

24th September, 1992

MINUTES OF CONVOCATION

Thursday, 24th September, 1992  
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Arnup, Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Furlong, Goudge, Hickey, Hill, Howie, Howland, Jarvis, Kiteley, Krishna, Lamek, Lamont, Lawrence, Lax, Legge, Lerner, McKinnon, Manes, Mohideen, Murphy, Murray, O'Brien, D. O'Connor, Palmer, Pepper, Peters, Richardson, Ruby, Somerville, Strosberg, Thom, Topp and Weaver.

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PUBLIC

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Convocation commenced at 9:00 a.m.

ORDERS

The following discipline Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Edward George Spong,  
of the Town of Whitby, 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 17th day of May, 1992, 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;

24th September, 1992

CONVOCATION HEREBY ORDERS that Edward George Spong be Reprimanded in Convocation.

DATED this 25th day of June, 1992

"James M. Spence"  
Treasurer

(Seal - Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Robert Arthur Donaldson,  
of the City of Toronto,  
a Barrister and 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 11th day of June, 1992, 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 Robert Arthur Donaldson be suspended for a period of two (2) years, such suspension to commence on the 9th day of September, 1991. Following the period of suspension and before resuming practice, the following conditions shall be fulfilled:

- (a) the Solicitor shall submit to a psychiatric assessment by a psychiatrist acceptable to the Law Society. The Solicitor shall not be permitted to resume practice until that psychiatrist confirms in writing to the Law Society that he is capable of doing so;
- (b) the Solicitor shall file a proposal as to the form in which he intends to return to practice. That form must be acceptable to the Law Society;

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- (c) in the event the Solicitor and the Law Society are unable to agree with respect to compliance with either or both of the two conditions, a committee of three Benchers shall be appointed by Convocation with authority to conduct a hearing and to report to Convocation as to the means by which any disagreement should be resolved.

DATED this 26th day of June, 1992.

"K. Howie"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF David Harris,  
of the City of Toronto,  
a Barrister and 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 5th day of June, 1992, 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 David Harris be Reprimanded in Convocation and that the Solicitor be ordered to pay the sum of \$12,500.00 towards the Society's costs.

DATED this 25th day of June, 1992.

"James M. Spence"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

24th September, 1992

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Lucien Octave Brisbois,  
of the City of Orleans,  
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 8th day of June, 1992 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 Lucien Octave Brisbois be Reprimanded in Convocation and that the Solicitor be ordered to pay the sum of \$2,500.00 towards the Society's costs.

DATED this 25th day of June, 1992.

"James M. Spence"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Kenneth Franklin Dyer,  
of the City of Mississauga,  
a Barrister and 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 29th day of May, 1992, 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;



24th September, 1992

CONVOCATION HEREBY ORDERS that Kenneth Franklin Dyer 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 June, 1992

"James M. Spence"  
Treasurer

(SEAL -The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Denis Russell Makepeace,  
of the City of Toronto,  
a Barrister and 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 April, 1992, in the presence of Counsel for the Society, the Student and Counsel for the student being in attendance, wherein the Student was found guilty of conduct unbecoming a student member and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Denis Russell Makepeace's call to the Bar be delayed until June, 1992, a period of four months.

DATED this 25th day of June, 1992

"James M. Spence"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Thomas Hollyoake Box,  
of the Town of Markham,  
a Barrister and Solicitor

24th September, 1992

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 22nd day of May, 1992, 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;

CONVOCATION HEREBY ORDERS that Thomas Hollyoake Box be suspended for a period of three (3) months, such suspension to commence on the 1st day of August, 1992.

DATED this 25th day of June, 1992

"James M. Spence"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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MOTION RE: STANDING COMMITTEE ON THE OMBUDSMAN

It was moved by Casey Hill, seconded by Robert Topp THAT:

1. Convocation endorse in principle the position expressed by the Treasurer today as the appropriate reply to the July 1, 1992 invitation from the Standing Committee on the Ombudsman to comment on "the possibility of expanding the Ombudsman's jurisdiction to include certain decisions of the Law Society - for example, decisions regarding the discipline of its members";
2. THAT a Special Committee consisting of:  

Paul Copeland  
Susan Elliott  
Netty Graham  
Marc Somerville and  
James Spence

with James Spence as Chair, be established to prepare a written submission to the Standing Committee on the Ombudsman based on the position outlined by the Treasurer; and

3. THAT should it be necessary to forward such submission to the Standing Committee on the Ombudsman prior to the October 22, 1992 Special Convocation, the Treasurer be authorized to forward the submission prepared by the Special Committee and that the Treasurer and such member or members of the Special Committee as the Treasurer may designate be authorized to make an oral presentation of the submission to the Standing Committee on the Ombudsman.

Carried

(see letter from Standing Committee on the Ombudsman dated July 30, 1992)

Mr. Lerner did not participate in discussion or vote.

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MOTIONS RE: APPOINTMENTS

It was moved by Don Lamont, seconded by Fran Kiteley THAT Maurice Cullity be appointed Vice-Chair of the Professional Conduct Committee.

THAT Philip Epstein be appointed a Vice-Chair of the Legal Education Committee.

THAT Casey Hill be added as a member to the Research and Planning, Legal Education, Professional Standards and Discipline Policy Committees.

THAT Ross Murray be added as a member to the Discipline Policy Committee.

THAT the members of the Special Committee on Payment of Arrears of Fees be as follows: James Wardlaw (Chair), Thomas Bastedo, Fatima Mohideen, Maurice Cullity and Carole Curtis.

THAT Sharman Bondy be appointed to the Family Rules Committee to replace Ian Fisher.

THAT the Special Committee on Benchers Elections be composed of the following members: David Scott (Chair), Marc Somerville, Paul Lamek, Susan Elliott, Ross Murray, Neil Finkelstein and Fatima Mohideen with the terms of reference as follows:

I To make specific recommendations concerning the following questions:

- (a) Should Convocation reaffirm the November 1991 reform as the appropriate long-term procedure for Benchers elections?
- (b) If the November 1991 reform is not appropriate as a permanent procedure,
  - (i) should the present method (i.e., the method employed in Benchers elections to and including the 1991 election) be preserved?
  - (ii) if we are to move to regional elections should we use the judicial regions or adopt different regions?
  - (iii) if we are to move to regional elections, should all lawyers throughout the Province have the right to vote for all candidates, or should they be entitled to vote only for candidates in their region? Should some combination be adopted?
  - (iv) how many Benchers should be elected from each region?
  - (v) should Metro Toronto be divided into regions for the purposes of regional Benchers elections?

II To report to Convocation not later than February 26th, 1993; and

III To consult with the County and District Law Presidents' Association, the Canadian Bar Association (Ontario) and other appropriate professional groups.

Carried

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MOTION: COMMITTEE REPORTS TAKEN AS READ

It was moved by Paul Lamek, seconded by Fatima Mohideen that the Reports listed in paragraph 4 of the Agenda with the addition of Admissions and excluding the September Report of Legislation and Rules and the May and June Reports of Libraries and Reporting be adopted.

Carried

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meetings of June 11th and September 10th, 1992

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 11th of June 1992, the following persons being present: Harvey T. Strosberg (Chair), Ross Murray, Dean Jeff Berryman, Marie Moliner, Donald Crosbie, Alan Treleaven, Marisha Roman and Felix Weekes.

C.

INFORMATION

1. On the recommendation of the Subcommittee on Disabled Persons, the organization "Barrier Free Design" will be consulted about the analysis of the barriers to free movement of disabled persons in the education wing and in other parts of the Law Society facility. It is proposed to examine the feasibility of having similar studies carried out in our Ottawa and London facilities.

2. The committee received a report from Marisha Roman, an aboriginal law student hired by the Aboriginal Articling Students' Support Committee. This committee is funded in part by the Legal Education Department. The report outlined the work being done to develop a support program for aboriginal articling students in Toronto.

The committee also received a report on a similar program being conducted by Felix Weekes, a black law student working in conjunction with the Black Law Students' Association of Canada.

It was noted that while the Aboriginal Articling Students' Support Committee focused more on the social and cultural support needed by aboriginal articling students, the work being carried out in conjunction with the Black Law Students' Association of Canada was focusing more directly on problems associated with obtaining articling positions and hire-back following articling.

24th September, 1992

The Under Treasurer reported on the procedures to be used to fund these projects over the seventeen week period ending in late August early September.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June 1992

"H. Strosberg  
Chair

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 10th of September 1992, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Paul Copeland, Harvey Strosberg, Dean Jeff Berryman, Thea Herman (for George Thomson), Andrew Ranachan, Adella Rodriguez, Donald Crosbie, Mimi Hart, Ajit John, Alexis Singer and Robin Payne (contract lawyer).

C.  
INFORMATION

1. Employment Equity Plan

The committee has started its consideration of the Employment Equity Plan that will be required of the Law Society by the new Employment Equity Act.

The committee was advised that a staff committee, chaired by Andrew Brockett and including Ajit John from the Unauthorized Practice department and Alexis Singer from the Legal Education department, had been set up to do the preliminary work.

It was agreed that the Chair, Stephen Goudge and Paul Copeland would join the staff committee to provide ongoing Equity Committee input.

2. Education Equity Awards

It was agreed that there was a need to move quickly on the development of the criteria on which the Education Equity Awards would be made in the current year. A subcommittee was struck to pursue this work consisting of Denise Bellamy, Jeff Berryman, Adella Rodriguez and Joanne St. Lewis. In addition, Mimi Hart volunteered to work with the committee on this issue to provide her background and experience with student awards.

3. Composition of Subcommittees

a) Education Equity Awards Subcommittee

See discussion above.

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b) Access to Legal Education

This committee was originally struck to consider ways of assisting minority students, many of whom were foreign trained lawyers, to complete the academic requirements for entry into the Bar Admission Course or a call to the bar in Ontario. The proposal pursued last year was that the Law Society undertake to develop courses of study which the minority students could then complete on their own time. When they were ready, they could write a challenge exam.

It was agreed this subcommittee should be continued with a membership consisting of Harvey Strosberg, Andrew Ranachan and Thea Herman. It was also agreed that the Chair would discuss the subcommittee with Paul Lamek to explore the possibility of it being a joint committee with the Legal Education Committee.

- c) The Chair asked for general comments on the advisability of having specific subcommittees to liaise with aboriginal people and with visible minority groups and with disabled persons and with the black community. The Chair concluded that he wished to discuss the matter further with the Under Treasurer and that he would report back to the committee at the next meeting.

4. Report on Students Seeking Articles

Mimi Hart reported on efforts related to the finding of articling positions for students in Phase I of the Bar Admission Course who have not yet located articles. There are 20 students still seeking articles. While there are 14 positions still available, it is difficult to match students with the articles available. Of the 20 students seeking articles, 5 are visible minorities and there is 1 handicapped student.

Dean Jeff Berryman reminded the committee that the recommendation at the meeting with the law deans in the spring was that the greatest contribution the Law Society could make at this time to the equity issue would be to find articling positions for the students coming through the Bar Admission Course.

There was not sufficient time to conclude discussion of this issue and it was tabled until the next meeting.

5. Summer Student Projects

The report prepared by the Aboriginal law student was distributed for the committee's information. The report is a booklet entitled "AASSC About Toronto" and is an orientation guide prepared by the Law Society and the Aboriginal Articling Students Support Council (AASSC) and Canada Employment and Immigration. More detailed reports on this project and on the Black law student summer project will be available at the October meeting.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September 1992

"S. Goudge"  
Chair  
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24th September, 1992

INVESTMENT COMMITTEE

Meetings of April 9th, June 11th and September 10th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of April, 1992 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair). Staff members present were David Crack and David Carey.

B.

ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds together with supporting documentation for the month ended March 31, 1992 (Schedule A).

Approved

2. Investment Activity - Errors and Omissions Investment Fund

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$500,000 8.25% Ontario Hydro Bonds due Sept. 15, 1997	Midland Walwyn	96.35	\$481,750	9.11%
\$500,000 9% Ontario Hydro Bonds due April 22, 1996	Midland Walwyn	99.40	\$497,000	9.18%
\$500,000 Toronto Dominion Bank Fixed Floating Rate Bonds due March 31, 2002	Nesbitt Thomson	100.25	\$501,250	8.76%
\$806,250 Ontario Hydro Coupons 10.75% due Feb. 6, 2002	Scotia McLeod	39.553	\$318,896	9.64%

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3. Investment Activity - Compensation Fund

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$500,000 8.25% Ontario Hydro Bonds due Sept. 15, 1997	Midland Walwyn	96.35	\$481,750	9.11%

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 24th day of April, 1992

"J. Wardlaw"  
Chair

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

B-Item 1 - Investment Report Summary as at March 31, 1992. (Schedule A)

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 11th of June, 1992 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair) and Feinstein. Staff members present were David Crack and David Carey.

B.  
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds together with supporting documentation for two months ended May 31, 1992 (Schedule A.)

Approved



24th September, 1992

2. Investment Activity - Errors and Omissions Investment Fund

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$550,000 9.9% Province of B.C. Bonds due January 9, 2002	Scotia McLeod	97.10	\$534,050	9.46%
\$2,175,000 11.25% Ontario Hydro Residue due August 8, 2000	Scotia McLeod	45.934	\$999,065	9.60%
\$1,000,000 8.25% Gov't of Canada Bonds due November 1, 1995	TD Bank	99.73	\$997,300	8.34%
\$500,000 9.10% Debentures due May 15, 2002	TD Bank	99.17	\$495,850	9.31%
\$1,059,250 9.5% Province of B.C. Coupons due January 9, 2002	Nesbitt Thomson	39.69	\$420,416	9.82%
\$2,850,000 9.5% Province of B.C. Coupons due July 9, 2002	Nesbitt Thomson	37.83	\$1,078,155	9.82%
\$1,000,000 8.75% Province of Ontario due April 16, 1997	Midland Walwyn	99.90	\$999,000	8.77%

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

3. Investment Activity - Compensation Fund

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$715,000 13.75% Gov't of Canada Coupons due Sept. 15, 1996	Scotia McLeod	69.791	\$499,006	8.35%

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\$500,000 11.25% Ontario Hydro Bonds due May 30, 1995	TD Bank	106.15	\$553,866	8.92%
\$500,000 8.25% Gov't of Canada Bonds due November 1, 1995	Midland Walwyn	100.05	\$500,250	8.23%

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 26th day of June, 1992

"J. Wardlaw"  
Chair

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

B-Item 1 - Investment Report Summary as at May 31, 1992.

(Shedule A)

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 10th of September, 1992 at two-thirty in the afternoon, 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 an investment report summary for the various Law Society Funds for the month ended June 30, 1992.

Approved

24th September, 1992

2. Investment Activity for July and August, 1992 - Errors and Omissions Investment Fund

<u>Purchase</u>	<u>Broker</u>	<u>Market</u>	<u>Current Cost</u>	<u>Yield</u>
\$1,000,000 7.0% Province of Alberta Bonds due August 20, 1997	TD Bank	99.700	\$ 997,000	7.072%
\$1,050,000 7.0% Province of Alberta Bonds due August 20, 1997	Midland Walwyn	99.700	\$1,046,850	7.072%

3. Investment Activity for July and August, 1992 - Compensation Fund

<u>Purchase</u>	<u>Broker</u>	<u>Market</u>	<u>Current Cost</u>	<u>Yield</u>
\$500,000 7.0% Province of Alberta Bonds due August 20, 1997	Midland Walwyn	99.700	\$498,500	7.072%
\$500,000 7.0% Province of Alberta Bonds due August 20, 1997	Scotia McLeod	99.700	\$498,500	7.072%

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 24th day of September, 1992

"J. Wardlaw"  
Chair

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

B-Item 1 - Investment Report Summary as at June 30, 1992. (Schedule A)

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WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of September 10th, 1992

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 10th of September, 1992, at 11:30 a.m., the following members being present: S. Elliott (Chair), M. Cullity, J. Lax, J. Monaghan, F. Mohideen and S. O'Connor.

Also present: C. Ateah, J. Herbert, A. Brockett, and S. Hodgett.

A.

POLICY

No matters to report.

B.

ADMINISTRATION

B.1. JOINT SUBCOMMITTEE ON REQUALIFICATION

B.1.1. In April 1992, Convocation approved in principle the Report of its Special Committee on Requalification. The Report dealt with the question of whether lawyers who cease to practise for an extended period should be required to complete retraining courses before returning to practice. Convocation deferred the implementation of any changes until detailed consideration is given to the matter by a Joint Subcommittee of the Legal Education, Professional Standards and Admissions Committees.

B.1.2. Your Committee had before it a letter from Professor Mary Jane Mossman to the Treasurer expressing concern that the proposed process for requalification will have a disproportionate impact on women in the profession.

B.1.3. Your Committee recommends that a representative of the Women in the Legal Profession Committee be added to the Joint Subcommittee in addition to representatives from the Legal Education, Professional Standards and Admissions Committees.

C.

INFORMATION

C.1. PRIORITIES OF THE COMMITTEE FOR THE COMING YEAR

C.1.1. Your Committee discussed its priorities for the coming year. There was a consensus that, while it is important to consider new educational and policy initiatives, it is equally important that the previous work of the Committee not be lost.

24th September, 1992

- C.1.2. Your Committee will consider future educational projects to continue to raise awareness of issues concerning women in the legal profession. In addition, a Subcommittee will consider the issues surrounding parental responsibilities and their impact on women in the profession and report back to the Committee.
- C.1.3. The Committee will examine the success and impact of past initiatives. In particular:
- it will review A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment. The review will re-examine the policy's content in light of experience and the extent to which the policy has been adopted in the profession.
  - it will review the implementation of the recommendations approved by Convocation in the Transitions Report in particular by the Law Society and its committees.
- C.2. THE COMMUNICATIONS SURVEY
- C.2.1. The Communications Committee asked all standing committees of the Law Society to consider the survey Public and Lawyers' Perceptions of and Attitudes Toward The Law Society of Upper Canada, Communications, Programs and Policy Issues.
- C.2.2. Your Committee has reviewed the survey to determine whether there are any matters which require action. There was some indication in the survey of lawyers that "quality of life/income" was considered a pressing concern by some lawyers (4%). Further, 50% of those lawyers felt that the Law Society was addressing this concern poorly. Considerations regarding lawyers' quality of life are part of the mandate of this Committee and are being addressed as part of efforts to consider and promote the place of women in the profession. By agreement, the Research and Planning Committee will consider a study of the long hours of work that are reported to be required by lawyers. Consequently, no special action is required from your Committee as a result of the survey.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"S. Elliott"  
Chair  
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FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of September 10th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

24th September, 1992

Your Committee met on Thursday, the 10th of September, 1992 at 11:30 a.m. The following members attended the meeting: Benchers representation: Ms. P.J. Peters (Chair), Ms. J.K. Palmer (Vice Chair), Mr. M.G. Hickey and Mr. P. Copeland (Observer). Staff representation: Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO).

B.  
ADMINISTRATION

1. Bilingual Staffing

In order to assist with the monitoring of bilingual staffing in key areas of the Law Society, your Committee approved a recommendation that a status report on bilingual designated positions be prepared by the Human Resources Department on a quarterly basis effective the third quarter of 1992.

This quarterly report should address staffing activity that took place during the previous three months, with specific reference to the recruitment and hiring of bilingual candidates and maintenance of sufficient bilingual resources to ensure the profession and the public are adequately served in French. Reporting guidelines will be forwarded to Human Resources shortly.

The first report should be submitted to your Committee's secretary in time for the October 8, 1992 meeting.

C.  
INFORMATION

1. Unavailability of French language services in Legal Aid Office

Your Committee has reviewed concerns raised about the unavailability of French language services in the Stormont, Dundas and Glengarry District Legal Aid Area Office located in Cornwall. This office serves a number of predominantly French-speaking communities. This matter is being referred to the Legal Aid Committee for further review and input.

The meeting was adjourned at 12:25 p.m.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"P. Peters"  
Chair

AUX CONSEILLERS ET CONSEILLÈRES DU BARREAU DU HAUT-CANADA

RÉUNIS EN CONSEIL

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

24th September, 1992

Votre Comité s'est réuni le jeudi 10 septembre 1992 à 11 h 30. Étaient présents, en qualité de conseillers et conseillères, M<sup>me</sup> P. J. Peters (présidente), M<sup>me</sup> J.K. Palmer (vice-présidente), M. M.G. Hickey et M. P. Copeland (observateur), en qualité de membre du personnel, M<sup>me</sup> D. Paquet (secrétaire) et à titre d'invités spéciaux, M. R. Paquette de l'Association des juristes d'expression française de l'Ontario (AJEFO) et M. T. Keith de l'Association du Barreau canadien - Ontario (ABCO).

B.  
ADMINISTRATION

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Dotation en personnel bilingue

Votre comité a approuvé une recommandation qui lui permettra de mieux contrôler le processus de dotation en personnel bilingue dans les secteurs clés du Barreau. Dorénavant, le Service des ressources humaines rédigera tous les trimestres, à partir du troisième trimestre 1992, un rapport portant sur la situation des postes désignés bilingues.

Ce rapport trimestriel devrait décrire les activités des trois derniers mois, en particulier le recrutement et l'embauche de membres du personnel bilingues, ainsi que le maintien de ressources bilingues suffisantes pour que les membres de la profession et le public puissent recevoir des services en français satisfaisants. Les ressources humaines devraient recevoir d'ici peu les directives nécessaires à l'établissement d'un tel rapport.

Le premier rapport devrait être soumis à la secrétaire de votre Comité en temps pour la réunion du 8 octobre 1992.

C.  
INFORMATION

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Indisponibilité des services en français dans un bureau de l'aide juridique

Votre comité a pris connaissance de commentaires sur l'indisponibilité des services en français dans le bureau de l'aide juridique du district de Stormont, Dundas et Glengarry qui est situé à Cornwall, alors qu'il dessert des collectivités majoritairement francophones. Cette question sera portée à l'attention du Comité de l'aide juridique.

La séance a été levée à 12 h 25.

FAIT le 24 septembre 1992

"P. Peters"  
La présidente,  
.....

24th September, 1992

UNAUTHORIZED PRACTICE COMMITTEE

Meetings of June 11th and September 10th, 1992

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 11th of June, 1992 at 10:30 a.m., the following members were present: D. O'Connor (Acting Chair), R. Cass, G.H.T. Farquharson, N. Graham, A. Lawrence and D. Scott. Also in attendance was: A. John.

B

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ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

The Committee authorized further investigation in two cases and prosecution in one case.

2. PROPOSED INTELLECTUAL PROPERTY TRIBUNAL

The Chair of the National Section on Intellectual Property for the Canadian Bar Association has written to the Law Society of Upper Canada about a new Intellectual Property Tribunal to be established by the Federal Government. The new Tribunal will merge the Trademark Opposition Board and the Copyright Board.

One issue which has arisen is the question of who may appear as counsel before the new Tribunal. Trademark agents (non-lawyers) have been allowed to appear before the Trademark Opposition Board on certain matters. Some other federal tribunals allow agents and consultants to appear as "counsel". Non-lawyers are not "Officers of the Court" and are not bound by a Provincial Bar's Code of Ethics.

The Canadian Bar Association has asked the Law Society for its opinion concerning agents who appear before tribunals.

Your Committee opposes in principle any suggestion that agents be allowed to appear as counsel before the new Tribunal. Your Committee has established a Subcommittee to examine the issues arising from the Federal Government proposals, and to prepare a report.



24th September, 1992

C.  
INFORMATION

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Attached hereto is a list of current prosecutions.

ALL OF WHICH is respectfully submitted

DATED the 26th day of June, 1992

"D. O'Connor"  
Chair

Prosecutions

Next Court Date

Richard Perry

June 5, 1992 at 10 a.m.  
50 Main Street East  
Hamilton  
Appeal  
To set a date

Emad Elguindy  
(Mississauga)

June 30, 1992 at 9 a.m.  
Ont. Court (Prov. Div.)  
Courtroom 111  
Continuation of Trial

Charles Azonwanna  
(Toronto)

July 3, 1992 at 9 a.m.  
Ont. Court (Prov. Div.)  
Courtroom 127  
Sentencing

Michael Baldasaro  
(Hamilton)

July 31, 1992, 3 p.m.  
Ont. Court (Prov. Div.)  
Courtroom 2  
Court of Appeal  
To be spoken to

Norine Earl  
(Toronto)

Appeal (filed but date for hearing not  
yet established)

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 10th of September, 1992 at 10:30 a.m., the following members were present: P. Peters (Acting Chair), R. Cass, P. Copeland, G.H.T. Farquharson, N. Graham, M. Hickey and M. Weaver. Also in attendance was: A. John.

24th September, 1992

B  
ADMINISTRATION

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1. COMPLAINTS/INVESTIGATIONS

Your Committee authorized further investigation in eight cases and prosecution in one case.

2. TRADEMARK MATTERS

Your Committee considered the issue of patent agents who provide legal opinions. The Law Society had received a complaint from a lawyer who was once in the employ of a firm of patent agents and who was disturbed by the practice of agents writing legal opinions which went beyond what was allowed under the Patent Act. This would represent a breach of S. 50(1) of the Law Society Act which prohibits the unauthorized practice of law. The issue is related to the questions currently arising from the examination of the proposed Intellectual Property Tribunal. Your Committee decided, therefore, to expand the mandate of the Subcommittee looking into the proposed tribunal and have it examine the question of legal opinions given by trademark agents.

3. PUBLIC INFORMATION

Your Committee discussed the need to publicize matters relating to the unauthorized practice of law. For example, members of the public are under the impression that the recommendations contained in the Report of the Ianni Task Force on Paralegals have the force of law. They are unaware of the risk involved in hiring agents who lack proper legal training. The public appears uninformed about several successful prosecutions recently conducted by the Law Society.

Your Committee considered the question of public awareness of Law Society prosecutions and recommends that the Communications Department distribute press releases prepared by Law Society prosecutors and assist in any way with the distribution of information about the unauthorized practice of law.

ALL OF WHICH is respectfully submitted

DATED the 24th day of September, 1992

"D. O'Connor"  
Chair

Prosecutions

Ruth Meta  
(Toronto)

Next Court Date

September 29, 1992 at 10 a.m.  
Old City Hall  
Courtroom 140  
To be spoken to

24th September, 1992

Goldsworthy Skeete  
(Markham)

September 30, 1992 at 9 a.m.  
Central East Region  
Newmarket  
Courtroom 200  
To be spoken to

Emad Elguindy  
(Mississauga)

October 13, 1992 at 9 a.m.  
Ont. Court (Prov. Div.)  
Courtroom 111  
Continuation of Trial

Michael Baldasaro  
(Hamilton)

November 10, 1992 at 10 a.m.  
Ont. Court (Prov. Div.)  
Courtroom 2  
Court of Appeal  
To be spoken to

Norine Earl  
(Toronto)

December 9, 1992 at 10 a.m.  
Room 3  
180 Dundas Street West  
Appeal

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#### INSURANCE COMMITTEE

Meetings of May 14th and September 10th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Epstein, Scace, Howie, Bragagnolo, Cass, Hickey, Wardlaw, Harvey and Ms. Palmer.

Also in attendance were Messrs. Whitman, Tinsley, Crack and O'Toole.

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#### ITEM

##### 1. ADDITIONAL SUPPLEMENTARY LEVY

Due to the tremendous increase in claim activity during the twelve-month period ending December 31, 1991 and the resulting deficit, your Committee has been considering the need for an additional supplementary levy to eliminate the deficit and re-build the required appropriate Fund surplus. The Director presented a detailed report on the current status of the E & O Fund with a view to determining if a 1992 mid-term additional supplementary levy would be necessary. The Director reports that claim frequency and severity for the four-month period ending April 30, 1992 has improved considerably over the previous four-month period ending December 31, 1991. Because of this, and statistical trends suggesting that claim activity for the remainder of 1992 could reflect the activity during the first four months, your Committee is of the view that a 1992 mid-term additional supplementary levy is not required at this moment however, the Committee cautions that should the claims experience deteriorate, the Society may be faced with no alternative but to implement such an interim supplementary

24th September, 1992

levy prior to the year end. The Director will continue his close monitoring of both claim frequency and severity, updating your Committee on a regular basis.

2. E & O FINANCIAL REPORT

The Director's monthly Errors & Omissions General Expense Budget Report is attached as Appendix "A".

3. ADDITIONAL EXAMINERS: CONTRACT EMPLOYEES

Pursuant to Convocation's adoption of your Committee's recommendation to hire additional permanent full time examiners, the Director reports that three such additional staff have recently been hired to cope with the heavy case load. In the long term, as the new examiners are brought up to speed, the objective is to achieve a case load per examiner in the 350-450 range. In the short term however, many of our staff will continue to face an unacceptably high file count. To alleviate the problems inherent in managing too high a case load, the Director has initiated steps to hire up to three additional examiners on a contract basis, a move unanimously supported by your Committee. Initially the contract employees will be retained for up to a three-month period after which the situation will be reviewed. The Director will report further to your Committee on this subject as developments occur.

4. E & O AUTOMATION PROJECT

This project, as previously recommended by your Committee and adopted by Convocation, has progressed to the point where implementation can now begin. The E & O Automation Project consultant has, in conjunction with the Society's Systems Information Manager, tabled his recommendation that the Society "make an immediate start on developing our own in-house system". The costs as projected at this time, are within the original estimates as approved by your Committee.

5. MEMBER AND PUBLIC SURVEYS

In response to the Communications Committee request that every standing and special committee "consider whether there are matters arising from the Report that require consideration in Committee", your Committee advises that the findings of the surveys have been noted and will be considered in both current and future Insurance Committee endeavours.

6. E & O PREMISES

The Errors & Omissions Department is scheduled to move to its new permanent premises located on the 22nd Floor of the Cadillac Fairview Tower on May 30, 1992.

24th September, 1992

7. OUTSTANDING ITEMS

(a) Sub-Committee on Loss Prevention / E & O Program Review

The Director reported that progress continues with respect to expansion and development of the Society's Loss Prevention Program. The Sub-Committee continues to liaise with Society staff on Loss Prevention initiatives and will report further as developments occur.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"C. Campbell"  
Chair

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

Item 2 - Director's monthly Errors & Omissions General Expense Budget Report for the four month period ending April 30, 1992. (Appendix "A")

Also attached to the Report is a memorandum to the profession dated June 30, 1992 re: Insurance Update.

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 10th of September, 1992 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Bragagnolo, Hickey, Feinstein, Epstein, Howie, Cass, Somerville and Ms. Elliott.

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

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reports a decrease in both the number and cost of new claims reported during the first eight months of 1992. During this period, 2,136 claims were reported at a cost of \$28,815,370. For the same period in 1991, 2,446 claims were reported at a cost of \$32,649,562. The result is 310 fewer claims and a reduction of \$3,834,192 in the cost of new claims. While there are no assurances that the decrease in claim frequency and cost will be sustained, the Director is cautiously optimistic that this pattern will continue for the remainder of 1992.

2. LPIC 1993 REINSURANCE RENEWAL

The Chair, the Director and the Society's Brokers are scheduled to meet with LPIC's Reinsurers shortly to discuss renewal of LPIC's reinsurance for the twelve-month period commencing January 1, 1993.

24th September, 1992

3. SUBCOMMITTEE ON LOSS PREVENTION / E & O PROGRAM REVIEW

Your Committee responded affirmatively to the Chair's report that the Director's recommendations on a new Loss Prevention initiative were considered and endorsed by the Subcommittee on Monday August 31, 1992.

4. ERRORS & OMISSIONS LEVY INQUIRY

A query has arisen regarding the obligation to pay the E & O levy by members who are employed by temporary placement agencies. A member, employed by such an agency, would be temporarily placed in the offices of a client, which on occasion would be a lawyer or a law firm. The member would perform professional services on behalf of the client. Currently, members who are employed by entities which are not law firms or lawyers and who do not engage in practice or perform professional services outside of such employment, are entitled to an exemption from the E & O levy. Your Committee is of the view that members employed by such agencies and who perform professional services on behalf of lawyers or law firms are obligated to pay the levy.

5. ERRORS & OMISSIONS COVERAGE INQUIRY

A lawyer licensed in Ontario and Michigan, wishes to conduct a practice which encompasses both Ontario and Michigan law from his Windsor law office. The Director of Insurance has reviewed the insurance requirements and concluded as follows:

a) The Policy provides coverage only for the practice of the "Law of Canada, its provinces and territories" and, with respect to any services performed outside of Canada, applies to such practice only where "such services occupy less than ten percent (10%) of an insured's time docketed for professional services in each calendar year".

b) This lawyer's practice will encompass both Canadian and U.S. law and involve clients on both sides of the border. Assuming the U.S. portion of his practice will be relatively substantial -- certainly more than 10%, this lawyer would be uninsured under the Mandatory Ontario Policy for any claims arising out of any service performed outside of Canada and, in any event, for such claims as might arise with respect to the practice of U.S. law.

c) As long as this lawyer has separate insurance to cover the Michigan practice, no problem exists. Even if this lawyer does not carry such coverage, this would seem to be outside of the responsibility of the LSUC and come within the regulation of the Michigan Bar.

Your Committee adopts the Director's conclusions.

6. ONTARIO INSURANCE COMMISSION (OIC): 1992 LPIC EXAMINATION

The OIC recently completed its 1992 LPIC examination and has requested the following:

a) The OIC has requested an undertaking from the Society that LPIC's capital and surplus will not be permitted to drop below \$3 million. Your Committee recommends providing the OIC with an undertaking in this regard.

24th September, 1992

b) By agreement with LPIC, the E & O Department is responsible for the investigation and settlement of all claims under the Mandatory Program. In this regard, claims and claim related expenses are paid by Law Society cheques after which the appropriate reimbursement is pursued from LPIC. The OIC has strongly recommended that LPIC cheques be used for all such payments, to be followed by recovery of the group deductible from the Society. The Director is pursuing the necessary administrative changes to accomplish this.

7. SUBCOMMITTEE:  
COMPENSATION FUND COMMITTEE / INSURANCE COMMITTEE

A Subcommittee consisting of the Chair and Ken Howie has been created to consider possible future interactions between the Lawyers' Fund For Client Compensation and the Errors & Omissions Program.

8. PRIORITIZING COMMITTEE ACTIVITY

Your Committee is of the view that leading priorities for this coming year include implementation of the Director's recommendations on the previously mentioned Loss Prevention initiative as well as review of coverage issues including Compensation Fund and innocent partner issues.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"C. Campbell"  
Chair  
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RESEARCH AND PLANNING COMMITTEE

Meeting of September 10th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of September, 1992, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, C. Curtis, S. Elliott, A. Feinstein, J. Herbert, C. Hill, P. Lamek, the Hon. A. Lawrence, R. Manes, C. McKinnon, F. Mohideen.

Also present: A. Brockett, S. Hodgett.

C.  
INFORMATION

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C.1.        STRATEGIC PLANNING CONFERENCE

C.1.1.        A Benchers' Strategic Planning Conference will be held on September 25 and 26, 1992, under the title "Professionalism in the 90's: Responding to Social and Ethical Change". A principal objective is to formulate recommendations for action by the Law Society.

C.1.2.        At its October meeting your Committee expects to consider the recommendations from the conference with a view to bringing them before Convocation.

C.2.        VOLUNTARY PRO BONO PILOT PROJECT

C.2.1.        A 12-month pilot project is currently being conducted in co-operation with the Law Associations in Middlesex and Hamilton. Through the Law Society's Lawyer Referral Service, non-profit organisations in those two areas are able to obtain legal services on a pro bono basis. The purpose is to determine the feasibility of establishing a central, province-wide *pro bono* delivery system.

C.2.2.        The Voluntary Pro Bono Subcommittee (chaired by Ronald Manes) expects to submit an interim report in November 1992.

C.3.        DISPUTE RESOLUTION

C.3.1.        The Dispute Resolution Subcommittee (chaired by Lloyd Brennan) is preparing a report on the responsibilities of the Law Society in respect of alternative dispute resolution. The report will focus on the aspects of

Education

Insurance

Professional Conduct

Public Information.

C.3.2.        An interim report was received by Convocation in April 1992. The subcommittee expects to present its final report in January 1993.

C.4.        KEEPING THE PROFESSION INFORMED ABOUT TECHNOLOGICAL DEVELOPMENTS

C.4.1.        A one-person subcommittee (Susan Elliott) is working towards the preparation of a report on the role that the Law Society might play in assisting and up-dating the legal profession in respect of technological developments.

C.5.        STATEMENT ON THE ROLE OF THE LAW SOCIETY

C.5.1.        As a result of discussions during the past year concerning the respective responsibilities of benchers, staff and committees, your Committee decided in June, 1992 to establish a subcommittee to prepare a draft statement on the role of the Law Society.

C.5.2.        Your Committee understands that the Treasurer hopes to seek the views of the profession on issues relating to the role and activities of the Law Society.



- C.5.3. Casey Hill, Paul Lamek and Fatima Mohideen have been appointed members of the subcommittee. They will proceed in consultation with the Treasurer.

C.6. DETERMINATION OF LAW SOCIETY PRIORITIES

- C.6.1. A further consequence of the discussions last year concerning the responsibilities of benchers, staff and committees was a decision to appoint a subcommittee to recommend a structure for the determination of Law Society priorities. The project is dependent upon the definition of the role of the Law Society, mentioned in the previous paragraph; it also overlaps with steps that are being undertaken by the Finance and Administration Committee. The Research and Planning Committee will therefore proceed only when it seems appropriate to do so in light of these other initiatives.

C.7. SURVEY OF HOURS SPENT BY BENCHERS ON LAW SOCIETY BUSINESS

- C.7.1. A survey of hours spent by benchers on Law Society business was conducted over the months January through April 1992. Preliminary results were reported to the Research and Planning Committee in June. A more detailed analysis is being prepared for consideration by the Committee at its October meeting.

C.8. TRANSCRIPTS OF THE PROCEEDINGS OF CONVOCATION

- C.8.1. Since September, 1991, a transcript of the proceedings of each meeting of Convocation has been produced. Copies of the transcript have been sent to the Great Library and to each of the County and District Law Libraries. They have also been advertised as available for purchase by members.
- C.8.2. As agreed in Convocation last September, a survey of the County and District Law Libraries will be undertaken to evaluate the arrangement whereby they are each sent a copy of the transcript.
- C.8.3. Your Committee will arrange for the production of an index to future issues of the transcript.

C.9. ROLL-CALL VOTES

- C.9.1. The practice of conducting roll-call votes in Convocation was introduced last year in response to the suggestion that benchers' voting records should be disclosed to members of the Society.
- C.9.2. During the past year, details of the roll-call votes have not been published. Convocation was of the view that if the details of roll-call votes were to be published there would also need to be a summary of the debate leading up to each vote. Over the course of the past year some summaries of debate have been prepared on an experimental basis.
- C.9.3. At its October meeting, your Committee will be reviewing the summaries with a view to making a recommendation to Convocation concerning the publication of roll-call votes.

24th September, 1992

C.10. FORMAT OF COMMITTEE REPORTS

- C.10.1. Since October 1991, the Research and Planning Committee has been experimenting with a revised format for its reports to Convocation. One element of the revised format has been the use of a decimal numbering system. Another element has been a standard order for the presentation of policy recommendations.
- C.10.2. Your Committee will be reviewing the experiment with a view to deciding whether to recommend that Convocation adopt a revised format for all committee reports.

C.11. PROCEDURE FOR PRESENTATION OF REPORTS TO CONVOCATION

- C.11.1. Your Committee has discussed the Treasurer's suggestion that committee reports which deal only with routine and uncontroversial matters might be "taken as read" to allow more time for the discussion of substantive issues. Colin McKinnon has been asked to prepare a recommendation for consideration at the October meeting of the Committee.

C.12. DISTRIBUTION OF CONVOCATION MATERIALS

- C.12.1. Your Committee will review current procedures for the copying and mailing of Convocation materials with a view to recommending steps to avoid duplication and unnecessary courier expenses.

C.13. INDEX OF PAST REPORTS AND POLICY PAPERS

- C.13.1. It has been suggested that benchers might find it useful to have an index of policy issues dealt with by Standing Committees and Special Committees in past years.
- C.13.2. A meeting with a representative of the Archives Department will be arranged to discuss this matter further.

C.14. ADVISORY MEETINGS

- C.14.1. Members of the Committee have mentioned the desirability of continuing the practice by which all benchers are invited to an Advisory Meeting on the evening preceding Committee Day. The matter will be discussed with the Treasurer.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"T. Bastedo"  
Chair  
.....

24th September, 1992

CLINIC FUNDING COMMITTEE

Meetings of June 25th, July 29th and September 1st, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Legal Aid begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated September 16, 1992 be adopted.

Attached is a copy of the Clinic Funding Committee's Report.

ALL OF WHICH is respectfully submitted

Robert L. Holden,  
Director,  
Legal Aid.

September 16, 1992

To: Robert Holden, Esq.,  
Provincial Director,  
The Ontario Legal Aid Plan.

The Clinic Funding Committee met on June 25, 1992, July 29, 1992 and September 1, 1992. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin.

A. DECISIONS

1. Applications

a. 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 Nipissing Community Legal Clinic in an amount up to \$350.

24th September, 1992

b. 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:

Elliot Lake & Northshore Community Legal Clinic - up to \$3,000  
Advocacy Resource Centre for the Handicapped - up to \$6,916  
Bloor Information & Legal Services - up to \$2,000  
Injured Workers' Consultants - up to \$8,050

2. Special Education/Outreach Funds

The Committee reviewed and approved an application from the Steering Committee on Social Assistance for funding, in an amount up to \$15,000, to conduct a one and a half-day community organizing and public legal education conference directed to social assistance consumers and advocates on the legislative changes proposed for social assistance in Ontario. This allocation includes the cost of travel and childcare to ensure consumer access to the conference.

3. Capital Purchases

The Committee has approved allocations to community legal clinics, for capital purchases and renovations in 1992/93, as follows:

Advocacy Resource Centre for the Handicapped	\$12,000
Algoma Community Legal Clinic	\$ 500
Centre for Spanish-Speaking Peoples	200
Community Legal Education Ontario	\$ 5,200
Clinique juridique populaire de Prescott et Russell	1,000
Community Legal Services (Ottawa-Carleton)	2,300
Elliot Lake & Northshore Community Legal Clinic	1,300
Georgina Community Legal Services	1,000
Jane Finch Community Legal Services	200
Kensington-Bellwoods Community Legal Services	1,000
Kingston Community Legal Clinic	500
Metro Toronto Chinese & Southeast Asian Legal Clinic	500
Toronto Workers' Health & Safety Legal Clinic	1,000

ALL OF WHICH is respectfully submitted

"P. Epstein"  
Philip Epstein, Q.C.,  
Chair,  
Clinic Funding Committee.

September 16, 1992

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DRAFT MINUTES - June 25th, 26th, July 10th and September 10th, 1992

(See draft copies in Convocation file)

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CERTIFICATION BOARD

June and September, 1992 Reports

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Friday, the 24th of April, 1992 at eight o'clock in the morning, the following members being present: D.R. O'Connor (Chair), D.W. Scott (Vice-Chair), J. Callwood, M.L. Pilkington, G.P. Sadvari and R.D. Yachetti. S. Thomson, of the Law Society, was also present.

Your Board met on Thursday, the 14th of May, 1992 at four o'clock in the afternoon, the following members being present: D.W. Scott (Vice-Chair), A. Feinstein, V. Krishna, M.L. Pilkington and G.P. Sadvari. Also in attendance were invited participants D. Cox (Chair - County of Carleton Law Association Committee to Review the Draft Standards for Environmental Law Certification Program), W. Johnson (Past President - County of Carleton Law Association), and R.A. Cotton (Chair) and H. Poch (Vice-Chair) of the Environmental Law Specialty Committee. S. Thomson, of the Law Society, was also present.

Your Board met on Friday, the 29th of May, 1992 at eight o'clock in the morning, the following members being present: D.R. O'Connor (Chair), D.W. Scott (Vice-Chair), J. Callwood, A. Feinstein, P.G. Furlong, R.D. Manes, M.L. Pilkington, G.P. Sadvari and R.D. Yachetti. D.W. Brady (Chair - Workers' Compensation Law Specialty Committee) and S. Thomson, of the Law Society, were also present.

Your Board met on Thursday, the 11th of June, 1992 at four o'clock in the afternoon, the following members being present: D.R. O'Connor (Chair), D.W. Scott (Vice-Chair), J. Callwood, P.G. Furlong and M.L. Pilkington. S. Thomson, of the Law Society, was also present.

The Education Sub-Committee of the Certification Board met on Friday, the 12th of June, 1992 at nine-thirty in the morning, the following members being present: M.L. Pilkington (Chair), R.D. Manes and G.P. Sadvari. A. Treleaven, B. Duncan and S. Thomson, of the Law Society, were also present.

Specialty Committees met as follows:

The Labour Law Specialty Committee met on Monday, the 20th of April, 1992 at five o'clock in the afternoon.

The Criminal Litigation Specialty Committee met on Friday, the 24th of April, 1992 at one o'clock in the afternoon.

The Immigration Law Specialty Committee met on Tuesday, the 28th of April, 1992 at four o'clock in the afternoon.

The Intellectual Property Law Specialty Committee met on Thursday, the 21st of May, 1992 at four-thirty in the afternoon.

The Criminal Litigation Specialty Committee met on Friday, the 29th of May, 1992 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 2nd of June, 1992 at eight-thirty in the morning.

A.  
POLICY

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1. SPECIALIST APPLICANTS - USE OF NON-ONTARIO REFEREES

Specialist applicants must include on their application form the names of four to six lawyers who have personal knowledge of the applicant's work and who would be willing to provide references in confidence to the Law Society.

In response to a recent inquiry about the possibility of using referees from other provinces, the United States, or further abroad, the Certification Board has established that a minimum of four referees must be Ontario lawyers. The two additional referees may reside elsewhere, and the applicant is free to have other lawyers write to the Law Society independently in support of the application.

2. COST-CUTTING MEASURES

It is the opinion of the Certification Board that further efforts must be made to reduce the cost of the Program. The Board has requested statistical data demonstrating financial problem areas and, where feasible, comparable information from American certification sources.

B.  
ADMINISTRATION

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1. PROPOSED ENVIRONMENTAL LAW SPECIALTY

Environmental Law was approved as a Specialty area by Convocation on September 28, 1990. The Environmental Law Specialty Committee met over the course of a year to draft the Environmental Law Specialist Standards. The proposed Standards were amended following consultation with interested members of the profession and the final Report of the Committee was submitted to the Certification Board in September 1991.

The Certification Board has debated for a number of months about the suitability of recommending to Convocation that Environmental Law ought to be implemented as an area for Specialist certification at this time.

Recognizing that Environmental Law is a specialty field in the practice of law, the Certification Board has approved in principle the implementation of the Environmental Law Specialty and the proposed Standards as prepared by the Committee. The Board is, however, of the opinion that an immediate implementation of the Environmental Law Specialty would create barriers to certification for many lawyers in the province who ultimately ought to be eligible for certification. Environmental law is a burgeoning area and it is expected that many lawyers will be choosing to concentrate their practice in this field in the next few years. To implement the Specialty at this time will give an unfair advantage to Toronto lawyers.

In June 1993, the Board will reconsider whether the Environmental Law Specialty should proceed.

24th September, 1992

C.  
INFORMATION

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1. CERTIFICATION OF SPECIALISTS

The Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists (3 names):

Larry G. Culver (of Hamilton)  
Thomas R. Lofchik (of Hamilton)  
David B. Williams (of London)

The Board is pleased to report the certification of the following lawyers as Criminal Litigation Specialists (6 names):

Peter M. Barr (of St. Catharines)  
John J. Donohue (of Toronto)  
Dean D. Paquette (of Hamilton)  
Murray D. Segal (of Toronto)  
Steven Skurka (of Toronto)  
Paul M. Taylor (of Brampton)

The Board is pleased to report the certification of the following lawyer as a Civil and Criminal Litigation Specialist (1 name):

Lawrence Greenspon (of Ottawa)

The Board is pleased to report the certification of the following lawyers as Immigration Law Specialists (5 names):

Marshall E. Drukarsh (of Toronto)  
Nancy Goodman (of Toronto)  
Mendal M. Green (of Toronto)  
Howard D. Greenberg (of Toronto)  
Cecil L. Rotenberg (of Toronto)

2. NATIONAL STANDARDS FOR CERTIFICATION OF SPECIALISTS

The Board considered the attached letter dated March 11, 1992 from David Cruickshank, Chair - Joint National Committee on Legal Education of the Federation of Law Societies of Canada. Professor McGovern's article "Accreditation of Specialization: A Continuing Legal Education Administrator's Perspective" is also attached.

The Board is of the opinion that the Law Society should be proactive in its approach to certification of Specialists and anticipate the eventual implementation of certification programs by other Law Societies.

The Board will communicate to Mr. Cruickshank its interest in co-ordinating a meeting of Federation of Law Societies to discuss Specialist certification at the national level. The Board recommends that the August Annual Federation of Law Societies meeting in Halifax may be an opportune time to hold a one-day or half-day program on Specialist certification.

The Board remains of the view that individual Law Societies should retain jurisdiction over the administration of provincial certification plans.

24th September, 1992

3. COMMUNICATIONS DEPARTMENT SURVEY

The Certification Board considered whether any matters arising from the survey require special consideration or action.

Members are of the opinion that there is an urgent need to provide a update to the profession about the progress of the Certification Program, some of the recurring issues and concerns pertaining to the certification of Specialists and the response of the Board to those concerns. A proposal for reporting on and marketing the Certification Program will be drafted during the summer months for review by the Board in September. It has also been recommended that articles discussing the impact of the certification of Specialists in the practice of law should be provided to various legal publications in the coming months.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"R. Yachetti"  
Chair

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

C-Item 2 - Letter from Mr. David Cruickshand, Chair, Joint National Committee on Legal Education to Mr. Paul Beckmann, Q.C., Federation of Law Societies of Canada dated March 11, 1992 re: National Standards for Certification of Specialization. Copy of article by Professor Peter J. McGovern re: Accreditation of Specialization: A Continuing Legal Education Administrator's Perspective.

(Pages 1 - 5)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Friday, the 26th of June, 1992 at eight o'clock in the morning, the following members being present: D.R. O'Connor (Chair), J. Callwood, P.G. Furlong and R.D. Manes. S. Thomson, of the Law Society, was also present.

Your Board met on Thursday, the 10th of September, 1992 at four o'clock in the afternoon, the following members being present: R.D. Manes (Vice-Chair), J. Callwood and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

Your Board met on Monday, the 21st of September, 1992 at six-thirty in the evening, the following members being present: R.D. Yachetti (Chair), J. Callwood, P.G. Furlong and M.L. Pilkington. S. Thomson, of the Law Society, was also present.

Specialty Committees met as follows:

The Intellectual Property Law Specialty Committee met on Wednesday, the 17th of June, 1992 at four-thirty in the afternoon.



The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 23rd of June, 1992 at eight-thirty in the morning.

The Bankruptcy and Insolvency Law Specialty Committee met on Tuesday, the 23rd of June, 1992 at six o'clock in the evening.

The Civil Litigation Specialty Committee met (conference call) on Wednesday, the 22nd of July, 1992 at eight-thirty in the morning.

The Immigration Law Specialty Committee met on Tuesday, the 28th of July, 1992 at four o'clock in the afternoon.

The Civil Litigation Specialty Committee met on Wednesday, the 9th of September, 1992 at eight-thirty in the morning.

A.  
POLICY

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1. CERTIFICATION PROCEDURES

It is the intention of the Board to achieve a greater level of formality in all aspects of the Certification Program.

The Board has instructed that a Certification Board Policy Manual is to be prepared. The Manual, for the use of Certification Board members, will outline present procedures, policies (including dates of implementation), Committee lists, and all Specialist Standards.

Once the Board Manual has been approved, a second policy and procedure manual will be prepared for general distribution to the legal profession.

2. CERTIFIED SPECIALISTS SUSPENDED FOR NON-PAYMENT OF ERRORS AND OMISSIONS LEVY

The Board recommends that Specialists who are suspended for non-payment of their errors and omissions levy should be informed that their names will be removed from the list of currently-certified Specialists during the duration of their suspension.

B.  
ADMINISTRATION

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1. REGULAR MEETINGS OF THE CERTIFICATION BOARD

A regular meeting schedule has been established for the Certification Board. The Board will meet on Committee Meeting Day from 12 noon to 1:30 p.m.

2. LABOUR LAW AND WORKERS' COMPENSATION LAW SPECIALTIES

The Labour Law and Workers' Compensation Law Specialty Committees have submitted proposed Standards for those Specialty areas.

The Board is considering whether the public would be better assisted by including those Specialties under an umbrella Employment Law Specialty, i.e.

24th September, 1992

Employment Law (Labour Relations)  
Employment Law (Workers' Compensation)  
Employment Law (Wrongful Dismissal)

There are divergent views on this proposal, and the Board intends to consider the matter further before making any formal recommendation to Convocation.

C.  
INFORMATION

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1. CERTIFICATION OF SPECIALISTS

The Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

Nestor E. Kostyniuk (of Toronto)  
Michael S. O'Neill (of Sault Ste. Marie)

The Board is pleased to report the certification of the following lawyer as an Immigration Law Specialist:

Joel S. Guberman (of Toronto)

2. SPECIALIST INTERVIEWS

An Interview Training Booklet has been distributed to all County and District Law Libraries to accompany the previously-distributed Interview Training Videotape. Copies are available upon request from the Certification Program office.

Interviews of Specialist applicants are currently arranged on an ad hoc basis and are conducted by certified Specialists. Wherever possible, an effort is being made to accommodate applicants by having interviews held in or near their communities. Combination in-person/conference call interviews have allowed for greater flexibility. As an example, from June 28, 1991 to September 18, 1992, 42 interviews were conducted in a total of eight Ontario communities (Toronto, Ottawa, Hamilton, St. Catharines, Burlington, Sault Ste. Marie, Kitchener, London).

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"R. Yachetti"  
Chair  
.....

24th September, 1992

FINAL REASONS RE: WILLIAM GORDON WINSOR

In the matter of  
The Law Society Act  
and in the matter of

William Gordon Winsor  
of the City of North York  
a barrister and Solicitor

REASONS

THE COMPLAINT

On January 22, 1990, Complaint D7/90 alleging professional misconduct was issued against William Gordon Winsor. Over a period of four days (November 7, 1990, December 7, 1990, March 27, 1991 and May 23, 1991) a Discipline Committee heard evidence and determined, as a result of that evidence combined with certain admissions of fact by the Solicitor, that three particulars of professional misconduct had been established.

The particulars found to be proven were:

- 2(a) While acting for the purchaser, Agnes Miranda, and the mortgagee, Montreal Trust Company, he attempted to mislead the mortgagee by falsely leading it to believe that the balance of the funds to close the purchase transaction were not borrowed funds when he knew that most of these funds were being supplied by a vendor take back mortgage in third position.
- (d) While acting on the various Tandon transactions, he misapplied approximately \$210,375.47, more or less, of trust funds by appropriating funds from his mixed trust account to close the Tandon purchase transactions when he did not have sufficient funds in trust to close those transactions, resulting in a total loss to other clients.
- (g) He failed to properly maintain the books and records of his practice of law despite being Reprimanded in Committee on a prior occasion for the same misconduct.

THE FACTS

The facts are set forth in the Report and Decision of the Discipline Committee and need not be repeated here in any detail. Of the three particulars found to be proven, one was more serious than the others, that is particular 2(d) alleging that the Solicitor "...misapplied approximately \$210,375.47, more or less, of trust funds by appropriating funds from his mixed trust account...."

The Solicitor operated mixed trust accounts at both the Royal Bank of Canada and at a branch of Canada Trust. On Friday, April 28, 1989, the Solicitor closed 25 real estate transactions, four such transactions being for one client. Ultimately, proceeds of sale were deposited to the Solicitor's trust account at Royal Bank then erroneously both paid out to a client, and transferred to Canada Trust to complete purchase transactions for that client. While this is an oversimplification of the facts, it in essence describes what happened. As a result of these and other errors, a trust account shortage of \$210,375.47 arose, approximately \$30,000.00 of which was eventually recovered from the client who, by then, was in financial difficulty. Immediately upon learning of the trust account shortage, the Solicitor contacted his client and notified the Director of Insurance of the Law Society.

DECISION OF THE DISCIPLINE COMMITTEE

The Discipline Committee found as a fact that the Solicitor was not dishonest and did not personally benefit from the misapplication of the trust funds. It found that "While the misapplication was inexcusable, it was not intentional". The Committee determined that the Solicitor's conduct was "...gross negligence tantamount to wilful blindness..."

The Committee was strongly of the view that there must be a clear message to the profession that such conduct cannot be tolerated and that the interests of the public must be protected. As the Solicitor had previously been Reprimanded in Committee for deficiencies in his books and records (in November of 1984) the Committee concluded that a reprimand would be inappropriate and, in all the circumstances a suspension of 12 months was appropriate.

PROCEEDINGS BEFORE CONVOCAATION

The Solicitor was represented both before the Discipline Committee and before Convocation by Charles C. Mark, Q.C., the Society was represented by Thomas J. Lockwood, Q.C.

The proceedings before Convocation were in two stages. Initially, Mr. Mark argued that the Solicitor had not been found guilty of the exact particulars as alleged and therefore it could not be said that the allegations of professional misconduct had been proven, other than with respect to particular 2(g). Mr. Lockwood submitted that, not only were the particulars which the Discipline Committee found to be established supported by the findings in its Report, in any event, the purpose of the particulars was to afford the Solicitor notice of the charges against him or her so that a full and adequate defence could be prepared. Citing *Re Stevens and Law Society of Upper Canada* (1979), 55 O.R. (2d) 405 (Div. Ct.) Mr. Lockwood argued that the particulars of professional misconduct need not conform to the same standards of precision as would criminal charges and, the Complaint itself is not in the form of an indictment.

Convocation deliberated upon this preliminary matter and adopted the Report of the Discipline Committee. Submissions were then invited as to penalty. These reasons deal only with the penalty portion of the proceedings before Convocation.

In addition to written and oral submissions by counsel, Convocation heard evidence from four witnesses (three called by the Solicitor, one called by the Society); a book of case authorities was tabled, together with a copy of the Agreed Statement of Facts relating to the 1984 discipline proceedings. The Report of the Discipline Committee dated November 7, 1991 was also before Convocation.

The Discipline Committee's recommendation as to penalty took into accounting the following considerations:

- 1) There was no finding of dishonesty;
- 2) There was no personal benefit to the Solicitor;
- 3) While the misapplication of funds was inexcusable, it was not intentional;
- 4) There must be a clear message to the profession that conduct of this nature cannot be tolerated;
- 5) The interests of the public must be protected;
- 6) Given the Solicitor's previous discipline record a reprimand would be inappropriate.

24th September, 1992

Counsel for the Solicitor urged that a Reprimand in Convocation would be appropriate and noted it would permit the Solicitor to continue to practise, thereby generating income with which to repay the balance of the trust account shortage.

Counsel for the Society argued that the 12 month suspension suggested by the Discipline Committee should be upheld, to send a strong message to the profession and the public.

Convocation was of the view that a suspension was appropriate. Various lengths of time were considered for the suspension. Convocation decided that the length of the suspension should take into account facts 1 to 3 above and should also address factors 4 to 6. That there was no dishonesty was important. It was also noted that the amount of the loss, given negligence, gross or otherwise, should not in itself determine the severity of the penalty, although it is also a factor, along with the others already noted. It was the Solicitor's actions, practices and procedures which led to the professional misconduct; the size of the loss was not the misconduct.

Solicitors have a responsibility to maintain adequate staff, use proper procedures and safeguards, supervise their files and generally be careful practitioners. The profession and public do not demand absolute perfection but, they do expect adequate and proper supervision and effort. This Solicitor failed to provide such a level of service. This solicitor's conduct was beyond the inadvertent lack of care which is found in cases of simple negligence. While his conduct was not dishonest, it was more than mere carelessness. Negligence is not a basis for discipline unless it is gross or habitual, or both. However, this is a case of misapplication of funds rather than misappropriation, the difference being that dishonesty is required for misappropriation while misapplication is improper use of the funds.

The imposition of a penalty in discipline proceedings is an individual process based on the facts unique to each case. Nonetheless, a range of penalties exists and Convocation strives to achieve consistency by recognizing the relative severity of one form of misconduct compared to another.

If the Solicitor had been found to have been dishonest, it is likely he would have been disbarred. Clearly there is a distinction to be made between dishonest acts and negligent ones. Negligence intrinsically does not involve moral turpitude or mens rea.

The range of sanctions available to Convocation as found in S.34 of the Law Society Act and S.12 of the Regulations are:

1. Disbarment
2. Permission to Resign
3. Suspension
4. Reprimand in Convocation
5. Any other disposition Convocation deems appropriate
6. Reprimand in Committee

A suspension is a serious penalty. It deprives the Solicitor of income. It disrupts the Solicitor's practice and inconveniences existing clients, who may, as a result, decide to transfer their business elsewhere. It indicates to the public and to the profession that the Solicitor has a serious discipline problem which requires termination of the solicitor's right to practice for a period of time.

24th September, 1992

In this case, Convocation determined that a suspension of 6 months, commencing April 1, 1992 would serve the purpose of protecting the public while sending a strong message to the profession that negligence, such as that found in this case, is a serious form of professional misconduct. The suspension also conveys the message to the public and to the profession that members are accountable for errors which arise from poor practice falling short of dishonest but not meeting the standard of care which one expects from a Solicitor.

DATE: August 10, 1992

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ADMISSIONS COMMITTEE

Meeting of September 10th, 1992

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 10th of September, 1992 at 9:30 a.m., the following members were present: Mr. Carter (Chair), Ms. Curtis, Ms. Mohideen, Messrs. Lamont and Goudge. M.J. Angevine, D. Cushing and P. Gyulay were also present.

A.  
POLICY

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1. PRIORITIES OF THE ADMISSIONS COMMITTEE FOR 1992/93

As requested by the Treasurer, the Admissions Committee has identified its priorities for the coming year and presents the following list in order of precedence:

- (i) Implementation of the Report of the Special Committee on Requalification
- (ii) Procedures for Admissions Hearings
- (iii) Transfer Examinations
- (iv) Records Management Project
- (v) Review of Administrative Fees
- (vi) Policy Re: Members' Names and Changes to Rolls

Approved

24th September, 1992

2. OCCASIONAL APPEARANCES ON SUMMARY CONVICTIONS

The Committee was asked whether a Manitoba lawyer, in light of the Pointts decision, is required to obtain an occasional appearance when appearing in Ontario on summary conviction matters where, under Ontario law, an agent can appear.

Staff counsel for the Unauthorized Practice Committee reviewed the Pointts decision and concluded that an occasional appearance is probably not required at law. There are, however, issues of professional comity. The out-of-province lawyer has been retained because he is a lawyer and presumably because of his expertise in the area. The Committee was asked whether as a lawyer, he should be expected to comply with the occasional appearance rules in Ontario and, if not, should he be required to expressly advise the person for whom he is acting that he is appearing as agent and not as lawyer. The concern is that the usual rules governing solicitor-client relationships, including Errors and Omissions Insurance, would not apply.

It was noted by the Committee that the Law Society of Manitoba does not permit an Ontario lawyer to appear as an "agent" in summary conviction matters. The Committee recommends that, as a matter of courtesy, the lawyer should advise the Law Society of Upper Canada when appearing, in Ontario, as an agent. In addition, the lawyer should disclose to the client, prior to the appearance, that he will be acting as agent on their behalf while in Ontario and not as lawyer.

The Committee was also asked to consider whether in the case of a hybrid offence, the lawyer could appear as agent before the Crown made its election. The Committee confirmed that the offence is indictable until the Crown elects otherwise and, as a result, the lawyer could not appear as agent.

3. GUIDELINES FOR MEDICAL REPORTS SUPPORTING PETITIONS TO COMMITTEE

A member has contacted the Society regarding reinstatement. The member was suspended for non-payment of the annual fee on the 27th February, 1987. Following a period of unemployment, his inability to return to practice was due to a severe and prolonged depressive illness. The member has been informed that there are three issues to be dealt with in order for his application to be considered by the Admissions Committee; a) requalification b) arrears of fees, and c) submission of a medical report.

With respect to the medical report, the member was informed that the Society would require a current report from a duly qualified practitioner and that the report must contain satisfactory evidence that the member is now capable of returning to the practice of law. In response, the member has provided a letter from his psychiatrist along the following lines:

"In reply to your letter of July 15th, 1992, the above patient has been suffering from a schizo-affective illness since 1985. He was hospitalized in November, 1991 following a severe bout of depression. Since the patient's discharge, with the help of medication and a treatment programme, he has markedly improved. The improvement in his mood enabled the patient to supply teach at a school, in Toronto, last spring. His energy level has improved as well.

The patient continues to be under my care and continues to take medication. He is motivated to practise law again. It is uncertain how the stress he will encounter will affect his ability to function, but I believe that he is well enough to make this effort."

24th September, 1992

The staff concluded after reviewing this material that it did not constitute sufficient evidence to enable the Committee to reach a decision in respect of this member's application. The Committee was further advised that no express guidelines have been formulated regarding the nature and extent of medical evidence required for this type of situation.

The Committee was asked to consider whether this was an appropriate time to formulate some general guidelines to deal with this and similar situations. The Committee recommended that applicants be required to furnish evidence in support of reinstatement or readmission which establishes, beyond a reasonable doubt, the member's fitness to resume practice.

B.  
ADMINISTRATION

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1. DIRECT TRANSFER - COMMON LAW - REGULATION 4(1)

The following candidates have met all the requirements to transfer under Regulation 4(1):

Faisal Joseph  
Andrew Gibson Loucks  
Barbara Jane McLeod

Approved

2. DIRECT TRANSFER - QUEBEC - REGULATION 4(2)

The following candidate has met all the requirements to transfer under Regulation 4(2):

Maxime Antoine Pare

Approved

3. APPLICATIONS - FOREIGN LEGAL CONSULTANTS

Frank Joseph Marinaro has applied to become licensed as a foreign legal consultant in the Toronto office of Shearman & Sterling.

Frank Joseph Marinaro was called to the Bar of the State of New York on the 15th day of April, 1992. From September 1991 to the present, Mr. Marinaro has been an associate attorney with the firm Shearman & Sterling.

As Mr. Marinaro has engaged in the practice of law in his home jurisdiction for less than three of the five preceding years, he applies for status as a foreign legal consultant pursuant to the paragraph of the policy which provides that applicants who have been actively engaged in the practice of law in their home jurisdiction for less than three years may be licensed provided they are under the supervision of a foreign legal consultant and the supervisory arrangement has been approved by the Committee.

Included in the materials from Shearman and Sterling was a letter from Pamela M. Gibson, a registered foreign legal consultant, setting out the nature of the supervision Mr. Marinaro will be subject to in the Toronto office.

Mr. Marinaro's application was complete and both he and the firm have filed all necessary undertakings.



24th September, 1992

The application and supporting material were available at the request of the Committee.

Approved

4. REINSTATEMENT AFTER SUSPENSION

(i) The member referred to in Policy (Section A), Item # 3, of this report will, because he has been suspended for more than 5 years, be required to requalify. The member requested and received permission from the Deputy Secretary to enter Phase III of the BAC on the understanding that the Committee might impose other conditions on his reinstatement.

The Committee recommends his reinstatement be conditional upon:

- (a) the member producing further evidence that establishes, beyond a reasonable doubt, his fitness to resume practice and;
- (b) his undertaking to comply with the policy adopted by Convocation following the report of the Special Committee on Payment of Arrears of Fees.

(ii) Dwight Richard Robinson was called to the Bar on the 11th April, 1979. He was suspended for non-payment of the annual fee on the 25th February, 1983. Mr. Robinson is seeking reinstatement and is aware of the policy governing suspended members who seek reinstatement five or more years from the date of their suspension and expects that he will be required to sit some examinations.

The Committee recommends his reinstatement without requalification based on information contained in his application that he has been involved in active fulltime practice for the past five years in another jurisdiction (Michigan).

In addition, the Committee's recommendation for reinstatement is conditional upon his undertaking to comply with the policy adopted by Convocation following the report of the Special Committee on Payment of Arrears of Fees.

(iii) John Duncan Unsworth was called to the Bar on the 28th March 1992. He was suspended for non-payment of the annual fee on the 29th May 1987. Mr. Unsworth made enquiries regarding reinstatement on both the 29th and 30th of June, 1992, one month outside the 5 year deadline. Immediately following those enquiries he faxed a letter dated the 30th June, 1992, stating his desire to be reinstated and his intention to make a special petition to the Admissions Committee to request a waiver of the usual examinations. His letter of petition, dated the 4th of September, was before the Committee for its consideration.

Mr. Unsworth made his request on the basis of his being only 1 month outside the 5 year deadline at the time of making his intention to be reinstated known and on the strength of the work he has performed since the time of his suspension. During the last 5 years, he has set-up high-tech research and development companies and through those businesses has worked in the law-related areas of Corporate & Commercial and Real Estate. When he is reinstated, he would like to do litigation for his own companies.

The Committee recommends his reinstatement without requalification conditional upon:

24th September, 1992

- (a) the member signing a letter of undertaking that he will advise the Society should he wish to return to private practice and, in the Society's discretion, he may be required to complete some form of requalification at that time
- (b) his undertaking to comply with the policy adopted by Convocation following the report of the Special Committee on Payment of Arrears of Fees

(iv) Catherine Lauren Gelman, called to the Bar on the 4th April, 1984, was suspended for non-payment of the annual fee on the 27th February, 1987.

The five years of grace, granted suspended members, prior to facing possible retesting, has expired. Catherine Gelman submitted a petition, dated the 4th of September, 1992, requesting an exemption from the requalification examinations.

She plans to seek employment as duty counsel.

The material filed by the member in support of her request indicated that she has never practised law. Her experience during the period 1985-1988 is in journalism: researching, writing and broadcasting legal and business stories and teaching law at community college. Since 1988, she has been a fulltime writer.

The Committee concluded that although this individual had maintained some contact with the law during the period of suspension, it was not sufficient to justify an exemption from requalification. Accordingly, your Committee recommends that the petition be denied.

5. EXAMINATION RESULTS - STATUTES AND PROCEDURE

The results of the examination on Statutes and Procedure in Ontario held in July, 1992 were before the Committee. Four candidates sat the examination:

The following candidates passed:

Steven Mark Cook  
John Norman Gregory  
Douglas Hall Mathew  
Eden Melanie Oliver

Approved

6. CALL TO THE BAR AND CERTIFICATE OF FITNESS

(i) BAR ADMISSION COURSE

The following candidates having successfully completed the 33rd Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on September 24th, 1992:

Christopher Martin Aide  
Jeffrey Charles Lloyd Wolman

Approved

24th September, 1992

The following candidates expect to complete the 33rd Bar Admission Course in early September, 1992 and wish to be called to the Bar and granted a Certificate of Fitness, at Regular Convocation on September 24th, 1992:

Pei Chi Mary Louise Cheah  
Deanna Elaine Hazen  
Lois Mary Leslie  
Esther Olufunke Obembe  
Tommy Schneider  
Andrea Marianne Smart  
Anita Szigeti

These applications are approved conditional upon the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to September 24th, 1992.

The following candidate having successfully completed the 31st Bar Admission Course and having deferred her Call, has filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on September 24th, 1992:

Carmel Anne Whelton

Approved

(ii) Transfer from Another Province - Regulation 4(1)

The following candidates having successfully completed the Statutes and Procedure in Ontario Examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted Certificates of Fitness at Regular Convocation on September 24th, 1992:

Steven Mark Cook	Province of British Columbia
Douglas Hall Mathew	Province of British Columbia
Eden Melanie Oliver	Province of Alberta

Approved

(iii) Full-Time Members of Faculties of Approved Law Schools

The following candidate's application for call to the Bar was approved by both the Committee and Convocation when they met in April, 1992.

Having filed the necessary documents and complied with the requirements of the Society in his particular case, he is now entitled to be called to the Bar of Ontario and to be granted a Certificate of Fitness at Regular Convocation on September 24th, 1992:

Kent William Roach	Faculty of Law, University of Toronto.
	Fee: \$200.00

Approved

7. ADMISSION OF STUDENTS-AT-LAW

The following students, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)  
34th B.A.C. (Entering Articles 1991)

211. Al-Sewaidi, Ghina	Joint Committee on Accreditation/92;
212. Arnold, George Frederic	B.A. Western/81; LL.B. Western/84;
213. Auerbach, Lianne B.	3 yrs. Arts, Concordia; LL.B. Ottawa/91;
214. Earle, Edward Allen	B.A. McGill/85; M.A. McGill/88; LL.B. Toronto/91;
215. Earle, Liesha Dawn	B.A. Toronto/87; LL.B. Windsor/91;
216. Ebbs, Matthew Joseph	B.A. Carleton/88; LL.B. Ottawa/91;
217. Eboe-Osuji, Chilezie Guy	Joint Committee on Accreditation
218. Edney, James Bruce Charles	B.A. York/88; LL.B. Western/91;
219. Eisenkrein, David Victor	B.A. Alberta/87; LL.B. York/91;
220. Eklove, Mark Daniel	B.A. York/87; LL.B. Ottawa/91;
221. Elkin, Clive	B.A. Toronto/87; LL.B. Victoria/91;
222. Ellickson, Denis William	B.A. British Columbia/88; LL.B. Calgary/91;
223. Ellis, Richard Jonathan	B.A. Toronto/88; LL.B. Ottawa/91;
224. Emard, Joseph Gilles Stéphane	B.Comm. Ottawa/87; LL.B. Ottawa/91;
225. Engel, Mitchel	B.Sc. McGill/87; LL.B. Windsor/91;
226. Erzetic, Josephina Dana	B.A. Carleton/88; LL.B. York/91;
227. Esbaugh, Cynthia Rita	B.A. Western/87; B.Ed. Western/88; LL.B. Western/91;

228. Esco, Paul Frederick 3 yrs. Science, Memorial;  
LL.B. Windsor/91;
229. Evans, John Robert B.A. Guelph/88;  
LL.B. New Brunswick/91;
230. Eves, Sarah Ann B.A. Wilfrid Laurier/88;  
LL.B. Western/91;
231. Halewood, Peter Haines B.A. Toronto/85;  
M.A. McGill/87;  
LL.B. British Columbia/90;
232. Ilchenko, Alexander B.A. Carleton/88;  
LL.B. Ottawa/91;
233. Ingles, Marla Elysse 2 yrs. Arts, York;  
LL.B. York/91;
234. Ip, Andrew Pui-Lam CEGEP;  
B.C.L. McGill/91;  
LL.B. McGill/91;
235. Irvine, Brian Clifford B.A. York/77;  
LL.B. Windsor/91;
236. Iseman, Joel Steven B.A. Carleton/87;  
LL.B. Windsor/91;
237. Israel, Lauren Beth B.A. Michigan, USA/87;  
LL.B. Toronto/91;
238. Ivanoff, Paul Alexander B.A. York/88;  
LL.B. New Brunswick/91;
239. Jacques, Marie-Thérèse  
Isabelle B.Sc. Ottawa/88;  
B.Soc.Sc. Ottawa/88;  
LL.B. Ottawa/91;
240. Jakobsh, Thomas Franklin  
Ludwig B.A. Waterloo/87;  
LL.B. Toronto/91;
241. James, Lisa Carolyn 2 yrs. Arts, Western;  
LL.B. York/91;
242. Jaszi, Erzsebet B.A. Guelph/88;  
LL.B. Ottawa/91;
243. Jauvin, Chantal B.Soc.Sc. Ottawa/87;  
LL.B. Ottawa/91;
244. Jennings Linehan, Sheila  
Kathleen 3 yrs. Arts, McGill;  
LL.B. Windsor/91;
245. Jeremias, Lawrence Samuel B.A. Western/88;  
LL.B. Toronto/91;
246. Joachim, Roland Hugh B.Sc. Western/86;  
LL.B. York/91;
247. Johnson, Susan Marie B.B.A. St. Francis Xavier/87;  
LL.B. Queen's/91;

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| 248. Johnston, Charles Donald     | B.A. California (Berkeley), USA/88;<br>LL.B. York/91;                            |
| 249. Johnston, Cynthia Maura      | B.A. Memorial/87;<br>LL.B. York/91;  |
| 250. Jolly, Jennifer Elaine       | B.A. Queen's/86;<br>M.A. British Columbia/87;<br>LL.B. Dalhousie/91;             |
| 251. Jones, Allan Maurice         | B.A. Saskatchewan/86;<br>LL.B. Dalhousie/91;                                     |
| 252. Jones, Heather Lynn          | B.A. Alberta/88;<br>LL.B. Dalhousie/91;  |
| 253. Jourard, Ronald James        | B.A. Toronto/78;<br>M.A. Toronto/80;<br>LL.B. Jerusalem/88;<br>LL.B. Western/91; |
| 254. Junger, Kathryn Alice        | B.A. Waterloo/88;<br>LL.B. Windsor/91;   |
| 255. Nadler, David Jacob          | B.A. McGill/88;<br>LL.B. Toronto/91;   |
| 256. Nadon, Suzanne Chantal Marie | B.Soc.Sc. Ottawa/91;<br>LL.B. Ottawa/91;   |
| 257. Nagata, Lorene Kim           | B.A. Western/87;<br>LL.B. Western/91;  |
| 258. Nagy, Steven Louis           | B.Sc. Western/88;<br>LL.B. Queen's/91;   |
| 259. Nahm, Kyong-Woo              | B.A.Sc. McMaster/88;<br>LL.B. York/91;   |
| 260. Nathu, Shamshudin Amirali    | B.A. Yale, USA/88;<br>LL.B. Toronto/91;  |
| 261. Nayman, Stuart Ross          | B.Comm. Toronto/88;<br>LL.B. Toronto/91;   |
| 262. Neal, Patricia Anne          | B.A. York/74;<br>M.F.A. York/77;<br>B.Ed. Toronto/78;<br>LL.B. Queen's/91;       |
| 263. Neuberger, Joseph Alexander  | 2 yrs. Arts, York;<br>LL.B. York/91;   |
| 264. Newman, Allan Cory           | B.A. Western/88;<br>LL.B. York/91;   |
| 265. Nicholls, Andrew Midgley     | B.A.Sc. Toronto/87;<br>LL.B. Western/91;   |
| 266. Nichols, David               | B.A. Waterloo/88;<br>LL.B. British Columbia/91;                                  |

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| 267. Nield, Laura Jean             | B.A. Queen's/88;<br>LL.B. McGill/91;                           |
| 268. Nieuwhof, Carey Nicholas      | B.A. York/88;<br>LL.B. York/91;                                |
| 269. Nobili, Roberto               | B.A. Toronto/90;<br>LL.B. Queen's/91;                          |
| 270. Norris, John Robert           | B.A. Carleton/82;<br>M.A. Western/84;<br>LL.B. Toronto/91;     |
| 271. O'Brien, Colleen Mary         | B.A. Memorial/88;<br>LL.B. McGill/91;                          |
| 272. O'Brien, Susan Elizabeth      | B.A. Western/87;<br>LL.B. McGill/91;                           |
| 273. Occhiuto, Maurizio            | 2 yrs. Arts, Toronto;<br>LL.B. York/91;                        |
| 274. O'Connor, John Robert         | B.A. Queen's/88;<br>LL.B. Queen's/91;                          |
| 275. O'Donnell, Sean Patrick       | B.Comm. Queen's/88;<br>LL.B. Queen's/91;                       |
| 276. O'Donohue, Mary Christine     | B.A. Queen's/88;<br>LL.B. Queen's/91;                          |
| 277. Ofori, Theophilus             | Joint Committee on Accreditation/92;                           |
| 278. O'Halloran, John Roderick     | B.A. Carleton/87;<br>LL.B. Queen's/91;                         |
| 279. O'Heare, Frances Julia Joanne | B.Sc.N. Ottawa/81;<br>M.H.Sc. Toronto/84;<br>LL.B. Queen's/91; |
| 280. Ohnjec, Johnny Peter          | B.Sc. McGill/88;<br>LL.B. Ottawa/91;                           |
| 281. Oliver, Adrienne Frances      | B.A. Toronto/87;<br>LL.B. Ottawa/91;                           |
| 282. Olsheski, Gail Henley         | B.A. McGill/72;<br>M.A. Toronto/74;<br>LL.B. Toronto/91;       |
| 283. O'Reilly, Jennifer Anne       | B.A. Carleton/88;<br>LL.B. Windsor/91;                         |
| 284. Orgil, Oded                   | B.A. York/88;<br>LL.B. Western/91;                             |
| 285. Ornoy, Yuval                  | 3 yrs. Arts, York;<br>LL.B. Western/91;                        |
| 286. Orr, Alfred John De Lery      | B.A. Western/87;<br>LL.B. Dalhousie/91;                        |

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| 287. Orth-Lashley, Margaret<br>Deborah | B.A. Carleton/81;<br>LL.B. Ottawa/91;                                  |
| 288. Osanic, Philip Michael            | B.A. British Columbia/87;<br>LL.B. Queen's/91;                         |
| 289. Osterberg, William Colin          | B.A. Western/88;<br>LL.B. Western/91;                                  |
| 290. Ouellette, André Gaston           | B.Soc.Sc. Ottawa/86;<br>B.C.L. McGill/90;<br>LL.B. McGill/90;          |
| 291. Overtveld, Joy Catherine          | B.A. Ottawa/85;<br>LL.B. Ottawa/91;                                    |
| 292. Owen-Going, Pamela Denice         | B.A. Carleton/71;<br>B.A. Carleton/87;<br>LL.B. Victoria/92;           |
| 293. Owusu-Sechere, Isaac              | Joint Committee on Accreditation/91;                                   |
| 294. Turner, Frances Elizabeth         | B.A. McMaster/85;<br>LL.B. Ottawa/91;                                  |
| 295. Turner, Geoffrey Scott            | B.A. Queen's/88;<br>LL.B. Toronto/91;                                  |
| 296. Tzimas, Eleftheria                | B.A. McGill/88;<br>LL.B. York/91;                                      |
| 297. Umansky, David Steven             | 2 yrs. Arts, Western;<br>LL.B. Western/91;                             |
| 298. Ungerman, Nicole Michelle         | B.A. McGill/88;<br>LL.B. York/91;                                      |
| 299. Urdahl, Kathleen Donna            | B.A. Victoria/83;<br>B.A. Victoria/86;<br>LL.B. Windsor/91;            |
| 300. Utvich-Spear, Mary Jane           | B.A. Brock/90;<br>LL.B. York/91;                                       |
| 301. Yach, John Howard                 | B.A. Queen's/88;<br>B.P.H.E. Queen's/88;<br>LL.B. Queen's/91;          |
| 302. Yaffe, Gary Michael               | B.A. McGill/88;<br>LL.B. Toronto/91;                                   |
| 303. Yang, Maria                       | CEGEP;<br>1 yr. Arts, McGill;<br>B.C.L. McGill/90;<br>LL.B. McGill/90; |
| 304. Yantha, Tammy Marie               | 2 yrs. Arts, Toronto;<br>LL.B. York/91;                                |
| 305. Yazbeck, David                    | B.A. McMaster/88;<br>LL.B. Queen's/91;                                 |



306. Yoannou, Theodore	B.A. Mount Allison/88; LL.B. Toronto/91;
307. Young, Donna Elaine	B.Sc. Toronto/87; LL.B. York/91;
308. Young, Judith	B.A. McGill/70; LL.B. York/91;
309. Young, Toby Griffiths	B.A. Trent/87; LL.B. Queen's/91;
310. Youngman, Mark Randolph	B.A. Western/87; LL.B. New Brunswick/91;
311. Yung, Sheryl Wai-Shuen	B.A. Toronto/88; LL.B. York/91;
312. Zajdeman, Marcie Sherry	2 yrs. Arts, Toronto; LL.B. York/91;
313. Zakuta, Silvie	B.A. Toronto/87; LL.B. Queen's/91;
314. Zemans, David Harris	2 yrs. Arts, McGill; LL.B. Dalhousie/91;
315. Zimmerman, Aviam	B.A.Sc. Toronto/83; LL.B. Toronto/91;
316. Zobel, Ulrike	Mature Student; LL.B. York/91;
317. Zwiebel, Thomas Wolf	B.Sc. Toronto/88; LL.B. Queen's/91;

Under Bar Admission Course Regulation 22(7)  
35th B.A.C. (Entering Articles 1992)

1. Abdo, John Jacques	2 yrs. Science, Toronto; LL.B. Toronto/92;
2. Abe, Lisa Kristina	B.Comm. Toronto/91; LL.B. Windsor/92;
3. Abramson, Neil Michael	2 yrs. Arts, Toronto; LL.B. Toronto/92;
4. Acton, Heather Lynn	B.A. Carleton/88; LL.B. Ottawa/92;
5. Adamson, Steven John	B.A. Toronto/88; LL.B. British Columbia/92;
6. Adeyinka, Alex Joshua	Joint Committee on Accreditation/92;
7. Ahing, Darin Sean	B.Sc. Waterloo/89; LL.B. Windsor/92;

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| 8. Aitken, Ian Miller                    | B.A. Mount Allison/84;<br>LL.B. Windsor/92;                 |
| 9. Allen, Carol Angela                   | B.A. Toronto/89;<br>LL.B. Queen's/92;                       |
| 10. Allen, Gentry Matthew Masao          | B.A. McMaster/87;<br>LL.B. Western/92;                      |
| 11. Alvaro, Alexander                    | B.A.A. Ryerson/83;<br>M.A. Toronto/88;<br>LL.B. Queen's/92; |
| 12. Amlin, Lorelei Mary                  | 2 yrs. Arts, Windsor;<br>LL.B. Windsor/92;                  |
| 13. Andrew, Jeffrey Michael              | B.A. McMaster/83;<br>LL.B. Ottawa/92;                       |
| 14. Arena, Giulia Francesca Lina         | B.A. Ottawa/88;<br>LL.B. Ottawa/92;                         |
| 15. Aston, Katherine Elizabeth           | B.Sc. Toronto/88;<br>LL.B. Western/92;                      |
| 16. Atkins, Drew Gordon                  | B.A. Western/90;<br>LL.B. Western/92;                       |
| 17. Atkinson, Steven John                | B.A. Western/89;<br>LL.B. Manitoba/92;                      |
| 18. Aubin, Marie Roberte<br>Christine    | B.Sc. Ottawa/89;<br>LL.B. Ottawa/92;                        |
| 19. Bachand, Paul Harold Eugene<br>Henry | B.Com. Queen's/89;<br>LL.B. Ottawa/92;                      |
| 20. Bardwell, Sharon                     | B.B.A. New Brunswick/88;<br>LL.B. New Brunswick/92;         |
| 21. Barin, Babak                         | B.A. Northwestern, USA/88;<br>LL.B. Moncton/92;             |
| 22. Barney, George Todd                  | 3 yrs. Arts, Ottawa;<br>LL.B. Western/92;                   |
| 23. Barrette, Jean Paul                  | B.Sc. Ottawa/89;<br>LL.B. Ottawa/92;                        |
| 24. Barzo, John Ian                      | B.A. Western/91;<br>LL.B. Windsor/92;                       |
| 25. Baum, Douglas Martin                 | B.A. Concordia/87;<br>LL.B. Ottawa/92;                      |
| 26. Beattie, Kent Frederick<br>William   | B.A. Toronto/89;<br>LL.B. Western/92;                       |
| 27. Begic, George                        | B.A. Toronto/89;<br>LL.B. Queen's/92;                       |

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| 28. Begun, Dov Baer               | B.Comm. Concordia/89;<br>LL.B. Ottawa/92;                         |
| 29. Behboodi, Rambod              | B.A. Toronto/88;<br>LL.B. Toronto/91;                             |
| 30. Bellemare, Michel Gilles      | B.Sc. Ottawa/89;<br>LL.B. Ottawa/92;                              |
| 31. Bernard, Thomas Paul          | 3 yrs. Science, Ottawa;<br>LL.B. Ottawa/92;                       |
| 32. Bernardi, Peter Enrico        | B.A. Guelph/91;<br>LL.B. Windsor/92;                              |
| 33. Bertolo, Debra Anne           | B.A. McMaster/86;<br>LL.B. Windsor/92;                            |
| 34. Berube, Leslie Ann            | 3 yrs. Arts, Ottawa;<br>LL.B. Ottawa/92;                          |
| 35. Besant, Laura Mary Genevieve  | B.A. Western/89;<br>LL.B. Toronto/92;                             |
| 36. Beveridge, Bradley Peter      | B.A. McMaster/89;<br>LL.B. Western/92;                            |
| 37. Bezaire, Steven Donald        | B.A. Windsor/89;<br>LL.B. Windsor/92;                             |
| 38. Bhardwaj, Rahul Kumar         | B.A. Toronto/87;<br>LL.B. Windsor/92;                             |
| 39. Bickford, Richard Allen       | B.A. Toronto/88;<br>LL.B. Queen's/92;                             |
| 40. Black, John Alexander         | B.A. Western/89;<br>LL.B. Western/92;                             |
| 41. Blakey, Jonathan Alfred       | B.A. Toronto/84;<br>B.Journ. Carleton/87;<br>LL.B. Calgary/92;    |
| 42. Blanche, Kathleen Mary        | B.Comm. Carleton/88;<br>LL.B. Western/92;                         |
| 43. Bond, Anthony Charles Leonard | B.Sc. Waterloo/87;<br>LL.B. Western/92;                           |
| 44. Boorne, Steven Michael        | B.A. McGill/88;<br>LL.B. Queen's/92;                              |
| 45. Brady, Michael Kevin          | B.A. Dalhousie/88;<br>M.B.A. Dalhousie/92;<br>LL.B. Dalhousie/92; |
| 46. Brandon, Terry Lynn           | B.A. Western/89;<br>LL.B. Queen's/92;                             |

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| 47. Britt, Katherine Renee     | B.Sc. Concordia/88;<br>B.C.L. McGill/92;<br>LL.B. McGill/92;                           |
| 48. Broadbent, Eva Rosemarie   | B.Mus. Western/83;<br>B.A. York/89;<br>LL.B. Queen's/92;                               |
| 49. Brock, Gayle Tari          | B.A. York/88;<br>LL.B. Western/92;   |
| 50. Brooker, David Abraham     | B.Sc. Toronto/88;<br>LL.B. British Columbia/92;  |
| 51. Brown, Warren Garnet       | B.A. Western/87;<br>LL.B. Western/92;  |
| 52. Burazin, Stipan            | B.Sc. Toronto/88;<br>LL.B. Queen's/92;   |
| 53. Burke, Lori                | B.Soc. McGill/91;<br>B.C.L. McGill/92;<br>LL.B. McGill/92;                             |
| 54. Burlock, Brett Aubrey      | B.A. Dartmouth/88;<br>LL.B. Dalhousie/92;  |
| 55. Burnside, Allan John       | B.A. Carleton/89;<br>LL.B. Western/92;   |
| 56. Cadieux, Joseph Claude Luc | B.Sc. Ottawa/88;<br>LL.B. Ottawa/88;   |
| 57. Callinan, Anne Maree       | B.A. Auckland, New Zealand/89;<br>LL.B. Auckland, New Zealand/89;<br>LL.B. Western/92; |
| 58. Campbell, Sadian Grace-Ann | B.A. Toronto/85;<br>M.B.A. Toronto/87;<br>LL.B. Queen's/92;                            |
| 59. Carmody, Chios Clinton     | B.A. Toronto/86;<br>B.A. California State, USA/89;<br>LL.B. Ottawa/92;                 |
| 60. Carnelos, Lisa Marie       | B.A. Windsor/89;<br>LL.B. Windsor/92;  |
| 61. Carnevale, Adriana         | B.A. Winnipeg/89;<br>LL.B. Manitoba/92;  |
| 62. Caulfeild, Sean David      | B.A. Ottawa/89;<br>LL.B. Windsor/92;   |
| 63. Chadha, Ena                | B.A. Ryerson/89;<br>LL.B. Saskatchewan/92;   |
| 64. Chadwick, Robert James     | B.Comm Dalhousie/89;<br>LL.B. Western/92;  |

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| 65. Chagpar, Salina Firoz<br>Huseinali   | B.A. York/87;<br>LL.B. Windsor/92;                             |
| 66. Chapnik, Allan Wayne                 | B.A. York/90;<br>LL.B. British Columbia/92;                    |
| 67. Cheng, Elizabeth Christina           | B.A.Sc. Toronto/89;<br>LL.B. Western/92;                       |
| 68. Chetty, Iyavar Moonsamy              | Joint Committee on Accreditation/92;                           |
| 69. Chong, Stephanie                     | B.Sc. Toronto/89;<br>LL.B. British Columbia/92;                |
| 70. Chong Yen, Matthew Francis           | B.A. Western/89;<br>LL.B. Ottawa/92;                           |
| 71. Chow, Milly                          | B.A. Toronto/88;<br>LL.B. Toronto/92;                          |
| 72. Chua, Charles Derrick                | B.A. Waterloo/89;<br>LL.B. Western/92;                         |
| 73. Clease, Kevin Alan                   | B.A. Victoria/89;<br>M.P.A. Victoria/92;<br>LL.B. Victoria/92; |
| 74. Clements, Jacqueline Marie<br>Yvonne | B.Comm. Alberta/87;<br>M.B.A. Western/92;<br>LL.B. Western/92; |
| 75. Cline, Steven Thomas                 | B.A. Western/89;<br>LL.B. Western/92;                          |
| 76. Cohen, Caroline Gail                 | B.A. Toronto/89;<br>LL.B. Dalhousie/92;                        |
| 77. Comor, Emily                         | B.A. Toronto/85;<br>M.A. Toronto/86;<br>LL.B. Ottawa/92;       |
| 78. Confente, Andrew Giuseppe<br>Antonio | B.A. McGill/89;<br>LL.B. Windsor/92;                           |
| 79. Connolly, Jo-Ann Marilyn             | B.Sc. Memorial/87;<br>LL.B. Queen's/92;                        |
| 80. Constantine, Lisa Marie              | B.A. Western/89;<br>LL.B. Western/92;                          |
| 81. Cooke, Peter Clinton                 | B.A. Queen's/89;<br>LL.B. Queen's/92;                          |
| 82. Copeland, Jill Miriam                | B.A. Western/89;<br>LL.B. Toronto/92;                          |
| 83. Coulombe, Guylaine                   | B.A. Laurentian/89;<br>LL.B. Ottawa/92;                        |

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| 84. Coulter, Douglas Andrew                  | B.A. Queen's/88;<br>M.Sc. L.S.E., UK/89;<br>LL.B. Western/92;   |
| 85. Crook, Mikaela Jill                      | B.A. Carleton/89;<br>LL.B. Queen's/92;                          |
| 86. Crothers, Henry David                    | B.A. York/88;<br>LL.B. Windsor/92;                              |
| 87. Crotteau, Susan Lynn                     | B.A. Ottawa/89;<br>LL.B. Ottawa/92;                             |
| 88. Cuddy, Karen Mary                        | 2 yrs. Arts, Carleton;<br>LL.B. Windsor/92;                     |
| 89. Cunningham, Robert William               | B.A. Western/86;<br>M.B.A. Western/92;<br>LL.B. Toronto/90;     |
| 90. Cusimano, Peter Anthony                  | B.Sc. Toronto/89;<br>LL.B. Windsor/92;                          |
| 91. Dais, Jacqueline Melisse                 | B.A. Calgary/88;<br>LL.B. Victoria/92;                          |
| 92. De Chastelain, Duncan John<br>Drummond   | B.Sc. Queen's/86;<br>M.Sc. Toronto/87;<br>LL.B. Queen's/92;     |
| 93. De Jesus, Maria Da Luz Raposo            | B.A. Toronto/89;<br>LL.B. Moncton/92;                           |
| 94. Deep, James Edward                       | B.A. York/88;<br>LL.B. Western/92;                              |
| 95. Delagran, David Nicholas                 | B.A. McGill/85;<br>M.A. Queen's/88;<br>LL.B. Queen's/92;        |
| 96. Delorimier, Kawennison Trisha<br>Marie   | B.A. Carleton/89;<br>LL.B. Queen's/92;                          |
| 97. Dessureault, Joseph Edmond<br>Pierre     | B.A. Ottawa/80;<br>LL.B. Ottawa/92;                             |
| 98. Dressler, Marilyn Joy                    | B.A. Calgary/89;<br>LL.B. Queen's/92;                           |
| 99. Dube, Brian Daniel                       | B.P.A. Windsor/89;<br>LL.B. Windsor/92;                         |
| 100. Dubois, Marie Josee Jacinthe<br>Martine | B.A. Sherbrooke/78;<br>LL.B. Ottawa/92;                         |
| 101. Dumbrell, Seanna Lyn                    | B.A. Queen's/87;<br>M.A. Queen's/88;<br>LL.B. New Brunswick/92; |

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| 102. Dunbar, Brenda Catherine      | B.A. Wilfred Laurier/73;<br>M.B.A. York/75;<br>LL.B. Queen's/92; |
| 103. Duong, Thanh Loi              | B.Comm. Ottawa/87;<br>M.B.A. Toronto/89;<br>LL.B. Ottawa/92;     |
| 104. Engmann, Caroline Efua Maanan | Joint Committee on Accreditation/92;                             |
| 105. Erickson, Christopher Eric    | B.A. Waterloo/89;<br>LL.B. Toronto/92;                           |
| 106. Erickson, Nancy Maxine        | B.A. Queen's/64;<br>LL.B. Windsor/92;                            |
| 107. Evans, John Frederick         | B.A. Western/89;<br>LL.B. Queen's/92;                            |
| 108. Evaristo, Vasco Manuel Conde  | B.A. York/89;<br>LL.B. Queen's/92;                               |
| 109. Eyolfson, Brian Harold        | B.Sc. Queen's/89;<br>LL.B. Queen's/92;                           |
| 110. Farr, Geoffrey Guy            | B.Comm. Queen's/89;<br>LL.B. Ottawa/92;                          |
| 111. Farrell, Eleanor Kathleen     | B.Comm. Concordia/89;<br>LL.B. McGill/92;                        |
| 112. Fedak, Larissa Jean           | B.P.E. McMaster/85;<br>M.Sc. McMaster/88;<br>LL.B. Toronto/91;   |

Approved

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INFORMATION

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1. REINSTATEMENT AFTER SUSPENSION

i) Carol Marie Claire Marinett was called to the Bar on the 9th April 1981. She was suspended on the 25th February 1983 for non-payment of the annual fee. Carol Marinett has been at home these years raising her children. In 1986, she received notice about the policy which came into effect in April, 1987 and was aware that there would be a form of retesting expected of her upon her return. Ms. Marinett submits a letter stating her desire to be reinstated and hopes to sit requalification examinations in January, 1993.

Her application was reviewed by the Deputy Secretary and found to be in order. It is now expected that she will take the requalification examinations in January, 1993.

Noted

24th September, 1992

2. REINSTATEMENT AFTER SUSPENSION - REQUALIFICATION EXAMS WAIVED

During the summer, two members have made application for reinstatement following suspension and have requested that the requalification examinations be waived. In both cases, it was considered appropriate that the applications be approved. The particulars of both situations are set out below:

i) Joseph Jean Marc Roland Robert Bedard was called to the Bar on the 14th April, 1986. He was suspended on the 27th February, 1987 for the non-payment of the annual fee.

The five years of grace granted a suspended member before a form of retesting may be required, expired in February, 1992. In a letter dated the 17th July, 1992, he requested reinstatement on the payment of fees owing and exemption from requalification examinations.

As outlined in his letter, the basis for his request was that he has been employed as Senior Policy Advisor in the Federal Department of Transport dealing specifically in the areas of transportation law; environment law; international law; administrative law; aviation law; maritime law; and competition law.

He also indicates that he has made use of legal skills: statutory interpretation; legislative drafting; regulatory review procedure; legislative development; and legal research.

He was in a position to become a member of the law group in the Federal Government and would be assigned to the Privy Council Office where he will be working with the regulations made pursuant to the Statutory Instruments Act.

In light of the information contained in his letter and the fact that his five years of grace expired only four months ago and taking into consideration that he will be working in a specialized area in the Federal Government, the Secretary recommended that Mr. Bedard be reinstated without the need to write the requalification examinations. His reinstatement was conditional upon:

- (a) his undertaking to comply with the policy adopted by Convocation following the report of the Special Committee on Payment of Arrears of Fees
- (b) payment of the current year's fees and;
- (c) signing an undertaking not to engage in the private practice of law without first satisfying any requirements the Law Society might impose upon him concerning requalification.

The Committee approved the Secretary's recommendations.

Noted

ii) Barbara Daryl Woodhouse, called to the Ontario Bar on 13th April, 1983, was suspended for non-payment of the annual fee on the 27th February, 1987.

The five years of grace, granted a suspended member before a form of retesting may be required, expired in February this year. She has written the Law Society requesting reinstatement on payment of all fees owing and that she should not be required to write requalification examinations.



24th September, 1992

As outlined in her correspondence, Ms. Woodhouse bases her request on the fact that during her employment with Energy, Mines & Resources Canada her work was almost entirely law related. As a member of a team comprising Justice lawyers she was responsible for the drafting and interpreting of legislation and regulations relating to Energy, Mines, & Resources Canada. She has also been responsible for the issuance of advance rulings, negotiating contracts and drafting legal agreements.

During the period of her suspension Ms. Woodhouse also attended Le Sorbonne where she obtained a Diplome de Civilisation Francaise. On her return to Canada she was engaged as a senior consultant with a government relations consulting firm where she specialized in issues relating to energy law, environment law, and constitutional law.

Ms. Woodhouse now has the opportunity to return to the Department of Justice.

In light of the information contained in her letter and the fact that her five years grace expired only four months ago and taking into consideration that she will be working in a specialized area in the Federal Government, she has been granted permission to be reinstated without the need to write the requalification examinations.

Ms. Woodhouse was required to give an undertaking not to engage in the private practice of law without first satisfying any requirements the Law Society might impose upon her concerning requalification.

Noted

ALL OF WHICH is respectfully submitted.

DATED this 24th day of September, 1992

"Robert Carter"  
Chair  
.....

PROFESSIONAL STANDARDS COMMITTEE

Meetings of May 14th and June 11th, 1992

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 14th day of May, 1992 at eleven thirty in the morning the following members being present: Mr. Yachetti (Chair), Mrs. Weaver (Vice-Chair), Mr. Finkelstein, Ms. Graham, Mrs. Legge, Mr. Manes, and Mr. Wardlaw.

Also in attendance were Mrs. Devlin, Ms. McCaffrey, Ms. Poworoznyk, and Messrs. Godden, Grieve and Kerr.

A.  
POLICY

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1. PROFESSIONAL STANDARDS COMMITTEE AND REQUALIFICATION

In May, 1989, Convocation appointed a special committee to review existing policies on the requalification of members who have not been involved in the active practice of law for five or more years, and to formulate alternatives.

The Special Committee on Requalification, by report dated March 27, 1992, recommended *inter alia*, that the Professional Standards Committee develop a range of reasonable conditions to be met by applicants who wish to recommence the practice of law. The new policy on requalification is to become effective July 1, 1993. The report of the Special Committee was approved by Convocation on April 24, 1992.

The recommendations in the report were referred to the Legislation and Rules Committee for the drafting of necessary amendments to the Rules under the *Law Society Act*. A draft of the amendments to Rule 46F was tabled at the meeting.

The Committee considered and approved a recommendation that a sub-committee be formed, consisting of members of the Professional Standards Committee as well as members of the Admissions and Legal Education Committees, for the purpose of developing the conditions to be met by applicants returning to the practice of law.

The Committee deferred its discussion of the draft amendments to Rule 46F until the sub-committee's mandate has been fulfilled.

Mr. Finkelstein, Mrs. Weaver and Mr. Yachetti have agreed to participate as members of the sub-committee. The Chair will approach the respective Chairs of the Admissions and Legal Education Committees for their input and appointment of members to the sub-committee.

2. SURVEY OF LAW SOCIETY MEMBERS AND THE PUBLIC

Manifest Communications, on behalf of the Law Society, conducted a random survey of the public and the profession to determine attitudes towards the Law Society. A report was prepared on April 16, 1992, and a copy of that report was distributed to all Benchers in April.

The Committee considered a request from the Communications Committee that each Standing and Special Committee of Convocation consider whether there are matters arising from the Report that require consideration in committee and, if so, to provide to the Communications Committee any suggestions or recommendations regarding future courses of action and the implementation of same.

Mr. Manes, with the assistance of staff, has agreed to review the report and provide the Committee with recommendations at its next Committee meeting in June.

C.  
INFORMATION

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1. ACCESS TO BAR ADMISSION COURSE FOR PRACTICE REVIEW PROGRAMME PARTICIPANTS

Various remedial options have and will be offered to participants in the Practice Review Programme, including, for example, the assistance of the Association of Legal Administrators. In this regard, the assistance available to participants through the Bar Admission Course has been assessed and its application to the Programme considered.

Occasionally as a result of information gained from a practice review, it appears that a participant in the Programme would benefit from attendance at Phase I of the Bar Admission Course, in order to gain exposure to fundamental aspects of practice management such as file organization, office systems and the like. Perhaps 5 of the 79 lawyers currently on active status in the Programme would fall into this category. As a result, staff have approached the Director of Education to enquire whether, and on what terms, Programme participants would be allowed to attend Phase I of the Course.

The Director has addressed this issue with Bar Admission Course faculty, and it is expected to be on the May agenda of the Education Committee. The Director has suggested, and faculty concur, that Programme participants attend the Course subject to the following conditions:

- (1) Space could be guaranteed in session three of Phase I (held in August) in Toronto, and offered if available in session two, in London, Toronto and Ottawa.
- (2) Participants would be expected to pay the cost of tuition (\$695.50, including GST).
- (3) Participants would be subject to the same requirements as students, including mandatory attendance, participation and completion of all assignments.
- (4) A special report would be provided for each lawyer attending the Course.
- (5) Entrance to the course would be arranged through the Professional Standards Department, which would liaise with the Admissions Co-ordinator for this purpose.

Additional requirements may be imposed by the Legal Education Committee.

The Director of Education raised concerns as to the possible increase of workload on faculty and instructors, and the impact that Programme participants may have on the learning environment. Staff have explained that only those participants who wish to attend will seek to enroll; as a result, the impact on workload and learning environment should be minimal and, one hopes, positive.

It may be appropriate for a Review Panel, or staff, to recommend to a member that he or she attend Phase I of the Bar Admission Course. This issue can be addressed on a case-by-case basis.

2. SUB-COMMITTEE FAMILY LAW

Final changes are being made to the Family Law Checklist to reflect legislative amendments with respect to the Support and Custody Orders Enforcement Act.

3. SUB-COMMITTEE SECURITIES LAW

It is anticipated that the first meeting of the sub-committee will be held at the end of May.

4. SUB-COMMITTEE CIVIL LITIGATION

Materials to assist in formulating the checklist have been distributed to members of the sub-committee and a meeting of the sub-committee, excluding members of the judiciary, is being scheduled for late May.

5. PRACTICE ADVISORY SERVICE - STATUS REPORT

The first meeting of Canadian Practice Advisers was held in Alberta on April 12, 13 and 14, 1992. Discussions at the meeting focused on the exchange of information between the various Advisers and proved to be very successful.

In April, professional staff from the Practice Advisory Service and Professional Standards Department met with the Director and professional staff of the Professional and Technical Services of the Institute of Chartered Accountants of Ontario to mutually exchange information on a number of issues including start-up workshops.

6. PROFESSIONAL STANDARDS - STATUS REPORT

An additional 8 lawyers were authorized by the Chair for participation in the Review Programme bringing the total number of members authorized to 129. In the month of April, staff attended at the premises of 8 different participants, to conduct follow-up reviews or undertake preliminary assessments of a member's practice.

The Continuing Legal Education Sub-committee is considering the question of mandatory CLE and staff are involved with the sub-committee to ensure that the concerns of the Professional Standards Committee are addressed.

The Professional Standards Department has acquired an educational video from the Lawyers' Assistance Program of British Columbia on substance abuse. and staff have discussed with Bar Admission faculty its use in the Bar Admission Course. The video will be used in the Professional Responsibility and Practice Management section of Phase I. Staff are also consulting with other Law Societies to discuss their teaching approach to the issue of substance abuse.

All of which is respectfully submitted

DATED this 29th day of May, 1992

"R. Yachetti"  
Chair

24th September, 1992

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 11th of June, 1992 at eleven thirty in the morning the following members being present: Mr. Yachetti (Chair), Mrs. Weaver (Vice-Chair), Mr. Furlong, Ms. Graham, and Mr. Wardlaw.

Also in attendance were Mrs. Devlin, Ms. McCaffrey, Ms. Poworoznyk, Ms. Smith, Ms. Singleton, Ms. Zechinni and Mr. Kerr.

A.  
POLICY

1. PRACTICE REVIEW PROGRAMME AND LAW SOCIETY REQUIREMENTS REGARDING LAWYERS SELLING THEIR PRACTICES

It has come to the attention of staff that on occasion, lawyers request the use of the Law Society's Placement Service to list their practices for sale. Prospective purchasers may not necessarily enquire as to the status of that practice.

The Committee considered this issue and expressed concern about the responsibilities the Law Society may have in these circumstances to its membership. As well, the Committee considered whether the policy of accepting advertisements for sale of law practices should be discontinued.

In this regard, further investigation of the impact of this issue on other Departments within the Law Society will be conducted and a report will be prepared for the Committee's consideration at the September meeting.

2. SURVEY OF LAW SOCIETY MEMBERS AND THE PUBLIC

At its May meeting, the Committee considered a request from the Communications Committee to review the report prepared by Manifest Communications with respect to their recent survey of the public and the profession, and determine whether there were any matters arising from the report that required consideration in Committee. The Committee had requested that one Committee member and staff review the report and submit recommendations regarding any matters which they felt should be addressed by the Committee.

The Committee considered the report prepared by Mr. Manes and staff and approved the following recommendations:

(1) Results of the survey suggest that communication of the existence and the activities of the Professional Standards Committee to the public and the profession is a matter of high priority, but issues such as budget, timing, staff resources and emphasis must be considered. The advice of the Director of Communications will be sought, in order to ensure that the proposed method of communication is effective.

24th September, 1992

(2) Existing resources, such as The Adviser, are available for communicating with the profession and would take into account budgetary considerations. The survey shows that not all members read The Adviser; it should be examined to assess how well it communicates with members, and how it can be improved, with respect to readership, format, frequency of publication and content. The Adviser can be used to communicate issues of special interest which cut across the lines of the profession.

(3) A section of The Adviser should be dedicated to addressing issues raised by the survey, such as the need for lawyers to communicate with their clients, and an explanation of techniques that will improve solicitor-client communications, including a list of "do's and don't's".

(4) Alternately, or in addition, a one-page bulletin format could be used, addressing each issue individually, for greater impact on the profession. Such a bulletin could be included in other Law Society mailings to the profession. Again, the advice of the Director of Communications will be requested.

(5) The Law Society has a number of resources available for training members in communication techniques, including Bar Admission Course materials and videotapes on interviewing and effective writing, and programs on these topics offered by the Continuing Legal Education Department and available on video or audio tape. Information about these resources should be communicated to the profession.

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C.  
INFORMATION

1. SUB-COMMITTEE FAMILY LAW

Final changes are being made to the Family Law Checklist to reflect legislative amendments with respect to the Support and Custody Orders Enforcement Act.

2. SUB-COMMITTEE SECURITIES LAW

The first meeting of the sub-committee is scheduled for June 17, 1992.

3. PRACTICE ADVISORY SERVICE - STATUS REPORT

Staff from the Practice Advisory Service and the Audit Department will address the CBAO General Practice section in June about "The Most Common Financial Mistakes General Practitioners Make and How to Avoid Them".

The Service met with Mr. Paul McLaughlin, Associate Practice Adviser with the Law Society of Alberta, to discuss issues of mutual interest.

During the period January 1, 1992 - May 5, 1992, the Service responded to 1686 telephone calls for assistance, 937 of which dealt with administrative issues and 749 of which concerned legal issues. 1148 calls were from within the Metro Toronto area and 538 were from outside Metro.

The Service has received a great number of calls recently with respect to the following issues:

24th September, 1992

- (1) "changing circumstances", especially in terms of repercussions of termination of employment;
- (2) effect of bankruptcy on a member's ability to practise.

4. PROFESSIONAL STANDARDS - STATUS REPORT

An additional 7 lawyers were authorized by the Chair for participation in the Review Programme bringing the total number of members authorized to 136.

The Department has hired a Systems Adviser, Judi Singleton who is employed under the auspices of the Practice Advisory Service and the Professional Standards Department. She will be providing assistance to members and their staff on practice management issues.

Staff from the Standards, Discipline and Complaints Departments met with members of the Steering Committee of the Ontario Legal Aid Plan to discuss, *inter alia*, exchange of information between the Plan and the Society, and the assistance the Society can provide the Plan in assessing and resolving quality of service concerns. The Plan will be referring to the Professional Standards Department lawyers about whom there are competency concerns.

All of which is respectfully submitted

DATED this 26th day of June, 1992

"R. Yachetti"  
Chair  
.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Report of the Professional Conduct Committee of its meeting on September 10th, 1992 and spoke to the review of the Rules of Professional Conduct which the Committee was undertaking.

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 10th of September, 1992 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Cullity (Vice-Chair), Campbell, Elliott, Hickey, Krishna, McKinnon, and Rowe (non-bencher).

A.  
POLICY

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1. PRIORITIES AND OBJECTIVES FOR THE  
PROFESSIONAL CONDUCT COMMITTEE 1992-1993

The Treasurer has asked that all Committees discuss their priorities and objectives for the next twelve month period.

There would appear to be two major objectives for the Committee:

(1) To get off the ground a review of the Rules of Professional Conduct. To some extent this has already begun with the profession being asked for its views on Rule 13, paragraph 1 of the Commentary (reporting wrongdoing to the Law Society) and Rule 5 (conflicts of interest).

(2) To bring to a conclusion some outstanding issues such as the CIBC Mortgage Package/CIBC Home Purchase Package, the ERS scheme and the vexing problem of misdirected communications.

The Committee discussed a revision of the Rules and how this project should be approached. There was a consensus that the approach should be twofold: there should be an examination of those rules that are in greatest need of revision and update; and, an independent person, such as a law professor, should be retained to advise the Committee on the broader issue of what should be in the Rules of Professional Conduct.

This item has been put in the Policy Section because of its importance. The Committee welcomes input from all benchers. As the project develops the profession will be kept advised.

2. CREDIT BUREAU MEMBERSHIP

A lawyer has asked if she could become a member of a credit bureau for the purpose of reporting delinquent accounts. Set out below is her letter to the Society:

I would like to become a member of the credit bureau primarily for the purpose of reporting delinquent accounts. I was previously in house legal counsel to a trust company and in my experience reporting a delinquent account to the credit bureau was an extremely effective way of obtaining payment of that account. Most clients will be in a position where they will be seeking credit from a bank or other financial institution and it is the practice of all financial institutions to do credit bureau searches as part of the credit application process. When an outstanding account is noted on a person's credit bureau file they are very often denied further credit until they clear up the outstanding accounts showing on the credit bureau account.

I understand that your concern is that by becoming a member of the credit bureau and reporting uncollected accounts we could be breaching our professional obligation to maintain confidentiality with respect to our relationship with our client.



24th September, 1992

In considering this matter you may wish to take into account that I have been advised by the Marketing Manager of the Barrie/Orillia Credit Bureau that when their firm handles third party collection procedures for law firms, they automatically report the delinquent account on that person's credit bureau file. In effect, a law firm using a collection agency is getting the same advantages of credit bureau reporting even though that firm is not the one directly making the report.

I am enclosing for your information a copy of the member's reporting form which would be completed and submitted to the credit bureau to notify them of the delinquent account (numbered 1).

In giving your consideration to this matter, I would also request that if you consider it appropriate for a lawyer to belong to the credit bureau is it necessary to have our account taxed prior to making the report to the bureau.

The Committee discussed the lawyer's inquiry and decided that there was no problem with her participation provided there was limited disclosure of information respecting the client as is provided for in paragraph 12 of Rule 4 of the Rules of Professional Conduct which reads:

Disclosure may also be justified in order to defend the lawyer or the lawyer's associates or employees against any allegation of malpractice or misconduct, or in legal proceedings to establish or collect the lawyer's fees, but only to the extent necessary for such purposes.

The Committee asks Convocation to adopt its opinion.

3. FEE SPLITTING - LAWYER QUALIFIED IN ONTARIO  
AND FLORIDA - TO PARTICIPATE IN STATE BAR  
REFERRAL SERVICE - MUST REMIT PERCENTAGE TO SERVICE

A lawyer in Ontario is also qualified in Florida. As a lawyer in good standing in Florida he is eligible to participate in the Florida State Bar Association's Lawyer Referral Service. In order to participate he must agree to remit to the Lawyer Referral Service 10% of all fees he bills that are greater than \$40.00.

Is this the type of fee splitting contemplated by Rule 9, Commentary 7, the first paragraph of which reads?

Any arrangement whereby lawyers directly or indirectly share, split or divide fees with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the lawyer's office, is improper and constitutes professional misconduct. It is equally improper for a lawyer to give any financial or other reward to such persons for referring business.

The Committee was of the opinion that Commentary 7 did not apply to this situation. It noted that lawyer participation in lawyer referral schemes is in the public interest and should be encouraged.

The Committee asks Convocation to adopt this opinion.

Note: Item deferred, see page 73

B.  
ADMINISTRATION

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1. REQUEST OF A RETIRED COUNTY COURT  
JUDGE TO RETURN TO PRACTICE BEFORE  
THE COURTS IN ADVANCE OF THE TWO  
YEAR PRESCRIPTION PERIOD - RULE 15

In January 1991 Convocation passed a new Rule on retired judges returning to practice. It reads:

1. Without the express approval of Convocation, which approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit, no member who was formerly a judge of the Supreme Court of Canada, the Ontario Court of Appeal or the Federal Court of Canada, Appeal Division and who has retired, resigned or been removed from the Bench and has returned to practice, shall appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal.

2. Without the express approval of Convocation, which approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit, no member who was formerly a judge of the Federal Court of Canada, Trial Division, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court or the Ontario Court of Justice (General Division) and who has retired, resigned or been removed from the Bench and has returned to practice, shall appear as counsel or advocate,

- (a) before the court on which the judge served or any lesser court; and
- (b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction;

for a period of two years from the date of such retirement, resignation or removal.

The Honourable D. G. E. Thompson retired from the bench on November 3rd 1991 at age 75. He wishes to be exempted from the two year requirement. His son first made inquiries two months ago. I have set out Peter F. Thompson's letter because it has some relevant information.

I am writing with regard to my father, retired Justice Donald Gordon Edward Thompson. My father turned 75 years of age last November 3rd and was, therefore, required to retire from the Ontario Court bench. Since that time, he has been employed as counsel to Dyer, Brown in London, Ontario. He will be moving to Barrie in July of this year.

Our firm is anxious to make use of his litigation skills as soon as may be permitted by the Law Society. We have not formally approached him with a proposal of employment but would like to know the Law Society's position with regard to when my father could appear before Ontario Municipal Board tribunals primarily, and, as well, when he could appear in other courts or before other tribunals. Due to the proximity of the moving date, an early reply would be greatly appreciated. My father is aware that I am seeking this information and, in fact, wishes to know the answers as well.

24th September, 1992

The Committee's Secretary telephoned Peter Thompson and told him that there were only three cases the Law Society has considered in the past 15 years which were those of Leo Landreville, Hugh Gibson and Robert F. Reid. Mr. Landreville was given an exemption but Messrs. Gibson and Reid were not. It was recommended that his father's letter should show compelling reasons why Convocation should exercise its discretion and waive the two year requirement. Set out below is the retired judge's letter:

In so far as the two year requirement is concerned, I have no intention of appearing in the Court on which I was a member of the Bench for so many years. So far as the administrative tribunals are concerned I had nothing to do with them during my period on the Bench except that when County Court judges were dealing with assessment appeals, appeals from County Court judges were then heard by the Ontario Municipal Board. However, I did have one case in Barrie and I believe it was last year when there was an appeal from an Ontario Municipal Board ruling which came before me and which I directed should go on to the Divisional Court.

I can see no good reason why I could not appear before one of the various administrative tribunals, if I was so minded, although I must say at the moment I have no great desire to do so, nor do I feel that my brief encounter with the Ontario Municipal Board ought to prevent me from appearing before that Board as well.

In my recollection, I never sat as a Divisional Court Judge, although I presume I qualified so to do, and I assume I am entitled to appear before the Court of Appeal and the Supreme court of Canada.

In any event, if Convocation should in its wisdom see its way clear to grant me some sort of leave which appears to be denied to me, I shall be grateful. On the other hand, if it should feel that it is not in the circumstances prepared to exercise such a discretion I shall accept the decision with my usual equanimity.

The Committee discussed the request but could find no compelling reason for rescinding the two year requirement.

The Committee asks Convocation to adopt its opinion.

C.  
INFORMATION

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1. CIBC MORTGAGE PACKAGE/CIBC HOME  
PURCHASE PACKAGE - OPINION OF COUNSEL

The Committee discussed how this should now be approached. It was decided to create a sub-committee that will report to the Professional Conduct Committee in the very near future.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"M. Somerville"  
Chair

Item 3 under Policy re: Fee Splitting was deferred.

Mr. Lerner did not vote or participate.

THE REPORT WITH THE EXCEPTION OF A-ITEM 3 WAS ADOPTED

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CALL TO THE BAR

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

Carmel Anne Whelton	31st Bar Admission Course
Christopher Martin Aide	33rd Bar Admission Course
Pei Chi Mary Louise Cheah	33rd Bar Admission Course
Dianna Elaine Hazen	33rd Bar Admission Course
Lois Mary Leslie	33rd Bar Admission Course
Esther Olufunke Obembe	33rd Bar Admission Course
Tommy Schneider	33rd Bar Admission Course
Andrea Marianne Smart	33rd Bar Admission Course
Anita Szigeti	33rd Bar Admission Course
Jeffrey Charles Lloyd Wolman	33rd Bar Admission Course
Steven Mark Cook	Special, Transfer, British Columbia
Douglas Hall Mathew	Special, Transfer, British Columbia
Eden Melanie Oliver	Special, Transfer, Alberta
Kent William Roach	Professor, Faculty of Law, University of Toronto

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LEGAL EDUCATION COMMITTEE

Mr. Lamek presented the Report of the Legal Education Committee of its meeting on September 10th, 1992 and spoke to the issue of the review of the funding of the Bar Admission Course.

24th September, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 10th of September, 1992, at 10:30 a.m.

The following members were present: Paul Lamek (Chair), Donald Lamont (Vice-chair), Lloyd Brennan, Casey Hill, Vern Krishna, Colin McKinnon, Ross Murray, Louis Radomsky, Marc Somerville, Roger Yachetti. Representing the law schools was: Dean Jeffrey Berryman. Staff in attendance were: Marilyn Bode, Brenda Duncan, Mimi Hart, Alexandra Rookes, Alan Treleaven.

A.  
POLICY

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A.1           No report this month.

B.  
ADMINISTRATION

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B.1           No Report this month.

C.  
INFORMATION

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C.1           TREASURER'S REQUEST: PRIORITIES AND GOALS OF LEGAL EDUCATION COMMITTEE

C.1.1        The Treasurer by memorandum of June 29, 1992 has asked all Benchers to suggest subjects that should be put before the Committees in the 1992-93 year and to set Committee priorities.

C.1.2        The Legal Education Committee has identified the following issues to be dealt with on a priority basis:

- 1)     Impact of potentially reduced funding on future Bar Admission Course planning.
- 2)     Potential Bar Admission Course student financial aid policy changes.
- 3)     Availability of articling positions, and related issues.
- 4)     Monitoring the effectiveness of Articling Reform in enhancing the educational value of articling.
- 5)     Mandatory Continuing Legal Education.
- 6)     Continuing Legal Education budgeting: break-even or deficit.

C.2        DESIGNATION OF HONORARY DEGREE RECIPIENTS AND GUEST  
SPEAKERS FOR CALLS TO BAR

- C.2.1        The Treasurer has asked the Legal Education Committee to provide him with names of individuals who might be granted Honorary Degrees or who might be invited to speak at the Special Convocations for Call to the Bar in Ottawa (February 5, 1993), London (February 8, 1993), and Toronto (February 9, 1993).
- C.2.2        The Chair has appointed a special subcommittee comprising Stephen Goudge (Chair), Vern Krishna and Laura Legge to provide a list of recommended names to the Legal Education Committee at its October 8, 1992 meeting. Legal Education Committee members were invited to suggest names to the special subcommittee by September 23, 1992.
- C.2.3        The Legal Education Committee will settle on a list at its October 8 meeting and provide that list to the Treasurer.
- C.2.4        The Committee also suggested that the special subcommittee formulate criteria for the granting of Honorary Degrees in the future, although not necessarily in time for the October meetings of the Legal Education Committee and Convocation.

C.3        VARIATION OF PHASE ONE REQUIREMENT

- C.3.1        The Phase One Requirements for Standing stipulate that students must complete Phase One (the one month teaching term) successfully in order to be eligible to begin Phase Three (the 14 week teaching term). Section 3.3 (b) of the Requirements for Standing stipulates that students who receive a grade of Conditional Fail in Phase One may complete supplementary course work prescribed by the Director of Education in order to have the Conditional Fail grade converted to a Pass grade.
- C.3.2        Most Bar Admission Course students complete the Phase Two articling year between Phase One and Phase Three, and accordingly have approximately one year to improve their skills and knowledge in order to convert their Conditional Fail grade to a Pass grade before Phase Three. Some students, however, due to special circumstances are scheduled to complete Phases One and Three of the Bar Admission Course consecutively in 1992. Most typically these students are individuals who have been lawyers in another jurisdiction and are entitled to an articling abridgment.

- C.3.3      There is one case in which a student who is scheduled to complete Phases One and Three consecutively in 1992 has received a Conditional Fail grade in Phase One. It is the Director's opinion that this student requires more time than the few weeks available between Phases One and Three to enhance the knowledge and skills sufficiently to pass Phase One. It is the Director's further opinion that the student ought to be permitted to commence Phase Three in 1992 on the express understanding that the student will not be eligible for admission to the Bar without having satisfactorily completed the Phase One supplemental course work requirement. This may result in a delay in admission to the Bar.
- C.3.4      The Committee decided to grant the Director of Education discretion to permit the student to enrol in Phase Three in 1992 on the condition that the student not be admitted to the Bar without having obtained a Pass grade in Phase One.
- C.4      STUDENT LACKING B.A.C. ENTRY QUALIFICATION
- C.4.1      The student attended an Ontario law school in 1991-92 to complete the Bar Admission Course entry requirements prescribed by the Joint Committee on Accreditation. The student failed a prescribed law school examination, but was permitted to enter Phase One of the Bar Admission Course because a supplemental examination result was pending. The student subsequently successfully completed Phase One but failed the supplemental law school examination.
- C.4.2      The student requests permission to complete Phase Three of the Bar Admission Course and to be exempted from passing the law school course.
- C.4.3      Regulation 573 under the Law Society Act requires either a Canadian law degree from one of the 16 approved Canadian law schools or a Certificate of Qualification issued by the Joint Committee on Accreditation. There is no discretion in the legislation to exempt any applicant from this requirement.
- C.4.4.      The Committee decided that the student would not be permitted to continue in Phase Three because it lacks the jurisdiction to exempt the student from completing the pre-requisite law school course.
- C.4.5.      Because the student's case raises issues which are of concern to the Equity Committee and because of the substantial personal hardship which the student has endured, the Committee instructed the Director to leave open the possibility of the student completing Phase Three and the law school course simultaneously if such an arrangement could be worked out, and if the arrangement would permit the student to complete the Phase Three requirements in full, including the attendance requirement.

C.5 SUBCOMMITTEES OF LEGAL EDUCATION COMMITTEE

C.5.1 The Chair of the Legal Education Committee invited the following persons to serve as subcommittee members:

- C.5.2
- 1) Articling Subcommittee: Benchers are: Marc Somerville (Chair), Maurice Cullity and Stephen Goudge. Other members are Janne Burton, Victoria Colby and Jay Rudolph.
  - 2) Bar Admission Course Subcommittee: Benchers are: Donald Lamont (Chair), Lloyd Brennan and Vern Krishna. Other members are Dean Jeffrey Berryman, Daniel Kuzmyk and Louis Radomsky.
  - 3) Continuing Legal Education Subcommittee: Benchers are: Colin McKinnon (Chair), Colin Campbell and Susan Elliott. Other members are Marc Bode, Paul Perell and Garry Watson.
  - 4) Bar Admission Course Financial Issues Subcommittee: Benchers are: Paul Lamek (Chair), Thomas Bastedo, Lloyd Brennan and Ross Murray, together with Dean Donald McRae.

C.5.3 A Special Joint Subcommittee, comprising members of the Legal Education Committee, the Discipline Policy Committee and the Women in the Legal Profession Committee is to be appointed to determine what procedures will apply to deal with allegations of sexual harassment in articling. The Chair will appoint representatives of the Legal Education Committee, to join Joan Lax representing the Women in the Legal Profession Committee and a representative of the Discipline Policy Committee.

C.6 ARTICLING SUBCOMMITTEE

C.6.1 The Articling Subcommittee met on Friday, June 26th 1992. In attendance were Marc Somerville (Chair) and Jay Rudolph. Staff members attending were Marilyn Bode, Barbara Dickie, Mimi Hart and Alan Treleaven.

C.6.2 The Subcommittee considered and granted one abridgment petition. The Subcommittee gave conditional approval to a further approximately thirty-four prospective articling principals for the 1992/93 articling year. To the date of the Subcommittee's June meeting, approximately 996 members of the profession applied. An application to serve as articling principal for the 1993-94 articling year was considered. The member has a significant negative history with the Law Society. The application was denied. Another member's application for approval for the 1993/94 articling year was deferred until the Subcommittee's next meeting in September.

C.6.3 Attached for information purposes is a copy of a Renewal of Articling Principal Approval form approved by the Articling Subcommittee (page 1). It is to be completed by principals who were approved for the 1992/93 year and wish to serve as principals again in the 1993/94 articling term.



- C.6.4 The bulk of the June meeting of the Subcommittee was spent reviewing the draft Report of the Articling Placement Policy Group. A first draft was provided to members of the Legal Education Committee and to Convocation in June. The draft report includes options the Law Society might consider to assist students without articling positions. The Sub-committee made comments and suggestions on the draft report. The updated Report of the Articling Placement Policy Group was presented to the Legal Education Committee at the September 10, 1992 meeting and was discussed in part. The Committee will continue its discussions at its October meeting and report to Convocation in October.
- C.6.5 A Notice to the Profession regarding Part-Time Articles was placed in the Ontario Reports (page 2).
- C.6.6 The Articling Director informed the Subcommittee of an abridgment candidate who appears to have submitted false documents from the candidate's foreign Law Society. The matter was referred to the Admissions Committee for investigation and decision. All abridgment candidates are now required to have Certificates of Current/Good Standing forwarded directly from the issuing institution(s).
- C.6.7 The Articling Director also informed the Subcommittee of a recent serious sexual harassment complaint by a student under articles. The student was encouraged to come forward with a written complaint.
- C.7 ARTICLING PLACEMENT REPORT
- C.7.1 The Director of Placement, Mimi Hart, has sent approximately five hundred letters to the profession in an effort to create new articling positions. The success of the letter campaign and the current numbers of unemployed articling students were reported orally to the Legal Education Committee by Ms. Hart. As of September 10, 1992, 21 students registered with the Placement Office were seeking articles.
- C.8 CONTINUING LEGAL EDUCATION SUBCOMMITTEE
- C.8.1 The Continuing Legal Education Subcommittee, Chaired by Colin McKinnon, met on July 6, 1992 to continue its study of mandatory continuing legal education. The work of the Continuing Legal Education Subcommittee will continue in September.
- C.9 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.9.1 The Continuing Legal Education Report on Courses is attached. (pages 3 - 8).

24th September, 1992

C.10 SPECIAL LECTURES

- C.10.1 The Law Society of Upper Canada 1992 Special Lectures will take place in Toronto at Osgoode Hall on Friday, November 6 and Saturday, November 7, 1992 on the topic: "Administrative Law" Principles, Practice and Pluralism". The Planning Committee is chaired by Dennis O'Connor and Philip Anisman. The Planning Committee members are Professor Hudson Janisch, The Honourable Mr. Justice Horace Krever, Sidney Lederman, and David Scott.

ALL OF WHICH IS respectfully submitted

DATED September 24, 1992

"P. Lamek"  
Chair

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

- C-Item C.6.3 - Copy of a Renewal of Articling Principal Approval form.  
(Page 1)
- C-Item C.6.5 - Copy of a Notice to Profession Re: Policy on Part-Time  
Articling.  
(Page 2)
- C-Item C.9.1 - Continuing Legal Education: Report on Courses.  
(Pages 3 - 8)

THE REPORT WAS ADOPTED  
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PROFESSIONAL STANDARDS COMMITTEE

Mr. McKinnon presented the Reports of the Professional Standards Committee of its meeting on September 10th, 1992 and spoke to the issue of mandatory peer review.

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 10th of September, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), P. Furlong, N. Graham, C. Hill.

Also present: M. Devlin, S. McCaffrey, J. Poworoznyk, P. Rogerson

A.  
POLICY

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A.1. THE USE OF LAW SOCIETY RESOURCES FOR THE SALE OF LAW PRACTICES

A.1.1 At its June meeting, the Committee raised concerns about the Law Society's responsibility to its membership when a lawyer known to be having serious practice problems seeks to use the resources of the Society, such as the Placement Service, to sell that practice. The Committee therefore directed staff to determine the perspective of other departments that might be affected by this issue, and to prepare a report for the September committee meeting. As a result, staff consulted with the Discipline, Complaints, Errors & Omissions, Audit and Investigations, and Education Departments (through which the Placement Service is operated).

A.1.2. The responses received were placed before the Committee, and the Committee recommends that the following suggestions be adopted:

A.1.2.1. A notice be posted on the Law Society's Placement Notice Boards and in the Law Society's Professional Placement Bulletin, immediately adjacent to any practice for sale listing, warning prospective purchasers that the Law Society has not inspected the practice and does not provide any warranty with respect to the state of the practice.

A.1.2.2. Materials for the purchase and sale of a practice be developed by the Practice Advisory Service and the Professional Standards Department, such materials to include reference to the need for a release from the vendor that will enable the purchaser to acquire information from the Law Society about the state of the vendor's practice.

A.1.2.3. A Notice to the Profession advising of the availability of these materials be published periodically in the Ontario Reports.

A.1.2.4. These materials be included in the workshops offered by the Law Society on "Starting a Law Practice".

A.1.2.5. An undertaking be obtained from lawyers in the Practice Review Programme that they will not offer their practices for sale without making appropriate disclosure to the potential purchaser of the state of their practices and their involvement in the Programme.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"C. McKinnon"  
Chair

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 10th of September, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice-Chair), M. Weaver (Vice-Chair), P. Furlong, N. Graham, C. Hill.

Also present: M. Devlin, S. McCaffrey, J. Poworoznyk, P. Rogerson

A.  
POLICY

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A.1. REQUALIFICATION

- A.1.1. The Chair advised the Committee members that a joint Committee will be struck to re-address the issues relating to Requalification including the implementation of requalification requirements. The joint Committee will consist of representatives from the Professional Standards, Legal Education and Admissions Committees as well as non-Bencher participants.

A.2. REFORM IMPLEMENTATION - MANDATORY PEER REVIEW

- A.2.1. The Chair advised the Committee that the recommendations of the Reform Implementation Committee as to amendments to the *Law Society Act*, including provisions regarding mandatory peer review, are not expected to be brought before the provincial Legislature in the foreseeable future. Staff have been asked to consult with Marilyn Pilkington in order to determine what portions of the Reform Implementation Committee's recommendations can be initiated without the need for legislative change.
- A.2.2. In the absence of the mandatory measures that would be introduced by the reforms, the Committee was of the view that there is a need for all Benchers to be more aware of the consequences of repeated violation of Rule 2 of the Rules of Professional Conduct, and the impact of incompetence on the public and the profession. The Committee emphasized the increasing necessity for an appropriate disciplinary response where members who have demonstrated significant competency problems decline to participate in the Practice Review Programme despite an evident need for same, or participate only in order to avoid the discipline process and with no intention of implementing the remedial recommendations made in the course of the Programme. As an example, the Committee cited the cases of two members who refused to participate in the Programme, despite the fact that they had in total received over a four year period 42 complaints and 20 Errors & Omissions claims. In the absence of a disciplinary response recognizing the seriousness of unchecked competence problems, the Law Society has no effective mechanism for remedying this problem.

- A.2.3. The Chair has discussed with the Chair of the Discipline Policy Committee the necessity of effectively addressing through the discipline process violations of Rule 2. Staff in the Professional Standards, Discipline and Complaints departments will meet to discuss procedures to be followed in such cases, in order to formulate recommendations to the Standards and Discipline Policy Committees with respect to this issue for review at the October Committee meetings.

B.  
ADMINISTRATION

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B.1 PRACTICE REVIEW PROGRAMME - FILE CLOSURES

- B.1.1 Three Practice Review files were closed by the Committee based on recommendations from staff. One of the files was closed on the basis that no further action was required. The remaining two files were closed on the basis that the lawyers were unwilling to participate in the programme. These files are being referred to Senior Counsel - Discipline pursuant to Committee policy.

C.  
INFORMATION

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C.1 PROFESSIONAL STANDARDS - DEPARTMENTAL UPDATE

- C.1.1. The Professional Standards Committee was established to address the need for uniform standards of competency for both the profession generally as well as individual lawyers.
- C.1.2. The Committee administers the activities of the Practice Advisory Service and the Professional Standards Department.
- C.1.3. The Committee is also responsible for overseeing the Society's participation in the LINK Lawyers' Assistance Program. This joint initiative provides counselling and referrals to lawyers experiencing difficulties with stress, substance abuse and other related problems. The LINK program has been operating since January 1990 and statistics indicate that it is providing valuable assistance to the profession, having a 1.1% user rate, typical of such programs.
- C.1.4. Staff of the Standards Department and the Director of the Practice Advisory Service continue to represent the Law Society on the OBAP council (Ontario Bar Alcoholism Program). The program and its members, former alcoholics or drug abusers, provide assistance to lawyers with such problems, on either a consultative or an interventionist basis.

- C.1.5. The Committee has embarked on a number of initiatives in an effort to improve overall standards of competency. Sub-committees have been created to formulate general competency guidelines for lawyers practising in different areas of law. The sub-committees are composed of Law Society Benchers and experienced counsel drawn from private practice throughout the province. To date, criminal defence and real estate law guidelines have been finalized and distributed to the profession and checklists are being prepared for publication in the areas of wills and estates and family law. Sub-committees have also been established to draft guidelines for use in the areas of Civil Litigation and Securities Law.
- C.1.6. A total of 139 lawyers to date have been approached to participate in the programme. Most of these lawyers have been referred to Standards from other departments. At the same time, "repeater" lists of the Errors & Omissions and Complaints Departments are periodically ordered to assist in identifying potential candidates.
- C.1.7. Attention is being focused on those lawyers in the Practice Review Programme whose files require monitoring as well as those which require follow-up attendances to provide assistance and ensure compliance with recommendations. Understandably, many practitioners in the programme require on-going participation by staff in order to effect changes to their practices.
- C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT
- C.2.1 The Service is delighted to welcome Patricia Rogerson as the new Director of the Practice Advisory Service.
- C.2.2 Commencing in September, 1992, the Adviser will be published through a joint effort of the Complaints, Audit, Standards, Professional Conduct and Practice Advisory Departments. The first edition is to be published on October 2, 1992 and will cover the topics of Sexual Harassment and Rule 27, associates and partners leaving a law firm, law firm break-ups and the effects of declaring bankruptcy. It will also include a short synopsis of the functions of the aforementioned departments. Thereafter, the Adviser will be published quarterly.
- C.3. UPCOMING POLICY ISSUES
- C.3.1. Reform Implementation: Given the recent developments with respect to the proposed legislative amendments, are there reforms that can be introduced without legislative change, but rather through seeking changes to the rules under the *Law Society Act*?
- C.3.2. The Practice Review Programme presently requires the use of review panels, constituted of Benchers, after the conclusion of the practice review. Should this requirement be continued? Are there files where a review panel is not necessary? On what basis, and by whom, should this decision be reached? Should the review panels be held at a later stage in the process, and if so, when? Should non-Benchers be included on the review panel?

- C.3.3. After a member has successfully completed the Practice Review Programme, should there be continued monitoring of the member's practice? What procedure should be used to do so, and for how long? If a member again experiences difficulties in practice, what steps, if any, should be taken?
- C.3.4. In what circumstances is it appropriate for members to be assisted through the Professional Standards Department, but outside the formal Practice Review Programme process?
- C.3.5. On occasion, Professional Standards staff are requested to act in effect as an investigative tool for disciplinary purposes, both before and after authorization for discipline proceedings has been granted. Is it appropriate to use Standards staff for either or both of these purposes? If it is appropriate, what restrictions, if any, should be placed on staff involvement in this regard?
- C.3.6. Convocation has in the past addressed the issue of exchange of information among departments within the Law Society. With the development of the Practice Review Programme, however, additional questions arise regarding the accessibility of information compiled by the Professional Standards Department to a variety of departments, authorities and individuals who are within the broad umbrella of the Law Society, such as the Continuing Legal Education Department, the Ontario Legal Aid Plan, or individuals conducting practice reviews. Related to this issue is the use of the Professional Standard Department as a "clearing house" for information regarding members; examples of where such use could occur are the Certification program, and requalification panels. Given the confidentiality offered to members who participate in the Practice Review Programme, are there any restrictions that should be placed on the release of information? Alternately, should the department's role in this regard be expanded?
- C.3.7. In what circumstances, if any, should a department of the Law Society refrain from using the services of a particular lawyer because of his/her involvement with the Practice Review Programme, Complaints, Discipline, or other departments of the Society?
- C.3.8. Sub-committees have drafted, or are in the process of drafting, checklists for use in various areas of practice, including real estate, criminal defence, family law and wills and estates. What additional sub-committees can be established to undertake this function for other areas of law?
- C.3.9. Issues arising from the Communications survey will continue to be raised for the consideration of the Committee during the forthcoming year.
- C.4. LINK - LAWYERS' ASSISTANCE PROGRAM
- C.4.1 The Board of Directors has invited tenders from service providers for the LINK Program. After 2 years of service from Corporate Health Consultants, and given the changes in the economy since that time, the Board felt that new arrangements should be considered. It is anticipated that Corporate Health Consultants will be one of the organizations submitting a tender.

24th September, 1992

C.5. FAMILY LAW CHECKLIST

The checklist has been updated to include recent legislative amendments with respect to Enforcement. Phil Epstein, Q.C., has agreed to review the checklist and provide his comments, if any.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"C. McKinnon"  
Chair

THE REPORTS WERE ADOPTED  
.....

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Ruby presented the Reports of the Lawyers Fund for Client Compensation Committee of its meetings on May 14th, June 11th, June 23rd and September 10th, 1992.

Mr. Topp did not participate in the debate or vote.

Meetings of May 14th and June 11th, 1992

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, May 14th, 1992, at 11:45 a.m. the following members being present:

C. Ruby (Chair), H. Strosberg (a Vice-Chair), L. Brennan, K. Howie and S. Lerner; P. Bell and H. Werry also attended.

A.  
POLICY

1. AMENDMENT OF SECTION 51(5) OF THE LAW SOCIETY ACT TO COVER CLAIMS CAUSED BY DISHONESTY WHEN THE MEMBER IS MENTALLY ILL

It was reported that as a result of several recent claims, a legal opinion was sought from outside counsel as to the wording of an amendment to permit the payment of grants where the loss was caused by the dishonesty of a member who was suffering from an illness or incapacity. The staff advise that in recent years grants have been paid in similar situations under the existing wording of Section 51(5) which is as follows:



24th September, 1992

Section 51(5)

Grants            Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee, notwithstanding that after the commission of the act of dishonesty he may have died or ceased to administer his affairs or to be a member.

After discussing the legal opinion of outside counsel, and the existing guidelines, THE COMMITTEE RECOMMENDS that there be no change to the Law Society Act or the General Guidelines for the Fund, and that claims where the loss was caused by the dishonesty of a member who was suffering from an illness or incapacity, be processed under the Society's usual procedure. The Committee is confident that if the problem arose it will be dealt with on a case by case basis.

B.  
ADMINISTRATION

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1.    AMENDMENT TO BUDGET OF 1992/1993

The Director of Finance has requested that the Committee consider increasing the amount of the Discipline, Audit and Complaints Departments Re-Charge for 1992/1993 to \$400,000. He has also requested that this year's re-charge (fiscal 1991/1992) be increased to \$400,000 by an additional charge of \$241,800. The Committee decided to amend its budget, subject to the approval of the Finance Committee by increasing the re-charge for the Discipline, Audit and Complaints Departments from \$240,000 to \$400,000 for 1992/1993 and to increase the recharge for the 1991/1992 fiscal year by an additional amount of \$241,800.

C.  
INFORMATION

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1.    REFEREE'S REPORT AND ASSISTANT SECRETARIES' MEMORANDA

The Referee's report and memoranda of Assistant Secretaries, 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, and the Activity Report for April 1992 are attached. (Pgs. C1 - C3)

3.    Accounts approved by Assistant Secretaries in April amounted to \$23,844.

24th September, 1992

4. SPECIAL REPORT ON REDUCING DEFALCATIONS

It was reported that the Chair will address the County & District Presidents meeting on Friday, May 15th at 9:30 a.m. on the two-lawyer rule and the changes to the Forms.

5. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on this matter.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"C. Ruby"  
Chair

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

- C-Item 1 - Copy of the Referee's report and memorandum of Assistant Secretaries. (Schedule "A")
- C-Item 2 - Copies of Financial Summary and Activity Report for April 1992. (Marked C1 - C3)

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, June 11th, 1992, at 11:45 a.m. the following members being present:

H. Strosberg (a Vice-chair in Chair), C. Ruby (Chair), L. Brennan, S. Lerner and S. Thom; P. Bell and H. Werry also attended.

A.  
POLICY

1. AMENDMENT TO THE LAW SOCIETY ACT - SECTION 51(5)  
TO COVER FINANCIAL LOSS CAUSED BY EMPLOYEES OF LAW CORPORATION

Convocation on May 29th, 1992, adopted a Report of the Special Committee on the Incorporation of Law Practices. An item that is referred to this Committee for consideration is whether Section 51(5) of the Law Society Act should be amended to cover financial loss caused by the dishonesty of employees of law corporations who are not members of the Society. Section 51(5) of the Law Society Act reads as follows:

- 51(5) Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee, notwithstanding that after the commission of the act of dishonesty he may have died or ceased to administer his affairs or to be a member.

At the present time the wording of the section appears to only cover dishonesty by a member, not dishonesty of one of the member's employees. After discussing the wording of the Alberta legislation and hearing a report from the staff, the Committee decided that there should be no change to Section 51(5) of the Law Society Act as that would expand the ambit of the claims that are covered by the Fund.

B.  
ADMINISTRATION

1. COMMUNICATIONS MEMBER AND PUBLIC SURVEYS

At the request of the Chair of the Communications Committee your Committee considered the Reports on the Perceptions of the Public and the Profession. Your Committee has no suggestions to make at this time.

2. PAYMENT OF LEGAL ACCOUNT OF A SUCCESSFUL CLAIMANT

A successful claimant who received a total of \$34,706. in grant payments on the recommendation of H.A. Werry, requests that the Fund pay the \$745.79 legal account of the claimant's counsel on the claim. After discussing the staff memorandum and the wording of the Guidelines concerning legal fees, the Committee decided to pay the account in full because of all the circumstances in this case, and for future cases the Committee decided that the Guidelines for the Fund should be amended to provide for legal fees of a claimant for the preparation of all claim documents prior to a Referee hearing, in the fixed amount of \$500.00 unless there are exceptional circumstances.

3. COMPENSATION HEARINGS HEARD BY REFEREE PRIOR TO DISCIPLINE PROCEEDINGS

The matter of Compensation hearings proceeding before Discipline hearings was discussed by the Committee. The Alberta Court of Appeal decision in the case of Re: Duncan and The Law Society of Alberta was considered and the Committee reaffirmed its policy that Compensation hearings should proceed before Discipline hearings. The reason for this is that the parties in a Compensation hearing and in a Discipline hearing are different, the standard of proof is different and this Committee should be able to process and pay claims without waiting for the completion of Discipline hearings.

4. COLLECTION OF AMOUNTS OWED TO THE SOCIETY

The Committee discussed having a centralized collection department for all Judgments, Restitution Orders and writs of seizure and sale. After hearing a staff report and discussing various alternatives, the Committee instructed the secretary of the Committee to write the Director of Finance and ask that the Society consider establishing a collection department for amounts owing to the Society on Compensation Fund and Errors and Omissions matters and that this be done in-house by Society staff.

24th September, 1992

C.  
INFORMATION

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1. ASSISTANT SECRETARIES' MEMORANDA

The memoranda of Assistant Secretaries 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, and the Activity Report for May 1992 are attached. (Pgs. C1 - C3)

3. Accounts approved by Assistant Secretaries in June amounted to \$26,174.

4. SPECIAL REPORT ON REDUCING DEFALCATIONS

A special Dinner meeting will be held on June 24th, 1992, at 6:00 p.m. for the meeting and 7:00 p.m. for the dinner to consider the submissions from the County and District Presidents on the recommendations in the Special Report.

5. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on this matter on meeting day.

6. APPEALS DIVISION

The Appeals Division of the Committee composed of K. Howie (Chair), L. Brennan and H. Strosberg heard an appeal of two claimants in the matter of E. Nowak. The appeal was dismissed and the Referee's Report and recommendation were upheld.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"C. Ruby"  
Chair

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

C-Item 1 - Memoranda of Assistant Secretaries.

(Schedule "A")

C-Item 2 - Copies of Financial Summary and Activity Report for May 1992.

(Marked C1 - C3)

THE REPORTS WERE ADOPTED

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24th September, 1992

Meeting of June 23rd, 1992

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 Wednesday, the 23rd of June, 1992, the following members being present: C. Ruby (Chair), H. Strosberg, L. Brennan, R. Murray. Law Society staff in attendance were: D.A. Crosbie, R.F. Tinsley, P. Bell, H. Werry, S. Traviss, J. Yakimovich and G. Logan.

B.

ADMINISTRATION

1. Proposed Amendment to Rule 5 of the Rules of Profession Conduct

Your Committee met to consider the responses from the profession to date on a proposed amendment to Rule 5. This amendment, if adopted, will prevent a lawyer from representing both the lender and the borrower in a private mortgage transaction.

A total of 35 replies have been reviewed to date: 27 from outside Metropolitan Toronto and 8 from within. The breakdown of these is as follows:

	<u>In Favour of the Amendment</u>	<u>Against the Amendment</u>
Outside Metro Toronto	14	13
Within Metro Toronto	<u>5</u>	<u>3</u>
Total	<u>19</u>	<u>16</u>

The Committee was informed that in many cases the views expressed were strongly held whether in favour of or against the proposal.

The Committee concluded that further time was necessary to permit the profession to respond to the proposal and accordingly, Convocation ought not to deal with the proposed amendment in June.

The Committee discussed the replies and identified two issues for consideration, namely:

1. What is the correlation, if any, between the view taken on the proposed amendment and the current practice of the firm with respect to representing both sides of a private mortgage transaction?
2. In view of its impact on the traditional practice of many firms, is the proposed amendment justified?

With respect to the first of these issues, your Committee recommends that a survey of the profession be conducted to determine whether any such correlation exists and if so, the nature and extent of it. The Committee noted that in conducting such a survey, care should be taken to ensure that a sufficiently large sample was used to generate statistically valid results.

24th September, 1992

On the second issue, your Committee considered the claims made against the Fund in the 1991-92 year. It was noted that the very significant increase in claims that year was largely caused by 23 defaulting lawyers. In view of the relatively small number of lawyers involved in defalcation, your Committee discussed whether Convocation ought to restrict the activities of a much larger number of lawyers with the consequential impact on clients who seek these services. The question was then raised whether it would be possible to develop a profile of defaulting lawyers. The Director of Audit and Investigation advised the Committee that he has done considerable work in this area and it appears to be a promising approach to the problem. Your Committee recommends therefore that a project be undertaken to analyze the characteristics of those members who have defaulted in recent years with a view to identifying any common characteristics that might serve as an advance warning of the likelihood of defalcation.

Although no amount has been included in the budget for the Lawyers Fund for Client Compensation administration in 1992/93 for this purpose, it was concluded that in view of the \$10 million exposure that arose last year and the healthy nature of the fund, it is appropriate to incur these additional expenditures. Your Committee recommends therefore that Convocation approve these expenditures subject to the specific amounts being approved by the Chair of Finance & Administration and subject to a maximum list of \$50,000.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June 1992

"C. Ruby"  
Chair

The last sentence in the last paragraph of the Report which reads "Your Committee recommends therefore that Convocation approve these expenditures subject to the specific amounts being approved by the Chair of Finance & Administration and subject to a maximum limit of \$50,000", was deleted.

THE REPORT AS AMENDED WAS ADOPTED

Meeting of September 10th, 1992

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, September 10th, 1992, at 11:45 a.m. the following members being present:

C. Ruby (Chair), V. Krishna (a Vice Chair), L. Brennan, K. Howie and S. Thom; P. Bell and H. Werry also attended.

A.  
POLICY

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1. AMENDMENT TO THE LAW SOCIETY ACT - SECTION 51  
TO ESTABLISH A SINGLE ENTITY TO DEAL WITH ALL CLAIMS  
RESULTING FROM DISHONESTY AND/OR NEGLIGENCE

The Chair has asked that the Committee consider amending the Law Society Act in order that claims arising out of the dishonesty and/or negligence of a member be dealt with by one entity. The Chair has written to the Treasurer suggesting that a working group be set up to work out the details of such an entity. The Chair's letter indicates that the treatment of claims against sole practitioners is different than those claims where there are innocent partners involved. There are the following inconsistencies in the treatment of claims:-

- (1) Dishonesty claims are subject to "capping" - the \$100,000. per claimant limit - negligence claims are not capped;
- (2) Damages, expenses, interest and legal fees are covered by the Errors & Omissions Insurance Department for negligence claims but are not covered under the Compensation Fund Guidelines;
- (3) Confusion of both the public and the profession as to what the two Funds cover and do not cover; and
- (4) Claimants in dishonesty claims to Errors and Omissions could be prejudiced by actions of a dishonest partner whereas Compensation claimants against sole practitioners would not be so affected.

IT IS RECOMMENDED that a Sub-Committee be appointed to consist of all of the members of Lawyers Fund for Client Compensation Committee and those members of the Insurance Committee to be appointed by the Chair of that Committee to study whether claims arising out of the dishonesty and/or negligence of a member be dealt with by one entity. The Co-Chairs of the Sub-Committee are to be C. Campbell and K. Howie.

2. PRIORITY ITEMS TO BE CONSIDERED BY THE COMMITTEE THIS YEAR

The following items are suggested by the Committee to be examined in the coming year pursuant to the Treasurer's request:-

- (1) the implementation of the Special Committee on Reducing Defalcations Report;
- (2) the speeding up of processing claims to the Lawyers Fund for Client Compensation; and
- (3) the relationship of the Lawyers Fund for Client Compensation department to other Law Society departments.

3. SUGGESTED CHANGES TO THE GENERAL GUIDELINES

Several suggested amendments to the General Guidelines were discussed by the Committee. These changes were intended to clarify the claims that are compensated. After a discussion of the amendments this matter was referred to the Sub-Committee on the Guidelines for consideration.

B.  
ADMINISTRATION

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1. SPEEDING UP THE PROCESSING OF CLAIMS

The Chair asked that this matter be considered by the Committee. At the May 14th meeting of the Committee this matter was deferred so that a staff report could be prepared on the matter. This matter was deferred to the October meeting of the Committee.

2. AMENDMENT OF SECTION 51(5) OF THE LAW SOCIETY ACT

It was reported that submissions were received concerning the recommendation of the Committee at its May 14, 1992 meeting that there be no change to Section 51(5) of the Law Society Act or the General Guidelines to cover claims caused by dishonesty when the member is mentally ill and that each claim should be dealt with under the Society's usual procedure. The Committee revisited the matter and discussed the submissions.

IT IS RECOMMENDED that the policy of the Committee approved at its May 14, 1992 meeting be reaffirmed.

C.  
INFORMATION

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1. REPORTS OF REFEREES AND MEMORANDA OF ASSISTANT SECRETARIES

The Reports of Referees and memoranda of Assistant Secretaries 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, and the Activity Report for June 1992 are attached.  
(Pgs. C1 - C3)

3. PROFILE OF DEFAULTING SOLICITORS

A profile of defaulting solicitors based on closed and open claims was before the Committee for information purposes.

4. Accounts approved by Assistant Secretaries in June, July and August amounted to \$43,025.67.

5. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on the budget.

6. NEW YORK STATE

It was reported that New York State has restored its per claimant limit to \$100,000. after having reduced it to \$50,000. several years ago.



24th September, 1992

7. SPECIAL REPORT ON REDUCING DEFALCATIONS

The two-lawyer rule in the Special Report on Reducing Defalcations was deferred by Convocation until after the County and District Presidents Association meeting on November 12 and 13, 1992 so that the County Presidents would have more time to consider it.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"C. Ruby"  
Chair

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

C-Item 1 - Reports of Referees and memoranda of Assistant Secretaries.  
(Schedule "A")

C-Item 2 - Copies of Financial Summary and the Activity Report for June 1992.  
(Marked C1 - C3)

The Treasurer said he would consider how the issue of non-financial damages (for example sexual assault) should be addressed.

THE REPORT WAS ADOPTED  
.....

LEGISLATION AND RULES COMMITTEE

Mr. Cullity presented the Report of the Legislation and Rules Committee of its meeting on September 10th, 1992.

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, September 10th, 1992, at 10:30 a.m. the following members being present:

M. Cullity (Chair), K. Palmer (Vice-Chair), A. Lawrence, S. Thom; P. Bell and J. Yakimovich also attended.

A.  
POLICY

No items

B.  
ADMINISTRATION

1. INCORPORATION OF LAW PRACTICES - FORMS 2LC, 3LC, 4LC & 5LC

It was reported that Forms 2LC, 3LC, 4LC and 5LC have been drafted for law corporations based on the individual Forms 2, 3, 4 and 5 that were approved by Convocation on June 26th, 1992. Copies of the new Forms 2LC, 3LC, 4LC and 5LC are available upon request from the Secretary's office.

IT IS RECOMMENDED that the revised Forms 2LC, 3LC, 4LC and 5LC be approved.

2. It was reported that the Institute of Chartered Accountants has suggested some minor non-substantive changes to Forms 2, 3, 4 and 5 adopted by Convocation on June 26, 1992. These changes have been incorporated into the four Forms in item B1. Copies of the four Forms with changes indicated are available upon request from the Secretary's office.

IT IS RECOMMENDED that the revised Forms 2, 3, 4 and 5 be approved as amended.

3. AMENDMENT TO RULE 50 TO PROVIDE FOR A LEGAL AID LEVY,  
A COUNTY LIBRARY LEVY, THREE CATEGORIES OF MEMBERSHIP  
AND PARENTAL LEAVE POLICY

The Finance and Administration Committee has for several years approved a Legal Aid levy, a County Library levy to be included with the Lawyers Fund for Client Compensation levy in the Annual Fees paid by members of the Society. In addition the Finance and Administration Committee and Convocation approved the three categories of membership in 1988. Convocation on July 10th, 1992 adopted a report of the Finance and Administration Committee which contained the parental leave policy of the Society. The Director of Finance requested that the Legal Aid levy, County Library levy, the three categories of membership, and the parental leave policy be referred to this committee for drafting to be included in amendments to Rule 50.

IT IS RECOMMENDED that Rule 50 be amended to read as follows:

Note: Amendment, see page 97

ANNUAL

Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, a Legal Aid levy and a County Library levy for each financial year of the Society in an amount to be determined by Convocation. The annual fee shall be due and payable on the 1st day of August in each financial year or, if a member is admitted, readmitted or restored to membership on a date subsequent to the 1st day of August, the annual fee is due and payable on the date on which the member is admitted, readmitted or restored. Student members who are admitted during the financial year in which they complete the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as a Solicitor.

#### CATEGORIES OF MEMBERSHIP

There are 3 categories of fee paying members:-

- (1.1) Members engaged in legal practice in respect of the law of Ontario, whether they do so in Ontario or in some other part of the world, including law teachers who practise and those federal, provincial and municipal government and corporate lawyers and other members who provide legal advice, opinions, or services with respect to Ontario law shall pay  
..... 100% of the annual fee;
- (1.2) Members not engaged in legal practice in respect of the law of Ontario, including those employed in education, government, corporations or any other position who do not provide legal advice, opinions or services shall pay  
..... 50% of the annual fee; and
- (1.3) Members who are not gainfully employed in or outside Ontario or who are in full-time attendance at a university, college or educational facility and not practising law shall pay  
..... 25% of the annual fee.

#### PARENTAL LEAVE AND CHANGE IN STATUS

- (i) For the purposes of determining fees, leave from employment or practice for reasons of maternity, paternity or adoption should be treated identically.
- (ii) Members in Categories 1.1 and 1.2 taking such leave shall be entitled to a pro rata reduction in annual fees to the Category 1.3 level for the period of time, in months, that such leave is taken.
- (iii) Members already in Category 1.3 (ie. unemployed) shall not be entitled to any additional reduction in annual fees.
- (iv) Members in Categories 1.1 and 1.2 who cease practising or become unemployed shall be entitled to a pro rata reduction in annual fees to the Category 1.2 or 1.3 level, as appropriate, for such period as the change in status continues.
- (v) Correspondingly, members in Categories 1.2 and 1.3 who commence practising or become employed must pay a pro rata increase in annual fees to the Category 1.1. or 1.2 level, as appropriate, for such period as the change in status continues.
- (vi) Members who wish to take advantage of this policy to obtain a reduction in annual fees must apply in writing to the Admissions and Membership Office of the Society.

#### 4. AMENDMENT TO RULE 36 UNDER THE LAW SOCIETY ACT RE JURISDICTION AND NAME OF THE ADMISSIONS COMMITTEE

It was reported that the Finance and Administration Committee at its September 10th, 1992 meeting considered a change in policy whereby any matters concerning changes to the membership and members records of the Society will in future be dealt with by the Admissions Committee. As a result, the Admissions Committee considered changing the name of that Committee to Admissions and Membership Committee and whether to accept these new responsibilities.

24th September, 1992

The Committee decided to defer this matter until the October meeting in order for the staff to obtain further information from the Finance Department concerning the new responsibilities of the Admissions Committee.

5. AMENDMENT TO RULE 38(1) UNDER THE LAW SOCIETY ACT  
RE COMPOSITION OF THE PROFESSIONAL CONDUCT COMMITTEE

It was reported that Rule 38(1) should be amended to delete the requirement that a member of the Legal Aid Committee must be a member of the Professional Conduct Committee.

Your Committee deferred consideration of this matter until October and asked the staff to obtain further information.

6. FRENCH VERSION OF RULES UNDER THE LAW SOCIETY ACT

It was reported that Convocation adopted the revised version of the Rules under the Law Society Act, on January 25th, 1991. The French translation of the Rules under the Law Society Act is available upon request from the Secretary's office.

The French translation of the Rules under the Law Society Act is submitted to Convocation for its approval.

7. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on the budget on Meeting Day.

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C.  
INFORMATION

1. AMENDMENTS TO REGULATION 573 - SUBSECTIONS 15a AND 15b

It was reported that the amendments to Regulation 573 to add subsections 15a and 15b were drafted by Legislative Counsel and signed by the Treasurer and Secretary on August 31st, 1992 and it is hoped will be filed on September 14th, 1992 and be Gazetted on October 6th.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"M. Cullity"  
Chair

The Chair amended Item 3 under Administration re: Amendment to Rule 50, the sentence starting "It is recommended...." to read "It is recommended that the part of Rule 50 that requires payment of Annual Fees be amended to read as follows:"

THE REPORT AS AMENDED WAS ADOPTED

.....

24th September, 1992

FINANCE AND ADMINISTRATION COMMITTEE

Mr. Howie presented the Report of the Finance and Administration Committee of its meeting on September 10th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 10th of September, 1992 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), A. Feinstein (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D. Bellamy, R.C. Bragagnolo, P.G. Furlong, D.H.L. Lamont, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.E. Crack, D.N. Carey as well as David Yule and Peter Kinch of Ernst & Young.

A.

POLICY

1. SUSPENSION OF MEMBERS FOR NON-PAYMENT OF DEDUCTIBLE ON CLAIMS

Currently members may be suspended only for non-payment of a fee or levy. These consist of the Annual Membership Fee, the Errors & Omissions Insurance Levy and the Late Filing Fee (for late filing of Form 2/3 with the Audit Department).

The Society's Errors & Omissions Insurance Department continues to encounter difficulty collecting member deductible portions of claim payments, despite the fact that a facility was set up some years ago to offer members bank loans through the Bank of Montreal, guaranteed by the Society.

The Chair asked the Committee to consider an amendment to Section 36 of the Law Society Act to include members' deductibles as a financial obligation for which members may be suspended if such deductibles are not paid within four months of the due date.

Approved

B.

ADMINISTRATION

1. DRAFT FINANCIAL STATEMENTS TOGETHER WITH THE AUDITORS' OPINION FOR THE YEAR ENDED JUNE 30TH.

Draft Financial Statements for the Society's fiscal year ended June 30th 1992 together with the auditors' unqualified opinion were before the Committee. An Annual Review from the Chair is attached.

Approved

2. AMENDMENT TO RULE 50 - ANNUAL FEES

Rule 50 of the Law Society Act has never been amended to include the categories of fee paying members as approved by Convocation in 1988. The attached wording, which reflects the current categories of membership, together with the wording for the Society's new parental leave policy, was before the Legislation & Rules Committee.

Approved

3. SALARIES - FINAL PAY EQUITY ADJUSTMENT

In its report to the committee this year (copy attached), the Salary Subcommittee recommended that:

"the financial position of the Law Society be reviewed in December 1992 and if sufficient funds are available in the salary accounts, that the final 25% of pay equity adjustments be implemented on January 1, 1993."

Because of the surplus position in the June 30, 1992 financial statements, it is proposed that the last phase of pay equity be implemented on January 1, 1993. The estimated cost to the Society is \$28,000 and this amount has been accrued at June 30, 1992.

Approved

4. FEDERATION OF LAW SOCIETIES - ANNUAL ASSESSMENT

At its mid-winter meeting in February 1992, the Board of Directors of the Federation fixed the assessment to be levied on each governing body as of July 1st 1992, at \$8.00 per active member, remaining unchanged from last year.

Our assessment, based on the number of active members (excluding retired members and those located out of province) is:

20,957 members @ \$8.00 per capita = \$167,656

Last year the payment was \$161,992 based on 20,249 members.

The budget includes an amount of \$191,000 to cover this assessment for the current year, as well as travelling and accommodation expenses of the Society's representatives attending Federation meetings.

The Committee was asked to approve this payment.

Approved

5. APPOINTMENT OF THE PRIORITIES AND PLANNING SUBCOMMITTEE

The Chair appointed T. Bastedo as Chair, D. Bellamy, A. Feinstein, R. Murray and J. Wardlaw as members of the Priorities and Planning Subcommittee.

The purpose of this subcommittee is to review, in detail, the financial results from the year ended June 30, 1992, the current budget and plans for the 1992/93 fiscal year, and make recommendations as to fee guidelines for the 1993/94 budget year.

6. URBAN ALLIANCE ON RACE RELATIONS - REQUEST FOR FUNDING

The Urban Alliance on Race Relations is requesting a \$7,000 contribution from the Law Society to help finance a conference on the Ontario justice system as it affects racial minorities and aboriginal peoples. They are also interested in obtaining space at Osgoode Hall for the conference. A similar request has been sent to the CBAO and to the Attorney General and some other ministries.

A letter dated July 23, 1992 from Paul Milbourn and Antoni Shelton of the UARR was before the Committee.

The Committee was asked to consider this request.

Denied

7. INTERDISCIPLINARY CONFERENCE ON VIOLENCE IN SOCIETY - REQUEST FOR FUNDING

The Interdisciplinary Conference Committee of the University of Western Ontario is organizing the annual Interdisciplinary Conference. This year's conference will focus on the issue of violence in society. The conference will include lawyers as well as experts in various fields.

A letter dated July 30, 1992 from Joel Farber requesting a donation of \$500 was before the Committee.

The Committee was asked to consider this request.

Denied

8. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 20 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 20 cases all or part of the late filing fee has been outstanding four months or more. The 20 members owe \$28,169 of which \$15,559 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 20 members be suspended on September 24, 1992 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 108

9. 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:

24th September, 1992

Norman William Allingham	Niagara-on-the-Lake
June Marie Bushell	Toronto
George Charlton Butterill	Toronto
Robert Stirling Wylie Campbell	Toronto
Charles Vincent Cole	Ottawa
John McCreary Coyne	Ottawa
Richard Michael Forbes Delph	Ottawa
Stephen Eisen	Don Mills
Lionel Sydney Frost	Toronto
James Welshe Gemmell	Toronto
John Osborne Graham	Goderich
John Wylie Hatherly	Cape Breton, NS
Iain Wilson Menzies Hendry	Hamilton
Joan Weir Morris Hodgson	Toronto
Frank Fred Hubscher	Laguna Niguel, CA, USA
George Frederick Hulme	Calgary, AB
John Burgess Jolley	Oakville
John Tweeddale Kirkland	Weston
Carl Olof Lindberg	Don Mills
James Herbert Lowry	Islington
William Percy Martin	St. Catharines
Angus Kerr McLeod	Winona
Jack Grant McNaughton	St. Catharines
Audrey Chlevera Ross Rosenthal	Toronto
Harold Rosenthal	Toronto
Kenneth Abdul Rouff	Hamilton
William Arthur Douglas Rutherford	Toronto
Om Parkash Sachdeva	Beamsville
Werner Schwantje	Hull, PQ
Melville Ralph Walton	Scarborough
Warren Pelham Winslow	Verdun, PQ
Maurice Wilfred Wright	Ottawa

(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:

Joseph Claude Bernard Dans	Toronto
Frank Terrence Doerner	New Dundee, ON
Alexander Smirle Forsyth	Toronto
David Bruce Olson	Ottawa

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

Approved

10. RESIGNATION - REGULATION 12

(a) Germain Joseph Labonté of Orleans, Ontario has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. He was called to the Bar on the 20th of September 1957 and has worked almost exclusively for the provincial and federal government. He maintains that he has not engaged in private practice for at least ten to fifteen years and that has not handled trust funds or other clients' property. His annual filings are up to date and the member has requested that he be relieved of publication in the Ontario Reports.



24th September, 1992

(b) John Edward McKim of Truro, Nova Scotia has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. He was called to the Bar on the 17th of April 1985 and was employed by Fennell, Rudden, Campbell & Stevenson as a junior lawyer until June 1990. He maintains that all files and materials have been left with the firm and at no time did he handle client trust funds or property. He is presently employed as a Legal Assistant in a Nova Scotia firm. His annual filings are up to date and the member has requested that he be relieved of publication in the Ontario Reports.

(c) Julius Guilio Fleischer of North York, has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. He was called to the Bar on the 22nd of March 1974 and practised until September 1989. He has ceased practising to pursue other interests. He claims that all clients matters have been completed and disposed of and arrangements have been made to have their files turned over to other members of the Society. His annual filings are up to date and he has requested that he be relieved of publication in the Ontario Reports.

(d) David Scott Curtis of Brighton, Ontario, has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. He was called to the Bar on the 31st of March 1989 and practised for three years. He maintains he has had only four clients for which he has done work which could be characterized as "practising law". He also claims that all trust funds and clients property has been accounted for and paid over to the persons entitled thereto and that all clients' matters have been completed and disposed of, or arrangements have been made to the clients' satisfaction to have their papers returned to them or some other barrister and solicitor. His annual filings are up to date and due to his low level of activity of the practice of law, he requests that he be relieved of publication in the Ontario Reports.

(e) Barbara Jean Hollingshead of Calgary, Alberta has applied for permission to resign her membership in the Society and has submitted a Statutory Declaration in support. She was called to the Bar of Ontario on the 7th of September 1990 and worked solely as Corporate Counsel for Trilea Centres Inc. She has been a member of the Law Society of Alberta since 1980 and was employed with Trilea in Alberta, until she was transferred by the company to Toronto. She claims her sole reason for becoming a member of the Law Society of Upper Canada was to provide legal advice to the company. In March of 1992, she terminated her employment with that company and has moved back to Calgary. She has not handled trust funds nor clients' property. Her annual filings are up to date, and the member requests that she be relieved of publication in the Ontario Reports.

(f) Samuel David Gameroff of Montreal, Quebec has applied for permission to resign his membership in the Society and has submitted Statutory Declaration in support. He was called to the Bar on the 15th of April 1988 and worked for eight months as in house counsel. He claims that he has not practised since that time. He has never handled trust funds or clients' property. His annual filings are up to date and he requests that he be relieved of publication in the Ontario Reports.

(g) Mary Elizabeth Burt Salter of Etobicoke, has applied for permission to resign her membership in the Society and has submitted a Statutory Declaration in support. She was called to the Bar on the 23rd of March 1973 and practised law for five months. She claims that all clients' matters have been completed and disposed of and that she did not handle trust funds or other clients' property. Her annual filings are up to date and she requests that she be relieved of publication in the Ontario Reports.

24th September, 1992

(h) Alexander Charles Pathy of Toronto, has applied for permission to resign his membership in the Society and has submitted a Statutory Declaration in support. He was called to the Bar on the 25th of June 1959 and has never engaged in the practice of law. He is currently a Professor at the University of Toronto. His annual filings are up to date and he requests that he be relieved of publication in the Ontario Reports

Their Declarations are in order and the Committee was asked to approve them, without publication in the Ontario Reports.

Approved

C.  
INFORMATION

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1. LIFE MEMBERS

Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective the 17th of September 1992:

Owen Richard Chapman	Willowdale
George Mitchell Dent	Ottawa
Hugh Francis Gibson	Kingston
Morris Kamin	Windsor
Earle Leroy Lutes	Toronto
Donald Alexander MacKenzie	Toronto
Franklin Howard Young	Thunder Bay

Noted

2. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Faith Esther <u>Slater</u>	Faith Esther <u>Hayman</u> (Change of Name Certificate)
Mary Christine <u>Batts</u>	Mary Christine <u>Davenport</u> (Marriage Certificate)
Susan Mary <u>Davis</u>	Susan Mary <u>Sack</u> (Marriage Certificate)
Sheila Kathleen <u>Budd</u>	Sheila Kathleen <u>Halladay</u> (Change of Name Certificate)
Sandra Marlene <u>Farber</u>	Sandra Marlene <u>Goldberg</u> (Birth Certificate)
Joanne Michelle <u>Clarfield</u>	Joanne Michelle <u>Schaefer</u> (Marriage Certificate)
Marie Julie Guindon	Marie <u>Irene</u> Julie Guindon (Baptismal Certificate)
Kim Marie <u>Gallant</u>	Kim Marie <u>McNeill</u> (Marriage Certificate)
<u>Joseph Antoine</u> Denis Chamberland	Denis <u>Ari</u> Chamberland (Change of Name Certificate)

24th September, 1992

Liisa Pille Hess

Liisa Pille Käärid  
(Marriage Certificate)

Colleen Virginia Pringle

Colleen Virginia Henderson  
(Marriage Certificate)

Emma Antoinette Catherine Grell Hill

Emma Antoinette Catherine Grell  
(Birth Certificate)

Denise Louise Bambrough

Denise Louise Tulk  
(Marriage Certificate)

Noted

3. MEMBERSHIP RESTORED

The following member gave notice under section 31 of The Law Society Act that he has ceased to hold judicial office and wishes to be restored to the Rolls and records of the Society:

Effective Date:

Jack Sol Climans  
(Ontario Court Provincial Division)

31st August 1992

Noted

4. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Arthur Nixon Kearns  
Guelph

Called June 15, 1939  
Died July 20, 1982

Agnes Weir Randolph  
Sarnia

Called September 19, 1935  
Died December 9, 1984

John Beverley Robinson  
North Bay

Called June 16, 1932  
Died August 1, 1988

Margaret Wendy Robson  
Peterborough

Called March 22, 1968  
Died August 16, 1991

John Hamilton Flett  
Welland

Called November 21, 1913  
Died October 24, 1991

William Archibald Maedel  
London

Called January 21, 1932  
Died October 24, 1991

John Galbraith Edison  
Toronto

Called June 18, 1936  
Died January 11, 1992

John Wilson Moorby  
Barrie

Called June 22, 1960  
Died January 22, 1992

Reginald Laverne Kayler  
Toronto

Called June 17, 1943  
Died February 5, 1992

George Arthur Yates  
Windsor

Called June 19, 1930  
Died February 25, 1992

Arthur David Michael Spohn  
Toronto

Called November 19, 1953  
Died February 27, 1992

Ormonde Herbert Barrett  
Montreal, PQ

Called September 16, 1926  
Died March 2, 1992

24th September, 1992

James McCubbin Owen Sound	Called June 19, 1941 Died March 4, 1992
Philip James Vernon Stevens Toronto	Called March 26, 1965 Died March 31, 1992
Louise Jane McIntosh Gloucester	Called April 14, 1986 Died May 4, 1992
William Neil McKinnon Toronto	Called April 5, 1979 . Died May 13, 1992
Ross Garstang Gray Ottawa	Called November 15, 1945 Died May 16, 1992
John Albert Deacon Brockville	Called October 19, 1939 Died May 24, 1992
Terry Alan Hartung Toronto	Called March 22, 1991 Died May 24, 1992
William Alan Templeton Van Every Toronto	Called June 20, 1929 Died June 1, 1992
William Adam Inch Sudbury	Called June 29, 1949 Died June 5, 1992
D'Arcy Argue Counsell Martin Hamilton	Called September 13, 1923 Died June 7, 1992
Albert Aldege Liboiron St. Catharines	Called March 24, 1972 Died June 13, 1992
Robert Alexander Macrae Ottawa	Called June 22, 1960 Died June 18, 1992
Joseph Robert Claude Dewhurst Kingston	Called March 22, 1968 Died June 21, 1992
Andre Paul Levesque Brampton	Called March 31, 1989 Died June 23, 1992
Ian McLean MacDonell Toronto	Called May 20, 1920 Died June 26, 1992
Edward Owen Cougler Cambridge	Called March 26, 1965 Died June 27, 1992
George Edward Hill Toronto	Called September 20, 1928 Died July 1, 1992
Theodore Pullan Metrick Ottawa	Called November 18, 1937 Died July 3, 1992
John Sydney Millar Hamilton	Called June 25, 1953 Died July 9, 1992
Altan Leslie Bowman Harrington Thornhill	Called September 20, 1934 Died July 19, 1992
Panayoti Allen Ballachey Brantford	Called February 21, 1935 Died August 1, 1992
Warren Arbogast Ehgoetz Stratford	Called June 29, 1949 Died August 7, 1992

24th September, 1992

Alfred Joseph Clifford O'Marra  
Mississauga

Called September 20, 1945  
Died August 12, 1992

Frederick Wayne Dickens  
Windsor

Called April 6, 1979  
Died August 14, 1992

Rebecca Jo Quance  
Greenfield, Ohio

Called April 7, 1983  
Died August 18, 1992

William James Hilger  
Toronto

Called April 5, 1979  
Died August 21, 1992

Fred D. O'Connor  
Toronto

Called April 19, 1963  
Died August 24, 1992

Noted

(b) Permission to Resign

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

Peter Zinko  
Islington

Called September 20, 1956  
Permitted to Resign - Convocation  
July 22, 1992

Noted

(c) Disbarments

The following member has been disbarred and struck off the rolls and his name has been removed from the rolls and records of the Society:

Kenneth Franklin Dyer  
Mississauga

Called March 23, 1973  
Disbarred - Convocation  
June 25, 1992

Noted

(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:

Donna Catherine McGillis  
Ottawa

Called March 29, 1977  
Appointed to Federal Court of Canada  
Trial Division  
May 12, 1992

Minoo Koorshed  
Toronto

Called May 16, 1969  
Appointed to the Ontario Court  
Provincial Division  
June 1, 1992

Paul Bentley  
Toronto

Called April 6, 1979  
Appointed to the Ontario Court  
Provincial Division  
June 1, 1992

Ronald Charles Sills  
Kitchener

Called June 27, 1957  
Appointed to the Ontario Court of  
Justice  
General Division  
June 24, 1992

24th September, 1992

Louise Liliane Gauthier  
Sudbury

Called April 15, 1981  
Appointed to the Ontario Court  
Provincial Division  
July 23, 1992

John Ronald McIsaac  
Whitby

Called March 26, 1971  
Appointed to the Ontario Court of  
Justice  
General Division  
July 31, 1992

Donald Sanders Ferguson  
Whitby

Called March 24, 1972  
Appointed to the Ontario Court of  
Justice  
General Division  
July 31, 1992

Charles Stephen Glithero  
Hamilton

Called March 24, 1972  
Appointed to the Ontario Court of  
Justice  
General Division  
July 31, 1992

Lynne Christine Leitch  
London

Called April 14, 1980  
Appointed to the Ontario Court of  
Justice  
General Division  
July 31, 1992

Noted

5. LEGAL MEETINGS AND ENTERTAINMENT

Pursuant to the authority given by the Finance Committee, the Secretary reported that permission has been given for the following:

September 17, 1992

Lawyers Club  
Convocation Hall

September 22, 1992

W.L.A. Dinner  
Convocation Hall

September 23, 1992

Medico-Legal Dinner  
Convocation Hall

September 24, 1992

Red Mass Dinner  
Convocation Hall

October 1, 1992

Western Business School Club  
Convocation Hall

Noted

24th September, 1992

6. STAFF CHANGES

The Director reports that 9 employees have left the employ of the Law Society and 8 have joined. Three new positions have been created and staff complement is now at 339 as at August 31, 1992.

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"K. Howie"  
Chair

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

- B-Item 1 - Memorandum from Mr. Kenneth E. Howie, Q.C. to the Treasurer and Benchers dated September 17, 1992 re: Audited Financial Statements for the year ended June 30, 1992. (pages 13 - 34)
- B-Item 2 - Copy of Rule 50 amended. (pages 35 - 36)
- B-Item 3 - Report of the salary and benefits subcommittee. (page 37)
- B-Item 4 - Letter from Antoni Shelton, and Paul Milbourn to Mr. Donald A. Crosbie, Q.C. dated July 23, 1992 re: Request for partial funding of a conference on the justice system to be held by the UARR. (pages 38 - 43)
- B-Item 7 - Letter from Mr. Joel Farber to the Law Society of Upper Canada dated July 30, 1992. (pages 44 - 45)

The Annual Financial Statements were accepted by Convocation.

THE REPORT WAS ADOPTED

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MOTION TO SUSPEND: FAILURE TO PAY FEE FOR LATE FILING FORM 2/3

It was moved by Mr. Howie, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from September 24, 1992 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

(see list in Convocation file)

Carried

.....

DISCIPLINE COMMITTEE

Mr. Strosberg presented the Report of the Discipline Committee of its meeting on September 10th, 1992.

24th September, 1992

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 10th of September, 1992, at one-thirty in the afternoon, the following members being present:

H. Strosberg (Chair), D. Bellamy, N. Graham, J. Klotz, J. Lax, S. O'Connor, J. Palmer, P. Peters, C. Ruby, S. Thom.

C. Hill, F. Mohideen, R. Murray, S. Hodgett, S. Kerr, G. MacKenzie, D. Robertson, J. Yakimovich also attended.

A.

POLICY

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1. RECOMMENDATIONS OF FRENCH LANGUAGE SUBCOMMITTEE

1.1 A Subcommittee of the French Language Services Committee studying discipline hearings in French submitted a report for the Committee's consideration. In May 1992, the French Languages Services Committee considered and unanimously approved its Subcommittee's recommendations. The Subcommittee's report is at Attachment A.

1.2 The Subcommittee was created to examine a procedure whereby discipline hearings could be held in French. The Subcommittee recommended that bilingual non-Bencher members be appointed to be available to sit as part of a Discipline Committee considering complaints against francophone lawyers.

1.3 Your Committee discussed the report and concluded that it is important that, if they choose, francophone lawyers be able to make representations to a panel in the French language, if that language is the language in which they most adequately express themselves. Alternative means of approaching the problem, such as simultaneous translation or reliance on Benchers who are French speaking, do not adequately address the concerns expressed in the Subcommittee's report.

1.4 Your Committee recommends that Convocation adopt a policy to allow non-Bencher lawyers who are fluent in French to sit on Discipline Panels at the request of a francophone solicitor if French speaking Benchers are not available. This recommendation obviously requires legislative change.

B.

ADMINISTRATION

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1. FROZEN TRUST ACCOUNTS AND PRO-RATA DISTRIBUTION

1.1 In its report to Convocation from its June 11, 1992 meeting, your Committee set out the issues relating to the problem of frozen trust accounts.

1.2 The Chair will appoint a Subcommittee to review the matter and report to the Committee at a future date. The Subcommittee is to look at the specific problem of the hardship caused when the Law Society freezes a law firm's trust fund.



C.  
INFORMATION

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1. DISCLOSURE GUIDELINES

1.1 Your Committee considered disclosure problems which arise when lawyers fail to respond to the Law Society's Complaints Department. The problems are the result of the Law Society's policy on the disclosure of documents. During the investigative stage lawyers have a professional duty to respond promptly to communications from the Society under s. 18 of Regulation 573 under the Law Society Act. Following the investigative phase, after a complaint has been authorized, it has been the Society's policy not to compel lawyers to produce documents which could be to their detriment.

1.2 As a consequence, the Law Society has hesitated to charge on substantive offenses when a lawyer fails to respond to its enquiries, in order to keep open the possibility of further investigation. This position may act to the detriment of complainants when there is a serious allegation against the lawyer which should be proceeded with without delay.

1.3 Gavin MacKenzie prepared a proposal for your Committee to consider. The proposal involved a modification of the Disclosure Policy as it pertains to lawyers who are uncooperative with the Society but where it is felt it is important to proceed with the substantive charge.

1.4 The proposal was discussed at the meeting. It will be further refined and will again be considered at the next meeting of your Committee.

2. AUTHORIZATION OF DISCIPLINE CHARGES

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

2.2 The following table shows the number of requests made by Discipline, Complaints and Audit staff for the months of June, August and September 1992.

	<u>Sought</u>	<u>Obtained</u>
<u>June</u>		
Discipline	15	15
Complaints	12	12
Audit	3	3
<u>August</u>		
Discipline	20	20
Complaints	12	11
Audit	3	3
<u>September</u>		
Discipline	6	6
Complaints	11	10
Audit	4	4

24th September, 1992

Total number of charges authorized to date for 1992:

January	20
February	16
March	31
April	19
May	37
June	30
August	34
September	20
Total:	207

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"H. Strosberg"  
Chair

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

A-Item 1.1 - Report of the French Language Subcommittee's recommendations  
on discipline hearings. (Marked A-1 - A-5)

Mr. McKinnon asked that the last paragraph on page A-3, II - re: Example of Problems, be deleted as it incorrectly stated the facts. Mr. McKinnon further advised Convocation that the fact that it was resolved was appreciated by the members of the panel who felt that had the hearing proceeded in the French Language they would have encountered difficulty in appreciating the evidence and technical argument.

THE REPORT WAS ADOPTED  
.....

COUNTY AND DISTRICT LIAISON COMMITTEE

Mr. Feinstein presented the Report of the County and District Liaison Committee of its meeting on September 10th, 1992.

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 10th of September, 1992 at 11:30 a.m., the following members were present: R. Bragagnolo (Chair), C. Curtis. A. Feinstein, and County and District Law Presidents' Association Executive: H. Arrell, M. Bode, S. Foley, R. Gates, M. Hennessy, M. Hebert, D. Lovell, N. Mossip and R. Smith. Also in attendance were: M. Angevine, G. Howell, A. John and S. Traviss.

1. LEGAL AID

There was a lengthy discussion regarding the proposed pilot projects under the Ontario Legal Aid Plan, with particular emphasis upon the views of legal organizations other than the Law Society. The Executive advised that this matter would be a priority at the November 1992 Plenary Session.

2. C.I.B.C. MORTGAGE SCHEME

Your Committee was briefed by Stephen Traviss concerning the opinion provided to the Law Society of Upper Canada by John Nelligan on the C.I.B.C. Home Purchase Package. The Professional Conduct Committee will be reviewing this matter at its meeting in September 1992 and report back to this Committee in October 1992.

3. RULE 5, CONFLICT OF INTEREST

Your Committee received information indicating that the Federation of Law Societies is working on a common rule for lawyers who move from firm to firm. The matter has been placed on the Agenda for the November 1992 Plenary of the County and District Law Presidents' Association.

4. NON-BENCHER MEMBERSHIP ON LAW SOCIETY COMMITTEES

The County and District Presidents' Association raised the issue of representation on various Committees of the Law Society. Your Committee supports the following proposal for appointments:

- a) Two representatives from the County and District Law Presidents' Association to the Bencher Election Committee; and
- b) one representative from the County and District Law Presidents' Association to the Professional Standards Committee.

ALL OF WHICH is respectfully submitted

DATED the 24th day of September, 1992

"A. Feinstein"  
for Chair

Convocation adjourned for a 15 minute recess.

Convocation resumed in public.

Convocation voted 21 to 8 in favour of appointing non Bencher members to the Bencher Election Committee.

24th September, 1992

ROLL CALL VOTES RE: ITEM 4(a)

It was moved by Carole Curtis, seconded by Abraham Feinstein that 2 non Bencher members be appointed to the Special Committee on Bencher Elections from the County and District Law Presidents' Association.

Lost

Arnup	Against
Bastedo	Against
Brennan	For
Campbell	Against
Carter	Against
Copeland	Against
Cullity	For
Curtis	For
Elliott	For
Epstein	For
Feinstein	For
Goudge	Against
Hickey	Against
Hill	Against
Howie	Against
Howland	For
Kiteley	For
Krishna	Against
Lamek	Against
Lax	Against
Legge	Against
Lerner	For
McKinnon	Against
Manes	Against
Mohideen	Against
Murphy	For
Murray	For
O'Brien	For
D. O'Connor	Against
Palmer	For
Peters	Against
Richardson	For
Ruby	For
Somerville	Against
Strosberg	Against
Thom	Against
Topp	Against
Weaver	Against

24th September, 1992

It was moved by Colin McKinnon, seconded by Ron Manes that there be 1 non Bencher member appointed to the Special Committee on Bencher Elections from the County and District Presidents' Association, 1 non Bencher member appointed from the County of York Law Association and such other members from other professional organizations as the Committee deemed appropriate.

Carried

Arnup	For
Bastedo	For
Brennan	For
Campbell	For
Carter	For
Copeland	For
Cullity	For
Curtis	For
Elliott	For
Epstein	For
Feinstein	For
Goudge	For
Hickey	For
Hill	For
Howie	For
Howland	For
Kiteley	For
Krishna	For
Lamek	For
Lax	For
Legge	For
Lerner	For
McKinnon	For
Manes	For
Mohideen	For
Murphy	For
Murray	For
O'Brien	For
D. O'Connor	For
Palmer	For
Peters	For
Richardson	For
Ruby	For
Somerville	For
Strosberg	For
Thom	For
Topp	For
Weaver	For

Convocation votes 19 to 18 in favour of non Bencher members having a vote on the Special Committee on Bencher Elections.

Arnup	Against
Bastedo	Against
Brennan	For
Campbell	For
Carter	Against
Copeland	For
Cullity	Abstain
Curtis	For
Elliott	For
Epstein	Against
Feinstein	For
Goudge	For
Hickey	For
Hill	Against
Howie	Against
Howland	For
Kiteley	For
Krishna	Against
Lamek	Against
Lax	For
Legge	Against
Lerner	For
McKinnon	For
Manes	Against
Mohideen	For
Murphy	For
Murray	For
O'Brien	Against
D. O'Connor	For
Palmer	For
Peters	Against
Richardson	For
Ruby	Against
Somerville	Against
Strosberg	Against
Thom	Against
Topp	Against
Weaver	Against

The issue on whether there should be representation from the County and District Law Presidents' Association to the Professional Standards Committee was deferred and the broader issue of whether there should be institutional representation of other professional organizations on standing committees was referred to the Research and Planning Committee.

THE REPORT AS AMENDED WAS ADOPTED

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SPECIAL COMMITTEE ON ONTARIO JUDICIAL COUNCIL

Mr. O'Connor presented the Report on the Special Committee on the Ontario Judicial Council.

THE LAW SOCIETY OF UPPER CANADA

24th September, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE SPECIAL COMMITTEE appointed to prepare a response to the Attorney General's Issues Paper regarding the ONTARIO JUDICIAL COUNCIL begs leave to report:

1. On June 5, 1992, the Attorney General wrote to the Treasurer-Elect, requesting the views of the Law Society "concerning the composition, powers and procedures of the Ontario Judicial Council for the purpose of identifying whether it needs to be made fairer and more effective in dealing with complaints against judges."
2. The Ontario Judicial Council, a body continued by section 46 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, has two functions (see section 47 of the act):
  - to consider all proposed appointments of provincial judges and make a report on them to the Attorney General
  - to receive and investigate complaints against provincial judges.
3. An accompanying Issues Paper, prepared by the Ministry of Attorney General, explained that the role of the Judicial Council in the process of appointing provincial judges had been the subject of a separate consultation. The issues on which the views of the Law Society were requested concerned only the process for receiving and investigating complaints against provincial judges.
4. The Attorney General initially asked for a response by August 20, 1992. Your Committee understands that the deadline has recently been changed: this permits Convocation to consider the response at its meeting on September 24.
5. On July 23, 1992, the Treasurer appointed the following benchers to be members of a Special Committee responsible for preparing a response to the Attorney General's Issues Paper: Dennis O'Connor (Chair), Colin Campbell, Ross Murray, Patricia Peters and Arthur Scace. Andrew Brockett and Simon Hodgett provided staff support for the Committee.
6. Your Committee met on August 7 and August 18. At that time it was thought that the Law Society's response would have to be submitted to the Attorney General by September 4. A submission drafted in the name of the Special Committee and dated August 24 was sent by fax to all benchers on August 28. Comments were requested by September 2.
7. Written comments were received from five benchers. Comments by telephone were received from a further five benchers.
8. It was subsequently learned that an extension of time for submitting the reply had been granted.
9. Your Committee met on September 11 to consider the comments received from benchers concerning the draft submission.
10. Your Committee is grateful for the comments that were submitted at such short notice. All have been considered and many have been incorporated in the Committee's final draft (attached to this report and dated September 17, 1992). Nevertheless, there remain some points on which your Committee has decided not to adopt benchers' suggestions to their full extent.

24th September, 1992

11. Your Committee recommends that Convocation adopt the attached document dated September 17, 1992 entitled "Submission to the Attorney General concerning the Ontario Judicial Council" and that the document be formally submitted to the Attorney General as the response of the Law Society.
12. Your Committee requests that it be discharged.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"D. O'Connor"  
Chair

THE LAW SOCIETY OF UPPER CANADA

SUBMISSION

TO THE ATTORNEY GENERAL

CONCERNING

THE ONTARIO JUDICIAL COUNCIL

September 17, 1992

1. INTRODUCTION

- 1.1. On June 5, 1992, the Attorney General wrote to the Treasurer-Elect, requesting the views of the Law Society on the Ontario Judicial Council and on the question of how complaints against provincially-appointed judges should be handled.
- 1.2. In making this submission, the Law Society wishes to express its appreciation to the Attorney General for the opportunity to comment.
- 1.3. Accompanying the Attorney General's letter was an Issues Paper dated June, 1992. Rather than commenting on all the issues raised in that paper, the Law Society is limiting its response to those matters which appear most closely related to its responsibilities.



A. COMPOSITION OF THE JUDICIAL COUNCIL

2. SHOULD THE PROPORTION OF LAY PARTICIPATION BE CHANGED?

- 2.1. Section 46 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides that the Judicial Council shall be composed of five judges, the Treasurer of the Law Society and "not more than two other persons appointed by the Lieutenant Governor in Council." The Law Society understands that, in practice, these "other persons" tend to be "lay" persons (neither lawyers nor judges). The Issues Paper asks whether the proportion of lay participation should be changed.
- 2.2. Lay participation on the Council is a visible reminder that judges are accountable to the public for their conduct. It ensures that the conduct of judges will be measured against community standards and expectations, not by the standards of lawyers alone. It brings to the Council valuable insights and perspectives that may differ from those of lawyers and fellow judges.
- 2.3. For all those reasons, the Law Society is of the view that a third lay person should be added to the membership of the Council.

Note: Motion, see page 128

- 2.4. The actual number of lay members on the Council is less important, however, than the attributes and experience which they bring to the task. The Law Society suggests that the paramount concern must be to appoint lay persons who have an understanding of the complexities of judicial office and the pressures to which judges are subject, lay persons who appreciate the qualities which make a judge a good judge.
- 2.5. The concept of public accountability must also be balanced against the need to preserve judicial independence. An undue emphasis on public accountability has the potential to erode the independence of the judiciary. These considerations underscore the argument for selecting lay persons who appreciate the vital importance of an independent judiciary and who are themselves people of independent mind.

3. SHOULD THE PROPORTION OF FEDERALLY-APPOINTED JUDGES BE CHANGED?

- 3.1. At present, four of the eight members of the Judicial Council are federally-appointed judges. Only one is a provincially-appointed judge - the Chief Judge of the Ontario Court (Provincial Division). The Issues Paper asks whether the proportion of federally-appointed judges should be changed.
- 3.2. The charts attached to the Issues Paper suggests that three other provinces and both territories are similar to Ontario in having only one provincially- (or territorially-) appointed judge; five provinces have judicial councils which include more than one provincially-appointed judge.
- 3.3. Prior to the amendment of the *Courts of Justice Act* in 1989, the Judicial Council included three federally-appointed judges and three provincially-appointed judges.

- 3.4. The Law Society sees considerable merit in maintaining a system under which federally-appointed judges constitute a significant proportion of the Council. By the nature of their office and responsibilities, federally-appointed judges are well-suited to judge the conduct of persons who hold judicial office. At the same time, federally-appointed judges will be seen as having the necessary degree of independence from the provincial bench.
- 3.5. The Issues Paper suggests that the participation of federally-appointed judges will ensure consistency of conduct decisions for all levels of the court.
- 3.6. On the other hand, the Issues Paper notes the value of conduct review by persons who are subject to the same pressures and circumstances as the judge under review. The Law Society suggests that it cannot fairly be said that judges of the Court of Appeal and the General Division (particularly the Chief Justices and Associate Chief Justices) are subject to the daily pressures and frustrations encountered by judges of the Provincial Division.
- 3.7. The Law Society is of the view that a reasonable balance between experience on the provincial bench and independence from that bench would be achieved if the Ontario Judicial Council were to include among its membership a total of six judges, three federally-appointed and three provincially-appointed.

4. SHOULD THE PROPORTION OF LAWYERS BE CHANGED?

- 4.1. There is at present one lawyer (namely the Treasurer of the Law Society) on the Judicial Council.
- 4.2. It is not only members of the public who are affected by the conduct of a judge on the bench. Lawyers who appear in court have a direct and unique interest in the way in which judges perform the duties of their office.
- 4.3. The Law Society is in favour of the appointment of a second lawyer to the Judicial Council.

Note: Motion, see page 129

- 4.4. The Law Society does not have an opinion on whether the appointment of the second lawyer should be made by the Law Society, or by the Canadian Bar Association - Ontario or by the County and District Law Presidents Association.

5. WHO SHOULD CHAIR THE JUDICIAL COUNCIL?

- 5.1. The Judicial Council is currently chaired by the Chief Justice of Ontario.

- 5.2. Although the Law Society is of the view that the Chief Justice of Ontario should continue to be a member of the Council, *ex officio*, it does not seem necessary to provide that the Chief Justice will automatically preside. The selection of the Chair is a matter which can appropriately be left to the members of the Council to decide.
- 5.3. The Law Society is of the view that each year, the members of the Judicial Council should elect from among their own membership one person to serve as Chair of the Council for the year.

6. APPOINTMENT AND SELECTION OF COUNCIL MEMBERS

- 6.1. As the Council is currently constituted, six of the eight members are appointed by virtue of their offices:
- The Chief Justice of Ontario
  - The Associate Chief Justice of Ontario
  - The Chief Justice of the Ontario Court
  - The Associate Chief Justice of the Ontario Court
  - The Chief Judge of the Ontario Court (Provincial Division)
  - The Treasurer of the Law Society of Upper Canada
- 6.2. The Law Society sees value in retaining a system under which a significant proportion of the Council consists of *ex officio* appointees. Appointment to the Council by virtue of office reduces the opportunity for apparently partisan appointments and preserves both the reality and the appearance of independence.
- 6.3. Appointments *ex officio*, however, may not lead to a Council which reflects the composition of Ontario society. This can be remedied by selecting for the remaining positions people from those communities which are not adequately represented on the Council, in particular Aboriginal people, people with disabilities, members of racial minorities and women.
- 6.4. The Law Society also suggests that those positions which are not filled *ex officio* should be for a term of three years.
- 6.5. In this submission, the Law Society has proposed that the membership of the Council be increased to eleven: three lay members, three federally-appointed judges, three provincially-appointed judges and two lawyers.
- 6.6 The Law Society recommends that the three lay members each be appointed for three-year terms and that they be selected with a view to reflecting in the membership of the Council the composition of Ontario society.
- 6.6. The recommends that the 3 federally-appointed judges be the Chief Justice of Ontario, the Chief Justice of the Ontario Court and one other federally-appointed judge appointed for a three-year term and selected by the Chief Justice of Ontario and the Chief Justice of the Ontario Court with a view to reflecting in the membership of the Council the composition of Ontario society.

- 6.5. The Law Society recommends that the 3 provincially-appointed judges be the Chief Judge of the Ontario Court (Provincial Division) and two Regional Senior Judges of the Ontario Court (Provincial Division), the two Regional Senior Judges each to be appointed for three-year terms or for such time as they continue to hold the office of Regional Senior Judge if less than three years, and to be selected with a view to reflecting in the membership of the Council the composition of Ontario society.
- 6.6 The Law Society recommends that one of the two lawyers on the Council continue to be the Treasurer of the Law Society of Upper Canada and that the other lawyer be appointed for a three-year term and selected with a view to reflecting in the membership of the Council the composition of Ontario society.
7. SUPPORT FOR LAY MEMBERS
  - 7.1. The Issues Paper notes that there is currently no formal mechanism to support lay members or to assist them in fulfilling their duties.
  - 7.2. The Law Society is of the view that a *per diem* fee should be paid to lay members for their performance of this public duty.
  - 7.3. The Law Society supports the suggestion that there should be an initial orientation process for newly-appointed lay members.
  - 7.4. The Law Society supports the proposal for staggered appointments that would contribute towards continuity.
  - 7.5. The Law Society does not see a need for institutionalized access to legal advice, nor for the provision of part-time staff support, nor for the establishment of an advisory group to advise and support lay members.

B: DISCIPLINE STRUCTURE AND POWERS

8. RECEIPT AND SCREENING OF A COMPLAINT
  - 8.1. The Issues Papers notes that, currently, complaints about provincially-appointed judges are received by a variety of different bodies including the Judicial Council, the Chief Judge and the Regional Senior Judges. The paper also points out that when a complaint is received by the Chief Judge or by a Regional Senior Judge, it may be resolved at those levels in which case it will not come to the attention of the Judicial Council.
  - 8.2. The Law Society also notes that the Issues Paper draws attention to an "Alternative Dispute Resolution Process" recently developed by the Chief Judge of the Provincial Division and the Executive Committee. This process involves mediation by the Regional Senior Judge and the Judicial Conduct Commission (a body whose members are all current or former provincial judges). It can result in a complaint being settled without reference to the Judicial Council.

- 8.3. For the sake of ensuring that complaints from all regions receive equal treatment, as well as for the sake of ensuring that judges from the different regions receive fair and equal treatment, the Law Society considers it an important principle that all complaints concerning the conduct of provincial judges should be brought to the attention of the Judicial Council.
- 8.4. It is also important that every decision as to whether or not to prosecute a complaint of misconduct against a provincial judge be seen to be taken by a body clearly independent of the provincial bench.
- 8.5. The Law Society recognizes, however, that many complaints concern issues that are not the responsibility of the Judicial Council. Some will be complaints against the judge's decision and must be dealt with by way of appeal. Others will be administrative matters that are properly dealt with by the Regional Senior Judge.
- 8.6. The Law Society therefore recommends that every complaint alleging that a judge is guilty of conduct incompatible with the execution of his or her office or alleging that the judge has failed to perform the duties of his or her office, whether received by the Regional Senior Judges, by the Chief Judge or by a member of the Judicial Council or its staff, should be brought before the Judicial Council for preliminary review.

9. CHANGE OF PROCEDURE

- 9.1. Under the present statutory scheme, where a complaint is received by the Judicial Council, the following procedure is followed:
  - a. Investigation by the Judicial Council which may decide either
    - i. That no further steps are warranted; or
    - ii. That the Judicial Council should hold a hearing into the complaint.
  - b. Where the Judicial Council holds a hearing into the complaint, it may report its opinion concerning the complaint to the Attorney General and may recommend that an inquiry be conducted by a judge of the General Division into the question whether the provincial judge should be removed from office.
  - c. Where the Judicial Council recommends to the Attorney General that an inquiry be held by a judge of the General Division, the Lieutenant Governor in Council may appoint a judge of the General Division to inquire into the question of whether the provincial judge should be removed from office.
  - d. Where an inquiry is held by a judge of the General Division, the report of the inquiry is laid before the Legislative Assembly. The report may recommend that the provincial judge be removed from office.
- 9.2. The Law Society is of the view that a procedure which provides for only one sanction, namely removal from office, is too restrictive and can lead to situations in which conduct deserving of sanction short of removal is not adequately addressed.

9.3. The Law Society recommends that the procedure should be reformed in accordance with the following principles:

- a. All complaints alleging that a provincially-appointed judge is guilty of conduct incompatible with the execution of his or her office, or alleging that the judge has failed to perform the duties of his or her office, to be submitted to the Ontario Judicial Council for preliminary review.
- b. Upon preliminary review, the Council to have power to dismiss complaints which, in its opinion, require no further action.
- c. Upon preliminary review the Council to have power to remit minor complaints to the Regional Senior Judge or to the Chief Judge for appropriate disposition.
- d. In all cases which are neither dismissed nor remitted as a result of preliminary review, the Council to hold an adjudicative hearing.
- e. The Council to have power to impose sanctions short of removal from office. Such sanctions might include
  - a reprimand
  - suspension from office for a defined period of time
  - a requirement that the judge attend an educational or training course, at public expense
  - a requirement that the judge seek professional counselling at public expense.
- f. The Council to have power (as at present) to recommend to the Attorney General that a judge of the General Division be appointed to conduct a public inquiry into the question of whether the provincial judge should be removed from office.
- g. Where, upon receipt of a recommendation to the Attorney General under paragraph f. above, the Lieutenant Governor in Council declines to appoint a judge of the General Division to conduct a public inquiry, the matter to be remitted by the Lieutenant Governor in Council to the Ontario Judicial Council, in which case the Council to have power to impose sanctions short of removal from office. (The Law Society recognizes that there is a potential difficulty in remitting the case to a body which has already concluded that the facts are such as to warrant a public inquiry into the question of whether the judge should be removed from office. The intention, however, is to ensure that where the Lieutenant Governor in Council declines to order a public inquiry there should still be provision for some lesser sanction where appropriate.)
- h. A right of appeal to the Court of Appeal, by the judge, against any sanction imposed by the Judicial Council.

- i. Where a public inquiry is held by a judge of the General Division, the report of the inquiry to be laid before the Legislative Assembly (as at present). The report may recommend that the provincial judge be removed from office (as at present) or may recommend that the matter be remitted to the Ontario Judicial Council for a decision as to whether to impose sanctions short of removal from office.
  - j. The power to remove a provincial judge from office to be vested only in the Legislative Assembly.
- 9.4 In the foregoing scheme, the Judicial Council would have investigatory, prosecutorial and adjudicative responsibilities. The Law Society recognizes the need to keep investigatory and prosecutorial functions separate from the adjudicative function - the need to ensure that adjudicators are not the persons who have made the decision to prosecute. Nevertheless, the Law Society does not believe that it is necessary to create two separate institutions, one to investigate and prosecute, the other to adjudicate.
- 9.5. It is understood that, under present practice, the Judicial Council retains counsel to undertake investigations. Some such arrangement would probably permit the Council to maintain the necessary separation between investigation and prosecution on the one hand and adjudication on the other.
- 9.6. The Law Society is of the view that the Judicial Council should be given power to implement its mandate in such a way that it maintains a clear distinction between the two functions.
- 9.7. The Law Society also recognizes that if the Judicial Council were to be given statutory power to impose sanctions, its proceedings would probably be subject to the *Statutory Powers Procedure Act* and its decisions would probably be subject to judicial review under the *Judicial Review Procedure Act*.
- 9.8. The Law Society further recognizes the apparent awkwardness of providing a right of appeal to the Court of Appeal against decisions of a body which includes amongst its members the Chief Justice of Ontario. There is no other obvious way of providing a right of appeal and the Law Society does not believe that the apparent awkwardness will in fact lead to any problems of substance.
10. INTERIM SUSPENSION
- 10.1. The Issues Paper notes that under the *Courts of Justice Act* there is no specific authority for any body to order the suspension of a judge pending final disposition of a complaint.
- 10.2. A power of interim suspension would permit the Council, in appropriate cases, to take steps to avoid bringing the administration of justice into disrepute while also providing adequate opportunity for a full and fair hearing of the complaint.

- 10.3. The Law Society notes that an interim suspension without remuneration could work an unfair hardship on a judge who, by virtue of the responsibilities of judicial office and the prohibition against other employment in s. 42 of the *Courts of Justice Act*, might not be able to engage in alternative activities to earn income. This may become acutely difficult for the judge who wishes to retain a lawyer.
- 10.4. The Law Society is of the view that the Ontario Judicial Council should have power to suspend a provincial judge from the performance of all judicial duties pending the final disposition of a complaint, such power to be exercisable at any time after the receipt of a complaint by the Council. In all cases of interim suspension, the judge's remuneration should be continued.
11. CONFIDENTIALITY OF INVESTIGATIVE PROCESS: ADJUDICATIVE STAGE TO BE PUBLIC OR PRIVATE?
  - 11.1. The Issues Paper asks whether the investigation of a complaint should be confidential and whether any hearings should be public or private.
  - 11.2. The Issues Paper points out that an inquiry by a judge of the General Division into the question whether the provincial judge should be removed from office is, under current procedures, a public inquiry subject to certain exceptions. The report to the Legislative Assembly is also a public document. Provided the power to remove from office remains vested in the Legislative Assembly, decisions to remove a judge from office will always be public.
  - 11.3. The question of whether a hearing before the Judicial Council should be held in public weighs the interest of public accountability against the ability of the judge in future to fulfil the role of judicial officer. Unfounded or scandalous allegations and irrelevant information, if brought forward at a public hearing, might effectively destroy the authority of the judge to sit again. The Law Society is therefore of the view that hearings should generally be conducted *in camera*. The findings of the Council, however, and any resulting sanctions, should generally be made public. It should also be noted that in section 12 below the Law Society recommends an extensive scheme of publication in the form of an annual report by the Council.
  - 11.4. If hearings are generally to be conducted *in camera*, it would appear necessary to provide a statutory exemption from s-s. 9(1) of the *Statutory Powers Procedure Act*.
  - 11.5. The Law Society understands that in the recent case involving the Hon. Judge Ruffo, the Québec Superior Court held that s. 2 of the *Charter of Rights and Freedoms* required the hearing of the complaint against Judge Ruffo to be open to the public. It is understood, however, that Judge Ruffo herself requested a public hearing.
  - 11.6. If hearings are generally to be held *in camera*, there needs to be provision for those cases in which the judge against whom the complaint has been laid wishes the facts to be made public. There may also be situations in which the Judicial Council considers it to be in the public interest that the hearing not be *in camera*.



11.7. The Law Society therefore recommends that:

- (a) Unless the Judicial Council makes an order to the contrary
  - (i) all investigations by the Council should be conducted in confidence; and
  - (ii) all hearings before the Council should be held *in camera*.

Note: Motion, see page 128

- (b) Unless the Judicial Council makes an order to the contrary, in every case in which the Council holds an adjudicative hearing and finds that the complaint has been established
  - (i) the findings of the Council in respect of the complaint should be made public; and
  - (ii) the sanctions imposed by the Council, or any other decision of the Council arising from its findings, should be made public.

12. PUBLIC REPORTS

- 12.1. The Issues Paper notes that the Judicial Council has issued a report covering the period September 1, 1988 to October 31, 1989, but that otherwise neither the government nor the public has access to information about the number of complaints received by the Council, the nature of those complaints, or the reasons given for not proceeding to investigate or hold a Council hearing into the complaint.
- 12.2. The Law Society is of the view that public information about the way in which the Ontario Judicial Council fulfils its mandate is essential to the maintenance of public confidence in the judiciary. Secrecy can lead only to uncertainty and doubt.
- 12.3. The Law Society recommends that the Judicial Council should be required by statute to submit an annual report to the Legislative Assembly and that the report should include the following information for the year in question:
  - The number of complaints received.
  - The number of judges against whom complaints were received.
  - A classification of complaints received and the number of complaints in each class.
  - The number of complaints investigated.
  - The number of complaints dismissed.
  - The number of complaints remitted to Regional Senior Judges and the Chief Judge.
  - The number of complaints in which the Judicial Council decided to hold an adjudicative hearing.
  - The number of adjudicative hearings conducted.

- The number of cases referred to the Attorney General with a recommendation that a judge of the General Division be appointed to conduct an inquiry.
- The number of cases in which the Lieutenant Governor in Council appointed a judge of the General Division to conduct a public inquiry.
- The number of cases in which the Lieutenant Governor in Council declined to appoint a judge of the General Division to conduct a public inquiry and remitted the matter to the Ontario Judicial Council.
- The number of cases remitted to the Judicial Council by the Legislative Assembly.
- The number of cases in which the Judicial Council imposed sanctions short of removal from office.
- A classification of the sanctions imposed and the number of dispositions in each class.

13. THE NEED FOR A CODE OF JUDICIAL CONDUCT

- 13.1 Although the Issues Paper does not address the matter of a Code of Judicial Conduct the Law Society wishes to bring it to the attention of the Attorney General. As far as is known, no such code exists in Ontario. The Law Society suggests that judges of all courts would find such a code useful. The Ontario Judicial Council seems to be the logical body to undertake the production of such a code in this province.
- 13.2 The Law Society recommends that resources be made available to the Ontario Judicial Council to permit the development of a Code of Judicial Conduct.

C: ACCESS TO THE JUDICIAL COUNCIL

14. ACCESS TO THE JUDICIAL COUNCIL

- 14.1. The Law Society is of the view that there should be a greater public awareness of the existence and responsibilities of the Ontario Judicial Council.
- 14.2. The Law Society acknowledges the responsibility of the legal profession to assist the public in bringing complaints where judges engage in conduct incompatible with the execution of their office or where judges fail to perform the duties of their office.
- 14.3. The Law Society agrees with the proposal that the address of the Judicial Council should be more widely publicized and that there should be a separately listed telephone number.
- 14.4. The Law Society will suggest to Convocation that it might be appropriate to consider including in the Law Society's Dial-A-Law program a tape outlining the function of the Ontario Judicial Council and the steps to be taken by a member of the public in order to lay a complaint against a provincially-appointed judge.

24th September, 1992

- 14.5. The Law Society will recommend that Convocation consider a proposal that members of the Law Society be reminded that, whenever a lawyer becomes aware of judicial misconduct which affects a client, the lawyer may have a professional duty to bring the fact of the misconduct to the attention of the client and to advise the client how to lay a complaint with the appropriate Judicial Council.
- 14.6. The recommendation, earlier in this submission, that the Judicial Council be required to publish an annual report will increase public awareness of the existence and responsibilities of the Council.
- 14.7. The Law Society suggests that it will be important, in all publicity, to make clear that the Ontario Judicial Council is not a body which hears appeals against judicial decisions.

It was moved by Fran Kiteley, seconded by Fatima Mohideen that in Recommendation #5.3 under the heading - Who should Chair the Judicial Council?, the Chair should be rotated on a yearly basis among the members so that each group (judges, lawyers, lay persons) would have an opportunity to chair the Council.

Lost

It was moved by Fran Kiteley, seconded by Fatima Mohideen that a new Recommendation #11.7 (a) (ii) under the heading - Confidentiality of Investigative Process, read that "the results of all investigations be held in public and that the existing #11.7 (a) (ii) be amended by deleting the words "in camera" and substituting "in public".

Withdrawn

It was moved by Thomas Bastedo, seconded by Carole Curtis that in Recommendation #2.3 under the heading - Should the Proportion of Law Participation be Changed?, that lay representation be increased by 2 people.

Carried

It was moved by Colin McKinnon, seconded by Clay Ruby that subsection 11.7(a)(ii) under the heading - Confidentiality of Investigative Process, be amended by adding at the end of the sentence the words "in accordance with the Statutory Powers Procedure Act".

Carried

It was moved by Stuart Thom, seconded by Sam Lerner that a clause be inserted in regard to lay members that a specific number should be women.

Lost

It was moved by Sam Lerner, seconded by Lloyd Brennan that in Recommendation #8.2 under the heading - Receipt and Screening of a Complaint, the last sentence be deleted and a sentence be added to the effect that the process be done with the consent of the judicial council.

Withdrawn

It was moved by Clay Ruby, but failed for want of a seconder that the powers of the judicial council set out in Recommendation #9.3 under the heading -Change of Procedure, be amended to provide for monetary awards to complainants including damages for personal suffering.

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It was moved by Marc Somerville, seconded by Colin McKinnon that Recommendation #4.3 under the heading - Should the Proportion of Lawyers be changed?, be amended by adding the words "such lawyer to be appointed by the Law Society of Upper Canada and that recommendation #4.4 be deleted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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The Treasurer introduced the Society's new lay Benchers Ms. Hope Sealy to Convocation.

.....

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

.....

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Bellamy, Brennan, Campbell, Carter, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Furlong, Goudge, Hickey, Hill, Howland, Jarvis, Kiteley, Lamak, Lawrence, Lax, Lerner, McKinnon, Manes, Mohideen, Murphy, Murray, D. O'Connor, Palmer, Peters, Ruby, Sealy, Somerville, Strosberg, Thom, Topp and Weaver.

.....

LEGAL AID COMMITTEE

Ms. Kiteley presented the Legal Aid Committee Report of its meeting on September 10th, 1992.

Two letters were distributed to the Benchers; a letter from the Ministry of the Attorney General dated September 18th, 1992 to the Treasurer and a letter from the Treasurer to the Ministry of the Attorney General dated September 22nd, 1992.

The Treasurer then amplified on the Report.

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 10th of September, 1992 at three o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, Ms. Campbell, Mr. Carter, Ms. Cohen, Ms. Curtis, Mr. Copeland, Ms. Kehoe, Messrs. Koenig, Lalande, Panico and Petiquan.

A.  
POLICY

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1. REPORT TO THE LEGAL AID COMMITTEE BY THE CHAIR

The Chair of the Legal Aid Committee delivered a report to inform the members of the Committee of events which have occurred in recent months with respect to the Tariff Review Reports. This Report is attached for Convocation's information and marked as SCHEDULE (A).

The Legal Aid Committee reiterated its instructions to the Steering Committee to continue to take steps between meetings of the Legal Aid Committee as were necessary to respond to the evolving situation.

2. REPORT OF THE STEERING COMMITTEE

In June, 1989 the Steering Committee began deliberations upon the composition of Area Committees. The Committee considered the subjects of conflict of interest and term for membership on Area Committees and reported to Convocation in September, 1990. The Committee has continued to deliberate the question of conflict of interest and has received written and oral representations from Area Directors and Area Committees and has compiled a list of persons who should be prohibited from membership on Area Committees.

The Legal Aid Committee recommends the adoption of the Steering Committee Report which is attached hereto as SCHEDULE (B).

3. REPORT OF THE STUDENT LEGAL AID SOCIETIES SUB-COMMITTEE

The Legal Aid Committee received the Report of the Student Legal Aid Societies Sub-Committee. The Sub-Committee had been asked to review the structure of the Societies, their reporting and accountability to the Plan.

After some discussion, it was agreed that the Report of the Student Legal Aid Societies Sub-Committee would be deferred to October pending the Report being circulated to all Faculties of Law and Student Legal Aid Societies and their input being sought.

4. APPOINTMENT OF NEW SUB-COMMITTEES OF THE LEGAL AID COMMITTEE

The Legal Aid Committee has struck three new Sub-Committees which are:

- (a) Appointments Sub-Committee  
Terms of Reference: To evaluate the method of appointing members to the Committee and to recommend persons when vacancies occur.
- (b) Regionalization Sub-Committee  
Terms of Reference: To assess the need for a regional structure for the Plan as proposed by Abt and Associates. The Sub-Committee may also consider other proposals relating to regionalization.
- (c) Standards of Professional Practice Sub-Committee  
Terms of Reference: To determine whether the Plan should establish standards of professional practice for entry on or retention on criminal legal aid panels.

A list of the members of all three Sub-Committees is attached hereto as SCHEDULE (C).

B.  
ADMINISTRATION

1. (a) REPORT OF THE DEPUTY DIRECTOR, FINANCE  
FOR THE FOUR MONTHS ENDED JULY 31, 1992

The Legal Aid Committee reviewed the Report of the Deputy Director, Finance for the Four Months Ended July 31, 1992. The following are the highlights from this Report for Convocation's information.

WORKLOAD STATISTICS

For the four month period ending July 31, 1992 the number of certificates issued increased by 5.6% over July 31, 1991 compared to increases of 40.6% and 22.8% over July 31, 1990 and 1989 respectively. As of the end of August 1992, the number of certificates issued is 6.1% higher than August, 1991.

FUNDING SHORTFALL

The shortfall in government funding has declined from \$37 million to \$19.6 million, a reduction of \$17.4 million. Most of the reduction is due to the following factors:

	<u>\$millions</u>
1. Cost of Certificate accounts lower than budgeted due to demand less than forecast	11.8
2. G.S.T. cash flow improved by claiming monthly rather than quarterly and changing accounting practice to reflect G.S.T. tax refund as receivable rather than expense	6.2
3. Client contributions higher than budgeted	1.0
4. Duty Counsel <u>costs</u> higher than budgeted	<u>(0.9)</u>
	<u>17.2</u>

Interest rates have declined this year and the economy has not recovered to the extent anticipated. The contribution from the Law Foundation was forecasted at \$10 million. The payments in June 1992 and September 1992 are expected to total \$4.7 million. The Deputy Director, Finance will revise the forecast shortly. Based on current information, the current forecast of \$10 million may be too high by \$1 to 2 million. If so, the shortfall will be \$20.6 to \$21.6 million.

The Report of the Deputy Director, Finance for the Four Months ended July 31, 1992 is attached hereto and marked as SCHEDULE (D).

(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS  
FOR THE MONTH OF AUGUST, 1992

The Report on the Payment of Solicitors Accounts for the month of August, 1992 is attached hereto and marked as SCHEDULE (E).

This information is reported regularly to Convocation to indicate the extensive efforts made by the Legal Accounts Department to pay solicitors' accounts more promptly. The accounts are being paid more quickly than required by the guidelines established by the Legal Aid Committee. Delayed payments and questioned accounts have contributed in the past to a reluctance by lawyers to participate in the Plan. Since this problem was identified approximately two years ago, significant changes have been made internally. Steps have been taken to keep the profession informed in order to alter the previous perceptions.

24th September, 1992

(c) REPORT ON THE STATUS OF REVIEWS IN THE  
LEGAL ACCOUNTS DEPT. FOR THE MONTH OF AUGUST, 1992

The Report on the Status of Reviews in the Legal Accounts Department for the month of August, 1992 is attached hereto and marked as SCHEDULE (F).

(d) AREA COMMITTEES - APPOINTMENTS & RESIGNATIONS

APPOINTMENTS

ALGOMA

Roderick Sonley, solicitor

OTTAWA/CARLTON

Lynn Christena MacFarlane, Director Policy Analysis, Environment Canada

Andrew Davis, solicitor

Robert Riley, solicitor

MANITOUBLIN/SUDBURY

Daniel Gingras, Directeur du Centre linguistique et education  
permanente, College Cambrian

NIAGARA SOUTH

Margaret Opatovsky, solicitor

Deyanira Benavides, community legal worker

Roderick Hugh McDowell, solicitor

OXFORD

James D. Searle, solicitor

PEEL

Christine A. Torry, solicitor

Howard Binsky, solicitor

WATERLOO

Mark G. Parrott, solicitor

WENTWORTH

Robert W. Young, solicitor

RESIGNATIONS

MANITOULIN/SUDBURY

Guy Lemieux

NIAGARA SOUTH

William K. Ebert

Gerald Mindorf

ALL OF WHICH is respectfully submitted

"F. Kiteley"  
Chair

September 25, 1992

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

A-Item 1 - Report to the Legal Aid Committee by Fran Kiteley, Chair (revised  
September 16, 1992) re: Tariff Review Reports.  
(Schedule (A), pages 1 - 6 and Appendices 1 & 2)

24th September, 1992

- A-Item 2 - Report of the Steering Committee to the Legal Aid Committee.  
(Schedule (B))
- A-Item 4 - List of new sub-committees - September 1992. (Schedule (C))
- B-Item 1(a) Report of the Deputy Director, Finance, four months ended July 31, 1992. (Schedule (D))
- B-Item 1(b) Report on the Payment of Solicitors Accounts for the month of August, 1992. (Schedule (E))
- B-Item 1(c) Report on the Status of Reviews in Legal Accounts Department for month of August, 1992. (Schedule (F))

THE REPORT WAS ADOPTED

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LIBRARIES AND REPORTING COMMITTEE

Mr. Murphy presented the Reports of the Libraries and Reporting Committee of its meetings on May 14th, June 11th and September 10th, 1992.

Meetings of May 14th and June 11th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992, at 9:00 a.m., the following members being present:

R. Bragagnolo (Acting Chair), S. Elliott, M. Hickey, B. Pepper and M. Weaver; G. Howell and P. Bell also attended.

A.  
POLICY

No Items

B.  
ADMINISTRATION

1. ONTARIO REPORTS - PROCEEDINGS OF CONVOCATION - BUFF PAGES - FRENCH VERSION

At the April 9th meeting of the Committee it was recommended to Convocation that the Proceedings of Convocation be printed in the Buff Pages of the Ontario Reports in English only and that the French version be made available to members on request. Convocation on April 24th, 1992, referred this matter back to the Committee for further consideration as to ways in which the French language version can be preserved. After discussing the matter and the cost implications the Committee was of the view that the Proceedings of Convocation should whenever possible be no more than eight pages in English and eight pages in French in order to stay within the budgetary amount imposed by Butterworths. Should additional pages be necessary the cost will be borne by the Society.



IT IS RECOMMENDED that the Proceedings of Convocation continue to be printed in the Buff Pages of the Ontario Reports in English and in French and that whenever possible each version be no more than eight pages.

2. ONTARIO REPORTS - LISTING OF JUDGES IN BOUND VOLUME

The Treasurer, Mr. Spence, received a letter from Chief Provincial Court Judge Sidney Linden concerning the listing of "Judges of the Ontario Courts of Justice" in the Bound Volumes of the Ontario Reports. As the letter states, only the General Division Judges of the Ontario Court of Justice are listed after the Court of Appeal, not the Judges of the Provincial Division.

In order for the listing to be accurate, it would either have to indicate that it is only a list of the General Division or include the Judges of the Provincial Division. The Committee discussed the cost implications of adding the names of Provincial Division Judges, and decided that only the General Division Judges should continue to be listed in the Ontario Reports (without cost).

IT IS RECOMMENDED that the words "General Division" be added in brackets under the heading "The Ontario Court of Justice".

3. ONTARIO REPORTS - FREE LIST

A letter was received from the Honourable Mr. Justice Borins, of the Ontario Court of Justice (General Division) asking the Society to add the General Division Judges from the Toronto Region to the list of federally appointed judges now receiving the Ontario Reports weekly parts, free of charge. There would be seven Toronto Region judges and eighteen judges in the regions outside Toronto added to the free distribution list.

IT IS RECOMMENDED that the twenty-five General Division judges be added to the list of judges receiving the weekly parts of the Ontario Reports from the Society.

4. ONTARIO REPORTS - EDITORIAL BOARD

Butterworths have requested that the Society approve adding Professor J.-G. Castel to the Editorial Board of the Ontario Reports as French language consulting editor. After discussing the matter the Committee approved the appointment.

5. MEETING OF CHIEF LIBRARIAN WITH THE  
COUNTY & DISTRICT LIBRARY REPRESENTATIVES

The Chief Librarian met with eighteen Presidents/Library Representatives of various County Law Associations to discuss library funding issues. The resolutions that were passed at the meeting were before the Committee for discussion.

6. MEETING WITH LAW BOOK PUBLISHERS

It was reported that the Chair, Mr. Pepper, Mr. Howell, and Mr. Bell met with the law book publishers on Thursday, April 23rd, 1992, to request their submissions on the rising cost of law book subscriptions. The law book publishers have promised to forward an analysis of the three page chart of subscription cost increases provided to them by the Chief Librarian. The Chief Librarian reported to the Committee on the matter. The Committee decided that a special meeting should be held concerning the cost increases of books when the submissions have been received from the Law Book Publishers.

C.  
INFORMATION

1. BOOK LIST

The Great Library will be adding 38 new titles to its book collection for May 1992.

2. MEETING WITH CHIEF JUSTICE CALLAGHAN'S EXECUTIVE ASSISTANTS

The Chief Librarian and the Secretary of the Committee met with two Executive Assistants of Chief Justice Callaghan concerning the receipt of diskettes containing the electronic version of reasons for judgment handed down by the Ontario Court of Justice (General Division).

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"D. Murphy"  
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992, at 9:00 a.m., the following members being present:

D. Murphy (Chair), R. Topp (Vice-chair), M. Cullity, S. Elliott, G. Farquharson, A. Feinstein, R. Lalande, P. Pepper and M. Weaver; G. Howell and P. Bell also attended.

A.  
POLICY

No Items

B.  
ADMINISTRATION

1. ONTARIO REPORTS - DECISION BY THE EDITORIAL BOARD TO REPORT A CASE

Butterworths have advised the Society that the Editorial Board of the Ontario Reports have decided to deny a request by a party that a case not be reported. The editors considered the possibility or desirability of preserving the anonymity of the party by initializing and/or abridging the case. The editors agreed that the case did not fall within any of the existing categories of cases where initializing is done. The editors concluded that the case should be reported without change. After discussing the letter from Butterworths and the reasons for judgment, the Committee decided to write to Butterworths and say that this is editorial policy and the Society will not interfere in this matter.

2. SUBMISSIONS OF LAW BOOK PUBLISHERS  
RE COST OF LAW BOOK SUBSCRIPTIONS

It was reported that submissions of three of the law book publishers, Butterworths, CCH and Canada Law Book concerning ways that the County Law Libraries can cope with the rising cost of law book subscriptions, have been received. The Committee decided to schedule a special meeting of the Committee on Thursday, June 25th at 4:30 p.m. to discuss this matter.

3. ONTARIO REPORTS - LAWYER PERCEPTIONS SURVEY  
DONE BY THE COMMUNICATIONS COMMITTEE

The Ontario Reports is an important publication of the Law Society. This has been recently confirmed by a survey conducted by the Communications Committee. This Committee has asked the other Standing Committees to comment on any parts of the survey report that are relevant to its work. After discussing the section entitled Perceptions of Specific Law Society Publications, your Committee decided to advise the Chair of the Communications Committee that it was noted that 64% of the Profession said that the Ontario Reports are very useful and 91% said that the Ontario Reports are moderately/very useful and that these were substantially higher ratings than other publications of the Law Society.

4. ONTARIO REPORTS  
REPORTING OF LENGTHY JUDGMENTS

In the past month, the Ontario Court of Appeal has released several long judgments, including the following:

Finta - 268 pages  
Harbottle - 72 pages  
Durette - 104 pages.

After discussing the matter of lengthy reasons for judgment, the Committee decided that the Chair should write a letter to Butterworths and remind the Editorial Board of the abridging policy that was discussed with the editors and agreed upon as well as the possibility of head-noting cases on a rare occasion.

5. ONTARIO REPORTS - LISTING OF JUDGES IN BOUND VOLUME

The Chair has asked that this matter be reviewed in light of several comments made by Benchers to the Chair informally at last months Convocation. The Treasurer, Mr. Spence, received a letter from Chief Provincial Court Judge Sidney Linden concerning the listing of "Judges of the Ontario Courts of Justice" in the Bound Volumes of the Ontario Reports. As the letter states, only the General Division Judges of the Ontario Court of Justice are listed after the Court of Appeal, not the Judges of the Provincial Division.

After discussing the matter and the cost implications, the Committee decided to re affirm its decision in May that the words "General Division" be added in brackets under the heading "The Ontario Court of Justice".

6. THUNDER BAY LAW ASSOCIATION - RELOCATION OF DISTRICT  
(REGIONAL) LIBRARY TO THE COURT HOUSE SUB-BASEMENT

The Chair visited the Thunder Bay Association recently and toured the district library located on the top floor of the District Court House. Tentative plans by the Government are to re locate the library in the sub-basement of the Court House. All concerned (including the Law Association, the Chair, [Mr. Murphy] and the Chief Librarian) have serious concerns about this development.

24th September, 1992

The Committee after discussing the matter decided that a letter should be written to the Court Administrator in Thunder Bay indicating that the Society opposes the move of the Library to the sub-basement.

C.  
INFORMATION

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1. BOOK LIST

The Great Library added 50 new titles to its book collection for June 1992.

2. DEPARTMENT BUDGET

The Chief Librarian reported on this matter to the Committee.

3. BUTTERWORTHS - LAW SOCIETY SYMPOSIUM ON LAW REPORTING

The 1992 Symposium will take place on Friday, June 12th, 1992, at 9:00 a.m. at the Old Mill Hotel in Toronto.

4. BUTTERWORTHS - ONTARIO REPORTS

It was reported that Andrew Martin resigned as President of Butterworths and Peter Robinson, Chief Executive North American Legal Division, Butterworths & Co (Publishers) Ltd., has taken on those duties.

5. CANADIAN BAR ASSOCIATION SECTION MEETING - LAW REPORTING

The Chief Librarian has been asked to be a part of a panel of the Research and Policy Analysis section of the C.B.A.O. The meeting will occur on the evening of Monday, June 15th, 1992.

6. COUNTY LIBRARIES-PUBLICATIONS COMMITTEE-CHANGE IN MEMBERSHIP

The Publications Committee has assisted the Chief Librarian over the past four years in selecting books that are recommended to the 47 County Law Associations as "suggested basic titles" to be held by the County Libraries. The Committee meets by teleconference call twice a year in June and November to review the Chief Librarian's list of publications.

The Committee's membership has consisted of a cross section of lawyers interested in County Libraries, both by area of expertise and by location and size of County Law Association.

The Committee membership has been as follows:

Mike Neville, Ottawa  
Mark Shields, St. Thomas  
Duncan Fraser, Q.C., Brockville  
Mike Hennessy, Sudbury  
Don MacKenzie, Brampton

Mr. MacKenzie has just recently been appointed a Judge of the General Division of the Ontario Court of Justice. He will continue as an "honourary" member of the Committee. Two lawyers who have been active in the County Libraries area have agreed to serve on the Committee:

24th September, 1992

Anita Berecz, Windsor  
Brent Lisowski, Toronto

These lawyers bring substantial expertise in the corporate/ commercial and general practice areas of law.

The first meeting of the Committee for 1992 is tentatively slated for June 23rd, 1992, at which a list of some 15 pages worth of text books and C.L.E. publications will be considered.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"D. Murphy"  
Chair

THE REPORTS WERE ADOPTED

Meeting of September 10th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of September, 1992, at 9:00 a.m., the following members being present:

R. Bragagnolo (Acting Chair), M. Cullity, G. Farquharson, A. Feinstein, K. Golish, M. Hickey, R. Lalande, B. Pepper, P. Peters and M. Weaver; G. Howell and P. Bell also attended.

A.  
POLICY

No Items

B.  
ADMINISTRATION

1. PRIORITY ITEMS TO BE CONSIDERED BY THE COMMITTEE THIS YEAR

The Committee identified the following projects as priorities for this year:

- (1) Distribution of copies of judgments by the Law Society's Great Library at reduced cost to the profession. It was decided that the Society should start a pilot project for a six month trial period commencing January 1, 1993 after a financial impact study has been prepared by the staff and approved by the appropriate committees.

- (2) A compact-disc (CD-ROM) of the Ontario Reports 2nd series (75 volumes, 1974 to 1991). It was decided that the Committee should assign this matter a similar priority to the distribution of judgments in (1) above, that the Chair appoint a Sub-Committee to look into the feasibility of the Ontario Reports on CD-ROM, and that a financial impact study be prepared by the staff to be approved by the appropriate committees.
- (3) An examination of the financing and costs of the County and District Libraries and the efficacy of continuing certain subscription services in all 47 county libraries. The Chief Librarian will report to the November Committee meeting on this issue. The County and District Law Presidents Association (CDLPA) will also consider the matter.

2. ONTARIO REPORTS DATA BASE QL SYSTEMS - DATA BASE CONTRACT

There has been an exchange of letters between the Society and QL Systems concerning the duplication of the full text of judgments on two data bases, the Law Society of Upper Canada's Ontario Reports and Canada Law Book's Dominion Law Reports. The Sub-Committee Chair, Gordon Henderson, and the Chief Librarian remain concerned about this issue and meetings are being scheduled. The Committee received the above information.

3. ONTARIO REPORTS - LISTING OF PROVINCIAL  
DIVISION JUDGES IN BOUND VOLUME

This matter was before the Committee on May 14th, 1992 and revisited on June 11th, 1992. The Committee considered a request from Chief Provincial Court Judge, Sidney Linden, that the listing of judges should either be amended by showing that it is only a list of General Division Judges or contain a complete list of all Provincial Division Judges after the General Division Judges in the Bound Volumes. As a result of new information received from Butterworths it appears to be possible to add the Provincial Division Judges after the General Division Judges at no extra cost.

Your Committee recommends that the Provincial Division Judges not be listed in the Ontario Reports with the General Division Judges. This means that the Committee report of May 14, 1992 is unchanged.

Note: Motion, see page 140

4. MEETING WITH REPRESENTATIVES OF  
THE MINISTRY OF THE ATTORNEY GENERAL

On June 25th, 1992 the Chair, the Chief Librarian and the secretary of the Committee met with Ms. Karen Cohl, Assistant Deputy Attorney General Courts Administration and two other representatives to discuss:

- (1) extending free distribution of the Ontario Reports to the 25 General Division Judges who are not now receiving them and having the Attorney General pay the cost;
- (2) potential cost of adding the 250 Provincial Division Judges to the list of Judges in the bound volumes of the Ontario Reports;
- (3) the potential duplication of resources in Court Houses between
  - (a) County Libraries and
  - (b) Government Libraries for the two divisions of the judiciary and the Crown Attorneys; and
- (4) provision of adequate space, facilities and fixtures for county libraries within Court Houses across Ontario.

Ms Cohl indicated that she would reply to the Society after speaking to officials in the Ministry and the judiciary.

24th September, 1992

The Committee noted the above information.

5. ONTARIO REPORTS - COURT FILE NUMBERS  
TO APPEAR BEFORE REASONS FOR JUDGMENT

A letter was received from Butterworths indicating that a number of requests were received to add the court file number just before the Judge's reasons for judgment in the Ontario Reports. The Committee decided that it would be an enhancement to have the court file number and instructed that Butterworths be asked to implement this change.

C.  
INFORMATION

1. BOOK LIST

The Great Library will be adding 79 new titles to its book collection for June, July and August.

2. DEPARTMENT BUDGET

The Chief Librarian reported to the Committee on the budget.

3. MEETING WITH LAW BOOK PUBLISHERS

Requests were sent to the publishers who attended the meeting on April 23rd, 1992 for submissions on the cost of law books for the County Libraries. The Chief Librarian's memo of June 24th (revised in early July) summarizing the reason for the meeting, the publishers' verbal responses, and their follow-up letters were before the Committee for consideration. The Chief Librarian will make a final report to the October Committee meeting and CDLPA will be considering this matter at its October and November meetings. The objective is to exercise some control on subscription cost increases for the 1993 operating year.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"D. Murphy"  
Chair

It was moved by Colin McKinnon, seconded by Susan Elliott that in Item 3 under Administration re: Ontario Reports, the names of judges be deleted.

Lost

It was moved by Denise Bellamy, seconded by Julaine Palmer that the names of all the judges of the Ontario Court of Justice including the Provincial Court judges be published.

Carried

THE REPORT AS AMENDED WAS ADOPTED

.....

24th September, 1992

COUNTY AND DISTRICT LIAISON COMMITTEE

Ms. Elliott presented the Report of the County and District Liaison Committee of its meeting on June 11th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992 at 11:30 a.m., the following members were present: A. Feinstein (Acting Chair), S. Elliott, H. Arrell, M. Bode, S. Foley, R. Gates, M. Hebert, M. Hennessy, D. Lovell and R. Smith. Also in attendance were: M. Angevine, G. Howell and A. John.

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1. RULE 5. CONFLICTS OF INTEREST AND COMPENSATION FUND PROTECTION

The County and District Executive feel that their Association is unable to respond to the Treasurer's letter of May 11, 1992 regarding proposed changes to Rule 5 until the issues raised by that letter are discussed with their membership as a whole. The first opportunity to do so will be at the November, 1992 Plenary. Accordingly, the County and District Executive request that Convocation consider deferring a decision on a revised Rule 5 until after the November, 1992 Plenary.

2. INCREASE IN COURT FEES AND OTHER PROVINCIAL GOVERNMENT FILING FEES

The County and District Executive is concerned with the substantial increase in a variety of fees set by the Provincial Government. It would appear that increases are made without consultation with the legal profession. Furthermore, members of the County and District Executive were of the view that such increases have a negative effect on access to justice. The County and District Executive have requested that the Treasurer and Convocation consider what action, if any, should be taken by the Law Society in respect of this issue.

Note: Referred back to Committee

ALL OF WHICH is respectfully submitted

DATED the 26th day of June, 1992

"S. Elliott"  
for Chair

Item 2 re: Increase in court fees, was referred back to the Committee to frame the issue and make recommendations to Convocation.

THE REPORT WITH THE EXCEPTION OF ITEM 2 WAS ADOPTED

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DISCIPLINE COMMITTEE

Mr. Strosberg presented the Report of the Discipline Committee of its meeting on June 11th, 1992.

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 11th of June, 1992, at one-thirty in the afternoon, the following members being present:

A. Rock (Chair), P. Peters, R. Topp, D. Bellamy, A. Cooper, N. Graham, C. McKinnon, D. Murphy, R. Murray, D. O'Connor, D. Scott, S. Thom, and R. Yachetti; S. Kerr, G. MacKenzie, G. Macri, J. Varro, and J. Yakimovich also attended.

A.  
POLICY

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1A. COMPLAINTS REVIEW POLICY AND PROCEDURE  
- PAYMENT OF ACCOUNTS FOR MEDICO/LEGAL REPORTS

At its March 26, 1992 meeting, your Committee requested that staff prepare information on the referral of complaints respecting non-payment of accounts for medico/legal reports to the Complaints Commissioners. The issue before the Committee was whether the option for Complaints Review should be provided to complainants in these cases, given the opinion expressed at the March 26 meeting that these complaints are akin to fee disputes, which alone will not now be subject to a complainant's option for Complaints Review.

Scott Kerr, Assistant Secretary, prepared a memorandum on the subject for the Committee's review.

He advised that in 1991, the Society probably received at least 300 complaints of this type out of a total of 5,250 complaints.

In these complaints, a doctor typically claims to have been retained by a lawyer to prepare a report. Upon completion and delivery of the report and an account for services, the account remains unpaid. The doctor's attempts at collecting the account short of suing the lawyer prove unsuccessful and the matter is then reported to the Law Society.

These disputes are normally assigned to Complaints Officers (law clerks). The Telephone Complaints Resolution procedure (TCR) is employed and, in the majority of cases, the lawyer pays the account and the file is closed.

A total of seven complaints dealing with disputes of this kind have been considered at the Complaints Review stage since January 1991.

The applicable Rule in these cases is Rule 13, Commentary 6, which provides as follows:

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.

Duty to meet Financial Obligations

6. In order to maintain the honour of the Bar, lawyers have professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients unless, before incurring such an obligation the lawyer clearly indicates in writing that the obligation is not to be a personal one. Lawyers have a professional duty generally to meet financial obligations in relation to their practice, including prompt payment of the deductible under the Society's Errors and Omissions Insurance Plan when properly called upon to do so.

Complaints Review may arise when staff have decided one of the following:

1. That the lawyer's personal responsibility is not sufficiently clear for Rule 13, Commentary 6 to be applied.
2. Where staff determines that Rule 13, Commentary 6 applies but the lawyer's response has satisfied staff that no further action is required and the doctor disagrees. This normally occurs when the lawyer acknowledges an obligation under the rule but disputes quantum. In these circumstances, staff will request that an amount be paid which the lawyer believes is reasonable and, unless that amount is patently unreasonable, staff will advise the doctor that court action will be necessary if further sums are to be sought.

Only rarely will the situation arise where staff have concluded that a lawyer clearly has a duty to pay for a medical report and the lawyer refuses to pay. When it does occur however, the instructions of the Chair and Vice-Chairs of Discipline are sought. Invitations to Attend are generally authorized.

Although the OMA - Law Society Mediation process was developed in 1988 as a means of resolving disputes arising out of the provision of medical reports, in practice, the procedure has not proved effective. The principal reason is that neither party is required to participate. Another reason is that the procedure is intended to deal exclusively with disputes over the amount of an account. Consequently, situations where the lawyer disputes personal liability are not 'caught' by the procedure. As well, medical providers other than doctors (e.g. therapists, dentists, chiropractors) do not have access to this option.

It was Mr. Kerr's view that an important distinction separates disputes over the payment of medical reports on the one hand and solicitor/client fee disputes and negligence claims on the other. The former requires the Law Society to interpret Rule 13, Commentary 6 in light of the facts of each case in order to determine whether the lawyer's conduct is consistent with the duties imposed by the Rule. A decision by staff that a lawyer has not complied with the Rule could ultimately result in some form of disciplinary action.

By contrast, allegations that a lawyer's fee is too high or that a client suffered financial loss as a result of professional negligence are not evaluated by Complaints staff as there are other more effective remedies available to the parties. As well, there is no applicable rule of conduct for these circumstances which imposes obligations similar to those found in Rule 13, Commentary 6.

Mr. Kerr also felt that in the case of a medical report dispute, staff are required to evaluate the merits of each case and have options available to them ranging from closing the file to requesting disciplinary action. Decision-making power of this type in the Complaints process is generally reviewable and to make an exception in this situation would provide staff with a degree of non-reviewable authority the Complaints Review process was intended to offset.

24th September, 1992

He suggested that the Committee not exclude complaints of this type from the review procedure.

After discussing the matter and observing that the particular Rule in question relates to practice-related financial obligations in general and not only medico/legal reports, the Committee questioned the appropriateness of the Rule in terms of a matter of professional conduct, given that such issues are more properly the subject of civil proceedings in the courts. The consensus of the Committee was that the Rule should be changed.

Your Committee therefore recommends that:

1. Rule 13, Commentary 6 of the Rules of Professional Conduct be revoked;
2. it be replaced with a rule providing that it is a matter of professional misconduct for a solicitor to fail to pay judgments incurred by creditors of the solicitor for practice-related debts;
3. the matter be referred to the Professional Conduct Committee for the purpose of drafting the new rule; and
4. no matters be referred to the Complaints Review Commissioner relating to Rule 13, Commentary 6 complaints in the interim.

Your Committee further instructed staff that until Convocation considered the matter and, in its discretion, agreed to revoke the Rule, complaints investigations relating to Rule 13, Commentary 6 continue in the normal course, with the exception that the option for Complaints Review not be offered to complainants.

Note: Motion, see page 148

## 2A. FROZEN TRUST ACCOUNTS AND PRO RATA DISTRIBUTION

Jim Yakimovich, Director of Audit, prepared a memorandum for your Committee's review, attached at pages A-1 to A-6 outlining policy considerations arising from situations where the Society freezes a solicitor's trust account where the account is in a shortage position and the interests of the beneficiaries must be protected. Coincident to this issue is how the funds in a solicitor's mixed trust account in a shortage position should be distributed. The Committee was also requested to consider the specific request of a firm, a member of which is under investigation for misappropriation, to have its frozen trust account released.

In dealing with the policy issues outlined on pages A-2 and A-3 of Mr. Yakimovich's memorandum, the Committee considered four questions, as follows:

1. Should the Law Society discontinue its current practice of conducting investigations relating to trust misappropriations on the basis of only establishing a 'best case' for discipline purposes, and expand its role to determining the full quantification of the misappropriation;
2. Should the Law Society encourage law firms to have a forensic audit completed and agree to pay a portion of the costs involved;
3. Should the Law Society assist a law firm in continuing with its operations where its trust account has been frozen by guaranteeing a law firm's line of credit for the period for which the firm must borrow money to enable it to meet its trust obligations; and
4. Respecting the request of the firm noted above, should it be given permission to release its frozen trust account.

24th September, 1992

The Committee answered questions 1, 2 and 4 in the negative. The Committee concluded that there was no obligation on the Society's part to invest its resources in undertaking an investigation with a view to complete quantification and identification for the purposes of a pro rata distribution. Respecting actual distribution of the funds, the Committee further concluded that the Society should not be the party to bring an application in the courts to have the funds distributed. The law firm itself or anyone claiming an interest in the frozen trust funds may apply. In the specific case of the firm noted above, the law firm itself should be encouraged to apply to the courts for release of the funds.

With respect to question number 3, the Committee was of the view that this issue required further consideration, and instructed the Chair to appoint a sub-committee to review the matter and report to the Committee at a future date.

#### 3A. MEMBER AND PUBLIC SURVEYS

Colin McKinnon, Chair of the Communications Committee, provided to your Committee a copy of the research results from the public and member surveys which were undertaken earlier this year by Decima Research.

The Communications Committee requested that every standing and special committee of Convocation consider whether there are matters arising from the report which require consideration in Committee. The Communications Committee has invited suggestions or recommendations regarding future courses of action and has offered its assistance to the Committee in the implementation of same.

Your Committee has instructed staff to examine the survey results and identify those issues which should be brought to the attention of Committee for its consideration. Staff were requested to report to the Committee's September, 1992 meeting.

#### 4A. DISCIPLINE PROCEEDINGS IN FRENCH

The sub-Committee of the French Languages Services Committee studying discipline hearings in French submitted a report for your Committee's consideration. The report was previously tabled at the May, 1992 meeting of the French Languages Services Committee which unanimously approved the sub-Committee's recommendation. The French Languages Services Committee, chaired by Patricia Peters, submitted the sub-Committee's report to the Committee for review and input.

The sub-Committee was created to examine a procedure for appointing bilingual panel members for discipline hearings and conducting such hearings in French. The sub-Committee recommended that, given the policy adopted by Convocation to provide services in the French language to its own members, French-speaking lawyers who request a disciplinary hearing in French should be granted the right to be heard in French. The sub-Committee also recommended that, given the small number of Benchers who are fluent in French, non-Bencher members of the Society be entitled to sit on discipline panels for the sole purpose of providing French language competence to those panels.

The Committee proposes to consider the recommendations of the sub-Committee and fully discuss the matter at its September, 1992 meeting.

24th September, 1992

Your Committee carefully considered the information before it, and recommends that Mr. Hutton be permitted to employ Mr. Gorman as a law clerk for the period of five or six months as requested, provided that Mr. Hutton satisfy the Society that he will at all times be present in the office throughout the period of employment.

C.  
INFORMATION

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1C. AUTHORIZATION OF DISCIPLINE CHARGES

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

The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of May, 1992.

	<u>Sought</u>	<u>Obtained</u>
Discipline	20	21 (one request for an Invitation to Attend was authorized as a formal complaint)
Complaints	18	15
Audit	1	1

Total number of charges authorized to date for 1992

January	20
February	16
March	31
April	19
May	<u>37</u>

Total: 123

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"H. Strosberg"  
Chair

B.  
ADMINISTRATION

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1B. JOHN PETER GORMAN -  
PERMISSION TO EMPLOY HIM AS A LAW CLERK

(As Mr. Rock was a member of the Discipline Hearing panel which decided the Gorman case, he excused himself from the meeting. Ms. Peters took the Chair.)

Robert Kenneth Hutton of Gravenhurst has applied for permission to employ a former lawyer, John Peter Gorman, as a law clerk for a period of five or six months to commence as soon as possible. The application is brought pursuant to Rule 20 of the Rules of Professional Conduct, which provides as follows:

No lawyer shall, without the express approval of Convocation, retain, occupy office space with, use the services of or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, or suspended, or who has been involved in disciplinary action and been permitted to resign as a result thereof, and has not been reinstated or yet been readmitted.

Mr. Gorman was disbarred in 1986 after being found guilty of professional misconduct. The misconduct included misappropriating \$38,871.18 from money held in trust for clients over a 16-month period, failing to co-operate with a Law Society audit investigation, endeavouring to intimidate a party opposed in interest to his clients by demanding payment of money in lieu of police involvement, deliberately breaching an order of the Discipline Committee, and deliberately breaching an undertaking not to practise law, among other things.

Mr. Hutton's letter of application, dated May 22, indicates that he has been acquainted with Mr. Gorman since his university days at St. Francis Xavier University and during Mr. Gorman's years in private practice when Mr. Hutton had occasion to work with Mr. Gorman on several real estate transactions, he always found him to be competent, co-operative and businesslike.

In a supplementary letter dated June 9, 1992 to Gavin MacKenzie, Senior Counsel - Discipline, Mr. Hutton advised that his practice is one-third real estate, one-fifth civil litigation and the remainder equally divided between criminal, administration development and family law. He confirmed that Mr. Gorman's duties would be strictly limited to the functions of a paralegal and that he would not have access to trust funds and would have no signing authority.

Mr. MacKenzie advised that the summer is usually a busy time for Mr. Hutton as he practises in cottage country.

Mr. Gorman has applied for readmission to the Society. His readmission application is scheduled to be heard on September 28, 1992.

Mr. Hutton was himself found guilty of professional misconduct and reprimanded in Committee in December, 1991. He was found to have acted in a conflict of interest by preferring the interests of a client to the prejudice of another client for whom he had previously acted, both clients being shareholders in a corporation for whom the solicitor purported to act as corporate counsel.

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

A-Item 2A - Memorandum from Mr. J.N. Yakimovich, Director, Audit Department to Mr. Alan Rock, Q.C., Chair, Discipline Policy Committee dated April 2, 1992 re: Frozen Trust Accounts, Pro Rata Distribution.  
(Marked A-1 - A-6)

It was moved by Colin Campbell, seconded by Ron Cass that Item 1A under Policy re: Complaints review policy and procedure, be deleted and referred to the Special Committee appointed to examine the existing Rules of Professional Conduct.

Carried

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

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#### COMMUNICATIONS COMMITTEE

Ms. Bellamy presented the Report of the Communications Committee of its meeting on September 10th, 1992.

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 10th of September, 1992, the following members were present: Denise Bellamy (Chair), Susan Elliott, Fran Kiteley, Vern Krishna, Alan Lawrence, Ross Murray, Julaine Palmer, Stuart Thom and Roger Yachetti. Also in attendance: Carolyn Ateah, Theresa Starkes, Richard Tinsley.

#### B. ADMINISTRATION

##### 1. Communications Committee Priorities

At the Treasurer's request, the Chair asked the Communications Committee to consider the priorities facing the Committee in the coming year. The Committee has identified the following priorities for the coming year:

##### Priorities for the Profession

1. Launch of the Newsletter Programme  
Convocation is committed to producing the following publications: The Advisor, E&O Bulletin, Benchers' Bulletin and Discipline Digest. The Benchers' Bulletin and the Discipline Digest are new publications which will replace the Proceedings of Convocation upon the commencement of publication of the Members Newsletter Programme on October 2nd, 1992. The continual publication of the Proceedings of Convocation would result in considerable duplication of information and resources. The money saved from ceasing publication of the Proceedings in the buff pages, in excess of \$15,000, has been allocated to the costs of the Benchers' Bulletin and Discipline Digest. Samples of the Newsletters will be distributed at Convocation. A publication schedule is attached (A-1 to A-5).

24th September, 1992

2. Improvements to Inter-Bench Communication

The Committee will discuss this issue at future meetings and provide Convocation with suggested improvements to communication between benchers and between Committee Chairs.

3. Improvements to the Society's Interaction with the Media

The Committee plans a future meeting to strategize and offer Convocation a proactive media relations plan.

Priorities for the Public

1. Dial-A-Law
2. Lawyer Referral Service
3. Pamphlet Programme

2. Dial-A-Law French Transcript Update

The French Dial-A-Law tapes are removed from the system as soon as the English tapes are sent out for updating. Unfortunately, it takes longer to have the revised French tapes back into the system partly because of translation. French callers have been deprived of vital information for weeks, sometimes months. Therefore, the Communications Committee recommends that the French tapes requiring only minor changes remain on the system until translated. Tapes that require major changes will be removed from the system immediately.

C.  

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INFORMATION

1. Committee Comments Regarding Reports on the Perceptions of the Public and Profession

The Communications Committee previously requested by Memorandum that each Committee consider whether there are matters arising from the report entitled "Public and Lawyers' Perceptions of and Attitudes Toward the Law Society of Upper Canada, Communications, Programs and Policy Issues" which should be brought to the attention of the Communications Committee. The Communications Department will be in contact with those Committees which have not yet responded to this memorandum. Those Committees which have not fully considered the communications implications of the surveys will be contacted by the Communications Department and asked to revisit specific sections of the surveys and reconsider their response.

2. Media Activity

A summary of media activity for the months of June and July is attached (A-6).

3. Call Statistics

Call statistics for Dial-A-Law and the Lawyer Referral Service are attached (A-7).



24th September, 1992

4. Dial-A-Law Survey

Communications is undertaking an internal survey of Dial-A-Law to ascertain caller satisfaction with various aspects of the service and the potential willingness of our callers to pay a nominal fee to access Dial-A-Law tapes. A copy of the Dial-A-Law survey is attached (A-8 - A-15).

5. New Non-Bencher Member of the Communications Committee

The Communications Committee welcomes new Committee member, Carolyn Ateah. Ms. Ateah is the managing lawyer at the CAW Legal Services Plan, Oakville Office.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"D. Bellamy"  
Chair

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

- B-Item 1 - Copy of the Newsletter Schedule, 1992-93. (Marked A-1 - A-5)
- C-Item 2 - Summary of media activity for the months of June and July 1992. (Marked A-6)
- C-Item 3 - Call statistics for Dial-A-Law and Lawyer Referral Service. (Marked A-7)
- C-Item 4 - Copy of internal survey of Dial-A-Law. (Marked A-8 - A-15)

THE REPORT WAS ADOPTED

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The Report of the Special Committee on Court Reform was deferred to the October Convocation.

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CONVOCATION ROSE AT 4:00 P.M.

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Confirmed in Convocation this       day of       , 1992.

Treasurer