

MINUTES OF CONVOCATION

Friday, 23rd January, 1998  
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Copeland, Cronk, DelZotto, Eberts, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Gottlieb, Harvey, Jarvis, Krishna, Lamont, Lawrence, MacKenzie, Manes, Marrocco, Martin, Murphy, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer advised that Mr. Armstrong would present his Report of the Legal Aid Committee today but the debate would take place at the February Convocation in Convocation Hall.

The Treasurer thanked the staff of the Policy Secretariat for their work in preparing a bound volume of decisions made by Convocation in public since the Benchers election in June 1995. Future decisions will be updated and reported every six months.

The Treasurer reported that the Law Society had been successful in having Mr. Tapper's challenge of Rule 50 and the insurance levy for non-resident members dismissed.

MOTION - REPORTS TAKEN AS READ

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Carter that the Draft Convocation Minutes for November 27th, 28th and December 12th, 1997, the Reports of the Executive Director of Education and Addendum and Admissions and Equity Committee be adopted.

Carried

Draft Minutes of Convocation - November 27th, 28th and December 12th, 1997

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

Report of the Executive Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:

B.  
ADMINISTRATION

B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. A number of candidates will have successfully completed the Bar Admission Course, filed the necessary documents, paid the required fee, and are applying to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, January 23rd, 1998:

The list of candidates for Call will be available January 23rd, 1998.

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidates having completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, January 23rd, 1998:

Laura Jane Craig	Province of British Columbia
Catherine DilysThompson	Province of British Columbia

B.2. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.2.1. The following former members apply for readmission and have met all the requirements in that regard:

Paul Christian Bourque	<u>Called:</u>	March 29th, 1977
	<u>Resigned:</u>	December 8th, 1995

Moiria Reid Calderwood	<u>Called:</u>	March 29th, 1989
	<u>Resigned:</u>	29th January, 1993

Florence Martha Deacon	<u>Called:</u>	5th April, 1979
	<u>Resigned:</u>	27th June, 1997

B.3. REINSTATEMENT FOLLOWING SUSPENSION

B.3.1. The following suspended member applies for reinstatement:

B.3.3. Ms. Mitchell successfully completed the Requalification Examinations and has paid all arrears of fees.

#### B.4.1. Retired Members

Anthony Camisso	St. Petersburg, FL
Alan Hanson Crabtree	Toronto
Donald Archibald Crosbie	Toronto
Jean Paul Filion	Orleans
Peter McLeod Harvie	Toronto
Brian Joseph John Hornsby	North York
Bruce Edward McGuire	Schomberg
Bernard Joseph Monaghan	Toronto
Raymond Michael Plant	Hamilton
Henry Milton Malcolm Pollit	Richmond Hill
Mohan Anand Prabhu	Gloucester
George William Priddle	Sault Ste. Marie
Morris Steinberg	Sudbury
Thomas Frederick Storie	Toronto

Elaine Margaret Complin	Toronto
Harvey Finkelstein	North York
Katherine Isobel O'Shaughnessy MacGregor	Whitby
Bruce Edward Zeran	Kingston

Elizabeth Anne Kirley-Switzer  
Tottenham  
Retired: April 4, 1997

B.5. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.5.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Kenneth Raymond Crosby of Vernon, BC was called to the Bar on April 10, 1981 and has not practised law since 1992.
2. Lionel Sydney Frost of Victoria, BC was called to the Bar on June 25, 1953 and has not practised law since 1992.

C.  
INFORMATION

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C.1. LIFE MEMBERS

C.1.1. Pursuant to Rule 49, the following members have become Life Members of the Society having been called to the Bar on January 15, 1948:

Garnet Clifton Devitt	Toronto
Hugh Derek Foster	Toronto

C.2. CHANGE OF NAME

The following members have changed their name:

C.2.1. <u>From</u>	<u>To</u>
Debra Anne <u>Bertolo</u>	Debra Anne <u>Bertolo-Puma</u> (Marriage certificate)
Lisa Mae <u>Hill</u>	Lisa Mae <u>Assaf</u> (Change of Name certificate)
Allison Christine <u>McMeekin</u>	Allison Christine <u>MacPherson</u> (Marriage certificate)
Jane Anne <u>Meagher-Ambrosino</u>	Jane Anne Meagher <u>Ambrosino</u> (Change of Name certificate)

Heather Colleen McLeod

Heather Colleen McLeod-Kilmurray  
(Marriage certificate)

Joshua Miguna Miguna

Miguna Miguna  
(Change of Name certificate)

Sharon Janeen Sargint

Sharon Janeen Davis  
(Marriage certificate)

Alison Christine Taylor

Alison Christine Taylor Love  
(Marriage certificate)

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Robert Douglas Osborne  
Newmarket

Called: June 29, 1950  
Died: May 16, 1996

Arthur Wyckoff Rogers  
Markdale

Called: April 20, 1922  
Died: September 11, 1997

Christopher James Thompson  
Sault Ste. Marie

Called: April 12, 1984  
Died: October 15, 1997

William George Charlton  
Toronto

Called: March 26, 1971  
Died: October 27, 1997

Gary Gerard Lachapelle Bonney  
Timmins

Called: March 26, 1971  
Died: November 4, 1997

Salomon Delmar  
Barrie

Called: February 7, 1992  
Died: November 5, 1997

Blair Campbell Fortier Fraser  
Toronto

Called: June 29, 1950  
Died: November 17, 1997

Frank Giannotti  
St. Catharines

Called: April 10, 1986  
Died: November 21, 1997

C.3.2. (b) Permission to Resign

On November 27, 1997, 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:

Kenneth Ross Bruce  
Kingston

Called: March 24, 1972

C.3.3. (c) Disbarments

The following members were disbarred and their names have been removed from the rolls and records of the Society:

Raymond Vincent Donohue Sarnia	Called: September 20, 1956 Disbarred: October 14, 1997
Alan Herbert Coles Thornhill	Called: March 19, 1970 Disbarred: October 28, 1997
Frank Arthur Wellington Ault Ottawa	Called: March 21, 1975 Disbarred: October 28, 1997
Dennis Michael Topp North York	Called: March 21, 1975 Disbarred: October 28, 1997
Frank Radley Mott-Trille Shelbourne	Called: May 20, 1954 Disbarred: October 29, 1997
Christopher Marc Cloutier Orleans	Called: April 6, 1984 Disbarred: November 27, 1997

C.3.4. (d) Membership in Abeyance

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:

Norman Charles Jackson Kingston	Called: March 23, 1973 Appointed to the Ontario Municipal Board October 6, 1997
Harvey Spiegel Toronto	Called: April 12, 1962 Appointed to the Ontario Court of Justice November 18, 1997
Maurice Charles Cullity Thornhill	Called: March 20, 1970 Appointed to the Ontario Court (General Division) November 18, 1997
Bruce Alan Glass Lindsay	Called: March 26, 1971 Appointed to the Ontario Court of Justice November 18, 1997
Paul Urbain Rivard North Bay	Called: March 22, 1974 Appointed to the Ontario Court of Justice November 18, 1997
Michel Zenophile Charbonneau Hawkesbury	Called: April 12, 1976 Appointed to the Ontario Court of Justice November 18, 1997

Susan Gail Himel  
Toronto

Called: April 14, 1978  
Appointed to the Ontario Court of Justice  
November 18, 1997

Nancy Margaret Mossip  
Meadowvale Village

Called: April 6, 1979  
Appointed to the Ontario Court (General Division)  
November 18, 1997

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of January, 1998

REPORT OF THE EXECUTIVE DIRECTOR OF EDUCATION

23RD JANUARY, 1998

ADDENDUM

B.  
ADMINISTRATION

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B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on January 23rd, 1998:

Jolanta Barbara Bula	38TH BAC
Christopher Andrew Chekan	38TH BAC
Samuel David Goldstein	38TH BAC
John Arthur Lewis Grant	38TH BAC
Olyde - Nester Munihiri	38TH BAC
Homayoon Sanayei	37TH BAC
Tariq Tayab Shah	38TH BAC
Marie-Claude Andree Yaacov	37TH BAC

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following applies to be certified as a foreign legal consultant in Ontario:

Gerard M. Meehan	The State of New York - Block & Colucci
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B.2.2. The application is complete and he has filed all necessary undertakings.

B.3. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.3.1. The following former member applies for readmission and has met all the requirements in that regard:

Hyla Shulamit Rose Reiter	<u>Called:</u>	June 28th, 1996
	<u>Resigned:</u>	September 27th, 1996

THE REPORT AND ADDENDUM WERE ADOPTED

Report of the Admissions and Equity Committee

Admissions & Equity Committee  
January 23, 1998

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Report to Convocation

Purpose of Report:      Information  
                                 Decision-Making

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on January 8, 1998. Committee members in attendance were Philip Epstein (Chair), William Carter (Vice-Chair), Nancy Backhouse (Vice-Chair), Nora Angeles, Tom Carey, Allan Lawrence, Robert Martin, and Dean Marilyn Pilkington. Staff in attendance were, Mimi Hart, Ian Lebane, Kimberley Saikkonen, Sophia Spurdakos, and Alan Treleaven.
2. The Committee is reporting on the following matter:
  - Procedures Governing the Recruitment of Articling Students

PROCEDURES GOVERNING THE RECRUITMENT OF ARTICLING STUDENTS

1. The Articling Recruitment Procedures govern the recruitment of articling students throughout Ontario.
2. The proposed Procedures to Govern the Recruitment of Articling Students for the year 1999-2000 are set out at Appendix 1. The procedures are essentially the same as those approved in 1996 with the exception that changes to dates have been made.
3. In addition, paragraph c.3 under General Recruitment Procedures has been deleted as it created difficulties in Ottawa and was not so critical to the articling recruitment procedures that the Ottawa difficulties should be ignored. The section read as follows:

c.3 Firms shall advise a student whom they have interviewed as soon as possible if they do not intend to make an offer to that student.



4. Firms are still free to convey their intentions to students even without this section.
5. The Committee has considered the proposed procedures governing the recruitment of articling students and recommends they be approved by Convocation. In addition the Committee recommends that these recruitment procedures be approved without the necessity of their being returned yearly for approval, unless a change to the content is being recommended.

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

- (1) Copy of "Procedures Governing the Recruitment of Articling Students for the 1999-2000 Articling Term."  
(Appendix 1, pages 2 - 8)

THE REPORT WAS ADOPTED

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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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CALL TO THE BAR

The following candidates listed in the Addendum to the Report of the Executive Director of Education 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. They were then taken by Mr. Lamont before Mr. Justice Lucien A. Beaulieu to sign the Rolls and take the necessary oaths.

Jolanta Barbara Bula	38th Bar Admission Course
Christopher Andrew Chekan	38th Bar Admission Course
Samuel David Goldstein	38th Bar Admission Course
John Arthur Lewis Grant	38th Bar Admission Course
Olyde - Nester Munihiri	38th Bar Admission Course
Homayoon Sanayei	37th Bar Admission Course
Tariq Tayab Shah	38th Bar Admission Course
Marie-Claude Andree Yaacov	37th Bar Admission Course

TOPP/PUCCINI MOTION

The Topp/Puccini motion to delete the \$25 Legal Aid application was deferred to the February Convocation.

Report of the Finance and Audit Committee - Decision Making

Meeting of January 8th, 1998

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on January 8, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, D. Murphy, C. Ruby, T. Stomp, and B. Wright. Staff members in attendance were J. Saso, R. Tinsley, W. Tysall, L. Cohen, G. Zecchini, J. Liu, S. Kerr and D. Carey.

1. The Committee has one matter that requires Convocation's approval:
  - Project 200 Business Plan and Financing Options
2. Material has been forwarded to each member of Convocation under separate cover.
3. The Finance and Audit Committee recommends that Convocation approve the Project 200 Business Plan.

4. The Finance and Audit Committee recommends that Convocation approve the capital expenditures as detailed in the Project 200 Business Plan.
5. The Finance and Audit Committee recommends that Convocation approve the financing that will be required as detailed in the Project 200 Business Plan.

Re: Project 200 Business Plan and Financing Options: 1998 - 2002

Mr. Krishna outlined how the implementation of Project 200 would be financed over a three-year period.

Mr. Saso, Chief Executive Officer, Ms. Jane Liu, Consultant with Trango Software Corporation and Ms. Wendy Tysall, Chief Financial Officer presented an overview of the changes needed to improve performance in the Law Society's operations.

THE CASE FOR CHANGE  
LAW SOCIETY OF UPPER CANADA  
BUSINESS PLAN AND FINANCING  
OPTIONS: 1998 - 2002

December 5, 1997

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Summary Costs/Savings Projections  
Detailed Costs Projections  
Detailed Systems Related Costs  
Detailed Savings Projections

FOREWORD

On October 6, 1995 the Law Society received a very critical report from its auditors, Coopers & Lybrand, for the year ending June 30, 1995. The report identified 33 substantial weaknesses related to the Society's financial controls, operating structures, personnel recruitment and training practices, and quarterly financial reporting. The Chief Executive Officer immediately developed a short-range plan to bring stability to the Society's financial operations, establish a human resources department staffed with experienced professionals and begin the process of investigating how to streamline and integrate various components of our administrative operations.

In a reporting letter dated April 2, 1997 for the year ending December 31, 1996, Coopers & Lybrand reported that:

In the past year, the Society has undergone significant reorganization of its operations, including the finance and reporting function. While we have detected some specific weaknesses arising in this period of change, the strategy adopted by management to improve the financial control environment through the focused development and documentation of practices and policies, personnel recruitment, training and improved quarterly financial reporting has resulted in significant enhancements to the Society's financial controls. We consider the current matters identified by us to be largely typical at this stage of the restructuring process and, while management should seek to address them in a timely manner, we believe that the foundation for a stronger control environment is now in place.

By year-end 1997, in addition to the substantial progress outlined in the auditor's report, approximately \$5.2 million in cost savings will be realized, and our staff complement will have been reduced by over 18% or 74 positions.

During 1997 senior management and over 50 employees, with the assistance of management and technology consultants Price Waterhouse and Trango Software Corporation respectively, thoroughly reviewed Law Society operations and developed a solid plan to streamline administrative functions, operationalize a comprehensive customer service initiative, improve staff productivity and create further cost efficiencies. Staff have named this initiative "Project 200" in commemoration of the Society's bicentennial.

Implementing this plan in 1998 will require bringing new and current technologies on-stream in order to modernize the Law Society's operations and bring its technological capability up to a satisfactory threshold level - replacing the cumbersome mixture of paper-based files and outdated and disjointed technologies that inadequately support current operations.

This document outlines the business plan to support a net investment of \$5.2 million to purchase new technologies and complete the administrative restructuring. It also includes a three-year plan to finance the investment. The business plan also illustrates the cost savings the new administrative infrastructure will generate.

## I. INTRODUCTION

The process of effecting major changes to the Law Society's operations began in January 1997. The focus was to measurably improve performance in areas most important to the Law Society and its key stakeholders - members and the public. Project 200 was spearheaded by senior management who were determined to bring accountability, a service orientation and business-like performance to the execution of the Society's core functions as a regulator.

## ◆ SCOPE OF PROJECT

Borrowing from the best practices of similar industries, the process of business transformation at the Law Society has been a collaborative one involving management, staff and external professionals with considerable experience in change management. Four teams comprising some 50 employees in total and assisted by consultants from Price Waterhouse worked up to an extra 16 hours per week from February to June 1997 auditing, benchmarking and redesigning four areas of the Law Society, namely:

- the administrative components of the regulatory function (ie. investigations, discipline, professional standards, practice advisory, complaints, professional conduct, etc.)
- all areas involved in the delivery of information or services to our members and the public
- the technology support structure
- the human resources infrastructure

## ◆ BUSINESS TRANSFORMATION PROCESS

During the course of its business restructuring initiative, the Society followed a multi-phased process designed by Price Waterhouse which consisted of the following steps:

a thorough audit of existing infrastructure and business processes designed to identify our administrative strengths and weaknesses as well as our strategic opportunities (both external and internal)

- a review of industry best practices to determine what leaders in the areas of professional regulation and professional services delivery were doing to boost performance levels
- a "redesign" of our core operations that would deliver significant improvements in our operational capability and would bridge the gap between current performance levels and those of best-in-class comparators.

## ◆ BUSINESS PLAN

The redesign proposals received the approval of the senior management team during the summer and work then began on the business plan which is outlined in this document. The business plan subjects the proposed redesign to a cost/savings analysis in order to determine if the investment required to fund it can be justified.

The business plan includes:

- a situational analysis summarizing the operational status quo in the regulatory and customer service areas, including a status overview of our technology and human resources infrastructure
- qualitative analysis of the proposed operational redesign
- financial viability of the redesign, including costs/savings projections and attendant financial risk
- financing options

## II. SITUATIONAL ANALYSIS

### ◆ THE CASE FOR CHANGE: LAW SOCIETY OPERATIONS TODAY

The proposed redesign of the Society's operations was developed in response to a strong case for change emerging from a thorough audit of existing operations completed earlier this year. Overall, the audit identified serious operational weaknesses in our regulatory functions, the absence of a service culture, a dated technology infrastructure and unsatisfactory human resources practices. Some of the more significant deficiencies - which were discussed with the Finance and Audit Committee on September 11 and have been previously documented in a report entitled "Law Society Audit of Internal Operations" - are identified in greater detail below:

#### Regulatory

- Cases in complaints, audit, discipline and professional standards take too long to wind their way through the system. Delays are often the result of duplication, poor file execution and uneven case loads caused by the fragmentation of regulatory functions across several departments. For example, discipline authorization material needs to be "recycled" at the review stage in order to correct deficiencies. On average, getting a case through the system from start to finish takes about three years.
- No case tracking system exists that can monitor the progress of a matter from beginning to end.
- No case management system exists. Upon opening a file, no clear goals are identified on how to proceed with the disposition of the case.
- Tickler systems are inadequate and, with the singular exception of the audit function, docketing systems are currently non-existent.

- The entire regulatory area is largely paper-based and paper-intensive putting the Law Society well behind the technology curve. The databases that do exist are largely manual and "stand alone" - these islands of information cause delays, duplication of effort and problems with information accuracy.
- No criteria for defining excellence exists. There are no key performance measures to evaluate regulatory staff or processes.
- Many investigators lack adequate training in evidentiary rules. The quality of disclosure, for example, is impeded by insufficient staff training on disclosure requirements.

Job descriptions and scope of authority of staff in the regulatory area are too narrow, creating hand-offs and lack of accountability.

- Most discipline cases involve "systems" failures (ie. forms, books and records) rather than dishonesty or dishonourable conduct. Because of current legislative constraints, the discipline process lacks dispositions aimed at addressing these problems. Other regulatory agencies have built remedial options into their discipline processes that address their most common discipline charges and expedite the disposition of these cases.
- The current organizational structure is ill-suited to implement regulatory provisions set out in the legislative reform package.

#### Customer Service

- Members, student members and the public often express frustration when trying to obtain information or services from the Society due to the lack of centralized resources. There are currently over 30 different contact points in the Law Society at which members can do business - file a form, sign up for a CLE course, register for Lawyer Referral, find out the balance outstanding on their fees, check the status of a complaint filed against them, etc. For the most part, these 30 points are stand alone business units that don't systematically communicate or share information. Consequently, a member who needs to conduct three different transactions with the Society - no matter how simple - ends up having to talk to three different departments.
- Other than anecdotal evidence brought forward by staff or benchers, the Law Society doesn't understand the needs or service expectations of its members or the public, nor does it measure how well we serve them. This is not surprising since no resources are invested in finding out. It's hard to provide good service if you don't understand what the people you serve need or want.
- The Law Society's work culture is often internally focused on functions, departments or process, and not always on achieving results for external audiences such as our members or the public.
- No technology infrastructure exists to capture member/public requests, service needs, etc. Telephone technology is outdated and fails to support the efficient distribution of incoming calls.

#### Technology

- Despite collecting voluminous bits of data about each of our members from several parts of our organization over time, this information has not been consolidated to form complete member profiles. Fragmentation of information impedes both efficiency (much time is spent hunting for information) and the ability to provide complete information to our members from a desktop computer. There are over 30 stand alone databases at the Law Society and countless manual, paper-based systems. The Law Society could have information about a specific member in as many as 82 different places.
- The multiplicity of "stand alone" databases creates access, accuracy, consistency and duplication problems.
- Fragmented information prevents the Society from identifying or tracking trends and impedes our ability to get out in front of developments emerging in the profession.
- In many departments of the Law Society, critical information is just simply not on-line. For example, data relating to the discipline function - our core area of operations-is completely paper-based.
- Every year, thousands of our members contact the Society for advice about ethical, practice and discipline matters. While documented on paper, none of this advice is available electronically.

- The accuracy of the membership database is impaired by the lack of formal policies and procedures regarding member information management. Practices with respect to data collection and storage have developed on an ad hoc basis.
- Internal access is provided through various interfaces, which creates inconsistency and adds unnecessary complexity.
- Desktop hardware and software are outdated. The Law Society is using old software releases which may not be supported in the near future. Upgraded hardware and software are required to maintain a minimum standard to operate business applications.

#### Human Resources

- There are no consistent performance measures in place largely because standards of excellence for the delivery of core programs and services have never been established.
- Pay and performance are not linked. There are no meaningful incentives for excellence.
- For a number of job classifications in the Society, our compensation system is not competitive within our marketplace. Often, managers are unable to attract the right calibre of employee. The Society also experiences an unacceptably high turnover among its top performers.
- No clearly defined training or development strategy is in place. Lack of investment in training has resulted in obsolescence of knowledge in key areas.
- The Law Society does not use consistent recruitment or selection practices. This results in poor hiring choices, high turnover and high costs.
- There is no organizational development (staffing) plan to support business operations.

### III. A BLUEPRINT FOR ACTION: QUALITATIVE ANALYSIS OF OPERATIONAL REDESIGN

Addressing the deficiencies documented through the audit process requires an approach that will allow us to address the systemic dysfunctions that permeate our business processes, organizational structure, technology and human resources infrastructure.

The implementation of an operational redesign is required to address current deficiencies and advance the Law Society's efforts to contain costs and improve services. The redesign, the features of which are described in greater detail later in this report, briefly consists of the following measures:

- an overhaul of the administrative components in the regulatory function
- the creation of a customer service and call centre which will integrate all telephone and walk in service and information functions available to our members and the public
- improvements to our technology infrastructure
- the development of a comprehensive human resources support system.



#### FEATURES AND BENEFITS OF OPERATIONAL REDESIGN

The operational redesign aims to institutionalize the Law Society's goals to become "customer-driven" and "performance-oriented". Some of the key requirements for such a successful overhaul are described below. This section outlines the features (action) of the operational redesign and the corresponding qualitative benefits (results).

### BUSINESS PROCESS REDESIGN

Business process redesign entails bridging the gap between how the Law Society operates today and the way it will need to operate in the future to optimize its performance as a regulator.

Features/Action	Benefits/Results
1.1 Develop policies to allow staff to increase the use of mediation and diversion alternatives in the regulatory process.	1.1 Fewer and shorter hearings. Expands disposition options available to discipline hearing committees. Dovetails with provisions in the legislative reform package. Cases completed at earlier stages. Discipline stage reserved primarily for matters involving dishonesty.
1.2 Organize work in the regulatory area around teams-each having responsibility for a variety of regulation-related functions.	1.2 Full ownership and accountability for an investigation are maintained within one team. Matters are not handed off from one person to the next as an investigation passes through its various stages. Employees become multi-skilled and better rounded. Best-in-class regulators who have adopted this approach report substantially higher performance and morale.
1.3 Create case plans for investigations.	1.3 Standardizes procedures and expectations. Provides concrete opportunities for development and improvement.
1.4 Expand role of practice review program by giving it real "teeth". Integrate PRP into other regulatory activities.	1.4 Supports diversion initiatives. Reconciles the Society's twin responsibilities for conduct and competence.
1.5 Create an ethics hotline for members.	1.5 Continues to provide confidential ethics advice to members. Packages routine practice advice queries in ways that improve consistency and timeliness.
1.6 Build service processes around the needs and expectations of our members and the public-in other words, find out what the customer wants and needs and craft services accordingly.	1.6 Society seeks and acts upon needs and suggestions of those it is mandated to serve.
1.7 Develop employee performance measures.	1.7 Increases productivity and improves performance.

### ORGANIZATIONAL STRUCTURE REDESIGN

Bureaucratic and inefficient organizational structures pose an impediment to performance and cost effectiveness. A new organizational structure must be designed that supports the administrative innovations the Society is imposing on its core functions in the regulatory and customer service areas.



Features/Action	Benefits/Results
2.1 Consolidate points of contact where members and the public do business with the Law Society.	2.1 One-stop shopping ensures service functions are integrated and consistent answers are given. Enhances service. Reduces customer confusion of "who does what" in the Society. Better utilization of employee resources. Consolidation requires fewer employees performing greater number of services.
2.2 Build a state-of-the-art service centre for members and the public-a central contact point for the Society's walk-in service and telephone operations with longer operating hours where customers have access to a live voice.	2.2 Wide range of information and services available from one contact point. The core business of the service centre is "service"-not an afterthought to other duties as so often happens when function is scattered throughout multiple areas of the Society. Additional hours offer convenience. Service is faster, more personalized.
2.3 Consolidate regulatory operations into fewer departments.	2.3 Encourages a broader more comprehensive approach to regulatory functions. Facilitates integration. Avoids duplication and cuts labour costs associated with administering multiple departments.

#### TECHNOLOGY INFRASTRUCTURE REDESIGN

There is a significant gap between the information-based technologies in place today at the Law Society and those required to do business effectively. The redesign is intended to bridge that gap and allow the Society to capitalize on future opportunities.

Features/Action	Benefits/Results
3.1 Consolidate the collection and storage of information about members and student members in one electronic database.	3.1 Ensures greater accuracy and integrity of data. Provides "one stop" access for all Law Society users. Facilitates report generation and statistical analysis. Encourages development of a comprehensive, consistent information management policy.
3.2 Expand self service options for members through the use of telephone voice technology (IVR), the Internet and fax on demand.	3.2 Allows members and the public the option to access information through various technologies when it best suits their convenience.
3.3 Build a corporate intranet for all critical business information.	3.3 Compiles all business information in one database-making it reliable, easy to access and easy to update.
3.4 Develop an electronic case tracking system for the regulatory function.	3.4 Provides immediate up-to-date status tracking of all matters in the regulatory stream. Facilitates monitoring of performance on case plans.
3.5 Add CTI (computer telephony integration) to	our customer service centre.

- |   |  |
|---|--|
| <p>3.5 Enables handling of greater call volumes. Reduces call abandon rates. Facilitates service provision by providing a complete electronic picture of a member at the moment a representative answers a "live" call.</p> | <p>3.6 Develop workflow solutions.</p> |
| <p>3.6 Automates flow of activities and information. Tracks requests, improves work turnaround time.</p>  |  |

#### HUMAN RESOURCES PRACTICES REDESIGN

The Society's redesign vision includes changes in the kinds of employees required, systems and measures for rewarding them, and the culture that sends them daily signals about "how we perform as a regulator" and "what we're all about".

Features/Actions	Benefits/Results
4.1 Develop a multi-skilled workforce.	4.1 Allows for flexible allocation of staff resources and gives the Society the ability to move employees around where needed. Improves long-term morale of employees.
4.2 Establish clear performance expectations, accountabilities and measures.	4.2 Increases productivity and ability to meet targets. Gives managers the tools to monitor and improve performance.
4.3 Increase skills development and training.	4.3 Protects against knowledge obsolescence that could impair performance in key areas.
4.4 Institute pay for performance.	4.4 Motivates excellence.
4.5 Institute standards, policies and practices.	4.5 Creates consistency in staffing, compensation, training and performance management and all human resources practices and procedures.

#### IV. FINANCIAL VIABILITY: QUANTITATIVE ANALYSIS OF OPERATIONAL REDESIGN

The principal justification for pursuing the operational redesign stems from the performance of enhancements (discussed in the previous section) and the costs savings to be derived from its implementation. To assess the viability of the investment in Project 200, summary cash flow projections have been mapped out and are shown in the schedule that appears on the page 15.

An operational redesign of the Law Society's core business processes, organizational structure, technology and human resources infrastructure will take between 18 months and two years to implement once appropriate financial resources are allocated.

◆ COSTS/SAVINGS PROJECTIONS

The majority of the costs for Project 200 are incurred in 1998 and 1999 and are required to fund two critical components of the redesign:

- the purchase of hardware/software and related technology implementation services; and
- severance obligations for surplus employees.

Savings begin in 1998 and continue strongly through the next four years of the business plan. These are realized largely through such measures as:

- streamlining of processes
- labour force reductions
- consolidation of job functions
- the elimination of duplication

Summary and detailed cost/savings projections showing dollars spent and saved over a five-year period appear at Appendix I.

◆ BUDGET IMPACT

Because of competing budgetary priorities as well as the cost of implementation over a compressed time period (approximately \$5.2 million over 18 months) management recognizes that Convocation may not be able to levy the profession for the full cost of the project in one year. Such a request would amount to approximately \$225 being added to the 1998 annual fee.

Instead, following discussions with members of the Finance & Audit Committee, it was proposed that the implementation of Project 200 be financed over a period of time. Based on current projections of equivalent full fee paying members (23,500 for 1998), and assumptions about financing costs, the Committee proposed and Convocation approved a sum of \$75 per member to be added to the annual fee. This allocation is required for a three-year period for total of \$225 per equivalent full fee paying member.

As the cash flows in the financial viability schedule indicate, Project 200 will require most of its funding in 1998 and 1999 - about \$5.2 million over an 18 month period. This amount will need to be financed through borrowing. The \$75 per member allocation will allow for the orderly repayment of principal and interest on a loan or line of credit, and will allow for a modest surplus to fund such contingencies as technology obsolescence over the course of the project, interest rate fluctuations in the case of financing through floating rate instruments, increases in supplier costs and reductions to the number of equivalent full fee paying members. In the event these contingencies do not materialize, accumulated surpluses can be applied to repay the principal (thereby accelerating debt retirement) or to lower membership fees in the ensuing year.

The financial viability schedule provides a summary of the impact Project 200 implementation will have on the Law Society's budget in comparison to the Society's status quo budget (defined as the 1998 budget adjusted annually for 2% inflation). It also illustrates how the \$75 per year membership fee allocation will be used to finance the project.

(see financial viability schedule in bound Report - page 15)

◆ FINANCIAL VIABILITY/IMPACT OF PROJECT 200

1998 budget. The 1998 General Fund expenses are taken directly from the approved 1998 budget-referred to as the "status quo". To these expenses are added the additional net costs for Project 200 for the first year of \$4.899 million. Approximately 85% of these net costs will be used to fund new technology, severance obligations and other organizational development costs such as training and recruitment. Financing will be required to fund cash flows throughout the year giving rise to interest expense. The level of financing could reach as high as \$5 million at one point in the year but is expected to be \$3.311 million at year end. Cash outflows total \$25.448 million.

Offsetting these cash outflows are cash inflows primarily made up of general membership fee revenue of \$20.374 million and Project 200 fees of \$1.763 million for a total cash inflow from membership fees of \$22.137 million creating a deficit of \$3.311 million.

The general membership fee has been set at \$866 per member plus \$75 per member to fund Project 200 for a total of \$941. The \$75 per member fee will be required for three years.

1999 Projection. General Fund expenses are increased by 2% for inflation. Notwithstanding considerable savings in 1999 flowing from decreased salary and benefit costs, savings will not compensate for the additional funding required as a result of technology and severance obligations. The additional net costs of \$289,000 bring the total net investment in Project 200 to \$5.2 million by the end of 1999.

The general membership fee remains the same in 1999 (subject only to the inflation adjustment) with the second installment of \$75 per member added to fund a portion of Project 200 costs and repay \$1 million of outstanding debt. The total inflation-adjusted general membership fee is \$959 per member. A modest surplus of \$194,000 is generated to be used as a contingency fund for increases in supplier costs, interest rate fluctuations, debt levels adjustments or to compensate for a decline in the number of equivalent full fee paying members.

2000 Projection. The financial benefits of Project 200 begin to come on stream. Cost savings generated through Project 200 will allow the general membership fee to decrease by \$21 per member to \$863. At this point in time, salary and benefit savings will drive the viability of the project. The savings realized by Project 200 also will allow the Society to offset the effects of inflation. The final installment of \$75 per member and the additional savings realized by Project 200 will provide for full debt repayment of \$2.311 million.

The total fee at \$938 per member will create a \$322,000 surplus bringing the total surplus to \$516,000-approximately 10% of the total net investment of Project 200 to allow for contingencies against increases in supplier costs, debt level adjustments, interest rate fluctuations, or to compensate for a decline in equivalent full fee paying members. As well, the effects of inflation will have been offset through cost savings.

2001 Projection. The full impact of Project 200 will be realized allowing the general membership fee to decrease to \$823 per member-a total decrease of \$115 per member. The Society will continue to realize incremental savings as compared to the previous year. The impact of labour force reductions will continue to move the cash flow projections in a positive direction. Once again the effects of inflation will be offset.

2002 and beyond. Project 200 will result in efficiencies that will allow the Law Society to continue to operate at reduced levels of expenditure.

◆ FINANCING OPTIONS

The Society investigated a number of financing and outsourcing options for Project 200 and held numerous discussions with the corporate financing and outsourcing divisions of Price Waterhouse. Among the options discussed were various leasing options for technology purchases. We were advised that the initial administrative expenses to set up such financing arrangements would be cost prohibitive considering the level of financing required. Similarly, outsourcing options-specifically related to technology acquisition - carry high profit margins for service providers thereby minimizing the affect of any savings to be gained by avoiding outright purchases. Most importantly, outsourcing services and technology as it relates to our regulatory functions results in loss of control over key information.

Given the relatively modest capital requirement needed to fund Project 200, recommended financing options are likely to include either a line of credit or a fixed rate loan for a fixed term. The Law Society already has access to a \$5 million line of credit at favourable rates through its banker, the Bank of Montreal. This financing instrument offers great flexibility, especially in a low interest rate environment - cash can be drawn down only when needed and surpluses can be used to repay outstanding balances at any time. Should interest rates rise, the Society can opt for a fixed rate loan to reduce its exposure to fluctuating rates.

A final decision on financing instruments will be made at the time cash flows are required and will depend on interest rate projections at that time.

◆ FINANCIAL RISK

The risks traditionally associated with business transformation initiatives are unanticipated cost overruns and savings that ultimately fail to materialize.

Since most of the costs associated with Project 200 involve system costs, it is essential that these be managed aggressively. The hardware costs are not likely to fluctuate significantly during the life of the project. However, consulting fees and software costs associated with the implementation of technology can escalate if project timelines are not strictly respected and if business processes and requirements are not adequately streamlined.

On the benefit side, most savings will accrue as a result of the elimination of full-time equivalent positions. Fifty-eight (58) current positions are being phased out and 18 new positions are being created for a total reduction of 40 full-time positions - or approximately 13 per cent of the current Law Society labour force. It is essential the Society redesign its business processes and streamline its organizational structure so these savings can begin to flow in 1999. Should there be a delay in the ability to achieve staff reductions, corresponding severance costs (which form a substantial portion of the costs of implementing Project 200) will also be deferred.

Throughout the project, senior management will ensure there is sufficient flexibility to make necessary course corrections to meet the Projects objectives.

The hiring of a highly skilled Chief Information Officer and the appointment of a dedicated and knowledgeable Project Manager, working with the Chief Financial Officer, will ensure that time lines and cost obligations are carefully controlled.

## CONCLUSION

Project 200 represents the first time the Law Society has undertaken a comprehensive, methodical examination of its operations in order to determine whether it is performing its various functions in a cost effective and efficient manner. Over the past two years, the Law Society has made substantial changes to its administration. However, in order to complete its restructuring initiative, it needs to move forward with the investment in Project 200.

Project 200 is the blueprint for building a new Law Society administration. Its implementation will dramatically improve service levels, greatly enhance the operation of the regulatory function and bring our technology and human resources infrastructure in line with market comparators.

Longer term, there is a very strong financial case for implementing Project 200. The status quo organizational structure is becoming more expensive to run-not less. Traditional cost cutting and cost containment strategies have reached the limits of their effectiveness. Certain programs are already being starved to fund cost increases in new programs with a higher priority. It is certain that neither significant savings nor excellence will be realized by doing the same things, the same way with the same resources.

.....

A debate followed.

It was moved by Mr. Krishna, seconded by Mr. DelZotto that the financing of Project 200 be approved and that reports be made on a quarterly basis on the progress of implementation and costs.

Carried

## THE REPORT WAS ADOPTED

### MOTION - L.L.Ds

It was moved by Mr. Epstein, seconded by Mr. Krishna that the following persons be admitted to the degree of Doctor of Laws (Honoris Causa): Susan Elliott, The Honourable Robert (Bob) Rae, Ian Scott, Q.C. and Paul Lamek, Q.C. and that the Minister of Justice The Honourable Anne McLellan be called to the Bar.

Carried

### MOTION - SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. Wilson THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from January 26, 1998 and until their levy is 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)

Report of the Finance and Audit Committee - Information

Meeting of January 8th, 1998

The Report of the Finance and Audit Committee sets out the following matters for Convocation's information: Insurance, Osgoode Hall Building and Maintenance Plan, Province of Ontario Confirmation of Amount Due to the Legal Aid Plan, Financial Statements of the Combined Errors and Omissions Fund for the Nine Months ended September 30, 1997 and an Update on Fees and Membership Classes.

Finance and Audit Committee  
January 8, 1998

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Report to Convocation

Purpose of Report: Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on January 8, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, D. Murphy, C. Ruby, T. Stomp, B. Wright. Staff in attendance were J. Saso, R. Tinsley, W. Tysall, L. Cohen, G. Zecchini, J. Liu, S. Kerr and D. Carey. Also in attendance was Michelle Strom (LPIC).

1. The Committee is reporting on the following matters:

- Law Society of Upper Canada - Insurance
- Osgoode Hall Building and Maintenance Plan
- Ontario Legal Aid Plan - March 31, 1997 Province of Ontario Confirmation of Amount Due to the Plan
- Combined Errors and Omissions Fund - Financial Statements for the Nine Months ended September 30, 1997
- Update on Fees and Membership Classes - A Working Group of the *Admissions & Equity Committee* and the *Finance and Audit Committee* has been established. The Working Group is comprised of H. Sachs, R. Martin, and E. DelZotto. The Working Group will be meeting early in the year to begin reviewing the membership fee categories with the hope of having a report come forward in March.

2. This report contains:

- a memorandum from the Director of Finance is attached on (pages 7 - 9) with respect to insurance coverages at The Law Society of Upper Canada. Staff have reviewed levels of coverage required and projected costs with two brokers -- H.B. Bennett Insurance Brokers Inc. and J & H Marsh McLennan,
- a report on the Building and Maintenance Plan (pages 10 - 18),
- a copy of the letter confirming the Acting Deputy Attorney General's agreement with respect to the Ontario government's commitment for work not yet performed on outstanding certificates (pages 19 - 22).
- Combined Errors and Omission Insurance Fund financial statements for the Nine Months Ended September 30, 1997 (pages 23 - 40).

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

- (1) Copy of Memorandum from Mr. David Carey to the Chair and Members of the Finance and Audit Committee dated December 10, 1997 re: Law Society - Insurance Review Update. (pages 7 - 9)
- (2) Memorandum from Mr. Ken Crossley to the Chair and Members of the Finance and Audit Committee dated December 10, 1997 re: Facilities Plan. (pages 10 - 18)
- (3) Copy of a letter Mr. C. Stuart Hartley, R.C.A., Partner with BDO Dunwoody to Ms. Andromache Karakatsanis dated August 15, 1997 re: Ontario Legal Aid Plan. (pages 19 - 22)
- (4) Combined Errors and Omissions Insurance Fund financial statements for the Nine Months Ended September 30, 1997. (pages 23 - 40)

It was moved by Mr. Krishna, seconded by Mr. Wilson that the balance of the Finance Report be adopted.

Carried

#### THE REPORT WAS ADOPTED

#### Report of the Legal Aid Committee

#### Meeting of January 15th, 1998

Mr. Armstrong presented the Report of the Legal Aid Committee and outlined the issues to be debated at the February Convocation. Those issues concern delivery models and the future governance of the Plan.

There would be a public announcement to notify all stakeholders on the timing and place of the debate in February.

#### Report of the Professional Development and Competence Committee

#### Meeting of January 8th, 1998

Ms. Eberts presented the Report of the Professional Development and Competence Committee for Convocation's approval.



Report to Convocation

Nature of Report: Policy and Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Development and Competence Committee ("the Committee") met on 8 January, 1998. In attendance were Mary Eberts (Chair), Robert Aaron, Michael Adams, Larry Banack (Vice-Chair), Ronald Cass, Susan Elliott, Ronald Manes, Helene Puccini, Heather Ross, David Scott and Rich Wilson (Vice-Chair). Staff members present were Janine Miller, Paul Truster, Mary Shena and Susan Binnie. Alan Treleaven and Sophia Spurdakos attended for part of the meeting and a consultant for the specialist certification review, Theresa Shanahan, also attended the meeting.

1. The Committee is reporting on five matters.
  - A recommendation for an approach to the long-term delivery of County and District library services (Policy Item);
  - A request to Convocation to direct the Chief Executive Officer to investigate revised methods of financial reporting and a revised payment schedule for County libraries (Policy Item);

- A proposal to issue certificates of attendance for registrants in Continuing Legal Education ADR Training Sessions (Policy Item);
- Matters being monitored by the Committee (Information Item):
  - The ongoing review of the Specialist Certification Program
  - The implementation of the Law Society's Requalification Policy
  - The appointment of a staff member to act as Committee liaison with LPIC
- A Committee review of applications for Specialist Certification and Recertification (Information Item).

2. This report contains:

- ◆ A Committee recommendation for an approach to long-term delivery of County library services;
- ◆ A request for direction by Convocation to the Chief Executive Officer for revisions to the County library financial records and changes to timing of payments to County libraries;
- ◆ A proposal that the Law Society issue certificates of attendance for registrants in Continuing Legal Education skills-training programs for Alternative Dispute Resolution;
- ◆ Information on three of the Committee's ongoing issues, namely:
  - the Committee's review of the Specialist Certification program;
  - a report on implementation of the Law Society's Requalification Policy, received and approved in principle by the Committee on 8 January, 1998;
  - the appointment by the Chief Executive Officer of a staff person to provide Committee liaison with the Lawyers' Professional Indemnity Company ("LPIC").
- ◆ A report on applications for Specialist Certification or Recertification approved in Committee on 8 January, 1988.

I REPORT ON THE APPROACH RECOMMENDED TO THE LONG-TERM DELIVERY OF COUNTY LIBRARY SERVICES

3. The Committee had before it a report from a working group on an approach to the long-term delivery of County and District library services. The working group was chaired by Susan Elliott with bench members Michael Adams and Rich Wilson and staff members Janine Miller and Susan Binnie; its establishment was reported to Convocation on 28 November, 1997.
4. Following an extensive discussion of this report the Committee determined that it wishes to make the following recommendations to Convocation.

The Committee recommends that a working group to be established immediately, consisting of:

- ◆ two or three members of the Professional Development and Competence Committee familiar with the existing County library system;
- ◆ one or more members of the CDLPA Library Committee;
- ◆ one or more members of the CBA-Ontario.

5. The mandate of the working group should be three-fold:
  - ◆ to establish policy objectives for the library system;
  - ◆ to consider broad alternative approaches to delivery of library services in light of stated policy objectives; and,
  - ◆ to consider the costs of viable alternatives.

These recommendations arise from the following facts.

6. It is well-recognized that serious and increasing financial difficulties are affecting the system of County and District law libraries. Over \$5.5 million was spent in 1996 on County library funding. Nonetheless, the libraries' financial situation has worsened in recent years due to rising costs and falling revenues.
7. The libraries now face the following financial problems:
  - ◆ a reduction in Law Society funding due to a decline in the number of lawyers paying fees;
  - ◆ a loss of revenue due to a province-wide decline in membership in local law associations;
  - ◆ cutbacks in 1998 and 1999 of up to 50 per cent of Law Foundation funding, and continuing pressures on that source of revenue;
  - ◆ rising costs due to average annual increases of about 10 per cent in the cost of books and subscriptions.
8. There is a consensus within the County and District library system that this crisis in funding is worsening over time and must be looked at.
9. The libraries face either or both a financial crisis or a decline in the quality of their collections. The results for the profession will be an effect on the capability of lawyers to undertake competent legal research on behalf of their clients.
10. In the Committee's view, general options for future legal information services need to be reviewed. The analysis needs to take account of existing library services and should be carried out with the assistance of stakeholders in the County library system. Viable options need to be costed and recommendations brought to Convocation promptly.
11. The Committee recommends that a broad range of discussion points be used to provide the starting point for a review process. As emphasised above, any potential approaches should be reviewed in light of the objectives for delivery of library services previously established by the working group.
12. The discussion items cited below are provided as illustrations of options that could be considered in a review process.
  - A. *Options based on accessibility to legal information services:*
    - ◆ library services based on measures of distance between local libraries and potential library users, designed to maximize the libraries' geographic proximity to practising members of the profession;
    - ◆ library services based on numbers of local lawyers (or members or users of the services) with the purpose of providing local library resources where members are located, in order to maximize the use of library facilities.

*B. Options based on regional or local operation of libraries:*

- ◆ autonomous local library services funded by a system of capped, flat-rate funding, with local libraries able within certain limits to spend funding according to local needs;
- ◆ regional library services in which coordinated services of different-sized libraries would service different areas of the province;

*C. Options based on the absence of alternative library resources:*

- ◆ library services which would not duplicate alternative legal information resources but would be deployed primarily in communities lacking such resources;
- ◆ library services in which all legal information resources would be deployed through existing library services such as university libraries or public libraries.

*D. Options based on electronic technology and/or centralized services:*

- ◆ library services with no physical depositary of books and few central services, most information to be provided electronically;
- ◆ centralized services under which all requests would be provided by a central library information resource centre through fax, phone or electronic services;

13. The Committee notes that there are sensitive issues associated with any change to the current County library system, even with apparent agreement by all involved that the system needs change. Rather than attempt to resolve those issues, which are best left to Convocation and the other professional groups to debate, the report will identify the range of issues and possible policies which could be established leaving the decision to Convocation with input from stakeholders.
14. The Committee is aware of the merger discussions taking place between CBA-O and CDLPA but these discussions do not change the task of reviewing the library system. Whether library services are operated in the future under the Law Society's governance or whether they are operated under a new merged CBA/CDLPA organization is an important issue. But in either case, the goals of providing library services to members will remain similar. Whichever organization is responsible, the problems faced by the current library system are not expected to change and similar kinds of questions will need to be addressed by the governing body.
15. The report should therefore present a range of options for running the best possible province-wide legal library system (recognizing the constraints of resources etc.) which system ought to be able to exist regardless of which organization is operating it. Therefore the report will not address whether the Law Society or another organization should be charged with running the library system.
16. In analysing options for delivery of library services, relevant experience in other jurisdictions should be considered. The pro's and con's for each approach examined by the working group should be weighed and the effects of the policy for all affected stakeholders reviewed. For any options under serious consideration, the working group should examine the financial impact of the policy on the Law Society and on other stakeholders so that all relevant factors are before Convocation.

17. In order to meet Law Foundation requirements, Convocation must receive and consider this report by its meeting on 29 May, 1998. The Presidents of CBA-O and the President of CDLPA have each agreed to immediately provide a representative to the new working group and each of those organizations will also need to receive the report when it is about to go to Convocation so that they can consider the findings and make representations to Convocation.
18. The working group should report back to the Professional Development and Competence Committee on a monthly basis and should refer any questions of process that cannot be solved in the working group to the Committee for determination.
19. It is possible that the Committee will wish to bring an interim report to Convocation for direction and instruction (for example with respect to the range of overall policy objectives which ought to be examined) and, in that case, reports will be made as necessary.
- II A REQUEST FOR DIRECTION TO THE CHIEF EXECUTIVE OFFICER FOR REVISED FINANCIAL REPORTS AND PAYMENT SCHEDULES FOR THE COUNTY LIBRARIES
20. In October, the Committee requested detailed financial statements for the collection and distribution of funds for County and District law libraries for the period from 1992 to 1997.
21. David Carey, Director of Finance, provided an analysis of County library funding from 1992 to 1997 in December, 1997. The financial statements are currently under review by a working group of the Committee, namely, Susan Elliott, Rich Wilson, and Michael Adams.
22. The review of recent financial statements has been complicated by differences in the financial records maintained by the Finance and Audit Departments and those maintained by the Great Library. For instance, the Finance Department uses an accrual-based accounting system while the Great Library maintains financial records on a cash basis. As well, the prior practice of creating many general accounts to track the unutilized funding and any levy surpluses for the County libraries created additional confusion.
23. Based on discussions held by the working group with the Director of Finance, David Carey, the Committee recommends that revised financial reporting for the County libraries should be investigated and, if feasible, put in place promptly. The Committee proposes that a revised reporting system should include at least the following features:
  - ◆ separate financial reporting for the Great Library and the County libraries;
  - ◆ provision of quarterly reports to the Professional Development and Competence Committee showing receipts and disbursements and the application of funds in accordance with any special direction of Convocation; and,
  - ◆ payments to local law associations on a regular basis, possibly quarterly.
24. The Committee accepts the report of the working group and asks Convocation to direct the Chief Executive Officer to take the following actions:
  1. to modify the current system of financial reporting for the Great Library and the County libraries effective in January 1998 for the 1998 financial year.
  2. to establish a reporting system which achieves the following goals:

- ◆ provides full and separate financial reports for the Great Library and the County libraries;
- ◆ provides quarterly reports to the Professional Development and Competence Committee that show receipts and disbursements and the application of funds in accordance with any special direction of Convocation;

3. to develop a proposed annual payment schedule for County library grants.

### III PROPOSAL FOR CERTIFICATES OF ATTENDANCE FOR REGISTRANTS IN CONTINUING LEGAL EDUCATION - ALTERNATIVE DISPUTE RESOLUTION ("ADR") PROGRAMS

25. The Department of Continuing Legal Education is mandated to provide education for members of the bar including, specifically, education in ADR.<sup>1</sup> The Department is planning a series of ADR programs.

26. The Director of Continuing Legal Education has pointed out to the Committee that other providers of ADR training are issuing certificates of attendance. He recommends that the Law Society should consider offering a certificate to each participant certifying completion of a given ADR course.

27. The Committee accepts this recommendation for the following reasons:

- ◆ participation in the Law Society's ADR training could be affected if other providers offer certificates and the Law Society does not;
- ◆ provision of certificates confirming completion of ADR training courses may become essential in the future
  - a) if mediators come under regulation and are required to undertake certified training, or
  - b) if they need to provide proof of previous training.

28. The Committee therefore asks Convocation to approve the following recommendation:

that the Law Society offer a certificate to participants in ADR training courses stating the number of hours completed in a given course.

### IV MATTERS BEING MONITORED BY THE COMMITTEE (INFORMATION ITEM)

29. a) Ongoing review of the Specialist Certification Program  
The Committee was informed that the working group undertaking the review of the Specialist Certification program had met on 15 December and would meet again on 19 January and that a research consultant, Theresa Shanahan, had been retained to work on the project in conjunction with staff and the working group.

30. b) The implementation of the Law Society's Requalification Policy  
The Committee received and reviewed a report from a joint working group of the Admissions and Equity Committee and the Professional Development and Competence Committee on the Law Society's Requalification Policy.

31. As background to this matter, a formal requalification requirement was approved by Convocation in March, 1994 and came into effect on 1 July, 1994. Under the policy all members are required to complete a "qualification status" form annually and members who do not make "substantial use of their legal skills on a regular basis for five years or more" and who wish to engage in the practice of law may be required to requalify. The first members affected by this policy will apply to requalify after 1 July, 1999.

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<sup>1</sup> This mandate is set out in the Report of the Dispute Resolution Subcommittee, at Chapter 9, Recommendation #7, approved by Convocation on 26 February, 1993.

32. The working group was established to address policy issues relating to implementation of the Requalification Policy. Its members are Mary Eberts and Harriet Sachs, with staff members Sophia Spurdakos, Sue McCaffrey and Susan Binnie, as reported to Convocation on 26 September, 1997.
33. The Committee accepted the joint working group's report in principle and agreed to the following steps before the report is brought to Convocation:
- ♦ the implementation proposal will be sent to the Admissions and Equity Committee and to the Treasurer's Equity Advisory Committee for review and comment;
  - ♦ two budgets will be required:
    - (i) for design completion and initial implementation of the Requalification program in 1999;
    - (ii) for the Requalification program's costs of operation for six months in 1999 and a full year in the year 2000;
  - ♦ the proposal and the budgets will be sent to the Finance and Audit Committee for review.
34. Members of the Treasurer's Equity Advisory Committee will receive the Requalification Report on 15 January; the Admissions and Equity Committee will review the report at its February meeting; and staff will begin work on the implementation budget.
35. c) The appointment of a staff member to act as Committee liaison with LPIC  
The Committee asked Convocation on 28 November, 1997 to affirm a recommendation that the Chief Executive Officer be requested to appoint a staff member or members to undertake regular liaison with LPIC on matters including competence, professional standards, quality assurance and post-call education.
36. The Committee was informed that, in response to its request for liaison with LPIC, the Chief Executive Officer has appointed Sophia Spurdakos to carry out a liaison function.
- V. INFORMATION REPORT ON SPECIALIST CERTIFICATION NEW APPLICATIONS AND RECERTIFICATIONS APPROVED IN COMMITTEE ON JANUARY 8, 1998.
37. The Professional Development and Competence Committee is pleased to report the Committee's approval of the following lawyers for certification:

Civil Litigation:

Aubrey Kauffman (of Toronto)  
Murn Meyrick (of Toronto)  
Bonnie Tough (of Toronto)  
Brian Wagner (of Kitchener)

Environmental Law:

J.M. Madeleine Donahue (of Toronto)

Criminal Law:

John Marko (of Toronto)

Family Law:

Bryan Smith (of Toronto)

38. The Professional Development and Competence Committee is pleased to report the Committee's approval of the following lawyers for recertification for an additional five years:

Civil Litigation:

F. Allan Huckabone (of Pembroke)  
Bernard Koffman (of Ottawa)  
David Smye (of Hamilton)

Family Law:

Barry Paquette (of Kitchener)  
Silja Seppi (of Mississauga)

Professional Development and Competence Committee  
January 8, 1998

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Report on Proposal for an Approach to Professional Development Objectives

Nature of Report: Policy

ADDITIONAL ITEM FOR PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT TO  
CONVOCATION, 8 January, 1998

PROPOSAL FOR AN APPROACH TO PROFESSIONAL DEVELOPMENT OBJECTIVES

1. The Chair of the Committee presented a proposal to examine Convocation's general approaches to professional development and its understanding of what different programs in the field of professional development are designed to achieve.
2. The proposal was termed a process for a benchers overview of "the professional development objectives" of the Law Society. These objectives were to be reviewed at a short benchers retreat.
3. It was suggested that clarification of professional development objectives would, in the longer-term, allow a more uniform philosophy for the reviews of professional development programs proceeding in 1998 as well as an agreed-upon purpose for the future development of programs.
4. A fuller rationale for the proposal is set out in an attached memorandum (Attachment A)
5. This issue can be related to two kinds of initiatives currently underway at the Law Society:
  - ◆ broader efforts to generally clarify and examine Law Society priorities for a full range of Law Society programs (the projects of the Governance Restructuring Task Force and of the Finance and Administration Committee are examples); and
  - ◆ more specific efforts involving particular programs via ongoing Law Society reviews and planning processes.
6. The proposal aims to link the two sets of processes for the field of professional development, by helping to develop broader objectives which can, in turn, serve as criteria for assessing specific programs.
7. Although the proposal arises out of several of the Committee's concerns, principally the Committee's review of the Specialist Certification program, the implementation of the Law Society's Requalification proposal, and the Committee's work on Enhanced Continuing Legal Education and Post-Call Legal Education, the issue is seen as a much broader one than for the Committee alone. In order to set directions for a group of existing programs, the bench will need to come together to consider what the overall purpose is for the existence of these programs.



8. The suggestion is that this work can best be begun in an open, informal and educational setting. The proposed retreat would take the form of a one-day session with time allotted to invited speakers and to informal discussion of the Law Society's purposes in the provision of professional development services to the profession. The one-day program would be preceded by one or more speakers on related topics - possibly as part of the 1998 bench education program.
9. The Chair recommended the retreat should take place before the end of March, 1998, before program reviews are completed, if it is to be a useful exercise in examining perspectives on the goals of professional development programs.
10. The Committee endorsed the proposal and asks Convocation to approve such a retreat to take place before the end of March, 1998.

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

- (1) Proposal for Approach to Professional Development. (Attachment A)

Re: Long-term delivery of County and District library services

It was moved by Ms. Eberts, seconded by Ms. Ross that the following recommendations be adopted:

THAT a working group be established immediately, consisting of:

- two or three members of the Professional Development and Competence Committee familiar with the existing County library system;
- one or more members of the CDLPA Library Committee;
- one or more members of the CBA-Ontario.

THAT the mandate of the working group be three-fold:

- to establish policy objectives for the library;
- to consider broad alternative approaches to delivery of library services in light of stated policy objectives; and
- to consider the costs of viable alternatives.

Carried

Re: Proposal for an Approach to Professional Development Objectives

Ms. Eberts presented an additional item for Convocation's approval on a Proposal for an Approach to Professional Development Objectives which was set out in a memorandum from Ms. Susan Binnie of the Policy Secretariat.

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IN CAMERA

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**IN CAMERA Content Has Been Removed**

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurer and Benchers had as their guests for luncheon Mr. Bruce Durno, Mr. Harry Sutherland, and Mr. Robert Topp's son, Daniel.

CONVOCATION RESUMED AT 2:20 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Carey, R. Cass, Chahbar, Cole, Copeland, Cronk, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Krishna, Lawrence, MacKenzie, Manes, Marrocco, Martin, Murphy, Puccini, Ross, Ruby, Sachs, Sealy, Swaye, Wilson and Wright.

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IN PUBLIC

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Resumption of the Report of Professional Development and Competence Committee

Re: Proposal for an Approach to Professional Development Objectives

Copies of the Budget for the Retreat were circulated to the Benchers.

The Chair accepted that the proposal for a retreat be referred to the Finance and Audit Committee for consideration.

Item re: Direction to CEO to Revise Financial Reporting for County Libraries

Mr. Wilson presented the item in the Report dealing with a revised financial reporting system for the County libraries.

It was moved by Mr. Wilson, seconded by Mr. Epstein that the CEO be directed to take the following actions:

1. to modify the current system of financial reporting for the Great Library and the County libraries effective in January 1998 for the 1998 financial year.

2. to establish a reporting system which achieves the following goals:
  - provides full and separate financial reports for the Great Library and the County libraries;
  - provides quarterly reports to the Professional Development and Competence Committee that show receipts and disbursements and the application of funds in accordance with any special direction of Convocation;
3. to develop a proposed annual payment schedule for County library grants.

Carried

Item re: Certificates of Attendance for CLE Sessions in ADR Training

Mr. Banack presented the item in the Report recommending the Law Society consider offering a certificate to each participant certifying completion of a given ADR course.

It was moved by Mr. Banack, seconded by Mr. Wilson that the recommendation that the Law Society offer a certificate to participants in ADR training courses stating the number of hours completed in a given course be approved.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Report of the Professional Regulation Committee

Meeting of January 8th, 1998

Professional Regulation Committee  
January 8, 1998

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Report to Convocation

Purpose of Report: Decision-Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on January 8, 1998. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)

Niels Ortved

Harriet Sachs

Robert Topp

Marshall Crowe

Gary Gottlieb

Laura Legge

Helene Puccini

Heather Ross

Staff: Jon Fedder, Duncan Gosnell (LPIC), Scott Kerr, Sue McCaffrey, Felecia Smith, Glenn Stuart, Stephen Traviss, Jim Varro, and Jim Yakimovich

2. This report contains the Committee's

- proposal for a policy on use of information about prior Invitations to Attend;
- proposal for the member "profile" for the focused audit program;
- proposal for amendments to the Rules of the Discipline Hearing Process;

decision respecting an amendment to the *Professional Conduct Handbook* to incorporate the definition of competence approved at the November 28, 1997 Convocation.

USE OF INFORMATION OF PRIOR INVITATIONS TO ATTEND

A. NATURE AND SCOPE OF THE ISSUE

3. A working group<sup>1</sup> of the Committee reviewing issues related to information disclosed about the fact of a lawyer's invitation to attend (ITA) at the Law Society presented its discussion paper, without recommended options<sup>2</sup>, to the Committee on January 8.
4. The Committee reviewed the paper, which highlighted the issues for discussion at Committee, and is now proposing in this report a policy for use of information on prior invitations to attend (ITAs) in the Society's regulatory processes.

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<sup>1</sup>Harriet Sachs, Marshall Crowe and Ross Murray, assisted by staff member Jim Varro.

<sup>2</sup>The working group's discussions disclosed the significance of the issues related to this matter. The working group determined that a full discussion at Committee was more appropriate than further deliberations in the smaller forum of the working group.

#### Background to the Issue

5. At a meeting of the discipline authorization committee (effectively, the Chair and three Vice-Chairs of Discipline) in September, 1997, two issues relating to ITAs were raised and referred to the Committee for review, namely:
  - a. Should prior ITAs be listed in the discipline history sections of authorization memorandums; and
  - b. What use, if any, should be made of information in the investigatory and discipline streams of the prior occurrence of an ITA.
6. The second issue relates in part to the policy made by Convocation in June 1997 respecting the use of information about a prior ITA in the reasons of discipline hearing panels. It was decided at that time that no reference to a prior ITA should be made in the reasons of a hearing panel nor should any reference be made to it by a discipline counsel in the course of a hearing.
7. A copy of the report to Convocation from the prior Committee is attached at Appendix 1. Although this report touched on the relevance a prior ITA to the current matter as a factor to be considered, it did not form part of any exception to the general policy.
8. The June 1997 policy dealt with a narrower point than the subject reviewed by the Committee, and accordingly further review of issues related to information about ITAs was required.

#### Current Practice

##### Staff Level

9. In the investigation of complaints, information about a prior ITA is one of a number of pieces of background information about a lawyer routinely placed in an investigatory file.
10. When a memorandum is prepared by staff at the conclusion of an investigation for referral to the discipline authorization committee, the fact of a prior ITA is included in a section at the end of the memorandum entitled "Prior or Current Discipline History". (Since September 1997, however, pending a policy decision, this information no longer appears in the memoranda).
11. This memorandum is reviewed by the Chair and the relevant Vice-Chairs of Discipline and if the matter is authorized as a formal complaint, the memorandum in its entirety is reviewed by discipline counsel to whom the matter is assigned.
12. Apart from investigations, there are other situations where staff in the Audit and Investigations Departments make use of information about a lawyer's former ITAs. Applications of disbarred or suspended lawyers or those who were permitted to resign as a result of discipline and subsequently apply for permission to work with a lawyer (under Rule 20) disclose this information, and an authorization for release of the information is signed by the applicant. These applications are reviewed *in camera* at Convocation.
13. Beyond staff in the Complaints, Audit and Investigations and Discipline Departments, staff in the Professional Standards department may access information about a lawyer's discipline record or ITA history, if necessary. The information is used in the profiles of members created for practice review, and is disclosed to the reviewer, who is a practitioner outside of the Law Society. As the reviewer is an agent of the Society for the purposes of the practice review, he or she maintains the confidentiality of the Society's information, including the contents of the member's profile.

14. The fact of an ITA is not part of a public record at the Law Society and cannot be disclosed publicly except to the complainant who referred the matter to the Law Society. Notification to such a complainant is usually done at the conclusion of the investigation after the ITA has been held.
15. Even where an ITA results from the withdrawal of a formal complaint at a hearing, where the "conversion" of the matter to an ITA is a matter of public record (although the ITA itself is not), the fact of that ITA cannot be disclosed, nor can the fact that the charge existed and has been withdrawn.

#### Bencher Level

16. As indicated above, under recent practice prior to September 1997, the Chair and the relevant Vice-Chairs of Discipline were notified through the authorization memorandum of any prior ITA concerning the lawyer under investigation.
17. Beyond the discipline authorization committee, benchers who are on panels for an ITA receive notification of a prior ITA for the lawyer appearing on the current ITA, as it is included as information in an ITA memorandum prepared by staff for the benchers and the lawyer.
18. In accordance with the June 1997 policy, no reference to a prior ITA is made by discipline counsel in the course of a hearing and no written information<sup>3</sup> is provided to the panel about a prior ITA of the lawyer appearing before the panel on a formal discipline charge.
19. In other circumstances, as noted above, benchers in Convocation may receive information about the fact of a prior ITA through review of Rule 20 applications.
20. The discipline authorization committee may also receive information about a prior ITA when reviewing submissions by staff in support of referrals of lawyers to that committee for practice review authorizations, as noted above.

#### Nature of the Concerns

21. The uniqueness of the ITA in the Society's regulatory process and its value as a method of addressing certain issues of professional conduct requires that policy decisions on features of this procedure be made with full knowledge and understanding of the procedure.
22. The report referred to at Appendix 1 includes a description of the essential features of an ITA, including its regulatory base. Of particular importance is section 10 of Regulation 708 which reads:  
*Where there comes to the notice of the Society, as a result of a preliminary investigation by the Secretary or otherwise, information that indicates that a member may have been guilty of a minor breach of discipline or that indicates there is a possibility that conduct may result in a breach of discipline, the Committee or the chair or vice-chair may direct the Secretary, without any formal complaint being completed and filed, to invite the member to appear before the Committee to enable it to make an informal investigation of the matter, and the Committee, in addition to any of its other powers, may after such informal investigation advise the member with respect to the matter.*

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<sup>3</sup>This would include Agreed Statements of Fact, Penalty Briefs and written submissions on penalty. Discipline counsel have advised, however, that Reports and Decisions before Convocation may continue to refer to ITAs in Agreed Statements of Fact because some of them were drafted and filed prior to the adoption of the June 1997 policy of Convocation.

23. It is clear that while there are disciplinary aspects to the ITA process, at the same time it is a procedure that can be characterized as an adjunct to or even an extension of the investigatory process. A third feature is the educational/remedial aspect of the process, because it is treated as a mechanism whereby lawyers can be instructed and advised by their peers.
24. The legislative reform package, excerpts from which are attached at Appendix 2, clearly speaks to the nature of an ITA as a means to advise a lawyer on an issue of conduct.
25. It is against that background that the following issues arise.

Knowledge of a Prior ITA by the Discipline Authorization Committee

26. There are two aspects to this issue, one being whether a prior ITA should be included as information anywhere in an authorization memorandum (or otherwise provided), and whether, if it is to be included, it should be included in the "prior or current discipline" section.
27. The latter issue goes to the characterization of the ITA as "discipline", when in fact it is not a disciplinary proceeding and does not result in the discipline of a lawyer as that word is used in the regulatory process and as it may be perceived by the public and the profession.
28. The primary issue, however, is the value attached to information about a prior ITA. More specifically:

a. *Is it valuable information in the authorization process?*

Information of a prior ITA which may, in part, lead to a decision by the Chair and the relevant Vice-Chairs of Discipline to authorize a formal complaint is a factor which will not be known to a discipline hearing panel. In this scenario, is there any value in the discipline authorization committee having had knowledge of a prior ITA?

If it were decided that information about an ITA was not to be referred to the Chair and Vice-Chairs by staff, a related question is whether staff could justifiably recommend a particular form of action to the Chair and Vice-Chairs when part of that decision may be based on the lawyer's prior experience in the investigatory stream which is not disclosed to the Chair and Vice-Chairs.

b. *Would the inability to refer to ITA information have a "chilling" effect on the decision to use ITAs?*

The second question is whether, if no information about a prior ITA is disclosed, there may be a reluctance to use the ITA procedure itself to address issues of professional conduct. If ITAs are, in part, utilized to address with a lawyer a "first time" instance of minor misconduct or error in judgment, if there is no information at the authorization level about a prior ITA (assuming such information may assist in deciding the appropriate disposition), this may lead to increased reluctance to authorize ITAs, and the necessity of proceeding with a formal complaint when there are reasonable and probable grounds for doing so.

c. *Should relevance of the issue in the prior ITA to the conduct being reviewed be the test for including information for the Discipline Authorization Committee of a prior ITA?*

The argument could be advanced that to protect the integrity of the regulatory process, and the place ITAs play therein, there must be a way to access all information necessary to make informed, reasonable and supportable decisions when reviewing allegations of a lawyer's misconduct. Part of that information may be factual circumstances closely related to the issue being reviewed for possible formal discipline.



The question is whether staff should provide information on prior ITAs to the discipline authorization committee, but only on the basis that the prior conduct is relevant to the issue(s) at hand.

Inclusion of Information about Prior ITAs in ITA Memoranda for Benchers Sitting on ITAs

29. As noted above, when a memorandum is prepared by staff for an ITA which has been authorized by the Chair and Vice-Chairs of Discipline, a section of the memorandum routinely lists the lawyer's discipline history and prior ITAs or letters of advice.
30. Essentially, the ITA memorandum mirrors the authorization memorandum in its factual content, with commentary on the specific issue the ITA is intended to address.
31. The ITA is an *in camera* proceeding, and is a means of concluding an investigation without formal discipline. To the extent that the panel of benchers sitting on the ITA should have complete information about the lawyer's history with the Society's investigatory or discipline processes, the information about prior ITAs has been included, and, prior to September 1997, no questions had been raised about that inclusion.
32. On occasion, a panel sitting on an ITA will use that information, for example, in expressing concern to a lawyer about the nature or extent of his or her involvement with the Society's complaints/discipline process to date, as a means of emphasizing that certain conduct may no longer be tolerated, or to ask for explanations which may lead the panel to offer assistance to the lawyer, if that appears to be an option.
33. The question, in light of the issues addressed above, is whether there is a need to review the decision to include this historical information about prior ITAs.

B. POLICY DISCUSSION

The Questions

34. The Committee considered the following questions:
  - a. Notwithstanding the June 1997 policy, are there circumstances where information about a prior ITA may be relevant to the proceedings before hearing panels?
  - b. If so, where and how should that information be disclosed?
  - c. If it is not disclosed at the hearing level, what value is there in disclosing it anywhere else, for example, at the discipline authorization committee level?
  - d. What effect would a decision to exclude prior ITA information at any bencher level have on the work of staff?

The Committee's Views

35. The Committee agreed that the June 1997 policy should continue to apply, in that no information about a prior ITA should be disclosed to hearing panels or form part of any oral or written submissions by Law Society counsel at the hearing.
36. The Committee also agreed that to protect the integrity of information about a lawyer's complaints history with the Law Society for use by staff in functions related to, for example, practice reviews or focused audits, a confidential record of any ITA respecting a lawyer should continue to be maintained.
37. The Committee debated at length whether information about a prior ITA should be disclosed to the Chair and Vice-Chairs of Discipline in the authorization memorandum or other material submitted by staff. The Committee noted that:

- a. No clear inferences respecting the conduct of a lawyer can be drawn from the fact of an ITA;
  - b. The historical fact of an ITA or a number of ITAs can influence the decision made by the discipline authorization committee on appropriate action to be taken. However, while the issue of relevance of the prior ITA may be a factor for the discipline authorization committee, hearing panels, without this knowledge, will still make their own determination on the merits of the case argued before them;
  - c. While arguably, the discipline authorization group sits in a fashion similar to that of a justice of the peace before whom an information based on criminal conduct is sworn, and should base a decision on the merits of the case presented in the authorization memorandum without knowledge of the member's prior "record", it could also be argued that the discipline authorization committee is akin to the complaints committees found in the structure of other regulatory bodies, and as an extension of the investigation branch, should receive all relevant information about a member before making a decision on a matter referred to it;
  - d. If the decisions made by the discipline authorization committee which trigger the process, and thus the information which can be considered by them, are different from the decisions made and information reviewed by hearing panels in adjudicating on the matters before them, the question is whether any issue concerning the fairness of the authorization process arises if ITA information is used in determining a particular course of action at the discipline authorization committee level;
  - e. There may be reluctance on the part of investigatory staff to recommend ITAs in situations where no information about a prior occurrence of an ITA is before the discipline authorization committee. However, that committee has absolute discretion to decide what action will be taken on a particular matter.
38. The key question for the Committee was what policy in this area will contribute most effectively to the ability of the Law Society to regulate its members in the public interest while ensuring fairness to the members.
39. The Committee determined that from the perspective of protection of the public, the fact of a prior ITA, if relevant to a subsequent fact situation involving an issue of alleged professional misconduct, is something the discipline authorization committee should know.
40. However, the Committee recognized that that is not the only consideration. Of equal importance is the necessity to ensure that the process is fair.
41. The Committee accepted that ITAs are not penal in nature, and do not form part of a discipline record of a member at the Law Society.
42. As such, the Committee concluded that it is not appropriate that information about prior ITAs be provided to the discipline authorization committee. The profession cannot be left with an understanding of the non-penal nature of an ITA when the fact of a prior ITA may affect consideration of and decisions on matters at the authorization level in the future.

#### The Committee's Proposals

43. The Committee proposes that:
- a. no reference to prior ITAs be made in material submitted by staff or other investigators to the discipline authorization committee. This would also apply to material prepared for an ITA itself, which, as noted above, is based on the authorization memorandum;
  - b. the current practice of recording the occurrence of an ITA be continued;
  - c. no change be made to the June 1997 policy of Convocation respecting information about ITAs at the hearing level.

Options and Alternatives for Decision by Convocation

44. Convocation must determine whether:
- a. the Committee's policy proposal is acceptable;
  - b. if acceptable, any amendments or exceptions to the proposed policy are required;
  - c. if the policy is not acceptable, how the policy should be framed.

FOCUSED AUDIT PROFILES

*A. NATURE AND SCOPE OF THE ISSUE*

45. On October 27, 1997, Convocation adopted the recommendation of the Lawyers Fund for Client Compensation Committee that the Law Society conduct "focused audits" on members in private practice.
46. At its November 13, 1997 meeting, the Committee, in the course of its review of the new Private Practitioner's Report (prescribed on the Committee's recommendation at the December 12, 1997 Convocation), instructed staff to draft for the Committee's review the proposed profile of members who would be subject to focused audits.
47. This report contains the proposed profile and the Committee's proposal for Convocation's approval of the profile.

Background and Method to Development of the Profile

48. The Lawyers Fund For Client Compensation Committee directed that the focused audit effort be proactive in nature and directed toward those members within a "risk" profile which should be developed jointly with LPIC, the Law Society and the Lawyers Fund For Client Compensation.
49. The focused audit initiative augments the array of investigative procedures and programs employed by the Society in order to meet its regulatory mandate.
50. Presently, investigative activity, including audits of members' practices, are triggered by complaints, events such as administrative suspensions or the receipt of information from other sources such as the police or the press. The development of a risk profile which can also trigger an audit is designed to establish uniform guidelines for the conduct of focused audits and to have both a deterrent effect and provide the Society with an early detection mechanism which will prevent serious breaches from fully developing.
51. Lawyers identified as subject to a focused audit will include members in private practice who fit within the "profile". The Lawyers Fund For Client Compensation Committee report stated that the criteria making up the "profile" should include the following factors:
- trust account problems reported on the annual filing report or identified through a review of trust comparisons filed with the financial reports;
  - law firm record keeping practices;
  - failure to file complete financial reports on a timely basis;
  - Complaints Department "profiles" based on extent and nature of complaints;
  - LPIC "profiles" based on extent and nature of claims and other factors;
  - Compensation Fund "profiles" based on claims characteristics.

52. A number of the properties which make up the focused audit profile will be electronically linked to member information data derived from member forms which the profession files with the Society annually: the Membership Information Form and the Private Practitioner's Report (self-reporting).
53. Linking the relevant information derived from the annual forms to the information needs of the profile will substantially reduce the need for clerical re-input of data.

#### Profile Properties For the Selection of Focused Audits

54. Prior to commencing any focused audit, a request supported by reasons as to why the authority to conduct the audit is being sought will be made to the Chair or a Vice Chair of Discipline, for authorization pursuant to Regulation 708.
55. Input from LPIC, The Lawyers Fund For Client Compensation, and Law Society regulatory departments has been consolidated in the drafting of the profile where the issues were common to the parties.
56. Each of the properties in the profile are discussed separately.

##### #1) Referrals from LPIC

LPIC representatives have proposed the following criteria be included the selection of focused audits:

- delinquency in payment of levies and deductibles
- late reporting of claims
- failure to file transaction levy or volume levy forms
- claims involving fraud

##### # 2) Member has ceased to practice law but continues to hold trust property of a former client

Information of this nature will be subject to initial review to determine whether the matter should fall within the responsibility of the regulatory investigation teams. Source of Information: Membership Information Form. Area 3, Page 2, Question A] (1) (attached at Appendix 3).

##### # 3) Lawyer in private practice holding mortgages in trust for clients, collecting monthly private mortgage investment payments for clients, arranging private mortgage investments for lender clients, or acting for private mortgage lenders and handling advances in respect of the private mortgage transaction

Transactions for financial institutions and clients not at arm's length with the lawyer are exempt, consistent with the form reporting criteria.

Members involved in non-institutional mortgage financing (private mortgage lending) have traditionally been responsible for the largest number of claims received by the Compensation Fund. Grant payments related to private mortgage claims have ranged from a low of 45% of total payments made in 1995 to 72% in 1996. Of the current open file inventory, 66% are private mortgage related claims. Dollar amount of mortgage claims, with limits applied, equal \$10.5 million, or 69% of the total.

The transactions of this nature are those reported on questions 10 through 14 of the Private Practitioner's Report (attached at Appendix 4). The number of transactions and the cumulative dollar value of the transactions reported on question 14 of the form will be included in the profile data fields.

# 4) Members who act as sole Estate Trustee and have sole authority over estate assets

The Compensation Fund has also had a poor claims experience with members acting as sole Estate Trustee and having sole authority over estate assets. This is largely attributable to the absence of control mechanisms and accessibility of substantial assets. The lack of existence of estate books and records and the frequency of reconciliation of the estate bank accounts with the estate accounting records will be included in the profile data fields.

The responses to questions 4 and 19 on the Private Practitioner's Report (attached at Appendix 4) will identify members that are both sole Estate Trustee and are responsible for significant estate assets.

# 5) "Other Investment" Claims

While mortgage investing represents the largest number of claims to the Compensation Fund, other forms of investment on behalf of clients also represent a significant demand on the resources of the Fund. While "other investment" claims have accounted for as little as 3% of total grants paid (in 1992 and 1995), it has been as high as 14% (1991). Of the current open file inventory, 8% are "other investment" related. In terms of dollars, other investment claims account for 10% of all claims with limits applied.

Identifying members who invest client funds in non-mortgage vehicles is more difficult as the Private Practitioner's Report does not currently request such information. Identification of members involved in such activity will be identified from other sources, i.e. letters of complaint.

# 6) Mixing the practise of law with other business relationships

This type of activity has resulted in claims to the Fund. The highest grant payments have been to clients of members that had the dual role of lawyer and real estate developer.

The lawyer is in a conflict of interest when his or her own business interests become paramount to those of the clients lending money for the lawyer's "projects". Clients may not even be aware that the lawyer is the actual borrower because of how the deal is structured. Attention should also be paid to members who share office space with mortgage brokers and may receive commissions for referring lender clients to the broker.

An affirmative answer to question 9 on the new Private Practitioner's Report (see Appendix 4) will identify members who are involved in joint ventures with their clients. Information from third parties and complainants would also assist in identifying members mixing business with the practise of law or who have close business relationships with mortgage brokers.

#7) Cumulative history of inadequate trust record keeping determined from previous audits of a law firm or by the receipt of information from the Complaints Department or any other department of the Law Society

A focused audit will be struck to address the history of record keeping practices, including education and specific guidance to assist the member in appropriate trust record keeping standards.

# 8) Indicia of financial distress or improper handling of client money

Included in this category are the issuance of NSF cheques from the general account, a history of the failure to meet financial obligations of the practice, client retainers deposited directly to the general account, or other similar indicia of financial distress or improper handling of client money which is not the subject of a regulatory investigation for discipline purposes.

Members in financial difficulty can come to the Law Society's attention through a variety of means such as complaints concerning unpaid financial obligations, NSF cheques, or the Society being advised of a member's bankruptcy. The Law Society and LPIC track members who tender NSF cheques to pay outstanding fees or levies. Also, the Private Practitioner's Report requests information on overdrawn trust accounts and client ledgers.

# 9) Member has been suspended administratively (i.e for non payment of fees or levies) and there is some indication that the member continues to practice

The Society frequently becomes aware (whether through routine telephone follow-up by Law Society Forms Services of members suspended each month or through third party sources) of members who continue to practice following an administrative suspension. If information is received indicative of a member practising while under suspension, and if the matter cannot be resolved over the telephone, currently an Audit Department examiner is dispatched to investigate. Historically, approximately 50% of these instances are resolved without involving further formal disciplinary proceedings. A member of the focused audit team could attend at the offices of such suspended members and quickly determine whether (s)he is in fact practising, typically evidenced by materials in files recording transactions handled on behalf of clients.

# 10) Members who have reported on their annual forms, potential problems with books and records requirements and/or infringements of the Rules of Professional Conduct, provide "qualified" answers on their forms, or fail to file the financial reporting form

Law Society Forms Services reviews forms annually filed by all members in private practice for deficiencies in bookkeeping records and infringements of the Rules of Professional Conduct. In a significant number of instances, issues are resolved by an exchange of correspondence, supported by documents.

In other instances, an attendance is prudent or required in order to determine the extent and nature of reported problems/deficiencies. A focused audit of these matters will also serve to supplement and improve the integrity of the spot audit program in light of the new self-reporting model.

Similarly, members who are in default of their filings should be included in this profile. Failure to file the self reporting financial report may not necessarily indicate a deficiency in or an absence of required books and records, or, it may be the result of serious deficiencies in the trust account or in record keeping practices. A visitation by a member of the focused audit program could promptly determine the nature of the cause for the failure to file and take appropriate action.

# 11) A referral/recommendation made by the Discipline Authorization Committee or Convocation to conduct a focused audit on a member

A referral or recommendation to conduct a focused audit at a future date may be made by the Discipline Authorization Committee (in the course of reviewing facts in a regulatory investigation) or Convocation (as part of a disposition at Discipline Convocation) with respect to a member's books and record-keeping practices.

#12) Referrals from the Complaints Department Intake Process

Certain types of complaints which may not appear to warrant an audit of the issues which resulted in the complaint(s) may nevertheless warrant the institution of a focused audit.

A pattern of similar complaints emerging over a relatively short period of time (eg. five complaints in one year) would trigger a focused audit of the member's practice in the following situations:

- failure to report in a timely fashion or at all in real estate, mortgage or estate matters;
- allegations of failure to pay financial obligations, agency accounts, etc;
- judgments having been obtained against the member;
- members who have taken steps to frustrate enforcement proceedings against them.

In these situations, the purpose of the complaint investigation is usually limited to the resolution of the individual complaint and would not extend to a consideration of what possible problems might be causing the complaints. A focused audit would provide a means of ascertaining at an early stage whether the complaints are a reflection of more serious financial problems.

Selection of Audit - Process

57. The focused audit program selection process will be designed to use the computer to generate a recommendation list of members who fit within the profile. It is proposed that the selection list will be reviewed by staff to set priorities from those members listed.
58. Recognition must also be given to the fact that a member on the recommendation list may also be the subject of a current, or recently completed, spot audit or regulatory investigation. This measure will address concern about duplication of regulatory attention on a member.

*B. DISCUSSION*

The Committee's Views

59. The Committee agreed with the scope and language of the proposed profile, and determined that it gives the appropriate and necessary framework to the focused audit program.
60. The Committee also recognized that experience in application of the profile in the focused audit program within the two-year period of the pilot project for the self-reporting model may lead to changes in the features and composition of the profile.
61. The Committee confirmed with staff the requirement for regular and meaningful statistical reporting and analysis of the results of the program, which will be submitted quarterly from the Director of Audit and Investigations to the Chief Executive Officer for his report to Convocation.
62. Respecting information to the profession, the Director of Audit and Investigations confirmed his intention to disseminate information about the program and its progress to the membership through the *Ontario Lawyers' Gazette*.
63. The Committee noted, as set out in paragraph 54 above, that the approval of the discipline authorization committee will be required before any focussed audit is conducted.

Options and Alternatives for Decision by Convocation

64. Convocation must decide whether:
- a. the profile as drafted is sufficient, and should be adopted;
  - b. whether additions or deletions should be made to the draft profile.

AMENDMENTS TO THE RULES OF THE DISCIPLINE HEARING PROCESS

*A. NATURE AND SCOPE OF THE ISSUE*

65. On April 25, 1997, Convocation adopted Rules of the Discipline Hearing Process<sup>4</sup>.
66. In the course of the discussion in Convocation, the Committee was asked to consider whether the following matters should be the subject of procedural rules:
- rules of deference by Convocation to findings and recommendations of Discipline Committees;
  - rules specifying when Convocation becomes seized of a matter; and
  - rules providing for alternative dispute resolution in the discipline hearing process.
67. With the assistance of the Committee's Working Group on the Revised Rules of the Discipline Hearing Process<sup>5</sup>, the Committee reviewed the above issues together with the following additional items:
- whether Rule 3.01(3) should be amended to delete the word "committee" and replace it with "tribunal"; and
  - whether Rule 9.05 should be amended with a view to reducing the number of materials submitted to Convocation.

*B. ANALYSIS AND CONCLUSIONS*

Deference of Convocation to findings and recommendations of Committees

68. With respect to deference to findings and recommendations of Discipline Committees, it is the Committee's view that the issue of deference is a question of law that is not properly the subject of procedural rules.

When Convocation becomes seized of a matter

69. The Committee is of the view that the issue as to when Convocation becomes seized of a matter is also a question of law that is not properly the subject of procedural rules.

ADR in the hearing process

70. With respect to alternative dispute resolution ("ADR"), the Committee recognized that to the extent that ADR may be included in the hearing process, it exists in the pre-hearing conference process provided for in Rule 3 of the Rules of the Discipline Hearing Process (please see Appendix 5).

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<sup>4</sup> Pursuant to section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22: "A tribunal may make rules governing the practice and procedure before it."

<sup>5</sup>Gavin MacKenzie, Niels Ortved, and staff member Janet Brooks with other discipline counsel.



71. At present, ADR techniques are used principally to resolve complaints prior to the authorization of formal discipline proceedings. The authorization of discipline proceedings assumes that all avenues of resolution have been exhausted.
72. However, a separate working group of the Committee is examining various issues relating to mediation in the complaints and discipline processes, and in particular how this initiative may apply at various stages in the work of the redesigned regulatory departments flowing from Project 200.
73. Accordingly, a final determination on whether ADR should become a feature of any procedural rules will await the results of the mediation working group's study.

Amendment of Rule 3.01(3)

74. Rule 3.01(3) states:  
The pre-hearing conference Benchers shall not sit as a member of the *Committee* at the hearing into the Complaint unless the parties consent in accordance with Rule 4. [Emphasis added].  
  
Rule 4 provides for Single Benchers Committees.
75. It is the view of the Committee that it is also preferable that the Pre-Hearing Benchers not sit as a member of Convocation.
76. "Tribunal" is a term which is defined by Rule 1.02(2) as "whichever of the HMT, Committee, CMT, or Convocation is or will be hearing the applicable part of a proceeding".
77. Accordingly, Rule 3.01(3) should be amended by deleting the word "Committee" and replacing it with "Tribunal" as follows:

The pre-hearing conference Benchers shall not sit as a member of the *Tribunal* at the hearing into the Complaint unless the parties consent in accordance with Rule 4. [Emphasis added].

Amendment of Rule 9.05

78. Rule 9 (please see Appendix 5) provides for the filing of a Record Book on contested matters. Rule 9.05 (6) sets out the content of the Record Books as follows:
  - (a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;
  - (b) a copy of each Notice of Disagreement;
  - (c) a copy of the Committee's Report;
  - (d) a copy of each document required;
  - (e) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and,
  - (f) a copy of each Certificate of the Contents of the Record Book.

79. At each sitting of Special Convocation, a copy of the Committee's Report, referred to in Rule 9.05(6) (c), is also distributed to members of Convocation in a separate brief.
80. In order to reduce the number of documents delivered to Convocation, it is the Committee's view that 9.05(6)(c) should be deleted since it results in duplication of materials before Convocation.
81. The Committee recognized that while the above amendment is a small but useful step in reducing the documentation provided for Special Convocations, concerns generally about the volume of material have been expressed by benchers.
82. While the current process essentially requires the existing volume of documentation and information to ensure, among other things, procedural fairness to the participants, the Committee intends to consider exploration of initiatives, including those involving technology, which may assist benchers in performing their adjudicative functions.

Options and Alternatives for Decision by Convocation and the Discipline Committee

83. Convocation and the Discipline Committee<sup>6</sup> must decide whether:
- a. they agree with the Committee's proposals not to include the first three items discussed in procedural rules;
  - b. if they do not agree, how such procedural rules should be framed;
  - c. with respect to Rules 3.01(3) and 9.05, the amendments should be made;
  - d. changes to the language of these amendments as proposed should be made.

AMENDMENT TO THE *PROFESSIONAL CONDUCT HANDBOOK*

*NATURE AND SCOPE OF THE ISSUE*

84. On November 28, 1997, Convocation adopted the report, and thereby the recommendations, of the Competence Task Force which provided a working definition of competence for the members of the Law Society.
85. One of the recommendations in the report was that the definition should be advanced by revising the Foreword to the *Professional Conduct Handbook* to include the definition at the end of the current Foreword.
86. The adoption of this recommendation effectively amends the *Handbook*, and, accordingly, triggers the Committee's responsibility respecting the *Handbook* under the Rules made pursuant to the *Law Society Act*.

The Committee's Role

87. The Committee's mandate, according to Rule 56 made under the *Law Society Act*, includes "the function assigned to the Professional Conduct Committee under Regulation 708." Section 20 of that Regulation states:

The Professional Conduct Committee is authorized to prepare and publish a handbook containing the code of professional conduct and ethics and rulings with respect thereto under the title "Professional Conduct Handbook".

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<sup>6</sup>Under s. 25.1 of the *Statutory Powers Procedure Act*, the "tribunal" which makes procedural rules would include, in the Law Society's process, both Convocation and the Discipline Committee.

88. On the understanding that the *Handbook* includes the Foreword and “prepare and publish” within the wording of section 20 would include any changes or amendments to the *Handbook*, the Committee is responsible for making, or affirming, any such changes as a matter delegated to it through Rule 56.

The Committee’s Decision

89. The Committee confirmed the amendment to the *Handbook* to incorporate the definition of competence and also a brief notice to the profession, advising that the definition is now included in the Foreword.
90. The existing Foreword, the definition of competence as approved by Convocation (excerpted from the Competence Task Force report) and the notice appear at Appendix 6.

Formal Request for Convocation’s Approval of the Amendment

91. As Convocation has already approved the definition and its inclusion in the Foreword, the Committee is simply reporting its decision, in accordance with its mandate, to Convocation respecting the amendment to the *Handbook*, which it requests Convocation approve through the adoption of this report.

APPENDIX 1

EXCERPT FROM PROFESSIONAL REGULATION COMMITTEE  
REPORT TO CONVOCATION JUNE 1997  
ON PRIOR INVITATIONS TO ATTEND

(pages 27 - 31)

APPENDIX 2

EXCERPTS FROM LEGISLATIVE AMENDMENTS  
RESPECTING INVITATIONS TO ATTEND

(pages 32 - 34)

APPENDIX 3

SELECTED QUESTIONS FROM THE MEMBERSHIP INFORMATION FORM

(pages 35 - 38)

APPENDIX 4

SELECTED QUESTIONS FROM THE PRIVATE PRACTITIONER’S REPORT

(pages 39 - 47)

APPENDIX 5

EXCERPTS FROM THE RULES OF THE DISCIPLINE HEARING PROCESS

### RULE 3 - PRE-HEARING CONFERENCE

#### Party to Request

- 3.01 (1) The member or the Society may request that a pre-hearing conference take place before a Benchler.  
(2) There shall not be more than one pre-hearing conference in a matter except by order of the pre-hearing conference Benchler or the HMT or on the consent of the parties.  
(3) The pre-hearing conference Benchler shall not sit as a member of the Committee at the hearing into the Complaint unless the parties consent in accordance with Rule 4.

#### Direction to Attend

- 3.02 Where a party refuses to attend a pre-hearing conference on consent, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

#### Notice of Pre-hearing Conference

- 3.03 (1) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Discipline Hearings Co-ordinator to the member, the Society, and the pre-hearing Benchler.  
(2) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

#### Preparation for Pre-hearing Conference

- 3.04 Unless otherwise ordered, the member and the Society shall exchange and file pre-hearing conference memoranda and any related documentation and provide copies to the pre-hearing conference Benchler, no less than two days prior to the pre-hearing conference.

#### Procedure at Pre-hearing Conference

- 3.05 At the pre-hearing conference, the presiding Benchler shall discuss the following with the parties:
- (a) whether any of all of the issues can be settled;
  - (b) whether the issues can be simplified;
  - (c) whether there are any agreed facts; and
  - (d) the advisability of attempting other forms of resolution of the matter.

#### Electronic Pre-hearing Conference

- 3.06 A pre-hearing conference may be held electronically by order of the pre-hearing conference Benchler or the HMT, or on consent.

#### Without Prejudice

- 3.07 A pre-hearing conference shall not be open to the public, and all discussions at the pre-hearing conference shall be without prejudice.

#### Documents

- 3.08 Documents filed at the pre-hearing
- (a) shall be returned to the party who filed the documents after the conference, and

- (b) shall not be considered to be filed in the proceedings.

#### Agreements And Undertakings

- 3.09 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference Benchers.  
(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.  
(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Committee.

#### RULE 9 - CONDUCT OF PROCEEDINGS AT CONVOCAATION MANAGEMENT TRIBUNAL AND AT CONVOCAATION

##### Service of the Report

- 9.01 The Secretary shall serve upon the member a copy of the Report, a notice of the time and place of the Convocation that will consider the Report, a summons requiring the member to attend Convocation and a notice that  
(a) Convocation reserves the right to impose all penalties, including disbarment, in every case; and  
(b) Convocation will not necessarily offer the member an opportunity for an adjournment where a motion for a higher penalty is made at Convocation.

##### Convocation Management Tribunal (CMT)

- 9.02 (1) The CMT shall schedule the time that matters shall be considered by Convocation.  
(2) The CMT shall hear motions with respect to the following matters:  
(a) adjournments in accordance with rule 2.05;  
(b) the extension or abridgment of deadlines for filing of materials as set out in rules 9.02 to 9.05 or as previously ordered by the CMT;  
(c) the materials to be filed with Convocation, including the content of materials and the number of copies to be prepared;  
(d) procedural matters regarding motions to tender fresh evidence including, the form of the evidence, the contents of the affidavit or the Record Book of Further Evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and,  
(e) requests to strike out a Notice of Disagreement for failure to comply with these rules or any order of the CMT or Convocation.

##### Notice of Disagreement

- 9.03 (1) Where a party disagrees with the Report of the Committee including the Committee's recommendation as to penalty, that party shall serve a Notice of Disagreement and file a copy with the Clerk to the Discipline Committee, prior to:  
(a) the expiry of 30 days from the date of mailing of the Committee's Report; or  
(b) the date on which Convocation is scheduled to consider the Report, whichever occurs first.  
(2) A Notice of Disagreement shall set out the grounds of disagreement and the disposition sought before Convocation.

- (3) Where a party does not deliver a Notice of Disagreement within the time prescribed in subrule (1), that party is deemed to have accepted the Report of the Committee, including the Committee's recommendation as to penalty, unless the party obtains the consent of the other party or an order from the CMT.

Uncontested Matters

- 9.04 Where all parties are deemed to have accepted the report of the Committee, Convocation shall decide whether to adopt the Committee's report including its recommendation as to penalty with or without receiving submissions from the parties.

Contested Matters

- 9.05
- (1) A party delivering a Notice of Disagreement shall contemporaneously deliver a Certificate of the Contents of the Record Book listing the contents of the Record Book necessary for that party's purposes.
  - (2) Within five days of delivery of a Certificate of the Contents of the Record Book, the other party shall deliver a Certificate of the Contents of the Record Book.
  - (3) Subject to subrule (5), the contents of the Record Book shall contain the documents listed in the Certificate of the Contents of the Record Book or the Certificates of the Contents of the Record Book, as the case may be, unless ordered otherwise by the CMT.
  - (4) Within twenty days of delivery of the first Certificate of the Contents of the Record Book, the party delivering a Notice of Disagreement shall prepare and file with the Clerk to Convocation, 45 copies of the Record Book.
  - (5)
    - (a) Where a party fails to deliver a Certificate of the Contents of the Record Book, that party shall be deemed to accept the other party's Certificate of the Contents of the Record Book, unless the party obtains the consent of the other party or an order from the CMT.
    - (b) If a party which has accepted the other party's Certificate of the Contents of the Record Book seeks to rely before Convocation on additional material from the record, that party shall be responsible for producing a separate Record Book, at the party's expense, in accordance with the relevant portions of subrules (3), (4), and (6).
  - (6) The Record Book shall contain, in consecutively numbered pages, the following:
    - (a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;
    - (b) a copy of each Notice of Disagreement;
    - (c) a copy of the Committee's Report;
    - (d) a copy of each document required;
    - (e) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and,
    - (f) a copy of each Certificate of the Contents of the Record Book.
  - (7) If only one party delivers a Notice of Disagreement, that party shall serve a factum on the other party within 15 days of the delivery of the Record Book.
  - (8) If more than one party delivers a Notice of Disagreement, the Society shall serve a factum upon the other party within 15 days of the delivery of the Record Book.
  - (9) Within 15 days of receipt of a factum, a party shall deliver a factum.

- (10) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law and authorities relating to each issue and the order sought.
- (11) Each party shall deliver with a factum, a book of authorities unless the authorities to be relied upon are contained in Convocation's Standard Book of Authorities.
- (12) Each party shall file 45 copies of the factum and book of authorities with the Clerk to Convocation.
- (13) Where the party who files a Notice of Disagreement fails to file a factum or book of authorities in the time prescribed by this rule or by the CMT, the Notice of Disagreement shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the CMT.

Motion to Tender Fresh Evidence

- 9.06
- (1) If a party seeks to tender evidence to Convocation which was not before the Committee, the party shall bring a motion before Convocation.
  - (2) The moving party shall serve on the other party
    - (a) a Notice of Motion setting out the grounds for the motion, and
    - (b) the affidavit or affidavits that the party seeks to tenderwithin the time prescribed for service of the moving party's Certificate of Content of the Record Book.
  - (3) The evidence shall be given by affidavit unless the parties agree or the CMT orders otherwise and may contain statements of the deponent's information and belief if the source of the information and the fact of the belief are specified in the affidavit.
  - (4) The party adverse to the moving party may cross-examine the deponent of the affidavit before the special examiner in accordance with Rule 34 of the *Rules of Civil Procedure* after delivery of reply material, if any, and within 15 days of receipt of the motion.
  - (5) The cost of transcripts and appointments before the special examiner shall be borne by the party seeking to tender the further evidence unless the CMT orders otherwise.
  - (6) Within ten days of the expiry of the time period prescribed in subrule (4), the moving party shall serve on the other party and file with the Clerk to Convocation, a Motion Record containing, in consecutively numbered pages, the following:
    - (a) a table of contents describing each document by its nature and date;
    - (b) the Notice of Motion;
    - (c) a copy of each affidavit with exhibits described and listed separately;
    - (d) a copy of each transcript; and,
    - (e) a copy of each exhibit marked during a cross-examination.
  - (7) The moving party shall file with the Clerk to Convocation 45 copies the Motion Record containing the fresh evidence and such other documents as the CMT may order, within the time limit prescribed by the CMT.
  - (8) Both parties shall be prepared to proceed with Convocation's consideration of the Report on its merits following a motion to tender fresh evidence before Convocation, in any event of the result of the motion.

- (9) Where the party who files a Notice of Motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the CMT, the Notice of Motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the CMT.

Procedure Before Convocation

- 9.07 (1) Oral argument before Convocation is not mandatory.
- (2) The Treasurer or Acting Treasurer may specify the time allowed for oral argument.
- (3) When the parties consent, submissions to Convocation may be made in writing by facta without oral argument.
- (4) Where there is oral argument before Convocation, in the absence of an agreement to the contrary between the parties, the order of presentation of argument of the parties shall be as follows:
- (a) where only one Notice of Disagreement is delivered, the party filing the Notice of Disagreement shall be the first party to make submissions to Convocation;
  - (b) where more than one Notice of Disagreement is delivered, the Society's counsel shall be the first to make submissions to Convocation; and
  - (c) where no Notice of Disagreement is delivered, the Society's counsel shall be the first to make submissions to Convocation.

APPENDIX 6

FOREWORD TO THE *PROFESSIONAL CONDUCT HANDBOOK* AND  
PROPOSED AMENDMENTS THERETO

(pages 56 - 59)

Item re: Use of Information of Prior Invitations to Attend

Ms. Cronk presented the issues raised in the use of information of prior Invitations to Attend.

It was moved by Ms. Cronk, seconded by Ms. Ross that the Committee's proposal outlined on page 11, paragraph 43 of the Report be adopted as follows:

- a. no reference to prior ITAs be made in material submitted by staff or other investigators to the discipline authorization committee. This would also apply to material prepared for an ITA itself;
- b. the current practice of recording the occurrence of an ITA be continued;
- c. no change be made to the June 1997 policy of Convocation respecting information about ITAs at the hearing level.

Carried

Item re: Focused Audit Profile

Ms. Cronk presented the item in the Report for approval of the proposed profile of members who would be subject to focused audits.



It was moved by Mr. Aaron, seconded by Mr. Gottlieb that #3 on page 14 be amended by deleting the following words "....or acting for private mortgage lenders and handling advances in respect of the private mortgage transaction."

Withdrawn

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that #4 re: Members who act as sole Estate Trustee and have sole authority over estate assets be deleted.

Withdrawn

The Chair accepted an amendment to #4 on page 15 to adding the words "do not maintain estate records".

It was further accepted that the last phrase in #3 be referred back to the Committee for consideration.

It was moved by Ms. Cronk, seconded by Ms. Sealy that paragraphs 45 to 58 be approved with the amendment to #4 of paragraph 56 and reconsideration of #3.

Carried

Item re: Amendments to the Professional Conduct Handbook

It was moved by Ms. Cronk, seconded by Ms. Ross that the amendment to the Handbook to incorporate the definition of competence in the Foreword be approved.

Carried

Item re: Amendments to Rules of the Discipline Hearing Process

Mr. MacKenzie presented for Convocation's approval amendments to the Rules of the Discipline Hearing Process.

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the recommendations of the Committee set out on pages 21 to 25 be accepted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

COPELAND/RUBY MOTION - Counsel for Ontario Legal Aid Plan on Rowbotham Applications

It was moved by Ms. Ross, seconded by Mr. Finkelstein that the motion be tabled.

Lost

Messrs. Copeland and Ruby presented their Motion for consideration by Convocation.

A discussion followed.

Materials concerning this matter were circulated to the Benchers.

It was moved by Mr. Armstrong, seconded by Mr. Finkelstein that the matter be referred back to the Legal Aid Committee and to report back to Convocation in February.

The Armstrong/Finkelstein Motion was accepted by Messrs. Copeland and Ruby.

Mr. Armstrong further advised that a letter would be sent to the Director to cease having counsel appear on Rowbotham Applications until this issue was resolved.

REASONS OF CONVOCAATION

The Reasons of Convocation in the matter of Dorothy Jeanne Mallory were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Dorothy Jeanne Mallory,  
of the City of Toronto, a barrister and solicitor.

REASONS OF CONVOCAATION

Leslie Cameron - counsel for  
The Law Society of Upper Canada

Robert MacKinnon, counsel for the Solicitor

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF The Law Society Act;

AND IN THE MATTER OF Dorothy Jeanne Mallory  
of the City of Toronto, a barrister and solicitor

REASONS OF CONVOCAATION

Finding of Professional Misconduct

On Tuesday, October 28, 1997 Convocation considered the Report and Decision and the Recommendation as to Penalty of Discipline Committee dated May 16, 1997.

Convocation adopted the Discipline Committee's finding that Dorothy Jeanne Mallory ("the solicitor") is guilty of professional misconduct and specifically adopted the findings in respect of the following particulars:

Complaint D53/95

- 2 a) She failed to reply to communications from the Law Society's Examiner attempting to conduct an audit, despite the Law Society's:
  - (ii) letters dated January 16, 1995, January 30, 1995 and February 13, 1995.

- c) she failed to file with the Society within six months of the termination of her fiscal year ending June 30, 1994, a certificate in the form prescribed by the Rules and the report completed by a public accountant and signed by the member in the form prescribed by the Rules, thereby contravening Section 16(2) of the Regulation 708 made pursuant to the Law Society Act.

Counsel for the parties made no submissions in respect of the finding of professional misconduct.

#### Discipline Committee's Recommendation as to Penalty

It was the recommendation of the Discipline Committee that the solicitor receive a one-month definite suspension, such suspension to continue indefinitely thereafter until the Secretary of the Law Society is satisfied that the Member is fit to return to practice. The Committee further recommends that if the solicitor is not satisfied with the decision of the Secretary, the issue is to be determined in accordance with the provisions of Section 47 of the Law Society Act. No costs were recommended.

#### Submissions of Counsel in Respect of Recommended Penalty

Mr. MacKinnon, counsel for the solicitor, submitted that the Discipline Committee erred in recommending a penalty of indefinite suspension based on the particulars established because:

- (a) this recommendation was based on evidence that was led and findings that were made in respect of a particular that was not found established;
- (b) the hearing was not pursuant to Section 35 of the Law Society Act; or
- (c) in the alternative, the penalty recommendation is too severe and is not commensurate with the evidence and findings made.

At the hearing Ms. Cameron, counsel for the Law Society tendered in evidence a letter dated October 4, 1993 prepared by Mr. John Barnett ("the Barnett Letter"). Mr. Barnett is a psychotherapist and member of the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists. The Barnett letter was tendered in camera.

The Barnett letter was in the possession of the Law Society as it had been in evidence at a prior Discipline hearing concerning the solicitor and in consequence of which a Discipline Committee had, on June 24, 1994, imposed a condition on the solicitor's practice that she maintain a mentoring relationship with a specified member of the Law Society for a period of three years.

At the instant hearing Ms. Cameron maintained the Barnett letter was relevant since it helped explain the context in which the earlier Discipline Committee had imposed its condition on the solicitor's practice. Over the objection of Mr. MacKinnon the Barnett letter was received in evidence (Exhibit 6). In ruling that the Barnett letter was admissible Mr. Swaye, the Chair of the Discipline Committee Panel, commented "it is our decision that we are going to accept the report and this Committee will take it with the concerns of the various parties and, in the event that we are of the view that it does not carry very much weight, we will so consider those particular arguments" (Joint Record Book pages 40-41). In the event the Discipline Committee dismissed the charge in respect of which the Barnett letter had been filed in evidence.

At Convocation it was submitted on behalf of the solicitor that the recommendation of indefinite suspension was based upon the contents of the Barnett letter and this was unfair to the solicitor since the particular of professional misconduct in respect of which the letter had been tendered in evidence had not been made out.

On the other hand, it was the submission of counsel for the Law Society that there is no principle that precludes the consideration of properly admitted evidence on multiple issues. Convocation agrees with this proposition. While there may be reason to question the decision of the Discipline Committee in admitting the Barnett letter into evidence, once admitted it formed part of the record and was therefore available to support any of the findings which the Discipline Committee was duly called upon to make.

The second ground advanced by Mr. MacKinnon in opposing the penalty recommendation of the Discipline Committee was that the penalty was being imposed pursuant to Section 34 (not Section 35) of the Law Society Act ("the Act").

Section 34 of the Act provides:

"If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by Order cancel membership in the society by disbarring the member as a barrister and striking the member's name off the role of solicitors or may by Order suspend the member's rights and privileges as a member for a period to be named or may by Order reprimand the member or may by Order make such other dispositions as it considers proper in the circumstances."

It would be convenient here to set out the provisions of Section 35 of the Act: "If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation, incapable of practising law as a barrister and solicitor by reason of physical or mental illness, including addiction to alcohol or drugs, or any other cause, Convocation may by Order limit or suspend any rights and privileges as a member for such time and on such terms as it considers proper in the circumstances."

It was submitted on behalf of the solicitor that the Discipline Committee lacked the jurisdiction to recommend an indefinite suspension pending satisfactory proof of fitness to practice since the penalty was being recommended pursuant to the authority conferred on Convocation by Section 34 of the Act.

Counsel for the Law Society submitted that the broad penal jurisdiction invested in Convocation pursuant to Section 34 includes suspension of a member's rights and privileges "for a period to be named" and "such other disposition as it considers proper in the circumstances". The cases of Dyck and Rothel were cited in support.

Convocation accepts that it has the jurisdiction under Section 34 of the Act to impose, in appropriate cases, the penalty recommended in this case.

#### Convocation's Reasons for Rejecting Recommendation as to Penalty

As stated above Convocation has the jurisdiction pursuant to Section 34 of the Act to impose the penalty recommended. A finding of physical or mental illness warranting suspension on the basis of incapacity may arise in the context of professional misconduct under Section 34 or otherwise under Section 35. In either case, it is clear that such a finding should only be made "after due inquiry". The term "due inquiry" suggests a high degree of procedural fairness and rigour.

In this case, it is far from clear that a "due inquiry" was conducted. In the first place, the chair of the Discipline Committee Panel somewhat cryptically observes "this Committee wishes it to be noted that this is not a Section 35 hearing" (Report and Decision of the Discipline Committee, page 5). While it is not clear what is intended by this observation, its passing gives rise to a real apprehension on the part of Convocation that the Committee did not consider itself engaged in an exercise requiring the attributes of due inquiry contemplated by that Section.

Convocation is fortified in this view by the following observations:

- 1) there is nothing on the record to indicate that the solicitor had been made aware that the Law Society would be seeking a finding that she was incapable of practising law by reason of physical or mental illness;
- 2) when the Barnett letter was received in evidence the Discipline Committee panel chair observed that its weight would be the subject of future consideration;
- 3) the Barnett letter was almost three years old when it was admitted into evidence;
- 4) the Barnett letter was led to establish the professional misconduct.
- 5) the solicitor, who gave evidence on her own behalf, was not cross-examined by counsel for the Law Society in respect of the contents of the Barnett letter;
- 6) there was no evidence tendered by the Law Society from a duly qualified medical practitioner in respect of the issue of physical or mental illness;
- 7) in response to the admission of the Barnett letter the solicitor filed a letter from her family physician, Dr. Goldhar, dated April 26, 1996 (Exhibit 9). This letter was also received in camera. It did not support a finding of incapacity.

In all cases where there has been a finding of mental or physical incapacity and suspension recommended under either Section 34 or 35 of Act the record should disclose there was due inquiry on the issue. A full hearing may not be necessary where, as in the Dyck case, the member concedes the issue of incapacity or, as in the Rothel case, the member does not apparently contest it.

#### Reasons for Penalty

For the reason given above it is the decision of Convocation that the solicitor not be subject to an indefinite suspension.

The solicitor is 65 years of age and was called to the Bar in 1965. Since 1979 she has practised as a sole practitioner. She is not currently practising and is under administrative suspension.

The solicitor has a discipline history. On February 18, 1992 she was reprimanded in Committee for failure to maintain books and records and failure to reply to communications from the Law Society. On June 24, 1994 she was reprimanded in Committee on three counts of failure to reply to communications to the Law Society between late 1992 and early 1993.

The solicitor has been under administrative suspension since May of 1994 and has not been practising since January of that year. Although the solicitor has been found guilty of professional misconduct, the misconduct arose in circumstances which are addressed in the evidence which was received in camera. Convocation believes that the interests of the public will be adequately safeguarded if the solicitor is reprimanded in Committee. Accordingly, Convocation was converted to a Committee of the whole in order that the Treasurer might administer the reprimand.

DATED at Toronto, this 6th day of January, 1998

William D. T. Carter

Convocation accepts that it has the jurisdiction under Section 34 of the Act to impose, in appropriate cases, the penalty recommended in this case.

The Treasurer advised that the Clarke Discipline matter was adjourned to the next Convocation.

CONVOCATION ROSE AT 3:55 P.M.

Confirmed in Convocation this 27 day of February, 1998

*Hawy T Strwsbey*

Treasurer