

MINUTES OF CONVOCATION

Friday, 25th March, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Bellamy, Campbell, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Hickey, Hill, Howland, Kiteley, Krishna, Lamont, Legge, McKinnon, Mohideen, Moliner, Murray, O'Brien, D. O'Connor, S. O'Connor, Palmer, Pepper, Peters, Richardson, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Weaver and Yachetti.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer read a letter to Convocation that he had received from Mr. Dan Murphy who was recovering from a recent accident.

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CALL TO THE BAR

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

David Steven Umansky	34th Bar Admission Course
Douglas Martin Baum	35th Bar Admission Course
Edna Angelina Chu	35th Bar Admission Course
Gary Edward Corbiere	35th Bar Admission Course
Karen Anne Cosgrove	35th Bar Admission Course
Carmen Alexandra De Facendis	35th Bar Admission Course
Kawennison Trisha Marie Delorimier	35th Bar Admission Course
Lisa Heather Fishbayn	35th Bar Admission Course
Paulette Susan Haynes	35th Bar Admission Course
William Edward Hewitson	35th Bar Admission Course
Jane Elizabeth Hooey	35th Bar Admission Course
Brock Timmons Howie	35th Bar Admission Course
Albert Ara Ishkhan Kaprielian	35th Bar Admission Course
John George Edward Kerenyi	35th Bar Admission Course
Phillip Louis Landolt	35th Bar Admission Course
Katherine Angela Liao	35th Bar Admission Course
Lora Lynn Mackie	35th Bar Admission Course
Adelso Mancia Carpio	35th Bar Admission Course
Victoria Anne Masnyk	35th Bar Admission Course

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Gautam Mohan	35th Bar Admission Course
David Andre Morin	35th Bar Admission Course
Allyce Bagombeka Mutungi	35th Bar Admission Course
Duen Yee Nora Ng	35th Bar Admission Course
Roger James Pead	35th Bar Admission Course
David Jason Rose	35th Bar Admission Course
Harris Matthew Rosen	35th Bar Admission Course
Mark Adrian Schofield	35th Bar Admission Course
Linda Florence Stevenson	35th Bar Admission Course
Giuliana Tricarico	35th Bar Admission Course
Christopher Turney	35th Bar Admission Course
Gang Wu	35th Bar Admission Course
Janet Jeffrey	Special, Transfer, Manitoba
Royden William Dean Ross Kropp	Special, Transfer, Manitoba
Joseph Dougal Legris	Special, Transfer, New Brunswick

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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MOTIONS - COMMITTEE APPOINTMENTS

It was moved by Fran Kiteley, seconded by Ron Cass -

THAT Ross Murray be added as a member of the County and District Liaison Committee; and

THAT a Special Committee on Conflicts of Interest be established and be composed of Arthur Scace (Chair), Ross Murray, Marie Moliner, Lloyd Brennan, Maurice Cullity, Carole Curtis, Susan Elliott, Hope Sealy and Kevin Carroll.

Carried

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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Strosberg, seconded by Mr. Finkelstein THAT the Reports listed in paragraph 3 of the Agenda (Reports taken as Read) excluding Item B.-3. of the Finance and Administration Report, Item A.-A.1.4. of the Professional Standards Report and Item 2. re: Audit Policy Subcommittee, of the February 24th Insurance Report, be adopted.

Carried

Admissions
Clinic Funding
Communications
County and District Liaison
Discipline
Equity in Legal Education and Practice
February Draft Minutes
Finance and Administration (March 10 Report)
Insurance (March Report)
Investment
Legal Education
Legislation and Rules
Libraries and Reporting
Professional Conduct
Professional Standards
Research and Planning
Specialist Certification Board
Unauthorized Practice
Women in the Legal Profession

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meeting of March 24, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 24th of March, 1994 at 1 p.m., the following members being present: Mr. Lamont (Chair), Ms. Moliner and Messrs. Farquharson and Goudge.

Also present: M. Angevine and P. Gyulay

A.
POLICY

A.1. CERTIFICATE OF STANDING

A.1.1. A member of the Law Society has written to the Secretary through his counsel objecting to the form and content of a Certificate of Standing issued to him by the Society.

A.1.2. The member objected in particular to information being provided under the heading "Other Relevant information" which indicated that there was currently an investigation by the Society into the member's conduct.

A.1.3. The member requested that an alternative form of Certificate of Standing be issued to him.

A.1.4. In considering the matter, your Committee had before it information provided by the Secretary indicating that the form of the certificate currently being used by the Society is common to all governing bodies within Canada and was arrived at to ensure that there was a uniformity of information provided to other governing bodies.

Your Committee considered that the Certificate of Standing which was issued to the member had been prepared and delivered in accordance with Law Society policy and recommends that no alternate form of Certificate be provided to the member.

B.
ADMINISTRATION

B.1. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.1.1. The following candidate has completed successfully the January 1994 transfer examination:

Maureen Shebib

Province of Nova Scotia

Approved

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

B.2.1. Bar Admission Course

The following candidates having successfully completed the 35th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on March 25th, 1994:

Douglas Martin Baum
Edna Angelina Chu
Gary Edward Corbiere
Karen Anne Cosgrove
Carmen Alexandra De Facendis
Kawennison Trisha Marie Delorimier
Lisa Heather Fishbayn

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Paulette Susan Haynes
William Edward Hewitson
Jane Elizabeth Hooey
Brock Timmins Howie
Albert Ara Ishkhan Kaprielian
John George Edward Kerenyi
Neil Kotnala
Phillip Louis Landolt
Katherine Angela Liao
Lora Lynn Mackie
Adelso Mancia Carpio
Victoria Anne Masnyk
Gautam Mohan
David Andre Morin
Allyce Bagombeka Mutungi
Duen Yee Nora Ng
Roger James Pead
David Jason Rose
Harris Mathew Rosen
Mark Adrian Schofield
Linda Florence Stevenson
Giuliana Tricarico
Christopher Turney
Gang Wu

Approved

B.2.3. Transfer from another Province - Section 4(1)

The following candidates having completed successfully the transfer examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, March 25th, 1994:

Janet Jeffrey	Province of Manitoba
Royden William Dean Ross Kropp	Province of Manitoba

Approved

The following candidate having completed successfully Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, March 25th, 1994:

Joseph Dougal Legris	Province of New Brunswick
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Approved

C.
INFORMATION

C.1. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Sandra Vivienne <u>Bair-Muirhead</u>	Sandra Vivienne <u>Bair</u> (Birth Certificate)
Rhys William <u>Langen-Jones</u>	Rhys William <u>Jones</u> (Birth Certificate)

Noted

C.2. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Kenneth Bain Munro Hagersville	Called September 16, 1948 Died January 21, 1993
Alibert St. Aubin Sudbury	Called June 16, 1927 Died October 30, 1993
Terence Alexander Whitbread Brantford	Called November 16, 1939 Died November 19, 1993
Norman Douglas Scott Toronto	Called June 21, 1951 Died January 1, 1994
Hugh Evan McGillicuddy Cameron	Called June 26, 1958 Died January 30, 1994
John David Philp Toronto	Called June 27, 1957 Died February 6, 1994
Frank Woods Callaghan Toronto	Called June 27, 1957 Died February 23, 1994

Noted

(b) Membership in Abeyance

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

Jan Van Der Woerd Burlington	Called March 26, 1965 Appointed to Small Claims Court September 1, 1992
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25th March, 1994

Clair Marchand
Barrie

Called June 22, 1960
Appointed to Ontario Court
(General Division)
January 27, 1994

Noted

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

R. Carter
Chair

THE REPORT WAS ADOPTED

CLINIC FUNDING COMMITTEE

Meeting of March 15, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on Tuesday, the 15th of March, 1994. Present were: Joan Lax, Chair, Paul Copeland, Jim Frumau, Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

B.
ADMINISTRATION

1. Applications to the Clinic Funding Committee

a. Court costs

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

Mississauga Community Legal Services - up to \$1,500

2. Legal Disbursements

The Committee reviewed and approved allocations for legal disbursements, in a total amount up to \$422,600, as set out in Schedule A.

25th March, 1994

3. Capital Purchases

The Committee reviewed and approved allocations for capital purchases, in a total amount up to \$153,329, as set out in Schedule B.

4. Summer Students 1994

The Committee reviewed and approved funds for the employment of summer law students in 1994, pending the designation of the clinic funding budget for 1994/95 by the Attorney General, as follows:

Correctional Law Project (4 students) - up to	\$ 28,000
Parkdale Community Legal Services	
(20 students) - up to	136,000
Legal Assistance of Windsor (12 students) - up to	82,000
Kensington-Bellwoods Community Legal Services	
(12 students) - up to	<u>82,000</u>
Total	<u>\$328,000</u>

C.
INFORMATION

ALL OF WHICH is respectfully submitted

J. Lax
Chair

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

Item B.-2. - Copy of legal disbursements. (Schedule A)

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at 11:30 a.m., the following members being present: A. Feinstein (Acting Chair), C. Campbell and S. Elliott. The following members of the County and District Law Presidents' Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, S. Foley, R. Gates, M. Hornseth, D. Lovell and M. J. Morissette. Staff in attendance were: M. Angevine and A. John (Secretary).

25th March, 1994

1. MAY 12 AND 13, 1994 PLENARY

The County and District Law Presidents' Association intends to devote the first day of the plenary on Thursday, May 12, 1994 to a discussion of the Law Society's Role Statement. The agenda for Friday will include participation by the benchers. Those benchers who wish to address the County and District Law Presidents' Association on any issue are asked to notify David Levell (telephone (519) 376-6700) or Harrison Arrell (telephone (905) 528-7963) before the end of March 1994.

The Chair of the Insurance Committee has agreed to address the plenary about the change in the Rule concerning conflict of interest in real estate matters.

2. LAW SOCIETY PROSECUTION OF UNAUTHORIZED PRACTICE MATTERS

The County and District Law Presidents' Association Executive has written to the Chair of the Unauthorized Practice Committee, providing the Association's response to the Chair's views on the prosecution of independent paralegals who breach s.50 of the Law Society Act. It is the Association's position that the Law Society should continue to prosecute rather than have this function taken over by the Attorney General of Ontario. The Association does not believe that the Province of Ontario will investigate and prosecute breaches of s.50 more vigorously than the Law Society.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

R. Bragagnolo
Chair

THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of March 1994, the following persons being present: Stephen Goudge (Chair), Nora Richardson, David Scott, Sharon Ffolkes-Abrahams, Marilyn Pilkington, Joanne St.Lewis, Donald Crosbie and Alexis Singer.

C.
INFORMATION

C.1 Proposed Rule on Non-Discrimination

C.1.1 The committee has made considerable progress in settling the wording of a redraft of Rule 28. The Chair hopes to be in a position to discuss the redrafted rule with the Chairs of the Women in the Legal Profession Committee and the Professional Conduct Committee in the near future.

C.1.2 The committee received the report from Marie Moliner and Joanne St.Lewis outlining the procedures to be followed in developing an educational program in respect of the *Ontario Human Rights Code*, the Charter and relevant labour laws. The committee directed that work be commenced immediately by the three subcommittees proposed by the report dealing respectively with human rights issues, employer issues and employment equity. The Chair will consult with the Women in the Legal Profession Committee concerning the extent to which this activity might be carried out in conjunction with the work of the Women in the Legal Profession Committee on gender equality issues.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March 1994

S. Goudge
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES - February 25, 1994

(see draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

INSURANCE COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

25th March, 1994

Your Committee met on Thursday, the 10th of March, 1994 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Bastedo, Cass, Scace, Wardlaw, Murray, Epstein, Feinstein and Ms. Elliott.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

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

2. LPIC RELATED INSURANCE SUBCOMMITTEES

Pursuant to recommendations on the role of Benchers on LPIC's Board of Directors made at the November 24, 1994 special Committee meeting, your Committee has created four Insurance Subcommittees to focus on specific areas of policy considerations with a view to reporting to your Committee in May.

1. CLAIMS POLICY SUBCOMMITTEE:

Benchers

Abe Feinstein
Michael Hickey

Staff

Caron Wishart

2. AUDIT POLICY SUBCOMMITTEE:

Benchers

Susan Elliott
Tom Bastedo

Staff

Kevin O'Toole

3. LOSS PREVENTION POLICY SUBCOMMITTEE:

Benchers

Jim Wardlaw
Julaine Palmer
Neil Finkelstein
Phil Epstein

Staff

Caron Wishart

4. MANAGEMENT POLICY SUBCOMMITTEE:

Benchers

Colin Campbell
Ken Howie
Ross Murray

Staff

Don Crosbie
Ed Anderson
David Crack
Robert Whiklo

25th March, 1994

3. ABA SEMINAR / NABRICO MEETING

The ABA's Standing Committee on Lawyers' Professional Liability April 1994 seminar will be followed by a meeting of the North American Bar-Related Insurance Company Organization (NABRICO), of which LPIC is a member. Your Committee has requested that the President and a Committee member attend these meetings.

4. LICENSING OF LPIC CLAIMS MANAGEMENT SOFTWARE SYSTEM

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

The Committee supported the suggestion in principle, and asked that the President retain counsel to advise if the agreement exposes the Law Society to potential undesirable consequences, and to amend the agreement, if necessary, to avoid such an exposure. The President will report on this subject when additional information is available.

5. OUTSTANDING ITEMS

a) American Home Assurance Company

The Director reported on the latest developments involving American Home Assurance Company, the insurer of the Mandatory E&O Program for January 1, 1982 to July 1, 1989. The Society and the insurer have conflicting views on whether or not adjuster fees, one of several claim-related expenses, accrue towards each respective individual Fund Year Stop Loss limit.

It appears that a resolution of this matter may be possible in the near future. In light of his past in-depth and lengthy involvement with this matter, your Committee has requested that Mr. Lin Whitman continue to assist the Chair in this regard.

b) LPIC Claim File Audit

The existing claim file audit program consists of regular in-house file audits by senior staff in addition to periodic external audits involving reinsurers, Law Society auditors and independent audit consultants. At the June 1993 meeting, the Committee agreed to schedule a claim file audit by an independent audit consultant. In light of the July 1993 Ontario Insurance Commission annual LPIC examination, and recent audits by both staff and reinsurers, the Committee agreed to schedule the independent consultant audit in the new year. Pursuant to this, the President and staff met with representatives of McNeary Insurance Consulting Inc. who will submit a detailed audit proposal for consideration. The President will report further on this subject when additional information is available.

As reported previously, Mr. Mark Orkin has been retained to audit claim files involving legal fee payments with a view to commenting on the relationship between the professional services rendered and the resulting fees. The President will report further on this subject when additional information is available.

25th March, 1994

c) Transaction Fee Based Levy

The Committee has been considering a recommendation that the Profession charge a transaction fee on a broad range of legal services. The purpose of the plan would be to spread the cost of the insurance program over a high volume of transactions such that the charge per transaction would be modest while generating considerable revenue to reduce both the deficit and members' individual levies. The Insurance Subcommittee consisting of Messrs. Feinstein, Finkelstein, Wardlaw, Howie and Ms. Elliott met on February 24, 1994. The Subcommittee's deliberations on this subject continue and your Committee will report further on this subject when additional information is available.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

C. Campbell
Chair

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

Item 1. - Copy of Director's monthly report. (Appendix "A")

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair). Staff member present was David Carey.

R. _____
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the month ended February 28, 1994 (Schedule A).

Approved

2. Investment Activity for January 1994 and February 1994

Due to increasing demands on the Society's funds to settle insurance claims, all levies received are required to be kept on a short term basis. The following tables detail the expenditure pattern.

The insurance claim payment, legal fees etc. for the last three months are as follows:

	<u>Dec. '93</u>	<u>Jan. '94</u>	<u>Feb. '94</u>
Claim payments	2,652,373	3,562,426	2,829,542
Adjusters fee	275,238	456,048	415,753
Defence costs	1,487,776	2,828,282	3,066,391
Counsel fees	-	-	121,882
Total	<u>4,415,387</u>	<u>6,846,756</u>	<u>6,433,568</u>

The Comparisons for the prior year are:

	<u>Dec. '92</u>	<u>Jan. '93</u>	<u>Feb. '93</u>
Claim payments	2,204,788	1,118,712	591,937
Adjusters fee	289,706	183,017	321,021
Defence costs	1,651,481	966,693	1,965,410
Counsel fees	144,986	8,425	32,879
Total	<u>4,290,961</u>	<u>2,276,847</u>	<u>2,911,247</u>

As the Members of the Committee can see there is a marked increase to the outflow of cash in January and February of 1994 as compared with the same periods in 1993. This \$8,092,230 increase to the cash outflow combined with the programme of allowing practicing members to pay in four instalments has had a direct impact on the Society's ability to invest funds long term. For the Committee's information, approximately 61% of the practicing members have chosen to pay in four instalments, or 10,400 members.

Noted

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

J. Wardlaw
Chair

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

Item B.-1. - Investment Report Summaries for various Law Society Funds for month ended February 28, 1994. (Schedule A)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994, at 12:00 noon, the following members being present: M. Cullity (Chair), R. Cass, S. Thom, R. Topp, J. Wardlaw.

Also present: E. Spears.

A.
POLICY

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

A.1.1. Your Committee was asked to assume responsibility for coordinating the preparation of the package of amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature.

A.1.2. The package is to include:

- amendments to implement reforms to the complaints, discipline and standards procedures;
- various other amendments to the *Law Society Act* approved by Convocation between September 1989 and January 1994; and
- any other amendments to the act that Convocation may approve prior to submission of the package to the Attorney General.

A.1.3. Amendments to Implement Reforms to the Complaints, Discipline and Standards Procedures (Proposed Amendments: Part A)

A.1.3.1. Staff Working Group

A.1.3.1.1. The Staff Working Group, convened on the request of the Committee and charged with the task of reviewing the amendments to the complaints, discipline and standards procedures, continues to meet regularly each week. Your Committee understands that the Staff Working Group has begun compiling a list of questions arising from the complaints/discipline/standards amendments that need to be answered by benchers. The Committee will be adding questions to this list from time to time.

A.1.3.2. Executive Summary

A.1.3.2.1. At its meeting on February 10, 1994, the Committee undertook the preparation of an "Executive Summary" of all amendments to the *Law Society Act* necessary to implement the complaints, discipline and standards procedures. It was the Committee's hope that the "Executive Summary" would be completed in time for March Convocation. The "Executive Summary" would be for the Treasurer to use in his discussions with provincial legislators.

A.1.3.2.2. The Committee considered an incomplete draft in progress of the "Executive Summary". The Committee hopes to have the "Executive Summary" completed in time for April Convocation.

A.2. LAW SOCIETY ACT: SUBSECTION 15(1): AMENDMENT TO PROVIDE THAT A MEMBER IN ARREAR TO THE SOCIETY FOR THE DEDUCTIBLE PORTION OF AN INSURANCE CLAIM PAYMENT IS NOT ELIGIBLE TO VOTE AT AN ELECTION OF BENCHERS

A.2.1. Recommendation

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

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

[Proposed amendments underlined.]

A.2.2. Explanation

A.2.2.1. On October 22, 1993, Convocation adopted the recommendation of the Legislation and Rules Committee that section 36 of the *Law Society Act* be amended to provide that Convocation may suspend the rights and privileges of any member who fails to pay the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan within two months after the day on which payment is due. Unamended, section 36 provides only that Convocation may suspend the rights and privileges of any member who fails to pay any fee or levy payable to the Society. At present, the act provides for such suspension after four months. A further proposed amendment to the act, approved by Convocation on July 10, 1992, would provide for such suspension after two months.

A.2.2.2. On January 28, 1994, Convocation approved the repeal and replacement of sections 15 to 21 of the *Law Society Act*. New subsection 15(1) of the *Law Society Act* reads, in part:

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

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

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

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

- A.2.2.3. The effect of sections 15 and 16 (when amended) will be that a member whose rights and privileges are suspended, pursuant to section 36, for non-payment of any fee or levy will not be a member in good standing, and, therefore, not a qualified member eligible to vote at an election of benchers.
- A.2.2.4. Similarly, a member whose rights and privileges are suspended, pursuant to section 36 (as it will be when amended), for non-payment of the deductible portion of an insurance claim payment will not be a member in good standing, and, therefore, not a qualified member eligible to vote at an election of benchers.
- A.2.2.5. Likewise, a member whose rights and privileges have not been suspended, but who is in arrear to the Society for a fee or levy, will not be a qualified member eligible to vote at an election of benchers.
- A.2.2.6. However, as the proposed amendments to sections 15 and 16 currently stand, a member whose rights and privileges have not been suspended, but who is in arrear to the Society for the deductible portion of an insurance claim payment only, will be a qualified member eligible to vote at an election of benchers.
- A.2.2.7. It has been suggested that proposed subsection 15(1) be amended so that members in arrear to the Society for the deductible portions of insurance claim payments be treated in the same manner as members in arrear to the Society for fees and levies.

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

A.3.1. Recommendation

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

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

[Proposed amendments underlined.]

A.3.1.2. That, subject to the approval of the Unauthorized Practice Committee, the proposed amendment to subsection 50(4) be included in the package of amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature.

A.3.2. Explanation

A.3.2.1. At present, subsection 50(4) of the *Law Society Act* reads:

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

A.3.2.2. On May 26, 1989 and on September 29, 1989, Convocation adopted recommendations of the Legislation and Rules Committee that (what is now) subsection 50(4) be amended to remove the requirement that a conviction precede proceedings to enjoin a person from acting or practising as a barrister or solicitor or from holding themselves out as, or representing themselves to be, a barrister or solicitor. On September 29, 1989, the Committee recommended, and Convocation adopted, the following draft wording for subsection 50(4):

Upon the application of the Society, where a judge of the Supreme Court is satisfied that a person is in contravention of subsection (1), the judge may make a restraining order to prohibit the person from acting as a barrister or solicitor or holding himself out as or representing himself to be a barrister or solicitor or practising as a barrister or solicitor.

A.3.2.3. The draft wording for subsection 50(4) is dated: The subsection does not use gender neutral language, and the reference to the Supreme Court is anachronistic. If the subsection is to be included in the package of amendments to the *Law Society Act* to be submitted to the Attorney General for presentation to the Legislature, it will need to be brought up to date with the present wording of the *Law Society Act*.

A.3.2.4. Your Committee was advised that the secretary to the Unauthorized Practice Committee has been asked to bring to that Committee's attention the proposed amendment to subsection 50(4) adopted by Convocation on September 29, 1989 (amended to bring it up to date with the present wording of the *Law Society Act*).

A.4. LAW SOCIETY ACT: SECTION 50.1: AUTHORITY TO LICENSE FOREIGN LEGAL CONSULTANTS; LICENSED FOREIGN LEGAL CONSULTANTS NOT IN CONTRAVENTION OF SUBSECTION 50(1)

A.4.1. Recommendation

A.4.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the act:

1. The *Law Society Act*, being chapter L.8 of the Revised Statutes of Ontario, 1990, as amended by ..., is further amended by adding thereto the following section:

FOREIGN LEGAL CONSULTANTS

50.1 (1) Any person who

- (a) is qualified to practise law in a jurisdiction outside of Canada; and
- (b) meets the requirements, including the payment of a fee, prescribed in the regulations;

may, in the discretion of Convocation, be licensed as a Foreign Legal Consultant to give legal advice respecting the laws of that jurisdiction, subject to any conditions, including the payment of a fee, and any limitations on services prescribed for Foreign Legal Consultants in the regulations.

(2) A person who is

- (a) licensed as a Foreign Legal Consultant pursuant to subsection (1); and
- (b) in compliance with the conditions, including the payment of a fee, and the limitations on services prescribed for Foreign Legal Consultants in the regulations;

does not contravene subsection 50(1).

2. Subsection 62(1) of the act is amended by adding thereto the following paragraph:

28. prescribing fees for Foreign Legal Consultants, and providing for the payment and remission thereof.

3. Section 63 of the act is amended by adding thereto the following paragraph:

12. prescribing the requirements, including the payment of a fee, to be met by persons applying to be licensed as Foreign Legal Consultants and the conditions, including the payment of a fee, and limitations on services to be imposed on persons licensed as Foreign Legal Consultants.

A.4.2. Explanation

A.4.2.1. At its meeting on November 11, 1993, the Legislation and Rules Committee, in the context of considering amendments to Rule 50 to provide for various fees for Foreign Legal Consultants, considered the question of whether the Law Society had authority to license Foreign Legal Consultants. The Committee concluded that it would be desirable to make express reference in the *Law Society Act* to the Law Society's authority to license Foreign Legal Consultants.

B.
ADMINISTRATION

- B.1. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FRENCH TRANSLATIONS OF AMENDMENTS MADE SEPTEMBER 1, 1993 TO NOVEMBER 30, 1993
- B.1.1. Since January 1991, there has been a French version of the Rules made under subsection 62(1) of the *Law Society Act*. The most recent version approved by Convocation (on the recommendation of the Legislation and Rules Committee) incorporated all amendments in the English version up to June 30, 1993.
- B.1.2. The staff of the French Language Services Department have prepared a French translation of all amendments made from September 1, 1993 to November 30, 1993. The staff have also prepared a set of minor revisions to the French text to make the translation more accurate.
- B.1.3. The French translations will be found at Attachment A.
- B.1.4. Your Committee understands that, at its meeting on February 10, 1994, the French Language Services Committee approved these translations as accurate.
- B.1.5. The French Language Services Committee having approved
- (i) the French translation of amendments made to the Rules between September 1, 1993 and November 30, 1993, and
- (ii) the minor revisions to the French text of the Rules,
- your Committee places the translations before Convocation for its approval.

C.
INFORMATION

- C.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SUBSECTION 3(2)
- C.1.1. On September 24, 1993, Convocation, in the exercise of its power under section 63 of the *Law Society Act*, made a regulation to amend subsection 3(2) of Regulation 708 by adding, in the definition of the word "Committee", after the word "Admissions", the words "and Membership", so that the definition of the word "Committee" in subsection 3(2) would read:

"Committee" means the Admissions and Membership Committee.

[Added text underlined.]

25th March, 1994

- C.1.2. The regulation was approved by the Lieutenant Governor in Council (O. Reg. 35/94). It was filed with the Registrar of Regulations on January 31, 1994. The amended subsection 3(2) of Regulation 708 came into force on January 31, 1994.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

M. Cullity
Chair

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

- Item B.-B.1.3. - Copy of french translations of Amendments made September 1, 1993 to November 30, 1993 re: Rules made under subsection 62(1) of the Law Society Act. (Attachments A - A-6)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at 8:30 a.m., the following members being present:

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

A.
POLICY

no items

25th March, 1994

B.
ADMINISTRATION

1. Great Library - Holdings of Periodicals (Law Reviews) - Survey of Usage - Possible Subscription Cuts

The Committee asked the Chief Librarian to report on usage of the Great Library's holdings of law reviews, with a particular emphasis on scrutinizing the value of U.S. law school journals other than those that are known as major titles. The Committee reviewed the following documents:

- a) Report on the Law Journal Collection
done by branch heads Roth, Hyland and Dvorak
- b) Appendix A - one week survey of Journals Used in the Great Library
- c) the Chief Librarian's one-page list of U.S. "Academic" Law Reviews: Possible Subscription Cuts.
- d) the Chief Librarian's March 3rd memorandum on the Great Library's Periodical Collection, recommending 21 subscription cuts at a cost-saving of \$1,340 per year and space-saving of some 400 volumes.

The Committee accepted the Chief Librarian's March 3rd memorandum and the list [c) above], and recommends to Convocation approval of the cancellation of 21 U.S. law review subscriptions.

2. Great Library - Holdings of Law Reports in More than One Copy

Last month, the Committee asked the Chief Librarian to report on the Great Library's holdings of duplicate sets of law reports. The Committee reviewed a sheet entitled "Duplication of Law Reports in the Great Library". This document shows that, after several cancellations recommended by the Chief Librarian and approved by the Committee at the February meeting, the Great Library will be left with duplicate holdings of a modest number of major law report series, as follows:

5 general reporters:	OR,	SCR,	FCR,	DLR,	& WWR
12 topical law reports:	BLR	CBR	CCLT	CCC	
	CRR	CPC	CR	ETR	
	MVR	PPSAC	RPR	RFL	
2 English series:	Law Reports	All ER's			

The Committee asked the Chief Librarian to report on the County of York Law Association's holdings of duplicate sets of law reports, at the next meeting.

25th March, 1994

C.
INFORMATION

1. County Libraries - Insurance Evaluations - Waterloo & Peterborough libraries

Last fall, the Chief Librarian had reported on an evaluation done of a small county library (Northumberland). That evaluation (\$271,200) was within \$1,000 of the Law Society's insurance coverage of the Northumberland library in Cobourg.

Evaluations have now been done on a medium-sized and large county library. The replacement-cost evaluation figures for the Peterborough and Waterloo libraries are \$402,400 and \$596,000 respectively, well within the insurance coverage for both counties. The professional appraiser (Ken Barnett, retired sales manager for Carswell) made several suggestions for dealing with particular conditions within the book collections of the two counties, which will be acted upon. In the course of conveying these suggestions, Mr. Barnett commented upon the growing importance of these libraries to their members and the fine quality of service provided by the library staff.

3. Ontario Reports - Extension of Publishing Contract with Butterworth

A February 4th letter from Butterworth, which outlined the major financial terms of the extension of the Ontario Reports publishing contract, referred to an adjustment to Law Society payments to Butterworth pursuant to the existing contract for advertising of "commercial" activities such as CLE programs. Butterworth had asked for an increase in the page rate from \$100 to \$150. Butterworth has now agreed to a rate of \$125 (with CPI adjustments in subsequent years). The Committee approved the new rate.

ALL OF WHICH is respectfully submitted

Dated this 25th day of February, 1994

D. Murphy
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), Braid, Cullity, Feinstein, Krishna, Scott and Wardlaw.

A.
POLICY

1. WILLS REGISTRY OPERATED BY ALBERTA
COMPANY - COMPANY WISHES TO SET
UP BUSINESS IN ONTARIO

An Alberta company, The Will Registry, that operates a wills registry business in that province has contacted the Law Society because it wishes to set up business in Ontario. The relevant correspondence is attached (Appendix A). The Alberta Law Society was of the opinion that its members could use the services of this company for the registration of wills but only with the consent of the client. There is no storage of wills by this company. The Will Registry records that John Smith prepared a will for Mary Jones on February 14, 1994.

The Committee received written input from David McKillop, one of the Society's Staff Trustees and from Patricia Rogerson, the Practice Adviser.

Mr. Wardlaw, who has had a keen interest in the concept of a registry, attended the meeting. He raised a concern as to what would happen were the company to go bankrupt.

Concern was also expressed as to who might have access to the registry.

The Committee concluded that:

- (a) the Law Society could not endorse the use of such a registry;
- (b) lawyers could register wills with the company but only with the express consent of the testator. It would have to be explained to the testator that registration might entail loss of confidentiality of the making of that individual's will.

The Committee asks Convocation to adopt its conclusion.

2. REQUEST FOR CLARIFICATION OF ITEM
IN BENCHERS' BULLETIN OF NOVEMBER/
DECEMBER 1993 CONCERNING ASSIGNMENT
OF ACCOUNTS RECEIVABLE

The following item appeared in the Benchers' Bulletin of November/December 1993:

Assignment of Accounts Receivable - Client Confidentiality

In order to protect client confidentiality, lawyers whose accounts receivable are assigned are not permitted to disclose client names unless they are ordered to do so by a court or they have obtained their clients' consent to do so. Members are advised to refer to Professional Conduct Rule 4 for further information regarding client confidentiality matters.

25th March, 1994

This has caused some concern for a number of lawyers. One lawyer has asked if it is proper for a lawyer to assign his accounts receivable to a collection agency.

We have been asked by the Ontario Society of Collection Agencies to write to you regarding a concern that they have that you might be inferring in that bulletin that lawyers are not to assign accounts to collection agencies for collection as it may involve a breach of confidentiality, if they reveal the client's name.

With all due respect, I would ask you to review this issue because it is not uncommon that lawyers must take steps to have accounts receivables collected and in such a case, even if they went through the courts and had the account "sued" or assessed by an assessment officer, they would have to reveal the client's name to various parties, including court staff when issuing the process and serving the claim and to the judicial officer hearing the claim. Therefore, it is obvious in such situations, the client's name would be revealed and no confidentiality could be maintained.

Similarly, if a lawyer assigned his accounts receivables to his bank, which is not unusual (often the banks will require a list of accounts receivable which involves clients names). Again I do not think this would be a breach of confidentiality.

Therefore, if a lawyer assigns his accounts to a collection agency, which in effect would be acting as the "agent for the lawyer" I would suggest this would and should not be considered a breach of confidentiality, as they are just taking steps to collect the lawyer's accounts. In most cases the lawyer would not have to give the details of the information confided to the lawyer but just the details of his outstanding account. This collection agency, acting as agent for the lawyer would be similar to other "agents" that the lawyer might retain on behalf of the client such as title searchers, process servers, out of town lawyers, etc. and in such situations, the lawyers would perhaps be obliged to give their client's name and this would not be considered a breach of confidentiality. Therefore, since the collection agency would in effect be acting as agent for the lawyer, we would suggest that such an assignment of accounts receivable to the collection agency for the purpose of collecting the account, would not be a breach of confidentiality.

Kindly clarify your position on this issue and clarify if it is permissible for lawyers to assign their accounts receivables to collection agencies, either by way of "a formal assignment" or by just listing the account with a collection agency for recovery.

Paragraph 12 of the Commentary under Rule 4 (Confidentiality of Information) reads as follows:

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

The Committee concluded that where a lawyer uses a collection agency the lawyer has a degree of control that does not exist in the context of the assignment of accounts receivable. Moreover the Rules of Professional Conduct specifically recognize that the revelation of information that might otherwise be confidential or privileged, including the address of the client and the nature of the legal services rendered, is justified in the process of collecting unpaid accounts. Hence the long established practice of lawyers using collections agencies to collect on unpaid accounts is in order.

The Committee asks Convocation to accept its conclusion.

3. LAW FIRM LETTERHEAD - USE OF TERM "VETLAW"
ON LETTERHEAD AND PROFESSIONAL CARD

A law firm that has a general practice (that includes the representation of a number of veterinarians) would like to use a logo containing the words "VetLaw" on both the letterhead of the firm and on the professional card of at least one of its lawyers. Set out below is a sample of the logo.

(see Appendix B)

The firm has corresponded with the Committee's Secretary who had some concern that the use of "VetLaw" might give rise to the inference that the firm only practised veterinarian law when such was not the case.

The Committee noted that the letterhead with the logo and the words "VetLaw" would only be used in the firm's correspondence with veterinarians. A call to the 800 number listed with the logo was a telephone number of the law firm and was answered as such.

The Committee was of the opinion that the law firm could use the letterhead it was proposing provided that the firm continued to be identified in the traditional way (i.e. the names of the members of the law firm) and that it did not advertise itself as the "VetLaw" law firm.

The Committee asks Convocation to approve of its conclusion.

4. LAWYER RENDERING OPINION TO A CLIENT -
THE PROPRIETY OF USING THIS OPINION IN
ADVISING ANOTHER CLIENT ON A SIMILAR
MATTER - REQUEST FOR ADVICE

A lawyer has asked about the propriety of using an opinion that was prepared for one client in advising a client in a similar matter. His concern is set out in his letter which is reproduced below:

I practice in the international trade law area. I would appreciate any observations or guidance that you may be able to provide in respect of the following.

A Corp. approaches me for the purpose of ascertaining where product X should be classified in the Customs Tariff.

My opinion results in A Corp. paying less customs duty to Revenue Canada than it would have without the benefit of my opinion.

25th March, 1994

B Corp. approaches me for an opinion as to where product Y is classified. The same legal interpretative issues arise as in the case of product X (at least at the Chapter, heading and possibly sub-heading level of classification, although not necessarily at the tariff item level). The very same tariff items may be in issue.

May I accept B Corp.'s retainer? Does it make a difference if:

- product X and product Y are in competition?
- the retainer with A Corp. did not include any relevant constraint on providing any legal services to competitors of A Corp.?
- my opinion is constrained to interpretation of relevant legislation without assessing product Y to determine the legislation's applicability to it?
- B Corp.'s law firm, or accounting firm or other consultant, seeks my opinion for their use in advising B. Corp.? In this instance, I could appear as counsel to B Corp.'s advisors in appeals below the Federal Court level. If B Corp.'s advisor was not a law firm, I would have to be retained directly by B Corp. for any Federal Court or Supreme Court appeal. Would that be proper?

If product X and Y are not in competition, I see no basis for refraining from acting for B Corp. However, the mere fact that products X and Y are in competition does not necessarily put me in a potential conflict of interest situation in an instance where the legal advice will only affect each of their liability to a third party.

In reviewing the foregoing, please consider the impact in a situation where there are 100 competitive products but only 20 lawyers presently well versed enough in the relevant legislation and product field to provide an economical and timely opinion.

The Committee concluded that the issue raised by the member was made in the nature of a business context as opposed to an ethical issue. Hence the decision taken would reflect business interests. The Committee did not see the situation as presenting a conflict of interest that would result in a breach of the Rules of Professional Conduct.

The Committee asks Convocation to agree with this assessment so the member can be properly informed.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

M. Somerville
Chair

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

Item A.-1. - Copy of letter from Ms. Marianne Ethier of The Will Registry to Mr. Richard F. Tinsley, Secretary dated January 4, 1994 together with its enclosures.

(Appendix A)

25th March, 1994

- Item A.-3. - Copy of sample of logo of a law firm for use on letterhead and professional card. (Appendix B)

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at 8:00 a.m., the following members being present:

R. Murray (Vice-Chair), S. Elliott, A. Feinstein and H. Sealy.

Also present: R. Tinsley, E. Spears and S. Hodgett.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. TECHNOLOGY AND THE LEGAL PROFESSION

B.1.1. Your Committee was asked by the Chair to consider ways in which the Law Society could encourage the provision of new technology and investigate where it may benefit the provision of legal services. New technology may significantly benefit the Law Society and the profession.

B.1.2. The Committee appointed Susan Elliott to assemble a subcommittee to consult with staff at the Law Society and outside sources to determine what technological advances the Law Society should be adopting in the delivery of its programs. The subcommittee should also consider whether it can give advice and promote the availability of technology to the profession.

25th March, 1994

C.
INFORMATION

C.1. QUESTION OF SUPPLY IN THE LEGAL PROFESSION

C.1.1. The Committee considered whether it should perform a study and make recommendations concerning the supply of lawyers entering the legal profession. At Convocation on February 25, discussion took place concerning a perceived over-supply of lawyers. The Committee was supplied with materials concerning the placement of articling students and members entering the Bar. It also had before it materials relating to the Special Committee on Numbers of Lawyers (1981-1983).

C.1.2. The Committee decided not to consider this issue further.

C.2. THE SUBCOMMITTEE ON REPORTS AND POLICIES

C.2.1. The Subcommittee on Reports and Policies reported to the Committee. The Subcommittee is developing a uniform format for the formulation of policy by Law Society committees. The format will remind committees of various categories which should be considered in all policy development. Financial impact, communications needs and staffing requirements are examples of the kinds of considerations which will be included. The subcommittee aims, by the formulation of such a format, to increase the ease with which policies are be implemented.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

L. Brennan
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 10th of March, 1994 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), D.W. Scott (Vice-Chair), P.G. Furlong and M.L. Pilkington. S. Thomson, of the Law Society, was also present.

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

25th March, 1994

The Workers' Compensation Law Specialty Committee met on Thursday, the 24th of February, 1994 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 25th of February, 1994 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 8th of March, 1994 at eight-thirty in the morning.

A.
POLICY

A.1. POLICY ON REFERENCES - SELECTION OF REFEREES

A.1.1. The Board approved a suggestion that all application packages should include an appropriate summary of the questions a referee will be expected to answer. Statements of Reference are typically seven to nine pages and include questions on the referee's knowledge of the applicant, assessment of abilities, history of making referrals of matters of substance to the applicant or readiness to do so, ratings according to various criteria, and general comments which may be helpful in the assessment of the applicant.

A.1.2. Applicants will be advised to bear the questions in mind when selecting referees and to discuss with potential referees whether, given the nature of the statement of reference, the individual has sufficient knowledge of the applicant to respond.

A.2. POLICY ON REFERENCES - ACCESS OF REFEREES TO NAMES OF OTHER REFEREES

A.2.1. The Board has approved a recommendation that names of referees should not be disclosed to persons other than the assessing Committee, the interview panel, and the Board.

B.
ADMINISTRATION

B.1. SIX-MONTH CERTIFICATE EXTENSIONS

B.1.1. A single certificate expired on February 27, 1994. The recertification application is currently being processed, and the Board extended the certificate for six months to August 27, 1994 or renewal date.

B.1.2. On August 24, 1993, the Board extended for six months (to February 24, 1994) all Specialist certificates due to expire on August 24th, where the processing of recertification applications had not been completed.

B.1.3. Some of those applications are still outstanding, including all dual Civil/Criminal recertification applications - a Report from the Sub-Committee to Consider the Implications of the Recommendations of the Civil and Criminal Litigation Specialty Committee is expected to be considered by the Board in April.

25th March, 1994

- B.1.4. The Board extended for an additional six months (to August 24, 1994 or renewal date) the outstanding August 24, 1993 certificates.
- B.2. INTELLECTUAL PROPERTY LAW SPECIALTY COMMITTEE MEMBERSHIP
- B.2.1. The Board recommends the appointment of R. Scott Jolliffe (of Gowling, Strathy & Henderson in Toronto) to the Intellectual Property Law Specialty Committee.
- B.3. CRIMINAL LAW SPECIALTY COMMITTEE MEMBERSHIP
- B.3.1. The Board recommends the appointment of Daniel M. Mitchell (of the Crown Attorney's Office in Thunder Bay) to the Criminal Law Specialty Committee.
- B.4. WORKERS' COMPENSATION LAW SPECIALTY COMMITTEE
- B.4.1. The Board recommends the appointment of Nicole Godbout (of the Industrial Accident Victims Group of Ontario in Toronto) and Terry Copes (of the Sudbury Community Legal Clinic) to the Workers' Compensation Law Specialty Committee.

C.
INFORMATION

- C.1. WORKERS' COMPENSATION LAW SPECIALTY
- C.1.1. Following the Board's recommendation, Convocation approved the implementation of the Workers' Compensation Law Specialty on April 23, 1993. At the time of approval, the Board recommended against the Committee's proposal to offer two certificates: Representing Workers and Representing Employers, and instructed the Committee to revise the Standards accordingly.
- C.1.2. Attached under Appendix 1 are the revised Workers' Compensation Law Standards dated February 1994, which reflect the Board's decision to delete the sub-division and which contain a few additions including information on possible areas of questioning in an interview.
- C.1.3. The Board approved the revised Standards. All other application documents (application form, interviewer's report, statement of reference) have been prepared.
- C.1.4. A notice will be published forthwith in the Ontario Reports advising that the Workers' Compensation Law Specialty Committee is ready to consider applications.

C.2. CERTIFICATION OF SPECIALISTS

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

J. Paul Bannon (of Mississauga)
Peter Karl Boeckle (of Toronto)
Kathryn I. Chalmers (of Toronto)
Mark S. Hayes (of Toronto)
Lee A. Pinelli (of Hamilton)

C.2.2. RECERTIFICATION OF SPECIALISTS

- C.2.3. The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

John W. Erickson (of Thunder Bay)
C. Anthony Keith (of Toronto)
Richard H. Krempulec (of Toronto)
Sidney N. Lederman (of Toronto)

- C.2.4. The Board is pleased to report the recertification for an additional five years of the following lawyer as a Criminal Litigation (Law) Specialist:

Morris Manning (of Toronto)

C.3. DENIAL OF CERTIFICATES

- C.3.1. The Board approved the recommendations of the Criminal Law, Family Law and Immigration Law Specialty Committees against the certification of an applicant in the respective Specialties.

C.4. SPECIALIST TRAINING PROGRAMS

- C.4.1. The Board has concluded that, in addition to the current practice of recognizing de facto Specialists, the Board should encourage the development of training and testing programs to prepare and evaluate Specialists, with the objective of enhancing access to specialization for lawyers throughout Ontario.

- C.4.2. Your Board notes the concern that proposed certification standards in Environmental Law would have the effect of concentrating such Specialists in Metropolitan Toronto and creating barriers to other lawyers who aspire to specialize in the field.

- C.4.3. The Board has discussed with Dean Pilkington of Osgoode Hall Law School (also a member of the Board) the possibility of working with members of the Environmental Law Specialty Committee to develop a prototype Specialist Training Program in Environmental Law, including substantive law and policy, skill development, and appropriate evaluation. The Ontario Law Schools will be kept apprised of this initiative.

25th March, 1994

- C.4.4. The Board anticipates that criteria for the accreditation of Specialist Training Programs (for the purposes of achieving Law Society Specialist Certification) will be prepared in due course.
- C.4.5. All Ontario Law Schools will be consulted as to their interest in offering Specialist Training Programs in one or more Specialty areas and as to their ability to meet criteria for accreditation.
- C.4.6. Specialist Training Programs are separate and distinct from continuing legal education requirements for initial certification and recertification of Specialists.
- C.5. BUDGET 1994-95
- C.5.1. In considering the budget for the 1994-95 fiscal year, the Board was pleased to note that the Specialist Certification Program is in a break-even position during the current fiscal year, in contrast to the 1992-93 deficit of \$101,059.00, and the year-end statement will likely reveal an excess revenue which can be applied to the Program's accumulated deficit.
- C.5.2. The increased revenue can be largely attributed to the high level of participation of "grandfathered" [automatically certified in the first months of the Program] Specialists in the recertification process and ongoing efforts to reduce expenses.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

R. Yachetti
Chair

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

Item C.-C.1.2. - Revised Workers' Compensation Law Standards dated February 1994.

(Appendix 1)

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at 9:30 a.m., the following members being present: P. Peters (Chair), N. Finkelstein and M. Weaver (Vice Chair).

25th March, 1994

B.
ADMINISTRATION

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

Your Committee continued a discussion of the Law Society's role in prosecuting non-lawyers for the unauthorized practice of law.

The matter will be carried forward to the next Committee meeting at which time it is hoped that recommendations will be made for Convocation's approval.

ALL OF WHICH is respectfully submitted

DATED the 25th day of March, 1994

P. Peters
Chair

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

List of Prosecutions.

(page 2)

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of March 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of March, 1994 at 3:00p.m., the following members being present:

S. Elliott (Chair), P. Hennessy, B. Humphrey, J. Lax, B. Luke, and N. Richardson.

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

A.
POLICY

No matters to report.

25th March, 1994

B.
ADMINISTRATION

B.1. BUDGET 1994-1995

B.1.1. Your Committee approved its budget for the 1994-1995 fiscal year.

C.
INFORMATION

C.1. MODEL POLICIES

C.1.1. The Committee had before it model policies concerning parental leave and alternative work plans developed by the Canadian Bar Association *Task Force on Gender Equality in the Legal Profession* and the American Bar Association *Commission on Women in the Profession*.

C.1.2. The Committee was of the opinion that model policies for the Law Society's purposes should be more concise and easily implemented at law firms of various sizes. The Committee will develop such model policies.

C.2. JOINT EDUCATION PROGRAMS WITH THE EQUITY COMMITTEE

C.2.1. Your Committee will examine how it can co-ordinate more fully with the Equity Committee in order to formulate education programs on areas of concern to both Committees. The Chair will discuss this matter with the Chair of the Equity Committee.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

S. Elliott
Chair

THE REPORT WAS ADOPTED
.....

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

LEGAL EDUCATION COMMITTEE

Meeting of March 10, 1994

Mr. Epstein presented Item A.-A.1 re: Proposal to Enhance Articling Placement Initiatives, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

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

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Maurice Cullity, Susan Elliott, Joan Lax, Dean Donald McRae (University of Ottawa), and Dean Marilyn Pilkington (Osgoode Hall Law School). The following staff were in attendance: Marilyn Bode, Brenda Duncan, Mimi Hart, Alexandra Rookes, and Alan Treleven.

A.
POLICY

A.1 PROPOSAL TO ENHANCE ARTICLING PLACEMENT INITIATIVES

- A.1.1 As of February 22, there were 1,210 Phase One 1994 applications received by the Bar Admission Course office. Students indicate on the application form whether they have obtained an articling position. Currently, 217 students (17.9 percent of the class) have not secured articling positions, while 993 (82.06 percent) have secured articling positions. Students who have not yet obtained articling positions will need to do so by September 1, 1994. The unplaced student figures at January 30 for the previous two years are as follows: 155 students in 1993, and 101 students in 1992. A memorandum from the Director of Financial Aid and Placement, Mimi Hart, providing more detailed figures, is attached. (pages 1 - 2) The second page of the memorandum outlines six initiatives currently under way to assist students in securing articling positions.

Note: Motion, see page 436

- A.1.2 The Director of Financial Aid and Placement produced a written proposal to enhance articling placement initiatives (pages 3 - 6), including a proposal that \$29,500 be allocated immediately to the Financial Aid and Placement budget.
- A.1.3 The Legal Education Committee and the Finance Committee have considered the expenditure of the \$29,500 for articling placement initiatives on the basis that the unexpended funds are available from another area of the Bar Admission Course budget. (Due to a member of the Bar Admission Course Faculty being on a personal leave, there is a salary saving in line one, "Salaries-Permanent", of the current Toronto Bar Admission Course budget.)
- A.1.4 Recommendation: The Legal Education Committee recommends, for the benefit of unplaced law students seeking articles in 1994, that \$29,500 be transferred to the Financial Aid and Placement budget from the Toronto Bar Admission Course budget to enhance the articling placement program through the activities outlined in the proposal.

B.
ADMINISTRATION

No matters to report this month.

C.
INFORMATION

C.1 BAR ADMISSION COURSE: SECTION HEAD FOR CIVIL LITIGATION

C.1.1 Allan Rock has informed the Director of Education that he wishes to step down as Head of Section for Civil Litigation in the Bar Admission Course in light of his new responsibilities. In announcing his wish to step down, Mr. Rock asked the Director to express his thanks to the many members of the profession who have volunteered in teaching Civil Litigation in London, Ottawa, and Toronto, and asked to have particular thanks extended to William Dewar (Senior Instructor, London), Timothy Ray (Senior Instructor, Ottawa), David Stinson (Assistant Head of Section, Toronto), and Michael Watson (Assistant Head of Section, Toronto).

C.1.2 The Legal Education Committee will be inviting a member of the profession to serve as the new Head of Section for Civil Litigation.

C.2 ANNUAL MEETING OF ONTARIO LAW DEANS AND THE LEGAL EDUCATION COMMITTEE

C.2.1 The annual meeting of the six Ontario Law Deans and the Legal Education Committee will take place in Convocation Room beginning at 4:00 p.m. on Thursday, April 7. A working dinner will follow at 6:00 p.m. The meeting will be chaired jointly by Mr. Epstein and by the Chair of the Committee of Ontario Law Deans, Dean Donald McRae of the University of Ottawa Faculty of Law (Common Law).

C.2.2 The agenda will be developed jointly by Dean McRae and Mr. Epstein. The draft agenda includes important legal education issues relating to the review of the Bar Admission Course and the role of law schools in professional legal education.

C.3 BAR ADMISSION COURSE SUBCOMMITTEE

C.3.1 The Bar Admission Course Subcommittee met on Saturday, February 26. The following members were in attendance: Philip Epstein (Chair), Lloyd Brennan, Joan Lax, Dean Donald McRae, Mohan Prabhu (non-Bencher member) and Marc Rosenberg (non-Bencher member and Head of Section for Criminal Procedure). Staff in attendance were Erika Abner (Bar Admission Course Faculty) and Alan Treleaven.

C.3.2 The Subcommittee had a wide-ranging discussion based on all of the options that might be considered in the process of preparing to present a report to Convocation in October. The Subcommittee in particular considered the following matters:

- 1) The process of consulting with the profession and students,
- 2) Committee structure,
- 3) The study of existing professional legal education and testing programs,
- 4) The study of other professional education and testing programs,
- 5) Restricted licensing.

C.3.3 The Bar Admission Course Subcommittee will next meet from 9:00 a.m. to 1:00 p.m. on Saturday, March 26 in Convocation Room.

C.4.1 The Articling Subcommittee met on Friday, March 11. The following members were in attendance: Stephen Goudge (Chair), Janne Burton, Maurice Cullity, Dora Nip, and Jay Rudolph. The following members of staff were in attendance: Marilyn Bode, Mimi Hart, Lynn Silkauskas, and Alan Treleaven.

C.4.2 The Subcommittee dealt with a number of articling principal applications, and focused on a number of policy items, including articling student recruitment initiatives and the development of a policy statement on unpaid articling positions. The Articling Subcommittee will report fully to the Legal Education Committee and to Convocation in April.

C.4.3 The Articling Subcommittee will next meet at 8:00 a.m. on Friday, April 29, 1994.

C.5.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 7 - 10)

DATED this 25th day of March, 1994

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

- Item A.-A.1.1 - Memorandum from Ms. Mimi K. Hart to Mr. Philip Epstein and Stephen Goudge dated February 22, 1994 re: Articling Placement Statistics for 1994-1995. (pages 1 - 2)
- Item A.-A.1.2 - Proposal to Enhance Articling Placement Initiatives. (pages 3 - 6)
- Item C.-C.5.1 - The Continuing Legal Education Report on Courses. (pages 7 - 10)

It was moved by Mr. Epstein, seconded by Mr. McKinnon that Item A.-A.1 be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

Meeting of March 10, 1994

Mr. Murray presented Item A.-1. re: Lawyer Referral Service Referral Policy, for Convocation's approval.

25th March, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March 10, 1994, the following members being present: Ross Murray (Acting Chair), Carole Curtis, Susan Elliott, Fran Kiteley, Hope Sealy and Stuart Thom. The following staff were in attendance: Theresa Starkes, Richard Tinsley and Gemma Zecchini.

A.
POLICY

1. Lawyer Referral Service Referral Policy

Background

The Lawyer Referral Service has had a long-standing policy of refusing referrals based on gender, race or ethnic background. When the Service was initiated in 1971, the decision to adopt a gender-neutral policy was based on the Law Society's wish to avoid discrimination against women on the LRS panel. At that time when the presence of women in the profession was less established, there were concerns that members of the public would be reluctant to accept referrals to female lawyers. At present this is rarely, if ever a problem. The gender-neutral policy was last reaffirmed in May 1991. With respect to race or ethnic background, the Law Society currently has no means of determining either the race or ethnicity of members of the Lawyer Referral panel.

The only criteria available to LRS telephone agents for the purpose of generating a referral are the following:

- i) Geographical Zone
- ii) Area of Law
- iii) Legal Aid Requirement
- iv) Language
- v) Special Requirements:
 - Is a home or institutional visit required?
 - Does the client require a wheelchair accessible office?
 - Does the client require a referral to a lawyer who is eligible to practice outside Ontario?
 - Does the client require a referral to a lawyer who can sign or who has a TDD (Telephone Device for the Deaf) in his/her office?

Issue

With increasing frequency over the past couple of years, Lawyer Referral Service (LRS) telephone agents have been receiving requests from members of the public seeking referrals to women lawyers. Typically these requests come from women callers seeking referrals in family law matters. (On occasion the Service has had requests from men charged with sexual offenses who wish to be represented by a female lawyer.) In family law matters, callers will often disclose physical or child abuse. Requests of this nature are now being made on average four times per day representing approximately three per cent of the LRS's referrals in the area of family law. Approximately 30 per cent of all referrals are in the area of family law (150 of the 500 referrals made daily). The current gender-neutral referral policy inhibits the Service from accommodating requests for women lawyers in the situation described above.

25th March, 1994

Similarly, members of ethnic or racial minorities will occasionally ask to be referred to a lawyer in their "community". While there is no statistical data available to precisely quantify the number of requests, anecdotal evidence obtained from LRS agents suggests that such requests, while virtually unheard of until a couple of years ago, now occur on a more regular basis. In cases where there is a language issue, the LRS will endeavour to locate a lawyer who has indicated s/he speaks the language the caller requires. Where the issue is exclusively one of race or ethnicity, these requests cannot be accommodated due to the ethnic/race-neutral policy.

A Client's View

In February 1993, a benchler was contacted by a woman who was denied a referral to a female lawyer by the LRS because of the Society's gender-neutral policy. The benchler subsequently wrote a letter to the Communications Chair asking that the policy be amended and describing the consequences of the policy for the woman in question. An excerpt of that letter is included below:

I have recently been contacted by (name omitted). She called the Law Society Referral Service (on January 26, 1993), and identified herself as a woman who wanted to pursue assault charges against her husband. She asked to be referred to a solicitor who was a woman. She spoke to operator #5, to the operator's supervisor, and to Mrs. Starkes. None of the three people she spoke to would provide her with the name of a solicitor who was a woman. They indicated that their policy was "gender neutral".

She was extremely distressed about this. She told me that it was a really hard step for her to take, to attempt to contact a lawyer and look into charging her husband with assault.

Policies should be re-examined where appropriate. In my view, this woman was not properly served by the Law Society Referral Service, and she should not have had to see a lawyer who was a man.

LRS Panel Members' Views

Feedback from LRS panel members suggests that lawyers gain nothing from receiving referrals from clients who are reluctant to retain them because the client's request could not be accommodated due to the Service's gender, race and ethnic neutral policies.

In cases where this has occurred, lawyers have often called the Service to indicate their displeasure. They are of the view that the consequences of enforcing this policy are that the client will either not show up for the initial half-hour consultation, or, will not retain the lawyer following the consultation.

Other Lawyer Referral Services and Professions

Several Referral Services have been surveyed to establish whether they provide referrals based on gender. The Lawyer Referral Services surveyed provincial and territorial referral services across Canada and a number of larger referral services in the U.S. None offered referrals based on gender, race or ethnic background. Medical referral services on the other hand provided gender-based referrals upon request, and have been doing so for some considerable time.

Women in the Legal Profession Committee

The views of the Women in the Legal Profession Committee have been canvassed on this issue and the Committee supports the recommendation that gender be added to the criteria upon which referrals can be based when requested by a member of the public.

Rationale for Recommendations

The committee adopted the position that any policy recommendation on this issue should be based on the principle that clients as *individuals* are entitled to representation by counsel of their choice and that the Lawyer Referral Service should accommodate requests from members of the public that will assist them to retain a lawyer that meets their individual needs.

Action Required & Recommendations

The Committee asks Convocation to approve the following recommendations:

1. That the Lawyer Referral Service amend its policy to allow gender as a criterion upon which to base a referral when requested by a member of the public.
2. That the Equity in Legal Education and Practice Committee be asked to decide whether race and/or ethnicity should be added to the criteria upon which to base referrals when requested by a member of the public.

Note: Motions, see pages 441 - 442

B.

ADMINISTRATION

1. Request for funding for *You and the Law*

A request made by Mr. Courtney Betty for \$20,000 in funding for the production of a public education program, *You and the Law* was turned down by the Committee due to budgetary constraints.

2. Heritage Publishing House--Request for Sponsorship

The Committee turned down an offer by the above publisher to include an historical overview of the Law Society in their upcoming volume "Canada-A Celebration of our Heritage" at the cost of \$900/page. The Society has retained a professional historian to write a history of the Society which will be published during the bicentennial year.

25th March, 1994

C.
INFORMATION

1. Call Statistics

The Lawyer Referral Service received 13,510 calls this month for a total of 25,719 since the beginning of the year. This represents an average of 643 calls/day. Dial-A-Law received 22,505 calls for a total of 44,952 calls for the year to date, representing an average of 845 calls/day.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

D. Bellamy
Chair

It was moved by Mr. Strosberg, seconded by Ms. Peters that the matter (A.-1.) be deferred to be dealt with at the same time as the race-ethnicity issue.

Lost

ROLL-CALL VOTE

Arnup	Against
Bastedo	Against
Bellamy	Against
Campbell	Against
Copeland	Abstain
Cullity	Against
Curtis	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Goudge	Against
Hickey	Against
Hill	Against
Howland	Against
Kiteley	Against
Krishna	Against
Legge	Against
McKinnon	Against
Mohideen	Against
Moliner	Against
Murray	Against
O'Brien	Against
D. O'Connor	Against
S. O'Connor	Against
Palmer	Against
Peters	For
Richardson	Against
Scott	Against
Sealy	Against
Somerville	Against
Strosberg	For
Thom	Against
Topp	Against
Weaver	Against
Yachetti	Against

Convocation voted on Recommendation #1 - THAT the Lawyer Referral Service amend its policy to allow gender as a criterion upon which to base a referral when requested by a member of the public.

Carried

ROLL-CALL VOTE

Arnup	For
Bastedo	For
Bellamy	For
Campbell	For
Copeland	For
Cullity	For
Curtis	For
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	For
Goudge	For
Hickey	For
Hill	For
Howland	For
Kiteley	For
Krishna	For
Legge	For
McKinnon	Against
Mohideen	For
Moliner	For
Murray	For
O'Brien	For
D. O'Connor	For
S. O'Connor	For
Palmer	For
Peters	Against
Richardson	For
Scott	Against
Sealy	For
Somerville	For
Strosberg	For
Thom	For
Topp	Against
Weaver	For
Yachetti	For

Recommendation #2 was amended by deleting the word "decide" and replacing it with the word "consider".

25th March, 1994

Convocation voted on Recommendation #2 as amended - THAT the Equity in Legal Education and Practice Committee be asked to consider whether race and/or ethnicity be added to the criteria upon which to base referrals when requested by a member of the public.

Carried

ROLL-CALL VOTE

Arnup	For
Bastedo	Against
Bellamy	For
Campbell	For
Copeland	Against
Cullity	For
Curtis	For
Elliott	For
Epstein	Against
Feinstein	For
Finkelstein	For
Goudge	For
Hickey	Against
Hill	Against
Howland	For
Kiteley	For
Krishna	For
Legge	Against
McKinnon	For
Mohideen	For
Moliner	For
Murray	For
O'Brien	For
D. O'Connor	Against
S. O'Connor	Against
Palmer	For
Peters	Against
Richardson	For
Scott	Against
Sealy	Against
Somerville	For
Strosberg	Against
Thom	Against
Topp	Against
Weaver	Against
Yachetti	Against

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

Convocation took a brief recess at 11:05 a.m. and resumed at 11:20 a.m.

.....

DISCIPLINE COMMITTEE

Meeting of March 10, 1994

Mr. Strosberg presented Item A.-A.1. re: Procedure to be followed where costs are sought against the Society, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, 1994 at 1:30 in the afternoon, the following members being present:

H.T. Strosberg (Chair), D. Scott (Vice Chair), D. O'Connor (Vice Chair), S. Thom, M. Martin, D. McPhadden.

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

A.
POLICY

A.1. PROCEDURE TO BE FOLLOWED WHERE COSTS ARE SOUGHT AGAINST THE SOCIETY

A.1.1. A Special Committee was appointed by Convocation to hear the claim for costs under s. 41 of the Law Society Act by Anthony Michael Speciale.

A.1.2. Section 41 of the Law Society Act states:

"Where it appears that disciplinary proceedings against a member or a student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings."

A.1.3. The Special Committee hearing the application by Mr. Speciale was composed of Harvey T. Strosberg, Q.C., The Honourable John Arnup, Colin Campbell, Q.C., Casey Hill and Hope Sealy. The Special Committee gave reasons for decision dated February 25, 1994 which endorsed a procedure to be followed in such cases. The Special Committee suggested, *inter alia*, that applications for costs should be made to the Discipline Committee which hears the complaint and that the Discipline Committee should make a recommendation to Convocation on the issue of costs.

A.1.4. The relevant paragraphs of the reasons of the Special Committee are paragraphs 85 through 90, which are as follows:

"85. And just because proceedings are or become unwarranted does not mean that the Society is obliged to pay costs. Convocation must exercise its discretion once it has answered the threshold question. In deciding whether the Society should pay costs, Convocation may and ought to look at all the circumstances, including the extent of the solicitor's co-operation with the Society, the efforts made by the solicitor or his or her counsel to bring home to the Society the unwarranted nature of the discipline proceedings, the degree of hardship the solicitor suffered, the opinion or opinions obtained by the Society, and the manner in which the discipline hearing was conducted. These factors are illustrative only; there are bound to be others, equally or more relevant in individual circumstances."

"86. When an application for costs is made under s. 41, matters perhaps irrelevant to the Discipline Committee's decision may become relevant. On the Cost Issue, then, supplementary material may be filed, and it is incumbent upon a solicitor seeking costs to lead evidence on particular issues such as, for example, the degree of his or her co-operation with the Society, offers to admit facts, the costs of the proceedings, and the hardship suffered.

"87. And when Convocation considers a s. 41 application, the Society and the solicitor are bound by the findings of fact made by the Discipline Committee unless the Discipline Committee erred in principle or was manifestly wrong.

"88. In the future, if a solicitor seeks costs she or he should, by motion with proper supporting material, request the Discipline Committee hearing the complaint to recommend to Convocation whether the Society should pay costs. Any supplementary material should be filed before the Discipline Committee. When the issue comes to Convocation, a record containing the relevant material should be settled before Convocation considers the s. 41 issue. And facta are absolutely necessary.

"89. Convocation should accept a Discipline Committee's recommendation as to costs unless the Discipline Committee erred in principle or was manifestly wrong.

"90. And if Convocation awards the solicitor costs of the discipline hearing, Convocation should take into consideration the costs of and incidental to the appearances necessary before the Discipline Committee and Convocation to obtain the s. 41 award of costs. Of course, any written offers to settle costs should be considered by Convocation after making its decision of entitlement and quantum."

A.1.5. The Committee discussed the procedure proposed by the Special Committee and in particular, the advantage in terms of efficiency in having Convocation receive a recommendation as to costs from the Discipline Committee which is familiar with the facts and issues of the case.

A.1.6. Your Committee recommends to Convocation that paragraphs 85 through 90 of the reasons for decision of the Special Committee in the matter of Anthony Michael Speciale be adopted as the procedure to be followed in respect of applications for costs in Discipline proceedings.

Note: Motion, see page 446

A.2. CONSENSUAL, INTIMATE RELATIONSHIPS WITH CLIENTS

A.2.1. The Committee expressed concern about the propriety of situations where lawyers, or their firms, provide legal services to clients while they are involved in consensual, intimate relationships with those clients. In these specific instances, there is at least some possibility that the legal advice given might be influenced by the existence of a relationship and, in any case, the professional independence of the lawyer appears to be compromised.

- A.2.2. The Committee resolved that a policy in the area should be developed articulating the position of the Law Society on the issue. The Committee discussed whether the focus of the policy should be limited to relationships with matrimonial or criminal clients, as opposed, for example, to relationships with clients by lawyers practising in areas such as real estate or corporate law where the concern of the effect of the influence exerted by the relationship may be less significant.
- A.2.3. Your Committee invites the Treasurer to consider striking a Special Committee to address the question of the propriety of consensual, intimate relationships between lawyers and their clients from a professional conduct standpoint and to make recommendations as to a policy, if any, to be adopted by the Law Society on the issue.

B.

ADMINISTRATION

B.1. ALTERNATIVE DISPUTE RESOLUTION
- CBAO FEE MEDIATION INITIATIVE

- B.1.1. The Society was approached by the ADR Section of the CBAO to provide assistance with an initiative aimed at offering lawyers and clients an alternative to the assessment procedure for resolving fee disputes.

The initiative calls for the creation of a panel of lawyers who are also trained mediators. It has been considered by the Attorney-General's office and Toronto Assessment Officers. In applicable circumstances, the terms of the agreement could be incorporated into a Certificate of Assessment which will be issued by the Court. The mediators will be compensated for their services by the parties. Scott Kerr addressed the Committee on the issue.

The Committee discussed the requests made to Society in providing the following assistance:

B.1.2. a. DISTRIBUTE INFORMATION

Attempts will be made by the CBAO ADR section to publicize the existence of the mediation service. The Law Society is the recipient of a large number of complaints regarding lawyer's fees. Presently, parties are advised that such matters are outside the Society's jurisdiction and information is provided about the assessment procedure.

The Society has been asked to inform parties about the CBAO mediation service as well as the assessment procedure. It is envisaged that brochures will be prepared by the CBAO; Law Society staff would be asked to distribute them.

- B.1.3. In relation to this issue, your Committee discussed the importance of providing all relevant information to the public.

25th March, 1994

B.1.4. Your Committee resolved that Scott Kerr report to the Committee on the information which might be provided by the Society to the public regarding mediation, including the CBAO meditation initiative.

B.1.5. b. FACILITATING MEDIATION

The Society was asked to consider providing administrative support for the ongoing operation of the mediation service. This support would be in the form of a phone line dedicated solely for this purpose that would be answered by a designated Law Society staff person. That person would have a list of the names of all the lawyers on the mediation panel. It would be their responsibility to provide callers with the names of the mediators on a rotating basis. The designated telephone line would be provided free of charge.

B.1.6. In relation to this issue, your Committee discussed the financial impact on the Society in terms of staff time, and the appearance of an endorsement by the Society of one mediation service over others.

B.1.7. Your Committee resolved that the Society not provide the assistance requested in the facilitation of mediation.

B.2 CRIMINAL AND QUASI-CRIMINAL CONVICTIONS

B.2.1. The Committee considered the issue of whether every criminal conviction or quasi-criminal conviction entered against a lawyer is a matter warranting disciplinary action. Two aspects of the issue are (1) the nature of the offence of which the member is convicted; and (2) the current status of the member. The Committee expressed its concern for the requirement of a policy which would provide consistency in the treatment of convictions against members.

B.2.2. After discussion, your Committee approved the creation of a Sub-Committee to consider the issue and to report its findings to the Committee.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

H. Strosberg
Chair

It was moved by Mr. Strosberg, seconded by Mr. Scott that Item A.-A.1. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

25th March, 1994

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of March 10, 1994

Mr. Somerville presented Item B.-3. re: Budget 1994-94 - Omnibus Application to the Law Foundation of Ontario, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

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

A.
POLICY

1. FEE FOR OUT OF PROVINCE MEMBERS

The Society has received a number of requests from members residing out of province that the issue of whether there should be a nominal fee for non-practising members be considered.

The Society currently charges the category 2 "50%" fee to members who are employed other than in the practise of the law of Ontario. By comparison the Law Society of British Columbia charges \$150 to out of province members, whether practising or not.

The Committee asked the Director of Finance and Administration to survey the other Law Societies as to their policies and prepare a financial impact statement of establishing a reduced fee before deciding and report back to the committee.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum together with a projection of results for the fiscal year ended June 30, 1994, for the General Fund and the Lawyers' Fund for Client Compensation for the 7 months ended January 31, 1994.[pages 5 - 10]

Approved

25th March, 1994

2. REPORT OF THE SPECIAL COMMITTEE ON PRIORITIES AND PLANNING

Tom Bastedo, Chair of the Special Committee on Priorities and Planning, gave a verbal report on progress to date and indicated that a draft budget together with recommendations with respect to program initiatives would be before the Committee next meeting day.

3. BUDGET 1994/94 - OMNIBUS APPLICATION TO THE LAW FOUNDATION OF ONTARIO

By letter dated October 14, 1993 [page 11], the Society was informed that at a meeting of the Trustees of the Law Foundation held on October 14th, it was resolved that the maximum level of grant the Society might expect to receive in respect of its 1994/95 year would be \$1,800,000 subject to conditions set out in that letter.

A draft letter to the Foundation was before the meeting. Committee members were asked to direct comments or recommendations to the Director of Finance and Administration.

Approved

Note: Motion, see page 452

4. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 30 members who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

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

The Committee was asked to recommend that the rights and privileges of these members be suspended on March 25, 1994 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 452

5. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Thomas Ambrose O'Flaherty	Kenora
John Terence Osbourne	Cambridge
Alfred Anthony Petrone	Thunder Bay
George Alexander Rogers	Sarasota, FL, USA
Clifford Everard Shand	Oakville
Joseph Walker Temple	Toronto

25th March, 1994

(b) Incapacitated Member - Rule 50

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

Inderjeet Singh Bhoi	Orleans
Michael Chykaliuk	North York
Herbert Carfrae Mosser	Penetanguishene

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

Approved

6. RESIGNATION - REGULATION 12

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

(a) Monica Ruth Nayman was called to the Bar on April 14, 1988 and has never practised law since her call. Her annual filings are up to date. The second instalment of the 1993/94 annual fee is owing.

(b) Stephanie Anne McManus of Wakefield, Quebec, was called to the Bar on April 13, 1987. She practised law until June 1993 with the firms Wilson, Monaghan and Brennan and Hodges. All clients' matters have been completed and disposed of or arrangements made to clients' satisfaction. She is not aware of any claims made against her. Her annual filings are up to date. The second instalment of the 1993/94 fee is owing.

(c) Aneurin Antony Thomas of Toronto, was called to the Bar on February 7, 1992 and practised with the firm Birenbaum, Koffman, Steinberg until October 1, 1993. All his former files have been transferred to other lawyers within that firm. All books and records relevant to his practice remain with the firm. He is not aware of any claims made against him. His annual filings are up to date. The second instalment of the 1993/94 fee is owing.

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

Approved

(d) Peter Stanley McBirnie's application for permission to resign his membership was before the committee in September 1993. Due to criminal charges against him (not related to his practice) the committee referred the matter to the Discipline Policy Committee which considered the application at its February meeting and recommended that Mr. McBirnie should not be permitted to resign through the Finance and Administration Committee. A memorandum from the Discipline Policy Committee was before the meeting.

The Committee was asked to consider the member's application for resignation.

Denied

25th March, 1994

C.
INFORMATION

1. PROPOSED STATEMENT OF THE ROLE OF THE LAW SOCIETY

On January 13, 1994, Convocation adopted a report of the Research and Planning Committee which included a consideration of the proposed Statement on the Role of the Law Society. A memorandum from Simon Hodgett was before the meeting.

The Committee was asked to take note of the recommendation that the Role Statement be used as a working document when setting priorities for the upcoming year.

Noted

2. LEGAL MEETINGS AND ENTERTAINMENT

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

March 17, 1994	W.L.A. Dinner Convocation Hall
April 6, 1994	Judges' Dinner Convocation Hall
April 13, 1994	Legal Aid Dinner Benchers' Dining Room

Noted

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

K. Howie
Chair

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

- Item B.-1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated March 10, 1994 re: January 1994 Financial Statement Highlights.
(pages 5 - 10)
- Item B.-3. - Copy of letter from Mr. H. D. Guthrie, Chair of Law Foundation to Mr. Paul Lamek, Q.C., Treasurer dated October 14, 1993 re: 1994/5 Budget Planning.
(page 11)

It was moved by Ms. Kiteley, seconded by Ms. Curtis that additional funds be requested from the reserve fund of the Law Foundation of Ontario - \$5 million for Legal Aid.

Lost

ROLL-CALL VOTE

Arnup	Against
Bastedo	Against
Bellamy	Abstain
Campbell	Against
Copeland	For
Cullity	Against
Curtis	For
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Hickey	Against
Hill	Abstain
Howland	Against
Kiteley	For
Krishna	Against
Lamont	Against
Legge	Against
McKinnon	Against
Mohideen	For
Moliner	Abstain
Murray	Against
O'Brien	Against
D. O'Connor	Against
S. O'Connor	For
Palmer	Against
Peters	For
Scott	Against
Sealy	Against
Somerville	Against
Strosberg	Against
Thom	Against
Topp	Against
Weaver	Against
Yachetti	Against

25th March, 1994

It was moved by Mr. Somerville, seconded by Mr. Murray that Item B.-3. be adopted.

Carried

Meeting of March 10, 1994 Report and Addendum

Mr. Somerville presented Item B.-4. of the March 10th Report and Item B. of the Addendum re: suspensions, for Convocation's approval.

ADDENDUM TO THE FINANCE AND ADMINISTRATION COMMITTEE MARCH 1994 REPORT

B.
ADMINISTRATION

SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are 9 members who paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank.

It is recommended that the rights and privileges of these members be suspended by Convocation on March 25, 1994 if the fees or levies remain unpaid on that date.

Note: Motion, see below

THE BALANCE OF THE MARCH REPORT AND ADDENDUM WAS ADOPTED

The suspension motions were amended by changing the suspension date from March 26 to March 25, 1994.

MOTION TO SUSPEND: FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Somerville, seconded by Mr. Murray THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from March 25, 1994 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: N.S.F. CHEQUES - ANNUAL FEES

It was moved by Mr. Somerville, seconded by Mr. Murray THAT the rights and privileges of each member who paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank and whose name appears on the attached list be suspended from March 25, 1994 and until the necessary fee or levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

PROFESSIONAL STANDARDS COMMITTEE

Meeting of March 10, 1994

Mr. Murray presented Item A.-A.1.4 re: Mentoring, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of March, at 3:00 p.m., the following members being present: R. Murray (Vice Chair), M. Weaver (Vice Chair), R. Cass, P. Furlong.

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

A.

POLICY

A.1. STRATEGIC PLANNING CONFERENCE

A.1.1 The Committee reviewed those recommendations of the Strategic Planning Conference specific to the Committee. Each recommendation is followed by the Committee's response.

A.1.2. Recommendation That the Policy Section of the Discipline Committee, in co-operation with the Professional Conduct Committee and the Professional Standards Committee, consider the possibility of special programs for the assistance of lawyers who have been found guilty of professional misconduct.

A.1.3. The Committee concluded that it is not possible, at this time and particularly given present financial constraints, for special programs of this nature to be developed.

A.1.4 Recommendation That the Professional Standards Committee consider the establishment of a scheme to ensure that all new lawyers have access to a mentor who can assist them in developing an understanding of the standard of practice required of professionals.

Note: Referred back to Committee

A.1.5. In part, this recommendation is addressed through the Practice Advisory Service, which provides mentoring on ethical and practice management issues, and is also developing a network of practitioners in family law and civil litigation to whom lawyers in general, and particularly new lawyers, can be referred for assistance with respect to substantive law and procedure. The Practice Advisory Service also refers to the Professional Standards Department lawyers who may need assistance beyond that available through the Service.

- A.1.6. The Committee concluded that an external mentor service is not feasible as a Law Society service, given the lack of control over, or even knowledge of, the advice being provided by the mentor. There is the additional difficulty of attempting artificially to create a relationship that depends for its success upon the meshing together of the personalities of the mentor and the junior.
- A.1.7. It was noted that Benchers also are often called upon by members of the profession to take the role of mentors.
- A.1.8. Recommendation That the Professional Standards Committee and the Professional Conduct Committee take steps to remind the profession that, where a lawyer is not competent to deal with a particular matter, there is a duty to refer the client to another lawyer who has the necessary competence. The communication should encompass both the negative duty (not to take on work for which one is not competent) and the positive duty (to make sure that the client is referred to a lawyer who is competent).
- A.1.9. It is the view of the Committee that this recommendation is being addressed through Rules 2 and 3, as revised, of the Rules of Professional Conduct.
- A.1.10. Recommendation That the Professional Conduct Committee and the Professional Standards Committee consider the feasibility of publishing, for the information of the profession, summaries of the advice given in response to questions of ethics and practice received by the Law Society.
- A.1.11. In part, this recommendation is addressed through articles published in *The Adviser*. The Professional Conduct Department has, in the past, published decisions of that Committee on ethical and practical issues. The Committee recommends that the Chair of this Committee meet with the Chair of the Professional Conduct Committee, to discuss further initiatives that may be possible in response to this recommendation.
- A.1.12. Recommendation That the Professional Standards Committee work with the Policy Section of the Discipline Committee and the Insurance Committee to establish a procedure for assisting and regulating the practice of those members who are subject to multiple complaints and/or multiple errors and omissions claims.
- A.1.13. It was the view of the Committee that this recommendation has been addressed through the establishment of the Practice Review Programme.

- A.1.14. Recommendation That the Professional Standards Committee address the responsibilities of the Law Society in respect of lawyers facing financial difficulties. In particular, that the Committee consider enhancing the financial counselling aspects of the Practice Advisory Service.
- A.1.15. It was the view of the Committee that, insofar as it is practicable for the Law Society to undertake any responsibility of this nature, it is being addressed appropriately through the Practice Advisory Service and through referrals to the LINK Programme, which offers (*inter alia*) financial counselling.
- A.1.16 Recommendation That the Insurance Committee, in co-operation with the Professional Standards Committee, develop loss prevention programs which recognize the diversity of types of practice within the profession.
- A.1.17. The Committee recognizes that such an initiative has been undertaken by the Errors and Omissions Loss Prevention Video. The Committee recommends that a report be requested from the Insurance Committee as to intended future loss prevention programs, and the assistance of this Committee offered in the planning of same.
- A.1.18 Recommendation That the Communications Committee and the Professional Standards Committee review the legal services provided to the public through the Lawyer Referral Service to ensure that they are of an appropriate professional standard.
- A.1.19. This recommendation is dealt with in part, in the Committee's view, through the removal from the Lawyer Referral Service roster of the names of members authorized to participate in the Practice Review Programme. The Committee recommends that the Communications Committee consider requiring lawyers seeking to be listed on the Referral Service to certify on the application form their ability to practise in the area(s) of law selected by them.
- A.1.20 Recommendation That the Professional Standards Committee seek the assistance of the Communications Committee in communicating to the public the commitment of the Law Society to appropriate standards of competence.
- A.1.21. The Committee will seek the assistance of the Communications Committee in this regard.

B.
ADMINISTRATION

B.1. AUTHORIZATION FOR PARTICIPATION IN PRACTICE REVIEW

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

B.2. REINSTATEMENT ON THE LAWYER REFERRAL SERVICE

- B.2.1. A member currently participating in the Practice Review Programme has written to the Committee seeking reinstatement on the Lawyer Referral Service.

- B.2.2. When a lawyer is authorized for participation in the Programme, pursuant to Committee policy the member's name is removed from the Lawyer Referral Service roster. Upon the successful completion of the Programme, the lawyer's name ordinarily is restored to the Service's roster.
- B.2.3. The member was called to the Bar in 1974. He was authorized to participate in the Programme in October, 1988, but his file was in abeyance from September 1989 until December 1992, due to discipline proceedings and his suspension for six months ending October, 1992. The member is currently suspended for non-payment of his annual fees, and is in arrears of payment of his E&O levy. The Law Society has received 35 complaints against the member since 1986, and 15 potential E&O claims since 1983; almost \$90,000. has been paid out in adjuster, counsel and claim costs. The member has been co-operative in following the recommendations made to date in the Practice Review Programme.
- B.2.4. Until he is no longer suspended for non-payment, the member cannot be restored to the Lawyer Referral Service in any event, and cannot practise law until he is a member in good standing. The Committee therefore denied the member's request for reinstatement.
- B.3. PRACTICE REVIEW PROGRAMME - FILE CLOSURES
- B.3.1. Three Practice Review files were closed on the basis of the members' successful completion of the Practice Review Programme. The members were authorized for participation in the Programme in January 1992, March 1991 and June 1993, respectively. In each of the files, the members met with a reviewer on one occasion and with staff on several occasions. In two of the files, Review Panel meetings were also convened. The Committee was satisfied that all three of the members have improved the quality of their practices and have benefitted from participation in the Practice Review Programme.
- B.3.2. One Practice Review file was closed on the basis that the member's participation in the Programme is no longer necessary. The member appeared on an Invitation to Attend at which time it was felt that participation in the Programme would be of assistance to him. He was authorized to participate in October, 1993 and at that time it was decided that staff would conduct a preliminary review to determine whether further participation would be appropriate. The attendance revealed the practice to be highly organized. Staff did make several recommendations, but felt that they could be implemented without further participation in the Programme.
- B.3.3. Two Practice Review files were closed on the basis that the members are no longer practising law. In the first instance, the member was authorized to participate in the Programme in November 1991. The solicitor was cooperating with the Programme until he was suspended by Discipline. He was found guilty of professional misconduct and was suspended for one month and thereafter until he fulfilled

various conditions as set out by the Discipline Committee. The member is still suspended. There is also evidence that the member was winding down his practice prior to suspension. The second member was authorized to participate in May, 1992. A review date had been set; however, prior to the meeting the member advised that he was taking a six-month leave of absence from the practice of law. The member has not returned to practice. The members' files will be monitored by staff in the event that the members return to practice, at which time the files may be re-opened if it is appropriate to do so.

C.
INFORMATION

C.1. RULE 3 - REVISED FORMAT

- C.1.1. The Special Committee to Review the Rules of Professional Conduct is preparing annotations to the draft Rule 2 presented by this Committee. As a result, it was decided to defer further consideration of Rule 3 until after the annotations had been received, and Rule 2 redrafted, so that applicable concerns of the Special Committee could be taken into consideration in the revision of Rule 3.

C.2. WILLS AND ESTATES CHECKLIST

- C.2.1. Consideration of this item was deferred to the April meeting of the Committee, to permit all Committee members the opportunity to review and consider the contents of the checklist. A letter is to be sent to all members of the Committee, asking them to be prepared to discuss the checklist at the April meeting with a view to its submission to Convocation in April.

C.3. PROJECTED OPERATING EXPENSE BUDGET FOR 1994/95 FISCAL YEAR

- C.3.1. The budgets of both the Practice Advisory and the Professional Standards Departments were recently considered by the Priorities and Planning Committee. That Committee requested that the Practice Advisory budget be amended to include one half-time Staff Lawyer for a one year contract period, instead of using the services of a "legal temp" agency as proposed. The Priorities and Planning Committee also requested additional information regarding the Education Programme included in the Professional Standards Budget. That information has subsequently been provided to it in the form of a memorandum.

C.4. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.4.1. In January 658 calls were dealt with by the Practice Advisory Service, representing an increase of 52% over January of 1990 and January 1992, and an 11% increase over January of 1993.
- C.4.2. Approximately 40 calls were on the subject of G.S.T. File transfer and the break-up and re-formation of law firms continue to be major topics, as does the subject of difficult clients.

25th March, 1994

- C.4.3. The Start-up Workshops continue to fill a great need in addressing actual start-up decisions and the area of practice management. At some time in the future it may be necessary to split these two areas and go back to having pure start-up workshops for newly-called lawyers, and practice management workshops for those coming from large firms to solo practice. Even the simplest suggestions for office management, such as how to make a Court document brief, use of different colours for files, importance of dating all pieces of paper and communication flow, generate significant interest.
- C.5. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT
- C.5.1. There are a total of 134 open files in the Practice Review Programme. In February, three participating members appeared before a review panel of Benchers Susan Elliott, Fran Kiteley and Laura Legge.
- C.5.2. Staff of various departments of the Law Society, including Professional Standards, have been constituted a working group to review the amendments to the *Law Society Act* as drafted by Dean Marilyn Pilkington, in order to enact the reforms and procedures approved by Convocation for discipline, complaints and professional standards.
- C.5.3. The applications of 75 members seeking certification as specialists were vetted through the Professional Standards Department in February; only 2 of those raised Standards concerns, and have resulted in referrals to the Practice Review Programme by the Certification Board.
- C.5.4. The Director has been asked to chair the ethics panel presented in Phase I of the Bar Admission Course, which panel addresses a variety of different ethical issues.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

C. McKinnon
Chair

It was moved by Ms. Kiteley, seconded by Mr. Scott that the Committee reconsider the rejection of a mentoring system.

Not Put

The Chair, Mr. McKinnon agreed to take the matter back to Committee.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

25th March, 1994

INSURANCE COMMITTEE

Meeting of February 24, 1994

Mr. Campbell presented Item 2. re: Audit Policy Subcommittee, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 24th of February, 1994 at 10:00 in the forenoon, the following members being present: Messrs. Campbell (Chair), Bastedo, Epstein, Finkelstein, Howie, McKinnon, Murray, Wardlaw, Bragagnolo, Cass, Feinstein, Hickey, Lamek, Scace and Ms. Elliot and Palmer.

Also in attendance were Messrs. Crosbie, Tinsley, Anderson, Crack, O'Toole and Ms. Angevine and Wishart. The following consultants were also present: Messrs. Moore, Traver, Chippindale and Walker.

ITEM

1. LAWYERS' PROFESSIONAL INDEMNITY COMPANY: ITS ROLE & STRUCTURE

The original purpose of the Committee meeting was to define the role of Lawyers' Professional Indemnity Company (LPIC) in the circumstances where managerial control of the Law Society's Mandatory Professional Liability Insurance Program has been moved from the Society's Errors & Omissions Department into LPIC.

Senior LPIC staff consisting of Ed Anderson, Caron Wishart and Kevin O'Toole had responded in writing to a number of questions about the operation of the program and these were elaborated on to some extent as a result of Benchers' questioning. Two significant issues became evident. The broader of the two involves an understanding, and delineation of, the policies undertaken by management of the insurance program. While these are set out in basic terms in the Minutes of the Insurance Committee of February 20, 1991 (see Appendix "A"), the Benchers feel that it is appropriate they have a more detailed understanding of the policies that are employed, and that more of these should be put in writing.

Arising out of the broad management policy statements are specific policies dealing with retaining legal counsel to assist in the resolution of claims, the choice of counsel and payment of counsel. The focus of the discussion was that the Insurance Committee should understand the nature of these policies, their intent, and what review should Committee members have of them.

During this discussion an even more fundamental question arose, namely the role of the insurance company. In this broad perspective, it will have to be determined whether LPIC operates on basic insurance principles, protection of the rights of the insured, or whether LPIC operates to protect members of the public in respect of claims made against lawyers for negligence. Further discussion of this subject has been postponed until the next special Committee meeting scheduled for 5:00 p.m. on Wednesday May 11, 1994.

25th March, 1994

John Walker, of McCarthy, Tetrault, provided a review of the current role of LPIC and the reasons for movement of the managerial control of the insurance program into LPIC. A question arose with respect to the possibility of structuring the program such that the benefit of GST Tax Input Credits could be realized. It was agreed to explore if another format, such as a reciprocal or a mutual, could achieve this end.

John Chippindale, of Marsh & McLennan Limited, provided background information involving the excess professional liability insurance market, the layers of insurance above the \$1,000,000 policy limit available under the Society's Mandatory Insurance Program. Mr. Chippindale advised that while many Benchers would be concerned about the level of the present levy, a relationship exists between the excess insurance market and the Society's Mandatory Program. His point in this connection was that Benchers could not tread too far in restricting coverage under the LPIC policy without an adverse impact on the excess insurance layers, required by approximately 70% of Ontario lawyers.

Messrs. Moore and Traver of McNeary Insurance Consulting, reviewed the similarities and distinctions between the Society's program and those of other organizations that they are familiar with including the State of Oregon, which is the only mandatory plan in the United States and the State of North Carolina. It was noted that Mr. Moore had been retained jointly by the Law Society of British Columbia and the Law Society of Upper Canada to conduct a review relating to the Canadian Lawyers Insurance Association (CLIA), which is the umbrella organization for numerous Canadian Law Societies.

Messrs. Moore and Traver outlined several important considerations on which to focus.

1. To establish levies at appropriate levels to meet current and future liabilities and to fund the program sufficiently to eliminate the deficit.
2. To undertake a claims review.
3. To consider whether or not there are circumstances that should be excluded from coverage under the LPIC policy.
4. To consider incentive rating of firms.

The afternoon session which took place in the absence of the insurance staff, reached a consensus that groups of members from the Insurance Committee should look at major policy considerations, Claims Policy, Audit Policy, Loss Prevention Policy, and Management Policy.

It was recognized that the ultimate form of the Insurance Program might properly await a determination as to whether or not another format, such as a reciprocal or a mutual company, is a more appropriate vehicle. It was also recognized that with the continuing role of Benchers on the LPIC Board it may, or may not, be appropriate to continue with consideration and study of matters at the Insurance Committee level. This is particularly so since Committee Day is not well positioned to accommodate the longer discussions needed for a number of these issues.

Based on the foregoing, it was proposed that four Insurance Subcommittees be created, each composed of at least 2 Benchers and 1 staff person and such other consultation as may be appropriate, to deal with the following items:

25th March, 1994

1. Claims Policy Subcommittee

To develop the parameters for claims review both within the staff function and outside to the extent that is appropriate or necessary to get expertise in specific areas. The policy would determine to what extent, if any, Benchers might or might not be involved in this process.

2. Audit Policy Subcommittee

This subcommittee would look at the criteria by which counsel doing work for Errors & Omissions are chosen, how they are reviewed, and how they are paid. In addition, the policy would look at to what extent it is consistent with the insurance aspects of errors and omissions to expand that counsel list both on a geographic and demographic basis.

Note: Motion, see below

3. Loss Prevention Policy Subcommittee

This subcommittee would look at the policy involved in the Law Society's Errors & Omissions Loss Prevention Program and the basis for input and participation of Benchers, the Insurance Committee and others.

4. Management Policy Subcommittee

This subcommittee, working with the President and Vice-President of LPIC would look at what role, if any, there should be between the Executive Committee composed of senior staff and Benchers including the inter-relationship between the Department of Finance and its Director, with the insurance company and its operation.

If the Insurance Committee agrees with these four proposed Subcommittees then they would be asked to commence work immediately with the expectation that they could report by Committee Day in May.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

C. Campbell
Chair

It was moved by Mr. Campbell, seconded by Mr. Feinstein that Item 2. be adopted.

Carried

THE REPORT WAS ADOPTED

SPECIAL COMMITTEE ON REQUALIFICATION

Mr. Goudge presented the Report of the Special Committee on Requalification, for Convocation's approval.

REPORT ON REQUALIFICATION

INTRODUCTION

The privilege of self-government carries with it the obligation to ensure that all practising lawyers have the capacity to provide competent legal services for clients. Traditionally, in its requalification requirements, the Law Society has focused its attention on members who left the practice of law, often for extended periods of time, as reflected in their suspension for the non-payment of fees. The mere payment of fees does not, however, demonstrate that a member is maintaining competence in the practice of law, and therefore does not protect the public from incompetent but fee-paying members.

A requalification policy is only one part of the Law Society's concern with the competence of members of the profession. The Society's interest in this issue is also demonstrated through initiatives such as the Rules of Professional Conduct, continuing legal education and the practice review programme.

Similarly, addressing competence in the context of requalification is only one issue requiring the Law Society's attention. Members who do not maintain and improve their knowledge of substantive law, procedure, and practice administration; members who change their areas of practice without educating themselves appropriately; members who "dabble" in areas outside their sphere of expertise; all such members constitute a danger to the public. It is therefore recommended that Convocation take specific steps to address the issue of continuing competence in this broader context.

THE COMMITTEE'S RECOMMENDATIONS ARE AS FOLLOWS:

1. All members, regardless of their fee-paying status, will be asked to complete a "qualification status" form annually, indicating whether they make substantial use of their legal skills on a regular basis in their current work. A draft of the form is attached.

Members engaged in the following types of work will be deemed to be in the "qualified" category:

- private practice in Ontario
- private practice in another jurisdiction
- in-house counsel
- clinic lawyer
- M.P. or M.P.P.
- government lawyer
- policy analysis or legislative drafting
- member of administrative tribunal
- arbitrator, mediator, conciliator
- legal teaching and/or legal writing
- legal research staff

Note: Motion, see page 471

Members will also be able to indicate that they fall into the category "other", as an addition to the enumerated list. Members checking "other" will be asked to provide an explanation, in order that their responses can be assessed to determine whether in fact they meet the specified criteria.

2. Members who have not fit in the "qualified" category, for a period of five years or more, and who wish thereafter to engage in the practice of law, either with a law firm or in their own practices, will be required to submit an application to the Professional Standards Committee. That Committee shall determine the requalification requirements to be met by each such member. Each member's application will be considered on an individual basis.

Note: Motion, see page 471

3. Members who have not fit within the "qualified" category for five years or more, but who thereafter have obtained employment as a government lawyer or as in-house counsel, will not be required to requalify so long as the member remains in that employment for a period of one year or more. If a member seeks to return to the private practice of law prior to the expiry of the one-year period, that member will be required to requalify.
4. A pre-emptive regime will be established, so that non-suspended members in the "other" category who may be required to requalify will be so advised immediately, rather than at the end of the five-year period. The Professional Standards Committee will review all responses in the category of "other", to determine whether the member's self-assessment meets the criteria. The Committee will then advise the member if, in the view of the Committee, the member would be required to requalify after 5 years, so that the member will have the opportunity of taking steps to maintain qualified status, as set out in recommendation 6, below.
5. Members disagreeing with the assessment of the Professional Standards Committee shall have the right to appeal that decision to Convocation.
6. The pre-emptive regime will prescribe steps each member can take to ensure that his or her legal skills will be preserved, in order to avoid being required to requalify at the end of the five year period. As a result, members who are not making substantial use of their legal skills can, through a combination of continuing legal education, volunteer work and the like, resume their active professional status without encountering significant economic and administrative barriers.
7. The Admissions Committee, the Legal Education Committee and the Professional Standards Committee will be asked jointly to develop the range of steps a member can take to preserve his or her legal skills through the pre-emptive regime.
8. The Admissions Committee, the Legal Education Committee and the Professional Standards Committee will be asked jointly to develop a range of reasonable conditions to be met by members who have not participated in the pre-emptive regime, and are therefore required to requalify.
9. The Professional Standards Committee will monitor the member's compliance with the steps prescribed in the pre-emptive regime.
10. The five-year period is to be calculated prospectively only, from the effective date of the policy, being July 1, 1994.
11. No distinction will be made with respect to members who make substantial use of their legal skills on a part-time rather than a full-time basis.

COMPOSITION OF THE SUB-COMMITTEE AND ITS PROCESSES

In order to provide representation reflective of the varied membership of the Law Society, the sub-committee was made up of six elected Benchers and three members of the Law Society in practice situations potentially affected by the issue of requalification. Representation of the public was provided by a lay bencher. The members of the sub-committee are Stephen Goudge, Chair; Thomas Bastedo, Susan Elliott, Casey Hill, Donald Lamont, Marie Rounding, Hope Sealy, David Sherman, Karen Thompson and Mary Weaver. The sub-committee engaged in extensive consultation with the profession, through direct mailings to interested members and organizations, an article in the *Benchers Bulletin*, circulation of the draft policy, and discussion with individual members potentially affected by the policy. The response from the profession was significant, both quantitatively and qualitatively, and has formed a major part of the foundation for the policy proposed.

THE MANDATE OF THE SUB-COMMITTEE

Although this sub-committee has considered requalification only as it applies to members who have not maintained active use of their legal skills, the sub-committee wishes to emphasize that requalification must be addressed in the larger context of the profession as a whole, in order to provide adequate protection to the public in circumstances where members change their areas of practice; or act on an isolated transaction outside their sphere of knowledge; or make very little use of their legal skills. "[C]ompetency is the issue of paramount concern wherever lawyers are offering their services."

RATIONALE FOR THE REQUALIFICATION POLICY

Background

In September, 1986, Convocation adopted a recommendation of the Admissions Committee that those members whose rights and privileges had been suspended for failure to pay a fee or levy, and who had remained suspended for five consecutive years or more, should be required to complete successfully the examinations of the teaching term of the Bar Admission Course. If unsuccessful, those members were then permitted to attend the Bar Admission Course and were required successfully to complete the teaching term, including the examinations, before being permitted to resume practising.

In May, 1989, Convocation appointed a special committee to review existing policies on the requalification of members who were not involved in the active practice of law for five or more years, and to formulate alternatives. This initiative was undertaken on the basis that, as a self-governing profession, the Law Society must ensure that those who are licensed are competent to practise law. The Special Committee on Requalification reported to Convocation by reports dated June 21, 1991 and March 27, 1992. The report of March 27, 1992, as amended, was adopted in principle by Convocation in April of 1992.

In September of 1992, this sub-committee was established to provide detailed consideration to the entire matter of requalification, including the requirements to be imposed upon members, and was directed to engage in wide consultation with the profession.

¹George Thomson, Deputy Attorney General; letter to the sub-committee, dated June 2, 1993.

Groups Affected by the Regualification Policy

i) Suspended members

Members are presumed competent upon their call to the Bar. Members who stop paying their Law Society fees have apparently cut their ties to the Society, and requalification is justified on that basis, if the member remains suspended for five years or more. There is no need for a change to the existing policy.

ii) Members Not Making Substantial Use of Legal Skills

The increasing diversity of the legal profession, and the impact of that diversity upon the practice of law, suggests that the traditional concept of private practice in a law firm should not be the sole basis upon which the Law Society assesses its members' competence. Legal education, particularly at the Bar Admission Course level, is moving more and more into the development of skills needed in the practice of law. Data from the Complaints and Errors & Omissions departments indicate that it is poor practice skills, not lack of substantive legal knowledge, that contribute primarily to complaints and claims.

At the same time, adult cognitive development research indicates that memory decay in a specific content area occurs in the first three to five years after acquisition, so specialized legal knowledge would appear to be the likely first casualty of an extended absence away from the use of legal skills.²

The focus of the requalification policy is therefore upon the *substantial use* of legal skills, regardless of the setting in which those skills are being used, or the title given to the member in that setting. In order to lend some certainty to the policy and peace of mind to members, and in recognition of the skills required for the positions contained in the categories set out above, it was felt appropriate to deem individuals in these categories as having maintained their qualified status.

Judges are omitted from the operation of this rule because, on resuming membership in the Law Society, they become subject to all rules of the Society including this one, and at that point would be subject to year 1 of the requalification regime.

No distinction was made between the part-time and full-time use of legal skills. It will be left to the honesty of the individual member to determine whether the part-time employment is sufficient to constitute *substantial* use of legal skills on a *regular* basis. The few members who will fall into this category do not justify complicating the policy further, in attempting to define "part-time", in order to capture them. In addition, Rule 2 of the Rules of Professional Conduct exists to protect the public against incompetent practices, part-time or otherwise.

"Unqualified" members (i.e. those who have not made substantial use of their legal skills on a regular basis for five years or more) are exempted from requalifying if they obtain employment as a government lawyer or as in-house counsel, on the basis that the purpose of the requalification policy is to protect the public. Presumably a corporate or governmental employer will be aware of the member's skills history and has decided that the member is an appropriate employee. The requirement that such member requalify if returning to the private practice of law after less than a year in such employment is based on the belief that any lesser period of time may not be sufficient to permit the member to regain the skills lost during the hiatus period.

²The Law Society of British Columbia, Policy Issue Discussion Paper, July 1992, as amended; p.4.

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The concept of assessing substantial use of legal skills was adopted, in part, to minimize systemic gender-bias, because of the following realities:

- i) women are more likely than men to leave the profession temporarily, in order to raise children;
- ii) in these circumstances, women are likely to suffer greater economic loss and consequent inability to pay fees in order to maintain membership or to cover the costs of returning to fee-paying status if suspended for non-payment;
- iii) statistical data indicate that women, in disproportionate numbers, occupy non-traditional employment positions in the profession.

The Time Frame

The five year hiatus period, after which a member must requalify, was chosen both in recognition of the erosion of specialized memory, and in order to be consistent with existing policies on suspended members.

Transitional Issues

The requalification proposal drew a significant level of response from members of the profession. Many members indicated that they had made career and lifestyle decisions on the understanding that, by maintaining their membership in the Society through the payment of fees, they would be preserving their right to return to the private practice of law without hindrance or penalty. The differing categories of Law Society membership were developed in part in recognition of different types of non-traditional legal employment, which draw less on the resources of the Society, and in part to accommodate financial realities, such as arise from leaving practice in order to raise a family. Women members of the profession are potentially more seriously affected by a requalification policy, if these concerns are not taken into consideration. As a result of the pre-emptive regime, members who are not making substantial use of their legal skills can, through a combination of continuing legal education, volunteer work and the like, resume their active professional status without encountering significant economic and administrative barriers.

Prospective, rather than retroactive, application of the policy therefore lessens its impact on members who made career choices in good faith, and permits them a reasonable period of time (5 years) in which to prepare to return to the private practice of law, with the assistance of the pre-emptive regime. It also gives a degree of certainty to members, and lessens the economic and inherently gender-biased effect of the policy.

Because the policy is prospective only, it is possible for a member who has been suspended for four and one-half years to return to good standing by paying fee arrears, then remain away from practice for a further five years, before having to requalify. The numbers of members likely to fall into this category are so slight that retroactivity cannot be justified on this basis.

Requalification Requirements

Whether as part of the pre-emptive regime, or in order to requalify, the policy requires that each member be assessed on an individual basis. The requalification requirements will be designed to address the needs of the individual member in a manner that is consistent with the needs of the public. At most, a requalifying member would be required to enrol in, and satisfactorily complete, the Bar Admission Course. In addition to any requirements that may be suggested by the Admissions, Legal Education and Professional Standards Committees, the sub-committee proposes the following range of possibilities for either the pre-emptive regime or in order to requalify:

- dependent upon the member's prior history, no requirements
- attendance at Continuing Legal Education programs, specified as to number and areas of law, and subject to availability and expense, given the member's place of residence and economic circumstances
- the development of "refresher" courses (subject to a cost analysis)
- volunteer employment at a shelter or legal clinic
- writing some or all of the Bar Admission Course examinations (or their equivalent)
- attendance at some or all of the Bar Admission courses, particularly given their emphasis on practice skills, and again recognizing availability to the member and economic impact
- practising under supervision for a specified period of time
- practising in a mentor relationship
- restricting practice to certain area(s) of law

The sub-committee recommends that, in determining the requirements to be imposed upon an individual member, the Professional Standards Committee take into consideration not only the member's activities in the preceding five years, but also the member's previous history in the profession, including his or her articles, and the member's future practice intentions.

The sub-committee further recommends that the Law Society implement procedures to obtain answers to the following questions:

- a) does the policy have a disproportionate effect upon women?
- b) what is the actual cost of the policy?
- c) do those members returning to practice have more complaints and claims than the average?

and that the impact of the policy be reviewed in light of the answers obtained, after three years have elapsed from the implementation date.

Administrative Consequences

The proposed requalification policy would have administrative consequences in the following areas:

- i) the printing and distribution of the "Qualification Status" form;
- ii) the review of the responses received, to identify those members who answer "no", and those who answer "other";

- iii) the assessment of the "other" responses;
- iv) the appeal process of assessments finding the "other" response unsatisfactory;
- v) prescribing the individual member's pre-emptive regime and monitoring compliance with same;
- vi) prescribing and monitoring the individual member's requalification requirements.

It is anticipated that the "Qualification Status" form would be printed and distributed together with the Fees form, and the responses reviewed by the Records Department, to identify those members answering either "no", or "yes" but "other". The Professional Standards Committee would be responsible for assessing the "other" responses, prescribing a pre-emptive regime, and imposing requalification requirements upon those members seeking to return to the private practice of law. Appeals would be done through the Professional Standards Committee to Convocation, or as Convocation may direct.

Monitoring compliance with the pre-emptive regime or the requalification requirements, depending upon the particular conditions imposed, may be done as is appropriate through either the Education Department or the Professional Standards Department, given the competency mandate of the latter.

Financial Impact

Again it should be remembered that this policy is unlikely to have an impact upon significant numbers of the profession. Membership records for 1992 indicate that approximately 30% of members in good standing are in the 50% and 25% fee-paying categories. By far the majority of these members would not be required to requalify. For example, computer-generated data from members' records indicate:

1983 - 1987:	13 members did not pay the E&O levy, who resumed payment (presumably returning to private practice) in 1988;
1983 - 1985:	24 members did not pay the E&O levy, but resumed payment in 1986.

The numbers required to requalify, and to be dealt with by the Professional Standards Committee and the Education and Professional Standards Departments can thus be anticipated to be relatively small.

The membership records for 1992 indicate that 15,753 members are in the full fee-paying category; some minor percentage of these may be captured by the requalification policy. These records also provide the following information:

- 234 members were employed in education;
- 2,290 were employed in government;
- 2,630 were in "other employment";
- 1,302 members reside out of province.

Many of these members may be encompassed within "qualified" categories such as "member of administrative tribunal", "arbitrator, mediator, conciliator", "private practice in another jurisdiction", "government lawyer" or "policy analysis or legislative drafting".

Some of the 3,932 members in the categories "other employment" or "residing out of province" are likely to classify themselves either in the "no" category, or as making substantial use of their legal skills but in the category "Other", requiring review and assessment of their responses. It is anticipated, however, that these numbers will be relatively few, because the majority of such members are expected to fall within a "deemed" category. The financial impact will thus be greatest in the resources required to review the responses received, and at the Professional Standards Committee level to assess the "other" responses, with accompanying paperwork and administrative issues. A small number of appeals might result from the assessments. The impact these processes would have on administrative resources is estimated as the equivalent of one additional month of support staff time per year.

A staff lawyer would be involved in the assessment of the "other" responses, the presentation of same to the Professional Standards Committee, the appeal process, and the monitoring of compliance with the pre-emptive regime or the requalification requirements, necessitating an estimated three months of staff lawyer time per year. The present resources of the Professional Standards Department are inadequate to encompass this demand on time at present.

The data being collected from the fees form is inputted into the Law Society's databank each year by a contract employee. Some relatively minor rewriting of the computer program would be necessary, to collect the data on qualification status; the cost of amending the program is estimated to be well under \$1,000. The contract employee would then input this data along with the other information being collected, at an additional time requirement of perhaps two weeks per year.

The policy is likely to have its greatest administrative impact in the first year, and the overall impact on resources can be best calculated after that time, when the actual numbers required to requalify or in the pre-emptive regime will have been determined.

A printing cost comparable to that required for the fees form would be required; distribution costs would be a proportion of the cost associated with distributing the fees form. (The marginal costs would be nil.)

If refresher courses are intended to be developed, the cost of same could be significant.

A "hidden" cost may result from the numbers of fee-paying members who would not be considered "qualified", and who therefore decide to discontinue paying their fees.

Legal Issue

At present there is real doubt that the Law Society has the jurisdiction to restrict through its rules the right of members in good standing to practise law in Ontario. A detailed memorandum on this issue has been prepared by Law Society staff. The implementation of this report would therefore require a statutory amendment.

The sub-committee recommends that the Ontario legislature be asked to amend the *Law Society Act*, prior to July 1, 1999, to permit the Society to make rules that restrict the rights of members to practise law. It is recommended that these amendments be sought as part of the package of amendments currently awaiting submission to the provincial legislature.

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For the years 1994-1999, there is no restriction on the ability of the Society to request that members indicate their qualification status each year on a form. Thus, the initial implementation of the requalification policy can proceed without amendment to the *Law Society Act*.

ALL OF WHICH is respectfully submitted

DATED this 4th day of November, 1993

Attached to the original Report in Convocation file, copies of:
Qualification Status Form.

It was moved by Ms. Weaver, seconded by Mr. Scott that M.P.'s and M.P.P.'s under Recommendation #1. be removed from the list of "qualified".

Lost

It was moved by Mr. Epstein, seconded by Ms. Weaver that Recommendation #2. be amended to provide an appeal procedure similar to that in the Legal Education program.

Carried

It was moved by Mr. Goudge, seconded by Mr. Bastedo that the Report as amended be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

CONVOCATION ROSE AT 12:45 P.M.

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The Treasurer and Benchers had as their guest for luncheon, Mr. Roger Oatley, President of the Advocates' Society.

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Confirmed in Convocation this day of 1994.

Treasurer