

MINUTES OF CONVOCATION

Friday, 24th April, 1992
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Arnup, Bastedo, Brennan, Campbell, Carter, Cullity, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Howland, Kiteley, Lamont, Lawrence, Lax, Lerner, Levy, McKinnon, Manes, Mohideen, Murphy, Murray, O'Brien, D. O'Connor, Palmer, Pepper, Peters, Rock, Scott, Somerville, Thom, Topp and Yachetti.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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PUBLIC

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The Treasurer drew to the attention of Convocation that it was the first anniversary of the Transitions Report and noted its importance to both the profession within Ontario as well as throughout Canada.

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The Treasurer noted that it would be Mr. George Johnston's 100th birthday on April 27th. Mr. Johnston who was called to the Bar in May 1919 was Chief Librarian of Osgoode Hall from October 19, 1939 to July 1, 1966.

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The Treasurer asked for Convocation's authority to make appointments for representatives to the Board of Advocates Society Institute and Provincial Courts Appointment Committee after consulting with Paul Lamek and Thomas Bastedo.

24th April, 1992

It was moved by Neil Finkelstein, seconded by Samuel Lerner that the Treasurer be authorized after appropriate consultation to make the appointments.

Not Put

The matter was put over to a Special Convocation on Meeting Day, May 14th, 1992.

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Mr. Topp asked Convocation to note the 80th birthday of Mr. Gordon Henderson and Mr. Somerville's 53rd birthday.

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MOTIONS

It was moved by Tom Bastedo, seconded by Netty Graham, THAT Susan Elliott be appointed a Trustee to the Law Society Foundation to replace Mr. Justice Jack Ground.

Carried

It was moved by Tom Bastedo, seconded by Netty Graham THAT Colin McKinnon be added as a member of the Professional Conduct Committee.

Carried

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COMMUNICATIONS COMMITTEE

Mr. McKinnon presented a Report on the results of the survey conducted by Manifest Communications.

It was moved by Colin McKinnon, seconded by David Scott that the Manifest Report be received.

(See Report in Convocation file)

THE REPORT WAS RECEIVED

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ADMISSIONS COMMITTEE

Mr. Brennan presented the Report of the Admissions Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at 9:30 a.m, the following members were present: Mr. Brennan (Chair), Messrs. Lamont and Wardlaw.

B.
ADMINISTRATION

1. 1992/1993 BUDGET PROCESS

The proposed 1992/93 budget for the Admissions/Records area was presented for the Committee's review and approval.

The Committee recommends that the budget proceed for consideration by the Finance Committee, subject to the deferral of line 31 (Capital Requests) until December, 1992, at which time the Admissions Committee will consider bringing forward this item once again dependent upon funding being available.

2. SPECIAL PETITION UNDER REGULATION 4(1)

Edward W. Demkiw, B.A. 1957 and LL.B 1961 both from the University of Manitoba, was called to the Bar of the Province of Manitoba on the 13th September, 1961 and to the Bar of the Province of Saskatchewan on the 21st June, 1973. Mr. Demkiw practised in the Province of Manitoba from 13th September 1961 until January 1991.

Mr. Demkiw was offered a specialized position as legal representative solely in child welfare matters with the Kenora-Patricia Child and Family Services in Kenora, Ontario. The position however, required his appearing in court on their behalf. Mr. Demkiw requested that because of the limited nature of his intended practice with this Agency, he be permitted to be called to the Bar on the condition that such Call be expressly limited to his employment by the Kenora Child and Family Services and that he be deemed to have resigned should he leave the employment of or be released by the Agency. He requested further that he be excused writing the transfer examinations on the basis of the limited scope of his employment with the above Agency.

On 10th January, 1991, the Admissions Committee considered the special petition of Mr. Demkiw regarding transfer under Regulation 4(1). The Committee indicated that while it was sympathetic to his position it had no discretion to alter the basic requirements for transfer.

Mr. Demkiw subsequently sat and failed the Statutes and Procedure Examination in July 1991. He did not wish to proceed by way of the second option, Phase Three of the Bar Admission Course.

Mr. Demkiw's petition for a limited call to the Bar has since been taken up and endorsed by the District of Kenora Law Association. The Secretary received correspondence from Mr. Ross Murray requesting that this matter be brought forward for consideration by the Admissions Committee and Convocation.

At present, a staff committee headed by the Director of Legal Education and the Chair of the Committee of the Reorganization of the Transfer Examinations, is developing a series of examinations to replace both the Bar Admission transfer examinations and the current Statutes and Procedures examination.

The Committee recommends that Mr. Demkiw's petition for a limited call to the Bar be denied. The Committee, while sympathetic to his situation, is of the opinion that he may still avail himself of the opportunity of proceeding with Phase Three of the Bar Admission Course in order to be called to the Bar. The Committee reaffirmed its previous position that it has no discretion to alter the basic requirements for transfer under Regulation 4 (1).

3. DIRECT TRANSFER - COMMON LAW - REG 4(1) - SPECIAL PETITION

(i) Douglas H. Mathew, B. Com. 1977 University of Alberta and LL.B. 1988 University of Toronto. Mr. Mathew was called to the Bar of British Columbia on the 1st September, 1989 and practised in that Province from that time until the present.

Mr. Mathew will not therefore have fulfilled the three years of practice required to transfer under Regulation 4(1), until 1st September, 1992.

Due to the fact that he will be transferred to the Toronto offices of his firm in September 1992, Mr. Mathew requested permission to proceed under Regulation 4(1) and to be allowed to write the Statutes and Procedure Examinations in July 1992. He understands that his transfer would not be complete and he would not be eligible to be called to the Bar until he has fulfilled the practice requirements.

Mr. Mathew has presented a Certificate of Good Standing and has paid the required application fee.

The Committee recommends that this application be approved conditional on the applicant continuing in practice, in British Columbia, until September, 1992 and providing satisfactory evidence to the Society that he has fulfilled the practice requirements.

(ii) Peter George Andrekson, B.A. 1984 Queen's University, LL.B. 1987 University of British Columbia. Mr. Andrekson was called to the Bar of British Columbia on the 26 August, 1988. He has practised in the City of Whitehorse, Yukon Territory from 8th August 1989 until the present.

Mr. Andrekson will not have fulfilled the three years of practice required to transfer under Regulation 4(1) until 8th August, 1992.

Mr. Andrekson will be moving to Ottawa, in August, and wishes to enter the Bar Admission Course, in Ottawa, commencing in September. He requested permission to proceed under Regulation 4(1) at this time in order to submit an early application for a place in the Bar Admission Course.

Mr. Andrekson has presented a Certificate of Good Standing and has paid the required application fee.

The Committee recommends that this application be approved conditional on the applicant continuing in practice, in the Yukon Territory, until August 8, 1992 and providing satisfactory evidence to the Society that he has fulfilled the practice requirements.

4. APPLICATION FOR READMISSION

Gary S.A. Solway was called to the Bar on 18th April 1985, and resigned from the Society at his own request on 23rd February, 1990 after taking a leave of absence from his law firm to start his own business selling preview systems to video stores. Mr. Solway now wishes to return to the practice of law and is rejoining his law firm.

Mr. Solway presented a Statutory Declaration and written statements by two persons in support of his application. He has paid the required fee and asks that he be readmitted to the Society.

Noted & Approved

5. NON-BENCHERS INTERESTED IN SERVING ON THE ADMISSIONS COMMITTEE

The Committee received a list of non-benchers interested in serving on the Admissions Committee from the Secretary's office.

The Committee was asked to consider whether it is desirable for non-benchers to be appointed to the Admissions Committee and, if so, to establish the criteria that ought to be applied in the selection of non-benchers.

At present, the Research & Planning Committee is drafting guidelines for Convocation's approval concerning the appointment process for non-benchers interested in serving on various Committees. The Committee has decided to defer its decision in this matter until after guidelines are adopted by Convocation.

6. CALL TO THE BAR AND CERTIFICATE OF FITNESS

(i) Full time Member of Approved Law Faculty

The following asks to be called to the Bar and admitted as a solicitor without examination under Regulation 5 respecting full-time members of approved law faculties and that he be granted a Certificate of Fitness.

Kent Roach
Faculty of Law
University of Toronto

B.A. 1984 & LL.B. 1987 both
from the University of Toronto

Approved

(ii) Bar Admission Course

The following candidates having successfully completed the 33rd Bar Admission Course and having deferred their Call, now have filed the necessary documents and paid the required fee and apply for call to the Bar and to be granted a Certificate of Fitness at the Regular Convocation on April 24, 1992:

Joseph Patrick Burke
Jacklyn Jaye Campbell
Wayne Valentine Colin De Landro
John Stephen Davidson Duthie
Robina Khan McCracken

Approved

The following 33rd Bar Admission Course candidates expect to complete the Course during the month of April, 1992 and wish to be Called to the Bar at the Regular Convocation on April 24, 1992 and granted a Certificate of Fitness:

Kadir Baksh
Mitchell Israel Besner
Karen Lillian Deland
Joel Ian Katz
Jeffrey Scott Maidment
Harinder Singh Mann
Edgar Warkentin

These applications are approved conditional on the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to April 24th, 1992.

24th April, 1992

The following 32nd Bar Admission Course candidate expects to complete the course in April, 1992 and wishes to be called to the Bar at Regular Convocation on April 24, 1992 and granted a Certificate of Fitness:

R. Lynn Hall

This application is approved conditional on the candidate successfully completing the course, filing the necessary documents and paying the required fee prior to April 24th, 1992.

7. ADMISSION OF STUDENTS-AT-LAW

The following candidates, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)
31st B.A.C. (Entering Articles 1988)

1196. Kierans, Madeleine Margaret	B.A. Simon Fraser/86; LL.B. Toronto/88
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Under Bar Admission Course Regulation 22(7)
33rd B.A.C. (Entering Articles 1990)

1200. Baker, David Kenneth Harold	B.A. Dalhousie/84; M.A. Queen's/86; LL.B. New Brunswick/89
1201. Bondzi-Simpson, Philip Ebow	Joint Committee on Accreditation/90
1203. Kelley, Wendy Anne	Mature Student; LL.B. Queen's/90
1204. Machum, George Grant	B.Comm. Dalhousie/86; LL.B. New Brunswick/90
1205. Schneider, Tommy	2 yrs. Arts, McGill; B.C.L. McGill/89; LL.B. McGill/89
1206. Wakim, Mary Martin	B.A St. Francis Xavier/87; LL.B. New Brunswick/90
1207. Wilson, Colleen Louise	3 yrs. Arts, Winnipeg; LL.B. Manitoba/89

Under Bar Admission Course Regulation 22(7)
34th B.A.C. (Entering Articles 1991)

1. Abrams, Jeffrey Mark	B.A. Toronto/91; LL.B. York/91
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2. Adema, Dean Randall
B.A. Calvin College, USA/87;
M.A. Toronto/88;
LL.B. York/91
3. Aitken, Melanie Lyall
B.A. Toronto/88;
LL.B. Toronto/91
4. Alexandris, Georgina
2 yrs. Commerce, Toronto;
LL.B. York/91
5. Allan-Bonneville, Julie
Annita
2 yrs. Arts, Windsor;
LL.B. Windsor/80
6. Allen, Lorna Jean
B.A. Queen's/75;
LL.B. Ottawa/91
7. Altaras, Michele Simha
2 yrs. Arts, Western;
LL.B. York/91
8. Anderson, Michael John
B.A. Western/88;
LL.B. British Columbia/91
9. Anderson, William Hodge
3 yrs. Arts, Toronto;
LL.B. Windsor/91
10. Andreopoulos, Tom Athan
B.A. York/85;
M.A. McMaster/88;
LL.B. York/91
11. Antecol, Jacob Edward
B.Eng. Carleton/81;
M.Eng. Carleton/83;
LL.B. Toronto/91
12. Argento, Angelina
B.Comm. McGill/86;
B.C.L. McGill/90;
LL.B. McGill/90
13. Ariss, Mary Rachel
B.A. Trent/86;
LL.B. York/91
14. Armstrong, Patricia Louise
B.A. Trent/86;
B.C.L. McGill/91;
LL.B. McGill/91
15. Armstrong, Timothy James
Joint Committee on
Accreditation/91
16. Arnold, Steven Bradley
2 yrs. Arts, Western;
LL.B. York/91
17. Arnoldi, Elizabeth Hazel
Evelyn
B.A. Queen's/88;
LL.B. York/91
18. Arthur, Douglas Richard
B.A. Laurentian/88;
LL.B. Western/91
19. Asare, Emmanuel Yao
Asumang-Adu
Joint Committee on
Accreditation/91
20. Assuras, Angela
B.A. Western/88;
LL.B. York/91

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| 21. Atha, Robin Lorraine | B.A. York/88;
LL.B. York/91 |
| 22. Atin, Jordan Michael | 2 yrs. Arts, York;
LL.B. York/91 |
| 23. Atkinson, Sarah Elizabeth | B.A. McGill/87;
LL.B. Ottawa/90 |
| 24. Auchinleck, Catherine Lynn | Mature Student;
LL.B. Ottawa/91 |
| 25. Aziz, Peter Allan | B.A. Western/87;
LL.B. Western/91 |
| 26. Baldwin, Richard Steven | B.Sc. Queen's/84;
M.A. Toronto/88;
LL.B. Dalhousie/91 |
| 27. Ball, Jonathan Knight | B.S. Stanford, USA/69;
M.Sc. Toronto/70;
LL.B. Toronto/91 |
| 28. Baran-Gerez, Constance Aurora | B.A. McGill/87;
LL.B. Queen's/91 |
| 29. Barker, Simon Paul | LL.B. Wales/85;
LL.M. Wales/88;
LL.B. Dalhousie/91 |
| 30. Barnwell, Osborne Godfrey | B.A. Western/78;
B.Comm. Windsor/80;
LL.B. York/91 |
| 31. Barr, Brenda Dianne | B.A. Wilfrid Laurier/84;
M.S.W. Wilfrid Laurier/86;
LL.B. Western/91 |
| 32. Barr, Toni Janine | B.A. Toronto/83;
LL.B. Windsor/91 |
| 33. Barratt, Martin Clifford | B.Comm. Queen's/88;
LL.B. Victoria/91 |
| 34. Barrett, Julie Ann | B.A. Carleton/88;
LL.B. York/91 |
| 35. Barron, Brian Kenneth | B.A. Toronto/86;
LL.B. Toronto/91 |
| 36. Barrowman, Barbara Grace | B.Sc. Queen's/88;
LL.B. Toronto/91 |
| 37. Baruch, Sharon Lea | 3 yrs. Commerce, British
Columbia;
LL.B. York/91 |
| 38. Basile, Domenico | B.A. Toronto/87;
LL.B. Moncton/91 |
| 39. Bates, Lauren Marie Gerarda | B.A. Calgary/88;
LL.B. York/91 |

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| 40. Batoff, Mary Delores | B.A. Queen's/84;
B.Ed. Queen's/85;
LL.B. Western/91 |
| 41. Baxter, Evelyn Joan | B.A. Lakehead/88;
LL.B. Queen's/91 |
| 42. Baxter, Wendy Jill | B.Sc. Toronto/87;
LL.B. British Columbia/91 |
| 43. Beal, Andrew Murray | B.A. Alberta/85;
LL.B. Queen's/91 |
| 44. Beaton, Virginia Lesley | B.A. Western/88;
LL.B. Western/91 |
| 45. Beavis, Merie-Anne Elizabeth | B.A. Western/84;
LL.B. Calgary/91 |
| 46. Becker, Janet Gay | B.A. Queen's/87;
LL.B. Queen's/91 |
| 47. Bedford-Jones, John Britton | B.A. McMaster/86;
M.A. McMaster/88;
LL.B. York/91 |
| 48. Bellacicco, Domenico Giuseppe | 2 yrs. Arts, Toronto;
LL.B. Western/91 |
| 49. Bellefeuille, Ann Marie | B.A. St. Francis Xavier/86;
M.A. Guelph/89;
LL.B. Windsor/91 |
| 50. Benaich, Arie Lucien | B.A. McGill/86;
LL.B. Windsor/91 |
| 51. Benchetrit, George | B.A. McGill/88;
LL.B. York/91 |
| 52. Benedict, Elizabeth Ainslie | B.A. Queen's/68;
LL.B. Ottawa/91 |
| 53. Bennett, Graham Michael | B.A. Ottawa/88;
LL.B. Ottawa/91 |
| 54. Bennett, Harold Richard | B.A. Toronto/88;
LL.B. Western/91 |
| 55. Bennett, Patrick Gordon | B.B.A. Acadia/87;
LL.B. Queen's/91 |
| 56. Bercovitch, Faygie Ruth | B.A. Clark, USA/85;
B.C.L. McGill/91;
LL.B. McGill/91 |
| 57. Berg, Jeffrey Allen | B.A. California, USA/71;
M.A. Simon Fraser/82;
LL.B. Toronto/91 |
| 58. Berman, Drew Allan | B.A. McGill/88;
LL.B. McGill/91 |

24th April, 1992

59. Bernstein, Stephen Raymond

B.A. McGill/85;
LL.B. Windsor/91

Approved

C.
INFORMATION

1. ADMISSIONS HEARINGS PROCEDURES

Copies of the publication Law Society Discipline Proceedings were distributed at the meeting for the Committee's information and comments and to assist them in developing procedures in the future to govern the conduct of Admissions Hearings.

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"L. Brennan"
for Chair

THE REPORT WAS ADOPTED
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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 Barrister-at-Law was conferred upon each of them by the Treasurer.

Rickie Lynn Hall	32nd Bar Admission Course
Kadir Baksh	33rd Bar Admission Course
Mitchell Israel Besner	33rd Bar Admission Course
Joseph Patrick Burke	33rd Bar Admission Course
Jacklyn Jaye Campbell	33rd Bar Admission Course
Wayne Valentine Colin De Landro	33rd Bar Admission Course
Marc D'Amours	33rd Bar Admission Course
John Stephen Davidson Duthie	33rd Bar Admission Course
Joel Ian Katz	33rd Bar Admission Course
Jeffrey Scott Maidment	33rd Bar Admission Course
Harinder Singh Mann	33rd Bar Admission Course
Robina Khan McCracken	33rd Bar Admission Course
Edgar Warkentin	33rd Bar Admission Course

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DISCIPLINE COMMITTEE

Mr. Rock presented the Report of the Discipline Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at one-thirty in the afternoon, the following members being present:

P. Peters (in the Chair), D. Bellamy, A. Cooper, N. Graham, C. McKinnon, D. Murphy, R. Murray, S. Thom and R. Yachetti; J. Lax and S. Kerr, G. MacKenzie, R. Tinsley, J. Varro, H. Werry, J. Yakimovich and G. Zecchini also attended.

A.
POLICY

1A. MATTERS CONCERNING BENCHERS AND THE DISCIPLINARY PROCESS

Your Committee was requested to consider and provide opinion on certain policy issues relating to the disciplinary process. The Committee discussed:

1. when or in what circumstances Convocation is required to or should give reasons for a decision in a disciplinary matter;
2. the suggestion that the selection process for discipline hearing panels, whether on a random or other selection basis, be clearly communicated to all Benchers, and if the selection process is not random, that an attempt be made to strike discipline panels which bring a diversity of views to discipline matters, given the different backgrounds, experiences and ages of the Society's Benchers;
3. the suggestion that new Benchers be provided with some guidance and instruction prior to sitting on their first discipline hearing panel, perhaps in the form of a manual, or attend at hearings as observers, or both, or alternatively, that they sit with one experienced Bencher at least for their first hearing.

Mr. Yachetti advised that most of these questions were addressed in his Committee's report, adopted by Convocation, respecting discipline reforms, through the following recommendations:

1. that reasons of Convocation be given in every case;
2. that the selection process for discipline hearing panels be rotational, on a random selection basis, but that effort be made to select Benchers with particular expertise for certain cases which require such expertise; and
3. that a discipline code be drafted and distributed to all Benchers which would describe features of the discipline process.

Respecting the selection process for discipline hearing panels, the Committee agreed that new Benchers should be given an opportunity to attend a discipline hearing as observers prior to sitting as members of a discipline hearing panel and that Society staff arranging members for a panel be instructed to include at least one experienced Benchers, other than a lay Benchers, on each panel. Respecting guidance to new Benchers, since this particular suggestion arose, Gavin MacKenzie, Senior Counsel - Discipline, prepared for and distributed to new Benchers information on the disciplinary process. The Committee agreed that it would be helpful for all Benchers to receive this information.

The Committee also discussed whether Convocation should ever reserve its decision in a particular matter to allow for a more methodical consideration of the case. The Committee observed that while Convocation has not been known to have ever reserved a decision, and that in practical terms, after reserving, difficulties may arise in circulating a decision for comment and approval and in reconvening the same group of Benchers for a vote, Convocation has inherent jurisdiction to reserve in the appropriate case.

2A. ADVANCE PUBLICATION OF INFORMATION
RESPECTING DISCIPLINARY PROCEEDINGS

At its February, 1992 meeting, your Committee appointed a sub-Committee to discuss procedures relating to the advance publication of information on members facing disciplinary action. The sub-Committee reported to the Committee's March 26, 1992 meeting at which time the Committee considered the proposal of the sub-Committee to revise the manner in which information about members facing disciplinary action is disclosed in the public realm. The sub-Committee had recommended that the Society prepare a book to be made available at the beginning of each month containing copies of all authorized complaints to be heard that month, together with the hearing date. The public or media could inspect the book and attend on that date. With respect to media outside of Toronto, a subscription list would be prepared and if such media were willing to cover the cost of xeroxing and mailing the book, it would be forwarded to them. Following debate, the Committee decided not to accept the sub-Committee's recommendations but instead, recommended to Convocation that the current practice of the Society, which consists of disclosure of a list of members' names, a brief summary of the charge and proceed dates, be maintained.

At its March 27, 1992 session, Convocation rejected the Committee's recommendation and adopted the recommendation of the sub-Committee.

At the request of the Chair of the Communications Committee and in light of certain concerns expressed by some Committee members about the possible consequences of the decision of Convocation, the Committee decided to reopen the matter.

The Committee, in the course of its discussions, noted the following:

1. The Communications Committee requested that this Committee revisit the issue, after considering and expressing concern about the probable consequences of implementing Convocation's decision, and the negative impact the decision may have upon the Society's relations with the media and the profession.

2. Further information was received respecting the practice in place in the criminal courts on public disclosure of criminal charges, which the sub-Committee viewed as being analogous to its proposal. Currently, criminal courts in Ontario display court dockets which simply list the names of accused, and sometimes charges faced by the accused, to be heard that day. Actual sworn informations are kept in the court clerk's office. Copies may be obtained by members of the public or the media upon payment of a copying fee. The procedure adopted by Convocation (as proposed by the sub-Committee) in fact goes much further than the procedure in place in the criminal courts, whereas the previous procedure was more in keeping with the "docket" system used in the criminal courts. For these and other reasons, this Committee had recommended that the status quo be maintained and the report of the sub-Committee not be adopted.
3. Certain members of the Toronto media have expressed criticism in communications to the Society about the new procedure and the fact that the media will be required to pay for information.
4. The Committee and the sub-Committee, during their deliberations, reviewed a discussion paper, attached at pages A-1 to A-15, prepared by Gavin MacKenzie, which included background to the existing procedure, the Yachetti Committee recommendations on advance publication of information, and policy considerations relevant to such publication. Mr. MacKenzie, at the Committee's April 9, 1992 meeting, reiterated the position outlined in his paper that different considerations respecting advance publication may apply to cases of relatively minor misconduct and cases of serious misconduct.

After a lengthy discussion, the Committee concluded that the matter required further consideration and therefore recommends that Convocation reopen discussion on the point so that the concerns expressed and identified may be considered by Convocation.

Note: Motion, see page 201

B.
ADMINISTRATION

No matters to report

C.
INFORMATION

1C. AUTHORIZATION OF DISCIPLINE CHARGES

Once each month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with the Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of March, 1992.

24th April, 1992

	<u>Sought</u>	<u>Obtained</u>
Discipline	21	19
Complaints	16	8
Audit	4	4

Total number of charges authorized to date for 1992

January	20
February	16
March	<u>31</u>
Total:	67

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"A. Rock"
Chair

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

A-Item 2A. - Discussion Paper - Policy concerning publication of the names of solicitors facing discipline. (marked A-1 - A-15)

It was moved by Allan Rock, seconded by Ross Murray that Item 2A under Policy re: publication of information relating to Discipline charges, be referred for immediate and joint review to the joint Committee of Discipline Policy and Communications and that those committees jointly report to Convocation no later than the 29th of May and that in the interim pending Convocation's review of the policy of releasing summaries of cases pending discipline continue to be in effect.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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REASONS

The majority Reasons prepared by Ross Murray in respect of the Ernest Rovet discipline matter which was heard by Convocation on January 23rd, 1992, were filed together with Reasons prepared by Harvey Strosberg and Joan Lax.

MAJORITY REASONS

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF

ERNEST ROVET
of the City of Toronto
a Barrister and Solicitor

The following particulars of professional misconduct were admitted and found to have been established.

Complaint D116/91

- 2(a) In written submissions to the Canada Labour Relations Board, he knowingly made false representations about facts material to the case before the Board. Reference is made to rule 10 of the Rules of Professional Conduct and commentary 2(b), (e), (f) and (g) thereof.
- (b) In connection with the case referred to in particular (a), he assisted his client to prepare false documents in support of his false representations.
- (c) From April 1989 to April 1991, he charged personal expenses as fees without the knowledge or consent of his partners or clients. Reference is made to rule 9 of the Rules of Professional Conduct and commentaries 1, 4, 5, and 8 thereof.

The Discipline Committee hearing the complaint recommended that the solicitor be suspended from practice for a period of six months from an effective date of June 1, 1991. However, before Convocation Gavin MacKenzie, Law Society Discipline Counsel, recommended a one year suspension to run from the date of Convocation.

John I. Laskin, counsel for Mr. Rovet, argued that the six month suspension recommended by the Discipline Committee was within the range and that Convocation should not interfere with this recommendation.

In making his argument Mr. Laskin argued that the Discipline Committee was an experienced Committee, that they had an opportunity to see and hear the witnesses give evidence, and that unless there was an error of principle, Convocation should not second guess the Committee's recommendation. Mr. Laskin further argued that the penalty of the Committee was within the range urged by the Law Society's discipline counsel, Mr. MacKenzie. It should be noted that although Mr. Laskin referred to a range, Mr. MacKenzie recommended a twelve month suspension and not a range. Mr. Laskin further argued that the voluntary undertaking not to practice law was only relevant with respect to the starting date of the suspension. Mr. Laskin argued that the starting date should be August 1, 1991.

Mr. Laskin referred to seven findings of the Discipline Committee as follows:

1. Mr. Rovet had been good lawyer with a fine reputation;
2. Mr. Rovet has had unblemished record in 20 years of practice;
3. the prospect of reoccurrence is at most remote;

4. the interest of the public does not require disbarment;
5. Mr. Rovet has been active in community activities;
6. Mr. Rovet has already suffered greatly as a result of these matters; and,
7. any notion that the rules are different for a tribunal as opposed to a court should be rejected.

Convocation found the representations made by Mr. Laskin on behalf of Mr. Rovet persuasive. Convocation also did not feel that disbarment was an appropriate penalty in all the circumstances. However, Convocation felt that an appropriate penalty was a suspension of one year, the one year suspension to run from the date of Convocation. Mr. Rovet was found guilty of serious professional misconduct relating to two separate and unrelated matters, and it was felt that a message had to be sent to the profession and to the public that this conduct was serious and not to be condoned. Convocation saw no reason to back date the order of suspension.

"Ross Murray"

DISSENTING REASONS

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

AND IN THE MATTER OF ERNEST ROVET
OF THE CITY OF TORONTO, BARRISTER AND SOLICITOR

DISSENTING REASONS

INTRODUCTION AND BACKGROUND

Ernest Rovet ("Mr. Rovet") was called to the bar and admitted as a solicitor to the Supreme Court of Ontario on March 26, 1971. He was a well-respected solicitor practising in the fields of labour and environmental law until he misconducted himself in the period 1989 to 1991.

During this time, Mr. Rovet in essence cheated his partners of about \$35,000.00 by charging personal expenses as fees without the knowledge or consent of his partners or the clients. He also made a false written submission about material facts to the Canadian Labour Relations Board ("Board") and assisted his clients in preparing false documentation for submission to the Board. Mr. Rovet was charged with three counts of professional misconduct. On October 1, 1991 he admitted professional misconduct.

It goes without saying that this professional misconduct is at once deplorable and inexcusable. In committing these acts Mr. Rovet disgraced himself, his family and his profession although to his credit, neither he nor his counsel has sought to rationalize or to minimize the gravity of his transgressions. Clearly, Mr. Rovet expects, and deserves, to be punished. The sole issue before Convocation is the appropriateness of the penalty to be imposed upon him.

THE STATUTORY FRAMEWORK FOR DISCIPLINE

The sections of the Law Society Act. R.S.O. 1990 c. L.8 relevant to the issue of discipline are as follows:

33. (1) No disciplinary action under section 34, 35, 37 or 38 shall be taken unless,
- (a) a complaint under oath has been filed in the office of the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
 - (c) a committee of Convocation has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard the evidence on the person's behalf and has reached the decision that the person is guilty.
- (7) At a hearing, the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross-examine the witnesses opposed in interest, including the deponent of an affidavit or a statutory declaration submitted in evidence.
- (8) The oral evidence submitted at a hearing shall be taken down in writing or by an other method authorized by the Evidence Act.
- (10) The Treasurer, the chair or a vice-chair of a committee of Convocation, or the Secretary may, and the Secretary upon application of a person whose conduct is being investigated shall, issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document or thing, the production of which could be compelled at the trial of an action, before the committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Ontario Court (General Division), but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Ontario Court (General Division).
- (12) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his or her right of appeal, shall be served upon him or her within thirty days after the date of the decision.
34. If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel membership in the Society by disbarring the member as a barrister and striking the member's name off the roll of solicitors or may by order suspend the member's rights and privileges as a member for a period to be named or may by order reprimand the member or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1980, c.233, 3. 34.

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39. (1) Any member who has been found guilty under section 37 or any student member who has been found guilty under section 38 and in either case, has been ordered to be reprimanded in committee may appeal from the order of the reprimand to Convocation within fifteen days from the day upon which the person is served with the order of the committee.

(2) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy of the proceedings before the committee, the evidence taken, the committee's report and all decisions, findings and orders of the committee in the matter.

44. (1) Any person dissatisfied with a decision of Convocation made under section 30, 32 or 46, or any person against whom an order, other than an order of reprimand in committee, has been made under section 38, or any person whose punishment has been ordered to be increased under subsection 39 (3) may appeal from the decision or order to the Divisional Court in accordance with the rules of court within fifteen days from the day upon which the person is served with the decision or order.

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the Secretary shall furnish the person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in Convocation and any committee thereof in dealing with and disposing of the matter complained of.

(4) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy, certified by the Secretary, of the proceedings before Convocation or any committee thereof, the evidence taken, the report of Convocation or any committee thereof and all decisions, findings and orders of Convocation or any committee thereof in the matter.

(5) Upon the hearing of an appeal under this section, the Divisional Court may make such order as the court considers proper or may refer the matter or any part thereof back to Convocation with such directions as the court considers proper.

THE PROCEEDINGS BEFORE AND DECISION OF THE DISCIPLINE COMMITTEE

On August 8, 1991, in accordance with S.33 (1)(a), a complaint was issued against Mr. Rovet alleging professional misconduct. On October 1, 1991, Mr. Rovet appeared before a committee of Convocation ("the Discipline Committee") comprised of Kenneth Howie, Q.C., Stewart Thom, Q.C., and Samuel Lerner, Q.C.. Mr. Howie has practised as a solicitor for about 41 years and has been a bencher since 1983. Mr. Thom has practised as a solicitor for about 45 years, has been a bencher since 1966, and is a former Treasurer. Mr. Lerner has practised as a solicitor for about 53 years and has been bencher since 1979. With great respect for other distinguished benchers, it would be difficult to imagine a more experienced, knowledgeable, and respected committee than this one.

In the case of Mr. Rovet, the Discipline Committee heard viva voce evidence: Mr. Rovet testified as well as Thomas Bastedo, Q.C., a sitting bencher and Mr. Rovet's closest friend. All the evidence given before the Committee was also taken down in writing. The Discipline Committee thus had the advantage of seeing, hearing, and reviewing the evidence of Mr. Rovet and Mr. Bastedo.

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The bifurcated discipline process contemplated by s. 33(1)(c) and s. 34 requires a committee to decide the threshold question of whether or not the barrister and solicitor is guilty of professional misconduct and requires Convocation to impose the penalty if the penalty is other than a mere reprimand in committee: see *Law Society of Upper Canada v. French*, [1975] 2 S.C.R. 767 per. Spence J. at 788.

The Discipline Committee found Mr. Rovet guilty of professional misconduct. In discharging their obligation under s. 33 (12), the Discipline Committee delivered a written decision ("the report") dated November 13, 1991.

Mr. Gavin MacKenzie, the Law Society's senior counsel, who appeared before the Discipline Committee on behalf of the Law Society, recommended as an appropriate penalty for Mr. Rovet a suspension in the range of six to twelve months.

The Discipline Committee ultimately decided to recommend to Convocation that Mr. Rovet be suspended for six months with the suspension to take effect beginning June 4, 1991. The Committee's reasons for making this recommendation are set out below:

The evidence demonstrated that the Solicitor is an intelligent, experienced, wholly competent practitioner of many years experience, who enjoyed an enviable reputation within the legal community and with an apparently sound family relationship.

The character evidence led on his behalf uniformly makes these points:

- (a) The Solicitor has never been known to have engaged in unethical or improper activities, other than the conduct evident in these complaints.
- (b) His conduct in respect of the complaints appears to be an aberration, and the Committee is unanimously of the belief, that the possibility of the conduct re-occurring is at least remote.

The solicitor has engaged himself actively in community activities, to the obvious benefit of the public in general.

The position of the Law Society with respect to the penalty was that the individual complaints, for which the Solicitor has been found guilty, might call for a reprimand in Convocation but that the combination of the two significant acts of misconduct together require a more severe penalty.

The Law Society believes that there should be a suspension of six to twelve months.

Counsel for the Solicitor takes the position that there should be a reprimand in Convocation as the appropriate penalty, but that if a suspension is required, it should be a maximum of six months.

It was argued strenuously, that the length of the suspension is relatively unimportant in comparison to the impact the complaints have already had and that he has already been seriously punished by the publicity associated with respect to his conduct.

It is obviously necessary for the Committee to consider two aspects in assessing any penalty.

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- (a) The penalty must be sufficient to deter the Solicitor, and in this connection, the Committee is satisfied that the prospect of re-occurrence is at least remote. The Committee is not unmindful that these complaints represent the first and hopefully last brush of the solicitor with the disciplinary process.
- (b) The interest of the public in ensuring that the penalty fits the wrongdoing of the Solicitor. It should be clearly noted that the Committee was unanimously of the view that the conduct of the Solicitor was not such to require a penalty of disbarment or permission to resign.

The solicitor voluntarily agreed to suspend practice as of May 1991, and has not engaged in practice since that time. It should be understood that this was done voluntarily and not at the request of the Law Society.

In all the circumstances, the Committee was unanimously of the view that a suspension for six months is an appropriate penalty in this case. Because the Solicitor has not practised since May 1991, the Committee was further of the view that it would be in order to back date the suspension to June 1, 1991.

THE PROCEEDINGS BEFORE CONVOCATION

On or about December 6, 1991, Mr. Rovet appeared before Convocation accompanied by counsel. Convocation heard submissions, then retired to deliberate. Apparently a motion for disbarment was put by a member of the bench. In accordance with Convocation's practice, no vote was taken on the motion, but the solicitor was advised of the motion and given an opportunity to consider his position. He elected to request an adjournment, which Convocation granted until January 23, 1992.

On January 23, 1992, Mr. Rovet again appeared before Convocation represented this time by new counsel, Mr. John I. Laskin. Mr. MacKenzie appeared for the Society. Mr. Laskin and Mr. MacKenzie agreed that submissions to Convocation would begin afresh and that no objection would be taken to a new quorum of Convocation sitting to make a decision.

As part of these proceedings, the report of the Discipline Committee was filed as an exhibit with Convocation. Also filed was a memorandum (exhibit 2). By this memorandum, Messrs. Laskin and MacKenzie advised Convocation that Mr. Rovet had performed some legal services for clients until July 31, 1991 when Mr. Rovet voluntarily ceased practising. Messrs. Laskin and MacKenzie agreed that the information in exhibit 2 was relevant only to the question of when Mr. Rovet's suspension ought to begin.

Convocation also received a number of letters attesting to Mr. Rovet's overall good character and a transcript of Mr. Bastedo's evidence before the Discipline Committee. However, Convocation did not have the benefit of a transcript of the full proceedings before the Discipline Committee, and it did not hear viva voce evidence.

In his able and balanced submissions to Convocation, Mr. MacKenzie submitted that Mr. Rovet should be suspended for a period ranging from six to twelve months. At the same time, he conceded that if the Discipline Committee's rationale were to be applied, bearing in the mind the information in exhibit 2, the Discipline Committee would have recommended the suspension to have begun on August 1, 1991 and to have expired on January 1, 1992.

CONVOCATION'S DECISION

Convocation rejected the Discipline Committee's recommendation of a six-month suspension and imposed instead a one-year suspension beginning January 23, 1992. It is with this decision that I respectfully disagree. In my opinion, the Discipline Committee's recommendation of a six-month suspension should have been accepted by Convocation, and the suspension should have begun on August 1, 1991, the date on which Mr. Rovet voluntarily ceased practising. I take this view for the reasons set out hereafter.

THE LACK OF A COMPLETE RECORD

When Convocation hears an appeal under s. 39 (2), Convocation must have before it the complete record of the proceedings before the Committee, including a transcript of the evidence taken. Similarly, when the Divisional Court hears an appeal of an order made by Convocation, by s. 44 (2), the Divisional Court must have before it the complete record, including the evidence heard before Convocation and before the committee. It stands to reason, therefore, that when Convocation exercises its s. 34 jurisdiction it may receive evidence.

When deciding guilt or innocence under s. 33 (c), a committee also hears all relevant evidence and full submissions on penalty. A committee then makes a report containing its finding as to guilt or innocence and, if guilt is established, its recommendation as to penalty. The report is then filed as an exhibit before Convocation.

In my opinion, as a starting point, Convocation must accord some weight to a committee's recommendation as to penalty, for if a committee's recommendation carries no weight its essential role is necessarily diminished and its efforts redundant or inconsequential. In the Rovet matter, the Discipline Committee's recommendation was within the very range of penalty suggested by Mr. MacKenzie, yet Convocation still saw fit to impose a different sanction.

This is not to suggest that Convocation must defer in every case, or in any case, to a committee's recommendation. The statutory framework clearly contemplates that Convocation is the body charged with the authority and responsibility of making the decision on penalty. But in my respectful opinion, if Convocation wishes not to follow a committee's recommendation, it ought to adopt and follow a procedure that accords with the principles of natural justice, including, for example:

- (a) requiring a complete record of the proceedings before the committee in addition to the committee report to be filed as an exhibit;
- (b) allowing the solicitor and the Society the opportunity to lead further evidence; and
- (c) founding its decision only upon the complete record of proceedings before the committee, and further evidence, if any, tendered before Convocation.

In the alternative, Convocation should hold a full de novo hearing on penalty.

Convocation did not follow this procedure in the s. 34 penalty phase when Mr. Rovet appeared before it. Moreover, as Mr. Laskin pointed out, Convocation did not have before it a transcript of all the evidence taken before the Discipline Committee on October 1, 1991, and, therefore, did not have the complete record of proceedings before the Discipline Committee. Most

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significantly, Convocation did not have before it a transcript of Mr. Rovet's evidence before the Discipline Committee which may have given Convocation some insight into the motivation for his conduct. In my opinion, in these circumstances, Convocation was not in a position to impose a penalty upon Mr. Rovet greater than that recommended by the Discipline Committee.

THE RETROACTIVITY ISSUE

Mr. MacKenzie submitted that, as a matter of policy, Mr. Rovet's suspension, and indeed all suspensions, should be imposed prospectively. In other words, Mr. Rovet's suspension should take effect on January 23, 1992. With this view Convocation concurred. I also disagree with this aspect of Convocation's decision.

When the Society begins an investigation into a solicitor's alleged misconduct, the Society does not know, at least with any degree of certitude, if the impugned conduct relates to a single, isolated occurrence or is part of a larger pattern. In many instances, the Society will not know the answer to this question even after a charge has been laid.

If Convocation should adopt a policy allowing for the possibility of a suspension to run from the time a solicitor voluntarily ceases to practice, a solicitor against whom a complaint has been made may feel inclined to stop practising either when the investigation begins or when the complaint is laid. The public would thus be protected, and the Society would have ample time to determine the facts and assess the severity of the impugned conduct.

But if suspensions are always and only to be prospective, what incentive is there for a solicitor to stop practising while his or her conduct is under investigation? The prospect of all solicitors practising during the investigative period is all the more problematical when one considers that the period from complaint to hearing date is uncertain and dependent upon a number of factors such as the number of discipline matters which antedate the complaint, the number of committees capable of being assembled, the length of other discipline matters, benchers' availability, and so on. Moreover, the period from the committee's hearing date to decision is also uncertain. In Mr. Rovet's case, the Discipline Committee took about six weeks to deliver its decision. There is inevitably an additional delay involved in getting listed on the agenda before Convocation. Finally, once on Convocation's agenda, the solicitor must accept his or her place on the priority list of other discipline matters which, in any event, Convocation almost never hears in the months of July and August.

All of these factors lead me to the conclusion that, as a matter of general policy, Convocation should impose penalties retrospectively beginning on the date the solicitor voluntarily ceases practising unless there is a compelling reason to depart from this procedure.

In the case of Mr. Rovet, it is my respectful view that even if Convocation was correct in rejecting the Discipline Committee's recommendation and imposing a penalty of one year's suspension, there was no compelling reason for concluding that the penalty should run prospectively from January 23, 1992.

For these reasons, in my opinion, Convocation erred in its disposition.

February 10, 1992

"Harvey T. Strosberg, Q.C."

I agree:

"Philip Epstein, Q.C."

IN THE MATTER OF THE LAW SOCIETY ACT

R.S.O. 1990, c. L.8

AND IN THE MATTER OF ERNEST ROVET,
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REASONS

BACKGROUND TO THESE REASONS

Mr. Rovet first appeared before Convocation on December 6, 1991. The minutes will reflect that I was present at Convocation on that day. The matter was adjourned to Convocation on January 23, 1992 when I was also in attendance. Convocation disposed of the matter on January 23rd and imposed a penalty of a one year suspension from that date.

There were four separate motions considered by Convocation on January 23rd on the issue of penalty. This was the only issue before Convocation. The motions were put for vote in order of severity; that is, the motion carrying the most severe penalty was put first and the motion carrying the least severe penalty was put last.

The first motion, which I seconded, was a motion to disbar the solicitor. The motion was lost. The second motion which I moved, was a motion to suspend the solicitor for three years. That motion was also lost. The third motion which ultimately carried, was a motion to suspend the solicitor for twelve months from January 23, 1992. It was therefore unnecessary to put the fourth motion, to suspend the solicitor for six months effective January 23, 1992. There was no motion to adopt the recommendation of the Discipline Committee in either its original form or, in the amended form proposed by Mr. Laskin, namely, a six month suspension, retroactive to August 1, 1991.

The minutes of Convocation of January 23, 1992 record Mr. Strosberg's dissent but do not record my dissent. At the time, it was suggested by a member of the bench, that my support of the third motion precluded me from having my dissent recorded. However, as the minutes make clear, I had all times favoured the imposition of the most severe penalty which was before Convocation. By supporting the third motion which ultimately carried, I did so knowing of the failure of the two previous motions (both carrying more severe penalties) and in the fact of the remaining fourth motion, which carried the least severe penalty.

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These reasons are intended to elaborate my dissent from the ultimate disposition of this matter by Convocation. In preparing them, I have had the benefit of reviewing the Reasons of Mr. Murray and Mr. Strosberg in this matter. With the greatest of respect, I find myself unable to agree.

THE FACTS

The particulars of the professional misconduct by the solicitor were not in dispute, either before the Discipline Committee or before Convocation. They may be summarized as follows:

- (1) Mr. Rovet misappropriated approximately \$35,000 from his partners for his personal benefit.
- (2) Mr. Rovet lied to a quasi-judicial tribunal by making false representations about facts material to a case in which he appeared as counsel.
- (3) Mr. Rovet deliberately and knowingly prepared false documents to support the lie referred to in (2) above.

The facts giving rise to the above particulars of professional misconduct arose in the period January to March, 1991. They are set out in detail in the Agreed Statement of Facts which form part of the Report and Decision of the Discipline Committee ("the report"). In short, they amount to this. Mr. Rovet engaged in a course of conduct which was intended to assist an employer/client block the unionization effort of its employees. This included: (i) introducing the client to a company, which, for a fee of \$125,000 per week, agreed to supply workers on a contract basis for the duration of the certification drive; (ii) drafting the contract reflecting a secret fee agreement between the client and the company, and drafting the contract between the client and the company to supply the workers; (iii) backdating the contract to supply the workers when it was learned that the union's application for certification had been filed, thereby settling the size of the bargaining unit; and, (iv) creating correspondence between the client and the company to falsely reflect the timing of the negotiations between them.

The Society first became aware of the above facts on or about April 30, 1991, when it was contacted by a lawyer who had recently been retained by the client which had formerly been represented by Mr. Rovet. An investigation by the Society ensued.

Shortly thereafter, Mr. Rovet voluntarily undertook not to practise pending the hearing of the complaint. The exact date upon which this voluntary undertaking was given is in dispute. The formal complaint was issued on August 8, 1991 and a hearing was conducted before a Discipline Committee on October 1, 1991. The solicitor admitted the particulars of the complaint and the hearing proceeded on the basis of an Agreed Statement of Facts. Paragraphs 28 and 29 of the Agreed Statement of Facts are as follows:

28. The solicitor has co-operated fully in the Law Society's investigation, and voluntarily undertook not to practise pending the hearing of the complaint. He has not practised, pursuant to his undertaking, since May 11, 1991.

29. The solicitor has read this agreed statement of facts in its entirety and has taken the advice of his counsel, Alan Lenczner, Q.C., before signing it.

The Agreed Statement of Facts is dated October 1, 1991.

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On December 6, 1991 the report of the Discipline Committee was before Convocation for the first time. Additional material filed at that time suggested that contrary to paragraph 28 of the Agreed Statement of Facts, Mr. Rovet may have practised subsequent to May 11, 1991. The disposition of the matter was adjourned consequent upon a motion to disbar the solicitor.

When the matter came back before Convocation on January 23, 1992, a memorandum was filed jointly by Mr. MacKenzie and Mr. Laskin, describing in detail the nature and extent of Mr. Rovet's practice subsequent to May 11, 1991. It also described the circumstances under which Mr. Rovet had given the voluntary undertaking not to practise. Whatever view one may take of these circumstances about which I will say more later, it is clear from the memorandum that Mr. Rovet practised subsequent to May 11, 1991 and billed approximately \$25,000 for legal services performed during the months of May, June and July, 1991.

THE PROCEEDINGS BEFORE CONVOCATION

I adopt that portion of Mr. Strosberg's dissent at pages 6 and 7 describing the proceedings before Convocation with the exception of the final paragraph on page 7. There, Mr. Strosberg states that Mr. MacKenzie, appearing as counsel, for the Society, submitted that Mr. Rovet should be suspended for a period ranging from six to twelve months. I have had the benefit of reviewing the transcript of proceedings taken before Convocation on January 23, 1992. In fact, Mr. MacKenzie recommended a penalty of suspension of one year or up to one year:

The submission I have is a penalty of one year which would run into the future rather than the past ...

Transcript of Proceedings of Convocation
January 23, 1992 (p. 51; lines 17-18)

So, in summary, my submission with respect to penalty, Treasurer and members of the bench, is that this is a serious matter, that Mr. Rovet should be suspended for a period of up to one year, that that suspension should run prospectively, but that there is no need, considering the matter, in light of the objects of the process, to impose the ultimate penalty of disbarment and expunge him as a lawyer.

Transcript of Proceedings of Convocation
January 23, 1992 (p. 59; lines 1-9)

It is also clear from the transcript that both in December, 1991 and in January, 1992 Mr. MacKenzie opposed a retroactive suspension. In response to a question from Mr. Strosberg to Mr. MacKenzie which arose from Mr. Laskin's submission that Convocation consider imposing a retroactive suspension from August 1, 1991, Mr. MacKenzie said the following:

...My submission on the point is that it is relatively unusual for a committee or for Convocation to make a suspension retroactive. The committee felt in this case apparently that there was a compelling reason to make the suspension retroactive because of the unusual circumstance that Mr. Rovet, in the view they and I held of the matter at the time, had voluntarily ceased practice as of May 11th. We now know that -- that that was a false premise on which they and I proceeded ...

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I fully accept that if you accept the logic of the committee mechanically, then Mr. Laskin is quite right, that there is certainly no evidence that Mr. Rovet has done any significant legal work since July 31st of last year. That's quite right.

Transcript of Proceedings of Convocation,
January 23, 1992 (p. 95, lines 20-25;
p. 96, lines 1-5 and 10-14)

I do not agree with Mr. Strosberg that the above remarks by Mr. MacKenzie amount to a concession that the committee "would have recommended the suspension to have begun on August 1, 1991".

THE REPORT AND DECISION OF THE DISCIPLINE COMMITTEE

The report of the Discipline Committee is fourteen pages in length of which eleven pages are taken up with the particulars of the complaint and the Agreed Statement of Facts. The Recommendation as to Penalty and the Reasons for Penalty appear at pages 12 and 13 and are reproduced in their entirety at pages 5 and 6 of Mr. Strosberg's dissent.

Mr. Murray's reasons incorporate the submissions of Mr. Laskin and refer to "the seven findings of the Discipline Committee". Although the findings of the committee are not in this form, they are fairly summarized by Mr. Murray. The committee was impressed by Mr. Rovet's previous good character and reputation within the legal community from which it appears to have drawn two conclusions. First, that the conduct complained of appeared to be aberrant. Second, that the possibility of re-occurrence was "at least remote". It is clear from the reasons that the committee was influenced by its understanding at the time that Mr. Rovet had voluntarily agreed to suspend practice as of May, 1991 and had not engaged in practice since that time.

Mr. Laskin acknowledged that the committee was under a misapprehension as to the facts when it came to backdate the suspension. At Convocation, Mr. Laskin referred to the memorandum which contained an extract from a letter written by Mr. Rovet on June 12, 1991 to his then solicitor. In this letter, Mr. Rovet outlined in a general way the nature of the practice he was engaged in and concluded with this statement: "When talking to Mr. MacKenzie about my voluntary suspension, your comments should be qualified by the above." Mr. Laskin argued that the letter qualified the voluntary undertaking not to practise, but through inadvertence, this information was not communicated to the Society. He further argued that Mr. Rovet believed that it was understood by the Society that he had performed legal services "of a transitional nature". Mr. Laskin invited Convocation to find that there was no deliberate deceit on Mr. Rovet's part.

I accept that Mr. Laskin's submission can afford a plausible explanation for Mr. Rovet's conduct subsequent to May 11, 1991 and may be consistent with an innocent explanation for what occurred. But, it also raises some questions. It is unclear whether the undertaking was given in May or June, 1991. Accepting Mr. Rovet's recollection that it was given in June, and further accepting that the qualification of the undertaking was overlooked by Mr. Rovet and by his counsel at the time it was given, why did this "blanket statement, unqualified", to use Mr. Laskin's language, appear in Paragraph 28 of the Agreed Statement of Facts on October 1, 1991, some four or five months later? And, why did the hearing proceed on that date on a material fact which Mr. Rovet knew or ought to have known was untrue, namely, that he had not practised since May 11, 1991 when in fact, he had. Although it was forcefully

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argued by Mr. Laskin and agreed to by Mr. MacKenzie that the misapprehension as to this fact affected the "retroactivity" issue only, I respectfully disagree. There is no way of knowing what the committee would have recommended had the correct facts been before it. In view of this, I believe that the principle of deference has no application to this case.

With respect to the aberrant nature of Mr. Rovet's conduct, I also have some concern. While it is true that Convocation did not have the benefit of the viva voce evidence of Mr. Rovet and Mr. Bastedo who were the only witnesses to give viva voce evidence before the committee on behalf of the solicitor, Convocation did have the transcript of Mr. Bastedo's evidence, all the character evidence which was before the committee in letter form, and four additional letters in support of Mr. Rovet's character which were filed by Mr. Laskin at Convocation.

Prior to the conduct from which this complaint arises, Mr. Rovet had apparently established an excellent reputation in the profession and in the community. It is therefore not surprising that his friends and professional colleagues would find and characterize his behaviour as aberrant. However, this does not necessarily lead to the conclusion, as the committee found, that the prospect of re-occurrence is "at least remote". It would not appear that any evidence of a psychiatric or medical nature was presented before the committee to explain the aberrant conduct. Certainly, no such evidence was put before Convocation. I am therefore left to speculate on what basis the committee concluded with such certainty that re-occurrence was unlikely. There is simply no explanation for the conduct. While I have said that there may be an innocent explanation for the misunderstanding between the Society and Mr. Rovet about the voluntary undertaking, there remain questions in my mind about this. It is worth noting that when the facts surrounding the undertaking ultimately surfaced, they did not come from Mr. Rovet, but came to the Society's attention from the client for whom Mr. Rovet had performed the substantial portion of the services.

THE PENALTY

The only issue before the Discipline Committee and Convocation was the appropriate penalty. The proposal on penalty by the Society's counsel before the committee was a suspension of six to twelve months. Counsel for the solicitor argued in favour of a reprimand in Convocation and sought to limit the suspension, if any, to a maximum of six months.

I have already referred to Mr. MacKenzie's submission on penalty at Convocation. Mr. Laskin argued that the six month suspension recommended by the committee was within the range of penalty in similar cases and that Convocation should not interfere with this recommendation.

In his submissions, Mr. MacKenzie outlined three objects of the discipline process. These are:

- (1) To protect the public from further harm.
- (2) To maintain high ethical standards among members of the profession.
- (3) To maintain public confidence in the profession.

Applying these principles to Mr. Rovet's case, Mr. MacKenzie concluded that disbarment was not an appropriate penalty.

With respect to the first principle, it is clear to me that Mr. MacKenzie shared the view of the committee that the public was at no risk from further harm. Although I accept that there was strong character evidence in

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Mr. Rovet's favour, I cannot be as unequivocal as Mr. MacKenzie about this in view of the lack of explanation as to his motivation for the conduct which formed the basis for the complaint.

With respect to the second principle, there can be no doubt that Mr. Rovet's conduct seriously violated this principle. While I appreciate that Mr. Rovet and his family have suffered greatly as a result of his conduct, it seems to me that this kind of personal loss is a matter that ought only to be taken into account on the question of specific deterrence and in mitigation of the appropriate penalty. It is irrelevant to the question of general deterrence and to ensuring the maintenance of high ethical standards among the members of the profession. Those standards demand that a solicitor who violates the trust of his partners by stealing from them, who brings the administration of justice into disrepute by lying to a tribunal, and who participates with a client in a dishonourable and deceitful scheme, has so violated the standards, that he or she should not continue to have the privilege of practising in the profession.

With respect to the third principle, maintaining public confidence, I believe that this case warrants a significantly more severe penalty than a one year suspension.

In his submissions before Convocation, Mr. MacKenzie indicated that it was tempting to make a convincing argument that Mr. Rovet should be disbarred for the misconduct that brought him before the committee and before Convocation. He declined to make this argument and explained to Convocation the factors to be weighed on the other side of the scale. These are dealt with in the report of the Discipline Committee and in Mr. Murray's reasons. With the greatest of respect to Mr. MacKenzie and to the three experienced benchers who heard this matter in committee, I respectfully dissent from their views.

Had this been a case of a serious misappropriation of client funds, even in circumstances where a lawyer had never been before the Society previously, the solicitor would have been disbarred. Indeed, Mr. MacKenzie said as much in his submissions to Convocation. However, he also said that Mr. Rovet's conduct had not been regarded in the past as the kind of case which would have attracted a penalty of disbarment. Convocation was referred to several authorities, decided in 1984 and 1985, none of which were on all fours in this case. However, even had they been, that is not to say that they were correctly decided. In any event, as Mr. MacKenzie pointed out, ethical standards imposed on lawyers change over time and if anything, should be higher today than they were in the past. In my view, a solicitor who cheats his partners, lies to an administrative tribunal, and prepares fraudulent documents for submission to the tribunal, engages in conduct which is equally reprehensible as the conduct of a solicitor who misappropriates client funds. In both kinds of cases, there is a serious violation of trust. In both kinds of cases, there is harm suffered. Although it may be easier to point out the direct harm suffered by clients when lawyers steal their money, this does not mean that the harm done in this kind of case is any less damaging. In both, the public is made vulnerable and the ethical standards of the profession and the public's confidence in it are seriously diminished.

I appreciate that my views in this matter are not shared by the Discipline Committee, the Society's counsel, or the majority of the members of the bench who participated in the decision at Convocation. If I should, as Mr. MacKenzie submitted, resist the temptation to impose a penalty of disbarment in such a case, the question remains why a more lengthy suspension is inappropriate for conduct which has been described by Mr. Strosberg as "deplorable and inexcusable" and by Mr. Murray as "serious and not to be condoned." In passing, I might mention that we do not have the benefit of the committee's views on Mr. Rovet's conduct. The reasons are silent. I am therefore left to wonder whether the committee did not regard Mr. Rovet's

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conduct as serious or whether the conduct was regarded as serious, but was mitigated by Mr. Rovet's co-operation with the Society and his previous good reputation.

I accept that a suspension is a serious penalty and has serious consequences for a solicitor. Certainly, it will have and already has had serious consequences for Mr. Rovet. I also accept that prior to these events, Mr. Rovet was an exemplary member of the profession with an enviable reputation. He was not, as Mr. MacKenzie pointed out, part of the repeat business of the Discipline Department. These facts, I agree, could support the committee's conclusion that a six month retroactive suspension appropriately addressed the issue of specific deterrence. I also agree with Mr. Strosberg that there may be good policy reasons in appropriate cases, to impose retroactive suspensions. I do not think that this is one of those cases.

As I have already indicated, I believe that disbarment is the appropriate remedy in both this kind of case and in this particular case. But, I accept that there may be like cases where a less severe penalty than disbarment should be imposed to take account of such matters as the solicitor's previous good conduct, co-operation with the Society, and prospects for re-occurrence. In such cases, the penalty is reduced in mitigation of these facts and in recognition of the fact that the objects of specific deterrence will be met by a reduced penalty. However, these mitigating factors, while relevant to the question of specific deterrence, do not touch the question of general deterrence which, in my view, is equally important in the discipline process.

I do not think that the issue of general deterrence has been addressed adequately, or at all, in this case. If it is accepted, as Mr. MacKenzie submitted, that a convincing argument for disbarment could be made in Mr. Rovet's case, it follows from this that this kind of professional misconduct per se is at least amenable to the most severe penalty. However, it does not follow that the penalty should be substantially reduced to a six month or one year suspension solely in mitigation of Mr. Rovet's prior good conduct and reputation. This ignores the question of general deterrence. Although Mr. Murray suggests that Convocation imposed its penalty for reasons of general deterrence, I believe, with respect, that Mr. Murray confused the questions of specific and general deterrence. The evidence and the submissions at Convocation went only to the question of specific deterrence.

If disbarment is too severe a penalty in this case having regard to all the circumstances, I suggest that the penalty ought to have been a suspension in the range of three to five years. This penalty would have far better served the objects of the discipline process than a one year suspension. It would have addressed the issues of specific and general deterrence. It would have accorded Mr. Rovet recognition for his previous unblemished record and allowed him the opportunity to re-enter the profession at the conclusion of his punishment. But, it would also have sent a more appropriate message to the profession and the public about the Society's view of Mr. Rovet's conduct.

THE PROCEDURAL ARGUMENT

Mr. Strosberg has included in his dissent the relevant portions of the Law Society Act R.S.O. 1990 c.L. 8 ("the Act"). He correctly points out that section 39 (2) of the Act requires that on the hearing of an appeal from committee, Convocation have before it a record of the proceedings before the committee including the evidence taken. As someone new to the Law Society and the discipline process, I do not know why this procedure is not followed in discipline matters which come before Convocation and was not followed in this case.

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Mr. Strosberg argues that in circumstances where Convocation wishes not to follow a committee's recommendation, it should adopt a procedure which complies with s. 3 (2), hear further evidence if necessary, and found its decision only upon the complete record and the further evidence, if any. In the alternative, he says, Convocation should hold a full de novo hearing on penalty. I agree with Mr. Strosberg on this point although I would qualify it by suggesting that this requirement can be waived on the consent of the solicitor and the Society. I believe that in this case, the requirement was waived.

On December 6, 1991, Mr. Rovet had notice that Convocation was considering the imposition of a more severe penalty than recommended by the Discipline Committee. Mr. Rovet was represented by experienced counsel at the hearing before the committee in October and at Convocation in December. Between December 6, 1991 and January 23, 1992, Mr. Rovet retained new counsel, Mr. Laskin. He is also a senior and experienced member of the bar.

As I have already indicated, new material was filed at Convocation on January 23, 1992 which included a joint memorandum on the question of the voluntary undertaking, a transcript of Mr. Bastedo's viva voce evidence before the Discipline Committee, and four letters in support of Mr. Rovet's character which were not before the committee. Mr. Rovet was present at Convocation and could have been called to give evidence. From this, I conclude that Mr. Laskin was content to have Convocation determine the matter on the record which was put before it. In effect, he waived the statutory requirement. Further, the transcript of proceedings before Convocation on January 23, 1992, makes clear that Mr. Laskin and Mr. MacKenzie agreed on all the evidence which would be presented to Convocation. Therefore, while I adopt Mr. Strosberg's argument that the principles of natural justice commend the procedure he suggests, I believe that those principles were met in this case for the reasons I have mentioned and for the additional reason described below.

It became apparent, at least from December 6, 1991 that the hearing which took place before the Discipline Committee on October 1, 1991 was flawed because it proceeded on a misapprehension as to a material fact. I think that the procedure which ought to have been followed was to refer the matter back to the committee at that point. As I have previously stated, it is my view that the committee was influenced in its recommendation by its understanding that Mr. Rovet had not practised from May 11, 1991. Had this information been before them, they might well have come to a different conclusion, both as to penalty and as to retroactivity.

At Convocation, Mr. Laskin acknowledged this misapprehension, but sought to confine it to the retroactivity issue. He said:

And the question is what -- what does one do about it now? And it occurred to me that there are two choices. One choice is to refer the matter back to the committee and let the committee get the full facts and make a decision; the other way to deal with it is to ask Convocation to deal with it as I am on the basis of the memorandum which I believe we have marked as Exhibit 2.

Transcript of Proceedings of Convocation
January 23, 1992 (p. 87; lines 13-19)

In view of the above, I conclude that Mr. Laskin consented to having the matter of penalty determined by Convocation on the basis of the evidence which he and Mr. MacKenzie had agreed on. I therefore do not think that there is any reason to find that Convocation erred in its disposition as a matter of process.

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However, I am of the opinion that Convocation erred in its disposition as a matter of substance and committed a serious error in principle.

For the reasons given, I would have arrived at a different result in this matter.

March 10, 1992

"Joan L. Lax"
.....

SPECIAL COMMITTEE ON REQUALIFICATION

Ms. Peters presented the Report on the Special Committee on Requalification dated March 27th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON REQUALIFICATION begs leave to report:

In May 1989, Convocation appointed a committee composed of Patricia Peters (Chair), Denise Bellamy (ad hoc), Maurice Cullity (ad hoc), Netty Graham, John Ground, Donald Lamont (ad hoc), Jeffrey Lyons, Helen King MacLeod, Allan Rock (ad hoc) and James Spence to review existing policies on the requalification of members who have not been involved in the active practice of law for five or more years and to formulate alternatives.

Roger Yachetti was added to the Committee in September of 1990.

Christine Iannetta, Ajit John and Richard Tinsley acted as staff to the Committee.

The Special Committee reviewed the requalification processes in other Canadian law societies. In addition, the Special Committee canvassed the members of the profession by way of an open invitation for comments made in the report of the proceedings of Convocation dated May 26, 1989. It also reviewed the Practice Inspection Program of the Ontario Institute of Chartered Accountants and invited Robert Anderson and Scott Kerr to advise on the Spot Audit and Professional Standards programs.

The Special Committee produced a report dated June 21, 1991 which was presented to Convocation in November 1991. At Convocation's request the Special Committee gave further consideration to the definition of practising law and to the inclusion of retired judges when it met in February and March 1992. The following are the Recommendations of the Special Committee as revised on March 12, 1992.

THE COMMITTEE'S RECOMMENDATIONS ARE AS FOLLOWS:

1. That all members and former members who have not been practising law for five or more years and who wish to resume the practice of law shall be required to make application to the Professional Standards Committee for practising status. Each person's application will be reviewed on an individual basis.

For the purpose of these Recommendations, those who are practising law are those who are:

- a) engaged in legal practice in Ontario;
- b) employed in federal, provincial or municipal government positions in Ontario and provide legal advice, opinions or services;
- c) employed by a corporation in Ontario and give legal advice, opinion and services, or maintain an additional practice;
- d) employed in education and maintain an additional practice;
- e) engaged outside Ontario in legal practice with respect to the law applicable in Ontario, including those in federal, provincial or municipal government positions and others who provide legal advice, opinions or services.

Persons referred to in Section 31 of the Law Society Act shall be exempted from this requirement if they apply to be restored within one year of ceasing to hold office.

Note: Amendment, see page 223

- 2. That the Professional Standards Committee develop a range of reasonable conditions to be met by applicants who wish to recommence the practice of law.
- 3. That changes be made to the Notice of Fees Due Form, in order to require members to indicate either by declaration or affidavit whether they have been practising law during the preceding year.
- 4. That the Law Society alert the profession to the new policy on requalification, which shall become effective on July 1, 1993.

Note: Amendment, see page 223

It is your Committee's view that these Recommendations can be implemented by virtue of Convocation's Rule-making power in paragraph 12 of Section 62(1) of the Law Society Act, which reads:

"62(1) Subject to Section 63, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing, . . .

12. governing members, life members and student members, and prescribing their rights and privileges."

Your Committee recommends that the revised Report be adopted and referred to the Legislation and Rules Committee for action.

BACKGROUND AND RATIONALE FOR THE RECOMMENDATIONS SUSPENDED MEMBERS

In September 1986, Convocation adopted a recommendation of the Admissions Committee that those whose rights and privileges had been suspended for failure to pay a fee or levy and who have remained suspended for five

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consecutive years or more should be required to complete successfully the examinations of the teaching term of the Bar Admission Course and, if unsuccessful, be permitted to attend the Bar Admission Course and be required to complete successfully the teaching term including the examinations, before being permitted to resume practising. The policy behind this rule is that, prima facie, those people who have not been engaged in the active practice of law in Ontario for the previous five years are not current in their knowledge of the law and procedures in Ontario and it is the Society's obligation to ensure that its members have such knowledge.

The current approach used by the Admissions Committee in regard to members who have been suspended for five years or more and who are re-applying for membership is to review an applicant's employment history and decide whether or not the applicant should be excused from some or all of the Bar Admission Course exams and whether or not any limitations should be placed on the applicant's right to practise. The examinations themselves, based on the Bar Admission Course materials as they presently exist, will not be continued. At present, a staff committee headed by the Director of Legal Education, Alan Treleaven and the Chair of the Committee of the Reorganization of the Transfer Examinations, Tom Lockwood, is developing a series of examinations to replace both the Bar Admission Course transfer examinations and the current Statute and Procedures examinations. These are primarily used to test the knowledge of those transferring from another province, but they might well be suitable for the purposes of requalification.

Attached as Appendix #1 is a chart summarizing the approaches taken in some of the other Canadian jurisdictions. Basically, all of the provinces surveyed have some type of requalification process for suspended and non-practising members who return to the practice of law. The requirements range from the writing of exams to the imposition of limitations on the members' rights to practise. An example of such a limitation would be that such a member may practise only as an employed solicitor for one year. The common element is that each individual is assessed and specific conditions imposed which take into account the member's background and circumstances.

Attached as Appendix #2 is Rule 6.20(1) of the Law Society of Newfoundland. It sets out the requirements for members who are switching from the non-practising category to the practising category. Applicants must provide evidence of current working knowledge of the law. The Law Society of Newfoundland Education Committee has discretion and assesses each case on its own merits.

The practice of reviewing each case individually is also followed by the Ontario College of Physicians and Surgeons. Although readmission is not as common in the medical field, the College has recently reviewed a case in which applicant had not practised for ten years. Its decision was to require that the applicant fully retrain before being allowed to practise.

The Institute of Chartered Accountants of Ontario (ICAO) Practice Inspection Program is one which aims at ensuring the continued competency of its members. Adopted in 1980, following a referendum, each member's practice is reviewed by a full-time or part-time inspector, approximately once every five years. Members are notified in advance of the inspection and bear its expense. Upon recommendation of the inspector, a member may be referred to the Professional Conduct Committee which is empowered to impose sanctions. Attached as Appendix #3 is a memorandum from Scott Kerr to Richard Tinsley dated 18 February, 1991 which provides a comparison of the Law Society's Professional Standards Program and the Institute of Chartered Accountants Practice Inspection Program.

NON-PRACTISING MEMBERS

During the discussion at Convocation that led to the appointment of the Committee, it was suggested that the considerations that would justify requalification for suspended members apply also to members who have ceased to practise but have continued to pay their annual fees. Having discussed this matter extensively, the Committee can find no policy or practical reason for distinguishing between these two groups.

If the supervisory responsibilities of the Professional Standards Committee are expanded and strengthened in the future it might be possible to relax or even remove requalification requirements but the Committee is of the opinion, that until that occurs, such requirements should remain and that they should apply to non-practising fee-paying members as well as members who have been suspended.

PRACTISING MEMBERS

There are certain checks on members to ensure competence. The first is Rule 2 which places a positive obligation on members to take on only such work as they are competent to do. Rule 2 provides that:

"2(a) The lawyer owes the client a duty to perform any legal service undertaken on the client's behalf.

(b) The lawyer should serve the client in a conscientious, diligent and efficient manner, and should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.

COMMENTARY

KNOWLEDGE AND SKILL

1. Competence in the context of the first branch of this Rule goes beyond formal qualification of the lawyer to practise law. It has to do with the sufficiency of the lawyer's qualifications to deal with the matter in question, and includes knowledge and skill, and the ability to use them effectively in the interest of the client."

A breach of Rule 2 could result in discipline proceedings. In fact, it has rarely been invoked as the basis of a charge. In the cases where it has been invoked, it involved practising members who had, over a period of time, consistently failed to provide an adequate level of service, as demonstrated by numerous complaints from clients.

Another check for ensuring the competency of lawyers is the Professional Standards Committee. Members who fail to provide an adequate level of service, as evidenced by numerous client complaints or errors and omissions claims, are subject to having their practices reviewed and may be invited, among other things, to take retraining programs set by the Committee. As with the discipline process, this is a reactive program rather than a proactive one, although the Committee has been developing practice guidelines for the assistance of the profession. To date, guidelines have been developed in the areas of criminal, real estate and family law and are presently being formulated in the areas of civil litigation and wills and estates law.

The Committee's consideration of the need for requalification when a member moves from the non-practising to the practising category led inevitably to the question whether requalification requirements should be restricted to persons not engaged in the practice of law or whether they should be aimed at

ensuring that all members meet a minimum standard of professional competence. This issue also involves a recognition of the growth in specialization. Should members who change their practices from one area to another be required to undertake some type of formal requalification process?

Another aspect of this issue is that members who pay 66% of the fee, i.e., those employed other than in the practice of law, may be as qualified in a specific area of the law as those who are full fee-paying members. One member who wrote to the Law Society had dual qualifications as a chartered accountant and as a lawyer. He is currently a tax specialist in an accounting firm. He pays 66% of the fee. If he decides to leave his accounting practice to practise as a tax lawyer, he feels he should not have to requalify because he is just as knowledgeable about tax law while working in an accounting firm as he would be if working for a law firm. Similarly, should a lawyer and patent agent currently employed as a patent agent by a company, who then takes up a position with a law firm as a patent lawyer, be required to requalify? These are only two examples which illustrate the complexity of trying to set rules regarding requalification.

A practical difficulty in addressing the problem of members who are engaged in the practice of law and, after a period of years in one area of law, switch to another, is one of monitoring such changes. While members are asked to indicate the nature of their practices on the Notice of Fees Due form, it is not mandatory and members may indicate several areas of practice. The Society would then have to check each form individually to determine whether the percentage distribution of the member's practice has changed significantly or whether new areas have been added.

Currently, the only method of policing members of the profession who are engaged in the practice of law and who switch from one area to another is that, if they fail to provide an adequate level of service, as evidenced by a complaint from a client or fellow member, they are subject to review by the Society's Professional Standards Committee.

Apart from the practical difficulty of policing changes from one area of practice to another, there would be other more fundamental problems in attempting requalification or other testing procedures in such cases. One such problem is that areas of practice overlap and the same legal issues can arise in several different areas. A lawyer who practises predominantly in one area might be quite competent, as well as accustomed, to handle particular cases that arise from time to time in another area. For this reason, even at a time of increasing specialization, a requirement that members identify their areas of practice could not be expected to do more than provide information about the principal emphasis of a particular lawyer's field or practice.

Moreover, the Law Society has recognized civil litigation as an appropriate area of specialization. If a member who is certified as a specialist in civil litigation is to be regarded as qualified to deal with the broad range of cases which fall under that heading and which cut right across the boundaries of different areas of practice, it would be difficult to justify a requirement that another lawyer who has practised non-litigiously in one of those areas should requalify before being permitted to practice in another.

While recognizing the logical difficulty in separating the questions of competence that are raised by lawyers who return to practice from those raised by lawyers who move from one area of specialization to another, the Committee believes that the practical difficulties of identifying, monitoring and policing such changes would make it unwise to attempt to impose requalifying

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requirements on lawyers who change their principal area of practice. The Committee believes that for such members the risk of infringing Rule 2 and of incurring liability for negligence, together with future development of the mandate and responsibilities of the Professional Standards Committee are the most appropriate safeguards.

This report does not address methods of ensuring the continuing competence of members of the profession by way of mandatory continuing legal education, periodic mandatory requalification or by a program of practice inspection similar to that used by the ICAO. Further study in these areas is being done by the Continuing Legal Education Reform Committee chaired by Tom Bastedo and by the Professional Standards Committee chaired by Roger Yachetti. In the latter case, Convocation has adopted the proposals developed by the Professional Standards Committee which have now been reviewed by the Reform Implementation Committee.

ALL OF WHICH is respectfully submitted.
DATED this 27th day of March, 1992.

Chair

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

- (1) A chart re: Transfer and requalification examinations. (Appendix #1)
- (2) Rule 6.20(1) of the Law Society of Newfoundland. (Appendix #2)
- (3) Memorandum from Mr. Scott Kerr to Mr. Richard Tinsley dated February 18, 1991 re: Comparison of the Professional Standards Programme and the ICAO's Practice Inspection Programme. (Appendix #3)

The Chair asked that an amendment be made to the last paragraph on page 2 by inserting the words "or have applied" after "if they apply" so that the sentence would then read: Persons referred to in Section 31 of the Law Society Act shall be exempted from this requirement if they apply or have applied to be restored within one year of ceasing to hold office.

It was moved by Tom Bastedo, seconded by Kenneth Howie that the Report be accepted in principle subject to Convocation reviewing the financial implications of implementation after implementation recommendations by the Professional Standards Committee.

Carried

A further amendment was made to the Report on page 3, that at the end of the sentence at Recommendation 4, the words "or such other date to be set by Convocation" be added.

The Chair accepted the amendment.

The Report as amended was adopted in principle with referral to the Professional Standards Committee for development of guidelines and to Finance and Administration for a Financial Impact Statement.

THE REPORT AS AMENDED WAS ADOPTED IN PRINCIPLE

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SPECIAL COMMITTEE ON BENCHER ELECTIONS

Mr. Topp presented the Report on the Special Committee on Bencher Elections of its meeting on March 26th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON BENCHER ELECTIONS begs leave to report:

Your Committee met on Thursday, the 26th of March, 1992, at 5 p.m., the following members being present: R. Topp (Chair), V. Krishna (Vice-chair) and P. Peters.

Also present: M. O'Dea (Chair, County and District Law Presidents Association), R. Tinsley, A. Brockett and S. Hodgett.

I. The Special Committee's Role:

This Committee was appointed in September, 1991. The Committee seeks the direction of Convocation, in light of the considerations outlined below, regarding the following matters:

1. the mandate of the Committee; and,
2. whether to delay pending amendments to the Law Society Act.

II. The previous Special Committee on Bencher Elections (The Ferguson Committee)

A. Background

In October 1991, Convocation appointed a Special Committee chaired by Mr. Roderick Ferguson, Q.C. to review issues concerning the election of benchers. The Committee consulted the profession extensively. In April 1990, a questionnaire was mailed to all members in good standing. In addition, advertisements were placed in the Ontario Reports and the Lawyers Weekly seeking input from the profession. The Committee received detailed proposals from interested groups including the Committee for Bencher Accountability and the County and District Law Presidents Association. There were 10 lengthy meetings. The Committee recommended to Convocation on November 23, 1990 a scheme of regional representation for benchers.

B. The Recommendations of the Ferguson Committee

The scheme of regional representation proposed by the Ferguson Committee was as follows:

- a. Eleven electoral regions to be established.
- b. Seven of the eleven regions to be the seven "judicial" regions outside Metropolitan Toronto.
- c. The remaining four electoral regions to comprise various municipalities within Metropolitan Toronto.
- d. One bencher to be elected as "regional representative" from each of the eleven electoral regions.

e. The eleven regional representatives to be elected only by the votes of voters within their own regions.

f. Thirteen benchers from outside Metropolitan Toronto to be elected by all voters, as at present.

g. Sixteen benchers from within Metropolitan Toronto to be elected by all voters, as at present.

The Ferguson Committee anticipated that these changes would be made by Convocation through Rule changes.

C. The Debate in Convocation on November 23, 1990

1. When the report of the Ferguson Committee was presented to Convocation, the argument was made that Convocation did not have power, under the *Law Society Act*, to provide for a scheme of regional representation. This argument prevailed. Although Convocation debated and eventually adopted the scheme of regional representation proposed by the Committee, its implementation was expressly made subject to the Law Society first obtaining the necessary power through amendments to sections 15(2), 15(3) and 62(1)6 of the *Law Society Act*.

2. The following motions were made in the course of debate upon the scheme of regional representation recommended by the Ferguson Committee:

a. That the proposal to establish four electoral regions within Metropolitan Toronto be deleted. - Lost

b. That the Treasurer be invited to constitute a Special Committee on Bencher Elections immediately on election of new benchers in 1991 such Committee to report no later than May 1992. - Lost

c. That the number of representatives from Metropolitan Toronto be increased from four to five, the City of Toronto being divided into two areas. - Lost

d. That there be two benchers elected from each of the electoral regions outside of Metropolitan Toronto except the North West and that one be elected from the North West. The remaining seven benchers from outside Metropolitan Toronto and the remaining sixteen benchers from within Metropolitan Toronto to be elected by all voters. - Lost

e. That the motion in (d) above be amended by deleting "except the North West and that one be elected from the North West." - Lost

3. The recommendations of the Ferguson Committee, implementing the scheme outlined above, were put to a vote and adopted subject to the Law Society obtaining the necessary amendments to the *Law Society Act* from the Legislature.

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D. Amendment of the Law Society Act

1. As stated above, implementation of the scheme of regional representation recommended by the Ferguson Committee and adopted by Convocation on November 23, 1990, was subject to the Law Society obtaining the necessary powers through amendment of the *Law Society Act*.
2. The Attorney General notified the Law Society that the legislative timetable did not permit the Government to enact the necessary amendments in time for the 1991 benchers election.
3. The 1991 benchers election was therefore conducted according to the existing scheme of representation.
4. At present the measures adopted by Convocation on November 23, 1990 remain the policy of the Law Society. Consequently the amendments to sections 15(2), 15(3) and 62(1)6 are pending as part of a larger package of amendments to the *Law Society Act*.

E. Position Adopted by the County and District Law Presidents Association before the Ferguson Committee in May 1990

1. In its submission to the Ferguson Committee the CDLPA advocated a more regionalized system of benchers representation than the scheme ultimately proposed by the Committee and adopted by Convocation.
2. The CDLPA submission to the Ferguson Committee proposed the following scheme:
 - a. the number of elected benchers be increased to forty-five;
 - b. five benchers be elected by all voters, as at present;
 - c. the remaining forty benchers be elected by voters within regions, the number of benchers for each "judicial" region being proportional to the number of members in that region subject to a minimum of two benchers per region.
3. Under the CDLPA proposal, the benchers would have been elected based on the following regional representation:

North West	2
North East	2
Central East	3
Central West	3
Central South	4
South West	4
East	5
Metropolitan Toronto	17
Elected at large	<u>5</u>
Total	45

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4. By the time of the CDLPA meeting in November 1990, it was becoming clear that there was little practical chance that a scheme as far-reaching as that proposed by the CDLPA could be adopted in time for the benchers elections in 1991. The CDLPA proposal would have required an amendment to the *Law Society Act* allowing an increase in the number of benchers to 45. Furthermore, the Ferguson Committee appeared to be coming to the conclusion that it would not be in favour of so extensive a scheme of regionalization.

5. As a consequence the CDLPA resolved to support the Ferguson Committee recommendations provided that:

(a) the regional representation for all regions outside Metropolitan Toronto, other than the North West, be increased from one to two benchers, and

(b) there be a concurrent commitment to review the election process again as soon as the 1991 election had taken place.

6. The Ferguson Committee was aware of these provisos. Both were voted upon at the Convocation of November 23, 1990 as motions (b) and (d) in paragraph C.2. above. Both motions were lost.

III. The Present Special Committee on Bencher Elections

A. The March 26, 1992 Meeting

Notwithstanding the defeat of the motion to establish a new committee after the 1991 election, a Special Committee on Bencher Elections was appointed in September 1991. The new Committee held its first meeting on March 26 in order to attempt to formulate a plan of action. Mr. O'Dea, President of the County and District Law Presidents Association, attended upon the invitation of the Committee. Mr. O'Dea outlined the concerns of the CDLPA.

B. CDLPA submissions to the Committee

1. Mr. O'Dea submitted that the recommendations of the Ferguson Committee adopted by Convocation in November 1990 were a compromise. They were a compromise dictated by time constraints and the attempt to achieve electoral reform before the election in 1991. He states that the CDLPA's understanding was that electoral reform would continue after the election. As a consequence the CDLPA wishes the Committee to reconsider the entire election process. In particular the CDLPA would be asking the Committee to re-examine and attempt to achieve a more extensive system of regional representation as outlined in the previous CDLPA submissions. Mr. O'Dea believes that regional representation will determine the extent to which members feel a sense of ownership in their governing body.

2. The CDLPA wishes to have 2 representatives on the Committee to allow it to participate fully. CDLPA also feels that urgent action is required if reforms, going beyond the Ferguson recommendations, and the necessary legislative changes are to be made before the next benchers election.

C. The Committee's position

1. The Committee reached the consensus that it did not have a clear mandate from Convocation. Clear instructions are particularly important if the Committee is to reconsider an area where

24th April, 1992

considerable energy was expended by a previous Committee whose recommendations are still awaiting necessary legislative change for implementation. Even with the Ferguson Report to build upon, reconsideration of the electoral process will be a substantial undertaking involving consultation with not only the CDLPA but also with other interested groups.

2. The Committee also believes that the recommendations passed by Convocation in November 1990 remain the policy of the Law Society. It may be necessary for Convocation to authorize a delay or halt to the process of legislative change should it feel that a reconsideration of electoral reform is appropriate.

D. Financial impact

1. The Committee believes that before deciding the Committee mandate Convocation should consider the cost of setting out to discuss this matter again. The average cost of travel and accommodation for those benchers who live outside Toronto to attend meetings is estimated to be \$700. As currently constituted the Committee has two members from Ottawa, one from Sudbury and one from Toronto. The cost for each meeting will, therefore, be approximately \$2100. This cost does not include other expenses nor does it include the travel and accommodation for any non-benchers, for example representatives of the CDLPA, who may be appointed to the Committee. The Ferguson Committee met 10 times. If the issue of regionalization is re-opened, there is no reason to believe that consensus will be any easier to achieve in a new consideration of the matter. Your Committee can speak no more eloquently than the Ferguson Committee. As the Ferguson Committee noted:

Regional representation appears first to have been discussed in 1870. The fact that it has since been considered on a number of occasions but never implemented may be an indication of its complexity.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

Chair

It was moved by Fran Kiteley, seconded by Roger Yachetti that the Committee review the current information and position of the Law Society and invite the County & District Presidents to submit their proposals and to undertake a series of meetings to determine whether a compromise situation could be achieved with the Committee to report back to Convocation no later than April 1993.

Lost

ROLL CALL VOTE - KITELEY MOTION

Arnup	Abstain
Bastedo	Against
Campbell	Against
Carter	Against
Cullity	Against
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	Against
Goudge	Against
Graham	For
Hickey	Against
Howie	Against
Howland	Abstain
Kiteley	For
Lamont	Against
Lax	For
Lerner	For
Levy	For
McKinnon	Against
Manes	Against
Mohideen	For
Murphy	Against
Murray	For
O'Brien	For
Palmer	For
Peters	Against
Rock	Against
Scott	Against
Somerville	For
Thom	Against
Topp	Against
Yachetti	For

It was moved by Tom Bastedo, seconded by David Scott that Convocation thank Mr. Topp for his report and that the Committee not proceed but that Convocation proceed with the implementation of the recommendations of the Ferguson report adopted by Convocation.

Lost

ROLL CALL VOTE - BASTEDO MOTION

Arnup	Abstain
Bastedo	For
Brennan	Against
Campbell	Against
Carter	For
Cullity	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	For
Goudge	For
Graham	Against
Hickey	For
Howie	For
Howland	Abstain
Kiteley	Against
Lamont	For
Lax	Against
Lerner	Against
Levy	Against
McKinnon	For
Manes	For
Mohideen	Against
Murphy	For
Murray	Against
O'Brien	Against
Palmer	Against
Peters	For
Rock	For
Scott	For
Somerville	Against
Thom	For
Topp	For
Yachetti	Against

It was moved by Colin McKinnon, seconded by Patricia Peters that the reforms approved by Convocation continue to be implemented.

Not Put

It was moved by David Scott, seconded by Tom Bastedo that Mr. Topp's Committee not continue its work.

Not Put

It was moved by Brendan O'Brien, seconded by Susan Elliott that the Committee continue consultation with the County & District's Presidents on this issue.

The Report was deferred.

.....

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

.....

24th April, 1992

The Treasurer and Benchers had as their guests for luncheon Don Guthrie, John Honsberger, The Honourable Karen Weiler, The Honourable Rosalie Abella and Donald Rickerd.

.....

CONVOCATION RECONVENED AT 2:30 P.M.

.....

PRESENT:

The Treasurer, Arnup, Bastedo, Brennan, Campbell, Carter, Copeland, Cullity, Elliottt, Epstein, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Kiteley, Lamont, Lawrence, Lax, McKinnon, Mohideen, Murphy, Murray, O'Brien, Palmer, Rock, Scott, Somerville, Thom, Topp and Yachetti.

.....

RESUMPTION OF THE REPORT ON BENCHER ELECTIONS

It was moved by Roger Yachetti, seconded by David Scott that the matter be tabled.

Carried

Mr. Topp voted against the Motion.

Mr. O'Brien's motion was not put.

THE REPORT WAS TABLED

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LEGAL EDUCATION COMMITTEE

Mr. Lamont presented the Report of the Legal Education Committee of its meeting on April 9th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of April, 1992. The following members were present: Paul Lamek (Chair), Maurice Cullity (Vice-chair), Donald Lamont (Vice-chair), Denise Bellamy, Lloyd Brennan, Carole Curtis, Philip Epstein, Vern Krishna, Colin McKinnon, Ross Murray. Representing the law schools was: Dean Berryman. Representing the Bar Admission Advisory Committee was: John Lewis. Staff in attendance were: Donald Crosbie, Barbara Dickie, Brenda Duncan, Holly Harris, Mimi Hart, Cheryl Keech, Alexandra Rookes, Alan Treleaven.

A.
POLICY

1. REQUIREMENTS FOR STANDING: PHASE ONE 1992 35TH BAR ADMISSION COURSE

The Requirements for Standing: Phase One 1992: 35th Bar Admission Course will govern Phase One of the 1992 Bar Admission Course, which commences on May 19, 1992.

The Bar Admission Course Subcommittee, chaired by Donald Lamont, met on March 11, 1992 and approved a draft. (pages 1 - 5)

It is recommended that the Requirements for Standing: Phase One 1992: 35th Bar Admission Course be approved.

Approved

2. BAR ADMISSION COURSE REFERENCE MATERIALS

Since the inception of the reformed Bar Admission Course, the Bar Admission Course Reference Materials, formally known as the "Lecture Notes", have been distributed to all students during Phase One of the Bar Admission Course. The purposes of distributing the Reference Materials during Phase One have primarily been the following:

- a) To permit the students to read the Reference Materials during Phase Two (the articling term) in preparation for Phase Three
- b) To permit the students to make use of the Reference Materials to assist them during articling.

At the commencement of Phase Three, it has been intended that the students receive updates of the Reference Materials for use during Phase Three and for the examinations. Depending on the changes to the law in each course, the updates would be replacement pages, replacement chapters or replacement of the entire volume.

The disadvantages of the current Reference Materials distribution scheme are as follows:

- a) The burden on Bar Admission Course Section Heads, Senior Instructors, Assistant Section Heads and other volunteer lawyers to update the Reference Materials twice each year (once for Phase One and once for Phase Three) is considerable and is considerably heavier than in the traditional Bar Admission Course
- b) The administrative burden of preparing and distributing for both the Phase One and Phase Three students in each year is considerable
- c) The cost of producing and distributing Reference Material on this basis is considerably greater than in the traditional Bar Admission Course.

The student representatives in the last session of Phase Three had the following reactions to the distribution of Reference Materials:

- a) Students do not have time to read the Reference Materials in advance of Phase Three because articling is very demanding. (In fact it appeared that very few students had read the Reference Materials prior to commencing Phase Three.)

24th April, 1992

- b) Students who had read some or all of the Reference Materials prior to Phase Three often were of the view that reading out of the context of classroom activity was not very useful.
- c) It is useful to have the Reference Materials available during articling as a reference tool.

The Bar Admission Course Subcommittee at its meeting of March 11 determined that the scheme for production and distribution of Reference Materials should be changed so that the Reference Materials would be distributed to all students only at the outset of Phase Three. Students would be entitled to purchase the most current available individual volume of any of the Reference Materials during Phase One or Phase Two at the bare production cost of \$10.00 to \$12.00 per volume. In that way the Reference Materials would be available to students at minimal cost for their assistance during articling, but students would not be asked to read the Reference Materials in advance of Phase Three. During Phase One students would continue to receive for their use in Phase One all of the Phase One Materials which are prepared each year for use during the Phase One educational program.

It is recommended that:

- a) Bar Admission Course Reference Materials be distributed to students at the outset of Phase Three only, the cost of which will be covered by the tuition fee.
- b) Bar Admission Course Reference Materials be available for purchase by students during Phase One and Phase Two at the bare production cost price of approximately \$10.00 to \$12.00 per volume.

Approved

3. PART-TIME ARTICLES

The Articling Subcommittee considered the issues relating to the introduction of a new policy on part-time articles at its February and March meetings. Twelve enquiries or requests for part-time articles have been recently received. The requests include a Michigan attorney who would like to pursue a call to the bar in Ontario while maintaining his Detroit area law practice. Most of the requests are from female students with infants and small children who would reluctantly postpone their articles if required to do them full-time. The students seek permission to article from two to four days per week.

Members of the Subcommittee recognize the value of such a proposal to students whose access to the profession might otherwise be denied. They note that alternative work arrangements are advocated by the Transitions Report adopted by Convocation in May of 1991.

The Subcommittee noted that part-time completion of work experience requirements is permitted in the accounting, engineering and medical professions. The Nova Scotia Barristers' Society and the Law Society of Manitoba permit part-time articles. Their experience mirrors that of other professions in that only limited numbers of individuals are interested in taking advantage of such a policy.

In these recessionary times, the Subcommittee believes that permitting part-time articles makes economic sense for law firms, government departments and corporations who cannot afford to hire a full-time articling student or do not have sufficient work for a full-time articling student. It is expected that the approval of part-time articles will expand the number of articling positions available.

24th April, 1992

The Subcommittee believes that no changes to the Law Society's Regulations or Rules would be required to permit part-time articles. Students who seek to complete their articles on a part-time basis could fall within the "exceptional circumstances" category under subsection 22(6) of Regulation 573 under the Law Society Act. Subsections 22(4a) and 22(6) are attached. (pages 6 - 7)

The Subcommittee believes that the Law Society should be as flexible as possible in accommodating part-time articling requests. However, there should be some minimum criteria for approval of a part-time articling arrangement. The Subcommittee expressed concern that there may be administrative difficulties with implementation of a part-time articling program if the numbers of students seeking to take advantage of it exceed our current expectations.

It is recommended that:

- 1) part-time articles be permitted on a trial basis;
- 2) the onus of finding a position be on the student;
- 3) the Articling Subcommittee publish a notice to the profession advising that part-time articles are acceptable;
- 4) the criteria for approval of part-time articles be adopted as attached (page 8);
- 5) the policy permitting part-time articles be reviewed after one and three years from implementation.

Approved

B.
ADMINISTRATION

1. FUNDING FOR ABORIGINAL AND MINORITY GROUP STUDENT SUPPORT PROGRAMS

A memorandum from the Under Treasurer outlining details of a proposal by the Equity in Legal Education and Practice Committee to develop student support programs for aboriginal and minority groups was before the Finance Committee (page 9). The Under Treasurer attended the Legal Education Committee meeting and presented the proposal orally.

The proposal was approved by the Legal Education Committee and the Finance Committee.

It is recommended that two grants of up to \$10,000 each be made out of Bar Admission Course funds to cover the cost of two law students to be employed for approximately 17 weeks over the summer.

Approved

C.
INFORMATION

1. LAW FOUNDATION GRANT

On Tuesday, March 31 the Law Society's application was considered by the Law Foundation of Ontario. The application included specific requests for the Bar Admission Course.

The Law Foundation has responded favourably, so that the request of \$2,148,500.00 for the Bar Admission Course has been granted.

Proposed final budgets will be settled in May and finally referred to Convocation for approval at its regular meeting on May 29.

2. ANNUAL MEETING AND DINNER OF THE LEGAL EDUCATION COMMITTEE AND BAR ADMISSION COURSE SECTION HEADS

The annual meeting and dinner of the Legal Education Committee and the Bar Admission Course Section Heads, Senior Instructors and Assistant Section Heads took place on Thursday, April 9.

3. ARTICLING SUBCOMMITTEE

The Articling Subcommittee met on Friday, March 27, 1992. In attendance were Marc Somerville (Chair), Denise Bellamy (Vice-Chair), Maurice Cullity, Janne Burton, Victoria Colby, and Jay Rudolph. Staff members attending were Marilyn Bode, Deborah Brown and Barbara Dickie.

The Subcommittee considered and granted two abridgment petitions. The Subcommittee further considered a proposal relating to part-time articles. It was decided to recommend a policy permitting part-time articles to the Legal Education Committee at its April meeting.

The Subcommittee gave conditional approval to a further approximately 53 prospective articling principals for the 1992-93 articling year. To date, approximately 900 members of the profession have applied. The applications of two members with a significant negative history with the Law Society were reviewed. One application was withdrawn. The other has been deferred pending the outcome of discipline proceedings against the member. Another member of that lawyer's firm will be invited to apply to serve as a principal. An applicant to serve as principal will be invited by the Subcommittee to respond to allegations of sexual harassment and mistreatment made by an articling student in the 1991-92 year.

4. CONTINUING LEGAL EDUCATION SUBCOMMITTEE

The Continuing Legal Education Subcommittee met on Thursday, March 26. In attendance were Colin McKinnon (Chair), Susan Elliottt, Marc Bode, Paul Perell, Gary Watson, Cheryl Keech and Alan Treleaven.

The meeting was devoted to a discussion of the subject of Mandatory Continuing Legal Education. The Subcommittee has been examining in particular the American experience and is considering how Mandatory Continuing Legal

24th April, 1992

Education might be most effective in Ontario, keeping in mind in particular the province's sheer physical size, the diversity of the profession and economic pressures which exist both for the profession and the Law Society.

ALL OF WHICH is respectfully submitted

DATED this 24 day of April, 1992

"P. Lamek"
Chair

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

- A-Item 1 - Draft re: Requirements for Standing Phase One 1992: 35th Bar Admission Course. (Numbered 1 - 5)
- A-Item 3 - Copies of Subsections 22(4a) and 22(6) of Regulation 573 and 574. (Numbered 6 - 7)
- A-Item 3 - Criteria for approval of a part-time articling arrangement. (Number 8)
- B-Item 1 - Memorandum from Mr. Donald A. Crosbie to the Finance and Administration Committee dated April 9, 1992 re: Funding support for aboriginal and minority group student support programs. (Number 9)

THE REPORT WAS ADOPTED

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FINANCE AND ADMINISTRATION COMMITTEE

Mr. Howie presented the Report of the Finance and Administration Committee of its meeting on April 9th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 9th of April, 1992 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), D.E. Bellamy (Vice-Chair), J.J. Wardlaw (Vice-Chair), T.G. Bastedo, R.C. Bragagnolo, P.G. Furlong, D.H.L. Lamont, S. Lerner, D.J. Murphy, R.W. Murray, K.J. Palmer, P.B.C. Pepper, and M.P. Weaver. Also in attendance were J.M. Spence, D.A. Crosbie, R.F. Tinsley, D.E. Crack and D.N. Carey.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the nine months ended March 31, 1992.

Approved

2. 1992/93 BUDGET

(a) 1992/93 Budget Process

A memorandum from the Director outlining the progress of the budget process to date together with a projection of financial results for the current fiscal year was before the Committee.

The Chair reported to the Committee in some detail many of the issues which had been considered by the various Committees and staff in arriving at the preliminary fee amounts which were set out in the Director's memorandum. It was pointed out that the budget is still under review by senior management and it is very likely that some savings will be found and that the fee may, in fact, be further reduced. The fee is to be set at Committee day in May for approval at May Convocation.

(b) Treasurer's Honorarium

The issue of the adequacy of the Treasurer's Honorarium was discussed.

The Chair directed that the Director of Finance survey the other Law Societies, prepare a financial impact statement and report back to the Committee.

3. AUDITORS' RECOMMENDATIONS

The "post audit" letter from our Auditors, Ernst & Young, was before the Committee in February. It was recommended that Mr. A. Feinstein meet with the Under Treasurer, Director of Finance and the auditors to review management responses and report back to the Committee.

Mr. Feinstein reported orally that he had completed his review and was satisfied with management's responses to the issues raised in the letter.

Approved

4. UNIVERSITY OF TORONTO - LAW FAIR

The Faculty of Law of the University of Toronto, on behalf of the Canadian Law Schools, is holding a Law Fair at the Metro Convention Centre on November 6th and 7th 1992.

They seek approval to use a picture of Osgoode Hall on their promotional materials.

The Committee was asked to consider this request.

Approved

24th April, 1992

5. QUEEN'S UNIVERSITY - REQUEST FOR AD PLACEMENT

Gemma Zecchini, the Director of Communications, has received a request from Queen's Law Student Society of Queen's University to place an ad in the 150th Anniversary year edition of the Queen's Law Students Society Yearbook (letter attached).

The Committee was asked to consider their request.

Denied

6. BUILDING COMMITTEE - BUDGET

A copy of the Building Committee budget was before the meeting.

Approved

7. FUNDING FOR ABORIGINAL AND MINORITY GROUP STUDENT SUPPORT PROGRAMS

A memorandum from the Under Treasurer outlining details of a proposal by the Equity in Legal Education and Practice Committee to develop student support programs for aboriginal and minority groups was before the Committee.

The proposal has been approved by the Legal Education Committee.

The Committee recommended that two grants of up to \$10,000 each be made out of Bar Admission Course funds to cover the cost of two law students to be employed for approximately 17 weeks over the summer.

Approved

8. 44 ECCLES STREET - OTTAWA
MORTGAGE WITH TORONTO-DOMINION BANK

On June 1, 1992 the outstanding principle of \$1,181,965 owing on our property at 44 Eccles St. becomes due.

This will be amalgamated into our current line of credit with Toronto-Dominion Bank.

Noted

9. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 33 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 33 cases all or part of the late filing fee has been outstanding four months or more. The 33 members owe \$46,420 of which \$13,690 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 33 members be suspended on April 24, 1992 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 242

10. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

The following members paid their Annual Fees with a cheque which was subsequently dishonoured by the bank.

24th April, 1992

John Calvin Bracewell	Sarnia
Douglas Robert Millar	Toronto
Arthur Sidney Pollack	Toronto
James Keith Deroux	Orangeville
Thomas Alan Kelly	North York
Richard Walter Martin	Toronto
Louisa Jackson Alger	Kingston

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on April 24, 1992 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 243

11. SUSPENSION OF MEMBER - ARREARS OF ANNUAL FEES

The following member has not paid his annual fees which were due on October 1, 1991.

Baxter Lee Calgary, AB

The Committee was asked to recommend that the rights and privileges of this member be suspended by Convocation on April 24, 1992 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 243

12. 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:

Clifford Wesley Lewis	Toronto
Abdool Shakoor Manraj	Toronto
Walter Leishman McGregor	Kingsville
Jack Marshall Stitt	Toronto
William John Carleton White	Ancaster

(b) Incapacitated Members - Rule 50 Retroactive

Norman Allan Chalmers of Edmonton, Alberta, was called to the Bar on the 27th of June 1957. For health reasons he was forced to discontinue his practice in Ontario and allowed his membership to lapse. His rights and privileges were suspended on the 27th of February 1987 for non-payment of annual fees. The clause pertaining to disability was in existence when he elected suspension. Arrears of fees now stand at \$3030.24. He is up to date on his annual filings.

Mrs. Chalmers, under power of attorney for her husband, makes application that he be granted retired status, without payment of annual fees, beginning with the period 1986/87.

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

Approved

13. RESIGNATION - REGULATION 12

(a) Nancy Elizabeth South of Vancouver, British Columbia has applied for permission to resign her membership in the Society and has submitted a Declaration in support. She was called to the Bar on the 30th of March 1990. She practised with the firm Tory, Tory, DesLauriers & Binnington for one and a half years and declared that she did not handle trust funds or other client's property. Her rights and privileges were suspended on the 6th of March 1992 for her failure to pay the 1991/92 annual fees. Arrears of fees total \$676.24. Her annual filings are up to date and the member has requested that she be relieved of publication in the Ontario Reports.

(b) Bruce Wayne MacDougall of Vancouver, British Columbia has applied for permission to resign his membership in the Society and has submitted a Declaration in support. He was called to the Bar on the 14th of April 1988. He practised with the firm Osler, Hoskin & Harcourt in the Research Department until August 1988, when he moved to Vancouver. He declares that he did not handle trust funds or other client's property. He has not paid his 1991/92 annual fees and the amount owing is \$676.24. His annual filings are up to date and the member has requested that he be relieved of publication in the Ontario Reports.

(c) Margaret Emilia Gouin of Ottawa has applied for permission to resign her membership in the Society and has submitted a Declaration in support. She was called to the Bar on the 17th of April 1985 and has never practised law. Her rights and privileges were suspended on the 6th of March 1992 for her failure to pay the 1991/92 annual fees. Arrears of fees total \$676.24. Her annual filings are up to date and the member has requested that she be relieved of publication in the Ontario Reports.

(d) Gordon Charles Pelletier of Sydney, New South Wales, Australia has applied for permission to resign his membership in the Society and has submitted an affidavit in support. He was called to the Bar on the 21st of March 1969 and has never practised law in Ontario. His rights and privileges were suspended on the 23rd of November 1984 for non-compliance of the Errors and Omissions Insurance Plan. He is also in arrears with respect to Annual fees for the years 1984 - 1992 inclusive. Arrears of fees now stand at \$6,016. His annual filings are not up to date, he last filed on the 11th of November 1984. A late filing penalty of \$6,000 has been applied. The member has requested that he be relieved of publication in the Ontario Reports.

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

Approved

C.
INFORMATION

1. CHANGES OF NAME

Members

From

To

Charinee Jayantha Abeysekera

Charinee Jayantha De Silva
(Change of Name Certificate)

Noted

24th April, 1992

2. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Donald Alexander McKenzie Kenora	Called March 26th 1965 Died November 14th 1987
John Wesley Burgess Wallaceburg	Called October 16th 1930 Died September 1st 1990
Benjamin Conroy Unger Cambridge	Called September 19th 1940 Died December 9th 1991
Francis Joseph Sparham Downsview	Called October 18th 1928 Died February 17th 1992
Joseph Dubeck Hamilton	Called September 16th 1954 Died March 6th 1992
Raymond Stanley Creed Toronto	Called June 27th 1957 Died March 7th 1992
Samuel Earl Wyatt Brantford	Called June 19th 1941 Died March 15th 1992

Noted

(b) Disbarments

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

Herman Julius Melnitzer Toronto	Called March 23rd 1973 Disbarred - Convocation March 26th 1992
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Noted

3. LEGAL MEETINGS AND ENTERTAINMENT

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

May 8, 1992	Class Reunion 1937 Small Dining Room
May 21, 1992	Lawyers Club Dinner Convocation Hall

Noted

24th April, 1992

4. STAFF CHANGES

The Director reports that 5 employees have left the employ of the Law Society and 7 have joined. Four new positions have been created and staff complement is now at 339 as at March 31st, 1992.

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of April 1992

"K. Howie"
Chair

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

- B-Item 1 - Memorandum from Mr. David Crack to the Chair and members of Finance Committee dated April 6, 1992 re: Financial Statements March 31, 1992 Highlights. (Pages 1 - 13)
- B-Item 2 - Memorandum from Mr. David Crack, Director of Finance, to the Chair and members of Finance Committee dated April 8, 1992 re: 1992/93 Budget Process together with schedule for 1992/93 budget procedure. (Pages 14 - 20)
- B-Item 4 - Letter from Ms. Judy Finlay, Admissions Officer, Faculty of Law, University of Toronto to Mr. Richard Tinsley dated March 31, 1992. (Page 21)
- B-Item 5 - Letter from Ms. Luiza Monteiro, Editor, Res Gestae, Queen's Law Students Society, Queen's University to Ms. Gemma Zecchini dated March 23, 1992. (Page 22)
- B-Item 7 - Memorandum from Mr. Donald A. Crosbie to the Finance and Administration Committee dated April 9, 1992 re: Funding support for aboriginal and minority group student support programs. (Page 23)

THE REPORT WAS ADOPTED

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MOTION TO SUSPEND: FAILURE TO PAY FEE FOR LATE FILING FORM 2/3

It was moved by Kenneth Howie, seconded by Don Lamont 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 April 24, 1992 for one year and from year to year thereafter or 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)

24th April, 1992

MOTION TO SUSPEND: ANNUAL FEE CHEQUES RETURNED N.S.F.

It was moved by Kenneth Howie, seconded by Don Lamont THAT the rights and privileges of the following members who paid their Annual Fees for the period July 1st, 1991 to June 30th, 1992 with cheques which were subsequently dishonoured by the bank be suspended from April 14, 1992 for one year and from year to year thereafter until the necessary fees have been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

John Calvin Bracewell
Douglas Robert Millar
Arthur Sidney Pollack
James Keith Derous
Thomas Alan Kelly
Richard Walter Martin

Sarnia
Toronto
Toronto
Orangeville
North York
Toronto

Carried

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEES

It was moved by Kenneth Howie, seconded by Don Lamont THAT having not paid their annual fees for the period July 1st, 1991 to June 30th, 1992, the rights and privileges of each of the members listed below be suspended for a period of one year from April 24th, 1992 and from year to year thereafter, or until their fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Baxter Lee

Calgary, AB

Carried

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LEGAL AID COMMITTEE

Ms. Kiteley presented the Report of the Legal Aid Committee of its meeting on April 9th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of April, 1992 at two o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, Carter and Copeland, Ms. Curtis, Messrs. Durno and Petiquan.

A.
POLICY

1.(a) ABT REPORT

The Legal Aid Committee continued its review of the Abt Report. The subject Chapters were 8 and the second half of 9 which deals with regionalization. A Sub-Committee will be struck to study regionalization further.

24th April, 1992

(b) MANIFEST COMMUNICATIONS

A Report from Manifest Communications was distributed at the meeting and Manifest will report further to the Committee in June.

B.
ADMINISTRATION

1.(a) REPORT OF THE PROVINCIAL DIRECTOR FOR THE ELEVEN MONTHS ENDED
FEBRUARY 28, 1992

The Director's report for the eleven months ended February 28, 1992 is attached hereto as SCHEDULE (A).

(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR MARCH, 1992

The Report on the Payment of Solicitors Accounts is attached hereto as SCHEDULE (B).

(c) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL
ACCOUNTS DEPARTMENT FOR MARCH, 1992

The Report on the Status of Reviews in the Legal Accounts department is attached hereto as SCHEDULE (C).

ALL OF WHICH is respectfully submitted

"F. Kiteley"
Frances P. Kiteley
Chair

April 24, 1992

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

- B-Item 1(a) - Report of the Provincial Director, eleven months ended February 28, 1992. (Schedule (A), pages (2))
- B-Item 1(b) - Report on the payment of solicitors accounts for month of March, 1992. (Schedule (B), pages (2))
- B-Item 1(c) - Report on the status of reviews in the Legal Accounts Department for month of March, 1992. (Schedule (C))

THE REPORT WAS ADOPTED

.....

CLINIC FUNDING COMMITTEE

Mr. Epstein presented the Report of the Clinic Funding Committee of its meeting on April 9th, 1992.

24th April, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated April 10, 1992 be adopted.

Attached is a copy of the Clinic Funding Committee's report.

ALL OF WHICH is respectfully submitted

"R. Holden"
Robert L. Holden
Director
Legal Aid.

April 10, 1992

To: Robert Holden, Esq.,
Provincial Director,
The Ontario Legal Aid Plan.

The Clinic Funding Committee met on April 9, 1992. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, and Pamela Giffin.

A. DECISIONS

1. a. 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 for 1991/92 as follows:

Brampton Community Legal Services - up to \$5,000
Sudbury Community Legal Clinic - up to \$5,000
Renfrew County Legal Clinic - up to \$5,000
Niagara North Community Legal Assistance - up to \$5,000
Legal Assistance of Windsor - up to \$5,000
Legal Assistance Kent - up to \$5,000
Kinna-aweya Legal Clinic - up to \$5,000
Advocacy Resource Centre for the Handicapped - up to \$5,000
Community Legal Services (Ottawa-Carleton) - up to \$5,000
Halton Hills Community Legal Clinic - up to \$5,000
Justice for Children and Youth - up to \$5,000
Kensington-Bellwoods Community Legal Services - up to \$5,000
Rexdale Community Information & Legal Services - up to \$5,000
West End Legal Services - up to \$5,000
Parkdale Community Legal Services - up to \$5,000

24th April, 1992

2. Summer Student Funding 1992

The Clinic Funding Committee is recommending that funding for summer students in 1992 be provided at the 1991/92 rate, pending the designation of the clinic funding budget by the Attorney General, as follows:

Correctional Law Project (4 students)	\$ 27,648
Parkdale Community Legal Services (20 students)	\$138,240
Legal Assistance of Windsor (10 students)	\$ 68,781
Kensington-Bellwoods Community Legal Services (12 students)	<u>\$ 82,944</u>
Total	<u>\$317,613</u>

3. Special Legal Education/Outreach Funds

The Clinic Funding Committee reviewed and approved two additional applications for special legal education/outreach funds for 1991/92, as follows:

Georgina Community Legal Services - up to \$8,000 - to produce an educational, interactive game in which participants answer questions on clinic areas of law .

Simcoe Legal Services Clinic - up to \$7,000 - to produce a plain language "how-to" booklet on applying for criminal injuries compensation.

ALL OF WHICH is respectfully submitted

"P. Epstein"
Philip Epstein, Q.C.
Chair
Clinic Funding Committee.

April 10, 1992

THE REPORT WAS ADOPTED

.....

PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Report of the Professional Conduct Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell, Cullity, Elliottt, McKinnon and Mohideen.

A.
POLICY

1. LAWYER LICENSED IN ONTARIO AND MICHIGAN -
WORKS OUT OF A WINDSOR LAW OFFICE - WISHES
TO PRACTISE IN BOTH ONTARIO AND MICHIGAN -
REQUEST FOR ADVICE AS TO HOW TO DO THIS

A lawyer qualified in Ontario and Michigan wishes to conduct a practice out of a Windsor law firm that would cover both Ontario and Michigan legal matters. He is concerned with compliance with the rules of the Law Society of Upper Canada and the Michigan bar. Set out below is his letter:

On February 5, 1992, I had the privilege of becoming a member of the Law Society of Upper Canada. I have also been a licensed attorney in the state bar of Michigan since 1989. My intent is to practice law in both jurisdictions out of my Windsor office and focus my practice upon the area of U.S. and Canadian immigration. Much of this work involves bi-national corporate and tax considerations. As I will be effectively practicing in these two jurisdictions my concern is to do so without violating any Law Society of Upper Canada ethical standards. In this regard, I request your opinion upon the following issues:

1. Members of the Michigan bar are permitted to accept referral fees. Much of my work involves peripheral work for clients in Michigan which I would be more comfortable referring to Michigan lawyers who practice in the area concerned. My question here is whether or not, as a licensed Michigan lawyer, I may accept referral fees when such fees involve Michigan legal matters.
2. There are some Michigan legal matters my clients have requested I do based upon a contingency fee arrangement. Is this permissible?
3. With regard to advertising, is it permissible to send letters clearly marked "advertisement" to Canadian and U.S. Corporate entities addressing the ambit of my bi-national services?
4. Would you also advise me as to any other implications you may foresee as a result of my intent to practice law both in Michigan as well as in Ontario through my Windsor office.

The Committee's Secretary gave a preliminary opinion that he could practise both Ontario and Michigan law as long as he kept both practices separate and as long as the clients he was serving knew in which capacity he was operating that is, as an Ontario lawyer or as a Michigan lawyer.

The Committee discussed the proposal and concluded that it was important that the clients with whom he was dealing appreciated whether he was functioning as an Ontario lawyer or as a Michigan lawyer. Separate letterhead would help in this regard.

1. The lawyer could accept referral fees when he was acting as a Michigan lawyer. It was assumed that referral fees are permitted in Michigan under the laws of that state.
2. The lawyer could represent clients on a contingency basis assuming for the moment that he is functioning as a Michigan lawyer and that contingency fees are permitted in Michigan.

24th April, 1992

3. The answer to this question would be yes because it would be in conformity with Rule 12.
4. The Committee was of the opinion that there are insurance questions that need to be reviewed by the Insurance Committee.

The lawyer will be advised of the preliminary opinion of the Committee and told that an opinion of the Insurance Committee will be forthcoming in the next month.

The Committee in giving the above opinion will advise the lawyer that he should satisfy himself that this dual practice is in conformity with the rules of the Michigan bar.

The Committee asks Convocation to adopt this opinion.

2. ADVERTISING INQUIRY - LAWYER WOULD LIKE TO PLACE AN ADVERTISEMENT IN A VIETNAMESE COMMUNITY NEWSPAPER THAT WOULD GIVE THE NAME OF AN INTERPRETER THE LAWYER WOULD USE - THE USE OF THE INTERPRETER WOULD BE TO PROVIDE ACCESS TO THE LAW FIRM

A lawyer has been in touch with the Committee's Secretary concerning an advertisement he would like to run in a Vietnamese community newspaper. Set out below is his letter of inquiry:

Further to our telephone conversation on March 12, 1992, this letter is to request your opinion on the enclosed advertisement which I propose to place in a local Vietnamese Newspaper. The object of what I am doing is to expand my practice to service the Vietnamese Community. Many of our Vietnamese friends do not speak English as most have arrived here as boat people. Still these people need access to legal services. To enable me to serve these clients it is necessary for me to associate myself with a Vietnamese Interpreter to speak with these clients right from the outset.

I confirm your advice to me that the Interpreter must be operating his business separate from me. I propose to allow him to use one of my offices, but he will operate distinct from me and be responsible for collecting his own fees as an Interpreter. Is it necessary for me to charge him rent? Furthermore you have advised that security of files is crucial and these steps I already take. I understand that steering is not allowed but I am unsure exactly what the term means. I presume that when people call the Interpreter and meet with him explaining their particular problem, then if the Interpreter determines that the problem requires the assistance of a Lawyer then he could refer the clients to me. Please provide me with your advice. I also confirm your advice that I must be aware of and avoid any potential conflicts in connection with a Vietnamese client which I may be acting for and any Interpretation services being performed by the Interpreter outside this office for another firm for example.

In regard to the other advertisements being placed by other lawyers doing the same thing as I propose, I am attempting to get a copy of the Vietnamese Newspaper but apparently it comes out only once a month so there may be a delay in my getting it to you.

A copy of a draft advertisement is attached (numbered 1).

24th April, 1992

The Committee discussed the advertisement and thought there was the possibility of steering by the interpreter. Balanced against this consideration was the legitimate goal of giving persons in the Vietnamese Canadian community in need of legal services access to those services. The Committee concluded that the advertisement would be acceptable if the reference to the interpreter's credentials as a Vietnamese lawyer and law professor were deleted and if it read that this interpreter would be available if the reader did not speak English.

The Committee also discussed the lawyer's relationship with the interpreter (although not asked to do so in the lawyer's letter). It was recommended that he make sure he is independent of the interpreter. As well, the Committee thought it advisable for the lawyer to have an informational letter in Vietnamese (translated by someone other than the interpreter) which the interpreter could give to the client that would clarify the lawyer's role and the interpreter's role.

The Committee asks Convocation to adopt its respective opinions.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"M. Somerville"
Chair

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

A-Item 2 - Copy of a draft advertisement.

(Number 1)

THE REPORT WAS ADOPTED
.....

LIBRARIES AND REPORTING COMMITTEE

Mr. Murphy presented the Report of the Libraries and Reporting Committee of its meeting on April 9th, 1992.

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 9th of April, 1992, at 9:00 a.m., the following members being present:

D. Murphy (Chair), R. Bragagnolo, M. Cullity, S. Elliott, A. Feinstein, B. Pepper and M. Weaver; and P. Bell and G. Howell also attended.

A.
POLICY

No Items

B.
ADMINISTRATION

1. COUNTY LAW ASSOCIATIONS - GRANT ALLOCATIONS

It has been brought to the attention of the Chair that Counties of similar size will be receiving differing amounts of 1992 funding due to the fact that two years ago, several Counties received no grant increase and that accordingly their base funding is lower than other Counties of a similar size. The Kenora Law Association had a substantial surplus two years ago and the Committee decided that along with six other counties Kenora would receive no grant increase in that year. It has had grant increases in the last two years but is still "under-funded" by the \$3,000. it did not receive by way of increase for 1990. Kenora's library fee is \$300. (second highest in the Province) and notwithstanding this high library fee is in a position of projecting a substantial deficit by the end of 1992.

IT IS RECOMMENDED that a grant of \$3,000. should be made to the Kenora Law Association. The basis for making the grant is that Kenora's library fee of \$300. per member is the second highest in the Province and a deficit is still projected by the end of 1992.

2. ONTARIO REPORTS - FRENCH LANGUAGE SERVICES

The Chair indicated that he had received a letter from the Chair of the French Language Services Committee concerning the Ontario Reports. A request was made that the Proceedings of Convocation in the English version be shortened so that both English and French versions can be printed in the Ontario Reports Buff Pages. After discussing this matter and the cost implications the Committee was of the view that only the English version of the Proceedings of Convocation should appear in the Buff Pages and that any member wishing to receive the French version could request that a copy be provided.

IT IS RECOMMENDED that the Proceedings of Convocation be printed in the Buff Pages of the Ontario Reports in English only and that the French version be made available to members on request.

Note: Motion, see page 251

C.
INFORMATION

1. MEETING OF CHIEF LIBRARIAN WITH THE
COUNTY & DISTRICT LIBRARY REPRESENTATIVES

The Chief Librarian will be meeting with the Library Representatives on Friday, April 10th, 1992, and the results of the meeting will be available at the May 14th meeting of the Committee. The County Presidents' spring meeting will be held May 14th and 15th, 1992.

2. BOOK LIST

The Great Library added 21 new titles to its book collection for April 1992.

24th April, 1992

3. MEETING WITH CHIEF JUSTICE CALLAGHAN

It was reported that the Society is trying to arrange a meeting with Chief Justice Callaghan in connection with the reporting of judgments.

4. MEETING WITH LAW BOOK PUBLISHERS

It was reported that the Society will be arranging a meeting with the law book publishers when the year-end cost figures are finalized.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"D. Murphy"
Chair

It was moved by Colin McKinnon, seconded by Roger Yachetti that Item 2 under Administration regarding bilingual publication of the buff pages, be referred back to the Committee for further consideration as to ways on which the french language version could be preserved.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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UNAUTHORIZED PRACTICE COMMITTEE

Mr. Carter presented the Report of the Unauthorized Practice Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at 10:30 a.m., the following members were present: R.J. Carter (Chair), R. Cass, G.H.T. Farquharson, A.F. Lawrence, F. Mohideen and M.P. Weaver. Also in attendance was: A.S. John.

B
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Your Committee authorized further investigation in four new matters.

24th April, 1992

C
INFORMATION

Attached hereto is a list of current prosecutions.

ALL OF WHICH is respectfully submitted

DATED the 24th day of April, 1992

"R. Carter"
Chair

MATTERS PENDING

Current Investigations

Prosecutions

Next Court Date

Christian Vadum
(Personal Paralegal)
Toronto

April 10, 1992 at 10 a.m.
Ontario Court (General Div.)
Appeal
To be argued

Charles Azonwanna
(Toronto)

June 9, 1992 at 10 a.m.
Ont. Court (Prov. Div.)
Courtroom 140
Sentencing

Emad Elguindy
(Mississauga)

June 30, 1992 at 9 a.m.
Ont. Court (Prov. Div.)
Courtroom 111
Continuation of Trial

Michael Baldasaro
(Hamilton)

July 31, 1992, 3 p.m.
Ont. Court (Prov. Div.)
Courtroom 2
Court of Appeal
To be spoken to

Richard Perry
(Hamilton)

Appeal (filed but date for hearing not
yet established)

Norine Earl
(Toronto)

Appeal (filed but date for hearing not
yet established)

THE REPORT WAS ADOPTED

.....

24th April, 1992

LEGISLATION AND RULES COMMITTEE

Mr. Cullity presented the Report of the Legislation and Rules Committee of its meeting on April 9th, 1992.

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 9th of April, 1992, at 2:30 p.m. the following members being present:

M. Cullity (Chair), S. Elliott (Vice Chair), R. Cass, and S. Lerner; and P. Bell also attended.

A.

POLICY

No items

B.

ADMINISTRATION

1. AMENDMENTS TO THE LAW SOCIETY ACT RE LIFE BENCHERS

Convocation on February 28th, 1992, adopted the recommendations of the Research and Planning Committee that:

- (1) paragraphs 5 and 6 of subsection 12(1) of the Law Society Act, R.S.O. 1990, Chapter L.8 be repealed and the following substituted as paragraph 5:

"5 Every person who has completed three full terms or a total of four thousand, three hundred and eighty-three days service as an elected bencher."

- (2) the following be added in an appropriate place in section 12:

"For the purposes of paragraph 5 of subsection 12(1), a 'full term' is a period of time commencing at the first regular Convocation following an election of benchers and ending, in the fourth year thereafter, at the first regular Convocation following the next election of benchers."

IT IS RECOMMENDED that paragraph 5 of subsection 12(1) be reenacted in the form adopted by Convocation and that the words referred to in (2) above be enacted as subsection 12(1a).

2. AMENDMENTS TO THE LAW SOCIETY ACT RE REGIONAL REPRESENTATION OF BENCHERS

It was reported that Convocation on November 23rd, 1990, passed the following resolution:-

It was moved by Mr. O'Brien, seconded by Mr. Furlong that:

(a) the Law Society seek amendments to the Law Society Act with regard to 2 matters: (1) insert, at the beginning of subsection 15(2) and at the beginning of subsection 15(3), the words:

"Subject to a rule or rules providing for different regional representation,"

(2) in paragraph 6 of subsection 62(1), add, after the word "providing" the words:

"for regional representation and"

IT IS RECOMMENDED that amendments to subsections 15(2), 15(3) and 62(1) paragraph 6 of the Law Society Act be enacted so that subsection 15(2) as amended will read as follows:

(2) Subject to a rule or rules providing for different regional representation, twenty of the forty benchers mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are within The Municipality of Metropolitan Toronto as it is constituted on that day.

Subsection 15(3) as amended will read as follows:

(3) Subject to a rule or rules providing for different regional representation, twenty of the forty benchers mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are outside The Municipality of Metropolitan Toronto as it is constituted on that day. R.S.O. 1980, c. 238, s.15.

Paragraph 6 of subsection 62(1) as amended will read as follows:

6. providing for regional representation and for the time and manner of and the methods and procedures for the election of benchers;

Note: Deleted, see page 257

3. AMENDMENTS TO REGULATION 573 BY ADDING PARAGRAPHS 15A AND 15B
RE NEW FORMS 4 AND 5 AND BOOKS AND RECORDS

Convocation on March 27th, 1992, adopted that part of the Lawyers Fund for Client Compensation Committee's Report that proposed amending Regulation 573 by adding paragraphs 15A and 15B after subsection 15(2).

IT IS RECOMMENDED that Regulation 573 be amended by adding the following after subsection 15(2):-

15A.-(1) Every member who holds in trust mortgages or other charges on real property either directly or indirectly through a related person or corporation, shall maintain books, records and accounts in addition to the requirements of section 15, and as a minimum additional requirement shall maintain,

- (a) a mortgage asset ledger showing separately for each mortgage or charge,
 - (i) all funds received and disbursed on account of the principal amount of the mortgage or charge;
 - (ii) the balance of the principal amount outstanding for each mortgage or charge;
 - (iii) an abbreviated legal description or the municipal address of the real property;
 - (iv) the particulars of registration of the mortgage or charge;

- (b) a mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,
 - (i) all funds received and disbursed on account of the principal amount invested in each mortgage or charge;
 - (ii) the balance of the principal amount invested in each mortgage or charge;
 - (iii) an abbreviated legal description or the municipal address of the real property; and
 - (iv) the particulars of registration of the mortgage or charge; and
 - (c) a record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the books and records together with the reasons for any differences between the totals and supported by,
 - (i) a detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding; and
 - (ii) a detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.
- (2) The books, records and accounts required to comply with subsection (1),
- (a) shall be entered currently at all times, and the comparison required by clause (1) (c) shall be made monthly within fifteen days from the effective date of each comparison; and
 - (b) shall be entered in ink or a duplication thereof, or by machine, and, subject to any federal or provincial requirements, shall be preserved for at least a ten-year period subsequent to the fiscal year of the member in which the records were prepared.

15B.-(1) Every member who receives money from a client or other person for investment by way of a loan secured, or to be secured, by a mortgage or other charge on real property, including those to be held in trust either directly or indirectly through a related person or corporation, shall maintain records in addition to the requirements of sections 14 and 15, and as a minimum additional requirement shall maintain a file for each mortgage or other charge which shall include,

- (a) an investment authority in a form prescribed by the rules, signed by each person from whom money has been received for investment before the advance of that money to or on behalf of the borrower;
 - (b) a copy of a report on investment in a form prescribed by the rules, the original of which shall be delivered forthwith to each person for whom money has been invested;
 - (c) a copy of a declaration of trust where the mortgage or other charge is held in the name of a person other than the investor, an original of which shall be delivered forthwith to each person for whom money has been invested; and
 - (d) a copy of the registered mortgage or other charge.
- (2) For the purposes of subsection (1),
- (a) a member shall be deemed to have received money from a client or other person by way of a loan to be secured by a mortgage or other charge on real property where the member directs the client or other person to pay the money to be invested or loaned to an account other than a trust account in the name of the member;
 - (b) any change to a mortgage or other charge, any change in the rank on title of the mortgage or other charge, or any exchange or substitution of the mortgage or charge for another security shall be deemed to be a new investment by way of a loan to be secured by a mortgage or other charge;

- (c) the aforementioned prescribed forms are not applicable to those clients who are a Chartered Bank or Registered Trust Company whose shares are publicly traded, other similar financial institutions who lend money on the security of real estate and whose shares are publicly traded or clients or persons who are lending money to persons connected by blood relationships, marriage or adoption;
- (d) the file maintained pursuant to subsection 1 shall be made available, without restriction, for review by a Public Accountant licensed in Ontario in the course of that person's engagement pursuant to section 16 and any privilege attached to any documentation in the file shall be protected by the Public Accountant by virtue of this clause; and
- (e) in the course of conducting such review for the purposes of this section, the Public Accountant shall independently confirm the particulars of the transaction as deemed necessary.

The Committee notes that the subsections do not purport to deal with payments received by the lawyer on the collection of a mortgage and the Committee also notes that 15B (2)(c) does not appear to cover financial institution clients such as credit unions, co-operatives or corporations whose shares are not publicly traded including the mortgage lending "holding company" of most chartered banks and trust companies.

Note: Deleted, see page 257

4. AMENDMENT TO THE RULES UNDER THE LAW SOCIETY ACT
UNDER SECTION 62(1)(26) PRESCRIBING THE FORMS
PROVIDED FOR IN SECTION 15A AND 15B OF REGULATION 573

Convocation on March 27th, 1992, adopted that part of the Lawyers Fund for Client Compensation Committee's Report of March 12th, 1992, that proposed changes to existing Forms 2 and 3 and proposed new Form 4 "Investment Authority for Mortgages or Other Charges" and Form 5 "Report on Investment of Mortgages or Other Charges on Real Property".

IT IS RECOMMENDED that the wording of the existing Forms 2 and 3 and the proposed new Forms 4 and 5 be prescribed in the Rules as set out in the attached Forms 2, 3, 4 and 5. (Pgs. B1 - B11)

Note: Deleted, see page 257

5. NON-BENCHER MEMBERS OF THE COMMITTEE

At the last meeting of the Committee a list of interested potential non-bencher members of this Committee was considered. The staff reported to the Committee on the status of this matter. The Committee decided to defer this matter until the next meeting.

Note: Deleted, see page 257

24th April, 1992

C.
INFORMATION

No items

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"M. Cullity"
Chair

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

B-Item 4 - Copies of Forms 2 and 3. (Marked B1 - B11)

The Chair asked that items 2, 3, 4 and 5 under Administration be deleted.

It was moved by Colin McKinnon, and failed for want of a seconder that item 2 be adopted.

B-ITEM 1 OF THE REPORT WAS ADOPTED
.....

INSURANCE COMMITTEE

Mr. Campbell presented the Report of the Insurance Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Bragagnolo, Wardlaw, Cass, Howie, Epstein and Ms. Palmer.

Also in attendance were Messrs. Whitman and O'Toole.

ITEM

1. DIRECTOR'S MONTHLY REPORT

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

2. E & O FINANCIAL REPORT

The Director's monthly Errors & Omissions General Expense Budget Report is attached as Appendix "B".

24th April, 1992

3. E & O CLAIMS DATA: STATISTICS CURRENTLY AVAILABLE

Pursuant to a request made at the previous Committee meeting the Director reported on the range of claim related statistical information currently available under the Mandatory E & O Program.

4. AMENDMENTS TO LPIC POLICY WORDING: LPIC RETAINED LAYER

Since its inception, LPIC has ceded to reinsurers the layer of claims between \$250,000 and the \$1 million Policy limit while retaining the layer between \$200,000 and \$250,000. As a component of the 1992 reinsurance renewal terms, LPIC is required to retain the first \$2,500,000 of accumulated claims in the layer excess of \$250,000 (called an "inner aggregate"). To accommodate this "inner aggregate" and to maintain a degree of continuity in the amount of risk assumed by LPIC, your Committee has approved a realignment of its retained layer. This will necessitate an increase of \$50,000 in LSUC's group deductible, returning it to its pre-LPIC total of \$250,000.

5. APPRECIATION OF THE COMMITMENT AND PERFORMANCE OF LSUC
E & O DEPARTMENT STAFF

Effective July 1, 1989 Lloyds' of London replaced American Home Assurance Company as the insurer for the E & O Mandatory Program. This change resulted in a great influx of new claims during the month of June 1989. The frequency of the claims remained high during the following year and soared even higher during the eighteen month period ending December 31, 1991. Recognizing the outstanding performance of the staff of the Errors & Omissions Department in meeting the challenges and demands of an extraordinarily high volume of claims, your Committee expresses its sincere thanks and appreciation to all members of the E & O Department for what can only be described as an exemplary demonstration of commitment, diligence and plain hard work.

6. OUTSTANDING ITEMS

(a) Sub-Committee on Loss Prevention / E & O Program Review

The above Sub-Committee which met on Tuesday March 31, 1992. The Chair and the Director presented a status report on the Sub-Committee's deliberations to date. A subsequent meeting of the Sub-Committee is scheduled for Tuesday April 14, 1992 as its work continues with a view to submitting a formal report at the appropriate time.

(b) American Home Assurance Company

The Chair reported on the latest developments involving American Home Assurance Company, the insurer of the Mandatory E & O Program from January 1, 1982 to July 1, 1989. Continuing dialogue between both parties has produced additional insight and information to be reviewed and considered by counsel previously retained to advise the Society on matters involving its continued relationship with American Home. Your Committee awaits receipt of counsel's advice in this regard.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"C. Campbell"
Chair

24th April, 1992

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

- Item 1 - Director's monthly report (Net Claims Summary, January 1, 1992 - March 24, 1992. (Appendix "A"))
- Item 2 - Director's monthly Errors & Omissions General Expense Budget Report, Three Month Period Ending March 31, 1992. (Appendix "B")

THE REPORT WAS ADOPTED

.....

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Murray presented the Report of the Lawyers Fund for Client Compensation Committee of its meeting on April 9th, 1992.

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 9th of April, 1992, at 11:45 a.m. the following members being present:

R. Murray (a Vice-Chair in the Chair), L. Brennan, S. Lerner and S. Thom; P. Bell and H.A. Werry also attended.

A.
POLICY

No Items

B.
ADMINISTRATION

1. SPEEDING UP THE PROCESSING OF CLAIMS

The Chair asked that this matter be considered by the Committee. The staff advised that there are 68 claims awaiting investigation and discipline hearings and 19 claims awaiting disposition by the Errors & Omissions Department. Most of the latter claims are under the Errors & Omissions Innocent Partner coverage and if Errors & Omissions covers then they will pay the claims. There are also 36 claims awaiting the claimants exhausting all civil remedies under Guideline 9 before the claims can be dealt with. The Committee after discussing this matter decided to defer it until the next meeting and asked the staff to prepare a report on the problem.

2. SPECIAL REPORT ON REDUCING DEFALCATIONS

Convocation approved the above Report as to the Forms on March 27th, 1992, and deferred the balance of the Report until June, subject to the submissions from the County and District Presidents and the profession at large. The Report is to be considered again by Convocation in June as to the two lawyer rule. The

24th April, 1992

Committee discussed several matters arising out of the Report, reviewed the replies received and decided to defer the matter until after the County and District Presidents meeting in May.

3. FEDERATION OF LAW SOCIETIES - DRAFT PROTOCOL
RE INTER-JURISDICTIONAL PRACTICE IMPLEMENTATION COMMITTEE

The draft Protocol, to be signed by all Law Societies in Canada, includes in paragraph 9 a section on the Lawyers Fund for Client Compensation. It indicates that the maximum per claimant limit, under some circumstances, could be \$1 million, rather than \$100,000 which is our per claimant limit. While no firm proposal has been put forward on resolving the above inconsistency our Inter-Jurisdictional Committee is reviewing the draft protocol and is inviting submissions by April 15th, 1992. The Committee instructed the staff to advise the Inter-Jurisdictional Committee that paragraph 9 of the draft Protocol is not satisfactory because our per claimant limit is \$100,000.

C.
INFORMATION

1. REFEREE'S REPORT AND AN ASSISTANT SECRETARY'S MEMORANDA

The Referee's report and memoranda of an Assistant Secretary, 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".

2. Copies of the Financial Summary, and the Activity Report for March 1992 are attached. (Pgs. C1 - C3)

3. Accounts approved by Assistant Secretaries in March amounted to \$12,908.88.

4. The Ontario Ministry of Financial Institutions has indicated to the Society that submissions on some proposed amendments to the Mortgage Brokers Act, R.S.O. 1990 ch. M.39 will be accepted and the Society has responded that submissions will be made.

5. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on the Department Budget.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"R. Murray"
for Chair

24th April, 1992

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

- C-Item 1 - Schedule "A" - Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee, Thursday, April 9th, 1992. (Schedule "A", page 3)
- C-Item 2 - Financial Summary for the period July 1, 1991 - March 31, 1992 and Compensation Fund Activity Report, March 31, 1992. (Marked C1 - C3)

THE REPORT WAS ADOPTED

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PROFESSIONAL STANDARDS COMMITTEE

Mr. Yachetti presented the Report of the Professional Standards Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at eleven thirty in the morning the following members being present: Mr. Yachetti (Chair), Mrs. Weaver (Vice-Chair), Mr. Furlong, and Ms. Graham.

Also in attendance was Ms. O'Connor, lay Bencher.

Staff present were Mrs. Devlin, Ms. McCaffrey, Ms. Poworoznyk, and Messrs. Grieve and Kerr.

A.
POLICY

1. NON-BENCHERS SERVING AS MEMBERS ON THE PROFESSIONAL STANDARDS COMMITTEE

At its March meeting, the Committee considered the issue of whether non-Bencher members should serve as members of the Professional Standards Committee and what criteria, if any, to apply in determining who should be invited to serve. Discussion on this item was deferred to the April meeting, to allow Committee members an opportunity to review the Research and Planning Committee's Report to Convocation dealing with this issue.

The Committee members reviewed the June 1991 Report of the Research and Planning Committee, which report indicated that a motion would be made under s. 62(1) of the *Law Society Act* to make a rule that would permit non-Bencher members of a Committee to have voting rights. Since the matter has not yet been determined by Convocation, the Committee members felt that selecting non-Bencher members at this time would be premature and tabled further discussion of this issue to a future Committee meeting.

B.
ADMINISTRATION

1. PRACTICE REVIEW PROGRAMME

The Committee considered a summary prepared by staff regarding a member's successful completion of the Review Programme.

The member expressed his gratitude for the intervention by the Law Society at an opportune moment in his life, before his practice encountered serious difficulties, but when he was on the brink of same.

C.
INFORMATION

1. PRACTICE ADVISORY SERVICE - STATUS REPORT

Efforts are being made to establish a province-wide advisor/mentor network of senior practitioners to provide assistance with practice management issues to members of the bar, upon request for same. Liaison with the County & District Law Associations is being proposed, and to that end, meetings have been held with Michael O'Dea, Chair of the County & District Law Presidents' Association. This initiative will be placed on the agenda of the May plenary session of the Association.

Practice Advisory staff and staff of the Continuing Legal Education Department are working together to ensure that there is an increased emphasis on practice/ethics issues in CLE programs. Practice Advisory staff are often invited to be guest speakers on ethical issues, and participated in that capacity most recently at a two-day conference of the Executive Directors of Ontario Legal Aid Clinics.

2. PROFESSIONAL STANDARDS - STATUS REPORT

A total of 122 members have been authorized by the Chair of the Professional Standards Committee for participation in the Practice Review Programme, and the number of referrals from various departments within the Society is increasing. In addition, Department staff become involved in situations where there are concerns as to a member's competence due to emotional, psychological or similar difficulties, and staff frequently act as liaison between Law Society departments in order to co-ordinate information and monitor the member's circumstances. Referrals are made in appropriate cases to the LINK program, the Ontario Bar Alcoholism Program, and members of the practising bar who may be willing and able to provide assistance.

The Steering Committee of the Ontario Legal Aid Plan has raised concerns about monitoring the quality of service provided by some members participating in the Plan. The Chair of the Professional Standards Committee and staff from the Department have been invited to meet with members of the Steering Committee

24th April, 1992

to discuss possible procedures for referrals between the Plan and the Practice Review Programme, so that members can be identified who will benefit from participation in the Programme.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"R. Yachetti"
Chair

THE REPORT WAS ADOPTED

.....

CERTIFICATION BOARD

Mr. Yachetti presented the Report of the Certification Board of its meeting on March 27th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Friday, the 27th of March, 1992 at eight o'clock in the morning, the following members being present: D.W. Scott (Vice-Chair), A. Feinstein, G.P. Sadvari, and R.D. Yachetti. S. Thomson, of the Law Society, was also present.

Specialty Committees met as follows:

The Criminal Litigation Specialty Committee met on Friday, the 27th of March, 1992 at one o'clock in the afternoon.

The Labour Law Specialty Committee met on Tuesday, the 31st of March, 1992 at five o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 7th of April, 1992 at eight-thirty in the morning.

A.
POLICY

No items.

B.
ADMINISTRATION

1. INTELLECTUAL PROPERTY LAW SPECIALTY

The Intellectual Property Law Specialty Committee, chaired by Ronald E. Dimock (of Toronto) was struck by Convocation on March 22, 1990. Committee membership was approved in Convocation on April 27, 1990, and the nine-member Committee met over the course of a year to define the practice of Intellectual Property Law and to prepare Standards for Specialists in the field of Intellectual Property Law.

The first draft Standards were completed in January 1991. Following a canvassing of the intellectual property bar, including a mailing and two public meetings, the proposed Standards were revised - virtually all the major objections and many of the minor ones were removed in the final Standards. The Committee presented its final Report to the Certification Board on May 17, 1991.

Consistent with other Specialty Standards, the Intellectual Property Law Standards require that successful applicants must satisfy the assessing Committee and the Board that, by reason of their knowledge of and their experience in the field, they are fit to be identified to the public as having a special ability to practice in their Specialty area. Special ability should be evident from the application and supporting material, which should reveal:

- "(a) a ready grasp of the substantive and procedural law bearing upon both typical and more unusual issues that arise in the relevant area of practice;
- (b) immediate awareness of and experience with the entire range of appropriate courses of action and remedies that can be invoked in aid of clients involved in both typical and unusual cases;
- (c) sound judgment in proposing solutions and approaches, so that proportion (both as to expense and delay) is maintained between the nature of the problem and the cost and elaborateness of the proposed response; and
- (d) an attitude of professionalism in every aspect of the applicant's approach to the client, the courts and fellow barristers and solicitors."

The Committee concluded that the interests of both the public and the profession require a division of the practice of intellectual property law into the respective specialties of patents, trade-marks, and copyrights. Lawyers, if qualified, may be designated as Specialists in Patent Law, Trade-mark Law, Copyright Law, or any combination thereof. Those who qualify in all three may designate themselves as Specialists in Intellectual Property (Patent, Trade-mark, and Copyright) Law or simply as Intellectual Property Law Specialists.

As is the case with all Specialties, there is some division among lawyers practising in the field about whether, for certification, there ought to be an Intellectual Property Law Specialty at all. The Board put considerable thought into the matter since the submission of the Committee's report of May 17, 1991 and has concluded that arguments in favour of implementing the Specialty, particularly those of public interest, the usefulness to the profession at large, and the enhancement of standards of practice within the intellectual property bar, outweigh opposing arguments.

The comprehensive report of the Intellectual Property Law Specialty Committee, including the proposed Standards, can be obtained by contacting the Certification Program Administrator, Sarah Thomson, at (416) 947-3919.

24th April, 1992

The Certification Board recommends to Convocation that the Intellectual Property Law Specialty be approved and that the Intellectual Property Law Specialty Committee be invited to implement its program of certifying Specialists in that field as soon as all necessary documents (application form, statement of reference, interviewer's report) have been prepared.

2. IMMIGRATION LAW SPECIALTY - RETURN TO THE FIVE-YEAR PLAN

Immigration Law Specialty Standards were approved by Convocation on November 22, 1991, and Immigration Law lawyers may now apply for Specialist certification.

In a special move, during a review of the certification process and with particular reference to the proposals of the Education Sub-Committee, Convocation approved the Immigration Specialty as a three-year plan (in other Specialties, the certificates have a duration of five years).

Meetings of the various Specialty Committees to consider the Report of the Education Sub-Committee took place over the months of January and February 1992. It is the view of a majority of the Committees that more consideration must be given to the proposals of the Education Sub-Committee and that changes to the Certification Program should be implemented only over the course of several years.

The Certification Board therefore recommends that the Immigration Law Specialty should remain consistent with the other Specialties and should return to being administered as a five-year plan.

C.

INFORMATION

1. DISTRIBUTION OF INTERVIEW TRAINING WORKSHOP VIDEO TAPE

A copy of the interview training workshop (June 9, 1990) video tape has been sent to the 47 County and District Law Association Librarians with the request that they bring the video to the attention of their members. To assist in assessing the effectiveness of the video, the Librarians have also been asked to maintain a record of usage, which will be requested by the Certification Program office every three months.

The primary purpose of the video (approximately 50 minutes) is to prepare certified Specialists for their role as interviewers of Specialist applicants and to achieve consistency in the way in which interviews are conducted. Anyone interested in interviewing techniques would find the presentation by communications expert Barry McLoughlin (Part II) helpful.

A booklet to accompany the video, including a transcript of Part I (former Certification Board Chair Allan Rock's statement about the role of the interview in the assessment of Specialist applicants) and a summary of Part II (Barry McLoughlin's lecture on interview techniques and the dynamics of the interview process), will also be provided to the Librarians.

24th April, 1992

Copies of the video and the accompanying booklet will be available for loan from the Certification Program office at the Law Society. Contact Sarah Thomson, Administrator, for further details.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"R. Yachetti"
for Chair

It was moved by Frances Kiteley, seconded by Netty Graham that item 1 under Administration re: Intellectual Property Law Specialty, be deferred until Certification Board has considered the results of the Manifest Survey.

Lost

THE REPORT WAS ADOPTED

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COMMUNICATIONS COMMITTEE

Ms. Palmer presented the Report of the Communications Committee of its meeting on April 9th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of April, 1992, the following members were present: Colin McKinnon (Chair), Robert Carter, Fran Kiteley, Ross Murray, Julaine Palmer, Stuart Thom and Roger Yachetti. Also in attendance: Richard Tinsley, Theresa Starkes, and Gemma Zecchini.

A. POLICY

1. Advance Publication of Information Respecting Disciplinary Proceedings

The Communications Committee considered the consequences of Convocation's decision in March, 1992 to alter the nature of advance information provided to the media with respect to pending disciplinary proceedings. The Committee noted its concern for the possible consequences flowing from the implementation of the decision. The Committee resolved to request the Discipline Policy Committee to note its concerns with a view to having Convocation reassess its decision in light of concerns of the Communications Committee.

24th April, 1992

C.
INFORMATION

1. Communications Budget

The Communications Committee reviewed and approved the Communications budget. This document will be presented to Convocation in May.

2. Media Activity

A summary of media activity for the month of March is attached (C-1).

3. Call Statistics

Call statistics for the Dial-A-Law and Lawyer Referral Service are attached (C-2).

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"C. Campbell"
for Chair

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

C-Item 2 - Summary of Media Activity - March 1992. (Marked C-1)

C-Item 3 - Call statistics for Dial-A-Law and Lawyer Referral Service.
(Marked C-2)

THE REPORT WAS ADOPTED

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COUNTY & DISTRICT LIAISON COMMITTEE

Ms. Elliott presented the Report of the County & District Liaison Committee of its meeting on April 9th, 1992.

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 9th of April, 1992 at 11:30 a.m., the following members were present: R. Bragagnolo (Chair), C. Curtis and S. Elliott. The following members of the County and District Law Association Executive were also in attendance: H. Arrell, S. Foley, R. Gates, M. Hennessy, D. Lovell and R. Smith. Staff in attendance were: M. Angevine, G. Howell and A. John (Secretary).

24th April, 1992

1. AGENDA FOR PLENARY SESSION OF THE COUNTY AND DISTRICT LAW ASSOCIATION on MAY 14 and 15, 1992

Attached A-1 to A-2 is a letter from Michael P. O'Dea to the Treasurer dated April 10, 1992 describing the Agenda for the Plenary Session to be held May 14 and 15, 1992. The Committee urges all benchers to make a special effort to attend the sessions on Thursday, May 14, 1992. In addition, all Committees are requested where possible to deal only with urgent business on that day to allow additional time for benchers to attend the Plenary. Of particular interest will be the panel discussion on continuing legal education (10 a.m. to 12 noon).

The Programme for Thursday, May 14, 1992 will be as follows:

9:45 a.m. - Noon. Address by Frank Harris, Executive Director of Continuing Legal Education for the Minnesota Bar Association, on the American experience with mandatory continuing legal education. Gary Watson and Paul Perell will respond.

2:00 p.m. - 4:00 p.m. Frank Harris will speak on the strengths and weaknesses of mandatory continuing legal education. A panel discussion will follow.

Venue: Nathan Phillips Room at the Downtown Holiday Inn.

2. BENCHER ELECTIONS

Your Committee discussed the work of the Special Committee on Bencher Elections and was advised that the Committee would be reporting to Convocation in April requesting clarification of its mandate. The County and District Executive would like Convocation to consider its position on the issue of Bencher Election Reform which is summarized below and set out in greater detail in the letter of Michael P. O'Dea, dated April 10, 1992 and attached as A-3.

The County and District Law Presidents' Association would like the Special Committee to reopen and revisit all issues touching on the manner in which benchers are elected.

3. RESOLUTIONS

Attached at A-4 to A-5 are two Resolutions passed by the County and District Association at its meeting in January 1992.

4. TRANSITION REPORTS

Your Committee has asked that the data collected for use in the Transitions Report be analyzed according to geographic area and a report prepared for the Committee's consideration.

5. COUNTY LIBRARY LEVY

The Law Society's Chief Librarian, G. Howell reported on the Law Foundation grant for the fiscal year 1992 - 1993. Library services could be maintained at the existing level if the County Library levy were increased by \$10. After some

24th April, 1992

discussion the members of the County and District Executive requested that the Report of this Committee specifically mention that the suggested increase in the County Library levy was wholeheartedly endorsed by the County and District Executive.

ALL OF WHICH is respectfully submitted

DATED the 24th day of April, 1992

"S. Elliott"
for Chair

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

- Item 1 - Letter from Mr. Michael P. O'Dea, Chair, The County and District Law Presidents' Association to Mr. James Spence, Q.C., Treasurer dated April 10, 1992. (Marked A-1 - A-2)
- Item 2 - Letter from Mr. Michael P. O'Dea, Chair to Mr. Rino Bragagnolo, Chair, County & District Liaison Committee dated April 10, 1992 re: Committee on Benchers' Elections. (Marked A-3)

THE REPORT WAS ADOPTED

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RESEARCH AND PLANNING COMMITTEE

Mr. Bastedo presented the Report of the Research and Planning Committee of its meeting on April 9th, 1992.

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 9th of April, 1992, at 8:00 a.m., the following members being present: T. Bastedo (Chair), L. Brennan, P. Copeland, C. Curtis, S. Elliott, A. Feinstein, The Hon. A. Lawrence, R. Manes, C. McKinnon, F. Mohideen, R. Smith.

Also present: N. Graham, S. Hodgett, A. Brockett.

A.
POLICY

A.1. DISPUTE RESOLUTION SUBCOMMITTEE

- A.1.1. An Interim Report was received from the Dispute Resolution Subcommittee (Attachment A).

A.1.2. Your Committee approved the following Position Statement (to be found at page 5 of the Interim Report):

The Subcommittee recognizes that lawyers are involved in the prevention and resolution of disputes. Negotiation and litigation are the traditional dispute resolution tools employed by lawyers but are not the sole methods. In recent years, increasing attention has been focused on a broad range of dispute resolution tools including mediation, arbitration, mini-trials, pre-trials and private adjudication. The Subcommittee is of the view that lawyers should be encouraged to become familiar with these and other tools, to make better use of such tools and, in appropriate cases, to serve as third-party neutrals.

The Subcommittee is of the view that action should be taken by the Law Society to accomplish the following:

1. To encourage and promote excellence in dispute resolution within the legal community.
2. To ensure that lawyers are familiar with, and have access to, a wide range of dispute resolution services, procedures, techniques and tools.
3. To ensure that lawyers are armed with the information necessary to assess the appropriate use of various procedures, techniques and tools of dispute resolution.
4. To facilitate involvement of lawyers in dispute resolution by reducing such barriers as may exist.
5. To provide training in dispute resolution techniques.
6. To encourage lawyers to acquire training
 - in the drafting of adequate dispute resolution clauses
 - as counsel in situations where mediation or arbitration are employed
 - as mediators and arbitrators.
7. To support the identification of dispute resolution services offered by persons who are appropriately trained.
8. To promote public awareness of dispute resolution services and the roles of lawyers in the provision of those services.

A.1.3. Recommendation

Your Committee recommends that Convocation approve the Subcommittee's proceeding in accordance with the principles set out in the Position Statement above.

24th April, 1992

A.1.4. Financial Impact

The costs of the Subcommittee's work are covered by the budget of the Research and Planning Committee. A sum of \$4,000 has been included in the proposed budget for 1992-1993 to permit the Subcommittee to continue its work.

A.1.5. Included with the Subcommittee's Interim Report was a Short Glossary of Dispute Resolution Terms (Attachment B) and a Condensed Spectrum of Dispute Resolution Processes (Attachment C). Both documents are shortened versions of material that will be included with the Subcommittee's final report.

A.1.6. Recommendation

Your Committee recommends:

A.1.6.1. That the Interim Report, the Short Glossary and Condensed Spectrum be distributed to all County Law Libraries.

A.1.6.2. That the following documents be sent to all members of the Society:

- a letter
 - outlining the Terms of Reference and membership of the Subcommittee;
 - presenting the Position Statement;
 - advertising the availability of the full Interim Report; and
 - soliciting comments.
- the Short Glossary;
- the Condensed Spectrum;

but that, in order to save postage costs, these items be enclosed with some other mailing from the Society.

A.1.5. Financial Impact

On the assumption that there will be no additional mailing costs, it is estimated that the printing of these documents will cost \$6,000. This sum can be met from the Committee's current budget.

B.
ADMINISTRATION

No matters to report.

24th April, 1992

C.
INFORMATION

C.1. STRATEGIC PLANNING CONFERENCE: SEPTEMBER 24-26, 1992

C.1.1. Attachment D is the latest draft of the program for the Strategic Planning Conference to be held in Toronto from September 24 to September 26, 1992, under the title "Professionalism in the 90's: Responding to Social and Ethical Change".

C.1.2. The program is being developed by a Subcommittee (A. Feinstein, D. Scott, T. Bastedo, C. Campbell, S. Goudge and R. Manes, with the assistance of Professor M. Pilkington). The Subcommittee is now considering possible speakers and facilitators for the group discussions.

C.1.3. Osgoode Hall Law School and the University of Toronto Faculty of Law have made their premises available for the conference.

C.2. LAY BENCHERS

C.2.1. At the invitation of the Committee, Netty Graham outlined some concerns shared by lay benchers. In particular, the lay benchers had experienced serious delays in the payment of allowances and the reimbursement of expenses by the Ministry of the Attorney General.

C.2.2. A suggestion that a new Standing Committee for lay benchers be established was not pursued. It was agreed that if the concerns of the lay benchers were not satisfactorily addressed, Ms. Graham would bring the matter back to the Research and Planning Committee.

C.3. SUBCOMMITTEE ON KEEPING THE PROFESSION INFORMED ABOUT TECHNOLOGICAL DEVELOPMENTS

C.3.1. Susan Elliott is serving as a one-person Subcommittee, reviewing the role of the Law Society in keeping members of the profession informed about developments in technology. She reported that she had advertised the review in the CSALT Newsletter. As a result of the advertisement, she is to meet with a representative of the New York Bar Association.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"T. Bastedo"
Chair

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

A-Item A.1.1. - Interim Report: March 12, 1992 - Dispute Resolution Subcommittee. (Pages (19))

24th April, 1992

- A-Item A.1.5. - Short glossary of Dispute Resolution Terms. (Pages (10))
- A-Item A.1.5. - Condensed Spectrum of Dispute Resolution Processes. (Pages (3))
- C-Item C.1.1. - Draft of program for the Strategic Planning Conference. (Pages (2))

THE REPORT WAS ADOPTED

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FRENCH LANGUAGE SERVICES COMMITTEE

Ms. Palmer presented the Reports of the French Language Services Committee of its meetings on January 9th, February 13th, March 12th and April 9th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of January, 1992 at 11:30 a.m. The following members attended the meeting: Benchers representation: Mr. R.C. Topp (Vice-Chair), Ms. K.J. Palmer (Vice-Chair) and Mr. V.C. Krishna. Staff representation: Mr. A. Treleaven, Ms. H. Harris and Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO) and Ms. G. Cortis, Legal Aid.

C.
INFORMATION

1. Discipline Hearings in French

Your Committee has concluded that the procedure for appointing bilingual panel members for French discipline hearings and conducting such hearings should be reviewed further. The Sub-committee on French Discipline Hearings is hereby created for this purpose and the first meeting will be held in the early part of February 1992. Mr. Vern C. Krishna is appointed as Chair of the Sub-Committee.

2. French Language Training for Benchers

At some benchers' request, the French Language Services Office conducted a preliminary survey among benchers to determine the viability of a French language skills upgrading program. The summary report indicated that 10 out of the 11 benchers surveyed not only indicated an interest in such program but would also be prepared to cost-share, if need be. Your Committee has requested that the French Language Services Office prepare a program recommendation and cost projection for its review.

24th April, 1992

3. Service of Official Documents in French

This matter was reviewed by the Senior Counsel of Professional Conduct who is of the opinion that if documents filed with the courts comply with section 135, there is no logical reason why court officials should not accept them. The same should hold true when a lawyer for one party is served with documents by the lawyer whose client is opposed in interest. This is further addressed in the January 24th report to Convocation of the Professional Conduct Committee. Your Committee therefore refers you to Item 1 of the said report under "Information".

4. Semaine francophone 1992

The French Language Services Coordinator reported that the Law Society has been invited to become a partner in the "Semaine francophone 1992". Francophone Week is a highly-publicized event held in June of each year at City Hall and throughout Toronto in celebration of the French culture and language. The Law Society has accepted the invitation subject to receiving more information on the 1992 program and financial implications.

The meeting was adjourned at 12:25 p.m.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 1992

"J. Palmer"
for Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of February, 1992 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. P.J. Peters (Chair), Mr. R.C. Topp (Vice-Chair), Mr. C.L. Campbell and Mr. V.C. Krishna. Staff representation: Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO) and Ms. G. Cortis, Legal Aid.

B.

ADMINISTRATION

1. 1992-93 Budget Proposal

Your Committee reviewed the 1992-93 budget proposal for the French Language Services Department and will submit same to Finance and Administration as proposed.

24th April, 1992

C.
INFORMATION

1. Discipline Hearings in French

The Sub-Committee on French Discipline Hearings met on February 12, 1992. A position paper will be presented to the Discipline Policy Committee for further discussion. A report will be made to Convocation thereafter.

The meeting was adjourned at 12:40 p.m.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"J. Palmer"
for Chair

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 12th of March, 1992 at 11:30 a.m. The following members attended the meeting: Benchers representation: Ms. P.J. Peters (Chair), Mr. R.C. Topp (Vice-Chair), Ms. K.J. Palmer (Vice-Chair) and Mr. M.G. Hickey. Staff representation: Ms. H. Harris and Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO) and Ms. G. Cortis, Legal Aid. Observer: Ms. Ruth Lawson, Legal Aid. Special Guest: Mr. Marc Cousineau, University of Ottawa.

B.
ADMINISTRATION

1. 1992-1993 Budget Proposal

A minor revision was made to the budget and approved for submission to the Finance and Administration Committee.

C.
INFORMATION

1. French Bar Admission Program

The Regional Director of the Ottawa Legal Education Centre reported that 42 applications were received for the Ottawa French Bar Admission Program starting May 19, 1992.

24th April, 1992

The letter from the Treasurer soliciting members' assistance with French instruction for the Ottawa Bar Admission Program has generated a number of replies from Toronto and a few from Ottawa and other Ontario regions. A follow-up report will be prepared with specific information and a suggested course of action.

2. French Language Training for Benchers

The French Language Services Coordinator indicated that the Spring session of the Law Society's French Language Skills Upgrading Program will resume April 14, 1992 and continue until June 24, 1992. Qualifying staff members will take part in the program, as well as qualifying senior managers and Toronto benchers subject to space availability. The addition of senior managers and benchers does not entail additional costs.

The continuation of the program beyond June 30, 1992 has not yet been approved.

3. Legal Services in French - Ottawa

Mr. Marc Cousineau, Associate Dean, Faculty of Law, Common Law Section, University of Ottawa, addressed your Committee on the need for enhanced legal services in French in Ottawa. He requested the sum of \$10,000 from the Law Society to enable a survey to be made of the Francophone bar and Francophone public in Ottawa and Sudbury in order to identify the reasons why Francophone members of the public and the profession are not using or providing services in French. Statistical information of this nature is not available.

The meeting was adjourned at 12:45 p.m.

ALL OF WHICH is respectfully submitted

DATED this 27th day of March, 1992

"J. Palmer"
for Chair

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 9th of April, 1992 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. P.J. Peters (Chair), Ms. K.J. Palmer (Vice-Chair) and Mr. D.H.L. Lamont. Staff representation: R. Tinsley, A. Treleaven, Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO).

24th April, 1992

C.
INFORMATION

1. Designated Bilingual Positions

At your Committee's invitation, the Secretary answered concerns raised about certain designated bilingual positions not being filled in the Secretariat area. The Secretary's explanations and suggestions are being considered by this Committee for further reporting.

The French Language Services Office has been requested to provide this Committee with a report on the current status of designated bilingual positions in all Law Society departments, as well as more information on recruitment practices for bilingual positions.

2. Private Survey on French Language Services in Ontario

Your Committee reviewed the request from Mr. Marc Cousineau, Assistant Dean, Law Faculty, University of Ottawa for the Law Society to sponsor a \$10,000 survey on the use of French language services by members of the profession and the public in Ottawa and other Francophone communities in Ontario.

While this would be a useful exercise, particularly in determining the number of users and the problems related to the use of legal services in French, it was decided that current budgetary constraints do not permit such expenditure.

3. Non-Benchers to Serve on French Language Services Committee

Your Committee discussed various options of selecting non-benchers and the cost involved to bring in out-of-town representatives. It was decided that further information was required on a universal selection procedure and funding. It is now your Committee's understanding that the Research and Planning Department is preparing a document addressing these issues.

The meeting was adjourned at 12:45 p.m.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"J. Palmer"
for Chair

THE REPORTS WERE ADOPTED

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WOMEN IN THE LEGAL PROFESSION COMMITTEE

Ms. Mohideen presented the Report of the Women in the Legal Profession Committee of its meeting on April 9th, 1992.

24th April, 1992

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 9th of April, 1992, at 11:30 a.m., the following members being present: D. Bellamy (in the Chair), P. Copeland, M. Cullity, J. Lax and F. Mohideen.

Also present: A. Brockett, S. Hodgett and L. Johnstone.

A.

POLICY

No matters to report.

B.

ADMINISTRATION

No matters to report.

C.

INFORMATION

C.1. DRAFT RULE OF PROFESSIONAL CONDUCT ON THE SUBJECT OF SEXUAL HARASSMENT

- C.1.1. In March 1991, Convocation resolved that the Professional Conduct Committee should address the issue of sexual harassment and, if it so decided, recommend a change to the Rules of Professional Conduct. It was subsequently agreed that the Women in the Legal Profession Committee would draft a rule for consideration by the Professional Conduct Committee.
- C.1.2. A version of the rule was before the Committee for consideration and it was discussed.
- C.1.3. There was general agreement that such a rule is necessary and should be proceeded with.
- C.1.4. The relation of such a rule with Rule 13, Commentary 1 (the duty to report) was also canvassed. The Women in the Legal Profession Committee will draw its concerns to the attention of Professional Conduct Committee which is currently reviewing Rule 13.
- C.1.5. The matter was put over for further discussion at the next meeting.

24th April, 1992

C.2. PRIORITIES OF THE COMMITTEE

- C.2.1. Ms. Bellamy, the Chair, reported to the Committee on a meeting which she had with the Chair of the Research and Planning Committee, Mr. Bastedo, and Mr. Goudge, a member of both Committees. The meeting had discussed which of the Committees should pursue various objectives set out in the Transitions Report.
- C.2.2. Your Committee discussed how to best to encourage implementation of the recommendations of the Transitions Report within the profession. Workshops and topics for further research will continue to be discussed. In particular the Committee is interested in exploring the economic implications and possible benefits of maternity leave and alternative work arrangements.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1992

"F. Mohideen"
for Chair

THE REPORT WAS ADOPTED
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EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Mr. Rock presented the Report of the Equity in Legal Education and Practice Committee of its meeting on April 9th, 1992.

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 9th of April 1992, the following members being present: Harvey T. Strosberg (Chair), Anne-Marie Stewart, Ross Murray, Shirley O'Connor and staff member Donald A. Crosbie.

C.
INFORMATION

1. The committee reviewed the subcommittees approved by Convocation on November 22, 1991 and concluded that the list of subcommittees was still satisfactory subject to the addition of a further subcommittee to deal specifically with the black community.
2. The committee agreed to provide support to the "Aboriginal Articling Student Support Committee" and to endorse the request of the Student Subcommittee to participate in the Subcommittee to Liaise with Native People.
3. The committee endorses supporting a similar program to be established and overseen by the Subcommittee to Liaise with the Black Committee.

24th April, 1992

4. The Under Treasurer was requested to review and report back on the logistics of providing support to these two subcommittees.
5. The committee requests that persons be appointed to the committee to represent the following interests:
 - a) the Attorney General;
 - b) the black community;
 - c) the Bar Admission Course Student Advisory Committee; and
 - d) the law deans (the committee has advised the law deans that they would be agreeable to having a law dean appointed to the committee and a law school staff member experienced in admissions or equity).

It will be noted that in each of the above cases, the representative or representatives are persons nominated by the group being represented on the committee. It is, therefore, not a case of selecting names from the list of Law Society members who had indicated an interest in serving on the Equity in Legal Education and Practice Committee. For this reason, the committee believes that it is appropriate to proceed immediately with such appointments.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April 1992

"A. Rock"
for Chair

THE REPORT WAS ADOPTED

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BUILDING AND GROUNDS COMMITTEE

Mr. Lamont presented the Report of the Building and Grounds Committee of its meeting on April 8th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BUILDING AND GROUNDS COMMITTEE begs to report:

Your Committee met on Thursday, the 8th of April 1992 at two o'clock in the afternoon, the following members being present: D.H.L. Lamont (Chair), K.E. Howie. Also in attendance were D.A. Crosbie, R.T. Tinsley, D.E. Crack and J.G. Irvine.

B. ADMINISTRATION

1. BUDGET

The Budget was before the Committee for approval.

24th April, 1992

Included in the budget document was a listing of capital projects to be considered for the 1992/93 fiscal year. A list including the items approved by the Committee is attached.

The Committee recommended that the budget to be forwarded to the Finance and Administration Committee for inclusion in the General Fund Budget, and that expenditures within the budget may be made by the Building Committee without further recourse to Convocation or the Finance and Administration Committee.

Approved

2. ARCHITECTURAL SERVICES TO THE SOCIETY

Historically, the Law Society has retained an architect, currently Norman McMurrich of N.O.R.R. Partnership, to provide a range of services extending beyond building structure and design to include interior design, decor, grounds etc.

With the creation of the role of Facilities Manager, the Society now has on staff many of the skills for which outside advice was required.

The Committee directed the Under Treasurer and the Director of Finance and Administration to meet with the Society's Architect to discuss arrangements for Architectural services and the consideration of a contract to define those services.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April 1992

"D. Lamont"
Chair

THE REPORT WAS ADOPTED
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The Investment Committee Report was deferred.

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CONVOCATION ADJOURNED AT 4:45 P.M.
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Confirmed in Convocation this ~~27th~~ day of *May*, 1992.


Treasurer