

MINUTES OF CONVOCATION

Friday, 22nd April, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Bellamy, Campbell, R. Cass, Copeland, Cullity, Elliott, Epstein, Feinstein, Finkelstein, Hill, Howie, Howland, Kiteley, Lamont, Lawrence, Lax, Lerner, Levy, McKinnon, Manes, Moliner, Murphy, O'Brien, Palmer, Ruby, Scace, Scott, Sealy, Somerville, Strosberg, Thom and Weaver.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer announced that Mr. Yachetti was recovering well and expected to be back in his office by the end of May.

The Treasurer expressed thanks to Mr. Bastedo and his Committee for the hard work done on the Priorities and Planning Committee.

The Treasurer welcomed Mr. Murphy back to Convocation.

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MOTIONS - COMMITTEE APPOINTMENTS

It was moved by Ms. Weaver, seconded by Ms. Elliott THAT a Special Committee to deal with the proposed amendments to the Law Society Act be established with the following mandate:

- (1) review all questions raised by the Staff Working Group in the course of its work; and
- (2) report to Convocation with recommendations as to how the questions should be answered.

and that the following Benchers be appointed as members:

Maurice Cullity (Chair)
Dennis O'Connor
Marie Moliner

Carried

It was moved by Ms. Bellamy, seconded by Mr. Finkelstein THAT Stephen Goudge be added as a member of the Professional Standards Committee.

Carried

22nd April, 1994

MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Ms. Weaver, seconded by Ms. Kiteley THAT the Reports listed in paragraph 3 of the Agenda (Reports taken as Read) excluding Item A.-1. of the Professional Conduct Report and Item A.-A.3. of the Legal Aid Committee, be adopted.

Carried

Admissions
Communications
County & District Liaison
Discipline (2 Reports - 1 in camera)
Equity in Legal Education and Practice
French Language Services
Finance and Administration
Insurance
Investment
Legal Aid
Lawyers Fund for Client Compensation (2 Reports - 1 in camera)
Legal Education
Legislation and Rules
Libraries and Reporting (2 Reports - 1 in camera)
March Draft Minutes
Professional Conduct
Professional Standards
Research and Planning
Specialist Certification Board
Unauthorized Practice
Women in the Legal Profession

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 9:30 a.m., the following members being present: Mr. Carter (Chair), Ms. Moliner and Ms. Mohideen and Messrs. Farquharson, Goudge and Lamont.

Also present: M. Angevine and P. Gyulay

B.
ADMINISTRATION

B.1. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.1.1. The following candidate has met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Sonia J. Struthers

Approved

B.2. DIRECT TRANSFER - QUEBEC - SECTION 4(2) - SPECIAL PETITION

B.2.1. Your Committee received a petition from a member of the Quebec Bar requesting the work he performed while employed as a legal assistant to a practising member of the Ontario Bar, particularly work before the Federal Court, in conjunction with his practice experience in Quebec to be taken as satisfying the three year requirement for the purpose of a transfer under sec. 4(2) of Regulation 708 made under the Law Society Act.

Your Committee reviewed the material put before it and concluded that he did not meet the requirements for transfer under sec. 4(2).

B.3. PETITION FOR WAIVER OF THREE YEAR PRACTICE REQUIREMENT FOR TRANSFER UNDER SECTION 4(2)

B.3.1. A petition was before the Committee from a member of the Quebec Bar who will have the requisite three years of practice for the purpose of a transfer by the end of January 1995. The petitioner asked permission to sit the transfer examination in September 1994 when she would be short the three years by 6 months.

Your Committee reviewed the material before it and recommends that the petitioner be permitted to sit the transfer examination no earlier than January 1995 on an undertaking that she will complete the requisite three years in practice before being eligible for call.

B.4. PETITION TO SIT SUPPLEMENTAL TO FAILED SECTION OF TRANSFER EXAMINATION

B.4.1. Your Committee considered the petition of a transfer candidate, who failed the January 1994 transfer examination, that he be required to resit only a portion of the failed examination.

Your Committee reviewed the examination process and recommends that the candidate be required to follow current transfer examination policy and either attempt the whole examination a second time or become enrolled in Phase Three of the Bar Admission Course.

22nd April, 1994

B.5. SPECIAL PETITION TO TRANSFER FROM ALBERTA

B.5.1. In May 1993 the Committee considered the petition for admission of a member of the Alberta Bar. The applicant has a foreign law degree, was called to the Bar in Alberta in September 1986 and practised in that province from October 1986 to July 1987. Since August 1988 the petitioner has been a lecturer in Commercial Contracts and Environmental Law at the University of Glasgow School of Law.

B.5.2. The petitioner was requesting admission on the basis of his membership with the Alberta Bar, and his five years of university law teaching and published legal writing.

B.5.3. On May 27th, 1993, Convocation adopted the recommendation of the Admissions Committee that his petition be denied. He did not fall within either sec. 4(1) or sec. 5 of the Regulation and there was no discretion in the Admissions Committee to grant his petition on any other basis.

B.5.4. In a letter dated February 25th, 1994, the applicant requests that the Committee reconsider his application.

Your Committee concluded that there is no basis to reverse the May 27th, 1993 decision of Convocation.

B.6. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.6.1. Bar Admission Course

The following candidates having successfully completed the 35th Bar Admission Course 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 April 22nd, 1994:

Bayani Francisco Abesamis
Georgios Aristos
Roderick Nicholas Brinckman
Warren Garnet Brown
Michael Warren Butterfield
Wanda Beatrice Frances Corston
Maria Da Luz Raposo De Jesus
Carl Jonathan Garland
Neil Kotnala
James Charles Middlemiss
Denzil Girard Minnan-Wong
Mukund Purshottam Mody
Brian Anthony Montgomery
Catharine Marie Parker
Margaux Anna Polanski
Teresa Eleanor Shilling
Donna Lee Shiplett
Anna Carmela Sinicrope
Mary Beth Sprigings
Steven Michael Starkman
Irene Theletritis
John Edwin Walker

Approved

22nd April, 1994

B.6.2. Transfer from another Province - Section 4(1)

The following candidates having completed successfully the transfer examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 22nd, 1994:

Peter Edwin Falk

Province of Manitoba

Approved

B.6.3. Transfer from Quebec - Section 4(2)

The following candidate having completed successfully Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 22nd, 1994:

Joseph Leo Gilles Levasseur Province of Quebec

Approved

B.6.4. Full-Time Members of Faculties of Approved Law Schools

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under s. 5 Reg. 709 on April 22nd, 1994. She has filed the necessary documents and complied with the requirements of the Society:

Cynthia Anne Petersen

Faculty of Law,
University of Ottawa.

Fee: \$200.00

Approved

C.
INFORMATION

C.1. INTER-JURISDICTIONAL PRACTICE PROTOCOL

C.1.1. Attached for the committee's information was a copy of the Inter-Jurisdictional Practice Protocol as executed by ten of the thirteen governing bodies of the legal profession in Canada at the Federation's 1994 Mid-Winter Meeting.

Noted

22nd April, 1994

C.2. CHANGES OF NAME

C.2.1. (a) Members

From

To

Dianne Jean Cox

Dianne Jean Bartnik
(Marriage Certificate)

Nitya Duclos

Nitya Iyer
(Citizenship Certificate)

Susan Lynn Housley

Susan Lynn Housley Davis
(Marriage Certificate)

Nathalie Lavigne

Nathalie Gregson
(Marriage Certificate)

Ruth Klein Rygier

Ruth Klein
(Birth Certificate)

Noted

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Frederick Lawrence Miller
St. Catharines

Called June 18, 1942
Died February 6, 1994

Anthony Herbert Hollinrake
Toronto

Called June 22, 1960
Died February 18, 1994

Noted

C.3.2. (b) Permission to Resign

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

Paul Hubert Watson
Ottawa

Called April 10, 1964
Permitted to Resign-Convocation
March 24, 1994

Mario Zammit
Mississauga

Called April 10, 1981
Permitted to Resign-Convocation
March 24, 1994

Noted

22nd April, 1994

C.3.3. (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:

Ronald Douglas Bridgewater	Called February 15, 1980
Oshawa	Disbarred - Convocation
	March 24, 1994

Noted

C.3.4. (d) Membership in Abeyance

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

Richard Francis Donnelly	Called September 28, 1950
North Bay	Appointed to Small Claims Court
	September 1, 1991
John Ivan Laskin	Called March 26, 1971
Toronto	Appointed to Ontario Court of Appeal
	January 27, 1994
Margaret Pauline Eberhard	Called April 14, 1978
Newmarket	Appointed to Ontario Court of Justice
	(General Division)
	January 27, 1994
Harry Smith Laforme	Called May 9, 1979
Newmarket	Appointed to Ontario Court of Justice
	(General Division)
	January 27, 1994
Rose Boyko	Called April 14, 1982
Newmarket	Appointed to Ontario Court of Justice
	(General Division)
	January 27, 1994

Noted

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

R. Carter
Chair

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

Item C.-C.1. - Copy of the Inter-Jurisdictional Practice Protocol.
(pages 1 - 35)

THE REPORT WAS ADOPTED

22nd April, 1994

COMMUNICATIONS COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994, the following members being present: Denise Bellamy (Chair), Carole Curtis, Christopher Du Vernet, Susan Elliott, Fran Kiteley, Allan Lawrence, Ross Murray, and Hope Sealy. The following were also in attendance: Noel Bates, Theresa Starkes, Richard Tinsley and Gemma Zecchini.

C.
INFORMATION

1. Call Statistics

The Lawyer Referral Service received 17,604 calls this month for a total of 43,323 since the beginning of the year. This represents an average of 684 calls/day. Dial-A-Law received 19,719 calls for a total of 64,311 calls for the year to date, representing an average of 775 calls/day.

ALL OF WHICH is respectfully submitted

DATED this 21st day of April, 1994

D. Bellamy
Chair

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 11:30 a.m., the following members being present: R. Bragagnolo (Chair), L. Brennan and A. Feinstein. The following members of the County and District Law Presidents' Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, S. Foley, R. Gates, M. Hornseth, M. J. Morissette, M. O'Dea and R. Sonley. Staff in attendance was: A. John (Secretary).

1. COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION PLENARY
- MAY 12 AND 13, 1994

The agenda for both days will include participation by the benchers. All Benchers are invited to attend the sessions listed below:

Thursday, May 12, 1994 - RAMADA INN

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|--------------------|---|
| 9:30 - 10:00 a.m. | SPECIAL DELEGATIONS
- Mr. Paul Lamek, Q.C.
- Mr. Roger Oatley
- Mr. Kevin Carroll, Q.C. |
| 10:00 - 12:00 p.m. | COMMITTEE MEETINGS |
| 12:00 - 1:30 p.m. | LUNCH - CONVOCATION DINING ROOM - OSGOODE HALL
Guest Speaker - The Honourable Marion Boyd,
Attorney General of Ontario |
| 1:30 - 2:00 p.m. | TREASURER'S REPORT |
| 2:00 - 4:30 p.m. | PANEL DISCUSSION & DEBATE ON ROLE STATEMENT OF
THE LAW SOCIETY
Panellists:
(1) Willson McTavish, Q.C. - Chair
(2) Ian Scott, Q.C.
(3) Brendan O'Brien, Q.C.
(4) Keith Jobbitt |
| 7:00 p.m. | - DINNER - CONVOCATION DINING ROOM - OSGOODE HALL
- Guest Speaker - Justice Frank Iacobucci |

Friday, May 13, 1994 - CONVOCATION HALL - OSGOODE HALL

- | | |
|--------------------|--|
| 8:30 - 9:00 a.m. | Coffee |
| 10:00 - 12:00 p.m. | BENCHER REPORTS
(1) Colin Campbell, Q.C. Special Committee on Rules
Revision, Conflict of Interest |
| 12:00 - 1:30 p.m. | LUNCH - CONVOCATION DINING ROOM - OSGOODE HALL |

22nd April, 1994

2. LAW SOCIETY PROSECUTION OF UNAUTHORIZED PRACTICE MATTERS

There was unanimous consent among the members of the County and District Law Presidents' Association that the Law Society should continue to prosecute paralegals for contraventions of s.50 of the Law Society Act. It was suggested that the Law Society should be open to retaining counsel who are prepared to represent the Society pro bono.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

R. Bragagnolo
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 1:30 in the afternoon, the following members being present:

C. Hill (in the Chair), M. Cullity, V. Krishna, L. Legge, R. Manes, M. Moliner, S. Thom, M. Martin, D. McPhadden.

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

A.
POLICY

A.1. DISCIPLINE PROCEEDINGS - SOLICITOR UNGOVERNABILITY

A.1.1 At the February 1994 meeting, the Committee was asked for its views as to a consistent approach being employed in respect of evidence of ungovernability, that is, whether the issue of a lawyer's governability is an appropriate subject for a separate "charge" or whether the issue is strictly a factor to be considered at the penalty stage of a discipline hearing with prior notice to the Solicitor who is the subject of the Complaint.

22nd April, 1994

- A.1.2. The Committee discussed the fact that ungovernability allegations usually derive from other, more specific particulars alleged in a charge of professional misconduct. The Committee found no basis for establishing a separate charge of ungovernability. Indeed, to raise the issue of ungovernability as a separate particular in a discipline Complaint would serve to prejudice the solicitor in the eyes of the Discipline Panel prior to a disposition of the Complaint on its merits.
- A.1.3. The Committee determined that the present practice should be maintained of raising evidence of ungovernability at the penalty portion of the hearing after a finding of professional misconduct or conduct unbecoming has been made. Since a Solicitor's past discipline history is always raised on penalty, the Committee found no necessity for a separate notice to the Solicitor that a finding of ungovernability would be sought on penalty. Because disbarment is a penalty that can be imposed against any Solicitor after a finding of professional misconduct or conduct unbecoming, the fact that the Discipline Panel may find someone ungovernable and therefore a candidate to be disbarred does not require special notice.
- A.1.4. Your Committee therefore recommends that the present practice of raising the issue of ungovernability on penalty be maintained and that a separate Complaint or particular of ungovernability not be created. In addition, a separate Notice to the Solicitor that a finding of ungovernability will be sought on penalty is not necessary.

A.2. DEFAULT IN FILING ANNUAL FORMS

- A.2.1. James Yakimovich addressed the Committee on the proposed changes to the procedure to be followed where there is default in the filing of annual Forms. Currently, a lawyer who has failed to file annual forms, Form 2 and Form 3, by the due date receives three Notices of Default. The first Notice is mailed after the expiration of the due date for the filing of the forms, if the forms are not received within thirty days of the date of the first Notice, a second Notice is mailed, informing the member of the default in filing and the date the late filing penalty begins to accrue. If the member does not file the forms pursuant to the second Notice, a third and final Notice is sent to the member once some portion of the late filing fee is outstanding for more than four months, the threshold established by section 36 of the Law Society Act.
- A.2.2. The staff cost of administering the follow up and re-issuance of the three notices, along with the cost of mailing and registration is significant.
- A.2.3. In addition to the cost factor associated with the default notice system, the member who has not filed a financial reporting, Form 3, is not subject to discipline until about one year after the end of the member's fiscal year end because of the time lags built into the filing and default notice system. This delay diminishes the effectiveness of the protection role of the public accountant in the timely review of trust accounting records and filing Form 3.

The Committee considered the following proposals for changes in the procedure:

A.2.4. a. Single Notice of Default

That the Society replace the current three notices with a single Notice of Default. This would shorten the time period between the due date of the forms and the date on which the matter is considered for discipline. This notice would be mailed to the member by registered mail within days of the deadline for filing the annual Form. A draft form of Notice was before the Committee and will be submitted the Legislation and Rules Committee for review.

A.2.5. b. Grace period in imposition of Late Filing Penalty

That the late filing penalty be imposed after a short grace period following the issuance of the Notice of Default. This measure will provide for fairness in the policy, as otherwise, the late filing fee would begin to accrue prior to the mailing of the Notice. Also the grace period will provide the member with an opportunity to file before the imposition of the penalty. Under the present system, as outlined in A.2.1., the late filing penalty begins to accrue approximately 50 days after the filing deadline.

A.2.6. Your Committee recommends that Convocation adopt the proposals, namely, a single notice of default and a grace period in the imposition of the late filing penalty.

C.
INFORMATION

C.1. LESSER INCLUDED OFFENCES

- C.1.1. The Committee considered whether a particular in a Discipline Complaint, like a count in a criminal indictment, can encompass a lesser, included offence. For example, whether the charge of misappropriation includes the lesser offence of misapplication.
- C.1.2. The Committee considered whether a finding of professional misconduct can be made where misconduct proven at a hearing is not the particular charged but misconduct "included" or so closely related to the particular alleged as to be a part of the same transaction.
- C.1.3. Your Committee questioned the similarity of particulars in a discipline Complaint and counts in a criminal indictment. The charge in a discipline Complaint is "professional misconduct" or "conduct unbecoming", not the particulars.
- C.1.4. Your Committee discussed the fact that particulars in a Complaint should be sufficiently general to encompass all related acts of professional misconduct or conduct unbecoming. Adjudicative fairness of course requires that the Complaint afford notice of the impugned transaction or acts alleged.

22nd April, 1994

- C.1.5. Your Committee concluded that a Discipline Panel may make a finding of professional misconduct based on conduct established at a hearing where the requirements of fairness have been met in notifying the Solicitor that that conduct is the subject of the charge. Your Committee specifically affirmed the principle that particulars in a Complaint should be sufficiently general to encompass other acts of professional misconduct or conduct unbecoming. As long as the conduct which is established at the hearing is encompassed by transaction particularized in the Complaint, it is open to a Discipline Panel to make a finding of professional misconduct or conduct unbecoming.

ALL OF WHICH is respectfully submitted

DATED THIS 22nd day of April, 1994

H. Strosberg
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE (in camera Report)

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EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 14th of April 1994, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Colin McKinnon, Marie Moliner, Shirley O'Connor, Nora Richardson, David Scott, Susan Charendoff, Vusumzi Msi, Marilyn Pilkington, Joanne St.Lewis, Donald Crosbie, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Proposed Rule 28 on Non-Discrimination

- C.1.1 The Chair advised that he proposes to discuss the redrafted rule with the Women in the Legal Profession Committee and the Professional Conduct Committee. He hopes to have a report for the May Convocation. He would like to include in the report the history of the committee's dealing with Rule 28 and the evolution of thinking that has occurred. He would also outline if possible other related activity and whether there is a need for more educational work with the profession before the rule is put in final form.

C.1.2. There was a general discussion of preliminary recommendations made by Marie Moliner and Joanne St.Lewis on the development of a strategy for informing and educating the profession on equitable principles contained in proposed Rule 28. It was stressed that the strategy emphasize the educational approach and that it avoid the professional conduct aspects of the rule so as to encourage in the most positive manner acceptance of the rule. It is hoped that the details of the strategy will be available for consideration by Convocation when the Chair reports on the rule in May.

C.2 Recommendations of the Strategic Planning Conference of 1992

C.2.1 One of the recommendations of the Strategic Planning Conference of 1992 was as follows:

"Your committee recommends that the Equity in Legal Education and Practice Committee consider the proposition that all law firms of a certain size should be required to file an employment equity plan for lawyers. Such plan should be designed to open up the full range of opportunities in the profession to people from groups hitherto under-represented, so that the profession will reflect the diversity of the community in Ontario."

C.2.2. The committee agreed that the best way to deal with this recommendation was to refer it to the Moliner/St.Lewis subcommittee to be dealt with as an element of their report.

C.3 Review of Initiatives to Assist Foreign Trained Lawyers to Qualify in Ontario

C.3.1 The Chair reviewed the earlier initiatives of the committee in its efforts to devise a program to assist foreign trained lawyers to qualify in Ontario. He pointed out that information coming to the committee now indicates that there are very basic cultural issues and differences in legal concepts between the Ontario legal profession and some of the foreign trained lawyers. This may require the committee to undertake a basic review of what it is that needs to be done to assist foreign trained lawyers and how the committee can go about doing it. The earlier proposal to use video taped lectures as a training aid is now thought to be an inappropriate pedagogical approach.

C.3.2 Joanne St.Lewis, a Professor at the University of Ottawa Law School, briefly outlined some of the very difficult situations she had encountered in dealing with students who had done very well in their own country but found it extremely difficult to comprehend the approach to certain legal issues in Ontario.

C.3.3 It was concluded that the Chair and Dean Marilyn Pilkington would work together to develop an approach to be recommended to the committee.

C.4 Relationship of Equity Committee and Women in the Legal Profession Committee

C.4.1 The committee considered the proposal that the Equity Committee and the Women in the Legal Profession Committee be combined. The rationale for this proposal was based on the need to avoid turf problems in dealing with common issues, the need to coordinate outreach programs which are directed at similar audiences and may deal with similar themes and the need to ensure that some issues are considered by both committees at the same time so that the recommendations come forward at the same time.

C.4.2 Those committee members opposed to the combination of the two committees pointed out that both committees have very heavy agendas and that if they are combined there will not be enough time to deal with the combined workload. It was also suggested that if the committees are combined the women's issues would submerge the equity issues.

C.4.3 Those committee members who supported the proposal suggested that the separation of the two committees creates a hierarchy of issues in which women of colour are not dealt with equitably. It was observed that many of the equity issues intersect with women's issues and that these areas of interaction should be dealt with by one committee not by two. It was also suggested that the two committees could be made subcommittees of a new committee and that the new committee would be able to provide the coordination and direct the priorities of the two subcommittees.

C.4.4 A third view was expressed that while the committees ought to be combined sometime that it was not yet an appropriate time to do so.

C.5 Review of Lawyer Referral Plan Policy on Assignment of Lawyers

C.5.1 The March 25, 1994 Convocation approved the recommendation of the Communications Committee:

"That the Equity in Legal Education and Practice Committee be asked to decide whether race and/or ethnicity should be added to the criteria upon which to base referrals when requested by a member of the public."

C.5.2 After a preliminary discussion touching on many of the issues that were raised in Convocation on March 25, 1994, it was agreed that there was a need for a basic document outlining the law as it would apply to the operation of the Lawyer Referral program if applicants were permitted to request lawyers of a specific race or ethnicity. Once this basic clarification of the law is obtained, the committee can then proceed to consider the policy implications of the practices permitted by the law.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April 1994

S. Goudge
Chair

THE REPORT WAS ADOPTED

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994, the following members being present: Vern Krishna, Q.C. (Chair), Michael Hickey, Fatima Mohideen, Julaine Palmer, Gwen Cortis (Legal Aid), Tony Keith (CBAO), Guy Pratte (AJEFO). Staff representation: Dominique Picouet-Bhatt, Richard Tinsley, and Gemma Zecchini.

A.
POLICY

1. French Language Services Committee

Your Committee reviewed the matter of support services to the French Language Services Committee. It was assured that it would continue to receive the necessary resources to adequately implement Convocation policy with respect to French Language Services.

2. French Language Services Budget 1994-1995

The French Language Services Budget for 1994-1995 was approved as submitted by your Committee.

3. Translation of Amendments to the Law Society Rules

Your Committee approved the French version of the Amendments, subject to comments being received within 7 days.

B.
ADMINISTRATION

1. Bilingual citation of Ontario Reports

This item has been deferred to the next meeting in order to consult the Libraries and Reporting Committee on technical matters.

C.
INFORMATION

1. Bilingual format of Ontario Reports

Congratulations are in order for the work of the Libraries and Reporting Committee regarding the new bilingual «face» of the Ontario Reports.

The meeting was adjourned at 1:00 p.m.

ALL OF WHICH is respectfully submitted

DATED this 14 day of April, 1994

V. Krishna
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Le Comité s'est réuni le jeudi 14 avril 1994. Étaient présents M^c Vern Krishna, c.r. (président), M^c Michael Hickey, M^c Fatima Mohideen, M^c Julaine Palmer, M^{me} Gwen Cortis (aide juridique), M^c Tony Keith (ABCO), M^c Guy Pratte (AJEFO) et, en qualité de membres du personnel, M^{me} Dominique Picouet-Bhatt, M^c Richard Tinsley et M^{me} Gemma Zecchini.

A.
POLITIQUE

1. Comité des services en français

Le Comité a étudié la question des services de soutien pour le Comité des services en français. Il a reçu l'assurance qu'il continuerait d'obtenir les ressources nécessaires à la mise en oeuvre satisfaisante de la politique du Conseil en matière de services en français.

2. Budget des services en français de 1994-1995

Le budget des services en français de 1994-1995 a été approuvé tel quel par le Comité.

3. Traduction des modifications aux Règles du Barreau

Le Comité a approuvé la version française des modifications, sauf avis contraire des membres du Comité reçu d'ici sept jours.

B.
ADMINISTRATION

Citation en français du Recueil de jurisprudence de l'Ontario (O.R.)

Cette question a été renvoyée à la réunion suivante afin de consulter le Comité des bibliothèques et de la publication des décisions judiciaires en matière technique.

C.
INFORMATION

Bilinguisme des Ontario Reports/Recueil de jurisprudence de l'Ontario

Félicitations au Comité des bibliothèques et de la publication des décisions judiciaires pour le nouveau visage bilingue de cette publication.

La séance a été levée à 13 h.

Fait le 22 avril 1994.

LE PRÉSIDENT,

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Hickey, Bastedo, Bragagnolo, Howie, Lerner, McKinnon, Wardlaw, Murray, Feinstein and Ms. Palmer.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

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

22nd April, 1994

2. LICENSING OF LPIC CLAIMS MANAGEMENT SOFTWARE SYSTEM

At the September 1993 Committee meeting, the President reported that the consultant retained to assist in the development of the new automated claims management system believes that it might have application to other professional liability insurance programs and possibly corporate self-insured programs. The consultant has suggested being licensed to market the system.

Your Committee considered the proposal and in light of the concerns expressed about possible undesirable consequences, decided not to pursue it at this time.

3. LPIC - LSUC SERVICES AGREEMENT

Pursuant to movement of managerial control of the insurance program into LPIC, a new services agreement between LPIC and the Law Society has been developed. Your Committee recommends that the Law Society enter into the agreement in its current form and that the Treasurer be directed to execute the agreement on behalf of the Law Society. See Appendix "B".

4. OUTSTANDING ITEMS

a) LPIC Claim File Audit

The existing LPIC claim file audit program consists of regular in-house file audits by senior staff in addition to periodic external audits involving reinsurers, Law Society auditors and independent audit consultants. At the June 1993 meeting, the Committee agreed to schedule a claim file audit by an independent audit consultant. In light of the July 1993 Ontario Insurance Commission annual LPIC examination, and recent audits by both staff and reinsurers, the Committee agreed to schedule the independent consultant audit in the new year. Pursuant to a request by the President, McNeary Insurance Consulting Inc. submitted a detailed audit proposal for consideration. Recent changes in managerial control of the insurance program, and an upcoming claim file audit by reinsurers have led your Committee to conclude that an independent consult audit, like that proposed by McNeary Insurance Consulting, would be more appropriately scheduled for a later date.

As previously reported to the Committee, Mr. Mark Orkin has been retained to audit claims files involving legal fee payments with a view to commenting on the relationship between the professional services rendered and the resulting fees. The final results of this audit are not yet available. The President will report to your Committee as additional information becomes available.

22nd April, 1994

b) Transaction Based Levy

The Committee has been considering a recommendation that the profession charge a transaction fee on a broad range of legal services. The purpose of the plan would be to spread the cost of the insurance program over a high volume of transactions such that the charge per transaction would be modest while generating considerable revenue to reduce both the deficit and members' individual levies. The Subcommittee Chair, Mr. Feinstein, presented a status report on the Subcommittee's activities to date. It is anticipated that the Subcommittee's recommendations will be brought before your Committee for discussion in the near future.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

C. Campbell
Chair

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

- Item 1. - Copy of Director's Monthly Report for the Month of March 1994.
(Appendix "A", pages 1 - 5)
- Item 3. - Copy of Services Agreement between LPIC and Law Society.
(Appendix "B", pages 1 - 7)

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair). Staff members present were David Crack and David Carey.

22nd April, 1994

B.
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds for the month ended March 31, 1994 (Schedule A).

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

J. Wardlaw
Chair

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

Item B.-1. - Investment Report Summaries for the various Law Society Funds for the month ended March 31, 1994.

(Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 14th of April, 1994, at 10:30 a.m. the following members being present: S. Thom (Acting Chair), S. Lerner (Vice-Chair), D. Batstone, M. Hickey, D. Murphy, and R. Wise; E. Spears, S. Hickling, H. Werry and J. Yakimovich also attended.

A.
POLICY

1. REVISIONS TO REGULATION 15 AND FORMS 4 AND 5

The Committee reviewed revisions to Regulation 15.2 prepared by the staff of the Legislation and Rules Committee.

The revisions incorporate amendments requested by the County & District Presidents Association and many members of the Bar. The original Regulation encompassed mortgage transactions that were not intended to be covered such as pension funds and non arms-length mortgages. As well, the revised Regulation exempts renewals where only the interest rate is changing. The Committee approved the revisions to Regulation 15.2 as attached.

22nd April, 1994

IT IS RECOMMENDED that the revised Regulation be sent to the Legislation and Rules Committee for final drafting. (Pgs. A1 - A3)

B.
ADMINISTRATION

NO ITEMS

C.
INFORMATION

1. REFEREE REPORTS AND STAFF MEMORANDA

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

2. Copies of the Financial Summary as of February 1994 and a graph showing claims made and outstanding claims is attached. (Pgs. C1 - C3)

3. Accounts approved by staff in March amounted to \$20,360.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

C. Ruby
Chair

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

- Item A.-1. - Copy of revisions to Regulation 15 and Forms 4 and 5.
(marked A1 - A3)
- Item C.-1. - Schedule "A" - Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee (April).
(Schedule "A")
- Item C.-2. - Copies of the Financial Summary as of February 1994 and graph showing claims made and outstanding claims.
(marked C1 - C3)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE (in camera Report)

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IN CAMERA Content Has Been Removed

LEGISLATION AND RULES COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994, at 12:00 noon, the following members being present: M. Cullity (Chair), C. Hill, The Hon. A. Lawrence, S. Lerner, S. Thom, J. Wardlaw.

Also present: A. Brockett, E. Spears.

A
POLICY

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

A.1.1. Amendments to Implement Reforms to the Complaints, Discipline and Standards Procedures (Proposed Amendments: Part A)

A.1.1.1. Staff Working Group

A.1.1.1.1. The Staff Working Group, convened at the request of your Committee and charged with the task of reviewing and drafting the amendments to the complaints, discipline and standards procedures, continues to meet regularly each week.

A.1.1.1.2. The Group has begun compiling a list of policy questions arising from the complaints/discipline/standards amendments that need to be answered by benchers. Your Committee reviewed the first instalment of the list.

A.1.1.1.3. Recommendation

A.1.1.1.3.1. Your Committee recommends that Convocation strike a special committee of benchers with a mandate to

1. review all questions raised by the Staff Working Group in the course of its work; and
2. report to Convocation with recommendations as to how the questions should be answered.

A.2. LAW SOCIETY ACT: SUBSECTION 15(1): BENCHER ELECTIONS:
DEFINITION OF "QUALIFIED MEMBER": AMENDMENT

A.2.1. Recommendation

A.2.1.1. That the definition of "qualified member" contained in proposed subsection 15(1) of the *Law Society Act*, adopted by Convocation on January 28, 1994, and amended by Convocation on March 25, 1994, be further amended to read as follows:

"qualified member" means a member who is not a temporary member and whose rights and privileges have not been suspended and is not in arrear to the Society for any fee or levy or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan.

[Amended text underlined. Deleted text struck through.]

A.2.2. Explanation

A.2.2.1. On January 28, 1994, Convocation approved proposals for the repeal and replacement of sections 15 to 21 of the *Law Society Act* to implement the scheme of regional election benchers. Proposed subsection 15(1) of the *Law Society Act* reads, in part:

In this section, and in sections 16 to 19 and section 21,

* * * *

"qualified member" means a member who is not a temporary member, is in good standing in the Society and is not in arrear to the Society for any fee or levy.

Proposed section 16 of the *Law Society Act* reads, in part:

... every qualified member is eligible to vote at an election of benchers

A.2.2.2. On March 25, 1994, Convocation adopted the recommendation of the Legislation and Rules Committee that the definition of "qualified member" contained in proposed subsection 15(1) of the *Law Society Act* be amended to read as follows (amended text underlined):

"qualified member" means a member who is not a temporary member, is in good standing in the Society and is not in arrear to the Society for any fee or levy or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan.

A.2.2.3. The amendment of March 25, 1994 was in response to an amendment to section 36 previously approved by Convocation. That amendment was to permit Convocation to suspend members not only for non-payment of fees and levies but also for non-payment of insurance deductibles. As a result of that amendment, if the original definition of "qualified member" contained in proposed subsection 15(1) of the *Law Society Act* was permitted to stand, the result would be that members not

paying their fees or levies, whether suspended or not, would be disqualified from voting at an election of benchers, whereas members not paying their insurance deductibles would be disqualified from voting at an election of benchers only if they were suspended. The amendment to subsection 15(1) was to ensure that members not paying their insurance deductibles were treated in the same manner as members not paying their fees and levies.

A.2.2.4. It has been brought to the attention of your Committee that the amendment to subsection 15(1) adopted by Convocation on March 25, 1994 will cause at least one administrative difficulty: It will seriously complicate the task of generating a voters list, as explained in the paragraphs which follow.

A.2.2.5. Amended subsection 15(1) requires the following members to be struck off the voters list:

1. members suspended for non-payment of fees or levies;
2. members suspended for non-payment of insurance deductibles;
3. members in arrear for the payment of fees or levies; and
4. members in arrear for the payment of insurance deductibles.

A.2.2.6. The problem arises with members in category 4: While it is a simple matter to identify members in arrear for the payment of fees or levies (a member is considered in arrear from the time payment is due to the time payment is made or the member is suspended), it is a less simple matter to identify members in arrear for the payment of insurance deductibles (the date on which a member is notified of the obligation to pay the deductible is not necessarily the due date for payment, nor is the member automatically considered in arrear from the time of notification to the time payment is made or the member is suspended).

A.2.2.7. It has also been brought to the attention of your Committee that the amendment to subsection 15(1) adopted by Convocation on March 25, 1994 may be somewhat inaccurate: It is not altogether clear that insurance deductibles are payable to the Society, and therefore, that a member who fails to pay an insurance deductible is in arrear to the Society.

A.2.2.8. The concerns raised regarding the definition of "qualified member" adopted by Convocation on March 25, 1994 could be dealt with by amending that definition to delete the words "and is not in arrear to the Society for any fee or levy or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan". Such an amendment would also address the concerns which originally prompted the amendment of the definition.

A.2.2.9. Good Standing

A.2.2.9.1. Pursuant to subsection 15(1), a "qualified member" is "a member ... who is in good standing in the Society" (emphasis added). The words "good standing" are not defined in the *Law Society Act*. They are also not used in the act outside the provisions governing the election of benchers.

A.2.2.9.2. In the context of the provisions governing the election of benchers, a member in good standing is understood to be a member whose rights and privileges have not been suspended. The phrase "a member whose rights and privileges have not been suspended" is used in the act. (See clauses (c) and (e) of subsection 61.2(1), and subsection 61.4(1), as contained in section 71 of the act.)

A.2.2.9.3. It is proposed that the definition of "qualified member" refer to a member whose rights and privileges have not been suspended, and not to a member who is in good standing in the Society.

A.3. LAW SOCIETY ACT: SUBSECTION 50(4): AMENDMENT TO REMOVE REQUIREMENT THAT A CONVICTION FOR THE UNAUTHORIZED PRACTICE OF LAW PRECEDE PROCEEDINGS TO ENJOIN A PERSON FROM ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW

A.3.1. Recommendation

A.3.1.1. That the text of proposed subsection 50(4) of the *Law Society Act* adopted by Convocation on September 29, 1989 be amended to read as follows:

Upon the application of the Society, where a judge of the Ontario Court (General Division) is satisfied that a person is in contravention of subsection (1), even though there has not been a conviction, the judge may make an order enjoining the person from acting as a barrister or solicitor or holding themselves out as or representing themselves to be a barrister or solicitor or practising as a barrister or solicitor, and the order may be enforced in the same manner as any other order or judgment of the court.

[Amended text underlined.]

A.3.2. Explanation

A.3.2.1. On March 25, 1994, the Legislation and Rules Committee made the following recommendations to Convocation:

That, subject to the approval of the Unauthorized Practice Committee, the text of the proposed subsection 50(4) of the *Law Society Act* adopted by Convocation on September 29, 1989 be amended to read as follows:

22nd April, 1994

Upon the application of the Society, where a judge of the Ontario Court (General Division) is satisfied that a person is in contravention of subsection (1), the judge may make an order enjoining the person from acting as a barrister or solicitor or holding themselves out as or representing themselves to be a barrister or solicitor or practising as a barrister or solicitor, and the order may be enforced in the same manner as any other order or judgment of the court.

[Amended text underlined.]

That, subject to the approval of the Unauthorized Practice Committee, the proposed amendment to subsection 50(4) be included in the package of amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature.

- A.3.2.2. It should be pointed out that the word "themselves" was, and is, not recommended with any enthusiasm by your Committee. It is, however, the word which the Office of Legislative Counsel has decided to use in this context – the vigorous protests of the Law Society notwithstanding.
- A.3.2.3. At its meeting on March 10, 1994, the Unauthorized Practice Committee considered the proposed amendment to subsection 50(4). The Committee asked that subsection 50(4) be further amended by adding, after the words "subsection (1)", the words "notwithstanding that there has not been a conviction".
- A.3.2.4. It is not possible to honour, to the letter, the request of the Unauthorized Practice Committee. The Office of the Legislative Counsel has published a pamphlet of drafting conventions which it relies on in drafting legislation. Subsection 27(3) of the pamphlet reads:
- "Notwithstanding" should not be used. Instead, use "despite" (or, in some contexts, "although" or "even though").
- A.3.2.5. Subject to this further amendment of subsection 50(4), the Unauthorized Practice Committee approved the inclusion of the proposed amendment to subsection 50(4) in the package of amendments to the *Law Society Act* to be submitted to the Attorney General.

B.
ADMINISTRATION

No items to report

22nd April, 1994

C.
INFORMATION

No items to report

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

M. Cullity
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 8:30 a.m., the following members being present:

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

A.
POLICY

no items

B.
ADMINISTRATION

1. Ontario Reports - Bilingual Format for Headings - Bilingual Citation

Attached is a memorandum dated March 25, 1994 from Dominique Picouet of the Law Society of Upper Canada's French Language Services programme.

The memorandum in turn refers to a letter from a member, Jacques McLaren of the CBC Law Department.

The memorandum raises two matters -

1. a French citation for the Ontario Reports (which would be RJO, as a companion citation to OR), and

22nd April, 1994

2. further bilingual headings for the first few pages of the front section of the Ontario Reports.

The federal and New Brunswick jurisdictions are officially bilingual, and the reports of the Supreme Court of Canada contain official bilingual versions of each and every case, published simultaneously, with equal authority. English cases in the OR's are not translated, and English translations of very infrequent French cases in the OR's are not authoritative. This is a major difference between the OR's and federal SCR's.

But besides the "status" difference between the OR's and SCR's, there is a practical problem with the suggested "bilingual reference system" - it would be

a) confusing, and b) cumbersometo force lawyers, judges, publishers & others to use an OR/RJO citation.

Two other members of the Ontario Reports editorial board agree that a bilingual reference system would be impractical.

The Committee recommends to Convocation that the bilingual cover for the Ontario Reports that was approved last fall is sufficient, and that no further change be made regarding the citation or the headings in the front section of the OR weekly parts.

2. Ontario Reports - Advertisements in Colour

Attached is a copy of a circular just recently sent by Butterworth to various parties that advertise in the Ontario Reports.

The Committee saw no problem with colour advertising as proposed by Butterworth and recommends no action.

3. County Libraries - Priorities & Planning Committee's Recommendations

The Priorities & Planning Committee's 1994-95 Budget Recommendations includes a recommendation that impacts directly on the County Libraries program. In short, the Priorities & Planning Committee recommends that the \$155,000 Law Foundation shortfall be partially covered not by the \$3 increase in the county library levy but instead by a reduction in the county libraries reserve on the Law Society of Upper Canada's balance sheet.

The Priorities & Planning Committee also recommends a report by early spring of 1995 on the future direction of funding for county libraries.

The Committee agreed with the Priorities & Planning Committee's recommendation that any funding shortfall for county libraries be taken from the Reserve, and asked the Chief Librarian to report to the May meeting of the Committee on the framework and process for the study on the future direction of funding for county libraries.

22nd April, 1994

C.
INFORMATION

1. Great Library - Holdings of Law Reports in More than One Copy - Comparison to County of York Law Association

Last month the Chief Librarian reported on the Great Library's holdings of duplicate sets of law reports. After several cancellations recommended by the Chief Librarian and approved by the Committee as part of the "Priorities and Planning" process for the upcoming 1994-95 Budget, the Great Library will have duplicate holdings of a modest number of major law report series:

5 general reporters:	OR,	SCR,	FCR,	DLR,	&	WWR
12 topical law reports:		BLR				CBR
		CCLT				CCC
		CRR				CPC
		CR				E&TR
		MVR				PPSAC
		RPR				RFL

2 English series: Law Reports All ER's

At the meeting last month, the Committee asked the Chief Librarian to ascertain the same information for law reports at the County of York Law Association. York County has "multiple subscriptions" to only three(3) report series - the Ontario Reports (3 copies), the Supreme Court Reports (2 copies), and the CCC's (3 copies, probably soon to be 2 copies)

For the volume of usage of the two libraries, the holdings of law reports in more than one copy is certainly modest in both locations.

The Committee accepted the above information provided by the Chief Librarian's office.

ALL OF WHICH is respectfully submitted

Dated this 22nd day of April, 1994

D. Murphy
Chair

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

- Item B.-1. - Memorandum from Ms. Dominique Picouet to Ms. Gemma Zecchini and Glen Howell dated March 25, 1994 re: Ontario Reports.
- Item B.-2. - Copy of a circular sent By Butterworth to various parties that advertise in the Ontario Reports.

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE (in camera Report)

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SPECIALIST CERTIFICATION BOARD

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 14th of April, 1994 at nine o'clock in the morning, the following members being present: D.W. Scott (Vice-Chair), R.D. Manes (Vice-Chair), J. Callwood, C.D. McKinnon, M.L. Pilkington and G.P. Sadvari. R.N. Robertson, Specialty Committee Chair, attended during the discussion of the Report of the Bankruptcy and Insolvency Law Specialty Committee. S. Thomson, of the Law Society, was also present.

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

The Workers' Compensation Law Specialty Committee met on Tuesday, the 22nd of March, 1994 at five o'clock in the afternoon.

The Family Law Specialty Committee met (in person/conference call) on Tuesday, the 5th of April, 1994 at four o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 12th of April, 1994 at eight-thirty in the morning.

A.
POLICY

A.1. ASSESSMENT OF APPLICATIONS - ALLEGATIONS OF PROFESSIONAL MISCONDUCT

A.1.1. A rather serious matter suggesting professional misconduct on the part of an applicant came to the attention of a Specialty Committee during the course of an application assessment.

A.1.2. The Committee proposed to interview the applicant to discuss the matter and sought the guidance of the Board.

A.1.3. The Board recommended that the applicant should be informed that the matter will be referred immediately to the investigative arm of the Law Society. The applicant will be advised that the application will be in suspension pending completion of the investigation. The Committee will be instructed not to go forward with the interview.

A.1.4. The Board adopted the following resolution to assist Specialty Committees in the future:

A.1.4.1. "Should any allegation of professional misconduct come to the attention of a Specialty Committee, the Committee shall notify the Specialist Certification Board and take no further investigative action. The assessment of the application shall be put in abeyance until the matter has been dealt with by the Board.

A.1.4.2. The Board shall make a determination as to whether the assistance of the investigative arm of the Law Society will be sought. If the Board concludes that the allegation should be investigated, a reporting will be made even if the member withdraws the application."

A.1.5. As a result of the above discussion, the Board also revised the following comment which is to be found in all Specialty Standards [underlining indicates revision]:

A.1.5.1. "Where a discipline investigation or complaint is pending at the date when the application is received or if an investigation is launched or a complaint is received during the determination of the application, the Board may postpone consideration of the application until the discipline matter has been disposed of in its entirety, whether by final order or otherwise."

A.2. POLICY ON REFERENCES

A.2.1. When applications are delayed for long periods because of insufficient numbers of solicited references (a minimum of four references, at least one of which must be provided by a currently-certified Specialist, must be received before the assessment process can begin), Specialist Certification Program staff routinely request the names of supplementary referees from applicants after one or two follow-up letters have been sent to the non-responding referees.

A.2.2. Applicants frequently ask for the names of the non-responding referees. The Board adopted the following policy, which has been the practice of Program staff to date: the names of non-responding referees shall not be provided to applicants.

B.
ADMINISTRATION

B.1. SIX-MONTH CERTIFICATE EXTENSIONS

B.1.1. On October 14, 1993, the Board extended for six months (to April 10, 1994) all Specialist certificates due to expire on October 10, 1993, where recertification applications had not been processed.

B.1.2. Some of those applications remain outstanding. The Board extended for an additional six months (to October 10, 1994 or renewal date) the certificates of the following Specialists:

Gerald J. Charney
Garret J. Cooligan
Hugh B. Geddes
J. Joseph Kelly
John E. Lang
G. Bernie Weiler
Roland J. Willis
Donald J. Wright

B.2. BANKRUPTCY AND INSOLVENCY LAW SPECIALTY COMMITTEE MEMBERSHIP

B.2.1. The Board approved the recommendation of the Committee Chair that all members of the Bankruptcy and Insolvency Law Specialty be continued for 1994 to provide continuity during the initial phase of the implementation of the Bankruptcy and Insolvency Law Specialty.

B.2.2. Members are:

Ronald N. Robertson, Q.C. (of Toronto) - CHAIR (of Toronto)
John D. Honsberger, Q.C., L.S.M. - VICE-CHAIR (of Toronto)
David E. Baird, Q.C. (of Toronto)
Jules N. Berman, Q.C. (of Toronto)
Christopher A. Fournier (of Ottawa)
Frank A. Highley (of London)
Carl H. Morawetz, Q.C. (of Toronto)
Gale Rubenstein (of Toronto)
H. Diane Winters (of Toronto)

C.
INFORMATION

C.1. REPORT OF THE BANKRUPTCY AND INSOLVENCY LAW SPECIALTY

C.1.1. On September 28, 1990, Convocation of the Law Society of Upper Canada approved the establishment of the Bankruptcy and Insolvency Law Specialty Committee.

C.1.2. The initial mandate of the Committee was to propose appropriate Standards for the certification of Specialists in the field of Bankruptcy and Insolvency Law. The Committee has completed its first task and submitted its Report, which was considered by the Board.

- C.1.3. The Report includes a chronology of the Committee's work and a copy of the first draft Standards, dated June 1992, which were distributed as follows:
- C.1.3.1. July 24, 1992 - to all members of the CBAO Insolvency Law Section (just under 700 members)
- C.1.3.2. July 30, 1992 - to all Deans of Ontario Law Schools
- C.1.3.3. July 30, 1992 - to all County and District Law Association Presidents
- C.1.3.4. August 7, 1992 - a notice was published in the Ontario Reports
- C.1.4. The Report also includes copies of responses from members of the profession to the draft standards (which were received during August and September 1992), the revised Standards for Certification dated April 1994, the American Bar Association Model Standards for Bankruptcy Law, the Committee's assessment of how the public will benefit from the implementation of the Bankruptcy and Insolvency Law Specialty, and the Committee's assessment of the extent to which lawyers practising in various regions of the province will have access to Specialist Certification in the field of Bankruptcy and Insolvency Law.
- C.1.5. Attached under Appendix 1 are selections from the Report, including the Chair's covering letter, the responses of members of the profession to the initial standards, the April 1994 standards, and the Committee's comments under tabs 7 and 8.
- C.1.6. The Committee Chair summarized the work of the Committee. He suggested that bankruptcy and insolvency law is a natural area of specialization and noted that the courts have been extremely busy in this area and it will be useful to be able to identify Specialists in the field.
- C.1.7. In revising the Standards, the Committee was sensitive to concerns of bankruptcy and insolvency lawyers practising outside Toronto. The percentage of time requirement was the major area of contention following the distribution of the initial draft Standards. The April 1994 Standards reflect the Committee's commitment to equal access to specialization by allowing less than 50% of professional time in the field if the applicant has sufficient experience over an extended period of time - see paragraph 4.ii(b).
- C.1.8. The Committee Chair was asked whether there could be any steering effect in the Standards that would result in a lawyer obtaining litigation experience in an attempt to meet the requirements, to the detriment of clients. The Chair observed, with reference to paragraph 6, that "the phrase "acted for" is not limited to acting in court provided that the applicant has actually performed the function of instructing solicitor". A bankruptcy and insolvency lawyer can be non-litigious yet qualify for Specialist certification.
- C.1.9. The Board complimented the Bankruptcy and Insolvency Law Specialty Committee on an excellent report.
- C.1.10. Your Board recommends that the revised Bankruptcy and Insolvency Law Specialty Standards should be approved.

22nd April, 1994

- C.1.11. All other application documents (application form, interviewer's report, statement of reference) will be prepared by the Committee, and in due course a notice will be published in the Ontario Reports advising the profession that the Bankruptcy and Insolvency Law Specialty Committee is ready to consider applications.

C.2. CERTIFICATION OF SPECIALISTS

- C.2.1. The Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

C. Kirk Boggs (of Toronto)
Michael A. Spears (of Toronto)

- C.2.2. The Board is pleased to report the certification of the following lawyers as Family Law Specialists:

Michael E. McGarry (of London)
G. Patrick Smith (of Thunder Bay)

- C.2.3. The Board is pleased to report the certification of the following lawyer as an Intellectual Property (Patent, Trade-Mark & Copyright) Law Specialist:

Sheldon Burshtein (of Toronto)

C.3. RECERTIFICATION OF SPECIALISTS

- C.3.1. The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

W. Ian C. Binnie (of Toronto)
Earle A. Blackadder (of Welland)
Hillel David (of Toronto)
James M. Flaherty (of Toronto)
Keith M. Landy (of Willowdale)

- C.3.2. The Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Litigation (Law) Specialists:

Alan D. Gold (of Toronto)
G. Gary McNeely (of Oshawa)

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

R. Yachetti
Chair

22nd April, 1994

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

Item C.-C.1.5. - Selections from the Report of the Bankruptcy and
Insolvency Law Specialty Committee on Bankruptcy and
Insolvency Law Specialist Standards for
Certification. (Appendix 1)

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 9:30 a.m., the following members being present: P. Peters (Chair), M. Hickey, S. Lerner and M. Weaver (Vice Chair). Staff in attendance was: A. John (Secretary).

B.
ADMINISTRATION

1. COMPLAINTS AND INVESTIGATIONS

Your Committee authorized four new matters for prosecutions.

2. BUDGET 1994/95

Your Committee discussed the recommendation of the Planning and Priorities Committee that the budget for 1994/95 be fixed at the same level as the budget for the previous fiscal year.

The Planning and Priorities Committee recommended a full debate in Convocation about continuation of s.50 prosecutions. Your Committee urges that the matter be discussed in Convocation in the fall of 1994.

ALL OF WHICH is respectfully submitted

DATED the 22nd day of April, 1994

P. Peters
Chair

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

Item B.-1. - List of Prosecutions. (page 2)

THE REPORT WAS ADOPTED

22nd April, 1994

CALL TO THE BAR

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

Bayani Francisco Abesamis	35th Bar Admission Course
Georgios Aristos	35th Bar Admission Course
Roderick Nicholas Brinckman	35th Bar Admission Course
Warren Garnet Brown	35th Bar Admission Course
Michael Warren Butterfield	35th Bar Admission Course
Wanda Beatrice Frances Corston	35th Bar Admission Course
Maria Da Luz Raposo De Jesus	35th Bar Admission Course
Carl Jonathan Garland	35th Bar Admission Course
Neil Kotnala	35th Bar Admission Course
James Charles Middlemiss	35th Bar Admission Course
Denzil Girard Minnan-Wong	35th Bar Admission Course
Mukund Purshottam Mody	35th Bar Admission Course
Brian Anthony Montgomery	35th Bar Admission Course
Catharine Marie Parker	35th Bar Admission Course
Margaux Anna Polanski	35th Bar Admission Course
Teresa Eleanor Shilling	35th Bar Admission Course
Donna Lee Shiplett	35th Bar Admission Course
Anna Carmela Sinicrope	35th Bar Admission Course
Steven Michael Starkman	35th Bar Admission Course
Irene Theletritis	35th Bar Admission Course
John Edwin Walker	35th Bar Admission Course
Joseph Leo Gilles LeVasseur	Special, Transfer, Quebec
Cynthia Anne Petersen	Prof., Faculty of Law, University of Ottawa

.....

AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

SPECIAL COMMITTEE ON PRIORITIES AND PLANNING

Mr. Bastedo presented the Report of the Special Committee on Priorities and Planning for Convocation's approval.

Mr. Bastedo expressed thanks to the staff and members of the Committee for the work they had done.

He advised that the major concentration of Law Society spending should be in the Discipline, Complaints and Audit Departments.

THE LAW SOCIETY OF UPPER CANADA

MEMORANDUM

April 12, 1994

TO: Treasurer and Benchers

FROM: Special Committee on Priorities and Planning
Tom Bastedo, Chair
Abe Feinstein
Casey Hill
Hope Sealy

22nd April, 1994

RE: RECOMMENDATION FOR BUDGET

Attached to this memorandum you will find the Society's Interim Budget for the financial year 1994/95 and the recommendations of the Special Committee on Priorities and Planning Committee to Convocation.

In summary, the Special Committee on Priorities and Planning recommends an annual fee for 1994/95 for the full fee paying member of \$1,132, which is identical to the fee for 1993/94, both in total and its component parts as shown on page 2 of the Interim Budget.

This recommendation and support material is provided to all Benchers so that the contents can be discussed in Committee prior to Convocation on April 22nd when the report will be submitted. We recognize that not all requests of all committees have been accepted by the Special Committee on Priorities and Planning. Accordingly, those committees which feel that their request has not been adequately considered financially or otherwise, will have a full opportunity to put forward, before Convocation, their further request. In addition, of course, any member is at liberty to put forward a recommendation to Convocation that the priorities as set forth in this report be altered so as to decrease requests in some areas and increase requests in others.

In general, the Committee strongly believes that the requests of the Discipline Policy Committee for Audit, Discipline and Complaints Departments and the requests of the Practice Advisory and the Professional Standards Committees for increased expenditure and staff complement should be substantially accepted. This decision by the Priorities and Planning Committee has meant that requests in other areas of the Law Society cannot be adequately dealt with as we would have liked. In our recommendation relating to the priorities, we have had close reference to the Proposed Statement on the Role of the Law Society distributed by the Research and Planning Committee.

We draw your attention to the discussion on pages 9 and 10 of the attached Budget Recommendations covering the long-term debt repayment plan and the surplus.

In May, the Priorities and Planning Committee intends to submit to Convocation its recommendations with respect to clauses (b) and (c) of its mandate dealing with the future of the Priority and Planning process.

The following is an excerpt from the Minutes of Convocation setting out the mandate of the Committee:

- "a) *to review with committee chairs and members and with management of the several departments of the Society, all of the activities, programs and services of the Society and to report to Convocation early in 1994 with recommendations as to the priorities to be given effect in the allocation of the Society's financial resources in planning the budget for 1994/95;*
- b) *to formulate and to recommend to Convocation a process to be followed in the future for each standing committee and department to submit estimates of proposed projects and for the Priorities Committee to set priorities and to make appropriate recommendations to Convocation for the allocation of financial resources; and*

22nd April, 1994

- c) to consult with the Standing and Special Committees of Convocation and, in particular, with the Finance and Administration and the Research and Planning Committees and to report to Convocation by May, 1994 with recommendations on the relationship that should exist in the future between the Special Committee on Priorities and Planning and those other committees and on their respective roles in the budgeting and planning process.

In order to ensure the greatest possible objectivity, each member of the special committee is "independent" in that he or she is neither a chair nor vice-chair of any other standing committee of Convocation."

(see attachments to this Memorandum in Convocation file)

It was moved by Mr. Bastedo, seconded by Mr. Hill that the Report be adopted.

Mr. Epstein commented on the request for bursary funds to assist needy students.

It was moved by Mr. Epstein, seconded by Ms. Lax that \$100,000 be made available from the Bar Admission Bursary Fund for the 1994/95 year.

Lost

It was moved by Mr. Lamont, seconded by Mr. Finkelstein that the expenditures to design the Mandatory Continuing Legal Education Program be deferred and revisited when the financial situation has improved.

Lost

Convocation took a brief recess at 11:15 a.m. and resumed at 11:30 a.m.

.....

SPECIAL COMMITTEE ON PRIORITIES AND PLANNING (cont'd)

It was moved by Mr. Lamont, seconded by Mr. Manes that the Canadian Bar Association request for a \$30,000 contribution toward the cost of the Annual Meeting, be approved.

Lost

The Report was adopted.

THE REPORT WAS ADOPTED

.....

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

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of April 14, 1994

Mr. Howie presented Item B.-3. re: Recommendation for the 1994/95 Annual Fee and Items B.-4., 5., and 6. re: Suspensions, for Convocation's approval.

22nd April, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 10:30 a.m., the following members being present: K.E. Howie (Chair), M. Somerville (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D. Bellamy, A. Feinstein, S.C. Hill, V. Krishna, R.D. Manes, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director of Finance presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the 8 months ended February 28, 1994.

Approved

2. REPORT OF THE SPECIAL COMMITTEE ON PRIORITIES AND PLANNING

A report from Tom Bastedo, Chair of the Special Committee on Priorities and Planning, was before the meeting.

Received

3. RECOMMENDATION FOR THE 1994/95 ANNUAL FEE

The Finance and Administration Committee recommends that the 1994/95 annual fee be identical to the 1993/94 annual fee, both in total and its component parts, as follows:

	1994/95	COMPARATIVE		
		1993/94	1992/93	1991/92
General Fund	\$758	\$758	\$778	\$781
County Libraries	81	81	79	68
Legal Aid	292	292	292	240
Lawyers' Fund For Client Comp.	1	1	1	1
TOTAL	1,132	\$1,132	1,150	1,090

Note: Motion, see page 131

4. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 18 members who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

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

22nd April, 1994

The Committee was asked to recommend that the rights and privileges of these members be suspended on April 22, 1994 if the late filing fee remains unpaid on that date.

Approved

Note: Motions, see page 131

5. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are members who have not paid all of their 1993/94 annual fees of which the second instalment was due on January 1, 1994. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on April 22, 1994 effective May 2, 1994 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 131

6. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period January 1 to June 30, 1994. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on April 22, 1994 effective May 2, 1994 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Approved

Note: Motion, see page 131

7. 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 memberships in the Society without payment of annual fees:

Frederick Jordan Fowler Edward	Sarnia
Robert Ian Hendy	Toronto
George Smith MacDonald	Port Colborne
Helen Louise Murray	Toronto
Henry Graham Walsh	Pembroke

(b) Incapacitated Member - Rule 50

The following member is incapacitated and unable to practise law and has requested permission to continue his membership in the Society without payment of annual fees:

Richard Graeff Fulford London

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

Approved

22nd April, 1994

(c) Return to Active Practice

Margaret Juliana MacMaster Atkinson of Toronto retired under the incapacitated section of Rule 50 on January 28, 1994. She now submits an application for the termination of her retirement and submits medical evidence attesting to her ability to practise law.

Her application is in order and the Committee was asked to approve it subject to the receipt of the relevant fees and levies.

Approved

8. RESIGNATION - REGULATION 12

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

(a) Pierre Gerard Normandin of Montreal, Quebec was called to the Bar on March 22, 1991 and has never practised law in Ontario since his call. His rights and privileges were suspended on November 1, 1993 for non-payment of the 1993/94 annual fee which is still outstanding. His annual filings are up to date.

(b) Kenneth Edward Field of Toronto was called to the Bar on March 19, 1970 and has never practised law since his call. His rights and privileges were suspended on November 1, 1993 for non-payment of the 1993/94 annual fee which is still outstanding. His annual filings are up to date.

(c) Michael John Wells Finley of Saskatoon, Saskatchewan was called to the Bar on April 13, 1978 and has never practised law in Ontario since his call. His rights and privileges were suspended on November 25, 1983 for non-compliance with the requirements of the Society's Errors and Omissions Insurance Plan. Annual fees for the years 1983/84 to 1993/94 inclusive are outstanding. His annual filings are up to date.

(d) Marvin Marshall Sokol of Cote St. Luc, Quebec was called to the Bar on April 6, 1982 and has never practised law since his call. His rights and privileges were suspended on December 1, 1992 for non-payment of the 1992/93 annual fee. Annual fees for 1992/93 and 1993/94 are outstanding. His annual filings are up to date.

(e) Peter Stanley Haskins of Alcove, Quebec was called to the Bar on June 16, 1978. He practised law exclusively for the Federal Government for twelve years up to his retirement in May 1991. His annual filings are up to date.

(d) Karen Ann Smith of St. Albert, Alberta was called to the Bar on March 31, 1989 and practised law in Ontario with the firm Fraser & Beatty until March 1992. She declares that she has not handled trust funds or other clients' property in Ontario since she left the firm and that, upon her departure, arrangements were made with respect to all clients' matters to be turned over to other members of the firm. She is not aware of any claims made against her. The second instalment of the 1993/94 fee is outstanding. Her annual filings are up to date.

(e) Larry Richard Alan Ackerl of St. Albert, Alberta was called to the Bar on April 8, 1987. He practised law in Ontario up to April 1992, the last 6 years being in the employ of the Criminal Prosecution Section of the Department of Justice in Toronto. The second instalment of the 1993/94 fee is outstanding. His annual filings are up to date.

22nd April, 1994

(f) Michael Gerard Massicotte of Calgary, Alberta was called to the Bar on February 5, 1992 and practised law as an associate with the firm Caputo, Sarlo, Irwin for approximately two weeks. He declares that he did not handle any trust funds or other clients' property. All clients' matters been completed and disposed of, or arrangements made to clients' satisfaction to have their matters turned over to other members of the firm. He is not aware of any claims made against him. The second instalment of his 1993/94 fee is outstanding. His annual filings are up to date.

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

Approved

C.
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

April 6, 1994	Judges' Dinner Convocation Hall
April 13, 1994	Legal Aid Dinner Benchers' Dining Room
April 27, 1994	Medico-Legal Dinner Convocation Hall
April 28, 1994	Lawyers' Club Dinner Convocation Hall
May 4, 1994	Judges' Dinner Convocation Hall
May 5, 1994	Clare Lewis Reception Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

K. Howie
Chair

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

Item B.-1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated April 14, 1994 re: February 1994 Financial Highlights.

(pages 5 - 9)

22nd April, 1994

It was moved by Mr. Howie, seconded by Mr. Bastedo that the annual fee for 1994/95 be as follows:

Category I	\$1,132
Category II	\$ 566
Category III	\$ 283

Carried

It was moved by Ms. Kiteley, seconded by Ms. Elliott that the date for suspension for non payment of the E & O Levy and annual fees be May 9, instead of May 2, 1994.

Carried

It was moved by Ms. Kiteley, seconded by Ms. Elliott that the Law Society staff in consultation with the Legal Aid staff be authorized to take assignments of Legal Aid accounts to satisfy amounts owing to the Society on account of the 1993/94 annual fees and/or the E & O levy for January - June 30, 1994 if the staff is satisfied that the regulatory and statutory concerns may be met.

Not Put

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

MOTION TO SUSPEND - FAILURE TO PAY ANNUAL FEES

It was moved by Mr. Howie, seconded by Mr. Somerville, THAT the rights and privileges of each member who has not paid all of their annual fees for 1993/94 and whose name appears on the attached list be suspended from May 9, 1994 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - FAILURE TO PAY E & O INSURANCE LEVY

It was moved by Mr. Howie, seconded by Mr. Somerville, THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on January 1, 1994 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from May 9, 1994 and until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Howie, seconded by Mr. Somerville, 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 April 22, 1994 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

.....

22nd April, 1994

LEGAL AID COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994, the following members being present: Frances P. Kiteley, Chair, B. Ally, L. Brennan, M. Buist, J. Campbell, P. Copeland, S. Cooney, C. Curtis, D. Fox, M. Fuerst, P. Peters, A. Rady, M. Stanowski, B. Sullivan.

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

A.
POLICY

A.1 LEGAL AID COMMITTEE - BOARD DEVELOPMENT PROCESS

A.1.1 As reported earlier to Convocation, the Legal Aid Committee held a Strategic Planning Day in December, 1993 as part of its ongoing development process. Steve Raiken, the consultant from Ernest and Young, attended the February meeting and presented a draft report which was discussed in some detail. Discussion with respect to the recommendations in the draft report was concluded. The Legal Aid Committee approved the report in principle subject to modest changes to be made by the consultant and subject to verification by the Legal Aid Committee that the changes coincide with the discussion which was undertaken. The final report will be made available for the May Legal Aid Committee meeting and will be forwarded in due course to Convocation.

A.2 APPENDIX A TO THE REPORT OF THE APPOINTMENTS SUB-COMMITTEE

A.2.1 Convocation received the Report of the Appointments Sub-Committee in January of this year. Appendix A of that report "Draft Role and Responsibilities of Legal Aid Committee Members" was deferred by the Legal Aid Committee at its January meeting for further discussion. The specific description of the role and responsibility of members coincides with one of the recommendations made by the consultant arising from the Strategic Planning Day. When the final report of the consultant is available in May, Appendix A with respect to the Role and Responsibilities of Legal Aid Committee Members will also be considered.

A.3 WOMEN'S FAMILY LAW CENTRE

A.3.1 The Legal Aid Committee gave further consideration to the Report of the Design Committee and the position taken by Convocation on November 26, 1993. The Legal Aid Committee passed a resolution (8:4) for which it seeks the approval of Convocation.

The Legal Aid Committee recommends that the Women's Family Law Centre be established by the Plan and that it should focus its efforts on the provision of services to women who are victims of spousal abuse.

The Committee further recommends that Legal Aid continues to grant certificates and that adequate social services of the type provided in the Women's Family Law Centre be made available in the community to men and women.

The Plan will continue to follow equal opportunity hiring policies in hiring for the Women's Family Law Centre. It is not intended that the Centre be staffed only by women.

- A.3.2 The following history reflecting the background of this matter may be helpful to Convocation.
- A.3.2.1 In mid 1992 Convocation concluded after a lengthy debate that the Law Society and the Legal Aid Committee should undertake a pilot project in the delivery of Legal Aid in Family Law based on a staff model of delivery.
- A.3.2.2 A Steering Committee was struck to pursue that objective. The Steering Committee includes representatives of the Legal Aid Committee, the Clinic Funding Committee and the Ministry of the Attorney General.
- A.3.2.3 The Steering Committee created a Design Committee. The members of the Design Committee included members of the profession, representatives of the Ministry of the Attorney General, representatives of the Legal Aid Committee, intermediaries, and one consumer. The Design Committee met on 25 occasions and produced a report which is attached as SCHEDULE (A).
- A.3.2.4 The recommendations of the Design Committee were as follows:
- a Limited Service Model should be undertaken to provide standard paper intensive services such as uncontested divorces and adoption,
 - the Women's Family Law Centre should be undertaken to provide comprehensive legal and related services for women in family law cases. Related services would include advice and referrals in related criminal immigration administrative and other areas of law as well as advocacy, crisis, counselling, interpreters, community legal education, law reform and other features.
 - the staff office providing only services consistent with the status quo on a certificate should not be undertaken. A certificate allows only for delivery of legal services in a distinct family law case. (This has been referred to as the third model or judicare equivalent model).
- A.3.2.5 The Legal Aid Committee adopted the report of the Design Committee at its meeting in November, 1993.
- A.3.3 On November 26, 1993 Convocation:
- adopted the limited service model
 - rejected the Women's Family Law Centre
 - adopted the third model/judicare equivalent model

- A.3.4 In the course of deliberations, several concerns were raised at Convocation. The issue to which many benchers spoke was the aspect that the Women's Family Law Centre would serve only women. Several benchers indicated a receptiveness to the approach if the rationale for giving priority to women was that their legal needs were related to the abuse they had experienced in their domestic relationship.
- A.3.5 The members of the Design Committee were subsequently canvassed on that issue. As a result of those additional consultations, the Legal Aid Committee reconsidered the report of the Design Committee and considered additional background information as follows:
- A.3.5.1 Facts About Women: Occurrences of Abuse and Poverty: Women Who are Victims of Spousal Abuse (SCHEDULE B)
- A.3.5.4 The report of the Violence Against Women Survey released in November, 1993 by Statistics Canada (SCHEDULE C).
- A.3.5.6 Statistics from the Centre for Violence Against Women and Children (SCHEDULE D).
- A.3.5.7 Column by Michelle Landsberg dated December 18, 1993: The Male Myth of "Battered Husbands" (SCHEDULE E).
- A.3.5.8 A Summary prepared by The Easton Alliance reflecting Statistics on Husband Abuse (SCHEDULE F).
- A.3.5.9 A newspaper Report from the Globe and Mail on steps taken by Hospitals with respect to abuse of women becoming apparent in the hospital setting (SCHEDULE G).
- A.3.5.10 A letter from Alva Orlando dated March 24, 1994 on behalf of the Inter Clinic Work Group on Violence Against Women and Children (SCHEDULE H).
- A.3.5.11 Contributions by Margaret Buist (a recent appointment to the Legal Aid Committee and a member of the Design Committee) and by George Biggar (Co-Chair of the Design Committee) that the members of the Design Committee assumed that the population served by the Women's Family Law Centre would be primarily abused women and that the resolution before the Legal Aid Committee on April 14 would accurately reflect the consensus of the members of the Design Committee.

Note: Item deferred

B.
ADMINISTRATION

B.1 REPORT ON THE INVESTIGATION OF LAWYERS ACCOUNTS

- B.1.1 Approximately two years ago the Legal Aid Committee asked the staff of the Plan to investigate what appeared to be some high levels of billing by some lawyers. Attached as SCHEDULE I is a memorandum from the Provincial Director to the Legal Aid Committee reporting on the status of that investigation.

B.2 NEW AREA DIRECTOR - TORONTO

B.2.1 Russell Otter was appointed to the Bench in June, 1993. It is recommended that Robert Buchanan be appointed to replace Mr. Otter as Area Director in Toronto and his curriculum vitae is attached as SCHEDULE J.

B.2.2 APPOINTMENT OF AREA DIRECTOR - SCARBOROUGH

B.2.2.1 A satellite office was opened in Scarborough in 1991. At that time Margaret Jane Silver was appointed Deputy Area Director. It is now recommended that Margaret Jane Silver be appointed as Area Director. Ms. Silver's curriculum vitae is attached as SCHEDULE K.

B.2.3 APPOINTMENT OF AREA DIRECTOR - ETOBICOKE

B.2.3.1 A satellite office was opened in Etobicoke in 1991. At that time Sandra Birnbaum was appointed Deputy Area Director. It is now recommended that Sandra Birnbaum be appointed as Area Director and her curriculum vitae is attached as SCHEDULE L.

B.2.4 APPOINTMENT OF AREA DIRECTOR - NORTH YORK

B.2.4.1 A satellite office was opened in North York in 1991. At that time Elizabeth Champlin was appointed Deputy Area Director and it is now recommended that Ms. Champlin be appointed as Area Director. Her curriculum vitae is attached as SCHEDULE M.

B.3 ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR THE TEN MONTHS ENDED JANUARY 31, 1994
ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR THE ELEVEN MONTHS ENDED FEBRUARY 28, 1994

B.3.1 The Statements of Receipts and Disbursements for the period ended February 28, 1994 are attached hereto as SCHEDULE N.

B.4 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTHS OF FEBRUARY AND MARCH, 1994

B.4.1 The Reports on the Payment of Solicitors Accounts for the Months of February and March, 1994 are attached as SCHEDULE O.

In the mid 1980's the Legal Aid Committee and Convocation approved the establishment of guidelines for payment of solicitors accounts as follows:

Civil	- Standard	- 90% within 30 days of receipt
Criminal	- Standard	- 90% within 30 days of receipt
Civil	- Non-Standard	- 80% within 60 days of receipt
Criminal	- Non-Standard	- 80% within 60 days of receipt

For many years, the Plan was able to process accounts more quickly than the time standards required. In order to try to compensate for the lack of a tariff increase, the Legal Aid Committee and the Legal Accounts Department were committed to processing the accounts and forwarding cheques in payment as soon as possible.

More recently, as a result of a reduction in funding, the Plan and senior administration had no alternative but to reduce expectations about the timeliness of payment of accounts. The objective became the payment of accounts within the guidelines set out above.

Unfortunately, as a result of funding constraints, the Plan has recently not been able to meet even the guidelines. As of the end of March, accounts are being paid at the following rates:

Civil	- Standard	- within 30 - 35 days of receipt
Criminal	- Standard	- within 30 - 35 days of receipt
Civil	- Non-Standard	- within 70 - 75 days of receipt
Criminal	- Non-Standard	- within 60 - 65 days of receipt

The Plan is optimistic that the status quo at the end of March will be improved upon. At this stage, cheques are being issued five days a week (rather than the four days a week in the most recent past). However, the Plan is not in a position to provide assurances that the payment schedule will be significantly improved in the immediate future. The Plan can, however, confirm that all money owing will be paid to solicitors.

At the Legal Aid Committee meeting, the effects of the payment arrangements above were canvassed. Members of the Legal Aid Committee were made aware of the hardship experienced by many members of the profession awaiting payment of amounts owed on Legal Aid Certificates: the inability in some cases to meet payroll in the law office and the inability to further extend an already significant line of credit and the likelihood that such financial constraint will affect access by the public to lawyers who will accept Certificates.

The Legal Aid Plan is committed to addressing the financial implications in the fiscal year just begun. However, the Legal Aid Committee was advised as will the profession be advised, that the reduction in funding to the plan will likely lead to the necessity to eliminate certain services in the current fiscal year. As previously reported to Convocation, special sub-committees of the Legal Aid Committee have been established for that purpose.

B.4.2 REPORTS ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR FEBRUARY AND MARCH, 1994

The Reports on the Status of Reviews in the Legal Accounts Department for the months of February and March, 1994 are attached as SCHEDULE P.

B.5 AREA COMMITTEE - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Hastings and Prince Edward

Robert L. Graydon, solicitor

Lambton

Shirley R. Wales, solicitor

Leeds and Grenville

Elizabeth M. Osborne, solicitor

22nd April, 1994

Metropolitan Toronto

Sian Elizabeth Williams, solicitor
Paul Vandervennen, solicitor
Gordon Wiseman, solicitor
Irwin Atlin, retired business man

Peel

Carol Ann Letman, solicitor
Robert Dean Allison, solicitor

Simcoe

Wendy L. Miller, solicitor
Susan Orr, solicitor
Gary Pickard, solicitor
Debora Batstone, solicitor
John Madden, solicitor

RESIGNATIONS

Waterloo

Theresa McClenaghan

C.
INFORMATION

C.1 Statistics provided by Bill Sullivan concerning immigration and Refugee Claims are attached as SCHEDULE Q.

ALL OF WHICH IS respectfully submitted

DATED this 22nd day of April, 1994

F. Kiteley
Chair

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

- | | | |
|-------------------|---|--------------|
| Item A.-A.3.2.3 - | Report of the Family Law Pilot Project Design Committee dated June 1, 1993. | (Schedule A) |
| Item A.-A.3.5.1 - | Facts about Women: Occurrences of Abuse and Poverty. | (Schedule B) |
| Item A.-A.3.5.4 - | Report in Statistics Canada re: Violence Against Women Survey released in November, 1993. | (Schedule C) |
| Item A.-A.3.5.6 - | Statistics from the Centre for Violence Against Women and Children. | (Schedule D) |
| Item A.-A.3.5.7 - | Column by Michelle Landsberg dated December 18, 1993: The Male Myth of "Battered Husbands". | (Schedule E) |

22nd April, 1994

- Item A.-A.3.5.8 - Summary prepared by The Easton Alliance reflecting Statistics on Husband Abuse. (Schedule F)
- Item A.-A.3.5.9 - Newspaper Report from the Globe and Mail on steps re: Hospitals find abuse of women 'pervasive'. (Schedule G)
- Item A.-A.3.5.10 - Letter from Ms. Alva Orlando, Barrister and Solicitor to Ms. Frances Kiteley dated March 24, 1994 re: Family Law Clinics. (Schedule H)
- Item B.-B.1.1 - Memorandum from the Provincial Director to the Legal Aid Committee re: Report on the Investigation of Lawyers' Accounts. (Schedule I)
- Item B.-B.2.1 - Curriculum Vitae of Robert Buchanan. (Schedule J)
- Item B.-B.2.2.1 - Curriculum Vitae of Ms. Margaret Jane Silver. (Schedule K)
- Item B.-B.2.3.1 - Curriculum Vitae of Ms. Sandra Birnbaum. (Schedule L)
- Item B.-B.2.4.1 - Curriculum Vitae of Ms. Elizabeth Champlin. (Schedule M)
- Item B.-B.3.1 - Statements of Receipts and Disbursements for the period ended February 28, 1994. (Schedule N)
- Item B.-B.4.1 - Reports on the Payment of Solicitors Accounts for the Months of February and March, 1994. (Schedule O)
- Item B.-B.4.2 - Reports on the Status of Reviews in the Legal Accounts Department for the months of February and March, 1994. (Schedule P)
- Item C.-C.1 - Statistics re: Immigration and Refugee Claims. (Schedule Q)

Ms. Kiteley asked that Item A.-A.3 re: Women's Family Law Centre be deferred to the May Convocation.

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

PROFESSIONAL STANDARDS COMMITTEE

Meeting of April 14, 1994

Mr. McKinnon presented Item A.-A.2. re: Strategic Planning Conference and Item A.-A.3. re: Wills and Estates Checklist, for Convocation's approval.

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 of April, at 3:00 p.m., the following members being present: C. McKinnon, R. Murray (Vice Chair), M. Weaver (Vice Chair), R. Carter, H. Warder-Abicht.

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

A.
POLICY

A.1. RULE 2 - REVISED FORMAT

A.1.1. The Committee, in its incarnation as the Working Group, met in March, April and May, 1993 to revise Rule 2. The rule as amended was forwarded to the Special Committee to Review the Rules of Professional Conduct. On February 9th and March 9th, 1994 the Special Committee met to consider the draft rule and has returned an annotated version for further consideration by the Working Group.

A.1.2. The Committee has agreed that a special meeting of the Working Group will be convened to discuss the comments made by the Special Committee and the various issues raised.

A.2. STRATEGIC PLANNING CONFERENCE - RECOMMENDATION #2 REVISITED

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

That the Professional Standards Committee consider the establishment of a scheme to ensure that all new lawyers have access to a mentor who can assist them in developing an understanding of the standard of practice required of professionals.

A.2.2. The Committee indicated, in its report to Convocation, that this recommendation is addressed in part through the Practice Advisory Service. The Committee had concluded that an external mentor service was not feasible as a Law Society service.

A.2.3. At March Convocation, concern was raised about the lack of consultation with the profession, and the issue was referred back to the Committee for further discussion.

A.2.4. There has been informal consultation with the profession, in the sense that the Practice Advisory Service received, in 1993, 7,218 enquiries from members of the profession and their staff, approximately 2,100 of which came from lawyers in their first five years of practice. In addition, the non-Bench member of the Committee is a lawyer called to the bar in 1992, who provided her perspective and the views and experiences of some of her colleagues.

A.2.5. The Criminal Justice Section of the Canadian Bar Association - Ontario is presently investigating the feasibility of establishing a mentor hotline for criminal defence lawyers. The Ontario Legal Aid Plan offers a mentor hotline telephone service for lawyers retained pursuant to a Legal Aid certificate.

A.2.6. Having discussed the issue again, in detail, the Committee reached the following conclusions:

a) A mentor relationship is a personal one, therefore attempting to match a mentor with a new lawyer through a formal mechanism has a limited likelihood of success.

b) If a formal mentor system were established through the Law Society, there would be an obligation on the part of the Society to ensure that the members acting as mentors were competent to do so, yet there is no cost-effective mechanism for monitoring and ensuring competence.

c) The mandate of the Practice Advisory Service includes a mentoring role, particularly with respect to ethical and practice management issues. Staff of the Service also refer callers to senior members of the bar, including Benchers, who are willing to provide assistance in procedural and substantive law matters. Finally, the Practice Advisory Service is in the process of developing its own list of mentors in family law and civil litigation, and eventually in solicitors' areas of law.

d) Many Benchers are called upon as mentors, on a frequent basis; the informal tradition can be an effective one.

e) New members appear to be in need of mentor assistance on an issue-by-issue basis, rather than through establishing, by means of a formal mechanism, a traditional mentor relationship with more senior members; this type of relationship evolves over time, as new members develop contacts within their own communities.

e) Certain areas of practice, such as criminal law or wills and estates, tend to lend themselves more readily to the development of a mentor relationship, perhaps because of the non-adversarial nature of these areas. New members are apparently less likely to seek assistance from lawyers who may well appear as opposing counsel. It would be difficult to design a single, formal mentor system that would take these differences into account.

f) Canvassing the profession, and particularly targeting a section of the profession, such as new members, is not cost-effective, particularly since it is unlikely to provide any information not already known. The issue is not whether new lawyers would appreciate having access to a mentor; it is the mechanism by which the Law Society most appropriately can make a mentor available.

A.2.7. Your Committee therefore recommends:

1. The existing mentoring mechanisms offered by the Law Society, being the Practice Advisory Service and the Professional Conduct Department, be publicized to the profession.

2. Consideration be given to devoting additional resources to these services, to ensure that they become adequate to meet both present and future demands.

3. County and District Law Associations, and the Canadian Bar Association - Ontario, be encouraged to develop mentoring systems for their respective members.

4. The Legal Education Committee consider requiring instructors in the Bar Admission Course to agree to act as mentors to newly-called members, as part of the instructors' commitment to the teaching process.

A.3. WILLS AND ESTATES CHECKLIST

- A.3.1. In November 1988, a sub-committee was established to prepare a checklist for use in a wills and estates practice. A draft checklist was completed, and in March, 1991 was distributed to the County & District Liaison Committee for review and comment. As a result of the consultation process, some concern was raised by the County and District Law Associations about the appropriateness of such a detailed checklist for a "simple" will. The sub-committee attempted the preparation of a two-part checklist, to provide for a "simple" will as well as more complicated estate planning, but rapidly reached the conclusion that there is no such thing as a "simple" will, and a disservice would be done to both the profession and the public if a checklist was disseminated by the Law Society that suggested the contrary.
- A.3.2. The sub-committee therefore reviewed in detail the original version of the checklist, made revisions thereto, and submitted a final draft to the Committee.
- A.3.3. The Committee approved the Wills & Estates Checklist as presented, and has recommended that it be published in an 8½" x 11" page format and in a three-ring binder, so that it can be inexpensively and easily updated.
- A.3.4. The Committee wishes to express its thanks to Mary Weaver, who chaired the sub-committee and to Howard Carr, Barry Corbin, Maurice Cullity, Hugh Guthrie, Elena Hoffstein, Brian Schnurr and Jim Wardlaw, the sub-committee members, for their excellent work.

A.4. REQUALIFICATION

- A.4.1. Convocation in March, 1994 approved the report on requalification, as amended. The report provides that the Professional Standards Committee, jointly with the Admissions and Legal Education Committees, are to develop:
- i) the range of steps a member can take to preserve legal skills through the pre-emptive regime;
 - ii) the range of reasonable conditions to be met by members required to requalify.
- A.4.2. The Committee has appointed Mary Weaver and Sue McCaffrey as its representatives and invites the Admissions and Legal Education Committees to name two of their members for this purpose as well.

A.5. UPDATE OF THE REAL ESTATE CHECKLIST

- A.5.1. A checklist for use in a residential real estate practice was published under the auspices of this Committee in April, 1991. The real estate sub-committee commenced preparation of the checklist in January, 1990.
- A.5.2. Four years having elapsed since the real estate checklist was initially prepared, the Committee has determined that another sub-committee should be constituted to review and revise, as may be appropriate, the existing checklist.

- A.5.3. Staff is currently in the process of canvassing potential sub-committee members.

B.
ADMINISTRATION

B.1. AUTHORIZATION FOR PARTICIPATION IN PRACTICE REVIEW

THIS ITEM WAS DISCUSSED AT THE MARCH MEETING AND WAS REVISITED BY THE COMMITTEE IN APRIL.

- B.1.1. At its March meeting the Committee considered the request of a solicitor seeking admission to the Practice Review Programme. The member was called to the Bar in 1979, and was originally authorized to participate in June, 1990, as a result of a referral from Discipline Counsel. When the member was invited to participate, he indicated that he preferred to wait until the discipline matters were completed. Staff wrote to the member in February, 1991, after the conclusion of the discipline proceedings, asking whether he remained willing to participate; no response was received to that letter, or two subsequent letters, as a result of which his file was closed by the Committee in June, 1991.
- B.1.2. In April, 1992, a Complaints Review Commissioner raised concerns about the member's practice; he was again referred to the Practice Review Programme, and in June, 1992 was again authorized to participate. Two letters were sent to the member; no response was received until October, 1992, when he telephoned to advise that he was "thinking about" participating, but was considering either selling his practice or practising with a firm or a corporation, and did not want to jeopardize his negotiations. In May, 1993, nothing further having been heard from the solicitor, his file was closed by the Committee.
- B.1.3. When the member learned that his file had been closed and Senior Counsel, Discipline, so advised, he wrote stating that he was "perfectly willing to be an active participant". The member's profile was updated and presented to the Chair in June, 1993, who concluded that this was a matter for discipline, the member's stated willingness to participate never having manifested itself in actual participation. The member was so advised.
- B.1.4. After speaking to Audit counsel in the course of an investigation and preparation of a counsel brief alleging numerous charges of failure to serve, as well as books and records violations, the member wrote in February, 1994, expressing his willingness to participate in the Practice Review Programme. The member has received 56 complaints since 1987, 13 potential E&O claims since 1982, and has an extensive discipline and audit history.
- B.1.5. In March the Committee reviewed the member's profile. At that time, the Committee concluded that the member should be denied authorization to participate, given the past opportunities presented to him, his past delays and failure to respond, the pending disciplinary action, and the limited resources of the Professional Standards Department. The Committee had recommended that this matter be left in the hands of Discipline.

- B.1.6. This matter was brought back before the Committee out of concern about the protection of the public. Although discipline proceedings are pending, it is unlikely the member will be disbarred as a result of same. Given the member's stated interest in participating, and the Law Society's duty to protect the public, the Committee revised its position and recommended that the member be invited to participate in the Practice Review Programme.

B.2. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

- B.2.1. Two Practice Review files were closed on the basis of the members' successful completion of the Practice Review Programme. The members were authorized for participation in the Programme in October, 1990 and November, 1990, respectively. In the first instance, a reviewer attended once and staff attended on three separate occasions to provide assistance to the solicitor. A review panel was also convened to provide further recommendations in the improvement of his office procedures. In the second file, staff attended on four occasions to provide assistance in alleviating practice problems. At a recent review panel, the panellists were satisfied that the solicitor had implemented many of the recommendations made to him in the course of the Programme. Both solicitors appear to have benefitted from their participation in the Practice Review Programme.

- B.2.2. One Practice Review file was closed on the basis that the member is no longer practising law. The member was authorized to participate in the Programme in May of 1992. A review was conducted of the member's practice and a report prepared, a copy of which was sent to the member for comments; no response was received. The Law Society's records indicate that the solicitor has been suspended since November 1993 for nonpayment of the annual fee. The Staff Trustee's office has advised that the member has abandoned the practice. The member's file will be monitored by staff in the event that the member returns to practice, at which time the file may be re-opened if it is appropriate to do so.

C.
INFORMATION

C.1. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.1.1. The Practice Advisory Service responded to a total of 866 calls in the month of February - double the number dealt with in February of 1990, 1991 and 1992. Fifty of the month's calls were from newly-called members, February being the month of call to the Bar. 115 of the calls were from members called in 1993.
- C.1.2. The Service continues to get many enquiries about the S.D.A. There will be a note about this legislation in the next edition of the Adviser, and there will be a joint Law Society and C.B.A.-O programme on the subject in the Fall. The Service also continues to receive a number of calls about Conflict, Privilege, transfer of files and the G.S.T.

22nd April, 1994

C.1.3. In March, Barry Vogel, Q.C., the Practice Advisor from the Law Society of Alberta met with the Director and provided material on the Alberta mentor programme.

C.2. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

C.2.1. There are a total of 135 open files in the Programme. A review panel consisting of Benchers Ronald W. Cass, Q.C., Mary P. Weaver, Q.C., and Roger D. Yachetti, Q.C., met with three participating members, in March.

C.2.2. The applications of 36 members seeking certification as specialists were vetted through the Professional Standards Department in March, none of which resulted in referrals to the Practice Review Programme.

C.2.3. The initial step in the Practice Review Programme is the review of a participating lawyer's practice by an experienced member of the practising bar. To date, members acting as reviewers have received little training in the review process. An information seminar for reviewers is therefore being held on June 17, 1994, *inter alia* to explain the background of the Programme; re-emphasize its goals and remedial focus; outline the interaction between departments of the Law Society referring members to the Programme; give an overview of all the procedures in the Programme, including review panels and staff involvement; and provide reviewers with the opportunity to discuss their experiences and exchange tips and techniques. It is anticipated that a significant number of reviewers will attend the seminar.

ALL OF WHICH IS respectfully submitted

DATED this 22nd day of April, 1994

C. McKinnon
Chair

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

Item A.-A.3. - Final Draft of the Wills and Estates Checklist.
(pages 1 - 41)

It was moved by Mr. McKinnon, seconded by Ms. Weaver that Items A.-A.2. and A.3. be adopted.

Carried

Ms. Weaver indicated that there would be a slight rewording to the Income Tax portion of the Wills and Estates Checklist.

THE BALANCE OF THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 14th of April, 1994, at 10:30 a.m.

The following members were in attendance: Donald Lamont (Vice-chair in the Chair for items A.1 to A.5, and C.12), Colin McKinnon (Vice-chair in the Chair for all other items), Lloyd Brennan, Dean Donald Carter (Queen's University), Maurice Cullity, Susan Elliott, Stephen Goudge, Joan Lax, Laura Legge, Dean Marilyn Pilkington (Osgoode Hall Law School) and Mohan Prabhu (non-Bencher member). Bencher Carole Curtis also attended. The following staff were in attendance: Marilyn Bode, Katherine Corrick, Brenda Duncan, Mimi Hart, Alexandra Rookes and Alan Treleaven.

A.
POLICY

A.1 POLICY STATEMENT ON UNPAID ARTICLING STUDENTS

A.1.1 The Articling Subcommittee, at its meeting of March 25, 1994, gave final approval to its draft Policy Statement on Unpaid Articling Positions, recognizing that articling students should be compensated fairly for their work but not excluding the possibility of exceptional cases in which there will be no remuneration or only remuneration at a nominal level.

A.1.2 The Articling Subcommittee's draft Policy Statement on Unpaid Articling Positions is attached. (page 1)

A.1.3 Recommendation: It is recommended that the draft policy statement on unpaid articling positions be approved.

A.2 PROPOSED FINANCIAL AID FOR ARTICLING STUDENTS

A.2.1 In light of there being some students accepting articling positions that offer no salary or only nominal compensation, and in response to student requests for the Law Society to provide financial assistance to students in such circumstances, the Articling Subcommittee established a Bursary Sub-Subcommittee to consider whether the Law Society should implement a program of financial assistance for students in the articling term of the Bar Admission Course.

A.2.2 The Bursary Sub-Subcommittee, which met on two occasions, consisted of Stephen Goudge, Chair of the Articling Subcommittee, Janne Burton, a member of the Articling Subcommittee, Marc Rosenberg, a member of the Articling Subcommittee, and Carmel Sakaran, a student-member of the Society articling with the Ministry of the Attorney General. Staff assisting the Sub-Subcommittee were Marilyn Bode, Articling Director, Mimi Hart, Director of Financial Aid and Placement, and Lynn Silkauskas, a lawyer in the Articling Director's office.

A.2.3 The Bursary Sub-Subcommittee discussed financial assistance for articling students in the context of its draft policy statement on unpaid articles, which states that the Law Society will not set minimum standards of compensation for articling students but that students should be properly compensated for their work, and that unpaid or nominally compensated positions are to be considered temporary arrangements made to afford students the opportunity to get their articles under way while seeking a permanent paid position. (An exception is made for articling in a not for profit setting.)

A.2.4 The Report and Recommendations of the Bursary Sub-Subcommittee of the Articling Subcommittee are attached. (pages 2 - 7)

A.2.5 Recommendations: It is recommended:

- 1) That the Law Society student loan program be extended to students in Phase Two of the Bar Admission Course who are experiencing serious financial difficulty as a result of their being unpaid or only nominally compensated during the articling term;
- 2) That the bursary resources of the Bar Admission Course be reviewed to determine if funds exist that might be allocated to reduce or eliminate the indebtedness of students who borrow from Law Society student loan program during Phase Two.

A.3 PROPOSED ENHANCED BAR ADMISSION COURSE BURSARY PROGRAM

A.3.1 On December 11, 1993, Convocation approved increases in Bar Admission tuition from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase) and from \$1780 for Phase Three 1993 to \$2100 for Phase Three 1994 (a 17.9 percent increase). The recommendation of the Legal Education Committee at its December 3, 1993 meeting for the tuition increases was linked to a request for \$300,000 in new bursary (grant) funds for financially needy Bar Admission Course students for the 1994-5 budget year. Convocation, however, deferred consideration of the bursary request while approving the tuition increases on their own.

A.3.2 The current bursary amount available for distribution to students is approximately \$30,000 per year. This amount is typically reserved for Phase Three students, although in exceptional circumstances awards can be made to Phase One and Phase Two (articling) students. The \$30,000 fund, which fluctuates modestly, is a limited one, so that students who have been very hard pressed financially have been required to increase their debt burden due to the limits to the bursary fund. This presents a particular hardship for some students, including single parent students, students with dependents, and single students without parental or other support. Additional bursary funds would enable such students either to limit their already substantial debt load or, even more importantly, reduce financial pressures during the Bar Admission Course.

A.3.3 For example, an enhanced bursary fund could help students in the following ways:

- 1) Single Parents: Typically female, the single parents in the Bar Admission Course are a group demonstrating a high level of financial need. The ability to award bursaries to cover tuition fees and contribute to living expenses could be achieved through an enriched bursary fund.

- 2) **Students with Dependents:** Often students with dependents have an unemployed spouse or a spouse with minimal earnings. These individuals, like single parents, may apply for loan assistance (from the Ontario government or the Law Society) but often have difficulty meeting expenses. The ability to award bursaries to cover tuition and assist these students to meet living expenses could be afforded by an enriched fund.
- 3) **Single Students Without Parental or Other Support:** Although most students apply to the Ontario Student Assistance Program and receive assistance (for a single student the maximum award will be \$3,850), many find their award funds dissipate by mid to late October. An enriched fund would allow the Bar Admission Course to assist those who have difficulty meeting living expenses toward the end of the program. The ability to make bursary awards to cover cash-flow deficits could make a considerable difference in the stress level of students.

A.3.4

There would also be the potential of extending bursary assistance to Phase One and Phase Two students on the following basis:

- 1) **Phase One:** Many students entering Phase One come directly from law school without the benefit of current or recent employment. Thus, government loan assistance or loans from the Law Society (if students are unable to obtain government aid) are their only source of financial assistance. Phase One creates additional cost for students who must move from their law school location to one of the centres at which the Bar Admission Course is offered and then again to article. The process is repeated for some students after articles when they must move back to a Bar Admission Course centre for Phase Three. Students with moving expenses, those who must maintain two residences during Phase One, and those without family support endure special financial hardship. An enhanced bursary fund could allow the Bar Admission Course to address these costs without creating additional debt for the students.
- 2) **Phase Two:** Increasingly, the Financial Aid Office is contacted by students who are experiencing financial difficulties during articles. Some students are articling without salary or with nominal compensation in the community legal clinic system to meet the articling requirement. A few students are victims of firms that split or become bankrupt, and so require bridge financing until they can secure alternative articles. Additional bursary funds could allow the Bar Admission Course to address these situations. (See Report and Recommendations of the Bursary Sub-Subcommittee of the Articling Subcommittee at section A.2.)

A.3.5

The Priorities and Planning Committee, chaired by Tom Bastedo, met on Wednesday, April 6 to consider the bursary request. The Priorities and Planning Committee was asked to consider the bursary funding request on a reduced basis, recognizing the constraints under which the Committee was operating. The Priorities and Planning Committee considered whether it would recommend an enhancement of the current bursary program by only \$100,000. The Priorities and Planning Committee decided not to recommend any enhancement of the bursary program.

A.3.6 The Legal Education Committee asks Convocation to approve the bursary request, on the basis that the bursary fund be enhanced by \$100,000. The \$100,000 would be in place to meet the needs of those students who are most desperate, while the balance would be made up through the Law Society's own student loan program. The combination of a bursary fund increased by \$100,000 and the Law Society's loan resources would alleviate pressures considerably, and hopefully reduce barriers to access to the profession that might be created by tuition increases.

A.3.7 Recommendation: It is recommended that Bar Admission Course bursary funds be increased by \$100,000 for the 1994/95 year.

Note: Item withdrawn

A.4 SANCTIONS FOR NON-COMPLIANCE WITH ARTICLING REFORM REQUIREMENTS

A.4.1 The "Proposals for Articling Reform" Report, approved by Convocation in October 1990, does not specify sanctions for non-compliance with the new articling requirements.

A.4.2 The Articling Subcommittee was asked by the Legal Education Committee to develop specific proposals to address non-compliance with articling reform requirements by members of the profession.

A.4.3 A number of members of the profession did not comply with the new articling reform requirements for the 1992/93 articling term. The requirements are threefold: to apply to serve as a principal, draft an education plan, and file mid-term and final evaluations.

A.4.4 For the 1993/94 articling term, there is virtually complete compliance with the requirement to file an application to serve as an articling principal and to file the education plan. However, some members have not to date filed the articling principal's mid-term evaluation for the 1993/94 articling term. Reminder notices have gone out to the profession. (For the 1993/94 articling term, the Subcommittee eliminated the requirement that principals file the final end-of-term evaluation of the quality of the articling experience provided.)

A.4.5 Possible sanctions for non-compliance with articling reform requirements that were considered include:

- 1) a letter from the Chair of the Articling Subcommittee to the member,
- 2) denial of approval to serve as articling principal for the current articling year,
- 3) denial of approval to serve as an articling principal for a subsequent articling year,
- 4) referral of the matter to the Complaints or Discipline Department,
- 5) a monetary sanction for late filing,
- 6) a report on the matter in a Benchers Bulletin or the Ontario Reports, and
- 7) advising the student of the non-completion of the articling year.

A.4.6 The Articling Subcommittee was of the firm view that students should not be prejudiced by members' non-compliance with the new requirements. Therefore, number 7 listed above was unanimously disapproved by the Subcommittee in all discussions. The Subcommittee believed that sanction number 1 would be effective for the short term, and that a combination of sanctions 1, 2, 3 and 5 might be considered for the long term.

A.4.7 For non-compliance for the 1992/93 and 1993/94 articling terms, the Subcommittee concluded as follows:

- 1) for Principal non-compliance by reason of failure to apply to serve as an articling principal, file an education plan, or file mid-term or final (1992/93 term only) principal evaluations, no monetary or other sanction should be imposed. (Reason: These were the first years of a new process. Sanctions were not developed in advance. Members were not advised of possible sanctions in advance. Also, the Subcommittee believed it wise to accommodate the profession as much as possible in the implementation of the new articling requirements.)
- 2) for Student non-compliance by reason of failure to file an education agreement or file mid-term or final student evaluations, no monetary or other sanction should be imposed. (Reason: Students must rely on the articling principal to some extent to comply with the requirement to file an education agreement. These are the first two years of a new process. Sanctions were not developed in advance. Student members were not advised of possible sanctions in advance.)

A.4.8 For non-compliance for the 1994/95 articling term, the Subcommittee concluded as follows:

- 1) for Principal non-compliance by reason of failure to apply to serve as an articling principal, file an education plan or file a mid-term principal evaluation, the Chair of the Articling Subcommittee should send a letter to the member advising that the non-compliance will be taken into account when considering subsequent articling principal applications or renewals. No monetary or other sanction should be imposed. (Reason: The Subcommittee believed that a letter from the Chair of the Subcommittee would have more impact than a reminder from staff.)
- 2) for Student non-compliance by reason of failure to file an education agreement by the deadline (which is within two weeks of the commencement of the student's articling term in the summer of 1994): require the student to file the form in order to be eligible for call to the bar in February 1996. (Reason: The education agreement is important as it indicates that the principal and student have discussed the Education Plan approved by the Law Society. This is the third year of the new requirements. Students are made aware of them in a number of ways. The student must file the Articles of Clerkship to be eligible for call to the bar. It is reasonable, therefore, to require the filing of the education agreement as well.)

- 3) for Student non-compliance by reason of failure to file mid-term or final student evaluations by the deadline (which for mid-term evaluations is February 1, 1995): for mid-term evaluations received beyond February 1, 1995, approval to file late may be obtained from the Articling Director's Office. Final student evaluations are due August 31, 1995. Approval to file late may be obtained in advance only from the Articling Director's Office for final evaluations received beyond that deadline. Both mid-term and final student evaluations must be filed for the student to be eligible for call to the bar in February 1996. (Reason: This is the third articling term for which the implementation of the articling reform requirements is applicable. Students are made aware of the requirements in a number of ways. Furthermore, students do not need to rely on their articling principals to comply with this requirement.)

A.4.9 Also, the Articling Subcommittee intends to continue to monitor the extent of non-compliance with the articling reform requirements with a view to recommending other sanctions, probably monetary, for non-compliance in the 1995/96 articling term.

A.4.10 Recommendation: The Legal Education Committee recommends:

- 1) No sanctions for the 1992/93 and 1993/94 articling terms, and that the extent of non-compliance continue to be monitored for the 1994/95 articling term.
- 2) For the 1994/95 articling term, that a letter to those members not complying with the requirements be sent from the Chair of the Articling Subcommittee noting the non-compliance and advising the members that the non-compliance may be taken into account on future applications for approval as an articling principal.
- 3) For the 1994/95 articling term, that students not filing mid-term or final student evaluations by the deadline be required to obtain permission from the Articling Director's office to file after the deadline.

A.5 MEMBERS WITH A SIGNIFICANT NEGATIVE HISTORY WITH THE LAW SOCIETY WHO APPLY LATE FOR APPROVAL TO SERVE AS AN ARTICLING PRINCIPAL

A.5.1 The Articling Subcommittee at its March 25th meeting considered the problem of members who wait until late into the articling year to apply for approval as articling principals. For example, a member hiring a student for the 1992/93 articling term might apply for approval in the summer of 1993, almost at the end of the articling term. Sometimes these members have a significant negative history with the Law Society that results in the denial of their applications to serve as an articling principal. The Subcommittee must consider the effect on current and future students. Current students may have almost finished their articling term by the time of consideration of the late application. To date, the Subcommittee has not prejudiced the students, so that any time the students have spent in the members' offices up until the denial of the principals' application counts toward completion of the articling requirement. Apart from the mixed message this sends to current students, the Subcommittee is concerned about future students coming to the members' offices. The members might wait to apply again in a subsequent articling term in an attempt to avoid or delay the consequences of a denial of the members' applications.

- A.5.2 The Subcommittee seeks approval to deny prospectively applications to serve as an articling principal. For example, if a member is denied approval for the 1993/94 articling term, the member would be presumed to be denied approval for at least the 1994/95 articling term and perhaps subsequent articling terms. The rationale is that until the member's history with the Law Society moves from a significantly negative one to being more positive, the member should not assume that an application to serve as an articling principal in the following term will be approved. This should discourage an apparent trend that members with a significant negative history with the Law Society apply well into or after the articling term for which they seek approval.
- A.5.3 Recommendation: It is recommended that the Articling Subcommittee be authorized to deny applications to serve as an articling principal prospectively if the member has a significant negative history with the Law Society.

B.
ADMINISTRATION

There are no items to report this month.

C.
INFORMATION

- C.1 DEAN DONALD CARTER
- C.1.1 Dean Donald Carter of Queen's University Faculty of Law joined the Legal Education Committee as its newest member on April 14, 1994. Dean Carter also joins the Bar Admission Course Subcommittee. Dean Carter replaces Dean Donald McRae of the University of Ottawa Faculty of Law (Common Law Section), who is stepping down shortly as Dean and will be beginning a sabbatical year prior to returning to the University of Ottawa as a member of the Faculty of Law. The new Dean at the University of Ottawa Faculty of Law (Common Law Section) will be Professor Sanda Rodgers.
- C.2 ARTICLING SUBCOMMITTEE
- C.2.1 The Subcommittee met at 8:00 a.m. on March 11th and at 8:00 a.m. on March 25, 1994. Two meetings were required to cover the agenda items for March.
- Meeting of March 11, 1994
- C.2.2 In attendance at the meeting of March 11th were Stephen Goudge (Chair of the Subcommittee), Maurice Cullity, Janne Burton, Dora Nipp and Jay Rudolph. Staff members attending were Marilyn Bode, Mimi Hart, Lynn Silkauskas and Alan Treleaven.

- C.2.3 The Subcommittee gave conditional approval to a further 42 applications from prospective articling principals for the 1993/94 articling year. To March, approximately 1,345 members have applied to serve as principals for the 1993/94 articling year. Of those, 1,337 applications have been approved. One application was denied as the member was found to be dishonest by a referee of the Lawyers' Fund for Client Compensation. The remaining applications have been deferred as an audit or discipline investigation on the member is pending.
- C.2.4 The Subcommittee also gave conditional approval to a further 146 applications from prospective articling principals for the 1994/95 articling term. To March, approximately 711 members have applied to serve as principals for the 1994/95 articling term. Of those, 709 applications have been approved. One application was denied as the member was at the time of review of the application suspended for non-payment of the member's errors and omission insurance levy. That member's application has since been approved because the member has paid the levy. Another application was deferred as an audit investigation of the member is pending.
- C.2.5 The Subcommittee gave special consideration to the applications of three members for the 1993/94 articling term. A final decision on two of the applications was deferred by the Subcommittee. In one case a Discipline Department investigation is pending. In the other, a Lawyers' Fund for Client Compensation hearing and an Audit investigation are pending. A third member has been found to be dishonest by a referee in a claim to the Lawyers' Fund for Client Compensation. The Subcommittee denied that member's application. That member requested a review of the decision of the Articling Subcommittee by the Legal Education Committee. (See section C.9.)
- C.2.6 The Subcommittee considered a number of policy items. The first item related to the placement of articling students for the 1993/94 term. Ms. Hart advised the Subcommittee that 6 students (approximately 0.5 percent of the incoming class) were still seeking articles as of the March 11th meeting.
- C.2.7 The second policy item was the articling student placement situation for the 1994/95 articling term. Final statistics on the numbers of students without jobs were provided by Ms. Hart from Bar Admission Course applications received and processed. Approximately 1,210 Bar Admission Course applications were received. Ms. Hart advised that 217 students, or 17.9 percent of students, had not yet located an articling position for the 1994/95 articling term. This compares to 155 students in January of 1993 still seeking articles for the 1993/94 articling term. Ms. Hart advised the Subcommittee that a "Will You Help" notice had been drafted by Philip Epstein for insertion into the Ontario Reports. Also, a letter was drafted to target sole practitioners and lawyers outside of Metropolitan Toronto.
- C.2.8 The third policy item was a consideration of the issue of articling students working for no salary. A draft policy on Unpaid Articling Positions was reviewed by the Subcommittee. Amendments were made. It was agreed that a redraft would be considered by the Subcommittee at its next meeting.

- C.2.9 The Subcommittee adjourned, but agreed to meet again on March 25, 1994 to discuss the remaining agenda items.

Meeting of March 25, 1994

- C.2.10 In attendance at the meeting of March 25th were Stephen Goudge (Chair of the Subcommittee), Janne Burton, Dora Nipp, Jay Rudolph, Carmel Sakaran and Mohan Prabhu. Staff attending were Marilyn Bode, Deborah Brown, Mimi Hart, Lynn Silkauskas and Alan Treleaven.
- C.2.11 Mimi Hart advised that the "Will You Help" notice placed in the Ontario Reports (to encourage members of the profession to contact the Placement Office if they could offer a position or additional positions for the 1994/95 articling term) had generated some interest in the profession. The Placement Office has received a number of requests for further information.
- C.2.12 The Subcommittee reconsidered the draft policy statement on Unpaid Articling Positions. The policy statement was approved and is recommended to the Legal Education Committee. (See section A.1.)
- C.2.13 The fourth policy item considered was a draft Policy on Financial Assistance for Articling Students. The Subcommittee suggested some minor amendments, and the Policy was placed on the Legal Education Committee Agenda for April. (See section A.2.)
- C.2.14 The fifth policy item was sanctions for non-compliance with articling reform requirements by members of the profession. (See section A.4.)
- C.2.15 The Subcommittee also considered, as a sixth policy item, the problem of members who wait until late into the articling year to apply for approval. (See section A.5.)
- C.2.16 The seventh policy item was Articled Students' Right to Appear Before Courts and Tribunals. The Subcommittee was asked by the Legal Education Committee to give further consideration to this matter at the Subcommittee's next meeting.
- C.2.17 The eighth policy item was additional student representation on the Articling Subcommittee. This item was tabled for further discussion.
- C.2.18 The Articling Subcommittee considered several information items. The first information item was the Notice to the Profession advising of the user-friendliness of articling reform requirements.
- C.2.19 The second information item was a memorandum from staff regarding comments on the 1992/93 final evaluations and an interim report regarding mid-term evaluations for the 1993/94 articling term. The memorandum noted that the majority of students received a satisfactory, good or excellent experience in virtually all skills areas in the 1992/93 articling term. There was a high correlation between ratings of the quality of the experience by principals and students. The interim report on 1993/94 mid-term evaluations indicates the term is going well for those who have filed their evaluations to date.

C.2.20 The third information item was the number of principal applicants who do not provide complete information on their history with the Law Society on their applications to serve as an articling principal. Approximately 23 percent of principal applicants with a significant negative history with the Law Society do not provide full details. This indicates that it is necessary for staff to continue to review applications on receipt.

C.2.21 The fourth information item was a proposal for an educational videotape on articling. After some discussion, this item was tabled for a future meeting of the Subcommittee. At that time, the Subcommittee will focus on the general education of principals for their duties as principals.

C.2.22 The next meeting of the Subcommittee was scheduled for at 8:00 a.m. on April 22, 1994.

C.3 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.3.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 8 - 10)

C.4 BAR ADMISSION COURSE SUBCOMMITTEE

C.4.1 The Bar Admission Course Subcommittee held its second meeting on Saturday, March 26, 1994. The following members were in attendance: Philip Epstein (Chair), Stephen Goudge, Donald Lamont, Laura Legge, Dean Donald McRae (Ottawa), and Mohan Prabhu. The Subcommittee welcomed two new members, Mark Austen, a graduate of the 1993 Bar Admission Course, and Professor Neil Gold, University of Windsor Faculty of Law. Staff in attendance were Erika Abner and Alan Treleaven.

C.4.2 The Subcommittee focused on an analysis of the bar admission processes in a number of jurisdictions, with a particular emphasis on their goals and objectives. The Subcommittee reviewed in particular the following programs:

- 1) the Nova Scotia Bar Admission Course, a seven week skills-based program preceded by entrance examinations, and linked to an additional 10 month articling requirement,
- 2) the British Columbia Professional Legal Training Course, a 10 week practice and skills oriented program, linked to 40 weeks of articling,
- 3) the New South Wales College of Law, a 23 week practice-oriented program that has replaced articling, and proposal (recently rejected) to reform the New South Wales program by replacing it with a 13 week course and a 37 week articling term,
- 4) the United States of America, with a particular emphasis on the following:
 - a) the American Bar Association Report entitled "Legal Education and Professional Development-An Educational Continuum", a study and critique of the current process of legal education in the United States,
 - b) the BAR/BRI Bar Review program, a private bar examination preparation program in the United States,
 - c) Multistate Examinations,
 - d) California's Performance Testing.

- C.4.3 The Subcommittee also reviewed a draft Notice to the Profession to be published in the Ontario Reports, soliciting views on the future of the Bar Admission Course, including articling. There was also discussion of the development of a more lengthy questionnaire to be included in a Benchers' Bulletin mailing.
- C.4.4 The Subcommittee decided to work at its next meeting on the development of detailed objectives for an Ontario Bar Admission Program, and to measure the current program and other prospective models against those objectives. The Subcommittee decided, on a preliminary basis, to measure the required qualifications of lawyers against five criteria: performance skills, analytical ability, professional responsibility knowledge and attitudes, substantive law knowledge, and knowledge of practice and procedure.
- C.4.5 The Subcommittee will be defining limits for possible proposals, including bar admission cost, articling availability, geography, economic pressures on students, and equity considerations.
- C.4.6 The next meeting is scheduled at 9:00 a.m., on Saturday, April 23.

C.5 LEGAL EDUCATION COMMITTEE AND ONTARIO LAW DEANS MEETING

- C.5.1 The annual meeting of the Ontario Law Deans and the Legal Education Committee took place on Wednesday, April 7, 1994. Members of the Legal Education Committee in attendance were Philip Epstein (Chair), Donald Lamont (Vice-chair), Colin McKinnon (Vice-chair), Stephen Goudge, Joan Lax, Laura Legge, and Mohan Prabhu. Members of the Bar Admission Course Subcommittee in attendance were Mark Austen and Professor Neil Gold. Law Deans in attendance were Dean Donald McRae (Chair of the Ontario Law Deans, from the University of Ottawa), Dean Jeffrey Berryman (Windsor), Dean Donald Carter (Queen's), Dean Peter Mercer (Western), Dean Marilyn Pilkington (Osgoode), and Dean Robert Sharpe (University of Toronto). The Treasurer attended briefly. Staff in attendance were Erika Abner, Marilyn Bode, Donald Crosbie, Mimi Hart, Richard Tinsley and Alan Treleaven.
- C.5.2 Principal attention at the meeting was focused on the current review of the Bar Admission Course. The appropriate function of the Bar Admission Course and the law schools in the continuum of legal education were discussed. There was a consensus that ongoing consultation is essential.
- C.5.3 Philip Epstein and the Law Deans agreed that the Law Society and the law schools through their alumni should cooperate in encouraging members of the profession to take on articling students.
- C.5.4 Dean Peter Mercer expressed concerns about funding pressures on law schools from the provincial government, and potential pressure from government through funding to limit law school student numbers. Dean Mercer asked that the Law Society and the law schools continue to communicate and cooperate fully should the issue of limiting numbers come to the fore.
- C.5.5 At the dinner following the meeting Dean McRae was thanked for his contribution as Chair of the Ontario Law Deans group. Dean McRae is stepping down as Dean at the University of Ottawa Faculty of Law (Common Law), and will begin a sabbatical leave on July 1, 1994.

C.6 MANDATORY CONTINUING LEGAL EDUCATION PROPOSAL

C.6.1 On December 11, 1993 Convocation approved in principal, but subject to approval of funding as a part of the April 1994 budget setting process, the carrying out of the detailed research, design and other preparatory work required to present to Convocation a comprehensive and educationally effective plan for mandatory continuing legal education. Convocation had before it a report on mandatory continuing legal education and a related draft budget, both of which had been approved by the Legal Education Committee at its meeting of December 3, 1993.

C.6.2 The budget shows a required amount of \$195,604 for the 1994/95 budget year. The Legal Education Committee, at its meeting of December 3, 1993, had approved the draft budget on the basis that it would be asking that \$100,000 be contributed out of the Errors and Omissions budget with the balance being contributed out of the Law Society's General Fund.

C.6.3 The Priorities and Planning Committee, chaired by Tom Bastedo, at its meeting of Wednesday, April 6, 1994 decided to recommend in part the approval of the funding. The Priorities and Planning Committee recommends approval of the \$100,000 from the Errors and Omissions budget and \$50,000 from the General Fund to be available for expenditure during the Law Society's 1994/95 year. A further \$50,000 is recommended for payment out of the General Fund in the Law Society's 1995/96 budget year.

C.6.4 The Legal Education Committee endorses the recommendation of the Priorities and Planning Committee that \$150,000 be approved as funding in the 1994/95 budget year to carry out the detailed research, design and other preparatory work for a comprehensive plan for mandatory continuing legal education, and that a further \$50,000 be available in the 1995/96 budget year.

C.7 CONTINUING LEGAL EDUCATION 1994/95 BUDGETS

C.7.1 Draft budgets for the Continuing Legal Education Department were approved for presentation to Convocation.

C.7.2 There are two draft budgets, the Continuing Legal Education budget and the Computer Education Facility budget. (The Computer Education Facility operates as one of the activities of the Continuing Legal Education Department.)

C.7.3 The two budgets have been developed on a combined break even basis, as in the 1993/94 budget year. These budgets have not been considered by the Priorities and Planning Committee because they have no impact on the General Fund.

C.8 CONSOLIDATED 1994-95 BAR ADMISSION COURSE BUDGET

C.8.1 The Legal Education Committee, at its meeting of December 3, 1993, discussed and approved proposed Bar Admission Course budgets for the 1994-5 year, at the request of Convocation. Convocation, on December 11, 1993, tabled the Bar Admission Course budgets on the basis that they should be considered together with all other Law Society budgets in April of 1994.

- C.8.2 The draft budgets approved by the Legal Education Committee and tabled by Convocation in December of 1993 were prepared on the basis that no major changes would be introduced in the Bar Admission Course or its budget for the 1994/5 budget year.
- C.8.3 Because of a reduction in Law Foundation funding and to avoid having the membership provide funding for the Course, cost cutting measures were employed and tuition fees were increased to produce a zero deficit. Convocation approved the new tuitions for the 1994/95 budget year. The tuition was increased from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase) and from \$1780 for Phase Three to \$2100 for Phase Three 1994 (a 17.9 percent increase).
- C.8.4 In the intervening months, some changes occurred to prompt a review of the proposed budget. The revised consolidated budget now shows a deficit due to a very recent increase in employee benefits. (The Finance Department recently provided this increase.)
- C.8.5 The Priorities and Planning Committee, at its meeting of April 6, 1994, decided to recommend to Convocation that the increase required for employee benefits in the amount shown as a deficit in the Consolidated Bar Admission Course budget be paid out of the General Fund.
- C.8.6 Projected expenses in the 1994/5 year have risen in other budget lines as well. Principally, there are increased costs related to examination marking. The proposed December budget was based on the same number of multiple choice examinations as offered during 1993/94. Since then, changes have been made in the Bar Admission Course, replacing some multiple choice content with written answer content. Changes were also made to the number of supplemental examinations allowed to each candidate. It is anticipated that increased costs attributable to this change can be partially offset by introducing an examination fee of \$50.00 plus G.S.T. to be charged for each supplemental examination. Other increases relate particularly to honoraria for teaching and tutoring in the Bar Admission Course, and in particular in Ottawa for enhancement of the French language program.
- C.8.7 Based on the recommendation of the Priorities and Planning Committee, the staff of the Bar Admission Course have made difficult adjustments to the budget so that the budget deficit is confined to the recently increased employee benefits.
- C.8.8 The Legal Education Committee approved the Consolidated 1994/95 Bar Admission Course budgets for presentation to Convocation.
- C.9 APPLICATION OF MEMBER TO BE APPROVED AS AN ARTICLING PRINCIPAL
- C.9.1 The member requested a review of the decision of the Articling Subcommittee. The Articling Subcommittee at its March 11, 1994 meeting denied the member's application to serve as an articling principal.
- C.9.2 Section 4.0 of the Proposals for Articling Reform Report (the "Report") specifies who may act as an articling principal. The Report states that to serve as a principal is a privilege, not a right.

- C.9.3 The Report further states in the Commentary to section 4.2:

In all cases, the decision by the Articling Sub-Committee whether to permit a member to serve as an articling principal will be governed by the policy that the principal serves as an exemplar. Articling students are taught as much by example as they are by instruction. The Law Society's objective must be to ensure that all principals share a dedication to professional excellence and an awareness of and commitment to the highest standards of ethical behaviour (emphasis added) ...

and again in the Commentary (4.2.2 Competence):

The Articling Sub-Committee must be satisfied that those who would serve as principals maintain a standard of practice that is appropriate for a professional who will be teaching by example and inculcating methods, habits and attitudes that will remain with students into their practising years. In that regard, the Articling Sub-Committee may consider any relevant information...

- C.9.4 The Articling Subcommittee denied the member's application as it does not appear that the member is an appropriate individual to serve as an articling principal. The rationale for this decision is that there had been a finding of dishonesty by the Referee of the Lawyers' Fund for Client Compensation.
- C.9.5 The member, by letter of March 23, 1994 to Alan Treleaven, clearly disagrees with the finding of the Referee. The member, in a telephone conversation with the Articling Director regarding the decision of the Articling Subcommittee indicated a wish to appeal the Referee's decision, but the time for appeal had expired.
- C.9.6 Furthermore, the member is on the current Discipline Situation Sheet of the Law Society. The usual practice of the Articling Subcommittee where matters have been referred to the Discipline Department is to defer a final decision on the member's application to serve as an articling principal until the disposition of the complaints/discipline hearing. This preserves the presumption of innocence. However, in this case, there was already a finding of dishonesty in the Report of the Referee. Therefore, the Articling Subcommittee denied the member's application.
- C.9.7 The Articling Subcommittee as a matter of policy prefers to credit the time the current articling student has spent in the member's office to date, as it prefers not to prejudice a student. The member had been advised by the Articling Subcommittee that the student could remain in the member's office pending the Legal Education Committee's decision.
- C.9.8 The Legal Education Committee denied the member's application to be approved as an articling principal, but permitted the articling student to complete the articling requirement with the member out of a concern that, with only three months remaining in the articling requirement, the student would likely have great difficulty in finding an articling position for the remaining time. The Articling Director will endeavour to find another member to serve as a mentor for the student for the balance of the student's articling term.

C.10. REQUEST OF STUDENT TO COMPLETE PHASE THREE BEFORE PHASE ONE

C.10.1 The student requested permission to complete the Bar Admission Course in the following order:

- 1) Phase Three, September to December of 1994,
- 2) Articling, January to December of 1995,
- 3) Phase One, either during a four week leave from articling in 1995 or split between late-July of 1994 and the first half of a Phase One session in 1995, but in any event not to be completed until after Phase Three.

C.10.2 The student's letter details in full the legislative provisions upon which the student relies and outlines the personal circumstances. Although the student's circumstances are somewhat sympathetic, the student does not have any background in the practice of law to suggest that the student should be excused from completing Phase One before Phase Three.

C.10.3 One of the reasons for the student's request is that the student's overseas graduate school will not allow the student to sit the final graduate examinations in Toronto on the scheduled examination dates (July 4, 5, 12 and 13, 1994) or at the graduate school on an earlier date. The examination dates conflict with Phase One. The student did not indicate whether the student would be permitted to defer the graduate examinations until a subsequent date, but in any event now requests that the Law Society depart from its requirement that Phase One be completed before Phase Three. If the student is unable to defer the graduate examinations, the Director can ensure the student a place in Phase One 1994 from June 8 to June 30 (session two of Phase One). The Director could also place the student's name on the waiting list for May 9 to June 3 (session one of Phase One).

C.10.4 The Legal Education Committee denied the student's request to complete Phase Three in 1994 before the completion of Phase One.

C.11 BAR ADMISSION COURSE STUDENT REQUEST

C.11.1 The student requested relief from failure of the Bar Admission Course.

C.11.2 The student demonstrated weakness in the Phase Three examinations. On the first attempt at the examinations, the student obtained a Fail grade in Accounting, Business Law, and Criminal Procedure. (In the Criminal Procedure examination, the student initially received a Fail grade, which was converted to a Conditional Fail grade after the Head of Section readjusted the grading scheme to take into account a problem with one question. The student's Conditional Fail grade in Criminal Procedure, however, reverted to a Fail grade because of a Fail grade in Business Law.) The student very narrowly received a Pass grade in Civil Litigation and in Real Estate, after successfully appealing the failure in each of those two examinations.

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- C.11.3 The student was required to complete supplemental examinations in Accounting, Criminal Procedure, and Business Law. The student obtained a Pass grade of 86 percent in Accounting (although commonly students repeating the Accounting examination obtain a grade of at least 80 percent due to the receptive nature of each computerized examination.) The student passed the supplemental examination in Criminal Procedure, but failed the supplemental examination in Business Law. On the next supplemental examination in Business Law (which was the student's third Business Law examination), the student failed each of the three parts of the examination.
- C.11.4 The student wrote to the Director of Education on March 8, 1994, requesting relief from failure of the Bar Admission Course, and the Director replied by letter of March 11, 1994 that the student's request was denied and that the student had to repeat Phase Three of the Bar Admission Course in its entirety.
- C.11.5 The Director, before writing to the student had sought confirming instruction from the Legal Education Committee at its meeting of March 10, 1994. Excerpts from the Agenda of that meeting read as follows:

A.1.1 The Requirements for Standing governing Phase Three of the 1993 Bar Admission Course dictate that a student who fails an examination may write a supplemental examination... The Requirements for Standing permit students who receive a failing grade in a supplemental examination to apply to the Director for permission to attempt a second supplemental examination. If a student fails the second attempt, section 7.3 of the Requirements for Standing unequivocally states as follows: "A student is not permitted a third attempt at a supplemental examination...". There is no exception provided to section 7.3, even on compassionate grounds.

A.1.2 To date two students have failed a second supplemental examination in a course. There are likely to be more students in that situation following the March supplemental examinations...

A.1.3 The Director intends to apply section 7.3 without exception, as he has done consistently in previous years, and asks the Legal Education Committee to re-affirm the appropriateness of applying section 7.3 in this manner.

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- C.11.6 The Director on March 10 informed the Legal Education Committee orally that by the end of March there would be an increased number of students who would, on the basis of the application of section 7.3 of the Requirements for Standing, stand failed in Phase Three of the Bar Admission Course and be required, pursuant to section 3.1, to complete Phase Three in its entirety. Section 3.1 states: "A student who does not satisfy all requirements for successful completion of Phase Three may repeat Phase Three once, and in so doing must repeat Phase Three in its entirety". The Legal Education Committee assured the Director that he would have the full backing of the Committee in applying the Requirements for Standing without exception.
- C.11.7 Although the student finally failed only the Business Law course, the student's overall performance in the Phase Three examinations was weak. To create an exception in this case would have been contrary to the applicable provisions of the Requirements for Standing and would have constituted a reversal of the decision of the Legal Education Committee made at its March 10, 1994 meeting.
- C.11.8 The Legal Education Committee denied the student's request for relief from failure of Phase Three of the Bar Admission Course and from the requirement to complete Phase Three in its entirety.
- C.12 ARTICLED STUDENTS' RIGHT TO APPEAR BEFORE COURTS AND TRIBUNALS
- C.12.1 The Articling Subcommittee has revised the existing rights of appearance of articulated students before courts and tribunals. The Subcommittee first sought and received the input of the Heads of Section of the Bar Admission Course. The revised document entitled "Articled Students' Right to Appear Before Courts and Tribunals" was referred back to the Articling Subcommittee for re-consideration of one item, but was otherwise approved.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

P. Epstein
Chair

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

- Item A.-A.1.2 - Articling Subcommittee's draft Policy Statement on Unpaid Articling Positions. (page 1)
- Item A.-A.2.4 - Report and Recommendations of the Bursary Sub-SubCommittee of the Articling Sub-Committee. (pages 2 - 7)
- Item C.-C.3.1 - Continuing Legal Education Report on Courses. (pages 8 - 10)

Mr. Epstein asked that Item A.-A.3. re: Proposed Enhanced Bar Admission Course Bursary Program, be withdrawn.

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

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PROFESSIONAL CONDUCT COMMITTEE

Meeting of April 14, 1994

Mr. Somerville asked that Item A.-1. re: Law Firm Maintains Judge's Name in Firm be deferred to the May Convocation and Item A.-2. re: Lawyers' Interest in a Rehabilitation Centre be referred back to Committee for further consideration.

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 14th of April, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Braid, Cullity, Feinstein, Goudge, Hickey and Moliner. Also present were Margot Devlin, Jonathan Fedder, Don Godden, Scott Kerr, Katherine Kowal and Stephen Traviss.

A.
POLICY

1. LAW FIRM MAINTAINS JUDGE'S NAME IN FIRM
NAME AFTER HIS ELEVATION TO THE BENCH -
FIRM QUESTIONS WHETHER LAW SOCIETY RULE
REQUIRING REMOVAL INTERFERES WITH
CHARTER'S RECOGNITION OF COMMERCIAL FREE SPEECH

The O'Connor, MacLeod law firm in Oakville continues to use the name of Judge O'Connor in its firm name.

Paragraph 7(d) of Rule 12 of the Rules of Professional Conduct provides:

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

The law firm questions whether this provision contravenes commercial free speech under the *Charter of Rights and Freedoms* as it has been judicially interpreted. Set out is the firm's position:

Terrance P. O'Connor was appointed a Judge of the General Division in June of 1993. He has commenced his duties and has been assigned to Central West. He is the designated Judge for Bruce County (Walkerton). His Chambers are in Orangeville (Dufferin).

In April of 1991, the firms O'Connor, Leitch, Hays and MacLeod, Knox, Watts merged to form the new firm O'Connor MacLeod. Considerable amounts of time and money have been expended in gaining identification of the name O'Connor MacLeod. The representation of the name in graphic form has been widely distributed. The sign attached to the firm's building is visible to the Queen Elizabeth Way and we are advised that in excess of 100,000 cars pass the location on a daily basis.

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The Code of Professional Conduct requires removal of the name of a lawyer from the firm name when the lawyer takes up an appointment as a Judge. We have not to this point removed the O'Connor name from O'Connor MacLeod. The name of Terrance P. O'Connor has been removed from the firm letterhead and other firm material.

We believe that the dissenting Judgment of Mr. Justice Henry in the Divisional Court decision in *Re: Klein and Law Society of Upper Canada and Re: Dvorak and Law Society of Upper Canada*, 50 O.R. (2d), pp. 118 is now law in accordance with the Supreme Court of Canada decision in *Black v. Law Society of Alberta*, 58 D.L.R. (4th) pp. 317.

We are also of the view that the Supreme Court of Canada decision in the *Irwin Toy Ltd.* case (*Irwin Toy Ltd. v. Quebec (Attorney General)*), 58 D.L.R. (4th), pp. 577 holds that the *Charter of Rights and Freedoms* is applicable to commercial speech and that decision overrules the majority view in *Klein and Law Society and Dvorak and Law Society*.

For legitimate commercial reasons, we do not wish to change the firm name. In light of the foregoing judicial decisions, the issue becomes (as stated by Henry, J.) "what limits on communication by advertising prescribed by law can be viewed as reasonable and demonstrably justified in a free and democratic society." The onus of showing these elements is on the authorities applying the law, i.e. The Law Society of Upper Canada.

We therefore do not propose to change the firm name in the absence of a statement of the rationale behind the rule. We will then take counsel as to the rationale and make a determination about our firm name.

We would ask you to respond to this letter with the view of The Law Society and with such reports of Convocation, Committees of Convocation etc. as may be of assistance.

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

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

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

Mr. Finkelstein, who could not be at the meeting because of a teaching commitment, has expressed the opinion that the provision in our Rules definitely contravenes commercial free speech as recognized in section 2(b) of the *Charter*. However, it is his opinion it is saved by the words of exception in section 1 of the *Charter*.

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (emphasis added)

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The Committee was of the unanimous opinion that the provision in paragraph 7(d) of Rule 12 contravened commercial free speech but the public interest objective noted above brought it within the words of the exception contained in section 1 of the *Charter*. In reaching this conclusion the Committee noted the conclusion of the majority in the Divisional Court in *Klein and Dvorak and the Law Society* that the Rules of Professional Conduct were part of the laws of Ontario.

The Committee asks Convocation to adopt this position and request the firm to change its signs and stationery accordingly.

Note: Item deferred

2. LAWYERS' INTEREST IN A REHABILITATION
CENTRE - POTENTIAL FOR CONFLICT OF
INTEREST - DUTY TO REVEAL INTEREST - RULE 5

A few lawyers in Ontario have a financial interest in a rehabilitation centre to which clients of their law firm may be referred for assistance in the rehabilitation process.

The Law Society's historical position has been that a lawyer may refer his or her clients to a company or other entity in which he or she has a financial interest provided the client is told that the lawyer or the lawyer's law firm has this interest and the client is given the option to go elsewhere.

Where the company in question is providing medical reports that may determine what insurance benefits are paid out, what obligation to disclose to the insurer is cast upon the lawyer? This issue has been raised in the media and a complaint has been made by the representative of one insurer against one of these lawyers. A staff lawyer in the Complaints Department, is monitoring the complaint and has prepared the memo set out below:

To summarize, I understand the insurer's concerns are as follows:

1. The solicitor who holds a financial interest in a clinic is in a conflict of interest because he or she will be relying on a medical report which is not arm's length to support his or her client's claim for damages. If the report says the injuries are extensive, then the "threshold" test to litigate may be met, and the solicitor will now receive the benefit of revenues from the clinic for rehabilitation treatment as well as the higher legal fees involved in a tort claim, as opposed to a no-fault settlement. It is therefore in the solicitor's interest to obtain a medical report that indicates the injuries are extensive and therefore meet the threshold to sue.
2. The insurer is required by the new Regulations (section 57), passed pursuant to Bill 164, to pay for all reasonable medical reports and assessments. The insurer feels it would be unfair for it to be forced to pay for medical reports or assessments provided by the solicitor's medical clinic, when the insurer feels these reports are not objective.
3. Under the no-fault scheme, rehabilitation monies are provided on the basis of medical assessments. The new legislation appears to leave the insurer with no route of appeal, in certain instances, if it receives an assessment it is unhappy with. If the assessment is provided by a Designated Assessment Centre, the insurer is very limited in terms of rejecting the assessor's findings. The insurer will have to pay the cost of the assessment and the rehabilitation.

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The lawyer's position is as follows:

1. The insurer has a vested interest in not paying for rehabilitation. The insurer is upset that the government has now made it clear that rehabilitation is necessary and the cost is the insurer's responsibility. The insurer is unfairly lashing out at the clinics and their owners.
2. The situation of lawyers holding a financial interest in a clinic is no different than doctors who refer their patients to a specialized facility where the doctors hold a financial interest. The medical profession appears to allow this.
3. It would be absurd to prop up a client's tort case based on a non-arm's length medical report, if the report was not accurate. The client's case would be very weak indeed.
4. The Insurance Bureau of Canada has not yet taken a formal position on the issue of lawyers having a financial interest in clinics. Only individual insurance companies have complained. Their concerns are better brought to the attention of the government, as the government is responsible for the legislation.

The Committee concluded that as long as the client was informed of the lawyer's interest in the rehabilitation centre and was told that there were other rehabilitation centres referrals were acceptable.

The Committee chose not to comment on lawyers having an interest in rehabilitation centres. If insurance companies are concerned about lawyer investment in such centres, it can canvass this concern with the responsible provincial ministry.

The Committee asks Convocation to adopt this position.

Note: Referred back to Committee

3. REFERRAL FROM COMPLAINTS DEPARTMENT - ONE
LAWYER COMPLAINED ABOUT RECEIVED DOCUMENTATION
FROM COMPLAINTS OFFICE THAT COULD HELP HIS
FORMER CLIENT (WHO WAS NOT THE COMPLAINANT) -
CAN THIS LAWYER PASS ON THE MATERIAL?

The Complaints Department has raised the following for consideration by the Committee:

The Complaints Department of the Law Society received correspondence from an individual who complained about the actions of:

- (a) his own lawyer;
- (b) another lawyer who had rendered an unfavourable second opinion; and
- (c) a third lawyer, "X", who had been acting for his opponent in certain litigation.

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The normal complaints investigation was initiated for the first two lawyers. With respect to X, the Law Society's Third Party Complaint Procedure was instituted. In accordance with this procedure, a copy of the complaint, including copies of various documents and correspondence, was forwarded to X with a request for his response to the allegations which had been made. X was advised that part or all of his response would, at his request, be kept confidential if this was necessary to preserve the privilege of any information which it was necessary for the solicitor to utilize in order to defend his actions in this matter.

X replied denying any misconduct in the actions he had taken in the matter. At the same time he also raised the issue as to whether he was permitted, or indeed obligated, to provide copies of the materials he had received to his own client. Although none of the materials appeared to be determinative of issues in contention in the lawsuit, it was possible that a strategic advantage could be obtained through disclosure of the materials.

X advised that he had recently changed law firms and the client had retained new solicitors to represent him in the action.

It is the position of the Complaints Department that the materials in question were provided to X for the limited purpose of informing him of the particulars of the complaint and allowing him the opportunity to respond. The intention in invoking the Third Party Complaints Procedure was to ensure that the Law Society did not become involved in the litigation. If X provides the materials to his former client, the opposite result will have been achieved. At the same time, it is recognized that X may have a continuing obligation to his client to bring these materials to his attention.

The Committee concluded that the lawyer was under a duty to pass this information along to his former client.

The Committee asks Convocation to adopt this position.

4. DRAFT RULE 28 ON DISCRIMINATION

Stephen Goudge was present as Chair of the Equity in Legal Education and Practice Committee to explain what progress was being made on Rule 28. He explained that his Committee had modified considerably the first draft that had been circulated to the profession in 1993. In addition to considering the very significant response from the profession and the input from experts in the field of discrimination law, the Committee will probably put the following draft forward for discussion at the May Convocation.

Given the importance of the issue it was thought advisable to include this in the Committee's report. No action needs to be taken at this time.

22nd April, 1994

DRAFT RULE 28

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

Commentary

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

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

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

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

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 1994

M. Somerville
Chair

THE BALANCE OF THE REPORT WITH THE EXCEPTION OF ITEMS A.-1. & 2. WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of April, 1994 at 8:00am, the following members being present: L. Brennan (Chair), F. Carnerie, S. Elliott, A. Feinstein, C. Hill, A. Lawrence, F. Mohideen, R. Murray, H. Sealy and M. Somers.

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

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. RULES OF PROCEDURE FOR THE ANNUAL MEETING

B.1.1. Your Committee considered a report from the Subcommittee on the Rules of Procedure for the Annual Meeting. The Committee was asked to make a number of decisions concerning the proposed changes to Rule 52. These decisions are set out below along with commentary. The Committee recommends that Convocation request that the Legislation and Rules Committee draft appropriate changes to Rule 52 to implement the proposed Rules for the Annual Meeting in time for the Annual Meeting in November 1994.

Introduction

B.1.2. On October 22, 1993, Convocation adopted the recommendation of the Research and Planning Committee that Rule 52 be amended to provide revised Rules of Procedure for the Annual Meeting. Convocation also adopted the following recommendation:

8. *If this report is adopted by Convocation in October 1993 the proposed changes to Rule 52 should be made available to members for information and comment at the 1993 Annual Meeting and circulated to the Standing Committees of Convocation for information and comment; Rule 52 should not be changed until such time as the Committee has had an opportunity to review any comments and report back to Convocation as to any further changes, additions, deletions or refinements to Rule 52 after such consultation has taken place. It is anticipated that through this process, the revised Rule 52 would be in effect for the 1994 Annual Meeting.*

B.1.3. In this Report references to "Rule 52" refer to proposed Rule 52 adopted by Convocation for the purposes set out above. See Attachment A.

B.1.4. The text of proposed Rule 52 was distributed at the 1993 Annual General Meeting. In addition, the text was sent to several members who requested it subsequent to its availability being advertised in the *Benchers Bulletin*. One member requested and was provided with the full report of the Subcommittee on the Rules of Procedure for the Annual Meeting. No comments on the proposed amendments to Rule 52 were submitted by members.

B.1.5. The text of proposed Rule 52 was sent to the secretaries to the Standing Committees of Convocation. Proposed Rule 52 was reviewed by the Admissions and Membership Committee, the Discipline Policy Committee and the Professional Standards Committee.

B.1.6. Comments were also received from senior staff.

B.1.7. Many of the comments were of an editorial nature and will be passed on to the Legislation and Rules Committee. Comments addressing matters of substance resulted in decisions by the Research and Planning Committee. These are summarized below.

Proposed Subrule 52(5) - loss of quorum

B.1.8. Subrule 52(5) contained what may be a typographical error. It read (possible error underlined):

If a quorum ceases to exist during the meeting, debate may continue if no members remaining and the Treasurer so decide but no resolutions shall be passed.

B.1.9. Comments were received respecting the awkwardness of subrule 52(5). Suggested amendments to remedy the awkwardness were before the Committee.

B.1.10. The Committee adopted the following amendment to subrule 52(5):

" ... debate may continue if no members remaining object and the Treasurer so decides ... "

[Amendments underlined.]

B.1.11. Proposed Subrule 52(6) - quorum regained

B.1.12. Proposed subrule 52(6) read:

If a quorum, having been lost is regained before the meeting is adjourned, the Treasurer shall so announce and the meeting proceeds as if the quorum had not been lost.

B.1.13. The Committee was asked to consider the following questions: What is the point of the Treasurer announcing that a quorum has been regained if nobody has objected to having lost it? If you place this onus on the Treasurer to keep track of the quorum and to announce each time it is regained after having been lost, what would be the consequences of the Treasurer failing to notice that a quorum had been lost or regained and proceeding without making any announcements?

B.1.14. The Committee recommends that subrule 52(6) be amended to remove the onus it places on the Treasurer to keep track of the quorum. The Committee adopted the following subrule 52(6):

If a quorum having been lost is regained before the meeting is adjourned, the meeting may proceed as if the quorum had not been lost and no objection shall be made to the meeting proceeding on the basis that a quorum had previously been lost.

[Amendments underlined.]

Proposed Subrule 52(12): Appeal of Treasurer's Ruling: Exception

B.1.15. The Committee discussed extensively the power of the Treasurer presiding over the Annual Meeting to make certain rulings not subject to appeal.

B.1.16. Proposed subrule 52(12) read:

Where the Treasurer rules that a matter may not be made the subject of debate or motion by the meeting because it concerns the conduct, competence or capacity of a member, and such conduct, competence or capacity is the subject of an investigation by the Society, the ruling of the Treasurer is not subject to appeal.
[Emphasis added.]

B.1.17. It was suggested that the exception to the appeal, as worded, might be too narrow. The following matters would not be covered by the exception:

1. Conduct, competence or capacity that was the subject of an investigation by the Society, but is no longer the subject of an investigation by the Society, and no charge arises from the investigation;
2. Conduct, competence or capacity that was the subject of an investigation by the Society, but is no longer the subject of an investigation by the Society, and a charge has been brought as a result of the investigation;
3. Conduct, competence or capacity that was not the subject of an investigation by the Society, and that has not resulted in a discipline charge; and
4. Matters, other than conduct, competence or capacity, in respect of which the Society has jurisdiction to hold a hearing (e.g., admissions matters).

B.1.18. It was suggested that the exception to the appeal should be in respect of any matter that requires a quasi-judicial review by the Law Society.

B.1.19. As a separate point, it was suggested that subrule 52(12) should also exclude from appeal rulings respecting matters that are *sub judice* (i.e., matters that are pending in a court or before a judge for judicial determination, or that are pending before a tribunal for determination).

B.1.20. The Committee decided to amend subrule 52(12) to read, in part, as follows:

Where the Treasurer rules that a matter may not be made the subject of debate or motion by the meeting because,

- (a) it concerns a matter in respect of which the Society has jurisdiction to hold a hearing under the Law Society Act;

* * * *

the ruling of the Treasurer is not subject to appeal.

[Amendments underlined.]

- B.1.21. The Committee also decided that subrule 52(12) should exclude appeal on a ruling that a matter may not be made the subject of debate or motion by the meeting because it is *sub judice* (i.e., it is a matter that is pending in a court or before a judge for judicial determination, or that is pending before a tribunal for determination).

Proposed Subrule 52(17) - Standing Vote

- B.1.22. Subrule 52(16) provided that following debate on an appeal of a Treasurer's ruling, a vote shall be taken on the question: "Shall the decision of the Treasurer be upheld". Subrule 52(17) then provided:

A tie vote is taken to be upholding the ruling of the Treasurer. The Treasurer may cast a vote to make the result a tie.

- B.1.23. The suggestion was made that the second sentence of the subrule should be deleted. The view was expressed that the meeting should decide whether a Treasurer's decision is to be upheld: If a tie vote is reached without any vote by the Treasurer, the decision is upheld. If the decision loses by one vote, the decision is overturned. To allow an individual Chair to vote on his or her own ruling would be contrary to democratic and parliamentary practice.

- B.1.24. The Committee decided to amend subrule 52(17) to deny the Treasurer a vote on the question of whether a Treasurer's ruling should be upheld.

Proposed Subrules 52(18) and (19)

- B.1.25. Subrule 52(16) provides that following debate on an appeal of a Treasurer's ruling, a vote shall be taken to determine whether the decision of the Treasurer should be upheld. Subrules 52(18) and (19) read:

(18) The announcement of the vote is not a decision and may not be appealed except by a member calling for a standing vote. A standing vote, or a division, is taken by having those voting in the affirmative stand and be counted, and those in the negative stand and be counted.

(19) A call for a standing vote needs no seconder and is not debatable.

- B.1.26. The comment was made that the wording of subrule 52(19) seems to imply that a call for a standing vote itself is subject to a vote. The Committee was asked whether this is a correct and intended interpretation of the subrule, or, alternatively, whether the intention is to give any member the right to call for a standing vote. The Committee had before it a suggested restructuring of subrules 52(18) and (19) to achieve the latter intention.

- B.1.27. The Committee decided that subrule 52(18) should clearly provide any member with a right to call for a standing vote. The Committee asked that the Legislation and Rules Committee determine how best to implement this decision.

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B.2. THE TASK FORCE ON THE CIVIL JUSTICE SYSTEM

- B.2.1. A Task Force has been announced to examine the civil justice system in the province of Ontario. The task force is to be Chaired by Mr. Justice Robert Blair and is designed to make proposals to improve the civil process.
- B.2.2. Your Committee is of the view that the Law Society should approach the Task Force in order to offer input to this process. One of the roles of the Law Society is to ensure that the public has access to justice. Delay in the civil system is of vital concern to the public and the profession.
- B.2.3. The Committee requests that the Treasurer consult with the Task Force and discuss with its Chair the best way in which the Law Society may participate in this project.

C.
INFORMATION

No matters to report.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April 1994

L. Brennan
Chair

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

Item B.-B.1. - Draft Rules for Annual General Meeting.
(Attachment A - A-4)

It was moved by Ms. Elliott, seconded by Mr. Feinstein that Item B.-B.2.
re: Task Force on Civil Justice System, be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSIONAL COMMITTEE

Meeting of April 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 14th of April, 1994 at 3:00 pm, the following members being present: S. Elliott (Chair), S. Goudge, P. Hennessy, J. Lax, B. Luke, R. Manes and J. Palmer.

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

A.
POLICY

1. LAW SOCIETY SUPPLEMENTARY MATERNITY LEAVE BENEFITS

1.1. Your Committee has identified as one of its priorities:

5. *The development of internal employment policies which make the Law Society a model employer with respect to maternity and other gender-related work policies.*

1.2. The Law Society recognized the importance of such policies in the *Transitions Report* (adopted in April 1991) in the following recommendation:

i) That the Law Society aim to set standards in terms of working conditions for its own staff which will make it a model for the profession and that the Society consider the development of its personnel policies in respect of:

- *balance between professional and personal responsibilities*
- *alternative work arrangements*
- *parental responsibility policies*
- *non-discrimination. (Transitions at 114)*

The Canadian Bar Association Task Force on Gender Equality made a similar recommendation (Recommendation 12.19 adopted by the Council of the Canadian Bar Association, February 1994).

1.3. In the opinion of the Committee, the institution of a maternity leave program for Law Society employees is the minimum step the Law Society should be taking in this regard. Such a policy is already in place in a number of work places in Ontario, including those of the legal profession. Such a plan should be generous and promote the Law Society as an equal opportunity employer. A level of compensation which, in conjunction with the unemployment insurance plan, provides 95% of salary should be established. Ninety-five percent is the maximum allowed under the unemployment insurance program.

Note: Amendment, see page 174

1.4. The Women in the Legal Profession Committee recommends that Convocation adopt as a matter of principle a supplementary maternity leave policy which in conjunction with the unemployment insurance program would provide women on maternity leave with 95% of salary for a seventeen week period and is subject to a one year period of employment before the employee will qualify for leave.

1.5. The Committee recommends that the Law Society make provision to institute the policy beginning on July 1, 1994. The Salaries and Benefits Subcommittee should deal with the transition period for this program in the spirit of the policy.

1.6. The Committee did not debate or consider whether the Law Society should institute an employee benefit program concerning parental leave (as distinct from maternity leave).

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

1. DRAFT RULE 28 ON NON-DISCRIMINATION

- 1.1. Stephen Goudge, the Chair of the Equity Committee and a member of this Committee, reported concerning Rule of Professional Conduct on non-discrimination (draft Rule 28). The Committee had before it a draft of the rule and commented on the text. A number of members of the Committee are participating in the formulation of an education plan to accompany the Rule. The Women in the Legal Profession Committee will fully consider Rule 28 and make recommendation to Convocation at the appropriate time.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April 1994

S. Elliott
Chair

Ms. Elliott asked that the Report be amended in Item A.-1.3. by changing "95%" to "93% of salary".

It was moved by Ms. Elliott, seconded by Ms. Lax that Item A.-1. re: Law Society Supplementary maternity Leave Benefits, as amended, be adopted.

Carried

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

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NOMINATIONS FOR TREASURER

The Deputy Secretary made the following announcement:

"In accordance with Rule 19 of the rules made under S. 62(1) of the Law Society Act, an election of a Treasurer will be the first item of business at the regular meeting of Convocation on Friday, June 24, 1994.

In accordance with Rule 19.1, every nomination for the office of Treasurer must be received in the office of the Secretary on or before Meeting Day, Thursday, May 12, 1994. Any nomination received after that day is void.

Every nomination must be in writing. It must be signed by the nominee, indicating the nominee's assent to be a candidate. Every nomination must also be signed by two benchers. Any nomination not so signed is void."

.....

22nd April, 1994

CONVOCATION ROSE AT 12:35 P.M.

The Treasurer and Benchers had as their guests for luncheon, Associate Chief Justice Patrick J. Lesage and Chief Justice R. Roy McMurtry.

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Confirmed in Convocation this day of 1994.

Treasurer