MINUTES OF CONVOCATION

Friday, 28th June, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Aaron, Adams, Angeles, Armstrong, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, R. Cass, Cole, Copeland, Crowe, Curtis, DelZotto, Eberts, Epstein, Feinstein, Farquharson, Finkelstein, Furlong, Gottlieb, Krishna, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Connor, Puccini, Ross, Ruby, Sachs, Sealy, Stomp, Strosberg, Swaye, Thom, Wardlaw, Wilson and Wright.

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IN PUBLIC

.....

ELECTION OF TREASURER

The Secretary reported that one nomination for the position of Treasurer was received - that of Susan E. Elliott by Messrs. Epstein and Feinstein. Ms. Elliott was re-elected Treasurer by acclamation for the coming year.

The Treasurer made brief remarks.

AGENDA - Committee Reports to be taken as read

It was moved by Ms. Ross, seconded by Mr. Crowe that the Reports listed in paragraph 5 of the Agenda (Reports to be taken as read), be adopted.

Carried

Admissions and Membership (2 Reports)
Clinic Funding
Draft Minutes - May 1996
Legal Aid
Professional Standards
Specialist Certification Board

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meetings of June 17 and 27, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Monday, the 17th of June, 1996, the following being present: Mr. Epstein (Chair) and Messrs. Goudge and Mackenzie.

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

The following candidates having successfully completed the 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 Friday, June 28th, 1996:

Marie Marcelle Josee Besner	36th	BAC
Alexander Joseph Black	37th	BAC
Esther Adelle Blackett	37th	BAC
Alistair Mitchell Crawley	37th	BAC
Geoffrey Alexander Dimick	36th	BAC
George Socrates Florentis	36th	BAC
Darren James Ghan	37th	BAC
Jaswinder Singh Gill	37th	BAC
Brenda Jean Goddard	36th	BAC
Harry Angelos Gregoropoulos	37th	BAC
William Harvey Jones	37th	BAC
Nimish Raghu Kothare	37th	BAC
David Lametti	32nd	BAC
Lesley Ann Lawrence	37th	BAC
Kennie Loon	36th	BAC
Mary Coleen Morrison	37th	BAC
David Wayne Pelley	37th	BAC
Victor Richard Peter	37th	BAC
Hyla Shulamit Rose Reiter	37th	BAC
James Paul Rowley	37th	BAC
Marguerite Russell	36th	BAC
Andreas Florian Sautter	37th	BAC
Andrea Lee Timoll	36th	BAC
William David Todd	37th	BAC
Mary Mabel Kathryn Van Eenoo	36th	BAC

Approved

B.1.2 Transfer from another Province - Section 4

B.1.3. 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, June 28th, 1996:

Mizuho Abe	Province of British Columbia
Michael Reginald Concister	Province of Quebec
Susan Marion Foote	Province of British Columbia
Graham Robert Nattress	Province of Manitoba
Susan Beth Tarshis	Province of British Columbia
Gregory Alfred Tereposky	Province of British Columbia
Theodore John Tjaden	Province of British Columbia

Approved

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (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:

William Frederick Jacobs	North York
John Carr Munro	Hamilton
Arthur Lawrence Smith	Toronto
John Harcourt Switzer	Etobicoke

Approved

B.2.2. (b) Incapacitated Members

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

Clare Ann Barclay	Toronto
Sally Christine Canniff	Kingston
Kenneth John Morton	Toronto
Mary Grace Anne Elizabeth Robinson	Cornwall

Approved

B.2.3. (c) Termination of Rule 50

The following members wish to terminate their retirement under Rule 50 and return to active status:

Norman Direnfeld Retired September 29, 1995	Willowdale

Approved

B.3. RESIGNATION - REGULATION 12

B.3.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports:

(1) Marie Cecile Germaine Louise Beaudet Davidson of Oliver, British Columbia, was called to the Bar on April 17, 1985. She declares that she ceased practising law on December 31, 1995. She states that all clients' matters have been completed. She further states that all trust funds or other clients' property have been accounted for and paid over to the persons entitled. The annual fee is paid in full. The annual filings are up to date.

(2) Michael Sobcov Cherney of Toronto, Ontario, was called to the Bar on April 19, 1985. He states that as of January 1996, he has not engaged in the practice of law. He further states that he has not handled trust funds or other clients' property since 1992. The annual fee is owing. The annual filings are up to date.

(3) Pamela Maureen Clarke of Toronto, Ontario, was called to the Bar on February 7, 1992. She states that she has not practised law since August of 1995. She declares that she has not handled trust funds or other clients' property. The annual fee is owing. The annual filings are paid in full.

(4) Lisa Laurine Davies of Nanoose Bay, British Columbia, was called to the Bar on March 30, 1990. She states that she ceased practising law in Ontario on June 30, 1993. She is currently suspended for non-payment of the 1995/96 annual membership fee. The annual filings are up to date.

(5) Mary Baptista De Munnik of Toronto, Ontario, was called to the Bar on April 6, 1979. She states that she has not practised law since March 31, 1995. She declares that all trust funds and other clients' property have been accounted for and paid over to the persons entitled thereto. The annual fee is outstanding. The annual filing is up to date.

(6) Carolyn Jean Gray of Toronto, Ontario, was called to the Bar on February 8, 1994. She states that she has never engaged in the practice of law. The annual fee is outstanding. The annual filings are up to date.

(7) Roy Fraser Gray of Ottawa, Ontario was called to the Bar on April 13, 1983. He declares that he has not engaged in the practice of law since March 1991. The annual fee is outstanding. The annual filings are up to date.

(8) Doran Robert Henderson of Kingston, Ontario, was called to the Bar on April 13, 1983. He states that he ceased practising law as of December 31, 1995. He states that all trust funds or clients' property have been accounted for and paid over to the persons entitled thereto. The annual fee is paid in full. The annual filings are up to date.

(9) Garth Edward Little of Windsor, Ontario, was called to the Bar on February 8, 1993. He declares that he ceased practising law on October 31, 1995. He further states that all trust funds and clients' property have been accounted for and paid over to the persons entitled thereto. The annual fee is outstanding. The annual filings are up to date.

(10) Mark Lindsay Millar of Kindersley, Saskatchewan, was called to the Bar on March 19, 1991. He states that he has never been engaged in the practice of law in Ontario. The annual fee is paid in full. The annual filings are up to date.

(11) Glenda Sheryl Perry of Richmond Hill, Ontario, was called to the Bar on February 7, 1992. She states that she has not engaged in the practice of law since March 31, 1996. She declares that all client matters have been completed or disposed of; and any ongoing files have been retained by Jack Daiter. The annual fee is outstanding. The annual filings are up to date.

(12) Sheldon Mark Seigel of Victoria, British Columbia, was called to the Bar on April 19, 1985. He declares that he ceased practising law in November of 1991. He is currently suspended for non-payment of the 1991/92 annual membership fee. The annual filings are up to date.

(13) Carolyn Elaine Stewart of St. John, New Brunswick, was called to the Bar on March 20, 1991. She states that she ceased practising law in Ontario in October of 1994. The annual fee is currently outstanding. The annual filings are up to date.

(14) William Edward Sylvester of Stratford, Ontario, was called to the Bar on March 19, 1970. He states that he ceased practising law on April 30, 1996. He further states that all trust funds or clients' property have been paid over to the persons entitled thereto. The annual fee is paid in full. The annual filings are up to date.

(15) Filomena Tassi of Hamilton, Ontario, was called to the Bar on April 20, 1988. She states that she has not practised Ontario law since December of 1994. The annual fee is currently outstanding. The annual filings are up to date.

(16) Ronald E. Williams of Ottawa, Ontario, was called to the Bar on June 22, 1960. He states that he has not practised law since December 1991. He is currently suspended for non-payment of the 1995/96 annual fee. The annual filings are up to date.

Approved

C. INFORMATION

C.1. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

C.1.1. The following former members have applied for readmission and have met all the requirements in that regard:

Donald Roy Neilson	Called:	June 25th, 1959
	Resigned:	March 24th, 1995
William Jerome Thorne	Called:	March 29th, 1977
	Resigned:	January 26th, 1996

Noted

C.2. REINSTATEMENT FOLLOWING SUSPENSION

C.2.1. The following suspended member will be reinstated upon payment of all arrears of fees or upon making the necessary payment plan arrangements with the Membership Department:

C.2.2. Stanley Harvey Rutwind — Called: March 29th, 1977; Suspended: February 26th, 1988 (for non-payment of the annual fee)

C.2.3. The Requalification Examination has been waived in light of his having continued to actively practise in another Canadian common law jurisdiction.

Noted

C.3. RESULTS OF THE TRANSFER EXAMINATION

C.3.1. The following candidates have successfully completed the April/May 1996 Transfer Examination:

Mizuho Abe	Province of British Columbia
Michael Reginald Concister	Province of Quebec
Susan Marion Foote	Province of British Columbia
Graham Robert Nattress	Province of Manitoba
Susan Beth Tarshis	Province of British Columbia
Gregory Alfred Tereposky	Province of British Columbia
Theodore John Tjaden	Province of British Columbia

Noted

C.4. LIFE MEMBERS

C.4.1. Pursuant to Rule 49, the following members are eligible to become Life Members of the Society with an effective date of June 20, 1996:

Harry Lorne Abramson	Windsor	1946
Grant Cullen Brown	Tillsonburg	1946
Robert Wright Davies	Toronto	1946
Roy Fraser Elliott	Toronto	1946
George Alvin Ray Leake	Toronto	1946
Walter Heming Lind	Toronto	1946
Lloyd Arthur May	Toronto	1946
George William Reed	Toronto	1946
Edward Richmond	London	1946
Jack Alfred Seed	Toronto	1946
Gerald David Stone	Parry Sound	1946
Francis Elliott Wigle	Hamilton	1946

Noted

C.5. CHANGE OF NAME

C.5.1.

From	To
Catherine Lydia Catchpole	Catherine Lydia Nicholson (Marriage Licence)

Pina Esposito	Pina Melchionna (Marriage Certificate)
Andrea Susan Gunn	Andrea Susan Boddy (Marriage Certificate)
Colleen Marie Olesen	Colleen Marie Hanycz (Birth Certificate)
Stanley Algirdas Pacevicius	Algirdas Stanley Pacevicius Pace (Change of Name)
Daniella Sicoli	Daniella Sicoli-Zupo (Marriage Certificate)
Sunita Siwach	Sunita Malik (Canadian Passport)

Noted

C.5.2. CHANGE OF NAME - STUDENT

Susan Jane Napal	Susan Jane von Achten (Immigration Card)

Noted

C.6. ROLLS AND RECORDS

C.6.1. (a) Deaths

The following members have died:

Michael Chykaliuk North York, Ontario	Called: March 17, 1967 Died: July 9, 1995
Liane Beth Rosenbaum North York, Ontario	Called: April 19, 1985 Died: August 15, 1995
Roger Digby Viets Ottawa, Ontario	Called: September 24, 1952 Died: November 7, 1995
Frederick John Arthur Haileybury, Ontario	Called: April 19, 1963 Died: November 29, 1995
Peter Logie Parkin MacDonnell Edmonton, Alberta	Called: September 8, 1947 Died: March 9, 1996
Joseph Rosenfeld Toronto, Ontario	Called: June 19, 1941 Died: April 2, 1996
Cyrl Holly Hollingshead Toronto, Ontario	Called: June 19, 1941 Died: April 19, 1996
Robert Johnson Carter Toronto, Ontario	Called: April 12, 1962 Died: April 28, 1996

Theodore Asquith King Toronto, Ontario	Called: April 18, 1946 Died: May 25, 1996

Noted

C.6.2. (b) Disbarments

C.6.3. On May 23, 1996, in Convocation, the following members have been disbarred and their names removed from the rolls and records of the Society:

Roderick Grant MacGregor	Bowmanville	05/04/96
Philip Gregory Evans	Toronto	22/03/91

Noted

C.6.4. (c) Permission to Resign

C.6.5. On May 23, 1996, in Convocation, 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:

Mary Gale Bullas Trapp	Kitchener	29/03/77
Joseph Glenn Michael Barnes	Merrickville	13/04/81
Shamdayal Bridj Mohan Sahoy	Unionville	06/04/82

Noted

C.6.6. (d) Memberships in Abeyance

C.6.7. Upon their appointments to the offices shown below, the memberships of the following members have been placed in abeyance under Section 31 of The Law Society Act:

William John Festeryga Toronto, Ontario	Called April 10, 1964 Appointed Ontario Court of Justice (General Division) May 7, 1996
Emile Raymond Kruzick Orangeville, Ontario	Called March 24, 1972 Appointed Ontario Court of Justice (General Division) May 7, 1996
Michael Robert Dambrot Toronto, Ontario	Called March 22, 1974 Appointed Ontario Court of Justice (General Division) May 7, 1996

Mary Lou Benotto
Toronto, Ontario

Called April 14, 1978
Appointed Ontario Court of Justice
(General Division)
May 7, 1996

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

P. Epstein
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Thursday, the 27th of June, 1996, the following being present: Ms. Ross and Messrs. MacKenzie and Marrocco.

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

The following candidates having successfully completed the 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 Friday, June 28th, 1996:

Mark Ofosu Addo	36th	BAC
Mary Elvira Elizabeth Anna Bianchi	37th	BAC

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

P. Epstein
Chair

THE REPORTS WERE ADOPTED

CLINIC FUNDING COMMITTEE

Meeting of June 6, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on June 6, 1996. Present were: Paul Copeland, Chair, Harriet Sachs, Gordon Wolfe, Mark Leach, Pamela Mountenay-Giffin. Also present: Joana Kuras, Clinic Funding Manager.

C.
INFORMATION

Convocation requested additional information with respect to the responsibilities of the Clinic Funding Committee and Convocation.

C.1 Clinic Funding Committee/Convocation Approvals

1. Regulation 710/90, made under the *Legal Aid Act*, establishes the composition of the Clinic Funding Committee and its functions. The Clinic Funding Committee has the power to:

   - direct clinic funding staff in the administration of clinic funding,
   - establish policy and guidelines in respect to the funding of clinics,
   - hear appeals from initial funding decisions by the clinic funding staff,
   - determine its own practice and procedure in relation to hearings and appeals,
   - perform any other function that in the opinion of the Committee is advisable for the efficient performance of its functions under the Regulation.

2. The Clinic Funding Committee is responsible to Convocation for the administration of clinic funding and is required to report to Convocation yearly on the functioning of the Committee and the operation of clinic funding; and provide an estimate of moneys required for clinic funding for the next year.

3. Convocation approval is only required to issue clinic certificates authorizing payments to clinics upon completion of the Committee's funding process.

4. The Attorney General for Ontario designates funds for the purpose of funding community legal clinics annually. Payment of these designated funds to community legal clinics is authorized by a clinic certificate.

5. Pursuant to the Clinic Funding Committee's policies and procedures, clinic funding staff assesses applications for funding and makes initial funding decisions. The Committee hears clinic appeals from those decisions and then makes its recommendations. There is no appeal from the Committee's decisions. The Committee reports its final funding recommendations to Convocation for the approval required to make payments to clinics.

6. A new revised statement of expenditures for 1995/96 is attached as Schedule A. The expenditures which required Convocation approval are found under the heading - payments to clinics. All recommendations for payments to clinics were approved by Convocation for the 1995/96 fiscal year. Notes are attached to assist in understanding the statement of expenditures. More detailed information is available if required.

7. An audit of each clinic is conducted annually by an external auditor retained by the Clinic Funding Committee.

   Expenditures on behalf of clinics and clinic funding administration costs which do not require Convocation approval are subject to annual audit by the Provincial Auditor.

C.2 Special Outreach Funds

The clinic funding Regulation authorizes the payment of funds to a clinic to provide activities reasonably designed to encourage access to legal or paralegal services or to further such services, and services designed solely to promote the legal welfare of the community. Under this broad definition, a wide range of community outreach and public legal education projects are undertaken by clinics.

The Minister of Justice of Canada has provided funding for public legal education and information services across Canada since 1989. The Clinic Funding Committee is the recipient of these funds for Ontario in recognition of the public legal education role carried out by clinics.

The Clinic Funding Committee provides the Minister of Justice with an audited financial statement, as well as reports on public legal education and outreach services provided using those funds. Federally-appointed auditors perform the audits with respect to this federal funding.

The Clinic Funding Committee has established a funding policy for special outreach projects. Clinic funding staff assesses the applications submitted by clinics and makes an initial funding decision. The Clinic Funding Committee reviews those funding decisions and makes the final funding allocation report.

Convocation approval is not required for expenditures of funds which are not provided by the Ministry of the Attorney General. Consequently, the special outreach project decisions reported in the May, 1996 Convocation Report were provided for your information only. Additional information about specific applications or the funding process is available on request.

C.3 Information Reports

Information reports are provided to Convocation from time to time. Unless specifically noted, Clinic Funding Committee reports do not require Convocation approval.

ALL OF WHICH is respectfully submitted

P. Copeland
Chair
Clinic Funding Committee

June 26, 1996

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

Item C.- C.1 6. - Copy of the revised statement of expenditures for 1995/96. (Schedule A)

THE REPORT WAS ADOPTED

DRAFT MINUTES - May 23 and 24, 1996

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

LEGAL AID COMMITTEE

Meeting of June 19, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 19th of June, 1996 at 2:00 p.m. the following members being present: Stephen Goudge, Chair, R. Armstrong, M. Buist (by telephone), H. Burroughs, C. Curtis, D. Fox, M. Fuerst, R. Lalande, M. Stanowski, B. Sullivan and T. Stomp.

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

Jack Martin, Director of the Refugee Law Office and Jan Tilston, Director of the Divorce Law Office were also in attendance.

Stuart Hartley, BDO Dunwoody, Keith Harrington, Coopers Lyebrand and Wendy Tysall, Law Society were also present, as was Richard Tinsley, Secretary, Law Society.

A.
POLICY

A.1 PILOT PROJECTS

The Legal Aid Committee received reports prepared by Jack Martin, Director of the Refugee Law Office and Jan Tilston, Director of the Divorce Law Office, which had been received at the May meeting when it was agreed that this item would be placed on the June agenda for further discussion. These reports are attached hereto and marked as SCHEDULE A.

With respect to the Refugee Law Office, the discussion centred mainly on whether the Committee would recommend that the office be closed or downsized with an attempt being made to allocate any monies saved for the payment of certificates. A vote was taken and the majority of the Committee members were in favour of the downsizing option.

The Chair agreed that he would meet with government to ascertain whether or not the monies saved could be allocated to certificates. If not, then the recommendation would not go forward.

With respect to the Divorce Law Office, it was agreed that at the Pilot Project Steering Committee meeting the Chair would ascertain what would happen to the monies saved if the office were to be closed.

2. IMPACT OF PRIORITIZATION AND THE NEW TARIFF

The Provincial Director briefly outlined the statistics for the months of April and May, 1996. It was agreed that these statistics and all matters concerning the impact of prioritization of certificates and the new tariff would be studied by the four working groups. These groups are to be activated as soon as possible (Criminal Consultation Group, Refugee Consultation Group, Family Consultation Group and the Other Civil Consultation Group).

These four consultation groups will report back to the Legal Aid Committee in due course.

B.
ADMINISTRATION

B.1 UPDATE ON YEAR END FINANCIAL STATEMENT
PREPARED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

The Legal Aid Committee received a draft copy of the Ontario Legal Aid Plan Financial Statements for the year ended March 31, 1996 which was discussed in detail. It was agreed that the five bencher members, one non-bencher and one lay representative would meet with senior staff the following week to peruse the final statements, together with the letter of confirmation and the auditor's letter which would be presented to the Finance Committee of the Law Society and then to Convocation.

B.2 STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE ONE MONTH ENDED APRIL 30, 1996

The Legal Aid Committee received the Statement of Receipts and Disbursements for the One Month ended April 30, 1996 which is attached hereto and marked as SCHEDULE B.

B.3 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF MAY, 1996

The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for the months of May, 1996 which is attached hereto and marked as SCHEDULE C.

B.4 REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR THE MONTH OF MAY, 1996

The Legal Aid Committee received the Report on the Status of Reviews in the Legal Accounts Department for the month of May, 1996 which is attached hereto and marked as SCHEDULE D.

B.5 AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Peel
Mangesh Singh Duggal, Solicitor

RESIGNATIONS
Carol Crawford

Peel
Peter Bedford

C.
INFORMATION

C.1 APPOINTMENT OF NEW EXECUTIVE DIRECTOR NISHNAWBE-ASKI LEGAL SERVICES CORPORATION

It is recommended that Sandra Bair be appointed to the position of Executive Director for Nishnawbe-Aski Legal Services Corporation (Thunder Bay). Ms. Bair has been Acting Executive Director since August, 1995. Ms. Bair's curriculum vitae is attached hereto as SCHEDULE E.

C.2 APPOINTMENT OF NEW AREA DIRECTOR - THUNDER BAY

It is recommended that Marc Bode be appointed to the position of Area Director for the District of Thunder Bay to replace Jack McCartney who was recently appointed to the Ontario Court General Division. Mr. Bode's curriculum vitae is attached hereto as SCHEDULE F.

C.3 LETTERS FROM CRIMINAL LAWYERS ASSOCIATION AND REFUGEE LAWYERS ASSOCIATION

The Legal Aid Committee received for its information copies of letters from the Criminal Lawyers Association and the Refugee Lawyers Association which are attached hereto and marked as SCHEDULE G.

ALL OF WHICH is respectfully submitted

S. Goudge
Chair

June 28, 1996

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

Item A.-A.1 - Copies of Reports re: Refugee Law Office Pilot Project and Divorce Law Office - The First Year of Operation. (Schedule A)

Item B.-B.2 - Copy of the Statement of Receipts and Disbursements for the One Month ended April 30, 1996. (Schedule B)

Item B.-B.3 - Copy of the Report on the Payment of Solicitors Accounts for the month of May 1996. (Schedule C)

Item B.-B.4 - Copy of the Report on the Status of Reviews for the month of May 1996. (Schedule D)

Item C.-C.1 - Copy of Sandra Bair's curriculum vitae. (Schedule E)

Item C.-C.2 - Copy of Marc Bode's curriculum vitae. (Schedule F)

Item C.-C.3 - Copies of letters from the Criminal Lawyers Association and the Refugee Lawyers Association. (Schedule G)

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of June 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of June , 1996 at 8:00 a.m., the following members being present: W.A. Derry Miller (Chair), Denise Bellamy, Thomas E. Cole, Daniel J. Murphy, Richmond C.E. Wilson, Bradley H. Wright. Judith Keene was also in attendance.

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

A.

POLICY

A.1. RULES OF PROFESSIONAL CONDUCT - RULE 28 - DRAFT BULLETIN #5

A.1.1. The Equity in Legal Education and Practice Committee publishes bulletins intended to provide guidance to members of the public on Rule 28 (Discrimination) of the Rules of Professional Conduct. In April, 1995, Convocation approved a recommendation of that Committee that all such bulletins be circulated for consultation to, *inter alia*, the Professional Standards Committee, before consideration by Convocation and ultimately distribution to the profession.

A.1.2. Your Committee was asked by The Equity in Legal Education and Practice Committee to consider a copy of Draft Bulletin #5 and approve the draft bulletin, or identify any questions or comments regarding the draft bulletin so that same could be communicated to the Equity Committee by May 10, 1996.

A.1.3. Your Committee approved the Bulletin subject to these recommended changes on page one: the deletion of the Quick Facts section and the revision of the Introduction as follows:

Introduction
This is the fifth in a series of Bulletins provided by the Law Society of Upper Canada to assist lawyers in complying with Rule 28 of the Rules of Professional Conduct, and with the *Ontario Human Rights Code* and related legislation.

In 1994, many lawyers who responded to a consultation on Rule 28 indicated that they were not knowledgable about human rights law and, in some cases, asserted the right to follow practices that violate the *Human Rights Code*. Therefore the purpose of this Bulletin is to provide guidance to lawyers concerning the duty to accommodate.

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

D. Millar
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of June 13, 1996

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 13th of June 1996 at nine o'clock in the morning, the following members being present: D. Murphy (acted as Chair), L. Banack, P. Furlong, D. Millar, M. Pilkington, and G. Sadvari. C. Giffin of the Law Society, was also present.

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

The Workers' Compensation Law Specialty Committee met on Thursday, the 9th day of May at five o'clock in the afternoon.

The Civil Litigation Specialty Committee met on Tuesday, the 14th day of May, 1996 at eight-thirty in the morning.

The Intellectual Property Law Specialty Committee met on Wednesday, the 22nd day of May, 1996 at one o'clock in the afternoon.

The Bankruptcy & Insolvency Law Specialty Committee met on Monday, the 27th day of May, 1996 at four o'clock in the afternoon.

The Criminal Law Specialty Committee met on Friday, the 31st day of May, 1996 at one o'clock in the afternoon.

The Labour Law Specialty Committee met on Wednesday, the 5th day of June, 1996 at four-thirty in the afternoon.

The Environmental Law Specialty Committee met on Thursday, the 6th day of June, 1996 at nine-thirty in the morning.

The Civil Litigation Specialty Committee met on Tuesday, the 11th day of June, 1996 at eight-thirty in the morning.

A. POLICY

A.1. ADR -- CHANGES TO CIVIL LITIGATION STANDARDS

A.1.1. Your Board approved changes to the Civil Litigation Standards for Certification submitted by the Civil Litigation Specialty Committee incorporating consideration of the use of ADR techniques by Specialist applicants. These changes were drafted as a result of recommendations made to certification by the Dispute Resolution Subcommittee of the Law Society. (See paragraphs 2., 4., and 5.iii. of attachment to this report.)

B. ADMINISTRATION

No items.

C. INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

C.1.1. Your Board is pleased to report the certification of the following lawyers as Bankruptcy & Insolvency Law Specialists:

Deborah Grieve (of Toronto)
Charles Merovitz (of Ottawa)
Miles O'Reilly (of Toronto)

C.1.2. Your Board is pleased to report the certification of the following lawyers as Environmental Law Specialists:

Roger Cotton (of Toronto)
Harry Dahme (of Toronto)
David Estrin (of Toronto)
Leonard Griffiths (of Toronto)
Harry Poch (of Toronto)
Dianne Saxe (of Toronto)

C.1.3. Your Board is pleased to report the certification of the following lawyers as Intellectual Property Law Specialists:

Frank Farfan (of Toronto)
Scott Jolliffe (of Toronto)
Peter Kappel (of Toronto)
Gregory Ludlow (of Toronto)

C.1.4. Your Board is pleased to report the certification of the following lawyer as a Labour Law Specialist:

Mary Cornish (of Toronto)

C.2. RECERTIFICATION OF SPECIALISTS

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

Arthur Barat (of Windsor)
Brian Barrie (of Owen Sound)
Charles Hackland (of Ottawa)
Robert Zarnett (of Toronto)

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

Brian Barrie (of Owen Sound)
Andrew Bradie (of Windsor)
Peter West (of Toronto)

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

R. Manes
Chair

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

Item A.-A.1.1. - Copy of the Changes to the Civil Litigation Standards for Certification incorporating consideration of the use of ADR techniques.

THE REPORT WAS ADOPTED

CALL TO THE BAR

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

Mark Ofosu Addo	36th Bar Admission Course
Marie Marcelle Josee Besner	36th Bar Admission Course
Mary Elvira Elizabeth Anna Bianchi	37th Bar Admission Course
Alexander Joseph Black	37th Bar Admission Course
Esther Adelle Blackett	37th Bar Admission Course
Alistair Mitchell Crawley	37th Bar Admission Course
Geoffrey Alexander Dimick	36th Bar Admission Course
George Socrates Florentis	36th Bar Admission Course
Darren James Ghan	37th Bar Admission Course
Jaswinder Singh Gill	37th Bar Admission Course
Brenda Jean Goddard	36th Bar Admission Course
Harry Angelos Gregoropoulos	37th Bar Admission Course
William Harvey Jones	37th Bar Admission Course
Nimish Raghu Kothare	37th Bar Admission Course
David Lametti	32nd Bar Admission Course
Lesley Ann Lawrence	37th Bar Admission Course
Kennie Loon	36th Bar Admission Course
Mary Coleen Morrison	37th Bar Admission Course
David Wayne Pelley	37th Bar Admission Course
Victor Richard Peter	37th Bar Admission Course
Hyla Shulamit Rose Reiter	37th Bar Admission Course
James Paul Rowley	37th Bar Admission Course
Andreas Florian Sautter	37th Bar Admission Course
Andrea Lee Timoll	36th Bar Admission Course
William David Todd	37th Bar Admission Course
Mary Mabel Kathryn Van Eenoo	36th Bar Admission Course
Mizuho Abe	Transfer, Province of British Columbia
Michael Reginald Concister	Transfer, Province of Quebec
Susan Marion Foote	Transfer, Province of British Columbia
Graham Robert Nattress	Transfer, Province of Manitoba
Susan Beth Tarshis	Transfer, Province of British Columbia
Gregory Alfred Tereposky	Transfer, Province of British Columbia
Theodore John Tjaden	Transfer, Province of British Columbia

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RESOLUTIONS - COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

Convocation received the Resolutions passed by the County and District Law Presidents' Association at their Plenary Session on May 10, 1996.

(see Resolutions in Convocation file)

REASONS OF CONVOCATION

The following Reasons of Convocation were filed by the Secretary:

Robert Allan HORWOOD
Bruce Allan CLARK

Re: Robert Allan HORWOOD

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF ROBERT ALLAN HORWOOD

REASONS OF CONVOCATION

October 27, 1995

BACKGROUND

1. On May 25, 1995, a duly constituted Discipline Committee of Convocation (the "Committee") recommended that Robert Allan Horwood (the "Solicitor") be found guilty of professional misconduct, and recommended a penalty.

2. The Law Society requested an award of costs against the Solicitor in accordance with the tariffs set out by the Discipline Policy Committee Report dated May 13, 1993, and adopted by Convocation on May 28, 1993.

3. The Committee refused the request on the grounds that sections 40 and 41 of the Law Society Act, when read together, grant Convocation jurisdiction to award costs to a member or student member where the discipline proceedings are unsuccessful against the person, but do not grant jurisdiction to award costs against a person who has been disciplined by the Law Society. The Committee adopted the dissenting opinion of Brendan O'Brien, Q.C., on the issue of jurisdiction to award costs in the Report and Decision in the Matter of Gordon Stanley Clarke dated November 25, 1992.

4. Notwithstanding the thoughtful Clarke dissent and the able arguments of the Solicitor's counsel, Convocation on October 27, 1995, determined that, pursuant to sections 34 and 40 of the Law Society Act, it has the authority to order solicitors to pay or contribute to the Law Society's costs of the investigation and hearing in a discipline proceeding.

RELEVANT STATUTORY PROVISIONS

5. Section 34, 40 and 41 of the Law Society Act, R.S.O. 1990, c. L.8., provide as follows:

> 34. If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel membership in the Society by disbarring the member as a barrister and striking the member's name off the roll of solicitors or may by order suspend the member's rights and privileges as a member for a period to be named or may by order reprimand the member or may by order make such other disposition as it considers proper in the circumstances.
>
> 40. A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which the person has been found guilty.
>
> 41. Where it appears that disciplinary proceedings against a member or student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings.

6. Section 36 of the Solicitor's Act, R.S.O. 1990, c. S.15., provides as follows:

> 36. Costs awarded to a party in a proceeding shall not be disallowed or reduced on assessment merely because they relate to a solicitor or counsel who is a salaried employee of the party.

REASONS OF CONVOCATION

7. While the word "expense" in section 40 has not been judicially considered per se, the word "expense" has been interpreted in other contexts by the courts as a general term, and not as a term of art.

Simpson v. Inland Revenue Commissioners. [1914] 2 K.B., 842, at pp. 845-846

8. The Judicial Committee of the Privy Council has observed that the word "expense" as used in section 6(2) of the Income War Tax Act has quite a general meaning.

Minister of National Revenue v. Wrights' Canadian Ropes Ltd., [1947] A.C. 109

9. Similarly, the Ontario Court of Appeal has found that " the definition of costs may well be applied and utilized flexibly when an appropriate situation arises."

Re Ewart and Toronto Terminals Railway Company, [1932] 1 D.L.R. 582 (Ont.C.A.)

10. Section 40 as a whole has been judicially considered. The Ontario High Court has held that section 40 provides that a member of the Society who is found guilty of misconduct may be ordered to "...pay the expense...incurred by the Law Society in the investigation or hearing of any complaint." The Court held that this is an order made as part of the discipline process, and is not an order made by a court, thus, orders made as part of a discipline process may be treated differently from orders made by a court. Section 40 grants Convocation jurisdiction to award expenses where appropriate as part of its mandate to discipline members.

Feldman v. Law Society of Upper Canada, (1989) 68 O.R. (2d) 157 at p. 160 (H.C.)

11. The Supreme Court of Canada has unanimously held that, in exercising its discretion to award costs of proceedings before it, the Canadian Radio-Television and Telecommunications Commission is entitled to take a broad view of the application of the principle of indemnification, and that the Commission is not bound by the principles reflecting the application of that principle in the courts. The Commission is not bound by the strict view of whether an expense has been actually incurred. Mr. Justice LeDain, speaking for the Court, stated that, "...Thus I am of the opinion that the word "costs" must carry the general connotation of being for the purpose of indemnification or compensation...The commission therefore should not be bound by the strict view of whether expense has been actually incurred that is applicable in the courts. It should, for example, be able to fix the expense which may be reasonably attributed to a particular participation by a public interest intervener as being deemed to have been incurred, whether or not as a result of the particular means by which the intervention has been financed, there has been any actual out-of-pocket expense..." (at pp. 586-587)

Bell Canada v. Consumers' Association of Canada et al., [1986] 26 DLR (4th) 573

12. The word "expense" in its plan and ordinary meaning is a very general word which is broader in scope than the word "costs" insofar as the word "costs" is used in the legal context. In the context of curt awards, the word "costs" means party and party costs or solicitor and client costs or costs as between a solicitor and his own client, and includes such things as time spent, court fees, transcripts, medical reports and other items identifiable as having been incurred with respect to the given matter. On the other hand, the word "expense" would include all of the foregoing and a direct contribution toward the winning solicitor's office overhead including rent, utilities and support staff salaries. In short, while legal context costs do not include other expenditures classified under "expense", "expense" includes legal context costs.

13. In interpreting the term "expense" narrowly to exclude from section 40 all expenses except "a specific amount disbursed or for which liability has been incurred in relation to a particular matter", the Clarke dissent relied on Re Wallis in which it was held that a mortgagee who is entitled to expenses incurred is not entitled to recover for work done by himself, though he would be entitled to recover amounts paid to someone else to do the same work. However, in the present case, the Law Society has incurred an actual expense in the form of the salaries paid to its counsel and staff in the investigation and prosecution of the complaint. The mortgagee in Re Wallis incurred no expense in doing the work personally.

Re Wallis ex parte Lickarish, (1890), 25 Q.B.D. 176, at pp. 180-81.

14. The purposes of the Law Society include the regulation of the legal profession in the public interest. Convocation is empowered to discipline lawyers to protect the public and maintain public confidence in the profession. The purposes of the statutory power conferred by section 40 (to require members who are found guilty of misconduct to pay expenses incurred in the investigation or hearing of complaints in respect of which they have been found guilty) are different from the purposes of the statutory powers bestowed on common law courts to require parties to pay the costs of litigation between private parties. The latter purposes include encouraging the settlement of civil disputes and

discouraging unmeritorious claims and defences, objectives that are irrelevant in professional disciplinary proceedings under the Law Society Act. Accordingly, cases such as Re Wallis dealing with awards of costs in civil litigation between private parties are of limited assistance in interpreting the term "expense" within the meaning of section 40. In any event, Re Wallis was decided prior to the enactment of section 36 of the Solicitors' Act, which changed the law to allow the courts to award costs even in circumstances where a party is represented by a counsel or solicitor who is a salaried employee.

15. It follows from the Clarke dissent that if the Law Society had retained outside counsel in this case, Convocation would have clear authority under section 40 to require the member to pay the fees charged by outside counsel. Convocation agrees with the submissions by counsel for the Law Society that to draw such a jurisdictional distinction between in-house and outside counsel engaged by the Law Society in the context of disciplinary proceedings under the Law Society is neither logical nor compatible with the policy underlying section 40. This view is strengthened by the anomaly which would occur if the word "expense" were given the limited meaning put forth in the Clarke dissent. If the Law Society were to engage outside counsel and be successful in disciplining a member, the costs to the Society of such engagement could be awarded against the member. However, if the Society were to use in-house counsel, a narrow interpretation of the word "expense" would limit any award to such matters as the costs of transcripts and other readily identifiable out-of-pocket disbursements. As pointed out by counsel for the Law Society, such an anomaly could not have been the intention of the Legislature.

16. The purpose of section 40 is indemnification or compensation. Section 40 does not empower discipline panels or Convocation to impose a supplementary penalty. As observed by counsel for the Law Society, in cases such as this, the Society incurs expense in relation to investigations and hearings in which it employs counsel whether its counsel are paid by the year or by the hour. Both the salaries of employed counsel and the fees of outside counsel are significant expenses of the discipline department. If the Society did not employ in-house counsel, it would be required to retain outside counsel in every case. What is important is not the structure of the engagement relationship between the Society and its counsel, but that the expense visited upon the member is no more than a reasonable approximation of the expense incurred.

17. The Clarke dissent characterized the order of the majority of the panel as "arbitrary"; however, it is no more arbitrary than the orders of assessment officers who calculate counsel fees as part of cost awards on the basis of the many factors enumerated under Rule 58.06(1) of the Rules of Civil Procedure (1994-1995). In any event, as stated in the Commentary to Rule 58, "Assessment of costs is more of an art form than an application of rules and principles". The Commentary also mentions that, generally, the result flows from the judgment and experience of the assessment officer. In our case, the result flows from the judgment and experience of the discipline panel and Convocation.

18. The Clarke dissent objected to the interpretation adopted by Convocation on the ground that the power (to require members to pay for the expense incurred) is "unlimited in amount"; however, in Feldman, supra, the Court held that "...The difficulty posed by quantification, or the inability to arrive at an exact figure for [that] expense, should be no bar to recovery especially as it is recognized that costs do not purport to provide full indemnification in any event." (at page 162). If a discipline panel or Convocation were to require a member to pay an amount that clearly exceeded a reasonable approximation of the expense incurred the order would be vulnerable on appeal or on an application for judicial review on the grounds of being manifestly unfair.

19. Section 40 authorizes discipline committees and Convocation to require members who have been found guilty of misconduct to pay all or part of the expense incurred by the Society in the investigation and hearing of the complaint. This provision recognizes that in some cases it is fairer to other members that a member who is guilty of misconduct bear all or part of the expense occasioned thereby. The Legislature intended that the whole of the profession not be burdened with all the expenses in every case where professional misconduct has been established. The alternative would be to cast the entire expense of the investigation and hearing on all members in every case.

20. In addition to the powers of Convocation pursuant to section 40, the closing words of section 34 empower Convocation "to make such other disposition as it considers proper in the circumstances." Convocation has found that ordering a member to reimburse the Society for all or part of the expense it incurs in investigating and prosecuting a complaint may be a proper disposition. Section 34 provides Convocation with flexibility in fashioning dispositions suitable to the circumstances of each case. This flexibility is not limited merely because another statutory provision (section 40) makes it clear that Convocation's powers extend to requiring members who are guilty of misconduct to pay all or part of the expense incurred by the Society.

21. The closing words of section 34 can be interpreted as providing an additional power to Convocation's power to disbar, suspend, or reprimand a member found guilty of misconduct. They are general words which should be interpreted broadly in order to give effect to the intention of the Legislature to bestow on Convocation the authority to make whatever disposition it considers proper in each case. Such authority, in Convocation's view, includes the authority to require members, whose misconduct has required an investigation and hearing, to contribute to the expense incurred thereby.

22. Counsel for the Solicitor argued that the wording of section 34 grants Convocation the power to impose the specific sanctions enumerated therein, including "such other disposition", as alternatives only. Counsel argued that, since the word "or" rather than the word "and" was used, section 34 does not permit more than one sanction to be imposed. This argument is untenable. Convocation clearly has the jurisdiction to impose, cumulatively or otherwise, any number of sanctions and to impose any number of conditions on any one or more of the sanctions. If the closing words of section 34 were simply an alternative, exclusive of the jurisdiction to impose other sanctions, it would leave unavailable to Convocation the option of reprimanding a member and imposing conditions of continued practice such as co-signing controls on trust accounts. Convocation agrees with the submission of counsel for the Law Society that would be too restrictive a reading of section 34.

23. Counsel for the Solicitor also relied on the view expressed in the Clarke dissent that the closing words of section 34 should be interpreted ejusdem generis such that other dispositions must be of the same type of penalties that are specifically mentioned in the section. Had the Legislature intended to limit the application of the closing words in section 34, it would have been a simple matter to use the phrase "other penalty" rather than the phrase "other disposition". The phrase "other disposition" was used to grant Convocation greater flexibility to make whatever orders it sees fit to fulfill its mandate of governing the profession in the public interest. Such flexibility includes ordering recovery of expenses and indemnification from a member guilty of misconduct.

24. With respect to the argument advanced in the Clarke dissent that section 40 would be redundant if section 34 gave power to award costs to Convocation and the discipline committees, the closing words of section 34 are broader than the words in section 40 and may be seen to apply only to the extent that Convocation has not already dealt with the issue of expense awards under section 40. Convocation agrees with the submission of counsel for the Law Society that for this reason section 40 is not redundant.

CONCLUSIONS

25. Convocation has the power to award expenses broadly defined against a member or student member who has been found guilty of professional misconduct, and included in that power is the power to accept recommendations to that effect from discipline committees.

26. Section 40 empowers Convocation to order in appropriate cases that a member or student member who has been found guilty of professional misconduct indemnify the Society for all or part of the expense it has incurred in engaging discipline counsel (whether in-house or outside counsel) and investigators to investigate and prosecute disciplinary matters, and in holding hearings.

27. Section 34 empowers Convocation to make such other disposition as it considers proper in the circumstances, which in appropriate cases may include an award for recovery of expenses if such an order has not already been made under section 40.

28. Section 41 empowers Convocation in appropriate cases to award costs against the Law Society in favour of a member or student member where the discipline proceedings were unwarranted.

29. The majority decision in Clarke is affirmed on its merits and on the basis that no compelling reasons have been advanced to cause Convocation to depart from the precedent of its earlier findings on these issues.

We are indebted and grateful to counsel for the Law Society, Neil Perrier, counsel for the Solicitor, Brian Bellmore, and Benchers Eleanore A. Cronk and Philip M. Epstein for their able assistance.

Bradley H. Wright
May 14, 1996

Re: Bruce Allan CLARK

THE LAW SOCIETY OF UPPER CANADA

In the matter of the *Law Society Act* and in the matter of *Bruce Allan Clark* of the City of Ottawa a barrister and solicitor	Michael Brown for the Society Bruce Allan Clark on his own behalf November 23, 1995

Reasons of Convocation

Introduction

In its report dated April 6, 1995, the discipline hearing panel found Bruce Allan Clark guilty of professional misconduct. In its recommendation as to penalty dated July 10, 1995, the panel recommended that Mr. Clark be granted permission to resign, and if he fails to tender his resignation to Convocation, that he be disbarred.

Convocation upholds the panel's finding of professional misconduct. It does not accept, however, that each of the particulars that the panel found established constitute professional misconduct in the unique circumstances of this case.

Convocation has concluded that the appropriate penalty for the professional misconduct that has been established is a reprimand in Convocation.

Background

Mr. Clark has devoted his career to the advancement of the cause of native rights in Canada. He has studied the subject at the graduate school level, and has obtained a Master of Arts degree in History and a Ph.D. degree in Jurisprudence as a result of his studies in the field of native rights.

For a period of seven years, Mr. Clark lived on a native reserve. He is the author of two academic texts on the subject of the rights of indigenous people in Canada.

All of the particulars in the complaint relate to Mr. Clark's relentless attempts to advance a single legal argument (see the Appendix to these reasons) on his native clients' behalf.

Although space does not permit a complete summary of Mr. Clark's argument, it is based upon the proposition that certain native lands (or "hunting grounds") have never been properly surrendered to the Crown. It follows, he contends, that Canadian courts have no jurisdiction over indigenous people who reside on the unsurrendered lands. Mr. Clark argues that statutes of Canada and the provinces do not apply to indigenous people who live on the unsurrendered lands, and that the affected indigenous people have a right of access to an independent and impartial third party court - as distinguished from non-native Canadian domestic courts -to adjudicate the law.

Mr. Clark goes on to contend that the extraterritorial assumption by the non-native Canadian domestic courts, of jurisdiction over indigenous people living on hunting grounds *prima facie* constitutes "misprision of treason" and "misprision of fraud" within the meaning of paragraph 6, Part IV of the Royal Proclamation of 1763, which has never been repealed. He adds that the use of the legal term of art "misprision" in the order-in-council relieves his clients of the need to prove intent.

Finally, Mr. Clark argues, by usurping jurisdiction over indigenous people living on unsurrendered hunting grounds, the Canadian government, the legal establishment and the domestic courts are contributing to and are complicit in the genocide of indigenous people. (The term "genocide" is defined in the Concise Oxford Dictionary (fifth edition) as the "extermination of a race".)

As the discipline hearing panel pointed out, and as mentioned above, it is this argument that is at the root of the complaint of professional misconduct that the panel and Convocation were called upon to deal with.

The Findings of the Discipline Hearing Panel

The following allegations of professional misconduct were found established by the discipline hearing panel:

a. *While appearing before a justice of the British Columbia Court of Appeal, the solicitor made intemperate statements about the Court which were unsupported by the facts.*

b. *In the course of his professional practice, the solicitor wrote letters to the following parties which were abusive, offensive and otherwise inconsistent with the proper tone of a professional communication:*

   i. *Letters dated August 19, 1992 and September 14, 1992 to Judge Fournier of the Ontario Court - Provincial Division*

   ii. *Letter dated May 19, 1992 to His Honour Judge Blair of the Provincial Court of British Columbia (re: R. v. Sauls).*

c. *In the course of representing clients in various criminal proceedings, he asserted legal positions for which there was no reasonable basis in evidence, the particulars of which are as follows:*

   i. *He prepared and delivered documentation from a bogus court which purported to influence proceedings relating to outstanding criminal charges against his client, Stephen Snake.*

   ii. *He prepared and delivered documentation from a bogus court which purported to convict Judge Fournier, the presiding judge in the criminal proceedings referred to in particular 2(c)(i) above, of various crimes.*

   iii. *In submissions made to the court during criminal proceedings brought against Pascal, et al. and Sauls, et al., he accused the British Columbia judiciary and the Crown of conspiracy in crimes of genocide against aboriginal people.*

   iv. *While appearing before a panel of the British Columbia Court of Appeal, he attempted to perform a citizen's arrest on the charges of treason and complicity to genocide.*

(e) *In the course of litigation involving the Bear Island Foundation, he made intemperate and unjustified statements about various parties, the particulars of which are as follows:*

   (i) *In an affidavit which he swore, dated February 2, 1993, he alleged that:*

      (1) *the Attorney General of Ontario was party to a fraud with respect to concealing relevant evidence from appellate courts, and alleged that the Attorney General of Canada was probably also a party to this fraud;*

      (2) *Chief Gary Potts fraudulently, treasonably and genocidally induced the Supreme Court of Canada to render a decision pursuant to a treaty that is demonstrably void; and*

(3) the leaders of the Aboriginal entities who caused a Notice of Change of Solicitors to be delivered by Blake, Cassels and Graydon on February 24, 1993, did so in an attempt to further their fraud, treason and complicity in genocide.

(ii) In an affidavit which he swore, dated March 15, 1993, he:

(A) implicitly suggested that a decision made by The Honourable Mr. Justice Bolan of Ontario earlier in said litigation might constitute complicity in the crimes of fraud, treason and genocide;

(B) alleged that The Honourable Mr. Justice Bolan wilfully blinded himself to precedents, statutes and facts; and

(C) further alleged that The Honourable Mr. Justice Bolan's refusal to address the precedents, statutes and facts referred to in particular 2(d)(ii)(B) above, proved his own criminal liability.

(iii) In an affidavit which he swore, dated April 20, 1993, he:

(A) alleged that the Attorney General of Canada and the provinces and the judges of the courts of Canada wish to evade the questions as to whether Aboriginal courts have jurisdiction over land;

(B) accused the Attorney General of Ontario of abuse of process and of invoking a criminally illegitimate aspect of non-native court jurisdiction;

(C) alleged that the Attorney General had resorted to chicanery and is guilty of complicity in fraud, treason and genocide and of aiding and abetting the continuation of crimes;

(4) accused The Honourable Mr. Justice Huneault of escaping with his genocidal usurped jurisdiction intact in dealing with a previous motion in the litigation;

(5) alleged that the Attorney General had fraudulently breached an agreement with counsel for the Aboriginal entities;

(6) accused Chief Potts and Rita O'Sullivan (the solicitor's former client's) of participating in a system of patronage and bribery;

(7) accused the Attorney General of Ontario and Canada, as well as unspecified judges, of being guilty of fraud, treason and genocide;

(8) accused The Honourable Mr. Justice Steele of Ontario and the Honourable Chief Justice McEachern of British Columbia of racist attitudes which are fraudulent and treasonable and amount to genocide;

(9) accused the Attorney General of sharp practice and chicanery and of being engaged in a criminal conspiracy on a national scale to pre-empt the law in furtherance of the crimes of fraud, treason and genocide;

(10) accused the Attorney General of cunning chicanery;

(11) accused the Attorney General of sharp practice and chicanery and accused the Canadian domestic courts of racism;

(10) accused the Attorney General of concealing relevant evidence from appeal courts; and

(11) accused The Honourable Mr. Justice Loukidelis of Ontario of judicial complicity in the Attorney General's chicanery.

(iv) He made allegations similar to those referred to in particular 2(d)(iii)(D) above, while making oral arguments before The Honourable Mr. Justice Huneault on March 19, 1993.

v. When appearing before The Honourable Mr. Justice Roberts of Ontario on June 1, 1993, he:

(B) refused a direct order from The Honourable Mr. Justice Roberts to cease argument on this point and to sit down;

(C) accused The Honourable Mr. Justice Roberts of perpetuating fraud, treason and genocide;

(D) accused The Honourable Mr. Justice Roberts of wilful blindness;

(E) stated that he intended to lay an information against Mr. Justice Roberts forthwith;

(F) alleged that The Honourable Mr. Justice Roberts was afraid to charge the solicitor with contempt; and

(G) stated that he was going to attempt to lay an information against The Honourable Mr. Justice Roberts for complicity in fraud, treason and genocide.

(f) In the course of the said litigation, he caused to be prepared, served and filed affidavits sworn on February 22, 1993; March 15, 1993; and April 20, 1993, in which he was the deponent, notwithstanding the fact that he was also counsel of record for the parties in whose support the affidavits were filed.

(h) By engaging in the course of conduct referred to above, he demonstrated his unwillingness to be governed by the Law Society or its Rules and Regulations.

(i) On or about June 6, 1993 in Haileybury, Ontario, the solicitor unlawfully assaulted a member of the Ontario Provincial Police.

(j) On or about June 6, 1993, the solicitor unlawfully trespassed upon certain property in Haileybury, Ontario, in an unjustified and illegal attempt to carry out a citizen's arrest of one James Morrison.

The discipline hearing panel accepted that Mr. Clark is remarkably knowledgeable in the area of native rights, and that the views that he espouses are honestly and sincerely held. It is accepted also that he believes that his comments and conduct as particularized in the complaint were intended to advance the cause of justice and the rule of law.

The panel also observed in its report that "all of the members of the panel were impressed with the solicitor's presentation, his thoughtful remarks to us, his commitment to his cause and the obvious sincerity of his beliefs". It acknowledged that Mr. Clark has made very significant family and financial sacrifices in pursuit of his quest for justice for his clients. The panel also recorded its belief that Mr. Clark has much to offer the legal profession.

The discipline hearing panel found all of the 21 allegations quoted above to have been established. It found a twenty-second allegation, in which it was alleged that Mr. Clark had counselled a subpoenaed Crown witness to refuse to give evidence and to absent herself from the proceedings, not to have been established.

In recommending that Mr. Clark's right to practise law be terminated, the discipline hearing panel explained that it made its recommendation "very reluctantly", and "primarily because of the finding that the solicitor is ungovernable". It added that while some or most of the allegations would not in themselves justify the ultimate penalty of disbarment, the cumulative effect of them, coupled with the finding of ungovernability, left the panel with little choice.

Convocations's Disposition

As mentioned above, Convocation agrees with the discipline hearing panel that Mr. Clark is guilty of professional misconduct, but it does not agree that each of the allegations found established by the panel constitute professional misconduct in the unique circumstances of this case.

Specifically, Convocation does not agree that the allegations relating to what may be described as Mr. Clark's forensic excesses should be considered professional misconduct. Nor does Convocation consider the panel's finding that Mr. Clark is ungovernable by the Law Society to be sustainable.

Finally, in light of its variation of the discipline hearing panel's findings on misconduct - and particularly in light of its rejection of the panel's finding of ungovernability - Convocation has concluded that the termination of Mr. Clark's right to practise is not warranted on the evidence. Convocation accordingly orders that Mr. Clark be reprimanded in Convocation.

Convocation's reasons for coming to somewhat different conclusions than did the discipline hearing panel are developed below.

Mr. Clark appeared before Convocation without counsel by telephone from Amsterdam. He participated fully in the hearing on the issue of his culpability but declined to participate on the issue of penalty.

He made it clear that he was not asking not to be disbarred on the footing that if he had committed the offences with which he is charged then disbarment was an inappropriate penalty, but rather was asking Convocation to deal with the merits of the argument respecting jurisdiction that he wanted put forward.

Mr. Clark asked by way of relief that "Convocation should say:

1. THAT THE RECOMMENDATION FOR DISBARMENT of the defendant on the ground of professional misconduct due to ungovernability for refusing to discontinue and to recant his Indian clients' allegation of law be and the same is hereby adjourned *sine die* pending an assessment and report in response to the following petition by Convocation; and

2. THAT CONVOCATION HEREBY PETITIONS HER MAJESTY to implement administratively the *Imperial Orders in Council* dated 9 *July 1704* and 7 *October 1763* to the extent of placing before the Court constituted by those orders (or before an equivalently independent and impartial third party tribunal) the aforesaid Indian clients' aforesaid allegation of law, for an assessment and report upon its strictly legal truth."

We do not think it is necessary to do either of these things.

We do not think this argument applies to us. Whatever might be its merits respecting a territorial jurisdiction exercised on unceded lands, our disciplinary jurisdiction respecting Ontario's licensed lawyers does not affect unceded lands as such. Moreover, it is a jurisdiction *in personam* over the solicitor himself irrespective of where he might be.

There was no dispute as to the essential facts.

The solicitor's position before Convocation on the merits of the complaints was set out by him in writing:

> *"Cumulatively these materials demonstrate the domestic legal establishment's criminal modus operandi: first, that establishment prematurely (prior to cession or purchase) invaded the Indians' yet unsurrendered Hunting Grounds, in the result establishing by force majeure an interpretive monopoly over the legal process; second, it implemented that monopoly by condoning the non-natives' physical dispossession of the Indians, specifically by criminalizing, under ultra vires domestic legislation, Indian resistance. This modus operandi is the cause. The effect is the ongoing genocide of the Indians upon their unsurrendered Hunting Grounds.*
>
> *The constitutional legislation upon which the Indian resistance movement relies not only renders the aforesaid domestic legislation ultra vires but in addition enacts that the implementation of that domestic law constitutes the precise crimes of `Misprision of Treason' and `Misprision of Fraud', offences in respect of which by legal definition it is not necessary to adduce proof of mens rea.*
>
> *The present charge brought by the Law Society against the defendant of `professional misconduct' for `ungovernability' is a variation upon the same historic theme of employing the usurped jurisdiction to criminalize resistance. From all that appears, in virtue of a long and unique professional career involving living with the Indian people as well as reading for advanced degrees directly on point the defendant is the only lawyer presently ready, willing and able to raise and defend the point of law his Indian clients unquestionably are legally entitled to make. Since the domestic judiciary does not want to be informed by any person that they, the judges, are committing treason, fraud and genocide, by stonewalling the constitutional law indicting them, the offended judges have reported the defendant to the Law Society. Because the real criminals, the domestic judges, are unable to meet the constitutional law in open court they seek in this fashion to preempt that law from public awareness - by silencing its messenger - by having him disbarred.*

"As to the truth or falseness of the point of law upon which all else turns, not only is the domestic legal establishment preemptively biased and hence disqualified upon first principles from proceeding to purport to adjudicate the point, but the constitution expressly and explicitly has constituted an unbiased alternative. This is the clear and plain consequence, and the profound jurisprudential wisdom, of the law that the legal establishment in Canada so far has stonewalled.

"Furthermore, the defendant's Indian clients' constitutionality entrenched due process right of access to the special constitutional Court constituted under the unrepealed Imperial Orders in Council, dated 9 July 1704, and 7 October 1763 is the crucial, indeed the sine qua non `existing aboriginal right' within the meaning of section 35(1) of the Constitution Act, 1982. That due process right is the only legal chance to apprehend the genocide.

"If the defendant's Indian clients are right on the law then it is clear and plain that everything said and done by the defendant is reasonable, indeed conservative. Even if the clients are wrong upon the law it cannot be held that the defendant has committed professional misconduct, since all that he has said and done has been directed toward informing the legal establishment of the law that, at least arguably, supports his clients' position. No judge has ever `ruled on that law'. Without exception, every single domestic judge has evaded the seminal juridical jurisdiction issue after having heard only the bare allegation of the Indians' point of law. No domestic judge has disagreed with the Indians that the constitutional legislative words say what they so clearly and plainly do say, when addressed, precisely because every domestic judge preemptively has refused to address those words. It cannot be said that the defendant ever `unprofessionally' persisted with his argument after a ruling on the law had been made by any judge. No `ruling' has ever been made. That is the problem: the issue itself all along has been evaded by the criminals that the law speaking to the issue indicts. The heinousness of their crimes makes any arguable breach of decorum by the defendant a trivialization which, by distracting attention from the constitutionality critical issue, aids and abets the unconstitutional treason, fraud and genocide."

And in a later submission he said:

"I have been excluded by the combined machinations of the law societies and domestic judges from the defence of my clients. My clients are being drawn into the courts either without legal counsel or with fostered counsel who refuse to risk the censure of contempt citations, forced mental examinations, police assaults at the counsel table and disbarment proceedings for raising the law that justifies my clients' words and deeds. Instead, the fostered lawyers attorn the clients to the jurisdiction of the domestic courts. The courts and lawyers that respectively are trying and defending my clients are thus the same as those that have for over a century treasonably, fraudulently and genocidally suppressed the indigenous peoples' lawful resistance by exercising their own usurped jurisdiction to criminalize or to allow the criminalization of that resistance.

"In aid of this grotesque and obscene abuse of the legal process the Law Society is being asked to aid and abet the crimes of treason, fraud and genocide by making permanent ostracism of me, and hence of the law which, from all that appears, I alone am at present ready, willing and able to raise and defend. The view of the Discipline Committee was that my refusal to recant and apologize established me as being ungovernable, and that this ungovernability was contrary to the public interest. In reply, I have to argue that the Law Society should never have been attempting to `govern' me out of telling the legal truth.

"The public's interest is in the vindication of the rule of law which is based upon truth - which entails listening to and dealing with the legislative words and precedents that constitute the truth. The lie that Canada is living should be identified and corrected. For the injustice that it represents corrupts its perpetrators as well as wastes its victims. The members of the Law Society are not just lawyers but human beings who, as citizens, have a legacy to leave and children and grandchildren to whom to leave it. It is time for more of us lawyers to help Canada to face the legal truth and make a fresh start. Disbarring the messenger will not assist with this any more than will imprisoning the indigenous people who have had the conviction to speak the legally accurate truth and the courage to risk their own lives against insurmountable physical power to defend it."

The intensity of the feelings engendered in Mr. Clark can be illustrated by his comments before His Honour Judge K.J. Libby on February 26, 1992 in the Provincial Court of British Columbia:

"Mr. Clark: And suppose the allegation is made to you that a holocaust and genocide are going on and that the proposition will be to put before you the international law that constitutes that a crime, and secondly, to put before you the context in which this allegation is made. Now we're at court. It is fair for you to say, `I'm not going to listen to that context because I don't yet have it in writing' and is it not legitimate for me at that point to say, `Goodness gracious, Your Honour, can't you see the fraud inherent in that position?' What you are doing is saying, `I am going to preclude the possibility of making a finding on holocaust and genocide by precluding the evidence which substantiates it.'"

. . .

"The Court: Let's leave then World War II out of it.
Mr. Clark: We cannot leave World War II out of it. The principle of the----of---of the convention on the prevention and punishment of the crime of genocide in 1948 is the result of the lesson of World War II. I am here to prove that genocide is occurring. How in the name of the supremacy of God which is engraved in the Canadian constitution, how on earth can you say, `Let's leave World War II out of it?'"

. . .

"The Court: Your answer is either I'm for you or I'm part of the conspiracy?
Mr. Clark: You are not for me.
The Court: Well, I --
Mr. Clark: You are either --
The Court: I accept your argument, I'm sorry, you're right.
Mr. Clark: You are either for justice or you are part of the conspiracy."

Forensic Excesses

We approach the merits of these complaints by placing great importance on the context in which these arguments are made.

As mentioned above, the discipline hearing panel acknowledged that Mr. Clark's argument (as summarized above) is at the root of the complaint of professional misconduct that the discipline hearing panel and Convocation have been called upon to adjudicate.

Mr. Clark's argument is anything but frivolous. It is the product of intensive study, and reflects a belief that Mr. Clark sincerely holds.

It would be difficult to disagree with Mr. Clark's assertion that the issue that his argument raises is "constitutionally critical". Again, the discipline hearing panel found that Mr. Clark honestly believes that the comments and conduct particularized in the complaint - which are an outgrowth of his argument - were intended to advance the cause of justice and the rule of law.

The "genocide" of which Mr. Clark speaks is real, and has very nearly succeeded in destroying the Native Canadian community that flourished here when European settlers arrived. No one who has seen many of our modern First Nation communities can remain untouched by this reality.

Mr. Clark is not making the kind of arguments that fall to most of us daily in our courts; much of the ordinary work of lawyers relates to the interpretation of a will, the proper understanding of a contract, the ownership of a piece of land, or individual culpability for crime. The issue Mr. Clark raises is one of great significance for an entire people -- and for all of us. His commitment to the argument and his conviction respecting its correctness cannot be questioned.

Had this activity been engendered in a context less fraught with significance and emotion, we would take a very different view of Mr. Clark's conduct.

The nature of Mr. Clark's argument is such that the persistent refusal of the Courts -- he states, without contradiction, that he has attempted to raise this argument some forty or forty-one times -- itself in part engenders his fixed and firm conclusion that his argument is correct. The issue has not been determined by any Court.

It is clear to us that the solicitor has been captured by this argument.

This is an important case because the Solicitor questions the integrity of our system of justice. At the same time, it raises the question of the limits of advocacy.

There can be no question about the right and responsibility of the Law Society of Upper Canada to discipline its members respecting their conduct in court as advocates: *R.* v. *Kopyto* (1987), 39 C.C.C. (3d) 1 (Ont.C.A.). But advocacy in court is a crucial aspect of freedom of expression guaranteed by the Constitution. In *Edmonton Journal* v. *Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at 1336-7, Cory, J. said:

> *"It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized."*

In *Dagenais* v. *Canadian Broadcasting Corporation* (1994), 25 C.R.R. (2d) 1 at 29, the Supreme Court of Canada dealt with a conflict between the protected rights of two individuals, in the context of a publication ban, and indicated that constitutional principles require a balance to be achieved that fully respects the importance of both sets of rights. The common law rule in question in that case was, therefore, reformulated given that publication bans, by their very definition, curtailed the freedom of expression of third parties. We deal today with similar values in the same courtroom context, though we do not equate the Crown with an individual litigant. The Court re-stated the rule as follows:

> *"A publication ban should only be ordered when:*
>
> *a. Such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risks; and*
>
> *b. The salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban."*

This formulation reflects the substance of the test for justifying infringement of a *Charter* right in a free and democratic society.

One may well question the effectiveness of Mr. Clark's advocacy. His use of such words as "fraud", "treason", and "genocide" is designed to shock as well as explain, but does not justify the unwillingness of many courts to hear his submissions.

The Law Society should be loath, in professional discipline proceedings, to become the arbiter of lawyers' advocacy techniques. Styles of advocacy vary greatly, and the effectiveness of any particular style is not a matter for Convocation to pronounce on in the context of an allegation of professional misconduct.

It is true that rule 10, and commentary 7 thereto, requires lawyers to treat courts and tribunals with courtesy and respect. There is no necessary conflict between this professional obligation and lawyers' duties to represent their clients "resolutely" (rule 10), "to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, which the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defense authorized by law" (rule 10, commentary 2), and "to protect the client as far as possible from being convicted except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged" (rule 10, commentary 10).

The Law Society must always be acutely sensitive to the danger that its disciplinary process may be used to punish vigorous advocacy. The Law Society should act aggressively to protect counsel from attempts to inhibit zealous advocacy on behalf of clients. This duty flows from the Society's responsibility - confirmed in the role statement approved by Convocation - to protect the independence of the bar.

It is important to our decision that the use of what would in most other circumstances rightly be regarded as extravagant, disrespectful and discourteous language, in Mr. Clark's case emanated directly from the legal argument that he was vigorously advancing on behalf of his clients. In attempting to resolve the tension between vigorous advocacy in the face of judicial resistance and the duty to treat the tribunal with courtesy and respect, much will depend on the context.

We are sympathetic, moreover, to Mr. Clark's assertion that the courts have been unwilling to listen to his argument. Though he must accept part of the responsibility for this, it is apparent on the record that he has been prevented by the courts on a number of the occasions in issue from effectively presenting the argument summarized above. Our finding may well have been different if Mr. Clark, having been given a full opportunity to develop his argument, had persisted in attempting to argue a point after the court had ruled against him. Again, the Law Society must promote, rather than inhibit, the right and duty of advocates to protect their clients' interests without unwarranted interference.

The lawyer's duty to resolutely advance every argument the lawyer thinks will help the client's case is of fundamental importance to the proper functioning of our judicial system. Failures to carry out that duty are more prevalent within the system of justice and more harmful to that system than are overzealousness and failures to treat the courts with courtesy and respect. Where the duties do come into conflict, Convocation should be reluctant to find that overzealousness constitutes professional misconduct.

This is not a case involving the distortion or falsification of testimony or the destruction or suppression of documents. (There was, as mentioned above, an allegation that Mr. Clark had advised a subpoenaed witness to absent herself from the proceedings, but that allegation was found by the discipline hearing panel not to have been established on the evidence.) Nor was the court misled in any way by Mr. Clark's argument. No miscarriage of justice was caused. The gravamen of the allegations consists in rudeness, lack of courtesy, and refusal to obey a direct order from a judge.

The Law Society's discipline process is not the only means available for controlling forensic excess. The courts are empowered to physically control the courtroom by ordering removal of any counsel acting improperly and (at least in certain types of proceedings) to order them to pay costs. The ability to call a short adjournment is usually the only measure required. In extreme cases, where all other techniques have been exhausted, a judge may cite a lawyer for contempt. Judges presiding in court are well-positioned to assess the seriousness of excesses in advocacy and to determine whether curative measures are required. Such measures were taken in the incident referred to in paragraph (c)(iv) of the complaint, in respect of which Convocation agrees with the finding of the discipline hearing panel (see below).

The fact that the courts considered it unnecessary to take similar measures in relation to the other particulars in the complaint is a factor that Convocation considered in deciding not to uphold the findings of professional misconduct on those particulars. It does not follow that the Law Society will necessarily exercise its jurisdiction in all cases in which the courts have adopted remedial measures. We also note that the advocacy in question here took place in the context of a serious argument on an issue of public importance. The Law Society's concurrent jurisdiction to discipline lawyers for excesses in advocacy should be reserved for particularly serious and harmful violations.

It is necessary, in the light of the values expressed above, to examine the charges brought against Mr. Clark that deal with the question of improper advocacy.

We do not find his letters abusive or offensive. Nor do we find his statements intemperate nor unsupported by the facts in their context. Indeed, throughout he has begged to be allowed to develop facts to sustain the argument. It is impossible to say there was no reasonable basis in evidence for the legal positions he asserted; he has always been prepared to make a thoughtful and comprehensive argument in each case. There is an entire absence of evidence that the documentation he delivered from a Native tribunal came from a "bogus court"; native tribunals are commonplace throughout Canada and there was simply no evidence about the composition or authority of this one. Though that documentation was intended to influence proceedings in relation to outstanding criminal charges, it was part of a legitimate argument relating to the jurisdiction of the Court before which Mr. Clark was appearing. Indeed, each of the statements alleged to be intemperate and unjustified flow logically and properly from the submissions he was making respecting jurisdiction.

The matter concerning the solicitor's appearance before Mr. Justice Roberts needs to be viewed in context.

> *"Mr. Clark: ...A second preliminary point, My Lord, it was drawn to my attention yesterday at the close of the proceedings that you are the son of the former Attorney General Counsel [Kelso] Roberts.*
> *The Court: Yes.*
> *Mr. Clark: If this is so, I wish to make an application that you be disqualified on the grounds of reasonable apprehension of bias.*
> *The Court: Application dismissed.*
> *Mr. Clark: Application has not been argued.*
> *The Court: Application is dismissed. There's no bias. My father died 23 years ago.*
> *Mr. Clark: Your father was Attorney General.*
> *The Court: The application is dismissed. I will not entertain your argument sir.*
> *Mr. Clark: I propose to argue it.*
> *The Court: Very well. If you propose to argue it, you will sit down as an order of this Court. Sit down now.*
> *Mr. Clark: The reason I propose to argue it is as follows.*
> *The Court: Sit down sir, as an order of this Court.*
> *Mr. Clark: The reason I propose to argue it is as follows.*
> *The Court: I won't entertain your argument.*
> *Mr. Clark: The crime of fraud, treason, and genocide if this will not be argued, patently as being perpetrated by this Court in virtue of...*
> *The Court: I will not entertain...*
> *Mr. Clark: ...wilful blindness.*
> *The Court: ...I will not entertain an argument of fraud, treason, or genocide or wilful blindness against the judiciary of this Court. You have already made in the material that you filed, and may I have that exhibit back please, allegations that...*
> *Mr. Clark: And they made that ruling, and they made that ruling, all issues have been pre-determined. Please close the proceedings. We will appeal from that ruling.*
> *The Court: Mr. Tunley, you may open your argument.*
> *Mr. Tunley: Your Honour, if I could just...*
> *Mr. Clark: I propose to go and lay an information at this time.*
> *The Court: Sit down.*
> *Mr. Clark: I will return*
> *The Court: Sit down.*
> *Mr. Clark: I am laying an information, or attempting to.*
> *The Court: Mr. Tunley, you may proceed with your argument in the absence of Mr. Clark. I invite him to stay. He can do what he likes.*
> *Mr. Tunley: Thank you, Your Honour.*

The Court: I want to deal with the propriety of him, first of all, acting on this own affidavit.
Mr. Clark: You mean you want to get rid of him so that the expositor of your crimes will not be allowed to speak.
The Court: We'll adjourn for ten minutes will I consider contempt in the fact of the Court.
COURT RESUMES
The Court: Mr. Tunley, if you would please resume your seat for a moment, unless you have some...
Mr. Tunley: Your Honour, if you intend to rule on the contempt motion, I wondered if you might want to hear submissions of counsel on that matter. If you don't need to hear submission.
The Court: I don't need to hear any submissions because I'm not going to rule on the contempt motion. I said I would consider it. I have considered it and I'm going to give counsel one more chance.
Mr. Clark: Counsel doesn't want one more chance. What counsel wants...
The Court: This matter, this matter...
Mr. Clark: ...is to be charged with...
The Court: ...will proceed...
Mr. Clark: ...contempt...
The Court: ...and will be dealt with today.
Mr. Clark: ...so that the law that this Court is wilfully blinding itself to...
The Court: Mr. Clark...
Mr. Clark: ...will go in on my defense.
The Court: ...you will either control yourself, or you will be removed from the Court.
Mr. Clark: You are afraid to charge me with contempt.
The Court: We will proceed in your absence if you make it necessary for me to order you removed.
Mr. Clark: You are afraid to charge me with contempt.
The Court: Mr. Clark...
Mr. Clark: I will challenge you to charge me with contempt.
The Court: ...I'm prepared to give you 15 minutes to control yourself and to consider your position if you wish a further 15 minute adjournment.
Mr. Clark: You cannot be goaded into it, can you?
The Court: If you do not wish a further 15 minute adjournment, I will call Mr. Tunley and we will proceed.
Mr. Clark: You can't be goaded into it, can you, because you know that if you charge me, in my defence I will raise the law to which you are wilfully blinding yourself.
The Court: You will now sit down Mr. Clark. I take it that the comments that you have made are to the effect that you do not wish a 15 minute adjournment.
Mr. Clark: What I'm going to do now, I will...
The Court: And I so hold, Mr. Tunley...
Mr. Clark: ...I am going, you have asked me a question and I propose to answer it.
The Court: ...if you do not sit down this minute, Mr. Clark, I will ask the officer to forcibly remove you from the courtroom.
Mr. Clark: He won't have to forcibly remove me. I am going to attempt to lay an information against you for complicity and fraud...
The Court: Officer, remove this man.
Mr. Clark: ...treason, and genocide.
The Court: Officer, would you please remove this man.
Mr. Clark: I would like an expedited transcript of the record...
The Court. Remove him as quickly as possible please officer. Thank you.

Mr. Clark: ...as evidence of this Judge's fraud, treason and genocide.

The Court: Throw him out."

Beyond doubt, when a direct order to sit down is given by a Judge, counsel must obey it. But in deciding whether the refusal to obey is professional misconduct, the circumstances as a whole must be examined. In this case it is clear that the motion to ask the Honourable Mr. Justice Roberts to disqualify himself for a reasonable apprehension of bias was dismissed before counsel was given any opportunity to articulate the grounds of the challenge; those presumably would be focused upon the role of former Attorney General Kelso Roberts in relation to the issues raised by the jurisdiction argument. In this circumstance, we do not find that the conduct of a solicitor amounted to professional misconduct.

The filing of these affidavits of which the solicitor was a deponent taking into account their content does not, in these circumstances, amount to professional misconduct. The Court was capable of controlling its own record and dealing with that matter directly if it wished.

Three matters remain to be considered.

The first it the attempt to perform a citizen's arrest upon four judges of the British Columbia Court of Appeal (paragraph (c)(iv) of the complaint).

> *"June 15, 1992, Vancouver, B.C. (EXCERPT OF PROCEEDINGS)*
> *Mr. Clark: Before the case is called, I'm here to perform a citizen's arrest for the crimes of treason and complicity to genocide of Lambert, Taggart, Macfarlane, and Wallace. These proceedings are a crime in progress and must not continue.*
> *Hutcheon, J.A.: Let's have him removed.*
> *Taggart, J.A.: Mr. Sheriff, will you escort Mr. Clark out of the courtroom, please."*
>
> Brief of Documents Filed in Support of Paragraphs (a), (b)(ii), (c)(iii) and (c)(iv) in the Complaint of J. Scott Kerr, Vol. 3, p.142

(It is not apparent why the solicitor did not attempt to arrest Justice Hutcheon.) It can be seen that this interruption, while serious, unprecedented and indeed hard to comprehend as a rational approach to the issue, caused only a minor disruption of the proceedings.

Second and third, there remains an assault upon a member of the Ontario Provincial Police and a trespass upon the property of James Morrison in an attempt to carry out a citizen's arrest of him. Mr. Clark had become convinced that James Morrison, who was an Indian archivist, had obtained and was concealing a document which would be of crucial significance to the establishment of his argument in a pending case. He resolved to arrest Mr. Morrison and seize the document to safeguard and preserve it for use in Court. Mr. Morrison then called the police who performed their duty and safeguarded him and his property. The evidence indicates that Mr. Clark was told that he could not arrest Mr. Morrison and could not trespass upon his front lawn by an officer of the Ontario Provincial Police. In a polite and non-violent manner he stepped onto the property and when the officer moved to arrest him he moved that officer's hand aside. The assault was technical and the trespass, though momentary, should not have taken place. In the end, no harm was done.

None of these three matters reflect any advocacy whatsoever. There are no issues of freedom of expression at issue unless there is a right to address the court in relation to someone else's cause. We are dealing here with conduct, not with advocacy.

Accordingly, for the reasons given, we find paragraphs (c)(iv), (i), and (j) established.

Ungovernability

As mentioned above, the discipline hearing found established allegation (h) in the complaint, in which it was alleged that by engaging in the course of conduct referred to in previous allegations in the complaint, Mr. Clark demonstrated an unwillingness to be governed by the Law Society or its rules and regulations. The panel advanced as its primary reason for its recommendation that Mr. Clark's right to practise law be terminated (a recommendation that it made "very reluctantly") its finding that Mr. Clark is ungovernable.

Convocation considers the panel's finding of ungovernability to be unsustainable in this case.

Mr. Clark cannot be considered to be ungovernable in the sense in which that term is usually used in discipline proceedings. Though not determinative, it is important that there was no evidence before either the panel or Convocation that he has been disciplined previously since his call to the bar in 1971, almost 25 years ago. The panel recognized that Mr. Clark has been of previous good character.

In the proceedings before the discipline hearing panel and in Convocation, Mr. Clark readily admitted the facts and documents on which the complaint was based. The panel made a point of mentioning in its report that all of the members of the panel were impressed by Mr. Clark's presentation, his thoughtful remarks to the panel, his commitment to his cause, and the obvious sincerity of his beliefs. Convocation was similarly impressed.

The panel based its finding of ungovernability on the fact that Mr. Clark would not undertake to refrain from repeating the conduct that brought him before the Law Society. The panel attached to its report a letter from the Law Society's counsel dated April 21, 1994 and Mr. Clark's reply to that letter dated April 25, 1994. In his reply, Mr. Clark stated that though he had no intention of revisiting his clients' "allegation of law" at the trial level in Canada, he was not prepared to undertake not to repeat the argument that he has been advancing in proceedings that were then pending in the Supreme Court of Canada. Nor was he willing to undertake not to repeat his argument in support of a petition that had been submitted to the Queen, or before "any other appellate or international tribunal that may have or may come to have jurisdiction over genocide".

Particularly in light of our finding that Mr. Clark is not guilty of professional misconduct in respect of many of the particulars referred to in the complaint, we do not think that Mr. Clark's refusal should make him vulnerable to a finding that he is not governable by the Law Society. Indeed, in our view, the Law Society has come quite close to asking Mr. Clark to refrain from making an argument that he believes to be both well founded in law and in the interest of his clients.

The solicitor is not ungovernable. He simply does not agree with the characterization of his conduct by counsel for the Law Society, nor that of the courts that have refused to rule on it, and he will not give up his argument at least until some court has ruled on it.

Conclusion

For these reasons, Convocation concludes that the allegations set forth in paragraphs (a), (b)(i), (b)(ii), (c)(i), (c)(ii), (c)(iii), (e)(i), (e)(ii), (e)(iii), (e)(iv), (e)(v), (f) and (h) do not amount to professional misconduct in the unique circumstances of this case.

Convocation upholds the findings of the discipline hearing panel that Mr. Clark is guilty of professional misconduct in respect of particulars (c)(iv), (i) and (j) of the complaint, which read as follows:

> (c)(iv) While appearing before a panel of the British Columbia Court of Appeal, He attempted to perform a citizen's arrest on the charges of treason and complicity to genocide.
>
> (i) On or about June 6, 1993 in Haileybury, Ontario, the Solicitor unlawfully assaulted a member of the Ontario Provincial Police.
>
> (j) On or about June 6, 1993, the Solicitor unlawfully trespassed upon certain property in Haileybury, Ontario, in an unjustified and illegal attempt to carry out a citizen's arrest of one James Morrison.

Penalty

When informed of Convocation's variation of the discipline hearing panel's findings, the Law Society's counsel, Mr. Brown, very fairly submitted that the appropriate penalty for the professional misconduct found established by Convocation would be a reprimand in Convocation. Convocation adopted Mr. Brown's submission.

The solicitor is currently in Amsterdam. It is our usual practice that reprimands be administered immediately following the decision of Convocation to the solicitor in person. We think it is useful to administer this reprimand in person. Accordingly, Mr. Clark will be asked to attend the January Convocation, at which time he will be reprimanded before Convocation. If he does not appear, he will remain suspended until the reprimand is administered at a subsequent Convocation.

Dated at Toronto this 19th day of June, 1996.

Clayton C. Ruby

Gavin MacKenzie

ATTACHMENT: Appendix A FACTUM R. v. CLARK/LAW SOCIETY v. CLARK 11 October 1995

MOTION - Committee Appointments

It was moved by Ms. Ross, seconded by Mr. Crowe THAT Denise Bellamy again be the nominee of the Law Society of Upper Canada for election as a Director of the Federation of Law Societies of Canada; and

THAT Paul Copeland be appointed as the Society's representative to the Provincial Judicial Appointments Advisory Committee.

Carried

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval and Reports to be spoken to

SUSPENSIONS

MOTION TO SUSPEND - Failure to pay Errors & Omissions Insurance Levy

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions insurance levy, and whose name appears on the attached list, be suspended from June 28, 1996 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - Failure to pay Annual Membership Fee

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Annual Membership Fee, and whose name appears on the attached list, be suspended from June 28, 1996 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(See list in Convocation file)

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Report of the Sub-Committee to deal with the Report to the Commission on Systemic Racism in the Ontario Criminal Justice System

Ms. Backhouse presented the Report of the Sub-Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SUB-COMMITTEE TO DEAL WITH THE REPORT TO THE COMMISSION ON SYSTEMIC RACISM IN THE ONTARIO CRIMINAL JUSTICE SYSTEM, a sub-committee of the Equity Committee, begs leave to report:

The committee met on Thursday, the 9th of May, 1996 at 5:00 p.m. the following members being present: Nancy Backhouse (Chair), Andre Chamberlain, Patricia Hennessey, Cheryl Medley, Paul Milbourn, Marie Moliner, Lloyd Perry and Alexis Singer.

The Committee recommends that Convocation provide a general endorsement of the Report to the Commission on Systemic Racism in the Ontario Criminal Justice System as outlined below:

The Equity Committee asks Convocation:

1. To approve in principal the Law Society's commitment to combating racism and systemic discrimination throughout the legal profession.

2. To refer to the Equity Committee the Recommendations in the Report of the Commission on Systemic Discrimination in the Ontario Criminal Justice System ("the Report") that apply to the Law Society for immediate and appropriate action, to be brought back to Convocation for further action by the Law Society.

3. To urge the Government of Ontario, the Chief Justice of the Provincial Division and the Chief Justice of the General Division to take all necessary and appropriate steps to make an effective response to the findings and issues in the Report.

The Recommendations the Report adopted are attached as Appendix A.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1996

N. Backhouse
Chair

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

Copy of the Recommendations of the Report to the Commission on Systemic Racism in the Ontario Criminal Justice System.

(Appendix A)

Ms. Bellamy asked that paragraph 3. of the Report be amended to read as follows:

"To inform the Government of Ontario, the Chief Justice of the Provincial Division and the Chief Justice of the General Division of the Law Society's decision today; and to offer to them the assistance and co-operation of the Law Society in participating in any initiatives with respect to the Committee's Report that affect the legal profession.

Ms. Backhouse accepted the amendment.

It was moved by Ms. Backhouse, seconded by Ms. Bellamy that the Report as amended be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

GOVERNMENT RELATIONS COMMITTEE

LEGISLATIVE SUBCOMMITTEE

The Report of the Legislative Subcommittee was presented by Mr. MacKenzie.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATIVE SUBCOMMITTEE of the GOVERNMENT RELATIONS COMMITTEE begs leave to report:

The Legislative Subcommittee met on Friday, the 26th of May, 1996, at 8:00 a.m, the following members being present: D.Scott (Chair), G. MacKenzie.

Staff: A. Brockett, S. McCaffrey, E. Spears.

1 PROPOSED AMENDMENTS TO THE *LAW SOCIETY ACT*: PROGRESS REPORT

1.1 On March 22, 1996, Convocation approved, with certain changes, a package of proposed amendments to the *Law Society Act*. The principal elements of the package were amendments to the complaints, discipline and standards procedures and provisions for the regional election of benchers.

1.2 The draft text of the proposed amendments, incorporating the changes made by Convocation, was formally submitted to the Ministry of the Attorney General in three instalments on March 29, April 4 and April 22. The only remaining items to be submitted to the Ministry are amendments to the trusteeship provisions (on which legal advice was being sought) and amendments to the incorporations provisions. If this report is approved by Convocation, the remaining text can be submitted to the Ministry without delay.

1.3 Counsel at the Ministry began reviewing the proposed amendments as soon as the first instalment was received on March 29. However, the Ministry was not able to prepare the necessary bill in time for the Spring sitting of the Legislative Assembly. It is hoped that the legislation can be introduced in the Fall session of 1996.

1.4 In the course of reviewing the proposed amendments, the Ministry has suggested a number of changes which have been considered by Law Society staff and by the Legislative Subcommittee. The County and District Law Presidents' Association has also raised one matter which has been considered by the Subcommittee.

1.5 This report recommends changes to the package which was approved by Convocation on March 22, 1996.

2 SECTION 26: ADVISORY COUNCIL

2.1 Section 26 of the *Law Society Act* reads:

ADVISORY COUNCIL

26. The Treasurer shall convene a meeting in each year consisting of,

(a) the chair and the vice-chair of each standing committee;

(b) the president of each county or district law association, or his or her nominee, being a member of his or her association; and

(c) one member who is a full-time teacher at each law school in Ontario approved by the Society, to be appointed annually by the faculty of the law school,

to consider the manner in which the members of the Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole.

2.2 On March 22, 1996, Convocation (on the recommendation of the Legislative Subcommittee) agreed that section 26 should be repealed. The reason advanced by the Subcommittee was that regular meetings of the County and District Law Presidents, representation of the law school deans on Law Society standing committees, and the close working relationships with both groups had rendered the requirement of a formal "advisory council" obsolete.

2.3 It had not been foreseen that one consequence of the repeal of section 26 would be the removal of the statutory requirement of an annual meeting between the Treasurer and the County and District Law Presidents. The CDLPA has raised this as a major concern.

2.4 The Legislative Subcommittee therefore recommends that instead of repealing section 26, the references to the chairs and vice-chairs of each standing committee and the full-time law teachers be removed so that section 26 would read:

26. The Treasurer shall convene a meeting in each year with the president of each county or district law association, or his or her nominee, being a member of his or her association, to consider the manner in which the members of the Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole.

3. COMPLAINTS RESOLUTION COMMISSIONER: FORMER BENCHERS NOT TO BE ELIGIBLE

3.1 The Reforms Implementation Committee (1991) recommended that a person ought not to hold office simultaneously as a bencher and as Complaints Resolution Commissioner. The committee did not make any recommendation as to whether a former bencher should be eligible to serve as Commissioner.

3.2 On the recommendation of the Special Committee on Amendments to the *Law Society Act* (1995), the package approved by Convocation on March 22, 1996, included a requirement that at least twelve months should elapse between the time when a person ceases to hold office as a bencher and the time when that person becomes eligible to be Complaints Resolution Commissioner.

3.3 Counsel at the Ministry of the Attorney General has suggested that it would be more in keeping with the rationale for the creation of the office of Complaints Resolution Commissioner (and particularly with the principle of independence from the Law Society) if the Act were to provide that a person who has been a bencher should never be eligible thereafter to become Complaints Resolution Commissioner.

3.4 The Legislative Subcommittee sees the force of this argument and recommends to Convocation that the proposed amendments be changed to provide that no person who has been a bencher be eligible to serve as Complaints Resolution Commissioner.

4 PROFESSIONAL COMPETENCE HEARING PANELS: SELECTION OF MEMBERS

4.1 The scheme adopted by Convocation on March 22, 1996, simply states that a professional competence hearing panel is to be composed of three members of the Society, at least one of whom is an elected bencher.

4.2 Counsel at the Ministry of Attorney General has drawn attention to the fact that there is no mention of how members are to be selected to serve on professional competence hearing panels.

4.3 All other hearing panels in the proposed amendments are composed solely of benchers. In the case of professional competence hearing panels there is a potential pool of 27,000 members to choose from. In practice, it is expected that lists of members will be drawn up by the Professional Standards Committee - perhaps approved by Convocation - and panels will be selected from those lists.

4.4 A requirement in the Act that members of professional competence panels be selected in accordance with established procedures would be consistent with the principle of public accountability.

4.5 The Legislative Subcommittee recommends that the proposed amendments should be modified to provide that members of professional competence hearing panels are to be selected in accordance with procedures prescribed in the by-laws.

5 LAW CORPORATIONS: AMOUNT OF FINE

5.1 The amendments provide, for the first time, that a member may be subject to a disciplinary fine (of $10,000).

5.2 If the disciplinary penalties for members are to include fines, it seems appropriate that the disciplinary penalties for law corporations (currently restricted to cancellation or suspension of a certificate of authorization, or reprimand) should also include fines.

5.3 The Legislative Subcommittee therefore recommends that the disciplinary penalties available in the case of a law corporation should include a fine of up to $50,000.

6 LAW CORPORATIONS: POWER TO IMPOSE DISCIPLINARY SANCTIONS AGAINST MEMBER AND CORPORATION FOR THE SAME CONDUCT

6.1 It is important that disciplinary action against a member for a particular act or omission should not preclude disciplinary action against the law corporation of which that member is a director or employee for the same act or omission by the member: and *vice versa*.

6.2 The staff is reasonably satisfied that the law would not preclude sanctions against both the member and the corporation for the same act or omission: see, for instance, the "dredging case" (*R. v McNamara et al. (No. 1)* (1981), 56 C.C.C. (2d) 193 (Ont. C.A.); affirmed [1985] 1 S.C.R. 662).

6.3 Nevertheless, there is some indication that it may be prudent to make this fact explicit[1]. Note that section 242 of the *Income Tax Act* reads:

> Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

6.4 The Legislative Subcommittee therefore proposes adding the following section to the incorporation provisions of the *Law Society Act*:

> *61.10.4.-(1) The fact that conduct by a member who is a director, employee or other agent of a law corporation has been found to constitute an offence under section 38 making the member subject to a disciplinary order under Part II, does not preclude the law corporation from being found guilty, in respect of that same conduct by the member, of a matter set out in subsection 61.10(1) thereby making the corporation subject to an order under section 61.10.2.*
>
> *(2) The fact that conduct by a member who is a director, employee or other agent of a law corporation, has led to a finding that the corporation is guilty of a matter set out in subsection 61.10(1) making the corporation subject to an order under section 61.10.2, does not preclude the member from being found guilty, in respect of that same conduct, of an offence under section 38 thereby making the member subject to a disciplinary order under Part II.*

7 TRUSTEESHIP AND FREEZING ORDER PROVISIONS

7.1 Sections 42 and 43 of the present Act provide for the Law Society to apply to a judge for an order,

- freezing certain property in a member's possession or control (in practice, the "property" will be client trust funds); or

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[1]Smith and Hogan, *Criminal Law*, 7th ed. (London: Butterworths, 1992) at 185 state:

"It is now common form to include the following provision in statutes creating offences likely to be committed by corporations:

> 'Where an offence...committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.'"

- appointing a trustee over property in the possession or control of a member or former member (in practice, the trustee is the Law Society).

7.2 On March 22, 1996, it was reported to Convocation that, although still under discussion, it was likely that the proposed amendments to the trusteeship and freezing order provisions would include the following changes:

- Identical grounds for obtaining either a freezing order or a trusteeship order.

- The combining of the current grounds for obtaining the two different types of order so that suspension or disbarment would no longer be necessary conditions for a trusteeship. In addition to situations of suspension, disbarment, death, or abandonment of a practice, either type of order would be available where the court is satisfied that,

  - the member has dealt improperly, or may have dealt improperly with property; or

  - other circumstances exist in relation to the member or the member's practice which indicate that a freezing order or an order of trusteeship is required for the protection of the public.

7.3 Legal advice has now been received on the proposed amendments. In addition to the amendments approved by Convocation on March 22 (as outlined in the previous paragraph) the following changes to the present scheme (most of which are derived from the report of the Subcommittee on Frozen Trust Accounts adopted by Convocation on June 23, 1995) are now proposed:

- Simplified requirements for obtaining a court order converting a freezing order into an order of trusteeship.

- An express grant to a trustee of all the powers reasonably required to effect the purposes of the trusteeship in an efficient manner.

- A power to require a member to account to the Society when a freezing order or order of trusteeship is obtained.

- Power for a trustee to apply to the court for its opinion, advice or direction, including advice respecting the preservation or carrying-on of a member's practice.

7.4 The Legislative Subcommittee recommends that Convocation approve the amendments proposed in the preceding paragraph.

8 UNCLAIMED AND UNDISTRIBUTABLE TRUST FUNDS

8.1 On April 26, 1996, Convocation approved a proposal from the Discipline Policy Committee that the *Law Society Act* be amended to permit the Society to receive client trust funds from members who are unable to locate the person entitled to the money. The Society is to hold the funds in trust in perpetuity and will be entitled to use the income for its own general purposes.

8.2 Legal advice has been received on the drafting of the provisions approved by Convocation.

8.3 The only significant addition to the scheme approved by Convocation is a provision that would permit the Society to transfer into the new trust fund, unattributable client trust funds which have come under its control in past years.

8.4 The Legislative Subcommittee recommends that Convocation approve the addition described in the preceding paragraph.

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

D. Scott
Chair

It was moved by Mr. MacKenzie, seconded by Mr. Swaye that the Report be adopted.

Re: Section 26: Advisory Council

It was moved by Ms. Sealy, seconded by Ms. Sachs that the original Section 26 of the Law Society Act not be amended.

It was moved by Ms. Curtis, seconded by Ms. Ross that the original decision to delete Section 26 be adopted.

Withdrawn

It was moved by Mr. Epstein and accepted by Ms. Sealy and Sachs that the original Section 26 be amended by adding paragraph "(d) President and Vice-President of the Canadian Bar Association-Ontario".

It was moved by Mr. Feinstein, seconded by Mr. Manes that the matter be referred to a committee for policy development.

Withdrawn

It was moved by Mr. Wright, seconded by Mr. Gottlieb that the original Section 26 be amended by deleting the word "shall" and inserting the word "may" so that the paragraph would then read:

"26. The Treasurer may convene a meeting in each year consisting of,"; and

that Section 26 be further amended by adding paragraph (e) to read "such other persons as the Treasurer in any year may deem advisable".

The amendment was accepted by Ms. Sealy and Ms. Sachs and by Messrs. MacKenzie and Swaye.

It was moved by Mr. DelZotto, seconded by Ms. Puccini that Mr. Epstein's amendment to add paragraph (d) - President and Vice-President of the Canadian Bar Association-Ontario, be deleted.

The DelZotto/Puccini motion was accepted by Ms. Sealy and Mr. Wright.

Convocation took a brief recess and resumed with the Report of the Legislative Subcommittee.

The Sealy/Sachs motion was withdrawn and replaced with the Wright/Gottlieb motion that Section 26 read as follows:

26. The Treasurer may convene a meeting in each year consisting of,

(a) the chair and the vice-chair of each standing committee;

(b) the president of each county or district law association, or his or her nominee, being a member of his or her association; and

(c) one member who is a full-time teacher at each law school in Ontario approved by the Society, to be appointed annually by the faculty of the law school,

(d) such other persons as the Treasurer in any year may deem advisable.

To consider the manner in which the members of the Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole.

Lost

ROLL-CALL VOTE

Adams	For
Angeles	Against
Armstrong	Against
Backhouse	Against
Banack	Against
Bellamy	Against
Bobesich	Against
Carpenter-Gunn	Against
Copeland	Against
Crowe	For
Curtis	Against
DelZotto	Against
Eberts	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Krishna	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Murphy	For
Murray	Against
O'Connor	Against
Puccini	For
Ross	Against
Ruby	Against
Sachs	Against
Sealy	Against
Stomp	Against
Strosberg	Against
Swaye	Against
Thom	For
Wilson	For
Wright	Against

Re: Complaints Resolution Commissioner: Former Benchers not to be eligible

It was moved by Mr. Adams, seconded by Ms. Puccini that the Act be amended by providing that a person who has been a bencher be eligible "after 2 years" rather than "never" to become a Complaints Resolution Commissioner.

Carried

The balance of the Report was voted on and adopted.

THE REPORT AS AMENDED WAS ADOPTED

Mr. Swaye asked that it be noted that he wanted to change his vote on the Roll-Call Vote.

RULE 20 APPLICATION

Ms. Curtis presented the Application of Mr. Douglas Menzies to employ Ms. Laura A. Clark an administratively suspended member as a law clerk.

It was moved by Ms. Curtis, seconded by Ms. Puccini that the Application be approved.

Carried

BOBESICH/SWAYE MOTION

Mr. Bobesich presented his motion that there be a $25 fee for filing a complaint.

It was moved by Mr. Manes, seconded by Mr. Banack that the matter be referred back to a staff committee for further analysis.

Lost

ROLL-CALL VOTE

Adams	Against
Angeles	Against
Backhouse	For
Banack	For
Bellamy	For
Bobesich	Against
Carey	Against
Carpenter-Gunn	Against
Copeland	Against
Crowe	Against
Curtis	For
DelZotto	Against
Eberts	Against
Epstein	For
Feinstein	For
Finkelstein	Against
Gottlieb	Against
MacKenzie	Against
Manes	For
Marrocco	Against
Millar	Against
Murphy	For
Murray	Against
O'Connor	Against
Puccini	Against
Ross	Against

Ruby	For
Sachs	Against
Sealy	Against
Stomp	Against
Strosberg	Against
Swaye	Against
Thom	Against
Wilson	For
Wright	Against

It was moved by Mr. Bobesich, seconded by Mr. Swaye that complainants be required to pay a $25 deposit on filing a complaint with the Law Society with the proviso that if the complaint is found to be valid the $25 will be refunded.

Lost

ROLL-CALL VOTE

Adams	Against
Angeles	Against
Armstrong	Against
Backhouse	Against
Banack	Against
Bellamy	Against
Bobesich	For
Carey	Against
Carpenter-Gunn	Against
Copeland	Against
Crowe	For
Curtis	Against
DelZotto	Against
Epstein	Against
Feinstein	Against
Gottlieb	For
Krishna	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Murphy	Against
Murray	Against
O'Connor	Against
Puccini	For
Ross	Against
Ruby	Against
Sachs	Against
Sealy	Against
Stomp	Against
Strosberg	Against
Swaye	For
Thom	Against
Wilson	Against

It was moved by Mr. Strosberg, seconded by Mr. Murphy that as a matter of policy that Convocation look at the whole issue of complaints and procedures.

Carried

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval and Reports to be spoken to

LEGAL EDUCATION COMMITTEE

POST-CALL LEARNING FOR LAWYERS - Report and Recommendations of the MCLE Subcommittee

It was moved by Mr. Swaye, seconded by Mr. DelZotto that the Report of the MCLE Subcommittee put over to a Special Convocation in September.

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Committee met on Thursday, May 23, 1996, at 8:00 a.m. The following members attended: Philip Epstein (Chair), Gavin MacKenzie (Vice-chair), Tom Carey, Dean Neil Gold (University of Windsor, by telephone), Allan Lawrence and Helene Puccini, together with Mr. Justice Marc Rosenberg, the Bar Admission Course Criminal Procedure Section Head. The following staff also attended: Katherine Corrick, Marie Fortier (by telephone), Ian Lebane, Alexandra Rookes and Alan Treleaven.

The Committee met again on Thursday, June 13, 1996 at 8:00 a.m. The following members attended: Philip Epstein (Chair), Gavin MacKenzie (Vice-Chair), Derry Millar (Vice-chair), Robert Armstrong, Larry Banack, Tom Carey, Allan Lawrence, Laura Legge, Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member) and Helene Puccini. The following staff also attended: Katherine Corrick, Ian Lebane, Alexandra Rookes and Alan Treleaven.

A.

POLICY

A.1 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE REPORT

A.1.1 On May 24, 1996 the Legal Education Committee reported to Convocation that the M.C.L.E. Subcommittee's report would be presented at the June 28 meeting of Convocation.

A.1.2 The Legal Education Committee had authorized the M.C.L.E. Subcommittee to circulate its draft report to the profession for comment. The report was circulated and comments were received during the months of April and May, 1996.

A.1.3 The report has been provided to Convocation under separate cover for consideration at the June 28 Convocation.

A.2 BAR ADMISSION COURSE EXAMINATION REGRADING ISSUE (from May 23)

A.2.1 The Legal Education Committee assessed the current examination regrading system whereby students are permitted to review their failed examinations and the marking guide prior to applying for a regrade.

A.2.2 The Committee considered implementing one of three possible options outlined in the attached document entitled "Examination Appeals". (pages 1 - 3)

A.2.3 The Committee recognized the paramount importance of protecting the public by ensuring the competence of newly-called lawyers through the administration of rigorous, effective examinations. This requires the development and maintenance of a bank of confidential examination questions.

A.2.4 Recommendation: The Legal Education Committee recommends that,
(1) the Bar Admission Course maintain a bank of strictly confidential examination questions; and
(2) students who fail an examination but who attain a grade within a specified range of the passing score be permitted to obtain an automatic regrade of their examination in lieu of being permitted to review their failed examination before applying for a regrading.

A.3 BAR ADMISSION COURSE EXAMINATION PASSING SCORE (from June 13)

A.3.1 In 1994 and 1995, the passing score on the Bar Admission Course examinations was 60%. This passing score has been problematic for a number of reasons. The failure rate on Bar Admission Course examinations fluctuates substantially from year to year. Within any one year, the failure rate varies widely from examination to examination. It has proven difficult to successfully gauge the degree of difficulty of each examination.

A.3.2 On May 8, 1996, a special subcommittee of the Legal Education Committee met to consider the effectiveness of the 60% passing score, and to consider other means of standard setting. On June 13, 1996, the Legal Education Committee accepted the subcommittee's recommendation that a norm-referenced passing score be implemented.

A.3.3 A background paper detailing issues relating to setting the passing score for Bar Admission Course examinations is attached. (pages 4 - 7) An expert in educational measurement and testing consulted by the Bar Admission Course has strongly recommended the implementation of a norm-referenced passing score. Norm-referenced passing scores are widely accepted and used by many licensing bodies that administer examinations to large numbers of students.

A.3.4 The chart in the background paper (page 7) sets out comparative statistics for the 1995 set of Bar Admission Course examinations. It shows the number of failures on each examination using both a 60% passing score and a norm-referenced passing score of 1.5 standard deviations below the mean. As can be seen from the chart, the fail rate would have been more consistent examination to examination, and approximately the same number of students would have failed, if the norm-referenced passing score had been in place in 1995.

A.3.5 Recommendation: The Legal Education Committee recommends that,
(1) the passing score for each Bar Admission Course examination be set at 1.5 standard deviations below the corrected mean;
(2) the norm-reference group comprise those students taking the examination for the first time; and
(3) the passing score on each supplemental examination be the passing score established for the regular examination.

A.4 PHASE THREE REQUIREMENTS FOR STANDING: 1996 (from June 13)

A.4.1 Phase Three of the Bar Admission Course begins its sixth term on September 3, 1996, the first day of the Civil Litigation course, and runs to December 12, 1996, the day of the Business Law examination.

A.4.2 The Legal Education Committee and Convocation annually settle and approve the Requirements for Standing, which govern Phase Three of the Bar Admission Course. The proposed Requirements for Standing for Phase Three 1996 of the Bar Admission Course are attached. (pages 8 - 11) The proposed Requirements for Standing are generally similar to those in force in 1995.

A.4.3 Section 3(2) of the draft is new, and is intended to create a narrow exception to section 3(1), which has been in force continuously since the beginning of the current format of Bar Admission Course in 1991.

A.4.4 Sections 11 and 12 relate to the system of regrading failed examinations. These two sections reflect changes approved by the Legal Education Committee at its May 23 meeting. (See A.2 above.)

A.4.5 Recommendation: It is recommended that the draft 1996 Phase Three Requirements for Standing be approved.

A.5 ONTARIO CENTRE FOR ADVOCACY TRAINING (from June 13)

A.5.1 The Ontario Centre for Advocacy Training ("O.C.A.T.") is jointly partnered by the Advocates' Society and the Law Society. As a partner, the Law Society has three seats on the O.C.A.T. Board, as does the Advocates' Society. The Board in turn has elected three additional members. On an annual basis Convocation has been approving a cash and in-kind grant to assist O.C.A.T. in its activities. For the Law Society 1996 budget year, the Law Society is contributing $20,000 in cash and $4,000 of in-kind services, which are attributable mainly to free teaching space in the Law Society's London, Ottawa and Toronto facilities.

A.5.2 The educational mission of O.C.A.T. is to run advocacy skills workshops, typically featuring classes of eight to sixteen lawyers. The small class size is important for advocacy training, and the costs of running the workshops are higher than for lecture-format programming.

A.5.3 The Advocates' Society has written to the Treasurer proposing that the Advocates' Society take over the operation of O.C.A.T., and that the Law Society no longer be a partner. The Advocates' Society believes that the elimination of the partnership would encourage the Advocates' Society to be more dynamically committed to the enterprise of O.C.A.T. The Advocates' Society, however, requests that the Law Society continue with its annual financial and in-kind contribution.

A.5.4 Recommendation: It is recommended that the Treasurer be authorized to accept the proposal of the Advocates' Society, subject to the Law Society's future cash and in-kind contribution being contingent on approval by Convocation on an annual basis.

B. ADMINISTRATION

There were no regular business and administration matters considered.

C.
INFORMATION

C.1 ARTICLING PLACEMENT REPORT

C.1.1 The up-to-date Articling Student Placement report, prepared by the Director of Financial Aid and Placement, Mimi Hart, will be available at Convocation.

C.2 BAR ADMISSION COURSE EXAMINATION SETTING AND GRADING PROTOCOL (from May 23)

C.2.1 One important concern in discussing the matters referred to in item A.2. (above) relates to improving the procedures for examination setting and grading. Bar Admission Course examinations, in order to be a reliable measure of student competence, must be effectively prepared and graded. The Director of Education and Bar Admission Course staff work with dedicated teams of volunteers from the practising bar, including Section Heads, to produce and grade examinations.

C.2.2 The Legal Education Committee approved a procedural protocol (pages 12 - 13) that will govern the production and grading of Bar Admission Course examinations. The protocol is an essential tool to produce and grade examinations reliably, and must be followed by those staff and members of the profession, including Section Heads, who participate in the examination setting and grading process. The Director of Education, Bar Admission Course staff, Section Heads and examination teams will follow the protocol in the setting and grading of Bar Admission Course examinations.

C.3 BAR ADMISSION COURSE SENIOR INSTRUCTOR APPOINTMENT (from June 13)

C.3.1 Kevin Doyle has stepped down as Senior Instructor (French language section) in Civil Litigation in the Ottawa Bar Admission Course. Ronald F. Caza has assumed the post, and will work with co-Section Heads David Stinson and Michael Watson, and Senior Instructors Timothy Ray (Ottawa) and William Dewar (London).

C.3.2 Since his Call to the Bar of Ontario, Ronald Caza has been exclusively practising advocacy with the law firm of Nelligan, Power. His main area of practice is civil litigation, with involvement in insurance-related matters, professional liability defence, personal liability defence, personal injury and employment law. He also practises criminal law. He is bilingual, and a considerable portion of his practice is carried on in the French language.

C.3.3 For the past six years, he has been a lecturer in civil procedure (French language course) at the Faculty of Law of the University of Ottawa, and an instructor with the Bar Admission Course in Ottawa.

ALL OF WHICH is respectfully submitted

DATED June 28, 1996

P. Epstein
Chair

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

Item A.-A.2.2 - Copy of document entitled Examination Appeals. (Pages 1 - 3)

Item A.-A.3.3 - Copy of background paper entitled Passing Score for Bar Admission Course Examinations. (Pages 4 - 7)

Item A.-A.4.2 - Copy of the Proposed Requirements for Standing for Phase Three 1996 of the Bar Admission Course. (Pages 8 - 11)

Item C.-C.2.2 - Copy of document entitled Examination Setting and Grading Procedures. (Page 12 - 13)

It was moved by Mr. Epstein, seconded by Mr. Millar that the balance of the Legal Education Report be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

NOTICES OF MOTION

The following Notices of Motion will he moved at the July Convocation.

(1) Amendment of Rules made under Subsection 62(1) of the Law Society Act re: Meeting of Members: Rules of Procedure.

(2) Amendment of Rules made under Subsection 62(1) of the Law Society Act re: Appointment of Auditor.

(3) Amendment of Rules made under Subsection 62(1) of the Law Society Act re: Election of Benchers: Certification of Results.

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of February, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of conduct unbecoming and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Derek George Nayduk be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister or solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of February, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Gary Michael Yaffe be reprimanded in Convocation, such reprimand to be administered at a date to be set.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF John Lawrence Deziel, of the Town of Belle River, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of February, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that John Lawrence Deziel be reprimanded in Convocation; that he attend the Professional Responsibility portion of the Bar Admission Course and pass the examination in that course; and, that he enrol in the Law Society's practice Review Programme and co-operate in implementing any recommendations issuing from that programme. Convocation further orders that the Solicitor pay costs in the amount of $1,500.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Henry Conrad, of the Town of Markham, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 8th day of March, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of conduct unbecoming and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that David Henry Conrad be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solciitor and from holding himself out as a barrister and solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Marvin Harvey Siegel, of the City of Toronto, a Barrister and Solciitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of April, 1995, in the presence of Counsel for the Society, the Solciitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Marvin Harvey Siegel be suspended for a period of one month, effective immediately, and indefinitely thereafter until her has made his filing.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF George Thomas Gardiner of the City of Scarborough, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of February, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that George Thomas Gardiner be suspended for a period of one year, effective immediately; and, that he be permitted to return to the practice of law after the expiry of that one year, provided the following conditions are met:

1. The Solicitor continue to receive treatment from Dr. M. H. Ben-Aron or another psychiatrist pre-approved by the Secretary of the Law Society of Upper Canada, and to see that psychiatrist at a frequency which the psychiatrist considers appropriate to his needs.

2. The Secretary of the Law Society of Upper Canada receive quarterly reports from that psychiatrist indicating that the Solicitor is continuing in treatment and that there is no mental illness, that might prevent him from practising law responsibly, that has developed beyond that covered in Dr. Ben-Aaron's letter. The object is to see that the Solciitor is able to practise law responsibly. If there is a problem with obtaining the concurrence of Dr. Ben-Aron to this, either Counsel may bring this to the attention of the Secretary of the Law Society of Upper Canada in order to seek some alternate solution.

3. The Solicitor is to practise only in association with another lawyer and he is not to operate a general or trust bank account.

4. The Solicitor is to be supervised by the member of the Law Society of Upper Canada in good standing with whom he practises and that person is to be pre-approved, as to both identity and the appropriate level of supervision, by the Secretary of the Law Society of Upper Canada. That member must provide a letter to the Secretary of the Law Society stating that he is familiar with this decision, the Order of Convocation, as well as the conditions which brought about the Order and confirming his or her agreement to supervise.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Howard William Cohen, of the Town of Thornhill, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of January, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Howard William Cohen be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister or solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Howard William Cohen, of the Town of Thornhill, a Barrister (hereinafter referred to as "the Solciitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of January, 1996, in the presence of Counsel for the Society, the Solciitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Howard William Cohen be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solciitor and from holding himself out as a barrister and solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of March, 1996, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Morris Manning, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that David Harris be suspended for a period of eight months, such suspension to commence May 15, 1996; that he be required to enrol in the Practice Review Programme of the Professional Standards Department; that he pay costs to the Law Society in the amount of $5,000 prior to resuming the practice of law; and, that he attend for medical treatment pursuant to the undertaking given on the in-camera hearing before the discipline committee.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Shane William Edwards, of the Town of Carleton Place, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of March, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Shane William Edwards be suspended for three months, effective immediately, and indefinitely thereafter until he has complied fully with the requirements of the Law Society as set out in the Report and Decision of the Discipline Committee dated March 14, 1996.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Douglas Laird Smith, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of February, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Douglas Laird Smith be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Robert Douglas Laird Smith, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of February, 1996, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid:

CONVOCATION HEREBY ORDERS that Robert Douglas Laird Smith be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister or solicitor.

DATED this 25th day of April, 1996

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 27 day of September 1996.

Treasurer