

28th February, 1997

MINUTES OF CONVOCATION

Friday, 28th February, 1997
8:00 a.m.

PRESENT:

The Treasurer (E. Susan Elliott), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cole, Copeland, Crowe, Curtis, DelZotto, Eberts, Epstein, Feinstein, Finkelstein, Furlong, Gottlieb, Harvey, Krishna, Lamont, Legge, MacKenzie, Manes, Marrocco, Murphy, Murray, O'Brien, Ortved, Pepper, Puccini, Ross, Ruby, Sachs, Scace, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Topp (by conference call), Wardlaw, Wilson and Wright.

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IN PUBLIC

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The reporter was sworn.

DISCIPLINE COMMITTEE

NOTICE OF APPLICATION

A notice of application was made by Ms. Michelle Fuerst to be removed from the record as Counsel for the Solicitor Robert Noel Bates in respect of a Notice of Disagreement and proceedings scheduled before Convocation on April 3rd, 1997.

Ms. Fuerst spoke to the matter and advised that the solicitor consented to the request.

It was moved by Mr. MacKenzie, seconded by Mr. Marrocco that the application be granted.

Carried

MOTION FOR INTERIM SUSPENSION re: ROBERT NOEL BATES

The Secretary placed the Report and Decision of the Discipline Committee on the Motion for Interim Suspension of the Solicitor together with the Affidavit of Service before Convocation (marked Exhibit 1).

28th February, 1997

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Robert Noel Bates,
of the City of Burlington, a Barrister & Solicitor

REPORT AND DECISION OF THE DISCIPLINE
COMMITTEE ON THE MOTION FOR INTERIM
SUSPENSION OF THE SOLICITOR

Mary A. Eberts, Chair
W. Michael Adams
Bradley H. Wright

Glenn Stuart
Counsel for the Law Society

No one appeared for the Solicitor

REPORT

On December 15, 1994 complaint D339/94 was issued against Robert Noel Bates ("the Solicitor") alleging that he was guilty of professional misconduct. Complaint D376/95 alleging professional misconduct against the Solicitor was issued November 30, 1995. Complaint D97/96 alleging professional misconduct against the Solicitor was issued March 29, 1996.

This Committee composed of Mary Eberts, Chair; Michael Adams and Bradley Wright convened on February 11 and 14, 1997 to hear these complaints. At the hearing, the Society withdrew the allegations of misconduct identified in complaint D339/94. The Society was represented by G. Stuart. At the outset of the hearing, F. Forsyth appeared on behalf of the Solicitor, who was not present in person, to request an adjournment. The request was denied. Following receipt of telephone instructions, Mr. Forsyth advised the Committee that the Solicitor would not attend the hearing, and that he was instructed to withdraw from the proceedings. The hearing continued thereafter in the absence of the Solicitor or his counsel.

DECISION

The following particulars of misconduct were found to have been established:

Complaint D376/95

2. a) he failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Complaint D97/96

2. a) He misappropriated funds in the sum of \$11,454.00 received from his client to be paid to a third party in settlement of a judgment insofar as he has misapplied those funds towards his fees;
- c) he sent a misleading letter to a client dated July 27, 1993, which confirmed that he would hold the \$11,454.00 in trust when the solicitor had already disbursed the funds by that date;
- d)(i) he misappropriated the sum of \$25,255.00 from a client, Mrs. Jenkins, when he charged her disbursements for a co-counsel at an inflated rate and for more hours than were actually provided;
- d)(ii) he rendered a misleading statement of account for legal services;
- d)(iii) he acted in a conflict of interest when he caused a mortgage to be registered on title to his client's property as collateral for legal fees without ensuring that the client obtained independent legal advice;
- e)(i) he improperly borrowed the sum of \$50,000.00 from a client;
- f) he misappropriated the sum of \$70,000.00 from his trust account on or about June 18, 1993; and
- g) in September, 1993, he misled a client, Mr. Main, by representing that he had invested a client's trust monies in the sum of \$70,000.00 in a mortgage, when in fact he had misappropriated the monies from his trust account.

The Committee recommended that the Solicitor be disbarred.

The Report and Decision of that hearing and decision is issued separately.

On February 14, 1997, the Society made before the Committee a motion requesting that it recommend to Convocation that the Solicitor be suspended, pursuant to Rule 2 of the Rules made under section 25.1 of The Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as well as a request for an abridgment of the time for notice of the motion, which was granted, on the basis that the Solicitor had actual notice through his solicitor of the Society's intention to seek an interim order of suspension at the February 28 Convocation, if he did not attend the hearing set to begin February 11. That was communicated to his solicitor at the hearings of February 11, 1997.

The motion was heard in the absence of the Solicitor and his counsel; G. Stuart appeared for the Society.

DECISION

Being satisfied upon the hearing of the motion that the protection of the public requires that an interim order of suspension be made, the Committee recommends to Convocation that the rights and privileges of the Solicitor be suspended forthwith, to continue indefinitely, until complaints D179/95, D376/95 and D97/96 are finally resolved.

REASONS FOR DECISION

1. STATUTORY FRAMEWORK

1. The matter of interim suspensions of a member's rights and privileges is dealt with by Rules made by Convocation February 23, 1996 under section 24.1 of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.

2. Rule 2.01 provides that where a complaint under oath has been filed in the office of the secretary and a copy of the complaint has been served upon the member, a motion may be made to the Discipline Committee, or in cases of urgency to Convocation, for an interim order suspending the member's rights and privileges or imposing conditions on them.

3. Rule 2.02 provides that notice of motion shall be served on the other party at least three days before the date on which the motion is to be heard.

4. Rule 2.12 provides that the Committee or Convocation may extend or abridge any time prescribed by this Rule.

5. Rule 2.06(1) provides that where the Committee, at the conclusion of the motion, is satisfied that the protection of the public requires that an interim order of suspension be made, the Committee shall report in writing, setting forth a summary of the evidence at the hearing and its recommendations as to the action to be taken by Convocation.

6. Rule 2.03 provides that the evidence on a motion for an interim order of suspension shall be given by affidavit. The evidence before the Committee on this motion consisted of the oral evidence of Neil Perrier, Law Society Discipline Counsel who has had carriage of these complaints, and exhibits. The Committee also took into account, as part of its review of the procedural history of the matter, the procedural matters which had arisen at the beginning of its hearing into Complaints D376/95 and D96/97, on February 11, 1997. The Committee considered that the language of the Rule regarding affidavit evidence is directory only, and not a mandatory requirement.

7. The Rule contemplates that motions may be brought before the Discipline Committee or, in an urgent case, before Convocation. Given both the language and structure of the Rule, it seems open to bring a motion before the Committee either as a separate proceeding, or as part of another proceeding already before the Committee. In this case, the Society brought its interim suspension motion in connection with its submissions on penalty following the Committee's decision that professional misconduct has been established.

8. The Rule's provisions about affidavit evidence seem directed toward convenient management of evidence, and also toward ensuring adequate notice of the case which the Solicitor has to meet. If these purposes, particularly the latter, are able to be fulfilled otherwise than by affidavit evidence, it seems appropriate to permit that approach. Each case in this regard is to be decided on its own circumstances.

9. In the circumstances of this case, we are satisfied that it was permissible under the Rule for the Society to proceed as it did by way of viva voce evidence, because the Solicitor was made aware, through his counsel, before the hearing commenced and in the course of the procedural matters on February 11, 1997 what was at issue. Moreover, the procedural matters upon which the Society relied, and the nature of the complaints of professional misconduct, which form the foundation of the Committee's decision on this motion, are by now well known to the Solicitor.

II. THE NATURE OF THE MATTERS INVOLVED IN THE DISCIPLINE COMPLAINTS

10. The Committee's decision on Complaint D97/96 involved several instances of professional misconduct involving misappropriation of trust funds: particular 2(a) involving \$11,4554.00 placed in trust to satisfy a judgment awarded against the Solicitor's client; particular 2(d)(i) involving \$25,255.00 charged to a client for the services of co-counsel at a rate inflated by the Solicitor and applied by him to more hours than had actually been worked; and 2(f) misappropriation of \$70,000.00 he was holding in trust on behalf of a client.

11. Other particulars of professional misconduct found by the Committee involved the Solicitor's preference of his own interest over the client's in financial dealings with clients: 2(d)(iii) acting in a conflict of interest when he caused a mortgage to be registered on title to his client's property as collateral for legal fees without ensuring that the client obtained independent legal advice; and 2(e)(i) improperly borrowing the sum of \$50,000.00 from a client contrary to Rule 7.

12. A third theme to emerge in the particulars of misconduct alleged is that of misleading clients; paragraph 2(c) sending a misleading letter to a client dated July 276, 1993 confirming that he would hold monies in trust when he had already disbursed the funds by that date; 2(d)(ii) rendering a misleading account for legal services and 2(g) misleading a client by representing that he had invested his trust monies in the sum of \$70,000.00 in a mortgage, when he had misappropriated the funds from this trust account.

13. Lastly, and of significance in view of the findings of misappropriation from trust and misleading clients about monies supposed to be held in trust, the Solicitor was found to have failed to make his annual filings for the year ended January 31, 1995. The annual filings provide a safeguard for clients with trust monies in the care of a Solicitor, and with respect to transactions with clients. When they are not made, the Society cannot be as effective a guardian of the public as it is intended to be.

14. This Committee had before it as well the Report and Decision of the Discipline Committee in complaint D179/95, in which it was found that the Solicitor misappropriated funds in the amount of \$90,000.00 more or less, in or about May 1993 and misappropriated funds in the sum of \$44,150.05, more or less, by drawing on a Letter of Credit ostensibly for the purposes of paying the accounts of agent solicitors who had performed services for his client John Grant.

III. PROCEDURAL HISTORY

15. The letter of Neil Perrier to Mr. Bates' counsel, F.L. Forsyth, dated February 7, 1997 sets out in detail the procedural history of four complaints of professional misconduct against the Solicitor: D339/94 (issued December 12, 1994); D179/95 (issued June 28, 1995); D376/95 (issued November 30, 1995), and D97/96 (issued March 29, 1996).

16. The first "proceed date" for complaint D339/94 was April 19, 1995. This was only one day before the Society received the filing for the year ended January 31, 1994 (which had been due July 31, 1994) which was the subject matter of the complaint. Ultimately, complaint D339/94 was withdrawn before this Committee.

17. Complaint D179/95 was originally scheduled to be heard on January 10, 1996, by consent of the Solicitor's counsel. It was ultimately heard on November 11-15, 1996.

18. Complaints D376/95 and D96/97 were heard by this Committee on February 11 and 14, 1997.

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19. The procedural history outlined in the chart contained in the letter from Mr. Perrier to Mr. Forsyth dated February 7, 1997, which chart shall be attached to the report on the substantive complaints, shows that dates for these matters were set several times, either on consent of the Solicitor, or peremptory to the Solicitor, or both. The Solicitor would repeatedly bring motions to postpone those set or agreed dates, in what seemed to this Committee to be often rather dubious grounds.

20. Complaints D339/94, D179/95 and D376/95 were set down, on consent, to be heard on January 10, 1996. All these complaints were adjourned at the request of Mr. Bates because he had a hearing set for that date, and new dates of March 25-27, 1996 were set, peremptory to the Solicitor.

21. In March 1996, Mr. Perrier discovered that the complainant in complaint D179/95, John Grant, had also been referred to Mr. Brian Greenspan, then Noel Bates' counsel, so that a potential conflict existed. Mr. Greenspan asked to be removed as counsel and requested a further adjournment. The Society questioned before this Committee why Mr. Bates had not drawn this potential conflict to Mr. Greenspan's attention, or alternatively, why it had been for the Society and not the Solicitor and his counsel to discover it.

22. On April 11, 1996 (after the peremptory dates of March 25-27, 1996), all complaints were scheduled to proceed peremptory to the Solicitor on July 3-5, 1996, on consent of his new counsel F.L. Forsyth.

23. On June 20, 1996, the Society was advised for the first time that the Solicitor would be moving to have Mr. Perrier removed as counsel for the Society, due to his engagement to an associate at Greenspan, Humphrey. This fact had been told to Mr. Bates in March by Mr. Greenspan, before the March 25-27 "proceed dates", but no issue of Mr. Perrier's alleged bias was raised at that time.

24. At the July 1996 dates scheduled on consent for the hearing of the complaints, an adjournment was secured because of the motion to remove Perrier. The motion was dismissed. The new dates for the hearing were November 11-15, 1996.

25. On November 11, 1996, the solicitor brought a motion for adjournment based on late disclosure. It was refused. Complaint D175/95 was heard, but the others had to be adjourned due to lack of time. The hearing of the remaining complaints was scheduled for February 10-14, 1997, on consent, peremptory to the Solicitor.

26. On January 17, 1997 the Solicitor made a first time request for numerous documents in complaint D96/97. Motions to adjourn the hearing based on those requests were heard and denied on January 20 and February 4, 1997.

27. In a telephone conversation on February 3, 1997, counsel for Mr. Bates asked Mr. Perrier what would be the Society's position if the Solicitor did not attend for the hearing, and he was advised that the Society would seek to proceed in his absence and have him declared ungovernable. This was confirmed in Mr. Perrier's letter dated February 3, 1997 to Mr. Forsyth.

28. On Friday, February 7, Mr. Forsyth advised the Society that Mr. Bates had instructed him to seek a further adjournment of the hearing, for medical reasons. Mr. Perrier indicated that the Society would oppose such a request.

29. The adjournment on medical grounds was requested by Mr. Forsyth on Tuesday, February 11, on the basis of a medical letter from Mr. Bates' personal physician, Dr. Benjamin Carruthers, dated February 10, 1997, which had been faxed to the Society late on the 10th. Dr. Carruthers was unavailable for cross-examination on the 11th because he was in surgery and was leaving for Arizona for 10 days on Wednesday February 12.

30. The Committee admitted the letter but considered that it provided inadequate support for an adjournment on medical grounds. Dr. Carruthers stated that the Solicitor suffered from reactive depression and stress-related anxiety and other conditions, and could not stand the stress of a discipline hearing. The Committee considered that the same could be said of many people involved in legal proceedings, and that Dr. Carruthers had not sufficiently identified the concerns attached to Mr. Bates' participation in the hearing. Moreover, Dr. Carruthers seemed inconsistent. He advised that he had instructed Mr. Bates to stop practising for three weeks at least, but that this did not mean he was medically incapable of practising, just that he would do himself and his clients no good if he did practise.

31. The Committee decided to proceed with the hearing in Mr. Bates' absence. On instructions from Mr. Bates, his counsel withdrew from the hearing.

32. Upon a review of this procedural history as a whole, it appears as if there is a real reluctance on the part of the Solicitor to let the proceedings go forward. The pattern of agreeing to dates, and then trying to dislodge them, using a variety of stratagems, raises a real concern that tactics are being used to delay the process.

33. This pattern of delay raises grave questions, particularly in light of the nature of the professional misconduct at issue and the fact that the Solicitor has continued to practise.

IV. THE SOLICITOR'S CONTINUATION IN PRACTICE

34. Following the Report and Decision of the Discipline Committee on Complaint D179/95, the matter was scheduled to go to the January sitting of Convocation. At the Convocation Assignment Tribunal, Mr. Bates through counsel filed a Notice of Disagreement and asked that the proceedings be adjourned.

35. The Notice of Disagreement was on the basis of "fresh evidence" of which Mr. Bates said he was unaware at the hearing of the Discipline Committee in November. It allegedly came into his possession on December 31, 1996. As of the hearing on February 14, 1997, the Solicitor had not provided any affidavit material in support of his new evidence contention.

36. At the Convocation Assignment Tribunal, the Society took the position that unless Mr. Bates undertook not to practise law, an adjournment would be inappropriate. There had been a large misappropriation, for which no restitution had been given, except for \$11,000.00 provided by the trustee in bankruptcy of the Solicitor, who had made a declaration of bankruptcy subsequent to the misappropriation.

37. The Convocation Assignment Tribunal benchers granted the adjournment on the basis of an undertaking to practice only under the supervision of another lawyer. Mr. Bates entered into such an undertaking, and it was still in effect at the date of the hearing on February 14.

38. At the January 1997 Convocation, the Society filed a notice of motion with supporting materials seeking an interim suspension of Mr. Bates, in connection with Complaint D179/95. Convocation determined to adjourn that motion to the April 3rd sitting of Convocation, with no reasons given.

39. When Mr. Bates' adjournment motion came before Mr. Aaron sitting as a single Benchers on February 4, 1997, Mr. Aaron observed that he would have felt differently about granting an adjournment if there had been an undertaking not to practise, or if the allegations involved lesser matters.

40. Mr. Stuart advised the Committee that efforts to negotiate an undertaking not to practise with Mr. Bates in the period following the hearing before Mr. Aaron were unsuccessful.

41. On February 11, 1997, following the refusal of an adjournment on medical grounds, Mr. Forsyth consulted with his client by telephone, receiving instructions that Mr. Bates would follow his doctor's advice and not appear and that Mr. Forsyth was to withdraw if the Committee chose to proceed in his absence. Apparently as an alternative to that position, Mr. Forsyth sought an adjournment on the Solicitor's oral undertaking not to practise. The Society opposed the request.

42. In all the circumstances, the Committee felt compelled to refuse the adjournment, and decline the undertaking. Events leading up to the hearing left us with the impression that the medical grounds may have been marshalled only after it became apparent that the Society would press to proceed if the Solicitor simply refused to appear. Those medical grounds were unconvincing. Three witnesses from out of town, two former clients and a former colleague, had made the trip to Toronto to testify and sat throughout the day as the Solicitor's adjournment request and procedural motion were dealt with. Respect for these clients, and the public, and public confidence in the discipline process, required that the Committee proceed, and not be deflected by the Solicitor's attempts to delay or deflect the dates he had earlier agreed would be peremptory to him, especially in the absence of cogent and compelling medical evidence.

V. APPLICATION OF THE PUBLIC PROTECTION TEST

43. The material before us shows a Solicitor charged with (and found by the Discipline Committee to be guilty of) professional misconduct involving misappropriation of trust funds, misleading clients about funds being held in trust, preference of the solicitor's interest in financial dealings with clients, and failure to file annual returns. These are all serious matters and call for the utmost vigilance. At both hearings, the Discipline Committee has recommended the penalty of disbarment.

44. The material also discloses a Solicitor with a history of procedural manipulation much of which appears to have been calculated to cause delay in the discipline hearing process. In the February 11 to 14 hearing, when the most recent of these stratagems provided unsuccessful, the Solicitor withdrew from the hearing.

45. A successful strategy of continuing delays, for example, in bringing the Reports and Decisions of the Discipline Committee before Convocation, will leave the Solicitor in practice throughout the delay period, unless action is taken. To date, he has been resistant to providing a written undertaking not to practise; his oral tendering of such an undertaking delivered through his solicitor on February 11 after refusal of his request for an adjournment on medical grounds lacked particulars, and carried no feeling of commitment with it. It was only the most recent stratagem in the long line of such stratagems. The Solicitor himself therefore cannot be looked to for protection of the public on a voluntary basis. In view of the seriousness of the professional misconduct found in the hearing on February 11 and 14, it cannot be said that practice under supervision provides a sufficient level of protection to the public. The failure to file annual returns has deprived the Society of its most basic instrument for protecting clients and the public interest.

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46. Nor can we rule out at this stage the possibility that the Solicitor will try to delay these matters coming to Convocation. He has filed a Notice of Objection to the Decision and Reasons in Complaint D179/95 without yet putting forward the new evidence upon which he will rely, and has already secured one adjournment of the Convocation hearing on the strength of that, as yet, unsupported Notice of Objection. While it is, of course, open to a Solicitor to exercise his or her legal and procedural rights in the discipline process, this Solicitor's conduct has, by now, assumed a configuration that shows an intent to undermine or derail the process itself.

47. Without an interim order suspending the rights and privileges of the member forthwith, the public, including existing and potential clients, will be at risk of further depredations. Now that these proceedings have made plain both the Solicitor's professional misconduct and his disregard for the discipline process, this Committee is of the view that Convocation cannot risk further harm to clients and members of the public.

48. We recommend suspension forthwith of Mr. Bates' rights and privileges as a member, to continue indefinitely, until the discipline complaints D179/95, D376/95 and D97/96 are finally resolved.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1997

Mary Eberts, Chair

Messrs. Banack, Topp, Crowe, Chahbar, Adams, Wright, Scott and Aaron, Ms. Curtis, Ms. Sachs, Ms. Eberts, Ms. Stomp and Ms. Backhouse did not participate.

Mr. Glenn Stuart appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present. Convocation had before it, a letter from the solicitor requesting an adjournment of the motion for interim suspension.

Mr. Stuart made submissions opposing the request by the solicitor for an adjournment of this matter.

There were questions from the Bench.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Copeland, seconded by Ms. Ross that the adjournment not be granted.

Counsel, the reporter and the public were recalled. There were further questions from the Bench for Mr. Stuart.

Counsel, the reporter and the public withdrew to deliberate.

It was moved by Ms. Backhouse, seconded by Mr. DelZotto that the adjournment be granted on the condition the solicitor give his undertaking to consent to an Order under section 43 failing which he be suspended on an interim basis.

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Counsel, the reporter and the public were recalled and Mr. Stuart clarified his position as to whether the solicitor could in fact comment to the making of an order under section 43.

Counsel, the reporter and the public withdrew.

The Backhouse/DelZotto motion was withdrawn and the Copeland/Ross motion to not grant the adjournment was adopted.

It was moved by Ms. Ross, seconded by Mr. MacKenzie that the interim suspension be granted.

Carried

Counsel, the reporter and the public were recalled and informed that the adjournment was denied and that the interim suspension was granted.

REPORTS TAKEN AS READ

It was moved by Mr. MacKenzie, seconded by Mr. Cole that the 2 Reports of the Director of Bar Admissions, the Report of the Clinic Funding Committee and the Draft Minutes for January 1997 be adopted.

Carried

COMMITTEE REPORTS

REPORTS OF THE DIRECTOR OF BAR ADMISSIONS

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

B. ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates having successfully completed the Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 28th, 1997:

Ofir-Asher Bar-Moshe	38th BAC
Russell Sanford Bennett	38th BAC
Timothy Arthur Bloos	38th BAC
Kathleen Mary Breedyk	38th BAC
Geoffrey Brian Davidson	38th BAC
Carrie Lynn Foerster	38th BAC
Lara Gail Friedlander	37th BAC
David Todd Fruitman	38th BAC
Darren Anthony Gluckman	38th BAC
Brian Christopher Graves	38th BAC

Donald Frank Neil Guthrie	38th BAC
Nina Louise Elswyth Hall	38th BAC
Timothy Lawrence Hutzul	38th BAC
Jay Maw	38th BAC
Adrian John Miedema	38th BAC
Karen Christine Molloy	38th BAC
Jo Anne Pigeon	38th BAC
Frantisek Polak	37th BAC
Martha Annellen Rafuse	38th BAC
Wilhelm Ludwig Rinas	38th BAC
Renuka Satchithanathan	38th BAC
Daniel William Scott	38th BAC
Eduard Gerald Sheremeta	38th BAC
Xiuhui Yang	38th BAC

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidates having completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 28th, 1997:

Aleem Shiraz Bharmal	Province of British Columbia
Maria Bruzzese	Province of Quebec
Brian Alexander Cuff	Province of Newfoundland
Marie Garneau	Province of Quebec
Sonya Rofani	Province of Quebec

B.2. MEMBERSHIP UNDER RULE 50

B.2.1. (a) Retired Members

B.2.2. The following members who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their memberships in the Society without payment of annual fees:

Robert Thomas Cummings Carr	North Bay
James Franklin Carter	Ajax
Gerald Cohen	Toronto
Raymond Leslie Fazakas	Puslinch
Jean-Pierre Goyer	Verdun, PQ
Joseph Jean Paul Guertin	Luskville, PQ
Duncan J. MacDonald	Cornwall
Stuart Bruce McLaughlin	Mississauga
Anna Penina Ker	Niagara-on-the-Lake
Ralph Edward Scane	Toronto
Mortimer Saul Smith	Toronto
Fred Stasiuk	Etobicoke
Wilfrid George Woodcock	Brantford

B.2.3. (b) Incapacitated Members

B.2.4. The following members are incapacitated and unable to practise law and have requested permission to continue their memberships in the Society without payment of annual fees:

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Robert John Armstrong	East York
Kenneth Blake Cribbie	Oshawa
William Edward Paterson	Toronto
John Richard Taylor	Toronto

B.3. RESIGNATION - REGULATION 12

B.3.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases when the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the persons entitled thereto. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Discipline and Audit departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Robert Davis Anderson, of East York, was called to the Bar on June 22, 1960 and practised law from December 1962 to August 1996 exclusively as an employee of Procter & Gamble Inc. The 1997 annual fee is outstanding.
2. Donald Bruce Appleton, of Halifax, NS, was called to the Bar on April 16, 1980 and practised Ontario law until 1982. He was suspended November 1, 1996 for nonpayment of the annual fee. The annual fees for 1996 and 1997 are outstanding.
3. Thomas Paul Bernard, of Evanston, IL, was called to the Bar on February 8, 1994 and practised law until August 1996 with the firm Blake, Cassels & Graydon.
4. Jean Pierre Benoit, of Lake Forest, IL, was called to the Bar on April 10, 1964 and practised law until 1972. The 1997 annual fee is outstanding.
5. Robi Sandor Blumenstein, of New York, NY, was called to the Bar on April 11, 1980 and practised Ontario law from April 1980 until June 1982 with the firm Tory, Tory, DesLauriers & Binnington.
6. Ernest Duree Boyden, of Toronto, was called to the Bar on May 9, 1979 and practised law from 1979 to 1988. The 1996 and 1997 annual fees are outstanding.
7. Joseph Brown of North York was called to the Bar on June 22, 1960 and practised law until June 1996 as a sole practitioner. The 1996 and 1997 annual fees are outstanding.
8. Sheila Lee Bruce, of Newmarket, was called to the Bar on April 8, 1987 and practised law until April 1996 with the firm Steinberg, Still & Bruce. She was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.

9. Michael Desmond Crosbie, of Regina SK, was called to the Bar on March 26, 1990. He practised law from April 1990 to December 1991 with the firm Smith, Graham, Hunt, Buck and from April 1992 to July 1996 with the firm Morscher & Morscher. The 1997 annual fee is outstanding.
11. Mary Ellen Cummings, of Toronto, was called to the Bar on April 9, 1987 and practised until September 1989 with the firm Mathews, Dinsdale and Clark. The 1997 annual fee is outstanding.
12. Toni-Anne Dasent, of Littleton, CO, was called to the Bar on February 8, 1994 and has never practised Ontario Law.
13. Janine Audrey Denney-Lightfoot, of Toronto, was called to the Bar on February 7, 1992 and practised Ontario law from February 1992 to September 1993 with the firm Moon, Heath. She was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.
14. Caroline Margaret Dick, of Kingston, was called to the Bar on March 22, 1991 and has never practised Ontario law. The 1997 annual fee is outstanding.
15. Lawrence Harold Easto, of North York, was called to the Bar on March 26, 1971 and practised law from March 1972 to May 1984. He was suspended February 27, 1987 for non-payment of the annual fee. The annual fees for years 1986/87 to 1992/93 inclusive are outstanding.
16. Harry Tinson Holman, of Charlottetown, PEI, was called to the Bar on April 6, 1984 and has never practised Ontario law. He was suspended February 27, 1987 for non-payment of the annual fee. The annual fees for the years 1986/87 to 1992/93 inclusive are outstanding.
17. Elizabeth Julian, of Toronto, was called to the Bar on April 13, 1962 and practised law full time for six years then part-time until December 1995 as a sole practitioner. The 1997 annual fee is outstanding.
18. John Cooper Kirwin, of St. Clair Beach, was called to the Bar on April 10, 1964 and practised law until December 31, 1992 with the firm Kirwin Partners. The 1997 annual fee is outstanding.
19. Kristin Laura Luhn-Jensen, of Toronto, was called to the Bar on February 9, 1993 and has never practised Ontario law. The 1997 annual fee is outstanding.
20. Kerry Joan Lee, of Owen Sound, was called to the Bar on April 6, 1983 and practised law until October 1995 as a sole practitioner. She advised all the lawyers in Grey County by letter that she was no longer practising and provided a copy of an announcement placed in the local newspaper on January 13, 1996. The 1996 and 1997 annual fees are outstanding.
21. Darcy John LeNeveu, of Toronto, was called to the Bar on March 31, 1989. He practised law from March 1989 to July 1995 with the firm Borden and Elliot and from July 1995 to December 1996 as an employee of Newcourt Credit Group Inc. The 1997 annual fee is outstanding.
22. Ana Magdalena Lopez, of Vancouver, was called to the Bar on February 3, 1994 and has never practised Ontario law. The 1997 annual fee is outstanding.

23. Lisa Ann McConnell, of Unionville, was called to the Bar on April 15, 1987 and was engaged in the private practice of law until October 1995 as an employee of various law firms. The 1997 annual fee is outstanding.
24. Anne Michaud, of Vancouver, BC, was called to the bar on March 20, 1991 and practised Ontario law exclusively as an employee of the Federal Government for three and one half years. The 1997 annual fee is outstanding.
25. Elizabeth Mitchell, of Soultzeren, France, was called to the Bar on April 19, 1985 and practised law until June 1994 with the firm Weir & Foulds. The 1997 annual fee is outstanding.
26. Marla Joy Morry, of Vancouver, BC, was called to the Bar on February 3, 1994 and practised Ontario law until August 1994. The 1996 and 1997 annual fees are outstanding.
27. Alexander Walter Graham Mortlock, of Peterborough, was called to the Bar on April 19, 1978 and practised law as a sole practitioner until he sold his practice to Mr. R. Dan Cornell on October 1, 1993. The 1997 annual fee is outstanding.
28. Richard David Mundell, of Ottawa, was called to the Bar on March 29, 1989 and practised law until March 1995 as a sole practitioner. He was suspended May 1, 1996 for non-payment of the annual fee. The annual fees for the years 1995/96 to 1997 inclusive are outstanding.
29. Elizabeth Antoinette Nastasi, of London, was called to the Bar on February 7, 1996 and has never practised law. The 1997 annual fee is outstanding.
30. Darlene Mary Patrick, of Vancouver, BC, was called to the Bar on April 9, 1979 and has practised law exclusively as an employee of the Federal Government since 1980. She was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.
31. Edward George Ralfe, of Whistler, BC, was called to the Bar on March 17, 1967 and practised Ontario law until January 31, 1990 with the firm Ralfe, Green, Germann & Forsyth. The 1997 annual fee is outstanding.
32. Myrna Rosemary Robb, of Toronto, was called to the Bar on April 9, 1981 and practised law from November 1987 to June 1991 as an associate in a law firm. The 1997 annual fee is outstanding.
33. Grahame Stewart Russell, of Washington, D.C., was called to the Bar on April 23, 1993 and has never practised law. The 1997 annual fee is outstanding.
34. Rocco Anthony Joseph Schiralli, of West Kingston, United Kingdom, was called to the Bar on March 22, 1968 and practised law until January 31, 1992 with various law firms. The 1997 annual fee is outstanding.
35. John William Scott, of Montreal, PQ, was called to the Bar on February 7, 1992. He practised law from February 1992 to November 1994 as a sole practitioner and from February 1995 to November 1995 as an employee of Henry M.Lang. The 1997 annual fee is outstanding.

36. Robert Alan Shea, of Gloucestershire, England, was called to the Bar on March 25, 1966 and has never practised Ontario law. He was suspended November 1, 1996 for non-payment of the annual fee. The 1996 and 1997 annual fees are outstanding.
37. James George Sloan, of Geneva, Switzerland, was called to the Bar on March 26, 1990. He practised law from March 1990 to March 1991 as a Clerk of the Supreme Court of Ontario and from March 1991 to June 1993 with the law firm Blake, Cassels and Graydon.
38. Jane Wendy Southey, of Toronto, was called to the Bar on April 8, 1987. She practised law from April 1987 to July 1990 with Bratty and Partners and from September 1990 to December 1996 as an employee of The Law Society of Upper Canada. The 1997 annual fee is outstanding.
39. David Sydney Steinberg, of Toronto, was called to the Bar on February 7, 1996 and has never practised law. The 1997 annual fee is outstanding.
40. Ellen Turley, of Vancouver, BC, was called to the Bar on April 15, 1988. She practised law from April 1988 to September 1991 as an employee of the Working Group on Refugee Resettlement. The 1996 and 1997 annual fees are outstanding.
41. Petronella Minca Vanderley, of Toronto, was called to the Bar on February 7, 1992. She practised law from May 1992 to April 1993 with Wheeler & Associates and from April 1993 to until June 1994 as an associate of Joseph N. Tascona. The 1997 annual fee is outstanding.
42. David Michael Wex, of Toronto, was called to the Bar on February 12, 1992. He practised law from February 1992 to December 1994 and from August 1995 to September 1995 with the firm Stikeman, Elliott. The 1997 annual fee is outstanding.
43. Hendrik Varju, of Toronto, was called to the Bar on February 16, 1995 and practised law until December 1996 with the firm Sloan, Barristers and Solicitors. The 1997 annual fee is outstanding.
44. Donald Brent Willmer, of Inverness, NS, was called to the Bar on April 6, 1983 and practised law until August 1990 exclusively with the firm Beard, Winter. The 1997 annual fee is outstanding.

C.
INFORMATION

C.1. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

- C.1.1. The following individuals have applied to be certified as foreign legal consultants in Ontario on condition that they file proof of professional errors and omissions insurance in an amount and form satisfactory to the Society:

Hao Ling	The People's Republic of China
Jean Paul Joseph Sarkis Semaan	The State of Michigan, U.S.A.

- C.1.2. Both applications are otherwise complete and each has filed all necessary undertakings.

C.2. RESTORATION OF MEMBERSHIP

- C.2.1. The following member has given notice that he has ceased to be a member of the Ontario Municipal Board and, accordingly, his membership in the Society has been restored.

Michael William Allen Melling Called: April 9, 1987
Toronto

C.3. LIFE MEMBERS

- C.3.1. Pursuant to Section 49, the following members are eligible to become Life Members of the Society having been called to the Bar on February 20, 1947:

Sidney Kaplan Downsview
Bryant Marcus Kassirer Toronto

C.4. CHANGE OF NAME

- | <u>From</u> | <u>To</u> |
|--|------------------------------------|
| Diane Grace Kelly <u>Burkom</u>
(Birth Certificate) | Diane Grace <u>Kelly</u> |
| Nancy June <u>Courtney</u>
(Marriage Certificate) | Nancy June <u>Courtney Granger</u> |
| Louise Elsie Mary <u>Dumelie</u>
(Change of Name Certificate) | Louise Elsie Mary <u>Muir</u> |
| Jacqueline Elaine <u>Goodwin</u>
(Marriage Certificate) | Jacqueline Elaine <u>Clark</u> |
| Jane Anne <u>Meagher</u>
(Change of Name Certificate) | Jane Anne <u>Meagher-Ambrosino</u> |

C.5. ROLLS AND RECORDS

C.5.1. Deaths

The following members have died:

Gerald Ernest Eastman Called: September 20, 1928
Kitchener Died: May 30, 1992

Douglas Gordon Cunningham Called: September 21, 1933
Kingston Died: July 11, 1992

Simon Gottlieb Called: September 16, 1937
Toronto Died: September 30, 1992

Eugene Charlton Gerhart Called: January 15, 1948
Parry Sound Died: June , 1993

Eugene Arthur Duchesne Called: June 19, 1947
Windsor Died: February 3, 1994

Cornell George Ebers Called: September 20, 1956
Toronto Died: April 8, 1994

Cecil Levy Called: September 18, 1941
Hamilton Died: May 9, 1995

Alfred William Grant Farwell Called: June 15, 1939
Port Hope Died: August 5, 1995

Esther Macdonald Marshall Called: September 18, 1947
Ancaster Died: September 1, 1995

Hugh Francis Gibson Called: September 17, 1942
Kingston Died: October 2, 1995

Terrence Fleming Flahiff Called: November 17, 1938
Westmount, PQ Died: December 17, 1995

Donald James McMahon Called: March 27, 1992
Edmonton, AB Died: September 1, 1996

George Emerson Bell Called: June 21, 1951
Toronto Died: September 17, 1996

Gerard Bernard Weiler Called: October 18, 1934
Thunder Bay Died: September 21, 1996

Paul Andre Lobraico Called: September 20, 1957
Toronto Died: October 13, 1996

Elliott Lloyd Marrus Called: November 18, 1937
Toronto Died: October 19, 1996

Neil Harry Karal Called: June 29, 1949
Toronto Died: December 23, 1996

David Herbert Newman Called: March 21, 1969
Toronto Died: December 30, 1996

George Roderick Gerard Phelan Called: June 17, 1937
Toronto Died: December 31, 1996

John Burgess Jolley Called: June 29, 1950
Oakville Died: January 8, 1997

David Roy Wolfish Called: April 18, 1985
North York Died: January 12, 1997

William Hector Eustace Urquhart Called: June 24, 1954
Toronto Died: January 13, 1997

Sonja Jean Gundersen Called: April 19, 1985
Markham Died: January 16, 1997

Lloyd William Perry Called: September 28, 1950
Toronto Died: January 18, 1997

Charles Philip Oppen Called: June 20, 1940
Downsview Died: January 20, 1997

Sydney Reid Johnston Called: May 25, 1923
Mississauga Died: January 22, 1997

Robert Ian Steinberg Called: April 19, 1978
Ottawa Died: January 27, 1997

28th February, 1997

Charles Lachlan McKinnon Called: June 20, 1940
Guelph Died: February 14, 1997

Morgan Lloyd Piper Called: June 15, 1933
North York Died: February 19, 1997

ALL OF WHICH is respectfully submitted

DATED this the 28th of February, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Bar Admissions begs leave to report:

1. RECOMMENDATIONS

- 1.1 That Convocation adopt the approval, by the meeting of benchers convened on Wednesday, February 19, 1997 at Ottawa, Ontario, of candidates for call to the bar and admission and enrolment as solicitors.
- 1.2 That Convocation adopt the call to the bar and admission and enrolment as solicitors, by the meeting of benchers convened on Wednesday, February 19, 1997 at Ottawa, Ontario, of the approved candidates in attendance at Ottawa, Ontario.
- 1.3 That Convocation adopt the call to the bar and admission and enrolment as solicitors, by the meeting of benchers convened on Monday, February 24, 1997 at London, Ontario, of the approved candidates in attendance at London, Ontario.
- 1.4 That Convocation adopt the call to the bar and admission and enrolment as solicitors, by the meeting of benchers convened on Friday, February 21, 1997 at Toronto, Ontario, of the approved candidates in attendance at Toronto, Ontario.

2. BACKGROUND

- 2.1 On Wednesday, February 19, 1997, a meeting of benchers was convened at Ottawa, Ontario. The meeting of benchers approved candidates for call to the bar and admission and enrolment as solicitors. The meeting of benchers also called to the bar and admitted and enrolled as solicitors the approved candidates in attendance at Ottawa, Ontario.
- 2.2 On Monday, February 24, 1997, a meeting of benchers was convened at London, Ontario. The meeting of benchers called to the bar and admitted and enrolled as solicitors the approved candidates in attendance at London, Ontario.
- 2.3 On Friday, February 21, 1997, at 3:15 p.m., a meeting of benchers was convened at Toronto, Ontario. The meeting of benchers called to the bar and admitted and enrolled as solicitors the approved candidates in attendance at Toronto, Ontario.

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- 2.4 The candidates approved for call to the bar and admission and enrolment as solicitors by the meeting of benchers convened on Wednesday, February 19, 1997 at Ottawa, Ontario are contained in Attachments A, B, C and D.
- 2.5 The candidates called to the bar and admitted and enrolled as solicitors by the meeting of benchers convened on Wednesday, February 19, 1997 at Ottawa, Ontario are contained in Attachment A.
- 2.6 The candidates called to the bar and admitted and enrolled as solicitors by the meeting of benchers convened on Monday, February 24, 1997 at London, Ontario are contained in Attachment B.
- 2.7 The candidates called to the bar and admitted and enrolled as solicitors by the meeting of benchers convened on Friday, February 21, 1997 at Toronto, Ontario are contained in Attachment C.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1997

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

Candidates for the 38th Bar Admission Course Call to the Bar in Ottawa,
London and Toronto. (Attachment A - D)

THE REPORTS WERE ADOPTED

REPORT OF THE CLINIC FUNDING COMMITTEE

Meeting of February 13th, 1997

CLINIC FUND COMMITTEE
FEBRUARY 24, 1997

REPORT TO CONVOCATION

Nature of Report: Decision-Making, Information

THE CLINIC FUNDING COMMITTEE met on February 13, 1997. In attendance were:

Committee members: Paul Copeland (Chair), Harriet Sachs (Vice-Chair),
Pamela Mountenay-Cain, Mark Leach, Gordon Wolfe

Joana Kuras, Clinic Funding Manager

1. This report contains:

- Funding decisions that require Convocation's approval.
- Information regarding the Committee's decision to defund Metro Tenants Legal Services.

28th February, 1997

- Implementation of a Quality Assurance Program.

2. Funding Decisions

Pursuant to s.7(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements. The Clinic Funding Committee therefore recommends Convocation's approval as follows:

Clinique juridique populaire de Prescott et Russell	\$10,000
Hastings & Prince Edward Legal Services	7,000
Kinna-aweya Legal Clinic	16,000
McQuesten Legal & Community Services	8,000
Peterborough Community Legal Centre	15,500
Clinique juridique Stormont, Dundas & Glengarry Legal Clinic	<u>15,000</u>
	<u>\$71,500</u>

3. Metro Tenants Legal Services

Pursuant to s.8(2) of the Regulation on Clinic Funding, the Committee made a decision to withdraw funding for Metro Tenants Legal Services (MTLS) on October 11, 1996. The Committee's decision that MTLS was not able to deliver quality legal services to tenants was based on evidence heard at a three-day hearing. The orderly wind-up of the clinic's operations will be completed by March 31, 1997.

4. Quality Assurance Program

In September, 1996, the Committee provided a paper outlining the components of a Quality Assurance Program to all community legal clinics. The Committee's objective is to allow for an ongoing verifiable assessment of the quality of the operation of community legal clinics, based on the current clinic performance evaluation criteria. During a lengthy consultation with clinics, the Committee received submissions on many issues relating to the new accountability structure. The Committee expects to begin implementation of the Quality Assurance Program in March, 1997 once two new staff positions are filled.

ALL OF WHICH is respectfully submitted

P. Copeland
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES OF CONVOCATION - January 23rd and 24th, 1997

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

28th February, 1997

CALL TO THE BAR

The following candidates were called to the Bar by the Treasurer and the degree of Barrister-at-Law was conferred upon each of them. They were then taken by Mr. Carey before Mr. Justice John Wilkins to sign the Rolls and take the necessary oaths.

Ofir-Asher Bar-Moshe	38th Bar Admission Course
Russell Sanford Bennett	38th Bar Admission Course
Timothy Arthur Bloos	38th Bar Admission Course
Kathleen Mary Breedyk	38th Bar Admission Course
Carrie Lynn Foerster	38th Bar Admission Course
Lara Gail Friedlander	37th Bar Admission Course
David Todd Fruitman	38th Bar Admission Course
Darren Anthony Gluckman	38th Bar Admission Course
Brian Christopher Graves	38th Bar Admission Course
Donald Frank Neil Guthrie	38th Bar Admission Course
Nina Louise Elswyth Hall	38th Bar Admission Course
Timothy Lawrence Hutzul	38th Bar Admission Course
Jay Maw	38th Bar Admission Course
Adrian John Miedema	38th Bar Admission Course
Karen Christine Molloy	38th Bar Admission Course
Jo Anne Pigeon	38th Bar Admission Course
Frantisek Polak	37th Bar Admission Course
Martha Annellen Rafuse	38th Bar Admission Course
Wilhelm Ludwig Rinas	38th Bar Admission Course
Renuka Satchithanathan	38th Bar Admission Course
Daniel William Scott	38th Bar Admission Course
Eduard Gerald Sheremeta	38th Bar Admission Course
Xiuhui Yang	38th Bar Admission Course
Aleem Shiraz Bharmal	Special, Transfer, Province of British Columbia
Maria Bruzzese	Special, Transfer, Province of Quebec
Brian Alexander Cuff	Special, Transfer, Province of Newfoundland
Marie Garneau	Special, Transfer, Province of Quebec
Sonya Rofani	Special, Transfer, Province of Quebec
Joanne Selena Paula St. Lewis	Faculty of Law, University of Ottawa

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FINANCE AND AUDIT COMMITTEE POLICY REPORT

Meeting of February 13th, 1997

Mr. Murray presented the item on Bencher Disbursements for Convocation's approval.

FINANCE AND AUDIT COMMITTEE
FEBRUARY 13, 1997

REPORT TO CONVOCATION

Purpose of Report: Decision-Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on February 13, 1997. In attendance were Ross Murray (Chair), Abdul Chahbar, Thomas Cole, Patrick Furlong, Jane Harvey, Vern Krishna, Ron Manes, Gerald Swaye, Bradley Wright. Tamara Stomp and Richmond Wilson attended via conference call. Staff members in attendance were John Saso, Wendy Tysall, David Carey, Katherine Corrick. Others in attendance were David Porter (Legal Aid) and Bryan Graham (Coopers & Lybrand).

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1. The Committee has two matters that require Convocation's approval:
 - Remuneration of Benchers, resulting from the February 13th meeting
 - Benchers disbursements, brought forward from January Convocation..
2. This report contains:
 - information regarding the Committee discussions, options considered, and their recommendation to Convocation
 - material from a previous Committee that has dealt with the issue of Bencher remuneration:
 - i. Women in the Legal Profession report to Convocation - January 12, 1995
 - ii. Discipline Policy Committee report to Convocation - September 14, 1995
 - Bencher Remuneration alternatives
 - Bencher Disbursement alternatives

Bencher Remuneration

3. The Committee discussed the merits of Bencher remuneration. Various concerns and issues were raised. A majority of those members present agreed, in principle, to some form of remuneration for Benchers. It was felt by many members that access was an issue and that many practitioners would not be able to run for the position Bencher because of the time commitment required. Other members of the Committee felt the position of Bencher is a volunteer position and should not be remunerated.
4. It was determined that any form of Bencher remuneration would not be applicable for the current Bench but would begin with the next Bench.
5. The Committee was undecided as to which Bencher work would be remunerated and at what level of compensation. A schedule detailing the various options considered is included in this report entitled Appendix A.
6. Convocation is requested to debate the merits of Bencher remuneration. If it is approved Convocation must then:
 - a. decide what Benchers are to be remunerated for:
 - I. All Bencher functions
 - II. Only bencher time spent on Discipline and Admission hearings
 - III. Any other combination.
 - b. Decide at what rate Benchers are to be remunerated
 - c. When to implement Bencher remuneration.

Enclosed, on page 38, is a schedule detailing eight methods of remunerating Benchers for their work at the Society.

Benchers Disbursements

7. The Committee reviewed the three options presented in the reports from the Chief Financial Officer and from the Research Director, and recommends that Rule 24, which governs reimbursement of expenses by Benchers, be amended as set out on Option 1, as follows:

"Benchers are entitled to be reimbursed by the Society for disbursements and out-of-pocket expenses incurred by them in the performance of their duties as Benchers".

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8. It should be noted that Option 3 also received some support by the Committee. Option 3 states that *"Benchers are entitled to be reimbursed for reasonable expenses incurred by their attendance at Convocation, committee meetings and other Society functions as requested by Convocation, by the Treasurer or by a chair of a committee"*.
9. The Committee also considered procedural alternatives presented for claiming expenses and recommends Alternative 1, as stated:

"Submit an expense report to claim the actual expenses. To support the claim, all expenses other than incidental expenses shall be supported by receipts".

Options and Alternatives for Decision by Convocation

10. Convocation is asked to approve the amendment to Rule 24 in order that it be stated as follows:

"Benchers are entitled to be reimbursed by the Society for disbursements and other out-of-pocket expenses incurred by them in the performance of their duties as Benchers".

Convocation is also asked to approve the procedure for claiming out-of-pocket disbursements. Specifically:

"Submit an expense report to claim the actual expenses. To support the claim, all expenses other than incidental expenses shall be supported by receipts."

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

- (1) Copy of the Women in the Legal Profession Report dated January 12, 1995.
(Appendix A)
- (2) Copy of the Discipline Policy Committee Report dated September 14, 1995.
(Appendix B)
- (3) Copy of a Memorandum from Ms. Wendy Tysall to the Chair and members of the Finance and Audit Committee dated January 28, 1997 re: Benchers Remuneration.
(Appendix C)
- ((4) Copy of a Memorandum from Ms. Wendy Tysall to the Chair and members of the Finance and Audit Committee dated November 1, 1996 and Updated on January 13, 1997 re: Bencher's expenses.
(Appendix D)

It was moved by Mr. Murray, seconded by Mr. Feinstein that Rule 24 be amended as set out in Alternative #1 on page 43 of the Report and Option #1 on page 47 of the Report as follows:

"Benchers are entitled to be reimbursed by the Society for disbursements and other out-of-pocket expenses incurred by them in the performance of their duties as Benchers".

"Submit an expense report to claim the actual expenses. To support the claim, all expenses other than incidental expenses shall be supported by receipts."

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The following 2 amendments to the Murray/Feinstein motion were accepted:

- (1) moved by Mr. Adams that the word "disbursements" be deleted; and
- (2) moved by Ms. Backhouse, seconded by Ms. Ross that in Option #1 the word "reasonable" be inserted to read "reasonable expenses".

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the word "reasonable" be deleted from Option #1.

Withdrawn

It was moved by Ms. Curtis, seconded by Mr. DelZotto that Option #3 be adopted.

It was moved by Mr. Aaron, seconded by Mr. Wilson that Option 3 be amended by adding the word "Secretary" at the end of the sentence and further that the word "requested" be replaced by the word "authorized".

Not Put

The Murray/Feinstein motion to adopt Option #1 as amended was voted on and carried.

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Backhouse	For
Banack	Against
Bobesich	For
Carey	For
Carpenter-Gunn	For
Chahbar	Against
Cole	For
Copeland	For
Crowe	For
Curtis	Against
DelZotto	Against
Feinstein	For
Finkelstein	For
Gottlieb	For
Harvey	For
Krishna	For
Legge	Against
MacKenzie	Against
Marrocco	Against
Murphy	For
Murray	For
O'Brien	For
Ortved	Against
Puccini	For
Ross	Against
Ruby	For
Scott	For
Sealy	Abstain
Stomp	For
Strosberg	For
Swaye	For
Thom	For
Wilson	Against
Wright	For

28th February, 1997

Rule 24 will be amended to read:

"Benchers are entitled to be reimbursed by the Law Society for reasonable expenses incurred by them in the performance of their duties as Benchers."

Mr. Murray presented the item on Bencher Remuneration for Convocation's approval.

A debate followed.

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

It was moved by Mr. Murray, seconded by Mr. Feinstein that some form of honorarium to Benchers be approved in principle subject to further study.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	For
Armstrong	Against
Arnup	Against
Backhouse	Against
Banack	Against
Bobesich	For
Carey	For
Carpenter-Gunn	For
Chahbar	Abstain
Cole	For
Copeland	For
Crowe	For
Curtis	For
DelZotto	For
Eberts	Against
Epstein	Against
Feinstein	For
Finkelstein	Against
Gottlieb	For
Harvey	Against
Krishna	Against
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Murphy	Against
Murray	For
O'Brien	Against
Ortved	Against
Puccini	For
Ross	For
Ruby	For
Sachs	For
Scace	Against
Scott	Against
Sealy	Abstain
Stomp	For

28th February, 1997

Strosberg	For
Swaye	Against
Thom	For
Topp	Against
Wilson	For
Wright	For

It was moved by Mr. Adams, seconded by Mr. DelZotto that there be a referendum at the next Bencher election to permit Bencher remuneration and that the matter be referred to a committee to report back to Convocation on how this could be carried out.

It was moved by Mr. Cole, seconded by Ms. Curtis that the motion on the referendum be tabled.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	Against
Angeles	For
Armstrong	Against
Arnup	Against
Backhouse	Against
Banack	Against
Bobesich	Against
Carey	For
Carpenter-Gunn	For
Chahbar	Against
Cole	For
Copeland	For
Crowe	Against
Curtis	For
DelZotto	For
Eberts	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Harvey	Against
Krishna	Against
Legge	Against
MacKenzie	Against
Manes	For
Marrocco	Against
Murphy	Against
Murray	Against
O'Brien	Against
Ortved	Against
Puccini	For
Ross	For
Ruby	For
Sachs	For
Scace	Against
Scott	Against
Sealy	Against
Stomp	For
Strosberg	Against
Swaye	Against
Thom	Against
Topp	Against

28th February, 1997

Wilson	Against
Wright	For

The Adams/DelZotto motion that there be a referendum was voted on and adopted.

ROLL-CALL VOTE

Aaron	Against
Adams	For
Angeles	Against
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Bobesich	For
Carey	Against
Carpenter-Gunn	Against
Chahbar	For
Cole	For
Copeland	For
Crowe	For
Curtis	Against
DelZotto	Against
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	Against
Harvey	For
Krishna	For
Legge	For
MacKenzie	For
Manes	For
Marrocco	For
Murphy	For
Murray	For
O'Brien	For
Ortved	For
Puccini	Against
Ross	Against
Ruby	Against
Sachs	For
Scace	For
Scott	For
Sealy	Abstain
Stomp	Against
Strosberg	For
Swaye	For
Thom	For
Topp	For
Wilson	Against
Wright	For

LEGAL AID COMMITTEE POLICY AND INFORMATION REPORT

Meeting of February 12th, 1997

Ms. Eberts presented the item on Financial Eligibility for Duty Counsel for Convocation's approval.

Legal Aid Committee

Report to Convocation

Nature of Report: Decision-Making, Information

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Appendix A - Policy Paper on Financial Eligibility Testing - Duty Counsel

Appendix B - Financial Statements for the 1995-1996 fiscal year

Appendix C - Financial Reports - January 1997

The Legal Aid Committee met on February 12, 1997. In attendance were:

Committee members: Mary Eberts (Chair), Heather Ross (Vice-Chair), Tom Carey, Carole Curtis, Allan Lawrence, Shirley O'Connor, Tamara Stomp.

The Treasurer, Susan Elliott

Senior Management of OLAP: Robert Holden, Provincial Director, and Deputy Directors George Biggar, Ruth Lawson and David Porter

Other OLAP Staff: Elaine Gamble, Communications Coordinator, Felice Mateljan. Attending for the Duty Counsel Debate were Lesley Byfield, Program Co-ordinator, Financial Assessments and Bruce Manson, Research Lawyer (Co-author of background materials on duty counsel)

In attendance for the discussion of duty counsel: Bruce Dunno, Criminal Lawyers' Association, Robert Spence, CBA-O, and Toni Hammond-Grant, CDLPA

28th February, 1997

1. Financial Eligibility for Duty Counsel

At its meetings in January and February, the Legal Aid Committee has considered a range of issues relating to duty counsel, an area identified in the summer and fall consultations as in need of review. A comprehensive background paper on duty counsel services under the Plan was prepared by George Biggar and Bruce Manson. Among the issues identified for discussion at the Legal Aid Committee are quality of duty counsel, duties of duty counsel in both family and criminal law, duty counsel clinics, and financial eligibility for duty counsel services. In January, the Committee received a briefing on the duty counsel program and discussed the briefing materials, and it identified financial eligibility as the first specific matter to be dealt with. Accordingly, financial eligibility was considered at the February 12 meeting.

The question addressed was, briefly, whether duty counsel services should continue to be available to persons who would not be eligible to receive a legal aid certificate, because their financial means exceed the certificate eligibility limits. The issue arises because historically there has been no financial test for eligibility for duty counsel. Discomfort was repeatedly expressed in the Committee's summer and fall consultations about persons receiving duty counsel services when they have the means to retain counsel.

On February 12 the Legal Aid Committee voted in favour of instituting a financial eligibility test for certain duty counsel services. It would be simple to administer, as part of the regular duty counsel interview with those seeking assistance. Financial limits for duty counsel roughly parallel those for certificates.

It is expected that the introduction of this screen will be, at worst, cost neutral, and, at best, result in cost savings for the Plan. In any event, by reducing the numbers of persons receiving the assistance of duty counsel, it is expected that this measure will allow duty counsel to focus more attention on the needs of those who meet the financial limits. Focussing the resources of the Plan on the financially disadvantaged in this way is consistent with the policy objective of ensuring that such resources as are available for legal aid, scarce as they may be, are targeted to those in greatest financial need.

The financial eligibility test will be instituted in six centres before April 1, 1997, with the balance of the implementation to be in place by the end of the summer.

Because the Legal Aid Regulation requires that legal aid be offered in accordance with financial standards outlined by the government, consultations have begun with officials of the Ministry of the Attorney General about this initiative, and the preliminary response has been positive. Meetings with the Ontario Court Provincial Division are also scheduled. Reaction from bar organizations to this measure has been favourable, consistent with their prior position on financial eligibility for duty counsel.

A comprehensive communications campaign will accompany introduction of the program.

Officials of the Plan have prepared a policy paper outlining in detail the criteria and operation of the financial eligibility process (attached).

The following matters are reported upon for information only:

2. Consultation Process

The Committee continues to meet with the bar, the public and the judiciary to monitor the effects of the cuts to the Tariff. Emphasis in the consultations is on the status of services in family law, and on issues relating to the number of unrepresented persons appearing in the Ontario Court Provincial Division (Family and Criminal). The Committee intends to prepare as comprehensive a report as possible on the effects of the funding restrictions to legal aid, and expects to be discussing a draft of that report at its meeting of March 19, 1997. If finalized at that time, the report will be before Convocation at its meeting of April 4, 1997.

3. The McCamus Committee - Legal Aid Review

Senior members of Plan management and members of the Committee have met several times with John McCamus and others on his committee or staff concerning the Review. Pursuant to a discussion at the Legal Aid Committee meeting in December, the Plan has been providing information to the McCamus Committee and its researchers concerning the structure and operation of the certificate and duty counsel system, in order that the McCamus Committee will be able to develop an understanding of the Plan in the short time available to it. In addition to information exchange at the staff level, the Legal Aid Committee will provide to the McCamus Committee its report on the effects of restrictions in government funding, discussed immediately above. It is believed that this report will be important to help the McCamus Committee understand the extent of the unmet need for legal services and legal aid in the province. Informal consultation between the Legal Aid Committee and the Clinic Funding Committee has taken place concerning the input of both to the McCamus Committee.

In addition to the report on the effects of funding cutbacks, the Legal Aid Committee will prepare for the McCamus Committee a summary of the debate in Convocation concerning governance of the Plan, at the time it was decided to accept "option 1" and continue to administer the Plan. It is expected that this document, too, will be before Convocation on April 4, 1997.

4. Staffing

It was hoped to have three new positions added to the management team at the Provincial Office by early in the new year. Two of these have been filled: Elaine Gamble as the Communications Coordinator, effective January 6, 1997, and Keith Wilkins (formerly the Area Director in Ottawa) to begin early in the fiscal year 1997/98 as Coordinator of Client Services. In that position he will be responsible for coordinating the Area Offices and the activities of duty counsel on a province-wide basis. He will report to George Biggar. The third position, of financial analyst reporting to David Porter, is not yet filled.

As a result of Mr. Wilkins' hiring, a search process for a new Area Director in Ottawa has been underway and is nearing completion. Ottawa benchers have been consulted about the appointment, as have local bar organizations.

28th February, 1997

5. Funding

Morin

In July 1995, the Legal Aid Committee voted to seek full compensation from the provincial government for the Plan's costs in relation to the Morin case. When the agreement with Mr. Morin and his family was announced early this year, and no settlement had been reached with the Plan, the Provincial Director and Committee Chair took the matter back to the Legal Aid Committee. At its meeting of February 12, the Committee reaffirmed the instructions of the previous Committee to pursue reimbursement, and authorized the Director and Chair to negotiate with the Government in this regard. As of June, 1995, the Plan had paid \$2,644,000.15 for the Morin defence.

Monitor Expenses

Plan management and the Law Society continue to take the position that the Government of Ontario should pay the full costs of the Monitor. The most recent requisition of funds was prepared on the basis that the Government is responsible for these costs.

Administrative Expenses

The Treasurer has requested from counsel an opinion on the issues of assessable administrative expenses and extraordinary expenses, and it is in preparation. There is at present no estimate of its expected completion date.

6. Annual Financial Statements

Attached for the information of Convocation are the Plan's audited financial statements for fiscal 1995 - 1996.

7. Area Committee Appointments

At its meeting of February 12, the Legal Aid Committee approved two appointments to area committees, as recommended by the Provincial Director; Alonzo Robertson in Niagara South, and John Peron in York Region.

8. Financial Reports -- January 1997

The financial reports for January 1997 are attached. Below is a summary of report highlights (page numbers in brackets refer to financial report page).

(a) Operating results (page 3)

Receipts

Receipts from the Law Foundation of Ontario were budgeted at \$4 million, but the actual amount received was \$2.2 million. Part of the difference is explained by the fact that a payment of \$1 million provided for by the MOU was not received in December; however, it is expected before the end of the fiscal year. The remaining shortfall, of \$0.8 million, is attributable to less being earned in interest by the Law Foundation due to lower interest rates.

The Law Society was budgeted to have paid the Plan \$3 million of its contribution to the assessable administrative expenses in December of 1996. This payment was received in February, 1997.

Disbursements

The amount paid in certificate payments in December 1996 was \$7.3 million less than budgeted. The difference is accounted for in two ways. First, because of the holidays, the Plan had only four cheque runs in December, instead of the five originally planned. Secondly, accounts under the new tariff are not being received as quickly as forecast. It appears as if the life cycle of the new tariff certificates is longer than the life cycle of the old tariff certificates (and it was the old tariff life cycle that was used for the forecasting, because of the need to acquire experience with the new tariff). The new tariff certificates are issued for more difficult cases, and therefore take longer to complete. Once sufficient data is collected on the new tariff certificates, the Plan will reforecast their lifestyle.

As a result of the longer lifecycle of the new tariff certificates, less costs will come in on the new tariff certificates in 1996/97 than originally forecast. The new tariff costs that do not fall into the 1996/97 fiscal year will be incurred in the remaining years of the MOU, and after the MOU. The government and the Monitor are aware of this development, and appreciate its cause. Once a reforecast of the new tariff certificates is done, a better picture of the cashflows from new tariff certificates will be produced.

Overall

Originally, it was budgeted that the Plan would have an excess of receipts over disbursements in the month of December 1996 of \$2.845 million. In actuality, the Plan had an excess of receipts over disbursements of \$5.456 million. These funds are applied to the Plan's accumulated deficit, which stood at \$81.8 million at the beginning of the 1996/97 fiscal year.

(B) Applications and Acknowledgements

In the year to date, there have been 26, 493 applications for certificates in Metro, in which 32% were refused. Outside of Metro, there were 55,306 applications, of which 29% were refused. In 1995/96, 24% of the applications in Metro were refused, and 25% of those outside. (Page 21)

In the ten month period ended January 31, 1997, 83% of the certificates issued by the Plan had been acknowledged (i.e. accepted) by lawyers. Certificates must be acknowledged within 90 days of issue, and the Plan's statistics do not reflect the certificates that are unacknowledged as yet because the 90 day period has not elapsed. By area, 84% of criminal, 80% of family, 89% of immigration, and 74% of other civil certificates had been acknowledged. (Page 22)

In fiscal 1996/97 an effort has been made to track the "tier levels" (experience) of the lawyers acknowledging certificates. Comparable data for previous years are not available. With respect to criminal law, 51% (Toronto) and 59% (outside Toronto) of the certificates are acknowledged by lawyers at level 2, the most senior. In immigration, 54% (Toronto) and 46% (outside Toronto) are acknowledged by level 1 (mid level) lawyers. In family law, the largest single group of acknowledging lawyers is at the basic (lowest) level, 41% in Toronto and 40% outside. (Page 23)

(c) Certificates Issued

It was predicted by Deloitte & Touche in May of 1996 that in 1996/97, the Plan would issue 100,000 certificates. This prediction has been scaled back to 80,000 certificates in view of the expected higher cost of each certificate.

28th February, 1997

Based on the 80,000 total estimated, experience to date is that 43,012 of the predicted 53,640 criminal certificates have been issued; 12,019 of the predicted 15,850 family; 4,892 of the predicted 6,245 immigration; and 3,159 of the predicted 4,265 "other civil". These figures include both old and new tariff certificates issued in 1996/97. (Pages 4-5)

(d) Certificate Program Cost

It was budgeted that \$138,732 million would be spent on old tariff certificates in 1996/97 and \$42,435 million on new tariff certificates. The total budgeted for both old and new tariff certificates was \$181,167 million.

Year-to-date, more has been spent on old tariff certificates than was predicted: \$124,202 million spent versus \$114,408 million predicted (9% higher). Less has been spent on new tariff certificates: \$11,366 million spent versus \$34,996 million predicted (68% lower). New tariff costs are just now starting to increase. As mentioned elsewhere in this summary, efforts will be made to recalculate the lifecycle of the new tariff certificates, which seem to take longer to complete and bill than the old tariff certificates because of the serious nature of the cases due to prioritization.

In the month of January, for the first time this fiscal year, actual spending on old tariff certificates was below what was predicted (by 28%). This is very encouraging. There also appeared to be some pickup in spending on new tariff certificates, which were only 19% below predicted in January. (Pages 11 - 14)

(e) Accounts Received and Paid

For the first time this fiscal year, the Plan received more new tariff accounts than was forecast, by 8%. Accounts received is generally the first indicator of new trends with certificate costs. These results, then, predict that the Plan will begin receiving more new tariff accounts. Given the drop in January of receipt of old tariff accounts, we may be seeing a welcome transition more fully into the new tariff system. Developments will continue to be monitored. (Page 15)

All accounts were paid within the standards set by the guidelines. (Pages 24 - 26)

The Plan has begun in fiscal 1996/97 to track "markdown" on accounts, that is the difference between the face value of the amount billed and the actual amount paid. Year-to-date, the total markdown on accounts has been 8%. (page 20)

Discretionary fees on old tariff certificates are generally higher than in the 1995/96 year. This is due to the complexity of cases, and the resulting request for more discretion. We will continue to monitor these costs to ensure they do not rise too high as the policy decision of Convocation was that discretionary costs not exceed 5% of the total. (Page 19)

By arrangement with the Government of Ontario to advance funds from the end of the MOU for this purpose, the Plan has been able to pay approximately \$8 million of the "over six month" accounts submitted in accordance with Plan guidelines, affecting the majority of lawyers with over six month accounts. It is expected that another group of these accounts will be attended to in the spring of 1997.

(f) Average Case Cost and Account Cost

Actual average case cost includes all the costs relating to a completed certificate if the final account was paid in the current month or fiscal year. The average will thus fluctuate from month to month depending on the number of expensive certificates for which a final account was received during the month.

The average case cost on the old tariff matters, year to date, is 21% higher than predicted. It is thought that this has occurred because the most difficult or complex cases are the ones remaining of the old tariff certificates.

The average case cost on the new tariff matters, year to date, is 54% lower than predicted, because these complex new matters are taking longer to complete and bill.

The overall average case cost year to date is 16% higher than predicted. However, in January, the overall average case cost was only 4% higher than predicted.

The overall average account cost year to date is \$971, 2% higher than budget (\$950). In the month of January, the overall average account cost was \$957, 1% higher than budget (\$950). (page 7)

(g) Estimate of Outstanding Certificate and Total Liability as at December 31, 1996 (page 27)

Estimate of Outstanding Certificate and Total Liability
As at December 31, 1996

Outstanding Certificate Liability			
-Accounts Payable	21.658	19.980	19.609
-Six Month Accounts	17.368	12.061	10.773
-Accrued Liability (Note 1)	10.411	8.988	7.103
-Contingent Liability (Note 2)	87.746	89.075	88.739
<hr/>			
Total Outstanding Certificate Liability	137.183	130.104	126.224
<hr/>			
Provincial Advance	27.000	27.346	22.890
Bank Loan	26.120	26.000	25.000
<hr/>			
Total Liabilities	290.303	183.450	174.114
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Notes and Assumptions

1. The accrued liability is an estimate of work that has been performed on certificates, but not billed to OLAP.
2. Contingent liability is an estimate of work that is yet to be performed on outstanding certificates.
3. This Schedule will always have information that lags 1 month behind other financial information due to the timing of the Legal Aid Committee meeting and the availability of reports.

28th February, 1997

(h) The Agony Index (page 28 -29)

This measure compares provincial funding levels to certificate costs. It is expected that in fiscal 1997/98 we will reach the point when the certificate costs are equal to provincial funding. After this point, the certificate cost must be less than the provincial funding in order to generate funds to handle the deficits that were incurred in prior years. The funds generated must equal the accumulated deficit to ensure that OLAP will be at a break-even point by the end of the MOU (end of the 1998/99 fiscal year). The current OLAP forecast does in fact achieve the break-even point by the end of the MOU.

(i) Forecast and Projection

As the end of the fiscal year is less than two months away, we have not included the forecast and projection in the financial reports. New forecasts to establish benchmarks for the 1997/97 certificate costs will be prepared early in the new fiscal year.

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

- | | | |
|-----|--|--------------|
| (1) | Paper on Financial Eligibility for Duty Counsel. | (Appendix A) |
| (2) | Copy of the Audited Financial Statements, 1995 - 1996. | (Appendix B) |
| (3) | Copy of the OLAP Financial Reports, January 1997. | (Appendix C) |

A debate followed.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Arnup, Armstrong, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cole, Copeland, Crowe, Curtis, DelZotto, Eberts, Feinstein, Finkelstein, Gottlieb, Harvey, Lamont, MacKenzie, Marrocco, Millar, Murray, O'Brien, Ortved, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Stomp, Strosberg, Swaye, Thom, Topp (by conference call), Wardlaw, Wilson and Wright.

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RESUMPTION OF THE LEGAL AID COMMITTEE POLICY REPORT

It was moved by Ms. Eberts, seconded by Ms. Ross that Convocation approve financial eligibility requirements for duty counsel as outlined in the Report.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Angeles	For
Armstrong	For
Arnup	For
Backhouse	Against
Banack	For
Bobesich	Against
Carey	For
Carpenter-Gunn	Against
Chahbar	For
Cole	Against
Copeland	For
Crowe	For
DelZotto	For
Eberts	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Harvey	For
MacKenzie	For
Marrocco	For
Murray	Against
Ortved	For
Puccini	For
Ross	For
Ruby	Against
Sachs	Against
Scott	For
Sealy	For
Stomp	For
Swaye	For
Thom	For
Topp	For
Wilson	For
Wright	For

It was moved by Ms. Eberts, seconded by Ms. Ross that Nathalie Remillard Champagne be appointed the Area Director in Ottawa.

Carried

The balance of the Report was received.

28th February, 1997

MOTION - E & O Insurance Levy

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from February 28, 1997 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(See list in Convocation file)

JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

Mr. Copeland gave an oral report on provincial appointments.

RULE 20 APPLICATION

Barbara Jackman - Applicant
Milosava Hrnjez - Suspended Member

The Secretary advised that this matter was being resubmitted after being deferred at the January Convocation because of concern raised about the scope of the Hrnjez's activities.

It was moved by Mr. Finkelstein, seconded by Mr. DelZotto that the application by Ms. Jackman to employ Ms. Hrnjez (an administratively suspended member) as a law clerk on immigration law files be approved with the conditions outlined in the Staff Trustee's memorandum of February 21st, 1997.

Carried

PROFESSIONAL REGULATION COMMITTEE POLICY REPORT

Meeting of February 13th, 1997

Mr. Malcolm Heins presented the item on the requirement of a new Rule 30 entitled "Lawyers' Duties with Respect to Title Insurance in Real Estate Conveyancing".

Professional Regulation Committee
February 13, 1997

Report to Convocation

Purpose of Report: Decision-Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 13, 1997. In attendance were:

Carole Curtis (Chair)
Neil Finkelstein (Vice-Chair)
Paul Copeland
Gavin Mackenzie
Clayton Ruby
Niels Ortved
Hope Sealy
Stuart Thom

Susan Elliott, Treasurer

28th February, 1997

Staff/Visitors: Janet Brooks, Margot Devlin, Georgette Gagnon,
Malcolm Heins, Maurizio Romanin, Glenn Stuart,
Stephen Traviss, Jim Varro, Kathleen Waters,
Sheena Weir and Jim Yakimovich

2. This report contains:

- The Committee's proposal for a new rule of professional conduct entitled "Lawyers' Duties with Respect to Title Insurance in Real Estate Conveyancing"
- The Committee's proposal for a policy on the attendance of lawyers to receive reprimands
- Information on
 - i. Operations of Secretariat departments
 - ii. Working groups struck to deal with two of the Committee's priority issues
 - iii. The Society's monitoring of the government's initiative to discontinue the current solicitor-client fee assessment process.

NEW RULE OF PROFESSIONAL CONDUCT
ON
LAWYERS' DUTIES WITH RESPECT TO
REAL ESTATE CONVEYANCING AND TITLE INSURANCE

A. NATURE AND SCOPE OF THE ISSUE

3. In September 1996, Convocation adopted the report of the Lawyers' Professional Indemnity Company (LPIC) and thereby formally endorsed LPIC's TitlePLUS title insurance program.
4. As a result of its negotiations with the Ontario Insurance Commission ("the Commission") for a licence to sell title insurance through the TitlePLUS program, LPIC agreed with the Commission's request to formulate a new rule of conduct setting out lawyers' duties respecting the use of title insurance in real estate conveyancing.
5. The mandate of the Professional Regulation Committee includes reviewing matters relating to the rules of conduct which are then referred to Convocation.¹ The president of LPIC, Malcolm Heins, presented a draft of the new rule to the Committee, and the Committee is now proposing the form of the new rule, the text of which appears at page 6, to Convocation.

¹Paragraph 4 of s. 63 of the *Law Society Act* provides that Convocation may make regulations "authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics". Section 20 of Regulation 708 gives the Professional Conduct Committee the authority to prepare and publish the Professional Conduct Handbook. New Rule 36(2) pursuant to the *Law Society Act* (passed by Convocation on September 27, 1996) authorizes the Professional Regulation Committee to "perform the function assigned to the Professional Conduct Committee under Regulation 708...". Historically, the standards of professional conduct, even if reviewed and recommended by a Committee, have been set by Convocation.

B. BACKGROUND

The Requirement for the New Rule

6. The Commission, in the negotiations with LPIC, determined that given the role that lawyers will play in implementing the program, the Law Society should formulate a specific rule of conduct dealing with title insurance issues in conveyancing. In particular,
 - although the provincial regulatory scheme governing the sale of insurance products exempts lawyers who may arrange for the purchase of title insurance but who are otherwise acting as lawyers in a particular transaction, under the TitlePLUS program, the role of lawyers in the purchase of title insurance is not incidental;
 - accordingly, the Commission felt that something at the governance level of the profession was required to address its concerns about the sale of this product, beyond what may be included in the contractual arrangement between TitlePLUS and lawyers;
 - although LPIC is prepared to manage lawyers through TitlePLUS, it obviously has no control over arrangements lawyers may make with other title insurance providers, in which case the new rule provides some uniformity in addressing the issue of title insurance
7. While there was some discussion about amending existing rules of conduct to incorporate the guidelines proposed in the new rule, Malcolm Heins advised that it was apparent that the Commission required a separate rule dealing specifically with title insurance to satisfy its concerns regarding the role of lawyers in the purchase of title insurance by their clients.
8. Given the pending implementation of TitlePLUS this spring, Convocation's review of the matter is now required.

Focus of the New Rule

9. The rule emphasizes lawyers' obligations to clients when title insurance is an issue in a conveyancing transaction. It:
 - prohibits compensation to lawyers for recommending a specific title insurance product
 - addresses the supervision/delegation issue within lawyers' offices
 - addresses the disclosure issue respecting the profession, the Law Society and LPIC concerning TitlePLUS
 - includes Commentary on the specific obligations outlined.

The New Rule and Current Provisions

10. The new rule includes language similar to that in some existing rules, as noted in the following chart (copies of the existing rules appear at Appendix 1):

New Rule	Existing Rules
First sentence, paragraph 1	similar Rule 2 (Competence and Quality of Service) paragraph a)
Paragraph 3	Rule 16 (Delegation to Non-Lawyers), Commentary paragraph 3
Commentary, paragraphs 1 and 2	similar to Rule 2, Commentary paragraph 8 and Rule 3 (Advising Clients) Commentary paragraphs 1 through 3
Commentary, paragraph 3	similar to Rule 9 (Fees and Disbursements) Commentary paragraph 8

11. The Committee noted that in some respects, the new rule simply expands on existing guidelines dealing with the delivery of legal services.
12. The rule was reviewed by Stephen Traviss, the Society's Senior Counsel - Professional Conduct, who indicated that there were no inconsistencies apparent to him between the new rule and existing rules.

C. ANALYSIS

Summary of the Committee's Review

13. The Committee recognized the need for the rule in light of the concerns of the Commission, and from a practice perspective, to provide guidance to lawyers when discussing title insurance with clients.
14. The Committee also noted that the rule essentially responds to the fact that the TitlePLUS product will be offered through lawyers and that they will in effect be providing professional advice on insurance.
15. The Committee discussed the draft of the rule presented by LPIC and made appropriate changes to ensure that the mandatory action aspects of the rule appeared in the rule as opposed to the Commentary, including the text on
 - the overall question of advice
 - the conflict/disclosure issue
 - the delegation issue, given that realistically, clients can meet with non-lawyers in a lawyer's office routinely in the course of real estate transactions
 - the commission or fee prohibition.
16. The Committee discussed whether the new rule should be cross-referenced to related existing rules. It decided that as all the rules must be observed and a discrete guideline was necessary for the title insurance issue, cross-referencing was not warranted.

The Policy Governance Perspective

17. From the broad perspective of governance, the Law Society's Role Statement affirms the Society's commitment to "govern the legal profession in the public interest by upholding the integrity and honour of the legal profession".² It also states that one of the ways that the Society upholds that integrity and honour is through its regulatory structure, which includes "the power to prepare and publish a code of professional conduct and ethics"³.
18. As new developments occur, the Society must respond and if necessary, acknowledge its responsibility to govern in the public interest by ensuring that appropriate regulatory measures are in place.
19. Creating a new rule on title insurance issues in conveyancing is one example of how that role is properly exercised.

The Committee's Proposal and Text of the New Rule

20. The Committee proposes the following draft of the new rule to Convocation for its decision on adopting a new rule on title insurance:

Rule 30

Lawyers' Duties with Respect to Title Insurance in Real Estate Conveyancing

RULE

1. The lawyer owes the client a duty to assess all reasonable options to assure title when advising clients with respect to a real estate conveyance. The lawyer must advise the client that title insurance is not mandatory and is not the only option available to protect the client's interests in a real estate transaction.
2. The lawyer cannot receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product to his or her client. The lawyer must disclose to the client that no commission or fee is being furnished to the lawyer with respect to any title insurance coverage.
3. The lawyer may not permit a non-lawyer to:
 - (a) provide advice to the client with respect to any insurance, including title insurance, without supervision;
 - (b) present insurance options or information regarding premiums to the client without supervision;
 - (c) recommend one insurance product over another without supervision;
 - (d) give legal opinions regarding the insurance coverage obtained.
4. If discussing TitlePLUS insurance with the client, the lawyer must fully disclose the relationship between the legal profession, the Law Society of Upper Canada and the Lawyers' Professional Indemnity Corporation (LPIC).

²Role Statement, section 7, paragraph 7.1.

³*Idem*, paragraph 7.6.

COMMENTARY

1. The lawyer should advise the client of the options available to protect the client's interests and minimize the client's risks in a real estate transaction. The lawyer should be cognizant of when title insurance may be an appropriate option. Although title insurance is intended to protect the client against title risks, it is not a substitute for a lawyer's services in a real estate transaction.
2. The lawyer should be knowledgeable about title insurance and discuss the advantages, conditions and limitations of the various options and coverages generally available to the client through title insurance with the client. Before recommending a specific title insurance product, the lawyer should be knowledgeable about the product and undergo such training as may be necessary in order to acquire such knowledge.
3. The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. For the purposes of this rule, "lawyer" includes his or her firm, any employee or associate of the firm or any related entity.

Options and Alternatives for Decision by Convocation

19. Convocation may make one of the following decisions:
 - i. Approve the text of the proposed rule and adopt it as an addition to the Rules of Professional Conduct (Rule 30) in the Professional Conduct Handbook;
 - ii. Amend the text as it sees fit, and adopt the rule;
 - iii. If it is not satisfied that all issues have been adequately addressed, refer the matter back to Committee for further review, with directions.

REPRIMANDS WHEN THE LAWYER IS NOT IN ATTENDANCE

A. NATURE AND SCOPE OF THE ISSUE

How the Issue Arose/Current Request for Input

20. In April 1996, Convocation decided to issue a reprimand to a lawyer as a penalty for misconduct. The lawyer was charged with and found guilty of failing to file his Form 2 for 1994. The lawyer was permanently out of the jurisdiction (in Vancouver) and advised that he did not intend to return at a future Convocation for the reprimand. Accordingly, Convocation referred the matter to the Discipline Policy Committee for consideration of the issue of the authority to issue a reprimand in the absence of the lawyer. The issue was not reached by that Committee and was one of the items "rolled over" to the Professional Regulation Committee ("the Committee").

21. The above discipline case was before Discipline Convocation again on November 28, 1996, at which time it confirmed that it would await review of the matter through the Committee, on the basis that Convocation is "committed to developing a policy on it"⁴ given its recurrence before Convocation.
22. The two questions for the Committee were
 - i. What should Convocation's policy be respecting reprimands when the lawyer is not before Convocation?
 - ii. What issues should be considered in formulating the policy?
23. To answer the above questions, information was provided on the purpose of the penalty of reprimand and what is it intended to address by way of sanction. Although the issue is framed in terms of a reprimand before Convocation, it was recognized that similar situations could present themselves at the Discipline Committee level.

B. BACKGROUND

Statutory Provisions/Current Practice

24. There would not appear to be a statutory impediment to reprimanding a lawyer in his or her absence⁵. Hearings may be conducted in the absence of the lawyer.⁶ While the lawyer is sent a notice of the proceeding before Convocation (if the recommended penalty is anything other than a reprimand in Committee), the fact of the lawyer's failure or refusal to attend has not to date been the subject of a separate proceeding.⁷
25. If the matter can proceed in Convocation in the absence of the lawyer and issuing a penalty is part of that process, it follows that Convocation has jurisdiction to make whatever order in that respect it deems appropriate. That could include requiring or not requiring that a lawyer attend for the reprimand, or attaching conditions to the disposition of the matter for the purpose of penalty.
26. The practice before Discipline Convocation has always been to issue the reprimand in the presence of the lawyer.

⁴Treasurer's remarks from transcript of Discipline Convocation, November 28, 1996.

⁵See Appendix 2 to this report for the relevant statutory provisions, especially s. 34 of the *Law Society Act*, which gives to Convocation a discretionary power to "make such other disposition as it considers proper...". The current legislative reform package recommends amendments which would allow a reprimand to be provided in writing.

⁶Discipline counsel, however, consistently make the submission that failure to attend the hearing without explanation warrants a finding of ungovernability.

⁷Regulation 708, s. 9(8)(b) (see Appendix) includes a summons requiring a lawyer to attend at the hearing, but in practice a summons has not been sent.

27. Society's discipline counsel, who provided helpful information on this subject, have advised that the Society has in the rare case held portions of discipline hearings by telephone⁸. The provisions of the *Statutory Powers Procedures Act* which permit electronic hearings were also noted, including those which allow the tribunal to consider prejudice to a party to the proceeding if it proceeds electronically and the authority to act to prevent abuses of the process generally.⁹

Law Society Discipline Cases Relevant to the Issue

28. In at least two discipline cases, the lawyers did not attend before Convocation and were ordered reprimanded. Because they did not attend for the reprimands, they were suspended until such time as they attend for the reprimands in Convocation.
29. In another case, a lawyer received a reprimand in Committee by telephone, a rare circumstance which occurred after continuation of a hearing following an adjournment to allow the lawyer to complete his filings. The conclusion of the hearing took place with all panel members and the solicitor on a conference call, with a reporter present.
30. In one case before a Discipline Committee where the solicitor did not attend, the Committee decided to issue a reprimand on the record and ordered that a transcript of the reprimand be sent to the lawyer by mail. It was returned by Canada Post unopened and the Society to date has not been able to locate the lawyer. *Quaere* whether a reprimand given to a solicitor in his or her absence is a penalty.
31. Although out of the strict discipline realm, Invitations to Attend have been held by telephone on at least three occasions. The decision to use this method emanated from a discussion among the Chair and Vice-Chairs of the Discipline Committee in early 1995 who decided that the procedure would be appropriate where the lawyer primarily was geographically remote from the Society's offices.

Other Jurisdictions

32. Several other Law Societies in Canada were canvassed on their policy or procedure respecting reprimands, although the type of case or seriousness of the conduct was not discussed:
- Manitoba and Saskatchewan - both will reprimand in the absence of the lawyer, although neither has a stated policy on the issue
 - Nova Scotia - does not provide for an equivalent penalty to Ontario's reprimand, but as a matter of practice the lawyer must be present to receive a disciplinary penalty
 - Alberta - although there is no stated policy, a penalty, including a reprimand, would not be imposed in the absence of the lawyer¹⁰
33. It should also be remembered that the volume of discipline cases in Ontario is much greater than that in any of the above jurisdictions.

⁸These cases involved agreed statements of fact and a recommendation for a joint submission for a penalty in Convocation (not a reprimand in Committee).

⁹See the Appendix for these provisions.

¹⁰The exception would be where the lawyer has refused to attend the hearing and the matter has proceeded in the lawyer's absence.

C. POLICY OBJECTIVES

34. It would appear that there are two conceivable objectives to deciding whether to allow reprimands in the absence of the lawyer, and stating a policy to prescribe or assist in prescribing the circumstances in which they will be allowed:
- i. to ensure that, whatever decision is made, the Society continues to fulfill its regulatory role in exercising its disciplinary authority appropriately and in the public interest;
 - ii. to address an issue for the lawyers charged concerning an ability to forego attendance at the Law Society for any number of reasons.
35. The public interest is the focus of the governance principle upon which the obligation to discipline for misconduct or conduct unbecoming a barrister and solicitor rests, and the Law Society accepts that
- The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.¹¹
36. A similar view is expressed in the ABA Standards on lawyer sanctions¹², where it is recognized that the primary purpose of sanctions is to protect the public. Another purpose is to deter further unethical conduct and where appropriate, to rehabilitate the lawyer. Although it is noted that sanctions have a punitive aspect, it is not the purpose to impose sanctions for punishment.
37. The ABA also recognized that the more the public knows about how effectively the disciplinary system works, the more confidence they will have in that system¹³.
38. The following description of the penalty of reprimand from the ABA Standards is instructive:

Reprimand, also known as censure or public censure, is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

Commentary

...A reprimand is appropriate in cases where the lawyer's conduct, although violating ethical standards, is not serious enough to warrant suspension or disbarment. ... A reprimand serves the useful purpose of identifying lawyers who have violated ethical standards, and, if accompanied by a published opinion, educates members of the bar as to these standards.¹⁴

¹¹Gavin Mackenzie, *Lawyers and Ethics - Professional Responsibility and Discipline* (Toronto: Carswell, 1993) p. 26 - 1.

¹²*Selected Statutes, Rules and Standards on the Legal Profession*, 1987 Edition, p. 288.

¹³*Idem*, p. 289.

¹⁴*Idem*, p. 295-296.

39. The English Court of Appeal has provided insightful commentary on the nature of disciplinary proceedings and penalty in particular. In the Bolton case¹⁵, concerning the suspension of a lawyer for misconduct, the court said:

There is, in some of these [disciplinary] orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. ... But often the order is not punitive. ... In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. ... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever, standing may be trusted to the ends of the earth.

...

...the essential issue...is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. ... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.

D. OPTIONS ANALYSIS

Provisions of the Role Statement

40. Of relevance to this discussion are the following sections of the Society's Role Statement:

1.2 *The concept of governance (the act, office or function of governing - of exercising authority) is central to the role of the Law Society. It conveys the idea that the Society has authority over its members (but always and only in the public interest). The responsibility of governance is the principle which legitimizes the authority which the Society exercises over its members, and prospective members, in respect of entry to the profession, standards, insurance requirements, professional conduct and discipline.*

2.6 *The duty to govern in the public interest implies a responsibility to ensure that members of the public may inform themselves as to the manner in which that duty is being discharged. It is therefore important that the Law Society continue conducting its proceedings in public and communicating its decisions not only to the profession but also to the public. Such openness is important for the Law Society in carrying out its duties as a democratic institution.*

¹⁵Bolton v. Law Society [1994] W.L.R. 512, C.A.

- 3.1 *It is sometimes assumed that the public interest must necessarily be opposed to the interest of the profession and that, in fulfilment of its duty to govern in the public interest, the Law Society can give no consideration to the interest of the profession. This is not so. Ideally, what is in the public interest will also be in the interest of the profession. It is only when the two interests conflict that the Law Society must subordinate the interest of the profession to that of the public.*

Policy Discussion

41. In deciding on a policy, the Committee noted a range of approaches that Convocation may wish to consider. Three possible options are:
- a. Convocation could decide that no reprimands will be issued at Convocation, and thus the matter not disposed of, until the lawyer in question appears before Convocation. This would mean, as in the two cases referred to above, that the lawyer would have some penalty visited upon him or her (ie. a suspension) until attending to receive the reprimand.
 - b. Convocation could take the above position but make rare exceptions for certain lawyers in certain narrow situations. The lawyer in question may be expected to satisfy the onus of showing why his or her attendance should not be required before the matter is disposed of by imposition of the reprimand. The following are examples:
 - if finances of the lawyer were in issue, the ability of the lawyer to satisfy Convocation of the seriousness of the financial hardship in attending at the Society;
 - filing a medical certificate (through a third party if necessary) if health issues were given as the reason for not attending;
 - the lawyer residing out of the jurisdiction and having no intention of returning.
- The following may also be considered:
- the nature of the discipline charge, in combination with other factors mentioned here. For example, if the lawyer is charged with failing to file and completes the filings before the discipline matter is concluded, this may not only affect the penalty but how it is administered;
 - the ability of the Society to effectively arrange the imposition of the penalty by a means other than the lawyer's attendance before Convocation.¹⁶ For example, if the lawyer were practising law in another jurisdiction, arrangements may be made with the Law Society for that jurisdiction to arrange a time and place for receipt, perhaps electronically, of the reprimand;
 - the attitude of the lawyer¹⁷

¹⁶How to issue a reprimand, electronically or otherwise, in circumstances where the lawyer does not attend is a decision that perhaps cannot be made until discipline counsel's advice to Convocation on the issues relevant to reprimands and the propriety of the penalty is provided. It becomes part of the question of the efficacy of the system in addressing matters in the public interest.

¹⁷Although this may be a subjective measurement, and it is accepted that there is no issue of ungovernability when a reprimand is decided as the appropriate penalty, there may be some merit to requiring some lawyers to attend, notwithstanding their protestations, to receive a reprimand to ensure that the most effective and appropriate disposition of the case has been made.

- c. Convocation could decide on a case by case basis whether or not it will require a lawyer who has indicated an unwillingness or inability to attend to appear for the reprimand, as a function of its discretion in deciding the matter, and develop guidelines for that purpose.
42. The S.O.A.R. Sample Rules of Practice¹⁸ drafted pursuant to s. 25.1 of the *Statutory Powers Procedure Act* include a useful section on electronic hearings and "relevant factors" to be considered by the tribunal, including:
- the convenience of the parties;
 - the cost, efficiency and timeliness of proceedings;
 - avoidance of unnecessary length or delay;
 - ensuring a fair and understandable process;
 - the desirability or necessity of public participation or public access to the tribunal's process;
 - fulfilment of the tribunal's statutory mandate.
43. The following factors, some of which expand on the above, may influence the manner in which the policy is decided.

Delivery of the Reprimand

44. A reprimand can often involve not only statements from members of a discipline panel or Convocation, but questions asked of the lawyer and statements made by the lawyer in response. If the reprimand is delivered other than in person, how effective would this exchange be as a function of administering the penalty?

The Public Perception

45. There can be a high degree of interest on the part of the public in the disposition of a discipline matter, particularly on the part of a complainant who has monitored the progress of the Society's investigation and prosecution of a lawyer. These individuals may actually attend to witness the reprimand. The questions are whether justice, in the form of an appropriate sanction and appropriate delivery of the sanction to the lawyer, is done or seen to be done when a lawyer does not appear to receive a reprimand, and whether there is certainty in the public's eyes that the Society has authority over the lawyer and the lawyer is submitting to the Society's authority.

The Effect on the Law Society

46. As indicated above, the efficacy of the Society's governance role through the discipline process is relevant to this issue. The Society must be assured that through its processes, especially the disciplinary function which is accessible to and open to scrutiny by the public, it is meeting its obligations to govern in the public interest. Reference has already been made to the Role Statement and the requirements it establishes. Would the effectiveness of the Society's governance role be lessened if it did not require the member to attend for a reprimand?

¹⁸Society of Ontario Adjudicators and Regulators. These rules have not been adopted by the Law Society.

The Effect on the Lawyer

47. If it is accepted that the penalty of a reprimand by its nature is most effectively given to a lawyer in person, the impact of that penalty may be lost if the lawyer does not attend to receive it. Further, in some cases, a reprimand is issued in situations where, but for notable mitigating circumstances or where it is a first "offence", a harsher penalty would have been given. It may be crucial to the Society's exercise of its governance authority and the lawyer's appreciation and acknowledgement of that authority together with the leniency that is being exhibited, that he or she be present before Convocation to receive the reprimand.

Refusal to Attend

48. Where a member is capable of attending at the Society but will not attend, or has expressed the desire not to attend in terms of simple inconvenience, it may be difficult to justify proceeding with a reprimand without further consideration of the circumstances. The cases referred to above illustrate two situations where the Society was prepared to impose another sanction on a lawyer (a suspension) where a refusal to attend for a reprimand was either expressed or was apparent.

Convenience to the Lawyer

49. There may be situations where it may be impractical, from the lawyer's perspective, to attend at the Law Society to receive a reprimand in person. For example:
- (a) Financial Issues
If the lawyer is out of the jurisdiction and has no intention of returning, to practice law or otherwise, it is arguable that requiring a lawyer to attend is in effect an additional penalty, largely financial, to that which he or she will receive. The difficulty in deciding when this might happen arises when an attempt is made to determine what is an unreasonable distance, for example, for a lawyer to travel to attend at the Society. Would Northern Ontario qualify, or would it have to be a location on the other side or off of the continent?
 - (b) Health Problems
While a lawyer may not be suffering from a debilitating illness to the extent that he or she is immobilized, but it would require some effort to attend at the Society, the question is whether this would be a circumstance to be considered in allowing the reprimand to issue without the lawyer's attendance.

The Committee's View

50. After considering the above information, the Committee felt that in the rare circumstance where the issue of the lawyers' attendance to receive a reprimand arises, the lawyer must attend unless *compelling* circumstances as explained by the lawyer dictate otherwise. Accordingly, the Committee endorsed option b. as described below.
51. All options, however, are provided for Convocation's review.

Options and Alternatives for Decision by Convocation

52. The Committee considered the following options and alternatives in its discussion on the appropriate policy of Convocation:

- a. A lawyer must attend before Convocation or the Discipline Committee ("Committee") to receive a reprimand, failing which the lawyer will be suspended until he or she so attends;
or
- b. A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, *unless* there are compelling circumstances which would dictate otherwise. The onus rests with the lawyer to satisfy Convocation or Committee respecting the merits of those circumstances before the lawyer is permitted to receive the reprimand other than by attending at Convocation or Committee;
or
- c. A lawyer must attend before Convocation or Committee to receive a reprimand, failing which the lawyer will be suspended until he or she so attends, *unless* there are compelling circumstances which would dictate otherwise (with the onus requirement as in b. above), *provided* that the reprimand can be *effectively* administered to the lawyer, as determined by Convocation or Committee, without requiring the lawyer's attendance;
or
- d. Convocation in its discretion may decide on a case by case basis whether or not a lawyer must attend before it to receive a reprimand and thereby conclude a disciplinary proceeding, where the attendance has been made an issue by the lawyer. For these purposes, discretionary guidelines should be developed for use by Convocation and Committee.

INFORMATION

A. REPORT ON THE OPERATIONS OF THE SECRETARIAT

53. Richard Tinsley, as part of the policy governance monitoring function, reports to the Committee each month on any operational initiatives and information relevant to the jurisdiction of the Committee. Information report by Mr. Tinsley for this meeting appears at Appendix 3 to this report.

B. WORKING GROUPS OF THE COMMITTEE

54. Following from Convocation's approval of the Committee's issues list on January 24, 1997, two working groups of the Committee have been struck by the Chair. They are:
- Technology and the Discipline Process, comprised of benchers Paul Copeland, Hope Sealy and Stuart Thom. Convocation is scheduled to receive the Committee's report on this issue in May 1997.
 - Revision of the Discipline Process Rules of Procedure, comprised of benchers Gavin Mackenzie and Niels Ortved. Convocation is scheduled to receive the Committee's report on this matter in April 1997.

C. FEES ASSESSMENT

55. As reported last Convocation, the CBAO assessment of costs committee has initiated efforts to co-ordinate its response with the Law Society and the Advocate's Society to the consultations with the government on a new assessment system. The Treasurer will be communicating with representatives of these two organizations respecting a unified approach to the consultations which should begin in the next few weeks. Brock Grant, the government's representative on the project, has been made aware of the intended approach.

APPENDIX 1

RULES OF PROFESSIONAL CONDUCT 2, 3, 9 AND 16

APPENDIX 2

STATUTORY/REGULATORY PROVISIONS

Law Society Act

- s. 33(3) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in the person's absence.
- s. 34 If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel membership in the Society by disbarring the member as a barrister and striking the member's name off the roll of solicitor or may by order suspend the member's rights and privileges as a member for a period to be named or may by order reprimand the member or may by order make such other disposition as it considers proper in the circumstances.
- s. 63 ¶1 Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62, and, without, limiting the generality of the foregoing,
1. Respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members or any class of either of them and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;

Regulation 708

- s. 9(7) Where at the conclusion of the hearing of a complaint or amended complaint against a member, such complaint or amended complaint has been established to the satisfaction of the Committee and the Committee has not by order reprimanded the member, the Committee shall report in writing to Convocation setting forth a summary of the evidence at the hearing, its findings of fact and conclusions of law, if any, based thereon and its recommendations as to the action to be taken by Convocation on the complaint.
- s. 9(8) The Secretary shall,
- (a) prepare the report referred to in subsection (7) for approval by the Committee, and the Committee's approval shall be evidence by the signature thereto of the member of the Committee who presided at the hearing or in his or her absence by another member of the Committee who was present at the hearing; and

- (b) serve upon the member whose conduct is being investigated a copy of the report as so approved, a notice of the time and place of the Convocation that will consider the report, a summons requiring the member to attend thereat and a notice substantially as follows:

"If you intend to dispute any statement of fact or finding of fact contained in the attached report of the Discipline Committee at the time of its consideration by Convocation, you are required to file with the Secretary not later than the day preceding Convocation a written statement setting forth any such statement of fact or finding of fact that you intend to dispute".

Statutory Powers Procedures Act

- s. 5.2 (1) A tribunal may hold an electronic hearing in a proceeding, in accordance with its rules made under section 25.1.
- (2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
- s. 6(5) A notice of an electronic hearing shall include,
- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
- s. 7(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6(5)(c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.
- s. 9 (1.2) An electronic hearing need not be open to the public.

- (2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member there may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

s. 18

- (1) The tribunal shall send each party who participated in the proceeding, or the party's counsel or agent, a copy of its final decision or order, including the reasons if any have been given,
 - (a) by regular mail;
 - (b) by electronic transmission;
 - (c) by telephone transmission of a facsimile; or
 - (d) by some other method that allows proof of receipt, in accordance with the tribunal's rules made under section 25.1.
- (3) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

s.23(1)

A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

APPENDIX 3

INFORMATION ON SECRETARIAT DEPARTMENTS

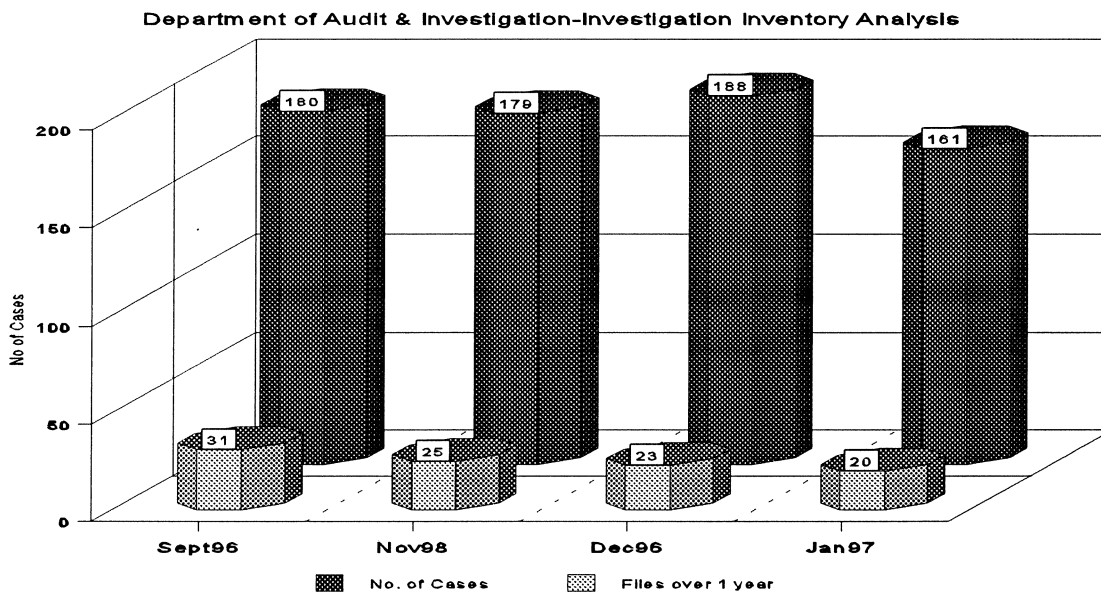
Discipline/Complaints/Audit Departments

4. *Senior Discipline Counsel Search*

The Society received 40 applications, including internal applications. 14 candidates have been interviewed to date and second interviews are being scheduled.

5. *Case Loads*

An inventory of cases before Committee and Convocation and the number of investigations in progress has been prepared. File management issues are being addressed with managers in the Discipline, Audit and Complaints Departments.



6. *Audit Files*

As the above chart shows, as at January 31, 1997, there were 161 open investigation files, down from 188 in December 1996.

28th February, 1997

There are 68 instructed but uncommenced investigations. The delay is attributable to the shift in a number of examiners to the Forms Services Unit for the month of January in response to the new forms initiative.

In the last week of January, the Forms Service Unit received 874 calls, largely related to the deadline for filing the new forms.

7. *Audit Staffing*

The job posting for two Investigation Counsel has been issued. It is hoped that the vacant positions will be filled by mid-March.

8. *Project 200*

Following on John Saso's report last month to Convocation, this operational initiative will be addressing, among other things, efficiencies to be achieved in the relevant departments. Scott Kerr, manager of Complaints, is leading a project team examining the regulatory processes. The first Project 200 report to senior management is due in June 1997.

9. *Neil Perrier*

Neil Perrier, one of the Society's discipline counsel, has accepted a position as the College of Physicians and Surgeons' first in-house counsel, and will be leaving the Society at the end of this month.

Compensation Fund

1. *1996 Statistics and Claims File Inventory and Value of Claims (see charts below)*

- number of claims closed 234
- Gross value of claims closed \$13.7 million
- At limits value of claims closed \$7.5 million
- Amount paid to claimants \$2.8 million

2. *January 1997 Statistics*

- Open claims 357
- Claims closed 23
- Amount paid to claimants \$569,000
- Gross value of claims closed \$3.3 million
- At limits value of claims closed \$946,000

Claims increased significantly in January as a result of LPIC's referral of 55 claims relating to Arnold Handelman, a disbarred lawyer, accounting for gross claims value increases of \$5.3 million (\$2.7 million at limits). In addition, there were several new claims attributable to one lawyer involving significant real estate losses, with a gross and at limits value of \$333,000.

(See graph of 1996 and 1997 Statistics in Convocation file)

.....

It was moved by Mr. DelZotto, seconded by Mr. Aaron that the new Rule 30 be adopted.

Carried

It was moved by Mr. Gottlieb, seconded by Mr. Bobesich that the words "without supervision" be deleted from sub paragraphs (a), (b) and (c) under the heading of number 3 of the proposed new Rule.

Lost

The item on Attendance of Lawyers to Receive Reprimands was deferred.

COMPETENCE TASK FORCE - PROPOSED TERMS OF REFERENCE

The Treasurer presented the proposed terms of reference of the Task Force.

REPORT TO CONVOCATION
FEBRUARY 28, 1997

COMPETENCE TASK FORCE - PROPOSED TERMS OF REFERENCE

Purpose of Report: Decision-Making

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A. NATURE AND SCOPE OF THE ISSUE TO BE ADDRESSED

1. January 24, 1997 Convocation gave preliminary approval to the formation of a Task Force on Competence. The Treasurer advised Convocation that at the February Convocation it would be provided with detailed terms of reference for the Task Force, including a framework for its analysis, time lines, membership, and discussion of budgetary issues and a possible consultation process.
2. The Treasurer convened a Task Force Working Group ("the working group") to develop a proposal for terms of reference. Participants have included the Treasurer, benchers Robert Aaron, Carole Curtis, Mary Eberts, and Derry Millar, and staff members Susan Binnie, Katherine Corrick, Sophia Sperdakos, Stephen Traviss, Alan Treleaven, and James Varro.

3. Convocation is requested to consider whether the proposed terms of reference set out in this report are acceptable, and to provide any direction it feels is appropriate to the Task Force.

B. BACKGROUND

4. At the January 1997 meetings of the Admissions & Equity Committee, the Professional Development and Competence Committee, and the Professional Regulation Committee, each of the committees identified the need to review and assess the Law Society's appropriate role in competence-related matters, both pre-call and post-call.
5. The Treasurer considered that the most effective way to address the related issues each committee wished to study was to refer them to a Task Force, which would have clearly articulated terms of reference. In particular, the terms of reference should frame the broad reasons for which the issue is being studied.
6. In providing Convocation with detailed terms of reference for its approval, this report:
 - a) places the Task Force's mandate in some context by:
 - (i) considering how the Law Society's mission statement and commentaries speak to its role in the competence of the profession; and
 - (ii) outlining the Law Society's current approach to competence and the difficulties that have emerged from that approach.
 - b) proposes what the Task Force on Competence should seek to address and in what stages; and
 - c) outlines the organizational framework for the Task Force, including:
 - (i) size and composition;
 - (ii) what type of consultation process might be pursued;
 - (iii) time lines for the Task Force; and
 - (iv) discussion of budgetary issues.

C. CONTEXT FOR THE TASK FORCE'S MANDATE

The Law Society's Mission Statement

7. The Law Society's mission statement states, in part, that the Law Society "exists to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct".
8. The Law Society is, therefore, responsible to the people of Ontario to ensure that lawyers in Ontario are, among other things, learned and competent.
9. The commentary to the mission statement asserts that programs designed with these goals in mind, "insofar as they involve the governance of the profession, can be said to fall squarely within the essential activities of the Law Society". It further states that programs that serve the ends of ensuring that lawyers meet high standards of learning and competence serve both the public and the profession.
10. The following further commentary to the role statement illustrates the breadth of the Law Society's acceptance of its competence-related responsibility:

The Law Society has a public obligation, arising from [its] monopoly, to ensure that the people whom it admits to membership and on whom it confers the right to practise law, are indeed fit to practise and competent to offer legal services. The Law Society also has an obligation to ensure that its members continue to be fit, qualified and competent. A member of the public will not necessarily be in a position to evaluate the competence of a person who claims to be qualified to practise law. Membership of the Law Society of Upper Canada certifies to the world at large that the person is fit, qualified and competent...Competence to perform legal tasks undertaken on a client's behalf is also specified as an ethical requirement for the practice of law in the Society's *Rules of Professional Conduct*. Practise at an unsatisfactory standard of competence may therefore attract disciplinary sanctions.

11. The challenge to the Law Society that flows from the mission statement stems primarily from two factors.
 - a) The first is that while a broad policy statement on competence is important for framing issues, it is ineffective as a tool without a clear articulation of the specific ends it seeks to achieve and the manner in which it will pursue those ends.
 - b) The second is that the assessment of what constitutes a competent professional is not a static one. It fluctuates with both the context in which the issue is considered, and with the changing face of the profession and the society in which lawyers function. This means that the definition of competence must always be seen to be evolving, and any definition must be capable of adapting with the times.

The Law Society's Current Approach to Competence

12. The Law Society currently devotes most of its time, services, and resources to programs explicitly or implicitly intended to address competence-related issues. Programs and activities relate to both pre-call and post-call competence.
13. A sample list of programs demonstrates that the Law Society has assumed a role in all aspects of competence. Through programs such as the bar admission course and articling, continuing legal education, specialist certification, practice checklists, start-up workshops, professional conduct, practice advisory, practice review, requalification, discipline and complaints the Law Society engages in programs that seek to develop, deliver, maintain, improve, and enforce competence. Programs range in nature from preventive, educational, remedial, and supportive, to regulatory and disciplinary.
14. Although all the programs operate under a similar competence-related umbrella, each one has tended to develop in its own context. The effect of this approach is that there is no unifying theory behind the various approaches, no overall articulated goal or methodology, and no Law Society wide analysis of whom the programs are intended to serve, and whether they are reaching the intended audience.

15. In particular, there is no sufficiently useful definition of competence from which the Law Society can work to meet its obligation to the public, or from which the members of the legal profession can assess their compliance with requirements placed upon them by the Law Society.¹
16. The issues raised by each committee in January, which led to the proposal for a Task Force, demonstrate the extent to which benchers are concerned with developing a more coherent approach to competence.
 - a) In its proposal for further study of entrance requirements to the bar of Ontario, the Admissions and Equity Committee identified the need to develop first "an appropriate definition for entry level competence";
 - b) The Professional Development and Competence Committee identified the need to elaborate on and clarify the place of competence in the mission statement;² and
 - c) The Professional Regulation Committee indicated the need to develop a policy on whether to discipline for incompetence. It viewed discussion of this issue as being related to developing a definition of competence.
17. The concerns expressed by the committees arise from a belief that the attention the Law Society devotes to its responsibility for competence needs to be refocused, that the approach to competence must be consistent with the Law Society's priorities, and that it must be capable of being interpreted in a consistent and coherent manner. A clear definition of competence, developed with a view to the context within which the Law Society operates, could provide clarity, guidance, and consistency to the profession, benchers, staff, and the public.

D. HOW THE TASK FORCE ON COMPETENCE SHOULD PROCEED

Working Group Consensus on Framework for Terms of Reference

18. Keeping in mind that the Task Force should have some freedom to develop the details of its terms of reference, the working group has developed a proposal for Convocation's approval.
19. Although competence has always been a concern of the legal profession, it is only in recent years that significant attention has been paid to the development of a framework for assessing professional competence, and on articulating ways to acquire and maintain it.

¹Rule 2 of the Rules of Professional Conduct stipulates that a lawyer's duty to the client is "to be competent to perform any legal services undertaken on the client's behalf". Although this statement is fundamental, it is so broad as to do little more than create an imperative with little practical guidance. The commentary to the Rule provides some indicia of competence, but is inconsistent in its structure and approach.

²The Committee asked the following questions:

- (i) What does the Law Society mean by the term *competence* in its Role Statement?
- (ii) What steps should the Law Society take to ensure that the people of Ontario are served by lawyers who meet high standards of competence?
- (iii) What steps should the Law Society take to monitor the competence of its members and offer quality assurance to the public?

Time Lines for Phase I of the Task Force

March 1997	April 25 Convocation	June Convocation	November Convocation
<i>Meetings begin</i>	<i>Provide further information for Convocation, including budgetary, and consultation.</i>	<i>Working Definition of Competence</i>	<i>Final Report on Phase I and Proposal for Phase II</i>

Budgetary Issues for Phase I of the Task Force

30. The working group has considered the budgetary needs of Phase I of the Task Force, in a preliminary way. Should Convocation accept the terms of reference for Phase I, as set out here, the working group anticipates that the costs for Phase I (leaving aside the consultation issue) will be limited to meeting costs and costs of materials. It is not yet known how many of the members of the Task Force will be from outside of Toronto, but it is anticipated that some meetings may be conducted by teleconference, and that overall the Task Force will have approximately 10-15 meetings.
31. No new staff resources are contemplated, as staff to the Task Force will come from the Policy Secretariat and the Department of Education.
32. As set out above it is appropriate to leave the issue of consultation process and any attendant budget issues to the Task Force itself, which will bring this issue to Convocation for its consideration at the April 25, 1997 Convocation. Meeting costs for the Task Force are included in the already allocated "bencher meeting expenses" line item of the 1997 Policy Secretariat budget.

Convocation's Consideration of the Terms of Reference

33. The working group proposes that Convocation consider the terms of reference proposed in this report and that it:
 - a) determine whether they reflect an appropriate framework for the Task Force on Competence; and
 - b) determine whether it wishes to provide any further direction to Phase I of the Task Force.

.....

It was moved by Mr. Aaron, seconded by Mr. Millar that the terms of reference be adopted.

Carried

ADMISSIONS AND EQUITY COMMITTEE POLICY REPORT

Meeting of February 13th, 1997

Mr. Armstrong presented for Convocation's approval the items on the Phase One Requirements for Standing and the Amendment to the Transfer Examination Policy.

ADMISSIONS AND EQUITY COMMITTEE
FEBRUARY 13, 1997

REPORT TO CONVOCATION

Purpose of Report: Decision-Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee ("the Committee") met on February 13, 1997. Committee members in attendance were Philip Epstein (Chair), Robert Armstrong (Vice-Chair), Nancy Backhouse (Vice-Chair), Nora Angeles, Denise Bellamy, Marshall Crowe, Allan Lawrence, Frank Marrocco, and Harriet Sachs. Staff in attendance were Alan Treleaven, Marie Fortier, Mimi Hart, Ian LeBane, Lynn Silkauskas, and Sophia Sperdakos.
2. The Committee is reporting on two substantive matters it considered. It seeks Convocation's approval of its proposals respecting the following matters:
 - Annual Approval of Phase One Requirements for Standing; and
 - Amendment to Transfer Examination Policy.

APPROVAL OF ANNUAL PHASE ONE REQUIREMENTS FOR STANDING

A. NATURE AND SCOPE OF THE ISSUE

1. The Phase One Requirements for Standing govern the requirements for passing Phase One of the Bar Admission Course. This is the one month skills-based program that precedes articling.

2. The Admissions and Equity Committee considered the draft Phase One Requirements for Standing and proposes that:
 - a) Convocation approve the Phase One Requirements for Standing contained in Appendix 1 to this report; and,
 - b) in addition, that Convocation approve the Requirements for Standing without the necessity of their being returned annually for approval of Convocation unless changes are being recommended.

B. BACKGROUND/OPTIONS

3. Section 10 of the *Law Society Act* provides that benchers are to govern the affairs of the Society, including "the call of persons to practise at the bar...and their admission and enrolment to practise as solicitors". Since fulfilling the requirements of the Phase One Requirements for Standing is a necessary step toward being admitted to the bar, approval of the Requirements for Standing is within the jurisdiction of Convocation.
4. The former Legal Education Committee and the Admissions and Equity Committee have considered the Phase One Requirements for Standing annually and recommended their approval to Convocation.
5. The Phase One Requirements for Standing set out the rules concerning the passing standard for the course, the consequences of failure, the attendance requirement, guidelines for granting exceptions to the attendance requirement, grounds upon which special accommodation is granted, and consequences to students who violate applicable rules.
6. The Phase One Requirements for Standing have contained essentially the same requirements in each of 1994, 1995, 1996, and for the proposed 1997 Requirements.
7. The Committee has reviewed the proposed Requirements for Standing, set out in Appendix 1, and proposes that they be approved.
8. The Committee is of the view that annual approval of the Phase One Requirements for Standing should be unnecessary unless there are changes to them that affect their substantive content. Provided the content remains essentially the same, Convocation's authority over call to the bar requirements remains in place without it having to review the requirements annually.
9. For this reason, the Committee proposes that Convocation approve the Phase One Requirements for Standing and state that the Requirements do not need to be returned to Convocation annually for approval unless changes to the Requirements of Standing are being recommended.

AMENDMENT TO TRANSFER EXAMINATION POLICY

A. NATURE AND SCOPE OF THE ISSUE

1. The Admissions and Equity Committee's mandate includes developing, for Convocation's approval, "policies to govern the transfer of candidates who are members of other governing bodies of the legal profession within Canada and elsewhere", as well as "policies to ensure the accreditation process operates in a reliable, fair, open and equitable manner".

2. At its February meeting the Committee examined Convocation's transfer examination policy, revised and adopted by Convocation in November 1995, and is of the view that an aspect of the transfer examination policy should be amended to conform with the provisions in the Phase Three Requirements for Standing for the Bar Admission Course.

B. BACKGROUND

Transfer Examination Policy

3. Section 4 of Regulation 708 of the *Law Society Act* sets out the conditions to be met by candidates for admission to the Ontario bar by transfer from another province. Section 4(1)2 provides that candidates "must pass the transfer examination prescribed by Convocation".
4. In November 1995 Convocation adopted the report of the former Admissions and Membership Committee recommending changes to the transfer examination policy. This is set out at Appendix 2. The relevant provisions are that:
 - a) candidates are to write examinations in 6 subject areas;
 - b) candidates who fail may sit a supplemental in any of the six subject areas failed at the next sitting of the transfer examination; and
 - c) candidates failing one or more supplementals are required, should they wish to continue with the transfer, to complete successfully the section(s) of Phase Three relating to the subject area(s) failed.
5. Convocation, therefore, has provided that a candidate who fails a supplemental examination must take the relevant course before being entitled to write the examination again. It is this mandatory provision in the transfer examination policy that the Committee has reviewed.

C. OPTIONS ANALYSIS

The Issue for Convocation's Consideration

6. The Committee's concern with the transfer examination policy requirement that a candidate who fails a supplemental examination must take the relevant course before being entitled to write the examination again, is that there is no discretion to provide relief from the requirement on significant medical or compassionate grounds.
7. This is in marked contrast to the Phase Three Requirements for Standing, which provide that a candidate who fails a supplemental examination may apply in writing to the Registrar for permission to write a second supplemental examination. The application may be granted only if the Registrar is satisfied that the failure is explained by a "significant medical or compassionate reason".
8. The result of this discrepancy is that two candidates writing the same supplemental examination, suffering from the same medical or compassionate circumstances, and failing the supplemental examination, may be treated differently simply because one is a transfer candidate and the other a Bar Admission Course student.
9. The Committee is of the view that where there are significant medical or compassionate circumstances that may have affected a candidate's ability to perform on an examination, it would be inappropriate to treat Bar Admission Course and transfer candidates differently.

10. It is clearly within Convocation's role of "governing the legal profession" to determine the requirements that candidates for admission to the Bar of Ontario must satisfy and modify them where appropriate. In governing the profession "in the public interest" Convocation must be satisfied that its requirements for accreditation operate openly, fairly and, reliably.

The Committee's Proposal

11. The Committee recommends that Convocation amend a portion of its transfer examination policy to provide discretion to permit a candidate to write a second supplemental examination where the Registrar is satisfied that the failure of the examination is explained by a significant medical or compassionate reason.
12. The Committee proposes that the form of the motion for Convocation be as follows:

MOVED THAT THE TRANSFER EXAMINATION POLICY BE AMENDED [AS SET OUT IN THE UNDERLINED TEXT BELOW] TO PROVIDE THAT:

- a) Subject to the provisions set out in (b) candidates failing one or more supplementals be required, should they wish to continue with the transfer, to complete successfully the section(s) of Phase Three relating to the subject area(s) failed. This would include payment of the prescribed fee for each session attended; mandatory attendance in seminar sessions, satisfactory completion of group assignments and examination(s).
- b) A candidate who fails a supplemental examination may apply in writing to the Registrar for permission to write a second supplemental examination. The Registrar may grant the application only if satisfied that the failure is explained by a significant medical or compassionate reason that is not employment-related. The Registrar may require the candidate to provide documents substantiating the application.

Options for Convocation

13. Convocation must decide:
 - a) whether to approve an amendment to the 1995 Transfer Examination Policy; and
 - b) whether to approved the language of the proposed amendment.

APPENDIX 1

REQUIREMENTS FOR STANDING PHASE ONE - 1997

40TH BAR ADMISSION COURSE

Definitions

1. In these requirements for standing,
 - (1) "Director" includes a person designated by the Director of Bar Admissions to perform the duties of the Director.
 - (2) "instructional day" means any teaching day but does not include Days 5, 16, 17 and 19.

- (3) "Registrar" includes a person designated by the Registrar to perform the duties of the Registrar.
- (4) "unit" means any section of Phase One: Professional Responsibility and Practice Management, Interviewing, Legal Research, Legal Writing, Alternative Dispute Resolution, or Advocacy.

Pass Standing

- 2. To achieve a pass standing in Phase One, a student must
 - (1) participate fully and in a professional manner,
 - (2) satisfy the attendance requirement, and
 - (3) obtain at least nine points, with at least one point in each unit that has a skills assessment.

Fail Standing

- 3. (1) A student who does not achieve a pass standing will receive a fail standing.
- (2) Subject to section 7(1) and (2), a student who receives a fail standing must repeat Phase One in its entirety before commencing Phase Three.
- (3) A student who receives a fail standing a second time may repeat Phase One again only upon satisfying the Director by written application that a significant change in circumstances has occurred that will likely result in the successful completion of Phase One.

Attendance Requirement

- 4. (1) A student is entitled to be absent for no more than two full or partial instructional days.
- (2) A student may not be absent for
 - (a) more than one of the two instructional days of Interviewing,
 - (b) the day of Legal Research,
 - (c) more than one of the two days of Alternative Dispute Resolution, or
 - (d) Day 15 of Advocacy.

Skills Assessments

- 5. (1) A student may obtain up to three points for the skills assessments in each of the following units, to a maximum of 15 points:
 - (a) Professional Responsibility and Practice Management (oral analysis of an ethical problem),
 - (b) Interviewing (client interview),
 - (c) Legal Research (research memorandum),
 - (d) Legal Writing (letter to a client and affidavit), and
 - (e) Advocacy (civil motion and sentencing submissions).
- (2) Points for each skills assessment will be allocated as follows:
 - (a) honours - three points,
 - (b) pass - two points,
 - (c) marginal - one point, and
 - (d) fail - zero points.

- (3) Points will be averaged for the two skills assessments in the Legal Writing unit and points will be averaged for the two skills assessments in the Advocacy unit, to a maximum of three points in each unit. Fractions will not be rounded to whole numbers.
- (4) A student who does not submit or complete a skills assessment by the prescribed deadline will have one point deducted from the points allocated to that skills assessment, to a minimum of zero.
- (5) A student who does not submit or complete a skills assessment by the last day of the student's Phase One session will receive a fail grade for that skills assessment.

Relief from Consequence

- 6. (1) Upon written application, the Registrar may relieve the student from the consequence of unpermitted absence or late submission or completion of a skills assessment only if satisfied that the absence or lateness is
 - (a) an exceptional occurrence, and
 - (b) due to a significant medical or compassionate reason that is not employment-related.
- (2) The Registrar may require the student to provide documents substantiating the application.
- (3) The Registrar's decision will be made at the conclusion of Phase One.
- (4) Where the Registrar has granted a student relief from the consequence of unpermitted absence or late submission or completion of a skills assessment, the Registrar may require the student to complete and pass special course work.

Supplemental Course Work

- 7. (1) A student who receives a fail standing may complete supplemental course work if the student
 - (a) satisfies the attendance requirement, and
 - (b) obtains at least six points, with at least one point in each of three units with a skills assessment.
- (2) If a student does not satisfy the requirements of subsection (1)(a), but satisfies the requirement of subsection (1)(b), the Registrar may, upon written application by the student, permit the student to complete supplemental course work on the basis of an overall strong performance in Phase One.
- (3) A fail standing will become a pass standing if the student obtains a pass before the commencement of Phase Three in all supplemental course work.
- (4) Supplemental course work will be graded on a pass or fail basis only.

Fail Standing: Regrading

- 8. (1) A student who obtains a fail standing may apply to have a skills assessment regraded.

- (2) The application for regrading must be on the prescribed form, and submitted to the Bar Admission Course office no later than ten business days after the day of release of the student's overall Phase One standing, together with the documents listed on the form and a fee of \$53.50 for each regrading application, which is refundable if the grade is raised.
- (3) A separate form must be submitted for each regrading application.
- (4) The student may include on the form a concise submission on the merits of the student's performance. No other submission will be considered.
- (5) The result on the regrading is final, and reasons for the result will not be provided.

Application for Accommodation

9. (1) A student who is disadvantaged by disability or family status in completing Phase One may apply in writing to the Registrar for accommodation.
- (2) "Family status" means the status of being in a parent and child relationship.
- (3) The written application must propose the accommodation intended to minimize the disadvantage.
- (4) A student must apply in sufficient time to permit the accommodation to be made.
- (5) The Registrar may require the student to provide documents substantiating the application.
- (6) The Registrar will advise the student in writing what accommodation, if any, has been granted.

Academic Integrity

10. (1) A student must not obtain or give improper assistance in completing skills assessments. "Improper assistance" includes copying any part of another person's work, or consulting or collaborating with another person beyond the initial discussion stage of preparation, except as expressly permitted by written instructions.
- (2) Contravention of section 10(1) may result in a fail standing in Phase One and disciplinary action pursuant to section 38 of the *Law Society Act*.

APPENDIX 2

1995 AMENDMENT TO TRANSFER EXAMINATION POLICY

(Copy of Admissions and Membership Committee Report in Convocation file)

It was moved by Mr. Armstrong, seconded by Mr. Crowe that the Phase One Requirements for Standing for passing Phase One of the Bar Admission Course be approved.

Carried

It was moved by Mr. Armstrong, seconded by Mr. Crowe that the transfer examination policy be amended to provide discretion to permit a candidate to write a second supplemental examination where the Registrar is satisfied that the failure of the examination is explained by a significant medical or compassionate reason.

Carried

RULE 56 AMENDMENT

THE LAW SOCIETY OF UPPER CANADA

NOVEMBER 29, 1996 MEETING OF CONVOCATION: OUTSTANDING BUSINESS

REPORT TO CONVOCATION FROM THE NOVEMBER 14, 1996 MEETING
OF THE PROFESSIONAL REGULATION COMMITTEE:

ADOPTION OF THE "1996 FISCAL MEMBERSHIP INFORMATION FORM"

February 17, 1997

1 ACTION REQUESTED OF CONVOCATION

1.1 Convocation is asked,

1. to amend Rule 56 of the Rules made under subsection 62(1) of the *Law Society Act* to provide for the use of the Membership Information Form; and
2. to amend the "1996 Fiscal Membership Information Form", adopted by Convocation on November 29, 1996, to provide that the year specified in the title of the Form should be altered from year to year so as to identify the year in question.

1.2 The following form of motion is suggested. (The motion is based on one that was originally contained in the report to Convocation from the November 14, 1996 meeting of the Professional Regulation Committee (presented to Convocation on November 29, 1996). The motion reflects the debate that occurred in Convocation in respect of the original motion, and omits that part of the original motion that was voted on by Convocation.)

MOVED, pursuant to the authority granted by paragraph 27 of subsection 62(1) of the *Law Society Act*:

1. That subrule 56(2) be revoked and replaced by the following:

56. (2) The certificate required to be filed with the Society by a member who meets the requirements of clauses (a) and (b) of subsection 16(3) of the said Regulation 708 shall be included in the Membership Information Form appended to these rules.
2. That the year specified in the title of the Membership Information Form adopted by Convocation on November 29, 1996 be altered from year to year so as to identify the year in question.

2 BACKGROUND

- 2.1 At the November 29, 1996 meeting of Convocation, the Professional Regulation Committee asked Convocation, *inter alia*,
 1. to approve a new "Fiscal 1996 Membership Information Form";
 2. to provide that the year specified in the title of the Membership Information Form should be altered from year to year so as to identify the year in question; and
 3. to amend Rule 56 to provide for the use of the Membership Information Form.
- 2.2 There was a debate in Convocation concerning the Membership Information Form. The following motions relating to the form were voted on (and carried):
 1. A motion that the Membership Information Form (together with other new forms) be converted to machine readable form.
 2. A motion that an optional question, providing members with the opportunity to indicate that they are a member of a minority group, be added to the Membership Information Form.
 3. A motion to adopt the Membership Information Form, as amended.
- 2.3 Comparing the motions voted on by Convocation with the request for action put to Convocation by the Professional Regulation Committee, it remains for Convocation,
 1. to provide that the year specified in the title of the Membership Information Form should be altered from year to year so as to identify the year in question; and
 2. to amend Rule 56 to provide for the use of the Membership Information Form.
- 2.4 An extract from the report of the November 14, 1996 meeting of the Professional Regulation Committee (without appendices) is attached. An extract from the minutes of the November 29, 1996 meeting of Convocation is also attached.

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

- (1) Extract from the Report of the November 14, 1996 Meeting of the Professional Regulation Committee.

28th February, 1997

(2) Extract from the Minutes of the November 29, 1996 Meeting of Convocation.

It was moved by Mr. Wilson, seconded by Mr. Millar that Rule 56 of the Rules be amended to provide for the use of the Membership Information Form and to amend the "1996 Fiscal Membership Information Form" to provide that the year specified in the title of the Form should be altered from year to year so as to identify the year in question.

Carried

POLICY REPORT DEFERRED

The Professional Development and Competence Committee Policy Report re: Transitional Specialist Certification Approval Process was deferred.

CONVOCATION ROSE AT 4:45 P.M.

Confirmed in Convocation this 4 day of April 1997.


Treasurer