

MINUTES OF CONVOCATION

Friday, 19th February, 1999
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Armstrong, Backhouse, Bobesich, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cronk, Crowe, DelZotto, Eberts, Epstein, Finkelstein, Gottlieb, Jarvis, Keenan, Krishna, Lamek, Lamont, Lawrence, MacKenzie, Manes, Marrocco, Millar, Murray, O'Brien, Puccini, Robins, Ross, Scott, Stomp, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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MOTION - REPORTS TO BE TAKEN AS READ

It was moved by Mr. Crowe, seconded by Mr. DelZotto that the Draft Convocation Minutes for January 21st, 22nd and 28th, 1999 be adopted.

Carried

BAR ADMISSION COURSE REFORM

Ms. Backhouse requested that the Report be put over to the March Convocation to permit some further consultation with the large law firms.

It was moved by Ms. Backhouse, seconded by Mr. Gottlieb that the Report be adjourned to the March Convocation.

Carried

REPORT OF THE LEGAL AID COMMITTEE

Meeting of February 10th, 1998

Mr. Armstrong presented the Report of the Legal Aid Committee for information only.

Report to Convocation

Nature of Report: Information

TABLE OF CONTENTS

Committee Process 1

Area Committee Appointments 1

1999/2000 Business Plan - Appendix A

Financial Reports - December 1998 - Appendix B

The Legal Aid Committee met on February 10, 1999. In attendance were:

Committee members: Bob Armstrong (Chair), Tamara Stomp, Rich Wilson, Derry Millar, Marshall Crowe, Elvio DelZotto, Abe Feinstein, Gerry Swaye and Allan Lawrence.

Senior Management of OLAP: Bob Holden, Provincial Director, Deputy Directors George Biggar, Ruth Lawson and David Porter, Clinic Funding Manager, Joana Kuras.

Law Society, Government Relations: Sheena Weir. Other OLAP Staff: Elaine Gamble, Communications Coordinator and Felice Mateljan, Executive Assistant.

The following items are for your information:

1. Area Committee Appointments

The Committee approved one new appointments to the Peel Area Committee as recommended by the Provincial Director: Irving André.

1999/2000 Business Plan

The 1999/2000 Business Plan is attached.

Financial Reports - December 1998

The financial reports for December 1998 are attached.

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

- (1) Copy of the 1999/2000 Business Plan: The New Beginning.
- (2) Copy of the Ontario Legal Aid Plan Financial Reports - December 1998.

THE REPORT WAS RECEIVED

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Meeting of February 11th, 1999

Mr. MacKenzie presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
February 11, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS	1
I. POLICY	
AMENDMENTS TO BY-LAW 21 AND RULE 8.02 OF THE RULES OF PRACTICE AND PROCEDURE RESPECTING INTERIM ORDERS	3
A. NATURE OF THE ISSUE	3
B. BACKGROUND	3
C. THE COMMITTEE'S REVIEW AND PROPOSAL	4
D. DECISION FOR CONVOCATION	5
ELECTRONIC FUNDS TRANSFER WITHIN THE TERAVIEW ELECTRONIC REGISTRATION SYSTEM .	6
A. NATURE OF THE ISSUE	6
B. BACKGROUND	7
C. THE COMMITTEE'S REVIEW AND PROPOSAL	9
D. DECISION FOR CONVOCATION	11
II. INFORMATION	
BENCHER ORIENTATION SESSIONS ON THE NEW HEARING PROCESS	12

ISSUES ARISING FROM CONVOCATION'S APPROVAL OF NEW REGULATORY PROVISIONS ARISING FROM THE LEGISLATIVE AMENDMENTS	12
POLICY ISSUES ARISING FROM THE HOWIE REPORT ON OUTSIDE COUNSEL'S ACCOUNTS IN THE EAGLESON DISCIPLINARY PROCEEDING	13
REVIEW OF RULE 18 OF THE RULES OF PROFESSIONAL CONDUCT	14
ISSUES RESPECTING FULFILMENT OF UNDERTAKINGS TO THE LAW SOCIETY	15
STATUS OF COMMITTEE ISSUES	16
APPENDIX 1 - PROPOSED AMENDED BY-LAW 21 AND RULE 8.02 OF THE RULES OF PRACTICE AND PROCEDURE	17
APPENDIX 2 - MEMORANDUM OF MICHAEL SETO ON ELECTRONIC REGISTRATION OF TITLE DOCUMENTS	25

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 11, 1999. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)

Niels Ortvad

Robert Topp

Paul Copeland

Marshall Crowe

Gary Gottlieb

Staff: Jonathan Batty, Janet Brooks, Leslie Cameron, Jonathan Fedder, Don Godden, Michael Seto, Richard Tinsley, Stephen Traviss, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee's policy reports on:

- ♦ proposals for amendments to By-Law 21 (Proceedings Authorization Committee) and Rule 8.02 of the Rules of Practice and Procedure respecting interim orders; and
- ♦ proposals for amendments to By-Law 19 (Handling of Money and Other Property) respecting certain electronic trust transfers in the Teraview Electronic Registration System;

and information reports on:

- ♦ orientation sessions for benchers on the new hearing process in the *Law Society Act*;
- ♦ issues arising from Convocation's approval of the new legislative scheme for the regulatory process;
- ♦ policy issues arising from the report of Kenneth Howie on the accounts of outside counsel in disciplinary proceeding against Alan Eagleson;
- ♦ review of Rule 18 of the Rules of Professional Conduct;
- ♦ review of certain issues concerning members' undertakings to the Law Society; and

- ◆ review of the status of issues identified by the Committee for review in 1998-99.

I. POLICY

AMENDMENTS TO BY-LAW 21 AND RULE 8.02 OF THE RULES OF PRACTICE AND PROCEDURE RESPECTING INTERIM ORDERS

A. NATURE OF THE ISSUE

3. Regulatory staff raised with the Committee an issue on a possible interpretation of Rule 8.02 of the Rules of Practice and Procedure on interim orders of hearing panels and paragraph 8(1)3 of the Proceedings Authorization Committee ("PAC") by-law (By-Law 21). The question is whether these provisions could be interpreted to mean that the Society must seek PAC's authorization for *any* Rule 8.02 motion, when it was intended that only those orders as described in the by-law in an intended proceeding be authorized by PAC.

B. BACKGROUND

4. Part of the legislative package approved by Convocation and sent to the government requesting amendments to the *Law Society Act* dealt with the authority of the Society to pursue interim orders for a member's suspension or restriction of a member's practice.
5. Convocation's decision in this respect was that the group of benchers authorizing matters for the various proceedings before the Society's hearing panels - now known as the Proceedings Authorization Committee, or PAC - would also have authority to authorize interlocutory motions for interim orders in *intended* proceedings, where no notice of application for an order in a proceeding had been prepared and served on a member as a result of an authorization for such action.
6. The *Law Society Amendment Act, 1998* incorporated these amendments, and the by-law governing the PAC, By-Law 21 made by Convocation on January 28, 1999, provided that the PAC may review matters referred to it for "obtaining authorization for the Society to move for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law" during or after an audit, investigation or review, and may take action to "authorize the Society to move for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law" after review by the PAC of a matter.
7. Rule 8.02 of the Rules of Practice and Procedure, also made by Convocation on January 28, 1999, provided that:

At any time, including prior to service of a notice of application, the Society may bring a motion before a Hearing Panel for an interim order.
8. It became apparent to regulatory staff that the combined effect of the rule and the by-law could be interpreted to mean that *any* motion for an interim order, including those which the Society may wish to bring in a proceeding already commenced before a Hearing Panel, must be authorized by the PAC. As noted above, this was not the intention of Convocation.

C. THE COMMITTEE'S REVIEW AND PROPOSAL

9. The Committee agreed that to reflect the policy decision of Convocation, it was necessary to amend the language of both the rule and the by-law to reflect that motions for interim orders are to be authorized by the PAC in intended proceedings, but not in proceedings already commenced before a Hearing Panel.
10. The Committee then discussed whether authorization should be sought from the PAC for such motions where a proceeding had been authorized by it but the hearing has not yet commenced. The Committee's view was that it would be a rare occurrence where information would come to the attention of the Society after authorization but before the hearing commenced requiring, in the Society's opinion, an interim order for suspension or restriction. Given the anticipated infrequency, and the benefits attached to having the PAC review and approve a motion for such an order in the appropriate case, the Committee agreed that authorization should be sought from the PAC for motions for such orders the Society wishes to bring between the time of authorization and commencement of the hearing.
11. Accordingly, the Committee proposes amendments to both the rule and the by-law in the language appearing in the texts of the rule and by-law in Appendix 1.

D. DECISION FOR CONVOCATION

12. Convocation must decide:
 - a. whether it agrees with the Committee's proposal to amend By-Law 21 and Rule 8.02; and
 - b. if so, whether it agrees with the language of the amendments, or wishes to adopt other language.

ELECTRONIC FUNDS TRANSFER WITHIN THE TERAVIEW ELECTRONIC REGISTRATION SYSTEM

A. NATURE OF THE ISSUE

13. The Teraview Electronic Registration System ("TERS"), the new system for land registration in Ontario, began its pilot test phase in Middlesex County on January 25, 1999. One matter related to the system requiring immediate attention is how to institute a facility for the electronic transfer of funds for payment of land transfer tax and registration fees, initially for the test phase. The key issue is how such transfers of funds may be accomplished and still comply with the Law Society's governance provisions on permitted electronic funds transfers.¹
14. The Committee reviewed material prepared by Michael Seto, Statutory Advisor, Audit and Investigations, and discussed the options available to the Law Society in addressing the question. Mr. Seto's memorandum is attached at Appendix 2, highlights of which are incorporated in the following sections of the Committee's report. Members of Convocation are urged to read Mr. Seto's explanatory material for a fuller understanding of the issue.

¹A second issue, respecting the effect of members' suspensions on their ability to work within the electronic document registration system, was also discussed at Committee. It was determined that because specific notification and technology issues are involved, and discussions with Teraview are continuing, no definitive treatment respecting this matter was required at the Professional Regulation Committee level.

15. The Committee is proposing that Convocation approve an amendment to By-Law 19 to permit lawyers to establish a separate trust account from which funds for payment of land transfer tax and land registration fees only would be paid to, or more precisely debited by, Teraview on behalf of the Ministry of Consumer and Commercial Relations. This amendment would be instituted for the test phase as described above, following which a report from the LSUC-CBAO Joint Committee on Electronic Document Registration would be provided to Convocation in the fall of 1999 on the results.

B. BACKGROUND

16. Convocation at its June 1997 meeting adopted recommendations of the LSUC-CBAO Joint Committee on Electronic Document Registration. One of the recommendations was that the Law Society, for test purposes, "undertake the appropriate actions to implement an efficient means of trust funds transfers for the payment of land transfer tax and registration fees."

Current Electronic Trust Transfers Provisions

17. Electronic trust funds transfer provisions in the Law Society's by-laws were developed independent of TERS. They were created as a result of the requests from large downtown Toronto firms for Law Society direction on use of remote PC banking products, primarily to transfer trust funds from their trust accounts to their general accounts following billings to clients. The need for electronic funds transfer under TERS is to accommodate electronic registrations, which by statute, must be accompanied by registration fees and (if applicable) land transfer tax.
18. The Joint Committee's conclusion, after reviewing the current system, was that it appeared that the provisions will not accommodate TERS because,
- The parties to the electronic communication in the TERS (the law firm and Teranet) and that contemplated by current provisions (the law firm and its bank) are different.
 - The separation of duties contemplated by current provisions is inconsistent with the closing process (see By-law 19, subsection 7(2), at the end of Appendix 2).
 - The volume of transactions and the number of members affected were not within the contemplation of the current provisions.
 - The TERS envisages a "modified pull" of funds through pre-authorized debits ("PADs").

The Options

19. In keeping with Convocation's June 1997 adoption of the Joint Committee's recommendations, and other than use of the general account for payment of these amounts, the identified options for the appropriate method of payment from trust appear to include the following:
- i. Payments directly from lawyer's mixed trust account;
 - ii. Creation of a new type of trust account, namely, an electronic transition or "suspense" trust account.
20. Directing debits of land transfer tax and registration fees from lawyers' general accounts was considered by the Joint Committee as an overly onerous financial burden on lawyers, and allowable measures under current regulations to reduce such burdens were considered administratively cumbersome. Accordingly, while general account debits may remain as an option available to law firms, the Joint Committee specifically requested the ability to transfer trust funds.

Use of Mixed Trust or "Segregated" Trust Account

21. In reviewing whether electronic trust transfers from a lawyer's mixed trust account would be feasible, the Committee recognized that there were some key problems, including the following:
- there is no linkage between the lawyer's trust accounting records and the TERS. To protect solicitor-client confidentiality and privilege, Teranet will not have access to client trust listings to ensure that a sufficient trust balance exists for the client to complete the transaction. Similarly, there is no systemic assurance that the law firm will refer to its accounting records to ensure that adequate trust funds from the particular client are on deposit;
 - there remains the possibility of innocent misapplications affecting all clients with trust deposits with the firm²;
 - Traditional approaches to ensuring a high level of protection of client funds require lawyers to control and thus "push" trust funds (e.g. through signature of cheques). Thus, current regulatory provisions prevent non-lawyers from directly accessing, or "pulling", client funds from an account.
22. Information before the Committee suggested that a "suspense" or separate trust account for deposits of funds earmarked for electronic funds transfers would permit lawyers to effect electronic funds transfers without placing the trust funds of other clients at potential risk (particularly given the new "modified pull" of trust funds).
23. Any facility for a trust transfer would require an amendment to By-Law 19 on Handling of Money and Other Property, which contains the current electronic trust transfer provisions.

C. THE COMMITTEE'S REVIEW AND PROPOSAL

24. The Committee considered at some length the merits of permitting lawyers to establish a separate trust account for transfers of land transfer tax payments and registration fees.
25. While it recognized that these payments do not usually involve large sums, and that the general account debit could work and would be permitted by current by-law authority, provided that the disbursements are incurred at the time the debit occurs, the Committee felt there was a need to reflect in these circumstances continuity of the regulatory approach historically taken by the Law Society in connection with client funds delivered to lawyers in trust. The Committee determined that this could best be accomplished, and at the same time a facility provided to allow the TERS to work, by requiring lawyers to maintain the funds in trust until required for the purposes for which the funds were delivered by the client to the lawyer.
26. The Committee recognized that, similar to the existing electronic trust transfer provisions, a system for these specific debits should require the following minimum procedures:
- The lawyer must sign and maintain a requisition form;
 - The system must provide a confirmation from payee which the lawyer must print;
 - The lawyer must effect a comparison between the requisition form and the printed confirmation; and
 - At month end, the lawyer's firm should obtain a list of transactions/registrations for that month and utilize it for the purposes of reconciliation.

² *Re Ontario Securities Commission and Greymac Corp.* (1988), 65 O.R.(2d)479 (S.C.C.), recently affirmed as applicable to lawyers, held that shortages in pooled funds/accounts should be pro rated amongst all contributors to the fund.

27. Accordingly, the Committee proposes that By-Law 19 be amended to add language permitting lawyers to establish a separate trust account into which deposits of client funds may be made for the purpose of payment to Teraview of required land transfer tax and land registration fees and from which debits of such amounts may be made by Teraview upon registration of a transfer of land. The deposits are to be for a limited time, to be established in the amendment, to coincide with the imminent registration of the subject transfer of land.
28. It is understood by the Committee that this facility will be provided through the By-Law for the pilot test phase of the TERS, after which a report on the results of the test phase, including use of the separate trust account, will be provided to the Law Society.
29. While draft language for the amendments was not prepared by the Committee, it is anticipated that it will be available for Convocation's review on February 19, 1999.

D. DECISION FOR CONVOCATION

30. Convocation must decide:
 - (a) whether it agrees with the Committee's proposal to amend By-Law 19 as described herein;
 - (b) if so, whether it agrees with the language of the text of the proposed amendments.

II. INFORMATION

BENCHER ORIENTATION SESSIONS ON THE NEW HEARING PROCESS

31. The Chair of the Committee, with the Committee's approval and with the assistance of Committee vice-chair Niels Ortvad and Committee member Marshall Crowe, will be organizing orientation sessions for benchers on the new hearing process and procedures resulting from the amendments to the *Law Society Act* in force February 1, 1999.
32. The sessions will provide a more in-depth analysis of the changes than the overviews provided to benchers on January 28 and February 11, 1999. In anticipation of the need to inform and educate both newly elected and re-elected benchers on the new scheme after the election of benchers in May 1999, the sessions will be planned for a time shortly after the election.
33. Details will be provided to benchers as the planning continues.

ISSUES ARISING FROM CONVOCATION'S APPROVAL OF NEW REGULATORY PROVISIONS ARISING FROM THE LEGISLATIVE AMENDMENTS

34. On January 28, 1999 Convocation made rules of practice and procedure and by-laws under the amended *Law Society Act*, which came into force February 1, 1999. A number of issues arose in the course of Convocation's debate, which were referred to the Committee for review.
35. The Committee, agreeing with the Chair's suggested approach, appointed a working group of the Committee, comprised of Paul Copeland and Gary Gottlieb, and selected Law Society regulatory staff, to review the following five issues which arose out of the January 28 debate:

- The language of the notice to members whose suspensions pursuant to a summary order continue for 12 months, and who are subject to summary disbarment;
 - Consideration of guidelines on when suspensions and disbarments pursuant to summary orders will be exercised;
 - Whether the use of the word "disbarment" should be used when this occurs pursuant to a summary order;
 - As a broadening of 3. above, consideration of what penalties should be published;
 - Consideration of the appointment of an ombudsperson to assist lawyers involved in the Law Society's regulatory process.
36. Given the urgency of some of the issues, the working group has been instructed to commence work immediately, which will entail some legal research, and report to the Committee's March 1999 meeting, to allow for consideration of the issues at the soonest possible time by Convocation.

POLICY ISSUES ARISING FROM THE HOWIE REPORT ON
OUTSIDE COUNSEL'S ACCOUNTS IN THE
EAGLESON DISCIPLINARY PROCEEDING

37. As a result of Convocation's September 25, 1998 review of and direction on the findings in Mr. Kenneth Howie's report on the accounts of outside counsel in the Alan Eagleson discipline proceeding, several policy issues arising from the report required review by the Committee.
38. The Committee had an opportunity to review these issues at its February 1999 meeting. The Committee noted that while some of the issues raised by Mr. Howie have been addressed through the *Guidelines For Retention And Oversight Of Outside Counsel Representing The Law Society Of Upper Canada In Professional Regulation Matters* (approved by Convocation May 29, 1998), a number of matters still required further attention.
39. With respect to a particular issue, at the suggestion of the Chair and with the Committee's approval, she and the Secretary, Richard Tinsley, will be preparing further material for consideration by the Committee, focussing on a systemic approach to a responsible and meaningful method to monitor costs of investigations. This assessment is to be completed for the Committee's review before the bench election.
40. The Committee will report on its consideration of proposals for action in this respect and on the other issues arising from Mr. Howie's report within the next two months.

REVIEW OF RULE 18 OF THE
RULES OF PROFESSIONAL CONDUCT

41. Early in the summer of 1998, the discipline authorization committee referred to the Committee an issue concerning the scope and interpretation of Rule 18, which governs the lawyer in public office. The issues, among others, relate to the definition of "public office" and "official body" and what a lawyer is expected to do when his or her duties as a lawyer and as an individual in public office conflict.
42. The Committee reviewed a recent memorandum on the issues prepared by Stephen Traviss, Senior Counsel - Professional Conduct, offering some insight on the issues.
43. The Committee acknowledged the comprehensive review of the Rules of Professional Conduct now in progress through the Task Force on Review of the Rules of Professional Conduct, and decided that issues relating to Rule 18 should be referred to that Task Force for further review.

44. Accordingly, notice was provided in this respect to Gavin MacKenzie, a vice-chair of the Committee and a co-chair of the Task Force.

ISSUES RESPECTING FULFILMENT OF UNDERTAKINGS
TO THE LAW SOCIETY

45. An issue arising from a matter before Discipline Convocation was referred to the Committee for review, relating to the continuous application of undertakings given by lawyers to, for example, respond promptly to Law Society communications. In these situations, the intention of the Society is that the obligation articulated in the undertaking should continue *ad infinitum*. The Committee considered whether, in the circumstances in which these undertakings are sought from lawyers and given by them to the Society, there is need to place time limits on their application.
46. It was concluded that no change in the policy respecting this type of undertaking was required, on the basis that:
- it is not unfair to the lawyer to have this undertaking apply for other than a fixed time period, given that the circumstances will dictate whether in the first instance such undertakings are appropriate, and
 - in terms of the Society's responsibilities, it would not be appropriate to impose an arbitrary finite time limit on this type of obligation.
47. It was also determined that nothing would prevent a lawyer from applying to the Society for relief from the undertaking and that the Society would consider appropriate cases where the lawyer should be relieved of the obligation.

STATUS OF COMMITTEE ISSUES

48. The Committee reviewed issues previously prioritized for the 1998-99 Committee year. While noting that a number of issues had been dealt with to date, the Committee determined that given the short time frame between now and the bench election, which is followed shortly by the last committee meeting of the Committee year, the following issues should be carried forward to the next reconstituted Committee, after the election:
- Policy on lawyers' sexual relationship with clients;
 - Review of the length of time discipline records should exist; and
 - Sentencing/suspension guidelines.

APPENDIX 1

PROPOSED AMENDED
BY-LAW 21
AND
RULE 8.02 OF THE RULES OF PRACTICE AND PROCEDURE

BY-LAW 21

PROCEEDINGS AUTHORIZATION COMMITTEE

Definitions

1. In this By-Law,

“Committee” means the Proceedings Authorization Committee;

“outside counsel” means a person appointed under section 49.53 of the Act to represent the Society in any proceeding under Part II of the Act before the Hearing Panel, the Appeal Panel or a court that concerns a benchers or employee of the Society;

“outside investigator” means a person appointed under subsection 49.5 (2) of the Act to conduct an investigation of the conduct or capacity of a benchers or employee of the Society.

“outside reviewer” means a person appointed under subsection 49.6 (2) of the Act to conduct a review of a benchers’ practice.

Establishment of Proceedings Authorization Committee

2. (1) There is hereby established a committee to be known in English as the Proceedings Authorization Committee and in French as Comité d’autorisation.

Composition

(2) The Committee shall consist of four benchers appointed by Convocation.

Chairs and vice-chairs of certain standing committees

(3) The Committee must include,

(a) the chair or a vice-chair of the Professional Regulation Committee; and

(b) the chair or a vice-chair of the Professional Development and Competence Committee.

Restrictions on appointments

(4) A benchers who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act may not be appointed to the Committee.

Term of office

(5) Subject to subsection (6), a benchers appointed to the Committee shall hold office for a term of one year and is eligible for reappointment.

Appointment at pleasure

(6) A benchers appointed to the Committee holds office as a member of the Committee at the pleasure of Convocation.

Chair

3. (1) Convocation shall appoint one member of the Committee who is an elected benchers as chair of the Committee.

Term of office

(2) Subject to subsection (3), the chair holds office for a term of one year and is eligible for reappointment.

Appointment at pleasure

- (3) The chair holds office at the pleasure of Convocation.

Function of Committee

4. The Committee shall review all matters referred to it in accordance with this By-Law or any other by-law and, in respect of each matter, shall determine whether any action mentioned in subsection 9 (1) should be taken.

Review of matters: quorum of Committee

5. (1) Two members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter.

Temporary members

- (2) If no two members of the Committee are able to constitute a quorum because three or more members of the Committee are unable for any reason to act, subject to subsection (3), the chair of the Committee may appoint one or more benchers as temporary members of the Committee for the purposes of constituting a quorum, and the temporary members shall be deemed, for the purposes of subsection (1), to be members of the Committee.

Ineligible benchers

- (3) The chair shall not appoint as a temporary member of the Committee a bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act.

Review by telephone conference call, etc.

6. The Committee may meet to review a matter by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously.

No right to participate

7. (1) Subject to subsection (2), no person may participate in the review of a matter by the Committee.

Participation at request of Committee

- (2) For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:

1. A person who has referred a matter to it.
2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to a matter.

Referral by Secretary, outside investigator, outside reviewer

8. (1) Subject to subsection (2), during or after an audit, investigation or review, the Secretary, an outside investigator or an outside reviewer, as the case may be, may refer to the Committee a matter respecting the conduct of a member, group of members or student member, the capacity of a member or student member or the professional competence of a member for one or more of the following purposes:

1. Obtaining directions with respect to the conduct of an audit, investigation or review.
2. Obtaining approval or directions for the informal resolution of the matter.
3. Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

4. Obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether,
 - i. a member or student member has contravened section 33 of the Act,
 - ii. a member or student member is or has been incapacitated, or
 - iii. a member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by Secretary, outside investigator

(2) The Secretary, or an outside investigator, shall not refer to the Committee a matter respecting the conduct of a member or student member if the matter is a complaint that has been referred to the Complaints Resolution Commissioner for resolution or review and the Complaints Resolution Commissioner has not yet disposed of the matter.

Recommendations for action

(3) A person who refers a matter to the Committee may recommend actions to be taken by the Committee in respect of the matter, and, in making his or her recommendations, the person is not restricted to recommending the actions mentioned in paragraphs 1 to 5 of subsection 9 (1).

Review of matters

9. (1) After reviewing a matter, the Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
 - i. a member or student member has contravened section 33 of the Act,
 - ii. a member or student is or has been incapacitated, or
 - iii. a member is failing or has failed to meet standards of professional competence.
3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.
4. Send to a member or student member a letter of advice concerning his or her conduct.
5. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.
6. Any other action that the Committee considers appropriate.

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence unless the Committee is satisfied that there are reasonable grounds for believing that the member is failing or has failed to meet standards of professional competence.

Appointment of representative

10. (1) Where the Committee authorizes the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated, the Committee may appoint another member to represent the member or student member in proceedings under Part II of the Act before the Hearing Panel, the Appeal Panel or a court if the Committee is satisfied that,

- (a) the member or student member is unable to participate in the proceedings or is unable to instruct counsel to do so;
- (b) the member or student member is not represented by counsel; and
- (c) the member or student member does not have a guardian, an attorney or a similar person who has authority to represent the member or student member in the proceedings.

Costs

(2) The costs resulting from an appointment under subsection (1) shall be paid for by the Society.

Decision in writing

11. The Committee shall record in writing its decision on every matter referred to it.

Notice

12. The Committee shall give to the Secretary notice of its decision on every matter referred to it.

Reasons

13. The Committee is not required to provide at any time to any person its reasons for a decision.

Withdrawal of application to Hearing Panel

14. (1) If the Committee authorizes the Society to apply to the Hearing Panel for a determination mentioned in paragraph 2 of subsection 9 (1) but the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, the Society shall not withdraw its application to the Hearing Panel unless the Committee has first authorized the withdrawal.

Request for withdrawal: procedure

(2) A request to the Committee to withdraw an application to the Hearing Panel shall be made by the Secretary or an outside counsel, as the case may be, and sections 5, 6, 7, 11, 12 and 13 apply, with necessary modifications, to the Committee's consideration of the request.

Commencement

15. This By-Law comes into force on February 1, 1999.

RULE 8.02 OF THE RULES OF PRACTICE AND PROCEDURE

Current Rule:

- 8.02 At any time, including prior to service of a notice of application, the Society may bring a motion before a Hearing Panel for an interim order.

Amendment:

- 8.02 (1) Subject to subrule (2), the Society may bring a motion before the Hearing Panel for an interim order.
- (2) Where a motion for an interim order is brought prior to the authorization of a notice of application, or the Hearing Panel has not commenced a hearing to determine the merits of a proceeding, the Society shall bring the motion with the authorization of the Proceedings Authorization Committee.

APPENDIX 2

MEMORANDUM OF MICHAEL SETO
ON
ELECTRONIC REGISTRATION OF TITLE DOCUMENTS

Electronic Registration of Title Documents

Electronic Funds Transfer

Table of Contents

Executive Summary	1
Introduction	3
Electronic Trust Transfers - By-Law 19 (formerly ss.14(10.1) to (10.7), Regulation 708)	3
<i>Application of Existing System to TERS</i>	6
Unique Teranet Aspects	7
Proposed Required Minimum Office Procedures	8
Direct Debiting Options	9
<i>The General Account Option</i>	9
<i>Direct Debiting from Trust Accounts</i>	10
Direct Debit from Lawyer's Mixed Trust Accounts	10
Direct Debiting from Transition/"Suspense" Trust Account	11
Implementation	11

Executive Summary

The Teraview Electronic Registration System ("TERS") entered into its pilot test phase on January 25, 1999 in Middlesex County. In order to support TERS, Convocation at its June 1997 meeting adopted recommendations of the LSUC-CBAO Joint Committee on Electronic Document Registration, including one that the Law Society, for test purposes, "undertake the appropriate actions to implement an efficient means of trust funds transfers for the payment of land transfer tax and registration fees." The purpose of this report is to seek this Committee's, and Convocation's, direction on specific policies to bring effect to this recommendation.

Current electronic trust funds transfer provisions were developed independent of TERS. They were created further to a request from large downtown Toronto firms for Law Society direction as to use of remote PC banking products, primarily to transfer trust funds from their trust accounts to their general accounts following billings to clients. The need for electronic funds transfer under TERS is to accommodate electronic registrations, which by statute, must be accompanied by registration fees and (if applicable) land transfer tax. Following consideration by the Joint Committee, it appears that current provisions will not accommodate TERS because,

- The parties to the electronic communication in the TERS (the law firm and Teranet) and that contemplated by current provisions (the law firm and its bank) are different.
- The separation of duties contemplated by current provisions is inconsistent with the closing process.
- The volume of transactions and the number of members affected were not within the contemplation of the current provisions.
- The TERS envisages a "modified pull" of funds through pre-authorized debits ("PADs").

Directing debits of land transfer tax from lawyers' general accounts is considered by the Joint Committee as an overly onerous financial burden on lawyers. Allowable measures under current regulations to reduce such burdens are considered administratively cumbersome by the Joint Committee. While this option should be left available to law firms, the ability to transfer trust funds is requested by the Joint Committee.

Any proposed electronic trust funds transfer system should require the following minimum required procedures:

- The lawyer to sign and maintain a requisition form.
- The system must provide a confirmation from payee which the lawyer must print.
- The lawyer must effect a comparison between the requisition form and the printed confirmation.
- At month end, the lawyer's firm should obtain a list of transactions/registrations for that month and utilize it for the purposes of reconciliation.

REQUEST 1:

In keeping with Convocation's June 1997 adoption of the Joint Committee's recommendations, this Committee's direction as to the appropriate method of payment from trust is sought.

The identified options are:

- 1) Payments directly from lawyer's mixed trust account.
- 2) Creation of a new type of trust account; namely an Electronic Transition or "Suspense" Trust Account. For test purposes, staff prefer this option.

REQUEST 2:

The Committee's directions as to the method of implementation of the test method of trust transfer is also sought, namely,

- (a) a change to the regulation/by-laws of the Law Society; or
- (b) such other option as the Committee feels appropriate.

Introduction

At its June 1997 meeting, Convocation approved for testing purposes, recommendations made by the LSUC-CBAO Joint Committee on Electronic Document Registration ("the Joint Committee"). The Joint Committee was struck in order to develop recommendations to address law practice related issues arising from the Teraview Electronic Registration System ("TERS"); the initiative of the Ministry of Consumer and Commercial Relations to convert Ontario's paper-based land title system to an electronic one.

Amongst the recommendations approved by Convocation for testing purposes was,

[t]hat the LSUC undertake the appropriate actions to implement an efficient means of trust funds transfers for the payment of land transfer tax and registration fees consistent with facilitating the TERS.

Since the closing of real estate deals and registration under the TERS will not typically occur at land registry offices (registrations will be made remotely from lawyers' offices), electronic means of transferring funds for payment of registration fees and land transfer tax concurrent with the process of electronic registration must be accommodated.³ Registration fees and land transfer tax will be collected by Teranet Information Systems Inc. as agent for the Ministry of Consumer and Commercial Relations.

Electronic Trust Transfers - By-Law 19 (formerly ss.14(10.1) to (10.7), Regulation 708)

Commencing in 1993, a Law Society sub-committee⁴ studied the issue of lawyers using remote PC banking to transact trust funds. The analysis was based on a review of products promoted by financial institutions, primarily for the purpose of moving funds from the firm's trust account to its general account following client billings. These products, as expected, were developed mindful of the generic needs of the institutions and their customers; none specifically addressed issues in connection with the fiduciary/trust obligations of lawyers and their trust funds. The sub-committee's report formed the basis of the current electronic trust funds transfer regime in subsections 14(10.1) through 14(10.7) inclusive of Regulation 708. These provisions have been carried forward in the By-Law 19 drafted pursuant to recent legislative amendments to the *Law Society Act*. This by-law accompanies this report.

Minimum requirements were established to provide the same level of safeguards present in the paper system. The requirements can be summarized as follows:

³ The *Land Transfer Tax Act*, R.S.O. 1990, chap. L.6, section 2.1 states that "[e]very person who submits for registration as an electronic document under Part III of the Land Registration Reform Act a conveyance by which any land is conveyed to or in trust for any transferee shall pay when the electronic document is submitted for registration,..." land transfer tax calculated in accordance with the Act.

⁴ Consisting of benchers Kenneth E. Howie and staff members George Macri (Deputy Director of Audit), Bill Edward (Investigation Auditor) and Don Godden (staff lawyer with Practice Advisory)

Requirement	Requirement Type	Rationale for Requirement
Lawyer must sign a requisition prescribed by the Law Society	<ul style="list-style-type: none"> Internal office process Provides audit trail. 	<ul style="list-style-type: none"> Products do not restrict authority to negotiate trust funds to lawyers (akin to requirement that only lawyers having signing authority on trust accounts in a paper system). In the absence of a requisition, there would be no documentation of a lawyer instructing the transaction (akin to a lawyer signed cheque). It is expected that lawyers would wish to delegate to staff mechanical processes of entering and sending transaction instructions to the bank (i.e. the process contemplates that the only instructions to the banks would come from non-lawyers). Products do not provide passwords distinguishing between account holder and persons with authority to instruct bank.
<p>The sending of instructions to the financial institution requires a separation of duties between,</p> <p>(i) the person physically entering the transaction data into the system; and,</p> <p>(ii) a separate person authorizing the transaction.</p>	<ul style="list-style-type: none"> System requirement. (The system must require this before instructions are effected.) Provides internal (office) security 	<ul style="list-style-type: none"> This requirement was built into the system on the premise that it would be more difficult to effect a theft or fraud if transactions were overseen by another person. This requirement impedes a staff member from improperly electronically directing trust funds. This requirement was also included in order to offset the fact that a signature of a lawyer is not required in the instructions conveyed to the bank. This eliminates the risk of "forgeries" to the banks and places it onto lawyers and their clients. (In a paper system, the bank remains liable if there is a "poor" forgery on a cheque; in the electronic system, maintaining integrity over the account is placed on the lawyer/customer.)
The system must produce within a day of authorization, a confirmation from the financial institution of particulars of the transaction.	<ul style="list-style-type: none"> System requirement. Provides audit trail 	<ul style="list-style-type: none"> Given that the financial transaction would be completed much quicker than in the paper system (which has delays built in due to various parties handling the cheque as well as banking clearing rules), a prompt confirmation was felt to be required in order to: <ul style="list-style-type: none"> (i) ensure that the bank received proper instructions; and (ii) allow the member the opportunity to identify and correct errors. In the absence of a signed paper cheque, this forms the only documentation in the lawyer's possession as to instructions upon which the bank acted.

Requirement	Requirement Type	Rationale for Requirement
Not later than the day after the day on which the confirmation is sent, the lawyer must print the confirmation and conduct a comparison between the requisition and the confirmation	<ul style="list-style-type: none"> Internal office process Provides audit trail and internal (office) security 	Given the speed of transactions in electronic transactions (see comments in above cell), a prompt comparison was felt necessary to ensure that only proper transactions were instructed and acted upon. In the event of error, only a prompt identification would allow the lawyer to take steps to rectify.

Exceptions to the above are made where the lawyer is a "pure" sole practitioner (i.e. (S)he has no employees).

Application of Existing System to TERS

The existing systems requirements were examined in the context of the TERS by the Joint Committee and were considered not viable for the following reasons.

- **Different Parties to the Communication** - The current regulation was prepared in the context of systems forming an electronic communication between the lawyer and her/his bank. In the TERS, the parties to the communication are the lawyer (or his/her representative/staff) and Teranet. There is no communication between the lawyer and the bank through the TERS. This most directly affects the requirement for a timely delivery of confirmation from the lawyer's financial institution.
- **Separation of Duties Inconsistent with Closing Process** - The process of closing real estate transactions and registering documents is frequently attended to by freelance conveyancers (i.e. non-staff of the lawyer) as well as law office staff. The concept of separation of duties is therefore difficult to enforce and unworkable. Additionally, this requirement has not been built into the TERS and would require a significant reworking of the closing process.
- **Volume of Transactions** - TERS will have a tremendous effect on the practise of real estate law in Ontario. According to statistics from the *1997 Membership Information Form*, there were approximately 9,600 members who reported that they had practised real estate law in some fashion. Teranet officials advise that there are approximately 1,200,000 real estate registrations in any given year in Ontario, approximately a quarter of which (300,000) are transfers/deeds. The volume and scope of TERS was not within the appreciation of the Howie sub-committee.
- **Push vs. Pull** - The Law Society's requirements do not allow lawyers to permit pre-authorized debits ("PADs") from their trust accounts. However, the TERS envisages a "modified pull" in the sense that the subscription agreement between lawyers and Teranet will indicate a bank account number from which Teranet is authorized to deduct payment for Land Transfer Tax. This authority to debit will be triggered on the instructions to register being sent by the law firm to Teranet.

It was upon these bases that the recommendation was made to Convocation to facilitate payments from trust.

Unique Teranet Aspects

The process of closing real estate deals pursuant to the TERS, due to its very unique nature, appears to reduce a number of the risks of "traditional" electronic trust transfers in several aspects. This may provide some comfort in relaxing requirements in relation to electronic trust payments under the TERS.

- Land transfer tax and registration costs will be automatically calculated by the TERS. This has the effect of greatly reducing, if not eliminating, the risk of miscalculation and error on the part of the lawyer's office.
- The TERS creates, in a sense, a closed system wherein funds are moving only between the lawyers' trust accounts and Teranet's account (as agent for the Ministry). Currently, there is no method of payment of funds to third parties⁵. Payments will only represent registration fees and land transfer tax. Consequently, given the limitations as to the recipient and purpose of payment, TERS appears to be an unattractive conduit for law office fraud/dishonesty.
- Teranet acts as agent for the MCCR. In discussions with the Teranet Consultation Group, the MCCR has indicated that any payments made to Teranet will be deemed to have been received by the Ministry. Consequently, the risk of recovery of erroneous payments being impeded by insolvency or inability to locate the payee is minimal.⁶
- Teranet provides a complete electronic audit trail. Before Teranet will issue access diskettes and passphrases, identification of the account holder and users will be required. There will be a distinction between lawyer and non-lawyer account holders. Transactions through TERS will record the identity of persons effecting transactions through passphrases and digital signatures. The combination of encryption technology and security clearances will assist in preventing third party interception of communications within TERS.

Proposed Required Minimum Office Procedures

While the current electronic trust transfer process as a whole does not appear viable for the TERS, any process which envisages non-lawyer staff to transact the payment of client trust funds should contain the following safeguards. These safeguards are present under current by-law provisions in relation to electronic funds transfer:

- The lawyer must sign a requisition form and keep it in the lawyer's file as proof of authority to transact.

This is necessary in order to establish that the trust transaction is authorized by a lawyer. Additionally, this will provide file documentation to confirm the request and act as a "trigger" for the process of transferring the funds. Lawyers should not sign the requisition until and unless they are satisfied that sufficient funds have been received from the client in trust. This is particularly important since the TERS is NOT linked to the lawyer's accounting information and thus safeguards built into computerized accounting systems to ensure that adequate client trust funds are on deposit will not be available (e.g. inability of printing/posting trust cheques when insufficient client balances exist). This is akin to the current process before a lawyer signs a trust cheque.

- The TERS must provide a confirmation which the lawyer must print within a business day following registration.

As the lawyer will presumably want some paper documentation to present to the client confirming registration, this should not be an onerous requirement. The confirmation should indicate the amount paid for Land Transfer Tax and Registration Fees, the transaction to which it relates and the registration particulars (date, etc.). This will serve as a record of required disbursements for registration.

⁵ Though if Teranet decides in the future to provide the facility to transact closing proceeds as part of the remote process, this issue would need to be carefully re-examined.

⁶ *Supra*, note 4.

- Within a business day of obtaining the TERS confirmation, the lawyer must effect a comparison between the requisition form and the printed confirmation and sign the confirmation.

This ensures that errors are caught and rectified promptly. This is particularly important given the speed by which transactions are effected electronically. It will also serve as a means to dissuade abuse of the TERS for improper funds transfer.

- At month end, the lawyer's firm should obtain a list of transactions/registrations from Teranet for that month and utilize it for the purposes of reconciliation

This would be necessary since there would be no way to identify different transactions from monthly bank statements. In the paper system, cheque numbers and/or payees are identified on the statements themselves. There may not be a method of identifying transactions based on the bank statements themselves (the payor would always be Teranet/ the Ministry).

Direct Debiting Options

The General Account Option

One option discussed by the Joint Committee was the possible use of the lawyer's general account as the designated account from which Land Transfer Tax and registration fees could be electronically paid, followed by the prompt reimbursement from trust once the disbursements was "incurred" (i.e. registration was effected)⁷. This process does not run afoul of Law Society requirements.

The Joint Committee felt that the general account option was not workable since it places an administrative burden on the lawyer to ensure that trust funds are immediately transferred to the firm's general account following registration to prevent the general account from being overdrawn. This was thought to be of high risk where the member has multiple closings and/or if closings are attended to by conveyancers/staff away from the lawyer's office. This places the lawyer in the position of initially bearing the costs of land transfer tax (albeit for potentially short periods of time) which was felt to be overly onerous by the Joint Committee.

It should be remembered that despite the general perception that electronic payments are instantaneous, Teranet will be processing such payments on a batch basis at certain times throughout day.

Direct Debiting from Trust Accounts

Direct Debit from Lawyer's Mixed Trust Accounts

Notwithstanding the inherent safeguards in TERS discussed above, there remain several key problems with allowing electronic transfers of trust funds directly from a lawyer's trust account.

7

Paragraph 4(1)3. of By-Law 19 permits monies to be drawn from trust "...to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client." A disbursement account is not required as prerequisite to this transfer; though the member is required to account to the client for the transfer in a subsequent billing.

- As alluded to above, there is no linkage between the lawyer's trust accounting records and the TERS. Particularly for the sake of maintaining solicitor-client confidentiality and privilege, Teranet/MCCR will obviously not have access to client trust listings to ensure that a sufficient trust balance exists for the client to complete the transaction. Similarly, there is no systemic assurance that the law firm will refer to its accounting records to ensure that adequate trust funds from the particular client are on deposit.
- Substantively, the *Greymac* principle⁸ has recently been affirmed as applicable to lawyers' trust accounts by the Ontario Court of Appeal.⁹ Consequently, there remains the possibility of innocent misapplications affecting all clients with trust deposits with the firm. While in any given isolated real estate file the quantum of land transfer tax may not be large, several files cumulatively can constitute a significant sum. Also, it is the significance of this sum that has prompted the Joint Committee recommendation to explore payments from trust rather than from general.
- The concept of allowing third parties to debit a lawyer's trust account is novel. Traditional approaches to ensuring a high level of protection of client funds require lawyers to control and thus "push" trust funds (e.g. through signature of cheques). Current regulatory provisions prevent non-lawyers from directly accessing client funds. This is particularly important given the concept of mixed trust accounts and the effect of *Greymac* discussed above. If Teranet is permitted to directly debit from a trust account, the Law Society may be called upon to permit other payees to so do, which may result in a fragmented, case by case analysis.

It was discussed with Teranet that if lawyers could obtain a daily report as to all real estate registrations that occurred on their account, a daily reconciliation may provide adequate safeguards (such statements would allow lawyers to conduct the reconciliation as contemplated above and provide the basis to identify any unauthorized transactions on their accounts). Indications at this time are that Teranet will be unable to accommodate daily reports at this time. Account statements can only be generated on a monthly basis, which will not satisfy the proposed confirmation process.

Direct Debiting from Transition/"Suspense" Trust Account

In order to minimize the risk of affecting other clients with trust funds on deposit in the law firm's trust account, an option is to require lawyers to open another mixed trust account to deal with funds earmarked for electronic funds transfers. This provides a degree of comfort for both lawyers and the Law Society. The concept of this account is to limit funds in this account only to those funds which are required to effect an imminent electronic funds transfer. It is also proposed that funds be permitted to remain in this account for some limited period (say 3 business days). This will have the effect of establishing a segregated, transition account allowing lawyers to effect electronic funds transfers without placing the trust funds of other clients at potential risk (particularly given the new "modified pull" of trust funds).

This process will also closely mirror the current paper based system in the handling of closing funds. The balance of proceeds for closing will still need to be handled by cheques. Currently, land transfer tax and registration fees are typically paid via a trust cheque. This trust cheque would simply now be payable to the lawyer and deposited into this new type of trust account (or, since closing proceeds are normally received either the day of or shortly before the date of closing, the client funds representing these payments can be paid directly into this trust account).

⁸ *Re Ontario Securities Commission and Greymac Corp.* (1988), 65 O.R.(2d)479 (S.C.C.), which held that shortages in pooled funds/accounts should be pro rated amongst all contributors to the fund.

⁹ *The Law Society of Upper Canada v. The Toronto Dominion Bank* (docket C23189 dated December 7, 1998) (Ont.C.A.).

Implementation

Convocation adopted the Joint Committee's recommendations for testing purposes only. The TERS entered the pilot testing phase recently (January 25, 1999). The testing phase is expected to last until May 1999 in Middlesex with Halton to follow thereafter. According to current schedules, TERS is expected to be in Peel late in 1999. There will be approximately 14 law firms involved in the test in Middlesex. It is therefore proposed that the option selected by this Committee be considered a test as well. The Joint Committee will be called upon to report back to Convocation in relation to the various recommendations (perhaps at the September/October 1999 meeting of Convocation) and can, at that time report back as to the viability associated with the approach directed.

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

(1) Copy of By-Law 19.

(Pages 1 - 9)

RULE 8 - INTERIM ORDERS

It was moved by Mr. MacKenzie, seconded by Mr. Scott that Rule 8 be amended by striking out Rule 8.02 and substituting the following:

Making the Motion

- 8.02 (1) Subject to subrule (2), the Society may bring a motion before the Hearing Panel for an interim order.
- (2) Where a motion for an interim order is brought prior to the authorization of a notice of application, or the Hearing Panel has not commenced a hearing to determine the merits of a proceeding, the Society shall bring the motion with the authorization of the Proceedings Authorization Committee.

Carried

BY-LAW 21 - PROCEEDINGS AUTHORIZATION COMMITTEE

Subsection 8 (1) [referral by Secretary, outside investigator, outside reviewer]

It was moved by Mr. MacKenzie, seconded by Mr. Scott that paragraph 3 of subsection 8 (1) of By-Law 21 be amended by adding after "move" in the first line "in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding".

The paragraph would then read:

"Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law".

Subsection 9 (1) [review of matters]

It was moved by Mr. MacKenzie, seconded by Mr. Scott that paragraph 5 of subsection 9 (1) of By-Law 21 be amended by adding after "move" in the first line "in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding".

The paragraph would then read:

"Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restructuring the manner in which a member may practise law".

Carried

BY-LAW 18 - RECORDING KEEPING REQUIREMENTS

By-Law 18 - Section 1 [interpretation]

It was moved by Mr. MacKenzie, seconded by Mr. Scott that section 1 of By-Law 18 be amended by adding the following subsection:

"Teranet"

(4) In paragraph 12 of section 2, "Teranet" means Teranet Land Information Services, Inc., a corporation incorporated under the Business Corporations Act, acting as agent for the Ministry of Consumer and Commercial Relations.

and

By-Law 18 - Section 2 [requirement to maintain financial records]

It was moved by Mr. MacKenzie, seconded by Mr. Scott that section 2 of By-Law 18 be amended by adding the following paragraph:

12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

BY-LAW 19 - HANDLING OF MONEY AND OTHER PROPERTY

By-Law 19 - [Handling of Money and Other Property]

It was moved by Mr. MacKenzie, seconded by Mr. Scott that By-Law 19 be amended by adding the following:

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Interpretation: "Teranet"

8.1 (1) In sections 8.2 and 8.3, "Teranet" means Teranet Land Information Services, Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Commercial Relations.

Interpretation: time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act under sections 8.2 and 8.3 expires on a holiday, the act may be done on the next day that is not a holiday.

19th February, 1999

Interpretation: counting days

(3) In subsection 8.3 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 8.3 (1) for more than five days.

Interpretation: "holiday"

(4) In this section, "holiday" means,

- (a) any Saturday or Sunday;
- (b) New Year's Day;
- (c) Good Friday;
- (d) Easter Monday;
- (e) Victoria Day;
- (f) Canada Day;
- (g) Civic Holiday;
- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day;
- (k) Christmas Day;
- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Same

(5) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.

Same

(6) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.

Same

(7) Where Christmas Day falls on a Friday, the following Monday is a holiday.

Authorizing Teranet to withdraw money from trust account

8.2 (1) Subject to subsection (2), a member may authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A member shall not authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the member in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the member not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the member.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
 - (b) the time and date that the authorization to withdraw money is received by Teranet; and
 - (c) the time and date that the confirmation from Teranet is sent to the member.

Written record of authorization

(4) A member who authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, in any, related to a client's real estate transaction shall record the authorization in writing.

Same

(5) The written record of the authorization required under subsection (4) shall be in Form 19B and shall be completed by the member before he or she authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

- (6) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a member, the member shall,
- (a) produce a paper copy of the confirmation, if the confirmation is sent to the member by electronic means;
 - (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the member;
 - (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
 - (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

8.3 (1) The trust account from which Teranet may be authorized by a member to withdraw money shall be,

- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the member or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account; and
- (b) an account into which a member shall pay only,
 - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and
 - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

- (2) A member may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

- (3) A member shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the member shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

- (4) A member who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the member shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Application of ss. 4, 6, 7 and 8

8.4 Sections 4, 6, 7 and 8 apply, with necessary modifications, to a trust account described in subsection 8.3 (1).

Form 19B

Authorization of Withdrawal by Teranet

Authorization (*number*)

Amount of funds to be withdrawn: (*Specify amount.*)

Re:

(*Specify name of client.*)

(*Specify file reference number.*)

19th February, 1999

Reason for withdrawal: *(Give reason for withdrawal, e.g., payment of land transfer tax, document registration fees.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Person authorizing withdrawal: *(Print the person's name.)*

(Date)

(Signature of person authorizing withdrawal)

Carried

THE REPORT WAS ADOPTED

BY-LAWS MADE UNDER SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT

Memorandum from Elliot Spears dated February 15th, 1999

THE LAW SOCIETY OF UPPER CANADA
OSGOODE HALL, TORONTO, ONTARIO M5H 2N6

MEMORANDUM

TO: Benchers

FROM: Elliot Spears
Staff Lawyer, Research

DATE: February 15, 1999

RE: By-Laws made under Subsections 62 (0.1) and (1) of the *Law Society Act*

I attach the following by-laws:

1. By-Law 1 [By-Laws].
2. By-Law 5 [Election of Benchers].
3. By-Law 8 [Convocation].
4. By-Law 9 [Committees].
5. By-Law 10 [Meetings of Members].
6. By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor].

7. By-Law 16 [Professional Liability Insurance Levies].
8. By-Law 17 [Filing Requirements].
9. By-Law 21 [Proceedings Authorization Committee].
10. By-Law 23 [Reporting of Court Decisions].

By-Laws 1, 9, 10, 16, 17 and 23 have been amended as directed by Convocation on January 28, 1999.

By-Laws 5, 8 and 11 have been amended as directed by Convocation on January 28, 1999 and otherwise to correct errors made in the versions of the by-laws considered by Convocation on January 28, 1999.

By-Law 21 has been "newly" amended as directed by the Professional Regulation Committee on February 11, 1999.

Convocation will be asked to approve the by-laws.

In each by-law, amended text is as follows:

- By-Law 1: Subsection 1 (3) and section 3.
- By-Law 5: Section 15 [page 7], subsection 33 (2) [page 13], section 49 [page 19] and subsection 50 (1) [page 19].
- By-Law 8: Section 1 [page 1], subsection 2 (2) [page 1], section 5 [pages 1 and 2] and section 7 [page 3].
- By-Law 9: Section 2 [page 1], section 6 [page 2], section 9 [page 3], section 12 [page 4], heading before section 16 [page 5], section 16 [page 5], subsection 17 (7) [page 7], subsection 17 (8) [page 7] and section 19 [page 8].
- By-Law 10: Subsection 19 (2) [page 4] and clause 23 (2) (b) [page 5].
- By-Law 11: Section 3 [page 1].
- By-Law 16: Heading [page 1], section 3 [page 1], subsection 3 (1) [page 1], subsection 4 (2) [page 1], subsection 7 (1) [page 2] and subsection 8 (2) [pages 2 and 3].
- By-Law 17: Subsection 4 (1) [page 2].
- By-Law 21: Paragraph 3 of subsection 8 (1) [page 3] and paragraph 5 of subsection 9 (1) [page 4].
- By-Law 23: Section 2 [page 1].

A. E. S.
Att.

By-Law 8 - section 2 (2)

It was moved by Mr. DelZotto, seconded by Mr. Scott that the paragraph (2) under section 2 be amended by deleting the word "five" and inserting the word "ten" so that the paragraph would then read:

19th February, 1999

- (2) Upon the written request of ten benchers, the Secretary shall convene a special meeting of Convocation by giving at least twenty-four hours notice to each bencher

Carried

By-Law 9 - section 12 (d)

It was moved by Mr. Krishna, seconded by Mr. Wilson that the words "including the Lawyers Fund for Client Compensation Committee" be added after the words "or any other budget".

Not Put

It was moved Mr. MacKenzie, seconded by Mr. Carter that the By-Laws set out in the Memorandum be adopted except the sections on Admissions and Equity and Finance and Audit Committees.

Carried

REPORT ON NON-BINDING REFERENDUM QUESTION

February 19th, 1999

In the absence of the bencher members of the Committee, Ms. Katherine Corrick, Director of the Policy Secretariat presented the Report on the Non-binding Referendum Question.

Report to Convocation
February 19, 1999

Report on Non-binding Referendum Question

Purpose of Report: Decision

I. TERMS OF REFERENCE

1. On January 28, 1999, Convocation established a Task Force to formulate a number of possible questions for the non-binding referendum on bencher compensation.
2. Benchers on the Task Force are Larry Banack (chair), Carole Curtis and Dan Murphy. Staff assisting the Task Force are Katherine Corrick and Maria Paez Victor.
3. Task Force members were unable to agree whether Convocation directed the formulation of a single question on bencher compensation or a detailed questionnaire.
4. The purpose of this report is to provide Convocation with options that reflect the differing views of the Task Force members and seek Convocation's decision on the appropriate question or questions.
5. A final decision by Convocation is urgent as election materials must be developed and finalized immediately.

II. ISSUES ALREADY DETERMINED

6. On February 28, 1997, Convocation approved the principle of compensating benchers for the time they devote to their duties as bencher.
7. The Task Force on the Bencher Election and Referendum, established by Convocation to advise on whether a referendum on the issue should be conducted, concluded that Convocation cannot delegate its decision-making authority on the issue of bencher remuneration to the profession.
8. On January 22, 1999, Convocation accepted this opinion and determined that a non-binding referendum would be held.
9. The final authority to decide whether benchers are compensated, and the appropriate scheme of compensation rests with Convocation.

III. TWO APPROACHES TO THE REFERENDUM

A. The Single Question

10. This approach seeks to obtain the view of the membership on the principle of bencher compensation, without attempting to elicit the profession's view on how bencher compensation would be implemented by Convocation. A compensation scheme, including which category of benchers would be compensated, and the rate and the duties for which benchers would be compensated, would be left to Convocation to determine.
11. A review of the debates in Convocation on this issue reveals a general consensus that benchers should not be compensated for all of the time they devote to Law Society business. Bearing that in mind, some possible questions that state the issue very broadly are as follows.

Should benchers be compensated for some of the work they perform on behalf of the Law Society of Upper Canada?

OR

Recognizing both the time commitment required to be a bencher of the Law Society and the voluntary nature of bencher work, should benchers be compensated for time spent fulfilling their duties?

12. The question can be narrowed by adding more specific pieces of information to it, such as which category of benchers are entitled to be compensated, the type of compensation, a limit to the amount of compensation individual benchers can receive or the maximum amount by which the annual fee will be raised to finance the initiative. For example,

Should elected benchers be compensated in recognition of the work they perform on behalf of the Law Society of Upper Canada?

OR

Should elected benchers be compensated to a maximum of \$X each, in recognition of the work they perform on behalf of the Law Society of Upper Canada?

13. If Convocation wishes to narrow the question by adding specific pieces of information to it, Convocation must first make the necessary underlying policy decisions. For example, if Convocation wishes to ask whether elected benchers should be compensated, it ought to first determine that only "elected" benchers will be eligible for compensation. If Convocation wishes to ask whether benchers should be compensated by honorarium, it ought to first determine whether the compensation scheme it is contemplating includes honoraria as opposed to per diem rates.

Advantages of the Single Question

14. The simplicity of a single question may encourage more members to answer it. Similarly, a single question can appear on the same page as the ballot making it more likely that voters will answer it than if the question(s) were printed on a separate sheet of paper.
15. A single question on the principle of benchers compensation is consistent with the advisory and non-binding nature of the referendum. It seeks the view of the profession only on the principle, leaving the details of any compensation scheme entirely to Convocation.
16. A single question on the principle of benchers compensation avoids the possibility that Convocation may feel bound by the profession's response to questions that deal with the specifics of a compensation scheme, when Convocation will have more and better information about the issue than members, and is the body charged by the statute with the responsibility to govern the affairs of the Society.

B. A Detailed Questionnaire

17. This approach seeks to determine not only the profession's support for benchers compensation, but also its views on a variety of compensation schemes. The number and types of question are endless and limited only by the practical realities of a pressing deadline and the need to present something to the members they will not consider too onerous to complete.
18. An example of a detailed questionnaire follows:

1) Do you support compensation for elected benchers?	Y	N
2) Should elected benchers be compensated for attending Convocation?	Y	N
3) a) Should elected benchers be compensated for attending committee meetings?	Y	N
b) Should elected benchers be compensated for attending committee meetings if the number of committee days exceeds X?	Y	N
4) a) Should elected benchers be compensated for hearing discipline cases?	Y	N
b) Should elected benchers be compensated for hearing discipline cases, if the number of hearing days exceeds X?	Y	N
5) a) Should elected benchers be compensated with an annual honorarium?	Y	N
b) Should elected benchers be compensated on an hourly basis?	Y	N
6) a) Should elected benchers be compensated for the time spent preparing for meetings and hearings?	Y	N
b) Should elected benchers from outside of Toronto be compensated for time spent travelling on Law Society business?	Y	N
19. Another approach is to ask members whether they support benchers compensation in general, and then ask their views on the details of a particular compensation scheme. For example:

Recognizing both the time commitment required to be a bencher of the Law Society and the voluntary nature of benchers work, should benchers be compensated for time spent fulfilling their duties?

Y N

If the answer is yes, what per diem rate should be paid to benchers?

- \$200 ☐
- \$300 ☐
- \$400 ☐
- \$500 ☐

20. A third possibility is as follows:

Do you support compensation for elected benchers to an amount not exceeding \$X per bencher, assuming,
attendance at and preparation for X Convocation days;
attendance at and preparation for X committee meeting days;
attendance at and preparation for X discipline hearing days;
attendance at and preparation for X days on other Law Society business?
Y N

21. Each example of a detailed questionnaire seeks the response of the profession to a different type of compensation scheme. If Convocation wishes to distribute a detailed questionnaire on bencher compensation with the ballot, it must indicate the type of compensation scheme it is contemplating.

Advantages of a Detailed Questionnaire

- 22. The profession's response to a detailed questionnaire will provide Convocation with more detailed information about the views of the profession on this issue.
- 23. A detailed questionnaire better informs the voter of the options under consideration by Convocation and allows the voter to make a more informed choice.

IV. INFORMATION TO ACCOMPANY QUESTION(S)

- 24. Information relevant to the issue of bencher compensation will be distributed with the ballot. The information that ought to be included will depend somewhat on the question or questions posed. A detailed questionnaire will require more specific information to ensure voters understand the questions.
- 25. There is little reliable statistical data on the number of hours benchers devote to Law Society business. Past surveys of benchers (in 1990 and 1992) have not produced reliable data because only half of the benchers responded. Additionally, the surveys showed a significant variation in workloads among benchers, making averages of limited use.
- 26. A reasonable estimate of bencher workload can be derived by considering the number of Regular, Special and Discipline Convocation days, standing committee meetings, and the number of days discipline hearings and pre-hearings were held in 1998, together with an estimated average of two hours of preparation time per meeting.
- 27. The variation in bencher participation in the hearing of discipline matters is enormous. Based on the available data, it appears that a reasonable estimate of the number of days a year the average bencher spends hearing discipline matters, including pre-hearings, is six. Some benchers spend many more. Some spend fewer.
- 28. The following table shows the number of days in 1998 benchers were called upon to attend to Law Society business. The table includes the average of six days a year for dealing with discipline matters.

Meeting	Number of days	Number of hours (7 hr. day)
Regular Convocation	9	63
Special Convocation	3	21
Calls to the Bar	3	21
Discipline Convocation	8	56
Committee Meetings	9	63
Discipline Matters, hearings and pre-hearings (average)	6	42
Preparation time (2 hours per meeting)	11	76
Total	49 days	343 hours

29. The total number of 49 days a year is an estimate. It does not include benchers time spent on task forces and working groups. Nor does it include time benchers spent writing discipline decisions or dealing with members of the profession about issues of concern to them. However, allowing seven hours per meeting is fairly generous and may make up the difference.
30. Convocation is asked to consider the above table and indicate its support or otherwise for the calculations in it. The material that accompanies the referendum ought to include information on the amount of time required and expected of benchers.
31. Convocation's direction is sought on whether to include the arguments for and against benchers compensation with the non-binding referendum material. Attached as Appendix A are the arguments that were advanced in Convocation on February 28, 1997.

V. ISSUES FOR CONVOCATION'S CONSIDERATION

32. Convocation is asked to decide whether it wishes to frame the referendum as a single question or a detailed questionnaire.
33. If Convocation wishes to do something other than ask a very general question on the principle of benchers compensation, Convocation is asked to provide clear direction on the compensation scheme it is contemplating.
34. Convocation is asked to approve or modify the estimate of the time commitment required of benchers contained in the table at page 7.
35. Convocation is asked to consider inclusion or exclusion of the material contained in Appendix A.

APPENDIX A

ARGUMENTS FOR BENCHER REMUNERATION

ACCESS

- This is an issue of increasing access to the bench. Payment would allow a greater diversity of benchers and ensure better representation of the profession. If benchers are remunerated it will encourage sole and small firm practitioners, women, young lawyers, lawyers who work for minorities and low income clients, and minority lawyers to participate.

ECONOMIC HARDSHIP

- This is an issue of mitigating the economic hardship that some benchers endure. Benchers devote many hours of work to the Law Society and especially those without benefit of business partners lose income. Benchers from outside of Toronto have a greater demand placed on their time in order to attend meetings.

ELITISM

- The issue is one of elitism. It is not a dishonour to receive a fee for services rendered. Currently, only those who have very lucrative practices can afford to be benchers. There are likely many who are dissuaded from seeking the position of benchers because they would be losing significant income.

LONG HOURS OF SERVICE

- It is a question of having to put in long hours of service to the Law Society. This detracts time not only from work but also from family and other charitable work. Benchers have to work on weekends or evenings to make up for lost business time and income losses.

VOLUNTARY PAYMENT

- It need not be a question of mandatory remuneration. Those benchers who do not need it are free to give up payment, recognizing that not all benchers are in identical situations.

ARGUMENTS AGAINST BENCHER REMUNERATION

DIVERSE BENCH

- This is not an issue of access to the bench. The present bench is already quite diverse: 57% of elected benchers are sole practitioners or from firms of 2-4 lawyers; only 15% are from firms with 50 or more lawyers. While 30% of Ontario lawyers are women, 32% of the elected benchers are women. Many different backgrounds are currently represented as compared to former benches.

TIME

- The real issue is the unreasonable amount of time that some benchers have to dedicate to Law Society business. The underlying problem is benchers' efficiency: lengthy discipline process, prolonged terms of office, and the unequal distribution of workload among benchers. Payment itself will not change this situation as it will not create more time or efficiency. It is this basic problem of benchers' time and efficiency that ought to be addressed. More lawyers would be inclined to become benchers if the time commitment was clear and less onerous.

HONOUR

- This is an issue of honour. Benchers are paid with honour, not cash. Benchers are amply compensated with respect and an increase in their profile within the profession, together with the potential contacts this brings.

VOLUNTEER SERVICE

- The issue is the voluntary nature of service that benchers render. The service benchers give to the Law Society is community service freely given. To be a bencher is not merely to assume a paying job, it is to voluntarily contribute to the benefit of the community, and serve both the public and the profession. A question of sacrifice is implicit. The profession, through its fees, should not have to subsidize an individual's public service.

.....

It was moved by Mr. MacKenzie, seconded by Mr. Carter that the question along the lines of questions set out in paragraph 11 on page 2 of the Report be developed for inclusion in the election materials. The questions are:

"Should benchers be compensated for some of the work they perform on behalf of the Law Society of Upper Canada? or

"Recognizing both the time commitment required to be a bencher of the Law Society and the voluntary nature of bencher work, should benchers be compensated for time spent fulfilling their duties?"

Withdrawn

It was moved by Mr. DelZotto but failed for want of seconder that on page 4 paragraphs 3(b) and 4(b) be deleted and a seventh question be added - "What per diem rate should be paid to benchers?"

An amendment by Ms. Ross was accepted by Messrs. MacKenzie and Carter that the words "some of" be deleted from the first question set out on page 2 so that it would then read:

"Should benchers be compensated for the work they perform on behalf of the Law Society of Upper Canada?"

Withdrawn

It was moved by Mr. Topp, seconded by Mr. Crowe that the questions in paragraph 11 on page 2 stipulate "elected" benchers.

Withdrawn

It was moved by Mr. Manes, seconded by Mr. Gottlieb that the matter be referred back to Committee.

Lost

Convocation took a brief recess and resumed with the Referendum question.

It was moved by Ms. Stomp, seconded by Mr. Topp that the following question be put in the election materials:

"Are you in favour of some form of honorarium being paid to Benchers?"

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Ross that "Appendix A" to the Report be included in the ballot.

Carried

It was moved by Ms. Puccini, seconded by Mr. Crowe that the information package include some indication of the cost of the proposal.

Lost

By-Laws re: Memorandum from Elliot Spears dated February 15th, 1999 (cont'd)

By-Law 9 - Finance and Audit Committee

By-Law 9 section 12 (d) was voted on and adopted as amended to read as follows:

- “(d) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purposes of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon and to recommend approval of the annual budget or any special or extraordinary budget; and
- (e) to review the plans for any unbudgeted expenditure arising during a financial year; to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.”

By-Law 9 - Admissions and Equity Committee

By-Law 9 section 11 (c) was voted on and adopted as amended so that the paragraph would then read:

"policies to govern the transfer to the Society of persons qualified to practise law in any province or territory"

It was moved by Ms. Eberts, seconded by Mr. Krishna that the sections under By-Law 9 on the Finance and Audit and Admissions and Equity Committees be adopted as amended.

Carried

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

The Report was deferred to the March Convocation.

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

Motion - Amendment to Benchers Code of Conduct

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the Benchers Code of Conduct be amended by adding the following:

- 1.7 Benchers' conduct toward other Benchers during Convocation should be characterized by courtesy and good faith. Benchers shall not attack or criticize other Benchers personally during debate at Convocation.

An amendment by Mr. Gottlieb to delete the words "during Convocation" was not accepted by the mover.

Not Put

It was moved by Mr. DelZotto, seconded by Mr. Epstein that the motion be tabled.

Carried

APPEAL PANEL

It was moved by Ms. Cronk, seconded by Mr. Topp that the Treasurer be given the authority to appoint benchers to the Appeal Panel chaired by Mr. Arnup in consultation with any benchers he feels appropriate.

Carried

REPORTS FOR INFORMATION

The following Reports were received for information only:

CEO's Quarterly Report
Finance and Audit Committee Report
Professional Development & Competence Committee Report

CEO'S FOURTH QUARTER REPORT TO CONVOCATION
October - December 1998

I. GENERAL OVERVIEW: DEVELOPMENTS, INITIATIVES, RESULTS

The information contained in this report summarizes activities, initiatives and results for Law Society operations during the final quarter of 1998 – October 1 to December 31. The information is not exhaustive, it highlights operational activities. Management's compliance with the executive limitations prescribed by Convocation is found at Tab 1.

A. Finance

1998 Nine Months Results. Results for the first nine months of 1998 were presented to the Finance and Audit Committee in November. Results for the final quarter of 1998 will be available in March of 1999. The General Fund's total program expenses were compared to the 1998 budget. Total revenues collected were \$21.296 million compared to the budget of \$20.699 million (a favourable variance of \$597,000). Expenses for the nine months ended September 30, 1998 are under budget for the same period with a budget expense utilization rate of approximately 60% or \$15.9 million. This expense utilization rate is typical for the first nine months of the year. Many expenses occur in the fourth quarter.

1999 Budget. The 1999 budget, for the first time, was prepared utilizing a "Full Indirect Cost Allocation" model that allocated costs to departments based on the resources they consume. "Full Indirect Cost Allocation" demonstrates how effectively resources are being used and how all activities contribute to the cost of the services provided. This model will be further refined for use during preparation of the 2000 Budget. Convocation received and approved the budget at November's Convocation. The annual membership fee for full fee-paying members is \$1,322 or \$1,272 for those wishing to pay prior to February 1st. This represents a reduction of \$425 from the prior year even though the library fee was increased by \$79. After adjusting for inflation, the fee is back to the level charged in 1993.

It should be noted that we are still awaiting the approval of the omnibus grant from the Law Foundation of Ontario. The Law Society has been requested to resubmit its application for funding. It is expected that we will receive a response by mid-March.

Osgoode Hall Renovations. Work has been completed on the renovations to the exterior of the South East wing, as well as the third floor of the Education wing to accommodate the restructured Information Systems Department. The computer classroom has been relocated to the main floor for easier access by members, staff and students. A work station has been installed in the Women Benchers locker room complete with a computer, fax machine and printer. A similar station is in the process of being established in the Men Benchers locker room.

The search for a replacement chef was completed and Chef Yasser Qahawish began his employment at the Law Society in October 1998.

B. Secretariat

Complaints

Performance Data

I Fourth Quarter Activity - 1998

Files opened:	1199
Files closed:	959
Files open as of December 31, 1998:	3043

II Year-to-date Comparisons

Date	# Files Opened Year to date	% inc (dec) from Previous Year
Dec. 31, 1998	4190*	0.3
Dec 31, 1997	4164	-7.7
Dec 31, 1996	4510	-7.1
Dec 31, 1995	4852	-12

*Includes a number of files opened as 1998 files in the first week of January 1999.

III Authorizations

Formal Complaints	-	21
Invitations to Attend	-	3
Letters of Advice	-	3
Referrals to LPIC	-	6
Direction to Close File	-	8

Trends

Productivity and timeliness in conducting investigations continue to improve. Significant improvements have been documented in the reduction of overdue files. While the total number of files being investigated remained approximately the same as last year, files overdue by one month decreased by 21%; files overdue by three months decreased by 41%; and files overdue by six months or more dropped by 61%. Staff are striving to reduce the 6 month and over category to zero. Overall, matters are being dealt with more promptly and thoroughly within reduced time spans.

New Initiatives

A number of staff have been selected for participation in the Alternate Dispute Resolution Pilot Project. These staff received skills training in negotiation and mediation, and commenced implementation of the Pilot Project in January 1999. Staff are enthusiastically committed to implementing these revised processes in the new year.

Audit and Investigations

Performance Data

Open investigations inventory remains relatively static:

December 97	143 Files
March 98	160 Files
June 98	147 Files
September 98	159 Files
December 98	150 Files

These statistics support the notion that investigative workloads remain relatively constant through new file intake from the Complaints Department, self reporting, and substantive matters which are generated from the Annual Forms and Spot Audit programs.

Audit/Investigations Completed:

Quarter Ended December 30, 1997	51 Files
Quarter Ended March 31, 1998	49 Files
Quarter Ended June 30, 1998	54 Files
Quarter Ended September 30, 1998	37 Files
Quarter Ended December 31, 1998	33 Files

Trends:

The case inventory of serious investigation matters remains constant.

Issues and Challenges:

The extensive efforts made to improve service to the profession in the forms services area slowed our attempts to do more substantive analysis with respect to the information filed on the forms. To address the challenges of trust filing review, two law clerks were hired on one- year contracts, commencing in October, to perform trust filing reviews. Over six hundred (600) trust filings have been reviewed by the end of December, with the result that ten (10) matters have been identified for more significant enquiry.

New Initiatives:

The Membership Information Form e-filing program was improved to provide faster response time. In addition, to encourage e-filing of the form, a \$50.00 CLE voucher will be provided for all those who e-file. Commencing January 18, 1999, the profession has been able to e-file the Private Practitioner's Report. These technology initiatives firmly place the Law Society of Upper Canada in the forefront of the "cyber applications" approach for our members.

Forms Processing:

In December, members of the profession received their personalized and pre-completed copies of the Membership Information Form and Private Practitioner's Report. By December 31st, 6,400 members had already filed their 1998 Membership Information Report. A significant shift to e-filing has taken place over the past year. In 1997, 369 members e-filed; in 1998 1783 members took advantage of e-filing.

Spot Audit Initiative

By December 31, 1998, four hundred (400) spot audits were authorized and three hundred eighty nine (389) were completed. The results of these audits are the subject of a separate report that was made to the Professional Regulation Committee in January 1999.

Focussed Audit Initiative

The focussed audit program began in the third quarter. By December 31, 1998, 29 firms have been the subject of this in-depth audit procedure. The results of this initiative are the subject of a separate report that was scheduled to be made to the Professional Regulation Committee in January 1999.

Lawyers Fund for Client Compensation

Performance Data

	December 31, 1997	36159	Difference
Gross Amount of Outstanding Claims	\$36,161,433	\$30,510,781	(\$5,650,652)
Amount of Outstanding Claims with Limits Applied	\$15,592,177	\$14,324,638	(\$1,267,539)
Number of Open Claims	331	256	-75

Trends

The downward trend in the number and dollar value of claims continues. In calendar year 1997 the Fund received 259 claims worth a total \$12.2 million with limits applied. In 1998, 230 claims were received (11% reduction) worth \$10.6 million (13% reduction) after the application of limits. As at December 31st 1997 the Fund had 331 outstanding claims worth \$15.6 million with limits. As at December 31st 1998 there were 256 open claims worth \$14.3 million; a reduction from 1997 of 75 claims or 23% and \$1.3 million or 8% with limits applied.

In 1997 the Fund paid out grants totalling \$5 million. In 1998 the total was \$4.5 million.

The type of claim received continues to follow historical patterns. Of all gross value claims received in 1998, close to 68% were related to the loss of mortgage investment funds. The next largest category were trust misappropriation claims which accounted for 17%. Non-mortgage investment, retainer, LPIC non-reporting and 'other' claims accounted for the remaining 15%.

The cash and investments of the Lawyers Fund For Client Compensation at December 31, 1998 total \$22,756,000. The comparative amount at September 30, 1998 was \$24,200,000.

Discipline

Performance Data

- 36 matters were authorized and referred to the Discipline Department in the fourth quarter of 1998, compared with 42 in the fourth quarter of 1997. In 1998, there were 252 matters authorized and referred to the Discipline Department, compared with 409 matters in 1997. The decrease is largely attributable to the fact that there were 150 fewer prosecutions for failure to make annual filings sought and authorised in 1998 than in 1997 largely due to the introduction of the self-reporting option.

The following chart summarizes the number of matters disposed of by Discipline Committees and by Discipline Convocation in the fourth quarter of 1998, and compares it with the fourth quarter of 1997. The chart also compares the annual totals for 1997 and 1998.

STATISTICS OF THE DISCIPLINE DEPARTMENT				
	4 TH QUARTER 1998	4 TH QUARTER 1997	TOTAL FOR 1997	TOTAL FOR 1998
# OF MATTERS/ SOLICITORS DISPOSED OF BY DISCIPLINE COMMITTEES	10/10	62/63	198/190	99/99
# OF MATTERS/ SOLICITORS DISPOSED OF BY DISCIPLINE CONVOCATIONS	26/18	47/29	133/91	124/95
TOTALS	36/28	109/92	331/281	223/194

The relatively lower number of prosecutions in the fourth quarter as compare to other quarters reflects the fact that there is usually no Discipline Convocation in December and fewer sittings of Discipline Committees during the holiday season.

The decrease in the total number of prosecutions in 1998 compared with 1997 is again a function of the decrease in the numbers of failures to file authorised and prosecuted. When the figures are adjusted by removing prosecutions for failures to file, the remaining number of prosecutions in 1998 is slightly higher than in 1997.

Appeals

There were two appeals to the Divisional Court disposed of in the fourth quarter of 1998. Both appeals were settled on terms which included a dismissal of the appeals without costs, and the service of the one and six month suspensions concurrently.

There was one appeal of an unauthorised practice prosecution heard and disposed of in the Ontario Court (Provincial Division) in the fourth quarter of 1998. The Law Society appealed the dismissal of three of the six counts. The appeal was heard on November 20, 1998 and was allowed with respect to one count of acting as a barrister and solicitor, contrary to s. 50(1) of the Law Society Act. A new trial was ordered.

Practice Advisory and Professional Conduct

Performance Data	4 th Quarter 1998	4 th Quarter 1997
Number of telephone calls	2892	3013
Calls from sole practitioners	45%	40%
Calls from employees, partners or associates of firms	36%	36%
Calls from non-members	19%	24%

Calls between 1997 and 1998 third and fourth quarters remained constant (1783 - Q3). The month of December is busy with year-end corporate and real estate closings.

Professional Standards

Practice Review Data

CASELOAD			
	Fourth Quarter	Annual Summary	1997 Comparisons
Existing Caseload	150	164 (Jan 1/98)	164
New Files Opened	13	39	65
Files Closed	5	53	65
Total Open Files	158	150 (Dec 31/98)	164

The number of staff attendances was approximately 20 per month, on average, for the fourth quarter of 1998, compared to 40 on average for the 4th quarter of 1997. The decline is attributable to staffing shortages, now been filled; attendance rates are expected to normalize early in 1999.

Trends

The caseload inventory has remained relatively constant since 1995. Between 1988 (the inception of the Practice Review Programme) and 1995, caseload grew year to year as the department's resources were expanded. The most significant growth occurred between 1992 and 1993, when the numbers of reviews increased by almost 500%. This growth is attributed in part to increased awareness of the Practice Review Programme and higher volume of referrals from the regulatory departments of the Law Society, and in part to the department's ability to manage a higher caseload.

Changes

In January, 1998, the Professional Standards Department became a "virtual" department, in that staff lawyers gave up their offices at Osgoode Hall in order to accommodate the changes being implemented by Project 200. The lawyers were outfitted with computers, printers, and modems, and began to work from home. Two offices at Osgoode are now being shared by 5 lawyers, on a rotational basis: each lawyer has one day "in" the office, and is either on attendances or working from home the remaining days.

1999 will be another year of flux, as the restructuring of the regulatory area is completed.

C. Education

Bar Admission Course

Performance Data

Call to the Bar

- Number called to the Bar for the year ended December 31, 1998: 1,230
- Number called to the Bar for the year ended December 31, 1997: 1,150

Phase 1 Enrollment

- Number registered in 1998: 1,182
- Number registered in 1997: 1,107

Phase 3 Enrollment

- Number registered in 1998: 1,140
- Number registered in 1997: 1,143

Trends

The second quarter report projected significant growth potential for Phase I and III registrations in 1998. The actual growth for Phase 1 was 6.8% and registrations in Phase 3 declined by 0.26%. Reasons attributed to the decline in Phase 3 included financial constraints, extended employment opportunities resulting from articling positions, opportunities outside of Canada and applicants' decisions to further their educational endeavours beyond their present degree level. The growth in Phase 1 represents a positive and important sign for Phase 3 in 1999 since some of the Law Schools had reported declines in their first year enrolments for 1998-99. The Bar Admission Course administration will continue to monitor enrolment trends at the Law Schools and report as necessary. Meanwhile, the 1999 Bar Admission Course budget has been adjusted to reflect potential lower enrolment in Phase 1.

Issues and Challenges

Students' requests for special accommodations, extended time, flexible examination schedules and tutoring services continued to be important educational issues for the Bar Admission Course administration in the final quarter. Requests for accommodations doubled over last year. The costs of providing specified support and specialized services presented an unexpected budget challenge in the last quarter of 1998. It was clear, however, that the responsibility of providing reasonable support and services to accommodate students with disabilities and special circumstances remained a priority for the Department of Education and the Law Society. The commitment for accommodations and student success in the Bar Admission Course was exemplified with the inception of the Student Success Centres at all three Bar Admission Course locations.

Additional financial resources and staffing have been provided for in the 1999 budget to meet the needs for specialized equipment and services such as real time captioning, scribes, text to speech, enlarge print capabilities, individual invigilation and flexible scheduling. In 1999, counselling services will be contracted to provide further support services for students in the Bar Admission Course. This year, more than thirty-five students were provided specialized service or appropriate accommodations at a cost of \$60,000. Compared to the previous year, there was a 50% increase in special accommodations and a 400% increase in costs.

New Initiatives

New initiatives in 1998 included the following: 1) students are able to maintain credit on previously passed courses; 2) one extra hour was provided to all students for all examinations written in Phase 3; 3) students could choose to take a partial course load in Phase 3 to accommodate family situations, work commitments and financial restrictions; 4) students were permitted access to their examinations and to the answer guide; 5) a preparatory program was provided to self-identified aboriginal students prior to the start of Phase 3; 6) the Student Success Centres opened at the three Bar Admission Course locations and offered students a Peer Support program (students assisting students), a Lawyer Mentoring program (recent called lawyers volunteering to assist students with strategies for completing Phase 3 successfully) and a Tutoring program.

Other initiatives focussed on the delivery of Phase 3 as a self-directed distance education learning project in Thunder Bay (five students), Los Angeles (one student) and Timmins (one student). Five of the seven students participating in these projects have successfully completed all Phase 3 courses and will be called to the Bar in February 1999.

The Task Force on Bar Admission Course Reform has completed its Consultation Report and consultation sessions with various interest groups have been scheduled for January and February 1999. Copies of the Consultation Report have been circulated widely with requests for group and individual feedback.

The second draft of the proposed policy on accommodations was completed in November 1998 and will be presented to the Admission and Equity Committee in February 1999. Convocation will receive the Committee's recommendation at the March Convocation.

I. Articling

Performance Data

Lawyers supervising students ("principals") must be approved, based upon prescribed criteria in the areas of experience, competence and ethical standards. Through a streamlined process, articling staff reviewed over 1,800 applications from members applying to serve as an articling principal in the 1998-1999 articling term. This compares with approximately 1,300 applications during the same period a year earlier.

The articling experience is evaluated by both principals and students. These evaluations serve as a barometer of the experience received by articling students. Three thousand (3,000) evaluation forms were processed in 1998. As reported in the third quarter report, eighty-eight percent (88%) of students rate their articling experience as either good or very good to excellent.

Articling staff process applications for abridgment of the articling requirement and modification of the Bar Admission Course phase order. Approximately 38 abridgment applications were processed in 1998 and 50 requests to reschedule the Bar Admission Course were granted to accommodate individual student needs.

II. FINANCIAL AID:

The Financial Aid Office administers various financial assistance programs for students in the Bar Admission Course and assists the Special Committee on Relief & Assistance in the administration of the LPIC Insurance Assistance Program and the trusteeship of the J. Shirley Denison Trust.

Financial Assistance to Student Members:

PHASE 1:

Financial Aid staff assisted 171 Phase One students (14.4% of the class) to receive funding from the Ontario Student Assistance Program in 1998. In addition, five (5) Phase One students (0.5% of the class) borrowed from the Society's own student loan fund to meet the costs of Phase One. The total funds issued to Phase One students in 1998 was \$326,500.

PHASE 3:

Financial Aid staff assisted 252 Phase Three students (22% of the class) to receive funding from the Ontario Student Assistance Program in 1998. In addition, 22 Phase Three students (2 % of the class) borrowed from the Society's own student loan fund to meet the costs of Phase Three.

Financial Aid staff administer a bursary program during Phase Three. One hundred and seventy (170) students applied for assistance from the bursary fund in 1998. The Bursary Committee awarded \$39,346 to 70 students. Awards ranged from \$300 to \$2,000. The source of funding for student bursaries is the Law Society Foundation (\$14,846) and the Bar Admission Course budget (\$24,500). The total funds issued to Phase Three students by Financial Aid staff from all sources in 1998 was \$672,850.

The Law Society's student loan fund is a \$250,000 revolving fund which, at December 31, 1997, had approximately \$236,035 outstanding. At December 31, 1998, the fund had approximately \$190,573 outstanding in current and prior years loans. The number of students relying on Law Society loans has significantly diminished in 1998 as a result of arrangements made by the Law Society with the Bank of Montreal to provide lines of credit to BAC students.

Financial Assistance to Members:

The Special Committee on Relief & Assistance ("Committee") met on five occasions in 1998. Thirteen (13) applications for assistance from the LPIC Insurance Assistance Fund were considered. The Committee made nine (9) awards in the aggregate amount of \$37,115. The annual contribution per member to support this fund was \$1 in 1998.

The Committee also administers the trust established by the late (former Treasurer) J. Shirley Denison to assist members experiencing severe financial difficulty. Seven (7) applications to the Denison Trust were considered in 1998 resulting in four (4) awards in the aggregate amount of \$10,211. The Denison Trust has capital of \$ 345,681 as of December 31, 1998.

III. PLACEMENT:

Articling Placement

One thousand, one hundred and sixty-one (1,161) students sought articles in Ontario in the 1998-1999 articling term. At December 31, 1998, 97% of students had secured placement. The majority of the 33 students who appear to have been unsuccessful in securing a placement have deferred the Bar Admission Course to pursue other opportunities.

Preliminary results of the survey of students entering the Bar Admission Course in 1999 indicate that 68% of third year law students have already secured articles for the 1999-2000 year.

Placement staff undertake various activities to assist unplaced students including: a job notice service; targeted marketing of unplaced students to the profession; resume writing and interview skills training and counselling for unplaced students; and, a mentor program that pairs unplaced students with members practising in the student's area of interest. In addition, the program encourages articling placements in various settings and has introduced flexible criteria for articling positions that permit part-time articles, joint articling arrangements and extra-jurisdictional components.

Graduate Placement:

The graduate placement service lists positions suitable for recent graduates of the Bar Admission Course. Two hundred and fifty-four (254) positions were listed with the service in 1998 of which 210 were offers of salaried employment and 44 were offers to share space or otherwise associate.

Placement staff conduct surveys of recent Bar Admission Course graduates to determine the rate of placement among the graduating class. Statistics have been gathered for over ten years. Sixty-six percent (66%) of graduates of the 1998 Bar Admission Course (who will be called to the bar in 1999) had a permanent position upon completion of the Bar Admission Course. This compares favourably with prior years where the average has been slightly less than 65%. A further survey will be taken at the signing of the rolls for call to the bar.

Professional Placement:

The professional placement service consists of the monthly publication of a bulletin containing notices of positions suitable for those with experience at the bar. The service listed 111 opportunities in 1998, some of which were also listed with the graduate service and are reported in the graduate numbers noted above.

Issues And Challenges:

A survey of the junior bar was conducted in October 1988 by the Institute for Social Research at York University in conjunction with the Bar Admission Course reform project. It reported that articling received the highest overall rating of the three phases of the Bar Admission Course.

With an improving economy, reduced reliance on financial assistance programs might be anticipated; however, ever-increasing tuition fees and education-related debt loads are expected to mitigate the benefits of an improved economy for a number of student members.

Data collected by the placement office continues to identify visible minority, Aboriginal and mature students among those that have a particularly difficult time securing articles. Our continuing challenge is to successfully promote equity in student recruitment and hiring.

CONTINUING LEGAL EDUCATION

Performance Data

	<u>1998</u>	<u>1997</u>
No. of live programs	49	77
No. of video replays	56	42
No. of registrants	7607	7733*
Program revenue (gross)	\$1,352,573	\$1,177,809
Publications revenue	\$441,184	\$257,899
Bursaries	302	302
Revenue increase (from 1997)	20%	

*If registrants in the subsidized LSUC/CBAO/CDLPA programs *Title Insurance* and *Electronic Registration* were included, the number would rise to 14,376 registrants

Trends

Demand for continuing legal education (CLE) remains high, and growth in the demand for publications is particularly strong. Despite earlier suggestions of a trend towards briefer or "bite-sized" CLE, 1998 showed the largest registrations in programs in the traditional half- or full-day lecture format.

New Initiatives

LSUC-CLE participated in the proceedings of the multi-partisan CLE Liaison group established by Convocation on January 24, 1997 to investigate and report on the prospects for enhancing the overall framework of CLE development and delivery throughout Ontario. The group's report will be submitted to LSUC's Professional Development and Competence Committee in February, 1999. Enhanced CLE ("ECLE") should not to be confused with mandatory CLE ("MCLE").

CLE worked with Professional Standards in developing legal skills handbooks which are scheduled to appear no later than July 1999, and which will be adopted at that time by the Requalification program mandated under Bill 53. The program is designed for lawyers who have not made substantial use of their legal skills on a regular basis but who are now seeking to requalify for practice.

SPECIALIST CERTIFICATION

Performance Data

No. of specialists certified:	12
No. of specialists recertified:	36
No. of applicants rejected:	0
No. of new applicants currently seeking certification:	34

There are currently 569 certified specialists in Ontario.

D. Libraries

Great Library

Performance Data for 1998

No. of requests for research & assistance: 80,500

No. of patron visits: 83,400

New initiatives

- The Ontario Realty Corporation is in the process of undertaking major renovations in the Reference Office of the Great Library. This required relocating 6 staff to the public areas of the library and the removal and the temporary relocation of 8,500 books while repair work proceeds on the ceiling plaster. This work is to be completed by the second week of January.
- A collections retention policy has been written which will be of assistance in the culling of unnecessary volumes from the collection.
- As part of a department review a library survey was undertaken. The questionnaire was completed by 435 members during the summer and fall of 1998. These were distributed both in the library to members attending, as well as by mail. There was high praise for the services provided by the Great Library and many users took the time to write comments on the forms.
- Staff were involved in a major way in assisting counsel in the preparation and compilation of research materials for the copyright lawsuit. This matter was heard over two weeks in December in the Federal Court. The Director of Libraries and the Head of Reference appeared as witnesses along with several former Treasurers.
- The Great Library electronic card catalogue is now available on the Internet and allows access to the catalogue on a world-wide basis through our web-site. It is called the *AdvoCat* and has received rave reviews from as far away as California

County Libraries

New initiatives - 4th quarter

- The Director of Libraries visited 4 County Law Associations in the last quarter and has now travelled to all but 5 of the 48 county law associations over the past 2.5 years.
- In October, the Director of Libraries organized a two-day training session for all County librarians, on marketing and as well as on the new web-based library catalogue.
- The availability of QuickLaw in the county libraries has been very well-received, and the number of members making use of this service continues to grow. The contract is now in its second year. The contract with Carswell to supply seven CD-ROM products to the county libraries was renewed and two new products supplied by CCH Canadian are now also available from the library computers.
- Members of county law associations continue to receive local training on both QuickLaw and the CD-ROM products.
- Phase I of the *Report of the Working Group on the Long-Term Funding of County Libraries* was completed in July and distributed for comments. The options it presented were debated by Convocation and the group was charged with developing the "Blended Model" for consideration. The Phase II report will be sent to Convocation in March or April 1999.

Archives

Annual Performance Data:

- Requests for external research assistance: 164 (1997: 215)
- Osgoode Hall tours: 1127 (1997: 917)

Archives staff supported and participated in Artsweek, the largest arts festival in Canada.

Accessions of note: 48 new accessions consisting of 742 photographs and half as many negatives/contact sheets, books; 24 boxes of Law Society records; 9 artifacts, 45 fine art items.

Conservation of note: 2 irreplaceable class photos restored following discovery of mould; 10 historical paintings stabilized against further deterioration

Microfilming of note: 32 volumes of Minutes of Convocation microfilmed to minimize handling and ease off-site storage for security purposes.

E. Information systems

During the fourth quarter the restaffing of Information Systems was completed. Nine vacant positions have been filled. Staff in Information Systems have been relocated into a consolidated office space on the third floor of the east wing.

Archives has been moved to the Information Systems department to help build expertise in the area of records management, document management and to make our collection of artifacts available for presentation on the web.

The Law Society has selected Oracle as its enterprise database, and it has selected the Oracle HR and Finance applications to build its member database and case tracking system. Compaq's Digital Alpha machine has been selected as the server for our new system.

Issues and Challenges

The major issue for Information Systems continues to be in the area of Human Resources. Now that we have a full staff, intensive training must be undertaken to prepare people with the specific skills required to build the new member database.

In spite of the massive changes that are being undertaken and the complete technology rebuild, every-day work must continue. Providing acceptable service in the face of a massively changing environment continues to be a major challenge

New Initiatives

Most work going on within Information Systems involves new initiatives as planned under Project 200. Work on the Case Tracking and Member Database systems is accelerating. The new Intranet is in the final development stage. Cable and plant infrastructure is being redesigned to accommodate expected increases in bandwidth. The deployment of new workstations running Windows 95 continues. Preparation for equipping of the call centre is underway.

F. Human resources

The daily operations of the Human Resources department provide support to all LSUC employees through a consultative model in the delivery of services related to organizational structure, employee relations, staffing and recruitment, compensation, performance management, training and developing employees. The Human Resources department is a key partner in the implementation of operational changes under the Project 200 initiatives which will deliver improved HR systems that support the organization's ability to change while remaining respectful of and responsive to employees' needs.

- Job analysis, the cornerstone of HR redesign, commenced; 95% of all new jobs analyzed
- Staffing and recruitment transition policy established to provide clear and consistent standards throughout the implementation of Project 200;
- The new positions of Manager-Advisory and Compliance Services, Manager-Call Centre, Manager-Membership Services, and Manager-Administration, Regulatory Services, each key leadership positions in the implementation of Project 200, have been filled; the few remaining positions should be filled in the first quarter of 1999.
- Change agent: provided leadership, expertise and programs to help employees manage change, to drive Project 200 and organizational change forward, and to begin to build an overall organizational capacity for change
- A series of change management and job search skills workshops was held to prepare employees for upcoming internal job competitions
- To support the restructuring in the regulatory area and the introduction of a customer service centre, a comprehensive plan was implemented that fulfills the Law Society's commitment to deal fairly with employees whose jobs are being phased out and who either choose not to apply for new positions, or whose candidacy for new jobs does not result in an offer of employment.
- Partnered with Information Systems and Department of Education to restructure their operations
- Partnered with the Treasurer's Equity Advisory Group (TEAG) and successfully filled the new position of Equity Advisor, a key senior management position. Charles Smith started in the position in December 1998.

In keeping with the commitment to provide continuous improvement within the Law Society, over the past quarter the Human Resources department completed the following:

- To ensure compliance with Executive Limitation 1.4, the Law Society's Harassment Policy was revised to include workplace harassment. This process included selection and initial training of internal staff advisors on the revised policy.
- Completed the annual performance management cycle, which included performance appraisals for all employees, management training, and implementation of pay-for-performance.

G. Communications

During the tenure of the current bench, the Communications Department has focussed its efforts on assisting the Law Society to improve communication and relationships with members, government and employees. Accordingly the department was renamed "Public Affairs" to recognize its interactions with a multiplicity of constituencies.

Responding to members' needs for regular communication from their professional body, the Society launched *The Ontario Lawyer's Gazette* in 1997 providing a bi-monthly vehicle to convey information about conduct and practice matters, to share perspectives on issues affecting the profession and to bring the voice of Convocation to the membership. Augmenting the Society's magazine is the website www.lsuc.on.ca which has been attracting a substantial number of members each month seeking information and performing a variety of transactions including e-filing, which has grown by 500 percent between 1998 and 1999. In 1998, over 632,000 web pages from the Society's website were accessed. Members can now also participate in a number of website discussion forums on various matters of interest.

Government Relations:

Improving relations with the provincial government was the focus of both Convocation's and the administration's efforts over the last few years. A government relations function was established to develop contacts with provincial ministries and officials, and to provide coordination and support to an MPP contact program. The focus of the function over the last year has been to work closely with members of the Public Affairs Committee to expedite the passing Bill 53 (amendments to the Law Society Act). The bill was proclaimed on February 1. Staff and the committee also mounted a province-wide education campaign in 1997-98 aimed at lawyers and MPPs regarding proposed amendments to Regulation 666 (the requirement to obtain independent legal advice on property titles) – a matter of significant interest to consumers as well as the legal profession and one which was ultimately successfully resolved.

OF NOTE ...

- Staff raised \$6,450 from Casual Day Fridays in 1998; these funds were distributed to the five charities staff selected to support for the year: Canadian Cancer Society, Hospital for Sick Children, Casey House, Canadian Breast Cancer Foundation, and the Heart and Stroke Foundation.
- Staff from the Maintenance, Security and Catering departments, continue to support lawyers' initiatives to feed the homeless, which take place twice-weekly at Osgoode Hall

H. Compliance with executive limitations

A. BUDGETING

1.0 Unless otherwise directed by Convocation, the Chief Executive Officer shall not:

- ⇨ Allow operating expenses to deviate from the budget in any significant way.
In compliance. The 1998 nine months operating expenses at \$15.708 million represent approximately 60% of the year's budget.
- ⇨ Allow expenditures to deviate materially from the Society's mission, priorities and programs.
In compliance. Expenditures are monitored internally monthly to ensure there are no material deviations from budget. In addition, expenditure information is reported to the Finance and Audit Committee and Convocation on a quarterly basis.
- ⇨ Incur debt on behalf of The Law Society of Upper Canada, other than an operating line of credit.
In compliance.
- ⇨ Present a budget without:
 - a reasonable projection of revenues and expenses,
 - disclosure of planning assumptions,
 - disclosure of operating and capital items,
 - dedicating appropriate human and financial resources to implement Convocation's ends policies.In compliance. The 1999 Budget as presented to, and approved by Convocation, included reasonable projections of all revenues and expenses, disclosed all assumptions, and disclosed all operating and capital items. The 1999 Budget includes appropriate funds and human resources to accomplish the ends policies as determined by Convocation.

B. ASSET ADMINISTRATION AND ACQUISITION OF SERVICES

1.0 Unless otherwise directed, the CEO shall not:

⇒ Allow Society funds to be invested except in accordance with the Society's Investment Policy.

In compliance. Investment reports are presented to the Finance and Audit Committee quarterly detailing compliance and information regarding the investment mix.

⇒ Allow physical assets to be subjected to improper wear and tear or insufficient maintenance or allow the historical integrity of the building to be impaired.

In compliance. A facilities plan has been submitted to the Finance and Audit Committee outlining work that is required and estimated costs. As well, work has been completed on various areas of the building. Architect's reports have been acquired indicating areas of further repair and renovation.

⇒ Operate without adequate insurance.

In compliance. A review of the current insurance coverage with the Society's insurance broker has been completed during the third quarter with the renewal taking place in the fourth quarter.

⇒ Make any capital purchases or commit the Society to any capital purchase of a value greater than \$100,000.

In compliance. All payments for purchases of \$100,000 or more must be approved by a Benchor. Policies and procedures have been put in place mandating that purchase orders greater than \$100,000 be approved by Convocation.

⇒ Make any purchase:

- If normally prudent protection against conflict of interest has not been taken.
In compliance. A Business Conduct Policy was approved by Senior Management in September of 1996. *A conflict of interest with respect to dealing with suppliers was discovered during the fourth quarter. Steps have been taken to ensure that all new employees read the Business Conduct Policy and will abide by its terms and conditions.*
- If over \$10,000 without having obtained competitive prices and quality, unless fully justified and documented.
In compliance. The Society requires three written quotations for all purchases in excess of \$10,000.

⇒ Contract for any service that does not comply with the Law Society's policy on retaining services.

In compliance. A central purchasing department is in place that has policies and procedures that must be followed. For the most part the Society followed the stated policy. *During the fourth quarter, there were several instances where goods or services were acquired that did not strictly follow the Society's stated policy. Steps have been taken to ensure there is full compliance in the future.*

⇒ Keep books and records, receive, process or disburse funds under controls which are insufficient to meet the Society's Auditor's standards.

In compliance. Financial practices and procedures have been developed and adopted by Senior Management and ensure proper and adequate control. Proper record keeping practices are in place and meet the Society's Auditor's standards. On an ongoing basis these practices and procedures are reviewed in order to ensure compliance.

⇒ Acquire, encumber, or dispose of real property.

In compliance. During the period, no real property was acquired, encumbered or disposed.

C. FINANCIAL CONDITION

1.0 The Chief Executive Officer shall protect the financial stability of The Law Society and shall not:

⇒ Allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed.

In compliance. All tax payments and other government ordered payments and filings are prepared and remitted to the respective government department on schedule.

⇒ Fail to monitor changes in legislation or legislative interpretation affecting Law Society finances and take appropriate action to protect the Law Society or each fund from liabilities arising from such changes.

In compliance. All changes to legislation and legislative interpretation are monitored and, when required, action has been initiated to protect the Society.

⇒ Use reserves (except for the Errors and Omissions fund) except as budgeted.

In compliance. Annual audited financial statements and quarterly unaudited financial statements detail the use of reserves.

D. HUMAN RESOURCE PRINCIPLES

1.0 The Chief Executive Officer shall not operate without:

⇒ Job descriptions and regular performance appraisals for all staff

In compliance. The annual performance management cycle, which included performance appraisals for all employees was completed, along with relevant management training, and implementation of pay for performance increases

⇒ The CEO shall not operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.

In compliance. The Society's harassment policy was revised to include workplace harassment. This process included selection and initial training of internal staff advisors on the revised policy.

E. COMPENSATION AND BENEFITS

1.0 With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.

In compliance. Budgets are monitored monthly to ensure that employment arrangements do not jeopardize fiscal stability.

1.1 The Chief Executive Officer shall not change his/her compensation and benefits.

In compliance. The Director of Human Resources reports that the CEO is compensated according to the terms of his contract, which have not been changed.

1.2 The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.

In compliance. The review of the Society's compensation, benefits and rewards program continues. Additional information will be identified as a result of the Project 200 initiative.

1.3 The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.

In compliance. Budget provisions ensure that there are sufficient funds to cover compensation obligations.

1.4 The Chief Executive Officer shall not fail to maintain a parental leave policy for staff.

In compliance. The Law Society maintains a parental leave policy.

II PROJECT 200 UPDATE

1999 marks the final chapter in the comprehensive administrative restructuring exercise known as Project 200, which began in early 1998. The conclusion of P200 will yield the following long-term improvements:

- a. a more streamlined regulatory operation divided into two principal functions: screening, investigation and prosecution of complaints which relate to our regulatory mandate; and the provision of advisory and remedial services to assist members in practice to maintain or enhance competence
- b. the consolidation of public and member inquiries/complaints functions and membership-related services into a centralized customer service operation that is telephone accessible through one number and which will be web accessible
- c. the implementation of a Law Society-wide technology solution that will provide a single comprehensive membership database (down from 32 separate ones), casetracking and workflow systems to track the progress of regulatory matters and customer service requests
- d. immediate reduction of operating costs and the containment of cost increases in the future

Regulatory Restructuring

Policy developments driven by a large number of committees have caused the Law Society's regulatory operations to generate significant staff growth since the early 1980s. Functions and departments mirrored the committee structure and – while performing important work – were often characterized by duplication of work and several layers of management resulting in less than optimal utilization of financial and human resources.

Restructuring will result in eight departments being consolidated into four units – reducing management by 50 percent and workforce by approximately 18 percent. The four departments will be responsible for the following activities:

1. Provision of advisory, practice management and remedial services to assist members to maintain or enhance competence
2. Screening minor complaints to achieve early resolution and closure
3. Investigation of serious complaints in a team setting to provide all required resources to address all issues on an integrated basis.
4. Prosecution of professional misconduct
5. Conduct hearings relating to professional and mental competency
6. Introduction of Alternative Dispute Resolution ("ADR") to achieve resolutions that are more satisfactory to complainants, members and the Law Society.

The transition to the first two of the restructured departments will occur by April 30. The Investigations unit will be fully restructured by year-end following a six-month pilot period to test a new integrated approach to investigations similar to the team approach model now followed by the health services sector. Every professional conduct investigation will be assigned to a team consisting of a case administrator, counsel, auditor and law clerks who will be responsible for the carriage of investigations, development of a remedial course of action, and preparation of complete counsel briefs to be used in the prosecution stage if required. The Discipline department will continue to undergo refinement as the provisions of the legislative package are implemented.

For the first time in the Society's history, performance standards and measurements have been established for the Regulatory operation, which will facilitate a significant reduction in the cycle time required to bring professional misconduct matters to resolution. The Law Society will aim to conclude 95 percent of all regulatory matters in less than one year.

- Complaints are to be resolved, or forwarded to Investigations within 2 months
- Investigations completed, and forwarded to Discipline if necessary, within the next 4 months;
- Discipline matters to be prosecuted within the next 4 months.

New casetracking and workflow systems, the introduction of case management practices, ADR and increased remedial dispositions, made possible through the legislative reform package, will assist greatly in meeting the performance targets which have been established following extensive consultation across a wide variety of North American regulatory bodies. In addition, a new performance management system that ensures employees meet these targets has been established.

Customer Service

Members and the public will soon be able to access most information and services from the Law Society through a centralized public and membership services unit, the CUSTOMER SERVICE CENTRE, scheduled to come into being in April. Accessible by telephone, internet or in person, the Centre will ultimately provide "one-stop shopping" for those seeking information and assistance with membership, CLE, complaints, lawyer referral and certification matters, to name just a few of the over thirty services that will be consolidated into the new, automated ground-floor operation at Osgoode Hall. Extended hours for live service from 8am to 6pm (presently 9am to 4:30pm), and the introduction of self-service technology options (IVR – integrated voice response systems and secure web-based access) will allow for quick and accurate processing of member and public requests.

Technology

Recently acquired technology solutions are quickly being added to the Society's operations in order to better track the status of professional misconduct complaints/cases, manage workflow and greatly improve overall efficiency. Strategic information will be collected about our members, enabling the Law Society to effectively tailor educational and remedial services. A single membership database, casetracking and workflow management system is currently under development and will be in operation in the Fall of 1999.

III ADMINISTRATIVE ACCOMPLISHMENTS

The current bench has, over the past four years, directed and encouraged staff to make major improvements in the way we conduct the business of the Law Society. Listed below are brief descriptions of just some of the Law Society's most significant gains between 1995 and 1999:

- ★ LAW SOCIETY AMENDMENT ACT SUCCESSFULLY DRAFTED by the regulatory area, under the direction of a bench task force
- ★ REGULATORY FUNCTIONS REDESIGNED AND STREAMLINED primarily by regulatory staff who at the same time performed their usual regulatory functions
- ★ A POLICY SECRETARIAT ESTABLISHED to provide top quality research reports to assist committees and Convocation in making policy decisions
- ★ COMPREHENSIVE SPOT AND FOCUSED AUDIT PROGRAMS developed and successfully implemented

FINANCE

- ★ MAJOR OPERATING WEAKNESSES ELIMINATED. The auditor's 1995 management letter identified 33 major operating weaknesses ... the 1997 management letter indicated that no major operating weaknesses existed
- ★ OPERATING EXPENSE REDUCTIONS, OTHER SAVINGS AND REVENUE ENHANCEMENTS TOTAL APPROXIMATELY \$8 MILLION in the past four years, including a \$2.6 million reduction for 1999
- ★ STAFF COMPLEMENT REDUCED by 25%
- ★ MEMBERSHIP PAYMENT OPTIONS INCREASED 4-FOLD FROM 1995: monthly pre-authorized payment plan, payment by credit card, prompt payment discounts added to the regular annual cash payment plan
- ★ CONTINUOUS BUILDING MAINTENANCE & UPDATE PLAN funded and operationalized to protect and maintain the integrity of Osgoode Hall

LIBRARIES

- ★ GREAT LIBRARY CATALOGUE WENT ELECTRONIC and made available on the internet and publications became available by way of CD-ROMs
- ★ ALL 48 COUNTY & DISTRICT LIBRARIES provided with computers, CD ROMs, electronic access to publications and free access to the Quicklaw Database

EDUCATION

- ★ DRAFT BAR ADMISSION COURSE REFORM PAPER & CONSULTATION REPORT completed and prepared for Convocation's consideration
- ★ 3 DISTANCE EDUCATION PILOT DELIVERY PROJECTS successfully completed in Canada and abroad, preparing the way for future delivery of Bar Admission and Continuing Legal Education programs across the province using this system
- ★ STUDENT SUCCESS CENTRE OPENED to help equity-seeking groups and now any student needing assistance to improve their learning skills in order to successfully complete the Bar Admission program

HUMAN RESOURCES

- ★ A PROFESSIONAL HUMAN RESOURCES DEPARTMENT ESTABLISHED to help ensure that staff, our most valuable and costly assets, are well trained, properly recruited, given meaningful objectives, evaluated, motivated and compensated on the basis of achievement
- ★ HUMAN RESOURCES PLAYS CRITICAL LEADERSHIP ROLE as change agent to help drive restructuring changes required to complete Project 200 implementation by the end of 1999

EQUITY INITIATIVES

- ★ EQUITY ADVISOR HIRED and initiatives envisioned in the Bicentennial Equity Policy adopted by Convocation in 1997 now underway
- ★ THE LAW SOCIETY WILL PARTICIPATE IN A NUMBER OF EVENTS COMMEMORATING OR CELEBRATING EQUITY AND DIVERSITY IN 1999
- ★ A DISCRIMINATION/HARASSMENT OMBUDSPERSON WILL BE APPOINTED as part of the Alternate Dispute Resolution pilot project with the assistance of the Equity Advisor

INFORMATION TECHNOLOGY

- ★ ADOPTED AN ENTERPRISE INFORMATION SYSTEM which will enable all departments to share common member and public information in an efficient and secured format
- ★ TOTALLY RESTRUCTURED the department and hired 9 new staff replacements
- ★ PURCHASED THE ORACLE DATABASE AND APPLICATIONS in order to consolidate over 32 mostly paper-file databases into one efficient database, and provide new servers with much more power than the current system, reducing the cost of operating the old IBM system by 75%
- ★ ESTABLISHED A LAW SOCIETY WEBSITE on the internet

PUBLIC AFFAIRS AND GOVERNMENT RELATIONS

- ★ ASSISTED THE TREASURER AND GOVERNMENT RELATIONS COMMITTEE in preparing successful strategies and information packages, helped lobby members of the government and opposition parties, and generally assisted the Treasurer in securing passage of the Law Society Amendment Act
- ★ CONSOLIDATED LETTERS, PUBLICATIONS AND REPORTS TO THE PROFESSION INTO THE LAWYERS GAZETTE, published 6 times per year and presented in electronic format on the Law Society's internet website

OTHER

- ★ BICENTENNIAL ACTIVITIES AND CELEBRATIONS were successfully undertaken throughout 1997 by Law Society Benchers and staff, and were well received. 62 lawyers representing every County & District Law Association received a Bicentennial Award of Merit in recognition of excellent public service in their communities
- ★ THE POLICY GOVERNANCE MODEL APPROACH to governance of the Law Society, which was unanimously adopted by Convocation in June 1996, was developed by the Bencher Restructuring Task Force, with the assistance of staff, and operationalized in 1997
- ★ SUBSTANTIAL OPERATING IMPROVEMENT resulting from Project 200 outlined in Tab 2

FINANCE AND AUDIT COMMITTEE REPORT

Finance and Audit Committee
February 11, 1999

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

Terms of Reference/Committee Process.....	3
Transition Provision.....	3
Classes of Membership.....	3

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on February 11, 1999. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, P. Furlong, D. Murphy, C. Ruby, T. Stomp, G. Swaye, J. Wardlaw, R. Wilson, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, D. Carey, K. Corrick, F. Grady, and R. White.

1. The Committee is reporting on the following matters:
 - funds available in the 1999 budget for Committee initiatives and Task Forces
 - classes of membership.
2. During the 1999 Budget debate, a request was made of the Finance and Audit Committee to review the composition of the 1999 Transition Provision to ensure adequate funds were available for Committee initiatives and Task Forces. The review was requested as the result of reducing the Transition Provision to offset the additional amount required of members to subsidize the Bar Admission Course.
3. The Finance and Audit Committee were presented with the details of the 1999 Transition Provision by staff and have determined that \$250,000 is included for Committee initiatives and Task Forces. Furthermore, the Transition Provision includes \$225,000 provision for expenses that may be incurred as the result of the passing of the new Act.
4. During the 1999 Budget presentation, a recommendation from the Finance and Audit Committee to reduce the number of membership classes to two was tabled.
5. Convocation requested that the Finance and Audit Committee revisit the issue of membership classes and, if necessary, report back to Convocation. To that end, a Working Group of the Finance and Audit Committee has been created to review the issues. The members of the Working Group are E. DelZotto and J. Wardlaw. Staff resources will be utilized as required. It is planned that a report be available for Convocation's consideration in April.

PROFESSIONAL DEVELOPMENT AND COMPETENCY COMMITTEE REPORT

Professional Development & Competence Committee
February 19, 1999

Report to Convocation

Purpose of Report: Information

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on February 11, 1999. Committee members in attendance were Mary Eberts (Chair), Rich Wilson (Vice-Chair), Mike Adams, and Ron Cass. Staff in attendance were Sue McCaffrey, Janine Miller, Felecia Smith, Elliott Spears, and Sophia Sperdakos.

2. The Committee is reporting on the following matters:
(Information)

- A report from the January 1999 meeting of the Certification Working group on new applications and recertifications as certified specialists (approved in Committee in February 1999).
- Implementation Issues - *The Law Society Amendment Act, 1998*

Information

INFORMATION REPORT ON SPECIALIST CERTIFICATION NEW APPLICATIONS AND RECERTIFICATIONS
APPROVED BY THE CERTIFICATION WORKING GROUP IN JANUARY 1999 (APPROVED IN COMMITTEE ON
FEBRUARY 11, 1999)

1. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval of the following lawyers for certification:

Civil Litigation:	Sean Dewart (of Toronto) William McCorriston (of Toronto)
Criminal Law:	James Marentette (of Kitchener)
Immigration Law:	Irvin Sherman (of Don Mills)

2. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval of the following lawyers for recertification for an additional five years:

Civil Litigation:	Murray Armel (of Toronto) Robert Armstrong (of Toronto) Robert Barnes (of Windsor) John Broderick (of Niagara Falls) Dalton Charters (of Windsor) John Evans (of Hamilton) Thomas Heintzman (of Toronto) Frederick Knight (of Windsor) Richard Lawson (of Toronto) Robert Loudon (of Toronto) Peter Madorin (of Kitchener) Peter Newcombe (of Ottawa) Denis Power (of Ottawa) Vern Rogers (of Toronto) William Salem (of Windsor) James Sawers (of Toronto) David Scott (of Ottawa) David Sims (of Whitby) Owen Smith (of New Liskeard) David Stockwood (of Toronto) Wendell Wigle (of Toronto) David Williams (of London)
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19th February, 1999

Criminal Law: Roderick Heather (of Toronto)
Morris Manning (of Toronto)

IMPLEMENTATION ISSUES - THE *LAW SOCIETY AMENDMENT ACT, 1998*

1. The Committee has begun the work related to the drafting of by-laws for the competence-related provisions of the *Law Society Amendment Act, 1998*.
2. Pursuant to by-law 9 one of the mandates of the Professional Development and Competence Committee is to develop for Convocation's approval policy options on all matters relating to the professional competence of members.
3. In April the Committee will be providing Convocation with draft by-laws and policy options relating to the following provisions:
 - a) s.42(1) Circumstances under which a practice review should be conducted.
 - b) s.42(2); s.49.4 Circumstances under which chair or vice-chair is required to direct practice review.
 - c) s.42(6) Procedure governing the making of recommendations and their inclusion in a proposal for competence order.
 - d) s.42(6-8) Process and time frame for accepting a proposal; procedures for benchers to follow in considering orders.
 - e) s.43 Consideration of PAC by-law for any additions regarding competence hearings.
 - f) Consideration of Rules of Practice and Procedure for assessment of applicability to competence hearings; any additional provisions.
 - g) s.45 Consideration of Rules of Practice and Procedure where member fails to comply with competence order.
 - h) s.49.1 Requalification by-law.
 - i) s.49.5(2) Process for obtaining outside investigators in the event benchers being investigated for competence.
 - j) Miscellaneous or other identified by-law issues.

CONVOCATION ROSE AT 12:30 P.M.

The Treasurer and Benchers had as their guests for luncheon The Hon. Marion Boyd and Fox Scholars, Katherine Awadalla and Arun Daniel-Salvaratnum.

Confirmed in Convocation this 26 day of March, 1999

Harvey T. Strassberg
Treasurer