

MINUTES OF CONVOCATION

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

PRESENT:

The Treasurer (Paul S. A. Lamek), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Curtis, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Graham, Hickey, Hill, Howie, Howland, Kiteley, Lawrence, Lax, Manes, Mohideen, Moliner, Murray, S. O'Connor, Palmer, Pepper, Peters, Ruby, Scace, Sealy, Strosberg, Thom, Topp, Weaver and Yachetti.

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IN PUBLIC

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TREASURER'S COMMENTS

The Treasurer paid tribute to The Honourable Chief Justice Frank W. Callaghan, who passed away on February 23rd, 1994.

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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Cass, seconded by Ms. Weaver that the Reports listed in paragraph 3 of the Agenda (Reports taken as Read) excluding Legal Education - C.-C.2.2, Item C.-C.1.3 - Equity in Legal Education and Practice, Item B.-1. - Lawyers Fund for Client Compensation, Schedule A (numbers 8. & 10.) - Clinic Funding, Item C.-1. - Communications and Item A.-A.4.1 (Schedule A) - Legal Aid, be adopted.

Carried

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

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CALL TO THE BAR

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

John Joseph Edward Barrack	35th Bar Admission Course
Elizabeth Greer Beattie	35th Bar Admission Course
Linda Anne Bronicheski	35th Bar Admission Course
John Morys Caccia	35th Bar Admission Course
Fiona Michele Davis	35th Bar Admission Course
Nancy Elaine Lands	35th Bar Admission Course
Michael Shard	35th Bar Admission Course
Paramdeep Singh	35th Bar Admission Course
Hai Ou Wang	35th Bar Admission Course

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COMMITTEE REPORTS

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994 at 11:30 a.m., the following members being present: A. Feinstein (Acting Chair), L. Brennan, C. Campbell, S. Elliott, D. Murphy and P. Peters. The following members of the County and District Law Presidents' Association Executive were also in attendance: D. DiGiuseppe, S. Foley, R. Gates, M. Hornseth, M. J. Morissette, M. O'Dea and R. Sonley. Staff in attendance was: A. John (Secretary).

1. ROLE STATEMENT

In preparation for a full discussion of this topic at the May 1994 Plenary Session, the Committee asked for data on the composition and mandate of various Departments, Committees and Subcommittees of the Law Society.

The Chair of the Unauthorized Practice Committee was present and advised the County District Law Presidents' Association Executive of the current review being undertaken concerning prosecuting of non-lawyers under s.50 of the Law Society Act. The views of members are being sought through the County and District Law President's Association before the March 1994 meeting of the Unauthorized Practice Committee.

25th February, 1994

2. ERRORS AND OMISSIONS LEVY

The Chair of the Insurance Committee reported on discussions to examine the structures and policies for the new insurance company. In addition, he asked for information which would assist the Insurance Committee in its efforts to reduce the number of claims. Such submissions are requested before February 24, 1994.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

R. Bragagnolo
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

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

H. Strosberg (Chair), D. O'Connor, S. Goudge, N. Graham, C. Hill, V. Krishna, R. Manes, M. Martin, D. McPhadden, F. Mohideen, M. Moliner, C. Ruby, M. Somerville, S. Thom, R. Yachetti.

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

A.
POLICY

A.1. BENCHERS GIVING EXPERT EVIDENCE AS WITNESSES IN DISCIPLINE PROCEEDINGS

A.1.1. Your Committee considered whether there should be a policy which governs the activities of Benchers in giving expert evidence in Discipline proceedings.

A.1.2. After discussion, your Committee recommends to Convocation that it conclude that Benchers be discouraged from giving expert evidence in all hearings of the Law Society.

25th February, 1994

B.
ADMINISTRATION

B.1. AMENDMENTS TO THE REGULATIONS TO REFLECT CHANGES IN THE BANKRUPTCY AND INSOLVENCY ACT

B.1.1. The Staff Trustees' Office suggested amendments to the Regulations to reflect changes in the Bankruptcy and Insolvency Act. Eileen McIntyre, Staff Trustee, addressed the Committee on this issue.

B.1.2. After discussion, your Committee approved the creation of a Sub-Committee to consider the various issues which this item raises, including revisiting the question of whether it is appropriate to have such a rule, and to report its findings to the Committee.

B.2. DISCIPLINE PROCEEDINGS - SOLICITOR UNGOVERNABILITY

B.2.1. In a number of cases each year, disciplinary proceedings are initiated against a lawyer in circumstances where, either through the present conduct of a lawyer or, the history of the lawyer's dealings with the Law Society, there is evidence that the lawyer is ungovernable.

B.2.2. After discussion as to the various approaches to be employed in respect of evidence of ungovernability, the Committee resolved that a memorandum of the views expressed be prepared for further consideration at the next meeting of the Committee.

C.
INFORMATION

C.1. REPORT OF PRIORITIES AND PLANNING SUB-COMMITTEE - BUDGET FOR FISCAL YEAR 94/95

C.1.1. Consideration of proposed budget requirements was deferred to a future meeting.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

H. Strosberg
Chair

THE REPORT WAS ADOPTED

25th February, 1994

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994, the following members being present: Vern Krishna, Q.C. (Chair), Michael Hickey, Fatima Mohideen, Julaine Palmer, Tony Keith, Guy Pratte. Also in attendance: Christine Wackermann

C.
INFORMATION

1. 1994-1995 Budget

Your Committee reviewed the 1994-1995 French Language Services budget. The Committee is continuing to review the budget and has to resolve certain resource issues.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

V. Krishna
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Le Comité s'est réuni le jeudi 10 février 1994. Étaient présents M^c Vern Krishna, c.r. (président), M^c Michael Hickey, M^c Fatima Mohideen, M^c Julaine Palmer, M^c Tony Keith, M^c Guy Pratte et M^{me} Christine Wackermann.

C.
INFORMATION

Budget de 1994-1995

Le Comité a commencé à examiner le budget de 1994-1995 des Services en

25th February, 1994

français. Il poursuivra ses débats et devra résoudre certains problèmes de ressources.

Fait le 25 février 1994.

Le président,

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Finkelstein, Hickey, Cass, Howie, McKinnon, Wardlaw, Epstein, Feinstein and Ms. Elliott and Palmer.

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

ITEM

1. DIRECTOR'S MONTHLY REPORT

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

2. DIRECTOR'S BUDGET RECONCILIATION REPORT

The Director's budget reconciliation report for the twelve month period ending December 31, 1993 is attached as Appendix "B".

3. DESIGNATED PARTIES PROGRAM

The above program provides for notification to firms, through designated representatives, of complaints matters, disciplinary proceedings and professional liability insurance claims involving firm members. Participation is voluntary and firms may access this service by request. In its January 1994 Report to Convocation, the Discipline Committee recommended that the Profession be notified that unless firms expressly advise of their wish not to participate in the notification program, designated firm members would receive notice of such matters. The Insurance Committee supports the recommendation of the Discipline Committee.

25th February, 1994

4. OUTSTANDING ITEMS

a) Transaction Based Levy

At the December 1993 Convocation, Abe Feinstein proposed a six-point plan for deficit reduction including a recommendation to introduce a transaction fee based levy on a broad range of legal services. The purpose of the plan would be to spread the cost of the insurance program over a high volume of transactions such that the charge per transaction would be modest, while generating considerable revenue to reduce both the deficit and members' individual levies.

Convocation adopted a motion that the Committee investigate such a transaction based levy with a view to reporting to Convocation in February 1994. Your Committee has created a Subcommittee consisting of Messrs. Feinstein, Finkelstein, Wardlaw, Howie and Ms. Elliott to consider the feasibility and parameters of a transaction based levy, and will report further on this subject after the Subcommittee has tabled its findings and recommendations.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

C. Campbell
Chair

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

- Item 1. - Copy of the Director's Monthly Report. (Appendix "A" (7 pages))
- Item 2. - Copy of the Director's budget reconciliation report for the 12 month period ending December 31, 1993. (Appendix "B")

THE REPORT WAS ADOPTED

DRAFT MINUTES - January 27 and 28, 1994

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

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

Also present: A. Brockett, E. Spears.

A.
POLICY

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

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

A.1.2. The package is to include amendments to implement reforms to the complaints, discipline and standards procedures, various other amendments to the *Law Society Act* approved by Convocation between September 1989 and January 1994, and any other amendments to the act that Convocation may approve prior to submission of the package to the Attorney General.

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

A.1.3.1. On the request of the Committee, the Secretary has convened a Staff Working Group comprising the following members of staff: Meg Angevine, Michael Brown, Scott Kerr, Sue McCaffrey, Jim Yakimovich, Andrew Brockett and Elliot Spears. The Staff Working Group is charged with the task of reviewing the amendments to implement reforms to the complaints, discipline and standards procedures with a view to preparing a list of questions arising from the amendments that need to be answered by benchers and a list of changes and additions to the amendments that will be needed if the amendments are to be the statutory authority for the complaints/discipline/standards work of the Law Society over the next ten years.

A.1.4. Other Amendments to the Law Society Act (Proposed Amendments: Part B)

A.1.4.1. Attached to this report, as Attachment A, is a document entitled "Proposed Amendments: Part B". This document lists, in tabular form, the precised wording of all amendments to the *Law Society Act*, other than the amendments to implement the complaints, discipline and standards procedures, which have been approved by Convocation since September 1989.

A.1.4.2. Attached to this report, as Attachment B, is a document entitled "Executive Summary". This document summarizes all amendments to the *Law Society Act*, other than the amendments to implement the complaints, discipline and standards procedures, which have been approved by Convocation since September 1989.

25th February, 1994

A.1.4.3. Your Committee requests Convocation to approve the documents at Attachments A and B for use by the Treasurer in his discussions with provincial legislators.

A.1.4.4. At March Convocation, your Committee expects to present an executive summary of the proposed amendments to the *Law Society Act* to implement the complaints, discipline and standards procedures. The precise wording of the complaints/discipline/standards amendments will not be ready at the time of the March Convocation.

A.1.4.5. Some members of your Committee have suggested that an executive summary of the complaints/discipline/standards amendments should not be provided to legislators until the precise wording of the amendments has been approved by Convocation.

A.1.5. Amendments to the *Law Society Act* Approved by Convocation Prior to September 1989

A.1.5.1. Your Committee is reviewing all amendments to the *Law Society Act* which were approved by Convocation between January 1977 and September 1989, and submitted to the Attorney General but not acted upon. Once the review is concluded, the Committee will advise Convocation.

A.1.6. Amendments to the *Solicitors Act*

A.1.6.1. The contingency fee scheme approved by Convocation in May 1988 and July 1992 will require amendments to the *Solicitors Act*. Certain minor amendments to the *Solicitors Act* will also be necessary when the incorporation provisions of the *Law Society Act* come into force.

A.1.6.2. Your Committee proposes to retain outside counsel to draft the amendments to the *Solicitors Act*.

A.2. LAW SOCIETY ACT: SECTION 36.1: AMENDMENT TO PROVIDE FOR CANCELLATION OF MEMBERSHIP OF MEMBER SUSPENDED FOR NON-PAYMENT OF THE DEDUCTIBLE PORTION OF INSURANCE CLAIM PAYMENTS; AMENDMENT TO DELETE REFERENCE TO TIME WHEN CONVOCATION MAY CANCEL MEMBERSHIP PURSUANT TO SECTION

A.2.1. Recommendation

A.2.1.1. That the text of the proposed section 36.1 of the *Law Society Act* adopted by Convocation on March 26, 1993 be amended to read as follows:

If a member whose rights and privileges have been suspended pursuant to section 36 fails to pay, within twelve months of the date of suspension, all fees and levies that were payable to the Society, or the deductible portions of all insurance claim payments payable under the Society's professional liability insurance plan, at the time of suspension, Convocation may by order cancel his or her membership.

[Amended text underlined.]

A.2.2. Explanation

A.2.2.1. On March 26, 1993, Convocation adopted the recommendation of the Legislation and Rules Committee that the *Law Society Act* be amended by adding thereto section 36.1 as follows:

If a member whose rights and privileges have been suspended pursuant to section 36 fails to pay, within twelve months of the date of suspension, all fees and levies that were payable to the Society at the time of suspension, Convocation may, at any time after February 26, 1994, by order cancel his or her membership.

A.2.2.2. When Convocation adopted this recommendation, section 36 of the *Law Society Act* provided for the suspension of a member's rights and privileges for non-payment of fees and levies. Therefore, section 36.1 was drafted to refer to fees and levies.

A.2.2.3. On October 22, 1993, Convocation adopted the recommendation of the Legislation and Rules Committee that section 36 of the *Law Society Act* be amended to read (new text underlined):

If a member fails to pay any fee or levy payable to the Society, or the deductible portion of any insurance claim payment payable under the Society's professional liability insurance plan, within four months after the day on which payment is due, Convocation may by order suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

A.2.2.4. Your Committee approved a proposal to amend section 36.1 of the *Law Society Act* to refer to suspension for failure to pay the deductible portions of insurance claim payments.

A.2.2.5. Section 36.1 provides that the power to cancel a member's membership is effective only after February 26, 1994. This delay was intended to implement the policy adopted by Convocation on February 26, 1993 that the period of 12 months, which is to elapse before a cancellation can be ordered, was to be reckoned from the date of suspension or the date on which the policy (respecting cancellation of membership) was adopted by Convocation, whichever came later.

A.2.2.6. After February 1994, the reference to the effective date of the power will become superfluous.

A.2.2.7. Your Committee was advised that on April 26, 1993, a notice was sent to all members whose memberships were in suspension at the time advising them of the policy concerning cancellation of membership. The *Benchers Bulletin* of February 1993 notified all members of the policy concerning cancellation of membership.

A.2.2.8. Your Committee approved a proposal to amend section 36.1 of the *Law Society Act* to delete the reference to February 26, 1994.

B.
ADMINISTRATION

B.1. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 8: AMENDMENT TO PROVIDE THAT WHERE TREASURER IS A CANDIDATE IN AN ELECTION, TREASURER IS NOT TO PRESIDE OVER THE ELECTION

B.1.1. Recommendation

B.1.1.1. That a new subrule (5) be added to Rule 8 to provide as follows:

(5) Where the Treasurer is a candidate in an election of benchers, all powers and responsibilities of the Treasurer with respect to the election shall be exercised by such other member of the Society as Convocation shall appoint.

B.1.2. Explanation

B.1.2.1. On June 25, 1993, Convocation adopted the recommendation of the Legislation and Rules Committee concerning wording which would amend the *Law Society Act* to provide that the only persons eligible for election or re-election as Treasurer would be benchers elected in the most recent bencher election.

B.1.2.2. In commenting upon the proposed amendments, Mr. McKinnon drew attention to Subrule 8(1) which reads:

Every election of benchers shall be presided over by the Treasurer and conducted by the Secretary.

B.1.2.3. If the proposed amendments to the *Law Society Act* are enacted, the Treasurer in office at the time of a bencher election may wish, himself or herself, to run as a candidate in the election. Re-election as a bencher would be the only way in which the Treasurer in office at the time of a bencher election could become eligible for re-election as Treasurer.

B.1.2.4. At its meeting on September 9, 1993, the Committee concluded that it would be inappropriate for a Treasurer, who may be a candidate in the Bencher Election, to preside over that election.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 50: TRANSFER MEMBERS: AMENDMENT TO CLARIFY THAT THE FEE FOR SITTING THE TRANSFER EXAMINATION (\$600) MUST BE PAID EACH TIME A CANDIDATE SITS THE TRANSFER EXAMINATION

B.2.1. Recommendation

B.2.1.1. That in the part of Rule 50 entitled "TRANSFER MEMBERS", the section which reads "Upon sitting the Common Law examination a second or subsequent time \$ 500" be deleted, and the "s" from the word "examination" after the word "Transfer" be deleted, so that the part of Rule 50 entitled "TRANSFER MEMBERS" will read:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990 - Non-refundable Application	
Fee	\$ 125
Upon sitting the common law examination	\$ 500
Upon sitting the transfer examination	\$ 600

B.2.2. Explanation

B.2.2.1. The present wording of the part of Rule 50 entitled "TRANSFER MEMBERS" reads:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990
— Non-refundable Application Fee \$ 125

Upon sitting the Common Law examination \$ 500

Upon sitting the Common Law examination a second or subsequent time
. \$ 500

Upon sitting the Transfer examinations \$ 600

B.2.2.2. It has been suggested that the reference to a fee for a second or subsequent sitting of the common law examination may support the interpretation that payment of one \$600 fee is all that is required however many times a candidate sits the transfer examination. This is not the intention of the rule. It is meant to prescribe a fee of \$600 for each occasion on which a person sits the transfer examination.

B.3. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 50: MISCELLANEOUS: AMENDMENT TO PROVIDE THAT MEMBER MAY OBTAIN CERTIFICATE OR LETTER OF STANDING AT THE SAME FEE

B.3.1. Recommendation

B.3.1.1. That in the part of Rule 50 entitled "MISCELLANEOUS", the section which reads "Letter certifying that a member is in good standing \$ 25" be deleted, the word "good", before the word "standing", be deleted and the words "or Letter" be added after the word "Certificate", so that the part of Rule 50 entitled "MISCELLANEOUS" will read, in part:

MISCELLANEOUS

* * * *

Certificate or letter of ~~good~~ standing \$50

* * * *

~~Letter certifying that a member is in good standing \$25~~

* * * *

[Amended text underlined; deleted text struck through.]

B.3.2. Explanation

B.3.2.1. The part of Rule 50 entitled "MISCELLANEOUS" currently reads, in part:

MISCELLANEOUS

Certificate of good standing \$50

Letter certifying that a member is in good standing \$25

B.3.2.2. It has been suggested that the rule should not draw a distinction between a "Certificate of Good Standing" and a "Letter certifying that a member is in good standing"; both items serve to certify a member's standing, and in practice, only one document is ever supplied to the member. It has also been suggested that the word "good", before the word "standing", should be deleted. The Law Society provides information on a member's standing, which may or may not be "good standing".

C.
INFORMATION

C.1. COMMITTEE BUDGET FOR 1994-1995

C.1.1. Your Committee considered its budget for 1993-1994, projected expenditures for 1993-1994 and a proposed budget for 1994-1995. The Committee approved the proposed budget for 1994-1995.

C.2. LAW SOCIETY ACT: AMENDMENTS IN FORCE DECEMBER 31, 1993

C.2.1. On December 2, 1993, *An Act to confirm and correct the Statutes of Ontario as revised by the Statute Revision Commissioners*, S.O. 1993, c. 27 (Bill 115), received Royal Assent. The act came into force on December 31, 1993.

C.2.2. The act amends the English version of clause 50(1)(a) of the *Law Society Act*, the English version of section 35 of the act, the French version of subsection 72(1) of the act and the French version of subsection 72(2) of the act.

C.2.3. Clause 50(1)(a) is amended by striking out the words "himself or herself" and substituting the word "themselves". The amended clause 50(1)(a) reads (amended text underlined):

25th February, 1994

50. (1) Except where otherwise provided by law,
- (a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor; and

* * * *

C.2.4. Section 35 of the act is amended by striking out the word "any" after the word "suspend" and substituting the words "the person's". The amended section 35 reads (amended text underlined):

35. If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of practising law as a barrister and solicitor by reason of physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances.

C.2.5. Subsection 72(1) is amended by adding the word "professionnelles" after the word "juridiques" in paragraph 13. Subsection 72(2) is amended by adding the word "professionnelle" at the end of paragraph 16. The amended subsections 72(1) and (2) read (amended text underlined):

- 72 (1) La disposition 13 du paragraphe 62 (1) est abrogée et remplacée par ce qui suit :
13. prescrire les droits et les cotisations payables par les membres, les membres étudiants et les sociétés juridiques professionnelles ou les catégories de membres;
- 13.1 prévoir le paiement et la remise des droits et des cotisations prescrits à la disposition 13;
- 13.2 exempter des catégories de membres du paiement de la totalité ou d'une partie d'un droit ou d'une cotisation prescrits à la disposition 13.
- (2) La disposition 61 du paragraphe 62 (1) est abrogée et remplacée par ce qui suit :
16. prévoir le paiement au Barreau, par un membre ou une société juridique professionnelle, des frais d'examen ou de vérification des livres, registres, comptes et opérations du membre ou de la société juridique professionnelle.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

M. Cullity
Chair

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

- Item A.-A.1.4.1. - Copy of document re: Proposed Amendments: Part B.
(Attachment A - A-14)
- Item A.-A.1.4.2. - copy of document re: Executive Summary.
(Attachment B - B-3)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

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

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

A.
POLICY

no items

B.
ADMINISTRATION

1. County Law Associations - "Mandatory Membership"

The Committee had before it the Agenda and supporting material for the "special meeting" of the CDLPA Libraries Committee, held on February 9th, 1994. The main item on the Agenda was consideration of county law association "mandatory membership" (or variations thereof). The Resolutions from the CDLPA Library meeting will be available for the March meeting of the Libraries & Reporting Committee, but first it will presumably be necessary for CDLPA to consider this important "proposed departure from the status quo" at its full plenary session in May, 1994.

2. County Libraries - 1993 Finances - 1994 Revised Budgets

The Committee reviewed two charts, one providing the breakdown on the financial results of the 1993 operating year for the county libraries, the other showing 1994 budget estimates. The latter was recently revised, due to being based on 1993 actual (not projected) figures. The county library system had a "break-even" operating year in 1993 (\$16,835 operating surplus on expenditures of almost \$5 million), leaving a "system" balance forward of \$180 thousand. The system is projecting an operating deficit of \$272 thousand in 1994, which would leave a deficit balance of almost \$100 thousand at the end of 1994. In other words, overall the system operates "fairly close to the line."

The Committee agreed with the Chief Librarian that the 1994 Budgets of a number of individual counties needed careful review, followed by a report back to the Committee next month. Comparisons of 1994 budget v. 1993 actual figures on books, staffing and other expenditures are being prepared and will be brought to the attention of counties where there are concerns.

25th February, 1994

3. Ontario Reports - Publishing Contract with Butterworths

The Committee had before it a 2-page memorandum from Butterworths, summarizing the results of a January 13th meeting between Murphy & Howell from the Law Society and Day and Key from Butterworth. The purpose of the meeting was to review various administrative matters regarding the OR publishing contract.

4. Copyright - newspaper article about West Publishing

The Chair circulated an article that appeared in a U.S. newspaper regarding West Publishing's efforts to protect copyright in its publications. A copy of the article is attached.

C.
INFORMATION

1. Committee budget for 1994-95

The Committee reviewed the material which had been presented by Messrs. Murphy and Howell to a meeting of the Priorities & Planning Committee on January 27th, 1994. This material had apparently been accepted by the Priorities & Planning Committee. There was one outstanding matter to be considered -

"How would a projected Law Foundation grant reduction be handled?"

The Committee reviewed the options and passed a motion recommending to the Finance and Administration Committee that there be a \$3 increase in the County Library Levy to partially offset any reduction in the Law Foundation grant, with the balance of the deficit to be covered by the reserve for county libraries.

ALL OF WHICH is respectfully submitted

Dated this 25th day of February, 1994

D. Murphy
Chair

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

Item B.-4. - Copy of article in U.S. newspaper re: West Moves to Protect Opinions.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED
IN CAMERA

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PROFESSIONAL STANDARDS COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, at 3:00 p.m., the following members being present: C. McKinnon (Chair), M. Weaver (Vice Chair), R. Cass, N. Graham, D. Murphy, H. Warder Abicht (non-Bencher member).

Also Present: J. Adamowicz, N. Amico, S. Kerr, S. McCaffrey, P. Rogerson, R. Shoreman, F. Smith.

B.
ADMINISTRATION

B.1. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.1.1. Two Practice Review files were closed on the basis of the members' successful completion of the Practice Review Programme. The first member was authorized for participation in the Programme in March, 1992. The Committee was satisfied that the member implemented the systems and recommendations made to him in the course of the Programme. The second member was authorized for participation in the Programme in September, 1992. The member has received no further complaints since November, 1992, and no claims since March, 1993. It appears that both members have improved the quality of their practices and have benefitted from participation in the Practice Review Programme.

B.1.2. A third member was authorized for participation in the Programme in March, 1992. A reviewer attended at the member's office in July, 1992. Staff also attended in February and August, 1993. A Review Panel was held in November, 1992 and another one held in October, 1993. The file has been closed on the basis that the problems experienced by the member cannot be addressed by the Practice Review Programme.

B.1.3. A fourth file was closed based on the member's unwillingness to participate in the Practice Review Programme. The member was originally authorized to participate in the Programme in March, 1992, but his file was closed in June, 1992, because of his unwillingness to participate. In September, 1993, the solicitor was again authorized to participate in the Programme, based on a referral from the discipline department. Five letters sent to the member failed to elicit a response. The member's file has been closed on the basis of his unwillingness to participate in the Programme and Senior Counsel, Discipline is to be so advised. The member will not be allowed to participate in the Practice Review Programme in the future.

B.1.4. Three files were closed by the Committee on the basis of the members' unwillingness to cooperate with the Practice Review Programme. These files are being referred to Senior Counsel, Discipline, pursuant to Committee Policy.

C.
INFORMATION

C.1. RULES 2 AND 3 - REVISED FORMAT

C.1.1. The Professional Standards Committee as a whole was convened as the Working Group to revise rules 2 and 3 of the Rules of Professional Conduct. Rule 2 as revised was presented on February 9, 1994 to the

Special Committee to Review the Rules of Professional Conduct; that Committee is preparing comments on the revised version, after which the Working Group will review rule 2 afresh.

- C.1.2. A revised copy of the draft rule 3 was presented to the Committee in its capacity as Working Group. The Working Group considered the most recent version of the rule and has recommended that further changes be made. Rule 3 as amended will be reviewed at the March meeting of the Committee, and will then be presented to the Special Committee to Review the Rules.

C.2. STRATEGIC PLANNING CONFERENCE

- C.2.1. At the October Committee meeting, a memorandum from Andrew Brockett was circulated setting out the recommendations of the Strategic Planning Conference which affect the Professional Standards Committee. This item was on the agenda for the November and January Committee meetings, but due to time constraints, was deferred to February. Consideration of this matter has been further deferred to March.

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

- C.3.1. The Professional Standards Department and Practice Advisory Service operating expense budgets for the 1994/95 fiscal year were reviewed and approved by the Committee, and will be forwarded to both the Priorities and Planning Committee and the Finance Committee for their consideration.

C.4. MEMBERS' SERVICE LINE

- C.4.1. Members who telephone the Law Society encounter two difficulties: they may be passed from one department to another in attempting to find someone who can help them with an enquiry; and if they are from outside the greater Metropolitan Toronto area, they must incur long distance charges. Although the Law Society does have a WATTS line, it is available to the public as well as the profession, and the Communications Department has ascertained that 80% of the calls to the Law Society on that line receive a busy signal. Members experience significant frustration in attempting to contact their governing body.
- C.4.2. A proposal is therefore being considered to install a line available to members only, staffed by an individual who is very familiar with the Law Society and its administrative requirements for members, and able to answer directly the member's inquiry, or obtain the information required for the member. The Practice Advisory Service and the Communications Department are assessing the financial impact and the feasibility of installing such a members' service line.
- C.4.3. It is not envisaged that the Members' Service Line would provide the same type of service given by the Practice Advisory Service, but rather would answer enquiries about filing times, requirements for retiring from or returning to practice, where to obtain publications, and similar administrative issues.

C.5. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.5.1. In December, the Service received 569 requests for assistance, reflecting a drop in calls from the preceding months due to holidays at Christmas, but nonetheless representing a 23% increase over the volume of calls received in December of 1992. The Service experienced a 28% increase in total calls in 1993, compared to 1992.
- C.5.2. Many practitioners called seeking information about powers of attorney, as a result of radio broadcasts providing inaccurate information that was heard by clients. Lawyers were referred to the new legislation, and information about the broadcasts was provided to the Public Trustee. The Dial-a-Law tape on powers of attorney is so helpful that one caller has his clients listen to it.
- C.5.3. The largest number of calls received concern the article on G.S.T. in the *Benchers Bulletin*; further clarification will be provided in the next *Benchers Bulletin*.
- C.5.4. Rosemary Shoreman has joined the staff of both the Practice Advisory Service and the Professional Standards Department in the capacity of Systems Adviser. She has 20 years of experience in law office management.

C.6. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

- C.6.1. The number of open files in the Practice Review Programme is now at 137, as a result of 9 lawyers being authorized to participate in January, and 4 files being closed. Not surprisingly, reaction from lawyers authorized to participate is primarily negative, and many such members apparently do not read the detailed letter sent to them setting out the policies and procedures of the Programme, since they subsequently evince astonishment at same.
- C.6.2. The Start Up Workshops engender consultation with a variety of departments within the Law Society, including Professional Conduct, the Placement Office, the Lawyers' Professional Indemnity Company, the Practice Advisory Service and Professional Standards, as members enquire about negligence insurance, advertising, locating space, preparing financial statements, and the like.
- C.6.3. The Wills and Estates Sub-committee is concluding its consideration of the draft checklist. A final draft is expected to be presented to the Professional Standards Committee in March.
- C.6.4. Members who apply for certification as specialists are vetted through the Professional Standards Department, in order to identify possible concerns that might affect the appropriateness of the specialist designation. To date, approximately 120 members have been evaluated. Their complaints, insurance, discipline and audit history is taken into consideration.

25th February, 1994

- C.6.5. The Director addressed the Hamilton Law Office Management Association about the roles and responsibilities of office managers in assisting lawyers to avoid complaints and claims.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

C. McKinnon
Chair

THE REPORT WAS ADOPTED

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994 at 8:00am, the following members being present: L. Brennan (Chair), F. Carnerie, S. Elliott, A. Feinstein, C. Hill, A. Lawrence, F. Mohideen, H. Sealy and M. Somers.

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

A.
POLICY

No matters to report

B.
ADMINISTRATION

B.1. STATEMENT ON THE ROLE OF THE LAW SOCIETY

- B.1.1. On January 28, 1994, Convocation authorized a distribution of the Proposed Role Statement, so that each member of the profession would be mailed the Statement with a questionnaire. The Committee has found the mail-distribution costs to be prohibitive.
- B.1.2. The Committee considers the Role Statement to be of great importance and has considered alternative methods of distribution. The staff have been requested to proceed with the distribution of the Proposed Role Statement by way of the *Ontario Reports* with a summary document and questionnaire to accompany the February *Benchers Bulletin*.
- B.1.3. The Proposed Role Statement will also be sent to legal professional organizations for comment, and the County Law Libraries will receive the document.

C.
INFORMATION

C.1. PROFESSIONALISM AND THE CHALLENGE OF COMMERCIALISM

C.1.1. The Conclusions and Recommendations of the Strategic Planning Conference (adopted by Convocation on May 28, 1993) recommended that the question of "Professionalism and the Challenge of Commercialism" be considered by a special committee. In January, Convocation approved a recommendation that the Research and Planning Committee be assigned this topic.

C.1.2. The Committee appointed a subcommittee, chaired by Abraham Feinstein, to plan this project.

C.2. SUBCOMMITTEE ON POLICY IMPLEMENTATION

C.2.1. A subcommittee consisting of Susan Elliott, Carole Curtis, Abraham Feinstein, Fran Carnerie and Ross Murray is considering procedures for the implementation of policy. A brief progress report was made to the Committee.

C.3. 1994-95 BUDGET

C.3.1. Your Committee considered a 1994-1995 draft budget. The budget, as amended and approved by the Committee, will be forwarded to the Priorities and Planning Committee.

C.4. DISCUSSION OF FUTURE PROJECTS OF THE RESEARCH AND PLANNING COMMITTEE

C.4.1. Your Committee discussed topics which might be placed on future agendas. A future agenda will include a discussion of the need for greater coordination between the Law Society and legal professional organizations. Discussions concerning coordination should take place with legal professional organizations after the adoption of the Role Statement.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February 1994

L. Brennan
Chair

THE REPORT WAS ADOPTED

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 10th of February, 1994 at nine o'clock in the morning, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), J. Callwood, C.D. McKinnon and M.L. Pilkington. S. Thomson, of the Law Society, was also present.

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

The Workers' Compensation Law Specialty Committee met on Thursday, the 20th of January, 1994 at five o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 4th of February, 1994 at one o'clock in the afternoon.

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

A.
POLICY

No items.

B.
ADMINISTRATION

B.1. CIVIL LITIGATION SPECIALTY COMMITTEE CHAIR

- B.1.1. The Board recommends that long-standing member of the Civil Litigation Specialty Committee William Festeryga (of Hamilton) should be appointed as Committee Chair to replace former Chair Peter Webb.

C.
INFORMATION

C.1. RECERTIFICATION OF SPECIALISTS

- C.1.1. The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Edward James Conroy (of Sudbury)
Timothy E.G. Fellowes (of Toronto)
Lawrence H. Mandel (of Toronto)
Edward Richmond (of London)
John M. Skinner (of Stratford)

- C.1.2. The Board is pleased to report the recertification for an additional five years of the following lawyer as a Criminal Litigation (Law) Specialist:

Malcolm A.F. Lindsay (of Ottawa)

C.2. TRAINING AND TESTING OF SPECIALISTS

- C.2.1. Your Board considered a draft report on the Training and Testing of Law Society Certified Specialists.

25th February, 1994

- C.2.2 The Board will report to Convocation following further consideration of the issues.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

R. Yachetti
Chair

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

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

B.
ADMINISTRATION

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

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

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

ALL OF WHICH is respectfully submitted

DATED the 25th day of February, 1994

P. Peters
Chair

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

List of Prosecutions.

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of February 10, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of February, 1994 at 3:00 p.m., the following members being present: S. Elliott (Chair), S. Goudge, P. Hennessy, B. Humphrey, J. Lax, B. Luke, J. Palmer, and C. Ruby.

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

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

A.1. LAW SOCIETY WORKPLACE POLICIES - SUPPLEMENTARY MATERNITY AND PARENTAL LEAVE BENEFITS

A.1.1. Your Committee had before it materials concerning a policy on supplementary benefits for maternity and parental leaves for Law Society employees, and noted with regret that consideration of such a policy has been pending for over two years.

A.1.2. The Committee requests that staff supply:

1. Updated information concerning the policies of other similar employers in Ontario;
2. A cost estimate.

A.2. DRAFT RULE 28 ON NON-DISCRIMINATION

A.2.1. Stephen Goudge, the Chair of the Equity Committee and a member of this Committee, reported about the draft Rule of Professional Conduct on non-discrimination.

A.2.2. The Committee agreed with the Equity Committee that the new Rule of Professional Conduct should be linked to an educational program. Members of the Committee will assist.

25th February, 1994

A.3. MODEL POLICIES

- A.3.1. Your Committee has received model employment policies which are appendices to the CBA Task Force on Gender Equality Report (The Wilson Report). The Committee has identified the development of model parental leave policies as one of its priorities for this Committee year. The Committee will review the model policies fully and determine a course of action at its next meeting.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February 1994

S. Elliott
Chair

THE REPORT WAS ADOPTED

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

CLINIC FUNDING COMMITTEE

Meeting of February 9, 1994

Re: Schedule A, Numbers 8. & 10. - Summary of Special Outreach Proposals for 1993/94

There were questions from the Bench regarding the above items.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on the 9th of February, 1994. Present were: Joan Lax, Chair, Paul Copeland, Jim Frumau, Pamela Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

B.
ADMINISTRATION

1. Supplementary Legal Disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements as follows:

McQuesten Legal & Community Services - up to \$4,000
Kingston Community Legal Clinic - up to \$1,500
West End Legal Services - up to \$5,000

2. Supplementary Funding

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements as follows:

South Ottawa Community Legal Services - up to \$3,600 in additional salary funds.

Clinique juridique populaire de Prescott et Russell - up to \$10,325 for a move to new premises, and renovations.

3. Special Legal Education/Outreach Funds 1993/94

The Clinic Funding Committee reviewed the initial decision of the clinic funding staff to allocate special outreach funds for 1993/94, in the amount of \$111,891, as follows:

\$ 16,215.00	Advocacy Resource Centre for the Handicapped
3,360.00	Brant County Community Legal Clinic
12,000.00	Clinique juridique populaire de Prescott et Russell
4,411.00	Georgina Community Legal Services
2,060.00	Hastings & Prince Edward Legal Services
2,963.00	Legal Assistance of Windsor
4,365.00	Metro Toronto Chinese & Southeast Asian Legal Clinic
4,240.00	McQuesten Legal & Community Services
24,000.00	Muskoka Legal Clinic (Kinna)
21,370.00	Northumberland Community Legal Centre
3,500.00	Northumberland Community Legal Centre
10,007.00	Parkdale Community Legal Services
1,350.00	Sudbury Community Legal Clinic
1,000.00	Toronto Workers' Health & Safety Legal Clinic
1,050.00	Toronto Workers' Health & Safety Legal Clinic

Total \$ 111,891.00
=====

Attached as Schedule A is a summary of approved projects. The Committee therefore recommends Convocation's approval of this funding.

ALL OF WHICH is respectfully submitted

Joan Lax
Chair
Clinic Funding Committee

Attached to the Report in Convocation file, copies of:

25th February, 1994

Item B.-3. - Summary of Special Outreach Proposals for 1993/94.
(Schedule A, (3 pages))

It was moved by Ms. Lax, seconded by Mr. Copeland that Schedule A numbers 8. and 10. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of February 10, 1994

Re: Item C.-1. - Dial-A-Law

There were questions from the Bench regarding the above item.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on the 10th of February, 1994, the following members being present: Denise Bellamy (Chair), Carole Curtis, Christopher DuVernet, Susan Elliott, Fran Kiteley, Allen Lawrence, Hope Sealy, Stuart Thom. Also in attendance: Gemma Zecchini and Christine Wackermann

C.
INFORMATION

1. Dial-A-Law

For the fiscal year 1992-1993, the Dial-A-Law budget was set at \$293,000. An increased number of calls brought the actual costs to \$362,850.

For 1993-1994, Convocation reduced the Dial-A-Law budget to \$100,000. In order to comply with this directive, a number of cost-cutting measures were implemented:

- The number of Wats lines was reduced from 6 to 2.
- DAL hours of operation were reduced. Instead of being accessible 24 hours a day, 7 days a week, the service is only available from 8 am to 6 pm, 7 days a week.
- The number of messages that can be accessed per call has been limited to 2.
- Messages are being trimmed down to a standard length of 5 minutes maximum.
- The introductory menu has been simplified, thereby shortening the time required to access tapes.

The two first measures described have resulted in a drastic withdrawal of service. Our Bell Telephone Representative has informed us that the Dial-A-Law "busy signal" rate is nearly 89%. The customer service implications can be readily observed by comparing Bell Canada bills for January 1994 with bills for the same period in 1993. In January 1993, 10,971 calls to the Dial-A-Law service were completed (the client was able to access the

25th February, 1994

service and receive information) while 447 were not completed (the client met with a busy signal). For the same period in 1994, 4,649 calls were completed and a staggering 34,963 calls were not. A closer look at the bill shows that some callers have to place more than 30 calls before a line becomes available. Statistics also indicate that some callers may be giving up on the system because they are unable to get through. In December 1993, the number of calls was down by 10,000 compared to the previous month, a difference of more than 40%. While a slight decrease around holiday time is to be expected, it should not reach this level.

The Bell Canada repair centre has called to express concern about the number of clients calling their service when they repeatedly are denied access to the 1-800 Dial-A-Law number. Bell Canada interprets the constant call busy rate as service breakdown.

Of particular concern is the fact that the measures implemented to reduce costs were insufficient to meet budget guidelines. Presently a deficit of approximately \$20,000-30,000 is expected.

In the summer of 1993, the Communications Department commissioned a consulting group specializing in telecommunications, to prepare service delivery alternatives for Dial-A-Law.

The report clearly stated that:

- The 1-800 service is not viable within present budgetary constraints.
- The 1-900 service (where all clients are charged a fixed amount to access the service) is not a realistic financing alternative at this point.
- Other cost-cutting measures, such as Block 800 Access for Area Code 416 callers, are being implemented as they become available, but are only "band-aid" solutions.

The report recommended that 800 (Wats) support to Dial-A-Law be discontinued and that the service be provided on caller-pay basis outside Metro Toronto. The report also recommended that the Society expand Dial-A-Law service to provide 24 hour per day, 7 day per week coverage, thus enabling out-of-town callers to benefit from reduced long distance rates available on week-ends and in the evenings after 6 pm and 11 pm.

This measure would only be temporary, until such time as a 1-900 service becomes viable.

The alternative proposed by the Communications Department is to increase the Dial-A-Law budget to \$220,450, to reflect actual expenses and to improve the quality of service available to out-of-town clients. This adjustment will not completely restore the service to its previous quality, but with this measure, it should be possible to stabilize the service until 1-900 service becomes feasible for our purpose.

Note: Motion, see page 207

25th February, 1994

2. 1994-1995 Budget

The Communications Committee approved the Communications budget for 1994-1995.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

D. Bellamy
Chair

It was moved by Ms. Bellamy, seconded by Ms. Kiteley that Item C.-1. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of February 10, 1994

Re: Item C.-C.1.3 - Proposed Rule on Non-Discrimination

There were questions from the Bench regarding the above item.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of February 1994, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Colin McKinnon, Marie Moliner, Nora Richardson, David Scott, Susan Charendoff, Jacinth Herbert, Wes Marsden, Marilyn Pilkington, Joanne St.Lewis, Donald Crosbie and Alexis Singer.

C.
INFORMATION

C.1 Proposed Rule on Non-Discrimination

C.1.1 The committee discussed at length the procedures to be used in developing proposed Rule 28. There was a consensus that the rule could not be developed in isolation. Appropriate educational material and models of procedures to assist the profession in understanding the application of the *Human Rights Code* to employers and to assist them in implementing any procedures that may be necessary to avoid contravention of the Code must be developed at the same time.

25th February, 1994

C.1.2 There was general agreement that the redrafted rule should not automatically deem all forms of discrimination as defined under the *Human Rights Code* as professional misconduct. This would leave some prosecutorial discretion as to whether on a given set of facts, it is appropriate to proceed with a discipline charge. It was noted that this is the standard approach in all other rules with the exception of Rule 27 dealing with sexual harassment.

C.1.3 The committee discussed at length the significance of adverse impact discrimination particularly as it related to the discipline procedure and whether an element of mens rea was required for any disciplinary process. There was a consensus in the committee that adverse impact discrimination not be excluded from Rule 28.

Note: Motion, see below

C.1.4 It was suggested that if adverse impact discrimination is an element of the rule, it may be necessary to have the rule apply to law firms as well as individual members of the profession. There was general agreement with this suggestion but some disagreement as to whether or not it was necessary to specifically mention firms in the rule. The Chair will follow-up with the Discipline and Professional Conduct Committees to determine whether any particular drafting should be used in this regard.

C.1.5 The committee in discussing the procedure by which the educational process would be separated from the statement of the rule expressed some concern that the redrafting of the rule must clearly demonstrate that the enactment of Rule 28 is more than a simple restatement of commentary 5 under Rule 13. Suggestions were made on how this redrafting of the rule could accomplish this goal and the Chair will take these into consideration in his further redrafting.

C.1.6 The committee considered suggestions about a procedure to develop;
a) standard of conduct that was a goal of the Law Society;
b) a Rule of Professional Conduct relating to such standard; and
c) an educational program to assist the profession in adapting their practices to such a standard and the Rule of Professional Conduct.

C.1.7 The Chair appointed a subcommittee of Marie Moliner and Joanne St.Lewis to make recommendations on the educational/public relations initiatives that will be necessary to ensure the profession understands and supports the proposed rule.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February 1994

S. Goudge
Chair

It was moved by Ms. Bellamy, seconded by Mr. Strosberg that Item C.-C.1.3 be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

25th February, 1994

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of February 10, 1994

Mr. Howie presented Items B.-3. & 4. re: Suspensions for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

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

R.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the 6 months ended December 31, 1993. [pages 5 - 8]

Approved

2. ROLE STATEMENT PRINTING AND DISTRIBUTION COST OPTIONS

The Communications department has requested funds, which are not in the current budget, for the printing and distribution of the Law Society's Role Statement. Two options are set out in the attached memorandum addressed to Richard Tinsley from Gemma Zecchini dated February 4, 1994. [page 9]

The Committee was asked to consider this request.

Denied

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 92 members who have not complied with the requirements respecting annual filing and have not paid their late filing fee.

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

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

Approved

Note: Motion, see page 212

4. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are 2 members who have not paid the second instalment of the 1992/93 annual fee in respect of which they had been granted a deferral of payment to January 1, 1994.

25th February, 1994

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on February 25, 1994 if the amounts outstanding remain unpaid on that date.

Approved

Note: Item deleted

5. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Roy Norwood Clarke	Etobicoke
James Howden Farrell	Toronto
Stanley George Joseph Lane	Mississauga
John Gartshore Martin	Kitchener
Albert Earl Morris McWha	North Bay
Shamdayal Bridj Mohan Sahoy	Willowdale
Morley Sidney Wolfe	North York

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

Approved

6. RESIGNATION - REGULATION 12

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

(a) James Frederick Bishop of Whitehorse, Yukon was called to the Bar on March 29, 1989 and has never practised law since his call. Annual fees for the year 1993/94 are outstanding.

(b) Maureen Elena Goldlist of Toronto, was called to the Bar on February 7, 1992 and has never practised law since her call. Annual fees for the year 1993/94 are outstanding.

(c) Elizabeth Mary Monica McCarten of Washington, D.C. was called to the Bar on April 17, 1985 and has never practised law since her call.

(d) Barbara Elizabeth Smith (McQueen) of Fredericton, New Brunswick was called to the Bar on March 23, 1973 and has never practised law in Ontario since her call. Her rights and privileges as a member were suspended on November 1, 1993 for non-payment of the 1993/94 annual fee which is still outstanding.

(e) Andrea Mary Stelmach of Barry's Bay, was called to the Bar on April 14, 1986 and has never practised law since her call. Annual fees for the years 1987/88, and 1989/90 - 1993/94 inclusive are outstanding.

(f) Ian Norman MacIntosh of Nelson, B.C. was called to the Bar on March 30, 1990. He practised with the firm Blake, Cassels & Graydon until 1990 when he moved to the firm's Vancouver office. Since January 1993 he has not engaged in the practice of law in Ontario nor has he handled trust funds or clients' property in Ontario. He declares that all books and records pertaining to practice in Ontario were left in the possession of the firm. He is not aware of any claims made against him. His annual filings are up to date.

25th February, 1994

(g) Anne Elizabeth Giardini of Richmond Hill, was called to the Bar on March 30, 1990 and practised approximately 3 years during the period since her call until December 1993. She has never practised as a sole practitioner. She was not responsible for trust funds or clients' property. All clients' matters for which she was responsible have been completed or disposed of or arrangements made to the clients' satisfaction. She is not aware of any claims made against her. Her annual filings are up to date.

(h) John Charles Zang of Calgary, AB, was called to the Bar on March 30, 1990 and practised with the firm of Harris Barr until September 1991. All clients' matters have been completed and disposed of or arrangements made to the clients' satisfaction. All books and records remain with the firm of Daniel Wilson. He is not aware of any claims made against him. His annual filings are up to date. Annual Fees for the year 1993/94 are outstanding.

(i) Carolyn Ann Phillipoff of Kenora, was called to the Bar on April 13, 1987 and practised with the Kenora Community Legal Clinic as a staff lawyer until early 1990. All trust funds and clients' property remain in the possession of the clinic and clients' matters have been completed and disposed of or arrangements made to the clients' satisfaction. She is not aware of any claims made against her. Her annual filings are up to date. Annual fees for the year 1993/94 are outstanding.

(j) James William Murray of Kingston, was called to the Bar on April 6, 1984 and practised as an employee of William J.F. Bishop until August 1993. All books, records and client files remain in the possession of the firm. He has not handled trust funds or other clients' property. All clients' matters have been completed and disposed of or arrangements made to clients' satisfaction. He is not aware of any claims made against him. His rights and privileges were suspended on November 1, 1993 for non-compliance with the requirements of the Errors and Omissions Insurance Plan for the July to September 1993 quarter. Errors and Omissions Insurance levies for that period and annual fees for the year 1993/94 are outstanding.

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

Approved

C.
INFORMATION

1. REPORT OF THE PRIORITIES SUBCOMMITTEE

Marc Somerville, Chair of Priorities Subcommittee, reported on the meeting held with the Director of Finance and his four managers to discuss the priorities and planning for the Finance and Administration department for the 1994/95 fiscal year. A report was before the Committee and approved for discussion with the Special Committee on Priorities and Planning chaired by Tom Bastedo.

Noted

2. REPORT OF THE SPECIAL COMMITTEE ON PRIORITIES AND PLANNING

Tom Bastedo, Chair of the Special Committee on Priorities and Planning, was unable to attend the meeting. David Crack, Director of Finance, reported in his place that meetings had been held with four committees to date and that a draft budget together with the report of the Special Committee would be presented in March.

Noted

3. LEGAL MEETINGS AND ENTERTAINMENT

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

- February 16, 1994 Judges' Dinner
 Convocation Hall
- Lawyers' Club
 Convocation Hall
- February 24, 1994 Lawyers' Club
 Convocation Hall
- March 5, 1994 Gale Cup Dinner
 Convocation Hall

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

K. Howie
Chair

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

- Item B.-1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated February 14, 1994 re: Financial Highlights for December 1993. (pages 5 - 8)
- Item B.-2. - Memorandum from Ms. Gemma Zecchini to Mr. Richard Tinsley dated February 4, 1994 re: Role Statement Printing & Distribution Cost (Options). (page 9)
- Item B.-4. re: Arrears of Annual Fees was deleted.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED
.....

MOTION TO SUSPEND: FAILURE TO PAY LATE FILING FEE

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

Carried

(see list in Convocation file)

.....

25th February, 1994

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of February 10, 1994

Re: Item B.-1. - Referee Fees

There were questions from the Bench regarding the above item.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 10th of February, 1994, at 10:30 a.m. the following members being present: C. Ruby (Chair), N. Graham, M. Hickey, D. Murphy, S. Thom, R. Wise; E. Spears, S. Hickling, H. Werry and J. Yakimovich also attended.

A.
POLICY

1. REVISIONS TO REGULATION 15 AND FORMS 4 AND 5

At Convocation in November revisions to Regulation 15.2 and Forms 4 and 5 were approved and were referred to the Legislation and Rules Committee for final drafting. These draft revisions were considered by the Committee. Elliott Spears outlined the amendments to the Regulation she proposed. Various concerns were raised. It was decided that the revisions should go back to staff of the Compensation Department for redraft and return to our Committee next month.

The Committee approved the exemption form to be used in simple mortgages between friends where the solicitor does not handle the funds. The exemption form exempts the transaction from the sample to be reviewed annually by the public accountant. Forms 4 and 5 must still be completed in relation to these transactions.

2. SUBROGATION RIGHTS

The Committee considered an inquiry made by a solicitor who is presently before a Discipline Committee as to what the consequences to him are if a grant is made to a former client. The Committee considered the subrogation provisions in the *Law Society Act*.

At present the subrogation section reads as follows:

Section 51.-(7)

"If a grant is made under this section, the Society is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the dishonest member or any other person, or, in the event of the death or insolvency or other disability of such member or other person, against the personal representative or other person administering the estate."

The Committee considered that the Society should be able to maintain the action against the solicitor in its own name. The statute should also require the claimant to give information and cooperation to the Society to assist the Society in maintaining a subrogated action.

The Legislation and Rules Committee is asked to draft suitable provisions to effect these changes.

Note: Item deleted

B.
ADMINISTRATION

1. REFEREES FEES

The Committee discussed whether the fees paid to Referees should be increased from \$600 per day to \$800 per day. Referees' fees have not increased since April 1991. Referees have been paid at the rate of \$600 per day for hearings and preparation of their Reports.

Counsel for claimants are generally awarded \$800 per day for the hearing plus \$500 for preparation. It was felt by the Committee that the Referee should not be paid less than the claimants' counsel are paid. Further, the rate allowed for counsel is modest.

The Committee hopes to engage some new Referees from the practising bar, who more closely reflect the diversity of the population of Ontario. In the past retired judges and lawyers have primarily acted as Referees and they do not have the high overhead that practising members would have. To engage practising members as Referees, especially sole practitioners, remuneration at \$800 per day seems more appropriate than the present rate.

Referees' expenses are paid out of the Lawyers Fund for Client Compensation and therefore an increase at this time will not have impact on the 1994/1995 annual fees of the members.

IT IS RECOMMENDED that the remuneration for Referees be increased to \$800 per day for hearings and preparation of their Reports to match the rate at which counsel for claimants are presently paid.

Note: Motion, see page 215

2. 1994/1995 LEVY AND BUDGET PLANNING

The Committee considered the advice of the Director of Finance that the Fund would continue to be adequately funded if the levy remained at \$1 per member for the 1994/1995 fiscal year. The ratio of the balance in the Fund to outstanding claims has improved over the last seven months and the volume of new claims has decreased since the 1992/1993 year.

IT IS RECOMMENDED that the levy remain at \$1 per member for 1994/1995. The balance of the budget items were approved subject to the adjustment for the increase in Referee expenses.

C.
INFORMATION

1. REFEREE REPORTS AND STAFF MEMORANDA

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

2. Copies of the Financial Summary as of December 1993 and a graph showing claims made and outstanding claims is attached. (Pgs. C1 - C3)

3. Accounts approved by staff in January amounted to \$17,222.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

C. Ruby
Chair

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

Item C.-1. - Grants approved by the Review Committee and by The Lawyers Fund for Client Compensation Committee Thursday, February 10, 1994. (Schedule "A")

Item C.-2. - Financial Summary - Lawyers Fund for Client Compensation for the period July 1, 1993 - December 31, 1993. (Marked C1 - C3)

It was moved by Mr. Ruby, seconded by Ms. Graham that Item B.-1. be adopted.

Not Put

It was moved by Ms. Curtis, seconded by Ms. Kiteley that the issue of Referee Fees be referred to the committee on fees for consideration.

Carried

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of February 10, 1994

Re: Item A.-A.4.1 (Schedule A) - Application for Approval of the Establishment of a new Student Legal Aid Society at the University of Toronto

There were questions from the Bench regarding the above item.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

25th February, 1994

Your Committee met on Thursday, the 10th of February, 1994, the following members being present: Frances P. Kiteley, Chair, B. Ally, L. Brennan, M. Buist, J. Campbell, P. Copeland, S. Cooney, D. Fudge, D. Fox, R. Lalonde, P. Peters, A. Rady, M. Stanowski, W. Sullivan.

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

A.
POLICY

A.1 LEGAL AID COMMITTEE - BOARD DEVELOPMENT PROCESS

A.1.1 As reported earlier to Convocation, the Legal Aid Committee held a Strategic Planning Day in December 1993 as part of its ongoing development process. Steve Raiken, the consultant from Ernst and Young, attended the meeting and presented a draft report which was discussed in some detail. Members will consider the report which will be brought back for further discussion in March.

A.2 APPENDIX A TO THE REPORT OF THE APPOINTMENTS SUBCOMMITTEE

Convocation received the Report of the Appointments Subcommittee in January of this year. Appendix A of that report "Draft Role and Responsibilities of Legal Aid Committee Members" was deferred by the Legal Aid Committee at its January meeting for further discussion. The issues in Appendix A are related to the Board Development Process and consequently deliberation on Appendix A was deferred until March for discussion at that time.

A.3 MANIFEST COMMUNICATIONS

A.3.1 Criticisms of the Plan contained in the 1991 federal evaluation of the Ontario Legal Aid Plan led to the Legal Aid Committee authorizing the Provincial Director to retain Manifest Communications in 1992 to develop a marketing communications strategy. The goal of this strategy is to enable Legal Aid to better inform applicants and clients as to expectations from Legal Aid administration and lawyers for the legally-aided client in order to make the certificate-granting process and the delivery of legal services process more efficient for all concerned. Mark Sarner attended the meeting to bring the Committee up to date on work that has been completed. Segments of two videos were shown, several booklets have been prepared as well as posters for Legal Aid offices.

A.4 APPLICATION FOR APPROVAL OF THE ESTABLISHMENT OF A NEW STUDENT LEGAL AID SOCIETY AT THE UNIVERSITY OF TORONTO

A.4.1 At the January meeting of the Legal Aid Committee consideration of the Application for approval of a new Student Legal Aid Society at the University of Toronto was deferred until the February meeting. The Legal Aid Committee approved this Application which is described in SCHEDULE A to this Report (pages 8 to 19). It should be noted that there is no request for funding from the Legal Aid Plan for this venture.

Note: Motion, see page 221

A.5 WOMEN'S LAW CENTRE

A.5.1 In November 1993, Convocation received a report on pilot projects in family law. After lengthy debate:

A.5.1.1 Convocation approved the paper intensive model (uncontested divorces and adoptions) as recommended by the Legal Aid Committee;

A.5.1.2 Convocation approved the judicare equivalent model (performing the same legal services as in the certificate system) although it had been rejected by the Legal Aid Committee;

A.5.1.3 Convocation rejected the Womens Law Centre (performing legal and other functions in a "full service model" for women) although it had been recommended by the Legal Aid Committee.

A.5.2 Since then, the rejection of the Women's Law Centre has generated considerable attention in the media, feedback from members of the committee which designed it, and feedback from members of the Legal Aid Committee. The Legal Aid Committee considered the remarks made by various Benchers in November 1993 to ascertain whether some of the issues raised could be addressed and Convocation might review its decision in that context. Further discussion on this matter will be held in March.

B.
ADMINISTRATION

B.1 INTRODUCTION OF NEW MEMBERS

B.1.1 In addition to the five Benchers, the membership of the Legal Aid Committee includes five lay persons appointed by the Attorney General, five non-Bencher lawyers appointed by Convocation, and one student member. The appointments by the Attorney General are for a period of three years. Although the three years had passed, steps had not been taken to reappoint or substitute until recently.

B.1.2 At the Legal Aid Committee meeting in February, we were pleased to introduce three new appointees by the Attorney General, as follows:

- Derek Paul Fudge, Nepean, Ontario. Derek is National Research Director for the National Union of Public and General Employees. He has a social work background which he has applied in many diverse ways.

- Dorothy Fox, Wikwemikong, Manitoulin Island, Ontario. Dorothy has been a Supervisor with the Native Child Family Resource Centre at the Wikwemikong Indian Reserve. She has a background in early childhood education. She is particularly familiar with justice issues in the family.
- Margaret Stanowski, Toronto, Ontario. Margaret is the Executive Director for Springboard Communication Corrections which has a variety of programs for youth and adults who have been involved are at risk for involvement in criminal activity. She has a background in social work which she has applied in the corrections field for many years.

B.1.3 At the request of the Chair of the Legal Aid Committee and the Provincial Director, the Attorney General agreed not to replace all five lay members of the Legal Aid Committee. Instead, two existing members, Bruce Ally and Judy Campbell have been reappointed for a further period of approximately 18 months in order to provide continuity amongst the lay representatives.

B.1.4 Of the non-Bencher lawyers on the Committee, the term of three of them had expired. At the January Convocation, approval was given to the appointment of three members, all of whom have joined the Committee:

- Bill Sullivan, Toronto, Ontario. Called 1988. Practises in the area of family law and immigration law.
- Andy Rady, London, Ontario. Called 1982. Practises in the area of criminal law, family law, civil litigation.
- Margaret Buist, London, Ontario. Called 1986. Practises in the area of family law.

B.1.5 In view of the addition of six members to the fifteen member Committee, steps are being taken to provide an orientation program.

B.2 REPORT OF THE PROVINCIAL AUDITOR ON THE LEGAL AID PLAN FOR THE YEAR ENDED MARCH 31, 1993

B.2.1 The Legal Aid Committee received this report which is attached as SCHEDULE B (pages 20 - 28).

B.3 PROVINCIAL DIRECTOR'S VALUE FOR MONEY AUDIT REPORT

B.3.1 The Provincial Government is entitled to conduct a value for money audit to ascertain whether the citizens of Ontario recover value for the taxpayers' monies invested in Legal Aid. The report is attached as SCHEDULE C (pages 29 - 33). In the case of the Legal Aid Plan, two main areas were assessed.

B.3.2 The analysis included a review of the procedures to ensure that Legal Aid certificates are issued to eligible applicants on a timely basis. The report reflected an existing concern as to the ability of the Legal Aid Plan to approve the application of a Legal Aid Certificate in a timely way, given the bifurcation of service between the Legal Aid Plan (which determines the application on legal eligibility terms) and, in many regions of Ontario, the Ministry of Community and Social Services (which makes a determination of financial eligibility).

B.3.3 The audit reported on a pilot project to stream-line procedures which the Legal Aid Plan had initiated in two area offices. The value for money audit report recommended:

- The Plan should consider extending the results of the pilot project to other area offices in an effort to stream-line administrative practices province-wide to improve certificate processing time and reduce administrative costs.

B.3.4 This bifurcation of service between the Ministry of Community and Social Services and the Ministry of the Attorney General has been explored and it is expected that commencing in the fiscal year April 1, 1994, the Plan will be in a position to address both financial and legal eligibility simultaneously which will have an important impact on accelerating the approval process.

B.3.5 In order to accomplish a rationalization of the decision making process on legal and financial eligibility, an amendment to Legal Aid regulation 46 is required. Section 46 now reads as follows:

"The financial abilities and needs of applicants shall be determined in accordance with standards established by the Ministry of Community and Social Services".

The proposed amendment is as follows:

"The financial abilities and needs of applicants shall be determined by the Law Society in accordance with standards established by the Ministry of the Attorney General."

B.3.6 The other area addressed by the auditor was the accuracy of verification of assets and income. In that regard, the report contains the following recommendations:

- Stricter compliance with procedures should be enforced to ensure adequate verification of eligibility, especially in verifying assets and income with banks and other sources. This enforcement should improve the quality and consistency of eligibility assessments.

Senior management of the Legal Aid Plan reflected its agreement in principle with the implementation of more strict and improved verification of income and asset guidelines, while pointing out that more strict compliance may have cost implications to the Plan because of the additional staff which would be required.

B.3.7 In the report, a certain applicant was identified, namely a potential legal-aided client discovered to have in excess of \$100,000 in undisclosed liquid assets. This part of the report received some considerable media attention at the time. However, the report also points out that the undisclosed assets were discovered by Legal Aid staff before the Legal Aid Certificate was granted. Ultimately, fraud charges were laid against the applicant, who pleaded guilty.

B.4 ONTARIO LEGAL AID PLAN - STATEMENT OF RECEIPTS AND DISBURSEMENTS FOR THE NINE MONTHS ENDED DEC. 31, 1993

B.4.1 This report was received. It is attached as SCHEDULE D (pages 35 - 36).

B.5 REPORT ON PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF JANUARY 1994

B.5.1 The Report on the Payment of Solicitors Accounts for the month of January 1994 is attached and marked as SCHEDULE E (pages 37 38).

B.5.2 The Legal Aid Committee considered the status of payment of accounts to lawyers in the context of earlier decisions taken by the Legal Aid Committee, and in particular, the reports to Convocation in October 1993 and in January 1994. The guidelines approved by Convocation in 1987 are:

- 90% of standard form accounts should be paid within 30 days of receipt;
- 80% of regular accounts should be paid within 60 days of receipt.

B.5.3 In the recent past, Legal Accounts has been able to accelerate payment and approve accounts and issue cheques within fifteen business days of receipt. For reasons indicated in the Report to Convocation in October 1993 and in January 1994, that acceleration is no longer possible.

B.5.4 Interruptions in the Legal Accounts Department have been caused by the loss of senior personnel and the elimination of overtime. As a result of administrative and policy decisions, in the last few weeks, Legal Aid has not been able to comply strictly with the guidelines. Every effort is being made to comply with the time standards.

B.5.5 Considerable concern has been expressed by members of the profession about the status of payment of accounts. This is manifested in letters and phone calls from lawyers to senior management and Benchers and articles in professional publications. Members of the Legal Aid Committee are sensitive to the concerns raised and will attempt to communicate with the profession in an effort to alleviate their concerns.

B.6 APPOINTMENTS AND RESIGNATION

APPOINTMENTS:

Metropolitan Toronto

Douglas Arthur Johnson, solicitor
Gary Lamourie, solicitor
Mary Anne Shaw, solicitor
Russell Silverstein, solicitor
Thomas LeRoy, solicitor
Shamin Shivji, solicitor

RESIGNATIONS:

Halton

William C. Leonard

Hastings and Prince Edward

Richard Floyd

25th February, 1994

Perth
Sandra Graf

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

Fran Kiteley
Chair

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

- Item A.-A.4.1 - Application for approval of a new Student Legal Aid Society at the University of Toronto. (Schedule A, pages 8 - 19)
- Item B.-B.2.1 - Report of the Provincial Auditor on the Legal Aid Plan for the year ended March 31, 1993. (Schedule B, pages 20 - 28)
- Item B.-B.3.2 - Report of the Provincial Director's Value for Money Audit. (Schedule C, pages 29 - 33)
- Item B.-B.4.1 - The Report of the Ontario Legal Aid Plan - Statement of Receipts and Disbursements for the nine months ended December 31, 1993. (Schedule D, pages 35 - 36)
- Item B.-B.5.1 - Report on the Payment of Solicitors Accounts for the month of January 1994. (Schedule E, pages 37 -38)

It was moved by Ms. Kiteley, seconded by Mr. Brennan that Item A.-A.4.1 be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

February 10, 1994

Re: Item C.-C.2.2 - Graduate Placement Statistics

Mr. Epstein reported that there were 217 students without articling positions - 60 more than last year.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

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

The following members were in attendance: Philip Epstein (Chair), Donald Lamont (Vice-chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Susan Elliott, Stephen Goudge, Joan Lax, Dean Donald McRae (University of Ottawa), Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). Staff in attendance were Marilyn Bode, Katherine Corrick, Brenda Duncan, Marie Fortier, Mimi Hart, Alexandra Rookes, and Alan Treleaven.

A.
POLICY

A.1 REQUIREMENTS FOR STANDING: PHASE ONE 1994: 37TH BAR ADMISSION COURSE

A.1.1 The Requirements for Standing: Phase One 1994: 37th Bar Admission Course will govern Phase One of the 1994 Bar Admission Course, which commences on May 9, 1994.

A.1.2 Recommendation: It is recommended that the Requirements for Standing: Phase One 1994: 37th Bar Admission Course be approved. (pages 1 - 4)

B.
ADMINISTRATION

No regular business and administration to report this month.

C.
INFORMATION

C.1 ARTICLING PLACEMENT FOR 1994-1995 ARTICLING YEAR

C.1.1 As the new Bar Admission Course application forms arrive at the Bar Admission Course office, Mimi Hart, the Director of Financial Aid and Placement, and her staff are processing the information on whether students currently in the third year of law school have yet found articling positions.

C.1.2 Ms. Hart reported to the Legal Education Committee on the most current statistics, so that the Committee could take steps to alleviate potential problems for the 1994-95 articling year.

C.2 GRADUATE PLACEMENT STATISTICS

C.2.1 The Law Society surveyed students on their current employment status at the signing of the rolls for the Special Convocations for Call to the Bar on February 1 in London, February 3 in Ottawa, and February 8 in Toronto.

C.2.2 Mimi Hart, the Director of Financial Aid and Placement, and her staff have processed the survey results. Ms. Hart reported to the Legal Education Committee on the survey results.

Note: Motion, see page 225

C.3 BAR ADMISSION COURSE SUBCOMMITTEE PROCESS

C.3.1 The new Bar Admission Course Subcommittee, chaired by Philip Epstein, is beginning its work on preparing a draft report for Convocation in October of 1994. Research and preparation of surveys is underway. Proposals for the process that the Subcommittee will adopt in preparing the report were discussed by the Legal Education Committee. The Subcommittee will meet at 9:00 a.m. on February 26 at the Law Society.

C.4 ARTICLING SUBCOMMITTEE

C.4.1 The Subcommittee met at 8:00 a.m. on January 28, 1994. In attendance were Philip Epstein, Stephen Goudge (Chair of the Subcommittee), Janne Burton, Victoria Colby, Jay Rudolph and Carmel Sakran. Staff members attending were Marilyn Bode, Lynn Silkauskas, and Mimi Hart.

C.4.2 The Subcommittee gave conditional approval to a further 64 applications from prospective articling principals for the 1993-94 articling year. To January, approximately 1302 members have applied to serve as principals for the 1993-94 articling year. Of those, 1297 applications have been approved, and the remaining applications have been deferred as an audit or discipline investigation on the member is pending. The Subcommittee also gave conditional approval to 447 applications from prospective articling principals for the 1994-95 articling term. To January, approximately 564 members have applied to serve as principals for the 1994-95 articling term. Of those, 563 applications have been approved, and one application was denied as the member is currently suspended for non-payment of the member's errors and omissions insurance levy. The member's application will be approved on payment of the levy.

C.4.3 The Subcommittee gave special consideration to the applications of four members. Two are applying for approval for the 1993-94 articling term and two for their 1994-95 articling term. Two of the applications were approved. The Subcommittee did not believe the negative history with the Law Society was significant enough to deny the applications. A third member is the subject of an ongoing discipline investigation. The Subcommittee has deferred a final decision on the application. Another member of the applicant's firm has been encouraged to apply to serve as an articling principal.

C.4.4 The fourth member receiving special consideration by the Subcommittee had applied for the 1994-95 articling term. The member is currently under suspension for non-payment of the errors and omissions insurance levy. The member's application was denied until such time as the member's status is reinstated.

C.4.5 The Chair of the Subcommittee reported to the Subcommittee on a successful meeting he attended with Lloyd Brennan, Mohan Prabhu and a member in Ottawa with suggestions regarding the articling reform requirements.

C.4.6 The Subcommittee considered a number of policy items. The first item was whether procedures should be put in place making it improper for lawyers to interview students prior to being approved to serve as an articling principal. The Subcommittee had a useful discussion of the issues and agreed to table them for further review.

C.4.7 The second item related to the placement of articling students for the 1993-94 term. Ms. Hart advised the Subcommittee that 11 students (approximately one percent) were still seeking articles as of the date of the January meeting.

C.4.8 Another policy item was a review of the part-time articling policy. (page 5) The policy was approved by Convocation in April of 1992. It requires a review after one and three years of implementation. The Articling Director reported that although many enquiries are received about the policy, only one or two students each articling term take advantage of the policy. The main reason for taking advantage of the policy is to permit students to discharge their child care responsibilities. It is apparent that the policy has improved access to the profession for some of our student members. The Articling Director recommended that the policy be continued. The Articling Subcommittee approved the recommendation of the Articling Director.

C.5 TERRANCE J. MCCARTHY

C.5.1 Terrance J. McCarthy is the newest member of the Bar Admission Course Faculty, joining the staff of the Ottawa Department of Education office. He replaces Jacqueline Huston, who has returned to private practice. Mr. McCarthy will work both as a Bar Admission Course Faculty member and with Marie Fortier and the Continuing Legal Education staff to develop programming in the Ottawa region.

C.5.2 Mr. McCarthy was called to the Bar in 1979 and was in private practice in Ottawa since that time. Mr. McCarthy's areas of practice included Civil Litigation, Family, Real Estate, Corporate Commercial, Wills and Estates. From 1990 until 1993 he was a seminar leader in the Bar Admission Course, teaching Advocacy. He has been an instructor with the Ottawa Board of Education in the Continuing Legal Education Program since 1986, teaching Business Law, Wills, Real Estate and Family Law.

C.6 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.6.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 6 - 8)

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

P. Epstein
Chair

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

- Item A.-A.1.2 - Copy of the Requirements for Standing Phase One 1994: 37th Bar Admission Course. (pages 1 - 4)
- Item C.-C.4.8 - Policy on part-time articling - April 1992 (page 5)
- Item C.-C.6.1 - Report on Courses - Continuing Legal Education. (pages 6 - 8)

.....

25th February, 1994

Convocation took a short recess at 11:10 a.m. and resumed at 11:25 a.m.

.....

LEGAL EDUCATION COMMITTEE (cont'd)

It was moved by Mr. Epstein, seconded by Ms. Lax that Item C.-C.2.2 be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

ADMISSIONS COMMITTEE

Meeting of February 10, 1994

Re: Item A.-A.2. - Publication of Admissions Hearings

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994 at 9:30 a.m., the following members being present: Ms. Mohideen, Ms. Moliner and Messrs. Lamont and Goudge.

Also present: M. Angevine, C. Shaw and P. Gyulay

A.
POLICY

A.1. NOTICES OF APPLICATION FOR READMISSION

A.1.1. A member of the Law Society has written to the Admissions Committee regarding the Notices of Application for Readmission which are placed in the Ontario Reports.

A.1.2. The member expressed concern that the notices do not contain information on the nature and extent of the conduct which resulted in disbarment. He felt that as the purpose of the notices is to give members of the profession an opportunity to make submissions on the application that it is essential that such information be published.

A.1.3. Current procedure with regard to an application for readmission requires that notice of the application be published in two consecutive issues of the Ontario Reports within four weeks of the filing of the application. A sample of this notice was attached for the Committee's consideration.

A.1.4. Currently the wording of the notice reads as follows:

25th February, 1994

IN THE MATTER OF
THE LAW SOCIETY ACT, R.S.O. 1990, c. L. 8
SECTION 46

TAKE NOTICE that the undersigned, who was disbarred pursuant to a report of the Discipline Committee adopted by the Benchers of the Law Society in Convocation on the day of 19 has submitted to the Law Society of Upper Canada an application for readmission.

AND FURTHER TAKE NOTICE that any person desiring to make representations respecting such application should communicate in writing with the Secretary of the Law Society of Upper Canada, Osgoode Hall, Toronto, Ontario M5H 2N6.

DATED at this day of 19 .

- A.1.5. Your Committee concluded after some discussion that the purpose of the notice is to invite those persons who may have information which is relevant to the application to bring it to the attention of the Law Society. Its purpose is not to solicit the views of individuals upon the merits of the application in light of the conduct which led to the applicant's disbarment.
- A.1.6. Accordingly, it is your Committee's view that it is not necessary to provide particulars of the applicant's professional misconduct as is suggested by the member.
- A.1.7. Further your Committee recommends that the wording of the notice be amended to more accurately reflect its purpose.

Specifically, your Committee recommends that the second paragraph of the notice be changed as follows:

AND FURTHER TAKE NOTICE that any person desiring to provide information which is relevant to such application should communicate in writing with the Secretary

A.2. PUBLICATION OF ADMISSION HEARINGS

- A.2.1. At its January 13, 1994 meeting your Committee was asked to consider whether a policy with regard to the regular publication of scheduled Admission Hearings should be established. A discussion ensued which canvassed various options. Following the discussion, your Committee requested that this item be deferred to the February meeting.
- A.2.2. At its February meeting your Committee resumed the discussion. It reviewed the Society's policy with respect to the publication of discipline matters, which is as follows:
 - 1. Public/Media enquiries: once a complaint is authorized and issued, the Society will release, upon request, the name of the solicitor facing discipline together with the allegations contained in the complaint;
 - 2. Prior notification: a list of hearings scheduled to take place in the forthcoming month is provided to the media at the end of each month. The following information is included: the name of the solicitor, the allegations in the complaint and the date and place of the hearing.

- A.2.3. In its discussion, the nature of admission hearings was explored and compared to that of discipline hearings.
- A.2.4. Your Committee observed that admission hearings frequently arise because the applicant has disclosed information about his or her conduct to the Society and asked whether the conduct in question will constitute a bar to admission. A hearing may be required because the Admissions Committee is unable to decide the "good character" issue without the benefit of hearing the evidence and observing the applicant.
- A.2.5. In discipline matters, however, the hearing arises only after there has been an investigation of the member's conduct and a decision made to charge the member with professional misconduct or conduct unbecoming.
- A.2.6. Further, your Committee was particularly struck by the fact that in admission hearings, counsel for the Society often takes no position on the question of good character, but instead, ensures only that all the relevant information necessary to decide the question is placed before the panel. Your Committee contrasted this role with that of the Society's counsel in discipline matters where, in every case, counsel asserts that the member is guilty of professional misconduct.
- A.2.7. Your Committee concluded that there is a significant distinction to be drawn between the two processes.
- A.2.8. It further concluded that based upon the distinction, it was not appropriate to adopt a policy regarding the publication of admission hearings which is identical to the one in place for discipline matters.

Your Committee recommends, therefore, that the following policy be adopted with respect to publication of admission hearings:

1. Public/Media enquiries: once a hearing has been ordered by the Admissions Committee and the applicant has been so notified, the Society shall respond to specific requests about an applicant. The Society, in responding, will confirm that an admission hearing has been ordered and advise as to the date if a date has been set. No other information will be provided.
2. There shall be no regular advance notice of admission hearings provided to the media.

Note: Item withdrawn

B.
ADMINISTRATION

- B.1. REINSTATEMENT FOLLOWING SUSPENSION - PETITIONS FOR WAIVER OF EXAMINATIONS
- B.1.1. The Committee considered two applications for reinstatement following suspension. Both Richard Desmond Jackman and Douglas Errol Semple made petition to be granted a waiver of the requalification examinations.

John Joseph Edward Barrack
 Elizabeth Greer Beattie
 Linda Anne Bronicheski
 John Morys Caccia
 Fiona Michele Davis
 Nancy Elaine Lands
 Lora Lynn Mackie
 Michael Shard
 Paramdeep Singh
 Hai Ou Wang

Approved

C.
 INFORMATION

C.1. CHANGES OF NAME

(a) Members

From

Helen Psarakis

To

Helen Vastis
(Marriage Certificate)

(b) Student Members

From

Candace Marie Ho Tom

To

Candace Marie Barrett
(Marriage Certificate)

Simone Elizabeth Hines

Simone Elizabeth Stinson
(Birth Certificate)

Anna Perschy

Anna Jadwiga Maria Perschy
(Birth Certificate)

Lisa Suzanne Swartz

Lisa Suzanne Morrow
(Birth Certificate)

Noted

C.2. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Donald Burgess Spence
Port Carling

Called September 21, 1944
Died June 21, 1993

Ephraim Harry Levenspil
Thornhill

Called June 28, 1956
Died October 13, 1993

Richard Neville Clarke
Barrie

Called March 21, 1969
Died November 5, 1993

Donald Kenneth Morrison
London

Called April 8, 1976
Died November 25, 1993

25th February, 1994

Malcolm Montgomery
Toronto

Called March 15, 1956
Died November 26, 1993

Gary Hayden Payne Gillam
Toronto

Called April 11, 1980
Died December 23, 1993

(b) Disbarments

The following member has been disbarred and struck off the rolls and her name has been removed from the rolls and records of the Society:

Natalie Bronstein
Toronto

Called April 19, 1978
Disbarred - Convocation
January 27, 1994

(d) Membership in Abeyance

Upon his appointments to the office shown below, the membership of the following member has been placed in abeyance under Section 31 of The Law Society Act:

Robert George Bigelow
Toronto

Called April 6, 1982
Appointed to Ontario Court
(Provincial Division), August 9, 1993

Noted

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

R. Carter
Chair

Item A.-A.2. was withdrawn.

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

MATTERS SPOKEN TO

INSURANCE COMMITTEE

Mr. Campbell reported on a meeting of the Insurance Committee held on February 24th regarding the role of LPIC and policy procedure recommendations. He also reported that as a result of a letter from the Law Society's actuaries, a review of the actuarial projections of the Errors & Omissions program's deficit was being undertaken.

.....

DISCIPLINE COMMITTEE

Copies of the Reasons in the matter of Anthony Michael Speciale's claim for costs were made available to the Benchers.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Anthony Michael Speciale's,
claim for costs pursuant to
s. 41 of The Law Society Act

DECISION

APPEARANCE:

Eric Murray, Q.C. for the solicitor (applicant)
Gavin MacKenzie for the Society (respondent)

THE SOLICITOR

1. On March 20, 1985, Anthony Michael Speciale ("Mr. Speciale") was called to the bar and admitted as a solicitor of what was known then as the Supreme Court of Ontario.

THE COMPLAINT

2. On January 25, 1984, a complaint issued (the "Complaint") charging Mr. Speciale with professional misconduct. Roger Yachetti, Q.C., Chair of Discipline at the time, authorized the issuance of the Complaint.

3. When the Complaint proceeded on May 2, 1989 before a Committee composed of Thomas Bastedo, Q.C., Hugh Guthrie, Q.C. and June Callwood (the "Discipline Committee"), the following allegations of professional misconduct against Mr. Speciale remained:

- (b) He orchestrated a sham sale by the Bucci Group to 407497 Ontario Limited of 72 Steeles Avenue West in or about the month of October, 1980 for the purposes of deceiving a Trustee in Bankruptcy of the Estate of Kama Estates.
- (c) Subsequent to the sham sale referred to in the preceding particular, he deliberately breached his trust obligations to the Bucci Group and Compania de Inversiones Elkland S.A. ("Elkland") in the following manner:
 - (i) He breached his trust obligation to the Bucci Group by releasing control of 407497 Ontario Limited before he had received the funds due the Bucci Group from the sale of 72 Steeles Avenue West to 407497 Ontario Limited;
 - (ii) He breached his trust obligation to Elkland by disbursing the sum of \$330,000.00, more or less, which he had received from Elkland for the purchase of a 60% interest in 407497, knowing that not all of the conditions precedent to such disbursement had been met;
- (d) From in or about the month of May, 1981 until in or about the month of September, 1981, he deliberately misled Elkland about his failure to honour his trust obligation to it.

4. After a six-day hearing, and by a report dated January 14, 1991, the Discipline Committee dismissed the Complaint.

5. Mr. Speciale's counsel Mr. Murray then sought to recover costs of the discipline proceedings from the Law Society of Upper Canada (the "Society") on the basis that the "discipline proceedings against a...member [Mr. Speciale] were unwarranted".

6. The sections of the Law Society Act relevant to the issue of the recovery of costs (the "Cost Issue") in proceedings before the Law Society are these:

THE LAW SOCIETY ACT

40. Expenses of investigations - A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which the person has been found guilty.

41. Costs where disciplinary proceedings unwarranted. - Where it appears that disciplinary proceedings against a member or student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings. [Emphasis added]

7. On March 28, 1991, with the consent of Mr. Murray and Mr. MacKenzie, Convocation directed the Discipline Committee to consider the Cost Issue and to make a recommendation to Convocation.

8. By report dated June 23, 1992, the Discipline Committee recommended that the Society pay to Mr. Speciale costs of \$25,000 plus certain disbursements (the "Recommendation").

9. On October 22, 1992, Convocation began to consider the Cost Issue and the Recommendation, but was hampered in its deliberations by the absence of a formal record. Convocation thus directed counsel to settle a record and deliver facta.

10. Thereafter, on November 27, 1992, at counsels' request and with its consent, Convocation authorized the Treasurer to appoint a panel of benchers to sit as or in the place of Convocation and to decide the Cost Issue. In due course, the Treasurer appointed a Special Committee, to hear the Cost Issue. The Special Committee was comprised of The Honourable John Arnup, Colin Campbell Q.C., Casey Hill, Hope Sealy and Harvey T. Strosberg Q.C.

11. On December 17, 1993, the Special Committee heard the Cost Issue, and on that occasion Mr. Murray, counsel for Mr. Speciale, and Mr. MacKenzie, counsel for the Society, confirmed that the Special Committee was exercising Convocation's jurisdiction under s. 41 and would decide the Cost Issue.

12. Before the Special Committee, neither counsel sought to uphold the Recommendation: Mr. MacKenzie submitted that no costs should be paid to Mr. Speciale by the Society; Mr. Murray submitted that Mr. Speciale should be awarded costs of the proceedings and should be fully indemnified.

13. Now it must be noted that Mr. MacKenzie had not appeared for the Society before the Discipline Committee. It was Mr. J. R. Conway who had been charged with that responsibility.

25th February, 1994

THE PARTICIPANTS IN THE TRANSACTIONS

14. Before deciding the Cost Issue, it is important to understand the events and transactions giving rise to the Complaint, and such understanding requires in turn the identification of the key participants in the transactions. They are as follows:

<u>Name</u>	<u>Identification</u>
Apstein, Miguel ("Mr. Apstein")	Directing mind of Elkland
Baird, Dr. Wycliffe ("Dr. Baird")	Toronto physician, investor in the Plaza and President of 407497
Baum, Bernard ("Mr. Baum")	An Ontario solicitor who acted for Orzech in Trust
Bucci Group	Five corporations involved in the construction trades who performed work on Vaughangrove Plaza and consisting of: Bucci Tile and Mosaic Limited; Aquarius Mechanical Limited; C.A.G. Services; Cleveland Drywall Limited; and Ermys Construction Company Limited
Bucci, Brian	Co-owner with Clem Bucci of Bucci Tile and Mosaic Ltd. - died in 1981
Bucci, Clem ("Mr. Clem Bucci")	Co-owner with brother Bruno of Bucci Tile & Mosaic Ltd. - part of Bucci Group
Cohen, Harold	Ontario solicitor retained by Clem Bucci in 1981
Compania de Inversiones Elkland S.A. ("Elkland")	An Argentine company controlled by Miguel Apstein
407497 Ontario Limited ("407497")	A corporation incorporated by Mr. Speciale that was inactive
Fiscaletti, Frank ("Mr. Fiscaletti")	Owner of Aquarius Mechanical Limited - part of Bucci Group
Gary Major Realty ("Realtor")	A real estate company solely owned by Louise Cherevaty, Mr. Speciale's wife
Kama Estates ("Kama")	Owner of the Vaughangrove Plaza ("Plaza")
Orzech, Lou ("Orzech")	Real estate broker and offeror, in trust, pursuant to the Orzech Offer
Page, Murray B. ("Mr. Page")	Ontario solicitor called to the Bar in 1954, retained by Society to give a legal opinion in evidence
Poultney, Harold ("Mr. Poultney")	Ontario solicitor called to the Bar in 1960, retained by Mr. Speciale to give a legal opinion in evidence

25th February, 1994

Seel Mortgage Investment
Corporation ("Seel")

First mortgagee of the Plaza

THE TRANSACTIONS AND THEIR AFTERMATH

15. In April, 1980, the five lien claimants comprising the Bucci Group retained Mr. Speciale. Their lien claims totalled about \$250,000.00.
16. On behalf of the Bucci Group Mr. Speciale asserted lien rights against the Plaza.
17. On April 5, 1980, after a meeting with Kama's principal, the Bucci Group and Mr. Speciale concluded that the registration of liens would preclude mortgage advances or preclude Kama's refinancing needed to pay the claims of the Bucci Group and other trade creditors. Thus, the Bucci Group agreed to accept a third mortgage registered against title to the Plaza instead of registering their mechanics' liens.
18. On April 18, 1980, a third mortgage was registered with the Bucci Group as mortgagee (the "Bucci mortgage"). Because of a title defect unrelated to Mr. Speciale, the Bucci mortgage became the second mortgage. Seel held the first mortgage (the "Seel mortgage").
19. Kama soon defaulted under the Seel mortgage and under the Bucci mortgage.
20. On July 16, 1980, Seel issued a notice of sale claiming the principal amount of \$1,860,524 and interest of \$67,873.19.
21. One week later, the Bucci Group issued a notice of sale under the Bucci mortgage claiming the principal amount of \$248,362.46 and interest of \$11,426.16.
22. On August 26, 1980, the Bucci Group brought the Seel mortgage into good standing by paying Seel about \$90,000.
23. On or about August 27, 1980, the Bucci group went into possession of the Plaza and became a mortgagee in possession.
24. The Bucci Group managed the Plaza while in possession. Mr. Speciale was involved in the Plaza's management and, among other efforts, he sought additional tenants.
25. On August 28, 1980, the Bucci Group entered into an exclusive listing agreement with the Realtor to sell the Plaza for \$2,600,000. This listing expired on September 30, 1980.
26. On or about September 23, 1980, as a result of the efforts of Ms. Cherevaty, the Bucci Group, assisted by Mr. Speciale, entered into a conditional agreement to sell the Plaza to Mr. Orzech in trust for \$2,450,000 (the "Orzech Agreement"). The closing of the Orzech Agreement was originally scheduled for September 30, 1980 but was extended on a number of occasions.
27. The beneficial interest in the Orzech Trust was held 60% by a South American group headed by Mr. Apstein, 20% by Mr. Orzech, and 20% by a Toronto group, of which Dr. Baird was a member.
28. The Orzech Agreement contemplated the Plaza being transferred to 407497 and a purchase of the 407497's shares by the beneficiaries of the Orzech Trust. Evidence of such intention is to be found in a letter dated October 6, 1980 from Mr. Speciale to Mr. Bernard Baum, the solicitor for Orzech in Trust, which provided in part the following:

25th February, 1994

We are in possession of an office incorporation in the name of 407497 Ontario Limited. Enclosed herewith please find copy of Certificate of Incorporation together with Articles of Incorporation for your review. We suggest that this company be used for acquisition of the property... .

29. The Orzech in Trust transaction did not close on September 30, 1980 but was in fact extended. Yet it was in obvious difficulty: the Bucci Group as vendor could not meet some of the conditions in the Orzech Agreement; the rental guarantee required by the Orzech Agreement could not be met because vacancies had increased; the first mortgage was maturing; there were no funds to pay out the Bucci mortgage.

30. On or about October 9, 1980, during the currency of the Orzech Agreement, Mr. Speciale learned by chance that Kama might be adjudged a bankrupt.

31. Mr. Speciale then advised the Bucci Group that if Kama was adjudged a bankrupt, a receiving order would be registered against the Plaza before the closing of the Orzech Agreement. Mr. Speciale concluded erroneously that the registration of the receiving order would in some way impede completion of the Orzech Agreement.

32. On October 13, 1980, the Bucci Group entered into an agreement to sell the Plaza to Dr. Baird in trust (the "Baird Agreement"), Mr. Clem Bucci signing the offer on behalf of the Bucci Group. The Baird Agreement was subject to the Orzech Agreement. Dr. Baird delivered a cheque for \$50,000 to the Realtor as a deposit, but the cheque was never cashed.

33. The Baird Agreement also contemplated the transfer of the Plaza to 407497 and the purchase of 407497's shares. The Baird Agreement contained the following clause:

...The vendor acknowledges that the Purchaser is acting in the capacity of Trustee only and intends to take title to the subject property in the name of a numbered company, namely 407497 Ontario Limited. On finalization and completion of this Offer to Purchase the Vendor's Solicitor is authorized to take all necessary steps to effect all necessary changes to this numbered Company at the request of the Purchaser or its nominee, including the transfer of shares and election of new directors and/or officers, as applicable.

34. By a deed dated October 15, 1980 and registered on October 17, 1980, the Bucci Group transferred the Plaza to 407497 (the "October 15, 1980 transfer").

35. Between the signing of the Baird Agreement on October 13, 1980 and the registration of the deed to 407497 on October 17, 1980, all of the issued shares of 407497 were transferred to Dr. Baird, who became president of 407497 on October 15, 1980.

36. Three hours after registration of the October 15, 1980 deed, Kama's trustee in bankruptcy registered the receiving order dated October 15, 1980 against the Plaza's title.

37. The solicitor swore the land transfer tax affidavit, identifying himself as the solicitor for the transferee, 407497. He also swore that the total consideration for the transaction was \$2,450,000, allocated as follows:

Monies paid or to be paid in cash	\$ 460,000.00
Mortgages assumed	1,870,000.00
Liens, etc. to which transfer was subject	<u>120,000.00</u>
	<u>\$2,450,000.00</u>

25th February, 1994

38. No cash was paid on the registration of the October 15, 1980 deed. Yet the sale was for valuable and substantial consideration totalling \$2,450,000, made up of the assumption of the \$1,870,000 mortgage and the liens of \$120,000 plus an agreement to pay \$460,000. There is no evidence that the sale price was less than Plaza's market value.

39. The land transfer tax affidavit was true in all material respects.

40. Although the Bucci Group paid the land transfer tax, Dr. Baird reimbursed them.

41. The transfer of the Plaza to 407497 did not affect the rights of Kama's Trustee. And if there had been no transfer, the registration of the receiving order could not have affected Bucci's rights as a mortgagee to complete the sale of the Plaza under the Orzech Agreement or under the Baird Agreement.

42. During argument, with his characteristic candour and fairness, Mr. MacKenzie conceded that the transfer of the Plaza by the October 15, 1980 deed did not in any way prejudice Kama's Trustee and that Mr. Speciale's opinion was erroneous. Yet he maintained that if Mr. Speciale had intended to deceive he would indeed be guilty of professional misconduct.

43. In the Complaint, the Society alleged that Mr. Speciale orchestrated a sham transaction by the October 15, 1980 deed conveying the Plaza to 407497.

44. Discussions continued with Mr. Orzech after October 17, 1980. But, in mid-November 1980, the Orzech Agreement was terminated. Thus, the Baird Agreement became operative.

45. On November 1, 1980, during the currency of the Orzech Agreement, Mr. Speciale met with Kama's trustee in bankruptcy, Price Waterhouse, its solicitor Mr. Morawitz, and a representative of the Federal Business Development Bank. At this meeting, Mr. Speciale disclosed and explained the transfer of the Plaza to 407497.

46. By letter dated November 18, 1980, Mr. Speciale confirmed his disclosures at the November 1, 1980 meeting in the following words:

This letter will confirm our meeting of November 1, 1980 at your offices at which representatives of Price, Waterhouse & Co., Trustee in Bankruptcy, Messrs. Borden & Elliot and the Federal Business Development Bank were present together with the writer.

In respect to this meeting, we wish to confirm the following:

1. Our client, Bucci Tile & Mosaic Limited, in Trust, is prepared to continue co-operating with you in every way to facilitate the discharge of your responsibilities and that of the Trustee in respect of the affairs of Kama Estates Limited.

2. As indicated to you, our client has sold the above-noted property to 407497 Ontario Limited pursuant to an Agreement of Purchase and Sale entered into with Lou Orzech, in Trust. We confirm that we produced to you a copy of this Agreement of Purchase and Sale for your perusal during the course of the meeting. As indicated to you, the Purchaser Company is a corporation that was established through this office for another client some time in early 1979. Following the execution of the Agreement with Lou Orzech, in Trust, it was decided that the aforementioned Numbered Company would be turned over to him and his clients. Accordingly, all documentation reflecting change-over of directorship, officers and shareholders has been effected as at October 15, 1980.

25th February, 1994

3. Also, during the course of our meeting, we produced to you deposit and cheque books in respect to the Trust Account established by our client as Mortgagee in Possession. Enclosed herewith please find Statement of Monies deposited and paid out by cheque, for your information.

4. Enclosed herewith please find Statement of Adjustments indicating a breakdown of the proceeds. Initially, the Agreement between our client and the Purchaser called for a total cash amount to be paid on closing. We confirm that the Agreement has been re-negotiated whereby our client has agreed to take back a \$150,000.00 Mortgage for the term of one (1) year, as part of the closing price. This Mortgage was necessitated as a result of conditions imposed by the First Mortgagee in negotiation of extension of its Mortgage. The additional cash that we would have otherwise been paid to our client has been reserved by the Purchaser, we understand, to be applied against the pay-down of the principal currently secured by the First Mortgage, mechanic liens and carriage of the property.

Also enclosed herewith please find photocopy of Statement of Monies Owing and Deficiency, for your information.

Also the Real Estate Commission payable represents about 4% of the Purchase Price. The entire Commission has been left in the property and the Purchaser has made its own arrangement to secure the same.

5. As discussed during the course of the meeting, the premises occupied by Casino Entertainment Inc. have been vacated on or about October 31, 1980. This loss of Tenant creates a further cash-flow hardship on the property in view of the fact that approximately 7,500 square feet, being 15% of the Plaza, has not been vacated. Accordingly, the Purchaser has become even more concerned as to the viability of the project. Our client is making attempts to replace this Tenant. We suspect that Casino Entertainment Inc. took advantage of the fact that the Trustee in Bankruptcy, who became involved in the property, thereby giving it an opportunity to leave because of the aura of uncertainty. In an effort to maintain stability, it would appreciate it if no further discussions were held between the remaining Tenants and the Trustee or its representatives.

6. As indicated our client and the Purchaser are prepared to co-operate with a view to assisting the Federal Business Development Bank in protecting its security in the operations previously carried on by the Sixth Dimension Discotheque. In this respect, we have delivered to the Federal Business Development Bank a Lease showing the said Bank as Tenant permitting it to market the business intact.

7. As we are negotiating and expect to complete the extension of the First Mortgage, we shall require from you a lifting of the Order which has been registered against the subject property. We wish to confirm that you are prepared to temporarily lift this Order to permit registration of the Mortgage Extending Agreement and thereafter recommend to the Creditors to lift the Order permanently, provided that you have had an opportunity to inspect all documentation. We appreciate your co-operation in this respect.

8. We have since our meeting learned that Mary Kaptyn has left for Holland permanently. This gives our client great concern as it will be one of the bigger creditors under its deficiency and no one to investigate in respect to the affairs of the bankrupt Estate. It now appears that there will be little funds, if any, available for distribution.

25th February, 1994

47. As a result of this meeting, the receiving order was removed from the Plaza's title.

48. Dr. Baird, Mr. Clem Bucci, Mr. Fiscaletti and Mr. Speciale performed services for 407497 by managing the Plaza. The Plaza's operation became more difficult because of new vacancies and escalating interest rates. In October, 1980, the first mortgage's annual interest rate was 15%. By December, 1980, it soared to 20.75% and, by August, 1981, to 25%.

49. The Bucci Group did not have the funds to carry the Plaza's continuing operating losses.

50. Dr. Baird paid about \$45,000 of 407497's operating expenses, including the cost of a two-year extension of the first mortgage. Mr. Speciale even moved his law office to the Plaza.

51. Mr. Speciale and Dr. Baird sold shares in 407497 to various investors other than Elkland and used the receipts totalling \$160,500.00 to meet some of the Plaza's operating losses.

52. In the spring of 1981, Mr. Speciale entered into negotiations with Mr. Apstein resulting in the purchase by Elkland of 60% of the common shares of 407497.

53. Elkland's instructions to Mr. Speciale were contained in a handwritten direction which read as follows:

You are hereby irrevocably directed and authorized to pay over the funds forwarded to you, in Trust, to 407497 Ontario Limited, up to \$330,000 Canadian dollars in exchange for common equity shares in the said company for no less than 60 percent as funds are provided as follows:

1. 120,000 immediately;
2. 100,000 on May 16, 1981;
3. 110,000 on June 16, 1981.

And this shall be your good and sufficient authority for so doing.

Dated at St. Thomas, U.S.A. this April 26, 1981 on behalf of myself and Jose Galvalisi for Compania de Inversiones Elkland.

54. From about the end of April, 1981 through the summer of 1981, Mr. Speciale attempted to settle with the Bucci Group and with legal counsel retained by Mr. Clem Bucci the Bucci Group's security for the balance owing to them.

55. Before May, 1981, Mr. Clem Bucci retained Mr. Harold Cohen as his solicitor. Mr. Clem Bucci required satisfaction of his personal claim for \$50,000 for managing the Plaza before he would settle the security for Bucci Group.

56. In May, 1981, Mr. Speciale and Dr. Baird, representing 407497, attended a meeting in Miami with Mr. Apstein, Dr. Blumenstein, and their lawyer, Mr. Pleeter, to discuss the Plaza. As a result of this meeting, an agreement was drawn which included, by shares and covenants, protection for the Bucci Group interest (the "Miami draft agreement").

57. When Mr. Apstein refused to pay Mr. Clem Bucci's management fee of \$50,000.00, Mr. Clem Bucci insisted that if his management fee was not paid there would be no deal. So Mr. Clem Bucci refused to sign the Miami draft agreement. And there was no deal.

25th February, 1994

58. On September 30, 1981, the Supreme Court of Ontario appointed Dunwoody Limited ("Dunwoody") as trustee of the Plaza under the Mechanics' Lien Act at the request of Bernardi Building Supplies, a lien claimant that had been a supplier to Cleveland Drywall Limited, one of the Bucci Group.

59. Also on September 30, 1981, another member of the Bucci Group, Aquarius Mechanical Limited, obtained an order appointing Dunwoody as Receiver/Manager of 407497.

60. A number of additional actions resulted, including:

- (a) an action by Bucci Tile & Mosaic Limited and Aquarius Mechanical Limited against Mr. Speciale, 407497 and Dr. Baird;
- (b) a counterclaim by Mr. Speciale for payment of his fees; and
- (c) a claim by Elkland for the return of its advances and for other relief against the Bucci Group, Mr. Speciale, the Realtor, Dr. Baird, 407497, and the Receiver/Manager appointed by the court for 407497.

61. On March 19, 1982, Dunwoody sold the Plaza for \$2,370,000. The net proceeds of \$298,352.73 were paid into court pending resolution of all claims.

62. In November, 1986, all actions were settled on the following bases:

- (a) the sum of \$527,000, being the monies in court plus \$43,800 contributed by Mr. Speciale's E&O insurer, was distributed among claimants, resulting in payments of:
 - (i) \$140,000 to Elkland; and
 - (ii) \$225,000 to Bucci Tile & Mosaic Limited, Aquarius Mechanical Limited and Ermys Construction Company Limited;
- (b) the waiver by the Realtor of its commission; and
- (c) the waiver by Dr. Baird and other investors of their claims.

THE DISCIPLINE PROCESS

63. The Complaint issued after Mr. Clem Bucci and Mr. Fiscaletti wrote to the Society alleging misconduct on the part of Mr. Speciale.

64. Although the Complaint issued formally on January 25, 1984, it was held in abeyance until resolution of the civil actions.

65. On December 13, 1988, several months before the hearing began, Mr. Conway, the Society's counsel, wrote to Mr. Murray saying, in part:

III. Legal Issues

- (a) Was the transfer to 407497 legally defensible? I have given this some thought and remain convinced that it was not. I suggested on September 29 that I would, however, welcome discussion of this issue with any of the real estate specialists in your firm who have a contrary view. As I indicated, Mr. Speciale should not face discipline on a transaction which raises a genuine issue of law."

66. Mr. Murray did not respond to Mr. Conway's invitation to discuss the issue identified in the letter.

67. Instead, the Society obtained a written opinion from Mr. Murray Page dated April 17, 1989 and revised on June 14, 1989. Mr. Page's opinion was that the conveyance by the October 15, 1980 deed was a fraudulent conveyance within the meaning of s. 2 of the Fraudulent Conveyances Act.

68. Mr. Murray did not respond to the December 13, 1988 invitation because, he said, he was unable "to comprehend on what basis Mr. Conway was alleging that the transfer to 407497 was not legally defensible." In his factum, Mr. Murray asked rhetorically:

...Why was it incumbent on the Solicitor to prove a negative and, more particularly, to prove that the sale was not a sham when the Society did not disclose why it alleged it was?

69. Still, Mr. Murray did not move for particulars before the commencement of the Discipline Committee on May 2, 1989.

WHAT ADDITIONAL INFORMATION DID THE SOCIETY HAVE BEFORE THE COMMENCEMENT OF THE DISCIPLINE HEARING?

70. The Society knew or ought to have known the facts set out above before the Discipline hearing began. The Society also had information from Mr. Fiscaletti and Mr. Clem Bucci that:

- (a) the October 15, 1980 transfer was intended to be for the benefit of the Bucci Group;
- (b) the shares of 407497 were to be held in trust for the members of the Bucci Group;
- (c) the purpose of the October 15, 1980 transfer was in some way to defeat Kama's trustee; and
- (d) Messrs. Fiscaletti and Bucci were unaware of the transfer to Elkland until April 27 or 28, 1981.

THE DISCIPLINE HEARING

71. At the hearing of the Complaint, the Society bore the onus of proof in respect of each of the following allegations:

<u>Paragraph in Complaint</u>	<u>Required to Establish</u>
2(b)	The October 15, 1980 transfer was a sham;
2(c)(i)	Mr. Speciale breached his trust obligation to the Bucci Group by transferring control of 407497;
2(c)(ii)	Mr. Speciale breached his trust obligation to Elkland by disbursing \$330,000 before conditions precedent to the disbursement were satisfied;
2(d)	From May 1, 1981 to September, 1981 Mr. Speciale misled Elkland about his failure to honour his trust obligation.

25th February, 1994

72. Before the Discipline Committee, the Society called witnesses, including Mr. Page, who expressed his expert opinion that the October 15, 1980 transfer was a sham and was intended to deceive Kama's trustee.

73. At the conclusion of the Society's evidence, Mr. Murray moved to dismiss the Complaint but advised the Discipline Committee that if the motion was dismissed he would call Mr. Poultney as a witness to dispute Mr. Page's legal opinion relating to particular (b).

74. The Discipline Committee immediately dismissed Mr. Murray's motion in respect of particulars (b) and (c)(i), but reserved its decision on particulars (c)(ii) and (d). Upon the resumption of the hearing, the Discipline Committee dismissed without reasons the motion relating to the latter two particulars of professional misconduct.

75. Mr. Murray then called Mr. Poultney to testify. Mr. Poultney contradicted Mr. Page's opinion. The Discipline Committee preferred Mr. Poultney's evidence to Mr. Page's evidence.

76. The Discipline Committee concluded:

- (a) that there was adequate consideration for the October 15, 1980 transfer;
- (b) that the October 15, 1980 transfer was not a sham;
- (c) that the evidence of Mr. Clem Bucci and Mr. Fiscaletti was manifestly unreliable; and
- (d) that the Society did not prove a breach of any trust obligation to Elkland.

77. In the result, the Discipline Committee dismissed the Complaint. Mr. Speciale did not give evidence before the Committee.

THE COST DECISION

78. The Discipline Committee accepted that Mr. Murray's solicitor/client account was \$108,000 and that about \$48,000 was incurred after delivery of Mr. Poultney's opinion.

79. The Discipline Committee recommended that, for the following reasons, the Society should be required to pay to Mr. Speciale \$25,000 plus disbursements:

- (a) On October 17, 1989, counsel for the solicitor delivered to the Law Society an expert report signed by Howard Poultney, Q.C. The Committee accepted the evidence of Mr. Poultney in preference to the evidence of Mr. Page. It is your Committee's view that upon the delivery of Mr. Poultney's report, it was incumbent upon the Society to consider carefully whether to withdraw the complaint. Some years previous, Mr. Page had given an opinion relating to the validity of the transaction which was, in essence, contrary to the opinion which he gave at the hearing before your Committee.
- (b) By October 17, 1989, the Society must have known that certain witnesses who were key participants in the events relating to these transactions would not be called by the Society. As Mr. Guthrie pointed out on behalf of the Committee in the Report, the Committee had before it had no explanation why Apstein, a key participant in the negotiations, was not called as a witness by the Law Society.

25th February, 1994

- (c) The evidence of Clem Bucci and Frank Fiscaletti contained manifest contradictions between their sworn evidence and previous examinations in other proceedings and the evidence given by them before the Committee. The evidence of other witnesses called by the Society was, in part, unsatisfactory because of the passage of time.

...
... Your Committee...is of the view that if, at a particular point in time, it appears that there is good reason to doubt whether the particular discipline proceedings "were unwarranted", then Convocation is given the jurisdiction to order, in its discretion, "Such costs as it considers just be paid by the Society to the member."

80. The recommended award of \$25,000 was apparently a party/party award in that it amounts to approximately 50% of the solicitor/client fees of \$48,000 incurred after delivery of Mr. Poultney's opinion.

THE ONUS OF ESTABLISHING ENTITLEMENT TO COSTS

81. The onus of establishing entitlement to costs is upon Mr. Speciale. He must prove on the balance of probabilities that "the disciplinary proceedings were unwarranted" and that Convocation should exercise its discretion to award him costs.

POLICY CONSIDERATIONS:

WHAT IS THE MEANING OF S. 41 OF THE ACT?
WHEN SHOULD CONVOCATION ORDER THE SOCIETY TO PAY COSTS?

82. Policy considerations are important in deciding the ambit of s. 41. The Society must not be deterred by the risk of costs from vigilantly fulfilling its mandate to protect the public interest. And certainly s. 41 does not contemplate a regime of costs following the event. Thus, just because discipline proceedings are dismissed, it does not follow that the discipline proceedings were unwarranted. Hindsight is often instructive, but Convocation must resist the temptation to rely slavishly upon it when judging after the fact whether disciplinary proceedings are or are not unwarranted. Whether proceedings are unwarranted must be analyzed as of the time the decision is made to institute the proceedings and at the time or times during the currency of the proceedings that the solicitor asserts the Society should know they have become unwarranted.

83. Because disciplinary proceedings were initially warranted, it does not follow that they continue to be warranted throughout the currency of a complaint. The Society must continue to exercise a reasonable degree of care, skill, judgment, and vigilance as the discipline process unfolds. A standard of perfection is sought for but not expected of those involved in the discipline process. However, if at any stage of the discipline process the Society acts in bad faith or maliciously or for a collateral purpose, the discipline proceedings become unwarranted.

84. The word "unwarranted" in the context of the phrase "where it appears that discipline proceedings against a member were unwarranted" means without reasonable justification, patently unreasonable, malicious, taken in bad faith, or for a collateral purpose.

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

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

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

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

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

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

WAS THE DISCIPLINE PROCEEDING AGAINST MR. SPECIALE UNWARRANTED?

91. There was no evidence before the Special Committee disclosing the information available to Mr. Yachetti when, as Chair of Discipline, he authorized the Complaint pursuant to s. 9(1) of Regulation 708 under the Act. It is unnecessary for the Special Committee to decide whether the information before Mr. Yachetti was privileged or, assuming that it was privileged, whether the Society should waive the privilege. For our purposes, it is sufficient to conclude that because there was no evidence on this point, Mr. Speciale has not established that the initiation of the disciplinary proceedings was unwarranted.

92. At the time the disciplinary proceedings were instituted by the issuance of the Complaint, Society's counsel knew the Society had the obligation to prove that the October 15, 1990 transfer was a sham transaction.

25th February, 1994

93. The s. 41 question has been complicated by the admission without objection of Mr. Page's opinion. There was no reason to admit Mr. Page's expert opinion on whether the October 15 transfer was a sham or contravened the Fraudulent Conveyances Acts. This was an opinion on a matter of Ontario law, an interpretation of an Ontario statute and its applicability or non-applicability to a particular set of facts. A decision on such a matter of law was wholly within the competency of the Discipline Committee.

94. Certainly it would have been prudent for the Society to obtain an expert's opinion before institution of the disciplinary proceedings. But there is no evidence that the Society sought an opinion before the Complaint was issued. Mr. Page's opinion was obtained in April, 1989, five years after the Complaint was authorized by Mr. Yachetti and within one month of the commencement of the hearing before the Discipline Committee. The Society gave no explanation for this delay, and Mr. Murray gave no explanation for failing to object to the admissibility of Mr. Page's evidence.

95. Moreover, Mr. Page's opinion was fundamentally wrong, an error exacerbated by the fact that Mr. Page had been retained by Dr. Baird in 1980 and, on that occasion, had given Dr. Baird an opinion that the October 15, 1980 transfer was not a sham transaction.

96. As set out in paragraph 65, Mr. Conway wrote to Mr. Murray on December 13, 1988, stating that, if there was a "genuine issue of law" raised, Mr. Speciale should not have to "face discipline." But once Mr. Poultney's opinion was delivered, a "genuine issue of law" was raised. Why, then, did the Society continue the discipline proceedings on particular (b) after delivery of Mr. Poultney's opinion? The Society has not answered this question.

97. The Society knew the following facts relating to the October 15, 1980 transfer when the hearing before the Discipline Committee began on May 2, 1989:

- (a) the Baird Agreement and the Orzech Agreement both contemplated the transfer of the Plaza to 407497;
- (b) the Bucci Group paid the land transfer incidental to the October 15, 1980 transfer tax but was reimbursed by Dr. Baird on behalf of 407497;
- (c) the reimbursement of the Bucci Group for the land transfer tax was inconsistent with the Bucci Group controlling 407497;
- (d) the October 15, 1980 transfer required 407497 to assume the existing mortgages and liens and 407497 paid monthly payments on account of the Seel mortgage after the October 15, 1980 transfer;
- (e) the Plaza was operated at a loss and Dr. Baird and the other investors advanced money to 407497, in part, to pay this operating loss;
- (f) Dr. Baird was involved in the management of the Plaza and therefore rendered services on behalf of 407497;
- (g) Dr. Baird had a legitimate business purpose in advancing money to 407497 and becoming involved in the management of the Plaza;
- (h) Dr. Baird and other investors advanced about \$200,000 to 407497 exclusive of Elkland's \$330,000, which sums were lost;

25th February, 1994

- (i) Mr. Speciale met with Kama's trustee in bankruptcy on November 1, 1980 and confirmed the meeting and the essence of the October 15, 1980 transfer by letter dated November 18, 1980. As a result, Kama's trustee in bankruptcy not only refrained from taking any action but also removed the receiving order from the Plaza's title;
- (j) the fact that negotiations were undertaken to establish a method of securing the Bucci Group's indebtedness was inconsistent with the Bucci Group's control of 407497. If the Bucci Group had controlled 407497, it was unnecessary for it to negotiate with Dr. Baird and Mr. Apstein. If the Bucci Group had controlled 407497, it needed only to unilaterally establish the terms of repayment;
- (k) as a matter of law, the Society must be taken to know that the Fraudulent Conveyances Act was inapplicable to the transfer because 407497 was an entity separate and apart from both Kama and the Bucci Group;
- (l) Mr. Speciale's concern about the registration of the receiving order on title was misplaced but must have been ameliorated by its removal from the Plaza's title by Kama's trustee.

98. Particular (b) alleged that Mr. Speciale "orchestrated a sham sale" to deceive Kama's trustee in bankruptcy. But how did the Society infer an intent to deceive Kama's trustee, given Mr. Speciale's disclosure to Kama's trustee during the November 1, 1980 meeting? The Society has not answered this question.

99. Certainly it is significant that Mr. Murray's motion for a directed verdict was dismissed. This dismissal justifies a conclusion that the Society established a prima facie case. The dismissal of a motion for a directed verdict is persuasive evidence that the proceedings were not unwarranted, but it is not dispositive of the issue.

100. Ultimately, the dismissal of Mr. Murray's motion bears little significance because the Discipline Committee concluded that the discipline proceedings were unwarranted after delivery of Mr. Poultney's opinion even though it dismissed Mr. Murray's motion for a directed verdict.

101. In relation to particular (b), in the absence of reasons by the Discipline Committee, the Special Committee infers that Mr. Murray's motion was dismissed because once Mr. Page's evidence was admitted the Society established a prima facie case.

102. Given the facts known to the Society as set out in paragraph 97, Mr. Speciale's disclosure to Kama's trustee in the November 1, 1980 meeting, the removal by Kama's of the receiving order from the Plaza's title and Mr. Page's erroneous opinion, we conclude that it was patently unreasonable and therefore unwarranted for the Society to proceed with particular (b).

103. In relation to particular (c)(i), the Society led the evidence of Mr. Clem Bucci and Mr. Fiscaletti to the effect that they believed the Bucci Group would retain control of 407497. Although this evidence was inconsistent with other evidence given by them under oath, it was reasonable for Society's counsel to leave the weighing of this evidence to the Discipline Committee. It may be that if a crucial witness not only recants prior testimony but also admits that he or she lied to the Society, the Society's counsel should ask for leave to withdraw a complaint. But this was not the situation Mr. Conway faced. The Discipline Committee probably dismissed Mr. Murray's motion in relation to this particular because it was required to weigh the evidence of Mr. Bucci and Mr. Fiscaletti.

25th February, 1994

104. In the Recommendation the Discipline Committee also erred in principle in relying upon the conclusion that the evidence of Messrs. Bucci and Fiscaletti was "manifestly unreliable". The Discipline Committee applied its own finding on credibility retrospectively to the Society's decision to proceed. It was wrong to do so. The Discipline Committee ought to have judged the Society's decision on the basis of the evidence known to Society's counsel. Mr. Conway ought not to be required to weigh the evidence. We therefore conclude that it was not unwarranted for the Society to proceed with particular (c)(i).

105. To prove particular 2(c)(ii), it was incumbent upon the Society to prove that Mr. Speciale breached his trust obligation to Elkland by disbursing the \$330,000.00.

106. When the hearing began on May 2, 1989 before the Discipline Committee, the Society knew that Mr. Speciale had the April 26, 1981 direction permitting the release of the \$330,000 on satisfaction of one condition, namely, the transfer to Elkland of 60% of the common shares of 407498.

107. The Society gave no explanation to the Discipline Committee for failing to call Mr. Apstein, and the Discipline Committee commented upon this omission. At the s. 41 hearing before the Special Committee, the Society again failed to explain why Mr. Apstein was not called to testify before the Discipline Committee.

108. From this omission, we infer that Society's counsel knew that Mr. Apstein would not be called to give evidence before the Discipline Committee when the hearing began on May 2, 1989.

109. Without the evidence of Mr. Apstein that there were conditions precedent other than those set out in the April 26, 1981 direction, the Society could not prove that Mr. Speciale breached his trust obligations. To the contrary, the objective evidence was that Mr. Speciale followed Elkland's specific instructions.

110. We conclude, therefore, that it was not reasonably justifiable and thus unwarranted for the Society to proceed with particulars (c)(ii). Similarly, it was unwarranted to proceed with particular (d) because each depended upon the finding that Mr. Speciale breached a trust obligation by disbursing the \$330,000.

SHOULD THE SOCIETY BE REQUIRED TO PAY COSTS TO MR. SPECIALE?

111. Having found that it was unwarranted to proceed with part of the Complaint, the Special Committee must decide, in the exercise of its discretion, whether Convocation should award costs and, if so, in what amount. The Act does not prescribe a scale of costs. The award, if made, does not have to fit within a scale, either party and party or solicitor and client. It does not have to be full indemnity for what the solicitor had to pay to defend himself or herself. It will depend on the facts of each particular case.

112. Costs should be awarded to a solicitor on a scale as between solicitor and client only in rare and exceptional circumstances so as to mark Convocation's disapproval of particularly unacceptable conduct by the Society in instituting or continuing to prosecute discipline proceedings. Such exceptional circumstances may include, for example, discipline proceedings that were malicious, or instituted in bad faith, or against the wrong person. In these circumstances costs on a solicitor/client basis may be appropriate. An award is likely to be more generous in a case in which discipline proceedings should never have been started than in a case in which continuation of proceedings already begun becomes unwarranted.

113. Although the Society's decision to continue with some of the particulars against Mr. Speciale was unwarranted, Mr. Speciale has not proved malice or bad faith on the Society's part.

114. Much of the confusion surrounding these discipline proceedings arose from Mr. Murray's failure to seek particulars relating to why the Society considered that the October 15, 1980 transfer was a sham transfer, from the Society's decision to call Mr. Page, whose legal opinion we consider to have been inadmissible, and from Mr. Murray's failure to object to the admissibility of this legal opinion. Instead, Mr. Murray called Mr. Poultney, who also gave a legal opinion that was ultimately accepted by the Discipline Committee. Mr. Murray also led evidence from Dr. Baird that he had retained Mr. Page to express an opinion about the October 15, 1980 transfer and that Mr. Page's opinion on that occasion was that the transaction was unimpeachable. And, of course, Mr. Murray cross-examined Mr. Page with his usual vigour on the issue of his previous oral opinion to Dr. Baird.

115. Moreover, although it was unwarranted to proceed with three particulars, there is no evidence about the extent of the solicitor's co-operation with the Society or about whether Mr. Murray disclosed to the Society before his cross-examination the fact that Mr. Page had been retained by Dr. Baird and had given a contrary opinion.

116. We consider the fact that Mr. Speciale attended on November 1, 1980 and made full disclosure to Kama's trustee to be the most telling fact. This disclosure was inconsistent with a sham transaction and inconsistent with a dishonest intent.

117. In all the circumstances, therefore, we conclude that the Society should pay to Mr. Speciale costs of \$52,000 calculated and reasoned as follows:

- (a) Mr. Murray's solicitor/client account to Mr. Speciale for the discipline hearing was \$108,000;
- (b) Party/party costs would be about 40% thereof or \$43,200;
- (c) We fix party/party costs at \$32,400 because three (3) of four (4) particulars were unwarranted and 3/4 of \$43,200 is \$32,400;
- (d) We fix interest on \$32,400 from January 4, 1991 at \$9,600;
- (e) We fix costs of the s. 41 proceedings before Convocation and the Special Committee at \$10,000 inclusive of interest and GST. Although neither counsel sought to uphold the Recommendation, the necessity for a hearing before the Special Committee arose because the Society considered the Cost Issue to give rise to a matter of principle.

118. We refuse to award as a disbursement Mr. Poultney's fees. We consider his legal opinion evidence to have been unnecessary. Had Mr. Murray objected to the admissibility of Mr. Page's legal opinion, we would have ordered otherwise.

February 25, 1994

Harvey T. Strosberg, Q.C.

The Honourable John Arnup

Colin Campbell, Q.C.

Casey Hill

Hope Sealy

.....

25th February, 1994

Mr. Strosberg advised Convocation that with regard to the George Flak discipline matter Convocation in February had requested Ms. Curtis to either make her own recommendation as to penalty or concur with one of the two recommendations already made. Ms. Curtis advised that "in all of the circumstances of this case, I am of the view that the better course of action is that I not make a recommendation as to penalty." As a result the solicitor can either request a hearing before a new Committee or proceed to Convocation with the Report and Recommendations as to Penalty submitted by the two Committee members at the original hearing.

.....

ORDERS

The following Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of November, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Natalie Bronstein be disbarred as a Barrister and that her name be struck off the Roll of Solicitors and that her membership in the said Society be cancelled.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

25th February, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Andrew Earl Steepe, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of November, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Andrew Earl Steepe be granted permission to resign, such resignation to be received by the Law Society within 30 days of Convocation, failing which, he be disbarred.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David John Parsons, of the Village of Frankford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of October, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

25th February, 1994

CONVOCATION HEREBY ORDERS that David John Parsons be suspended indefinitely until he has filed the statutory declaration and report of a public accountant.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David John Parsons, of the Village of Frankford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of December, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that David John Parsons be Reprimanded in Convocation and that he be suspended until such time as he appears before Convocation to be reprimanded and that he pay the costs of the Law Society in the amount of \$3,500.00.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

25th February, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Charles John Lewonas, of the City of Woodstock, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of November, 1993, in the presence of Counsel for the Society, the Solicitor and counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct, and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Charles John Lewonas be suspended for a period of 30 days or so long thereafter until his books and records are maintained in accordance with the provisions of Section 15 of Regulation 573 of the Law Society Act. Such suspension to commence the 15th day of February, 1994, and that he pay the costs of the Law Society in the amount of \$1,700.00 within 30 days of Convocation.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

IN THE MATTER OF Marvin Larry Ellison, of the City of Scarborough, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the majority of the Discipline Committee dated the 17th day of September, 1993 and the minority report dated the 22nd day of October, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

25th February, 1994

CONVOCATION HEREBY ORDERS that Marvin Larry Ellison be suspended for a period of 19 months and that he pay costs of the Law Society in the amount of \$1,900.00.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Paul Francis O'Neill, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of October, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Paul Francis O'Neill be reprimanded in Convocation and pay costs in the amount of \$500.00 payable immediately upon recommencing practice following his suspension, and that he be suspended from the practise of law indefinitely until his books and records are up to date and his filings made to the satisfaction of the Law Society.

DATED this 27th day of January, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

.....

25th February, 1994

ADMISSIONS COMMITTEE

Re: ANDREW GRANT MCQUILKIN - Application for Termination of Suspension

The Secretary placed the Application before Convocation.

Ms. Bellamy, Ms. Kiteley and Mr. Bastedo withdrew until the conclusion of this matter.

Mr. Perrier appeared for the Law Society and Mr. McQuilkin appeared on his own behalf.

The Application was filed as Exhibit 1 and an Undertaking from the applicant dated February 25, 1994 was filed as Exhibit 2.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF ANDREW GRANT MCQUILKIN
of the City of Toronto

AND IN THE MATTER OF an Application for Termination of Suspension

REASONS FOR DECISION

PANEL:

Ms. Frances Kiteley - Chair
Ms. Denise Bellamy
Mrs. Laura Legge, Q.C.

APPEARANCES:

Mr. Neil J. Perrier - for the Law Society
Mr. McQuilkin represented himself

DATED:

January 21, 1994

This is an application by Mr. Andrew Grant McQuilkin for termination of his suspension pursuant to s.47 of the Law Society Act, R.S.O. 1990, c.L.8.

A hearing was set for January 21, 1994 before a committee composed of Fran Kiteley (Chair), Laura Legge and Denise Bellamy. The Society was represented by Neil Perrier. The Solicitor represented himself.

BACKGROUND:

On January 24, 1985, Convocation ordered that the Solicitor's rights and privileges "be suspended until he has filed all of the forms required by the Society and all his books and records are up to date". The Solicitor had been found guilty of professional conduct of the following:

25th February, 1994

- failing to maintain books, records and accounts in connection with his practice;
- failing to reply to a letter sent to him by the Law Society; and
- failing to file with the Law Society within six months from his fiscal year end a statutory declaration in the form prescribed by the Rules.

The Reasons for the Recommendation as to Penalty were given by a Discipline Committee comprised of James Wardlaw (Chair), Tom Bastedo and Reginae Tait. They referred, among other things, to the following pertinent information:

- Mr. McQuilkin had been called to the Bar in 1968 after having graduated from Osgoode Hall Law School. He started practise with Wilson, Miller in St. Catherines and was in partnership with them for two years. After that, he was a sole practitioner.
- As a result of marital problems, the Solicitor did not practise law between 1973 and 1976. He did not pay his Law Society fees and was suspended during this period.
- He was reinstated in 1977 and started his practice in Toronto as an employee of Louis Kesten doing civil and criminal litigation.
- Since his reinstatement in 1976, Mr. McQuilkin had been suspended eight times for non payment of fees or insurance premiums. At the time of the Discipline Committee's recommendation, he was already suspended for non-payment of the insurance premium.
- Mr. McQuilkin expressed an interest to be reinstated and remain a member of the Society, although he did not propose to open his own law office or re-enter the private practice of law. At that time he anticipated using his legal talents as an in-house counsel.
- Mr. McQuilkin admitted that he had no books and records since 1980 and could not satisfy the Society's bookkeeping regulations.

APPLICATION FOR TERMINATION OF SUSPENSION:

The Solicitor first notified the Society of his intent to apply for reinstatement on December 31, 1992. Thereafter it became apparent to the Society that, although the Solicitor was able to file all of the forms required by the Society, he was still not in a position to comply with the Order of Convocation to produce up to date books and records for the Audit Department's inspection.

Indeed, the Solicitor finds himself to be in a worse position than he had been in 1985. All his source documents have since been lost. The Solicitor asked, therefore, that the Law Society waive the necessity for him to comply with the condition that his books and records be up to date.

Counsel for the Society took no position on whether the committee should recommend such a waiver to Convocation. Instead, Mr. Perrier contended that if there were to be such a recommendation, the following conditions should apply:

1. that the Solicitor pay late filing fees for 1985 and 1986 amounting to \$2,631.17;
2. that the Solicitor successfully completed Phase I and Phase III of the Bar Admission course;

25th February, 1994

3. that the Solicitor enrol in and complete the Law Society's Start Up Workshop before resuming practice; and
4. that the Solicitor file monthly trust reconciliations with the Law Society for a three year period.

The Solicitor had no objection to conditions 1, 3, and 4 (although he suggested a quarterly reconciliation). He did, however, have difficulty with the suggestion that he retake the Bar Admission course. He believed that, if the Law Society was intending to make that a condition of reinstatement, the Law Society should have informed him of this at the outset. He further argued that Mr. Gordon Goldman, who had been disbarred after receiving a sentence of fifteen months imprisonment for conspiring to possess counterfeit money, was reinstated by Convocation without such a need to pass the Bar Admission exam. As well, since his suspension, he has been personally involved in suing a number of different individuals and organizations. He asserted that this has enabled him to keep current with changes to the rules of civil procedure.

After some discussion, Mr. McQuilkin submitted that he could take a number of the classes offered in the Bar Admission course.

RECOMMENDATION:

The committee recommends that Convocation terminate the Solicitor's suspension without the necessity of the Solicitor producing up to date books and records, and that, pursuant to section 48 of the Law Society Act, the following terms and conditions be imposed:

1. that the Solicitor pay his fees for the years 1983-84 and 1984-85 in the amount of \$1,431.00, together with late filing penalties for the filing years 1985 and 1986 amounting to \$600 for each year, for a total of \$2,631.00;
2. that, pursuant to the Law Society's 1987 Policy on Reinstatement, the Solicitor successfully complete written examinations based on the Bar Admission Course materials within twelve months from the date on which Convocation renders its decision on this matter. The Committee does not recommend requiring attendance at Phase I, Phase II or Phase III of the Bar Admission course;
3. that the Solicitor pay 50% of the cost of the materials and the fee to sit the Bar Admission Course examinations;
4. that the Solicitor give his undertaking that, within three months of his reinstatement (or, if the course is no longer offered monthly, the first available course after his reinstatement), he will take the Law Society's Start Up Workshop; and
5. that the Solicitor, if he operates a trust account, provide quarterly trust reconciliations to the Law Society for three years. The frequency may be reduced with the written approval of the Secretary of the Law Society.

REASONS FOR RECOMMENDATION:

The operative sections of the Law Society Act are as follows:

47. Where the rights and privileges of a member or a student member are suspended for a definite or indefinite period, the member or student member may apply at any time to have them restored, and Convocation, after due inquiry by a committee thereof, may restore them.

25th February, 1994

48. Upon the readmission of a person as a member or student member or upon the termination of the suspension of the rights and privileges of a member or student member or upon the reprimand of a member or student member, Convocation or a committee thereof may impose upon the person such terms and conditions as it considers proper.

The onus of convincing the Law Society that the suspension of 1985 should be terminated rests with the Solicitor. The Committee is of the opinion that the Solicitor has discharged that onus.

The Committee had before it over thirty documents provided by both counsel. Mr. McQuilkin gave sworn evidence on his own behalf and was cross-examined by the Society.

The Solicitor attributed his past difficulties with the Society to a long period of alcoholism which began when he started the University of Toronto. For approximately thirty years the Solicitor had a severe drinking problem which has resulted in a failed marriage, the afore-mentioned difficulties with the Law Society, serious financial problems, and broken bones and unexplained injuries as a result of falling down while drunk.

It was during this period of severe alcoholism that the Solicitor lost his source documents. In the mid to late '80s, the Solicitor would stay at a friend's place where he frequently drank. He left a box containing his documents in that friend's basement. At some point the property was acquired by a new owner. Any boxes that had been left in the basement when the new owner took over the property ultimately disappeared.

In February 1989, the Solicitor made the decision to stop drinking, and - apart from half a glass of white wine at his wedding in 1993 - he has not consumed alcohol since then. His physician, Dr. E. Forman, confirms that the Solicitor has shown no signs of alcohol abuse for several years.

Since his suspension in 1985, he has always been gainfully employed, working at odd jobs, including dishwashing and working in restaurants and cafeterias. He has been employed with the Bulova Watch Company working in the shipping department doing, boxing, shipping and receiving work for the last six years.

The Law Society has received no claims resulting from the Solicitor's practice.

Despite the Goldman case, the Committee believes strongly that it is imperative that the Solicitor take the Bar Admission Course examinations as a necessary precursor to the suspension being lifted. Despite some personal litigation, the Solicitor has not practised law for nine years. Even when he was practising, there were numerous times when he was suspended and not allowed to practise. For the protection of the public, the Solicitor must requalify.

For all these reasons, the Committee believes that the condition imposed by Convocation in 1985 be waived. The Solicitor will never be able to meet that condition. The Committee is satisfied that, upon the new conditions being completed, the public will be adequately protected.

DATED at Toronto this 15th day of February, 1994

"D. Bellamy"

25th February, 1994

It was moved by Mr. Topp, seconded by Mr. Thom that the Application be adopted.

There were brief submissions by Mr. Perrier on behalf of the Society in support of the Application.

The Application was adopted.

Counsel and applicant retired.

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AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

SPECIAL COMMITTEE ON LAWYERS FEES

Mr. Howie presented the Report of the Special Committee on Lawyers Fees for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON LAWYERS' FEES begs leave to report:

1. HISTORY OF COMMITTEE
- 1.1. In March 1993 Convocation adopted a recommendation of the Finance and Administration Committee that a joint subcommittee be formed to consider the establishment of fee guidelines for outside counsel retained by the Law Society.
- 1.2. Representatives of the Admissions, Insurance, Discipline, Lawyers Fund for Client Compensation and Finance and Administration Committees were invited to participate.
- 1.3. The original Bencher members of the subcommittee are Colin L. Campbell, Philip M. Epstein, Clayton C. Ruby, David W. Scott and Harvey T. Strosberg with Kenneth E. Howie serving as Chair.
- 1.4. Staff members are Meg Angevine, David Crack and Lin Whitman.
- 1.5. In December 1993 Convocation approved the creation of a Special Committee to carry on the work that the joint subcommittee had begun and Susan Elliott was added as a member.
- 1.6. Your Committee has met on May 28, 1993, September 9, 1993, October 14, 1993, December 10, 1993 and February 21, 1994 and wishes to provide an interim report to Convocation on its work to date.
2. BACKGROUND
- 2.1. Your Committee reviewed information regarding the policies of various other law societies and the federal and provincial governments with respect to the selection and compensation of outside counsel.

- 2.2 Your Committee noted that, in general, most of the organizations surveyed had tried to establish guidelines to ensure that consistent principles were applied both in retaining and in paying outside counsel. The guidelines were aimed both at controlling costs and ensuring fairness.
- 2.3 Your Committee discussed at some length the current approach followed by the various departments of the Law Society which retain outside counsel on a regular basis. The discussion canvassed the nature and extent of outside counsel services provided to the Law Society and the range of compensation offered.
- 2.4 Your Committee then endeavoured to identify the Law Society's needs and objectives with respect to the use of outside counsel.
- 2.5 Your Committee observed that there is a real need to provide clear guidance to those who are charged with the responsibility for retaining outside counsel to represent the Society.
- 2.6 In addition, it is important that outside counsel understand what the Society's expectations are and what they, as counsel, must do to meet those expectations.
- 2.7 A consensus developed in the Committee that it is both necessary and desirable to establish maximum hourly rates ("caps") for outside counsel. Your Committee concluded that such "caps" are an essential element of any programme designed to achieve cost control and fairness.
- 2.8 It was further concluded that a schedule of maximum hourly rates would only be effective if it were applied in the context of general guidelines governing the provision of legal services to the Society by outside counsel.

3. RECOMMENDATIONS

3.1 Your Committee recommends that:

Outside counsel retained by the Law Society be subject to the following policy regarding legal accounts.

3.1.1 Maximum Hourly Rates:

- | | | |
|----|--------------------------|-------|
| 1. | Law Clerk/Student-at-law | \$ 75 |
| 2. | Junior Counsel up to | \$150 |
| 3. | Senior Counsel up to | \$250 |

3.1.2 General Guidelines for Legal Accounts:

1. All counsel retained by the Society are under an obligation to ensure that the legal services provided by their firm are, in every instances, both competent and cost effective. In particular, it is expected that the work will be performed by the individual whose skills, training and experience are most appropriate to the task.
2. Accounts for professional services should contain a detailed description of the services performed, the names of the persons providing the services, their respective hourly rates and the number of hours billed by each of them.

- 3. Each account submitted will be reviewed to determine whether;
 - (i) it is in accordance with established guidelines;
 - (ii) the result obtained (both in absolute terms and in terms of the timeliness of the result) justifies an increase or decrease in the amount billed.
- 4. In unique or exceptionally complex situations, there is a discretion to retain counsel at a rate in excess of the maximum otherwise in effect.

4. OTHER ISSUES

- 4.1 Your Committee proposes to consider next what guidelines should be established for the selection of outside counsel and how such counsel should be supervised once retained.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February 1994

K. Howie
Chair

It was moved by Mr. Howie, seconded by Mr. Feinstein that the Report be adopted.

It was moved by Ms. Curtis, seconded by Ms. Peters that any Benchers who does work for the Law Society or whose law firm acts for the Society should not be a member of this Committee.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:35 P.M.

The Treasurer and Benchers had as their guests for luncheon Mr. justice G. D. Finlayson, a former Treasurer and Mr. Nicholas Richter who was recently awarded the Treasurer's Medal.

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CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Cullity, Curtis, Elliott, Epstein, Finkelstein, Graham, Hickey, Hill, Howie, Manes, Mohideen, Moliner, S. O'Connor, Peters, Sealy, Strosberg, Thom and Topp.

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LAWYERS FEES (cont'd)

It was moved by Mr. Bastedo, seconded by Mr. Cullity that the Committee continue to look into the legal fees charged to the Law Society excluding Errors and Omissions.

Not Put

It was moved by Mr. Bastedo, seconded by Mr. Cullity that the Treasurer be authorized to broaden the base of the Committee.

Not Put

It was moved by Ms. Elliott, seconded by Mr. Cullity that all of the motions be tabled and that a policy on conflict of interest be brought forward to Convocation as soon as possible.

Not Put

It was moved by Mr. Hill, seconded by Mr. Brennan that the Treasurer appoint a special committee to consider the issue of conflicts of interest with respect to Benchers and Bencher firms and that the outstanding motions be tabled and the present Committee be disbanded and that the Treasurer be given the authority to appoint a new committee with a broader base and that no member of Convocation be disqualified from sitting on the Committee.

Carried

Mr. Strosberg abstained from voting.

THE REPORT WAS TABLED

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

PROFESSIONAL CONDUCT COMMITTEE

Meeting of February 10, 1994

Mr. Campbell presented the Report of the professional Conduct Committee for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 10th of February, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), D. O'Connor (Vice-Chair), Braid, Cullity, Feinstein, Finkelstein and Moliner. Also present were Tinsley and Rogerson.

C.
INFORMATION

1. REQUEST FOR ADVICE -
HIV-T COUNSEL ASSOCIATION

The Provincial and Territorial Governments and other interested parties have created a financial package for those who were infected with HIV as a result of receiving tainted blood through the Red Cross.

The terms of the financial package require each claimant to have independent legal advice which requires the lawyer giving the advice to sign a Certificate of Independent Legal Advice in the form prescribed by the government.

The Counsel Association is concerned about the following Certificate of Independent Legal Advice:

THIS IS TO CERTIFY that I have been retained by _____ ("the client") of _____, _____ to advise and have advised the client with regard to the Multi-Provincial/Territorial Assistance Program Agreement and the execution by or on behalf of the client of the attached Release, dated the _____ day of _____, 199 , (the "Release") and that on the _____ day of _____, 199 , I fully read over and explained the Multi-Provincial/Territorial Assistance Program Agreement and the Release to the client and advised him/her of the nature and effect thereof and he/she expressed himself/herself as understanding, and appeared to be as fully understanding the nature and extent of the Multi-Provincial/Territorial Assistance Program Agreement and of Release and stated to me and it appeared to me that he/she entered into the said Release willingly and not under any duress exercised by and without pressure or influence on the part of any one of the Released Parties set out in the Release, or any one on their behalf.

I INFORMED AND ADVISED the client of the nature and effect of the Release and I believe the client was fully informed with regard to the contents of the Release, and may fairly be said to have acted independently therein.

I AM SATISFIED that the client has attained the age of majority and is not under any mental or legal disability to execute the said Release.

At the time of signature of Release or before it was signed I gave the client a true copy of the Release.

This Association has raised two questions about this certificate.

1. If a solicitor executes this certificate, believing the contents to be true, and an action is subsequently brought where the solicitor is made a third party, will the Law Society's Errors and Omissions Insurance respond? That is, is a solicitor competent to express opinions on the matters set out in the certificate in the ordinary course of practice?
2. If the solicitor is in doubt, particularly with respect to the appearance of duress, what is the appropriate procedure?

25th February, 1994

The Committee shared the concerns raised by the Counsel Association and decided not to reach any conclusion on Meeting Day. A meeting was arranged for the following day with the superintending counsel for the various insurers involved at which time the Committee's concerns were made known.

It was suggested that the words following "willingly" on line 10 of the first paragraph be deleted ("and not under any duress exercised by and without pressure or influence on the part of any use of the Released Parties set out in the Release, or any one on their behalf"). The Certificate would read as set out in Appendix A.

Counsel undertook to canvass the relevant parties and report back. On Thursday he told the Committee's Secretary that they would accept what had been suggested with respect to the deletion of certain words in the first paragraph. They asked that the following words be added after the word "independently" on line 3 of paragraph 2 "and without duress therein". The Certificate would then read as set out in Appendix B.

On review it was concluded that the reintroduction of the word "duress" put the matter back to where it had been on Committee Day.

The Committee's Secretary communicated the most recent concern about the use of "duress" to the superintending counsel.

The Committee has concluded that lawyers should not sign a Certificate of Independent Legal Advice unless the language of duress is removed. Accordingly, the Committee asks Convocation to adopt this position.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1994

M. Somerville
Chair

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

- Item C.-1. - Copy of the Certificate of Independent Legal Advice in the form prescribed by the government. (Appendix A)
- Item C.-1. - Copy of the revised Certificate of Independent Legal Advice. (Appendix B)

It was moved by Mr. Campbell, seconded by Mr. Finkelstein that the Report be adopted.

Not Put

It was moved by Mr. Strosberg, seconded by Ms. Graham that the profession and the public be advised that members of the profession not sign the Certificate of Independent Legal Advice either in the original form or amended form as part of the settlement.

Not Put

