postponed to the fall pending further study of alternative structure and coverage considerations. The following table sets out the effect of the levy changes proposed following the May meeting of the Insurance and Finance Committees:

1994 LEVY INFORMATION

January 1994 Levy (re & Nov. 94)		BASE	1,950
		DEFICIT	<u>225</u>
			2,175
July 1994 Levy Anticipated in January 1994		BASE	1,950
		DEFICIT	<u>225</u>
			2,175
Anticipated 1994 Total Year			4,350
Full Year	Revised	BASE	5,730
Minus January Levy for 6 months		BASE	<u>1,950</u>
			3,780
Previously Anticipated July 1994 Levy for 6 months		BASE	<u>2,175</u>
		DIFFERENCE	1,615
OUTSTANDING (Recommended DEFICIT Levy considered deferred to September 1994)			1,479

The issue narrowed to a consideration of whether \$3,780 should be levied for the period July 1 to December 31, 1994 with possible additional or exemption relief for those whose incomes are most severely affected, or whether \$2,175 would be assessed for the same period on the basis that it was an interim levy for that period only subject to further consideration in the fall when a report on various potential changes to the programme is anticipated to be made.

Discussion ensued on the question of whether any changes could be made to the programme now which would have the effect of increasing revenue. Those included raising the deductible, making members against whom claims have been successfully defended pay their deductible nevertheless, and changing the caps for payment of defence counsel.

After consideration there was a consensus that none of these changes should be implemented now, rather they should be part of the consideration of a task force over the next two to three months to put all of the ideas in context and permit reasoned decisions to be made on the basis of full information on the impact that such changes and any additional recommendations may have on the overall levy prospect not just for the remainder of 1994, but also for 1995.

Upon motion a majority of those present voted in favour of maintaining the \$2,175 figure as an interim levy to the fall. There was a strong consensus of all Benchers present that the profession should be advised the additional \$1,600 was, on the basis of current projections, simply being deferred and that it may be necessary, after full consideration of all of the issues raised, for this amount to be levied in the fall.

The view was expressed by the minority, on the motion, that fiscal responsibility would dictate that a certain levy addition beyond \$2,175 should be imposed now rather than being deferred.

It was noted that no matter what range of any actuarial forecast is used, based on current projections the levy should be in excess of \$3,000 before any consideration of relief that may be granted in any form to those with income problems.

2. Transaction Based Levy

Abe Feinstein, Chair of the subcommittee on this issue, reported on the work of the committee and its tentative conclusion that while the matter was not entirely free from doubt there did not seem to be an insurmountable legal hurdle to the implementation of a transaction based levy.

The subcommittee work will continue over the summer to deal with the particulars of the proposal and the extent to which it may be imposed together with the administrative apparatus necessary to make it effective.

By that time it should be clear what effect, if any, this would have on E&O levy prospects for the new year.

The tentative conclusion of the subcommittee is that the question of whether or not a transactional levy be included as a disbursement will be left to an individual lawyer, and his or her client.

Attached to the original Report in Convocation file, copies of:

Memorandum from Mr. Colin Campbell to the Benchers dated June 21, 1994 re: Report from the Chair - Insurance together with enclosures.
(pages 1 - 14)

It was moved by Mr. Campbell, seconded by Ms. Elliott that the base levy for the next 6 months be at the figure of \$2,175 and that discussion of an increase be deferred until the fall.

Carried

NOTICE OF MOTION

Mr. Somerville gave notice that he intended to bring a motion before Convocation that the Insurance Committee investigate and report to Convocation in September of the consequences of the Law Society withdrawing from the insurance program and leaving the insuring of lawyers to the private sector.

Mr. Somerville accepted an amendment to his motion by Mr. Howie that a study be done on whether or not the relationship between the insurance program and the Law Society should be changed.

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Convocation took a brief recess at 11:10 a.m. and resumed at 11:25 a.m.

AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

E & O LEVY (cont'd)

It was moved by Mr. Bastedo, seconded by Mr. Krishna that the fee be set at \$3,000 for the next 6 months (July 1 - December 31, 1994) to be allocated to the deficit subject to any adjustment in the fall.

Lost

MOTION

It was moved by Mr. Wardlaw, seconded by Mr. Feinstein THAT:

1. After September 30, 1994
 - (a) subject to section 3 a member shall not act for or otherwise represent both the vendor and purchaser in any transaction whereby the title to real property or personal property or both passes from a vendor to a purchaser.
 - (b) subject to section 4 a member shall not act for or otherwise represent both a lender and a borrower where money is loaned on the security of real property or personal property or both.
2. In the foregoing rule, the singular includes the plural, and vice versa.
3. Subsection 1(a) shall not apply in the following situations.
 - (a) A member acting for the personal representatives of an estate may transfer real or personal property, or both, to a beneficiary, where the lawyer is not expressing any opinion with respect to the quality of the title to the property being transferred.
 - (b) A member may transfer the title of real or personal property or both in a non arms length planning situation where no opinion as to the quality of the title to the property being transferred is being expressed. This includes transfers from parent to child and transfers between related corporations.
4. Subsection 1(b) shall not apply with the following situations.
 - (a) A lawyer may represent both a purchaser of real or personal property or both and an institutional lender such as a bank or trust company lending money to assist the purchaser to finance the purchase.
 - (b) A lawyer may represent both a lender and a borrower in an intra family loan such as a loan by parent to child.
5. This rule will not come into effect in remote geographic areas where there are few lawyers available to serve the public until December 31, 1994. Thereafter this rule will apply to those areas unless the lawyers in that geographic area apply for and are granted an exemption to the application of this rule.

6. This proposed resolution and rule is to be submitted to the Legislation and Rules Committee to improve its drafting, and the amendment of other rules. That committee may also consider other exemptions to the rule that it considers advisable.

Not put

It was moved by Mr. Murray, seconded by Mr. Murphy that the Wardlaw/Feinstein motion be tabled.

Lost

It was moved by Mr. Epstein, seconded by Mr. Bastedo that the conflict motion be amended to include prohibition against lawyers acting on both sides of a matrimonial matter.

Not Put

It was moved by Mr. Strosberg, seconded by Mr. Murphy that the Wardlaw motion be referred to a joint committee of the Insurance and Professional Conduct Committees.

Carried

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

.....

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Bastedo, Blue, Brennan, Campbell, Carter, R. Cass, Cooper, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Jarvis, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, Lerner, Levy, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, S. O'Connor, Palmer, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw and Yachetti.

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IN PUBLIC

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It was moved by Mr. Copeland, seconded by Ms. Graham that the media be allowed to remain in Convocation and photograph the proceedings.

Carried

AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

LEGAL AID COMMITTEE

Meetings of June 8 and 9, 1994

Ms. Kiteley presented Item A.-A.2 of the Report of the Legal Aid Committee for Convocation's approval. Also before Convocation was a Report entitled Summary of Issues and Options dated June 24, 1994 setting out the Legal Aid Committee's recommendations that option #1 and option #2 be adopted.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Legal Aid Committee begs leave to report:

Your Committee met on Wednesday, the 8th of June, 1994 from 3:00 p.m. to 6:00 p.m., the following members being present: Frances P. Kiteley, Chair, M. Buist, J. Campbell (by telephone), P. Copeland, S. Cooney, C. Curtis, D. Fudge, D. Fox, R. Lalonde, P. Peters, A. Rady, M. Stanowski, B. Sullivan.

Your Committee met on Thursday, the 9th of June, 1994 from 2:00 p.m. to 6:45 p.m., the following members being present: Frances P. Kiteley, Chair, B. Ally, M. Buist, J. Campbell, P. Copeland, S. Cooney, C. Curtis (by telephone), D. Fudge, D. Fox, R. Lalonde, P. Peters, R. Rady, M. Stanowski, B. Sullivan.

Fatima Mohideen, Bencher of the Law Society was also in attendance on June 9, 1994.

The following senior members of staff were present at both meetings: Bob Holden (Provincial Director), Ruth Lawson, (Deputy Director-Appeals), George Biggar (Deputy Director-Legal), Bob Rowe (Deputy Director-Finance).

A.
POLICY

A.1. Finances for the Current Fiscal Year

A.1.1 Refer to Schedule 1-1 (page 4) for the statement of income and expenditure to April 30, 1994 and to Schedule 1-2 (page 5) for the statistics on services provided to April 30, 1994.

A.1.2 On the assumption that no changes are made affecting the current fiscal year, the cash flow available for the balance of the fiscal year is such that further slowdown in payment of accounts to lawyers will be required. Refer to Schedule 1-3 (page 6).

A.2 Budget Alterations to Survive the Current Fiscal Year

A.2.1 In May, 1994 Convocation was advised that service cuts or revenue enhancements would be necessary in the current fiscal year.

A.2.2 In June, 1994, the Legal Aid Committee held two meetings: June 8th for three hours and June 9th for four and a half hours. By the conclusion, consensus was achieved on the many steps to be undertaken in the current and next fiscal year.

A.2.3 Rather than repeating in this report, Benchers are referred to the report of the Steering Committee (Schedule 2, pages 7 - 14). The results of the deliberations are summarized in the table at Schedule 3 (pages 192 - 216).

A.2.4 Benchers will be asked to approve the recommendations in Schedule 3 (pages 192 - 216).

A.3 Report on Refugee Issues

A.3.1 A report on refugee issues, prepared by Ruth Lawson (Deputy Director, Appeals) was received by the Legal Aid Committee and by Convocation in May. (Schedule 4-1, page 216). That report identified an important issue with respect to the Cost Recovery Fee for landing applications by Convention Refugees. Specifically, that it could increase costs to legal aid by \$3 million. At its meeting in May, the Legal Aid Committee directed the chair of the Legal Aid Committee to correspond with the Minister of Citizenship and Immigration. A copy of that letter is attached as Schedule 4-2 (page 222). No reply to that letter has been received.

The Legal Aid Committee recommends that:

- the Ontario Legal Aid Plan adopt the policy at this time of not authorizing as a disbursement the Cost Recovery Fee for applications for landing in Canada made by persons who have been determined in Canada to be Convention Refugees who are legally aided; and
- the Ontario Legal Aid Plan continue in its efforts to persuade the Minister of Citizenship and Immigration to remove the requirement of the Cost Recovery Fee or not require it to be paid until after landing application has been filed.

A.4 Legal Aid Committee - Board Development Process

A.4.1 As reported earlier to Convocation, the Legal Aid Committee held a strategic planning day in December 1993 as part of its ongoing development process. Steve Raiken, the consultant from Ernst & Young prepared a final report which the Legal Aid Committee received at its May meeting.

A.4.2 At the June meeting, the Legal Aid Committee adopted the recommendations made by the consultant. The entire report is found at Schedule 5. The recommendations are summarized in the executive summary at Schedule 5 (pages 225-272). The recommendations of particular interest to Convocation are numbered 1, 2, 3, 4, 5, 10 and 14 (starting at page 230).

B.
ADMINISTRATION

B.1. Ontario Legal Aid Plan - Statement of Income and Expenditure for the One Month Ended April 30, 1994

B.1.1 Bob Rowe, Deputy Director, Finance presented the Statement of Income and Expenditure (for the month ended April 30, 1994 which is attached as Schedule 1-1 (page 4) referred to above in A.1.1 and A.1.2.

B.2 Report on the Payment of Solicitors' Accounts for the Month of May, 1994

B.2.1 The report on the payment of solicitors accounts for May 1994 is attached hereto as Schedule 6 (page 274).

24th June, 1994

- B.3 Report on the Status of Reviews for the Month of May 1994
- B.3.1 The report on the status of reviews in the Legal Accounts Department for the month of May is attached hereto as Schedule 7 (page 275).

B.4 Area Committees: Appointments and Resignations

Appointments:

Ottawa/Carleton

William Carroll, solicitor
Sean J. May, solicitor
Ann Scholberg, solicitor
J. David Wake, Q.C.

Peel

David Craig, solicitor
Ava Hillier, solicitor
Paula Sehmi, solicitor

Resignations:

Niagara North

Tom Richardson

Ottawa/Carleton

Phil Killeen
Leonard Shore

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

F. Kiteley
Chair

(see bound Report re: Note to Benchers, in Convocation file)

Option #1

Reduce services by instituting a temporary moratorium on discretionary legal aid certificates. Reduce fees paid for certain matters.

Option #2

Enhance revenues. Raise additional funds from the legal profession, the legal aid bar and the Law Foundation.

There was a debate in Convocation.

It was moved by Mr. Somerville, seconded by Mr. McKinnon that Convocation adopt the following motion which for ease of identification was referred to as option #5:

WHEREAS Convocation considers it important to reaffirm

- (a) the importance of preserving the certificate delivery system for Legal Aid in Ontario to ensure the free choice of lawyer,
- (b) the value of independent administration of the Legal Aid Plan by the Society,
- (c) the statutory responsibility of the Provincial Government for the funding of the Legal Aid Plan, and
- (d) the Law Society's role and responsibility with respect to protection of the public interest;

THEREFORE IT IS MOVED THAT:

Convocation postpone consideration of the report of the Legal Aid Committee and the motion to discontinue certain pilot projects under the completion of further discussions with the Government by the Treasurer and the Chair of Legal Aid. These discussions must have particular reference to:

- (a) the Government's position with respect to funding of the Plan,
- (b) the negative impact, if any, of such funding upon the scope of services provided by the Plan,
- (c) the resulting unfortunate need for the reduction of services, if any,
- (d) the timing of any such reductions, and
- (e) the Law Society's obligations with respect to the public interest.

Further that the committee report to Convocation as soon as possible after the completion of such discussions and in any event not later than Regular Convocation in September, 1994.

Carried

ROLL-CALL VOTE - (Option #5)

Bastedo	Against
Blue	Against
Brennan	Against
Campbell	Against
Carter	For
Copeland	For
Cullity	Against
Curtis	For
Elliott	For
Epstein	Against
Goudge	For
Graham	Against
Hickey	For
Kiteley	Against
Lamont	For
Lax	For
Legge	Against
Levy	Against
McKinnon	For
Manes	For
Mohideen	For
Moliner	Abstain
Murphy	For
Murray	For
Palmer	For
Peters	For
Richardson	For
Ruby	For
Scott	Against
Sealy	Against
Somerville	For
Thom	Against
Topp	For
Wardlaw	Against
Yachetti	For

It was moved by Ms. Kiteley, seconded by Mr. Brennan that the balance of the Report be adopted.

THE REPORT WITH THE EXCEPTION OF ITEM A.-A.2 WAS ADOPTED

AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

SPECIALIST CERTIFICATION BOARD

Meetings of June 8 and 9, 1994

Mr. Yachetti presented Item A.-A.1. re: Specialist Certification Program and Item A.-A.2. re: Dual Speciality Certification for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Wednesday, the 8th of June, 1994 at six o'clock in the evening, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), A.M. Cooper, P.G. Furlong and G.P. Sadvari. M.J. Angevine and S. Thomson, of the Law Society, were also present.

Your Board met on Thursday, the 9th of June, 1994 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), D.W. Scott (Vice-Chair), J. Callwood, A.M. Cooper, P.G. Furlong and C.D. McKinnon. S. Thomson, of the Law Society, was also present.

Since the last report, Specialty Committees have met as follows:

The Workers' Compensation Law Specialty Committee met on Thursday, the 26th of May, 1994 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met on Friday, the 27th of May, 1994 at five o'clock in the afternoon.

A.
POLICY

A.1. THE SPECIALIST CERTIFICATION PROGRAM

A.1.1. In a discussion on June 8th, the Board renewed its commitment to the continuance and growth of the Specialist Certification Program, in the public interest and to the betterment of the legal profession.

A.1.2. The cornerstone of a well-respected Program within the legal profession and in the public realm, will be the development of comprehensive, accessible and sophisticated educational programs for Specialists. It is therefore the Board's view that the development of these programs is essential to the continuation of the Specialist Certification Program.

A.2. DUAL SPECIALTY CERTIFICATION

A.2.1. Your Board considered the Report of the Sub-Committee on the Dual Civil and Criminal Litigation Specialty, dated March 4, 1994 (see Attachment 1).

A.2.2. After some discussion your Board concluded that the recommendation of the Sub-Committee in favour of the rejection of the concept of combined Specialties as areas of certified specialization should be adopted.

A.2.3. Your Board therefore also endorses the recommendation of the Sub-Committee in favour of the abolition of the dual Civil and Criminal Litigation Specialty.

A.2.4. Your Board recommends that the "grandfathered" dual Civil and Criminal Litigation Specialists, whose certificates have been extended pending consideration of this issue by the Board, should be advised that their dual certificates will not be renewed; however, these Specialists will be encouraged to pursue their applications in one or both Civil Litigation and Criminal Law under the recertification standards.

A.2.5. Your Board agrees that the 50% practice time rule (the Workers'

Compensation Law Specialty excepted) should be maintained and may be averaged over the "five years of recent experience" preceding the date of application.

- A.2.6. A special comment will be drafted for inclusion in the Standards to permit some discretion in the assessment of those applicants who do not strictly meet the 50% minimum practice time requirement, but who are able to demonstrate comparable "substantial involvement" in the field to the satisfaction of the assessing Specialty Committee and the Board according to criteria which will be itemized in the Standards.

Note: Motion, see page 129

B.
ADMINISTRATION

B.1. SIX-MONTH CERTIFICATE EXTENSIONS

- B.1.1. The Board extended for up to six months those certificates due to expire on June 6, 1994 to allow time for the proper processing of the recertification applications.

B.2. WORKERS' COMPENSATION LAW SPECIALTY COMMITTEE MEMBERSHIP - 1994

- B.2.1. Your Board recommends the following membership for 1994 of the Workers' Compensation Law Specialty Committee, in accordance with the recommendations of that Committee:

David W. Brady (Chair) - of Toronto
Terry F. Copes - of Sudbury
David P. Craig - of Brampton
Alec W. Farquhar - of Toronto - NEW MEMBER
Nicole R. Godbout - of Toronto
S. David Gorelle - of Toronto - NEW MEMBER
Charles E. Humphrey - of Toronto - NEW MEMBER
Perry R. McCuaig - of Ottawa
Daniel S. Revington - of Toronto

- B.2.2. Your Board will request that the Committee make every effort to achieve a better balance of men and women Committee members in future recommendations.

B.3. LABOUR LAW COMMITTEE MEMBERSHIP - 1994

- B.3.1. Your Board recommends the continuance of the Labour Law Specialty Committee as presently constituted for the remainder of 1994:

Roy C. Fillion (Chair) - of Toronto
Alan M. Minsky (Vice-Chair) - of Toronto
Janice A. Baker - of Toronto
Jacques A. Emond - of Ottawa
Leonard P. Kavanaugh - of Windsor
Elizabeth J. McIntyre - of Toronto
Chris G. Paliare - of Toronto
Paula Rusak - of Toronto
Jeffrey Sack - of Toronto
John B. West - of Toronto

C.
INFORMATION

C.1. RECERTIFICATION OF SPECIALISTS

C.1.1. The Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Litigation (Law) Specialists:

Michael D. Edelson (of Ottawa)
Peter A.J. Harris (of Toronto)
Richard LeDressay (of Oakville)
Patrick F.D. McCann (of Ottawa)
Bruce R. Shilton (of Toronto)
George F. Walker (of St. Catharines)
Alan C.R. Whitten (of Hamilton)

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

R. Yachetti
Chair

Attached to the original Report in Convocation file, copies of:

A.-Item A.2. - Report of the Sub-Committee on the Dual Civil and Criminal Litigation Specialty dated March 4, 1994.
(Attachment 1, pages 1 - 5)

It was moved by Mr. Yachetti, seconded by Mr. Scott that Items A.-A.1. & A.2. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of June 9, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of June, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), D. O'Connor (Vice-Chair), Blue, Cullity, Feinstein, Finkelstein, Hickey, Lamont, Moliner, Scott and Wardlaw. The following staff members were present: D. Godden, S. Kerr, K. Kowal, J. Varro, H. Werry and S. Traviss.

A.
POLICY

1. DRAFT RULE ON DISCRIMINATION - RULE 28

The Professional Conduct Committee was advised in April that the Equity in Legal Education and Practice Committee wished to have a new Rule of Professional Conduct that would address discrimination and that would come into effect within the next couple of months. This rule would replace what has been in the existing Rules of Professional Conduct for a number of years (see paragraph 5 of the Commentary under Rule 13).

Set out below is the draft Rule 28:

"The lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and specifically to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offenses (as defined in the *Ontario Human Rights Code*), marital status, family status or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person."

Commentary

The Law Society of Upper Canada acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination. Members must ensure that no one is denied services or receives inferior service on the basis of the grounds noted in the Rule. Members must ensure that their employment practices do not offend the Rule. Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the *Ontario Human Rights Code* and related equity legislation.

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The *Ontario Human Rights Code* requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the *Code*.

The Rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Attached are three pages respecting the background of this matter (Appendix A).

The Committee requests Convocation:

- (a) to adopt this Rule; and
- (b) to decide when it should come into force.

Note: Item deferred

2. PROPOSAL TO AMEND RULE 5 TO ADDRESS CERTAIN
CONFLICTS IN REAL ESTATE TRANSACTIONS

The Committee discussed Mr. Wardlaw's Notice of Motion that is to be presented at Convocation on June 24th. This Notice was distributed at Convocation on May 27th. It is set out below:

1. After September 30, 1994
 - (a) subject to section 3 a member shall not act or otherwise represent for both the vendor and purchaser in any transaction whereby the title to real property or personal property or both passes from a vendor to a purchaser.
 - (b) subject to section 4 a member shall not act or otherwise represent both a lender and a borrower where money is loaned on the security of real property or personal property or both.
2. In the foregoing rule, the singular includes the plural, and vice versa.
3. Subsection 1(a) shall not apply if in the following situations.
 - (a) A member acting for the personal representatives of an estate may transfer real or personal property, or both, to a beneficiary, where the lawyer is not expressing any opinion with respect to the quality of the title to the property being transferred.
 - (b) A member may transfer the title of real or personal property or both in a non arms length planning situation where no opinion as to the quality of the title to the property being transferred is being expressed. This includes transfers from parent to child and transfers between related corporations.
4. Subsection 1(b) shall not apply with the following situations.
 - (a) A lawyer may represent both a purchaser of real or personal property or both and an institutional lender such as a bank or trust company lending money to assist the purchaser to finance the purchase.
 - (b) A lawyer may represent both a lender and a borrower in an inter family loan such as a loan by parent to child.

5. This rule will not come into effect in remote geographic areas where there are few lawyers available to serve the public, until December 31, 1994. Thereafter this rule will apply to those areas unless the lawyers in that geographic area apply for and are granted an exemption to the application of this rule.
6. This proposed resolution and rule is to be submitted to the Professional Conduct Committee to improve its drafting, and the amendment of other rules. That Committee may also consider other exemptions to the rule that it considers advisable.

The effect of this would be to prohibit a lawyer acting for both a vendor and purchaser except in certain circumstances (such as in an estate matter or in transactions involving transfers from parent to child) and a lawyer acting for both a mortgagor and mortgagee in private mortgage transactions (those not involving banks or trust companies). It was noted that losses in mortgage transactions are responsible for many of the claims made against the Society's errors and omissions insurance and the Lawyers Fund for Client Compensation. Prohibiting dual representation in those transactions would reduce claims against both.

The Committee asks Convocation to adopt the proposed changes to Rule 5 contemplated in Mr. Wardlaw's motion.

Should Convocation be in agreement, it is planned that the necessary amendments to Rule 5 be brought to Convocation in September.

Note: Amendment, (see Wardlaw motion page 120)

3. FEDERATION OF LAW SOCIETIES WORK ON THE MARTIN V. GRAY DECISION OF THE SUPREME COURT OF ONTARIO - CONFLICTS ARISING AS A RESULT OF TRANSFERS BETWEEN LAW FIRMS

Attached is a memo from Colin Campbell, Q.C. under date of May 26, 1994 together with the Rule and Commentary, a chart and the decision in the Baumgartner case (Appendix B).

The Committee asks Convocation to receive the Report of the Federation of Law Societies Committee and to make it available to the profession. Interested lawyers can phone the Communications Department to receive a copy.

The Professional Conduct Committee will be considering this matter over the summer and will be reporting back to Convocation in the Fall.

C.
INFORMATION

1. REMOVAL OF LAWYER'S NAME FROM FIRM NAME AFTER APPOINTMENT TO THE BENCH, AS REQUIRED BY RULE 12 - SHOULD THIS REQUIREMENT BE REPEALED?

The Committee has had occasion to consider paragraph 7(d) of Rule 12 of the Rules of Professional Conduct which provides:

24th June, 1994

When a lawyer retires from a firm to take up an appointment as a judge or master, or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

The reason behind this provision is that the public could associate the judge's name with the firm and conclude that there was a marked advantage to be gained by employing this law firm in litigious matters because his brother and her sister judges would know of that judge's former association with that firm. Although no benefit would be accorded a litigant in these circumstances, there is still that perception which would harm the administration of justice.

The ABA Model Code at Rule 7.5, subsection (c) reads:

The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practising with the firm.

The majority of the Committee was of the opinion that the justification for paragraph 7(d) should be rethought. It may be that the requirement in paragraph 7(d) is unnecessary and therefore should be repealed.

The Committee will be discussing this issue at its September meeting with a view to bringing forward a report to Convocation that month.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

M. Somerville
Chair

Attached to the original Report in Convocation file, copies of:

- A.-Item 1. - Proposed new Rule 28 re: Discrimination. (Appendix A - A3)
- A.-Item 3. - Memorandum from Mr. Colin Campbell, Q.C. to All Directors, All Governing Bodies, All Deputy Attorneys General, Ontario Crown Counsel Association, Ontario Criminal Lawyers' Association and Canadian Corporate Counsel Association dated May 26, 1994 re: Model Rule on "Conflicts Arising as a Result of Transfer between Law Firms (Appendix B - B18)

Item A.-2. re: Proposal to amend Rule 5 was amended (see Mr. Wardlaw's Motion on page 120).

Item A.-1. re: Draft Rule on Discrimination - Rule 28 was deferred to the September Convocation.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

ADMISSIONS COMMITTEE

Addendum

ADDENDUM TO THE ADMISSIONS COMMITTEE REPORT - JUNE 1994

The following item was deferred from May Convocation:

A.
POLICY

A.1. REQUIREMENTS FOR TRANSFER FROM ANOTHER CANADIAN JURISDICTION

- A.1.1. In its June 1993 report your Committee made recommendations with respect to revisions of the requirements to transfer from another Canadian common law jurisdiction under section 4(1) of Regulation 708. Convocation requested that the recommendations be further revised and that a comprehensive package be prepared to encompass section 4(2) of the Regulation with respect to applicants for transfer from Quebec.
- A.1.2. Your Committee had before it for consideration the decision of the Quebec Superior Court in Richards v. Bateau du Quebec. The issue in this case was whether the requirement of three years practice in another Canadian jurisdiction in order to be eligible to transfer to Quebec is unconstitutional.
- A.1.3. Regulation 708 made under the Law Society Act provides as follows:
- A.1.4. Section 4(1)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five year period immediately preceding the application;
- A.1.5. Section 4(2)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in the Province of Quebec for a period or periods totalling three years within the five year period immediately preceding the application.
- A.1.6. The Society retained Counsel to provide an opinion as to the validity of the requirement of three years of active practice to be eligible to transfer to Ontario from another Canadian jurisdiction in light of the Richards decision.
- A.1.7. The opinion provided that, in essence, the Society may require transfer applicants to comply with standards for admission which are equivalent to those required of students proceeding through the Bar Admission Course.
- A.1.8. Your Committee also considered the following: 1) transfer requirements of the other provinces; 2) the nature of their pre-call training; and 3) the draft Protocol prepared by the Federation of Law Societies Committee on Interjurisdictional Practice.

A.1.9. In reviewing the criteria transfer applicants should be required to meet, your Committee considered the requirements of pre-call training in Ontario including the academic requirements for entry to the Bar Admission Course and the seventeen months duration of the course.

A.1.10. Your Committee now recommends that the transfer requirements be revised as follows:

4(1) Upon the recommendation of the Committee, an applicant who is qualified to practise law in any province or territory of Canada outside Ontario may be called to the bar and admitted as a solicitor provided the applicant,

- (a) (i) is a graduate of a law course, approved by Convocation, in a university in Canada, or
 - (ii) has a certificate of qualification issued by the Joint Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
 - (b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the application, has been engaged in,
 - (i) the active practice of law as a member of a law society or equivalent body which is a member society of the Federation of Law Societies of Canada,
 - (ii) the pre-call education program of a member society of the Federation of Law Societies of Canada, or
 - (iii) a combination of the activities referred to in subclauses (i) and (ii);
 - (c) files a certificate of good standing issued by a member society of the Federation of Law Societies of Canada; and
 - (d) passes the transfer examination as prescribed from time to time by Convocation.
- (2) For purposes of this section, an applicant shall be deemed to have been engaged in the pre-call education program of a member society of the Federation of Law Societies of Canada when,
- (a) enrolled and participating in a teaching or education program prescribed by that society and distinct from a university law course; or
 - (b) serving under articles of clerkship to a member of that society in accordance with the rules or regulations of that society.

24th June, 1994

(3) On each occasion when a candidate for call and admission under subsection (1) sits the transfer examination referred to in clause (1)(d) the candidate must present evidence that the candidate,

- (a) has been engaged in the activities set out in subclauses (i), (ii) or (iii) of clause 1(b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the examination; and
- (b) is a member in good standing of a member society of the Federation of Law Societies of Canada.

A.1.11. Your Committee considered a provision which would permit an applicant whose engagement in the activities referred to in clause (1) (b) does not amount to the total of seventeen months required by that clause to satisfy the requirement of that clause by serving under articles of clerkship in Ontario for the length of time required to bring the total to seventeen months.

A.1.12 After discussion your Committee concluded that such a provision ought not to be included. Your Committee was concerned that transfer applicants seeking short term articling positions in Ontario would increase the difficulties already faced by students-at-law in the Bar Admission Course in finding articling placements.

The Report re: Requirements for Transfer was deferred to the September Convocation.

Meeting of March 24, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 24th of March, 1994 at 1 p.m., the following members being present: Mr. Lamont (Chair), Ms. Moliner and Messrs. Farquharson and Goudge.

Also present: M. Angevine and P. Gyulay

A.

A.1. PUBLICATION OF ADMISSION HEARINGS

A.1.1. At its January 13, 1994 meeting the Committee was asked to consider whether a policy with regard to the regular publication of scheduled Admission Hearings should be established. A discussion ensued which canvassed various options. Following the discussion, the Committee requested that this item be deferred to the February meeting.

A.1.2. At its February meeting your Committee resumed the discussion. It reviewed the Society's policy with respect to the publication of discipline matters, which is as follows:

1. Public/Media enquiries: once a complaint is authorized and issued, the Society will release, upon request, the name of the solicitor facing discipline together with the allegations contained in the complaint;
 2. Prior notification: a list of hearings scheduled to take place in the forthcoming month is provided to the media at the end of each month. The following information is included: the name of the solicitor, the allegations in the complaint and the date and place of the hearing.
- A.1.3. In its discussions, the nature of admission hearings was explored and compared to that of discipline hearings.
- A.1.4. Your Committee observed that admission hearings frequently arise because the applicant has disclosed information about his or her conduct to the Society and asked whether the conduct in question will constitute a bar to admission. A hearing may be required because the Admissions Committee is unable to decide the "good character" issue without the benefit of hearing the evidence and observing the applicant.
- A.1.5. In discipline matters, however, the hearing arises only after there has been an investigation of the member's conduct and a decision made to charge the member with professional misconduct or conduct unbecoming.
- A.1.6. Further, your Committee was particularly struck by the fact that in admission hearings, counsel for the Society often takes no position on the question of good character, but instead, ensures only that all the relevant information necessary to decide the question is placed before the panel. Your Committee contrasted this role with that of the Society's counsel in discipline matters where, in every case, counsel asserts that the member is guilty of professional misconduct.
- A.1.7. Your Committee concluded that there is a significant distinction to be drawn between the two processes. Your Committee then discussed whether that distinction justifies a different policy with respect to the publication of hearings.
- A.1.8. Initially the Committee reached the conclusion that a different policy was justified and proposed the following policy:
1. Public/Media Enquiries: If an inquiry is made to the Society about a specific individual who is subject to a hearing, the fact that an admission hearing has been ordered will be disclosed, together with the date of the hearing (if known). No other particulars will be provided.
 2. Prior notification: There will be no prior notification ie. a list of admission hearings scheduled to take place in the forthcoming month will not be provided to the media at the end of each month.
- A.1.9. Upon further reflection your Committee decided to revisit this issue at its meeting on March 24th, 1994.

24th June, 1994

- A.1.10. At that meeting the discussion focused on the process leading up to the decision that a hearing pursuant to s. 27 of the Law Society Act is required. The Committee articulated the concern that a hearing is sometimes ordered because the Committee feels unable to dispose of the issue on the basis of the written material before it. In other words the Committee is not satisfied as to the "good character" of the applicant nor is it willing to assert that the applicant is not of good character.
- A.1.11. The Committee felt that in those cases it might well assist in the process to arrange an informal meeting with the applicant to review the material as well as provide an opportunity for the Committee to observe the applicant and ask questions. This meeting would take place before the decision about the necessity of a hearing is made.
- A.1.12. With this additional step of an informal meeting your Committee felt it would be better able to deal with those troublesome cases where there is genuine ambivalence on the part of committee members concerning the necessity for a hearing.
- A.1.13. Your Committee then proceeded to review its earlier position. In light of the introduction of an informal meeting with the applicant into the process, the Committee concluded that it was appropriate to follow the practice of prior notification established for discipline hearings, namely that a list of forthcoming admission hearings be provided to the media. Unlike the practice for discipline hearings, however, no particulars, other than the name of the applicant and the date and place of the hearing, will be provided.
- A.1.14. In conclusion, your Committee therefore recommends that Convocation adopt the following policy regarding publication of admission hearings:
1. Public/Media Enquiries: If an inquiry is made to the Society about a specific individual who is subject to a hearing, the fact that an admission hearing has been ordered will be disclosed, together with the date of the hearing (if known). No other particulars will be provided.
 2. Prior notification: A list of admission hearings scheduled to take place in the forthcoming month will be provided to the media at the end of each month. The following information will be included: the name of the applicant and the date and place of the hearing. No other particulars will be provided.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

Chair

The Report re: Publication of Admission Hearings was deferred to the September Convocation.

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REASONS - TED ROLAND LAAN

The Reasons in the Ted Roland Laan discipline matter were filed in Convocation.

REASONS OF CONVOCATION

IN THE MATTER OF

TED ROLAND LAAN

Convocation, in dealing with the matter of Ted Roland Laan on March 24th, 1994 ordered written reasons to follow to indicate to the profession and to the public the serious view that Convocation takes of Solicitors who practice while under suspension. In addition Convocation wishes to express its concern regarding the departure from the principles expressed by Convocation in other such cases.

THE PRINCIPLE

Convocation has established as a guiding principle in "Penalty" the following general rule:

"That in cases of solicitors practicing while under suspension, the penalty shall reflect a further suspension of one month for each month that the solicitor has practised while under suspension plus an additional one month as specific and general deterrence."

See: Roderick Grant MacGregor
Roger Edgar Bellefeuille
Marvin Larry Ellison

REASONS FOR THE PRINCIPLE

Convocation has adopted as reasons for the above mentioned general principle, the following:

- 1) A solicitor should not be put in a better position after having been found guilty of practicing while under suspension, than the solicitor would have been had that solicitor complied with his/her obligation and refrained from practicing while suspended.
- 2) Convocation generally views practicing while suspended as a flouting of the Law Society and is therefore deserving of a penalty that reflects such serious misconduct. No solicitor who acts in this fashion ought to be in a better position than a person who observed the suspension in the first place.
- 3) Convocation is not prepared to reward solicitors who practice while under suspension under any circumstances:

CONCLUSION

Convocation recognizes that in each case the facts may mitigate or aggravate the penalty and therefore it is not possible to set a standard penalty in each case. At the same time, Convocation having now re-stated in these Reasons the General Principle, gives fair warning to all members of the profession that not only is this conduct intolerable but that in each case of this nature in the future the general principle shall be applied absent circumstances of great mitigation or great aggravation.

24th June, 1994

The public interest in clients only being represented by solicitors who are not suspended is paramount. Convocation views this on-going problem seriously and in the future solicitors can expect to be dealt with accordingly.

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ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Allen Zinszer, of the City of Kitchener, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

Convocation of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 7th day of February, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Allen Zinszer be suspended for a period of three months, such suspension to commence on the 1st day of June, 1994 and that he pay costs in the amount of \$2,000.00 within 60 days of the Order of Convocation.

DATED this 26th day of May, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Calum Donald Graham, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of February, 1994, in the

24th June, 1994

presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Calum Donald Graham be suspended indefinitely until a Committee appointed by Convocation is satisfied that:

- (a) the Solicitor is capable of practicing law; and
- (b) the Solicitor has responded to all issues in all complaints.

DATED this 26th day of May, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Emerson Pritchard, of the City of Sault Ste. Marie, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of April, 1994, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Emerson Pritchard be suspended for a period of three months, such suspension to commence upon the termination of the administrative suspension now in effect, and thereafter to continue until all of his obligations of membership in the Society are fulfilled.

DATED this 26th day of May, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Meyer Korman, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 30th day of March, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Meyer Korman be granted permission to resign.

DATED this 26th day of May, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

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AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

SPECIAL COMMITTEE ON AMENDMENTS TO THE LAW SOCIETY ACT

Meeting of June 7, 1994

Mr. Cullity reported on the legislative amendments.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON AMENDMENTS TO THE *LAW SOCIETY ACT* begs leave to report:

Your Committee met on Tuesday, June 7, 1994, at 5:00 p.m., the following members being present: M. Cullity (Chair), M. Moliner, D. O'Connor.

Also present: A. Brockett, M. Brown, S. Kerr, S. McCaffrey, D. McKillop, E. Spears, R. Tinsley, J. Yakimovich.

A.
POLICY

- A.1. PACKAGE OF AMENDMENTS TO THE LAW SOCIETY ACT: ENACTMENT:
RECOMMENDED APPROACH
- A.1.1. The package of amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature is to include:
1. Amendments to implement reforms to the complaints, discipline and standards procedures.
 2. Various other amendments to the *Law Society Act* approved by Convocation between September 1989 and May 1994. (These include the amendments necessary to implement the scheme of regional election of benchers adopted by Convocation.)
 3. Any other amendments to the *Act* that Convocation may approve prior to submission of the package to the Attorney General.
- A.1.2. The majority of amendments contained in the package are ready to be submitted to the Attorney General. Significant exceptions are the amendments to implement reforms to the complaints, discipline and standards procedures.
- A.1.3. In January 1994, the Secretary, on the request of the Legislation and Rules Committee convened a Staff Working Group comprising the following members of staff: Andrew Brockett, Michael Brown, Scott Kerr, Sue McCaffrey, Richard Tinsley, Elliot Spears, Jim Yakimovich. The Group was charged with the task of reviewing and drafting the amendments to implement reforms to the complaints, discipline and standards procedures.
- A.1.4. The Staff Working Group has been meeting since January 1994, and it has been compiling a list of policy questions arising from the amendments that need to be answered by benchers.
- A.1.5. On April 22, 1994, Convocation, on the recommendation of the Legislation and Rules Committee, struck the Special Committee on Amendments to the *Law Society Act*. The following benchers were appointed to the Committee: Maurice Cullity (Chair), Marie Moliner and Dennis O'Connor. The mandate of the Committee is to review all questions raised by the Staff Working Group in the course of its work, and to report to Convocation with recommendations as to how the questions should be answered.
- A.1.6. The Special Committee met for the first time on Tuesday, June 7 and began considering the list of policy questions compiled by the Staff Working Group. The Special Committee was advised that the extensive list before it was not the final list.
- A.1.7. The Special Committee wishes to inform Convocation that, in the view of the Committee, it is most unlikely that the package of amendments to the *Law Society Act* can be enacted before the upcoming election of benchers, unless the amendments to implement reforms to the complaints, discipline and standards procedures are hived off into a separate package, to be dealt with subsequently.

24th June, 1994

B.
ADMINISTRATION

No items to report.

C.
INFORMATION

No items to report.

ALL OF WHICH is respectfully submitted

DATED this 24th day of June, 1994

M. Cullity
Chair

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