

MINUTES OF CONVOCATION

Friday, 28th January, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S.A. Lamek), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Hickey, Hill, Howie, Jarvis, Kiteley, Krishna, Lawrence, Lax, Legge, Levy, McKinnon, Manes, Mohideen, Moliner, Murphy, Murray, O'Brien, D. O'Connor, Palmer, Pepper, Peters, Ruby, Scace, Sealy, Somerville, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer read a letter to the Benchers from the Very Rev. S. Duncan Abraham who expressed his gratitude for the invitation to lunch after the service of the Opening of the Courts on January 6th, 1994.

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MOTIONS - COMMITTEE APPOINTMENTS

It was moved by Ron Cass, seconded by Abraham Feinstein THAT a committee composed of David Scott (Chair), Arthur Scace, Susan Elliott, Ross Murray and Denise Bellamy be struck to study the office and role of the Treasurer and

THAT a committee composed of Netty Graham, Shirley O'Connor, Hope Sealy, Nora Richardson, Dennis O'Connor and Lloyd Brennan be struck to develop a description of the duties and obligations undertaken by lay benchers in discharging their office for forwarding to the Attorney-General to assist in future lay bencher appointments.

Carried

It was moved by Mr. Lamek, seconded by Mr. Howie THAT Dorothy Fox, Margaret Stanowski and Derek Paul Fudge be appointed as members of the Legal Aid Committee.

Carried

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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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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Goudge, seconded by Ms. Lax THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as Read) be adopted.

Carried

Admissions (2 Reports)
Bi-Centennial
Clinic Funding
Communications
County and District Liaison
Discipline (Public Report)
Equity in Legal Education and Practice
Finance and Administration
French Language
Insurance (2 Reports)
Investment
Lawyers Fund for Client Compensation
Legal Aid
Legal Education
Legislation and Rules

Libraries and Reporting
 November and December Draft Minutes
 Professional Conduct
 Professional Standards
 Research and Planning
 Specialist Certification Board
 Unauthorized Practice
 Women in the Legal Profession

Carried

CALL TO THE BAR

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

Barbara Jean Hendrickson	Special, Transfer, Manitoba
Wayne Stanley Shalagan	Special, Transfer, Manitoba
Aida Mary Van Wees	Special, Transfer, British Columbia
Patricia Anne Monture-OKanee	Prof., Faculty of Law, University of Ottawa

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meetings of January 13 and 20, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 9.30 a.m., the following members being present: Mr. Carter: (Chair), Ms. Mohideen, and Messrs. Lamont and Farquharson.

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

A.
POLICY

A. 1. RULES OF PROCEDURE FOR THE ANNUAL MEETING

A.1.1. The proposed amendments to Rule 52 recommended by the Research and Planning Committee were before the Committee for consideration.

A.1.2. After discussion, your Committee requested the Secretary to convey its views to the Research and Planning Committee.

B.
ADMINISTRATION

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

B.1.1. The following candidate has met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Paul Robert Lawrence Arkin

Approved

B.1.2. The following candidate has met all the requirements to transfer under sections 4(1) and 3(1) of Regulation 708 made under the Law Society Act:

John McDermott Meaney

Approved

B.2. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.2.1. FULL-TIME MEMBERS OF FACULTIES OF APPROVED LAW SCHOOLS

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under s. 5 Reg. 708 on January 28th, 1994. She has filed the necessary documents and complied with the requirements of the Society.

Patricia Anne Monture-OKanee

Faculty of Law
University of Ottawa

Approved

B.3. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.3.1. The following candidates have completed successfully the September 1993 transfer examinations:

Christopher Atchison
Peter Edwin Falk

B.3.2. Two candidates failed.

Noted

B.4. REQUESTS TO BE CALLED TO THE BAR IN FEBRUARY 1994 ON UNDERTAKING TO PURSUE PERMANENT RESIDENCY STATUS

B.4.1. The following students have satisfied the requirements of the Bar Admission Course:

Neil Cummings
Jack Douglas Pappalardo

B.4.2. Both students are non-resident candidates for call to the Bar who have been actively pursuing permanent residency status. They respectfully request to be called to the Bar with their classmates in February 1994 upon signing an undertaking to pursue their application.

Your Committee recommends that they be permitted to proceed conditional upon each providing an undertaking that he will:

1. diligently pursue the permanent residency status application;
2. report to the Law Society quarterly on the status of the application; and
3. be deemed to have resigned from membership in the Society if the permanent residency status is not approved.

B.5. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.5.1. Charles Gordon Ross was called to the Bar April 19, 1963. He resigned his membership in the Society at his own request June 20, 1975 to pursue ordained ministry. Mr. Ross now applies for readmission to the Society.

B.5.2. He has complied with the requalification requirements of the Society having successfully completed four months of articling and Phase Three of the Bar Admission Course. He has paid the Readmission Fee and made arrangements for the payment of all arrears of fees.

Approved

B.5.3. Douglas William Melville was called to the Bar February 5, 1993. He resigned his membership in the Society at his own request September 24, 1993. No fees were outstanding at the time of his resignation. Mr. Melville applies for readmission to the Society.

B.5.4. Mr. Melville states that his resignation was due to financial reasons and his inability to find employment as a legal practitioner at that time. He has paid the Readmission Fee.

Approved

C.
INFORMATION

C.1. CHANGES OF NAME

C.1.1. (a) Members

<u>From</u>	<u>To</u>
Mary Lynn <u>Bailey</u>	Mary Lynn Bailey <u>Clarfield</u> (Marriage Certificate)
Judie Lynn <u>Leach</u>	Judie Lynn Leach <u>Bennett</u> (Marriage Certificate)
George Franz <u>Brandstetter</u>	George Franz <u>Brant</u> (Change of Name Certificate)
Sheila Mary <u>Corey</u>	Sheila Mary <u>McKinlay</u> (Birth Certificate)
<u>Beny</u> Antonio De Rubeis	<u>Ben</u> Antonio De Rubeis (Change of Name Certificate)

28th January, 1994

Anne Therese <u>Doherty</u>	Anne Therese <u>Morris</u> (Marriage Certificate)
Rhonda Bonnie <u>Gilbert</u>	Rhonda Bonnie <u>Levy</u> (Marriage Certificate)
Kimberley Ann <u>Hutchinson</u>	Kimberley Ann <u>McVittie</u> (Marriage Certificate)
Marie Aline <u>Klemencic</u>	Marie Aline <u>Kouhi-Klemencic</u> (Change of Name Certificate)
Faye Helen <u>McEvoy</u>	Faye Helen <u>Smith</u> (Marriage Certificate)
<u>Paul Henri Jos Gabriel</u> Menard	<u>Gabriel Joseph Henri Paul</u> Menard (Birth Certificate)
Tilda Malca <u>Moussadji</u>	Tilda Malca <u>Roll</u> (Marriage Certificate)
Guytaine Sylvie <u>Noel-Wade</u>	Guytaine Sylvie <u>Noel</u> (Birth Certificate)
Susan Elizabeth <u>O'Brien</u>	Susan Elizabeth <u>Beattie</u> (Marriage Certificate)
Deborah Mae <u>O'Connor</u>	Deborah Mae <u>O'Connor Kerr</u> (Change of Name Certificate)
Prema Kris Rao	Prema Kris Rao <u>Thiele</u> (Marriage Certificate)
Lynda Susan <u>Ross-Won</u>	Lynda Susan <u>Ross</u> (Birth Certificate)
Elizabeth Anne <u>Moffatt-Montour</u>	Elizabeth Anne <u>Urban</u> (Marriage Certificate)
Kathy <u>Zamos</u>	Kathy <u>Pelkola</u> (Marriage Certificate)

C.1.2. (b) Student Members

<u>From</u>	<u>To</u>
Karen Susan <u>Bainerman</u>	Karen Susan <u>Kotansky</u> (Marriage Certificate)
Elena <u>Kurgatnikov</u>	Elena <u>Kurgatnikov Miller</u> (Marriage Certificate)
Roger <u>Laframboise</u>	Roger <u>Joseph David Wyse</u> (Change of Name Certificate)
<u>Joseph Francois Jean-Pierre</u> Paroyan	<u>Francois Jean-Pierre</u> Joseph Paroyan (Birth Certificate)

Linda Leah Zieroth

Linda Leah Zieroth Roth
(Birth Certificate)

Noted

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following members have died:

Charles Frederick Sanderson London	Called October 16, 1930 Died June 2, 1993
Gordon Eric McTurk Hamilton	Called June 29, 1949 Died October 1, 1993
Richard Devere Thrasher Amherstburg	Called June 21, 1951 Died October 11, 1993
Ronald Bruce Kallmeyer Toronto	Called June 27, 1957 Died October 18, 1993
Benjamin Tepper Toronto	Called September 18, 1930 Died November 2, 1993
Franklin Douglas Gibson Toronto	Called June 27, 1957 Died November 3, 1993
Rocco Leonard Di Giulio Downsview	Called March 19, 1970 Died November 6, 1993
Robert Leroy Pepall Toronto	Called June 20, 1935 Died November 13, 1993
Albert Charles Hoad Toronto	Called June 28, 1956 Died November 17, 1993

C.2.2. (b) Permission to Resign

The following members were permitted to resign their membership in the Society and their names have been removed from the rolls and records of the Society:

Henry Peter Steponaitis Toronto	Called March 26, 1971 Permitted to Resign - Convocation November 25, 1993
Peter Simons Toronto	Called March 31, 1989 Permitted to Resign - Convocation November 25, 1993

28th January, 1994

C.2.3. (c) Disbarments

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

Spencer Black Richmond Hill	Called March 17, 1967 Disbarred - Convocation November 25, 1993
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Ian Thomas McEachern Woodville	Called March 20, 1975 Disbarred - Convocation November 25, 1993
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David William Goldman Toronto	Called April 10, 1986 Disbarred - Convocation November 25, 1993
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C.2.4. (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:

Marvin Grant Morten Cheltenham	Called March 22, 1974 Appointed to Ontario Court (Provincial Division) July 1, 1993
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Robert George Bigelow Toronto	Called April 6, 1982 Appointed to Ontario Court (Provincial Division) August 9, 1993
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Morris Jacob Winer North York	Called April 12, 1962 Appointed Deputy Judge Small Claims Court November 26, 1993
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Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

R. Carter
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

28th January, 1994

Your Committee met on Thursday, the 20th of January, 1994 at 2:30 p.m. (by conference call), the following members being present: Ms. Mohideen, Ms. Moliner and Messrs. Lamont and Farquharson.

Also present: M. Angevine and C. Shaw

B.
ADMINISTRATION

B.1. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.1.1. The following candidates have completed successfully the January 1994 transfer examination:

Dianne Elizabeth Brothers	(Requalification candidate)
Carol Ann Dutcheshen	Province of Manitoba
Barbara Jean Hendrickson	Province of Manitoba
Janet Jeffrey	Province of Manitoba
Royden William Dean Ross Kropp	Province of Manitoba
Wayne Stanley Shalagan	Province of Alberta
Aida Mary Van Wees	Province of British Columbia

Noted

B.2. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.2.1. TRANSFER FROM ANOTHER PROVINCE - SECTION 4(1)

B.2.2. The following candidates having completed successfully the transfer examination, 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 Regular Convocation on Friday, January 28th, 1994:

Carol Ann Dutcheshen	Province of Manitoba
Barbara Jean Hendrickson	Province of Manitoba
Wayne Stanley Shalagan	Province of Alberta
Aida Mary Van Wees	Province of British Columbia

Approved

YOUR COMMITTEE also begs leave to report:

A quorum of Benchers, representing the Admissions Committee met on Thursday, the 27th of January, 1994, the following being present: Ms. Moliner, Ms. Curtis and Ms. Elliott.

28th January, 1994

B.
ADMINISTRATION

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

B.1.1. Bar Admission Course

A list of candidates who have successfully completed the thirty-fifth Bar Admission Course or one of the earlier Bar Admission Courses, filed the necessary documents and paid the required fee, or who have successfully completed Phase 3 of the Bar Admission Course in lieu of writing the transfer examination, or who have successfully completed the transfer examination, paid the required fee and fulfilled all other requirements, was before the Committee. They now apply to be called to the Bar and to be granted Certificates of Fitness. The Special Calls to the Bar will take place on the following dates:

London Tuesday, February 1st, 1994
 Radisson Hotel

Ottawa Thursday, February 3rd, 1994
 National Arts Centre

Toronto Tuesday, February 8th, 1994
 Roy Thomson Hall

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

R. Carter
Chair

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

Item B.-B.1. - Memorandum dated January 27, 1994 from Ms. Deborah Brown, Registrar to Ms. Patricia Gyulay, together with lists of candidates re: Special Convocations, February 1994.

(Attachment "A"(pages (15))

THE REPORTS WERE ADOPTED

BICENTENNIAL COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 4:30 p.m., the following members being present: Wardlaw (Chair), O'Brien and Pepper. Also in attendance were Susan Binnie, Elise Brunet, Ann-Marie Langlois and Stephen Traviss.

C.
INFORMATION

1. A TRAVELLING EXHIBITION DURING THE BICENTENNIAL YEAR

A travelling exhibition during the Bicentennial Year, 1997, will be discussed in close consultation with representatives of the County and District Law Presidents' Association. It is hoped that the exhibition would visit some smaller centres and county towns in the province.

Convocation will be given further details in the next year.

2. HISTORY FOR THE BICENTENNIAL

The contract between the Law Society and Christopher Moore (and his company) was signed shortly before Christmas.

Mr. Moore has started work on the project.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

J. Wardlaw
Chair

THE REPORT WAS ADOPTED

CLINIC FUNDING COMMITTEE

Meetings of November 17, December 8, 1993 and January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on the 17th of November and the 8th of December, 1993, and the 13th of January, 1994. Present were: Joan Lax, Chair, Paul Copeland, Jim Frumau, Pamela Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

B.
ADMINISTRATION

1. Supplementary legal disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements as follows:

Clinique juridique Stormont, Dundas & Glengarry Legal Clinic - up to \$5,000
Muskoka Legal Clinic - up to \$5,000
Sudbury Community Legal Clinic - up to \$5,000
Clinique juridique Grand Nord - up to \$1,000
Kinna-aweya Legal Clinic - up to \$5,000
Community Legal Assistance Sarnia - up to \$1,000
South Ottawa Community Legal Services - up to \$5,000
South Etobicoke Community Legal Services - up to \$5,000
Kensington-Bellwoods Community Legal Services - up to \$7,000
Bloor Information & Legal Services - up to \$4,000
Peterborough Community Legal Centre - up to \$5,000

2. Court costs

Pursuant to s.10 of the Regulation on clinic funding, the Clinic Funding Committee has approved an application for the payment of court costs from the following clinics:

Community Legal Services (Ottawa-Carleton) - up to \$500
Parkdale Community Legal Services - up to \$1,500

3. Incorporation

Pursuant to the direction of Convocation, the Clinic Funding Committee has reviewed, as to name and objects, an application for incorporation from Halton Hills Community Legal Clinic. The Committee recommends Convocation's approval of this application.

C.
INFORMATION

1. African-Canadian Legal Clinic

The clinic funding staff continues to work with representatives of the African-Canadian community to prepare for the establishment of the African-Canadian Legal Services Clinic.

28th January, 1994

2. International Legal Aid Conference

Joana Kuras, Clinic Funding Manager, has been invited to participate in an International Conference in the Netherlands and make a presentation on the community legal clinic system in Ontario, and the need for social welfare law specialists.

ALL OF WHICH is respectfully submitted

Joan Lax
Chair
Clinic Funding Committee

January 14, 1994

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994, the following members being present: Denise Bellamy (Chair), Carole Curtis, Christopher DuVernet, Susan Elliott, Fran Kiteley, Ross Murray, Hope Sealy. Staff representation: Gemma Zecchini and Christine Wackermann.

C.
INFORMATION

1. Communications Policy

Your Committee examined the third draft of a Communications Policy. The Committee is satisfied with the progress made on the policy and believes that it could become a significant asset to streamline and enhance all communications projects.

2. Call Statistics

Lawyer Referral Service. The service received 176,802 calls in 1993, an average of 711 calls per day. This represents a net diminution of 1% over 1992.

Dial-A-Law. Calls were down by 37% in December 1993. This diminution is due to the fact that only two Inwats lines are currently open. Traffic reports indicate that there is an 81% busy rate for long distance calls. These figures show that clients calling from outside Metro Toronto receive a very unsatisfactory level of service.

28th January, 1994

3. Media Activity

A summary of the media activity for the months of November and December indicates the following list of popular media issues in order of priority: Discipline, Legal Aid, Federal Government/Ministry of Justice, Access to the Legal Profession, Lawyers Fees, Lawyers Image, and other miscellaneous topics.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

D. Bellamy
Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 12 p.m., the following members being present: R. Bragagnolo (Chair), A. Feinstein (Vice Chair), L. Brennan, C. Campbell, C. Curtis, D. Lamont, and R. Murray. The following members of the County and District Law Presidents' Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, R. Gates, M. J. Morissette, M. Murphy, M. O'Dea and R. Sonley. Staff in attendance were: M. Angevine and A. John (Secretary).

1. RESOLUTIONS PASSED AT THE NOVEMBER 1993 PLENARY

Attached are copies of the Resolutions passed at the November 1993 Plenary Session of the County and District Law Presidents' Association.

The Resolutions have been forwarded to the appropriate Committees for their attention.

2. 1994 - 1995 BUDGET

The County and District Law Presidents' Association is to prepare budget proposals for discussion at the next meeting.

28th January, 1994

3. ROLE STATEMENT

The County and District Law Presidents' Association will engage in a full discussion at its May 1994 Plenary session.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

R. Bragagnolo
Chair

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

- Item 1. - Copies of Resolutions passed at the November 1993 Plenary Session of the County and District Law Presidents' Association. (pages 1 - 7)

THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of January 1994, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Nora Richardson, David Scott, Jacinth Herbert, Allan Hutchinson, Wes Marsden, Joanne St.Lewis, Donald Crosbie, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Proposed Rule on Non-Discrimination

The Chair reported briefly on the inter-committee meeting of the previous evening which discussed in detail the proposed Rule 28 on non-discrimination. The Chair advised that he will attempt a redraft of the rule in consultation with other committee members. He thought that it would be necessary to spell out alternatives and to get further input from the Equity Committee. The Women in the Legal Profession Committee will also be asked to provide further input. He observed that the meeting of the previous evening had been very fruitful and that there was a very good participation in the discussion from representatives of all the committees present. David Scott and Denise Bellamy, as authors of the Equity Committee report on the letters received concerning Rule 28, both were of the opinion that any redraft of it should attempt to follow the new proposed form for the Rules of Professional Conduct. Should the

format of the Rules of Professional Conduct be subsequently changed as a result of further deliberations of the Review Committee, it was thought that it would be easier to adapt the redraft of Rule 28 than if it were set out in the format currently being used.

C.1.2 It was noted that some of the replies demonstrated a considerable lack of information about current labour law and indicate the distance that must be travelled in order to be able to have an effective employment equity rule in place. This problem raises the fundamental issue of how we best proceed with the rule in light of the significant educational program that is required. It was suggested that trying to educate the profession by introducing a Rule of Professional Conduct was not an effective way of education and that in fact it might be counter-productive by creating more resentment than cooperation.

C.1.3 It was suggested that there must be a comprehensive and strategic approach to the rule that recognizes that lawyers tend to reinforce the status quo. It was observed that generally speaking people are not prepared to have painful discussions about issues of discrimination and that they are not prepared to challenge it in the workplace. This reluctance to deal with the issue reinforces the need for a strategic approach that will take this factor into account.

C.1.4 The Chair advised the committee that he was still wrestling with the implications of the meeting of the night before and suggested that we devote an early meeting to a further review of Rule 28 and the practical steps that can be taken to implement it. In this regard, it was noted that the Law Society is not the first institution to attempt to implement such a process and that we should endeavour to learn from others who have gone before us.

C.1.5 In connection with the educational aspect of our work, Jacinth Herbert noted that on January 19, 1994, the Delos Davis Guild will be meeting with Stephen Goudge to discuss equity issues.

C.2 Report on the Wilson Task Force and Gender Equality in the Legal Profession

C.2.1 A staff assessment of the extent to which the activities of the Law Society have dealt with issues raised in the Bertha Wilson report was distributed with the agenda. Staff were asked to do further work on this report particularly with a view to prioritizing the action that may be required in respect of various recommendations. It was agreed that there should be further liaison with the Women in the Legal Profession Committee which is also assessing this report.

C.3 Placement of Equity Students

C.3.1 The Director of Student Placement advised that there were 11 persons looking for articling positions, 4 of whom are placed under circumstances which they would like to change, for example, where they are not being paid for their services. Seven persons have not yet obtained articles.

- C.3.2 Of the 11, 5 are equity candidates. One is an aboriginal student, 4 are visible minorities including 1 women. Of these 5, 1 has limited the search to criminal law practice and this has affected the availability of positions. One is not in the province and this is making placement more difficult. One is working in a community clinic without pay but will be receiving \$1,000 per month assistance which has been recently granted. One is working with a lawyer at nominal pay and 1 is working without pay.
- C.3.3 In the discussion following the report from the Director of Placement, the committee was advised by Joanne St. Lewis and Jacinth Herbert of the significantly increased pressure on third year students who are looking for articles. It appears that the student perception of the ability of minorities to be placed is different from the reality. They under-estimate the extent to which minority students have been placed. However, it was also noted that there appears to be a significant increase in racial tensions at the law schools with students and some professors taking overt discriminatory positions.
- C.3.4 It was noted that in our traditional approach to the articling process, we do not receive information on the extent of articles until the students enter into Phase I and provide the Law Society with a report on their success to date. The Director of Student Placement advised that she has found it very difficult to get law firms to consider articling concerns in January when the real crisis time does not arise until September when the student articling period commences and persons are clearly identified as not having articles at that time. Under this procedure, we will know in a month's time from the information from Phase I of the 1994 Bar Admission Course year, the likely problem we will be facing in 1994 and the extent to which any skewing affecting minority students occurs.
- C.3.5 There was a general discussion of the committee's role in dealing with the difficulties that minority students face finding articling positions. It was suggested that the committee's basic role was to ensure that the process applied in the profession was fair and equitable but that the committee could not undertake to guarantee that all students would eventually find articles. Particular concern was expressed about the likelihood of 1994/95 being extremely difficult years unless an unanticipated substantial improvement in the economy occurs.
- C.4 Toronto Law Office Management Association (TLOMA) Initiatives in Respect of Employment Equity
- The Chair reported very briefly on the meeting that he and the Under Treasurer had with the TLOMA Human Resources section. The committee was advised that the speaker, Trevor Wilson of Omnibus Inc., was advocating the business case for employment equity. The Delos Davis Guild representative expressed some concern that a business case

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justification for employment equity would tend to serve those minority groups that were seen to provide an economic advantage to a law firm and that this might favour oriental law students over black law students.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January 1994

S. Goudge
Chair

THE REPORT WAS ADOPTED

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994, the following members being present: Vern Krishna, Q.C. (Chair), Julaine Palmer, Tony Keith, Ryan Paquette, Gwen Cortis. Also in attendance: Christine Wackermann

C.
INFORMATION

1. Visit of Mr. Tom Fagan, French Language Services Coordinator with the Ministry of the Attorney General

Your Committee met with Mr. Tom Fagan, French Language Services Coordinator at the Ministry of the Attorney General. Mr. Fagan expressed interest in establishing a method for ongoing communications between the Society's French Language Services Committee and the Ministry's French Language Services branch. Mr. Fagan was particularly interested in getting regular feedback from the Society on the impact that the various changes planned by the Ministry in Ontario courts would have on Ontario lawyers, citing as an example the recently amended regulation under section 126 of the Courts of Justice Act with respect to Bilingual Proceedings.

Issues discussed by Mr. Fagan at the meeting include the possible amendment of the Rules of Professional Conduct to ensure that members bring to the attention of their clients, where appropriate, the right to be served by the Courts of Ontario in the French language (this issue has been forwarded to the Professional Conduct Committee); the possibility of publishing a bilingual or a French version of the Ontario Reports; access to Legal Aid services in the French language; and the linguistic designation of Courts.

28th January, 1994

Your Committee assured Mr. Fagan that all issues presented would be considered by the Committee in the near future, and that communication would be maintained with his office through the French Language Coordinator.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

V. Krishna
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

LE COMITÉ DES SERVICES EN FRANÇAIS a l'honneur de faire son rapport.

Le Comité s'est réuni le jeudi 13 janvier 1994. Étaient présents M^e Vern Krishna, c.r. (président), M^e Julaine Palmer, M^e Tony Keith, M^e Ryan Paquette, M^{me} Gwen Cortis et M^{me} Christine Wackermann.

C.
INFORMATION

1. Visite de M^e Tom Fagan, coordonnateur des services en français du ministère du Procureur général

Le Comité a rencontré M^e Tom Fagan, coordonnateur des services en français du ministère du Procureur général. M^e Fagan souhaiterait voir s'établir des relations suivies entre le Comité des services en français du Barreau et la Direction des services en français de son ministère. Il aimerait en particulier connaître régulièrement les réactions du Barreau quant aux effets qu'auraient sur la profession les transformations de l'appareil judiciaire provincial prévues par le ministère. Il a mentionné par exemple la modification récente du Règlement pris en application de l'article 126 de la Loi sur les tribunaux judiciaires à l'égard des procédures bilingues.

Plusieurs questions ont été débattues par M^e Fagan lors de la réunion, y compris la révision possible du Code de déontologie pour que les membres du Barreau informent leur clientèle, s'il y a lieu, du droit à l'usage du français dans les tribunaux de l'Ontario (question transmise au Comité de déontologie), la publication éventuelle d'une version bilingue ou française des Ontario Reports/Recueil de jurisprudence de l'Ontario, l'accès aux services d'aide juridique en français et la désignation linguistique des tribunaux.

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Le Comité a donné à M^e Fagan l'assurance que toutes ces questions seraient examinées et que la coordonnatrice des services en français assurerait les communications avec son bureau.

FAIT le 28 janvier 1994

Le président,

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of November 25, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 25th of November, 1993 at 7:30 in the evening, the following members being present: Messrs. Campbell (Chair), Feinstein, Cass, McKinnon, Wardlaw, Murray and Ms. Palmer.

Also in attendance were Messrs. Crosbie, Whitman, Crack, Carey, Whiklo, O'Toole and Ms. Wishart.

ITEM

1. MOVEMENT OF PROGRAM MANAGEMENT INTO LPIC

Under an agreement with Lawyers' Professional Indemnity Company (LPIC), the Law Society's E&O Department is responsible for the day-to-day management of the mandatory professional liability insurance program, including claim investigation and settlement.

Your Committee has been considering if the Society should take advantage of the existence of LPIC and move the managerial control of the insurance operations into LPIC, a modification endorsed and viewed by the Director as serving the best interests of the insurance program.

In September 1993, Convocation adopted the Committee's recommendation to approve this move in principle. Under the new structure, the E&O Department would be disbanded and its staff moved into LPIC as joint employees of the Law Society and LPIC. Financial and information services in addition to human resources, payroll and employee benefits would continue to be supplied through the Law Society.

28th January, 1994

Pursuant to your Committee's request, the Director has made inquiries regarding Income Tax and GST considerations, the conclusion of which is that such a move would have no adverse affect on The Law Society's tax status. Your Committee recommends that the Director proceed to arrange for movement of the managerial control of the insurance operations into LPIC as described above, to be effective February 1, 1994 or as soon as practical thereafter.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

C. Campbell
Chair

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair), Bragagnolo and Furlong. Staff members present were David Crack and David Carey.

B.
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the months ended November 30, and December 31, 1993 (Schedules A.1 and A.2).

Approved

2. Investment Activity for November & December 1993 - Lawyers' Professional Indemnity Company

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$1,000,000 7.0% PROVINCE OF B.C. BONDS due Mar. 2, 1998	RBC/DS	103.000	\$1,030,000	6.189%

28th January, 1994

\$500,000 7.0% PROVINCE OF B.C. BONDS due Mar. 2, 1998	Midland Walwyn	103.450	\$ 517,250	6.070%
\$500,000 5.5% FARM CREDIT CORP. BONDS due Mar. 15, 1999	RBC/DS	97.540	\$ 487,700	6.050%
\$675,000 6.0% PROVINCE OF ALBERTA BONDS due Mar. 1, 1999	Scotia McLeod	99.200	\$ 669,600	6.180%

3. Investment Activity for November 1993 - Compensation Fund

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$1,000,000 6.0% CMHC BONDS due Dec. 1, 1998	Midland Walwyn	99.800	\$ 998,000	6.050%
\$500,000 5.75% PROVINCE OF ALBERTA BONDS due Sep. 3, 1996	RBC/DS	100.630	\$ 503,150	5.496%
\$500,000 5.75% PROVINCE OF ALBERTA BONDS due Sep. 3, 1996	Midland Walwyn	100.620	\$ 503,100	5.490%

These investments were made on the advice of Martin, Lucas and Seagram Ltd., our independent investment counsel, and with the Director of Finance's approval. The Committee was asked to ratify the purchase of these investments.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

J. Wardlaw
Chair

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

- Item B.-1. - Copies of Investment Report Summaries for the various Law Society Funds for months ended November 30 and December 31, 1993. (Schedules 1 and 2)

THE REPORT WAS ADOPTED

28th January, 1994

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of January, 1994, at 10:30 a.m. the following members being present: C. Ruby (Chair), D. Batstone, N. Graham, S. Thom, R. Wise; G. Stuart, E. Spears, J. Brooks, S. Hickling, H. Werry and J. Yakimovich also attended.

A.

POLICY

1. REVISIONS TO REGULATION 15 AND FORMS 4 AND 5

At Convocation in November revisions to Regulation 15.2 and Forms 4 and 5 were approved and were referred to the Legislation and Rules Committee for final drafting.

At November's meeting of the Committee, at the suggestion of Dan Murphy, staff were asked to draft an exemption form to be used in situations where the mortgage was between friends and the solicitor did not handle the funds. The exemption would remove the mortgage transaction from the sample to be reviewed annually by the public accountant.

The Committee reviewed the exemption but had concerns about the concept of exempting certain types of mortgage transactions. The matter will be reviewed again when Mr. Murphy is able to attend.

2. AUTHORITY TO SUMMON WITNESSES

The Committee considered whether it has the authority to summon witnesses to Referee hearings under the *Statutory Powers Procedures Act*. The Committee had before it legal opinions from Tom Lockwood, outside counsel, and Elliot Spears, staff researcher, that differed as to the applicability of the *Statutory Powers Procedures Act* to claims to the Lawyers Fund for Client Compensation. Ms Spears and Glen Stuart, on Mr. Lockwood's behalf, attended the meeting.

For the *Statutory Powers Procedures Act* to apply there must be a requirement in law to hold a hearing before disposing of a claim.

IT IS RECOMMENDED that the Committee proceed on the basis it has the authority to summon witnesses under the *Statutory Powers Procedures Act*.

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3. REVIEW OF THE PROCEDURES FOR APPROVAL OF REFEREE REPORTS AND APPEALS

In October 1988 Convocation approved a procedure for dealing with Referee Reports and Appeals. Mr. Thom expressed his concerns about some parts of the process in particular providing the Referee Report to the Claimant prior to it having been adopted by the Committee. The opinion of Stuart Thom is attached. The staff also had some concerns about the process.

IT IS RECOMMENDED that the principles set out in Mr. Thom's opinion be adopted. The staff, with the assistance of Mr. Thom, will prepare a draft of a new set of procedures to be presented to the Committee at a future meeting.

(Pgs. A1 - A2)

4. ALTERNATIVE DISPUTE RESOLUTION

Allan Lawrence, Chair of the Dispute Resolution Sub-Committee, has asked that all Committees consider their programme to see where they may benefit from the use of alternative dispute resolution. The staff reported that the hearing process is frequently avoided by the parties coming to an agreement as to the grant. Over an eighteen month period the statistics indicate approximately 80% of claims are dealt with by an agreed upon resolution and 20% require Referee hearings. The Committee expressed its satisfaction with continuing this process where appropriate.

B. ADMINISTRATION

No items

C. INFORMATION

1. REFEREE REPORTS AND STAFF MEMORANDA

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

2. Copies of the Financial Summary as of November 1993 and a graph showing claims made and outstanding claims is attached. (Pgs. C1 - C3)

3. Accounts approved by the staff in November and December amounted to \$10,395.28 and \$15,109.46 respectively.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

C. Ruby
Chair

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

- Item C.-1. - Grants approved by Review Committee and by the Lawyers Fund for Client Compensation Committee - January 14, 1994. (Schedule "A")
- Item A.-3. - Copy of Mr. Thom's opinion re: New Set of Procedures for Approval of Referee Reports and Appeals. (Marked A1 - A2)
- Item C.-2. - Copies of the Financial Summary as of November 1993 and graph showing claims made and outstanding claims. (Marked C1 - C3)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 13th of January, 1994, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Lloyd Brennan, Maurice Cullity, Susan Elliott, Joan Lax, Laura Legge, Dean Donald McRae (University of Ottawa), Mohan Prabhu (non-Bencher member), and Roger Yachetti. Staff in attendance were Marilyn Bode, Brenda Duncan, Mimi Hart, Alexandra Rookes, Lynn Silkauskas, and Alan Treleaven.

A.
POLICY

- A.1 PROCEDURES GOVERNING THE RECRUITMENT OF ARTICLING STUDENTS FOR THE 1995-1996 ARTICLING TERM
- A.1.1 The Recruitment Procedures Review Sub-Committee chaired by Philip Epstein met on five occasions: March 16, 1993, April 13, 1993, May 12, 1993, November 23, 1993 and December 9, 1993. The Sub-Committee consisted of 16 members, including articling recruiters from law firms and other employers of articling students (inside and outside the Matching Program) and a student representative. Staff assisting the Sub-Committee were Marilyn Bode, Mimi Hart and Alan Treleaven.
- A.1.2 To ensure that student concerns about the recruitment process would be addressed by the Sub-Committee, a questionnaire was developed and administered to students in Session One of Phase One in 1993. These students participated in the articling recruitment process in 1992.
- A.1.3 The Sub-Committee considered issues arising from the questionnaire results and issues raised by Sub-committee members. One common theme in the student comments was the stress associated with the August articling recruitment process. In particular, students in the Matching Program were frustrated at not knowing whether they would be ranked (the Procedures prohibit students asking a firm for

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ranking information) and, students receiving ranking communications voluntarily (which is permitted) reported difficulty interpreting the communications.

A.1.4 The Sub-Committee recommends addressing these concerns as follows:

1. That during the interview week students be permitted to request of firms in the Matching Program where the firm intends to rank the student. (Firms will not be required to respond to students.)

2. That firms choosing to communicate ranking intentions either voluntarily or in response to student enquiries be strongly encouraged to use the terminology set out in newly drafted "1994 Guidelines for the Communication of Ranking Intentions to Articling Candidates".

3. That the Placement Office continue to monitor the articling recruitment program and report to the Articling Sub-Committee.

A.1.5 Recommendation: It is therefore recommended that the following draft documents be approved:

1. 1994 Guidelines for Firms Participating in the Matching Program, re: Communication of Ranking Intentions to Articling Candidates. (pages 1 - 2)

2. Procedures Governing the Recruitment of Articling Students for the 1995-96 Articling Term. (pages 3 - 9)

B.
ADMINISTRATION

No items to report this month.

C.
INFORMATION

C.1 ARTICLING PLACEMENT UPDATE

C.1.1 Eleven students are working with the Placement Office to obtain articles or alternate articles in the current articling term. Five of the eleven are unplaced, and six are articling for nominal or no compensation.

C.1.2 Statistics are being compiled for the 1994/95 articling term, and will be available following the Bar Admission Course application deadline at the end of January, 1994.

C.2 BAR ADMISSION COURSE GRADES UPDATE

- C.2.1 The last regularly scheduled examination for Phase Three of the 1993 Bar Admission Course was in Estate Planning and Administration, on December 13, 1993. Three complete sets of special and supplemental examinations have been scheduled in 1994 in the week of January 4 to 7, the week of February 14 to 17, and during the month of March.
- C.2.2 The Director of Education summarized the overall 1993 examination statistics at the meeting. (page 10)

C.3 BAR ADMISSION COURSE REVIEW

- C.3.1 Mr. Epstein informed the Legal Education Committee that it will report to Convocation on October 28, 1994 on its assessment of the current Bar Admission Course, and on proposals for the Bar Admission Course in 1995 and beyond.
- C.3.2 Members of the Legal Education Committee have been invited to volunteer to serve on a new Bar Admission Course Subcommittee, chaired by Mr. Epstein. The primary work of the Subcommittee will be to assess the current Bar Admission Course and develop proposals for the future. The Subcommittee will meet frequently, and will include other members of the profession, some of whom will have been called to the Bar in 1993 and 1994. As well there will be extensive consultation with students who have just completed the Bar Admission Course.
- C.3.3 The new Bar Admission Course Subcommittee must begin its work in earnest because of the magnitude of the task it faces, and accordingly members of the Legal Education Committee have been asked to notify Mr. Epstein or Mr. Treleaven quickly of their willingness to serve on the Bar Admission Course Subcommittee.

C.4 ARTICLING SUBCOMMITTEE

- C.4.1 The Subcommittee met at 8:00 a.m. on November 26, 1993. In attendance were Philip Epstein, Stephen Goudge (Chair of the Subcommittee), Maurice Cullity, Marc Rosenberg, Janne Burton, Victoria Colby, Mohan Prabhu, Carmel Sakran and Dora Nipp. Staff members attending were Marilyn Bode, Deborah Brown, Mimi Hart, and Lynn Silkauskas.
- C.4.2 The Subcommittee gave conditional approval to an application from a prospective articling principal for the 1992/93 articling year. To November, approximately 1364 members of the profession have applied. The Subcommittee also gave conditional approval to an additional 39 applications from prospective articling principals for the 1993/94 year. To November, approximately 1237 members have applied to serve as principals for the 1993/94 articling year. The Subcommittee also gave conditional approval to 116 applications from prospective articling principals for the 1994/95 articling term.
- C.4.3 The Subcommittee gave special consideration to the applications of four members. One was applying for retroactive approval for the 1992/93 articling term and for the 1993/94 articling term. The member is the subject of an ongoing audit investigation. Given the seriousness of the information the audit has disclosed to date, it is expected that the matter may well result in discipline proceedings. Although no complaints had yet been authorized by the Chair or Vice-Chair of Discipline against the member, the Subcommittee decided to defer a final decision on the application.

Another member of the applicant's firm will be encouraged to apply to serve as an articling principal. The Subcommittee decided that the student who articulated with the member for the 1992/93 articling term would not be prejudiced in any way by the deferral of a final decision on the application. (The Subcommittee had decided earlier that as the 1992/93 term was the first year of implementation of the new articling program, articling students would not be prejudiced in such circumstances.)

- C.4.4 One of the three other members receiving special consideration by the Subcommittee for the 1993/94 articling term was the subject of an authorized formal discipline complaint. The Subcommittee deferred a final decision on that member's application. It suggested that another member of the member's firm apply to serve as an articling principal. The two other members have a significantly negative history with the Law Society in that they had been authorized to participate in the Peer Review Program. One of the members declined to participate in the Program. Section 4.2.2. of the Proposals for Articling Reform states that members who have been the subject of a practice review authorized by the Professional Standards Committee in connection with standards of practice in the five years immediately preceding the application date will generally be denied the privilege of serving as an articling principal. The Subcommittee denied the approval of the member who declined to participate in the Peer Review Program. The other member had not submitted a renewal of an application for the 1993/94 articling term. That member had submitted his application for the 1992/93 articling term at the conclusion of the term. The Subcommittee decided that the member should be sent a letter advising that an application to serve as an articling principal for the 1993/94 articling term must be received and approved prior to the member hiring another articling student.
- C.4.5 The Subcommittee considered a number of policy items. One item was a discussion of the Draft Proposals to Financially Assist Unplaced Articling Students and Articling Students Working for No Pay. The Subcommittee spent considerable time discussing these two issues. It was agreed that a small working group of the Subcommittee would meet to consider a bursary proposal for articling and possibly Phase Three students, and report back to the Subcommittee at its January meeting.
- C.4.6 Another item was making the articling reform requirements more "user friendly". The Subcommittee approved changes to the Evaluation Forms submitted by principals and students. The form has been shortened, and principals will only be required to submit a mid-term evaluation. This is to permit adjustments to the educational experience for the remainder of the articling term. Students will still be required to submit a mid and final evaluation of the quality of the articling experience. A sample student and principal evaluation form is attached. At the conclusion of the articling term, principals will simply certify that adjustments to the educational experience provided to the articling student were made as a result of the mid-term evaluation process.

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- C.4.7 The final policy item was an informal request received by the Articling Director by a member to hire two articling students. One would act primarily as a researcher and the other to answer phones when clients call the firm. The Articling Director had advised the member that the positions were too narrowly focused. The member had suggested to the Articling Director that in current economic times the Law Society should permit this type of articling placement. The Articling Director recommended that the request be denied. The Subcommittee approved the recommendation of the Articling Director.
- C.4.8 Sanctions for non-compliance with articling reform requirements by members of the profession will be reconsidered at the January 1994 meeting of the Subcommittee.
- C.4.9 The next meeting of the Subcommittee is scheduled at 8:00 a.m. on January 28, 1994.
- C.5 APPLICATION FOR APPROVAL OF ARTICLING PRINCIPAL
- C.5.1 The member had applied to the Articling Subcommittee to be approved as an articling principal for the current articling term. The member was denied the privilege of serving as an articling principal. The member submitted a written request to the Legal Education Committee for a review of the Articling Subcommittee denial.
- C.5.2 In considering applications to serve as an articling principal, a member's history with the Law Society in the areas of complaints, errors and omissions, discipline, audit, professional standards, and the compensation fund are reviewed. The Articling Subcommittee had before it a copy of the member's Application to Serve as an Articling Principal. The Subcommittee also had before it staff documents briefly summarizing the situation.
- C.5.3 The applicable section of the Proposals for Articling Reform is section 4. Section 4.2.2(b) of the Proposals for Articling Reform states that a member will generally be denied the privilege of serving as an articling principal if that member "was the subject of a Practice Review authorized by the Professional Standards Committee in connection with the standards of practice in the five-year period immediately preceding the application date".
- C.5.4 The Legal Education Committee decided to grant the member's request to be approved as an articling principal for the 1993/94 articling term, based on the written material, but to remind the member that it is necessary to apply in a timely manner for a renewal for any subsequent articling term.
- C.6 CONTINUING LEGAL EDUCATION REPORT
- C.6.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 11 - 14)

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

P. Epstein
Chair

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

- Item A.-A.1.5 - 1994 Guidelines for Firms Participating in Matching Program re: Communication of Ranking Intentions to Articling Candidates. (Pages 1 - 2)
- Item A.-A.1.5 - Procedures Governing the Recruitment of Articling Students for the 1995-96 Articling Term. (Pages 3 - 9)
- Item C.-C.2.2 - 1993 Examination Statistics. (Page 10)
- Item C.-C.6.1 - Continuing Legal Education Report prepared by Ms. Brenda Duncan, Director of Continuing Legal Education. (Pages 11 - 14)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994, at 12:00 noon, the following members being present: M. Cullity (Chair), R. Cass, S. Thom, J. Wardlaw.

Also present: A. Brockett, E. Spears.

Your Committee met a second time on Monday, the 17th of January, 1994, at 4:00 p.m., the following members being present: M. Cullity (Chair), C. Hill, S. Thom, and, by telephone conference call, R. Cass, The Hon. A. Lawrence, R. Topp, J. Wardlaw.

Also present: A. Brockett, E. Spears.

A
POLICY

A.1. PACKAGE OF LEGISLATIVE AMENDMENTS TO THE LAW SOCIETY ACT

- A.1.1. Your Committee has assumed responsibility for coordinating the preparation of the package of legislative amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature.
- A.1.2. The package is to include amendments to implement reforms to the complaints, discipline and standards procedures, amendments to implement the scheme of regional election of benchers adopted by Convocation in March 1993, and various other amendments to the *Law Society Act* approved by Convocation between September 1989 and December 1993.

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- A.1.3. On the request of your Committee, the Secretary has convened a Staff Working Group comprising the following members of staff: Meg Angevine, Michael Brown, Scott Kerr, Sue McCaffrey, Jim Yakimovich. The Staff Working Group has been charged with the task of reviewing the amendments to implement reforms to the complaints, discipline and standards procedures with a view to preparing a list of questions arising from the amendments that need to be answered by benchers and a list of changes and additions to the amendments that will be needed if the amendments are to be the statutory authority for the complaints/discipline/standards work of the Law Society over the next ten years.
- A.1.4. Your Committee understands that the completed work of the Staff Working Group will be put to a special committee struck for the purpose of reviewing the Group's work, resolving the questions raised, and suggesting any necessary changes and additions to the amendments.
- A.1.5. As this work necessarily involves some time, your Committee is preparing an executive summary of all amendments to the *Law Society Act* adopted in principle by Convocation, for which no draft wording exists, and all amendments to the *Law Society Act* for which draft wording has already been adopted by Convocation. Your Committee hopes that this material will be of use to the Treasurer in his discussions with provincial legislators.

28th January, 1994

A.1.6. Your Committee is also proceeding to work on draft wording for amendments to the *Law Society Act* adopted in principle by Convocation but for which no draft wording exists.

A.2. BENCHER ELECTIONS: IMPLEMENTATION OF SCHEME OF REGIONAL ELECTIONS

A.2.1. Recommendation

A.2.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendments to the English text of the *Law Society Act*, together with the equivalent amendments to the French text of the Act:

1. Sections 15, 16, 17, 18, 19, 20, and 21 to be repealed and replaced by the provisions set out in the right hand column on the following five pages.
2. The following paragraphs to be added to section 63:
 10. establishing electoral districts and prescribing the number of benchers to be elected from each electoral district;
 11. providing for the registration of an address for each member in the records of the Society.
3. The period at the end of paragraph 9 of section 63 be struck out and a semi-colon substituted.

A.2.1.2. That Convocation, in submitting the aforesaid amendments to sections 15, 16, 17, 18, 19, 20, 21 and 63, advise the Attorney General that, although it proposes a particular allocation, as between the act and the regulations, of the provisions governing the election of benchers, it is not wedded to that allocation and is open to considering an alternative allocation.

<u>CURRENT TEXT</u>	<u>PROPOSED TEXT</u>
15.	<p>15. (1) In this section, and in sections 16 to 19 and section 21,</p> <p>"address" means the member's address registered on the records of the Society in accordance with the regulations.</p> <p>"qualified member" means a member who is not a temporary member, is in good standing in the Society and is not in arrear to the Society for any fee or levy.</p>
<p>(1) An election of benchers shall be held in 1991 and in every fourth year thereafter at each of which forty benchers shall be elected by secret ballot from and by the members in accordance with this Act and the rules.</p>	<p>(2) An election of benchers shall be held in 1995 and in every fourth year thereafter at each of which forty benchers shall be elected by secret ballot from and by the qualified members in accordance with this Act, the regulations and the rules.</p>
<p>(2) Twenty of the forty benchers mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are within The Municipality of Metropolitan Toronto as it is constituted on that day.</p>	<p>(3) Twenty of the forty benchers mentioned in subsection (2) shall be members whose addresses on the last day for nominations are within The Municipality of Metropolitan Toronto as it is constituted on that day.</p>
<p>(3) Twenty of the forty benchers mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are outside The Municipality of Metropolitan Toronto as it is constituted on that day.</p>	<p>(4) Twenty of the forty benchers mentioned in subsection (2) shall be members whose addresses on the last day for nominations are outside The Municipality of Metropolitan Toronto as it is constituted on that day.</p>

<u>CURRENT TEXT</u>	<u>PROPOSED TEXT</u>
	<p>(5) The benchers referred to in subsections (3) and (4) shall be elected from electoral districts as, and to the extent, prescribed in the regulations.</p>
<p>16. (1) Every member in good standing and not in arrear to the Society for any fee or levy is an elector qualified to vote at an election of benchers.</p>	<p>16. Subject to section 18, every qualified member is eligible to vote at an election of benchers for any candidate.</p>
<p>(2) For the purposes of subsection (1), "member" does not include a temporary member.</p>	
<p>17. No member is eligible to be a candidate for bencher at any election who is not qualified to vote at the election.</p>	
<p>18. Any bencher is eligible for re-election.</p>	<p>17. Subject to section 18, every qualified member is eligible to be a candidate in an election of benchers and any bencher is eligible for re-election.</p>
	<p>18. A bencher to be elected from an electoral district pursuant to the regulations, shall be elected</p> <ul style="list-style-type: none">(a) from among the qualified members who have addresses in the electoral district on the last day for nominations; and(b) by the qualified members who have addresses in the electoral district on the last day for nominations.
<p>19. Any member who was qualified to vote at an election of benchers may, in accordance with rules, petition Convocation against the election of any bencher.</p>	<p>19. Any qualified member may, in accordance with rules, petition Convocation against the election of any bencher at that election.</p>

<u>CURRENT TEXT</u>	<u>PROPOSED TEXT</u>
20. The elected benchers shall take office at the first regular Convocation following their election and, subject to this Act, shall hold office until their successors take office.	20. The elected benchers shall take office at the first regular Convocation following their election and, subject to this Act, shall hold office until their successors take office.
21. (1) Where there is a failure to elect the requisite number of qualified benchers, the remaining benchers shall as soon as convenient supply the deficiency by electing in Convocation the requisite number of qualified members as benchers.	21. (1) Where there is a failure to elect the requisite number of benchers, or the requisite number of benchers from an electoral district, the remaining benchers shall as soon as convenient, supply the deficiency by electing in Convocation the requisite number of qualified members as benchers.
	(2) For the purposes of subsection (1), where the deficiency occurs in an electoral district from which a bencher is to be elected, only qualified members having addresses in the electoral district on the last day for nominations for the most recent quadrennial election are eligible to be elected.

<u>CURRENT TEXT</u>	<u>PROPOSED TEXT</u>
<p>(2) Where there is a vacancy in the requisite number of benchers, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation a qualified member as a bencher to fill the vacancy but, where at the last quadrennial election of benchers there were more qualified candidates than benchers to be elected, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation as a bencher the qualified member who among the defeated candidates at such election received the greatest number of votes.</p>	<p>(3) Where there is a vacancy in the requisite number of benchers, or in the requisite number of benchers elected from an electoral district, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation a qualified member as a bencher to fill the vacancy but, where at the last quadrennial election of benchers there were more eligible candidates than benchers to be elected, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation as a bencher the qualified member who among the defeated candidates at such election received the greatest number of votes from qualified members.</p>
	<p>(4) For the purposes of subsection (3), where the vacancy occurs in an electoral district from which a bencher is to be elected, only qualified members having addresses in the electoral district on the last day for nominations for the last quadrennial election shall be considered to be qualified members and only defeated candidates at that quadrennial election having addresses in the electoral district on the last day for nominations shall be considered to have been candidates at that election.</p>
	<p>(5) For the purposes of subsections (3) and (4), a vacancy shall not be considered to occur by reason only of a change in a bencher's address.</p>

<u>CURRENT TEXT</u>	<u>PROPOSED TEXT</u>
<p>(3) The benchers elected under this section shall, subject to this Act, hold office until their successors take office.</p>	<p>(6) Benchers elected under section 21 shall, subject to this Act, hold office until their successors take office.</p>
<p>* * * *</p>	<p>* * * *</p>
<p>63. Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62 and, without limiting the generality of the foregoing,</p>	<p>63. Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62 and, without limiting the generality of the foregoing,</p>
<p>* * * *</p>	<p>* * * *</p>
	<p>10. establishing electoral districts and prescribing the number of benchers to be elected from each electoral district;</p> <p>11. providing for the registration of an address for each member in the records of the Society.</p>

A.2.2. Explanation

A.2.2.1. The proposed amendments are intended to implement the scheme of regional election of benchers as adopted by Convocation in March 1993 and as elucidated by Convocation in November 1993.

A.3. LAW SOCIETY ACT: SECTION 50: AMENDMENT TO PROHIBIT UNAUTHORIZED USE OF THE TERM "LAW CORPORATION"

A.3.1. Recommendation

A.3.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the Act:

1. The following clauses to be added to subsection 50(1):
 - (c) no corporation other than a corporation which holds a certificate of authorization under subsection 61.2(1) shall hold itself out as or represent itself to be a law corporation; and
 - (d) no law corporation shall hold itself out as or represent itself to be a law corporation at any time when its rights and privileges are suspended.
2. The word "and" to be deleted from the end of clause (a).
3. The period at the end of clause (b) to be struck out and a semi-colon substituted.

A.3.1.2. Following its amendment, section 50 will read (amended text underlined):

50. (1) Except where otherwise provided by law,
- (a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor;
 - (b) no temporary member shall act as a barrister or solicitor or practise as a barrister or solicitor except to the extent permitted by subsection 28.1 (3);
 - (c) no corporation other than a corporation which holds a certificate of authorization under subsection 61.2(1) shall hold itself out as or represent itself to be a law corporation; and
 - (d) no law corporation shall hold itself out as or represent itself to be a law corporation at any time when its rights and privileges are suspended.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

(3) A proceeding shall not be commenced in respect of an offence under subsection (2) after two years after the date on which the offence was, or is alleged to have been, committed.

(4) Where a conviction has been made under subsection (2), the Society may apply to a judge of the Ontario Court (General Division) by application for an order enjoining the person convicted from practising as a barrister or solicitor, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the court.

(5) Any person may apply to a judge of the Ontario Court (General Division) for an order varying or discharging any order made under subsection (4).

A.3.2. Explanation

A.3.2.1. The term "law corporation" is defined in section 1 of the *Law Society Act* (as amended by section 66) as "a corporation that holds a certificate of authorization issued or renewed under section 61.2."

A.3.2.2. There appears to be nothing that would prevent a corporation which does not hold a certificate of authorization from using the term. It might therefore be possible for a corporation in which the shareholders and directors are not lawyers, and which offers "para-legal" services to the public, to describe itself as a "law corporation".

A.3.2.3. It might also be possible for a corporation which formerly held a certificate of authorization to continue to use the name "law corporation" even after the certificate has ceased to be valid.

A.3.2.4. The Special Committee on the Incorporation of Law Practices decided that there ought to be a legislated prohibition against unauthorized use of the term "law corporation". At the time of its report, however, when it was expected that the incorporation provisions of the *Law Society Act* would shortly be proclaimed in force, there seemed no likelihood that an amendment to the Act could be obtained before the provisions were proclaimed. The Special Committee therefore recommended that the prohibition against unauthorized use of the name "law corporation" be achieved by means of regulation under the *Business Corporations Act*. It was recommended that the Provincial Government be asked to make the necessary regulation when the incorporation provisions had been proclaimed in force. Convocation adopted this recommendation on May 29, 1992.

A.3.2.5. Since there now appears to be an opportunity to obtain amendments to the *Law Society Act* in the near future, your Committee suggests that Convocation revoke its decision to achieve the prohibition by means of a regulation under the *Business Corporations Act* and request, instead, an amendment to section 50 of the *Law Society Act*.

A.4. LEGISLATION AND RULES MANUAL

A.4.1. Recommendation

A.4.1.1. That Convocation approve the production and distribution, under its authority, of a Legislation and Rules Manual.

A.4.2. Explanation

A.4.2.1. At the request of the Secretary, the staff compiled a Legislation and Rules Manual containing English and French copies of the *Law Society Act*, the regulations and the rules made under the *Law Society Act*, the *Barristers Act*, the *Solicitors Act*, and the Rules of Professional Conduct. The Manual is intended for distribution to the Great Library, the 47 County Law Libraries, all Ontario Law School Libraries, all benchers and some Law Society staff. It is intended that the Manual will be kept continually updated.

A.4.3. Financial Impact

A.4.3.1. The cost of the initial production and distribution of the Legislation and Rules Manual has been estimated at \$9,000. These funds are already available in the Secretariat budget.

A.4.3.2. The cost of the annual updating of the Manual, on a quarterly basis, has been estimated at \$3,000 per annum. These funds will be included in the budget of the Legislation and Rules Committee, for the fiscal year 1994-1995 and for subsequent fiscal years.

B.
ADMINISTRATION

B.1. LAW SOCIETY ACT: SECTION 38.1: AMENDMENT TO PROVIDE FOR THE SUSPENSION OF THE RIGHTS AND PRIVILEGES OF A LAW CORPORATION

B.1.1. Recommendation

B.1.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the *Act*:

Section 38.1 to be amended by striking out the words "certificate of authorization" after the words "or may by order suspend its" and substituting the words "rights and privileges as a law corporation".

- B.1.1.2. Following its amendment, section 38.1 will read (amended text underlined):

If a law corporation is found guilty of any of the matters set out in subsection 61.10 (1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization or may by order suspend its rights and privileges as a law corporation for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances.

B.1.2. Explanation

- B.1.2.1. Section 38.1 of the *Law Society Act* describes the disciplinary penalties which Convocation may impose upon a law corporation. It reads:

If a law corporation is found guilty of any of the matters set out in subsection 61.10 (1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization *or may by order suspend its certificate of authorization* for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances. (Italics added.)

- B.1.2.2. Unlike the corresponding provision in respect of members (section 34), section 38.1 does not refer to suspending the "rights and privileges" of a corporation. It states that Convocation may "suspend its certificate of authorization for a period to be named". It has been suggested that, if the certificate of authorization is suspended, the corporation no longer "holds" a certificate of authorization.

- B.1.2.3. If it is true that a corporation whose certificate of authorization is suspended under section 38.1 no longer "holds" a certificate of authorization, the corporation will no longer be a law corporation (section 1 as amended by section 66) and will therefore be outside the disciplinary and regulatory jurisdiction of the Law Society. This is not the case with a member. Where a member's "rights and privileges" are suspended, the member remains a member, subject to the disciplinary and regulatory jurisdiction of the Law Society.

- B.1.2.4. The consequences which will flow from a situation in which a corporation no longer holds a certificate of authorization have been set out in the Report of the Special Committee on the Incorporation of Law Practices (amended and adopted by Convocation on May 29, 1992). They will not be repeated here. Suffice it to say that there is the possibility that the interests of clients of the law corporation may be at risk.

- B.1.2.5. On May 29, 1992, Convocation adopted the recommendation of the Special Committee on the Incorporation of Law Practices that section 38.1 of the *Law Society Act* be amended so that it provides for the suspension of the rights and privileges of a law corporation instead of the suspension of the certificate of authorization.

B.2. LAW SOCIETY ACT: SECTION 49: AMENDMENT TO PROVIDE FOR NOTIFICATION TO THE ONTARIO COURT OF JUSTICE IN THE CASE OF LAW CORPORATIONS

B.2.1. Recommendation

- B.2.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the *Act*:

Section 49 to be repealed and the following substituted therefor:

49. Notice of:

- (a) admission to membership;
- (b) any cancellation, suspension, resignation, readmission or other change in a member's status in the Society;
- (c) the issuance of a certificate of authorization to a law corporation; and
- (d) the cancellation or surrender of the certificate of authorization of a law corporation, or the suspension of the rights and privileges conferred thereunder;

shall be given forthwith by the Secretary to the local registrar of the Ontario Court (General Division) at Toronto who shall keep a record thereof.

B.2.2. Explanation

- B.2.2.1. In respect of members of the Law Society, section 49 of the *Law Society Act* provides:

Notice of admission to membership and of any cancellation, suspension, resignation, readmission or other change in a member's status in the Society shall be given forthwith by the Secretary to the local registrar of the Ontario Court (General Division) at Toronto who shall keep a record thereof.

- B.2.2.2. The Special Committee on the Incorporation of Law Practices suggested that similar notification will be needed in the case of law corporations.

- B.2.2.3. On May 29, 1992, Convocation adopted the recommendation of the Special Committee on the Incorporation of Law Practices that section 49 of the *Law Society Act* be amended to require written notice to the local registrar of the Ontario Court (General Division) at Toronto immediately following:

- (i) the issuance of a certificate of authorization to a law corporation;
- (ii) the cancellation of the certificate of authorization of a law corporation;
- (iii) the suspension of the certificate of authorization of a law corporation;
- (iv) the suspension of the rights and privileges of a law corporation;

(v) the surrender of the certificate of authorization of a law corporation.

B.3. LAW SOCIETY ACT: SECTION 61.3: AMENDMENT TO PROVIDE FOR THE APPLICATION OF SECTION 36.1 TO LAW CORPORATIONS

B.3.1. Recommendation

B.3.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the *Act*:

Section 61.3 to be amended by adding, after the comma which follows section number "36": "36.1,".

B.3.1.2. Following its amendment, section 61.3 will read (added text underlined):

Sections 36, 36.1, 40, 41, 42, 43, 57 and 61 apply with necessary modifications to law corporations as if a reference to a member in those sections were a reference to a law corporation and reference to membership were a reference to a certificate of authorization.

B.3.2. Explanation

B.3.2.1. On March 26, 1993, Convocation approved draft wording for new section 36.1 of the *Law Society Act*. That section reads:

If a member whose rights and privileges have been suspended pursuant to section 36 fails to pay, within twelve months of the date of suspension, all fees and levies that were payable to the Society at the time of suspension, Convocation may, at any time after February 26, 1994, by order cancel his or her membership.

B.3.2.2. By virtue of section 61.3 of the *Law Society Act*, section 36 of the *Act* applies to corporations. Section 36.1, however, does not apply to law corporations.

B.3.2.3. Section 61.3 of the *Law Society Act* reads:

Sections 36, 40, 41, 42, 43, 57 and 61 apply with necessary modifications to law corporations as if a reference to a member in those sections were a reference to a law corporation and reference to membership were a reference to a certificate of authorization.

B.3.2.4. In its report to Convocation on March 26, 1993, the Committee undertook to consider whether a provision similar to section 36.1, to apply to law corporations, would be required.

28th January, 1994

C.
INFORMATION

C.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SUBSECTION 18(1)

C.1.1. On June 25, 1993, Convocation, in the exercise of its power under section 63 of the *Law Society Act*, made a regulation to amend subsection 18(1) of Regulation 708 by adding the section numbers "15.1, 15.2" after section number "15" so that subsection 18(1) would read:

The chair or a vice-chair of the Discipline Committee may at any time require an investigation to be made by a person designated by him or her of the books and accounts of any member for the purpose of ascertaining and reporting whether section 14, 15, 15.1, 15.2 and 16 have been and are being complied with by such member who shall produce forthwith to such person all evidence, vouchers, records, books, papers and shall furnish such explanations as such person may require for the purpose of his or her investigation.

(Added text underlined.)

C.1.2. The regulation submitted for approval by the Lieutenant Governor in Council further amended subsection 18(1) by inserting the word "and" after the word "books" so that subsection 18(1) would read:

The chair or a vice-chair of the Discipline Committee may at any time require an investigation to be made by a person designated by him or her of the books and accounts of any member for the purpose of ascertaining and reporting whether section 14, 15, 15.1, 15.2 and 16 have been and are being complied with by such member who shall produce forthwith to such person all evidence, vouchers, records, books and papers and shall furnish such explanations as such person may require for the purpose of his or her investigation.

(Added text underlined.)

C.1.3. The regulation was approved by the Lieutenant Governor in Council (O. Reg. 923/93). It was filed with the Registrar of Regulations on December 17, 1993. The amended section 18(1) of Regulation 708 came into force on December 17, 1993.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

M. Cullity
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

28th January, 1994

Your Committee met on Thursday, January 13, 1994 at 8:30 a.m., the following members being present:

D. Murphy, (Chair), R. Bragagnolo (Vice-Chair), T. Bastedo, M. Cullity, G. Farquharson, B. Pepper, M. Weaver, and M. Hennessy. G. Howell also attended.

A.
POLICY

no items

B.
ADMINISTRATION

1. Great Library - 1994-95 Book Budget - Subscription Cuts

As part of the Budget process for the upcoming 1994-95 fiscal year, the Chief Librarian and Professional Librarians of the Great Library have thoroughly reviewed the library's subscription holdings.

In order for the Book Budget to remain at the current figure, some \$40,000 worth of subscription reductions would be necessary to offset inflationary cost increases on the remainder of library subscription holdings. The Committee reviewed a two-page list of possible subscription cuts totalling \$42,000, and agreed with the list subject to reconsideration of several titles.

2. Ontario Reports - Butterworth Request - Change in Weight of Paper

Butterworth has requested the Law Society's consent to a reduction in the paper weight of OR parts from 50 pounds to 40 pounds. This reduction would have financial and environmental advantages. This change will not affect the bound volumes. The Committee recommends that the Law Society consent to the Butterworth request.

C.
INFORMATION

No items

ALL OF WHICH is respectfully submitted

Dated this 28th day of January, 1994

D. Murphy
Chair

THE REPORT WAS ADOPTED

28th January, 1994

DRAFT MINUTES - November 26, 27 and December 11, 1993

(see draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at three o'clock in the afternoon, the following members being present: Campbell (in the Chair), O'Connor (Vice-Chair), Cullity, Feinstein, Krishna, Sealy, Scott and Braid.

A.
POLICY

1. LAWYERS GIVING SECOND OPINIONS -
PROPRIETY OF LAWYERS GIVING SECOND
OPINIONS - REQUEST FOR ADVICE

A member of the profession has questioned the propriety of lawyers giving second opinions. Does a lawyer giving a second opinion need to contact the lawyer who gave the first opinion to tell him that he has been asked to give a second opinion?

The Committee's Secretary referred this question to Colin Campbell, a Vice-Chair of the Committee.

Mr. Campbell sent the following reply:

Further to your letter of November 17th, 1993 I agree with you that this is done all of the time and is a healthy exercise. I think a lot depends on how the individual lawyer is approached and who his duty is to.

I have on occasion been asked by a lawyer to give a second opinion to assist a client. Under those circumstances I feel since the lawyer contacted me I am under a duty to provide the opinion to the lawyer unless he asked me to do so directly to the client, and then I would do so to the client but to the lawyer as well.

In the event that a client has approached me for a second opinion, and gives me instructions that say to render that opinion to the client only and not the first lawyer, I think I am under a duty to the client. I will, in those circumstances, recommend that I have an opportunity to speak to the first lawyer because I would like to ensure that I have a complete factual basis on which to work.

28th January, 1994

We might pass this by the Committee in January, and if others agree, then I think we should put something in the Adviser.

The Committee agreed with Mr. Campbell's assessment and concluded that the giving of second opinions was quite in order.

The Committee asks Convocation to approve of its conclusion.

2. OBLIGATION OF LAWYER WHO DREW WILL
TO TURN OVER NOTES TO LAWYER FOR
EXECUTOR - REQUEST FOR ADVICE

A lawyer has been asked to turn over the notes made at the time of the drawing of two separate Wills, one in 1985 and the other in 1991. Set out below is the letter from the lawyer in which he asks about the propriety of turning over such notes:

I prepared Wills for a client in 1985 and May of 1991. Apparently she executed another Will in another law firm in another city in November, 1991.

I have now been contacted by the solicitor acting on behalf of the executrix and a devisee of the Will of 1985 advising her client alleges the deceased lacked testamentary capacity at the time of signing the 1991 Wills. She asks in her letter to me:

"Prior to launching proceedings to test the validity of the 1991 Wills, we are asking you to forward to us copies of any notes that you made at the time of the execution of the 1985 and May, 1991 Wills. Could you also prepare a summary of your recollections of discussions with the deceased at the time you received her instructions, and whether or not she was accompanied to your office by any person. We require such a report from you in order to advise our client as to the validity of her claim that at the dates of the execution of the two 1991 Wills, the deceased lacked testamentary capacity."

I have no objection to providing what information I am able, but I am concerned that my doing so is improper. If you believe it is proper for me to provide this information, under what conditions, if any, should it be made available?

The Committee discussed the issue and concluded that a lawyer could turn over his notes to the person named as executor if the person so named made the request.

Were there two different Wills with two different persons named as executors the lawyer would need the consent of both persons before turning over his notes.

Were there a disagreement the lawyer should not turn over the notes unless compelled to do so by order of a court.

The Committee asks Convocation to approve of its conclusions in this matter.

28th January, 1994

3. PROPOSAL BY FAMILY LAW
SPECIALIST - REQUEST FOR ADVICE

A well known matrimonial lawyer raised a proposal with the Committee's Secretary in the following letter:

I am certified as a specialist in Family Law. I have a specific idea for making my practice better known.

I propose to write to the president, or senior officer, of large corporations in the Toronto area suggesting that part of the remuneration for their senior employees would include one consultation, without charge, in the area of Family Law. Topics of interest would include Marriage Contracts and outlines for estate planning.

For those corporations which were interested, I would, if requested, meet with a senior employee for approximately one hour and a half with no fee to any person. During this time I would review the factual situation and make such suggestions as seems appropriate. If the employee wished, the matter would be left there. On the other hand, if the employee wished to proceed further, I would charge a fee for service on my normal basis. No fee would ever be charged for the initial consultation. Of course, all information received on the first consultation would be subject to the privilege of the senior employee.

With the letter I would include a brochure consisting of a letter sized sheet of paper folded in three. It would contain my curriculum vitae and those of each of my two associates. It would bear the word "advertisement" on every page, as required by Rule 12. It appears to me that sending a letter and brochure is not prohibited by Rule 12, and I would appreciate confirmation from the Law Society to that effect.

The Committee's Secretary sent the following reply:

This is to acknowledge receipt of your letter of November 26th.

What you are proposing is somewhat analogous to a prepaid legal services plan. The only problem with your scheme is that the employee would not have the choice of counsel since the employee could use only you and your two associates. This is the only real obstacle as I see it.

Enclosed please find a copy of the guidelines for prepaid legal services plans.

Would you like me to put this matter on a no names basis on the January agenda of the Professional Conduct Committee?

I look forward to hearing from you.

The specialist sent another letter in response:

I have given some more thought to our conversation yesterday.

I do not envisage making any payment to the corporations I would write to. Nor would they pay me.

The benefit to the corporations would be in knowing their senior employees would perhaps have a potentially difficult area of their lives attended to, so they would be able to work without distractions.

28th January, 1994

The corporations would not have any contractual relationship with me. The corporations might tell their senior employees, as part of their remuneration and benefits, that if they wished, they could have a free initial consultation with me on family law matters. This arrangement would not be "pre-paid", and so the question of freedom of choice does not arise.

It would appear that the effect of this scheme would be that the company would be promoting this lawyer by advertising the availability of his services to its employees.

The Committee discussed this proposal at some length. There was an observation that the corporation might be conferring a taxable benefit on certain employees if it facilitated the arrangement by providing a boardroom for consultation.

The Committee did not think the proposal contravened Rule 12 but there might be steering involved if the legal services were rendered on the premises of the employer.

The Committee asks Convocation to approve of its conclusion.

4. ADVERTISING INQUIRY - VIETNAMESE INTERPRETER

In April 1992 an item was considered by the Professional Conduct Committee which in turn reported to Convocation. It concerned the use of a Vietnamese interpreter. Set out below is the item as reported:

ADVERTISING INQUIRY - LAWYER WOULD LIKE TO
PLACE AN ADVERTISEMENT IN A VIETNAMESE
COMMUNITY NEWSPAPER THAT WOULD GIVE THE
NAME OF AN INTERPRETER THE LAWYER WOULD
USE - THE USE OF THE INTERPRETER WOULD BE
TO PROVIDE ACCESS TO THE LAW FIRM

A lawyer has been in touch with the Committee's Secretary concerning an advertisement he would like to run in a Vietnamese community newspaper. Set out below is his letter of inquiry:

Further to our telephone conversation on March 12, 1992, this letter is to request your opinion on the enclosed advertisement which I propose to place in a local Vietnamese Newspaper. The object of what I am doing is to expand my practice to service the Vietnamese Community. Many of our Vietnamese friends do not speak English as most have arrived here as boat people. Still these people need access to legal services. To enable me to serve these clients it is necessary for me to associate myself with a Vietnamese Interpreter to speak with these clients right from the outset.

I confirm your advice to me that the Interpreter must be operating his business separate from me. I propose to allow him to use one of my offices, but he will operate distinct from me and be responsible for collecting his own fees as an Interpreter. Is it necessary for me to charge him rent? Furthermore you have advised that security of files is crucial and these steps I already take. I understand that steering is not allowed but I am unsure exactly what the term means. I presume that when people call the Interpreter and meet with him explaining their particular problem, then if the Interpreter determines that the problem requires the assistance of a Lawyer then he could refer the clients to me.

28th January, 1994

Please provide me with your advice. I also confirm your advice that I must be aware of and avoid any potential conflicts in connection with a Vietnamese client which I may be acting for and any Interpretation services being performed by the Interpreter outside this office for another firm for example.

In regard to the other advertisements being placed by other lawyers doing the same thing as I propose, I am attempting to get a copy of the Vietnamese Newspaper but apparently it comes out only once a month so there may be a delay in my getting it to you.

A copy of a draft advertisement is attached (numbered 1).

The Committee discussed the advertisement and thought there was the possibility of steering by the interpreter. Balanced against this consideration was the legitimate goal of giving persons in the Vietnamese Canadian community in need of legal services access to those services. The Committee concluded that the advertisement would be acceptable if the reference to the interpreter's credentials as a Vietnamese lawyer and law professor were deleted and if it read that this interpreter would be available if the reader did not speak English.

The Committee also discussed the lawyer's relationship with the interpreter (although not asked to do so in the lawyer's letter). It was recommended that he make sure he is independent of the interpreter. As well, the Committee thought it advisable for the lawyer to have an informational letter in Vietnamese (translated by someone other than the interpreter) which the interpreter could give to the client that would clarify the lawyer's role and the interpreter's role.

The Committee asks Convocation to adopt its respective opinions.

Another law firm has asked if it could advertise in the Canadian Vietnamese community in a city outside Toronto. One of the lawyers has been advised of the earlier position of the Committee and has sent the following letter:

I acknowledge receipt of faxed communication with respect to a similar request and Convocation's recommendations.

I would advise, that the interpreter I will be using is not a Vietnamese lawyer, and, of course, no such mention would be made in the advertisement, other than he is the interpreter. As well, I will be including in the advertisement something to the effect that if the reader does not speak English, to contact the interpreter we will be using. The interpreter does not share space with me and has his own office in Hamilton.

In regard to the reference with respect to an informational letter in Vietnamese (translated by someone other than the interpreter) which the interpreter could give to the client, I will attempt to find someone who speaks Vietnamese who can compose such a letter in Vietnamese for me.

Attached is a draft advertisement with the names of the lawyers removed (numbered 2 & 3).

28th January, 1994

The Committee approved of the advertisement because it would facilitate the access to legal services for persons of Vietnamese origin who could not speak English or had trouble doing so.

The Committee asks Convocation to approve its conclusion.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

M. Somerville
Chair

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

- Item A.-4. - Copy of draft advertisement proposed for a Vietnamese Community newspaper. (Page 1)
- Item A.-4. - Draft advertisement with names of lawyers removed. (Pages 2 - 3)

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, at 3:00 p.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), R. Carter, R. Cass, P. Furlong, N. Graham, D. Murphy, H. Warder Abicht (non-Bencher member).

Also Present: J. Adamowicz, N. Amico, S. Kerr, S. McCaffrey, P. Rogerson.

B.
ADMINISTRATION

B.1. PRIORITIES AND PLANNING PROCESS - 1994/95

B.1.1. The Priorities and Planning Committee asked all Standing Committees of the Law Society to review objectives, projects and programmes in the context of both their importance and their present and future impact on the Society's budget. The Committee reviewed the revised report of the Professional Standards Department and has approved it as amended for presentation to the Priorities and Planning Committee.

B.2. ANTICIPATED BUDGETARY INCREASES FOR FISCAL '94-'95

B.2.1. The Committee had before it information regarding anticipated budgetary increases for fiscal '94-'95. The Committee reviewed the information provided and approved those increases for inclusion in the proposed budget for fiscal '94-'95.

B.3. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.3.1. A Practice Review file was closed on the basis of the solicitor's successful completion of the Practice Review Programme. The member was authorized for participation in the Programme in April, 1992 after he signed a Discipline undertaking to participate. A review of his practice was conducted by a reviewer and staff attended at his office on two occasions. The solicitor implemented the recommendations and appears to have benefitted from the Programme.

B.3.2. The second Practice Review file closed in January was that of a member who applied to the Certification Board as a specialist and in accordance with Law Society policy, his application was vetted through the Professional Standards Department. In light of the number and nature of the complaints it was recommended by the department that his certification application be put in abeyance pending at least a staff attendance under the Practice Review Programme. The Board accepted the recommendation and the solicitor was authorized for participation in the Programme in September, 1993. A staff attendance revealed that the solicitor's practice was well organized. Staff recommendations could be implemented relatively easily, without further delay of the certification process. The solicitor was responsive to the recommendations made. The solicitor's file was closed on the basis that his participation in the Programme was no longer necessary.

B.3.3. The Committee closed a third member's file. The solicitor was authorized for participation in the Programme in March, 1993, based on a referral from both the Complaints and Audit Departments. Various attempts were made by the reviewer to set a date with the solicitor to conduct the practice review. Appointments were cancelled and telephone messages to set up further appointments were not returned. The solicitor was given a deadline by which to set a new date for the review. The solicitor did not respond to that letter. The file has been closed and is being referred to Senior Counsel, Discipline for consideration.

B.3.4. A fourth member was authorized for participation in the Programme in September, 1993. The solicitor has advised that due to medical reasons, he has ceased practising; his status with the Law Society is shown as "Retired - Not Working." The Committee therefore closed the member's file.

B.3.5. Two other files were before the Committee for its consideration. In both instances, the solicitors invited to participate in the Practice Review Programme objected to authorization being granted and sought the opportunity to make representations to the Committee with the assistance of counsel. The Committee directed the Chair to correspond with both members, describing the remedial nature of the Programme and explaining that participation therein is voluntary, and requesting the members' response. If the members decline to participate, the files will be re-submitted to the Committee for closing.

C.
INFORMATION

C.1. RULE 2 - REVISED FORMAT

C.1.1. The Committee considered the most recent version of rule 2 and has recommended further changes to that rule. The rule as amended will now be forwarded to The Special Committee to Review the Rules of Professional Conduct.

C.2. RULES OF PROCEDURE FOR THE ANNUAL MEETING

C.2.1. On October 22, 1993, Convocation adopted a recommendation from the Research and Planning Committee that Rule 52 (made under subsection 62(1) of the *Law Society Act*) be amended to provide revised Rules of Procedure for the Annual Meeting.

C.2.2. Also on October 22, 1993, Convocation adopted a recommendation from the Research and Planning Committee that the proposed amendments to Rule 52 be circulated to all Standing Committees of Convocation, for information and comment.

C.2.3. The Committee reviewed the proposed amendments, and has directed that a memorandum of the Committee's comments be forwarded to the Research and Planning Department, for submission to the Legislation and Rules Committee.

C.3. STRATEGIC PLANNING CONFERENCE

C.3.1. At the October Committee meeting, a memorandum from Andrew Brockett was circulated setting out the recommendations of the Strategic Planning Conference which affect the Professional Standards Committee. This item was on the agenda for the November Committee meeting, but due to time constraints, was deferred to January. This matter has been further deferred to February.

C.4. FAMILY LAW CHECKLIST

C.4.1. The Communications Department requested the Committee's direction regarding the format of the forthcoming Family Law Checklist. The Committee has agreed that the checklist should be published in a format that is 8½" x 11", with "signposts" and colours, so long as the publication with these changes can be encompassed within the existing budget.

C.5. PRACTICE ADVISORY SERVICE - STATUS REPORT

C.5.1. In October, 1993, there were 582 calls to the Service; in November, 1993, 740 calls were received, a record high. There is no discernable reason for this volume.

C.5.2. Many lawyers who contact the Service are looking for alternatives to practice, either because of financial considerations, or because "practising law is not what it used to be".

C.5.3. The Director spoke at a meeting of the Carleton County Law Association on December 15th, and a general discussion ensued about members' communications with the Law Society. Implementation of a members' services line would enable members of the profession to contact the Law Society and discuss their concerns in timely

28th January, 1994

fashion, without being transferred between departments. The Director also took part in the Bar Admission Course Start-Up Workshop, in Ottawa and Toronto, and participated in a panel on stress at the CBAO - an unexpectedly stressful experience, since the main speaker forgot the appointment, and the two subsidiary speakers were called upon to fill the entire program.

C.6. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.6.1. Almost 70 applications for the position of Systems Adviser were received, out of which 11 people were interviewed, 4 of whom were granted a second interview. A decision about the successful candidate is imminent.
- C.6.2. Five lawyers were authorized to participate in the Practice Review Programme in November, and 5 files were closed, so that the numbers of members participating was kept constant at 133. An additional 8 members were authorized to participate in January, and 4 files were closed by the Committee.
- C.6.3. A record number of students enrolled in and attended the Bar Admission Course Start Up Workshops in London, Ottawa and Toronto, reflective of realistic employment expectations for the future. The Toronto program was videotaped, and can therefore be made available to members and student members of the profession who are unable to attend in person or wish to review the program a second time.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

C. McKinnon
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meetings of December 22, 1993 and January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board held a special meeting to address education/testing matters on Wednesday, the 22nd of December, 1993 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), D.W. Scott (Vice-Chair - by conference call), A.M. Cooper, J. Callwood, P.G. Furlong, C.D. McKinnon (by conference call), M.L. Pilkington and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

28th January, 1994

Your Board met on Thursday, the 13th of January, 1994 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), D.W. Scott (Vice-Chair), A.M. Cooper, P.G. Furlong and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

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

The Family Law Specialty Committee met on Thursday, the 18th of November, 1993 at two o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 26th of November, 1993 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 14th of December, 1993 at eight o'clock in the morning.

The Intellectual Property Law Specialty Committee met (in person/conference call) on Tuesday, the 14th of December, 1993 at twelve o'clock noon.

A.
POLICY

A.1. EDUCATION OF SPECIALISTS

A.1.1. Your Board recommends that two aspects of legal education should be permanent components of the Specialist Certification Program:

A.1.1.1. (1) continuing legal education requirements for first-time certification and recertification, to be integrated with the Legal Education Committee's proposed MCLE requirements - there will be a general presumption that no lawyer will be certified as a Specialist unless the Specialist Certification Board is satisfied as to the applicant's commitment to remain at the cutting edge of the specialty field, which will ordinarily include participation in continuing legal education and other forms of professional development;

A.1.1.2. (2) Specialist Preparatory Programs individually accredited by the Specialist Certification Board, in compliance with yet-to-be-established guidelines, and delivered by interested Law Schools - the preparatory programs will satisfy the pressing need for greater objectivity in the assessment of applications, increased access to certification for small-firm and small-community lawyers and younger members of the bar, and will enhance standards of practice in a broad range of specialty fields.

- A.1.2. With respect to the first component (A.1.1.1. above), the Board has noted that there is currently considerable variation in the amount of continuing legal education required in the various Specialty Standards for certification and recertification and the time periods during which the requirements must be satisfied, from 15 hours over the five years preceding the date of application, to 12 hours in the preceding 4 years, to 15 hours in the preceding 3 years, and so on.
- A.1.3. The Board proposes to standardize education requirements for all specialties. Specialty Committees will be advised that, unless there is a compelling reason for departing from the standard with respect to a particular specialty, the Board intends to adopt the following CLE requirements for Specialists:
- A.1.3.1. (1) CLE requirement for first-time certification: 12 hours per year in each of the three qualifying years preceding date of application;
- A.1.3.2. (2) CLE requirement for recertification: 12 hours per year during the five years of certification.
- A.1.4. The means of satisfying CLE requirements will include participation in CLE programs as a participant or a registrant, writing or editing books and articles, giving speeches and courses to professional audiences, and other similar activities which contribute to the professional development of the applicant in the field of specialization. At this time, the Board is of the view that self-study and in-firm training inaccessible to all members of the profession should not qualify as CLE. It is expected that Specialists will spend a good deal more than 12 hours annually in self-study to maintain and advance their expertise.
- A.1.5. These requirements are considered transitional provisions and will be revisited after the Board has the benefit of the proposed MCLE Design Team's recommendations.
- A.1.6. With respect to the second component (A.1.1.2. above), the Board's first and pivotal report on Training and Testing of Specialists will be before Convocation in February.

B.
ADMINISTRATION

- B.1. SPECIALTY COMMITTEE MEMBERSHIPS - 1994
- B.1.1. Civil Litigation Specialty Committee
- B.1.1.1. Three long-time members of the Civil Litigation Specialty Committee from Toronto resigned from the Committee as of the end of 1993. The 1994 Civil Litigation Specialty Committee is recommended as follows:

B.1.1.2	<u>DATE OF APPOINTMENT</u>	<u>NAME (of city/town)</u>
	March 1992	William Festeryga (of Hamilton)
	February 1993	James O'Grady (of Ottawa)
		David Williams (of London)
	January 1994	Barbara Grossman (of Toronto)
		Donald Jack (of Toronto)
		Nancy Spies (of Toronto)
		James Lewis (of Mississauga)

B.1.2. Criminal Law Specialty Committee

B.1.2.1. The Criminal Law Specialty Committee has had a fairly good turnover of members and the Board recommends that the Committee continue as presently constituted for 1994:

B.1.2.2.	<u>DATE OF APPOINTMENT</u>	<u>NAME (of city/town)</u>
	October 1989	Alan Gold (of Toronto) - Chair
		Michael Neville (of Ottawa)
	January 1990	Patrick Ducharme (of Windsor)
		Jeffrey Manishen (of Hamilton)
		- appointed Vice-Chair Oct./92
	September 1990	Norman Peel (of London)
	June 1991	Susan Ficek (of Toronto)
	March 1992	Diana Fuller (of Sudbury)
		Michael Anne MacDonald (of Bracebridge)

B.1.2.3. The Committee may recommend the appointment of an additional member from the Thunder Bay/Sault Ste. Marie or Kingston/Belleville areas and will report to the Board in due course.

B.1.3. Family Law Specialty Committee

B.1.3.1. The Family Law Specialty Committee has had a fairly good turnover of members and the Board recommends that the Committee continue as presently constituted for 1994:

B.1.3.2.	<u>DATE OF APPOINTMENT</u>	<u>NAME (of city/town)</u>
	May 1988	Ian Fisher (of Windsor)
		Ruth Mesbur (of Toronto)
	October 1989	Nancy Mossip (of Mississauga)
		- appointed Chair January 1993
		Evlyn McGivney (of Toronto)
		- appointed Vice-Chair January 1993
	January 1991	Stephen Grant (of Toronto)
	January 1993	David Aston (of London)
		Catherine Aitken (of Ottawa)
		Terrence Caskie (of Toronto)

B.1.3.3. The Committee may recommend the appointment of an additional member from North Bay or area and will report to the Board in due course.

B.1.4. Intellectual Property Law Specialty Committee

B.1.4.1. The Intellectual Property Law Specialty Committee is acquiring experience in assessing applications and the Board recommends that there be no change to Committee composition for 1994:

B.1.4.2.	<u>DATE OF APPOINTMENT</u>	<u>NAME (of city/town)</u>
	March 1990	Ronald Dimock (of Toronto) - Chair
	April 1990	Joseph Day (currently in New Brunswick)
		Carol Hitchman (of Toronto)
		Malcolm S. Johnston (of Toronto)
		Charles Kent (of Ottawa)
		John Macera (of Ottawa)
		David Morrow (of Ottawa)
		Cynthia Rowden (of Toronto)
		Colleen Spring Zimmerman (of Toronto)

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

C.1.1. The Board is pleased to report the certification of the following lawyers as Family Law Specialists:

Donald S. Baker (of Toronto)
Emile R. Kruzick (of Toronto)
Gordon E. Sheiner (of Ottawa)

C.2. RECERTIFICATION OF SPECIALISTS

C.2.1. The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Donald S. Affleck (of Toronto)
Lloyd Brennan (of Ottawa)
Donald J.M. Brown (of Toronto)
Charles B. Cohen (of Toronto)
Robert B. Edgar (of St. Catharines)
Aubrey E. Golden (of Toronto)
William T. Green (of Ottawa)
Robert C. Lee (of Toronto)
Benjamin V. Levinter (of Toronto)
Robert M. Loudon (of Toronto)
John L. McDougall (of Toronto)
W. Thomas McGrenere (of Toronto)
Barry A. Percival (of Toronto)
Julian H. Porter (of Toronto)
Kenneth Radnoff (of Ottawa)
Edward A. Sabol (of Toronto)
William A. Salem (of Windsor)
Maxwell M. Steidman (of Toronto)
David Stockwood (of Toronto)
J. Douglas Thoman (of Hamilton)

28th January, 1994

C.2.2. The Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Litigation (Law) Specialists:

Joseph L. Bloomenfeld (of Toronto)
Louis D. Silver (of Toronto)

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

R. Yachetti
Chair

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 9:30 a.m., the following members being present: P. Peters (Chair), N. Finkelstein (Vice Chair), N. Graham, and M. Weaver (Vice Chair). T. Bastedo, Chair of the Priorities and Planning Committee was also in attendance as were: A. John (Secretary) and J. West.

B.
ADMINISTRATION

1. ROLE OF THE LAW SOCIETY IN PROSECUTING NON-MEMBERS

In discussing the formation of the Law Society's role statement, your Committee was asked the following question: "How does the duty to govern the legal profession under the Law Society Act lead the Society to prosecute non-lawyers for the unauthorized practice of law?".

28th January, 1994

Your Committee discussed, at length, the question of paralegals and the role in prosecuting breaches of s.50 of the Law Society Act. Because of the importance of this subject for the work of the Committee, discussion of this matter was put over to the February meeting.

ALL OF WHICH is respectfully submitted

DATED the 28th day of January, 1994

P. Peters
Chair

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

List of Prosecutions.

(Page 2)

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of January 1994 at 3:00 pm, the following members being present:

S. Elliott (Chair), P. Hennessy, B. Humphrey, J. Lax, B. Luke, R. Manes, N. Richardson, C. Ruby

Also present: A. Brockett, E. Spears and S. Hodgett

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. THE CBA TASK FORCE ON GENDER EQUALITY

B.2. Your Committee considered a report from a subcommittee charged with the task of reviewing the CBA Task force on Gender Equality Report: *Touchstones for Change*. The subcommittee reviewed the Task Force recommendations which relate to the Law Society. Each recommendation has been assigned to a committee for consideration. The subcommittee

has allocated most of the recommendations among three Committees: the Equity Committee, the Legal Education Committee and the Women in the Legal Profession Committee.

- B.2.1. The Chairs of the Equity and Legal Education Committees had requested that this Committee express its opinion as to the priorities with which each recommendation should be considered.
- B.2.2. Your Committee has adopted the report of the subcommittee. It will forward its views concerning allocations and priorities to the Committees concerned.
- B.2.3. The Women in the Legal Profession Committee has assigned the consideration of the following items high priority on its agenda:
 - 1. The establishment of a mentor program for female practitioners in small firms.
 - 2. The development of maternity and parental leave programs, eg. model policies.
 - 3. The development of programs for members returning from leave.
 - 4. The recommendation that Convocation adopt a statement of values as outlined in recommendation 12.1 of the Wilson Task Force Report.
 - 5. The development of internal employment policies which make the Law Society a model employer with respect to maternity and other gender-related work policies.
 - 6. The consideration of ways to implement the Task Force Report by way of Joint Committees etc.. The Joint Action Committee on Gender Equality is an initial step toward the implementation of this recommendation and will continue to be an important priority of the Committee.

C.
INFORMATION

- C.1. THE MODEL POLICY ON EMPLOYMENT RELATED SEXUAL HARASSMENT
- C.1.1. The Committee considered a report from staff concerning a questionnaire which was sent to the profession in April 1993. The results of the questionnaire indicate that the response to *A Recommended Personnel Policy on Employment-Related Sexual Harassment*, while encouraging in some respects, indicate that the policy is not suitable for the small law firm.
- C.1.2. As a result, the Committee has requested that staff prepare a working document for consideration by the Committee. The document will outline preventive measures against employment-related sexual harassment which could be taken at small law firms.
- C.1.3. Your Committee will consider further the information acquired by way of the questionnaire at future meetings.

28th January, 1994

C.2. CHILD-CARE EXPENSES FOR BENCHERS

- C.2.1. Your Committee received a request from a member of the profession that the Law Society consider making provision for the child-care expenses of benchers and other members of the profession, who incur the expenses while on Law Society business. The Law Society of British Columbia has adopted such a policy.
- C.2.2. The Committee will study this issue and make a report in the future.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January 1993

S. Elliott
Chair

Ms. Palmer's name was added to those members who attended the January 13th meeting.

THE REPORT WAS ADOPTED

AGENDA - ITEMS TO BE SPOKEN TO

DISCIPLINE COMMITTEE (public Report)

Meeting of January 13, 1994

Mr. O'Connor spoke to Item A.-A.3. re: Firm Notification.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 1:30 in the afternoon, the following members being present:

H. Strosberg (Chair), D. Scott, D. O'Connor, P. Lamek, N. Graham, R. Manes, V. Krishna, L. Legge, S. Thom, R. Yachetti, M. E. McPhadden

M. Brown, S. Kerr, J. Yakimovich, M. O'Connor, G. Macri, S. Jenkins, D. Robertson, S. Hodgett and H. Rosenthal also attended.

A.
POLICY

A.1. DEPARTMENTAL BUDGET - FISCAL YEAR 1994/95 - NEW PROGRAMS AND OTHER EXPENDITURES

A.1.1. The Priority and Planning Committee requested that all Standing Committees of Convocation review new proposed expenditure items from Law Society departments reporting to them.

A.1.2. The Committee approved the creation of a sub-committee composed of three members from the Committee, as well as the Managers of the Complaints, Audit and Discipline departments.

A.1.3. The mandate of the sub-committee will be to consider the resource needs of the Audit, Complaints and Discipline departments both in conjunction with the process for developing the 1994/95 budget and with a view to developing a long term strategy aimed at identifying and meeting their needs.

A.2. PROPOSED RULES OF PROCEDURE FOR THE ANNUAL MEETING OF THE LAW SOCIETY

A.2.1. On October 22, 1993, Convocation adopted a recommendation from the Research and Planning Committee that Rule 52 (made under subsection 62(1) of the Law Society Act) be amended to provide revised Rules of Procedure for the Annual Meeting.

A.2.2. Also on October 22, 1993, Convocation adopted a recommendation from the Research and Planning Committee that the proposed amendments to Rule 52 be circulated to all Standing Committees of Convocation, for information and comment.

A.2.3. The principal features of the proposed amendments to Rule 52 are as follows:

- that Bourinot's Rules of Order be the standard authority;
- that rulings of the Chair be subject to appeal except when they relate to any matter concerning the conduct, competence or capacity of a member where such conduct, competence or capacity is the subject of an investigation by the Law Society;
- that motions from the floor of the Annual Meeting be accepted without a requirement of prior notice, provided they relate to the work of the Society and to the matter then being debated at the meeting.

A.2.4. Your Committee had before it a copy of the Existing Text of Rule 52. The proposed amendments, based on a consultant's report, were also before the Committee.

A.2.5. The Committee recommended approval of the proposed amendments set out in the consultant's report.

A.3. FIRM NOTIFICATION OF ONGOING COMPLAINT INVESTIGATIONS INVOLVING INDIVIDUAL FIRM MEMBERS

A.3.1. This issue was considered by the Committee at a meeting in October, 1993. Discussion centred on the question of whether, in appropriate circumstances, the Law Society should contact a firm and disclose details of ongoing investigations involving a member of said firm. The purpose of such communications would be to limit any potential prejudice to the firm's clients and to minimize the chance of an E & O claim arising in which all firm members could be found liable.

A.3.2. After a discussion of the issues involved including the effect on E & O claims and the fiduciary duties of partners, the Committee recommended that an item be placed in the Bencher's Bulletin in order to canvass the views of the profession.

Your Committee had before it a copy of the item which appeared in the October 1993 issue of the Bencher's Bulletin.

A.3.3. RESPONSE OF THE PROFESSION

The following list summarizes the profession's response:

1. In response to the Bencher's Bulletin item an additional ten firms are now participating in the Designated Parties Programme. This brings the number of participating firms to 32. Most respondents claimed that they were previously unaware of the programme's existence.
2. All of the responding firms endorsed the idea of being notified of outstanding enquiries being conducted by the Society involving a firm member.
3. The respondents had an interest in being notified of E & O claims as well as complaints.
4. The firm's designated party should be a partner, unless they specify otherwise.
5. Full disclosure of complaints and claims should be made to designated parties rather than mere notification of their existence (the practice employed in the Designated Parties Programme).

A.3.4. The Committee recommended that the Profession be notified that unless firms expressly advised the Law Society of their wish not to participate, a designated member of said firm would receive notice of any complaint received which alleges professional misconduct on the part of a lawyer in said firm.

Note: Motion, see page 128

- A.3.5. The Committee also recommended that the Insurance Committee be advised of this policy.
- A.4. IMPLIED UNDERTAKINGS OF NON-DISCLOSURE - EFFECT ON LAW SOCIETY INVESTIGATIVE AND DISCIPLINE PROCEDURES
- A.4.1. Your Committee had before it a copy of a recent decision of Justice Brockenshire in Rivait and Gaudry, et al. The decision arose from a motion brought by the Plaintiff for a contempt order against one of the Defendants for breaching an implied undertaking not to use information derived from the discovery process for a collateral purpose.
- A.4.2. In his decision, Justice Brockenshire canvasses a good deal of case law dealing with the issue. While acknowledging that the question of whether a "rule" regarding implied undertakings is part of the general law in Ontario is unsettled, he nevertheless concluded that such a rule is applicable in Ontario and goes on to find that use of information obtained through the discovery process for "any purpose collateral or ulterior to the resolution of the issues in that action, without leave of the Court, is a contempt of the Court".
- A.4.3. The underlying policy reasons in support of the Judge's finding appear to be the protection of individual privacy rights and the right of the Court to govern its procedures.
- A.4.4. The Judge also places the onus on the party wishing to use information gained from a discovery for a collateral purpose to first seek leave of the Court.
- A.4.5. The Committee was asked to consider the potential impact of this decision:
- (a) on the Society's ability to use material obtained from the discovery process in unrelated or collateral civil proceedings in subsequent investigations and discipline hearings; and,
 - (b) on a solicitor's obligation to report another solicitor because of information disclosed during the discovery process.
- A.4.6. Your Committee had before it a copy of R. v. Kuldip and Johnstone v. Law Society of British Columbia for consideration as to whether a discovery transcript can be used to cross-examine a witness to impeach credibility.
- A.4.7. A sub-committee to be chaired by David Scott was created to consider issues relating to this item and to report its findings to the Committee.

B.
ADMINISTRATION

- B.1. USE OF SUMMONS POWER DURING AN INVESTIGATION BY THE LAW SOCIETY
- B.1.1. This matter was briefly discussed at the October 14, 1993 meeting.
- B.1.2. Your Committee had before it a progress report by Simon Hodgett at Attachment F.
- B.1.3. After discussion, the Committee was of the view that subject to the approval of the Chair and Vice-Chairs of the Discipline Committee, the Law Society may use summons power to compel a solicitor to produce documents within the context of a Discipline hearing.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

M. Somerville
Chair

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

Item B.-B.1.2. - Memorandum from Mr. Simon Hodgett to the Discipline Policy Committee dated January 7, 1994 re: Use of the Summons to further production of documents during an investigation.
(Attachment F - F12)

It was moved by Mr. Yachetti, seconded by Mr. Somerville that the Discipline Report be reconsidered in its entirety.

Carried

It was moved by Mr. Yachetti, seconded by Mr. Ruby that Item A. paragraph A.3.4. under the heading Firm Notification be amended to include the words "conduct unbecoming" after the word misconduct so that the sentence would then read:

"The Committee recommended that the Profession be notified that unless firms expressly advised the Law Society of their wish not to participate, a designated member of said firm would receive notice of any complaint received which alleges professional misconduct and conduct unbecoming on the part of a lawyer in said firm."

Carried

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

ORDERS

The following Orders were filed with Convocation.

28th January, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Ronald Houlahan, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the majority Report and Decision of the Discipline Committee dated the 7th day of June, 1993 and the Dissent dated the 25th day of November, 1993 in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Ronald Houlahan be reprimanded in Convocation.

DATED this 21st day of October, 1993.

"K. Howie"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Ian Thomas McEachern, of the Town of Lindsay, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 10th day of September, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th January, 1994

CONVOCATION HEREBY ORDERS that Ian Thomas McEachern be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Spencer Black, of the City of North York, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of August, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Spencer Black be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

28th January, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Henry Peter Steponaitis, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of October, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Henry Peter Steponaitis be granted permission to resign.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Peter Simons, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of May, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th January, 1994

CONVOCATION HEREBY ORDERS that Peter Simons be granted permission to resign.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL-The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Ernest Arthur Dyck, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 30th day of September, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ernest Arthur Dyck be suspended from the practise of law for a period of four months, such suspension to commence on the 20th day of December, 1993 with the provision that the Solicitor immediately contact the Staff Trustee to assist in the transfer of his files. Prior to the Solicitor's return to the practise of law, he is to provide psychiatric evidence satisfactory to the Law Society that he is capable of practising law.

DATED this 26th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

28th January, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF David William Goldman, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of October, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that David William Goldman be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF John Melville Hartley, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of October, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Melville Hartley be suspended for a period of three months, such suspension to come into effect on the later of the date of the Order of Convocation or the date upon which the current administrative suspension for non-payment of the Errors and Omissions levy has been lifted. Such suspension shall continue until such time as:

28th January, 1994

- a) the solicitor has responded to particular 2 c) of Complaint D73/93 to the satisfaction of discipline counsel;
- b) the solicitor has responded to particular 2 f) of Complaint D30/93 to the satisfaction of discipline counsel;
- c) the solicitor has paid the sum of \$5,000.00 to the Law Society for costs.

DATED this 25th day of November, 1993.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

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AGENDA - ITEMS TO BE SPOKEN TO (cont'd)

LEGAL AID COMMITTEE

Meeting of January 13, 1994

Ms. Kiteley spoke to Item 1.-3. re: Report of the Appointments Sub-Committee, Item 1.-4. re: Federation of Law Societies' Statement of Principles and Item 1.-5. re: Appointment of New Area Directors.

It was moved by Mr. McKinnon, seconded by Mr. Yachetti that Item 1.-4. re: Federation of Law Societies' be reconsidered.

Not Put

The Chair accepted an amendment to #3. under Schedule C, of the Report by adding the word "financial" before the word responsibility so that the sentence would then read:

"The provision of legal advice and representation to every person in Canada who, by reason of financial, cultural, gender, linguistic or geographic considerations might otherwise be denied such advice or representation is the financial responsibility of government."

and an amendment to #7. under Schedule C by deleting the word shall and inserting the word "should" in the first line so that the sentence would then read:

The quality of publicly funded legal services should not be adversely affected by financial constraints, nor shall the quality of service be less than that which a client of reasonable means has a right to expect from a lawyer retained privately."

LEGAL EDUCATION COMMITTEE

Mr. Epstein spoke to Item A.-A.1 re: Procedures Governing the Recruitment of Articling Students, Item C.-C.1 re: Articling Placement Update and Item C.-C.2 re: Bar Admission Course Grades Update.

There were questions from the Bench on the legal costs incurred by the Bar Admission Students.

Mr. Somerville did not participate in the discussion.

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville spoke to Items A.-1., 2. & 3. re: Request for Advice and Item A.-4. re: Advertising Inquiry.

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

LEGAL AID COMMITTEE

Meeting of January 13, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Ms. Campbell, Ms. Curtis, Messrs. Cooney, Copeland, Durno, Ms. Kehoe, Mr. Koenig, Ms. Peters and Mr. Petiquan.

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

1.
POLICY

1.1. BUDGET APRIL 1, 1993 - MARCH 31, 1994

For the remaining three months of the fiscal year, the Plan had forecast a deficit. Part of the deficit had been attributable to an expectation that \$14 mil. would be addressed in the current fiscal year by a combination of increased revenue from the Law Foundation and decreased expense as a result of the criminal protocol. Neither of these expectations has been realized. Since these two items were budgeted by OLAP at the urging of the Deputy Attorney General, senior officials of OLAP have made representations to the Deputy Attorney General who has in turn made representations to Treasury Board. In mid-December, the Plan was given confirmation that it can expect that that portion of the deficit (\$14 mil.) will be covered by the Ministry.

28th January, 1994

The Plan will nonetheless have a cash flow problem. The books will only balance in the fiscal year ending March 31, 1994 if accounts to lawyers are paid more consistently with the time standards recommended by the Legal Aid Committee and approved by Convocation. In about 1987 the Legal Aid Committee and Convocation approved guidelines for payment of solicitors accounts. Standard form accounts are to be paid within 30 days of receipt by Legal Aid of the account; and non-standard form accounts within 60 days.

In the last few years, the Legal Accounts Department has been urged by the Legal Aid Committee to accelerate the payment of accounts on the basis that if the Legal Aid Plan could not increase the tariff of fees, that at least the payment that was permitted would be made as quickly as possible. The profession has become accustomed to payment of their accounts (particularly the standard form accounts) in a period of time shorter than the guidelines would suggest. For several years, leaving aside occasional aberrations (such as when the Provincial Office moved offices in the winter of 1992/93) cheques have been issued by Legal Accounts Department within 15 business days of receipt of the standard form account.

The acceleration has improved the cash flow of those many lawyers who practice to a considerable extent in the Legal Aid field. Those lawyers have come to rely upon the cash flow. Between October 1993 and the end of the fiscal year, the Legal Aid Committee had no alternative but to work toward paying accounts more consistently with the guidelines. As a result, by the end of March 1994, it is anticipated that there will be 31,500 accounts on hand (1000 a day for 30 business days). At an average cost of about \$900, that represents \$29 mil. Accordingly, while the budget attached appears to balance, it does so on the basis of having an inventory of 31,500 accounts at the end of the fiscal year which will nonetheless be within the guidelines. This approach means financing an institutional cash flow problem at the expense of the lawyers who accept Legal Aid Certificates.

Note: Motion, see page 143

1.2 BUDGET APRIL 1, 1994 - MARCH 31, 1995

The Legal Aid Committee recommends that Convocation approve the Budget for fiscal year 1994/95 which is attached hereto, together with explanatory notes, and marked as SCHEDULE (A).

Senior members of the Legal Aid Plan and the Chair of the Legal Aid Committee met with members of the Finance Committee of the Law Society in January, 1994 and reviewed the relevant budget items with members of the Finance Committee.

At a meeting on another subject in December 1993, the Deputy Attorney General raised with Bob Holden, Fran Kiteley and George Biggar, whether it would be reasonable to have representatives of the Legal Aid Plan and representatives of the Ministry of the Attorney General work more closely in budget formulation (historically the role of the Ministry of the Attorney General has been primarily in budget implementation). The representatives of the Plan responded very favourably to the Deputy Attorney General's initiative. Towards this end, Bob Rowe, Bob Holden and Fran Kiteley met with the Deputy Attorney General and others on January 11 and 19, 1994 in order to explore with senior officials of the Ministry of the Attorney General their preliminary reactions to the proposed budget and to receive a preliminary response by Treasury Board to the tentative request by the Deputy Attorney General on behalf of Legal Aid.

2. FUNDING ISSUES

Although funding has from time to time been problematic the Legal Aid Plan has been funded consistently throughout its history. As indicated above, a problem will occur in the current fiscal year which will be addressed on a cash flow basis.

The economy is such that anything more than a modest recovery cannot be expected in the immediate future. The Legal Aid Committee contemplated the prospect that the budget for fiscal year 1994/95 will not be significantly increased over the existing budget.

In order to do more with the same or less resources, the Legal Aid Committee considered some new options and reconsidered some old options. The following is a summary of the results of the deliberations of the Legal Aid Committee.

2.1 COST REDUCTION

2.1.1 In summary conviction and hybrid offenses (such as communicating for prostitution and theft under) a block fee of \$417 is paid for trial or withdrawal; and \$277 block fee for a guilty plea. Currently, there is an additional fee permitted for a bail hearing. Consideration will be given to eliminating the additional fee in order that any services rendered in connection with the bail hearing would be included in the existing block fee, or the bail hearing could be done by Duty Counsel. A 1991 one week study conducted for the Criminal Tariff Review Committee revealed that in 33% of these cases the Plan was billed for a bail hearing with an estimated cost of \$2 mil.

Members of the Legal Aid Committee raised a concern that it would be premature to consider this issue until such time as the implications of province wide Crown Screening had materialized. Accordingly, the Legal Aid Committee agreed that a small sub-committee would be created to study the effect of eliminating the additional fee provided that the small sub-committee would begin its work in June 1994, by which time the effects of Crown Screening will be more apparent. This sub-committee should report within the 1994/95 fiscal year.

2.1.2 There are certain categories of matters where choice of counsel may not be essential. Examples include some young offender matters (particularly those where counsel is ordered by the Court in circumstances where, but for the accused being a young offender, a Certificate would not be granted for the offence) undefended divorces where there are no issues of corollary relief; and some parole hearings. The Legal Aid Committee considered the possibility of adopting the English and Manitoba approach of franchising where a specified number of such cases is allocated to a particular individual or firm in a tendering process.

The Plan projects that in this fiscal year approximately \$14. mil. will be paid to representing alleged young offenders. The Plan does not have any data as to what percentage of the people who receive Certificates would be eligible under the adult criteria. If 50% were ineligible and were as a result assigned counsel there might be a savings of as much as \$3.5 mil. if the Legal Aid Manitoba analysis is accurate.

The Plan projects that approximately \$10 mil. will be paid for undefended divorces. The Legal Aid Committee was reminded that the "limited service model" was approved by the Legal Aid Committee and Convocation to offer services in the paper-intensive areas of uncontested divorces and adoptions. This model will be introduced in Toronto in the 1994-95 fiscal year.

The Legal Aid Committee agreed that a sub-committee will be struck to consider the possibility of introducing franchising in young offenders matters. The composition of this sub-committee may include members of the criminal and civil bar. This sub-committee should be created and report its recommendations in the immediate future.

2.1.3 Currently, the role of criminal duty counsel varies from one locale to another. The Legal Aid Committee considered making the role more uniform as a result of which the Duty Counsel would take on some modest additional responsibility.

The average cost of a criminal case provincially this year is \$1,173. The following is the average cost in various counties selected only to illustrate the variations in different locales:

In Essex the cost is	-	\$1,071
In Wentworth	-	\$1,073
In Frontenac	-	\$1,082
In Middlesex	-	\$1,166
In Peel	-	\$ 935
In Durham	-	\$1,014
In Manitoulin & Sudbury	-	\$ 952
In Ottawa/Carlton	-	\$1,492

In 1991-92, the Legal Accounts Department estimated that approximately \$5.5 mil. was spent on bail hearings, bail reviews and variations.

George Biggar, Deputy Director - Legal of the Plan will monitor this and report back to the Legal Aid Committee in April, 1994 with recommendations as to means by which greater uniformity might be achieved.

Note: Items received, see page 143

2.1.4 The Federal/Provincial Agreement requires that a Certificate be given where an accused is otherwise financially eligible and is charged with an indictable offence or where, in the opinion of the Provincial Agency, there is a likelihood that upon conviction there will be a sentence of imprisonment or the loss of means of earning a livelihood. Consideration might be given to seeking an amendment to the Federal/Provincial Agreement to permit legal Aid to decline to issue a Certificate in cases such as a second impaired driving.

In the current fiscal year, the Plan projects that approximately \$4 mil. will be paid for impaired driving, over 80 and refusal to take a breathalyser.

It was agreed that a sub-committee would be struck to consider whether the Plan should seek an amendment to the Federal/Provincial Agreement to permit Legal Aid to decline to issue a Certificate in cases such as a second impaired driving, over 80 and refusal to take a breathalyser.

2.2 BORROWING

2.2.1 As indicated in paragraph 1.1 above, with respect to the current fiscal year, the Legal Aid Committee reluctantly concluded that in order to balance the budget, there will be 31,500 accounts outstanding at the end of the fiscal year. The Legal Aid Committee considered whether there were any prospects of arranging short term credit facility to defray the cost of certificates in order to leave fewer accounts outstanding at the end of the fiscal year. Short term credit arrangements do not appear to be feasible.

2.3 REVENUE ENHANCEMENT

2.3.1 The Legal Aid Committee considered whether revenue from the Law Foundation might be increased by various methods including increasing the percentage dedicated to Legal Aid, by renegotiating the interest paid by the banks, by implementation of the pooling arrangement and by access to some of the reserve of the Law Foundation.

The Legal Aid Committee supports increasing the revenue from the Law Foundation by whatever means are available.

In particular, the Legal Aid Committee recommends that the Attorney General and Convocation make a special request to the Law Foundation to obtain a payment from the Law Foundation reserve (currently in the amount of approximately \$11.5 mil.) of \$5. mil. in the current fiscal year ending March 31, 1994. If such a payment were made in the current fiscal year, it would enable the Legal Aid Plan to pay approximately 16% of the accounts referred to in paragraph 1.1 above.

Note: Motion, see page 143

2.32 The Legal Aid Committee considered whether an increased Legal Aid levy should be considered beyond the \$292 paid by the average member in the current fiscal year.

The levy is based on a formula in the Regulation which requires the Law Society to contribute 25% of the assessable administrative costs of the Plan. If an additional levy were considered, the formula in the Regulation would have to be revised. Alternatively, a one time only levy outside of the regulation would not require alteration of the existing levy arrangements.

The Legal Aid Committee strongly opposed any proposal which would increase the levy required to be paid by members of the profession; or which would lead to a one time levy.

2.4 OTHER ISSUES

2.4.1 From time to time, suggestions have been made that the tariff for family law, civil law, criminal law and refugee law should be uniform - by making the entire tariff hourly-based. This would be a long-term, highly controversial initiative. The Legal Aid Committee agreed that a sub-committee would be struck to study this initiative. The sub-committee may include non lawyers and lawyers who do not generally participate in Legal Aid.

2.4.2 The Legal Aid Committee agreed to strike a sub-committee which will, during the 1994/95 fiscal year, explore the commitment by the Legal Aid Plan to civil legal aid. In the current fiscal year, the forecast for services for civil matters is \$15.3 mil.

2.4.3 There are a few cases each year where there are many defence counsel on Legal Aid Certificates in the same case. The Legal Aid Committee agreed that in the next fiscal year it would study whether or not it has a role to play in rationalizing those services while being cognizant of the right to counsel, the presumption of innocence and the conflicts which arise when one counsel represents more than one accused. This sub-committee may include members of the Family Law Bar who participate in Legal Aid.

Note: Items Received, see page 143

2.4.4 The Legal Aid Committee and Convocation agreed at the end of 1992 that the criminal tariff should be reduced by 5% for an 18 month period ending May 1, 1994. The Legal Aid Committee considered whether that 5% reduction should be sustained beyond May 1, 1994. With one abstention, the Legal Aid Committee opposed any extension of the 5% reduction beyond its current expiry date, namely May 1, 1994. As a result of the expiry of the 5% reduction the increased costs to the Plan for the fiscal year 1994/95 will be approximately \$2.5 mil.

3. REPORT OF THE APPOINTMENTS SUB-COMMITTEE

The Legal Aid Committee reported to Convocation in May, 1993 that the Appointments Sub-Committee had embarked upon a process by which vacancies in the Legal Aid Committee might be filled in order to ensure representativeness. In the current year, vacancies are occurring in the category of lay members and non-bencher lawyers.

The Report of the Appointments Sub-Committee is attached as SCHEDULE (B). In addition to the recommendations with respect to the means by which appointments should be made, that report, as adopted by the Legal Aid Committee, proposes that the following non bencher lawyers be appointed by Convocation to fill the vacancies, two of which are already created and one of which will occur in March, 1994; Margaret Buist, Andre Rady and Anthony William Sullivan.

Copies of the curriculum vitae are attached and form part of SCHEDULE (B). The selection of names involved intense discussion and difficult decisions about excellent candidates. While all the criteria were not met completely, in combination with the information the Appointments Sub-Committee received on the characteristics of the lay members shortly to be appointed, the Sub-Committee is satisfied that these individuals, if approved, will create a more balanced and representative Legal Aid Committee.

4. FEDERATION OF LAW SOCIETIES' STATEMENT OF PRINCIPLES

Attached as SCHEDULE (C) is a copy of the Statement of Principles amended following discussion at the Legal Aid Committee. Convocation is asked to comment upon or suggest changes to this Statement of Principles as will all other Law Societies. The Federation will be meeting in February, 1994 to consider, amongst other things, the responses by all Law Societies to this Statement of Principles.

ADMINISTRATION

5. APPOINTMENT OF NEW AREA DIRECTORS

5.1 David Clancy has acted as Deputy Area Director or Area Director for Ottawa/Carlton and Prescott and Russell since 1969. He is retiring from the Plan.

The Provincial Director and the Deputy Directors participated in an extensive interviewing process including consultation with the local Bar in order to recommend the appointment of a successor. The Legal Aid Committee adopts the recommendation of senior Plan officials that Mr. R. Keith Wilkins should be appointed to replace David Clancy. Mr. Wilkins' curriculum vitae is attached hereto as SCHEDULE (D).

5.2 W.A. Woods has been Area Director for Kent County since 1978. He is retiring from the Plan. The local Legal Aid Area Committee embarked upon an interviewing process and recommended a short list of potential candidates. Senior members of the Plan interviewed those on the sort list. The Legal Aid Committee accepted the recommendation of senior officials of the Plan that David Joseph Reinhart be appointed to replace W.A. Woods. Mr. Reinhart's curriculum vitae is attached hereto as SCHEDULE (E).

5.3 Douglas Haig, Area Director for Simcoe County has been with the Plan since 1980 and is retiring. In this case, Ramona Wildman had acted as Area Director for almost two years. The local Legal Aid Area Committee recommended the appointment of Ms. Wildman. The Legal Aid Committee accepts the recommendation of senior Plan officials for the appointment of Ramona Wildman. Ms. Wildman's curriculum vitae is attached hereto as SCHEDULE (F).

6. ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR THE EIGHT MONTHS ENDED NOV. 30, 1993

The Statement of Receipts and Disbursements for the Eight Months Ended November 30, 1993 is attached hereto and marked as SCHEDULE (G). Attached, as SCHEDULE (G.1) is a copy of an article in the December, 1993 issue of IT Magazine featuring the Legal Aid Plan's "re-engineering" initiatives.

7. REPORTS ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1993

The Reports on the Payment of Solicitors accounts for the months of November and December 1993 are attached hereto and marked as SCHEDULE (H).

8. REPORTS ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPT. FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1993

The Reports on the Status of Reviews in the Legal Accounts Department for the Months of November and December, 1993 are attached hereto and marked as SCHEDULE (I).

9. REPORT BY THE DEPUTY DIRECTOR - LEGAL

The Deputy Director - Legal reported that Arnold Schwartz, Legal Accounts Officer and Neva Vehovic, Deputy Legal Accounts Officer are no longer with the Plan. Steps are underway to engage a successor for the Legal Accounts Officer as soon as possible.

10. AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Elgin

Robert James Upsdell, solicitor
Douglas Brian Walker, solicitor

Metropolitan Toronto

Eve Atlin, retired businesswoman
Louise Botham, solicitor
Michael Crane, solicitor
F. Timothy Deeth, solicitor
Thomas William Horbay, paralegal
William H. Jackson, Labour Relations Officer
Monique Irwin, client advocate program advisor
Ralph Ingleton, educator

28th January, 1994

Niagara North
Johan Ruth McMillan, solicitor

RESIGNATIONS

Metropolitan Toronto
Margaret Murdoch
Robert Bigelow
Michael Mitchell
Marlys Edwardh
Barbara Jackman
William Trudell
J. David Gorrell
Julie Bolton
Aimee Gauthier
Jack Martin

DECEASED

Oxford
William Dutton

All OF WHICH is respectfully submitted

DATED this 28th day of January , 1994

F. Kiteley
Chair

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

- Item 1.-1.2 - Copy of Budget for 1994/95 together with explanatory notes. (Schedule (A))
- Item 1.-3. - Report of the Appointments Sub-Committee. (Schedule (B))
- Item 1.-4. - Copy of the Statement of Principles. (Schedule (C))
- Item 1.-5.1 - Copy of the curriculum vitae of Mr. R. Keith Wilkins. (Schedule (D))
- Item 1.-5.2 - Copy of the curriculum vitae of Mr. David Joseph Reinhart. (Schedule (E))
- Item 1.-5.3 - Copy of the curriculum vitae of Ms. Ramona Wildman. (Schedule (F))
- Item 1.-6. - Statement of Receipts and Disbursements for Eight Months Ended November 30, 1993. (Schedule (G))
- Item 1.-6. - Copy of an article in December 1993 issue of IT Magazine re: re: Not Guilty. (Schedule G.1)
- Item 1.-7. - Reports on Payment of Solicitors accounts for the months of November and December 1993. (Schedule (H))
- Item 1.-8. - Reports on the Status of Reviews in Legal Accounts Department for Months of November and December 1993. (Schedule (I))

28th January, 1994

It was moved by Ms. Kiteley, seconded by Mr. Copeland that Item 1.-1.1 re: Budget be approved.

Carried

It was moved by Mr. Topp, seconded by Ms. Peters that Items 2.1, 2.1.1, 2.1.2 and 2.1.3 re: Cost Reduction and Items 2.4.1, 2.4.2 and 2.4.3 re: Other Issues be received.

The Chair accepted that these Items be received.

It was moved by Mr. Yachetti, seconded by Mr. Wardlaw that the request of the Legal Aid Committee for a \$5 million grant from the Law Foundation not be considered at this time.

Carried

ROLL-CALL VOTE

Bastedo	For
Bellamy	Abstain
Bragagnolo	For
Brennan	For
Campbell	For
Copeland	Against
Elliott	For
Epstein	Against
Feinstein	For
Finkelstein	For
Goudge	For
Hickey	For
Hill	Abstain
Howie	For
Kiteley	Against
Krishna	For
Lax	For
Legge	For
Levy	For
McKinnon	For
Manes	For
Mohideen	For
Moliner	Abstain
Murphy	For
Murray	For
O'Brien	For
D. O'Connor	For
Palmer	For
Peters	For
Scace	For
Sealy	For
Somerville	For
Thom	For
Topp	For
Wardlaw	For
Weaver	For
Yachetti	For

It was moved by Ms. Kiteley, seconded by Mr. Copeland that Convocation ask the Law Foundation for \$5 million from its reserve.

Not Put

28th January, 1994

It was moved by Mr. Epstein, seconded by Mr. Campbell that the issue of the Law Foundation funding be deferred until the budget debate in April.

Not Put

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of January 13, 1994

Mr. Howie presented Items B.-4. and 5. re: Suspensions, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at ten-thirty in the morning, the following members being present: J.J. Wardlaw (Vice Chair in the Chair), T.G. Bastedo, D. Bellamy, R.W. Cass, A. Feinstein, N. Finkelstein, R.D. Manes, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack M.J. Angevine and D.N. Carey.

R.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the 5 months ended November 30, 1993.

Approved

2. EXCESS LIABILITY INSURANCE COVERAGE

In December 1992 the Society obtained \$5,000,000 insurance in excess of the \$1,000,000 subject to the same terms, conditions and exclusions as the LPIC policy no. 90.001. The policy is issued by Zurich Insurance.

The premium for the year January 1, 1994 - December 31, 1994 is \$66,500 (plus PST), an increase of 2½% over 1993.

The Committee was reminded that the premium for this coverage when tendered last year was \$65,000 and that the two other quotes obtained at that time were in the range of \$115,000 to \$125,000. Our broker, H.B. Bennett Insurance Brokers, inform us that the increase this year is dictated by the premiums in the reinsurance market and that an increase in premium of 5% had been sought.

The Committee was asked to approve this expenditure.

Approved

3. LAW SOCIETY CONTRIBUTION TO LEGAL AID

By letter dated December 17, 1993, Russell Hall, Controller of The Ontario Legal Aid Plan, has requested payment of the Society's contribution to the assessable administrative expenses of OLAP for the fiscal year ended March 31, 1994 in the amount of \$6,500,000, the budgeted amount for the current year. Last year the total paid out was \$6,110,000 against the budgeted amount of \$6,300,000.

To date approximately \$5,778,000 in Legal Aid levies have been received with a further \$825,000 to be collected, bringing the total to over \$6,600,000. This is added to a carry forward balance from previous years of \$879,000.

Last year at this time the Society made payment by way of an advance of \$5,900,000, the balance paid subject to receipt of final financial statements of OLAP.

It was recommended that a payment of \$6,000,000 be made by January 31, 1994 with the balance payable upon receipt of the Plan's audited financial statements for its fiscal year ended March 31, 1994.

Approved

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

There are 3 members who paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on January 28, 1994 if the fees or levies remain unpaid on that date.

Approved

Note: Motion, see page 148

5. SUSPENSION OF MEMBERS DUE TO NON-PAYMENT OF THE E & O LEVY

In response to requests by members experiencing severe financial difficulties, levy payment deferrals were granted. To avoid escalating the members' indebtedness to the Law Society, deferrals were granted only to the end of December 1993 by which time the full amount of the outstanding levies had to be paid. The Deputy Director of Insurance subsequently wrote to the members reminding them of the deferral deadline, and advised each member that if the current levy obligation was not paid in full by December 31, 1993, they would be subject to suspension.

The Director of Insurance requested the Committee's approval to submit to Convocation, for immediate suspension, the names of members who have not complied with the terms of the deferrals and who have not made acceptable alternative arrangements.

Approved

Note: Motion, see page 148

6. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

28th January, 1994

Herbert Duncan Bryant	Windsor
Victor John Cassano	Hamilton
Edwin Arnold Christie	Toronto
George William Copeland	Don Mills
John Alexander Gillespie	Peterborough
Louis Alfred Low	Toronto
Gordon Stuart Nisbet	Grand Bend
Leonard Noble	Calgary, AB
Dean Lloyd Richardson	Don Mills
Robert Charles Webster	Kingston

(b) Incapacitated Members

The following members are incapacitated and unable to practise law and have requested permission to continue their membership in the Society without payment of annual fees:

Margaret Juliana MacMaster Atkinson	Toronto
Alan Michael Cornwall	Toronto

(c) Incapacitated - Membership Under Suspension

The following members were suspended on November 1, 1993 for non-payment of the 1993/94 annual fee. At the time of their suspensions the members were incapacitated and unable to practise law. They have now applied under Rule 50 on a retroactive basis requesting that their memberships be reinstated without the payment of the 1993/94 annual fee.

Maureen Cooper	Willowdale
Aaron Hermant	Toronto

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

Approved

7. RESIGNATION - REGULATION 12

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

(a) Penny Loraine Levesque of Russell was called to the Bar on February 12, 1992 and has never practised law since her call. Annual fees for the years 1992/93 and 1993/94 are outstanding.

(b) Ann Mary Crawford of Cote St. Luc, Quebec was called to the Bar on April 8, 1987 and has never practised law since her call. Annual fees for the year 1993/94 are outstanding.

(c) Nancy Lynn Scott-Lipitkas of Oakville was called to the Bar on February 7, 1992 and has never practised law since her call. Annual fees for the year 1993/94 are outstanding.

(d) David Bruce Weary of St. Albert, Alberta was called to the Bar on April 16, 1980 and has never practised law in Ontario since his call. His rights and privileges were suspended on March 2, 1981 for non-payment of the 1980/81 annual fees. Annual fees for the years 1980/81 - 1993/94 inclusive are outstanding.

28th January, 1994

(e) Wendy Frances Smith of Ottawa was called to the Bar on May 24, 1985 and practised as an employee with the firm Brennan, Tunney, Niebergall and Emond until July 1990. All clients' matters were completed or disposed of prior to her leaving the firm. She is not aware of any claims made against her. Her annual filings are up to date.

(f) Simone Therese Levesque of Tecumseh was called to the Bar on April 15, 1985 and practised with the firm Levesque & Levesque until August 1989. All books and records remain in the possession of the former firm. All clients' property were accounted for and paid over to the persons entitled thereto or were left with the former firm. She is not aware of any claims made against her. Her annual filings are up to date. Her rights and privileges were suspended on May 1, 1993 for non-payment of the second instalment of the 1992/93 annual fees. Annual fees for the years 1992/93 and 1993/94 are outstanding.

(g) Elise Marie De Villers of Penetanguishene was called to the Bar on March 21, 1975 and practised as a sole practitioner until June 1991. All trust funds or clients' property have been accounted for and paid over to the persons entitled thereto. All other clients' matters have been completed and disposed of or arrangements made to clients' satisfaction to have their papers returned to them or turned over to her brother Paul J. De Villers who is a member of the Society. She is not aware of any claims made against her. Her annual filings are up to date. Annual fees for 1993/94 are outstanding.

(h) Michael David Thompson of Toronto was called to the Bar on June 28, 1956 and was in private practice until 1961. From 1961 to 1990 he was employed in the law department of Abitibi Paper Company Ltd. His rights and privileges were suspended on November 1, 1993 for non-payment of the 1993/94 annual fees which are still outstanding.

(i) Kenneth Lynn Cole of Madrid, Spain was called to the Bar on March 22, 1991 and practised law as an associate with the firm Weir and Foulds until February 1992. All files were transferred to other lawyers in the firm, and all trust funds or clients' property remain in the possession of the firm. His annual filings are up to date. His rights and privileges were suspended on November 2, 1992 for non-compliance with the requirements of the Errors and Omissions Insurance Plan for the period July - December 1992. Annual fees for the years 1992/93 and 1993/94 are outstanding.

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

Approved

C.
INFORMATION

1. AUDITORS' RECOMMENDATIONS

Our auditors, Ernst & Young, have submitted a draft of their Memorandum of Recommendations regarding the Society's internal accounting controls. The Director of Finance is currently preparing a response to the issues raised.

The Chair has asked that Mr. A. Feinstein meet with the Under Treasurer, Director of Finance and the auditors to review management responses and report back to the Committee.

Noted

28th January, 1994

The Treasurer introduced the Attorney General for Ontario The Honourable Marion Boyd who addressed Convocation.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:35 P.M.

The Treasurer and Benchers had as their guests for luncheon the Attorney General The Honourable Marion Boyd, Stephen Foulds, Legal Policy Advisor and Roger Oatley, President of the Advocates' Society.

CONVOCATION RECONVENED AT 2:05 P.M.

PRESENT:

The Treasurer, Bastedo, Bellamy, Brennan, Campbell, R. Cass, Cullity, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Hickey, Howie, Jarvis, Kiteley, Lawrence, Levy, McKinnon, Manes, Mohideen, Moliner, Murphy, D. O'Connor, Palmer, Pepper, Peters, Ruby, Scace, Sealy, Somerville, Thom, Topp, Wardlaw, Weaver and Yachetti.

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HERITAGE COMMITTEE

Meeting of November 11, 1993

Mr. Hickey presented the Item on User Fees for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of November, 1993 at 4:30 p.m., the following members being present: Hickey (Chair), Palmer and Wardlaw. Also present were Binnie, Brunet, Langlois and Traviss.

A.
POLICY

The following item was deferred from the November 1993 Convocation:

1. USER FEES

At the May meeting of the Committee the issue of user fees was raised. Susan Binnie, Research Coordinator, has prepared a paper that addresses this issue (numbered 1 - 11).

The Committee discussed the issue of user fees at some length. It was decided that it would be premature to suggest the sort of amounts that should be charged and whether there should be different categories. The Committee asks Convocation to accept in principle the implementation of some sort of user fee for individuals and institutions who use the service of the Archives except with respect to the most basic type of inquiry.

Convocation is asked to approve in principle the implementation of user fees.

If Convocation adopts the recommendation, the Committee will come back with a scale of fees that would be charged.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

M. Hickey
Chair

28th January, 1994

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

- Item A.-1. - Copy of Report by Ms. Susan Binnie, Research Co-ordinator re: Proposal on Reference Service User Fees. (Pages 1 - 11)

ITEM A.-1. WAS ADOPTED

INSURANCE COMMITTEE

Meeting of January 13, 1994

Mr. Campbell presented Item 3. re: Movement of Program Management into LPIC for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Finkelstein, Bastedo, Bragagnolo, Cass, McKinnon, Wardlaw, Murray, Epstein, Feinstein and Ms. Elliot and Palmer.

Also in attendance were Messrs. Crosbie, Whitman, Anderson and O'Toole.

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the net costs of new claims reported during the twelve-month period ending December 31, 1993 is \$55,226,179 compared to \$54,289,140 for 1992, an increase of \$937,039. The number of newly reported claims increased from 3,621 in 1992 to 3,959 in 1993.

2. HIRING OF NEW DIRECTOR OF INSURANCE AND LPIC APPOINTMENTS

The Selection Committee, pursuant to authority delegated to it by the Insurance Committee, has hired Mr. Ed Anderson to succeed Mr. Lin Whitman as Director of Insurance. Mr. Whitman will retire at the end of January. LPIC's Board of Directors has appointed Mr. Anderson to succeed Mr. Lin Whitman as President. Your Committee approves the hiring of Mr. Anderson as Director of Insurance and concurs with his appointment as President of LPIC.

Your Committee also concurs with two other LPIC Board appointments involving Law Society staff, Mr. Kevin O'Toole as Senior Vice-President and Ms Caron Wishart as Vice-President Claims.

3. MOVEMENT OF PROGRAM MANAGEMENT INTO LPIC

Your Committee has scheduled a meeting for 10:00 a.m. February 24, 1994 to discuss and make recommendations on the respective roles of the Insurance Committee and LPIC's Board of Directors including the structure, composition, responsibilities and authority of both the Committee and LPIC's Board.

The recommendation by your Committee to move the managerial control of the insurance operations into LPIC is scheduled for consideration by Convocation on January 28, 1994. Your Committee is of the view that consideration of this recommendation should proceed as scheduled.

4. LPIC: 1994 REINSURANCE RENEWAL

The Director reported that LPIC's reinsurance renewal for the twelve-month period commencing January 1, 1994 has been completed on favourable terms including a \$500,000 reduction in the reinsurers' premium.

5. LEGAL FEE COSTS REDUCTION PROGRAM

As part of the Special Committee on Lawyers' Fees initiatives to contain and reduce legal fees incurred by the Law Society, the Director has informed counsel retained under the professional liability insurance program of the E&O Department's two-pronged cost-reduction program, greater use of ADR and the introduction of caps on hourly rates for legal services. The Director's correspondence in this regard is attached as Appendix "A".

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

C. Campbell
Chair

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

- Item 5. - Copy of letter from Mr. Lin Whitman, President of the Lawyers' Professional Indemnity Company to counsel re: Legal Fee Costs Reduction Program. (Appendix "A", pages 1 - 2)

THE BALANCE OF THE REPORT WAS ADOPTED

The new Director of the Errors and Omissions Department, Mr. Ed Anderson was introduced to the Benchers. The Treasurer on behalf of Convocation expressed thanks to Mr. Lin Whitman for his contribution to the insurance program and the Law Society.

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RESEARCH AND PLANNING COMMITTEE

Meeting of January 13, 1994

Ms. Mohideen presented Item A.-A.1. re: Statement on the Role of the Law Society for Convocation's approval.

28th January, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of January, 1994 at 8:00 am, the following members being present:

L. Brennan (Chair), F. Carnerie, S. Elliott, A. Feinstein, F. Mohideen, R. Murray, H. Sealy and M. Somers.

Also present: The Treasurer, A. Brockett, E. Spears and S. Hodgett

A.
POLICY

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

A.1.1. Your Committee recommends that Convocation:

1. discuss the proposed Statement on the Role of the Law Society at this Convocation;
2. authorize the distribution to the profession for comment the proposed Role Statement, its commentary, and a record of remarks made at this Convocation;
3. ask all Committees of the Law Society to consider the Role Statement as a working document when setting priorities for the upcoming year.

A.1.2. The Research and Planning Committee will consider remarks made at Convocation and responses from the profession. The Committee will then bring forward a final draft for adoption by Convocation on June 24, 1994.

A.1.3. The Role Statement with its Appendices is included with this report.

Background

A.1.4. The Research and Planning Committee considered the Report of the Subcommittee on the Role of the Law Society at the meeting on November 22, 1993. The Committee adopted the subcommittee's report and included it with the report of the Research and Planning Committee to Convocation on November 26, 1993. In its report the Committee indicated that a motion for adoption of the Role Statement would be made at Convocation on December 11, 1993.

A.1.5. The agenda at Convocation on December 11 did not allow time for the debate and adoption of the Role Statement. It was anticipated that the Statement would be debated and considered for adoption at the January Convocation.

- A.1.6. At its meeting on January 13, 1994, your Committee considered a letter from David L. Lovell, Chair of the County and District Law Presidents' Association. Mr. Lovell has requested that the Law Society postpone its consideration of the Role Statement until the Law Presidents' Association has had a chance to consider the matter more fully and make submissions.
- A.1.7. The Committee understands that the County and District Law Presidents' Association wishes to distribute the proposed Role Statement to its member associations for comment. It is also planned that the topic will be a subject for discussion at CDLPA Plenary Meeting to be held on May 11 and 12, 1994.
- A.1.8. Should Convocation approve the course of action set out in paragraph A.1.1, your Committee proposes to distribute the proposed Role Statement for comment as soon as possible after this Convocation. Members of the profession will be asked to comment about the Role Statement by the end of April 1994. The April deadline will allow the subcommittee and the Committee to consider the responses and report back to Convocation in June.

B.
ADMINISTRATION

A.2. SUBCOMMITTEE ON POLICY IMPLEMENTATION

- A.2.1. Your Committee appointed a subcommittee to recommend standardized procedures and formats for the implementation of policy adopted by Convocation. The members of the subcommittee will be Susan Elliott, Abraham Feinstein and Ross Murray.

A.3. PROFESSIONALISM AND THE CHALLENGE OF COMMERCIALISM

- A.3.1. On May 28, 1993, Convocation adopted a report of the Research and Planning Committee entitled Strategic Planning Conference - 1992: Conclusions and Recommendations. The report contained the following recommendation (A.1):

Your Committee recommends that a Special Committee be established to examine and report to Convocation on the impact of commercialism on the practice of law.

- A.3.2. Owing to heavy demands on benchers-time, a Special Committee on this topic has not yet been appointed.
- A.3.3. The topic of commercialism in the practice of law, as outlined in the Strategic Planning Conference report, concerns the Committee.
- A.3.4. It is recommended that Convocation assign the topic of commercialism in the practice of law (recommendation A.1 from the report of the Strategic Planning Conference) to the Research and Planning Committee, and that Convocation at present forego the appointment of the Special Committee.

C.
INFORMATION

A.4. DISCUSSION OF FUTURE PROJECTS OF THE RESEARCH AND PLANNING COMMITTEE

A.4.1. At its meeting on January 13, 1994, your Committee held a broad discussion of future projects for the Committee. From that discussion the Committee decided to proceed with the projects outlined in items B.1 and B.2. In addition members of the Committee raised a number of issues which will be considered further:

(a) The idea has arisen in a number of contexts that the Law Society should have a Committee concerning the Lawyer as Employer. Such a Committee would alert members to their responsibilities as employers. Human rights, employment equity and other developments in employment law have made the responsibilities of our members increasingly complex.

(b) The Research and Planning Committee may wish to act as a Research and Development service to the Society and the profession.

(c) The Law Society should be co-ordinating its efforts with other professional bodies. Once the Role Statement has been completed, the Society should review a number of issues with those organizations. Often the Law Society identifies a need which could or should be addressed by another organization. It is likely that this review will have to be performed on a project-by-project basis.

(d) The Research and Planning Committee should be looking at the structure of the Society and identifying ways to make it work better.

(e) The Research and Planning Committee may wish to consider ways to utilize new technologies in the practice of law.

(f) The Committee may wish to examine the position of lawyers in early years of practice to assess their needs in today's professional environment. Has the environment changed so much that it is in effect a different profession than it was 10 or 20 years ago? Particular concern was expressed with the impact of the current insurance levies on lawyers commencing practice.

ALL OF WHICH is respectfully submitted

DATED this 28th day of January 1994

L. Brennan
Chair

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

Item A.-A.1.3. - Copy of the Role Statement together with Appendix A and Appendix B.

THE BALANCE OF THE REPORT WAS ADOPTED

AGENDA - ITEMS TO BE SPOKEN TO

LEGISLATION AND RULES COMMITTEE

Meeting of January 13, 1994

Mr. Cullity spoke to Item A.-A.2. re: Bencher Elections, Item A.-A.3. re: Law Society Act: Section 50.

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

SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE

Meeting of January 27, 1994

Ms. Weaver presented the Report of the Special Committee on Relief and Assistance for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 27th of January, 1994 at one o'clock in the afternoon, the following members being present: M.P. Weaver (Chair) and D.H.L. Lamont. Also present was D.E. Crack.

B.
ADMINISTRATION

1. REQUEST FOR FUNDS

A request for financial assistance from a member was before the committee. Sue McCaffrey, of the Professional Standards Department, has met with the member and confirms the strained financial circumstances as outlined in her memorandum dated November 17, 1993, which was before the committee.

A grant of \$1,200, to be made in four monthly payments of \$300 each, was recommended.

Approved

2. APPLICATION FOR DEFERRAL OF THE 1993/94 ANNUAL MEMBERSHIP FEES

Applications from 13 members requesting deferral for up to one year of payment of the 1993/94 annual fees were before the meeting.

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of January, 1994

M. Weaver
Chair

THE REPORT WAS ADOPTED

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AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

FEDERATION OF LAW SOCIETIES PROTOCOL ON INTERJURISDICTIONAL PRACTICE

Mr. McKinnon presented the Report of the Federation of Law Societies Interjurisdictional Practice Protocol for Convocation's approval.

FEDERATION OF LAW SOCIETIES' INTER-JURISDICTIONAL PRACTICE PROTOCOL

The Committee on Inter-Jurisdictional Practice was formed in 1989 to monitor the work being done by the Inter-Jurisdictional Committee formed by the Federation of Law Societies of Canada. The membership, which has changed over the years, has included Mr. Justice James Spence and Mr. Justice Jack Ground and presently consists of Harvey Strosberg, Jim Wardlaw, Colin McKinnon and Dennis O'Connor.

Convocation has received reports from time to time on the progress of the Federation's committee and a copy of the Federation Committee's report which was adopted by the Federation in February 1991 was distributed to the bench in the Spring of 1991. Following on the adoption of the report the Federation struck an Implementation Committee to take the recommendations in the report and develop a Protocol which would be signed by all governing bodies and which would set out a unified scheme for inter-jurisdictional practice within Canada.

That Protocol has now been completed and was adopted by the Federation at its meeting in August 1993.

As the development of the Protocol has taken place over an extended period of time, a brief history of the Federation's Inter-Jurisdictional Committee is provided.

HISTORY

In 1988 the Federation of Law Societies of Canada established a committee to consider the issue of inter-jurisdictional practice. The committee was established because of a growing recognition that inter-jurisdictional mobility of lawyers in Canada was increasing and it would be of benefit to all jurisdictions if there was one set of uniform principles governing the movement of lawyers within Canadian jurisdictions. The committee was established prior to the decision of the Supreme Court of Canada in the Black case which struck down two rules of the Law Society of Alberta which restricted inter-provincial mobility. The Black case merely emphasized the need to develop regulations which would recognize mobility rights given under the Charter.

The Inter-Jurisdictional Committee of the Federation had representatives from all of the governing bodies and met 12 times over a period of two years before delivering its report in December 1990. The report was before the Federation's mid-winter meeting in February 1991 at which time it was approved. The Law Society of Upper Canada was represented on the Committee by Mr. Justice Spence and, on occasion prior to his appointment, by Mr. Justice Ground and most recently, by Colin McKinnon. The Secretary, Richard Tinsley, also attended meetings of the Inter-Jurisdictional Committee to provide staff assistance.

The guiding principle of the Federation's committee was embodied in the following resolution:

"The committee recognizes that Canadian lawyers have constitutional rights relating to inter-provincial practice of law. However, the governing body of each jurisdiction retains the authority and responsibility to ensure that:

- a) a member of a Society who practises in another jurisdiction, or
- b) a member of another Canadian governing body who practises in its jurisdiction,

does so competently, ethically and with financial responsibility."

With that principle as its guide the committee then developed recommendations regarding:

- a) Inter-provincial individual lawyer mobility covering all aspects of the individual lawyer moving between or among Canadian jurisdictions including pre-call and post-call, temporary and permanent;
- b) Inter-provincial law firms;
- c) International individual lawyer mobility relating to Canadian lawyers practising off-shore and foreign lawyers seeking to practise the law of their own jurisdiction in Canada; and
- d) International law firms dealing with firms practising law in one or more Canadian and foreign jurisdictions and not limited to practising the law of a home jurisdiction.

Following the adoption of the report by the Federation in 1991 an Implementation Committee was struck by the Federation. Its membership was basically a continuation of the previous Inter-Jurisdictional Committee. The Implementation Committee then set about developing a Protocol to be signed by all governing bodies governing the four areas set out above.

28th January, 1994

The Implementation Committee created sub-committees which were tasked with formulating proposals in specific areas such as insurance, discipline, education and compensation fund. These sub-committees, in addition to members of the Implementation Committee, drew on the expertise of benchers and staff in all jurisdictions. From Ontario, Colin Campbell and Lin Whitman served on the insurance sub-committee. Alan Treleaven contributed to the education sub-committee and Scott Kerr and Gavin MacKenzie assisted with the development of the provisions dealing with discipline. Mr. Justice Spence and Richard Tinsley were involved in the development of the provision regarding international mobility and foreign legal consultants and Mr. Alan Lawrence reviewed the arbitration rules.

Convocation is asked to approve the Protocol and authorize the Treasurer to execute it on behalf of the Law Society at the Federation's mid-winter meeting in February.

As the Protocol indicates the act of signing commits a governing body to put in place where possible the policies set out in the Protocol and where statutory amendment is required to actively pursue the passing of those amendments.

In Ontario we will require statutory amendments to give the Law Society the authority to make rules and regulations governing the various areas covered by the Protocol. This is the position in most of the other jurisdictions and accordingly it will be some time before the Protocol is enacted in force.

The Protocol consists of 18 general paragraphs setting out the framework of the agreement followed by 6 appendices dealing with temporary mobility, permanent mobility, foreign legal consultants, inter-jurisdictional law firms, arbitration rules and uniform guidelines for the payment of interprovincial compensation fund claims. The Protocol is attached as Appendix 1 to this report. To assist the bench in reviewing the document the salient points are set out below in point form.

THE PROTOCOL

- Purpose - to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law which will promote uniform standards and procedures while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.
- Signatories agree to implement policies set out in the protocol and appendices where possible and where legislative amendment is required to actively pursue amendments.
- Enforcement of professional standards through uniform discipline procedures:
 - (i) host jurisdiction to assume responsibility for conduct of discipline proceedings arising out of conduct in its jurisdiction unless agreement to the contrary with the lawyer's home jurisdiction;
 - (ii) home jurisdiction to cooperate with host jurisdiction;
 - (iii) venue for discipline proceedings to be decided by public interest convenience and cost;

- (iv) penalties:
 - reprimand
 - fine or costs or both
 - prohibition against practising in the host jurisdiction for specified period or permanently
 - declaration that if the lawyer had been a member the penalty would have been a suspension or disbarment;
 - (v) home jurisdiction to take disciplinary action against member where member practises in violation of a prohibition order issued by another jurisdiction or fails to pay a fine imposed by the host jurisdiction.
- Insurance - common policy limits of \$1 million per occurrence and \$2 million per member aggregate limit per year - where a jurisdiction's policy falls short of these limits the jurisdiction will act as insurer of last resort and obtain insurance to cover inter-jurisdictional claims to the agreed limits.
 - Compensation Fund:
 - (i) all signatories to obtain innocent party coverage under their errors and omissions program;
 - (ii) claims to be processed according to uniform guidelines (Appendix 6);
 - (iii) no jurisdiction to be called upon to pay more to a claimant from another jurisdiction than it would pay under its domestic program.
 - Signatories to cooperate in resolving disputes and formulating programs and procedures to implement and maintain regulatory scheme.
 - Execution of Protocol indicates intention to be bound and to implement its terms subject to obtaining necessary legislative amendments.
 - Signatories may withdraw on 90 days written notice to other signatories.
 - Protocol to expire on December 31, 1998 unless the signatories agree to the contrary before its expiration.

Appendix 1:- Temporary Mobility

At present, most Canadian jurisdictions have regulatory schemes to govern occasional appearances in court matters by lawyers from other jurisdictions within Canada. The schemes are restricted to court appearances and require the lawyer to make application to the host jurisdiction and receive permission to appear as a temporary member of the host law society.

The Protocol sets out a scheme which would apply to both court and non-court matters and which would not require the visiting lawyer to "check in" provided the lawyer complies with certain objective standards.

Definitions

- Practising occasionally - not more than 10 matters and for not more than 20 days in total during any 12-month period.

- Jurisdiction specific law - topics of substantive and procedural law whether statutory or common law which are specific in their application to the host jurisdiction.

Requirements

- (i) Member in good standing of another governing body in Canada;
 - (ii) Carry comparable professional liability insurance;
 - (iii) Have comparable compensation fund coverage;
 - (iv) Not subject to criminal or disciplinary proceedings in any jurisdiction;
 - (v) Have no prior discipline or criminal record;
 - (vi) Pay requisite administration fee;
 - (vii) Be competent to practise law including any jurisdiction specific law.
- A lawyer who is a member in good standing of any provincial governing body may appear in any province as counsel before the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada and any federal or provincial administrative tribunal before which non-lawyers may appear.
 - Practising jurisdiction specific law - may be done in consultation with member of host jurisdiction provided there is meaningful consultation and local lawyer is substantially involved in the matter.
 - A visiting lawyer may on meeting whatever competency requirements are set by the host jurisdiction practise jurisdiction specific law without consultation.
 - Lawyers who are employees of the Crown in right of Canada as long as they are members of a Canadian governing body are exempt from provisions while practising law for the Crown in right of Canada - same exemption for house counsel.
 - Lawyers practising under the temporary mobility provisions are bound by the host jurisdiction's regulatory legislation and Rules of Professional Conduct.
 - Trust funds - visiting lawyer cannot maintain a trust account in the host jurisdiction and if the lawyer's practice requires the handling of clients' trust funds, it must be done through the trust account of a member of the host jurisdiction.

Comment

While the purpose of the Protocol is to avoid a check-in system for occasional practice in another province, if the visiting lawyer intends to practise jurisdiction specific law there is an initial "check-in" at which time the visiting lawyer will have to fulfil the requirements of the host jurisdiction in regard to demonstrating competency to practise in a specified area of law. Having satisfied the host jurisdiction and having received confirmation, the visiting lawyer could then practise occasionally in the host jurisdiction. If the practice became more than "occasional" the visiting lawyer would have to become a member of the host jurisdiction.

Appendix 2: Permanent Mobility

This part of the Protocol sets out the basic procedures for permanent transfers within Canadian jurisdictions. There are provisions regarding the credit to be given to articles and pre-call training in the home jurisdiction. The Protocol also permits a jurisdiction to exempt transfer candidates from all or a portion of the Bar Admission Course.

- Length of articling period - minimum of 12 months including Bar Admission Course.
- Credit for articles in another Canadian jurisdiction - not more than 6 months.
- Students who have completed the Bar Admission Course in another Canadian jurisdiction may be exempted from all or a portion of the Bar Admission Course or be required to complete transfer exams or courses.

Comment

There is a problem with the permanent mobility provisions relating to the requirements for entry to the Bar Admission Course. In Ontario a candidate has to possess either an LL.B. from a Canadian law school or a Certificate of Equivalency issued by the Joint Committee on Accreditation. All other common law jurisdictions recognize the Certificate of Equivalency from the Joint Committee with the exception of Alberta which has a provincially mandated board. In the past Ontario and British Columbia have not recognized the credit allowed to applicants by the Alberta board and have insisted that transfer candidates obtain a Certificate from the Joint Committee even though they may have been called to the Bar in Alberta, the main issue being the weight given by the Alberta to non-Canadian law degrees. If the Protocol is adopted it might appear that we would have to accept a candidate who has a non-Canadian bachelor of law degrees but who has received an equivalency rating from the Alberta board and has gone on to complete the Alberta Bar Admission Course and been called to the Bar.

A similar problem arises with Quebec where if the Protocol were taken on its face members of the Barreau who have a civil law degree and members of the Chambre des Notaires could transfer without a certificate.

One could, however, take the view that in order to qualify for transfer under the Protocol a person has to meet the same requirements for entry to the Bar Admission Course as "domestic" candidates and that is a recognized Canadian law degree or a Certificate of Equivalency from the Joint Committee on Accreditation. This is the position of the Law Society of British Columbia which has adopted the protocol

If Convocation approves the Protocol this item could be placed on the agenda to clarify the position.

Appendix 3:- Foreign Legal Consultants

This portion of the Protocol mirrors the Law Society's existing regime with differences in the requirements as to residency and bonding. The Law Society requires a Foreign Legal Consultant to be resident in Ontario but does not require a fidelity bond as Foreign Legal Consultants are not to handle trust funds. Our Foreign Legal Consultant regime may well have to be amended with regard to residency requirements as a result of provisions in NAFTA.

Appendix 4:- Inter-Jurisdictional Law Firms

This portion of the Protocol deals with the licensing of inter-jurisdictional law firms and includes not only firms composed of practitioners from one or more Canadian jurisdictions but also international firms in which there are members who are not licensed in any Canadian jurisdiction. The provisions mirror the existing rules for Canadian inter-jurisdictional firms and should Convocation at some point in the future approve international law firms, the Protocol provides a regulatory framework.

Provisions

- At least one partner has to be a member of the governing body of the jurisdiction in which the firm operates and must actively engage in the practice of law principally in the jurisdiction.
- Requirement for reciprocity of treatment in dealing with international law firms - foreign jurisdictions must offer similar rights to Canadian law firms.
- Books and records to be kept and available in the jurisdiction on demand.
- Disciplinary sanctions:
 - (i) reprimand the firm;
 - (ii) impose a fine not exceeding \$100,000.
- Law societies to make rules regarding disciplinary procedures involving inter-jurisdictional firms that they feel are necessary to maintain regulation.

Appendix 5:- Arbitration Rules

Appendix 5 sets out arbitration procedures for settling any dispute or claim arising out of the operation of the Protocol. The rules are based on the current Ontario rules.

Appendix 6:- Compensation Fund Guidelines

Convocation on June 1993 approved the concept of a national fund to compensate clients who suffer losses as the result of the dishonesty of lawyers practising inter-jurisdictionally under the terms of this Protocol. Appendix 6 sets out the procedures to be followed in processing claims.

Procedure

- First call will be made on innocent partner coverage where applicable;
- The home governing body will, in consultation with the host jurisdiction, determine whether the loss would be covered under the host jurisdiction's program and, if so, the quantum that would be paid by the host jurisdiction;
- The home governing body's liability limited to \$50,000 - then claimant goes to the national excess plan (\$1 million fund to be established by a levy of \$2 per member);
- Claims to the National Excess Fund to be dealt with on a yearly basis so that if claims exceed the amount in the National Excess Fund a pro rata distribution to claimants can be made;
- Where claimant receives less than the home governing body would have paid a domestic claimant because of the operation of the \$50,000 cap in paragraph 9 (b) and a pro rata distribution from the National Excess Plan then the claimant may apply to the home jurisdiction for further compensation up to the domestic limits.

Example

An Ontario lawyer, a sole practitioner, practising on an occasional basis in Alberta steals \$100,000 from an Alberta claimant. The Alberta client would claim against the Law Society of Upper Canada's fund for Client Compensation. We would contact Alberta and determine whether on the facts of the case the client would be entitled to compensation from the Law Society of Alberta under its compensation fund scheme. If the answer is yes, the Law Society of Upper Canada would pay the client \$50,000. The client would then make application to the National Excess Fund for the balance. If the client because of the number of claims against the National Excess Fund receives only \$25,000 on a pro rata distribution, the client can then apply to the Law Society of Upper Canada fund for the balance of the claim, \$25,000 bringing the recovery to \$100,000 which is what the client would have been entitled to from the Ontario fund.

Attached to the Report in Convocation file, copies of:

Inter-Jurisdictional Practice Implementation Committee's Draft Protocol dated June 24, 1993. (Pages 1 - 33)

It was moved by Mr. McKinnon, seconded by Ms. Bellamy that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

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